

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

In the Matter of)
) CC Docket No. 99-216
2000 Biennial Regulatory Review of Part 68 of)
the Commission's Rules and Regulations)

REPORT AND ORDER

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By the Commission:

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I. INTRODUCTION

1. In the Telecommunications Act of 1996 (1996 Act), Congress directed the Commission to review its rules every even-numbered year and repeal or modify those found to be no longer in the public interest.¹ Consistent with the directive of Congress, in the year 2000, the Commission undertook its second comprehensive biennial review of the Commission’s rules to eliminate regulations that are no longer necessary because the public interest can be better served through reliance on market forces.² In this Order,

¹ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, codified at 47 U.S.C. §§ 151 *et seq.* (1996 Act). Hereinafter, all citations to the 1996 Act will be to the 1996 Act as it is codified in the United States Code. The 1996 Act amended the Communications Act of 1934. We refer to the Communications Act of 1934, as amended, as the “Communications Act” or the “Act.” The Biennial Review of Regulations is codified at 47 U.S.C. §61.

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

we completely eliminate significant portions of Part 68 of our rules governing the connection of customer premises equipment (terminal equipment) to the public switched telephone network and privatize the standards development and terminal equipment approval processes. By these actions, we minimize or eliminate the role of the government in these processes.

2. Specifically, in this Order we eliminate the detailed regulations currently in our rules establishing technical criteria for terminal equipment and requiring registration of terminal equipment with the Commission. Given the maturity of the terminal equipment manufacturing market, we find that Standards Development Organizations (SDOs) that are accredited by the American National Standards Institute (ANSI), and that incorporate a balance of industry representatives including both the terminal equipment manufacturing industry and the telecommunications carrier industry, should be responsible for establishing technical criteria to ensure that terminal equipment does not harm the public switched telephone network. We find, moreover, that a private industry committee (“Administrative Council for Terminal Attachments” (Administrative Council)) shall be responsible for compiling and publishing all standards ultimately adopted as technical criteria for terminal equipment.

3. With regard to equipment approval, we find that manufacturers may show compliance with the technical criteria through one of two means. First, manufacturers may seek approval of terminal equipment’s compliance with the relevant technical criteria from private Telecommunications Certification Bodies (TCBs). In the alternative, manufacturers may show compliance through the Supplier’s Declaration of Conformity (SDoC) method of equipment approval.

4. The streamlined approach outlined in this Order will allow the Commission to replace approximately 130 pages of technical criteria currently in our rules with only a few pages of simple principles that terminal equipment shall not cause any of the prescribed harms to the public switched telephone network, that providers of telecommunications must allow the connection of compliant terminal equipment to their networks, and that the Commission diligently will enforce compliance with these rules. This streamlined approach relies on the common vested interest of terminal equipment manufacturers and providers of telecommunications in safeguarding the public switched telephone network to eliminate the need for direct government involvement in establishing technical criteria for terminal equipment and in registering or approving terminal equipment that meets those technical criteria. In addition, we retain in our rules the technical criteria relating to inside wiring, hearing aid compatibility and volume control, and consumer protection provisions. We also maintain enforcement procedures for terminal equipment compliance and an appeal procedure for the Administrative Council’s decisions. Finally, we update the complaint procedures for our hearing aid compatibility and volume control rules.

5. The new regulatory paradigm that we adopt in this Order for terminal equipment interconnection shall function as follows. We will maintain our rules’ broad principles, including a proscription against causing any of four harms to the public switched telephone network by the direct connection of terminal equipment. A single committee, the Administrative Council, sponsored by an ANSI-accredited entity, shall adopt, compile and publish specific technical criteria for terminal equipment in furtherance of the Commission’s broad principles. Any ANSI-accredited standards-development organization may submit technical criteria for terminal equipment. Once the Administrative Council publishes such criteria, the Commission shall presume the criteria to be valid for the prevention of the harms to the public switched telephone network by terminal equipment interconnection, subject to *de novo* review by petition to this Commission.

6. Conformance with the technical criteria will be considered a demonstration of compliance with the Commission’s rules prohibiting terminal equipment from harming the public switched telephone network. Terminal equipment manufacturers either will submit their products to TCBs for certification of conformity with the technical criteria (instead of submitting them for registration with the Commission), or they will use the Supplier’s Declaration of Conformity process to show conformity with the technical criteria. The Administrative

Council will work with the TCBs to develop labeling and other non-technical requirements. We believe that this process will be more efficient and responsive to the needs of all segments of the industry, and remove the Commission from a role where governmental involvement is no longer necessary or in the public interest.

II. BACKGROUND

7. Before the Commission established its rules in Part 68, terminal equipment 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 terminal equipment was connected to the public switched telephone network, but also created a monopoly in the development and manufacture of terminal equipment. The Part 68 rules are premised on a compromise whereby providers are required to allow terminal equipment manufactured by anyone to be connected to their networks, provided that the terminal equipment has been shown to meet the technical criteria for preventing network harm that are established in the Part 68 rules.³ Thus, although our Part 68 rules appear to establish elaborate requirements for terminal equipment manufacturers, the fundamental obligation that the rules impose is on the local exchange carriers -- they must allow Part 68-compliant terminal equipment to be connected freely to their networks.⁴ Terminal equipment manufacturers are not required to comply with Part 68, but equipment that is not Part 68-registered is not freely connectable to the public switched telephone network and thus has limited marketability. Our rules have facilitated a vibrant, competitive market for terminal equipment, reducing prices and resulting in a proliferation of new equipment and capabilities available to consumers.

8. At the time the Commission established its Part 68 rules, AT&T controlled the terminal equipment market as well as the public switched telephone network itself. Few entities outside of the telephone company had extensive knowledge about the interaction of terminal equipment and the public switched telephone network, and there appeared to be no private standard-setting bodies or testing laboratories with expertise in terminal equipment. The adoption of standards by individual state regulatory commissions was not a viable option at the time. Given this market condition, the Commission took upon itself the obligations of both establishing technical criteria to ensure that terminal equipment would not harm the network and verifying that specific terminal equipment complied with the technical criteria.

9. Taking account of AT&T's near monopoly on technical expertise in the 1970s, the Commission included in its Part 68 rules detailed technical information, including drawings and schematics of terminal equipment circuitry and interconnection devices. The initial Part 68 rules were based, in large measure, on the 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.⁵

10. Part 68 of the Commission's rules establishes technical criteria designed to ensure that terminal equipment does not harm the public switched telephone network or telephone company personnel, and a registration process to verify whether terminal equipment complies with these criteria. Part 68 requires carriers

³ *In the Matter of 2000 Biennial Review of Part 68 of the Commission's Rules and Regulations*, CC Docket No. 99-216, Notice of Proposed Rulemaking, 15 F.C.C.R. 10525 at 10528, para. 5 (2000) (*Notice*).

⁴ Part 68's regulation of terminal equipment is narrowly drawn and applies only to equipment directly connected to the public switched telephone network on the customer's side of the demarcation point.

⁵ With few exceptions, quality and performance factors of terminal equipment are served by consumer protection laws and by the operation of the free market. To the limited extent that Part 68 addresses these functions (*e.g.*, inside wire), we do not propose at this time to privatize them because we recently adopted these rules to protect against demonstrated problems in the market. *See infra* para. 65.

to allow terminal equipment that is registered as Part 68 compliant to be connected to their networks.⁶ Thus, our Part 68 rules establish requirements for terminal equipment manufacturers and impose on carriers the requirement that they allow Part-68 compliant terminal equipment to be connected freely to their networks.

11. In the years since Part 68 was established, however, the marketplaces for both terminal equipment and local exchange service have changed dramatically. Vibrant competition has emerged in the terminal equipment marketplace. Basic voice telephones and new types of terminal equipment, including advanced telephones, computer modems, and equipment for individuals with disabilities, have become widely and competitively available. Private standards-setting bodies and testing laboratories for telecommunications equipment have also become well established, and the terminal equipment-manufacturing industry has matured and plays a strong and active role in them. In more recent years, this Commission has relied on the work of these industry bodies to update the technical criteria in Part 68. For example, TIA Committee TR41 undertook to develop harmonized network protection rules between the U.S. and Canada, and proposed them for a rulemaking proceeding.⁷ The rapid pace of change in both network and terminal equipment technologies, however, has made it increasingly difficult for the regulatory process to keep pace.

12. Because of these market changes, as well as our overall mandate to eliminate regulations wherever possible, consistent with the public interest,⁸ this Commission's approach to regulation of Part 68 equipment has also changed significantly. To this end we have recently enacted rules that allow manufactures to have their equipment certified as compliant with Part 68 not only by the Commission, but also, as an alternative, by any of a multitude of TCBS as well.⁹ We have also adopted uniform, or "harmonized," technical criteria for protection of the wireline network consistent with the protections used in Canada.¹⁰ In the *Notice*, we proposed alternative approaches to reducing the Commission's role in regulating the interconnection of terminal equipment to the public switched telephone network by relying to a greater extent on industry standards-setting bodies. We first discussed ways to allow industry standards-setting organizations to take over the establishment of the Commission's technical criteria for terminal equipment currently set forth in the Commission's Part 68 rules. We then discussed alternatives for removing the Commission from the role of verifying terminal equipment's compliance with the relevant technical criteria, which occurs currently through the Part 68 registration process.¹¹

III. REGULATORY PARADIGM FOR ESTABLISHING TECHNICAL CRITERIA

13. There are two basic questions before us with respect to technical criteria for terminal

⁶ Prior to the adoption of Part 68, AT&T generally only permitted its customers to connect terminal equipment that AT&T supplied itself, giving AT&T monopoly control of the terminal equipment market.

⁷ *Amendment of Part 68 of the Commission's Rules*, CC Docket No. 96-28, Report and Order, 12 FCC Rcd 19218 (1997) (*Harmonization Order*).

⁸ 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.")

⁹ *1998 Biennial Regulatory Review – Amendment of Parts 2, 25, and 68 of the Commission's Rules to Further Streamline the Equipment Authorization Process for Radio Frequency Equipment, Modify the Equipment Authorization Process for Telephone Terminal Equipment, Implement Mutual Recognition Agreements and Begin Implementation of the Global Mobile Personal Communications by Satellite (GMPCS) Arrangements*, GEN Docket No. 98-68, Report and Order, 13 F.C.C.R. 24687 (1998) (*MRA Order*); 68 C.F.R. §§ 68.160, 68.162.

¹⁰ See generally *Harmonization Order*, 12 FCC Rcd 19218.

¹¹ *Notice*, 15 FCC Rcd at 10531, para. 12.

equipment. First, we must determine whether, in light of the competitive maturity of the terminal equipment market and the concomitant ability, interest, and motivation of terminal equipment manufacturers to ensure their products do not harm the public switched telephone network, there is a continued need for technical criteria in order to protect the public switched telephone network from specific types of 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 opposed to having industry self-establish the criteria.

A. Need for Technical Criteria to Protect Against Harms to the Public Switched Telephone Network

1. Background

14. Our proposals in the *Notice* were 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. In the *Notice*, we tentatively concluded that it remains necessary to retain in our rules proscriptions against certain harms to the public switched telephone network that can be caused by terminal equipment that does not meet technical criteria for network protection.¹² We also proposed that our rules continue to require that telecommunications carriers allow compliant terminal equipment to be connected freely to their networks.

2. Discussion

15. Based on unanimous record support,¹³ we conclude that the four types of harm currently embodied in the Part 68 rules continue to represent a valid enunciation of the types of harm to the public switched telephone network against which the Commission must continue to protect.¹⁴ Part 68 was originally devised to ensure that terminal equipment intended for connection to the public switched telephone network meets the engineering parameters that the Commission has concluded will prevent harms to the network. The four harms that Part 68 is designed to prevent are: (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 users of the subject terminal equipment, their calling or called parties. Although the record reflects that actual harm to the network caused by noncompliant terminal equipment is rare, we agree with many commenters that with the advent of advanced technologies that push the limits of twisted copper pair capabilities, it is imperative that the Commission continue to maintain and enforce rules designed to prevent harms to the network. We conclude, therefore, that we should retain in our rules these broad proscriptions against harms to the public switched telephone network.

16. We further conclude, as discussed in detail below, that technical criteria are effective in preventing these harms to the network, and are, therefore, necessary. Nortel, Bell Atlantic, Lucent, and other commenters persuade us that the rapid deployment of new technologies, such as xDSL, requires continued Commission enforcement of compliance with technical criteria. Moreover, the existence of rules identifying the technical criteria as valid protections against harm to the network gives telecommunications providers the ability to remove harmful equipment, as well as the responsibility to allow the connection of compliant, approved

¹² *Notice*, 15 FCC Rcd at 10533, para. 16.

¹³ Bell Atlantic Comments at 1; BellSouth Comments at 1-3; HP Comments at 1-2; ITI Comments at 2; Lucent Comments at 1-2; Nortel Comments at 3.

¹⁴ TIA Comments at 6; ITI Comments at 2. TIA and ITI are industry associations with a broad membership, including manufacturers, test labs, and LECs. See USTA Comments at 2; Lucent Comments at 2; Phonex Comments at 1.

equipment. Finally, as argued by Lucent and Nortel, presumptively valid technical criteria will ensure uniformity and a level playing field that will assure continued robust competition in the market for terminal equipment.¹⁵ These technical criteria for terminal equipment will ensure that manufacturers are able to develop terminal equipment that can operate throughout the country and over all carriers' networks, and that the public switched telephone network which is owned by telecommunications providers, is not harmed by such terminal equipment. Accordingly, we conclude that carriers are only required to permit connection to the public switched telephone network of equipment that is shown to comply with technical criteria designed to prevent the four enunciated harms.

17. One of the purposes of technical criteria is to permit competitive access to the network, and the Commission has succeeded in this goal. We believe compliance with these technical criteria remains necessary because the public switched telephone network is privately-owned by telecommunications carriers, and consumers connect to the public switched telephone network only with consent of the telecommunications provider. Moreover, we agree with commenters that emphasize that we must retain in Part 68 legal authority to permit the disconnection of harmful equipment or, if necessary, the discontinuance of service to customers using harmful terminal equipment, because such a requirement protects the public switched telephone network and other customers.¹⁶ As argued by Bell Atlantic (now Verizon), carriers retain the ultimate responsibility to maintain the quality and integrity of their services to the public, and they must be in a position to take immediate action if that quality or integrity is being compromised.¹⁷

B. Development of Technical Criteria

1. Background

18. In the *Notice*, we tentatively concluded that the public interest would be better served if private industry, rather than the Commission, developed the technical criteria that are necessary to protect the public switched telephone network from harms.¹⁸ We therefore proposed in the *Notice* to use one of several potential industry standards-setting processes.¹⁹ To ensure that the public interest is adequately protected, we proposed 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 noted our expectation, however, that such Commission involvement would be extremely limited.

19. In our July fora, commenters raised the issue of the extent to which we can legally give the force of law to privately developed technical criteria.²⁰ As we stated in the *Notice*, the Commission's authority

¹⁵ Lucent Comments at 2. *See also* Nortel Comments at 3.

¹⁶ 47 C.F.R. § 68.108. Bell Atlantic Comments at 2; GTE Comments at 6.

¹⁷ Bell Atlantic Comments at 8.

¹⁸ *Notice*, 15 FCC Rcd at 10533, para. 17.

¹⁹ *Notice*, 15 FCC Rcd at 10535-10536, para. 26. The only technical criteria that we proposed to retain in our rules were those that ensure access to telecommunications and services by persons with disabilities and those that deal with network demarcation and inside wire. Demarcation issues pertain to the location of the dividing point between LEC-controlled telephone line and customer-controlled telephone line. 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.

²⁰ *See, e.g.*, Federal Communications Commission Public Fora on Deregulation/Privatization of Equipment Registration and Telephone Network Connection Rules, July 12-13, 1999, ("Record") at 75, 78.

to establish technical criteria to prevent harms to the public switched telephone network and to approve terminal equipment prior to attachment of such terminal equipment to the public switched telephone network arises out of section 151 of the Communications Act. Section 151 charges the Commission with the mission to “to make available . . . a rapid, efficient, Nation-wide, and world-wide wire and radio communications service with adequate facilities . . .”²¹ In addition, the Commission relied upon several other provisions of the Communications Act of 1934 when it originally implemented Part 68.²² Finally, as we stated above, in the Telecommunications Act of 1996 (1996 Act), Congress directed the Commission to examine its rules every two years and repeal or modify those found to be no longer in the public interest.²³

2. Discussion

20. We conclude that the statutory authority upon which the Commission relied to implement Part 68 in the first instance does not *require* that the Commission establish the technical criteria with which terminal equipment must comply in order to prevent harms to the network. Instead, this statutory authority *permits* the Commission to adopt reasonable regulations to ensure that terminal equipment does not cause harms to the public switched telephone network, consistent with the public interest. Moreover, the 1996 Act mandates that we repeal or modify rules where market forces make the rules no longer necessary. Accordingly, we adopt our tentative conclusion that consumers and the industry are better served by industry rather than Commission development of technical criteria for terminal equipment. Although we find that technical criteria remain necessary, we find that it is in the public interest to privatize development of the specific technical criteria for preventing harms to the public switched telephone network. While we have concluded in the foregoing section of this Order that our rules should continue to identify and prohibit specific harms to the public switched telephone network by terminal equipment, we are convinced that it is not necessary for the Commission to be responsible for developing and maintaining these technical criteria. In light of these legal parameters, we adopt our tentative conclusion that we have the legal authority to give presumptive validity to the technical criteria adopted by the industry standards body, as discussed below.

21. In determining whether the Commission or private industry is best suited for maintenance and development of technical criteria, we weigh the potential harms to the network when Commission oversight is removed from the development process against the fact that the industry possesses the necessary expertise and incentive for development of new technical criteria and the speed in which the industry, as opposed to the Commission, can establish required technical criteria – especially for advanced technologies.²⁴ We recognize, as argued by ITI, that in today’s telecommunications networks, harm to the network does not occur with any significant frequency.²⁵ There is little record evidence of harm to the network caused by terminal equipment other than inside wire.²⁶ The fact that such harms rarely occur is, we believe, a testament to several factors.

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

²² 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 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, 613 (1975)(*Part 68 First Report and Order*).

²³ *See supra* para. 1.

²⁴ GTE Comments at 2.

²⁵ ITI Comments at 1.

²⁶ *E.g.*, BellSouth discussed network interference problems caused by inside wire, but such issues are not affected by our decisions herein. BellSouth Comments at 4-5.

First, manufacturers and test laboratories, as well as telecommunications carriers, possess relevant expertise in the criteria needed to prevent harms to the public switched telephone network.²⁷ In fact, industry standards setting organizations are often the primary source for updates to the Commission's Part 68 rules. Telecommunications providers,²⁸ manufacturers, and test laboratories have worked together to identify technical criteria, and the Commission has mandated these technical criteria through its rulemaking process and enforced the criteria through testing and registration procedures. For instance, in the technical criteria for hearing aid compatibility requirements, Commission rule 68.316, the Commission refers to a specific technical standard for hearing aid compatibility published by TIA.²⁹ Second, responsible manufacturers have a vested interest in producing equipment that does not harm the network.³⁰ Manufacturers have persuasively argued that their customers would not tolerate equipment that did not perform well, and that if their terminal equipment were identified as harmful to the public switched telephone network the manufacturers would quickly lose their standing with customers.³¹ Third, industry has every incentive to establish criteria for new technology on an expedited basis. We are convinced that industry rather than Commission development of technical criteria will decrease development time and allow manufacturers to bring innovative consumer products, especially for the provision of advanced services, to the market on an expedited basis. This expedited process should benefit consumers by lowering the costs of terminal equipment and by ensuring that new technologies are widely available.

22. Accordingly, we conclude that any standards development organization (SDO), accredited under the ANSI Organization Method or the Standards Committee Method, can establish technical criteria for terminal equipment pursuant to ANSI consensus decision-making procedures, and, as discussed in detail below, submit such criteria to the Administrative Council for Terminal Attachments established by industry. As discussed in detail in Section III.B.2.C of this Order, the Administrative Council would review the criteria only for supporting documentation from the SDO certifying that the submitted technical criteria are not duplicative or in conflict with any other existing technical criteria required for terminal equipment. The Administrative Council must publish the submitted criteria as technical criteria for terminal equipment. Upon publication, the Commission would consider the technical criteria to be presumptively valid such that they comply with the rules for proscribing harm to the network, subject to *de novo* review on appeal.

23. We are convinced that allowing any ANSI-accredited standards development organization to submit technical criteria for terminal equipment will permit the industry to continue with the cooperative nature of the procedures for development of technical criteria and voluntary standards that they have now. We emphasize that today, as in the past, standards development organizations have been primarily responsible for the technical criteria for terminal equipment that exist today. Standards organizations generally specialize in subject areas and cooperate with each other and, as stated in the *Notice*, we have no intention of disrupting the ongoing processes.³² At the same time, this structure will place responsibility on a single gatekeeper

²⁷ Bell Atlantic Comments at 1; GTE Comments at 1-2; SBC Comments at 1; TIA Comments at 4; ATIS Comments at 2.

²⁸ In this Order we change the language of Part 68 making the rules applicable to providers of wireline telecommunications rather than the outdated term "telephone company," *see infra*, paras. 74-76.

