

ADMINISTRATIVE COUNCIL FOR TERMINAL ATTACHMENTS (ACTA)

MEETING DATE: December 10, 2002

TITLE: TEM Concerns about PN02-04

SOURCE*: Steve Whitesell, Clint Pinkham, and Billy Johnson
TEM Representatives

PURPOSE: Action

DISTRIBUTION TO: Council Members, Sponsors, TEM Segment Members

ABSTRACT

The August 27, 2002 release of PN02-04 announcing a "New Filing Requirement" created great consternation and adverse reaction from several members of the TEM interest segment. While the TEM Representatives supported and continue to support the fundamental message in the public notice, they agree the wording of the notice gives the impression that ACTA is overstepping its bounds and trying to exercise regulatory authority that it does not have. Some segment members remain convinced that this is indeed what actually happened. This contribution is intended to bring all of the issues into the open so the Council can learn from this experience, take steps to see that it does not recur, and clarify the record with respect to this notice.

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Background

On August 27, 2002, ACTA released Public Notice PN02-04 with "ACTA Announces New Filing Requirement" as the subject. This was done in response to an agreement reached during an executive session of ACTA held on July 12, 2002 that "ACTA should place on its web site a notice to Responsible Parties and TCBs summarizing ACTA's interpretation of the Part 68 rules regarding the timeliness of submissions to the database."

The notice was drafted and circulated on August 7 to Council members for comment. There were several email exchanges and modifications made to the text before it was finally published, but the proposed wording about this being a new filing requirement was in it from the beginning. As the TEM representatives to the Council, we should have recognized the concern this statement would cause and raised the issue at that time. However, we failed to do so.

ACTA's Interpretation of the Rules Regarding Timeliness of Filing

The ACTA discussion during the July 12 meeting centered around the requirement for the database to meet the FCC's needs for enforcement purposes, with the implication that equipment needed to be listed in the database by the time it was connected to the network in order for ACTA to fulfill this responsibility. The Primary TEM Representatives, Steve Whitesell and Clint Pinkham, participated in the discussion and supported the decision reached. ACTA's interpretation of the Part 68 rules regarding the timeliness of submission to the database is based on the following sections of the rules:

- §68.300(a): Terminal equipment approved as set out in this part must be labeled in accordance with the requirements published by the Administrative Council for Terminal Attachments and with requirements of this part for hearing aid compatibility and volume control.
- §68.610(a): The Administrative Council for Terminal Attachments shall operate and maintain a database of all approved terminal equipment. The database shall meet the requirements of the Federal Communications Commission and the U.S. Customs Service for enforcement purposes. The database shall be accessible by government agencies free of charge. Information in the database shall be readily available and accessible to the public, including individuals with disabilities, at nominal or no costs.
- §68.610(b): Responsible parties, whether they obtain their approval from a Telecommunications Certification Body or utilized the Supplier's Declaration of Conformity process, shall submit to the database administrator all information required by the Administrative Council for Terminal Attachments.

Terminal equipment may be connected to the network, and private lines that use the wireline facilities of network service providers, only after it has been approved using the TCB or SDoC process. Such approved equipment must be properly labeled as described in TIA TSB168 adopted by ACTA. ACTA is charged with maintaining a database of all approved terminal equipment such that it meets the requirements of the FCC for enforcement purposes. The information in the database must also be readily available and accessible to the public. Finally, it is the Responsible Party who must see that the database administrator has all the information required by ACTA.

The question of when the information needs to be in the database is best answered by examining when it might be needed for the above stated purposes. Although there is a stated requirement to meet the enforcements needs of US Customs, it is ACTA's understanding that Customs does not rely on the information in the database, but relies on a copy of the SDoC certificate or the TCB grant, for accomplishing its work. Thus, it appears the first time the information may be required is if a product causes a problem when it is connected to the network. In such a case, the purchaser of the equipment and/or the network service provider might want to get additional information about the product, including the name of the Responsible Party and the US point of contact for complaints. The FCC could also need the information for enforcement purposes to institute a recall if the product is causing serious problems.

