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

In the Matter of	)	
	)	
2000 Biennial Regulatory Review of Part 68 of the Commission's Rules and Regulations	)	CC Docket No. 99-216
	)	
1998 Biennial Regulatory Review – Modifications to Signal Power Limitations Contained in Part 68 of the Commission's Rules	)	CC Docket No. 98-163 ✓
	)	

**ORDER ON RECONSIDERATION IN CC DOCKET NO. 99-216  
AND  
ORDER TERMINATING PROCEEDING IN CC DOCKET NO. 98-163**

**Adopted: March 28, 2002**

**Released: April 10, 2002**

**By the Commission:**

**I. INTRODUCTION**

1. In the Telecommunications Act of 1996 (1996 Act), Congress directed the Federal Communications Commission (Commission) to review its rules every even-numbered year and repeal or modify those found to be no longer in the public interest.<sup>1</sup> Consistent with this directive, in the year 2000, the Commission undertook the second comprehensive biennial review of its rules to eliminate regulations that are no longer necessary because the public interest can be better served through reliance on market forces.<sup>2</sup> In a *Report and Order* addressing Part 68 of the Commission's rules, the Commission completely eliminated significant portions of these rules, which govern the connection of customer premises equipment (or terminal equipment) to the public switched telephone network (PSTN), and privatized the standards development and terminal equipment approval processes.<sup>3</sup> By these actions, the Commission minimized or eliminated the role of the federal government in these processes.

2. In this Order on Reconsideration, we address several issues raised in *ex parte* comments or in petitions for reconsideration and subsequent pleadings. We clarify, pursuant to a request by the Administrative Council for Terminal Attachments (Administrative Council) seeking clarification of section 68.602(c), that a

<sup>1</sup> Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, codified at 47 U.S.C. § 151 *et seq.* (1996 Act). The 1996 Act amended the Communications Act of 1934. We refer to the Communications Act of 1934, as amended, as the "Communications Act" or the "Act." The biennial review of regulations is codified at 47 U.S.C. § 61.

<sup>2</sup> See *Federal Communications Commission Announces Substantial Progress on Biennial Review to Repeal Unnecessary Regulations*, FCC News Release (rel. May 15, 2000).

<sup>3</sup> In the Matter of 2000 Biennial Regulatory Review of Part 68 of the Commission's Rules and Regulations, CC Docket No. 99-216, *Report and Order*, 15 FCC Rcd 24,944 (2000).

formal contract is not required between the Administrative Council and its sponsors. We deny petitions to reconsider the supplier's declaration of conformity (SDoC) procedure established in the *Report and Order*, but we grant Industry Canada's request to delete the requirement in section 68.321 of our rules that responsible parties be located within the United States. Instead, we amend section 68.321 to specify that responsible parties must designate an agent for service of process that maintains an office within the United States. We deny the petition by the American National Standards Institute to accept standards development by the Canvass method of consensus for technical criteria, and we grant the American National Standards Institute petition as to appeals procedures. In addition, we clarify on our own motion that technical criteria, after they have been published for 30 days by the Administrative Council, remain in effect during any subsequent appeal. We grant the requests of several petitioners that we eliminate the provisions in sections 68.354(d) and 68.612 requiring the manufacturer(s) of terminal equipment to be identified on the label and in the database of approved terminal equipment. We also deny petitions to retain the technical rules for type B surge requirements.

3. On our own motion, we amend section 68.162(e)(5)(i) to clarify that the Administrative Council is responsible for publishing technical criteria, and section 68.162(g) to provide that certificates issued by Telecommunications Certification Bodies be given to the Administrative Council rather than to the Commission. We decline to take further action on a 1998 Biennial Review proceeding regarding signal power limitations, but we allow the industry to develop standards if it determines such standards are appropriate and reasonable. In addition, we clarify that the Administrative Council shall publish the technical criteria that have been the subject of our streamlined waiver proceedings.

## II. BACKGROUND

4. Given the maturity of the terminal equipment manufacturing market, the Commission determined in the *Report and Order* that standards development organizations that are accredited by the American National Standards Institute, and that incorporate a balance of industry representatives including both the terminal equipment manufacturing industry and the telecommunications carrier industry, should be responsible for establishing technical criteria to ensure that terminal equipment does not harm the PSTN. The Commission further determined that a private industry committee, the Administrative Council, would be responsible for compiling and publishing all standards ultimately adopted as technical criteria for terminal equipment.

5. With regard to equipment approval, the Commission determined that manufacturers may show compliance with technical criteria through one of two means. First, manufacturers may seek certification of terminal equipment's compliance with the relevant technical criteria from private Telecommunications Certification Bodies. In the alternative, manufacturers may show compliance through the SDoC method of equipment approval, which requires self-certification based on testing by the manufacturer or an independent laboratory.

