

FCC MAIL SECTION

Federal Communications Commission

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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Revision of Part 2 of the Commission's Rules)
Relating to the Marketing and Authorization) ET Docket No. 94-45
of Radio Frequency Devices) RM-8125

REPORT AND ORDER

Adopted: February 3, 1997;

Released: February 12, 1997

By the Commission:

INTRODUCTION

1. By this action, the Commission is amending the marketing regulations and equipment authorization procedures that apply to radio frequency (RF) devices. Currently, these regulations generally prohibit the marketing and operation of an RF device unless the device has complied with the applicable FCC technical standards and equipment authorization procedures. The changes adopted herein will provide manufacturers greater flexibility in marketing their products by applying to all RF devices the same, less restrictive marketing regulations that now apply only to industrial, scientific and medical (ISM) devices and to certain types of digital devices.¹ In particular, the new rules will allow all RF devices in the development, design or preproduction stages to be advertised, displayed, and offered for sale to distributors and retailers prior to a demonstration of compliance with the applicable technical standards and compliance with the applicable equipment authorization procedure. The new rules will also eliminate the need for manufacturers to obtain from the Commission a developmental license or a special temporary authority to operate certain categories of products for compliance testing, demonstration at trade shows, or evaluation of performance and customer acceptability at the manufacturer's facilities or at a business, commercial, industrial, scientific or medical user's site during the product development stages. These changes will stimulate growth by decreasing the time it takes for a product to reach the marketplace and by permitting products to be developed on a cooperative basis by manufacturers and retailers.

¹ The amended rules adopted herein are set forth in Appendix B.

BACKGROUND

2. Subpart I of Part 2 of the Commission's rules contains regulations governing the marketing of RF devices.² These rules describe the conditions that must be met before an RF device may be marketed in the United States. Subpart J of Part 2 of the rules specifies the equipment authorization procedures that apply to RF devices.³ These rules describe the procedures that must be followed to obtain equipment authorization, the procedures used by the Commission to administer the equipment authorization program, and the responsibilities of manufacturers and importers under these procedures.

3. In the *Notice of Proposed Rule Making (Notice)* in this proceeding, the Commission proposed to amend the marketing rules and equipment authorization procedures in Subparts I and J of Part 2 of its rules.⁴ Specifically, in response to a Petition for Rule Making from the Consumer Electronics Group of the Electronic Industries Association (EIA/CEG)⁵ the Commission proposed a number of changes to consolidate and harmonize the marketing rules to allow all radio devices to be announced, advertized, displayed, activated at trade shows, and offered for sale prior to completion of the applicable equipment authorization requirements, provided that the prospective buyer is advised in writing that the products must comply with those requirements before delivery.⁶ The Commission also proposed several changes to the equipment authorization rules to resolve inconsistencies and to remove unnecessary restrictions. These changes were intended to assist industry by reducing the time it takes to introduce new products.

4. Comments and/or reply comments responding to the proposed changes to the marketing and equipment authorization rules were submitted by a number of parties.⁷ Generally,

² See 47 CFR §§ 2.801-2.815 (1995).

³ See 47 CFR §§ 2.901-2.1207 (1995).

⁴ See *Notice of Proposed Rule Making*, ET Docket No. 94-45, 9 FCC Rcd 2702 (1994).

⁵ The Electronics Industry Association Consumer Electronics Group has since become the Consumer Electronics Manufacturers Association (CEMA).

⁶ See *Notice* at para. 8-12.

⁷ A list of parties submitting comments and/or reply comments is shown in Appendix A. Several parties submitted comments addressing issues that are outside the scope of this proceeding and will, therefore, not be considered herein. In particular, International Business Machines Corporation (IBM) recommends that the Commission substitute a verification procedure for the certification process now applicable to personal computers and associated peripherals. See IBM comments at 1-2, 5-11. The Computer and Business Equipment Manufacturer's Association (CBEMA), now the Information Technology Council (ITI), similarly requests consideration of a "declaration" process for personal computers. See CBEMA comments at 7. The Commission addressed these issues in the *Report and Order* in ET Docket 95-19, adopted May 9, 1996, 61 FR 31044, June 19, 1996. General Electric Lighting (GEL) requests that the requirement that grantees report Class II permissive changes to the Commission

the comments are supportive of the Commission's efforts to harmonize and clarify its marketing and equipment authorization rules. The Commission also received numerous suggestions for improving or modifying these proposed rules. The issues raised in the comments are addressed in the following paragraphs.

MARKETING REGULATIONS

Existing Rules

5. In general, the current marketing regulations prohibit the marketing of RF devices prior to a demonstration that the device complies with the applicable technical standards and the completion of the applicable equipment authorization requirements.⁸ The regulations also provide several exemptions to this general rule. In particular, Section 2.806 permits certain digital devices to be: 1) announced and offered for sale prior to authorization; 2) operated for compliance testing; 3) operated for performance evaluation at the manufacturer's or at a user's site; 4) demonstrated at a trade show; and 5) tested for compliance at an end user's site after installation.⁹ In addition, Section 2.809 provides similar exemptions to the marketing rules for industrial, scientific, and medical (ISM) devices subject to the provisions in Part 18 of the rules.¹⁰ Further, Section 2.803 permits the advertising and display, but not activation, of products that require type acceptance, certification or notification prior to obtaining a grant of authorization as long as the advertising or display is accompanied by a notice that the equipment has not been authorized and may not be marketed until Commission authorization has been obtained.¹¹ However, Section 2.805, which addresses the marketing of devices that do not require a grant of equipment authorization to be issued by the Commission, *i.e.*, devices subject to authorization under the verification procedure, does not contain any provisions that permit advertising or

before a product can be marketed be deleted. *See* GEL comments at 2-3 and Alcatel Network Systems, Inc. (ANS) reply comments at 18. The Association for Maximum Service Television, Inc. (MSTV) requests that the Commission act on a Petition of Inquiry filed on October 4, 1989, concerning sources of interference to television broadcast reception. *See* MSTV comments at 4.

⁸ As defined in the rules, marketing includes sale or lease, offers for sale or lease (including advertising for sale or lease), and importation, shipment or distribution for the purpose of sale or lease or offering for sale or lease. *See* 47 CFR §§ 2.803 and 2.805 (1995). Currently, the equipment authorization procedures are: type acceptance, certification, notification, declaration of conformity, and verification. *See* 47 CFR Part 2, Subpart J (1995). The declaration of conformity is a new equipment authorization procedure implemented in the *Report and Order* in ET Docket 95-19, *supra*.

⁹ Various conditions attach to these exemptions to the marketing rules. *See* 47 CFR § 2.806 (1995).

¹⁰ *See* 47 CFR § 2.809 (1995). Additional exceptions are provided in 47 CFR §§ 2.811 and 2.813 (1995) for broadcast transmitters operating under Part 73 of the rules and for instructional television fixed transmitters operating under Subpart I of Part 74 of the rules.

