



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

May 26, 2010

VIA CERTIFIED MAIL – RETURN RECEIPT REQUESTED
AND FACSIMILE AT 602-307-4591

Mr. David O'Toole, Business Manager - Telecom
Circle K Stores, Inc.
P.O. Box 52085
Phoenix, Arizona 85072-2085

Re: File No. EB-09-SE-174

Dear Mr. O'Toole:

This is an official **CITATION** issued to Circle K Stores, Inc. ("Circle K"), a reseller of wireless services, pursuant to section 503(b)(5) of the Communications Act of 1934, as amended ("Act"),¹ for violating the digital wireless handset hearing aid compatibility status report filing requirements set forth in section 20.19(i)(1) of the Commission's Rules ("Rules").² As explained below, future violations of the Commission's rules in this regard may subject Circle K to monetary forfeitures.

In the 2003 *Hearing Aid Compatibility Order*, the Commission adopted several measures to enhance the ability of individuals with hearing disabilities to access digital wireless telecommunications.³ The Commission established technical standards that digital wireless handsets must meet to be considered compatible with hearing aids operating in acoustic coupling and inductive coupling (telecoil) modes.⁴ The Commission further established, for each standard, deadlines by which manufacturers and service providers were required to offer specified numbers or percentages of digital wireless handsets per air interface⁵ that are compliant with the relevant standard if they did not come under the *de minimis* exception.⁶ In February 2008, as part of a comprehensive reconsideration of the effectiveness of the

¹ 47 U.S.C. § 503(b)(5).

² 47 C.F.R. § 20.19(i)(1).

³ The Commission adopted these requirements for digital wireless telephones under the authority of the Hearing Aid Compatibility Act of 1988, codified at Section 710(b)(2)(C) of the Communications Act of 1934, as amended, 47 U.S.C. § 610(b)(2)(C). See *Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones*, Report and Order, 18 FCC Rcd 16753, 16787 ¶ 89 (2003); Erratum, 18 FCC Rcd 18047 (2003) ("*Hearing Aid Compatibility Order*"); Order on Reconsideration and Further Notice of Proposed Rulemaking, 20 FCC Rcd 11221 (2005).

⁴ See *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16777 ¶ 56; 47 C.F.R. § 20.19(b)(1), (2).

⁵ The term "air interface" refers to the technical protocol that ensures compatibility between mobile radio service equipment, such as handsets, and the service provider's base stations. Currently, the leading air interfaces include Code Division Multiple Access (CDMA), Global System for Mobile Communications (GSM), Integrated Digital Enhanced Network (iDEN) and Wideband Code Division Multiple Access (WCDMA) a/k/a Universal Mobile Telecommunications System (UMTS).

⁶ See *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16780 ¶ 65; 47 C.F.R. §§ 20.19(c), (d). The *de minimis* exception provides that manufacturers or mobile service providers that offer two or fewer digital wireless handset models per air interface are exempt from the hearing aid compatibility deployment requirements, and manufacturers

hearing aid compatibility rules, the Commission released an order that, among other things, adopted new compatible handset deployment benchmarks beginning in 2008.⁷

Of primary relevance, the Commission also adopted reporting requirements to ensure that it could monitor the availability of these handsets and to provide valuable information to the public concerning the technical testing and commercial availability of hearing aid-compatible handsets, including on the Internet.⁸ The Commission initially required manufacturers and digital wireless service providers to report every six months on efforts toward compliance with the hearing aid compatibility requirements for the first three years of implementation (May 17, 2004, November 17, 2004, May 17, 2005, November 17, 2005, May 17, 2006 and November 17, 2006), and then annually thereafter through the fifth year of implementation (November 19, 2007 and November 17, 2008).⁹ In its 2008 *Hearing Aid Compatibility First Report and Order*, the Commission extended these reporting requirements with certain modifications on an open ended basis, beginning January 15, 2009.¹⁰ The Commission also made clear that these reporting requirements apply to service providers that fit within the *de minimis* exception.¹¹

Circle K did not file a hearing aid compatibility status report prior to the January 15, 2009 deadline. The Wireless Telecommunications Bureau referred Circle K's apparent violation of the hearing aid compatibility reporting requirement to the Enforcement Bureau for possible enforcement action. On October 20, 2009, the Enforcement Bureau's Spectrum Enforcement Division issued Circle K a Letter of Inquiry ("LOI").¹² Circle K responded to the LOI on November 11, 2009,¹³ stating that it does not believe that it is subject to the provisions of Section 20.19. Circle K stated that it purchases the Talk and Go program, both handsets and airtime pins, from an external source.¹⁴ Circle K further asserted that it has no present involvement in the operation of a wireless telephone service nor has it ever been involved in the operation of a wireless telephone service.¹⁵

We find that, as a reseller of wireless services, Circle K is a service provider subject to the wireless handset hearing aid compatibility requirements. Circle K purchases handsets and airtime pins from an external source and resells the handsets and airtime pins to customers. The Commission has made clear that the hearing aid compatibility requirements apply to service providers such as resellers.¹⁶

or mobile service providers that offer three digital wireless handset models per air interface must offer at least one compliant model. 47 C.F.R. § 20.19(e).

