

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

In the Matter of)
)
Amendment of Parts 0, 1, 2, 15 and 18 of the)
Commission's Rules regarding Authorization) ET Docket No. 15-170
of Radiofrequency Equipment)
)
Request for the Allowance of Optional)
Electronic Labeling for Wireless Devices)
) RM-11673
)
)

COMMENTS OF THE INFORMATION TECHNOLOGY INDUSTRY COUNCIL (ITI)

Introduction and statement of interest

The Information Technology Industry Council (ITI)¹ submits the following comments in response to the Notice of Proposed Rulemaking (NPRM) in the above-captioned proceeding regarding the authorization of radiofrequency equipment. ITI applauds the Commission for continuing its comprehensive review of its equipment authorization processes to keep pace with the accelerating evolution of technology and the growing availability of new radiofrequency products in the marketplace.

In particular, ITI appreciates the Commission's careful examination and proposed revision of the rules related to product approval programs, certification of modular transmitters, electronic

¹ ITI represents the nation's leading information and communication technology (ICT) companies, including computer hardware and software, Internet services, and wireline and wireless networking companies. ITI is the voice of the high tech community, advocating policies that advance U.S. leadership in technology and innovation, open access to new and emerging markets, support e-commerce expansion, protect consumer choice and enhance global competition. See: www.itic.org.

labeling and consolidating duplicative rules, as well as the proposal to discontinue requiring the filing of FCC Form 740 with Customs and Border Protection.

ITI is also grateful to the Office of Engineering and Technology (OET) for the guidance it provides via its Knowledge Database (KDB). The rigorous, yet flexible KDB process is among the most streamlined regulatory processes in the world, helping to retain U.S. leadership in promoting innovative new technologies.

Discussion

Unifying self-approval procedures

ITI supports the Commission's proposal to combine elements of the existing declaration of conformity (DoC) and verification procedures into a single self-approval process. We believe the growing body of RF equipment that has a strong record of compliance with minimal risk of harmful interference, coupled with the long, successful history of the existing DoC and verification processes, warrant this change. The two existing self-approval processes are similar in many ways and could be combined without any significant negative effects on interference potential, consumers, manufacturers or third-party test organizations.

We agree that the single process proposed by the Commission would simplify equipment authorization requirements and reduce confusion about which process applies to any given device. For example, this change would eliminate the occasional misconception that all Class B devices are required to be labeled with the FCC logo defined in the DoC process. Ultimately, the unified process would be more efficient and time-effective, allowing for innovations to enter the market faster.

ITI agrees with the FCC's plan to not require that the laboratory used for testing devices subject to the Commission's self-approval process be accredited. While accreditation is a rigorous process that can improve the quality of the testing organization, accreditation by itself does not guarantee quality test results. Mandating use of an accredited test laboratory also raises costs for manufacturers (which may end up being passed on to consumers) and can delay release of new innovations into the marketplace.

Paragraph 26 of the NPRM proposes to "make it clear that all devices must be tested for compliance" by removing the ambiguous reference to "[taking] necessary steps" as a potential alternative to testing that is currently part of the verification and DoC rule language. ITI urges the FCC to clarify that numerical modeling can be used for devices authorized via a self-approval methodology and either leave 2.902(a) and 2.906(a) as is, or modify them to include numerical modeling.

The proposed term for the new unified self-approval procedure, "Supplier's Declaration of Conformity" or "SDoC," is in line with the terminology used throughout industry to describe the preferred approach to equipment approval. ITI fully agrees with its use by the Commission for its unified self-approval procedure.

We also support the proposal that would require identifying the responsible party in the user documentation and are pleased the Commission will not require this information to be placed on the equipment itself. Space for including such information on the equipment (on a compliance label, for example) can be very difficult to find, even on large equipment. In an ever-increasing number of cases, the equipment is too small to include such information on it at all. In addition, we request that the SDoC compliance statement not be required to include a telephone number.

The proposed changes to Part 18 do not include a requirement for a telephone number. We support the same approach for Part 15. The current approval models of Verification and Certification do not require that a telephone number be provided. Furthermore, there is a risk that consumers would mistakenly dial these numbers seeking to remedy service issues.

