



Federal Communications Commission
Wireless Telecommunications Bureau
Washington, D.C. 20554

June 24, 2016

Laura Stefani
Fletcher, Heald & Hildreth, PLC
1300 N. 17th Street, Suite 1100
Arlington, VA, 22209

DA 16-709

Re: Request by Kathrein Automotive GmbH & Co. KG For Waiver of Section 20.21 of the Commission's Rules

Dear Ms. Stefani:

By this letter, the Mobility Division of the Wireless Telecommunications Commission hereby grants Kathrein Automotive GmbH & Co. KG (Kathrein), a limited waiver of the consumer signal booster rules,¹ as applied to the "Kathrein compensator" (compensator). The compensator is a type of Consumer Signal Booster that Kathrein plans to offer to vehicle manufacturers, who will install and embed the product within their vehicles.² Kathrein contends that the product falls outside the goals of the consumer labeling rules due to the unique placement of the compensator within vehicles and that application of those rules would not advance the public interest.³ We agree, and hereby grant the waiver request.

Section 20.21(f)(1) requires that Consumer Signal Booster manufacturers, distributors, and retailers ensure that all signal boosters marketed on or after April 30, 2014,⁴ include specific advisories concerning the device "on the outside packaging of the device" and "on a label affixed to the device."⁵ On July 15, 2015, Kathrein requested that the Commission waive rules under Sections 20.21(e)(5) (anti-oscillation protections) and 20.21(f)(1)(iii)-(iv) (labelling requirements) with regards to its compensator.⁶

On July 21, 2015, the Commission issued a *Public Notice* seeking comment on the Kathrein Waiver Request.⁷ V-COMM, Wilson Electronics, and Cellphone-Mate opposed the waiver request.⁸

¹ 47 CFR § 20.21(f).

² Kathrein, Request for Waiver of Section 20.21 of the Commission's Rules, WT Docket No. 10-4, at 2-3 (filed July 15, 2015), <http://apps.fcc.gov/ecfs/document/view?id=60001118696> (Kathrein Waiver Request).

³ *Id.* at 9-10.

⁴ 47 CFR § 20.21(f)(1) requires implementation of the rule by March 1, 2014. The Wireless Telecommunications Bureau, however, extended the deadline until April 30, 2014, to allow for adequate review and testing of these devices and to allow others to complete testing of their devices and apply for certification. *Amendment of Parts 1, 2, 22, 24, 27, 90 and 95 of the Commission's Rules to Improve Wireless Coverage Through the Use of Signal Boosters*, Order, 29 FCC Rcd 1260 (WTB 2014).

⁵ 47 CFR § 20.21(f)(1). Section 20.21(f)(1) also requires that these advisories be included "in on-line, point-of-sale marketing materials" and "in any print or on-line owner's manual and installation instructions." *Id.*

⁶ *Id.* at 1.

⁷ *Wireless Telecommunications Bureau Seeks Comment on Kathrein Request for Waiver to Permit Equipment Certification for Sale of Mobile Phone Signal Booster*, Public Notice, 30 FCC Rcd 7362 (WTB 2015) (*Public Notice*).

⁸ V-COMM, Wilson Electronics, and Cellphone-Mate Comments at 1.

They argued that Kathrein had not shown substantial burden, harm, or other reasons why anti-oscillation requirement could not be adhered to, and that significant errors in Kathrein's analysis masked the potential for oscillation and interference with networks in certain circumstances.⁹ The companies also argued that the labeling requirements were "important and necessary information for consumers," and that product labeling would not be costly and would ensure the advisory was given to future aftermarket owners.¹⁰ AT&T Services Inc. also opposed the waiver, stressing the importance of the compromise reached in creating the signal booster rules and arguing that those requirements should be followed.¹¹ AT&T also noted that it opposed the waiver of labeling requirements, but would be willing to support it if the notice was given to consumers on a separate page at delivery, and if device shutdown procedures were "prominently explain[ed] to the car buyer."¹² Verizon also opposed the Kathrein Waiver Request, contending that the features of the compensator would not successfully prevent oscillation, and that labels could be placed on the cradle or other areas that were accessible to consumers.¹³ BMW Group supported the waiver, citing that in-vehicle installation would negate the need for anti-oscillation safeguards and reduce the necessity of on-product labeling.¹⁴

