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## Unlicensed But Not Unregulated: An Overview of the FCC's Regulations Regarding Part 15 Devices

by Clifford M. Harrington and Tony Lin

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*The FCC has long permitted devices employing relatively low level radio frequency signals (“Part 15 devices”), such as garage door openers, cordless telephones, personal computers, and computer peripherals, to be operated without the need for a spectrum license.<sup>1</sup> While such operations are unlicensed, the devices themselves are not unregulated. The FCC’s rules require that the manufacturer or importer<sup>2</sup> of such devices (the “responsible party”) obtain equipment authorization before marketing any such device in order to minimize the potential for harmful radiofrequency interference.<sup>3</sup> Failure to obtain proper equipment authorization can result in monetary forfeitures and/or other sanctions. The FCC routinely investigates Part 15 rule violations and, as an example, recently issued a notice of apparent liability in the amount of \$1,000,000 against one alleged violator. Because this overview provides only general information, we urge entities with specific concerns or questions about Part 15 compliance to seek FCC counsel for advice.*

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### **FCC Equipment Authorization Procedures**

As discussed below, there are three methods for obtaining FCC equipment authorization: verification, declaration of conformation, or certification. Under each procedure, the responsible party makes measurements or takes the necessary steps to ensure that the equipment complies with the appropriate technical standards specified in the FCC’s rules. See generally, 47 C.F.R. §§ 15.01 et seq. The particular procedure and technical limits vary depending on the type of equipment and frequencies for which authorization is sought. In all cases, the responsible party must retain records of the testing (47 C.F.R. §§ 2.938, 2.1075)

and is required to provide such records and sample units to the FCC upon request (47 C.F.R. §§ 2.945, 2.1076).

The responsible party must also provide the necessary Part 15 compliance statements in the user manual (47 C.F.R. § 15.105) and caution the user that changes or modifications may void the user's authority to operate the equipment (47 C.F.R. § 15.21). The Part 15 device itself must bear a unique identifier (47 C.F.R. §§ 2.254, 2.1074) or an FCC Identifier, if certification is required (47 C.F.R. § 2.925), and display a Part 15 compliance statement (47 C.F.R. § 15.19). The equipment authorization is valid for all electrically identical equipment and for devices that are subsequently modified but with no degradation in the relevant technical characteristics. See 47 C.F.R. §§ 2.908, 2.924, 2.932, 2.933, 2.1043. Following is a summary of the three different equipment authorization procedures:

### Verification

The verification process, which is the simplest of the three FCC procedures for obtaining equipment authorization, applies mainly to unintentional radiators, such as TV and FM broadcast receivers, digital devices and peripherals marketed for use in commercial environments (i.e. Class A devices), and very low power intentional radiators. See 47 C.F.R. §§15.101(a), 15.201(a). Under the verification process, the responsible party tests on its own or through an agent and verifies that the Part 15 device in question meets the applicable technical standards. See 47 C.F.R. § 2.952.

### Declaration of Conformity

The declaration of conformity ("DoC") authorization procedure is used mainly for computing equipment, such as personal computers, computer peripherals, CPU boards and associated internal power supplies marketed for use in residential environments (i.e. Class B devices), CB receivers, and TV interface devices (such as set-top boxes). See 47 C.F.R. § 15.101(a). It is intended as an alternative to the more time-consuming certification procedure. Accordingly, many devices that can be authorized under the DoC process can also be authorized under the certification process. Like the verification process, the responsible party tests on its own or through an agent and verifies that the Part 15 device in question meets the applicable technical standards. However, testing under the DoC process can only be conducted in laboratories accredited by an approved accreditation organization. See 47 C.F.R. § 2.948(a)(3), (d). Additionally, a copy of the declaration, identifying the party responsible for compliance and providing other relevant information, must be included in the literature supplied with the device. See 47 C.F.R. § 2.1077.

### Certification

Certification applies to most intentional radiators such as, garage door openers, cordless telephones, and microwave ovens. See 47 C.F.R. § 15.201(b). An entity seeking certification of a device must submit an application to the FCC or a Telecommunication Certification Body ("TCB"), an accredited entity authorized by the FCC to approve equipment certifications (47 C.F.R. § 2.960). The application must provide detailed technical and administrative information about the device, including equipment test data, and the applicant must submit a filing fee. See 47 C.F.R. §§ 2.1033, 2.1046 *et seq.* This is the most time-consuming of the three FCC equipment authorization procedures.

