

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

In the Matter of)
)
SLO Cellular, Inc. d/b/a Cellular One)
Of San Luis Obispo)
)
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)
Sections 20.19(c)(2)(i) and 20.19(d)(2))
of the Rules)

To: Chief, Wireless Telecommunications Bureau

PETITION FOR TEMPORARY WAIVER OR TEMPORARY STAY

SLO Cellular, Inc. d/b/a Cellular One of San Luis Obispo ("SLO"), by its attorneys and pursuant to Sections 1.3 and 1.925 of the Commission's Rules, hereby requests a temporary waiver, or temporary stay, up to and including January 31, 2007, of the requirements contained in Sections 20.19(c)(2)(i)(A) and 20.19(d)(2) of the Rules that SLO include in its handset offerings at least two handset models for its recently installed Global System for Mobile Communications ("GSM") digital air interface facilities that comply with Rule Sections 20.19(b)(1) and 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. SLO is the licensee of Cellular Radiotelephone Service Station KNKQ332 (Frequency Block A – California 5 – San Luis Obispo RSA). SLO 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. SLO’s system has historically employed the Time Division Multiple Access (“TDMA”) air interface. TDMA being a phased-out technology, there are no Hearing Aid Compatible (“HAC”) TDMA handsets available from the handset manufacturers. The system was recently overbuilt with facilities that employ the GSM digital air interface. The GSM facilities were placed into commercial service on or around October 16, 2006.
3. SLO currently markets fourteen digital wireless telephone models for the GSM air interface, only one of which (the Motorola Model RAZR V3) meets a U3 rating (more commonly called an M3 rating in the industry) for radio frequency interference under ANSI Standard C63.19. None of the GSM handset models marketed by SLO meets a U3T rating (or M3T rating) for inductive coupling under the ANSI standard. However, SLO is ordering the Motorola Model RAZR V3i and the LG Model C2000, both of which meet a U3 and a U3T rating under the standard, and expects to receive its first shipments of these handsets by the end of November 2006.

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

4. Section 20.19(c)(2)(i)(A) of the Commission's Rules specifies that "each provider of public mobile service must ... [i]nclude in its handset offerings at least two handset models per air interface that comply with Section 20.19(b)(1) by September 16, 2005, 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)(1) requires that the two handset models meet a U3 (or M3) rating for radio frequency interference under ANSI Standard C63.19.

5. 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.

6. Thus, these rule requirements are generally applicable to all Tier III CMRS carriers. They require SLO to offer, and to make available for in-store testing by consumers, for its GSM digital air interface facilities at least two HAC-compliant digital wireless telephones meeting both a U3 (or M3) rating for radio frequency interference and a U3T (or M3T) rating for inductive coupling, by the applicable implementation deadline. In this case, the applicable implementation deadline is October 16, 2006 because that was when the GSM overbuild facilities were placed into commercial service.

Because SLO offers more than two digital wireless telephones for the GSM 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

7. The Commission has indicated generally that waiver requests of the 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”).

8. 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 In This Case

8. The reason in support of this waiver request is very simple and can be concisely stated: The waiver is needed to support SLO’s orderly transition to the GSM digital air interface, and SLO expects to be fully compliant by the end of November 2006. Thus, the amount of time needed to achieve compliance is extremely brief.

9. The GSM overbuild project has been an extremely exacting and time consuming project for SLO because SLO is a very small carrier. The project involved numerous activities, both large and small. The level of detail required was extremely exacting. Nevertheless, the overbuild has been successfully accomplished, acceptance testing of the facilities completed, and the GSM facilities have been in commercial service since approximately October 16, 2006. While SLO successfully completed this enormous task, it inadvertently forgot to assure that it had in its inventory sufficient models of HAC-compliant GSM handsets. This oversight should be corrected by the end of November 2006.

10. The instant temporary waiver (or temporary stay) is being requested out of an abundance of caution because the GSM overbuild facilities have been in commercial service since approximately October 16, 2006, which (in the absence of the relief requested) would leave an approximate six-week period of arguable non-compliance.

11. In this case, the requested relief is clearly warranted and in the public interest because SLO has shown a clear path to full compliance, and because full compliance will be achieved in the near future. Given these facts, application of the HAC-complaint handset requirements to SLO during this brief time period would be inequitable, unduly burdensome and contrary to the public interest; and, in any event, good cause exists to grant the instant request. SLO has no alternative but to request the waiver.

12. SLO 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 all of the applicable ANSI Standard C63.19 requirements for the GSM air interface at the earliest practicable date, and that it will do so promptly once the handsets have been received from the handset vendors. In this regard, SLO wishes to emphasize that it is partially compliant with the Commission's requirements at this time because it currently markets the one handset model available to it that meets a U3 (or M3) rating for radio frequency interference under ANSI standard C63.19.

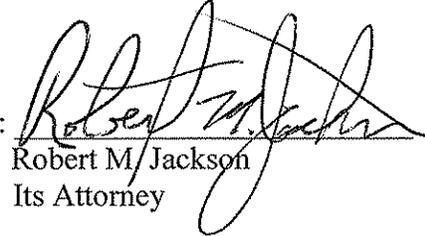
WHEREFORE, good cause shown, SLO requests that the instant Petition be accepted for filing *nunc pro tunc* as of October 16, 2006; and further requests that the instant Petition be granted.

Respectfully submitted,

**SLO Cellular, Inc. d/b/a
Cellular One of San Luis
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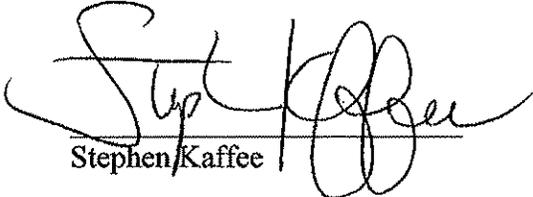
Filed: November 17, 2006

DECLARATION UNDER PENALTY OF PERJURY

I, Stephen Kaffee, hereby state the following:

1. I am the Chief Executive Officer of SLO Cellular, Inc. d/b/a Cellular One of San Luis Obispo.
2. I have read the foregoing "Petition for Temporary Waiver or Temporary Stay."
3. With the exception of those facts of which official notice can be taken, all facts set forth in the Petition 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 17th day of November, 2006.


Stephen Kaffee