

**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	)	WT Docket No. 01-309
	)	
Cingular Wireless LLC Petition for Waiver of	)	
Section 20.19(c)(3)(i)(A) of the Commission's	)	
Rules	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted:** September 7, 2005

**Released:** September 8, 2005

By the Commission: Commissioner Copps issuing a statement.

**I. INTRODUCTION**

1. We have before us two submissions pertaining to the hearing aid compatibility of digital wireless handsets employing the GSM<sup>1</sup> air interface. First, the HAC Incubator Working Group 9 (Working Group 9), a technical group focused on hearing aid compatibility in wireless handsets employing the GSM air interface, recommends that the Commission issue a pronouncement regarding the hearing aid compatibility of dual-band digital wireless handsets that employ a GSM air interface in the 850 MHz and 1900 MHz bands.<sup>2</sup> Specifically, Working Group 9 has asked the Commission to temporarily accept the hearing aid compatibility compliance rating of dual-band GSM digital wireless handsets based on their operation in the 1900 MHz band only, rather than require the rating of the handsets based on operation in both the 850 MHz and 1900 MHz bands.<sup>3</sup> In addition, we have received a request for waiver from Cingular Wireless LLC (Cingular).<sup>4</sup> Cingular, a Tier I wireless carrier<sup>5</sup> that

<sup>1</sup> The Global System for Mobile Communications (GSM) is a digital air interface for wireless systems that divides each wireless channel into eight discrete time slots, which allows up to eight simultaneous calls using the same frequency.

<sup>2</sup> Letter from Thomas Goode, counsel to the Alliance for Telecommunications Industry Solutions and Presentation of the HAC Incubator Working Group 9, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 01-309 (filed Aug. 1, 2005) (Working Group 9 Recommendation).

<sup>3</sup> See *id.* at 3 (“[t]he 1900 MHz band HAC rating should be accepted as the overall rating for all dual band wireless devices[.]”). In a subsequent *ex parte* letter, ATIS recommended that the Commission accept the 1900 MHz rating as the overall rating for dual-band wireless devices employing a GSM air interface. See Letter from Thomas Goode, counsel to the Alliance for Telecommunications Industry Solutions, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 01-309 (filed Aug. 26, 2005) at 2.

<sup>4</sup> 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 Waiver Request).

<sup>5</sup> In 2002, the Commission defined Tier I wireless carriers as the six wireless carriers with national footprints (AT&T Wireless, Cingular Wireless, Nextel Communications, Sprint PCS, Verizon Wireless, and T- (continued....))

exclusively offers dual-band GSM handsets that operate in the 850 MHz and 1900 MHz frequency bands, seeks a waiver of Section 20.19(c)(3)(i)(A) of the Commission's rules, which provides that Tier I wireless carriers must offer hearing aid-compatible digital wireless handsets to consumers by September 16, 2005.<sup>6</sup> T-Mobile USA, Inc. (T-Mobile), another Tier I wireless carrier, has separately asked the Commission for, among other things, relief consistent with the waiver sought by Cingular.<sup>7</sup>

2. After careful consideration and as set forth below, we adopt the recommendation submitted by Working Group 9 regarding temporary relief to any and all entities that offer dual-band digital wireless handsets that employ a GSM air interface in the 850 MHz and 1900 MHz bands. Pursuant to our waiver authority, we will accept, until August 1, 2006, the hearing aid compatibility compliance rating for 1900 MHz operation as the overall compliance rating for dual-band GSM digital wireless handsets that operate in both the 850 MHz and 1900 MHz bands. Consistent with this action, we grant in part the Cingular Waiver Request to the extent described herein. Finally, we impose conditions on Cingular and all other entities that avail themselves of the temporary relief granted by this order. We believe that this temporary waiver provides adequate additional time for wireless carriers, service providers and manufacturers to ensure that GSM digital wireless handsets operating in the 850 MHz band are compatible with hearing aids. Our decision today is consistent with the Commission's goal of bringing the benefits of digital wireless telecommunications to the millions of Americans with hearing loss.

## II. BACKGROUND

3. In the 2003 *Hearing Aid Compatibility Order*,<sup>8</sup> the Commission took a number of actions to further the ability of persons with hearing disabilities to access digital wireless telecommunications. Among other actions, the Commission adopted the performance levels set forth in American National Standards Institute (ANSI) ANSI C63.19-2001, *American National Standard for Methods of Measurement of Compatibility between Wireless Communication Devices and Hearing Aids, ANSI C63.19-2001*, as the applicable technical standard for achieving hearing aid compatibility of digital

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Mobile USA). See Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, *Order to Stay*, 17 FCC Rcd 14841, 14843 ¶ 7 (2002). Since that time, the Commission consented to Cingular Wireless' acquisition of AT&T Wireless. See Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corp. for Consent to Transfer of Control of Licenses and Authorizations, WT Docket Nos. 04-70, 04-254, 04-323, *Memorandum Opinion and Order*, 19 FCC Rcd 21522 (2004). More recently, the Commission consented to the transfer of control of all licenses and authorizations held directly and indirectly by Nextel to Sprint Corporation. See Applications of Nextel Communications, Inc. and Sprint Corp. for Consent to Transfer Control of Licenses and Authorizations, WT Docket No. 05-63, *Memorandum Opinion and Order*, FCC 05-148 (rel. Aug. 8, 2005).

