

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of )
)
Amendment of Section 1.80 of the Commission's )
Rules )
)
Implementing Section 2 of the Preventing Illegal )
Radio Abuse Through Enforcement Act )
(PIRATE Act) )
)

ORDER

Adopted: December 17, 2020

Released: December 17, 2020

By the Chief, Enforcement Bureau, and the Managing Director:

I. INTRODUCTION

1. The Preventing Illegal Radio Abuse Through Enforcement Act (PIRATE Act)<sup>1</sup> grants the Commission additional enforcement authority, including higher forfeiture penalties, against pirate radio broadcasters and any person who permits the operation of pirate radio broadcasting.<sup>2</sup> Section 2 of the PIRATE Act adds a new section to the Communications Act of 1934, as amended (the Communications Act), enumerated as section 511 and entitled "Enhanced Penalties for Pirate Radio Broadcasting; Enforcement Sweeps; Reporting."<sup>3</sup> This Order amends section 1.80 of the Commission's rules to implement that provision.<sup>4</sup> We move directly to an order here because implementation of new section 511 entails no exercise of our administrative discretion and, therefore, notice and comment procedures are unnecessary under the "good cause" exception to the Administrative Procedure Act (APA).<sup>5</sup>

II. BACKGROUND

2. New section 511 provides specific authority for the Commission to combat pirate radio broadcasting with enhanced penalties.<sup>6</sup> Pirate radio broadcasting is defined as "the transmission of communications on spectrum frequencies between 535 and 1705 kilohertz, inclusive, or 87.7 and 108 megahertz, inclusive, without a license issued by the Commission, but does not include unlicensed

<sup>1</sup> Preventing Illegal Radio Abuse Through Enforcement Act, Pub. L. No. 116-109, 134 Stat. 3 (2020) (codified at 47 U.S.C. § 511) (PIRATE Act).

<sup>2</sup> PIRATE Act § 2, 134 Stat. at 3.

<sup>3</sup> Id.; 47 U.S.C. § 511.

<sup>4</sup> 47 CFR § 1.80.

<sup>5</sup> See 5 U.S.C. § 553(b)(B); see e.g., Implementing Section 3 of the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act (TRACED Act), Order, 35 FCC Rcd 4476 (EB 2020) (Section 3 TRACED Act Order); see also Komjathy v. Nat'l Transp. Safety Bd., 832 F.2d 1294, 1296-97 (D.C. Cir. 1987) (notice and comment is unnecessary where the regulation does no more than repeat, virtually verbatim, the statutory grant of authority), cert. denied, 486 U.S. 1057 (1988); Metzbaum v. Federal Energy Regulatory Commission, 675 F.2d 1282, 1291 (D.C. Cir. 1982) (agency order appropriately issued without notice and comment under the APA's "good cause" exception as a nondiscretionary ministerial action).

<sup>6</sup> 47 U.S.C. § 511.

operations in compliance with part 15 of title 47, Code of Federal Regulations.”<sup>7</sup> Sections 511(a) and (b) permit forfeitures of up to \$100,000 per day, up to a maximum fine of \$2 million, for any person who “willfully and knowingly does or causes or suffers to be done”<sup>8</sup> any pirate radio broadcasting.<sup>9</sup> These enhanced forfeiture amounts are “in *addition* to any other penalties provided by law.”<sup>10</sup> Section 511(f) directs the Commission to “revise its rules to require that, absent good cause, in any case alleging a violation of subsection (a) or (b), the Commission shall proceed directly to issue a notice of apparent liability without first issuing a notice of unlicensed operation.”<sup>11</sup>

### III. DISCUSSION

3. We amend section 1.80 of our rules to implement section 511. *First*, we codify penalties for violations of section 511(a) or (b). Under the amended rule, the Commission has the authority to impose a penalty of up to \$100,000 per day, up to a maximum fine of \$2 million,<sup>12</sup> against any person who willfully and knowingly does or causes or suffers to be done any pirate radio broadcasting, in addition to any forfeiture penalty amount that may be proposed under any other provision of the Communications Act.<sup>13</sup>

