

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of )  
 )  
Rugged Race Products, Inc. ) File No.: EB-SED-18-00026086  
d/b/a Rugged Radios )

**CITATION AND ORDER**

**ILLEGAL MARKETING OF UNAUTHORIZED RADIO FREQUENCY DEVICES**

**Adopted: November 24, 2020**

**Released: November 24, 2020**

By the Chief, Spectrum Enforcement Division:

**I. NOTICE OF CITATION**

1. This **CITATION AND ORDER** (Citation), notifies Rugged Race Products, Inc. d/b/a Rugged Radios (Rugged Radios or Company) that it unlawfully marketed six models of radio frequency devices that (a) operated outside the scope of their respective equipment authorization, or without any equipment authorization; (b) permitted any operator to program and transmit on new frequencies using the device’s external operation controls; and (c) lacked the appropriate labeling. Specifically, Rugged Radios marketed models RH5R-V2, RM25R, RM25R-WP, RM50R, RM60-V, and RM100 in violation of section 302(b) of the Communications Act, as amended (Act), and sections 2.803(b), 2.925(a)(1), 80.203(a), 90.203(a), 90.203(e), 95.361(a), and 95.391 of the Commission’s rules.<sup>1</sup> We therefore direct Rugged Radios to take immediate steps to comply with the Commission’s equipment authorization and marketing rules and to cease marketing any unauthorized radio frequency devices in the United States. If the Company fails to comply with these laws, it may be liable for significant fines up to \$20,489 per day for each unauthorized model marketed, as well as other sanctions.<sup>2</sup>

2. **Notice of Duty to Comply with the Law:** We issue this Citation pursuant to section 503(b)(5) of the Communications Act of 1934, as amended (Act), which states that the Commission may not impose monetary forfeitures against non-regulatees who violate Commission rules or the Act unless and until: (a) the Commission issues a citation to the violator; (b) the Commission provides the violator a reasonable opportunity to respond; and (c) the violator subsequently engages in conduct described in the citation.<sup>3</sup> Accordingly, Rugged Radios is hereby on notice that it must comply with section 302(b) of the Act and sections 2.803(b), 2.925(a)(1), 80.203(a), 90.203(a), 90.203(e), 95.361(a), and 95.391 of the Commission’s rules.<sup>4</sup> If Rugged Radios subsequently engages in any conduct of the type this Citation describes — specifically any violation of section 302(b) of the Act and sections 2.803(b), 2.925(a)(1), 80.203(a), 90.203(a), 90.203(e), 95.361(a), or 95.391 of the Commission’s rules — Rugged Radios may be subject to civil penalties, including but not limited to, substantial monetary forfeitures. In assessing

<sup>1</sup> 47 U.S.C. § 302a(b); 47 CFR §§ 2.803(b), 2.925(a)(1), 80.203(a), 90.203(a), 90.203(e), 95.361(a), 95.391.

<sup>2</sup> See 47 U.S.C. § 503(b)(2)(D); 47 CFR § 1.80(b)(7). The forfeiture amounts stated here, which became effective upon publication in the Federal Register, reflect the current annual inflation adjustments to the forfeiture amounts originally specified in section 503(b)(2) of the Act. *Amendment of Section 1.80(b) of the Commission’s Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, 34 FCC Rcd 12824 (EB 2019) (2020 Inflation Order); FCC Annual Adjustment of Civil Monetary Penalties to Reflect Inflation, 85 Fed. Reg. 2318 (Jan. 15, 2020). The 2015 Inflation Adjustment Act provides that the new penalty levels shall apply to penalties assessed after the effective date of the increase, “including [penalties] whose associated violation predated such increase[.]” See Pub. L. No. 114-74, § 701, 129 Stat. 584, 599 (2015) (2015 Inflation Adjustment Act).

<sup>3</sup> See 47 U.S.C. § 503(b)(5).

<sup>4</sup> 47 U.S.C. § 302a(b); 47 CFR §§ 2.803(b), 2.925(a)(1), 80.203(a), 90.203(a), 90.203(e), 95.361(a), 95.391.

such forfeitures, the Commission may consider both the conduct that led to this Citation and the conduct following it.<sup>5</sup> Rugged Radios should take immediate steps to ensure that all radio frequency equipment in its inventory that is marketed to U.S. consumers is authorized for sale in the United States and compliant with all applicable rules.

