

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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

To: The Commission

COMMENTS OF THE RURAL WIRELESS ASSOCIATION, INC.

The Rural Wireless Association, Inc. (“RWA”)¹ hereby files these comments in response to the Federal Communications Commission’s (“FCC” or “Commission”) Fourth Report and Order and Notice of Proposed Rulemaking in the above-captioned proceedings.²

RWA appreciates the opportunity to provide comments on the Commission’s hearing aid compatibility (“HAC”) requirements – an issue of great importance to small and rural carriers and their customers.

I. BACKGROUND.

To ensure that a wide selection of digital wireless handset models is available to consumers with hearing loss, manufacturers and service providers are required to offer minimum numbers or percentages of handset models that are compatible with hearing aids operating in both acoustic coupling (M rating) and inductive coupling modes (T rating). The current

¹ RWA is a 501(c)(6) trade association dedicated to promoting wireless opportunities for rural telecommunications companies who serve rural consumers and those consumers traveling to rural America. RWA’s members are small businesses serving or seeking to serve secondary, tertiary, and rural markets. RWA’s members are comprised of both independent wireless carriers and wireless carriers that are affiliated with rural telephone companies. Each of RWA’s member companies serves fewer than 100,000 subscribers.

² *Fourth Report and Order and Notice of Proposed Rulemaking*, WT Docket Nos. 07-250, 15-285, FCC 15-155 (Nov. 20, 2015) (“*HAC NPRM*”).

deployment benchmarks require that, for each of the air interfaces their handsets use, service providers meet an M3 rating for at least 50 percent or ten of their models, and a T3 rating for at least one-third or ten of their models.³ Under the *de minimis* exception, service providers that offer two or fewer wireless handset models for any given covered air interface are exempt from these benchmarks for those models.⁴ Commission rules require wireless service providers to submit annual reports detailing the covered handsets that they offer for sale, the models that are hearing aid-compatible, and the specific rating of each handset.⁵ Service provider compliance filings are due on January 15 of each year.

The Commission seeks comment on the proposed adoption of a plan to replace the current fractional regime with a system under which all covered wireless handsets would eventually be hearing aid-compatible.⁶ On November 12, 2015, several consumer advocacy and industry trade organizations submitted to the Commission a *Joint Proposal* for moving away from the current fractional regime.⁷ The *Joint Proposal* provides that within two years of the effective date of the adoption of the new benchmark rules, 66 percent of wireless handset models offered to consumers should be compliant with M- and T-rating requirements.⁸ Within five years, 85 percent of wireless handset models offered to consumers should be compliant.⁹ In addition to these two- and five-year benchmarks, the *Joint Proposal* provides that “[t]he Commission should commit to pursue that 100% of wireless handsets offered to consumers

³ 47 C.F.R. §§ 20.19(c)(2), (c)(3), (d)(2), (d)(3). *See also HAC NPRM* at ¶ 57.

⁴ 47 C.F.R. § 20.19(e). *See also HAC NPRM* at ¶ 57.

⁵ *Id.* § 20.19(i)(1)-(3).

⁶ *See* Letter from James Reid, Senior Vice President, Government Affairs, TIA, Scott Bergmann, Vice President, Regulatory Affairs, CTIA, Rebecca Murphy Thompson, General Counsel, CCA, Anna Gilmore Hall, Executive Director, HLAA, Claude Stout, Executive Director, Telecommunications for the Deaf and Hard of Hearing, and Howard A. Rosenblum, Chief Executive Officer, National Association of the Deaf, to Marlene H. Dortch, Secretary, FCC, WT Docket Nos. 07-250, 10-254, filed Nov. 12, 2015 (“*Joint Proposal*”).

⁷ *Id.*

⁸ *Id.* at 1.

