

ADMINISTRATIVE COUNCIL FOR TERMINAL ATTACHMENTS (ACTA)

MEETING DATE: August 6, 2004

TITLE: ACTA Communication to FCC RE: FCC Issued Waivers and Guidance for Parties Assuming Responsibility for Terminal Equipment Approved via a SDoC

SOURCE*: ACTA Secretariat

PURPOSE: Informative

DISTRIBUTION TO: ACTA

ABSTRACT

This contribution provides to the FCC ACTA's Guidance and Handling of FCC Issued Waivers. It also provides the FCC with ACTA's Clarification and Guidance for Parties Assuming Responsibility for Terminal Equipment Approved via a SDoC.

NOTICE

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July 30, 2004

VIA ELECTRONIC DELIVERY

Ms. Cathy Zima
Acting Deputy Chief, Industry Analysis and Technology Division (IATD)
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: ACTA's Guidance and Handling of FCC Issued Waivers and ACTA's Clarification and Guidance for Parties Assuming Responsibility for Terminal Equipment Approved via a SDoC

Dear Ms. Zima:

The Administrative Council for Terminal Attachments ("ACTA") is writing to notify the Federal Communications Commission ("FCC") of its newly adopted requirement with respect to terminal equipment approved under Part 68 utilizing a FCC-issued *Order* granting a party's request for waiver, and of its notice to parties assuming responsibility for terminal equipment approved utilizing a SDoC.

ACTA recently adopted a requirement, with respect to FCC-granted waivers, to assure that terminal equipment approved for Part 68 utilizing FCC-granted waivers are appropriately identified within the ACTA database of approved terminal equipment. Specifically, ACTA now require that parties include on their Supplier's Declaration of Conformity (SDoC) or Telecommunications Certifying Body (TCB) certificate a reference to the specific FCC *Order* (i.e., "DA" number) wherein the FCC grants a party's request for wavier in accordance with Section 68.5 of the FCC's rules.

Section 68.218 of the FCC's rules require that parties acquiring approval of terminal equipment for connection to the public telephone network must warrant -- whether through a TCB or SDoC -- that each unit of equipment complies with all the applicable rules and regulations in 47 C.F.R. Part 68, and with the applicable ACTA-adopted technical criteria. Parties are required to also explicitly indicate the applicable technical criteria under which the equipment was approved and to file this information with ACTA for inclusion in its database of approved equipment. Under the circumstance whereby the FCC grants a request for waiver to its otherwise applicable criteria, ACTA believes parties should explicitly reference the FCC-issued *Order* that granted the request within their submission to ACTA. By ensuring this information is maintained on a party's SDoC or TCB certificate, in conjunction with reference to the applicable ACTA-adopted criteria, users of the ACTA database are made aware of the technical criteria applicable specifically for approval of the terminal equipment.

To assist parties in understanding the waiver process in general --especially given the FCC's privatization of over 130 pages of its technical criteria -- and ACTA's requirements specifically, ACTA recently made available on its website (www.part68.org) a whitepaper entitled "Waiver of Part 68 Related Technical Criteria, July 2004." A copy of this whitepaper is attached.

ACTA also recently issued a notice to the over 1500 users of its ACTA On-Line Filing (AOF) system – the system used by parties to submit approved Part 68 terminal equipment – in which ACTA needed to provide clarification and guidance for parties assuming responsibility for terminal equipment approved via a SDoC. Namely, ACTA provided parties procedural information in regards to processing the transfer of product responsibilities. The notice effectively reminds Responsible Parties (“RP”) that pursuant to §68.324 they are required to include the identification and description of the RP on a Supplier's Declaration of Conformity. As such, when responsibilities are transferred from one party to another, the "new" RP is required to ensure the SDoC(s) for product(s) they continue to produce and market is/are updated to reflect the correct identification of the party responsible for the product. A copy of this notice is attached.