¹¹ *See* 47 CFR § 2.803 (1995).

display before a product has been demonstrated to comply with the applicable standards.¹² The Commission's staff has, however, in an interpretation of the rules, permitted manufacturers of products subject to the marketing rules in Section 2.805 to display and advertise those products following the procedures in Section 2.803.¹³

Discussion

6. In the *Notice*, the Commission recognized concerns raised by the EIA/CEG and parties replying to its petition that the current marketing rules contain inconsistencies and unnecessary restrictions that are causing confusion for the electronics industry, with the result that equipment vendors are being denied opportunities to promote their products to potential customers. In considering this matter, the Commission also expressed concern regarding the possibility that significant interference and enforcement problems could result if non-compliant devices were sold or provided to the general public. The Commission therefore proposed a number of rule changes intended to provide for significant harmonization of the marketing rules and elimination of unnecessary restrictions, while at the same time addressing its concerns regarding interference and enforcement. These changes would:

- Permit the advertising and display of all RF devices, including those subject to the verification procedure, prior to completion of the equipment authorization requirements;
- Permit RF devices to be offered for sale, prior to completion of the equipment authorization requirements, to all parties other than the general public, *i.e.*, business, commercial, industrial, scientific, and medical users, provided: 1) the devices are in the conceptual, developmental, design or preproduction stage; 2) the prospective buyer is advised in writing at the time of announcement or offer for sale that the devices are subject to the Commission's rules; and 3) the equipment complies with the appropriate rules, including completion of the equipment authorization requirements, prior to delivery to the buyer or centers of distribution;
- Permit any RF device to be operated for compliance testing, demonstration at a trade show, or evaluation of product performance and determination of customer acceptability at the manufacturer's facilities or at a business, commercial, industrial, scientific or medical user's site during the development, design or preproduction stages;
- Require products which are advertised, displayed at trade shows or operated and evaluated at a customer's location prior to testing or authorization to be accompanied by a conspicuous notice warning that the product has not been authorized and may not be

¹² See 47 CFR § 2.805 (1995).

¹³ See letter of January 8, 1992, from Richard B. Engelman, Chief, Technical Standards Branch, Office of Engineering and Technology, FCC, to John M. Bianchi, Senior Engineer, Compliance Engineering, Toshiba America Consumer Products, Inc.

sold or leased until such authorization is obtained; and,

- Permit products subject to verification to be tested for compliance at the installation site of a business, commercial, industrial, scientific or medical user, provided the purchase or lease agreement includes a proviso that such a determination of compliance be made by the party responsible for verification of the equipment.

7. The Commission generally is adopting herein the proposals contained in the *Notice*, taking into account several minor modifications suggested by commenting parties. These new regulations will harmonize the marketing rules for all RF devices, remove certain inconsistencies in the existing rules, and eliminate unnecessary regulations. However, these changes to the regulations do not in any manner alter the Commission's longstanding prohibition against the sale or provision of equipment to the general public prior to a demonstration of compliance with the appropriate technical standards and authorization under the applicable equipment authorization procedure. The Commission continues to believe that it is unrealistic to permit consumer devices to be offered for sale to potentially millions of people and expect the delivery of the devices to be delayed while awaiting the Commission authorizations. The enforcement of such a program would be unmanageable. The Commission therefore believes that these amendments to the regulations will not result in an unacceptable risk of interference or enforcement problems due to the operation of non-compliant products. A discussion of each aspect of the new marketing rules is provided below.

Announcement and Offer for Sale

8. In the *Notice*, the Commission proposed to apply the marketing provisions in Section 2.803 of the rules, which permit advertising and display of products prior to completion of the equipment authorization requirements, to all RF devices, including those subject to the verification procedure.¹⁴ It further proposed to permit, prior to completion of the equipment authorization requirements, all RF devices to be offered for sale to business, commercial, industrial, scientific, and medical users, subject to certain conditions. These conditions are that: 1) the devices are in the conceptual, developmental, design or preproduction stage; 2) the prospective buyer is advised in writing at the time of announcement or offer for sale that the devices are subject to the Commission's rules; and 3) the equipment will comply with the appropriate rules, including completion of the equipment authorization requirements, prior to delivery to the buyer or to centers of distribution.¹⁵

¹⁴ See *Notice* at para. 8.

¹⁵ See *Notice* at Appendix B, § 2.803(d). The EIA/CEG petition requested that similar marketing to the general public be permitted. The Commission declined to advance this proposal in the *Notice* due to concerns about potential interference and enforcement problems. ANS, GEL, and EIA/CEG continue to support this original proposal in their comments, and MSTV opposes it. The Commission sees no new information presented in the comments that would cause it to reconsider its initial decision to exclude members of the general public from this proposal. See comments of ANS at 3 and GEL at 1, and reply comments of EIA/CEG at 4; MSTV comments at

9. *Comments.* The comments generally support the proposals to expand the rule permitting the advertising and display of products, prior to authorization, to encompass all RF devices¹⁶ and to permit RF devices to be offered for sale, but not delivered, to parties other than the general public prior to authorization.¹⁷ Ericsson Corporation (Ericsson) states that these proposals will protect the public by ensuring that 1) prospective purchasers are aware that certain items of equipment are not yet compliant with the Commission's rules; and 2) no RF device is delivered until it has been authorized. Uniden America Corporation (Uniden) states that the proposals in the *Notice* would allow for a more consistent policy on the marketing of RF devices. Itron, Inc. (Itron) adds that the prohibition against the offer for sale to the general public adequately addresses the Commission's concerns regarding interference and enforcement problems while simultaneously facilitating the marketing of RF products.¹⁸ The Association for Maximum Service Television, Inc. (MSTV) opposes the proposal to permit RF devices to be offered for sale prior to authorization, arguing that businesses that have pre-purchased equipment are unlikely to wait for months, or longer, for delivery pending resolution of technical problems.¹⁹ MSTV believes that this proposal will place manufacturers under intense pressure to deliver devices prior to Commission authorization.

10. The Computer and Business Equipment Manufacturer's Association (CBEMA) requests that the phrase "not to the general public" be clarified with regard to the methods through which announcements of pre-authorized equipment may be made to business or commercial users.²⁰ CBEMA assumes that the phrase was intended to describe the announcements and not the media through which these announcements are made. CBEMA believes that the target of the announcement or offer for sale, not the medium through which it is made, should be the determining factor in demonstrating that marketing is not being promoted to the general public. International Business Machines Corporation (IBM) and Northern Telecom Inc. (Northern Telecom) propose that the Commission further amend its rules to permit the sale

6 and reply comments at 6.

¹⁶ See, e.g., ANS comments at 4, reply comments at 5-7; AMSC Subsidiary Corporation (AMSC) comments at 4; AT&T Corporation comments at 1; CBEMA comments at 1; EIA/CEG comments at 3, reply comments at 2; Digital Microwave Corporation (DMC) comments at 1; Ericsson Corporation (Ericsson) comments at 2; MSTV comments at 2; National Association of Broadcasters (NAB) comments at 2-3; Northern Telecom Inc. (Northern Telecom) reply comments at 2; Mobile and Personal Communications Private Radio Section of the Telecommunications Industry Association (TIA) comments at 1-3; Uniden America Corporation (Uniden) comments at 1-2.

¹⁷ See, e.g., AMSC comments at 4, ANS comments at 5, CBEMA comments at 1, Ericsson comments at 1, IBM comments at 3, and Itron, Inc. (Itron) comments at 1.

¹⁸ See Itron comments at 1-2.

¹⁹ See MSTV comments at 6-7.

²⁰ See CBEMA comments at 4-5.

of prototype devices to a limited class of users for "beta" testing and for complementary product development of software and associated hardware products.²¹ IBM complains that the current rules effectively prohibit manufacturers from charging for prototypes they provide to product developers. It believes that permitting pre-authorization sales would permit direct recovery of the cost of its prototype units.

