



INFORMATION TECHNOLOGY INDUSTRY COUNCIL

DOCKET FILE COPY ORIGINAL

March 29, 1996

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

MAY 29 1996

Re: In the Matter of Improving Commission Processes; PP Docket 96-17

Dear Mr. Caton:

I am enclosing an original and ten copies of reply comments by the Information Technology Industry Council (ITI) in response to PP Docket No. 96-17.

Sincerely,

Fiona Branton
Director, Government Relations and Regulatory Counsel, ITI

No. of Copies mailed
List AS/007

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The association of leading IT companies

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

In the Matter of)
) **PP Docket 96-17**
Improving Commission Processes)

Reply Comments of the
Information Technology Industry Council

The Information Technology Industry Council ("ITI") hereby files these Reply Comments in response to the FCC's Notice of Inquiry released February 14, 1996, FCC 96-50 ("Notice"). In its Notice, the Commission discusses, among other things, two items on which ITI submits its comments:

1. Section F. Paragraph 68, which asks:

...what measures would be appropriate to ensure that equipment will continue to comply with FCC technical requirements if the Commission were to shift more equipment to manufacturer self-declaration of compliance. For example, should the Commission require that test results be made available to the Commission upon request and that test laboratories be accredited to ensure the reliability of the test results?

ITI strongly endorses FCC adoption of a simplified Declaration of Conformity program and is on record with its Comments and Reply Comment in the matter of Docket No. 95-19, Amendment of Parts 2 and 15 of the Commission's Rules to Deregulate the Equipment Authorization Requirements for Digital Devices. ITI, however, in its comments on Docket No. 95-19, strongly recommended that the Commission should not mandate any test facility accreditation; at most, it should require test facilities performing measurements for products subject to a Declaration of Conformance equipment authorization to file basic "qualifying" information with the agency, as they have in performing certification measurements. We are enclosing, for your information, the sections of our Comments and Reply Comments on Docket No. 95-19 that pertain to this subject.

2. Section F. Paragraph 69, which refers to "...the general desirability of such MRAs and how we should conduct our authorization processes under such agreements."

ITI supports the Reply Comments of the Telecommunications Industry Association (TIA) on this item with a further comment on the TIA reference that the Congress has recently cleared certain statutory barriers to allow the FCC to delegate its type approval authority in certain cases. It appears to ITI that the provision in the Telecommunications Act of 1996 addressing delegation of testing authority¹ may have been misdrafted so that the intent of the language can be misconstrued. As written, the language in Section 302(e) of the Telecommunications Act of 1996 may be construed to limit the Commission's authority to delegate its approval only to Part 15 of its Rules. ITI believes it was the intent of the Congress in drafting Section 302(e) of the Act that the Commission should be able to delegate its authority to any or all Parts of its Rules.

Respectfully submitted,



Fiona J. Branton

Director, Government Relations and
Regulatory Counsel

Information Technology Industry Council

Date: March 29, 1996

Enclosures:

1. Excerpts of Comments of the Information Technology Industry Council in ET Docket No. 95-19, June 5, 1995.
2. Excerpts of Reply Comments of the Information Technology Industry Council in ET Docket No. 95-19, July 5, 1995.

¹ 47 U.S.C. 302 (e)(1996).

BEFORE THE
Federal Communications Commission
WASHINGTON, DC 20026

In the Matter of)
)
Amendment of Parts 2 and 15 of)
the Commission's Rules to)
Deregulate the Equipment) ET Docket No, 95-19
Authorization Requirements for)
Digital Devices)

REPLY COMMENTS

INFORMATION TECHNOLOGY INDUSTRY COUNCIL

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ITS ATTORNEYS

JULY 5, 1995

BEFORE THE
Federal Communications Commission
WASHINGTON, DC 20026

In the Matter of)
)
Amendment of Parts 2 and 15 of)
the Commission's Rules to)
Deregulate the Equipment) ET Docket No, 95-19
Authorization Requirements for)
Digital Devices)

SUMMARY

The Information Technology Industry Council ("ITI") hereby replies to the more than thirty five comments filed in response to the Notice of Proposed Rulemaking (FCC 95-46, released February 7, 1995) (the "NPRM") in the above-captioned proceeding. The initial commenters have provided a substantial and constructive record on the issues presented in the NPRM. For the reasons discussed in detail below, ITI urges expeditious adoption of a Declaration of Conformity authorization program and the application of that program to the assembly and marketing of modular computers and modular components.