4. *Second*, consistent with section 511(f), we amend section 1.80 to provide that, absent good cause, the Commission shall, in the first instance, propose a penalty against any person who “willfully and knowingly does or causes or suffers to be done any pirate radio broadcasting.”<sup>14</sup> In other words, absent good cause to do otherwise, the Commission will not first issue a notice of unlicensed operation to a person who engages in such conduct.<sup>15</sup> In applying the good cause standard in section 511(f), we may consider Commission precedent concerning waiver of our regulations for good cause shown.<sup>16</sup> In general, this standard requires special circumstances warranting a deviation from the general rule and serving the public interest.<sup>17</sup>

5. Consistent with previous decisions, we amend our rules without providing for prior public notice and comment.<sup>18</sup> Our action here is ministerial because it simply effectuates regulations

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<sup>7</sup> 47 U.S.C. § 511(h).

<sup>8</sup> 47 U.S.C. § 511(a).

<sup>9</sup> 47 U.S.C. §§ 511(a)-(b).

<sup>10</sup> 47 U.S.C. § 511(b) (emphasis added).

<sup>11</sup> 47 U.S.C. § 511(f). Because section 511(f) is specific to cases involving pirate radio broadcasting, this *Order* does not impact the Bureau’s use of such notices in cases that do not involve pirate radio broadcasting, as defined in section 511(h). *See id.* § 511(h).

<sup>12</sup> These amounts are subject to annual adjustments due to inflation. *Amendment of Section 1.80(b) of the Commission’s Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, 34 FCC Rcd 12824 (EB 2019).

<sup>13</sup> *See* 47 U.S.C. §§ 511(a)-(b).

<sup>14</sup> 47 U.S.C. § 511(a).

<sup>15</sup> S. Rep. No. 116-178, at 8 (stating that “in implementing the ‘good cause’ standard” in subsection (f), the Commission should “balance the need for efficient and effective enforcement activity with the intent of this Act to eliminate the problems associated with pirate radio broadcasting.”).

<sup>16</sup> *See* 47 CFR § 1.3.

<sup>17</sup> *Ne. Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969)).

<sup>18</sup> *See, e.g., Section 3 TRACED Act Order*, 35 FCC Rcd at 4478, para. 10; *Implementation of the Satellite Home Viewer Extension and Reauthorization Act of 2004 (“SHVERA”)*, Order, 20 FCC Rcd 7780, para. 1 & n.3 (2005); *Implementation of Section 505 of the Telecommunications Act of 1996* (Scrambling of Sexually Explicit Adult Video

(continued....)

established by legislation and requires no exercise of administrative discretion.<sup>19</sup> For this reason, we conclude that prior notice and comment would serve no useful purpose and is unnecessary. We therefore find that this action comes within the “good cause” exception to the notice and comment requirements of the APA.<sup>20</sup>

#### IV. PROCEDURAL MATTERS

6. The Enforcement Bureau is responsible for, among other things, rulemaking proceedings regarding general enforcement policies and procedures.<sup>21</sup> In section 511(f) of the Communications Act, Congress mandated the Commission to prescribe implementing regulations.<sup>22</sup> Additionally, the enhanced penalties set forth in sections 511 (a) and (b) require codification in the Commission’s rules. Therefore, action on delegated authority is properly taken in this *Order* amending section 1.80 of our rules, which is part of the Commission’s general enforcement policies and procedures. In addition, because a notice of proposed rulemaking is not required for these rule changes, no regulatory flexibility analysis is required.<sup>23</sup>

7. *Effective Date.* The rules adopted in this *Order* shall be effective 30 days after publication in the Federal Register.