## II. BACKGROUND

3. To best accommodate the diversity of radio communication needs, the Commission partitions radio frequency spectrum, and creates different radio services, each with different operating parameters. The Commission also implements a certification process designed to ensure that radio frequency devices that intentionally emit radio waves meet various operating requirements, including power levels, frequency band limits, and channel bandwidth. Radio frequency devices must operate within the technical parameters established in the Commission's rules because they can easily cause interference to federal government and licensed communications systems.

4. Rugged Radios is a corporation based in California that markets two-way handheld and mobile radios. The Commission received several complaints alleging that Rugged Radios was marketing unauthorized radio frequency devices in violation of the Commission's equipment authorization and marketing rules. Complaints further alleged that Rugged Radios had programmed some two-way radios to enable them to transmit on frequencies outside the scope of their equipment authorizations.

5. In response to these complaints, the Spectrum Enforcement Division (Division) issued an initial letter of inquiry (LOI) to Rugged Radios on August 14, 2018.<sup>6</sup> The LOI directed the company to state whether six radio frequency devices had been properly tested and certified under the Commission's rules and whether they operated within the proper technical parameters of their respective certifications. The LOI also inquired whether the six models included the proper labels and user information disclosures. Rugged Radios provided incomplete, inconsistent, or inaccurate statements in its LOI response.<sup>7</sup> Ultimately, the Division found it necessary to issue a series of further inquiries in order to obtain information needed to resolve the investigation.<sup>8</sup> While Rugged Radios would repeatedly provide

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<sup>5</sup> See S. Rep. No. 95-580, 95th Cong., 1st Sess. at 9 (1977) (If a person or entity that has been issued a citation by the Commission thereafter engages in the conduct for which the citation of violation was sent, the subsequent notice of apparent liability "would attach not only for the conduct occurring subsequently *but also for the conduct for which the citation was originally sent.*") (emphasis added).

<sup>6</sup> Letter of Inquiry from Matthew L. Conaty, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau, to Greg Cottrell, Owner, Rugged Radios (Aug. 14, 2018) (LOI).

<sup>7</sup> See Response to Letter of Inquiry, from Karen A. O'Neil, Counsel to Rugged Race Products d/b/a Rugged Radios, to Matthew L. Conaty, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau (Sept. 4, 2018) (LOI Response).

<sup>8</sup> Letter from Elizabeth Y. Mumaw, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau, to Karen A. O'Neil, Counsel to Rugged Race Products d/b/a Rugged Radios (Nov. 29, 2018) (Supplemental LOI); Letter from Elizabeth Y. Mumaw, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau, to Karen A. O'Neil, Counsel to Rugged Race Products d/b/a Rugged Radios (Mar. 5, 2019) (Second Supplemental LOI); E-mail from Kevin Pittman, Spectrum Enforcement Division, FCC Enforcement Bureau, to Karen A. O'Neil, Counsel to Rugged Race Products d/b/a Rugged Radios (Apr. 28, 2020, 14:14 EDT); E-mail from Kevin Pittman, Spectrum Enforcement Division, FCC Enforcement Bureau, to Paul Feldman, Counsel to Rugged Race Products d/b/a Rugged Radios (May 29, 2020, 17:36 EDT); E-mail from Kevin Pittman, Spectrum Enforcement Division, FCC Enforcement Bureau, to Paul Feldman, Counsel to Rugged Race Products d/b/a Rugged Radios (June 19, 2020, 18:37 EDT) (all on file in EB-SED-18-00026086).

inaccurate information about the compliance of certain devices in succeeding responses,<sup>9</sup> it ultimately corrected the inaccurate information in its final response.<sup>10</sup>

6. Rugged Radios acknowledged that it marketed each of the six models identified in the LOI.<sup>11</sup> Specifically, it began marketing the RH5R-V2 in February 2014, RM25R in November 2015, RM60-V in June 2016, RM-50R in July 2016, RM25R-WP in March 2017, and RM100 in May 2017.<sup>12</sup> Rugged Radios acknowledged that all six models were “sold with the capability of being face programmable to allow a user to enter new operating frequencies” and that the associated manufacturer or supplier delivered the radio to the Company with this capability.<sup>13</sup> The Company also identified the frequencies that it pre-programmed into each model prior to sale.<sup>14</sup>

7. The Company supplied valid FCC Identifiers (FCC ID) suggesting that four of the six two-way radios had been properly tested and authorized under the Commission’s equipment authorization rules.<sup>15</sup> Specifically, RH5R-V2 (FCC ID X24-THUV) and RM60-V (FCC ID X24-Mobile-V) were certified as Part 90 radios. RM25R-WP (FCC ID POD25W-WP) and RM50R (FCC ID PODTH-9800) were certified, but only as scanning receivers, which may receive transmissions on designated frequencies but are not authorized to transmit. Rugged Radios failed to provide any FCC IDs for its RM25R and RM100 models, indicating that these models had never been authorized for sale in the United States.

