

FHH Telecom Law

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Reflective Detectors Detected, Rejected

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Drivers who use radar detectors agree they have a defect – if you don't slow down when they go off, a ticket is very likely. Much better would be a gizmo that not only alerts you, but also disables the radar. With one of those on the dashboard, you could sail past the officer with a wave and a smile.

A company called Rocky Mountain Radar (RMR) liked the idea, too – so much that they put it on the market.

Police radar bounces a high-frequency radio signal off your car back to the radar gun. The speed of the car alters the received frequency in a mathematically predictable way. The radar gun does the math and displays your speed. To prevent that, the RMR device, on detecting the radar signal, sends out a similar signal and deliberately varies the frequency in a way that confuses the radar gun. The officer sees nonsense on the display.

The FCC objected to the RMR device. Not because the people there disapprove of speeding, although perhaps they do, but because RMR had violated the FCC's rules by unlawfully marketing a radio-frequency device. The FCC requires that most portable transmitters be certified for compliance with its technical standards. The standards bar a device that intentionally emits in certain "restricted bands." And those include the frequencies used by the RMR device. The RMR device thus was not only uncertified, but it could not have been certified. To make matters worse, its emissions exceeded the very low levels permitted for unintentional emissions in a restricted band. And, in any event, the device was ineligible for certification because it deliberately caused malicious interference. The FCC fined RMR \$25,000.

RMR had an answer. The product, it said, is not really a transmitter, and hence not subject to the FCC rules, because it does not generate a radio signal of its own. Instead, it merely sends back an altered version of the signal coming in from the police radar gun. That might be a pretty good argument, were it not for one drawback: The FCC rejected the same argument from the same company back in 1997. Could the FCC have been wrong? RMR thought so, and challenged the decision in the U.S. Court of Appeals. But the court upheld the FCC's reading of its own rules.

In an area where the law is sometimes murky, this case is about as clear as it gets: A device that re-emits an incoming signal is a transmitter subject to FCC jurisdiction – and, in this case, potentially exposes its manufacturer to a fine.

The FCC simultaneously issued “official citations” to nine companies charged with marketing the offending RMR products. The citations do not themselves carry a fine, but expose the recipients to a fine if they commit the same violation again.

Just two weeks earlier, the FCC cited its 1997 decision against RMR in fining San Jose Navigation \$75,000 for marketing GPS “re-radiators.” These receive, amplify, and retransmit incoming signals from GPS satellites to improve reception in areas where the signals would otherwise be too weak, such as inside buildings.

Like RMR, this company committed the offense of marketing a product that required but did not have FCC certification. And, like RMR’s, the San Jose product was ineligible for authorization because it operates in a restricted band. Some of the federal agencies that use GPS signals complained to the FCC that the product could interfere with their operations (although none reported actual interference). The FCC investigated, and subsequently imposed the fine.

Unlike the RMR device, however, San Jose’s actually served a useful purpose not otherwise addressed. And there was no claim of deliberate malicious interference. Moreover, although offenses within the statute of limitations would have justified a fine of \$28,000, the FCC took into account prior violations – outside the statute of limitations – in raising the fine to \$75,000. The very high levy probably reflects the great importance the FCC and the rest of the federal government attach to GPS operations.