

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
Request For Updated Information) WT Docket No. 07-250
And Comment On Wireless Hearing Aid) WT Docket No. 10-254
Compatibility Regulations)

To: Wireless Telecommunications Bureau &
Consumer and Governmental Affairs Bureau

COMMENTS OF CTIA–THE WIRELESS ASSOCIATION®

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I. INTRODUCTION AND SUMMARY

CTIA–The Wireless Association® (“CTIA”)¹ is pleased to comment on the *Public Notice* released by the Wireless Telecommunications Bureau (“WTB”) and the Consumer and Governmental Affairs Bureau (“CGB”) (collectively the “Bureaus”)² to update information about the Commission’s wireless hearing aid compatibility (“HAC”) rules gathered in the above-referenced proceeding.³ The HAC rules are codified in Section 20.19 of the

¹ CTIA is the international organization of the wireless communications industry for both carriers and manufacturers. Membership in the organization covers Commercial Mobile Radio Service (“CMRS”) providers and manufacturers, including cellular, Advanced Wireless Service, 700 MHz, broadband PCS, and ESMR, as well as providers and manufacturers of wireless data services and products.

² See *Request For Updated Information And Comment On Wireless Hearing Aid Compatibility Regulations*, Public Notice, 29 FCC Rcd 13969 (WTB, CGB 2014) (“*Public Notice*”), which seeks to update the record gathered in response to *Updated Information and Comment Sought on Review of Hearing Aid Compatibility Regulations*, Public Notice, 27 FCC Rcd 13448 (WTB 2012) (“*2012 Public Notice*”) and *Comment Sought on 2010 Review of Hearing Aid Compatibility Regulations*, Public Notice, 25 FCC Rcd 17566 (WTB 2010) (“*2010 Public Notice*”).

³ CTIA participated in earlier phases of this proceeding. See CTIA Comments, WT Docket No. 10-254 (filed Jan. 22, 2013) (“*CTIA 2013 Comments*”); CTIA Comments, WT Docket No. 10-254 (filed Feb. 14, 2011) (“*CTIA 2011 Comments*”).

Commission's rules,⁴ and CGB's *2014 CVAA Biennial Report to Congress* describes the comprehensive HAC requirements now in place pursuant to Section 710 of the Communications Act of 1934, as amended (the "Act"), 47 U.S.C. § 610.⁵ CTIA appreciates the opportunity to provide information to the FCC on the many ways the wireless industry continues to work to ensure that all consumers, including people with disabilities and older adults, can take advantage of innovative wireless products and services.⁶

Wireless service providers and handset manufacturers significantly exceed the Commission's minimum thresholds for HAC-compliant wireless handsets, offering an array of HAC wireless handsets with a variety of features and price points. The HAC rules are fulfilling their statutory purpose of ensuring reasonable access to telephone service by persons with hearing loss, serving consumers while also affording industry the flexibility needed to innovate. In addition, new applications and innovative services, including HD Voice and Text-to-911, are revolutionizing the way that consumers with hearing loss use wireless products and services.

Given the expansive array of HAC wireless handsets with innovative features, the Commission should not adopt the modifications proposed in the *Public Notice*. CTIA does not believe that the proposed modifications are necessary or would materially improve consumers who use hearing aids' ability to access wireless handsets and services. The successful rate of

⁴ See 47 C.F.R. § 20.19.

⁵ See *Implementation of Sections 716 and 717 of the Communications Act of 1934, as Enacted by the Twenty-First Century Communications and Video Accessibility Act of 2010*, Biennial Report to Congress as Required by the Twenty-First Century Communications and Video Accessibility Act of 2010, 29 FCC Rcd 11909, 11948-49, ¶¶ 75-76 (CGB 2014).

