

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

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| In the Matter of |) | |
| |) | |
| Part 68 Waiver Requests of |) | File Nos.: |
| |) | |
| Efficient Networks Inc. |) | NSD-L-01-123 |
| Comtrend Corporation |) | NSD-L-01-125 |
| Chung Fu Chen Yeh Enterprise Corp. |) | NSD-L-01-126 |
| Chung Fu Chen Yeh Enterprise Corp. |) | NSD-L-01-127 |
| Chung Fu Chen Yeh Enterprise Corp. |) | NSD-L-01-128 |
| DirecTV Broadband, Inc. |) | NSD-L-01-129 |
| Comtrend Corporation |) | NSD-L-01-130 |
| Kinpo Electronics, Inc. |) | NSD-L-01-131 |
| Apache Micro Peripheral, Inc. |) | NSD-L-01-132 |
| Apache Micro Peripheral, Inc. |) | NSD-L-01-133 |
| Apache Micro Peripheral, Inc. |) | NSD-L-01-134 |
| Apache Micro Peripheral, Inc. |) | NSD-L-01-135 |

ORDER

Adopted: July 26, 2001

Released: July 27, 2001

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

1. The Federal Communications Commission (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

- Efficient Networks Inc. on July 6, 2001 for its Model 7461;
- Comtrend Corporation on July 3, 2001 for its Model CT-300;
- Chung Fu Chen Yeh Enterprise Corp. on July 12, 2001 for its Model AI100;
- Chung Fu Chen Yeh Enterprise Corp. on July 12, 2001 for its Model AU101;

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

- Chung Fu Chen Yeh Enterprise Corp. on July 12, 2001 for its Model AR300, AR301;
- DirecTV Broadband, Inc. on July 12, 2001 for its Model 10-X301;
- Comtrend Corporation on July 18, 2001 for its Model 9304;
- Kinpo Electronics, Inc. on July 18, 2001 for its Model ADSL 302ER;
- Apache Micro Peripheral, Inc. on July 19, 2001 for its Model AE-DSL/A;
- Apache Micro Peripheral, Inc. on July 19, 2001 for its Model AC-DSL/A;
- Apache Micro Peripheral, Inc. on July 19, 2001 for its Model AP-DSL/C;
- Apache Micro Peripheral, Inc. on July 19, 2001 for its Model AB-DSL/C.

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 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

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).

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 (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 its ADSL modem.¹⁰ The Bureau 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 Bureau 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 Bureau 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 Bureau 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 Bureau 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. 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

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).

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 Efficient Networks Inc., Comtrend Corporation, Chung Fu Chen Yeh Enterprise Corp., DirecTV Broadband, Inc., Kinpo Electronics, Inc., and Apache Micro Peripheral, 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

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