



November 11, 2005

Marlene H. Dortch
Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Ex Parte* Presentation in WT Docket No. 01-309
Section 68.4(a) of the Commission's Rules Governing Hearing Aid
Compatible Telephones

Dear Ms. Dortch:

Enclosed is a copy of a letter to Julius Knapp, Deputy Chief of the Office of Engineering and Technology. Pursuant to Section 1.1206(b)(2) of the Commission's rules, one copy of this letter is being filed electronically for inclusion in the public record of the above referenced proceeding.

If there are any questions regarding this matter, please do not hesitate to contact the undersigned.

Sincerely,

Thomas Goode
Associate General Counsel
The Alliance for Telecommunications
Industry Solutions
1200 G Street, NW
Suite 500
Washington, DC 20005

Attachment



November 11, 2005

Julius P. Knapp
Deputy Chief
Office of Engineering and Technology
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Ex Parte* Presentation in WT Docket No. 01-309
Section 68.4(a) of the Commission's Rules Governing Hearing Aid
Compatible Telephones

Dear Mr. Knapp:

The Alliance for Telecommunications Industry Solutions (ATIS), on behalf of the ATIS Incubator Solutions Program #4- Hearing Aid Compatibility (AISP.4-HAC or ATIS Incubator), hereby submits this update on AISP.4-HAC's efforts to investigate and find solutions to challenges faced by manufacturers and service providers in meeting the Commission's hearing aid compatibility requirements and wireless devices operating in the low band (800 – 960 MHz) and at higher power (2 watts). AISP.4-HAC has reached an agreement via consensus regarding band differentiation in wireless devices operating between the bands below 960 MHz and those above 960 MHz (high band).

This letter and the attached presentation provide additional technical data supporting the ATIS Incubator's findings that the released version of C63.19 Standard did not accurately reflect the hearing aid user's experience with low band wireless devices. Based on this additional data, the ATIS Incubator remains convinced that the C63.19 Standard must reflect the difference in hearing aid immunity between the low and high bands.

Background - The Need for Band Differentiation

The AISP.4-HAC Incubator focused its initial efforts on testing for RF hearing aid compatibility (HAC) under the C63.19 Standard. Performance measurements and testing, including round-robin testing among test labs, were performed in order to meet the HAC compliance deadline of September 16, 2005. Through round-robin testing and the ATIS Incubator's suggestions for improvements to the C63.19 Standard, the members of the AISP.4-HAC made significant progress for manufacturers to confidently measure their products.

In the evaluation of test results and analysis of the Standard, it was discovered that no manufacturer of GSM wireless devices operating in the 850 MHz band could obtain an M3 or better rating on their products prior to the September 16, 2005 deadline. Following this discovery, the ATIS Incubator formed Working Group 9 (WG-9) on 850MHz and Higher Power Challenges in June 2005 to identify potential solutions to this anomaly within the existing C63.19 Standard. Numerous solutions were examined, but none were acceptable to manufacturers, service providers and consumer advocates.

Testing performed by AISP.4-HAC WG-9 member company Cingular Wireless determined that the interference to hearing aids from wireless devices was frequency dependent. Tests performed by the AISP.4-HAC WG-9 verified these findings. Moreover, these findings are consistent with existing European and Australian standards and European and US studies.

Additionally, the AISP.4-HAC notes that the difference in hearing aid immunity between the low band frequencies and the 1900MHz band was acknowledged during the development of the C63.19 Standard, but was never incorporated into the 2001 version of the Standard.

Recent Incubator Activity

In October 2005, the HAC Incubator analyzed additional data from the testing of hearing aid immunity to wireless devices by the European Hearing Instrument Manufacturers Association (EHIMA). EHIMA has sponsored an ongoing study of over 700 hearing aids, from 1997 to present, that tracks the progress of hearing aid immunity based on IEC 60118-13. The IEC standard was created to measure interference to a hearing aid user in a bystander situation (e.g. a cell phone in close proximity to a hearing aid user and causing interference to the hearing aid). The EHIMA study is a far field, low power, Gigahertz Transverse ElectroMagnetic Cell (GTEM) test created to replicate the bystander condition.

The EHIMA data had to be converted to a high power, near field measurement in order for this data to be compared to the HAC near field data. The AISP.4-HAC WG-9 created a conversion method based on principles of physics and the Oklahoma University EMC Study paper by Schlegel and Grant, entitled "Modeling the Electromagnetic Response of Hearing Aids to Digital Wireless Phones." (*See* Schlegel, R.E. and Grant, F.H. "Modeling the Electromagnetic Response of Hearing Aids to Digital Wireless Phones," *IEEE Transactions on Electromagnetic Compatibility*, Vol. 42, Is. 4 pp.347-357 (November 2000)). The resulting analysis supports a 10 dB field strength difference between the low and high frequency bands for wireless devices. A presentation describing this analysis is also attached to this letter.

Following the analysis of the EHIMA data by the WG-9, the AISP.4-HAC reached agreement that there is a need for frequency banding differentiation in the C63.19

Standard, and that the appropriate difference between the 850 MHz and 1900 MHz bands should be 10 dB.

Additional Industry Findings

ASC C63 is re-visiting the frequency banding issue in a Project Initiation Notification C (PIN C) Working Group. The PIN-C recognized that: (1) the “wireless device frequency of operation in determining the category ratings ... is based on the interference potential to hearing aids from the operating frequency of the wireless device...”; (2) “some wireless devices operate on more than 1 frequency band and are typically dual band”, and (3) the longer wavelengths (lower frequency of operation) have been shown to produce less interference potential to hearing aids than shorter wavelengths (higher frequencies of operation).”

Studies by Gallaudet University have also consistently shown that hearing aid users have comparable listening experience with low band iDEN M1-rated wireless devices as with M3-rated 1900 MHz CDMA wireless devices.

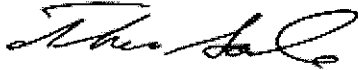
A consultant to Self Help for Hard of Hearing People (SHHH), presented his analysis of the EHIMA data to the HAC Incubator at its October 31, 2005, meeting. The analysis of the data concurs that the difference in immunity between the 850 MHz and 1900 MHz frequency bands was 10 dB or higher.

