

**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 of Accredited Standards Committee C63 (EMC) ANSI ASC C63™)	
)	
)	

REPLY COMMENTS OF T-MOBILE, USA INC.

T-Mobile USA, Inc. (“T-Mobile”) respectfully submits these reply comments in response to the *Second Report and Order and Notice of Proposed Rulemaking* released in the above-referenced dockets.¹ As detailed in its initial comments, T-Mobile fully supports the Commission’s goal of providing consumers access to a greater number of wireless devices that are hearing-aid compatible (“HAC”). T-Mobile is proud of its long-standing commitment to promoting hearing aid compatibility and urges the Commission to modify its HAC regulations as discussed herein.

As an initial matter, the FCC should expeditiously adopt the Joint Consensus Plan² in its entirety. With the rapid approach of the February 18, 2008, benchmark

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*”). All comments submitted in response to this *NPRM* are short-cited herein.

² Supplemental Comments of ATIS, WT Docket No. 06-203 (filed June 25, 2007) (“*Joint Consensus Plan*”).

deadline, it is critical that the Commission resolve and clarify the obligations of service providers and manufacturers with regard to hearing-aid compatibility compliance as soon as possible. To the extent the other issues raised in the *NPRM* cannot be resolved swiftly, the Commission should defer consideration of these issues until a later date when the Commission and the public have adequate time to fully consider them.

In addition, the Commission should defer at this time calls for modifications to its rules beyond those set forth in the Joint Consensus Plan. In particular, the Commission should rule that multi-mode handsets are HAC compliant when they are compliant on air interfaces for which there are established standards. The Commission also should retain the *de minimis* exception in its current form as a means of fostering innovation. Finally, the Commission should refrain from extending its in-store testing requirements or adopting guidelines for in-store demonstrations because consumers clearly have full access to HAC handsets and can test them in carrier owned and operated stores. Without substantiated evidence to the contrary, additional FCC requirements in this regard are unwarranted.

I. THE RECORD IN THIS PROCEEDING DICTATES EXPEDITIOUS ADOPTION OF THE JOINT CONSENSUS PLAN.

The vast majority of commenters in this proceeding support adoption of the Joint Consensus Plan, as drafted in its entirety, in the near term because it will result in consumers with hearing loss having increased access to wireless devices. As noted by the Alliance for Telecommunications Industry Solutions (“ATIS”), the Joint Consensus Plan “present[s] a win-win solution for all interested parties and, if fully adopted, will achieve improved wireless services for consumers with hearing loss through increased

access to hearing aid compatible handsets.”³ Similarly, the Rehabilitation Engineering Research Center on Telecommunications Access (“RERC-TA”) stated that the Joint Consensus Plan “effectively modifies the planned roll-out of HAC compliant telephones in a technologically neutral manner that will improve the availability of telecoil-compatible handsets for people who rely on telecoil coupling.”⁴ For these and all of the other reasons raised by T-Mobile and other commenters in this proceeding, T-Mobile urges the Commission to adopt the Joint Consensus Plan.

In doing so, the Commission should adopt the Joint Consensus Plan in its entirety. As many commenters noted, the Joint Consensus Plan is the result of “extensive meetings of industry and consumers working together to come to consensus”⁵ and “reflects the input of all interested constituencies.”⁶ The result of this extensive process was a series of several tightly integrated rule proposals, all of which are essential to achieving the benefits of the proposal. Any deviation from this plan would threaten the delicate balance and many public benefits achieved by this compromise.⁷

³ ATIS Comments at 1.

⁴ RERC-TA Comments at 3. *See also* AT&T Comments at 3 (stating that “[w]hile the record in this proceeding underscores that GSM/UMTS service providers (like AT&T) and manufacturers face technology-specific compliance challenges under present circumstances, the Joint Consensus Plan addresses these difficulties, while also ensuring that hearing aid users have meaningful handset choices across competing wireless carriers.”); Research In Motion Comments at 6 (stating that “[t]he Joint Consensus Plan takes account of technical realities challenging manufacturers in acoustic coupling modes, while at the same time expanding consumers’ choices for new models of hearing-aid compatible handsets...and for compatible handsets in inductive coupling (T-coil) modes.”).

⁵ HAAA Comments at 2. *See also* AT&T Comments at 2 (stating that the Joint Consensus Plan “was the result of unprecedented collaboration between the disabilities community and the wireless industry.”).

⁶ Motorola Comments at 2. *See also* Nokia Comments at 2 (stating that the Joint Consensus Plan is a “carefully negotiated and structured compromise.”).

