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JUL 23 2001

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

LORETTA J. GARCIA  
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July 23, 2001

Ms. Magalie Roman Salas, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Re: Meeting of Hearing Industries Association; Reallocation of the 216-217 MHz, 1390-1395MHz, 1427-1429 MHz, 1429-1432 MHz, 1432-1435 MHz, 1670-1675 MHz, and 2385-2390 MHz Government Transfer Bands; ET Docket No. 00-221

Dear Ms. Salas:

The following parties met on July 20 with Commissioner Michael Copps and his legal advisor Lauren Van Wazer: David Woodbury of Hearing Industries Association; Beth Wilson and Timothy Creagan of Self-Help for Hard of Hearing People; and David Irwin, Peter Tannenwald and Loretta Garcia of the captioned law firm. The parties discussed ET Docket No. 00-221 and specifically the potential reallocation of the 216-217 MHz band in which assistive listening devices currently operate. They observed that they filed comments in this proceeding earlier this year.

The parties explained the value of the assistive listening device to hearing-impaired children and adults. They discussed the legal and policy reasons why assistive listening devices should continue operating in the 216-217 MHz band. They also advocated for protection of these devices from harmful interference in the event any other users are authorized in the band.

The attached memorandum was distributed at the meeting and the attached letter was discussed. Should there be any questions concerning this meeting, please contact the undersigned counsel.

Sincerely,



Loretta J. Garcia

Attachments

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List ABCDE



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Alexandria, Virginia 22314  
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JUL 23 2001

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

## MEMORANDUM

July 19, 2001

**TO:** Commissioner Michael Copps  
**FROM:** Hearing Industries Association  
**RE:** Potential Reallocation of 216-217 MHz Band

**Board of Directors**  
Paul Erickson (2003)  
Siemens Hearing Instruments  
Glenn E. Hemmerle (2002)  
Miracle Ear  
Michael R. Jones (2002)  
Phonak, Inc.  
Ian McWalter (2003)  
Gennum Corporation  
James C. Mulford (2003)  
Phonic Ear, Inc.  
Randall Raymond (2002)  
Rayovac Corporation  
Andy Raguskus (2003)  
Sonic Innovations, Inc.  
Eric Spar (2003)  
WIDEX  
Carsten Trads (2002)  
GN ReSound  
Gary Ullman (2002)  
Lori/Unitron  
Peter Van Nest (2003)  
Bernafon, Inc.  
Mikael Worning (2003)  
Oticon, Inc.  
John J. Zei (2002)  
Knowles Electronics, Inc.

**Problem:** Americans who use assistive listening devices (ALDs) will be harmed if the Commission chooses to reallocate spectrum from the 216-217 MHz bands currently assigned for use by these devices.

**Solution:** Assign the highest priority to preserving the benefits of ALDs operating in the 216-217 MHz band. Elevate their status to primary use and license them on a blanket basis if necessary for preservation, but not in a way that restricts their ability to operate anywhere at any time so long as no interference is caused.

### Background

The Commission released a Notice proposing to make available to the private sector spectrum that was previously allocated exclusively or on a shared basis for federal government use, pursuant to the Balanced Budget Act of 1997. See NPRM in ET Docket No. 00-221, FCC 00-395, Nov. 20, 2000.

Many hard-of-hearing persons rely heavily on ALDs. For example, 35% of the nation's places of worship -- as well as schools, theaters, auditoriums, sports arenas, and other public places -- use assistive listening technology. Most new and improved equipment is focused on using the 216-217 MHz band, which replaced the old interference-riddled 72-76 MHz band. The hard-of-hearing community has counted on the FCC to keep their new electronic home available and clear and are deeply concerned that the FCC's commitment is proposed for abandonment without good reason.

### The Technology

Traditional hearing aids amplify all sounds equally and the hard-of-hearing person does not have the neurological tools to distinguish and reject the undesired sounds.

**Chairman**

Michael R. Jones  
Phonak, Inc.

**Past Chairman**

John J. Zei  
Knowles Electronics, Inc.

**President**

Carole M. Rogin

**Secretary/Treasurer**

Randall Raymond  
Rayovac Corporation

ALDs solve this problem by allowing the sound receptor to be placed at the source of the sound and linked to the hearing aid-based amplifier through radio spectrum.

The desired sound becomes dominant and the user can decipher sounds that otherwise would be unintelligible. This development has significantly improved the quality of life for a million persons currently using ALD technologies.

### **Legal and Policy Arguments**

#### **The 1997 Budget Act does not require the auctioning of 216-217 MHz to the detriment of ALDs.**

The Act directs the Commission to award licenses by competitive bidding. However, the Act does NOT compel that every single piece of designated spectrum must be offered at auction; nor does it require accepting mutually exclusive applications, which is the only action that invokes the general statutory auction obligation.

