

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

In the Matter of)
Docomo Pacific, Inc.) Docket No. 23-227
Emergency Request for a Temporary Waiver of) CSR-9011-Z
Sections 76.601 and 76.614 of the Commission's)
Rules)

MEMORANDUM OPINION AND ORDER

Adopted: September 15, 2023

Released: September 18, 2023

By the Senior Deputy Chief, Policy Division, Media Bureau:

1. We have before us a request filed by Docomo Pacific, Inc. (Docomo) for a temporary waiver of sections 76.601 and 76.614 of the Federal Communication Commission's (Commission) rules, which would allow Docomo to find and suppress cable leaks and file its Basic Signal Leakage Performance Report (Form 320) through April 1, 2024.1 For the reasons set forth below, we grant the waiver request.

2. Section 76.601 requires a cable operator to conduct performance testing of its cable system as specified in the Commission's rules.2 Section 76.614 requires a cable system to conduct regulator monitoring of its system for signal leakage every three months.3

3. Docomo seeks this waiver to extend the time for finding and suppressing cable leaks in its system and to submit the Form 320 because Guam received a "direct hit from Super Typhoon Mawar (Typhoon Mawar)" on May 24, 2023, which resulted in "sustained catastrophic damage" to its network.4 Docomo states that sections 76.601 and 76.614 of the Commission rules require it to perform a Cumulative Leakage Index test once per year and thereafter file its Form 320.5 Docomo also states that because the maximum time allowed after it conducts a drive out to the system plant is 90 days, which "coincides with the time period for a quarterly monitoring drive out," it needs additional time.6

4. Docomo states that Guam lost "power, water, and fixed and mobile communications."7 Docomo also states that 71 percent of its fixed network is comprised of aerial infrastructure and

1 47 CFR § 76.601; 47 CFR § 76.614. Docomo Request for Waiver, MB Docket No. 23-227 (filed June 22, 2023) (Docomo Waiver Request). The Media Bureau released a public notice seeking comment on the Request for Waiver. Special Relief and Show Cause Petitions, Public Notice, Report No. 0508 (MB July 10, 2023).

2 47 CFR § 76.60.

3 47 CFR § 76.614.

4 Docomo Waiver Request at 2-3.

5 Id.

6 Id. at 2.

7 Id. at 3.

approximately 60 percent of that aerial network was lost.⁸ Docomo further states that while it is working diligently to rebuild its system as fast as possible, that work is impacted by both a limited team and limited amount of material available, and the material needed is estimated to arrive between eight and twelve weeks.⁹ In addition, Docomo states that system restoration will be impacted by the fact that the system goes through “underground areas, sections protected by mountains, or topological depressions.”¹⁰

5. Docomo seeks a waiver of sections 76.601 and 76.614 pursuant to section 1.3 of our rules.¹¹ Generally, the Commission's rules may be waived for good cause shown.¹² The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.¹³ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹⁴

6. We find that the significant property damage, power outages, and disruptions in services caused by Typhoon Mawar in the affected disaster area constitute extremely unusual circumstances warranting the temporary waiver of the rules and procedures described above. We agree with Docomo that granting its waiver will serve the public interest because it is time limited and will allow Docomo to use its limited resources on rebuilding its network rather than finding and repairing cable signal leaks.¹⁵ As Docomo observes, the Commission is permitted to consider “issues involving hardship, equity, and the effective implementation of its policies.”¹⁶ According to Docomo, it has filed its Form 320 timely for many years and it was in the “middle of the second quarter CLI drive-out when the Typhoon hit.”¹⁷ Further, while it has restored 23 percent of the subscriber count, the remaining subscribers are in areas that will be “difficult to access and time intensive to restore.”¹⁸ For these reasons, we find that Docomo’s request to extend its time to find and suppress cable leaks and file its Basic Signal Leakage Performance Report (Form 320) through April 1, 2024, are appropriate measures to accommodate the extraordinary circumstances caused by Typhoon Mawar.

7. Accordingly, **IT IS ORDERED** that pursuant to section 1, 4(i), 4(j), and 403 of the Communications Act of 1934, as amended, and sections 76.601, 76.614, and 1.3 of the Commission’s rules, 47 C.F.R. §§ 76.601 and 76.614, the Emergency Request for a Temporary Waiver of Sections 76.601 and 76.614 of the Commission’s Rules filed by Docomo Pacific, Inc. **IS GRANTED** as set forth above.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* at 1.

¹² 47 CFR § 1.3.

¹³ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

¹⁴ *Northeast Cellular*, 897 F.2d at 1166.

¹⁵ Docomo Waiver Request at 4.

¹⁶ *Id.*

¹⁷ *Id.* at 5.

¹⁸ *Id.*

8. This action is taken pursuant to authority delegated by section 0.283 of the Commission's rules.¹⁹

FEDERAL COMMUNICATIONS COMMISSION

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¹⁹ 47 CFR § 0.283.