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

NOTICE OF PROPOSED RULEMAKING

Adopted: May 15, 2000 Released: May 22, 2000

Comment date: June 23, 2000
Reply comment date: July 7, 2000

By the Commission:

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I. INTRODUCTION

1. In this Notice of Proposed Rulemaking (Notice), we propose to streamline most elements of the process by which technical criteria are established for customer premises equipment[1] (CPE or terminal equipment) that, once approved, local exchange carriers must allow to be connected to the public switched telephone network (PSTN). We also propose to minimize Commission assessment of product compliance with technical criteria for such equipment. Our goal is to make these processes faster and more responsive to technical innovation, with a diminished role for the government, while preserving our core goals of preventing harm to the PSTN and ensuring access for persons with disabilities.

2. CPE currently is regulated by Part 68 of our rules, which establishes technical criteria designed to ensure that the CPE does not harm the PSTN or telephone company personnel[2] and a registration process to verify which CPE complies with these criteria. Part 68 requires local exchange carriers to allow CPE that is registered as Part 68 compliant to be connected to their networks.[3] As part of

[1] "Customer premises equipment" is defined as equipment employed on the premises of a person (other than a carrier) to originate, route, or terminate telecommunications. 47 U.S.C. § 153(14).

[2] Part 68 does not regulate the quality or performance of CPE except as these factors relate to preventing network harm. Quality and performance factors are served by consumer protection laws and by the operation of the free market.

[3] Prior to the adoption of Part 68, telephone companies generally only permitted their customers to connect to their networks the CPE the companies supplied themselves, giving the telephone companies monopoly control of the CPE market.

our overall mandate to reduce regulation wherever possible, consistent with the public interest, [4] we propose in this Notice largely to privatize two of Part 68's functions -- first, the establishment of technical criteria for CPE to ensure it will not harm the PSTN and, second, the registration process used to determine whether a particular model of equipment meets those standards.[5] The reduction of governmental involvement in the setting of technical criteria and registration of CPE will, we believe, have a beneficial impact upon the pace of new or competitive CPE deployment, and therefore increase the choices available to consumers.[6]

3. Our proposals in this Notice are based on positions that emerged from a series of industry fora we held in July 1999 to explore the extent to which regulations in Part 68, other than our hearing aid compatibility and volume control (HAC/VC) rules, may no longer be necessary. We also include proposals patterned after the Commission's rules establishing interconnection rules for cable television devices.[7] In this Notice, we propose to retain in our rules proscriptions against certain harms to the PSTN that can be caused by offending CPE. We also propose that our rules continue to require that local exchange carriers (LECs) allow CPE that meets technical criteria for network protection to be connected freely to their networks. However, rather than continuing to set such technical criteria ourselves, we propose in this Notice to use one of several potential industry standards-setting processes. The only technical criteria that we propose to retain in our rules are those that ensure access to telecommunications and services by persons with disabilities and those that deal with network demarcation and inside wire.[8] To ensure that the public interest is adequately protected, we propose to provide for *de novo* Commission review and enforcement, where necessary, of the industry-established technical criteria in the event of an appeal regarding the criteria. We expect, however, that such Commission involvement would be extremely limited.

4. We also propose to assign to private industry the process of verifying that specific CPE meets the established technical criteria. We have already established a procedure whereby CPE manufacturers may submit their products to private Telecommunications Certifications Bodies (TCBs), rather than the Commission, for Part 68 registration.[9] In this Notice, we propose to replace Commission

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[4] *See* preamble of Telecommunications Act of 1996 ("…to promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies.") Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, codified at 47 U.S.C. §§ 151 *et seq*. (*1996 Act*).

[5] *See* para. 28 and note 56, *infra*, for a list of specific rule sections affected by this NPRM.

[6] Indeed, commenters have identified shortcomings in the current Part 68 regime, including the need to conduct notice-and-comment rulemaking proceedings to keep Part 68 current with new technology, and the time it presently takes to get equipment registered.

[7] 47 C.F.R. §76.1200-1210

[8] Demarcation issues pertain to the location of the dividing point between LEC-controlled telephone line and customer-controlled telephone line. *See* note 56, *infra*. Inside wire issues pertain to requirements concerning customer-owned line. Both of these matters affect a number of consumer and competitive issues including competitive access.

[9] 1998 Biennial Regulatory Review – Amendment of Parts 2, 25 and 68 of the Commission's Rules

registration entirely with either expanded use of the TCBs for certification, or self-certification or verification.

II. BACKGROUND

5. Before the Commission established its rules in Part 68, CPE was manufactured almost exclusively by Western Electric, which was part of the Bell System of companies that included the monopoly local exchange and long distance providers in most parts of the country. This ensured that no harmful CPE was connected to the PSTN, but also created a monopoly in the development and manufacture of CPE. The Part 68 rules are premised on a compromise whereby LECs are required to allow CPE manufactured by anyone to be connected to their networks, provided that the CPE has been shown to meet the technical criteria for preventing network harm that are established in the Part 68 rules. Thus, although our Part 68 rules appear to establish elaborate requirements for CPE manufacturers, the fundamental obligation that the rules impose is on the LECs -- they must allow Part 68-compliant CPE to be connected freely to their networks.[10] CPE manufacturers are not required to comply with Part 68, but equipment that is not Part 68-registered is not freely connectable to the PSTN and thus has limited marketability. Our rules have facilitated a vibrant, competitive market for CPE, reducing prices and resulting in a proliferation of new equipment and capabilities available to consumers.

6. At the time the Commission established its Part 68 rules, the LECs controlled the CPE market as well as the PSTN itself. Few entities outside of the LECs had extensive knowledge about the interaction of CPE and the PSTN, and there appeared to be no private standard-setting bodies or testing laboratories with expertise in CPE. Given this market condition, the Commission took upon itself the obligations of both establishing technical criteria to ensure that CPE would not harm the network and verifying that specific CPE complied with the technical criteria. The rules identified four types of harm against which the network was to be protected:[11]

(1) electrical hazards to telephone company personnel,
(2) damage to telephone company equipment,
(3) malfunction of telephone company billing equipment, and
(4) degradation of service to persons other than the user of the subject terminal equipment, his calling or called party.

7. Taking account of the LECs' near monopoly on technical expertise in the 1970s, the Commission included in its Part 68 rules detailed technical information, including drawings and schematics of CPE circuitry and interconnection devices. The initial Part 68 rules were based, in large measure, on the

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to Further Streamline the Equipment Authorization Process for Radio Frequency Equipment, Modify the Equipment Authorization Process for Telephone Terminal Equipment, Implement Mutual Recognition Agreements and Begin Implementation of the Global Mobile Personal Communications By Satellite (GMPCS) Arrangements, *Report and Order*, GEN Docket No. 98-68, 13 FCC Rcd. 24687 (1998) (*MRA Order*).

[10] Part 68's regulation of CPE is narrowly drawn and does not apply to any equipment on the network side of the demarcation point, to networks other than twisted copper pair, or to matters regarding the internal functioning of the PSTN.

[11] 47 C.F.R. § 68.3.

existing internal carrier technical standards at that time. Although they contain detailed technical criteria, the Part 68 rules do not generally seek to ensure the quality, performance, or interoperability of interconnected networks.[12]

8. In the years since the Part 68 rules were promulgated, the marketplaces for both CPE and local exchange service have changed dramatically, as has this Commission's approach to regulation. As noted above, vibrant competition has emerged in the CPE marketplace. Basic voice telephones (virtually the only consumer CPE that was available from the LECs at the time Part 68 rules were established) are now available from an array of suppliers in a myriad of styles with varied options for extremely low prices. New types of CPE, including advanced telephones, computer modems, and equipment for individuals with disabilities, have become available. Private standards-setting bodies and testing laboratories for telecommunications equipment have also been established, and the CPE-manufacturing industry has matured and plays a strong and active role in them. The PSTN itself is also becoming more competitive. Competition in the long distance market became a reality with the divestiture of the Bell System in 1984. With Congress's passage, and the Commission's implementation, of the 1996 Act, competition is now emerging in the local exchange market as well, with new companies often using their own networks, in whole or in part, to serve local customers.

9. The Commission has revised Part 68 many times since it was initially promulgated, often to reflect technological innovation in the network and CPE.[13] In addition, we have established rights to supply, buy, and use inside wiring.[14] Despite frequent revisions, the time and resources required to change federal regulations in accordance with the Administrative Procedure Act (APA)[15] have prevented, in some cases, the Part 68 rules from keeping pace with technological innovations. As a result, we have established a policy of granting waivers of certain of the technical criteria in Part 68 on an *ad hoc* basis to accommodate technological innovations that, while not compliant with Part 68, nevertheless serve the public interest.[16] We generally have granted such waivers in anticipation of later rulemaking proceedings that would effect a change in our rules to accommodate the innovations on a permanent basis. Nevertheless, the waiver process may hinder the pace at which such innovations can be deployed in the

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[12] To the limited extent that Part 68 addresses these latter functions (*e.g.*, inside wire), we do not propose at this time to privatize them because we have developed these rules for consumer protection or competitive market development.

[13] *See, e.g.*, Petition to Amend Part 68 of the Commission's Rules, *Order on Reconsideration*, 12 FCC Rcd 4615 (1997) and cases cited therein (including in Part 68 technical criteria for Integrated Services Digital Network and Public Switched Digital Service terminal equipment), Amendment of Part 68 of the Commission's Rules, *Report and Order*, 12 FCC Rcd 19218, 19225 (1997) (*Harmonization Order*).

[14] *See, e.g.*, Detariffing the Installation & Maintenance of Inside Wiring, *Third Report & Order*, 7 FCC Rcd 1334 (1992) (*Inside Wiring Third Report & Order*); Amendment of Part 68 of the Commission's Rules Concerning Connection of Telephone Equipment, Systems & Protective Apparatus to the Telephone Network, *First Report & Order*, 97 FCC 2d 527 (1984).

[15] Title 5 U.S.C. §§ 551-559.

[16] In particular, equipment manufactured with stutter dial tone and xDSL technologies has proceeded under waiver pending a rulemaking proceeding. *See, e.g.*, Paradyne Corporation, *Order*, 14 FCC Rcd. 4496 (Network Services Div., Com. Carr. Bur. 1999).

marketplace and enjoyed by the public.

10. The Part 68 rules also affect foreign manufacturers of CPE. Currently, the U.S. Customs Service prevents the importation into the United States of terminal equipment[17] that is not Part 68-registered. Because the Commission currently processes Part 68 registrations, foreign manufacturers must apply to the Commission for registration prior to exporting their products to the United States. In part to make it easier to export terminal equipment into the United States, we recently have enacted rules that allow manufacturers to have their equipment certified as compliant not only by the Commission, but, as an alternative, by any of a multitude of TCBs as well.[18] TCBs need not be based in the U.S.; TCBs may be based in any country with which the U.S. has a Mutual Recognition Agreement (MRA).[19] TCBs must meet certain qualifications that ensure their knowledge, expertise, and integrity.[20] We have also adopted uniform, or "harmonized," technical criteria for protection of the wireline network consistent with the protections used in Canada.[21] The existence of the TCB program will benefit not only foreign manufacturers but also domestic manufacturers, who may apply to TCBs for equipment registration in lieu of the Commission. Nevertheless, our current rules envision the TCBs as an alternative to the primary role of the Commission in registering CPE.

11. Against the backdrop of these highly developed and competitive market conditions and the opportunity for a new regulatory paradigm, we began an inquiry in 1999 into whether the Commission could begin to take a less active role in regulating the interconnection of CPE to the PSTN. In July 1999, the Common Carrier Bureau held a series of public fora on this question. Industry commenters in the fora included representatives of incumbent local exchange carriers (ILECs), competitive local exchange carriers (CLECs), manufacturers, industry associations, terminal equipment testing laboratories, and one state consumer counsel.[22] The views of commenters and fora participants were that: (1) carriers' networks must be protected; (2) one uniform set of national technical standards is necessary; (3) there are few, if any, unnecessary technical requirements in Part 68 at present; (4) the Commission should retain the authority to

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[17] Terminal equipment is 1) communications equipment at either end of a communications link, used to permit the stations involved to accomplish the mission for which the link was established; 2) telephone and telegraph switchboards and other centrally located equipment at which communications circuits are terminated.

[18] *See MRA Order* at 24687.

