

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

In the Matter of)	
)	
South Central Utah Telephone Association, Inc.)	WT Docket No. 01-309
)	
Section 68.4(a) of the Commission's Rules Governing Hearing Aid Compatible Telephones)	
)	
Petition for Temporary Waiver, or Temporary Stay, of Section 20.19(c)(2)(i) of the Commission's Rules)	

To: **The Commission**

PETITION FOR PARTIAL RECONSIDERATION

South Central Utah Telephone Association, Inc. (South Central), by its attorney, and pursuant to Section 405 of the Communications Act of 1934, as amended, and Section 1.106 of the Commission's rules, hereby petitions the Commission for 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 denies a non-existent request by South Central for waiver of Section 20.19(f) of the Commission's rules and refers South Central's purported violation of Section 20.19(f) to the Commission's Enforcement Bureau.

In support of this petition, the following is shown:

Background

1. South Central, a rural area telephone cooperative, is a small, Tier III Commercial Mobile Radio Service licensee, as defined in the Commission's E-911 *Order to Stay*, FCC 02-210, released July 26, 2002. In this regard, South Central is the licensee of stations KNLG223 and WQBL704 in the Broadband Personal Communications Service (PCS). South Central serves the St. George, Utah BTA on the PCS F-block spectrum (station KNLG223) and utilizes Nortel Networks' CDMA equipment for its PCS network. On October 5, 2004, South Central completed

its acquisition of a partitioned portion of Qwest Wireless, LLC's E-Block PCS license for the Salt Lake City-Ogden, Utah BTA (station WQBL704). The partitioned area consists of Piute County, Utah and portions of Sevier and Wayne Counties, Utah.

2. On September 15, 2005, South Central 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 Commission's rules, that South Central 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 South Central request a waiver of the Rule Section 20.19(f) package labeling requirements, the reason being that such waiver did not appear to be required. However, drawing upon South Central's three subsequently filed semi-annual reports of hearing-aid compatible (HAC) handset compliance, filed pursuant to the requirements of Paragraph Nos. 89 – 91 of the Commission's **Report and Order** (WT Docket No. 01-309), FCC 03-168, released August 14, 2003, the Commission inferred a request for waiver of Rule Section 20.19(f) and denied it; and, thereupon, referred South Central to the Commission's Enforcement Bureau for the purported violation of Rule Section 20.19(f).

3. At the same time, the Commission found, based on South Central's November 17, 2005 semi-annual report, that South Central came into compliance with the preliminary handset deployment benchmark as of November 17, 2005, and accordingly granted South Central a waiver *nunc pro tunc* to extend the Rule 20.19(c)(2)(i) compliance deadline to November 17, 2005 (at paragraph 37 of the *MO&O*).

4. It is of the denial of the inferred Rule 20.19(f) waiver request and referral of the purported rule violation to the Commission's Enforcement Bureau that South Central seeks reconsideration

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

5. If the Commission takes the position, as it apparently has, that the Rule 20.19(f) package labeling requirement applies to both handset manufacturers and CMRS providers alike, and that if the manufacturer fails to meet the requirement, the CMRS provider is responsible for labeling the package, that position has not been made sufficiently clear in either the rule itself or the Commission's orders dealing with the rule. As a preliminary matter, it is to be noted that radio station licensees, in general, and CMRS providers, in particular, have traditionally not been responsible for the labeling of radio equipment and packaging. Thus, Section 2.925 of the Commission's Rules contains very specific details on how equipment that radiates RF energy is to be labeled. The equipment manufacturer alone is responsible for the labeling. An equipment operator is responsible only for determining that the equipment has been approved by the Commission. No liability is incurred by the operator if the equipment is improperly labeled or even if it is not labeled at all.

6. The case of HAC handsets appears to be the first instance in which the Commission has taken the position that the licensee of the equipment (the CMRS provider) bears the responsibility for labeling the equipment packaging if the manufacturer fails to label the packaging and thereby violates the Commission's Rules. If that, in fact, is the case, it is not abundantly clear from the rules or the Commission's pronouncements on the subject. Thus, Rule 20.19(f) states, in relevant part:

Handsets 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."

