

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

In the Matter of)	
)	
Amendment of the Commission’s Rules Governing Hearing-Aid Compatible Handsets)	WT Docket No. 07-250
)	
Section 68.4(a) of the Commission’s Rules Governing Hearing-Aid Compatible Handsets)	WT Docket No. 01-309
)	
Petition of American National Standards Institute Accredited Standards Committee C63 (EMC) ANSI ASC C63™)	

To: The Commission

COMMENTS OF RURAL CELLULAR ASSOCIATION

Rural Cellular Association (“RCA”)¹, by its attorneys, respectfully submits these Comments in response to the Commission’s interest in whether to modify the requirements, deadlines and reporting obligations associated with hearing aid compatible (HAC) handset deployment by providers of digital commercial mobile radio services (CMRS).²

Introduction

The Commission has tentatively concluded that it will (1) modify the February 18, 2008 benchmark that requires that manufacturers and wireless service providers ensure that at least 50 percent of their handset models over each air interface meet an M3 or better rating for radio frequency (RF) interference reduction and (2) impose new benchmarks for deploying handsets that meet standards for providing inductive coupling capability with a T3 or better rating. In these

1 RCA was formed in 1993 to address the distinctive issues facing wireless service providers serving rural and small market areas. RCA is an association representing the interests of approximately 100 small and rural wireless licensees providing commercial services.

2 *Second Report and Order and Notice of Proposed Rulemaking*, WT Docket Nos. 01-309 and 07-250, FCC

Comments RCA recommends that the Commission adopt flexible revised quotas and staggered implementation and reporting deadlines for Tier II/Tier III wireless service providers. The Commission is encouraged to refrain from adding features requirements to HAC handsets, and to not limit the universe of compliant handsets by requiring compliance on all bands and in all modes on which a handset will operate. Neither should the Commission get into the business of regulating smaller carriers' HAC website content or other forms of consumer outreach.

I. HAC Handset Benchmarks

RCA concurs with the proposal to modify the requirement that service providers ensure that 50% of handset models offered, per air interface, are rated at least M3 (regarding reduced RF interference for acoustic coupling compatibility). The Commission correctly notes that marketplace and technical realities make it difficult for manufacturers to produce and small carriers to obtain sufficient supplies of handsets, particularly GSM and iDEN handsets, which meet the M3 standard and provide other features in demand by consumers. As noted in the *Commission Staff Report*, in 2006, the number of M3 handset models produced by manufacturers for CDMA far outnumbered handset models produced for GSM and iDEN. There were about four and one-half times as many CDMA M3 phones as GSM M3 phones, and more than twice as many CDMA M3 phones than there were iDEN M3 phones.³ Reduced and alternative M3 thresholds, such as those proposed for Tier I carriers, are appropriate to calibrate the obligations of carriers with the availability of M3 phones.

The M3 benchmark for Tier II and Tier III carriers bears adjusting in a different proportion from that proposed for Tier I carriers. Tier II/III carriers, particularly GSM and iDEN carriers,

07-192, released November 7, 2007 (“NPRM”).

³ *Report on the Status of Implementation of the Commission’s Hearing Aid Compatibility Requirements*, WT Docket No. 01-309, WT Docket No. 06-203, DA 07-4151, 22 FCC Rcd 17703, at para. 26 (2007) (*Commission Staff Report*).

cannot meet the M3 quota of Tier I carriers without reducing the total number of handset offerings, to the detriment of their customer base. For example, RCA member WestLink Communications, LLC (WestLink), operator of a 1900 MHz GSM wireless system, reported to the FCC in November 2007 that it carries four handset models rated M3, and offers a total complement of twelve handsets. To comply with a 50% M3 mandate, WestLink would be forced to remove four non-HAC models from its handset offering. Adding M3 handsets is not an immediate option because of supply constraints from this small carrier's vendors.

RCA member and GSM carrier Union Telephone Company, Inc. (Union) reported to the FCC in November 2007 that its core assortment presently includes ten models of GSM handsets, of which three are rated M3 (and three are rated T3). Without severely limiting its portfolio, Union does not have a path to reach the 50% M3 benchmark because additional M3 products are not available to Union. Nor does Union have the size or strength to influence the roadmap of its handset suppliers. Union finds itself having to wait many months for both HAC and non-HAC handsets developed for Tier I carriers to trickle down channels of commerce and become available to small rural service area operators. Union foresees no change in this pattern of supply.

Another RCA member, Corr Wireless Communications, L.L.C. (Corr Wireless), offers fourteen handset models to its GSM system subscribers. Available for purchase from its distributor are only four handsets rated M3 (and two rated T3). Other M3 phones are carried by the distributor, but they are available exclusively to large, volume-purchase carriers, or they are manufactured in small quantities, quickly sold and then discontinued from production. Corr Wireless has purchased all of the M3 phone models available to it. To meet a 50% M3 quota, however, this small carrier would have no choice but to withdraw six handsets from its customers' choices.