Conclusion

The AISP.4-HAC’s test data and analysis supports the inclusion of frequency band differentiation in the C63.19 Standard in order to reflect the difference in hearing aid immunity between low band wireless devices and those operating in the 1900 MHz band. AISP.4-HAC’s conclusion is based on multiple data and analyses that recognize that the C63.19 Standard was overly conservative in its failure to include frequency banding differentiation for wireless devices, and is not intended to simply relieve the wireless industry from HAC obligations. Further, this change does not guarantee that all 850 MHz phones will achieve an M3 rating, but will allow for additional phone choices for consumers. The data demonstrates that hearing aid users have no appreciable difference in their experience using an M3-rated 1900 MHz wireless device as they would using an M1-rated low band wireless device. The ATIS Incubator has communicated this recommendation to C63 and is pleased to see that the recently balloted C63.19-2005 rd 3.10 includes the Incubator-recommended 10 dB frequency banding differentiation for wireless devices.

If there are any questions about this matter or if you would like us to provide a more detailed presentation regarding this issue, please do not hesitate to contact the undersigned.

Sincerely,



Thomas Goode
Associate General Counsel
The Alliance for Telecommunications
Industry Solutions
1200 G Street, NW
Suite 500
Washington, DC 20005

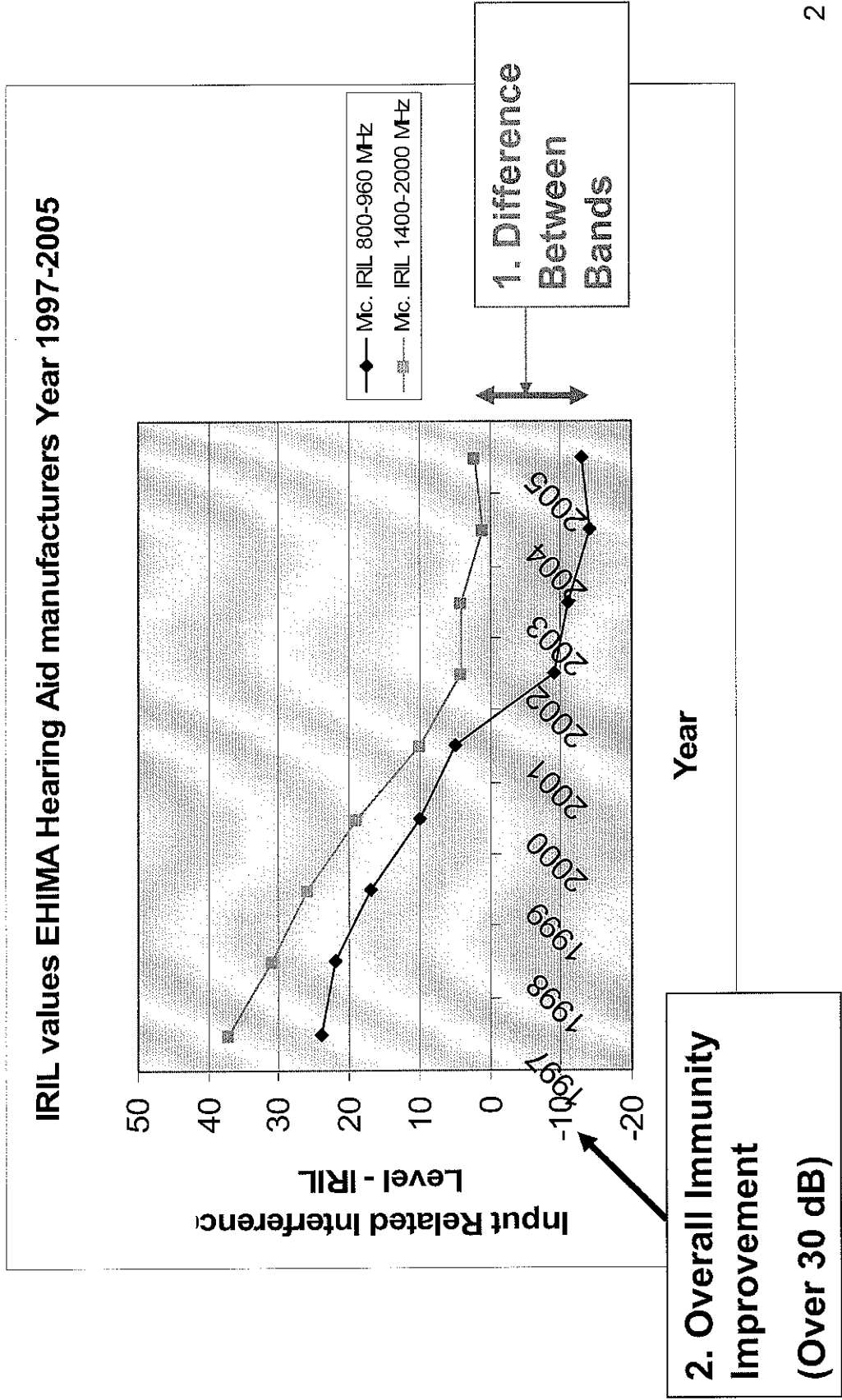
Attachment

cc: Dr. Rashmi Doshi, Chief of the Laboratory Division, Office of Engineering
Technology
Martin Perrine, Electronic Engineer, Laboratory Division, Office of Engineering
Technology
Angela Giancarlo, Associate Chief, Public Safety & Critical Infrastructure
Division, WTB
Fred Campbell, Legal Advisor for Wireless Issues, Office of Chairman Martin
Mel Frerking, Director of WTS, Cingular Wireless
Mary Jones, Consultant, T-Mobile
Steve Coston, Technical Manager, Regulatory Project Office, Sony Ericsson Mobile
Communications
Tom Victorian, Vice President, Starkey Laboratories, Hearing Industries
Association
James Turner, Technical Coordinator, ATIS
Martha Ciske, Committee Administrator, ATIS

