

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Improvements to Benchmarks and Related Requirements Governing Hearing Aid-Compatible Mobile Handsets)	WT Docket No. 15-285
)	
Amendment of the Commission’s Rules Governing Hearing Aid-Compatible Mobile Handsets)	WT Docket No. 07-250
)	

To: The Commission

COMMENTS OF THE BLOOSTON RURAL CARRIERS

The law firm of Blooston, Mordkofsky, Dickens, Duffy & Prendergast, LLP, on behalf of its rural and independent telephone and wireless service provider clients (the “Blooston Rural Carriers”) hereby submits comments in the above-captioned proceeding concerning the modernization and improvement of the FCC’s hearing aid compatibility (HAC) rules and procedures.¹

The *HAC NPRM* proposes to adopt, and seeks comment on, a consensus approach developed by consumer advocates and industry trade associations which would require manufacturers and service providers to increase the percentage of new wireless handset models that are hearing aid compatible over time, and which would ultimately lead to a system in which all wireless handset models are accessible to people with hearing loss. As a related matter, the *Fourth R&O* portion of the item has expanded the scope of the HAC requirements so the rules

¹ See In the Matter of Improvements to Benchmarks and Related Requirements Governing Hearing Aid-Compatible Mobile Handsets, *Fourth Report and Order and Notice of Proposed Rulemaking*, FCC 15-155, WT Dockets No. 15-285 and 07-250, (rel. Nov. 20, 2015) (“*HAC NPRM*” or “*Fourth R&O*”). The comment and reply deadlines for this proceeding were extended by the Chief of the Wireless Bureau to January 28, 2016 (comments) and February 12, 2016 (reply comments). See *Public Notice* DA 16-26 (rel. January 11, 2016).

now extend to handsets (those mobile devices that contain a built-in speaker and are typically held to the ear in any of their ordinary uses) used with any terrestrial mobile service that enables two-way real-time voice communications among members of the public or a substantial portion of the public, including through the use of pre-installed software applications.² In other words, following a two-year transition period (*i.e.*, January 1, 2018 for manufacturers and Tier I carriers and April 1, 2018 for Tier II and Tier III service providers), the Commission’s HAC rules will apply to interconnected and non-interconnected VoIP services and will no longer be limited to mobile wireless services that are regulated as CMRS.

The Blooston Rural Carriers support the Joint Consensus Proposal to increase the applicable HAC benchmark percentages, culminating in a 100 percent benchmark in eight years, only upon a formal determination by the Commission of that complete compatibility is achievable; and only if the 100 percent requirement is achieved through the mandate of complete compatibility on the manufacturers of devices, so that the flow of handsets and other subject devices to service providers is made up of only compliant ones. As the Commission is aware, small carriers do not have the same purchasing power as nationwide service providers and their access to newer wireless handset models is often limited to those devices that “trickle down” to them from third-party handset distributors. If a sufficient supply and selection of HAC-enabled devices is not available from these sources, small carriers may be forced to reduce the overall number of handsets they make available to all consumers in order to comply with the HAC benchmark percentages. Moreover, while compliance with the HAC benchmarks

² The Commission has clarified that compliance with the hearing aid compatibility obligations is currently required only to the extent these handsets are used for voice communications services provided over frequencies covered by Commission-approved standards for hearing aid compatibility (*i.e.*, services provided between the 698 MHz and 6 GHz bands). See *Fourth R&O* at Para. 8.

has not been very difficult for service providers that operate CDMA networks (since most CDMA handsets appear to have HAC capability), HAC compliance for service providers that operate 1900 MHz GSM networks remains challenging, even for nationwide service providers such as T-Mobile.³ Fortunately, the availability of HAC-enabled GSM devices has improved in recent years, but there can be no guarantee that the latest and most sought-after devices that Tier III carriers must offer in order to remain competitive will all have hearing aid compatibility features, or that devices with HAC capability will always be available to Tier III carriers. For this reason, it is best to achieve 100% compliance through the manufacturing process.

The Blooston Rural Carriers continue to believe that a move toward 100% HAC compliance of wireless handsets, subject to technical feasibility, is in the public interest because this will ensure greater access to existing wireless communications services and emerging technologies for the tens of millions of Americans with hearing loss. However, until handset manufacturers are able to meet this goal, the Commission should adopt policies that allow greater flexibility to smaller service providers. If the Commission chooses to adopt the Consensus Plan it should preserve the *de minimis* exception in its current form until device manufacturers are abiding by a 100 percent compatibility requirement. The Blooston Rural Carriers also agree with the Commission's proposal that it eliminate annual HAC reporting, as well as the disclosure, labeling, and other requirements imposed under the current rules, if it chooses to transition to a 100-percent compatibility regime. It should grandfather legacy handset models that received equipment authorization prior to the end of any transition period from HAC compliance, because small carriers are more likely to have access to legacy handset

³ Comments of T-Mobile from 2010 noted that handsets using GSM technology faced challenges in meeting the Commission's hearing aid compatibility requirements and such challenges rendered it premature at that time to consider new deployment benchmarks. *See* T-Mobile 2010 Review PN Comments at 2-3.

models, and the Commission should eliminate the deployment benchmarks applicable to the handset portfolios of Tier III service providers once a 100-percent compatibility regime is in place.⁴

CONCLUSION

The Blooston Rural Carriers applaud the work by the Joint Consensus Parties and support the Commission's proposal to transition to a 100-percent compatibility regime. However, until such time as all new devices in the marketplace are hearing aid compatible, raising the HAC handset benchmarks even incrementally creates a risk that small service providers that operate networks using certain legacy air interfaces (*e.g.*, GSM) may be unable to secure the requisite minimum number or percentage of HAC devices. This will only get more difficult as manufacturers focus their research and development on newer air interfaces. The Commission should therefore establish clear waiver policies for small carriers that demonstrate their good faith effort at compliance and it should significantly reduce its \$15,000 per-handset per-month forfeiture formula or eliminate monetary forfeitures for Tier III carriers that, through no fault of their own, are unable to meet the increased HAC benchmarks.

⁴ In the event that the Commission does not adopt the Blooston Rural Carriers' suggested approach, it should at least make it clear that waivers will be readily available for small carriers that can demonstrate their good faith effort at compliance. At the same time, it should significantly reduce its \$15,000 per-handset per-month forfeiture formula or eliminate fines altogether for Tier III carriers that, through no fault of their own, are unable to meet the increased HAC benchmarks. This formula was adopted to address a nationwide service provider's temporary non-compliance and it creates the potential for disproportionate and ruinous fines when applied to Tier III service providers that are several orders of magnitude smaller than nationwide carriers and that may have just several thousand customers.

Respectfully submitted,

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