

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Wireless Telecommunications Bureau Seeks)	WT Docket No. 01-309
Comment on Petitions for Reconsideration)	DA 08-1087
Filed in Hearing Aid Compatibility Docket)	

**COMMENTS OF THE
NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION**

The National Telecommunications Cooperative Association (NTCA)¹ hereby submits these comments in support of seven petitions for reconsideration of the Commission’s *Memorandum Opinion and Order* denying requests to extend the September 18, 2006 deadline to provide handsets that meet the Commission’s hearing aid compatibility (HAC) standard for inductive coupling.² NTCA agrees with petitioners that the Commission’s rulings in the *Memorandum Opinion and Order* were arbitrary, capricious, an abuse of discretion and not reasoned decision making.

The vast majority of companies that sought waivers became compliant with the Commission’s HAC rules between November 2006 and March 2007. Though all companies that sought waivers were unable to obtain compliant handsets prior to the Commission imposed deadline, the Commission granted waivers to companies that came

¹ NTCA is the premier industry association representing rural telecommunications providers. Established in 1954 by eight rural telephone companies, today NTCA represents 584 rural rate-of-return regulated telecommunications providers. All of NTCA’s members are full service rural local exchange carriers (RLECs) and many of its members provide wireless, cable, Internet, satellite and long distance services to their communities. Each NTCA CMRS provider is a “Tier III” wireless provider, as that term is defined by the Commission. Several of the Petitioners in this proceeding are NTCA member companies.

² 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 01-309, *Memorandum Opinion and Order*, 23 FCC Rcd 3352 (2008).

into compliance on or prior to January 1, 2007 and denied waivers to those that came into compliance after January 1, 2007. The only factor considered was the date. A company that came into compliance on January 1, 2007 was granted a waiver. A company that came into compliance on January 15, 2007 was denied a waiver.

The Commission indicated that waiver requests of the HAC requirements would be evaluated under the general waiver standard set forth in Section 1.3 and 1.925 of the Commission's rules and the standards set forth in *WAIT Radio v. FCC*³ and *Northeast Cellular Telephone Company v. FCC*.⁴

Section 1.3 of the Rules states that “[a]ny provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefore is shown.” Section 1.925(b)(3) of the Rules states that the “Commission may grant a waiver request if it is shown that: (i) [t]he underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or (ii) [i]n view of unique or unusual factual circumstances of the instant case, application of the rules would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.” Waivers are granted on an individualized basis; and in evaluating waiver requests the Commission is obligated to take a “hard look” at the request.⁵

The Commission may not discharge its responsibility to take a “hard look” at waiver requests by establishing an arbitrary deadline before which waivers are granted and after which they are not. In doing so, the Commission in fact establishes a new

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).

⁴ *Northeast Cellular Telephone Company v. FCC*, 897 F. 2d 1164 (D.C. Cir. 1990).

⁵ *WAIT Radio*, 418 F. 2d at 1158.

deadline for compliance, absent notice to the affected parties; it does not evaluate waiver requests. In the decision at issue, the Commission did not consider the unusual factual circumstances of each request, the compliance burdens to any of the companies, or the public interest.

The Commission justified its decision to deny waiver requests to companies that did not comply prior to January 1, 2007 because they did not exercise “due diligence” since other companies were able to comply prior to January 1, 2007. However, it is impossible to determine whether a company exercised “due diligence” without first examining the facts and circumstances affecting that company.⁶ That some companies were able to obtain and deploy compliant equipment on or before January 1, 2007 does not create the inference that a company that complied some date thereafter did not make every reasonable effort to come into compliance.

The Commission is well aware that small companies are last in line for obtaining equipment from manufacturers and justifies the waivers it did grant on that basis. The Commission fails to recognize in its analysis and establishment of a waiver grant date that even among Tier III carriers, there are differences that dictate that some companies will receive equipment before others. Tier III carriers come in different sizes and have different influence and relationships with manufacturers. While the pool of Tier III carriers consists of all of those with fewer than 500,000 subscribers, the average NTCA member serves just 14,000 wireless customers and some only a couple of hundred. A

⁶ Despite the Commission’s apparent reliance on “due diligence” for denying the waiver requests, due diligence was not required for a waiver grant. In its *Memorandum Opinion and Order*, the Commission “could not conclude” that Five Star was diligent in its efforts to meet the September compliance deadline, but its waiver was granted because it managed to comply before January 1, 2007. The company’s due diligence or lack thereof was irrelevant. The one and only factor that determined whether the Commission granted the waiver request was the date.

company with fewer than 14,000 subscribers does not possess the same buying power or influence with manufacturers as one with several hundred thousand. An arbitrary waiver boundary provides no opportunity for careful and considered examination of the facts. The Commission must follow the law and its own precedent and examine the facts and circumstances surrounding each individual waiver request before granting or denying it.

Conclusion

The Commission should grant the aforementioned petitions for reconsideration. NTCA respectfully submits that the Commission discharged its duties in setting an arbitrary deadline before which waivers would be granted and after which they would not. The Commission is required to take a hard look at the waiver requests and grant them given that Petitioners have sufficiently demonstrated that application of the HAC deadline would be inequitable, unduly burdensome or contrary to the public interest, or the Petitioners had no reasonable alternative.

Respectfully submitted,

**NATIONAL TELECOMMUNICATIONS
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CERTIFICATE OF SERVICE

I, Adrienne L. Rolls, certify that a copy of the foregoing Initial Comments of the National Telecommunications Cooperative Association in WT 01-309, DA 08-1087, was served on this 22nd day of May 2008 by first-class, United States mail, postage prepaid, or via electronic mail to the following persons:

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