

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File No. EB-10-SE-016
)	
)	Acct. No. 201132100015
Maximum Communications Cellular, LLC)	
)	FRN No. 0019130319

ORDER

Adopted: December 23, 2010

Released: December 27, 2010

By the Chief, Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau ("Bureau") and Maximum Communications Cellular, LLC ("MaxCell"). The Consent Decree terminates an investigation by the Bureau against MaxCell for possible violations of Section 20.19(c)(3)(ii) of the Commission's Rules ("Rules")¹ regarding the commercial availability of digital wireless handset models meeting the radio frequency standard for hearing aid compatibility,² and for possible violations of Section 20.19(d)(3)(ii) of the Rules³ regarding the commercial availability of digital wireless handset models meeting the inductive coupling standard for hearing aid compatibility.⁴

2. The Bureau and MaxCell have negotiated the terms of the Consent Decree that resolve this matter. A copy of the Consent Decree is attached hereto and incorporated by reference.

3. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree and terminating the investigation.

4. In the absence of material new evidence relating to this matter, we conclude that our investigation raises no substantial or material questions of fact as to whether MaxCell possesses the basic qualifications, including those related to character, to hold or obtain any Commission license or authorization.

5. Accordingly, **IT IS ORDERED** that, pursuant to Section 4(i) of the Communications Act of 1934, as amended,⁵ and Sections 0.111 and 0.311 of the Rules,⁶ the Consent Decree attached to this Order **IS ADOPTED**.

6. **IT IS FURTHER ORDERED** that the above-captioned investigation **IS TERMINATED**.

¹ 47 C.F.R. § 20.19(c)(3)(ii).

² See 47 C.F.R. § 20.19(b)(1) (setting forth the hearing aid compatibility standard for radio frequency interference).

³ 47 C.F.R. § 20.19(d)(3)(ii).

⁴ See 47 C.F.R. § 20.19(b)(2) (setting forth the hearing aid compatibility standard for inductive coupling).

⁵ 47 U.S.C. §§ 154(i), 503(b).

⁶ 47 C.F.R. §§ 0.111, 0.311.

7. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail and certified mail, return receipt requested, to Ken Johnson, Esq., Counsel for Maximum Communications Cellular, LLC, Bennet & Bennet, PLLC, 4350 East West Highway, Suite 201, Bethesda, Maryland 20814 and to Cheryl Scapanski, Chairperson, Maximum Communications Cellular, LLC, 102 Jonathan Boulevard, Suite 212, Chaska, Minnesota 55318.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison
Chief, Enforcement Bureau

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)	Acct. No. 201132100015
Maximum Communications Cellular, LLC)	
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CONSENT DECREE

The Enforcement Bureau ("Bureau") and Maximum Communications Cellular, LLC ("MaxCell"), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Bureau's investigation into whether MaxCell violated Section 20.19(c)(3)(ii) of the Commission's Rules ("Rules")¹ regarding the commercial availability of digital wireless handset models meeting the radio frequency standard for hearing aid compatibility,² and Section 20.19(d)(3)(ii) of the Rules³ regarding the commercial availability of digital wireless handset models meeting the inductive coupling standard for hearing aid compatibility.⁴

I. DEFINITIONS

1. For the purposes of this Consent Decree, the following definitions shall apply:
 - (a) "Act" means the Communications Act of 1934, as amended, 47 U.S.C. § 151 *et seq.*
 - (b) "Adopting Order" means an Order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
 - (c) "Bureau" means the Enforcement Bureau of the Federal Communications Commission.
 - (d) "Commission" and "FCC" mean the Federal Communications Commission and all of its bureaus and offices.
 - (e) "Compliance Plan" means the compliance obligations and compliance program described in this Consent Decree at paragraph 8.
 - (f) "Effective Date" means the date on which the Bureau releases the Adopting Order.

¹ 47 C.F.R. § 20.19(c)(3)(ii).

² See 47 C.F.R. § 20.19(b)(1) (setting forth the hearing aid compatibility standard for radio frequency interference).

³ 47 C.F.R. § 20.19(d)(3)(ii).

⁴ See 47 C.F.R. § 20.19(b)(2) (setting forth the hearing aid compatibility standard for inductive coupling).

- (g) "Investigation" means the investigation initiated by the Bureau regarding whether MaxCell violated Section 20.19(c)(3)(ii) of the Rules⁵ regarding the commercial availability of digital wireless handset models meeting the radio frequency standard for hearing aid compatibility,⁶ and Section 20.19(d)(3)(ii) of the Rules⁷ regarding the commercial availability of digital wireless handset models meeting the inductive coupling standard for hearing aid compatibility.⁸
- (h) "MaxCell" means Maximum Communications Cellular, LLC and its predecessors-in-interest and successors-in-interest.
- (i) "Parties" means MaxCell and the Bureau, and each a "Party."
- (j) "Rules" means the Commission's regulations found in Title 47 of the Code of Federal Regulations.

