Statement of

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IN SUPPORT OF THE PIRATE ACT

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Executive Summary

The New York State Broadcaster's Association, Inc. and the National Association of Broadcasters strongly support the PIRATE Act, which combats the growing problem of illegal pirate radio stations. In New York City and Northern New Jersey alone, the number of illegal pirate radio stations exceeds the number of licensed stations. But this has become a nationwide issue. Illegal pirate radio stations harm the public in several ways:

- Pirates undermine the Emergency Alert System (EAS)
- Pirates threaten public health by exposing to RF radiation
- Pirate stations interfere with airport communications
- Pirates ignore federal and state consumer protection laws
- Pirate ignore all FCC engineering, public interest and political broadcast rules

The PIRATE Act gives the FCC additional tools to address the growing pirate radio problem. It significantly increases fines to a maximum of $2 million and $100,000 per violation. Upon prior notice, it holds liable persons, including property owners, who "knowingly" facilitate illegal pirate operations. It gives the FCC the ability to go to Federal District court and obtain court orders to seize equipment. The PIRATE Act streamlines the enforcement process. It also authorizes the FCC to seize illegal pirate radio equipment if it discovers someone broadcasting illegally in real time. Finally, the PIRATE Act requires the FCC to conduct pirate radio enforcement sweeps in cities with a concentration of pirate radio stations.

We are reaching the point where illegal pirate stations undermine the legitimacy and purpose of the FCC's licensing system to the detriment of listeners in communities across the country. The PIRATE Act will help the FCC restore integrity to the system.

I. INTRODUCTION

The New York State Broadcaster's Association, Inc.[1] and the National Association of Broadcasters[2], strongly support the PIRATE Act, legislation that gives the Federal Communications Commission (FCC) additional and much needed tools to combat illegal radio operators. For years unauthorized pirate radio stations have harmed communities across the country both by interfering with licensed stations' abilities to serve their listeners, undermining the Emergency Alert System (EAS), and by posing direct health and safety risks. The time has come to take significant steps to resolve this vexing problem.

We want to thank Congressman Leonard Lance (NJ-07) and Congressman Paul Tonko (NY-20) for their leadership in drafting this legislation, and Congressman Chris Collins (NY-27), who has been a leader on this issue. FCC Chairman Ajit Pai and Commissioner Michael O'Rielly are to be applauded for making pirate enforcement a priority. In addition, we want to thank Rosemary Harold, Chief of the FCC's Enforcement Bureau, and her team. They are on the front lines. Chasing down illegal radio stations is not glamorous. This is difficult and sometimes dangerous work. Nonetheless, the work is essential to protecting the public.

Spectrum enforcement in general and enforcement against illegal pirate radio operations in particular, lies at the heart of the FCC's mission. It is the very reason the FCC was

[1] The New York State Broadcasters Association, Inc. is a not for profit trade association representing approximately 450 radio and television broadcasters licensed to communities throughout New York State. Our mission is to foster an economic and regulatory environment that helps local broadcasters serve their communities in the public interest, convenience and necessity.

[2] The National Association of Broadcasters is a nonprofit trade association that advocates on behalf of free local radio and television stations and broadcast networks before Congress, the Federal Communications Commission and other federal agencies, and the courts.

created. Absent strong FCC spectrum enforcement, the airwaves will become nothing more than a "cacophony" of radio transmissions. Economists refer to this as a "tragedy of the commons." In the real world it means that interference from unauthorized and illegal radio transmissions will clutter the airwaves, causing widespread interference. The result is that no one will hear anything. The American public will lose access to a vital information service – no emergency "EAS" alerts, no local news, no emergency weather or tornado alerts, no music and no traffic reports during drive time.

The importance of the PIRATE Act must be viewed in context. The enforcement mechanisms in the Communications Act are aimed primarily at communications systems that are, or want to be, licensed or authorized by the FCC. Current enforcement mechanisms are really designed to regulate entities that fundamentally agree to be regulated. The current FCC enforcement process is not designed to address truly bad actors that willfully ignore the law including all FCC regulations. Fundamental changes are needed to address these situations.

II. ILLEGAL PIRATE RADIO HARMS THE PUBLIC

A. Illegal Pirate Stations are a Pervasive Problem

Illegal pirate radio stations are not ships off shore broadcasting "rock and roll." We have all seen the movie. This is not a movie. Illegal pirate radio stations are widespread and growing in the United States. Their illegal broadcasts emanate from rooftops, apartment balconies and back yards in major urban areas such as New York City, Northern New Jersey, Miami, Tampa, and Boston. Pirates have operated in upstate New York, Colorado, Texas,

Louisiana, Tennessee, California and Connecticut.[3] The FCC has documented enforcement actions against pirate radio operators in many states across the country.

The New York State Broadcasters Association commissioned the noted engineering firm of Meintel, Sgrignoli and Wallace (MSW) to conduct engineering sweeps of illegal pirate activity in New York City and Northern New Jersey. MSW estimated that there may be more than 100 illegal pirate operators in the New York Metropolitan Area.[4] In fact there may be more illegal pirate operators in New York and Northern New Jersey than there are legitimately licensed stations.

The pervasiveness of the problem can be seen in a "Go Fund Me" page for the Brooklyn Pirate Sound Map Project. The purpose of the project is to create a map showing the locations and frequencies of all the illegal pirate stations in Brooklyn.

