

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

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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
NOV 27 2007

MEMORANDUM OPINION AND ORDER

Adopted: November 19, 2007

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By the Commission:

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I. INTRODUCTION

1. In this Memorandum Opinion and Order, we address the following twelve waiver requests from Tier III carriers seeking relief from the Commission's hearing aid compatibility requirements for wireless digital telephones, filed by: (1) Advantage Cellular Systems, Incorporated (Advantage); (2) AST Telecom, LLC dba Blue Sky Communications (Blue Sky); (3) CT Cube, Inc. d/b/a West Central Wireless (CT Cube); (4) Farmers Cellular Telephone Company (Farmers Cellular); (5)

1 Tier III carriers are non-nationwide wireless radio service providers with 500,000 or fewer subscribers. 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) (Non-Nationwide Carriers Order).

Kaplan Telephone Company, Inc. (Kaplan); (6) Mid-Tex Cellular, Ltd. (Mid-Tex); (7) Missouri RSA No. 5 Partnership d/b/a Chariton Valley Wireless Services (Chariton); (8) Pine Telephone Company (Pine); (9) Pinpoint Wireless, Inc. (Pinpoint); (10) Plateau Telecommunications, Incorporated, Texas RSA 3 Limited Partnership, New Mexico RSA 4 East Limited Partnership, and E.N.M.R. Telephone Cooperative (Plateau Companies); (11) Texas RSA-1 Limited Partnership d/b/a XIT Wireless (XIT); and (12) TMP Corp. and TMP Jacksonville, LLC (TMP Companies).² Each request seeks a partial waiver of Section 20.19(c)(2)(i)(A) of the Commission's rules, which requires non-nationwide carriers to offer, by September 16, 2005, two or more digital handset models per air interface that are rated hearing aid-compatible under defined standards for acoustic coupling.³ More particularly, the petitioners seek extension of a limited waiver of that provision granted previously by the Commission, which provided that, until August 1, 2006, it would accept a GSM⁴ dual-band handset's hearing aid compatibility rating in

² See Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones, WT Docket No. 01-309, Petition for Limited Waiver of Section 20.19(c)(2)(i)(A) of the Commission's Rules by Advantage Cellular Systems, Incorporated (filed July 25, 2006) (Advantage Petition); Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones, WT Docket No. 01-309, Petition for Limited Waiver of Section 20.19(c)(2)(i)(A) of the Commission's Rules by AST Telecom, LLC dba Blue Sky Communications (filed July 25, 2006) (Blue Sky Petition); Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones, WT Docket No. 01-309, Petition for Limited Waiver of Section 20.19(c)(2)(i)(A) of the Commission's Rules by CT Cube, Inc. d/b/a West Central Wireless (filed July 26, 2006) (CT Cube Petition); Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones, WT Docket No. 01-309, Hearing Aid Compatibility Report and Request for Extension of GSM-Based HAC Compliance Relief by Farmers Cellular Telephone Company (filed May 16, 2006) (Farmers Cellular Request); Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones, WT Docket No. 01-309, Petition for Limited Waiver of Section 20.19(c)(2)(i)(A) of the Commission's Rules by Kaplan Telephone Company, Inc. (filed July 25, 2006) (Kaplan Petition); Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones, WT Docket No. 01-309, Petition for Limited Waiver of Section 20.19(c)(2)(i)(A) of the Commission's Rules by Mid-Tex Cellular, Ltd. (filed July 25, 2006) (Mid-Tex Petition); Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones, WT Docket No. 01-309, Petition for Limited Waiver of Section 20.19(c)(2)(i)(A) of the Commission's Rules by Missouri RSA No. 5 Partnership d/b/a Chariton Valley Wireless Services (filed July 25, 2006) (Chariton Petition); Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones, WT Docket No. 01-309, Petition for Limited Waiver of Section 20.19(c)(2)(i)(A) of the Commission's Rules by Pine Telephone Company (filed July 25, 2006) (Pine Petition); Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones, WT Docket No. 01-309, Petition for Limited Waiver of Section 20.19(c)(2)(i)(A) of the Commission's Rules by Pinpoint Wireless, Inc. (filed July 26, 2006) (Pinpoint Petition); Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones, WT Docket No. 01-309, Petition for Limited Waiver of Section 20.19(c)(2)(i)(A) of the Commission's Rules by Plateau Telecommunications, Incorporated, Texas RSA 3 Limited Partnership, New Mexico RSA 4 East Limited Partnership, and E.N.M.R. Telephone Cooperative (filed July 25, 2006) (Plateau Petition); Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones, WT Docket No. 01-309, Petition for Limited Waiver of Section 20.19(c)(2)(i)(A) of the Commission's Rules by Texas RSA-1 Limited Partnership d/b/a XIT Wireless (filed July 25, 2006) (XIT Petition); Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones, WT Docket No. 01-309, Request for Waiver by TMP Corp. and TMP Jacksonville, LLC (filed July 31, 2006) (TMP Request).

³ 47 C.F.R. § 20.19(c)(2)(i)(A). Section 20.19(c)(2)(i)(A) of the Commission's rules provides that a Tier II or Tier III wireless carrier "must [i]nclude in its handset offerings at least two handset models per air interface that comply with Section 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." 47 C.F.R. § 20.19(c)(2)(i)(A). Section 20.19(b)(1) of the Commission's rules in turn provides that a wireless handset is deemed hearing aid-compatible if, at minimum, it receives a U3 rating for acoustic coupling as set forth under the applicable American National Standards Institute (ANSI) standard. 47 C.F.R. § 20.19(b)(1).

⁴ Global System for Mobile Communications (GSM) is one of several digital air interfaces used by wireless voice networks in the United States.

the 1900 MHz band as the rating for the handset overall.⁵ Also pending before the Commission are motions from four of the petitioners, Advantage, Mid-Tex, Chariton, and Pine, for leave to withdraw their petitions.⁶

2. Because we find that Pine met the August 1, 2006 deadline for full compliance with Section 20.19(c)(2)(i)(A), we grant Pine's motion to withdraw its petition. Further, after reviewing the remaining eleven requests on the merits, we grant three of the petitioners extensions *nunc pro tunc* to November 1, 2006, and one petitioner an extension *nunc pro tunc* to November 15, 2006. We conclude that, because of the limited availability of compliant dual-band handsets prior to the deadline and the priority access to such handsets given to larger carriers, among other factors, these brief extensions are consistent with the Commission's waiver standards and with Commission precedent.

3. We find that the remaining seven petitioners have continued to rely, apparently up to the present time, on handsets that were no longer properly classified as compliant as of August 1, 2006 -- specifically, the Nokia 6061 and 6102 (h), and the Motorola V3 and V220. We conclude, however, that enforcing the August 1, 2006 deadline against them would be inequitable and contrary to the public interest because of confusion regarding the process necessary to classify a dual-band GSM handset as compliant as of August 1, 2006. Therefore, we take this opportunity to clarify that, to be classified as compliant as of August 1, 2006, such handsets need to be tested and recertified in both bands. We also grant these petitioners, on our own initiative to the extent necessary, extensions of the August 1, 2006 deadline lasting until three months from the release date of this *Memorandum Opinion and Order*, by which time the petitioners must have transitioned to fully compliant handsets. To ensure that these seven petitioners meet the new deadline, we also impose new reporting requirements on these petitioners as a condition of the extensions. Our actions today will provide clarity and guidance to GSM handset manufacturers and GSM carriers seeking in good faith to comply with the hearing aid compatibility requirements, and are consistent with our goal of bringing the benefits of digital wireless telecommunications to individuals with hearing disabilities.