11. *Decision.* The Commission is adopting its proposal to allow all RF devices to be advertised, displayed and offered for sale prior to authorization.²² In addition to making the rules consistent for all RF devices, these provisions will assist industry efforts to introduce new products more promptly. The current rules already permit the announcement and offer for sale, prior to authorization, of digital devices subject to authorization under the verification procedure and of ISM devices under the same conditions proposed in the *Notice*,²³ and there have been no indications that these provisions have been abused by any manufacturer. In adopting its marketing rules in 1970, the Commission emphasized that its actions were designed to stop mass-marketed devices from reaching the general public before a grant of equipment authorization had been obtained.²⁴ It therefore rejected a request to permit RF devices to be sold, but not delivered, to the general public before a determination of compliance and authorization of the equipment. The revised rules the Commission is adopting herein continues this prohibition and thus will facilitate manufacturers' marketing efforts without increasing the possibility of harmful interference to other radio services. Further, the Commission does not agree with MSTV that manufacturers will feel pressure to deliver pre-purchased devices which have not been authorized by the Commission.

12. The Commission does not agree entirely with CBEMA that the target of the offer for sale, and not the medium through which the offer is made, should be the determining factor in demonstrating that marketing is not being promoted to the general public. Although the

²¹ See IBM comments at 3-5; Northern Telecom reply comments at 3. In "beta" testing, a manufacturer supplies to prospective customers products that are still in the development stage. This permits the manufacturer to determine potential customer interest in the product and to discover any potential problems with product design.

²² The rules are also being codified to include previous Commission decisions that permit: 1) conditional sales contracts between manufacturers and wholesalers and retailers, where delivery is contingent upon the equipment complying with the applicable Commission equipment authorization and technical requirements; and 2) agreements between parties to produce new products manufactured in accordance with designated specifications. See *Memorandum Opinion and Order* in GEN Docket No. 87-389, 6 FCC Rcd 1683 (1991) at para. 9.

²³ See 47 CFR §§ 2.806 and 2.809 (1995).

²⁴ See *Report and Order*, Docket No. 18426, 35 FR 7898, May 22, 1970, at para. 12. Since the implementation of these rules, the provisions of §§ 2.803, 2.806 and 2.809 (1995) permitting the advertising of non-authorized devices have been added. See *Memorandum, Opinion and Order*, RM-2573 and RM-2601, 58 FCC 2d 784; *Order Granting in Part Reconsideration*, Docket No. 20780, 45 FR 24154, April 9, 1980; *Report and Order*, Gen. Docket No. 81-463, 47 FR 13812, April 1, 1982; and *Third Report and Order*, GEN Docket No. 20718, 50 FR 36067, September 5, 1985.

Commission agrees that the actual party to whom the equipment is offered for sale or sold should be the final determining factor on whether equipment is properly marketed, it also notes that the type of audience reached by an advertiser is largely dependent on the medium through which the offer is made.²⁵ Thus, the responsible party must exercise due caution in both the selection of the medium and the presentation employed in the offer for sale. To provide additional clarity regarding the prohibition against marketing to the general public, the regulations will specifically prohibit the offer for sale of pre-authorized equipment to end users located in a residential environment and to any parties other than business, commercial, industrial, scientific or medical users.²⁶ To avoid confusion about whether an "announcement" for sale constitutes an actual offer for sale, the Commission is also removing the reference to announcements for sale.²⁷

13. The Commission does not agree with IBM and Northern Telecom that the rules should permit the pre-authorization sale of prototype devices for "beta" testing and for complementary product development of software and associated hardware products. In the event that a product was found not to comply with the appropriate standards after sale and delivery, it could be very difficult for the manufacturer to recover a product from the purchaser. Thus, permitting such sales could allow into the marketplace a significant number of products that have not been demonstrated to comply with the appropriate standards. In addition, providing these prototype products without concluding a sale permits other parties to develop software and hardware that will be marketed and used with the prototype products. Thus, prohibiting the sale of prototype devices should not present an unreasonable economic burden to equipment manufacturers. The Commission will not, therefore, permit the pre-authorization sale of prototype products for "beta" testing or for complementary product development of software and associated hardware products.

Operation Prior to Authorization

14. In the *Notice*, the Commission proposed to harmonize its equipment marketing rules by extending to all RF devices the current provisions that allow limited operation of digital devices and ISM devices before the equipment has been authorized.²⁸ Under this proposal, it would be permissible to operate RF devices that had not yet been authorized: 1) for compliance testing; 2) for demonstrations at trade shows; 3) for evaluation of product performance at the

²⁵ If a product were offered for sale in a business-oriented periodical but the sale was made to someone other than a business, commercial, industrial, scientific or medical users, *i.e.*, to the general public, the sale would be in violation of the regulation.

²⁶ This change to the regulation is consistent with other provisions being adopted herein, *e.g.*, the operation of pre-authorized products at a business, commercial, industrial, scientific or medical user's site, as discussed below. See § 2.803(d), (e)(3), (e)(5) and (f) in Appendix B.

²⁷ See § 2.803(c) in Appendix B.

²⁸ See 47 CFR §§ 2.806(c) and 2.809(c) (1995); *Notice* at para. 10-11.

manufacturer's facilities during the development, design or preproduction stages; and 4) for evaluation of product performance and customer acceptability at a business, commercial, industrial, scientific, or medical user's site during the development, design or preproduction stages.²⁹ The Commission indicated, however, that these types of operations would still be subject to any station licensing requirements currently specified under the rules and in 47 USC 301.³⁰

15. *Comments.* Most of the commenting parties support the proposal to allow limited operation of equipment prior to completion of the applicable equipment authorization requirements.³¹ For example, Alcatel Network Systems, Inc. (ANS) states that pre-compliance operation is necessary to determine empirically if an RF device will work as contemplated, to "de-bug" the device before it is sold, to ascertain customer acceptability, and to allow new products to be displayed at annual trade shows. Itron indicates that these proposals will enhance the ability of manufacturers to evaluate product performance and assess customer satisfaction. The Mobile and Personal Communications Private Radio Section of the Telecommunications Industry Association (TIA) believes the proposals to allow demonstrations at trade shows and evaluations for customer acceptability at a user's site is particularly important to industry. TIA states that it is important that pre-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 customers.

16. To address the possibility that the operation of untested, pre-authorized products could result in harmful interference to other radio services, some of the commenting parties suggest that additional limitations be placed on operations that take place prior to completion of the authorization requirements. For example, MSTV suggests that manufacturers be required to certify to the Commission that on-site testing is the only feasible means of determining compliance before undertaking delivery of an pre-authorized device to a customer's place of business.³² MSTV also recommends that testing of standard electronic office equipment, e.g., printers, should not be eligible for evaluation at a customer's site.³³ AT&T Corporation (AT&T) and CBEMA contend that allowing manufacturers to determine acceptability at a customer's site and limiting the devices eligible for such testing based on size or unique capability is likely to be ineffective in preventing the proliferation of devices that could cause potentially harmful

²⁹ See § 2.803(e) of the rules proposed in the *Notice*.

³⁰ The marketing of products prior to authorization is permitted under other provisions being adopted in § 2.803, e.g., § 2.803(b) and (d). It is not permitted under the operational provisions in § 2.803(e), as discussed in this paragraph.

³¹ See ANS comments at 5-6, reply comments at 9-10, 12-15; Itron comments at 2; NAB comments at 2-3; TIA comments at 2-4 and 6-7.

³² See MSTV comments at 8.

