

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Section 68.4(a) of the Commission's Rules)	WT Docket No. 01-309
Governing Hearing Aid-Compatible Telephones)	
)	
Dobson Communications Corporation Petition)	
for Waiver of Section 20.19(c)(2)(i) of the)	
Commission's Rules)	

To: The Commission

**DOBSON COMMUNICATIONS CORPORATION
PETITION FOR WAIVER OF SECTION 20.19(c)(2)(i)
OF THE COMMISSION'S RULES**

Pursuant to Section 710(b)(3) of the Communications Act of 1934, as amended (the "Act"), and Sections 1.3 and 1.925 of the Commission's rules, Dobson Communications Corporation ("Dobson") hereby requests a waiver of Section 20.19(c)(2)(i) of the Commission's rules.¹ The waiver is required because U3-rated hearing aid-compatible ("HAC") handsets that can operate at full power on cellular spectrum² utilizing the Global System for Mobile Communications ("GSM") protocol are not yet commercially available. So that Dobson has a reasonable opportunity to obtain, test, and stock retail outlets with compliant handsets, Dobson requests that the waiver extend for at least 60 days beyond the date when such compliant handsets are first made commercially available to Dobson for sale to its subscribers.

¹ 47 U.S.C. § 610(b)(3); 47 C.F.R. §§ 1.3, 1.925, 20.19. Section 20.19(c)(2)(i) requires that public mobile service providers offer at least two hearing aid-compatible handsets per air interface by September 16, 2005.

² The Commission has allocated spectrum in the 800-900 MHz band for the Cellular Radiotelephone Service (this band hereinafter will be referred to generally as the "850 MHz band").

Dobson, like Cingular Wireless LLC (“Cingular”),³ utilizes the GSM air interface technology and operates principally on the 850 MHz spectrum in most of its service areas.⁴ Because handset manufacturers do not currently offer *any* HAC GSM handsets operating at full power in the 850 MHz band that are U3-rated, Dobson cannot offer two HAC handset models per air interface by the September 16, 2005 deadline as required by Section 20.19(c)(2)(i). Enforcement of the deadline against Dobson clearly would be inequitable and contrary to the public interest because compliance is not technologically feasible. Accordingly, a waiver of the September 16, 2005 deadline is appropriate.

DISCUSSION

Section 20.19(c)(2)(i) of the Commission’s rules requires that “each provider of public mobile service must . . . include in their handset offerings at least two handset models per air interface that comply with §20.19(b)(1) by September 16, 2005 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”⁵ Section 20.19(b)(1) provides that a public mobile radio service handset will be deemed compatible with hearing aids if it meets, at a minimum, the U3 rating set forth in the 2001 version of the American National Standards Institute (“ANSI”) C63.19 technical standard.⁶

³ The reasons justifying the instant waiver are substantially similar to those set forth by Cingular in its petition for waiver, filed on August 5, 2005, with respect to the September 16, 2005 deadline for Tier 1 carriers to offer HAC handsets. *See* Cingular Wireless LLC, Petition for Waiver of Section 20.19(c)(3)(i)(A) of the Commission’s Rules, WT Docket No. 01-309 (filed Aug. 5, 2005) (“Cingular Petition”).

⁴ Dobson operates through two primary subsidiaries, Dobson Cellular Systems, Inc. and American Cellular Corporation.

⁵ 47 C.F.R. § 20.19(c)(2)(i). The Commission amended this rule on reconsideration to provide additional relief for carriers using the Time Division Multiple Access (“TDMA”) protocol, on the basis that TDMA is a first generation digital technology that is being phased out by the industry. *See Section 68.4(a) of the Commission’s Rules Governing Hearing Aid-Compatible Telephones*, WT Docket No. 01-309, *Order on Reconsideration*, FCC 05-122 at ¶¶ 46-50 (rel. June 21, 2005). The amended rule went into effect on August 26, 2005. *See* 70 Fed. Reg. 43323 (July 27, 2005).

