

joint sponsoring organizations for the Administrative Council for Terminal Attachment, shall notify the industry of its intent to establish and populate an Administrative Council.

- The Administrative Council shall be populated within 60 days after notice to the industry.
- No later than 30 days after the Administrative Council is populated, the Administrative Council shall convene its first official meeting.
- No later than 60 days after the first official meeting of the Administrative Council, the Administrative Council shall establish, publish, and submit to the Commission a “charter” detailing its functions, operations, and standards for providing balanced membership.
- No later than 180 days after the date of publication of this Order in the Federal Register, the Administrative Council shall publish the Part 68 rules we transfer to it by operation of the rules we adopt herein.
- As explained *infra*, no later than 180 days after publication of this Order in the Federal Register, the Commission shall cease accepting applications for registration of Part 68 equipment and transfer responsibility for establishing and maintaining the database of approved equipment to the Administrative Council.
- As explained *infra*, no later than 180 days after publication of this Order in the Federal Register, the Administrative Council shall report to the Commission its progress in resolving outstanding numbering and labeling requirements.

79. Once the Administrative Council conducts its first meeting, we require it to establish a schedule for regular meetings and additional procedures for meetings necessary to adopt proposed technical criteria for terminal equipment. The initial Administrative Council meeting is essential to an orderly and prompt transfer of responsibilities from the Commission to the industry. We believe that the combined expertise of members of the industry will enable industry to populate an Administrative Council promptly and efficiently. We require TIA and ATIS, as the joint sponsoring organizations, to report to the Common Carrier Bureau the progress of populating the Administrative Council and establishing a “charter” detailing the operating rules of the Administrative Council. This report will enable the Bureau to monitor the progress of the transition and ensure that industry is prepared to assume responsibility for the Commission’s current Part 68 responsibilities as detailed in this Order.

#### IV. REGULATORY PARADIGM FOR EQUIPMENT APPROVAL

##### A. Streamlining the Equipment Approval Process

###### 1. Background

80. In addition to seeking comment on streamlining the process for establishing technical criteria for terminal equipment interconnection, we sought comment in the *Notice* on revisions to the Commission’s equipment registration procedures.<sup>114</sup> Currently, under Commission rule 68.102, manufacturers must register terminal equipment.<sup>115</sup> Manufacturers may satisfy this requirement by seeking approval of terminal equipment

---

<sup>114</sup> *Notice*, 15 FCC Rcd at 10548, para. 64.

<sup>115</sup> 47 C.F.R. § 68.102.

conformity to Part 68 technical criteria from either telecommunications certification bodies (TCBs) or the Commission.<sup>116</sup> Consistent with our efforts to privatize much of the Part 68 process, we tentatively concluded in the *Notice* that, although some type of equipment approval process continues to be necessary, the Commission should not perform the function of direct approval of terminal equipment.<sup>117</sup> In furtherance of our mandate in the Telecommunications Act of 1996 to privatize or streamline Commission processes that are no longer in the public interest,<sup>118</sup> we proposed, in the *Notice*, three methods of requiring proof of equipment compliance with technical criteria: (1) continuing to rely, either entirely or in part, upon on TCBs for equipment approval;<sup>119</sup> (2) allowing manufacturers to use a declaration of conformity (DoC) process,<sup>120</sup> as defined in Part 2 of the Commission's rules;<sup>121</sup> or (3) allowing manufacturers to use a verification process,<sup>122</sup> as defined in Part 2 of the Commission's rules.<sup>123</sup> Each of these equipment approval methods, discussed in detail below, would eliminate the Commission's direct involvement in the terminal equipment approval process while providing various safeguards to ensure that the equipment meets technical criteria designed to prevent any or all of the harms detailed in Part 68.<sup>124</sup> In lieu of continuing our current role in this process, we proposed that the Commission should reallocate its resources to enforcing industry-established technical criteria for terminal equipment.<sup>125</sup>

81. We also requested in the *Notice* that parties believing we should implement more than one approval process comment on whether we should leave the choice of approval processes up to the equipment manufacturer or importer, or whether we should implement a hierarchy of approval methods, *i.e.* regulatory requirements specifying which approval process shall apply to each type of terminal equipment.<sup>126</sup> For example, we requested comment on whether we should require TCB certification or a DoC for all terminal equipment subject to the hearing aid compatibility and volume control (HAC/VC) provisions of sections 68.316 and 68.317, while permitting less stringent review for other types of equipment such as modems.<sup>127</sup>

## 2. Discussion

82. As we concluded with regard to the development of technical criteria, Section 151 of the Communications Act<sup>128</sup> and the statutory authority relied upon by the Commission to implement Part 68 in the

<sup>116</sup> *MRA Order*, 13 FCC Rcd at 24708, para. 48.

<sup>117</sup> *Notice*, 15 FCC Rcd at 10547, para. 63.

<sup>118</sup> 47 U.S.C. § 161.

<sup>119</sup> *Notice*, 15 FCC Rcd at 10548, para. 64.

<sup>120</sup> *Id.*, 15 FCC Rcd at 10548, para. 64.

<sup>121</sup> 47 C.F.R. § 2.906.

<sup>122</sup> *Notice*, 15 FCC Rcd at 10548, para. 64.

<sup>123</sup> 47 C.F.R. § 2.902(a).

<sup>124</sup> 47 C.F.R. § 68.3(b)(3).

<sup>125</sup> *MRA Order*, 13 FCC Rcd at 24691, 24707, paras. 10, 45.

<sup>126</sup> *Notice*, 15 FCC Rcd at 10548, para. 64.

<sup>127</sup> *Id.*, 15 FCC Rcd at 10551-552, para. 74-75.

<sup>128</sup> See 47 U.S.C. § 151.

first instance<sup>129</sup> do not *require* that the Commission register directly every type of terminal equipment before it can be interconnected with the public switched telephone network. Rather, this statutory authority *permits* the Commission to adopt reasonable regulations to ensure that terminal equipment does not cause harm to the PSTN, consistent with the public interest. Furthermore, as we stated above, under the 1996 Act, Congress directed the Commission to examine its rules applying to the operation or activities of any provider of telecommunications service every two years and determine whether “any such regulation is no longer in the public interest as the result of meaningful economic competition between providers of such service.”<sup>130</sup> Congress directed the Commission to repeal or modify those regulations it determines, based upon the statutory standard, to be no longer necessary in the public interest.<sup>131</sup> The record overwhelmingly demonstrates that, based upon the maturity and competitiveness of the terminal equipment manufacturing market and the telecommunications services industry, it is in the public interest for private industry to self-regulate conformance of terminal equipment to the Administrative Council’s technical criteria.<sup>132</sup> Our decision in this Order to privatize the terminal equipment registration process will reduce unnecessary costs and delays currently imposed upon manufacturers and the Commission without measurably increasing the possibility of harm to the network.<sup>133</sup> Thus, upon weighing the substantial benefits of accelerating the terminal equipment approval process against the unlikely possibility of any cost increases associated with harm to the PSTN that may result from a decreased presence of the Commission in the approval process, we conclude that it is no longer in the public interest for the Commission to continue its Part 68 registration functions. Accordingly, the Commission shall cease accepting applications for Part 68 registration 180 days after publication of this Order in the Federal Register and the Administrative Council shall begin to assume all the responsibilities assigned herein.

83. We conclude that privatization of the terminal equipment approval process will continue to provide the same degree of protection to the PSTN as the current Commission Part 68 registration and approval process, while significantly increasing the efficiency of the approval process. We agree with the majority of commenters, including equipment manufacturers, testing laboratories, carriers, and other providers of telecommunications, that the Commission should privatize the equipment approval process for several reasons.<sup>134</sup> First, privatization will reduce product approval times and enable manufacturers to bring their products to market at an accelerated pace.<sup>135</sup> Thomson estimates that in this era of intense terminal equipment competition, the cost to consumers and manufacturers of the Commission’s current registration process can

---

<sup>129</sup> See *supra* n.22. See *Part 68 First Report and Order*, 56 FCC 2d at 613.

<sup>130</sup> See 47 U.S.C. § 161(a).

<sup>131</sup> See 47 U.S.C. § 161(b).

<sup>132</sup> TIA Comments at 22; SBC Comments at 1; HP Comments at 1; Lucent Comments at 4; ITI Comments at 1; ATIS Comments at 2; Nortel Comments at 1-2; SBC Comments at 1; BA Comments at 1; GTE Comments at 1; 2; ACIL Comments at 5; CCL Comments at 6; Phonex Comments at 4; UL Comments.

<sup>133</sup> Lucent Comments at 4-7; Thomson Comments, filed July 2, 1999, at 2, 3; Nortel Comments at 8-10; ITI Comments at 4-6; HP Comments at 3; TIA September 26, 2000 *Ex Parte* “Update on Supplier’s Declaration of Conformity.” See also Bell South Comments at 15; Phonex Comments at 4.

