

**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
)	

**The Consumer Groups’ and the DHH Tech RERC’s Comments to
Hearing Aid-Compatible Mobile Handsets NPRM**

The Hearing Loss Association of America (“HLAA”), Telecommunications for the Deaf and Hard of Hearing (“TDI”), and the National Association of the Deaf (“NAD”) (the “Consumer Groups”) and the Deaf/Hard of Hearing Technology RERC (DHH Tech RERC) hereby comment on the FCC’s Notice of Proposed Rulemaking, FCC 15-155 to adopt the Joint Consensus Proposal (“Proposal”). The Consumer Groups and wireless industry representatives TIA, CTIA, and CCA worked together to craft and submit to the FCC the Proposal. The Consumer Groups and the DHH Tech RERC support the Proposal and encourage the Commission to expeditiously consider and adopt the framework set forth in the Proposal, which reflects an historic consensus between the wireless industry and the hearing loss community. The Consumer Groups and the DHH Tech RERC are filing supplemental comments to reflect their members’ interests where the Proposal is silent, or where additional clarity regarding implementation will further the public interest.

- I. The Commission Should Adopt the Proposal, Its Timeline, and Its Recommendations about the Task Force, to Ensure that Commission Consideration of 100% HAC Requirement in the Proposal Is Not Delayed

The Proposal conditions the transition to 100% hearing aid compatibility (“HAC”) on a Commission determination that 100% HAC is achievable based on a report from a newly established task force. The

task force's recommendation about 100% HAC would be informed by data collected in Year 4 and Year 5 after the Commission adopts the Proposal. The task force would include consumer and industry stakeholders, which would report to the Commission after the rules are adopted.

The Commission should adopt the Proposal's timeline in order to ensure that all interested parties have adequate notice about the creation of the task force, the task force's membership, the scope of the task force's work, and the timing of the task force's recommendation about 100% HAC. Such notice has previously been critical for industry in order to accommodate more stringent technical standards while planning for its production schedule in addition to ensuring that consumers have adequate notice.¹ Consumer Groups and the wireless industry plan to work together to provide the Commission with further details on areas of agreement for the task force membership and operation. However, in order to preserve the timeline set forth in the Proposal, the Consumer Groups and the DHH Tech RERC urge the Commission to incorporate a commitment to create the task force, and include a requirement to limit the task force's data review to Year 4 and Year 5 in the order adopted by this rulemaking. That limit is the only way to ensure that the task force has adequate time to compile and study the data to make its recommendation to the Commission about 100% HAC achievability in advance of the eight year deadline. Requiring the task force to collect and review additional data in Year 6 and 7 could delay the task force's report to the Commission, which may, in turn, delay the Commission's achievability determination. Any such delay in determining whether 100% HAC is achievable would not be in the public interest given the lengthy, eight year "glide path" already incorporated into the Proposal. Such delay would also undermine the integrity of the agreement made by parties that participated in drafting

¹ The wireless industry trade association, mobile carriers, and handset manufacturer all recently supported a two year transition for HAC handsets on previously unregulated air interfaces. See, e.g., Fourth Report and Order, WT Docket No. 07-260, ¶ 48, FCC 15-155 (2015) ("Clearwire, CTIA, T-Mobile, and Motorola support a two-year transition as adequate for many handsets to come into compliance with existing benchmarks.")(Hereinafter, "Fourth Report").

the proposal and the carefully crafted trade-offs they made in the course of negotiating this historic agreement.

II. The Commission Should Apply the Definition of “Achievable” from Section 710 to HAC

The Consumer Groups and the DHH Tech RERC believe the Commission must adopt the definition of “achievable” in Section 710 of the CVAA² -- technological feasibility, marketability, and impact on the use and development of technology – to HAC. That is the only logical result based on a reading of the plain language of the statute. The outcome is supported by the legislative history of the CVAA.

In contrast, Sections 716 and 718, governing “advanced communications services” and web browsers, define the term “achievable” to mean “with reasonable effort or expense, as determined by the Commission.” That definition requires the Commission to consider four factors equally in making its achievability determination. That level of scrutiny is appropriate for the “advanced communications services” regulated under Section 716 and the web browsers used in public mobile services in Section 718, which the Commission will only started regulating for accessibility under the 2010 CVAA. In contrast, the Section 255 HAC requirements were originally adopted in 1988. They were extended to mobile wireless in 2003. Thus, the achievability requirements of Section 716 and 718 are different than those applicable to HAC.