⁶ *See* 47 C.F.R. § 20.19(b)(1). The Office of Engineering and Technology (“OET”) has subsequently decided to allow applicants for equipment certification to rely on either the 2001 or the updated draft 2005 version of ANSI C63.19. *See Public Notice*, “OET Clarifies Use of Revised Wireless Phone Hearing Aid Compatibility Standard

Dobson is one of the largest providers of rural and suburban wireless communications services in the United States, offering services to a population base of 11.8 million people in sixteen states stretching from Alaska to New York. Dobson, primarily through its cellular spectrum in the 850 MHz band, offers digital service to consumers utilizing the GSM/ General Packet Radio Service (“GPRS”)/ Enhanced Data rates for Global Evolution (“EDGE”) and, to a limited extent, the TDMA air interface protocol.⁷ In cellular markets located in Alaska, Kansas, Michigan, and Oklahoma, Dobson also offers service utilizing broadband Personal Communications Services (“PCS”) spectrum in the 1.9 GHz band.⁸ While Dobson’s cellular service areas extend throughout portions of all sixteen states in which it operates, Dobson’s PCS coverage overlaps with substantially less than half of Dobson’s cellular service areas, and none of Dobson’s five “regional service areas” are covered ubiquitously by both cellular and PCS spectrum.

Because Dobson’s networks, and the networks of its roaming partners (including Cingular), utilize both cellular and PCS frequency bands to provide the regional and nationwide services that subscribers require, Dobson must offer multi-band handsets that can operate in

Measurement Procedures and Rating Nomenclature,” DA 05-1134 (rel. Apr. 25, 2005). The Commission will consider whether to incorporate the updated 2005 standard into its rules after the updated standard has received final approval and is published by ANSI. *See id.*

⁷ With the exception of certain newly acquired markets, Dobson completed the GSM overlay of its TDMA network in 2004. Dobson still supports its legacy TDMA network and other non-GSM networks in recently acquired markets for existing subscribers, but only offers GSM service and handsets (and TDMA service and handsets to a limited extent) to new customers. The Commission has exempted TDMA carriers from the “per air interface” requirement to provide TDMA HAC handsets if the carrier plans to convert its network to alternative technologies like GSM. *See* 47 C.F.R. § 20.19(c)(2)(i)(B). The Commission amended the rule in recognition that TDMA is a first generation digital technology for which new handsets (including HAC handsets) are not being developed. Given that Dobson has substantially converted its TDMA network to GSM but that GSM handsets are not commercially available, a waiver of the HAC handset requirement for the TDMA interface is not necessary. To the extent that the Commission believes otherwise, Dobson requests that the instant petition for waiver include a waiver of Section 20.19(c)(2)(i) for Dobson’s TDMA air interface offering, because HAC handsets for TDMA are not commercially available.

⁸ With the exception of a few markets in Kansas and Oklahoma where Dobson only provides PCS coverage, Dobson’s 1.9 GHz spectrum generally supplements existing cellular coverage in the 850 MHz band to allow Dobson to provide enhanced digital services to its subscribers.

either the 850 MHz or 1.9 GHz band based on the best available signal to ensure that its subscribers have seamless coverage throughout each region. For this reason, Dobson only offers multi-band handsets to customers. None of the handsets offered, however, are compliant with Section 20.19(b)(1). While vendors may be offering several GSM handsets that are operable only in the 1.9 GHz band that meet the U3 standard,⁹ there are no multi-band phones available in which both the 1.9 GHz and 850 MHz component is U3 compliant, because of technical problems incurred by the manufacturers with GSM in the 850 MHz band.¹⁰ The GSM technical issues at 850 MHz are industry wide, and Dobson is advised that vendors do not expect these technical problems to be resolved by the September deadline or anytime soon thereafter.

Section 710(b)(3) of the Act provides that the Commission, upon application of any interested person, may waive the requirements of the Hearing Aid Compatibility Act (“HAC Act”) with respect to new telephones, or telephones associated with new technology or service if “on the basis of the evidence in the record of such proceeding, that such telephones, or such technology or service, are in the public interest” and that compliance is “technologically infeasible.”¹¹ In considering whether to grant a waiver pursuant to Section 710(b)(3), the Commission must consider the effect of granting a waiver on persons with hearing disabilities.¹²

⁹ See T-Mobile USA, Inc., Petition for Waiver of Section 20.19(c)(3) of the Commission’s Rules, WT Docket No. 01-309 (filed Aug. 26, 2005) (indicating that two HAC handset models are available for GSM in the 1.9 GHz band that meet the Commission’s requirements).

¹⁰ Per ANSI C63.19, a handset is assigned a rating based on the lowest performing standard the handset achieves, so that a multi-band phone where the 1.9 GHz component meets a U3 standard and the 850 MHz component meets a U2 standard is given an overall rating of U2. See Cingular Petition at 11 n.37.

¹¹ 47 U.S.C. § 610(b)(3); HAC Act of 1988, Pub. L. 100-394, § 3(a), 102 Stat. 976 (1988). “Infeasible” in this context means impossible or “undoable.” S. Rep. No. 100-391, at 11 (1988), *reprinted in* 1988 U.S.S.C.A.N. 1345, 1355.

¹² Pursuant to the HAC Act, public mobile service handsets were initially exempt from hearing aid compatibility requirements until the Commission lifted the statutory exemption in 2003, determining that the statutory criteria for lifting the exemption had been met. See 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, 16757-59, 16764-66 (2003). As Cingular points out, whether the waiver process set forth in Section 710(b)(3) applies to newly non-exempt handsets that are already in existence is unclear. See Cingular Petition at 16-17 n.50. To the extent the

The Cingular Petition makes a compelling case for a waiver of the September 16, 2005 deadline, the justifications for which apply equally to Dobson as well, if not more so. As Cingular points out, when the Commission eliminated the exemption for public mobile service phones and adopted Section 20.19, it predicted the “technological feasibility” of producing HAC handsets for GSM in the 850 MHz band, but such predictions have not materialized.¹³ While the Commission expected that compliance would not require significant handset design changes, research and development, or production costs, just the opposite has proven to be true. As a result of testing protocols developed and implemented after the Commission lifted the HAC Act exemption for wireless handsets (and even before the C63.19 standard became final), vendors discovered in late 2004 that GSM phones in the 850 MHz band (once thought to be close to, or capable of, complying with a U3 performance level) are not compliant because of difficulties in directing the RF power away from the hearing aid.¹⁴ Meeting the U3 rating in the 850 MHz band is thus a challenge for handset manufacturers and may require core design changes, including “modifying the mechanical design of the ‘flip top,’ antenna changes (such as location, internalization or directional antennas), or changing speaker location.”¹⁵ The end result is that no

Commission finds Section 710(b)(3) inapplicable, waiver of Section 20.19(c)(2)(i) is alternatively sought pursuant to Sections 1.3 and 1.925 of the Commission’s rules. Section 1.3 of the Commission’s rules states that the Commission may waive any provision of its rules, in whole or in part, on its own motion or on petition, if good cause is shown. 47 C.F.R. § 1.3. Finally, Section 1.925 states that the Commission may grant a request for waiver if it is shown that “[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.” 47 C.F.R. § 1.925.

¹³ See Cingular Petition at 5-16.

¹⁴ See Cingular Petition at 5-6, 17-23. Several handset manufacturers notified the Commission of the technical difficulties in April 2005. See Letter from Elisabeth H. Ross, Sony Ericsson Mobile Communications, Inc., to Marlene H. Dortch, Secretary, FCC (dated Apr. 29, 2005). In addition, the compliance status report filed on May 17, 2005, by the Alliance for Telecommunications Industry Solutions (“ATIS”) on behalf of several vendors and service providers, including Dobson, reported that there was an industry wide problem with developing compliant GSM handsets for the 850 MHz band. See Letter from Thomas Goode, ATIS, to Marlene H. Dortch, Secretary, FCC (dated May 17, 2005) (“ATIS Status Report”).

¹⁵ Cingular Petition at 19.

GSM handsets that meet the U3 rating when operated at full power are commercially available for the 850 MHz band today.

To the extent that Cingular, as a Tier 1 carrier, has not been able to expedite a technological solution, Dobson, whose purchasing power (and thus influence) is significantly less, is effectively without any remedy for meeting this requirement. In fact, Dobson does not even have the purchasing power to obtain handsets directly from manufacturers, and thus has no ability to affect the development and production of HAC handsets. As such, “good cause” exists here to justify a waiver of the September deadline, because it is not technologically feasible for Dobson to comply.

Moreover, like Cingular, there is no reasonable alternative for Dobson to comply. Simply offering GSM phones that meet the U3 rating and only operate in the 1.9 GHz band will not do, because Dobson must offer multi-band handsets in order to provide ubiquitous coverage to its customers throughout its network that consists largely of cellular-only service areas.¹⁶ A 1.9 GHz-only handset will do little for a hearing impaired customer if they lose service as soon as they travel out of Dobson’s more limited PCS coverage area.¹⁷ Nevertheless, if the requested waiver is granted, Dobson will offer in the alternative at least two dual band GSM handset models that meet a U3 rating at 1.9 GHz and a U1/U2 rating at 850 MHz once these phones are made commercially available to Dobson.¹⁸ If Nokia or others are able to manufacture a viable

¹⁶ See *id.* at 21-23.

¹⁷ Even a cursory analysis of Dobson’s coverage areas indicates that subscribers would have very limited PCS-only coverage in most of Dobson’s markets.

¹⁸ Current evidence indicates that operating in the 850 MHz with a U2 or U1 rated handset is sufficiently reliable with most hearing aids, and so the alternative handsets proposed by Dobson should effectively mitigate any potential harm to the hearing impaired and meet industry’s HAC Act obligations. See Cingular Petition at 11-16; Comments of Hearing Industries Assoc. (“HIA”), WT Docket No. 01-309 at 2 (stating that “HIA acknowledges that there is anecdotal evidence showing that a hearing aid wearer using a GSM handset that achieves a U3 rating at 1900 MHz may experience comparable interference immunity when the handset operates at 850 MHz at higher power, even though the handset does not achieve a U3 rating at 850 MHz under the current ANSI C63.19 standard”) (“HIA

dual band GSM handset that meets a U3 rating at 1.9 GHz and U3 at 850 MHz (when manually powered down), Dobson will also consider offering at least one such handset when it becomes commercially available.¹⁹

Finally, Dobson requests that the Commission waive the requirements of Section 20.19(c)(2)(i) until such time as HAC handsets are commercially available for GSM in the 850 MHz band. Dobson further requests an additional 60 days from when HAC handsets are commercially available, because time is needed for the handsets to make their way through the channels of commerce and into Dobson's retail stores. Specifically, additional time will be needed for Dobson to order and obtain handsets, test handset features, insert Subscriber Identity Module ("SIM") cards, and otherwise ensure that the handsets are interoperable with Dobson's network. Moreover, time is needed to stock retail stores with HAC handsets and to train retail staff on in-store testing procedures. A waiver is of little benefit unless Dobson is given time to bring the handsets into the stores.²⁰

Comments"). The appropriate resolution of the GSM issue at 850 MHz may very well require a change to the ANSI C63.19 standard, and not the handsets, to differentiate between the different frequency band operations. *See* Letter from Thomas Goode, ATIS, to Marlene H. Dortch, Secretary, FCC at 13 (dated Aug. 1, 2005) (concluding "that there should be two different emissions passing limits for the 850 MHz and 1900 MHz frequency bands"); Cingular Petition at 11-16. If so, then the alternative handsets proposed by Dobson may meet the revised standard. Finally, Dobson must note that it does not have the purchasing power of a national carrier to buy handsets directly from the manufacturers and is dependent on the available inventory of handset vendors. Accordingly, while a manufacturer may offer a handset directly to a national carrier, the handset may not be commercially available to Dobson.

¹⁹ Nokia has reported that it believes that by using a variable power mode option, whereby the user must manually set the phone to a reduced power level, the phone could meet the U3-standard. *See* ATIS Status Report, Nokia Status Update Attachment. While such handsets are not commercially available at present, Dobson has concerns over the practicality of such devices on its network if and when they do become available. Cellular networks in the 850 MHz band are designed on the assumption that handsets will operate consistent with a Class 4 (2 Watt) power level. Operations of handsets at a reduced power level could significantly reduce the range and quality of service for the user; the impact of which will need to be evaluated further.

²⁰ Dobson recognizes that some hearing-impaired interest groups are willing to support waivers of the September 16, 2005 deadline with respect to GSM in the 850 MHz band provided that the waiver period is limited in time, perhaps to one year. *See* HIA Comments at 3; Comm. Daily at 5 (rel. Aug. 23, 2005). However, if a waiver period is tied to a set date instead of when HAC handsets are commercially available, then there is no guarantee that the service provider will be able to comply once the waiver expires. Moreover, the threat of punishing Dobson if compliance is not met by a set date will not motivate manufacturers to timely resolve the technical issues.

CONCLUSION

The Commission has appropriately chosen to give carriers flexibility in the type of air interface they choose. As a result, American consumers have many choices, including carriers like Dobson that provide competitive and advanced service offerings to rural America. Strictly enforcing the September 16, 2005 deadline against Dobson for not doing the technologically impossible with GSM handsets at 850 MHz would be unduly burdensome, inequitable, and contrary to the HAC Act. For the reasons stated above, grant of the instant waiver request is consistent with the HAC Act and with the public interest, convenience and necessity.

Respectfully submitted,

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