Non-hearing impaired customers should not be punished by protecting the rights of the hearing impaired. The public interest does not require such sacrifice.

Small and mid-sized service providers cannot reasonably achieve the same M3 quotas as Tier I carriers. Nor can they do so on the same schedule. The handset marketplace has not changed from that which caused the FCC to adopt higher quotas for Tier I than it did for Tier II/III carriers. The Commission devised Rule Section 20.19(c) by setting September 16, 2005 as the date by which Tier II/III carriers were to offer **two** M3 models, and Tier I carriers were to offer **four** M3 phones or twenty-five percent of models offered, whichever is greater. In adopting the requirement, the Commission justifiably considered differences among the nationwide carriers, as well as between nationwide and smaller carriers. As noted in the adopting Order:

Tier I wireless carriers have formidable means to drive manufacturers' equipment development and deployment efforts, as discussed in the *Non-Nationwide Carriers Order*, 17 FCC Rcd 14844-47, at ¶12-20. ...The largest carriers have a greater number of subscribers and place the largest orders for compliant equipment, and therefore easily become priority customers for manufacturers and vendors. In contrast to large carriers, smaller wireless carriers may be disadvantaged when they seek to acquire location technologies, network components, and specialized handsets. ...The Commission, therefore, justified its decision to adopt a handset deployment benchmark for Tier I wireless carriers in light of the varied circumstances among individual wireless carriers, and pursuant to Congress' mandate that it ensure the orderly and efficient implementation of the hearing aid compatibility requirements. *Order on Reconsideration and Notice of Proposed Rulemaking*, WT Docket No. 01-309, 20 FCC Rcd 11221, at ¶22 (2005).

The Commission should continue to recognize the ingrained differences of purchasing power between larger and smaller carriers and establish different benchmarks for Tier I and Tier II/III carriers according to the rationale set forth in Commission precedent.

Recommendations: In keeping with prior ratios, the M3 benchmarks for Tier II/III carriers should be about half that for Tier I carriers. The compliance date should be extended by one year to

accommodate the lag times of availability to smaller carriers of new handset models. Tier II/III carriers should have the choice of ensuring that by February 18, 2009 twenty-five percent of its handset models per air interface are rated M3 or better, or, in the alternative, ensuring that a number of handset models per air interface are offered by future dates as follows:

February 18, 2009: four M3-rated (or higher) handset models.

February 18, 2010: five M3-rated (or higher) handset models.

RCA supports similar adjustments to the requirements for handsets rated T3 or better for inductive coupling capability. Tier II/III carriers should be permitted to meet the lesser of the following requirements for each air interface over which they offer service:

(1) *February 18, 2009:* 15% of digital wireless handset models are T3-rated (or higher); or

(2) a schedule as follows:

February 18, 2009: three T3-rated (or higher) handsets.

February 18, 2010: four T3-rated (or higher) handsets.

February 18, 2011: five T3-rated (or higher) handsets.

Differentiated compliance regimes for Tier I and Tier II/II carriers advance the goal of instituting equitable deadlines, reasonably achievable by both sets of carriers. Breaking down additional categories by size or digital platform is unnecessary.

II. New Requirements for Handset Deployment

Regulatory initiatives are not necessary to ensure that a range of hearing aid compatible handset models will be available to consumers with hearing loss. Demand will drive to market

popular and innovative styles and features. The Commission should not require carriers to offer HAC handsets with “tiers” of functionality, or with volume controls or on/off commands for screens displays. The Commission should refrain from getting into the business of defining and requiring “feature-rich” HAC handsets to be offered by carriers. Such activity is beyond the Congressional directive of the HAC Act “to ensure reasonable access to telephone service by persons with impaired hearing.” *See* 47 U.S.C. §610(b). The HAC Act charges the Commission with establishing regulations to ensure that “essential phones” are compatible with hearing aids. *See* 47 U.S.C. §610(b)(1)(A). Although the Commission added wireless phones to the list of essential phones in 2003, the addition of feature-rich wireless phones to the list of essential phones is not justified. There has been no determination of “adverse effect on hearing-impaired individuals” who do not have feature-rich phones, or that the costs of the phones would not impair marketability, or other of the factors set forth in the HAC Act. *See* 47 U.S.C. §610(b)(2)(C).

