

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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

PETITION FOR CLARIFICATION AND/OR RECONSIDERATION

TELECOMMUNICATIONS INDUSTRY ASSOCIATION

Brian Scarpelli
Director, Government Affairs

TELECOMMUNICATIONS INDUSTRY ASSOCIATION
1320 North Courthouse Rd.
Suite 200
Arlington, VA 22201
(703) 907-7714

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PETITION FOR CLARIFICATION AND/OR RECONSIDERATION

Pursuant to Section 1.429 of the Federal Communications Commission’s (“Commission’s”) Rules, the Telecommunications Industry Association (“TIA”) respectfully submits this Petition for Clarification and/or Reconsideration of the Commission’s December 30, 2014-released Report and Order in the above-captioned proceedings (“Equipment Authorization Reform R&O”).¹

I. STATEMENT OF INTEREST AND SUMMARY

TIA is a Washington, DC-based trade association representing hundreds of global information and communications technology (“ICT”) manufacturers, vendors, and suppliers. TIA members manufacture Wi-Fi, 3G, 4G, intentional transmitters (small cell), and non-radio products such as routers and switches, as well as cable set-top boxes. As a result, TIA members are heavy users of the Commission’s certification system.

¹ *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) (“Equipment Authorization Reform R&O”).

Initially, TIA reiterates that it commends the Commission on the general success of the equipment authorization rules, which have developed to provide a great deal of certainty for the ICT manufacturer community and are an important factor in encouraging investment by manufacturers. We appreciate the Commission's focus and attention to the important issue of device certification, and its impact on manufacturers' and suppliers' ability to innovate. TIA's existing efforts to streamline the approval of devices are led by our Technical Regulatory Policy Committee ("TRPC"),² which meets several times each year with Commission lab staff to address device approval issues and to share information among stakeholders.

TIA also notes its ongoing efforts to work directly with Telecommunications Certification Bodies ("TCBs") that are crucial partners in navigating the equipment authorization process. TIA's members, representing manufacturers and vendors of ICT, constantly work with TCBs to ensure the quality of submissions to the Commission's OET Laboratories. In addition, TIA is a liaison between the TCB Council³ and the ICT manufacturer and vendor community, and presents to the TCB Council members emerging trends and issues at the twice-annual TCB Council Workshops in April and October of each year in Baltimore, MD.

TIA submits this Petition for Clarification and/or Reconsideration to address a narrow but important issue in the Equipment Authorization Reform R&O. Specifically, we request that the Commission (1) implement its policies for the re-certification of laboratories in countries without a telecommunications MRA in place and which were accredited by a Commission-recognized

² TIA's TRPC advocates public policy positions related to the streamlining and clarification of the mechanisms of the FCC equipment certification processes and procedures through interaction with the Federal Communications Commission (FCC), its Office of Engineering and Technology (OET) and its Laboratory, and other governmental bodies, including but not limited to those issues which are affected by related TIA standardization activities. *See* <http://www.tiaonline.org/>.

³ The TCB Council is a non-profit entity that provides a forum for periodic dialogue between the FCC and the TCBs and to facilitate on-going activities geared toward the improvement of TCB technical and administrative performance. *See* <http://www.tcbCouncil.org/>.

accreditation body; (2) provide clarification on the path forward to re-certification for § 2.948-listed laboratories in non-MRA countries as soon as possible; and (3) provide a period of two years once this process is finalized and made public for such laboratories to undergo and complete such process.

II. DISCUSSION

A. BACKGROUND

In the Equipment Authorization Reform R&O, the Commission adopted a new accreditation requirements, notably superseding the § 2.948 criteria for unaccredited laboratories that test equipment certified under Parts 15 and 18 of the rules, stating that it will cease to recognize new unaccredited § 2.948-listed laboratories.⁴ Due to publication in the Federal Register, the Commission has now confirmed that it will no longer accept applications for § 2.948 test site listing as of July 13, 2015; that laboratories by the Commission under the § 2.948 process will remain listed until the sooner of their expiration date or July 13, 2016, and may continue to submit test data in support of certification applications for October 13, 2016; and that laboratories with an expiration date before July 13, 2016 may request the Commission to extend their expiration date to July 13, 2016.⁵ The Commission notes that “[a] large number of testing laboratories recognized as § 2.948-listed are located in countries that do not have an operational [Mutual Recognition Agreement (“MRA”)] and are not eligible to be recognized by the FCC until procedures for recognizing laboratories in non-MRA countries are in place.”⁶ Further, in

⁴ See Equipment Authorization Reform R&O at ¶¶ 45–49.

