

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of
Premier Communications Corp. d/b/a Pryme Radio
Products
File No.: EB-SED-19-00028740

CITATION AND ORDER
ILLEGAL MARKETING OF UNAUTHORIZED RADIO FREQUENCY DEVICES

Adopted: December 29, 2020

Released: December 29, 2020

By the Division Chief, Spectrum Enforcement Division, Enforcement Bureau:

I. NOTICE OF CITATION

1. This CITATION AND ORDER (Citation), notifies Premier Communications Corporation d/b/a Pryme Radio Products (Pryme or Company) that it unlawfully marketed radio frequency devices in the United States in violation of the Commission's equipment authorization and labeling requirements. Specifically, Pryme marketed models BTH-600, BTH-500, BTH-300, BT-PTT-U, BT-PTT-Z, BT-PTT-ZU, BT-PTT-M, and BT-PTT2 in violation of section 302(b) of the Communications Act, as amended (Act), and sections 2.803, 2.925, 15.19, and 15.201 of the Commission's rules, as applicable. We therefore direct Pryme to take immediate steps to comply with the Commission's equipment authorization and labeling requirements and to cease marketing any noncompliant radio frequency devices in the United States. If the Company fails to comply with these laws, it may be liable for significant fines of up to \$20,489 per day for each unauthorized model marketed, and other sanctions.

2. Notice of Duty to Comply with the Law: We issue this Citation pursuant to section 503(b)(5) of the Act, which states that the Commission may not impose monetary forfeitures against non-regulatees that 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. Accordingly, Pryme is hereby on notice that it must comply with section 302(b) of the Act and sections 2.803, 2.925, 15.19, and 15.201 of

1 47 CFR § 2.803(a) (defining marketing as the "sale or lease, or offering for sale of 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.").

2 47 U.S.C. § 302a(b).

3 47 CFR §§ 2.803, 2.925, 15.19, 15.201.

4 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).

5 See 47 U.S.C § 503(b)(5).

6 47 U.S.C. § 302a(b).

the Commission's rules.⁷ If the Company subsequently engages in any conduct of the type this Citation describes — specifically any violation of the Commission's equipment authorization or labeling rules — it may be subject to civil penalties, including but not limited to substantial monetary forfeitures. In assessing such forfeitures, the Commission may consider both the conduct that led to this Citation and the conduct following it.⁸

II. BACKGROUND

3. Under the Commission's rules, radio frequency devices marketed in the United States must operate within certain technical parameters, otherwise they may interfere with authorized communications systems. Consistent with these rules, the Commission has established an equipment authorization program, which generally requires that radio frequency devices undergo testing to verify that they comply with FCC-prescribed technical requirements before such devices can be marketed in the United States. The Commission's equipment authorization and labeling rules ensure that radio frequency devices meet the Commission's technical requirements. As such, marketers must ensure that radio frequency devices are properly authorized and comply with all applicable technical, labeling, and identification requirements prior to being offered for sale in the United States.

4. Pryme is a privately held California corporation, incorporated in 1995.⁹ The Company markets wired and wireless Bluetooth-enabled accessories throughout the United States through its website, pryme.com.¹⁰

5. The Enforcement Bureau's (Bureau) Spectrum Enforcement Division (Division) received a complaint alleging that Pryme was marketing unauthorized intentional radiators¹¹ in violation of the Commission's equipment authorization and labeling requirements. The complaint identified eight allegedly noncompliant wireless Bluetooth-enabled communications devices, specifically models BTH-600 (wireless speaker microphone), BTH-500 (wireless speaker microphone), BTH-300 (wireless lapel microphone kit), BT-PTT-U (mini wireless push-to-talk button), BT-PTT-Z (mini wireless push-to-talk button), BT-PTT-ZU (strap mini wireless push-to-talk button), BT-PTT-M (push-to-talk button for use with Zello push-to-talk app), and BT-PTT2 (wireless push-to-talk switch). On April 18, 2019, the Division sent a letter of inquiry (LOI) to Pryme directing it to provide equipment authorization information and documents related to the models identified in the complaint.¹² Pryme responded to the LOI on May 28, 2019.¹³

6. Pryme acknowledged that it marketed each of the eight models identified in the LOI. The Company provided the dates on which each subject model was authorized pursuant to the Commission's

⁷ 47 CFR §§ 2.803, 2.925, 15.19, 15.201.

⁸ 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).

⁹ See Response to Letter of Inquiry, from Henry Liou, President and Secretary, Premier Communications Corp. d/b/a/ Pryme Radio Products, to Marlene Dortch, Secretary, Federal Communications Commission, attn: Jonathan Garvin, Attorney Advisor, Spectrum Enforcement Division, FCC Enforcement Bureau, at 2, Response to Inquiry 1 (May 28, 2019) (on file in EB-SED-19-00028740) (LOI Response).