II. BACKGROUND

A. Hearing Aid Compatibility Requirements and Deadlines

4. In the 2003 *Hearing Aid Compatibility Order*, the Commission took a number of actions to further the ability of persons with hearing disabilities to access digital wireless telecommunications.⁷

⁵ See 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, 20 FCC Rcd 15108 (2005) (*Cingular Waiver Order*). As discussed in more detail below, the obligation to offer two hearing aid-compatible handsets by September 16, 2005, was modified in connection with dual-band GSM handsets in the *Cingular Waiver Order*, which established that the Commission accepted, until August 1, 2006, the hearing aid compatibility rating for 1900 MHz as the overall compliance rating for dual-band GSM digital handsets that operate in both the 850 MHz and 1900 MHz bands. See *id.* at 15112 ¶ 8.

⁶ Motion by Advantage Cellular Systems, Incorporated, for Leave to Withdraw Petition for Limited Waiver of Section 20.19(c)(2)(i)(A) of the Commission's Rules, WT Docket 01-309, filed Aug. 30, 2006 (Advantage Motion); Motion by Mid-Tex Cellular, Ltd. for Leave to Withdraw Petition for Limited Waiver of Section 20.19(c)(2)(i)(A) of the Commission's Rules, WT Docket 01-309, filed Aug. 30, 2006 (Mid-Tex Motion); Motion by Missouri RSA No. 5 Partnership d/b/a Chariton Valley Wireless Services for Leave to Withdraw Petition for Limited Waiver of Section 20.19(c)(2)(i)(A) of the Commission's Rules, WT Docket 01-309, filed Aug. 30, 2006 (Chariton Motion); Motion by Pine Telephone Company for Leave to Withdraw Petition for Limited Waiver of Section 20.19(c)(2)(i)(A) of the Commission's Rules, WT Docket 01-309, filed Sept. 5, 2006 (Pine Motion).

⁷ Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones, *Report and Order*, WT Docket No. 01-309, 18 FCC Rcd 16753 (2003); *Erratum*, 18 FCC Rcd 18047 (2003) (*Hearing Aid Compatibility Order*). The Commission adopted these requirements for digital wireless telephones under authority

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Among other actions, the Commission required manufacturers and digital wireless service providers to collectively take steps to increase the number of hearing aid-compatible handset models available, and established phased-in deployment benchmark dates for the offering of hearing aid-compatible digital wireless handset models.⁸ In this regard, the Commission required that, by September 16, 2005, manufacturers and non-nationwide service providers that do not fall within the *de minimis* exception⁹ must offer two or more digital wireless handset models per air interface that provide reduced radio frequency (RF) emissions to enable acoustic coupling between the handset and hearing aids.¹⁰ More specifically, hearing aid-compatible handsets had to meet, at a minimum, a U3 rating for RF emissions¹¹ as set forth in the 2001 version of American National Standards Institute (ANSI) C63.19, "American National Standard for Methods of Measurement of Compatibility between Wireless Communication Devices and Hearing Aids, ANSI C63.19-2001."¹² The Commission further required handset

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of a provision of the Hearing Aid Compatibility Act of 1988, codified at Section 710(b)(2)(C) of the Communications Act of 1934, as amended, 47 U.S.C. § 610(b)(2)(C).

⁸ See *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16780 ¶ 65; 47 C.F.R. § 20.19(c). In adopting these requirements, the Commission observed, *inter alia*, that "as wireless service has evolved to become increasingly more important to Americans' safety and quality of life, the need for persons with hearing disabilities to have access to wireless services has become critical." *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16757 ¶ 7.

⁹ 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. Mobile service providers that obtain handsets only from manufacturers that offer two or fewer digital wireless handset models in the U.S. are likewise exempt from the hearing aid compatibility 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.

¹⁰ See *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16775 ¶ 53; 47 C.F.R. § 20.19(c)(1), (2). The Commission imposed a greater deployment obligation on nationwide (Tier I) carriers, which is not relevant to the instant petitions. See 47 C.F.R. § 20.19(c)(3); see also 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 11221 (2005) (modifying Tier I deployment obligation).

¹¹ The U rating indicates the amount of RF emissions, as the Commission explained in the *Hearing Aid Compatibility Order*:

To use a digital wireless phone with a hearing aid or cochlear implant in acoustic coupling mode, RF interference and other EMI from the wireless phone must be controlled. Based on recommended audio signal-to-interference ratios and other assumptions about wireless phones' performance, ANSI C63.19 specifies ratings for digital wireless phones, U3 through U4, based on their RF emission levels, with U3 being the highest emissions and U4 the lowest emissions.

Hearing Aid Compatibility Order, 18 FCC Rcd at 16770 ¶ 40. We note that, since its 2005 draft version, the ANSI C63.19 technical standard has used a new nomenclature for hearing aid compatibility compliance in place of the original "U" and "UT" ratings, in order to make the ratings easier for consumers to understand. See Letter from Thomas Goode, counsel for The Alliance for Telecommunications Industry Solutions, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 01-309 (filed May 6, 2005) (ATIS Letter). Specifically, the standard now uses an "M" nomenclature for the handset's radio frequency interference rating (rather than "U") and a "T" nomenclature for the handset's inductive coupling rating (rather than "UT"). See *id.* The Commission has approved the use of the "M" and "T" nomenclature and considers the M/T and U/UT nomenclatures as synonymous. See Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones, *Order on Reconsideration and Further Notice of Proposed Rulemaking*, WT Docket No. 01-309, 20 FCC Rcd 11221, 11238 ¶ 33 (2005) (*Hearing Aid Compatibility Reconsideration Order*).

¹² See *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16780 ¶ 65; 47 C.F.R. § 20.19(b)(1). The rules also required that, by September 18, 2006, handset manufacturers and carriers offer at least two handsets that meet, at a

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manufacturers to obtain Commission certification, using the Commission's equipment authorization process, that the handsets "selected by the manufacturers as potential candidates for hearing aid compatibility" are in fact compliant with the established hearing aid compatibility standard.¹³

5. On September 8, 2005, the Commission released the *Cingular Waiver Order*, which provided a measure of relief from the September 16, 2005 deadline for entities that offer dual-band GSM digital wireless handsets that operate in both the 850 MHz and 1900 MHz bands.¹⁴ Pursuant to its waiver authority, the Commission ruled that it would accept, until August 1, 2006, a dual-band GSM handset's hearing aid compatibility compliance rating for 1900 MHz operation as the overall compliance rating for the handset.¹⁵ The Commission reasoned that the waiver would avoid a delay in the introduction of dual-band GSM handsets and that requiring immediate compliance in the 850 MHz band might lead manufacturers to divert resources toward the development of short-term fixes, such as handsets with special low-power compliant modes, that would actually delay the development of handsets compliant at full power.¹⁶ The Commission emphasized, however, that the relief was limited in time, and that it required "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."¹⁷ In addition, the Commission imposed a number of conditions on GSM carriers taking advantage of the relief, including certain reporting and consumer outreach obligations.¹⁸

6. On June 6, 2006, the Wireless Telecommunications Bureau (WTB) and the Office of Engineering and Technology (OET), acting on delegated authority,¹⁹ approved a revised version of the ANSI C63.19 standard, version 3.12, designated ANSI C63.19-2006, as an acceptable standard for hearing aid compatibility.²⁰ While applicants for certification could continue to rely on previously approved versions of the ANSI C63.19 standard,²¹ OET would now accept, in the alternative, applications

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minimum, a U3T rating for inductive compatibility under ANSI C63.19-2001. 47 C.F.R. § 20.19(b)(2), (d). We note that some of the petitioners that requested a waiver of the August 1, 2006 deadline filed subsequent petitions seeking waiver relief from the September 18, 2006 deadline. *See* Modification of Ex Parte Status of Pending Petitions for Waiver of Hearing Aid Compatibility Requirements, WT Docket No. 01-309, *Public Notice*, DA 07-102 (WTB rel. Jan. 18, 2007) at Apps. B, C (listing petitioners seeking relief from August 1, 2006 deadline and September 18, 2006 deadline, respectively). We emphasize that, in this *Memorandum Opinion and Order*, we are not addressing the petitions seeking waivers of the September 18, 2006 deadline for deployment of handsets that meet a U3T rating, and are ruling solely on the petitions for waiver of the August 1, 2006 deadline.

