

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

In the Matter of

North Dakota Network Co.

**Section 68.4(a) of the Commission's Rules) WT Docket No. 01-309
Governing Hearing Aid Compatible)
Handsets)**

**Request for Temporary Waiver, or)
Temporary Stay, of Section 20.19(d)(2))
of the Rules)**

To: The Commission

PETITION FOR RECONSIDERATION

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Summary

North Dakota Network Co. (“NDNC”) requests reconsideration of the Commission’s *Memorandum Opinion and Order*, WT Docket No. 01-309, FCC 08-67, released February 27, 2008 (“*HAC Waiver Order*”) insofar as it denied NDNC a temporary waiver of the requirement that it offer two handsets meeting a U3T (or M3) rating for inductive coupling under ANSI Standard C63.19 by September 18, 2006, and referred the matter to the Enforcement Bureau.

The Commission’s action did not constitute reasoned decision making; and was arbitrary, capricious and an abuse of discretion.

The Commission was required to ensure that compliant handsets were available from the handset manufacturers and distributors in sufficient quantities to be commercially available to Tier III carriers before denying the waiver request and making the referral to the Enforcement Bureau. The regulation at issue requires the manufacturers to have the handsets available in time for carriers to meet the compliance deadline, which was not done in this case as the *HAC Waiver Order* amply demonstrates. In addition, there was a lack of reliable information available to the carriers identifying which handsets were HAC-compliant. Indeed, the *HAC Waiver Order* itself demonstrates actual knowledge on the Commission’s part that compliant handsets were not generally available to Tier III carriers either as of September 18, 2006 or for some time thereafter.

The *HAC Waiver Order* adopted (without basis) and arbitrary January 1, 2007 cut-off date for determining which waiver requests would be granted, a procedure that is

not consistent with the requirement of *WAIT Radio* that waiver requests be given a “hard look.”

The Commission took official notice in the case of one petitioner that compliant handsets were not available to Tier III carriers, but failed to apply this finding to the other petitioners even though the finding applied to them equally.

NDNC met the standards for securing a waiver.

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Section 68.4(a) of the Commission's Rules)
Governing Hearing Aid Compatible)
Telephones) **WT Docket No. 01-309**
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Request for Temporary Waiver, or)
Temporary Stay, of)
Section 20.19(d)(2) of the Rules)

To: The Commission

PETITION FOR RECONSIDERATION

North Dakota Network Co. ("NDNC"), 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 08-67, released February 27, 2008 ("HAC Waiver Order") insofar as it denied NDNC's request for a waiver of the Rule Section 20.19(d)(2) and 20.19 (b)(2) requirement that it include within its handset offerings by September 18, 2006 at least two Hearing Aid Compatible ("HAC") digital wireless handsets which meet a U3T (or M3T) rating for inductive coupling under ANSI Standard C63.19; and of its referral to the Enforcement Bureau for its apparent violation of Rule Sections 20.19(d)(2) and 20.19(b)(2) (which collective set forth one regulatory requirement). In support hereof, the following is shown:

I) Denial Of The Waiver Request

1. On September 15, 2006, NDNC filed with the Commission its "Petition for Temporary Waiver or Temporary Stay" ("Petition") requesting until September 18, 2007 to achieve compliance with the Rule Sections 20.19(d)(2) and 20.19(b)(2) requirement that it include within its handset offerings (and make available for in-store testing by consumers) at least two HAC-compliant digital wireless handsets that meet a U3T (or M3T) rating for inductive coupling under ANSI Standard C63.19. NDNC is a Tier III Commercial Mobile Radio Service ("CMRS") carrier and uses the Code Division Multiple Access ("CDMA") digital air interface. NDNC noted that it was marketing nine (9) digital wireless handset models, one of which met a UT3 (or T3) for inductive coupling under the HAC-compatible handset standard, and requested the waiver to acquire a second HAC-compliant handset. NDNC noted that, upon information and belief, it appeared "that in fact there may be only one handset commercially available that meets a U3T (or M3T) rating" under the HAC standard, and that "NDNC markets this handset." (Petition, pg. 2). NDNC further noted that additional compliant handsets might not be available to small carriers or, if they were available, availability would be confined to the larger, Tier I carriers (Petition, pp. 4-5). Additionally, NDNC assured the Commission that "it is committed to providing its hearing impaired subscribers with at least two models of digital wireless handsets meeting a U3T (or M3T) rating ... at the earliest practicable date, and that it will do so promptly once the handsets become generally available to Tier III carriers" (Petition, pg. 7). Consistent with this commitment, NDNC achieved compliance with the requirement on January 23, 2007 by offering the Motorola Model L7c (FCC ID No. IHDT56GQ1) and Motorola Model K1m