> The Brooklyn Pirate Radio Sound Map (BPRSM) documents a homegrown cultural phenomenon at once aesthetically vibrant, technologically tumultuous, and undeniably illegal. **Every night, over 30 stations take to the air transmitting a wide array of programming to the West Indian Community**. ...For the past four years, I've been recording the local pirate radio scene from my home in Flatbush Brooklyn while seeking out station owners and listeners on both sides of the legal divide to dig into the history and understand the context in which these stations thrive.
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> This high level of radio activity goes back at least to the early 90's when unlicensed radio stations, popularly called pirates, began popping up on the local FM broadcast band. Originating from secret studios scattered around Brooklyn, they transmit adjacent to and often right on top of legal stations. This creates a certain amount of risk for the pirate operators**, but the combination of cheap**

[3] *See* FCC website at https://www.fcc.gov/reports-research/maps/fcc-enforcement-actions-against-pirate-radio-location/

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

FM transmitters and the sheer number of stations offer a sort of protection from an understaffed FCC enforcement division…..[5]

The Brooklyn Pirate Map Sound Project is not a pirate radio operation. Nonetheless it plans to map and lists the frequencies on which pirates operate in Brooklyn and perhaps the other boroughs.

From our perspective it confirms two basic facts. First, illegal pirate stations are a pervasive problem in New York City. The 30 stations listed confirm our engineering survey in 2016 that found you could receive 30 pirate stations in Brooklyn from one location. Second, the FCC's enforcement policies have little or no deterrent effect. The lack of deterrence has been a well-known fact for years. The chances of being caught are minimal. Even where a pirate is caught by the FCC, most simply received a Notice of Unlicensed Operation, *i.e.,* a paper warning. In the past, there has been very little follow up, very few fines and only a few seizures.

B. Illegal Pirate Operations May Be Part of a Larger Criminal Activity

Illegal pirates are not benign disc jockeys playing "rock and roll" to their fans from ships off shore. They are not college students firing up a transmitter or experimenting with radio. Pirate radio is an illegal, coordinated and highly profitable business. Most illegal pirate operators have been broadcasting for years. Some broadcast in multiple markets. Many have advertising "rate cards." Pirates have web sites, and *Facebook* pages. They will accept advertising for both legitimate and illegal businesses. Some even broadcast political ads.

[5] *Brooklyn Pirate Sound Map* at https://gogetfunding.com/the-brooklyn-pirate-radio-sound-map/ visited March 18, 2018 at 8:54 pm.

Some illegal pirate operators are part of a much larger criminal enterprise. For example, in Miami the Orange County Gang Unit arrested an illegal pirate operator. Apparently, the complaint filed with the FCC alleged, illegal operations, vulgar language and telling people where to buy drugs and prostitutes.[6] In Alaska a pirate radio operator was arrested after making threats of violence to law enforcement over his illegal pirate radio station.[7]

While the level of collateral illegal activity may vary, there is one undeniable fact – those operating illegal pirate operations do so in direct violation of the law. Most would never receive a license to operate a legitimate broadcast station under the FCC "character" policies.

More importantly pirate operations jeopardize the lives of American citizens. Even if one were to find an illegal pirate operator of "sufficient character," the failure to follow the FCC's engineering rules damages the public. The harm is real and palpable.

C. <u>Interference From Illegal Pirate Stations is Pervasive</u>

Interference from pirate radio stations is generated in two ways. First, "co-channel interference" which is caused by operating on the same frequency at the same time in the same geographic area will cause interference. The second type of interference is "adjacent channel interference," which results from operating a radio station on frequencies that are next to or adjacent to a frequency used by a licensed station. To avoid this type of interference, the FCC has strict engineering rules requiring stations operating on adjacent channels to be

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[6] *Orlando Weekly,* at https://www.orlandoweekly.com/orlando/killing-the-messenger/Content?oid=2255711 visited March 17, 2018 at 2:37 pm.

[7] *Anchorage Daily News*, "*FBI arrests Anchor Point man for threatening law enforcement in pirate-radio broadcasts"* Anchorage Daily News, October 2, 2015 at https://www.adn.com/crime-justice/article/fbi-arrests-anchor-point-man-over-pirate-radio-threats/2015/10/02/ visited March 17, 2018 at 3:08 PM.

geographically separated. Illegal pirate stations ignore these separation requirements, often operating within the coverage areas of licensed stations. In fact, the 2016 engineering analysis found that most of the "adjacent" channels in the New York Metropolitan area have one or more pirates operating on those channels.

By violating the FCC's channel and adjacent channel spacing rules, all pirate stations in New York are, by definition, causing interference to legitimately licensed stations. In other words, under its engineering rules, the FCC would not grant these pirate stations a license to operate because they would interfere with legitimately licensed stations.

The problems with pirate station interference are exacerbated because illegal operations do not comport with sound engineering practices. Power levels may fluctuate considerably. They may also drift and spill over on to other frequencies. In many instances illegal pirate stations are using transmitting equipment that has not been approved by the FCC. Equipment that has been approved is often altered.

The interference caused by pirate stations in pervasive and insidious. MSW's engineering analysis found that the power levels for these illegal stations may range from 10 watts to as high as 3000 watts. Depending on the height of the building the signal from these stations may range from a few blocks to several miles. This means that you can have multiple pirates operating on the same channels in the Bronx, Brooklyn, Queens, Manhattan and Northern New Jersey. Collectively, this means there is interference from hundreds of pirate stations that operate on nearly every adjacent channel and many co-channels throughout the New York Metropolitan area.