²⁹ Section 68.316 states, "A telephone handset is hearing aid compatible for the purposes of this section if it complies with the following standard, published by the Telecommunications Industry Association, copyright 1983, and reproduced by permission of the Telecommunications Industry Association. 47 C.F.R. § 68.316.

³⁰ *See* ATIS Comments at 4.

³¹ *E.g.*, Record at 278-280.

³² *Notice*, 15 FCC Rcd at 10538, para. 34.

Administrative Council to ensure uniformity and to refer conflicts in technical criteria back to the originating SDO for resolution.

24. *Legal Status of Technical Criteria.* We adopt our tentative conclusion that Commission reliance on private industry for the adoption and publication of technical criteria that would be enforceable by this Commission, to the extent that they comply with the rules proscribing harm to the public switched telephone network, does not raise issues with the applicability of the Administrative Procedure Act (APA)³³ or other Federal statutes pertaining to rulemaking proceedings.³⁴ We agree with TIA that although private industry would be developing presumptively valid technical criteria pursuant to our rules and subject to our *de novo* review, the Commission is not itself establishing technical criteria, nor is industry acting as the agent of the Commission.³⁵ This conclusion is consistent with the Commission's decision in the *Third Advanced Services Report and Order* where we determined that we would rely on the ANSI accredited standards development organization, T1E1.4, to develop 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 for spectrum compatibility standards and for fair and open practices in the deployment of advanced services technology. In that proceeding, we reiterated our general belief that industry standards bodies, rather than the Commission, should create acceptable standards for deployment of advanced services.³⁶ We established broad principles for Committee T1E1.4 to follow, but did not adopt any specific technical standards developed by the committee for inclusion in our rules. Accordingly, we conclude that the APA and other federal statutes pertaining to rulemaking procedures are not applicable to industry adoption of technical criteria for terminal equipment. This is so because, when the industry adopts technical criteria for terminal equipment, it will not be adopting a rule. Rather, it will be making a private interpretation of a Commission rule prohibiting harms caused by terminal equipment to the public switched telephone network.³⁷ In effect, conformity with the technical criteria establishes a rebuttable presumption that the equipment complies with our rules proscribing harm to the public switched telephone network.³⁸ Any final

³³ 5 U.S.C. § 553 (b).

³⁴ *Notice*, 15 FCC Rcd at 10536, paras. 27-28.

³⁵ TIA Comments at 8.

³⁶ *In the Matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, and *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order in CC Docket No. 98-147, Fourth Report and Order in CC Docket No. 96-98, 14 FCC Rcd. 20,912 at 20993-20994, para. 186 (1999) (*Advanced Services Third Report and Order*).

³⁷ Under the National Technology Transfer and Advancement Act of 1995, federal agencies are required to utilize technical standards that are adopted by voluntary consensus standards bodies and to use those standards "as a means to carry out policy objectives or activities determined by the agencies . . ." See 15 U.S.C. § 272(d)(1).

³⁸ The Commission has previously relied upon presumptions of validity, adopted in rulemakings, to streamline its regulation. For example, Commission rules provide that a foreign carrier from a WTO country seeking Commission approval of its entry into the U.S. market is afforded a rebuttable presumption that it is eligible for entry. See *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, IB Docket No. 95-22, Report and Order and Order on Reconsideration, 13 FCC Rcd 23891 (1997) (*Foreign Participation Order*), Order on Reconsideration, FCC 00-339 (rel. September 19, 2000). As a further example, Commission rules also provide that price cap local exchange carrier tariff filings are subject to a rebuttable presumption that they are reasonable so long as they fall within the parameters set forth by the Commission for such filings. See, e.g., *In the Matter of Accounting for Judgements and Other Costs Associated with Litigation*, CC Docket No. 93-240, Report and Order, 12 F.C.C.R. 5112 (1997). In effect, these deregulatory actions provide a "safe harbor" where the entry application of the foreign carrier or tariff filing of a LEC is presumptively valid so long as the entity involved meets certain requirements. In this Order, the (continued....)

interpretation with respect to compliance would remain with the Commission through a *de novo* review and enforcement procedure, should a party file a valid complaint with the Commission, or should the Commission act upon its own motion.

C. Structure for Industry Development of Technical Criteria

25. *Background.* In the Notice, we proposed three options for relying on private development of technical criteria to ensure that terminal equipment connected to the public switched telephone network does not cause any of the four prescribed harms. The three proposals were: (A) Commission identification of a “gatekeeper” Standards Development Organization (SDO) that will establish and publish binding technical criteria for terminal equipment developed pursuant to American National Standards Institute (ANSI) procedures for consensus bodies; (B) adoption of a presumption that terminal equipment that complies with technical specifications established by any national standards-setting organization will not cause harms and that any terminal equipment meeting any such standard could be connected to the public switched telephone network; or (C) incorporation into this Commission’s rules by reference, through the APA rulemaking process, to specific standards developed by national standards organizations.³⁹

26. In the Notice, we requested parties to submit their proposals for the manner in which the gatekeeper SDO should be structured. We stated that we would not specify any particular format for the gatekeeper.⁴⁰ In their comments, and more thoroughly in *ex parte* communications provided at the request of the Commission’s staff, TIA and ATIS explained that some of the functions outlined for the gatekeeper SDO in the Notice are inconsistent with functions of an ANSI-accredited standards development organization. Each party suggested that the gatekeeper should be a committee separate from standards development organizations.

27. In the Notice we tentatively concluded that ANSI accreditation of the organizations involved in establishing technical criteria for terminal equipment is essential because the ANSI procedures are a benchmark for consensus decision-making, and include both appeal and auditing procedures.⁴¹ ANSI accredited organizations are obliged to have balanced representation on the committees that develop standards.⁴² ANSI procedures for due process are applicable to all standards developers that ANSI accredits.⁴³ ANSI procedural criteria include the requirement that “participation shall be open to all persons who are directly and materially affected by the activity in question.”⁴⁴ We stated in the Notice that we intend for the gatekeeper to make its consensus processes open to all interested parties. We sought comment on whether it is necessary for us to impose additional requirements on the gatekeeper other than the standard ANSI requirements to ensure these

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Commission presumes that the private industry-established technical criteria comply with an agency rule, i.e., not causing harm to the network. This regulatory treatment is appropriate because this Order (like the orders that established the regulatory presumptions mentioned above) sets forth the basic requirements that govern private industry’s technical standard-setting activity such that the technical standards that are established give reasonable assurance of conformity with the Commission’s rule prohibiting equipment harmful to the network.

³⁹ Notice, 15 FCC Rcd at 10534, para. 23.

⁴⁰ Notice, 15 FCC Rcd at 10538, para. 34.

⁴¹ Notice, 15 FCC Rcd at 10542, para. 45.

⁴² TIA Comments at 6; “Procedures for the Development and Coordination of American National Standards,” American National Standards Institute (*ANSI Procedures*) § 1.2.2.

⁴³ *ANSI Procedures* §§ 1.1 and 1.2.

⁴⁴ *Id.* § 1.2.1.

goals.⁴⁵

28. Pursuant to ANSI procedures, an entity that develops standards may be accredited under one or more of three methods for developing evidence of consensus: (1) the Organization Method, (2) the Standards Committee Method, and (3) the Canvass Method. The Organization Method is most often used by associations that have, among their other activities, an interest in developing standards.⁴⁶ The Standards Committee Method is most often used when a standard affects a broad range of diverse interests or where multiple associations or societies with similar interests exist.⁴⁷ The primary operational difference between the Organization Method and the Standards Committee Method is that, in the latter, ANSI generally requires the entity to be divided into a consensus body and a secretariat. The functions of the secretariat include overseeing the consensus body's compliance with ANSI criteria and administrative functions in connection with the development and approval of standards. The Canvass Method provides that due process be used to determine consensus only after the draft standard has been developed.⁴⁸ Thus, development of the draft standard for which consensus is sought under the Canvass Method does not necessarily include broad and open participation as does the other two accreditation methods.

29. ANSI due process procedures include:

- The right of any person (organization, company, government agency, individual, etc.) with a direct and material interest to participate by expressing an opinion and its basis, having that position considered, and appealing if adversely affected.
- No undue financial barriers to participation, no conditions upon participation based on organization membership, and no unreasonable requirements for technical qualifications, etc.
- A requirement that the standards development process includes a balance of interests and that it not be dominated by any single interest category.
- A requirement to actively seek and fully consider appropriate, representative user views including individuals and organizations.
- A requirement that written procedures shall govern the methods used for standards development and shall be available to any interested person.
- A requirement that the written procedures shall contain an identifiable, realistic, and readily available appeals mechanism for the impartial handling of substantive and procedural complaints regarding any action or inaction.
- Notification of standards activity shall be announced in suitable media; comment periods are specified.
- A requirement that prompt consideration shall be given to the written views and objections of all participants; an effort shall be made to resolve objections; each objector shall be informed of the

⁴⁵ *Notice*, 15 FCC Rcd at 10542, para. 45.

⁴⁶ *ANSI Procedures Annex E*, §E-1.

⁴⁷ *Id.*, § E-2.

⁴⁸ *Id.*, § E-3.

appeals process.

- International standards shall be taken into consideration.
- The principle that it is generally not acceptable to include proper names or trademarks of specific companies in a standard, but a patented item may be used in a term if technical reasons justify this approach.

30. *Discussion.* We find the arguments presented by nearly all commenters regarding the advantages of having a single source for technical criteria to be persuasive. As commenters argue, using a single organization eliminates the potential for conflicting technical criteria and reduces the possibility of confusion, thereby ensuring uniform national criteria.⁴⁹ Uniformity of the technical criteria is essential for equipment manufacturers and their customers, because the presence of conflicting, multiple criteria adds complexity, confusion, and cost to the design and development of products, particularly where terminal equipment components or devices are integrated with other terminal equipment to create different stand-alone devices.⁵⁰ In addition, under the structure outlined in this Order, all terminal equipment technical criteria will be developed under the fair and open processes required for ANSI accreditation.⁵¹ Finally, the process for establishing technical criteria for terminal equipment would be accomplished with due process comparable to a Commission rulemaking proceeding, but in a manner faster and more responsive to industry innovation.⁵²

31. We adopt TIA's proposal that we require industry to establish an Administrative Council for Terminal Attachment (Administrative Council). We find merit in TIA's and ATIS's arguments that the entity responsible for publishing the technical criteria should be a committee or some other organization rather than a standards development body. According to the structure outlined in this Order, the entity should not be a standards development organization because it will not be developing standards. Its functions will be administrative in nature. It will be a committee of interested industry experts that will, subject to our guidelines and procedures adopted herein, perform the functions of publishing technical criteria proposed by ANSI-accredited SDOs and, as discussed in Section IV.C of this Order, maintain a database of approved terminal equipment.⁵³

32. We further conclude that the Administrative Council should be convened by a suitable private industry sponsor or sponsors and that it should operate under the auspices of such sponsor. We disagree with

⁴⁹ *E.g.*, TIA Comments at 7, SBC Comments at 1-2, ITI Comments at 2-3, USTA Comments at 4-5, ATIS Comments at 4-5, Nortel Comments at 4-5, Bell Atlantic Comments at 2-4, GTE Comments at 3, Lucent Comments at 2-3, and Phonex Comments at 5.

⁵⁰ ITI Comments at 3.

⁵¹ Requiring that a single organization ultimately publish all technical criteria (Option A as described in the *Notice*) corrects the disadvantages of Option B (the proposal to permit any standards development organization to establish technical criteria) observed by many parties: "Option B does not achieve the Commission's stated objectives. Traditional standards-setting organizations may not be open to everyone; uniform national standards may not always be achieved; costs to manufacturers and consumers may be increased. These disadvantages are fatal...". SBC Comments at 3-4.

⁵² ATIS Comments at 5.

⁵³ Standards development organizations that are not ANSI-accredited may develop criteria for the interconnection of terminal equipment, however, they must put these criteria through an ANSI-accredited process prior to submitting them to the gatekeeper.

TIA's suggestion that this Commission should be the *de facto* sponsor of the Administrative Council.⁵⁴ As discussed *supra*, private industry is well equipped to take over all functions except enforcement and final appeal processes. Accordingly, we choose a sponsor for the Administrative Council based upon the principles outlined in the Notice for the gatekeeper itself. The qualities of the gatekeeper outlined in the Notice are equally applicable to the sponsor function.⁵⁵

33. We find that the industry Administrative Council model is the one best able to ensure continuity in the development of technical criteria for terminal equipment while, at the same time, enabling the industry to develop rapidly equipment for the provision of advanced services. We are confident that this model also enables the Commission to ensure the continued protection of the public switched telephone network. We agree with those commenters suggesting that permitting industry to develop technical criteria for terminal equipment benefits all segments of the industry and consumers alike and therefore it is in the public interest.

34. For all of these reasons, we adopt the industry Administrative Council model for overall administration of technical criteria for terminal equipment. First, the Commission bears ultimate responsibility for dispute resolution of the model detailed herein and sets, in this Order, broad objectives and policies governing the prevention of harms to the public switched telephone network by terminal equipment that will remain embodied in the Commission's rules.⁵⁶ As supported in this record, this model calls for a structure that has a single administrative body that, in many respects, assumes the role that the Commission has served with regard to Part 68. Although the Administrative Council does not, itself, establish technical criteria, the Administrative Council publishes technical criteria for terminal equipment submitted to it by ANSI-accredited standards development organizations. As discussed herein, upon publication the criteria become the presumptively valid technical criteria for terminal equipment. The Administrative Council is also responsible for operation and maintenance of a database of approved equipment. Initially, the Administrative Council shall have a sponsoring organization that may be responsible for the administrative functions of the Administrative Council. The Administrative Council, does not, however, report to the sponsoring organization. Instead, the Administrative Council is subject only to the control of industry. Finally, in the following sections, we describe in more detail the structure of and role to be played by the various entities.

35. We conclude, however, that this committee is not a Federal Advisory Committee (FAC).⁵⁷ USTA's proposal for a FAC does not meet our regulatory goals in this proceeding. Establishing a FAC would not achieve our goals of reduced governmental involvement in the standards process and expedited development of technical criteria for new technology. A FAC would require direct Commission participation in the process of developing standards. Our goal is to minimize our participation where it is no longer necessary in the public interest, continuing only to enforce and review technical criteria *de novo* if market forces and the industry's consensus process do not satisfactorily address the concerns of a segment of the industry.

1. Sponsoring Organization for the Administrative Council for Terminal Attachments

a. Purpose and Responsibilities of Sponsoring Organization

36. *Background.* Although in the *Notice* we did not propose a specific structure for the Administrative Council, we stated that no matter what structure we ultimately decided was in the public interest,

⁵⁴ TIA September 26, 2000 *Ex Parte*.

⁵⁵ *Notice*, 15 FCC Rcd at 10541, para. 43.

⁵⁶ *See supra* paras. 15-17.

⁵⁷ *See* Federal Advisory Committee Act, 5 U.S.C., App. (1988) (FACA).

it is not our intention to modify the existing industry standards setting process.⁵⁸ As stated above, the record in this proceeding makes clear that not only should industry standards development functions remain separate from the functions of a gatekeeper committee or organization, in most instances, organizations that function in a manner similar to that we proposed for the gatekeeper are often sponsored by industry associations such as the Telecommunications Industry Association (TIA) or Alliance for Telecommunications Industry Solutions (ATIS). These sponsoring associations often perform administrative or secretarial functions on behalf of industry committees and fora similar to the gatekeeper proposed in the *Notice*. For these reasons, as described in detail below, we recognize the sponsor and the gatekeeper as two distinct entities. Although in the *Notice* we set out specific criteria for the gatekeeper, we now apply many of these criteria to our selection of a sponsoring organization for the Administrative Council.

37. Under the gatekeeper option discussed in the *Notice*, we proposed to choose the gatekeeper to serve subject to Commission oversight. We tentatively concluded that the designated gatekeeper: (a) must be ANSI-accredited; (b) must be professionally and administratively prepared to take responsibility for administration of technical criteria; (c) should be experienced with technical criteria development; and (d) must follow, and be capable of following, any Commission rules and guidelines for standards development.⁵⁹ We also requested that ideally, commenters would develop a consensus proposal to submit to the Commission.⁶⁰

38. In the *Notice*, we asked for comment on whether the gatekeeper should serve for a specified term, or simply be subject to our right to review our decision should circumstances warrant in the future. We suggested that, on the one hand, by not establishing a term limit, we may be permitting the gatekeeper 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, but on the other hand, by establishing a term limit, we pointed out that we would be requiring a regular review of the gatekeeper's performance. The gatekeeper would, therefore, have an ongoing incentive to remain responsive, efficient, and effective.⁶¹

39. *Discussion.* Although the first responsibility of the sponsor is to send out a call to the industry to convene an organizational meeting for the purpose of establishing the Administrative Council for Terminal Attachments discussed below, the primary ongoing purpose of the sponsoring organization will be to provide administrative and secretarial support to the Administrative Council. The sponsor's administrative functions may be as broad or as narrow as the Administrative Council determines. For instance, the sponsor may merely organize and facilitate the Administrative Council's meetings. If the Administrative Council chooses, the sponsor may also operate and maintain the database of approved equipment. As discussed below, the Administrative Council will delineate clearly and publicly the arrangement it enters into with the sponsor. Under no circumstances, however, will the sponsoring organization make substantive decisions regarding technical criteria for terminal equipment, nor will it in any other way attempt to influence the decision-making process of the Administrative Council or any standards development organization submitting standards to the Administrative Council for adoption as technical criteria for terminal equipment.

40. The sponsoring organization is responsible for ensuring that the industry populates the Administrative Council in a manner consistent with ANSI criteria for a balanced and open membership. We require the sponsor to notify the industry that it intends to establish a Administrative Council with membership

⁵⁸ *Notice*, 15 FCC Rcd at 10538, para. 34.

⁵⁹ *Notice*, 15 FCC Rcd at 10541, paras. 41-43.

⁶⁰ *Id.*, 15 FCC Rcd at 10541, paras. 41-43.

⁶¹ *Id.*, 15 FCC Rcd at 10542, para. 44.

that is balanced in terms of the points of view represented. As discussed below, the specific membership will be determined when the Administrative Council establishes its “charter.”

41. After the Administrative Council is populated, the sponsor is responsible for fulfilling secretariat functions for the Administrative Council. After the Administrative Council is in being, then its relationship with the sponsor becomes contractual. The Administrative Council may contract with the sponsor to provide the appropriate public notice for its actions and for appeals to it. The Administrative Council may also contract with the sponsor to coordinate the industry’s assignment of standards-development projects, and take other actions that will support the Administrative Council’s functions and coordination of industry standards-setting processes.

b. Selection of the Sponsoring Organization of the Administrative Council

42. *Background.* In an *ex parte* letter jointly filed by ATIS and TIA, these organizations proposed a cooperative arrangement for sponsoring the Administrative Council.⁶² TIA and ATIS propose that they would initially share the responsibility for creating the Administrative Council. The two organizations proposed that they coordinate the manner in which the initial organizational meeting is convened, host the first meeting, assign an initial chair, and put secretariat support in place.⁶³

43. *Discussion.* We conclude that joint TIA-ATIS sponsorship of the Administrative Council will best serve our goal of ensuring broad-based industry participation in the Administrative Council’s activities and responsibilities detailed in the following section. We commend the parties for reaching an agreement that is responsive to our request in the NPRM that commenters propose a consensus arrangement for the entity that will ensure uniformity of technical criteria in this streamlined process.⁶⁴

44. Both TIA and ATIS are well suited to sponsor the Administrative Council. Both organizations have a great deal of experience sponsoring standards organizations and thus have the staff experience and competency to support the activities of the Council detailed herein. We note, moreover, that both parties have agreed to eliminate influence from organizations, including TIA and ATIS themselves, from the Administrative Council. TIA sponsors standards development committees that have participated in developing Part 68 technical criteria since its inception. For example, TIA Committee TR41 has subcommittees dedicated to all aspects of Part 68 issues.⁶⁵ TIA is ANSI-accredited and its Committees and subcommittees for Part 68 matters have broad-

⁶² Letter from ATIS and TIA to Dorothy Attwood, Chief, Common Carrier Bureau, CC Docket No. 99-216, Biennial Review of Part 68 of the Commission’s Rules (dated November 2, 2000) (Joint ATIS-TIA *Ex Parte*).

⁶³ Joint ATIS-TIA November 2, 2000 *Ex Parte* at 1.

⁶⁴ TIA and ATIS offered a lengthy list of specific functions for their joint sponsorship of the Administrative Council in the Joint ATIS-TIA November 2, 2000 *Ex Parte*. While these proposals include many of the functions we are assigning to the sponsors, they are not identical to the rules we establish herein for sponsor functions. To the extent that the TIA/ATIS proposal is conflicts with any of the rules established in this Order, our rules shall prevail.