<sup>134</sup> TIA Comments at 22; SBC Comments at 1; HP Comments at 1; Lucent Comments at 4; ITI Comments at 1; ATIS Comments at 2; Nortel Comments at 1-2; SBC Comments at 1; BA Comments at 1; GTE Comments at 1; 2; ACIL Comments at 5; CCL Comments at 6; Phonex Comments at 4; UL Comments at 1.

<sup>135</sup> Lucent Comments at 4. See also ITI Comments at 3-4; Bell South Comments at 15. We note, however, the Network Services Division of the Common Carrier Bureau currently processes Part 68 applications in less than two weeks.

amount to millions of dollars per year industry-wide.<sup>136</sup> We agree with Thomson and other commenters that relieving the industry and consumers of any unnecessary delay will further enhance the competitive robustness of the terminal equipment market.<sup>137</sup> Second, we are persuaded by Nortel and ITI that the competitive nature of terminal equipment market, which demands quality products, gives rise to strong economic incentives for manufacturers to ensure compliance with relevant technical criteria, thereby protecting the network from harm.<sup>138</sup> As evidence of these incentives, Nortel and ITI point out that there is an absence of non-compliance with the Commission's requirements.<sup>139</sup> Finally, we are persuaded that the new privatized equipment approval process will bring newer technologies to end user customers more expeditiously than the current Commission approval process.

84. Privatizing the equipment registration process will permit the Commission to focus on enforcement of the industry-established technical criteria for terminal equipment. In order to maintain a sufficient level of accountability for suppliers, we conclude that an organized system of equipment approval procedures that require appropriate documentation remains necessary. This documentation will identify the party responsible for compliance with the technical criteria, provide accountability, and enable sufficient enforcement of the technical standards to satisfy the public's interest in protecting the PSTN. As we explain below, we defer to the industry to compile and maintain a database of all necessary approval information. We note however, that we will continue to monitor the effectiveness of the terminal equipment approval process. Furthermore, the Commission shall maintain its role as the forum of last resort for disputes regarding terminal equipment standards and approval procedures.

#### B. Equipment Approval Methods

85. As stated above, in the *Notice*, we proposed three methods of requiring proof of equipment compliance with required technical criteria: continuing to rely, either entirely or in part, on TCBs for equipment approval;<sup>140</sup> allowing manufacturers to use a DoC process as defined in Part 2 of the Commission's rules;<sup>141</sup> or allowing manufacturers to use a verification process, as defined in Part 2 of the Commission's rules.<sup>142</sup> In addition, several parties asked that the Commission clarify its use of terminology and permit suppliers to use the Supplier's Declaration of Conformity (SDoC) process, as defined in the International Organization for Standardization and the International Electrotechnical Commission (ISO/IEC) Guide 22, and described in detail below.<sup>143</sup>

<sup>136</sup> Thomson Comments, filed July 2, 1999, at 2, 3. The estimate made as follows: Each of the 3,000 products registered every year under Part 68 experiences, on average, a four-week delay in market introduction. The aggregate costs of these delays, multiplied by the number of registered products, results in total costs approximating \$100 million per year.

<sup>137</sup> Although it is desirable to reduce or eliminate, if possible, the registration delay in getting new products to market, we also note registrations are currently issued in a short time (approximately 4 weeks on average). This is perhaps the most expeditious non-automated application process in the Commission.

<sup>138</sup> Nortel Comments at 10; ITI Comments at 5.

<sup>139</sup> Nortel Comments at 9; ITI Comments at 7.

<sup>140</sup> *Notice*, 15 FCC Rcd at 10548, 10549, paras. 64, 67.

<sup>141</sup> *Id.*, 15 FCC Rcd at 10548-10550, paras. 64, 68-70.

<sup>142</sup> *Id.*, 15 FCC Rcd at 10525, 10550-551, paras. 64, 71-73.

<sup>143</sup> International Organization for Standardization/ International Electrotechnical Commission (ISO/IEC) Guide 22, *General criteria for supplier's declaration of conformity*, at section 2.4, n.2.

86. We agree with several commenters, including manufacturers and test laboratories that, while TCB approval is and will continue to be an effective means of assessing the conformity of new products with the technical criteria, permitting an additional method of equipment approval would ensure the most expeditious means of bringing innovative equipment to the market, without increasing the risk of harm to the network.<sup>144</sup> Accordingly, as discussed in detail below, we conclude that a terminal equipment supplier must either submit its equipment to a TCB for approval, or utilize the SDoC procedure to assure conformity with the required technical specifications.<sup>145</sup> In addition to greater efficiency, TCB approval and SDoC approval offer sufficient protection to the network because TCB approval requires independent, third party approval, while SDoC requires the supplier to declare that its equipment conforms with all applicable standards, which, as ITI and Nortel explain, places strong market incentive upon the supplier to test thoroughly its products.<sup>146</sup>

87. We decline to create a regulatory hierarchy specifying which type of equipment must be subject to each approval procedure. In turning over the approval process to the industry, we seek to ensure a process that will be as simplified and efficient as possible. We believe that adding new regulatory layers with additional rules to implement an equipment registration and approval process is inconsistent with our deregulatory goals in this proceeding. As discussed below, because we find that both TCBs and the SDoC approval of terminal equipment shall satisfy the public interest, suppliers are free to choose the approval process that best suits their needs.<sup>147</sup>

## 1. Approval by Telecommunications Certification Bodies (TCBs)

### a. Background

88. In 1998, we established in the *MRA Order* an alternative procedure to direct Commission approval of terminal equipment, whereby terminal equipment suppliers may submit their products to private telecommunications certification bodies (TCBs) for terminal equipment registration.<sup>148</sup> The TCB procedure requires the Commission to designate private entities as TCBs to approve equipment as complying with the Commission requirements in lieu of the Commission continuing its current Part 68-registration process.<sup>149</sup> The TCB program was designed in connection with Mutual Recognition Agreements/ Arrangements (MRAs)<sup>150</sup> between the United States and the European Community (EC)<sup>151</sup> and the Asia-Pacific Economic Cooperative (APEC)<sup>152</sup> to facilitate market access and competition in the provision of telecommunications products that require testing and/or approval.<sup>153</sup> Under the MRAs, TCBs satisfying the qualification criteria specified in the

---

<sup>144</sup> See Nortel Comments at 8-9. See also ITI Comments at 4; Lucent Comments at 6; TIA Comments at 22-26; HP Reply Comments at 2-3.

<sup>145</sup> We define the term supplier as the responsible party.

<sup>146</sup> ITI Comments at 5; Nortel Comments at 10.

<sup>147</sup> See *infra* paras. 89-92, 97-105.

<sup>148</sup> *MRA Order*, 13 FCC Rcd at 24693, para. 14.

<sup>149</sup> *MRA Order*, 13 FCC Rcd at 24699, para. 26. We note that TCBs began operating in June 2000.

<sup>150</sup> We note that the proper terms are the European Community Mutual Recognition Agreement and the Asia-Pacific Economic Cooperative Mutual Recognition Arrangement, we refer to both as "MRAs".

<sup>151</sup> *MRA Order*, 13 FCC Rcd at 24711-712, paras. 53-56.

<sup>152</sup> *Id.*, 13 FCC Rcd at 24712, paras. 57-58.

<sup>153</sup> *Id.*, 13 FCC Rcd at 24714, para. 63.

relevant MRA may certify equipment for export.<sup>154</sup> Similarly, suppliers seeking to import equipment into the United States may seek certification of conformance to U.S. standards from foreign entities designated in the MRAs.<sup>155</sup> Thus, once fully effective, the MRAs will ensure mutual recognition of equipment approval between the United States and other countries that commit themselves to the agreements.<sup>156</sup>

89. We contemplated in the *MRA Order* that TCBs would eventually take over our registration processes, but that, initially, suppliers could choose either Commission or TCB registration.<sup>157</sup> In the *Notice*, we proposed completely transferring the Commission's role in terminal equipment approval to TCBs.<sup>158</sup> As stated in the *Notice*, our endorsement of TCBs as an appropriate method to show equipment conformance with the required terminal equipment technical criteria would accelerate the use of TCBs for terminal equipment approval so that the Commission is no longer engaged in the equipment approval and registration process.<sup>159</sup>

#### b. Discussion

90. We conclude that terminal equipment must be approved in accordance with the requirements set out herein. Suppliers may seek approval of all Part 68 terminal equipment from a TCB of the supplier's choice. Our decision to complete the transfer of terminal equipment approval authority to TCBs is well supported in the record.<sup>160</sup> First, we agree with several commenters who argue that the TCBs will be able to perform effectively the Commission's terminal equipment approval functions for both domestic and international purposes within a short time after they are designated by the Commission, and our own experience with the TCBs thus far reinforces this conclusion.<sup>161</sup> Although the TCB program has been functional for only a short period of time, we estimate that TCBs are currently handling ten percent of

---

<sup>154</sup> 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. *MRA Order*, 13 FCC Rcd at 24711-712, paras. 53-56.

<sup>155</sup> This includes foreign TCBs.

<sup>156</sup> *MRA Order*, 13 FCC Rcd at 24711-712, para. 56.

<sup>157</sup> *Id.*, 13 FCC Rcd at 24691-693, paras. 10-14.

