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

MAR 27 2008

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FEDERAL COMMUNICATIONS COMMISSION

In the Matter of)
)
Section 68.4(a) of the Commission's Rules)
Governing Hearing Aid-Compatible Telephones)
)
Petitions of Alaska DigiTel, LLC, Edge Wireless)
Licenses, LLC, and NE Colorado Cellular, Inc. for)
Waiver of Section 20.19 of the Commission's)
Rules)

WT Docket No. 01-309

MEMORANDUM OPINION AND ORDER

Adopted: March 20, 2008

Released: March 20, 2008

By the Chief, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. In this Memorandum Opinion and Order, we address three waiver petitions filed by Tier III carriers¹ in January and February, 2008, that request extensions of the September 18, 2006 deadline to provide handsets that meet the Commission's hearing aid compatibility standard for inductive coupling.² Specifically, Alaska DigiTel, LLC (Alaska DigiTel), Edge Wireless Licenses, LLC (Edge), and NE Colorado Cellular, Inc. dba Viaero Wireless (Viaero) request waiver of the handset deployment requirement set forth in Section 20.19(d)(2) of the Commission's rules.³ Section 20.19(d)(2) provides that, by September 18, 2006, each mobile service provider subject to that provision must offer at least two wireless telephone handset models per digital air interface⁴ that are certified as meeting, at a minimum,

¹ Tier III carriers are non-nationwide wireless 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 CMRS Carriers, *Order to Stay*, 17 FCC Rcd 14841, 14847 ¶¶ 22-24 (2002).

² Alaska DigiTel, LLC, Petition for Waiver of Section 20.19(d)(2) of the Rules (filed January 15, 2008) (Alaska DigiTel Petition); Edge Wireless Licenses, LLC, Petition for Waiver of Section 20.19(d)(2) of the Rules (filed January 17, 2008) (Edge Petition); NE Colorado Cellular, Inc. dba Viaero Wireless, Petition for Waiver of Section 20.19(d)(2) of the Rules (filed February 12, 2008) (Viaero Petition).

³ 47 C.F.R. § 20.19(d)(2). We note that on February 28, 2008, the Commission released an order making several revisions to Section 20.19 going forward, including new inductive coupling-capable handset deployment requirements under Section 20.19(d)(2). See Amendment of the Commission's Rules Governing Hearing Aid-Compatible Mobile Handsets, *First Report and Order*, WT Docket No. 07-250, FCC 08-68 (released February 28, 2008).

⁴ The term "air interface" refers to the technical protocol that ensures compatibility between mobile radio service equipment, such as handsets, and the service provider's base stations. Currently, the leading air interfaces include Code Division Multiple Access (CDMA), Global System for Mobile Communications (GSM), Integrated Digital Enhanced Network (iDEN), and Time Division Multiple Access (TDMA).

the “U3T” or “T3” rating for inductive coupling under the American National Standards Institute (ANSI) C63.19-2001, ANSI C63.19-2005, or ANSI C63.19-2006 standard.⁵

2. After careful consideration of the record before us, and for the reasons set forth below, we deny the relief requested by the three petitioners. Consistent with the Commission’s recent decision in its *Inductive Coupling Capability Waivers Order*, which addressed other petitions for waiver of the same requirement,⁶ we conclude that granting waivers to these service providers would be inconsistent with the Commission’s goal of ensuring the expeditious introduction of hearing aid-compatible digital wireless handsets.⁷

II. BACKGROUND

3. 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.⁸ Among other actions, the Commission established technical standards that digital wireless handsets must meet to be considered hearing aid-compatible, including a standard for radio frequency interference (the “U3” or “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” or “T3” rating) for handset production of an audio signal-based magnetic field to enable inductive coupling with hearing aids operating in telecoil mode.⁹ The Commission further established, for each standard, deadlines by which service providers and

