

**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)	
)	
Inland Cellular Telephone Company)	
Petition for Limited Waiver of Section)	
20.19(d)(2) of the Commission's Rules)	

To: The Commission

**INLAND CELLULAR TELEPHONE COMPANY
PETITION FOR LIMITED WAIVER OF SECTION 20.19(d)(2)
OF THE COMMISSION'S RULES**

Pursuant to Sections 1.3 and 1.925 of the Commission's rules, Inland Cellular Telephone Company ("Inland"), by counsel, hereby requests a limited waiver of Section 20.19(d)(2) of the Commission's rules.¹ Specifically, Inland seeks a limited waiver of the Commission's September 18, 2006 deadline for inductive coupling ("T-coil") requirements for hearing aid-compatible ("HAC") phones.² As a Tier III carrier, Inland accounts for such a miniscule number of phone set sales that Inland must deal with third party equipment vendors rather than handset manufacturers. The result is that Inland will have to wait until the scant supply of compliant handsets increases to the point that it will trickle down to Tier III carriers. Based on information Inland has received, compliant models are not expected to become available to Tier III carriers

¹ 47 C.F.R. §§ 1.3, 1.925, 20.19(d)(2).

² Section 20.19(d)(2) requires that public mobile service providers offer at least two handset models per air interface by September 18, 2006 that meet the FCC's T-coil HAC standard, *i.e.*, T3 or higher, and make available in each retail store owned and operated by the provider all of these handset models for consumers to test in the store. *See* 47 C.F.R. § 20.19(d)(2).

until toward the end of the year. Thus, Inland will be unable to offer two compliant handset models by the September 18th deadline. Inland is diligently attempting to obtain compliant handset models, but has been unsuccessful and therefore seeks a limited waiver of Section 20.19(d)(2) until December 31, 2006 or until such time as it is able to offer a two compliant handset models, whichever is earlier. For the reasons set forth below, grant of a waiver is consistent with the public interest, convenience and necessity.

BACKGROUND

Inland Cellular Telephone Company (“Inland”) is the general partner of Eastern Sub – RSA Limited Partnership and Washington RSA No. 8 Limited Partnership (collectively “the Partnerships”). The Partnerships are small “Tier III” carriers. Inland has explained in its previously filed semi-annual HAC status reports, purchases its CDMA handsets from third party distributors and has limited ability to influence product development or selection. Inland must therefore rely on the range of available products which are often models that were “commercially available” six months ago. Inland is currently in compliance with its existing M-rating and other HAC obligations.

DISCUSSION

The Commission may waive any of its rules for good cause shown, and will grant a request for waiver if the underlying purpose of the rule would not be served or would be frustrated by application to the instant case, and that grant would be in the public interest, or, in view of unique or unusual factual circumstances, application of the rule would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable

alternative.³ As explained below, because Inland is dependent on the availability of compliant handsets from its vendors, and the limited supply of such handsets, it is unable to timely offer any compliant models at this time. As such, Inland has no reasonable alternative to waiver and the limited relief requested herein is warranted under the Commission's waiver standards.

As the Commission is aware, wireless carriers are largely dependent on the availability of equipment from manufacturers with respect to equipment-related deadlines, and HAC compliance is no exception.⁴ The Commission has previously recognized that these problems are particularly acute for Tier III carriers.⁵ HAC technology has proven technically complex for vendors and, as the Commission is aware, handset manufacturers have only recently been able to obtain the necessary certifications to comply with the T-coil requirement. Compliant products are therefore only beginning to be released into the retail distribution chain. Further, given the realities of economies of scale, small Tier III carriers like Inland generally do not have a direct relationship with the manufacturers, but instead purchase handsets from third party distributors. Further, large carriers are typically given priority by the handset manufacturers as the handsets are made available. Inland simply does not have compliant handset models available to it at this time.

³ See 47 C.F.R. §§ 1.3, 1.925(b)(3); *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).

⁴ See *In the Matter of Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones, T-Mobile USA, Inc. Petition for Waiver of Section 20.19(c)(3) of the Commission's Rules*, Memorandum Opinion and Order, 20 FCC Rcd. 15147, ¶ 7 (2005) (waiver warranted in case where carrier's "handset vendor informed [it] that the given handsets failed to achieve certification of compliance with the required U3 rating"); *see also Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems: Phase II Compliance Deadlines for Non-Nationwide CMRS Carriers*, Order to Stay, 17 FCC Rcd. 14841, ¶¶ 11-13, 17 (2002) ("*Non-Nationwide Carriers' E911 Stay Order*").

⁵ See *Non-Nationwide Carriers' E911 Stay Order* at ¶¶ 11-13.

Finally, strict enforcement would effectively require Inland to limit its total handset offerings to two,⁶ thus limiting the availability of innovative handsets to Inland customers. For this reason as well, waiver is consistent with the public interest.⁷

Accordingly, strict enforcement of the T-coil deadline against Inland would be inequitable and unduly burdensome, especially given that Inland has no reasonable alternative to achieve compliance due to the delays of the manufacturers. Inland seeks limited relief, as it is cautiously optimistic that additional models will be more widely available to carriers before year-end, although if necessary Inland will revisit the matter at that time.⁸

⁶ See 47 C.F.R. § 20.19(e) (*de minimis* exemption).

⁷ 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, 20 FCC Rcd. 15108, ¶ 9 (“*Cingular Waiver Order*”) (grant of waiver “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”).

⁸ The relief initially requested here is just over one calendar quarter – substantially less than the duration of the relief afforded in the *Cingular Waiver Order*. Indeed, the company hopes to obtain access to compliant handsets in advance of the December 31, 2006 date.

CONCLUSION

For the reasons stated above, Inland seeks a limited waiver of Section 20.19(d)(2) until December 31, 2006 or until such time as it is able to offer two compliant handset models, whichever is earlier. Grant of the instant waiver request is consistent with the public interest, convenience and necessity.

Respectfully submitted,

INLAND CELLULAR TELEPHONE COMPANY

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