Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of the Commission's Rules Governing Hearing Aid Compatible Mobile Handsets	)	WT Docket No. 07-250
	)	

Subject: **WT Docket No. 07-250**

Comments of the Hearing Loss Association of America and Telecommunications for the Deaf and Hard of Hearing, Inc.

The Hearing Loss Association of America (HLAA)[1] and the Telecommunications for the Deaf and Hard of Hearing Inc. (TDI)[2] submit the following comments in response to the Notice of Proposed Rulemaking (NPRM) published at 72 Fed. Reg. 65494 and styled "Amendment of the Commission's Rules Governing Hearing Aid-Compatible Mobile Handsets,

[1] Hearing Loss Association of America is the nation's foremost consumer organization representing people with hearing loss. HLAA's national support network includes an office in the Washington D.C. area, 15 state organizations, and 200 local chapters. The HLAA mission is to open the world of communication to people with hearing loss through information, education, advocacy, and support. HLAA provides cutting edge information to consumers, professionals and family members through a website, www. hearingloss.org, an award -winning publication, *Hearing Loss,* an online newsletter, *ENews*, message boards, and hearing accessible national and regional conventions. HLAA impacts accessibility, public policy, research, public awareness, and service delivery related to hearing loss on a national and global level.

[2] TDI is a membership organization that promotes equal access to telecommunications, media, and information technology for 31 million Americans who are deaf and hard of hearing. TDI educates and encourages consumer involvement regarding legal rights regarding access to technology; provides technical assistance and consultation to industry, associations, and individuals; encourages accessible applications of existing and emerging technologies in all sectors of the community; advises on and promotes the uniformity of standards for technologies; works in collaboration with other deaf and disability organizations, government, industry, and academia; develops and advocates national policies that support accessibility issues; and publishes *TDI World* quarterly magazine, *TDI Briefs* newsletter, and the annual *TDI National Directory & Resource Guide* or the *Blue Book*. For more information or to become a member or subscriber, go to www.tdi-online.org.

Petition of American National Standards Institute Accredited Standards Committee C63 (EMC) ANSI ASC C63."

The Federal Communications Commission (FCC) has generated this NPRM based upon a Staff Report that relied extensively on the Joint Consensus Plan developed by representatives of industry and the hard of hearing and deaf community. The HLAA was a member of the group that produced the Joint Consensus Plan after extensive meetings of industry and consumers working together to come to consensus. The HLAA and TDI note that the recommendations contained in the Joint Consensus Plan are accepted in the NPRM to a large extent, and, thus, the HLAA and TDI support the positions taken by the FCC that are in accord with the Plan. However, the HLAA and TDI offer the following additional comments that are designated by the paragraph number in the NPRM.

M3 and T3 Benchmarks. (¶¶ 33-42) HLAA and TDI support the modifications as proposed in the Consensus Plan. Reducing the threshold for the manufacture of M mode phones constitutes a beneficial trade-off to increase the benchmark for the manufacture of T mode phones. Consumers are able to find adequate numbers of compliant phones in the M mode, and the CDMA interface is exceeding current requirements because it does have an advantage over the GSM interface. Consumers with more severe hearing loss require greater assistance than is supplied by T mode phones that can result in using or not using a phone. T mode phones cut out background noise and provide a direct feed to hearing aids. The current requirement for two T mode handsets is inadequate in the absence of a mechanism to increase the quantity especially given that "the number of individuals using telecoil-equipped hearing aids is increasing and includes some with the most profound hearing loss." *Staff Report at ¶ 35n.91.*

Additional deployment milestones. (¶ 49) HLAA anticipated and expects a steady increase in the number of accessible handsets in both M and T mode phones. Since doing so is technically feasible, the manufacturing process should include routine checks for designing in HAC, ANSI ongoing improvements, and close monitoring by the FCC. Working toward M4 and T4 ratings, especially for GSM, will benefit the consumer in using the phones as there are still individuals with hearing aids that are unable to benefit from M3 and T3 telephones. People without hearing disabilities do not tolerate anything less than the clearest signal. People using hearing aids and cochlear implants should not be subject to a lesser standard of performance. HLAA and TDI agree with the RERC at Gallaudet that this should be on the agenda for the 2010 review.

