

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

In the Matter of)
)
Amendment of Parts 0, 1, 2, and 15 of the) ET Docket No. 13-44
Commission's Rules regarding Authorization of) RM-11652
Radiofrequency Equipment)
)
Amendment of Part 68 regarding Approval of)
Terminal Equipment by Telecommunications)
Certification Bodies)

MEMORANDUM OPINION AND ORDER AND ORDER ON RECONSIDERATION

Adopted: June 14, 2016

Released: June 15, 2016

By the Commission:

I. INTRODUCTION

1. In this Memorandum Opinion and Order and Order on Reconsideration, we describe how we will implement the rules that govern how we recognize laboratories as accredited and authorized to perform the compliance testing associated with applications for equipment certification and the bodies that accredit those laboratories; we also extend the transition period by which time all laboratories that test for equipment authorization must have FCC-recognized accreditation to perform such testing. We address two petitions for reconsideration of the Report and Order in this proceeding. Our actions are designed to facilitate the continued rapid introduction of new and innovative products to the market by enabling qualified testing laboratories to continue offering necessary services in the near term, and by providing the regulatory certainty necessary to their long-term viability.

II. BACKGROUND

2. The Report and Order in this proceeding represented a substantial review of our equipment authorization procedures. Among other things, we clarified the obligations of Telecommunication Certification Bodies (TCBs) and updated the rules referencing the measurement procedures used to determine RF equipment compliance. We also decided that all laboratories recognized by the Commission as authorized to perform compliance testing in support of an application for equipment certification must be accredited by an FCC-recognized accrediting body, and modified the rules to codify an existing procedure through which we recognize new laboratory accreditation bodies.

3. On July 13, 2015, Motorola Solutions, Inc. (Motorola) and the Telecommunications Industry Association (TIA) filed separate petitions requesting reconsideration and/or clarification of the

1 The Commission administers an equipment authorization program for radiofrequency (RF) devices under Part 2 of its rules, 47 C.F.R. Part 2 Subpart J. All RF devices subject to equipment authorization must comply with the Commission's technical requirements prior to importation or marketing. The Office of Engineering and Technology (OET) administers the equipment authorization program under authority delegated to it by the Commission. See 47 C.F.R. § 0.241(b).

2 Amendment of Parts 0, 1, 2, and 15 of the Commission's Rules regarding Authorization of Radiofrequency Equipment; Amendment of Part 68 regarding Approval of Terminal Equipment by Telecommunications Certification Bodies, Report and Order, 29 FCC Rcd 16335 (2014) (Report and Order).

3 A TCB is a private third-party organization which is authorized to issue equipment grants of certification.

Report and Order.⁴ Both petitions focused on a narrow set of related issues, including the process for accreditation of testing laboratories located in countries that have not entered into a Mutual Recognition Agreement (MRA) with the United States and the transition period for such accreditation.⁵ The Consumer Technology Association and Huawei Technologies, Inc. (USA) and Huawei Technologies Co., LTD filed comments supporting both petitions.⁶ No opposing comments were filed.

III. DISCUSSION

4. As described below, we grant the petitions in part. Our discussion focuses on the process by which compliance testing laboratories can become recognized by the Commission as properly accredited. We also extend the transition deadlines for laboratories that have operated under a specific rule provision that the *Report and Order* eliminated to become accredited.⁷

A. Background

5. In the *Report and Order*, we decided to require all laboratories that perform certification testing be accredited under ISO/IEC 17025.⁸ We concluded that requiring laboratory accreditation and recognition by the FCC is essential to ensure that testing performed to support equipment certification applications complies with the applicable standards.⁹ We confirm this determination and we note that no party has asked us to revisit this fundamental conclusion. Requiring all laboratories that perform tests in support of applications for equipment certification to be accredited is essential for ensuring compliance with the Commission's technical rules in the face of increasingly complex technology and devices. As we stated in adopting this provision, this requirement will provide a higher degree of confidence that equipment testing done in support of certification applications is conducted in accordance with the applicable standards. In addition, this requirement is an important adjunct to our concurrent decision to allow TCBs to certify all RF equipment.¹⁰ For example, Huawei, which filed comments in support of the Petitioners, recognizes and supports "the Commission's determination that the increasing complexity of products on the market and the testing requirements for those products demands that testing be performed

⁴ Petition for Clarification and Partial Reconsideration of Motorola Solutions, Inc. (filed July 13, 2015) (Motorola Petition); and Petition for Clarification and/or Reconsideration of Telecommunications Industry Association (filed July 13, 2015) (TIA Petition).

