

PREVENTING ILLEGAL RADIO ABUSE THROUGH
 ENFORCEMENT ACT

JULY 18, 2018.—Committed to the Committee of the Whole House on the State of
 the Union and ordered to be printed

Mr. WALDEN, from the Committee on Energy and Commerce,
 submitted the following

R E P O R T

[To accompany H.R. 5709]

The Committee on Energy and Commerce, to whom was referred
 the bill (H.R. 5709) to amend the Communications Act of 1934 to
 provide for enhanced penalties for pirate radio, and for other
 purposes, having considered the same, report favorably thereon with
 an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:
 Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Preventing Illegal Radio Abuse Through Enforce-
 ment Act” or the “PIRATE Act”.

SEC. 2. PIRATE RADIO ENFORCEMENT ENHANCEMENTS.

Title V of the Communications Act of 1934 (47 U.S.C. 501 et seq.) is amended by adding at the end the following new section:

“SEC. 511. ENHANCED PENALTIES FOR PIRATE RADIO BROADCASTING; ENFORCEMENT SWEEPS; REPORTING.

“(a) **INCREASED GENERAL PENALTY.**—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.

“(b) **VIOLATION OF THIS ACT, RULES, OR REGULATIONS.**—Any person who willfully and knowingly violates this Act or any rule, regulation, restriction, or condition made or imposed by the Commission under authority of this 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 or may hereafter become 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 subsection (a).

“(c) **FACILITATION.**—Any person who knowingly and intentionally facilitates pirate radio broadcasting shall be subject to a fine of not more than \$2,000,000.

“(d) **ANNUAL REPORT.**—Not later than one year after the date of enactment of the PIRATE Act, and annually thereafter, the Commission shall submit to the House Committee on Energy and Commerce and the Senate Committee on Commerce, Science, and Transportation a report summarizing the implementation of this section and associated enforcement activities for the previous fiscal year, which may include the efforts by the Commission to enlist the cooperation of Federal, State, and local law enforcement personnel (including United States Attorneys and the United States Marshals Service) for service of process, collection of fines or forfeitures, seizures of equipment, and enforcement of orders.

“(e) **ENFORCEMENT SWEEPS.**—

“(1) **ANNUAL SWEEPS.**—Not less than once each year, the Commission shall assign appropriate enforcement personnel to focus specific and sustained attention on the elimination of pirate radio broadcasting within the top five radio markets identified as prevalent for such broadcasts. Such effort shall include identifying, locating, and taking enforcement actions designed to terminate such operations.

“(2) **ADDITIONAL MONITORING.**—Within six months after conducting the enforcement sweeps required by paragraph (1), the Commission shall conduct monitoring sweeps to ascertain whether the pirate radio broadcasting identified by enforcement sweeps is continuing to broadcast and whether additional pirate radio broadcasting is occurring.

“(3) **NO EFFECT ON REMAINING ENFORCEMENT.**—Notwithstanding paragraph (1), the Commission shall not decrease or diminish the regular enforcement efforts targeted to pirate radio broadcast stations for other times of the year.

“(f) **STATE AND LOCAL GOVERNMENT AUTHORITY.**—The Commission may not preempt any State or local law prohibiting pirate radio broadcasting.

“(g) **REVISION OF COMMISSION RULES REQUIRED.**—The Commission shall 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 Operations’.

“(h) **PIRATE RADIO BROADCASTING DATABASE.**—

“(1) **IN GENERAL.**—Not later than 90 days after the date of the enactment of this section, and semi-annually thereafter, the Commission shall publish a database in a clear and legible format of all licensed radio stations operating in the AM and FM bands. The database shall be easily accessible from the Commission home page through a direct link. The database shall include the following information:

“(A) Each licensed station, listed by the assigned frequency, channel number, or Commission call letters.

“(B) All entities that have received a Notice of Unlicensed Operation, Notice of Apparent Liability, or Forfeiture Order by the Commission.