II. BACKGROUND

2. Pursuant to Section 20.19(c)(3)(ii) of the Rules,⁹ non-Tier I service providers are required to offer – between May 15, 2009 and May 15, 2010 – at least ten digital wireless handset models per air interface that meet or exceed the M3 rating for radio frequency interference, or alternatively, ensure that at least one-half of their commercially available digital wireless handset models per air interface meet or exceed the M3 rating.¹⁰ Pursuant to Section 20.19(d)(3)(ii) of the Rules,¹¹ non-Tier I service providers are required to offer – between May 15, 2009 and May 15, 2010 – at least five digital wireless handset models per air interface that meet or exceed the T3 rating for inductive coupling, or alternatively, ensure that at least one-third of their commercially available digital wireless handset models per air interface meet or exceed the T3 rating.¹² In order to monitor the availability of these handsets, the Commission required digital wireless service providers to submit annual status reports, beginning January 15, 2009, on efforts toward compliance with the hearing aid compatibility requirements.¹³

3. On January 15, 2010, MaxCell, a start-up company with only 18 two-way voice customers at the end of 2009, submitted its hearing aid compatibility status report for the 2009 reporting period.¹⁴ On January 25, 2010, MaxCell made voluntarily disclosures to the Bureau regarding its compliance with the hearing aid compatibility handset deployment requirements, noting that it had provided fewer handsets than required based on incorrect information from its vendors about handset compatibility.¹⁵

⁵ 47 C.F.R. § 20.19(c)(3)(ii).

⁶ See 47 C.F.R. § 20.19(b)(1) (setting forth the hearing aid compatibility standard for radio frequency interference).

⁷ 47 C.F.R. § 20.19(d)(3)(ii).

⁸ See 47 C.F.R. § 20.19(b)(2) (setting forth the hearing aid compatibility standard for inductive coupling).

⁹ 47 C.F.R. § 20.19(c)(3)(ii).

¹⁰ 47 C.F.R. § 20.19(b)(1).

¹¹ 47 C.F.R. § 20.19(d)(3)(ii).

¹² 47 C.F.R. § 20.19(b)(2).

¹³ 47 C.F.R. § 20.19(i)(1).

¹⁴ See Maximum Communications Cellular, LLC Hearing Aid Compatibility Status Report (filed January 15, 2010).

III. TERMS OF AGREEMENT

4. **Adopting Order.** The Parties agree that the provisions of this Consent Decree shall be subject to final approval by the Bureau by incorporation of such provisions by reference in the Adopting Order without change, addition, modification, or deletion.

5. **Jurisdiction.** MaxCell agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and has the authority to enter into and adopt this Consent Decree.

6. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the Effective Date. Upon release, the Adopting Order and this Consent Decree shall have the same force and effect as any other Order of the Bureau. Any violation of the Adopting Order or of the terms of this Consent Decree shall constitute a separate violation of a Bureau Order, entitling the Bureau to exercise any rights and remedies attendant to the enforcement of a Commission Order.

7. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate its Investigation. In consideration for the termination of said Investigation, MaxCell agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that in the absence of new material evidence, the Bureau will not use the facts developed in this Investigation through the Effective Date, or the existence of this Consent Decree, to institute, on its own motion, any new proceeding, formal or informal, or take any action on its own motion against MaxCell concerning the matters that were the subject of the Investigation. The Bureau also agrees that in the absence of new material evidence it will not use the facts developed in this Investigation through the Effective Date, or the existence of this Consent Decree, to institute on its own motion any proceeding, formal or informal, or take any action on its own motion against MaxCell with respect to MaxCell's basic qualifications, including its character qualifications, to be a Commission licensee.

8. **Compliance Plan.** For purposes of settling the matters set forth herein, MaxCell agrees to (i) create, within thirty (30) calendar days after the Effective Date, a Compliance Plan related to future compliance with the Act, the Rules, and the Commission's Orders, (ii) designate a Compliance Officer to oversee MaxCell's compliance with the Compliance Plan; and (iii) establish operating procedures intended to ensure compliance with the terms and conditions of this Consent Decree and Section 20.19 of the Rules. The Compliance Plan will include, at a minimum, the following components:

- (a) **Compliance Officer.** MaxCell shall designate a Compliance Officer who will be responsible for implementing and administering the Compliance Plan. The Compliance Officer will be familiar with the FCC's hearing aid compatibility regulations and associated selling and labeling benchmarks, and will review the FCC's hearing aid compatibility regulations on a monthly basis in order to stay abreast of pending benchmarks and any new hearing aid compatibility requirements. As of the date of the Adopting Order, MaxCell has designated Scott Widor, General Manager, as its Compliance Officer.

¹⁵ MaxCell offered to consumers a total of nine hearing-aid compatible digital wireless handset models per air interface, six of which met or exceeded both the M3 rating for radio frequency interference and the T3 rating for inductive coupling.