ANALYSIS OF THE DELTA HEARING AID IMMUNITY DATA AND THE PROPOSED C63.19 FREQUENCY BANDING

This presentation has been edited for its inclusion in the AISP.4-HAC November 11, 2005 exparte communication to the FCC. The original and detailed data presentation to the AISP.4-HAC Incubator October 31, 2005 is available at http://www.atis.org/hac/docs/2005/WG9_Frequency_Banding_Analysis.ppt

BYSTANDER: 3 V/m, 2 V/m



PROPOSAL: 10 dB Differentiation FOR WD ON LOW BAND (< 960 MHz)

- 10 dB Differentiation (Up to 354.8 V/m) for Wireless Devices needs to consider:
 - 1.) Difference Between Frequency Bands (850 MHz vs. 1900 MHz)
 - 2.) Field Strength Hearing Aid was Tested
 - Bystander: 3 V/m and 2 V/m
 - User: 75 V/m and 50 V/m
 - Wireless Device: M1 (354.8 V/m) and M3 (112.2 V/m)
 - 3.) Overall Immunity Improvement (IRIL) and Measurement
 - 1kHz, 80% AM
 - GTEM (Far Field)
 - Near Field

HEARING AID IMMUNITY TEST:

C63.19 vs. IEC 60118-13

C63.19

- Method 1: Near Field
- At 900 MHz
 - Max RF + 3 dB, 1kHz 80% AM
- At 1800 MHz
 - 1W with 1kHz 80% AM.

- Method 2: WB-GTEM
- At 800-950 MHz

- Increase Field Strength to Produce 55 dB IRIL in HA
- At 1600 – 2500 MHz
 - Increase Field Strength to Produce 55 dB IRIL in HA

IEC60118-13

- GTEM only
- 800-960 MHz
 - Bystander: 3 V/m
 - User: 75 V/m
- 1400-2000 MHz
 - Bystander: 2 V/m
 - User: 50 V/m

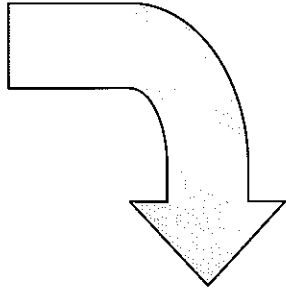
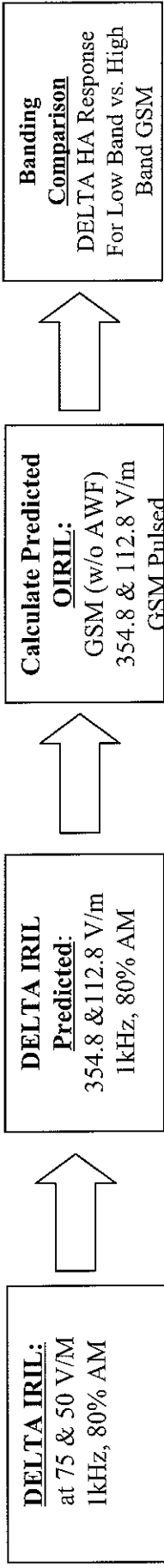
WIRELESS DEVICE FIELD STRENGTHS

- 1900 MHz Wireless Devices are qualifying as M3
 - 63.1 V/m to 112.2 V/m
 - w/ AWF (-5) 47.3 V/m to 84.1 V/m
- 850 MHz Wireless Devices are qualifying at M1
 - 199.5 V/m to 354.8 V/m
 - w/ AWF (-5) 149.6 V/m to 266.1 V/m

BANDING DISCUSSION

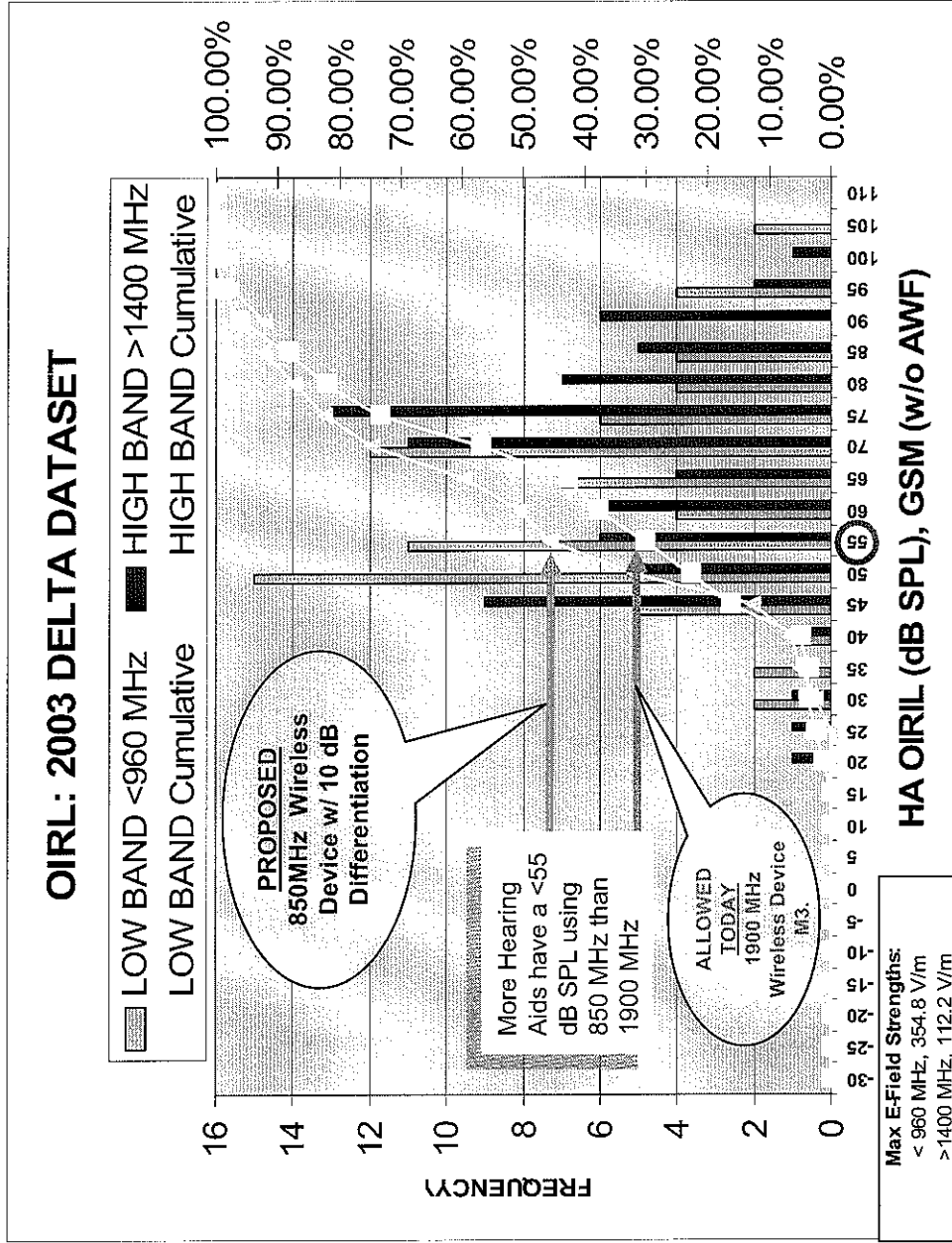
- Recent Measurements of Banding:
 - Several Banding Tests performed in the Cingular Wireless lab
 - Real World Testing at 2005 SHHH Convention
 - DELTA Hearing Aid study
- Banding has been proposed in C63.19 rd 3.10
 - At C63 meeting in Irvine, CA: Discussion of 10 dB was debated and C63 asked for additional data to substantiate 10 dB
- The HAC Incubator analyzed additional DELTA data for 2003, 2004, 2005 regarding banding.