The impact on licensed stations is profound. For example, depending on the type of station, a licensed station in New York may have a coverage area that spans 30 to 50 miles. Within this coverage area there may be dozens of illegal pirate stations operating on the same channel or adjacent channels. These illegal stations create pockets of interference in neighborhoods throughout the station's coverage area. In effect, the coverage area of the licensed station begins to resemble "Swiss Cheese," with interference holes appearing throughout the protected coverage area of the station.

From a consumer's perspective, service from the licensed stations will be disrupted. For example, a person listening to a legal station in the car will start the trip receiving a good quality signal from the legal station. As the driver gets closer to a pirate transmitter, he will first receive interference, blocking out the signals of both the legal and illegal station. As the driver gets closer to the illegal pirate station, the pirate's signal will overwhelm the signal from the legitimate station in the radio receiver, and the listener will hear only the pirate station. Depending on the power of the pirate station and the height of its antenna, this could last for a few city blocks or a few miles. With a number of pirate stations located within the stations service area, a stations licensed coverage area becomes filled with interference zones, where consumers no longer receive service from the licensed station.

D. <u>Pirates Stations Undermine the Emergency Alert System</u>

Interference from pirate stations is not confined to entertainment programs. Such interference also affects 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. Whether it's a tornado, flash flood, and

hurricane or man-made disaster, the system must function properly. It is monitored closely by the FCC and Federal Emergency Management Agency (FEMA), which have conducted several national tests of the system. There are required monthly tests for EAS participants. Every state has an EAS plan that is required to be filed with the FCC.

The system is built on a basic principle. Stations participating in the EAS system must be able to transmit and receive interference-free signals. This becomes impossible with hundreds of illegal pirate stations operating in a region. The EAS system is undermined in three ways.

First, illegal pirate stations do not participate in the EAS system. They do not follow the FCC's rules regarding EAS participation. They have no equipment to monitor other EAS stations. They have not installed the required Common Alert Protocol equipment to receive messages via the Integrated Public Alert and Warning System. These stations do not participate in any required monthly tests or in the national EAS test conducted by FEMA and the FCC. In short, a consumer listening to an illegal pirate station will not hear an EAS alert.

Second, as noted above, these stations cause interference to licensed radio stations. The interference also blocks the EAS messages from licensed stations. Thus consumers located near an illegal pirate radio transmitter will not hear the legitimate station's EAS alert. Moreover, they will not hear any follow up newscasts which provide life-saving information in the event of an emergency. The situation becomes truly dangerous with hundreds of illegal pirate stations interfering with many licensed stations located throughout a metropolitan area.

Third, and perhaps most importantly, illegal pirate radio stations interfere with the technical foundations of the off-air EAS system. The EAS system is based on alerts being broadcast from primary stations, which first receive the message directly from the government.

These primary stations then transmit the EAS message over the air on their assigned channels. Other "secondary" stations in the market monitor these primary channels for the EAS messages. These messages are received by the secondary stations and broadcast over the air on their channels. The process is repeated by other stations in the market, across the state and ultimately nationwide in a "daisy chain." Any break in the "daisy chain" will mean that stations and listeners further down the chain will not receive the EAS message. It is similar to a row of dominos where one domino fails to fall.

Interference from illegal pirate stations may cause a break in this vitally important system. An example of this problem was the basis for a complaint at the FCC in 2015. WWRV 1330 AM, which served the Hispanic community in New York City and Northern New Jersey, was required to monitor two stations as part of the New York State EAS plan - WINS 1010 AM and the New York public radio station - WNYC FM 93.9. However, because of an illegal pirate station operating in New Jersey on FM 93.7 (a channel adjacent to WNYC's 93.9) it became difficult to monitor and receive a clear signal from WNYC. As a result, the WWRV had to change its EAS monitoring assignment to WABC AM 770.

The danger is compounded because pirate radio stations are unpredictable. Power levels rise and fall. Stations switch channels and locations at will. As a result legitimate stations may not realize they have an issue with the stations they are monitoring until an emergency requiring an EAS alert takes place. Fortunately, the EAS system requires that each station monitor two primary stations. Nonetheless, the ability of the system to function will become more challenged as the number of illegal pirate radio stations grows.

E. Pirate Radio Stations Threaten Public Health

Legally licensed stations are required to meet the FCC Radio Frequency Radiation (RFR) rules. 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.[8] These standards ensure that consumers and workers are not exposed to harmful levels of RF radiation that emanate from broadcast transmissions. It is the reason why broadcast towers are surrounded by fences or have special precautions if located on the top of a building like the Empire State Building or One World Trade in New York City. It is also one of the reasons broadcast stations "power down" when technicians are working on broadcast towers and transmitting antennas.

Pirate radio stations completely ignore these public health considerations. Transmitting antennas are located in neighborhoods on rooftops, balconies and fire escapes with little concern about the residents living or working next to these transmitting antennas.

In 2016 MSW conducted an analysis of several pirate radio locations in the Bronx, Brooklyn and Northern New Jersey.[9] Of course, pirate radio stations operate at power levels below full service radio stations, ranging from 10 to 3000 watts. Nonetheless, MSW found RFR

[8] On 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-frequencysafety-0

[9] Wallace Dennis, Meintel, Sgrirnoli & 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

levels in excess of the MPE standards.[10] For example, 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. In other words the power level of the pirate transmitter will dictate how close you can get to the illegal transmitter before exceeding the MPE standards.

While the distances may seem small, the risk of harm in congested urban areas is very real. While the level of constant exposure may depend on the types of construction materials used, families living or working in the top floors of the buildings are well within 22 or 68 feet of the transmitting antenna. MSW also found that many of the buildings containing pirate antennas are located on two or three story wood framed buildings. Apartments in these buildings, as wells as in adjacent buildings, are well within 22 or 68 feet of the transmitting antenna. If the illegal antenna is on a balcony, those living in the adjacent apartment may be exposed to RF levels above the MPE standard. A person using a roof top deck or working on the roof would be located in an area above the MPE standard.