“(2) **CLEAR IDENTIFICATION.**—The Commission shall clearly identify in the database—

“(A) each licensed station as a station licensed by the Commission; and

“(B) each entity described in paragraph (1)(B) as operating without a Commission license or authorization.

“(i) **DEFINITIONS.**—In this section:

“(1) **PIRATE RADIO BROADCASTING.**—The term ‘pirate radio broadcasting’ means the transmission of communications on spectrum frequencies between 535 to 1705 kHz or 87.7 to 108 MHz without a license issued by the Federal

Communications Commission, but does not include unlicensed operations in compliance with part 15 of title 47, Code of Federal Regulations.

“(2) FACILITATES.—The term ‘facilitates’ means providing access to property (and improvements thereon) or providing physical goods or services, including providing housing, facilities, or financing, that directly aid pirate radio broadcasting.

“(3) KNOWINGLY AND INTENTIONALLY.—The term ‘knowingly and intentionally’ means the person was previously served by the Commission with a notice of unlicensed operations, notice of apparent liability, or citation for efforts to facilitate pirate radio broadcasting.”.

PURPOSE AND SUMMARY

H.R. 5709, the “Preventing Illegal Pirate Radio Abuse Through Enforcement Act” or “PIRATE Act” was introduced on May 8, 2018, by Representative Leonard Lance (R-NJ). H.R. 5709 would give the Federal Communications Commission (FCC) additional authority to issue fines on any person who willfully and knowingly broadcasts radio transmissions over AM or FM frequencies without a license from the FCC or without complying with unlicensed operations rules defined by the Commission. The bill would further give the FCC additional tools to enforce penalties against pirate stations by raising the fine for rule violations to \$100,000 dollars per day per violation, up to a maximum of \$2,000,000 dollars.

BACKGROUND AND NEED FOR LEGISLATION

The Communications Act authorizes the licensing for radio broadcast stations in the AM and FM band.¹ Managing radio spectrum, through the licensing and enforcement process is part of the FCC’s primary mission. Absent effective enforcement, the use of radio spectrum devolves into a cacophony of illegal transmitters, harming Americans who rely on vital news and entertainment from radio broadcasting.

Evidence before the Committee demonstrates that illegal radio operations in the AM and FM radio band have been, and continue to be, a significant problem. This is especially true in several major radio markets such as New York, Northern New Jersey, and Miami. One engineering study documented more than 100 illegal radio stations operating in the New York Metropolitan area.² The study estimates that the number of illegal radio stations operating in the New York Metropolitan area exceeds the number of stations licensed by the Federal Communications Commission in the same area.³ It appears that illegal radio stations are spreading to other states including Connecticut and Massachusetts.

The Committee finds that the growth of illegal operations is due to several factors. First, the price of acquiring illegal transmitting equipment has declined significantly, making it more affordable for illegal operators. Second, improvements in technology have reduced the size of transmitting equipment making it easier to locate. Third, transmitting equipment, much of it not certified by the FCC, may be obtained online from suppliers overseas. Fourth, illegal pirate studios are not necessarily located in the same location as the

¹ 47 U.S.C. § 151 et seq.

² Wallace Dennis, Meintel, Sgrinoli & Wallace, *Field Measurements of Unauthorized FM Band Radio Signals in New York NY Metropolitan Area*; Phase Four, May 19, 2016 at 16–23. The study may be found at <http://nysbroadcasters.org/wp-content/uploads/2018/03/Pirates-MSW-2016-study-final-pdf.pdf>

³ Id.

transmitting antenna. Many of these illegal transmitters are being supplied from remote studios via microwave or even satellite.

Pirate radio operations harm the public in a number of ways.