### Failure to Comply with the FCC's Regulations

Under Section 503(b)(2)(C) of the Communications Act, the FCC has authority to assess a maximum forfeiture of \$11,000 for each violation, or each day of continuing violation of its rules, up to a statutory maximum forfeiture of \$97,500 for any single continuing violation. 47 U.S.C. § 503(b)(2)(C). Under Section 1.80(b)(4) of its rules, the FCC has established a base forfeiture amount of \$7,000 for the importation or marketing of unauthorized equipment.

In practice, the FCC has applied only the base forfeiture amount to each product model found to be in violation of the FCC's rules, despite the ongoing nature of most violations. *See, e.g., Samson Technologies, Inc.*, 19 FCC Rcd 4221 (2004), *consent decree issued*, 19 FCC Rcd 24542 (2004). The FCC has the right, depending on the circumstances of the violation, to adjust the forfeiture amount up or down, as limited by the statute. *See* 47 U.S.C. § 503(b)(2)(D). For example, the FCC has in the past been willing to mitigate forfeiture amounts where the company in good faith sought to comply with the rules prior to any FCC investigation, where the company has demonstrated an inability to pay, or where the company has a history of overall rule compliance. *See, e.g., SpectraSite Communications, Inc.*, 18 FCC Rcd 17673 (2004); *Hawking Technologies*, DA 06-853 (2006). In contrast, where the company has obtained substantial economic gain from the marketing of a device in violation of the FCC's rules or continued to violate rules after receiving notice of potential violations, the FCC has increased the forfeiture amounts. For example, the Commission recently issued a notice of apparent liability in the amount of \$1,000,000 against a company that had allegedly marketed 50 models of unauthorized devices and egregiously continued to do so even after the FCC initiated an inquiry into the potential violations. *See In the Matter of Behringer USA, Inc.*, 21 FCC Rcd 1820 (2006).

The FCC also has the authority to revoke a licensee's equipment authorizations for violations of its rules, but it has stated it is unlikely to take such a drastic measure unless the violator has actually perpetuated a fraud on the FCC or its actions had been so willful or deliberate as to raise serious questions as to the entity's fitness to hold an equipment authorization. *See, e.g., Highway Information Systems Equipment Certification for Traveler's Advisory Transmitter*, 17 FCC Rcd 4027, ¶ 9 (2002). Additionally, federal law permits equipment that is imported or sold in willful and knowing violation of the Commission's rules to be forfeited and seized by the Attorney General of the United States. *See* 47 U.S.C. 510. Violators are also subject to criminal penalties including fines up to \$10,000 and imprisonment of up to one year (or two years for repeat offenders). *See* 47 U.S.C. § 501; *see also* 18 U.S.C. 3571 (organization found guilty of criminal offense may be subject to fines up to \$200,000). However, the Attorney General has not historically been active in enforcing these laws.

In recent years, the FCC has favored resolving investigations through "Consent Decrees," which are orders adopting negotiated agreements with parties who are under investigation for violation(s) of the FCC's rules and/or the Communications Act. In general, under such an agreement, the FCC terminates its investigation regarding the alleged violations in return for a contribution to the U.S. Treasury and, if appropriate, other commitments by the alleged violator to prevent potential problems of the same nature from arising in the future.

Parties with questions or concerns about compliance with the FCC's Part 15 regulations should contact one of the attorneys listed on the next page.

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- 1 Under Part 18 of its rules, the FCC also permits operation of industrial, scientific, and medical devices without the need for a license. See 47 C.F.R. §§ 18.101 et seq.
- 2 Importers of devices capable of causing harmful interference to radio communications must also submit a separate customs declaration upon the entry of such devices into the United States. See 47 C.F.R. § 2.1201 et seq.
- 3 “Marketing” is defined as selling, leasing, offering for sale or lease, importing, shipping, or distributing for the purpose of selling or leasing. See 47 C.F.R. §§ 2.801 et seq. The FCC’s rules permit the advertisement and display of unauthorized equipment at trade shows or exhibitions, if accompanied by a conspicuous notice disclosing such information. See 47 C.F.R. § 2.803(c). The FCC’s rules also do not prohibit conditional contracts between manufacturers and wholesalers or retailers where delivery is contingent upon compliance with the applicable equipment authorization and technical requirements, nor do they prohibit agreements between such parties to produce new products, manufactured in accordance with designated specifications. *Id.* at § 2.803(b).

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