The problem is compounded because there are hundreds of illegal pirate stations operating in the New York City Metropolitan area. Citizens living and working near illegal pirate transmitting antennas have absolutely no idea that they are at risk. The risk to public health means that the FCC and Congress should make pirate radio enforcement a top priority.

[10] See Appendix A for examples of the locations where RFR exposure analysis was conducted.

F. Illegal Pirate Radio Stations Interfere with Airport Communications

Pirate stations interfere with airport communications on frequencies assigned to the Federal Aviation Administration (FAA), creating an extremely dangerous situation. For example, in 2013, the FCC and the Department of Justice shut down an unauthorized radio station operating on 91.7 MHz in Boston, MA. According to the Department of Justice's Press Release, the FAA complained about pirate radio interference:

> "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."[11]

The growth in illegal pirate radio stations increases the probability there will be more interference issues with airport communications. The FM broadcast band is adjacent to aeronautical frequencies (108 to 137MHz). Interference from pirate stations could cause errors in navigational guidance, interference to pilot to ground communications, as well as other aeronautical systems. Because illegal pirate stations ignore all engineering rules and standards, there is a significant chance that their signal will spill over on to airport communications systems.

The risk of interference grows as the number of illegal pirate stations increase. For example in 2016, MSW found a pirate stations in Newark, NJ, operating on 107.7 MHz, which is only one channel away from being directly adjacent to the FAA frequencies that start at 108

[11] Department 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.

MHz. Newark has an extremely busy airport. The survey found an unauthorized pirate station in Brooklyn operating on 107.9, which is directly adjacent to FAA frequencies. This station could potentially affect communications at JFK airport.

The interference concern is not limited to pirate stations operating on FM channels that are adjacent to FAA frequencies. Pirate stations may unexpectedly cause "intermodulation products" that cause interference to frequencies assigned to the FAA. Intermodulation is a commonly known interference mechanism caused by strong local signals overloading or overpowering the tuner in a receiver. Typically, this non-linear effect will produce interfering signals on multiple frequencies at the front end of the aeronautical radio. For example, a strong pirate signal on 105.1 MHz may mix with an aeronautical signal on 115.05 MHz and produce an intermodulation product at 125.0 MHz, potentially causing interference to the voice communications of aircraft.

The potential harm from this type of interference cannot be overstated. Because pirate stations may start transmitting at any time, without notice, neither the FCC nor the FAA can predict when interference to aeronautical frequencies will occur. Enforcement can only be taken after the interference has affected FAA frequencies. To reduce the risk of this type of interference, the FCC must take affirmative steps to reduce the overall number of illegal pirate stations.

G. Pirate Stations Ignore All Consumer Protection and FCC Regulations and Undermine Investment in Legitimately Licensed Stations

Because they operate outside the law pirate stations need not comply with any of the FCC rules. They may ignore sponsorship identification requirements, indecency rules, on-line public file requirements, or issue responsive programming obligations. They may completely

ignore all state and federal consumer protection laws. Pirates may broadcast advertisements for illegal products with impunity. They may avoid all federal and state taxes. Pirates pay no FCC regulatory fees. They may ignore demands for copyright payments from BMI and ASCAP. Sadly, some pirates broadcast political ads for certain candidates. Of course, illegal pirate operators have no obligation to provide access to federal candidates, comply with the lowest unit charge rules or provide equal opportunities to candidates under Section 315 of the Communications Act.

Radio stations are licensed by the FCC to serve the public interest. By ignoring these laws, most of the illegal pirate radio stations do not serve their communities. To the contrary they often prey on the most vulnerable populations.

Beyond direct harm to their communities, illegal pirate operations create an unfair competitive environment for legally licensed stations. They do not have to bear the costs associated with legitimate broadcasters. Not only does this create an unfair business climate, it undermines investment. This is especially true for legitimate minority owned broadcast stations.

> By selling advertising in minority communities to legitimate businesses, pirates give themselves the false appearance of legitimacy and undermine the advertising base for legitimate licensed minority owned stations. It is patently unfair to NABOB members to invest substantial sums purchasing and operating radio stations only to discover they must compete against illegal operators who do not live by the same rules. These operators do not have to build or purchase a facility that meets the Commission's engineering and operating standards. They do not have to comply with the Commission rules, consumer protection laws, or EAS requirements.[12]

[12] Letter to the Honorable Thomas Wheeler, Chairman FCC from James L. Winston, President National Association of Black Owned Broadcasters (NABOB), May 7, 2015.

In summary, illegal pirate radio stations do no serve the public interest. Violating the FCC's engineering rules, by itself, causes a direct and immediate harm to the public. Ignoring all consumer protection and FCC content based rules compels provides an additional, compelling reason, for increased enforcement by the FCC. The time has come to give the FCC the tools necessary to achieve its fundamental mission.

III. RADIO BROADCASTERS SUPPORT THE PIRATE ACT

We strongly agree with FCC Commissioner Michael O'Rielly that Congress must give the FCC additional tools to combat illegal pirate radio stations. For too long FCC enforcement efforts have been hampered by limitations contained in the Communications Act itself. These limitations have rendered ineffective many FCC enforcement efforts. Some complain that pirate enforcement is too difficult, using the "whack a mole" analogy. The reason why there is a "whack a mole" problem, however, is that the enforcement tools and resources employed by the FCC to address the problem have been ineffective. The PIRATE Act will provide the FCC with the tools necessary to achieve its mission.

