

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of )  
 )  
Rath Microtech Complaint Regarding )  
Electronic Micro Systems, Inc. )  
Elevator Emergency Telephones )  
 )  
Electronic Micro Systems, Inc. )  
Petition for Waiver )

MEMORANDUM OPINION AND ORDER

Adopted: September 14, 2001

Released: September 17, 2001

By the Acting Chief, Network Services Division:

I. INTRODUCTION

1. Before us is a request by Electronic Micro Systems, Inc. (EMS) for a limited waiver of labeling requirements and on-hook impedance limitations specified in Federal Communications Commission (Commission or FCC) rules.<sup>1</sup> EMS's waiver request is made in response to the above-captioned complaint by Rath Microtech.<sup>2</sup> In its complaint, Rath Microtech argues that EMS's emergency elevator telephones are not properly registered or labeled and that they fail to comply with on-hook impedance limitations as required by Part 68 of the Commission's rules. Specifically, the complaint alleges potential violations by EMS of sections 68.2, 68.102, 68.214, 68.300, 68.312 of the Commission's rules<sup>3</sup> in connection with EMS's sale of equipment that did not meet impedance limitations, its failure to properly register modifications to its elevator telephone, and its sale of a single telephone to Rath Microtech that did not meet labeling requirements.

2. With regard to the complaint, we conclude that EMS did violate certain Commission rules. We therefore grant the complaint, in part. Because, however, the violations have been corrected and there is no evidence to indicate that the violations were willful or repeated, we decline to take any enforcement action against EMS. We therefore also deny the complaint, in part. In addition, we conclude that it is in the

<sup>1</sup> Letter to Ms. Geraldine A. Matisse, Chief, Network Services Division, from Richard D. Marks and Robert A. Mazer, Attorneys for Electronic Micro Systems, Inc., Re: Electronic Micro Systems, Inc. Request for Limited Waiver of Sections 68.312, 68.2 and 68.102 of the Commission's Rules, September 3, 1997 (*EMS Waiver Request*).

<sup>2</sup> Letter to Mr. William von Alven, Federal Communications Commission, from Jessica L. Bulgrin, Marketing/Product Manager, Rath Microtech, July 18, 1997 (*Rath Microtech Complaint*).

<sup>3</sup> 47 C.F.R. §§ 68.2, 68.102, 68.214, 68.300, 68.312 (1997).

public interest to conditionally grant EMS's waiver request.

## **II. BACKGROUND**

3. Sections 68.2 and 68.102 of the Commission's rules require that terminal equipment connected to the public switched telephone network (PSTN) meet the technical requirements for protection of the PSTN and be registered under Part 68 of the Commission's rules (or connected through protective circuitry).<sup>4</sup> If information provided about terminal equipment in an original application changes, as in the case of a new model, another application must be filed for a new registration number.<sup>5</sup> Section 68.300 of the Commission's rules requires that the registration number and certain other information be displayed on the exterior surface of the terminal equipment.<sup>6</sup>

4. Section 68.312 of the Commission's rules specifies the limitations for on-hook impedance.<sup>7</sup> It restricts the permissible limit for direct current flowing between the tip and ring conductors within a telephone or other terminal equipment, and the limit for direct current flowing between the tip and ring conductors and the earth round, when the telephone is in the on-hook condition. Non-compliance with on-hook impedance limitations can interfere with loop integrity testing, and can lead to false trouble reporting and extra service calls.

## **III. RATH MICROTECH'S COMPLAINT**

5. *Background.* EMS is a manufacturer of elevator emergency telephones. Rath Microtech, also a manufacturer of elevator emergency telephones, has three primary areas of complaint against EMS arising from Rath Microtech's purchase of one of EMS's elevator emergency telephones. First, Rath Microtech charges that EMS has been selling telephones that it has modified but for which it has not sought a new registration number. In particular, Rath Microtech argues that EMS sells a number of models, including PBX-DV, under one registration number (HCMUSA-74085-SP-N) that was originally issued for model HFP1 (HF1 Series). Second, Rath Microtech argues that EMS's telephone does not comply with section 68.312 limitations for on-hook impedance. Independent laboratory tests commissioned by Rath Microtech showed that the EMS telephone exceeded on-hook impedance limitations. Third, Rath Microtech argues that EMS does not label its equipment, in violation of section 68.300. Rath Microtech asks that EMS be made to comply with all of the requirements of Part 68 regulations.