⁵ Mutual Recognition Agreements (MRAs) are government-to-government trade facilitating measures aimed at a global approach to conformity assessment. In these agreements, the regulatory authorities in the participating countries mutually agree to accept the test results and/or product approvals performed by recognized Conformity Assessment Bodies (CABs) located in the other country. The United States has signed six MRAs under which 53 countries can recognize each other's testing laboratories. See National Institute of Standards and Technology, Introduction to EMC and Telecom Mutual Recognition Agreements, (December 29, 2015), <http://gsi.nist.gov/global/index.cfm/L1-4/L2-16/L3-101>. We remain committed to furthering the adoption of such agreements wherever possible. This proceeding focuses exclusively on telecommunications equipment MRAs.

⁶ Consumer Technology Association Comments Supporting the Petitions for Clarification of Motorola Solutions, Inc. and The Telecommunications Industry Association (filed December 15, 2015) (CTA Comments); Comments of Huawei Technologies, Inc. (USA) and Huawei Technologies Co., LTD (filed December 15, 2015) (Huawei Comments).

⁷ See Motorola Petition at 1-4; TIA Petition at 1-3 (seeking an extension of these deadlines).

⁸ See *Report and Order* at 16354-5, para. 45. Laboratory accreditation under ISO/IEC 17025 is a rigorous process involving an extensive review of documentation and onsite visits by representative(s) of the accrediting body. *Id.* Devices authorized under the Declaration of Conformity (DoC) process were already required to be tested only in accredited laboratories.

⁹ *Report and Order* at 16354-55, para. 45.

¹⁰ See *Report and Order* at 16338-41, paras. 6-10. Until recently, TCBs were restricted from approving certain limited types of devices, especially when the application of the FCC measurement procedures had not been fully developed – most typically in the case of new technology.

by accredited testing laboratories in order to ensure a high level of quality and confidence in the test results.”¹¹

6. In adopting the new requirement, we discontinued a process the Commission had been using to let certain unaccredited laboratories test equipment for certification.¹² Our Office of Engineering and Technology (OET) maintains records of two types of qualified testing laboratories: “accredited” and “[rule section] 2.948-listed,” and only such labs could be used for testing devices to be authorized under the certification process.¹³ Although the *Report and Order* discontinued the 2.948 listing option, we provided a transition period to permit laboratories recognized under the 2.948 criteria as of July 13, 2015 to continue to be recognized until their existing expiration date or until July 13, 2016, whichever is sooner.¹⁴ Additionally, any testing that is completed by unaccredited recognized 2.948-listed laboratories prior to July 13, 2016 would be accepted only in support of a certification application submitted by October 13, 2016.¹⁵

7. With regard to testing laboratories that are located in countries that do not have an MRA with the United States, the Commission acknowledged that, while the current rules allowed for the recognition of accredited testing laboratories in countries without an operational MRA with the United States, the rules did not identify a particular process for such recognition, and it acknowledged that the process as to how the Commission would recognize the accreditation of a testing laboratory located in a non-MRA country needed to be clarified.¹⁶ The Commission accordingly adopted a process for such laboratories to become accredited by organizations that the Commission has recognized as authorized accrediting bodies (ABs).¹⁷

8. Nonetheless, the Petitioners are concerned that 2.948-listed laboratories will not be able to achieve accreditation before the July 13, 2016 deadline, and they contend that the Commission’s process for foreign laboratories in non-MRA countries to become recognized by the FCC as accredited under the new rules is unclear in various respects, such as that the Commission has failed to specify the form of such requests (electronic or paper), what procedures OET will use in evaluating such requests, what evidentiary showing is required, and what weight OET will assign factors specified for evaluating such requests under Section 2.949.¹⁸ Accordingly, the petitioners ask us to describe the method that we

¹¹ Huawei Comments at 6.

¹² The term “unaccredited laboratories” is used herein to describe laboratories without accreditation recognized by the FCC. We note that many laboratories have accreditation from other bodies for other purposes, but such accreditations are not relevant to our process or to this discussion.

¹³ See *Report and Order* at 16352, para. 39. Section 2.948 of the Commission’s rules, 47 C.F.R. § 2.948, describes the information that a testing laboratory is required to submit to the Commission if it wishes to be recognized as qualified to perform the compliance testing associated with certification applications. Prior to the adoption of the *Report and Order*, testing laboratories that were not accredited under ISO/IEC 17025 could be recognized via a so-called “2.948 listing” which was based upon an OET staff paper review of certain specific information and therefore was less rigorous than laboratory accreditation. See also note 9, *supra*. (This listing will be maintained until the end of the transition period for acquiring accreditation.)

