

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

In the Matter of)	
)	
Section 68.4(a) of the Commission’s Rules)	WT Docket No. 01-309
Governing Hearing Aid-Compatible Telephones)	
)	
Petitions for Waiver of Section 20.19 of the)	
Commission’s Rules)	

ORDER ON RECONSIDERATION

Adopted: August 10, 2012

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By the Commission:

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I. INTRODUCTION

1. In this Order on Reconsideration, we address six petitions requesting reconsideration of decisions that denied the petitioners partial waivers of their obligations to offer hearing aid-compatible handsets capable of inductive coupling.¹ Inductive coupling avoids feedback from a handset to a hearing aid and eliminates background noise, and thus provides improved access to digital mobile communications to the deaf and hard of hearing community. Under Section 20.19(d)(2) of the Commission’s rules, Commercial Mobile Radio Service (CMRS) providers and handset manufacturers were required to have offered by September 18, 2006, at least two handset models that met the

¹ See Section 68.4(a) of the Commission’s Rules Governing Hearing Aid-Compatible Telephones, WT Docket No. 01-309, *Memorandum Opinion and Order*, 23 FCC Rcd 3352 (2008) (*February 2008 Waiver Order*).

Commission's standard for inductive coupling capability.² The Commission subsequently granted waivers providing limited extensions of the September 18, 2006 deadline to some wireless service providers and denied waivers to others.³

2. Several Tier III carriers that were denied waiver relief have sought reconsideration.⁴ Specifically, the six pending petitions were filed by the following carriers: (1) North Dakota Network Co. (NDNC); (2) Iowa Wireless Services, LLC d/b/a i wireless, on behalf of itself and 37 related licensees (collectively, i wireless); (3) South Slope Cooperative Telephone Co., Inc. d/b/a South Slope Wireless (South Slope); (4) Blanca Telephone Company (Blanca), CTC Telecom, Inc. (CTC), and Farmers Cellular Telephone (Farmers Cellular) (collectively, Joint Petitioners); (5) Uintah Basin Electronic Telecommunications d/b/a UBET Wireless (UBET); and (6) SLO Cellular, Inc. d/b/a Cellular One of San Luis Obispo (SLO Cellular) and Entertainment Unlimited (EU).⁵ After careful consideration of the merits of the requests, and pursuant to our waiver authority, we grant the petitions of NDNC, i wireless, and South Slope, and deny the petitions of Blanca, CTC, Farmers Cellular, UBET, SLO Cellular, and EU.

II. BACKGROUND

3. In the *2003 Hearing Aid Compatibility Order*, the Commission adopted several measures

² See 47 C.F.R. § 20.19(d)(2) (2006). In February 2008, as part of a comprehensive reconsideration of the effectiveness of the hearing aid compatibility rules, the Commission made several changes to these rules, including revisions to expand, for most carriers, the number of handsets that they must offer that meet the inductive coupling standard. See 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 (2008) (*2008 Hearing Aid Compatibility Order*), *Order on Reconsideration and Erratum*, 23 FCC Rcd 7249 (2008); see also Amendment of the Commission's Rules Governing Hearing Aid-Compatible Mobile Handsets, WT Docket No. 07-250, *Policy Statement and Second Report and Order and Further Notice of Proposed Rulemaking*, 25 FCC Rcd 11167 (2010) (*2010 Hearing Aid Compatibility Order*); Amendment of the Commission's Rules Governing Hearing Aid-Compatible Mobile Handsets, WT Docket No. 07-250, *Third Report and Order*, DA 12-550 (WTB/OET rel. April 9, 2012) (both adopting further changes to hearing aid compatibility rules). These revised rules, however, do not govern conduct prior to the effective date of the revisions, June 6, 2008, see 73 Fed. Reg. 25,566 (May 7, 2008), and therefore are not relevant to disposition of the pending petitions.

³ See *February 2008 Waiver Order*.

⁴ Tier III carriers are non-nationwide wireless radio service providers with 500,000 or fewer subscribers as of the end of 2001. 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).

⁵ See Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones, WT Docket No. 01-309, Petition for Reconsideration by North Dakota Network Co. (filed Mar. 27, 2008) (NDNC Petition); Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones, WT Docket No. 01-309, Petition for Reconsideration by South Slope Cooperative Telephone Co., d/b/a South Slope Wireless (filed Mar. 27, 2008) (South Slope Petition); Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones, WT Docket No. 01-309, Petition for Reconsideration by CTC, Inc., Blanca Telephone Company, Farmers Cellular Telephone, Inc. *et al.* (filed Mar. 28, 2008) (CTC, Blanca, and Farmers Cellular Petition); Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones, WT Docket No. 01-309, Petition for Reconsideration by SLO Cellular, Inc. d/b/a Cellular One Of San Luis Obispo & Entertainment Unlimited (filed Mar. 28, 2008) (SLO/EU Petition), *erratum filed*, Mar. 28, 2008; Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones, WT Docket No. 01-309, Petition for Reconsideration by Uintah Basic Electronic Telecommunications d/b/a UBET Wireless (filed Mar. 28, 2008) (UBET Petition). A seventh petition for reconsideration of the *February 2008 Waiver Order* was filed by IT&E Overseas, Inc. (IT&E) on March 28, 2008. IT&E subsequently withdrew its petition, and we will not address it herein.

to enhance the ability of the deaf and hard of hearing community to access digital wireless telecommunications.⁶ Among other actions, the Commission established technical standards that digital wireless handsets must meet to be considered hearing aid-compatible. One of these standards -- the “U3” (now “M3”) rating⁷ -- indicates a reduction in radio frequency (RF) interference to enable effective acoustic coupling between a digital wireless phone and hearing aids operating in acoustic coupling (a.k.a. microphone) mode. The other standard -- the “U3T” (now “T3”) rating -- indicates that the handset produces an audio signal-based magnetic field to enable inductive coupling with hearing aids operating in telecoil mode.⁸ The Commission further established, for each standard, deadlines by which service providers and manufacturers were required to offer specified numbers or percentages of digital handset models per air interface⁹ that were compliant with the relevant standard. In particular, manufacturers were required to offer to service providers, and service providers were required to offer and make available in each retail store that they own or operate, at least two handset models that met the U3T or T3 rating for inductive coupling by September 18, 2006.

4. In the *February 2008 Waiver Order*, the Commission addressed 46 waiver petitions filed on behalf of 99 service providers and one manufacturer seeking extensions of the September 18, 2006 deadline to offer handsets that met the Commission’s hearing aid compatibility standard for inductive coupling. As the Commission noted, parties seeking a waiver face a “high hurdle,” and must demonstrate that “the underlying purpose of the rule(s) would not be served or would be frustrated by application in 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

⁶ 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 FCC Rcd 18047 (2003) (*2003 Hearing Aid Compatibility Order*).

⁷ The 2001 version of American National Standards Institute (ANSI) Standard C63.19, which the Commission adopted in the *2003 Hearing Aid Compatibility Order*, used a “U” nomenclature for radio frequency interference reduction in acoustic coupling mode and a “UT” nomenclature for inductive coupling capability. The 2006 version of this standard substituted the terms “M” and “T,” respectively. In obtaining certification, manufacturers during the time period relevant to these petitions were permitted to rely on either of these standards or on an intermediate 2005 draft revision. See Wireless Telecommunications Bureau and Office of Engineering and Technology Clarify Use of Revised Wireless Phone Hearing Aid Compatibility Standard, *Public Notice*, 21 FCC Rcd 6384 (WTB/OET 2006).