<sup>158</sup> *Notice*, 15 FCC Rcd at 10549-50, paras. 67.

<sup>159</sup> *Id.*, 15 FCC Rcd at 10549, paras. 67. Under existing rules, the TCBs are required to test terminal equipment pursuant to technical criteria now outlined in Part 68. TCBs also provide certification for equipment subject to 47 C.F.R. Parts 2, 11, 15, 18, 21, 22, 24, 25, 26, 27, 74, 80, 87, 90, 95, 97, and 101.

<sup>160</sup> TIA Comments at 22; SBC Comments at 2-3; Phonex Comments at 4; USTA Comments at 5-6; UL Comments; BA Comments at 2; GTE Comments at 5; Lucent Comments at 6.

<sup>161</sup> *See, e.g.*, Statement by Intertek Testing Services, NA Inc., filed July 20, 1999. We are mindful, however, of commenters' concerns that governmental presence is necessary to supply the force of law behind the technical criteria governing terminal equipment manufacture and connection to the wireline telephone network without harm. We discuss the Commission's enforcement mechanism in paras. 115-120 of this Order. Record at 20, 24, 26, and 113. *See also* TIA Comments at 22, SBC Comments at 2-3, Phonex Comments at 4, USTA Comments at 5-6, UL Comments, BA Comments at 2, GTE Comments at 5, Lucent Comments at 6.

domestic equipment approval applications,<sup>162</sup> and it appears, as Phonex argues, that TCBs are already significantly reducing approval time.<sup>163</sup> Although the current Part 68 registration process operates in an expeditious manner,<sup>164</sup> as we stated in the *MRA Order*, the TCB system may prove to be significantly faster since suppliers can select from several different approval bodies and can choose one with a shorter processing time.<sup>165</sup> Manufacturer endorsement of TCB approval of terminal equipment further strengthens our belief that TCBs will expeditiously review terminal equipment approval requests, because manufacturers have a strong interest in ensuring that their products are available in the market as quickly as possible.<sup>166</sup> Thus, we are confident that, due to their greater resources and the market forces of competition, TCBs will perform the equipment approval function in an expeditious yet thorough manner.

91. Second, we find that TCBs are sufficiently qualified and capable of approving terminal equipment. Domestic TCBs, in accordance with the *MRA Order*, are currently providing equipment approval under the Commission's general oversight.<sup>167</sup> Under existing Commission rules, TCBs must be accredited by the National Institute of Standards and Technology (NIST), thus ensuring their competence to perform these equipment approval functions.<sup>168</sup> As argued by GTE, by carefully specifying the qualification criteria for TCBs, and exercising the proper oversight, the Commission will be able to ensure that the TCB system is fair and impartial.<sup>169</sup>

92. Third, providers of telecommunications services recognize the TCBs' ability to register equipment in a manner that will protect the network from harm.<sup>170</sup> As we stated in the *Notice*, the carriers that own and operate the PSTN have an interest in ensuring that terminal equipment is reviewed competently.<sup>171</sup> Thus, carrier support of TCBs further persuades us of their ability to assume the responsibility for terminal equipment approval. Indeed, carriers were significant participants in the industry consensus process leading up to development of TCBs. We agree with the expectation of several commenters that TCBs will provide independent, third party scrutiny of equipment, perform on-going compliance and auditing functions, and give

---

<sup>162</sup> This general estimate is based upon a comparison between the number of Part 68 applications submitted to the Commission in 1999 and 2000.

<sup>163</sup> Phonex Comments at 4. Phonex argues that TCBs are satisfactorily reducing certification time, and therefore, the Commission should not further streamline the equipment approval process.

<sup>164</sup> See *supra* n.138.

<sup>165</sup> *MRA Order*, 13 FCC Rcd at 24693, para. 14.

<sup>166</sup> TIA Comments at 22; Phonex Comments 4-5; UL Comments; Lucent Comments at 6.

<sup>167</sup> See *MRA Order*, 13 FCC Rcd at 24693, para. 14.

<sup>168</sup> *Id.*, 13 FCC Rcd at 24698-699, paras. 25-26.

<sup>169</sup> GTE Comments at 5.

<sup>170</sup> SBC Reply Comments at 2-3; Record at 283, 284; Verizon Reply Comments at 2. On the other hand, use of independent third parties has the immeasurable benefit of ensuring that both of these functions are performed by entities without a vested interest in the outcome. Just avoiding the appearance of a potential conflict of interest could be sufficient to forestall complaints to the Commission and provide the full neutrality that either form of supplier certification lacks.

<sup>171</sup> *Notice*, 15 FCC Rcd at 10549-50, paras. 67.

expert guidance to the Commission to facilitate resolution of complaints.<sup>172</sup>

93. Fourth, large and small manufacturers alike agree that TCBs are an important part of the equipment approval process,<sup>173</sup> because TCBs provide an internationally recognized means of assessing equipment conformity. Lucent and Phonex assert that some manufacturers may prefer TCB certification because these manufacturers may be unable to conduct thoroughly in-house testing.<sup>174</sup> TCBs will provide manufacturers an equipment approval alternative that has proven to be effective and is widely recognized. Phonex, a small manufacturer, expresses concern that it will face discrimination on its self-declaration of compliance in some countries because small manufacturers lack bargaining power of large suppliers through domestic and foreign distributors.<sup>175</sup> We recognize that larger manufacturers may hold an advantage over small manufacturers due to brand recognition. Because TCBs will continue to approve terminal equipment, we believe smaller manufacturers will have a competitively viable option of seeking terminal equipment approval, and thus will not be harmed by the Commission's adoption of an alternative approval method, SDoC, as discussed below. Thus, we are persuaded that when an equipment supplier chooses to seek certification from a TCB, TCBs will effectively assume the Commission's current responsibilities of terminal equipment approval in an efficient and nondiscriminatory manner.

## **2. Other Types of Conformity Assessment and Equipment Approval – DoC, verification, and SDoC**

### **a. Background**

94. In addition to TCB certification, we consider three other proposed types of equipment approval procedures described below. The first two, declaration of conformity (DoC) and verification, are defined in Part 2 of the Commission's rules and currently are used for Part 15 (Radio Frequency Devices) equipment approval. The third type, supplier's declaration of conformity (SDoC), is an equipment approval method supported by several commenters<sup>176</sup> and defined in the International Organization for Standardization and International Electrotechnical Commission (ISO/IEC) Guide 22.<sup>177</sup> These approval procedures are distinguishable by whether they require laboratory accreditation and whether they require the "responsible party,"<sup>178</sup> or supplier, to certify conformance with industry standards. In order to clarify the definition and use of these terms, we set out below a detailed explanation of each type of conformity assessment, highlighting the similarities and differences.

---

<sup>172</sup> Bell Atlantic Comments at 2; GTE Comments at 5; SBC Reply Comments at 2-3.

<sup>173</sup> Lucent Comments at 6; Phonex Comments at 5. (We note that Phonex is opposed to the Commission's adopting any equipment approval process other than TCBs).

<sup>174</sup> Lucent Comments at 6; Phonex Comments at 4-5.

<sup>175</sup> Phonex Comments at 5. Overseas, American products with Part 68 grants are often accepted with no further proof of conformity assessment compliance. Phonex has encountered situations where other countries ask for European approval numbers, which Phonex can no longer provide them because of the implementation of the RTTE Directive in Europe requiring suppliers' self-declaration. However, when applicable, these countries would accept Part 68 approval as proof of compliance with their import requirements. Phonex Comments at 4-5.

<sup>176</sup> ITI Comments at 4, 6; HP Comments at 3; Nortel at 9; TIA September 26, 2000 *Ex Parte*, "Update on Supplier's Declaration of Conformity," 10; Supplemental Filing by TIA concerning the Part 68 Streamlining Open Forum (Annex A), July, 29, 1999; Nortel Comments at 9; ITI Comments at 6.

<sup>177</sup> ISO/IEC Guide 22 at § 2.4 (n.2).

95. *Declaration of Conformity.* In the *Notice*, we proposed allowing suppliers to use the declaration of conformity process (DoC) for Part 68 terminal equipment, as defined in Part 2 of the Commission's rules.<sup>179</sup> DoC is an equipment approval procedure under which the party responsible for the equipment's compliance with specific technical parameters, the manufacturer, importer, or assembler, causes measurements to be made of equipment performance to determine compliance with the standards.<sup>180</sup> The party performing such measurements must be accredited for doing so by either the National Institute of Standards and Technology (NIST) or the American Association for Laboratory Accreditation (AALA).<sup>181</sup> Unlike the TCB approval process, the DoC procedure does not require the Commission to designate which testing facilities are appropriate. This DoC procedure is generally recognized for radio frequency equipment by foreign jurisdictions through the MRAs into which the U.S. has entered into with the EC and APEC.<sup>182</sup> In the *Part 15 Streamlining Order*, we stated that DoC provides added safeguards (over verification) that are necessary to ensure compliance for certain products that have a greater potential for causing interference or where issues about proper measurement method may arise.<sup>183</sup>

96. *Verification.* In addition, we proposed allowing suppliers to use the verification process.<sup>184</sup> Verification is a procedure whereby the manufacturer or importer certifies equipment through a testing facility that measures equipment performance with regard to specific technical parameters.<sup>185</sup> Verification, in the context of Part 15 equipment, permits approval from any laboratory. Unlike DoC, verification does not require accreditation of the testing facility or a formalized declaration of compliance by the responsible party. In contrast to SDoC, under verification, the supplier would not be required to attach a formal statement identifying the party responsible for ensuring that the equipment complies with the appropriate technical standards.

