ITS Intertek Testing Services

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

July 27, 1998

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of 1998 Biennial Regulatory Review -- Amendment of Parts 2, 25, and 68 of the Commission's Rules to Further Streamline the Equipment Authorization Process for Radio Frequency Equipment, Modify the Equipment Authorization Process for Telephone Terminal Equipment, Implement Mutual Recognition Agreements and Begin Implementation of the Global Mobile Personal Communications by Satellite (GMPCS) Arrangements	))))))))))))	GEN Docket No. 98-68

COMMENTS of Intertek Testing Services NA Inc.

Intertek Testing Services NA Inc. hereby submits these comments in response to the FCC's Notice of Proposed Rulemaking ("NPRM") in the matter of GEN Docket No. 98-68, FCC 98-62.

Intertek Testing Services, Ltd. is the largest product and commodities testing organization in the world. The company provides product testing and certification, performance testing, and quality management systems registration for: manufacturers, distributors, retailers, commodity producers, and government agencies. ITS has over 7,500 employees in its network of 176 laboratories and 342 offices located in 66 countries.

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Intertek Testing Services comments follow the outline of the NPRM referencing the relevant paragraphs and numbers and responding to areas where the FCC seeks input. In addition, Intertek Testing Services suggests amendments to Appendix A which are also discussed in our Comments where appropriate.

Paragraph 11.

Intertek Testing Services applauds the FCC's efforts to streamline equipment authorization and approval which would result in faster market access for short-lived technologies and better service to manufacturers and end users of such technologies. We encourage the FCC to continue to ensure the public welfare and protection with regard to telecommunications equipment and services. Intertek Testing Services believes that without the Commission's willingness to fulfill its responsibility in enforcement and oversight while allowing deregulation and privatization of equipment authorization, the integrity of any adopted system would be compromised.

Paragraph 12.

Intertek Testing Services supports the use of ISO/IEC Guide 65 as the primary qualification criteria for Telecommunications Certification Bodies ("TCBs"). However, the Guide must be applied in its entirety so that such qualification can be accepted, both domestically and internationally. A partial application of the Guide could only lead to the preclusion of the universal acceptance of such qualification.

Paragraph 13.

Intertek Testing Services believes that it is extremely important that a TCB have the technical expertise that will support its ability to judge the compliance of the product with the applicable regulations. Intertek Testing Services agrees with the intent of the proposed new section 2.962(b)(3) requiring ISO/IEC Guide 25 compliance, with the modifications noted in Appendix A.

Paragraph 14.

Intertek Testing Services believes that in addition to the use of NVCASE for accreditation of certification bodies, that existing private sector organizations should not be precluded from playing a role in the accreditation of certification bodies. We believe that NIST should, in accordance with its procedures, allow other appropriately qualified accrediting bodies to accredit TCBs as certification bodies and testing laboratories, as stated in new section 2.960(a) with the modifications noted in Appendix A.

Intertek Testing Services believes that there currently exist many public and private sector accrediting organizations that are alternatives NVCASE, and therefor there is no need for the Commission to establish and administer an additional program for designating TCBs.

Paragraph 15.

Intertek Testing Services believes that additional language should be added to the FCC rules to insure due-process. Amended wording is provided in new section 2.960(g) in Appendix A.

Intertek Testing Services believes that post market sampling and surveillance will be an effective means of monitoring the performance of TCBs.

Intertek Testing Services recommends that the Commission provide a clear definition of "independence". Furthermore, we request that the Commission uphold the principle of "independence" of a TCB as outlined in Guide 65. A workable definition of "independence" as applied to TCBs may be adopted from the language of the European Directives regarding the Notified Body, a counterpart to the proposed Telecommunications Certification Body:

A Notified Body, its director and the staff responsible for carrying out the tasks for which the notified body has been designated shall not be a designer, manufacturer, supplier or installer of terminal equipment, or a network operator or a service provider, nor the authorized representative of any of such parties. They shall not become directly involved in the design, construction, marketing or maintenance of terminal equipment, nor represent the parties engaged in these activities.[1]

Paragraph 16.