(IHDT56GH1) handsets.¹ *See also HAC Waiver Order*, Para. No. 20. In point of fact and as noted at Paragraph Nos. 26-27 below, **NDNC in fact achieved compliance on December 29, 2006.**

2. In denying the waiver request, the Commission determined that NDNC did not meet the requirements to justify grant of a waiver. Specifically, the Commission determined that NDNC had failed to demonstrate that it had exercised sufficient diligence in seeking to procure compliant handsets “not only before, but within a reasonable period of time after the September 18, 2006 compliance deadline;” and that nothing had been provided to distinguish its “situation from other Tier III carriers that were able to comply by January 1, 2007, or before.” *HAC Waiver Order*, Para. No. 22 (emphasis added).

3. For the reasons stated below the Commission’s decision was in error, and the determination set forth in the *HAC Waiver Order* should be set aside and NDNC granted a waiver *nunc pro tunc* through January 23, 2007. NDNC qualifies for a waiver, and the Commission failed to engage in reasoned decision making when it denied the request. The Commission’s action was arbitrary, capricious and an abuse of discretion, and treated NDNC differently than similarly situated carriers.

II) Waiver Standard

4. The Commission has indicated generally that waiver requests of the 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,

¹ See “Supplement to Petition for Temporary Waiver or Temporary Stay,” filed May 31, 2007.

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”).

5. 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 therefor 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 rule(s) would be inequitable, unduly burdensome or contrary to the public 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. Waivers are granted on an individualized basis; and in evaluating waiver request the Commission is obligated to take a “hard look” at the request. WAIT Radio, 418 F.2d at 1158.

6. More specifically, WAIT Radio charges the Commission with administering its responsibilities in a manner that is consistent with the public interest. That a federal agency may discharge its responsibilities by promulgating rules of general applicability which, in the overall context, establish the “public interest” for a broad range of situations, does not relieve it of an obligation to take a “hard look” and seek out the

public interest in particular individualized cases. Indeed, the Commission's right to waive its rules is not unlike an obligation in that it is a *sine qua non* to its ability to promulgate otherwise rigid rules. It is the necessary "safety valve" that makes the system work. *Id.*

7. In this case, it is clear that the Commission did not take the required "hard look" at NDNC's waiver request and, accordingly, the "safety valve" function of the waiver process was not allowed to work. When given a hard look, the waiver request should be granted.

III) The Commission Was Required To Ensure That Compliant Handsets Were Available Before Denying The Waiver Request And Making The Referral To The Enforcement Bureau

8. When the Commission implemented its HAC regulations codified in Rule Section 20.19(d), it did so with the express intent that both manufacturers and service providers work in tandem to make HAC compliant handsets available to the public. Specifically, Rule Section 20.19(d) states as follows:

- (1) Each manufacturer of handsets used with public mobile services for use in the United States or imported for use in the United States must offer to service providers at least two handset models for each air interface offered that comply with § 20.19(b)(2) by September 18, 2006.
- (2) *And* each provider of public mobile service must include in their handset offerings at least two handset models for each air interface that comply with § 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.²

The Commission's use of the conjunctive word "and" in Rule Section 20.19(d)(2) is not a trivial grammatical device. Rather, it makes clear that the obligations of both

² 47 C.F.R. § 20.19(d)(1) and (d)(2) (emphasis added).

manufacturers and service providers are intertwined and inseparable, and both must do their part to bring compliant handsets to market.

