

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
2010 Review of Hearing Aid Compatibility Requirements)	WT Docket No. 10-254
)	
Amendment of the Commission's Rules Regarding Hearing Aid Compatible Mobile Handsets)	WT Docket No. 07-250
)	

COMMENTS OF MOTOROLA SOLUTIONS, INC.

Motorola Solutions, Inc. (“Motorola Solutions”) hereby files these Comments in response to the Commission’s Public Notice seeking updated information on whether the Commission’s Hearing Aid Compatibility (“HAC”) rules for wireless handsets effectively meet the needs of consumers who are deaf and hard of hearing.¹ Motorola Solutions strongly supports the Commission’s efforts to improve accessibility across the entire communications sector. As it considers refinements to its HAC rules, Motorola Solutions urges the Commission to maintain its long-established policy of distinguishing public safety and enterprise devices from consumer devices in regards to accessibility requirements.

I. INTRODUCTION

Through the Public Notice, the Commission seeks to refresh the record on two issues related to its HAC rules. First, the Commission asks whether it should revise the HAC regulatory regime “to apply in a technologically neutral way to all mobile wireless devices that can be used for voice communications,” and second, whether it should eliminate its fractional

¹ Request for Updated Information and Comment on Wireless Hearing Aid Compatibility Regulations, *Public Notice*, WT Docket No. 07-250, 10-254, 29 FCC Rcd 13969 (2014) (“Public Notice”).

deployment benchmarks in favor of a requirement that all covered mobile wireless devices must be made hearing aid compatible.²

Although Motorola Solutions supports the Commission’s goals of “keep[ing] pace with consumer expectations and the evolution of wireless technologies”³ while also exploring “rules that expand consumer access to hearing aid compatible handsets,”⁴ the Commission should not expand the HAC rules to apply to public safety and enterprise communications devices in this proceeding. As further explained below, public safety and enterprise equipment by definition are neither consumer devices nor functional equivalents to such devices, and differences in the markets, technologies, level of user training, and uses of these devices warrant different treatment.

II. THE COMMISSION SHOULD MAINTAIN THE HAC EXEMPTIONS FOR PUBLIC SAFETY AND ENTERPRISE DEVICES.

The Commission’s HAC rules apply to providers of digital commercial mobile radio services (“CMRS”) offering interconnected voice or data services and manufacturers of wireless handsets used with such services.⁵ Since it first instructed the Commission to develop the HAC regime in the Hearing Aid Compatibility Act of 1988,⁶ Congress has exempted telephones used with private radio services, including public safety and enterprise devices, from the HAC regime,⁷ granting the Commission authority to remove this exception if it determines that: (1) revoking the exception is in the public interest, (2) continuing the exception would have an

² *Id.*, ¶ 2.

³ *Id.*, ¶ 8.

⁴ *Id.*, ¶ 13.

⁵ 47 C.F.R. § 20.19(a)-(b).

⁶ Hearing Aid Compatibility Act of 1988, Pub. L. No. 100-394, 102 Stat. 976 (1988).

⁷ 47 U.S.C. § 610(b)(2)(A)(ii).

adverse effect on hearing-impaired individuals, (3) compliance with the rules is technologically feasible, and (4) compliance would not increase costs such that the devices could not be successfully marketed.⁸ In the 2010 Hearing Aid Compatibility Order and FNPRM, the Commission determined that it would not extend the HAC rules to public safety and dispatch networks because the burden of implementing such rules would outweigh the benefits, “given the very different circumstances of the market for these handsets.”⁹

The instant Public Notice now proposes to alter these findings and apply the Commission’s HAC rules to “private internal networks.”¹⁰ The Commission should decline to make this change in policy with respect to public safety and enterprise communications devices. There are material differences between public safety and enterprise devices on the one hand, and consumer devices on the other, that warrant their differential treatment in the HAC context. Applying the HAC rules to public safety and enterprise communications devices could have an overall negative impact on the entities and individuals who depend on those services, while providing limited subsequent benefits to the public at large, as public safety and enterprise devices rarely, if ever, make it into the hands of consumers. Regardless of what actions the Commission takes with respect to any other devices operating over private internal networks in this proceeding, it should make clear that public safety and enterprise devices remain exempt from its Hearing Aid Compatibility rules.