³³ See *id.* at 8.

interference because of the lack of specificity.³⁴ They argue that an excessive number of such devices could be placed with users. AT&T and CBEMA suggest that the Commission place a limit on the number of devices that can be operated prior to authorization, e.g., 200 units of any given model of equipment. They state that the Commission should also indicate that it will consider granting waivers of this numerical limit. AT&T also argues that the Commission should not permit the operation of intentional radiators at trade shows unless an experimental license has been obtained and also should not allow the evaluation of Class A digital devices at a customer's site.³⁵ AT&T, CBEMA and MSTV also argue that the Commission needs to provide a better distinction between business and residential sites.³⁶ They indicate that, because of the increase in telecommuting and individuals operating businesses in homes, the dividing line between business and residential sites is blurred and may no longer be a practical divider for the Commission to use for the marketing rules.

17. In reply comments, ANS opposes MSTV's proposal that manufacturers be required to certify to the Commission that on-site testing is the only feasible method of determining compliance, arguing that this additional requirement would not streamline the process, but would create a still more burdensome and bureaucratic process.³⁷ MSTV and ANS support AT&T and CBEMA's suggestion for a limit on the number of devices that can be placed in operation prior to authorization.³⁸ However, IBM opposes such a numerical limitation, maintaining that this would result in numerous waiver requests that would be an administrative burden both to the Commission and to industry.³⁹

18. Some of the comments reflect the belief that the proposed rules would still require that experimental licenses be obtained for pre-authorization operation of Part 15 devices. For example, EIA/CEG and ANS suggest exempting from further licensing those RF devices that will eventually be authorized under Part 15.⁴⁰ MSTV contends that the current regulations, which require an operator to obtain temporary or experimental authority before operating unlicensed Part 15 devices, are entirely appropriate. According to MSTV, licenses provide a mechanism for

³⁴ See AT&T comments at 5-6, reply comments at 4; CBEMA comments at 3-4.

³⁵ See AT&T comments at 2-4.

³⁶ See AT&T comments at 5; CBEMA comments at 4-5; MSTV comments at 8.

³⁷ See ANS reply comments at 15.

³⁸ See MSTV reply comments at 9; ANS reply comments at 12.

³⁹ See IBM reply comments at 4-5.

⁴⁰ See EIA/CEG comments at 5-6; ANS reply comments at 14. EIA/CEG maintains that § 2.803(e)(6), as proposed in the *Notice*, takes back the authority granted by the proposed 47 CFR § 2.803(e)(2). TIA believes that the proposal for evaluation at the customer's site eliminates all special temporary authorization (STA) requirements. See TIA comments at 3-4.

tracking potential sources of interference.⁴¹ AT&T proposes that the Commission require manufacturers to obtain an experimental license to operate an pre-authorized intentional radiator.⁴² However, EIA/CEG and Northern Telecom disagree, arguing that requiring an experimental license for Part 15 products operated at trade shows or exhibitions would defeat the streamlining and consistency of the marketing rules being sought in this rule making. EIA/CEG adds that AT&T does not offer any evidence that actual harm would occur. Northern Telecom anticipates that the large increase in the volume of experimental license applications would strain the Commission's resources.⁴³ EIA/CEG also asks that the Commission permit, prior to authorization, demonstrations of equipment at exhibitions other than trade shows.⁴⁴

19. *Decision.* The Commission believes that its original proposal regarding the operation of RF equipment prior to compliance with the equipment authorization requirements generally will provide an appropriate balance of the concerns raised. This plan will provide increased flexibility for manufacturers to develop products cooperatively with the customers while also maintaining sufficient control over the marketing of RF products to ensure that there will be no unacceptable risk of increased interference to other radio services. The Commission does not believe that the additional restrictions suggested by some commenting parties are necessary, including certification that on-site testing is the only feasible means of determining compliance or limits on the number of products that can be operated prior to authorization. The Commission concludes that it would be overly burdensome to insist that manufacturers certify that no other alternative is feasible for determining compliance other than at a customer's site. It also agrees with IBM that placing a limit on the number of products would add to the administrative burden for both industry and Government. However, the Commission concurs with AT&T, CBEMA and MSTV that a better distinction between business and residential sites should be made. Thus, the rules being adopted restrict operation at a user's site to non-residential locations, thereby excluding operation at businesses located within a residence. The rules also limit operation prior to completion of the equipment authorization requirements to products that are in the development, design or preproduction stages, and prohibit the marketing of products that are being evaluated under these circumstances. These restrictions will serve to limit the interference potential of products that will be operated under this provision. To further alleviate the concerns expressed by some of the commenting parties that the operation of products prior to authorization could result in interference to other radio services, the Commission is amending Section 2.803(e) to clarify that operation is only permitted on a non-interference basis.⁴⁵

⁴¹ See MSTV reply comments at 8.

⁴² See AT&T comments at 3.

⁴³ See EIA/CEG reply comments at 4; Northern Telecom reply comments at 2-4.

⁴⁴ See EIA/CEG comments at 8.

⁴⁵ See § 2.803(e)(9) in Appendix B.

20. As proposed in the *Notice*, the amended rules will specify that station licenses or operating licenses are still required for devices operating under rule sections which require such station licensing.⁴⁶ However, several categories of products, including equipment operating under Part 15 and some transmission systems operating under Part 95, do not require a station license. The Commission sees no justification for requiring a license to be obtained to operate these products for compliance testing, demonstrations, or evaluation of product performance, even if those products are still in the developmental stage, and is so amending its regulations.⁴⁷ This change to the regulations will result in a decrease in the number of applications for experimental and developmental licenses. In the case where a license is required for operation, the Commission would be able to issue a station license, a special temporary authority for the service in which the equipment would normally operate, or an experimental/developmental license obtained under Part 5 of the rules.

21. The Commission agrees with EIA/CEG that the ability to demonstrate products at a trade show should be expanded to include other types of exhibitions. It is concerned, however, about allowing unrestricted operation at any general "exhibition" without placing some limits on what that term might include. The Commission recognizes that residential environments, with their high density and widespread use of radio receivers, generally are the locations where interference is more likely to occur. Accordingly, the rules will permit the operation of an RF device prior to a demonstration of compliance or authorization at trade shows and at exhibitions which are conducted at business, commercial, industrial, scientific, or medical locations. However, under no circumstances may such demonstrations or exhibitions be conducted in residential environments.

Advisory Notice

22. In the *Notice*, the Commission proposed to require that products which, prior to testing or authorization, are advertised, displayed at trade shows or operated and evaluated at a customer's location, be accompanied by a conspicuous notice warning that the product has not been authorized and may not be marketed until such authorization is obtained.⁴⁸ The specific language proposed in the *Notice* for the disclaimer notice was:

This device has not been authorized as required by the rules of the Federal Communications Commission. This device is not, and may not be, offered for sale or

⁴⁶ As provided under the Communications Act of 1934, as amended, most radio frequency devices may not be operated without the required station licenses. See 47 USC 301. Further, most transmitters requiring licenses operate at substantial power levels and could cause significant interference problems if the transmitters were operated on frequencies used by existing licensed services.

⁴⁷ See § 2.803(e) in Appendix B. Any operation of these products remains subject to the requirement that no harmful interference be caused to other radio operations.

⁴⁸ See *Notice* at Appendix B, § 2.803(c), (e)(2) and (e)(4).

lease, or sold or leased, until authorization is obtained.

This proposed notice is essentially identical to the notice currently required under Section 2.803 of the rules for products that are advertised or displayed prior to a demonstration of compliance or authorization.