⁵ Specifically, Section 20.19(d)(2) provides that each provider of public mobile service must include in its handset offerings at least two handset models for each air interface offered that comply with Section 20.19(b)(2) by September 18, 2006. 47 C.F.R. § 20.19(d)(2). Section 20.19(b)(2) provides that a wireless handset is deemed hearing aid-compatible for inductive coupling if, at minimum, it receives a U3T rating (the equivalent of a T3 rating under current terminology) “as set forth in the standard document ANSI C63.19-2001[,] ‘American National Standard for Methods of Measurement of Compatibility between Wireless Communications Devices and Hearing Aids.’” 47 C.F.R. § 20.19(b)(2). On April 25, 2005, the Commission’s Office of Engineering and Technology announced that it would also certify handsets as hearing aid-compatible based on the revised version of the standard, ANSI C63.19-2005. *See* OET Clarifies Use of Revised Wireless Phone Hearing Aid Compatibility Standard Measurement Procedures and Rating Nomenclature, *Public Notice*, 20 FCC Rcd 8188 (OET 2005). On June 6, 2006, the Commission’s Wireless Telecommunications Bureau and Office of Engineering and Technology announced that the Commission would also certify handsets as hearing aid-compatible based on the revised version of the standard, ANSI C63.19-2006. Thus, applicants for certification may rely on either the 2001 version, the 2005 version, or the 2006 version of the ANSI C63.19 standard. *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).

⁶ 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, *Memorandum Opinion and Order*, FCC 08-67 (released February 27, 2008) (*Inductive Coupling Capability Waivers Order*).

⁷ *See* 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*, WT Docket No. 01-309, 20 FCC Rcd 15147, 15151 ¶ 8 (2005).

⁸ 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*).

⁹ The *Hearing Aid Compatibility Order* described the acoustic coupling and telecoil modes as follows:

In acoustic coupling mode, the microphone picks up surrounding sounds, desired and undesired, and converts them into electrical signals. The electrical signals are amplified as needed and then converted (continued....)

manufacturers were required to offer specified numbers or percentages of digital handsets per air interface compliant with the relevant standard if they did not come under the *de minimis* exception.¹⁰ Manufacturers were required to offer to service providers, and service providers were required to make available in each retail store that they own or operate, at least two handsets that met, at a minimum, the U3T or T3 rating for inductive coupling by September 18, 2006.¹¹ In connection with the offer of hearing aid-compatible handset models, the Commission also required service providers to label the handsets with the appropriate technical rating, and to explain the technical rating system in the owner's manual or as part of the packaging material for the handset.¹²

4. On February 27, 2008, the Commission released the *Inductive Coupling Capability Waivers Order*, which addressed 46 waiver petitions requesting relief from the September 18, 2006 deadline to provide at least two handset models with inductive coupling capability for each air interface being offered. In the *Inductive Coupling Capability Waivers Order*, the Commission granted waiver requests to those petitioners that complied by January 1, 2007, and provided adequate justification for their inability to comply with the inductive coupling requirement by the deadline in the Commission's rules.¹³ The Commission denied waiver requests to the petitioners that complied at some time after January 1, 2007.¹⁴

5. Waiver Standard. 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 (Continued from previous page)

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.

Hearing Aid Compatibility Order, 18 FCC Rcd at 16763 ¶ 22.

¹⁰ See *Hearing Aid Compatibility Order*, 18 FCC Rcd 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 the 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).

¹¹ 47 C.F.R. § 20.19(d). The 2001 version of ANSI Standard C63.19, which the Commission adopted in the *Hearing Aid Compatibility Order*, used a "U" nomenclature for RF interference reduction and a "UT" nomenclature for inductive coupling. The 2006 version of this standard substituted the terms "M" and "T," respectively. In obtaining certification, manufacturers are 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).

¹² 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.

¹³ See, e.g., *Inductive Coupling Capability Waivers Order* at ¶¶ 11-17. In reaching this decision, the Commission noted that it had issued inductive coupling compliance certifications covering a total of 20 CDMA-based handset models and 13 GSM-based handset models prior to the September 18, 2006 compliance deadline. *Id.* at ¶ 8.

¹⁴ See, e.g., *id.* at ¶¶ 18-22.

or would be frustrated by application to 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.¹⁵ In considering the instant 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.¹⁶ 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.”¹⁷ If our hard look at a waiver request reveals only inadequate, conflicting, and inconsistent information, then our inquiry need go no further because the petitioner has failed in its obligation to plead with particularity the facts and circumstances warranting its requested relief.¹⁸

III. DISCUSSION

6. The three petitions being considered in this Memorandum Opinion and Order contain presentations and arguments similar to those already considered by the Commission in its disposition of the 46 waiver petitions in the *Inductive Coupling Capability Waivers Order*. We address each of these petitions below, and deny each request consistent with the reasoning set forth in the Commission’s *Inductive Coupling Capability Waivers Order*.