DATA ANALYSIS FLOW

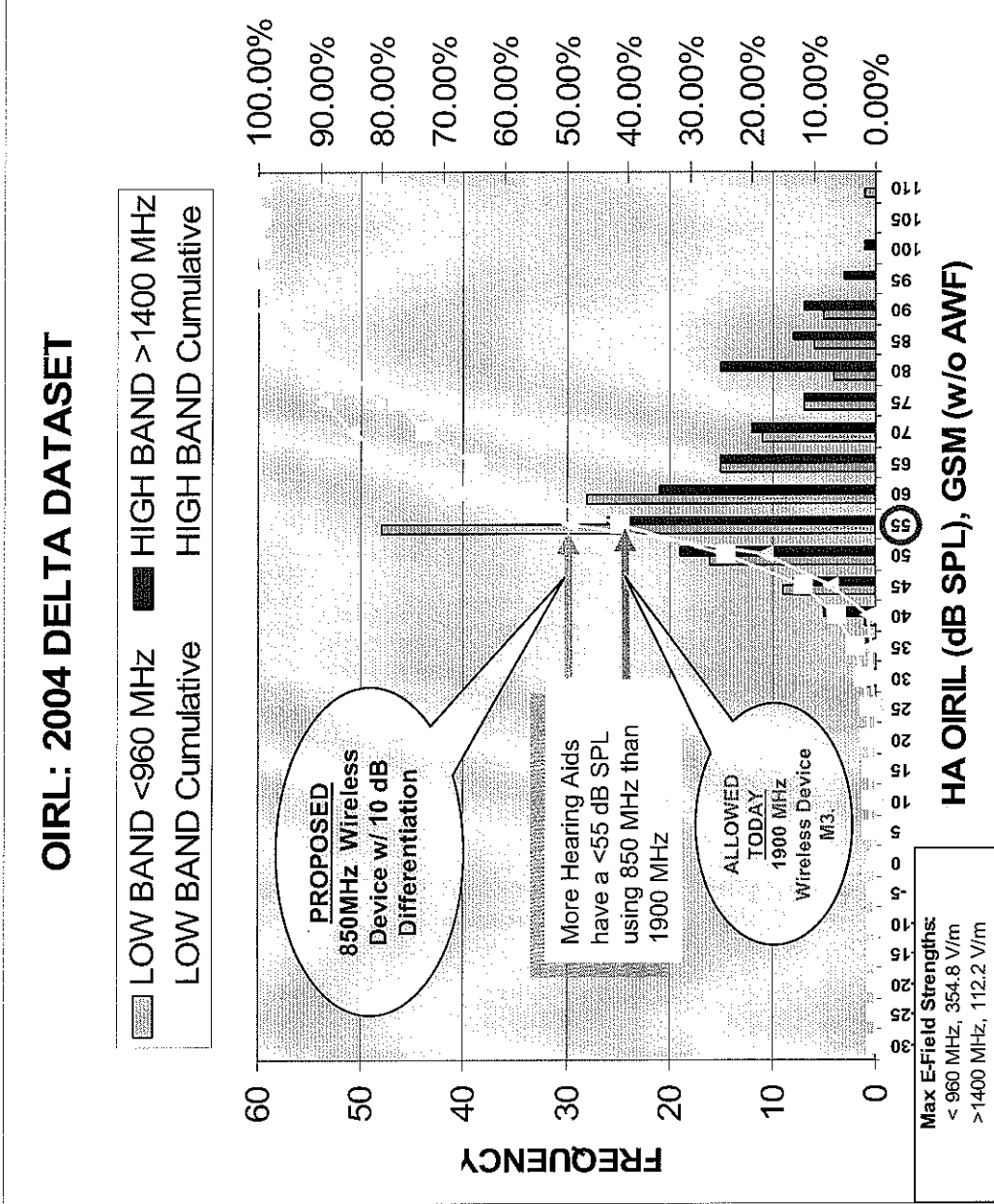


Is 850 MHz 2W WD with 10 dB Differentiation (354.8 V/m M rating) worse than the response 1900 MHz 1W WD (112.8 V/m M rating) to Hearing Aids using the DELTA 2003 – 2005 Hearing Aid IRIL data?