9. The record in the Commission's hearing aid compatibility proceeding contains abundant evidence that the Commission considered the manufacturers' participation and achievements in developing and bringing to market HAC-compliant handsets as being absolutely essential to the wireless carriers' ability to comply with Rule Section 20.19(d)(2). After all, carrier compliance can be achieved only after the HAC-compliant handsets have been developed and are available to the carriers in sufficient quantities. For example, the Commission envisioned that manufacturers would need to revise handset designs as a result of issues identified through compliance testing.³ The Commission also required manufacturers to, among other things, place labels on the exterior packaging containing a HAC-compliant wireless handset indicating the technical rating of the handset, and include more detailed information on the ANSI standard in either a product insert or in the wireless telephone's manual.⁴ The responsibility to produce, package, label, and test HAC-compliant handsets was wholly within the province of the manufacturers, which was a condition precedent to wireless carriers, such as NDNC, carrying out their obligations to provide those handsets to subscribers at the retail level of the distribution chain. Wireless carriers are totally and completely dependent on the handset manufacturers to fulfill their obligations under Rule Section 20.19(d)(2).

³ *Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones*, WT Docket No. 01-309, Report and Order, 18 FCC Rcd 16753 ¶ 71 (2003).

⁴ *Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones*, Order on Reconsideration and Further Notice of Proposed Rulemaking, 20 FCC Rcd 11211 ¶¶ 31-36 (2005).

10. Because wireless service providers could not comply with their Rule Section 20.19(d)(2) obligations unless the manufacturers *first* complied with their Rule Section 20.19(d)(1) obligations, it was incumbent upon the Commission to determine the precise date upon which the HAC-compliant handsets became available to Tier III carriers from the manufacturers and their authorized U.S. distributors. It was insufficient for the Commission to merely rely on the date that it approved a particular handset as complying with the M3/T3 standard (as discussed in more detail below) because of the lag time between the Commission approval date and the general commercial availability of the approved handset. The wording of Rule Section 20.19(d) requires the Commission to first determine whether there was meaningful compliance with the manufacturers obligations under Rule Section 20.19(d)(1), before moving on and deciding that a carrier had violated Rule Section 20.19(d)(2).

11. The HAC Waiver Order is devoid of any information demonstrating that the Commission went to the manufacturers or distributors to investigate and determine the actual date that each HAC-compliant handset was available for shipping to handset vendors and to the Tier III carriers. Rather, the Commission relied solely on information provided by the carriers themselves regarding the dates they began to offer compliant handsets. Those dates provide no information regarding when HAC-compliant handsets were actually available from manufacturers or distributors, and the Commission's inquiry provided an incentive for carriers to liberally construe when handsets were available by, for example, counting test units towards their compliance obligations. Furthermore, as discussed above and as the Commission has recognized in the past, Tier I carriers can obtain handsets directly from the manufacturer, while Tier III carriers are required to

obtain handsets from authorized distributors. There may be more than one distributor that is authorized to sell a manufacturer's handsets at wholesale, and those distributors may only be authorized to sell handsets in particular areas of the country. Carriers located in different regions of the country may not have had access to handsets at the same time depending on the distributor to whom they were assigned.

12. Without this type of information, it was impossible for the Commission to engage in reasoned decision making and determine whether it was reasonable for carriers to have deployed the handsets on the dates indicated in their respective reports. In order for the Commission to have established non-arbitrary standards for granting waivers to carriers that deployed compliant handsets after September 18, 2006, the Commission was required to first determine when those handsets actually became commercially available from the manufacturers and distributors, as required by Rule Section 20.19(d)(1), particularly when carriers relied on different means of obtaining their handsets. Otherwise, any decision by the Commission regarding a carrier's diligence, the reasonableness of its handset deployment dates, and whether those dates merit a waiver of Rule Section 20.19(d)(2) is simply guesswork that is unsupported by the evidentiary record, and therefore reconsideration of the Commission's *HAC Waiver Order* is required.

IV) Lack Of Available Reliable Information

13. Indeed, it should be emphasized that no consistent and reliable information existed regarding even the existence of HAC-compliant digital wireless handsets. As the Commission has acknowledged, "the availability of information regarding hearing aid

compatible handsets still suffers from serious shortcomings.”⁵ Specifically, carriers searching the Commission’s OET database could not always obtain information regarding the HAC status for handsets offered by manufacturers because “the current rating for hearing aid compatibility may not always be clear to a consumer or service provider conducting a routine search of the database.”⁶ It was in this difficult and confusing environment that wireless carriers, such as NDNC attempted to obtain HAC-compliant handsets to comply with the Commission’s deadline.

