

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

In the Matter of
Section 68.4(a) of the Commission's Rules
Governing Hearing Aid-Compatible Telephones
Petitions for Waiver of Section 20.19 of the
Commission's Rules
WT Docket No. 01-309

ORDER ON RECONSIDERATION

Adopted: May 25, 2010

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By the Commission:

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I. INTRODUCTION

1. The Commission's wireless hearing aid compatibility rules were promulgated to enhance the ability of the deaf and hard of hearing community to access digital wireless telecommunications. During the period from 2005 to 2007, these rules included labeling requirements and an obligation for service providers to offer at least two handset models that were hearing aid-compatible in the acoustic coupling mode. In an April 2007 order, the Commission granted temporary waivers of certain requirements under these rules to some wireless service providers and denied waivers to other providers.1 In this Order on Reconsideration, we grant petitions for reconsideration of three of these waiver denials, two relating to labeling and one relating to handset availability. We deny reconsideration of another waiver denial relating to labeling requirements.

1 See Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones, WT Docket No. 01-309, Memorandum Opinion and Order, 22 FCC Rcd 7171 (April 2007 Waiver Order).

2. The petitions were filed by the following Tier III carriers<sup>2</sup>: (1) CC Communications (CC); (2) South Central Utah Telephone Association, Inc. (South Central); (3) Uintah Basin Electronic Telecommunications d/b/a UBET Wireless (UBET); and (4) WUE, Inc. (WUE).<sup>3</sup> CC, South Central, and UBET seek partial reconsideration of the Commission's denial of waivers of Section 20.19(f) of the Commission's rules, which specifies package labeling requirements for hearing aid-compatible digital wireless handsets.<sup>4</sup> WUE seeks reconsideration of the Commission's denial of its request for temporary waiver or temporary stay of Section 20.19(c)(2)(i) of the Rules, which, during the times relevant to these petitions, required service providers that offer more than two digital handset models to offer, by September 16, 2005, at least two models that enable acoustic coupling between digital wireless handsets and hearing aids operating in the microphone mode.<sup>5</sup>

3. After careful consideration of the merits of the four requests, and pursuant to our waiver authority, we grant the petitions of CC, UBET, and WUE, and deny the petition of South Central.

## II. BACKGROUND

4. The Hearing Aid Compatibility Rules. In the *Hearing Aid Compatibility Order* issued in 2003, the Commission adopted several measures to enhance the ability of the deaf and hard of hearing community to access digital wireless telecommunications.<sup>6</sup> Among other actions, the Commission established technical standards that digital wireless handsets must meet to be considered hearing aid-compatible. These included a standard for radio frequency (RF) interference--the "U3" (now "M3") rating--that would enable acoustic coupling between digital wireless phones and hearing aids operating in acoustic coupling (a.k.a. microphone) mode, and a separate standard--the "U3T" (now "T3")--rating for handset production of an audio signal-based magnetic field to enable inductive coupling with hearing aids operating in telecoil mode.<sup>7</sup> The Commission further established, for each standard, deadlines by which

<sup>2</sup> Tier III carriers are non-nationwide commercial mobile radio service providers with 500,000 or fewer subscribers as of the end of 2001. See Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems; Phase II Compliance Deadlines for Non-Nationwide Carriers, CC Docket No. 94-102, *Order to Stay*, 17 FCC Rcd 14847 ¶ 22 (2002).

<sup>3</sup> See Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones, WT Docket No. 01-309, Petition for Partial Reconsideration by CC Communications (filed May 10, 2007) (CC Petition); Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones, WT Docket No. 01-309, Petition for Partial Reconsideration by South Central Utah Telephone Association, Inc. (filed May 11, 2007) (South Central Petition); Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones, WT Docket No. 01-309, Petition for Partial Reconsideration by Uintah Basin Electronic Telecommunications d/b/a UBET Wireless (filed May 11, 2007) (UBET Petition); Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones, WT Docket No. 01-309, Petition for Reconsideration by WUE, Inc. (filed May 10, 2007) (WUE Petition).

<sup>4</sup> 47 C.F.R. § 20.19(f).