Interference to the broadcast Emergency Alert System

Illegal pirate radio stations interfere with the Emergency Alert System (EAS). EAS is critically important to protect the public and national security. During national, regional, and local emergencies, the broadcast EAS system is essential to saving lives. Stations participating in the EAS system must be able to transmit and receive interference-free signals. Pirate stations do not participate in the EAS system and do not comply with FCC's EAS rules monitoring and broadcasting EAS alerts. Further, unlicensed illegal stations interfere with licensed radio stations. Such interference affects EAS alerts that are broadcast by licensed radio stations. Thus, consumers located near a pirate radio transmitter will not hear the legitimate station's EAS alert.

Interference to FAA communications systems

The record before the Committee documents that pirate stations interfere with airport communications on frequencies assigned to the Federal Aviation Administration (FAA), creating potentially dangerous situations. For example, in 2013, the FCC and the Department of Justice shut down an unauthorized radio station in Boston, MA. According to the Department of Justice:

According to an affidavit filed with the civil complaint, the unlicensed FM radio station was causing interference to Federal Aviation Administration (FAA) frequency 120.6 MHz, which is one of the primary frequencies used by pilots to communicate with FAA controllers when flying in the Boston metropolitan area. The FCC issued verbal and written warnings to the residents of 9 Rutland Street on several occasions, but the radio station continued to broadcast.⁴

The danger to the public is significant, as interference from pirate stations could cause errors in navigational guidance, interference to pilot-to-ground communications, as well as other aeronautical systems.⁵

Risks to public health

Radio stations licensed by the FCC must meet Radio Frequency Radiation (RFR) standards. The standards defining exposure limits to RFR are governed by the National Council on Radiation Protection and Measurements' (NCRP's) Maximum Permissible Exposure (MPE) limits.⁶ These standards ensure that consumers and work-

⁴Department of Justice Press Release, Tuesday March 12, 2013 at <https://www.justice.gov/usao-ma/pr/radio-equipment-seized-pirate-radio-station>; visited March 18, 2018 at 12:03pm

⁵See Testimony of David L. Donovan, President New York State Broadcasters Association, before the Subcommittee on Communications and Technology, Committee on Energy and Commerce, U.S. House of Representatives, March 22, 2018, at 12–13.

⁶On August 1, 1996, the Commission adopted the NCRP's recommended Maximum Permissible Exposure limits for field strength and power density for the transmitters operating at frequencies of 300 kHz to 100 GHz. In addition, the Commission adopted the specific absorption rate (SAR) limits for devices operating within close proximity to the body as specified within the ANSI/IEEE C95.1–1992 guidelines. (See Report and Order, FCC96–326) <https://www.fcc.gov/general/radio-frequenciesafety-0>

ers are not exposed to harmful levels of RFR that emanate from broadcast transmissions. Illegal pirate radio operations pose a health hazard by exposing communities to RFR levels above the standards established by the government.⁷

COMMITTEE ACTION

On March 22, 2018, the Subcommittee on Communications and Technology held a hearing entitled “Legislative Hearing on Four Communications Bills.” The Subcommittee received testimony from:

- Tim Donovan, Senior Vice President, Legislative Affairs, Competitive Carriers Association;
- David Donovan, President and Executive Director, New York State Broadcasters Association, Inc.;
- Robert Gessner, President, MCTV;
- John Madigan, Vice President and Chief Public Policy Officer, American Foundation for Suicide Prevention; and
- Sarah Morris, Director of Open Internet Policy, Open Technology Institute, New America Foundation.

On June 13, 2018, the Subcommittee on Communications and Technology met in open markup session and forwarded H.R. 5709, as amended, to the full Committee by a voice vote. On July 12, 2018, the full Committee on Energy and Commerce met in open markup session and ordered H.R. 5709, as amended, favorably reported to the House by a voice vote.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. There were no recorded votes taken in connection with ordering H.R. 5709 reported.

