

FHH Telecom Law
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**FCC Takes a Look at the Bright Side
of Rule Violation**

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Following a wave of enforcement actions over its equipment authorization rules, the FCC has suddenly stopped to ask whether an offender should receive a waiver instead of a fine. The offender here, Respironics, Inc., acquired a company that manufactures equipment for monitoring medical patients. It discovered after the acquisition that its new product line is not in compliance with FCC technical rules.

The Respironics device uses unlicensed radio signals at 104 kHz to download data from a patient-worn unit to a stationary unit. The power is low enough to be inoffensive. But the frequency falls in the band used for LORAN radionavigation signals. This is a "restricted band" in the FCC rules, meaning it is closed to unlicensed transmitters, regardless of how low their power might be. Thus, marketing of the Respironics product violates FCC rules.

Respironics has asked the FCC for a waiver of the rules, not only to keep an existing 1,500 units in operation, but to market 1,000 more while it develops a new and compliant version of the product. Respironics points out that its device operates well below the emissions levels permitted for off-frequency emissions from transmitters operating in other bands. It argues that victim receivers are equally unaffected by emissions that are fundamental, such as its own, and those that are spurious. Also, says Respironics, since the device has a useful range of only a few millimeters, and is used solely in controlled settings such as hospitals, it is unlikely to cause actual interference.

The FCC could have cited Respironics for an admitted violation of the rules. Instead, it issued a public notice inviting comment on the waiver request. This does not necessarily guarantee that no fine will ultimately be assessed, but at least the FCC's approach here appears constructive rather than punitive. Would-be offenders are nevertheless cautioned not to rely on the kindness of strangers at the FCC.