American Council of Independent Laboratories

Response to FCC Notice of Proposed Rulemaking
ET DOCKET 13-44

Foreword

The American Council of Independent Laboratories (ACIL) is pleased to submit this reply and commentary on the Federal Communications Commission's Notice of Proposed Rulemaking (NPRM) released February 15, 2013.

For over seventy five years, ACIL has represented independent testing and certification service providers and is a strong advocate for industry-government dialogue on common concerns and issues. Our core mission statement is "Enhancing Public Health and Safety Through Quality Testing and Engineering" which extends across multiple fields of endeavor and markets.

We recognize and appreciate the substantial thought, care and craft that was expended to create the NPRM under consideration. The document reads as a fine introduction, orientation and statement of the FCC's very successful Certification program that has fostered the development of many million communications devices that our global community relies on for safety, productivity and entertainment.

Our response has been developed by a working group of members under the Conformity Assessment Section (CAS). CAS members represent test laboratories, certification bodies, accreditation bodies as well as expert practitioners in the standards development community.

We respectfully submit the following comments, which reference particular sections of the NPRM as well as supplementary and, we hope, constructive comments on matters related to the NPRM and which affect our industry.

ACIL Reponses

Paragraphs 18 - 19.

We support the proposal that all Certification be provided by designated Telecommunications Certification Bodies. The current ratio of FCC to TCB-granted applications is small and reflects the growth of the TCB industry and its expansion of bodies of knowledge to all manner of wireless device technologies.

The modified/expanded Permit-But-Ask procedure is very welcome to assure timely processing of applications. The reality of the marketplace is that time-to-market is one of the most critical pressures facing product developers. This

pressure flows through the lab and certification process. Hence, the focus on the FCC to deliver timely and cogent guidance is critical.

Paragraph 20.

We welcome the change to improve efficiency of communications.

Paragraph 21.

The procedure makes sense for releasing the Certification process to the TCB. One concern is the amount of time that may elapse before testing can be conducted at the FCC. Timelines should be built in for performing testing. If an option were to test the DFS function at a laboratory not involved in the original submission, this may relieve some of the time pressure. Some language to the effect: "The FCC may allow the DFS device to be tested at a third-party laboratory."

(As a practical matter, regarding Step 5 of the procedure: TCBs don't generally "dismiss" applications if they are non-compliant.)

Paragraphs 24 -26.

TCBs, as it states in the proposed procedures, will not be burdened by this requirement. Much of this work is already performed in the current framework.

Paragraph 28 - 33

The process of requesting and receiving samples for post-market surveillance is extremely burdensome and time-consuming.

We request that consideration be given to provide a function *through the EAS* wherein the TCB can request a sample via the FCC. We believe that this will be an effective measure to improve the response rate from clients as well as to give advance information to the FCC about the level and frequency of requests, as well as 'level the playing field' to all TCBs.

3 Assessing TCB Performance

Paragraph 34

As the program is over 10 years old and functioning very effectively and information is widely available through training, the KDB process and other means. The wide complexity of the technology means, in a practical manner, that different levels of competence exist in the industry. Much of this is highly dependent on individual technical knowledge.

The Accreditation Bodies have unique and individual processes that are used to determine technical competence of personnel in the employ of a TCB. Formal criteria for technical competence is left to the discretion of assessors who may have a subjective and arbitrary criteria for competence.

ACIL requests that the FCC develop a uniform set of criteria to assess the competence of personnel employed by TCBs and this be mandated to Accreditation Bodies accrediting TCBs. This would raise the bar for TCB reviewers without an undue financial burden on TCBs.

B. Test Laboratories

1. Accreditation of Test Laboratories

We support requiring accreditation of test laboratories who perform Certification and Declaration of Conformity (DoC) testing. The accreditation process is competitive and well-understood and nearly universally accepted. However, the accreditation of a laboratory is only part of the general competence of an organization. Unaccredited laboratories have also been observed to produce excellent device evaluations and reports, while not all accredited test laboratories may always produce satisfactory evaluations.

Results between laboratories, both accredited and non-accredited have been found to be uneven. Proficiency testing (PT) programs are common across many other testing industries (i.e., chemical, mechanical, biological laboratories). A well-run proficiency testing program can serve the purpose of improving laboratory consistency and, by direct influence, quality of measurements. A PT program not only produces quantifiable comparisons between laboratories, but also serves as a reference for evaluating individual technical competence of operators and the test facilities/instrumentation used. This supports the above-noted support for a program to create uniform personnel criteria. While we recognize that the FCC Rules may not be the most realistic location in the regulatory conformity assessment scheme, as a minimum, we request that the Commission provide the imprimatur of "recommended practice" to Proficiency Testing.