V) Analysis In The HAC Waiver Order

14. As a general matter, the HAC Waiver Order is notable for three reasons which demonstrate a lack of reasoned decision making on the Commission’s part. First, the HAC Waiver Order demonstrates on its face actual knowledge on the Commission’s part that compliant handsets were not generally available to Tier III carriers either as of September 18, 2006 or for some considerable time thereafter. The Commission stated:

We note that the Commission’s equipment authorization data indicates that the vast majority of the inductive coupling-compliant handset models that had been approved by the Commission prior to the September 18, 2006 compliance date *were approved in August and September of 2006*. Specifically, as of the September 18, 2006 compliance deadline, the Commission had issued inductive coupling compliance certifications covering a total of 37 handset models. Of these, only two handset models, both involving Motorola phones for use on CDMA systems, were available and certified more than two months prior to the compliance deadline. Certifications covering an additional 10 models were issued between one and two months prior to the deadline, and 25 models were based on certifications issued after August 18, 2006 (including 11 in September). Twenty (20) of these were CDMA-based handsets, 13 were GSM-based handsets, and 4 were were iDEN-based handsets. Finally, certifications covering eight additional models were not issued until after the compliance deadline.” HAC Waiver Order, Para. No. 8 (emphasis added).

⁵ *Section 68.4(a) of the Commission’s Rules Governing Hearing-Aid Compatible Telephones*, Report on the Status of Implementation of the Commission’s Hearing Aid Compatibility Requirements, 22 FCC Rcd 17709, 17740 ¶ 47 (2007).

⁶ *Id.*

As we noted above, the Commission's Office of Engineering and Technology received and *approved very few applications* to certify inductive coupling compatibility *until two months or less prior to the September 18, 2006 deadline. This left little time for carriers to purchase* such phones and make them available in all company stores in time to comply with our rules. Further, *as Tier III carriers, these petitioners typically experienced significant delays in obtaining shipping commitments from their handset suppliers* because handset manufacturers filled orders first for the larger Tier I and Tier II carriers. HAC Waiver Order, Para. No. 16 (emphasis added).

15. Given these circumstances, NDNC's January 23, 2007 compliance date is entirely reasonable and consistent with the Commission's observation that the handsets were not readily available to Tier III carriers.

16. Second, the HAC Waiver Order arbitrarily and capriciously (and without record evidence) adopted a January 1, 2007 cut-off date by which carriers were required to be in compliance, and arbitrarily applied that standard across the board. Carriers that achieved compliance on or prior to January 1, 2007 were granted temporary waivers, while those achieving compliance after that date were not.⁷ Thus, for example, Pocket Communications achieved compliance on December 31, 2006 and was granted a waiver. In stark contrast, Centennial Communications Corp. achieved compliance on January 3, 2007 (*i.e.*, a scant three calendar days after Pocket) and was denied a waiver. HAC Waiver Order, Para. Nos. 14, 15, 60 and 61. The only apparent source of this January 1, 2007 compliance deadline was a Consolidated Opposition to the waiver requests filed on November 6, 2006 by Telecommunications for the Deaf and Hard of Hearing, Inc.

("TDF") and the Hearing Loss Association of America ("HLAA"). HAC Waiver Order,

⁷ See, e.g., HAC Waiver Order, Para. Nos. 11 (A group of petitioners "indicate that they have come into compliance ... on or before January 1, 2007"), 15 ("... we find that [these petitioners] have exercised reasonable diligence by coming into compliance on or before January 1, 2007"), 18 and 22 (Petitioners indicating a compliance date "at some time after January 1, 2007" denied relief); 41 ("... given that most other carriers obtained two compliant handsets by January 1, 2007, we attribute [the petitioner's] inability to procure an additional compliant handset model before June 2007 to its failure to exercise due diligence").