⁶ See *id.* at ¶¶ 40-42 (generally finding a greater selection of accessible telecommunications devices available to people with disabilities and describing industry efforts to comply with the CVAA's requirements to ensure that advanced communications services and the equipment used for these services are accessible to people with disabilities based on extensive submissions illustrating a range of accessible devices, from feature phones to smartphones, for individuals with varying types of disabilities).

compliance among wireless service providers and handset manufacturers suggests that ongoing consumer concerns arise primarily from other aspects of the HAC ecosystem, such as consumer education about the HAC rating system and awareness of hearing aid device immunity or compatibility with wireless handsets. Remedying those issues, so as to build on the ongoing successful efforts of wireless services providers and handset manufacturers under the existing HAC regime, may have a more positive impact on consumers' ability to access HAC wireless handsets than adopting the modifications suggested in the *Public Notice*. In particular, CTIA explains in these comments that:

- Expanding the scope of the devices covered by the HAC rules would be inconsistent with the Act, harmful to innovation, and unnecessary.
- A 100% compliance regime is unnecessary to ensure that consumers who use hearing aids have access to HAC wireless handsets and would burden both industry and the Commission.
- Further engagement and oversight of hearing aid manufacturers could have a more positive impact on consumers' ability to access HAC wireless handsets.

Therefore, CTIA urges the Commission to maintain the existing HAC rules, which successfully provide the flexibility needed to encourage innovation and investment while serving the needs of consumers who use hearing aid devices.⁷ If the Commission wishes to pursue any of the proposals in the *Public Notice*, the Commission should release a detailed notice of proposed rulemaking so that the public can comment more fully on the impacts of possible rule changes.

⁷ See *Amendment of the Commission's Rules Governing Hearing Aid-Compatible Mobile Handsets, Policy Statement and Second Report and Order and Further Notice of Proposed Rulemaking*, 25 FCC Rcd 11167, 11174 ¶ 18 (2010) ("2010 HAC Policy Statement").

II. THE COMMISSION SHOULD IDENTIFY ANY UNDERLYING ISSUES IN THE HAC ECOSYSTEM TO ADDRESS CONSUMER CONCERNS BEFORE MODIFYING A HAC REGIME THAT WORKS FOR CONSUMERS WITH HEARING LOSS.

A. THE COMMISSION'S EXISTING HAC REGIME ENSURES CONSUMERS HAVE DIVERSE WIRELESS HANDSET OPTIONS WHILE PROVIDING FLEXIBILITY FOR INDUSTRY TO INNOVATE

The Commission's existing HAC framework has afforded the wireless industry the opportunity to generally exceed the Commission's minimum HAC requirements. The wireless industry has taken full advantage of this opportunity to serve consumers with hearing loss while creating and deploying innovative products and services. Because the overwhelming majority of wireless handsets in the market are HAC compliant, consumers who use hearing aid devices have ample choices among HAC-wireless handsets with a variety of features and functions.

Since 2011, the number and variety of HAC-compliant wireless handsets have increased and continue to significantly exceed the applicable minimum thresholds. In their most recent status reports, service providers reported that **79%** of their handset offerings were HAC compliant during the January 2013–December 2013 reporting period.⁸ This is a marked increase above the percentage of their offerings that were HAC compliant (71%) during the January 2011–December 2011 reporting period, the period preceding the release of the *2012 Public Notice*.⁹ Similarly, for the most recent reporting period, handset manufacturers reported that **81%** of the handsets they offered were HAC compliant,¹⁰ which is also more than the

⁸ See FCC Wireless Telecommunications Bureau, Service Providers Summary of Unique Handsets by Air Interfaces and HAC Ratings, Reporting Period From: January 1, 2013 – December 31, 2013, https://apps.fcc.gov/edocs_public/attachmatch/DOC-326848A1.pdf (last visited Jan. 27, 2015).

⁹ See FCC Wireless Telecommunications Bureau, Service Providers Handset Totals by Air Interface, January 1, 2011 – December 31, 2011, https://apps.fcc.gov/edocs_public/attachmatch/DOC-313050A1.pdf (last visited Jan. 27, 2015).

¹⁰ See FCC Wireless Telecommunications Bureau, Device Manufacturer Handset Totals by Air Interface, Reporting Period: July 1, 2013 – June 30, 2014,

percentage of their handset offerings that were HAC compliant during the reporting period preceding the *2012 Public Notice*.¹¹ Just a few examples of such HAC-compliant handsets include handsets with a wide range of capabilities:

- *Smartphones*: Apple iPhone 6, BlackBerry Q10, HTC Desire EYE, LG G Vista, Motorola Nexus 6, Nokia Lumia Icon, Samsung Galaxy S4; and
- *Basic Phones*: Kyocera Kona S2150/S2151, LG A380, Samsung Rugby 4, ZTE Z432.

