

Details of Ex Parte Presentation on Product Labeling
June 19, 2001

BACKGROUND

The Administrative Council for Terminal Attachments ("ACTA") was established by the Report & Order ("R&O") for CC Docket No. 99-216 (FCC 00-400), which streamlined Part 68 of Title 47 of the Code of Federal Regulations ("47 CFR 68"). Among other things, ACTA was charged with establishing labeling requirements for products subject to 47 CFR 68 and with maintaining a database of products shown to be compliant with specified technical criteria. ACTA is awaiting submittal of a labeling proposal developed by Telecommunications Industry Association ("TIA") Subcommittee TR-41.11 that has just successfully completed the default ballot stage (document PN-3-0014-1). This proposal would result in a unique identifier on the product, similar to that required by 47 FCR 15, that can be used by any interested party to look up all information required by the R&O in a web accessible database. ACTA formed a Database Working Group to recommend the contents of the database, and this group has identified an apparent conflict in the R&O. ACTA has a recommendation for resolving the conflict as described below.

Every item of information required by the Commission for the Part 68 label needs to be in the Part 68 database. Until recently, the manufacturer's identity (if different from the Grantee) was included in the database but not on a label. This required multiple registrations for a single product if manufactured in more than one factory. To relieve the burden of unnecessary multiple registrations and the burden of managing multiple labels for one product at an assembler (e.g., a PC maker including modems in their computers), the FCC took action such that one registration could suffice for multiple manufacturers. In such cases, the code MUL was entered into the database instead of the manufacturer's identity. We believe that action was proper.

However, the wording for 47 CFR §68.354(d) and §68.612 in Appendix B of the R&O states the manufacturer must be identifiable from the label. As a result, the database ACTA inherited from the FCC is inadequate to comply with the new labeling requirement without substantial database modification. The need for significant database modification can be avoided by changing the wording of these sections to reflect what we believe was the Commission's intent as documented in Paragraphs 86, 94, 115, and 124 of the R&O and in the new wording for 47 CFR §68.3 and §68.418. These changes are consistent with the Commission's decision to not include manufacturer information in the database when multiple manufacturers are involved.

DISCUSSION

Paragraph 115 of the R&O addresses requirements for the product label and reads in part as follows:

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 note, particularly, that the Commission wants consumers to be able to easily identify the "supplier" of their equipment. One of the main considerations here is for consumers who may have complaints about the hearing aid compatibility or volume control performance of a product

to be able to contact the “supplier” using the informal complaint procedures the Commission has established. Paragraph 124 of the R&O reads in relevant part:

Under our new rules, complainants are encouraged first to attempt to contact the supplier of terminal equipment with regard to their informal complaint. . . . Our new rules also require that the supplier respond within a designated period of time, generally thirty days, as specified by the Commission.

Earlier, when discussing approval methods in Paragraph 86 of the R&O, the Commission clearly indicates in Footnote 145 that by “supplier” they mean “responsible party”:

We define the term supplier as the responsible party.

This is further seen in the Commission’s implementation of the discussion in Paragraph 124 of the R&O concerning the contacting of the “supplier” about hearing aid compatibility and volume control complaints. The corresponding wording of the new rules at §68.418, as given in Appendix B of the R&O, requires that such complaints be submitted to and answered by the “responsible party”. It further indicates that the “responsible party” is to designate an agent for dealing with such complaints:

(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. . . .

In Paragraph 94, the R&O again equates “supplier” to “responsible party” but does mention in Footnote 178 that 47 CFR §2.209(b) defines “responsible party” as a “manufacturer” or “importer”:

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

The Commission deals with this in the text for the definition of “Responsible Party” that it adds to §68.3 of the rules, which reads in part as follows:

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.

