

Before the
Federal Communication Commission
Washington, D.C.

In the Matter of:)
)
Comments and Updated Information Sought on) WT Docket
Wireless Hearing Aid Compatibility Regulations) Nos. 07-250 and 10-254

REPLY COMMENTS OF:

**HEARING LOSS ASSOCIATION OF AMERICA
ASSOCIATION OF LATE DEAFENED ADULTS
NATIONAL ASSOCIATION OF THE DEAF
TELECOMMUNICATIONS FOR THE DEAF AND HARD OF HEARING
DEAF AND HARD OF HEARING CONSUMER ADVOCACY NETWORK**

Hearing Loss Association of America (“HLAA”), the Association of Late-Deafened Adults (ALDA), the Deaf and Hard of Hearing Consumer Advocacy Network (DHHCAN), the National Association of the Deaf (NAD), and Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), collectively, “Consumer Groups,” submit the following Reply Comments in response to the request for updated information and comments on Wireless Hearing Aid Compatibility Regulations issued as a Public Notice (PN) by the Federal Communications Commission (“FCC” or “Commission”) and published on December 23, 2014. In that PN the Commission sought information to determine whether the hearing aid compatibility (HAC) rules in Title 47 C.F.R. §20.19 still effectively meet the needs of persons with hearing loss.

In our Comments on this matter, the Consumer Groups urged the Commission to revise the HAC requirements to apply in a technologically neutral manner and to replace the fractional deployment benchmarks with a requirement that all newly manufactured handsets be hearing aid compatible.

We find arguments opposing new rules unconvincing. CTIA states, “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.”

CTIA also states that “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, 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. Section 710 thus acknowledges difference 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 Act.”

We agree that Section 710, in effect since August 1988, codified exemptions for

- (i) telephones used with public mobile services;
- (ii) telephones used with private radio services;
- and
- (iii) secure telephones.

However, we cannot ignore the very next paragraph where Congress explicitly requires the Commission to periodically assess exemptions:

The Commission shall periodically assess the appropriateness of continuing in effect the exemptions for telephones and other customer premises equipment described in subparagraph (A) of this paragraph. The Commission shall revoke or otherwise limit any such exemption if the Commission determines that—

- (i) such revocation or limitation is in the public interest;
- (ii) continuation of the exemption without such revocation or limitation would have an adverse effect on hearing-impaired individuals;
- (iii) compliance with the requirements of subparagraph (B) or (C) of paragraph (1) is technologically feasible for the telephones to which the exemption applies; and
- (iv) compliance with the requirements of subparagraph (B) or (C) of paragraph (1) would not increase costs to such an extent that the telephones to which the exemption applies could not be successfully marketed.

In fact, the benchmarks the wireless industry has been complying with since 1996 are based on this very authority. Consumer Groups agree with the Commission that we are not living in the same technological world we were living in 1988, or even that of 1996. We also agree that the Commission has not only the authority, but an obligation to assess whether the continuation of current exemption(s) “would have an adverse effect on hearing-impaired individuals.”

Further, we are compelled to remember that the Hearing Aid Compatibility Act of 1988 reflected the desire of Congress to ensure equal access to the national telecommunications network. Congress relied on the Commission’s universal service mandate requiring communication service to be available to “all the people of the United States.”¹ The HAC Act reflected the desire of Congress to ensure that people with hearing loss who depend on their hearing aids to connect with wireless phones would not be left behind.

Consumer Groups strongly believe:

- 1) It is clearly in the public interest to revoke the old rules and institute new rules that are technologically neutral and provide for all wireless phones to come into compliance.
- 2) Not revoking the rules would have a negative impact on people with hearing loss in that it limits their ability to obtain wireless phones that work with their hearing aids, which in

¹ The FCC’s universal service obligation is contained at 47 U.S.C. §151.

the worst case scenario end up frustrating their ability to communicate over the phone with emergency services and others.

- 3) None of the filed comments indicate that providing HAC phones would be technologically infeasible.
- 4) None of the filed comments indicate that compliance with new rules increase costs to such an extent that the telephones to which the exemption applies could not be successfully marketed.

CTIA states that broadening the HAC rules will stifle innovation, but offers only speculation to how it might stifle innovation. For example, CTIA states that “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.” (CTIA Comments at p. 11, emphasis added) Consumer Groups have heard this argument before. In fact, in 1977, AT&T, came out in strong opposition to any rules that would mandate inductive coupling, insisting that such rules would freeze the design of telephone handsets to 1950s technology: “the door should be left open for the utilization of new technology, which at some future date may offer attractive features or economic advantages that cannot be ignored.”²

Like AT&T in 1977, CTIA appears to be content with the status quo. CTIA notes 79% of handsets offered by service providers were HAC in 2013. (CTIA Comments at p.)It is not clear, however, how they came up with the conclusion 79% is sufficient. We are not aware of any study or survey of consumers with hearing loss that supports that conclusion. Nor are we aware of any survey of hearing consumers asking if it they would be content if approximately 20% of the handsets offered would be unusable and unavailable to them. HLAA’s own survey of 834 consumers with hearing loss in 2014 revealed that 80% of those responding to the survey thought that 100% of cell phones should be HAC³.

