

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)
)
Union Telephone Company)
)
Section 68.4(a) of the Commission's Rules)
Governing Hearing Aid Compatible) WT Docket No. 01-309
Telephones)
)
Petition for Waiver of Section 20.19(c)(2)(i) of)
the Rules)

To: Chief, Wireless Telecommunications Bureau

PETITION FOR TEMPORARY WAIVER

Union Telephone Company ("Union"), by its attorneys and pursuant to Section 1.3 and 1.925 of the Commission's rules, hereby requests a temporary waiver of the requirements contained in Section 20.19(d)(2) of the Commission's rules that Union include in its handset offerings at least two (2) handset models per air interface that comply with Section 20.19(b)(2) of the Commission's rules, and make available in each retail store owned or operated by Union all of the handset models for consumers to test in the store. Because handsets with an M3T rating that would operate on Union's network have only recently become available to Union, and because a handset model offered by Union and thought by Union to be rated M3T was not rated M3T, Union respectfully requests an extension of the September 18, 2006 deadline.

As explained below, Union expects to offer the second of two handset models with a M3T rating by no later than June 30, 2007.

Background

Union is a rural wireless provider operating GSM wireless systems in Wyoming, Colorado, Utah and Idaho. Union sells a variety of handsets which it obtains from several vendors, particularly Motorola and Nokia. By September 18, 2006, only one of the handsets offered by Union had an M3T rating in accordance with Section 20.19(b)(2) of the Commission's rules. However, Union will be offering a second model, the Nokia 6085, FCC Identifier LJPRM-198H, rated M3T3, by June 30, 2007. The Nokia 6085 will be stocked and selling in all of Union's retail stores by that date.

Rule Section 20.19(d)(2) Requirements

Section 20.19(d)(2) of the Commission's Rules specifies that "each provider of public mobile radio service must...[i]nclude in its handset offerings at least two handset models per 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 UT3 rating for radio frequency interference under ANSI Standard C63.19.¹ Thus, the rule requirement is

¹ The FCC adopted the ASC C63.19-2005 of the American National Standards Institute, which provides a consistent standard for assessing and rating wireless device compatibility with hearing aids. The classification categories changed from "U" and "UT" to "M" and "T," where "M" stands for microphone mode and "T" stands for T-coil mode, to make it easier for

generally applicable to all Tier III CMRS carriers, such as Union. The rule required Union to offer, and to make available for in-store testing by consumers, for the GSM digital air interface at least two handsets with a M3T rating by the September 18, 2006 implementation deadline.

Discussion

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”).

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 therefore 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 rules(s) would be inequitable, unduly burdensome or contrary to the public

consumers to understand. *Order on Reconsideration and Further Notice of Proposed Rulemaking*, 20 FCC Rcd 11221 (2005).

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.

As a rural, Tier III wireless carrier, Union is dependant on the availability of compliant handsets from its vendors. Given the limited supply of such handsets, Union has been unable to timely offer two handsets with a M3T rating. As the Commission has recognized, wireless carriers are largely dependant on the availability of equipment from manufacturers with respect to equipment-related deadlines.² Further, handset manufacturers have only recently been able to obtain the necessary certifications to comply with the T-coil requirement and ramp up production of M3T-rated handsets for GSM in quantities sufficient to satisfy the needs of small carriers.

The circumstances associated with Union’s efforts to meet the requirements set forth in Section 20.19(d)(2) are beyond its control. In view of the unique and unusual circumstances described herein, Union has no reasonable alternative but to request a temporary waiver of Section 20.19(d)(2) of the Commission’s rules.

² See *In the Matter of Section 68.4(a) of the Commission’s Rules Governing Hearing Aid-Compatible Telephones, T-Mobile USA, Inc. Petition for Waiver of Section 20.19(c)(3) of the Commission’s Rules, Memorandum Opinion and Order*, 20 FCC Rcd 15147, para 7 (2005); see also *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems: Phase II Compliance Deadlines for Non-Nationwide CMRS Carriers, Order to Stay*, 17 FCC Rcd 14,841, paras 11-13, 17 (2002).

A. Union Has Exercised Good Faith in Attempting to Comply with the HAC Rules

By September 18, 2006 Union had begun to offer the LG c2000 model handset rated M3T. This offering was listed in Union's status report filed November 19, 2006. Union also offered the Motorola RAZR V3 and listed it in the report as among its offerings of HAC phones rated M3T. Union did so because in researching product compliance ahead of the September deadline, Union had inquired of its vendor and was informed the Motorola RAZR V3 was rated M3T. In retrospect a miscommunication appears to have taken place. The vendor was speaking of the RAZR V3i or V3e when identifying HAC phones rated M3T, not the V3 HAC phone rated M3 that Union purchased. Union is disappointed to recently learn of the error because it had exercised great effort and had already faced serious challenges pursuing M3T handsets operable on its GSM network.