⁸ The *2003 Hearing Aid Compatibility Order* described hearing aids’ acoustic coupling and telecoil (or inductive coupling) modes as follows:

In acoustic coupling mode, the [hearing aid’s] 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. 18 FCC Rcd at 16763 ¶ 22.

⁹ 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 used for voice communications include Code Division Multiple Access (CDMA), Global System for Mobile Communications (GSM), Integrated Digital Enhanced Network (iDEN), and Wideband Code Division Multiple Access (WCDMA). WCDMA is also known as Universal Mobile Telecommunications System (UMTS).

public interest, or the applicant has no reasonable alternative.”¹⁰ Further, parties “must plead with particularity the facts and circumstances which warrant” a waiver.¹¹ Applying this standard, the Commission denied waivers to, among others, NDNC, i wireless and its 37 associated licensees, South Slope, Blanca, CTC, Farmers Cellular, UBET, SLO Cellular, and EU.¹² The Commission found that these petitioners had not presented any facts or circumstances warranting grant of the requested relief. Following the submission of petitions for reconsideration, the Commission put the petitions out for comment on May 7, 2008.¹³ Several of the petitioners, as well as the National Telecommunications Cooperative Association, filed comments supporting the requests for relief.¹⁴

III. DISCUSSION

5. For the reasons discussed below, we grant the petitions of NDNC, i wireless, and South Slope, and deny the petitions of Blanca, CTC, Farmers Cellular, UBET, SLO Cellular, and EU. A petition for reconsideration may rely on facts not previously presented to the Commission only if the new information was not previously available to the petitioner or circumstances have changed, or if consideration of the new information serves the public interest.¹⁵ In the instant case, when the original waiver petitions were filed prior to the *February 2008 Waiver Order*, it was not clear what facts the Commission would find most relevant in considering waiver requests, and we therefore find that consideration of the new facts that petitioners present does serve the public interest. We emphasize, however, that in light of the *February 2008 Waiver Order*, all petitioners have had a full opportunity in their present petitions to present all relevant facts. We therefore would be strongly disinclined to grant any further petitions based upon new facts.

A. Petition of North Dakota Network Co.

6. Background: NDNC is a Tier III CDMA carrier serving parts of North Dakota.¹⁶ It

¹⁰ *February 2008 Waiver Order*, 23 FCC Rcd at 3356-57 ¶ 7; see 47 C.F.R. § 1.925(b)(3); *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), *appeal after remand*, 459 F.2d 1203 (D.C. Cir. 1972), *cert. denied*, 409 U.S. 1027 (1972); *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990); 47 C.F.R. § 1.3.

¹¹ *February 2008 Waiver Order*, 23 FCC Rcd at 3357 ¶ 7, *citing Rio Grande Family Radio Fellowship v. FCC*, 406 F.2d 664 (D.C. Cir. 1968).

¹² See *February 2008 Waiver Order*, 23 FCC Rcd at 3364-65, 3368-69, 3372 ¶¶ 22, 34, 44.

¹³ See Wireless Telecommunications Bureau Seeks Comment on Petitions for Reconsideration Filed in Hearing Aid Compatibility Docket, WT Docket No. 01-309, *Public Notice*, 23 FCC Rcd 7482 (WTB 2008) (*Reconsideration Petition Public Notice*).

¹⁴ Comments were filed by the National Telecommunications Cooperative Association (NTCA), and jointly by Blanca, CTC, and Farmers Cellular. See Comments of the National Telecommunications Cooperative Association, WT Docket No. 01-309, filed May 22, 2008 (NTCA Comments); Comments of Blanca Telephone Company, CTC Telecom, Inc., and Farmers Cellular Telephone, Inc., WT Docket No. 01-309, filed May 22, 2008 (Joint Petitioners Comments). Reply comments were filed jointly by Blanca, CTC, and Farmers Cellular and by IT&E, NDNC, South Slope, and UBET. See Reply Comments of Blanca Telephone Company, CTC Telecom, Inc., and Farmers Cellular Telephone, Inc., WT Docket No. 01-309, filed June 2, 2008 (Joint Petitioners Reply Comments); Reply Comments of IT&E Overseas, Inc., WT Docket No. 01-309, filed June 2, 2008; Reply Comments of North Dakota Network Co., WT Docket No. 01-309, filed June 2, 2008 (NDNC Reply Comments); Reply Comments of South Slope Cooperative Telephone Co., Inc. d/b/a South Slope Wireless, WT Docket No. 01-309, filed June 2, 2008 (South Slope Reply Comments); Reply Comments of Uintah Basic Electronic Telecommunications d/b/a UBET Wireless, WT Docket No. 01-309, filed June 2, 2008 (UBET Reply Comments).

¹⁵ 47 C.F.R. § 1.106(c).

¹⁶ See *February 2008 Waiver Order*, 23 FCC Rcd at 3364 ¶ 20.

sought a waiver of the requirement to offer inductive coupling-capable handsets until September 18, 2007, citing difficulties in obtaining handsets.¹⁷ The *February 2008 Waiver Order* denied NDNC's request for a waiver because it had not shown sufficient evidence that it was diligent in its efforts to obtain compliant handsets.¹⁸

7. Petition for Reconsideration: NDNC filed its Petition for Reconsideration of the *February 2008 Waiver Order* on March 27, 2008. In its petition, NDNC provides new material information supported by a sworn declaration documenting its efforts to come into compliance prior to and within a reasonable period after the September 18, 2006 deadline. This documentation includes a detailed timeline of contacts it pursued with vendors in its attempts to obtain compliant handsets.¹⁹ Further, while NDNC had previously reported to the Commission that it came into compliance on January 23, 2007, it provides in its petition information showing that it in fact came into compliance on December 29, 2006.²⁰

8. Decision: We grant NDNC's Petition for Reconsideration. The documentation of efforts NDNC provides in support of its petition, as well as the fact that those efforts bore fruit on December 29, 2006, persuades us that NDNC was reasonably diligent in its efforts to obtain compliant handsets. Thus, we find that NDNC has made a showing sufficient to justify a waiver of Section 20.19(d)(2), and we therefore grant its Petition for Reconsideration of the *February 2008 Waiver Order*.

B. Petition of Iowa Wireless Services, LLC d/b/a i wireless

9. Background: On September 18, 2006, i wireless filed a request on behalf of itself and 37 related licensees for a waiver of Section 20.19(d)(2) until "such time as compliant handsets are commercially available" to it, citing its inability to obtain compliant handsets by the deadline.²¹ On November 21, 2006, i wireless filed a status report, stating that it was offering two compliant handsets (the Nokia 6061 and Motorola V3i).²² In a subsequent filing, however, i wireless indicated that it only came into compliance as of March 22, 2007, based on its offering of the Motorola RAZR V3 and the Nokia 6126h.²³

10. In the *February 2008 Waiver Order*, the Commission denied i wireless's request, finding that it had not demonstrated unique or unusual circumstances, nor sufficient diligence, to warrant a waiver of the handset deployment deadline.²⁴ The Commission found that i wireless had failed to demonstrate a need for a six month extension when most similarly situated carriers were able to comply in less time.²⁵ It also noted that the Nokia 6061, reported as compliant in i wireless's November 2006 Status Report, had not in fact been certified as hearing aid-compatible for inductive coupling. Furthermore, i wireless had not explained why it had initially listed the Nokia 6061 as hearing aid-compatible, and it had provided no

¹⁷ *Id.*

¹⁸ *See id.* at 3365 ¶ 22

¹⁹ *See* NDNC Petition at 13-15.