[19] Our TCB program was designed in connection with an agreement with the European Union and an arrangement with APEC in order to facilitate the international sale of devices and equipment requiring testing and/or certification. Creating TCBs in both the U.S. and EU countries will allow manufacturers to meet one certification process rather than dozens. The TCBs in this country originally were intended to provide an alternative to FCC registration, in order to facilitate international trade. The TCBs certify equipment pursuant to standards now outlined in Part 68 for terminal equipment.

[20] These rules were effective May 3, 1999; TCBs are expected to become operational this year.

[21] Amendment of Part 68 of the Commission's Rules, *Report & Order*, 12 FCC Rcd 19218 (1997).

[22] Public Notice, "Common Carrier Bureau Will Hold Fora on Deregulation/Privatization of Equipment Registration and Telephone Network Connection Rules (47 C.F.R. Part 68)," CC Docket No. 99-216, DA 99-1108, June 10, 1999 (*Part 68 Fora Public Notice*); *See* Appendix A, List of Commenters and List of Fora Participants.

ensure that the PSTN is protected; and (5) the functions of technical criteria development, laboratory qualification, and registration of equipment, currently performed by the Commission, largely can be privatized.[23] The ideas developed in the fora have shaped some of the proposals discussed in this Notice. In addition, in a 1998 Report and Order on interconnection devices for cable television systems[24] we adopted a set of rules to accomplish set-top box interconnection functions that were far simpler than the Part 68 framework for CPE interconnection.[25] Our proposals for Part 68 privatization also are based in part upon this precedent.[26]

III. PROPOSALS FOR PART 68

12. In this Notice, we propose alternative approaches to reducing the Commission's role in regulating the interconnection of CPE to the PSTN by relying to a greater extent on industry standards-setting bodies. We first discuss ways to allow industry standards-setting organizations to take over the establishment of the Commission's technical criteria for CPE currently set forth in Commission's rules. We then discuss alternatives for removing the Commission from the role of verifying CPE's compliance with the relevant technical criteria, which occurs currently through the Part 68 registration process.

A. Regulatory Paradigm for Establishing Technical Criteria

13. As noted above, Part 68's guarantee that compliant CPE can be connected to the PSTN has fundamentally altered the market for CPE and the balance of power between the LECs and equipment manufacturers. Because we believe that the industry has developed a high degree of competitiveness, information dissemination, and balanced participation of entities other than incumbent LECs in developing policies applicable to network protection, we initiate in this Notice a rulemaking proceeding to rely more heavily on industry standards-setting bodies for establishing technical criteria for CPE. In this section, we consider how to implement these changes. We face two basic questions with respect to technical criteria for CPE. First, we must determine whether there is a continued need for technical criteria of any kind in order to protect the PSTN from harm. Second, if there is a continued need for technical criteria, we must consider whether it is necessary for the Commission to continue to establish and maintain such criteria as

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[23] Summary provided in Sprint Comments, filed July 20, 1999, at 1.

[24] Implementation of Section 304 of the Telecommunications Act of 1996 - Commercial Availability of Navigation Devices, *Order on Reconsideration*, CS Docket No. 97-80, FCC 99-95, 14 FCC Rcd 7596 (1999) (*Section 304 Reconsideration Order); Report & Order*, CS Docket No. 97-80, FCC 98-116, 13 FCC Rcd 14775 (1998) (*Section 304 Report & Order*).

[25] 47 C.F.R. §76.1200-1210

[26] *But see Section 304 Report & Order*, 13 FCC Rcd at 14780, para. 12 (noting that the approach taken in the cable order was necessarily different from the Part 68 precedent because "when customer ownership of telephone CPE became available, the telephone network was effectively a national monopoly. Well developed technical standards existed throughout an almost ubiquitous network. In contrast, cable networks do not reflect universal attributes, and have substantially different designs." Accordingly, we sought with the cable order's regulatory scheme "to accommodate these differences from the telephone model.") *Id.*

opposed to having industry establish the criteria.

1. Need for Technical Criteria to Protect the Network

14. We must begin this inquiry with the question of whether technical criteria are still required at all to protect the PSTN from harm. Such criteria would no longer be necessary if, for example, we were to determine that the CPE-manufacturing industry has reached such a level of maturity that it is now inconceivable that harmful CPE would ever be brought to market, or that any LEC allegations of CPE's potential to cause harm had been exaggerated. These are questions that the Common Carrier Bureau explored in the 1999 public fora on Part 68 deregulation.

15. In general, it appears that all segments of the industry, including equipment manufacturers, agree that improperly designed or constructed CPE may still present a threat to the PSTN. The Common Carrier Bureau began the July 1999 fora with the premise that industry might welcome complete elimination or reduction of Part 68 regulation.[27] We learned that that is not entirely the case. Commenters from all facets of the CPE industry were unanimous in their view that the technical requirements designed to protect the network from harm are beneficial to owners of the network, to consumers, and to both domestic and foreign manufacturers.[28] In fact, all parties at the fora argued that all four types of protections listed in section 68.3 are still needed.[29] SBC, for example, discussed at length the technical faults that can cause injury to maintenance personnel,[30] the network physical plant,[31] and to other users of the network.[32] Ameritech and Lucent argued that new technology increases, rather than diminishes, the need for protection of the network from harm and interference to third parties.[33] Thomson pointed out that responsible manufacturers are eager to learn and comply with the technical criteria that will protect the network from harm;[34] other manufacturers attending the fora generally agreed that rules are necessary to this end.[35] It appears that LEC billing apparatus still requires protection from potential abuse by CPE.[36]

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[27] *Part 68 Fora Public Notice*, *supra*, p. 1; Federal Communications Commission Public Fora on Deregulation/Privatization of Equipment Registration and Telephone Network Connection Rules, July 12-13, 1999 ("Record") at 8, 9.

[28] Record at 11-12, 20, 22, 26, 28-29, 38, 45-47, 73, 78, 85-86, 112, 278.

[29] *See, e.g.*, Ameritech Comments, filed July 2, 1999, at 1; SBC Comments, filed July 2, 1999, at 4.

[30] Record at 29, 45.

[31] Record at 29, 47.

[32] Record at 50, 59, 87.

[33] Ameritech Comments, filed July 2, 1999, at 1; Lucent Comments, filed July 2, 1999, at 1, 2.

[34] Record at 73.

[35] *See, e.g.*, Record at 20; Nortel Comments, filed July 2, 1999, at 1-2 (relying upon the marketplace for network integrity requirements in lieu of Part 68 is not a viable alternative).

[36] Record at 48-53.

TIA,[37] USTA,[38] and ITI,[39] trade associations representing a broad spectrum of the telecommunications industry, all argued that the network must be protected from damage that still can be caused by improperly designed CPE or untested new technologies. Commenters also pointed out that, in the *Harmonization Order*, the technical criteria were carefully reviewed so that the applicability of the current technical rules has been recently examined by industry standards groups.[40]

16. We therefore tentatively conclude that it remains necessary to maintain technical criteria for CPE to protect the PSTN from harm. We also tentatively conclude that the four types of network harm currently embodied in the Part 68 rules continue to represent a valid enunciation of the types of harm against which the PSTN still must be protected. We seek comment on these tentative conclusions.

2. Relative Roles of Government and Industry in Establishing Technical Criteria

17. Currently, the technical criteria for freely connectable CPE are contained in Part 68 of our rules; they are thus promulgated by a government agency pursuant to the rulemaking process. Based on the information received in the fora, we tentatively conclude that consumers and the industry would be better served if the technical criteria were established by an industry standards-setting process rather than by the Commission. We reach this tentative conclusion for three reasons.

18. First, the record developed to date shows that all components of the CPE industry, *i.e.*, industry associations, terminal equipment manufacturers, local exchange carriers, standards organizations, and retailers, depend upon the safety of the telephone network for their economic survival. As a result, they are logically in the best position to know what is necessary to protect the network.

19. Second, we believe that, because the industry substantially benefits from protecting the PSTN, it rightly should have the responsibility, in the first instance, of establishing these criteria rather than relying on the government to do so. This places the initial responsibility of protecting the PSTN from harm on those who have a strong financial interest in ensuring this protection.

20. Third, the extensive participation in technical standards-development by these diverse segments of the industry is a testament that appropriate parity exists among these parties. Competing interests (*e.g.*, the LECs that own the networks, the manufacturers of CPE, and existing testing laboratories) will share responsibility for establishing the technical criteria. Thus, it does not appear that one segment of the industry will dominate the development of technical criteria to the detriment of another segment of the industry. We seek comment on these tentative conclusions.

21. We next consider whether it is necessary to extend the force of law to technical criteria established by private bodies, or whether the industry is capable of ensuring compliance with technical criteria for CPE without the force of law behind those requirements. In connection with the Common Carrier Bureau's fora, telephone company representatives argued that it is essential to have the authority of

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[37] Record at 78.

[38] Record at 26, 46-47.

[39] Record at 85-86.

[40] Record at 16, 52.

the government to uphold provisions for network protection in order to facilitate their efforts to seek disconnection of harmful CPE from the PSTN. Without the authority of the government behind technical criteria, they argue, their own efforts to protect their networks would be difficult, if not impossible.[41] Comments indicate that consumers also benefit from government regulations protecting the network from harm. According to the Texas Office of Public Utility Counsel (TOPUC), there are potential market failures and externalities from harmful CPE interconnection.[42] Damage to the network adversely affects all network users and causes them to incur costs, not just the party that interconnected the offending CPE. Thus, the manufacturer or importer does not have full economic incentive to avoid offering harmful CPE, and the result is a market failure.[43] Commission rules would thus be required to protect consumers from these externalities.

22. Based on the foregoing, we tentatively conclude that it is necessary for the government to continue to provide the force of law to technical criteria designed to protect the network from harm. We seek comment on this tentative conclusion and the premises supporting it.

23. We must next determine how best to pursue our twin goals of, on the one hand, privatizing the establishment of technical criteria and, on the other hand, retaining a public (*i.e.*, Commission) mechanism for reviewing and enforcing those criteria. These two functions are interrelated in the sense that our method of reviewing and enforcing the technical criteria may depend in large part on the method by which the criteria are adopted. In the remainder of this section, we discuss concrete proposals to effectuate the policy goals we have discussed above. We propose three options for relying on private development of technical criteria to ensure that CPE connected to the PSTN does not cause harm. The three proposals include: (a) Commission identification of a "gatekeeper" Standards Development Organization (SDO) that will establish and publish binding technical criteria for CPE developed pursuant to American National Standards Institute (ANSI) procedures for consensus bodies; (b) adoption of a presumption that CPE that complies with technical specifications established by any national standards-setting organization will not cause harm and that local exchange carriers must permit its connection to the PSTN; or (c) incorporation into this Commission's rules by reference, through the rulemaking process, of specific standards developed by national standards organizations. We refer to these three proposals as Options A, B, and C, respectively. We do not, at this stage of our proceeding, express a preference for any of the options. We request that interested parties provide analyses of these options and suggest further alternatives if appropriate. Comments we receive in response to this Notice will provide the basis for our choice of any options or alternatives.

24. Next, we must consider how, from a legal perspective, we can give privately developed technical criteria the force of law. Historically, we have generally done so by referencing such standards by specific title, number and year in our rules. Accordingly one alternative is a deregulatory paradigm that involves referencing industry standards specifically in our Part 68 rules. Such specific references, however, must be updated through a rulemaking proceeding to reflect a newer version of any given standard.[44] For example, in sections 68.3, 68.215(d)(4) and 68.317(a) of our current rules, we reference

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[41] Record at 11-12, 22, and 78.

[42] Texas Office of Public Utility Counsel Comments, filed July 2, 1999, at 2.

[43] *Id.* at 3.

[44] Administrative Procedure Act, 5 U.S.C. § 553.

specific industry standards rather than including the entire technical description in our rules. Commenters indicate that this procedure, while removing technical criteria from our rules, nevertheless creates a "bottleneck" as the referenced standards may become obsolete and the reference must be updated in a rulemaking proceeding.[45] The delay caused by the need to hold a rulemaking proceeding is one of the elements of the current system that we seek to eliminate in this proceeding. Therefore, we tentatively conclude that it is preferable to pursue a deregulatory paradigm that allows us to give the force of law to private technical criteria without specifically referencing them in our rules. We tentatively conclude that such a procedure will allow vendors to market CPE more expeditiously and bring greater benefits to consumers. We seek comment on these tentative conclusions.

