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

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	)	GEN Docket No. 98-68
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	)	

REPORT AND ORDER

Adopted: December 17, 1998 **Released: December 23, 1998**

By the Commission: Commissioner Furchtgott-Roth issuing a statement.

I. INTRODUCTION

1. By this action, we amend Parts 0, 2, 15, 25 and 68 of the rules to provide the option of private sector approval of equipment that currently requires an approval by the Commission. We are also adopting rule changes to implement Mutual Recognition Agreements and Arrangements (MRAs) for product approvals with the European Community (EC), the Asia Pacific Economic Cooperation (APEC) and with other foreign trade partners.[1] These actions will eliminate the need for foreign and domestic manufacturers to obtain approval from the Commission before marketing equipment in the United States, thereby reducing the time needed to bring a product to market. We also adopt an interim procedure to issue equipment approvals for Global Mobile Personal Communication by Satellite (GMPCS) terminals prior to domestic

[1] The US-EC document is called a "Mutual Recognition Agreement", while the APEC document is called a "Mutual Recognition Arrangement". We will use the abbreviation "MRA" for both documents.

implementation of the GMPCS-MoU Arrangements (GMPCS Arrangements).[2] This action will benefit manufacturers of GMPCS terminals by allowing greater worldwide acceptance of GMPCS-related equipment. The full implementation of the GMPCS Arrangements will be the subject of a future proceeding in early 1999.

II. BACKGROUND

A. Legal Framework

2. Section 302 of the Communications Act of 1934, as amended, authorizes the Commission to make reasonable regulations, consistent with the public interest, governing the interference potential of equipment that emits radio frequency energy.[3] The purpose of this provision is to ensure that radio transmitters and other electronic devices meet certain standards before they reach the market to control interference to radio services. The Commission carries out its responsibilities under Section 302 in two ways. First, the Commission establishes technical regulations for transmitters and other equipment to minimize their potential for causing interference to radio services. Second, the Commission administers an authorization program to ensure that equipment reaching the market complies with the technical requirements. The authorization program requires that equipment be tested either by the manufacturer or at a private test laboratory to ensure that it complies with the technical requirements. For a large number of devices, once the equipment has been tested and found to comply, it may be marketed without any approval from the Commission. However, for equipment which the Commission has determined may pose a greater risk of interference, the Commission requires the submission of an application which must be reviewed and approved before the equipment can be marketed. The Commission may also request a sample of a device to confirm it complies with our standards.

3. Part 68 of the Commission's rules applies to terminal equipment connected to the telecommunications network.[4] Part 68 was enacted more than two decades ago to facilitate competition in the telecommunications equipment industry and to expand the options available

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[2] "Global Mobile Personal Communications by Satellite" or GMPCS service is defined in the 1996 Final Report of the World Telecommunications Policy Forum as: "any satellite system, (i.e., fixed or mobile, broadband or narrow-band, global or regional, geostationary or non-geostationary, existing or planned) providing telecommunication services directly to end users from a constellation of satellites." The GMPCS - MoU arrangements are intended to allow the worldwide transport and use of GMPCS equipment. They are described in more detail later in this Order.

[3] *See* 47 U.S.C. § 302(a).

[4] *See* 47 C.F.R. § 68.1.

to telecommunications customers for the connection of customer premises equipment and wiring to the telecommunications network. Through Part 68, the Commission has standardized the interfaces between customer premises equipment and the public switched telecommunications network while protecting the telecommunications network from harm that might be caused by the connection of telecommunications terminal equipment. The potential harms addressed by Part 68 include electrical hazards to telephone company personnel and equipment, the degradation of telecommunications services to third parties, and malfunctioning of billing equipment. In addition, Part 68 rules ensure that persons with hearing aids are afforded reasonable access to the telecommunications network.[5] Before equipment may be imported to the United States or connected to the public switched telecommunications network ("PSTN"), it must be registered in accordance with Part 68.[6] The Part 68 registration program requires that terminal equipment be tested for compliance either by the manufacturer or a competent test laboratory, and proof of compliance, in the form of an application, test procedures, and test results must be submitted to the Commission for approval and a grant of registration.

4. During the first International Telecommunication Union (ITU) World Telecommunication Policy Forum held in 1996 in Geneva, satellite operators, service providers and international regulators stressed the need to facilitate the free circulation of GMPCS terminals to ensure that customers could access GMPCS services on a real-time, ubiquitous basis. Parties at the Forum agreed to a draft Memorandum of Understanding (MoU) designed to facilitate the free circulation of GMPCS user terminals. The draft MoU was finalized in February 1997. Interested parties and signatories assembled in the spring of 1997 to sign the MoU and to begin drafting five specific arrangements concerning the licensing, type approval, marking, provision of traffic data and customs treatment of GMPCS terminals. The GMPCS-MoU Arrangements were completed in October 1997.

5. Today, over 100 Administrations and private sector entities have signed the MoU. The ITU Council has approved the use of the "GMPCS-MoU ITU REGISTRY" mark for placement on terminals which have been duly registered in the ITU database. This globally-recognized mark will be placed on GMPCS terminals to signify they have been type-approved by at least one Administration and that the actual licensing, type approval, and marking "requirements" noted in the GMPCS-MoU Arrangements have been duly registered with the ITU. The Commission, on behalf of the United States government, is now responsible for implementing fully the GMPCS-MoU Arrangements consistent with its regulatory authority.

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[5] *Id.*

[6] *See* Form 730 Application Guide, Registration of Telephone and Data Terminal Equipment, Approved by OMB 3060-0056, Exp. 3/31/2000, FCC, Rev C-276, Nov. 1997, *and see* 19 U.S.C. § 3101 "Telecommunications Trade Act of 1988" Pub.L. 100-418, Title I § 1372, Aug. 23, 1988, 102 Stat. 1216.

B. History of Proceeding

6. The *Notice of Proposed Rule Making ("Notice")* in this docket[7] proposed to amend Parts 2, 25 and 68 of the rules to 1) allow private sector entities in the United States to issue equipment authorizations; 2) allow entities in foreign countries which are party to an MRA to issue equipment approvals; and 3) provide for the interim authorization of GMPCS mobile terminals prior to implementation of the GMPCS Arrangements.

7. In the *Notice*, we designated this proceeding as part of our 1998 biennial review of regulations pursuant to Section 11 of the Communications Act of 1934, as amended.[8] Section 11 requires us to review all of our regulations applicable to providers of telecommunication services and determine whether any rule is no longer in the public interest as the result of meaningful economic competition between providers of telecommunications service.[9] As part of our biennial review, we stated that our goal in this proceeding was, among other things, to empower private entities to perform many of the conformity assessment activities that the Commission currently performs with respect to terminal equipment connected to the public switched telecommunications network.[10] Accordingly, we proposed in the *Notice* to revise our regulations to allow private entities to perform these activities as the first step in the streamlining of the Part 68 program generally.

8. A total of 36 parties filed comments, and 17 filed reply comments in this proceeding. With some exceptions, the parties were generally supportive of the Commission's proposals. A list of parties submitting comments is contained in Appendix B.

III. DISCUSSION

9. In this order, we adopt measures to reduce the burden of the equipment authorization program on manufacturers, ensure market access and promote competition in the provision of telecommunication and electronic equipment, and allow greater worldwide acceptance of GMPCS equipment. In the following discussion, we address the comments filed in response to our proposals to recognize private entities to certify equipment as complying with Commission rules.

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[7] *See Notice of Proposed Rule Making in GEN Docket 98-68*, 13 FCC Rcd 10683.

[8] *See* 47 U.S.C. § 161.

[9] *Id.*

[10] *See Notice* at para. 2.

The program we adopt will be used both to streamline our domestic equipment approval programs and satisfy the United States' obligations to implement MRAs.

A. Telecommunications Certification Bodies (TCBs)

10. In the *Notice*, we proposed to allow designated private entities to issue equipment approvals in essentially the same manner as the Commission.[11] Under this proposal, private entities in the U.S. and designated entities in other countries would certify that equipment intended for use within the U.S. complies with Commission requirements. We proposed that these certifying organizations be called "Telecommunication Certification Bodies", or TCBs, since their purpose will be to grant certification to telecommunications equipment. This approach would provide manufacturers with alternatives where they could possibly obtain certification faster than with the Commission and from a facility in a more convenient location. We also anticipated that the TCB program would result in a reduction of applications filed with the Commission, thus enabling the Commission to redirect resources toward enforcement of the rules. Finally, allowing equipment to be certified by parties in other countries is an essential step in implementing MRAs, and using private entities for domestic certification purposes would parallel our MRA obligations.

11. While the comments generally support establishing a TCB program, several parties express concerns about the proposal. Cisco states that the Commission should expand the Declaration of Conformity (DoC)[12] program instead, particularly to non-radio terminal equipment subject to Part 68.[13] Cisco states that this equipment does not pose a risk of interference or radio frequency exposure, and the DoC program largely eliminates compliance-related delays in bringing products to market.[14] Mobile Engineering opposes having private entities perform Part 68 testing, arguing that the current system is fair and impartial and that the Commission's

[11] *See Notice* at para. 11. Section 302(e) of the Communications Act, 47 U.S.C. § 302(e), allows the Commission to use private entities for testing and certifying equipment.

[12] Declaration of Conformity (DoC) is a self-approval procedure applicable to equipment which has a relatively low risk of causing interference. It requires the manufacturer or importer to test the equipment to determine compliance with the FCC standards. The laboratory performing the measurements must be accredited by either the National Institute of Standards and Technology (NIST) or the American Association for Laboratory Accreditation (A2LA). A compliance information statement, listing the party responsible for compliance, must be supplied with the product.

[13] *See* Cisco comments at 4-7.

[14] *See* Cisco comments at 5-6.

proposal will increase costs to test labs and TCBs due to accreditation requirements.[15] ITI states that the Commission should give higher priority to expanding the DoC program for more product types, because prior approval of products is not necessary for the success of an authorization program and typically creates significant delays in the product introduction cycle.[16] SEA believes that the Commission's proposal will result in increased cost to manufacturers and slower processing of applications, because TCBs will want to retest all equipment they certify, even if the manufacturer has already tested it.[17] Bell Atlantic believes that allowing foreign entities to authorize equipment may introduce partiality into the authorization process.[18]

12. In ET Docket 97-94, we recently examined the Part 2 authorization program, relaxing the authorization requirements for many types of equipment to permit manufacturer's self-approval (verification or DoC).[19] We estimate that our actions in Docket 97-94 will reduce by approximately half the number of applications required to be filed with us. The equipment for which we relaxed the authorization requirement includes receivers, which is the only type of equipment that ITI suggested be placed under the DoC program.[20] We determined in Docket 97-94 that a certain "core group" of equipment requires a higher level of oversight than manufacturer's self-approval, due to a high risk of non-compliance, the potential to create significant interference to safety and other communication services, and the need to ensure compliance with the requirements to protect against radio frequency exposure. Neither ITI nor any other commenter provides any new information that would lead us to change our determination. Accordingly, we decline to expand further the DoC program for equipment subject to a Part 2 authorization requirement at this time.

13. Since the *Notice* did not propose to place terminal equipment subject to the Part 68 registration program under DoC, as Cisco suggests, the record does not yet contain sufficient information or analysis to ensure that it would be fair and equitable to do so. Accordingly, we

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[15] *See* Mobile Engineering comments at 2-3.

[16] *See* ITI comments at 3-4.

[17] *See* SEA comments at 4-6.

[18] *See* Bell Atlantic reply comments at 2.

[19] *See Report and Order* in ET Docket No. 97-94, 13 FCC Rcd 11415 (1998). Verification is also a self-approval procedure, but unlike the DoC procedure does not require the use of an accredited test laboratory or a compliance statement to be supplied with the equipment.

[20] Scanning receivers are the only type of receiver that require certification by the Commission. Scanning receivers have exhibited significant compliance problems in the past.

decline to expand further the DoC program to equipment subject to Part 68 registration at this time. We may, however, consider this possibility in the context of future proceedings where we may more fully investigate and resolve the relevant issues.

14. By carefully specifying the qualification criteria for TCBs, as well as exerting the proper oversight, we intend to ensure the TCB system will be as fair and impartial as the current system. The TCB system also may be significantly faster than the Commission's current system, since manufacturers should have more than one approval body to choose from and can select one with a shorter processing time. We expect TCBs to function much like the Commission by certifying a product based on the test results of one representative sample. Further, competition among TCBs, as well as expectations of manufacturers, should encourage TCBs to process applications quickly and at reasonable expense. TCBs should provide conveniently located expertise and "one stop shopping" for manufacturers, thereby eliminating the uncertainty and delay in assembling and forwarding applications to the Commission inherent in the current system. We also recognize and agree with commenters[21] that the integrity of the TCB program must be based on our ability to enforce our rules effectively. As we stated in the *Notice*, we intend to redirect resources toward enforcement of the rules. Further, we intend to review and revise our rules and procedures, as necessary, to ensure that we fulfill our responsibilities to ensure credible rule enforcement. We recognize that there will be initial start-up problems and we plan to work with industry and the National Institute of Standards and Technology (NIST)[22] to facilitate the training and implementation of TCBs. Accordingly, we find it is in the public interest to adopt the TCB system as proposed in the *Notice*, for equipment authorized under both Parts 2 and 68 of our rules.