Tier II/III carriers should not be required to “tier” HAC handsets based on feature depth, function or frequency band. Nor should HAC handsets that operate over multiple frequency bands or air interfaces be required to be HAC compliant on each band and interface on which the phone operates. It is important for small carriers who have limited access to phones to be able to count as HAC compliant multi-band and multi-mode handsets. This is crucial for smaller GSM and iDEN carriers who have enough trouble procuring HAC phones. Eliminating from compliancy an available phone just because it is not HAC on all of its bands and in all of its modes harms both the operator seeking to comply with FCC rules and the customer seeking a HAC phone that will work on the network to which he is subscribed. To count a phone as non-compliant because it is non-compliant on all bands and in all modes on which the phone operates will discourage manufacture of multi-

band, multi-mode phones, and will limit the number of models available to small carriers' customers. Small wireless operators and their customers need HAC phones. Overly ambitious regulation will reduce the supply of HAC phones.

III. Reporting and Outreach

RCA members have a history of close association with the disabilities community, and will continue that tradition.

It is reasonable for service providers' reports to include information on models offered (including FCC Identifier number and "M" and/or "T" rating), product labeling, outreach efforts, retail availability and total numbers of compliant and non-compliant phones offered. Tier II/III service providers' reports should not require information on feature tiering. Tiering and reporting on tiering should be voluntary. Nor should reports require a listing of the air interface(s) and frequency band(s) over which each HAC model operates. That information is difficult to obtain and verify, and it is irrelevant to a reporting carrier's single-interface operation.

Provision by Commission staff of a standardized HAC report form or template is not necessary. Narrative reports permit a service provider to present the information in its own format and to file via the Commission's Electronic Comment File Submission (ECFS) system. However, RCA has no objection to staff development of an electronic form, particularly if the form incorporates automatic access to equipment authorizations where handsets' HAC ratings can be verified.

RCA supports the proposal for staggered reporting schedules whereby Tier II/III carriers would submit annual status reports one year later than Tier I carriers, with Tier II/III reports beginning November 30, 2009 and continuing through November 30, 2012. Annual reports are

sufficient; the numbers and ratios of smaller carriers' handset offerings do not change to a large degree year-to-year. Report preparation is an interruption to business that should not be required more than is necessary to meet the Commission's stated purposes of monitoring progress and making public information on testing and availability of HAC handsets. *See NPRM*, at para. 66. Information submitted in the November 2007 reports can be updated in November 2009 with no significant loss of intervening data, allowing time for the Commission to receive and process information from manufacturers and Tier I carriers.

Preparation of reports would be simplified if the database of the FCC's Office of Engineering and Technology (OET) were to clearly list the HAC ratings of handsets, perhaps on a single page, even if the listing is by FCC ID number. Currently, research by FCC ID requires an excessive amount of clicking and scrolling through on-line pages, sometimes finding a HAC rating, sometimes not. Association of trade names and model numbers to the FCC IDs would be helpful, but should be voluntary by manufacturers, since searching by marketing names and numbers would not be as reliable as searching HAC ratings using FCC IDs. Trade names and model numbers as search tools on an FCC website could be more useful if they also list the FCC IDs, voluntarily.

Likewise the FCC should encourage but not require service providers to post particular information on their websites. Carriers should have discretion to educate consumers and promote handsets in a manner conducive to their markets. Carriers should decide whether or not to post on their websites the HAC ratings of their handsets, and carriers should not have to assume responsibility for technical accuracy of the HAC ratings. To require a particular form of outreach and dissemination exceeds the Commission's HAC Act authority to ensure access to telephone service, and adds to the burden of smaller carriers.

IV. **Consumer Complaints**

Consumers have access to information necessary to file a complaint for HAC violations. The contact information for designated agents for service of complaints on carriers is available on the Enforcement Bureau's website at <http://gullfoss2.fcc.gov/cib/form499/499a.cfm>. The information is submitted by all common carriers to the FCC's Enforcement Bureau pursuant to FCC Rule §1.49(h), 47 C.F.R. §1.47(h). The same contact information is filed with the Disabilities Right Office of the FCC's Consumer and Government Affairs Bureau pursuant to FCC Rule §§6.18 and 7.18, 47 C.F.R. §§6.18 and 7.18. Duplicate filings by service providers to identify themselves for HAC complaints should be unnecessary, although links among the FCC's Bureaus' websites may be helpful to consumers seeking to identify service providers.

Conclusion

Adoption of revised benchmarks, flexible quotas and staggered implementation and reporting deadlines will relieve smaller wireless service providers from overly burdensome and unrealistic HAC requirements. Also helpful will be avoidance of mandated features and tiering of HAC handsets and limitation of the definition of multi-band, multi-mode compliant handsets. Streamlining of the OET handset database for HAC ratings searches will assist carriers and consumers in identifying HAC phones, but requiring carriers to reflect that data on their own websites is burdensome without helping ensure access to telephone service by the hearing impaired.

Access to telephone service is best ensured by the availability of HAC phones, which is best assisted by Commission policies designed to promote unobstructed development of HAC phones, with due consideration of the impact of Commission requirements upon smaller carriers.

Respectfully submitted,

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[filed electronically]

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