⁷ See *Amendment of the Commission's Rules Governing Hearing Aid-Compatible Mobile Handsets*, First Report and Order, 23 FCC Rcd 3406 (2008) ("*Hearing Aid Compatibility First Report and Order*"), Order on Reconsideration and Erratum, 23 FCC Rcd 7249 (2008).

⁸ See *Hearing Aid Compatibility First Report and Order*, 23 FCC Rcd at 3443 ¶ 91.

⁹ *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16787 ¶ 89; see also *Wireless Telecommunications Bureau Announces Hearing Aid Compatibility Reporting Dates for Wireless Carriers and Handset Manufacturers*, Public Notice, 19 FCC Rcd 4097 (Wireless Tel. Bur. 2004).

¹⁰ See *Hearing Aid Compatibility First Report and Order*, 23 FCC Rcd at 3445-46 ¶¶ 97-99.

¹¹ *Id.* ¶ 99.

¹² See Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, to Geoffrey Haxel, Vice President, Circle K Talk & Go (October 20, 2009).

¹³ See Letter from David O'Toole, Business Manager – Telecom, Circle K Stores, to Samantha N. Peoples, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (November 11, 2009).

¹⁴ *Id.* at 2.

¹⁵ *Id.*

¹⁶ See e.g., *Hearing Aid Compatibility First Report and Order*, 23 FCC Rcd at 3424 ¶ 46 (concluding that a three-month extension of deadlines for meeting the handset deployment benchmarks is appropriate with regard to

Thus, Circle K is a service provider subject to the wireless handset hearing aid compatibility requirements.¹⁷ Under section 20.19(i)(1) of the Rules, all service providers must file hearing aid compatibility status reports initially on January 15, 2009, and annually thereafter.¹⁸ These reports are necessary to enable the Commission to perform its enforcement function and evaluate whether Circle K is in compliance with Commission mandates that were adopted to facilitate the accessibility of hearing aid-compatible wireless handsets. These reports also provide valuable information to the public concerning the technical testing and commercial availability of hearing aid-compatible handsets. Based on the record before us, we find that Circle K did not file the January 15, 2009 report.¹⁹ Accordingly, Circle K violated the hearing aid compatibility status report filing requirements set forth in section 20.19(i)(1) of the Rules.²⁰

Circle K should take prompt action to ensure that it does not continue to violate the Commission's wireless hearing aid compatibility rules. If, after receipt of this Citation, Circle K violates the Communications Act or the Commission's rules or orders in any manner described herein, the Commission may impose monetary forfeitures not to exceed \$150,000 for each such violation or each day of a continuing violation.²¹

Circle K may respond to this citation within 30 days from the date of this letter either through (1) a personal interview at the Commission's Field Office nearest to your place of business, or (2) a written statement. Circle K's response should specify the actions that it is taking to ensure that it does not violate the Commission's rules governing the filing of hearing aid compatibility status reports in the future.

The nearest Commission field office appears to be the San Diego District Office, in San Diego, California. Please call Samantha Peoples at 202-418-1101, if Circle K wishes to schedule a personal interview. Circle K should schedule any interview to take place within 30 days of the date of this letter. Circle K should send any written statement within 30 days of the date of this letter to:

Samantha Peoples
Spectrum Enforcement Division
Enforcement Bureau
Re: EB-09-SE-174
Federal Communications Commission
445 12th Street, S.W., Rm. 3-A267
Washington, D.C. 20554

Under the Privacy Act of 1974,²² we are informing Circle K that the Commission's staff will use all relevant material information before it, including information that Circle K discloses in its interview or written statement, to determine what, if any, enforcement action is required to ensure Circle K's compliance with the Communications Act and the Commission's rules and orders.

"service providers that are not Tier I nationwide providers, including regional and smaller providers, such as Tier II and Tier III carriers, and *other service providers such as resellers and MVNOs.*")

¹⁷ See *7-Eleven, Inc.*, Citation, 25 FCC Rcd 344, 346 (Enf. Bur., Spectrum Enf. Div. 2010).

¹⁸ 47 C.F.R. § 20.19(i)(1).

¹⁹ To date, Circle K still has not filed the January 15, 2009 report.

²⁰ We note that on January 11, 2010, Circle K did file its report that was due January 15, 2010.

²¹ See 47 C.F.R. § 1.80(b)(3).

²² See 5 U.S.C. § 552a(e)(3).

The knowing and willful making of any false statement, or the concealment of any material fact, in response to this citation is punishable by fine or imprisonment.²³

We thank Circle K in advance for its anticipated cooperation.

Sincerely,

Kathryn Berthot
Chief, Spectrum Enforcement Division
Enforcement Bureau

²³ See 18 U.S.C. § 1001.