¹³ *See Hearing Aid Compatibility Order*, 18 FCC Rcd at 16783 ¶ 75; 47 C.F.R. § 20.19(b)(3).

¹⁴ *See, generally, Cingular Waiver Order.*

¹⁵ *Id.*

¹⁶ *See id.*, 20 FCC Rcd at 15113 ¶¶ 9-10.

¹⁷ *Id.*, 20 FCC Rcd at 15114 ¶ 13, 15115 ¶ 17.

¹⁸ *Id.*, 20 FCC Rcd at 15117-18 ¶ 23.

¹⁹ *See Hearing Aid Compatibility Order*, 18 FCC Rcd at 16779 ¶ 63.

²⁰ *See* Public Notice, "Wireless Telecommunications Bureau and Office of Engineering and Technology Clarify Use of Revised Wireless Phone Hearing Aid Compatibility Standard," 21 FCC Rcd 6384 (WTB & OET 2006) (*2006 Standard PN*).

²¹ In a public notice issued on April 25, 2005, OET had approved for use a draft version of the standard issued by the Accredited Standards Committee on Electromagnetic Compatibility, C63, designated as C63.19-2005. *See* Public Notice, "OET Clarifies Use of Revised Wireless Phone Hearing Aid Compatibility Standard Measurement Procedures and Rating Nomenclature," 20 FCC Rcd 8188 (OET 2005). Following this approval, "applicants for hearing aid compatibility certification [could] rely on either the 2001 or draft 2005 version of ANSI C63.19." *Id.*

for certification of equipment tested and rated under the new 2006 standard.²² The new standard included separate rating tables for devices operating below 960 MHz and devices operating above 960 MHz, and provided that devices operating below 960 MHz could have somewhat greater emissions. As a consequence, manufacturers of GSM handsets were able to meet the 2006 standard in the 850 MHz band, and began obtaining certification of dual-band GSM handsets in June of 2006. According to Commission records, the Commission certified the first dual-band GSM handset on June 10, 2006, the second on June 28, 2006, and the third on July 10, 2006.

B. Petitions for Waiver

7. Prior to the August 1, 2006 deadline, the petitioners filed the pending requests.²³ While most of the petitioners request three-month extensions, Farmers Cellular requests one year and the TMP Companies do not specify a particular period, but ask for relief “to the extent necessary.”²⁴ The petitioners generally argue that they require extensions of the August 1, 2006 deadline because the requisite hearing aid-compatible dual-band GSM handsets were unavailable to them and because they required time to identify compatible handsets, obtain them from their distributors, and test them for network compatibility.

8. *Three Month Requests.* The following ten parties filed petitions seeking three month extensions of the August 1, 2006 deadline: Advantage, AST, Chariton, CT Cube, Kaplan, Mid-Tex, Pine, Pinpoint, the Plateau Companies, and XIT. In substantially identical petitions, these petitioners state that they have “worked with handset distributors” and “made repeated contact with handset manufacturers to try and determine when GSM wireless handsets would be available that meet all of the Commission’s benchmarks,” but, “as of July 18, 2006,” were not aware of any handsets that had been certified in both the 850 MHz and 1900 MHz bands.²⁵ They indicate that they have had difficulty obtaining information from manufacturers on which GSM handsets would meet the standard for both the 850 MHz and 1900 MHz bands.²⁶ They also state that they were unable to obtain information from the Commission’s own website regarding which handsets had been certified as hearing air compatible.²⁷

9. These petitioners further assert, in substantially identical terms, that, in addition to delays resulting from having to wait for manufacturers to obtain certification of dual-band handsets and the difficulty in identifying which handsets were certified, the carriers would be further delayed in their ability to offer fully compliant dual-band handsets by a number of other factors: (1) delays because manufacturers would give larger carriers priority access to newly certified handsets; (2) additional “distributor-associated delays” because carriers too small to have direct arrangements with manufacturers

²² See *2006 Standard PN*, 21 FCC Rcd at 6385.

²³ While most of the petitioners filed very shortly before the August 1, 2006 deadline, Farmers Cellular filed earlier, on May 16, 2006, and reiterated its request on September 18, 2006. See *Farmers Cellular Hearing Aid Compatibility Report and Request for Extension of GSM-Based HAC Compliance Relief*, WT Docket No. 01-309 (filed Sept. 18, 2006) (*Farmers Cellular Report*) at 2.

²⁴ *Farmers Cellular Request* at 3; *TMP Request* at 1.

²⁵ See, e.g., *Chariton Petition* at 3-4; *Pinpoint Petition* at 3-4; *CT Cube Petition* at 3-4; *Advantage Petition* at 3-4; *XIT Petition* at 3-4; *Plateau Petition* at 3-4. Represented by the same counsel, these ten petitioners filed similar petitions. Each of the petitioners indicates that it contacted LG, Motorola, Nokia, Samsung, and Sony Ericsson, although they do not specify when these contacts took place. See, e.g., *Chariton Petition* at 3 n.9; *Pinpoint Petition* at 3 n.9; *CT Cube Petition* at 3 n.9.

²⁶ See, e.g., *CT Cube Petition* at 4 & n.10; *Pine Petition* at 4 & n.10; *Advantage Petition* at 4 & n.10.

²⁷ See, e.g., *CT Cube Petition* at 4 n.10; *Pine Petition* at 4 n.10; *Advantage Petition* at 4 n.10. Pursuant to Commission rules, designated Telecommunications Certification Bodies (TCBs) may certify equipment, including providing certification of equipment as hearing aid-compatible, in accordance with the Commission’s rules and policies. See 47 C.F.R. § 2.962(f).

must obtain their handsets indirectly through vendors and distributors, who must first obtain the handsets themselves; and (3) the need to first test the handsets to ensure that they function on the carrier's network, before they can be offered to the public.²⁸ Because of these factors, the petitioners argue, they "would not be able to obtain these handsets in sufficient time to . . . make them available for sale" even if such handsets had been recently certified.²⁹ They estimate that obtaining certified handsets from their distributors would take approximately two months from the time they were able to identify compliant handsets, and that testing the new handsets to ensure they work on the carriers' networks would take an additional one to two weeks.³⁰ Accordingly, they request three month extensions to November 1, 2006.³¹

10. *TMP Corp. and TMP Jacksonville.* In their request, the TMP Companies report that they "understand from manufacturers' representatives" that two of the phones they offer, the Nokia 6061 and LG 1400i, are hearing aid-compatible in both the 850 MHz and 1900 MHz bands.³² They further state, however, that because "they have not been able to independently confirm this information" on either the manufacturers' websites or the Commission's equipment authorization database, they have chosen, "out of an abundance of caution," to seek a waiver "to the extent necessary, in the event that [their] reliance on the information from manufacturers' representatives is misplaced in this instance."³³ While they do not specify the length of the extension requested, they assert that they will "continue to seek information and add models to [their] inventory to ensure compliance."³⁴

11. *Farmers Cellular.* In a request filed on May 16, 2006, Farmers Cellular indicates that it had contacted its distributors but was unable to obtain any dual-band GSM handsets that were hearing aid-compatible.³⁵ Farmers Cellular argues that its "ability to affect any manufacturing changes is limited by [its] small carrier status and its lack of market power."³⁶ Asserting that "it appears . . . that [hearing aid-compatible] GSM phones will not be available to it in the near term," Farmers Cellular requests a one-year extension of the August 1, 2006 deadline.³⁷

C. Motions to Withdraw

12. On or around August 30, 2006, four of the petitioners, Advantage, Mid-Tex, Chariton, and Pine, filed motions for leave to withdraw their petitions, asserting that they had determined that the relief was unnecessary. In each motion, the petitioner asserts that, since filing its waiver petition, it had learned that two or more of the dual-band GSM handsets it had been offering since August 1, 2006, had been certified as compliant with the acoustic coupling hearing aid compatibility standard, and that it was therefore "in full compliance with Section 20.19(c)(2)(i)(A) on the date it filed its waiver *Petition* . . ."³⁸

²⁸ See, e.g., Mid-Tex Petition at 3-6; Kaplan Petition at 3-6; AST Petition at 3-6.