25. In light of these tentative conclusions, we propose certain deregulatory options in this Notice (specifically, those identified below as Options A and B) that would give presumptive validity and the force of law to privately established technical criteria for CPE without referencing those criteria specifically in our rules. We believe that options A and B are supported by the past regulatory framework for Part 68. The Part 68 *First Report and Order* stressed that the Commission's guiding objective for competitive CPE registration is that it would remain "simple and easy to administer as is reasonably possible with a minimum of government intervention."[46] The Commission's goal was to minimize expense to both the government and private industry, to the benefit of the ultimate consumer, while protecting the PSTN from harms that could be caused by faulty CPE.[47] Now, in view of the market changes discussed above, we tentatively conclude that the key objectives that led to the original adoption of the Part 68 program may be served better through a different mix of government and private industry involvement. Although the privately established technical criteria would have the force of law, the private standards-setting organization would not be performing a Commission policymaking function. The authorized standards development organizations would assist us in the implementation of our objectives to permit connection of competitive CPE to the PSTN without causing harm. Although we would expect any disputes over the technical criteria to be resolved through established industry processes, any disputes ultimately could be brought to the Commission for *de novo* review or enforcement, if necessary, giving the Commission the final say in the establishment of technical criteria. We request comment on this analysis and the foregoing tentative conclusions.

26. We tentatively conclude that the Commission possesses the statutory authority to adopt any of the proposals discussed in this Notice. For example, the proposed changes are entirely in furtherance of our statutory mission "to make available . . . a rapid, efficient, Nation-wide, and world-wide wire and radio communications service with adequate facilities . . . ."[48] Further, the proposed changes are justified, at least in part, on the basis of the same statutory authority which was relied upon in 1975 when

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[45] Letter from Trone Bishop, Bell Atlantic, to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 99-216, at 2 (filed July 7, 1999).

[46] Proposals for New or Revised Classes of Interstate and Foreign Message Toll Telephone Service (MTS) and Wide Area Telephone Service (WATS), Docket No. 19528, *First Report and Order*, 56 FCC 2d 593, at 599 (1975) (*Part 68 First Report and Order*).

[47] *Id.*

[48] 47 U.S.C. § 151; *see also North Carolina Utilities Commission v. FCC*, 537 F.2d 787, 793-94 (4th Cir. 1976).

the Part 68 program was originally implemented.[49] Finally, as noted previously, the proposed changes, if adopted, will further the competitive goals of the 1996 Act.[50] We also seek comment, however, on whether the proposed standards options, particularly the Commission's role relative to standards organizations under each of the proposed options, are subject to, and consistent with, Section 256 of the Act.[51]

27. We also believe that the notice and comment requirements of the APA[52] would not be applicable to the development of technical criteria by a non-governmental entity as proposed in options A and B. This is so because when an industry body adopts and applies technical criteria, it will not be adopting a rule. Rather, it will be making a private interpretation of a Commission rule prohibiting harm caused by CPE to the PSTN. Any final interpretation with respect to compliance would remain with the Commission through a *de novo* review and enforcement procedure. We ask for comment on this analysis. We are particularly interested in constructive comments on the likely impact of these proposals on small entities. For example, will it be easier or more difficult for small businesses to participate in industry procedures than it is for them to participate in FCC rulemaking proceedings under the APA?

28. We note that there are a number of other statutory provisions that govern the procedural and administrative aspects of agency action, including the Regulatory Flexibility Act (RFA),[53] the Paperwork Reduction Act (PRA),[54] and the Congressional review procedures enacted in the Contract with America Advancement Act (CWAAA).[55] For the same reasons that we believe the APA does not apply to privatized development of technical criteria, we do not believe these statutory provisions are applicable. We seek comment on this tentative conclusion.

29. Certain factors are common to all three of our options. First, these proposals affect

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[49] The provisions of the Communications Act of 1934 upon which the Commission relied to initiate the Part 68 program included Sections 4(i), 4(j), 201-205, 215, 218, 313, 314, 403, 404 and 602. *See Part 68 First Report and Orde*r, 56 FCC 2d at 613.

[50] We also cite precedent supporting each of our specific proposals, as we discuss *infra* in the following sections.

[51] 47 U.S.C. §§ 256(b)-(c). This statutory provision limits the Commission's authority to participate in the development of industry standards on interconnectivity and states in subsection (b)(2) that the Commission "may participate, in a manner consistent with its authority and practice prior to the date of enactment of this section, in the development by appropriate industry standards-setting organizations…".

[52] 5 U.S.C. § 553 (b).

[53] 5 U.S.C. §§ 601 *et seq.* For example, the RFA requires an agency to prepare and make available an initial regulatory flexibility analysis whenever it proposes a rule of general applicability that must be published in a notice of proposed rulemaking under § 553 of the APA. 5 U.S.C. § 603.

[54] 44 U.S.C. §§ 3501 *et seq.* For example, the PRA states that an agency shall not conduct or sponsor certain collections of information unless it provides sixty days notice in the Federal Register and obtains approval from the Office of Management and Budget. 44 U.S.C. §§ 3506 (c)(2)(A), 3507.

[55] 5 U.S.C. §§ 801 *et seq.* These provisions of the CWAAA require, for example, that before an agency rule can go into effect, the agency must submit a report to each house of Congress and the General Accounting Office.

technical criteria in Part 68, Subparts B, C, D, and F.[56] These proposals also affect the technical definitions contained in Section 68.3. We propose, however, to retain in Part 68 definitions of other terms that embody important public policies or have some other aspect that is important to our regulatory design outside of CPE interconnection. Accordingly, we propose to keep in Part 68 the present definitions of: (a) "demarcation point"[57] and the related terms "single-unit installations" and "multiunit installations," (b) "essential telephones," (c) "harm," (d) "hearing aid compatible," (e) "Private Radio Services," (f) "Public Mobile Services," and (g) "secure telephones."[58] In addition, we will maintain our direct oversight of, and rules concerning, hearing aid compatibility (HAC),[59] volume control,[60] consumer protection,[61] and inside wiring.[62] We request comment on these proposals and tentative conclusions and request suggestions for any other rules which should be retained, or added to, Part 68.

30. We tentatively conclude that the explicit goals of Part 68 -- in effect, the requirements that would remain in our rules to guide and govern industry development of technical criteria under either option A or B -- should be the following:

- to develop technical criteria[63] to protect the wireline telephone network from harm, as defined in our rules;

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[56] The rules proposed to be affected by this NPRM are: §§ 68.2 except for 68.2(i) and the last paragraph of 68.2(l)(2); 68.3 to the extent indicated above; 68.200, 68.202, 68.204, 68.210, 68.212, 68.216, 68.226, 68.302, 68.304, 68.306, 68.308, 68.310, 68.312, 68.314, 68.500, 68.502, 68.504, and 68.506.

[57] *See, e.g.*, *Inside Wiring Third Report & Order*, 7 FCC Rcd 1334 at note 6; *see supra* notes 8 and 10; *see also* Promotion of Competitive Networks in Local Telecommunications Markets, WT Docket No. 99-217, Wireless Communications Association International, Inc. Petition for Rulemaking to Amend Section 1.4000 of the Commission's Rules to Preempt Restrictions on Subscriber Premises Reception or Transmission Antennas Designed To Provide Fixed Wireless Services, Cellular Telecommunications Industry Association Petition for Rule Making and Amendment of the Commission's Rules to Preempt State and Local Imposition of Discriminatory And/Or Excessive Taxes and Assessments, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, *Notice of Proposed Rulemaking* and *Notice of Inquiry, WT Docket No. 99-217, Third Further Notice of Proposed Rulemaking, CC Docket No. 96-98*, 14 FCC Rcd. 12673 (1999) (*Competitive Networks NPRM*). In the *Competitive Networks NPRM*, we sought comment on how the demarcation point under Part 68 affects access to multiple tenant environments by competitive telecommunications service providers, and whether any Commission action is appropriate. *Id*. at 12709. We do not address these issues here, and will consider them in the context of the *Competitive Networks* rulemaking proceeding.

[58] These definitions are now found in 47 C.F.R. § 68.3.

[59] 47 C.F.R. § 68.4.

[60] 47 C.F.R. § 68.318 (c), *adopted pursuant to* 47 U.S.C. § 227.

[61] 47 C.F.R. § 68.318 (d), *adopted pursuant to* 47 U.S.C. § 227, 47 C.F.R. § 68.318 (e), *adopted pursuant to* 47 USC § 226.

[62] 47 C.F.R. §§ 68.213, 68.215, 68.2(c)(3); *see also* § 68.3 (defining "demarcation point").

[63] The technical criteria should focus on preventing harm to the network by CPE, rather than on its construction, operation, or performance, to ensure that it does not harm the PSTN.

- to allow the expeditious approval of terminal equipment for connection to the wireline telephone network;[64]
- to ensure that technical criteria for CPE are responsive to the needs of new suppliers, new technology, and innovative terminal equipment and services;
- to rely, in developing specific technical criteria to carry out these goals, on nationally recognized standards for the relevant technical aspects of CPE; and
- to minimize the duration and expense of any related activities, especially concerning the introduction of new technology, *e.g.* testing and product approval.

31. We ask for comment on the foregoing tentative conclusions and these requirements. Are any of the requirements unnecessary or inappropriate? Further, are there other requirements that are important enough to be stated along with those above? We request parties to propose other requirements that would be appropriate for our rules.

32. As a corollary to the foregoing, we propose to consider, review and/or enforce privately-established CPE technical criteria only to the extent they concern network harm as defined in our rules. As discussed above, this is the proper province of Part 68. We tentatively conclude that we would not grant presumptive validity to any standards addressing network service quality, performance, and interoperability issues. We seek comment on this tentative conclusion.

33. Finally, with regard to all three options, we seek comment on whether the entities involved in technical criteria development should be treated as FACs under the Federal Advisory Committee Act (FACA).[65]

3. Option A – "Gatekeeper" SDO

34. In this option, we propose that the Commission would choose a "gatekeeper" SDO that will establish and publish technical criteria for CPE developed pursuant to American National Standards Institute (ANSI) procedures for consensus bodies. Thus, we propose that LECs must permit connection to the PSTN of any CPE that meets the technical criteria endorsed by the "gatekeeper" SDO. We do not propose to require any specific structure for the gatekeeper SDO. The SDO may simply act as a central committee and endorse technical criteria developed by other organizations, or it may be an active SDO in its own right that directly establishes technical criteria. Moreover, it is not our intention to modify the existing industry standards setting process and the excellent cooperation that today exists among standards groups. Ideally, commenters that prefer this option would agree on what entity we should designate as the "gatekeeper" SDO. It is clear from the comments received during the fora that there are a number of industry standards organizations that could serve as the gatekeeper SDO. We request comment on which entity, or combination of entities, would best be able to carry out the functions we propose for the SDO herein. We believe that Option A would reduce Commission involvement, and give responsibility to the

[64] Of course, 47 U.S.C. §273(d)(2) applies to standards development organizations' responsibility to protect proprietary information filed with them.

[65] 5 U.S.C. App. 2; 41 C.F.R. §§ 101-6.1001 to 101.6-1035 (GSA Federal Advisory Committee Management Regulations).

industry for establishment of technical criteria. This option would ensure that technical criteria remains uniform and mandatory. Thus, we believe that this option addresses all of the concerns raised by fora commenters while minimizing the Commission's involvement in establishment of technical criteria.

35. The proposal for a single SDO to serve as the industry body responsible for the establishment of technical criteria is not without precedent. In the recent *Advanced Services Third Report and Order*,[66] we determined that a single ANSI-accredited standards development group, T1E1.4,[67] is the best forum for developing spectrum compatibility standards pertaining to the network side of the demarcation point. We determined that because T1E1.4 has broad-based industry representation and years of experience developing these standards, the Commission would rely on that organization to be the one body responsible for development of spectrum compatibility standards and for fair and open practices in the deployment of advanced services technology. We concluded that relying on a single standards setting body would ensure that all carriers know which technologies can be deployed and can design their networks and business strategies accordingly.[68] In addition, in an effort to ensure that the Commission played a role in fostering timely, fair, and open development of standards, we chose the Network Reliability and Interoperability Council (NRIC), an existing Federal Advisory Committee (FAC), to advise the Commission on the standards developed by T1E1.4. We would view the chosen SDO's determinations regarding technical criteria for CPE to be presumptively valid. Moreover, as described herein, the Commission would retain a role in the process by providing necessary oversight and enforcement through continued network harm rules and a *de novo* review and enforcement process.

