

CTIA – THE WIRELESS ASSOCIATION™
HEARING AID COMPATIBILITY
LEGAL ANALYSIS OF STATE ENFORCEMENT ROLE
WT DOCKET NO. 01-309

Procedural History

- In the *HAC Order* (§ 95), the Commission extended its Part 68 complaint rules, which are based on Section 710(h) of the HAC Act, to wireless service providers and manufacturers. Under these rules, “informal complaints regarding compliance with the hearing aid compatibility rules ... must first be filed with the state public utility commission, so long as the state has adopted our hearing aid compatibility rules and provided for enforcement of those sections.”
- CTIA timely sought reconsideration of this aspect of the *Order*.
- The Commission provided interested parties two opportunities to comment on petitions for reconsideration. No parties opposed this aspect of CTIA’s petition for reconsideration.

Introduction/Background

- The Commission’s plenary authority to regulate RF emission and technical matters is not superseded by Section 710(h) of the HAC Act.
- Delegating authority to state commissions to adjudicate individual customers’ complaints will result in inconsistent rulings and balkanized enforcement.
 - If one state commission in adjudicating a complaint finds that a particular handset model or carrier deployment effort is not compliant with the Commission’s rules, but another state commission (or the FCC, for that matter) reaches the opposite conclusion in a different complaint, manufacturers and carriers would be compelled to adopt state-specific marketing and distribution plans, that would potentially be in conflict with the Commission’s certification of said handset.
 - If handsets deemed noncompliant in one state are offered in adjoining states via a wide-area service plan, a carrier would be effectively precluded from offering the handset in both states, thus undermining consumer choices and creating significant logistical difficulties for carriers and manufacturers.
 - New Section 20.19(g) provides simply that “[e]nforcement of this section is hereby delegated to those states which adopt this section and provide for enforcement.” The Commission’s rules do not define or otherwise expressly limit the issues appropriate for state commission resolution. State commission involvement in such issues creates a compliance dilemma for manufacturers and service providers.
 - Service providers’ and manufacturers’ handset deployment obligations are *nationwide* in scope. An individual state commission should not have authority to determine a carrier’s or manufacturer’s compliance with handset sales and deployment obligations.

- The Commission has ample authority, under Title III of the Communications Act and the HAC Act itself, to assert federal primacy in enforcement of wireless HAC requirements, and the public interest is best served by centralizing within the FCC the authority to resolve complaints brought under Section 20.19 of the rules.

Commission Authority to Retain Exclusive Substantive Enforcement of the FCC's HAC Rules

- HAC Act Public Mobile Services Exemption. Section 710(b) of the HAC Act authorizes the Commission to “revoke *or otherwise limit*” the public mobile services exemption.
 - The public mobile services exemption precluded Section 710(h) and the implementing regulations from applying to wireless services; the Commission’s authority to “otherwise limit” the scope of the exemption necessarily entails the authority to keep aspects of that exemption in effect. Thus, the Commission is expressly authorized to maintain that exemption as to Section 710(h) and its implementing rules.
 - In order to lift the public mobile services exemption, the Commission must consider technical feasibility. As discussed above and in pending petitions for reconsideration, balkanized enforcement raises substantial questions of technical feasibility for carriers and manufacturers.
 - Lifting the public mobile services exemption in a manner that results in confusion for consumers, service providers and handset and hearing aid manufacturers, is contrary to the public interest.
- Section 255(f). Section 255(f) of the Act grants the Commission plenary authority to hear complaints under the disabilities access requirements of Section 255.
 - The Commission’s Section 255 rules include hearing aid compatibility provisions, and the Part 68 HAC rules were amended to ensure that they better serve the Commission’s *Section 255* objectives, finding that “retaining these [HAC] rules in Part 68, ... ensure[s] that the Commission is able to continue monitoring and enforcing compliance with these requirements as directed by Congress in Section 255 of the Act.” 15 FCC Rcd 24944, ¶ 66 (2000).
- Section 710(h) of the HAC Act Does Not Compel the Commission to Delegate the Broad Enforcement Authority It Has Delegated.
 - Tenets of statutory construction require that the language of Section 710(h) providing that “[t]he Commission shall delegate to each State commission the authority to enforce ... compliance with the specific regulations that the Commission issues” be viewed in the context of the broader statute.
 - As discussed above, the Commission must interpret Section 710(h) in a manner consistent with Title III, the HAC Act itself and Section 255(f).
 - As to the HAC Act, interpreting Section 710(h) to require the Commission to automatically delegate authority to the states would perversely hinder the Commission’s authority to lift the public mobile services exemption because delegation of authority to states would add technical feasibility questions.

Requested Commission Action

- The Commission should:

- Reconsider its decision in the *HAC Order* to apply existing Part 68 wireline complaint procedures wholesale to wireless HAC enforcement.
- Clarify that the Commission has exclusive authority to adjudicate HAC complaints pertaining to wireless carriers' and manufacturers' compliance with the HAC Act and Section 20.19 of the rules.
- Confirm that consumers and industry alike are best served by exclusive Commission enforcement.
 - Uniform technical standards help ensure that consumers benefit from economies of scale in manufacturing and distribution.
 - The Commission is best equipped and staffed to adjudicate wireless HAC complaints, as the Commission has the technical expertise and experience with industry standards that state commissions do not.
 - The Commission already has the staffing and procedures in place to consider consumer complaints, and the Commission has considerable experience with carriers and consumers in the similar Section 255 context.