In Paragraph 30 of the NPRM, the Commission suggests that a statement in the user manual should be added when equipment is modified. Based on the following footnote, it appears as though the FCC is referring to modifications from a third party:

For modified equipment, such a statement could be based on the language currently set forth in Section 2.909(d) (stating that “This product has been modified by [insert name, address and telephone number of the party performing the modifications]).²

While this information must be provided when a modification has been done by a third party, ITI recommends that the FCC explicitly state that no additional information is required when the original responsible party makes a modification to a product that remains subject to the SDoC process.

ITI does not support the FCC’s proposal in Paragraph 31 to expand the use of the statement of compliance in section 15.19(a) to include the new SDoC procedure and eliminate the logo. The 15.19(a) statement would be required to be supplied to users as part of the SDoC procedure’s “Compliance Information” and would be redundant if also required to be on a product label. We agree with Commissioner Rosenworcel’s statement that “consumers can trust the FCC symbol on

² *NPRM* ¶ 30 (footnote 55).

the back of so many of their devices.”³ With label space being a premium on so many products, having a recognizable symbol is preferable to a paragraph of text that may need to be of such a small font size that legibility for all ages of eyes is strained. We believe the expanded use of the logo notifies Customs and Border Protection officials, FCC Enforcement Bureau investigators, and consumers that the devices meet the rules’ technical requirements. As the Commission notes, “there are some countries with few or limited regulatory requirements, and evidence of adherence to FCC’s standards is seen as an indicator of a level of performance.”⁴ The logo would have greater recognition in other countries than an English language paragraph.

ITI believes that the proposal to apply the new SDoC process to the scope of products currently subject to DoC or verification is appropriate. We do not see a need to require that any such equipment must undergo certification, but we support having the option available for a manufacturer to choose the certification path if they wish to do so.

We ask the Commission to consider allowing a manufacturer’s representative located in the U.S. to act as the responsible party for imported equipment subject to SDoC, as an alternative to requiring the importer to fulfill this role, as defined in Section 2.909(b)(2). Requiring the importer to perform the duties of the responsible party results in duplication of effort, which can be particularly onerous in cases where multiple entities import a device from a single manufacturer.

³ Statement of Commissioner Jessica Rosenworcel, *Re. Amendment of Parts 0, 1, 2, 15 and 18 of the Commission’s Rules regarding Authorization of Radiofrequency Equipment; Request for the Allowance of Optional Electronic Labeling for Wireless Devices, ET Docket No. 15-170, RM-11673* (https://apps.fcc.gov/edocs_public/attachmatch/FCC-15-92A2.pdf)

⁴ *NPRM*, ¶ 32.

ITI supports the FCC proposal for a one-year transition period for SDoC. We request that the FCC make it clear that the new rules for SDoC and labeling apply for new authorizations only and that existing products would have the option to adopt the new rules or to be “grandfathered” until end-of-life.

Updating certification procedures

We are encouraged by the Commission’s proposals to streamline and modernize the Certification process. Many of the proposals will result in clarification of the rules for newer technologies and simplification of the process for all applicants. In general, we support the plan to amend the basic certification rule to clearly indicate that certification may be obtained for the three types of equipment described in Paragraph 38 of the NPRM: a device capable of independent operation, (the traditional type of device that is already addressed by [FCC] certification rules), a modular transmitter that is designed for installation into a host device or as a peripheral to another device, and a host device consisting of one or more modular transmitters certified by other parties.

Furthermore, adding the ability to certify a family of related devices under a single FCC ID will be beneficial to manufacturers who rely on combining multiple devices into a single, complex, integrated solution to meet consumer demands and needs.

Modular Transmitters

We urge the FCC to adopt changes to bring greater flexibility to the use of modular certifications. The FCC should modify its rules to make clear that modular certifications are available for all licensed and unlicensed devices, including handsets. Thus, ITI supports the Commission’s proposal to move the modular approval requirements into Part 2. Adoption of many of the proposals in the NPRM will allow for the introduction of new types of devices, including those that are customizable by end users.

