



Introduction:

Prior to the Federal Communications Commission's (FCC or Commission) privatization of certain duties and responsibilities relevant to 47 C.F.R. 68 (Part 68), it was not uncommon for the FCC to grant a Terminal Equipment (TE) manufacturer/vendor a waiver to FCC Part 68 technical criteria, provided the TE vendor could show that an FCC-issued waiver would serve in the best interest of the consumer or public. After the privatization of Part 68 and the subsequent removal of a significant portion of these technical criteria from Part 68 in favor of industry oversight and stewardship, a general misunderstanding has been discovered with respect to the continuance of this waiver process and the jurisdiction under which it is maintained -- ACTA or the FCC.

This paper details ACTA expectations regarding listing of waived equipment in the ACTA Database of Approved Equipment (final two paragraphs).

This paper is also intended to provide some clarity around the continuance of the FCC waiver process and some guidance with respect to parties seeking a waiver for FCC-retained criteria or requesting a waiver for ACTA-adopted criteria. This document reflects the understanding of ACTA as to the FCC waiver process as of the time it was written. For legally binding information about this subject the reader should contact the FCC.

Obtaining a Waiver for FCC-retained Technical Criteria:

Despite the FCC's privatization and removal of a significant portion of its technical criteria in Part 68, the FCC elected to retain sole authority and jurisdiction over certain consumer-related criteria. Namely, the FCC retained oversight of and rules pertaining to technical criteria for Hearing Aid Compatibility (HAC) and Volume Control (VC). The FCC also retained rules pertaining to inside wiring and consumer protection.

For technical criteria retained by the FCC, the FCC process for assessing and granting waiver requests has remained relatively intact: TE vendors may request a waiver of FCC-retained technical requirement pursuant to §68.5 for HAC or VC by submitting an application to the FCC. TE vendors also may, if applicable, request a waiver pursuant to the FCC's streamlined waiver procedures. In all cases, however, waivers granted by the FCC, as historically issued, are on a product-by-product, case-by-case basis.

As to the streamlined procedures, the FCC released an *order* in March 2001 adopting a streamlined waiver process for deciding §68.317(f) waiver petitions¹. When followed, the procedure would serve to ensure that the FCC waiver requirements would be met, and that an *order* could be issued granting the waiver request if manufacturers filed a statement with the FCC stating that they complied with the following five safety conditions:

- (1) the volume reset override switch shall be labeled as such and located on the telephone in such a way as to not be accessible to accidental engagement;*
- (2) a bright indicator light shall be prominently displayed on the front of the telephone and shall light up when the override is engaged and the telephone is placed in an off-hook condition;*
- (3) next to the light shall be a warning that the amplification is at a high level;*

¹ In the Matter of Tandy Corporation, Walker Equipment Company, Ameriphone, Inc., and Ultratec, Inc., Request for Waiver of Volume Control Reset, 47 C.F.R. §68.317(f), DA 01-578, March 5, 2001

(4) a caution on the use of the volume reset override switch shall be included in the users' manual; and

(5) the telephone includes a warning printed in Braille that can be securely attached to the back of the handset, or, if the telephone has only a headset, above the dial buttons, to indicate that a high volume setting may be engaged.

With this streamlined waiver process, the FCC eliminated the usual public notice and comment procedures for petitions for waivers of Commission rules.

Accordingly, parties may request waiver of section §68.317(f) by submitting a letter certifying that the equipment for which the waiver is requested complies with the five safety conditions noted above. The letter (waiver request) must be signed by a company representative or other officer responsible for its truthfulness. Waivers to the FCC's HAC and/or VC technical criteria will be issued by the Consumer and Governmental Affairs Bureau, Disabilities Rights Office (DRO).

If the request is in order and if no other issues are present that preclude a grant, the FCC will issue an *order* granting the waiver request. The party receiving such a waiver grant may then pursue equipment approval under the remaining applicable Part 68 rules.

Requesting a Waiver for ACTA-adopted Technical Criteria:

With the FCC's privatization of Part 68, the FCC handed-over to industry over 130 pages of the technical criteria previously contained in its Part 68 rules for industry's oversight, maintenance and continual development. The FCC also set in place rules that allow for any ANSI-accredited standards development organization (SDO) to develop required technical criteria going forward for advanced technologies. Consequently, under these rules, technical criteria previously contained in Part 68 that are absorbed/assumed by (or additional criteria developed by) an ANSI-accredited SDO that are submitted and adopted by ACTA would be deemed presumptively valid technical criteria by the FCC for Part 68 approval.

For this reason, requests for waivers (as historically defined) processed and granted by the FCC to technical criteria previously included in Part 68, and newly ACTA-adopted technical criteria, are no longer accepted by the FCC nor allowed by the ACTA. Parties developing and marketing products that fall outside established technical criteria or products for which technical criteria do not currently exist are now required to directly pursue necessary modifications to existing criteria or the development of new criteria for Part 68 approval via an ANSI-accredited SDO. An SDO's acceptance of a technical change request to existing criteria or the development of new criteria will be based solely on the technical merit of the request, pursuant to ANSI procedures.

Aside from submitting a request for a waiver, parties may appeal ACTA-adopted technical criteria by filing opposition to: (1) the submitting SDO; (2) ANSI for procedural issues; or (3) the FCC directly for a *de novo* review pursuant to §68.614. Refer to *ACTA Operating Principles and Procedures (OP&P)*, Revision 1.6, for more information on filing opposition to ACTA-adopted technical criteria.

Of interest, on release of the FCC *order* privatizing Part 68, the *Telecommunications Industry Association (TIA)* Committee TR41 assumed responsibility for maintaining the technical criteria previously contained in Part 68 and released (ACTA-adopted) standard TIA-968. This standard and its technical criteria continue to evolve. In addition, the *Alliance for Telecommunications Industry Solution (ATIS)*, Committee T1E1, has also developed and continues to develop technical criteria for Part 68 approval.

Filing Approved Terminal Equipment under a FCC Waiver with ACTA:

In accordance with FCC Rules and Regulations (§68.218), parties acquiring approval of terminal equipment for connection to the public telephone network must warrant – whether through a Telecommunications Certification Body (TCB) or a Supplier's Declaration of Conformity (SDoC) -- that each unit of equipment complies with all the applicable rules and regulations in 47 C.F.R. 68, and with the applicable ACTA-adopted technical criteria. Parties are required to also explicitly

indicate the technical criteria under which the equipment was approved and to file this information with ACTA for inclusion in its database of approved equipment.

In circumstances, therefore, where equipment has obtained approval as a result of a FCC granted waiver, parties filing this equipment for inclusion in the ACTA-maintained database are required to explicitly indicate on the SDoC or TCB certificate a reference to the technical criteria **and** a reference to the FCC-issued *order* wherein the FCC waived its requirements for approval (e.g., DA-##-###).