36. We propose that the gatekeeper SDO conduct its deliberations pursuant to the American National Standards Institute (ANSI) procedures for consensus bodies. We believe that this requirement would result in few, if any, appeals to this Commission as a result of disputes over technical criteria. We expect that all industry parties, including the manufacturers and LECs, will accept the SDO's published criteria, because they will have been developed pursuant to consensus procedures. We request comment on this proposal.

37. Under this option, we also propose to continue the present level of Commission monitoring of the development of technical criteria by attending certain deliberative meetings of the SDO. Commission staff attendance at the meetings of one SDO would not stretch the Commission's resources beyond the current level dedicated to this monitoring function, and may possibly reduce them. Commenters argue that this Commission's continued involvement in monitoring the development of technical criteria is essential, stating, for example, that the "FCC has a way of bringing in various complaints that may have come to the Commission from consumers around the country and making sure that that voice is heard,"[69] and that without Commission involvement, there is a possibility for industry negotiators to base their desire for particular standards on their market share of a particular technology or even on a patent for which they

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[66] Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147, *Third Report and Order*, CC Docket No. 96-98, *Fourth Report and Order*, FCC 99-355 (rel. Dec. 9, 1999) (*Advanced Services Third Report and Order*).

[67] T1E1.4 is a working group of Alliance for Telecommunications Industry Solutions (ATIS)-sponsored Committee T1.

[68] *Advanced Services Third Report and Order*, para. 180.

[69] John Bipes, Mobile Engineering, Record at 81-82.

would receive a royalty.[70] Commission staff currently attends some industry standards meetings as observers, and this participation has been sufficient to achieve the benefits noted by fora commenters. We tentatively conclude that this level of participation in a "gatekeeper" SDO is essentially a continuation of current levels of monitoring, and as such is sufficient to provide public interest input to the SDO at the current level offered to Part 68 industry standards groups. We request comment on this analysis and tentative conclusion.

38. We propose that our rules containing Part 68 technical criteria would remain applicable until the designated SDO publishes its criteria. The SDO's initial technical criteria would be identical to our existing technical criteria. At the same time, our new rules would go into effect that would not include the detailed technical criteria. Our rules would, instead, identify the SDO's technical criteria as presumptively valid and, if complied with, would trigger LEC responsibility to permit CPE connection to the PSTN. Thus, there would be no lapse of coverage of the technical criteria. Our new rules would provide that the SDO would thereafter have the responsibility to maintain, change or even eliminate the criteria, subject to a few guiding principles and requirements we propose to establish in our rules. Clearly, we do not propose to usurp the role of industry in the standards-setting process. We seek comment, therefore, on whether this proposal allows for sufficient autonomy in the industry standards-setting process. We emphasize that we will set out a procedure that will allow parties to petition the Commission for *de novo* review or enforcement of the SDO's technical criteria determinations. Thus, the new rules will provide a procedure for reviewing the SDO's activities that is no more cumbersome than the current procedure for changing the Commission's technical criteria in the first instance. Absent the need for Commission intervention, however, the new procedure will allow the SDO to update the CPE interconnection technical criteria in response to changes in technology much more expeditiously than the current rulemaking processes allows. More importantly, however, the process will be in the hands of the industry itself, largely privatizing the criteria-setting process so that the Commission may assume a more appropriate oversight role through the rules proposed herein.

39. In summary, we propose that technical criteria established by the gatekeeper SDO would be considered presumptively valid, and directly supported with necessary Commission oversight and enforcement pursuant to guidelines and requirements established in our rules.[71] Whatever the SDO's published technical criteria are, a manufacturer that complies with the criteria must be permitted by any LEC to be approved for connection to the PSTN. We believe that this approach has the advantage of maximizing the role of the industry in establishing its own CPE technical criteria. This approach would also achieve our goals of largely privatizing the process of establishing technical criteria while retaining our ultimate authority over the policies underlying the technical criteria. We expect that the CPE industry would normally comply with the SDO's technical criteria without seeking Commission review. Fora commenters concurred with this deregulatory solution, and we believe that fora participants and the CPE industry in general are motivated to work with a unified source for establishment of technical criteria.

40. We do recognize, however, that the "gatekeeper SDO" option may have some disadvantages. While we believe that conducting deliberations pursuant to ANSI procedures assures a high degree of fairness to participants, a gatekeeper SDO could end up with a significant amount of authority over the standards-setting process. We see two possible problems resulting from this authority. First, we

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[70] Jimmy Salinas, SBC, Record at 83.

[71] *See, e.g.*, TIA Comments, filed July 2, 1999, at 4; USTA Comments, filed July 2, 1999, at 2, 3.

seek comment on whether designating a gatekeeper SDO may inhibit a more dynamic process that multiple SDOs might better achieve if, as we propose in Option B, they do not have the requirement to seek ratification by another SDO as gatekeeper. Second, because of the need to facilitate the rapid growth and pace of introduction of new technologies, we also seek comment on whether a gatekeeper SDO consensus process, as opposed to other processes, such as those proposed in Options B and C, would be able to keep pace with the introduction of new and innovative CPE technologies and services.

a) Identity of the Proposed SDO

41. Under the gatekeeper SDO option, we propose to choose the gatekeeper SDO to serve subject to Commission oversight. We emphasize that we request industry input on the best structure and composition for the gatekeeper SDO. Ideally, commenters would offer a consensus suggestion for the identity and structure of this organization.

42. In this proceeding commenters have both suggested specific entities and proposed quality standards for the gatekeeper SDO. Communications Certification Laboratory (CCL) envisions that the SDO would provide an open forum, following due process guidelines outlined in ANSI procedures, to produce and maintain a "privatized ANSI Part 68."[72] CCL recommends that we use an SDO such as the Telecommunications Industry Association (TIA), ANSI C63, or the Alliance for Telecommunications Industry Solutions (ATIS). Sprint observes that two groups could serve as the SDO: the Telecommunications Industry Association, which sponsors the Committee TR-41.9,[73] or the ATIS Committee T1. Sprint recommends the latter group because it includes central office switch engineers from equipment manufacturers and because it says the group has a greater participation by incumbent and new local exchange carriers.[74] Lucent suggests that the Commission delegate to a single SDO or council of SDOs the responsibility of developing national technical rules, noting that any SDO chosen for this capacity must represent industry as a whole and permit open participation by all parties.[75] ITI proposes an open industry forum to develop the technical requirements based on the international standards of the International Electrotechnical Commission (IEC). USTA and TIA suggest an ANSI-accredited SDO.[76] TIA, the only one of the suggested SDOs to participate in this proceeding to date, states that its Committee TR-41, "User Premises Telephone Equipment Requirements Engineering Committee," is prepared to take on the task of an SDO for this Commission and that it has experience in the process from both a Part 68 perspective and as an ANSI-accredited SDO. We welcome comment on these aforementioned bodies serving as the gatekeeper SDO, as well as other nominations. We request comment on any potential conflict of interest considerations that pertain to any entity proposed for the role of gatekeeper SDO.

43. We tentatively conclude that the designated SDO: (a) must be ANSI-accredited, as discussed in the next section; (b) must be professionally and administratively prepared to take responsibility for administration of technical criteria; (c) should be experienced with technical criteria development; and

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[72] CCL Comments, filed July 2, 1999, at 3.

[73] TIA Committee TR-41.9 is a CPE technical regulations working group.

[74] Sprint Comments, filed July 2, 1999, at 8.

[75] Lucent Comments, filed July 2, 1999, at 3.

[76] TIA Comments, filed July 2, 1999, at 4; USTA Comments, filed July 2, 1999, at 2.

(d) must follow, and be capable of following, any Commission rules and guidelines for SDO operations. We request comment on these qualification requirements and seek further input from parties on these and any additional requirements.

44. Part 68 fora participants did not extensively discuss the concept of term limits. We request comment on whether a term limit for the SDO is necessary. On the one hand, by not establishing a term limit, we may be permitting the SDO to be a more stable entity, and thus it may better serve the industry and the public interest by bringing certainty to the process of administration of technical criteria and by attracting participants with a deep commitment. Any entity with standing would, of course, be able to petition this Commission for relief at any time if it believed that the SDO was not adhering to our rules or otherwise not serving the public interest. On the other hand, by establishing a term limit, we would be requiring a regular review of the SDO's performance. The SDO would have an ongoing incentive to remain responsive, efficient, and effective. We request comment on this issue and on what the length of the SDO's term should be, if any.

b) Guidelines for SDO Operations

45. We tentatively conclude that most aspects of the gatekeeper SDO operations should be governed by the terms of accreditation under ANSI, including consensus proceedings. We believe it is essential to require ANSI accreditation for the gatekeeper SDO because the ANSI procedures are a benchmark for consensus decisionmaking, and include auditing procedures.[77] For example, under ANSI procedures, any person with a direct and material interest has a right to participate, and to do so without any undue financial burden. Each such person has the right to express a position, to have it considered, and to appeal an adverse decision. Under ANSI procedures, each such person who is known to the SDO receives timely and adequate advance notice of proposed technical criteria setting activities, and the notice meaningfully and clearly describes the proposed activities and states where more information may be obtained. The ANSI standards-development process maintains a balance of interests. Furthermore, the methods used for developing technical criteria are in writing and available to any interested person.[78] We request comment on whether requiring the SDO to be ANSI-accredited is sufficient to ensure fairness in the establishment of technical criteria. If parties believe that this is insufficient, we request comment on whether we should develop any additional requirements for the gatekeeper SDO, and if so, what they should be.

46. Because we propose that the SDO meet ANSI accreditation requirements, we tentatively conclude that it is not necessary to establish any further requirements regarding the SDO's operations. We believe that following the ANSI requirements will ensure that the SDO will provide the opportunity to all entities, including small businesses and individuals, to remain involved and informed of the SDO's actions. Thus, we do not propose to establish any separate requirements for such matters as the number or location of meetings, the reporting of meetings or other information pertaining to agendas, the availability of meeting transcripts, the establishment of working groups, or any other aspect of the SDO's operations.

47. We are, however, aware that ANSI procedural criteria include the requirement that "participation shall be open to all persons who are directly and materially affected by the activity in

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[77] Record at 108, 114; USTA Comments, filed July 2, 1999, at 2, 3.

[78] American National Standards Institute, *Procedures for the Development and Coordination of American National Standards* §§ 1.2.1-1.2.7 (visited April 2000), <http://web.ansi.org/public/library/std_proc/>.

question."[79] We intend for the gatekeeper SDO to make its consensus processes open to all interested parties. We request comment on whether participation in the standards-setting process of a gatekeeper SDO would be as open to such entities as consumer groups, government agencies, or small businesses, as in a Commission rulemaking process. We seek comment on whether it is necessary for us to impose additional requirements on the SDO other than the normal ANSI requirements to ensure these goals.

48. Likewise, we tentatively conclude that it is not necessary for us to make any specific proposals with regard to the SDO's financing. We believe that following the ANSI requirements will ensure that the SDO will be capable of determining its own financing arrangements, and that it will successfully take responsibility for ensuring that small businesses and individuals are able to participate in the standards-setting and standards-purchasing processes. We request comment on this tentative conclusion.

c) Exceptions to the SDO's Criteria and Interpretation of Criteria

49. Historically, most of the Part 68 waiver requests that have been filed with the Commission are due to the lack of updated technical criteria in our rules for newer equipment, *e.g.*, stutter dialtone devices and xDSL modems.[80] We expect that an SDO would operate relatively quickly to update the technical criteria, and that few exceptions to any technical criteria administered by the SDO would be necessary. To the extent exceptions, or interim standards, are requested by manufacturers or importers whose equipment does not meet the technical criteria administered by the SDO, however, we propose to require the SDO to establish an expedited interim standard process. This process would require resolution of the requested exception within 60 days. If the exception is denied, a party could file an appeal with the Commission. We request comment on this proposed procedure. We further request comment on whether the provisions of Section 64.1703 of our rules, which establish a system of alternative dispute resolution ("ADR") for the use by entities aggrieved by non-accredited SDOs, should be adapted for use by the accredited gatekeeper SDO as the guideline for the interim standards process within the SDO. One difference that we propose for adapting Section 64.1703 to Part 68 would be that participation in an ADR process would not be limited to entities that fund the gatekeeper SDO.

50. Likewise, numerous questions received by the Commission staff regarding applicability of the technical criteria in particular cases may also be a result of the need to more frequently update the technical criteria. With the privatization of development and maintenance of technical criteria, we believe that there would be fewer such questions. To the extent that manufacturers and the general public require information concerning applicability of technical criteria, we propose that the SDO establish procedures to respond to such questions directly. We request comment on these proposals.