TCB Qualification criteria

15. In the *Notice*, we tentatively concluded that the International Organization for Standardization (ISO) / International Electrotechnical Commission (IEC) Guide 65 (1996), *General requirements for bodies operating product certification systems* ("Guide 65"), sets forth the requirements that must be used to establish the primary qualification criteria for TCBs.[23]

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[21] See, e.g, ACIL comments at 9-11; CCL comments at 6; ITS comments at 9-10.

[22] NIST will be involved in the accreditation of TCBs, as discussed below.

[23] ISO/IEC Guide 65 is available through the American National Standards Institute, Customer Service, 11 West 42nd Street, New York, NY - 10036, telephone 212-642-4900, facsimile 212-302-1286, or e-mail to jrichard@ansi.org. This document is also available through national standards organizations around the world.

TCB equipment certification would be based on type testing, which is the option listed in subclause 1.2(a) of Guide 65.[24] We also proposed that TCBs:

- Demonstrate expert knowledge of the regulations for each product with respect to which the body seeks designation, including knowledge of all applicable technical regulations, administrative provisions or requirements, as well as the relevant policies and procedures.[25]
- Be accredited in accordance with ISO/IEC Guide 25, *General Requirements for the Competence of Calibration and Testing Laboratories* ("Guide 25"), in order to demonstrate that they are competent to perform testing of the products they will certify.[26]
- Have the ability to recognize when interpretations of the rules or test procedures are necessary and demonstrate a knowledge of how to obtain current and correct interpretations.[27]
- Participate in consultative activities identified by the Commission to establish a common understanding and interpretation of the regulations.[28]

16. The comments were highly supportive of making Guide 65 the primary qualification criteria for TCBs. Several commenters indicate, however, that Guide 65 should be applied in its entirety to promote acceptance of TCBs both domestically and internationally.[29] There also was support for requiring TCBs to be Guide 25 accredited[30] and for the other additional qualifications criteria that we proposed.[31]

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[24] Clause 1.2 of Guide 65 provides five options for determining the compliance of a product with the applicable requirements. The Commission's current certification system is based on type testing, which means testing a representative sample of a device to determine if it complies with the technical requirements.

[25] *See Notice* at para. 13.

[26] *Id.* ISO/IEC Guide 25 is available through the American National Standards Institute, Customer Service, 11 West 42nd Street, New York, NY - 10036, telephone 212-642-4900, facsimile 212-302-1286, or e-mail to jrichard@ansi.org. This document is also available through national standards organizations around the world.

[27] *See Notice* at para. 13.

[28] *Id.*

[29] *See* ACIL comments at 2, CCL comments at 2, Compliance comments at 1, Intertek comments at 2, and TIA comments at 3.

[30] *See* ACIL comments at 2, CCL comments at 3, DLS comments at 4, Intertek comments at 3, and Retlif comments at 3.

[31] *See* ACIL comments at 2, CCL comments at 2, ICS comments at 2, ITS comments at 3, Metricom comments at 4 and Retlif comments at 4.

17. We find that Guide 65, an existing international standard, establishes appropriate qualifications for product certifiers.[32] Guide 65 will be used as the primary qualification criteria for TCBs under MRAs, so use of this document for domestic purposes as well will facilitate acceptance of U.S. certifications internationally, and thereby promote U.S. trade abroad. We also find that TCBs should have the expertise and capability to test equipment they certify, since they will either perform measurements themselves or will use this expertise and capability to correctly review test data from other parties and perform audit testing as required. Thus, we also find that TCBs must be accredited to Guide 25 to demonstrate appropriate knowledge and capability to perform product testing. Accordingly, we require TCBs to be both Guide 65 and 25 accredited.

18. CCL requests that the Commission recognize current accreditation schemes for testing laboratories, such as the National Voluntary Laboratory Accreditation Program (NVLAP) and the American Association for Laboratory Accreditation (A2LA).[33] Laboratories that perform testing of equipment approved under DoC must be accredited through NVLAP, A2LA or other parties recognized by the Commission.[34] These accreditations are based on Guide 25 and cover testing of certain devices subject to Part 15 of the rules.[35] We find that these accreditations would satisfy our requirement for a TCB to be Guide 25 accredited. Accordingly, a prospective TCB which is already accredited by A2LA, NVLAP or another recognized party, based on Guide 25, will not have to obtain another Guide 25 accreditation, provided the equipment it certifies is covered by the scope of the accreditation.

19. We also adopt the additional qualification criteria that we proposed, i.e., TCBs must demonstrate expert knowledge of the regulations for each product with respect to which they seek designation; recognize when interpretations of the rules or test procedures are necessary and demonstrate knowledge of how to obtain current and correct interpretations; and participate in consultative activities identified by the Commission to establish a common understanding and interpretation of the regulations. The MRAs, for example, identify regulations and requirements

[32] For example, Guide 65 requires that product certifiers be impartial, responsible for their decisions, have a quality system, have personnel with the appropriate knowledge and experience, document the certification system, maintain records of approvals, conduct internal audits, and perform post-market surveillance. *See Notice* at para. 12.

[33] *See* CCL comments at 3.

[34] *See* 47 C.F.R. § 2.948(d).

[35] *See* 47 C.F.R. Part 15.

that are applicable to certifying equipment intended for import into the United States.[36] Since such regulations and requirements may be modified in the future, we delegate authority to the Chief, Office of Engineering and Technology (OET), and to the Chief, Common Carrier Bureau (CCB), to identify specific regulations and requirements for which TCBs certifying equipment for use within the United States shall demonstrate expert knowledge. Both OET and CCB shall provide public notice of the specific regulations and requirements identified for this purpose, to ensure that prospective TCBs will know for which specific regulations and requirements they must demonstrate expert knowledge as required under our qualifying criteria.

20. *Subcontractors.* Several parties address the issue of whether subcontractors to TCBs (e.g., test laboratories) should also be Guide 25 accredited. Acme, DLS, ICS and Retlif believe that subcontractors should be Guide 25 accredited.[37] TIA believes that test labs should have a 24 month grandfathering period before they should be Guide 25 accredited.[38] Motorola and Redcom both believe that manufacturers' labs should be allowed to continue testing without Guide 25 accreditation.[39]

21. Under Guide 65, a TCB may use a subcontractor to perform certain tasks (e.g., testing or inspection).[40] Guide 65 further states that a TCB shall take full responsibility for subcontracted work, and shall "ensure that the subcontracted body or person is competent and complies with the applicable provisions of [Guide 65] and other standards and guides relevant to testing, inspection or other technical activities."[41] Thus, TCBs must ensure that subcontractors, which perform their work under the direction of, and generally with compensation from, the TCB, are competent and in compliance. We do not interpret Guide 65 as requiring subcontractors to be Guide 25 accredited. We expect that as a result of our requirement that TCBs must be accredited to Guides 65 and 25, TCBs will have the expertise to determine whether a

[36] The US/EC MRA contains a non-exclusive list for telecommunications equipment. The model APEC MRA provides that countries will identify the relevant regulations and requirements at the time they enter into bilateral agreements.

[37] *See* Acme comments at 2, DLS comments at 4, ICS comments at 2, and Retlif comments at 4.

[38] *See* TIA comments at 3.

[39] *See* Motorola comments at 7-9, and Redcom comments at 2.

[40] *See* Guide 65, clause 4.4. Although a TCB might use a subcontractor to perform certain tasks related to the certification process, a TCB is precluded by Guide 65 from delegating to a third party, such as a subcontractor, any authority for granting certifications. *See* Guide 65, clauses 4.4(a) and 12.2.

[41] *See* Guide 65, clause 4.4(a) & (b).

manufacturer or independent laboratory that is a subcontractor is competent to correctly measure the equipment being tested. We will allow TCBs to use any reasonable means, including requiring Guide 25 accreditation, to determine whether a subcontractor is competent and in compliance with relevant standards or guidelines.

22. *Manufacturers.* Retlif, Rockwell and Kenwood request that the Commission confirm that a manufacturer can be a TCB, provided it meets the Guide 65 requirement for impartiality.[42] ACIL, CCL and Intertek want the Commission to provide a clear definition of "independence" for TCBs, and propose a definition based on the language in European Directives,[43] which would exclude manufacturers from being TCBs.

23. Guide 65 clearly requires that the certifying body be impartial. More specifically, clause 4.2 of Guide 65 requires that the certifying body "not supply or design products of the type it certifies," nor "provide any product or service which could compromise the confidentiality, objectivity or impartiality of the certification process and decisions."[44] We interpret these guidelines to effectively preclude manufacturers from becoming TCBs. Thus, we do not find it necessary to adopt a specific definition of independence in order to preclude manufacturers from TCB designation. On the other hand, we find Guide 65 less restrictive regarding subcontractors. Clause 4.4 of Guide 65 states that the certifying body is to ensure that the subcontractor "is not involved either directly or through the person's employer with the design or production of the product in such a way that impartiality would be compromised."[45] Thus, manufacturers satisfying the conditions of clause 4.4 of Guide 65 could be used as subcontractors, provided the TCB is satisfied that its own impartiality would not be compromised. Since the TCB is the party whose impartiality must be maintained, the TCB is in the best position to determine whether the use of a particular subcontractor would in any way jeopardize that requirement. We expect, nonetheless, that a manufacturer would not be used as a subcontractor to test its own products or similar products made by a competing manufacturer.

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[42] *See* Retlif comments at 3, Rockwell comments at 2, and Kenwood reply comments at 3.

[43] *See* ACIL comments at 3, CCL comments at 2, and Intertek comments at 4.

[44] *See* Guide 65, clause 4.2(a) & (o).

[45] *See* Guide 65, clause 4.4(b).

Designation Procedure

24. The *Notice* proposed that TCBs be accredited by NIST under its National Voluntary Conformity Assessment System Evaluation (NVCASE) program.[46] We proposed that NIST would perform an assessment in accordance with the standards in ISO/IEC Guide 61[47] to determine if the TCB complies with Guide 65. The comments generally support having NIST perform Guide 65 accreditation, but ACIL, Acme, CCL, ICS, Intertek and TIA argue that additional bodies be allowed to perform accreditations.[48] Retlif wants only NIST to accredit during the transition period for MRA implementation, since U.S. government involvement will help strengthen the program's international acceptance.[49] ANSI does not believe that NIST can accredit to Guide 65, and offers its own accreditation program as an alternative to NIST.[50] NIST agrees that it can either accredit bodies directly, or recognize accreditors who would then perform the actual accreditations.[51]

25. In accordance with our proposal, we designate NIST as the entity with primary responsibility for accrediting TCBs. NIST may directly accredit TCBs or may, in consultation with the Commission, designate additional accreditation bodies who will, in turn, accredit TCBs. We will work directly with NIST to develop the many administrative details of the criteria and processes for accreditation of TCBs. The Commission will identify for NIST, for example, the specific types of tests that need to be done for telecommunications equipment and the types of measurements that should be done to demonstrate compliance with our rules; identify processes that TCBs will use to obtain current and correct interpretations of rules or test procedures; and identify consultative activities requiring TCB participation. The Commission will provide public notice of the methods that NIST will use to accredit TCBs consistent with the qualification criteria adopted herein.

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[46] *See Notice* at para. 14.

[47] ISO/IEC Guide 61 (1996) *General requirements for Assessment and Accreditation of Certification/Registration Body assessment and Accreditation Systems - - General Requirements for Operation.*

[48] *See* ACIL comments at 3, Acme comments at 2, CCL comments at 3, ICS comments at 2, Intertek comments at 3, and TIA comments at 4.

[49] *See* Retlif comments at 4.

[50] *See* ANSI comments at 2.

[51] *See* NIST comments at 1.

26. As proposed in the *Notice*, we will designate as a TCB any organization that meets the qualification criteria and is accredited by NIST or its recognized accreditor.[52] An organization may seek accreditation and designation as a TCB for all or only some equipment requiring authorization under Parts 2 and 68. The Commission will issue a public notice listing each accredited entity that it designates as a TCB and maintain a current list of all designated TCBs. We will not limit the number of TCBs that will be designated, nor will we limit the time period during which an organization must be accredited and designated. We will not require periodic renewals of a TCB designation, but we note that under international standards, accreditations are only valid for a specific number of years. The Commission will withdraw the designation of a TCB if the TCB's accreditation by NIST or its recognized accreditor is withdrawn or expires, if the Commission otherwise determines there is just cause for withdrawing the designation, or if the TCB requests that it no longer hold the designation. The Commission will provide a TCB with 30 days notice of its intention to withdraw TCB designation and provide the TCB with an opportunity to respond. Withdrawal of designation will be announced by public notice.

