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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

MEMORANDUM OPINION AND ORDER
(Proceeding Terminated)

Adopted: May 14, 1998

Released: May 28, 1998

By the Commission:

INTRODUCTION

1. In response to a Petition for Reconsideration and Clarification in this proceeding filed by Ericsson, Inc. ("Ericsson"), the Commission is amending the importation regulations that apply to transmitters operating in the authorized radio services. Specifically, it is relaxing the rules regarding the number of radio frequency (RF) devices that can be imported, prior to receiving a grant of equipment authorization, for the purpose of testing and evaluation or demonstration at industry trade shows. Currently, only 200 units may be imported for testing and evaluation and only ten units may be imported for demonstrations at trade shows unless specific written authorization is first obtained from the Chief, Compliance Division, Compliance and Information Bureau.¹ For imported devices designed solely to be operated under the provisions of a license issued by the Commission within one of the allocated radio services, these limits are being increased to 2000 units for devices imported for testing and evaluation and to 200 units for devices imported for demonstrations at trade shows. The Commission believes that this increase will provide marketing parity between products that are domestically manufactured and those that are imported. The Commission also is granting in part and denying in part the request by Ericsson to eliminate the licensing requirements for manufacturers that operate transmitters for evaluation or demonstration at trade shows. Manufacturers operating equipment for demonstration or evaluation purposes will be permitted to operate the equipment under the authority of a local FCC licensed service provider on the condition that the licensee gives the manufacturer permission to operate in this manner and accepts responsibility for the operation of the equipment. Otherwise, the manufacturer would be required to obtain a special temporary authorization (STA) or an experimental license.

¹ See 47 CFR § 2.1204(a)(3) and (a)(4).

BACKGROUND

2. On February 3, 1997, the Commission adopted a *Report and Order (Order)* in this proceeding.² Among other changes, this *Order* amended the marketing rules to permit operation of unlicensed RF devices prior to obtaining an equipment authorization or making a determination of compliance with the applicable rules.³ These products may be operated for any of the following purposes: 1) compliance testing; 2) demonstrations at a trade show; 3) demonstrations at an exhibition conducted at a business, commercial, industrial, scientific, or medical location, but excluding locations in a residential environment; 4) evaluation of product performance and determination of customer acceptability at the manufacturer's facilities during developmental, design or pre-production states; and 5) evaluation of product performance and determination of customer acceptability where customer acceptability of an RF device cannot be determined at the manufacturer's facilities because of size or unique capability of the device, provided the device is operated at a business, commercial, industrial, scientific, or medical user's site, but not at a residential site, during the development, design or pre-production stages.⁴ Devices that operate in an authorized service will continue to require a license prior to operation.⁵

3. In this proceeding, Ericsson and Northern Telecom Inc. suggested that devices being marketed or operated under the new rules should be permitted to be imported in unlimited quantities.⁶ The Commission disagreed. Under the current rules, RF devices that have not been authorized may only be imported in limited quantities for testing and evaluation or for demonstrations at industry trade shows.⁷ The Commission stated that such a change would permit the importation of an unlimited number of products that have not been tested to demonstrate compliance with the standards. It added that if such imported products were later found to be non-compliant with the rules, it might be impossible to recover them, with the result that significant interference problems could develop for other radio operations. Accordingly, the

² See *Report and Order* in ET Docket No. 94-45, 12 FCC Rcd 4533 (1997).

³ For certain radio operations, such as products operated under 47 CFR Parts 15 and 18 and some transmitters operated under 47 CFR Part 95, no license is required for operation. See 47 CFR § 2.803(e)(7). Further, such operation is limited to products that are designed to comply with, and to the best of the responsible party's knowledge will comply upon testing with, all applicable standards. See 47 CFR § 2.803(g).

⁴ See 47 CFR § 2.803(e).

⁵ Compliance testing of equipment designed for use in the authorized radio services does not normally require that the transmitter be connected to an antenna. If an antenna is not connected to the transmitter, a license is not required.

⁶ See *Order* at para. 31-32.

⁷ Unless prior written approval is obtained, up to 200 units may be imported for testing and evaluation to determine compliance with the rules, and up to 10 units may be imported for demonstrations at industry trade shows. See 47 CFR § 2.1204(a)(3) and (a)(4).

Commission retained its existing regulations regarding the importation of RF products.⁸ It added that the relaxation of the marketing rules would still provide foreign manufacturers with sufficient flexibility to display and promote their products. The Commission also added a reminder in 47 CFR § 2.803(h) that the importation conditions continue to apply to imported products.

