

November 23, 2004

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
12th Street Lobby, TW-A325  
Washington, D.C. 20554

**Re: *Ex Parte* Presentation  
WT Docket 01-309**

Dear Ms. Dortch:

On Monday, November 22, 2004, Diane Cornell, Carolyn Brandon, and Lori Messing McGarry, representing CTIA – The Wireless Association™, Robert Morse, attorney for Wilkinson Barker Knauer and David Nace, representing the Rural Cellular Association, met with Cathy Seidel, Michael Wilhelm, Gregory Guice and Nicole McGinnis of the FCC's Wireless Telecommunications Bureau regarding the status of the petitions for reconsideration of the FCC's Report and Order governing hearing aid compatibility ("HAC") with digital wireless telephones. We discussed issues raised in CTIA's Petition for Reconsideration. Specifically, CTIA discussed the issues in the attached presentation.

Pursuant to Section 1.1206 of the Commission's Rules, this letter is being electronically filed with your office. If you have any questions concerning this submission, please contact the undersigned.

Sincerely,

*Diane Cornell*

Diane Cornell  
Vice President, Regulatory Policy

Cc: Cathy Seidel  
Michael Wilhelm  
Gregory Guice  
Nicole McGinnis

**Hearing Aid Compatibility**  
**WT Docket No. 01-309**  
**November 22, 2004**

**I. Federal Preemption**

- Background: The Commission in the *HAC Order* expanded the scope of its Part 68 Subpart E rules to wireless carriers to allow consumers to bring informal complaints if either wireless carriers or handset manufacturers fail to comply. Part 68 rules contemplate a dual-regulatory structure where the FCC and states share jurisdiction with respect to services offered by wireline providers.
- CTIA is requesting that the FCC reconsider its decision in the *HAC Order* and clarify that the Commission has exclusive authority to adjudicate wireless HAC complaints pertaining to wireless carriers' and manufacturers' compliance with the HAC Act and Section 20.19 of the rules.
- Statutory construction -- Section 710(h)'s delegation of authority to state PUCs can be reconciled with Title III preemption

Section 710(h), by its terms, delegates to state PUCs authority to enforce only Sections 710(a) and (b) of the HAC Act; it does not delegate enforcement authority over technical standards (710(c)) and labeling (710(d)). The *HAC Order's* delegation of authority is therefore broader than Section 710(h) allows.

The remaining provisions of Section 20.19 (the handset sale/distribution regulations at (c)-(e)) are *nationwide* in scope and not amenable to state-by-state regulation. Thus, enforcement at the federal level is appropriate.

The HAC Act itself, and its legislative history, indicate that Section 710(h)'s mandate and Title III preemption of state enforcement of 20.19(c)-(e), are not irreconcilable.

- Wireless hearing aid compatibility is a RF interference issue. The Commission's exclusive authority over RF interference is clearly delineated in the Communications Act and Commission precedent.
- The Commission alone has the expertise, experience and resources to address and resolve highly technical and enforcement issues regarding HAC compliance.

**II. 25% and 50% Requirements**

- Background -- the HAC Order adopted two "implementation requirements for both wireless carriers and handset manufacturers. Under the standards, carriers must make available to consumers at least two or 25% HAC compliant phone models, whichever is greater, within two years of the HAC Order. 50% of all models should be compliant by February 18, 2008.
- This decision is inconsistent with the record in the proceeding.

Section 706(2)(A) of the APA provides that the courts hold unlawful conclusions that are arbitrary and capricious.

There is no explanation or rationale given for the 50% requirement or why the two or 25% model is applicable to Tier 1 carriers, contrary to the consumer-driven approach advocated in the record.

There are innumerable practicable hurdles to achieving, contrary to the public interest.

### III. ANSI/ATIS Incubator Standards Issue

- CTIA argued in its Petition for Reconsideration that the C63.19 standard, in its current form, is not a viable standard. Industry standards groups should be permitted to continue their work to improve the standard – indeed, the FCC itself in the *HAC Order* understood that revisions to the standard might be forthcoming.

The wireless industry has actively participated in the ATIS Incubator for 18 months. The Incubator has made considerable progress with the RF portion of the standard.

Nearly all of the proposed changes have been adopted into the re-balloted version of the RF portion of the standard and should be included in the FCC rules for compliance. Industry experts and consumer advocates agree that this is a critical step in the right direction.

- The FCC should affirm that the 2004 C63.19 HAC standard will be reflected in the rules immediately upon publication. On a going forward basis, FCC staff should adopt updated ANSI approved HAC standards.

### IV. Need Timely Resolution and Process Certainty

- Industry needs a resolution soon from the FCC. The compliance deadline is just 10 months away. The ATIS Incubator Solutions Program filed Status Report #2 on November 17, 2004, which estimates how long each implementation step would take *after* the FCC incorporates the C63.19 standard into the HAC rules.
  1. Carrier Acceptance Testing typically takes four (4) months
  2. Handset Rollout (ordering, delivery and distribution) can take about three (3) months
- Outstanding Issues that need to be resolved to add certainty to the process:
  - The Grant Authorization process
  - Will Telecommunications Certification Bureaus (TCB) be permitted to accept applications and issue grants?
  - What will OET/WTB's role be in determining when interim ANSI Standards or ATIS Incubator work efforts should be reflected in the FCC's rules?

### V. TDMA Issue

- The Commission should not require HAC handsets for TDMA Air Interface
  - The industry is steadily migrating away from TDMA to other digital air interfaces.

- Industry wide support for the TDMA air interface is evaporating
- There is a steady decline in the development and availability of new TDMA handset models.
- The industry has submitted data to the FCC supporting this trend.