4. Option B – Multiple Standards Organizations

51. As an alternative to designating a gatekeeper SDO, we propose a second option: relying

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[79] *Id.* at § 1.2.1.

[80] Record at 64. Because technical criteria are part of the Commission's rules, a party that wants to register equipment that doesn't meet the existing technical criteria must request a waiver of the rules. This is an adjudicatory proceeding required by the APA.

directly on consensus positions achieved under standards development processes and organizations. This is essentially the same policy we have adopted for television "set top boxes" used in cable television and similar systems.[81] We seek comment on all aspects of this alternative option, discussed below. Under this option, the Commission's rules would establish general requirements that networks are to be protected from harms that could be caused when terminal equipment is connected and that customers have a right to connect terminal equipment that will not harm networks.[82] The Commission's rules also would provide that terminal equipment that complies with technical specifications that are designed to protect networks from harm and that are consensus positions recommended by any national standards-setting organization would be presumed to comply with the Commission's general requirements on networks and customers' rights. Although under this option the Commission's rules would not specify any particular industry standard or standards-setting organization, the rules would clearly require that only terminal equipment that complies with a standard to prevent network harm that is a consensus position of any national standards-setting organization could be connected to the PSTN. Under this approach, customers could be allowed to connect to any network any terminal equipment that complies with any applicable standard. Alternatively, carriers could disclose which applicable terminal equipment standard conforms to their network design, if more than one standard exists for a given service and equipment. The Commission would observe but not actively participate in the industry technical criteria establishment activity on an ongoing basis. The Commission would allow for *de novo* review and enforcement in the same manner as proposed for Option A, and it may undertake to communicate with industry standards groups that were developing standards that went beyond prevention of harm to the PSTN.

52. We believe that there are numerous benefits to adopting this option for terminal equipment. Foremost, the Commission would increase its reliance on existing private sector standards-setting processes and organizations, consistent with existing federal government policies[83] and Commission precedents.[84] Since the inception of Part 68, standards-setting in this area has continued to develop and is now an integral part of existing standards organizations. Indeed, many of the more recent technical rules adopted in Part 68 were initiated by petitions from standards organizations or others involved in private sector consensus processes.[85] Organizations such as TIA and ATIS[86] have cooperated well over the years in developing

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[81] 47 C.F.R. 76.1204(b).

[82] Under this option, however, the Commission would continue to prescribe certain technical criteria, such as in the areas of HAC/VC or inside wire, as discussed above.

[83] *See, e.g.*, National Technology Transfer and Advancement Act of 1995, Pub.L.No.104-113, §12, 110 Stat. 775, 782-83 (1996). *See also* OMB Circular A-119, Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities.

[84] This option is very similar to the one the Commission adopted for cable television (CATV). The Commission has decided to rely on voluntary industry consensus processes for the development of technical standards for navigation devices (e.g., cable set-top boxes, cable modems), which may involve more than one organization. *See Section 304 Order on Reconsideration*, 13 FCC Rcd at 14792-14809.

[85] *See, e.g.*, Amendment of Part 68 of the Commission's Rules, *Notice of Proposed Rulemaking*, CC Docket No. 96-28, 11 FCC Rcd 13282 (1996) (*Harmonization Notice*); Petition to Amend Part 68 of the Commission's Rules to Include Terminal Equipment Connected to Basic Rate Access Service Provided via Integrated Services Digital Network Access Technology and Petition to Amend Part 68 of the Commission's Rules to Include Terminal Equipment Connected to Public Switched Digital Service, *Notice of Proposed Rulemaking*,

standards for new technologies and services on both the customer-side and network-side of the point of demarcation. Although we were reluctant in the past to adopt requests to rely directly on the private sector standards-setting processes for terminal equipment,[87] we believe that the success of these groups over time in addressing network harm issues for terminal equipment allows us to consider recognizing their work as proposed herein without increasing the risk of network harm.

53. We also believe that this option would not impose any additional burdens on standards-setting organizations, carriers or manufacturers. Rather, these groups would continue to work cooperatively on issues of mutual concern. Today, the pace of technological change is ever increasing. It is not uncommon for *ad hoc* groups to organize to address specific issues and then disband or fold their work into more traditional organizations. Traditional standards-setting organizations may respond to technological changes by developing interim standards, clarifying the application of existing standards, or modifying existing standards. Often, different organizations work together to share their expertise and reach consensus positions.[88] We request comment on any benefits this option may have in that it would not interfere with multiple approaches used for achieving consensus positions, and whether it may thus be less of an impediment to the introduction of new technologies and services.[89] Under this option, the Commission would not set up any procedure for centralized establishment of interim technical criteria, but, rather, would rely on industry groups to clarify or interpret their own existing technical criteria, modify their technical criteria, or develop new interim technical criteria. Under the Commission's general rules on preventing harm, described above, equipment complying with these *ad hoc* solutions would be presumed to not cause harm to networks.

54. We recognize that this option may have possible disadvantages. For example, membership

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CC Docket No. 93-268, 9 FCC Rcd 1068 (1993) (*ISDN Notice*).

[86] For example, TIA's Committee TR-41.9 (User Premises Telephone Equipment Requirements) and ATIS's Committee T1 (working group T1E1.4) address standards for terminal equipment.

[87] *See Harmonization Order*; Petition to Amend Part 68 of the Commission's Rules to Include Terminal Equipment Connected to Basic Rate Access Service Provided via Integrated Services Digital Network Access Technology and Petition to Amend Part 68 of the Commission's Rules to Include Terminal Equipment Connected to Public Switched Digital Service, *Report and Order*, 11 FCC Rcd 5091, 5102-5103 (1996) (*ISDN Order*).

[88] TIA, ATIS and other standards groups have a long history of working cooperatively on technical standards issues for telecommunications services and terminal equipment. For example, ATIS' T1A1 has prepared standards for voice over ADSL service and TIA's TR41 will prepare CPE standards for the service; ATIS's T1E1.4 and TIA's 30.3 (two technical sub-committees) have formed a joint ad hoc group to develop xDSL test procedures for performance benchmarking of different vendors' equipment, and the group's output will be the basis for a standard for evaluating xDSL model performance; ATIS's T1E1 is preparing a spectrum management plan for cable plant, while TIA's TR 41 will adapt the plan for CPE applications; and TIA's TR41.3 has worked cooperatively over the years with IEEE's subcommittee on telephone instrumentation and testing on telephone set requirements.

[89] For example, the opportunity on the network side of the demarcation point to introduce technology prior to development of a nationwide standard sped both the initial introduction of xDSL technology into the local loop and the availability of broadband services to consumers.

in traditional standards-setting organizations may not be open to everyone, and not all eligible members may participate. Participation may not be possible for consumer groups, government agencies, or small manufacturers, carriers, or testing laboratories. Would such constraints result in consensus positions that are not truly representative of carriers' and customers' needs? If not, how would the Commission overcome any shortcomings in those consensus positions in order to protect carriers and customers rights? Should we recognize only consensus positions endorsed by ANSI-accredited standards organizations, since ANSI procedures provide some assurance of open participation and dialogue in the consensus process?

55. This option would allow consensus positions from any national standards organizations to be recognized, and thus uniform nationwide standards may not always result under this option. It may be possible for entities who disagree with the position of an existing standards body to set up their own standards organization. The risk also exists that interested parties may not reach consensus positions on all issues. In the past, we have justified our decisions to adopt specific technical requirements in Part 68 as the sole means for the Commission to use its authority to resolve impasses on technical criteria and thus ensure that customers could continue to enjoy the benefits of interconnection.[90] We also have expressed concerns that multiple standards might increase costs to manufacturers and consumers if manufacturers had to provide alternative devices in the market.[91] We seek comment on whether these concerns are still valid in this competitive market. If so, how could these concerns be ameliorated under this proposal? We believe that the standards-setting processes for terminal equipment have developed significantly over time and interested parties should be able to resolve their differences in a consensus process. We seek comment on whether the Commission should consider some oversight procedures to address these concerns.

56. Finally, we recognize that many of the specific technical requirements now in Part 68 did not arise through a standards-setting process. If we were to adopt this option, we seek comment on whether we should provide a transition period (e.g., twelve months) before sunsetting the technical rules in Part 68 so that standards-setting organizations would have time to determine which requirements they would continue to support and implement procedures to do so. We recognize that the Commission may have to continue to grant waivers during this transition period so that new technologies could be registered and thus connected to the PSTN. Therefore, we seek comment on a reasonable effective date for implementing this option.

57. We seek comment on all aspects of this option, discussed above, as well as comment on other issues relevant to implementing this approach.

5. Option C - Incorporate Specific Standards by Reference

58. In this option we propose that interconnection standards be developed by national standards organizations and that specific standards be incorporated by reference into our rules. Incorporating specific standards by reference is a long practice at the Commission and other regulatory agencies[92] and doing so in accordance with the above procedures is one way of giving the referenced

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90 *See Harmonization Order*, 12 FCC Rcd at 19225; *ISDN Order*, 11 FCC Rcd at 5102-5103.

91 *See ISDN Order*, 11 FCC Rcd at 5098.

92 *See* 47 C.F.R. §15.107(e).

standards the full force of law.[93]

59. This option would avoid any necessity to designate a gatekeeper SDO for interconnection standards, but would rely on input from traditional standards development organizations. At present both TIA's and ATIS's T1 committees are active in this area and coordinate their activities. Under this option, these groups and others, as appropriate, would develop specific standards and petition the Commission to incorporate by reference these standards in our rules. We recognize that there was discussion in the comments and fora regarding the burden of the rulemaking process. We seek comment on the extent to which this option would either expedite or delay the development of technical criteria for Part 68.

60. While this option would continue to require an APA rulemaking procedure, and thus may require more time to establish technical requirements than options A and B, we believe that requirements may be more clear, uniform and consistent. Although two groups could petition for conflicting standards which would have to be resolved in a rulemaking, in the past this type of conflict has been rare because interested parties have usually resolved conflicts in the standards development process and we anticipate they would continue to do so. We seek comment on this alternative and its implications.

6. Clarification of Terminology in Part 68

61. Part 68 currently uses the term "telephone company" rather than the term "local exchange carrier." We tentatively conclude that Part 68 should be amended throughout to change this terminology, including the rule sections that we propose to be turned over for any private industry technical criteria establishment. The use of the discontinued term "telephone company" has resulted in some confusion as to whether Part 68 applies to competitive LECs as well as incumbent LECs. In practice, we have required all LECs to permit connection of compliant CPE. This proposed change would reflect our current practice. We request comment on this proposal.

B. Regulatory Paradigm for Equipment Approval

62. From the inception of Part 68, the Commission has been responsible for registering specific models of CPE that comply with the technical standards for interconnection set out in Part 68.[94] The current procedure is that terminal equipment manufacturers are required to submit information to the Commission showing that the equipment meets the requirements of Part 68. An application for registration must be submitted on FCC Form 730. Once the Commission grants an application for registration, the

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[93] We note that there is precedent, both within Part 68 and within other regulatory designs implemented by this Commission, for referencing industry standards in our rules. For example, Bell Atlantic points out that Section 68.3 specifies that the zero level decoder, used in equipment testing under Part 68, must comply with the μ=255 pulse code modulation encoding standards specified in International Telecommunications Union/ Telecommunications Standards Section (formerly the Consultative Committee for International Telegraphy and Telephony, (CCITT)) Rec. G.711 for voiceband encoding and decoding. Bell Atlantic Comments at 2. In addition, Section 68.500 specifies that hard gold, and contact performance equivalence to gold, shall be determined in accordance with the standard detailed in Appendix H of TIA Telecommunications Systems Bulletin No. 31, *id;* see *also* Procedure for Measuring Electromagnetic Emissions from Intentional and Unintentional Radiators, Gen. Docket Nos. 89-116, 89-117, 89-118, *Report and Order*, 8 FCC Rcd 4236 (1993).

[94] See 47 C.F.R. §68.200 *et seq.*

Commission assigns an FCC registration number which denotes compliance with Part 68.