Intertek Testing Services supports the use of a negotiated MRA framework as a means of addressing designation of foreign laboratories, provided there is clear balance in the requirements imposed by both parties. Intertek Testing Services requests the Commission to clarify that accreditation of TCBs in the U.S. will be performed by U.S. accreditation bodies, both for the

[1] Official Journal of the European Communities L 74. 12.3.98, p. 20

purposes of product certification and testing to the Commission's rules in the U.S., and to the European rules in the European Community. A U.S. TCB should not have to undergo accreditation by a European body in order to test and certify products to be imported in Europe according to European standards.

Paragraph 17.

Subparagraph (b). Intertek Testing Services believes that the Commission must select a uniform method by which authorized private certification bodies are identified once those organizations have fulfilled all of the appropriate requirements to be a TCB. In addition, we suggest that the Commission provide a current list of all such authorized bodies in both electronic and hard copy media. This information should be accessible to: manufacturers, consumers, the general public, foreign customs officials, and foreign regulatory agencies.

TCB grants of certification must be exactly equivalent to FCC grants under this proposal. Traditionally manufacturers have relied on an FCC grant to facilitate export of their products to foreign markets. Foreign customs officials and other regulators recognize and accept such FCC grants as a matter of course. The TCB grant should state that the TCB is FCC designated, and the FCC should publish a letter on FCC letterhead listing current TCBs for use by the exporter.

Subparagraph (f). Intertek Testing Services would like to clarify its understanding that "subcontractors" may include manufacturers' own testing facilities as provided for under the

provisions of ISO/IEC Guide 65. In addition that compliance with the principles of ISO/IEC Guide 25 is the basis for the acceptance of such test data.

Subparagraph (h). Intertek Testing Services encourages the FCC not only to develop electronic options for equipment registration under Part 68 (which are nonexistent at the current time), but to ensure that information requested for Part 68 is standardized and in line with that which is requested for Part 15. FCC's resources must be committed to the maintenance of a common database in order to warrant uniformity of information submitted by various certification bodies, both domestic and international. The information requested must include only the minimum necessary for the Commission to adjudicate complaints that may arise.

Furthermore, limiting the amount of information submitted to the FCC common data base to the above items would save storage space without compromising the integrity of information kept on file. Intertek Testing Services is committed to work with the Commission, other industry trade associations, and any other interested party to develop the format for this information template.

Paragraph 18.

Although Intertek Testing Services recognizes that the FCC will retain control over the formulation of minimum technical requirements based on existing industry standards, and over the enforcement related to certification, we urge the Commission to grant the fullest authority possible to private sector certification bodies within the bounds of existing regulations.

Additionally, in paragraph 18 of the NPRM, Intertek Testing Services disagrees with the Commission on the proposed limitation that "TCBs will not be empowered to authorize transfers of control of grants of certification." Currently under FCC Part 68, an applicant may submit a simple re-registration application that effectively allows a second party to have a grant based on a first party previous grant's data submitted to the FCC. The second party (the applicant of the re-registration filing) needs only to present a letter of authorization from the first party, along with some supporting exhibits (Exhibit H (labeling), Exhibit G2 (Continuing Compliance) and Exhibit J (User's Manual)). The FCC then grants a new FCC registration number to this second party, effectively authorizing a transfer of control of the grant of certification. This function, currently provided by the FCC under a minimum set of procedures, should be allowed to be performed by the TCB, since the re-registration application is not only one of the many processes by which registration is granted in FCC Part 68, but is by far the simplest one.

In general, when proposing to limit the power of a TCB, Intertek Testing Services would caution the Commission to review the proposed authority of the TCBs in light of the responsibilities placed on them. If TCBs are only allowed to perform a small number of limited administrative duties without real responsibility or authority, we could run into the undesirable situation of having an insufficient number of TCBs.

Paragraph 19.

Intertek Testing Services encourages the FCC to develop a joint public-private sector working group to arrive at consensus opinions that would include: public and private sector accrediting

organizations, TCBs, laboratories and manufacturers that would make the transition to private sector certification as efficient as possible. A group that is interested in participating in such a working group is the United States Council of EMC Laboratories (USCEL).