8. In response to further inquiries by the Division, Rugged Radios later revealed additional issues regarding the authorization status of the RH5R-V2 and RM60-V models. The Company confirmed that its dual band handheld RH5R-V2 radio had not, in fact, been authorized under FCC ID X24-THUV or any other FCC grant of certification.<sup>16</sup> In other words, the device marketed by Rugged Radios as the RH5R-V2 for six years was not the same radiofrequency device that had been tested and certified under FCC ID X24-THUV.<sup>17</sup> Similarly, although the RM60-V model had initially been tested and certified

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<sup>9</sup> Response to Supplemental Letter of Inquiry, from Karen A. O’Neil, Counsel to Rugged Race Products d/b/a Rugged Radios, to Eric Ehrenreich, Spectrum Enforcement Division, FCC Enforcement Bureau (Dec. 13, 2018) (Supplemental Response); Response to Second Supplemental Letter of Inquiry from Karen A. O’Neil, Counsel to Rugged Race Products d/b/a Rugged Radios, to Eric Ehrenreich, Spectrum Enforcement Division, FCC Enforcement Bureau (Mar. 15, 2019) (Second Supplemental Response); E-mail from Paul Feldman, Counsel to Rugged Race Products d/b/a Rugged Radios, to Kevin Pittman, Spectrum Enforcement Division, FCC Enforcement Bureau (May 27, 2020, 15:28 EDT); E-mail from Paul Feldman, Counsel to Rugged Race Products d/b/a Rugged Radios, to Kevin Pittman, Spectrum Enforcement Division, FCC Enforcement Bureau (June 25, 2020, 15:55 EDT) (all on file in EB-SED-18-00026086).

<sup>10</sup> Rugged Radios blames many of its incorrect responses, which concerned the compliance status of radios the Company marketed to U.S. consumers, on misinformation provided by its device manufacturers or suppliers.

<sup>11</sup> LOI Response at 2-3, Response to LOI Question 8(a). Marketing “includes sale or lease, or offering for sale or lease, including advertising for sale or lease, or importation, shipment, or distribution for the purpose of selling or leasing or offering for sale or lease.” 47 CFR § 2.803(a).

<sup>12</sup> Supplemental Response at 2, Response to LOI Question 8(a).

<sup>13</sup> *Id.* at 6-10, Response to Supplemental LOI Question 3.

<sup>14</sup> Rugged Radios pre-programmed these models with amateur UHF and VHF frequencies, as well as certain frequencies reserved for the Maritime Services, Private Land Mobile Radio Services, and Personal Radio Services. *See* Supplemental Response, Frequency Attachment (showing third party webpage identifying frequencies commonly used in off-road racing); Second Supplemental Response, Frequency Spreadsheet (identifying each pre-programmed frequency for each model).

<sup>15</sup> LOI Response at 2-3, Response to LOI Questions 6; Supplemental Response at 3-4, Response to LOI Question 12(a); Second Supplemental Response at 2, Response to Second Supplemental LOI Questions 5-6.

<sup>16</sup> *See* E-mail from Paul Feldman, Counsel to Rugged Race Products d/b/a Rugged Radios, to Kevin Pittman, Spectrum Enforcement Division, FCC Enforcement Bureau (June 25, 2020, 15:55 EDT).

<sup>17</sup> The scope of the investigation did not extend to the compliance status of alternate versions of the RH5R two-way radio.

under FCC ID X24-Mobile-V in 2012, it was later modified by the manufacturer to such an extent that a new equipment certification was required.<sup>18</sup> The manufacturer that holds the grant of certification for FCC ID X24-Mobile-V did not obtain a new certification,<sup>19</sup> but Rugged Radios continued to market the modified radio under various trade names, including the RM60-V, RM60, and RM-60R.<sup>20</sup>