PETITION FOR RECONSIDERATION

4. On April 7, 1997, Ericsson filed its Petition for Reconsideration and Clarification.⁹ Ericsson requests that the Commission reconsider its quantity limits on RF equipment that is imported for testing and evaluation or for demonstration at trade shows. Ericsson states that 47 CFR § 2.803(e) was crafted to provide all manufacturers, both domestic and foreign, with greater flexibility to test, evaluate and demonstrate RF devices prior to receiving a grant of equipment authorization in order to allow the manufacturers to promote their products in a more competitive and technologically advancing marketplace. Ericsson argues that removing the limits placed on imported devices, *i.e.*, eliminating 47 CFR §§ 2.803(h), 2.1204(a)(3) and 2.1204(a)(4), is consistent with the liberalized marketing rules adopted in the *Order* and would ensure that there was no unreasonable discrimination against imported equipment that could be viewed as a barrier to trade. Ericsson indicates that manufacturers in today's competitive marketplace are being requested by numerous licensees and prospective operators, who have won licenses in auctions, to demonstrate products. Thus, Ericsson believes that the limitations on a manufacturer's ability to import an unlimited number of devices for product demonstrations at customer locations or trade shows unfairly restricts the ability of foreign manufacturers to compete with domestic manufacturers. Ericsson adds that, should the Commission choose not to eliminate the limits on imported devices, it should exempt certain categories of imported equipment from those limits, namely base station transceivers and portable/mobile devices used in the Cellular Radiotelephone Service and the Personal Communications Services (PCS) under 47 CFR Parts 22 and 24, respectively, since these products have an excellent record of compliance, are manufactured by companies that take the Commission's rules very seriously, and can be easily traced to a responsible party.

5. Ericsson also requests that the Commission eliminate its requirement that manufacturers obtain a license to operate transmitters for demonstrations at trade shows, demonstrations at an exhibition, or evaluation of product performance. Ericsson states that requiring manufacturers to continue to obtain special temporary authorizations (STA's) or experimental licenses before operating the equipment negates the benefits the changes to the rules were intended to provide.¹⁰ Ericsson adds that the requirement to obtain a license before operating should apply only to entities that intend to provide services using the product rather

⁸ See 47 CFR Subpart K.

⁹ This petition was placed on Public Notice on April 21, 1997.

¹⁰ The Commission clarified in the *Order* that a special temporary authorization or experimental license would not be required for products that normally do not require a license to operate, *e.g.*, RF devices operating under Part 15 of the rules and some transmitters operating under Part 95 of the rules. See *Order* at para. 20.

than to entities, like manufacturers, that only intend to demonstrate the products at trade shows, etc.

6. Comments on Ericsson's petition were filed by Siemens Business Communication Systems, Inc. ("SBCS") on May 9, 1997. SBCS states that if the Commission's concern was to minimize potential interference from non-compliant prototype devices, it would limit the number of prototype devices produced domestically. It adds that with the auctioning of "thousands" of PCS and other wireless licenses, the number of potential operators has "exploded" and is likely to increase as additional auctions are held. However, the existing limits on importation do not allow foreign manufacturers to adequately demonstrate their prototype products to this growing number of providers. For example, SBCS indicates that each of the MTA operators for a PCS system typically requests 50 or more prototype handsets to perform their internal evaluation, quickly exceeding the Commission's 200 unit limit on importation. Accordingly, SBCS requests that the Commission at least increase the import limits to 2,000 units for products imported for testing and evaluation and to 50 units for products imported for display and operation at trade shows. SBCS also agrees with Ericsson that the licensing requirements should not apply to demonstrations at trade shows as this is an unnecessary regulatory burden. SBCS adds that manufacturers can not always plan their customer tests with sufficient notice to obtain an STA or experimental license on a timely basis.

7. A late filed comment was received and accepted from Bosch Telecom GMBH ("Bosch") on June 13, 1997.¹¹ Bosch states that the restrictions on the number of devices imported for testing and evaluation or for demonstrations will distort competition and create unreasonable discrimination that could be viewed as a barrier to trade. Bosch adds that it is necessary for manufacturers to be able to demonstrate their products concurrently to multiple potential customers throughout the U.S. Further, as a result of a desire to ensure low barriers to entry within the U.S. market and to promote free trade within the U.S., Bosch believes that foreign manufacturers have traditionally had unique incentives to manufacture equipment that meets the Commission's technical standards. It adds that the importation limits are unreasonably discriminatory and anti-competitive, and unfairly deny American consumers full access to global available technologies, are beyond the scope of this proceeding, and serve no legitimate regulatory purpose.