<sup>5</sup> 47 C.F.R. § 20.19(c)(2)(i)(2005). In February 2008, as part of a comprehensive reconsideration of the effectiveness of the hearing aid compatibility Rules, the Commission made several changes to these Rules. See Amendment of the Commission's Rules Governing Hearing Aid-Compatible Mobile Handsets, WT Docket No. 07-250, *First Report and Order*, 23 FCC Rcd 3406 (2008) (*2008 Hearing Aid Compatibility Order*), Order on Reconsideration and Erratum, 23 FCC Rcd 7249 (2008). These revised rules, however, do not govern conduct prior to the effective date of the revisions, June 6, 2008. See 73 Fed. Reg. 25,566 (May 7, 2008).

<sup>6</sup> 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 (2003); *erratum*, 18 FCC Rcd 18047 (2003) (*Hearing Aid Compatibility Order*).

<sup>7</sup> The *Hearing Aid Compatibility Order* described hearing aids' acoustic coupling and telecoil modes as follows:

In acoustic coupling mode, the [hearing aid's] microphone picks up surrounding sounds, desired and undesired, and converts them into electrical signals. The electrical signals are amplified as needed and then

(continued....)

service providers and manufacturers were required to offer specified numbers or percentages of digital handset models per air interface that were compliant with the relevant standard unless they fell under the *de minimis* exception.<sup>8</sup> In particular, service providers were required to make available in each retail store that they own or operate at least two handset models that met, at a minimum, the U3 (M3) rating for acoustic coupling capability by September 16, 2005.<sup>9</sup> The Commission also required that hearing aid-compatible handsets be labeled with the appropriate technical rating, and that the technical rating system be explained in the owner's manual or as part of the packaging material for the handset.<sup>10</sup> In order to monitor efforts to make hearing aid-compatible handsets available, the Commission 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 (on 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 (on November 19, 2007, and November 17, 2008).<sup>11</sup>

5. In the *April 2007 Waiver Order*, the Commission addressed the requests of 19 service providers for waivers or extensions of the hearing aid compatibility requirements that became effective September 16, 2005. Of relevance here, the Commission denied waivers to CC, South Central, and UBET of the labeling requirements for hearing aid-compatible handsets, and it denied WUE's request for waiver of the requirement to offer at least two handset models that are hearing aid-compatible for acoustic

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converted back into sound by the hearing aid speaker. In telecoil mode, with the microphone turned off, the telecoil picks up the audio signal-based magnetic field generated by the voice coil of a dynamic speaker in hearing aid-compatible telephones, audio loop systems, or powered neck loops. The hearing aid converts the magnetic field into electrical signals, amplifies them as needed, and converts them back into sound via the speaker. Using a telecoil avoids the feedback that often results from putting a hearing aid up against a telephone earpiece, can help prevent exposure to over amplification, and eliminates background noise, providing improved access to the telephone.

*Id.* at 16763 ¶ 22. The 2001 version of American National Standards Institute (ANSI) Standard C63.19, which the Commission adopted in the *Hearing Aid Compatibility Order*, used a "U" nomenclature for radio frequency interference reduction in acoustic coupling mode and a "UT" nomenclature for inductive coupling capability. The 2006 version of this standard substituted the terms "M" and "T," respectively. In obtaining certification, manufacturers were permitted to rely on either of these standards or an intermediate 2005 draft revision. *See* Wireless Telecommunications Bureau and Office of Engineering and Technology Clarify Use of Revised Wireless Phone Hearing Aid Compatibility Standard, *Public Notice*, 21 FCC Rcd 6384 (WTB/OET 2006).

<sup>8</sup> *See id.* at 16780 ¶ 65; 47 C.F.R. § 20.19(e). Section 20.19(e), entitled "*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 most hearing aid compatibility requirements, and manufacturers or 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).

<sup>9</sup> 47 C.F.R. § 20.19(c)(2)(i)(2005). Service providers not covered by the *de minimis* exception were also required to make available at least two handset models that met, at a minimum, the U3T (T3) rating for inductive coupling capability by September 18, 2006. 47 C.F.R. § 20.19(d)(2) (2005).