6. This streamlined approach established in the *Report and Order* eliminated the rules containing the technical criteria for protection of the PSTN in Part 68. The Commission retained in the rules the principles that terminal equipment shall not cause any of four prescribed harms to the PSTN, that providers of telecommunication services must allow the connection of compliant terminal equipment to their networks, and that the Commission diligently will enforce compliance with these rules.<sup>4</sup> This streamlined approach relies on the common vested interest of terminal equipment manufacturers and providers of telecommunication services in safeguarding the PSTN to eliminate the need for direct government involvement in the establishment of technical criteria for terminal equipment and certification of terminal equipment meeting those technical criteria. The Commission did not eliminate from Part 68 the technical criteria relating to inside wiring, provisions regarding hearing aid compatibility and volume control, or the consumer protection provisions. The Commission also maintained enforcement procedures for terminal equipment compliance and established a

<sup>4</sup> 47 C.F.R. §§ 68.1, 68.7, 68.100, 68.102, 68.201, 68.211.

procedure for Commission review of the Administrative Council's decisions. Finally, the Commission updated the complaint procedures for the hearing aid compatibility and volume control rules.

7. The Administrative Council is responsible for adopting, compiling and publishing specific technical criteria for terminal equipment in furtherance of the Commission's broad principles. Any American National Standards Institute-accredited standards development organization may submit technical criteria for terminal equipment. Once the Administrative Council publishes such criteria, the Commission presumes the criteria to be valid, subject to *de novo* review by petition to the Commission. Conformance with the technical criteria is considered a demonstration of compliance with the Commission's rules prohibiting terminal equipment from harming the PSTN. The Commission concluded that this process will be more efficient and responsive to the needs of all segments of the industry, and removes the Commission from a role in which governmental involvement is no longer necessary or in the public interest.

### III. DISCUSSION

#### A. Publication of Administrative Council's "Contract"

8. The tasks undertaken by the Administrative Council in the *Report and Order* include administrative functions such as publishing technical criteria developed by qualified standards development organizations, as well as substantive functions such as developing labeling requirements for terminal equipment. The Administrative Council seeks clarification on the Commission's use of the term "contract" in section 68.602(c), which states that the Administrative Council must make public the contract it signs with the sponsor or sponsors.<sup>5</sup> The Administrative Council argues that it is currently not a legal entity, and that the joint sponsors, Telecommunications Industry Association (TIA) and Alliance for Telecommunications Industry Solutions (ATIS), function as the legal entity for conducting any Administrative Council-related business necessitating legal standing. Accordingly, they argue, the Administrative Council cannot enter into a legal "contract" with its sponsors.

9. We decline to address the status of the Administrative Council as a legal entity for the purpose of entering into a contract with its sponsors. In establishing section 68.602(c), the Commission intended to ensure that the nature of the arrangement between the Administrative Council and its sponsor(s) is subject to public disclosure.<sup>6</sup> The Administrative Council states that it will develop a statement of work or similar document pertaining to its relationship with its sponsors, and make the document available online and from the secretariat upon request.<sup>7</sup> We find that this is sufficient for purposes of compliance with section 68.602(c).

10. Accordingly, we clarify that the term "contract" in section 68.602(c) was intended to describe any agreement entered into by the Administrative Council and its sponsors, whether a formal contract or other form of agreement, as long as the agreement is in writing and is intended to represent the relationship and duties of the Administrative Council and the sponsors. We therefore amend section 68.602(c) to reflect the clarification.<sup>8</sup>

#### B. Supplier's Declaration of Conformity (SDoC)

11. *Background.* The American Council of Independent Laboratories (ACIL), Underwriters

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<sup>5</sup> Letter from Jimmy Salinas, Chair, Administrative Council for Terminal Attachments, to Susan Magnotti, Attorney, Network Services Division, filed June 7, 2001, at 2 (ACTA June 7 Letter). See 47 C.F.R. § 68.602(c).

<sup>6</sup> See *Report and Order* at 24,963, para. 56.

<sup>7</sup> ACTA June 7 Letter at 2.

<sup>8</sup> See Appendix B.

Laboratories, Inc., Teccor Electronics, BellSouth Corporation and Verizon seek reconsideration of the Commission's rule that permits manufacturers to show compliance with the technical criteria using SDoC.<sup>9</sup> Specifically, petitioners argue that, at a minimum, manufacturers using the SDoC process must use accredited testing laboratories.

12. The SDoC process, as defined in the International Organization for Standardization and the International Electrotechnical Commission (ISO/IEC) Guide 22, and as modified in the *Report and Order*,<sup>10</sup> permits responsible parties to test for and to declare conformity of their own equipment with required technical criteria. Responsible parties using the SDoC process may, if they have the capability to do so accurately, test the equipment themselves, or they may have it tested by an independent laboratory. A written statement that the equipment conforms to the required technical criteria, signed by the person making the declaration,<sup>11</sup> must be included in the user's manual or as a separate document enclosed with the terminal equipment.<sup>12</sup> The Commission requires the SDoC statement to include, at a minimum, (1) the identification of the supplier and a description of 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>13</sup> The supplier must provide the Administrative Council with a copy of its statement<sup>14</sup> and retain the test records and other pertinent information on file for at least ten years after the manufacture of the equipment has been discontinued.<sup>15</sup>

