

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

In the Matter of)	
)	
Part 68 Waiver Requests of	)	File Nos.:
)	
NEC America Inc.	)	NSD-L-00-262
Infinilink Corporation	)	NSD-L-00-264
Virtual Access (UK) Ltd.	)	NSD-L-00-265
Virtual Access (UK) Ltd.	)	NSD-L-00-266
D-Link Corporation	)	NSD-L-01-01
D-Link Corporation	)	NSD-L-01-02
Xavi Technologies Corporation	)	NSD-L-01-03
mPhase Technologies, Inc.	)	NSD-L-01-04
D-Link Corporation	)	NSD-L-01-05
3Com Corporation	)	NSD-L-01-06
Dataquest Technology Inc.	)	NSD-L-01-07
Eicon Networks	)	NSD-L-01-08
Telocity, Inc.	)	NSD-L-01-09
MAC System Co., Ltd.	)	NSD-L-01-10
Tecom Co., Ltd.	)	NSD-L-01-11
ADC DSL Systems, Inc.	)	NSD-L-01-13

ORDER

Adopted: January 23, 2001

Released: January 24, 2001

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

1. The Commission has received petitions for waiver of 47 C.F.R. section 68.308(e)(1) of its rules from the following parties who wish to register, under Part 68 of the rules, Asymmetrical Digital Subscriber Line (ADSL) modems that exceed the out-of-band signal power limitations of that section:¹

- NEC America Inc. on December 12, 2000 for its Model NEC DSL(A)-B10 ETU;
- Infinilink Corporation on December 15, 2000 for its Model i300;
- Virtual Access on December 18, 2000 for its Model 3531;

¹ An ADSL modem provides high bit-rate digital transmission concurrent with analog voice transmission over a single telephone line.

- Virtual Access on December 18, 2000 for its Model 3532;
- D-Link Corporation on January 5, 2001 for its Model DSL-500/ DSL-300;
- D-Link Corporation on January 5, 2001 for its Model DSL-200;
- Xavi Technologies Corporation on January 4, 2001 for its Model 7000-ABA-ST1;
- mPhase Technologies, Inc. on January 10, 2001 for its Model Traverser DVDDS-CPE TINI1001;
- D-Link Corporation on January 9, 2001 for its Model DSL-100D;
- 3Com Corporation on December 28, 2000 for its Model 3CP4623;
- Dataquest Technology Inc. on January 11, 2001 for its Model ADSL 101U;
- Eicon Networks on January 16, 2001 for its Model LC 2050;
- Telocity, Inc. on January 16, 2001 for its Model 10-X203;
- MAC System Co., Ltd. on January 13, 2001 for its Model MGA2000ES ;
- Tecom Co., Ltd. on January 16, 2001 for its AB800;
- ADC DSL Systems, Inc. on January 18, 2001 for Models Megabit Modem 700F, 600F, 500L, 400F;

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 68.308(e)(1), as requested by the above-mentioned Petitioners, would allow Petitioners to submit their ADSL modems for Part 68 registration despite the fact that the modems do not meet the out-of-band signal limitations of section 68.308(e)(1). A waiver of one or more requirements of Part 68 does not, however, excuse an applicant from this testing process.

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

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).

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 ADSL Waiver Process. On February 28, 2000, the Commission's Common Carrier Bureau released a Memorandum Opinion and Order granting Alcatel USA, Inc., (Alcatel) a waiver of Section 68.308(e)(1) of the Commission's rules for a similar ADSL modem.¹⁰ The Commission granted the waiver subject to two conditions (Alcatel conditions), which were corrected by erratum¹¹ to read as follows: the ADSL modem must (1) meet the transmitter spectral response requirements specified in Section 7.14 of T1.413- Issue Two (1998), and (2) operate with an aggregate power of less than 12.5 dBm over the range 25.875 to 138 kHz as specified in Section 7.15 of the same document.

5. The Alcatel Waiver Order additionally established a streamlined process for Part 68 waivers of ADSL modems, eliminating the usual public notice and comment procedures if a petitioner certifies that the above two conditions are met. The Commission determined that because the ANSI T1.413 - Issue Two (1998) standard for ADSL modems reflects a reasonable level of industry consensus on terminal equipment output limitations intended to protect the PSTN, we can rely on this standard in establishing a streamlined waiver process that will provide manufacturers and carriers the stability afforded by our Part 68 rules without the expense and delay associated with the rule making process. The Commission invited other parties able to meet the Alcatel conditions to file petitions for waiver of Section 68.308(e)(1) in order to register ADSL modems. In addition, the Commission determined that further waivers 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, ADSL modems satisfy part one of the two-part analysis that the Commission has used in evaluating Part 68 waiver requests. By not harming the PSTN in accordance with the Alcatel conditions, they also satisfy the second part.

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 *Alcatel USA, Inc. Petition for Waiver of the Signal Power Limitations Contained in Section 68.308(e)(1) of the Commission's Rules*, Order, NSD File No. NSD-L-99-81, DA 00-388 (rel. Feb. 28, 2000)(Alcatel Waiver Order).

¹¹ *Alcatel USA, Inc. Petition for Waiver of the Signal Power Limitations Contained in Section 68.308(e)(1) of the Commission's Rules*, Erratum, NSD File No. NSD-L-99-81, DA 00-388 (rel. March 21, 2000).

6. Discussion. All Petitioners cited above have certified that their devices are ADSL modems that comply with the two conditions specified in the Alcatel Waiver Order. Thus, we conclude, for the same reasons as in the Alcatel Waiver 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

7. 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 68.308(e)(1)) of the rules, 47 C.F.R. § 68.308(e)(1) by NEC America Inc., Infinilink Corporation, Virtual Access (UK) Ltd., D-Link Corporation, Xavi Technologies Corporation, mPhase Technologies, Inc., 3Com Corporation, Dataquest Technology Inc., Eicon Networks, Telocity, Inc., MAC System Co., Ltd., Tecom Co., Ltd., and ADC DSL Systems, Inc. ARE GRANTED to the extent stated herein.

8. IT IS FURTHER ORDERED that the petitions for waiver ARE GRANTED SUBJECT TO THE following conditions: that the devices (1) meet the transmitter spectral response requirements specified in Section 7.14 of ANSI T1.413- Issue Two (1998), and (2) operate with an aggregate power of less than 12.5 dBm over the range 25.875 to 138 kHz as specified in Section 7.15 of the same document.

FEDERAL COMMUNICATIONS COMMISSION

L. Charles Keller
Chief, Network Services Division
Common Carrier Bureau