²⁰ *See id.* at 15.

²¹ *See February 2008 Waiver Order*, 23 FCC Red at 3372 ¶ 42.

²² *Id.* at 3372 ¶ 43.

²³ *Id.*

²⁴ *Id.* at 3372 ¶ 44.

²⁵ *Id.*

information as to whether, and if so why, it had believed the handset was hearing aid-compatible.²⁶

11. Petition for Reconsideration: In its Petition for Reconsideration, i wireless asserts that, during the period both before and after the deadline, it worked diligently to procure hearing aid-compatible handsets from authorized distributors.²⁷ i wireless further asserts that, while it offered its first compliant handset on October 16, 2006, it was prevented from offering a second compliant handset due to “delays and misinformation from handset manufacturers and distributors, and a lack of availability of compliant units. . . .”²⁸ With its petition, i wireless provides documentation of its efforts to obtain compliant handsets supported by a sworn declaration and an affidavit from its inventory manager.²⁹

12. Decision: We grant the Petition for Reconsideration filed by i wireless and its related licensees. i wireless’s petition provides sufficient information to show that its efforts to obtain compliant handsets, although not achieving compliance until March 22, 2007, were nevertheless reasonably diligent. In the accompanying affidavit, i wireless’s inventory manager relates that “[i]n order to identify and procure [hearing aid-compatible] phones for i wireless to comply with Section 20.19(d)(2) of the Commission’s rules, I regularly contacted manufacturers and distributors, and asked them for information regarding the availability of compliant handsets,”³⁰ a process that included identifying the authorized distributors for particular manufacturers, obtaining information regarding handset availability from these distributors, and obtaining and testing handsets for network compatibility.³¹ The petition, supported by a sworn declaration and affidavit, documents with timelines i wireless’s efforts in connection with fourteen handsets.³² According to this evidence, among other efforts, i wireless:

- tested and began offering the Motorola V3i by shortly after September 16, 2006;
- determined that most inductive coupling-capable GSM handsets were either subject to exclusive contracts with large carriers, were not in production, or would not work on the i wireless network;
- determined that two models were not available on a wholesale basis; and
- purchased two compliant Nokia models as soon as they were available from Brightpoint, Nokia’s authorized distributor in the United States.³³

13. i wireless also provides evidence that its efforts were partly hindered by misinformation from manufacturers. It indicates that it initially identified the Nokia 6061 as hearing aid-compatible for inductive coupling based on information it had received from Nokia. When Nokia subsequently informed it that the handset was not in fact compliant, i wireless states, it decided to obtain the Nokia 6126h as a

²⁶ *Id.*

²⁷ *See* i wireless Petition at 5-14.

²⁸ *See id.* at 4-5.

²⁹ *See* i wireless Petition; Affidavit of Phillip Luebke, Inventory Manager, i wireless, dated Mar. 25, 2008 (Luebke Aff.). *See also* i wireless Petition; Certification by Phillip Luebke, Inventory Manager, Iowa Wireless Services, LLC d/b/a i wireless, dated Mar. 25, 2008.

³⁰ Luebke Aff. at 4.

³¹ *See id.* at 1-4; i wireless Petition at 5-10. i wireless states that because many handsets were certified as hearing aid-compatible for inductive coupling only shortly before the deadline, it “accelerated its testing program to identify, test, order, and distribute compliant phones as soon as possible.” i wireless Petition at 7.

³² *See* i wireless Petition at 13-17.

³³ *See id.*

second compliant handset.³⁴ However, Nokia's projection of availability for that handset again turned out to be inaccurate.³⁵ We find that the difficulties i wireless faced due to such inaccurate information and faulty projections further support its claim to have made diligent efforts. While it is possible that further attempts or alternative avenues might have led to compliance sooner, we find the actions by i wireless, taken as a whole, establish a reasonably diligent effort to achieve compliance under the circumstances. We conclude that i wireless has made a showing sufficient to justify a waiver of Section 20.19(d)(2), and we therefore grant its Petition for Reconsideration of the *February 2008 Waiver Order*.³⁶

C. Petition of South Slope Cooperative Telephone Co., Inc. d/b/a South Slope Wireless

14. **Background:** South Slope Wireless is a Tier III GSM carrier providing service in Iowa.³⁷ While it filed its waiver request and Petition for Reconsideration separately from i wireless, it is associated with, and its circumstances are the same as, those carriers which filed jointly with i wireless.

15. **Petition for Reconsideration:** South Slope argues in its petition that the Commission should have ensured that compliant handsets were in fact available to carriers before denying their waiver requests and that the Commission acted arbitrarily in its use of the January 1, 2007 date in its deliberations.³⁸ South Slope also incorporates the arguments put forth by i wireless and states that its factual circumstances, as an affiliated carrier, are exactly as represented by i wireless.³⁹

16. **Decision:** We grant the Petition for Reconsideration filed by South Slope Wireless. While we find no merit in its arguments that the onus was on the Commission to ascertain the availability of compliant handsets or that the Commission acted arbitrarily,⁴⁰ South Slope has presented evidence that, as a carrier associated with i wireless, its circumstances are indistinguishable from those of i wireless and its other associated carriers.⁴¹ Thus, we find that South Slope has made a showing sufficient to justify a waiver of Section 20.19(d)(2) until March 22, 2007, and we therefore grant its Petition for Reconsideration of the *February 2008 Waiver Order*.

D. Petition of CTC Telecom, Inc., Blanca Telephone Company, and Farmers Cellular Telephone, Inc.

17. **Background:** In separate requests filed on September 18, 2006, CTC and Blanca, both Tier III CDMA carriers, and Farmers Cellular, a Tier III GSM carrier, each contended that it was unable

³⁴ See *id.* at 8 n.31.

³⁵ See *id.* at 15.

³⁶ We note that i wireless filed two versions of its Petition for Reconsideration, a redacted version filed publicly and an unredacted version containing allegedly confidential information. Together with the unredacted version, i wireless submitted a request seeking confidential treatment of certain portions of its unredacted filing. We do not rule on the request for confidential treatment at this time because it is unnecessary to do so for purposes of this Order. Consistent with i wireless's request, this Order relies solely on information in the public domain and on those portions of i wireless's petition for which it did not seek confidential treatment. We find that this publicly available information is sufficient to warrant granting the petition without consideration of any of the allegedly confidential communications or documents.

³⁷ See South Slope Petition at 13.

³⁸ See *id.* at 10.

³⁹ *Id.* at 15.

⁴⁰ See ¶ 31, *infra*.