63. We tentatively conclude that some type of equipment approval process continues to be necessary for terminal equipment in order to assure carriers and customers that terminal equipment can be connected to the PSTN while avoiding risks of network harms and to meet our objectives of access to the PSTN by persons with disabilities. Moreover, consistent with our efforts to privatize much of the Part 68 process, we tentatively conclude that the Commission no longer needs to perform the function of direct registration of CPE. This tentative conclusion is supported by fora commenters who argued unanimously that the primary shortcoming in the operation of Part 68 today is the time it takes to get equipment registered.[95] For example, Thomson estimates that in this era of intense CPE competition, the cost to consumers and manufacturers of the weeks-long registration process can amount to millions of dollars a year industry-wide.[96] We agree with Thomson and other commenters that relieving the industry and consumers of this delay will further enhance the competitive robustness of the CPE market.[97]

64. Accordingly, we discuss three methods of requiring proof of equipment compliance with technical criteria, each of which would reduce or eliminate the Commission's role in the equipment approval and registration process.[98] These proposals include relying on TCBs for equipment approval, allowing manufacturers to use the declaration of conformity process, and allowing manufacturers to use the verification process. We request comment on which of these approval processes we should implement. If parties believe we should implement more than one process, we request comment on whether we should leave the choice of approval processes up to the equipment manufacturer or importer, or whether we should implement regulatory requirements specifying the specific types of equipment that shall be subject to a specific approval process. Commenters should address how these different approaches for implementing more than one approval process may affect the integrity of an equipment approval program and compliance with other obligations, such as mutual recognition agreements and the Anti-Drug Abuse Act, discussed *infra* in sections B1 and B4, respectively.

65. We also propose to combine the registration marks and equipment numbering systems for Part 15 and Part 68 equipment. Manufacturers have requested that we reduce the amount of space taken up on their equipment by the registration marks, noting that as equipment becomes smaller, it becomes

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[95] *See, e.g.*, CCL Comments, filed July 13, 1999, at 4; Nortel Comments, filed July 2, 1999, at 2; Thomson Comments, July, 2, 1999, at 1-3.

[96] 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.

[97] Although it is desirable to reduce or eliminate, if possible, the registration delay in getting new products to market, we also commend the Network Services Division of the Common Carrier Bureau for administering the registration process so that registrations are issued in a short time (approximately 4 weeks on average). This is perhaps the most expeditious non-automated application process in the Commission.

[98] We note, however, that this Commission will continue to enforce compliance of the obligation not to connect harmful CPE to the PSTN. We will also enforce the requirements that LECs permit connection of compliant equipment to the PSTN. In addition, we emphasize that we are committed to enforcing the rules protecting access for persons with disabilities and other consumer rules.

more difficult to find room to place the marks.[99]

1. Telecommunications Certification Bodies

66. Although under the current regulatory regime, the Commission registers terminal equipment pursuant to the rules in Part 68, in 1998 we approved rules for new procedures whereby TCBs could also perform Part 68 equipment authorization functions.[100] The TCB program was designed in connection with an agreement with the European Union ("EU") to facilitate the international sale of devices and equipment requiring testing and/or certification. There is a mutual recognition agreement (MRA) between the U.S. and the EU that allows the U.S. to designate entities that can approve equipment to satisfy both domestic and EU requirements, and allows EU entities to approve equipment to both U.S. and EU requirements. In the U.S., these entities are known as TCBs. The TCBs in this country were originally intended to provide an alternative to direct Commission registration, and to further international trade. Indeed, the Commission contemplated that TCBs would eventually take on all of the necessary registration processes.[101] The TCB program requires the Commission to designate private domestic entities as TCBs to certify or register equipment as complying with the Commission requirements in lieu of the Commission continuing its current Part 68 registration process.[102]

67. We propose the TCB program as one option to replace Commission registration of CPE, thus furthering our goal of privatizing or streamlining Commission processes that are no longer necessary. In the *MRA Order*, we contemplated that TCBs would eventually take over our registration processes, but that initially, manufacturers could choose either Commission or TCB registration. Our proposal herein would accelerate the use of TCB registration to replace Commission registration of Part 68 CPE.[103] We agree with several commenters who argued that the TCBs would be in a position to perform the Commission's CPE registration functions for both domestic and international purposes within a short time after they are designated by the Commission.[104] As we noted when we adopted the TCB program, we expect that the TCB program will provide an alternative to the current registration process and perhaps quicker means to introduce new products in the market.[105] We believe this proposal has several

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99 *See, e.g.*, Comments of Tandy Corporation, filed July 20, 1999, at 7.

100 *MRA Order* at 24699, 24701.

101 *MRA Order* at 24708 – 24709.

102 Our reliance on TCBs for testing and registration is scheduled to become effective this year.

103 Under the existing rules, the TCBs are required to test CPE pursuant to technical criteria now outlined in Part 68. TCBs also will 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.

104 *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 CPE manufacture and connection to the wireline telephone network without harm. Record at 20, 24, 26, and 113.

105 *MRA Order* at 24687 - 24688.

advantages. First, domestic TCBs are close to starting equipment approval under the Commission's oversight. Several entities have applied to be certified as TCBs for the Part 68 equipment approval programs, and manufacturers and importers will be able to apply to TCBs for approvals under Part 68, so that TCBs could promptly replace the Commission's registration process. Second, TCBs must be accredited by the National Institute of Standards and Technology (NIST); this will ensure their competence to perform these equipment approval functions. Third, the carrier community appears comfortable with the TCBs' ability to register equipment in a manner that will provide their networks with necessary protection from harm.[106] Indeed, carriers have been significant participants in the industry consensus process leading up to development of TCBs. Fourth, the manufacturing community has also been involved in the industry consensus proceedings and appears very eager to have this option for more rapid equipment registration.[107] We request comment on this proposal.

2. Supplier's Declaration of Conformity and Verification

68. *Declaration of Conformity*. A second alternative to direct Commission registration is the declaration of conformity process (DoC) that is currently available for certain types of equipment subject to Part 15 regulation, and is defined in Part 2 of our Rules.[108] DoC is a 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 with regard to those parameters. The party performing such measurements must be accredited for doing so by an authorized accreditation body based on the International Organization for Standardization and International Electrotechnical Commission ("ISO/IEC") Guide 25. This DoC procedure is covered by the MRAs that the U.S. has with the EU and Asian Pacific Economic Community (APEC).

69. Under this option, CPE manufacturers would seek the services of a testing laboratory that is accredited to test Part 68 equipment by an accreditation body pursuant to ISO/IEC Guide 25. The manufacturer itself may be so accredited, and may perform in-house testing. TIA believes that a DoC process would benefit consumers and relieve competing manufacturers of the delay caused by governmental registration. It points out that authorization procedures for safety, electromagnetic compatibility, and terminal attachment requirements, similar to the DoC and verification processes, have been successfully adopted in many different countries. Some MRA signatories such as the EU, or potential signatories such as Australia, and Singapore, have moved to a "supplier's declaration of conformity" process for equipment authorization. TIA argues that the U.S. should follow suit because manufacturers have earned confidence in their conformity assessment capabilities.[109] Moreover, it argues, the surveillance that our rules require TCBs to perform, and penalties for non-compliance, will support compliance.[110]

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[106] Record at 283, 284.

[107] Record at 203, 204, 221, 206-211, 251.

[108] 47 C.F.R. §§ 2.906, 2.948. As TIA has pointed out, the similarly named "Supplier's Declaration of Conformity" process established in ISO/IEC Guide 2:1996 does not require accreditation. TIA Ex Parte, Supplemental Comments, filed July 29, 1999, at 18, 19.

[109] TIA Comments, filed July 29, 1999, at 3, 7, 8.

[110] *Id*. at 8.

70. We seek comment on the extent to which this procedure would reduce the burden on the manufacturer or importer, allow new products to enter the market more quickly than would the TCB approval option, and the extent to which it may increase the risk of harm to the PSTN. Commenters that support adoption of the DoC procedure rather than the verification procedure discussed in the following paragraphs should explain why the DoC procedure, to the exclusion of the verification procedure, better serves the public interest.

71. *Verification.* Currently, manufacturers and importers may also use the "verification" procedure for certain types of equipment subject to Part 15 regulation; verification is defined in Part 2 of our Rules.[111] Verification is a procedure whereby a responsible party makes measurements of equipment performance with regard to specific technical parameters. Unlike DoC, accreditation of the testing facility is not required for verification.

72. ITI argues that verification should replace the current registration process. ITI believes that mandatory laboratory accreditation is unnecessary and indeed undesirable because (1) manufacturers have every incentive to choose competent entities to perform testing, in view of the demands of the marketplace and the Commission's statutory penalties for non-compliance with our rules; (2) many competent laboratories with years of experience in Part 68 testing would be subject to the expense and delay of obtaining accreditation; and (3) companies with global manufacturing operations would have to perform redundant testing. ITI adds that although this redundancy can be overcome by MRAs, doing so takes a significant amount of time.[112] ITI argues that its proposal would bring the Commission's procedures in line with international norms for the supplier's declaration of conformity, as defined by the ISO/IEC Guide 2. ITI provided detailed rules in support of its proposal. We invite comments on those rules.

73. We seek comment on the extent to which this procedure would reduce the burden on the manufacturer or importer, allow new products to enter the market more quickly than would the TCB or DoC approval option, and the extent to which it may increase the risk of harm to the PSTN. Commenters that support adoption of the verification procedure rather than the DoC procedure discussed *supra* should explain why the verification procedure, to the exclusion of the DoC procedure, better serves the public interest. As parties have pointed out, numerous other countries are moving towards use of these procedures. Even the EU, with which we have a mutual recognition agreement, has developed procedures that would obviate the need for TCBs in many situations.

74. *Creation of a Hierarchy-Based Approval Process.* There was some suggestion in the fora that different equipment might be subject to different approval procedures depending upon technological complexity and other factors. Because of our deregulatory goals in this proceeding, we prefer to avoid adding a new regulatory layer with additional rules that do not exist in Part 68 now. Accordingly, we prefer to choose just one of the equipment approval options discussed above. There may be public interest factors, however, that would lead us to conclude that some aspects of the equipment registration process require closer scrutiny than others. For example, should we require TCB registration or DoC for all terminal equipment subject to the HAC/VC provisions of sections 68.316 and 68.317, while permitting DoC or verification for other equipment such as modems? Alternatively, should we require the TCB registration or DoC procedure only insofar as it ascertains compliance with certain technical requirements

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111 47 C.F.R. § 2.902.

112 ITI Comments, filed August 6, 1999, at 3, 4.

(*e.g.*, the HAC/VC provisions) and allow a manufacturer to rely on DoC or verification for demonstrating compliance with other technical requirements?

75. Accordingly, we request comment on whether it is necessary for us to establish a hierarchy for the approval method for CPE, *i.e.*, should we establish rules specifying which approval procedure may be used for particular types of equipment?[113] If so, on what factors should the Commission base such a hierarchy? Commenters arguing that the Commission should establish a hierarchy should explain why this additional regulatory procedure is in the public interest. In addition, commenters should address how we should determine with which approval process manufacturers and importers must comply for equipment that combines technologies that are subject to different equipment approval procedures.

3. Database of Approved or Certified Equipment

76. Currently, the Commission maintains a data base of terminal equipment registered pursuant to Part 68. Consistent with our proposal in this Notice to privatize many of the Commission's current Part 68 functions, we propose that a private entity be responsible for sponsoring and maintaining a similar database.[114] We propose that entities obtaining equipment approval from TCBs and entities using either DoC or verification be required to submit pertinent information regarding their identity and approved equipment to a database administrator.[115] The only standards we propose for the database of approved CPE are that it be accurate and that it be readily available at a reasonable cost to users. We believe that these requirements would ensure that information is available in a timely manner to the public and to governmental enforcement agencies without imposing unnecessary burdens on TCBs or entities using either DoC or verification. We recognize that information on certain radio equipment approved under DoC or verification is not required to be maintained in a database. We tentatively conclude, however, that a data base of all CPE should be maintained, regardless of whether the equipment is approved by a TCB, or by the DoC or verification procedures. A nationwide data base ameliorates concerns regarding the potentially adverse impact of non-compliant CPE on the PSTN. We seek comment on this tentative conclusion. We also seek comment on whether the costs of maintaining a national database outweigh the benefits of continuing this information collection requirement for CPE. We further seek comment on what information we should require to be submitted into a national data base by parties using DoC or verification procedures, and how that information would be submitted. Finally, would the entity or entities maintaining the database be an acceptable source for a number signifying equipment approval, and if so, what requirements should be imposed for assignment of an equipment approval number to CPE?

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[113] We note that the Commission has relied upon certain factors to develop the hierarchy of equipment approvals in Part 15 of our rules, including complexity of equipment, the relative novelty of the technology, history of compliance with technical requirements, and consensus on testing procedures.

