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**VIA ELECTRONIC FILING**

Marlene H. Dortch, Esq.  
Secretary  
Federal Communications Commission  
445 Twelfth Street, SW  
Washington, DC 20554

Re: Notice of *Ex Parte* Presentation in WT Docket No. 01-309

Dear Ms. Dortch:

This is to notify you that, on behalf of SunCom Wireless, Inc. (“SunCom”), David Martin and I participated in a telephone conference today with Wayne Leighton, acting wireless advisor to Commissioner Tate, to discuss SunCom’s pending waiver request in the above-referenced proceeding. On the call, we discussed the two attached documents, which summarize SunCom’s waiver-related filings in the docket and detail SunCom’s compliance efforts in 2006 and 2007 relating to the Commission’s hearing aid compatibility (“HAC”) rules. Please contact the undersigned if there are any questions regarding this filing.

Sincerely,

*/s/ Michele C. Farquhar*

Michele C. Farquhar  
David L. Martin  
Counsel to SunCom Wireless, Inc.

cc: Wayne Leighton

**SUNCOM WIRELESS, INC.**  
**WT Docket No. 01-309**

Overview of Waiver Requests and Compliance Efforts  
Regarding T3-rated HAC-Compliant Handsets

**I. FCC Waiver Standard**

The Commission may grant a request for waiver if it is shown that:

- (i) The underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that grant of the requested waiver would be in the public interest; or
- (ii) In 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. 47 C.F.R. § 1.925(b)(3)(i) and (ii).

In applying this standard, the Commission has previously granted waiver requests to petitioners seeking relief from the M3 handset deployment requirement (Sept. 16, 2005) on the basis of:

- Greater difficulties faced by Tier II and Tier III carriers in procuring hearing aid-compatible handsets;
- The late availability of certified handsets, and GSM-compatible handsets in particular;
- Good faith and diligence on the part of the carrier in attempting to comply with the requirement;
- Short duration of delay in compliance that would not unduly deprive subscribers of access to, and information about, hearing aid-compatible handsets.

**II. SunCom HAC Compliance Efforts**

SunCom's difficulties complying with the T3 handset deployment requirement were caused by the actions of its vendors – unusual circumstances beyond its control.

- SunCom relied in good faith on its vendors' representations, which proved to be misleading and/or inaccurate. For example:
  - Nokia first stated that it would ship the 6126H in the fourth quarter of 2006. When SunCom later requested a status update, it learned that Nokia would not be able to ship the 6126H until mid-January 2007. In January, Nokia told SunCom that delivery would not occur until late March 2007.
  - Sony Ericsson first stated that a T3-rated version of the W710 would be available by November. Sony Ericsson later revised its estimated ship date to late January. In January, it indicated that previously-shipped units of the W710 were, in fact, already

T3-compliant. By late March, Sony Ericsson admitted it was mistaken, and indicated that compliant versions of the W710 would not ship until late April.

- Motorola produced two different handsets – one T3-rated, the other not – marketed under the same model number (V3i), creating confusion for carriers and consumers alike. Publicly available sources, including Motorola’s own website, listed the V3i as T3-rated without warning that the rating applies only to certain units bearing this model number.
- In a related context, the Commission granted a waiver to T-Mobile on the basis of vendor issues beyond its control. T-Mobile only learned less than four weeks prior to the September 16, 2005 M3 deadline that its vendor’s handsets had failed to achieve certification of compliance with the M3 rating. A similar consideration should apply here.
- Likewise, the Commission has recognized that Tier II and Tier III carriers have little ability to influence the availability of equipment from manufacturers. In the E-911 proceeding, the Commission “conclude[d] that handset vendors and network-based location technology vendors give priority to the larger, nationwide carriers,” which delayed the shipment of compliant equipment to non-nationwide carriers. *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, Order to Stay, 17 FCC Rcd 14841 ¶ 11 (2002).
- The Commission should not necessarily expect that carriers would have been able to comply with the T3 rating as quickly as they may have been able to comply with the M3 rating. The revised industry standard for HAC compliance was not approved by the FCC until just three months prior to the September 2006 T3 deadline, creating a bottleneck of certification applications as labs and TCBs came up to speed with the new revisions.

SunCom used good faith efforts to procure compliant handsets in time to meet the January deadline extension it initially requested based on information SunCom received from its vendors, and made multiple, regular contacts to its vendors in an ongoing effort to meet the FCC deadlines.

- If SunCom had received more accurate timing and availability information from its vendors initially, SunCom would have made other arrangements earlier on.
- The process for ordering and deploying new handsets typically takes 4 to 5 months. This lead time left SunCom no alternative but to keep its existing orders, as any new orders would have required additional months and would not have allowed SunCom to comply any earlier.
- When SunCom applied for waiver of the T3 handset deployment requirement, it only asked for the amount of time necessary based on vendor representations.
- SunCom kept the Commission informed of the delays and problems with its vendors in its filings and only requested amendments to its initial waiver request when it became clear that the vendors would not come through.
- SunCom otherwise has an excellent record of compliance with FCC rules.