OVERSIGHT FINDINGS AND RECOMMENDATIONS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee held a hearing and made findings that are reflected in this report.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 5709 would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

⁷Testimony of David L. Donovan, President New York State Broadcasters Association, Inc., before the Subcommittee on Communications and Technology, Committee on Energy and Commerce, U.S. House of Representatives, March 22, 2018, at 10–12. In 2016 the engineering firm of Meintel, Sgrinoli & Wallace (MSW) conducted an analysis of several pirate radio locations in the Bronx, Brooklyn and Northern New Jersey. MSW found RFR levels in excess of the MPE standards at several locations. A pirate station located in Clifton, New Jersey operated at 2,573.3 watts. This means that anyone located within 68 feet of the transmitting antenna would be exposed to RF levels above the MPE standard. In the Bronx, a pirate station was found to be operating at 288.4 watts, meaning that anyone located within 22.76 feet of the transmitting antenna would be exposed to RF above the MPE standard. See Wallace Dennis, Meintel, Sgrinoli & Wallace, *Field Measurements of Unauthorized FM Band Radio Signals in New York NY Metropolitan Area*; Phase Four, May 19, 2016 at 16–23. <http://nysbroadcasters.org/wp-content/uploads/2018/03/Pirates-MSW-2016-study-final-pdf.pdf>

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, at the time this report was filed, the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974 was not available.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII, the general performance goal or objective of this legislation is to give the FCC additional authority to enforce its rules and protect public services provided by legitimate, licensed broadcasters.

DUPLICATION OF FEDERAL PROGRAMS

No provision of H.R. 5709 establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974. At the time this report was filed, the estimate was not available.

EARMARK, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

Pursuant to clause 9(e), 9(f), and 9(g) of rule XXI, the Committee finds that H.R. 5709 contains no earmarks, limited tax benefits, or limited tariff benefits.

DISCLOSURE OF DIRECTED RULE MAKINGS

Pursuant to section 3(i) of H. Res. 5, the Committee finds that H.R. 5709 contains no directed rule makings.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

Section 1 provides that the Act may be cited as the “Preventing Illegal Radio Abuse Through Enforcement Act” or the “PIRATE Act.”

Section 2. Pirate radio enforcement enhancements

Section 2 amends Title V of the Communications Act of 1934 (47 U.S.C. 501 et seq.) to create a new section, section 511.

The new section would increase the general penalty for willfully and knowingly causing or facilitating pirate radio broadcasting to not more than \$2,000,000. The new section also provides that any person who willfully and knowingly violates this Act or any rule, regulation, restriction, or condition made or imposed by the Commission under the authority of this Act shall be subject to a fine of not more than \$100,000 for each day during which such offense occurs, up to \$2,000,000.

The new section would further require the FCC to submit a report to Congress one year after enactment, and annually thereafter, summarizing the implementation of this section and any associated enforcement activities for the previous fiscal year.

Additionally, the new section would require the FCC to assign appropriate enforcement personnel to focus specific and sustained attention on the elimination of pirate radio broadcasting within the top five radio markets identified as prevalent for such broadcasts. Such effort shall include identifying, locating, and taking enforcement actions designed to terminate such operations.

The new section would require the FCC to revise its rules to require that, absent good cause, in any case alleging a violation described in this Act, the Commission shall proceed directly to a “Notice of Apparent Liability,” without first issuing a “Notice of Unlicensed Operations.”

Finally, the new section would require the FCC to publish a database in a clear and legible format of all licensed radio stations operating in the AM and FM bands. The database must include each licensed station in addition to entities that have received a Notice of Unlicensed Operation, Notice of Apparent Liability, or Forfeiture Order by the Commission. While the Committee expects that the Commission will maximize efficiency by leveraging existing databases to assist in carrying out the requirements of this subsection, the Commission shall ensure that the pirate radio broadcasting database is clear, legible, easy to navigate, and easily accessible.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

COMMUNICATIONS ACT OF 1934

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**TITLE V—PENAL PROVISIONS—
FORFEITURES**

* * * * *

**SEC. 511. ENHANCED PENALTIES FOR PIRATE RADIO BROADCASTING;
ENFORCEMENT SWEEPS; REPORTING.**

(a) *INCREASED GENERAL PENALTY.*—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.