[114] If the Commission ultimately chooses Option A, a gatekeeper SDO, this entity could also supervise the database. *See supra* paras. 33-49.

[115] *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).

77. In the *MRA Report and Order* and under our current rules, TCBs are required to use Form 730 to submit information to the Commission on approved equipment. We now propose with regard to Part 68, however, that once this Commission is no longer engaged directly in registering CPE, that we cease our direct involvement in this area and no longer require TCBs to use Form 730 or to submit any information directly to this Commission. We believe that TCBs and industry consensus groups should be able to develop their own requirements for providing CPE information to a national database. We seek comment on whether the Commission needs to have any continuing role in data submission requirements to this data base. Finally, we request comment on whether we should require the entity or entities maintaining the database to develop a format for submitting information, *i.e.*, should manufacturers and vendors submit information electronically, via the Internet, or on paper?

4. Anti-Drug Abuse Act

78. The Anti-Drug Abuse Act (ADAA)[116] requires an entity receiving a "federal benefit" to certify compliance with ADAA requirements. In our decision implementing the ADAA, we applied the definition of "license" found in the APA to determine the scope of the term "license" as used in 47 U.S.C. section 5301 and thus to define the scope of federal benefits.[117] 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."[118] Pursuant to this definition, we found that Commission Part 68 registration of equipment to be connected to the telephone network is included within the scope of the ADAA.[119]

79. We seek comment on whether the proposed DoC or verification procedures require ADAA certification. In addition, we request comment on whether any conflict would exist between use of the TCB procedure on the one hand, which currently requires certification 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 request comment on whether any ADAA certification continues to be required if we adopt the privatization/streamlining proposals discussed herein.

80. In addition, we seek comment and recommendations on the most efficient and accurate way to collect any information required by the Anti-Drug Abuse Act, and on whether the information must be retained by this Commission or whether it may be held in a privately-maintained registration database.

5. Registration Numbering and Labeling

81. As stated previously, when the Commission determines that a piece of terminal equipment

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[116] 21 U.S.C. § 862; 47 C.F.R. §§ 1.2001 - 1.2003.

[117] 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*).

[118] 5 U.S.C. § 551(8).

[119] The Commission found that the ADAA rules apply to "all forms of Commission instruments of authority, including . . . equipment certification . . . ". *ADAA Report and Order* at para. 4.

meets the technical requirements for that equipment, the Commission assigns a unique registration number to that piece of equipment. We tentatively conclude that although the Commission will no longer be responsible for CPE registration, some form of unique identifying label must be applied to all terminal equipment. This identifying label is necessary to adequately identify CPE as an approved piece of terminal equipment that customers are entitled to connect to the PSTN, whether the manufacturer uses the TCB process, a DoC process, or a verification process. We note, however, that we are prepared to be persuaded otherwise if a substantial record can be developed showing that registration numbers are no longer necessary.

82. We seek comment on the best method, under our streamlined Part 68, to assign registration numbers to equipment. Currently, we assign registration numbers when we approve Part 68 equipment applications. In the event this Commission is no longer involved in reviewing applications for CPE approval, registration numbers must be assigned by a private entity or entities. We are now working with TCBs to establish a method for them to assign registration numbers to CPE they approve. We seek comment on how these numbers should be assigned to CPE approved through a DoC or verification procedure.

83. At present, Part 68 registration numbers, including three character applicant codes, are assigned by the Commission. 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. We agree with TIA that the Part 15 numbering system may work for Part 68 as well. We propose to combine the requirement for an FCC Registration Number under Part 68 with the FCC Identifier requirement of section 2.926 of our rules that is used for radio equipment approved by the Commission. We propose to use the Part 15 coding scheme for terminal equipment under Part 68 and seek comment on how that scheme can be applied reasonably to Part 68 equipment. Under this proposal, a given equipment model will have only one FCC number associated with it that is used to document its status. We believe that this approach would avoid unnecessary duplication of identifying marks for equipment that must comply with both Part 68 and Part 15 requirements, and also will clearly establish one type of identifier to signify that the CPE satisfies all Part 15 and Part 68 technical requirements for connection to the PSTN. We request comment on this proposal.

84. As an alternative approach, TIA suggests that a three-character grantee code, which is already assigned to existing manufacturers under the CCB certification process, would eliminate the requirement for individual product registration numbers.[120] How would the lack of equipment-specific registration numbers affect those who rely on those numbers to identify registered equipment? In particular, would this impact our responsibility to give the Customs Service sufficient information to conduct their interdiction functions?

85. We also propose a harmonized label for equipment subject to either or both Part 15 and Part 68. The single label would show compliance with all relevant Commission rules and identify which rules are relevant for the model. For example, the label may state that "This unit complies with all relevant FCC Part 15 and 68 requirements" in the case of models subject to those parts. We believe that the label should be as small as possible, consistent with clarity. We note that the Department of Energy and Environmental Protection Agency's Energy Star program[121] has a simple labeling scheme to show

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120 TIA Comments, filed July 29, 1999, at 13.

121 *See* http://www.epa.gov/energystar/

compliance with voluntary standards. This program uses a simple, attractive logo that has been very effective in identifying compliant products. We seek comment on the exact format of labeling that would be used under the amended rules for both Part 15 and Part 68-compliant equipment, and we welcome specific design suggestions.

6. Compliance With Consumer Protection and Part 68 HAC/VC Rules.

86. 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. As noted above, we intend to maintain the Part 68 HAC/VC 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. There was some discussion in the fora regarding the effect of changing the registration process to DoC or verification on compliance with rules intended to protect access by persons with disabilities.[122] We request comment on whether changes in the registration process proposed in this Notice may unintentionally affect compliance with consumer protection and HAC/VC provisions of Part 68. We seek comment on whether any of the changes to Part 68 proposed in this Notice will have an adverse impact on consumer protection or Part 68 HAC/VC rules. If so, what can be done to prevent or mitigate that impact?

87. In addition, any complaints regarding compliance with the technical criteria relating to Part 68 HAC/VC and consumer protection in Part 68 would come directly to the Commission, as they do now. We seek comment, however, as discussed in the next section, on whether the present Part 68 complaint procedures regarding our HAC/VC rules should be replaced or augmented with the procedures we developed pursuant to Section 255 of the Communications Act, Parts 6 and 7 of our Rules. We seek comment and proposals on these issues.

C. Commission Enforcement of the Streamlined Part 68

88. Although we propose in this Notice to privatize much of the Commission's current functions under Part 68, there are numerous aspects of Part 68 regulations that we now enforce and intend to continue enforcing. First, as discussed above, Part 68 would continue to require that local exchange carriers permit connection of compliant CPE to their networks. Second, we propose no change in Section 68.108, which permits carriers to discontinue service to subscribers that connect harmful equipment. Third, we shall continue to enforce the rules that will remain in Part 68, such as the technical rules for HAC/VC. Fourth, we do not intend any of the proposals we consider herein to interfere with ongoing U.S. Customs Service enforcement of imported CPE. We tentatively conclude that the proposals will not affect the ability of the U.S. Customs Service to enforce the provisions of 19 U.S.C. section 3109 dealing with the importation of equipment not compliant with Part 68.[123] We seek comment on this tentative conclusion.

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[122] Record at 275 - 277. *See also* Letter from Peter van der Heim to Chairman Kennard and Commissioners Ness, Furchtgott-Roth, Powell, and Tristani, CC Docket No. 99-216 (dated Mar. 3, 2000) (transmitted via e-mail).

[123] 19 U.S.C. § 3109.

89. If we choose the option of TCB registration, the TCBs are required by our rules to conduct an ongoing surveillance program.[124] In addition, our rules allow parties to report to the Commission any deficiencies discovered in connection with the surveillance program. We propose no change in this basic procedure, and indeed we believe it to be an advantage in using the TCB program for Part 68 registration. Finally, we provided in the *MRA Order* that a TCB may revoke its own certification for a period of 30 days after the date of action for an administrative error only, but that any other certification revocation must be addressed by the Commission.[125] We do not propose to change these rules at this time, although we may revisit them at a later date with an eye to reducing our involvement in this program.

90. Parties generally agree, and we so propose, that the Commission should retain ultimate responsibility to enforce compliance with our rules, which would include industry-developed technical criteria that we may, upon appeal, review and enforce through a *de novo* review process. Moreover, we propose these enforcement policies notwithstanding which option for establishment of technical criteria we choose, and which equipment approval option we choose. There are two general categories of complaints that parties could bring before the Commission requesting enforcement. First, there may be complaints by end-users or manufacturers that a telephone company would not permit connection of compliant equipment. Second, there is the possibility of complaints from consumers or others who believe that certain CPE is not compliant, not approved, or that it has caused harm as defined in Part 68.[126]

91. Part 68 has existing complaint procedures. We request comment on how these provisions have operated to date to uphold the technical criteria in Part 68. In addition, we request comment on whether it would be appropriate for the Commission to revise our Part 68 complaint rules, solely for complaints arising from our HAC/VC rules, to incorporate procedures recently adopted pursuant to Section 255 and 225 of the Act.[127] In these proceedings, we made it easier for consumers to file complaints and for subject entities to move quickly to resolve them. Accordingly, we request comment on whether a similar approach would be beneficial for enforcement of Part 68 HAC/VC rules.

92. In addition, we propose, solely for complaints arising from compliance with the technical criteria intended to prevent harm to the PSTN, that prior to filing a complaint with this Commission a party

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[124] 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* at 24707.

[125] 47 C.F.R. § 68.162.

[126] We do not propose, with our suggestions regarding our enforcement rules, to increase or decrease the standards by which a complainant has standing to file a complaint. For example, issues of harm as defined in our rules that is caused by faulty equipment are and would continue to be addressed to the local telephone company in the first instance. Any entity may continue to file a complaint about an unregistered product pursuant to our Part 68 complaint procedures.

[127] *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*, -- FCC Rcd. ---- (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, FCC 00-56, *Report and Order and Further Notice of Proposed Rulemaking*, -- FCC Rcd. --- (rel. Mar. 6, 2000).

must follow an alternative dispute resolution process designed to minimize the number of complaints needing Commission *de novo* review. We propose requiring this alternative dispute resolution process only for disputes arising from the technical criteria we propose to be administered by an industry standards body or bodies. This provision requires the complainant to certify that it has made a good faith effort to discuss the possibility of settlement with each entity against which it is filing a complaint, and/or with the local exchange carrier. We believe that such a requirement in this instance would narrow the need for the Commission to review complaints of parties who are acting in good faith to comply with the technical criteria. We request comment on an alternative step: for equipment registered by a TCB, would it be appropriate to refer the complaint to the TCB that issued the registration? Finally, if these alternative dispute resolution procedures do not resolve the complaint, the complainant may then petition the Commission under the applicable complaint procedures. We request comments on these proposals.

D. Conclusion

93. In this Notice we propose several options to privatize and streamline two of Part 68's functions -- first, the establishment of technical criteria for CPE that will not harm the PSTN and, second, the process used to determine whether a particular model of equipment meets those standards (presently called "registration"). These proposals are consistent with our overall mandate to reduce regulation wherever possible, consistent with the public interest. We seek a new regulatory regime that reduces direct governmental involvement while still protecting the PSTN from harm, maintaining a competitive CPE marketplace, and facilitating expeditious deployment of new technology. We believe that this new regulatory regime will have a beneficial impact upon the pace of new or competitive CPE deployment, and therefore increase the choices available to consumers.

94. We ask commenters who favor proposals other than those we make above to discuss and compare their regulatory paradigm in detail with our proposals.

IV. PROCEDURAL MATTERS

A. Ex Parte Presentations

95. The matter in CC Docket No. 99-216, initiated by this NPRM, shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's ex parte rules.[128] Persons making oral ex parte presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required.[129] Other rules pertaining to oral and written presentations are set forth in our rules as well.[130]

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[128] *See* Amendment of 47 C.F.R. § 1.1200 *et seq*. Concerning Ex Parte Presentations in Commission Proceedings, *Report & Order*, 12 FCC Rcd 7348, 7356-57, para. 27, citing 47 C.F.R. § 1.1204(b)(1) (1997).

[129] *See* 47 C.F.R. § 1.1206(b)(2), as revised.

[130] 47 C.F.R. § 1.1206(b).