A. Fines for Illegal Pirate Radio Stations Should be Raised Significantly

The PIRATE Act will increase the fines for illegal pirate radio operations to up to $100,000 per violation and up to a maximum of up to $2 million. By significantly increasing the fines the FCC will be sending a clear signal to pirate operators that it serious about pirate radio enforcement. Broadcasters support this increase.

Under the Communications Act, the fines that may be assessed on a non-licensee are essentially limited to $10,000 per violation and capped at a maximum of $75,000. In some

instances, these amounts may be increased for flagrant violations.[13] Because illegal pirate operators are "non-licensees," they are subject to these limits. Unfortunately, these amounts are well below any amount that could have a deterrent effect. Pirate radio is a business, and this amount is simply considered a cost of doing business. Ironically pirate radio fines are well below the amounts that the FCC often applies to licensed stations for a single infraction. In other words you can completely ignore all FCC rules and be subject to a fine of around $10,000. If you are a licensee, however you may be assessed a forfeiture of hundreds of thousands of dollars for violating a single rule. The current policy makes little sense.

Increasing the fines will also save Commission resources. The current limit of $10,000 per violation means that the FCC must send out its monitoring truck multiple times in order to assess a pirate station with a significant fine. Changing the per violation limit to $100,000, means the FCC may assess larger fines, without having to expend resources send out its monitoring trucks multiple times.

Increasing the fines may have a salutary effect on the relationship between the Department of Justice and the FCC. The FCC must work with the Department of Justice to seize equipment and to bring a collection action in Federal District court. Increasing the fines should provide the local U.S. Attorney's offices with an added incentive to bring pirate radio cases in Federal District Court.

[13] A recent case in Miami resulted in a forfeiture of $144,344, for ignoring a number of FCC warnings. The case started in 2012 and the pirate radio operators ignored several orders including a prior forfeiture order and equipment seizures. In the context of pirate radio, such forfeitures are rare. *In the Matter of Fabrice Polyniece and Harold Sido,* Notice of Apparent Liability, FCC 17-127, released September 26, 2017. https://apps.fcc.gov/edocs_public/attachmatch/FCC-17-127A1_Rcd.pdf

B. Extending Liability to those who "Facilitate" Pirate Operations is Essential

Illegal pirate radio operators are elusive. They can be difficult to track down. For example, Illegal stations broadcasting in New York may be provided with content via microwave from another state or from another country by satellite. When confronted by the FCC, illegal pirate stations simply move to another location.

The PIRATE Act makes clear that people who "knowingly" facilitate illegal pirate operations may also be subject to a forfeiture of up to $2 million. This provision is essential, and perhaps the most important part of the PIRATE Act. It is especially important as it applies to property owners who allow access to pirate radio operators.

Under existing FCC precedents, the Commission may impose liability on those who assist pirates only where there is a strong nexus between the person and the underlying pirate radio operation. Essentially the FCC must find that the person assisting the pirate was part of the pirate operation. For example, the FCC will look for a number of facts such as allowing a pirate exclusive access to a property, providing the pirate with electricity, providing the pirate with Internet access, and providing the pirate with programming.[14]

The PIRATE Act clarifies existing law by making it clear that property owners may receive forfeiture (*i.e.*, a fine) if they "knowingly" provide an illegal pirate operator with access to property. In this regard, the FCC need not prove that the property owner was essentially part of the pirate operation. "Knowingly" providing access will be sufficient.

[14] *In the Matter of Fabrice Polyniece and Harold Sido*, Notice of Apparent Liability, FCC 17-127, released September 26, 2017. https://apps.fcc.gov/edocs_public/attachmatch/FCC-17-127A1_Rcd.pdf

This standard better reflects the reality of many pirate operations. Pirate operators broadcast from the roofs of buildings and on balconies. Some pirates pay rent for the space. Others have entered into an arrangement with the building manager or supervisor. In some cases, the tenant of a building is operating a pirate station. In many cases, other than providing access to the roof or balcony, the property owner may not be involved in the day to day operations of the pirate. By holding building owners accountable the PIRATE Act will take a major step forward in pirate radio enforcement. While pirate operators are elusive, you cannot move a building. The PIRATE Act will deny pirate operators the physical locations they need to engage in their illegal broadcasts.

Importantly, the PIRATE Act requires that those who facilitate pirate broadcasts may be held liable only if they "knowingly" facilitated the pirate. The bill requires that those "facilitating" pirates, including property owners must first receive notice from the FCC, before they can be held accountable. This requirement strikes the appropriate balance. It is also consistent with Section 503 of the Communications Act which requires that non-licensees must be notified before they are held liable.

C. The PIRATE Act Recognizes the Importance of State Law Enforcement

The PIRATE Act recognizes the legitimacy of state laws that impose criminal penalties on illegal pirate radio stations. Today three states, New York, Florida and New Jersey, make it a crime to operate a pirate radio station without an FCC license. No doubt other states will adopt similar laws as illegal pirate radio operations grow and spread across the nation. We do not believe these state laws are in conflict or preempted by the Communications Act. Nonetheless,

the PIRATE Act removes any ambiguity and makes is clear that these laws will not be preempted.

Recognizing state laws will also assist the Commission's enforcement efforts. Working with local law enforcement gives the FCC a "force multiplier," providing it with more "boots on the ground" to confront illegal pirate radio operators. This legislation helps solidify the FCC's ability to work with state law enforcement officials.