⁶⁵ These include TR41.9, which addresses a broad and comprehensive range of technical standards in connection with terminal equipment relating to harms to the network, especially in view of new and innovative technology. TR41.9, as KTL Dallas points out in its Comments at 1-2, has, through the rulemaking process, been a major resource to the Commission on interpretation and development of our current rules. Subcommittee TR41.9 meets four times a year, and includes representatives from carriers, manufacturers, test laboratories, the Canadian government, and the U.S. government. Subcommittee TR41.11 addresses administrative matters such as terminal equipment labeling and customer instructions for terminal equipment certification application. Subcommittee TR41.2 addresses issues pertaining to conformity to regulatory standards for telecommunications equipment. It considers and recommends harmonization of international regulations and standards.

based industry representation. It has been our observation, as Nortel states, that TIA's standards development operations are conducted in an open, consensus-based manner, consistent with ANSI requirements.⁶⁶

45. Likewise, ATIS sponsors and/or provides secretariat services for sixteen technical or standards committees, including Committee T1E1, the standards development organization that addresses standards for advanced technologies. We note that T1E1 has taken the lead in developing standards for the latest generation of terminal equipment based on digital subscriber line (DSL) technology.⁶⁷ In the *Advanced Services Third Report and Order*,⁶⁸ the Commission determined that ATIS Committee T1E1.4⁶⁹ would be the best forum for developing spectrum compatibility standards pertaining to the network side of the demarcation point.⁷⁰ As stated in that Order, T1E1.4 maintains a broad participation list with representatives from all segments of the industry with technical expertise and experience on xDSL access standards.⁷¹

46. We find no merit in Verizon's argument that the Commission did not properly provide notice that we would select a gatekeeper if we determine it is in the public interest to implement this model of technical criteria development.⁷² In the *Notice* we proposed, under the gatekeeper option, to choose a gatekeeper to compile and publish technical criteria for terminal equipment.⁷³ We stated that the gatekeeper would be able to act as a central committee and adopt technical criteria for terminal equipment. We requested comment on which entity, or combination of entities, would best be able to carry out the functions we proposed for the gatekeeper. In fact, the Commission devoted an entire section of the *Notice* to the identity of the proposed gatekeeper.⁷⁴ As discussed below, we indeed received comments from many entities on the identity of the gatekeeper. Moreover, no other parties to this proceeding appear to be unaware that we intended to identify the gatekeeper in this proceeding.

47. *Term Limit for the Administrative Council's Sponsor.* We conclude that it is not necessary to establish a term limit for the Administrative Council sponsor. We agree with Bell Atlantic (now Verizon) that there is value in maintaining continuity in the standards-setting process, and that re-bidding the gatekeeper function at regular intervals could disrupt that process.⁷⁵ We do, however, believe that it would be in the public

⁶⁶ Nortel Comments at 6-7.

⁶⁷ See, e.g., *Paradyne Corporation Petition of the Signal Power Limitations Contained in Section 68.308(e) of the Commission's Rules*, Order, 14 FCC Rcd 4496 (Network Svcs. Div. 1999).

⁶⁸ See *supra*, n.36.

⁶⁹ T1E1.4 is a working group of Alliance for Telecommunications Industry Solutions (ATIS)-sponsored Committee T1.

⁷⁰ The Commission acknowledged the expertise of Committee T1E1.4 on xDSL access issues, but established a scheme whereby the work of the Committee on spectrum management and spectrum compatibility issues would be subject to oversight by the Network Reliability and Interoperability Council (NRIC), an existing Federal Advisory Committee (FAC), to advise the Commission on the standards developed by T1E1.4. *Advanced Services Third Report and Order*, 14 FCC Rcd. at 20991-20997.

⁷¹ *Id.*, 14 FCC Rcd. at 20993-20994, para. 186.

⁷² Verizon Reply Comments at 3.

⁷³ *Notice*, 15 FCC Rcd at 10538, para. 34.

⁷⁴ *Notice*, 15 FCC Rcd at 10541-10542, paras. 41-44.

⁷⁵ Bell Atlantic Comments at 5.

interest to permit the Administrative Council, after it is well-established and operational, to vote on a regular basis for which sponsoring organization and/or secretariat it will use. Accordingly, beginning four years from the date the Administrative Council begins operations, it has the option to vote to change its sponsoring organization and/or secretariat organization.

48. We are mindful, however, of the need for the Commission to monitor the Administrative Council operations to ensure that no anti-competitive or other discriminatory practices hinder the prompt and fair development of technical criteria.⁷⁶ Accordingly, we will accept substantiated complaints regarding the sponsoring organization's compliance with our rules and policies for review under our complaint procedures adopted herein, and we retain the right to review our determination regarding the identity of the Administrative Council's sponsor at any time.

2. Administrative Council for Terminal Attachments

a. Purpose of the Administrative Council

49. The purpose of the Administrative Council is to act as the clearing-house publishing technical criteria for terminal equipment developed by ANSI-accredited standards development organizations. As stated above, by adopting this approach we ensure that all manufacturers know which terminal equipment technologies can be connected to the public switched telephone network and all providers of telecommunications can deploy services and design their networks to permit connection consistent with these technical criteria. We conclude that the Administrative Council will not make substantive decisions regarding the development of technical criteria.⁷⁷ This conclusion is based in large part on comments we received from TIA and ATIS regarding the industry's suggestions for its process of developing technical criteria.⁷⁸ We agree with these parties that the gatekeeper should be a separate entity from existing standards development organizations.

b. Criteria for the Administrative Council.

50. We conclude that the Administrative Council should be a non-governmental entity that is not controlled or dominated by any particular telecommunications industry segment. The Administrative Council must be fair and impartial. We believe that the separation of the sponsoring organization, the Administrative Council, and standards development functions eliminates any concerns regarding even the appearance of bias on the part of the Administrative Council.

51. The Administrative Council must have a membership fairly balanced in terms of the points of view represented. In meeting this requirement, we anticipate the Administrative Council membership will represent all segments of the industry including local exchange carriers, interexchange carriers, terminal and network equipment manufacturers, test laboratories, and other interested parties. We agree with ATIS that the individual member's industry segment, rather than the office held in industry organizations, such as Committees T1 or TR41, should be counted to ascertain the balance of membership. We require that the Administrative Council limit the number of Administrative Council members to a workable number. This requirement, however, shall not be used to limit arbitrarily participation by any one segment of the industry. In addition, to the extent there is interest among industry members, the Administrative Council is required to rotate the

⁷⁶ See, e.g., TIA Comments at 18.

⁷⁷ See Appendix B for specific rules.

⁷⁸ TIA September 26, 2000 *Ex Parte*; Letter from Megan L. Campbell, General Counsel, ATIS, to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 99-216, (filed October 2, 2000) (ATIS October 2, 2000 *Ex Parte*).

Administrative Council membership to give all interested individuals an opportunity to participate, and to avoid placing undue burden on specific individuals.

c. Functions of the Administrative Council

52. We conclude that the Administrative Council will adopt technical criteria for terminal equipment through the act of publishing criteria developed by ANSI-accredited standards development organizations.⁷⁹ This process will operate as follows: Immediately upon receipt of submitted technical criteria, the Administrative Council will publish a public notice detailing the technical criteria and the standards development organization responsible for its submission. Interested parties will have 30 days to appeal any aspects of the proposed technical criteria to the standards development organization, to the American National Standards (ANS) Board, or to the Commission. Simultaneously with the appeal, the party appealing the proposed technical criteria must provide notice of this appeal to the Administrative Council. If no appeals are filed within 30 days after the Administrative Council's public notice, then the Administrative Council will publish the technical criteria, and the Commission will consider the criteria presumptively valid.

53. The Administrative Council will also be responsible for establishing and maintaining a database of equipment approved as compliant with the technical criteria. The Administrative Council may perform this database function on its own, or may make arrangements with one of the sponsoring organizations to be the administrator of the database. The Administrative Council will assume many of the Commission's current Part 68 functions, including responding to inquiries from the public regarding the technical criteria it has published, including the technical criteria that are currently in the Part 68 rules, and approved equipment. It is within the Administrative Council's discretion to determine the most appropriate way to perform many of these functions. For instance, the Commission receives approximately 60 inquiries per month regarding the proper interpretation and application of the Part 68 technical criteria. We require the Administrative Council to refer such inquiries to an appropriate standards development organization or TCB.

54. The Administrative Council will accomplish these responsibilities by:

- Accepting submissions of proposed technical criteria from ANSI-accredited standards development organizations or committees;
- Ascertaining that the SDO's have made certifications regarding no conflict with existing criteria and applicability to the four harms, as discussed *infra*;
- Providing a public notice to inform industry as thoroughly as practicable of the identity of the proposing SDO and of the proposed technical criteria;
- Publishing the SDO submitted criteria thirty days after public notice, thereby making the technical criteria presumptively valid under the Commission's rules.

55. The Administrative Council may undertake any other administrative functions that it deems necessary to coordinate industry's development and review of potential technical criteria. We agree with TIA that these functions, currently performed on an *ad hoc* basis by individuals coordinating among interested standards development organizations, may find a locus in the Administrative Council.⁸⁰ For example, the Administrative Council may provide notice to interested parties of new standards being developed for publication as technical criteria. It may also coordinate, if necessary, which industry SDOs will take on a particular development project, and ensure that all interested parties have notice of the undertaking.⁸¹ We note,

⁷⁹ As discussed *infra*, paras. 70-73, the Council will also offer opportunities for an appeal process through the applicable standards development organizations or through the ANSI appeal process, as appropriate.

⁸⁰ TIA September 26, 2000 *Ex Parte*.

⁸¹ *Id.*

however, that the Administrative Council must not engage in standards development, policymaking, or dispute resolution. In order to ensure that the Administrative Council is functioning according to the requirements and principles set out in this Order, the Administrative Council must establish a “charter” that will set forth its functions, its operations, and its standards for providing balanced membership. We require the Administrative Council to make its charter detailing these operations and procedures available to the public and this Commission for review within 60 days after the first official meeting of the Administrative Council.

56. Finally, we conclude that it is not necessary for us to establish specific funding mechanisms for the Administrative Council. We believe that the Administrative Council and the joint sponsoring organizations, TIA and ATIS, are in the best position to determine financing arrangements. We are also confident that they will ensure successfully that small businesses and individuals are able to participate in the standards-setting and to purchase the Council’s published standards. We note that TIA and ATIS, in their proposal for a joint Administrative Council sponsorship are considering issues pertaining to funding of the Administrative Council.⁸² Because the relationship between the sponsoring organizations and the Administrative Council will be a contractual one, subject to our overarching policies of accessibility and openness, we leave these matters within the Administrative Council’s purview.

57. *Interim, Trial Use, or Exceptions to Criteria.* In the Notice, we proposed that to the extent manufacturers or importers request exceptions or interim criteria for their terminal equipment that does not meet the technical criteria published by the gatekeeper, we would require the gatekeeper to establish an expedited interim standard process. We proposed that this process would require resolution of the requested exception within 60 days. Commenters have pointed out that ANSI procedures include establishment of trial standards for an interim period.⁸³ We conclude that the Administrative Council should make use of these procedures. We do not, however, establish a time limit of 60 days as suggested in the Notice. The record indicates that this may not be sufficient time to analyze the technical issues under the ANSI due process procedures.⁸⁴ Accordingly, so long as ANSI procedures are followed in a manner consistent with the deadlines established therein, we will not establish a shorter time frame in which the Administrative Council must act.

3. Standards Development Organizations

a. Submission of Technical Criteria to the Administrative Council

58. *ANSI-accredited Process.* We conclude that only standards development organizations that meet the due process requirements for ANSI accreditation for either Organizations or Standards Committees may develop technical criteria for submission to the Administrative Council as valid technical criteria for terminal equipment.⁸⁵ We agree with TIA that this requirement will ensure a broad representation among the individuals working to develop the criteria.⁸⁶ We believe that the representation and careful consideration of comments and exceptions required by ANSI accreditation will be a safeguard similar to our rulemaking processes. While we have concluded that the standards development organizations that develop technical criteria are in no way making rules, because the Commission will give presumptive validity to the technical criteria to the extent that they comply with the rules proscribing harm to the public switched telephone network,

⁸² See Joint TIA-ATIS November 2000 *Ex Parte*.

⁸³ SBC Comments at 3, TIA Comments at 21.

⁸⁴ SBC Comments at 3.

⁸⁵ See *supra* n. 53 (explaining how non-ANSI accredited SDOs can submit criteria)

⁸⁶ TIA Comments at 5-6, 20.

subject only to our *de novo* review, we believe the public interest requires these safeguards.

59. The two standards development organizations most involved in Part 68 and related matters, T1E1 and TR41, are ANSI accredited. In addition, our rules do not preclude other ANSI-accredited standards development organizations from developing technical criteria for submission to the Administrative Council for publication. Thus, we conclude that we are not adopting a new process for industry, but instead we are adding new authority to existing industry procedures and functions.

b. Necessary Certifications to the Administrative Council

60. *Certification that New Technical Criteria Do Not Conflict with Established Technical Criteria.* We conclude that the technical criteria presented to the Administrative Council need not have achieved the status of an American National Standard. Some technical criteria, especially those developed for new technology, may not rise to the level of a national standard prior to being appropriate for inclusion in the Administrative Council's technical criteria. However, in order to satisfy the concerns of commenters that new technical criteria not be in conflict with established technical criteria, we require all standards development organizations submitting technical criteria for publication to the Administrative Council to certify that the submitted technical criteria do not conflict with any existing technical criteria. This certification will be the least burdensome and most effective way to ensure uniformity of technical criteria without conflict.

61. *Certification that Technical Criteria are Limited to Four Harms.* The technical criteria that are presumptively valid subject to our *de novo* review must be limited to preventing the four types of harm that are currently represented in our rules.⁸⁷ We agree with commenters that it is still necessary to protect the public switched telephone network from these harms, but on the other hand, the record does not suggest any justification for expanding on these parameters. Accordingly, we require that all standards development organizations submitting criteria for publication to the Administrative Council must certify that the technical criteria are limited to preventing harms to the public switched telephone network.

4. The Commission

62. Although the Commission will no longer be responsible for establishing technical criteria for terminal equipment, with the exception, as discussed below, of those criteria addressing hearing aid compatibility and volume control requirements as well as inside wiring, we do retain certain responsibilities regarding review of the industry established technical criteria and enforcement of the proscription against causing harms to the network.

a. Retention of Certain Rules Designed to Prevent Harms to the Network and Rules Pertaining to Technical Criteria for Hearing Aid Compatibility and Volume Control

63. *Background.* In the Notice, we specified that our proposals to privatize and streamline the approval of terminal equipment affect technical criteria in Part 68, Subparts B, C, D, and F.⁸⁸ The proposals also affected the technical definitions contained in Section 68.3. Although we tentatively concluded that it was no longer in the public interest for the Commission to continue its direct involvement in terminal equipment approval, we proposed retaining several definitions in Part 68 that are related to other Commission policies outside of terminal equipment interconnection.⁸⁹ Accordingly, we proposed to keep in Part 68 the present

⁸⁷ See *supra* paras. 15-17.

⁸⁸ Notice, 15 FCC Rcd at 10536, n.56.

⁸⁹ Notice, 15 FCC Rcd at 10536-10537 at para. 29.

definitions of: (a) "demarcation point"⁹⁰ 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."⁹¹ In addition, we proposed to maintain our direct oversight of, and rules concerning, hearing aid compatibility (HAC),⁹² volume control,⁹³ consumer protection,⁹⁴ and inside wiring.⁹⁵ SBC and BellSouth contend that the Commission should also maintain its Type B power surge requirements.

64. *Discussion.* We are convinced that we should retain the technical definitions contained in Section 68.3. Accordingly, we shall retain in Part 68 the present definitions of: (a) "demarcation point" 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." In addition, as discussed below, we maintain our enforcement mechanisms and rules concerning, hearing aid compatibility, volume control, consumer protection, and inside wiring. These terms and requirements will continue to serve important Commission policies after the privatization of Part 68.

65. Maintaining the term "harm" enables the Commission to monitor terminal equipment approval and ensure that the requirements enumerated in this Order will be satisfied in an expeditious and nondiscriminatory manner. We believe that maintaining this term in Part 68 will not limit the authority of the Administrative Council, TCBS, standards development bodies, or other private entities that we charge with responsibilities in this Order. In addition, the terms "demarcation point," "single-unit installations," and "multiunit installations" are essential to ensure the validity and effectiveness of our inside wiring rules. In January 2000, we released an order adopting inside wiring requirements designed to protect consumers from the degradation of basic telephony service that can be caused by the installation of substandard wiring.⁹⁶ At the time

⁹⁰ See, e.g., *In the Matter of Detariffing the Installation and Maintenance of Inside Wiring*, CC Docket No. 79-105, Third Report and Order, 7 FCC Rcd 1334 at n.6; see *supra* notes 4 and 5; See *In the Matter of Promotion of Competitive Networks in Local Telecommunications Markets*, *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*, WT Docket No. 99-217, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, and *Review of Sections 68.104, and 68.213 of the Commission's Rules Concerning Connection of Simple Inside Wiring to the Telephone Network*, CC Docket No. 88-57, First Report and Order and Further Notice of Proposed Rulemaking in WT Docket No. 99-217, Fifth Report and Order and Memorandum Opinion and Order in CC Docket No. 96-98, and Fourth Report and Order and Memorandum Opinion and Order in CC Docket No. 88-57, FCC 00-366, released October 25, 2000, (*Competitive Networks Report and Order*).

⁹¹ The definitions of demarcation point, single-unit installations, multiunit installations, essential telephones, harm, hearing aid compatible, Private Radio Services, Public Mobile Services, and secure telephones are codified at 47 C.F.R. § 68.3.

⁹² 47 C.F.R. § 68.4.

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

⁹⁴ 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.

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

⁹⁶ *Review of Sections 68.104 and 68.213 of the Commission's Rules Concerning Connection of Simple Inside Wiring to the Telephone Network*, CC Docket No. 88-57, and *Petition for Modification of Section 68.213 of the Commission's Rules Filed by the Electronic Industries Association*, RM-5643, Third Report and Order, 15 FCC Rcd 927 (2000) (*Inside Wiring Order*).

we adopted the rules, we found that the action was necessary to protect against demonstrated problems in the market as it now operates.⁹⁷ We believe that it is necessary for the Commission to retain the rules intended to encourage builders to install quality inside wiring, thereby ensuring that customers will continue to have access to all available communications services, including advanced services that are more demanding on inside wire than traditional voice.⁹⁸

66. As we explain above, we will continue to maintain our hearing aid compatibility and volume control rules. These rules are a critical component of the Commission's requirements intended to ensure that individuals with hearing and speech disabilities have access to telecommunications services in a manner functionally equivalent to someone without such disabilities.⁹⁹ By retaining these rules in Part 68, we also ensure that the Commission is able to continue monitoring and enforcing compliance with these requirements as directed by Congress in Section 255 of the Act.¹⁰⁰ Maintaining the term "hearing aid compatible" is essential to ensure that our requirements are as clear and effective as possible. Finally, the terms "essential telephones," "Private Radio Services," "Public Mobile Services," and "secure telephones" provide necessary clarity and precision to our rules.

67. We are not, however, persuaded by SBC's and BellSouth's argument that we should retain our Type B power surge requirements.¹⁰¹ This Commission amended the Part 68 rules to add Type B surge requirements as part of the effort to harmonize U.S. and Canadian requirements governing connection of terminal equipment to the public switched telephone network.¹⁰² As with all the Part 68 rules that we privatize herein, we are confident that the Administrative Council will maintain our Type B surge requirements as long as is necessary to protect the public switched telephone network from harms. Thus, we conclude that there is no basis to create an exception for these requirements in light of our determination in this Order that privatizing Part 68 is in the public interest.

b. Commission *de novo* Review of Administrative Council Technical Criteria

68. *Background.* In the *Notice*, we proposed to retain ultimate responsibility to enforce compliance with our rules designed to prevent harms that may be caused by terminal equipment to the public switched telephone network.¹⁰³ We proposed, moreover, that upon appeal we would conduct a *de novo* review of industry-developed technical criteria. We proposed that any final interpretation with respect to compliance would remain with the Commission through this *de novo* review procedure.¹⁰⁴

⁹⁷ *Id.*, 15 FCC Rcd at 936, para. 19.

⁹⁸ *Id.*, 15 FCC Rcd at 932, para. 9.

⁹⁹ Pub. L. No. 101-336, § 401, 104 Stat. 327, 366, 69 (1990) (adding section 225 to the Communications Act of 1934, as amended) 47 U.S.C. § 225.

¹⁰⁰ 47 U.S.C. § 255.

¹⁰¹ BellSouth Comments at 4; SBC Reply Comments at 9.

¹⁰² 47 C.F.R. § 68.302(c); *see Harmonization Order*, 12 FCC Rcd at 19221, at para. 7.

¹⁰³ *Notice*, 15 FCC Rcd at 10556, para. 90.

¹⁰⁴ We stated that this proposal made it possible to allow the SDO to establish technical criteria that are presumptively valid without being subject to the Administrative Procedure Act rulemaking requirements. *Id.*, 15 FCC Rcd at 10556, para. 90.