In August 2006 Union reviewed the status of M3T compliant handsets for GSM systems, as identified by its vendors. The following status was associated with each:

LG c2000 – This phone was available, tested well, and was offered to customers as part of Union's portfolio of HAC handsets.

LG CE500 – This phone was available only to a select Tier I carrier and was not made available to Union.

LG CE300 – This phone was available only to a select Tier I carrier and was not made available to Union.

LG 1400i – This phone was being phased out by the manufacturer and would not be available to Union.

Motorola V3e – This phone was not available from Union's distributors.

Motorola V3i – This phone was tested by Union, but it did not meet the RF requirements established to provide a quality experience to the end user.³

Nokia 6126h – This phone was not available from Union’s distributor.

Nokia 6133h - This phone was available only to a select Tier I carrier and was not made available to Union.

By the time of the filing of Union’s November 2006 status report, Union believed it was in compliance with the requirement to offer two handsets rated M3T, namely the LG c2000 and the Motorola V3. Union now recognizes that it was not in compliance, despite its best efforts. However, there is no more Union could have done. There was no reasonable means to meet the September 18th compliance date because no suitable GSM phones rated M3T were available to Union that would work on Union’s GSM network system.

³ Union runs each new phone through a series of call trace testing that measures the performance of the phone during live calls. Through testing, Union captures performance data in critical areas, such as link balance, receive and transmit levels, and signal to noise ratios. These tests provide an indication of whether or not the phone is likely to give the end consumer a quality experience, and they determine how likely the phone is to inject noise into Union’s network.

In evaluating the test results, Union does not necessarily eliminate a phone due to a single factor, as variations, such as atmospheric conditions, etc., can influence the test. Instead, takes into account a number of factors and compares them with test results from other phones in the company’s portfolio. In the case of the Motorola V3i, the Signal to Noise ratios were low (higher is better) enough to disqualify the handset from further consideration. Other factors with the Motorola V3i, such as measurement of the link balance, were also out of line with other handsets. The results were particularly concerning with respect to testing in the 1900 MHz range, but were also poor in the 850 MHz testing.

At the time it was difficult for a carrier to identify compliant phones because reliable documentation was not readily available. Carriers were reliant upon their vendors and distributors to verify HAC ratings and supply properly rated, FCC-approved handsets. There was no website or other resource accessible by carriers to independently verify ratings and help ensure compliance. Union performed as best it could under these circumstances.

B. Union Has a Program to Achieve and Maintain Compliance with the HAC Rules

Union recognizes the need to continuously offer two M3T-rated handsets and to scrupulously monitor the ratings of its HAC handset offerings. Aware that compliant phones age and are routinely discontinued by the manufacturer, Union constantly pursues additional M3T compliant handsets. Union makes monthly inquiries with its distributors, and quarterly inquiries with the manufacturers, as to the availability of handsets rated M3T suitable to its GSM system.

Two M3T-rated handsets are newly available to Union: the Nokia 6126h and the Nokia 6085. Both have very similar features. Union will offer the Nokia 6085 (FCC Identifier LJPRM-198H, rated M3T3) in each of its retail outlets by June 30, 2007 to complete its complement of two M3T-rated handsets. Union will continue to offer the LG c2000, also rated M3T, as long as supplies last. Union anticipates that an M3T handset soon to be released Sony Ericsson will be useful on its GSM system as well.

In further effort to ensure that it adequately serves the community of hearing aid and cochlear implant users, Union has investigated accessibility loop sets and various Bluetooth adapters to allow for integration with T-Coil equipped hearing aids. At this time Union has found that these items do not perform consistently enough to adequately meet the needs of its

customers. Union continues to offer M3T-rated handsets as well as possible accessory add-on products for customers with T-Coil equipped hearing aids. As a practical matter, Union has found that the greater demand among its customers is for HAC phones rated M3. To Unions' knowledge, no customer has been harmed and no customer has been turned away without an adequate communications device due to Union's period of offering of one, rather than two, HAC phones rated M3T.

Conclusion

For the reasons stated above, Union seeks a temporary waiver of Section 20.19(d)(2), from September 18, 2006 through June 30, 2007. Union is committed to continuously offer at least two HAC handsets with an M3T rating, and to serve its customers with hearing disabilities with additional options as well. Grant of the instant waiver request is consistent with the public interest, convenience and necessity.

Respectfully submitted,

UNION TELEPHONE COMPANY



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Its Attorney

June 14, 2007

DECLARATION

I, Todd Crook, hereby declare as follows:

1. I am the Product Manager of Union Telephone Company.
2. I am familiar with the facts contained in the foregoing "Petition for Temporary Waiver", and I verify that those facts are true and correct to the best of my knowledge and belief, except that I do not and need not attest to those facts which are subject to official notice by the Commission.



Todd Crook

June 14, 2007