A. Alaska DigiTel, LLC (Alaska DigiTel)

7. **Background.** Alaska DigiTel, a small Tier III CDMA carrier serving rural parts of Alaska, filed a petition for waiver of Section 20.19(d)(2) of the Commission’s rules on January 15, 2008, requesting a waiver *nunc pro tunc*, through January 31, 2007, of the September 18, 2006 deadline for inductive coupling handset capability.¹⁹ Alaska DigiTel claims that, as a small service provider, it was unable to offer the required two handset models approved for inductive coupling capability by the September 18, 2006 deadline because of the limited supply of such handsets compatible with its CDMA network.²⁰ Alaska DigiTel offered its first handset approved for inductive coupling capability, the Motorola model V3c handset (FCC ID IHDT56FT1), prior to the September 18, 2006 deadline.²¹ Alaska DigiTel offered its second handset approved for inductive coupling capability, the Kyocera model K132 handset (FCC ID OVFKWC-K132) before the end of January, 2007. Specifically, Alaska DigiTel indicates that it ordered this handset “as soon as practically possible,”²² and that it came into compliance

¹⁵ 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.

¹⁶ 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).

¹⁷ *Rio Grande Family Radio Fellowship, Inc. v. FCC*, 406 F.2d 664 (D.C. Cir. 1968).

¹⁸ *Inductive Coupling Capability Waivers Order* at ¶ 7.

¹⁹ Alaska DigiTel Petition at 1.

²⁰ *Id.* at 3.

²¹ *Id.* at 4.

²² *Id.*

by January 31, 2007.²³

8. Discussion. We conclude that Alaska DigiTel did not meet the requisite conditions to justify our granting a waiver pursuant to the Section 1.925(b)(3) standard. Although Alaska DigiTel came into compliance by January 31, 2007, it fails to provide evidence in its petition that it exercised sufficient diligence in seeking a second inductive coupling-capable handset model within a reasonable period of time after the September 18, 2006 compliance deadline. In particular, this petitioner does not present any unique facts or circumstances to clearly distinguish its situation from the many other Tier III CDMA carriers that previously requested waiver of Section 20.19(d)(2) and were able to comply with the inductive coupling requirement prior to January 1, 2007.²⁴ Accordingly, consistent with the Commission's treatment of these other similarly-situated carriers, we deny the waiver petition of Alaska DigiTel, and refer its apparent violation of the inductive coupling requirement to the Commission's Enforcement Bureau.²⁵

B. Edge Wireless Licenses, LLC (Edge)

9. Background. Edge, a small Tier III GSM carrier serving rural parts of Oregon, Idaho, Wyoming, and California, filed a petition for waiver of Section 20.19(d)(2) of the Commission's rules on January 17, 2008, requesting a waiver *nunc pro tunc* of the September 18, 2006 deadline through January 19, 2007.²⁶ Edge offered its first handset approved for inductive coupling capability, the Motorola model V3i handset (FCC ID IHDT56GW1), on October 24, 2006.²⁷ Edge ordered a second compliant handset model, the Nokia model 6126h, on September 4, 2006, and states that it expected delivery in October.²⁸ In its petition, Edge indicates that delivery of the Nokia handsets did not occur until mid-January, 2007, after several delays that Edge fails to explain.²⁹

10. Discussion. We conclude that Edge does not meet the requisite conditions to justify our granting a waiver pursuant to the Section 1.925(b)(3) standard. Although Edge came into compliance on January 19, 2007, it fails to provide evidence in its petition that it exercised sufficient diligence in seeking a second inductive coupling-capable handset model within a reasonable period of time after the September 18, 2006 compliance deadline. Petitioner does not present any unique facts or circumstances to clearly distinguish its situation from other Tier III GSM carriers that were able to comply by January 1, 2007. In particular, we note that seven Tier III petitioners (representing eight GSM service providers) considered in the Commission's *Inductive Coupling Capability Waivers Order* were able to obtain the Nokia model 6126h handset by January 1, 2007.³⁰ Accordingly, consistent with the Commission's

²³ *Id.* at 1.

²⁴ See *Inductive Coupling Capability Waivers Order* at ¶¶ 11-17 (Commission granted 13 waiver requests filed by 21 Tier III CDMA carriers that complied by January 1, 2007).

²⁵ See *Inductive Coupling Capability Waiver Orders* at ¶¶ 18-22 (Commission denied waivers to, among others, three Tier III CDMA carriers that came into compliance, respectively, on January 15, 2007, January 23, 2007, and January 29, 2007).

