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™	)	

REPLY COMMENTS OF MOTOROLA, INC.

Motorola, Inc. ("Motorola") respectfully submits these reply comments in response to the Second Report and Order and Notice of Proposed Rulemaking in the above-captioned proceedings ("NPRM") seeking comment on proposed modifications to the Commission's hearing aid compatibility ("HAC") requirements for mobile handsets.[1] As further discussed below, the record in this proceeding demonstrates the widespread support for the Joint Consensus Plan, and Motorola urges its expeditious adoption by the Commission. Motorola also offers further comment on proposals it believes should not be adopted at this time.

Twenty comments were filed in response to the NPRM with the majority supporting the adoption of the Joint Consensus Plan.[2] Like Motorola, these commenters

[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 (Nov. 7, 2007) ("*NPRM*").

[2] *See, e.g.*, Comments of the Alliance for Telecommunications Industry Solutions ("ATIS"); Comments of AT&T, Inc. ("AT&T"); Comments of the Hearing Loss

recognize the tremendous effort and collaboration that went into the creation of this plan and stress the importance of adopting the Joint Consensus Plan in its entirety, with great care taken regarding modifications to individual elements of the plan. In particular, Motorola notes that the revised technical standard, modified manufacturer requirements and proposed reporting requirements all received widespread support by commenters in this proceeding.

Although Motorola again urges the Commission to adopt the Joint Consensus Plan, it highlights four proposals made by commenters that the Commission should not adopt at this time. The *de minimis* exception should not be tightened or limited, as doing so would stifle innovation and experimentation. The proposed M4/T4 requirements for handset manufacturers are inappropriate and are not currently needed to ensure that consumers with hearing loss have access to current wireless handset technology. The Commission should not prohibit handsets from being compliant if they utilize an air interface for which standards have not been developed. Finally, the Commission should not impose its HAC rules on unlicensed devices at this time.

I. **COMMENTERS IN THIS PROCEEDING UNIVERSALLY SUPPORT EXPEDITIOUS ADOPTION OF THE JOINT CONSENSUS PLAN.**

As demonstrated by the record in this proceeding, the Joint Consensus Plan has received widespread support by handset manufacturers,[3] service providers,[4] and

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Association of America and Telecommunications for the Deaf and Hard of Hearing, Inc. ("HLAA/TDI"); Comments of Nokia, Inc. ("Nokia"); Comments of the Rehabilitation Engineering Research Center on Telecommunications Access ("RERC-TA").

[3] Comments of Motorola; Comments of Research In Motion Limited ("Research In Motion"); Comments of Nokia; Comments of Sony Ericsson Mobile Communications.

[4] Comments of AT&T; Comments of T-Mobile USA, Inc. ("T-Mobile").

organizations representing the interests of people with hearing loss.[5] For this reason, the Commission should promptly adopt the Joint Consensus Plan.

Motorola notes the widespread support for the modified manufacturer requirements. As illustrated by the record, this modification (imposing more stringent inductive coupling compatibility requirements while relaxing acoustic coupling compatibility requirements) strikes an appropriate balance between making sure people with severe hearing loss have access to a greater number of T-mode phones while providing the industry with needed flexibility.[6] Furthermore, as noted by commenters, "[c]onsumers are able to find adequate numbers of compliant phones in the M mode, and the CDMA interface is exceeding current requirements."[7] Therefore, the proposed trade-off is both fair for manufacturers and beneficial for consumers.

Commenters also overwhelmingly support the new 2007 ANSI C63.19 Technical Standard. This new standard "reflects changes in technology and efficiencies and improvements in testing procedures."[8] By implementing the 2007 standard while allowing for a phase-out of the existing technical standard, the Commission will ensure a smooth transition to the 2007 standard and the rapid deployment of compliant technologies. As noted by Research In Motion, "[t]he Joint Consensus Plan's phase-in proposal strikes the right balance between spurring the development of an increasing number of products conforming to the new HAC technical standards, without unfairly

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[5] Comments of HLAA/TDI; Comments of RERC-TA.

[6] Comments of Motorola at 5; Comments of HLAA/TDI at 2.

[7] Comments of HLAA/TDI at 2.

