

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 68

[GEN Docket No. 98–68; FCC 01–141]

Streamlining the Equipment Authorization Process; Implementation of Mutual Recognition Agreements and the GMPCS MOU

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document responds to the Petition for Reconsideration filed by Motorola. The petition requested clarification of the Report and Order in this proceeding regarding the handling of confidential information by “Telecommunication Certification Bodies.”

DATES: Effective June 18, 2001.

FOR FURTHER INFORMATION CONTACT: Hugh Van Tuyl, Office of Engineering and Technology, (202) 418–7506.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission’s *Memorandum Opinion and Order*, GEN Docket No. 98–68, FCC 01–141, adopted April 24, 2001, and released April 30, 2001. The full text of this Commission decision is available on the Commission’s Internet site at www.fcc.gov. It is available for inspection and copying during normal business hours in the FCC Reference Information Center, Room CY–A257, 445 12th Street, SW., Washington, DC, and also may be purchased from the Commission’s duplication contractor, International Transcription Service, (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Summary of the Memorandum Opinion and Order

1. The *Report and Order*, 64 FR 4984, February 2, 1999, in this proceeding, established a process through which private sector organizations could be designated to approve radio frequency devices and telephone terminal equipment in essentially the same manner as the Commission. These organizations are called Telecommunication Certification Bodies (TCBs). The rules we adopted specify the criteria that an organization must meet to be eligible for designation as a TCB, the designation procedure, the scope of responsibility of TCBs, and the requirements that TCBs must follow after issuing equipment approvals. Motorola, Inc. (Motorola) filed a petition requesting a clarification of the confidentiality of applications filed with

TCBs. By this action, we clarify the confidentiality requirements in Parts 2 and 68 of the rules that TCBs must follow in certifying radio frequency devices and telephone terminal equipment as compliant with the Commission’s rules.

2. Equipment authorization applications and related materials are not routinely available for public inspection prior to the effective date of the authorization. Upon grant of an application, the application file is routinely available for public inspection. However, the party filing an application for equipment authorization may request that the Commission hold certain exhibits confidential. Those exhibits for which confidentiality have been requested and granted are not routinely available for public inspection even after grant of the application. The factors that the Commission considers in determining whether to grant confidentiality include, among others, whether the material contains information that is commercial, financial, privileged or a trade secret, and whether disclosure of the information could result in substantial competitive harm.

3. When the requirements for TCBs were established, one of the rules adopted states that, upon request from the Commission, a TCB shall provide a copy of an application file to the Commission accompanied by a request for confidentiality for any information that qualifies as trade secrets. This requirement is intended to ensure the appropriate handling of materials filed with a TCB that are not routinely available for public inspection. Just as similar materials filed with the Commission are not routinely available for public inspection, TCBs are obligated to safeguard the confidentiality of information obtained in the course of their certification activities.

4. In its petition, Motorola requests that we clarify § 2.962(g)(4) of the rules regarding the handling of confidential information by TCBs. Specifically, Motorola is concerned about the use of the term trade secrets in this section to identify confidential materials. It states that this term as construed by the courts refers to a process that a business does not disclose publicly. Thus, it contends, this wording of the rule provides less protection to material included with applications filed with TCBs than those filed with the Commission. It believes that the rules for TCBs we adopted in this proceeding should refer more broadly to material that qualifies for confidential treatment under the

Commission’s rules rather than to trade secrets.

5. Motorola is correct that our rules permit material besides trade secrets to be held as confidential. We find that its recommended change to the rules we adopted in this proceeding more clearly reflects the intent of the rules, which is to ensure that applications processed by TCBs are treated in the same manner as applications processed by the Commission. We are therefore adopting this change. Motorola only specifically requested that we change § 2.962(g)(4) of the rules, which applies to the authorization of radio frequency devices by TCBs. However, on our own motion we are also making this change to § 68.162(g)(4) of the rules which applies to authorization of telephone terminal equipment by TCBs because the same confidentiality requirements that apply to radio frequency devices apply to telephone terminal equipment. This change will ensure consistent treatment of applications for both types of equipment.

Final Regulatory Flexibility Certification

6. The Regulatory Flexibility Act of 1980, as amended (RFA),¹ 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.”² The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”³ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.⁴ A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria

¹ The RFA, *see* 5 U.S.C. 601 *et seq.*, has been amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

² 5 U.S.C. 605(b).

³ 5 U.S.C. 601(6).