Our meetings with members of Congress make clear that members of the Telecommunications and Appropriations Committees think that that NTIA's identification of 216-217 MHz for reallocation was the result of a misunderstanding of the identification criteria in have the Budget Act of 1997.

In addition, these members of Congress believe that NTIA failed to adequately consider the requirement that the transfer of spectrum used by the federal government shall not result in costs to the federal government, or in loss of services or benefits to the public, that are excessive in relation to the benefits that may be provided. 47 USC 923(a)(4).

#### **Introduction of new services that threaten ALDs would conflict with statutory obligations and administration policies to encourage and protect services for persons with disabilities.**

Other statutes -- and established legislative and executive policies -- favor promoting and *requiring* the deployment of devices to aid disabled users.

For example, section 225 requires a telecommunications system for speech- and hearing-impaired users and section 255 requires manufacturers and service providers to make their equipment and services accessible by physically-challenged users. And as discussed below, schools and special education institutions are *required* by federal law to provide properly functioning ALDs to children with disabilities.

The principle of harmonization of statutes compels the FCC to confine auctions to 217-220 MHz and to reserve 216-217 MHz for statutorily exempt public safety operations, such as ALDs.

#### **ALDs should be elevated to primary spectrum status and licensed on a blanket basis.**

To permit interference of ALDs would seriously harm the ability of the hearing-impaired users to function in society. Thus primary status is justified. However, primary status

should not be turned against the hard-of-hearing community by disallowing non-interfering operation of ALDs at any time and at any place.

Individual licensing would tremendously burden FCC staff and discourage the use of ALDs by people who cannot afford to pay regulatory fees or are unable to undertake the required paper work.

**The 216-217 MHz band must be governed by technical rules that protect ALDs and television broadcast services.**

Any other use of the spectrum at 216-217 MHz must not impair the ability of the hard-of-hearing to use ALDs or adversely affect reception of TV Channel 13, which occupies the band 210-216 MHz and is especially vulnerable to interference from operations close to 216 MHz.

Any competing uses of this spectrum should operate with very low power, infrequently in time, and only in places not frequented by people, and must not be available as general consumer products.

**Well-established public policy requires the protection of ALDs.**

No realistic fiscal policy objective exists to successfully compete against the well-established national policy of protecting persons with disabilities and the devices they use to improve their lives.

Recent trade press shows growing support for protecting the use of this spectrum by ALDs.

The Commission has the opportunity to show that it cares for the needs of people with disabilities.

**Impairing the operation of ALDs would place state and other institutions in violation of federal laws.**

Federal law covering special education provides federal funding to states if they meet certain requirements, including providing a free and appropriate public education to children with disabilities. 20 U.S.C. §§1400 *et seq.*

The school is required to provide hearing aids and radio-based assistive listening systems if they are included in the child's Individual Education Program established under the state's procedures.

It is important that the band on which radio-based devices operate be free from interference everywhere (not just in or near schools) because a school may permit a child to use an ALD outside of school, such as in the home.

Introducing new potentially interfering services in the 216-217 MHz band could destroy a service intended to assist persons who are a specific target of federal and state government assistance.

## **Conclusion**

The FCC should not turn both law and public policy on their head by depriving a group that Congress intended to protect of the tools they need to function in a hearing world and by causing educational institutions and public gathering places to be in violation of other federal laws. To do so would be objectionable and politically embarrassing both to the Commission and to Congress, which clearly did not direct such an unintended result.

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**United States Senate**  
WASHINGTON, DC 20510

June 26, 2001

The Honorable Donald Evans, Secretary  
U.S. Department of Commerce  
1401 Constitution Avenue, NW  
Washington, DC 20230

The Honorable Michael K. Powell, Chairman  
Federal Communications Commission  
445 12th St. SW  
Washington, DC 20554

Dear Secretary Evans and Chairman Powell:

We are writing to urge you to reconsider your tentative conclusion to award licenses for new commercial radio services in the 216-217 MHz radio band by competitive bidding. This band is one of the twenty-seven Megahertz of radio spectrum which the Federal Communications Commission proposed for reallocation in a Notice of Proposed Rulemaking (NPRM), dated January 23, 2001, in ET Docket No. 00-221.

We ask for this consideration because this band is currently used by low power assistive listening devices (ALDs). These devices allow individuals who are hard of hearing to participate in school, hospital settings, meetings and churches, and simply to hold conversations in noisy and distracting environments. We have with the hundreds of people who submitted comments in response to the NPRM. Commercial use of this band is likely to cause interference to ALDs, depriving them of this important technological benefit.

