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

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)	
)	
Revision of Part 2 of)	ET Docket No. 94-45
the Commission's rules relating)	RM-8125
to the marketing and authorization)	
of radio frequency devices.)	

To: The Commission

COMMENTS

Pursuant to Section 1.415 of the Commission's Rules,¹ Alcatel Network Systems, Inc. ("ANS"),² by its attorney, hereby comments on the Commission's above-captioned Notice of Proposed Rule Making, 9 FCC Rcd 2702 (1994) ("NPRM").

In the NPRM, the Commission proposes updating its equipment authorization rules. ANS applauds the Commission's efforts. Its proposals will expedite introduction of product into the marketplace without compromising the existing safeguards against harmful RF interference ("RFI"). Thus, as detailed below, ANS generally supports adoption of the proposed rules.

¹47 C.F.R. Section 1.415 (1992).

²ANS is a wholly-owned subsidiary of Alcatel Alsthom ("Alcatel"), one of the world's largest corporations (with annual sales in excess of \$30 billion) and the world's largest manufacturer and supplier of telecommunications equipment. In particular, Alcatel is the world's largest independent manufacturer and supplier of microwave radios. Formerly Collins Radio and a division of Rockwell International, ANS, with over \$500 million in annual sales, is a world leader in manufacturing microwave and light wave transmission systems. ANS' equipment is used for a wide range of services, including short, medium and long-haul voice, video and data transmission. Its microwave customers include all the Bell Operating Companies, most major independent telephone companies, cellular operators, power and other utility companies, oil companies, railroads, industrial companies, and state and local government agencies.

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**ANS SUPPORTS THE COMMISSION'S GOALS
IN ADOPTING THE NPRM**

The Commission's equipment authorization rules have worked well. Nevertheless, the Commission correctly recognizes that the time has come to refine these rules:

The proposed changes are intended to remove certain inconsistencies in the existing rules and to consolidate in the rules several interpretations issued in letters. These inconsistencies have led to confusion for industry and may have discouraged or prevented use of some otherwise legitimate methods of marketing RF devices pending receipt of an authorization from the Commission. These proposals would stimulate economic growth by permitting products to be developed on a cooperative basis by manufacturers and retailers, and by potentially decreasing the time for a product to reach the marketplace.³

In addition, the Commission's proposed rules are intended to

remove inconsistencies and clarify existing equipment authorization regulations, [and] to remove outdated and unnecessary restrictive regulations. . . .⁴

To avoid confusion in the marketplace and the associated delays in developing and selling product, equipment designers, manufacturers, vendors and customers need a uniform and consistent slate of rules. As the manufacturer of microwave radios subject to type notification and verification, ANS agrees with the Commission that there is a need to update its equipment authorization rules. Accordingly, ANS fully supports the goals of the NPRM.

**ANS SUPPORTS THE COMMISSION'S
PROPOSED MARKETING REGULATIONS**

The Commission proposes several revisions to Section 2.803. These revisions would relax restrictions on marketing and testing RF devices which have not been authorized or determined to be in compliance with applicable technical standards. ANS supports the need to relax those restrictions. However, the Commission's proposals do not go far enough.

³9 FCC Rcd at 2702.

⁴9 FCC Rcd at 2702 n.2.

In a Petition for Rulemaking which prompted the NPRM, the Consumer Electronics Group of the Electronics Industries Association ("EIA/CEG") proposed that the Commission permit all RF devices to be announced, advertised, displayed, activated at trade shows and offered for sale prior to authorization or determination of compliance with technical standards, provided final delivery to the buyer or centers of distribution does not occur before compliance with applicable equipment authorization procedures. The Commission rejected this proposal because it feared that sale of non-compliant consumer products to the general public would result.⁵ Instead, the Commission, in the NPRM, proposes that announcement, advertisement or offer for sale and operation of unauthorized or non-compliant RF devices is permissible only under certain conditions and not for products that will be sold to the general public.⁶

ANS disagrees with the Commission and supports the EIA/CEG proposal. ANS and other manufacturers will not invest in designing, developing and promoting products unless there are willing buyers. Oftentimes, product development does not occur until sales are made. Innovation is deterred without the impetus of an actual market for the product. Thus, the Commission must allow all manufacturers maximum flexibility to market their product.

Under the EIA/CEG proposal, such optimal flexibility is provided. No restriction on sales or any other activity would be imposed provided delivery is made after the authorization is granted or compliance is verified. If authorization or compliance is not achieved, the sale is cancelled and the product is not delivered. Thus, by adopting the EIA/CEG proposal, the Commission "would create an important avenue for the promotion and introduction of new products without increasing the potential for harmful interference to radio users."⁷

⁵9 FCC Rcd at 2703-04.

⁶9 FCC Rcd at 2703-04.

⁷9 FCC Rcd at 2703.

Even though ANS strongly supports adoption of the EIA/CEG proposal, it also recognizes that the rule changes in the NPRM are appropriate. Thus, if the Commission re-affirms its decision against adopting the EIA/CEG proposal, ANS supports the specific rule changes proposed in the NPRM.

Conditional sales contracts. The Commission proposes that RF device manufacturers can enter into conditional sales contracts with wholesalers or retailers if delivery is contingent upon compliance with applicable equipment authorization and technical requirements.⁸ This revision is critical to ANS and other manufacturers because they need the flexibility to develop proposals and to negotiate sales without waiting for regulatory approval. Such negotiations do not involve the general public, but do involve discrete customers which will operate the RF devices in areas where there is little or no threat of harmful RFI to other devices. The Commission's requirement that authorization be obtained prior to delivery, however, is appropriate to protect against harmful RFI from occurring.