D. Enforcement Sweeps Will Help in Markets with High Pirate Concentrations

We support the provisions in the PIRATE Act that require the FCC to conduct pirate radio enforcement sweeps twice a year. This provision will ensure that the FCC keeps pace with this growing problem. While such a requirement will be resource intensive, we have reached a point where there are more illegal pirate operators in some cities than there are legitimate stations. We are close to the point where the federal licensing system will lose all meaning. Significant action is required. Enforcement sweeps will help the FCC keep pace with this problem and restore the integrity of the licensing process. In addition, such sweeps are necessary to determine whether FCC enforcement policies are effective.

E. The FCC's Enforcement Process Must be Streamlined

The typical process of assessing a fine against pirate stations takes several stages. The process is contained in Section 503 of the Communications Act. Basically, the process tracks the following steps:

- **Notice of Unlicensed Operation:** Illegal operators are first presented with a Notice of Unlicensed Operation. This is the most common enforcement action, and is essentially a letter telling the pirate station to stop broadcasting. These notices are often simply ignored by the pirates.

- **Notice of Apparent Liability:** The next step in the process is to issue a Notice of Apparent Liability (NAL). In this step the pirate is warned that the FCC may assess a forfeiture (i.e., a fine) if illegal operations continue. The illegal operator has the opportunity to respond to the NAL.

- **Forfeiture Order:** After the NAL is issue, the FCC then moves forward and issues the actual Forfeiture Order. This is the order that issues the actual fine. Illegal pirate operators have an opportunity to appeal this decision to the Commission. If the fine is paid, they may then appeal the decision in Federal Court.

- **Federal District Court**: If the illegal pirate operator fails to pay the fine, the FCC must go to Federal District Court, *for a trial de novo*, to obtain an order to collect the fine. The FCC must however, work the local U.S. attorney's office to obtain the court order.

This entire process takes months, if not years to complete. It is one of the reasons illegal pirate radio stations do not fear the FCC. Something must be done to streamline the process. Today illegal pirate radio operators simply game the process.

The PIRATE Act creates a new process for pirate radio enforcement. Under the bill, the FCC would be able to skip the first two steps in the process, and move directly to the step issuing the fine. Of course due process requires that the FCC may not issue a Forfeiture Order without a hearing. While rarely used, Section 503(b)(3) of the Communications Act gives the FCC the ability to impose such a fine, provided the person has an opportunity to appear before an administrative law judge.

This provision may have the potential to streamline the process. It may require the FCC to secure more administrative law judges in Washington to hear these types of cases. Moreover, consistent with due process, new procedures may have to be enacted to streamline the administrative process. Nonetheless, foregoing the first two administrative steps and requiring illegal operators to appear before and Administrative Law judge in Washington, would

not only shorten the process, but it would make it clear the FCC is serious with respect to pirate radio enforcement.

F. The FCC Should Have the Authority to Go to Court and Obtain an Order to Seize Pirate Radio Equipment

Seizing pirate radio equipment is an important enforcement tool. Perhaps one of the most significant obstacles to efficient pirate radio enforcement is the requirement that the FCC work through a local U.S. Attorney's offices in order to obtain a court order to seize equipment. This should be no surprise. U.S. Attorneys' offices are dealing with a host of vitally important issues ranging from organized crime, drug interdiction and terrorism. It is no surprise that illegal pirate radio operators are not given a higher priority.

The PIRATE Act provides a solution to this problem. It gives the FCC the authority to go into Federal District Court to obtain the necessary orders to seize equipment. In addition the PIRATE Act gives the FCC the authority to seize equipment if it finds the equipment being used in "real time."

We think both provisions are important to address the growing illegal pirate radio problem. Issues regarding coordination with the local U.S. Attorney's office have been around for decades and will not be resolved and time soon. On the other hand, policing the airwaves is at the heart of the FCC's mission. The Commission has a vested interest in ensuring that the airwaves are not overwhelmed with illegal operators.

Granting the FCC the authority to go directly to court and obtain a seizure order raises resource issues. Today, the Commission has no trial attorneys with expertise in Federal District Court procedures. Also there are security and safety concerns regarding the Enforcement Bureau's ability to seize equipment.

If the Congress and the FCC wants to eradicate the illegal pirate radio problem, however, then they must begin to rethink the enforcement process. As noted earlier, the current FCC enforcement process was not designed to deal with truly bad actors. The time has come to make changes. We believe the provisions of the PIRATE Act are a step in the right direction.

IV. CONCLUSION

In 2015, 33 bipartisan members of the House of Representatives sent a letter to the FCC demanding additional pirate radio enforcement. Today illegal pirate radio stations outnumber legitimately licensed stations in some major markets. The integrity of the federal licensing system is being tested. Significant steps must be taken. Resources have to be allocated to enforcement. The Communications Act needs to be amended to address this growing problem. As Commissioner O'Rielly has stated, the FCC needs Congress to provide it with additional tools. The PIRATE Act provides those tools.