In particular, ITI recommends:

- Adoption of a simplified Declaration of Conformity program that can, after a relatively short transition, be applied to all digital devices, both Class A (as an update to the existing verification process) and Class B;

- Standardization of the information required on a Declaration of Conformity to meet requirements similarly imposed internationally;
- Simplification of the information provided to consumers to include relevant materials from which they can reasonably establish that a device has been tested for compliance and the location for obtaining information concerning the emission characteristics, as tested, of that device;
- Adoption of a simplified labelling program using an FCC compliance logo capable of obtaining marketplace recognition, in place of the current label;
- Rejection of any mandatory accreditation program for testing facilities;
- Adoption of the Modular Component/Modular Computer regulatory program as outlined in ITI's initial comments in this proceeding.
- Expeditious resolution of the issues remaining in this matter so that the substantial benefits to be obtained from this deregulatory program can be realized by the American public at the earliest possible time.

- the name of the company, the division within the company, and a responsible, authorized individual within that division, including an address and (if deemed appropriate¹⁷) telephone number, who maintains the appropriate documentation establishing the basis for the issuance of the Declaration of Conformity; and
- the statement of compliance signed by such identified individual, certifying under penalty of perjury, that the device to which the Declaration of Conformity has attached has been tested in accordance with the FCC's rules and determined to be compliant.

ITI believes that the same information can satisfy the FCC's requirements. By adopting a common information gathering requirement, the FCC can gradually move toward the international harmonization which will allow domestically manufactured products to achieve their full competitive position in the global marketplace.

B. Mandatory Lab Accreditation Is Not Essential To The Success of the Declaration Of Conformity Process.

1. There is nothing in the record to demonstrate that lab accreditation will result in "better" lab performance than exists today.

Several parties -- most notably those representing independent test facilities -- have conditioned their support for

¹⁶ (...continued)
facility. To that end, ITI urges the Commission to seek such legislative authority as would be needed to extend its forfeiture authority over test facilities -- independent or manufacturer-owned --- as may engage in misfeasance or malfeasance in the performance of FCC compliance testing.

¹⁷ The EU does not require a telephone number.

the FCC's deregulating efforts on the imposition of a mandatory accreditation process for test facilities.¹⁸ While some of those suggesting such a requirement would limit it to independent third party facilities¹⁹, none has demonstrated that the test facility industry today lacks credibility or that a mandatory accreditation process will substantially improve the testing process or quality over that achieved without such a mandated requirement.

In fact, the numbers cited by the proponents of mandatory accreditation suggest otherwise. There are over 500 labs performing certification testing that have listed their site characteristics with the FCC. Only fifteen of ACIL's 400 member labs perform EMC testing, and ACIL does not identify how many of those labs are NVLAP accredited (ACIL at 1). Only 17 of the 700 labs that have been accredited by A2LA are accredited in the electrical/electronics field of testing (A2LA at 2), and A2LA also does not identify how many of those would be NVLAP approved. Yet there is no suggestion in the record that the remaining 450+ FCC

¹⁸ See, e.g., A2LA at ___; CCL at 2-5; CCS at 1; Gateway 2000 at 5-6; Motorola at 5; Washington Labs at 2-3; ACIL at 1.

¹⁹ See, e.g., Elite at 3; Retliffe at 2-3. Contrary to the suggestions implicit in the comments of some test facilities, e.g., PC Test at 4, and CCS at 1, there is absolute no evidence in the record of this proceeding to suggest that manufacturer's test facilities lack credibility today and/or that subjecting manufacturer's test facilities to any mandatory accreditation requirement would provide any public interest benefit.