Additionally, we suggest that the 24-month period identified in this provision be considered a maximum, and that the Commission should maintain the flexibility to reduce the duration of the transition as appropriate.

Paragraph 20.

Intertek Testing Services believes that the Commission has the duty to maintain the capability to evaluate telecommunications equipment as they see fit. However, Intertek Testing Services believes that the certification system must reside solely within the private sector, and that any delay in removing the option to have certification performed directly by the Commission will not only create confusion, but will potentially develop into a two-tier system that places less value on certifications performed by TCBs. Intertek Testing Services requests that the Commission probatively foster competition in order to encourage the development of the most efficient and cost-effective private sector certification system.

We agree with the perceived impression that an FCC issued certificate may seem to be more "authoritative." We believe that this situation clearly mandates the need for the certificate issued by a TCB to be totally equivalent to that of the Commission. We further believe, that this speaks clearly to the Commission exiting the certification process in a minimum amount of time.

Paragraph 22.

Intertek Testing Services disagrees with the Commission decision to distinguish between "certification" and "registration". The two terms refer to the same process. We suggest that the FCC expand the definition of the term "certification" in Part 2 to include "registration" under Part 68, in order to be consistent not only across various Parts of the Code of Federal Regulations, but also with international terminology.

With regard to "whether and to what extent Commission supervision" of certification bodies is necessary, Intertek Testing Services believes that the FCC must step up their very important role of enforcing compliance to FCC rules. Intertek Testing Services encourages the Commission to increase beyond what has been the traditional role of the Commission, to ensure the public welfare and protection with regard to telecommunications equipment and services. Intertek Testing Services believes that without the Commission's willingness to fulfill the responsibility of enforcement and oversight while allowing deregulation and privatization of equipment authorization, the integrity of any adopted system would be compromised.

Intertek Testing Services strongly supports Commissioner Susan Ness in her call for reallocation of resources within the FCC to actively focus on enforcement, in the Commissioner's separate statement accompanying the FCC Report and Order relating to ET Docket 97-94:

I strongly support reducing unnecessary paperwork and delays. But we must not diminish our commitment to prevent harmful interference . . . Whatever our equipment authorization

procedures, there will remain a danger that some products will not be designed to minimize the danger of interference. And there will also remain a problem of individuals who construct or operate transmitting devices with disregard for our rules.

Our responsibility to prevent harmful interference can only be fulfilled if we are prepared to follow through with credible enforcement. I sincerely hope that agency resources that are freed up . . . will be redirected to enforcement activities, so that instances of harmful interference can be swiftly removed.[2]

Paragraph 24.

Intertek Testing Services strongly supports the use of a common format among certification bodies for the transmission of information required to be archived with the Commission regarding the common database. It is imperative that the test report and test data be in a uniform format to standardize the process and to assist the regulators, manufacturers, test labs and users in searching for the proper information. In addition we believe that the certification document issued by the TCB should be in the same format as the current FCC Form 731(a) to facilitate access into markets traditionally accepting FCC grants as evidence of compliance.

In order to foster common understanding and the development of a uniform format, certification bodies should be required to participate in industry activities such as those of the TIA's TR41.9

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[2] The Commission Report and Order, ET Docket 97-94, The Commission 98-58, Separate Statement of Commissioner Susan Ness, released
April 16, 1998.

Terminal Attachment Programs Subcommittee[3] whose scope is to provide a consensus forum for the understanding and technical interpretation of Part 68 requirements.

Paragraph 31.

Intertek Testing Services requests that, pursuant to Section 7(3.1) of the U.S.-EU MRA, the U.S. government ensure an active role for U.S. private sector organizations. The JSC membership should include manufacturers, testing laboratories and TCBs.

CONCLUSION

Intertek Testing Services strongly supports the Commission's efforts in this NPRM and in the process of privatizing and streamlining the equipment authorization process with the goal of eliminating delays in market access for the telecommunications and information technology industry. However, Intertek Testing Services believes that it is crucial for the Commission to redirect resources to enforcement in order to preserve the integrity and the long-term viability of the proposed system.