Advertising or trade show display. Under proposed Section 2.803(c), any RF device can be advertised or displayed (at a trade show or exhibition) prior to authorization or determination of compliance if the advertising or display has a conspicuous notice that it can not be offered for sale or sold until compliance. ANS supports this rule because it expands the scope of products eligible for such activity to include RF devices that must be verified. Thus, this proposal affords manufacturers of verifiable RF devices with a useful opportunity to demonstrate their product.⁹

⁸See proposed Section 2.803(b). This proposal incorporates a previous Commission ruling. See 9 FCC Rcd at 2703 n.12.

⁹The Commission rejected a request by the National Association of Broadcasters ("NAB") that, prior to demonstration of RF devices at trade shows or at potential customer sites, manufacturers must be required to perform preliminary interference testing and that a certification of such testing accompany the demonstration device. 9 FCC Rcd at 2703. ANS concurs with the Commission's rejection of NAB's proposal because it would impose an unnecessary burden on manufacturers. These demonstrations are made in a controlled area and no further testing is needed.

Announcement and offer for sale. In Section 2.803(d), the Commission proposes relaxing restrictions on the announcement and offer for sale of unauthorized or non-compliant RF devices. The Commission would permit the announcement and offer for sale of these RF devices only to business, commercial, industrial, scientific or medical users (but not to the general public). Any such unauthorized RF device must be in the conceptual, developmental, design or preproduction stage. The buyer must be advised in writing, at the time of announcement or offer for sale, that the equipment is subject to Commission rules and that it will be in compliance with such rules before delivery to the buyer or to centers of distribution. This proposal is acceptable because it minimizes the risk that non-compliant devices will be sold, facilitates marketing activities, and ensures that prospective buyers know the status of the product.

Operation. In addition to relaxing the requirements applicable to offering unauthorized or non-compliant RF devices for sale, the Commission intends making it easier to operate such RF devices. In proposed Section 2.803(e), the Commission permits any unauthorized or non-compliant RF device to be operated (not marketed) for: (i) compliance testing; (ii) demonstration at a trade show with the appropriate conspicuous notice that the device is not yet authorized; or (iii) evaluation of product performance and customer acceptability during the development, design or preproduction phase at the "manufacturer's facilities"¹⁰ or at the site of a business, commercial or industrial user if such evaluation cannot be made at the "manufacturer's facilities" due to size or unique capability of the device. Under this proposal, for RF devices subject to verification and sold only to business, commercial or industrial users, the manufacturer can ensure compliance (and thus verify the device)

¹⁰In proposed Section 2.803(e)(5), "manufacturer's facilities" are defined to include "the facilities of the party responsible for compliance with the regulations and the manufacturer's premises, as well as other entities working under the authorization of the responsible party in connection with the development and manufacture, but not marketing, of the equipment."

at each end user's location after sale and installation only if the sales contract or lease sets forth that a determination of compliance must be made by the appropriate party.

ANS urges the Commission to adopt these proposals. Pre-compliance operation is necessary to empirically determine if the RF device will work as contemplated, to de-bug the device before it is sold, and to ascertain customer acceptability. Moreover, this flexibility will ensure that only those RF devices the manufacturer intends selling will be subject to the authorization process.

ANS SUPPORTS ADOPTION OF THE PROPOSED EQUIPMENT AUTHORIZATION RULES

The Commission also proposes revising its equipment authorization rules. ANS supports these changes. Once adopted, the new rules will streamline the authorization and compliance processes and harmonize them with existing market practices.

Modification of authorized devices. Under the current Section 2.909, the grantee of a type notified device or the manufacturer or importer of a verified device has ultimate responsibility for ensuring that the product complies at all times with the equipment authorization standards. The Commission proposes shifting this responsibility to the entity making the modifications. This proposal is made because:

It is not realistic to require the party that obtained the original authorization to accept responsibility for ensuring that it complies with the standards when that product is modified by an independent party. Similarly, the Commission cannot reasonably require the holder of the grant of equipment authorization or, in the case of verified equipment, the manufacturer or importer to retain measurement data and other records demonstrating that the product, as modified by a separate party, continues to comply with the standards.¹¹

Once a compliant product is sold, manufacturers have little, if any, control over how it is used. Thus, ANS supports this proposal because it shifts the burden for compliance to the appropriate party.

¹¹9 FCC Rcd at 2705 (footnote omitted).

Miscellaneous rule changes. In "cleaning up" its equipment authorization rules, the Commission proposes myriad clarifications and revisions which ANS supports. The Commission's proposed Section 2.924, which defines "electrically identical equipment," is consistent with industry practice and thus is appropriate. The proposed changes in the rules for identification of equipment (Section 2.925(b)(4)), limitations on grants (Section 2.927), changes in identification of equipment (Section 2.933), retention of records (Sections 2.938 and 2.955), responsibility for compliance (Section 2.953), and application for notification (Section 2.975) all should be adopted. They properly eliminate inconsistencies in the rules and promote compliance with the equipment authorization requirements.

CONCLUSION

ANS supports the Commission's equipment authorization program. Adopting the proposal by EIA/CEG to relax the restrictions against marketing non-compliant RF devices is in the public interest and will improve this program significantly. It would enable ANS and other manufacturers to meet market demand with innovative product while still ensuring that only compliant devices actually are sold and delivered. However, if the Commission does not adopt the EIA/CEG proposal, it must adopt the rules proposed in the NPRM, which also will enhance the authorization program.

Respectfully submitted,

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