<sup>10</sup> *See Hearing Aid Compatibility Order*, 18 FCC Rcd at 16785 ¶¶ 83, 85-86. *See also* 47 C.F.R. § 20.19(f). In addition, to ensure that the rating information was actually conveyed to consumers prior to purchase, the Commission required digital wireless service providers to ensure that the U-rating of the handsets is available to such consumers at the point-of-sale, whether through display of the label, separate literature, or other means. *See Hearing Aid Compatibility Order*, 18 FCC Rcd at 16785 ¶ 87.

<sup>11</sup> *See id.* at 16787 ¶¶ 89-91; *see also* Wireless Telecommunications Bureau Announces Hearing Aid Compatibility Reporting Dates for Wireless Carriers and Handset Manufacturers, *Public Notice*, 19 FCC Rcd 4097 (WTB 2004). In the *2008 Hearing Aid Compatibility Order*, the Commission modified its rules to impose an on-going annual reporting requirement for service providers and handset manufacturers. 23 FCC Rcd at 3446 ¶ 101; *see* 47 C.F.R. § 20.19(i).

coupling. The Commission cited the failure of each petitioner to demonstrate unique or unusual circumstances, or the existence of any other factor, warranting grant of these waivers.

### III. DISCUSSION

6. In this Order, we reconsider the Commission's previous decisions to deny the waivers at issue. Pursuant to Section 1.925(b)(3) of the Commission's rules, the Commission may grant a request for waiver if the underlying purpose of the rule(s) would not be served or would be frustrated by application in the instant case, and grant would be in the public interest or, in view of unique or unusual factual circumstances, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.<sup>12</sup> In considering waiver requests, we are mindful of our obligation fairly to determine whether the public interest would be served by granting a petitioner an exception to a rule of general applicability. We also bear in mind that "[a]n applicant for waiver faces a high hurdle even at the starting gate" and that we are obliged to take a "hard look" at the waiver proponent's request.<sup>13</sup> In this regard, it is well established that a party seeking a waiver "must plead with particularity the facts and circumstances which warrant such action."<sup>14</sup>

#### A. Petition of CC Communications (CC)

7. Background: In the *April 2007 Waiver Order*, the Commission granted CC's request for waiver of the September 16, 2005 hearing aid-compatible handset deployment requirement until November 16, 2005, but denied a waiver of the labeling requirement. The Commission found that although CC's November 2005 Report showed that it offered two digital wireless handset models, the Motorola models V262 and V710, that met a U3 (M3) rating,<sup>15</sup> the Report did not indicate that CC complied with the Commission's labeling requirements. To the contrary, the Report simply stated that "[i]t is anticipated that product labeling will be handled by the handset manufacturers."<sup>16</sup> In a supplemental filing on April 25, 2006, CC informed the Commission that it had been in compliance with hearing aid compatibility requirements (including the associated labeling requirements) as of April 1, 2006.<sup>17</sup> Although CC never explicitly requested a waiver of the labeling requirements in any filing or report,<sup>18</sup> the Commission concluded from these statements that waiver of the labeling requirements in Section 20.19(f) was needed for a period of almost five months from November 16, 2005, until April 1, 2006.<sup>19</sup> The Commission ruled that CC had failed to make the requisite showing justifying a waiver of

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<sup>12</sup> See 47 C.F.R. § 1.925(b)(3). See also *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); *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990); 47 C.F.R. § 1.3.

<sup>13</sup> See *WAIT Radio v. FCC*, 418 F.2d 1153, 1158 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972); see also *Family Stations, Inc. v. DirecTV, Inc.*, *Order on Reconsideration*, 19 FCC Rcd 14777, 14780 (MB 2004).

<sup>14</sup> *Rio Grande Family Radio Fellowship, Inc. v. FCC*, 406 F.2d 664 (D.C. Cir. 1968).

<sup>15</sup> CC November 17, 2005 Report at 2.

<sup>16</sup> *Id.*

<sup>17</sup> CC April 25, 2006 Supplemental Report at 1.