Kathrein filed reply comments stating that complying with anti-oscillation requirements would increase costs without providing a public benefit, and that opponents had misconstrued the features of the compensator and the efficacy of the barriers to oscillation inherent to its design.¹⁵ Kathrein also stated that the labeling critiques were not valid, because consumers would not view the device, and Kathrein "will market and sell the compensator only to automotive manufacturers" and not to after-market installers.¹⁶ Additionally, Kathrein noted that Audi had received a similar labeling waiver.¹⁷ On May 2, 2016, Kathrein reiterated its request for a waiver of the labeling requirements, while withdrawing the request for waiver of the anti-oscillation rule.¹⁸

Section 1.925 of the Commission's rules states that waivers may be granted if it is shown that: (i) the underlying purpose of the rules(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or (ii) in view of the unique or unusual factual circumstances of the instant case, application of the rule(s) would be

⁹ *Id.* at 3-13. The firms argued that the modification protections were inadequate and that the booster could likely be modified by the consumer, and that unexpected interference could result from vehicle crashes, interaction with other fixed and vehicle boosters, and other unintended signal multipath situations. *Id.*

¹⁰ *Id.* at 15-16.

¹¹ AT&T Services Inc. Reply at 2.

¹² *Id.* at 3-4.

¹³ Verizon Reply at 2-5.

¹⁴ BMW Group Reply.

¹⁵ Kathrein Reply at 3-10.

¹⁶ *Id.* at 10.

¹⁷ *Id.*; *Re: Request for Partial Waiver of Section 20.21(f) of the Rules*, WT Docket No. 10-4, Letter Order (WTB Feb. 20, 2014) (on file at <https://www.fcc.gov/files/signal-boosters-faq-audi-waiver-letterpdf>).

¹⁸ Kathrein Voluntary Partial Withdrawal of Request for Waiver, WT Docket No. 10-4 (filed May 2, 2016), <http://apps.fcc.gov/ecfs/document/view?id=60001750699>.

inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.¹⁹

Kathrein argues that the labeling rules that require advisory notice “on the device packaging and on the device itself” are not necessary due to the unique design of the compensator; it is professionally installed and cannot be modified by the consumer.²⁰ Kathrein argues that compliance with those specific portions of Section 20.21(f) would not be “beneficial to the public interest because consumers do not have access to the package or device.”²¹ Kathrein further explains that the device will be sold only to vehicle manufacturers, and will be installed in areas inaccessible to consumers.²²

For vehicles equipped with the compensator, Kathrein proposes to provide advisory notices to vehicle manufacturers for inclusion in on-line, point-of-sale marketing materials and in print or on-line owner’s manuals.²³ This advisory notice would explain the operation of the compensator and recite the exact language mandated by Section 20.21(f)(1)(i) in its entirety.²⁴ Kathrein further proposes to “bind automobile manufacturers by contract to ensure that their dealers provide this notice to the consumer.”²⁵

We find that the underlying purpose of Section 20.21(f)(1) would not be served by strict application here. When the Commission adopted Section 20.21(f)(1), it stated that the labeling requirement was the “best method to inform consumers about which devices are appropriate for their use and how to comply with our rules,” as well as to decrease interference to wireless networks.²⁶ The Commission also believed consumers should be informed about the impact of signal boosters on E911 calls.²⁷ Because consumers would lack access to the actual compensator device or packaging, we find that the alternative approach described above better meets the Commission’s public interest goals in enacting Section 20.21(f)(1), and provides adequate notice to the consumer as intended. Kathrein has pledged that, via contractual agreement, notice will be provided at point of sale and in vehicle materials, and it has sufficiently demonstrated that consumers will not be able to view the device itself, making the need for labeling on the device unnecessary and unreasonable. We therefore waive only the portions of

¹⁹ 47 CFR § 1.925(b)(3).