69. *Discussion.* We establish that an aggrieved party may appeal to the Commission for a *de novo* review of the technical criteria.¹⁰⁵ We anticipate that a complainant may not have a separate procedure, other than those established herein, to appeal an SDO's proposed technical criteria before they go into effect. We leave open the possibility, however, that there may be some circumstances in which such a separate procedure might be appropriate. In the unlikely event that a technical criterion goes into effect that will harm the public switched telephone network, carriers retain the right to disconnect harmful terminal equipment, as discussed *infra*.¹⁰⁶

5. Appeals Procedures for Development of Technical Criteria

a. Background

70. ANSI procedures provide that an SDO must evaluate and respond to public comment on standards under development. Anyone alleging that the SDO has not respected due process principles during the standards development process has a right to appeal in accordance with the ANSI-accredited procedures for the standards developer.

b. Discussion

71. *Appeals of Technical Criteria Before Publication by the Administrative Council.* We adopt our proposal to require a party, aggrieved by an SDO's decision to submit technical criteria to the Administrative Council for publication, to appeal this decision through the SDO's ANSI-accredited appeal procedures. As explained *supra* in Section C.2.c, interested parties will have 30 days to appeal any aspects of the proposed technical criteria to the standards development organization, to the American National Standards (ANS) Board, or to the Commission. Simultaneously with the appeal, the party appealing the proposed technical criteria must provide notice of this appeal to the Administrative Council. If no appeals are filed within 30 days after the Administrative Council's public notice, then the Administrative Council will publish the technical criteria, and the Commission will consider the criteria presumptively valid. These procedures should address the needs of a party that has a direct and material interest in the criteria at issue, as well as a commenter in the standard development proceedings whose interest may not rise to the level of "direct and material." We conclude that this appeal process alleviates local exchange carrier commenters' concerns that they may be required to permit connection of terminal equipment that is the subject of appealed criteria.¹⁰⁷

72. *Appeals of Technical Criteria After Publication by the Administrative Council.* If the Administrative Council receives an appeal regarding published technical criteria, the Administrative Council shall refer the proposed technical criteria and the comments back to the submitting SDO. The SDO shall first try to satisfy the objecting party's concerns, subject to a time limitation imposed by the Administrative Council; if that process is unsuccessful the party filing an objection must exhaust its appeal process through ANSI. If the SDO appeal procedures are completed but are unsuccessful in resolving the objection, the objecting party may file a request for *de novo* review by this Commission, as explained *supra* in Section C.4.b. Regardless of whether an appeal is initiated before or after the Administrative Council publishes technical criteria, the Commission will not recognize technical criteria as presumptively valid until the appeal has been resolved by the SDO, and, if review is sought here, by the Commission.

¹⁰⁵ We note that the Commission will consider the published technical criteria to be presumptively valid if not appeals are filed within the 30 period, either with the industry appeals processes or with the Commission.

¹⁰⁶ See *infra* para.120; see also 47 C.F.R. § 68.108.

¹⁰⁷ See, e.g., BellSouth Reply Comments at 4.

73. *Appeals of Technical Criteria That Are Former Commission Rules.* If a party files an objection with the Administrative Council to original technical criteria (*i.e.* a former Part 68 rule), the Administrative Council shall coordinate with interested parties to have an ANSI-accredited SDO address the objections under ANSI procedures.

6. Modification of Part 68 Terminology

74. *Background.* In the *Notice* we requested comment on whether the Commission should continue to include in Part 68 the term “telephone company” rather than the term “local exchange carrier.” We tentatively concluded that Part 68 should be amended throughout to change this terminology, including the rule sections that we propose to turn over to the private industry.¹⁰⁸ We noted that the use of the discontinued term “telephone company” has resulted in some confusion as to whether Part 68 applies to competing local exchange carriers (LECs) as well as incumbent LECs.

75. *Discussion.* Although the Commission is privatizing as technical criteria large portions of the scope of the Part 68 rules currently found at Rule 68.2, the fundamental purpose of Part 68 remains the same, *i.e.*, that “the rules and regulations [including the Administrative Council’s technical criteria] apply to direct connection of all terminal equipment to the public switched telephone network, for use in conjunction with all services other than party line services.”¹⁰⁹ Against this background of the scope of Part 68, we conclude that we should change the terminology in Part 68 and in the technical criteria published by the Administrative Council from “telephone company” to “provider of wireline telecommunications.” The term “telephone company” is not defined in the Act and we believe that it is not sufficiently precise. Although we proposed changing the terminology to “local exchange carrier,” upon further consideration, we agree with USTA and Sprint that “local exchange carrier” is not the most appropriate term because it does not capture interexchange carriers (IXCs) and other providers of telecommunications that could be subject to Part 68 obligations if they own that portion of the public switched network to which terminal equipment is attached directly. Accordingly, we replace the language “telephone company” with the phrase “providers of wireline telecommunications” to clarify that all wireline carriers, including incumbent LECs, competitive LECs, IXCs, and other entities that offer wireline telecommunications and whose network may be affected by direct connection of terminal equipment are subject to our rules under Part 68.

76. The term “telecommunications” is defined in the Act as “the transmission, between or among points specified by the user, of information of the user’s choosing without change in the form or content of the information as sent and received.”¹¹⁰ Thus, the phrase “providers of wireline telecommunications” clearly encompasses incumbent LECs, competing LECs, IXCs, and all other entities that may own the portion of the public switched telephone network to which terminal equipment may be connected directly. The phrase “providers of wireline telecommunications” provides more clarity than the term “telephone company” and will protect the rights of consumers by ensuring that all providers of wireline telecommunications permit connection of approved terminal equipment to their networks.¹¹¹

¹⁰⁸ *Notice*, 15 FCC Rcd at 10547, para. 61.

¹⁰⁹ 47 C.F.R. § 68.2(a)(1).

¹¹⁰ 47 U.S.C. § 153(43).

¹¹¹ *See infra* Section IV discussing the regulatory paradigm for approval of terminal equipment.

D. Transition of Commission Responsibilities to Administrative Council Technical Criteria

1. Respective Roles of the Commission and Industry During Transition

77. In the Notice, we sought comment on the best means to transition from the traditional governmental Part 68 functions to private industry responsibility. As proposed in the Notice,¹¹² and as supported by the record,¹¹³ our rules containing Part 68 technical criteria will remain applicable until the Administrative Council publishes the technical criteria codified in Part 68 as its technical criteria for direct attachment of terminal equipment. Thus, the Administrative Council's initial technical criteria shall be identical to our existing Part 68 technical criteria. Thereafter, our new rules that do not include the detailed technical criteria will go into effect. Our new Part 68 rules will identify the Administrative Council's technical criteria as presumptively valid and, if complied with, trigger the responsibility of providers of telecommunications to permit terminal equipment connection to the public switched telephone network. We note that during the 180-day transition period set out below, until the Administrative Council publishes the Part 68 rules we transfer to it, the Commission will continue to maintain and enforce all of the current Part 68 rules. As part of this responsibility, the Commission will accept and consider petitions for waiver of Commission rules 68.3212(i) and 68.308(e)(1) as part of the streamlined waiver process for stutter dial tone and ADSL terminal equipment, respectively. Thus, there will be no lapse of protection to the public switched telephone network provided by technical criteria. There is no objection period for these technical criteria, nor do they need to be sponsored by an ANSI-accredited SDO, since they have been developed pursuant to Commission rulemaking proceedings. Our new Part 68 rules will provide that the Administrative Council, thereafter, has the responsibility to maintain, change, or if appropriate, eliminate the criteria, subject to the Commission's guiding principles and procedural requirements that we establish herein.

2. Schedule for Transition

78. We believe that the transition to the industry Administrative Council model for adoption of technical criteria for terminal equipment, transfer of the Commission's current Part 68 functions to the new Administrative Council, and as discussed *infra*, the transfer of the current Commission Part 68 equipment registration functions to industry should occur as rapidly as possible, in a manner consistent with the public interest. To this end, we suggest the following transition schedule that sets time periods as outside limits for the completion of each phase of the transition. The transition steps are:

- No later than 30 days after publication of this Order in the Federal Register, TIA and ATIS, as the joint sponsoring organizations for the Administrative Council for Terminal Attachment, shall notify the industry of its intent to establish and populate an Administrative Council.
- The Administrative Council shall be populated within 60 days after notice to the industry.
- No later than 30 days after the Administrative Council is populated, the Administrative Council shall convene its first official meeting.
- No later than 60 days after the first official meeting of the Administrative Council, the Administrative Council shall establish, publish, and submit to the Commission a "charter" detailing its functions, operations, and standards for providing balanced membership.
- No later than 180 days after the date of publication of this Order in the Federal Register, the

¹¹² Notice, 15 FCC Rcd at 10540, para. 38.

¹¹³ TIA Comments at 14.

Administrative Council shall publish the Part 68 rules we transfer to it by operation of the rules we adopt herein.

- As explained *infra*, no later than 180 days after publication of this Order in the Federal Register, the Commission shall cease accepting applications for registration of Part 68 equipment and transfer responsibility for establishing and maintaining the database of approved equipment to the Administrative Council.
- As explained *infra*, no later than 180 days after publication of this Order in the Federal Register, the Administrative Council shall report to the Commission its progress in resolving outstanding numbering and labeling requirements.

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

IV. REGULATORY PARADIGM FOR EQUIPMENT APPROVAL

A. Streamlining the Equipment Approval Process

1. Background

80. In addition to seeking comment on streamlining the process for establishing technical criteria for terminal equipment interconnection, we sought comment in the *Notice* on revisions to the Commission’s equipment registration procedures.¹¹⁴ Currently, under Commission rule 68.102, manufacturers must register terminal equipment.¹¹⁵ Manufacturers may satisfy this requirement by seeking approval of terminal equipment conformity to Part 68 technical criteria from either telecommunications certification bodies (TCBs) or the Commission.¹¹⁶ Consistent with our efforts to privatize much of the Part 68 process, we tentatively concluded in the *Notice* that, although some type of equipment approval process continues to be necessary, the Commission should not perform the function of direct approval of terminal equipment.¹¹⁷ In furtherance of our mandate in the Telecommunications Act of 1996 to privatize or streamline Commission processes that are no longer in the public interest,¹¹⁸ we proposed, in the *Notice*, three methods of requiring proof of equipment compliance with technical criteria: (1) continuing to rely, either entirely or in part, upon on TCBs for equipment approval;¹¹⁹ (2)

¹¹⁴ *Notice*, 15 FCC Rcd at 10548, para. 64.

¹¹⁵ 47 C.F.R. § 68.102.

¹¹⁶ *MRA Order*, 13 FCC Rcd at 24708, para. 48.

¹¹⁷ *Notice*, 15 FCC Rcd at 10547, para. 63.

¹¹⁸ 47 U.S.C. § 161.

¹¹⁹ *Notice*, 15 FCC Rcd at 10548, para. 64.

allowing manufacturers to use a declaration of conformity (DoC) process,¹²⁰ as defined in Part 2 of the Commission's rules;¹²¹ or (3) allowing manufacturers to use a verification process,¹²² as defined in Part 2 of the Commission's rules.¹²³ Each of these equipment approval methods, discussed in detail below, would eliminate the Commission's direct involvement in the terminal equipment approval process while providing various safeguards to ensure that the equipment meets technical criteria designed to prevent any or all of the harms detailed in Part 68.¹²⁴ In lieu of continuing our current role in this process, we proposed that the Commission should reallocate its resources to enforcing industry-established technical criteria for terminal equipment.¹²⁵

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

2. Discussion

82. As we concluded with regard to the development of technical criteria, Section 151 of the Communications Act¹²⁸ and the statutory authority relied upon by the Commission to implement Part 68 in the first instance¹²⁹ do not *require* that the Commission register directly every type of terminal equipment before it can be interconnected with the public switched telephone network. Rather, this statutory authority *permits* the Commission to adopt reasonable regulations to ensure that terminal equipment does not cause harm to the PSTN, consistent with the public interest. Furthermore, as we stated above, under the 1996 Act, Congress directed the Commission to examine its rules applying to the operation or activities of any provider of telecommunications service every two years and determine whether "any such regulation is no longer in the public interest as the result of meaningful economic competition between providers of such service."¹³⁰ Congress directed the Commission to repeal or modify those regulations it determines, based upon the statutory standard, to be no longer necessary in the public interest.¹³¹ The record overwhelmingly demonstrates that, based upon the maturity

¹²⁰ *Id.*, 15 FCC Rcd at 10548, para. 64.

¹²¹ 47 C.F.R. § 2.906.

¹²² *Notice*, 15 FCC Rcd at 10548, para. 64.

¹²³ 47 C.F.R. § 2.902(a).

¹²⁴ 47 C.F.R. § 68.3(b)(3).

¹²⁵ *MRA Order*, 13 FCC Rcd at 24691, 24707, paras. 10, 45.

¹²⁶ *Notice*, 15 FCC Rcd at 10548, para. 64.

¹²⁷ *Id.*, 15 FCC Rcd at 10551-552, para. 74-75.

¹²⁸ *See* 47 U.S.C. § 151.

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

¹³⁰ *See* 47 U.S.C. § 161(a).

¹³¹ *See* 47 U.S.C. § 161(b).

and competitiveness of the terminal equipment manufacturing market and the telecommunications services industry, it is in the public interest for private industry to self-regulate conformance of terminal equipment to the Administrative Council's technical criteria.¹³² Our decision in this Order to privatize the terminal equipment registration process will reduce unnecessary costs and delays currently imposed upon manufacturers and the Commission without measurably increasing the possibility of harm to the network.¹³³ Thus, upon weighing the substantial benefits of accelerating the terminal equipment approval process against the unlikely possibility of any cost increases associated with harm to the PSTN that may result from a decreased presence of the Commission in the approval process, we conclude that it is no longer in the public interest for the Commission to continue its Part 68 registration functions. Accordingly, the Commission shall cease accepting applications for Part 68 registration 180 days after publication of this Order in the Federal Register and the Administrative Council shall begin to assume all the responsibilities assigned herein.

83. We conclude that privatization of the terminal equipment approval process will continue to provide the same degree of protection to the PSTN as the current Commission Part 68 registration and approval process, while significantly increasing the efficiency of the approval process. We agree with the majority of commenters, including equipment manufacturers, testing laboratories, carriers, and other providers of telecommunications, that the Commission should privatize the equipment approval process for several reasons.¹³⁴ First, privatization will reduce product approval times and enable manufacturers to bring their products to market at an accelerated pace.¹³⁵ Thomson estimates that in this era of intense terminal equipment competition, the cost to consumers and manufacturers of the Commission's current registration process can amount to millions of dollars per year industry-wide.¹³⁶ We agree with Thomson and other commenters that relieving the industry and consumers of any unnecessary delay will further enhance the competitive robustness of the terminal equipment market.¹³⁷ Second, we are persuaded by Nortel and ITI that the competitive nature of terminal equipment market, which demands quality products, gives rise to strong economic incentives for manufacturers to ensure compliance with relevant technical criteria, thereby protecting the network from harm.¹³⁸ As evidence

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

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

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

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

¹³⁶ 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.

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

¹³⁸ Nortel Comments at 10; ITI Comments at 5.

of these incentives, Nortel and ITI point out that there is an absence of non-compliance with the Commission's requirements.¹³⁹ Finally, we are persuaded that the new privatized equipment approval process will bring newer technologies to end user customers more expeditiously than the current Commission approval process.

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

B. Equipment Approval Methods

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

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

¹³⁹ Nortel Comments at 9; ITI Comments at 7.

¹⁴⁰ *Notice*, 15 FCC Rcd at 10548, 10549, paras. 64, 67.

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

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

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

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

¹⁴⁵ We define the term supplier as the responsible party.

places strong market incentive upon the supplier to test thoroughly its products.¹⁴⁶

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

1. Approval by Telecommunications Certification Bodies (TCBs)

a. Background

88. In 1998, we established in the *MRA Order* an alternative procedure to direct Commission approval of terminal equipment, whereby terminal equipment suppliers may submit their products to private telecommunications certification bodies (TCBs) for terminal equipment registration.¹⁴⁸ The TCB procedure requires the Commission to designate private entities as TCBs to approve equipment as complying with the Commission requirements in lieu of the Commission continuing its current Part 68-registration process.¹⁴⁹ The TCB program was designed in connection with Mutual Recognition Agreements/ Arrangements (MRAs)¹⁵⁰ between the United States and the European Community (EC)¹⁵¹ and the Asia-Pacific Economic Cooperative (APEC)¹⁵² to facilitate market access and competition in the provision of telecommunications products that require testing and/or approval.¹⁵³ Under the MRAs, TCBs satisfying the qualification criteria specified in the relevant MRA may certify equipment for export.¹⁵⁴ Similarly, suppliers seeking to import equipment into the United States may seek certification of conformance to U.S. standards from foreign entities designated in the MRAs.¹⁵⁵ Thus, once fully effective, the MRAs will ensure mutual recognition of equipment approval between

¹⁴⁶ ITI Comments at 5; Nortel Comments at 10.

¹⁴⁷ *See infra* paras. 89-92, 97-105.

¹⁴⁸ *MRA Order*, 13 FCC Rcd at 24693, para. 14.

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

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

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

¹⁵² *Id.*, 13 FCC Rcd at 24712, paras. 57-58.

¹⁵³ *Id.*, 13 FCC Rcd at 24714, para. 63.

¹⁵⁴ Under the US/EC MRA, products can be tested and certified in the United States for conformance with EC member states’ technical requirements. The certified products may be shipped directly to Europe without any further testing or certification. In return the MRA obligates the United States to permit parties in Europe to test and authorize equipment based on the United States technical requirements. The US/EC MRA thereby promotes bilateral market access and competition in the provision of telecommunications products and electronic equipment. *MRA Order*, 13 FCC Rcd at 24711-712, paras. 53-56.

¹⁵⁵ This includes foreign TCBs.

the United States and other countries that commit themselves to the agreements.¹⁵⁶

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

b. Discussion

90. We conclude that terminal equipment must be approved in accordance with the requirements set out herein. Suppliers may seek approval of all Part 68 terminal equipment from a TCB of the supplier's choice. Our decision to complete the transfer of terminal equipment approval authority to TCBs is well supported in the record.¹⁶⁰ First, we agree with several commenters who argue that the TCBs will be able to perform effectively the Commission's terminal equipment approval functions for both domestic and international purposes within a short time after they are designated by the Commission, and our own experience with the TCBs thus far reinforces this conclusion.¹⁶¹ Although the TCB program has been functional for only a short period of time, we estimate that TCBs are currently handling ten percent of domestic equipment approval applications,¹⁶² and it appears, as Phonex argues, that TCBs are already significantly reducing approval time.¹⁶³ Although the current Part 68 registration process operates in an expeditious manner,¹⁶⁴ as we stated in the *MRA Order*, the TCB system may prove to be significantly faster since suppliers can select from several different approval bodies and can choose one with a shorter processing time.¹⁶⁵ Manufacturer endorsement of TCB

¹⁵⁶ *MRA Order*, 13 FCC Rcd at 24711-712, para. 56.

¹⁵⁷ *Id.*, 13 FCC Rcd at 24691-693, paras. 10-14.

¹⁵⁸ *Notice*, 15 FCC Rcd at 10549-50, paras. 67.

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

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

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

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

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

¹⁶⁴ *See supra* n.138.

¹⁶⁵ *MRA Order*, 13 FCC Rcd at 24693, para. 14.

approval of terminal equipment further strengthens our belief that TCBs will expeditiously review terminal equipment approval requests, because manufacturers have a strong interest in ensuring that their products are available in the market as quickly as possible.¹⁶⁶ Thus, we are confident that, due to their greater resources and the market forces of competition, TCBs will perform the equipment approval function in an expeditious yet thorough manner.

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

92. Third, providers of telecommunications services recognize the TCBs' ability to register equipment in a manner that will protect the network from harm.¹⁷⁰ As we stated in the *Notice*, the carriers that own and operate the PSTN have an interest in ensuring that terminal equipment is reviewed competently.¹⁷¹ Thus, carrier support of TCBs further persuades us of their ability to assume the responsibility for terminal equipment approval. Indeed, carriers were significant participants in the industry consensus process leading up to development of TCBs. We agree with the expectation of several commenters that TCBs will provide independent, third party scrutiny of equipment, perform on-going compliance and auditing functions, and give expert guidance to the Commission to facilitate resolution of complaints.¹⁷²

93. Fourth, large and small manufacturers alike agree that TCBs are an important part of the equipment approval process,¹⁷³ because TCBs provide an internationally recognized means of assessing equipment conformity. Lucent and Phonex assert that some manufacturers may prefer TCB certification because these manufacturers may be unable to conduct thoroughly in-house testing.¹⁷⁴ TCBs will provide manufacturers an equipment approval alternative that has proven to be effective and is widely recognized. Phonex, a small manufacturer, expresses concern that it will face discrimination on its self-declaration of compliance in some countries because small manufacturers lack bargaining power of large suppliers through domestic and foreign

¹⁶⁶ TIA Comments at 22; Phonex Comments 4-5; UL Comments; Lucent Comments at 6.

¹⁶⁷ See *MRA Order*, 13 FCC Rcd at 24693, para. 14.

¹⁶⁸ *Id.*, 13 FCC Rcd at 24698-699, paras. 25-26.

¹⁶⁹ GTE Comments at 5.

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

¹⁷¹ *Notice*, 15 FCC Rcd at 10549-50, paras. 67.

¹⁷² Bell Atlantic Comments at 2; GTE Comments at 5; SBC Reply Comments at 2-3.