As the ACTA is continuing with its efforts to maintain an accurate database of approved Part 68 terminal equipment for use by industry, consumers, and federal agencies, the ACTA is proceeding with modifying its filing guidelines and AOF filing system to support the above requirements and guidelines. Unless advised otherwise by the FCC, these efforts will continue.

Should you wish to discuss ACTA’s decision further, I can be contacted by phone at +1.713.567.8095. You may also contact Tim Jeffries at +1.202.662.8669.

Sincerely,

Jimmy Salinas
ACTA Chair

Attachments: Waiver of Part 68 Related Technical Criteria, July 2004
ACTA’s Clarification and Guidance for Parties Assuming Responsibility for Terminal Equipment Approved via a SDoC, July 13, 2004

cc: ACTA Segment Representatives (acta-isreps@lists.atis.org)
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Waiver of Part 68 Related Technical Criteria

July 2004

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-##-###).

DELIVERED VIA E-MAIL

Date: 13 July, 2004

To: Filers to the ACTA-maintained Database of Part 68 Approved Terminal Equipment

From: Administrative Council for Terminal Attachments (ACTA)

RE: Clarification and Guidance for Parties Assuming Responsibility for Terminal Equipment Approved via a SDoC

ACTA recently received a request by a Responsible Party (RP) acquiring an existing product line approved by utilizing a Supplier's Declaration of Conformity (SDoC) to replace the existing SDoC in the ACTA database with one revised/updated to reflect the name and information of the new RP (the "successor").

From its review of the request, and based on FCC Part 68 Rules and Regulations, ACTA wants to provide filers to the ACTA On-Line Filing (AOF) system the following procedural information in order to better enable you to process the transfer of product responsibilities appropriately.

1) ACTA reminds Responsible Parties that pursuant to §68.324 they are required to include the identification and description of the RP on a Supplier's Declaration of Conformity. As such, when responsibilities are transferred from one party to another, the "new" RP is required to ensure the SDoC(s) for product(s) they continue to produce and market is/are updated to reflect the correct identification of the party responsible for the product.

2) Based on the above, when a RP submits a "Request for Transfer" to ACTA the RP will now be required to also provide ACTA with a copy of the updated/revised SDoCs for those products they continue to market. If a RP wishes to provide updated/revised SDoCs for additional products, this also may be done during the transfer on a voluntary basis.

3) In addition to updating the ACTA database to reflect the name and other associated information (i.e., US Agent of Service) of the new RP, ACTA also will replace the most recent SDoCs submitted by the original party with the revised/updated SDoCs from the new RP. ACTA will retain a copy of the original SDoC for reference, but will not make this SDoC available via its website.

4) To assist users of the ACTA Part 68 website's "TTE Search" function to better understand the possibility of differences between the information contained in an SDoC or Telecommunications Certification Body (TCB) certificate and the RP information maintained by ACTA, the ACTA Part 68 "TTE Search" webpage will be updated to provide text that could serve as a "pointer" to the original RP; e.g., explaining the "transfer of responsibilities" process.

5) The above requirements are applicable for RPs that assume responsibility for products approved utilizing the SDoC approach only. RPs assuming responsibility for products approved via a TCB are not required to submit a revised TCB certificate, given that RPs are not required by the FCC to provide this information to the consumer. However, if/when a RP modifies a product after the transfer, a revised/updated TCB certificate or SDoC must reflect the new company name.

6) Pursuant to §68.324, RPs assuming responsibility for products approved utilizing the SDoC process are reminded that they also assumed responsibility for maintaining a copy of the original and any revised/updated SDoCs on their website for ALL the products they assumed responsibility for; regardless if the product is still being produced or not.

7) Should the new RP inform ACTA that a copy of the SDoC is not available to the general public and accessible to the disabled community on a functional and reliable website that it maintains, and needs ACTA to maintain a copy of the original or revised/updated SDoC on ACTA's website,

the new RP will be charged an additional \$300 posting fee per SDoC, pursuant to the ACTA Guidelines.

Should you have any questions or comments concerning the above, do not hesitate to contact us at aofquestions@part68.org.

Best Regards,
ACTA Council