⁴¹ See South Slope Petition at 13.

to obtain compliant handsets from its vendors prior to the September 18, 2006 deadline for deployment of inductive coupling-capable handsets as set forth in Section 20.19(d)(2) of the Commission's rules.⁴² In the *February 2008 Waiver Order*, the Commission denied these requests.⁴³ Finding that Blanca, CTC, and Farmers Cellular had come into compliance on June 20, 2007, March 13, 2007, and June 6, 2007, respectively,⁴⁴ the Commission concluded that each had failed to demonstrate sufficiently diligent efforts to obtain compliant handsets either prior to the deadline or within a reasonable period afterward.⁴⁵ The Commission found that other Tier III carriers had been able to comply by or before January 1, 2007,⁴⁶ and that the petitioners had not presented any facts or circumstances to clearly distinguish themselves from those other Tier III carriers. The Commission also stated that it was not "sufficient effort after this time frame simply to contact one's existing vendors on a monthly basis, or to limit one's efforts to testing those existing vendors' handsets for system compatibility."⁴⁷

18. Petition for Reconsideration: On March 28, 2008, CTC, Blanca, and Farmers Cellular jointly filed a petition for reconsideration of the *February 2008 Waiver Order*.⁴⁸ In their petition, CTC, Blanca, and Farmers Cellular (collectively, Joint Petitioners) argue that the Commission failed to provide carriers with prior notice in either establishing January 1, 2007, as a new compliance deadline or requiring a more substantial showing of compliance effort for carriers that came into compliance after that date.⁴⁹ The Joint Petitioners further argue that the Commission's reliance on the compliance records of other carriers to identify January 1, 2007, as a significant date was both arbitrary and contrary to the facts in the record.⁵⁰ They argue that the Commission, in resting its decision in part on a finding that the carriers made only monthly contacts with vendors, failed to explain why monthly contact is insufficient or what the frequency of contact should be.⁵¹ They also contend that the Commission's conclusion was inconsistent with its resolution of hearing aid compatibility waiver requests in the *2007 GSM Waiver Order*,⁵² in which, they argue, the Commission granted much longer extensions to carriers that had relied on existing vendor relationships.⁵³ They similarly allege that the Commission applied a different waiver standard to the carriers that were granted relief in the *February 2008 Waiver Order* than to those that were denied relief.⁵⁴ CTC, Blanca, and Farmers Cellular also make brief separate arguments based on

⁴² See *February 2008 Waiver Order*, 20 FCC Rcd. at 3363 ¶¶ 19-20.

⁴³ See *id.* at 3364-65 ¶ 22.

⁴⁴ See *id.*

⁴⁵ See *id.* at 3365 ¶ 22.

⁴⁶ See *id.*

⁴⁷ See *id.*

⁴⁸ See CTC, Blanca, and Farmers Cellular Petition.

⁴⁹ See *id.* at 5-6.

⁵⁰ See *id.* at 6-8.

⁵¹ See *id.* at 9-10.

⁵² See Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones, WT Docket No. 01-309, *Memorandum Opinion and Order*, 22 FCC Rcd 20459 (2007) (*2007 GSM Waiver Order*) (addressing twelve requests by GSM carriers for partial waiver of the requirement to offer, by September 16, 2005, two or more digital handset models per air interface that were rated hearing aid-compatible for acoustic coupling).

⁵³ CTC, Blanca, and Farmers Cellular Petition at 10-14.

⁵⁴ Joint Petitioners Reply Comments at 2-3.

their individual factual circumstances.⁵⁵ Finally, they allege that the *February 2008 Waiver Order* improperly relied on comments made in violation of the Commission's *ex parte* rules and that the Wireless Telecommunications Bureau inappropriately extended the comment period on the petitions for reconsideration.⁵⁶

19. Decision: We deny the joint Petition for Reconsideration filed by CTC, Blanca, and Farmers Cellular. First, the Commission did not apply January 1, 2007, as an alternate deadline nor did it otherwise impose any new obligations without notice. The Joint Petitioners had notice of their obligation to meet the September 18, 2006 deadline absent a waiver, and in evaluating their requests, the Commission did not depart from its general waiver standard. Rather, the Commission considered the date of compliance, along with the carrier's description of its efforts to comply, in determining whether a carrier had demonstrated reasonably diligent efforts to come into compliance, both before the September 18, 2006 deadline and after it. For carriers that came into compliance by January 1, 2007, the Commission found that their efforts at compliance were more likely to have met the standard of reasonable diligence, given that many carriers achieved compliance shortly before that date, and that a previous order had granted waivers to several carriers that had complied with a different hearing aid compatibility requirement within a comparable time period.⁵⁷ Accordingly, the Commission granted waivers to most, but not all, carriers that complied prior to January 1, 2007.⁵⁸ Carriers that did not achieve compliance by this date were not automatically precluded from relief or subject to higher burdens of proof; rather, the Commission was not able to rely on the time of compliance to support a similar inference. We find that in applying this analysis, the Commission appropriately carried out its obligation to take a "hard look" at each case.⁵⁹

⁵⁵ See, e.g., CTC, Blanca, and Farmers Cellular Petition at 3 n.4, 9 n.15, 3 n.6.

⁵⁶ See Joint Petitioners Comments at 3-6.

⁵⁷ The Joint Petitioners take issue with the Commission's assertion that "the great majority of the Tier III carriers were able to achieve compliance within a few months of the deadline," see *February 2008 Waiver Order*, 23 FCC Rcd at 3365 ¶ 22, asserting that of those Tier III carriers seeking waivers, 59 percent did not achieve compliance until later. See CTC, Blanca, and Farmers Cellular Petition at 7. The Joint Petitioners' calculation ignores those Tier III carriers that did not seek waivers. In any case, we find that the large number of petitioners who achieved compliance on or before January 1, 2007, is evidence that a carrier could obtain handsets in that time frame through reasonably diligent efforts. See *February 2008 Waiver Order*, 23 FCC Rcd at 3365 ¶ 22; see also *id.* at 3362 ¶ 17 ("[W]e note that many of the petitioners achieved compliance on or shortly before January 1, 2007. This similarity in timing supports our conclusion that a Tier III carrier exercising reasonable diligence might have required this much time to resolve issues involved in identifying, testing, and ultimately selling inductive coupling-compliant handsets.").

⁵⁸ We note that compliance by January 1, 2007, although indicative of reasonably diligent efforts, was not conclusive. For example, the Commission found that SLO Cellular had not been reasonably diligent notwithstanding its compliance by December 1, 2006. See *February 2008 Waiver Order*, 23 FCC Rcd at 3368 ¶ 32, 3369 ¶ 34.

⁵⁹ See *WAIT Radio v. FCC*, 418 F.2d 1153, 1158 (D.C.Cir. 1969). Consistent with the "hard look" standard, failure to comply until after January 1, 2007, is not conclusive proof of a lack of diligent efforts. Above we conclude, based on specific facts in the record, that i wireless and its related licensees were reasonably diligent although they did not achieve compliance until March 22, 2007. We do not find, however, that the record supports relief for the Joint Petitioners. Aside from their failure to make a comparable showing of effort, we note that our determinations regarding i wireless are specific to GSM technology, for which hearing aid-compatible handset availability was significantly more limited than for CDMA. See Alliance for Telecommunications Industry Solutions, Hearing Aid Compatibility Status Report #6, WT Docket No. 01-309, filed Nov. 17, 2006, at 7. Among the Joint Petitioners, the only carrier to use GSM, Farmers Cellular, did not achieve compliance until June 6, 2007, more than two months after i wireless and its related licensees.