⁵ See *Authorization of Radiofrequency Equipment*, Final Rule, 80 Fed. Reg. 33425 (June 12, 2015).

⁶ Equipment Authorization Reform R&O at ¶ 45, n. 144. These alternative processes remain undefined by the Commission.

draft guidance from the Commission’s Office of Engineering and Technology Laboratory, the Commission states:

The FCC, in consultation with the Office of United States Trade Representative, is reviewing potential requirements and procedures for recognizing foreign accrediting bodies in non-MRA countries or allowing currently recognized accreditation bodies to accredit test firms in non-MRA countries. This guidance will be updated if such procedures are established.⁷

There are 579 § 2.948-listed laboratories on the Commission’s database.⁸ TIA members utilize – and rely upon – these § 2.948-listed laboratories. Additionally, some TIA members themselves own such laboratories and others (*e.g.*, original equipment manufacturers) operate internal laboratories in countries without an MRA, and operate them to be consistent with internal controls as well as international industry standards.

ICT supply chains are global, resulting in benefits that include reduced cost of products and services to end users in consumer, business, and government contexts, as well as strengthened trade. TIA notes that it has, and continues, to fully support the use of telecommunications equipment MRAs to improve equipment approval processes while improving international trade. Generally, MRAs allow for “foreign” manufactured products to be tested in one laboratory, including manufacturers’ laboratories, for sale in the United States. TIA remains committed to facilitating MRAs that result in lower overall costs for all ICT manufacturers and reduced testing and certification delays in releasing products to markets, all while increasing reliability for regulatory authorities and increasing consumer access to the widest variety of available technology at lower costs. Without the needed clarification as described above, this environment is put at risk based on the current proposed rule.

⁷ See KDB Publication 974614 at n. 14.

⁸ See <https://apps.fcc.gov/oetcf/eas/reports/TestFirmSearch.cfm>.

B. THE IMPACT OF THE COMMISSION’S PATH FORWARD FOR CURRENT § 2.948-LISTED UNACCREDITED LABORATORIES AND CERTIFIED LABORATORIES IN COUNTRIES WITHOUT A MUTUAL RECOGNITION AGREEMENT IN PLACE AND WHICH WERE ACCREDITED BY COMMISSION-RECOGNIZED ACCREDITATION BODIES

For laboratories that reside in non-MRA countries, uncertainty exists in several contexts. First, because the negotiation of a telecommunications equipment MRA is largely in the hands of regulatory authority decisions which are reserved for government-to-government fora, those § 2.948-listed laboratories in non-MRA countries, as well as laboratories in countries without a telecommunications MRA in place and which were accredited by a Commission-recognized accreditation body that are unable to successfully complete an MRA negotiation by July 13, 2016, must rely on processes outside of their control. Such laboratories will find themselves scrambling to gain recognition while facing a looming deadline to satisfy a re-certification process not yet defined. Second, while the estimated time period for such re-certification has been estimated to be approximately one year, the practical reality could easily be longer.⁹

As a result, without a finalized process in place for § 2.948-listed laboratories in non-MRA countries and for laboratories in countries without a telecommunications MRA in place and which were accredited by a Commission-recognized accreditation body to gain or regain certification, these laboratories are assured a period of dormancy, threatening their survival at large based solely on their geographic location rather than their trustworthiness. TIA members

⁹ We concur with the Commission’s explanation in the Equipment Authorization Reform R&O of the laboratory accreditation as “a rigorous process involving an extensive review of documentation and onsite visits by representative(s) of the accrediting body.” Equipment Authorization Reform R&O at ¶ 40. TIA adds that time process typically exceeds a one year timeframe. As the Commission notes, laboratory accreditation bodies assess a variety of aspects of a laboratory, including the technical competence of staff; the validity and appropriateness of test methods; traceability of measurements and calibration to national standards; suitability, calibration, and maintenance of the testing environment; sampling, handling, and transportation of test items; and quality assurance of test and calibration data. *See id.* at n. 121.