The legislative history of CVAA similarly reflects the difference between HAC and services regulated under Sections 716 and 718. The Senate Report accompanying the CVAA discusses modifications to HAC requirements under Section 255 of the Communications Act³ but clearly distinguishes that requirement from the ACS and web browser regulations in Sections 716 and 718.⁴ Sections 716, relating to advanced

² Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-260, 124 Stat. 2751 (2010) (codified in various sections of 47 U.S.C.). See also Pub. L. No. 111-265, 124 Stat. 2795 (2010) (technical corrections to the CVAA) (hereinafter, “CVAA”).

³ S. 3304 (“First, the bill would amend section 710 to require that telephones and two-way voice communications equipment functioning as telephones meet certain requirements to ensure hearing aid compatibility...”).

⁴ *Id.* (“The bill also would create new sections of the Communications Act. New sections 716 and 717 would require that manufacturers of advanced communications services (ACS) equipment and providers of ACS services make their equipment and services accessible to individuals with disabilities if doing so is achievable. The bill would

telecommunications services, and 718, which relate to internet browsers on mobile phones, sought to provide access to a broader array of services to people with disabilities. Since, for example, mobile phone internet browsers were not required to be accessible prior to the CVAA, it makes sense that Congress directed the Commission to consider the cost in making those services and equipment accessible. There is no similar requirement for HAC because services subject to Section 255 were not subject to Sections 716 and 718. This is consistent with the longstanding requirement that telephones, and mobile handsets, be HAC. Following this line of reasoning from the CVAA, the Commission must adopt the more general Section 710 definition of “achievable” that is applicable to HAC. We also note that based on the Commission’s reports of Form 655, most handsets currently comply with HAC requirements. As a result, the Consumer Groups and the DHH Tech RERC conclude that HAC is technically achievable and should continue to be so in the future.

The Consumer Groups and the DHH Tech RERC encourage the Commission to ensure that any alternative technologies that purport to make devices HAC are easy to use. If the Commission delegates the task force with determining whether alternative technologies can be used to reach HAC, the Commission should instruct the task force to consider ease of use in its determination. In addition, such alternative technology must be available to people without smartphones, since many people do not own smartphones and their prices tend to be higher than more basic phones. We encourage the Commission to continue to ensure, as it does under its existing Part 20 rules,⁵ that carriers and manufacturers ensure that HAC models are available at different price points and with different functionality, regardless of whether new standards are adopted, or if adopted, what those new standards are. Compliance with the Commission’s existing rule will ensure that HAC technology is available to as many members of the

require the FCC to consider a set of factors when making an achievability determination, weighing each factor equally.”)

⁵ 47 C.F.R. §20.19(c)(4)(ii) (“Offering models with differing levels of functionality. Each service provider must offer its customers a range of hearing aid-compatible models with differing levels of functionality (e.g., operating capabilities, features offered, prices)...”).

public with hearing loss as possible. We encourage the Commission to require the task force to look at the availability of devices with different functionality and different price points. The Consumer Groups and the DHH Tech RERC also urge the Commission to consider the best method to encourage carriers and manufacturers to provide the greatest number of handsets that reach the highest level of HAC possible (e.g., M4/T4 rather than M3/T3).

The Commission also requested comment regarding whether it should consider alternative technologies, such as Bluetooth, when considering whether HAC is 100% achievable. The Commission must be mindful that the current standards were developed as way to guide industry and provide a method that consumers could rely upon to ensure they purchased a HAC phone. The task force and the Commission must fully explore and have a solid understanding of problems that can arise with new technology, such as potential interference from other devices using the same unlicensed frequencies that could disrupt communication between the wireless and hearing devices, as well as issues arising if multiple ways of achieving HAC are considered. For example, if you can achieve HAC in more than one way, how will the task force determine how many devices must be HAC for any given method? If the Commission allows alternative technologies, it should also consider whether a customer can try the service prior to buying it. If it is only sold on line or if packaging or other impediments prevent a person with hearing loss from testing the device the Commission should require that the device be returnable, and prohibit companies from charging consumers with hearing loss restocking or other return fees.

