

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Part 68 Waiver Requests of)	File Nos.:
)	
Uniden Engineering Services)	NSD-L-00-216
Uniden Engineering Services)	NSD-L-01-42
Kyushu Matsushita Electric Co., Ltd.)	NSD-L-01-57
Uniden Engineering Services)	NSD-L-01-66
RadioShack Corporation)	NSD-L-01-81
ShenZhen Huaneng Communication Co. LTD.)	NSD-L-01-93

ORDER

Adopted: May 4, 2001

Released: May 7, 2001

By the Chief, Network Services Division, Common Carrier Bureau:

1. The Commission has received petitions for waiver of 47 C.F.R. section 68.312(i) of its rules from the following parties who wish to register, under Part 68 of the rules, devices that detect the presence of a stutter dial tone:¹

- Uniden Engineering Services on October 16, 2000 for Models EXT1160(XX), EXT1265(XX), and EXT1365(XX);
- Uniden Engineering Services on February 22, 2001 for its Model EXT1165(XX);
- Kyushu Matsushita Electric Co., Ltd. on March 13, 2001 for Models KX-TC1713(xx) and KX-TC1703(xx);
- Uniden Engineering Services on March 26, 2001 for its Model Q1960(XX);
- RadioShack Corporation on April 25, 2001 for its Model 43-3507(XX);
- ShenZhen Huaneng Communication Co. LTD. on April 23, 2001 for its Model MH9915.

¹ Stutter dial tone is a series of short separate tones produced by the telephone company's central switching office that alerts a voice mail subscriber that he or she has voice mail. The Petitioners' devices automatically check for the presence of stutter dial tone and, if detected, cause a light to blink to alert the subscriber of the waiting voice mail message.

For the reasons discussed below, we grant these petitions, subject to the conditions in this Order.

2. Part 68 Registration Process. 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.² The Part 68 registration process requires testing of a device to demonstrate that it conforms to specifications designed to prevent harm to the PSTN.³ If tests show that an applicant's device meets these Part 68 requirements, the Commission issues a registration number for it, thereby permitting its sale and connection to the PSTN in the United States. A waiver of Section 68.312(i), as requested by the above-mentioned Petitioners, would allow them to submit their stutter tone devices for Part 68 registration despite the fact that the devices do not meet the limitations of section 68.312(i). A waiver of one or more requirements of Part 68 does not, however, excuse an applicant from the testing requirements.

3. Waiver Standard. The Commission will not waive any provision of its rules unless good cause is shown.⁴ 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."⁵ Nevertheless, an agency must take a "hard look" at applications for waiver⁶ and must consider all relevant factors.⁷ An agency must adhere strictly to its rules unless a party can show "reasons why in the public interest the rule should be waived."⁸ 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."⁹

4. Streamlined Stutter Dial Tone Waiver Process. On September 28, 1995, the Commission's Common Carrier Bureau released an order granting eight parties waivers of Section 68.312(i) of the Commission's rules to offer devices that detect the presence of a stutter dial tone.¹⁰ The waivers were granted subject to eight conditions (Alameda conditions).¹¹

² 47 C.F.R. § 68.2.

³ See FCC Form 730, Application Guide, Revision C - 273 (March 1997).

⁴ 47 C.F.R. § 1.3.

⁵ *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969).

⁶ *Id.*

⁷ *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 416 (1971).

⁸ *FPC v. Texaco Inc.*, 377 U.S. 33, 39 (1964).

⁹ *Northeast Cellular Telephone Company, L.P. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹⁰ Part 68 Waiver Request of Alameda Engineering, Inc., *Order*, 10 FCC Rcd 12135 (Com. Car. Bur. 1995) (*Alameda Order*).

¹¹ Stutter dial tone detection devices must: (1) perform no periodic testing for stutter dial tone; (2) make an off-hook stutter dial

5. On August 9, 1999, the Common Carrier Bureau (Bureau) released an Order on Reconsideration (*Reconsideration Order*) in response to petitions filed by VoiceWaves, Inc. and Southwestern Bell Telephone Company (SBC).¹² In the *Reconsideration Order*, the Bureau granted VoiceWaves' request and eliminated the requirement that the stutter dial tone check occur no later than 30-seconds after a voice mail subscriber terminates a call. The second performance condition now reads: "(2) makes an off-hook stutter dial tone check no more than once after a subscriber completes a call, and completes the check no earlier than 4 seconds after the subscriber hangs-up."¹³ The Bureau also applied the same logic to the third performance condition and eliminated the four-minute maximum following the termination of a subscriber's call, so that it now reads: "(3) makes an off-hook stutter dial tone check after an unanswered incoming call no more than once."¹⁴ The Bureau denied the rest of VoiceWaves' and SBC's requests in those petitions.¹⁵ Finally, the Bureau ordered that all parties already in receipt of stutter dial tone waivers issued pursuant to the *Alameda Order* are not required to file a new Part 68 Registration for equipment covered by those waivers as a consequence of the *Reconsideration Order*.¹⁶