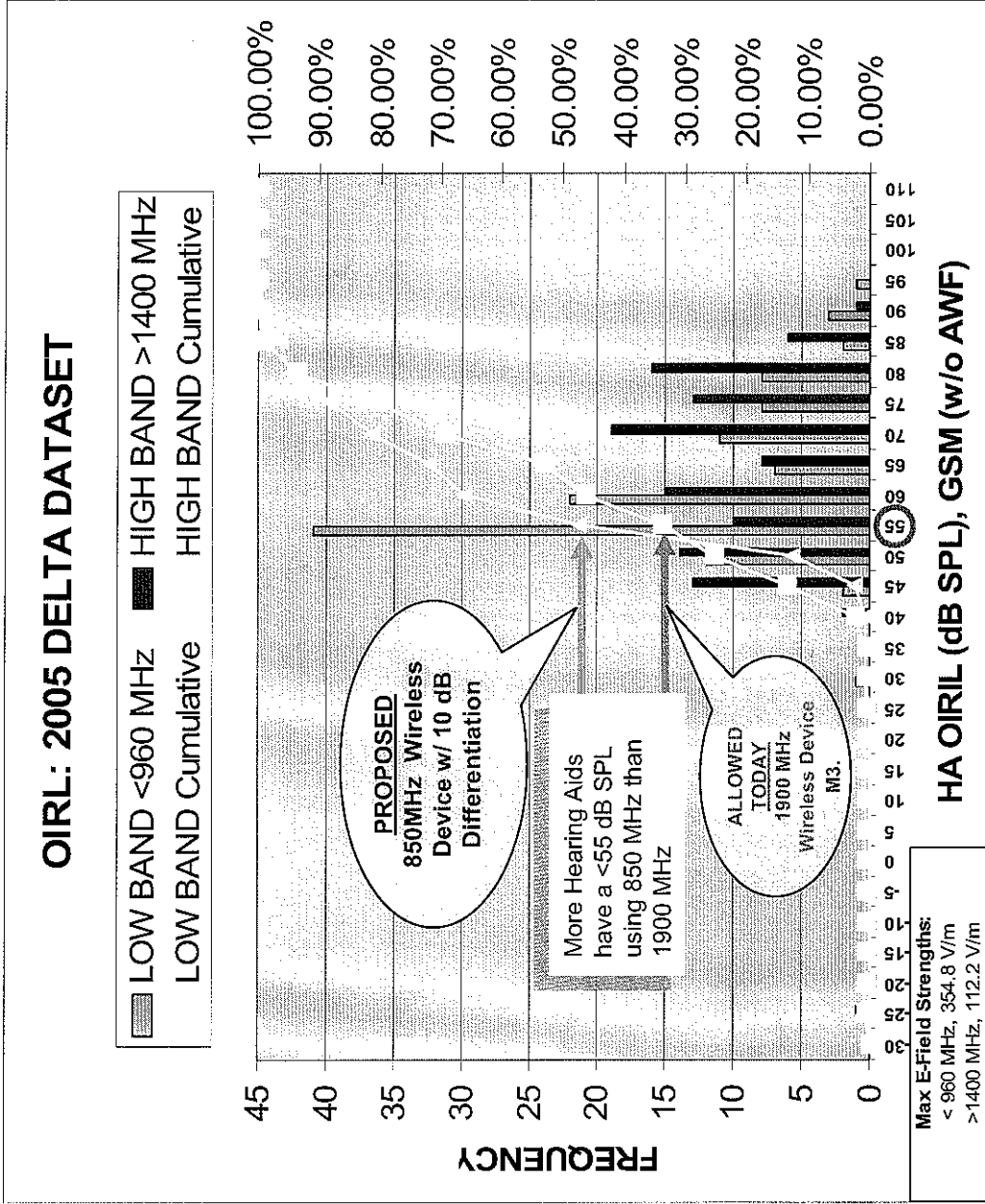
2003: 850 BETTER THAN 1900 UP TO 55 dB SPL



2004: 850 BETTER THAN 1900 UP TO 55 dB SPL

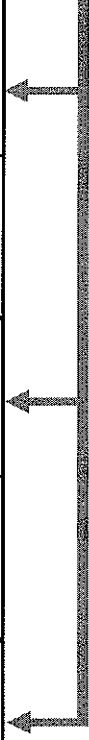


2005: 850 BETTER THAN 1900 UP TO 55 dB SPL



OIRIL YEARLY SUMMARY: 2003 - 2005 DELTA DATA

2003		2004		2005	
LOW BAND <960 MHz 354.8 V/m	HIGH BAND >1400 MHz 112.2 V/m	LOW BAND <960 MHz 354.8 V/m	HIGH BAND >1400 MHz 112.2 V/m	LOW BAND <960 MHz 354.8 V/m	HIGH BAND >1400 MHz 112.2 V/m
PROPOSED	ALLOWED	PROPOSED	ALLOWED	PROPOSED	ALLOWED
# of HA with <= 55 dB SPL	# of HA with <= 55 dB SPL	# of HA with <= 55 dB SPL	# of HA with <= 55 dB SPL	# of HA with <= 55 dB SPL	# of HA with <= 55 dB SPL
36	24	75	63	56	40



Allowed Today
M3 Rated (112
V/m) for 1900
MHz
Wireless
Devices

RESULTS

- **2003 – 2005 Totals**
 - LOW BAND (<960 MHz): 167 Hearing Aids with ≤ 55 dB SPL
 - HIGH BAND (>1400 MHz): 127 Hearing Aids with ≤ 55 dB SPL
- Looking closely at the curves, we see that Year over Year, **MORE HEARING AIDS** would have a lower Overall IRIL (up to 55 dB SPL) on the 850 Band than the 1900 MHz band (36 vs. 24, 75 vs. 63, 56 vs. 40).
 - This matches results seen from the Previous Lab Testing and User Testing at 2005 SHHH Convention.

SUMMARY

- With a 10 dB Differentiation and based on the DELTA 2003 - 2005 Hearing Aid Improvements, More Hearing Aid Consumers using a wireless device with a 10 dB (354.8 V/m) Differentiation on the 850 MHz Low band would still have an overall better experience (≤ 55 dB SPL) than the 1900 MHz High Band (112.8 V/m).
- Allowing the 10 dB differentiation puts the 850 MHz wireless device on level with what the 1900 MHz wireless devices are allowed today to consumers
 - Based on the Frequency Banding Effect on Hearing Aid immunity and overall IRL improvements as reported in the DELTA data (2003-2005).