20. We similarly find unpersuasive the Joint Petitioners' arguments that the Commission's decision was inconsistent with the *2007 GSM Waiver Order*. In that ruling, the Commission extended from August 1, 2006 until February 23, 2008, a limited waiver which provided that, for the purposes of acoustic coupling compatibility, it would accept a GSM dual-band handset's hearing aid compatibility rating in the 1900 MHz band as the rating for the handset overall.⁶⁰ The Commission instructed carriers that it expected compliance at the end of this period, and that if the carriers' "usual vendors [could not] supply appropriate handset models, [the Commission expected that] petitioners [would] make the necessary arrangements with other vendors."⁶¹ Joint Petitioners argue that this language implies that carriers need only rely on existing vendor relationships until expressly directed otherwise by the Commission.⁶² However, the *2007 GSM Waiver Order* granted the carriers extensions not based on their claimed inability to get compliant handsets from their existing vendors, but because they had reasonably concluded, in part based on information from those vendors, that they had already achieved compliance.⁶³ The carriers' reliance on their existing vendors for information in that case is distinguishable from reliance on a vendor that the carrier knows cannot provide compliant handsets. In the latter circumstance, a failure to investigate alternatives will be a relevant factor in assessing a carrier's diligence, and the Commission has never indicated otherwise.

21. Joint Petitioners' argument that the *2007 GSM Waiver Order* granted longer periods of relief than Joint Petitioners requested fails because their circumstances are not comparable. The Commission concluded in the *2007 GSM Waiver Order* that the petitioners who had mistakenly relied on non-compliant handsets to meet their obligations should be granted a waiver because "the difficulty they had in obtaining the correct compatibility information created unique and unusual circumstances."⁶⁴ Due to the circumstances cited, the Commission extended the waiver that it had previously granted for approximately 16 additional months until the date of its new ruling, plus four months into the future. Joint Petitioners claim that they should be granted similar relief, but they themselves note that whereas the carriers in the *2007 GSM Waiver Order* had received erroneous information from their vendors that certain handsets were compliant, the Joint Petitioners "were correctly advised by their vendors that they could not be timely supplied with [hearing aid-compatible] handsets."⁶⁵ Because the Joint Petitioners were on notice of their non-compliance, the unique circumstances that supported the *2007 GSM Waiver Order* are not present here.

22. Beyond their legal arguments, Joint Petitioners provide very little in the way of new information to demonstrate that they exercised reasonable diligence in their attempts to obtain compliant handsets.⁶⁶ CTC points to an invoice indicating that on January 25, 2007, it purchased the Kyocera K132,

⁶⁰ See *2007 GSM Waiver Order*, 22 FCC Rcd at 20459-61 ¶ 1 (extending, for certain GSM carriers, the relief previously granted in 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)).

⁶¹ See *id.* at 20473 ¶ 31.

⁶² See CTC, Blanca, and Farmers Cellular Petition at 10.

⁶³ See *2007 GSM Waiver Order* at 20472-73 ¶ 30.

⁶⁴ See *id.* at 20473 ¶ 30.

⁶⁵ CTC, Blanca, and Farmers Cellular Petition at 13 n.17.

⁶⁶ Joint Petitioners argue that granting relief is "especially" appropriate as "it does not appear that any person was denied a [hearing aid-compatible] handset." Joint Petitioners Supplemental Reply Comments at 6. To the extent that the Joint Petitioners seek relief on the grounds that none of them received requests from consumers for hearing aid-compatible handsets, we note again that this consideration is not relevant to determining whether a waiver is justified. See *February 2008 Waiver Order*, 23 FCC Rcd at 3365 ¶ 22.

which was later certified by the Commission as compliant for inductive coupling.⁶⁷ We note that CTC did not provide a sworn declaration establishing the authenticity of the invoice, but in any case, given that the device was not requested until the end of January, this additional device would not support a finding of reasonably diligent efforts. Farmers Cellular and CTC take issue with the Commission's conclusion that it was not sufficient "simply to contact one's existing vendors on a monthly basis."⁶⁸ Farmers Cellular points to a 2007 status report indicating that it would usually contact its existing vendors "weekly or every other week" rather than monthly, and CTC points to a statement in a 2007 status report that it would check with its vendor "at least monthly, sometimes more often. . . ."⁶⁹ Regardless of how often these carriers contacted their existing vendors, however, they do not suggest that they investigated alternative suppliers, as they should have done in the exercise of reasonable diligence when their existing vendors could not satisfy their requirements. Blanca highlights that it did offer one hearing aid-compatible handset shortly after the compliance date.⁷⁰ However, this does not alter our conclusion that Blanca has not justified waiver relief for its failure to offer a second compliant handset.⁷¹

23. *Ex Parte* Issues: Joint Petitioners also argue that they should be granted relief to remedy a procedural violation by certain parties opposed to their waiver requests. On November 6, 2006, after the filing of the original waiver requests but prior to the Commission's decision on those requests, Telecommunications for the Deaf and Hard of Hearing, Inc. and Hearing Loss Association of America (collectively, Opponents) filed a joint opposition to the Joint Petitioners' waiver requests as well as to the waiver requests of other carriers (hereinafter Consolidated Opposition).⁷² Addressing what they characterized as "long-term" waiver requests, the Opponents stated, among other things, that if the Commission "should deem waivers of Commission Rule 20.19(d)(2) to be in the public interest . . . the Commission should grant a temporary waiver until January 1, 2007," conditioned on certain proposed reporting obligations.⁷³

24. The Opponents filed the Consolidated Opposition in the Commission's Electronic Comment Filing System (ECFS) in the same public docket in which the carriers had filed their waiver requests, WT Docket No. 01-309. Although the consideration of the waiver requests was a restricted proceeding under the Commission's *ex parte* rules, the Opponents did not serve their filing on the relevant petitioners.⁷⁴ Subsequently, on January 18, 2007, the Commission changed the status of the

⁶⁷ See CTC, Blanca, and Farmers Cellular Petition at 3 n.4, Attachment.

⁶⁸ See *id.* at 9 n.15; *February 2008 Waiver Order*, 23 FCC Rcd at 3365 ¶ 22.

⁶⁹ See CTC, Blanca, and Farmers Cellular Petition at 9 n.15.

⁷⁰ See *id.* at 3 n.6.

⁷¹ We note that in determining the amount of forfeiture for which Blanca is apparently liable, the Enforcement Bureau took the date on which it offered its first compliant handset into account. See *Blanca Telephone Company*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 9398, 9404 ¶ 13 (Enf. Bur., Spectrum Enf. Div. 2008).

⁷² See Consolidated Opposition of Telecommunications For the Deaf and Hard of Hearing, Inc. and Hearing Loss Association of America to Requests For Waiver of Commission Rule 20.19(d)(2), WT Docket No. 01-309, filed Nov. 6, 2006 (Consolidated Opposition).

⁷³ *Id.* at 12.