<sup>6</sup> See Cingular Waiver Request at 21-22. See also 47 C.F.R. § 20.19(c)(3)(i)(A); Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones, WT Docket No. 01-309, *Order on Reconsideration and Further Notice of Proposed Rulemaking*, 20 FCC Rcd 11194 (2005) (*Hearing Aid Compatibility Reconsideration Order*) at 11232 App. B.

<sup>7</sup> 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). We will address the T-Mobile request separately.

<sup>8</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*, WT Docket No. 01-309, 18 FCC Rcd 18047 (2003) (*Hearing Aid Compatibility Order*).

wireless handsets.<sup>9</sup> Specifically, the Commission ruled that adoption of ANSI C63.19 served the public interest because the manufacture of digital wireless handsets comporting with this technical standard would ensure that “a greater number of hearing aid and cochlear implant users will be able to find digital wireless phones that will work for them.”<sup>10</sup> The Commission also required handset manufacturers, carriers and service providers to collectively take steps to reduce the amount of interference emitted from digital wireless handsets, and established phased-in deployment benchmark dates for the offer of hearing aid-compatible digital wireless handsets.<sup>11</sup> In this regard, the Commission required each of these classes of entities that do not satisfy the *de minimis* exception<sup>12</sup> to begin to offer hearing aid-compatible digital wireless handsets by September 16, 2005.<sup>13</sup>

4. In 2005, the Commission took two additional steps to ensure that individuals with hearing disabilities would have access to the benefits of digital wireless telecommunications. First, in April 2005, the Commission’s Office of Engineering and Technology (OET) clarified that applicants for hearing aid compatibility certification could rely on either the 2001 or draft 2005 version of ANSI C63.19.<sup>14</sup> Specifically, OET clarified that the Commission would accept testing to the draft ANSI C63.19-2005 standard prior to ANSI’s final approval of the standard,<sup>15</sup> and stated that, “[a]llowing the use of the new measurement and rating procedures now should assist manufacturers and carriers in meeting the September 16, 2005, deadline for providing handset models that comply with the radio frequency interference requirements of § 20.19(b).”<sup>16</sup>

5. Second, in June 2005, the Commission modified the preliminary handset deployment benchmark specific to Tier I wireless carriers in order to provide greater regulatory certainty while simultaneously ensuring a broad array of choices for hearing impaired individuals who seek to purchase hearing aid-compatible wireless phones.<sup>17</sup> Specifically, the *Hearing Aid Compatibility Reconsideration*

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<sup>9</sup> See *id.* at 16776-79 ¶¶ 55-64. See also 47 C.F.R. § 20.19(b)(1)-(2).

<sup>10</sup> *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16777 ¶ 57.

<sup>11</sup> See *id.* at 16780 ¶ 65. See also 47 C.F.R. § 20.19(c).

<sup>12</sup> See 47 C.F.R. § 20.19(e)(1)-(2). The *de minimis* exception applies on a per air interface basis and provides that manufacturers or mobile service providers that offer two or fewer digital wireless handsets in the U.S. are exempt from the requirements of the hearing aid compatibility rules. For mobile service providers that obtain handsets only from manufacturers that offer two or fewer digital wireless handset models in the U.S., the service provider would likewise be exempt from the requirements. Manufacturers or mobile service providers that offer three digital wireless handset models must offer at least one compliant handset model. Mobile service providers that obtain handsets only from manufacturers that offer three digital wireless handset models in the U.S. are required to offer at least one compliant handset model.

<sup>13</sup> See 47 C.F.R. § 20.19(c).

<sup>14</sup> OET Clarifies Use of Revised Wireless Phone Hearing Aid Compatibility Standard Measurement Procedures and Rating Nomenclature, *Public Notice*, 20 FCC Rcd 8188 (OET 2005). We note that the new draft standard uses an “M” rating for RF interference immunity, rather than a “U.” For purposes of this Memorandum Opinion and Order, we regard the M and U rating nomenclature as synonymous.

<sup>15</sup> *Id.* at 8188.

<sup>16</sup> *Id.* at 8189.