<sup>18</sup> Prior to submitting its Fourth Semi-Annual Report, CC filed a petition on September 16, 2005, seeking waiver of the handset deployment deadline in Section 20.19(c)(2)(i), which at that time required the petitioner to offer at least two handset models that were hearing aid-compatible in the acoustic coupling mode by September 16, 2005. Although the waiver request did not discuss the labeling of handsets, the Commission in the *April 2007 Waiver Order* treated the petition as a request for waiver of all requirements related to hearing aid compatibility, including labeling requirements.

<sup>19</sup> *April 2007 Waiver Order*, 22 FCC Rcd at 7192 ¶ 48.

Section 20.19(f), denied this aspect of its September 16, 2005 petition, and referred the apparent violation to the Commission's Enforcement Bureau.<sup>20</sup>

8. Petition for Partial Reconsideration: CC states that the Commission misread its November 16, 2005 Report and that CC has in fact been labeling handset packaging where manufacturers failed to do so.<sup>21</sup> CC also states that it never requested a waiver of the labeling requirements,<sup>22</sup> and it argues that it did not legally require such a waiver.<sup>23</sup>

9. Decision: We grant CC's Petition for Partial Reconsideration. In its petition, CC provides confirmation, supported by a "Declaration Under Penalty of Perjury" of a company official, that the handsets it offered contained the required labeling at all times either through manufacturer-supplied labeling or through labeling that CC added.<sup>24</sup> In addition, in light of evidence elsewhere in the record that Motorola was labeling its hearing aid-compatible handsets at all times,<sup>25</sup> it is apparent that, notwithstanding the implications in CC's earlier filings, the Motorola handsets it offered were labeled as required. Thus, we find that CC did not require a waiver of Section 20.19(f) of the Commission's rules, and we therefore grant its Petition for Partial Reconsideration.

## **B. Petition of South Central Utah Telephone Association (South Central)**

10. Background: In the *April 2007 Waiver Order*, the Commission granted South Central's request for waiver of the September 16, 2005 hearing aid-compatible handset deployment requirement until November 17, 2005, but denied a waiver of the labeling requirement. The Commission found that statements in South Central's November 2005, May 2006, and November 2006 semi-annual reports indicated that although South Central was offering more than the required number of hearing aid-compatible handset models as of each of those dates, South Central was not fully in compliance with the handset labeling requirements.<sup>26</sup> Although South Central never explicitly requested a waiver of the labeling requirements for these models in any filing or report,<sup>27</sup> the Commission concluded that waiver of the labeling requirements in Section 20.19(f) was needed. The Commission specifically found that: (1) the November 2005 Report indicated that, as of November 17, 2005, only three of South Central's six

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<sup>20</sup> *Id.*

<sup>21</sup> CC Petition for Partial Reconsideration at 6.

<sup>22</sup> *Id.* at 1.

<sup>23</sup> *Id.* at 3-5.

<sup>24</sup> *Id.* at 6; Declaration of Robert G. Adams, General Manager.

<sup>25</sup> See Hearing Aid Compatibility Status Report #4 submitted by the Alliance for Telecommunications Industry Solutions, which includes the Motorola Status Report as of November 1, 2005.

<sup>26</sup> For example, in its November 17, 2005 report, South Central stated that it was not involved in labeling and noted that it had been advised that all manuals and boxes shipped from the Motorola distribution center after September 16, 2005, had hearing aid compatibility information on them, and that compliant Nokia models would include the M3 designation on the product box label. South Central November 17, 2005 Report at 2. In its May 17, 2006 and November 17, 2006 reports, South Central stated that it was not involved in labeling and acknowledged that while its Motorola and Nokia models had both external labels and internal explanations, models from LG and Kyocera had only internal information. South Central May 17, 2006 Report at 2, and South Central November 17, 2006 Report at 2.