Given the preponderance of HAC-compliant wireless handsets in the marketplace, the letter and spirit of Section 710(e) of the Act are being met. The current fractional deployment benchmarks successfully “encourage the use of currently available technology and do not discourage or impair the development of improved technology.”¹²

Recent technological improvements are also offering new solutions for consumers with hearing loss and technological developments will continue to provide solutions without additional regulation. Beyond the Commission’s HAC regime, new applications and innovations, such as HD Voice and Text to 911, offer unparalleled opportunities for consumers with hearing loss to benefit from wireless products and services. In addition, hearing aid manufacturers are developing new methods of interacting with wireless handsets using “off-the-shelf” technologies, such as Bluetooth, that may produce better results for consumers with hearing loss than the existing radio frequency (“RF”) immunity and telecoil approaches to HAC.

http://transition.fcc.gov/Daily_Releases/Daily_Business/2014/db1017/DOC-330001A1.pdf (last visited Jan. 27, 2015).

¹¹ See FCC Wireless Telecommunications Bureau, Device Manufacturers Handset Totals by Air Interfaces, Reporting Period From July 1, 2011 to June 30, 2012, https://apps.fcc.gov/edocs_public/attachmatch/DOC-316706A1.pdf (last visited Jan. 27, 2015).

¹² 47 U.S.C. § 610(e).

Specifically:

- HD Voice provides mobile users with crisp voice quality and decreased background noise, which can benefit people with hearing loss.¹³
- Text-to-911 enables direct communication with local emergency services for people who are deaf, hard of hearing, or have speech disabilities.¹⁴
- Multiple applications are available on mobile platforms, including Android and iOS, to assist users with hearing loss.¹⁵
- Hearing aid manufacturers, such as Oticon and Phonak, are using Bluetooth technology to turn hearing aids into wireless headsets when used with wireless handsets.¹⁶

Because consumers with hearing loss currently enjoy a plethora of options among wireless products, services, and applications to address their needs, CTIA does not believe that the proposals discussed in the *Public Notice* will significantly change the ability of consumers with hearing loss to access and benefit from wireless products and services. Altering the current successful framework to require a 100% compliance regime would, however, reduce industry flexibility to innovate and rapidly introduce new wireless handsets.

¹³ See Molly Wood, *With HD Voice, Better Call Quality Is Coming*, *Text Your Friends*, N.Y. TIMES, May 1, 2014, at B8, available at http://www.nytimes.com/2014/05/01/technology/personaltech/hd-voice-promises-better-call-quality-but-dont-hold-your-breath.html?_r=0.

¹⁴ See, e.g., FCC News Release, FCC Adopts Rules to Promote Widespread Text-to-911 Availability, at 1 (Aug. 8, 2014), available at https://apps.fcc.gov/edocs_public/attachmatch/DOC-328755A1.pdf (“Text-to-911 can provide a lifesaving alternative in a number of different situations, such as where a person who is deaf, hard of hearing, or has a speech disability is unable to make a voice call; where voice networks are congested; or where a 911 voice call could endanger the caller.”).

¹⁵ See, e.g., Feta Fernsler and Betti Thompson, Deaf and Hard of Hearing Services Center, Inc., Apps 101 for the Deaf, Hard of Hearing, Late Deafened, DeafBlind and Speech Disability (Oct. 9, 2014), <http://www.slideshare.net/fullscreen/dhhscinc/popular-apps-for-the-deaf-hard-of-hearing-late-deafened-and-deafblind/5>.

¹⁶ See Karen D. Schwartz, *Loud and Clear*, BLUETOOTH TECHNOLOGY WEBSITE, <http://www.bluetooth.com/Pages/Loud-and-Clear.aspx> (last visited Jan. 27, 2015).

