

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

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In the Matter of)
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Lucent Technologies, Inc..) File No. NSD-L-97-13
)
)
Sharp Electronics Corp.,) File No. NSD-L-97-12
)
and)
)
Matsushita Electric Co. of America) File No. NSD-L-97-5
(Panasonic))
)
Part 68 Hearing Aid)
Compatibility Waiver Requests)
)

ORDER

Adopted: March 28, 1997

Released: March 28, 1997

By the Deputy Bureau Chief, Common Carrier Bureau:

I. INTRODUCTION

1. Sharp Electronics Corporation (Sharp), Matsushita Electric Co. of America (Panasonic), and Lucent Technologies, Inc. (Lucent)¹ seek limited waivers 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

¹ See letter from Richard Mullen, Matsushita Electronic Corp. of America, to Andy Firth, Network Services Division, Common Carrier Bureau (January 30, 1997) (Panasonic Letter); letter from Richard Mullen, Matsushita Electronic Corp. of America, to Andy Firth, Network Services Division, Common Carrier Bureau (March 27, 1997) (Second Panasonic Letter); letter from Patrick Keys, Sharp Electronics Corp., to Andy Firth, Network Services Division, Common Carrier Bureau (February 19, 1997) (First Sharp Letter); letter from Patrick Keys, Sharp Electronics Corp., to Andy Firth, Network Services Division, Common Carrier Bureau (March 6, 1997) (Second Sharp Letter); letter from Steven M. Crosby, Lucent Technologies, to Geraldine Matise, Network Services Division, Common Carrier Bureau (March 6, 1997) (First Lucent Letter); letter from Steven M. Crosby, Lucent Technologies, to Geraldine Matise, Network Services Division, Common Carrier Bureau (March 18, 1997) (Second Lucent Letter).

States, must have the letters "HAC" permanently affixed thereto.² The petitioners seek these waivers for certain overseas inventories of telephones that will not be imported into the United States until after April 1, 1997. In this *Order*, we grant the waiver requests of Lucent, Sharp and Panasonic in part, subject to certain conditions and terms, and deny them in part. Finally, we clarify that the HAC labelling requirements apply at either the date of manufacture, if manufactured in the United States, or at the date of importation into the United States, if manufactured overseas.

II. BACKGROUND AND THE PETITIONS

2. Part 68 of the Commission's rules, in addition to setting uniform standards for the protection of the telephone network from harm caused by the connection of terminal equipment and associated wiring, also provides for the compatibility of hearing aids and telephones.³ 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 16, 1989, must be hearing aid compatible.⁴ Section 68.4(a)(1) imposes a similar requirement on cordless phones manufactured or imported for use in the United States after August 16, 1991.⁵

3. In its July 3, 1996 *HAC Order*,⁶ 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 requests 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.⁷ 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.

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

³ 47 C.F.R. § 68.1.

⁴ 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.

⁵ *Id.*

⁶ 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*).

⁷ 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.

4. Sharp Request. Sharp states that approximately 8,180 cordless telephones, although hearing aid compatible, have been manufactured without HAC labels, and these units cannot be imported into the United States before April 1, 1997. Sharp states that it would cause an undue burden if it were required to retrieve these telephones from storage and "re-work" them to include HAC labels. Sharp further states that these telephones are tentatively scheduled for importation by September 1997.

5. Panasonic Request. Panasonic states that in accordance with 47 C.F.R. § 68.300(c), it has begun to place HAC labels on newly manufactured registered telephones. Panasonic states that approximately 1,000 hearing aid compatible telephones that are in boxed overseas inventories do not have HAC markings, but the outer boxes do have printed information indicating that the enclosed products are hearing aid compatible. Panasonic requests that the Commission grant a "limited time waiver" to allow existing overseas inventory to be imported beyond April 1, 1997, and suggests six months as the duration for such a waiver. Panasonic also asks whether it would be acceptable to place HAC markings onto the outer boxes for these telephones.

6. Lucent Request. Lucent requests an extension of the April 1, 1997 compliance date to February 28, 1998. Lucent states that a revised distribution plan for certain of its imported products "has made technical compliance with the Commission's rules difficult and costly." Approximately 2 million telephones that were previously imported into the United States have been transferred to Mexico for storage, and are scheduled for re-importation into the United States throughout 1997 and into early 1998. Approximately 500,000 more telephones have been or will be manufactured overseas prior to April 1, 1997, and will be stored in the Mexico facilities for subsequent import into the United States. All of these 2.5 million telephones are hearing aid compatible. Of these 2.5 million telephones, Lucent states that approximately 2.1 million have printed information on the outside packaging that indicates that the product complies with the Commission's hearing aid compatibility rules. Approximately 400,000 of these phones have no such external package information, but do contain information on hearing aid compatibility in the user documentation inside the packages. Lucent further states that it will cost approximately \$2.5 million to unpack, affix permanent labels, and re-pack all of these 2.5 million telephones. Lucent also states that it would cost approximately \$200,000 to place external labels on the packages of the 400,000 telephones without outside package information, because these telephones are already packed into bulk pallets and shrink-wrapped. Lucent also states that all 2.5 million of these telephones are intended for residential use. Finally, Lucent requests that the Commission rule that, for these specific overseas inventories, the requirements of 47 C.F.R. § 68.300(c) are applicable upon the date of manufacture, and not upon the date of importation.