¹⁴ Additionally, 2.948-listed laboratories whose recognition will expire prior to July 13, 2016 may request the Commission extend their recognition date until July 12, 2016. *Report and Order* at 16355, para. 47.

¹⁵ *Id.*

¹⁶ *Id.* at 16355-56, para. 48. In instances where a country has implemented an MRA with the United States, the terms of the applicable MRA provide the process whereby the accreditation of a testing laboratory located in the specified country is recognized. This process includes the method for the identification of laboratory accreditation bodies.

¹⁷ *Id.*; 47 C.F.R. §§ 2.948(f)(2), 2.949.

¹⁸ See Motorola Petition at 4-5; CTA Comments at 6; Huawei Comments at 2.

will use to recognize laboratory accreditation in countries where no MRAs exist and to extend the deadlines we established for the phase-out of the 2.948 listing program. We address each of these issues separately, below.

B. Accreditation of Foreign Testing Laboratories

9. *Petitions.* TIA notes that a substantial number of 2.948-listed laboratories are located in countries that have not entered into MRAs with the United States, and asks that we clarify the process by which such laboratories may become accredited as soon as possible. TIA states that the lack of clear guidance affects testing laboratories in non-MRA countries.¹⁹ Motorola shares TIA's general concerns and asserts that the lack of a clear process for the recognition of accrediting bodies within non-MRA countries adds to the uncertainty and delays facing testing laboratories interested in pursuing a Commission-recognized accreditation.²⁰ It also states that there is no information related to the mechanism by which such a body would make its request, whether the request would be publicly available and subject to public notice and related pleadings, how the application would be evaluated, or what further information must be provided.²¹ Finally, as an interim step, TIA suggests that 2.948-listed laboratories (including facilities that only conduct bench tests) located in countries without an MRA in place and that are fully controlled and verified for trustworthiness by an accredited laboratory, should be considered a subsidiary of such a laboratory.²²

10. *Decision.* In order to perform compliance testing that is acceptable under our certification and Declaration of Conformity processes, a laboratory must be accredited by a body that the Commission has recognized as meeting our requirements for performing the accreditation of testing laboratories.²³ Presently, there are two ways that we recognize the accreditation of laboratories located outside the United States. A laboratory can be accredited by a body that the Commission has already recognized under the terms of an MRA,²⁴ or it can be designated for FCC recognition by an AB recognized pursuant to Section 2.949 of our rules. An AB in the U.S. or any other country can request FCC recognition to accredit laboratories in any non-MRA country. While OET has received informal inquiries about such recognition, as parties have noted the Commission has not yet described a process by which domestic or foreign ABs can accredit in non-MRA countries. As a consequence, as also noted by parties, there is no practical experience nor specific public guidance that parties can draw upon when considering how to comply with our rules in this regard, hindering organizations from applying for permission to serve as FCC-recognized ABs under these circumstances..

11. Several accreditation bodies already exist²⁵ and, pursuant to Section 2.949 of our rules, any entity can submit a request to OET addressing its ability to accredit testing laboratories in a non-MRA country or countries, making this process relatively readily available. We here direct OET to publish, pursuant to the authority provided in our rules,²⁶ specific guidance as to the form and substance such submissions should take – *e.g.*, the mechanism by which such a body would make its request for approval as an AB – in its Knowledge Database (KDB). This addresses the first of the two points raised on reconsideration and satisfies the objectives set forth in the petitions. Further, when considered along

¹⁹ TIA Petition at 7-9.

²⁰ Motorola Petition at 3-5.

²¹ *Id.* at 6.

²² TIA Comments at 8.

²³ 47 C.F.R. § 2.948(e).

²⁴ 47 C.F.R. § 2.948(f)(1).

²⁵ OET currently maintains a listing of test laboratory accreditation bodies that it has recognized. This list is available online at <https://apps.fcc.gov/oetcf/mra/reports/AccreditingBodyReport.cfm>.

²⁶ 47 C.F.R. § 0.241.

with the criteria set forth in Section 2.949 of the Commission's rules, the guidance provided in the KDB will offer a clear process for recognizing laboratory accreditation bodies that Motorola requested. Once such a request is granted and we recognize the AB, testing laboratories in that country or countries could then seek accreditation from the laboratory accrediting body for subsequent recognition by the Commission. By clarifying this process, we will provide a certain means for laboratories in countries that have not yet executed MRAs to become recognized as accredited under our equipment authorization rules.