8. *Paperwork Reduction Act of 1995 Analysis.* We have analyzed the actions taken herein with respect to the Paperwork Reduction Act of 1995 (PRA),<sup>24</sup> and we find them to impose no new or modified information collection(s) subject to the PRA. In addition, pursuant to the Small Business Paperwork Relief Act of 2002,<sup>25</sup> our actions do not impose any new or modified “information collection burden for small business concerns with fewer than 25 employees.”<sup>26</sup>

9. *Congressional Review Act.* The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs that this rule is “non-major” under the Congressional Review Act, 5 U.S.C. § 804(2). The Commission will send

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Service Programming), Order and Notice of Proposed Rulemaking, 11 FCC Rcd 5386, 5387, para. 3 (1996); *Implementation of Sections 204(a) and 204(c) of the Telecommunications Act of 1996* (Broadcast License Renewal Procedures), Order, 11 FCC Rcd 6363, 6364, para. 6 (1996); *Implementation of Sections 202(a) and 202(b)(1) of the Telecommunications Act of 1996* (Broadcast Radio Ownership), Order, 11 FCC Rcd 12368, 12371, para. 5 (1996); *Implementation of Sections 202(c)(1) and 202(e) of the Telecommunications Act of 1996* (National Broadcast Television Ownership and Dual Network Operations), Order, 11 FCC Rcd 12374, 12377, para. 7 (1996).

<sup>19</sup> We also take this opportunity to make a few nonsubstantive editorial revisions to section 1.80, as some punctuation and numbering references have gotten out of sequence as a result of past amendments. See 47 CFR § 0.231(b) (“The Managing Director, or his designee, is delegated authority to make nonsubstantive editorial revisions of the Commission’s rules and regulations upon approval of the bureau or staff office primarily responsible for the particular part or section involved.”).

<sup>20</sup> See 5 U.S.C. § 553(b)(B).

<sup>21</sup> See 47 CFR § 0.111(a)(22). Bureau action is appropriate here, because this proceeding does not require notice and comment. See 47 CFR § 0.311(a)(1); see also *supra* para. 5.

<sup>22</sup> See 47 U.S.C. § 511(f).

<sup>23</sup> See 5 U.S.C. § 603(a); U.S. Small Business Administration, Office of Advocacy, A Guide for Government Agencies, How to Comply with the Regulatory Flexibility Act at 9 (2017), <https://www.sba.gov/sites/default/files/advocacy/How-to-Comply-with-the-RFA-WEB.pdf> (detailing Regulatory Flexibility Act exemptions).

<sup>24</sup> Pub. L. No. 104-13, 109 Stat. 163 (codified at 13 U.S.C. § 91, 44 U.S.C. § 101 note, and 44 U.S.C. §§ 3501-20).

<sup>25</sup> Pub. L. No. 107-198, 116 Stat. 729 (codified at 5 U.S.C. § 601 note, 44 U.S.C. §§ 101 note, 3504, 3506, 3520, 3521).

<sup>26</sup> See 44 U.S.C. § 3506(c)(4).

a copy of this *Order* in a report to be sent to Congress and the Government Accountability Office, pursuant to 5 U.S.C. § 801(a)(1)(A).

10. *People with Disabilities.* To request material in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

11. *Further Information.* For further information, contact Shannon Lipp, Legal Advisor, Office of the Bureau Chief, Enforcement Bureau, at (202) 418-8192 or [shannon.lipp@fcc.gov](mailto:shannon.lipp@fcc.gov).

#### V. ORDERING CLAUSES

12. Accordingly, **IT IS ORDERED**, pursuant to sections 4(i), 4(j), and 511 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 511, and sections 0.111(a)(22), 0.231(b), and 0.311(a)(1) of the Commission's rules, 47 CFR §§ 0.111(a)(22), 0.311(a)(1), that this *Order* **IS ADOPTED**.

13. **IT IS FURTHER ORDERED** that section 1.80 of the Commission's rules, 47 CFR § 1.80, is **AMENDED** as set forth in the Appendix.

14. **IT IS FURTHER ORDERED** that this *Order* and the foregoing amendments to the Commission's rules **SHALL BE EFFECTIVE** thirty (30) days after the date of publication in the Federal Register.

15. **IT IS FURTHER ORDERED** that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, **SHALL SEND** a copy of this *Order* to Congress and the Government Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. § 801(a)(1)(A).

FEDERAL COMMUNICATIONS COMMISSION

Rosemary C. Harold  
Chief  
Enforcement Bureau

Mark Stephens  
Managing Director

**APPENDIX**

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 1 as follows:

**PART 1---PRACTICE AND PROCEDURE****Subpart A---General Rules of Practice and Procedure****Miscellaneous Proceedings**

1. The authority citation for part 1 continues to read as follows:

Authority: 47 U.S.C. chs. 2, 5, 9, 13; 28 U.S.C. 2461 note, unless otherwise noted.