There is limited available real estate on the module and host systems generally have existing power regulation. Therefore, we also recommend amending the modular approval requirement to allow for the power regulation to reside off the module. We propose the following update for 2.142(b)(3): “Module must have its own power supply regulation which can include the power regulation or management to be within the chip package or be fed by regulated power off the module.”

Because modules will be integrated into an end system, ITI also recommends removing the requirement for AC conducted line tests. We also believe that the Commission should retain the requirements for Split Modules, which provide manufacturers with necessary flexibility in their module designs.

Devices with software-based capabilities

ITI recommends that the FCC clarify that its proposals regarding software-based devices are not intended to preclude the use of open-source software, especially with regard to routers. In particular, open source plays an important and beneficial role in finding security vulnerabilities and correcting “buggy” software. Precise language should be adopted to tailor the language of the rules to the potential for perceived harm.⁵ It is important for the Commission to determine which regulatory parameters are critical and to educate stakeholders about the limits of the proposed rules.

⁵ Brodtkin, J. “FCC accused of locking down Wi-Fi routers, but the truth is a bit murkier.” *Arstechnica*, September 4, 2015: See: <http://arstechnica.com/information-technology/2015/09/fcc-accused-of-locking-down-wi-fi-routers-but-the-truth-is-a-bit-murkier/>

Changes to certified equipment

If the FCC eliminates the "electrically identical" standard for changes to devices, sufficient guidance should be provided to enable parties to determine whether the changes to their devices clearly fall within the new standards.

ITI agrees with the Commission's proposal to continue to permit Class I permissive changes for those changes that do not degrade the device parameters normally reported in an equipment authorization application to demonstrate compliance with FCC rules.⁶ ITI proposes that the Commission further specify that *any* change of enclosure, component and or circuitry in a non-RF related area be considered a Class I permissive change, as long as compliance to general emissions requirements is confirmed, and there is no change to the reported RF parameters.

ITI supports the FCC proposal to allow certification of families of products.⁷ Under current rules, manufacturers often need to obtain separate certifications for different carrier versions of the same device. The family of products proposal would alleviate expenditures of time and money on these efforts, providing a more sensible approach. We also ask the Commission for clarification on how to add to and otherwise change product families.

Responsible parties for certified equipment

ITI agrees in general with the proposals to codify existing practices related to certification of end products incorporating certified modular transmitters. Regarding certified modular transmitters

⁶ *NPRM*, at ¶ 53.

⁷ *NPRM*, at ¶ 55.

sold directly to consumers, however, we believe it is not practical to hold the grantee responsible for actions consumers take with the grantee's equipment in violation of detailed instructions for proper installation and use that accompany the device.

We further believe the most effective method to discourage and prevent entry of a non-compliant device shipped directly from a foreign-based entity to a consumer in the United States is to treat the company that ships the device as the importer. Taking action against the consumer as the importer for entry of a non-compliant device would not have substantial effect on the foreign-based entity and its continued marketing and shipping of non-compliant devices to consumers.

ITI supports the proposal to require all applications for certification to include the contact information of a responsible party located in the United States. In addition to providing a U.S.-based contact name, the responsible party should report to the FCC whenever a new model/type is used against an existing FCC ID. This information should be published by the FCC. We also ask the FCC to not hold importers accountable for reporting FCC ID numbers. Model numbers should be sufficient, and the FCC should be able to validate the FCC ID through their database.

Enforcement should only be made against the responsible party.

Modification of certified equipment by third parties

ITI encourages the FCC to take a cautious approach in regard to modification of certified equipment by third parties. Even though they may have agreements with original manufacturers, third parties may make modifications to products and not be fully aware of how such changes impact the product.

Confidentiality of certification applications

ITI supports adopting commonsense approaches to confidentiality of application information. With regard to short-term confidentiality, all application exhibits (including test reports) should automatically be considered part of a short-term confidentiality request, and confidentiality should be granted automatically for at least 45 days (or longer with applicant request and FCC approval). As is presently the case, short-term confidentiality should cease immediately if the device is marketed to the public or otherwise publicized by applicant. Long-term/permanent confidentiality automatically should be granted for: (1) schematics, (2) block diagrams, (3) operational descriptions, and (4) parts list / tune-up information. Presently, the FCC routinely grants requests for long-term confidentiality submitted by the applicant for these exhibits at the time of filing. Members of the public are not able to see these exhibits absent a successful request under the Freedom of Information Act. Rather than have every applicant supply a justification for long-term confidential treatment with every device application, therefore, it would be more efficient for that justification to be supplied by the applicant only in those limited cases in which disclosure is sought.