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listed labs are not performing quality EMC testing. Before burdening the test facility industry with a reregulatory program of accreditation, far more evidence of a need for such government mandated accreditation must be developed.

Nor is the argument favoring accreditation to "protect" American consumers from less scrupulous foreign testing facilities any more persuasive.²⁰ Rank speculation at best, such arguments fail to recognize that nearly half of the currently FCC listed facilities are located on foreign soil; that many such facilities are owned by, or affiliated with, domestic manufacturers; and that the long-standing results of such facilities' performance over the years are a substantial part of the FCC's findings of competence that have justified the level of confidence in the computer manufacturing community leading to the

²⁰ See, e.g., Motorola at 5; CCS at 1; Elite at 2; Retliffe at 2-3

proposed Declaration of Conformity program.²¹ Ultimately such protectionist comments must be rejected.

Indeed, as many commenters pointed out, and contrary to the suggestion of a few parties favoring NVLAP accreditation, a mandatory lab accreditation program would put the United States at odds with most of its major trading partners. Neither the EU nor Japan currently imposes mandatory accreditation on laboratories providing Declaration of Conformity type testing. Adopting such a requirement would result in the type of international disharmony and create unnecessary tensions within the global marketplace that this proceeding is designed to avoid.

2. Mandatory Accreditation will unduly burden the Industry with unnecessary bottleneck costs and delays.

Far more persuasive are those comments recognizing that a mandatory accreditation program will increase the cost and time associated with testing, replacing the FCC's certification

²¹ Anticipating the argument of ITI and others that a mandatory accreditation process will appropriately be viewed as a trade barrier to foreign manufactured products, some proponents of such a requirement assume that NIST will enter into mutual recognition agreements with foreign-based accrediting bodies to allow offshore labs to be accredited by their home equivalents of NIST. See, e.g., A2LA at 1-2; CCL at 4-5; CCS at 1; ACIL at 1; Of course there is no basis for such assumption in the record. Moreover, such course would be effectively abrogating to NIST the responsibility for determining which labs would be authorized to participate in the FCC's equipment authorization program. ITI would strongly oppose such an approach.

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bottleneck with a lab accreditation bottleneck of equal or even greater proportions." As Sony observed, "NVLAP accreditation is extremely burdensome and costly. The fee structure is complex, and . . . coordination for offshore manufacturers will be extremely difficult and time consuming." (Sony at 5). Spirit Technologies properly noted, "the present regulations and the proposed DOC process with its pre-certification testing are both premised on the presumption that if manufacturers and suppliers are not closely controlled they will indiscriminately violate the Commission's technical standards. . . . The Commission should reverse this presumption, i.e., if a company certifies that its product is within the Commission's technical standards, then that self-certification should be respected as true and correct unless the Commission has reason to expect otherwise . . . with appropriate penalties for false or negligent information."

In ITI's view, this is clearly "a solution in search of a problem." The Commission has no reason to believe that the hundreds of laboratories currently performing certification testing -- and any new labs that may be developed in response to the continued growth of the digital devices industry spurred by this deregulating proceeding -- are not capable of continuing to perform the tests that they have performed for more than a

²³ See, e.g., Apple at 2,4; AT&T 4-6; CCITL at 3; Compaq at 7; CompTIA at 4; Hewlett-Packard at 3; Intel at 2; IBM at 8; Unisys at 4-5; EIA/CEG at 4.

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decade. There is simply no basis for burdening this industry with the cost, expense and general nuisance associated with a mandatory accreditation program. To the extent that accreditation is deemed to add value to an particular laboratory -- i.e., that accreditation establishes that a lab is better qualified than one that is not accredited -- positive marketplace forces will create the appropriate incentives, without government intervention, to achieve those benefits.

C. Requiring Authorization of Modular Components and Labelling of Modular Computers will increase the effectiveness of the FCC's Rules.

