

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

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

COMMENTS OF T-MOBILE USA, INC.

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COMMENTS OF T-MOBILE USA, INC.

T-Mobile USA, Inc. (“T-Mobile”) respectfully submits these comments in response to the *Second Report and Order and Notice of Proposed Rulemaking* released November 7, 2007 in the above-referenced dockets.¹ The timeliness and importance of this Order are paramount to service providers, equipment manufacturers and consumers with the rapid approach of the February 18, 2008 benchmark deadline.² Hence, it is critical that the Commission resolve and clarify the obligations of service providers and manufacturers with regard to hearing-aid compatibility compliance as expeditiously as possible. The sooner service providers and manufacturers are given a clear mandate on how to meet HAC standards, the faster the objectives of the Joint Consensus Plan

¹ Amendment of the Commission’s Rules Governing Hearing Aid Compatible Mobile Handsets, *Second Report and Order and Notice of Proposed Rulemaking*, 22 FCC Rcd 19670 (2007) (“NPRM”).

² The FCC ordered a 60-day stay of the benchmark rule’s effectiveness to April 18, 2008, pending decision on the proposed rules. Notwithstanding the stay, which T-Mobile supports, expeditious action in advance of the stay’s expiration would benefit the public. *Id.* at ¶¶ 98-99.

signatories, as well as the Commission, can be implemented – that is, to provide better mobile communications services and products to consumers with hearing loss.

I. INTRODUCTION AND SUMMARY

T-Mobile fully supports the Commission’s goal of providing people with hearing loss access to a greater number of wireless devices that are hearing-aid compatible (“HAC”) and works diligently as a wireless service provider to promote it. T-Mobile is proud of its long-standing and active membership in the Alliance for Telecommunications Industry Solutions (“ATIS”), Incubator Solutions Program # 4-Hearing Aid Compatibility (“AISP.4-HAC”),³ which has been instrumental to successful wireless HAC implementation. The wireless industry, including service providers and equipment manufacturers, working together with representatives of consumers with hearing loss developed the Joint Consensus Plan that was filed by AISP.4-HAC in this proceeding.⁴ The Joint Consensus Plan is a model of industry and consumer cooperation toward achieving Commission goals. T-Mobile commends the Commission’s consideration of this landmark Joint Consensus Plan and fully supports the agency’s tentative conclusion to adopt the provisions therein.⁵

T-Mobile urges the Commission to expeditiously adopt the provisions of the Joint Consensus Plan. The provisions outlined in the Joint Consensus Plan represent agreements reached as a result of numerous and comprehensive discussions between industry and consumer representatives over many months. The Plan appropriately

³ T-Mobile has chaired AISP.4-HAC since its inception in 2003. T-Mobile also helped lead the negotiations resulting in the Joint Consensus Plan in its capacity as co-chair of Working Group 10.

⁴ See Supplemental Comments of ATIS, WT Docket No. 06-203 (filed June 25, 2007) (“Joint Consensus Plan”).

⁵ *NPRM* at ¶ 4.

balances the interests of the wireless industry and those of consumers, which were all fully considered and deliberated throughout the process. This balance of goals, objectives, and interests was carefully woven into the fabric and provisions of the Joint Consensus Plan. Therefore, T-Mobile strongly encourages the FCC to adopt the provisions of the Plan in its entirety.

As noted, the rapid approach of the February 18, 2008 benchmark sets the stage and the necessity for quick Commission action. Additional topics beyond the Joint Consensus Plan that were raised in the NPRM, such as HAC for new technologies and equipment used in open platform environments, may present issues that cannot be resolved swiftly. Accordingly, these issues should be deferred until the Commission and the public have adequate time to consider them. T-Mobile urges that the Commission place its primary focus today on adoption of the Joint Consensus Plan in its entirety.

Finally, T-Mobile urges the Commission to (1) refrain from expanding the in-store demonstration requirement to other retail distribution channels that are not owned and operated by service providers, (2) retain the *de minimis* exception and allow it to take into account newer air interfaces and retiring air interfaces, and (3) implement a phase-in of the 2007 ANSI C63/19 standard.