27. There are many details of the qualification and accreditation process that remain to be worked out between the Commission and NIST. Therefore, we delegate authority to the Chief, OET and the Chief, CCB to identify the specific methods that will be used by NIST to accredit TCBs, consistent with the qualification criteria adopted herein, and to enter into a memorandum of understanding with NIST on the accreditation process for TCBs. We also delegate authority to the Chief, OET and the Chief, CCB to designate and withdraw the designation of TCBs, consistent with the terms of this *Report and Order*.

Implementation Matters

28. In the *Notice*, we proposed to allow TCBs to certify equipment under Parts 2 and 68 of our rules, performing the same application processing functions as used by the Commission. In particular, the following requirements were proposed for TCBs.[53]

a) Certification must be based on the submittal to the TCB of an application that contains all the information required under the Commission's rules.[54]
b) TCBs will be required to issue a written grant of certification.

[52] *See Notice* at para. 15.

[53] *See Notice* at para. 17.

[54] The application form for equipment authorized under Part 2 is FCC Form 731, and the application form for equipment authorized under Part 68 is FCC Form 730. *See* 47 C.F.R. §§ 1.1103 and 1.1105.

c) The grantee of certification will remain the party responsible to the Commission for compliance of the product.
d) The type testing as defined in Guide 65 should normally be done on only one unmodified sample of the equipment for which approval is sought.
e) There is no restriction on the fees that TCBs may charge for certification.
f) TCBs may either perform the required compliance testing themselves, or may accept and review the test data from manufacturers or other laboratories. TCBs may also subcontract with others to perform the testing. However, the TCB remains responsible for ensuring that the tests were performed as required and in this regard TCBs are expected to perform periodic audits to ensure that the data they may receive from others is indeed reliable.
g) Equipment certified by a TCB must meet all the Commission's labelling requirements, including the use of an FCC Identifier.
h) TCBs must submit an electronic copy of each granted application to the Commission using the new electronic filing system for equipment authorization applications. This will allow us to easily verify whether a piece of equipment has been approved without having to locate the TCB which approved it and obtain the records. It will also allow us to monitor the activities of the TCBs to determine how many approvals are issued and for what types of equipment. Finally, this would create a common database that all parties can use to verify approvals and obtain copies of applications. Where appropriate, the file should be accompanied by a request for confidentiality for any material that qualifies as trade secrets.
i) TCBs may approve requests for permissive changes to certified equipment, irrespective of who originally certified the equipment.
j) TCBs must periodically perform audits of equipment on the market that they have certified to ensure continued compliance.

29. In the *Notice*, we tentatively concluded that some functions not be performed by TCBs but, rather, by the Commission. In particular, we tentatively concluded that TCBs not grant waivers of Commission rules and regulations; not certify new or unique equipment for which Commission rules or requirements do not exist or for which application of the rules or requirements is not clear; not take enforcement action but rather report rule violations to the Commission; and not grant transfers of control or assignments of certifications.[55] Finally, we proposed that any action of a TCB be subject to review by the Commission.[56]

[55] *See Notice* at para. 18.

[56] *Id.*

30. Commenters were generally supportive of the implementation requirements. Some specific concerns were expressed, and we discuss those concerns below. In light of the comments, we adopt these requirements as modified and clarified below.

31. *Scope of responsibility.* ACIL, CCL, DLS and Intertek urge the Commission to give TCBs the fullest authority possible.[57] Most commenters support the Commission's proposals that only the Commission grant waivers of rules and take enforcement actions.[58] PCTEST does not believe that TCBs should be allowed to certify products that require routine environmental evaluation for RF exposure, since there are few laboratories with experience in the testing, and the test procedures are still under development.[59]

32. Consistent with section 302(e) of the Communications Act, as well as the terms of the MRAs, we will use TCBs to test and certify equipment as complying with our technical rules and requirements. Under this authority, TCBs are to certify equipment in accordance with Commission rules and policies. It is important that applicants are treated fairly and equitably regardless of where their equipment is certified, since a certification granted by a TCB will be treated the same as one issued by the Commission. In that regard, should equipment manufacturers take issue with a TCB's decision, they may seek Commission review of such decision. Thus, TCBs are not to impose their own requirements, and must conform their testing and certification processes and procedures to comply with any changes the Commission makes in its rules and requirements. We recognize that changes to the Commission's technical rules may require TCBs to be re-accredited in order to continue to be qualified to test and certify certain equipment. Finally, we anticipate that TCBs will test and certify a broad range of equipment, and we do not intend to preclude TCBs from certifying any class of equipment at this time, as PCTEST suggests. We would, however, only designate a TCB to test and certify equipment requiring routine evaluation for RF exposure if it demonstrates that it has the appropriate knowledge and expertise. Any concerns that TCBs may have about specific test procedures for RF exposure will be addressed by the Office of Engineering and Technology during the TCB program implementation.

33. Although we intend to use TCBs to certify a broad range of equipment, we find that certain functions regarding certifying equipment should continue to be performed by the Commission. Specifically, TCBs will not be permitted to waive the rules, nor to certify new or

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[57] *See* ACIL comments at 6-7, CCL comments at 4, DLS comments at 4, and Intertek comments at 6-7.

[58] *See* ACIL comments at 6, CCL comments at 4, Intertek comments at 6, Retlif comments at 5 and TIA comments at 7.

[59] *See* PCTEST reply comments at 3.

unique equipment for which Commission rules or requirements do not exist or for which application of the rules or requirements is not clear. The Commission in the first instance will determine whether and under what conditions rules may be waived, and provide interpretations of novel issues concerning the Commission's technical standards, testing requirements or certification procedures. We expect that in many instances the Commission's decisions can provide adequate guidance to TCBs to allow them to certify equipment that is similarly situated. In some instances, the Commission may have to develop new rules. We find that by reserving for the Commission all waiver requests and new and novel rule applications and interpretations, we can ensure that all TCBs will certify equipment in a uniform manner, consistent with Commission policies.

34. We also conclude that TCBs should not take any enforcement actions, but rather report apparent violations of rules to the Commission. Enforcement actions that the Commission may undertake include, for example, revocation of an authorization and imposing a fine and forfeiture. Neither Section 302(e) of the Communications Act of 1934, as amended,[60] nor the MRAs contemplate using TCBs as enforcement agents. Moreover, the Commission has specific statutory obligations that it must satisfy in this area.[61]

35. ACIL, Intertek and TIA state that the Commission should allow TCBs to authorize transfers of control, since that is a simple procedure for Part 68 applications.[62] We will not permit TCBs to authorize transfers of control of Part 2 grants of certification, however, because the Commission's rule on these transfers requires that we make a determination on a case-by-case basis as to whether new equipment authorization applications are required.[63] We will continue to perform that function to ensure that the rule is applied in a consistent manner. We determine, however, that TCBs may authorize transfers of Part 68 certifications. Commission approval of such transfers is not required, although the Commission requires notification of such transfers.[64] We intend to develop an electronic filing system to accommodate Part 68. We expect that the electronic filing system will permit TCBs to notify the Commission of transfers of control. In

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[60] *See* 47 U.S.C. section 302(a).

[61] *See, e.g.,* Title V of the Communications Act.

[62] *See* ACIL comments at 6-7, Intertek comments at 7, and TIA comments at 7.

[63] *See* 47 C.F.R. § 2.929(d).

[64] *See* 47 C.F.R. § 68.214(b).

the interim, we will accept Part 68 transfers of control by utilizing the same means of communication we employ during the TCB program implementation period.[65]

36. *Written grant of certification.* Several parties would like the Commission to ensure that grants issued by TCBs are exactly equivalent to grants issued by the FCC. ACIL, Intertek and TIA suggest that TCB-issued grants indicate that the TCB is FCC designated, and that the FCC publish the list of TCBs under its letterhead.[66] Motorola and PCTEST recommend that the FCC standardize the format of TCB grants.[67] We find that the first two suggestions have merit. We believe the success of the TCB program will depend in part on our ensuring that TCB certifications are truly equivalent to those issued by the Commission. Accordingly, we will require a TCB grant to indicate that the TCB is designated to grant the certification, citing the source of authority (e.g., the rules that we are adopting in this *Report and Order*). We will not require a specific format for TCB grants, but the certification must include the same information as contained in one issued by the Commission. We will make samples of the Commission's format available to TCBs that wish to follow it.

37. Consistent with the Commission's rules,[68] a TCB may set aside a grant on its own motion within 30 days of the effective date of the grant in the event of administrative errors, e.g., the application was not complete. The TCB will be required to provide notice of such action to the applicant and to the Commission. After the 30 day period, only the Commission may revoke a grant if, for example, we discover misrepresentations in the application or failure of the equipment to conform to the applicable technical standards.[69]

38. *Unmodified sample for type testing.* Curtis-Strauss requests clarification on what constitutes an "unmodified" sample for testing.[70] Curtis-Strauss points out that manufacturers often apply for certification during product development, and product modifications are often

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[65] We will accept FCC form 730 for transfer of control purposes until we have developed and implemented an electronic filing system for Part 68. We may utilize interim filing procedures as necessary during the development and implementation of the electronic filing system. We will provide public notice of any changes in our filing procedures.

[66] *See* ACIL comments at 4, Intertek comments at 5, and TIA comments at 5-6.

[67] *See* Motorola comments at 5, and PCTEST reply comments at 6.

[68] *See* 47 C.F.R. § 1.108.

[69] *See* 47 C.F.R. § 2.939(a).

[70] *See* Curtis-Strauss comments at 1-2.

needed for compliance.[71] In proposing this requirement, we intended that TCBs use the same standards that we currently use in certifying equipment (i.e., the sample of the equipment for which certification is being obtained must be representative of what will actually be marketed). In the event modifications to a sample are required during compliance testing[72] to make a product comply with the standards, those modifications must be incorporated into the finished marketed product.[73]

39. *Test data.* Some commenters express concern that TCBs will not accept test data from manufacturers or independent labs, preferring instead to conduct compliance testing themselves. SEA is concerned that TCBs will have an incentive to conduct compliance testing themselves in order to demonstrate their impartiality and, as a result, manufacturers' costs and time to market will increase.[74] TIA asks that we clarify whether "subcontractor" includes an applicant's own test lab.[75] Although it recognizes that a TCB will want a manufacturer to demonstrate a basis for confidence in the manufacturer's test procedures and results, Motorola suggests that TCBs provide public notice of the criteria they will use to determine whether they will accept test data from a manufacturer.[76] ACIL recommends that ISO Guide 25 accreditation serve as the basis for accepting test data.[77]

40. Under the Commission's current certification process, manufacturers and independent laboratories may test products and submit applications to the Commission for certification. Under the TCB system we are adopting, manufacturers and independent labs may continue to test products as they do now, except applications can be submitted to a TCB rather than the Commission.[78] Thus, a manufacturer or a test lab does not have to be a subcontractor in order to test products and submit applications to a TCB. We agree with Motorola that a TCB will want a manufacturer to demonstrate a basis for confidence in the manufacturer's test procedures and

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[71] *Id.*

[72] "Compliance testing" and "type testing" mean the same thing.

[73] *See* 47 C.F.R. § 2.907(b) (equipment marketed by a grantee must be identical to the sample tested).

[74] *See* SEA comments at 5-6.

[75] *See* TIA comments at 6.

[76] *See* Motorola comments at 9.

[77] *See* ACIL comments at 2.

[78] A TCB is required to make its services available to all applicants. *See* clause 4.1.2 of Guide 65.

results. Consistent with our decision regarding subcontractor's competence, a TCB can establish confidence in a manufacturer's or independent lab's test results by any reasonable means, but we will not require accreditation of the test lab under Guide 25. We expect that a TCB will examine a test report for completeness of data and documentation; notify applicants in writing of any deficiencies in the test report; request additional information to address the deficiencies; and not retest or duplicate testing for minor equipment changes that do not affect compliance with technical requirements. Our oversight of TCBs should identify any abusive practices concerning the acceptance of test data.