⁸ 47 U.S.C. § 610(b)(2)(B).

⁹ 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, ¶ 82 (2010) (“Order and FNPRM”).

¹⁰ *Id.*, 9.

A. Public Safety and Enterprise Devices are Not Consumer Devices, and Should Be Treated Differently.

The Commission should not expand the HAC rules to public safety and enterprise devices because these devices largely are not functionally equivalent to telephones. In the Public Notice, the Commission seeks comment as to the meaning of functional equivalence and whether wireless handsets with built-in speakers are functionally equivalent to telephones.¹¹ The Commission dealt with a similar question in 2010, when it proposed to extend the HAC compliance regime to all “customer equipment used to provide wireless voice communications over any type of network among members of the public or a substantial portion of the public via a built-in speaker where the equipment is typically held to the ear”¹² Relatedly, Congress—through the CVAA—and the Commission have both embraced a policy of analyzing the primary purpose of a multi-function device when considering accessibility requirements.¹³ A similar analysis in this instance would weigh against extending HAC obligations to public safety and enterprise devices.

The Public Notice focuses on consumers and the expansion of the HAC rules from a consumer’s perspective.¹⁴ However, extending the HAC requirements to public safety and enterprise devices would present limited benefits to consumers because, by definition, public safety and enterprise devices are not consumer devices. Public safety and enterprise devices are not marketed or sold to individual consumers nor can they be purchased at retail. Rather, these

¹¹ *Id.*, ¶ 8.

¹² Order and FNPRM ¶ 77.

¹³ See 47 U.S.C. § 617(h)(1); 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; CG Docket No. 10-213, *Report and Order and Further Notice of Proposed Rulemaking*, 26 FCC Rcd 14557, ¶¶ 1881-2000 (2011) (“ACS Report and Order”).

¹⁴ See Public Notice, ¶ 7-9.

devices are only marketed and sold, either directly or indirectly, to state or local governments, public safety organizations, utilities, or other such enterprise customers. None of the public safety or enterprise device customers could be considered “consumers” within the term’s meaning as set out in the public notice.

Although some public safety and enterprise devices may have the ancillary capability to communicate with other users over public networks while being held to the ear like a traditional telephone, this is not their primary purpose or function. The primary function of public safety devices is to promptly make and respond to emergency communications, and the primary function of enterprise devices is to communicate within a business network about business operations. As described above, these devices are not marketed toward, or even readily available to, the public at large.¹⁵ While some public safety and enterprise broadband networks will be based on 3GPP’s LTE standard, and may support roaming onto commercial LTE networks, any such interconnected capabilities exist to serve the public safety and enterprise mission of these devices and to expand their functionality for those users.

The physical operations of public safety and enterprise devices also are distinct from consumer telephones. For example, despite some devices being capable of operations while held to the ear, many public safety and enterprise voice communication devices are actually intended to be held in front of the face or attached to the user’s body. Indeed, where a device typically is intended to be used in a manner other than held to the ear, HAC compliance would be irrelevant, regardless of what communications capabilities the device might feature. Public safety and

¹⁵ Cf. Accessibility of User Interfaces, and Video Programming Guides and Menus, MB Docket No. 12-108, *Report and Order and Further Notice of Proposed Rulemaking*, 28 FCC Rcd 17330, ¶ 31 (2013) (“CVAA Section 204/205 Order”) (exempting public safety and enterprise equipment from CVAA Section 204 and 205 obligations in part because these devices are not provided to individuals and are marketed or sold to governments, public safety organizations, and enterprise customers).

enterprise users often receive special training on the use of the device, making it unlikely that there would be any mistaken expectations or confusion about device functionality or intended usage. Additionally, there are greater demands for performance and reliability on these devices. It is possible that public safety and enterprise devices may operate at greater power or have other technological differences from consumer wireless handsets that will render the HAC standards inappropriate.