6. The *Alameda Order* established a streamlined process for Part 68 waivers of stutter dial tone devices, eliminating the usual public notice and comment procedures if a petitioner certifies that the eight conditions, as amended, are met. The Bureau determined that we could rely on these conditions in establishing a streamlined waiver process that provides manufacturers and carriers the stability afforded by our Part 68 rules without the expense and delay associated with the rule making process.

7. The Bureau invited other parties able to meet the *Alameda* conditions to file petitions for waiver of Section 68.312(i) in order to register stutter dial tone devices.¹⁷ Further waivers, the Bureau determined, would facilitate the market availability of such equipment, thus serving the public interest through increased innovation, consumer choice, and value. By serving the public interest, stutter dial tone waiver applications satisfy part one of the two-part analysis that the Commission has used in evaluating

tone check no more than once after a subscriber completes a call, and complete the check no earlier than 4 seconds and no later than 30 seconds after the subscriber hangs-up; (3) make an off-hook stutter dial tone check after an unanswered call no more than once and do so within 4 minutes after the call; (4) perform no off-hook stutter dial tone checks after an unanswered incoming call if the visual message indicator is already lit; (5) take the line off-hook for no more than 2.1 seconds per stutter dial tone check; (6) synchronize off-hook checks when multiple stutter dial tone detection and visual signalling devices are attached to the same line so that only one check is made per calling event for a single line; (7) not block dial tone to a subscriber attempting to initiate a call as an off-hook stutter dial tone detection check is occurring; and (8) not use more than 8 micro-amps of direct current (DC) from subscriber line loop, except that the devices may draw loop DC sufficient to make authorized off-hook checks. *Id.* at 12141.

¹² Part 68 Waiver Request of Alameda Engineering, et al., *Order on Reconsideration*, NSD-L-98-154, DA 99-1542 (rel. August 9, 1999).

¹³ *Id.* at ¶ 22.

¹⁴ *Id.* at ¶ 23.

¹⁵ *Id.* at ¶ 2.

¹⁶ *Id.* at ¶ 24.

¹⁷ *Id.* at 12141 n.73.

Part 68 waiver requests. By not harming the PSTN in accordance with the Alameda conditions, they also satisfy the second part.

8. Discussion. All Petitioners cited above have certified that their devices are stutter dial tone devices that comply with the eight conditions specified in the *Reconsideration Order*. Thus, we conclude, for the same reasons as in that order, that Petitioners have shown good cause for granting the requested waivers. Applications to register these devices under Part 68 of our rules may be submitted with this waiver.

ORDERING CLAUSES

9. Accordingly, IT IS ORDERED, pursuant to authority delegated in Sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and Section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, that the requests for waiver of Section 68.312(i) of the Commission's rules, 47 C.F.R. § 68.312(i), by Uniden Engineering Services, Kyushu Matsushita Electric Co., Ltd., RadioShack Corporation, and ShenZhen Huaneng Communication Co. LTD. ARE GRANTED to the extent stated herein.

10. IT IS FURTHER ORDERED that the petitions for waiver ARE GRANTED SUBJECT TO THE FOLLOWING CONDITIONS: that the stutter dial tone detection devices (1) perform no periodic testing for stutter dial tone; (2) make an off-hook stutter dial tone check no more than once after a subscriber terminates a call, and complete the check no earlier than 4 seconds after the subscriber hangs up; (3) make an off-hook stutter dial tone check after an unanswered incoming call no more than once; (4) perform no off-hook stutter dial tone checks after an unanswered incoming call if the visual message indicator is already lit; (5) take the line off-hook for no more than 2.1 seconds per stutter dial tone check; (6) synchronize off-hook checks when multiple stutter dial tone detection and visual signalling devices are attached to the same line so that only one check is made per calling event for a single line; (7) do not block dial tone to a subscriber attempting to initiate a call as an off-hook stutter dial tone detection check is occurring; and (8) do not use more than 8 micro-amps of direct current (DC) from subscriber line loop, except that the devices may draw loop DC sufficient to make authorized off-hook checks.

FEDERAL COMMUNICATIONS COMMISSION

Diane Griffin Harmon
Acting Chief, Network Services Division
Common Carrier Bureau