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

¹⁷⁴ Lucent Comments at 6; Phonex Comments at 4-5.

distributors.¹⁷⁵ We recognize that larger manufacturers may hold an advantage over small manufacturers due to brand recognition. Because TCBs will continue to approve terminal equipment, we believe smaller manufacturers will have a competitively viable option of seeking terminal equipment approval, and thus will not be harmed by the Commission's adoption of an alternative approval method, SDoC, as discussed below. Thus, we are persuaded that when an equipment supplier chooses to seek certification from a TCB, TCBs will effectively assume the Commission's current responsibilities of terminal equipment approval in an efficient and nondiscriminatory manner.

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

a. Background

94. In addition to TCB certification, we consider three other proposed types of equipment approval procedures described below. The first two, declaration of conformity (DoC) and verification, are defined in Part 2 of the Commission's rules and currently are used for Part 15 (Radio Frequency Devices) equipment approval. The third type, supplier's declaration of conformity (SDoC), is an equipment approval method supported by several commenters¹⁷⁶ and defined in the International Organization for Standardization and International Electrotechnical Commission (ISO/IEC) Guide 22.¹⁷⁷ These approval procedures are distinguishable by whether they require laboratory accreditation and whether they require the "responsible party,"¹⁷⁸ or supplier, to certify conformance with industry standards. In order to clarify the definition and use of these terms, we set out below a detailed explanation of each type of conformity assessment, highlighting the similarities and differences.

95. *Declaration of Conformity.* In the *Notice*, we proposed allowing suppliers to use the declaration of conformity process (DoC) for Part 68 terminal equipment, as defined in Part 2 of the Commission's rules.¹⁷⁹ DoC is an equipment approval procedure under which the party responsible for the equipment's compliance with specific technical parameters, the manufacturer, importer, or assembler, causes measurements to be made of equipment performance to determine compliance with the standards.¹⁸⁰ The party performing such measurements must be accredited for doing so by either the National Institute of Standards and Technology (NIST) or the American Association for Laboratory Accreditation (AALA).¹⁸¹ Unlike the TCB approval process, the DoC procedure does not require the Commission to designate which testing facilities are appropriate. This DoC procedure is generally recognized for radio frequency equipment by foreign jurisdictions

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

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

¹⁷⁷ ISO/IEC Guide 22 at § 2.4 (n.2).

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

¹⁷⁹ 47 C.F.R. § 2.906.

¹⁸⁰ *Id.*

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

through the MRAs into which the U.S. has entered into with the EC and APEC.¹⁸² In the *Part 15 Streamlining Order*, we stated that DoC provides added safeguards (over verification) that are necessary to ensure compliance for certain products that have a greater potential for causing interference or where issues about proper measurement method may arise.¹⁸³

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

97. *Supplier's Declaration of Conformity.* In addition to the proposals set forth by the Commission, ITI, Nortel, and Hewlett-Packard propose that the Commission implement a supplier's declaration of conformity (SDoC) procedure.¹⁸⁶ In the Notice, we sought comment on this procedure.¹⁸⁷ SDoC, as defined in ISO/IEC Guide 22¹⁸⁸ and currently used in the European Union, is a hybrid of the DoC and verification procedures currently in Part 2 of the Commission's rules.¹⁸⁹ Unlike the Commission's DoC process, SDoC does not require testing of the equipment by an accredited laboratory. The SDoC process does, however, require responsible parties to test for and declare conformity of their own equipment with required technical criteria, or at their option, have it tested by an independent laboratory. Although the procedures are similar, SDoC differs from verification because under SDoC, equipment is accompanied by a formal SDoC statement identifying the party responsible for the product's compliance with appropriate technical standards to ensure accountability for equipment attached to the PSTN. In addition, whereas the term SDoC is internationally defined and understood, the term verification is Commission defined.

b. Discussion

98. We conclude that, as an alternative to TCB certification of terminal equipment, suppliers also have the option of utilizing the SDoC procedure as defined in the ISO/IEC Guide 22 and clarified below to meet Commission requirements.¹⁹⁰ We are persuaded that there are many benefits to permitting suppliers to show

¹⁸² *MRA Order*, 13 FCC Rcd at 24713, para. 61.

¹⁸³ *Part 15 Streamlining Order*, 13 FCC Rcd 11415, at para. 12.

¹⁸⁴ *Notice*, 15 FCC Rcd at 10548, para. 64.

¹⁸⁵ 47 C.F.R. § 2.909(b).

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

¹⁸⁷ *Notice*, 15 FCC Rcd at 10550, para. 70.

¹⁸⁸ ISO/IEC Guide 22 at § 2.4 (n.2).

¹⁸⁹ 47 C.F.R. § 2.909(b).

¹⁹⁰ ISO/IEC Guide 22 at § 2.4 (n.2). We note that, as UL argues, the Commission the Commission declined to implement the DoC procedure for Part 68 equipment in the *MRA Order*, however, we stated that we may (continued....)

compliance with the Administrative Council's technical criteria by utilizing the SDoC process. We agree with several commenters that the SDoC process would significantly reduce the complexities, costs, and delays associated with pre-market approval while providing sufficient assurance that the terminal equipment complies with the technical criteria designed to prevent harm to the PSTN.¹⁹¹

99. We are not persuaded by commenters arguing that accreditation of testing facilities, as required by DoC but not by SDoC, is essential to protecting the PSTN.¹⁹² Under the Commission's SDoC process, the supplier is required to test accurately the equipment and provide a written declaration that the terminal equipment conforms to applicable Administrative Council technical criteria.¹⁹³ The declaration shall include, at the minimum, (1) the identification and a description of the supplier and the product, (2) a conformity statement and referenced standards, (3) the date and place of issue of the declaration, and (4) the signature, name and function of person making declaration.¹⁹⁴ We require the supplier to notify the Administrative Council of any changes in this information. We are convinced, as several commenters argue, that in the competitive terminal equipment market, accreditation of testing laboratories is not necessary.¹⁹⁵ Current equipment approval procedures, which do not require the testing laboratories to be accredited, have proven to be so successful that the Commission is able to undertake this present streamlining initiative. Moreover, we agree with Nortel and ITI that there is virtually no record of non-compliance with the Commission's technical criteria for terminal equipment.¹⁹⁶

100. Furthermore, as part of the SDoC process defined herein, requiring suppliers to seek equipment approval from an accredited test laboratory or TCB would impose additional cost and delays to the equipment approval process.¹⁹⁷ Although UL and Verizon dispute this conclusion,¹⁹⁸ we are persuaded by ITI's estimate that permitting suppliers to select SDoC as an alternative to TCB certification of terminal equipment would

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reconsider that decision. Based upon a complete record that includes further supporting evidence present market and regulatory conditions, we now find that there is sufficient evidence to adopt the SDoC procedure in this Order. UL Comments; *MRA Order*, 13 FCC Rcd at 24692-693, para. 13.

¹⁹¹ ITI Comments at 4-6; HP Comments at 3.

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

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

¹⁹⁴ ISO/IEC Guide 22.

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

¹⁹⁶ Nortel Comments at 9; ITI Reply Comments at 2.

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

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

accelerate, by a matter of days or even weeks, the availability of equipment to the marketplace.¹⁹⁹ In contrast, requiring the DoC procedure where suppliers would be forced to have their equipment approved by an accredited lab would force suppliers to either undergo costly accreditation procedures or to suffer additional costs and delays by seeking third party approval of their equipment from an accredited lab. In balancing the relatively low risks that testing and measurement procedures of unaccredited laboratories may permit noncompliant equipment to be connected to the PSTN against the additional costs accreditation may impose upon suppliers and consumers alike, we conclude that requiring, as opposed to permitting, suppliers to use accredited testing laboratories is not in the public interest.

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

102. Finally, permitting suppliers to use the internationally defined and recognized SDoC process, as clarified to meet Commission requirements, is consistent with international trends and thus should lower transaction costs for suppliers seeking to import or export terminal equipment into or out of the United States.²⁰⁰ We agree with Nortel that SDoC will reduce costs and delays for multinational suppliers while ensuring that small businesses seeking to export or import terminal equipment are not subjected to duplicative testing and certification requirements.²⁰¹ As Nortel explains, the adoption of SDoC procedures will facilitate the use of the mutual recognition process with those countries, such as the member states of the EC, that have adopted or will adopt SDoC procedures.²⁰² To benefit from the MRAs, exporters must conform to the standards and testing requirements of the country into which they are making their terminal equipment available.²⁰³ Thus, domestic suppliers seeking to export terminal equipment to countries that have not adopted SDoC procedures, or with whom the Commission has not entered into MRAs have the option of using SDoC or testing procedures that

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

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

²⁰¹ Nortel Comments at 10.

²⁰² Nortel Comments at 9.

²⁰³ *See generally* *MRA Order*, 13 FCC Rcd 24687.

receive mutual recognition. For example, if the importing country requires testing by an accredited laboratory, in order to receive the benefits of the MRA, the supplier must comply with the relevant testing requirements and conform to stricter approval procedures than we adopt today. Suppliers seeking to export that do not have sufficient in house testing facilities to satisfy the testing requirements of foreign countries may utilize TCBs or other appropriate testing procedures.

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

104. Furthermore, wireline providers of telecommunications will continue to be able to require disconnection of non-compliant terminal equipment.²⁰⁴ These entities have a strong incentive to identify and disconnect noncompliant equipment causing any harms to the network. Although BellSouth argues that the ability of these entities to disconnect noncompliant equipment from the network is not effective in preventing large scale instances of noncompliance,²⁰⁵ as stated above, the record and the Commission's experiences demonstrate that there have been few instances where noncompliance of terminal equipment causes any harms.²⁰⁶

Moreover, suppliers that fail to comport with the rules established by the Commission or by the Administrative Council may face enforcement action from the Commission. We are confident that, by adopting two safe and effective methods of equipment approval, TCB approval and SDoC, our procedures will allow suppliers to develop and bring to market products incorporating new features and technology in an efficient manner that will decrease delays, encourage deployment of new technology, and lower costs to consumers.²⁰⁷

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

²⁰⁴ 47 C.F.R. § 68.108.

²⁰⁵ BellSouth Reply Comments at 2.

²⁰⁶ Nortel Comments at 9; ITI Comments at 1.

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

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

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

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

C. Database of Approved Equipment

1. Background

107. In the *Notice*, we tentatively concluded that a database of all registered terminal equipment should be maintained, regardless of whether the equipment is approved by a TCB or some form of declaration of conformity. We proposed that a private entity assume responsibility for sponsoring and maintaining a database that would replace the Commission's current database of Part 68 registrations.²¹³ The Commission's database of approximately 30,000 Part 68 registrations contains equipment identification information, applicant identity, and technical information. In order to ensure that the database has sufficient information to support re-registrations, to respond to inquiries from U.S. (and foreign) customs services as to the validity of registrations, and to respond to consumer inquiries regarding the identity of the supplier of a particular piece of terminal equipment, we currently require TCBs to use Form 730 to submit information to the Commission on approved equipment.²¹⁴ We proposed in the *Notice* that, once this Commission is no longer engaged directly in registering terminal equipment, we cease our direct involvement in this area and no longer require TCBs to submit any information directly to this Commission or to use Form 730.²¹⁵ We sought comment on what information we should require to be submitted into a national database by parties using suppliers' declaration of conformity procedures, and how that information would be submitted.²¹⁶ In addition, we proposed that entities obtaining equipment approval be required to submit pertinent information regarding their identity and approved equipment to a database administrator.²¹⁷ Furthermore, we proposed requiring that the database of approved terminal equipment remain

²¹⁰ 47 C.F.R. § 2.902.

²¹¹ Nortel Comments at 9.

²¹² Nortel Comments at 9.

²¹³ *Notice*, 15 FCC Rcd at 10552, para. 77.

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

²¹⁵ *Notice*, 15 FCC Rcd at 10552, para. 77.

²¹⁶ *Notice*, 15 FCC Rcd at 10552, para. 76.

accurate and readily available at a reasonable cost to users.²¹⁸

2. Discussion

108. In light of our efforts to privatize the equipment approval process, we agree with Nortel, ITI, and other commenters that it will no longer be necessary for this Commission to maintain a database of compliant equipment.²¹⁹ We are convinced, however, that the continuation of a uniform, nationwide database is essential to protecting the public interest. Such a database will permit interested parties such as the Commission, providers of telecommunications, and consumers to track and identify suppliers or importers of non-compliant equipment.²²⁰ As such, the database should ameliorate concerns regarding the potentially adverse impact of non-compliant terminal equipment on the PSTN by ensuring that suppliers are held accountable for any damage their equipment may cause to the PSTN.²²¹ Thus, we adopt our tentative conclusion that a nationwide database of all approved terminal equipment should be maintained, regardless of whether the equipment is approved by a TCB or through the SDoC process. In lieu of the Commission continuing to maintain and manage the database of all terminal equipment, we agree with the majority of commenters that the Administrative Council should assume these responsibilities.²²² We find compelling TIA's argument that the details of the database structure, content, and maintenance are better left to the Administrative Council to establish.²²³ We believe that, after privatizing the registration process, industry will be in a better position than the Commission to assess the database requirements and to develop and implement such requirements and accompanying procedures.²²⁴

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

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²¹⁷ 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).

²¹⁸ Notice, 15 FCC Rcd at 10552, para. 76.

²¹⁹ Nortel Comments at 11; ITI Comments at 6.

²²⁰ Lucent Comments at 6.

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

²²² GTE Comment at 4; ITI Comments at 6; Lucent Comments at 6; Nortel Comments at 11; Bell Atlantic Comments at 6.

²²³ TIA Comments at 24,

²²⁴ TIA Comments at 22-23.

²²⁵ See e.g., HP Comments at 5; Lucent Comments at 6.

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

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

D. Numbering and Labeling

1. Background

112. *Numbering.* In the *Notice*, we sought comment on the best method, under a privatized Part 68, to assign registration numbers to equipment.²²⁹ Currently, we assign registration numbers to applicants when they seek Part 68 equipment approval directly from the Commission. In addition, we provide TCBs with blocks of registration numbers to assign to applicants when they seek TCB approval of Part 68 equipment. We proposed in the *Notice* to combine the requirement for an FCC Registration Number under Part 68 with the FCC Identifier requirement of section 2.926 of our rules²³⁰ that is used for radio equipment approved by the Commission.²³¹ We also proposed to use the current Part 15 coding scheme for terminal equipment currently registered under Part 68 and sought comment on how that scheme can be applied reasonably to Part 68 equipment. Under this proposal, a given equipment model will have only one number associated with it that is used to document its status. As an alternative approach, we sought comment on TIA's suggestion that a three-character grantee code, which is already assigned to existing manufacturers under the TCB approval process, would eliminate the requirement for individual product registration numbers.²³²

113. *Labeling.* We tentatively concluded in the *Notice* that, although the Commission will no longer be responsible for terminal equipment registration, some form of unique identifying label must be applied to all

²²⁶ GTE Comments at 4.

²²⁷ ITI Comments at 7

²²⁸ *See infra* para. 78 for transfer of responsibility to the Administrative Council.

²²⁹ *Notice*, 15 FCC Rcd at 10553-554, para. 82.

²³⁰ 47 C.F.R. § 2.926.

²³¹ *Notice*, 15 FCC Rcd at 10554, para. 83.

²³² TIA Comments, filed July 29, 1999, at 13.

terminal equipment.²³³ These labels are necessary to identify adequately terminal equipment as an approved piece of terminal equipment that customers are entitled to connect to the PSTN. We proposed a harmonized label for equipment subject to either or both Part 15 and Part 68.²³⁴

2. Discussion

114. We agree with TIA that, subject to fulfilling the requirements of government and industry for information, the Administrative Council shall develop any terminal equipment numbering and labeling requirements it deems reasonable and necessary.²³⁵ We are persuaded by TIA that industry committees are better positioned than the Commission to assess the future need for labeling and database requirements and to develop such requirements.²³⁶ Accordingly, we will not promulgate specific rules for numbering and labeling as we proposed in the *Notice*. Instead, we defer to the Administrative Council to resolve, as it deems reasonable and necessary, specific issues regarding labeling and numbering we raised in the *Notice*. Furthermore, we defer the responsibility to maintain and alter as they deem reasonable and necessary the customer instructions rules to the Administrative Council.²³⁷ However, if the Administrative Council chooses to continue the practice of utilizing a designated “FCC” number, we direct the Administrative Council to include in its labeling requirements a warning that the Commission no longer directly approves or registers terminal equipment. We recognize that Part 68 requirements for numbering and labeling are issues that are already being addressed by TIA Committee TR41²³⁸ and that the TCB Administrative Council is already addressing the numbering system for equipment certified by TCBS.²³⁹

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

²³³ *Notice*, 15 FCC Rcd at 10553, para. 81.

²³⁴ 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.

²³⁵ See TIA Sept. 26, 2000 *Ex Parte* at 2-3.

²³⁶ TIA Comments at 22-23.

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

²³⁸ TIA Comments at 24.

²³⁹ See TIA Sept. 26, 2000 *Ex Parte* at 2-3.

²⁴⁰ *Id.*

numbering and labeling requirements, we require the Administrative Council to report its progress in fulfilling these requirements to the Commission within 180 days of the publishing of this Order in the Federal Register.²⁴¹

E. Enforcement of Equipment Compliance

1. Background

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

117. Our rules implementing TCB operations provide further enforcement support.²⁴⁸ TCBs are required by our rules to conduct an ongoing surveillance of terminal equipment to ensure that such equipment complies with applicable technical criteria.²⁴⁹ In addition, our rules allow parties to report to the Commission any deficiencies discovered in connection with the surveillance program. We proposed no change in this basic procedure, and indeed we believe it to be an advantage in using the TCB program for terminal equipment registration. Finally, a TCB may revoke its own certification of terminal equipment for a period of 30 days after the date of action for an administrative error, but any other certification revocation must be addressed by the Commission.²⁵⁰ We did not propose to change these rules at this time, although we noted we could revisit them at a later date with an eye to reducing our involvement in this program.²⁵¹

118. In the *Notice*, we proposed to retain ultimate responsibility to enforce compliance with our

²⁴¹ See *supra* paras. 77-79.

²⁴² *Notice*, 15 FCC Rcd at 10555-6, paras. 88-89.

²⁴³ *Id.*, 15 FCC Rcd at 10555, para. 88.

²⁴⁴ 47 C.F.R. § 68.108.

²⁴⁵ *Notice*, 15 FCC Rcd at 10555, para. 88.

²⁴⁶ *Id.*, 15 FCC Rcd at 10555, para. 88.

²⁴⁷ *Id.*, 15 FCC Rcd at 10555, para. 88.

²⁴⁸ 47 C.F.R. §§ 68.160, 68.162.

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

²⁵⁰ 47 C.F.R. § 68.162.

²⁵¹ *Notice*, 15 FCC Rcd at 10555-556, para. 89.

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

2. Discussion

119. The Chairman's Strategic Plan for the FCC in the 21st Century makes clear that enforcement is an essential component of deregulation of competitive markets.²⁵⁶ We agree with Phonex that without strict enforcement, the operation of competitive markets may suffer.²⁵⁷ Thus, although we are eliminating our direct involvement in approval of terminal equipment, we will continue to make it a priority to ensure that both imported and domestically manufactured terminal equipment is compliant with the required technical criteria for such equipment. We note that a number of commenters urge us to maintain or even increase our enforcement of terminal equipment compliance.²⁵⁸ We believe that our current level of enforcement has ensured an excellent level of terminal equipment compliance; no evidence exists on the record to the contrary, and indeed the Commission receives very few complaints of unregistered or non-compliant terminal equipment. We assure all interested parties that we will in no way reduce our enforcement functions nor our cooperation with the U.S. Customs Service with regard to terminal equipment compliance. We also note that none of the provisions in this Order diminish the obligations set forth in section 255.²⁵⁹

120. Moreover, we agree with Bell Atlantic that section 68.108²⁶⁰ of our rules will remain in effect, allowing carriers to protect their network from the rare occurrence of faulty terminal equipment, and allowing customers to bring a complaint to the Commission.²⁶¹ We believe that this is a common-sense approach to permit immediate self-help to providers of telecommunications services whose networks are being harmed, or whose other customers are being affected, by harmful terminal equipment. A carrier disconnecting faulty terminal equipment must also inform the customer of his or her rights to file a complaint with the Commission.²⁶²

²⁵² *Id.*, 15 FCC Rcd at 10556, para. 90.

²⁵³ *Id.*, 15 FCC Rcd at 10555-556, paras. 88-92.

²⁵⁴ *Id.*, 15 FCC Rcd at 10556, para. 90.

²⁵⁵ 47 C.F.R. § 68.400(c).

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

²⁵⁷ Phonex Comments at 6.

²⁵⁸ TIA Comments at 22; ITI Comments at 2; GTE Comments at 6; Bell Atlantic Comments at 9; ATIS Comments at 9.

²⁵⁹ 47 C.F.R. § 255.

²⁶⁰ 47 C.F.R. § 68.108.

²⁶¹ Bell Atlantic Comments at 2.

²⁶² 47 C.F.R. § 68.108(c).