<sup>17</sup> See *Hearing Aid Compatibility Reconsideration Order*, 18 FCC Rcd at 11208-09 ¶¶ 26-27.

*Order* established that by September 16, 2005, Tier I wireless carriers must offer four digital wireless handset models per air interface, or twenty-five percent of the total number of digital wireless handset models offered by the carrier nationwide, that meet a U3 rating.<sup>18</sup> The *Hearing Aid Compatibility Reconsideration Order*, however, did not modify the preliminary deployment benchmark obligations for handset manufacturers or Tier II or Tier III (*i.e.*, non-nationwide) wireless carriers. Handset manufacturers that do not satisfy the *de minimis* exception must offer to service providers at least two U3-rated handset models for each air interface offered by September 16, 2005.<sup>19</sup> Similarly, non-nationwide wireless carriers that do not satisfy the *de minimis* exception must include in their handset offerings at least two U3-rated handset models per air interface by September 16, 2005.<sup>20</sup>

6. Since release of the *Hearing Aid Reconsideration Order*, we have received the above-noted submissions from Working Group 9 and Cingular, respectively, pertaining to the hearing aid compatibility of dual-band GSM handsets. First, Working Group 9 has recommended that the Commission accept in the short-term the hearing aid compatibility rating of a dual-band handset employing the GSM air interface based on its operation in the 1900 MHz band only, rather than to rate the handset based on operation in both the 850 MHz and 1900 MHz bands.<sup>21</sup> In support, the group asserts that “there is no discernable difference in user experience between M1/M2-rated 850 MHz wireless devices and M3-rated 1900 MHz wireless devices[,]”<sup>22</sup> and adds that its recommendation “is supported by wireless carriers, manufacturers and hearing industry representatives.”<sup>23</sup> In the long-term, Working Group 9 intends to work within the standards setting process to update the C63.19 hearing aid compatibility technical standard.<sup>24</sup>

7. Second, Cingular has petitioned for waiver of the “requirement that it offer at least four handsets meeting a U3 or higher interference rating until such time as the C63.19 standard has been amended (or otherwise modified in accordance with standards body procedures) to reflect band differences between 1.9 GHz and 850 MHz.”<sup>25</sup> Cingular argues that compliance with the September 16, 2005, deployment benchmark is “technologically infeasible” as it pertains to dual-band GSM handsets.<sup>26</sup>

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<sup>18</sup> See *id.* at 11232 App. B. See also 47 C.F.R. § 20.19(b)(1), which provides that a wireless handset used for public mobile radio services is hearing aid-compatible if it meets, at a minimum, a U3 rating for radio frequency interference.

<sup>19</sup> See 47 C.F.R. § 20.19(c)(1)(i).

<sup>20</sup> See 47 C.F.R. § 20.19(c)(2)(i).

<sup>21</sup> Working Group 9 Recommendation at 3.

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

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at 3.

<sup>25</sup> Cingular Waiver Request at 29.

<sup>26</sup> *Id.* at 4-16. The ANSI C63.19 standard requires wireless phones using the GSM air interface to have lower emissions than wireless phones that use other air interfaces because GSM uses time division that switches at a rate that falls within the audio spectrum. Manufacturers participating in the ATIS Incubator have indicated that they are able to meet the stricter standard for GSM at 1900 MHz, but are unable to do so at 850 MHz without degrading the performance of the phone. The manufacturers contend that the emissions mitigation techniques, such as shielding, are not sufficiently effective at 850 MHz due in part to the longer wavelength. While the (continued....)

In support of its request, Cingular explains that it has “worked diligently to ensure that its vendors incorporate accessibility features into their handset products ...”<sup>27</sup> and will retain an active role in addressing the wireless industry’s compliance with the hearing aid compatibility rules.<sup>28</sup> Cingular also indicates that it is prepared to comply with a number of conditions in exchange for the relief it seeks.<sup>29</sup> The Hearing Industries Association (HIA), which represents the manufacturers of eighty-five percent of the hearing aids sold in the United States,<sup>30</sup> and Self Help for Hard of Hearing People (SHHH), a nationwide support network that represents people with hearing loss,<sup>31</sup> have filed comments discussing the challenges associated with hearing aid compatibility of dual-band GSM handsets and in support of temporary, conditional relief for Cingular.

### III. DISCUSSION

8. *Working Group 9 Recommendation.* For the reasons discussed below, we find that adoption of the recommendation of Working Group 9 is consistent with the Commission’s waiver standard<sup>32</sup> and serves the public interest. Accordingly, we will accept, until August 1, 2006, the hearing aid compatibility compliance rating for 1900 MHz operation as the overall compliance rating for dual-band GSM digital wireless handsets that operate in both the 850 MHz and 1900 MHz bands.

