

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

In the Matter of)	
)	
Amendment of the Commission's Rules)	
Governing Hearing Aid-Compatible Mobile)	WT Docket No. 07-250
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)	
Accredited Standards Committee C63 (EMC))	
ANSI ASC C63)	
)	
)	
)	

REPLY COMMENTS OF METROPCS COMMUNICATIONS, INC.

MetroPCS Communications, Inc. ("MetroPCS"),¹ by its attorneys, hereby respectfully submits its reply 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 RECORD ESTABLISHED THAT ADDITIONAL REGULATION ON TIER II AND TIER III CARRIERS IS UNNECESSARY FOR THE PROVISIONING OF HEARING AID-COMPATIBLE HANDSETS

In its initial comments, MetroPCS put forth its position that the Commission should not apply additional hearing aid-compatible (“HAC”) handset requirements for hearing aid-compatible handsets on Tier II/III wireless carriers. While MetroPCS is fully committed to making available the most advanced hearing aid-compatible handsets to all consumers, the ability of MetroPCS to do so is adversely affected by its status as a Tier II wireless carrier. As a Tier II carrier, MetroPCS both (1) carries a substantially smaller number of handsets than Tier I carriers, which “may have 2 to 3 or more times the number of handsets” as a Tier II/III carrier,³ and (2) has more difficulty than Tier I carriers in obtaining handsets, especially new models, from manufacturers.⁴ These considerations restrain MetroPCS and other Tier II/III carriers from being able to provide new handset models which are hearing aid-compatible to consumers on the same basis as Tier I carriers. Moreover, as MetroPCS advocated in its comments, the “marketplace should dictate the number of hearing aid-compatible handsets that Tier II and Tier III carriers are able to carry.”⁵ If the Commission establishes additional requirements for Tier I carriers, Tier II/III carriers will be incited by competitive market forces to provide similar hearing aid-capabilities in order to compete effectively with larger providers – as soon as possible. A one-size-fits-all government-established deadline is not required. Moreover, since Tier I carriers compete in almost all areas that have Tier II/III carriers, consumers needing

³ Comments of MetroPCS at 3.

⁴ *Id.* at 4; *see also* Comments of Rural Cellular Association at 2-4. Others, such as the Hearing Loss Association of America and Telecommunications for the Deaf and Hearing, Inc. and the Rehabilitation Engineering Research Center also acknowledge these concerns, even though they suggest a different solution that does not fully capture the market realities faced by Tier II/III carriers. *See infra* at 4.

⁵ Comments of MetroPCS at 4.

hearing aid-compatible handsets will always have a choice of carriers from whom to obtain their desired handset. It is for these reasons that the Joint Consensus Plan should only be applied to Tier I carriers, as was originally intended.⁶ If the Commission does apply any additional requirements upon Tier II/III carriers, such requirements should be substantially different than the requirements applied to Tier I carriers.

Significantly, a number of Tier II/III carriers, and industry groups representing Tier II/III carriers, agree that such carriers should not be subjected to the same requirements as Tier I carriers. For example, the Rural Cellular Association (“RCA”) -- an association comprised of Tier II and III carriers -- states that “marketplace and technical realities make it difficult for manufacturers to produce and small carriers to obtain sufficient supplies of handsets.”⁷ Notably, RCA provides in its comments concrete examples of the difficulties a number of its members have had in attempting to comply with previous hearing aid-compatible handset requirements due to the inability to obtain compatible handsets from manufacturers.⁸ RCA also points out that the “handset market has not changed from that which caused the FCC to adopt higher quotas for Tier I than it did for Tier II/III carriers” for previous hearing aid-compatibility requirements.⁹ RCA points out that in granting relief before, the Commission considered the differences between Tier I and Tier II/III carriers, and rightfully established different benchmarks for such providers.¹⁰ In addition, MTPCS, LLC d/b/a Chinook Wireless (“Chinook”), a Tier III carrier, notes that its vendors told it that “they expect they will not have

⁶ As the Commission acknowledged in the *NPRM*, the Joint Consensus Plan was only designed for Tier I carriers, and only contains deployment deadline rule changes for Tier I carriers. *See NPRM* at para. 50.

⁷ Comments of RCA at 2.

⁸ *Id.* at 3.

⁹ *Id.* at 4.