Labeling

Industry applauds and supports the FCC's adoption and use of electronic labeling (e-labeling) for screened devices. We believe that the proposed rules generally are well-balanced. However, certain aspects of the proposed rules require further clarification or modification. We would like to address the following specific e-labeling provisions:

- (1) Instructions on how to access the required labeling and regulatory information to be on the product related website, if available*

ITI requests that the proposed requirement to provide access instruction on the product-related website⁸ be clarified to apply to the responsible party's support webpage, if such a website exists. Products are often simultaneously offered for sale via numerous websites (e.g., by equipment manufacturer, resellers, retailers, etc.) and applying the access instruction website requirement to all of them would be unnecessarily burdensome.

(2) Accessing the labeling and regulatory information requires no special codes or permissions

The FCC has proposed to require that users must be able to access e-label information without special codes, accessories, or permissions.⁹ We request that the FCC clarify that passwords, PINs, or other mechanisms configured by a user to secure access to a device (e.g., a smartphone) do not qualify as "special codes" or "permissions."

(3) Accessing the labeling and regulatory information should require no more than three steps.

While mandating a limit of three steps¹⁰ may introduce a tangible boundary, this limit is both constraining and unclear. However, the requirement is ambiguous with respect to where to begin counting the three steps. For example, when a new device is powered on for the first time, users are often presented with a set-up process that includes many steps. We recommend that the FCC consider requiring that products be supplied with instructions that include "clearly defined steps to access the required labeling and regulatory information" in lieu of the three-step limit. If the FCC chooses to maintain a limit, the rules should clarify that the count occurs in normal use, after the user accesses the device's settings menu, and after the device has been through the setup

⁸ *NPRM*, at ¶ 98.

⁹ *Id.*

¹⁰ *Id.*

process and is usable, with any security measures, such as a screen lock, having been successfully deactivated.

(4) The FCC reiterates that in the current NPRM, the Commission does not allow other forms of electronic labeling such as Radio Frequency Identification (RFID) tags or Quick Response (QR) codes to substitute for the on-screen information display, or otherwise permit displays that require the use of special accessories, supplemental software, or similar plug-ins but goes on to ask whether non screened devices which rely on a wireless or remote connection should be allowed to use an electronic label that is accessible via the connected smartphone, web interface, or other network connection, and if so, what additional requirements on how the labeling requirement is implemented would be needed.

We applaud the Commission in this forward thinking question and support such an allowance. Electronic labeling should be made available to devices subject to FCC regulations, as an alternative to conventional labeling means. Other countries' regulations also provide for e-labeling for screened devices, and allow for e-labeling for devices without an integrated screen under many circumstances. For example, in Canada devices without an integrated display screen are allowed to present the e-labelling information through an audio message or a host device display screen connected via physical connection, Bluetooth, Wi-Fi, etc. if the connection to a device with a display is mandatory for use.¹¹

We also encourage the FCC to consider the potential benefits in supporting innovative methods such as employing RFID, QR, or other machine-readable codes to alternatively provision information that may displayed on a screen or by traditional marking means while meeting regulatory objectives. We note as an example of such innovative methods, that the U.S. Food and Drug Administration has implemented its Unique Device Identification (UDI) program which

¹¹ Industry Canada, Notice 2014-DRS1003, November 13, 2014: See: <https://www.ic.gc.ca/eic/site/ceb-bhst.nsf/eng/tt00099.html> .

utilizes machine readable codes to supply relevant information.¹² As the global acceptance and use of machine readable codes continues to grow, we propose that regulators adopt this innovative technology to further streamline their requirements. Moreover, we believe that a globally standardized approach could best serve the needs of both regulators and industry. This international alignment of requirements would facilitate market access for devices both with and without integrated screens.