Appendix A

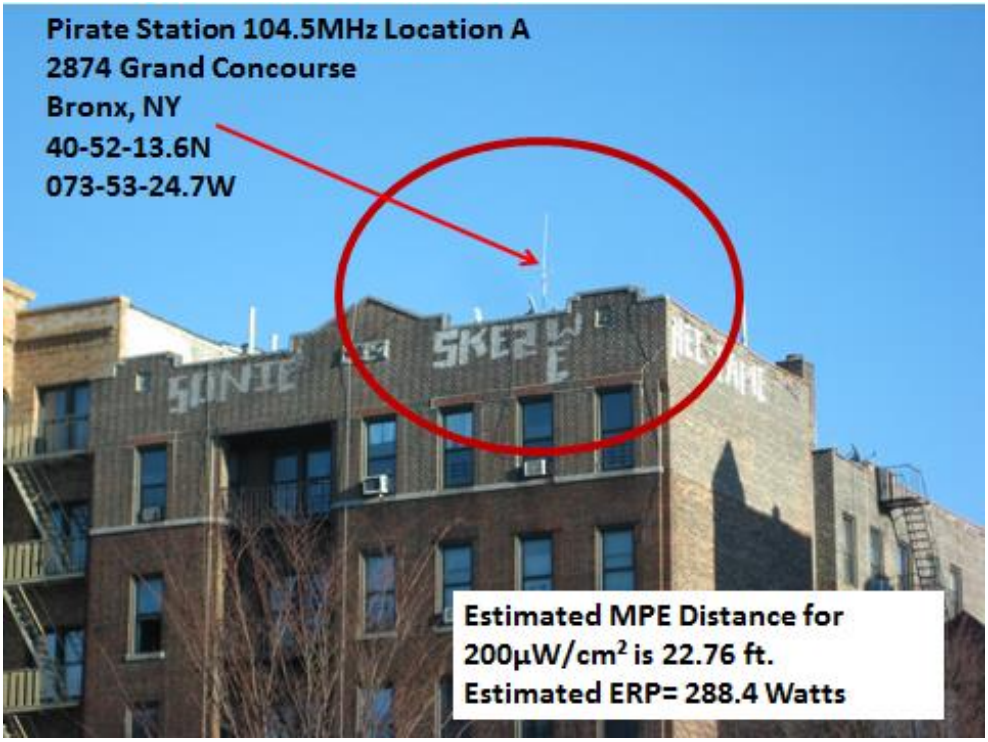
Examples of RF Radiation and Illegal Pirate Radio Stations

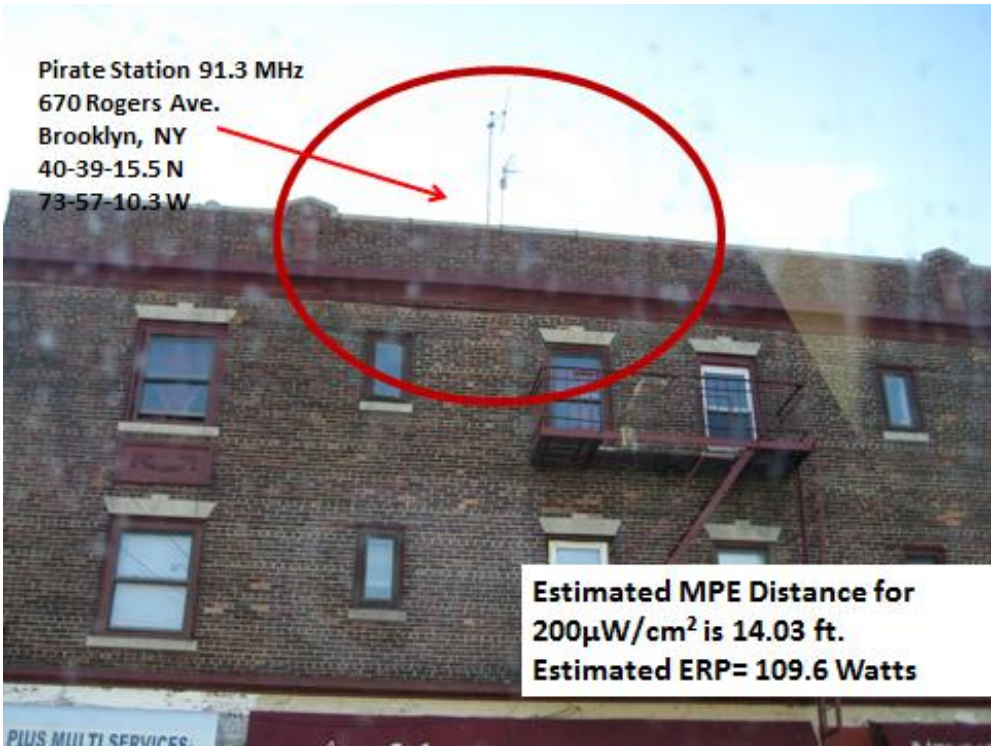
The examples in this Appendix were taken from and engineering analysis conducted by

Meintel, Sgrignoli & Wallace, *Field Measurements of Unauthorized FM Band Radio Signals in New York NY Metropolitan Area;* Phase Four, May 19, 2016.