¹⁰ *Id.*

sufficient complaint handsets to support all carriers' needs to meet the new requirements on time."¹¹ Chinook also points out that because small, rural carriers are unable to obtain immediate access to new handsets, "it will be difficult or impossible for these carriers to comply with the HAC requirements unless they dramatically restrict the amount of handsets they offer to customers – in other words, reducing offerings, decreasing customer choice."¹²

Significantly, none of the carriers which commented in support of the adoption of the Joint Consensus Plan recommend or support the application of the Joint Consensus Plan's new Tier I regulations to Tier II/III carriers.¹³ A very small number of non-carrier commenters in this proceeding do suggest that the Joint Consensus Plan should apply to Tier II/III carriers as well. However, their comments do not reflect an accurate understanding of the wireless marketplace. For example, the Hearing Loss Association of America ("HLAA") and Telecommunications for the Deaf and Hard of Hearing, Inc. ("TDI") submit that it should be up to "Tier II and III carriers to place orders for phones sufficiently in advance of the time needed to meet the benchmarks and . . . up to manufacturers to ensure they can supply all carriers of all Tiers in a timely fashion."¹⁴ And while, the Rehabilitation Engineering Research Center on Telecommunications Access acknowledges that Tier II/III carriers are dependant on manufacturers, it only proposes giving such carriers an additional 6 week to 3 month staggered deadline for compliance.¹⁵ MetroPCS appreciates the fact that these comments are intended to advance the causes of the hearing impaired, but, unfortunately they do not adequately take into consideration the market realities

¹¹ Comments of Chinook at 2.

¹² *Id.* at 2.

¹³ *See* Comments of Alliance for Telecommunications Industry Solutions; *see also* Comments of AT&T, Inc; Comments of T-Mobile USA, Inc.

¹⁴ Comments of HLAA and TDI at 3.

¹⁵ Comments of Rehabilitation Engineering Research Center on Telecommunications Access at 5.

that Tier II/III carriers face.¹⁶ As noted above, Tier II/III carriers purchase substantially fewer handsets than Tier I carriers, and thus have less ability to dictate what handsets and features are available to them.¹⁷ The adoption of an arbitrary phase-in period of 3 months for Tier II/III carriers as suggested by HLAA and TDI will not solve this problem either, as a phasing-in period that applies the same numerical benchmarks to Tier II/III carriers as to Tier I carriers would force Tier II/III carriers, to the extent even possible, to vastly increase their handset lines and have a greater percentage of hearing aid-compatible handsets than Tier I carriers. Indeed, even if a percentage benchmark was adopted, Tier II/III carriers could be forced to reduce their handset lines in order to come into compliance. None of these options would be in the public interest, particularly since HLAA and TDI acknowledge that “Tier II and III carriers are dependent on distribution of supplies from manufacturers who put priority on their large customers.”¹⁸ Due to the competitive pressures this priority creates, by applying the Joint Consensus plan to Tier I carriers, Tier II/III carriers will be incented to provide hearing aid compatible handsets once they are made available to them – without additional regulations, or arbitrary deadlines set by governmental fiat.

However, if the Commission does choose to adopt additional deployment deadlines for Tier II/III wireless carriers, the Commission should adopt the revised schedule proposed by

¹⁶ A failure to comply with Commission rules is a serious issue. In addition to the fines and forfeitures the Commission could impose, many financing arrangements that Tier II/III carriers have require such carriers to remain in compliance with Commission rules. As such, such carriers may find themselves in default under their existing financing arrangements which could limit additional financings and could require acceleration of payment.

¹⁷ Indeed, in many instances, the Tier I carriers negotiate exclusivity arrangements for new handsets. If the Commission requested the Tier II/III carriers to have these handsets but they could not be obtained because of the Tier I carriers, Tier I carriers could use this as a way to block Tier II/III compliance. Of course, one solution could be for the Commission to prohibit handset manufacturers from agreeing to exclusivity on new handsets which meet HAC requirements.

¹⁸ Comments of HLAA and TDI at 3.

MetroPCS and RCA. As noted previously by MetroPCS, “[b]ecause of the more limited number of handsets sold by Tier II/III carriers, as well as the difficulty described 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.”¹⁹ A similar proposal was submitted by RCA, although RCA’s proposal included a one year extension to accommodate the “lag times of availability to smaller carriers of new handset models.”²⁰ As an alternative schedule to the existing 50 percent M3-rated or higher February 18, 2008 deadline,²¹ 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)

If the Commission decides to adopt deployment targets for Tier II/III carriers, carriers should be able to choose to meet either of the following alternatives:²²

(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

¹⁹ Comments of MetroPCS at 5-6.

²⁰ Comments of RCA at 4-5. MetroPCS supports RCA’s view that a one-year delay would be appropriate for Tier II/III carriers.

²¹ See *NPRM* at para. 44.

²² RCA also submitted a similar proposal for T3-rated handsets, with a one-year compliance extension, as well as only a 15% benchmark in lieu of a 33% benchmark. RCA Comments at 5. For the reasons articulated by RCA, MetroPCS would support a one-year compliance extension as well.

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)

As noted previously by MetroPCS, 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.”²³ 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. Lastly, MetroPCS reiterates that Tier II/III carriers should not have to provide access to handsets with different levels of functionality.²⁴

II. CONCLUSION

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

Respectfully submitted,

MetroPCS Communications, Inc.

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²³ Comments of MetroPCS at 7.

²⁴ See *NPRM* at para. 57.