13. Industry Canada also seeks reconsideration of section 68.321, which states that "[t]he responsible party for a Supplier's Declaration of Conformity must be located within the United States."<sup>16</sup> It notes that because some exporters to the United States do not use importers located in the United States, no qualified responsible party would exist for such entities.<sup>17</sup>

14. *Use of Non-Accredited Testing Laboratories.* The Commission has long permitted testing of Part 68 equipment by non-accredited laboratories, with few documented problems, and has required laboratory accreditation only in instances where the test procedures are sufficiently complex so as to raise concerns about the tests being performed properly. We have no such concerns with the tests required for Part 68 terminal equipment. Moreover, we believe that commenters' concerns that use of the SDoC process will lead to non-compliant equipment are unfounded.<sup>18</sup> One commenter, ACIL, offered some statistics on initial failure

<sup>9</sup> 47 C.F.R. §§ 68.320, 68.324-68.350.

<sup>10</sup> *Report and Order* at 24,979, para. 98.

<sup>11</sup> 47 C.F.R. § 68.324(a).

<sup>12</sup> 47 C.F.R. § 68.324(c).

<sup>13</sup> 47 C.F.R. § 68.324(a).

<sup>14</sup> 47 C.F.R. § 68.324(e)(2)

<sup>15</sup> 47 C.F.R. § 68.326.

<sup>16</sup> Letter from William E. Howden, Common Carrier Bureau, to Magalie Roman Salas, Secretary, Federal Communications Commission, regarding *ex parte* presentation by Industrie Canada, May 2, 2001. (*Industrie Canada ex parte Letter*).

<sup>17</sup> See 47 C.F.R. § 68.3 (stating that if the equipment is imported, the importer must be the responsible party for purposes of the SDoC process).

<sup>18</sup> For example, commenters indicate that hearing aid compatibility and volume control regulations are particularly at risk. Teccor argues that persons with hearing disabilities would have their lives endangered if their telephones were approved through the SDoC process because of the likelihood that they would be non-compliant. Teccor Petition for Reconsideration at 5.

rates by equipment received at unspecified testing laboratories,<sup>19</sup> stating that it queried “some Part 68 test laboratories” regarding the percentage of equipment failing to meet the volume control requirements of section 68.317. ACIL reports that the failure rate for products submitted for the first time ranged from 22% to 50%. In addition, ACIL states that a German post-market testing auditor tested electrical (not telecommunications) equipment subject to the new SDoC process in the EU and found a high non-compliance rate. These statistics are not dispositive, nor do they give us reason to believe that laboratory accreditation would affect the compliance rates for terminal equipment initially submitted to laboratories for testing.<sup>20</sup> Responsible parties whose equipment fails testing under the SDoC process are required to make corrections and to re-test the equipment for compliance with required technical criteria.

15. Because terminal equipment must be compliant with all rules retained in Part 68 and with technical criteria published by the Administrative Council, responsible parties must ensure that their chosen test facility is knowledgeable and competent to perform the required tests necessary for that specific terminal equipment. Reliance on the results of a test laboratory that is not equipped and qualified to test a particular type of terminal equipment accurately will not excuse responsible parties from liability and certification revocation for terminal equipment non-compliance, whether the testing laboratory is accredited or unaccredited. The burden is on the responsible party to demonstrate the compliance of its terminal equipment with our rules and the technical criteria.

16. We affirm that the Commission’s decision to allow manufacturers to use the SDoC process to demonstrate compliant equipment for connection to the PSTN is necessary in the public interest. We disagree with commenters who argue that confidence in equipment compliance will be reduced if the SDoC process is used. Responsible parties using the SDoC process will not be in compliance with our rules if they are not competent and qualified to make the declaration that their terminal equipment meets the technical criteria. A responsible party’s good faith reliance on its own laboratory or on a third party for testing will not excuse the responsible party from the absolute requirement that its equipment comply with our rules. Failure to produce equipment that complies with our rules, for any reason, will subject the responsible party to enforcement procedures and penalties pursuant to subpart E of Part 68,<sup>21</sup> including revocation of certification and, for imported goods, refusal of entry.

17. *Location of Responsible Party.* Section 68.321 requires that the responsible party for purposes of SDoC certification be located in the United States.<sup>22</sup> Section 68.3 requires the responsible party for SDoC to be the importer, if the equipment is imported. Thus, under the current rules, for imported equipment, the importer must be located in the United States. We agree with Industry Canada’s observation, however, that some importers of terminal equipment manufactured abroad may not be located within the United States, and that it would be a hardship to require such companies to relocate their importers or to change their importer. This may result in a trade barrier, which is an outcome we do not intend. Accordingly, we modify the requirement in section 68.321 that the responsible party be located in the United States. To ensure that the Commission can identify and have access to responsible parties located outside of the United States, however, we will require that responsible parties designate an agent for service of process that is physically located within the United States.