⁷⁴ Under the Commission's *ex parte* rules, waiver proceedings are generally classified as restricted, which means that *ex parte* presentations are prohibited and that written presentations must therefore be served on all parties to the proceeding. See 47 C.F.R. §§ 1.1208, 1.1202(b)(1), 1.1202(a).

proceeding to permit-but-disclose.⁷⁵ In the *February 2008 Waiver Order*, after finding that relief was warranted to certain carriers, all of whom had achieved compliance on or before January 1, 2007, the Commission noted in a footnote that its conclusion was also “consistent with the [Opponents’] position that to the extent we grant any waivers, they should not extend beyond January 1, 2007.”⁷⁶

25. In comments filed in this proceeding, the Joint Petitioners argue that the Consolidated Opposition was the source of the Commission’s use of January 1, 2007, in addressing reasonable diligence. They further argue that the Opponents’ failure to serve them violated the *ex parte* rules and that they were denied an opportunity to respond to the Consolidated Opposition as a result.⁷⁷ The Commission’s Office of General Counsel requested that the Opponents respond to the Joint Petitioners’ allegations of *ex parte* violations.⁷⁸ In their reply, the Opponents admit that their failure to serve the Consolidated Opposition on the Joint Petitioners violated the Commission’s *ex parte* rules, but argue that the violation was inadvertent and non-prejudicial.⁷⁹ In response to the Opponents’ arguments, the Joint Petitioners counter that the *ex parte* violation was not mitigated by either the Consolidated Opposition’s posting on ECFS or the subsequent conversion of the proceeding to “permit-but-disclose” status.⁸⁰ They conclude that “because the [Opponents] obtained relief illegally, . . . an appropriate remedy would be to grant the [hearing aid compatibility] waiver requests. . . .”⁸¹

26. Although the filing of the Consolidated Opposition violated the Commission’s *ex parte* rules, we are not persuaded that the Joint Petitioners suffered prejudice as a result, and we find that no remedial action is warranted. Most importantly, in the *February 2008 Waiver Order*, the Commission rested its conclusion that a carrier that came into compliance before January 1, 2007, was more likely to have exercised reasonable diligence on the Commission’s examination of all the petitions in this proceeding, as well as on periods of relief that were previously found justified in a similar context.⁸² The Commission merely noted that this conclusion was “consistent” with the Consolidated Opposition, and not that it relied on it. Therefore, we find the Commission would have reached the same result with or

⁷⁵ See Modification of Ex Parte Status of Pending Petitions for Waiver of Hearing Aid Compatibility Requirements, *Public Notice*, WT Docket No. 01-309, 22 FCC Rcd 535, 536 (WTB 2007) (“Because these petitions implicate broadly applicable policy issues, we find . . . that these petitions should be treated as permit-but-disclose proceedings under the *ex parte* rules.”).

⁷⁶ See *February 2008 Waiver Order*, 23 FCC Rcd at 3362 n.75. See also *id.* at 3356 ¶ 6 (summarizing the Consolidated Opposition).

⁷⁷ See Joint Petitioners Comments at 2-3; Ex Parte Supplemental Reply Comments Regarding Petitions For Reconsideration of Blanca Telephone Company, CTC Telecom, Inc., and Farmers Cellular Telephone, Inc., WT Docket No. 01-309, filed July 28, 2008 (Joint Petitioners Supplemental Reply Comments). See also SLO/EU Petition at 8-9 (stating that the *February 2008 Waiver Order* “makes clear that the Consolidated Opposition was the source of the January 1, 2007 cut-off date applied by the Commission”); UBET Petition at 10-11 (same).

⁷⁸ See Letter from Joel Kaufman, Associate General Counsel, FCC, to Paul O. Gagnier, Esq. and Jeffrey J. Strenkowski, Esq. (June 16, 2008).

⁷⁹ See Letter from Paul O. Gagnier and Jeffrey R. Strenkowski to Joel Kaufman, Esq., Associate General Counsel, FCC (July 22, 2008) (*Ex Parte* Violation Response).

⁸⁰ See Joint Petitioners Supplemental Reply Comments at 2-4.

⁸¹ See *id.* at 6.

⁸² See *February 2008 Waiver Order*, 23 FCC Rcd at 3362 ¶ 17; see also *id.* at 3364-65 ¶ 22.

without consideration of the Consolidated Opposition.⁸³ Furthermore, petitioners have had ample opportunity to discuss and address the Consolidated Opposition in several of their filings, and vacating the *February 2008 Waiver Order* to give them a further such opportunity would serve no purpose.

27. Extension of Comment Period: Finally, the Joint Petitioners argue that the Wireless Telecommunications Bureau improperly waived and extended the deadline in Section 1.106(g) of the Commission's rules for filing oppositions to the petitions for reconsideration when it sought comment on these petitions in the *Reconsideration Petitions Public Notice*.⁸⁴ Neither petitioners nor any other party in this proceeding suffered any prejudice as a result of the Bureau's extension of the filing period, as a routine exercise of its discretion.⁸⁵ No party filed any opposition to the reconsideration petitions, the Joint Petitioners availed themselves of the opportunity to file both comments and reply comments, and the Joint Petitioners cited the supportive comments filed by other parties. Therefore, it is apparent that Joint Petitioners suffered no prejudice from this additional opportunity for public comment on their petition. Moreover, we agree that the Bureau's extension of the filing period was an appropriate exercise of its discretion in this case,⁸⁶ and doing so was entirely consistent with the Commission's earlier determination that the underlying waiver petitions "implicate broadly applicable policy issues" warranting the application of "permit-but-disclose" rules.⁸⁷

28. We conclude that CTC, Blanca, and Farmers Cellular have not made a showing sufficient to justify a waiver of Section 20.19(d)(2), and we therefore deny their joint Petition for Reconsideration of the *February 2008 Waiver Order*.

E. Petition of Uintah Basin Electronic Telecommunications d/b/a UBET Wireless

29. Background: On September 18, 2006, UBET, a Tier III CDMA carrier serving parts of Utah, Wyoming, and Colorado, sought a waiver of the requirement to offer inductive coupling-capable handsets until September 18, 2007, citing difficulties obtaining compliant handsets prior to the deadline.⁸⁸ Subsequently, UBET indicated that it came into compliance on January 15, 2007.⁸⁹ In the *February 2008 Waiver Order*, the Commission found that UBET failed to show that it had exercised sufficient diligence

⁸³ We similarly decline to impose sanctions against the Opponents for their failure to serve the Consolidated Opposition. The Opponents state that they discussed with Commission staff their intent to file an Opposition and were not informed that the proceeding was restricted, and they note that they did post the Consolidated Opposition to the correct docket, thereby making it available electronically to the petitioners and all interested parties. *Ex Parte Violation Response* at 2-3. While inquiries made to staff do not relieve a party of its obligation to understand and comply with the Commission's rules, after weighing the evidence, we find credible the Opponents' assertion that their violation was inadvertent. Furthermore, as noted above, we find that there was no prejudice to petitioners. We also note that the Joint Petitioners do not propose any sanctions against the Opponents, but only that the Commission grant waiver relief to Tier III carriers previously denied such relief in this proceeding. *See Joint Petitioners Supplemental Reply Comments* at 6.

⁸⁴ *See Joint Petitioners Comments* at 3-4. *See also* 47 C.F.R. § 1.106(g) (providing that oppositions to a petition for reconsideration shall be filed within 10 days after the petition is filed).

⁸⁵ *See* 47 C.F.R. § 1.3 (providing for suspension, amendment, or waiver of rules by the Commission on its own motion). Nothing in the Communications Act or the Commission's rules prevents a waiver or extension of this filing period.

⁸⁶ *See* 47 C.F.R. § 0.331.

⁸⁷ *See Modification of Ex Parte Status of Pending Petitions for Waiver of Hearing Aid Compatibility Requirements, Public Notice*, WT Docket No. 01-309, 22 FCC Rcd 535, 536 (WTB 2007).

