

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

**In the Matter of** )  
 )  
**Uintah Basin Electronic** )  
**Telecommunications d/b/a UBET** )  
**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: The Commission**

**PETITION FOR PARTIAL RECONSIDERATION**

Uintah Basin Electronic Telecommunications d/b/a UBET Wireless (“UBET Wireless”), 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 partial 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 it purported to deny UBET Wireless’ nonexistent request for waiver of the Rule Section 20.19(f) package labeling requirements for Hearing Aid Compatible (“HAC”) digital wireless handsets, and of its referral of UBET Wireless to the Enforcement Bureau for its apparent violation of Rule Section 20.19(f). Briefly stated, UBET Wireless never requested a waiver of the package labeling requirements for the simple reason that it has never required such a waiver. In support hereof, the following is shown:

### **Background**

1. On September 16, 2005, UBET Wireless 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 UBET Wireless 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. Nowhere in the Petition did UBET Wireless request a waiver of the Rule Section 20.19(f) package labeling requirements.

2. On November 16, 2005, UBET Wireless filed with the Commission its “Fourth Semi-Annual Report,” as required under the Commission’s HAC procedures. The Report noted that UBET Wireless “currently markets a number of digital wireless telephones;” that four of these models meet a U3 (or M3) rating under ANSI Standard C63.19; and provided the make and model numbers for the four HAC-complaint handsets. Of particular significance in light of the adverse finding contained in the MO&O, in the response to Item 5, entitled “Report On The Status Of Product Labeling,” UBET Wireless duly reported: “None. *Product labeling is presently being handled by the handset manufacturer, Motorola.* It is anticipated that all product labeling for future HAC-compliant handset models activated on the system will be handled by the handset manufacturers” (emphasis added). Stated another way, the manufacturer was placing the

HAC U-rating on the handset packaging. Thus, the Report clearly demonstrated compliance with the Rule Section 20.19(f) package labeling requirement.

3. On April 25, 2006 and in response to an oral request for information from the Commission's staff, UBET Wireless filed a "Supplement to Petition for Temporary Waiver or Temporary Stay" ("Supplement") stating that, since February of 2006, "UBET Wireless has marketed at least four digital wireless handset models which meet a U3 (or M3) rating for radio frequency interference under ANSI Standard C63.19," and provided the make and model numbers for the four HAC-compliant handsets. Because the Commission's staff specifically requested that the topic of package labeling be addressed, the Supplement went on to state that "[i]n each of the four cases, the manufacturer-supplied packaging indicates that the units are hearing aid compatible."

4. At Paragraph No. 55 of the MO&O, the Commission determined (based upon UBET Wireless' November 16, 2005 "Fourth Semi-Annual Report") that UBET Wireless came into compliance with the handset deployment requirement as of November 16, 2005 and, accordingly, granted UBET Wireless a waiver *nuncpro tunc* to extend the Rule 20.19(c)(2)(i) compliance deadline until November 16, 2005. However, for some reason not readily apparent, the Commission misread the Petition as also requesting a temporary waiver of the Rule Section 20.19(f) package labeling requirement; determined that the standards for securing a waiver of this requirement had not been met; "den[ie]d this aspect of the UBET Wireless Petition;" and referred UBET Wireless' "apparent violation" to the Enforcement Bureau, MO&O, Para. No. 56. Thus, with respect to package labeling, the Commission acted upon a request for relief that was not pending before it. Of even greater significance, no violation of the Rule Section 20.19(f) package

labeling requirements is present, as was evident from both the November 16, 2005 Report and the April 25, 2006 Supplement, both of which clearly demonstrated that the required package labeling was being performed by the handset manufacturer, Motorola..