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

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

1. Background

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

2. Discussion

123. We conclude that we should adapt the most recent version of the disability complaint procedures for Part 68 complaints of hearing aid compatibility and volume control rule violations, and change our rules accordingly. We are committed to ensuring that persons with disabilities and other consumers continue to receive the full level of enforcement that they currently receive from us. We agree with GTE and SHHH that the Commission should continue to maintain the Part 68 hearing aid compatibility and volume control rules, registration, and complaint procedures.²⁶⁵ As noted above, we intend to maintain the Part 68 hearing aid compatibility and volume control rules that we have promulgated in response to statutory directives, rather than using a privatized industry process to establish or maintain the technical criteria ensuring hearing aid compatibility and volume control. We will, however, amend the Part 68 complaint procedures to incorporate the informal complaint process established pursuant to Sections 255 and 225. We agree with SHHH that these rules specifically take into account complaints regarding telecommunications issues affecting persons with hearing disabilities, and are designed to be more consumer responsive.²⁶⁶ We note, however, that we do not modify the Part 68 rules at this time to incorporate the formal complaint procedures established under these sections of the Communications Act.

124. Under our new rules, complainants are encouraged first to attempt to contact the supplier of terminal equipment with regard to their informal complaint.²⁶⁷ In a previous proceeding, we established procedures for informal complaints that give a fair amount of information to the supplier without burdening the

²⁶³ 47 C.F.R. § 68.102. *See generally* 47 C.F.R. § 400.

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

²⁶⁵ GTE Comments at 7; SHHH Comments at 1-3.8

²⁶⁶ SHHH Comments at 2.

²⁶⁷ *See* Appendix B for specific rules.

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

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

²⁶⁸ See generally Section 255 Order, FCC 99-181.

²⁶⁹ *Id.*, FCC 99-181 at para. 123.

²⁷⁰ See Appendix B for specific rules.

²⁷¹ *Id.*

²⁷² *Id.*

²⁷³ *Id.*

²⁷⁴ *Id.*

²⁷⁵ *Id.*

²⁷⁶ *Id.*

²⁷⁷ *Id.*

²⁷⁸ *Id.*

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

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

G. ADAA Certification Requirements

1. Background

128. In the *Notice*, we stated that the Anti-Drug Abuse Act (ADAA)²⁸² requires an entity receiving a “federal benefit” to certify compliance with ADAA requirements.²⁸³ In our decision implementing the ADAA, we applied the definition of “license” found in the Administrative Procedures Act (APA)²⁸⁴ 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.²⁸⁵ 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.”²⁸⁶ Pursuant to this definition, the Commission found that registration of Part 68 equipment to be connected to the telephone network is included within the scope of the ADAA.²⁸⁷ In the *Notice*, we sought comment on whether the proposed DoC or verification procedures require certification of ADAA compliance.²⁸⁸ In addition, we requested comment on whether any conflict would exist between use of the TCB procedure on the one hand, which currently requires approval under the ADAA, and the use of DoC and/or verification procedures on the other hand, which potentially might not be subject to ADAA requirements. We also requested comment on whether any ADAA

²⁷⁹ 47 C.F.R. Part 68, Subpart E.

²⁸⁰ See Appendix B for specific rules.

²⁸¹ 47 U.S.C. §§ 255, 225.

²⁸² 21 U.S.C. § 862; 47 C.F.R. §§ 1.2001 - 1.2003.

²⁸³ *Notice*, 15 FCC Rcd at 10553, para. 78.

²⁸⁴ 5 U.S.C. § 551(8).

²⁸⁵ *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*).

²⁸⁶ 5 U.S.C. § 551(8).

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

²⁸⁸ *Notice*, 15 FCC Rcd at 10553, para. 79.

approval continues to be required if we adopt the privatization and streamlining proposals discussed herein.

2. Discussion

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

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

V. PROCEDURAL MATTERS

A. Final Regulatory Flexibility Analysis

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

B. Paperwork Reduction Act

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

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

²⁹⁰ *Id.*, 6 FCC Rcd at 7551, para. 6.

VI. ORDERING CLAUSES

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

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

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

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

APPENDIX A: Final Regulatory Flexibility Analysis

136. As required by the Regulatory Flexibility Act (RFA), 5 USC 603, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice* in this docket, CC Docket No. 99-216.²⁹¹ The Commission sought written public comment on the proposals in the *Notice*, including comment on the IRFA.²⁹² This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA, 5 USC § 604.

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

137. This rulemaking proceeding was initiated in order to streamline and privatize Part 68 of the Commission's rules. Section 151 of the Communications Act and the statutory authority relied upon by the Commission to implement Part 68 in the first instance²⁹³ do not *require* that the Commission establish technical criteria for the attachment of terminal equipment to the PSTN or to register directly every type of terminal equipment before it can be interconnected with the public switched telephone network. Rather, this statutory authority *permits* the Commission to adopt reasonable regulations to ensure that terminal equipment does not cause harm to the PSTN, consistent with the public interest. Furthermore, under the Telecommunications Act of 1996 (1996 Act), Congress directed the Commission to examine its rules applying to the operation or activities of any provider of telecommunications service every two years and determine whether "any such regulation is no longer in the public interest as the result of meaningful economic competition between providers of such service."²⁹⁴ Congress directed the Commission to repeal or modify those regulations it determines, based upon the statutory standard, to be no longer necessary in the public interest.²⁹⁵ The record overwhelmingly demonstrates that, based upon the maturity and competitiveness of the terminal equipment manufacturing market and the telecommunications services industry, it is in the public interest for private industry to establish technical criteria for the connection of technical equipment to the PSTN and to self-regulate conformance of terminal equipment to the Administrative Council's technical criteria.

138. The Commission finds that industry rather than Commission development of technical criteria will decrease development time and allow suppliers to bring innovative consumer products, especially for the provision of advanced services, to the market on an expedited basis. This expedited process should benefit consumers by lowering the costs of terminal equipment and by ensuring that new technologies are widely available. The process of developing and maintaining technical criteria will be accomplished as follows. Any standards development organization (SDO), accredited under the ANSI Organization Method or the Standards Committee Method, can establish technical criteria for terminal equipment pursuant to ANSI consensus decision-making procedures, and submit such criteria to the Administrative Council for Terminal Attachments established by industry. The Administrative Council would review the criteria only for supporting documentation from the SDO certifying that the submitted technical criteria are not duplicative or in conflict with any other existing technical criteria required for terminal equipment. The Administrative Council must publish the submitted

²⁹¹ See generally *Notice*, 15 FCC Rcd at Appendix B.

²⁹² See *Notice*, 15 FCC Rcd at 10561, para. 106.

²⁹³ 47 U.S.C. § 151. 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 Order*, 56 FCC 2d at 613.

²⁹⁴ 47 U.S.C. § 161.

²⁹⁵ 47 U.S.C. § 161.

criteria as technical criteria for terminal equipment. Upon publication, the Commission would consider the technical criteria to be presumptively valid such that they comply with the rules for proscribing harm to the network, subject to *de novo* review on appeal.

139. Privatizing the terminal equipment registration process will reduce unnecessary costs and delays currently imposed upon suppliers and the Commission without measurably increasing the possibility of harm to the network.²⁹⁶ The Commission finds that registration of terminal equipment shall continue, but that suppliers may show compliance with the technical criteria through one of two means. First, suppliers may seek approval of terminal equipment's compliance with the relevant technical criteria from private Telecommunications Certification Bodies (TCBs). In the alternative, suppliers may show compliance through the Supplier's Declaration of Conformity (SDoC) method of equipment approval.

140. Upon weighing the substantial benefits of accelerating the terminal equipment approval process against the unlikely possibility of any cost increases associated with harm to the PSTN that may result from a decreased presence of the Commission in the approval process, it is no longer in the public interest for the Commission to continue its Part 68 registration functions. Accordingly, the Commission shall cease accepting applications for Part 68 registration 180 days after publication of this Order in the Federal Register and the Administrative Council shall begin to assume all the responsibilities assigned herein.

B. Legal Basis

141. In this Report and Order, we conclude that the Commission has the necessary statutory authority to adjust the Part 68 program as adopted herein. For example, the amendments 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" ²⁹⁷ Further, the amendments 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, *i.e.*, Sections 4(i), 4(j), 201-205, 215, 218, 313, 314, 403, 404 and 602. ²⁹⁸ Finally, as noted previously, the amendments will further the competitive goals of the recently enacted Telecommunications Act of 1996. ²⁹⁹

142. The Commission's action 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."³⁰⁰ 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 same time protecting the PSTN from harms that could be caused by the connection of faulty terminal equipment. ³⁰¹ Accordingly, we conclude that, in view of the changes in the industry and

²⁹⁶ See *supra* paras. 90-93, 98-106.

²⁹⁷ 47 U.S.C. §§ 201-205; see also *North Carolina Utilities Commission v. FCC*, 537 F.2d 787, 793-94 (4th Cir. 1976).

²⁹⁸ See *First Report and Order*, 56 FCC 2d at 613.

²⁹⁹ 47 U.S.C. §161.

³⁰⁰ *First Report and Order*, 56 FCC 2d at 599.

³⁰¹ *Id.*

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.

C. Summary of Significant Issues Raised by Public Comments in Response to the IRFA.

143. TIA notes that the proposal to have a single source for identifying technical criteria (Option A in the *Notice*) is likely to have a positive impact on the ability of small entities to participate in the development of technical criteria. A comparison of the attendance records of TIA's TR-41.9, Technical Regulatory Considerations Engineering Committee and that of this open docket shows a much more diverse community of interest in the TIA committee than those providing comments in this docket.³⁰² TIA further notes that ANSI requires notice to interested parties of standards actions, thus allowing more active participation in development or revision of standards. It states that most standards groups are using electronic working methods that make the process more accessible to small and medium sized organizations.³⁰³

144. Phonex urges the Commission carefully evaluate the effect on small business entities of any regulatory change before further streamlining Part 68.³⁰⁴ Phonex recommends that the Commission to wait 12 to 18 months for the TCB program to stabilize and to provide benefits before introducing any other change that could adversely affect small businesses, including suppliers.³⁰⁵ Redcom Labs contends that language needs to be added in any rulemaking by the Commission that reflects the language in the RFA 5 § USC 603(c), because the standards developed will have the force of law.³⁰⁶ Without language mirroring the RFA, Redcom Labs argues, it will be far too easy to ignore the needs of small companies or provide special consideration to small companies.³⁰⁷

D. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply.

145. 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.³⁰⁸ 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.³⁰⁹ 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.³¹⁰ 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.*

³⁰² TIA Comments at 10-11.

³⁰³ TIA Comments at 11.

³⁰⁴ Phonex Comments at 5.

³⁰⁵ Phonex Comments at 5.

³⁰⁶ Recom Labs Comments.

³⁰⁷ Recom Labs Comments.

³⁰⁸ 5 U.S.C. § 603(b)(3).

³⁰⁹ 5 U.S.C. § 601(3).

³¹⁰ 5 U.S.C. § 632.

FERC, 773 F.2d 327, 342-43 (D.C. Cir. 1985). The Commission's equipment authorization rules directly regulate only suppliers 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 analysis.

146. 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.³¹¹ 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.³¹² We estimate that there are fewer than 443 small manufacturers of terminal equipment that may be affected by the proposed rules.

E. Description of Projected Reporting, Recordkeeping, and other Compliance Requirements.

147. Reporting and Recordkeeping: This Report and Order involves several reporting requirements. No later than 180 days after the date of publication of this Order in the Federal Register, the Administrative Council shall publish the Part 68 rules we transfer to it by operation of the rules we adopt herein. No later than 180 days after publication of this Order in the Federal Register, the Administrative Council shall report to the Commission its progress in resolving outstanding numbering and labeling requirements. The Administrative Council must also establish and maintain a database of all approved or supplier-declared terminal equipment. Furthermore, suppliers are required to maintain a copy of their declaration of conformity, test labs results, and an explanation of the testing procedures utilized for 10 years after the equipment is no longer available on the market.

148. Other Compliance Requirements: No later than 30 days after publication of this Order in the Federal Register, TIA and ATIS, as the sponsoring organization for the Administrative Council for Terminal Attachment, shall notify the industry of their intent to establish and populate a Administrative Council. The Administrative Council shall be populated within 60 days after notice to the industry. No later than 60 days after the first official meeting of the Administrative Council, the Administrative Council shall establish, publish, and submit to the Commission a "charter" detailing its functions, operations, and standards for providing balanced membership. No later than 180 days after publication of this Order in the Federal Register, the Commission shall cease accepting applications for registration of Part 68 equipment and transfer responsibility for establishing and maintaining the database of approved equipment to the Administrative Council. No later than 30 days after the Administrative Council is populated, the Administrative Council shall convene its first official meeting.

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

149. 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:

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

³¹² 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).

- (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.

150. In the Notice, the Commission sought comment on several processes for establishing technical criteria and how suppliers may demonstrate conformity with those criteria.³¹³ The Commission also sought comment on how those processes would impact small manufacturers.³¹⁴ The Commission based its conclusion in the Order on the comments it received in this proceeding, including those submitted by smaller manufacturers.

151. In the Order, the Commission concluded that in establishing technical criteria, the Administrative Council must use procedures that will encourage all interested parties, including small manufacturers, to be involved in the standards setting process. With this decision, we considered the comments of TIA and of Redcom Laboratories that small businesses should be included in the process of developing technical criteria. The Commission acknowledged the needs of small businesses by choosing the option for development of technical criteria that the record showed would permit more small business input. In addition, the Commission entrusted affordable participation in the technical criteria development process by small businesses to the Administrative Council, while maintaining a right of Commission review of the industry processes should that be necessary.

152. Similarly, the Commission considered the needs of small suppliers by establishing a two-prong process for suppliers to demonstrate conformity with those criteria. Suppliers may choose to either seek approval of their equipment from TCBs or to provide a formal SDoC of their own equipment to the Administrative Council and to consumers. Large and small manufacturers alike agree that TCBs are an important part of the equipment approval process,³¹⁵ because TCBs provide an internationally recognized means of assessing equipment conformity. Lucent and Phonex assert that some manufacturers may prefer TCB certification because these manufacturers may be unable to conduct thoroughly in-house testing.³¹⁶ TCBs will provide manufacturers an equipment approval alternative that has proven to be effective and is widely recognized. Phonex, a small manufacturer, expresses concern that it will face discrimination on its self-declaration of compliance in some countries because small manufacturers lack bargaining power of large suppliers through domestic and foreign distributors.³¹⁷ We recognize that larger manufacturers may hold an advantage over small manufacturers due to brand recognition. Because TCBs will continue to approve terminal equipment, we believe smaller manufacturers will have a competitively viable option of seeking terminal equipment approval, and thus will not be harmed by the Commission's adoption of an alternative approval

³¹³ Notice, 15 FCC Rcd at 10534, 10548, paras. 23, 64.

³¹⁴ Notice, 15 FCC Rcd at 10561, para. 106.

³¹⁵ Lucent Comments at 6; Phonex Comments at 5. (We note that Phonex is opposed to the Commission's adopting any equipment approval process other than TCBs).

³¹⁶ Lucent at 6; Phonex at 4-5.

³¹⁷ Phonex Comments at 5. Overseas, American products with Part 68 grants are often accepted with no further proof of conformity assessment compliance. Phonex has encountered situations where other countries ask for European approval numbers, which Phonex can no longer provide them because of the implementation of the RTTE Directive in Europe requiring suppliers self-declaration. However, when applicable, these countries would accept Part 68 approval as proof of compliance with their import requirements. Phonex Comments at 4-5.

method, SDoC. Thus, when an equipment manufacturer chooses to seek certification from a TCB, TCBs will effectively assume the Commission's current responsibilities of terminal equipment approval in an efficient and nondiscriminatory manner. In the alternative, the Commission considered requiring all suppliers to seek TCB certification or approval from an accredited lab. These alternatives would have imposed unnecessary requirements, delays and costs on consumers and all suppliers, including those qualifying as small entities. Thus, adopting these alternative procedures would be contrary to the public interest, and therefore, Congress' mandate that the Commission eliminate unnecessary regulation to streamline its own procedures where the public interest dictates.

G. Report to Congress

153. The Commission will send a copy of this *Report and Order*, including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, *see* 5 § USC 801 (a)(1)(A). In addition, the Commission will send a copy of this *Report and Order*, including FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Report and Order*, and FRFA (or summaries thereof) will also be published in the Federal Register. *See* 5 § USC 604(b).

APPENDIX B: FINAL RULES

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

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

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

2) The table of contents of Part 68 is amended as follows:

PART 68—CONNECTION OF TERMINAL EQUIPMENT TO THE TELEPHONE NETWORK**Subpart A—General**

Sec.

68.1 Purpose.

68.2 Scope.

68.3 Definitions.

68.4 Hearing aid-compatible telephones.

68.5 Waivers.

68.6 Telephones with volume control.

68.7 Technical criteria for terminal equipment.

Subpart B—Conditions on Use of Terminal Equipment

68.100 General

68.102 Terminal equipment approval requirement.

68.105 Minimum point of entry (MPOE) and demarcation point.

68.106 Notification to provider of wireline telecommunications.

68.108 Incidence of harm.

68.110 Compatibility of the public switched telephone network and terminal equipment.

68.112 Hearing aid-compatibility.

68.160 Designation of Telecommunications Certification Bodies (TCBs)

68.162 Requirements for Telecommunications Certification Bodies

Subpart C—Terminal Equipment Approval Procedures

68.201 Connection to the public switched telephone network.

68.211 Terminal equipment approval revocation procedures.

68.213 Installation of other than “fully protected” non-system simple customer premises wiring.

68.215 Installation of other than “fully protected” system premises wiring that serves more than four subscriber access lines.

68.218 Responsibility of the party acquiring equipment authorization.

68.224 Notice of non-hearing aid compatibility.

Subpart D—Conditions for Terminal Equipment Approval

68.300 Approval of terminal equipment for connection to the public switched telephone network.

- 68.316 Hearing aid compatibility: technical requirements.
- 68.317 Hearing aid compatibility volume control: technical standards.
- 68.318 Additional limitations.
- 68.320 Supplier's Declaration of Conformity.
- 68.321 Location of responsible party.
- 68.322 Changes in name, address, ownership or control of responsible party.
- 68.324 Supplier's Declaration of Conformity Requirements.
- 68.326 Retention of records.
- 68.346 Description of testing facilities.
- 68.348 Changes in equipment and circuitry subject to a Supplier's Declaration of Conformity.
- 68.350 Revocation of Supplier's Declaration of Conformity.
- 68.354 Numbering and labeling requirements for terminal equipment.

Subpart E—Complaint Procedures

- 68.400 Content.
- 68.402 Amended complaints.
- 68.404 Number of copies.
- 68.406 Service.
- 68.408 Answers to complaints and amended complaints.
- 68.410 Replies to answers or amended answers.
- 68.412 Defective pleadings.
- 68.414 Hearing aid-compatibility: Enforcement.
- 68.415 Hearing aid-compatibility and volume control informal complaints.
- 68.417 Informal complaints; form and content.
- 68.418 Procedure; designation of agents for service.
- 68.419 Answers to informal complaints.
- 68.420 Review and disposition of informal complaints.
- 68.423 Actions by the Commission on its own motion.

Subpart F—reserved

Subpart G—Administrative Council for Terminal Attachments

- 68.602 Sponsor of the Administrative Council for Terminal Attachments.
- 68.604 Requirements for submitting technical criteria.
- 68.608 Publication of technical criteria.
- 68.610 Database of terminal equipment.
- 68.612 Labels on terminal equipment.
- 68.614 Oppositions and appeals.

- 3) Section 68.2 is amended to amend paragraph (a), and to delete all other paragraphs except paragraph (i) and the last paragraph of subparagraph (1)(2), which shall be renumbered respectively as subparagraphs (b) and (c), and to amend renumbered paragraph (b) as follows:

§68.2 Scope

- (a) Except as provided in paragraphs (b) and (c) of this section, the rules and regulations apply to direct connection of all terminal equipment to the public switched telephone network for use in conjunction with all services other than party line services.

(b) * * * * *

(2) The equipment or device to be connected either complies with the technical criteria pertaining thereto or will not cause harm to the nationwide telephone network or to employees of any provider of wireline telecommunications; and

(3) The installation is performed by well-trained, qualified employees under the responsible supervision and control of a person who is a licensed professional engineer in the jurisdiction in which the installation is performed.

* * * * *

4) Section 68.3 is amended to delete all terms and their definitions except: “demarcation point,” “essential telephones,” “harm,” “hearing aid compatible,” “Private Radio Services,” “Public Mobile Services,” and “secure telephones;” the definitions for the terms “demarcation point” and “harm” are amended as follows, and this section is further amended to add the following terms with their definitions:

§68.3 Definitions

* * * * *

Demarcation point (also point of interconnection): As used in this part, the point of demarcation and/or interconnection between the communications facilities of a provider of wireline telecommunications, and terminal equipment, protective apparatus or wiring at a subscriber's premises.

Harm: Electrical hazards to the personnel of providers of wireline telecommunications, damage to the equipment of providers of wireline telecommunications, malfunction of the billing equipment of providers of wireline telecommunications, and degradation of service to persons other than the user of the subject terminal equipment, his calling or called party.

Inside wiring or premises wiring: Customer-owned or controlled wire on the subscriber's side of the demarcation point.

Premises: As used herein, generally means a dwelling unit, other building or a legal unit of real property such as a lot on which a dwelling unit is located, as determined by the provider of telecommunications service's reasonable and nondiscriminatory standard operating practices.