⁸⁸ *See February 2008 Waiver Order*, 23 FCC Rcd at 3364 ¶ 21.

⁸⁹ *See id.*

in seeking inductive coupling-capable handsets.⁹⁰

30. Petition for Reconsideration: UBET argues in its petition that the Commission was required to ensure that compliant handsets were in fact available to carriers such as UBET before denying its waiver request, and that the Commission failed to make this determination.⁹¹ UBET also makes arguments similar to those set forth by CTC, Blanca, and Farmers Cellular that the Commission acted arbitrarily in its use of the January 1, 2007 date in its deliberations.⁹²

31. Decision: We deny UBET's Petition for Reconsideration. First, we reject UBET's assertion that the Commission had the burden to show that inductive coupling-capable handsets were available. The burden of showing that a waiver is warranted rests squarely with the party seeking the waiver, and thus, in this case, it was UBET's obligation to demonstrate that it could not obtain compliant handsets notwithstanding reasonably diligent efforts to do so.⁹³ UBET made no such demonstration.⁹⁴ UBET's argument that the Commission established a new arbitrary cut-off date for relief is similarly without merit for the reasons discussed above.⁹⁵ Furthermore, UBET supplies no additional facts that would warrant a reexamination of its circumstances.⁹⁶ We conclude that UBET has not made a showing sufficient to justify a waiver of Section 20.19(d)(2), and we therefore deny its Petition for Reconsideration of the *February 2008 Waiver Order*.

⁹⁰ See *id.* at 3365 ¶ 22.

⁹¹ See UBET Petition at 5-7 (asserting the *February 2008 Waiver Order* is “devoid of any information demonstrating that the Commission went to the manufacturers or distributors to investigate and determine the actual date that each [hearing aid-compatible] handset was available for shipping”).

⁹² See *id.* at 10.

⁹³ See Petition By Gila River Telecommunications, Inc. Pursuant to 47 C.F.R. Sections 36.3, 36.123-126, 36.152-157, and 36.372-382 For Commission Approval to Unfreeze Part 36 Category Relationships, CC Docket No. 80-286, 25 FCC Rcd 17459, n.42 (2010) (“[I]n demonstrating whether a waiver is warranted, the burden of proof rests with the petitioner.”); *Tucson Radio, Inc. v. FCC*, 452 F.2d 1380, 1382 (D.C. Cir. 1971).

⁹⁴ UBET merely asserts that other “distributors may only be authorized to sell handsets in particular areas of the country” and thus “[c]arriers located in different regions of the country may not have had access to handsets at the same time depending on the distributor to which they were assigned.” UBET Petition at 7-8. However, UBET does not provide evidence that there were in fact no alternatives to its existing vendors or that it made reasonable efforts to identify such alternatives.

⁹⁵ See *supra* ¶ 19. In support of its claim that the Commission applied a hard cut-off-date, UBET asserts that in the *February 2008 Waiver Order*, another carrier was denied waiver relief notwithstanding its compliance on January 3, 2007. UBET Petition at 10. As the Commission noted in denying relief, however, that carrier achieved compliance on January 3, 2007, only in its Caribbean market; for its “mainland market,” it did not claim compliance until November 19, 2007. See *February 2008 Waiver Order*, 23 FCC Rcd at 3378 ¶ 60.

⁹⁶ UBET mischaracterizes the *February 2008 Waiver Order* in asserting that the Commission failed to consider with respect to UBET, as it did for other petitioners, the availability of handsets to small carriers. UBET Petition at 12; see also SLO/EU Petition at 11-12. The Commission took into account in all cases that “[m]any inductive coupling-compliant handsets became available to Tier III carriers only after the September 18, 2006 compliance deadline.” *February 2008 Waiver Order*, 23 FCC Rcd at 3362 ¶ 17. This was, however, only one factor in determining whether each petitioner had justified a waiver providing for the specific extension it had requested. See also *id.* at 3370 ¶ 38 (noting that “additional compliant models were not available to [the petitioner] *as of the deadline* and it could not reasonably have come into compliance *at that time*.”) (emphasis added).

F. Petition of SLO Cellular, Inc. d/b/a Cellular One of San Luis Obispo & Entertainment Unlimited

32. Background: SLO Cellular and EU operated Time Division Multiple Access (TDMA) networks in southern California as of September 18, 2006.⁹⁷ Recognizing that TDMA was being phased out by vendors and carriers, the Commission had previously granted TDMA carriers that were overbuilding their networks with another air interface an extension from September 16, 2005, to September 18, 2006, of the requirement to offer acoustic coupling-compatible handsets on their TDMA networks. This extension was conditioned on the carrier: (1) offering two acoustic coupling-compatible handsets on its non-TDMA network; (2) completely replacing its TDMA network with an alternative air interface; and (3) completing the transition by September 18, 2006.⁹⁸

33. On September 14, 2006, SLO Cellular and EU filed a joint petition seeking waivers of the requirement to offer inductive coupling-capable handsets. SLO Cellular and EU requested until September 18, 2007, to achieve compliance and stated that no compliant handsets were then available for TDMA networks.⁹⁹ On November 17, 2006, SLO Cellular filed a supplemental petition indicating that it had completed its transition to GSM as of October 16, 2006, and expected to have hearing aid-compatible handsets available to its customers by November 2006, and requesting a waiver of both the acoustic coupling and inductive coupling requirements for its GSM network until January of 2007.¹⁰⁰ Subsequently, in June of 2007, SLO Cellular indicated that it had come into compliance with the hearing aid compatibility requirements for both inductive and acoustic coupling as of December 1, 2006. Also in June 2007, EU reported that it was still not in compliance.

34. In the *February 2008 Waiver Order*, the Commission denied the waiver requests, concluding that neither SLO Cellular nor EU had demonstrated circumstances or factors that would satisfy the standard for a waiver.¹⁰¹ With respect to their TDMA networks, the Commission found that while both carriers cited the lack of hearing aid-compatible handsets for the TDMA air interface, the Commission had already taken that factor into account in setting a technology transition deadline of September 18, 2006, as a condition for extending the acoustic coupling compliance date, and neither carrier had made any showing as to why its transition was taking longer than anticipated. The Commission also held that SLO Cellular had not shown sufficient efforts to support a waiver with respect to its GSM network.

35. Petition for Reconsideration: On March 28, 2007 SLO Cellular and EU filed a joint Petition for Reconsideration of the *February 2008 Waiver Order*.¹⁰² These petitioners cite the complexity faced by small carriers in migrating from one technology to another as a factor in their inability to complete their transitions by the September 18, 2006 deadline.¹⁰³ Given that complexity, and the continued lack of hearing aid-compatible handsets for TDMA networks, they state that the Commission

⁹⁷ It appears that EU may have ceased operation by 2009.

⁹⁸ See 47 C.F.R. § 20.19(c)(2)(i)(B); 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) (*2005 Hearing Aid Compatibility Reconsideration Order*).

⁹⁹ See *February 2008 Waiver Order*, 23 FCC Rcd at 3368 ¶ 31.

¹⁰⁰ See *id.* at 3368 ¶ 32; see also Petition for Temporary Waiver or Temporary Stay by SLO Cellular, Inc. d/b/a Cellular One of San Luis Obispo, WT Docket No. 01-309, filed Nov. 17, 2006.

