

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

In the Matter of	)	
	)	
Amendment of the Commission's Rules	)	WT Docket No. 07-250
Governing Hearing Aid-Compatible Mobile Handsets	)	
	)	
Southern Communications Services, Inc. d/b/a Southern Linc	)	
Petition for Limited Waiver	)	

**ORDER**

**Adopted: July 11, 2017**

**Released: July 11, 2017**

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

1. In this Order, we grant the Petition of Southern Communications Services, Inc. d/b/a Southern Linc (Southern Linc)<sup>1</sup> requesting a limited waiver of the Commission's Section 20.19 benchmarks that, as applied to the instant case, require that a specified minimum number or fraction of Southern Linc's total offered iDEN handset models comply with hearing aid compatibility standards for inductive coupling capability.<sup>2</sup> We find that due to the unique and unusual circumstances of this case, strict application of this rule to Southern Linc during the time period covered by its request would advance neither the public interest nor the purpose of the rule. Accordingly, we grant Southern Linc's Petition for limited waiver.

2. *Background.* The Commission's wireless hearing aid compatibility benchmarks require covered service providers to meet a rating of T3 or higher under the specified inductive coupling technical standard for a specific percentage or number of handset models that they offer to the public.<sup>3</sup> As relevant in this case, under Section 20.19(d)(3), a non-Tier I service provider offering *four or more* handset models that operate over a particular air interface must meet at least a T3 rating for inductive coupling capability for at least one-third of its total offered handset models using that interface (rounded up) or ten

<sup>1</sup> Southern Communications Services, Inc. d/b/a Southern Linc, WT Docket No. 07-250, *Amended Request for Limited Waiver*, filed Dec. 2, 2016 (Petition). In its Petition, Southern Linc states that Southern Communications Services, Inc. changed its d/b/a name from "SouthernLINC Wireless" to "Southern Linc" in October 2016. *Id.* at 1 n.1.

<sup>2</sup> See 47 CFR §§ 20.19(d)(3), 20.19(e). We refer to the obligations under Section 20.19(d)(3) and Section 20.19(e) collectively as the "benchmarks."

<sup>3</sup> Under paragraph (b)(2) of Section 20.19, a handset is considered hearing aid-compatible for inductive coupling capability with hearing aids operating in telecoil mode if it meets a rating of T3 or higher under American National Standards Institute technical standards C63.19-2007 or C63.19-2011. See *id.* § 20.19(b)(2). Using a telecoil-equipped hearing aid 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. See *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 para. 22 (2003) (*2003 Report and Order*).

models.<sup>4</sup> In addition, under Section 20.19(e), with certain exceptions not applicable here, a service provider offering *three or fewer* handset models that operate over a particular air interface must meet at least a T3 rating for inductive coupling capability for at least one offered handset model using that interface.<sup>5</sup> Because the number of handsets offered by Southern Linc during the relevant time period may fluctuate between “four or more” and “three or fewer,” Southern Linc is subject to the benchmarks set forth in Section 20.19(d)(3) or in Section 20.19(e) at different points as appropriate during this period.<sup>6</sup>

3. In its Petition for a limited waiver filed on December 2, 2016, Southern Linc states that despite best efforts, and due to circumstances beyond its control occurring in mid-August 2016, it has only been able to offer to the public one hearing aid-compatible handset model over the iDEN air interface, that this model is not T-rated for inductive coupling capability, and that as a result, Southern Linc is not in compliance with the inductive coupling benchmarks.<sup>7</sup> Southern Linc states that it is one of the only service providers currently operating “a digital 800 MHz ESMR system utilizing the iDEN air interface technology” and the “only carrier in the global iDEN market that is subject to the Commission’s hearing aid compatibility rules.”<sup>8</sup> Southern Linc states that in mid-August 2016, its non-US licensed iDEN handset supplier unexpectedly informed Southern Linc that a shortage of components would prevent it from fulfilling any of Southern Linc’s orders for the one T4-rated iDEN handset model that Southern Linc had been offering to the public.<sup>9</sup> As a result, beginning approximately August 17, 2016, Southern Linc has offered only one handset model to the public over the iDEN air interface, a model that is rated hearing-aid compatible for reduced RF interference but that is not T-rated for inductive coupling capability.<sup>10</sup> Southern Linc states that it “continues to diligently and vigorously pursue all available

<sup>4</sup> See 47 CFR § 20.19(d)(3)(ii)(A); § 20.19(d)(3)(ii)(B)(4); see also *Amendment of the Commission’s Rules Governing Hearing Aid-Compatible Mobile Handsets*, WT Docket No. 07-250, First Report and Order, 23 FCC Rcd 3406, 3419-20 para. 36 (2008) (stating to round fractions up when computing the one-third percentage of digital wireless handset models rated T3 (or higher)). The hearing aid compatibility rules define a Tier I carrier as a Commercial Mobile Radio Service provider “that offers such service nationwide.” See 47 CFR § 20.19(a)(3)(v); see also *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 para. 7 (2002). Southern Linc states that it provides service “over a 127,000 square mile service territory covering Georgia, Alabama, southeastern Mississippi, and the panhandle of Florida,” Petition at 5, and is accordingly covered by the provisions applicable to non-Tier I service providers.