<sup>27</sup> South Central filed a petition on September 15, 2005, seeking waiver of the handset deployment deadline in Section 20.19(c)(2)(i), which at that time required the petitioner to offer at least two handset models that were hearing aid-compatible in the acoustic coupling mode by September 16, 2005. Although the waiver request did not discuss the labeling of handsets, the Commission in the *April 2007 Waiver Order* treated the petition as a request for waiver of all requirements related to hearing aid compatibility, including labeling requirements.

hearing aid-compatible handset models were compliant with the labeling obligations; (2) the May 2006 Report established that only five of its eight hearing aid-compatible handsets were fully compliant with the labeling requirements, the remaining three being only partially compliant; and (3) the November 2006 Report established that, as of that date, only six of nine hearing aid-compatible handsets were fully compliant with the labeling obligations.<sup>28</sup> The Commission ruled that South Central had failed to make the requisite showing justifying a waiver of Section 20.19(f), denied this aspect of its September 15, 2005 petition, and referred the apparent violation to the Commission's Enforcement Bureau.<sup>29</sup>

11. Petition for Partial Reconsideration: South Central does not deny that it sold hearing aid-compatible handsets that lacked the required labeling under Section 20.19(f). However, South Central argues that it did not require a waiver of the labeling requirements, and that it therefore never requested such a waiver, because Section 20.19(f) did not at that time impose obligations on service providers.<sup>30</sup> In particular, South Central argues that in paragraphs 85 and 86 of the *Hearing Aid Compatibility Order*, the Commission described the labeling obligations of Section 20.19(f) solely with reference to manufacturers, whereas paragraph 87 gave service providers flexibility to meet their obligation to inform consumers either by displaying the label or through other means.<sup>31</sup> South Central further argues that: (1) even though it reported to the Commission in six semi-annual reports that it was not involved in product labeling and anticipated that labeling would be handled by the handset manufacturers, it received no indication from the Commission that this interpretation of the rule was incorrect;<sup>32</sup> (2) strict enforcement of the labeling requirements against it is of questionable public interest benefit given that South Central has always provided a hearing aid compatibility information sheet to inform the hearing-impaired about the hearing aid-compatible handsets it sells, and also has provided an opportunity for these consumers to test handsets for compatibility with their hearing aids prior to purchase;<sup>33</sup> (3) in the wake of the *April 2007 Waiver Order*, South Central has instituted procedures to ensure that all hearing aid-compatible handsets have appropriate labeling, that its in-store displays include the compatibility rating for each hearing aid-

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<sup>28</sup> *April 2007 Waiver Order*, 22 FCC Rcd at 7188-89 ¶ 38.

<sup>29</sup> *Id.* at 7189 ¶ 39. See South Central Utah Telephone Association, *Notice of Apparent Liability for Forfeiture*, 21 FCC Rcd 19251, 19255-26 ¶ 10 (Enf. Bur., Spectrum Enf. Div., 2007) (proposing a \$24,000 forfeiture against South Central for apparently willfully and repeatedly violating the hearing aid compatibility handset labeling requirements), *response pending*.

<sup>30</sup> South Central Petition at 2.

<sup>31</sup> *Id.* at 4-6. Paragraph 85 of the *Hearing Aid Compatibility Order* states: "First, we require manufacturers to affix a label on the exterior of the wireless telephone's box that provides the particular U-rating for that model of handset. We require labels to be affixed to the exterior of the packaging in order to inform the purchaser of the quality of the interoperability between a wireless telephone and a hearing aid." Paragraph 86 of the *Hearing Aid Compatibility Order* states: "Additionally, we require manufacturers to develop language for a product insert or placement in the handset's manual. Such information will allow the consumer to better understand the U-rating system and could help frame the consumer's expectation with regards to the performance of the handset." Paragraph 87 of the *Hearing Aid Compatibility Order* states: "Furthermore, to ensure that the information is conveyed to consumers, we require service providers to ensure that the U-rating is made available, either through display on the handset's box, separate literature on which model handsets the provider offers that are compatible, through posting information on their Internet web site, or by any other means the service provider determines is sufficient, to individuals with hearing disabilities so they may determine which wireless telephone best meets their individual needs. We recognize that service providers offer their products and services through a variety of channels, including the Internet, carts in shopping malls, agents, and stand-alone stores. Some of these entities are small businesses with limited resources. We, therefore, are adopting a requirement that provides flexibility for service providers to determine how best to convey the information to the consumer." *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16785-86 ¶¶ 85-87.