In addition, it’s not clear how many of those models that CTIA refers to are actually available to customers. We note that the Rural Wireless Association (RWA) in their Comments in this proceeding indicate that “When new handsets become available to large, nationwide (Tier I) carriers, such handsets generally do not become available to rural carriers until at least six months later.” (RWA Comments at p. 3) They also indicate that “Rural carriers lack significant numbers of subscribers and have no influence over handset manufacturers’ deployment plans.” (RWA Comments at p. 3)

We also note that while Comments by the Mobile Manufacturers Forum (MMF) notes the “GARI database, for example, lists 306 handset models currently available in the US, 272 (89%) are HAC rated, demonstrating that the existing fractional deployment benchmarks have thus served their purpose well.” (MMF Comments at 5) However, when we tried to access the GARI database via the CITA website <http://accesswireless.org/Home.aspx> , we were only able to find 240 models (78%) from the database. We are unsure why there would be a discrepancy.

² AT&T Supplemental Comments in CC Dkt. 78-50 (May, 5, 1980), 10, 12.

³ Ex Parte filed WB 07-250, November 12, 2014, attachment: HLAA HAC Cell Phone Survey, October 1, 2014, Q 11 <http://apps.fcc.gov/ecfs/comment/view?id=60000978484>

Unfortunately, we do not have the resources to check even 240 models that we found. However a spot check revealed that at least some of those models are no longer available, except for resale on line, a poor choice for someone with hearing loss who needs to test the handset to see if it works well with their hearing aid or cochlear implant. In addition, as we have never entered a storefront showing 272 models or even 240 models that are live and ready to be tested, we suspect that not all models are available in any given market at any given time, rendering these numbers less than helpful.

In fact, the Wireless RERC at Georgia Tech survey in 2013 revealed that 47% of 442 respondents found their search for a HAC phone “difficult” or “very difficult,” while only 25% found that search “very easy” or “easy.” (GA Tech Wireless RERC at 8) In simple terms: it should not be so difficult to find a phone that is hearing aid compatible.

Consumer Groups also note that the RERC on Technology for Individuals who are Deaf or Hard of Hearing filed comments that given the latest revision of the ANSI 63.19 standards in 2011, the potential for interference can be determined at the earliest stages of design. Given that, it seems that the innovation potential that has been stifled is innovation that would provide more hearing aid compatible handsets. We would argue that requiring fewer than 100% hearing aid compatible wireless phones in fact encourages designers to avoid innovation that would result in greater access.

That said, we do appreciate the strides the industry has worked to ensure that more than the minimum models are hearing aid compatible. Still, the ongoing frustration of consumers attempting to find a wireless handset that works with their hearing device cannot be denied.

Worse, we fear that someone will purchase a wireless phone that does not work well for that person for a voice calls and find it useless when calling 911. We cannot be satisfied with the status quo if that means people will not get access to a voice call when they need it in an emergency or even to have access to phone services for everyday situations at work, at home, at school and at play. Consumer Groups believe that leaving the rules as they are now will have the undesirable result of ensuring that some people will not have access to wireless phones, contrary to the will of Congress.

We do note that several commenters expressed interest in seeing the mobile phone industry working together with the hearing aid industry. In fact, both CTIA and HIA voice a need to work in cooperation with each other (CTIA Comments pp. 13-14; HIA Comments pp. 8-10) Consumer groups applaud any effort among and between industries to find solutions to address remaining issues and find creative and innovative designs for future HAC phones. We encourage and support a forum for these industries to work hand in hand to achieve the objective of hearing accessible phones and would be pleased to join forces with these industries to provide critical consumer input. We stand ready to work with all to achieve that goal.

Once again, Consumer Groups thank the Commission for this opportunity to provide these Reply Comments.

Respectfully submitted,



Anna Gilmore Hall
Executive Director
Hearing Loss Association of America

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Hearing Loss Association of America (HLAA)
Contact: Lise Hamlin, Director of Public Policy, LHamlin@Hearingloss.org
7910 Woodmont Avenue, Suite 1200, Bethesda, MD 20814
301.657.2248
www.hearingloss.org

Association of Late-Deafened Adults (ALDA)
Steve Larew, President • president@alda.org
8038 Macintosh Lane, Suite 2, Rockford, IL 61107
www.alda.org

Deaf and Hard of Hearing Consumer Advocacy Network (DHHCAN)
Cheryl Heppner, Vice Chair • CHEppner@nvrc.org
3951 Pender Drive, Suite 130, Fairfax, VA 22030

National Association of the Deaf (NAD)
Howard Rosenblum, Chief Executive Officer • howard.rosenblum@nad.org
Contact: Andrew Phillips, Policy Counsel • andrew.phillips@nad.org
8630 Fenton Street, Suite 820, Silver Spring, MD 20910
301.587.1788
www.nad.org

Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI)
Claude Stout, Executive Director • cstout@TDIforAccess.org
8630 Fenton Street, Suite 121, Silver Spring, MD 20910
www.TDIforAccess.org