41. *Common Database of Certified Equipment.* ACIL, CCL, Intertek and TIA request that the Commission establish a standard format for the information submitted for inclusion in the database to be maintained by the Commission.[79] ACIL provides a list of the information it believes is necessary to include in the database.[80] TIA requests that the Commission work with industry to develop the common database.[81]

42. We conclude that it is necessary to maintain a common database of certified equipment by having all TCBs send an electronic copy of each granted application, including the certification the TCB issued, to the Commission using the electronic filing system for Part 2 applications. As we explained in the *Notice*, a common database will allow the Commission to verify whether a piece of equipment was approved without having to locate the TCB that approved it and obtaining their records; to monitor the activities of TCBs to determine how many approvals are issued and for what types of equipment; and to provide one location which all parties can use to verify approvals and obtain copies of applications. However, requiring submission of a copy of the complete application to the database, including all the photographs, user manuals and test reports would be an unnecessary burden on TCBs. We will only require submission of the application Form 731 and an electronic copy of the TCB's grant of equipment authorization. In the event we need additional information about a particular piece of equipment, we can obtain it from the TCB. We are amending our rules to require TCBs to provide a copy of the application file within 30 days of a request by the Commission, or to provide an explanation as to why the file can not be provided. Where appropriate, the TCB will provide a copy of any request for confidentiality for any material in the application file that qualifies as

[79] *See* ACIL comments at 5, CCL comments at 8, Intertek comments at 10, and TIA comments at 6.

[80] *See* ACIL comments at 5-6. ACIL recommended that the information submitted include the application form, photographs of the equipment, and a copy of the test results.

[81] *See* TIA comments at 6.

trade secrets, to ensure appropriate handling.[82] OET will notify TCBs of the specific information it will need about a TCB grant and in what electronic format it should be provided.

43. We recognize that we have not yet developed an electronic filing system to accommodate Part 68, but intend to do so in the future. We will utilize conventional means for collecting information in the interim.[83] We will authorize submission of Part 68 certification information into a common database, and describe the information that must be filed for Part 68 purposes, after we have developed an electronic filing system to accommodate that information.

44. *Surveillance Activities.* ISO/IEC Guide 65 requires TCBs to perform surveillance on products they have approved.[84] It does not specify the number or percentage of products that need to be examined. We received a number of comments on this issue. Acme and Curtis-Strauss would like the Commission to clarify exactly what TCBs are required to do.[85] However, many parties object to requiring TCBs to perform surveillance. Cisco, ITI, Itron, Motorola, SEA and PCTEST believe that surveillance should be done only by the government, primarily because they view audits as closely aligned with enforcement responsibility which they argue should be retained by the Commission.[86] Cisco, ITI, Itron and PCTEST are concerned about a possible lack of impartiality or conflict of interest.[87] Cisco also is concerned that a TCB may determine that a product is no longer in compliance with a certification it issued, when in fact the manufacturer used another TCB to certify the product modification.[88] SEA is concerned that TCBs will have to charge additional fees to cover the cost of equipment audits.[89]

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[82] Under clause 4.10 of Guide 65, TCBs are to safeguard the confidentiality of information obtained in the course of their certification activities, but they may disclose the information as required by law.

[83] We will accept FCC form 730 during the development and implementation of the electronic filing system.

[84] *See* Guide 65, clause 13.

[85] *See* Acme comments at 1, and Curtis-Strauss comments at 2.

[86] *See* Cisco comments at 9, ITI comments at 6, Itron comments at 2, Motorola comments at 9-10, SEA comments at 8-9, and PCTEST reply comments at 4.

[87] *See* Cisco comments at 9-10, ITI comments at 6, Itron comments at 2-3, and PCTEST reply comments at 4.

[88] *See* Cisco comments at 9-10.

[89] *See* SEA comments at 8-9.

45. The Commission will continue to perform its own surveillance of products on the market, by periodically conducting random product testing as well as by investigating allegations of non-compliance. However, we find that surveillance is an appropriate activity for TCBs to supplement the Commission's efforts. Under clause 13 of Guide 65, a TCB is obligated to ensure that products that it has certified continue to comply with Commission requirements, particularly after a manufacturer notifies a TCB that the product has been modified.[90] We will not specify a specific number or percentage of products that a TCB should test to satisfy this guideline, since our experience has shown that different levels of scrutiny are required for different products to ensure compliance.[91] We will rely on TCBs to use their judgment in complying with this guideline. In addition, we may periodically require a TCB to test for continued compliance certain types of products that the TCB certified and which are already being marketed (post-market surveillance). We do not view post-market surveillance by TCBs as an abdication of our enforcement responsibilities, since the TCB will report apparent violations to the Commission and not take action on its own against the manufacturer. To ensure that TCBs conduct audits impartially, the Commission will devise procedures that TCBs will use for post-market surveillance, and we delegate authority to the Chief, OET and the Chief, CCB to develop procedures that TCBs will use for conducting post-market surveillance. These procedures will address, for example, conducting field audits or acquiring samples for testing. The TCB will test the products under the Commission guidelines and report the results to us. TCBs will be able to check the Commission's common database, described above, to avoid reporting as non-compliant products that actually were subsequently re-certified by another TCB. By using the TCBs to conduct audits, the Commission will be able to secure information quickly from a variety of sources about ongoing compliance, while focusing its own resources on investigating specific problem cases. Based on the TCBs' reports, the Commission may conduct further investigations and take appropriate enforcement action against companies found to be marketing non-compliant products. As stated above, the Commission will also continue to perform post-market surveillance in cases where we deem it warranted, and to audit the performance of TCBs. These actions will help ensure that TCBs act in a fair, impartial manner. We expect that TCBs will take the cost of post-market surveillance into account when setting their fees. As previously stated, we are not regulating the fees that TCBs charge, but we expect that competitive pressures in the market will prevent a TCB from charging excessive fees.

46. *Consultative Activities.* Several parties suggest that the Commission develop a joint public-private sector working group to address implementation issues as they arise. Commenters

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[90] *See* Guide 65, clause 13.2.

[91] For example, low-power, unlicensed transmitters such as cordless telephones and baby monitors have frequently been a source of compliance problems because of pressures in the marketplace to build them as cheaply as possible, or to increase their operating range by increasing their transmitter power above the legal limit.

recommend that this working group include all interested parties, such as TCBs, test labs and manufacturers.[92] We refrain from establishing a new formal organization at this time, and choose to rely instead on existing voluntary industry consensus groups. For example, for Part 68 issues, we intend to continue our cooperative association with TIA's TR.41 committees. Moreover, we intend to work with all interested parties to implement the TCB program and to ensure its success.

Continued Certification by the Commission

47. The *Notice* solicited comments on whether the Commission should eventually stop certifying equipment once TCBs are designated.[93] We received mixed comments on this issue. ACIL, CCL, Compliance, DLS, ICS, Intertek and TIA state that the Commission should cease certifying equipment after TCBs are designated.[94] However, Cisco, Curtis-Strauss, ITI, Motorola and SEA state that the Commission should continue to certify equipment.[95] Cisco states that the Commission is better able to interpret the rules, and authorization by the Commission will set a benchmark for quality and prices.[96] ITI believes that having the Commission continue to issue authorizations will help limit fees charged by TCBs.[97] Motorola believes continued Commission certification is necessary to satisfy foreign governments that may require an FCC approval.[98]

48. Our goal in this proceeding is to discontinue granting routine, non-controversial applications under Parts 2 and 68 of our rules when TCBs are available to perform the work, but we do not at this time set a date when the Commission will cease to issue authorizations. We conclude that the Commission should continue approving equipment, including processing routine applications, during the implementation of the TCB program. This will help smooth the transition to the new system and ensure that at least one organization is available to certify all

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[92] *See* ACIL comments at 7, CCL comments at 4-5, ICS comments at 3, Intertek comments at 7-8, Retlif comments at 4, and TIA comments at 7-8.

[93] *See Notice* at para. 20.

[94] *See* ACIL comments at 8, CCL comments at 5, Compliance comments at 2, DLS comments at 4, ICS comments at 3, Intertek comments at 8, and TIA comments at 8.

[95] *See* Cisco comments at 10, Curtis-Strauss comments at 2, ITI comments at 4-5, Motorola comments at 5, and SEA comments at 9-10.

[96] *See* Cisco comments at 10-11.

[97] *See* ITI comments at 4.

[98] *See* Motorola comments at 5.

types of equipment. After we have some experience with the new system, we will assess the effectiveness of the TCB program and determine when the Commission should discontinue approving products. After the TCB program is initiated, however, the Commission will continue to be the authorizing body if no TCB is available to authorize a given type of equipment and to process applications raising novel issues regarding application of our rules.

49. We conclude that it is unnecessary for the Commission to continue approving certification applications for personal computers and peripherals, since that equipment can be authorized through the DoC procedure.[99] We find that processing these voluntarily filed applications is not an efficient use of the Commission's resources. Accordingly, once domestic TCBs are available to process applications for personal computer equipment for those applicants who choose to use the certification process rather than DoC, the Commission will stop accepting these applications a reasonable time thereafter. The Commission will announce by public notice when it will cease to accept these applications. We amend Section 15.101 of the rules to reflect this change.

Implementation Dates and Transition Periods

50. In the *Notice*, we proposed that a transition period of 24 months elapse before any TCBs would be allowed to certify equipment.[100] This time period was proposed because it is similar to the provision of the US/EC MRA, which specifies a 24 month transition period after the MRA effective date, so that countries have time to modify requirements and procedures to meet the MRA's obligations. Some commenters suggest that a transition period be no more than 24 months, and perhaps less.[101] Upon further consideration, we do not find it necessary to delay the introduction of the TCB system for a 24 month period, and we would rather implement the TCB system as soon as practicable. Nonetheless, we cannot implement the TCB system immediately because of a number of tasks which need to be completed first. For example, we need to specify the documentation necessary to meet the qualification criteria for TCBs, as discussed above, and we need to develop with NIST the accreditation and designation procedures. Although we will immediately begin taking the necessary steps to implement the TCB system, we recognize that it is difficult to specify a fixed date when TCBs will begin to certify

[99] Personal computers and peripherals can be authorized through the DoC procedure, but manufacturers also have the option of obtaining certification from the Commission. In the quarter that ended in September 1998, the Commission received 342 applications for this equipment, which was approximately one-third of all applications received during that time period.

[100] *See Notice* at para. 19.

[101] *See* ACIL comments at 7, ITS comments at 8, and TIA comments at 8.

equipment. We also conclude that a fixed date would not serve the ongoing accreditation and implementation processes. For example, TCBs may be identified readily for some equipment, but not for others, accreditation compliance dates may vary, and TCBs can enter and exit the system at different times. Thus, we conclude that we will authorize the use of TCBs as they are designated by the Chief, OET and the Chief, CCB in a public notice.

Part 68 Issues

51. *Terminology.* In the *Notice*, we discussed the use of the terms "certification" and "registration" as they apply to the Part 68 program.[102] Commenters suggest that the two terms are functional equivalents, and recommend that we expand our use of the term "certification" to include our Part 68 program.[103] Commenters point out that such usage would be consistent with various other parts of the Federal Register, the norms of international terminology, and specifically the language of the MRAs.[104] We agree with commenters that the use of common terminology benefit clarity and consistency, and determine that the terms "registration" and "certification" are equivalent for the purposes of our Part 68 rules. To the extent practicable, we will implement this change in the course of future rule makings and administrative actions affecting Part 68.

52. *FCC Form 730.* The Part 68 program currently utilizes FCC Form 730 to transmit information from test labs and manufacturers to the Commission. In the *Notice*, we sought comment on whether we could utilize that form to transmit test data to the Commission from TCB candidates during the transition period.[105] Although commenters support the use of a common format for recording and transmitting information among TCBs and the Commission, they do not support the use of FCC Form 730 for this purpose.[106] We agree that FCC Form 730 is not the optimal format for use among TCBs and the Commission, and intend to develop an electronic filing system and common database to fulfill that purpose. In the mean time, however, we find that it would be a waste of resources to create an interim solution. Thus, we determine that we will utilize FCC Form 730 as the initial information transmission format for the purposes

[102] *See Notice* at para. 21-24.

[103] ACIL comments at 8; CCL comments at 5; ICS comments at 4; ITC comments at 9; TIA comments at 10.

[104] ACIL comments at 8; ITS comments at 9; TIA comments at 10.

[105] *See Notice* at para. 24.

[106] *See* ACIL comments at 11-12; CCL comments at 8; ITS comments at 10.

of implementing the TCB program. We will, however, update this requirement pursuant to further TCB program implementation activities.

B. Mutual Recognition Agreements (MRAs)

United States / European Community MRA

53. The Office of the United States Trade Representative and the Department of Commerce have participated in negotiations over the past several years to develop a mutual recognition agreement for product approvals with the European Community (EC). The Commission has also participated in these negotiations, as have industry representatives from both the United States and Europe. These negotiations culminated on June 21, 1997 when the US/EC MRA was finalized by the United States Trade Representative and a representative of the European Community. The Agreement was signed on May 18, 1998, and entered into force on December 1, 1998.

54. The US/EC MRA addresses conformity assessment activities in six industrial sectors: telecommunications equipment, electromagnetic compatibility, electrical safety, recreational craft, pharmaceutical good manufacturing practice, and medical devices. The Commission's regulations apply directly to two industry sectors, telecommunications equipment and electromagnetic compatibility ("EMC"), among the six specifically addressed by the US/EC MRA. The telecommunications sector addresses terminal equipment covered by Part 68 of the rules, and transmitters covered by Part 2 and other parts of the Commission's rules. The EMC sector applies to equipment addressed by Parts 15 and 18 of the Commission's rules.[107]

55. Under the US/EC MRA, products can be tested and certified in the United States for conformance with EC member states' technical requirements. The certified products may be shipped directly to Europe without any further testing or certification. In return, the MRA obligates the United States to permit parties in Europe to test and authorize equipment based on the United States technical requirements. The US/EC MRA thereby promotes bilateral market access and competition in the provision of telecommunications products and electronic equipment. The US/EC MRA also will reduce industry burdens and delays caused by testing and approval requirements for products marketed in the United States and Europe.

56. The US/EC MRA provides a 24 month transitional period that will be used to implement the regulatory or legislative changes necessary for both parties to implement the US/EC MRA. The period began on the effective date of the MRA, which is December 1, 1998.

[107] *See* 47 C.F.R. §§ 2, 15, 18, and 68.

At the end of the transition period, the parties should be prepared for full mutual recognition of product certifications and registrations. To ensure parity between U.S. and EC manufacturers, we will not permit parties in an EC country to test and approve products to U.S. requirements until that country permits U.S. parties to test and approve products to its requirements.

Asia-Pacific Economic Cooperation (APEC) MRA

57. The Office of the United States Trade Representative, at the request of the United States telecommunication industry, has negotiated a Mutual Recognition Arrangement (MRA) for Conformity Assessment for Telecommunication products in the Asia-Pacific Economic Cooperation (APEC), which is intended to facilitate trade in telecommunications and radio equipment among the APEC economies. APEC is a trade cooperative of twenty-one economies along the Pacific Rim. Commission staff and representatives of the United States telecommunications industry have been participating in a Task Force Group under the Telecom Working Group of APEC, which was established in March, 1997 to facilitate the development of the APEC Telecom MRA.

58. The text of the model APEC Telecom MRA was finalized on April 30, 1998 and was endorsed at the APEC Ministerial Meeting on June 5, 1998. Unlike the US/EC MRA, the APEC Telecom MRA is a voluntary model agreement. To enact the agreement, each APEC member economy must adopt the agreement with each of its APEC trade partners, such as the United States, through a bilateral exchange of letters. Participation in the APEC Telecom MRA is voluntary; however, if a member economy chooses to participate, the model text becomes the governing document for conformity assessment between the participating member economies. The MRA is expected to take effect on July 1, 1999, although individual parties may agree to apply it bilaterally before that date. The key elements of the APEC Telecom MRA text are substantially similar to the key elements of the US/EC MRA text, with the following exceptions: the APEC Telecom MRA has specific designation procedures for conformity assessment bodies (CABs); when parties agree to participate in activities with one another, the transition period will normally be twelve months from the date of mutual agreement; and implementation occurs in two phases - the first for accepting test results and the second for accepting product approvals. As in the case of the US/EC MRA, we will not permit parties in an APEC member economy to test and approve products to U.S. requirements unless that member economy permits parties in the U.S. to test and approve products to its requirements. We adopt the tentative conclusion in the *Notice* that the rules proposed in this proceeding to implement the US/EC MRA are sufficient to implement the APEC Telecom MRA.[108]

[108] *See Notice* at para. 35.

Other MRAs

59. We anticipate that the United States may develop or participate in additional mutual recognition agreements that involve other regions of the world. For example, the Interamerican Telecommunications Committee (CITEL) of the Organization of American States is considering developing an MRA for the Americas region.

Designation of TCBs for equipment imported into the United States

60. The *Notice* proposed to amend our rules as required to permit parties in MRA partner economies to certify radio frequency devices for conformance with Parts 2, 15, 18 and other rule parts and to test and certify telecommunications equipment for conformance with Part 68.[109] We proposed that these privileges should only be granted subject to the terms and conditions specified in the MRA.[110] No parties disagreed with this proposal. Accordingly, we are amending Parts 2 and 68 of our rules to allow parties in MRA partner economies to certify equipment under applicable MRA terms and conditions.

61. In accordance with the US/EC and APEC MRAs, the United States and each MRA partner will identify a "Designating Authority" in its territory. A Designating Authority is a body with power to designate, monitor, suspend, remove suspension of or withdraw conformity assessment bodies (CABs) in accordance with the MRAs. The Designating Authorities must meet the requirements of ISO/IEC Guide 61. Designating Authorities will in turn designate CABs, also within each country's territory, that will be empowered to approve products for conformity with the technical requirements of countries to which the equipment is exported. As used in the APEC and US/EC MRAs, "conformity assessment body" is a general term that refers to a body, which may include a third party testing laboratory or a certification body, that performs conformity assessment to specific technical regulations. Consequently, the MRAs cover two types of product approvals under the Commission's rules: certification, which is approval granted by a certification body, such as a TCB, and declaration of conformity, which requires product testing

[109] *See Notice* at para. 33.

[110] *Id.*

by an accredited testing laboratory.[111] The MRAs state that the designation of CABs is based on international standards, specifically ISO/IEC Guides 65 and 25.

62. Because CABs in exporting countries will be certifying equipment for import into the United States, we expect that those CABs will follow all relevant Commission requirements for certification, including those requirements we are adopting in this *Report and Order*. Thus, CABs will follow the implementation guidelines discussed above. The MRAs contain provisions to remove the designation of foreign certifiers that do not comply with the applicable requirements. Those provisions are discussed below.

Designation of TCBs for equipment exported from the United States.

63. The US/EC and APEC MRAs identify the Designating Authorities for the United States as NIST and the Federal Communications Commission. NIST will designate conformity assessment bodies, such as TCBs,[112] in the United States for equipment that will be exported through its National Voluntary Conformity Assessment System Evaluation (NVCASE) program. NIST will oversee the United States conformity assessment bodies on an ongoing basis to ensure that they are performing in a satisfactory manner. We stated in the *Notice* that it would be unnecessary for the Commission to play a direct role in designating or supervising TCBs with respect to equipment being exported. However, the Commission would provide assistance and guidance to NIST as may be necessary. For example, if questions arise as to the performance of a United States-based CAB, the Commission would make its expertise in testing and measurements available as needed to resolve such matters.

64. We adopt the approach described in the *Notice* for designating conformity assessment bodies, such as TCBs, in the United States for equipment that will be exported to countries pursuant to MRAs. TCBs designated to certify equipment for export to a specific country shall meet the qualification criteria specified in the relevant MRA. We conclude that NIST has sufficient resources and experience to assume responsibility for designating and overseeing the performance of TCBs certifying equipment for export, in conformance with MRA obligations. Thus, the Commission will not perform designation and oversight functions for TCBs certifying equipment for export, but will provide assistance and guidance to NIST as necessary.

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[111] *See* 47 C.F.R § 2.948(d). Laboratories that perform testing for a declaration of conformity must be Guide 25 accredited. The accreditation of laboratories located outside the U.S. is acceptable only if 1) there is an MRA between that country and the U.S., and the laboratory is covered by the agreement; 2) there is an agreement between accrediting bodies that permits similar accreditation of U.S. facilities to perform testing for products marketed in that country; or 3) the country already accepts the accreditation of U.S. laboratories.

[112] A TCB is a type of conformity assessment body.

65. We received several comments on the MRA provisions for equipment being exported from the United States. DLS and USCEL request that we clarify whether the US/EC MRA covers Competent Bodies in Europe which evaluate Technical Construction Files for electromagnetic compatibility (EMC) that are used in some cases in lieu of a supplier declaration, and whether U.S. TCBs should be permitted to prepare Technical Construction Files for equipment going to Europe.[113] Intertek wants the Commission to clarify that U.S. TCBs do not need accreditation from Europe to approve products going to Europe.[114] SEA notes that TCBs approving products for export would have to be able to approve products for many different countries, since standards still vary by country.[115] Cisco wants the Commission to ensure that U.S. TCBs are capable of granting equipment authorizations for any country covered by the US/EC MRA. Otherwise, manufacturers would have to approve equipment at multiple TCBs, which is the same piecemeal approach manufacturers currently face.[116] PCTEST does not believe that Europeans will accept test results and certifications of products performed in the United States. It wants the Commission to take an active role in TCB certification of equipment exported to Europe and other countries.[117] SEA also expresses concern that regulatory authorities in some countries may require additional approvals despite the MRA.[118]

66. Some of the concerns raised are already addressed by provisions of the MRAs. For example, the EC requirements for telecommunications equipment are covered by three separate directives -- EMC, Low Voltage and Telephone Terminal Equipment (TTE) Directives. Each directive has distinct conformity assessment requirements. Under the EMC Directive most equipment is subject to supplier's declaration, except that when standards are not harmonized within the EC or the equipment is too large for remote testing, the supplier must use what is called the Technical Construction File (TCF) route to market, requiring the use of a CAB called a Competent Body. NIST will be able to designate a U.S. entity to serve as a Competent Body, provided the entity is accredited to Guide 25 and meets the appropriate technical requirements

[113] *See* DLS comments at 1, and USCEL comments at 2. In Europe, manufacturers may declare compliance with essential elements of the EMC Directive, relying on harmonized standards. If standards are not harmonized or the standard cannot be used for another reason, the manufacturer develops a technical construction file (TCF) which a European Competent Body will evaluate to determine compliance.

[114] *See* Intertek comments at 4-5.

[115] *See* SEA comments at 11-14.

[116] *See* Cisco reply comments at 9.

[117] *See* PCTEST reply comments at 5.

[118] *See* SEA comments at 11.

in the EMC Directive. Radio transmitters and telephone terminal equipment subject to the TTE Directive, which is the most frequently used route to market, must be approved by a CAB called a Notified Body, which is accredited to Guide 65. In either case, NIST will accredit and designate the U.S. TCBs to the appropriate directives. Under the MRAs, parties are to accept test results and product certifications prepared by CABs in other countries. The APEC MRA, for example, clarifies that an importing party is to accept test reports on terms no less favorable than those it accords to those produced by its own CABs and that re-testing or duplicate testing is to be avoided.[119] Because technical standards vary by country, a U.S. CAB may be found qualified to certify equipment intended for export to some countries but not others. The US/EC MRA, for example, does not require that CABs in this country be capable of approving equipment to all of the EC member states requirements, and we find no basis for imposing such a requirement. We expect that CABs will be able to provide certification for multiple countries because manufacturers will expect this level of service from CABs.

Administration of the MRAs

67. The US/EC MRA provides for oversight of implementation by a Joint Committee and Joint Sectorial Committees ("JSC").[120] The MRA provides that Commission representatives will participate in both committees for the United States with regard to telecommunications equipment and electromagnetic compatibility sectors. The APEC MRA has similar provisions for a Joint Committee consisting of representatives of each party, with subcommittees including persons from the business/private sector. We conclude that Commission participation in the Joint Committees and JSCs will be important to ensure the successful administration and implementation of the US/EC and APEC MRAs. For example, the Commission may serve as an independent authority to evaluate claims of performance deficiencies by United States TCBs or the noncompliance of specific equipment with European technical requirements.

68. With regard to ensuring the ongoing compliance of TCBs, the US/EC MRA provides that if a particular TCB does not appear to be performing satisfactorily, the Commission may request that the noncompliant TCB take corrective actions. The Commission may also present appropriate evidence to the JSCs and/or Joint Committee and request removal of the TCB from

[119] *See* APEC MRA, Appendix B section 5.

[120] The US/EC MRA states that it will be administered by a Joint Committee along with Joint Sectoral Committees ("JSCs") in the various sectors (i.e. - telecommunication and EMC). The Agreement also states that the Joint Committee and JSCs will consist of government representatives, with possible participation by private sector experts in the JSCs. These groups will establish their own operating procedures. Each party will have one vote. The Joint Committee and JSCs will provide a vehicle for the exchange of information, dispute resolution, and general management of the implementation of the US/EC MRA.

the list of designated Certification Bodies. The APEC MRA also has provisions for contesting a TCB's technical competence, and provides a framework to limit or remove the recognition of TCBs when necessary. The Commission shall consult with the Office of the United States Trade Representative (USTR), as necessary, concerning any disputes that arise under an MRA.[121]

C. Global Mobile Personal Communications by Satellite (GMPCS)

69. The *Notice* proposed to adopt an interim equipment authorization procedure for GMPCS terminals prior to full implementation of the GMPCS Arrangements.[122] The Commission will be undertaking a separate proceeding to propose rules to implement fully the GMPCS Arrangements. Because one GMPCS operator was providing service prior to the *Notice* and another system was scheduled to commence service before final rules implementing the Arrangements could be adopted, we proposed a set of interim standards under which applicants could request equipment certification. We believe that certification of GMPCS terminals will be a major benefit to the global satellite industry. A Commission equipment authorization, and the subsequent placement of the "GMPCS-MoU ITU Registry" mark on the terminals, would potentially be recognized by many foreign countries as sufficient to allow the equipment to transit borders more easily and without additional type approvals, equipment testing, or imposition of fees or delay for the user.

70. The *Notice* proposed a voluntary equipment authorization procedure that would apply to GMPCS terminals as defined by the 1996 World Telecommunications Policy Forum held under the auspices of the ITU.[123] The terminals would be certified in accordance with the requirements in Parts 1, 2 and 25 of the rules.[124] In addition, we proposed that terminals operating in the 1610-1626.5 MHz band would also have to meet the out-of-band emission limits recommended

[121] *See* the Telecommunications Trade Act of 1988 (Section 1371-1382 of the Omnibus Trade and Competitiveness Act of 1988). Section 1377 requires the USTR to conduct a review to determine whether any act, policy, or practice of a foreign country that has entered into a telecommunications-related agreement with the U.S. (1) is not in compliance with the terms of the agreement; or (2) otherwise denies, within the context of the agreement, mutually advantageous market opportunities to telecommunications products and services of U.S. firms in that country.

[122] *See Notice* at para. 37-45.

[123] *See supra* note 2.

[124] *See* 47 C.F.R., Parts 1, 2 and 25. Part 25 contains the technical requirements for satellite communications. Part 1 contains the requirements for RF safety, and Part 2 contains the equipment authorization requirements.

for implementation by the year 2000 by the National Telecommunications and Information Administration (NTIA) in their September 1997 petition for rule making.[125]

71. A number of parties expressed concern about the out-of-band emission limits proposed in the *Notice*. LSC, Raytheon and the GPS Council state that the proposed NTIA limits are not stringent enough to protect GPS and GLONASS.[126] However, AMSC and CCI state that the NTIA limits are too stringent.[127] CCI objects to the fact that they have not been adopted through a rule making.[128] Moreover, MCHI believes that the Commission should wait to approve equipment until final standards are adopted, since there may be difficulties in recalling or retrofitting noncompliant equipment if the final standards adopted are more stringent than the interim ones.[129] TIA in their comments, and Globalstar/Airtouch, Iridium, MCHI, Motorola and ORBCOMM in their reply comments, all state that the issue of out-of-band limits should be addressed in a separate rule making proceeding.[130]

72. In addition to uniform support expressed for the Commission's intention to rapidly implement the GMPCS-MoU Arrangements, we also received comments concerning other issues related to the interim GMPCS equipment certification. Primary among these was an indication by several parties that the Commission was limiting the interim authorization procedure to "Big Leos"[131] in the *Notice*. Final Analysis, ICO, Lockheed, ORBCOMM and Iridium all state that the interim authorization procedure should apply to other mobile satellite terminals.[132]

73. In the *Notice*, we specifically proposed to apply an interim procedure for certifying all GMPCS-related terminal equipment where we have authorized service and which demonstrates

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[125] *See* RM-9165

[126] *See* LSC comments at 1, Raytheon comments at 1, and the GPS Council comments at 6.

[127] *See* AMSC comments at 3, and CCI comments at 3.

[128] *See* CCI comments at 3.

[129] *See* MCHI comments at 6-7.

[130] *See* TIA comments at 15, Globalstar/Airtouch reply comments at 5, Iridium reply comments at 5, MCHI reply comments at 2, Motorola reply comments at 8, and ORBCOMM reply comments at 3.

[131] "Big Leo" systems provide voice and data Mobile-Satellite Service via a constellation of one or more non-geostationary orbit satellites operating in the band of 1610-1626.5 MHz.

[132] *See* Final Analysis comments at 3, ICO comments at 2, Lockheed comments at 2, ORBCOMM comments at 7, and Iridium reply comments at 3.

compliance with the Commission's relevant Part 1 and Part 25 standards, including emission limits for "Little Leos"[133] contained in 25.202(f).[134] In light of the comments, we adopt the voluntary interim procedures for all GMPCS terminal equipment.

74. For terminals operating in the 1610-1626.5 MHz band, we proposed to add a requirement that the out-of-band emission limit of -70 dBW/MHz averaged over any 20 millisecond period for wide band emissions occurring between 1559-1605 MHz and -80 dBW/700 Hz for narrow band emissions occurring between 1559-1605 MHz would also need to be met. We find that, for the following reasons, use of the proposed out-of-band emission standards for terminals operating in the 1610-1626.5 MHz band will facilitate the authorization process for this equipment. First, the International Telecommunication Union's Radio Sector (ITU-R) Study Group WP 8D has adopted the proposed wideband standard as a recommendation for suppression of spurious emissions for MSS systems with mobile earth terminals.[135] Similarly, the European Commission/CEPT adopted a European Testing and Standards Institute (ETSI) standard late last year for both CDMA and TDMA-type Mobile Satellite Service (MSS) systems based on this ITU-R recommendation.[136] Second, NTIA proposed both the wide and narrowband standards cited in its recent petition for rule making concerning out-of-band emissions standards for protection of radionavigation devices. By using the most stringent requirement currently under review, we will ensure that MCHI's concern over the recall or retrofit of non-compliant equipment in the future is minimized. Since the Commission will consider the NTIA petition for rule making in conjunction with full implementation of the GMPCS Arrangements, any further concerns about the proposed NTIA out-of-band emission limits are best addressed in the future, separate proceeding.

75. In adopting this standard for voluntary interim certification, we are not prejudging the standards that we will ultimately adopt in our future GMPCS proceeding. Rather, we are establishing here a voluntary certification process designed to facilitate the circulation of GMPCS terminals across borders, aiding system operators, manufacturers and users of GMPCS service. If the standards we adopt in the GMPCS proceeding are more stringent than the ones used for interim certification, we will require the terminals to meet the stricter standards, in accordance

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[133] "Little Leo" systems provide data-only Mobile-Satellite Service via a constellation of non-geostationary orbit satellites operating below 1 GHz.

[134] *See Notice* at para. 45.

[135] *See* Recommendation ITU-R M.1343

[136] *See* ETSI standards TBR-041 and TBR-042 for Mobile Earth Terminals in the 1.6/2.4 GHz and 2.0 GHz range, respectively.

with any associated implementation provisions adopted in that proceeding. In order to be used, the terminals must be operated with a satellite system or service provider authorized to provide mobile satellite service in the United States. Subsequent to receiving a blanket authorization under Part 25 of the rules, terminals may be authorized under Part 2 of the rules.

76. Accordingly, we amend Part 25 of the rules to allow for the voluntary equipment authorization of all GMPCS terminals meeting the requirements set forth in our *Notice*. Authorizations granted under this interim provision will be conditioned on the equipment meeting all final standards eventually adopted for GMPCS-related equipment.

ORDERING CLAUSES

77. Accordingly, IT IS ORDERED that Parts 0, 2, 15, 25 and 68 of the Commission's Rules and Regulations ARE AMENDED as specified in Appendix A effective 90 days after publication in the Federal Register. This action is taken pursuant to Sections 4(i), 301, 302, 303(e), 303(f), 303(r), 304 and 307 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 301, 302, 303(e), 303(f), 303(r), 304 and 307.

78. IT IS FURTHER ORDERED that, pursuant to Section 5(c)(1) of the Communications Act of 1934, as amended, 47 U.S.C. § 155(c)(1), authority is delegated to the Chief, Office of Engineering and Technology (OET) and the Chief, Common Carrier Bureau (CCB) to develop specific methods that will be used by the National Institute for Standards and Technology (NIST) to accredit TCBs, consistent with the qualification criteria herein, to enter into a memorandum of understanding with NIST on the accreditation process for TCBs, to designate and withdraw the designation of TCBs, and to develop procedures that TCBs will use for performing post-market surveillance.

79. IT IS FURTHER ORDERED that the Commission's Office of Public Affairs, Reference Operations Division, SHALL SEND a copy of this Report and Order, including the Final Regulatory Flexibility Analysis in Appendix C, to the Chief Counsel for Advocacy of the Small Business Administration.

80. For further information regarding this Report and Order, contact Hugh L. Van Tuyl, (202) 418-7506, Office of Engineering and Technology. For Part 68 specific questions, contact Vincent M. Paladini, (202) 418-2332, Common Carrier Bureau. For Part 25 specific questions, contact Tracey Weisler at (202) 418-0744.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas

Magalie Roman Salas
Secretary

APPENDIX A

FINAL RULES

Part 0 of Title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 0 continues to read as follows:

AUTHORITY: Sec. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155, 225, unless otherwise noted.

2. A new paragraph 0.241(g) is added to read as follows:

Section 0.241 *Authority delegated*

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(g) The Chief of the Office of Engineering and Technology is delegated authority to enter into agreements with the National Institute of Standards and Technology to perform accreditation of Telecommunication Certification Bodies (TCBs) pursuant to §§ 2.960 and 2.962 of this chapter. In addition, the Chief is delegated authority to develop specific methods that will be used to accredit TCBs, to designate TCBs, to make determinations regarding the continued acceptability of individual TCBs, and to develop procedures that TCBs will use for performing post-market surveillance.

3. A new paragraph 0.291(i) is added to read as follows:

Section 0.291 *Authority delegated*

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(i) The Chief, Common Carrier Bureau, is delegated authority to enter into agreements with the National Institute of Standards and Technology to perform accreditation of Telecommunication Certification Bodies (TCBs) pursuant to §§ 68.160 and 68.162 of this chapter. In addition, the Chief is delegated authority to develop specific methods that will be used to accredit TCBs, to designate TCBs, to make determinations regarding the continued acceptability of individual TCBs and to develop procedures that TCBs will use for performing post-market surveillance.

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

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

AUTHORITY: 47 U.S.C. 154, 302, 303, 307 and 336, unless otherwise noted.

SOURCE: 28 FR 12465, Nov. 22, 1963, unless otherwise noted.

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

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

The Commission may designate Telecommunication Certification Bodies (TCBs) to approve equipment as required under this part. Certification of equipment by a TCB shall be based on an application with all the information specified in this part. The TCB shall process the application to determine whether the product meets the Commission's requirements and shall issue a written grant of equipment authorization. The grant shall identify the TCB and the source of authority for issuing it.

(a) The Federal Communications Commission shall designate TCBs in the United States to approve equipment subject to certification under the Commission's rules. TCBs shall be accredited by the National Institute of Standards and Technology (NIST) under its National Voluntary Conformity Assessment Evaluation (NVCASE) program, or other recognized programs based on ISO/IEC Guide 65, to comply 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 shall comply with the requirements in § 2.962 of this Part.

(b) In accordance with the terms of an effective bilateral or multilateral mutual recognition agreement or arrangement (MRA) to which the United States is a party, bodies outside the United States shall be permitted to authorize equipment in lieu of the Commission. A body in an MRA partner economy may authorize equipment to U.S. requirements only if that economy permits bodies in the United States to authorize equipment to its requirements. The authority designating these telecommunication certification bodies shall 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).

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

Section 2.962 *Requirements for Telecommunication Certification Bodies*

Telecommunication certification bodies (TCBs) designated by the Commission, or designated by another authority pursuant to an effective bilateral or multilateral mutual recognition agreement or arrangement to which the United States is a party, shall comply with the following requirements.

(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 when certain tests are likely to render a sample inoperative.

(b) Criteria for Designation

(1) To be designated as a TCB under this section, an entity shall, by means of accreditation, meet all the appropriate specifications in ISO/IEC Guide 65 for the scope of equipment it will certify. The accreditation shall specify the group of equipment to be certified and the applicable regulations for product evaluation.

(2) The TCB shall demonstrate expert knowledge of the regulations for each product with respect to which the body seeks designation. Such expertise shall 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 TCB shall have the technical expertise and capability to test the equipment it will certify and shall also be accredited in accordance with ISO/IEC Guide 25 to demonstrate it is competent to perform such tests.

(4) The TCB shall demonstrate an ability to recognize situations where interpretations of the regulations or test procedures may be necessary. The appropriate key certification and laboratory personnel shall 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 TCB shall participate in any consultative activities, identified by the Commission or NIST, to facilitate a common understanding and interpretation of applicable regulations.

(6) The Commission will provide public notice of the specific methods that will be used to accredit TCBs, consistent with these qualification criteria.

(c) Sub-contractors

(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 TCB, provided the laboratory has been assessed by the TCB as competent and in compliance with the applicable provisions of ISO/IEC Guide 65 and other relevant standards and guides.

(2) When a subcontractor is used, the TCB shall be responsible for the test results and shall maintain appropriate oversight of the subcontractor to ensure reliability of the test results. Such oversight shall include periodic audits of products that have been tested.

(d) Designation of TCBs

(1) The Commission will designate as a TCB any organization that meets the qualification criteria and is accredited by NIST or its recognized accreditor.

(2) The Commission will withdraw the designation of a TCB if the TCB's accreditation by NIST or its recognized accreditor is withdrawn, if the Commission determines there is just cause for withdrawing the designation, or if the TCB requests that it no longer hold the

designation. The Commission will provide a TCB with 30 days notice of its intention to withdraw the designation and provide the TCB with an opportunity to respond.

(3) A list of designated TCBs will be published by the Commission.

(e) Scope of responsibility

(1) TCBs shall certify equipment in accordance with the Commission's rules and policies.

(2) A TCB shall accept test data from any source, subject to the requirements in ISO/IEC Guide 65, and shall not unnecessarily repeat tests.

(3) TCBs may establish and assess fees for processing certification applications and other tasks as required by the Commission.

(4) A TCB may rescind a grant of certification within 30 days of grant for administrative errors. After that time, a grant can only be revoked by the Commission through the procedures in § 2.939. A TCB shall notify both the applicant and the Commission when a grant is rescinded.

(5) A TCB may not:

(i) grant a waiver of the rules, or certify equipment for which the Commission rules or requirements are do not exist or for which the application of the rules or requirements is unclear.

(ii) take enforcement actions; or

(iii) authorize a transfer of control of a grantee.

(6) All TCB actions are subject to Commission review.

(f) Post-certification requirements

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

(2) In accordance with ISO/IEC Guide 65, a TCB is required to conduct appropriate post-market 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 Commission may at any time request a list of products certified by the certification body and may request and receive copies of product evaluation reports. The Commission may also request that a TCB perform post-market surveillance, under Commission guidelines, of a specific product it has certified.

(3) 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 grantee and the Commission. A follow-up report shall also be provided within thirty days of the action taken by the grantee to correct the situation.

(4) Where concerns arise, the TCB shall provide a copy of the application file within 30 calendar days upon request by the Commission to the TCB and the manufacturer. Where appropriate, the file should be accompanied by a request for confidentiality for any material that qualifies as trade secrets. If the application file is not provided within 30 calendar days, a statement shall be provided to the Commission as to why it cannot be provided.

(g) In case of a dispute with respect to designation or recognition of a TCB and the testing or certification of products by a TCB, the Commission will be the final arbiter. Manufacturers and designated TCBs will be afforded at least 30 days to comment before a decision is reached. In the case of a TCB designated or recognized, or a product certified pursuant to an effective bilateral or multilateral mutual recognition agreement or arrangement (MRA) to which the United States is a party, the Commission 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. The Commission shall consult with the Office of the United States Trade Representative (USTR), as necessary, concerning any disputes arising under an MRA for compliance with the Telecommunications Trade Act of 1988 (Section 1371-1382 of the Omnibus Trade and Competitiveness Act of 1988).

Title 47 of the Code of Federal Regulations, Part 15, is amended as follows:

7. The authority citation for Part 15 continues to read as follows:

Authority: 47 U.S.C. 154, 302, 303, 304, 307 and 544A.

8. Section 15.101, paragraph (a) is revised to read as follows:

Section 15.101 *Equipment authorization of unintentional radiators.*

(a) Except as otherwise exempted in §§ 15.23, 15.103, and 15.113, unintentional radiators shall be authorized prior to the initiation of marketing, as follows:

Type of device	Equipment authorization required
TV broadcast receiver.....	Verification
FM broadcast receiver.....	Verification
CB receiver.....	Declaration of Conformity or Certification
Superregenerative receiver.....	Declaration of Conformity or Certification
Scanning receiver.....	Certification
All other receivers subject to part 15.....	Declaration of Conformity or Certification
TV interface device.....	Declaration of Conformity or Certification
Cable system terminal device.....	Declaration of Conformity
Stand-alone cable input selector switch.....	Verification
Class B personal computers and peripherals..	Declaration of Conformity or Certification.**
CPU boards and internal power supplies used with Class B personal computers	Declaration of Conformity or Certification.**
Class B personal computers assembled using authorized CPU boards or power supplies.	Declaration of Conformity
Class B external switching power supplies....	Verification.
Other Class B digital devices & peripherals..	Verification.
Class A digital devices, peripherals & external switching power supplies.	Verification.
All other devices.....	Verification

Note: Where the above table indicates more than one category of authorization for a device, the party responsible for compliance has the option to select the type of authorization.

** Applications for this equipment will no longer be accepted by the Commission once domestic Telecommunication Certification Bodies are available to certificate the equipment. See § 2.960.

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

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

Authority: 47 U.S.C. 701-744. Interprets or applies sec. 303, 47 U.S.C. 303. 47 U.S.C. sections 154, 301, 302, 303, 307, 309 and 332, unless otherwise noted.

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

Section 25.200 *Interim equipment authorization.*

(a) For purposes of this section, a "GMPCS system" is defined as "any satellite system, (i.e., fixed or mobile, broadband or narrow-band, global or regional, geostationary or non-geostationary, existing or planned) providing telecommunication services directly to end users from a constellation of satellites."

(b) Subsequent to receiving a blanket authorization under this part, terminals used in conjunction with GMPCS systems, as defined under Section 25.200 (a) above, may also obtain an equipment authorization from the Commission in accordance with the certification procedure for use under this part. The certification procedure is found in Subpart J of Part 2 of the Rules.

(c) In order to be granted certification, a transmitter shall comply with the technical specifications in this part. In addition, mobile earth satellite terminals for use in the band of 1610 - 1626.5 MHz shall meet a specific out-of-band emissions limit. Emissions in the band 1559-1605 MHz shall be limited to -70 dBW / MHz averaged over any 20 millisecond period for wideband signals, and a standard of -80 dBW across within the measurement bandwidth of 700 Hz or less for narrowband signals.

(d) Licensees and manufacturers are subject to the radiofrequency radiation exposure requirements specified in § 1.1307(b), § 2.1091 and § 2.1093 of this chapter, as appropriate. Applications for equipment authorization of mobile or portable devices operating under this section shall contain a statement confirming compliance with these requirements for both fundamental emissions and unwanted emissions. Technical information showing the basis for this statement shall be submitted to the Commission upon request.

(e) Equipment authorizations issued pursuant to this section will be conditioned on the equipment meeting all relevant technical requirements that are adopted by the Commission in implementing the GMPCS Arrangements.

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

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

AUTHORITY: 47 U.S.C. 154, 303.

12. A new Section 68.160 is added to read as follows:

Section 68.160 *Designation of Telecommunication Certification Bodies (TCBs)*

The Commission may designate Telecommunication Certification Bodies (TCBs) to approve equipment as required under this part. Certification of equipment by a TCB shall be based on an application with all the information specified in this part. The TCB shall process the application to determine whether the product meets the Commission's requirements and shall issue a written grant of equipment authorization. The grant shall identify the TCB and the source of authority for issuing it.

(a) The Federal Communications Commission shall designate TCBs in the United States to approve equipment subject to certification under the Commission's rules. TCBs shall be accredited by the National Institute of Standards and Technology (NIST) under its National Voluntary Conformity Assessment Evaluation (NVCASE) program, or other recognized programs based on ISO/IEC Guide 65, to comply 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 shall comply with the requirements in § 68.162 of this Part.

(b) In accordance with the terms of an effective bilateral or multilateral mutual recognition agreement or arrangement (MRA) to which the United States is a party, bodies outside the United States shall be permitted to authorize equipment in lieu of the Commission. A body in an MRA partner economy may authorize equipment to U.S. requirements only if that economy permits bodies in the United States to authorize equipment to its requirements. The authority designating these telecommunication certification bodies shall 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).

13. A new Section 68.162 is added to read as follows:

Section 68.162 *Requirements for Telecommunication Certification Bodies*

Telecommunication certification bodies (TCBs) designated by the Commission, or designated by another authority pursuant to an effective mutual recognition agreement or arrangement to which the United States is a party, shall comply with the following requirements.

(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 when certain tests are likely to render a sample inoperative.

(b) Criteria for Designation

(1) To be designated as a TCB under this section, an entity shall, by means of accreditation, meet all the appropriate specifications in ISO/IEC Guide 65 for the scope of equipment it will certify. The accreditation shall specify the group of equipment to be certified and the applicable regulations for product evaluation.

(2) The TCB shall demonstrate expert knowledge of the regulations for each product with respect to which the body seeks designation. Such expertise shall 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 TCB shall have the technical expertise and capability to test the equipment it will certify and shall also be accredited in accordance with ISO/IEC Guide 25 to demonstrate it is competent to perform such tests.

(4) The TCB shall demonstrate an ability to recognize situations where interpretations of the regulations or test procedures may be necessary. The appropriate key certification and laboratory personnel shall 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 TCB shall participate in any consultative activities, identified by the Commission or NIST, to facilitate a common understanding and interpretation of applicable regulations.

(6) The Commission will provide public notice of specific elements of these qualification criteria that will be used to accredit TCBs.

(c) Sub-contractors

(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 TCB, provided the laboratory has been assessed by the TCB as competent and in compliance with the applicable provisions of ISO/IEC Guide 65 and other relevant standards and guides.

(2) When a subcontractor is used, the TCB shall be responsible for the test results and shall maintain appropriate oversight of the subcontractor to ensure reliability of the test results. Such oversight shall include periodic audits of products that have been tested.

(d) Designation of TCBs

(1) The Commission will designate as a TCB any organization that meets the qualification criteria and is accredited by NIST or its recognized accreditor.

(2) The Commission will withdraw the designation of a TCB if the TCB's accreditation by NIST or its recognized accreditor is withdrawn, if the Commission determines there is just cause for withdrawing the designation, or if the TCB requests that it no longer hold the designation. The Commission will provide a TCB with 30 days notice of its intention to withdraw the designation and provide the TCB with an opportunity to respond.

(3) A list of designated TCBs will be published by the Commission.

(e) Scope of responsibility

(1) TCBs shall certify equipment in accordance with the Commission's rules and policies.

(2) A TCB shall accept test data from any source, subject to the requirements in ISO/IEC Guide 65, and shall not unnecessarily repeat tests.

(3) TCBs may establish and assess fees for processing certification applications and other tasks as required by the Commission.

(4) A TCB may rescind a grant of certification within 30 days of grant for administrative errors. After that time, a grant can only be revoked by the Commission. A TCB shall notify both the applicant and the Commission when a grant is rescinded.

(5) A TCB may not:

(i) grant a waiver of the rules, or certify equipment for which the Commission rules or requirements are do not exist or for which the application of the rules or requirements is unclear.

(ii) take enforcement actions

(6) All TCB actions are subject to Commission review.

(f) Post-certification requirements

(1) A TCB shall supply a copy of each approved application form and grant of certification to the Commission.

(2) In accordance with ISO/IEC Guide 65, a 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 Commission may at any time request a list of products certified by the certification body and may request and receive copies of product evaluation reports. The Commission may also request that a TCB perform post-market surveillance, under Commission guidelines, of a specific product it has certified.

(3) 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 grantee and the Commission. A follow-up report shall also be provided within thirty days of the action taken by the grantee to correct the situation.

(4) Where concerns arise, the TCB shall provide a copy of the application file within 30 calendar days upon request by the Commission to the TCB and the manufacturer. Where appropriate, the file should be accompanied by a request for confidentiality for any material that qualifies as trade secrets. If the application file is not provided within 30 calendar days, a statement shall be provided to the Commission as to why it cannot be provided.

(g) In case of a dispute with respect to designation or recognition of a TCB and the testing or certification of products by a TCB, the Commission will be the final arbiter. Manufacturers and designated TCBs will be afforded at least 30 days to comment before a decision is reached. In the case of a TCB designated or recognized, or a product certified pursuant to an effective bilateral or multilateral mutual recognition agreement or arrangement (MRA) to which the United States is a party, the Commission 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. The Commission shall consult with the Office of the United States Trade Representative (USTR), as necessary, concerning any disputes arising under an MRA for compliance with under the Telecommunications Trade Act of 1988 (Section 1371-1382 of the Omnibus Trade and Competitiveness Act of 1988).