²⁹ See, e.g., XIT Petition at 3; Pinpoint Petition at 3; Plateau Petition at 3.

³⁰ See, e.g., Chariton Petition at 6, 9; Pine Petition at 6, 9; Plateau Petition at 6, 9.

³¹ See, e.g., Advantage Petition at 9; Kaplan Petition at 9; CT Cube Petition at 9.

³² See TMP Request at 1.

³³ *Id.*

³⁴ *Id.*

³⁵ See Farmers Cellular Request at 3.

³⁶ *Id.*

³⁷ *Id.*

³⁸ See Advantage Motion at 2; Chariton Motion at 2; Mid-Tex Motion at 2; Pine Motion at 2.

The carriers assert that, because they complied at all times with their deployment requirements, waivers are unnecessary.³⁹

D. Compliance Reports

13. On or before November 17, 2006, the petitioners filed compliance reports,⁴⁰ detailing among other things the hearing aid-compatible handsets that they offered to subscribers.⁴¹ All of the petitioners listed two or more allegedly compliant GSM dual-band handsets that they were offering as of the date of the report. Subsequently, at the request of Commission staff, several of the petitioners filed supplements, providing the FCC ID Number associated with the allegedly compliant models that they were offering.⁴²

III. DISCUSSION

14. 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 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

³⁹ See Advantage Motion at 2; Chariton Motion at 2; Mid-Tex Motion at 2; Pine Motion at 2.

⁴⁰ In the *Hearing Aid Compatibility Order*, the Commission required manufacturers, carriers, and digital wireless service providers to report every six months on efforts toward compliance with the hearing aid compatibility requirements for the first three years of implementation, and then annually thereafter through the fifth year of implementation. See *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16787 ¶¶ 89-91; see also Wireless Telecommunications Bureau Announces Hearing Aid Compatibility Reporting Dates for Wireless Carriers and Handset Manufacturers, *Public Notice*, 19 FCC Rcd 4097 (WTB 2004).

⁴¹ See Hearing Aid Compatibility Report by Advantage Cellular Systems, Inc. d/b/a DTC Wireless, WT Docket 01-309 (filed Nov. 17, 2006) (Advantage Report); Hearing Aid Compatibility Report by AST Telecom, LLC d/b/a Blue Sky Communications, WT Docket No. 01-309 (filed Nov. 17, 2006) (Blue Sky Report); Hearing Aid Compatibility Report by CT Cube, Inc. d/b/a West Central Wireless, WT Docket No. 01-309 (filed Nov. 17, 2006) (CT Cube Report); Hearing Aid Compatibility Report and Request for Extension of GSM-Based HAC Compliance Relief by Farmers Cellular Telephone Company, WT Docket No. 01-309 (filed Sept. 18, 2006); Hearing Aid Compatibility Report by Kaplan Telephone Company, Inc. d/b/a Pace Communications, WT Docket No. 01-309 (filed Nov. 15, 2006) (Kaplan Report); Hearing Aid Compatibility Report by Mid-Tex Cellular, Ltd., WT Docket No. 01-309 (filed Nov. 14, 2006) (Mid-Tex Report); Hearing Aid Compatibility Report by Missouri RSA No. 5 Partnership d/b/a Chariton Valley Wireless Services, WT Docket No. 01-309 (filed Nov. 17, 2006); Hearing Aid Compatibility Report by Pine Telephone Company, WT Docket No. 01-309 (filed Nov. 14, 2006); Hearing Aid Compatibility Report by PinPoint Wireless, Inc., WT Docket No. 01-309 (filed Nov. 14, 2006); Hearing Aid Compatibility Report and Withdrawal of Request for Waiver of Section 20.19(d)(2) of the Commission's Rules by Plateau Telecommunications, Incorporated, Texas RSA 3 Limited Partnership, New Medico RSA 4 East Limited Partnership, and E.N.M.R. Telephone Cooperative, WT Docket No. 01-309 (filed Nov. 15, 2006) (Plateau Report); Hearing Aid Compatibility Report by XIT Telecommunications & Technology, LTD d/b/a XIT Wireless, WT Docket No. 01-309 (filed Nov. 16, 2006) (XIT Report).

⁴² See Letter from Advantage Cellular Systems, Inc. *et al.*, to Marlene Dortch, Secretary, FCC, WT Docket No. 01-309 (filed Feb. 20, 2007); Letter from Mid-Tex Cellular, Ltd., to Marlene Dortch, Secretary, FCC, WT Docket No. 01-309 (filed Feb. 22, 2007). The Commission designates all certified handsets in its equipment authorization database by FCC ID Number rather than by their model name. Accordingly, to check the equipment authorization database records in order to determine whether a particular handset has been certified as hearing aid-compatible, it is generally necessary to know the FCC ID Number associated with the handset.

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.⁴³

15. Below, we first address issues regarding the hearing aid compatibility status of certain handsets that are relevant to several of the petitions. We then consider each of the petitions for waiver and motions to withdraw in light of our findings.

A. Compliant Handsets

16. Initially, we consider the hearing aid compatibility status of dual-band GSM handsets that were certified as hearing aid-compatible based solely on their rating in the 1900 MHz band and the relief granted in the *Cingular Waiver Order*, but were not subsequently re-certified as compatible in both the 1900 MHz and 850 MHz bands. In their November 2006 compliance reports, several of the petitioners rely on such handsets (including the Nokia 6102 (h) and 6061 models and the Motorola V3 and V220 models), as satisfying their obligations under Section 20.19(c)(2)(i)(A).⁴⁴ In addition, Nokia and Motorola list these handsets as compliant in their reports. Some petitioners acknowledge that certain of these handsets had been “certified for [hearing aid compatibility] compliance solely when in operation at 1900 MHz,” but state that “Nokia recently informed [them] that since certification demonstrated that the [handset] was . . . compliant in operation at both 850 MHz and 1900 MHz under the ANSI standard, adopted June 6, 2006, the FCC will not require Nokia to obtain an additional certification.”⁴⁵ Based on this information, these petitioners assert that these handsets satisfied their obligations even after the expiration of the relief granted in the *Cingular Waiver Order* on August 1, 2006.

17. As explained below, we clarify that dual-band handsets certified as compliant only as a result of testing in the 1900 MHz band, pursuant to the *Cingular Waiver Order*, are not considered hearing aid-compatible as of August 1, 2006. Instead, these handsets must be tested and recertified in both the 850 and 1900 MHz bands to be considered hearing aid-compatible. As the record indicates, there has been considerable confusion about what additional process, if any, is necessary for a waiver-certified handset to continue to be considered as compliant. In particular, confusion has arisen between the Commission’s general equipment authorization requirements,⁴⁶ on the one hand, which do not require recertification of a handset absent changes being made to that handset, and the phase-in requirements for hearing aid-compatible GSM phones on the other,⁴⁷ which require recertification if a manufacturer wants to continue to offer a handset as compliant with hearing aid compatibility requirements. For the general equipment authorization requirements, there is no need for recertification simply to keep offering a handset if no change is made to the handset.⁴⁸ However, under the particular circumstances created by the

⁴³ See 47 C.F.R. §§ 1.3, 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).

⁴⁴ See Advantage Report at 1 (Motorola V3 and V220 and Nokia 6102 (h)); AST Report at 1 (Motorola V3 and V220); Mid-Tex Report at 1 (Motorola V3 and V220); Letter from Bennet & Bennet, PLLC, to Marlene Dortch, Secretary, FCC, WT Docket No. 01-309 (filed Feb. 22, 2007) at 2 (reporting that Mid-Tex had also offered the Nokia 6061 and 6102 (h) at all relevant times, but inadvertently omitted these models from its November report); PinPoint Report at 1 (Motorola V3 and V220 and Nokia 6061); CT Cube Report at 1 (Motorola V3 and Nokia 6061); XIT Report at 1 (Motorola V3 and Nokia 6061); Farmers Cellular Report at 2 (Motorola V3 and V220).