⁹ *Id.* at 2.

should be compliant with [the M and T rating requirements] within eight years.”¹⁰ This transition to 100 percent, however, is conditioned on a Commission determination within seven years of the rules’ effective date that reaching the 100 percent goal is “achievable.”¹¹

The proposal provides that these new benchmarks should apply to manufacturers and carriers that offer six or more digital wireless handset models in an air interface. Tier I and Non-Tier I carriers¹² would receive six and eighteen months of additional compliance time, respectively, to account for availability of handsets and inventory turn-over rates.¹³ The proposal states that the existing *de minimis* exception should continue to apply for manufacturers and carriers that offer three or fewer handset models in an air interface and that manufacturers and carriers that offer four or five digital wireless handset models in an air interface should ensure that at least two of those handsets models are compliant with M and T rating requirements.¹⁴

II. THE FCC SHOULD NOT IMPOSE A 100% COMPATIBILITY REQUIREMENT ON TIER III WIRELESS SERVICE PROVIDERS.

While RWA does not oppose the imposition of a 100 percent compatibility requirement on manufacturers, it strongly opposes the imposition of any such requirement on Tier III wireless service providers. As stated previously in comments filed in response to the Commission’s 2014 *Request for Updated Information and Comment on Wireless Hearing Aid Compatibility Regulations*,¹⁵ RWA would support a Commission move toward a 100 percent compatibility requirement for newly manufactured wireless handsets only if: (1) the Commission

¹⁰ *Joint Proposal* at 2.

¹¹ *Id.*

¹² Tier I carriers are Commercial Mobile Radio Service (CMRS) providers with nationwide footprints. *See Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems; Phase II Compliance Deadlines for Non-Nationwide Carriers*, CC Docket No. 94-102, Order to Stay, 17 FCC Rcd 14841, 14843 para. 7 (2002). In contrast, Tier II carriers are non-nationwide CMRS providers with greater than 500,000 subscribers as of the end of 2001, while Tier III carriers are non-nationwide CMRS providers with no more than 500,000 subscribers as of the end of 2001. *See id.* at 14846-14848 paras. 19-24.

¹³ *Joint Proposal* at n.1, n.2.

¹⁴ *Id.*

¹⁵ *Request for Updated Information and Comment on Wireless Hearing Aid Compatibility Regulations*, WT Docket Nos. 07-250, 10-254, Public Notice (Nov. 21, 2014).

eliminates Tier III service provider HAC reporting requirements on a going-forward basis; (2) the 100% compliance requirement is imposed on manufacturers, not wireless service providers; and (3) a transition of appropriate length allows small and rural carriers to sell their inventory and recover associated costs.¹⁶ The *Joint Proposal*, by increasing fractional deployment benchmarks in the near term and possibly imposing a 100% compliance requirement on both manufacturers *and* service providers in the long term, will increase compliance costs for Tier III carriers. Heightened requirements, without any sort of safe harbor upon which Tier III carriers can rely, mean that rural carriers will spend more resources on handset research, recordkeeping throughout the year, and compliance reporting – resources that, for many carriers, are already stretched to the limit.

If the Commission requires that all newly manufactured mobile wireless devices comply with HAC rules, manufacturers and Tier I and Tier II carriers should bear the sole burden of ensuring compliance. RWA acknowledges that every service provider, regardless of its size and handset offerings, has customers who need compliant devices. While RWA carrier members are fully committed to supplying their customers with compliant devices, they are not in a position of market power like handset manufacturers or large carriers. The Commission should ensure that the entities that design and manufacture those devices are responsible for ensuring compliance – rather than placing responsibility on Tier III carriers – the last entities in a long chain of wholesalers and middle-men that have *zero* input in the design or manufacturing process, or the prices that must be paid for compliant handsets.

III. THE COMMISSION SHOULD ELIMINATE TIER III CARRIER REPORTING REQUIREMENTS.

In order to alleviate burdensome compliance costs, the Commission should eliminate

¹⁶ Comments of the Rural Wireless Association, WT Docket Nos. 07-250 & 10-254 (Feb. 5, 2015).

HAC reporting requirements for Tier III carriers going forward regardless of whether or not it chooses to enact the *Joint Proposal*. The annual HAC reports required by the FCC's rules have proven to be extremely problematic for small carriers. Current HAC reporting requirements cause rural carriers to spend substantial resources throughout the calendar year attempting to ascertain the HAC status of various handsets.¹⁷

RWA believes that the Commission can safely eliminate the need for further annual HAC reporting by Tier III service providers with little risk of adverse impact to the hearing impaired.¹⁸ The current, and perhaps future, fractional compliance regime can be adequately enforced with respect to Tier III carriers through the Commission's informal complaint process. Tier III service providers will remain subject to the fractional compliance requirements. Moreover, persons with hearing loss will be adequately informed about the availability of these devices through service providers' ongoing compliance with HAC labeling and disclosure requirements. Any specific consumer complaints – to the extent that they occur – could be addressed quickly with the supervision of Commission staff if the matter is not resolved with the service provider directly. Should the Commission impose a 100% compliance requirement for newly manufactured handsets, it would be even more unnecessary for Tier III carriers to engage in expensive compliance reporting and verification. Eliminating annual HAC reporting for Tier III carriers would ultimately benefit rural consumers by reducing carriers' regulatory compliance costs. These resources could instead be used to improve and expand upon wireless service quality and rural network coverage for consumers.

