

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

**In the Matter of** )  
 )  
**South Slope Cooperative Telephone** )  
**Co., Inc. d/b/a South Slope Wireless** )  
 )  
**Section 68.4(a) of the Commission's Rules** )  
**Governing Hearing Aid Compatible** )  
**Telephones** ) **WT Docket No. 01-309**  
 )  
**Request for Temporary Waiver, or** )  
**Temporary Stay, of** )  
**Section 20.19(c)(2)(i) of the Rules** )

**To: Chief, Wireless Telecommunications Bureau**

**PETITION FOR TEMPORARY WAIVER OR TEMPORARY STAY**

South Slope Cooperative Telephone Co., Inc. d/b/a South Slope Wireless ("South Slope"), by its attorneys and pursuant to Sections 1.3 and 1.925 of the Commission's Rules, hereby requests a one-year temporary waiver, or temporary stay, up to and including September 18, 2007, of the requirements contained in Section 20.19(d)(2) of the Rules that South Slope include in its handset offerings at least two handset models per air interface that comply with Rule Section 20.19(b)(2), and make available in each retail store owned or operated by it all of these handset models for consumers to test in the store. In support hereof, the following is shown:

**Background**

1. South Slope is the licensee of Broadband Personal Communications Service ("Broadband PCS") Stations WPOL801 (Frequency Block A – Des Moines – Quad Cities MTA), WPOL802 (Frequency Block A – Des Moines – Quad Cities MTA), WPWM732

(Frequency Block A – Des Moines – Quad Cities MTA) and WQDP532 (Frequency Block A – Des Moines – Quad Cities MTA). South Slope has fewer than 500,000 subscribers. As such, it is a Tier III Commercial Mobile Radio Service (“CMRS”) provider, as defined in the Commission’s Non-Nationwide Carriers Order (Order to Stay), 17 FCC Rcd. 14841, Para. No. 22 (2002).

2. The Broadband PCS systems employ the Global System for Mobile Communications (“GSM”) air interface. South Slope markets more than two digital wireless telephone models, none of which meets a U3T rating (more commonly called an M3T rating in the industry) for inductive coupling under ANSI Standard C63.19. Upon information and belief, it appears that in fact there are no GSM handsets commercially available that meet a U3T (or M3T) rating under ANSI Standard C63.19, or, if such handsets are available, that they are not commercially available to smaller carriers, such as South Slope.

#### **Rule Section 20.19(c)(2)(i) Requirements**

3. Section 20.19(d)(2) of the Commission’s Rules specifies that “each provider of public mobile service must ... [i]nclude in their handset offerings at least two handset models for each air interface that comply with Section 20.19(b)(2) by September 18, 2006, and make available in each retail store owned or operated by the provider all of these handset models for consumers to test in the store ...” Rule Section 20.19(b)(2) specifies that a “wireless phone used for public mobile radio services is hearing aid compatible ... if it meets, at a minimum” a U3T (or M3T) rating for inductive coupling under ANSI Standard C63.19. Thus, the rule requirement is generally applicable to all

Tier III CMRS carriers. It requires South Slope to offer, and to make available for in-store testing by consumers, for its GSM digital air interface at least two Hearing Aid Compatible (“HAC”) digital wireless telephones meeting a U3T (or M3T) rating under ANSI Standard C63.19 for inductive coupling by the September 18, 2006 implementation deadline. Because South Slope offers more than two digital wireless telephones for the CDMA air interface, it does not qualify for the *de minimis* exception codified in Section 20.19(e)(1) of the Commission’s Rules.

#### **Waiver Standard**

4. The Commission has indicated generally that waiver requests of the Hearing Aid Compatible (“HAC”) digital wireless handset requirements will be evaluated under the general waiver standard set forth in Sections 1.3 and 1.925 of the Rules and the standards set forth in WAIT Radio v. FCC, 418 F.2d 1153 (D.C. Cir. 1969), *appeal after remand*, 459 F.2d 1203 (D.C. Cir. 1972), *cert. denied*, 409 U.S. 1027 (1972) and Northeast Cellular Telephone Company v. FCC, 897 F.2d 1164(D.C. Cir. 1990). Hearing Aid Compatible Telephones (WT Docket No. 01-309 – Order on Reconsideration and Further Notice of Proposed Rulemaking), FCC 05-122, released June 21, 2005 at Para. No. 50 (“Order on Reconsideration”).

5. Section 1.3 of the Rules states, in relevant part, that “[a]ny provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefor is shown.” Section 1.925(b)(3) of the Rules states that the “Commission may grant a waiver request if it is shown that: (i) [t]he underlying purpose of the rule(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) [i]n view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.” Under WAIT Radio and Northeast Cellular Telephone Company, a rule waiver “may be granted in instances where the particular facts make strict compliance inconsistent with the public interest if applied to the petitioner and when the relief requested would not undermine the policy objective of the rule in question.” Order on Reconsideration, Para. 50 n. 158.

**A Waiver Is Warranted Because Sufficient Compliant Handset Models Are Not Available To Small Carriers**

6. It is respectfully submitted that a waiver is justified in this instance because South Slope has been unable to verify that there are at least two HAC compliant digital wireless telephone models for the GSM air interface available for purchase by smaller carriers, such as South Slope, that meet a U3T (or M3T) rating under ANSI Standard C63.19 for inductive coupling. As a result, South Slope is not currently in a position to achieve full compliance with the requirements of Section 20.19(d)(2) of the Rules, and therefore, a temporary waiver of the Rule’s requirements is warranted. South Slope has taken steps to procure Motorola V3i handsets that are apparently compatible with the U3T/M3T standard. These handsets will not be delivered until later this month or October 2006. However, South Slope has not yet been able to identify and obtain another GSM-compatible U3T/M3T handset.