⁴⁵ Advantage Motion at n.2; Chariton Motion at n.2; Mid-Tex Motion at n.2; see also TMP Request at 1 (stating that it “underst[ood] from manufacturers’ representatives that two phone models [including the Nokia 6061] are now HAC compliant in the 850 MHz frequency band.”).

⁴⁶ 47 C.F.R. § 2.901 *et seq.*

⁴⁷ 47 C.F.R. § 20.19.

⁴⁸ See 47 C.F.R. § 2.1043.

Cingular Waiver Order, recertification of dual-band handsets was required in order to establish that GSM handsets were hearing aid-compatible. Because the *Cingular Waiver Order* recognized hearing aid compatibility certification of dual-band handsets in the 1900 MHz band alone as effective only until August 1, 2006, the manufacturer was obligated to recertify the handset under the new C63.19 standard if the manufacturer wished to continue to offer the handset as hearing aid-compatible.

18. For several reasons, service providers may not have been fully cognizant of their obligation to retest and recertify under the new C63.19 standard those dual-band handsets they claim as hearing aid-compatible as of August 1, 2006. First, communications between Commission staff and industry did not always make clear that manufacturers needed to meet an M3 or higher rating⁴⁹ in both bands and obtain certification of that rating in order to maintain a phone's classification as hearing aid-compatible. Further, some manufacturers and handset vendors have apparently acted on the assumption that there was no need for recertification under the new C63.19 standard if a manufacturer wanted to continue to offer a waiver-certified GSM handset as compliant with the hearing aid compatibility requirements as of August 1, 2006. Indeed, Nokia's November 2006 compliance report lists the 6061, 6101 (h), and 6102 (h) models among its compliant handsets.⁵⁰ Although Motorola's November 2006 compliance report notes that the Motorola V3 and V220 were certified pursuant to the *Cingular Waiver Order*, the report also continues to list the handsets among its compliant phones.⁵¹ Evidence in the docket also indicates that vendors, who are typically the direct source of handsets for small carriers,⁵² have in some cases provided information indicating that waiver-certified phones were compliant.⁵³ We note that, in the recently released *Hearing Aid Compatibility Second Report and Order and Notice of Proposed Rulemaking*, the Commission is seeking comment on steps that it could take that may help to prevent confusion over the compliance status of handsets from arising in the future.⁵⁴

19. Given the apparent confusion described above, we now clarify that as of August 1, 2006, dual-band GSM handset models certified under the *Cingular Waiver Order* cannot be used to satisfy the obligations of either the manufacturer or the carrier under Section 20.19(c) unless they both meet an M3 rating and have been formally recertified in both bands.⁵⁵ The Commission stated in the *Cingular Waiver*

⁴⁹ As discussed in note 11, above, the new M nomenclature has replaced the original U nomenclature adopted in the *Hearing Aid Compatibility Order*.

⁵⁰ See Nokia Status Report.

⁵¹ See Motorola Status Report.

⁵² See, e.g., Chariton Petition at 5-6 (stating that, "[s]ince Chariton does not have the market power to purchase handsets directly from the handset manufacturer, . . . Chariton will need to check with handset distributors to see when those distributors will be able to obtain the particular handset in sufficient quantity to supply Chariton.").

⁵³ In one compliance report, for example, a carrier reported that according to its vendor, "the Motorola V220 and Motorola V3 – are rated M3T [sic] under the standard ANSI C63-19-2005, which meets the Commission's current hearing aid compatibility requirements (and does not rely on compliance rating for 1900 MHz handset operation as the overall compliance rating for GSM digital wireless dual band handsets[])." Semi-Annual Report by PetroCom License Corporation, WT Docket 01-309 (filed Nov. 17, 2006), at 3.

⁵⁴ See Amendment of the Commission's Rules Governing Hearing Aid-Compatible Mobile Handsets, WT Docket 07-250, Section 68.4(a) of the Commission's Rules Governing Hearing Aid Compatible Telephones, WT Docket 01-309, *Second Report and Order and Notice of Proposed Rulemaking*, FCC 07-192, ¶¶ 63-77 (rel. Nov. 7, 2007).

⁵⁵ We note that both Nokia and Motorola do offer at least two GSM handset models that have been certified as hearing aid-compatible without reliance on the *Cingular Waiver Order*, and so meet their obligations to offer two or more GSM handsets that meet the acoustic coupling hearing aid compatibility requirement. See Hearing Aid Compatibility Compliance Efforts Status Report #6 by the Alliance for Telecommunications Industry Solutions, WT Docket No. 01-309 (filed Nov. 17, 2006), Attach. A, Nokia Inc. Status Report on Hearing Aid Compatible Wireless Devices (Nokia Status Report) (listing 6126 (h), 6133 (h), and 6085 among its compliant GSM models); *id.*,

(continued....)

Order that it would only “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.”⁵⁶ Further, even assuming that a manufacturer has tested its waiver-certified handsets and determined that they met the C63.19-2006 standard in both bands, this would not be sufficient to permit these handsets to be offered as fully compliant. Before a handset can be offered as compliant with hearing aid compatibility standards, we clarify that the manufacturer must certify the handset as compliant through the equipment authorization process set forth in Part 2 of our rules. Specifically, Section 20.19(b), establishing the “Technical standard for hearing aid compatibility,” requires that the manufacturer of the handset in question certify its compliance with the test requirements as set forth in Section 2.1033(d) of the Commission’s rules.⁵⁷ As a result, if a dual-band GSM handset was initially certified as compliant based on its rating in the 1900 MHz band but was not later re-certified as compliant in both bands, it ceased to be a compliant handset on August 1, 2006.

20. Turning to the handset models at issue here, although both Nokia and Motorola met their own deployment obligations through other handset models, the Nokia 6061 and 6102 (h) models and the Motorola V3 and V220 models were certified pursuant to the *Cingular Waiver Order* and their compliance rating in the 1900 MHz band, but were not later recertified in both bands.⁵⁸ Accordingly, beginning August 1, 2006, these models could no longer be offered to satisfy a carrier’s handset deployment obligation under Section 20.19(c)(2)(i)(A).

B. Disposition of Petitions

1. Pine

21. In its motion to withdraw, Pine states that as of August 1, 2006, it offered both the LG 1400i and the Motorola V3i.⁵⁹ Pine’s November 2006 compliance report confirms that it offered both of these models.⁶⁰ According to the Commission’s records, each of these models was certified as meeting a U3 rating in both bands prior to August 1, 2006. Accordingly, we find that Pine has demonstrated that it was in compliance with the deployment requirements by August 1, 2006. We therefore grant Pine’s motion for leave to withdraw its petition for waiver and we dismiss the petition.

2. Chariton, Kaplan, the Plateau Companies, and the TMP Companies

22. As discussed below, Chariton, Kaplan, the Plateau Companies, and the TMP Companies all came into compliance with the compatible handset deployment requirement on or before November

(...continued from previous page)

Motorola Status Report on Hearing Aid Compatible Wireless Devices (Motorola Status Report) (listing, among others, the V3e and V3i).

⁵⁶ *Cingular Waiver Order*, 20 FCC Rcd at 15112 ¶ 8 (emphasis in original). See also *id.* at 15114 ¶ 13 (emphasizing that the “relief [] grant[ed] in this order is ‘limited in time’ and ‘restricted’”).

⁵⁷ 47 C.F.R. § 20.19(b)(3); *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16783 ¶ 75. Under Part 2, a manufacturer submits its application for certification either to the Commission or to a TCB. See 47 C.F.R. § 2.960(a)-(b).

⁵⁸ We note that Nokia has submitted data that purportedly demonstrates that the handsets in question meet an M3 or higher rating in both bands. Nothing in our conclusions prevents Nokia from seeking to recertify the handsets as hearing aid-compatible at this time if it wishes, and we encourage it to do so.

⁵⁹ Pine Motion at 1-2. Although Pine also offers the Nokia 6101, according to Commission records, this handset model has never been certified as hearing aid-compatible.