IV. IF THE COMMISSION ADOPTS THE *JOINT PROPOSAL*, OR OTHERWISE MODIFIES THE FRACTIONAL DEPLOYMENT BENCHMARKS,

¹⁷ Many small companies are forced to have an employee devote several weeks annually to tracking HAC ratings, a considerable burden for small companies with few employees.

¹⁸ See Comments of the Blooston Rural Carriers, WT Docket No. 10-254, pp. 2-4 (Jan. 22, 2013).

ADDITIONAL COMPLIANCE TIME FOR TIER III CARRIERS IS NECESSARY.

The *Joint Proposal* calls for an extension of compliance deadlines for Tier I and Non-Tier I carriers of six and eighteen months, respectively, to account for the availability of handsets and inventory turn-over rates. If the Commission adopts the *Joint Proposal* or otherwise modifies the fractional deployment benchmarks, RWA agrees that additional compliance time is necessary for non-Tier I carriers, and would support a 24-month extension for Tier III carriers.

Small and rural wireless carriers, including RWA members, are often unable to purchase handsets directly from manufacturers and their dealers. Instead, these carriers typically rely upon third-party vendors that aggregate available “leftover” handsets. When new handsets become available to large nationwide or regional carriers, such handsets generally do not become available to rural carriers until *at least* six – and often between 18 and 24 – months later. Commission policy must take into account both rural carriers’ lack of market clout and limited handset options.

The Commission previously recognized these circumstances when it established separate, tiered handset deployment benchmarks for Tier I carriers and medium and small (Tier II and Tier III) carriers:

Tier I wireless carriers have formidable means to drive manufacturers’ equipment development and deployment efforts... [t]he largest carriers have a greater number of subscribers and place the largest orders for compliant equipment, and therefore easily become priority customers for manufacturers and vendors. In contrast to large carriers, smaller wireless carriers may be disadvantaged when they seek to acquire location technologies, network components, and specialized handsets...¹⁹

In 2008, the Commission continued to recognize small rural carriers’ limited handset access when it adopted new benchmarks and deadlines regarding deployment of handsets rated

¹⁹ Section 68.4(a) of the Commission’s Rules Governing Hearing Aid-Compatible Telephones, WT Docket No. 01-309, Order on Reconsideration and Notice of Proposed Rulemaking, FCC 05-122, 20 FCC Rcd 11221, at ¶ 22 (2005).

M3 or higher for radio frequency interference reduction and handsets rated T3 or higher for inductive coupling capability and extended the deadline for meeting those benchmarks:

...[T]o ensure that all consumers will have options regardless of where they reside or from which carrier they obtain service, we adopt the same deployment benchmarks for all service providers, although we extend the compliance deadlines for service providers other than Tier I carriers in recognition of their more limited handset options and their difficulty obtaining the newest offerings.²⁰

RWA agrees that additional compliance time is necessary for non-Tier I carriers, and for the reasons stated above, the Commission should adopt a 24-month extension for Tier III carriers. Because many Tier III carriers obtain handsets through third-party vendors whose inventory may be outmoded by several months with respect to HAC ratings, it would be infeasible for them to meet deployment benchmarks for entirely new types of handsets on the same schedule as Tier I or Tier II carriers.

V. THE COMMISSION SHOULD EMPLOY A ROBUST WAIVER PROCESS AND LESS STRINGENT FORFEITURE CRITERIA.

The Commission seeks comment on which compliance processes, such as waivers, should be modified to accommodate innovation and rural and regional carriers' handset inventories and turn-over rates within a compliance regime with the enhanced benchmarks described in the *Joint Proposal*.²¹ In the past, the Commission has granted waivers to rural and smaller carriers that required additional time to meet deployment benchmarks for HAC-rated handsets. If the Commission adopts the *Joint Proposal*, it should continue to grant waivers in situations where Tier III carriers encounter difficulties in procuring compliant handsets. As discussed above, rural carriers lack significant numbers of subscribers and therefore do not influence handset manufacturers' device deployment plans.