²⁶ Edge Petition at 1.

²⁷ *Id.* at 5.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Inductive Coupling Capability Waivers Order* at ¶¶ 11-18 and Appendix C.

treatment of other similarly-situated GSM carriers, we deny the waiver petition of Edge, and refer its apparent violation to the Commission's Enforcement Bureau.³¹

C. NE Colorado Cellular, Inc. dba Viaero Wireless (Viaero)

11. Background. Viaero, a small Tier III GSM carrier serving rural parts of Colorado and Nebraska, filed a petition for waiver of Section 20.19(d)(2) of the Commission's rules on February 12, 2008, requesting a waiver *nunc pro tunc* of the September 18, 2006 deadline through March 12, 2007.³² Viaero offered its first handset approved for inductive coupling capability, the Motorola model V3i handset (FCC ID IHDT56GW1), on October 18, 2006.³³ Viaero came into compliance on March 12, 2007, when it started offering a second compliant handset model, the Nokia model 6126h.³⁴ In its petition, Viaero merely indicates that delivery of the Nokia handsets was delayed, without further explanation.³⁵

12. Discussion. We conclude that Viaero does not meet the requisite conditions to justify our granting a waiver pursuant to the Section 1.925(b)(3) standard. Although Viaero came into compliance on March 12, 2007, it fails to provide evidence in its petition that it exercised sufficient diligence in seeking a second inductive coupling-compliant handset model within a reasonable period of time after the September 18, 2006 compliance deadline. As noted above, seven petitioners (representing eight GSM carriers) considered in the *Inductive Coupling Capability Waivers Order* were able to obtain the Nokia model 6126h handset by January 1, 2007.³⁶ Viaero does not present any unique facts or circumstances to clearly distinguish its situation from other Tier III GSM carriers that were able to comply by January 1, 2007. Accordingly, consistent with the Commission's treatment of other similarly-situated GSM carriers, we deny the waiver petition of Viaero, and refer its apparent violation to the Commission's Enforcement Bureau.³⁷

IV. CONCLUSION

13. In this Memorandum Opinion and Order, we deny the petitions for waiver of Section 20.19(d)(2) of the Commission's rules filed by Alaska DigiTel, Edge, and Viaero. Although each service provider is now in compliance with the hearing aid compatibility rules for inductive coupling, the measures taken by these providers, as described in their petitions for waiver, do not satisfy the Commission's criteria for waiver of the applicable hearing aid compatibility requirement. Accordingly, we find that these service providers' respective failures to meet this important requirement should be addressed through the enforcement process.

³¹ See *id.* at ¶¶ 18-22 (denying waivers to, among others, three Tier III GSM carriers that complied after January 1, 2007).

³² Viaero Petition at 1.

³³ *Id.* at 4.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Inductive Coupling Capability Waivers Order* at ¶¶ 11-18 and Appendix C.

³⁷ See *id.* at ¶¶ 18-22 (denying waivers to, among others, three Tier III GSM carriers that complied after January 1, 2007).

V. ORDERING CLAUSES

14. Pursuant to Sections 1 and 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), and pursuant to Sections 0.131, 0.331, and 1.925 of the Commission's rules, 47 C.F.R. §§ 0.131, 0.331, 1.925, this Memorandum Opinion and Order IS ADOPTED.

15. IT IS FURTHER ORDERED, pursuant to Sections 1 and 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), and Sections 0.131, 0.331, and 1.925 of the Commission's rules, 47 C.F.R. §§ 0.131, 0.331, 1.925, that the Petition for Waiver, filed January 15, 2008, by Alaska DigiTel, LLC, IS DENIED.

16. IT IS FURTHER ORDERED, pursuant to Sections 1 and 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), and Sections 0.131, 0.331, and 1.925 of the Commission's rules, 47 C.F.R. §§ 0.131, 0.331, 1.925, that the Petition for Waiver, filed January 17, 2008, by Edge Wireless Licenses, LLC, IS DENIED.

17. IT IS FURTHER ORDERED, pursuant to Sections 1 and 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), and Sections 0.131, 0.331, and 1.925 of the Commission's rules, 47 C.F.R. §§ 0.131, 0.331, 1.925, that the Petition for Waiver, filed February 12, 2008, by NE Colorado Cellular, Inc. dba Viaero Wireless, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION



Fred B. Campbell, Jr.
Chief, Wireless Telecommunications Bureau