DECISION

8. Import limits. Part 2 of the Commission's rules generally prohibits the importation and marketing of equipment before it has been authorized as required. However, up to 200 units may be imported routinely, prior to equipment authorization, for the purpose of testing and evaluation, and up to ten units may be imported routinely for demonstration at a trade show. Higher quantities may be imported if specific written authorization is obtained from the Commission.¹² In the *Order*, the Commission chose not to amend its rules limiting the importation of RF devices

¹¹ Bosch entitled its filing as "Ex Parte Comments."

¹² See 47 CFR §§ 2.1204(a)(3) and 2.1204(a)(4).

because of the difficulties sometimes associated with identifying the party that is responsible for complying with the rules, *e.g.*, the importer.¹³ Our concern is the potential for harmful interference that could be caused to other users of the spectrum should large quantities of non-compliant equipment be imported and operated. With many products, especially low-power, unlicensed, consumer devices, the name of the responsible party may not be on the product. Thus, it may not be possible to trace a product to a specific importer or to have a product be recalled should it later be found to be a source of harmful interference.

9. We continue to believe that limits on the number of unauthorized devices that may be imported routinely for testing and evaluation or display at a trade show are necessary. These limits do not pose a significant barrier to foreign trade. In most cases, the current limits permit foreign manufacturers to routinely import sufficient quantities of unauthorized equipment to meet legitimate needs for testing and evaluation and display at trade shows. Further, manufacturers can generally obtain permission to import as many units as they need by filing a brief and simple request. It is expected that the staff would be able to respond to such requests in a prompt manner.

10. Ericsson has made a compelling argument that the current limits are inappropriate for equipment intended for use in authorized radio services where a license to operate is required to be obtained from the Commission. In some authorized radio services, such as the Personal Communications Services, there are several hundred licensees, each of which may be interested in evaluating small quantities of sample base and mobile units before making larger purchases. This could result in frequent requests for permission to import a higher number of such units. In order to reduce this administrative burden, we are amending the rules to allow the routine importation of up to 2000 units for test and evaluation and up to 200 units for display at trade shows, but only for equipment intended to be operated in an authorized radio service and under a Commission-issued license.¹⁴ There is little risk that such equipment will be marketed or placed into permanent operation before it has been authorized as required because the equipment will remain within the control of either the manufacturer or a licensee. Further, such equipment normally is labelled with the name of the manufacturer, facilitating identification of the responsible party.

11. Licensing requirements. The Communications Act requires that a station license be obtained prior to the operation of an RF transmitter.¹⁵ A product operated by a manufacturer has the potential to cause interference to licensed services already operating in the vicinity. This potential is minimized by careful coordination of the operating frequency, power and location of the transmitter with other licensed services. This coordination is assured through the current rules that require STA's or experimental licenses. If the coordination is not performed, there is a significant risk that operation of the device will cause interference to existing spectrum users.

¹³ See 47 CFR § 2.909.

¹⁴ The numbers being adopted were suggested by Ericsson in an *ex parte* meeting with the staff on June 26, 1997.

¹⁵ See Section 301 of the Communications Act of 1934, as amended, 47 USC § 301.

The source of such interference would be difficult to locate. Accordingly, the Commission does not agree with Ericsson that the requirement to obtain a license, where currently required, should be eliminated for equipment manufacturers.¹⁶

12. STA's and experimental licenses are available to equipment manufacturers. The Commission recognizes that a manufacturer may not always have sufficient time to obtain such a license from the Commission for a product demonstration. We believe that these timing problems will be ameliorated upon the completion of the proceeding in ET Docket No. 96-256 which will streamline Part 5 of the rules and permit us to expedite the granting of STA's.¹⁷ In the interim, and as an alternative to obtaining a Part 5 license, such timing problems can be eliminated by permitting the equipment manufacturer to operate under the authority of a local licensed service provider. The operating parameters for this license have already been addressed. If the manufacturer operates equipment that complies with these existing parameters, there would be no increase in the potential for interference to other spectrum users. Accordingly, the Commission is amending its regulations to permit a manufacturer to operate its product for demonstration or evaluation purposes under the authority of a local FCC licensed service provider. The licensee must grant permission to the manufacturer to operate in this manner. Further, the licensee would continue to remain responsible for complying with all of the operating conditions and requirements associated with its license.