6. *Discussion.* In analyzing Rath Microtech's complaint, we first consider whether the Commission's rules have been violated. If so, we next consider whether any enforcement action, such as issuance of a notice of apparent liability, is warranted. In doing so, we also consider whether any demonstrated violation is willful or repeated.<sup>8</sup> The Commission may also impose conditions on a regulatory license as a result of rule violations. Here, we find that EMS violated certain of the Commission's regulations in Part 68, but the violations were not of a willful or repeated nature. We

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<sup>4</sup> 47 C.F.R. §§ 68.2, 68.102 (1997).

<sup>5</sup> 47 C.F.R. § 68.214 (1997).

<sup>6</sup> 47 C.F.R. § 68.300 (1997).

<sup>7</sup> 47 C.F.R. § 68.312 (1997).

<sup>8</sup> See generally 47 U.S.C. §§ 501 - 502. See also *Complaints by Verilink Corporation*, 1986 WL 291578 (CCB 1986).

therefore decline to take enforcement action against EMS.

7. *Equipment Registration.* Commission rules require that terminal equipment be registered.<sup>9</sup> EMS acknowledges that it did not re-register modifications to the electronics board of its elevator telephone made in a ten month period prior to September 29, 1997. EMS indicates that it uses only one type of electronics board that it puts into all its telephones, and that this board has undergone modifications that EMS now realizes should have been registered. EMS argues that this failure was not the result of lack of care or negligence, however, because it relied on the expertise of Rockford Engineering Services (Rockford) to ensure that its telephone continued to comply with Part 68 regulations.<sup>10</sup> EMS acted promptly to apply for a new registration once the error was brought to its attention, and states that it is now fully compliant.

8. We conclude that EMS failed to properly register its emergency elevator telephone. We find, however, no evidence to indicate that EMS's violation was willful or repeated. EMS's telephones were promptly registered correctly when the violation was brought to its attention. Accordingly, we find no enforcement action on this issue is warranted.

9. *On-hook Impedance Limits.* Commission rules require that the amount of direct current flowing between the tip and ring conductors within a telephone or other terminal equipment, and the amount of direct current flowing between the tip and ring conductors and the earth ground, when the telephone is in the on-hook condition, may not exceed certain levels.<sup>11</sup> Tests by CCL requested by Rath Microtech, by U.S. Tech requested by EMS, and by the Commission, confirmed that EMS's telephone did not achieve the required results.

10. EMS employed Rockford<sup>12</sup> to test its Hand Free Phone series HF1 telephone prior to applying for certification with the Commission. Rockford provided EMS with a Continuing Compliance notice in January 1997. On February 27, 1997, the Commission issued a registration (number HCMUSA-74085-SP-N) based on the Rockford test results provided by EMS. EMS states that it has never received any complaint regarding on-hook impedance limits of its telephones and that it was first notified of Rath Microtech's complaint on July 21, 1997, through an EMS customer who had received a facsimile transmission of the complaint from Rath Microtech. Upon receiving this complaint, EMS immediately sent its telephone to Rockford for retesting.<sup>13</sup> On July 31, Rockford confirmed its original assessment that the telephone complied with Part 68 standards. On July 26, EMS sent the telephone to a different laboratory, U.S. Tech, for retesting. U.S. Tech found that the telephone failed Part 68 on-hook impedance limitations. Thereafter EMS worked with its contractors to redesign and modify the telephone. EMS states that the use of a 180-volt Transient Volt Suppressor (TVS) caused the non-complaint condition. EMS resubmitted the telephone, modified to remove the TVS, to U.S. Tech for retesting and received notification on August 19, 1997 that the modified telephone met the Part 68 on-hook impedance criteria. EMS states that it replaced the TVS in its telephones beginning September 1, 1997. EMS filed a new registration application with the Commission for the modified telephone, which was granted on September 29, 1997.

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<sup>9</sup> 47 C.F.R. § 68.102 (1997).

<sup>10</sup> *EMS Waiver Request* at 2.

<sup>11</sup> 47 C.F.R. § 68.312 (1997).

<sup>12</sup> Rockford is an EN 45001 accredited laboratory; this accreditation is the European equivalent of ISO/IEC Guide 25.

<sup>13</sup> Letter from Dan Gilbert, President of EMS, to William von Alven, Federal Communications Commission, (undated, references Mr. von Alven's letter of 22 July 1997)(*EMS August 1997 Letter*).