¹⁰¹ See *February 2008 Waiver Order*, 23 FCC Rcd at 3368 ¶ 34.

¹⁰² See SLO/EU Petition.

¹⁰³ *Id.* at 10.

should have granted their waiver requests for their TDMA networks until such time as they were able to complete the transition. SLO Cellular further argues that the Commission should have granted a waiver with respect to its GSM network because it was in compliance prior to January 1, 2007, the date by which other carriers granted waivers were in compliance.¹⁰⁴

36. Decision: We deny the joint Petition for Reconsideration filed by SLO Cellular and EU. With regard to petitioners' requests for waiver relief for their TDMA networks, neither petitioner offers grounds for such relief beyond the lack of available compliant TDMA handsets and the difficulty and complexity of the overbuild process. However, the Commission took these factors into account in the *2005 Hearing Aid Compatibility Reconsideration Order*, in which it granted TDMA carriers that were overbuilding their networks a one-year extension of the September 16, 2005 deadline to offer acoustic coupling-compatible handsets conditioned on, among other things, their completing the overbuild by September 16, 2006.¹⁰⁵ The Petitioners argue that the Commission should extend the hearing aid compatibility obligations for their TDMA networks indefinitely because it is impossible to obtain TDMA handsets that are hearing aid-compatible. That is not consistent, however, with the temporary and conditional framework for relief established by the Commission in the *2005 Hearing Aid Compatibility Reconsideration Order*. Further, while that Order did contemplate individual requests for waivers from TDMA carriers that did not intend to "completely replace existing networks . . .,"¹⁰⁶ it did not indicate that carriers operating TDMA networks were categorically excused from compliance. As in their original waiver petition, neither carrier offers any detail to demonstrate diligent efforts to complete the overbuild by the deadline or explain why they could not complete their overbuild by the deadline.¹⁰⁷ Given that they offer no information beyond the general factors that have already been considered in the relief granted TDMA carriers in 2005, we find no grounds for extending that relief.

37. SLO Cellular has also not made a sufficient showing to support a waiver of hearing aid compatibility obligations with regard to its GSM network. SLO Cellular does not contest that it made no effort to obtain hearing aid-compatible GSM handsets until several weeks after the September 16, 2006 deadline. While SLO Cellular argues that it was preoccupied by the tasks involved in changing over its network,¹⁰⁸ this does not excuse disregard of its obligations. SLO Cellular argues that it has not been treated similarly to other carriers that, like itself, achieved compliance before January 1, 2007. However, in these cases, the record supported a finding of diligent efforts to obtain handsets.¹⁰⁹ SLO Cellular, by contrast, has made no such showing.

38. We conclude that neither SLO Cellular nor EU has justified a waiver, and we therefore deny their joint Petition for Reconsideration of the *February 2008 Waiver Order*.

¹⁰⁴ See *id.* at 9.

¹⁰⁵ See *2005 Hearing Aid Compatibility Reconsideration Order*, 20 FCC Rcd at 11242-43 ¶ 48.

¹⁰⁶ See *id.* at 11243 ¶ 50.

¹⁰⁷ See *2008 Hearing Aid Compatibility Order*, 23 FCC Rcd at 3369 ¶ 34 ("SLO and EU provide no details as to why they could not complete their overbuilds by that deadline.").

¹⁰⁸ SLO/EU Petition at 10.

¹⁰⁹ SLO Cellular notes in particular that the Commission granted one carrier relief even though the Commission found that it was not diligent in verifying the status of a handset it erroneously believed to be compliant. SLO/EU Petition at 11; *February 2008 Waiver Order*, 23 FCC Rcd at 3370 ¶ 38. That carrier's case is also distinguishable. Unlike SLO Cellular, that carrier did not fail to make efforts to obtain compliant handsets for weeks after the deadline. Rather the carrier, although erroneously believing itself compliant, nevertheless continued its efforts to obtain additional compliant handsets. See *id.* at 3370 ¶¶ 37-38.

IV. CONCLUSION

39. In this *Order on Reconsideration*, we address six petitions for reconsideration of the 2008 denial of petitioners' requests for partial waivers of their hearing aid compatibility obligations. Specifically, we grant the petitions for reconsideration of NDNC, i wireless, and South Slope Wireless. We deny the petitions of UBET Wireless, CTC, Blanca, Farmers Cellular, SLO Cellular, and EU. By requiring that carriers demonstrate reasonably diligent efforts to comply with our hearing aid compatibility rules before granting waivers of those rules, we ensure that deaf and hard-of-hearing Americans will have access to the rapidly growing number of digital wireless handsets.

V. ORDERING CLAUSES

40. Accordingly, IT IS ORDERED, pursuant to Sections 1, 4(i), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 405 and Sections 1.3, 1.106, 1.925, and 20.19 of the Commission's rules, 47 C.F.R. §§ 1.3, 1.106, 1.925, 20.19, that this Order on Reconsideration IS ADOPTED.

41. IT IS FURTHER ORDERED, pursuant to Sections 1, 4(i), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 405 and Sections 1.3, 1.106, 1.925, and 20.19 of the Commission's rules, 47 C.F.R. §§ 1.3, 1.106, 1.925, 20.19, that the Petition For Reconsideration, filed March 27, 2008, by North Dakota Network Co. IS GRANTED.

42. IT IS FURTHER ORDERED, pursuant to Sections 1, 4(i), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 405 and Sections 1.3, 1.106, 1.925, and 20.19 of the Commission's rules, 47 C.F.R. §§ 1.3, 1.106, 1.925, 20.19, that the Petition For Reconsideration, filed March 27, 2008, by Iowa Wireless Services, LLC d/b/a i wireless IS GRANTED.

43. IT IS FURTHER ORDERED, pursuant to Sections 1, 4(i), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 405 and Sections 1.3, 1.106, 1.925, and 20.19 of the Commission's rules, 47 C.F.R. §§ 1.3, 1.106, 1.925, 20.19, that the Petition For Reconsideration, filed March 27, 2008, by South Slope Cooperative Telephone Company d/b/a South Slope Wireless IS GRANTED.

44. IT IS FURTHER ORDERED, pursuant to Sections 1, 4(i), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 405 and Sections 1.3, 1.106, 1.925, and 20.19 of the Commission's rules, 47 C.F.R. §§ 1.3, 1.106, 1.925, 20.19, that the Petition For Reconsideration, filed March 28, 2008, by CTC Telecom, Inc, Blanca Telephone Company, and Farmers Cellular Telephone, Inc, IS DENIED.

45. IT IS FURTHER ORDERED, pursuant to Sections 1, 4(i), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 405 and Sections 1.3, 1.106, 1.925, and 20.19 of the Commission's rules, 47 C.F.R. §§ 1.3, 1.106, 1.925, 20.19, that the Petition For Reconsideration, filed March 28, 2008, by Uintah Basin Electronic Telecommunications d/b/a UBET Wireless, IS DENIED.

46. IT IS FURTHER ORDERED, pursuant to Sections 1, 4(i), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 405 and Sections 1.3, 1.106, 1.925, and 20.19 of the Commission's rules, 47 C.F.R. §§ 1.3, 1.106, 1.925, 20.19, that the Petition For Reconsideration, filed March 28, 2008, by SLO Cellular Inc d/b/a/ Cellular One of San Luis Obispo and Entertainment Unlimited, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary