

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

**In the Matter of** )  
 )  
**WUE, Inc.** )  
 )  
**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: The Commission**

**PETITION FOR RECONSIDERATION**

WUE, Inc. (“WUE”), by its attorneys and pursuant to Section 405 of the Communications Act of 1934, as amended, and Section 1.106 of the Commission’s Rules, hereby requests reconsideration of the Commission’s *Memorandum Opinion and Order, WT Docket No. 01-309, FCC 07-51*, released April 11, 2007 (“*MO&O*”) insofar as denied WUE’s request for a temporary waiver of one of the Commission’s Rules governing Hearing Aid Compatible (“HAC”) digital wireless handsets, and of its referral to the Enforcement Bureau for its apparent violation of the HAC requirements. In support hereof, the following is shown:

**Background**

1. On September 16, 2005, WUE filed with the Commission a “Petition for Temporary Waiver or Temporary Stay” (“Petition”) requesting a one-year temporary waiver, or temporary stay, up to and including September 16, 2006, of the requirements

contained in Section 20.19(c)(2)(i) of the Rules that WUE include in its handset offerings at least two handset models per air interface that comply with Rule Section 20.19(b)(1), and make available in each retail store owned or operated by it all of these handset models for in-store testing by consumers. Rule Section 20.19(b)(1) specifies that a “wireless phone used for public mobile radio services is hearing aid compatible ... if it meets, at a minimum” a U3 (or M3) rating for radio frequency interference under ANSI Standard C63.19. At that time, the filing of the Petition was deemed necessary because, as of that date, WUE sometimes offered more than two (*i.e.*, three) digital wireless handsets for its Code Division Multiple Access (“CDMA”) air interface facilities. Thus in mid-September of 2005, WUE did not at all times qualify for the *de minimis* exception codified in Rule Section 20.19(e)(1), and, therefore, needed to request temporary waiver relief from the regulation’s requirements (*See* Petition, pp 2 – 3).

2. On November 11, 2005, WOE filed with the Commission its “Fourth Semi-Annual Report,” as required under the Commission’s HAC procedures. The report noted that WUE then marketed three digital wireless handsets, provided the make and model of each handset; noted that none of the handsets met a U3 (or M3) rating under ANSI Standard C63.19; and noted that no U-3 (or M-3) rated handsets were then available for purchase by WUE, a very small Tier III Commercial Mobile Radio Service (“CMRS”) carrier.

3. On or around December 1, 2005, WUE decided that, on a going forward basis, it would market only two digital wireless handset models for the CDMA air interface and thus place itself squarely within the Rule Section 20.19(e)(1) *de minimis* exception to the HAC requirements, as codified in Section 20.19 of the Commission’s Rules. At that

time, there were still no HAC-compliant handsets available for purchase by WUE. WUE made this decision because carrying two additional handset models for HAC compliance would have been unduly financially burdensome due to its very small customer base and limited revenues, and because no consumer ever had requested a HAC-compliant digital wireless handset. In fact, even as of the date of execution of the supporting declaration for this “Petition for Reconsideration,” WUE has never had even a single consumer request for a HAC-compliant handset.

4. On April 25, 2006 and in response to an oral request for information from the Commission’s staff, WUE filed a “Supplement to Petition for Temporary Waiver or Temporary Stay” (“Supplement”), stating as follows:

As noted in the Petition, the digital portion of WUE’s cellular system employs the Code Division Multiple Access (“CDMA”) air interface (Petition Pg. 2). In the past, WUE has typically marketed anywhere from one to three digital wireless telephone models, depending upon their availability (Petition, Pg. 2). Because WUE has sometimes offered more than two digital wireless handset models for the CDMA air interface, historically it has not qualified at all times for the *de minimis* exception codified in Section 20.19(e)(1) of the Commission’s Rules.

The Supplement went on to state that:

[a]t present, WUE markets only two CDMA digital wireless handset models, the LG Model VX3300 and the Audiovox Model 8910, neither of which meets a U3 (or M3) rating for radio frequency interference under ANSI Standard C63.19. On a going forward basis, WUE plans to offer only two digital wireless handset models. As a result, it will remain at all times within the Rule Section 20.19(e)(1) *de minimis* exception on a going forward basis.