This understanding or "interpretation" of when the information needs to be in the database is based on the existing rules and is not a new requirement established by ACTA. Rather, the Public Notice should have been worded more along the lines of bringing this timeliness need to the attention of Responsible Parties and TCBs, who often handle the paperwork for Responsible Parties.

Note that there is no change in the requirement for equipment to be approved before being connected. What was needed was a clarification that once a product is approved, the relevant information needs to be quickly placed into the database. When the FCC was doing the approvals and maintaining the database, both the approval and the database entry were under the control of one entity and tended to happen more-or-less simultaneously. Now that we have a distributed approval process with one central database, we needed a clarification of the need for the Responsible Party or its designated agent to be timely in getting the information on the approved product to ACTA for entry into the database.

Reaction from TEM Members

Reaction from several TEM members, the providers of the equipment subject to this “new requirement,” was swift and heated. One wrote:

I was quite dismayed to see the ACTA public notice issued yesterday (27 August) regarding their new "requirement" that TTE database filings be done prior to PSTN connection. While at first the argument that the carriers need this information when devices are attached to the network seems reasonable, this action by the ACTA is unnecessary, inappropriate, and clearly exceeds their authority.

I would like to ask that as TEM segment representatives you lodge a formal complaint with the ACTA on this matter. I think this complaint should seek the retraction by the ACTA of this action, and a promise from them that they will cease to take actions of this sort that exceed their authority and FCC mandate. . .

The TEM Representatives agree that this public notice creates the appearance that ACTA is exceeding its bounds and is trying to exercise regulatory authority that it does not possess. The message about this being ACTA's interpretation of the existing rules got lost in the wording surrounding the main statement of the document.

Another person wrote:

I agree with [comment above] in the interpretation that the ACTA is overstepping its bounds to issue this "requirement". I understand the need for this information to be available at time of connection... and that this "requirement" does not stop me from shipping product... and that future web submissions will only take a few days to get to the database... and that the impact to my business is minimal, however there is a principle that must be observed here that the ACTA cannot make "requirements". . .

I have no problem with the information published by the ACTA if the spirit of the word "requirement" is removed or changed to "notice", "information to Industry" or similar words. I would ask that our TEM reps take this proposal to the ACTA and push for these changes.

Still another wrote:

I agree with [earlier comment] that ACTA seems to be extending their authority again. . . I would like to stop these guys from doing this kind of stuff every six months once and for all.

One of the TEM members quoted above provided follow-up comments in which he cited the reference in §68.610(b) about the need for the Responsible Party to provide the information required by ACTA for the database. He noted:

This is the requirement, and no more. The ACTA can specify what information is in the database, but they cannot mandate when. . .

This ACTA notice was not provided as a reminder or advisory, but as a “requirement”. Furthermore, it is clear that this attempts to exceed the requirements in Part 68, and to effectively modify the Part 68 requirement without benefit of due process. The ACTA may not do this. . .

. . . I like the [TEM Representative's] suggestion that the ACTA should re-state their so-called “requirement” as a simple advisory or reminder to industry. I have no objection to this, and it may indeed have a positive effect. It may also be a worthwhile exercise toward developing other vehicles for action than to simply publish “requirements.” The ACTA is very good at painting itself into corners (e.g., the single funding situation), and it would be good for them to develop other mechanisms for influence and action. Has anyone suggested a “newsletter” to industry?

In total, six TEM members have expressed their concerns to the TEM Representatives about the public notice and the feeling that ACTA exceeded its authority in this case. As noted above, many would have found the notice much more acceptable as a statement of ACTA's understanding of the rules and a "reminder to industry" as originally intended, rather than as a "new requirement". TEM segment members and their representatives want it made clear that ACTA has no regulatory authority nor enforcement powers. Within the constraints established by the FCC, ACTA can create requirements about such things as what must be in the database, how the information is to be submitted, what labeling must be on the product, and what information must be provided to the customer. However, ACTA cannot create requirements about what products can be connected to the network or when or under what conditions they can be connected.