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

In the Matter of)	
)	
Section 68.4(a) of the Commission's Rules)	
Governing Hearing Aid-Compatible Telephones)	WT Docket No. 01-309
)	
T-Mobile USA, Inc. Petition for Waiver of)	
Section 20.19(c)(3) of the Commission's Rules)	
)	
Samsung Telecommunications America, L.P.)	
Request for Waiver of Section 20.19(c)(1)(i) of)	
the Commission's Rules)	

MEMORANDUM OPINION AND ORDER

Adopted: September 16, 2005

Released: September 16, 2005

By the Commission: Commissioner Copps issuing a statement

1. We have before us a request for waiver from T-Mobile USA, Inc. (T-Mobile),¹ a Tier I wireless carrier² that employs the GSM air interface.³ T-Mobile seeks additional time within which to comply with Section 20.19(c)(3)(i)(A) of the Commission's rules, which provides that Tier I wireless carriers must make hearing aid-compatible digital wireless handsets available to consumers by September 16, 2005.⁴ After careful consideration and pursuant to our waiver authority, we grant the T-Mobile

¹ T-Mobile USA, Inc. Petition for Waiver of Section 20.19(c)(3) of the Commission's Rules, WT Docket No. 01-309 (filed Aug. 26, 2005) (T-Mobile Waiver Request). *See also* Reply of T-Mobile USA, Inc., WT Docket No. 01-309 (filed Sept. 8, 2005) (T-Mobile Reply Comments).

² In 2002, the Commission defined Tier I wireless carriers as the six wireless carriers with national footprints (AT&T Wireless, Cingular Wireless, Nextel Communications, Sprint PCS, Verizon Wireless, and T-Mobile USA). *See* Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, *Order to Stay*, 17 FCC Rcd 14841, 14843 ¶ 7 (2002). Since that time, the Commission consented to Cingular Wireless' acquisition of AT&T Wireless. *See* Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corp. for Consent to Transfer of Control of Licenses and Authorizations, WT Docket Nos. 04-70, 04-254, 04-323, *Memorandum Opinion and Order*, 19 FCC Rcd 21522 (2004). More recently, the Commission consented to the transfer of control of all licenses and authorizations held directly and indirectly by Nextel to Sprint Corporation. *See* Applications of Nextel Communications, Inc. and Sprint Corp. for Consent to Transfer Control of Licenses and Authorizations, WT Docket No. 05-63, *Memorandum Opinion and Order*, FCC 05-148 (rel. Aug. 8, 2005).

³ The Global System for Mobile Communications (GSM) is a digital air interface for wireless systems that divides each wireless channel into eight discrete time slots, which allows up to eight simultaneous calls using the same frequency.

⁴ *See* 47 C.F.R. § 20.19(c)(3)(i)(A); 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 11194 (2005) (*Hearing Aid Compatibility Reconsideration Order*) at 11232 App. B.

Waiver Request to the extent described herein. Specifically, T-Mobile must make available to consumers: (1) one hearing aid-compatible handset no later than September 16, 2005; (2) two hearing aid-compatible handsets no later than October 16, 2005; and (3) four hearing aid-compatible handsets no later than November 16, 2005. Finally, we impose conditions on T-Mobile in accordance with this limited relief.

2. *Background.* In the 2003 *Hearing Aid Compatibility Order*, the Commission took a number of actions to further the ability of persons with hearing disabilities to access digital wireless telecommunications.⁵ Among other actions, the Commission required handset manufacturers, carriers and service providers to collectively take steps to reduce the amount of interference emitted from digital wireless handsets, and established phased-in deployment benchmark dates for the offer of hearing aid-compatible digital wireless handsets.⁶ In this regard, the Commission required each of these classes of entities that do not satisfy the *de minimis* exception⁷ to begin to offer hearing aid-compatible digital wireless handsets by September 16, 2005.⁸

3. In June 2005, we modified the preliminary handset deployment benchmark specific to Tier I wireless carriers in order to provide greater regulatory certainty, while simultaneously ensuring a broad array of choices for hearing impaired individuals who seek to purchase hearing aid-compatible wireless phones.⁹ Specifically, the *Hearing Aid Compatibility Reconsideration Order* established that by September 16, 2005, Tier I wireless carriers must offer four digital wireless handset models per air interface, or twenty-five percent of the total number of digital wireless handset models offered by the carrier nationwide, that meet a U3 rating.¹⁰ The *Hearing Aid Compatibility Reconsideration Order*, however, did not modify the preliminary deployment benchmark obligations for handset manufacturers or Tier II or Tier III (*i.e.*, non-nationwide) wireless carriers. Handset manufacturers that do not satisfy the *de minimis* exception must offer to service providers by September 16, 2005, at least two U3-rated handset models for each air interface offered.¹¹ Similarly, non-nationwide wireless carriers that do not satisfy the *de minimis* exception must include in their handset offerings at least two U3-rated handset models per air

⁵ 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*, WT Docket No. 01-309, 18 FCC Rcd 18047 (2003) (*Hearing Aid Compatibility Order*).

⁶ *See id.* at 16780 ¶ 65. *See also* 47 C.F.R. § 20.19(c).

⁷ *See* 47 C.F.R. § 20.19(e)(1)-(2). The *de minimis* exception applies on a per air interface basis and provides that manufacturers or mobile service providers that offer two or fewer digital wireless handsets in the U.S. are exempt from the requirements of the hearing aid compatibility rules. For mobile service providers that obtain handsets only from manufacturers that offer two or fewer digital wireless handset models in the U.S., the service provider would likewise be exempt from the requirements. Manufacturers or mobile service providers that offer three digital wireless handset models must offer at least one compliant handset model. Mobile service providers that obtain handsets only from manufacturers that offer three digital wireless handset models in the U.S. are required to offer at least one compliant handset model.

⁸ *See id.*

⁹ *See Hearing Aid Compatibility Reconsideration Order*, 18 FCC Rcd at 11208-09 ¶¶ 26-27.

¹⁰ *See id.* at 11232 App. B. *See also* 47 C.F.R. § 20.19(b)(1) (a wireless handset used for public mobile radio services is hearing aid-compatible if it meets, at a minimum, a U3 rating for radio frequency interference); OET Clarifies Use of Revised Wireless Phone Hearing Aid Compatibility Standard Measurement Procedures and Rating Nomenclature, *Public Notice*, 20 FCC Rcd 8188 (OET 2005). We note that the new draft standard uses an "M" rating for RF interference immunity, rather than a "U."