<sup>32</sup> South Central Petition at 6-8.

<sup>33</sup> *Id.* at 8.

compatible handset, and that its web site includes the same compatibility information;<sup>34</sup> and (4) Section 2.925 of the rules, which contains detailed requirements for labeling equipment that radiates RF energy, obligates manufacturers alone, and does not obligate radio station licensees to label radio equipment.

12. **Decision:** We deny South Central's Petition for Partial Reconsideration. As codified in 2005, Section 20.19(f) stated that hearing aid-compatible handsets "shall clearly display the U-rating . . . on the packaging material" and shall include appropriate inserts. Section 20.19(a) stipulated that "this section is applicable to providers of . . . [public mobile services]" as well as "to the manufacturers of the wireless phones used in delivery of these services."<sup>35</sup> In the absence of any specific assignment of responsibility in Section 20.19(f), therefore, the obligations of this rule section fell on both manufacturers and service providers.<sup>36</sup> Read in this context, the service providers' customer information obligation in paragraph 87 of the *Hearing Aid Compatibility Order* is in addition to their responsibility, together with manufacturers, to meet the labeling requirements of subsection (f). Thus, for example, a service provider may choose to convey hearing aid compatibility information to its customers by providing separate literature or posting information on its website instead of by displaying the labeled boxes on its shelves, but this would not relieve its responsibility to ensure that the boxes are in fact labeled and that detailed information is included in the product manual. Although the Commission contemplated that the labeling obligations would be met in the first instance by manufacturers, and paragraphs 85 and 86 are therefore phrased in terms of the manufacturers' duties, nothing in those paragraphs amends the plain language of the rule that imposes this obligation equally upon manufacturers and service providers.

13. South Central's additional arguments are unpersuasive as a basis for a waiver. First, the Commission was under no obligation to tell South Central that its status reports showed it to be in violation of the labeling requirements. Second, neither South Central's provision of information to consumers consistent with paragraph 87 of the *Hearing Aid Compatibility Order* nor its provision of a testing opportunity as required under former Section 20.19(c)(2)(i)(A) of the rules<sup>37</sup> substitutes for adherence to the labeling requirements. Third, South Central's actions to come into compliance after the *April 2007 Waiver Order* do not excuse its non-compliance prior to that Order. Fourth, the fact that Section 2.925 of the rules imposes a different labeling obligation solely on manufacturers is irrelevant to the interpretation of Section 20.19(f). Thus, we find that South Central has not made the requisite showing to justify a waiver of Section 20.19(f) of the Commission's rules, and we therefore deny its Petition for Partial Reconsideration.

### **C. Petition of Uintah Basin Electronic Telecommunications d/b/a UBET Wireless (UBET)**

14. **Background:** In the *April 2007 Waiver Order*, the Commission granted UBET's request for waiver of the September 16, 2005 hearing aid-compatible handset deployment requirement until November 16, 2005, but denied a waiver of the labeling requirements. The Commission noted that although UBET's November 2005 Report stated that it marketed a number of digital wireless telephones that met a U3 (M3) rating,<sup>38</sup> the Report did not indicate that UBET complied with the Commission's

<sup>34</sup> *Id.* at 8-9.

<sup>35</sup> 47 C.F.R. §20.19(a).

<sup>36</sup> See *April 2007 Waiver Order*, 22 FCC Rcd at 7189 n.135. In the *2008 Hearing Aid Compatibility Order*, the Commission amended the text of Section 20.19(f) to state expressly that both manufacturers and service providers are responsible for ensuring compliance with its provisions. *2008 Hearing Aid Compatibility Order*, 23 FCC Rcd at 3476-77.

<sup>37</sup> 47 C.F.R. §20.19(c)(2)(i)(A) (2005) (currently codified at 47 C.F.R. § 20.19(c)(4)(i)).