7. In adopting the Rule Section 20.19(d)(2) September 18, 2006 implementation deadline for Tier II and Tier III CMRS carriers, the Commission projected (but,

obviously, could not assure) that a sufficient number of models of digital wireless handsets meeting a U3T (or M3T) rating under ANSI Standard C63.19 for inductive coupling would be made available by the manufacturers for purchase by smaller carriers by that date. Hearing-Aid Compatible Telephones (WT Docket No. 01-309 – Report and Order), 18 FCC Rcd. 16753 (2003). While some industry progress has been made toward developing compliant handsets, it does not appear that research, development and manufacturing activities have reached the point where the handset manufacturers can make a sufficient number of models of compliant handsets commercially available to wireless carriers.

8. Assuming for purposes of argument that some digital wireless handset models are commercially available for the GSM air interface, it nevertheless appears that a sufficient number of models are not available for purchase by smaller carriers such as South Slope. Thus, once compliant handset models for the GSM air interface are being marketed commercially, it is clear that the handset manufacturers will be concentrating on meeting the needs of the larger (*i.e.*, Tier I) carriers, to the exclusion of smaller carriers.

9. Given these facts and circumstances, it seems abundantly clear that the temporary relief requested herein is warranted and in the public interest, and that good cause exists to grant the temporary waiver requested. Where the Commission's projections of technological feasibility and commercial availability do not pan out, waiver of the requirements would appear to be particularly appropriate. Indeed, basic principles of administrative law prohibit the Commission from compelling carriers to do the impossible. See, e.g., Alliance for Cannabis Therapeutics v. DEA, 930 F.2d 936, 940

(D.C. Cir. 1991); Hughey v. JMS Development Corp., 78 F.3d 1523, 1530 (11<sup>th</sup> Cir. 1996). Furthermore, the Commission has acknowledged that Tier II and Tier III CMRS carriers “have much less ability than the nationwide CMRS carriers to obtain specific vendor commitments necessary” to deploy the equipment needed to meet regulatory requirements; that “handset vendors ... give priority to the larger, nationwide carriers;” that the deployment needs of the larger carriers create “downstream delays for Tier II and III carriers;” and, accordingly, “that there are temporary and special circumstances applicable to [Tier II and Tier III carriers] that constitute a sufficient basis to grant a stay on a limited and temporary basis” from Commission-imposed regulatory requirements. Non-Nationwide Carriers (Order to Stay), 17 FCC Rcd. 14841, Para Nos. 10 and 11 (2002). See also, FCI 900, Inc., 16 FCC Rcd. 11072 (Comm. Wir, Div., WTB 2001) (granting all 900 MHz MTA licensees an extension of the construction deadline so that they might deploy advanced digital 900 MHz systems, where the subject digital voice equipment was not commercially available in sufficient quantities in time to meet the five-year construction deadline).<sup>1</sup> South Slope simply has no control over the equipment development, manufacturing and distribution practices of the handset manufacturers. The lack of sufficient, available digital wireless handset models for the CDMA air interface that meet the Commission’s HAC requirements for inductive coupling is a circumstance

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<sup>1</sup> Additional case precedent supports this position. See Leap Wireless International, Inc., 16 FCC Rcd. 19573 (Comm. Wir. Div., WTB (2001) (granting extension of time so that licensee might deploy “high data rate” wireless technology that was not available in time to meet the five-year construction requirement); Monet Mobile Networks, Inc., 17 FCC Rcd. 6452 (Comm. Wir. Div., WTB 2002) (granting extension of time so that licensee might deploy “high data rate” wireless technology that was not available in time to meet the five-year construction requirement); and Warren C. Havens, Mimeo DA 04-2100, adopted July 12, 2004 (granting extension of the five-year construction requirement for

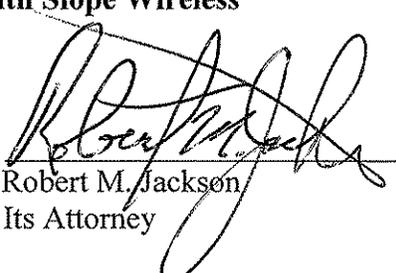
beyond the carrier's control. In view of the unique or unusual factual circumstances present here, application of the rule would clearly be inequitable, unduly burdensome and contrary to the public interest. Given that insufficient compliant digital wireless handset models appear to be currently available (at least for purchase by smaller carriers), South Slope has no reasonable alternative but to request the instant waiver.

10. South Slope wishes to assure the Commission that it is committed to providing its hearing impaired subscribers with at least two models of digital wireless handsets meeting a U3T (or M3T) rating under ANSI Standard C63.19 for the GSM air interface at the earliest practicable date, and that it will do so promptly once the handsets become generally available to Tier III carriers.

**WHEREFORE**, good cause shown, South Slope requests that the instant petition be granted.

Respectfully submitted,

**South Slope Cooperative  
Telephone Co., Inc. d/b/a  
South Slope Wireless**

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220 MHz licensees to allow for the use of next-generation digital technology in the band).

**DECLARATION UNDER PENALTY OF PERJURY**

I, J. R. Brumley, hereby state the following:

1. I am the Chief Executive Officer of South Slope Cooperative Telephone Co., Inc. d/b/a South Slope Wireless.

2. I have read the foregoing "Petition for Temporary Waiver or Temporary Stay." With the exception of those facts of which official notice can be taken, all facts set forth therein are true and correct to the best of my knowledge, information and belief.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 18<sup>th</sup> day of September, 2006.

  
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J. R. Brumley