¹¹ *See* 47 C.F.R. § 20.19(c)(1)(i).

interface by September 16, 2005.¹²

4. More recently, on September 8, 2005, we ruled that we would accept, until August 1, 2006, the hearing aid compatibility compliance rating for 1900 MHz operation as the overall compliance rating for dual-band GSM digital wireless handsets that operate in both the 850 MHz and 1900 MHz bands.¹³ In the *Cingular Waiver Order*, we provided additional time for wireless carriers, service providers and manufacturers to ensure that GSM digital wireless handsets operating in the 850 MHz band would be compatible with hearing aids. The action facilitated compliance with the deployment benchmark obligations by Tier I wireless carriers, including T-Mobile, as well as handset manufacturers, including Samsung,¹⁴ and smaller, non-nationwide wireless carriers that offer dual-band GSM digital wireless handsets that must also meet the September 16, 2005, deadline.

5. As referenced earlier, T-Mobile has petitioned for additional time within which to comply with Section 20.19(c)(3)(i)(A) of the Commission's rules. Specifically, T-Mobile has indicated that it will "strive to make available" one hearing aid-compatible handset by September 16, 2005, a second compliant handset no later than October 16, 2005, and two other compliant handsets no later than November 16, 2005.¹⁵ T-Mobile explains that it has "dedicated significant resources to help develop industry standards to ensure that all customers, including those with hearing disabilities, have access to wireless services[.]"¹⁶ and asserts that it cannot comply with the September 16, 2005, deadline given "unique and unusual factual circumstances beyond [its] control[.]"¹⁷

6. Self Help for Hard of Hearing People (SHHH), a nationwide support network that represents people with hearing loss, has filed comments discussing the challenges associated with hearing aid compatibility and supporting the relief sought by T-Mobile.¹⁸ Specifically, SHHH supports T-Mobile's request, indicating that the "time period of 60 days is reasonable ..."¹⁹ SHHH also requests that T-Mobile deploy compliant handsets as soon as possible rather than delay until all four required handsets are each inventoried and marketable.²⁰ The Alliance for Public Technology submitted comments stating its

¹² See 47 C.F.R. § 20.19(c)(2)(i).

¹³ Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones, Cingular Wireless LLC Petition for Waiver of Section 20.19(c)(3)(i)(A) of the Commission's Rules, WT Docket No. 01-309, *Memorandum Opinion and Order*, FCC 05-166 (rel. Sept. 8, 2005) (*Cingular Waiver Order*).

¹⁴ See Samsung Telecommunications America, L.P. (Samsung) Request for Waiver of Section 20.19(c)(1)(i) of the Commission's Rules, WT Docket No. 01-309 (filed Sept. 2, 2005). Given Samsung's representation that it "already offers two GSM handsets that meet an M3 or M4 rating at 1900 MHz and an M2 or M1 rating at 850 MHz," *id.* at 8, and the company's request for relief consistent with that afforded in the *Cingular Waiver Order*, *see id.* at 13, we dismiss the Samsung request as moot.

¹⁵ See T-Mobile Reply Comments at 3.

¹⁶ T-Mobile Waiver Request at 1.

¹⁷ *Id.* Motorola, the manufacturer of two of the four handsets identified as compliant by T-Mobile "completely and unexpectedly" informed T-Mobile that both of the Motorola models failed to achieve certification. *See id.* at 5.

¹⁸ Comments of Self Help for Hard of Hearing People (SHHH), WT Docket No. 01-309 (filed Aug. 30, 2005) (SHHH Comments) at 1 n.1.

¹⁹ *Id.* at 3.

²⁰ *Id.*

support for T-Mobile, “[i]n light of T-Mobile’s ongoing commitments to address the needs of people with hearing losses[.]”²¹ Finally, the Telecommunications Industry Association (TIA) stresses that all industry stakeholders have been actively and cooperatively engaged in trying to ensure widespread and expeditious availability of hearing aid-compatible digital wireless handsets.²²

7. *Discussion.* For the reasons discussed below, we find that limited relief would be consistent with the Commission’s waiver standard and would serve the public interest.²³ First, in view of the unique circumstances at issue here, strict application of the deadline set forth in the rule would be inequitable. Given the close cooperation between the companies, T-Mobile relied on its vendor’s representation that that company’s digital wireless handsets would be available to T-Mobile for timely distribution.²⁴ T-Mobile asserts that it was surprised when, less than four weeks prior to the September 16, 2005, deadline, its handset vendor informed T-Mobile that the given handsets failed to achieve certification of compliance with the required U3 rating.²⁵ SHHH stated in its comments that T-Mobile appeared to be “on track” to deploy the requisite handsets in a timely manner but for the failure of its vendor to deliver compliant handsets.²⁶ Furthermore, T-Mobile immediately notified the Commission of the new information it had obtained and pledged to undertake remedial measures to provide alternative compliant handsets as quickly as possible.²⁷

8. In addition, the staggered deployment schedule offered by T-Mobile, and adopted today, evinces the company’s meaningful efforts to address the obstacles that are largely out of its control, and addresses SHHH’s concern that T-Mobile deploy compliant handsets in stages, rather than waiting until all are inventoried and ready for market.²⁸ The deployment schedule also ensures that T-Mobile’s customers with hearing disabilities will have at least one hearing aid-compatible handset on September 16, 2005, the deadline set forth in the Commission’s rules and ensures that T-Mobile’s customers will have at

²¹ Comments of the Alliance for Public Technology, WT Docket No. 01-309 (filed Sept. 13, 2005) at 2.

²² See Reply Comments of the Telecommunications Industry Association, WT Docket No. 01-309 (filed Sept. 8, 2005).