B. INSTEAD OF UNNECESSARILY INCREASING THE BURDEN ON THE WIRELESS INDUSTRY, THE COMMISSION SHOULD CONSIDER ADDRESSING OTHER AREAS OF THE HAC ECOSYSTEM TO IMPROVE CONSUMER'S HAC EXPERIENCES

Rather than moving precipitously on the proposals in the *Public Notice* to increase the regulatory burden on wireless manufacturers and service providers, CTIA believes that the Commission should first identify whether there are other issues and steps that could improve the ability of consumers who use hearing aids to use the HAC rating system when selecting a wireless handset. Specifically, the Commission should develop a record that clearly demonstrates the steps hearing aid device industry is taking to educate their customers about the HAC rating system. Hearing aid compatibility is an ecosystem that requires a careful balance between wireless and hearing aid technologies, but the Commission's existing HAC regime imposes responsibility and burdens solely on wireless service providers and handset manufacturers.

The HAC rating and disclosure system requires both the wireless and hearing aid industries to take appropriate steps to reduce interference and educate consumers to ensure compatibility between the hearing aid device and a wireless handset. If a wireless handset has been tested and rated for HAC pursuant to the Commission's current rating and disclosure rules, interference experienced by the consumer may well stem from the hearing aid device or a hearing aid user's lack of awareness of how to utilize the HAC rating system to select a wireless handset. In addition, unlike the wireless industry, the hearing aid industry's efforts to implement uniform methods of coupling with wireless handsets or disclosure and education about the HAC ratings of hearing aid devices are unclear.

As CTIA is not aware of any material increase in the minimal number of HAC complaints the Commission currently receives, CTIA does not believe that a problem has been

demonstrated in the wireless industry's compliance with HAC that the proposals in the *Public Notice* might address. Moreover, without a better understanding of the hearing aid industry's educational and informational efforts, the increased regulatory burden of the Commission's proposed rules will not significantly improve the HAC ecosystem for consumers with hearing loss.

Instead, the proposals in the *Public Notice*, and especially the proposal to require 100% compliance with the T and M ratings, will undermine the Commission's HAC goals, articulated in the *2010 HAC Policy Statement* to "ensur[e] that all Americans, including Americans with hearing loss, will reap the full benefits of new technologies as they are introduced into the marketplace" by, among other items, "provid[ing] industry with the ability to harness innovation to promote inclusion by allowing the necessary flexibility for developing a range of solutions to meet consumers' needs while keeping up with the rapid pace of technological advancement."¹⁷ CTIA does not believe the proposals in the *Public Notice* to modify the current HAC regime are necessary or will significantly change the generally positive experience of consumers with hearing loss given that HAC wireless handsets constitute the overwhelming majority of the wireless handset market and the limited record developed to determine potential issues in other areas in the HAC ecosystem.

¹⁷ *2010 HAC Policy Statement*, 25 FCC Rcd 11167, 11174 ¶ 18 (2010).

III. EXPANDING THE SCOPE OF THE DEVICES COVERED BY THE HAC RULES IS INCONSISTENT WITH THE ACT, HARMFUL TO INNOVATION, AND UNNECESSARY.

The scope of the devices covered by the existing rules properly balances the statutory goals that “regulations adopted to implement this section encourage the use of currently available technology and do not discourage or impair the development of improved technology.”¹⁸

Although the *Public Notice* focuses on “technological neutrality” in presenting a proposal for expanding the types of devices to be covered by the HAC rules,¹⁹ obviously such an approach must be bounded by the explicit intent of Congress to define a limited scope of products subject to the HAC requirement in Section 710 of the Act. The statute focuses on a specific definition of “customer premises equipment” (“CPE”) that contains express exemptions for certain types of telephones based on the radio services with which they are used, as well as secure telephones.²⁰ Section 710 thus acknowledges differences among forms of CPE and their related radio and other services for purposes of HAC compliance, thus suggesting that a broader “technologically neutral” approach would not be consistent with the intent of the Act.²¹

CTIA believes that the current definition of covered devices in Section 20.19 of the rules best satisfies the requirements of Section 710(e) and urges the Commission to decline proposals to expand the scope of devices covered based on misplaced argument regarding “technological

¹⁸ 47 U.S.C. § 610(e).

¹⁹ See *Public Notice*, 29 FCC Rcd at 13972-73 ¶¶ 7-12.

²⁰ 47 U.S.C. § 610(b)(1), (2).

