

FHH Telecom Law
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**Unauthorized Operation
at 68 Sites for Five Years
Nets \$20K Fine**

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The Enforcement Bureau recently levied a forfeiture against Neptuno Networks, Inc. (Neptuno), for operating unlicensed radio transmitters in Puerto Rico. The Bureau discovered that Neptuno had been using unlicensed 5 GHz spectrum set aside for indoor use at 68 separate sites over a five-year period. Despite these pervasive violations of the Commission's rules, the Enforcement Bureau levied a \$20,000 forfeiture.

According to the Notice of Apparent Liability, the FCC's resident agent in Puerto Rico followed up on a complaint relating to Neptuno's unauthorized operations, and traveled to three different sites on separate occasions. Then the resident agent traveled to one site with the Vice President of Operations of Neptuno. In the course of three separate sets of communications between Neptuno and the FCC, Neptuno disclosed that it had been using the unlicensed spectrum for over five years at 68 different sites in Puerto Rico. The resident agent determined that Neptuno must have altered the equipment power settings to increase the equipment's power levels to far exceed the limits set for indoor use. He concluded that Neptuno was not authorized to operate from these sites without a license.

The FCC stated that, in reaching the forfeiture amount, it took into account the number of active sites (68), the duration of the violations (5 years), and the fact that Neptuno was using the unlicensed frequencies for commercial purposes. However, while the base forfeiture for operating without an authorization is \$10,000, the Commission levied a forfeiture of only \$20,000, rather than imposing a \$10,000 forfeiture for each separate site. Also, the Commission apparently did not consider the unauthorized modification of the equipment as a separate basis for forfeiture, even though the Commission's rules set forth a separate \$4,000 fine per occasion for such actions.

It is not clear whether the failure to consider each transmit point as a separate violation reflects a change in policy at the Enforcement Bureau. Typically, the Commission is faced with an isolated incident of a violation, rather than the apparently systematic use described in the Commission's order. However, considering that the frequencies were used as part of a commercial operation, the impact of the forfeiture on Neptuno's bottom line will likely be negligible.