12. We do not adopt TIA's suggestion that we permit 2.948-listed testing labs in non-MRA countries that are controlled by and vouched for by accredited testing laboratories to perform compliance testing. TIA is effectively asking us to let testing laboratories rather than accrediting bodies determine the capability and reliability of other laboratories. We continue to hold that it would not be appropriate to accept test results from laboratories that will not have been subject to our rigorous accreditation rules and procedures.²⁷ In addition, we observe that the KDB guidance and the transition period, as provided for herein, will reduce the need for such an accommodation.

C. Transition Period

13. *Petitions.* Parties seek an extension of the deadline for compliance with the testing laboratory accreditation requirement beyond the existing July 13, 2016 date. TIA, asking for a date two years from the date on which the Commission provides a clear accreditation process for laboratories located in non-MRA countries, asserts that attaining accreditation is both time- and resource-intensive process and that "while attaining accreditation for laboratories typically takes at least one year, attaining this accreditation in countries without an operational MRA will likely face further increased difficulties."²⁸ It also states that the existing timeline "would not be consistent with the Commission's general interests in facilitating the transition to an improved equipment authorization regime without unduly impairing the availability or cost of devices or imposing undue burdens on manufacturers or the public."²⁹ Motorola also requests that the transition period be extended two years, and notes that it expects a large number of laboratories will be seeking accreditation for the first time.³⁰

14. *Decision.* We find that there is good cause for continuing to recognize existing Section 2.948-listed laboratories through July 12, 2017. Because July 12, 2016 is rapidly approaching, it is likely that some existing Section 2.948-listed laboratories will not have sufficient time to take advantage of the clarified procedures we are adopting, and that a limited availability of recognized testing laboratories could disrupt the ability of manufacturers to bring new and innovative products to the marketplace in a timely manner.³¹ However, any extension of time must not undermine our decision to revise our rules to discontinue the use of Section 2.948-listed laboratories – a decision that has not been challenged on reconsideration.³²

15. We conclude that an extension of the implementation of the new accreditation requirement to July 13, 2017 (*i.e.*, one year beyond the current end date) will serve the public interest by providing

²⁷ "[A]ll laboratory work be done by laboratories that are recognized by the Commission as accredited laboratories." *Report and Order, supra* at 16355, para. 46.

²⁸ TIA Petition at 10. In their comments, Huawei and CTA support extending the transition period in the same manner. Huawei Comments at 2. CTA Comments at 6-7.

²⁹ TIA Petition at 10.

³⁰ Motorola Petition at 6-8.

³¹ See TIA Petition at 9. This extension applies to all 2.948-listed laboratories, including those in countries with MRAs.

³² See *infra* para. 6; See also Huawei Comments at 6 (supporting for our decision to require laboratory accreditation).

sufficient time for laboratories that are eligible to become recognized as accredited to undergo that process. Such an extension is necessary to ensure that a sufficient number of laboratories will be recognized and accredited by the 2017 deadline so as not to unduly disrupt the equipment development and manufacturing process. While this time period is less than that sought by the Petitioners and commenters, we believe that the parties have largely focused on worst-case scenarios, and do not take into account the fact that the rules we are clarifying are already consistent with an accreditation process that is based on widely-known and well accepted standards.³³ Moreover, as Huawei and TIA discuss, although such accreditations have not yet been recognized by the Commission, some laboratories have already opted to receive accreditation from a U.S.-based accreditation body.³⁴ This should reduce concerns about backlog and delays and, overall, we expect that most participants will find the accreditation and laboratory recognition process to be straightforward and similar in many aspects to “routine” processes.³⁵

16. Accordingly, laboratories recognized under the Section 2.948 criteria will continue to appear on the OET published list for such laboratories and be recognized until their expiration date of recognition or through July 12, 2017, whichever is sooner. Section 2.948-listed laboratories whose recognition will expire before July 12, 2017, may request that the Commission extend their recognition through July 12, 2017. Any testing that is completed by unaccredited recognized 2.948-listed laboratories will be accepted only in support of a certification application submitted by October 12, 2017. We also modify our rules to reflect these new dates.