relying on such laboratories will be at a competitive disadvantage due to external circumstances beyond their control. While TIA fully supports the Commission's goals of improving and ensuring the validity of testing data received, we do not believe that the widespread de-certification of all laboratories in non-MRA countries, regardless of the trustworthiness of these laboratories, is in the Commission's or the industry's interests. TIA therefore believes that it is clear that unaccredited § 2.948-listed laboratories will require a defined process as well as more time due to the difficulty and expense associated with attaining accreditation. Specifically, we request that the Commission revise the newly-changed 47 C.F.R. § 2.948 to provide that, for § 2.948-listed laboratories in non-MRA countries, such laboratories have two years from the finalization and release of alternative re-certification process.

C. TIA’S REQUEST FOR CLARIFICATION AND/OR RECONSIDERATION

1. TIA URGES THE COMMISSION TO IMPLEMENT ITS POLICIES FOR THE RE-CERTIFICATION OF LABORATORIES IN COUNTRIES WITHOUT A MUTUAL RECOGNITION AGREEMENT IN PLACE AND WHICH WERE ACCREDITED BY COMMISSION-RECOGNIZED ACCREDITATION BODIES

Initially, TIA notes that the language of the Equipment Authorization Reform R&O itself obligates the Commission to implement its criteria. Specifically, the Commission states:

Requests for recognition of testing laboratories in countries that do not have an MRA with the United States and which were accredited by accreditation bodies recognized by the Commission will be handled under our current procedures in Section 2.948.¹⁰

Based on this statement, the Commission’s approach to these laboratories in countries that do not have an MRA in place with the United States and which were accredited by accreditation bodies recognized by the Commission mandates that the alternative approach continue to be available for their accreditation. However, accrediting bodies – even those that may be compliant with ISO/IEC 17025 – willing to provide accreditation to laboratories in non-MRA countries do not currently have a Commission-identified arrangement in place to provide these services to those laboratories. It is crucial that the Commission come forward with the procedures and criteria that will be used to evaluate test lab accreditation bodies as soon as practicable. Therefore, TIA urges the Commission to utilize and implement its own procedures as soon as possible, whether in a further Order or through its established Knowledge Database (“KDB”) process.

¹⁰ Equipment Authorization Reform R&O at ¶ 48 (footnote omitted).

2. AS SOON AS PRACTICABLE, THE COMMISSION SHOULD CLARIFY ITS PATH FORWARD FOR § 2.948-LISTED LABORATORIES LOCATED IN COUNTRIES WITHOUT A NEGOTIATED MUTUAL RECOGNITION AGREEMENT THAT MUST BE RE-ACCREDITED

Based on the above, TIA requests that the Commission move forward as soon as practicable to provide the alternative process for those unaccredited § 2.948-listed laboratories in non-MRA countries to regain certification. TIA fully agrees with the Commission on the utility of a telecommunications equipment MRA, and further, TIA has and will continue to work with the Commission, other United States federal stakeholders, foreign regulators, and the ICT industry writ large to realize MRAs between the United States and any other country. However, the full negotiation of such an MRA for all § 2.948-listed laboratories in non-MRA countries cannot reasonably be expected to occur across the range of countries needing one by July 13, 2016.

It is imperative that the processes the Commission has for these unaccredited laboratories be finalized and released to the public as soon as possible. Once these processes are released, these laboratories can begin to plan for and implement this process. Without any finalized and published process in place, these laboratories are forced to wait to begin such planning and implementation under a shrinking deadline due to the publication of the Equipment Authorization Reform R&O in the Federal Register. As part of this alternative process, we urge the Commission to consider previously § 2.948-listed laboratories, including facilities that conduct only bench tests, in countries without a telecommunications equipment MRA in place which are fully controlled and verified for trustworthiness by and of an accredited laboratory, to be considered a subsidiary of such a laboratory.