²⁰ Kathrein Waiver Request at 8-10.

²¹ Kathrein Waiver Request at 9-10

²² *Id.*

²³ *Id.* Kathrein argues that the public interest of the advisory requirement is served even if installation instructions are not provided, because consumers will not install the compensator. *Id.*

²⁴ *See id.* Appendix C. Section 20.21(f)(1)(i) requires the following language: “This is a CONSUMER device. BEFORE USE, you MUST REGISTER THIS DEVICE with your wireless provider and have your provider’s consent. Most wireless providers consent to the use of signal boosters. Some providers may not consent to the use of this device on their network. If you are unsure, contact your provider. You MUST operate this device with approved antennas and cables as specified by the manufacturer. Antennas MUST be installed at least 20 cm (8 inches) from any person. You MUST cease operating this device immediately if requested by the FCC or a licensed wireless service provider. WARNING. E911 location information may not be provided or may be inaccurate for calls served by using this device.” 47 C.F.R. § 20.21(f)(1)(i).

²⁵ Kathrein Waiver Request at 10.

²⁶ *Amendment of Parts 1, 2, 22, 24, 27, 90 and 95 of the Commission’s Rules to Improve Wireless Coverage Through the Use of Signal Boosters*, Report and Order, 28 FCC Rcd 1663, 1704 ¶ 119 (2013).

²⁷ *See id.* at 1705 ¶ 121.

Section 20.21(f)(1) that specifically relate to placing advisories concerning the device “on the outside packaging of the device” and “on a label affixed to the device,” and only as relates to the manufacture, distribution, and sale of the compensator to vehicle manufacturers, as described in the Kathrein Waiver Request.²⁸

This waiver is specifically conditioned on the following:

- (1) This waiver is limited to the Kathrein compensator only as installed in vehicles during manufacture.
- (2) Kathrein, manufacturers, distributors, and retailers of vehicles offering the compensator are jointly responsible for ensuring that consumers taking possession of a vehicle with the compensator installed are provided an advisory notice in marketing materials, owner’s manuals, and separately at vehicle delivery (e.g. on a separate sheet given to the consumer). The advisory notice must include the following language with respect to the compensator: “This is a CONSUMER device. BEFORE USE, you MUST REGISTER THIS DEVICE with your wireless provider and have your provider’s consent. Most wireless providers consent to the use of signal boosters. Some providers may not consent to the use of this device on their network. If you are unsure, contact your provider. You MUST operate this device with approved antennas and cables as specified by the manufacturer. Antennas MUST be installed at least 20 cm (8 inches) from any person. You MUST cease operating this device immediately if requested by the FCC or a licensed wireless service provider. WARNING. E911 location information may not be provided or may be inaccurate for calls served by using this device.”²⁹
- (3) Kathrein must provide a copy of this waiver to manufacturers, distributors, and retailers of vehicles offering the compensator, confirming that manufacture, distribution, or sale without providing the advisory notice is a violation of FCC rules.
- (4) A copy of this waiver must be included in the application for certification of the compensator.

We also note that to the extent the compensator is manufactured, distributed, and sold in compliance with this waiver, the relevant manufacturers, distributors, dealers, and retailers are in compliance with Section 20.21(f)(1).

²⁸ We do not reach the merits of the request for waiver of the anti-oscillation rules of Section 20.21(e)(5), due to the Kathrein’s voluntarily withdrawal of this portion of the Kathrein Waiver Request.

²⁹ 47 CFR § 20.21(f)(1)(iv)(A)(I).

Accordingly, IT IS ORDERED that, pursuant to Section 4(i) and 303(r) of the Commissions Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and Sections 0.331, 1.3, and 1.925 of the Commission's Rules, 47 CFR §§ 0.331, 1.3, 1.925, the waiver request is GRANTED to the extent described above.

Sincerely,

Roger S. Noel
Chief, Mobility Division
Wireless Telecommunications Bureau
Federal Communications Commission