APPENDIX B
LIST OF COMMENTING PARTIES

Comments

1. ACIL
2. Acme Testing (Acme)
3. Aeronautical Radio, Inc. (ARINC)
4. American National Standards Institute (ANSI)
5. AMSC Subsidiary Corporation (AMSC)
6. Cisco Systems, Inc. (Cisco)
7. Communication Certification Laboratory (CCL)
8. Compliance Engineering Service, Inc. (Compliance)
9. Constellation Communications, Inc. (CCI)
10. Curtis-Strauss
11. D.L.S. Electronic Systems, Inc. (D.L.S.)
12. Final Analysis Communication Services, Inc. (Final Analysis)
13. ICO Global Communications (ICO)
14. Information Technology Information Council (ITI)
15. International Certification Services (ICS)
16. Intertek Testing Services NA Inc. (ITS)
17. Iridium
18. Itron, Inc. (Itron)
19. Leo One USA Corporation (Leo One USA)
20. Lockheed Martin Corporation (Lockheed Martin)
21. LSC, Inc. (LSC)
22. Metricom, Inc. (Metricom)
23. Mobile Engineering
24. Mobile Communications Holdings, Inc. (MCHI)
25. Motorola, Inc. (Motorola)
26. National Institute of Standards and Technology (NIST)
27. Orbital Sciences Corporation (Orbital)
28. Orbital Communications Corporation (ORBCOMM)
29. Philip Hooge
30. Raytheon
31. Retlif Testing Laboratories (Retlif)
32. Rockwell International Corporation (Rockwell)
33. SEA, Inc. (SEA)
34. Soaring Society of America, Inc. (Soaring Society)

35. Telecommunications Industry Association (TIA)
36. U.S. GPS Industry Council (the Council)
37. United States Council of EMC Laboratories (USCEL)

Reply Comments

1. AMSC Subsidiary Corporation (AMSC)
2. Bell Atlantic
3. BellSouth Corporation (BellSouth)
4. Cisco Systems, Inc. (Cisco)
5. Final Analysis Communication Services, Inc. (Final Analysis)
6. Globalstar, L.P. and Airtouch Satellite Services U.S., Inc. (Globalstar and Airtouch)
7. Information Technology Industry Council (ITI)
8. Iridium
9. Kenwood Communications Corporation (Kenwood)
10. Metricom, Inc. (Metricom)
11. Mobile Communications Holdings, Inc. (MCHI)
12. Motorola, Inc. (Motorola)
13. Orbital Communications Corporation (ORBCOMM)
14. PCTEST Engineering Laboratory, Inc. (PCTEST)
15. Redcom Laboratories Incorporated (Redcom)
16. Retlif Testing Laboratories (Retlif)
17. Telecommunication Industry Association (TIA)

APPENDIX C

FINAL REGULATORY FLEXIBILITY ANALYSIS

As required by the Regulatory Flexibility Act (RFA),[137] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rule Making* in GEN Docket 98-68.[138] The Commission sought written public comment on the proposals in the *Notice*, including comment on the IRFA. The comments received are discussed below. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.[139]

A. Need for, and Objectives of, this *Report and Order*

The Commission is amending Parts 2, 15, 25 and 68 of the rules to provide the option of private sector approval of equipment that currently requires an approval by the Commission. We are also adopting rule changes to implement a Mutual Recognition Agreement (MRA) for product approvals with the European Community (EC), the Asia Pacific Economic Cooperation (APEC) and other foreign trade parties. These actions will eliminate the need for manufacturers to wait for approval from the Commission before marketing equipment in the United States, thereby reducing the time needed to bring a product to market. We are also adopting an interim procedure to issue equipment approvals for Global Mobile Personal Communication for Satellite (GMPCS) terminals prior to domestic implementation of the GMPCS-MoU Arrangements.[140] [141] That action will benefit manufacturers of GMPCS terminals by allowing greater worldwide acceptance of their products.

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[137] *See* 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 *et. seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[138] *See Notice of Proposed Rule Making* in GEN Docket 98-68, 13 FCC Rcd 10683, 10711 (1998).

[139] *See* 5 U.S.C. § 604.

[140] "Global Mobile Personal Communications by Satellite" (GMPCS) service is defined in the 1996 Final Report of the World Telecommunications Policy Forum as: "any satellite system, (i.e., fixed or mobile, broadband or narrow-band, global or regional, geostationary or non-geostationary, existing or planned) providing telecommunication services directly to end users from a constellation of satellites."

[141] The GMPCS MoU and Arrangements are intended to allow the worldwide transport and use of GMPCS equipment. They are described in more detail in the Notice.

B. Summary of Significant Issues Raised by Public Comments In Response to the IRFA

Several parties commented on the IRFA. ACIL, Acme, ICS and Retlif noted that the IRFA only focuses on the costs to small manufacturers and not to small test laboratories.[142] Acme stated that small testing laboratories may not have the resources to become TCBs and may be forced to exit the testing business.[143] Retlif stated that the rules will add another assessment fee to test laboratories who wish to become TCBs or subcontract with TCBs.[144] SEA does not believe the benefits of the rules described in the IRFA outweigh the increased expenses and paperwork burdens that will fall on RF equipment manufacturers.[145] However, in its reply comments, TIA disagreed with SEA, stating that the increased number of TCBs would benefit small companies because of their global reach.[146] TIA further stated that the vast majority of its 900 members are small and medium companies that support the Commission's proposed changes.

C. Description and Estimate of the Number of Small Entities To Which Rules Will Apply

Under the RFA, small entities may include small organizations, small businesses, and small governmental jurisdictions. 5 U.S.C. § 601(6). The RFA, 5 U.S.C. § 601(3), generally defines the term "small business" as having the same meaning as the term "small business concern" under the Small Business Act, 15 U.S.C. § 632. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration ("SBA"). This standard also applies in determining whether an entity is a small business for purposes of the RFA.

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[142] *See* ACIL comments at 12, Acme comments at 3, ICS comments at 4, and Retlif comments at 4.

[143] *See* Acme comments at 3.

[144] *See* Retlif comments at 4.

[145] *See* SEA Regulatory Flexibility comments at 3. The four benefits to manufacturers we listed in the IRFA are 1) providing manufacturers with alternatives where they could possibly obtain certification faster than available from the Commission; 2) providing the option of obtaining certification from a facility in a more convenient location; 3) reducing the number of applications filed with the Commission, thereby enabling the Commission to redirect resources to enforcement of the rules; and 4) allowing equipment to be certified in other countries is a necessary step for concluding mutual recognition agreements.

[146] *See* TIA reply comments at 2.

Regulatory Flexibility Analyses need only address the impact of rules on small entities directly regulated by those rules. *See Mid-Tex Electric Cooperative, Inc. v. FERC*, 773 F.2d 327, 342-43 (D.C. Cir. 1985). The Commission's equipment authorization rules directly regulate only manufacturers of equipment, which must satisfy the Commission's product approval requirements, and not test laboratories. Therefore, we disagree with ACIL, Acme, ICS and Retlif that the IRFA should have addressed the impact of the rules on small test laboratories.

The Commission has not developed a definition of small entities applicable to RF Equipment Manufacturers. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to manufacturers of "Radio and Television Broadcasting and Communications Equipment." According to the SBA's regulation, an RF manufacturer must have 750 or fewer employees in order to qualify as a small business.[147] Census Bureau data indicates that there are 858 companies in the United States that manufacture radio and television broadcasting and communications equipment, and that 778 of these firms have fewer than 750 employees and would be classified as small entities.[148] We believe that many of the companies that manufacture RF equipment may qualify as small entities.

The Commission has not developed a definition of small manufacturers of telephone terminal equipment. The closest applicable definition under SBA rules is for manufacturers of telephone and telegraph apparatus (SIC 3661), which defines a small manufacturer as one having 1,000 or fewer employees.[149] According to 1992 Census Bureau data, there were 479 such manufacturers, and of those, 436 had 999 or fewer employees, and 7 had between 1,000 and 1,499 employees.[150] We estimate that there fewer than 443 small manufacturers of terminal equipment that may be affected by the proposed rules.

[147] *See* 13 C.F.R. § 121.201, Standard Industrial Classification (SIC) Code 3663.

[148] *See* U.S. Department of Commerce, 1992 Census of Transportation, Communications and Utilities (issued may 1995), SIC category 3663.

[149] 13 C.F.R. § 121.201, SIC 3661.

[150] 1992 Economic Census, Industry and Employment Size of Firm, Table 1D (data prepared by U.S. Census Bureau under contract to the U.S. Small Business Administration).

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

We are allowing designated Telecommunication Certification Bodies (TCBs) in the United States to issue equipment approvals. Applicants for equipment authorization may apply either to the FCC or to a TCB, and they will be required to submit the same application data and exhibits to either that the rules currently require. Therefore, there will be no increase in the paperwork burden on manufacturers.

We are adopting changes to implement mutual recognition agreements with the European Community and the Asia Pacific Economic Cooperation that will permit certain equipment currently required to be authorized by the FCC to be authorized instead by TCBs in Europe or Asia. As with TCBs in the United States, applicants would be required to submit to a foreign TCB the same application data and exhibits they now submit to the Commission.

We are requiring that TCBs submit a copy of certain parts of each approved application to the FCC. Applications for equipment authorization under Part 2 of the rules will be sent and stored electronically using the new OET electronic filing system. Paper copies of Part 68 applications will be required, since there is not yet an electronic filing system for those applications.

We are also allowing a voluntary equipment authorization for mobile transmitters used in the Global Mobile Personal Communications by Satellite (GMPCS) service. This will require manufacturers who want to use the voluntary procedure to file an application and technical exhibits with the FCC and wait for an approval before the equipment can be marketed. While using the procedure would require and additional filing with the FCC, it will ultimately reduce the burden on manufacturers. Under the terms of the GMPCS-MoU and Arrangements, the single approval obtained in the United States could eliminate the need to obtain approvals from multiple other countries.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

Certain equipment that uses radio frequencies or is connected to the public switched telecommunications network must be approved by the Commission before it can be marketed. Allowing parties other than the Commission to certify equipment will have the following benefits:

1. It will provide manufacturers with alternatives where they could possibly obtain certification faster than available from the Commission.

2. Manufacturers will have the option of obtaining certification from a facility in a more convenient location.
3. It will reduce the number of applications filed with the Commission, which will enable the Commission to redirect resources to enforcement of the rules. This will ensure a "level playing field" for all manufacturers.
4. Allowing equipment to be certified by parties located in other countries is an essential and necessary step for concluding mutual recognition agreements (MRAs). MRAs benefit manufacturers by improving access to foreign markets.

As previously stated, SEA argued that these four benefits do not outweigh the significant increased expenses and greater paperwork burden that will fall on RF equipment manufacturers as a result of the rules.[151] TIA disagreed with SEA, stating that the increased number of TCBs would benefit small companies because of their global reach, and that the vast majority of its members are small and medium companies that support the changes proposed in the *Notice*.[152]

This Report and Order allows parties other than the Commission to certify equipment, but it does not change the information required to obtain a grant of certification. Therefore, there will not be an increase in the paperwork burden on manufacturers. SEA does not provide any data to justify its claim of significantly higher expenses to manufacturers. Further, the Commission will continue to grant certifications, and these manufacturers have the option to use a TCB, but are not required to do so. The Commission will not regulate the fees that TCBs can charge. However, as we stated in the Report and Order, we expect that competition between TCBs should encourage them to process applications at a reasonable expense.

Federal Rules that May Duplicate, Overlap, or Conflict With the Proposed Rule:

None.

[151] *See* SEA Regulatory Flexibility comments at 3.

[152] *See* TIA reply comments at 2.

Separate Statement of Commissioner Harold W. Furchtgott-Roth

In re: Report and Order

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

I support adoption of this Report and Order. In my view, any reduction of unnecessary regulatory burdens is beneficial. To that extent, this item is good and I am all for it. This item should not, however, be mistaken for complete compliance with Section 11 of the Communications Act.

As I have explained previously, the FCC is not planning to "review *all* regulations issued under this Act . . . that apply to the operations or activities of any provider of telecommunications service," as required under Subsection 11(a) in 1998 (emphasis added). *See generally 1998 Biennial Regulatory Review -- Review of Computer III and ONA Safeguards and Requirements*, 13 FCC Rcd 6040 (released Jan. 30, 1998). Nor has the Commission issued general principles to guide our "public interest" analysis and decision-making process across the wide range of FCC regulations.

In one important respect, however, the FCC's current efforts are more ambitious and difficult than I believe are required by the Communications Act. Subsection 11(a) -- "Biennial Review" -- requires only that the Commission "*determine* whether any such regulation is no longer necessary in the public interest" (emphasis added). It is pursuant to Subsection 11(b) -- "Effect of Determination" -- that regulations determined to be no longer in the public interest must be repealed or modified. Thus, the repeal or modification of our

rules, which requires notice and comment rule making proceedings, need not be accomplished during the year of the biennial review. Yet the Commission plans to complete roughly thirty such proceedings this year.

I encourage parties to participate in these thirty rule making proceedings. I also suggest that parties submit to the Commission -- either informally or as a formal filing -- specific suggestions of rules we might determine this year to be no longer necessary in the public interest as well as ideas for a thorough review of all our rules pursuant to Subsection 11(a).

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