(b) *VIOLATION OF THIS ACT, RULES, OR REGULATIONS.*—Any person who willfully and knowingly violates this Act or any rule, regulation, restriction, or condition made or imposed by the Commission under authority of this 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 or may hereafter become 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 subsection (a).

(c) *FACILITATION.*—Any person who knowingly and intentionally facilitates pirate radio broadcasting shall be subject to a fine of not more than \$2,000,000.

(d) *ANNUAL REPORT.*—Not later than one year after the date of enactment of the PIRATE Act, and annually thereafter, the Commission shall submit to the House Committee on Energy and Commerce and the Senate Committee on Commerce, Science, and Transportation a report summarizing the implementation of this section and associated enforcement activities for the previous fiscal year, which may include the efforts by the Commission to enlist the cooperation of Federal, State, and local law enforcement personnel (including United States Attorneys and the United States Marshals Service) for service of process, collection of fines or forfeitures, seizures of equipment, and enforcement of orders.

(e) *ENFORCEMENT SWEEPS.*—

(1) *ANNUAL SWEEPS.*—Not less than once each year, the Commission shall assign appropriate enforcement personnel to focus specific and sustained attention on the elimination of pirate radio broadcasting within the top five radio markets identified as prevalent for such broadcasts. Such effort shall include identifying, locating, and taking enforcement actions designed to terminate such operations.

(2) *ADDITIONAL MONITORING.*—Within six months after conducting the enforcement sweeps required by paragraph (1), the Commission shall conduct monitoring sweeps to ascertain whether the pirate radio broadcasting identified by enforcement sweeps is continuing to broadcast and whether additional pirate radio broadcasting is occurring.

(3) *NO EFFECT ON REMAINING ENFORCEMENT.*—Notwithstanding paragraph (1), the Commission shall not decrease or

diminish the regular enforcement efforts targeted to pirate radio broadcast stations for other times of the year.

(f) STATE AND LOCAL GOVERNMENT AUTHORITY.—The Commission may not preempt any State or local law prohibiting pirate radio broadcasting.

(g) REVISION OF COMMISSION RULES REQUIRED.—The Commission shall 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 Operations”.

(h) PIRATE RADIO BROADCASTING DATABASE.—

(1) IN GENERAL.—Not later than 90 days after the date of the enactment of this section, and semi-annually thereafter, the Commission shall publish a database in a clear and legible format of all licensed radio stations operating in the AM and FM bands. The database shall be easily accessible from the Commission home page through a direct link. The database shall include the following information:

(A) Each licensed station, listed by the assigned frequency, channel number, or Commission call letters.

(B) All entities that have received a Notice of Unlicensed Operation, Notice of Apparent Liability, or Forfeiture Order by the Commission.

(2) CLEAR IDENTIFICATION.—The Commission shall clearly identify in the database—

(A) each licensed station as a station licensed by the Commission; and

(B) each entity described in paragraph (1)(B) as operating without a Commission license or authorization.

(i) DEFINITIONS.—In this section:

(1) PIRATE RADIO BROADCASTING.—The term “pirate radio broadcasting” means the transmission of communications on spectrum frequencies between 535 to 1705 kHz or 87.7 to 108 MHz without a license issued by the Federal Communications Commission, but does not include unlicensed operations in compliance with part 15 of title 47, Code of Federal Regulations.

(2) FACILITATES.—The term “facilitates” means providing access to property (and improvements thereon) or providing physical goods or services, including providing housing, facilities, or financing, that directly aid pirate radio broadcasting.

(3) KNOWINGLY AND INTENTIONALLY.—The term “knowingly and intentionally” means the person was previously served by the Commission with a notice of unlicensed operations, notice of apparent liability, or citation for efforts to facilitate pirate radio broadcasting.

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