9. First, adoption of the working group’s recommendation does not frustrate the underlying purpose of the benchmark requirements for deployment of hearing aid-compatible digital wireless handsets. As noted earlier, the Commission established the deployment benchmarks in order to expedite the availability of compliant handsets and increase choices for consumers with hearing disabilities. Temporary acceptance of the hearing aid compatibility rating for 1900 MHz operation as the overall rating for dual-band GSM digital wireless handsets will increase users’ choices by ensuring the

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transmitter power could be reduced to achieve compliance, this would result in the phone not operating as reliably as a full power phone. Other measures, such as increasing the thickness of the phone to reduce emissions at the earpiece, would make the phone less convenient to carry and operate.

<sup>27</sup> *Id.* at 24.

<sup>28</sup> *See id.* at 24-26.

<sup>29</sup> *See id.* at 29-30.

<sup>30</sup> Comments of the Hearing Industries Association, WT Docket No. 01-309 (filed Aug. 11, 2005) (HIA Comments) at 1.

<sup>31</sup> Comments of Self Help for Hard of Hearing People (SHHH), WT Docket No. 01-309 (filed Aug. 18, 2005) (SHHH Comments) at 1 n.1.

<sup>32</sup> The Commission’s waiver rules require the proponent to show that: (i) the underlying purpose of the rule would not be served or would be frustrated by its application to the instant case, and grant of the waiver would be in the public interest; or (ii) in view of the unique or unusual factual circumstances of the specific situation, application of the rule would be inequitable, unduly burdensome or contrary to the public interest, or the entity requesting the waiver has no reasonable alternative. *See* 47 C.F.R. §§ 1.3, 1.925. *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); *see also* *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990) (a waiver of the Commission’s rules 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).

availability of dual-band GSM handsets. Our action avoids the unintended consequence of delaying introduction of dual-band digital wireless phones that otherwise could be used by consumers with and without hearing disabilities.

10. Similarly, in the absence of our action today, GSM manufacturers and carriers might elect to divert resources by seeking to implement potentially “undesirable fixes”<sup>33</sup> that could delay introduction of fully compliant dual-band digital wireless handsets. Working Group 9 suggests that this type of “fix” could include introduction of “HAC Mode” handsets, which would require the user to first find and then activate a separate operational mode that would reduce the interference potential of the handset by reducing its power, but with a consequent reduction in coverage.<sup>34</sup> SHHH has indicated that persons with hearing disabilities would not find such handsets acceptable because they would be difficult to use, could potentially have poorer service and coverage, and would revert to full power for 911 calls, increasing the chance of interference in emergencies.<sup>35</sup> By acting on the recommendation of Working Group 9, therefore, we allow manufacturers and carriers to focus on the critical goal of resolving the technical issues that impact GSM digital wireless handsets, and introducing, as quickly as possible, fully compliant dual-band handsets. As stated by HIA, “it is important that the process of resolving the GSM/850 issue be completed with reasonable dispatch[.]”<sup>36</sup>

11. Second, adoption of the Working Group 9 recommendation satisfies the public interest requirement in the Commission’s waiver standard. The broad composition of this group, and the corresponding support for its recommendation, weigh in favor of adopting the recommendation. In addition to wireless carriers (Cingular, T-Mobile and Sprint/Nextel) and handset manufacturers (Kyocera, LGE, Motorola, NEC America, Nokia, RIM, Samsung and Sony Ericsson), the group includes representatives from the hearing aid industry (HIA), the hearing disabled community (Gallaudet University – Technology Access Program and SHHH), as well as the Information Technology Technical Assistance and Training Center, which comprises representatives from the Georgia Institute of Technology tasked with developing information and educational materials on accessibility matters.<sup>37</sup> All of these entities support the recommendation put forth by the group.<sup>38</sup>

12. We also find that the efforts undertaken by Working Group 9 serve the public interest. The group has brought its unique expertise and resources to bear in the important effort to resolve the present challenge. Moreover, the group has expressly committed to continue its work on this critical project.<sup>39</sup> The fact that Working Group 9 has incorporated a short-term and long-term component into its recommendation,<sup>40</sup> and has pledged to further its efforts on this project, evinces its commitment to

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<sup>33</sup> Working Group 9 Recommendation at 19.

<sup>34</sup> *See id.*

<sup>35</sup> *See* SHHH Comments at 3.

<sup>36</sup> HIA Comments at 3.

<sup>37</sup> *See* Working Group 9 Recommendation at 2.

<sup>38</sup> *See id.*

<sup>39</sup> *See id.* at 14 (committing to undertake “follow-up field study”).

<sup>40</sup> *See id.* at 20.

resolving the current challenge within a limited period of time.