The Supplement concluded by stating that:

By way of additional information, WUE has had no requests for Hearing Aid Compatible (“HAC”) digital wireless telephones. Should any such requests be received, WUE will, depending on the customer’s wishes, either obtain a sampling of HAC telephones for the customer to try or, in the alternative, refer the

customer to the nearest Verizon Wireless store to obtain a HAC telephone for use on WUE's system.

5. At Paragraph No. 44 of the MO&O, the Commission determined that WUE had "failed to demonstrate unique or unusual circumstances, or the existence of any other factor, warranting grant of the requested waiver..." The Commission stated that "WUE has not identified – or attempted to identify – the period(s) of time during which it was not in compliance with the [HAC] requirements." The Commission further concluded that "W E states that it is currently in compliance and expects to remain so, by availing itself of the *de minimis* exception, and adds without explanation that 'historically, it has not qualified at all times for the *de minimis* exception;" and that the "Supplement provides no information regarding what efforts, if any, W E has undertaken to come into compliance during those periods when it was ineligible for the *de minimis* exception." In this regard, according to the Commission, "WUE's proposed 'solution' – that it would obtain a sampling of compliant phones or refer its customer to a Verizon Wireless store – is unacceptable. Accordingly, the Commission denied WUE's waiver request; and referred WUE's "apparent violation" of the HAC requirements to the Enforcement Bureau. MO&O, Para. No. 44.

### Argument

6. Rule Section 20.19(e)(1) states, in relevant part, that "[m]anufacturers or mobile service providers that offer two or fewer digital wireless handsets in the U.S. are exempt from the requirements of this section," *i.e.*, Rule Section 20.19.

7. In this case, WUE respectfully submits that it should be granted the requested waiver *nunc pro tunc* to December 1, 2005 – the date upon which it began to operate continuously under the Rule Section 20.19(e)(1) *de minimis* exception. Prior to that date, WUE was in full compliance with the Commission’s HAC requirements because: a) it had pending before the Commission a request for waiver of the Rule Section 20.19(c)(2)(i) requirement that it offer two wireless handset models per digital air interface meeting a U3 (or M3) rating for radio frequency interference under ANSI Standard C63.19; and b) on and prior to December 1, 2005, there were no HAC-compliant handsets available for purchase by WUE, a very small Tier III CMRS carrier. Since December 1, 2005, WUE at all times has marketed only two digital wireless handset models, and thus has been in continuous compliance with the *de minimis* exception. It intends to continue to avail itself of the *de minimis* exception in the future, but wishes to assure the Commission that if at some future date it offers more than two, then it also will offer at least two Rule Section 20.19 HAC-compliant handsets for its CDMA air interface facilities. As noted above, WUE has never had a consumer inquiry concerning HAC-compliant phones.

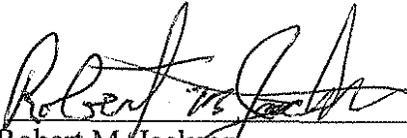
8. At this juncture, WUE wishes to clarify that it never proposed obtaining a sampling of HAC-compliant handsets for hearing-impaired consumers to try – or referring these consumers to the nearest Verizon Wireless store – as a proposed means of compliance with Rule Section 20.19(c)(2)(i). Rather, the statement was made to assure the Commission that, notwithstanding WUE’s availing itself of the *de minimis* exception, that it nevertheless would undertake to assure that the needs of any hearing-impaired customers would be met, albeit by alternative means.

**WHEREFORE**, WUE requests that the instant petition be granted.

Respectfully submitted,

**WUE, Inc.**

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By   
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Its Attorney

Filed: May 10, 2007

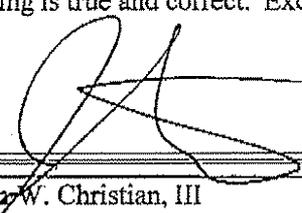
**DECLARATION UNDER PENALTY OF PERJURY**

I, John W. Christian, III, hereby state the following:

1. I am the President of WUE, Inc.

2. I have read the Foregoing "Petition for Reconsideration." 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 9<sup>th</sup> day of May, 2007.



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John W. Christian, III