Probably the most controversial part of the Commission's proposals are those intended to apply the technical requirements and marketing rules more directly to computers sold by point-of-sale "manufacturers"/"assemblers". ITI supported the concept of authorizing Modular Components, defined more expansively, and to allow the marketing without further testing of Modular Computers, i.e., those computers assembled entirely of modular components. Several others, e.g., Hewlett Packard, CTIA, Intel, IBM, provided similar support. As Hewlett Packard appropriately noted at 4), while "system compliance is more than the simple sum of the parts . . . the Commission's proposal for retail channel PC assembly has merit because it would increase

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To The Commission)

**COMMENTS OF THE
INFORMATION TECHNOLOGY INDUSTRY COUNCIL**

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June 5, 1995

BEFORE THE
Federal Communications Commission
WASHINGTON, DC 20026

In the Matter of)
)
Amendment of Parts 2 and 15 of)
the Commission's Rules to)
Deregulate the Equipment) ET Docket No, 95-19
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Summary of Positions

The Information Technology Industry Council ("ITI"), by its attorneys and pursuant to section 1.415 of the Commission's rules, hereby comments on the several important issues raised by the Commission in its Notice of Proposed Rulemaking (FCC 95-46, released February 7, 1995) (the "NPRM") in the above-captioned proceeding. For the reasons summarized below, ITI strongly endorses the proposed equipment authorization program:

- A. The Supplier's Declaration of Conformity program is a reasonable balance of regulatory and marketplace interests and should be expeditiously substituted for the current certification requirements.
- B. It is a reasonable requirement that can be readily implemented both by manufacturers and by modular component suppliers, and therefore will be enforceable against both wholesale manufacturers and retail marketers of personal computers.
- C. It will allow re-allocation of FCC resources to the post marketing enforcement programs.
- D. It will assist consumers by lowering costs, putting technology into their hands sooner by

substantially improving time to market for personal computers; this will be accomplished without affecting the industry's excellent record of compliance or otherwise increasing the already extremely small likelihood of interference.

However, certain changes should be made to the proposal:

- A. The Commission should not mandate any test facility accreditation; at most, it should require test facilities performing measurements for products subject to a Declaration of Conformance equipment authorization to file basic "qualifying" information with the agency, as they have in performing certification measurements.
- B. The Supplier's Declaration of Conformity program should be applied equally and enforced where experience suggests difficulties are likely to arise. The Commission should therefore impose compliance requirements on all "modular components" (which ITI defines expansively) that are sold to consumers at retail, and should impose labelling requirements on "modular computers" assembled by retailers entirely from modular components, thereby allowing for an enforceable regulation at both the wholesale computer manufacture and retail computer integration levels.
- C. A new simplified labelling program should be adopted both for products subject to the Declaration of Conformity program and for the retail integrator/manufacturer of modular computers.
- D. The Commission must strengthen and encourage enforcement efforts and enhance its consumer education programs so that FCC compliance becomes a consumer issue, thereby allowing the marketplace to supplement those enforcement efforts by discriminating purchase of FCC compliant devices.

ITI does propose one change in the procedures outlined in the NPRM for the Declaration of Conformity program. The Commission has proposed that the Declaration of Conformity and associated test report must be submitted within fourteen days after receipt of a request from the FCC. This can be an onerous deadline for manufacturers when, as is often the case, the test reports are filed distantly from the responsible compliance officer or manager -- occasionally across the country, but often overseas. Adding the time that internal mail takes to reach that responsible officer, the potential that he or she may be out of the office for some period of time, and the time needed to put the package of materials together and return it to the FCC; it can be quickly demonstrated that fourteen days is simply not sufficient for reply. ITI therefore urges the Commission to provide a thirty day period for such return submissions.

B. Test Facility Accreditation Is Not Necessary.

The NPRM suggests that in lieu of the review of test reports associated with the certification process, some

⁹ (...continued)
of an EC mark, and similar efforts underway to develop a standardized mark for NAFTA recognition. Any logo adopted by the FCC should be sensitive to, and hopefully consistent with, such efforts.

form of independent accreditation¹⁰ may be appropriate for test facilities performing Declaration of Conformity testing. ITI does not believe that mandatory accreditation for test facilities is a necessary quid pro quo for lessening the filing burden on manufacturers of computers.