Paragraphs 51 - 53

We support the implementation of Mutual Recognition Arrangements (MRAs). The MRA process has created the foundation of trade and ease of regulatory burden between economies that are signatories to MRAs (the US-EU MRA is a stellar example of this process). MRAs provide the basis for equal access to markets. The US-EU MRA has positively impacted US industries by allowing US laboratories to service US manufacturers for compliance with the CE Marking. Any changes to the Rules that erode the incentive for non-MRA partners to participate in an MRA should be discouraged.

We are greatly concerned with this section of the NPRM "...we propose to modify Section 2.948(e)(2) to provide that if a laboratory is located in a country that does not have an MRA with the United States, then it must be accredited by an organization recognized by the Commission for performing accreditations in the country where the laboratory is located. " This exception, that is, essentially allowing laboratories in non-MRA economies to have the benefits accorded MRA partners by simply being "accredited by an organization recognized by the Commission" is inadequate and subverts the MRA process that has been so beneficial to US industry.

Countries that do not have MRA agreements essentially benefit (nearly) completely from an open regulatory process structured by the FCC. This notion will gut any remaining incentive for those non-MRA countries to be part of the process.

The 2.948 test site listing process is a service to the industry and the public. The testing industry has come to rely on this resource when looking at industry data that enhance understanding of the regulatory landscape. Therefore, we DO NOT support the proposal outlined in paragraph 51.

Regarding Paragraph 52 and whether the Commission should recognize accreditations made through an organization such as the International Laboratory Accreditation Cooperation (ILAC), with or without an MRA, the answer is a resounding no.

ILAC is only one such organization in the world that operates a recognition program under ISO/IEC 17011. The Commission should not create a monopoly position for ILAC within the Commission's rules when there are other bodies around the world and in the United States that operate such recognition programs that may in fact be a better fit for the FCC. In fact the peer review process used by ILAC raises antitrust concerns in the United States since competing accreditation bodies are in fact assessing their own competitors.

Regarding Paragraph 53, ACIL supports laboratory accreditation for all laboratories.

Paragraph 55 and 56

ACIL supports the proposal in the above paragraphs except that specific reference to ILAC should be eliminated, or an in the alternative, list the National Cooperation for Laboratory Accreditation (NACLA) as well.

Paragraphs 57 – 68 – Test site validation and measurement procedures

Upon the release this NPRM, ACIL conducted a survey of its member laboratories to determine the financial impact of adopting ANSI C63.4-2009 in lieu of the 2003 version of the standard. What follow are the results.

All laboratories surveyed that are currently accredited to ANSI C63.4:2003 indicated that the hybrid antenna replacement, Test Site Validation above 1 GHz and Bore Siting technical issues have deterred them from pursuing accreditation to the 2009 version of the standard. All laboratories responding to the ACIL survey indicated that compliance costs to the new standard would range between $80K and $300K. For those labs surveyed that are currently accredited to the 2009 version of the standard, all indicated that modifications were required prior to accreditation.

Based on the ACIL survey and in ACIL's opinion, the Commission has not demonstrated that the technical benefits outweigh the costs to industry to comply.

In addition the ACIL survey discovered that roughly two-thirds of the laboratories currently accredited to ANSI C63.4: 2009 stated that their accreditation assessment either did not include a review of the technical issues referenced above or only a partial review. This creates the question of whether or not the accreditation bodies have received the necessary training and fully understand the technical requirements of ANSI C63.4: 2009, and/or the assessors are not following the checklists developed by the FCC. ACIL's concern is that the FCC may view the fact that a number of laboratories have already obtained accreditation to ANSI C63.4: 2009 as being a sign that mandatory implementation of this standard will not create a major burden for the laboratories when in fact some accreditation assessments may be falling technically short and helping to create a false impression.

In summary, ACIL believes that the financial burden created for EMC test laboratories outweighs any technical improvements provided by the ANSI C63.4: 2009 standard. In addition, remediating the problem of assessors not following the FCC checklists could be remediated through a NACLA program. Also, the transition period is inadequate. ACIL suggests three years.

ACIL appreciates this opportunity to comment and stands ready to answer any questions the Commission may have.

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