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3 TR41.9 is a subcommittee of TIA Engineering Committee TR41 *User Premises Telecommunications Requirements.* TR41.9's charter includes "responding to the The Commission technical concerns on subject matters relating to C.F.R. Part 68 and terminal attachment and advising the The Commission on technical requirements in the regulatory environment. The Subcommittee initiates proposals and monitors new requirements and additions to Part 68 and the Canadian Standard CS-03 to ensure continued harmonization. Harmonization is achieved by coordinating activities with members of the Technical Task Force of the Canadian Terminal Attachment Program Advisory committee (TAPAC). The Subcommittee produces and maintains appropriate documentation relating to test procedures and compliance evaluations associated with the harmonized Part 68 requirements. This includes addenda and revisions to the test procedures, as required, whenever the The Commission adopts changes to the Part 68 rules." *(Ref. TIA TR41.9 Scope Statement)*

Respectfully submitted,

Intertek Testing Services NA Inc.

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July 27, 1998

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APPENDIX A (As Amended by Intertek Testing Ser~~DOCKET FILE COPY ORIGINAL~~

PROPOSED RULE CHANGES

Title 47 of the Code of Federal Regulations Parts 2, is proposed to be amended as follows:

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

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

2. A new Section 2.960 is added to read as follows:

Section 2.960 *Designation of Telecommunication Certification Bodies (TCBs)*

Parties other than the Commission may be designated to ~~approve~~ certify equipment. These parties will be referred to as "Telecommunication Certification Bodies" or TCBs. Certification of equipment by a TCB must be based on an application with the all the information specified in this part. The TCB must process the application to determine whether the product meets the FCC requirements and must issue a written grant of equipment authorization.

(a) The Federal Communications Commission is the Designating Authority for designating TCBs in the United States to approve equipment subject to certification. The FCC will require TCBs to be accredited by qualified accrediting organizations operating to the requirements of Guide 61 and Guide 58 as appropriate. ~~the National Institute of Standards and Technology (NIST) under its National Voluntary Conformity Assessment Evaluation (NVCASE) program to show compliance with the Commission's qualification criteria for TCBs~~. NIST may, in accordance with its procedures, allow other appropriately qualified accrediting bodies to accredit TCBs and testing laboratories. TCBs must also comply with the requirements in § 2.962 of this Part.

(b) In accordance with the terms of a Mutual Recognition Agreement or Arrangement (MRA), bodies outside the United States will be permitted to ~~authorize~~ certify equipment in lieu of the FCC. The authority designating these telecommunication certification bodies must meet the following criteria.

(1) The organization accrediting the prospective telecommunication certification body shall be capable of meeting the requirements and conditions of ISO/IEC Guide 61.

(2) The organization assessing the telecommunication certification body shall appoint a team of qualified experts to perform the assessment covering all of the elements within the scope of accreditation. For assessment of telecommunications equipment, the areas of expertise to be used during the assessment shall include, but not be limited to electromagnetic compatibility and telecommunications equipment (wired and wireless).

3. A new Section 2.962 is added to read as follows:

Section 2.962 *Requirements for Telecommunication Certification Bodies*

Telecommunication certification bodies designated by the FCC, or designated by another authority pursuant to an MRA, must comply with the following criteria.

(a) Certification Methodology

(1) The certification system shall be based on type testing as identified in sub-clause 1.2(a) of ISO/IEC Guide 65.

(2) Certification shall normally be based on testing no more than one unmodified representative sample of each product type for which certification is sought. Additional samples may be requested if clearly warranted, such as in cases where certain tests are likely to render a sample inoperative. All test samples shall be returned to the applicant unless otherwise indicated by the applicant.

(b) Criteria for Designation

(1) To be designated as a telecommunication certification body under this section, the body must, by means of accreditation, meet all the appropriate specifications in ISO/IEC Guide 65 for the scope of equipment it is to certify. The scope of accreditation shall specify the group of equipment to be certified and the applicable regulations.

(2) The telecommunication certification body must demonstrate expert knowledge of the regulations for each product with respect to which the body seeks designation. Such expertise must include familiarity with all applicable technical regulations, administrative provisions or requirements, as well as the policies and procedures used in the application thereof.

