

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

In the Matter of)
Panasonic Corporation of North America)
Request For Waiver of Hearing Aid-Compatibility)
and Volume Control Requirements for its)
Panasonic 2.4 GHz FHSS Cordless Telephone)
with Bone Conduction Type Ear-Piece,)
47 C.F.R. §§ 68.316, 68.317)

ORDER

Adopted: August 16, 2005

Released: August 18, 2005

By the Deputy Chief, Consumer & Governmental Affairs Bureau:

1. In this Order we address a petition for waiver of 47 C.F.R. §§ 68.316 and 68.317 of the Commission’s rules filed by Panasonic Corporation of North America (Panasonic) on April 19, 2005. Section 68.316 provides the technical requirements for ensuring that telephones are hearing aid compatible. Section 68.317 provides technical standards for hearing aid compatibility volume control. Panasonic seeks approval of a telephone device, Panasonic 2.4 GHz FHSS Cordless Telephone with Bone Conduction Type Earpiece, Model KX-TG2388(xx), that provides a “bone conduction earpiece (vibrator)” in order to allow individuals with conductive hearing loss to use the telephone. Because the bone conduction telephone is a specialized device unlike traditional telephone receivers, Panasonic requests a waiver of Sections 68.316 and 68.317.

2. Background: Part 68 Registration Process. All terminal equipment manufactured in, or imported into, the United States and connected to the public switched telephone network (PSTN) must conform to the requirements of Part 68 of the Commission’s rules. To that end, Part 68 requires either that terminal equipment be tested by a Telecommunications Certification Body (TCB) or that the

1 Request for Waiver of Hearing Aid-Compatibility and Volume Control Requirements in 47 C.F.R § 68.316 and 47 C.F.R § 68.317 for Panasonic 2.4 GHz FHSS Cordless Telephone with Bone Conduction Type Ear-Piece, Model KX-TG2388(xx), (April 19, 2005) (Panasonic Request for Waiver).

2 47 C.F.R. §§ 68.4 & 68.316.

3 47 C.F.R. §§ 68.6 & 68.317.

4 Panasonic Request for Waiver at 1.

5 Part 68 is intended to prevent harm to the PSTN from the connection of terminal equipment and associated wiring. 47 C.F.R. § 68.1. Pursuant to Part 68, all terminal equipment that may be connected to the telephone network must meet the technical requirements of both Part 68 and those published by the Administrative Council for Terminal Attachments (ACTA) as required in Sections 68.7, 68.102, and subpart C of Part 68 of the Commission’s rules. See 47 C.F.R. §§ 68.7, 68.102; 47 C.F.R. Subpart C.

6 TCBs are equipment test laboratories certified by the Commission pursuant to Sections 68.160 and 68.162 of the Commission’s rules to approve terminal equipment for connection to the telephone network. Each TCB has its own (continued....)

responsible party follows the procedures for a Supplier's Declaration of Conformity (SDOC).⁷ A waiver of Sections 68.316 and 68.317 allows the petitioner to apply to a TCB, or to file its SDOC pursuant to the Part 68 equipment approval requirements, despite the fact that the device does not meet the technical standards of Sections 68.316 and 68.317.

3. *Waiver Standard.* Pursuant to Section 1.3 of the Commission's rules, the Commission may waive any provision of its rules, in whole or in part, on its own motion or on petition, if good cause is shown.⁸ Section 68.5 more specifically provides that the Commission, upon application of any interested person, may waive the requirements for hearing aid compatibility with respect to new telephones, or telephones associated with new technology or service.⁹ In a proceeding to grant a waiver from the Commission's hearing aid compatibility requirements, the Commission shall consider the effect of granting a waiver on persons with hearing disabilities.¹⁰

4. More broadly, in reviewing a request for a waiver, the Commission will 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."¹¹ Furthermore, the Commission may only waive a provision of its rules for "good cause shown."¹² The Commission must take a "hard look" at applications for waiver¹³ and must consider all relevant factors when determining if good cause exists.¹⁴ The party petitioning the Commission for a waiver bears the heavy burden of showing good cause: "[an] applicant [for a waiver] faces a high hurdle even at the starting gate."¹⁵ In addition, the "[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."¹⁶ 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.¹⁷ Applying these standards, we find good cause exists to grant Panasonic's waiver request, to the extent indicated herein, and that doing so is in the public interest.

