

FCC Proposes First-Ever Forfeiture Against Property Owners for Facilitating Pirate Radio Operations

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Continuing its [assault](#) on unlicensed broadcast operations, the Federal Communications Commission ("FCC") issued a unanimous [Notice of Apparent Liability for Forfeiture](#) ("NAL") at its September meeting proposing the statutory maximum fine of \$144,344 against a pirate radio operator as well as the owners of the property housing the unlicensed station. The action represents the [first time](#) the FCC has found landowners apparently liable for pirate radio operations on their property and the first Commission-level NAL issued against a pirate radio operation. Imposing penalties on property owners that support pirate operations has been a [longstanding goal](#) for Commissioner O'Rielly, and Chairman Pai [signaled](#) that cracking down on pirate stations remains a key enforcement priority for the FCC.

The [Communications Act](#) prohibits the transmission of radio signals above specified power levels without a FCC license. The NAL follows a five-year investigation of Fabrice Polynice, who operated a pirate radio station in North Miami, Florida from a shed located in the backyard of Harold and Veronise Sido (the "Sidos"). FCC field agents first identified the pirate station in 2012 and warned Mr. Polynice and the Sidos that such operations were illegal. But the unlicensed operations continued, resulting in seizure of the station's radio equipment by U.S. Marshalls later that year. However, the station soon returned to the air and the FCC's Enforcement Bureau subsequently [fined](#) Mr. Polynice \$25,000, which remains unpaid. At the time, the Enforcement Bureau declined to impose fines against the Sidos, but again warned them of the illegality of pirate operations.

In the NAL, the FCC found that Mr. Polynice continued to operate the pirate station despite the prior fine and multiple additional warnings from FCC field agents in recent years. The FCC determined that the maximum fine was necessary in light of the intentional and repeated nature of the violations as

well as the egregious disregard demonstrated for the Commission's authority. However, the FCC went a step further and also found the Sidos apparently liable for the continued operation of the pirate station. In doing so, the FCC used a "totality of the circumstances" test that focused on three criteria:

- **First**, the FCC emphasized that the Sidos controlled access to the backyard containing the shed housing the pirate station's transmitter and antenna, and granted access to Mr. Polynice with the knowledge that his pirate radio operations were illegal.
- **Second**, the FCC highlighted the material support the Sidos gave the station, including providing and paying for the Internet service necessary to carry the station's programming to the transmitter and the electricity required to run the station's equipment.
- **Third**, the FCC noted that Mr. Sido apparently joined Mr. Polynice during broadcasts and the Sidos often took the station off the air in response to FCC field agent visits, further demonstrating control over station operations.

In light of the access and aid provided to Mr. Polynice as well as the multiple prior warnings, the FCC found the Sidos jointly and severally liable for the proposed maximum forfeiture.

The Commissioners **all supported** the NAL, although Commissioner O'Rielly **criticized** the size of the proposed fine as inadequate compared to the larger penalties imposed for violations of other FCC rules, and asked Congress to increase the statutory maximum penalty for pirate operations. Commissioner Clyburn also **cautioned** that pirate operations may be driven by the lack of opportunities to obtain FCC licenses, especially for stations targeting minority listeners in urban areas.

While the facts underlying the NAL are straightforward, its impacts may be far-reaching. Chairman Pai **indicated** that the FCC wanted to send "a clear message" to pirate operators and their supporters that it will use its "strongest enforcement tools" to curb unlicensed operations. However, the FCC's current enforcement focus appears limited to property owners that not only knew about pirate stations operating on their property but also actively supported such operations knowing they are illegal. As a result, it remains to be seen whether the FCC will expand its focus to target apartment landlords and other owners of multi-tenant properties that may be unknowingly housing pirate stations.