There is simply no evidence to suggest that independent or manufacturers' test facilities are not generally performing satisfactory tests or that there is a laboratory accreditation process that would reasonably and effectively improve such performance. In fact, the evidence is quite to the contrary. ITI notes, for example, that Verification testing is done by a large number of test facilities, none of whose work is "reviewed and approved" by the FCC. Yet Verification has been an extremely effective equipment authorization program for a multitude of products, without the need for an independent accreditation program to establish FCC confidence in the test facilities that are used to determine the compliance with FCC limits for a verified device.

Nor is it clear that NVLAP (or for that matter any other currently available accreditation program) will provide any greater level of confidence in the test results

¹⁰ To that end, the Commission has proposed use of the "National Voluntary Laboratory Accreditation Program" ("NVLAP") currently administered by the National Institute of Standards and Technology ("NIST").

that are obtained from such "accredited" labs. The number of labs that have been NVLAP approved is quite small by comparison to the number of independent and manufacturer sponsored test facilities that currently perform Class A and/or Class B device testing. Given the extremely small number of problems with reported results filed with the Commission to date, there is simply no basis for concluding that accreditation adds any substantial degree of confidence to the results reported.

On the other hand, there are numerous disadvantages to such a mandatory accreditation requirement. First, and foremost, is the bottleneck nature of such requirement, and the costs and delays on test facilities that would necessarily be imposed. NVLAP is a relatively time consuming and expensive process which, at least to date, has not been demonstrated to result in any better or higher quality test results.¹¹ Given the hundreds of test facilities that would be subject to such accreditation, it would be disastrous to create a monopoly (or even virtual oligopoly should several other accrediting bodies be developed) for accreditation that could force many excellent

¹¹ Indeed, given the very few test facilities that have achieved NVLAP approval compared to the multitude of facilities who regularly perform high quality FCC compliance testing without NVLAP accreditation, there is no basis for concluding that NVLAP accreditation provides a higher quality of test result.

test facilities out of business for lack of accrediting resources, and not for lack of quality by the test facilities in question.

Moreover, any "accreditation" requirement will be viewed by "off-shore" manufacturers as creating a serious trade barrier. NVLAP accreditation, for example, will require off-shore manufacturers either to obtain NIST approval (probably at substantial cost) for their off-shore test sites or to use (with substantial delays) domestic NIST-approved test facilities. Neither alternative will be viewed favorably, and this could lead to similar restrictions being imposed on domestic manufacturers desirous of selling devices into global markets. Thus, instead of promoting international harmonization for the benefit of domestic manufacturers, this approach could lead to the closing of many international markets.

This is not to say that accreditation is not valuable. But, as its name -- the National **Voluntary** Lab Accreditation Program -- implies, such accreditation should be a matter for each test facility to weigh and choose if, in its voluntary judgement, such accreditation will have benefit for it.¹² Just as consumer awareness of the

¹² Moreover, NVLAP is only one of several standards employed internationally, e.g., ISO Guide 25 or EN 45001, that may be used by a test facility as a guidepost for the quality of its resources, and over time, it is
(continued...)

Declaration of Conformity label will, over time, result in consumers viewing products that are not in compliance as less valuable or of lesser quality, so too, when accreditation is viewed as adding quality and value to a test facility, the manufacturing marketplace will demand such accreditation.

If the FCC continues to believe that some additional assurances are needed as to test facilities used to determine the compliance of personal computer products, then ITI believes that an alternative already exists for those test facilities that choose not to voluntarily obtain test facility accreditation from one of the nationally or internationally recognized accrediting bodies. The FCC's test facility registration program, already in use for test facilities providing certification and type acceptance testing, is a more than adequate vehicle for maintaining the degree of confidence that is currently held by the agency under the certification program.

