

# Commissioner O’Rielly Again Targets Pirate Broadcasters and Their Supporters to Walk the Enforcement Plank

July 25, 2017



Commissioner Michael O’Reilly called for stronger enforcement action to combat unauthorized “pirate” radio broadcasters in a [statement](#) before the Communications and Technology Subcommittee of the House Energy and Commerce Committee on July 25, 2017. The Commissioner’s recommendations came during the Subcommittee’s [hearing](#) on [draft legislation](#) to reauthorize the Federal Communications Commission (“FCC”). While the reauthorization bill does not focus on pirate enforcement and the issue normally is seen as non-controversial, it is a [longstanding priority](#) for the Commissioner. In his statement, Commissioner O’Reilly not only advocated for increased fines against pirates, but also penalties against third parties that support pirates, such as building owners housing pirate stations or pirate station advertisers. While it remains unlikely that the recommendations will result in near-term legislative action, Commissioner O’Reilly’s statement sends a clear message that pirate broadcasters and their supporters remain in his enforcement crosshairs.

Federal law [prohibits](#) the operation of a radio broadcast station above certain power levels without an FCC license. Since arriving at the FCC, Commissioner O’Reilly has been a [frequent critic](#) of pirate broadcasters, arguing these unauthorized operations steal listeners from licensed stations, cause harmful interference to licensed stations, and do not provide critical emergency alerts, weather updates, and news offered by licensed stations. Despite these harms, the Commissioner [claimed](#) the FCC has done little to combat unauthorized stations, particularly in pirate “[hotbeds](#)” of New York City, Boston, and Miami. As a result, Commissioner O’Reilly has supported multiple anti-pirate proposals during his FCC tenure, from empowering licensed broadcasters to [bring private lawsuits](#) against unauthorized stations to ensuring the Enforcement Bureau remains committed to pirate enforcement following the [closure of FCC field offices](#). The Commissioner’s recent statement recommended beefing up pirate enforcement in five areas:

1. Increased Penalties – While the FCC occasionally issues [large penalties](#) against particularly

egregious, long-running unauthorized broadcasters, such actions are rare with pirate operators generally receiving non-monetary [warnings](#) or fines below the \$25,000 [delegated authority limit](#) for Enforcement Bureau actions in this area. Commissioner O’Rielly recommended that the fines against pirates should instead mirror the significant penalties proposed for other violations impacting public safety and consumer protection, which can range from [millions](#) to [hundreds of millions](#) in fines.

2. Third-Party Aiding & Abetting Liability – The FCC issued an [Enforcement Advisory](#) last year with Commissioner O’Rielly’s support warning that third parties aiding pirate operations may be subject to enforcement action. But FCC pirate radio investigations continue to target the actual station operators instead of those “aiding and abetting” such violators. In his statement before the House Subcommittee, the Commissioner reiterated his recommendation to take enforcement action against landlords, building owners, building supervisors, and advertisers that “knowingly and intentionally assist” pirates to cut off outside support for unauthorized stations.
3. Equipment Confiscation – Federal law allows FCC agents to [confiscate](#) pirate broadcaster equipment, but only after receiving the approval of the Department of Justice and overcoming certain procedural hurdles. As a result, FCC agents often leave pirate equipment in place after conducting investigations, allowing unauthorized stations to quickly return to the air. The Commissioner recommended the FCC adopt an expedited process to confiscate pirate equipment, particularly when such equipment is located in common areas like elevator shafts and rooftops not owned or controlled by pirate operators.
4. Follow-Up Enforcement – As a corollary to equipment confiscation, the Commissioner recommended that FCC agents conduct follow-up sweeps of known pirate hotspots to ensure that unauthorized stations do not return to the air after investigations. Although he did not offer a specific timetable, the Commissioner indicated in his statement that such sweeps should occur at least annually.
5. Eliminating Warnings – Federal law allows the FCC to impose fines on pirate broadcasters [without first issuing a warning or other notice](#). However, Commissioner O’Rielly stated that FCC agents often leave warning after warning informing the same individuals to stop unauthorized broadcasts to no avail. The Commissioner indicated that this process undermines FCC authority and recommended that it suspend any further warnings to pirates and move to propose fines against unauthorized broadcasters as soon as they are discovered.

Commissioner O’Rielly’s call for action on pirate radio represents just one example of his [process reforms](#) designed to improve FCC transparent and efficiency as well as his continuing role as a “[procedural stickler](#)” focused on enforcing the technical regulations underlying broadcast operations. As we previously [reported](#), the Enforcement Bureau recently issued two pirate forfeitures with striking speed, potentially signaling a broader shift in the pace of FCC enforcement resolution. However, it remains to be seen whether Commissioner O’Rielly’s longstanding pirate radio proposals will translate into new FCC enforcement rules or policies.