

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)
)
Section 68.4 of the Commission's Rules) WT Docket No. 01-309
Governing Hearing Aid-Compatible Telephones)

Reply Comments of CompUSA

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CompUSA Stores L.P. and Good Guys of California, Inc. (collectively, “CompUSA”), both wholly owned subsidiaries of CompUSA Inc., submit these Reply Comments in the above-captioned proceeding.¹

About CompUSA. CompUSA Stores, L.P. is one of the nation's leading retailers and resellers of technology products and services. It currently operates 229 CompUSA Superstores in over 90 major metropolitan markets across the United States and Puerto Rico that serve retail, small-to-medium businesses, corporate, government, and education customers and include technical service departments. Good Guys of California, Inc., is a west coast, high-end electronics retailer with stores in California, Oregon, Washington, and Nevada.

I. Summary

CompUSA opposes the Commission’s proposal to mandate that independent retailers provide live, in-store testing of wireless telephone handsets for hearing aid compatibility. The Commission has no authority to impose this requirement. Its doing so would create a burden for

¹ *Section 68.4(a) of the Commission’s Rules Governing Hearing Aid-Compatible Telephones, 20 FCC Rcd 11221 (Order on Reconsideration and Further Notice of Proposed Rulemaking) (2005) (“Notice”).*

independent retailers out of proportion to the benefits, and so would be contrary to the public interest.

As an alternative measure, CompUSA recommends a required no-cost return policy for a consumer who purchases a wireless handset and finds it to be incompatible with a particular hearing aid.

II. Discussion

A. The Commission has neither statutory authority nor authority under the common law of agency to require that independent retailers provide live, in-store testing.

The *Notice* seeks comment on the Commission’s authority to extend the live, in-store testing requirement for hearing-aid compatible wireless telephones to retail outlets that are not directly owned or operated by wireless carriers or service providers.²

The Hearing Aid Compatibility Act (“the Act”) authorizes the Commission to “establish such regulations as are necessary to ensure reasonable access to telephone services by persons with impaired hearing.”³ To accomplish this, the Act directs the Commission to require that “all telephones manufactured in . . . or imported for use in the United States . . . provide internal means for effective use with hearing aids that are designed to be compatible with telephones which meet established technical standards for hearing aid compatibility.”⁴ But the Act contains no language specifying the entities subject to the Commission’s regulations. In particular, nothing in the Act extends the Commission’s jurisdiction. Although the Commission sometimes

² See *Notice* at ¶ 62.

³ 47 U.S.C. § 610(a).

⁴ *Id.* at § 610(b)(1).

enforces technical regulations at the point of retail sale,⁵ it does not impose on retailers any obligation beyond verifying that regulated products carry the outward indicia of authorization. That is the extent of the Commission’s authority. If Congress wants to give the Commission further reach into the details of retail practices, it will have to say so.

The common law of agency does not add to the Commission’s power here. The *Notice* correctly mentions that independent retailers act as agents for wireless carriers and service providers *in the sale of wireless services*.⁶ With respect to the sale of handsets, however, the retailers are not agents, but mere resellers. They neither act nor are authorized to act as the manufacturer’s representative in a transaction with the customer.

B. A requirement for live, in-store testing would place an unacceptable burden on independent retailers.

The *Notice* additionally solicits comment on the impact of extending the testing provision to small business retailers and independent retailers, asking whether it would create an “unacceptable burden.”⁷ The answer with respect to CompUSA is yes. Although we cannot speak for the small business retailers, we think the burden on them must be even greater.

The first obstacle to in-store testing is a lack of working handsets. CompUSA stores use “dummy,” non-functional handsets for display, so as to minimize theft. Even the packaged products held in inventory are non-functional until activated.

To offer in-store testing, each retail location would have to alter its distribution plans with every wireless carrier and provider for whom it acts as a reseller, so as to receive a full line

⁵ *E.g.*, 47 C.F.R. § 2.803(a) (prohibiting the marketing of certain devices that require but do not have Commission approval).

⁶ *See Notice* at ¶ 64.

⁷ *Id.* at ¶ 63.

of functional and activated “demo” models for testing, provide sales staff with technical training on all models, maintain in-house or on-call repair services, and deal with the consequences of increased theft. More associates would be needed on the floor, and their costs would necessarily flow to all customers.⁸ And counter space in the stores would have to be expanded to allow for set-up and installation of testing and demonstration. CompUSA, like other retailers, would incur substantial expense in implementing these changes.

C. A no-cost return requirement will fully protect consumers without unreasonably burdening independent retailers.

CompUSA presently accepts returns of wireless handsets within 21 days at no cost to the consumer. This covers returns due to hearing aid incompatibility, among other reasons.

CompUSA’s return policy extends only to the handset, as we have no control over whether a wireless carrier charges a termination fee for canceling the associated telephone service. But CompUSA would not oppose a requirement that carriers waive any such fee in the event that a handset approved for use with the service does not work with the customer’s hearing aid.

This option would give customers the opportunity for prolonged testing away from the commotion of the sales floor, at no financial risk.

⁸ See 47 U.S.C. § 610(e) (“In any rulemaking to implement the provisions of this section, the Commission shall specifically consider the costs and benefits to all telephone users, including persons with and without hearing impairments.”)

CONCLUSION

The Commission should abandon its proposal to require independent retailers to provide in-store testing for hearing aid compatibility of wireless handsets. The Commission lacks the requisite authority; and such a requirement would be overly burdensome. Instead, the Commission should require retailers to accept returns at no charge, if a handset proves to be incompatible, and in those circumstances should require carriers and service providers to waive termination charges.

Respectfully submitted,

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