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<sup>19</sup> ACIL does not specify whether these statistics came from accredited or unaccredited laboratories. ACIL Petition for Reconsideration at 4.

<sup>20</sup> Moreover, the compliance rate for equipment submitted for initial testing is immaterial because any instance of non-compliance must be corrected before the equipment is placed on the market.

<sup>21</sup> 47 C.F.R. Subpart E, §§ 68.400-414.

<sup>22</sup> 47 C.F.R. § 68.321.

## C. The American National Standards Institute Petition

### 1. Standards Development Process

18. *Background.* The American National Standards Institute seeks reconsideration of the Commission's decision not to allow technical criteria to be developed through the Canvass method.<sup>23</sup> The American National Standards Institute states that the three methods for developing technical criteria - (1) the Organization method, (2) the Standards Committee method, and (3) the Canvass method - are equivalent for due process purposes. Unlike the Organization method and the Standards Committee method,<sup>24</sup> the Canvass method provides that due process be used to determine consensus only after a draft standard has been developed.<sup>25</sup> Thus, the consensus process under the Canvass method does not necessarily include broad and open participation at an early stage in the standards development process as with the other two accreditation methods. Therefore, the Commission concluded that only standards development organizations that meet the due process requirements for American National Standards Institute accreditation using either the Organization or Standards Committee methods may develop technical criteria for submission to the Administrative Council as valid technical criteria for terminal equipment.<sup>26</sup>

19. *Discussion.* We deny the American National Standards Institute's petition.<sup>27</sup> We agree with Verizon that the Organization and Standards Committee methods of development provide additional assurance by allowing open participation to ensure that interested parties have a voice in drafting the standards at an early stage in the standards development process.<sup>28</sup> We believe that such public participation is similar to that provided in a rulemaking proceeding. Notwithstanding the American National Standards Institute's finding that the Canvassing method ultimately provides a similar level of due process afforded by the other two methods, we believe that for the purpose of developing technical criteria, it is essential for all interested parties to have an opportunity to enjoy full participation in the standards development process from the outset of that process. Therefore, we deny the American National Standards Institute's request to allow organizations accredited under the Canvass method to submit standards to the Administrative Council.

### 2. Appeals Process

20. *Background.* In response to the American National Standards Institute's request for clarification of the *Report and Order*,<sup>29</sup> we clarify certain aspects of the American National Standards Institute appeals procedures. The *Report and Order* establishes two appeals processes for the development of technical criteria.<sup>30</sup> Under the first appeals process, a party may appeal any proposed technical criteria placed on public notice by the Administrative Council to the originating standards development organization, to the American

<sup>23</sup> American National Standards Institute *Ex Parte*, February 6, at 1, American National Standards Institute Petition at 2.

<sup>24</sup> See 15 FCC Rcd 24,955, para. 28 (describing Organization & Standard Committee method).

<sup>25</sup> *American National Standards Institute Procedures Annex E*, § E-3.

<sup>26</sup> *Report and Order*, 15 FCC Rcd. 24,964, para. 58.

<sup>27</sup> We recognize, however, that the American National Standards Institute has conducted an open proceeding on the issue of whether the three consensus methods are equivalent, and our decision herein is not an effort to reverse the American National Standards Institute's findings in its proceeding.

<sup>28</sup> Verizon Comments at 1-2.

<sup>29</sup> See American National Standards Institute Petition at 5.

<sup>30</sup> *Report and Order*, 15 FCC Rcd 24,967-24,968, paras. 71-72.

National Standards Institute, or to the Commission. The appealing party must provide notice of the appeal to the Administrative Council. Under the second appeals process, a party seeking to change published technical criteria may submit its appeal to the Administrative Council. The Administrative Council then refers the appellant's comments and the technical criteria back to the originating standards development organization. If the standards development organization is unsuccessful in resolving the issue within the time limit set by the Administrative Council, the appellant then must appeal to the Administrative Council. Upon exhaustion of such appeals, the party may appeal to the Commission for *de novo* review.<sup>31</sup> Under either of the procedures above, the *Report and Order* specifies that the Commission will not recognize the technical criteria in question as presumptively valid until the standards development organization or the Administrative Council resolves the appeal, or, if a party seeks *de novo* review from the Commission, until the Commission completes its review.<sup>32</sup>

21. *Discussion.* First, we clarify that the American National Standards Institute Board of Standards Review may only hear appeals regarding procedural issues and only with regard to a standard that is submitted to it for approval as an American National Standard.<sup>33</sup> Any other technical standards are not eligible for American National Standards Institute review. Second, we clarify that the scope of appeals review by the Board of Standards Review is limited to the standards developer's compliance with all of the American National Standards Institute's procedural requirements for the development of American National Standards. Thus, the American National Standards Institute will review the procedure by which a standard was developed, but it will not review the merits of the standard itself. Third, before appealing directly to the American National Standards Institute, parties must first go through the appeal process at the standards development organization that originally drafted the standard.<sup>34</sup> Finally, on our own motion, we clarify that after technical criteria are published, and the 30-day public notice period passes, technical criteria will be deemed to be presumptively valid and remain so during appeal, unless they are subsequently invalidated by the standards development organization, the Administrative Council, the American National Standards Institute, or the Commission.<sup>35</sup>