There is also a concern about the wording of the main statement in the notice appearing to hold the Responsible Party accountable for ACTA getting the information entered into the database promptly upon receipt. A follow-up comment from another of the individuals quoted above speaks to this point:

I can only assure that it [the required information for the database] is in the ACTA's hands by the point of connection. Anything after that I am powerless to control. . . .

I don't want to be held responsible for something over which I have no control, and I don't want to have to hold shipment while I wait for the ACTA to post it.

Of course, any time delay due to ACTA processing should become a mute point once Responsible Parties start using the on-line filing system.

Summary and Desired Action

The release of PN02-04 created an outrage among members of the TEM industry segment, who felt the document overstepped ACTA's bounds. They viewed the announcement of the "new filing requirement" as an attempt to regulate conditions that had to be met before equipment could be connected to the network, which ACTA has no authority to do. The TEM Representatives completely agree that the wording of the notice creates this impression and needs to be changed.

The TEM Representatives request that PN02-04 be rescinded and replaced with the modified text provided in Appendix A. This modified text conveys the message about the need for Responsible Parties to ensure that information is provided to ACTA in a timely manner for inclusion in the database, but does so with the proper perspective. It also better meets the intent of the decision taken in the July 12 meeting for a notice "summarizing ACTA's interpretation of the Part 68 rules regarding the timeliness of submissions to the database."

Finally, ACTA needs to acknowledge the fact that it does not have any regulatory authority and take steps to make sure it does not create such an impression. As a first step, it should ensure that the wording of its Public Notices, etc. truly reflect the decisions taken in meetings.

PUBLIC NOTICE

File No.: PN02-04A

ACTA Announces ~~New Filing Requirement~~Reminder Concerning Timeliness of Filing

August 27, 2002[new date]

The Administrative Council for Terminal Attachments ("ACTA") ~~today announces a new filing requirement for~~reminds parties submitting information for inclusion in the ACTA-maintained database of Part 68 approved equipment to do so in a timely manner.

Pursuant to 47 CFR §68.610, the FCC requires that Responsible Parties file product information with ACTA. The ACTA is required to maintain this information in a database of approved terminal equipment to meet the needs of the FCC and US Customs for enforcement purposes. The ACTA is also required to make the information in the database readily available and accessible to the public. Due to its experience in processing this information over the past 12 months, the ACTA ~~has adopted the following new requirement:~~is issuing the following reminder:

"Responsible Parties ~~shall assure~~need to ensure that product information is submitted to ACTA in a timely manner so that it is available for retrieval from the ~~ACTA~~ Database of Approved Terminal Equipment, via the publicly-available interface, prior to the connection of such product to Public Switched Telephone Network ("PSTN") services and private line services that require such approval."

This requirement is effective October 1, 2002.

The ACTA notes that this is consistent with FCC activities prior to the creation of ACTA. In the past, the FCC reviewed submissions and issued a product ID number only after it had all the required information in hand. Accordingly, a product was not permitted to be directly connected to the network except after issuance of the FCC-assigned product ID. Today, the Responsible Party determines the product ID and has the product approved by a Telecommunication Certification Body ("TCB") or uses the Supplier's Declaration of Conformity ("SDoC") process. The Responsible Party or its designated agent then submits the required information to the ACTA for the database. This ~~new ACTA filing requirement assures~~reminder is intended to ensure product information will be submitted to the ACTA for inclusion in the database before the FCC, telecommunications service providers, Customs officials, or the public needs it.

Questions about ACTA or this notice should be submitted to the ACTA Secretariat via E-mail at acta@atis.org, or by phone at +1.202.628.6380.