PROCEDURAL MATTERS

13. Final Regulatory Flexibility Analysis. As required by Section 603 of the Regulatory Flexibility Act (RFA), 5 U.S.C. § 603, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rule Making (Notice)* in ET 94-45. The Commission sought written Comments on the proposals in the *Notice* including the IRFA. No commenting parties raised issues specifically in response to the IRFA and a Final Regulatory Flexibility Analysis (FRFA) as included in the *Report and Order* in this proceeding. The rules adopted in this Memorandum Opinion and Order (MO&O) provide clarification and further relaxation of the marketing regulations adopted in the *Report and Order*. We therefore certify, pursuant to Section 605(b) of the RFA, that the rules adopted in this MO&O do not have a significant economic impact on a substantial number of small entities.

14. The Commission will send a copy of this final certification, along with this Memorandum Opinion and Order, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. § 605(b). This certification will also be published in the Federal Register.

ORDERING CLAUSES

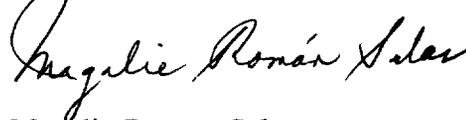
¹⁶ For some radio operations, there is no requirement that a station license be obtained. See, e.g., 47 CFR Parts 15, 18, and 95. See, also, *Order* at para. 20.

¹⁷ See *Notice of Proposed Rule Making* in ET Docket No. 96-256, 11 FCC Rcd 20130 (1996).

15. IT IS ORDERED that the Petition for Reconsideration and Clarification filed by Ericsson, Inc., IS GRANTED, as described above, and IS DENIED in all other respects. Further, IT IS ORDERED that Part 2 of the Commission's Rules and Regulations IS AMENDED as shown in the attached Appendix, effective 60 days from the date of publication of this amendment in the Federal Register. IT IS FURTHER ORDERED that this proceeding is TERMINATED. This action is taken pursuant to the authority contained in Sections 4(i), 301, 302, 303(f), (g), (l), and (r) of the Communications Act of 1934, as amended, 47 USC §§ 154(i), 301, 302, 303(f), (g), (l), and (r),

16. For further information regarding this Memorandum Opinion and Order, contact the Office of Engineering and Technology, John Reed, at (202) 418-2455.

FEDERAL COMMUNICATIONS COMMISSION



Magalie Roman Salas
Secretary

APPENDIX

Title 47 of the Code of Federal Regulations, Part 2, is amended as follows:

1. The authority citation for Part 2 continues to read as follows:

AUTHORITY: Sec. 4, 302, 303, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154, 302, 303 and 307, unless otherwise noted.

2. Section 2.803 is amended by revising paragraph (e)(7) to read as follows:

Section 2.803 Marketing of radio frequency devices prior to equipment authorization.

* * * * *

(e)(7) The provisions of paragraphs (e)(1), (e)(2), (e)(3), (e)(4), and (e)(5) of this section do not eliminate any requirements for station licenses for products that normally require a license to operate, as specified elsewhere in this chapter.

(i) Manufacturers should note that station licenses are not required for some products, *e.g.*, products operating under Part 15 of this chapter and certain products operating under Part 95 of this chapter.

(ii) Instead of obtaining a special temporary authorization or an experimental license, a manufacturer may operate its product for demonstration or evaluation purposes under the authority of a local FCC licensed service provider. However, the licensee must grant permission to the manufacturer to operate in this manner. Further, the licensee continues to remain responsible for complying with all of the operating conditions and requirements associated with its license.

* * * * *

3. Section 2.1204 is amended by revising paragraphs (a)(3) and (a)(4) to read as follows:

Section 2.1204 Import conditions.

* * * * *

(a)(3) The radio frequency device is being imported in limited quantities for testing and evaluation to determine compliance with the FCC Rules and Regulations or suitability for marketing. The devices will not be offered for sale or marketed. The phrase "limited quantities," in this context means:

(i) 2000 or fewer units, provided the product is designed solely for operation within one of the Commission's authorized radio services for which an operating license is required to be issued by the Commission; or

(ii) 200 or fewer units for all other products.

(iii) Prior to importation of a greater number of units than shown above, written approval must be obtained from the Chief, Enforcement Division, Compliance and Information Bureau, FCC.

(iv) Distinctly different models of a product and separate generations of a particular model under development are considered to be separate devices.

(a)(4) The radio frequency device is being imported in limited quantities for demonstration at industry trade shows and the device will not be offered for sale or marketed. The phrase "limited quantities," in this context means:

(i) 200 or fewer units, provided the product is designed solely for operation within one of the Commission's authorized radio services for which an operating license is required to be issued by the Commission; or

(ii) 10 or fewer units for all other products.

(iii) Prior to importation of a greater number of units than shown above, written approval must be obtained from the Chief, Enforcement Division, Compliance and Information Bureau, FCC.

(iv) Distinctly different models of a product and separate generations of a particular model under development are considered to be separate devices.

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