⁷ *See* Nokia Comments at 2. *See also* Sony Ericsson Mobile Communications Comments at 3 (stressing that “[d]ue to the complex and interconnected nature of the HAC rules proposed under the Joint Consensus Plan...[the proposal] is a complete plan, and any changes to the Plan should be closely reviewed by the

Expeditious adoption of the Joint Consensus Plan is essential to ensuring consumers and industry receive adequate guidance in advance of the upcoming February 2008 HAC deadline. If issues raised in the *NPRM* cannot be resolved swiftly, the Commission should defer consideration of these other issues until a future date when the Commission and the public have adequate time to consider them.

II. CERTAIN COMMENTER PROPOSALS THAT GO BEYOND THE JOINT CONSENSUS PLAN ARE WITHOUT MERIT AND THEIR ADOPTION WOULD BE COUNTERPRODUCTIVE TO THE COMMISSION'S UNDERLYING GOALS IN THIS PROCEEDING.

As detailed above, adoption of the Joint Consensus Plan will promote the availability of HAC-compliant devices. Several commenters in this proceeding, however, put forth proposals that go beyond the Joint Consensus Plan. For the reasons detailed below, adoption of these proposals is unnecessary and would undermine the Commission's goals of ensuring consumers with hearing loss have access to a variety of HAC-compliant wireless devices.

A. The Commission should reject proposals that would defer or delay consumers with hearing loss from taking advantage of benefits of multi-mode phones.

Several commenters assert that the Commission should prohibit carriers and manufacturers from labeling multi-mode devices as HAC-compliant if they utilize an air interface for which HAC standards have not been developed.⁸ In making these proposals, commenters assert that this approach is necessary to ensure consumers are fully informed and not confused by a device's labeling as HAC-compliant when one of the air interfaces

Commission prior to acceptance and adoption."); Motorola Comments at 3. (stating that "a change to any single element [of the Joint Consensus Plan] could render the remaining elements unacheivable.").

⁸ See HIA Comments at ¶ 7; RERC-TA Comments at 14.

over which it operates does not have a standard under which HAC compliance can be measured.⁹

Adoption of this proposal would have the counter-productive effect of reducing the hearing loss community's access to innovative products that embrace the latest technologies.¹⁰ Standards development and implementation is a lengthy process that requires extensive study by industry participants, negotiation among all the players, and ultimately design and development of handsets by manufacturers. During this time, consumers with hearing loss would be discouraged from utilizing devices that may be HAC-compliant on air interfaces for which standards have been developed solely because a standard has not been developed for other incorporated air interfaces.

These devices, however, could provide many benefits to consumers with hearing loss. For example, a HAC-compliant GSM/Wi-Fi multi-mode device could provide consumers with hearing loss the ability to utilize data services over Wi-Fi while also allowing them to use the carrier's GSM voice service when necessary. Indeed, the consumer may even be able to utilize voice services over Wi-Fi as there is no substantiated evidence indicating that Wi-Fi handsets cause interference to hearing aids. Under the proposed approach, however, it is unlikely that a consumer with hearing loss

⁹ See RERC-TA Comments at 14 (noting that consumers who purchase handsets labeled as HAC have an expectation that such phones will be compatible in all their operations); HIA Comments at ¶ 7 (stating that it is unreasonable to require hearing aid users to be sufficiently sophisticated in electronics to analyze what is behind the M/T rating on a handset box and to understand the differences among various frequency bands and operating modes).

¹⁰ See, e.g., Motorola Comments at 8 ("The unfortunate result [of this proposal] would be to penalize manufacturers and carriers for introducing new technologies simply because they have no formal means to measure potential interference."); RIM Comments at 16 ("Such a rule would unfairly penalize manufacturers for the typically lengthy timelines inherent in the work of standards-setting processes [and] create a significant disincentive to the introduction of new technologies to market, automatically rendering them HAC non-compliant.").

would be willing even to try such a multi-mode device to determine if it is capable of meeting his or her needs.

Rather than discouraging consumers with hearing loss from utilizing multi-mode phones that are hearing aid compatible on various CMRS frequencies, the Commission should ensure consumers with hearing loss have adequate information to make informed decisions about which wireless devices will meet their needs.

B. The Commission should not further limit the *de minimis* exception.

A couple of commenters also encourage the Commission to limit to whom the *de minimis* exception may apply. For example, the Hearing Loss Association of America and Telecommunications for the Deaf and Hard of Hearing (“HLAA”) urge the Commission to “further limit[the *de minimis* exception] when large business concerns only produce one or two mobile phones, but those phones have mass appeal and are distributed nationwide.”¹¹ Similarly, the RERC-TA asserts that “some limit to the *de minimis* exception is in order” for large and prosperous companies that do not plan to introduce three or more handset models into the market.¹² These commenters argue that the *de minimis* exception was intended to only apply to manufacturers and service providers that have a “small presence” in the market and that larger companies have the financial and logistical resources necessary to meet the Commission’s HAC requirements.¹³

¹¹ HLAA Comments at 6.

¹² RERC-TA Comments at 13-14.