Adopting rules based on a single capability of a device without assessing its primary purpose would result in an overbroad application of the rules to a wider range of devices than desired, which could prompt substantial unnecessary administrative procedures, as the Commission needs to further clarify, interpret, and revise its approach in the future.¹⁶ To promote efficient administration of and compliance with the HAC regime, the Commission should be clear that public safety and enterprise equipment, even with ancillary connectivity to the PSTN, are distinct from consumer devices and should remain exempt from the HAC rules.

B. Expanding HAC Rules to Public Safety and Enterprise Devices Would Not Best Serve the Public Interest.

The Commission correctly determined in the 2010 HAC Order and FNPRM not to extend the HAC rules to devices used with “public safety or dispatch networks” because the burdens placed on manufacturers, service providers, and users by the new rules would outweigh the benefits provided to the public.¹⁷ The Commission has not made the statutory determinations

¹⁶ This could be similar to the Commission’s experience with the broad applicability of the definition of “autodialer” that was adopted in the Telephone Consumer Protection Act (TCPA) context, which continues to prompt Petitions for Declaratory ruling, consuming substantial agency resources. *See, e.g.*, Consumer and Governmental Affairs Bureau Seeks Comment on Petition for Exemption Filed by the American Bankers Association, CG Docket No. 02-278, *Public Notice*, 29 FCC Rcd 13673 (2014).

¹⁷ FNPRM and Order, ¶ 82.

necessary to support reversal of this policy.¹⁸ Public safety and enterprise devices are used in discrete networks for specialized purposes, which differ greatly from consumer networks in terms of technical, operational, and economic demands. Expanding the HAC requirements to public safety and enterprise networks could incidentally stifle innovation in this area.

Maintaining the HAC exemption for public safety and enterprise devices would be consistent with past Commission precedent. As previously discussed, in 2010, the Commission proposed not to extend the HAC rules to public safety and enterprise devices because the increased burdens of compliance outweigh the benefits provided to the public.¹⁹ Additionally, expanding HAC rules to public service and enterprise devices would be inconsistent with the Commission's implementation of CVAA, which the Public Notice identifies as one of the motivators of the present proceeding.²⁰ For example, the Commission recognized explicit exemptions for public safety and enterprise devices from CVAA obligations imposed in Sections 216 (Advanced Communications Services)²¹ and Sections 204 and 205 (Navigation Device User Interfaces) of that Act.²²

Mandating accessibility requirements on these devices could chill innovation, contrary to the public interest. The ability for public safety agencies to receive and dispatch emergency

¹⁸ 47 U.S.C. § 610(b)(2)(B) (requiring, prior to revoking the HAC exemption for private radio services, that the Commission determine: “(i) such revocation . . . is in the public interest; (ii) continuation of the exemption without such revocation . . . would have an adverse effect on hearing-impaired individuals; (iii) compliance with the [HAC] requirements . . . is technologically feasible for the telephones to which the exemption applies; and (iv) compliance with the [HAC] requirements . . . would not increase costs to such an extent that the telephones to which the exemption applies could not be successfully marketed.”) ; *see also supra* pp. 2-3.

¹⁹ FNPRM and Order, ¶ 82.

²⁰ Public Notice, ¶ 2.

²¹ *ACS Report and Order*, ¶¶ 171-172.

²² *CVAA Section 204/205 Order*, ¶ 31.

communications efficiently is critical and can often mean the difference between life and death. Similarly, effective enterprise communications can be essential to preventing disasters or ensuring the smooth operations of major economic undertakings. If complying with HAC obligations would require limiting the functionality of devices, for example by changing operational parameters, such as a reduction in output RF power, or removing interconnected capabilities, these additional accessibility requirements could potentially slow public safety and enterprise broadband innovation while also adding delay and cost increases.

III. CONCLUSION

As discussed above, Motorola Solutions fully supports the Commission's efforts to ensure that all hearing-impaired customers have access to mobile communications devices. In doing so, however, the Commission should determine, as it has before, that the HAC requirements are not applicable to public safety and enterprise devices.

Respectfully submitted,

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