#### D. Labeling Of Terminal Equipment

22. *Background.* In the *Report and Order*, we concluded that the Administrative Council would be responsible for developing terminal equipment labeling requirements.<sup>36</sup> New sections 68.354(d) and 68.612 require that both the manufacturer and the responsible party be identifiable by the label required to be affixed

<sup>31</sup> 47 C.F.R. § 68.614(a). As an alternative, oppositions to proposed technical criteria may be filed directly with the Commission for *de novo* review within the 30 day public notice period. 47 C.F.R. § 68.614(b).

<sup>32</sup> *Report and Order*, 15 FCC Rcd 24,968, para. 72.

<sup>33</sup> American National Standards Institute Petition at 5. We also note that appeals must be filed at the American National Standards Institute within 15 working days after receipt of notification by the American National Standards Institute of an action by the BSR to approve or not approve a standard.

<sup>34</sup> *Id.* at 5.

<sup>35</sup> In contrast, if an appeal of technical criteria is filed within 30 days of the criteria's publication by the Administrative Council, the technical criteria would not be deemed presumptively valid during the appeals process.

<sup>36</sup> *Report and Order* at 24,985-24,986, paras. 114-115. The Commission required the Administrative Council to adopt labeling requirements that address both equipment approved by *Telecommunications Certification Bodies* and equipment approved through the SDoC process. While leaving the specific format up to industry, the Commission required labeling to contain sufficient information for providers of telecommunications, the Customs Service, the Commission, and for consumers to easily identify the supplier of the terminal equipment. In addition, the Commission required that the numbering and labeling scheme be nondiscriminatory and that it create no competitive advantage for any entity or segment of the industry.

to terminal equipment. In an *ex parte* petition, representatives of ATIS and TIA argued that the wording of section 68.354(d) and 68.612 should be changed to eliminate the requirement for the label to identify the "manufacturer" in addition to the "responsible party."<sup>37</sup>

23. *Discussion.* We clarify that terminal equipment labels, as well as the database maintained by the Administrative Council, need not include information regarding the manufacturer, if that entity is not the responsible party. Representatives of TIA explained that current business practices often are that the licensing entity, whose name is on the product, contracts with several manufacturers to produce the equipment. In this case the relevant entity is the licensing party, not the manufacturer. These contract manufacturers are numerous and may change frequently and, perhaps most importantly, their identities are proprietary information for the licensing entity. For example, a Sprint representative explained that one of their manufacturers had recently been hired by a competitor of Sprint, and his company incurred the time and expense of replacing the manufacturer. We agree that this outcome could be a hardship for licensing entities under the current business practice. Accordingly, sections 68.354(d) and 68.612 will be modified to reflect that the manufacturer need not be identified on the label.

#### E. Type B Surge Requirements

24. *Background.* In the *Report and Order*, the Commission declined to adopt a proposal by SBC and BellSouth to retain the Type B power surge requirements in the rules in addition to inside wire, hearing aid compatibility, and other consumer protection rules.<sup>38</sup> The Commission found no basis to create an exception for these technical requirements in light of its determination in the *Report and Order* that privatizing the technical requirements in Part 68 is in the public interest. In their *Petitions for Reconsideration*, BellSouth and Verizon again argue that Type B power surge requirements for terminal equipment should be retained in Part 68 because these rules protect end users from injury caused by lightning strikes.

25. *Discussion.* We deny petitioners' request to retain these technical requirements as a part of the Commission's rules. We continue to believe that the privatized system is the most efficient and responsive method for addressing future updates to the technical criteria for terminal equipment. We believe that BellSouth's concerns, that the Type B surge requirements would be eliminated under the privatized system, are unfounded. The Administrative Council has no discretion unilaterally to remove the Type B surge requirements. Standards development organizations that meet the requirements of the *Report and Order* are the only entities that may formulate changes to, or ultimately eliminate, technical criteria. Such standards development organizations must permit open participation in the development or amendment of technical requirements, and they must follow consensus procedures. The Administrative Council merely publishes these criteria after ensuring the Commission's requirements were met. Moreover, the Commission retains *de novo* review, appeals and enforcement jurisdiction in the event of an appeal of technical criteria.

26. We do not agree with BellSouth's argument that there is no justification for treating the Type B surge requirement rules differently from the inside wire and hearing aid compatibility rules. Type B surge requirements are technical criteria designed to protect the PSTN from potential harm from terminal equipment. On the other hand, the hearing aid compatibility rules, although they include technical criteria, have as their primary focus the Commission's policy to ensure that individuals with hearing disabilities can use telephone equipment for all purposes, including emergencies. The inside wire rules are the foundation of the Commission's competitive access and other policies. By contrast, the Type B surge requirements were

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<sup>37</sup> Notice, Alliance for Telecommunications Industry Solutions and the Telecommunications Industry Association, February 7, 2001.