[8] Comments of Nokia at 3.

penalizing older products on their way out of the market."[9] Although Motorola recognizes the importance of regularly updating the technical standard for hearing aid compatibility, it reiterates that the Commission should use the public notice process in enacting new technical standards.[10]

Finally, Motorola highlights the widespread support for the Joint Consensus Plan's proposed reporting requirements.[11] These requirements "were the product of joint industry-consumer group collaboration and reflect an appropriate level of information that will promote the Commission's stated objectives for these reports."[12] Motorola again notes, however, that the Commission's proposed permissive change requirements undermine the goals of annual reporting, and that they are needlessly burdensome in light of the requirements proposed in the Joint Consensus Plan.[13]

II. SEVERAL COMMENTERS' PROPOSALS WOULD NOT BE IN THE PUBLIC INTEREST.

A. The De Minimis Exception Should Not Be Tightened or Eliminated as Proposed by Several Commenters.

Some commenters, such as the Rehabilitation Engineering Research Center on Telecommunications Access, argued that limitations should be placed on the current *de minimis* exception, and that it should not be applied on a permanent basis for all handset

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[9] Comments of Research In Motion at 12.

[10] Comments of Motorola at 9.

[11] Comments of ATIS at 8; Comments of AT&T at 5; Comments of HLAA/TDI at 3-4; Comments of Nokia at 4-5.

[12] Comments of the Telecommunications Industry Association at 12.

[13] *See* Comments of Motorola at 6-7.

manufacturers.[14]

The *de minimis* exception was designed to promote innovation and encourage experimentation by new and existing manufacturers in new air interfaces.[15] The *de minimis* exception has proven extremely successful in fostering innovation and market entry by new participants. In 2005, Research In Motion successfully argued that the *de minimis* exception should apply on a per air interface basis, an action which enabled them enter the market for voice telecommunications.[16] In granting the RIM petition, the Commission stressed its intention that the *de minimis* exception promotes competition and market entry by new manufacturers.[17] For this reason, the Commission correctly concluded that the record did not support a narrowing of the *de minimis* exception.

Despite the success of the *de minimis* exception, certain commenters now object to its widespread application because of the success of the Apple iPhone. These commenters believe that because new market entrants such as Apple and Google may never produce additional models, they will never leave the *de minimis* category despite

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[14] Comments of RERC-TA at 11-12.

[15] *See 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, ¶ 53 (2005) ("*Reconsideration Order*") ("We agree that the *de minimis* exception could be interpreted as requiring all digital wireless carriers, service providers and handset manufacturers, regardless of size, to either enter the U.S. market with two compliant handsets or not enter the market at all. We do not intend to force RIM or any other similarly-situated digital wireless carrier, service provider or handset manufacturer to potentially either triple its product offering for the iDEN and CDMA air interfaces or withdraw its existing products from the U.S. wireless market. We find that this outcome could have the effect of retarding technological progress and limiting competition.").

[16] *Id.* at ¶¶ 51-53 (2005); Research In Motion Limited, Petition for Reconsideration, WT Docket No. 01-309 (filed October 16, 2003).

[17] *Reconsideration Order* at ¶ 53.

the companies' significant resources.[18]

The narrowing of the *de minimis* exception would have a substantial chilling effect on other new devices, devices which may or may not reach the same level of popularity as the iPhone. Therefore, because commenters' concerns regarding the maintenance of the current *de minimis* exception are unnecessary, the Commission should maintain the exception as it currently stands and not narrow it.

B. **Proposals to Impose M4/T4 Requirements on Wireless Handset Manufacturers Should Not Be Considered At This Time.**

In their comments, both the Hearing Industries Association and Wireless RERC suggest that the Commission consider expanding its rules to increase the number of handset models available with M4/T4 compatibility.[19] As the Hearing Industries Association correctly noted, such performance is not reasonably achievable by the wireless industry at this time. It is Motorola's view that expanding the current rules to include an increased number of M4/T4 handsets is neither in the spirit of the original Order nor is it consistent with the design of the ANSI C63.19 standard. In both, HAC was envisioned to involve hearing aid immunity as well as mobile phone emission limits, with an equally distributed responsibility to provide appropriate solutions for compatible operation. This model is how the standard is intended to operate, is appropriate, and should not be changed.

Further, prior research performed in collaboration with ATIS AISP.4 HAC, which substantially contributed to the definition of existing ANSI C63.19 limits, did not

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[18] Comments of RERC-TA at 12-13.

[19] Comments of Wireless RERC at 5; Comments of the Hearing Industries Association at n. 2.

accurately reflect or anticipate the significant increase in immunity of current hearing aids. A more accurate reflection of current hearing aid immunity was demonstrated at the last ANSI ASC C63 meeting with the help of HIA representatives. For this reason, the current emission limits for mobile phones are likely more conservative than initially intended, further mitigating the need to mandate more conservative M4/T4 emission limits. More controlled research coordinated through ANSI ASC C63 should clarify whether this is the case. In any event, it would be inappropriate to change the Commission's HAC rules for minimal requirements on the handsets until this research is completed and evaluated.