97. *Supplier's Declaration of Conformity.* In addition to the proposals set forth by the Commission, ITI, Nortel, and Hewlett-Packard propose that the Commission implement a supplier's declaration of conformity (SDoC) procedure.<sup>186</sup> In the *Notice*, we sought comment on this procedure.<sup>187</sup> SDoC, as defined in ISO/IEC Guide 22<sup>188</sup> and currently used in the European Union, is a hybrid of the DoC and

(Continued from previous page) \_\_\_\_\_

<sup>178</sup> See 47 C.F.R. § 2.909(b) where "responsible party" is defined as a manufacturer or importer.

<sup>179</sup> 47 C.F.R. § 2.906.

<sup>180</sup> *Id.*

<sup>181</sup> *Part 15 Streamlining Order* 13 FCC Rcd 11415, at para. 5. Referenced in the International Organization for Standardization and International Electrotechnical Commission ("ISO/IEC") Guide 22.

<sup>182</sup> *MRA Order*, 13 FCC Rcd at 24713, para. 61.

<sup>183</sup> *Part 15 Streamlining Order*, 13 FCC Rcd 11415, at para. 12.

<sup>184</sup> *Notice*, 15 FCC Rcd at 10548, para. 64.

<sup>185</sup> 47 C.F.R. § 2.909(b).

<sup>186</sup> ITI Comments at 4-6; Nortel Comments at 9-10. See HP Comments at 3. Although HP recommends that the Commission adopt the verification procedure as defined in Part 2, it notes that it has long supported one standard, one test SDoC, and that the Commission should amend its rules to be consistent with international terminology. HP Comments at n.5.

<sup>187</sup> *Notice*, 15 FCC Rcd at 10550, para. 70.

<sup>188</sup> ISO/IEC Guide 22 at § 2.4 (n.2).

verification procedures currently in Part 2 of the Commission's rules.<sup>189</sup> Unlike the Commission's DoC process, SDoC does not require testing of the equipment by an accredited laboratory. The SDoC process does, however, require responsible parties to test for and declare conformity of their own equipment with required technical criteria, or at their option, have it tested by an independent laboratory. Although the procedures are similar, SDoC differs from verification because under SDoC, equipment is accompanied by a formal SDoC statement identifying the party responsible for the product's compliance with appropriate technical standards to ensure accountability for equipment attached to the PSTN. In addition, whereas the term SDoC is internationally defined and understood, the term verification is Commission defined.

#### b. Discussion

98. We conclude that, as an alternative to TCB certification of terminal equipment, suppliers also have the option of utilizing the SDoC procedure as defined in the ISO/IEC Guide 22 and clarified below to meet Commission requirements.<sup>190</sup> We are persuaded that there are many benefits to permitting suppliers to show compliance with the Administrative Council's technical criteria by utilizing the SDoC process. We agree with several commenters that the SDoC process would significantly reduce the complexities, costs, and delays associated with pre-market approval while providing sufficient assurance that the terminal equipment complies with the technical criteria designed to prevent harm to the PSTN.<sup>191</sup>

99. We are not persuaded by commenters arguing that accreditation of testing facilities, as required by DoC but not by SDoC, is essential to protecting the PSTN.<sup>192</sup> Under the Commission's SDoC process, the supplier is required to test accurately the equipment and provide a written declaration that the terminal equipment conforms to applicable Administrative Council technical criteria.<sup>193</sup> The declaration shall include, at the minimum, (1) the identification and a description of the supplier and the product, (2) a conformity statement and referenced standards, (3) the date and place of issue of the declaration, and (4) the signature, name and function of person making declaration.<sup>194</sup> We require the supplier to notify the Administrative Council of any changes in this information. We are convinced, as several commenters argue, that in the competitive terminal equipment market, accreditation of testing laboratories is not necessary.<sup>195</sup> Current equipment approval procedures, which do not require the testing laboratories to be accredited, have proven to be so successful that the Commission is able to undertake this present streamlining initiative.

---

<sup>189</sup> 47 C.F.R. § 2.909(b).

<sup>190</sup> ISO/IEC Guide 22 at § 2.4 (n.2). We note that, as UL argues, the Commission the Commission declined to implement the DoC procedure for Part 68 equipment in the *MRA Order*, however, we stated that we may reconsider that decision. Based upon a complete record that includes further supporting evidence present market and regulatory conditions, we now find that there is sufficient evidence to adopt the SDoC procedure in this Order. UL Comments; *MRA Order*, 13 FCC Rcd at 24692-693, para. 13.

<sup>191</sup> ITI Comments at 4-6; HP Comments at 3.

<sup>192</sup> Bell Atlantic Comments at 8; BellSouth Comments at 15; Verizon Reply Comments at 1-2; KTL Dallas Comments at 2; UL Comments at 2.

<sup>193</sup> The supplier is the party that supplies the product, process or service and may be the manufacturer, distributor, importer, assembler, service organization, etc. *ICT Industry Green Paper on a Global Product Conformity Assessment System for the Future* at p. 11.

<sup>194</sup> ISO/IEC Guide 22.

<sup>195</sup> ITI Comments at 5; Nortel Comments at 10; HP Comments at 3; Lucent Comments at 5; TIA October 20, 2000 "Ex Parte Presentation" Supplement supporting SDoC and stating that verification, which does not require laboratory accreditation, is successful for Part 15 equipment.

Moreover, we agree with Nortel and ITI that there is virtually no record of non-compliance with the Commission's technical criteria for terminal equipment.<sup>196</sup>

100. Furthermore, as part of the SDoC process defined herein, requiring suppliers to seek equipment approval from an accredited test laboratory or TCB would impose additional cost and delays to the equipment approval process.<sup>197</sup> Although UL and Verizon dispute this conclusion,<sup>198</sup> we are persuaded by ITI's estimate that permitting suppliers to select SDoC as an alternative to TCB certification of terminal equipment would accelerate, by a matter of days or even weeks, the availability of equipment to the marketplace.<sup>199</sup> In contrast, requiring the DoC procedure where suppliers would be forced to have their equipment approved by an accredited lab would force suppliers to either undergo costly accreditation procedures or to suffer additional costs and delays by seeking third party approval of their equipment from an accredited lab. In balancing the relatively low risks that testing and measurement procedures of unaccredited laboratories may permit noncompliant equipment to be connected to the PSTN against the additional costs accreditation may impose upon suppliers and consumers alike, we conclude that requiring, as opposed to permitting, suppliers to use accredited testing laboratories is not in the public interest.

101. Moreover, we implement additional requirements to ensure that the public will be able to trace suppliers that declare non-compliant equipment as conforming to Administrative Council technical criteria so that they may be held legally accountable for any resulting harm to the PSTN. First, we require suppliers to ship a copy of the formal SDoC with the terminal equipment to consumers. We also require suppliers to make a copy of the SDoC readily available to the general public, including the disabled community, at no cost on its company website. If the supplier does not have a functional and reliable website, then we require the supplier to inform the Administrative Council of such circumstances so that it may make a copy available on its website. In addition, we require the supplier to send a copy of the SDoC, along with any other information the Administrative Council requires, to the Administrative Council to ensure that consumers and wireline providers of telecommunications can readily obtain a copy. We also require the supplier to retain a copy of the SDoC, all test results, and an explanation of the testing procedures utilized for ten years after the product is no longer available on the market. Finally, as explained below, we require the Administrative Council to implement numbering and labeling requirements and maintain a database of all Commission approved, TCB certified, or supplier-declared terminal equipment that will ensure that consumers and wireline providers of telecommunications can readily obtain the supplier's identity. We believe that the combination of these requirements will protect sufficiently the PSTN by holding suppliers accountable through strong economic incentives to thoroughly test their equipment before declaring that terminal equipment conforms to all appropriate Administrative Council technical criteria.

102. Finally, permitting suppliers to use the internationally defined and recognized SDoC process, as clarified to meet Commission requirements, is consistent with international trends and thus should lower transaction costs for suppliers seeking to import or export terminal equipment into or out of the United

---

<sup>196</sup> Nortel Comments at 9; ITI Reply Comments at 2.

<sup>197</sup> ITI Comments at 5; Nortel Comments at 8-9; HP Comments at 3; Lucent Comments at 4-6; TIA Sept 26, 2000 *Ex Parte* at 6 Supplement titled "SDoC for equipment approvals"; ITI Reply Comments at 2.

<sup>198</sup> UL Comments at 2; Verizon Reply Comments at 1-2 (arguing that TCBs will not delay the certification process).