Responsible Party: The party or parties responsible for the compliance of terminal equipment or protective circuitry intended for connection directly to the public switched telephone network with the applicable rules and regulations in this part and with the technical criteria published by the Administrative Council for Terminal Attachments. If a Telecommunications Certification Body certifies the terminal equipment, the responsible party is the holder of the certificate for that equipment. If the terminal equipment is the subject of a Supplier's Declaration of Conformity, the responsible party shall be: (1) the manufacturer of the terminal equipment, or (2) the manufacturer of protective circuitry that is marketed for use with terminal equipment that is not to be connected directly to the network, or (3) if the equipment is imported, the importer, or (4) if the terminal equipment is assembled from individual component parts, the assembler. If the equipment is modified by any party not working under the authority of the responsible party, the party performing the modifications, if located within the U.S., or the importer, if the equipment is imported subsequent to the modifications, becomes the new responsible party. Retailers or original equipment manufacturers may enter into an agreement with the assembler or importer to assume the responsibilities to ensure compliance of the terminal equipment and to become the responsible party.

Terminal Equipment: As used in this part, communications equipment located on customer premises at the end of a communications link, used to permit the stations involved to accomplish the provision of telecommunications or information services.

5) A new Section 68.7 is added as follows:

§68.7 Technical criteria for terminal equipment.

(a) Terminal equipment shall not cause harm, as defined in §68.3, to the public switched telephone network.

(b) Technical criteria published by the Administrative Council for Terminal Attachments are the presumptively valid technical criteria for the protection of the public switched telephone network from harms caused by the connection of terminal equipment, subject to the appeal procedures in section 68.614 of this part.

6) Section 68.100 is amended as follows:

§68.100 General.

In accordance with the rules and regulations in this part, terminal equipment may be directly connected to the public switched telephone network, including private line services provided over wireline facilities that are owned by providers of wireline telecommunications.

7) Section 68.102 is amended as follows:

§68.102 Terminal equipment approval requirement.

Terminal equipment must be approved in accordance with the rules and regulations in subpart C of this part, or connected through protective circuitry that is approved in accordance with the rules and regulations in subpart C.

8) Section 68.104 is deleted and the number reserved.

9) A new Section 68.105 is added as follows:

§68.105 Minimum point of entry (MPOE) and demarcation point.

(a) *Facilities at the demarcation point.* Carrier-installed facilities at, or constituting, the demarcation point shall consist of wire or a jack conforming to the technical criteria published by the Administrative Council for Terminal Attachments.

(b) *Minimum point of entry.* The "minimum point of entry" (MPOE) as used herein shall be either the closest practicable point to where the wiring crosses a property line or the closest practicable point to where the wiring enters a multiunit building or buildings. The reasonable and nondiscriminatory standard operating practices of the provider of wireline telecommunications services shall determine which shall apply. The provider of wireline telecommunications services is not precluded from establishing reasonable classifications of multiunit premises for purposes of determining which shall apply. Multiunit premises include, but are not limited to, residential, commercial, shopping center and campus situations.

(c) *Single unit installations.* For single unit installations existing as of August 13, 1990, and installations installed after that date the demarcation point shall be a point within 30 cm (12 in) of the protector or, where there is no protector, within 30 cm (12 in) of where the telephone wire enters the customer's premises, or as close thereto as practicable.

(d) *Multiunit installations.*

(1) In multiunit premises existing as of August 13, 1990, the demarcation point shall be determined in accordance with the local carrier's reasonable and non-discriminatory standard operating practices. Provided, however, that where there are multiple demarcation points within the multiunit premises, a demarcation point for a customer shall not be further inside the customer's premises than a point twelve inches from where the wiring enters the customer's premises, or as close thereto as practicable.

(2) In multiunit premises in which wiring is installed, including major additions or rearrangements

of wiring existing prior to that date, the provider of wireline telecommunications may place the demarcation point at the minimum point of entry (MPOE). If the provider of wireline telecommunications services does not elect to establish a practice of placing the demarcation point at the minimum point of entry, the multiunit premises owner shall determine the location of the demarcation point or points. The multiunit premises owner shall determine whether there shall be a single demarcation point location for all customers or separate such locations for each customer. Provided, however, that where there are multiple demarcation points within the multiunit premises, a demarcation point for a customer shall not be further inside the customer's premises than a point 30 cm (12 in) from where the wiring enters the customer's premises, or as close thereto as practicable. At the time of installation, the provider of wireline telecommunications services shall fully inform the premises owner of its options and rights regarding the placement of the demarcation point or points and shall not attempt to unduly influence that decision for the purpose of obstructing competitive entry.

(3) In any multiunit premises where the demarcation point is not already at the MPOE, the provider of wireline telecommunications services comply with a request from the premises owner to relocate the demarcation point to the MPOE. The provider of wireline telecommunications services must negotiate terms in good faith and complete the relocation within forty-five days from said request. Premises owners may file complaints with the Commission for resolution of allegations of bad faith bargaining by provider of wireline telecommunications services. *See* 47 U.S.C. Section 208; 47 C.F.R. Sections 1.720-1.736 (1999).

(4) The provider of wireline telecommunications services shall make available information on the location of the demarcation point within ten business days of a request from the premises owner. If the provider of wireline telecommunications services does not provide the information within that time, the premises owner may presume the demarcation point to be at the MPOE. Notwithstanding the provisions of section 68.110(c) of this part, provider of wireline telecommunications services must make this information freely available to the requesting premises owner.

(5) In multiunit premises with more than one customer, the premises owner may adopt a policy restricting a customer's access to wiring on the premises to only that wiring located in the customer's individual unit that serves only that particular customer.

10) Section 68.106 is amended to delete subparagraphs (d) and (e) and to amend the text as follows:

§68.106 Notification to provider of wireline telecommunications.

(a) *General.* Customers connecting terminal equipment or protective circuitry to the public switched telephone network shall, upon request of the provider of wireline telecommunications, inform the provider of wireline telecommunications of the particular line(s) to which such connection is made, and any other information required to be placed on the terminal equipment pursuant to § 68.354 of this part by the Administrative Council for Terminal Attachments.

(b) *Systems assembled of combinations of individually-approved terminal equipment and protective circuitry.* Customers connecting such assemblages to the public switched telephone network shall, upon the request of the provider of wireline telecommunications, provide to the provider of wireline telecommunications the following information:

For each line:

- (i) Information required for compatible operation of the equipment with the communications facilities of the provider of wireline telecommunications;
- (ii) The identifying information required to be placed on terminal equipment pursuant to § 68.354 for all equipment dedicated to that line; and
- (iii) Any other information regarding equipment dedicated to that line required to be placed on the terminal equipment by the Administrative Council for Terminal Attachments.

(iv) A list of identifying numbers required to be placed on terminal equipment, if any, by the Administrative Council for Terminal Attachments, pursuant to § 68.354 of this part, for equipment to be used in the system.

(c) Systems *using other than “fully protected” premises wiring*. Customers who intend to connect premises wiring other than “fully protected” premises wiring to the public switched telephone network shall, in addition to the foregoing, give notice to the provider of wireline telecommunications in accordance with § 68.215(e).

11) Section 68.108 shall be amended as follows:

§68.108 Incidence of harm.

Should terminal equipment, inside wiring, plugs and jacks, or protective circuitry cause harm to the public switched telephone network, or should the provider of wireline telecommunications reasonably determine that such harm is imminent, the provider of wireline telecommunications shall, where practicable, notify the customer that temporary discontinuance of service may be required; however, wherever prior notice is not practicable, the provider of wireline telecommunications may temporarily discontinue service forthwith, if such action is reasonable under the circumstances. In case of such temporary discontinuance, the provider of wireline telecommunications shall:

* * * * *

12) Section 68.110 is amended as follows:

§68.110 Compatibility of the public switched telephone network and terminal equipment.

(a) *Availability of interface information*. Technical information concerning interface parameters not specified by the technical criteria published by the Administrative Council for Terminal Attachments, that are needed to permit terminal equipment to operate in a manner compatible with the communications facilities of a provider of wireline telecommunications, shall be provided by the provider of wireline telecommunications upon request.

(b) *Changes in the facilities, equipment, operations, or procedures of a provider of wireline telecommunications*. A provider of wireline telecommunications may make changes in its communications facilities, equipment, operations or procedures, where such action is reasonably required in the operation of its business and is not inconsistent with the rules and regulations in this part. If such changes can be reasonably expected to render any customer’s terminal equipment incompatible with the communications facilities of the provider of wireline telecommunications, or require modification or alteration of such terminal equipment, or otherwise materially affect its use or performance, the customer shall be given adequate notice in writing, to allow the customer an opportunity to maintain uninterrupted service.

(c) *Availability of inside wiring information*. Any available technical information concerning wiring on the customer side of the demarcation point, including copies of existing schematic diagrams and service records, shall be provided by the provider of wireline telecommunications upon request of the building owner or agent thereof. The provider of wireline telecommunications may charge the building owner a reasonable fee for this service, which shall not exceed the cost involved in locating and copying the documents. In the alternative, the provider of wireline telecommunications may make these documents available for review and copying by the building owner. In this case, the provider of wireline telecommunications may charge a reasonable fee, which shall not exceed the cost involved in making the documents available, and may also require the building owner to pay a deposit to guarantee the documents’ return.

13) The title of Subpart C is amended as follows:

Subpart C—Terminal Equipment Approval Procedures

14) Section 68.200 is deleted and the number reserved.

15) A new Section 68.201 is added as follows:

§68.201 Connection to the public switched telephone network.

Terminal equipment may not be connected to the public switched telephone network unless it has either been certified by a Telecommunications Certification Body or the responsible party has followed all the procedures in this subpart for Supplier's Declaration of Conformity.

16) Section 68.202 is deleted and the number reserved.

17) Section 68.204 is deleted and the number reserved.

18) Section 68.206 is deleted and the number reserved.

19) Section 68.208 is deleted and the number reserved.

20) Section 68.210 is deleted and the number reserved.

21) Section 68.211 is amended as follows:

§68.211 Terminal equipment approval revocation procedures.

(a) *Causes for revocation.* The Commission may revoke the interconnection authorization of terminal equipment, whether that authorization was acquired through certification by a Telecommunications Certification Body or through the Supplier's Declaration of Conformity process in §§68.320-68.350 of this part, where:

(1) the equipment approval is shown to have been obtained by misrepresentation;

(2) the approved equipment is shown to cause harms to the public switched telephone network, as defined in §68.3.

(3) the responsible party willfully or repeatedly fails to comply with the terms and conditions of its equipment approval; or

(4) the responsible party willfully or repeatedly fails to comply with any rule, regulation or order issued by the Commission under the Communications Act of 1934 relating to terminal equipment.

(b) *Notice of Intent to Revoke Interconnection Authority.* Before revoking interconnection authority under the provisions of this section, the Commission, or the Common Carrier Bureau under delegated authority, will issue a written Notice of Intent to Revoke Part 68 Interconnection Authority, or a Joint Notice of Apparent Liability for Forfeiture and Notice of Intent to Revoke Part 68 Interconnection Authority pursuant to §§1.80 and 1.89 of this chapter.

(c) *Delivery.* The Notice will be sent via certified mail to the responsible party for the terminal equipment at issue at the address provided to the Administrative Council for Terminal Attachments.

(d) *Reauthorization.* A product that has had its approval revoked may not be authorized for connection to the public switched telephone network for a period of six months from the date of revocation of the approval.

(e) *Reconsideration or appeal.* A responsible party of terminal equipment that has had its authorization revoked and/or that has been assessed a forfeiture may request reconsideration or make administrative appeal of the decision pursuant to Part 1 of the Commission's rules: Practice and Procedure, Part 1 of this chapter.

22) Section 68.212 is deleted and the number reserved.

23) Section 68.213(b) is amended as follows:

§68.213 Installation of other than “fully protected” non-system simple customer premises wiring.

(a) * * * * *

(b) *Wiring authorized.* Unprotected premises wiring may be used to connect units of terminal equipment or protective circuitry to one another, and to carrier-installed facilities if installed in accordance with these rules. The provider of wireline telecommunications is not responsible, except pursuant to agreement between it and the customer or undertakings by it, otherwise consistent with Commission requirements, for installation and maintenance of wiring on the subscriber’s side of the demarcation point, including any wire or jacks that may have been installed by the carrier. The subscriber and/or premises owner may install wiring on the subscriber’s side of the demarcation point, and may remove, reconfigure, and rearrange wiring on that side of the demarcation point including wiring and wiring that may have been installed by the carrier. The customer or premises owner may not access carrier wiring and facilities on the carrier’s side of the demarcation point. Customers may not access the protector installed by the provider of wireline telecommunications. All plugs and jacks used in connection with inside wiring shall conform to the published technical criteria of the Administrative Council for Terminal Attachments. In multiunit premises with more than one customer, the premises owner may adopt a policy restricting a customer’s access to wiring on the premises to only that wiring located in the customer’s individual unit wiring that serves only that particular customer. *See* §68.105 in this part. The customer or premises owner may not access carrier wiring and facilities on the carrier’s side of the demarcation point. Customers may not access the protector installed by the provider of wireline telecommunications. All plugs and jacks used in connection with inside wiring shall conform to the published technical criteria of the Administrative Council for Terminal Attachments.

* * * * *

24) Section 68.214 is amended as follows:

§68.214 Changes in other than “fully protected” premises wiring that serves fewer than four subscriber access lines.

Operations associated with the installation, connection, reconfiguration and removal (other than final removal) of premises wiring that serves fewer than four subscriber access lines must be performed as provided in § 68.215(c) if the premises wiring is not “fully protected.” For this purpose, the supervisor and installer may be the same person.

25) Section 68.215 is amended to delete the Note after paragraph (d)(2) and to amend the text of paragraphs (a)(2)-(3), (d)(5), (e), (f)(4), and (g)(1)-(5) as follows:

§68.215 Installation of other than “fully protected” system premises wiring that serves more than four subscriber access lines.

(a) *Types of wiring authorized.*

(1) *****

(2) *Between an equipment entity and the public switched telephone network interface(s).* Fully-protected premises wiring shall be used to connect equipment entities to the public switched telephone network interface unless the provider of wireline telecommunications is unwilling or unable to locate the interface within 7.6 meters (25 feet) of the equipment entity on reasonable request. In any such case, other than fully-protected premises wiring may be used if otherwise in

accordance with these rules.

(3) *Hardware protection as part of the facilities of the provider of wireline telecommunications.*

In any case where the carrier chooses to provide (and the customer chooses to accept, except as authorized under paragraph (g) of this section), hardware protection on the network side of the interface(s), the presence of such hardware protection will affect the classification of premises wiring for the purposes of §68.215, as appropriate.

* * * * *

(d) *Workmanship and material requirements*

(1) * * * * *

(5) *Limitations on electrical signals.* Only signal sources that emanate from the provider of wireline telecommunications central office, or that are generated in equipment at the customer's premises and are "non-hazardous voltage sources" as defined in the technical criteria published by the Administrative Council for Terminal Attachments, may be routed in premises telephone wiring, except for voltages for network control signaling and supervision that are consistent with standards employed by the provider of wireline telecommunications. Current on individual wiring conductors shall be limited to values that do not cause an excessive temperature rise, with due regard to insulation materials and ambient temperatures. The following table assumes a 45° C temperature rise for wire sizes 22 AWG or larger, and a 40° C rise for wire sizes smaller than 22 AWG, for poly-vinyl chloride insulating materials, and should be regarded as establishing *maximum* values to be de-rated accordingly in specific installations where ambient temperatures are in excess of 25° C:

* * * * *

(e) *Documentation requirements.*

* * * * *

(1) * * * * *

(9) The supervisor's signature.

The notarized original shall be submitted to the provider of wireline telecommunications at least ten calendar days in advance of the placement and connection of the wiring. This time period may be changed by agreement of the provider of wireline telecommunications and the supervisor. The copy shall be maintained at the premises, available for inspection, so long as the wiring is used for telephone service.

(f) * * * * *

(1) * * * * *

(4) *Monitoring or participation in acceptance testing by the provider of wireline telecommunications.* The provider of wireline telecommunications may monitor or participate in the acceptance testing required under this section, in accordance with §68.215(g) of this part, from its central office test desk or otherwise.

(g) *Extraordinary procedures.* The provider of wireline telecommunications is hereby authorized to limit the subscriber's right of connecting approved terminal equipment or protective circuitry with other than fully-protected premises wiring, but solely in accordance with this subsection and §68.108 of these rules.

(1) *Conditions that may invoke these procedures.* The extraordinary procedures authorized herein may only be invoked where one or more of the following conditions is present:

(i) Information provided in the supervisor's affidavit gives reason to believe that a violation of part 68 of the FCC's rules is likely.

(ii) A failure has occurred during acceptance testing for imbalance.

(iii) Harm has occurred, and there is reason to believe that this harm was a result of wiring operations performed under this section.

The extraordinary procedures authorized in the following sub-sections shall not be used so as to discriminate between installations by provider of wireline telecommunications personnel and installations by others. In general, this requires that any charges for these procedures be levied in

accordance with, or analogous to, the “maintenance of service” tariff provisions: If the installation proves satisfactory, no charge should be levied.

(2) *Monitoring or participation in acceptance testing for imbalance.* Notwithstanding the previous sub-section, the provider of wireline telecommunications may monitor or participate in acceptance testing for imbalance at the time of the initial installation of wiring in the absence of the conditions listed therein; at any other time, on or more of the listed conditions shall be present. Such monitoring or participation in acceptance testing should be performed from the central office test desk where possible to minimize costs.

(3) *Inspection.* Subject to paragraph (g)(1) of this section, the provider of wireline telecommunications may inspect wiring installed pursuant to this section, and all of the splicing and connection points required to be accessible by §68.215(d)(3) to determine compliance with this section. The user or installation supervisor shall either authorize the provider of wireline telecommunications to render the splicing and inspection points visible (*e.g.*, by removing covers), or perform this action prior to the inspection. To minimize disruption of the premises communications system, the right of inspecting is limited as follows:

(i) During initial installation of wiring:

The provider of wireline telecommunications may require withdrawal of up to 5 percent (measured linearly) of wiring run concealed in ducts, conduit or wall spaces, to determine conformance of the wiring to the information furnished in the affidavit.

In the course of any such inspection, the provider of wireline telecommunications shall have the right to inspect documentation required to be maintained at the premises under §68.215(e).

(ii) After failure of acceptance testing or after harm has resulted from installed wiring: The provider of wireline telecommunications may require withdrawal of all wiring run concealed in ducts, conduit or wall spaces which reasonably could have caused the failure or harm, to determine conformance of the wiring to the information furnished in the affidavit.

In the course of any such inspection, the provider of wireline telecommunications shall have the right to inspect documentation required to be maintained at the premises under §68.215(e).

(4) *Requiring the use of protective apparatus.* In the event that any of the conditions listed in paragraph (g)(1) of this section, arises, and is not permanently remedied within a reasonable time period, the provider of wireline telecommunications may require the use of protective apparatus that either protects solely against hazardous voltages, or that protects both against hazardous voltages and imbalance. Such apparatus may be furnished either by the provider of wireline telecommunications or by the customer. This right is in addition to the rights of the provider of wireline telecommunications under § 68.108.

(5) *Notice of the right to bring a complaint.* In any case where the provider of wireline telecommunications invokes the extraordinary procedures of § 68.215(g), it shall afford the customer the opportunity to correct the situation that gave rise to invoking these procedures, and inform the customer of the right to bring a complaint to the Commission pursuant to the procedures set forth in subpart E of this part. On complaint, the Commission reserves the right to perform any of the inspections authorized under this section, and to require the performance of acceptance tests.

* * * * *

26) Section 68.216 is deleted and the number reserved.

27) Section 68.218 is amended to delete subparagraphs (b)(4) and (d) and to read as follows.

§68.218 Responsibility of the party acquiring equipment authorization.

(a) In acquiring approval for terminal equipment to be connected to the public switched telephone network, the responsible party warrants that each unit of equipment marketed under such authorization will comply with all applicable rules and regulations of this part and with the applicable technical criteria of the Administrative Council for Terminal Attachments.

(b) The responsible party or its agent shall provide the user of the approved terminal equipment the following:

(1) Consumer instructions required to be included with approved terminal equipment by the Administrative Council for Terminal Attachments;

(2) For a telephone that is not hearing aid-compatible, as defined in §68.316 of these rules:

(i) notice that FCC rules prohibit the use of that handset in certain locations; and

(ii) a list of such locations (see §68.112).

(c) When approval is revoked for any item of equipment, the responsible party must take all reasonable steps to ensure that purchasers and users of such equipment are notified to discontinue use of such equipment.

28) Section 68.220 is deleted and the number reserved.

29) Section 68.226 is deleted and the number reserved.

30) Amend the title for Subpart D as follows:

Subpart D—Conditions for Terminal Equipment Approval

31) Section 68.300 is amended to amend paragraph (a), delete paragraph (b), and to redesignate paragraph (c) to paragraph (b) as follows:

§68.300 Approval of terminal equipment for connection to the public switched telephone network.

(a) Terminal equipment approved as set out in this part must be labeled in accordance with the requirements published by the Administrative Council for Terminal Attachments and with requirements of this part for hearing aid compatibility and volume control.

(b) * * * * *

32) Section 68.302 is deleted and the number reserved.

33) Section 68.304 is deleted and the number reserved.

34) Section 68.306 is deleted and the number reserved.

35) Section 68.308 is deleted and the number reserved.

36) Section 68.310 is deleted and the number reserved.