Para. No. 6, Consolidated Opposition, pg 12 (“Specifically, the Commission should grant a temporary waiver until January 1, 2007 ...”). Indeed, the text of the HAC Waiver Order makes clear that the Consolidated Opposition was the source of the January 1, 2007 cut-off date applied by the Commission: “In particular, we note that many of the petitioners achieved compliance on or shortly before January 1, 2007.” HAC Waiver Order, Para. No. 17. Footnote 75 (found at the exact same paragraph) states that “[o]ur conclusion is also consistent with TDI’s and HLAA’s position that to the extent we grant waivers, they should not extend beyond January 1, 2007. See TDI/HLAA Joint Opposition at 12.” The Consolidated Opposition stated a policy preference for a January 1 cut-off date, but provided no evidence in support of this date based on data from manufacturers and suppliers. Notably, the Consolidated Opposition was not served on the petitioners. Thus, the January 1, 2007 cut-off date was adopted arbitrarily and capriciously pursuant to the *ex parte* request of an interested party, was unsupported by record evidence, and was applied across the board to the waiver requests. This is the very antithesis of reasoned decision making; and clearly contravenes the requirement of WAIT Radio that waiver requests must be given a “hard look.” That the Commission was faced with multiple waiver requests did not relieve the Commission of its WAIT Radio obligation to give the waiver request the required “hard look” so that the waiver process could perform its “safety valve” function. Stated another way, adoption and application of the “bright line” test of a January 1, 2007 cut-off date for compliance as an administratively convenient means of disposing of numerous waiver requests is simply inconsistent with the WAIT Radio standard.

17. Third, in the case of a petitioner who achieved compliance on December 29, 2006, the Commission noted that the petitioner “does not describe in detail the efforts it made to verify the information it received from manufacturers regarding the handset models that it erroneously believed were compliant, and we cannot, based on this information, conclude that it was diligent in these efforts.” *HAC Waiver Order*, Para. No. 38. However, in granting the requested waiver, the Commission determined that “[n]evertheless, [the petitioner] does show, consistent with those circumstances faced by many other Tier III wireless carriers and our analysis above, that even if it had been aware these handsets were not compliant, additional compliant models were not available to it as of the deadline and it could not reasonably have come into compliance at that time.” *HAC Waiver Order*, Para. No. 38. Thus, the Commission took official notice of the unavailability of compliant handsets to small carriers, but did not apply the officially noticed fact to the other petitioners, such as NDNC.

18. In choosing January 1, 2007 as an unannounced, unsupported deadline for a substantial group of small rural carriers that were all vying for a limited supply of compliant handsets, the Commission is engaging in disparate treatment of similarly situated carriers, which is arbitrary and capricious.⁸ There is no significant difference between a carrier obtaining compliant handsets on December 31, 2006 and a carrier obtaining those handsets on January 23, 2007. While the Commission has to draw lines when creating prospective deadlines in a rulemaking context, the present case involves a situation in which the Commission concedes that compliance with the original September 18, 2006 deadline was not feasible; and there was nothing to inform in advance carriers

⁸ It is axiomatic that “an agency must treat similar cases in a similar manner unless it can provide a legitimate reason for failing to do so.” *Indep. Petroleum Ass’n of Am. v. Babbitt*, 92 F.3d 1248, 1258 (D.C. Cir. 1996); *Transactive Corp. v. United States*, 91 F.3d 223, 237 (D.C. Cir. 1996).

cast into this situation that January 1, 2007 was the new deadline. Nor is it reasonable for the Commission to conclude that, because some carriers were able to obtain HAC-compliant handsets before January 1, 2007, it follows that *all* Tier III carriers had such handsets available to them on or prior to that date.

19. In view of the fact that the handset manufacturers were slow in developing and submitting for Commission approval HAC-compliant handsets, that Commission certification of only a small number of HAC-compliant handsets had occurred as of and for a good period of time after the September 18, 2006 compliance deadline; that (as the Commission expressly acknowledged) availability of the handsets to Tier III carriers was at best problematic at best until some time after the September 18 compliance deadline, NDNC submits that a January 23, 2007 compliance date was eminently reasonable and that its waiver request should have been granted *nunc pro tunc* to that date. The waiver request should have been evaluated on its individual merits with these factors squarely in mind, and not under the January 1, 2007 cut-off date standard arbitrarily adopted in the HAC Waiver Order.

VI) Supplemental Information

20. At this juncture, NDNC wishes to respond to the Commission's specific determination that it was not diligent in its attempts to procure T3 rated HAC-compliant handsets prior to or shortly after the September 18, 2006 compliance deadline. NDNC respectfully submits that these facts confirm diligence on its part.