<sup>199</sup> ITI Comments at 4. *See also* Nortel Comments at 8-9; HP Comments at 3; TIA Sept 26, 2000 *Ex Parte* at 6 Supplement titled "SDoC for equipment approvals"; ITI Reply Comments at 2 (arguing that SDoC will significantly decrease pre-market approval delays).

States.<sup>200</sup> We agree with Nortel that SDoC will reduce costs and delays for multinational suppliers while ensuring that small businesses seeking to export or import terminal equipment are not subjected to duplicative testing and certification requirements.<sup>201</sup> As Nortel explains, the adoption of SDoC procedures will facilitate the use of the mutual recognition process with those countries, such as the member states of the EC, that have adopted or will adopt SDoC procedures.<sup>202</sup> To benefit from the MRAs, exporters must conform to the standards and testing requirements of the country into which they are making their terminal equipment available.<sup>203</sup> Thus, domestic suppliers seeking to export terminal equipment to countries that have not adopted SDoC procedures, or with whom the Commission has not entered into MRAs have the option of using SDoC or testing procedures that receive mutual recognition. For example, if the importing country requires testing by an accredited laboratory, in order to receive the benefits of the MRA, the supplier must comply with the relevant testing requirements and conform to stricter approval procedures than we adopt today. Suppliers seeking to export that do not have sufficient in house testing facilities to satisfy the testing requirements of foreign countries may utilize TCBs or other appropriate testing procedures.

103. We will monitor the effectiveness of the TCB and SDoC terminal equipment certification procedures. In particular, we reiterate our commitment to using the Commission's enforcement mechanisms to ensure the continued compliance with the HAC/VC requirements. Moreover, as explained below, we adopt the most recent version of the disability complaint procedures for informal complaints regarding hearing aid compatibility and volume control rule violations. These procedures will provide for a more efficient and effective complaint process.

104. Furthermore, wireline providers of telecommunications will continue to be able to require disconnection of non-compliant terminal equipment.<sup>204</sup> These entities have a strong incentive to identify and disconnect noncompliant equipment causing any harms to the network. Although BellSouth argues that the ability of these entities to disconnect noncompliant equipment from the network is not effective in preventing large scale instances of noncompliance,<sup>205</sup> as stated above, the record and the Commission's experiences demonstrate that there have been few instances where noncompliance of terminal equipment causes any harms.<sup>206</sup> Moreover, suppliers that fail to comport with the rules established by the Commission or by the Administrative Council may face enforcement action from the Commission. We are confident that, by adopting two safe and effective methods of equipment approval, TCB approval and SDoC, our procedures will allow suppliers to develop and bring to market products incorporating new features and technology in an efficient manner that will decrease delays, encourage deployment of new technology, and lower costs to consumers.<sup>207</sup>

105. We conclude that the TCB certification and SDoC procedures for terminal equipment

---

<sup>200</sup> See ISO/IEC Guide 22, *ICT Industry Green Paper* at p. 11.

<sup>201</sup> Nortel Comments at 10.

<sup>202</sup> Nortel Comments at 9.

<sup>203</sup> See generally *MRA Order*, 13 FCC Rcd 24687.

<sup>204</sup> 47 C.F.R. § 68.108.

<sup>205</sup> BellSouth Reply Comments at 2.

<sup>206</sup> Nortel Comments at 9; ITI Comments at 1.

<sup>207</sup> HP Comments at 1; ITI Comments at 4; ATIS Comments at 4; Nortel Comments at 8-9 (arguing that privatization will accelerate the availability of advanced services equipment to the market.)

approval we adopt in this Order preclude the need to adopt a DoC approval process. Under the SDoC process we adopt in this Order, suppliers have the option of choosing an accredited laboratory to test their terminal equipment, whereas they would be required to do so under the DoC procedure. Thus, manufactures seeking third party approval for their terminal equipment would have the same opportunity under SDoC as they would have under the DoC process to seek approval of their terminal equipment from an accredited laboratory. Although BellSouth argues that DoC would provide an efficient approval process while offering greater protection to the PSTN than SDoC or verification,<sup>208</sup> we agree, as stated above, with numerous commenters that accreditation of testing facilities is not necessary to protect the public interest.<sup>209</sup> We are confident that the Commission's SDoC requirements provide sufficient protection to the PSTN.

106. Finally, we conclude that establishing a verification procedure for terminal equipment approval is unnecessary at this time. While we acknowledge that there are many similarities between SDoC and verification, we believe that adopting the SDoC procedure for terminal equipment will better serve the public interest because SDoC is an internationally recognized procedure. Verification, on the other hand, is defined in Part 2 of the Commission's rules.<sup>210</sup> Moreover, we continue to believe that it is in the public interest for responsible parties to formally certify that their equipment has been tested to meet the Administrative Council technical criteria. Because verification does not require the supplier to formally certify that its product conforms to the applicable technical criteria and to make that certification readily available to the public, we agree with Nortel that verification does not offer sufficient protection to satisfy the public interest.<sup>211</sup> We conclude, therefore, that SDoC provides greater assurance that the party responsible for terminal equipment compliance is held accountable. We note, however, that our decision herein does not affect the Commission's equipment approval procedures defined in Part 2 for radio frequency equipment. Without this necessary supplier's declaration, Nortel persuasively argues, it may be difficult to hold suppliers accountable for compliance failures because it would be more difficult for injured parties to trace as easily the offending terminal equipment back to the party responsible for the product's compliance with the required technical criteria.<sup>212</sup>

### C. Database of Approved Equipment

#### 1. Background

107. In the *Notice*, we tentatively concluded that a database of all registered terminal equipment should be maintained, regardless of whether the equipment is approved by a TCB or some form of declaration of conformity. We proposed that a private entity assume responsibility for sponsoring and maintaining a database that would replace the Commission's current database of Part 68 registrations.<sup>213</sup> The Commission's database of approximately 30,000 Part 68 registrations contains equipment identification information, applicant identity, and technical information. In order to ensure that the database has sufficient information to

---

<sup>208</sup> BellSouth Comments at 15-16. *See also* Lucent Comments at 5-6 (recognizing the merits of DoC but recommending verification based upon the time and costs associated with seeking accreditation).

<sup>209</sup> ITI Comments at 5; Nortel Comments at 10; HP Comments at 3; Lucent Comments at 5; TIA October 20, 2000 "Ex Parte Presentation" Supplement supporting SDoC and stating that verification, which does not require laboratory accreditation, is successful for Part 15 equipment.

<sup>210</sup> 47 C.F.R. § 2.902.

<sup>211</sup> Nortel Comments at 9.

<sup>212</sup> Nortel Comments at 9.

<sup>213</sup> *Notice*, 15 FCC Rcd at 10552, para. 77.

support re-registrations, to respond to inquiries from U.S. (and foreign) customs services as to the validity of registrations, and to respond to consumer inquiries regarding the identity of the supplier of a particular piece of terminal equipment, we currently require TCBs to use Form 730 to submit information to the Commission on approved equipment.<sup>214</sup> We proposed in the *Notice* that, once this Commission is no longer engaged directly in registering terminal equipment, we cease our direct involvement in this area and no longer require TCBs to submit any information directly to this Commission or to use Form 730.<sup>215</sup> We sought comment on what information we should require to be submitted into a national database by parties using suppliers' declaration of conformity procedures, and how that information would be submitted.<sup>216</sup> In addition, we proposed that entities obtaining equipment approval be required to submit pertinent information regarding their identity and approved equipment to a database administrator.<sup>217</sup> Furthermore, we proposed requiring that the database of approved terminal equipment remain accurate and readily available at a reasonable cost to users.<sup>218</sup>

## 2. Discussion

108. In light of our efforts to privatize the equipment approval process, we agree with Nortel, ITI, and other commenters that it will no longer be necessary for this Commission to maintain a database of compliant equipment.<sup>219</sup> We are convinced, however, that the continuation of a uniform, nationwide database is essential to protecting the public interest. Such a database will permit interested parties such as the Commission, providers of telecommunications, and consumers to track and identify suppliers or importers of non-compliant equipment.<sup>220</sup> As such, the database should ameliorate concerns regarding the potentially adverse impact of non-compliant terminal equipment on the PSTN by ensuring that suppliers are held accountable for any damage their equipment may cause to the PSTN.<sup>221</sup> Thus, we adopt our tentative conclusion that a nationwide database of all approved terminal equipment should be maintained, regardless of whether the equipment is approved by a TCB or through the SDoC process. In lieu of the Commission continuing to maintain and manage the database of all terminal equipment, we agree with the majority of commenters that the Administrative Council should assume these responsibilities.<sup>222</sup> We find compelling TIA's argument that the details of the database structure, content, and maintenance are better left to the Administrative Council to establish.<sup>223</sup> We believe that, after privatizing the registration process, industry will

<sup>214</sup> *MRA Order*, 13 FCC Rcd at 24710, para. 52. As discussed below, Form 730 also requires applicants to include information required under the ADAA.

<sup>215</sup> *Notice*, 15 FCC Rcd at 10552, para. 77.

