

LAW OFFICES
BLOOSTON, MORDKOFKY, DICKENS, DUFFY & PRENDERGAST, LLP

BENJAMIN H. DICKENS, JR.
JOHN A. PRENDERGAST
GERARD J. DUFFY
RICHARD D. RUBINO
MARY J. SISAK
D. CARY MITCHELL
SALVATORE TAILLEFER, JR.

2120 L STREET, NW
WASHINGTON, DC 20037

(202) 659-0830
FACSIMILE: (202) 828-5568

October 25, 2018

AFFILIATED SOUTH AMERICAN OFFICES

ESTUDIO JAUREGUI & ASSOCIATES
BUENOS AIRES, ARGENTINA

HAROLD MORDKOFKY
OF COUNSEL

EUGENE MALISZEWSKYJ
ENGINEERING CONSULTANT

ARTHUR BLOOSTON
1914 – 1999

WRITER'S CONTACT INFORMATION
(202) 828-5538

VIA ELECTRONIC FILING

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: Ex Parte Presentation, *Revisions to Reporting Requirements Governing Hearing Aid Compatible Mobile Handsets*, WT Docket No. 17-228

Dear Ms. Dortch,

The law firm of Blooston, Mordkofsky, Dickens, Duffy & Prendergast, LLP (“BloostonLaw”), on behalf of its rural and independent wireless service provider clients (the “Blooston Rural Carriers”), submits this letter in support of a consensus proposal by and among CTIA, CCA, TIA and the Hearing Loss Association of America (“HLAA”) that would eliminate the annual Form 655 Hearing Aid Compatibility (“HAC”) reporting requirement for mobile wireless service providers and adopt, in its place, an annual certification of compliance with the Commission’s HAC rules, two-year recordkeeping requirements (consistent with the recordkeeping obligations under the Twenty-First Century Communications and Video Accessibility Act) and modest changes to the current service provider website requirements.¹ The Commission can maximize its regulatory relief to small service providers if it adopts revised rules expeditiously and, if necessary, waives the January 2019 HAC reporting requirement for non-Tier I service providers.

I. Imposing Onerous Regulatory Obligations Will Discourage Small and Rural Carriers from Offering Handsets and Could Limit “Try Before You Buy” Opportunities for Rural Consumers

¹ See Joint *ex parte* presentation of CTIA, CCA, TIA and HLAA, WT Docket No. 17-228, filed October 19, 2018. (*Form 655 Consensus Letter*)

The Blooston Rural Carriers are a diverse group of Tier III wireless service providers that are dedicated to meeting the needs of consumers who live and work in the smaller communities and sparsely populated expanses of rural America. Despite the challenges of competing in a marketplace that is increasingly dominated by a handful of nationwide carriers, locally-owned businesses have been able to survive because of their demonstrated commitment to meeting the service and accessibility needs of their customers. That said, seismic changes in the wireless business and availability of wireless handsets from a wide variety of non-carrier sources have led many small carriers to limit the selection of wireless handsets they offer and has led some small providers to cease offering wireless handsets altogether. Eliminating the Form 655 HAC report would have a measurable impact on their bottom line and will help to ensure that smaller rural service providers are able to continue offering wireless handsets – as well as local “try before you buy” testing experiences - to consumers who live and work in remote and niche markets. Ensuring that all consumers have an opportunity to test a wireless handset before they buy is significant because every individual’s accommodation needs and preferences are unique. Adopting an annual certification filing in place of Form 655 and implementing certain other protections would be a reasonable way to meet the needs of consumers without imposing unnecessary regulatory burdens on small service providers.

The Commission initiated its review of the HAC reporting requirements as an effort to provide regulatory relief to smaller companies like the Blooston Rural Carriers. Annual HAC reports filed by these entities in recent years have show that the vast majority of handsets are now HAC compliant and few (if any) carriers fall short of meeting the substantive handset deployment benchmarks. As a result, the HAC Rules now can be adequately enforced through the informal complaint process, which will allow specific consumer complaints (to the extent there are any) to be redressed quickly and directly with the supervision of the FCC’s Consumer and Governmental Affairs Bureau, if the matter is not resolved through dealing with the service provider directly.