**The Rule Section 20.19(f) Requirements Apply Only  
To Handset Manufacturers, Not To CMRS Licensees**

5. Rule Section 20.19(f) states, in relevant part, that “[h]andsets used with public mobile services that are hearing aid compatible, as defined in Sec. 20.19(b) of this chapter, shall clearly display the U-rating, as defined in Sec. 20.19(b)(1), (2) on the packaging material of the handset.” In this case, product labeling was being performed by the handset manufacturer. It is nevertheless instructive to note that from the language used in the regulation, it is quite clear that this directive applies only to the handset manufacturers (and not to the licensees), a reading confirmed by examination of the Commission’s *Hearing Aid Compatibility Order* and *Hearing Aid Compatibility Order on Reconsideration* in the HAC proceeding.

6. The Rule Section 20.19(f) package labeling requirement was adopted by *Report and Order, WT Docket No. 01-309, FCC 03-168, 2 CR 1299* (rel. August 14, 2003) (“*Hearing Aid Compatibility Order*”) and reaffirmed without modification by *Order on Reconsideration and Further Notice of Proposed Rulemaking, WT Docket No. 01-309, FCC 05-122, 36 CR 190* (rel. June 21, 2005) (“*Hearing Aid Compatibility Order on Reconsideration*”). In adopting the requirement, the Commission stated that it “will require manufacturers to place a label on the exterior packaging containing the wireless telephone indicating the U-rating of the wireless telephone;” and “require service providers to ensure that the label is made visible to individuals with hearing disabilities so they may determine which wireless telephone best meets their individual needs.”

Hearing Aid Compatibility Order, Para. No. 83. Stated another way, package labeling is to be performed by the manufacturer, and the carriers are to ensure that they remain visible by, for example, not placing any stickers over the label. The Commission went on to state that

First, *we require manufacturers* to affix a label on the exterior of the wireless telephone's box that provides the particular U-rating for that model of handset. The label should be conspicuous so that the consumer, without any assistance, can discern the U-rating of the particular hearing aid-compatible phone. ... We require labels to be affixed to the exterior of the packaging in order to inform the purchaser of the quality of interoperability between a wireless telephone and a hearing aid.

Hearing Aid Compatibility Order, Para. No. 85 (emphasis added). *Accord, Hearing Aid Compatibility Reconsideration Order*, Para. Nos. 31 – 36 (“The Commission sought to effectuate [the mandate of Section 108 of the HAC Act] by requiring digital wireless handset *manufacturers* to: (1) *place a label on the exterior packaging* containing the wireless handset indicating the technical rating of the wireless handset ...” at Para. 31; “The requirement that digital *wireless handset manufacturers* *prominently place an exterior label* indicating the U-rating satisfies the need of consumers to learn the U-rating of a given handset at a glance ...” at Para. 33) (emphasis added).

7. Carriers, however, are not subject to this requirement, being given considerably greater latitude:

Furthermore, to ensure that the information is conveyed to consumers, we require service providers to ensure that the U-rating is made available, *either through display on the handset's box*, separate literature on which model handsets the provider offers that are compatible, through posting information on their Internet web site, or by any other means the service provider determines is sufficient, to individuals with hearing disabilities so they may determine which wireless telephone best meets their individual needs.

Hearing Aid Compatibility Order, Para. No. 87 (emphasis added). Thus, under the regulation, carriers are *not required* to affix labels to the packaging in the event the manufacturers fail to do so. Affixing labels is only one of several methods that a carrier may employ to discharge its obligations because, as the Hearing Aid Compatibility Order expressly states, other options for the carriers are available. In explaining the greater latitude afforded carriers, the Commission stated:

We recognize that service providers offer their products and services through a variety of channels, including the Internet, carts in shopping malls, agents, and stand-alone stores. Some of these entities are small businesses with limited resources. We, therefore, are adopting a requirement that provides flexibility for service providers to determine how best to convey the information to the consumer. We encourage service providers to use the flexible approach we provide to adequately inform consumers with disabilities about their choices.

Hearing Aid Compatibility Order, Para. No. 87.