2. Amend § 1.80 as follows:
  - a. Revising paragraph (a)(4);
  - b. Redesignating paragraphs (a)(5) and (6) as paragraphs (a)(6) and (7) and adding a new paragraph (a)(5);
  - c. Revising redesignated paragraphs (a)(5) and (6);
  - d. Redesignating paragraphs (b)(6) through (10) as paragraphs (b)(7) through (11) and adding a new paragraph (b)(6);
  - e. Revising redesignated paragraph (b)(9);
  - f. Revising the Note to redesignated paragraph (b)(10);
  - g. Revising the title of Table 1 and the Note to redesignated paragraph (b)(11);
  - h. Revising paragraph (d);
  - i. Redesignating paragraphs (e), (f), (g), (h), (i), and (j) as paragraphs (f), (g), (h), (i), (j), and (k) and adding a new paragraph (e).

The revisions and additions read as follows:

**§ 1.80 Forfeiture proceedings.**

(a) \* \* \*

(4) Violated any provision of sections 227(b) or (e) of the Communications Act or of the rules issued by the Commission under sections 227(b) or (e) of that Act;

(5) Violated any provision of section 511(a) or (b) of the Communications Act or of the rules issued by the Commission under section 511(a) or (b) of that Act;

(6) Violated any provision of section 1304, 1343, or 1464 of Title 18, United States Code; or

\* \* \* \* \*

(b) \* \* \*

(6)(i) Any person who willfully and knowingly does or causes or suffers to be done any pirate radio broadcasting shall be subject to a fine of not more than \$2,000,000; and (ii) Any person who willfully and knowingly violates the Act or any rule, regulation, restriction, or condition made or imposed by the Commission under authority of the Act, or any rule, regulation, restriction, or condition made or imposed by any international radio or wire communications treaty or convention, or regulations annexed thereto, to which the United States is party, relating to pirate radio broadcasting shall, in addition to any other penalties provided by law, be subject to a fine of not more than \$100,000 for each day during which such offense occurs, in accordance with the limit described in this section.

\* \* \* \* \*

(9) In any case not covered in paragraphs (b)(1) through (b)(8) of this section, the amount of any forfeiture penalty determined under this section shall not exceed \$16,000 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of \$122,500 for any single act or failure to act described in paragraph (a) of this section.

(10) \* \* \*

NOTE TO PARAGRAPH (b)(10): *Guidelines for Assessing Forfeitures.* The Commission and its staff may use these guidelines in particular cases. The Commission and its staff retain the discretion to issue a higher or lower forfeiture than provided in the guidelines, to issue no forfeiture at all, or to apply alternative or additional sanctions as permitted by the statute. The forfeiture ceilings per violation or per day for a continuing violation stated in section 503 of the Communications Act and the Commission's rules are described in § 1.80(b)(11). These statutory maxima became effective September 13, 2013. Forfeitures issued under other sections of the Act are dealt with separately in section III of this note.

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(b)(11) (i) \* \* \*

(ii) \* \* \*

TABLE 1 to PARAGRAPH (b)(11)(ii)

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NOTE TO PARAGRAPH (b)(11): Pursuant to Public Law 104-134, the first inflation adjustment cannot exceed 10 percent of the statutory maximum amount.

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(d) *Preliminary procedure in some cases; citations.* Except for a forfeiture imposed under sections 227(b), 227(e)(5), 511(a), and 511(b) of the Act, no forfeiture penalty shall be imposed upon any person under this section of the Act if such person does not hold a license, permit, certificate, or other authorization issued by the Commission, and if such person is not an applicant for a license, permit, certificate, or other authorization issued by the Commission, unless, prior to the issuance of the appropriate notice, such person:

\* \* \* \* \*

(e) *Preliminary Procedure in PIRATE Act cases.* Absent good cause, in any case alleging a violation of subsection (a) or (b) of section 511 of the Act, the Commission shall proceed directly to issue a notice of apparent liability for forfeiture without first issuing a notice of unlicensed operation.

\* \* \* \* \*