13. Moreover, adopting the Working Group 9 recommendation and establishing a limited period of relief addresses the concerns of HIA and SHHH. First, this approach ensures that no handset is completely exempted from hearing aid compatibility compliance.<sup>41</sup> In addition, we emphasize that the relief we grant by this order is “limited in time”<sup>42</sup> and “restricted,”<sup>43</sup> as these commenters have advocated. We agree with these commenters that manufacturers, carriers and service providers must adhere to the original intent of the Commission’s rules – to expeditiously introduce digital wireless handsets that are compatible with hearing aids – and continue to work collectively and cooperatively to resolve the current challenge.

14. In light of this analysis, we adopt the recommendation of Working Group 9. We will temporarily accept, until August 1, 2006, the hearing aid compatibility compliance rating for 1900 MHz operation as the overall compliance rating for dual-band GSM digital wireless handsets that operate in both the 850 MHz and 1900 MHz bands. Given its broad applicability, we clarify that this action applies to all handset manufacturers, carriers and service providers that offer dual-band GSM wireless handsets that operate in both the 850 MHz and 1900 MHz bands.

15. Cingular Waiver Request. Consistent with our adoption of the Working Group 9 recommendation, we also grant the Cingular Waiver Request in part, but deny the request to the extent that it seeks broader relief. As discussed below, analysis of the two filings before us in the context of the Commission’s waiver standard leads us to conclude that granting the temporary, narrow relief sought by Working Group 9 better serves the public interest than granting the broad relief sought by Cingular.

16. First, in adopting the Working Group 9 recommendation, we provide Cingular with a means to comply with the September 16, 2005, preliminary deployment benchmark obligation set forth in Section 20.19(c)(3)(i)(A) of the Commission’s rules without the need to *per se* exempt any particular dual-band GSM handset.<sup>44</sup> Our action facilitates compliance with the deployment benchmark obligations by other Tier I wireless carriers, including T-Mobile, as well as handset manufacturers and smaller, non-nationwide wireless carriers that offer dual-band GSM digital wireless handsets and must also meet the September 16, 2005, deadline.<sup>45</sup> Moreover, adoption of the Working Group 9 recommendation avoids the need for manufacturers to develop and design reduced power, “HAC Mode” phones, which, as noted earlier, would not satisfy consumers with hearing disabilities.<sup>46</sup>

17. On the other hand, we find that Cingular’s more open-ended request, if granted, would frustrate the underlying purpose of Section 20.19(c)(3)(i)(A) of the Commission’s rules. Whereas

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<sup>41</sup> See HIA Comments at 2; SHHH Comments at 2.

<sup>42</sup> HIA Comments at 3.

<sup>43</sup> SHHH Comments at 3.

<sup>44</sup> See *id.* at 2 (stating that SHHH members “do not support any handset being exempted from the rule[.]”).

<sup>45</sup> See 47 C.F.R. §§ 20.19(c)(1)-(2).

<sup>46</sup> See SHHH Comments at 3 (raising and dismissing several possibilities offered by Cingular, including hands-free devices, devices with specialized volume controls, and introduction of devices with a low power option).

Cingular has asked for relief “until such time as the C63.19 standard has been amended (or otherwise modified in accordance with standards body procedures),”<sup>47</sup> we decline to adopt an open-ended timetable that relies solely on action by standards setting bodies given the uncertainty associated with their deliberative procedures.<sup>48</sup> We expect wireless carriers, service providers and handset manufacturers to make available dual-band GSM digital wireless handsets with a U3 or higher rating in both the 850 MHz and 1900 MHz bands no later than August 1, 2006. While we appreciate Cingular’s pledge to continue to work to resolve the current technical challenge within the standards context, and we strongly encourage Cingular and all interested stakeholders to do so, we see no need to grant relief that is tied to this process.

18. It is also premature to declare that achieving hearing aid compatibility in GSM digital wireless handsets is “technologically infeasible.”<sup>49</sup> As noted by HIA, testing and analysis is ongoing.<sup>50</sup> In this regard, Cingular asserts that the Commission’s rules are premised on the incorrect assumption that the U3 rating is technologically feasible and a reliable indicator of usability for all air interface protocols.<sup>51</sup> These are the very arguments that the Commission previously considered and addressed in the context of its action to first adopt and subsequently affirm ANSI C63.19, while also allowing a means

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<sup>47</sup> Cingular Waiver Request at 29.

<sup>48</sup> See HIA Comments at 2-3 (“[w]hile there may be reason over the long term to adjust the C63.19 standard, as there is to adjust any standard over time as technology progresses, it is very important to keep the ball rolling... [a]ccordingly, any relief that the Commission sees fit to grant should be in the nature of a narrow rule waiver[.]”). See also SHHH Comments at 2 (“a fixed term waiver will place all affected parties (manufacturers, service providers, ATIS and ANSI) on notice of the Commission’s insistence that any changes that turn out to be necessary in the C63.19 standard be adopted promptly[.]”).

