

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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In the Matter of )  
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Revision of Part 2 of the )  
Commission's rules relating to )  
the marketing and authorization )  
of radio frequency devices. )

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

ET Docket No. 94-45  
RM-8125

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COMMENTS

AT&T Corp. ("AT&T") respectfully submits the following comments in response to the Commission's Notice of Proposed Rulemaking ("NPRM"), FCC 94-110, released June 9, 1994.

AT&T supports the proposals in the NPRM to modify the Commission's rules regarding the marketing and authorization<sup>1</sup> of radio frequency devices, with two

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<sup>1</sup> As AT&T understands the NPRM (fn.3), the term "authorization" applies to the type acceptance, notification and certification procedures in 47 CFR §§ 2.904-2.906, all of which result in a grant of authorization issued by the Commission, and to the verification procedure in 47 CFR § 2.902, under which the manufacturer measures compliance with applicable standards, submits data and a sample unit to the Commission only upon request, but does not obtain a grant from the Commission. The NPRM (§ 19) proposes to eliminate all references in the present rules (e.g., 47 CFR § 2.903) to a fourth grant of authorization procedure, type approval, which is no longer used.

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exceptions. In addition, these comments suggest a few further clarifications in the proposed rules.

The NPRM proposes to liberalize and harmonize the disparate rules governing when different kinds of radio frequency devices can be operated prior to the applicable authorization procedure. Proposed new § 2.803(e) is applicable to operation of any radio frequency device, which explicitly includes the incidental, unintentional and intentional radiators defined in Part 15 of the Commission's Rules (47 CFR § 2.801(b)). That proposed rule permits operation for demonstration at trade shows and for evaluation of customer acceptability at commercial customer sites.

As the term indicates, intentional radiators are designed to emit radio frequency energy, and the Commission's Rules permit significantly higher emissions than in the case of unintentional radiators.<sup>2</sup> As a result, the potential for harmful interference in the event of non-compliance with the emission limits is markedly greater than in the case of unintentional radiators. Therefore, AT&T opposes the proposal in the NPRM to expand to intentional radiators permission in the present rules to

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<sup>2</sup> For example, the Commission's Rules (47 CFR § 15.233(c)) allow a cordless telephone operating near 49 MHz to radiate a field strength orders of magnitude greater than that allowable for unintentional radiators in that frequency range (47 CFR § 15.109(a) and (b)).

operate digital devices at trade shows and Class A digital devices at customer premises,<sup>3</sup> in advance of the required authorization<sup>4</sup> but without any safeguards against harmful interference.

To reduce the risk of harmful interference, AT&T proposes that an experimental license be required in order to operate an unauthorized intentional radiator at a trade show or on customers' premises.<sup>5</sup> The Experimental Radio Services rules contain important safeguards, including requiring the licensee to use "every precaution to insure" that no such interference occurs.<sup>6</sup> Moreover, an applicant

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<sup>3</sup> Digital devices are a category of unintentional radiators and are defined in 47 CFR §§ 15.3(k). Class A and Class B digital devices are defined in § 15.3 (h) and (i), respectively, in terms of use in business and residential environments. The permission to operate digital devices at trade shows appears in 47 CFR § 2.806(c)(2) and to operate Class A digital devices at customer premises in § 2.806(c)(4).

<sup>4</sup> 47 CFR §§ 15.201 and 15.101, respectively, identify which intentional and unintentional radiators must be certified, notified, and verified. Incidental radiators are not subject to any of the equipment authorization procedures, but manufacturers must use good engineering practices to minimize the risk of harmful interference, 47 CFR § 15.13.

<sup>5</sup> Because of the lower risk of harmful interference posed by unintentional and incidental radiators, AT&T does not urge that an experimental license be required for operation of those devices under those circumstances.

<sup>6</sup> 47 CFR § 5.151(a)(2). Those rules also require the licensee to maintain control of the transmitter (§ 5.106) to insure that the operator is qualified (§ 5.155(b)); to cease transmission if harmful interference develops; and not to resume transmission

will presumably not be able to make the certification required by the application form that the station will be operated so as to "preclude harmful interference" (FCC Form 442, item 22(c)) without having tested the device.

In addition to requiring an experimental license for operation of unauthorized intentional radiators at trade shows or on customer premises, the rules should clarify the language of the notice which proposed new § 2.803(c) requires to be conspicuously displayed whenever operation of an unauthorized radio frequency device occurs.<sup>7</sup> That section, as proposed, requires such notices to state that the device is not, and cannot be, sold, leased, or offered for sale or lease "until authorization is obtained." Because verification is not properly described as being "obtained," the language of the notice does not clearly apply to operation in advance of required verification. AT&T suggests either that the text of the notice be expanded to deal with lack of a grant of

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(footnote continued from previous page)

until it is certain that harmful interference will not occur (§ 5.155(a)(2)).

<sup>7</sup> The rule itself plainly permits operation of devices requiring a grant of authorization (i.e., certified) and of devices not subject to the grant requirement, but which must comply with applicable technical requirements (i.e., verified).

authorization or of verification, as applicable, or that separate texts be provided for those two situations.