²¹ For example, with regard to HAC rules for CPE used with advanced communications services, Section 710(e) provides that:

- [T]he Commission shall use appropriate timetables or benchmarks to the extent necessary
- (1) due to technical feasibility, or
 - (2) to ensure the marketability or availability of new technologies to users.

47 U.S.C. § 610(e).

neutrality.” In fact, such an expansion of the HAC regime could harm innovation by introducing regulatory uncertainty into the device development process. Developers could delay or abandon promising, innovative projects if they thought that commercial release of new products would trigger a HAC obligation that heretofore did not exist and may not be feasible to satisfy.

Notably, the Commission’s *2011 ANSI Standard Order*²² adopting the ANSI C63.19-2011 technical standard (“2011 ANSI Standard”)²³ already included an expanded scope of covered handsets, so there is no need to expand the rules’ existing definitions to include new devices not already contemplated by the ANSI standard. The Commission also must continue adhering to the express statutory limitation on the scope of covered devices, which is restricted to equipment that is designed for two-way voice communication via a built-in speaker “intended to be held to the ear in a manner functionally equivalent to a telephone.”²⁴ To avoid the harms to innovation discussed above, the Commission should continue to maintain the scope of covered wireless handsets and rely on the existing standards-based processes to modify the HAC regime.

IV. A 100% COMPLIANCE REGIME IS UNNECESSARY TO ENSURE CONSUMERS WITH HEARING LOSS ACCESS TO WIRELESS HANDSETS AND WOULD BE BURDENSOME FOR INDUSTRY AND THE COMMISSON.

A. THE CURRENT HAC COMPLIANCE REGIME STRIKES THE RIGHT BALANCE TO PROVIDE CONSUMERS WITH DIVERSE HAC WIRELESS HANDSET OPTIONS AND INSUTRY WITH FLEXIBILITY TO INNOVATE

As described in Section II above, the current HAC rules, which provide for percentages of devices to meet the M- and T-ratings, ensure that a wide variety of compliant handsets are

²² See *Amendment of the Commission’s Rules Governing Hearing Aid-Compatible Mobile Handsets*, Third Report and Order, 27 FCC Rcd 3732 (WTB, OET 2012) (“*2011 ANSI Standard Order*”).

²³ See Accredited Standards Committee C63[®] – Electromagnetic Compatibility, *American National Standard Methods of Measurement of Compatibility between Wireless Communications Devices and Hearing Aids*, ANSI C63.19-2011 (May 27, 2011) (“*2011 ANSI Standard*”).

²⁴ See 47 U.S.C. § 610(b)(1).

available for individuals with hearing aids while also encouraging innovation in wireless handset and service offerings. In this context, moving to a 100% HAC requirement²⁵ is both unwarranted and counterproductive.

If handset manufacturers and service providers are going to continue to innovate, a 100% compliance obligation could impact the availability of wireless handsets with advanced accessibility features and will not necessarily mean that all handsets in the marketplace will be HAC-compliant. There may be some handsets with highly innovative features, including features that enable accessibility, that would not be HAC-compliant, at least until technical standards are developed for those newer technologies, as was the case with VoLTE.²⁶ Either such devices will be kept out of the marketplace, which would help no one and harm many consumers who would have no access to these devices, or the Commission would have to consider waiving the 100% compliance requirement. Requiring handset manufacturers and service providers to obtain waivers before introducing these new technologies could delay the conferral of significant benefits for consumers and would likely increase administrative burdens for the Commission. Therefore, the Commission should not pursue changes to the current compliance obligations.

B. AN NPRM SHOULD EXPLORE ALTERNATIVE CHANGES TO THE HAC REGIME THAT COULD BENEFIT CONSUMERS WITHOUT LIMITING INNOVATION

However, if the Commission decides to take further action on the issues raised in the *Public Notice*, regarding either the 100% compliance proposal or a proposal to expand the scope of devices covered by the rules, the Commission should release a full-scale notice of proposed

²⁵ See *Public Notice*, 29 FCC Rcd 13973-75 ¶¶ 13-17.

²⁶ See *2011 ANSI Standard Order*, 27 FCC Rcd at 3737 ¶ 12.

rulemaking, in order to examine the effect of such changes on the existing successful HAC regime.