C. **The Commission Should Not Prohibit Handsets From Being Compliant if They Utilize An Air Interface For Which Standards Have Not Been Developed.**

In its initial comments, Motorola urged the Commission not to mandate that a handset meet HAC requirements in all operational air interfaces to be counted as HAC compliant, even prior to the adoption of HAC standards for particular air interfaces.[20] As detailed by many commenters in this proceeding, such an approach would create many disincentives to introduce new technologies into the market.[21] Sony Ericsson correctly noted that "this approach raises very serious public policy questions about the Commission's support for the introduction of new technologies."[22]

Furthermore, as noted by Research In Motion, the Commission lacks the authority to promulgate such a regulation. Subsection (b)(1) of the HAC Act requires "established

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[20] Comments of Motorola at 7-8.

[21] Comments of ATIS at 10-11; Comments of Nokia at 7-8; Comments of Research In Motion at 15-16.

[22] Comments of Sony Ericsson Mobile Communications at 5-6.

technical standards" for the imposition of a HAC requirement.[23] Because this rule applies with equal force to wireless and wired phones, under the proposed rule the Commission would be enforcing the imposition of a HAC requirement on handsets in the absence of "established technical standards" for the non-regulated bands and interfaces. Motorola agrees with Research In Motion's conclusion that the Commission lacks the authority to adopt its proposed multi-mode handset rule.

D. **The Commission Should Not Impose HAC Requirements on Unlicensed Devices At This Time.**

Commenters in this proceeding have debated whether or not the Commission should extend its HAC rules to handsets that operate on unlicensed WiFi networks, with some arguing that any device used for voice communication should be regulated by HAC.[24] Motorola urges the Commission not to impose HAC requirements on unlicensed devices at this time, as commenters supporting the imposition of HAC rules on unlicensed devices ignore the serious risks of taking action at such an early and premature stage. First, to impose HAC rules on WiFi or VoIP at this stage would give

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[23] 47 U.S.C. § 610(b)(1) ("The Commission shall require that . . . (A) all essential telephones, and (B) all telephones manufactured in the United States (other than for export) more than one year after the date of enactment of the Hearing Aid Compatibility Act of 1988 or imported for use in the United States more than one year after such date, provide internal means for effective use with hearing aids that are designed to be compatible with telephones which meet *established technical standards for hearing aid compatibility*.") (emphasis added). By establishing HAC rules for wireless devices, the Commission has brought CMRS services within the realm of Subsection (b)(1) of the HAC act.

[24] *See, e.g.*, Comments of the Hearing Industries Association at ¶ 8 (defining a telephone as any device that may be used to make voice calls and arguing that unlicensed voice devices should be subject to HAC regulation); Comments of Nokia at 7 (stating that there is no evidence that unlicensed technologies inhibit the ability of consumers with hearing aids to use wireless handsets, and asserting that the imposition of HAC requirements on unlicensed devices could have long-ranging negative implications); Comments of Research In Motion at 20-21 (stating that the integration of WiFi networks with CMRS is in its infancy and thus regulation is premature).

manufacturers insufficient notice and lead time to modify their technologies accordingly. Furthermore, addressing these technologies now could unnecessarily delay the adoption of the Joint Consensus Plan.[25]

There is currently no evidence that new technologies, such as those used by unlicensed devices, inhibit the ability of consumers with hearing loss to use wireless handsets.[26] Thus, the imposition of HAC rules on these technologies is premature and inappropriate. As Sony Ericsson correctly stated, the application of HAC rules to unlicensed devices is "potentially unnecessary"[27] and constitutes "regulations for the sake of regulating."[28] Such action by the Commission is improper and will not advance its policy goals with regard to hearing aid compatibility.

III. **CONCLUSION**

In recent years, the wireless industry has made great progress in the area of HAC, and this progress will continue as long as there is ongoing discussion among participants in the industry and experts on hearing loss. Motorola continues to work with standards-setting groups and hearing loss advocates to ensure that consumers with hearing loss continue to have access to a variety of wireless technologies and services. In support of this goal, Motorola urges the rapid adoption of the Joint Consensus Plan, as well as the incorporation of suggestions made by Motorola in the record in this proceeding. In doing

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[25] Comments of Nokia at 6.

[26] *Id.*

[27] Comments of Sony Ericsson Mobile Communications at 9.

[28] *Id.* at 8.

so, the Commission will ensure that the wireless industry may continue to efficiently and effectively serve consumers with hearing loss.

Respectfully submitted,

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January 7, 2008