

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

In the Matter of)	
)	
Pitney Bowes, Inc.,)	File No. NSD-L-97-14
)	
Part 68 Hearing Aid)	
Compatibility Waiver Request)	
)	

ORDER

Adopted: August 21, 1997

Released: August 22, 1997

By the Chief, Network Services Division:

I. INTRODUCTION

1. Pitney Bowes, Inc.¹ seeks a six-month waiver of 47 C.F.R. § 68.300(c), which requires that, as of April 1, 1997, all telephones that are hearing aid compatible (HAC) and are manufactured in the United States (other than for export), or imported for use in the United States, must have the letters "HAC" permanently affixed thereto.² Pitney Bowes seeks this waiver of the HAC labelling requirements for their imported facsimile products with built-in HAC telephones. In this *Order*, we deny a general six-month waiver of the HAC labelling requirements for all Pitney Bowes facsimile products.

II. BACKGROUND

2. Section 68.4(a)(1) of the Commission's rules requires that, except for secure telephones and telephones used with public mobile and private radio services, every telephone manufactured in the United States (other than for export), or imported for use in the United States, after August

¹ See letter from Donald E. Sullivan, Pitney Bowes, to Andy Firth, FCC, dated March 31, 1997 (First Pitney Bowes Letter); letter from Peter Mandzuk, Pitney Bowes, to Andy Firth, FCC, dated April 30, 1997 (Second Pitney Bowes Letter); letter from Peter Mandzuk, Pitney Bowes, to Andy Firth, FCC, dated June 26, 1997 (Third Pitney Bowes Letter).

² We will refer to the rules at 47 C.F.R. § 68.300(c) as the "HAC labelling requirements."

16, 1989, must be hearing aid compatible.³ Section 68.4(a)(1) imposes a similar requirement on cordless phones manufactured or imported for use in the United States after August 16, 1991.⁴ In its July 3, 1996 *HAC Order*,⁵ the Commission amended its hearing aid compatibility rules. Among the new rules adopted by the Commission was 47 C.F.R. § 68.300(c), which is the subject of the waiver request before us. This rule mandates that, as of April 1, 1997, all registered telephones, including cordless telephones, manufactured in the United States (other than for export), or imported for use in the United States, that are hearing aid compatible, must have the letters "HAC" permanently affixed thereto.⁶ The HAC labelling requirements are intended to provide notice to telephone users that a telephone is hearing aid compatible in accordance with section 68.4(a)(1) of the Commission's rules.

3. In a March 28, 1997 *Order*, the Commission decided several requests for limited waivers of the HAC labelling requirements, received from Lucent Technologies, Sharp Electronics, and Matsushita Electronics Corp. of America (Panasonic).⁷ All three petitioners in the *Lucent Order* alleged the same essential facts: they had certain overseas inventories of telephones manufactured prior to April 1, 1997, without HAC labelling, which would not be imported into the U.S. until after April 1, 1997. Petitioners based their waiver request for these specific inventories upon, *inter alia*, the fact that these inventories were already boxed and packed for shipping, and they would incur severe financial hardships if they had to open, label, and re-pack all of the telephones in these inventories.⁸ The Commission granted limited waivers of 47 C.F.R.-§ 68.300 (c) for all three petitioners, for certain time periods, on the condition that the petitioners take the alternative step of ensuring that the outer packaging of these products contain labels indicating that the enclosed product is hearing aid compatible.⁹

³ 47 C.F.R. § 68.4(a)(1). A telephone is "hearing aid compatible" when the telephone contains an internal electro-magnetic coil that detects, or is compatible with, a similar coil in hearing aids, thus enabling a person with a hearing aid to use that telephone. See 47 C.F.R. § 68.316 for hearing aid compatibility technical standards.

⁴ *Id.*, § 68.4(a)(1).

⁵ See Access to Telecommunications Equipment and Services by Persons with Disabilities, *Report and Order*, CC Docket No. 87-124, 11 FCC Rcd 8249 (July 3, 1996) (*HAC Order*).

⁶ 47 C.F.R. § 68.300(c). "Permanently affixed" means: ". . . the required nameplate data [are] etched, engraved, stamped, indelibly printed or otherwise permanently marked. Alternatively, the required information may be permanently marked on a nameplate of metal, plastic, or other material fastened to the enclosure by welding, riveting, etc., or with a permanent adhesive. Such a nameplate must be able to last the expected lifetime of the product." 47 C.F.R. § 300(b)(5). See also *HAC Order*, 11 FCC Rcd at 8291.

⁷ In the Matter of Lucent Technologies, Inc., et al., Part 68 Hearing Aid Compatibility Waiver Requests, *Order*, NSD File Nos. L-97-5, L-97-12, and L-97-13, DA 97-643, 97 WL 141784 (F.C.C.) (March 28, 1997) (*Lucent Order*).