<sup>216</sup> *Notice*, 15 FCC Rcd at 10552, para. 76.

<sup>217</sup> See, e.g., *Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them, and Examination of Exclusivity and Frequency Assignment Policies of the Private Land Mobile Services*, PR Docket No. 92-235, Second Report and Order, 12 FCC Rcd 14307, 14333-14334 (1997) (establishing a one-day period for frequency coordinators to notify each other of frequency recommendations).

<sup>218</sup> *Notice*, 15 FCC Rcd at 10552, para. 76.

<sup>219</sup> Nortel Comments at 11; ITI Comments at 6.

<sup>220</sup> Lucent Comments at 6.

<sup>221</sup> Nortel Comments at 11. However, Nortel states that if a centralized database were required the gatekeeper could serve the position.

<sup>222</sup> GTE Comment at 4; ITI Comments at 6; Lucent Comments at 6; Nortel Comments at 11; Bell Atlantic Comments at 6.

<sup>223</sup> TIA Comments at 24.

be in a better position than the Commission to assess the database requirements and to develop and implement such requirements and accompanying procedures.<sup>224</sup>

109. We note that several commenters suggest that the database be maintained on, and be accessible through, the Internet.<sup>225</sup> A Web-based database would serve to reduce administrative costs and ensure accessibility to the database information by all interested parties. Moreover, we agree with commenters that the accuracy of the database can be best achieved by limiting the required information and by using electronic filing procedures. Accordingly, we require the Administrative Council to devise a centralized, accurate database that is readily available and accessible to the public, including individuals with disabilities, at nominal or no costs. In addition, we believe that entities submitting information to the database, whether they obtained their approval from a TCB or utilized the SDoC process, should submit pertinent information regarding their identity and approved equipment to the database administrator.

110. We also charge the Administrative Council with the responsibility to ensure that the database is created and maintained in an equitable and nondiscriminatory manner. The manner in which the database is created and maintained must not permit any entity or segment of the industry to gain a competitive advantage. We note that GTE suggests that Form 730, which we currently require TCBs to utilize, could be expanded to develop and maintain a database.<sup>226</sup> As we discuss below, while the continued use of Form 730 is permitted, we only require that the database contain sufficient information for providers of telecommunications, this Commission, and the U.S. Customs Service to carry out their functions. The database shall be available to the Commission and the U.S. Customs Service at no cost. We defer to the Administrative Council to consider ITI's proposal to integrate the terminal equipment database with a global database of compliance information in order to facilitate trade, enhance the competitiveness of US industry, and reduce the cost and burden for suppliers, customers, and regulators.<sup>227</sup>

111. Finally, to ensure that the Administrative Council expeditiously adopts such a database, we require the Administrative Council to file with this Commission, within 180 days of publication of this Order in the Federal Register, a detailed report of the structure of the database, including details of how the Administrative Council will administer the database, the pertinent information to be included in the database, procedures for including compliance information in the database, and details regarding how the public will access the information.<sup>228</sup>

#### **D. Numbering and Labeling**

##### **1. Background**

112. *Numbering.* In the *Notice*, we sought comment on the best method, under a privatized Part 68, to assign registration numbers to equipment.<sup>229</sup> Currently, we assign registration numbers to applicants when they seek Part 68 equipment approval directly from the Commission. In addition, we provide TCBs with blocks of registration numbers to assign to applicants when they seek TCB approval of Part 68

---

<sup>224</sup> TIA Comments at 22-23.

<sup>225</sup> See e.g., HP Comments at 5; Lucent Comments at 6.

<sup>226</sup> GTE Comments at 4.

<sup>227</sup> ITI Comments at 7.

<sup>228</sup> See *infra* para. 78 for transfer of responsibility to the Administrative Council.

<sup>229</sup> *Notice*, 15 FCC Rcd at 10553-554, para. 82.

equipment. We proposed in the *Notice* to combine the requirement for an FCC Registration Number under Part 68 with the FCC Identifier requirement of section 2.926 of our rules<sup>230</sup> that is used for radio equipment approved by the Commission.<sup>231</sup> We also proposed to use the current Part 15 coding scheme for terminal equipment currently registered under Part 68 and sought comment on how that scheme can be applied reasonably to Part 68 equipment. Under this proposal, a given equipment model will have only one number associated with it that is used to document its status. As an alternative approach, we sought comment on TIA's suggestion that a three-character grantee code, which is already assigned to existing manufacturers under the TCB approval process, would eliminate the requirement for individual product registration numbers.<sup>232</sup>

113. *Labeling.* We tentatively concluded in the *Notice* that, although the Commission will no longer be responsible for terminal equipment registration, some form of unique identifying label must be applied to all terminal equipment.<sup>233</sup> These labels are necessary to identify adequately terminal equipment as an approved piece of terminal equipment that customers are entitled to connect to the PSTN. We proposed a harmonized label for equipment subject to either or both Part 15 and Part 68.<sup>234</sup>

## 2. Discussion

114. We agree with TIA that, subject to fulfilling the requirements of government and industry for information, the Administrative Council shall develop any terminal equipment numbering and labeling requirements it deems reasonable and necessary.<sup>235</sup> We are persuaded by TIA that industry committees are better positioned than the Commission to assess the future need for labeling and database requirements and to develop such requirements.<sup>236</sup> Accordingly, we will not promulgate specific rules for numbering and labeling as we proposed in the *Notice*. Instead, we defer to the Administrative Council to resolve, as it deems reasonable and necessary, specific issues regarding labeling and numbering we raised in the *Notice*. Furthermore, we defer the responsibility to maintain and alter as they deem reasonable and necessary the customer instructions rules to the Administrative Council.<sup>237</sup> However, if the Administrative Council chooses to continue the practice of utilizing a designated "FCC" number, we direct the Administrative Council to include in its labeling requirements a warning that the Commission no longer directly approves or registers terminal equipment. We recognize that Part 68 requirements for numbering and labeling are issues that are already being addressed by TIA Committee TR41<sup>238</sup> and that the TCB Administrative Council is already

<sup>230</sup> 47 C.F.R. § 2.926.

<sup>231</sup> *Notice*, 15 FCC Rcd at 10554, para. 83.

<sup>232</sup> TIA Comments, filed July 29, 1999, at 13.

<sup>233</sup> *Notice*, 15 FCC Rcd at 10553, para. 81.

<sup>234</sup> For Part 15, three character grantee codes are also assigned by the Commission. Applicants combine their three character Part 15 applicant code with three to eleven characters of their choice to create a six to fourteen character Part 15 equipment authorization number.

<sup>235</sup> See TIA Sept. 26, 2000 *Ex Parte* at 2-3.

<sup>236</sup> TIA Comments at 22-23.

<sup>237</sup> 47 C.F.R. § 68.218. We note however, that we maintain sections 68.218(b)(5), 68.224 and 68.300(c) in our rules because they pertain to hearing aid compatibility. Any modifications the Administrative Council makes to the customer instructions rules must be consistent with the other requirements in this Order, including our rules regarding the information required under the SDoC process. See Appendix B for specific rules.

<sup>238</sup> TIA Comments at 24.

addressing the numbering system for equipment certified by TCBs.<sup>239</sup>

115. We require the Administrative Council to include any labeling requirements in its technical criteria and only to adopt labeling requirements that address both equipment approved by TCBs and equipment that has been approved through the SDoC process. While we are leaving the specific format up to the industry, we require labeling to contain sufficient information for providers of telecommunications, this Commission, and the U.S. Customs Service to carry out their functions, and for consumers to easily identify the supplier of their terminal equipment. Moreover, as with the creation of the database, the Administrative Council shall adopt a numbering and labeling scheme that is nondiscriminatory, creating no competitive advantage for any entity or segment of the industry. We require, as argued by TIA, that existing FCC marking and labeling requirements should remain unchanged until the Administrative Council adopts specific labeling requirements.<sup>240</sup> Finally, in order to ensure that the Administrative Council is moving forward expeditiously to resolve outstanding numbering and labeling requirements, we require the Administrative Council to report its progress in fulfilling these requirements to the Commission within 180 days of the publishing of this Order in the Federal Register.<sup>241</sup>

## **E. Enforcement of Equipment Compliance**

### **1. Background**

116. In the *Notice*, we stated that there are numerous aspects of Part 68 regulations that we currently enforce and intend to continue enforcing, even after the transition to the industry model for the adoption of technical criteria and terminal equipment approval.<sup>242</sup> First, we proposed that Part 68 will continue to include rules requiring that wireline providers of telecommunications permit connection of compliant terminal equipment to their networks.<sup>243</sup> Second, we proposed no change in Section 68.108,<sup>244</sup> which permits carriers to discontinue service to subscribers that connect harmful equipment.<sup>245</sup> Third, we proposed to continue to enforce the rules that will remain in Part 68, such as the technical rules for hearing aid compatibility, volume control, and inside wiring.<sup>246</sup> Fourth, we proposed that there be no change in our responsibility to support the U.S. Customs Service's enforcement of requirements pertaining to imported terminal equipment.<sup>247</sup>

117. Our rules implementing TCB operations provide further enforcement support.<sup>248</sup> TCBs are required by our rules to conduct an ongoing surveillance of terminal equipment to ensure that such equipment

---

<sup>239</sup> See TIA Sept. 26, 2000 *Ex Parte* at 2-3.