9. After receipt of the initial LOI, Rugged Radios began taking steps to come into compliance with the Commission's rules. The Company ceased marketing four of the six models (RM25R, RM25R-WP, RM-50R, and RM100) in September 2018, updated its marketing materials, and ensured that new models included an FCC ID and labeling information.<sup>21</sup> Rugged Radios also made firmware changes to the remaining two models—RH5R-V2 and RM60-V—that disabled face programming functions, thereby preventing newly manufactured units of these models from operating outside of the appropriate frequencies.<sup>22</sup> After further Division inquiries regarding the compliance of these two models, the Company ceased marketing the RH5R-V2 and RM60-V models in May 2020.<sup>23</sup>

### III. APPLICABLE LAW AND VIOLATIONS

10. The Communications Act and the Commission's rules require that most radio frequency devices be properly authorized, identified, and labeled before they can be marketed in the United States. Section 302(b) of the Act states that “[n]o person shall manufacture, import, sell, offer for sale, or ship devices or home electronic equipment and systems, or use devices, which fail to comply with regulations promulgated pursuant to this section.”<sup>24</sup> Section 2.803(b) of the Commission's rules provides that:

No person may market a radio frequency device unless . . . [f]or devices subject to authorization under certification, the device has been authorized in accordance with the rules in subpart J of this chapter and is properly identified and labeled as required by § 2.925 and other relevant sections in this chapter.<sup>25</sup>

11. Pursuant to the Commission's rules, intentional radiators, such as the models at issue here, must be approved through the equipment certification procedures prior to marketing<sup>26</sup> and all certified devices must bear a permanently affixed nameplate or label listing the FCC identifiers.<sup>27</sup> Additionally, Commission rules only permit transmitters designed to operate above 25 MHz to be

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<sup>18</sup> See E-mail from Paul Feldman, Counsel to Rugged Race Products d/b/a Rugged Radios, to Kevin Pittman, Spectrum Enforcement Division, FCC Enforcement Bureau (June 25, 2020, 15:55 EDT). After the Division inquired about suspected modifications to the device, the company consulted its manufacturer; Rugged Radios asserts that it thus learned of post-certification modifications to its RM60-V model on June 18, 2020. *Id.*

<sup>19</sup> Information about certified RF devices may be obtained by performing an equipment authorization search on the Commission's website, at <https://apps.fcc.gov/oetcf/eas/reports/GenericSearch.cfm>. The Commission's equipment authorization database shows that the grantee of equipment certifications for both FCC ID POD25W-WP (RM25R-WP model) and FCC ID PODTH-9800 (RM50R model) radios is TYT Electronics Co. Ltd. (FCC grantee code POD). The grantee of the equipment certification for FCC ID X24-MOBILE-V (RM60-V model) is Quanzhou TYT Electronics Co. Ltd. (FCC grantee code X24).

<sup>20</sup> See E-mail from Paul Feldman, Counsel to Rugged Race Products d/b/a Rugged Radios, to Kevin Pittman, Spectrum Enforcement Division, FCC Enforcement Bureau (May 27, 2020, 15:28 EDT).

<sup>21</sup> Supplemental Response at 3, Response to LOI Question 8.

<sup>22</sup> Supplemental Response at 6-10, Response to Supplemental LOI Question 3; LOI Response at 2-3, Response to LOI Question 6.

<sup>23</sup> See E-mail from Paul Feldman, Counsel to Rugged Race Products d/b/a Rugged Radios, to Kevin Pittman, Spectrum Enforcement Division, FCC Enforcement Bureau (June 25, 2020, 15:55 EDT).

<sup>24</sup> 47 U.S.C. § 302a(b).

<sup>25</sup> 47 CFR § 2.803(b).

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* § 2.925(a)(1). Where applicable, the FCC ID may be provided electronically. *See id.* § 2.935.

certificated if the device is incapable of allowing an operator to program and transmit on frequencies other than those programmed by the manufacturer, service or maintenance personnel, using the device's external operation controls.<sup>28</sup>

12. Radio transmitters operating on frequencies within the Maritime Services, Private Land Mobile Radio Services, and Personal Radio Services, must be certified to operate under parts 80, 90, and 95, respectively, before they can be marketed in the United States.<sup>29</sup> Section 80.203(a) of the Commission's rules provides that "each transmitter authorized in a station in the maritime services after September 30, 1986 . . . must be certified by the Commission for part 80 operations."<sup>30</sup> Section 90.203(a) of Commission's rules states that "each transmitter utilized for operation under this part and each transmitter marketed as set forth in § 2.803 of this chapter must be of a type which has been certified for use under this part."<sup>31</sup> Section 95.361(a) provides that "each transmitter that operates or is intended to operate in a service of the Personal Radio Services must be certified in accordance with the governing subpart and part 2 of this Chapter."<sup>32</sup> Section 95.391 prohibits the marketing of non-certified equipment for the Personal Radio Services.<sup>33</sup>