23. *Comments.* AT&T, CBEMA, and IBM argue that the proposed language for the advisory notice is ambiguous because it does not clearly apply to equipment subject to verification.⁴⁹ CBEMA suggests that the advisory language should be clarified by adding to the end of the proposed advisory notice the phrase "or compliance established, as required by the applicable requirements." IBM suggests that the advisory notice read: "This device has not demonstrated compliance with the radio frequency emissions standards established by the Federal Communications Commission. This device may not be sold, offered for sale, or delivered to the general public until compliance determination is complete and any necessary FCC authorization is obtained." EIA/CEG submits that the language contained in the proposed advisory notice appears to be inconsistent with other sales activity provisions proposed in the *Notice*, i.e., the proposals in Section 2.803(b) and (d) which, under certain conditions, permit announcement and offer for sale, but not delivery, prior to authorization, and recommends that the language be modified to eliminate these inconsistencies.⁵⁰ Finally, IBM suggests that an alternate notice should be permitted for the display and/or demonstration of a prototype of a product where the prototype has not been authorized but the final assembly version of the product has been authorized.⁵¹

24. *Decision.* The Commission does not agree with the commenting parties that the language in the proposed advisory notice is ambiguous for products subject to authorization under the verification procedure. Verification, and the new declaration of conformity, are equipment authorization procedures, even though a grant of equipment authorization is not issued by the Commission. Further, the Commission does not agree with IBM that the notice should also caution against delivery to the general public. Under certain limited conditions, delivery is permitted prior to authorization or a demonstration of compliance.⁵² Accordingly, the Commission is adopting the advisory language that was proposed in the *Notice*.

25. The Commission agrees with EIA/CEG that, under certain conditions, the language

⁴⁹ See AT&T comments at 4-5, CBEMA comments at 2, and IBM reply comments at 2-3.

⁵⁰ See EIA/CEG comments at 7, reply comments at 4-5. See also ANS comments at 4, reply comments at 9.

⁵¹ The example provided by IBM reads: "This is a prototype of an FCC compliant device. Use of this prototype is for demonstration or evaluation purposes only. This labelled prototype may not be sold to the general public."

⁵² See § 2.803(e)(5) and (f) in Appendix B.

in the advisory notice runs the risk of inconsistent construction with the provisions being adopted that permit marketing prior to authorization. Specifically, this language could conflict with the provisions permitting limited marketing to wholesalers and retailers or to certain business, commercial, industrial, scientific or medical users.⁵³ Accordingly, the rules governing these limited marketing provisions are being amended to clarify that this advisory notice is not required when these marketing conditions are met. Further, at their option manufacturers advertising products or displaying products at trade shows prior to authorization may add additional language to the advisory notice to describe these limited marketing provisions.

26. The Commission agrees with IBM that different language for the advisory notice is appropriate when the product being demonstrated or displayed is a prototype that is not authorized but the actual product being marketed is properly authorized. In many cases, manufacturers continue to use prototypes for display or demonstration purposes, even after obtaining authorization of the final product. If the prototype is consistent with the equipment that was authorized, the prototype may be labelled as authorized and could be marketed without a disclaimer notice. However, if the prototype is not consistent with the product that was authorized, it may not be displayed or marketed except under the conditions being adopted in this Report and Order, including any applicable condition for licensing. Accordingly, the Commission is adopting an alternate advisory notice to address the specific situation raised by IBM. The alternate language for such prototype devices will be "Prototype. Not for Sale." However, parties displaying prototypes of authorized products may use additional language, if desired.

On-site Verification

27. In the *Notice*, the Commission proposed to permit products subject to verification that are sold to business, commercial, industrial, scientific or medical users (but not to the general public) to be measured to demonstrate compliance at the customer's location after sale and installation, provided the purchase or lease agreement includes a proviso that such a determination of compliance be made and is the obligation of the party responsible for verification of the equipment.⁵⁴ Only MSTV specifically commented on this proposal, stating that the incidence of equipment failing post-sale, post-installation testing is likely to be low, and that the Commission should limit this rule to industrial, medical and scientific purchasers.⁵⁵ However, many of the comments of other parties addressing the proposal to permit operation prior to authorization, above, indirectly apply to this issue.⁵⁶

⁵³ See § 2.803(b), (d) and (f) in Appendix B.

⁵⁴ See *Notice* at Appendix B, § 2.803(f).

⁵⁵ See MSTV comments at 8-9.

⁵⁶ See, e.g., AT&T comments at 5-6, reply comments at 4; CBEMA comments at 3-5; MSTV comments at 8.

28. *Decision.* As indicated in the discussion above on operation prior to authorization, the Commission does not believe that further limitations to its marketing rules, including numerical limits, are needed. However, it concurs with the comments from AT&T, CBEMA and MSTV that there needs to be a better distinction between business and residential sites. Thus, the rules being adopted restrict operation at a business, commercial, industrial, scientific or medical user's site to non-residential locations. Further, the rules being adopted will limit such operation to products subject to authorization under the verification procedure, as proposed in the *Notice*. Currently, the products authorized under the verification procedure are digital devices other than personal computers and peripherals to personal computers, ISM devices other than consumer devices, broadcast receivers, and other Part 15 devices that are not expected to pose a significant interference risk.⁵⁷ Verified digital devices and ISM devices are already permitted to be measured to demonstrate compliance with the standards after installation, and there has been no indication that this provision has resulted in interference or other problems.⁵⁸ Thus, the Commission does not believe that the addition of other Part 15 devices already subject to authorization under the verification procedure would increase the risk of harmful interference being caused to other radio services. Accordingly, the Commission is amending the rules to permit products subject to verification to be sold to business, commercial, industrial, scientific or medical users, but not to other parties or to any user located in a residential environment, and measured for compliance at such customers' sites after installation, provided the purchase or lease agreement includes a proviso that such a determination of compliance be made and is the obligation of the party responsible for verification of the equipment.

Application of the Marketing Requirements to All RF Devices

29. In the *Notice*, the Commission proposed to apply the new, harmonized marketing provisions to all RF devices regardless of the rule part under which the devices operate. We also requested comments on whether it might be desirable to exclude devices subject to authorization under the type acceptance procedure from the scope of the proposed rule change.⁵⁹ EIA/CEG, Itron, TIA, IBM, AMSC Subsidiary Corporation (AMSC), and ANS state that the new rules should apply to all RF devices.⁶⁰ Itron points out that, by prohibiting the sale of RF products to the general public prior to their authorization, the proposed rules adequately address the potential for the creation of significant interference and enforcement problems that might be associated with any type of equipment. Northern Telecom adds that manufacturers have the same marketing needs for devices subject to authorization under type acceptance as they do for other devices.

⁵⁷ See 47 CFR §§ 15.101, 15.201(a), and 18.203 (1995).

⁵⁸ See 47 CFR §§ 2.806(b) and 2.809(b) (1995).

⁵⁹ EIA, in its petition, indicated that it would not object if the Commission excluded devices subject to authorization under the type acceptance procedure from the scope of the proposed rules.

⁶⁰ See comments of EIA/CEG at 4-5, Itron at 1; TIA at 4, IBM at 3; AMSC at 4; ANS at 3. See also reply comments of Northern Telecom at 3.