- (b) **Verification of Hearing Aid Compatibility Ratings.** The Compliance Officer shall ensure that MaxCell independently verifies the hearing aid compatibility ratings of each digital wireless handset model that MaxCell offers for sale (e.g., by reviewing equipment certification records available in the Commission's Equipment Authorization Database).
- (c) **Training.** The Compliance Officer shall be responsible for ensuring that all MaxCell employees who are involved directly or indirectly in the procurement of digital wireless handsets or the offer for sale of these handsets to consumers receive training concerning the hearing aid compatibility requirements. Such training shall be completed within ninety (90) days of the Effective Date, and any new employees hired subsequent to this initial training shall receive training within thirty (30) days of their employment.
- (d) **Consumer Outreach.** MaxCell shall advertise the availability of hearing aid-compatible digital wireless handsets to ensure that all of its retail customers are aware that hearing aid-compatible digital wireless handsets are available.
- (e) **Compliance Reports.** MaxCell shall file Compliance Reports with the Commission ninety (90) days after the Effective Date, twelve (12) months after the Effective Date, and twenty four (24) months after the Effective Date. Each Compliance Report shall include a certification by the Compliance Officer, as an agent of and on behalf of MaxCell, stating that the Compliance Officer has personal knowledge that (i) MaxCell has established operating procedures intended to ensure compliance with this Consent Decree and with Section 20.19 of the Rules together with an accompanying statement explaining the basis for the Compliance Officer's certification; (ii) MaxCell has been utilizing those procedures since the previous Compliance Report was submitted; and (iii) the Compliance Officer is not aware of any instances of non-compliance. The certification must comply with Section 1.16 of the Rules and be subscribed to as true under penalty of perjury in substantially the form set forth therein. If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of MaxCell, shall provide the Commission with a detailed explanation of: (i) any instances of non-compliance with this Consent Decree and the Rules, and (ii) the steps that MaxCell has taken or will take to remedy each instance of non-compliance and ensure future compliance, and the schedule on which proposed remedial actions will be taken. All Compliance Reports shall be submitted to the Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554. All reports shall also be submitted electronically to Pamela Hairston at Pamera.Hairston@fcc.gov and to Nissa Laughner at Nissa.Laughner@fcc.gov.
- (f) **Termination Date.** Unless stated otherwise, the requirements of this paragraph 8 of the Consent Decree will expire twenty-four (24) months from the Effective Date.

9. **Section 208 Complaints; Subsequent Investigations.** Nothing in this Consent Decree shall prevent the Commission or its delegated authority from adjudicating complaints filed pursuant to Section 208 of the Act against MaxCell or its affiliates for alleged violations of the Act, or for any other type of alleged misconduct, regardless of when such misconduct took place. The Commission's adjudication of any such complaint will be based solely on the record developed in that proceeding. Except as expressly provided in this Consent Decree, this Consent Decree shall not prevent the Commission from investigating evidence of noncompliance by MaxCell with the Act, the Rules, or Commission Orders.

10. **Voluntary Contribution.** MaxCell agrees that it will make a voluntary contribution to the United States Treasury in the amount of seven thousand dollars (\$7,000). The payment will be made within thirty (30) days after the Effective Date. The payment must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the Account Number and FRN Number referenced in the caption to the Adopting Order. Payment by check or money order may be mailed to the Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code). MaxCell shall also send electronic notification to Pamera Hairston at Pamera.Hairston@fcc.gov and to Nissa Laughner at Nissa.Laughner@fcc.gov.

11. **Waivers.** MaxCell waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order, provided the Bureau issues an Adopting Order adopting this Consent Decree without change, addition, modification or deletion. MaxCell shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order, neither MaxCell nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and MaxCell shall waive any statutory right to a trial de novo. MaxCell hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act, 5 U.S.C. § 504 and 47 C.F.R. § 1.1501 et seq., relating to the matters addressed in this Consent Decree.

12. **Invalidity.** In the event that this Consent Decree in its entirety is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

13. **Subsequent Rule or Order.** The Parties agree that if any provision of the Consent Decree conflicts with any subsequent rule or Order adopted by the Commission (except an Order specifically intended to revise the terms of this Consent Decree to which MaxCell does not expressly consent) that provision will be superseded by such Commission rule or Order.

14. **Successors and Assigns.** MaxCell agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

15. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties with respect to the matters set forth herein. The Parties further agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or legal finding or determination regarding any compliance or noncompliance with the requirements of the Act or the Commission's Rules and Orders.

16. **Modifications.** This Consent Decree cannot be modified without the advance written consent of both Parties.

17. **Paragraph Headings.** The headings of the paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

18. **Authorized Representative.** Each Party represents and warrants to the other that it has full power and authority to enter into this Consent Decree.

19. **Counterparts.** This Consent Decree may be signed in any number of counterparts (including by facsimile), each of which, when executed and delivered, shall be an original, and all of which counterparts together shall constitute one and the same fully executed instrument.

Ricardo M. Durham
Acting Chief
Spectrum Enforcement Division
Enforcement Bureau

Date

Cheryl Scapanski
Chairperson
Maximum Communications Cellular, LLC

Date