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
Section 68.4(a) of the Commission's Rules Governing Hearing Aid Compatible Telephones	)	WT Docket No. 01-309
Petition of American National Standards Institute Accredited Standards Committee C63 (EMC) ANSI ASC C63	)	

COMMENTS OF METROPCS COMMUNICATIONS, INC.

MetroPCS Communications, Inc. ("MetroPCS"),[1] by its attorneys, hereby respectfully submits its comments in response to the *Second Report and Order and Notice of Proposed Rulemaking,* FCC 07-192 released November 7, 2007 (the "*NPRM*")[2] in the above-captioned proceeding. The following is respectfully shown:

[1] For purposes of these Comments, the term "MetroPCS" refers to MetroPCS Communications, Inc. and all of its FCC-licensed subsidiaries.

[2] *See In the Matter Amendment of the Commission's Rules Governing Hearing Aid-Compatible Mobile Handsets, Section 68.4(a) of the Commission's Rules Governing Hearing Aid Compatible Telephones, Petition of American National Standards Institute Accredited Standards Committee C63 (EMC) ANSI ASC C6*, Second Report and Order and Notice of Proposed Rule Making, FCC 07-192 (rel. November 7, 2007) ("*NPRM*"), 72 Fed. Reg. 65494 (November 21, 2007).

I. THE COMMISSION SHOULD NOT APPLY ITS PROPOSALS FOR TIER I CARRIERS TO TIER II AND III CARRIERS

In the *NPRM,* the Commission seeks comment on various recommendations regarding the Commission's hearing aid compatibility rules made in the Joint Consensus Plan, a Plan which was developed jointly by industry and representatives for the deaf and hard of hearing community, as well as recommendations in the recent Wireless Telecommunications Bureau Report which assessed the "impact of the hearing aid compatibility rules in achieving greater compatibility between hearing aids and digital wireless phones and that examines the development of new technologies that could provide greater and more efficient accessibility of wireless telecommunications to hearing aid users."[3] The Commission tentatively concludes that (1) it should adopt a number of the recommendations, including the adoption of new M3- and T3-rated handset deployment benchmarks through 2011 for Tier I carriers,[4] (2) the record does not support a change to the Commission's current in-store demonstration requirement for any carrier,[5] and (3) it should adopt a requirement that Tier I carriers offer hearing-aid compatible handsets with different levels of functionality.[6] In addition, the Commission requests "comment regarding the appropriate deployment regime for Tier II/III carriers and other service providers that are not Tier I carriers, which generally were not included within the Joint Consensus Plan's framework."[7]

MetroPCS currently provides wireless broadband personal communications services in a number of major metropolitan areas throughout the United States and is a Tier II wireless

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[3] *See id.* at para. 3.

[4] *See id.* at para. 32.

[5] *See id.* at para. 27.

[6] *See id.* at para. 56.

[7] *See id.* at para. 33.

carrier.[8] Based on its experience, MetroPCS respectfully submits that no additional hearing-aid requirements should be placed on Tier II/III carriers.

The Commission asks commenters to "address whether there is anything inherent in the characteristics of Tier II and Tier III carriers, resellers, and mobile virtual network operators (MVNOs), or other categories of smaller service providers, that would prevent them from meeting either the RF interference reduction or inductive coupling-capable handset numbers and percentages set out . . . for Tier I carriers."[9] The answer is yes. As an initial matter, most Tier II/III service carriers do not carry anywhere near as many different handsets as Tier I carriers. For example, MetroPCS' currently offers 15 unique handsets. This is a substantially smaller number of handsets than the Tier I carriers who may have 2 to 3 or more times the number of handsets being offered by the Tier II/III carriers. As a result of the more limited number of handsets offered by Tier II/III carriers, the alternative benchmarks proposed by the Commission would not work as proposed - as such benchmarks may require Tier II/III carriers to vastly expand their handset lines and have a greater percentage of hearing-aid compatible handsets than the Tier I carriers. In addition, since Tier II/III carriers generally have more limited access to capital, any rule that requires them to increase their product line would take away from their ability to deploy capital to improve their coverage or service. Finally, even if the requirements were translated into percentages, the Tier II/III carriers may suffer because they might be required to limit the number of handsets offered to consumers if they cannot secure the necessary number of hearing-aid compatible handsets. This obviously will not aid consumers. Thus,