Under Section 2.948(a)(2) of the Rules, any test facility that is used in tests for certification or

¹² (...continued)
likely that other accreditation processes and standards may be developed here or abroad that will be used by test facilities as a mark of competitively superior compliance testing.

notification applications¹³ must register with the agency, and at a minimum demonstrate its ability to perform tests in accordance with the ANSI C63.4 standard applicable to computing devices.¹⁴ Meeting the site attenuation requirements of ANSI C63.4 requires a substantial degree of electromagnetic compliance engineering expertise, both for personnel and for test equipment and the site. Thus, by applying this rule to test facilities used to determine compliance under a Declaration of Conformity, the FCC will have a reasonable level of assurance that the site and the personnel used in the testing are competent. Simply maintaining in place a program and requirement that has provided a reasonable confidence level is a far better approach than introducing an entirely new bureaucracy -- in the form of test facility accreditation -- into the Declaration of Conformity process.

¹³ Test sites used in verification testing must maintain similar information, but it need not be filed with the FCC. ITI does not believe that any additional filing requirements should be imposed on test facilities that do not intend to perform compliance testing for purposes of supporting a Declaration of Conformity.

¹⁴ ANSI C63.4 contains test facility requirements that, in general, provide some modicum of assurance as to the quality of the test facility. The Commission may want to solicit additional comments concerning any other information that should be included in a test site registration to assure that the test site possesses a reasonable level of competence to perform the required tests.

Equally important, though, through a vigorous post-marketing enforcement program, the FCC will be able to request and review the test reports generated by a substantial number of test facilities,¹⁵ including those operated by manufacturers¹⁶ and those operated by independent entrepreneurs. With those audits, the Commission will be able to review the work product of such test facilities and appropriately recommend¹⁷ any improvements or modifications in the test facilities and/or procedures utilized which, in the agency's expert view, are necessary to better achieve compliance with the regulations.

¹⁵ The current pre-marketing filing process is virtually toothless in its application to the point of sale integrators, while penalizing those manufacturers who regularly comply with the certification process with the time delays inherent in such a pre-marketing review. By relying more on a random enforcement mechanism applied to a Declaration of Conformity program, with which retailers can reasonably comply, some teeth can be put into the enforcement mechanism that is balanced on the entire industry, including both manufacturers and independent compliance testing facilities.

¹⁶ Because a manufacturer's test facility is part of its overall quality control program, and thus subject to a variety of different requirements that do not easily lend themselves to a standardization associated with accreditation, ITI has consistently opposed any accreditation program for a manufacturer's internal test facility.

¹⁷ While the Commission does not currently regulate test facilities directly, if in the future there is a determination that independent test facilities are not generally meeting the FCC's standards for quality testing, regulatory oversight in the form of enforcement mechanisms to require changes to facilities and/or procedures may be added.

This enforcement mechanism will, in ITI's view, be a far more effective tool in obtaining a higher quality of test results than a requirement for accreditation under a particular government-designed accreditation program.

C. The "Modular Computer" Authorization Program Should Be Adopted.

ITI is extremely encouraged by the proposal to require testing and approval (through the Declaration of Conformity program) of all CPU boards, power supplies and enclosures designed for use in personal computers and marketed directly to the public. However, in order to avoid future confusion and uncertainty as to whether a particular component is a CPU or a peripheral or a component, and thus subject to a different regulatory regime, ITI believes that a new term should be used -- Modular Component -- which would be defined as follows:

"Modular Component" means a subassembly that performs a specific function such as data storage and retrieval, mass storage, power supply, enclosure¹⁸, data display, or increasing clock speed or processing power and (1) that is intended for use in a personal computer and (2) sold to the public on a stand-alone basis or to a retailer for

¹⁸ While as a current matter, a requirement to test and determine the compliance of enclosures makes some sense, ITI hopes that over time the industry moves more toward controlling the sources of emissions and away from containment of emissions through the design of enclosures, etc. If emissions are controlled at the source, even an entirely plastic enclosure should be usable with any mix of compliant components.