<sup>240</sup> *Id.*

<sup>241</sup> See *supra* paras. 77-79.

<sup>242</sup> *Notice*, 15 FCC Rcd at 10555-6, paras. 88-89.

<sup>243</sup> *Id.*, 15 FCC Rcd at 10555, para. 88.

<sup>244</sup> 47 C.F.R. § 68.108.

<sup>245</sup> *Notice*, 15 FCC Rcd at 10555, para. 88.

<sup>246</sup> *Id.*, 15 FCC Rcd at 10555, para. 88.

<sup>247</sup> *Id.*, 15 FCC Rcd at 10555, para. 88.

<sup>248</sup> 47 C.F.R. §§ 68.160, 68.162.

complies with applicable technical criteria.<sup>249</sup> In addition, our rules allow parties to report to the Commission any deficiencies discovered in connection with the surveillance program. We proposed no change in this basic procedure, and indeed we believe it to be an advantage in using the TCB program for terminal equipment registration. Finally, a TCB may revoke its own certification of terminal equipment for a period of 30 days after the date of action for an administrative error, but any other certification revocation must be addressed by the Commission.<sup>250</sup> We did not propose to change these rules at this time, although we noted we could revisit them at a later date with an eye to reducing our involvement in this program.<sup>251</sup>

118. In the *Notice*, we proposed to retain ultimate responsibility to enforce compliance with our rules.<sup>252</sup> Moreover, we proposed these enforcement policies notwithstanding which equipment approval option or options we ultimately adopt.<sup>253</sup> We noted that there are two general categories of complaints those parties requesting enforcement could bring before the Commission.<sup>254</sup> First, there may be complaints by end-users or suppliers that a provider of telecommunications would not permit connection of compliant equipment. Second, consumers or others who believe that certain terminal equipment is not compliant, not properly approved, or lacks a proper SDoC, or that it has caused harm as defined in Part 68, may file a complaint with the Commission in accordance with section 68.400(c) of our rules.<sup>255</sup>

## 2. Discussion

119. The Chairman's Strategic Plan for the FCC in the 21<sup>st</sup> Century makes clear that enforcement is an essential component of deregulation of competitive markets.<sup>256</sup> We agree with Phonex that without strict enforcement, the operation of competitive markets may suffer.<sup>257</sup> Thus, although we are eliminating our direct involvement in approval of terminal equipment, we will continue to make it a priority to ensure that both imported and domestically manufactured terminal equipment is compliant with the required technical criteria for such equipment. We note that a number of commenters urge us to maintain or even increase our enforcement of terminal equipment compliance.<sup>258</sup> We believe that our current level of enforcement has ensured an excellent level of terminal equipment compliance; no evidence exists on the record to the contrary, and indeed the Commission receives very few complaints of unregistered or non-compliant terminal equipment. We assure all interested parties that we will in no way reduce our enforcement functions nor our

<sup>249</sup> 47 C.F.R. § 68.162. "Under clause 13 of Guide 65, a TCB is obligated to ensure that the products it certifies continue to comply with Commission requirements. . . . The Commission relies on the TCBs to use their judgement in complying with this guideline." *MRA Order*, 13 FCC Rcd at 24707, para.45.

<sup>250</sup> 47 C.F.R. § 68.162.

<sup>251</sup> *Notice*, 15 FCC Rcd at 10555-556, para. 89.

<sup>252</sup> *Id.*, 15 FCC Rcd at 10556, para. 90.

<sup>253</sup> *Id.*, 15 FCC Rcd at 10555-556, paras. 88-92.

<sup>254</sup> *Id.*, 15 FCC Rcd at 10556, para. 90.

<sup>255</sup> 47 C.F.R. § 68.400(c).

<sup>256</sup> *Report Card on the Implementation of the Chairman's Draft Strategic Plan*, March 2000, Figure 1 at 3.

<sup>257</sup> Phonex Comments at 6.

<sup>258</sup> TIA Comments at 22; ITI Comments at 2; GTE Comments at 6; Bell Atlantic Comments at 9; ATIS Comments at 9.

cooperation with the U.S. Customs Service with regard to terminal equipment compliance. We also note that none of the provisions in this Order diminish the obligations set forth in section 255.<sup>259</sup>

120. Moreover, we agree with Bell Atlantic that section 68.108<sup>260</sup> of our rules will remain in effect, allowing carriers to protect their network from the rare occurrence of faulty terminal equipment, and allowing customers to bring a complaint to the Commission.<sup>261</sup> We believe that this is a common-sense approach to permit immediate self-help to providers of telecommunications services whose networks are being harmed, or whose other customers are being affected, by harmful terminal equipment. A carrier disconnecting faulty terminal equipment must also inform the customer of his or her rights to file a complaint with the Commission.<sup>262</sup>

121. Finally, we note that any person may continue to bring unregistered terminal equipment to the Commission's attention for enforcement action.<sup>263</sup> The complainant need not have standing or otherwise be directly affected by the terminal equipment that lacks approval. This set of enforcement mechanisms will, we believe, ensure the continuation of a high level of compliance with our rules.

## F. Complaint Procedures for Hearing Aid Compatibility and Volume Control Rules

### 1. Background

122. In the *Notice*, we requested comment on whether it would be appropriate to revise our Part 68 complaint rules for informal complaints arising from our hearing aid compatibility and volume control rules by incorporating procedures recently adopted pursuant to Section 255 and 225 of the Communications Act.<sup>264</sup> In those proceedings, we made it easier for consumers to file complaints and for subject entities to move quickly to resolve them.

### 2. Discussion

123. We conclude that we should adapt the most recent version of the disability complaint procedures for Part 68 complaints of hearing aid compatibility and volume control rule violations, and change our rules accordingly. We are committed to ensuring that persons with disabilities and other consumers continue to receive the full level of enforcement that they currently receive from us. We agree with GTE and SHHH that the Commission should continue to maintain the Part 68 hearing aid compatibility and volume control rules, registration, and complaint procedures.<sup>265</sup> As noted above, we intend to maintain the Part 68

<sup>259</sup> 47 C.F.R. § 255.

<sup>260</sup> 47 C.F.R. § 68.108.

<sup>261</sup> Bell Atlantic Comments at 2.

<sup>262</sup> 47 C.F.R. § 68.108(c).

<sup>263</sup> 47 C.F.R. § 68.102. *See generally* 47 C.F.R. § 400.

<sup>264</sup> *Notice*, 15 FCC Rcd at 10555-556, paras. 87, 91. *See Implementation of Sections 255 and 251(a)(2) of the Communications Act of 1934, as enacted by the Telecommunications Act of 1996 -- Access to Telecommunications Service, Telecommunications Equipment and Customer Premises Equipment by Persons with Disabilities*, WT Docket No. 96-198, FCC 99-181, Report and Order and Further Notice of Inquiry (*Section 255 Order*) (rel. Sept. 29, 1999); *see also Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd. 5140 (2000).

<sup>265</sup> GTE Comments at 7; SHHH Comments at 1-3.8

hearing aid compatibility and volume control rules that we have promulgated in response to statutory directives, rather than using a privatized industry process to establish or maintain the technical criteria ensuring hearing aid compatibility and volume control. We will, however, amend the Part 68 complaint procedures to incorporate the informal complaint process established pursuant to Sections 255 and 225. We agree with SHHH that these rules specifically take into account complaints regarding telecommunications issues affecting persons with hearing disabilities, and are designed to be more consumer responsive.<sup>266</sup> We note, however, that we do not modify the Part 68 rules at this time to incorporate the formal complaint procedures established under these sections of the Communications Act.

124. Under our new rules, complainants are encouraged first to attempt to contact the supplier of terminal equipment with regard to their informal complaint.<sup>267</sup> In a previous proceeding, we established procedures for informal complaints that give a fair amount of information to the supplier without burdening the complainant with requirements for an unreasonable amount of information.<sup>268</sup> We adopt these same rules with regard to the hearing aid compatibility and volume control requirements under Part 68. Thus, for complainants choosing to contact the supplier or the Commission's Consumer Information Bureau (CIB), their complaints should include the name, address, and identification of the equipment involved, along with a statement of facts supporting the allegation that the equipment does not comply with our Part 68 hearing aid compatibility and volume control rules, and complainant's preferred method of response.<sup>269</sup> We permit informal complaints to be transmitted to the supplier or to the Commission's Consumer Information Bureau by any reasonable means such as letter, facsimile, voice and TTY, email, audiocassette recording, and Braille.<sup>270</sup> If the complainant chooses only to send its complaint to CIB, the Bureau will forward informal complaints to the appropriate entity.<sup>271</sup> Our new rules also require that the supplier respond within a designated period of time, generally thirty days, as specified by the Commission.<sup>272</sup> Where it appears from the defendant's answer that an informal complaint has been satisfied, the Commission may consider the informal complaint closed without further response.<sup>273</sup> In all other cases, the Commission shall inform the parties of its review and disposition of an informal complaint.<sup>274</sup> In the event that the Commission determines, based on a review of the information provided in the informal complaint and the defendant's answer thereto, that no further action is required by the Commission with respect to the allegations contained in the informal complaint, the informal complaint shall be closed and the complainant and defendant shall be duly informed of the reasons therefor.<sup>275</sup>

125. A complainant unsatisfied with the defendant's response to the informal complaint and the staff decision to terminate action on the informal complaint, may file a complaint with the Commission under

---

<sup>266</sup> SHHH Comments at 2.

