

RECEIVED

OCT - 6 1994

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

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

ORIGINAL

In the Matter of)

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

ET Docket No. 94-45
RM-8125

To: The Commission

DOCKET FILE COPY ORIGINAL

REPLY COMMENTS

ALCATEL NETWORK SYSTEMS, INC.

Robert J. Miller
Gardere & Wynne, L.L.P.
1601 Elm Street, Suite 3000
Dallas, Texas 75201

Its Attorney

October 5, 1994

190795/gw03

No. of Copies rec'd 044
List A B C D E

TABLE OF CONTENTS

SUMMARY 2

**THE RECORD SUPPORTS ADOPTION OF
THE COMMISSION'S PROPOSED MARKETING RULES 6**

**THE RECORD SUPPORTS ADOPTION OF THE
COMMISSION'S PROPOSED EQUIPMENT AUTHORIZATION RULES 15**

**PROPOSALS TO STREAMLINE EQUIPMENT AUTHORIZATION
PROCESSING SHOULD BE ADOPTED 18**

CONCLUSION 20

RECEIVED

OCT - 6 1994

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

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

ET Docket No. 94-45
RM-8125

To: The Commission

DOCKET FILE COPY ORIGINAL

REPLY COMMENTS

Pursuant to Section 1.415 of the Commission's Rules,¹ Alcatel Network Systems, Inc. ("ANS"),² by its attorney, hereby responds to the 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. These proposals are designed to expedite introduction of product into the marketplace without weakening existing safeguards against harmful RF interference ("RFI"); remove inconsistencies in the existing

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.

rules; apply the same marketing rules to all classes of RF devices; and incorporate staff letter rulings into the new rules.

SUMMARY

Product development and time-to-market cycles are accelerating rapidly to keep pace with customer demand. This scenario is especially true for emerging technologies, such as personal communications services ("PCS"), and for associated fixed microwave and other services. Under Part 2, however, manufacturers must wait for Commission approval before testing and marketing new products to determine technical and customer acceptance.

As the record of this proceeding clearly demonstrates, these restrictions on pre-compliance testing, operation, and marketing of RF devices are unnecessary. Manufacturers must have optimum flexibility to develop and market their product. Investment in product design, development, and promotion will be stifled unless manufacturers can respond to new technologies or shifting customer demand without having to navigate through the current Part 2 marketing restrictions.

Any concern that relaxing Part 2 requirements would unleash harmful RFI is unfounded. Pre-compliance product testing and operation typically occur in a controlled environment. Development of RF devices that operate improperly or that cause harmful RFI will be deterred by the marketplace. Moreover, if the RF device causes harmful RFI, it must cease operating. Interference problems can be resolved in response to complaints filed with the Commission, whose resources are better utilized addressing these problems than reviewing countless authorization applications. The benefits of liberalizing the Part 2 marketing requirements simply outweigh the burdens imposed by the current rules.

The Commission's proposed changes to Part 2 meet this critical need. Not surprisingly, the overall support for adoption of the new rules is unanimous.³ For example, Ericsson states:

[T]he Commission's proposal serves the public interest most significantly by enabling manufacturers, service providers and/or end users to keep up with the pace of technology development on the one hand, without allowing the regulatory process to delay implementation of service to the public, on the other hand.⁴

Moreover, EIA/CEG, which filed the rule making petition underlying this proceeding, declares that:

the new regulations will simplify and eliminate the regulatory anomalies in the existing marketing rules.

* * * * *

[T]he proposed rules generally reflect a fair balance between the benefits of introducing new consumer products and the need to ensure that the marketing of these products does not cause harmful interference with radio communications. The new rules will provide the consumer electronics industry with the opportunity to present prototypes of innovative equipment to retailers, distributors, and consumers, to exchange ideas, to discuss product improvements, and to facilitate the efficient development of more marketable products. Such efforts will help establish the market acceptability of new equipment designs and allow significant product exposure for those entities that do not have national sales organizations. The proposed rules will therefore benefit consumers and those entities involved in developing and marketing consumer products, without risking increased radio interference.