¹³ HLAA Comments at 6; RERC-TA Comments at 12-13.

The Commission should reject these calls to limit the *de minimis* exception as they directly contravene the purpose of the exception.¹⁴ The *de minimis* exception was designed to foster the introduction of new products and new entrants into the market. Specifically, the *de minimis* exception has allowed both new entrants and existing market participants to experiment with a number of new air interfaces and devices to determine their commercial viability prior to the imposition of costly and complicated HAC regulatory obligations.¹⁵ Thus, contrary to these commenters' assertions, this exception was not designed to apply only to small entities with limited financial resources. Indeed, the *de minimis* exception helped companies like RIM successfully enter the market. RIM now offers HAC compliant devices. If the Commission limits the *de minimis* exception, the result will be to discourage the introduction of new devices and air interfaces by both large and small entities.

C. The Commission should not expand the in-store demonstration requirement.

HLAA urges the Commission to extend in-store testing requirements to independent retailers.¹⁶ In support of this request, HLAA asserts that “[t]his is necessary in order to level the playing field for different types of retailers, and most importantly to give consumers choice about where to shop for phones.”¹⁷ This request, however,

¹⁴ See, e.g., RIM Comments at 18; AT&T Comments at 6 (“the current rule...enables service providers to more efficiently transition new innovative technologies into their inventories and to discontinue legacy technologies”); Nokia Comments at 6 (“the *de minimis* exception allows manufacturers to experiment with new air interfaces and technologies that are new to them”).

¹⁵ Joint Consensus Plan at ¶ 10.

¹⁶ See HLAA Comments at 5.

¹⁷ *Id.*

ignores the reality in which wireless handsets are offered for sale by independent retailers.

As detailed by many commenters in this proceeding, the extension of in-store testing to independent retailers would be unduly burdensome and impractical.¹⁸ In many situations, the location and size of independent retailers make in-store testing not feasible.¹⁹ Independent retailers also often lack adequate staff to ensure consumers with hearing loss receive the full attention necessary.²⁰ In addition, wireless carriers, not independent retailers, are experts on the technical capabilities their devices offer. Carriers, however, have no control over the information that is passed onto consumers by independent retailers during HAC testing, a process that can be relatively complicated. Finally, this proposal overlooks the overall public good that results from consumers being able to purchase wireless devices at a wide variety of venues. If such a regulation is imposed on independent retailers, fewer retailers will even offer wireless handsets. Accordingly, T-Mobile encourages the Commission to continue to require in-store testing only at carrier-owned and operated outlets. This approach will ensure all consumers receive the best, most informed service possible.

¹⁸ *See, e.g.*, RadioShack Comments at 2-3; T-Mobile Comments at 8-9. The FCC also lacks authority to impose in-store testing requirements on independent retailers. *See, e.g.*, T-Mobile Comments at 9 (“Nothing under the Hearing Aid Compatibility Act or other statutes gives the Commission authority to regulate independent retailers.”); CERC Comments at 2-4 (“the Commission’s delegated authority does not extend to retailers when they are not engaged in communication by wire and radio.”).

¹⁹ *See* RadioShack Comments at 3 (noting that it operates hundreds of kiosks in malls, airports, truck stops, and other locations which are on average 100 square feet and located in areas with poor wireless coverage).

²⁰ *Id.* at 2-3 (stating that its stores have only two to four sales associates on duty at any one time).

HLAA also asks the Commission to adopt guidelines for handling in-store testing by consumers.²¹ Specifically, HLAA asks that these guidelines include spending more time with consumers with hearing loss, knowing which phones are HAC-compliant, having reference information handy or knowing where it can be accessed on the web, allowing the consumer to try more than one phone in the store, having sales representatives learn communication techniques, permitting appointments to be scheduled at times when phones will be available for testing, being set up to enable the placing of a real call, and using the phone evaluation tool that is being developed by the RERC.²²

Such micro-management of in-store testing is wholly unnecessary and inappropriate. Carriers have the business incentive to serve all of their customers, including those with hearing loss. Indeed, many carriers, including T-Mobile, already offer consumers with hearing loss many of the services identified by HLAA. Carriers, however, must have the flexibility to serve their customers in the best way possible. Thus, the Commission does not need to, and should not, interfere by regulating in-store demonstrations further.

III. CONCLUSION

For these reasons, the Commission should expeditiously adopt the Joint Consensus Plan in its entirety. The sooner service providers and manufacturers are given a clear mandate on how to meet HAC standards, the faster the goal of the Commission to achieve hearing-aid compatibility can be realized. If the Commission cannot rule swiftly

²¹ HLAA Comments at 4-5.

²² *Id.*

on all of the issues raised in the *NPRM*, the Commission should bifurcate the proceeding and quickly adopt the Joint Consensus Plan.

Respectfully submitted,

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