B. Initial Paperwork Reduction Act Analysis

96. This NPRM contains a proposal to reduce and/or change existing information collections. As part of our continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections obtained in this Notice, as required by the Paperwork Reduction Act of 1995, Public Law No. 104-13. Public and agency comments are due at the same time as other comments on this Notice; OMB comments are due 60 days from date of publication of this Notice in the Federal Register. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

C. Comment Filing Procedures

97. This proceeding is titled "In the Matter of Biennial Review of Part 68 of the Commission's Rules and Regulations, CC Docket No. 99-216." Pursuant to Sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments on or before **June 23, 2000** and reply comments on or before **July 7, 2000**. All filings should refer only to "In the Matter of Biennial Review of Part 68 of the Commission's Rules and Regulations, CC Docket No. 99-216." Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 24,121 (1998). Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number, which in this instance is CC Docket No. 99-216. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

98. Parties who choose to file by paper must file an original and four copies of each filing. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Room TW-B204F, Washington, D.C. 20554.

99. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to Al McCloud, Common Carrier Bureau, Network Services Division, 445 12th Street, SW, Room 6 A-270, Washington, D.C. 20554. Such a submission should be on a 3.5-inch diskette formatted in an IBM compatible format using Microsoft Word97 or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the docket number, in this case, CC Docket No. 99-216), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy - Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor,

International Transcription Service, Inc., 1231 20th Street, N.W., Washington, D.C. 20036.

100. Regardless of whether parties choose to file electronically or by paper, parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 1231 20th Street, N.W., Washington, D.C. 20036. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, Room CY A-257, 445 12th Street, SW, Washington, D.C. 20554; and with Al McCloud, Network Services Division, Common Carrier Bureau, Room 6 A-207, 445 12th Street, SW, Washington, D.C. 20554.

101. Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also comply with section 1.49 and all other applicable sections of the Commission's Rules.[131] We also direct all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. All parties are encouraged to provide a table of contents, regardless of the length of their submission. We also strongly encourage that parties track the organization set forth in this NPRM in order to facilitate our internal review process.

102. Written comments by the public on the proposed and/or modified information collections are due on or before **60 days from publication in the Federal Register** and reply comments are due on or before **15 days from the comment date**. Written comments must be submitted by the OMB on the proposed and/or modified information collections on or before 60 days after date of publication in the Federal Register. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1-C804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to jboley@fcc.gov, and to Edward C. Springer, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, N.W., Washington, DC 20503 or via the Internet to edward.springer@omb.eop.gov.

D. Further Information

103. For further information regarding this proceeding, contact Susan E. Magnotti, Senior Attorney, Network Services Division, at 418-0871 or smagnott@fcc.gov. Further information may also be obtained by calling the Common Carrier Bureau's TTY number: 202-418-0484.

V. ORDERING CLAUSES

104. Accordingly, IT IS ORDERED that, pursuant to 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), the NOTICE OF PROPOSED RULEMAKING is hereby ADOPTED.

105. IT IS FURTHER ORDERED that the Commission's Consumer Information Bureau, Reference Information Center, SHALL SEND a copy of this NOTICE OF PROPOSED RULEMAKING, including the Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small

[131] 47 C.F.R. § 1.49.

Business Administration, in accordance with the Regulatory Flexibility Act, see 5 U.S.C. § 605(b).

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

Appendix A
List of Commenters and Fora Participants

ACIL (formerly the American Council of Independent Laboratories)

Ameritech

Cisco Systems, Inc.

Communications Certification Laboratory

Information Technology Industry Council

Intertek Testing Services, NA Inc.

Lucent Technologies, Inc.

Mobile Engineering

Nortel Networks

SBC Communications, Inc.

Sprint Corporation

Tandy Corporation

Telecommunications Industry Association (User Premises Equipment Division)

Texas Office of Public Utility Counsel

Thomson Consumer Electronics

United States Telephone Association

van der Heim, Peter

Appendix B
Initial Regulatory Flexibility Analysis

106. As required by the Regulatory Flexibility Act (RFA),[132] the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Notice of Proposed Rulemaking. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Notice of Proposed Rulemaking provided above in Section IV, Subpart C. The Commission will send a copy of the Notice of Proposed Rulemaking, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. *See* 5 U.S.C. § 603(a). In addition, the Notice of Proposed Rulemaking and IRFA (or summaries thereof) will be published in the Federal Register. *See id*.

VI. Need for, and Objectives of, the Proposed Rules

107. In this Notice of Proposed Rulemaking, we take a significant step forward in our initiative to largely privatize the process by which technical criteria are established for customer premises equipment[133] (CPE or terminal equipment) that may be sold for connection to the public switched telephone network (PSTN), and for the registration of such equipment. Our proposals in this Notice largely are based on the consensus positions of the participants in a series of industry forums we held in July 1999 to explore the extent to which regulations in Part 68, other than our HAC/VC rules, may no longer be necessary. The majority of commenters and forum participants generally argued that: (a) carriers' networks must be protected; (b) one uniform set of national technical standards is necessary; (c) there are few, if any, unnecessary technical requirements in Part 68 at present; (d) the Commission should retain the authority to ensure that the telephone network is protected; and (e) the functions of technical criteria development, laboratory qualification, and registration of equipment, currently performed by the Commission, largely can be privatized.

108. In this Notice, we propose that the new Part 68 would contain no detailed technical criteria for protection of the network, no descriptions and schematics of connectors, and none of the existing rules that pertain to application by manufacturers and importers directly to the Commission for equipment registration. We propose, in place of these rules, that local exchange carriers must permit connection to the PSTN of any CPE that meets the technical criteria set by an industry standards body or bodies. This Notice proposes alternative ways that the determination might be made whether a piece of CPE meets the industry's criteria, including certification by a telecommunications certification body (TCB) and self-certification by the manufacturer. Both the industry's technical criteria and the certification of individual CPE would be subject to a Commission *de novo* review or enforcement process. While the industry would make its determinations regarding technical criteria under the guidance of our policies and regulations, its

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

[133] "Customer premises equipment" is defined as equipment employed on the premises of a person (other than a carrier) to originate, route, or terminate telecommunications. 47 U.S.C. § 153(14).

technical criteria would not be binding on the Commission in the event of *de novo* review or enforcement. The industry's administration activity would assist us in the implementation of our objectives to permit connection of CPE to the PSTN without causing harm, but the industry standards body or bodies would not determine the final outcome of technical criteria matters. Therefore, as administrator of its technical criteria program governing the prevention of harm to the PSTN, the industry standards body or bodies would not be performing a Commission policy function. Although our proposals, to transfer the responsibility for the development and maintenance of CPE technical criteria from this Commission to an industry body subject to *de novo* review or enforcement, represent a new paradigm for Part 68 regulation, this procedure is in fact a logical progression of our historic regulation of CPE and is similar to other deregulatory initiatives we have used.

109. In addition, we propose to largely privatize equipment registration by devolving this function, currently performed solely by this Commission, to Telecommunications Certification Bodies (TCBs), which we have previously established to streamline and privatize some of our regulatory processes.[134] TCBs would use the technical criteria developed by industry to determine whether equipment meets the requirements for registration. We also propose to establish new procedures for manufacturer self-declaration of conformity or verification pursuant to the technical criteria, and we request comment on the details pertaining to these options. Thus, under the proposed new rules for Part 68, if CPE meets the technical criteria, and if it is registered pursuant to our new privatized registration rules, then wireline telephone companies must permit the equipment to be connected to the PSTN.

VII. Legal Basis

110. In this Notice of Proposed Rulemaking, we tentatively conclude that the Commission has the necessary statutory authority to adjust the Part 68 program as proposed herein. For example, the proposed changes are entirely in furtherance of our statutory mission "to make available . . . a rapid, efficient, Nation-wide, and world-wide wire and radio communications service with adequate facilities . . ."[135] Further, the proposed changes are justified, at least in part, on the basis of the same statutory authority which was relied upon in 1975 when the Part 68 program was originally implemented, *e.g.*, Sections 4(i), 4(j), and 201-205.[136] Finally, as noted previously, the proposed changes, if adopted, will further the competitive goals of the 1996 Act.

111. Our proposal herein is further supported by the past regulatory framework for Part 68. The Part 68 *First Report and Order* stressed that the Commission's guiding objective for competitive CPE registration is that it would remain "simple and easy to administer as is reasonably possible with a minimum of government intervention."[137] The Commission's goals were to produce an absolute minimum of expense to both the government and private industry, to the benefit of the ultimate consumer, while at the

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[134] *MRA Order*, *supra*, note 9.

[135] 47 U.S.C. § 151; *see also North Carolina Utilities Commission v. FCC*, 537 F.2d 787, 793-94 (4th Cir. 1976).

[136] *See Part 68 First Report and Order*, 56 FCC 2d at 613.

[137] *Id.* at 599.

same time protecting the PSTN from harms that could be caused by the connection of faulty terminal equipment.[138] Accordingly, we tentatively conclude in this Notice of Proposed Rulemaking that, in view of the changes in the industry and the market for CPE over the past twenty-five years, the key objectives that led to the original adoption of the Part 68 program can better be served through a different mix of government and private industry involvement.

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

112. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[139] The Regulatory Flexibility Act defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small business concern" under section 3 of the Small Business Act.[140] A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[141]

113. RFA analyses and certifications need only address the impact of rules on small entities directly regulated by those rules, *Mid-Tex Electric Cooperative, Inc. v. FERC*, 773 F.2d 327, 342-43 (D.C. Cir. 1985). The Commission's equipment authorization rules directly regulate only manufacturers of equipment, which must satisfy the Commission's product approval requirements. Small test laboratories are not directly regulated by the proposed Commission rules. Thus, to the extent that any testing laboratories would be affected by these proposed rules, such entities are not addressed in this IRFA.

114. The Commission has not developed a definition of small manufacturers of telephone terminal equipment. The closest applicable definitions under SBA rules is for manufacturers of telephone and telegraph apparatus (SIC 3661), which defines a small manufacturer as one having 1,000 or fewer employees.[142] According to 1992 Census Bureau data, there were 479 such manufacturers, and of those, 436 had 999 or fewer employees, and seven had between 1,000 and 1,499 employees.[143] We estimate that there are fewer than 443 small manufacturers of terminal equipment that may be affected by the proposed rules.

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

115. We are proposing to remove the requirement that applicants for equipment authorization

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138 *Id.*

139 5 U.S.C. § 603(b)(3).

140 *Id.* § 601(3).

141 *Id.* § 632.

142 13 C.F.R. § 121.201, Standard Industrial Classification (SIC) Code 3661.

143 1992 Economic Census, Industry and Employment Size of Firm, Table 1D (prepared by U.S. Census Bureau under contract to the U.S. Small Business Administration).

apply to the Commission, and instead propose that they apply to designated Telecommunications Certification Bodies. We are proposing that instead of submitting Part 68 application information to the Commission, the TCBs would be required to submit the data to a nationwide database instead, which shall be administered by a private entity. We are also proposing to offer responsible parties the option to use either a Self-Declaration of Conformity or a verification process for equipment authorization. Such parties would have to submit data concerning their equipment to a nationwide database.

116. Further, we are proposing to privatize development and maintenance of technical criteria for terminal equipment, other than those technical criteria required for compliance with our HAC/VC and consumer protection rules, which the Commission proposes to retain. Small entities with an interest in the development, interpretation, and waiver of such technical criteria would be required to seek the ruling of the standard development organization responsible for the standard at issue in the first instance. The Commission, however, proposes to retain full *de novo* review procedures for any industry decision.

117. The Commission also proposes to require that certain information regarding the equipment authorized under Part 68 would be placed into a publicly available database. This information would be available for review of technical parameters of specific equipment, including parameters required for compliance with hearing aid compatibility, volume control, and other HAC/VC requirements. This requirement would not be a new information requirement since application data is currently required and kept in a Commission database.

118. Finally, the Commission proposes to unify the numbering system and the logo that must be imprinted on customer premises equipment. Currently, Part 15 and Part 68 have different labeling and different registration numbering systems.

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

119. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

120. The proposals in this Notice are designed to reduce the length of time for new technology to reach the market. This may benefit small entities especially because the proposals would cut any manufacturer's cost to bring an equipment design to market. Alternatives for making these reductions are included in the form of options for different methods of 1) industry development and maintenance of technical standards and 2) equipment registration. We request comment on these options.

121. We request comment on whether small entities would be adversely affected by the proposals herein, particularly whether the proposed enforcement procedures or any of the proposed options for establishing technical criteria would have a significant economic impact. We believe that our proposals would have either no impact, or would reduce, any economic burdens on small entities.

XI. Federal Rules that May Duplicate, Overlap, or Conflict With the Proposed Rules

None.