(...continued from previous page)

application procedure and operates independently of the Commission. In addition, bodies outside the United States are also permitted to approve equipment. See 47 C.F.R. §§ 68.160(c), 162.

⁷ SDOC procedures are set forth in Sections 68.320 – 68.353 of the Commission's rules. 47 C.F.R. §§ 68.320 – 68.353.

⁸ 47 C.F.R. § 1.3.

⁹ 47 C.F.R. § 68.5.

¹⁰ *Id.*

¹¹ *FPC v Texaco, Inc.*, 377 U.S. 33, 39 (1964).

¹² 47 C.F.R. § 1.3.

¹³ *FPC v Texaco, Inc.*, 377 U.S. 33, 39 (1964).

¹⁴ *Citizens to Preserve Overton Park, Inc., v. Volpe*, 401 U.S. 402, 416 (1971).

¹⁵ *WAIT Radio v FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969).

¹⁶ *Northeast Cellular Telephone Company, L.P. v FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹⁷ See 47 C.F.R. § 1.3; *Part 68 Waiver Request of Alameda Engineering Inc., et al*, Order, DA 95-2058, 10 FCC Rcd 12135, 12139 (1995).

5. *Discussion.* In response to the *Panasonic Request for Waiver*, the Commission issued a *Public Notice*,¹⁸ to which three comments, all supporting the request for waiver, were filed in response.¹⁹ Panasonic, in its comments, asserts that it developed its Panasonic 2.4 GHz FHSS Cordless Telephone with Bone Conduction Type Earpiece in order to fit the needs of a small niche of individuals with hearing disabilities that cannot process sound received through the outer ear but can process sound when the bones of the inner ear are vibrated directly. As Panasonic explains, “[t]he bone conduction speaker design provides vibrations, which allow a user to hear telephone conversations by placing it against the user’s head.”²⁰ Although, as Panasonic notes, “this product also can be used in [a] conventional manner, with sound transmission directly through the outer ear to the inner ear’s auditory nerve,”²¹ when “tested strictly in accordance with §68.316 and RS-504, its axial and radial field intensity falls outside induced frequency response at frequencies below the 700 Hz range” and therefore not within the Commission’s definition of hearing aid compatible.²² Similarly, Panasonic states that its request for volume control waiver is necessary because the design of the handset does not allow the volume “to be precisely measured in accordance with traditional measurement techniques.” However they believe that the “product’s volume control amplification is appropriate for its intended users, who themselves are often unable to take advantage of other accessible products.”²³

6. Panasonic intends to compensate for the lack of hearing aid compatibility through marketing and appropriate warnings.²⁴ Panasonic states that the “product would be marketed as a bone conduction type telephone product to address the special needs of transmission hearing impaired people.”²⁵ Further, the product’s outer shipping box will “contain conspicuous marking ‘This product is a bone conduction telephone product and is non-hearing aid compatible.’”²⁶ Additionally, the operating instructions will include warnings that the product is not hearing aid compatible and instructions on how it can be best used with a hearing aid.²⁷

7. SHHH states that although they estimate only 5-10 percent of people with hearing loss would benefit from this product,²⁸ and it may not be hearing aid compatible, “[i]f in fact the phone is designed to work directly only through bone conduction then the request for waiver makes sense, hearing

¹⁸ *FCC Seeks Comment on Panasonic Corporation of North America’s Request for Waiver of Hearing Aid-Compatibility and Volume Control Requirements for its Panasonic 2.4 GHz FHSS Cordless Telephone with Bone Conduction Type Ear Piece*, CC Docket No. 87-124, Public Notice, DA 05-1683 (June 17, 2005).

¹⁹ Comments were filed by Panasonic Corporation of North America (Panasonic) (June 27, 2005), Self Help for Hard of Hearing People (SHHH) (June 27, 2005), and Tennessee Regulatory Authority (TRA) (June 27, 2005).