Deployment Benchmarks for Other than Tier 1 Carriers (¶¶ 50-51). Regarding Tier I, the HLAA and TDI support the Consensus Plan since it provides consumers with severe hearing loss more options while taking into account technical challenges. Regarding lower tiers, it is reported that Tier 1 carriers account for 90 percent of subscribers. It is our understanding that Tier II and III carriers are dependent on distribution of supplies from manufacturers who put priority on their large customers (Tier I). Tier II and III requests for waivers show that they were looking to comply but phones were not available to them. Therefore, it would seem 1) up to Tier II and III carriers to place orders for phones sufficiently in advance of the time needed in order to meet the benchmarks and 2) up to manufacturers to ensure they can supply all carriers of all Tiers in a timely fashion. On this basis, there should be no need to phase in the benchmark for Tier II and III carriers as long as all parties plan ahead. If deemed absolutely necessary, a maximum phase in period of 3 months may be reasonable.

Product Refresh. (¶ ¶ 53-57). The HLAA and TDI support adoption of the product refresh proposal in the Consensus Plan and support measures that will ensure a range of models to HAC users. A range of prices and features is important to consumers so that they can have choices to meet their individual needs and desires, rather than being forced to acquire only the very high end or low end handsets. HLAA and TDI agree with the FCC suggestion to require service providers, as part of their reports and/or in-store displays, to explain their "tiering" so consumers understand how compliant handsets break down by function and frequency band. We agree with the RERC at Gallaudet that Tier 11 and Tier 11 carriers should also meet the "tiering" obligation.

ANSI Standards (¶¶ 58-62). The HLAA and TDI support the rule change to codify a single 2007 version of the testing standard as being consistent with the Consensus Plan. This change will provide consumers with benefit through an improved SNR.

Reporting (¶¶ 65-71). The HLAA and TDI support maintaining the reporting dates as provided in the Consensus Plan, that calls for manufacturers to provide an annual status report to the FCC on November 30 and carriers six months later, on May 30. The HLAA and TDI agree with the recommendations for reporting by manufacturers and service providers that contains greater detail and clarifications to assist consumers. A standardized reporting template, that should be electronic and user friendly for ease in updating, would make reading through the material easier as well as facilitate monitoring progress. The HLAA and

TDI further support the proposal to require that reports include the air interface(s) and frequency bands over which the handsets operate. This information is of value to consumers and furnishing it should not be burdensome to manufacturers and service providers.

Tier II and III carriers should report on the same schedule as Tier I carriers. A reporting requirement should not be so burdensome that it cannot be accomplished in a timely fashion. Having reports filed 18 months or so after Tier I carriers report is likely to leave these reports with little, if any, value.

Public Information and Outreach. (¶¶ 72-77). The FCC web site should link to manufacturer and service provider web sites from the DRO web page. HLAA and TDI agree that manufacturers and service providers subject to the HAC rules should follow the same procedures applicable to § 255 complaints. Also, contact information for HAC designated agents contact information should be published on the DRO website. Companies should be strongly encouraged to include accessibility features in advertisements and post on their web sites HAC information including:

- A search function for HAC to allow consumers to browse within the category for features they want
- A listing of phones with all HAC ratings, not just those with ratings of 3 and 4 (because hearing aid ratings are now available to consumers).
- Volume control levels on phones
- Vibrating feature on phones
- Ring tones most suitable for people with hearing loss – those with low frequencies
- Devices with Qwerty keyboards for ease in sending emails and instant messages that supplement HAC
- Other features and functions on handsets
- Downloadable version of brochure on HAC handsets developed by ATIS WG6 (print version of brochure should be available in every store, including independent stores)
- Downloadable version of phone evaluation tool that the RERC at Gallaudet is now testing

Regarding additional outreach efforts, the HLAA and TDI encourage the FCC to issue guidelines for handling in-store testing by consumers. These guidelines should include the following.

- Spending more time, if needed, with customers using hearing aids or cochlear implants.
- Knowing precisely which phones are HAC.