III. The Proposal is Consistent With, and Warranted Under, Section 710 of the Act

Section 710 of the Act directs the Commission to revoke or limit a HAC exemption if it finds that (1) continuing the exemption without such revocation or limitation would have an adverse effect on individuals with hearing loss; (2) compliance with the hearing aid compatibility requirements would be technologically feasible for devices to which the exemption applies; (3) the cost of compliance would not increase costs to such an extent that the newly covered devices could not be successfully marketed;

and (4) revoking or limiting the exemption is in the public interest. The Consumer Groups and the DHH Tech RERC believe that the path charted in the Proposal is consistent with Section 710 of the Act. Under the first factor, continuing the existing percentage exemptions from HAC would have an adverse effect on individuals with hearing loss because they will continue to be denied access to the full range of wireless devices. Based on the significant rate of compliance with existing HAC rules, devices developed over the next two and five year interim HAC benchmarks will be technologically feasible. Similarly, the industry has developed a significant amount and range of technology to meet HAC requirements over the 13 years since the HAC rules have been implemented for wireless devices. Widespread compliance with those rules indicates that additional compliance would not create an unmanageable cost of compliance. Finally, revoking the existing exemption for higher thresholds of HAC devices, and a date certain for review of whether HAC is 100% achievable, would further the Congressional goal of making devices available to the greatest number of people with hearing loss.

The Proposal also meets the three part test set forth in Section 710 that requires the Commission to look at the following three factors in rulemakings to implement hearing aid compatibility requirements: (1) specifically consider the costs and benefits to all telephone users, including people with and without hearing loss, (2) ensure that hearing aid compatibility regulations encourage the use of currently available technology and do not discourage or impair the development of improved technology, and (3) use appropriate timetables and benchmarks to the extent necessary due to technical feasibility or to ensure marketability or availability of new technologies to users. As noted above, many hearing aid compatible handsets are available today, so the costs of continuing to provide HAC compliant devices should not be onerous. The benefits, however, inure to the public because anyone can suffer hearing loss at any time, although the likelihood of hearing loss increases significantly after age 60.⁶ The Proposal encourages HAC but does not mandate particular technologies, and the Proposal's task force

⁶ President's Council of Advisors on Science and Technology, Washington, DC 20502, Report, October 2015 ("PCAST Report") at 1. http://hearingloss.org/sites/default/files/docs/PCAST_Hearing_Tech_LetterReport_FINAL.pdf

will specifically look at alternative technical approaches to compliance. That result allows maximum technical flexibility to develop improved technology. Finally, the eight year timetable is long enough for manufacturers and carriers to implement a strategy to increase HAC compatible options for its users.

IV. Implementation of *De Minimis* Rule Must Not Undercut the Commission's Goal of 100% HAC Phones, If Achievable

The Commission agreed with the Proposal that the consumer groups and industry should work toward the 100% HAC compliant handsets, provided such a goal is achievable. 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 handset models are compliant with our M and T rating requirements.”

The Consumer Groups and the DHH Tech RERC support continuation of the *de minimis* exemption until such time that the Commission finds that 100% HAC is achievable. At that point, the *de minimis* exemption would contradict the 100% HAC achievability requirement and, more importantly, prevent 100% HAC for as long as it remained in the Commission's rules. Unlike new accessibility requirements adopted in the CVAA, the HAC requirement was first adopted by Congress 27 years ago, in 1988, and has applied mobile phones for more than a decade.⁷ In addition, the Proposal reflects agreement between the hearing loss community and the wireless industry to a lengthy eight year glide path for carriers and manufacturers to achieve 100% HAC in all mobile phones, subject to a finding of achievability. We believe that the Proposal contains adequate notice to the industry that it should expect a 100% HAC requirement. As customers keep their phones for a longer period of time, this ability is even more crucial, since customers are more likely to experience hearing loss the longer they keep their phones.

⁷ Hearing Aid Compatibility Act of 1988 (“HAC Act”), P.L. 100-394, August 16, 1988 required the FCC to ensure that telephones manufactured or imported into the United States after August 1989 were hearing aid-compatible. The HAC Act exempted wireless phones but allowed the FCC to revoke or limit the exemption. The FCC modified the exemption for digital wireless telephones on August 14, 2003.

Finally, in the Fourth Report and Order, the Commission extended the scope of covered handsets to include “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 both interconnected and non-interconnected Voice over Internet Protocol (VoIP) services provided through pre-installed software applications.”⁸ If those changes result in a substantial increase in the number of manufacturers, carriers, or third parties that provide mobile voice capability relying on the *de minimis* exemption, the Commission may need to take steps to ensure the *de minimis* exception does not eviscerate the rule.