²⁰ Panasonic Comments at 2.

²¹ Panasonic Comments at 2.

²² Panasonic Comments at 2. Panasonic also notes that though the technical standards for hearing aid compatibility are not met in their field testing, the model has been tested by persons who use hearing aids with positive results. *Id.* SHHH also tested the model with a small number of individuals who wear hearing aids and had similar positive results, though they note their sample size was rather small. SHHH Comments at 2.

²³ Panasonic Comments at 3. Panasonic further notes that “the base unit does have volume control buttons for speakerphone mode; and the handset unit itself has a volume control button for bone conduction mode.” *Id.*

²⁴ See *Panasonic Request for Waiver* at 1.

²⁵ *Panasonic Request for Waiver* at 1.

²⁶ *Id.*

²⁷ *Id.*

²⁸ SHHH Comments at 1.

aid compatibility is not necessary, and we support that.”²⁹ SHHH, however, does express a few concerns. First, they assert that because the telephone has an acoustic signal as well as bone conduction use, Panasonic “needs to clarify what this phone is intended to be and the intended user group” and continue working towards making the acoustic signal hearing aid compatible.³⁰ SHHH also requests “clarification of the volume control levels to ensure that they are adequate for the intended users.”³¹ Finally, SHHH asserts that Panasonic should refer to their target audience as “people with conductive and or mixed hearing losses.”³²

8. TRA supports the waiver because, “[t]he individuals that will benefit from this device will not benefit from it being hearing aid compatible.”³³ TRA also notes that this product brings new technology to the field of bone conduction telephones as, “bone conduction telephones are only available as corded telephones and therefore do not provide an individual in need of the device to have functionally equivalent access to telecommunications services,” and “[h]aving the cordless bone conduction telephone will definitely meet an existing need in the hearing loss community.”³⁴

9. We agree that Panasonic’s bone conduction telephone is a niche product that will serve the public interest by addressing the unique needs of a small segment of individuals with hearing disabilities. We therefore grant Panasonic’s request for waiver of Section 68.316. Although we accept that this particular model’s audio signal is not hearing aid compatible, we join SHHH in urging Panasonic to make future versions of the phone compatible with hearing aids so all users can benefit from the device. In addition, we grant Panasonic’s request for waiver of Section 68.317 given Panasonic’s explanation that the volume control on the handset is appropriate for the bone conduction user. We again agree with SHHH, however, that in order to avoid confusion, the phrase “people with conductive and or mixed hearing losses” should be used to better describe the target market for this phone. Finally, the Commission reminds Panasonic to ensure that the appropriate warning labels about lack of hearing aid compatibility, both on the box and in the operator’s instructions, be made as conspicuous as possible.

10. Accordingly, IT IS ORDERED that, pursuant to authority delegated in Sections 0.141 and 0.361 of the Commission’s rules, 47 C.F.R. §§ 0.141, 0.361, and Section 1.3 of the Commission’s rules, 47 C.F.R. § 1.3, the request for waiver of Sections 68.316 and 68.317 of the Commission’s rules for Panasonic 2.4 GHz FHSS Cordless Telephone with Bone Conduction Type Earpiece, Model KX-TG2388(xx), filed by Panasonic Corporation of North America, IS GRANTED to the extent stated herein.

²⁹ SHHH Comments at 2.

³⁰ *Id.*

³¹ SHHH Comments at 3.

³² *Id.* Panasonic, in its request for waiver, had referred to its target audience as “transmission hearing impaired people.” *Panasonic Request for Waiver* at 1. In their comments Panasonic explained that this term “is intended to indicate that this added feature [bone conduction] enables sound vibration to reach the inner ear’s auditory nerve directly by bone conduction.” Panasonic Comments at 2.

³³ TRA Comments at 1.

³⁴ *Id.*

11. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY). This *Order* can also be downloaded in Word or Portable Document Format (PDF) at: <http://www.fcc.gov/cgb/dro>.

FEDERAL COMMUNICATIONS COMMISSION

Jay Keithley, Deputy Chief
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