11. We conclude that EMS's telephones manufactured between March 1, 1997 and September 1, 1997 failed to comply with section 68.312 on-hook impedance limitations. We further conclude that there is no evidence to indicate that EMS's violation was willful or repeated, based on the actions that were taken by EMS before and after this violation was discovered. Accordingly, we decline to impose any enforcement action against EMS. We note that EMS requests a waiver, discussed *infra*, to allow the non-compliant telephones sold between March 1, 1997 and September 1, 1997 to remain in use by the purchasers. As discussed below, we conclude that a conditional waiver of section 68.312 is warranted.<sup>14</sup>

12. *Labeling Terminal Equipment.* Commission rules require that specific identifying information must be prominently displayed on an outside surface of all terminal equipment.<sup>15</sup> Rath Microtech ordered a single telephone from EMS that was not labeled as required by section 68.300. EMS admits that that telephone was not properly labeled, but explains that it was a single occurrence. EMS states that Rath Microtech's order came at the end of a working day, after the regular staff had left, and was presented as a rush order that could not wait until the following day.<sup>16</sup> In an effort to satisfy a supposed customer, the president of EMS shipped the telephone himself, but was unaware that it did not include the correct labeling.<sup>17</sup> Under these unique circumstances of this single incident, and due to EMS's correction of this matter, we find that this violation was not willful or repeated. Accordingly, we find no enforcement action is warranted.

#### **IV. EMS WAIVER REQUEST**

13. EMS requests a waiver<sup>18</sup> of the requirements in section 68.312 for 10,326 non-compliant telephones that were sold between March 1, 1997 and September 1, 1997.<sup>19</sup> EMS states that 8,633 telephones were sold directly to elevator companies or to a manufacturer of elevator cabs, 1,380 telephones were sold to distributors of elevator equipment, and the remaining 313 telephones were sold to various other users. EMS believes that a significant number of the telephones are connected to a private branch exchange (PBX) or to stand-alone intercom systems, and hence would not impact the PSTN. EMS says, however, that it has no way of ascertaining how many of its units are connected directly to the PSTN.

14. EMS also requests a waiver of sections 68.2 and 68.102, which require *inter alia* that terminal equipment must be registered. EMS states that it misunderstood the Commission's rules and failed to amend its registration number each time modifications were made to the telephone. EMS indicates that it is aware of the importance of complying with FCC rules and that it is now aware of the requirement to change its registration number each time a new model is developed. In support of its waiver, EMS argues that no harm is being caused to the public interest because these telephones are not sold to the general

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<sup>14</sup> See section IV, *infra*.

<sup>15</sup> 47 C.F.R. § 68.300 (1997).

<sup>16</sup> Electronic Micro Systems, Inc., Request for Limited Waiver, September 3, 1997, at 4.

<sup>17</sup> *Id.*

<sup>18</sup> This waiver request seeks retroactive authority to permit connection to the PSTN of equipment that EMS has already sold, and that already has been connected to the PSTN for some years.

<sup>19</sup> EMS states that up to 400 volts of induced voltage caused by the mechanical operations of an elevator can enter the telephone line and cause damage to the telephone's circuitry, and the TVS used in the non-compliant telephones was intended to protect the telephones from such damage.

public, but typically are purchased and installed by elevator companies. Moreover, EMS argues, upon realizing its mistake, it immediately took steps to correct its compliance by changing the FCC labels and its FCC customer information letter.

15. *Waiver Standard.* In analyzing EMS's waiver request, we consider established legal standards for waiver of the Commission's rules. The Commission will adhere strictly to its rules unless a party can demonstrate that "in the public interest the rule should be waived."<sup>20</sup> Furthermore, the Commission may only waive a provision of its rules for "good cause shown."<sup>21</sup> The Commission must take a "hard look" at applications for waiver<sup>22</sup> and must consider all relevant factors when determining if good cause exists.<sup>23</sup> The party petitioning the Commission for a waiver bears the heavy burden of showing good cause: "[a]n applicant [for a waiver] faces a high hurdle even at the starting gate."<sup>24</sup> In addition, "[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."<sup>25</sup> Finally, a waiver of one or more portions of the Commission's rules does not excuse an applicant from compliance with the Commission's other requirements.<sup>26</sup>

16. The test for a waiver of Part 68 rules is well established.<sup>27</sup> We have formulated and applied a two-part test, the *Nortel Test*, to determine whether a request for waiver of Part 68 rules to permit registration of non-compliant customer premises or terminal equipment is warranted. The first prong of the test is an evaluation of the terminal equipment's benefit to the public interest, with an emphasis on the potential gain in consumer choice and value. The second prong of the test is an evaluation of the terminal equipment's potential for causing network harm.<sup>28</sup>

17. *Discussion.* We find that a conditional waiver of section 68.312 the Commission's rules is warranted. Regarding the first prong of the *Nortel Test*, we conclude that there is a benefit to the public interest provided by the elevator telephones at issue. Elevator telephones permit emergency calls from the elevator in the event of a mechanical or power failure, or in the event of the personal emergency of a passenger. Clearly, their existence is in the public interest. Moreover, if a waiver is not granted, the purchasers of the more than ten thousand elevator telephones would have to remove their existing telephones and install new ones, or demonstrate that their telephones are connected to a PBX rather than to the PSTN, and thus will not cause harm to the PSTN. We conclude that the magnitude of this

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<sup>20</sup> *FPC v. Texaco Inc.*, 377 U.S. 33, 39 (1964).