<sup>5</sup> See 47 CFR § 20.19(e). Southern Linc does not qualify for the exceptions that would permit it to offer no hearing aid-compatible handset models. See Petition at 10 n.11.

<sup>6</sup> We note that Southern Linc’s Petition requests a waiver of the deployment obligations applicable to service providers under Section 20.19(d)(3), but does not expressly ask for relief of the deployment requirements applicable under the *de minimis* exception, Section 20.19(e). We find it clear from the substance of its assertions and arguments, however, that Southern Linc in fact seeks relief from the inductive coupling deployment obligations under both provisions, and we construe its request accordingly. See, e.g., Petition at 9 (asserting Southern Linc is currently unable to offer any T-rated models); see also *WCBD, Inc. (WAIT), Chicago, Ill. For Modification of Construction Permit*, Decision and Order on Petition for Rehearing and Relief, 9 FCC 44 (1941) (where petition was “in substance” a request for waiver of a provision, request was construed to seek relief from that provision).

<sup>7</sup> See Petition at 3. Prior to filing its Petition, Southern Linc filed a request in June 2016 seeking a limited waiver of the hearing aid compatibility rule’s benchmarks for handset models that must be rated hearing aid-compatible for radio frequency (RF) interference as well as a limited waiver of the inductive coupling benchmarks. See generally *Southern Communications Services, Inc. d/b/a SouthernLINC Wireless*, WT Docket No. 07-250, *Request for Limited Waiver*, filed Jun. 6, 2016. In the instant Petition filed in December, Southern Linc narrowed the scope of its request to a limited waiver of only the inductive coupling benchmarks, and it also discussed additional developments that supported the need for a waiver of those benchmarks. See, e.g., Petition at 1-2.

<sup>8</sup> Petition at 5, 14.

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

<sup>10</sup> *Id.*

options for the acquisition of additional [T-rated hearing aid-compatible] iDEN handsets,”<sup>11</sup> but that it will be unable to maintain compliance with the applicable inductive coupling benchmarks until the end of 2018 when it will have transitioned completely from its iDEN network to a greenfield LTE network that will enable it to then meet all benchmarks for hearing aid-compatible handsets.<sup>12</sup> Southern Linc also states that reduced vendor and industry support for the iDEN air interface has made it difficult for it to obtain any new or replacement T-rated iDEN handset models, and, as a result, it cannot offer an iDEN handset model rated T3 or higher before the transition to its new LTE network is complete.<sup>13</sup>

4. *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>14</sup> In considering 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.<sup>15</sup>

5. *Discussion.* Based on the facts in the record before us, Southern Linc has justified a waiver of the Commission’s Section 20.19 benchmarks regarding deployment of handsets rated T3 (or higher) for inductive coupling capability over the iDEN air interface.<sup>16</sup> Specifically, Southern Linc has demonstrated that it would be unduly burdensome for it to offer iDEN handsets rated T3 or higher, and Southern Linc has shown that it has no reasonable sourcing channels to procure T-rated hearing aid-compatible handsets until it can transition completely to its LTE network. In addition, we find that it would not serve the underlying purpose of the hearing aid compatibility rules for Southern Linc to comply with the rules by discontinuing the offering of all handsets to the public because it is not able to obtain any T-rated hearing aid-compatible handset models.

6. We find that during the period from August 17, 2016 through December 31, 2018, it would be unduly burdensome to require Southern Linc to offer the minimum number of T-rated hearing aid-compatible handsets over the iDEN air interface.<sup>17</sup> The iDEN air interface technology is being phased out in the United States.<sup>18</sup> In this regard, manufacturers did not report the offering of any iDEN handset

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<sup>11</sup> *Id.* at 10.

<sup>12</sup> *Id.* at 2. Southern Linc states in its Petition: “Construction of the new LTE network commenced in 2015 and is scheduled for completion in 2018. Southern Linc will continue to provide service over and support its iDEN network until the transition of its subscribers to the new LTE network is complete. As part of its network planning, Southern Linc has included in its equipment procurement process a requirement that the handsets for its LTE network meet the Commission’s requirements for hearing aid compatibility. Southern Linc will thus be able to offer its customers a range of hearing aid-compatible handset options as they transition to the new LTE network.” *Id.* at 5-6.

<sup>13</sup> *Id.* at 6.

<sup>14</sup> See 47 CFR § 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 CFR § 1.3.

<sup>15</sup> See *CTC Telecom, Inc. d/b/a Mosaic Telecom, Petition for Temporary Waiver*, WT Docket No. 07-250, Order, 26 FCC Rcd 9227, 9229 para. 6 (WTB SCPD 2011) (*Mosaic Order*).