CBEMA supports applying the new marketing rules to all unintentional radiators.⁶¹ E. F. Johnson Company (E. F. Johnson), however, argues that the new rules, specifically those permitting the announcement and offer for sale, demonstrations at trade shows, and evaluation at the user's site prior to authorization, should not apply to devices subject to type acceptance since these devices operate in services where frequency use is highly coordinated.⁶² MSTV also opposes the application of the new rules to devices subject to type acceptance, noting that the Commission adopted different authorization procedures because of differences in the potential to cause harmful interference.⁶³

30. *Decision.* The Commission continues to believe that it is appropriate to apply the new marketing rules to all types of radio equipment. The regulations being adopted will provide maximum marketing flexibility to equipment manufacturers while limiting the potential for harmful interference to other radio services that could be caused from the operation of non-compliant products. As discussed above, various restrictions have been placed on when, where, and how products may be operated, advertised, displayed or marketed prior to testing or authorization. In addition, licenses from the Commission and frequency coordination will still be required in many cases before operation is permitted. The new marketing rules will not apply to consumer devices because it would not be realistic to permit consumer devices to be offered for sale to potentially millions of people who would then have to await Commission authorization prior to delivery of the devices. Therefore, no RF devices may be offered for sale to the general public prior to compliance with all of the standards, including the equipment authorization requirements. The Commission believes that all these restrictions are sufficient to alleviate the concerns expressed by E. F. Johnson and MSTV regarding any increased potential for harmful interference from type accepted devices. Accordingly, the new regulations are being applied to all radio frequency devices addressed under the rules, including type accepted devices.

Importation Rules

31. Under the current rules, radio frequency devices that have not been authorized may only be imported in limited quantities for testing and evaluation or demonstrations at industry trade shows. Ericsson and Northern Telecom suggest that devices being marketed or operated under the new rules being adopted in this Report and Order may be imported in unlimited quantities.⁶⁴ AT&T disagrees, arguing that the Commission did not intend to permit the

⁶¹ See CBEMA comments at 1.

⁶² See E. F. Johnson comments at 2-4, reply comments at 1-3.

⁶³ MSTV observes that type acceptance is a more stringent authorization procedure than notification, verification or a declaration of conformity. See MSTV reply comments at 7.

⁶⁴ See Ericsson comments at 4-5; Northern Telecom reply comments at 2-3. See 47 CFR § 2.1204 (1995).

importation of unlimited quantities of "non-compliant" devices for market acceptability testing.⁶⁵ It adds that the Commission, in the *Notice*, did not propose any change to the importation rules.

32. *Decision.* The Commission does not agree with Ericsson and Northern Telecom that Section 2.803 should be amended to remove the current restrictions on importation. Such a change would permit the importation of an unlimited number of products that have not been tested to demonstrate compliance with the standards or have not been authorized under the appropriate equipment authorization procedure. If such products were later found to be non-compliant with the standards, it might be impossible to recover them, with the result that significant interference problems could develop for other radio operations. The Commission therefore affirms that it is retaining the current regulations regarding the importation of RF products, as set forth in Part 2, Subpart K of the rules.⁶⁶ These regulations place strict limits on the number of pre-authorized products that can be imported for testing, evaluation, or display at trade shows. These importation limits, combined with the relaxation of the marketing rules, will still provide foreign manufacturers with sufficient flexibility to display and promote their products. The Commission is amending the new Section 2.803 of the rules to clarify that the importation conditions specified in Subpart K of Part 2 of the rules also apply to imported products.

EQUIPMENT AUTHORIZATION RULES

Discussion

33. In the *Notice*, the Commission proposed changes to the equipment authorization rules in Subpart J of Part 2 to resolve inconsistencies and remove unnecessary restrictions. These proposals addressed the modification of authorized devices, the definition of an electrically-identical product for which the trade name or model number is modified by the grantee, the retention of records for verified devices in the responsible party's files, and the submission to the Commission of data or samples for verified devices.⁶⁷ The Commission also proposed to modify the rules, for purposes of clarification, to state explicitly that, as with any request for authorization, an anti-drug abuse statement is required with requests for permissive changes.⁶⁸ It further proposed to amend the rules to indicate that proper labelling of a product is a condition of the grant of equipment authorization and that such labelling is required prior to marketing.⁶⁹

⁶⁵ See AT&T reply comments at footnote 8.

⁶⁶ See 47 CFR §§ 2.1201 *et seq.* (1995).

⁶⁷ See *Notice* at para. 14-18.

⁶⁸ See *Notice* at footnote 19.

⁶⁹ *Id.*

In addition, the Commission proposed to remove outdated regulations, such as references to type approval, which is no longer employed; to combine duplicative rules into single rule sections; and to correct erroneous rule citations.⁷⁰ These issues are addressed in the following paragraphs.

Modification of Authorized Devices

34. As indicated in the *Notice*, it has become a fairly common practice for RF devices, especially those intended for sale to the general public, to be modified by someone other than the grantee of the equipment authorization or, for verified products or products subject to a declaration of conformity, the manufacturer or importer. Except for products authorized under the certification procedure, the regulations specifically permit modifications to be performed by other parties provided the equipment continues to comply with the standards.⁷¹ However, according to the regulations the holder of a grant of notification or type acceptance remains responsible for ensuring that the equipment continues to comply with the appropriate standards, even if the equipment is modified by an independent party.⁷² For products subject to authorization under the verification procedure or under a declaration of conformity, the responsible party is the manufacturer, if the manufacturer is located within the U.S., or the importer, if the product is imported.⁷³ In the *Notice*, the Commission observed that it is not realistic to require the grantee or the manufacturer or importer to accept responsibility for ensuring that the equipment continues to comply with the standards when that product is modified by an independent party.⁷⁴ Similarly, it seems unreasonable to require the grantee, 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. In order to address this issue, the Commission proposed to specify that a party modifying an authorized product is responsible for ensuring that the modified product continues to comply with the applicable rules.⁷⁵ It further proposed that the party performing the modifications be required to

⁷⁰ *Id.*

⁷¹ Changes to a certified product made by any party other than the grantee requires that the party performing the modifications obtain a new grant of certification, thereby becoming the new responsible party. See 47 CFR § 2.1043(b)(3). Products authorized under the verification, notification or type acceptance procedures may be modified by independent parties under the procedures contained in 47 CFR §§ 2.953(d), 2.977, or 2.1001. Under the type acceptance procedure, modifications considered to be a Class II permissive change require the submission of measurement data to, and approval by, the Commission, and major modifications require new type acceptance. See 47 CFR § 2.1001(a) and (b)(3). Products authorized under the declaration of conformity procedure may also be modified by an independent party, but the party performing the modification becomes the new responsible party. See 47 CFR § 2.1073.

⁷² See 47 CFR § 2.909 (1995).

⁷³ *Id.*

⁷⁴ See *Notice* at para. 15.

⁷⁵ *Id.*

label the modified product with its name, address and telephone number to facilitate identification of the new responsible party.⁷⁶ In addition, the Commission proposed to require that the responsible party maintain copies of all records describing the product and demonstrating compliance with the appropriate standards.⁷⁷

35. *Comments.* IBM and TIA agree with our assessment in the *Notice* that it is not realistic to hold equipment manufacturers responsible for compliance once others have modified equipment.⁷⁸ National Association of Broadcasters (NAB) generally supports the proposals but is concerned that companies that routinely modify equipment may not have sufficient incentive to seek the proper authorization once a device is modified.⁷⁹ NAB urges the Commission to ensure that its regulations have sufficient "teeth" to act as a deterrent to those that would offer pre-authorized devices for sale. General Electric Lighting (GEL) also agrees with the proposed changes but cautions that the definition of the responsible party should be more precise. GEL points out that the rules permit a grantee to license or otherwise authorize a second party to manufacture or market the equipment covered by the responsible party's grant.⁸⁰ In order to avoid the situation where a purchaser of this equipment may inappropriately claim such an authorization, GEL and ANS request that the Commission require this licensing or authorization to be in writing.⁸¹ CBEMA and ANS oppose the proposal to require the modifying party to include additional information on the FCC Identifier label, i.e., the name, address and telephone number of the modifying party.⁸² They argue that this additional information is not consistent with the FCC identification program which does not require the name of the grantee, manufacturer or any other party; only the FCC Identifier is required. AT&T, with support from ANS, CBEMA, and IBM, indicates that these changes to the rules could be interpreted to require anyone modifying a device to obtain the original design drawings from the grantee, manufacturer or importer. AT&T requests that the requirement to retain the original design drawings apply only to those drawings regarding modifications and changes to the original product.⁸³

36. *Decision.* As proposed, the party performing the modifications will be responsible

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ See IBM comments at footnote 3; TIA/CEG comments at 5-6.