From the language used and considering traditional labeling requirements, as noted above, it seems quite clear that this directive applies only to the handset manufacturers (and not to CMRS providers), a reading confirmed by examination of the Commission's *Hearing Aid Compatibility Order* and *Hearing Aid Compatibility Order on Reconsideration* in the HAC proceeding.

7. The Rule Section 20.19(f) package labeling requirement was adopted by *Report and Order*, WT Docket No. 01-309, FCC 03-168, 18 FCC Rcd 16753 (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, released 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. 83. The clear indication is that package labeling is a requirement of the manufacturer, and the carrier's only obligation is to ensure that the manufacturer's label is not obliterated or otherwise covered up by, for example, a price tag or other sticker, *i.e.*, the manufacturer's label must remain visible. There is no indication, from a plain reading of the rule, that the carrier's responsibility goes beyond making certain that the manufacturer's label remains visible to prospective purchasers of the handset

8. The Commission went on to state:

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. 85 (emphasis added). *Accord*, *Hearing Aid Compatibility Reconsideration Order*, paras. 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 ...” *Id.* 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 ...” *Id.* para. 33) (emphasis added).

9. Carriers, however, are seemingly 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. 87 (emphasis added).

Under the Commission’s unambiguous wording, a carrier is not required to affix a label to the packaging in the event the manufacturer fails to do so. Affixing a label 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 carrier to convey pertinent information to customers are available, including “any other means the service provider determines is sufficient.” 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. 87.

Thus, carriers are not required to label the handset packaging if the manufacturers fail to do so, provided the carrier conveys the HAC information to the customer in one of several other acceptable ways. From everything the Commission has said on the subject prior to the release of the *MO&O*, failure to label the packaging is a handset manufacturer violation, not a carrier violation. Licensees are accorded much greater flexibility to advise consumers of the HAC U-rating of the handset. Therefore, the *MO&O* is simply wrong as matter of fact and law in holding that the carrier must always label the packaging if the manufacturer fails to do so. This aspect of the *MO&O* should be reconsidered and set aside.

South Central Has Not
Been Given Adequate Notice

10. South Central's first semi-annual report in Docket 01-309 was filed with the Commission on May 17, 2004. In it, South Central indicated that it was not involved in product labeling and stated its belief that product labeling would be handled by the equipment manufacturers. In the ensuing three years, South Central has filed five additional semi-annual reports, each one reiterating the same and stating in addition that South Central was not involved in developing product labeling standards. Review of the semi-annual filings in Docket 01-309 reveals that other CMRS carriers have made similar statements regarding product labeling.

11. . To place this response in context, it should be noted that it was 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 unquestionably 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 South Central, 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. **As** South Central interpreted this language, it was asking for the status of South Central's involvement in the product labeling activities of the handset manufacturers who, as stated above, are the only ones required to attach the labels to the packages. That the mandatory labeling duty fell 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. South Central quite properly indicated that it was not involved in the discharge of the manufacturers' obligations through assisting manufacturers in the development and placement of labels, or otherwise. Under the policy statement contained in the *Hearing Aid Compatibility Order*, package labeling by the carrier is discretionary since there are alternate means available (as described in the *Hearing Aid Compatibility Order*) to discharge its obligations. That the reports were not required to set forth the alternate means being used (which were discussed by the Commission solely in the context of the actions carriers were required to take) further indicated to South Central that the question was directed solely to manufacturers.