II. THE COMMISSION SHOULD EXPEDITIOUSLY ADOPT THE JOINT CONSENSUS PLAN IN ITS ENTIRETY.

The Commission should expeditiously adopt the Joint Consensus Plan as proposed.⁶ This Plan is the result of input from both industry participants and advocates of consumers with hearing loss. As a result, the proposal addresses the challenges of achieving hearing aid compatibility in a technologically neutral way that promotes

⁶ See generally Joint Consensus Plan.

handsets that are compatible with both acoustic hearing aids and T-coil equipped hearing aids that are used by consumers with the most severe hearing loss.

The Joint Consensus Plan charts a comprehensive and efficient path to greater availability of hearing aid compatible handsets.⁷ ATIS developed a working group that included wireless service providers, equipment manufacturers, and several advocacy groups for consumers with hearing loss. This consensus-driven process produced a proposal that the parties believe will advance hearing aid compatibility and ultimately provide more and better choices for consumers with hearing loss. Because the Joint Consensus Plan represents several tightly integrated rule proposals, as described in more detail below, T-Mobile urges the Commission to adopt the Plan in its entirety.

Modified Benchmarks for M-rated and T-rated handsets. The Joint Consensus Plan proposes specific deployment benchmarks for M-rated and T-rated handsets that will ensure that carriers and manufacturers will be able to provide a variety of devices that operate both in the acoustic coupling and inductive coupling (telecoil) mode.⁸ The Commission should modify its current benchmarks and adopt the exact numerical benchmarks and percentages laid out in the Joint Consensus Plan. The proposed benchmarks in the Joint Consensus Plan will allow industry the necessary flexibility to provide HAC compliant handsets across technology platforms. The Joint Consensus Plan also makes the requirements for T-rated handsets more stringent, which in turn, will “provide valuable benefits to affected consumers with profound hearing loss.”⁹

⁷ See *id.* at 3 (listing the working group membership and participants in the development of the Joint Consensus Plan).

⁸ *Id.* at 6-9.

⁹ *NPRM* at ¶ 48.

The Joint Consensus Plan will not only advance compatibility between hearing aids and handsets, it will do so in a manner that satisfies the Commission’s goal of “promulgat[ing] rules that are as technology-impartial as possible.”¹⁰ As the Plan states, “the current rules did not anticipate and do not adequately address the problems associated with providing HAC across technology platforms.”¹¹ Because some air interfaces have difficulty achieving HAC-compliant devices in all form factors, the industry cannot comply with the current rules on a technology-neutral basis.¹² For the GSM air interface, many of the current regulations either are not technologically achievable or would result in the development of unmarketable products.¹³ GSM service providers face significant technical challenges in developing and deploying products with an M3 or M4 rating due to output power and AWF issues.¹⁴ The Joint Consensus Plan furthers the Commission’s goal of technology-impartial rulemaking through its carefully calibrated proposal that provides an alternative to the February 18, 2008 deadline’s 50 percent rule.¹⁵ The alternative schedule provided in the Plan strikes an appropriate balance between maintaining technological neutrality and ensuring that affected consumers have access to HAC compliant handsets.

¹⁰ *Id.* at ¶ 42.

¹¹ *See* Joint Consensus Plan at 5.

¹² *Id.*

¹³ Comments of the Alliance for Telecommunications Industry Solutions (ATIS) on behalf of ATIS Incubator Solutions Program # 4- Hearing Aid Compatibility, WT Docket 06-203 (filed Jan. 12, 2006) (“ATIS Comments”).

¹⁴ ATIS Comments at 15.

¹⁵ Joint Consensus Plan at 5.

The Joint Consensus Plan also promotes T-coil availability,¹⁶ which will result in a greater variety of handsets for use by consumers with more severe hearing loss.¹⁷ The Commission should adopt the Joint Consensus Plan because it requires both manufacturers and service providers to produce and make available to their customers more handsets that are compatible with hearing aids that are T-coil equipped. The increased benchmarks for HAC-compliant devices with a T3 rating or higher ultimately will provide more options to consumers with T-coil equipped hearing aids.