⁷⁹ See NAB comments at 3.

⁸⁰ See 47 CFR § 2.929(b) (1995).

⁸¹ See GEL comments at 1-2; ANS reply comments at 17.

⁸² See CBEMA comments at 5-6; ANS reply comments at 17.

⁸³ See AT&T comments at 9; ANS comments at 6, reply comments at 16; CBEMA comments at 6; IBM reply comments at 3.

for ensuring continued compliance with the regulations and will be required to relabel the product with its name, address and telephone number in order to identify clearly the new responsible party. As stated in the *Notice*, it is not realistic to hold a manufacturer responsible for the compliance of its equipment if that equipment has been modified by some other party. As long as the name, address and telephone number of the modifying party is on the modified product, the Commission will be able to identify the responsible party. We believe that there are also sufficient "teeth" under the current rules to ensure that a company that modifies products will obtain a new grant of authorization, when required.⁸⁴ The marketing of equipment modified by any party who fails to perform these necessary steps would violate the marketing rules.⁸⁵ Such violations could subject the modifying party to monetary and equipment forfeitures.⁸⁶ The Commission does not agree with ANS and GEL that the rules need to be amended to require that any licensing or authorization by a grantee to a second party to manufacture a product be in writing. A party that modifies an authorized product, even a modification falling within the purview of a Class I permissive change⁸⁷, becomes responsible for the compliance of that product, unless there is a specific authorization from the grantee (or manufacturer or importer for verified products or products authorized under a declaration of conformity) permitting the modifications, *i.e.*, the grantee of the product continues to accept responsibility for the modified product. If that authorization is not in writing, the party performing the modifications does so at its own risk of becoming responsible for the modified product.

37. As indicated, ANS and CBEMA object to the Commission requiring the modifying party to label the modified product with its name, address and telephone number. Such labelling will not be required if the modifying party obtains a new equipment authorization.⁸⁸ For equipment authorized under the certification procedure, changes or modifications performed by a party other than the grantee already require a new application for, and grant of, certification.⁸⁹ Accordingly, the proposals in this proceeding that the party modifying a product place its name, address and telephone number on the product would not apply to certified products or to any product for which a new authorization is obtained by the party performing the modifications. The Commission is amending its proposed rules to reflect this qualification. Finally, the Commission agrees with the comments from ANS, AT&T, CBEMA and IBM that parties modifying products should not be required to obtain the original design drawings from the grantee, manufacturer or importer. Rather, these parties will be required to retain only those

⁸⁴ See, *e.g.*, 47 CFR §§ 2.1001(b)(1)-(b)(3) and 2.1043(b)(3) (1995).

⁸⁵ See 47 CFR § 2.803 (1995) and 47 USC 302(b).

⁸⁶ See 47 USC §§ 501-510.

⁸⁷ See 47 CFR § 2.1001(b)(1).

⁸⁸ The FCC Identifier is required only on products authorized under the type acceptance, certification or notification procedure. See 47 CFR §§ 2.925 and 2.926 (1995).

⁸⁹ See 47 CFR § 2.1043(b)(3) (1995).

drawings regarding the modifications or changes made to the original product. The Commission is amending Section 2.938 of its rules to incorporate this change.

Electrically Identical Equipment

38. In the *Notice*, the Commission proposed to clarify the use of the term "electrically identical" in the rule that permits a grantee to change the model/type numbers and trade names of electrically identical products without notifying the Commission.⁹⁰ Specifically, it proposed to clarify that equipment would be deemed electrically identical if no changes are made to the equipment, as authorized, or if any modifications or changes to that equipment could be treated as Class I permissive changes under the type acceptance or certification rules.⁹¹ The commenting parties who addressed this proposal supported it.⁹² Accordingly, the Commission is adopting the clarification of the term "electrically identical," as proposed.

Retention of Records for Verified Devices

39. In the *Notice*, the Commission proposed to specify in the rules the information that must be retained for an authorization under verification. The information retention requirements currently are spelled out in a Public Notice.⁹³ ANS and IBM support the proposed record retention rules.⁹⁴ IBM asserts that complete documentation is an essential part of the Commission's compliance scheme. AT&T opposes this proposal, arguing that specifying the information to be retained would be counterproductive because Commission action would be needed to modify the required information.⁹⁵ AT&T adds that under the current rules the information retention requirements could be readily changed under authority delegated to the Chief, Office of Engineering and Technology.⁹⁶

⁹⁰ See *Notice* at para. 16.

⁹¹ See 47 CFR §§ 2.1001 and 2.1043 (1995).

⁹² See comments of E. F. Johnson at 4; ANS at 7; and Itron at 2. GEL requested an expansion of the class of "electrically identical" equipment in order to eliminate the requirement that grantees obtain authorization for Class II permissive changes; however, the Commission finds that request to be outside the scope of this proceeding.

⁹³ See Public Notice, 53 Fed. Reg. 5988, February 29, 1988.

⁹⁴ See ANS comments at 7; IBM reply comments at 6-7.

⁹⁵ See AT&T comments at 7-8.

⁹⁶ The record retention requirements are also specified in a measurement procedure, American National Standard Institute (ANSI) C63.4-1992, entitled "Methods of Measurement of Radio-Noise Emissions from Low-Voltage Electrical and Electronic Equipment in the Range of 9 kHz to 40 GHz," published by the Institute of Electrical and Electronics Engineers, Inc. on July 17, 1992, as document number SH15180. This procedure is incorporated into the rules by reference. See 47 CFR § 15.31(a) (1995).

40. In order to ensure that all parties retain the appropriate records for verified equipment, the Commission believes that these information retention requirements should be set forth clearly in the rules. As indicated in the *Notice*, the information proposed to be included in the rules is the same verification information that has been required since February 29, 1988. Currently, the measurement procedure in which the record retention requirements are described is incorporated by reference into the regulations along with the publication date of the procedure.⁹⁷ Incorporation into the rules of a new version of that measurement procedure thus would be subject to the procedures specified under the Administrative Procedure Act.⁹⁸ The Commission also notes that this measurement procedure only applies to products operated under Part 15. However, some products operated under Part 18 of the rules are also subject to authorization under the verification procedure. The record retention requirements for verified Part 18 devices are described only in the Public Notice mentioned above. Accordingly, the Commission concludes that the information retention requirements should be specified in the regulations and is amending the rules as proposed.

41. As an additional point, CBEMA, with agreement from AT&T, also requests that verified devices be excluded from inclusion under the record retention requirements in 47 CFR Section 2.938, adding that the record retention requirements for verified devices are already addressed in Section 2.955.⁹⁹ The Commission sees no apparent inconsistencies or additional information gathering or storage requirements from including verified products under Section 2.938 as well as under Section 2.955. Any product that meets the record retention requirements in Section 2.955 will also comply with the requirements in Section 2.938. These two sections are not necessarily duplicative. Section 2.938 contains a general requirement to maintain copies of the design drawings, test procedures and measurement data, whereas Section 2.955 contains detailed requirements as to the exact records that must be maintained for products authorized under the verification procedure.¹⁰⁰ For equipment authorization procedures where a grant of authorization is issued by the Commission, similar detailed information requirements are specified under the application filing requirements.¹⁰¹ However, no application for a grant of equipment authorization is submitted for verified equipment. Rather, this information is retained by the responsible party. The Commission, however, is amending Section 2.938(c) to reflect the existing requirements regarding how long records must be retained for different equipment

⁹⁷ See 47 CFR § 15.31(a).