<sup>267</sup> See Appendix B for specific rules.

<sup>268</sup> See generally Section 255 Order, FCC 99-181.

<sup>269</sup> *Id.*, FCC 99-181 at para. 123.

<sup>270</sup> See Appendix B for specific rules.

<sup>271</sup> *Id.*

<sup>272</sup> *Id.*

<sup>273</sup> *Id.*

<sup>274</sup> *Id.*

<sup>275</sup> *Id.*

existing Part 68 complaint procedures.<sup>276</sup> In addition, if the Commission determines, based on a review of the information presented in the informal complaint and the defendant's answer thereto, that a material and substantial question remains as to the defendant's compliance with these informal complaint requirements, the Commission may conduct such further investigation or such further proceedings as may be necessary to determine the defendant's compliance with the requirements of our Part 68 rules and to determine what, if any remedial actions and/or sanctions are warranted.<sup>277</sup> Finally, if the Commission determines, based on a review of the information presented in the informal complaint and the defendant's answer thereto, that the defendant has failed to comply with these informal complaint requirements, the Commission may order or prescribe such remedial actions and/or sanctions as are authorized under the Act and the Commission's rules and which are deemed by the Commission to be appropriate under the facts and circumstances of the case.<sup>278</sup>

126. Finally, our rules provide that formal complaints to the Commission regarding issues pertaining to all other Part 68 complaints, including our hearing aid compatibility and volume control rules that can not be resolved through the informal complaint process, must be filed with the Common Carrier Bureau pursuant to Part 68 complaint procedures.<sup>279</sup> Our rules place the burden of proof on the suppliers to prove that its equipment is in compliance with our hearing aid compatibility and volume control rules.<sup>280</sup> We note that we may consider changing our rules to move responsibility for these Part 68 enforcement functions to the Enforcement Bureau and amending the rules to ensure consistency with existing formal complaint procedures.

127. The new procedures for informal complaints will, we believe, minimize the difficulty of making a complaint while providing the supplier with an opportunity to correct the situation without delay and without governmental review. We note that none of the actions taken herein is intended to have any effect on the enforcement mechanisms established by the Commission pursuant to Sections 255 and 225 of the Communications Act.<sup>281</sup> We find that this decision is in the public interest as beneficial to both consumers and industry.

## G. ADAA Certification Requirements

### 1. Background

128. In the *Notice*, we stated that the Anti-Drug Abuse Act (ADAA)<sup>282</sup> requires an entity receiving a "federal benefit" to certify compliance with ADAA requirements.<sup>283</sup> In our decision implementing the ADAA, we applied the definition of "license" found in the Administrative Procedures Act (APA)<sup>284</sup> to determine the scope of the term "license" as used in 47 U.S.C. section 5301 and thus to define the scope of

---

<sup>276</sup> *Id.*

<sup>277</sup> *Id.*

<sup>278</sup> *Id.*

<sup>279</sup> 47 C.F.R. Part 68, Subpart E.

<sup>280</sup> See Appendix B for specific rules.

<sup>281</sup> 47 U.S.C. §§ 255, 225.

<sup>282</sup> 21 U.S.C. § 862; 47 C.F.R. §§ 1.2001 - 1.2003.

<sup>283</sup> *Notice*, 15 FCC Rcd at 10553, para. 78.

<sup>284</sup> 5 U.S.C. § 551(8).

federal benefits.<sup>285</sup> The APA defines "license" as including "the whole or part of an agency permit, certificate, approval, registration, charter, membership, statutory exemption or other form of permission."<sup>286</sup> Pursuant to this definition, the Commission found that registration of Part 68 equipment to be connected to the telephone network is included within the scope of the ADAA.<sup>287</sup> In the *Notice*, we sought comment on whether the proposed DoC or verification procedures require certification of ADAA compliance.<sup>288</sup> In addition, we requested comment on whether any conflict would exist between use of the TCB procedure on the one hand, which currently requires approval under the ADAA, and the use of DoC and/or verification procedures on the other hand, which potentially might not be subject to ADAA requirements. We also requested comment on whether any ADAA approval continues to be required if we adopt the privatization and streamlining proposals discussed herein.

## 2. Discussion

129. In light of our decision in this Order that the Commission will no longer approve and register Part 68 equipment as compliant with required technical criteria, we conclude that applicants will no longer receive a federal benefit when they receive approval of their equipment. In relinquishing our role in the terminal equipment approval process we allow suppliers to seek such approval either from TCBs or the SDoC process. Because suppliers will either seek approval from private industry or declare their own equipment as conforming to industry standards, they will no longer receive an instrument of authorization from the Commission. The Commission will not, therefore, be providing a federal benefit as defined in section 5301 of the ADAA.<sup>289</sup> This conclusion is consistent with the Commission's decision in the *ADAA Implementation Order* finding that users of blanket licenses are not subject to the ADAA requirements because "they do not involve applications or the issuance of individual authorizations or licenses by the Commission."<sup>290</sup> Accordingly, the Commission's rules will no longer require manufacturers or suppliers to include certification of ADAA compliance in their applications to TCBs or in the information they submit to the Administrative Council for inclusion in the equipment database.

130. Because suppliers will either seek approval from private industry or declare their own equipment as conforming to industry standards, the Commission will not be providing a federal benefit. Accordingly, the Commission's rules will no longer require applicants to include ADAA approval in their applications. We note that currently, TCBs use Commission Form 730 to track equipment compliance. Form 730 requires applicants to certify their compliance with the ADAA. The Administrative Council and the TCBs are no longer obligated to use Commission Form 730. We defer to the Administrative Council to determine what information it will require from TCBs and from suppliers using the SDoC process for equipment approval.

---

<sup>285</sup> *Amendment of Part 1 of the Commission's Rules to Implement Section 5301 of the Anti-Drug Abuse Act of 1988*, Gen. Docket No. 90-312, Report and Order, 6 FCC Rcd 7551 (1991) (*ADAA Report and Order*).

<sup>286</sup> 5 U.S.C. § 551(8).

<sup>287</sup> The Commission found that the ADAA rules apply to "all forms of Commission instruments of authority, including . . . equipment approval . . ." *ADAA Report and Order*, 6 FCC Rcd at 7551, para. 4.

<sup>288</sup> *Notice*, 15 FCC Rcd at 10553, para. 79.

<sup>289</sup> *ADAA Report and Order*, 6 FCC Rcd at 7551, paras. 4-6.

<sup>290</sup> *Id.*, 6 FCC Rcd at 7551, para. 6.

## V. PROCEDURAL MATTERS

### A. Final Regulatory Flexibility Analysis

131. As required by the Regulatory Flexibility Act (RFA), 5 U.S.C. § 603, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice*. The Commission sought written public comment on the proposals in the *Notice*, including the IRFA. Appendix A sets forth the Final Regulatory Flexibility Analysis for this Report and Order.

### B. Paperwork Reduction Act

132. The action contained herein has been analyzed with respect to the Paperwork Reduction Act of 1995 and found to impose new or modified reporting and recordkeeping requirements or burdens on the public. Implementation of these new or modified reporting and recordkeeping requirements will be subject to approval by the Office of Management and Budget (OMB) as prescribed by the Act, and will go into effect upon announcement in the Federal Register of OMB approval.

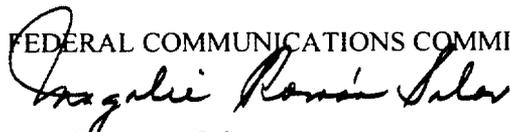
## VI. ORDERING CLAUSES

133. Accordingly, IT IS ORDERED that, pursuant to the authority contained in Sections 1-4, 201-205 and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 201-205 and 303(r), this REPORT AND ORDER is hereby ADOPTED and Part 68 of the Commission's rules ARE AMENDED as set forth in the attached Appendix B.

134. IT IS FURTHER ORDERED that the amendments of the Commission's rules as set forth in Appendix B ARE ADOPTED, effective thirty days from the date of publication in the Federal Register. The action contained herein has been analyzed with respect to the Paperwork Reduction Act of 1995 and found to impose new or modified reporting and/or recordkeeping requirements or burdens on the public. The collections of information contained within are contingent upon approval by the OMB. The Commission will publish a document at a later date establishing the effective date.

135. IT IS FURTHER ORDERED that the Commission's Consumer Information Bureau, Reference Information Center, SHALL SEND a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

  
Magalie Roman Salas  
Secretary