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FCC to Inter Tech: REALLY, Keep the Paperwork Straight!

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We reported in February a proposed FCC fine of \$7,000 against a company called Inter Tech which had failed to properly verify an FM broadcast transmitter. This is a rare offense, in part because verification is so easy: just test the product for compliance with the FCC's technical rules, and keep certain records. In the same order, the FCC proposed to add on another \$11,000 for Inter Tech's saying it had discontinued a particular model when, in fact, the model was still on sale. We observed that Inter Tech was lucky, as the FCC could have imposed the same \$7,000 fine separately for each of 15 different models.

We spoke too soon. The FCC is back.

Two of the new offenses also concern Inter Tech's FM transmitters, each made up of an exciter and an amplifier supplied by different companies. (The exciter is the part that produces an FM signal at relatively low power, which the amplifier then amplifies.) Inter Tech had verification paperwork relating only to the exciters. The amplifiers had been separately approved, under the more demanding procedure of certification. But that was not enough. Combining the two components makes a new product that requires a new verification, a step that Inter Tech had omitted.

Another two violations appear to stem from the same certified amplifiers. Inter Tech had apparently combined these with the exciters and marketed the resulting package under its own trade name. Re-branding a certified device is perfectly acceptable, under the rules, but only with the approval of the certification grantee. In practice, this is very common. There are dozens of brands of Wi-Fi equipment, for example, but far fewer manufacturers who supply the FCC-certified transmitters inside. The same core circuitry thus turns up in many different makes and models. In this case, however, Inter Tech was unable to show authorization from the company that made the amplifiers.

Turning these facts into a rule violation took a few steps. First, the FCC deemed Inter Tech's re-branding to be a "modification" of the equipment. Under the rules, said the FCC, that made Inter Tech the "responsible party" answerable for compliance. And that in turn, according to the argument, obligated Inter Tech to re-certify the amplifiers for

sale under its own trade name.

That first step – calling the re-branding a modification – strikes us as a stretch. The rule that shifts responsibility for compliance, following a modification, appears to contemplate *technical* modifications, particularly those that might adversely affect the device's continued compliance. Certainly that was the clear intent of the FCC order that adopted the rule. As far as we can tell, the FCC has never before treated re-branding as a modification for these purposes.

Besides, having found that the whole transmitter fell short under the equipment authorization rules, it seems excessive to also cite Inter Tech separately for one component of the same transmitter.

Inter Tech did not help its case by claiming the transmitter was exempt from FCC regulation on the ground that it was sold only for export. The legal premise is right: products manufactured for export do not need FCC compliance or approval. But Inter Tech's sole basis for invoking this exception was the words "Export Only" in its marketing materials – diluted, unfortunately, by an offer to ship anywhere within the United States.

The FCC is looking more aggressive all the time in its enforcement efforts. Sadly, it is getting plenty of help from careless manufacturers. Total proposed fines in this round are \$22,000.