⁹⁸ See 5 U.S.C. § 553 and 47 CFR §§ 0.31 and 0.241.

⁹⁹ See CBEMA comments at 5; AT&T reply comments at 6.

¹⁰⁰ See 47 CFR § 2.955. The record retention requirements for verified products are similar to the record retention requirement for products subject to authorization under a Declaration of Conformity. See 47 CFR § 2.1075.

¹⁰¹ See, for example, 47 CFR § 2.983.

authorization procedures.¹⁰²

Other Issues

42. The Commission also proposed two additional clarifications to the rules: 1) as with any request for authorization, an anti-drug abuse statement is required with requests for permissive changes; and 2) proper labelling of a product is a condition of the grant of equipment authorization and such labelling is required prior to marketing.¹⁰³ In addition, the Commission proposed to remove outdated regulations, such as references to type approval, which is no longer employed; to combine duplicative rules into single rule sections; and to correct erroneous rule citations. No comments were filed in response to these proposals. The Commission continues to believe that these changes are desirable and adopts them as proposed in the *Notice*.

43. Several other rule sections in Part 2 contain errors. These sections, and the changes being made, are:

Section 2.925(b)(4) and (f): remove the colon (":") from between the label "FCC ID" and the FCC Identifier, consistent with Section 2.925(a) and (b).

Section 2.929(b)(1): clarify that the "name and number" referenced in the rules refers to the FCC Identifier.

Section 2.933(a) and (c): clarify that a change in identification requiring a new application for equipment authorization refers to a change in the FCC Identifier.

Section 2.936(a): clarify the specific sections referencing a grant of equipment authorization.

Section 2.941(a): clarify that only information regarding applications for a grant of equipment authorization are readily available from the Commission.

Section 2.954: delete the reference to type approval.

Section 2.955(a)(3)(vii): indicate that drawings may be substituted for photographs, consistent with current policy.

Sections 2.983(h) and 2.1033(b)(10): delete these paragraphs referencing the EBS decoder rules which are now addressed in Part 11 of the rules.

¹⁰² See the record retention requirements in 47 CFR §§ 2.955(b), 2.975(g), and 2.1075(c) (1995) for products subject to authorization under notification, verification or a declaration of conformity.

¹⁰³ See *Notice* at footnote 19.

Since these changes to the rules involve minor or merely technical amendments, public notice and comment on these changes are unnecessary pursuant to Section 553(b)(3)(B) of the Administrative Procedure Act.¹⁰⁴

ADMINISTRATIVE

44. Final Regulatory Flexibility Analysis. As required by Section 603 of the Regulatory Flexibility Act, 5 U.S.C. § 603 ("RFA"), an Initial Regulatory Flexibility Analysis ("IRFA") was incorporated into the *Notice of Proposed Rule Making* ("Notice"), in ET Docket No. 94-45.¹⁰⁵ The Commission sought written public comments on the proposals in the *Notice*, including the IRFA. The Commission's Final Regulatory Flexibility Analysis ("FRFA") in this Report and Order conforms to the RFA, as amended by the Contract With America Advancement Act of 1996 (CWAAA), Pub. L. No. 104-121, 110 Stat. 847 (1996).¹⁰⁶

45. *Need For and Objective of the Rules.* Our objectives are to facilitate the marketing and early use of radio frequency (RF) devices by permitting vendors, manufacturers, and importers to market such devices prior to a demonstration of compliance with applicable technical standards and equipment authorization procedures, and to promote efficiency and equity in our rules by requiring that any party that modifies an RF device be responsible for ensuring compliance with applicable technical standards. This action will also facilitate the retrieval of RF device test records by the Commission, remove outdated regulations, and correct existing errors and ambiguities in the rules.

46. *Summary of Significant Issues Raised by Public Comments in Response to the IRFA.* No comments were submitted in direct response to the IRFA. However, Alcatel Network Systems, Inc. (ANS), AT&T Corp., Computer and Business Equipment Manufacturer's Association (CBEMA) and International Business Machines Corp. (IBM) suggested changes to our proposed reporting and record keeping requirements for modified RF devices. ANS and CBEMA oppose the proposal that a party modifying equipment be required to label the modified equipment with additional information, *i.e.*, the name, address and telephone number of the party performing the modifications. AT&T, with support from ANS, CBEMA and IBM, requests that the party modifying the equipment not be required to obtain and retain the original equipment design drawings.

47. *Description and Estimate of the Number of Small Entities to Which the Rules Will Apply.* For the purposes of this Order, the RFA defines a "small business" to be the same as a

¹⁰⁴ See 5 USC 553(b).

¹⁰⁵ See 9 FCC Rcd 2702 (1994).

¹⁰⁶ Subtitle II of the CWAAA is "The Small Business Regulatory Enforcement Fairness Act of 1996" (SBREFA), codified at 5 U.S.C. § 601 *et seq.*

"small business concern" under the Small Business Act, 15 U.S.C. § 632, unless the Commission has developed one or more definitions that are appropriate to its activities.¹⁰⁷ Under the Small Business Act, a "small business concern" is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA).¹⁰⁸ These new rules will apply to computer manufacturers and other RF device manufacturers as well as those entities that modify and market RF equipment.

(a) *Computer Manufacturers:* According to SBA regulations, a computer manufacturer must have 1,000 or fewer employees in order to qualify as a small entity.¹⁰⁹ Census Bureau data indicates that there are 716 firms that manufacture electronic computers and of those, 659 have fewer than 500 employees and qualify as small entities.¹¹⁰ The remaining 57 firms have 500 or more employees; however, we are unable to determine how many of those have fewer than 1,000 employees and therefore also qualify as small entities under the SBA definition.

(b) *RF Equipment Manufacturers:* The Commission has not developed a definition of small entities applicable to RF equipment manufacturers. Therefore, we will utilize the SBA definition applicable to manufacturers of Radio and Television Broadcasting and Communications Equipment. According to the SBA's regulations, an RF equipment manufacturer must have 750 or fewer employees in order to qualify as a small business concern.¹¹¹ Census Bureau data indicates that there are 858 U.S. companies that manufacture radio and television broadcasting and communications equipment, and that 778 of these firms have fewer than 750 employees and would be classified as small entities.¹¹² The Census Bureau category is very broad, and specific figures are not available as to how many of these firms are manufacturers of RF devices. However, we believe that many of them may qualify as small entities.

48. The Commission has not developed a definition of small entities applicable to services which are related specifically to RF devices. Therefore, the applicable definition of small entity is the definition under the Small Business Administration (SBA) rules applicable

¹⁰⁷ See 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 5 U.S.C. § 632).

¹⁰⁸ See 15 U.S.C. § 632.

¹⁰⁹ See 13 CFR § 121.201, (SIC) code 3571.

¹¹⁰ See U.S. Small Business Administration 1995 Economic Census Industry and Enterprise Report, Table 3, SIC Code 3571, (Bureau of the Census data adapted by the Office of Advocacy of the U.S. Small Business Administration).

¹¹¹ See 13 C.F.R. § 121.201, (SIC) Code 3663.

¹¹² See U.S. Dept. of Commerce, 1992 Census of Transportation, Communications and Utilities (issued May 1995), SIC category 3663.