To summarize thus far: It appears that it was the Commission’s intent that consumers be able to easily identify the “supplier” of their terminal equipment. By “supplier” the Commission meant “responsible party,” who might be a “manufacturer”, an “importer”, an “assembler” or someone else. Consumers need not be able to identify the “manufacturer” if different from the “supplier”

However, this intent seems to have not been translated into the text of the new rules for 47 CFR §68.354(d) and §68.612, as given in Appendix B of the R&O. As written, this text would require both the “responsible party” and the “manufacturer” to be identified by the labeling. The rules read in part as follows:

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.

and

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.

We suggest this wording goes beyond the Commission's intent. Clearly, the Commission wanted a consumer with a question or complaint about a product to be able to easily contact the "supplier" or "responsible party" for the equipment. However, the wording in 68.354 and 68.612 is inconsistent with the Commission's decision to no longer record multiple manufacturer information in the database as described above. It should not be necessary for the consumer to have to contact a "manufacturer", who may merely make the product for the responsible party under contract, , who is not required to have a U.S. address, and who might not have authority to make any change in the product. As a result, ACTA recommends the wording of §68.354(d) and §68.612 be changed to eliminate the requirement for the label to identify the "manufacturer" in addition to the "responsible party" for the following reasons:

- It is more onerous than the previous rules which required only the "grantee", who was also the "responsible party", to be identified (see 47 CFR §68.300 prior to the R&O).
- It is inconsistent with the Common Carrier Bureau's decision to allow the code MUL to be used as part of the Registration number to identify multiple manufacturing locations, which can include different manufacturers of the same product for one "grantee". In fact today, when a responsible party has more than one manufacturing location the FCC enters "MUL" (for "multiple") in the manufacturer's field, and no manufacturer information is entered in the database.
- It is inconsistent with the labeling requirements for the Commission's Part 15 certification program in which the "FCC ID" on the product identifies the responsible party (i.e., the "grantee"), who may have multiple manufacturing locations or manufacturers making the product, without identifying any manufacturer.
- It is inconsistent with needs of the consumer for filing informal complaints concerning hearing aid compatibility and volume control since §68.418(a) requires that such complaints be submitted to and answered by the responsible party and §68.418(b) requires the responsible party to designate an agent for handling such complaints.
- The term "manufacturer" in 47 CFR 68 originated in an era where the norm was for one entity to be the responsible party for the design, manufacture, and on-going compliance of products under its own brand name. In today's world, the responsible party may have a license agreement for a brand name and may contract with one entity to design a product and another entity to produce it. Should a problem arise, the contract manufacturer may have no ability to make necessary design changes, the designer may have no ability to implement necessary manufacturing changes, and neither may have authority to make any changes in the first place. The one thing that remains true is that the "responsible party" is the one and only entity

responsible for continued product compliance with the technical criteria for 47 CFR 68.

- Requiring Responsible Party A to reveal that it uses a contract manufacturer whereas Responsible Party B does not, when such information is not essential to the implementation of 47 CFR 68, might be viewed as being discriminatory and giving a competitive advantage to Responsible Party B.
- The database inherited by ACTA from the FCC is not structured to easily accommodate multiple manufacturers for the same unique identifier and would require substantial revamping to accommodate this added complexity.
- The costs associated with developing modifications to the database and with having to enter more data and update it when manufacturers or manufacturing locations change was not intended by the Commission nor considered in its analysis of the economic impact on small entities.

RECOMMENDATION

Accordingly, ACTA requests and recommends eliminating any requirement for the manufacturer to be identifiable from the Part 68 label. This can be accomplished by removing reference to the “manufacturer” in §68.354(d) and §68.612. That is, the first sentence of §68.354(d) should be changed to read:

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 for their terminal equipment.

Correspondingly, the last sentence of §68.612 should be changed to read:

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 and model number.

To meet the Commission-mandated transition deadline, ACTA intends to continue with this phase of its work of making the database transition from the FCC to industry as if the Commission had decided in favor of this proposal. The rationale is that the preponderance of evidence indicates the Commission’s intent was for the consumer to be able to identify the supplier of the terminal equipment, i.e., the responsible party who can help the consumer.