21. As a small, Tier III CMRS carrier, SDNC does not have direct access to the handset manufacturers for the purpose of ordering handsets. Accordingly, NDNC is required to deal with distributors, in this case Brightpoint and Cellstar, and NDNC

always orders compliant handsets when they become available to Tier III carriers through the distributors.

22. On August 31, 2006, NDNC contacted Motorola by e-mail inquiring as to which of its handsets had a T3 (or better) rating for HAC compliance. Motorola replied on September 6, 2006 that it had a T4 rating on two of its handsets, the Motorola Model V3c and V3m. At that point in time, NDNC already offered the Model V3c, but the Model V3m was not available to it, presumably because satisfying the needs of the larger Tier I and Tier II carriers was Motorola's priority.

23. Also on August 31, 2006, NDNC contacted Kyocera by e-mail inquiring as to which of its handsets had a T3 (or better) rating for HAC compliance. On September 1, 2006, a Kyocera employee replied that he would have to check with the Kyocera HAC Compliance Team. According to the Kyocera employee: a) he knew the M ratings only; b) the T-coil for the T3 rating either was under test or was due to be tested for the Models K322, K323 and K324; and c) and that nothing prior to these models had been tested for T3 compliance, nor was any testing planned.

24. On October 31, 2006, NDNC again contacted Kyocera by e-mail to determine whether any updates were available for the ratings on the Models KX160, K322 and K324. Upon information and belief, Kyocera did not respond to this inquiry.

25. On November 14, 2006, NDNC inquired of Motorola via e-mail requesting the identification of handsets that were T3 compliant. In an exchange of e-mails later that day, Motorola advised NDNC of the Motorola handsets that met a T4 rating, one of which was the Model V3c which NDNC already had available to its customers. One

other handset model was the Motorola Model L7c, which NDNC acquired as soon as it was made available to NDNC on January 23, 2007.

26. As soon as possible, NDNC ordered the Motorola Model K1m (rated M4/T4) (which it began marketing on December 29, 2006) and the Motorola Model L7c (rated M4/T4) (which it began marketing on January 23, 2007).

27. Indeed, it is apparent that NDNC was in fact compliant with the requirement to market T3 rated handsets when it began marketing the Motorola Model K1m on December 29, 2006. NDNC had been marketing the Motorola Model V3c as of September 18, 2006, and the September 6, 2006 e-mail from Motorola stated that this model had been rated T4 by the Commission. Thus, it is clear that NDNC was marketing one compliant handset prior to December 29, 2006, and that it achieved compliance on December 29, 2006.

28. Under the analysis contained in the HAC Waiver Order, NDNC should be granted a waiver because it achieved compliance prior to January 1, 2007. Indeed, NDNC achieved compliance two days before Pocket, and the HAC Waiver Order granted Pocket's waiver request. (See Para. No. 16, above). As noted previously, the Commission is required by law to give similar treatment to similarly situated petitioners, a principle of law that requires grant of NDNC's waiver request in this case.

29. As the foregoing demonstrates, NDNC was plainly diligent in its efforts to secure two T3 (or better) rated handsets at the earliest practicable date. The problems that it experienced were typical of those facing the small, Tier III carriers whose waiver requests were granted. Indeed, NDNC was HAC-complaint earlier than previously believed.

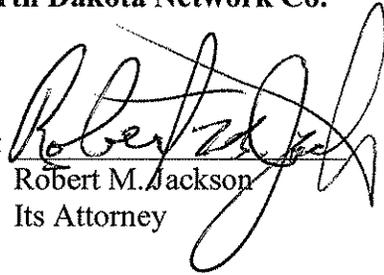
WHEREFORE, NDNC requests that this petition be granted; that its waiver request be granted *nunc pro tunc* to January 15, 2007; and that the referral to the Enforcement Bureau be rescinded.

Respectfully submitted,

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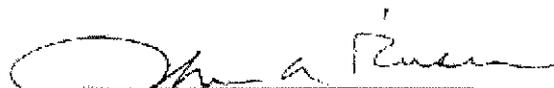
Filed: March 27, 2008

DECLARATION UNDER PENALTY OF PERJURY

I, John Reiser, hereby state the following:

1. I am the Chief Operations Officer of North Dakota Network Co.
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 27 day of March, 2008.


John Reiser