37) Section 68.312 is deleted and the number reserved.

38) Section 68.314 is deleted and the number reserved.

39) A new Section 68.320 is added as follows:

§68.320 Supplier's Declaration of Conformity.

- (a) Supplier's Declaration of Conformity is a procedure where the responsible party, as defined in §68.3, makes measurements or takes other necessary steps to ensure that the terminal equipment complies with the appropriate technical standards.
- (b) The Supplier's Declaration of Conformity attaches to all items subsequently marketed by the responsible party which are identical, within the variation that can be expected to arise as a result of quantity production techniques, to the sample tested and found acceptable by the responsible party.
- (c) The Supplier's Declaration of Conformity signifies that the responsible party has determined that the equipment has been shown to comply with the applicable technical criteria if no unauthorized change is made in the equipment and if the equipment is properly maintained and operated.
- (d) The responsible party, if different from the manufacturer, may upon receiving a written statement from the manufacturer that the equipment complies with the appropriate technical criteria, rely on the manufacturer or independent testing agency to determine compliance. Any records that the Administrative Council for Terminal Attachments requires the responsible party to maintain shall be in the English language and shall be made available to the Commission upon a request.
- (e) No person shall use or make reference to a Supplier's Declaration of Conformity in a deceptive or misleading manner or to convey the impression that such a Supplier's Declaration of Conformity reflects more than a determination by the responsible party that the device or product has been shown to be capable of complying with the applicable technical criteria published by the Administrative Council of Terminal Attachments.

40) A new section 68.321 is added as follows:

§68.321 Location of responsible party.

The responsible party for a Supplier's Declaration of Conformity must be located within the United States.

41) A new section 68.322 is added as follows:

§68.322 Changes in name, address, ownership or control of responsible party.

- (a) The responsible party for a Supplier's Declaration of Conformity may license or otherwise authorize a second party to manufacture the equipment covered by the Supplier's Declaration of Conformity provided that the responsible party shall continue to be responsible to the Commission for ensuring that the equipment produced pursuant to such an agreement remains compliant with the appropriate standards.
- (b) In the case of transactions affecting the responsible party of a Supplier's Declaration of Conformity, such as a transfer of control or sale to another company, mergers, or transfer of manufacturing rights, the successor entity shall become the responsible party.

42) A new section 68.324 is added as follows:

§68.324 Supplier's Declaration of Conformity requirements.

- (a) Each responsible party shall include in the Supplier's Declaration of Conformity, the following information:
- (1) the identification and a description of the responsible party for the Supplier's Declaration of Conformity and the product, including the model number of the product,
 - (2) a statement that the terminal equipment conforms with applicable technical requirements, and a reference to the technical requirements,
 - (3) the date and place of issue of the declaration,

- (4) the signature, name and function of person making declaration,
 - (5) a statement that the handset, if any, complies with §68.316 of these rules (defining hearing aid compatibility), or that it does not comply with that section. A telephone handset which complies with §68.316 shall be deemed a "hearing aid-compatible telephone" for purposes of §68.4.
 - (6) any other information required to be included in the Supplier's Declaration of Conformity by the Administrative Council of Terminal Attachments.
- (b) If the device that is subject to a Supplier's Declaration of Conformity is designed to operate in conjunction with other equipment, the characteristics of which can affect compliance of such device with Part 68 rules and/or with technical criteria published by the Administrative Council for Terminal Attachments, then the Model Number(s) of such other equipment must be supplied, and such other equipment must also include a Supplier's Declaration of Conformity or a certification from a Telecommunications Certification Body.
- (c) The Supplier's Declaration of Conformity shall be included in the user's manual or as a separate document enclosed with the terminal equipment.
- (d) If terminal equipment is not subject to a Supplier's Declaration of Conformity, but instead contains protective circuitry that is subject to a Supplier's Declaration of Conformity, then the responsible party for the protective circuitry shall include with each module of such circuitry, a Supplier's Declaration of Conformity containing the information required under §68.340(a), and the responsible party of such terminal equipment shall include such statement with each unit of the product.
- (e) (1) The responsible party for the terminal equipment subject to a Supplier's Declaration of Conformity also shall provide to the purchaser of such terminal equipment, instructions as required by the Administrative Council for Terminal Attachments.
- (2) A copy of the Supplier's Declaration of Conformity shall be provided to the Administrative Council for Terminal Attachments along with any other information the Administrative Council for Terminal Attachments requires; this information shall be made available to the public.
 - (3) The responsible party shall make a copy of the Supplier's Declaration of Conformity freely available to the general public on its company website. The information shall be accessible to the disabled community from the website. If the responsible party does not have a functional and reliable website, then the responsible party shall inform the Administrative Council for Terminal Attachments of such circumstances, and the Administrative Council for Terminal Attachments shall make a copy available on its website.
- (f) For a telephone that is not hearing aid-compatible, as defined in §68.316 of this part, the responsible party also shall provide the following in the Supplier's Declaration of Conformity:
- (1) notice that FCC rules prohibit the use of that handset in certain locations; and
 - (2) a list of such locations (see §68.112).

43) A new section 68.326 is added as follows:

§68.326 Retention of records.

- (a) The responsible party for a Supplier's Declaration of Conformity shall maintain records containing the following information:
- (1) A copy of the Supplier's Declaration of Conformity;
 - (2) The identity of the testing facility, including the name, address, phone number and other contact information.
 - (3) A detailed explanation of the testing procedure utilized to determine whether terminal equipment conforms to the appropriate technical criteria.
 - (4) A copy of the test results for terminal equipment compliance with the appropriate technical

criteria.

(b) For each device subject to the Supplier's Declaration of Conformity requirement, the responsible party shall maintain all records required under section 68.326(a) for at least ten years after the manufacture of said equipment has been permanently discontinued, or until the conclusion of an investigation or a proceeding, if the responsible party is officially notified prior to the expiration of such ten year period that an investigation or any other administrative proceeding involving its equipment has been instituted, whichever is later.

44) A new section 68.346 is added as follows:

§68.346 Description of testing facilities.

(a) Each responsible party for equipment that is subject to a Supplier's Declaration of Conformity under this subchapter, shall compile a description of the measurement facilities employed for testing the equipment. The responsible party for the Supplier's Declaration of Conformity shall retain a description of the measurement facilities.

(b) The description shall contain the information required to be included by the Administrative Council for Terminal Attachments.

45) A new section 68.348 is added as follows:

§68.348 Changes in equipment and circuitry subject to a Supplier's Declaration of Conformity.

(a) No change shall be made in terminal equipment or protective circuitry that would result in any material change in the information contained in the Supplier's Declaration of Conformity Statement furnished to users.

(b) Any other changes in terminal equipment or protective circuitry which is subject to an effective Supplier's Declaration of Conformity shall be made only by the responsible party or an authorized agent thereof, and the responsible party will remain responsible for the performance of such changes.

46) A new section 68.350 is added as follows:

§68.350 Revocation of Supplier's Declaration of Conformity.

(a) The Commission may revoke any Supplier's Declaration of Conformity for cause in accordance with the provisions of this section or in the event changes in technical standards published by the Administrative Council for Terminal Attachments require the revocation of any outstanding Supplier's Declaration of Conformity in order to achieve the objectives of Part 68.

(b) Cause for revocation. In addition to the provisions in §68.211, the Commission may revoke a Supplier's Declaration of Conformity:

(1) For false statements or representations made in materials or responses submitted to the Commission and/or the Administrative Council for Terminal Attachments, or in records required to be kept by §68.324 and the Administrative Council for Terminal Attachments.

(2) If upon subsequent inspection or operation it is determined that the equipment does not conform to the pertinent technical requirements.

(3) If it is determined that changes have been made in the equipment other than those authorized by this part or otherwise expressly authorized by the Commission.

47) A new section 68.354 is added as follows:

§68.354 Numbering and labeling requirements for terminal equipment.

(a) Terminal equipment and protective circuitry that is subject to a Supplier's Declaration of Conformity or

that is certified by a Telecommunications Certification Body shall have labels in a place and manner required by the Administrative Council for Terminal Attachments.

(b) Terminal equipment labels shall include an identification numbering system in a manner required by the Administrative Council for Terminal Attachments.

(c) If the Administrative Council for Terminal Attachments chooses to continue the practice of utilizing a designated "FCC" number, it shall include in its labeling requirements a warning that the Commission no longer directly approves or registers terminal equipment.

(d) Labeling developed for terminal equipment by the Administrative Council for Terminal Attachments shall contain sufficient information for providers of wireline telecommunications, the Federal Communications Commission, and the U.S. Customs Service to carry out their functions, and for consumers to easily identify the responsible party and the manufacturer of their terminal equipment. The numbering and labeling scheme shall be nondiscriminatory, creating no competitive advantage for any entity or segment of the industry.

(e) FCC numbering and labeling requirements existing prior to the effective date of these rules shall remain unchanged until the Administrative Council for Terminal Attachments publishes its numbering and labeling requirements.

48) A new section 68.415 is added as follows:

§ 68.415 Hearing aid-compatibility and volume control informal complaints.

Persons with complaints under 68.4 and 68.112 that are not addressed by the states pursuant to section 68.414, and all other complaints regarding rules in this part pertaining to hearing aid compatibility and volume control, may bring informal complaints as described in 68.416 through 68.420 of this subpart. All responsible parties of terminal equipment are subject to the informal complaint provisions specified in this section.

49) A new section 68.417 is added as follows:

§68.417 Informal complaints; form and content.

(a) An informal complaint alleging a violation of hearing aid compatibility and/or volume control rules in this subpart may be transmitted to the Consumer Information Bureau by any reasonable means, e.g., letter, facsimile transmission, telephone (voice/TRS/TTY), Internet e-mail, ASCII text, audio-cassette recording, and Braille.

(b) An informal complaint shall include:

- (1) The name and address of the complainant;
- (2) The name and address of the responsible party, if known, or the manufacturer or provider against whom the complaint is made;
- (3) A full description of the terminal equipment about which the complaint is made;
- (4) The date or dates on which the complainant purchased, acquired or used the terminal equipment about which the complaint is being made;
- (5) A complete statement of the facts, including documentation where available, supporting the complainant's allegation that the defendant has failed to comply with the requirements of this subpart;
- (6) The specific relief or satisfaction sought by the complainant, and
- (7) The complainant's preferred format or method of response to the complaint by the Commission and defendant (e.g., letter, facsimile transmission, telephone (voice/TRS/TTY), Internet e-mail, ASCII text, audio-cassette recording, Braille; or some other method that will best accommodate the complainant's disability).

50) A new section 68.418 is added as follows:

§68.418 Procedure; designation of agents for service.

(a) The Commission shall promptly forward any informal complaint meeting the requirements of subsection 68.17 of this subpart to each responsible party named in or determined by the staff to be implicated by the complaint. Such responsible party or parties shall be called on to satisfy or answer the complaint within the time specified by the Commission.

(b) To ensure prompt and effective service of informal complaints filed under this subpart, every responsible party of equipment approved pursuant to this part shall designate and identify one or more agents upon whom service may be made of all notices, inquiries, orders, decisions, and other pronouncements of the Commission in any matter before the Commission. Such designation shall be provided to the Administrative Council for Terminal Attachment and shall include a name or department designation, business address, telephone number, and, if available TTY number, facsimile number, and Internet e-mail address. The Administrative Council shall make this information promptly available without charge to complainants upon request.

51) A new section 68.419 is added as follows:

§68.419 Answers to informal complaints.

Any responsible party to whom the Commission or the Consumer Information Bureau under this subpart directs an informal complaint shall file an answer within the time specified by the Commission or the Consumer Information Bureau. The answer shall:

- (a) be prepared or formatted in the manner requested by the complainant pursuant to section 68.417 of this subpart, unless otherwise permitted by the Commission or the Consumer Information Bureau for good cause shown;
- (b) describe any actions that the defendant has taken or proposes to take to satisfy the complaint;
- (c) advise the complainant and the Commission or the Consumer Information Bureau of the nature of the defense(s) claimed by the defendant;
- (d) respond specifically to all material allegations of the complaint; and
- (e) provide any other information or materials specified by the Commission or the Consumer Information Bureau as relevant to its consideration of the complaint.

52) A new section 68.420 is added as follows:

§68.420 Review and disposition of informal complaints.

(a) Where it appears from the defendant's answer, or from other communications with the parties, that an informal complaint has been satisfied, the Commission or the Consumer Information Bureau on delegated authority may, in its discretion, consider the informal complaint closed, without response to the complainant or defendant. In all other cases, the Commission or the Consumer Information Bureau shall inform the parties of its review and disposition of a complaint filed under this subpart. Where practicable, this information (the nature of which is specified in subsections (b) - (d) of this section, shall be transmitted to the complainant and defendant in the manner requested by the complainant, (e.g., letter, facsimile transmission, telephone (voice/TRS/TTY), Internet e-mail, ASCII text, audio-cassette recording, or Braille).

(b) In the event the Commission or the Consumer Information Bureau determines, based on a review of the information provided in the informal complaint and the defendant's answer thereto, that no further action is required by the Commission or the Consumer Information Bureau with respect to the allegations contained in the informal complaint, the informal complaint shall be closed and the complainant and defendant shall be duly informed of the reasons therefor. A complainant, unsatisfied with the defendant's response to the

informal complaint and the staff decision to terminate action on the informal complaint, may file a complaint with the Commission or the Common Carrier Bureau as specified in sections 68.400 through 68.412 of this part.

(c) In the event the Commission or the Consumer Information Bureau on delegated authority determines, based on a review of the information presented in the informal complaint and the defendant's answer thereto, that a material and substantial question remains as to the defendant's compliance with the requirements of this subpart, the Commission or the Consumer Information Bureau may conduct such further investigation or such further proceedings as may be necessary to determine the defendant's compliance with the requirements of this subpart and to determine what, if any, remedial actions and/or sanctions are warranted.

(d) In the event that the Commission or the Consumer Information Bureau on delegated authority determines, based on a review of the information presented in the informal complaint and the defendant's answer thereto, that the defendant has failed to comply with or is presently not in compliance with the requirements of this subpart, the Commission or the Consumer Information Bureau on delegated authority may order or prescribe such remedial actions and/or sanctions as are authorized under the Act and the Commission's rules and which are deemed by the Commission or the Consumer Information Bureau on delegated authority to be appropriate under the facts and circumstances of the case.

53) A new section 68.423 is added as follows:

§68.423 Actions by the Commission on its own motion.

The Commission may on its own motion conduct such inquiries and hold such proceedings as it may deem necessary to enforce the requirements of this subpart. The procedures to be followed by the Commission shall, unless specifically prescribed in the Act and the Commission's rules, be such as in the opinion of the Commission will best serve the purposes of such inquiries and proceedings.

54) Subpart F is deleted and the designation reserved.

55) Section 68.500 is deleted and the number reserved.

56) Section 68.502 is deleted and the number reserved.

57) Section 68.504 is deleted and the number reserved.

58) Section 68.506 is deleted and the number reserved.

59) A new subpart to contain rule numbers in the range of 68.600 – 68.699 is added as follows:

Subpart G – ADMINISTRATIVE COUNCIL FOR TERMINAL ATTACHMENTS

60) A new section 68.602 is added as follows:

§68.602 Sponsor of the Administrative Council for Terminal Attachment.

(a) The Telecommunications Industry Association (TIA) and the Alliance for Telecommunications Industry Solutions (ATIS) jointly shall establish the Administrative Council for Terminal Attachment and shall sponsor the Administrative Council for Terminal Attachments for four years from the effective date of these rules. The division of duties by which this responsibility is executed may be a matter of agreement between these two parties; however, both are jointly and severally responsible for observing these rule provisions. After four years from the effective date of these rules, and thereafter on a quadrennial basis,

the Administrative Council for Terminal Attachments may vote by simple majority to be sponsored by any ANSI-accredited organization.

(b) The sponsoring organizations shall ensure that the Administrative Council for Terminal Attachments is populated in a manner consistent with the criteria of American National Standards Institute's Organization Method or the Standards Committee Method (and their successor Method or Methods as ANSI may from time to time establish) for a balanced and open membership.

(c) After the Administrative Council for Terminal Attachments is populated, the sponsors are responsible for fulfilling secretariat functions as determined by the Administrative Council for Terminal Attachments. The Administrative Council for Terminal Attachments shall post on a publicly available website and make available to the public in hard copy form the contract into which it enters with the sponsor or sponsors.

61) A new section 68.604 is added as follows:

§68.604 Requirements for submitting technical criteria.

(a) Any standards development organization that is accredited under the American National Standards Institute's Organization Method or the Standards Committee Method (and their successor Method or Methods as ANSI may from time to time establish) may establish technical criteria for terminal equipment pursuant to ANSI consensus decision-making procedures, and it may submit such criteria to the Administrative Council for Terminal Attachments.

(b) Any ANSI-accredited SDO that develops standards for submission to the Administrative Council for Terminal Attachments must implement and use procedures for the development of those standards that ensure openness equivalent to the Commission rulemaking process.

(c) Any SDO that submits standards to the Administrative Council for Terminal Attachments for publication as technical criteria shall certify to the Administrative Council for Terminal Attachments that:

- (1) The submitting SDO is ANSI-accredited to the Standards Committee Method or the Organization Method (or their successor Methods as amended from time to time by ANSI);
- (2) The technical criteria that it proposes for publication do not conflict with any published technical criteria or with any technical criteria submitted and pending for publication, and
- (3) The technical criteria that it proposes for publication are limited to preventing harms to the public switched telephone network, identified in §68.3 of this part.

62) A new Section 68.608 is added as follows:

§68.608 Publication of technical criteria.

The Administrative Council for Terminal Attachments shall place technical criteria proposed for publication on public notice for 30 days. At the end of the 30 day public notice period, if there are no oppositions, the Administrative Council for Terminal Attachments shall publish the technical criteria.

63) A new Section 68.610 is added as follows:

§68.610 Database of terminal equipment.

(a) The Administrative Council for Terminal Attachments shall operate and maintain a database of all approved terminal equipment. The database shall meet the requirements of the Federal Communications Commission and the U.S. Customs Service for enforcement purposes. The database shall be accessible by government agencies free of charge. Information in the database shall be readily available and accessible to the public, including individuals with disabilities, at nominal or no costs.

(b) Responsible parties, whether they obtain their approval from a Telecommunications Certification Body or utilized the Supplier's Declaration of Conformity process, shall submit to the database administrator all information required by the Administrative Council for Terminal Attachments.

(c) The Administrative Council for Terminal Attachments shall ensure that the database is created and maintained in an equitable and nondiscriminatory manner. The manner in which the database is created and maintained shall not permit any entity or segment of the industry to gain a competitive advantage.

(d) The Administrative Council shall file with the Commission, within 180 days of publication of these rules in the Federal Register, a detailed report of the structure of the database, including details of how the Administrative Council will administer the database, the pertinent information to be included in the database, procedures for including compliance information in the database, and details regarding how the government and the public will access the information.

64) A new Section 68.612 is added as follows:

§68.612 Labels on terminal equipment.

Terminal equipment certified by a Telecommunications Certification Body or approved by the Supplier's Declaration of Conformity under this part shall be labeled. The Administrative Council for Terminal Attachments shall establish appropriate labeling of terminal equipment. Labeling shall meet the requirements of the Federal Communications Commission and the U.S. Customs Service for their respective enforcement purposes, and of consumers for purposes of identifying the responsible party, manufacturer and model number.

65) A new Section 68.614 is added as follows:

§68.614 Oppositions and appeals.

(a) Oppositions filed in response to the Administrative Council for Terminal Attachments' public notice of technical criteria proposed for publication must be received by the Administrative Council for Terminal Attachments within 30 days of public notice to be considered. Oppositions to proposed technical criteria shall be addressed through the appeals procedures of the authoring standards development organization and of the American National Standards Institute. If these procedures have been exhausted, the aggrieved party shall file its opposition with the Commission for *de novo* review.

(b) As an alternative, oppositions to proposed technical criteria may be filed directly with the Commission for *de novo* review within the 30 day public notice period.

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

- 1) Amend Section 15.214(b) to read:

§15.214 Cordless telephones.

(a) * * * * *

(b) A cordless telephone that is intended to be connected to the public switched telephone network shall also comply with the applicable regulations in Part 68 of this chapter. A separate procedure for approval under Part 68 is required for such terminal equipment.

* * * * *

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

- 1) Part 2 is amended by deleting Subpart L, including sections 2.1300 and 2.1302, and reserving the letter designation.

Appendix C: List of Parties**Comments**

ACIL
Alliance for Telecommunications Industry Solutions
Bell Atlantic
BellSouth Corporation
Communications Certification Laboratory, Inc.
GTE
Hewlett-Packard Company
Information Technology Industry Council
Itronix Corporation
KTL Dallas, Inc.
Lucent Technologies Inc.
Nortel Networks Inc.
Phonex Broadband Corp.
Redcom Laboratories, Inc.
SBC Communications Inc.
Self Help for Hard of Hearing People, Inc.
Sprint Corporation
Telecommunications Industry Association
United States Telecom Association

Reply Comments

Alliance for Telecommunications Industry Solutions
BellSouth Corporation
Hewlett-Packard Company
SBC Communications Inc.
Self Help for Hard of Hearing People, Inc.
Telecommunications Industry Association
Verizon