Congress has stressed the importance of reducing regulatory burdens on small businesses, through its enactment of the Regulatory Flexibility Act of 1980,² as amended by the Small Business Regulatory Enforcement Fairness Act of 1996,³ as well as the Paperwork Reduction Act.⁴ The wireless marketplace has changed significantly in the years since the HAC reporting requirement was originally adopted. For the reasons cited in the NPRM, and in the comments of the Blooston Rural Carriers, the Commission is now in a position to reduce regulatory burdens associated with HAC compliance, while still protecting the hearing impaired community. To this end, the Blooston Rural Carriers support a consensus plan that would streamline HAC

² See 5 U.S.C. § 603.

³ See Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996) (“Small Business Act”).

⁴ See 44 U.S.C. § 3501 *et seq.*

compliance burdens. However, based on the proliferation of HAC-compliant handsets, and with the adoption of reasonable consumer outreach measures, there is no need to impose additional suggested requirements that for a small business will be just as burdensome as the current reporting regime. In particular, the Blooston Rural Carriers support certain of the proposed consensus measures, but oppose certain other suggested measures as unnecessary and unduly burdensome. In assessing each of the proposed requirements, the Blooston Rural Carriers recommend that the Commission keep in mind that the purpose of HAC compliance no longer needs to be to spur the development and availability of HAC-compliant handsets. Fortunately, technology and the market place have largely addressed those issues. The vast majority of handsets manufactured today are HAC compliant, and hearing impaired customers have a variety of sources to obtain such handsets. Instead, the focus should be on the individual transaction between a hearing-impaired customers and the handset retailer. To this end, the Blooston Rural Carriers have the following comments on the specific measures suggested for the proposed consensus plan:

The *Form 655 Consensus Letter* includes a recommendation that the FCC eliminate the HAC Form 655 for wireless service providers and, instead, impose new certification and recordkeeping requirements for service providers. While the Blooston Rural Carriers are not sure an additional HAC filing requirement is necessary, a simple certification would be far better than the painstaking reporting requirement now in place. The requirements for a small carrier's certification should be straightforward, and limited to statements that the service provider complies with the FCC's HAC rules, including the applicable benchmarks and consumer disclosures and the new and revised website disclosures. Such a certification would ensure that a small carrier's limited resources are available to the greatest extent for compliance with existing requirements, including the provision of:

- A “try before you buy” testing experience in each retail store owned or operated by the provider, all of its HAC-compliant handset models;
- Device HAC ratings on each handset's packaging material;
- An explanation of the HAC rating system in each device's user manual or as an insert in the packaging material for the handset;
- A disclosure that the device may operate on newer technology that may not have been tested;
- Specific guidance requiring how to use the device if it was tested using the 1900 MHz power-down exception;
- A description of the compatibility features of the handset upon request;
- Usable customer support and technical support in call centers and service centers; and

- Contact methods for obtaining information about the accessibility and HAC features of the device in the general product information.

In this context, the Blooston Rural Carriers believe an enhanced two-year recordkeeping requirement would be reasonable because it is consistent with other accessibility recordkeeping requirements such as imposed by the CVAA.

Turning to the website outreach requirements, the Commission’s existing HAC policies and rules require service providers that operate public websites to make available:

- Information about HAC models currently offered;
- The ratings of those models;
- An explanation of the HAC rating system so that consumers can find devices that meet their needs;
- Information regarding the level of functionality for each model; and
- An explanation of the methodology for designating the levels of functionality.

In addition to preserving these existing requirements, the *Form 655 Consensus Letter* proposes service providers also provide the following information on their public HAC websites:

- (1) the FCC identifier (FCC ID) for all HAC-rated handsets made commercially available by the service provider;
- (2) the marketing model/number(s) for all HAC-rated handsets made commercially available by the service provider; and
- (3) a link to the Global Accessibility Reporting Initiative (“GARI”) database, or, alternatively, a list of devices that may have been sold in the past two years but are no longer commercially available (so long as devices that are no longer available for purchase are clearly marked).