¹⁰ See Pryme Radio Products, *Bluetooth*, https://www.pryme.com/index.php?l=product_list&c=71 (last visited Aug. 26, 2019); see also LOI Response, *supra* note 9, at 3, Response to Inquiry 2.

¹¹ See 47 CFR § 15.3(o) (defining intentional radiator); 47 CFR § 15.201 (outlining authorization requirements).

¹² Letter of Inquiry from Elizabeth Mumaw, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau, to Henry Liou, President, Premier Communications Corp. d/b/a Pryme Radio Products (Apr. 18, 2019) (on file in EB-SED-19-00028740) (LOI).

¹³ LOI Response.

rules,¹⁴ and the dates on which it began marketing those models.¹⁵ The dates are provided in the table below.

<u>Model No.</u>	<u>Date Marketing Began</u>	<u>Date of Authorization</u>
BTH-600	September 2017	January 23, 2019
BTH-500	March 2017	May 28, 2017
BTH-300	January 2016	September 1, 2015 ¹⁶
BT-PTT-U	December 2016	May 28, 2017
BT-PTT-Z	December 2016	May 28, 2017
BT-PTT-ZU	December 2016	May 28, 2017
BT-PTT-M	December 2016	May 28, 2017
BT-PTT2	March 2015	May 18, 2012 ¹⁷

7. The Company admitted that it marketed two models—BTH-600 and BTH-500—before receiving FCC authorization because it mistakenly believed that authorizations had been acquired by the manufacturer at the time it began marketing those devices.¹⁸ The Company also admitted that all eight models at issue lacked the labels required under section 15.19 of the Commission’s rules.¹⁹ Specifically, while Pryme had included the information required by section 15.19(a)(3)²⁰ in the user manual for each model, it failed to also affix either a temporary label to the device or include the information on the device packaging as required by section 15.19(a)(5).²¹

8. Pryme also asserted that it lawfully marketed models BT-PTT-M and BT-PTT2 because the devices had been properly authorized under the grant of certification for other similar models: BT-PTT-U (FCC ID: XTS-PTT-U) and BT-PTT-1 (FCC ID: XTS-BT-PTT), respectively.²² However, to alleviate any concerns that models BT-PTT-M and BT-PTT2 were not electronically identical to models BT-PTT-U and BT-PTT-1, the Company had the manufacturer acquire a new FCC authorization for

¹⁴ *Id.* at 5-6, Response to Inquiry 11(a).

¹⁵ *Id.* at 5, Response to Inquiry 10.

¹⁶ There is no marketing violation associated with this model, as it was authorized prior to the date that marketing began. *See* LOI Response at 5-6, Responses to Inquiries 10 and 11(a).

¹⁷ As discussed in paragraph 12 below, Pryme erroneously believed that model BT-PTT2 was covered under the authorization of another model, BT-PTT1; thus, in Pryme’s LOI response it provided May 18, 2012, as the date for the device’s authorization. Subsequently, Pryme obtained a grant of authorization for model BT-PTT2 on June 24, 2019—which is the date used to determine whether model BT-PTT2 was authorized prior to marketing. *See infra* para. 9.

¹⁸ *Id.* at 6, Response to Inquiry 11(b).

¹⁹ *Id.* at 8, Response to Inquiry 11(d).

²⁰ 47 CFR § 15.19(a)(3).

²¹ 47 CFR § 15.19(a)(5) (“When the device is so small or for such use that it is impracticable to label it with the statement specified under [47 CFR § 15.19(a)] in a font that is four-point or larger, and the device does not have a display that can show electronic labeling, then the information required by this paragraph shall be placed in the user manual and must also either be placed on the device packaging or on a removable label attached to the device.”).

²² LOI Response at 7, Response to Inquiry 11(b).

model BT-PTT2 and discontinued marketing model BT-PTT-M.²³ The Company also noted that all models at issue were compliant with the section 2.925 identification requirements, except for models BT-PTT-M and PT-PTT2.²⁴

9. After receipt of the LOI, Pryme began taking steps to come into compliance with the Commission's rules. Specifically, the Company obtained a separate grant of authorization for model BT-PTT-2²⁵ and attached the FCC identifier to the model before resuming marketing.²⁶ The Company also ceased marketing model BT-PTT-M on April 22, 2019.²⁷ Pryme also asserts that, going forward, all devices will be compliant with section 15.19, as it intends to include labeling information either on a removable label attached to the device or on the device's packaging.²⁸ Finally, all devices will be reviewed by Pryme's Chief Technologist to ensure compliance with the equipment authorization rules before marketing.²⁹