⁴ 5 U.S.C. 601(3) (incorporating by reference the definition of “small business concern” in the Small Business Act, 15 U.S.C. 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*.”

established by the Small Business Administration.

7. The *Report and Order*, 64 FR 4984, February 2, 1999, established a process through which private sector organizations could be designated to approve radio frequency devices and telephone terminal equipment. These TCBs were required under the *Report and Order* to keep "trade secret" information confidential. A Final Regulatory Flexibility Analysis was incorporated in the *Report and Order*.⁵ Following publication of the *Report and Order*, Motorola filed its petition seeking clarification of the confidentiality of applications filed with TCBs. In this *Memorandum Opinion and Order* we are amending the rules to indicate that confidentiality should apply to "any material that qualifies for confidential treatment under the Commission's Rules."

8. This amendment to the rules will affect the 15 to 20 TCBs in operation; and it is the Commission's belief that most of the TCBs are small businesses. Most applications filed with TCBs do not require that any information be held confidential. Where material does require confidential treatment it is predominantly because the materials are "trade secrets." Systems for determining and storing "trade secrets" are already in place. The small amount of additional material required to be stored because it is "material considered to be confidential by the Commission" is insignificant. Therefore, we expect that the increased burden on TCBs caused by this amendment is nominal and does not rise to the level of a "significant economic burden." Therefore, we certify that the amendments included in this *Memorandum Opinion and Order* will not have a significant economic impact on a substantial number of small entities.

9. The Commission will send a copy of the *Memorandum Opinion and Order*, including a copy of this final certification, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996.⁶ In addition, the *Memorandum Opinion and Order* and this certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration.⁷

10. The petition for clarification filed by Motorola is granted. It is further ordered that Parts 2 and 68 of the Commission's Rules are amended June 18, 2001. Pursuant to the authority contained in sections 4(i), 303(f), 303(g)

and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(f), 303(g) and 303(r).

11. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of the *Memorandum Opinion and Order*, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Parts 2 and 68

Communications equipment, Reporting and recordkeeping requirements.

Federal Communications Commission.
Magalie Roman Salas,
Secretary.

Rules Changes

For the reasons discussed in the preamble, parts 2 and 68 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 2.962 is amended by revising paragraph (g)(4) to read as follows:

§ 2.962 Requirements for Telecommunication Certification Bodies.

* * * * *

(g) * * *

(4) Where concerns arise, the TCB shall provide a copy of the application file to the Commission within 30 calendar days of a request for the file made by the Commission to the TCB and the manufacturer. Where appropriate, the file should be accompanied by a request for confidentiality for any material that may qualify for confidential treatment under the Commission's Rules. If the application file is not provided within 30 calendar days, a statement shall be provided to the Commission as to why it cannot be provided.

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PART 68—CONNECTION OF TERMINAL EQUIPMENT TO THE TELEPHONE NETWORK

3. The authority citation for part 68 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

4. Section 68.162 is amended by revising paragraph (g)(4) to read as follows:

§ 68.162 Requirements for Telecommunication Certification Bodies.

* * * * *

(g) * * *

(4) Where concerns arise, the TCB shall provide a copy of the application file to the Commission within 30 calendar days of a request for the file made by the Commission to the TCB and the manufacturer. Where appropriate, the file should be accompanied by a request for confidentiality for any material that may qualify for confidential treatment under the Commission's Rules. If the application file is not provided within 30 calendar days, a statement shall be provided to the Commission as to why it cannot be provided.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 23

RIN 1018–AH63

Changes in List of Species in Appendices to the Convention on International Trade in Endangered Species of Wild Fauna and Flora

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES, or "the Convention") regulates international trade in certain animals and plants. Species for which such trade is controlled are listed in Appendices I, II, and III to the Convention. This final rule announces decisions made by the eleventh meeting of the Conference of the Parties to CITES (COP11) in April 2000 on amendments to Appendices I and II, and incorporates those decisions in 50 CFR 23.23. This rule also discusses the issue of entering of reservations by the United States on any of the amendments. The effect of a reservation would be to exempt the United States from implementing CITES for a particular species. The United States has entered no reservations. The CITES amendments to Appendices I and II described in this rule entered into effect on July 19, 2000, unless specifically indicated otherwise.

⁵ 13 FCC Rcd 24737 (1999).

⁶ See 5 U.S.C. 801(a)(1)(A).

⁷ See 5 U.S.C. 605(b).