<sup>38</sup> *Report and Order* at 24,966-24,967, para. 67.

developed and proposed to the Commission by an industry standards development organization<sup>39</sup> and they were added to Part 68 in connection with the Canadian harmonization proceeding.<sup>40</sup> Under the new regulatory paradigm of privatizing technical criteria, qualified standards development organizations retain authority to address these requirements. Rather than subject these industry-developed technical criteria to continued Commission jurisdiction, we believe they should remain under the purview of standards development organizations, with other types of technical criteria designed to prevent harm to the PSTN, so that they may be addressed more quickly through the privatized development process.

#### F. Telecommunications Certification Bodies' Information to Administrative Council

27. On our own motion, we amend section 68.162(g) to remove the requirement that Telecommunications Certification Bodies provide a copy to the Commission of each application form received and each grant of certification issued. Instead, Telecommunications Certification Bodies shall provide this information to the Administrative Council, which is now responsible for keeping a database of certified terminal equipment. We also amend section 68.162(e)(5)(i), which states *inter alia* that Telecommunications Certification Bodies may not certify equipment for which Commission rules do not exist. Because the Administrative Council is now responsible for publishing technical criteria, the rule will now state that certification may not be issued for equipment for which Commission rules and requirements, or technical criteria published by the Administrative Council, do not exist.<sup>41</sup>

#### G. Pending Proceedings

##### 1. Modifications to signal power limitations: CC Docket No. 98-163

28. *Background.* On September 16, 1998, the Commission released a notice of proposed rulemaking that sought to accelerate the rate at which customers could download data from the Internet.<sup>42</sup> In the *56K Notice*, the Commission sought comment on whether it should modify its rules limiting the amount of signal power that can be transmitted over telephone lines, thereby prohibiting such products from operating at their full potential.<sup>43</sup> Specifically, the Commission proposed to increase the power limit on encoded analog content specified in sections 68.308(h)(1)(iv) and 68.308(h)(2)(v) from -12 dBm to -6 dBm, and the Commission sought comment on the effect of this proposed rule change. In particular, the Commission sought comment on whether such a rule change would improve the performance of PCM modems; whether increasing the signal power risks harm to the network; and whether a signal power limit other than -6 dBm but greater than -12 dBm, or another modification to Part 68 of our rules, would be more beneficial and entail less risk.<sup>44</sup> By implementing such modifications, the Commission believed it could improve the transmission rates experienced by persons using high-speed digital information products, such as 56 kilobits per second (kbps)

<sup>39</sup> TIA subcommittee TR41.2 addresses issues pertaining to conformity of regulatory standards for telecommunications equipment. It considers and recommends harmonization of international regulations and standards.

<sup>40</sup> *Amendment of Part 68 of the Commission's Rules*, CC Docket No. 96-28, Report and Order, 12 FCC Rcd 19,218 (1997) (*Harmonization Order*). Moreover, harmonization of U.S. terminal equipment rules with international rules is the subject of a standing subcommittee of TIA's TR41. *Report and Order* at 24,959-24,960, para. 44 and note 65.

<sup>41</sup> See Appendix B.

<sup>42</sup> *1998 Biennial Regulatory Review – Modifications to Signal Power Limitations Contained in Part 68 of the Commission's Rules See Notice*, CC Docket No. 98-163, Notice of Proposed Rulemaking, FCC 98-221 (rel. Sept. 16, 1998) (*56K Notice*).

<sup>43</sup> *Id.*, FCC 98-221, at para. 1.

<sup>44</sup> *Id.*, FCC 98-221, at para. 8.

modems, to download data from the Internet.<sup>45</sup>

29. *Discussion.* In light of the Commission's privatization of the equipment approval process and withdrawal from the role of approving equipment and standards, we decline to take further action in the 56K proceeding. Rather than promulgating rules in accordance with the actions recommended in the 56K Notice and comments received in response to the notice, we believe the industry should determine whether modification of the rules governing signal power limitations is warranted. We therefore terminate this proceeding. We note that the Administrative Council has published the technical criteria proposed in the 56K Notice. Accordingly, we defer to the Administrative Council the option of considering the actions recommended in the 56K Notice and establishing technical criteria in accordance with the rules adopted in the Report and Order.<sup>46</sup>

## 2. Streamlined Waiver Proceedings

30. *Streamlined Waiver Process for Asymmetrical Digital Subscriber Line (ADSL) Modems.* Section 68.308(e)(1) of the Commission's rules requires terminal equipment to meet specific out-of-band signal limitations. A waiver of Section 68.308(e)(1) of the Commission's rules allows entities to submit their ADSL modems for Part 68 registration despite the fact that the modems do not fully satisfy those requirements. A waiver of one or more requirements of Part 68 does not, however, excuse an applicant from the requisite testing process.