IV. PROCEDURAL MATTERS

A. Final Regulatory Flexibility Analysis

17. The Regulatory Flexibility Act of 1980, as amended (RFA)³⁶ requires that a regulatory flexibility analysis be prepared for rulemaking proceedings, unless the agency certifies that "the rule will not have a significant economic impact on a substantial number of small entities."³⁷ The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."³⁸ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.³⁹ A small business concern is one which: (1)

³³ See, e.g., Motorola Petition at 7 (anticipating that the development of procedures and standards for the recognition of accreditation bodies will be “time-consuming and iterative process,” and that “in many non-MRA countries there may not be an established organization ready and qualified promptly to step into the role of an accreditation body”); See also CTA Comments at 4 and 7.

³⁴ Huawei Comments at 4; TIA Petition at 7.

³⁵ TIA Petition at 10-11. Because TIA and others contend that laboratories have been unable to proceed pending further clarification from the Commission, the decision cited by TIA (relating to difficulties encountered during the transition of Broadcast Auxiliary Service frequencies) more appropriately relates to a phase of the transition of 2.948-listed laboratories that has not yet occurred and may not ever happen.

³⁶ The RFA, see § 5 U.S.C. S 601 *et. seq.*, has been amended by the Contract with America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

³⁷ 5 U.S.C. § 605(b).

³⁸ 5 U.S.C. § 601(6).

³⁹ 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in Small Business Act, 15 U.S.C. S § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).⁴⁰

18. We address issues related to the recently adopted requirement that laboratories that perform compliance testing related to applications for equipment certification must be accredited in a manner recognized by the Commission. First, we discuss how a specific subset of such testing laboratories, those located in countries that do not have an MRA with the United States, can comply with this requirement. In doing so, we create no additional filing burdens for the affected testing laboratories. U.S.-based laboratory accreditation bodies that wish to voluntarily participate in this process would file a minimal request with OET. Additionally, we extend the transition period for overall compliance with the accredited testing laboratory requirement. This extension should eliminate the need for some laboratories to cease conducting testing related to the equipment certification process because they have not been able to meet the original transition deadline.

19. Therefore, we certify that the requirements of this Memorandum Opinion and Order and Order on Reconsideration will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of this Memorandum Opinion and Order and Order on Reconsideration, including a copy of this final certification, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, *see* 5 U.S.C. § 801(a)(1)(A). In addition, this Memorandum Opinion and Order and Order on Reconsideration and this certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration, and will be published in the Federal Register. *See* 5 U.S.C. § 605(b).

B. Paperwork Reduction Act

20. This Memorandum Opinion and Order and Order on Reconsideration contains no new information collection requirements, only non-substantive modifications.

C. Congressional Review Act

21. The Commission will send a copy of this Memorandum Opinion and Order and Order on Reconsideration to Congress and the Government Accountability Office pursuant to the Congressional Review Act.⁴¹

V. ORDERING CLAUSES

22. IT IS ORDERED that pursuant to Sections 1, 4(i), 7(a), 301, 302, 303(f), 303(g), 303(r), 307(e) and 332 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 151, 154(i), 157(a), 301, 302a, 303(f), 303(g), 303(r), 307(e), and 332, this Memorandum Opinion and Order and Order on Reconsideration IS ADOPTED.

23. IT IS FURTHER ORDERED that the rules and requirements adopted herein WILL BECOME EFFECTIVE [thirty days after the date of publication of a summary of this Report and Order in the Federal Register].

24. IT IS FURTHER ORDERED that the Petition for Reconsideration of The Telecommunications Industry Association is GRANTED to the extent indicated herein and otherwise DENIED.

25. IT IS FURTHER ORDERED that the Petition for Partial Reconsideration of Motorola Solutions, Inc. is GRANTED to the extent indicated herein and otherwise DENIED.

⁴⁰ Small Business Act, § 15 U.S.C. S 632.

⁴¹ See 5 U.S.C. § 801(a)(1)(A).

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

27. IT IS FURTHER ORDERED that, pursuant to the authority contained in Sections 4(i), 4(j), and 303 of the Communications Act, as amended, 47 U.S.C. §§ 154(i), 154(j) and 303, that should no petitions for reconsideration or applications for review be timely filed, this proceeding **IS TERMINATED** and ET Docket No. 13-44 **IS CLOSED**.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX**Final Rules**

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

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

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

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

2. Section 2.950 is amended by revising paragraph (e) to read as follows :

§ 2.950 Transition periods.

* * *

(e) The Commission will no longer accept applications for § 2.948 test site listing as of July 13, 2015. Laboratories that are listed by the Commission under the § 2.948 process will remain listed until the sooner of their expiration date or through July 12, 2017 and may continue to submit test data in support of certification applications through October 12, 2017. Laboratories with an expiration date before July 13, 2017 may request the Commission to extend their expiration date through July 12, 2017.

* * *