We understand that the Federal Communications Commission is sympathetic to the needs of the people who depend on ALDs and is open to alternatives that would allow the protection of these frequencies. We also understand, however, that the Commission believes that the legislation mandating the reallocation of government-controlled spectrum requires an auction of commercial licenses, even if it means not preserving the current utility to ALDs of this small, but very important slice of the spectrum. We want to assure the Commission that Congress did not intend for the reallocation of government spectrum to cause hardship to the public, and that we are adamant that there is no impairment of the benefit of ALDs to the twenty-eight million hard of hearing Americans.

In the Balanced Budget Act of 1997, Congress directed the Secretary of Commerce to identify no less than twenty Megahertz of government spectrum that would be available for reallocation to the civilian sector, and to present the President and Congress with a report on this identification.

Congress further directed the FCC to establish procedure for the sale by auction of licenses to operate on these frequencies. In November 1998, the National Telecommunications and Information Administration (NTIA) issued a report entitled **NTIA SPECIAL PUBLICATION 98-36, SPECTRUM REALLOCATION REPORT** Response to Title III of The Balanced Budget Act of 1997, identifying twenty-seven Megahertz of government controlled spectrum for reallocation. The FCC proposes to auction licenses on all of these frequencies.

Section 3002(c)(1)(C)(i) of the Balanced Budget Act required that the Secretary identify the frequencies for reallocation pursuant to Section 113 of the National Telecommunications and Information Administration Act (47 U.S.C. Sec. 923). We believe that the identification of 216-217 MHz for reallocation was the result of a misunderstanding of identification criteria set forth in Section 923.

In particular, we believe that NTIA failed to adequately consider the requirement stated in subsection (a)(4) that: the transfer of which (from Federal Government use) will not result in costs to the Federal Government, or losses of services or benefits to the public, that are excessive in relation to the benefits to the public that may be provided by non-Federal licensees; (47 U.S.C. 923(a)(4)).

In 1996, in response to consumer demand the FCC allowed the use of ALDs in the 216-217 MHz band because users were experiencing serious interference problems with devices that used channels in the previously authorized 72-76 MHz band. The problems in this band continue to the present, and users have consequently been converting to equipment which operates in 216-217 MHz. This tiny slice of the spectrum has thus far been free of interference problems. In addition, it has characteristics that allow for smaller less obtrusive transmitters and receivers. This quality allows hearing aid manufacturers to produce equipment that is less bulky and more cosmetically acceptable to school children and adults who require ALDs.

The FCC provided access to the 216-217 MHz band as a safe harbor from the interference problem that is common in 72-76 MHz, with assurance against any high power to avoid interference with TV Channel 13. We believe that a change which would subject those who rely on this Commission action to the same interference problems they finally escaped would be a serious mistake. There is no question that such action would cause an excessive loss of service to blind and hard of hearing members of the public who rely on ALDs, contrary to the intent of 47 U.S.C. Sec. 923.

Additionally, for children in school who are hard of hearing, the Individuals With Disabilities Education Act (IDEA) (20 U.S.C. Sec. 1401 et. seq.) requires State and Local governments to provide ALDs to children who need them as part of their obligation to provide a Free Appropriate Public Education (FAPE) to special needs children. We believe that subjecting devices that operate in the 216-217 MHz band to interference would result in excessive cost and loss of service to these entities contrary to the intent of disability legislation.

While the Balanced Budget Act did mandate the issuance of licenses for spectrum transferred by NTIA by competitive bidding, that general mandate did not specify that every piece of transferred

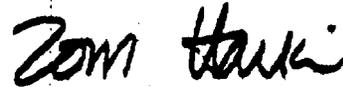
spectrum, no matter how small, must be auctioned regardless of the impact on other statutes and statutory objectives. 47 U.S.C. Sec. 923 makes it clear that excessive costs to the public are to be avoided, and disability laws are very specific in mandating the deployment of ALDs. Nor does the Balanced Budget Act require the Commission to accept mutually exclusive applications for 216-217 MHz, without which an auction is not needed. Given the clear intent of Congress to avoid excessive costs to the public and to protect ALD use, there is no reason for the Commission to rely on the general language of the Balanced Budget Act of 1997 and to compound, rather than undo, NTIA's error by auctioning 216-217 MHz to the detriment of ALDs.

For these reasons, we believe that fulfillment of the intent of Congress requires the FCC to make a public interest determination for future use of the 216-217 MHz band that does not pose any threat to ALD use, even if the result is that commercial operations are excluded from that band and that one Megahertz of spectrum is licensed without mutually exclusive applications or competitive bidding. We thank you for your attention to this important matter.

Sincerely,



CHRISTOPHER J. DODD  
United States Senator



TOM HARKIN  
United States Senator



EDWARD KENNEDY  
United States Senator



JAMES M. JEFFORDS  
United States Senator

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