<sup>49</sup> See Cingular Waiver Request at 3-16. We also disagree with Cingular’s contention, set forth in a footnote, that Section 710(b)(3) of the Hearing Aid Compatibility Act, 47 U.S.C. § 610(b)(3), which allows the Commission a means to waive hearing aid compatibility requirements for new technologies or services, is applicable in the instant case. See Cingular Waiver Request at 16-17 n.50. On its face, this provision applies to “new telephones, or telephones associated with a new technology or service[.]” 47 U.S.C. § 610(b)(3), and Congress explained that this provision “applies to ‘new’ telephones, *i.e.*, those that employ a technology that has not previously been marketed, and telephones associated with a new technology or service.” S. Rep. No. 100-391 at 7 (1988). Yet, Cingular admits that “GSM technology in itself is not new[.]” Cingular Waiver Request at 17 n.50. Moreover, in describing the intent surrounding this provision, Congress stated, “[t]he Commission may not waive the compatibility requirements for any essential telephone.” H.R. Rep. No. 100-674 (1988) at 13. In this regard, the Commission and Congress have recognized that access to telecommunications is essential for participation in nearly all aspects of society. See *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16782 ¶ 72, citing Implementation of Sections 255 and 251(a)(2) of the Communications Act of 1934, As Enacted by the Telecommunications Act of 1996: Access to Telecommunications Service, Telecommunications Equipment and Customer Premise Equipment by Persons With Disabilities, WT Docket No. 96-198, *Report and Order*, 16 FCC Rcd 6417, 6420 (1999). Furthermore, in initially implementing the hearing aid compatibility rules for digital wireless carriers, the Commission sought to ensure that individuals with disabilities are not left behind as digital technology – including GSM – evolves to improve upon the delivery of essential telecommunications service. See *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16768-69 ¶ 36.

<sup>50</sup> See HIA Comments at 2-3.

<sup>51</sup> See Cingular Waiver Request at 5-11. Cingular asserts that the Commission “imposed the U3 obligation for all air interface protocols in spite of record evidence that meeting the obligation would be difficult.” *Id.* at 5. Cingular also argues that advances in hearing aid manufacturing “call into question whether the current standard is a meaningful indicator of usability.” *Id.* at 9.

to continuously review, revise and update the standard.<sup>52</sup> Indeed, given the late-breaking and evolving findings, we are encouraged that Cingular has undertaken recent testing to more fully examine and address the compliance challenges.<sup>53</sup> Given Cingular's efforts, the ongoing work of Working Group 9, and the rigorous analysis within the standards process, we are optimistic that the lingering technical challenges will be expeditiously resolved. Accordingly, we will accept the hearing aid compatibility compliance rating for 1900 MHz operation as the overall compliance rating for dual-band GSM digital wireless handsets that operate in both the 850 MHz and 1900 MHz bands, but only until August 1, 2006. We urge that all parties work to complete this work in time to achieve compliance in the 850 MHz band within this time frame and we plan to closely monitor the standards review process.

19. Having determined that the relief granted by this order should be temporary rather than open-ended, we now turn to consideration of the conditions offered by Cingular. Cingular offers that, in exchange for relief, it would: (1) by September 16, 2005, offer at least four handsets that meet a U3 rating at 1.9 GHz and a U1/U2 rating at 850 MHz; and at least one handset that meets a U3 rating at 850 MHz (when powered down), (2) make available current technical and anecdotal information for access by the public regarding the hearing aid compatibility of specific GSM digital wireless handsets, (3) by March 2006, report to the Commission the status of ongoing testing efforts, (4) continue to work with stakeholders – including disabilities groups – to resolve the technical challenges associated with dual-band GSM wireless handsets, and (5) promote accessories and other technologies that will facilitate the usability of GSM 850 MHz handsets with hearing aid devices.<sup>54</sup>

20. In its filing, HIA asserts that grant of a temporary waiver would be appropriate subject to the conditions proposed by Cingular.<sup>55</sup> In addition, HIA states that “Cingular’s commitment to report to the Commission at six-month intervals is laudable and should be adopted. However, the waiver should still be limited in time, perhaps to one year.”<sup>56</sup> Likewise, SHHH notes that Cingular played a leading role in the effort to achieve accessibility of wireless devices, and reports that its members would “support a waiver that is narrowly focused on 850 MHz and that is for a restricted period of time.”<sup>57</sup> In addition, SHHH indicates its support for Cingular’s offer to provide progress reports every six months.<sup>58</sup>

21. Based on the record before us, and particularly the submissions from HIA and SHHH, we are persuaded that the proposed conditions associated with this relief with some modifications would serve the public interest. While our action to adopt the recommendation of Working Group 9 moots the second prong of the first condition offered by Cingular, we have considered and will largely adopt the other proposed conditions offered by Cingular, as discussed immediately below.