<sup>21</sup> 47 C.F.R. §1.3.

<sup>22</sup> *Id.*

<sup>23</sup> *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 416 (1971).

<sup>24</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969).

<sup>25</sup> *Northeast Cellular Telephone Company, L.P. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

<sup>26</sup> *See* 47 C.F.R. § 1.3; *Alameda Order* at 12139.

<sup>27</sup> Alcatel USA, Inc. Petition for Waiver of the Signal Power Limitations Contained in Section 68.308(e) of the Commission's Rules, File No. NSD 00-37, *Memorandum Opinion and Order*, DA 00-388, -- FCC Rcd --- (Com. Car. Bur. Network Svcs. Div. 2000) ("*Alcatel Order*").

<sup>28</sup> *Id.*

inconvenience to the telephone purchasers would be unjustified, and the benefit of allowing the telephones to remain in place outweighs any likely harm that their continued use might cause to the PSTN.

18. Further, regarding the second prong of the *Nortel Test*, we conclude that no harm to the PSTN is likely to occur by continued use of these telephones. The non-compliant telephones have been in use for several years. No report of any complaints about harm to the PSTN caused by these telephones has been made to EMS or to this Commission. We also note that, unlike most customer premises equipment regulated under Part 68, elevator telephones are routinely and frequently tested in the normal course of business. Local telephone companies tests elevator telephones from its central office using computerized testing equipment on almost a daily basis.<sup>29</sup> In addition, elevator companies normally have maintenance contracts with building management companies that require testing of elevator telephones. EMS verifies that testing the operation of the telephone at least once a month is a common industry practice.<sup>30</sup>

19. EMS has stated that many of its customers connect the elevator telephones to a PBX system. Non-compliant telephones that are connected to a PBX rather than directly to the PSTN will not cause harm to the PSTN. Non-complaint telephones connected directly to the PSTN could, however, potentially cause false on-hook readings, which can interfere with loop integrity testing, and can lead to false trouble reporting and extra service calls. Such occurrences would be discovered through central office or engineer testing. No complaints from telephone companies or consumers have been reported thus far.

20. We also find that a conditional waiver of sections 68.2 and 68.102 of the Commission's rules is warranted. In addition to finding, as we found above under the first prong of the *Nortel Test*, that there is a benefit to the public interest despite the failure to properly label the telephones at issue, we also find that no harm has occurred or is likely to occur to the PSTN under the second prong due to improper labeling. Although terminal equipment owners and telephone companies need to be able to identify the manufacturer of non-compliant equipment, the purchasers in this instance, which are not members of the general public, have actual knowledge of the manufacturer's identity, and thus have not been harmed by the improper labeling.

21. We therefore grant EMS a waiver of sections 68.2, 68.201, and 68.312 of the Commission's rules, conditioned as follows. EMS need not recall or replace any of the non-compliant telephones. EMS shall, however, as a condition of this waiver, replace with a comparable compliant telephone, at no charge to its customers, any telephone returned to EMS containing the TVS component that is shown by the customers' telephone company to have caused harm to the PSTN.

#### **IV. ORDERING CLAUSES**

22. Accordingly, pursuant to the 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, IT IS HEREBY ORDERED that the complaint filed by Rath Microtech is GRANTED IN PART, and DENIED IN PART.

23. IT IS FURTHER ORDERED that the request filed by Electronic Microsystems, Inc. for waiver of sections 68.2, 68.102, and 68.312 of the Commission's rules, 47 C.F.R. §§ 68.2, 68.102, 68.312, by Electronic Microsystems, Inc., IS GRANTED subject to the following condition: Electronic

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<sup>29</sup> EMS Request for Limited Waiver, *supra*, at 2-3.

<sup>30</sup> Electronic Micro Systems, Inc., letter to Ms. Geraldine A. Matise, Chief, Network Services Division, October 27, 1997, at 2.

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Microsystems, Inc. must replace with a comparable compliant telephone, at no charge to its customers, any non-compliant telephone containing the TVS component sold between March 1, 1997 and September 1, 1997 and returned to Electronic Microsystems, Inc. that is shown by the customers' telephone company to have caused harm to the public switched telephone network.

FEDERAL COMMUNICATIONS COMMISSION

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