

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

In the Matter of	)	
	)	
Part 68 Waiver Requests of	)	File Nos.:
	)	
Samsung Electronics Co., Ltd.	)	NSD-L-01-37
GVC Corporation	)	NSD-L-01-38
Netopia Inc.	)	NSD-L-01-39
Westell Technologies Inc.	)	NSD-L-01-40
CastleNet Technology Inc.	)	NSD-L-01-41
Korea One Telecommunication Technology, Inc.	)	NSD-L-01-43
Archtek Telecom Corporation	)	NSD-L-01-44
Ambit Microsystems Corporation	)	NSD-L-01-45
Amigo Technology, Inc.	)	NSD-L-01-47
Abocom Systems, Inc.	)	NSD-L-01-48
D-Link Corporation	)	NSD-L-01-49
CIS Technology Inc.	)	NSD-L-01-50
CastleNet Technology Inc.	)	NSD-L-01-51
Acer Communications & Multimedia Inc.	)	NSD-L-01-52
Zyxel Communications Corporation	)	NSD-L-01-53
Zyxel Communications Corporation	)	NSD-L-01-54
Zyxel Communications Corporation	)	NSD-L-01-55
Amigo Technology, Inc.	)	NSD-L-01-56
Westell, Inc.	)	NSD-L-01-58

**ORDER**

**Adopted: March 15, 2001**

**Released: March 16, 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:<sup>1</sup>

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

- Samsung Electronics Co., Ltd. on February 15, 2001 for its Model SAM-335;
- GVC Corporation on February 16, 2001 for its Model TI AP5 ADSL MODEM, DSL-800I/T2B;
- Netopia Inc. on February 16, 2001 for Models 4541XXXNA and 4741XXXNA;
- Westell Technologies Inc. on February 14, 2001 for its Model Access 4000;
- CastleNet Technology Inc. on February 21, 2001 for its Model AR211;
- Korea One Telecommunication Technology, Inc. on February 26, 2001 for its Model Es-Link KCP1000;
- Archtek Telecom Corporation on February 26, 2001 for its Model PIW-A3, PIW-A3NS;
- Ambit Microsystems Corporation on March 6, 2001 for Models U41, U41M001B and U41M001R;
- Amigo Technology, Inc. on March 7, 2001 for its Model AMX-GA82U;
- Abocom Systems, Inc. on March 6, 2001 for its Model UA600GS;
- D-Link Corporation on March 6, 2001 for its Model DSL-504;
- CIS Technology Inc. on March 6, 2001 for its Model AP200;
- CastleNet Technology Inc. on March 5, 2001 for its Model AI 400;
- Acer Communications & Multimedia Inc. on March 5, 2001 for its Model ASR 688;
- Zyxel Communications Corporation on February 23, 2001 for its Model Prestige 643;
- Zyxel Communications Corporation on February 23, 2001 for its Model Prestige 642R;
- Zyxel Communications Corporation on February 23, 2001 for its Model Prestige 630;
- Amigo Technology, Inc. on March 7, 2001 for its Model AMX-IA81P;
- Westell, Inc. on March 1, 2001 for its Model R405 Wirespeed.

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.<sup>2</sup> The Part 68 registration process requires testing of a device to demonstrate that it conforms to specifications designed to prevent harm to the PSTN.<sup>3</sup> 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.

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<sup>2</sup> 47 C.F.R. § 68.2.

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

3. Waiver Standard. The Commission will not waive any provision of its rules unless good cause is shown.<sup>4</sup> 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."<sup>5</sup> Nevertheless, an agency must take a "hard look" at applications for waiver<sup>6</sup> and must consider all relevant factors.<sup>7</sup> An agency must adhere strictly to its rules unless a party can show "reasons why in the public interest the rule should be waived."<sup>8</sup> 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."<sup>9</sup>

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.<sup>10</sup> The Commission granted the waiver subject to two conditions (Alcatel conditions), which were corrected by erratum<sup>11</sup> 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

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<sup>4</sup> 47 C.F.R. § 1.3.

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

<sup>6</sup> *Id.*

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

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

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

<sup>10</sup> *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).

<sup>11</sup> *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).

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. 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 Samsung Electronics Co., Inc., GVC Corporation, Netopia Inc., Westell Technologies Inc., CastleNet Technology Inc., Korea One Telecommunication Technology, Inc., Archtek Telecom Corporation, Ambit Microsystems Corporation, Amigo Technology, Inc., Abocom Systems, Inc., D-Link Corporation, CIS Technology Inc., Acer Communications & Multimedia Inc., Zyxel Communications Corporation, and Westell, 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