In addition to demonstrations at trade shows, the NPRM proposes to permit operation of unauthorized radio frequency devices "at a business, commercial, industrial, scientific, or medical user's site, but not at a residential site" so long as such operation is necessary to determine customer acceptability because of the "unique capability of the device." These provisions address the Commission's fear that otherwise "a large quantity of untested and potentially noncompliant equipment could end up in the hands of the general public" making product tracing and recall very difficult (NPRM ¶ 10).

However, the proposed rule is likely to be ineffective in solving this problem. There are countless business sites, ranging from the headquarters of Fortune 500 corporations to "Mom-and-Pop" grocery stores to hot dog and ice cream carts on street corners. Moreover, the distinction between business and residential sites may be interpreted in ways that the Commission does not intend. For example, the home offices of employees who telecommute or self-employed individuals operating a business out of a room in the house, could credibly be claimed to be business sites.

The specified reason for operation at customer sites -- determination of acceptability because of the

"unique capability of the device" -- is also likely to be ineffective in preventing undue proliferation of potentially harmful devices. Manufacturers can credibly maintain that a very large number of such devices can be placed in the hands of users to obtain valid data on the "unique capability of the device" to meet needs of diverse users in many different circumstances.

Rather than using verbal description tests, which can lead to disputes about meaning and be stretched beyond what the Commission intended, to limit operation of potentially harmful devices, the Commission should place numerical limits on such operation. This is precisely what the Commission did in resolving this very issue in connection with importation of unauthorized or unverified devices for demonstration at trade shows and evaluation to decide acceptability for marketing.<sup>8</sup> The Commission allowed importation of up to 10 such devices for demonstration at trade shows and up to 200 for marketing acceptability testing.<sup>9</sup> There is no need to permit more widespread use where such devices are manufactured in this country rather than imported. As the importation rules

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<sup>8</sup> Amendment of Part 2 of the Rules Concerning the Importation of Radio Frequency Devices Capable of Causing Harmful Interference, 7 FCC Rcd. 4960 (1992).

<sup>9</sup> 47 CFR §§ 2.1204(a)(3) and (4), respectively, set forth the market acceptability and trade show quantities.

provide,<sup>10</sup> the new marketing rules should authorize the Chief, Experimental Division, Field Operations Bureau, to approve operation of greater quantities in individual situations.

Adopting numerical limits obviates any need for ambiguous verbal descriptions of business operation sites to determine market acceptability. Federal Clean Air Act requirements, as well as other forces, will sharply expand telecommuting and use of home offices. Therefore, appropriately limited testing for market acceptability should explicitly be permitted in homes as well as businesses. Moreover, the bar in the proposed rule against such testing at government sites is unwarranted.

In addition to amending the marketing rules, the NPRM proposes various improvements in the rules governing the equipment authorization process. AT&T supports those changes with one exception and suggests that one clarification is needed. That exception is to proposed new § 2.955(a)(3) on retention of measurement records, which substitutes much detail for the present general requirement for retention of records identifying the measurement procedure and containing the resulting data. This new detail is not needed because essentially the same information must be retained pursuant to the measurement

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<sup>10</sup> Id.

procedure in American National Standards Institute ("ANSI") C63.4 - 1992, already incorporated by reference in the Commission's Rules.<sup>11</sup>

In addition to being unnecessary, specifying record retention requirements in the Commission's Rules would be counterproductive. Recognizing that the C63.4 standard is subject to regular review and improvement by ANSI, the Commission's incorporation by reference of the 1992 version of that standard into the rules also delegated to the Chief Engineer authority to modify the rules to reference future versions of that standard "that do not raise substantive compliance issues."<sup>12</sup> Because record retention rules surely would not raise such issues, improvements in these rules made by ANSI in subsequent editions of C63.4 can readily be incorporated by reference in the Commission's Rules. However, details specified in the Commission's Rules per proposed new § 2.955(a)(3) could be changed only by a new rulemaking proceeding.

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<sup>11</sup> 47 CFR § 15.31(c)(6). Although compliance with the new ANSI standard is not required until June 1, 1995, the Commission has encouraged use thereof as soon as practical (*Id.*). In any event, June 1, 1995 is not likely to be substantially, if at all, later than the effective date of the rules emerging from the instant proceeding.

<sup>12</sup> Procedures for Measuring Electromagnetic Emissions from Intentional and Unintentional Radiators, 8 FCC Rcd. 4236, 4237 (1993).

Finally, AT&T urges the Commission to clarify proposed new § 2.938 which says that the responsible party, who could be someone who has modified the equipment other than the grantee or, in the case of verification, the manufacturer or importer,<sup>13</sup> shall retain "the original design drawings and specifications" as well as all changes. AT&T is concerned that this rule could be interpreted to require the modifier somehow to obtain from the grantee, manufacturer or importer the original drawings, and correlatively requiring that entity to turn over those drawings. The new rule should clearly apply only to the original drawings regarding the modification and changes therein.

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<sup>13</sup> This point is established by the additional language proposed for §§ 2.909(a) and (b).

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CONCLUSION

AT&T's suggested modifications to the rules proposed in the NPRM will help facilitate deployment of new technology, protect other users from harmful interference, simplify administration and avoid possible abuse of the rules. Therefore, the Commission should adopt the rules proposed in the NPRM with the changes proposed in these comments.

Respectfully submitted,

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