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[8] Tier II carriers are non-nationwide wireless radio service providers with more than 500,000 subscribers. Tier III carriers are non-nationwide wireless radio service providers with 500,000 or fewer subscribers. *See In the Matter of Section 68.4(a) of the Commission's Rules Governing Hearing-Aid Compatible Telephones*, Memorandum Opinion and Order, 22 FCC Rcd 7171 at fn. 1 (rel. Apr. 11, 2007).

[9] *See NPRM* at para. 50.

mandating the same number of compatible handsets for Tier II/III carriers as for Tier I carriers would be illogical and indefensible.

Securing compliant handsets over the entire functionality line also is much more difficult for Tier II/III carriers than for Tier I carriers. As the Commission recognized in the *NPRM*, numerous Tier II/III carriers have been granted extensions of "compatible handset deployment deadlines because they were unable timely to obtain compliant handsets in sufficient quantities from manufacturers."[10] The Commission also correctly confirmed that "[b]ecause of market realities, Tier II and Tier III carriers may have more difficulty than Tier I carriers in obtaining handsets."[11] Indeed, Tier II/III carriers have considerably less ability to dictate what handsets and features are available because they purchase substantially fewer handsets from the manufacturers than the Tier I carriers. This inability limits both the number of hearing-aid compatible handsets the Tier II/III carriers could offer as well as the spreading of the hearing-aid compatible requirements over handsets with different levels of functionality. If the Commission mandated additional requirements for Tier II/III carriers, the Commission would be forced to consider numerous waiver requests, much as it did with regards to its prior hearing-aid compatibility regulations. A better approach would be for the Commission to allow the marketplace to dictate the number of hearing aid-compatible handsets that Tier II and Tier III carriers are able to carry.[12]

By establishing additional requirements for Tier I carriers, Tier II/III carriers will be incented, without additional regulation, to provide similar hearing aid-capabilities in order to

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[10] *See id.* at para. 50.

[11] *See id.* at para. 51.

[12] If the Commission is unwilling to allow the marketplace to dictate handset design, then the Commission should impose any such additional requirements solely on the handset manufacturers who have the ability to drive handset design, rather than imposing them on the Tier II/III carriers who do not.

compete effectively with the larger carriers, where they can. The market for mobile wireless services is highly competitive, and it is in the best long-term interests of Tier II/III carriers to match the offerings of Tier I providers, who tend to drive the handset market. If these Tier I carrier offerings are not being matched, it is due to the fact that smaller and regional carriers are having problems obtaining compliant handsets from manufacturers in a timely manner. Notably, the Commission has found that the wireless industry has "effective competition."[13] The robust competition in the wireless service industry, which is matched by substantial competition in the wireless equipment market, has resulted in substantial innovations not only with pricing plans and services but also with new and innovative handsets which are feature rich despite declining prices. This is an outgrowth of the pro-competitive policies the Commission has pursued in a conscious effort to reach a point where free marketplace forces rather than governmental fiat dictates the products and services that are available in the market. For example, MetroPCS and Leap Wireless - - both of whom offer low cost no-signed contract, no termination fee, all-you-can eat wireless services - - are aggressive competitors offering differentiated services. New entrants such as Pocket Phone, Revol and MobiPCS also have emerged and are offering differentiated services. The Commission should not limit the growing competition provided by such Tier II/III competitors by imposing additional burdensome regulations on these smaller carriers -- which will not fix any potential problems, and would hinder the efforts of Tier II/III carriers to compete with the realities of the marketplace.