(3) The telecommunication certification body shall have the technical expertise ~~and capability~~ to test the equipment it will certify and must also be accredited in accordance with ISO/IEC Guide 25 ~~to demonstrate it is competent to perform such tests~~ for the tests it will conduct.

(4) The prospective telecommunication certification body must demonstrate an ability to recognize situations where interpretations of the regulations or test procedures may be necessary. The appropriate key certification and laboratory personnel must demonstrate a knowledge of how to obtain current and correct technical regulation interpretations. The competence of the telecommunication certification body shall be demonstrated by assessment. The general competence, efficiency, experience, familiarity with technical regulations and products included in those technical regulations as well as compliance with applicable parts of the ISO/IEC Guides 25 and 65 shall be taken into consideration.

(5) A telecommunication certification body shall participate in any consultative activities, announced by the Commission or NIST, to establish to facilitate a common understanding and

interpretation of applicable regulations.

(c) Sub-contracting

(1) In accordance with the provisions ~~of sub-clause 4.4~~ of ISO/IEC Guide 65, the testing of a product, or a portion thereof, may be performed by a sub-contractor of a designated telecommunication certification body, including a supplier's laboratory, provided the laboratory has been assessed by the telecommunication certification body in accordance with ISO/IEC Guide 25, or has been accredited to ISO/IEC Guide 25.

(2) When a subcontractor is used, the telecommunication certification body remains responsible for the tests and must maintain appropriate oversight of the subcontractor to ensure reliability of the test results. Such oversight ~~must~~ shall include periodic audits of products that have been tested.

(d) Procedures for Designation

(1) NIST will give 30 days for ~~notice and~~ comment in the Federal Register ~~before~~ upon accrediting a ~~prospective~~ TCB. ~~In the case of a foreign TCB, the foreign Designating Authority will provide 30 days for the prospective TCB to be designated in accordance with the MRA.~~

(2) In case of concern raised during the 30 day comment period, ~~the Commission and~~ NIST will allow sufficient opportunity for the Designating Authority and prospective TCB to provide comments before a decision will be made~~. on the designation of the TCB.~~

(3) A list of designated TCBs ~~will~~ shall be published by the Commission on Commission letterhead and available electronically.

(e) Procedures for Recognition of Foreign TCBs Under MRAs

The FCC will provide 30 days for comment in the Federal Register prior to recognition of any foreign TCB.

(f) Post-certification requirements

(1) ~~A TCB shall supply an electronic copy of each approved certification application to the Commission.~~

Upon equipment certification for domestic application, a TCB shall electronically provide the Commission with the following information:

a. applicant's name, address, and contact information,
b. model number of certified equipment,
c. description of equipment,

d. product type,
e. grantee number (FCC ID),
f. TCB project and file number, and
g. regulations addressed.

The certification document issued by the TCB shall be in the same format as the applicable FCC form. In addition, the certification application shall remain on file with the TCB for a period of five years after the product is no longer certified.

(2) A TCB grant shall state that it is FCC-designated.

~~(2)~~ (3) In accordance with ISO/IEC Guide 65, the TCB is required to conduct appropriate surveillance activities. These activities shall be based on type testing a few samples of the total number of product types which the certification body has certified. Other types of surveillance activities of a product that has been certified are permitted, provided they are no more onerous than testing type. The importing party may at any time request a list of products certified by the certification body. ~~and may request and receive copies of product evaluation reports.~~

~~(3)~~(4) If during post market surveillance of a certified product, a certification body determines that a product fails to comply with the applicable technical regulations, the certification body shall immediately notify the applicant. ~~supplier and the appropriate importing party. A follow-up report shall also be provided within thirty days of the action taken by the supplier to correct the situation.~~

~~(4)~~(5) Where concerns arise, the applicant shall provide a copy of the ~~product evaluation~~ certification report within 30 calendar days upon request by the Commission. ~~to the TCB and the manufacturer.~~ If the certification report is not provided within 30 calendar days, a statement shall be provided to the Commission as to why such a report cannot be provided. This could be grounds for revocation of the product certification.