12. At no time during the three-year period since South Central's first report was filed has the Commission advised, by way of correspondence with South Central or its counsel, or by way of a Public Notice or otherwise that the Commission regards Rule 20.19(f) as imposing the obligation for the labeling of handset packaging on both manufacturers and carriers. Such notification should have been deemed desirable, if not essential, given the apparent language in the Commission's regulations to the contrary and the statements in the semi-annual reports of a number of carriers, including South Central, that they were not involved in product labeling. The release of the *MO&O* on April 11, 2007 was South Central's first indication that the Commission took issue with its oft-expressed understanding on the subject. In these circumstances, elementary fairness requires that South Central should have been given adequate notice and the

opportunity to come into compliance before the Commission took the drastic step of referring South Central to the Commission's Enforcement Bureau. This aspect of the MO&O should be reconsidered and set aside.

**South Central Has Complied In Good Faith With Both
The Letter And Spirit Of The Commission's Regulations**

13. In South Central's experience, prospective handset purchasers, including the hearing-impaired, do not make their buying decisions based on what is on or in the handset package. Indeed, customers typically do not see the handset packaging until after the sale has been completed. Buying decisions are generally made based on in-store displays – how the handset looks and feels and accompanying descriptive material – information on the Internet, recommendations from sales personnel and, in the case of the hearing-impaired, information received in the hearing-impaired community. In addition, the hearing-impaired are given the opportunity to try the handset for compatibility with their hearing aids before making a purchase. Handset packages are not on display and, in South Central's experience, no customer has ever asked to see the box that the handset comes in before making a purchase. Accordingly, a strict requirement for the labeling of handset boxes is of questionable public interest benefit when compared with other means of informing the hearing-impaired regarding HAC handsets.

14. South Central's semi-annual reports, filed with the Commission since HAC handsets became available, have included the following information on outreach efforts:

South Central has developed a hearing aid compatibility information sheet to assist hearing impaired customers in selecting current model phones and accessories most suitable to their needs and in selecting new HAC compliant phones as they become available. Our sales and customer service personnel are knowledgeable in this area and understand how best to help customers who use a hearing aid.

It is accordingly clear that South Central has made good faith efforts to comply with the Commission's HAC handset regulations. The fact that it may have sold some handsets that were not properly labeled by the manufacturer should not provide a basis for enforcement action in

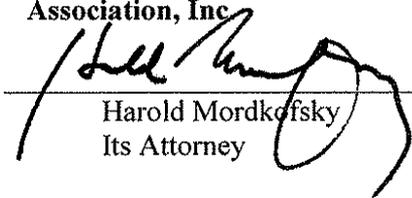
view of South Central's activities and good faith belief, based on the wording of Rule 20.19(f) and the clear and unambiguous language of the *Hearing Aid Compatibility Order* and the *Hearing Aid Compatibility Order on Reconsideration*, that it was not under an obligation to label HAC handsets if the manufacturer failed to do so. In addition, in the wake of the *MO&O*, South Central has instituted procedures that should satisfy the Commission as to its commitment to provide useful information to the hearing-impaired regarding HAC handsets. In particular, South Central is contacting the equipment manufacturers that have been remiss in their product labeling responsibilities with requests for appropriate labels and inserts going forward and for any existing inventory that is lacking the required labeling. In the interim, South Central is preparing its own labels and inserts for such inventory with the rating involved. In addition, South Central is supplementing the information cards for its in-store displays to include the compatibility rating for each HAC handset. And finally, South Central is reviewing its Web site to be certain that the handset descriptions include the same information. **As** additional HAC handsets are received, South Central will review the product labeling, both inside and outside the package to be certain of compliance. Any such handsets not in compliance will be brought into compliance by South Central

WHEREFORE, South Central submits that there is ample justification in the public interest for the Commission to grant its petition.

Respectfully submitted,

**South Central Utah Telephone
Association, Inc**

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DECLARATION

I, Brant Barton, hereby declare under penalty of perjury under the law of the United States that I am the Chief Executive Officer and General Manager of South Central Utah Telephone Association, Inc.; that I have read the foregoing Petition *for* Partial Reconsideration; and that, except for those statements of fact of which the Federal Communications Commission may take official notice, all **of** the factual statements therein are true and correct of **m y** own personal **knowledge**.

Dated this 11th day of May, 2007.



Brant Barton