²⁰ *Amendment of the Commission's Rules Governing Hearing Aid-Compatible Mobile Handsets*, WT Docket No. 07-250, First Report and Order, FCC 08-68 at ¶ 27 (2008).

²¹ *HAC NPRM* at ¶ 78.

While the Bureau did not specifically seek comment on the forfeiture criteria it applies in HAC enforcement proceedings, RWA notes its continued concern regarding the harm that excessive HAC fines can cause to small and rural carriers. The FCC's forfeiture criteria for HAC violations are unfair and excessively punitive. Under the Bureau's approach to calculating forfeiture penalties for HAC violations,²² which applies a formula based on a \$15,000 per handset base forfeiture multiplied by the number of months the carrier was out of compliance, a small carrier that falls short of its compliance benchmarks will almost certainly be hit with an astronomically high forfeiture penalty. For example, a carrier that is able to offer nine T-rated handsets and nine M-rated handsets to its customers (only one handset short of each requirement, and enough to give customers a choice of multiple handsets in each price category) throughout a twelve month period will be subject to a forfeiture penalty of \$360,000. This amount is vastly disproportionate to forfeiture penalties applied to other FCC rule violations.²³

While RWA recognizes that the Bureau takes into account a company's financial situation when making adjustments to a base forfeiture proposal, the mere fact that a company has to engage in litigation with the Bureau over such matters imposes a significant and completely unnecessary expense. Further, uncertainty over potentially massive financial penalties makes planning and obtaining funding for network buildouts substantially more difficult and expensive. The Commission should amend its forfeiture criteria for HAC violations to make penalties for HAC violations comparable to those imposed for other violations.

²² *In the Matter of T-Mobile USA, Inc.*, File No. EB-10-SE-127, Notice of Apparent Liability for Forfeiture, NAL/Acct. No. 201232100024, FRN 0006945950, FCC 12-39 (rel. April 13, 2012).

²³ Compare a penalty of \$360,000 for falling one handset short of the FCC's required minimums with base forfeiture penalties for the following FCC rule violations: (1) operating without a license (\$10,000); (2) unauthorized substantial transfer of control (\$8,000); (3) false distress communications (\$8,000); (4) Emergency Alert System equipment not installed or operational (\$8,000); and (5) alien ownership violation (\$7,000). 47 C.F.R. § 1.80. Each of these violations raises serious public safety concerns, yet the penalties for such violations are only a fraction of the penalty proposed for failure to provide consumers (who already have a choice of HAC-compliant handset models) with the choice of one additional handset model in each category.

VI. THE COMMISSION SHOULD EMPLOY A SAFE HARBOR FOR TIER III CARRIERS THAT RELY ON ACCESSIBILITY CLEARINGHOUSE AND FORM 655 DATA.

The Commission seeks comments on whether service providers should be able to rely on information in the Accessibility Clearinghouse and on Form 655. Further, the Commission asks how it should treat a service provider if it offers a handset that a manufacturer has included in the Accessibility Clearinghouse and indicated to be compliant in the manufacturer's annual FCC Form 655, even if it is later determined that the handset does not in fact meet the hearing aid compatibility requirements. RWA believes that Tier III providers *must* be able to rely on information in the Accessibility Clearinghouse and on Form 655s submitted by manufacturers, and that such reliance should be a "safe harbor" for such carriers.

For small and rural wireless carriers, obtaining HAC compliant handsets is time intensive and costly at best. Current HAC reporting requirements have caused such carriers to spend unnecessary resources attempting to ascertain the HAC status of various handsets. In the absence of a single, easily accessible source of accurate and up-to-date HAC-rating data, rural operators rely heavily on vendor information, published manufacturer specifications, and online sources for HAC information. Due to the unreliability of such information, carriers have frequently found themselves expending further substantial resources dealing with the FCC's Enforcement Bureau. If the regulatory compliance requirement for rural carriers goes from 50 percent M3 and one-third T3 to 100 percent without any sort of safe harbor provision, the problems experienced by Tier III carriers will only be amplified, resulting in far fewer consumer handset choices and more harsh penalties against these carriers for violations that are largely beyond their control.

Respectfully submitted,

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January 28, 2016