⁸ *Id.* at paras. 2-6.

⁹ *Id.* at paras. 7-8.

4. Pitney Bowes' Request: Pitney Bowes states in its request that it has "only just become aware" of the new HAC labelling requirements at 47 C.F.R. § 68.300(c).¹⁰ Pitney Bowes specifically requests a six-month waiver for its "facsimile products with built-in telephones."¹¹ While no specific numbers are provided, Pitney Bowes states that it "imports many thousands of facsimile machines each year" and that these machines are manufactured in Japan.¹² Pitney Bowes also states that it understands that "such a waiver was granted to Panasonic and Sharp on the condition that the affected telephone's outer shipping carton indicate that the product is hearing aid compatible. . . [Pitney Bowes] could make this type of arrangement for [its] telephone handsets."¹³ In a follow-up letter, Pitney Bowes remarks that "we do not have overseas inventories of non-HAC marked products that were manufactured before April 1, 1997. . . . we do have domestic inventories of products that are not HAC marked."¹⁴ Pitney Bowes does not provide data on any financial burdens that compliance with the HAC labelling requirement will impose upon it.

III. DISCUSSION

5. 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 for a waiver is shown.¹⁵ A petitioner must demonstrate that special circumstances warrant a deviation from the general rule and how such deviation will serve the public interest.¹⁶ We find that Pitney Bowes' request for a general six-month waiver of the HAC labelling requirement for all of its imported facsimile products has not met this burden. Pitney Bowes offers no substantial evidence indicating that compliance with the labelling requirements, for products manufactured after April 1, 1997, will cause an undue financial or administrative hardship. Pitney Bowes' assertion that its waiver request is "similar" to those granted in the *Lucent Order* is erroneous, because Pitney Bowes' appears to be seeking a six-month waiver for all of its imported facsimile products, including products manufactured after April 1, 1997. We cannot grant such an extensive waiver without a thorough showing by Pitney Bowes of special circumstances that warrant a deviation from the rule. We note, however, that the April 1, 1997 compliance date for 47 C.F.R. § 68.300(c) has already passed, and therefore Pitney Bowes may, upon the effective date of this

¹⁰ See Second Pitney Bowes Letter.

¹¹ See *id.*

¹² See First Pitney Bowes Letter.

¹³ See *id.*

¹⁴ See Third Pitney Bowes Letter.

¹⁵ 47 C.F.R. § 1.3.

¹⁶ *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).

Order, have non-compliant inventories of facsimile products. While we will not prohibit Pitney Bowes from continuing to sell products from these inventories, until these inventories are exhausted, Pitney Bowes is expected to comply with 47 C.F.R. § 68.300(c) for all products subject to Part 68 that are manufactured or imported after the effective date of this *Order*.

6. To assist the Bureau in monitoring Pitney Bowes' compliance with the Commission's rules, we require Pitney Bowes to file two reports with the Network Services Division. The first report shall be filed within five (5) days of the effective date of this *Order*. This first report shall identify the number of non-compliant facsimile products in Pitney Bowes' inventories, and shall also identify a projected date for exhaustion of such inventories. The second report shall be due at the Network Services Division sixty (60) days from the effective date of this *Order*, and shall update the Bureau on the number of remaining non-compliant facsimile products in Pitney Bowes' inventories, if any. These reports may be in the form of a letter to the Chief, Network Services Division, Common Carrier Bureau.

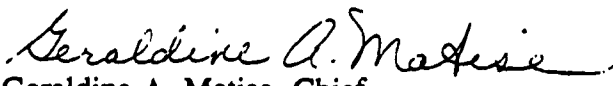
IV. ORDERING CLAUSES

7. Accordingly, pursuant to authority delegated in Section 0.91, 47 C.F.R. § 0.91, section 0.291 of the Commission's rules, 47 C.F.R. § 0.291, and section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, IT IS HEREBY ORDERED, that the request for waiver of section 68.300(c) of the Commission's rules and regulations, 47 C.F.R. § 68.300(c), by Pitney Bowes, Inc., IS DENIED.

8. IT IS FURTHER ORDERED that Pitney Bowes shall file two reports with the Chief, Network Services Division, Common Carrier Bureau, according to the following instructions: (1) the first report shall be filed within five (5) days of the effective date of this *Order*, and shall identify the number of non-compliant facsimile products in Pitney Bowes' inventories, and shall identify a projected date for exhaustion of such inventories; (2) the second report shall be due at the Network Services Division sixty (60) days from the effective date of this *Order*, and shall update the Bureau on the number of remaining non-compliant facsimile products in Pitney Bowes' inventories, if any.

9. IT IS FURTHER ORDERED that, pursuant to 47 C.F.R. § 1.102(b)(1), this *Order* SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION



Geraldine A. Matise, Chief

Network Services Division, Common Carrier Bureau