²³ The Commission’s waiver rules require the proponent to show that: (i) the underlying purpose of the rule would not be served or would be frustrated by its application to the instant case, and grant of the waiver would be in the public interest; or (ii) in view of the unique or unusual factual circumstances of the specific situation, application of the rule would be inequitable, unduly burdensome or contrary to the public interest, or the entity requesting the waiver has no reasonable alternative. See 47 C.F.R. §§ 1.3, 1.925. 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); see also *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990) (a waiver of the Commission’s rules may be granted in instances where the particular facts make strict compliance inconsistent with the public interest if applied to the petitioner and when the relief requested would not undermine the policy objective of the rule in question).

²⁴ See T-Mobile Waiver Request at 5.

²⁵ See *id.*

²⁶ See SHHH Comments at 2 (noting its support of the waiver because T-Mobile was “caught” by its handset manufacturer).

²⁷ See Letter from Shellie Blakeney, counsel to T-Mobile USA, Inc., to Marlene H. Dortch, Secretary, FCC, WT Docket No. 01-309 (filed Aug. 19, 2005).

²⁸ See SHHH Comments at 3.

least two hearing aid-compatible handsets from which to choose no later than October 16, 2005, only thirty days beyond the September 16, 2005, deadline. Ultimately, T-Mobile will offer these customers a full complement of four compliant handsets thirty days later. Thus, the limited extension afforded today satisfies the Commission's goal of ensuring the expeditious introduction of hearing aid-compatible digital wireless handsets.

9. Second, the limited relief afforded here satisfies the public interest requirement in the Commission's waiver standard. T-Mobile has informed us that the company is "fully committed to offering its customers handsets that are compatible with hearing aids[.]"²⁹ Indeed, T-Mobile has played a leading role in the technical efforts to bring hearing aid-compatible digital wireless handsets to the market by chairing the HAC Incubator, a technical group focused on hearing aid compatibility in wireless handsets, within the Alliance for Telecommunications Industry Solutions (ATIS) since 2003.³⁰

10. In addition, the brief extension granted today will permit T-Mobile to have the necessary collateral marketing materials in place, including call-out cards in retail handset displays,³¹ which will ensure a meaningful shopping experience for the company's hearing disabled customers.³² Moreover, the extension will allow T-Mobile to complete the employee training it has already initiated. In light of the relief we grant in this order, we expect T-Mobile to ensure that all of its sales personnel – covering more than 1100 retail outlets – will be able to adequately assist hearing disabled customers desiring suitable handsets during the staggered deployment period.³³

11. Having granted the relief described above, we now turn to consideration of T-Mobile's offer to report to the Commission on its status of compliance "within thirty days of a waiver grant."³⁴ In its filing, SHHH states, "[a]t the very least [T-Mobile] should be required to document what has been done[.]"³⁵ We agree. Accordingly, we impose on T-Mobile the reporting obligations set forth below. We note that these conditions are *in addition to* the hearing aid compatibility rules and procedures set forth in Section 20.19 of the Commission's rules and promulgated pursuant to the *Hearing Aid Compatibility Order* and the more recent *Hearing Aid Compatibility Reconsideration Order*. Thus, the conditions imposed by today's order should not be construed as preempting or otherwise excusing compliance with any hearing aid compatibility rule or policy. Furthermore, to the extent that T-Mobile elects to take advantage of the relief offered in the recent *Cingular Waiver Order*, the company must also adhere to all of the conditions established by that order.³⁶

12. Conditions. T-Mobile must satisfy the following reporting obligations:

1. T-Mobile must file a report no later than October 16, 2005, that includes detailed

²⁹ T-Mobile Waiver Request at 1.

³⁰ See *id.* at 4.

³¹ See *Hearing Aid Compatibility Reconsideration Order*, 20 FCC Rcd at 11209 ¶ 27.

³² See T-Mobile Waiver Request at 8.

³³ See *id.*

³⁴ *Id.* at 10.

³⁵ SHHH Comments at 2.

³⁶ See *Cingular Waiver Order* at ¶¶ 22-23.

information that describes and discusses with specificity the status of its efforts to make available hearing aid-compatible digital wireless handsets to consumers.

2. T-Mobile must certify in its November 17, 2005, hearing aid compatibility compliance report³⁷ that the company is in full compliance with Section 20.19(c)(3)(i)(A) of the Commission's rules.³⁸ In addition, this report must contain detailed information that describes and discusses with specificity T-Mobile's efforts to make hearing aid-compatible digital wireless handsets available to consumers.

13. *Ordering Clauses.* Pursuant to Sections 1 and 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), and Section 1.925 of the Commission's rules, 47 C.F.R. § 1.925, IT IS ORDERED that the Petition for Waiver of Section 20.19(c)(3) of the Commission's Rules filed by T-Mobile USA, Inc. on August 26, 2005, IS GRANTED to the extent set forth herein.

14. Pursuant to Sections 1 and 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), and Section 1.925 of the Commission's rules, 47 C.F.R. § 1.925, IT IS ORDERED that the Request for Waiver of Section 20.19(c)(1)(i) of the Commission's Rules filed by Samsung Telecommunications America, L.P. on September 2, 2005, IS DISMISSED AS MOOT.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

³⁷ See Wireless Telecommunications Bureau Announces Hearing Aid Compatibility Reporting Dates for Wireless Carriers and Manufacturers, WT Docket No. 01-309, *Public Notice*, 19 FCC Rcd 4097 (WTB 2004).

³⁸ We note that T-Mobile may elect to take advantage of the relief afforded pursuant to the *Cingular Waiver Order* in order to achieve full compliance with this rule.

**STATEMENT OF
COMMISSIONER MICHAEL J. COPPS**

RE: Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones; T-Mobile 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).

Today's Order grants T-Mobile a short extension in complying with our hearing aid compatibility rules. As I stated last week when the Commission granted a waiver to Cingular Wireless, I am unhappy that we find ourselves having to do this. Again with hesitation, I will support today's action because the brief extension will ensure that Americans with hearing disabilities will soon have access to digital wireless services. In granting this limited waiver, we understand the T-Mobile will have at least one type of HAC-compliant phone in stores by the September 16, 2005 deadline. Under today's waiver, T-Mobile must have an additional phone within one month—and comply with our HAC rules by making four phones available within two months. We have insisted that T-Mobile file reports with the Commission certifying compliance with the applicable HAC rules. I intend to monitor compliance closely—and expect complete resolution by the firm deadline of November 16, 2005.