13. After examining the information and documents Rugged Radios provided in response to the letters of inquiry, the Division determined that the Company marketed six models of radio frequency devices (RH5R-V2, RM25R, RM25R-WP, RM50R, RM60-V, and RM100) in violation of section 302(b) of the Act and sections 2.803(b), 2.925(a)(1), 80.203(a), 90.203(a), 90.203(e), 95.361(a), and 95.391 of the Commission's rules, as applicable.<sup>34</sup>

**A. Model RH5R-V2**

14. Documentation provided by Rugged Radios indicated that this radio was pre-programmed with the capability of transmitting on frequencies in the Maritime Services, Private Land Mobile Radio Services, and Personal Radio Services, despite having a certification to operate only in Private Land Mobile Radio Service frequencies.<sup>35</sup> The Company therefore marketed a device that was capable of operating outside of its equipment authorization in violation of sections 2.803(b), 80.203(a), 95.361(a), and 95.391 of the Commission's rules.

15. While section 2.925(a)(1) of the Commission's rules requires that each certified device bear its FCC ID conspicuously on the device, Rugged Radios admits that the RH5R-V2 was initially marketed without an FCC identifier.<sup>36</sup> Based on information provided during the investigation by its supplier/manufacturer, the Company began marketing this model in August 2018 under FCC ID X24-THUV, in supposed compliance with section 2.925. In response to further Division inquiries regarding

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<sup>28</sup> *Id.* § 90.203(e). While there are exceptions to this rule, none appear to apply in this case and Rugged Radios has not asserted any exception applies. The six models at issue operate above 25 MHz given that each model operates at a minimum of 136 MHz. *See* Supplemental Response at 4-5, Response to LOI Question 12(d).

<sup>29</sup> 47 CFR §§ 2.803(b), 80.203(a), 90.203(a), 95.361(a), 95.391.

<sup>30</sup> *Id.* § 80.203(a). While there are exceptions to this rule, none appear to apply in this case and Rugged Radios has not asserted any exception applies.

<sup>31</sup> *Id.* § 90.203(a). While there are exceptions to this rule, none appear to apply in this case and Rugged Radios has not asserted any exception applies.

<sup>32</sup> *Id.* § 95.361(a).

<sup>33</sup> *See id.* § 95.391.

<sup>34</sup> 47 U.S.C. § 302a(b); 47 CFR §§ 2.803(b), 2.925(a)(1), 80.203(a), 90.203(e), 95.361(a), 95.391.

<sup>35</sup> Specifically, Rugged Radios provided a pre-programmed frequency list for the model that included frequencies in those services, such as: 151.505 MHz (Part 90-Private Land Mobile Radio Services); 156.675 MHz (Part 80-Maritime Services); and 462.5625 MHz (Part 95-Personal Radio Services). *See* 47 CFR §§ 80.373(f), 90.35(b)(3), 95.1763(b).

<sup>36</sup> 47 CFR § 2.925(a)(1). *See* E-mail from Paul Feldman, Counsel to Rugged Race Products d/b/a Rugged Radios, to Kevin Pittman, Spectrum Enforcement Division, FCC Enforcement Bureau (June 25, 2020, 15:55 EDT).

this model, the Company affirmed under oath that the RH5R-V2 had not been authorized under that FCC ID and stated that it could not identify any applicable FCC authorization for this model. Thus, the RH5R-V2 was never authorized and could not lawfully be marketed in the United States. Therefore, Rugged Radios violated sections 2.803 and 2.925(a)(1) of the Commission's rules by marketing this device in the United States.

16. The RH5R-V2 also appears to have been ineligible for certification. In the Supplemental Response, the Company admitted that the model was "sold with the capability to be face programmable to allow a user to enter new operating frequencies."<sup>37</sup> Thus, the model could be programmed to transmit on frequencies other than those authorized by its certification and programmed by the manufacturer or service personnel, using the device's external operation controls. The RH5R-V2 would be ineligible for certification with this capability and therefore could not be lawfully marketed in the United States.<sup>38</sup> Therefore, Rugged Radios violated section 90.203(e) by marketing the device in the United States.

17. Collectively, Rugged Radios violated sections 2.803(b), 2.925(a)(1), 80.203(a), 90.203(e), 95.361(a), and 95.391 of the Commission's rules for marketing a device without a proper certification and without a proper FCC identifier.<sup>39</sup> The Company ceased marketing model RH5R-V2 in May 2020.<sup>40</sup>

#### **B. Models RM25R, RM25R-WP, and RM50R**

18. The pre-programmed frequency list provided by the Company reflects that models RM25R, RM25R-WP, and RM50R were capable of transmitting on frequencies in the Maritime Services, Private Land Mobile Radio Services, and Personal Radio Services.<sup>41</sup> When questioned about the certification for each radio, the Company failed to provide an FCC ID for model RM25R,<sup>42</sup> and the certifications for models RM25R-WP and RM50R covered only scanner receiving functions.<sup>43</sup> Thus, the Company failed to provide certifications demonstrating that each model was authorized to operate in the Maritime Services, Private Land Mobile Radio Services, and Personal Radio Services. The Company therefore marketed three models of radio frequency devices that operated outside the scope of their respective certification or without any certification in violation of sections 2.803(b), 80.203(a), 90.203(a), 95.361(a), and 95.391 of the Commission's rules.

19. The record also reflects that the RM25R, RM25R-WP, and RM50R were ineligible for certification. The Company's Supplemental Response noted that the radios were "sold with the capability to be face programmable to allow a user to enter new operating frequencies."<sup>44</sup> Thus, these three models could be programmed to transmit on frequencies other than those programmed by the manufacturer or

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<sup>37</sup> Supplemental Response at 7, Response to Supplemental LOI Question 3.

<sup>38</sup> "Except as provided in paragraph (g) of this section, transmitters designed to operate above 25 MHz shall not be certified for use under this part if the operator can program and transmit on frequencies, other than those programmed by the manufacturer, service or maintenance personnel, using the equipment's external operation controls." 47 CFR § 90.203(e).

<sup>39</sup> 47 CFR §§ 2.803(b), 2.925(a)(1), 80.203(a), 90.203(e), 95.361(a), 95.391.

<sup>40</sup> See E-mail from Paul Feldman, Counsel to Rugged Race Products d/b/a Rugged Radios, to Kevin Pittman, Spectrum Enforcement Division, FCC Enforcement Bureau (June 25, 2020, 15:55 EDT).

<sup>41</sup> For example, the list indicated that the models were pre-programmed with the following frequencies prior to marketing: 151.505 MHz (Part 90-Private Land Mobile Radio Services); 156.675 MHz (Part 80-Maritime Services); and 462.5625 MHz (Part 95-Personal Radio Services). See 47 CFR §§ 80.373(f), 90.35(b)(3), 95.1763(b).

<sup>42</sup> Supplemental Response at 3-4, Response to LOI Question 12(a).

<sup>43</sup> Second Supplemental Response at 2, Response to Second Supplemental LOI Questions 4-5; see FCC IDs POD25W-WP (for model RM25R-WP) and PODTH-9800 (for model RM50R).

<sup>44</sup> Supplemental Response at 7-9, Response to Supplemental LOI Question 3.

service personnel, using the device's external operation controls. The radios would be ineligible for certification with this capability and therefore could not be lawfully marketed in the United States.<sup>45</sup>

20. Rugged Radios is therefore in violation of sections 2.803, 80.203(a), 90.203(a), 90.203(e), 95.361(a), and 95.391 of the Commission's rules for marketing the RM25R, RM25R-WP, and RM50R without proper certification.<sup>46</sup> The Company ceased marketing these three models in August 2018.<sup>47</sup>

### C. Models RM60-V and RM100

21. The Company's Supplemental Response reflects that models RM60-V and RM100 were capable of operating on frequencies in the Maritime Services and Private Land Mobile Radio Services.<sup>48</sup> However, the certification associated with the RM60-V only reflects an authorization to operate in the Private Land Mobile Radio Services.<sup>49</sup> Additionally, subsequent responses from the Company confirmed that the RM60-V, which was also identified as the RM60 or RM-60R, underwent post-certification modification that required a new grant of equipment certification.<sup>50</sup> No new equipment certification was obtained for the RM60-V, while the RM100 radio had never obtained an original equipment certification.<sup>51</sup> Therefore, the RM60-V and RM100 radios sold by Rugged Radios were not properly authorized for sale within the United States in violation of sections 2.803, 80.203(a), and 90.203(a) of the Commission's rules.

22. Like the other devices at issue, the RM60 and RM100 were also ineligible for certification because they could allow a user to program and transmit on frequencies other than those programmed by the manufacturer or service personnel, using the devices' external controls.<sup>52</sup> In sum, Rugged Radios violated sections 2.803, 80.203(a), 90.203(a), and 90.203(e) of the Commission's rules for marketing these two models without proper certifications.<sup>53</sup> Rugged Radios confirmed that it ceased marketing model RM100 in August 2018, at which time it began marketing the RM60-V without the external programming capability.<sup>54</sup> Rugged Radios ceased marketing the RM60-V model in May 2020.<sup>55</sup>

## IV. OPPORTUNITY TO RESPOND TO THIS CITATION

23. Rugged Radios may respond to this Citation within 30 calendar days from the release date of this Citation by any of the following methods: (1) a written statement, (2) a teleconference

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<sup>45</sup> See 47 CFR § 90.203(e).

<sup>46</sup> 47 CFR §§ 2.803, 80.203(a), 90.203(a), 90.203(e), 95.361(a), and 95.391.

<sup>47</sup> Supplemental Response at 2-3, Response to LOI Question 8(e).

<sup>48</sup> Second Supplemental Response, Frequency Spreadsheet. Specifically, Rugged Radios provided a pre-programmed frequency list for the models that included frequencies in those services, such as: 156.675 MHz (Part 80-Maritime Services); 151.505 MHz (Part 90-Private Land Mobile Radio Services). See 47 CFR §§ 80.373(f), 90.35(b)(3).

<sup>49</sup> See FCC ID X24-Mobile-V.

<sup>50</sup> See E-mail from Paul Feldman, Counsel to Rugged Race Products d/b/a Rugged Radios, to Kevin Pittman, Spectrum Enforcement Division, FCC Enforcement Bureau (May 27, 2020, 15:28 EST); E-mail from Paul Feldman, Counsel to Rugged Race Products d/b/a Rugged Radios, to Kevin Pittman, Spectrum Enforcement Division, FCC Enforcement Bureau (June 25, 2020, 15:55 EST) (all on file in EB-SED-18-00026086).

<sup>51</sup> Supplemental Response at 3-4, Response to LOI Question 12(a).

<sup>52</sup> Supplemental Response at 9-10, Response to Supplemental LOI Question 3.

<sup>53</sup> 47 CFR §§ 2.803(b), 80.203(a), 90.203(a), and 90.203(e).

<sup>54</sup> Supplemental Response at 3, Response to LOI Question 8(e).

<sup>55</sup> See E-mail from Paul Feldman, Counsel to Rugged Race Products d/b/a Rugged Radios, to Kevin Pittman, Spectrum Enforcement Division, FCC Enforcement Bureau (June 25, 2020, 15:55 EDT).

interview, or (3) a personal interview at the Commission Field Office nearest to the Company's place of business. The Commission Field Office nearest to Rugged Radios is located in Los Angeles, California.

24. If Rugged Radios requests a teleconference or personal interview, it must contact Kevin Pittman at 202-418-1427 and [kevin.pittman@fcc.gov](mailto:kevin.pittman@fcc.gov). We note that such teleconference or interview must take place within 30 calendar days of the release date of this Citation. If Rugged Radios prefers to submit a written response with supporting documentation, it must send the response within 30 calendar days of the release date of this Citation to the contact and address provided in paragraph below.

25. All written communications should be sent via email to [kevin.pittman@fcc.gov](mailto:kevin.pittman@fcc.gov) and to [EB-SED-Response@fcc.gov](mailto:EB-SED-Response@fcc.gov), and the subject line of the email should specify the Company name and its investigation File Number, **EB-SED-18-00026086**. Due to network file size restrictions, the Company should partition the response into separate emails of less than 10 MB, including attachments. The Company should seek guidance in sufficient advance of the response deadline if it requires an alternative method of delivery.

26. Upon request, the Commission will make reasonable accommodations for persons with disabilities. If applicable, Rugged Radios should provide a description of the accommodation required, and include as much detail as possible, and also provide a telephone number and other contact information. Rugged Radios should allow at least five business days advance notice; last minute requests will be accepted but may be impossible to fill. Rugged Radios should send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the FCC's Consumer & Governmental Affairs Bureau:

For sign language interpreters, CART, and other reasonable accommodations:  
202-418-0530 (voice), 202-418-0432 (tty);

For accessible format materials (braille, large print, electronic files, and audio format):  
202-418-0531 (voice), 202-418-7365 (tty).