Because displaying an FCC ID is the only consistent way for consumers and others to identify a specific wireless handset and confirm its functionality and accessibility features via FCC records and other trusted sources (including device manufacturer HAC reports) the Blooston Rural Carriers believe these additional HAC web-site requirements are reasonable in lieu of Form 655 reporting. Moreover, these informational requirements are consistent with what many small carriers already do today, and compliance would not add a significant burden.

II. Imposing Additional Web Site Content Requirements Would Be Burdensome and Contrary to the Small Business Act and Paperwork Reduction Act.

HLAA has signed on to the consensus letter, but the organization also filed its own separate letter on October 19, 2018 proposing additional requirements.⁵ The Blooston Rural Carriers believe that these additional proposals are unnecessary, unduly burdensome and would effectively eliminate any benefit to small and rural carriers that is gained from eliminating the annual report. The additional proposals include:

- Requiring carriers to post the total numbers of compliant and non-compliant models for each air interface over which the service provider offers service;
- Requiring carriers to update the HAC information on their public website within 30 days of relevant changes;
- Requiring information provided on the HAC list to be dated on the web page;
- Requiring HAC ratings to be posted as:
 - tested and found to be hearing aid compatible
 - tested and found not to be hearing aid compatible
 - not tested for hearing aid compatibility;
- Requiring the HAC rating for each model to be included wherever information about handset specifications are displayed;
- Requiring carriers to post a link to the Commissions' HAC Fact Sheet and outline of the rules on HAC handsets at <https://www.fcc.gov/consumers/guides/hearingaid-compatibility-wireline-and-wireless-telephones> along with certain components of the rules;
- Requiring carriers to post a link to the FCC's consumer compliant center.

For small carriers, the requirement that they post the total numbers of compliant and non-complaint models for each air interface is largely the same as having them complete a HAC report. If the Commission has determined that the report is no longer necessary because of the widespread availability of compliant handsets, then requiring small carriers to post what is, in essence, a HAC report on the carrier's web site is an unnecessary burden that would presumably run afoul of the Small Business Act and Paperwork Reduction Act. Small and rural service providers often have very simple web pages, with static information about their service offerings, due to the lack of personnel and resources needed to maintain a complex web site. Mandating that web sites be updated on a particular schedule depending on device availability, or that web pages include dates, ratings specified in a particular format or other content beyond what is required under rules proposed in the *Form 655 Consensus Letter* would impose significant hardship on small providers, who may have limited technical staff in house with the ability to

⁵ See *Ex parte* presentation of HLAA, WT Docket No. 17-228, filed October 19, 2018. (HLAA Additional Proposals)

update and maintain a website. With every additional website requirement that is added, an additional layer of regulatory review would be required to make sure that required information isn't changed or inadvertently omitted or deleted when other website changes are made. At most, the additional informational items sought by HLAA should be viewed as suggestions for carriers to include in their websites. In this regard, many rural carriers HAC web pages already include links to resources such as the FCC's HAC Fact Sheet, CTIA's "AccessWireless.org" web site as a public service to their customers.

Conclusion

The Commission's HAC rules have been a model of success in helping to raise industry awareness about meeting the needs of the hearing impaired, and in driving accessibility features into all segments of the device marketplace. As technology has improved, a far greater number and percentage of new wireless devices include hearing aid accessibility features. According to TIA, many of its members are already exceeding the 85% benchmark that will go into effect in 2021 for manufacturers.⁶ Annual reporting once helped to raise awareness among smaller wireless carriers and their customers, but public outreach and other ongoing obligations like website and in-store disclosures adequately serve these purposes, and the burdens of requiring an annual status report filing by small, rural, and regional service providers now outweigh the benefits. The Commission should therefore eliminate the Form 655 filing requirement and adopt modest changes to the current service provider website requirements. It is respectfully submitted that the Commission can maximize its regulatory relief to small service providers if it acts promptly and waives or eliminates for small carriers the HAC reporting obligation that would otherwise be due in January of 2019.

Respectfully submitted,

THE BLOOSTON RURAL CARRIERS



By: _____
D. Cary Mitchell
John A. Prendergast
Their Attorneys

⁶ TIA Comments on the 2018 CCVA Biennial Report, CG Docket No. 10-213, (*filed* May 3, 2018) at p. 5.