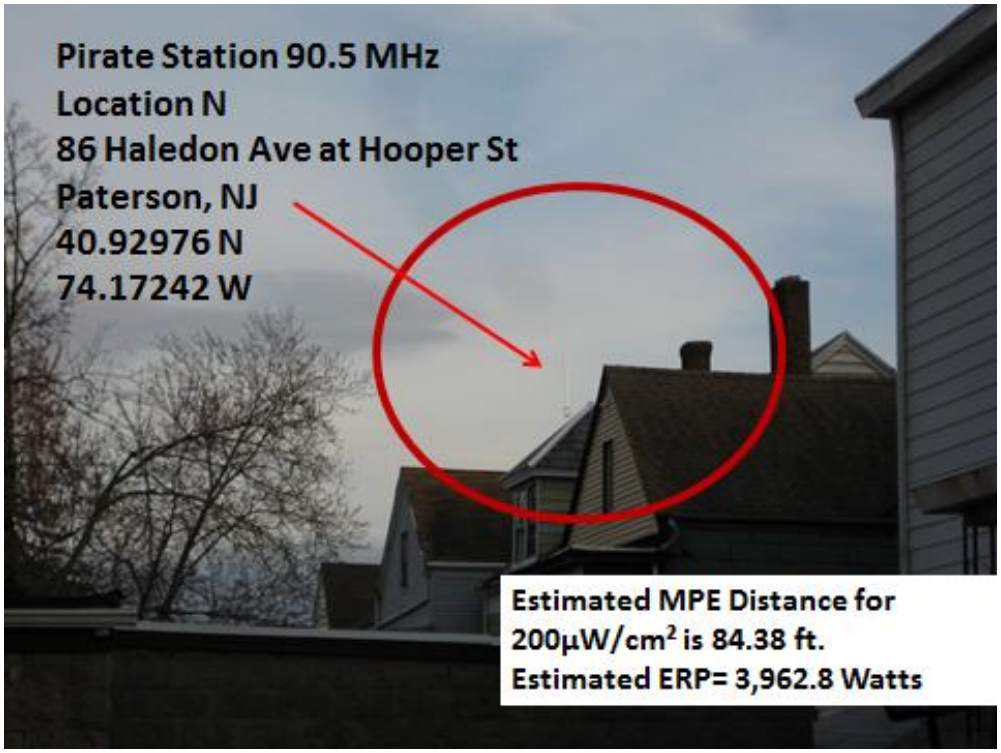
The complete engineering analysis may be accessed at

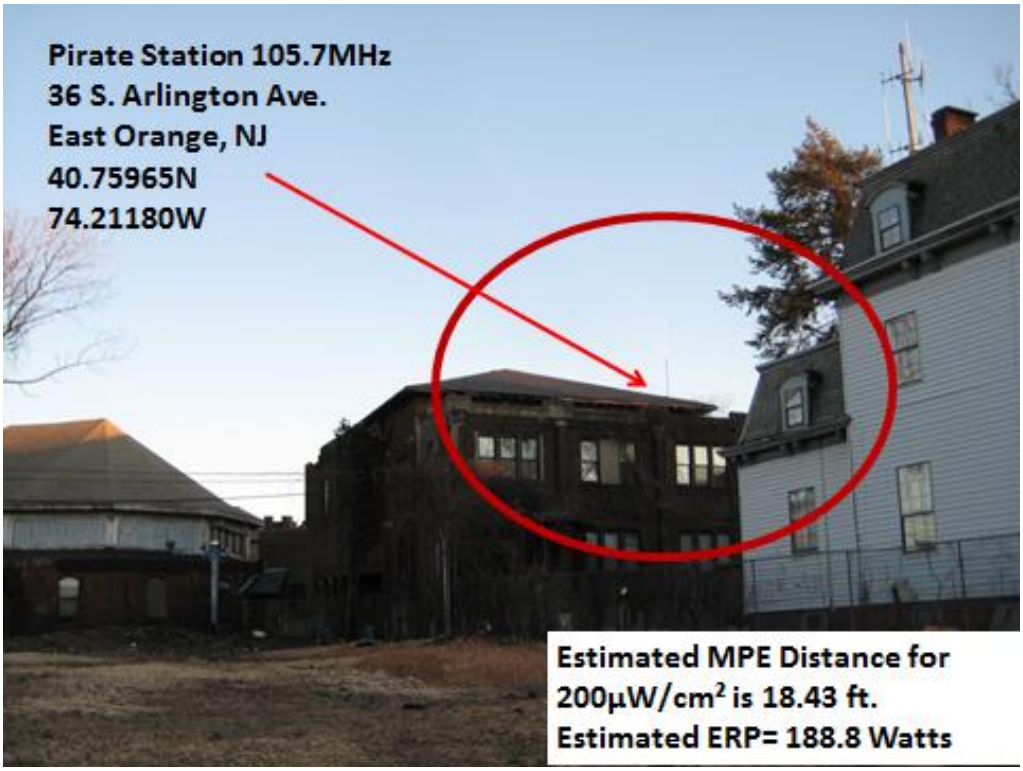
http://nysbroadcasters.org/wp-content/uploads/2018/03/Pirates-MSW-2016-study-final-pdf.pdf


Pirate Station 104.5MHz Location A
2874 Grand Concourse
Bronx, NY
40-52-13.6N
073-53-24.7W
Estimated MPE Distance for
200μW/cm² is 22.76 ft.
Estimated ERP= 288.4 Watts


Pirate Station 91.3 MHz
670 Rogers Ave.
Brooklyn, NY
40-39-15.5 N
73-57-10.3 W
Estimated MPE Distance for
200μW/cm² is 14.03 ft.
Estimated ERP= 109.6 Watts


Pirate Station 94.5MHz Location L
114 Fenner Ave.
Clifton, NJ
40.89431N
74.17285W
Estimated MPE Distance for
200μW/cm² is 68.03 ft.
Estimated ERP= 2,576.3 Watts


Pirate Station 90.5 MHz
Location N
86 Haledon Ave at Hooper St
Paterson, NJ
40.92976 N
74.17242 W
Estimated MPE Distance for
200μW/cm² is 84.38 ft.
Estimated ERP= 3,962.8 Watts


Pirate Station 105.7MHz
36 S. Arlington Ave.
East Orange, NJ
40.75965N
74.21180W
Estimated MPE Distance for
200µW/cm² is 18.43 ft.
Estimated ERP= 188.8 Watts