27. We advise Rugged Radios that it is a violation of section 1.17 of the Commission's rules<sup>56</sup> for any person to make any false or misleading written or oral statement of fact to the Commission. Specifically, no person shall:

(1) In any written or oral statement of fact, intentionally provide material factual information that is incorrect or intentionally omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading; and

(2) In any written statement of fact, provide material factual information that is incorrect or omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading without a reasonable basis for believing that any such material factual statement is correct and not misleading.

28. Further, the knowing and willful making of any false statement, or the concealment of any material fact, in reply to this Citation is punishable by fine or imprisonment.<sup>57</sup>

29. Violations of section 1.17 of the Commission's rules or the criminal statute referenced above may result in further legal action, including monetary forfeitures pursuant to section 503 of the Act.

30. Finally, we warn Rugged Radios that, under the Privacy Act of 1974,<sup>58</sup> Commission staff will use all relevant material information before it, including information disclosed in interviews or

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<sup>56</sup> 47 CFR § 1.17.

<sup>57</sup> 18 U.S.C. § 1001.

<sup>58</sup> 5 U.S.C. § 552a(e)(3).



written statements, to determine what, if any, enforcement action is required to ensure the Company's compliance with the Act and the Commission's rules.<sup>59</sup>

## V. FUTURE VIOLATIONS

31. If, after receipt of this Citation, Rugged Radios again violates section 302 of the Act and/or sections 2.803(b), 2.925(a)(1), 80.203(a), 90.203(a), 90.203(e), 95.361(a), and/or 95.391 of the Commission's rules by engaging in conduct of the type described herein, the Commission may impose sanctions for each such violation. For example, the Commission may impose monetary forfeitures not to exceed \$20,489 for each such violation or each day of a continuing violation, and up to \$153,669 for any single act or failure to act.<sup>60</sup> The Commission may further adjust the forfeiture reflecting enumerated statutory factors, which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.<sup>61</sup> Further, as discussed above, the Commission may assess forfeitures on both the conduct that led to this Citation and the conduct following it.<sup>62</sup>

## VI. ORDERING CLAUSES

32. Accordingly, **IT IS ORDERED** that, pursuant to sections 4(i) and 4(j) of the Act,<sup>63</sup> Rugged Radios must cease and desist from marketing noncompliant radio frequency devices in violation of section 302(b) of the Communications Act and sections 2.803(b), 2.925(a)(1), 80.203(a), 90.203(a), 90.203(e), 95.361(a), and 95.391 of the Commission's rules.<sup>64</sup>

33. **IT IS FURTHER ORDERED** that a copy of this Citation and Order shall be sent by first class mail and certified mail, return receipt requested, to Mr. Greg Cottrell, Owner, Rugged Race Products, Inc., d/b/a Rugged Radios, 951 E. Grand Avenue, Arroyo Grande, CA 93420, and to Paul J. Feldman, Fletcher, Heald & Hildreth, Counsel for Rugged Race Products, Inc. d/b/a Rugged Radios, 1300 N. 17th Street, Suite 1100, Arlington, VA 22209.

FEDERAL COMMUNICATIONS COMMISSION

Elizabeth Y. Mumaw  
Chief  
Spectrum Enforcement Division  
Enforcement Bureau

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<sup>59</sup> Any entity that is a "Small Business Concern" as defined in the Small Business Act (Pub. L. 85-536, as amended) may avail itself of rights set forth in that Act, including rights set forth in 15 U.S.C. § 657, "Oversight of Regulatory Enforcement," in addition to other rights set forth herein.

<sup>60</sup> See 47 U.S.C. § 503; 47 CFR § 1.80(b). This amount is subject to further adjustment for inflation. See 47 CFR § 1.80(b)(9).

<sup>61</sup> See 47 U.S.C. § 503(b)(2)(E); 47 CFR § 1.80(b)(8).

<sup>62</sup> See *supra* paragraph 2. We also note that on June 21, 2017, Rugged Radios received a Warning Notice in a separate Enforcement Bureau investigation (EB-FIELDNER-17-00024499) for the marketing of its unauthorized RM50B multiband radio, which was capable of operation on VF, UHF, and CB channels.

<sup>63</sup> 47 U.S.C. §§ 154(i), 154(j).

<sup>64</sup> 47 U.S.C. § 302a(b); 47 CFR §§ 2.803(b), 2.925(a)(1), 80.203(a), 90.203(a), 90.203(e), 95.361(a), 95.391.