III. DISCUSSION

A. Waiver Requests

7. 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.⁸ A petitioner must demonstrate that special circumstances warrant a deviation from the general rule and how such deviation will serve the public interest.⁹ We find that Sharp, Panasonic and Lucent have met this burden. We are persuaded that the expense involved in unpacking, labelling, and repacking individual telephones that have already been manufactured and are awaiting importation would not serve the public interest. We condition these waivers, however, on petitioners using an alternative, less burdensome means, consistent with the intent of 47 C.F.R. § 68.300(c), to provide information regarding the hearing aid compatibility of these telephones to consumers. Specifically, if the external packaging of the product does not indicate that the enclosed product is hearing aid compatible, we direct the petitioners to attach labelling that indicates that the product is hearing aid compatible, on the outside of the individual product packages.

8. The intent of the Commission's HAC labelling requirements is to give notice to telephone users that a particular telephone is hearing aid compatible. This labelling is especially important in environments such as workplaces and hotels, where employers or owners often relocate telephones, and thus need some way to be sure that they are in compliance with their obligations to provide hearing aid compatible telephones under 47 C.F.R. § 68.112.¹⁰ We find that the alternative step of placing a label on the product packaging will provide this information to *initial purchasers*, which would include both business and residential customers. Business purchasers of these telephones will have to alert their employees or customers that these telephones are indeed hearing aid compatible, just as they do now with telephones issued prior to the HAC labelling requirement.

9. We further conclude that, in the case of Sharp and Panasonic, the specific labelling requirements of 47 C.F.R. § 68.300(c) should be waived for the overseas inventories of telephones specified by the petitioners for a six-month period, from April 1, 1997 until October 1, 1997. In the case of Lucent, we conclude that the specific labelling requirements of 47 C.F.R. § 68.300(c) should be waived for the overseas inventories specified in its request for a nine-month period ending January 1, 1998. Our decision to grant Lucent a waiver for a longer period of time is due to the large number of unlabelled telephones identified by Lucent. We find that the six-month (for Sharp and Panasonic) and nine-month (for Lucent) waivers for these specified inventories of overseas telephones, in conjunction with the alternative labelling steps described above, strike a fair balance between the need to inform consumers of a telephone's hearing aid compatibility, and the objective of not imposing unreasonable burdens on the petitioners. As of October 1, 1997 for Sharp and Panasonic, and January 1, 1998 for Lucent, the petitioners must ensure that all telephones imported into the United States after that date comply with 47 C.F.R.

⁸ 47 C.F.R. § 1.3.

⁹ *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).

¹⁰ 47 C.F.R. § 68.112, *inter alia*, contains hearing aid compatibility requirements for telephones provided in workplaces, confined settings (e.g., hospitals and nursing homes), and hotels and motels.

§ 68.300(c).

10. We find that six-month and nine-month waivers give sufficient time for the petitioners to adjust their importation schedules so that any inventories that do not comply with 47 C.F.R. § 68.300(c) can be imported to the United States prior to the expiration of the waiver periods. We conclude that the record does not justify Lucent's request that this compliance date be extended even further, until February 28, 1998.

B. Clarification of 47 C.F.R. § 68.300(c)

11. Sharp requests that we clarify why the effective dates are "based upon the date of importation as opposed to the date of manufacture commonly used in other requirements." We clarify that the obligations imposed by 47 C.F.R. § 68.300(c) attach either at the date of manufacture, for telephones manufactured in the United States (other than for export), or the importation date, for telephones manufactured overseas for sale in the United States. The language of the Commission's rule parallels the manufacturing and importation requirements established by Congress in the 1988 Hearing Aid Compatibility Act.¹¹ The purpose of this rule is to ensure that all registered telephones introduced into the United States market after a date certain contain HAC labels. A rule based only upon the date of manufacture, and not taking into account imported telephones, would not achieve this purpose, especially when a large number of telephones sold in the U.S. market are manufactured overseas. Lucent asks that we apply the requirements of 47 C.F.R. § 68.300(c) on the basis of the date of manufacture, not on the basis of the date of importation, for certain overseas inventories. We deny Lucent's request, because this result would be inconsistent with the plain language of the rule.

IV. ORDERING CLAUSES

12. 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 requests for waiver of section 68.300(c) of the Commission's rules and regulations, 47 C.F.R. § 68.300(c), by Sharp, Panasonic, and Lucent ARE GRANTED to the extent discussed herein, and otherwise DENIED.

13. IT IS FURTHER ORDERED that the April 1, 1997 compliance date at section 68.300(c) of the Commission's rules, 47 C.F.R. § 68.300(c), IS WAIVED until October 1, 1997, for the overseas inventories of telephones manufactured prior to April 1, 1997, cited by Sharp and Panasonic in their requests, subject to the conditions imposed herein.

14. IT IS FURTHER ORDERED that the April 1, 1997 compliance date at section 68.300(c) of the Commission's rules, 47 C.F.R. § 68.300(c), IS WAIVED until January 1, 1998, for the overseas inventories of telephones manufactured prior to April 1, 1997, cited by Lucent

¹¹ See 47 U.S.C. § 610(b)(1)(B).

in its request, subject to the conditions imposed herein.

15. IT IS FURTHER ORDERED, that the petitions for waiver are granted SUBJECT TO THE FOLLOWING CONDITION: If no statements appear indicating that the enclosed product is hearing aid compatible on the external packaging of the product, petitioners shall attach on the outside of the individual product packages labelling that indicates that the product is hearing aid compatible.

FEDERAL COMMUNICATIONS COMMISSION



Kathleen B. Levitz
Deputy Bureau Chief, Common Carrier Bureau