Such a notice of proposed rulemaking should consider the following steps if a 100% compliance requirement were to be imposed:

- Setting a three-year transition period²⁷ for industry to achieve 100% compliance, with the fractional benchmarks remaining in place until the end of the transition period.
- Eliminating the multiple requirements associated with the current fractional benchmarks, specifically, the annual status reports on hearing aid compatibility, the product refresh rule, the “different levels of functionality” rule, and the proposed rule for in-store testing at independent retailers.
- Permitting all manufacturers and service providers to use the 1900 MHz GSM power down to achieve a compliant M-rating.
- Engaging the U.S. Food and Drug Administration (“FDA”) and hearing aid manufacturers to ensure that consumers are aware of the immunity levels and telecoil capabilities of their hearing aid devices.
- Adopting a streamlined waiver process for individual models.
- Simplifying the disclosure requirements now in Section 20.19 of the rules.

C. THE COMMISSION SHOULD PERMIT ALL COVERED ENTITIES TO UTILIZES A POWER DOWN OPTION FOR GSM WIRELESS HANDSETS OPERATING AT 1900 MHZ

CTIA noted in its comments as long ago as the proceeding leading to the *2010 HAC Policy Statement*²⁸ that one modest change that the Commission should make to the HAC rules is to permit all manufacturers and service providers, regardless of size, to utilize a software solution that enables the end user to reduce the maximum power of a GSM handset at 1900 MHz in all

²⁷ See *Accessibility of User Interfaces, and Video Programming Guides and Menus*, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 17330, 17399 ¶ 111 (2013) (establishing a three-year compliance deadline for the Commission’s user interface accessibility rules).

²⁸*Supra* note 6.

circumstances with appropriate disclosures. Even with the adoption of the 2011 ANSI Standard, handsets operating over GSM at 1900 MHz are challenged to achieve an M3 rating.

The use of a generally available power reduction option at 1900 MHz will serve the public interest by making it easier for manufacturers and service providers to bring to market lower cost handsets that are HAC-certified and that incorporate new and innovative wireless technologies.

V. FURTHER OVERSIGHT OF HEARING AID MANUFACTURERS IS NEEDED IF THE COMMISSION BELIEVES MEANINGFUL CHANGES TO THE CURRENT HAC SYSTEM ARE NECESSARY.

Improving hearing aid compatibility between hearing aid devices and wireless handsets can only occur with meaningful participation in the existing HAC rating and disclosure system by hearing aid manufacturers. CTIA urges the Commission to work with the Food and Drug Administration (“FDA”) and the hearing aid industry, in addition to the wireless industry, to provide the necessary regulatory reforms. Hearing aid manufacturers should fully participate in HAC efforts by educating their customers about the RF immunity levels and coupling capabilities of hearing aid devices.

Given the Commission’s existing jurisdiction over hearing aid devices based on its Section 302(a) authority, CTIA believes the FCC should work with the FDA to ensure hearing aid devices fully participate in the HAC rating system. Section 302(a) of the Act states that:

The Commission may, consistent with the public interest, convenience, and necessity, make reasonable regulations ... governing the interference potential of devices which in their operation are capable of emitting radio frequency energy by radiation, conduction, or other means in sufficient degree to cause harmful interference to radio communications²⁹

²⁹ 47 U.S.C. § 302(a).

Because hearing aids emit radio frequency energy that can interfere with other devices, the Commission has authority under Section 302(a) to make reasonable regulations governing the interference potential of hearing aids. It would be reasonable for the Commission to establish minimum standards for hearing aid devices to minimize their interference to mobile communications.

CTIA urges the hearing aid industry to work with the wireless industry and the Commission in developing a coordinated approach to improve consumer education and awareness about the immunity or coupling capabilities of hearing aid devices with wireless handsets. With a coordinated and committed effort by the hearing device industry, consumers who make a significant investment in hearing devices can better select a hearing aid device that will be compatible with any one of the hundreds of HAC wireless handsets currently in the U.S. market.

VI. CONCLUSION

To continue the success of the current HAC regulatory regime for consumers and industry participants alike, the Commission should act consistent with CTIA's recommendations above.

Respectfully submitted,

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