(g) In case of dispute with respect to designation of a TCB and the testing or certification of products by a TCB, the Commission will be the final arbiter. ~~Manufacturers~~ Applicants and designated TCBs will be afforded the opportunity to comment before a decision is reached consistent with the following due process considerations:

(1) The Commission will exercise such authority under exceptional circumstances only, and justified in an objective and reasoned manner, in writing to the TCB and applicants(s);

(2) The TCB and applicant(s) will be provided a period of at least 30 days to provide information to the Commission regarding this dispute. During this period, the TCB's designation will remain in effect and the affected certified product(s) will remain on the market;

(3) In the event the information is insufficient to settle the dispute, the Commission will allow the TCB and applicant(s) 90 days to resolve the dispute. During this period, the TCB's designation will remain in effect and the affected certified product(s) will remain on the market;

(4) If at the end of this 90-day period, the TCB and applicant(s) fail to resolve the dispute or the FCC is unpersuaded by the information presented, the Commission will advise the TCB that it intends to withdraw its designation. The affected product(s) can continue to be marketed provided that they otherwise conform with the Commission's rules.

(5) 90 days following withdrawal, the TCB may reapply for designation.

In the case of a TCB designated or recognized, or a product certified pursuant to a bilateral or multilateral mutual recognition agreement or arrangement (MRA), the FCC may limit or withdraw its recognition of a TCB designated by an MRA party and revoke the certification of products using testing or certification provided by such a TCB consistent with MRA obligations. The FCC shall consult with the Office of the United States Trade Representative (USTR), as necessary, concerning any problems arising under an MRA for the USTR's investigation or review under the Telecommunications Trade Act of 1998 (Section 1371-1382 of the Omnibus Trade and Competitiveness Act of 1988).

Title 47 of the Code of Federal Regulations Part 25, is proposed to be amended as follows:

4. The authority citation for Part 25 continues to read as follows:

Authority: Sections 25.101 to 25.601 issued under Section 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interpret or apply sections 101-104, 76 Stat. 419-427; 47 U.S.C. 701-744; 47 U.S.C. 554.

5. A new Section 25.200 is added to read as follows:

Section 25.200 *Equipment authorization.*

(a) Mobile earth satellite terminals for use in the band of 1610 - 1626.5 MHZ must be authorized by the Commission under its certification procedure for use under this part. The certification procedure is found in Subpart J of Part 2 of the Rules.

(b) In order to be granted certification, a transmitter must comply with the technical specifications in this part. Further, emissions in the band 1559-1605 MHZ must be limited to -70 dBW / MHZ averaged over any 20 millisecond period for wideband signals, and -80 dBW / 700 Hz for narrowband signals.

(c) Applicants for certification of transmitters that operate in these services must determine that the equipment complies with IEEE C95.1-1991, ``IEEE Standards for Safety Levels with Respect to Human Exposure to Radio Frequency Electromagnetic Fields, 3 kHz to 300 GHz" as measured using methods specified in IEEE C95.3-1991, ``Recommended Practice for the Measurement of Potentially Hazardous Electromagnetic Fields--RF and Microwave." The applicant for certification is required to submit a statement affirming that the equipment complies with these standards as measured by an approved method and to maintain a record showing the basis for the

statement of compliance with IEEE C.95.1-1991.

Title 47 of the Code of Federal Regulations Part 68 is proposed to be amended as follows:

6. The authority citation for Part 68 continues to read as follows:

AUTHORITY: Sections 1, 4, 5, 201-5, 208, 215, 218, 226, 227, 303, 313, 314, 403, 404, 410, 522 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, 155, 201-5, 208, 215, 218, 226, 227, 303, 313, 314, 403, 404, 410, 522.

7. A new Section 68.230 is added to read as follows:

Section 68.230 *Certification Bodies Designated by the Commission*

Section 68.230 *Designation of Telecommunication Certification Bodies (TCBs)*

Parties other than the Commission may be designated to ~~approve~~ certify equipment. These parties will be referred to as "Telecommunication Certification Bodies" or TCBs. TCBs will require applications with the all the information specified in this part, process applications in the same manner as the Commission, and issue written grants of equipment authorization.

(a) The Federal Communications Commission is the Designating Authority for designating TCBs in the United States to approve equipment subject to certification. The FCC will require TCBs to be accredited by qualified accrediting organizations operating to the requirements of Guide 61 and Guide 58 as appropriate. ~~the National Institute of Standards and Technology (NIST) under its National Voluntary Conformity Assessment Evaluation (NVCASE) program to show compliance with the Commission's qualification criteria for TCBs~~. NIST may, in accordance with its procedures, allow other appropriately qualified accrediting bodies to accredit TCBs and testing laboratories. TCBs must also comply with the requirements in § 2.962 of this Part.

(b) In accordance with the terms of a Mutual Recognition Agreement or Arrangement (MRA), bodies outside the United States will be permitted to ~~authorize~~ certify equipment in lieu of the FCC. The authority designating these telecommunication certification bodies must meet the following criteria.

(1) The organization accrediting the prospective telecommunication certification body shall be capable of meeting the requirements and conditions of ISO/IEC Guide 61.

(2) The organization assessing the telecommunication certification body shall appoint a team of qualified experts to perform the assessment covering all of the elements within the scope of accreditation. For assessment of telecommunications equipment, the areas of expertise to be used during the assessment shall include, but not be limited to electromagnetic compatibility and telecommunications equipment (wired and wireless)

8. A new Section 68.232 is added to read as follows:

Section 68.232 *Requirements for Telecommunication Certification Bodies*

Telecommunication certification bodies designated by the FCC, or designated by another authority pursuant to an MRA, must comply with the following criteria.

(a) Certification Methodology

(1) The certification system shall be based on type testing as identified in sub-clause 1.2(a) of ISO/IEC Guide 65.

(2) Certification shall normally be based on testing no more than one unmodified representative sample of each product type for which certification is sought. Additional samples may be requested if clearly warranted, such as in cases where certain tests are likely to render a sample inoperative. All test samples shall be returned to the applicant unless otherwise indicated by the applicant.

(b) Criteria for Designation

(1) To be designated as a telecommunication certification body under this section, the body must, by means of accreditation, meet all the appropriate specifications in ISO/IEC Guide 65 for the scope of equipment it is to certify. The scope of accreditation shall specify the group of equipment to be certified and the applicable regulations.

(2) The telecommunication certification body must demonstrate expert knowledge of the regulations for each product with respect to which the body seeks designation. Such expertise must include familiarity with all applicable technical regulations, administrative provisions or requirements, as well as the policies and procedures used in the application thereof.

(3) The telecommunication certification body shall have the technical expertise ~~and capability~~ to test the equipment it will certify and must also be accredited in accordance with ISO/IEC Guide 25 ~~to demonstrate it is competent to perform such tests~~ for the tests it will conduct.

(4) The prospective telecommunication certification body must demonstrate an ability to recognize situations where interpretations of the regulations or test procedures may be necessary. The appropriate key certification and laboratory personnel must demonstrate a knowledge of how to obtain current and correct technical regulation interpretations. The competence of the telecommunication certification body shall be demonstrated by assessment. The general competence, efficiency, experience, familiarity with technical regulations and products included in those technical regulations as well as compliance with applicable parts of the ISO/IEC Guides 25 and 65 shall be taken into consideration.

(5) A telecommunication certification body shall participate in any consultative activities,

announced by the Commission or NIST, to establish to facilitate a common understanding and interpretation of applicable regulations.

(c) Sub-contracting

(1) In accordance with the provisions of ~~sub-clause 4.4 of~~ ISO/IEC Guide 65, the testing of a product, or a portion thereof, may be performed by a sub-contractor of a designated telecommunication certification body, including a supplier's laboratory, provided the laboratory has been assessed by the telecommunication certification body in accordance with ISO/IEC Guide 25, or has been accredited to ISO/IEC Guide 25.

(2) When a subcontractor is used, the telecommunication certification body remains responsible for the tests and must maintain appropriate oversight of the subcontractor to ensure reliability of the test results. Such oversight ~~must~~ shall include periodic audits of products that have been tested.