- Having reference information handy or knowing where it can be accessed on the web.
- Allowing the customer to try more than one phone in the store.
- Having sales representatives learn communication techniques such as speaking more slowly.
- Permitting appointments to be scheduled at times that phones will be available for testing.
- Being set up to enable the placing of a real call.
- Using the phone evaluation tool currently being developed by the RERC at Gallaudet

In a 2005 HAC Reconsideration Order and Further Notice, the FCC directed retail outlets owned or operated by service providers to make HAC models available for consumer testing, and at the same time, asked whether it should extend this requirement to independent retailers. While it appears that no comments were received from consumers on this topic, this could only be explained as an oversight by consumers. HLAA and TDI very much believe there is a need for these rules to be extended to independent retailers in light of changes in the marketplace and the regulatory environment since 2005. This is necessary in order to level the playing field for different types of retailers, and most importantly to give consumers choice about where to shop for phones. Without this requirement, hearing aid and cochlear implant users will be locked into shopping only in carrier's stores. Independent retailers such as big box stores offer sales that are often not available in company owned stores and offer a wider variety of phones and contracts from multiple service providers. At a minimum the independent retailers should offer in-store testing and return policies similar to the company owned stores. Further their sales personnel should be knowledgeable about the HAC phones they have on the shelves or at least have print handouts with information that can be provided to the customer such as the HAC brochure referred to in paragraph 31 - 33 *Public Information and Outreach.*

Other Spectrum Bands (¶ et.seq.) The HLAA and TDI strongly support modifying the rule to make the hearing aid compatibility requirements automatically effective to new frequency bands that may be allocated for these communications. This application should take place as soon as the appropriate technical standards are established for the air interfaces. Modifying the regulations to provide for automatic extension of the requirements to new frequencies should be straightforward. If this revision is not adopted, the requirement to undertake a rulemaking process every time handsets using new air interfaces or frequencies are introduced may unduly delay accessibility by consumers.

De Minimis Exception (¶ 85). The HLAA and TDI agree with the proposal to codify the de minimis exception on a per-air interface in the regulation. As an additional comment, the HLAA and TDI believe that the de minimis exception should be further limited when large business concerns only produce one or two mobile phones, but those phones have mass appeal and are distributed nationwide. In this case, these companies have the financial and logistical resources to fully meet the hearing aid compatibility requirements, where small businesses might lack the necessary capacity. In fact, the Commission's justification for this exception, contained in its Regulatory Flexibility Analysis, was to limit the impact of the rule requiring hearing aid compatible mobile handsets on small business concerns. *See* 68 Fed. Reg. 54175 (Sept. 16, 2003). The exception is intended to apply only to manufacturers and service providers that have "only a small presence in the market." Large business concerns, such as Apple with its production and sale of the iPhone, expect to have and gain much more than a "small presence" in the mobile phone market. Allowing such manufacturers to fall under the de minimis exception has the effect of undermining the intent of the rule.

Further review. (¶ 86). The HLAA urges that the review be kept in 2010.

Volume Control. (¶ 87). This should be driven by the outcome of the ATIS WG11 group which is researching volume control and audio output. Volume control is part of the HAC rules for wireline phones under the negotiated rulemaking and we believe it should also be for wireless phones. We do not believe this will create a burden as most manufacturers already include this feature on their wireless handsets. Volume control is a benefit for a wide range of phone users, those with hearing loss and those without, especially given that wireless phones are frequently used in noisy places.

Emerging Technologies. (¶ ¶ 89-97). Companies should have procedures in place to automatically include HAC in new designs and emerging technologies. The HAC rules should apply to all emerging technologies so that affected consumers will not be left without access as these technologies gain shares of the market. Already there are 19 million[3] baby boomers with some degree of hearing loss and with the increase in population the total number of Americans with hearing loss is estimated at 31 million[4]. This significant group cannot be left without access to emerging technologies. The WiFi and VoIP phone industries should be given notice now and the FCC should be prepared to issue a rule on emerging technologies at the 2010 review. The Apple iPod is an example of the introduction of a new technical

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[3] American Speech Language Hearing Association web site

[4] Kochkin, S. MarkeTrak VII: Hearing Loss Population Tops 31 Million People, The Hearing Review, Vol. 12(7) July 2005, pp. 16-29.

product that has failed to comply with the HAC requirements; AT&T has announced a faster 3G iPhone due to debut next year and Google has already announced the entry of its new products. HAC rules must be in place so that emerging technologies are in compliance from the get go as they arrive on the scene.

Thank you for the opportunity to comment on this issue that impacts millions of Americans.

Respectfully submitted,

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