III. APPLICABLE LAW AND VIOLATIONS

10. Section 302 of the Act provides 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 [Commission] regulations.”³⁰ For devices requiring Commission authorization, section 2.803(b)(1) of the Commission's rules prohibits marketing devices unless they have been authorized in accordance with the Commission's technical standards and properly identified and labeled.³¹ Sections 2.925, 15.19, and 15.21 of the Commission's rules set forth the identification, labeling, and user manual requirements for devices requiring Commission authorization.³²

11. Intentional radiators, such as the devices at issue here, must be properly authorized and labeled in accordance with the Commission's equipment certification process.³³ No intentional radiator may be marketed unless and until the device has been properly authorized and is properly labeled.³⁴

²³ See *id.*; see also E-mail from Madeleine M. Lottenbach, Esq., Wiley Rein LLP, Counsel to Pryme Communications Corp. d/b/a Pryme Radio Products, to Paul Noone, Attorney Advisor, Spectrum Enforcement Division, FCC Enforcement Bureau (Oct. 30, 2020, 15:42 EDT) (on file in EB-SED-19-00028740).

²⁴ *Id.* at 7–8, Response to Inquiry 11(c).

²⁵ See *Grant of Equipment Authorization* (June 24, 2019), https://apps.fcc.gov/oetcf/tcb/reports/Tcb731GrantForm.cfm?mode=COPY&RequestTimeout=500&tcb_code=&application_id=CxNoSKWIX0Jf6Q9n%2BcZOrA%3D%3D&fcc_id=XTS-BT-PTT2.

²⁶ See LOI Response at 7-8, Response to Inquiry 11(c).

²⁷ See E-mail from Madeleine M. Lottenbach, Esq., Wiley Rein LLP, Counsel to Pryme Communications Corp. d/b/a Pryme Radio Products, to Paul Noone, Attorney Advisor, Spectrum Enforcement Division, FCC Enforcement Bureau (Oct. 30, 2020, 15:42 EDT) (on file in EB-SED-19-00028740).

²⁸ LOI Response at 8, Response to Inquiry 11(d).

²⁹ *Id.* at 6, Response to Inquiry 11(b).

³⁰ 47 U.S.C § 302a(b).

³¹ 47 CFR § 2.803(b)(1).

³² 47 CFR §§ 2.925, 15.19, 15.21.

³³ See 47 CFR § 15.201(b). An intentional radiator is “[a] device that intentionally generates and emits radio frequency energy by radiation or induction.” *Id.* § 15.3(o). A certification is an equipment authorization issued by the Commission or issued by a Telecommunication Certification Body (TCB) and authorized under the authority of the Commission, based on representations and test data submitted by the applicant. *Id.* § 2.907(a). The equipment certification procedures can be found in 47 CFR §§ 2.1031-2.1060.

³⁴ See 47 CFR §§ 2.803, 15.19.

Authorization may attach to a model that is subsequently marketed if that model is electronically identical to the model that was originally tested, except for permissive changes.³⁵

12. The Division's investigation found that Pryme began marketing seven models before they were authorized, specifically, models BTH-600, BTH-500, BT-PTT-U, BT-PTT-Z, BT-PTT-ZU, BT-PTT-M, and BT-PTT2.³⁶ This determination was made by comparing the date that Pryme began marketing each device with the date that each device was authorized by the Commission.³⁷ However, Pryme contends that model BT-PTT2 was authorized before the Company began marketing it because the device was properly authorized under the grant of certification for another "very similar" model—the BT-PTT1 (FCC ID: XTS-BT-PTT).³⁸ After reviewing the documentation³⁹ related to the two devices, the Division determined that model BT-PTT2 requires a separate grant of authorization because the two devices are not electronically identical.⁴⁰ Therefore, Pryme marketed model BT-PTT2 prior to authorization since model BT-PTT2 was not covered by the authorization for model BT-PTT1. As such, Pryme violated section 302(b) of the Act and sections 2.803 and 15.201 of the Commission's rules because it began marketing seven models before they were authorized.

13. In addition, we conclude Pryme failed to comply with the FCC identification requirements when it marketed models BT-PTT-M and BT-PTT2 without the proper FCC ID. In the LOI Response, the Company admitted that all of the subject devices were complaint with this requirement except models BT-PTT-M and PT-PTT2.⁴¹ The Company thus violated section 2.925 of the Commission's rules.

14. We also find that Pryme failed to properly label all eight models at issue prior to marketing. Specifically, the Company admitted in its LOI Response that it did not provide FCC labels required under section 15.19 for models BTH-600, BTH-500, BTH-300, BT-PTT-U, BT-PTT-Z, BT-PTT-ZU, BT-PTT-M, and BT-PTT2.⁴² The Company thus violated section 15.19 of the Commission's rules.