* * * * *

³ANS at 1; Mobile and Personal Communications Private Radio Section of the Telecommunications Industry Association ("TIA") at 1; AT&T Corp. ("AT&T") at 1; Itron, Inc. ("Itron") at 1; General Electric Lighting ("GEL") at 1; National Association of Broadcasters ("NAB") at 2; Consumer Electronics Group of the Electronics Industry Association ("EIA/CEG") at 2; Computer and Business Equipment Manufacturers Association ("CBEMA") at 1; International Business Machines Corporation ("IBM") at 1; Association for Maximum Service Television, Inc. ("MSTV") at 2; The Ericsson Corporation ("Ericsson") at 1; E.F. Johnson Company ("Johnson") at 4; Uniden America Corporation ("Uniden") at 1; AMSC Subsidiary Corporation ("AMSC") at 1.

⁴Ericsson at 2-3.

The proposed rules are also consistent with the Commission's past recognition of the importance of facilitating the introduction of new and innovative products to retailers and distributors at industry trade shows prior to Commission authorization.⁵

Indeed, even NAB, which, in comments on EIA/CEG's petition, recommended that the Commission forego adopting new rules that would grant overly broad relief and that could lead to interference problems, supports the proposed rules:

[T]he proposed amendment to Section 2.803 achieves the Commission's stated goal but is not so overly broad or general as to allow anyone to demonstrate any RF device anywhere they wish. The new proposed regulations would provide the requisite clarity and, at the same time, protect authorized radio services from unwarranted interference. As such, NAB applauds the Commission's efforts.⁶

Not only is there strong support for adopting the Commission's proposed rules, IBM and CBEMA advocate relaxing the marketing rules even further. IBM questions the continued need to certificate Class B personal computers ("PCs") and related RF devices. It proposes replacing the certification requirement for PCs and subjecting them to verification.⁷ CBEMA suggests a "declaration" process to replace the current equipment authorization requirements for computing devices.⁸ This process would permit manufacturers, which are responsible for testing and determining the compliance of the computing devices, to issue a declaration of compliance with each device sold. ANS urges the Commission to seriously consider these proposals in its ongoing effort to develop a regulatory environment conducive to product innovation and marketing success.

⁵EIA/CEG at 3.

⁶NAB at 2-3 (footnote omitted).

⁷IBM at 1-2.

⁸CBEMA at 7.

Although there is a strong consensus in favor of the Commission's general approach, various parties take different positions with respect to specific proposals in the NPRM:

Marketing rules apply to all classes of RF devices -- Under Part 2, different RF devices are subject to different pre-authorization marketing restrictions. In the NPRM, the Commission proposes eliminating such "inconsistencies and unnecessary restrictions."⁹ The record strongly supports the Commission's proposal.¹⁰

Conditional sales contracts -- ANS, Ericsson and GEL support the Commission's proposal 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. However, MSTV opposes adoption of this proposal because it could result in proliferation of RF devices that would interfere with TV reception.¹¹

Advertising or trade show display -- ANS, TIA, NAB, and AMSC support the Commission's proposal for allowing RF devices to 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. MSTV also opposes this proposal because of its fear that interfering devices would be available too readily.¹²

Announcement and offer for sale -- The Commission proposes relaxing restrictions on the announcement and offer for sale of unauthorized or non-compliant RF devices only to business,

⁹NPRM, 9 FCC Rcd at 2703-04.

¹⁰EIA/CEG at 5; Ericsson at 2; Itron at 1; AMSC at 4; TIA at 4; Uniden at 2; CBEMA at 1.

¹¹ANS at 4; Ericsson at 3; GEL at 1; MSTV at 6-7.

¹²ANS at 4; TIA at 2; NAB at 2; AMSC at 4; MSTV at 6-7.

commercial, industrial, scientific or medical users (but not to the general public). This proposal was generally supported.¹³

Operation -- The most controversial proposal in the NPRM is to permit operation of an unauthorized or non-compliant RF device 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 under certain circumstances. Several parties, including ANS, TIA, EIA/CEG, Ericsson, IBM and AMSC, support this proposal.¹⁴ Concerns over difficulties in implementing this proposal and ensuring that it is not abused prompted different proposals by AT&T and CBEMA and prompted opposition by MSTV.¹⁵

Modification of authorized devices -- The record supports the Commission's proposal that the entity making modifications has the responsibility for ensuring that the product complies at all times with the equipment authorization standards.¹⁶

Electrically identical equipment -- The record supports adoption of proposed changes in the rules for defining "electrically identical equipment."¹⁷

THE RECORD SUPPORTS ADOPTION OF THE COMMISSION'S PROPOSED MARKETING RULES

Under Part 2, the Commission gerrymanders its marketing provisions. Different RF devices are subject to different requirements. For example, the marketing provisions in Section 2.803,

¹³See, e.g., ANS at 5; MSTV at 2.

¹⁴ANS at 5-6; TIA at 3; EIA/CEG at 5-6, 8; Ericsson at 3; IBM at 4; AMSC at 4.

¹⁵AT&T at 2-3, 5-7; MSTV at 6-9; CBEMA at 3-4.

¹⁶ANS at 6; AT&T at 9; CBEMA at 6; Itron at 2; TIA at 5; GEL at 1-2.

¹⁷ANS at 7; Itron at 2; Johnson at 4.

permitting pre-authorization advertising and display, do not apply to RF devices subject to verification. The Commission proposes eliminating these arbitrary restrictions and making all RF devices subject to the same marketing requirements.

With limited exception, the Commission's fundamental revisions to its Part 2 marketing rules are supported enthusiastically:

[T]he proposals will accomplish the Commission's goal of harmonizing the marketing rules for all RF devices, thus making the Commission's rules more equitable in general. Moreover, the Commission's proposals will protect the public by ensuring that (1) prospective purchasers of RF devices are aware that certain items of equipment are not yet compliant with the Commission's rules and (2) no RF device is actually delivered for commercial use until and unless the device has received the appropriate equipment authorization from the Commission.¹⁸

Conditional sales contracts -- In proposed Section 2.803(b), the Commission would allow RF device manufacturers to enter into conditional sales contracts with wholesalers or retailers if delivery is contingent upon compliance with applicable equipment authorization and technical requirements. In its comments, ANS strongly supports adoption of this proposal. Permitting conditional sales contracts provides manufacturers with the needed flexibility to develop proposals and to negotiate sales without waiting for regulatory approval. No risk is posed because these negotiations will not involve the general public, but will involve discreet customers which will operate the RF devices in areas where there is minimal, if any, threat of harmful RFI. Further protection is provided because the authorization must be obtained prior to delivery.¹⁹

¹⁸Ericsson at 2. See also CBEMA at 1; TIA at 4.

¹⁹ANS at 4.

Ericsson, Itron and GEL agree.²⁰ Ericsson supports this proposal because permitting conditional sales contracts will make it easier for manufacturers and prospective customers, such as PCS providers, to evaluate system operational characteristics in a real world situation:

It is equally important for manufacturers to be able to offer equipment for sale and enter into conditional sales contracts in advance of receiving an equipment authorization to ensure that systems can be delivered to service providers at the very earliest possible time subsequent to the licensing process. Ericsson believes adoption of the Commission's rules will accomplish the foregoing goals.²¹

MSTV, however, opposes adoption of this proposal. It claims that permitting pre-sale of RF devices conditioned on subsequent authorization "sweeps too broadly" because such liberalization of the rules could result in too many non-compliant RF devices being used.²²

ANS and most of the other commenters do not share MSTV's concern. The Commission's proposal merely incorporates its existing policy into the rules,²³ and there is no evidence in the record that this policy has produced the dire results MSTV fears. Moreover, the Commission's rules provide adequate protection because devices causing harmful RFI must cease operation.²⁴

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 cannot be offered for sale

²⁰Ericsson at 3; Itron at 1; GEL at 1.

²¹Ericsson at 3.

²²MSTV at 6-7.

²³NPRM, 9 FCC Rcd at 2703 n.12.

²⁴See, e.g., 47 C.F.R. Sections 15.5, 21.211, and 94.101 (1994).

or sold until compliance. ANS supports adoption of this rule because it affords RF device manufacturers with a useful opportunity to demonstrate their product.²⁵

Similarly, TIA urges adoption of this rule:

As manufacturers, the ability to display non type-accepted products at trade shows and exhibits is essential and necessary for widespread product introduction. Businesses, public safety officials, industrial users, and other customers must be kept abreast of the latest offerings in product design and performance. Many of these RF devices are simultaneously undergoing field testing and while the actual application of type acceptance may have been filed with the FCC, the actual grant of equipment authorization may not be issued in time for various trade shows.

* * * * *

Most trade associations have yearly trade shows and thousands of products are demonstrated to business and industry. While it is appropriate to have proper placards on non-authorized equipment to distinguish these products from those which have been authorized by the FCC, it is critical that non-authorized products be shown at trade shows and demonstrations so that the industry can make educated decisions as to which equipment will best meet the needs of their business.²⁶

MSTV is not concerned regarding trade show display prior to authorization. It supports this activity "provided that manufacturers take reasonable precautions to ensure that such demonstrations do not cause interference to licensed operations, including television broadcasting."²⁷

Adoption of Section 2.803(c) (and the corollary Section 2.803(e)(2) regarding operation at a trade show) is critical for manufacturers. Typically, each RF manufacturer has one major annual trade show to promote its product. If a manufacturer is unable to display or operate new, yet-to-be authorized RF devices at this annual trade show, it misses the prime opportunity for marketing during the entire year. Oftentimes, new products are developed and ready for display or operation

²⁵ANS at 4.

²⁶TIA at 2. See also EIA/CEG at 5-6.

²⁷MSTV at 2 (footnote omitted).

immediately preceding this annual show. Given the controls existing at these shows against harmful RFI, it makes no sense to risk preventing the manufacturer from taking advantage of its best marketing opportunity by requiring prior Commission approval.

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. Such announcement and offer of RF devices could be made only to business, commercial, industrial, scientific or medical users (but not to the general public). ANS supports adoption of this proposal "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."²⁸

Generally, this proposal is supported in the record:

Specifically, Itron whole-heartedly endorses the Commission's proposal to permit all types of RF devices to be offered for sale prior to equipment authorization to business, commercial, industrial, scientific and medical users (*i.e.*, parties other than consumers), subject to the conditions enumerated in the Notice. By prohibiting the offer for sale of these devices to the general public prior to equipment authorization, the proposed rule change adequately addresses the Commission's concerns relating to the creation of significant interference and enforcement problems, while simultaneously facilitating the marketing of RF products by equipment manufacturers.²⁹

However, unlike the Commission's proposals regarding conditional sales contracts, advertising or trade show displays, this proposal is limited to the announcement or offer for sale of products to specific classes of customers -- business, commercial, industrial, scientific or medical users. Several parties express concern over this proposal because of anticipated enforcement problems.³⁰ For example, MSTV states:

²⁸ANS at 5.

²⁹Itron at 1-2 (footnote omitted).

³⁰These same concerns are raised over the proposed Section 2.803(e) rules for operation.

[T]he inclusion of "business" and "commercial" buyers encompasses everyone from an insurance salesman with a garage office, to a corner florist, to IBM. Simply put, the exception as proposed will effectively swallow the rule. The Commission must limit the sweep of its proposed rule, perhaps by limiting it to industrial, medical and scientific purchasers.³¹

In its comments, AT&T expresses the same concern:

[T]he proposed rule is likely to be ineffective 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 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.³²

AT&T and CBEMA propose that, instead of adopting a rule that would require a determination as to whether a site is permissible, a numerical limit should be imposed on the number of RF devices that can be announced, offered for sale or operated prior to authorization:

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. The Commission allowed importation of up to 10 such devices for demonstration at trade shows and up to 200 for marketing acceptability testing. There is no need to permit more widespread use when such devices are manufactured in this country rather than imported. As the importation rules provide, the new marketing rules would 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

³¹MSTV at 8-9 (footnote omitted).

³²AT&T at 5.

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.³³

ANS supports the objective solution to this issue proposed by AT&T and CBEMA. It would be highly counter-productive to afford manufacturers more freedom in their pre-compliance activities while potentially ensnaring them in time-consuming disputes over whether the test site is business or residential.

Operation of unauthorized or non-compliant devices -- In proposed Section 2.803(e), the Commission permits operation of an unauthorized or non-compliant device for:

- compliance testing;
- demonstration at a trade show with the appropriate conspicuous notice that the device is not yet authorized; or
- evaluation of product performance and product acceptability during the development, design, or preproduction phase at the "manufacturer's facilities" 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.

In addition, in Section 2.803(f), the Commission proposes that RF devices subject to verification and sold only to business, commercial or industrial users can be operated at the customer's premises to verify compliance.

³³AT&T at 6-7 (footnotes omitted). Accord CBEMA at 4.

ANS and several other parties support adoption of this proposal.³⁴ Permissible pre-authorization operation will provide necessary flexibility to manufacturers.³⁵

The TIA strongly supports the Commission's proposal to allow the operation of all types of RF devices prior to equipment authorization at the sites of business, commercial, industrial, scientific and medical users. The FCC would make this allowance with the provision that any devices be designed with the intent of complying with all applicable regulations. Currently, for a manufacturer to field test a non type-accepted radio, a request for a Special Temporary Authorization ("STA") must be filed with the FCC. The person who will have control of the radio, usually the customer actually testing the radio, must sign the request to be filed with the Commission. STAs are usually granted for a specific period of time and often have to be renewed if the testing has not been completed. All testing occurs on licensed channels and, in nearly every situation, equipment is designed with the intent of complying with all applicable regulations. This proposal, which would allow the operation of RF devices at customer sites, is beneficial for everyone: the manufacturers benefit because they can more expeditiously move their products into field testing; the beta site customers benefit from reduced paperwork and from new technology and products; the FCC benefits from the reduction of unnecessary paperwork; and the end customers benefit because products come to market more quickly and with less overhead expense. TIA strongly supports the elimination of the need to acquire STAs for testing unauthorized equipment at customers' sites.³⁶

³⁴ANS at 5-6; AMSC at 4; TIA at 3; EIA/CEG at 5-6, 8; Ericsson at 3; IBM at 4. As discussed *supra*, ANS supports the proposals made by AT&T and by CBEMA to impose numerical limits on the number of pre-compliant RF devices that could be operated under Section 2.803(e). CBEMA is also concerned that permitting pre-compliance operation under Section 2.803(e)(4), when product performance and customer acceptability determinations cannot be made at the manufacturer's premises due to the "size or unique capability of the device," will be "hard to apply." CBEMA at 3. Thus, CBEMA urges that the numerical limit replace this criterion, and ANS agrees.

³⁵EIA/CEG requests that proposed Section 2.803(e)(2) be revised to permit pre-compliance demonstration at exhibitions as well as at trade shows. EIA/CEG at 8. ANS supports this request. In its comments on the EIA/CEG petition, NAB suggested that, prior to demonstrating non-compliant RF devices at trade shows or at potential customer sites, the manufacturer must perform preliminary interference testing and must provide certification of such testing with each demonstration device. See *NPRM*, 9 FCC Rcd at 2703. ANS and others oppose this proposal as unnecessary because the demonstrations are made in a controlled environment where there is little, if any, risk of harmful RFI. See, e.g., ANS at 4 n.9; TIA at 6. It is noteworthy that NAB did not resurrect this proposal in its comments. Only MSTV and GEL support its adoption. MSTV at 2 n.3; GEL at 1.

³⁶TIA at 3-4. IBM requests that the Commission permit the actual sale of prototype digital devices to a limited class of users, solely for the purpose of beta testing or system development. IBM

Itron also strongly supports the proposal for expanding the existing exceptions in the Commission's rules to permit operation of all types of RF devices prior to equipment authorization. It concludes that such "a rule change will enhance substantially the ability of manufacturers to evaluate product performance and assess customer satisfaction. Likewise, customers will be able to determine first hand whether a given RF device meets their individual requirements."³⁷

EIA/CEG agrees that the Commission must permit pre-compliance operation of RF devices for demonstration purposes at industry trade shows.³⁸ It is concerned, however, that proposed Section 2.803(e)(6) still requires manufacturers to obtain experimental station licenses or STA for devices that ultimately will be authorized under Part 15.³⁹ Thus, it "urges the Commission to clearly exempt from any further licensing requirements RF devices that are operated at trade shows that will ultimately be authorized under Part 15."⁴⁰ ANS supports EIA/CEG's request.

MSTV opposes permitting on-site testing, including compliance testing at a customer's location after sale and installation. It believes that adoption of this rule will result in on-site "testing" of unauthorized equipment increasing dramatically.⁴¹ To protect against this problem, MSTV recommends that:

at 4-5. ANS does not object to this proposal.

³⁷Itron at 2.

³⁸EIA/CEG at 6.

³⁹EIA/CEG at 6.

⁴⁰EIA/CEG at 6.