If the Commission does adopt additional requirements for Tier II/III carriers, it should not impose the same requirements on Tier II/III carriers that apply to Tier I carriers. Because of the more limited number of handsets sold by Tier II/III carriers, as well as the difficulty described

[13] *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, Eleventh Report, FCC-06-142 at para. 2 (rel. Sept. 29, 2006)

above as far as such carriers being able to obtain compliant handsets, any such requirements should be altered for Tier II/III carriers by halving the number of handsets (rounded up to the next whole number) and providing for a percentage alternative. If the Commission decides to adopt deployment targets for Tier II/III carriers, MetroPCS submits that the Commission's tentative conclusions for T3- and M3-rated handsets should be approximately cut in half for such carriers (and rounded up to the nearest whole number). Further, in light of the fact that Tier II/III carriers may have smaller handset line-ups than Tier I carriers, the Commission should also include a percentage alternative to the strict number of handsets requirement. For example, for the Commission's alternative schedule to the 50 percent M3-rated or higher February 18, 2008 deadline,[14] the Commission should adopt a schedule for Tier II/III carriers in accordance with the following:

February 18, 2008 – four M3-rated (or higher) handset models or 50% of handset models offered be M3-rated (or higher)

February 18, 2009 – five M3-rated (or higher) handset models or 50% of handset models offered be M3-rated (or higher)

February 18, 2010 – five M3-rated (or higher) handset models or 50% of handset models offered be M3-rated (or higher)

The 50% level is appropriate for Tier II/III carriers as it allows carriers the flexibility to increase or decrease the size of their handset offerings while at the same time providing a substantial number of M3-rated handsets.

In addition, the Commission tentatively decided to require Tier I carriers to meet the lesser of two requirements for deployment of T3-rated (or higher) handset models.[15] If the

[14] *See NPRM* at para. 44.

[15] *See id.* at para. 47.

Commission decides to adopt deployment targets for Tier II/III carriers, carriers should be able to choose between the lesser of the following alternatives:

(1) February 18, 2008 – 33% of digital wireless handset models are T3-rated (or higher);

or

(2) February 18, 2008 – two T3-rated (or higher) handsets

February 18, 2009 – three T3-rated (or higher) handsets or 20% of digital wireless handset models are T3-rated (or higher)

February 18, 2010 – four T3-rated (or higher) handsets or 25% of digital wireless handset models are T3-rated (or higher)

February 18, 2011 – five T3-rated (or higher) handsets or 33% of digital wireless handset models are T3-rated (or higher)

Again, allowing Tier II/III carriers to meet the requirement either by number of handsets or percentages will allow Tier II/III carriers flexibility on how to meet the requirement given their inability to dictate manufacturer product designed. In addition, although the percentages lead up to 33%, which is the current standard, the percentages proposed are substantial in that the Commission itself has proposed lower standards on the manufacturers of the handsets. The Commission should not impose a higher standard on the Tier II/III carriers than it imposes on the handset manufacturer especially given the lack of control over handset design enjoyed by the Tier II/III carriers. Moreover, for the same market realities described above, Tier II and Tier III carriers should not have to provide access to handsets with different levels of functionality.[16]

The Commission also rightfully found that the live, in-store consumer testing requirements should not be extended to retail outlets not directly owned or operated by wireless carriers or service providers. MetroPCS agrees with those commenters that argue that the Commission lacks the authority to impose such a requirement and that even if it did have such

[16] *See id.* at para. 57.

authority such a requirement would be burdensome and inadvisable. Further, nothing has changed in the wireless marketplace since 2005 which would drive a different result. Although the wireless industry has experienced significant consolidation since 2005, for the most part the consolidation has been of rural carriers by nationwide carriers which have minimal overlap and, as a result, will drive additional carrier owned or operated retail location, not less. In addition, since most wireless carriers operate their own retail outlets or have a business offices in their markets, such a requirement is unnecessary in order for consumer to have access to live, in-store testing. An additional concern of MetroPCS with such a requirement is that it would require MetroPCS to have activated phones available to consumers out of its control - which could potentially lead to fraud. Accordingly, MetroPCS supports the Commission's view that the requirement is not extended beyond carrier owned or operated retail locations.

II. CONCLUSION

The foregoing premises having been fully considered, MetroPCS respectfully submits that the Commission take actions in this proceeding consistent with these Comments.

Respectfully submitted,

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