Product Refresh. The Commission should adopt the Joint Consensus Plan because it will enable consumer access to up-to-date devices through its “product refresh” requirement.¹⁸ The Plan noted that it would be important for people with hearing loss to have access to new, advanced devices.¹⁹ To support this goal, industry “agreed to offer a mix of new and existing models so people with hearing loss have access to the latest technology.²⁰” By adopting a product refresh requirement as described in the Joint Consensus Plan, the Commission will help to ensure that people with hearing loss are offered a variety of handsets that are HAC compliant.

Carrier Product “Tiering”. The Commission also seeks feedback on its tentative conclusion to require Tier I carriers to offer to consumers hearing aid

¹⁶ *Id.*

¹⁷ *Id.* at 5; Mark Ross, *Telecoils and Telephones: the Most Commonly Misunderstood Assistive Listening Device*, available at Hearing Loss Association of America, <http://www.shhh.org/learn/rossteleararticle.asp>; Frequent Questions, HearingLoop.org, http://www.hearingloop.org/fq_preferred.htm (estimating that 30% of hearing aid consumers in the U.S. use T-coils and the percentage is higher among those with more severe hearing loss).

¹⁸ Joint Consensus Plan at 9-10.

¹⁹ *Id.* at 9.

²⁰ *Id.*

compatible handsets with different levels of functionality or “tiering.”²¹ T-Mobile would note that the Joint Consensus Plan proposes that carriers continue to define tiers as part of their annual reports on HAC compliance.²² While T-Mobile supports use of tiering by carriers, it strongly urges that the Commission refrain from formally defining product types and price ranges that are offered to consumers with hearing loss. The fluidity of markets, handset functionalities, and service price levels makes it infeasible to have Commission-defined tiers. Indeed, such a development would be ultimately counterproductive as it may potentially delay or derail efforts by service providers and manufacturers to offer unique products or products with different levels of functionality in the marketplace that may not fall into a pre-defined tier. Instead, tiering information could readily be provided to the Commission in the service provider’s annual status report on HAC compliance, which would provide the public and the Commission all the information needed to determine industry compliance.

Multi-mode Phone Compliance Requirements. The Commission should rule that multi-mode phones are HAC compliant if the phones meet HAC standards on all air interfaces for which there are established standards, even if the handset also operates on one or more additional air interfaces that do not have established standards. The Commission should not adopt its tentative conclusion that multi-mode phones should not be counted as compatible in any mode if they operate over air interfaces for which technical standards have not been established.²³ This tentative conclusion will have the

²¹ *NPRM* at ¶57

²² Joint Consensus Plan at 12.

²³ *NPRM* at ¶ 84.

counter-productive effect of reducing the access of consumers with hearing loss to innovative products that embrace the latest technologies.

III. THE COMMISSION SHOULD RULE ON SEVERAL ADDITIONAL PROPOSALS ADDRESSED IN THE NPRM.

The Commission seeks comment on three other proposals: (1) the in-store demonstration rule, (2) the *de minimis* exception, and (3) the phase-in of the 2007 ANSI standard. The Commission has already developed a record on both the in-store demonstration rule and the *de minimis* exception in the *Hearing Aid Compatibility Reconsideration Order and Further Notice*²⁴ and, as discussed below, neither requirement should be changed. In addition, establishing a reasonable phase-in schedule for the 2007 ANSI standard is critically important as manufacturers need to incorporate new standards into handsets that are currently being designed.

A. In-store demonstrations should not be expanded.

T-Mobile opposed the expansion of in-store demonstrations to independently owned retailers in its Reply Comments to the *Hearing Aid Compatibility Reconsideration Order and Further Notice*,²⁵ on the ground that such a requirement would exceed the Commission's authority and likely would undermine rather than increase access to HAC handsets. We do not believe that there have been any material changes to the marketplace or regulatory environment since 2005 that would militate toward expanding the in-store demonstration requirement to other retail distribution channels that are not owned and operated by service providers.

²⁴ Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones, *Order on Reconsideration and Further Notice of Proposed Rulemaking*, 20 FCC Rcd 11221 (2005).

²⁵ Reply Comments of T-Mobile USA, Inc., WT Docket No. 01-309 (filed Oct. 25, 2005) ("Reply Comments of T-Mobile").

