

**FHH Telecom Law**  
**January 2005**

**Unlicensed Operation Deemed Legal**

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Whew! Garage door openers, Wi-Fi, and all the rest are safe. The FCC has decided that unlicensed operation under Part 15 of its rules does not violate the Communications Act.

The claim of unlawfulness was brought by Cingular Wireless as part of its multi-pronged effort to eliminate unlicensed ultra-wideband from the airwaves. Cingular pointed to Section 301 of the Communications Act, which says anyone using a radio transmitter must have an FCC license. Cingular argued that none of the exceptions listed in the statute covers cordless phones, remote control toys, and the countless other unlicensed products approved by the FCC. (Cingular is an odd company to have brought the claim, considering that at least seven of its wireless phone models sport unlicensed Bluetooth devices.)

The FCC disagreed with Cingular on two grounds. First, in the FCC's view, Cingular's reading of the statute would bar even devices that emit minuscule amounts of radio-frequency energy, and even if they are not used for communication. A better reading, according to the FCC, would limit the licensing requirement of Section 301 to devices that have the potential to cause harmful interference -- which compliant Part 15 devices do not. Second, the FCC found several instances in which Congress formally acknowledged the FCC's authorization of unlicensed devices. If Congress thought the FCC had misconstrued the statute, it had plenty of opportunity to say so.

Keyless entry to your car is safe for now. But this issue is not likely to go away for good until the Court of Appeals finally speaks -- or until Congress adds a few words to the statute.