<sup>16</sup> See *supra* notes 2 & 5.

<sup>17</sup> We note that Section 20.19’s required minimum number of T-rated hearing aid-compatible handsets may vary over this period and depends on the total number of unique digital wireless handset models that Southern Linc offers over the iDEN air interface at any given point in time.

<sup>18</sup> See, e.g., Petition at 6-7, 12-14.

models in the United States according to FCC Form 655 hearing aid compatibility status reports filed by manufacturers from July 2014 through June 2016.<sup>19</sup> We find it unreasonable to require Southern Linc to comply with inductive coupling benchmarks when manufacturers are no longer producing iDEN handsets for US markets. Even with extensive efforts across several alternative channels to source newly-manufactured or refurbished handsets in secondary and non-US markets,<sup>20</sup> Southern Linc has not been able to obtain access to the handset models that it would need to comply with the benchmarks. Accordingly, we conclude that, in view of these unique circumstances, application of these Section 20.19 benchmarks to Southern Linc would be inequitable and unduly burdensome.

7. Moreover, given that Southern Linc cannot reasonably offer T-rated hearing aid-compatible iDEN handsets and currently operates only an iDEN network, absent a waiver Southern Linc would need to stop offering any handsets on its network to new or existing customers, including discontinuing its offering of its one handset that is rated hearing-aid compatible for reduced RF interference.<sup>21</sup> We find that it would not serve the underlying purpose of the hearing aid compatibility rules for Southern Linc to comply with inductive coupling benchmarks by discontinuing its offering of handsets to the public. The Commission's benchmarks are designed to enhance the ability of consumers with hearing loss to access digital wireless telecommunications.<sup>22</sup> Southern Linc has already maximized the choice it provides to these consumers with a handset that can be used with a hearing aid's microphone, even if not usable with a telecoil. Requiring compliance through the elimination of this option will only reduce the choices available to consumers with and without hearing loss.<sup>23</sup> We agree with Southern Linc that "the minimum percentage benchmark . . . was adopted on the assumption that a sufficient number of handset models meeting the T3 rating requirement would be made available by manufacturers to enable carriers to offer their customers a 'wide array' of hearing aid-compatible handsets."<sup>24</sup> In other words, we conclude that there is no reasonable alternative that would allow Southern Linc to satisfy the Commission rules at issue. Accordingly, grant of the requested limited waiver serves the public interest by enabling Southern Linc to continue to offer iDEN handsets to the public until its customers can be transitioned to a new LTE network.

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<sup>19</sup> See *id.* at 6-7, 12.

<sup>20</sup> See *id.* at 7-9. For example, Southern Linc states that "only a limited number of refurbished and refreshed handsets are available from distributors, and much of the inventory available on the secondary market consists of handsets that were not primarily designed for the general consumer and which typically do not meet the Commission's hearing aid compatibility requirements." *Id.* at 3. With regard to its efforts to obtain newly manufactured hearing aid-compatible handsets from non-US markets, Southern Linc states that it has limited leverage to obtain such handsets because "the carrier customer base for [its non-US] licensed iDEN handset manufacturer[] consists primarily of service providers operating in non-US markets that do not have any hearing aid compatibility obligations or requirements." *Id.* at 8.

<sup>21</sup> See, e.g., *id.* at 14-15 (stating that "[d]ue to these factual circumstances that are unique to the iDEN platform in general and to Southern Linc in particular, Southern Linc would have no reasonable alternative other than to discontinue offering iDEN handsets . . . to the public in order to maintain compliance"); see also *Mosaic Order*, 26 FCC Rcd at 9229-30 para. 8.

<sup>22</sup> See generally *2003 Report and Order*.

<sup>23</sup> See Petition at 13 (stating that "[t]he result of such action would be to limit the choices of wireless services available to consumers, even though Southern Linc has already done all it may reasonably do to maximize the choices it provides to those consumers with hearing loss").

<sup>24</sup> *Id.* at 12 (*citing* Improvements to Benchmarks and Related Requirements Governing Hearing Aid-Compatible Mobile Handsets, Amendment of the Commission's Rules Governing Hearing Aid-Compatible Mobile Handsets, WT Docket Nos. 15-258, 07-250, *Fourth Report and Order and Notice of Proposed Rulemaking*, 30 FCC Rcd 13845, 13846 para. 1 (2015)).

8. Accordingly, IT IS ORDERED that, pursuant to authority delegated in Sections 0.131 and 0.331 of the Commission's rules, 47 CFR §§ 0.131, 0.331, and Sections 1.3 and 1.925 of the Commission's rules, 47 CFR §§ 1.3, 1.925, the request filed by Southern Communications Services, Inc. d/b/a Southern Linc for limited waiver of the Commission's Section 20.19 benchmarks regarding deployment of handsets rated T3 (or higher) for inductive coupling capability over the iDEN air interface during the period from August 17, 2016 through December 31, 2018, IS GRANTED.

## FEDERAL COMMUNICATIONS COMMISSION

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