⁶⁰ See Pine Report at 1.

15, 2006. In addition, both Chariton and the TMP Companies raise preliminary arguments suggesting that they may not require relief at all. We first address Chariton's motion to withdraw its waiver request on the ground that it offered two fully compliant handsets by the August 1, 2006 deadline and that relief is therefore unnecessary. We also address the assertion by the TMP Companies that they may have met the deadline. In both cases, we find that the petitioners did not meet the deadline, and, accordingly, that the requests for waiver must be reviewed on the merits. Reviewing on the merits, we then conclude that Chariton and the TMP Companies, as well as Kaplan and the Plateau Companies, have justified the relief they request on grounds of handset unavailability.

23. We first conclude that Chariton's motion to withdraw its petition as unnecessary must be denied because Chariton did not offer two compliant handsets as of August 1, 2006. As of that date, Chariton was relying on the Nokia 6061 and LG 1400i to meet its two-handset deployment obligations.⁶¹ As noted above, however, the Nokia 6061, although certified as hearing aid-compatible pursuant to the *Cingular Waiver Order*, was never re-certified as fully compliant in both bands, and hence was no longer compliant beginning August 1, 2006. Because Chariton has not demonstrated that a waiver is unnecessary, we proceed to address its petition for a three-month extension of the August 1, 2006 deadline on the merits.

24. Second, we find that the TMP Companies did not meet the August 1, 2006 deadline. The TMP Companies state that they had received certain information indicating that two of the handsets they offered as of August 1, 2006, met the hearing aid compatibility standard, but they seek a waiver "to the extent necessary" in the event that information is incorrect. Reviewing their filing of July 31, 2006, we find that, of the two handsets that the TMP Companies report offering as of that date, only the LG 1400i was fully compliant.⁶² While they also offered the Nokia 6061, this handset was only certified pursuant to the relief granted in the *Cingular Waiver Order*, and was never re-certified as fully compliant under the 2006 standard in both the 850 MHz and 1900 MHz bands. It was therefore no longer compliant beginning August 1, 2006. Thus, the TMP Companies were not in compliance with their handset deployment obligations as of August 1, 2006.

25. Turning to the merits of the requests filed by Chariton, Kaplan, the Plateau Companies, and the TMP Companies, we conclude that, for similar reasons, granting extensions to each of them is warranted. We are persuaded that these four petitioners could not reasonably have identified, obtained and offered the requisite two handsets by the August 1, 2006 deadline, in light of the following circumstances: (1) the very limited number of compliant handset models on the market prior to August 1, 2006, due to the fact that the Commission did not certify the first fully compatible dual-band GSM handset model until June, 2006, and had certified only two by July 9, 2006; (2) the difficulty obtaining current and accurate information regarding which handset models had been certified as compatible in both the 850 MHz and 1900 MHz bands; (3) the priority access to compliant handsets that is typically given to larger carriers;⁶³ and (4) the time needed to test the new handsets on their networks.⁶⁴ We therefore

⁶¹ Chariton Motion at 1-2.

⁶² See TMP Request at 1.

⁶³ The Commission has acknowledged in this proceeding that, "[i]n contrast to large carriers, smaller wireless carriers may be disadvantaged when they seek to acquire ... specialized handsets" because vendors treat the largest carriers, who place the largest orders for equipment, as priority customers. See *Hearing Aid Compatibility Reconsideration Order*, 20 FCC Rcd at 11233 ¶ 22. See also, e.g., Chariton Petition at 5 ("As a small carrier with considerably less market clout than nationwide carriers . . . , Chariton is given low priority by wireless handset vendors in fulfilling wireless handset orders. As a result, Chariton will not be able to even begin its own GSM network testing until after the Tier I carriers' GSM [hearing aid compatibility] compliant handset orders are filled.").

⁶⁴ Because these factors are sufficient to warrant the requested relief, we find it unnecessary to determine whether asserted "distributor-associated delays" would justify relief. We expect, however, that carriers having difficulty obtaining handsets from one distributor or vendor would make inquiries with other vendors as necessary.

conclude that providing these four petitioners with extensions is justified and in accord with the Section 1.925(b)(3)(ii) waiver standard.⁶⁵

26. We further find, based on their compliance reports, that Chariton, Kaplan and the Plateau Companies achieved compliance by November 1, 2006, the requested extension period.⁶⁶ Additionally, the TMP Companies report offering two fully compliant handsets in their compliance report filed on November 15, 2006,⁶⁷ and we therefore find that they achieved full compliance by November 15, 2006. Accordingly, we grant the petitions of Chariton, Kaplan, and the Plateau Companies, and, for these companies, extend the relief granted in the *Cingular Waiver Order nunc pro tunc* for three months to November 1, 2006; and we grant the TMP Companies' petition, and, for the TMP Companies, extend the relief granted in the *Cingular Waiver Order nunc pro tunc* for three-and-one-half months to November 15, 2006.

3. Advantage, AST, Mid-Tex, PinPoint, CT Cube, XIT, and Farmers Cellular

27. As discussed below, we conclude that Advantage, AST, Mid-Tex, PinPoint, CT Cube, XIT, and Farmers Cellular did not identify two compliant handset models that they are offering either in their motions to withdraw or in their compliance reports. Therefore, these companies are apparently still not in compliance with Section 20.19(c)(2)(i)(A).⁶⁸ We further find that these companies have not justified relief on grounds of handset unavailability. Nonetheless, we grant these seven petitioners relief until three months after the release of this order for different reasons.

28. We first conclude that the motions by Advantage and Mid-Tex to withdraw their petitions as unnecessary must be denied because they did not offer two compliant handsets as of August 1, 2006.

⁶⁵ We note that the Commission has previously granted extensions of comparable length to an earlier hearing aid compatibility deadline under similar circumstances. See, e.g., Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephone, WT Docket No. 01-309, *Memorandum Opinion and Order*, 22 FCC Rcd 7171, 7181 ¶ 21 (2007) (*Hearing Aid Compatibility Waiver Order*) (carrier needed approximately three months following Commission's *Cingular Waiver Order* to obtain handsets deemed compliant under that order; given that "[compliant] handsets often are not delivered to smaller carriers as quickly as they are deliver to larger carriers," the Commission found that the requested waiver was "a reasonable accommodation to market realities, consistent with precedent, and in accord with the Section 1.925(b)(3)(ii) waiver standard.").

⁶⁶ See Chariton Report at 1 (stating that Chariton offered the Motorola V3i and LG 1400i); Kaplan Report at 1 (listing the Motorola V3i and the LG 2000); Plateau Report at 1 (listing Motorola V3i and LG 2000i). In response to a request by Commission staff, Kaplan and the Plateau Companies subsequently clarified that the models that they listed as "LG 2000" and "LG 2000i," respectively, are both the device designated in the Commissions' equipment authorization database as FCC ID No. BEJC2000, which LG's November 2006 compliance report lists as the C2000, and which Commission equipment authorization records confirm is certified as fully compliant. See Letter from Advantage Cellular Systems, Inc. et al., to Marlene Dortch, Secretary, FCC, WT Docket No. 01-309 (filed Feb. 20, 2007).

⁶⁷ See TMP Report at 1 (listing LG 1400i and Motorola V3i). We note that the TMP Companies also offered the Motorola V220, which has not been certified as meeting the compatibility standard in both bands.

⁶⁸ We note that, on April 11, 2007, the Commission denied requests from AST, CT Cube, and XIT, filed in 2005, that also requested partial waivers of Section 20.19(c)(2)(i)(A), the same provision at issue here. See *Hearing Aid Compatibility Waiver Order*, 22 FCC Rcd at 7183-87 ¶¶ 25-34. The relief sought in those requests was nevertheless distinct from what is at issue here. In the 2005 requests, petitioners sought extensions of the obligation under Section 20.19(c)(2)(i)(A), as modified by the *Cingular Waiver Order*, to offer, by September 16, 2005, two handsets that were compliant with the acoustic coupling standard at least in the 1900 MHz band. See *id.* At issue here is the subsequent obligation to offer, by August 1, 2006, two handsets that are fully compliant with the acoustic coupling standard in both the 850 MHz and 1900 MHz bands. The latter obligation is separate and independent of the former, and nothing in this *Memorandum Opinion and Order* should be interpreted to revisit any of the Commission's prior determinations.

As of that date, Advantage was relying on the Nokia 6102 (h) and LG 1400i to meet its two-handset deployment obligations, and Mid-Tex was relying on the Nokia 6061 and 6102 (h).⁶⁹ As discussed above, however, both the Nokia 6061 and the Nokia 6102 (h), although certified as hearing aid-compatible pursuant to the *Cingular Waiver Order*, were never re-certified as fully compliant in both the 850 MHz and 1900 MHz bands, and hence were no longer compliant as of August 1, 2006. Because Advantage and Mid-Tex have not demonstrated that a waiver is unnecessary, we proceed to address their petitions on the merits.

29. We further conclude that all seven of these petitioners apparently remain out of compliance with the requirement to deploy two compatible handsets. In their most recent compliance reports, none of these carriers reported offering more than one handset model that had been certified compliant in both the 1900 MHz and 850 MHz bands. Instead, to meet their two-handset minimum, these petitioners relied entirely or in part on models that, according to Commission equipment authorization records, were certified as hearing aid-compatible based only on their rating in the 1900 MHz band and the relief granted in the *Cingular Waiver*.⁷⁰ So far as the record demonstrates, these petitioners have continued to rely on waiver-certified models to the present time to satisfy their handset deployment requirements.⁷¹ As discussed above, these handset models cannot be used to satisfy the handset deployment requirement as of August 1, 2006.

30. We nevertheless conclude that these seven petitioners should be granted extensions because their reliance on non-compliant handsets, even to the present, was reasonable because the difficulty they had in obtaining the correct compatibility information created unique and unusual circumstances.⁷² While we expect carriers to perform due diligence in identifying hearing aid-compatible handsets,⁷³ we also acknowledge that, because there is currently no ready means for third parties to

⁶⁹ See Advantage Motion at 1-2; Mid-Tex Motion at 1-2.

⁷⁰ More specifically, carriers reported offering the following handsets that were allegedly fully compliant (handsets that were in fact fully compliant are shown in **bold** and waiver-certified handsets in underline): (1) Advantage reported offering the **LG 1400i**, the Motorola V3 and V220, and the Nokia 6102 (h) and Nokia 6103; (2) AST reported offering the Motorola V3 and V220; (3) Mid-Tex reported offering the Nokia 6061 and 6102 (h), and the Motorola V3 and V220; (4) PinPoint reported offering the Nokia 6061, the Nokia 6101, 6102, and the Motorola V3 and V220; (5) CT Cube reported offering the **LG 1400i**, the Nokia 6061 and Nokia 6126, and the Motorola V3; (6) XIT reported offering the Motorola V3i, the Motorola V3, and the Nokia 6061; and (7) Farmers Cellular reported offering the Motorola V3 and V220, the Nokia 6101 and 6102, and the Samsung SGH-X496. As indicated, of all of these dual-band handsets, only the LG 1400i, the Motorola V3i, and the Sony Ericsson W710 are certified as hearing aid-compatible in both bands. The Nokia 6101, 6102, 6103, and 6126 were never certified as hearing aid-compatible, according to equipment authorization database records, and the Motorola V3 and V220 and Nokia 6102 (h) and 6061 were only waiver-certified. Thus, all of these seven petitioners relied on at least one of these four waiver-certified handsets after August 1, 2006, to meet their handset deployment requirements.

⁷¹ Farmers Cellular has indicated in supplements that it changed its handset offerings since filing its petition, but that it still relies upon the Motorola V3 to satisfy its deployment requirement. See Farmers Cellular Telephone Company Supplement to Hearing Aid Compatibility Report and Request for Extension of GSM-Based HAC Compliance Relief, WT Docket No. 01-301 (filed Feb. 16, 2007) (stating that it offers the Motorola V3 and the Sony Ericsson W710).

⁷² See para. 17, *supra*.

⁷³ In the *Hearing Aid Compatibility Waiver Order*, the Commission held that a carrier error regarding the compliance status of a handset "by itself" was not enough to justify a waiver "when due diligence would have prevented such a mistake in the first place." *Hearing Aid Compatibility Waiver Order*, 22 FCC Rcd at 2184 ¶ 28. That carrier had identified a compliant handset and then accidentally ordered a different, non-compliant handset, the Nokia 6101, and failed to detect its mistake. Because the handset at issue in the *Hearing Aid Compatibility Waiver Order* was never compliant, and was thus not listed as compliant on any of Nokia's status reports, the carrier's error was entirely due to its own lack of diligence. The handsets at issue here, in contrast, continue to appear even on the most recent manufacturers' status reports in their lists of compliant handsets. Also with respect to the handsets here,

(continued....)

identify compliant handsets from the Commission's records, carriers have no practical alternative but to rely on manufacturers and vendors to identify which compliant handsets they are offering. We therefore find that these seven petitioners acted diligently and reasonably, although erroneously, based on the information available to them. Because we have now clarified the status of these handsets, however, we expect these carriers to transition to handsets that have been certified to fully meet hearing aid compatibility standards as quickly as reasonably possible. Accordingly, we grant them, on our own initiative to the extent necessary, extensions of three months from the release date of this *Memorandum Opinion and Order*, which provides them sufficient time to obtain new handsets that comply with the handset deployment requirements of Section 20.19(c)(2)(i)(A).⁷⁴

31. By the end of this period, these seven petitioners must offer two or more fully compliant GSM handsets, and we will not grant further extensions based on the concerns we have addressed herein. Further, given that many other small carriers have successfully obtained fully compliant handsets, we will look very skeptically at any claims that handsets remain unavailable, and we expect that, if these seven petitioners' usual vendors cannot supply appropriate handset models, petitioners will make the necessary arrangements with other vendors.

32. *Reporting Requirements.* To ensure that these seven petitioners have achieved full compliance within the new extension period, we impose additional reporting requirements. Specifically, we require each of these seven petitioners to file, no later than February 23, 2008, a new list of all hearing aid-compatible handsets offered by the carrier, by model and FCC ID Number, including the hearing aid compatibility acoustic coupling rating and, if applicable, inductive coupling rating of the handset. We further extend the consumer outreach conditions of the *Cingular Waiver Order* to apply during the period of this extension, including (1) the obligation to ensure a 30-day trial period or otherwise adopt an acceptable, flexible return policy for consumers seeking to obtain hearing aid-compatible GSM digital wireless handsets, and (2) the obligation to 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.⁷⁵

IV. CONCLUSION

33. In this *Memorandum Opinion and Order*, we resolve twelve petitions for waiver of hearing aid compatibility obligations. Specifically, we dismiss one of the petitions as unnecessary, and grant extensions of the August 1, 2006 deadline for GSM carriers to offer fully compliant handsets to each of the remaining 11 petitioners. To three of these, we grant extensions to November 1, 2006. To one, we grant an extension to November 15, 2006. To the other seven, we grant extensions to February 23, 2008. We conclude that, in this case, the confusion reflected in the record regarding the compliance

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Advantage relates that, to identify available compliant handsets, it "worked . . . with" distributors and made "repeated contacts" with manufacturers, including LG, Motorola, Nokia, Samsung, and Sony Ericsson. Advantage Petition at 3, 4 & n.9. Advantage also specifically notes that in response to its inquiries, Nokia informed it that the Nokia 6102 (h) was compliant. Advantage Motion at n.2. While not all the petitioners specifically relate the basis for their reliance on the handset models in question, the numerous instances of inaccurate information from manufacturers and vendors as discussed above lead us to infer that these carriers, in their diligent efforts, reasonably but erroneously relied on such information.

⁷⁴ We note that many handsets currently comply with these requirements. According to the manufacturers' most recent compliance reports, and as confirmed by the Commission's records, these include the LG L1400i, C2000, CE500, CG300, and CU400; Motorola V3e and V3i; Nokia 6126 (h), 6133 (h), and 6085; RIM Blackberry 8705 and 8705g; Samsung SGH-ZX20 and SGH-A707; and Sony Ericsson W712a and Z712a. We note that this is not necessarily a complete list.

⁷⁵ See *Cingular Waiver Order*, 17 FCC Rcd at 15118 ¶ 23.

status of carriers' current handset models justifies temporary relief sufficient to provide these carriers with time to obtain new handsets. We continue to expect carriers to engage in due diligence in determining the compliance status of handsets, however. Further, while these petitions reveal that carriers have, in many cases, had problems obtaining accurate and timely information about the availability of certified handsets, we do not expect such problems on a going-forward basis, now that the various manufacturers are providing numerous compliant handsets,⁷⁶ and given the clarifying information in this *Memorandum Opinion and Order*. Nevertheless, we will continue to consider whether additional steps might be appropriate to ensure that both manufacturers and carriers provide convenient access to up-to-date and accurate information regarding available hearing aid-compatible digital handsets as we monitor the ongoing deployment and marketing of such handsets.

V. ORDERING CLAUSES

34. Accordingly, IT IS 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 1.3 and 1.925 of the Commission's rules, 47 C.F.R. §§ 1.3, 1.925, that this *Memorandum Opinion and Order* IS ADOPTED.

35. 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 1.3 and 1.925 of the Commission's rules, 47 C.F.R. §§ 1.3, 1.925, that the Motion for Leave to Withdraw Petition For Limited Waiver of Section 20.19(c)(2)(i)(A) of the Commission's Rules, filed September 5, 2006, by Pine Telephone Company IS GRANTED, and the Petition for Limited Waiver of Section 20.19(c)(2)(i)(A) of the Commission's Rules, filed July 25, 2006, by Pine Telephone Company IS DISMISSED.

36. 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 1.3 and 1.925 of the Commission's rules, 47 C.F.R. §§ 1.3, 1.925, that the Motion for Leave to Withdraw Petition for Limited Waiver of Section 20.19(c)(2)(i)(A) of the Commission's Rules, filed August 30, 2006, by Missouri RSA No. 5 Partnership d/b/a Chariton Valley Wireless Services IS DENIED.

37. 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 1.3 and 1.925 of the Commission's rules, 47 C.F.R. §§ 1.3, 1.925, that the Motion for Leave to Withdraw Petition for Limited Waiver of Section 20.19(c)(2)(i)(A) of the Commission's Rules, filed August 30, 2006, by Advantage Cellular Systems, Incorporated, IS DENIED.

38. 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 1.3 and 1.925 of the Commission's rules, 47 C.F.R. §§ 1.3, 1.925, that the Motion for Leave to Withdraw Petition for Limited Waiver of Section 20.19(c)(2)(i)(A) of the Commission's Rules, filed August 30, 2006, by Mid-Tex Cellular, Ltd., IS DENIED.

39. 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 1.3 and 1.925 of the Commission's rules, 47 C.F.R. §§ 1.3, 1.925, that the Petition for Limited Waiver of Section 20.19(c)(2)(i)(A) of the Commission's Rules, filed July 25, 2006, by Missouri RSA No. 5 Partnership d/b/a Chariton Valley Wireless Services, IS GRANTED, and the deadline for full compliance is extended to November 1, 2006.

40. 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 1.3 and 1.925 of the Commission's rules, 47

⁷⁶ See *id.*

C.F.R. §§ 1.3, 1.925, that the Petition for Limited Waiver of Section 20.19(c)(2)(i)(A) of the Commission's Rules, filed July 25, 2006, by Kaplan Telephone Company IS GRANTED, and the deadline for full compliance is extended to November 1, 2006.

41. 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 1.3 and 1.925 of the Commission's rules, 47 C.F.R. §§ 1.3, 1.925, that the Petition for Limited Waiver of Section 20.19(c)(2)(i)(A) of the Commission's Rules, filed July 25, 2006, by Plateau Telecommunications Incorporated, Texas RSA 3 Limited Partnership, New Mexico RSA 4 East Limited Partnership, and E.N.M.R. Telephone Cooperative, IS GRANTED, and the deadline for full compliance is extended to November 1, 2006.

42. 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 1.3 and 1.925 of the Commission's rules, 47 C.F.R. §§ 1.3, 1.925, that the Request for Waiver, filed July 31, 2006, by TMP Corp. and TMP Jacksonville, LLC, IS GRANTED, and the deadline for full compliance is extended to November 15, 2006.

43. 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 1.3 and 1.925 of the Commission's rules, 47 C.F.R. §§ 1.3, 1.925, that the Petition for Limited Waiver of Section 20.19(c)(2)(i)(A) of the Commission's Rules, filed July 25, 2006, by Advantage Cellular Systems, Incorporated, IS GRANTED, and the deadline for full compliance is extended to three months from the release date of this *Memorandum Opinion and Order*.

44. 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 1.3 and 1.925 of the Commission's rules, 47 C.F.R. §§ 1.3, 1.925, that the Petition for Limited Waiver of Section 20.19(c)(2)(i)(A) of the Commission's Rules, filed July 25, 2006, by AST Telecom, LLC dba Blue Sky Communications, IS GRANTED, and the deadline for full compliance is extended to three months from the release date of this *Memorandum Opinion and Order*.

45. 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 1.3 and 1.925 of the Commission's rules, 47 C.F.R. §§ 1.3, 1.925, that the Petition for Limited Waiver of Section 20.19(c)(2)(i)(A) of the Commission's Rules, filed July 26, 2006, by CT Cube, Inc. d/b/a West Central Wireless, IS GRANTED, and the deadline for full compliance is extended to three months from the release date of this *Memorandum Opinion and Order*.

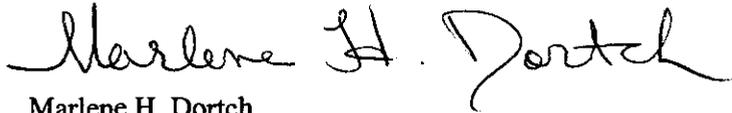
46. IT IS FURTHER ORDERED, pursuant to Sections 1 and 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), and Sections 1.3 and 1.925 of the Commission's rules, 47 C.F.R. §§ 1.3, 1.925, that the Petition for Limited Waiver of Section 20.19(c)(2)(i)(A) of the Commission's Rules, filed July 25, 2006, by Mid-Tex Cellular, Ltd., IS GRANTED, and the deadline for full compliance is extended to three months from the release date of this *Memorandum Opinion and Order*.

47. 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 1.3 and 1.925 of the Commission's rules, 47 C.F.R. §§ 1.3, 1.925, that the Petition for Limited Waiver of Section 20.19(c)(2)(i)(A) of the Commission's Rules, filed July 26, 2006, by Pinpoint Wireless, Inc., IS GRANTED, and the deadline for full compliance is extended to three months from the release date of this *Memorandum Opinion and Order*.

48. 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 1.3 and 1.925 of the Commission's rules, 47 C.F.R. §§ 1.3, 1.925, that the Petition for Limited Waiver of Section 20.19(c)(2)(i)(A) of the Commission's Rules, filed July 25, 2006, by Texas RSA-1 Limited Partnership d/b/a XIT Wireless, IS GRANTED, and the deadline for full compliance is extended to three months from the release date of this *Memorandum Opinion and Order*.

49. 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 1.3 and 1.925 of the Commission's rules, 47 C.F.R. §§ 1.3, 1.925, that the Request for Extension of GSM-Based HAC Compliance Relief, filed May 16, 2006, by Farmers Cellular Telephone Company, IS GRANTED, and the deadline for full compliance is extended to three months from the release date of this *Memorandum Opinion and Order*.

FEDERAL COMMUNICATIONS COMMISSION



Marlene H. Dortch
Secretary