⁴¹MSTV at 8. AT&T, while generally supporting proposed Section 2.803(e), opposes its application to intentional radiators because of their high emission levels. AT&T at 2. Instead, AT&T proposes requiring an experimental license for operation at a trade show or a customer's premises. Id. at 3. ANS disagrees because adequate safeguards against harmful RFI at a trade show or a customer's premises exist without the need for waiting to be granted an experimental license.

the Commission should further strengthen proposed section 2.803(e)(4) by requiring manufacturers to certify to the Commission that on-site testing for a particular product is the only feasible means of determining compliance characteristics before undertaking delivery or operation of an unauthorized device at a customer's place of business. Moreover, an explanatory note to section 2.803(e)(4) should make clear that on-site testing of "standard electronic office equipment," such as printers, is not permitted.⁴²

ANS disagrees with MSTV. Its proposal would result in unnecessary bureaucratization of the marketing rules. The fundamental purpose of the rules proposed in the NPRM is to streamline the authorization process, so product can be brought to market on a timely basis, without compromising protection against harmful RFI. MSTV's proposal defeats this goal. It does not enhance protection, but it burdens the Commission and manufacturers with administrative rigmarole. If interference happens to occur, the Commission and the manufacturers can react appropriately. Thus, MSTV's proposal must be rejected.⁴³

THE RECORD SUPPORTS ADOPTION OF THE COMMISSION'S PROPOSED EQUIPMENT AUTHORIZATION RULES

In the NPRM, the Commission proposes several revisions to its authorization rules. Most notably, the Commission proposes changes in treatment of modified devices and a more specific definition of "electrically identical."

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 equipment authorization standards. In Section 2.909, the Commission proposes shifting this responsibility to the entity making the modifications.

⁴²MSTV at 8.

⁴³EIA/CEG also proposes consolidating and simplifying Sections 2.803(c), (d) and (e) because they "have the same goal" and because such consolidation would decrease or eliminate any confusion. EIA/CEG at 6-7. ANS agrees.

This proposal was widely supported by the parties:⁴⁴

The Commission wisely proposes that any party who modifies an authorized device becomes the party responsible for ensuring compliance of the modified device and for retaining measurement data demonstrating compliance. [I]t is a well-known fact that equipment shipped to end-users is sometimes subsequently modified by customers and non-standard peripherals are attached to that equipment. This can be expected because equipment is readily altered, and, in certain cases, equipment is customized through software and hardware changes which can affect compliance to performance standards. Furthermore, integration of many pieces of individual equipment are grouped together in a system-level configuration, and tracking non-compliance to an individual manufacturer would be nearly impossible. It would also be unrealistic to attempt to hold manufacturers responsible for equipment that is configured incorrectly. Incorrect configuration could move the equipment outside of the required specification. Based on field inquiries and on internal monitoring of customer inquiries, it is estimated that a significant number of private land mobile base stations are modified in the field. While manufacturers provide equipment tuning procedures to customers that ensure compliance with applicable standards, manufacturers cannot enforce compliance with these standards. Therefore, the Commission is correct in identifying the responsible party as the party who subsequently modifies an authorized device.⁴⁵

However, certain changes to the proposal are recommended.⁴⁶

AT&T requests Commission clarification that the responsible party is not required to obtain the original design drawings and specifications from the grantee but that it is only responsible for maintaining the original drawings regarding the modification or change.⁴⁷ ANS supports this clarification.

⁴⁴ANS at 6; GEL at 1-2; NAB at 3-4; TIA at 5; Itron at 2.

⁴⁵TIA at 5-6.

⁴⁶NAB fears that retailers will "ignore the Commission's regulations and offer for sale unauthorized equipment, often because they are unaware of the . . . regulations." NAB at 3-4. Thus, NAB "urges the Commission to ensure that its regulations have sufficient 'teeth' to act as a deterrent to those that would offer unauthorized devices for sale." *Id.* at 4.

⁴⁷AT&T at 9. See also CBEMA at 6.

In the proposed rule, the Commission requires that the modifying party must include its name, address and telephone number on the label. CBEMA opposes adoption of this requirement because it would require more information than is currently required on the FCC Identifier label.⁴⁸ ANS supports CBEMA's proposal.