When the Commission determines that HAC is achievable, paragraph (e) should be deleted and replaced by the portion of paragraph (m) that states, “all wireless handset models that a manufacturer offers in the United States and that are within the scope of this section must be certified as hearing aid-compatible under the standards of paragraph (b) of this section.”

The Commission should clarify that legacy models that do not meet HAC standards will not be allowed to be used after the transition to the 100% HAC regulation. The Commission’s rules already require significant HAC compliance, and the FCC’s summary of the most recent FCC Form 655 reports reflect that compliance is significant. The proposed rules will increase the benchmarks to 85%, and then, if achievable, to 100%, over an eight year period. The Consumer Groups and the DHH Tech RERC submit that the time period provides more than adequate notice that handsets will need to be HAC in eight years. The Commission should not adopt any further grandfathering for legacy devices in light of the clear mandate in this proceeding. Individual manufacturers or carriers can always petition for a waiver of the HAC rules if a technological difficulty prevents 100% HAC compliance.

The Commission seeks comment on how best to ensure that people with hearing loss are able to find hearing aid-compatible phones that can meet their communication needs during the transition period to a 100% compatibility requirement. We continue to encourage the Commission, handset

⁸ Fourth Report at ¶ 18.

manufacturers, carriers, and third party marketers to post M and T ratings for all handsets on their websites, in consistent and easily searchable ways, for example as part of the technical specifications for the handset, and have such information available at retail outlets where consumers can test devices. Unless the Commission requires all handsets to meet the highest level of HAC, such as M4/T4 ratings, and as long as M3/T3 ratings and/or similar accessibility standards are allowed under the rules, the Consumer Groups and the DHH Tech RERC suggest that the disclosure, labeling, and in store requirements continue after the transition to 100% HAC. The labeling requirement is important because a customer must know what his or her phone is supposed to be capable of doing and whether it will pair with their hearing aid or cochlear implant. In addition, while the FCC's Accessibility Clearinghouse is a good resource, it is not widely known to the general public. We encourage the Commission and the wireless industry, and its related associations, to fund and conduct further outreach about the Clearinghouse. The effort should be similar to the public education effort the FCC undertook regarding the digital television service transition. That way, the public will know about the availability and usefulness of this important public resource provided at a neutral website. In addition, the FCC should ensure that they continue to include the M and T rating for all mobile phones available in the Clearinghouse.

The Commission should continue to require labelling and reporting until the transition to 100% HAC is complete and grandfathering is no longer permitted. Absent such reporting, the Commission will not be able to determine violations of its rules, nor will it be able to determine if carriers are relying on *de minimis* exemptions to comply with the HAC rules. Any gaps in reporting would undermine the 100% HAC requirement and should not be adopted.

V. Conclusion

The Consumer Groups and the DHH Tech RERC strongly support the Commission's expeditious adoption of the Proposal. In particular, we urge the Commission to maintain the Proposal's timelines

that industry and Consumer Groups agreed on during the negotiation process. Preserving that agreement would mean the Commission will consider 100% HAC achievability in the near future and on a schedule that industry has agreed is reasonable. The Commission's adoption of the Proposal would assure that all parties know their respective deadlines and that other Commission priorities will not indefinitely delay the 100% HAC achievability review. Adopting the Proposal will increase the number and percentage of HAC phones available to people with hearing loss, and may ensure that all devices are HAC in the future. Such a result is clearly in the public interest.

Respectfully submitted,

/s/ Lise Hamlin, Director of Public Policy
Hearing Loss Association of America
7910 Woodmont Avenue, Suite 1200, Bethesda, MD 20814
LHamlin@hearingloss.org

/s/ Claude Stout, Executive Director,
Telecommunications for the Deaf and Hard of Hearing
8630 Fenton Street, Suite 121, Silver Spring, MD 20910
cstout@TDIforAccess.org

/s/ Howard Rosenblum, Chief Executive Officer
National Association of the Deaf
8630 Fenton Street, Suite 820, Silver Spring, MD 20910
howard.rosenblum@nad.org

/s/ Linda Kozma-Spytek, Co-Director
Deaf/Hard of Hearing Technology RERC
Gallaudet University, 800 Florida Ave, NE, Washington, DC 20002
linda.kozma-spytek@gallaudet.edu

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