8. Thus, the licensees are not required to label the handset packaging if the manufacturers for some reason fail to do so. Failure to label the packaging is a handset manufacturer violation, not a licensee violation. Licensees are accorded much greater flexibility to advise consumers of the HAC U-rating of the handset. However, in this case and as discussed above, the manufacturer was labeling the handset packaging with the required U-rating. Furthermore, the MO&O is simply wrong as matter of law in its apparent holding that the licensee must always label the packaging if the manufacturer fails to do so. This aspect of the MO&O must be set aside as erroneous both on the facts and the law.

**UBET Wireless Labels The Handset Packaging With  
The HAC U-Rating Where The Manufacturer Fails To Do So**

9. As noted above, the HAC-compliant Motorola handsets discussed in the November 16,2005 Report and in the April 25,2006 Supplement have at all times borne manufacturer labeling setting forth the HAC U-rating of the handsets. However, UBET Wireless wishes to go a step further and assure the Commission that it labels the handset packaging with the HAC U-rating in those cases where the handset manufacturer fails to do so.

10. The Commission's conclusion that UBET Wireless was not in compliance with its obligations under the *Hearing Aid Compatibility Order* apparently stems from a misreading of UBET Wireless' various semi-annual reports in WT Docket No. 01-309, specifically citing the Report filed on November 16,2005. As noted previously, under Item 5, entitled "Report On The Status Of Product Labeling," UBET Wireless duly reported: "None. *Product labeling is presently being handled by the handset manufacturer, Motorola.* It is anticipated that all product labeling for future HAC-compliant models activated on the system will be handled by the handset manufacturers" (emphasis added). Thus, the Report demonstrated that the manufacturer-supplied packaging contained the required HAC U-rating of the handsets.

11. However, it should be emphasized at this juncture that a more general response to Item 5, one indicating that package labeling was exclusively a manufacturer responsibility, would have been completely appropriate. To place this point in context, it should be remembered that the reports are submitted pursuant to the requirements set forth at Paragraph Nos. 89 – 91 of the *Hearing Aid Compatibility Order*, which mandated

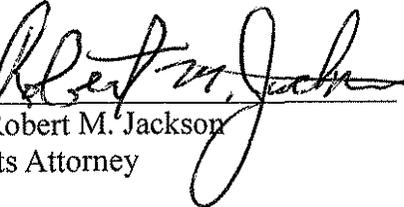
the filing of reports by both carriers and handset manufacturers and which specified what the reports were to contain. Some of the items listed are quite obviously directed to the handset manufacturers, since the Commission could never have reasonably contemplated that a small, Tier III Commercial Mobile Radio Service carrier (such as UBET Wireless) would have access to that information. Included in this category are such things as the models tested, the laboratory used, the test results for each handset tested, information regarding the incorporation of hearing aid compatibility features into newer phone models, activities related to ANSI C63.19 standards work, ongoing efforts for interoperability testing with hearing aid devices, and product labeling. A carrier would interpret the product labeling language for what it clearly is – as asking for the status of the carrier’s involvement in the product labeling activities of the handset manufacturers who, as discussed above, are the only ones required to attach the labels to the packages. That the mandatory labeling duty falls exclusively upon the handset manufacturers was readily apparent from the statements contained in the section of the *Hearing Aid Compatibility Order* setting forth the Commission’s interpretation of the labeling requirement that it was enacting, the section that immediately preceded the one discussing (and specifying the contents **of**) the reports.

**WHEREFORE**, UBET Wireless requests that the instant petition be granted.

Respectfully submitted,

**Uintah Basin Electronic  
Telecommunications d/b/a  
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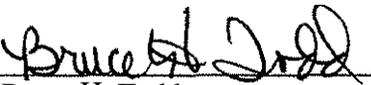
**DECLARATION UNDER PENALTY OF PERJURY**

I, Bruce H. Todd, hereby state the following:

1. **I am** the Chief Executive Officer and General Manager of Uintah Basin Electronic Telecommunications d/b/a UBET Wireless.

2. I have read the foregoing "Petition for Partial 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 11<sup>th</sup> day of May, 2007.

  
Bruce H. Todd