GEL also favors adoption of proposed Section 2.909.⁴⁹ Nevertheless, it cautions that the definition of "responsible party" should be more precise because a grantee, under Section 2.929(b), can authorize a second party to market the device covered by the grant.⁵⁰ To avoid the risk that a purchaser unjustifiably claims it is authorized, GEL proposes that such licensing or authorization under Section 2.929 be in writing before the purchaser can avoid responsibility for modification, as set forth in new Section 2.909.⁵¹ ANS concurs.

Electrically identical -- Under Section 2.924, a grantee may change the "model/type number" and trade names of "electrically identical" products without notifying the FCC. In the NPRM, the FCC proposes defining "electrically identical" to "clarify that a product is considered to be 'electrically identical' if no changes are made to the product authorized by the Commission, or if the changes made to the product could be treated under the provisions of type acceptance or certification as 'Class I' permissive changes."⁵²

ANS, Itron and Johnson support this proposal.⁵³ However, GEL, while agreeing with the proposal in concept, states that the revisions are insufficient in two respects: (1) the proposed

⁴⁸CBEMA at 5-6.

⁴⁹GEL at 1.

⁵⁰GEL at 1.

⁵¹GEL at 2.

⁵²NPRM, 9 FCC Rcd at 2705.

⁵³ANS at 7; Itron at 2; Johnson at 4.

definition does not supplant either explicit and implicit definitions of "identical" (e.g., in Section 2.908, "identical" is defined as "within the variation that can be expected to arise as a result of quantity production techniques"); and (2) the revisions do not recognize the practical need for a range in which modifications are permitted before the manufacturer must give notice of the change.⁵⁴ Accordingly, GEL recommends that a consistent definition be adopted. It does not agree that using the distinction between Class I and Class II modifications is appropriate. Instead, GEL proposes that, because "Class II permissive changes must satisfy 'minimum requirements of the applicable rules,' . . . the Commission [should] permit manufacturers to make Class II modifications if manufacturers notify the Commission of the modification within a reasonable period" and if the acknowledgement requirement is deleted.⁵⁵

ANS disagrees with GEL's proposal. The Commission's approach protects against unauthorized changes that could produce harmful RFI without unnecessary government oversight. GEL's proposal, in contrast, increases Commission involvement without any corresponding benefit.

PROPOSALS TO STREAMLINE EQUIPMENT AUTHORIZATION PROCESSING SHOULD BE ADOPTED

While the record of this proceeding supports adoption of the Commission's rules as being in the public interest, two of the parties, in their comments, submitted additional proposals that could further streamline the equipment authorization program. IBM proposes that PCs and related RF devices be subject to verification rather than to certification.⁵⁶ CBEMA recommends that, instead of requiring manufacturers to submit applications for equipment authorizations, these manufacturers

⁵⁴GEL at 2.

⁵⁵GEL at 3 (citation omitted).

⁵⁶IBM at 2.

only should be required to provide a "declaration" that the device complies with appropriate requirements when it is marketed.⁵⁷

IBM proposal -- Due to the deluge of applications for equipment certification and other authorizations, IBM is concerned that Commission resources are being stretched unnecessarily. Consequently,

IBM recommends that the Commission substitute a verification procedure for the certification process now applicable to personal computers and associated peripherals. Such a procedure would allow the Commission to redeploy valuable Commission personnel to focus directly on those who may be bringing their personal computer products to market without bothering to comply with the present testing or filing requirements. Redeploying Commission personnel toward more effective enforcement procedures would be fully consistent with the Commission's goal to serve as "a model for reinventing government." Verification procedures would also eliminate the critical delays experienced by the growing numbers of PC users in the time-to-market for personal computers and associated peripherals.

* * * * *

Adopting verification procedures would also bring U.S. regulatory requirements into line with international procedures.⁵⁸

CBEMA proposal -- CBEMA proposes substituting a "declaration" process for the current equipment authorization program:

CBEMA has developed and proposed to the Chief Engineer a "declaration" process to replace the current equipment authorization for computing devices, by which manufacturers would be responsible for testing and determining the compliance of computer systems, and then including a declaration of compliance with each device sold, which would certify as to the product covered, the test procedure utilized, and a responsible party for compliance. While CBEMA supports the changes proposed [in the NPRM], it urges expeditious consideration of this "declaration" process as a substantial

⁵⁷CBEMA at 7.

