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## **First-Time Class A Violator Fined \$63,000 For Failure To Verify**

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Recently the FCC imposed a fine of \$63,000 on a company that, it said, marketed Class A digital devices without first having them “verified” for compliance, as the FCC rules require. The action is unusual in two respects. First, Class A devices rarely become enforcement targets. These are devices marketed for commercial or industrial use which, by their very nature, are unsuited to consumer applications. Here the offending products were rack-mounted computer gear – not sleek high-end audio racks, but the kind used in back-room installations. These have all the esthetic appeal of the back of a refrigerator. They don’t go with anyone’s living-room furniture.

“Verification” of Class A devices like these consists of three steps: (1) test the product for compliance with FCC rules; (2) put the test results and certain design data in a drawer; and (3) close the drawer. That’s it. No submission to the FCC; no special labeling; no paperwork to the customer. Enforcement actions involving Class A devices are unusual because compliance is easy, and violations are hard to spot. An un-verified device looks just like one that has been verified. In this case, the FCC tells us it launched its investigation because it “received a complaint,” which usually means a phone call from a competitor. Without those phone calls, the FCC has no practical way to enforce the verification rules.

The second reason this case raises eyebrows is an FCC rule mandating that most violators receive a citation – a formal warning – before they can be fined. There are exceptions for FCC licensees and other recipients of FCC authorizations, who can be fined without a warning, on the theory that they should know better. And no warning is necessary if the offending activity is one for which a license, permit, or certificate is required but wasn’t obtained. Here, though, the defendant was not (and need not have been) a licensee, and the offense was a simple lack of verification, which does not entail a license, permit, or anything of the kind. A warning citation would therefore seem to have been a necessary prerequisite to a fine; yet the FCC skipped that step entirely.

Companies that manufacture or market Class A equipment can easily avoid becoming featured in one of our articles about recipients of FCC fines. All it takes is having your products tested, and keeping your records in good order. True, there are costs involved. But compliance is a lot cheaper than paying fines to the FCC. Or paying a lawyer to bail you out.