15. Based on the information in the record, we conclude that the Company marketed eight models of radio frequency devices in violation of section 302(b) of the Act and sections 2.803(b), 2.925, 15.19, and 15.201 of the Commission's rules, as applicable. Upon receipt of the LOI and its realization that it was not in compliance with the Commission's rules, Pryme acted swiftly by reviewing the authorizations for the models at issue and immediately suspending the marketing of models BT-PTT2 and BT-PTT-M. Next, the Company obtained a new FCC authorization for model BT-PTT2 and permanently discontinued model BT-PTT-M. Finally, Pryme took steps to bring the subject models into compliance with FCC identification and labeling requirements.

IV. OPPORTUNITY TO RESPOND TO THIS CITATION

16. Pryme 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 interview, or (3) a

³⁵ See 47 CFR §§ 2.907(b), 2.908.

³⁶ See LOI Response at 3–6, Response to Inquiries 6, 9, 10, and 11(a). Specifically, the charts provided in response to Inquiries 10 and 11(a) show the dates the Company began marketing each of the subject models and the dates each model received its FCC Grant of Authorization, respectively. As for the seven models noted, the company began marketing each device before the device was granted its Authorization. *Id.*

³⁷ See LOI Response at 5-6, Response to Inquiries 10 and 11(a).

³⁸ LOI Response at 7, Response to Inquiry 11(b).

³⁹ See *id.*, Exhibit B (schematics).

⁴⁰ See 47 CFR §§ 2.907(b), 2.908.

⁴¹ LOI Response at 7, Response to Inquiry 11(c).

⁴² LOI Response at 8, Response to Inquiry 11(d).

personal interview at the Commission Field Office nearest to Pryme's place of business. The Commission Field Office nearest Pryme is located in Los Angeles, California.

17. If Pryme requests a teleconference or personal interview, contact Paul Noone at (202) 418-7945 and via e-mail at paul.noone@fcc.gov and EB-SED-Response@fcc.gov. We note that such teleconference or interview must take place within 30 calendar days of the release date of this Citation. If Pryme 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 the paragraph below.

18. All written communications should be sent by e-mail to paul.noone@fcc.gov and to EB-SED-Response@fcc.gov, and the subject line of the e-mail should specify the Company name and its investigation File Number, EB-SED-19-00028740. Due to network file size restrictions, the Company should partition the response into separate e-mails 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.

19. Upon request, the Commission will make reasonable accommodations for persons with disabilities. If applicable, Pryme 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. Pryme should allow at least five business days advance notice; last minute requests will be accepted, but may be impossible to fill. Pryme should send an e-mail to 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).

20. We advise Pryme that it is a violation of section 1.17 of the Commission's rules⁴³ 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.

21. 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.⁴⁴

22. 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.

23. Finally, we warn Pryme that, under the Privacy Act of 1974,⁴⁵ Commission staff will use all relevant material information before it, including information disclosed in interviews or written

⁴³ 47 CFR § 1.17.

⁴⁴ 18 U.S.C. § 1001.

⁴⁵ 5 U.S.C. § 552a(e)(3).

statements, to determine what, if any, enforcement action is required to ensure the Company's compliance with the Act and the Commission's rules.⁴⁶

V. FUTURE VIOLATIONS

24. If, after receipt of this Citation, Pryme again violates section 302(b) of the Act and/or sections 2.803, 2.925, 15.19, and/or 15.201 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 against Pryme of up to \$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.⁴⁷ 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.⁴⁸ Further, as discussed above, the Commission may assess forfeitures on both the conduct that led to this Citation and the conduct following it.⁴⁹

VI. ORDERING CLAUSES

25. Accordingly, **IT IS ORDERED** that, pursuant to sections 4(i) and 4(j) of the Act,⁵⁰ Pryme must cease and desist from marketing noncompliant radio frequency devices in the United States, including models BTH-600, BTH-500, BTH-300, BT-PTT-U, BT-PTT-Z, BT-PTT-ZU, BT-PTT-M, and BT-PTT2, in violation of section 302(b) of the Act and sections 2.803, 2.925, 15.19, and 15.201 of the Commission's rules.⁵¹

⁴⁶ 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.

⁴⁷ 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).

⁴⁸ See 47 U.S.C. § 503(b)(2)(E); 47 CFR § 1.80(b)(8).

⁴⁹ See *supra* paragraph 2.

⁵⁰ 47 U.S.C. §§ 154(i), 154(j).

⁵¹ 47 U.S.C. § 302a(b); 47 CFR §§ 2.803, 2.925, 15.19, 15.201.

26. **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. Henry Liou, President and Secretary, Premier Communication Corporation d/b/a Pryme Radio Products, 911 Mariner Street, Brea, CA 92821, and to David Hilliard, Esq., Counsel for Premier Communications Corporation d/b/a Pryme Radio Products, Wiley Rein LLP, 1776 K Street NW, Washington, DC 20006.

FEDERAL COMMUNICATIONS COMMISSION

Elizabeth Y. Mumaw
Division Chief
Spectrum Enforcement Division
Enforcement Bureau