31. On February 28, 2000, the Commission's Common Carrier Bureau (Bureau) released a Memorandum Opinion and Order granting Alcatel USA, Inc., a waiver of Section 68.308(e)(1) of the Commission's rules for its ADSL modem.<sup>47</sup> The Bureau granted the waiver subject to two conditions (Alcatel conditions), which were corrected by erratum<sup>48</sup> to read as follows: the ADSL modem must (1) meet the transmitter spectral response requirements specified in Section 7.14 of T1.413- Issue Two (1998), and (2) operate with an aggregate power of less than 12.5 dBm over the range 25.875 to 138 kHz as specified in Section 7.15 of the same document.

32. The *Alcatel Waiver Order* additionally established a streamlined process for Part 68 waivers of ADSL modems, eliminating the usual public notice and comment procedures if a petitioner certifies that the above two conditions are met. The Bureau determined that because the ANSI T1.413 - Issue Two (1998) standard for ADSL modems reflects a reasonable level of industry consensus on terminal equipment output limitations intended to protect the PSTN, it could rely on this standard in establishing a streamlined waiver process that would provide manufacturers and carriers the stability afforded by the Part 68 rules without the expense and delay associated with the rule making process. The Bureau invited other parties able to meet the Alcatel conditions to file petitions for waiver of Section 68.308(e)(1) to register ADSL modems. In addition, the Bureau determined that additional waivers would facilitate the market availability of such equipment, thus serving the public interest through increased innovation, consumer choice, and value. By serving the public interest, ADSL modems satisfy part one of the two-part analysis that the Bureau has used in evaluating Part 68 waiver requests. By not harming the PSTN in accordance with the Alcatel conditions, they also satisfy the second part.

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<sup>45</sup> *Id.*, FCC 98-221, at paras. 1, 7-8.

<sup>46</sup> See generally Report and Order, 15 FCC Rcd 24,944.

<sup>47</sup> *Alcatel USA, Inc. Petition for Waiver of the Signal Power Limitations Contained in Section 68.308(e)(1) of the Commission's Rules*, Order, NSD File No. NSD-L-99-81, DA 00-388 (rel. Feb. 28, 2000)(*Alcatel Waiver Order*).

<sup>48</sup> *Alcatel USA, Inc. Petition for Waiver of the Signal Power Limitations Contained in Section 68.308(e)(1) of the Commission's Rules*, Erratum, NSD File No. NSD-L-99-81, DA 00-388 (rel. March 21, 2000).

33. *Streamlined Waiver Process for Terminal Equipment that Detects Stutter Dial Tone.* Section 68.312(i) requires that "registered terminal equipment and registered protective circuitry shall not by design leave the on-hook state by operations performed on tip and ring leads for any other purpose than to request service or answer an incoming call, except that terminal equipment that the user places in the off-hook state for the purpose of manually placing telephone numbers in internal memory for subsequent automatic or repertory dialing shall be registerable."<sup>49</sup> On September 28, 1995, the Bureau released the *Alameda Order* granting eight parties waivers of Section 68.312(i) of the Commission's rules to offer devices that detect the presence of a stutter dial tone.<sup>50</sup> The waivers were granted subject to eight conditions (Alameda conditions).<sup>51</sup>

34. The *Alameda Order* also established a streamlined process for Part 68 waivers of stutter dial tone devices, eliminating the usual public notice and comment procedures if a petitioner certifies that the eight conditions, as amended, are met. The Bureau invited other parties able to meet the Alameda conditions to file petitions for waiver of Section 68.312(i) to register stutter dial tone devices.<sup>52</sup> Additional waivers, the Bureau determined, would facilitate the market availability of such equipment, thus serving the public interest through increased innovation, consumer choice, and value. By serving the public interest, stutter dial tone waiver applications satisfy part one of the two-part analysis that the Commission has used in evaluating Part 68 waiver requests. By not harming the PSTN in accordance with the Alameda conditions, they also satisfy the second part.

35. *Discussion.* The Commission will no longer consider streamlined waiver requests for stutter dialtone and for ADSL modems. The technical criteria published in the *Alameda Reconsideration Order* and in the *Alcatel Order* have been published by the Administrative Council, and we clarify that these criteria will henceforth be under the purview of the Administrative Council pursuant to our rules.<sup>53</sup>

#### IV. PROCEDURAL MATTERS

36. *Paperwork Reduction Act.* The action contained herein has been analyzed with respect to the Paperwork Reduction Act of 1995 and found not to impose new or modified reporting and recordkeeping requirements or burdens on the public.

37. *Final Regulatory Flexibility Certification.* In the *Report and Order*, the Commission concluded that privatizing the terminal equipment registration process would reduce unnecessary costs and delays

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<sup>49</sup> 47 C.F.R. § 68.312(i).

<sup>50</sup> Part 68 Waiver Request of Alameda Engineering, Inc., *Order*, 10 FCC Rcd 12,135 (Com. Car. Bur. 1995) (*Alameda Order*).

