

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

In the Matter of )
)
CTC Telcom, Inc. d/b/a Mosaic Telecom )
Petition for Temporary Waiver )
) WT Docket No. 07-250
Amendment of the Commission's Rules )
Governing Hearing Aid-Compatible Mobile )
Handsets )

ORDER

Adopted: June 29, 2011

Released: June 29, 2011

By the Deputy Chief, Spectrum and Competition Policy Division, Wireless Telecommunications Bureau:

1. In this Order, we grant CTC Telcom d/b/a Mosaic Telecom (Mosaic) a temporary waiver of 47 C.F.R. §§ 20.19(c)(3) and 20.19(d)(3) for the period from September 1, 2009, through February 1, 2011. As applied to Mosaic, these provisions require that at least half of the handset models it offers meet hearing aid compatibility standards for acoustic coupling and one-third of its handset models meet hearing aid compatibility standards for inductive coupling, respectively. Mosaic contends that a waiver is merited because of the limited availability of hearing aid-compatible handsets designed to operate in the 1710-1755/2110-2155 MHz Advanced Wireless Service (AWS) bands, which is the only frequency range in which Mosaic provides service. We find that due to the unique and unusual circumstances of this case, strict application of these rules to Mosaic during the time period covered by its request would advance neither the public interest nor the purpose of the rules. Accordingly, we grant Mosaic's waiver request.

2. Background. The Commission's wireless hearing aid compatibility rules require manufacturers and service providers to offer specific numbers or percentages of handset models that meet technical standards for hearing aid compatibility. A handset is considered hearing aid-compatible for radio frequency interference reduction with hearing aids operating in acoustic coupling mode if it meets a rating of M3 or better under American National Standards Institute technical standard C63.19-2007 (ANSI C63.19-2007), and for inductive coupling capability with hearing aids operating in telecoil mode if it meets a rating of T3 or better under ANSI C63.19-2007.<sup>1</sup> During the period covered by this petition,

<sup>1</sup> See 47 C.F.R. § 20.19(b)(1), (2). Grants of certification issued before January 1, 2010, under earlier versions of ANSI C63.19 remain valid for hearing aid compatibility purposes. 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 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. 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, 16763 ¶ 22 (2003); Erratum, 18 FCC Rcd 18047 (2003).

Section 20.19(c)(3) required service providers other than Tier I carriers<sup>2</sup> to meet a rating of M3 or better for at least one-half of the handset models that they offered to customers per air interface,<sup>3</sup> unless they met an alternative numerical threshold.<sup>4</sup> During this same period, Section 20.19(d)(3) required service providers other than Tier I carriers to meet a rating of T3 or better for at least one-third of the handset models that they offered to customers per air interface, unless they met an alternative numerical threshold.<sup>5</sup>

3. In its waiver petition filed January 15, 2010, Mosaic, a Tier III wireless service provider, indicates that it began offering WCDMA service in the 1700/2100 MHz AWS bands in July 2009, and that it does not hold licenses, lease spectrum rights, or offer service in any other frequency band.<sup>6</sup> From July until September 2009, Mosaic offered a total of four handset models, including two models that met an M3/T3 rating (Nokia 3555 and Nokia 6263). In September 2009, Mosaic added an additional handset model, and it added two more in October, none of which met the Commission's hearing aid compatibility standards. Mosaic indicates that at that time only three other hearing aid-compatible models were being produced over the 1700/2100 MHz AWS bands, each of which was rated M3 but not T3. However, Mosaic states that it could not use any of these handsets because they were loaded with T-Mobile firmware/software, and some of them were subject to exclusivity arrangements.<sup>7</sup> In its January waiver petition, Mosaic therefore asked for a waiver of the hearing aid-compatible handset deployment requirements from January 2010 through January 2011.

4. On November 19, 2010, Mosaic filed an amendment expanding its waiver request to the period from September 2009 through January 2012.<sup>8</sup> Mosaic indicated that it still was not able to procure a sufficient number of hearing aid-compatible handset models, but that it was offering every model it had located that was neither subject to an exclusivity arrangement nor loaded with T-Mobile firmware/software.<sup>9</sup>

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<sup>2</sup> Tier I carriers are Commercial Mobile Radio Service (CMRS) providers with nationwide footprints. *See* Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems; Phase II Compliance Deadlines for Non-Nationwide Carriers, CC Docket No. 94-102, *Order to Stay*, 17 FCC Rcd 14841, 14843 ¶ 7 (2002). In contrast, Tier II carriers are non-nationwide mid-sized CMRS providers, specifically providers with greater than 500,000 subscribers as of the end of 2001, while Tier III carriers are non-nationwide small CMRS providers with no more than 500,000 subscribers as of the end of 2001. *See id.* at 14846-48 ¶¶ 19-24.

<sup>3</sup> *See id.* at 16780 ¶ 65. The term air interface refers to the system 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 Dispatch Enhanced Network (iDEN), and Wideband Code Division Multiple Access (WCDMA).

<sup>4</sup> 47 C.F.R. § 20.19(c)(3). Specifically, from May 15, 2009, through May 14, 2010, the alternative numerical minimum for these service providers was nine handset models per air interface. Beginning May 15, 2010, the alternative numerical minimum increased to ten handset models per air interface.

<sup>5</sup> 47 C.F.R. § 20.19(d)(3). Specifically, from May 15, 2009, through May 14, 2010, the alternative numerical minimum for these service providers was five handset models per air interface. Beginning May 15, 2010, the alternative numerical minimum increased to seven handset models per air interface. Service providers offering three or fewer digital handset models over an air interface may qualify for a *de minimis* exception from the requirements of both Section 20.19(c) and (d). *See* 47 C.F.R. § 20.19(e).

<sup>6</sup> CTC Telcom, Inc. d/b/a Mosaic Telecom, WT Docket No. 07-250, *Petition for Temporary Waiver*, filed Jan. 15, 2010, at 2, 3.

<sup>7</sup> *Id.* at 4.

<sup>8</sup> CTC Telcom, Inc. d/b/a Mosaic Telecom, WT Docket No. 07-250, *Amendment to Petition for Temporary Waiver*, filed Nov. 19, 2010.

<sup>9</sup> *Id.* at 8.

5. On March 14, 2011, Mosaic filed a second amendment indicating that it had become compliant with the hearing aid compatibility rules as of February 1, 2011.<sup>10</sup> Mosaic indicates that in order to comply with the Commission's hearing aid compatibility requirements, it is offering certain models "that are pre-loaded with a competing Tier I service provider's software and firmware (which cannot be removed), and that are branded with this competing service provider's trademarks (which have been obscured). As a result, Mosaic must sell these products as 'used' or 'refurbished' even if they're essentially brand new."<sup>11</sup>

6. *The 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 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.<sup>12</sup> In considering these 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.<sup>13</sup> 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."<sup>14</sup> 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.

7. *Discussion.* Given the facts in the record, Mosaic has demonstrated that it meets the Commission's waiver requirements. According to the hearing aid compatibility status reports filed by manufacturers in July 2009 and July 2010, few WCDMA handsets served the 1700/2100 MHz AWS bands, and even fewer of those handsets were hearing aid-compatible.<sup>15</sup> Mosaic has explained that during the period for which it seeks a waiver, every one of these handsets other than those it offered was loaded with a different carrier's firmware/software, subject to exclusivity arrangements, or both. We find that during this period, it would not have been reasonable to expect Mosaic to offer handsets that were subject to these conditions. Thus, we conclude that due to its unique or unusual situation as a carrier offering service only over the 1700/2100 MHz AWS bands, Mosaic had no reasonable alternative that would have allowed it to satisfy sections 20.19(c)(3) and 20.19(d)(3) of the Commission's rules.<sup>16</sup>

8. Further, given that Mosaic could not reasonably have offered additional hearing aid-compatible handsets, we find that it would not have served the underlying purpose of the hearing aid

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<sup>10</sup> CTC Telcom, Inc. d/b/a Mosaic Telecom, WT Docket No. 07-250, *Amendment to Petition for Temporary Waiver*, filed Mar. 14, 2011, at 1.

<sup>11</sup> *Id.* at 2.

<sup>12</sup> 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.

<sup>13</sup> 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).

<sup>14</sup> *Rio Grande Family Radio Fellowship, Inc. v. FCC*, 406 F.2d 664 (D.C. Cir. 1968).

<sup>15</sup> See [http://wireless.fcc.gov/hac/index.htm?job=reports\\_dm](http://wireless.fcc.gov/hac/index.htm?job=reports_dm).

<sup>16</sup> We do not reach any conclusion as to whether it would have been reasonable for Mosaic to continue not to offer such handsets after January 2011, or whether Mosaic or any other service provider may be excused from offering such handsets in the future. Any such decision would be based on all the facts of the case, including Mosaic's now-demonstrated ability to obtain such handsets and offer them as "used" or "refurbished."

compatibility rules for Mosaic to have met the one-half and one-third requirements by limiting its selection of handsets that were not hearing aid-compatible. Those rules are designed to enhance the ability of consumers with hearing loss to access digital wireless telecommunications.<sup>17</sup> Where the service provider has already maximized the choice it provides those consumers, we see no benefit in limiting choice for consumers who do not use hearing aids.<sup>18</sup>

9. Accordingly, IT IS ORDERED that, pursuant to authority delegated in sections 0.131 and 0.331 of the Commission's rules, 47 C.F.R. §§ 0.131, 0.331, and sections 1.3 and 1.925 of the Commission's rules, 47 C.F.R. §§ 1.3, 1.925, the request for temporary waiver of sections 20.19(c)(3) and 20.19(d)(3) filed by CTC Telecom, Inc. d/b/a Mosaic Telecom for the period September 1, 2009, through February 1, 2011, IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Jeffrey S. Steinberg  
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<sup>17</sup> See, e.g., 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 Rcd 18047 (2003).

<sup>18</sup> We note that in connection with the Commission's comprehensive review of its wireless hearing aid compatibility regulations, the Wireless Telecommunications Bureau has sought comment on whether the current rules effectively ensure that a selection of hearing aid-compatible handsets is readily available to all consumers across all air interfaces, as well as on the ability of smaller service providers to obtain new and desirable handsets. Comment Sought on 2010 Review of Hearing Aid Compatibility Regulations, WT Docket No. 10-254, *Public Notice*, 25 FCC Rcd 17566, 17570, 17572 (WTB 2010).