Nothing under the Hearing Aid Compatibility Act or other statutes gives the Commission authority to regulate independent retailers.²⁶ Even if the Commission had such authority, however, expanding the in-store demonstration requirement would not serve the public interest. Because independent retailers offer such a wide array of electronic products, and wireless handsets are only a small subset of their offering, sales clerks do not necessarily have the training or expertise to adequately assist customers with HAC handsets.²⁷ Wireless carriers also would be burdened because carriers would have to provide thousands of demonstration handsets to independent retailers, as well as ensure network coverage at all locations of that independent retailer. To the extent it becomes too costly to sell HAC handsets through independent retailers, a live in-store testing requirement could thwart consumers' access to wireless devices in general, including HAC.

Currently, T-Mobile allows customers to test HAC handsets at retail stores that are owned and operated by the company. In addition, T-Mobile provides an extended period of time for customers purchasing HAC handsets in its owned and operated retail stores to return the handset. These policies allow consumers with hearing loss to find a satisfactory handset through any company owned and operated retail store without necessitating that the Commission extend the in-store demonstration requirement to independent retailers.

²⁶ *See id.* at 2-6 (providing a detailed analysis of the Commission's lack of authority under the HAC Act and § 217 of the Communications Act).

²⁷ *See id.* at 7 (*citing* Comments of the Consumer Electronics Retailers Coalition, WT Docket No. 01-309, at 1 (filed Sept. 26, 2005)).

B. The Commission should retain the *de minimis* exception and allow it to take into account newer air interfaces and retiring air interfaces.

The Commission should retain the current *de minimis* exception that excludes manufacturers and sellers of two or fewer digital wireless handsets from HAC obligations.²⁸ The Commission should also retain its clarification that the *de minimis* exception applies on a per air interface basis. Under this exception, new air interfaces entering the market have the opportunity to develop adequately prior to the imposition of HAC regulatory obligations.²⁹ This exception also facilitates the orderly phase-out of service of air interfaces that are being discontinued. The *de minimis* exception is critical to the industry's ability to promote the innovation of new technologies.

C. The Commission should implement a phase-in of the 2007 ANSI C63/19 standard.

As proposed in the Joint Consensus Plan, the Commission should allow both the 2006 and 2007 versions of the standard to be used for new RF interference and inductive coupling hearing aid compatibility certifications through 2009. Phasing in the new 2007 standard by allowing short-term co-existence of the 2006 standard is essential to avoid unreasonable burdens on equipment manufacturers and on their service provider customers. As the Joint Consensus Plan observes, the 2007 version of the standard is much more stringent than the 2006 version.³⁰ Therefore, a two step phase-in period is necessary to allow manufacturers to build handsets and devices to the new standard.

²⁸ See 47 C.F.R. § 20.19(e).

²⁹ Joint Consensus Plan at 10.

³⁰ *Id.* at 13.

IV. CONCLUSION

The FCC should expeditiously adopt the Joint Consensus Plan. The Plan is a watershed event in the history of Commission regulation of disabilities access issues. It represents the first significant time all parties to an accessibility issue, industry and consumers, have voluntarily come together to seek a comprehensive solution to what had previously been regarded as an intractable problem – how to achieve HAC in a technology-neutral manner that met the feasibility needs of industry while significantly enhancing the HAC handset choices of consumers with hearing loss. The Joint Consensus Plan represents a victory of cooperation over conflict and stalemate – and drives all toward implementing the Commission’s longstanding policy of enhancing access to telecommunications by all Americans with hearing loss, including those with more profound hearing loss. Therefore, T-Mobile urges that the Commission adopt the Plan be expeditiously adopted by the Commission before the February 18, 2008 deadline, and, in any event, no later than the 60-day extended timeframe specified by the Commission in the Order.

To meet this aggressive schedule, T-Mobile also proposes that the Commission defer to one or more future proceedings any other issues from the NPRM that may not appear amenable to rapid resolution. This will preserve the ability of all parties to carefully present relevant information on these difficult matters and will give the Commission sufficient time to review the record compiled and render reasoned decisions.

Finally, T-Mobile urges the Commission to (1) refrain from expanding the in-store demonstration requirement to other retail distribution channels that are not owned and operated by service providers, (2) retain the *de minimis* exception and allow it to take

into account newer air interfaces and retiring air interfaces, and (3) implement a phase-in of the 2007 ANSI C63/19 standard.

Respectfully submitted,

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