(d) Procedures for Designation

(1) NIST will give 30 days for ~~notice and~~ comment in the Federal Register ~~before~~ upon accrediting a ~~prospective~~ TCB. ~~In the case of a foreign TCB, the foreign Designating Authority will provide 30 days for the prospective TCB to be designated in accordance with the MRA.~~

(2) In case of concern raised during the 30 day comment period, ~~the Commission and~~ NIST will allow sufficient opportunity for the Designating Authority and prospective TCB to provide comments before a decision will be made. ~~on the designation of the TCB.~~

(3) A list of designated TCBs will be published by the Commission on Commission letterhead and available electronically.

(e) Procedures for Recognition of Foreign TCBs Under MRAs

The FCC will provide 30 days for comment in the Federal Register prior to recognition of any foreign TCB.

(f) Post-certification requirements

(1) ~~A TCB shall supply an electronic copy of each approved certification application to the Commission~~.

Upon equipment certification for domestic application, a TCB shall electronically provide the Commission with the following information:

a. applicant's name, address and contact information,
b. model number of certified equipment,
c. description of equipment,

d. product type
e. grantee number (FCC ID),
f. TCB project and file number, and
g. regulations addressed.

The certification document issued by the TCB shall be in the same format as the applicable FCC form. In addition, the certification application shall remain on file with the TCB for a period of five years after the product is no longer certified.

(2) A TCB grant shall state that it is FCC-designated.

~~(2)~~(3) In accordance with ISO/IEC Guide 65, the TCB is required to conduct appropriate surveillance activities. These activities shall be based on type testing a few samples of the total number of product types which the certification body has certified. Other types of surveillance activities of a product that has been certified are permitted, provided they are no more onerous than testing type. The importing party may at any time request a list of products certified by the certification body. ~~and may request and receive copies of product evaluation reports.~~

~~(3)~~(4) If during post market surveillance of a certified product, a certification body determines that a product fails to comply with the applicable technical regulations, the certification body shall immediately notify the applicant. ~~supplier and the appropriate importing party. A follow-up report shall also be provided within thirty days of the action taken by the supplier to correct the situation.~~

~~(4)~~(5) Where concerns arise, the TCB shall provide a copy of the ~~product evaluation~~ certification report within 30 calendar days upon request by the Commission. ~~to the TCB and the manufacturer.~~ If the certification report is not provided within 30 calendar days, a statement shall be provided to the Commission as to why such a report cannot be provided. This could be grounds for revocation of the product certification.

(g) In case of dispute with respect to designation of a TCB and the testing or certification of products by a TCB, the Commission will be the final arbiter. ~~Manufacturers~~ Applicants and designated TCBs will be afforded the opportunity to comment before a decision is reached consistent with the following due process considerations:

(1) The Commission will exercise such authority under exceptional circumstances only, and justified in an objective and reasoned manner, in writing to the TCB and applicant(s);

(2) The TCB and applicant(s) will be provided a period of at least 30 days to provide information to the Commission regarding this dispute. During this period, the TCB's designation will remain in effect and the affected certified product(s) will remain on the market;

(3) In the event the information is insufficient to settle the dispute, the Commission will allow the TCB and applicant(s) 90 days to resolve the dispute. During this period, the TCB's designation will remain in effect and the affected certified product(s) will remain on the market;

(4) If at the end of this 90-day period, the TCB and applicant(s) fail to resolve the dispute or the FCC is unpersuaded by the information presented, the Commission will advise the TCB that it intends to withdraw its designation. The affected product(s) can continue to be marketed provided that they otherwise conform with the Commission's rules.

(5) 90 days following withdrawal, the TCB may reapply for designation.

In the case of a TCB designated or recognized, or a product certified pursuant to a bilateral or multilateral mutual recognition agreement or arrangement (MRA), the FCC may limit or withdraw its recognition of a TCB designated by an MRA party and revoke the certification of products using testing or certification provided by such a TCB consistent with MRA obligations. The FCC shall consult with the Office of the United States Trade Representative (USTR), as necessary, concerning any problems arising under an MRA for the USTR's investigation or review under the Telecommunications Trade Act of 1998 (Section 1371-1382 of the Omnibus Trade and Competitiveness Act of 1988).