<sup>38</sup> UBET November 17, 2005 Report at 1 (listing the Motorola V262, Motorola V265, Motorola V710 and Motorola T720).

labeling requirements. To the contrary, the Report simply stated that “labeling is presently being handled by the handset manufacturer, Motorola.”<sup>39</sup> In a supplemental filing on April 25, 2006, UBET informed the Commission that it had been in compliance with hearing aid compatibility requirements (including the associated labeling requirements) since February 2006.<sup>40</sup> Although UBET never explicitly requested a waiver of the labeling requirements in any filing or report,<sup>41</sup> the Commission concluded from these statements that waiver of the labeling requirements in Section 20.19(f) was needed for a period of more than two months from November 17, 2005, until February 2006. The Commission ruled that UBET had failed to make the requisite showing justifying a waiver of Section 20.19(f), denied this aspect of its September 16, 2005 petition, and referred the apparent violation to the Commission’s Enforcement Bureau.<sup>42</sup>

15. Petition for Partial Reconsideration: UBET states that the Commission misread its November 17, 2005 report and that the “HAC compliant Motorola handsets discussed in the . . . report . . . have at all times borne manufacturer labeling. . .”<sup>43</sup> UBET also states that it never requested a waiver of the labeling requirements,<sup>44</sup> and it argues that it did not legally require such a waiver.<sup>45</sup>

16. Decision: We grant UBET’s Petition for Partial Reconsideration. UBET’s petition provides specific information, supported by a “Declaration Under Penalty of Perjury” of a company official, that its Motorola handsets complied with the Commission’s labeling requirements as of November 2005.<sup>46</sup> Although this position seems to conflict with its April 25, 2006 filing saying it came into compliance in February 2006, evidence elsewhere in the record supports that the hearing aid-compatible handset models mentioned in the November 2005 Report have at all times borne manufacturer labeling supplied by Motorola.<sup>47</sup> Thus, we find that UBET did not require a waiver of Section 20.19(f) of the Commission’s rules and we therefore grant its Petition for Partial Reconsideration.

#### **D. Petition of WUE, Inc. (WUE)**

17. Background: In the *April 2007 Waiver Order*, the Commission found that WUE failed to make the requisite showing to justify a waiver of Section 20.19(c)(2)(i), which at that time required service providers that did not fall under the *de minimis* exception to offer at least two handset models that were hearing aid-compatible in the acoustic coupling mode by September 16, 2005.<sup>48</sup> The Commission noted that WUE’s November 2005 Report stated that none of the three handset models then being offered

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<sup>39</sup> *April 2007 Waiver Order*, 22 FCC Rcd at 7193-94 ¶ 53.

<sup>40</sup> UBET Supplemental to Petition for Temporary Waiver or Temporary Stay, filed April 25, 2006, at 1.

<sup>41</sup> In its petition filed on September 16, 2005, UBET sought a waiver of the handset deployment deadline in Section 20.19(c)(2)(i), which at that time required the petitioner to offer at least two handset models that were hearing aid-compatible in the acoustic coupling mode by September 16, 2005. Although the waiver request did not discuss the labeling of handsets, the Commission in the *April 2007 Waiver Order* treated the petition as a request for waiver of all requirements related to hearing aid compatibility, including labeling requirements.

<sup>42</sup> *April 2007 Waiver Order*, 22 FCC Rcd at 7194 ¶ 56.

<sup>43</sup> UBET Petition at 7.

<sup>44</sup> *Id.* at 1.

<sup>45</sup> *Id.* at 4-6.

<sup>46</sup> *Id.* at 7; Declaration of Bruce H. Todd, CEO and General Manager.

<sup>47</sup> See Hearing Aid Compatibility Status Report #4 submitted by the Alliance for Telecommunications Industry Solutions, which includes the Motorola Status Report as of November 1, 2005.