In the NPRM, the FCC proposes to require that devices utilizing e-labeling also display the e-labeling information on the product packaging or on a physical label placed on the product.¹³ We ask the FCC to clarify that e-labeling does not affect any existing requirements to provide regulatory information on the packaging of a device. The FCC ID and HAC rating (where applicable) of a device are already required to be visible to consumers at the time of purchase.¹⁴ Those requirements would remain in effect. However, the FCC should not require manufacturers utilizing e-labeling to provide any additional information on the packaging (e.g., the Part 15 statement), as device packaging frequently has limited available space and such standard information will have limited value to consumers. This requirement would partially undermine the benefits of e-labeling. Devices that have not yet received authorization may also have extremely limited real estate on the products themselves. ITI asks the Commission to allow the same labeling options for devices that have not yet received authorization as it permits for devices

¹² For more on the U.S. Food and Drug Administration, Unique Device Identification (UDI) program *See*: <http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/UniqueDeviceIdentification/> A description of the FDA's Final Rule on the UDI system is also available in the Federal Register: <http://www.gpo.gov/fdsys/pkg/FR-2013-09-24/pdf/2013-23059.pdf>

¹³ *NPRM*, at ¶ 99.

¹⁴ *See* 47 C.F.R. §§ 2.925(d) and 20.19(f).

that have already received authorization (i.e. information may be on the product, in the manual, on the package, or in electronic form).

In the NPRM, the FCC noted that its proposed rule would not affect rules requiring warning statements or other information that are required to be provided in user manuals.¹⁵ We request that the FCC reconsider and expand the scope of the e-labeling rules to allow manufacturers to use e-labeling to provide information that is currently required to be provided in the user manual (e.g., an explanation of hearing aid compatibility¹⁶). While the E-LABEL Act does not require the FCC to permit the use of e-labeling for this information, the Act also does not prohibit the FCC from doing so. Allowing this information to be provided via e-labeling would enable manufacturers to reduce the amount of documentation packaged and distributed with their products, benefiting the environment and reducing costs.

The FCC also seeks comment on how its proposed modifications to the rules governing modular transmitters would affect labeling requirements (Paragraph 106). The FCC asked, for example, whether it should permit a modified label to be placed on the host device that reads “contains FCC ID xxxyyy changed from FCC ID aaabbb.” ITI considers the label containing the new FCC ID to be sufficient for compliance purposes.

Measurement Procedures

ITI believes that modifying Section 2.947 to state that other rule parts may specify additional measurement procedures is not necessary but would not cause any harm. The measurement

¹⁵ *NPRM*, at ¶ 100.

¹⁶ *See* 47 C.F.R. § 20.19(f)(1).

procedures stated in Section 15.31(a)(3) and (4) should be sufficient to allow the specific measurement procedure in Sections 15.34 through 15.35 to be revised to remove redundancy. Removing references to CISPR Publication 16 would seem to be appropriate given the reliance on ANSI standards, especially when one considers the many revisions made to the referenced ANSI standards over the years to make them more thorough.

ITI would like to take the liberty of revisiting one of the topics addressed in the Commission's Report and Order released December 30, 2014 for ET Docket No. 13-44 regarding measurement standards. In paragraph 77 of the Report and Order, the Commission noted it was not convinced that CISPR 22 or CISPR 32 should be referenced in the rules as test standards, provided several reasons why, and recommended that ANSI ASC C63 review CISPR 32 and work toward future harmonization with the ANSI C63.4 standard. ITI believes there is a way to reference the CISPR 22 and 32 standards as test methods for products within the scopes of those standards and also include through the reference process the extensions needed to address the frequency range and limits not addressed directly in the CISPR standards. Responsible parties would have a choice of using the referenced CISPR standards with extensions or using ANSI C63.4 standard for products in the scope of the CISPR standards. Products not in the scope of the CISPR standards would be evaluated only to ANSI C63.4. ITI believes the reference and use of CISPR standards in the FCC rules will send a positive message regarding the U.S.' position on international harmonization for unintentional emissions requirements and this will result in less confusion by global industry as companies products are subject to the CISPR standards through other country regulations and they must also meet the FCC regulations for those same products. ITI suggests proposals for this effort could be developed jointly by industry association members, the ANSI ASC C63 committee and OET staff.

Importation Rules

ITI fully supports the Commission's proposal to eliminate the Form 740 filing requirements. We agree with the conclusion that filing this Form with Customs and Border Protection is no longer justified and do not see any significant benefit to continuing this tradition. We urge the FCC to work with CBP to streamline transactional reporting requirements, helping to ensure that the regulatory scheme makes sense. For instance, importers of devices are not always the responsible party with regard to obtaining regulatory authorization. This can lead to importation delays, as communications between the importer and the actual responsible party may need to occur to answer CBP questions. To alleviate this issue, the FCC should clarify what obligations fall on the importer, and what obligations fall on the responsible party. Furthermore, importers are experiencing inconsistency with regard to what information CBP collects to ensure that a device complies with FCC rules. The FCC should specify precisely what data is necessary to submit to CBP to satisfy FCC requirements.

Accordingly, ITI recommends removing § 2.1203 (a) and (b), with the following proposed revision: “§2.1203(a) The importer or ultimate consignee, or their designated customs broker must provide, upon request, made within one year of the date of entry, documentation on how an imported radio frequency device was determined to be in compliance with Commission requirements.” This change will enable importers to expedite shipments to its customers and allow importers the ability to provide a periodic (annual) reporting process to validate adherence to the FCC rules. If the FCC decides not to completely discontinue reporting requirements for importers, then we ask the Commission to allow importers to self-regulate and maintain their own records, to generate documents on a semi-annual or on a request basis, and to provide additional benefits to the reporting requirement for members participating in trusted trader programs.

The FCC has acknowledged the reporting burden for importers.¹⁷ However, FCC rules require importers to report, regardless of the value of their import shipments. ITI member companies import hundreds of thousands of shipments annually with nearly half flagged for FCC import requirements. Many of these low value shipments are typically used for internal purposes such as research and development. In order to alleviate the reporting burden for importers, we recommend that the FCC follow the CBP rules, which allow importers to “write off” the declaration for low value shipments.

ITI supports the FCC's proposal (Paragraph 92) to issue “provisional” certifications for devices, which could be used for legal importation and distribution through the supply chain prior to sale. In particular, the FCC should specify that a provisional grant constitutes a “grant” for purposes of importation rules. This change would allow more flexibility for staging products close to the point of sale prior to launch (i.e. prior to going public with information about the product), and it doesn't take away from the 30 days from marketing/offering for sale that the public has to review and challenge the certification with the possibility of the FCC pulling them from the market.

Modification of Customs bonded warehouse requirement

ITI believes that the FCC should not eliminate the ability to use a foreign trade zone or bonded facility for devices imported prior to issuance of provisional grants of certification or regulatory authorizations, but should increase flexibility to enable the responsible party to use its own or a designee's facilities as well. This would lower importation costs and maximize supply chain

¹⁷ *NPRM* at ¶ 116.

efficiency to the benefit of importers, manufacturers, and consumers. To ensure regulatory compliance, the FCC could require importers to keep records similar to those kept by foreign trade zones and bonded facilities.

Increasing the number of trade show devices

ITI supports further increases in the number of devices that may be imported for demonstration purposes at trade shows. We appreciate the Commission raising limits for both licensed and unlicensed devices. However, the NPRM does not reflect the full intent of the proposed change. Accordingly, we request that in addition to raising the number of licensed devices from 200 to 400 units, the Commission should also raise the number of unlicensed devices from 10 to 400.¹⁸

Devices imported for personal use

ITI agrees with the FCC's proposal to expand the exception on devices imported for personal use and adopt a blanket rule that provides a personal use exception for all devices, both licensed and unlicensed. ITI recommends raising the limit of devices imported for personal use from three to ten, to better reflect real-world consumer adoption of technology.

Conclusion

We are grateful to the Commission for its consideration of the above comments and for its ongoing work to improve and modernize the approval process for radiofrequency equipment, as the continued development and adoption of innovative technologies will require innovative regulatory approaches.

¹⁸ See §2.1204 (a)(4)(ii).

Respectfully submitted,
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