



Federal Communications Commission
Enforcement Bureau
Region Three

Los Angeles Regional Office
11331 183rd Street, PMB #365
Cerritos, CA 90703
562-860-7474
field@fcc.gov

May 24, 2023

BY UPS, FIRST-CLASS MAIL, AND CERTIFIED

Commissioner Stephanie Garcia Richard
New Mexico State Land Office
310 Old Santa Fe Trail
Santa Fe, NM 87501

Spaceport America
4605 Research Park Circle, Ste. A
Las Cruces, NM 88001
Attn: Dr. Bill Gutman, Director of Aerospace Operations

**NOTICE OF ILLEGAL
RADIO BROADCASTING**

Case Number: EB-FIELDWR-22-00034019

The Denver Office of the Federal Communications Commission's (FCC) Enforcement Bureau is investigating a complaint about an unlicensed FM broadcast station operating on frequencies 95.3 MHz and 96.3 MHz. An Agent from the Denver Office confirmed that unauthorized radio signals were transmitted on frequencies 95.3 MHz and 96.3 MHz from the Spaceport America property located between Las Cruces and Truth or Consequences, New Mexico, between June 21 and June 25, 2022, during the Spaceport America Cup 2022 event. Public records identify the New Mexico State Land Office as the owner of the Spaceport America property.¹ The FCC's records show no license issued for operation of a radio broadcast station on 95.3 MHz and 96.3 MHz at this location.

Radio broadcast stations operating on certain frequencies,² including 95.3 MHz and 96.3 MHz, must be licensed by the FCC pursuant to the Communications Act of 1934, as amended (Act).³ While the FCC's rules create exceptions for certain extremely low-powered devices, our agents have determined that those exceptions do not apply to the transmissions originating from the Property. Accordingly, the station operating on the Property may be violating the Act.⁴

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<http://liveweb.sierraco.org/assessor.aspx?source=assessor&page=optOwner&searchterm=18377&select=18377&selectyr=2022&nextp=3005087268508> (last visited Apr. 10, 2022).

² 47 CFR § 73.201.

³ 47 U.S.C. § 301.

⁴ See, e.g., 47 U.S.C. § 511.

Under section 511(a) of the Act, persons or entities found to willfully and knowingly suffer (*i.e.*, permit) a third party to engage in illegal broadcasting—so-called “pirate radio” broadcasting—on their property can face significant financial penalties.⁵ **Accordingly, you are hereby notified and warned that the FCC may issue a fine of up to \$2,316,034 if, following the response period set forth below, we determine that you have continued to permit any individual or entity to engage in illegal radio broadcasting on the property that you own or manage.**⁶

If you do not respond to this Notice, the FCC may nonetheless determine that, as a legal matter, you have sufficient knowledge of the above-referenced illegal radio activity to support enforcement action against you. Service of this Notice to you or your agent establishes the foundation, along with other evidence, that could lead to significant financial penalties.

You have ten (10) business days from the date of this Notice to respond by providing evidence that you are no longer permitting illegal radio broadcasting to occur at the Property. Your response should be sent to the address in the letterhead and reference the listed case number. Under the Privacy Act of 1974,⁷ we are informing you that the FCC’s staff will use all relevant material information before it to determine what, if any, enforcement action is required to ensure your compliance with the FCC’s rules. This will include any information that you disclose in your reply.

You may contact this office at 562-860-7474 if you have any questions.

Lark Hadley
Regional Director, Region Three
FCC Enforcement Bureau

Enclosures:

Excerpts from the Communications Act of 1934, As Amended
Enforcement Bureau, "Inspection Fact Sheet", March 2005

⁵ 47 U.S.C. § 511(a).

⁶ *Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, DA 21-1631, 2021 WL 6135287, at *5 (EB Dec. 22, 2021); *see also* Annual Adjustment of Civil Monetary Penalties to Reflect Inflation, 87 Fed. Reg. 396 (Jan. 5, 2022) (setting January 5, 2022, as the effective date for the increases).

⁷ 5 U.S.C. § 552a(e)(3).