In view of these unique circumstances, strict application of the deadline here would be inequitable.

**SunCom Wireless, Inc.**  
**HAC / T3 Compliance Efforts Timeline**

Early 2006	SunCom requests information from its vendors on their planned T3-compliant handsets, so that SunCom can incorporate appropriate models into its handset “roadmap” in advance of the September 2006 T3 deadline. No T3 handsets have yet been certified, and vendors do not commit to specific availability dates.
June 6, 2006	FCC adopts the rd 3.12 version of the C63.19 standard, just over three months in advance of the September 18, 2006 T3 compliance deadline. No handsets designed to this industry-approved standard could be tested and certified as T3-rated until after this FCC action.
Early September 2006	Nokia informs SunCom that the T3-rated 6126H will ship 4Q 2006; Sony Ericsson informs SunCom that a T3-rated version of the W710 would be available by November.
Early September 2006	OET database still shows only six GSM handsets with a T3-rating.
September 15, 2006	SunCom files waiver petition, seeking an extension until January 18, 2007, based on information from Nokia and Sony Ericsson regarding expected availability.
September 18, 2006	Deadline for manufacturers to <i>begin</i> making T3-rated handsets “commercially available” to carriers, and simultaneous deadline for carriers to have at least two T3-rated handsets in stores and available for purchase by consumers.
Late September 2006	SunCom receives and deploys the Motorola V3i in its Puerto Rico stores. The V3i is listed as T3-rated on various websites, including Motorola’s.
Early November 2006	SunCom requests status updates from its vendors and learns that Nokia’s delivery date has slipped to mid-January 2007, and that Sony Ericsson’s has slipped to end of January 2007. SunCom reports this new information in its November 15, 2006 HAC status report (filed through ATIS).
Early January 2007	SunCom told by Sony Ericsson that the current version of the (previously shipped) W710 is T3-rated. SunCom queries Nokia for status and is told that the date for the 6126H has slipped again, to late March 2007. SunCom seeks to obtain Motorola’s T3-rated RAZR V3 model, but is told that the handset couldn’t be shipped any sooner than late March 2007.
January 12, 2007	SunCom files amendment to waiver request, seeking a new extension until April 1, in light of recent information from Nokia and Motorola.
March 2007	The shipment of Nokia 6126Hs is received and distributed to SunCom stores in the mainland U.S.
Late March 2007	Sony Ericsson admits to SunCom that its prior statement regarding the W710s was incorrect, and that SunCom’s existing inventory of W710s are not T3-compliant, although any future W710s shipped would be compliant. SunCom is given an estimated arrival date of end of April for the compliant W710s.

March 30, 2007	SunCom files an amendment to its waiver request to request a further extension until May 15, 2007, in light of the new revelation from Sony Ericsson regarding the W710.
April 26, 2007	Nearly two months after SunCom provided RF approval for Nokia to proceed with manufacture of Nokia 6085s, Nokia notifies SunCom that it cannot proceed without new wake-up banner software for Puerto Rico-bound handsets. SunCom provides the software within one week, but Nokia cannot provide a ship date for the Puerto Rico stores.
Late April / Early May 2007	SunCom receives the compliant Sony Ericsson W710s and distributes them to its mainland U.S. stores. (Also, Nokia 6085s replace Nokia 6126H models.) All mainland U.S. stores – representing 80% of SunCom stores – are now compliant.
May 30, 2007	After repeated earlier attempts to obtain an estimated ship date for the Nokia 6085s for Puerto Rico, Nokia finally responds with a date of June 10, 2007. SunCom acts immediately to move compliant 6085s from its mainland stores to Puerto Rico.
June 1, 2007	SunCom notifies the FCC that it has achieved compliance in its mainland stores since May 10, but explains the additional delay caused by Nokia regarding the 6085, which affects only the 25 stores in Puerto Rico. SunCom seeks a limited waiver for the Puerto Rico stores until June 6, 2007, and successfully delivers compliant 6085s from its mainland stores prior to that date.
June 4, 2007	In response to a call from Joe Levin of the Wireless Bureau questioning the FCC ID number reported for the V3i handsets in the Puerto Rico stores, SunCom verifies that it reported the correct FCC ID number. However, SunCom contacts Motorola and learns that Motorola produces the V3i under two different FCC ID numbers. One version is T3-rated, the other is not. The non-compliant version was shipped to SunCom. Motorola's website, its November 2006 HAC report, and multiple Internet sources list the V3i as a T3-rated handset, without any indication that not all V3i units are compliant. SunCom acts immediately to ship T3-rated Sony Ericsson W710 handsets to its Puerto Rico stores.
June 11, 2007	SunCom files a letter reporting its full compliance in all of its markets, and seeking a limited waiver <i>nunc pro tunc</i> to cover the time period it reasonably believed that it possessed T3-rated V3is for Puerto Rico.