<sup>51</sup> *Id.* 10 FCC Rcd at 12,141. The final criteria for stutter dial tone detection devices were established in Part 68 Waiver Request of Alameda Engineering, *et al.*, *Order on Reconsideration*, NSD-L-98-154, 15 FCC Rcd 1658 (Com. Car. Bur. 1999) (*Alameda Reconsideration Order*). These criteria are: (1) perform no periodic testing for stutter dial tone; (2) makes an off-hook stutter dial tone check no more than once after a subscriber completes a call, and completes the check no earlier than 4 seconds after the subscriber hangs-up; (3) makes an off-hook stutter dial tone check after an unanswered incoming call no more than once; (4) perform no off-hook stutter dial tone checks after an unanswered incoming call if the visual message indicator is already lit; (5) take the line off-hook for no more than 2.1 seconds per stutter dial tone check; (6) synchronize off-hook checks when multiple stutter dial tone detection and visual signaling devices are attached to the same line so that only one check is made per calling event for a single line; (7) not block dial tone to a subscriber attempting to initiate a call as an off-hook stutter dial tone detection check is occurring; and (8) not use more than 8 microamps of direct current (DC) from subscriber line loop, except that the devices may draw loop DC sufficient to make authorized off-hook checks.

<sup>52</sup> *Id.* 10 FCC Rcd. at n.73.

<sup>53</sup> 47 C.F.R. §§ 68.604, 68.608.

currently imposed upon suppliers and the Commission without measurably increasing the possibility of harm to the network.<sup>54</sup> The Commission found that registration of terminal equipment shall continue, but that suppliers may show compliance with the technical criteria through one of two means. First, suppliers may seek approval of terminal equipment's compliance with the relevant technical criteria from private Telecommunications Certification Bodies. In the alternative, suppliers may show compliance through the SDoC method of equipment approval. 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, the Commission concluded that is no longer in the public interest for it to continue its Part 68 registration functions.

38. This Order on Reconsideration affirms the Commission's findings with regard to these provisions, and hence the economic effect on small businesses will not change from that discussed in the *Report and Order*. Therefore, we certify that the requirements of this Order on Reconsideration will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of this Order on Reconsideration including a copy of this Certification, in a report to Congress pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A). In addition, this Order on Reconsideration and this certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration, and will be published in the Federal Register. *See* 5 U.S.C. § 605(b).

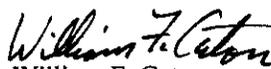
#### V. ORDERING CLAUSES

39. 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 ORDER ON RECONSIDERATION IN CC DOCKET NO. 99-216 AND ORDER TERMINATING PROCEEDING IN CC DOCKET NO. 98-163 is hereby ADOPTED and Part 68 of the Commission's rules ARE AMENDED as set forth in the attached Appendix B.

40. 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.

41. It is further ordered that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Order on Reconsideration, including the Supplemental Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

  
William F. Caton  
Acting Secretary

<sup>54</sup> *Report and Order* at 24,975-24,977, paras. 90-93, and 24,979-24,982, paras. 98-106.

**APPENDIX A: LIST OF PETITIONERS AND COMMENTERS***Parties filing Petitions for Reconsideration:*

Alliance for Telecommunications Industry Solutions

American Council of Independent Laboratories

American National Standards Institute

BellSouth Corporation

Teccor Electronics

Telecommunications Industry Association

Underwriters' Laboratories, Inc.

*Parties Filing Comments or Ex Parte Communications:*

Administrative Council for Terminal Attachments

American National Standards Institute

BellSouth Corporation

GlobeSpan, Inc.

Hewlett-Packard Company

Telecommunications Industry Association

Verizon

## APPENDIX B: FINAL RULES

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

1) The authority citation for Part 68 continues to read as follows:

AUTHORITY: 47 U.S.C. 154, 155 and 303.

2) Section 68.162(e) is amended to read as follows:

**Section 68.162(e) *Designation of Telecommunications Certification Bodies.***

\* \* \* \* \*

(5) A Telecommunications Certification Body may not:

(i) Grant a waiver of Commission rules or technical criteria published by the Administrative Council, or certify equipment for which Commission rules or requirements, or technical criteria do not exist, or for which the application of the rules or requirements, or technical criteria is unclear.

\* \* \* \* \*

4) Section 68.162(g)(1) is amended to read as follows:

**Section 68.162(g) *Post-certification requirements.***

(1) A Telecommunications Certification Body shall supply a copy of each approved application form and grant of certification to the Administrative Council for Terminal Attachments.

\* \* \* \* \*

6) Amend section 68.321 to read as follows:

**Section 68.321 *Location of responsible party.***

The responsible party for a Supplier's Declaration of Conformity must designate an agent for service of process that is physically located within the United States.

7) The last sentence of section 68.602(c) is amended to read as follows:

**Section 68.602 *Sponsor of the Administrative Council for Terminal Attachments***

\* \* \* \* \*

(c) . . . The Administrative Council shall post on a publicly available web site and make available to the public in hard copy form the written agreement into which it enters with the sponsor or sponsors.