⁵⁸IBM at 9-10 (footnotes omitted).

improvement over the current equipment authorization procedures for computing devices.⁵⁹

ANS supports the goals underlying the IBM and CBEMA proposals. The equipment authorization program is sufficiently mature, and manufacturers and customers are sufficiently sophisticated, that reliance on Commission review and approval to prevent harmful RFI is becoming anachronistic. While the rules proposed in the NPRM are beneficial and must be adopted, they should serve as a transition to a thorough review, by the Commission, of the continued necessity for the authorization program.

CONCLUSION

The Commission's equipment authorization program has worked well. Incidence of harmful RFI is down.

All parties to this proceeding support the Commission's goals to update and revise its equipment authorization rules. Specifically, the record supports Commission adoption of its proposed rules permitting pre-compliance conditional sales contracts, display at trade shows, announcement and offer for sale, and operation for compliance testing or at trade shows. In addition, the Commission's proposals regarding modification of compliant RF devices and regarding what constitutes an "electrically identical" device are appropriate and are supported by the parties to the NPRM.

Nevertheless, refinements still are necessary. Most importantly, certain of the new marketing rules are conditioned upon testing or operation of the RF device: (1) if it is located at a business, commercial, industrial, scientific, or medical location; or (2) if the size or unique capability of the device prevents the manufacturer from testing or operating at its premises. ANS agrees with the concern by several parties that disputes will arise over whether the device is being tested or operated

⁵⁹CBEMA at 7.

at the appropriate location or if it possesses the necessary special characteristics. Thus, ANS supports imposing numerical limits on such devices instead.

Finally, there is strong sentiment to make the marketing rules as flexible and unobtrusive as possible. The IBM proposal for making all PCs subject to verification, and the CBEMA proposal for eliminating pre-authorization and for requiring a manufacturer's "declaration" of compliance, are commendable attempts to "push the envelope" even further toward total deregulation.

Hopefully, the Commission will respond to the IBM and CBEMA proposals and expeditiously initiate an inquiry into the continued need for pre-authorization. Until this review occurs, the proposals in the NPRM, with the refinements supported herein, are necessary and must be adopted promptly.

Respectfully submitted,

ALCATEL NETWORK SYSTEMS, INC.



Robert J. Miller
Gardere & Wynne, L.L.P.
1601 Elm Street, Suite 3000
Dallas, Texas 75201

October 5, 1994

Its Attorney

190795/gw03

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Reply Comments were sent via first class mail, postage prepaid, to the following parties on the 5th day of October, 1994.

Lawrence J. Movshin, Esq.
Wilkinson, Barker, Knauer & Quinn
1735 New York Avenue N.W.
Washington, D.C. 20006-5289
Counsel for Computer and Business Equipment
Manufacturers Association

Mr. Eric Schimmel
Vice President
Telecommunications Industry Association
2001 Pennsylvania Avenue, N.W., Suite 800
Washington, D.C. 20006-1813

Wayne Leland
Chairman, TIA MPC, Private Radio Section
1301 East Algonquin Road
Schaumburg, Illinois 60196

Mark C. Rosenblum, Esq.
AT&T Corp.
Room 3261B3
295 North Maple Avenue
Basking Ridge, New Jersey 07920

Gregory M. Schmidt, Esq.
Covington & Burling
P. O. Box 7566
Washington, D.C. 20044
Counsel for Association for Maximum
Service Television, Inc.

Henrietta Wright, Esq.
Goldberg, Godles, Wiener & Wright
1229 19th Street N.W.
Washington, D.C. 20036
Counsel for Itron, Inc.

Barbara N. McLennan
Staff Vice President
Government and Legal Affairs
Consumer Electronics Group, Electronics Industry Association
2001 Pennsylvania Avenue N.W.
Washington, D.C. 20006

Lon C. Levin, Esq.
Vice President and Regulatory Counsel
AMSC Subsidiary Corporation
108902 Parkridge Boulevard
Reston, Virginia 22091

Susan H. R. Jones, Esq.
Gardner, Carton & Douglas
1301 K Street N.W., Suite 900 East Tower
Washington, D.C. 20005
Counsel for E. F. Johnson Company

Henry L. Baumann, Esq.
Executive Vice President and General Counsel
National Association of Broadcasters
1771 N Street N.W.
Washington, D.C. 20036

James R. Haynes
Chief Engineer
Uniden America Corporation
Engineering Services Office
8707 North by Northeast Boulevard
Fishers, Indiana 46038