<sup>48</sup> *April 2007 Waiver Order*, 22 FCC Rcd at 7191 ¶ 44.



on WUE's system met a U3 (M3) rating.<sup>49</sup> In a supplemental filing on April 25, 2006, WUE stated that as of that date it was offering only two handset models, and it therefore qualified for the *de minimis* exception.<sup>50</sup> The Commission denied WUE's waiver request because WUE did not identify the period of time during which it was out of compliance with the hearing aid-compatible handset deployment rule, and it did not provide evidence of diligent efforts to obtain hearing aid-compatible handsets during the period that it did not qualify for the *de minimis* exception.<sup>51</sup>

18. Petition for Reconsideration: WUE states in its petition and accompanying Declaration that it began to offer only two handset models to its customers as of December 1, 2005, and argues that it should be granted a waiver until that date.<sup>52</sup> WUE explains that as a Tier III carrier, there were no hearing aid-compatible handsets available to it prior to December 1, 2005.<sup>53</sup> WUE references its filing on April 25, 2006, in which it informed Commission staff that it only marketed two models, the LG VX3300 and Audiovox 8910, and that it intended to remain at all times within the *de minimis* exception.<sup>54</sup>

19. Decision: We grant WUE's Petition for Reconsideration. Given that WUE was out of compliance for less than three months, and given the limited availability of hearing aid-compatible handsets to Tier III carriers, WUE's delay was *de minimis* and did not unduly deprive its subscribers of access to hearing aid-compatible handsets. This is consistent with the Commission's findings in the *April 2007 Waiver Order* for other Tier III carriers. Therefore, we find that WUE has made the requisite showing to justify a waiver of Section 20.19(c)(2)(i) of the Commission's rules and we grant its Petition for Reconsideration.

#### IV. CONCLUSION

20. In this *Order on Reconsideration*, we resolve four petitions for reconsideration of denials of requests for waiver of hearing aid compatibility obligations. Specifically, we grant the petitions of CC, UBET, and WUE, and deny the petition of South Central. We continue to expect carriers to engage diligently in determining the hearing aid compatibility status of handsets and in conveying this information to their existing and potential subscribers. We will also continue to monitor carrier compliance with the hearing aid compatibility rules to ensure that deaf and hard-of-hearing Americans have access to the rapidly growing number of digital wireless handsets.

#### V. ORDERING CLAUSES

21. Accordingly, IT IS ORDERED, pursuant to Sections 1, 4(i), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 405 and Sections 1.3, 1.429, 1.925, and 20.19 of the Commission's rules, 47 C.F.R. §§ 1.3, 1.429, 1.925, 20.19, that this *Order on Reconsideration* IS ADOPTED.

22. IT IS FURTHER ORDERED, pursuant to Sections 1, 4(i), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 405 and Sections 1.3, 1.429, 1.925, and 20.19 of the Commission's rules, 47 C.F.R. §§ 1.3, 1.429, 1.925, 20.19, that the Petition For Partial Reconsideration, filed May 10, 2007, by CC Communications IS GRANTED.

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<sup>49</sup> WUE November 17, 2005 Report at 1.

<sup>50</sup> WUE Supplement to Petition for Temporary Waiver or Temporary Stay, filed April 25, 2006, at 1-2.

<sup>51</sup> *April 2007 Waiver Order*, 22 FCC Rcd at 7191 ¶ 44.

<sup>52</sup> WUE Petition at 5; Declaration of John W. Christian, III, President.

<sup>53</sup> WUE Petition at 5.

<sup>54</sup> *Id.* at 3.

23. IT IS FURTHER ORDERED, pursuant to Sections 1, 4(i), 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 405 and Sections 1.3, 1.429, 1.925, and 20.19 of the Commission's rules, 47 C.F.R. §§ 1.3, 1.429, 1.925, 20.19, that the Petition For Partial Reconsideration, filed May 11, 2007, by South Central Utah Telephone Association IS DENIED.

24. IT IS FURTHER ORDERED, pursuant to Sections 1, 4(i), 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 405 and Sections 1.3, 1.429, 1.925, and 20.19 of the Commission's rules, 47 C.F.R. §§ 1.3, 1.429, 1.925, 20.19, that the Petition For Partial Reconsideration, filed May 11, 2007, by Uintah Basin Electronic Telecommunications d/b/a UBET Wireless, IS GRANTED.

25. IT IS FURTHER ORDERED, pursuant to Sections 1,4(i), 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 405 and Sections 1.3, 1.429, 1.925, and 20.19 of the Commission's rules, 47 C.F.R. §§ 1.3, 1.429, 1.925, 20.19, that the Petition For Reconsideration, filed May 10, 2007, by WUE, Inc., IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary