

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

In the Matter of)
)
Northeast Telephone Services, Inc.)
)
Request for Waiver of the Commission's Filing)
Deadline for Hearing Aid Compatibility Status)
Report)

ORDER

Adopted: September 20, 2013

Released: September 20, 2013

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

I. INTRODUCTION

1. On May 20, 2013, Northeast Telephone Services, Inc. (Northeast) filed a request for waiver of Section 20.19(i)(1) of the Commission's rules with respect to the late filing of its 2011 hearing aid compatibility status report.¹ This report was required to be filed by January 17, 2012. The waiver request was referred to the Spectrum and Competition Policy Division from the Spectrum Enforcement Division of the Enforcement Bureau on or about September 5, 2013. For the reasons stated below, we deny Northeast's request.

II. BACKGROUND

2. Section 20.19(i)(1) of the Commission's rules requires that providers of digital mobile wireless services file annual reports with the Commission on their offerings of handsets that are compatible with hearing aids.² These reports are due on January 15;³ the reporting period covers the previous January 1 through December 31. In these annual reports, service providers provide information on, among other things, the hearing aid-compatible handset models that they offered for the reporting period, the functionalities and labeling of these handsets, and the company's consumer outreach efforts.

3. Northeast requests that the Commission waive Section 20.19(i)(1) so that Northeast's 2011 hearing aid compatibility status report, due on January 17, 2012 but filed on September 25, 2012, will be considered timely. In its request, Northeast argues that under the circumstances of its case, holding it to the January 17, 2012 filing deadline for its 2011 status report would be inequitable and contrary to the public interest. Specifically, Northeast states that it began providing commercial mobile radio service, not as a licensee but as a reseller, for the first time in 2011; that it was unfamiliar with the regulatory requirements applicable to resellers; and that it therefore mistakenly relied for regulatory

¹ Letter from Harold Mordkofsky, Attorney for Northeast Telephone Services, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, File No. EB-SED-13-00006159 (May 20, 2013).

² 47 C.F.R. § 20.19(i)(1).

³ Service providers are required to file their hearing aid compatibility status reports on January 15th of each year. *See* 47 C.F.R. § 20.19(i)(1). However, because January 15, 2012 fell on a Sunday and January 16, 2012 was a federal holiday the report was due the next business day, January 17, 2012. *See id.* § 1.4(e)(1) (defining "holiday" to include Sunday and federal holidays); *Id.* § 1.4(j) (when a deadline falls on a holiday, the deadline is extended until the next business day); *see also* Hearing Aid Compatibility Status Reporting, <http://wireless.fcc.gov/hac>.

guidance on the entity whose services it was reselling. It further states that once it became aware of the need to file its 2011 status report, it took steps to come into compliance and put into place internal procedures to make sure that in the future its reports would be timely filed. Northeast also reports that it timely filed its 2012 status report, and that its late-filed 2011 status report shows that it was in compliance with the Commission's substantive hearing aid compatibility requirements for the relevant reporting period.

III. DISCUSSION

4. The Commission does not routinely grant waivers of its rules.⁴ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.⁵ In addition, the Commission may take into account considerations of hardship, equity, or effective implementation of overall policy on an individual basis.⁶ Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.⁷ In order to be granted a waiver, a party must demonstrate: (1) that the underlying purpose of the rule would not be served or would be frustrated by its application to the instant case, and that grant of a waiver would be in the public interest, or (2) in view of unique or unusual factual circumstances in the instant case, application of the rule would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.⁸

5. In this case, Northeast filed its 2011 hearing aid compatibility status report on September 25, 2012. This is over eight months after the report was due. It filed its request for waiver eight months after it filed its late status report, as part of its May 20, 2013 response to an Enforcement Bureau letter of inquiry. Northeast states that, when it began providing commercial mobile radio service as a reseller in 2011, it was unfamiliar with the Commission's hearing aid compatibility regulations, and argues that the Commission should excuse its late filing under these circumstances. The Commission's hearing aid compatibility status report requirements, however, have been in place for years.⁹ As a Commission-regulated entity, Northeast is required to be aware of and comply with all Commission regulations, including the hearing aid compatibility requirements.¹⁰ Northeast's failure to familiarize itself with the Commission's reporting requirements does not constitute a unique or unusual circumstance that would justify waiving the January 17, 2012 filing deadline. Moreover, neither Northeast's compliance with the substantive hearing aid compatibility requirements nor its efforts to ensure future timely reporting is an adequate ground to excuse the late filing of its 2011 report.

6. Further, we find that the underlying purpose of the filing deadline would not be served by waiving it in this case. The Commission uses the data it gathers from the hearing aid compatibility status reports, among other things, to monitor compliance with the hearing aid compatibility provisions, assess the success of its regulations, and help make determinations about future refinements to these

⁴ See 47 C.F.R. §§ 1.3, 1.925(b); see also 47 C.F.R. § 1.46(a) ("It is the policy of the Commission that extensions of time shall not be routinely granted.").

⁵ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

⁶ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

⁷ *Northeast Cellular*, 897 F.2d at 1166.

⁸ 47 C.F.R. § 1.925(b).

⁹ See, e.g., Section 68.4(a) of the Comm'n's Rules Governing Hearing Aid-Compatible Telephones, WT Docket No. 01-309, *Report and Order*, 18 FCC Rcd 16753 (2003).

¹⁰ See 47 C.F.R. § 20.19.

provisions.¹¹ The Commission also makes the reports available to the public along with a summary of the information contained in the reports. Importantly, these reports provide valuable information to the public concerning the technical testing and commercial availability of hearing aid-compatible handsets.¹² Regardless of whether any particular provider complied with the substantive requirements to offer hearing aid-compatible handsets, therefore, the Commission has an important interest in making sure that the information it gathers is accurate, up-to-date, and timely. For these reasons, we deny Northeast's request to waive the January 17, 2012 filing deadline for its 2011 hearing aid compatibility status report.

IV. ORDERING CLAUSE

7. Accordingly, IT IS ORDERED, pursuant to sections 4(i) and 610 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 610, and sections 0.131, 0.331, 1.3, and 1.925(b) of the Commission's rules, 47 C.F.R. §§ 0.131, 0.331, 1.3, and 1.925(b), that the waiver request filed by Northeast Telephone Services, Inc. IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

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Wireless Telecommunications Bureau

¹¹ See *Public Notice*, "The Wireless Telecommunications Bureau Reminds Wireless Handset Manufacturers of Their Obligation To Report on the Status of Compliance with the Commission's Hearing Aid Compatibility Requirements by July 15, 2009," 24 FCC Rcd 5821 (2009).

¹² See *Public Notice*, "FCC Enforcement Advisory, Hearing Aid Compatibility for Wireless Telephones, Wireless Service Providers Advised to Review Compliance with Hearing Aid Compatibility Rules and Ensure Accurate Reporting," Enforcement Advisory No. 2013-01, 28 FCC Rcd 93 (2013).