



PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

News media information 202 / 418-0500
Fax-On-Demand 202 / 418-2830
Internet: <http://www.fcc.gov>
TTY 202 / 418-2555

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**TANDY CORPORATION, WALKER EQUIPMENT AND AMERIPHONE,
INC. SEEK WAIVER OF HEARING AID COMPATIBILITY VOLUME
CONTROL STANDARDS
47 C.F.R. § 68.317(f)**

NSD-L-00-17
NSD-L-00-22
NSD-L-00-63

Comment date: September 7, 2000

Reply Comment date: September 22, 2000

On February 8, 2000, Tandy Corporation filed a petition with the Commission for waiver of 68.317(f) of its rules, 47 CFR 68.317(f) in order to register under Part 68 a cordless telephone with a feature that preserves a loud setting from one use of the telephone to another. On February 23, 2000, Walker Equipment, a Division of Plantronics, Inc. filed a petition for waiver of the same rule for various models of corded and cordless telephones with a similar feature. On May 9, 2000 Ameriphone, Inc. also petitioned to waive the rule for an analog phone with this feature. We are consolidating these petitions because they raise the same questions of policy.

All terminal equipment sold in the United States and connected to the public switched telephone network (PSTN) must be registered under Part 68 of the Commission's rules, *see* 47 C.F.R. § 68.2. The Part 68 registration process requires a device to conform to specifications designed to prevent harm to the PSTN. If an applicant's device meets Part 68 requirements, the Commission issues a registration number for it, thereby requiring local exchange carriers to permit its connection to the PSTN in the United States. A waiver of Section 68.317(f) requested by the above-mentioned Petitioners would allow them to register their telephone despite the fact that the telephone does not meet some of the technical requirements of this section. A request for waiver of one or more requirements of Part 68 does not excuse an applicant from meeting the requirements for which the applicant did not request waiver.

The Commission will not waive any provision of its rules unless good cause is shown, *see* 47 C.F.R. § 1.3. Under the relevant case law, the applicant has the burden of showing good cause for a waiver: "[a]n applicant [for a waiver] faces a high hurdle even at the starting gate." *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969). Nevertheless, an agency must take a "hard look" at applications for waiver, *id.*, and must consider all relevant factors. *See Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 416 (1971). An agency must adhere strictly to its rules unless a party can show "reasons why in the public interest the rule should be waived." *FPC v. Texaco Inc.*, 377 U.S. 33, 39 (1964). Finally, "[t]he agency must explain why deviation better serves the public interest and articulate the nature of the special circumstances to prevent discriminatory application and to put future parties on notice as to its operation." *Northeast Cellular Telephone Company, L.P. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

Subparagraph (f) of 47 CFR 68.317 requires that if a telephone allows a gain in Receive Objective Loudness Rating (ROLR) of more than 18 dB, it must reset to a nominal setting after being returned to the on-hook state. The purpose of the requirement is to protect individuals without reduced hearing, who may use the same telephone, from a sudden loud noise that could damage their ears. We note that the volume control requirements are the result of a rulemaking process that included a regulatory negotiation committee of consumer and industry representatives, and that the rules have just gone into effect this year.

Petitioners argue that their telephones would meet the special needs of people with hearing disabilities by eliminating the task of having to reset volume control each time a telephone is taken off-hook. Ameriphone describes another benefit as eliminating the problem of missed dialogue at the beginning of a phone call before the volume is reset. Petitioners state that their volume reset defeat features can be turned on and off without risk of accidental change, thereby facilitating appropriate use in either a single user environment of someone who needs amplification or a multi-user one containing both persons with and without hearing disabilities. Tandy Corporation and Walker Equipment claim that their telephones protect hearing because acoustic pressure limits are still met. Ameriphone contends that risk of injury is minimal because of warnings on its telephone, and the sensitivity of a telephone owner with a hearing disability to protect the hearing of other users. The petition by Ameriphone includes a letter in support of its telephone from a relevant consumer organization, Self Help for Hard of Hearing People, Inc.

We note that a Petition for Partial Reconsideration, filed December 20, 1999 in WT Docket No. 96-198, requests an increase in the minimum required adjustable gain for volume control on telephones. In that petition, the Council of Organizational Representatives asks the Commission to reconsider its decision to require a minimum 18 dB gain, and instead adopt a 20 dB gain level consistent with the Access Board's guidelines. The Council notes that "[a] two decibel increase in a telephone headset volume is a significant logarithmic volume increase . . . Therefore, a small increase in decibels represents a great increase in intensity." In a separate public notice, published in the Federal Register on July 7, 2000, the Commission set a deadline for filing oppositions and replies to that petition. Commenters to the instant Part 68 volume control waiver requests should indicate what impact a 20 dB gain for telephone volume control may have on persons without hearing disabilities if the Commission were to grant this waiver and the Petition for Partial Reconsideration in WT Docket No. 96-198.

Comments responding to this public notice must be filed with the Commission by September 7, 2000, and reply comments by September 22, 2000. Such comments should reference the file numbers NSD-L-00-17, NSD-L-00-22 and NSD-L-00-63. They should include specific information about the impact of this proposed waiver.

Comments should be sent to the Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Room TW-A325, Washington, DC 20554. Two copies of the comments should also be sent to the Network Services Division, 445 12th Street, SW, Room 6-A207, Washington, DC 20554.

The full text of this document, the waiver petitions, and public comment will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC 20554. This document may also be purchased from the Commission's copy contractor, International Transcription Service, Inc. (ITS), 1231 20TH Street, NW, Washington, DC 20036, telephone 202-857-3800, facsimile 202-857-3805, TTY 202-293-8810.

For further information, contact Jamal Mazrui at phone (202) 418-0069, email jmazrui@fcc.gov, or Susan Magnotti at phone (202) 418-0871, email smagnott@fcc.gov of the Network Services Division, Common Carrier Bureau. The TTY number is (202) 418-0484.

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