TIA notes that the Commission has historically first set finalized requirements *before* implementing a hard date deadline. For example, in the Commission's rulemaking to address

Unlicensed National Information Infrastructure (U-NII) device operations in the 5 GHz band, the Commission established timelines for the applications for certification of 5 GHz devices to meet the new and modified rules predicated on finalized requirements on those U-NII devices in the same Order.¹¹ Conversely, in the instance of the Equipment Authorization Reform R&O, a hard deadline has been set for § 2.948-listed laboratories, despite these laboratories not being eligible for recognition by the FCC until procedures for recognizing laboratories in non-MRA countries are in place at some future time.

As the Commission appreciates, the viability and accreditation of laboratories is a necessity to countless ICT manufacturers, vendors, and suppliers. Consequently, a rapid deactivation without time to adapt or a clear process raises due process issues and represents a threat to the ability of ICT manufacturers to alter their supply chains which are crucial to bringing innovative products to the marketplace. To avoid a harmful series of consequences, TIA again urges the Commission to make the procedure for accreditation for non-MRA, § 2.498-listed laboratories available to the public as soon as possible. If that is not feasible, then TIA suggests that the Commission consider extending the timeline before these laboratories lose their accreditation to allow the process for re-accreditation to be made public and for the subject laboratories to act on its requirements.

¹¹ See *Revision of Part 15 of the Commission's Rules to Permit Unlicensed National Information Infrastructure (U-NII) Devices in the 5 GHz Band*, First Report and Order, ET Docket No. 13-49, 29 FCC Rcd. 4127 (2014) at ¶¶ 129–134.

3. THE COMMISSION SHOULD EXTEND THE EXPIRATION DATE FOR ACCEPTANCE OF § 2.948-LISTED LABORATORY DATA UNTIL AN IMPLEMENTATION PROCESS FOR THESE LABORATORY RE-ACCREDITATIONS HAS BEEN DETERMINED

In addition to providing clarification on the path forward for unaccredited § 2.948-listed laboratories, TIA also urges the Commission to allow for sufficient time so that these laboratories would be able to interpret, plan for, and implement such a timeline, once established. In the Equipment Authorization Report & Order, § 2.948-listed laboratory listings will expire no later than one year after the effective date of the rules,¹² which is July 13, 2016. As noted above, TIA members have found, through their ownership of accredited laboratories as well as in their extensive experience in partnering with such laboratories, that attaining accreditation is both time- and resource-intensive processes. For example, while attaining accreditation for laboratories typically takes at least one year, attaining this accreditation in countries without an operational MRA in place will likely face further increased difficulties. TIA therefore requests that the Commission allow for a two year period of time for unaccredited § 2.948-listed laboratories to attain re-certification, with this two year period of time commencing only once the process for re-certification is finalized and publicly released.

Based on the above, TIA believes that the Commission's proposed path, as written today, 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. TIA notes that this extension

¹² See Equipment Authorization Reform R&O at ¶ 54–55.

would also be consistent with the well-established Commission precedent of temporarily waiving the deadline for completing a technical transition for good cause.¹³

¹³ See, e.g., Improving Public Safety Communications in the 800 MHz Band, WT Docket 02-55, Order, 22 FCC Rcd 19730 (2007) (finding good cause to extend a deadline for completing the transition of broadcast auxiliary service frequencies).

III. CONCLUSION

TIA thanks the Commission for its continuing efforts to improve the equipment authorization's efficiency and quality. Consistent with the above, TIA urges for the Commission to (1) implement its policies for the re-certification of laboratories in countries without a telecommunications MRA in place and which were accredited by a Commission-recognized accreditation body; (2) provide clarification on the path forward to re-certification for § 2.948-listed laboratories in non-MRA countries as soon as possible; and (3) provide a period of two years once this process is finalized and made public for such laboratories to undergo and complete such process.

Respectfully submitted,

TELECOMMUNICATIONS INDUSTRY ASSOCIATION

By:



Brian Scarpelli
Director, Government Affairs

TELECOMMUNICATIONS INDUSTRY ASSOCIATION

1320 North Courthouse Road
Suite 200
Arlington, VA 22201
(703) 907-7700

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