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<sup>52</sup> See *Hearing Aid Compatibility Reconsideration Order*, 20 FCC Rcd at 11200-03 ¶¶ 9-16.

<sup>53</sup> See Cingular Waiver Request at 13-16 (citing Cingular’s recent testing and concluding that the articulation weighting factor of C63.19 must be revisited).

<sup>54</sup> See *id.* at 30.

<sup>55</sup> See HIA Comments at 3.

<sup>56</sup> *Id.*

<sup>57</sup> SHHH Comments at 2.

<sup>58</sup> See *id.*

22. *Conditions.* As a preliminary matter, we remind manufacturers of their obligation to certify compliance with the test requirements set forth in Section 2.1033 of the Commission's rules.<sup>59</sup> Nothing in this order preempts or otherwise modifies that longstanding requirement. In addition, all entities, whether or not they opt into the temporary relief afforded by this order, remain obligated to comply with all of our hearing aid compatibility rules, including, for instance, providing live, in-store consumer testing<sup>60</sup> and filing hearing aid compatibility compliance reports on the dates previously announced by the Wireless Telecommunications Bureau.<sup>61</sup>

23. As detailed below, we impose reporting and outreach obligations on Cingular and any other entity that avails itself of the temporary relief provided by this order.<sup>62</sup> At the outset, we note that these conditions are *in addition to* the hearing aid compatibility rules and procedures set forth in Section 20.19 of the Commission's rules and promulgated pursuant to the *Hearing Aid Compatibility Order* and the more recent *Hearing Aid Compatibility Reconsideration Order*. None of these conditions should be construed as preempting or otherwise excusing compliance with any hearing aid compatibility rule or policy. Furthermore, we share the concern expressed by SHHH that efforts to resolve the challenges associated with GSM digital wireless handsets could divert manufacturers from meeting the September 2006 hearing aid compatibility milestone for telecoil coupling.<sup>63</sup> We strongly caution all digital wireless handset manufacturers, carriers and service providers to implement all necessary steps to ensure compliance with this milestone.

- Reporting

1. Cingular and any other entity that avails itself of the relief afforded by this order must so notify the Commission in its upcoming November 17, 2005, hearing aid compatibility compliance report. In addition to providing notice, such entity must include detailed information in its report that describes and discusses with specificity the status of its efforts to offer dual-band GSM handsets that achieve a rating of U3 or higher in the 850 MHz band in addition to the 1900 MHz band. We note that this condition is consistent with the requirement that compliance reports provide information regarding "any activities related to ANSI C63.19 or other standards work intended to promote compliance with" the Commission's rules and policies.<sup>64</sup>
2. Cingular and any other entity that avails itself of the relief afforded by this order and that

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<sup>59</sup> See 47 C.F.R. §§ 20.19(b)(3); 47 C.F.R. § 2.1033.

<sup>60</sup> See 47 C.F.R. §§ 20.19(c)(2)-(3).

<sup>61</sup> See Wireless Telecommunications Bureau Announces Hearing Aid Compatibility Reporting Dates for Wireless Carriers and Manufacturers, WT Docket No. 01-309, *Public Notice*, 19 FCC Rcd 4097 (WTB 2004).

<sup>62</sup> Specifically, reporting obligation three applies only to Cingular. See *supra* ¶ 19 (setting forth Cingular's offer to report to the Commission the status of ongoing testing efforts by March 2006). Reporting obligations one and two apply to Cingular and any other entity that avails itself of the relief afforded by this order. Both consumer outreach obligations apply to Cingular and any other entity that avails itself of the relief afforded by this order.

<sup>63</sup> See SHHH Comments at 2-3. See also 47 C.F.R. § 20.19(b)(2).

<sup>64</sup> *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16787 ¶ 89. See OMB Control No. 3060-0999.

so notifies the Commission on or before November 17, 2005, (as referenced in condition 1, above), must include in its May 17, 2006, hearing aid compatibility compliance report detailed information that describes and discusses with specificity the status of its efforts to offer dual-band GSM handsets that achieve a rating of U3 or higher in the 850 MHz band in addition to the 1900 MHz band.

3. Cingular must file an additional report with the Commission no later than February 1, 2006. This report must include detailed information that describes and discusses with specificity the status of its efforts to offer dual-band GSM handsets that achieve a rating of U3 or higher in the 850 MHz band in addition to the 1900 MHz band.<sup>65</sup>

- Consumer Outreach

1. Cingular and any other entity that avails itself of the relief afforded by this order must ensure a thirty-day trial period or otherwise adopt an acceptable, flexible return policy for consumers seeking to obtain hearing aid-compatible GSM digital wireless handsets. In addition, such entity must include detailed information in its November 17, 2005, and May 17, 2006, hearing aid compatibility compliance reports that describes and discusses with specificity efforts to ensure a thirty-day trial period or otherwise flexible return policy for consumers seeking to obtain hearing aid-compatible GSM digital wireless handsets. We note that this condition makes mandatory one of the outreach efforts described by the Commission in the *Hearing Aid Compatibility Order*<sup>66</sup> and further discussed in the *Hearing Aid Compatibility Reconsideration Order*.<sup>67</sup> Also, this condition is consistent with the requirement that compliance reports provide information regarding “outreach efforts.”<sup>68</sup>
2. Cingular and any other entity that avails itself of the relief afforded by this order must take reasonable efforts to make available current technical and anecdotal information for access by the public regarding the hearing aid compatibility of specific GSM digital wireless handsets. In addition, such entity must include detailed information in its November 17, 2005, and May 17, 2006, hearing aid compatibility compliance reports that describes and discusses with specificity efforts to comply with this condition. We note that this condition is consistent with the outreach efforts described by the Commission in the *Hearing Aid Compatibility Order*,<sup>69</sup> as well as the requirement that compliance reports provide information regarding “outreach efforts.”<sup>70</sup>

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<sup>65</sup> See *supra* n.62.

<sup>66</sup> See *id.* at 16788 ¶ 93.

<sup>67</sup> See *Hearing Aid Compatibility Reconsideration Order*, 20 FCC Rcd at 11213 ¶ 40.

<sup>68</sup> *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16787 ¶ 89.

<sup>69</sup> See *id.* at 16787-88 ¶ 92.

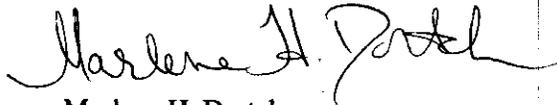
<sup>70</sup> *Id.* at 16787 ¶ 89.

**IV. ORDERING CLAUSES**

24. Accordingly, pursuant to Sections 1 and 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), and Section 1.925 of the Commission's rules, 47 C.F.R. § 1.925, IT IS ORDERED that the waiver relief requested in the Letter from Thomas Goode, counsel to the Alliance for Telecommunications Industry Solutions, and in the Presentation of the HAC Incubator Working Group 9, filed on August 1, 2005, IS GRANTED to the extent set forth herein.

25. IT IS FURTHER ORDERED that the Petition for Waiver of Section 20.19(c)(3)(i)(A) of the Commission's Rules filed by Cingular Wireless LLC on August 5, 2005, IS GRANTED IN PART to the extent set forth herein.

FEDERAL COMMUNICATIONS COMMISSION



Marlene H. Dortch  
Secretary

**STATEMENT OF  
COMMISSIONER MICHAEL J. COPPS**

*RE: Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones; Cingular Wireless LLC Petition for Waiver of Section 20.19(c)(3)(i)(A) of the Commission's Rules, Memorandum Opinion and Order (WT Docket No. 01-309).*

Today's Order grants Cingular Wireless a limited waiver of our hearing aid compatibility rules as they apply to wireless phones. It is with some hesitation that I support this action. I have said before that strong and clear rules are critical to accomplishing the statutory goal of ensuring that our Nation's telecommunication networks are accessible to Americans with hearing loss. Nonetheless I understand that technological difficulties have emerged for wireless phones operating in the 850 MHz band. Advocates for the hearing loss community have expressed support for Cingular's request—and I am satisfied that Cingular and other participants in the Hearing Aid Compatibility Incubator Program have been working in good faith to solve this problem quickly.

I support today's limited waiver because it moves us closer to the goal of ensuring that Americans with hearing disabilities have access to digital wireless services. In granting this limited waiver, we have insisted on regular updates to the FCC on the progress made to develop a solution for wireless phones that operate in the 850 MHz band. I will monitor that progress closely—and expect complete resolution by the firm deadline we have set of August 1, 2006. By that time, nationwide carriers that operate in the 850 MHz band—either on their own networks or through roaming agreements—should have hearing aid compatible phones available to consumers that work in that band.

We have made the relief granted today available to other wireless carriers, service providers and handset manufacturers. T-Mobile has already requested similar action, and may avail itself of today's limited waiver. I am encouraged that the wireless industry has been engaging in a dialogue with advocates for the millions of Americans with hearing disabilities so that solutions can be found for hearing aid compatibility.