
Before the
Federal Communications Commission
Washington, DC 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 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™)

To: The Commission

REPLY COMMENTS OF AT&T INC.

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SUMMARY

There is uniform support among industry commenters and consumer groups for the Joint Consensus Plan, notably relating to the new handset offering benchmarks and deadlines, the 2007 version of the C63.19 industry standard, and reporting requirements. The record in the initial comments supports prompt Commission action, as well as deferred consideration of issues not addressed in the Joint Consensus Plan, including an M4/T4 mandate and volume control.

Industry and consumer groups broadly support the Joint Consensus Plan's carrier "tiering" requirements, which leave the defining of tiers to industry. Further Commission-imposed requirements beyond those proposed in the Joint Consensus Plan, including specific requirements regarding disclosure of tiering methodology, are unnecessary and inappropriate.

The Commission should maintain the *de minimis* exception, as proposed in the Joint Consensus Plan, to ensure that the rules do not undermine handset innovation and competition. Contrary to the arguments of consumer groups, who express concern for the iPhone, the Commission's original 2003 *Report and Order* and the 2005 *Order on Reconsideration* demonstrate that the exception was not adopted solely out of concern for the impact of the HAC rules on small manufacturers and carriers, but also out of concern for the innovative and competitive offerings other manufacturers who offer a limited number of handset models in the U.S. market. Finally, the Commission should ensure that its HAC rules do not inadvertently deter the introduction of new technologies that may have tangible benefits for other market segments, including persons with disabilities other than hearing impairment.

The Commission should not adopt its proposed requirements for multi-mode handset certification, which was not part of the Joint Consensus Plan and could unnecessarily preclude HAC certification for certain models. The 2007 version of the C63.19 standard is being expanded to accommodate new bands and air interface protocols. This proposal is at best premature and at worst could inhibit or delay the introduction of innovative technologies and undermine carriers' own compliance efforts.

AT&T agrees with the substantial number of commenters who emphasize that service providers and manufacturers require flexibility with respect to outreach obligations and that there can be no "one-size-fits-all" requirements, given the wide variety of retail operations consumers may experience (*e.g.* retail store, independent or "big box" store, online, mall kiosk). Many of the specific proposals suggested by the Rehabilitation Engineering Research Center on Telecommunications Access ("RERC-TA") and Hearing Loss Association of America/Telecommunications for the Deaf, Inc. ("HLAA/TDI") have merit, but should be deemed potential "best practices" to be worked out between industry and consumer groups, not mandates. Regarding the HAC Incubator Working Group 6 brochure, carriers should be expected to provide the relevant information on request, but they require flexibility in the manner in which this information is made available to customers. Similar flexibility is required with respect to in-store testing and customer care practices, as well as website information – although in no event should carriers be required to post HAC information for handsets that are not certified as M3/M4 or T3/T4.

Terrestrial-capable MSS/ATC handset devices should be subject to HAC requirements and deadlines. Such Commission action should not delay prompt approval of the Joint

Consensus Plan, but as MSS providers actively pursue ATC authorization and deployment, the Commission's statutory obligations and competitive parity compel such action.

Finally, commenters generally support AT&T's view that the Commission should defer issues raised in the *NPRM* concerning emerging technologies and open platforms until a later date. In no event should any Commission action in this area delay prompt implementation of the core Joint Consensus Plan provisions.

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REPLY COMMENTS OF AT&T INC.

AT&T Inc., on behalf of AT&T Mobility LLC and its wholly-owned and controlled wireless affiliates (collectively "AT&T") hereby submits reply comments on the Commission's *Notice of Proposed Rulemaking* in the above-referenced proceedings.¹

I. COMMENTERS UNIFORMLY SUPPORT PROMPT ADOPTION OF THE JOINT CONSENSUS PLAN

AT&T and other industry commenters, as well as consumer groups, uniformly support Commission adoption of the Joint Consensus Plan² submitted by the Alliance for

¹ *In the Matter of Amendment of the Commission's Rules Governing Hearing Aid-Compatible Mobile Handsets, Section 68.4 of the Commission's Rules Governing Hearing Aid Compatible Telephones, Petition of American National Standards Institute Accredited Standards Committee C63 (EMC) ANSI ASC C63™*, Second Report and Order and Notice of Proposed Rulemaking, WT Docket Nos. 07-250 and 01-309, FCC 07-192 (rel. Nov. 7, 2007) ("*Second Report and Order*" or "*NPRM*," as applicable).

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

Telecommunications Industry Solutions (“ATIS”), most notably issues relating to new handset offering benchmarks and deadlines,³ phased in implementation of the 2007 C63.19 standard,⁴ and reporting requirements.⁵ Numerous commenters underscore AT&T’s position that prompt action is required if the Commission is to ensure that industry has sufficient lead time to achieve the Joint Consensus Plan’s contemplated deadlines.⁶

Issues not addressed in the Joint Consensus Plan, such as a M4/T4 mandate⁷ and volume control,⁸ should be considered at a subsequent date so as not to delay incorporation of the plan

³ See ANSI C63 at 1; AT&T at 1-2; ATIS at 6, 12; HLAA/TDI at 2 (generally supports); Motorola at 2-3, 4-5 (supports plan in its entirety); Nokia at 2-4 (same); RERC-TA at 4; RIM at 3-4; Sony Ericsson at 3, 4-5; TIA at 2-4; T-Mobile at 3-5.

⁴ See ANSI C63 at 2; AT&T at 5-6; ATIS at 8; HLAA/TDI at 3; Motorola at 3-4; Nokia at 3; RERC-TA at 7; RIM at 10; TIA at 5-6; T-Mobile at 10.

⁵ See ATIS at 8-10; HLAA/TDI at 3; Motorola at 4-5; Nokia at 4-5; RERC-TA at 7-8; RIM at 12-14; Sony Ericsson at 4-5; TIA at 12.

⁶ See AT&T at 2-3; ATIS at 12; Motorola at 9-10; Nokia at 2-3; RIM at 6; TIA at 2; T-Mobile at 11; see also RERC-TA at 20 (address backlight illumination in 2010 review); HLAA/TDI at 6 (address WiFi/VoIP at 2010 review).

⁷ See AT&T at 3-4 (allow Joint Consensus Plan to take effect and wait until future review); Nokia at 8-9 (same); HLAA/TDI at 3 (address in 2010 review); RERC-TA at 5-6 (address in 2010 review); see also HIA at 2 (supports M4/T4 at some point in the future). AT&T still has no evidence from vendors that an M4/T4 mandate is technically feasible for GSM technology absent a reduction in handset power – an approach the Commission has frowned upon. See Section 68.4(a) of the Commission’s Rules Governing Hearing Aid-Compatible Telephones, Cingular Wireless LLC Petition for Waiver of Section 20.19(c)(3)(i)(A) of the Commission’s Rules, Memorandum Opinion and Order, 20 F.C.C.R. 15108, ¶ 16 (2005). This fact further underscores the desirability of Commission approval of the C63.19-2007 version, which allows the decoupling of the T and M ratings such that devices with higher rated T measurements (e.g. “M3/T4”) could be labeled as such and offered to consumers with hearing aids.

⁸ See AT&T at 6; ATIS at 6; HLAA/TDI at 6; Nokia at 9; RERC-TA at 19-20; RIM at 19; TIA at 9.

into the Commission's rules.⁹ While commenters offer divergent views on some substantive issues – a few of which AT&T addresses below – resolution of these matters need not delay expeditious adoption of the rule changes agreed to in the Joint Consensus Plan.

II. IT IS UNNECESSARY TO IMPOSE TIERING OBLIGATIONS BEYOND THOSE PROPOSED IN THE JOINT CONSENSUS PLAN

There is broad support among industry and consumer groups for the Joint Consensus Plan's proposed requirements for carriers' "tiering" of handset offerings.¹⁰ AT&T agrees with industry commenters that further Commission-imposed requirements regarding the development of a tiering methodology are unnecessary and inappropriate.¹¹ Differences in marketing practices and business models could make price a far less significant factor for certain carriers.¹² As the RERC-TA recognizes, "given rapid changes in technology, the FCC should leave the actual task of defining how phones are tiered to the wireless industry."¹³

Consumer groups argue that carriers should be required to disclose tiering-related information in their reports and in-store displays.¹⁴ The Joint Consensus Plan, however, already provides that Tier I carriers' reports will "include information on the carriers' implementation of

⁹ *See supra* notes 7-8.

¹⁰ *See* AT&T at 2; ATIS at 6-7; HLAA/TDI at 3; Motorola at 5; Nokia at 4; RERC-TA at 6-7; RIM at 9-10; Sony Ericsson at 8; TIA at 4-5; T-Mobile at 6-7.

¹¹ *See* ATIS at 6-7; Motorola at 5; RIM at 9-10; T-Mobile at 6-7.

¹² As RIM points out, nor are the bands over which a particular handset operates necessarily a determinative factor either. *See* RIM at 10.

¹³ *See* RERC-TA at 6-7.

¹⁴ *See* HLAA/TDI at 3; RERC-TA at 6.

‘tiering.’”¹⁵ Further, the Joint Consensus Plan and the draft amendments to Section 20.19 expressly codify tiering into the rules.¹⁶ In light of these new legal obligations, no additional reporting requirements relating to carriers’ product tiering are necessary at this time.

III. THE COMMISSION SHOULD MAINTAIN THE *DE MINIMIS* EXCEPTION TO ENSURE THAT THE RULES DO NOT UNDERMINE HANDSET INNOVATION AND COMPETITION.

Like other commenters, AT&T supports the existing *de minimis* exception, as proposed in the Joint Consensus Plan and as recently affirmed by the Commission.¹⁷ HLAA/TDI and the RERC-TA, however, cite to the Apple iPhone as an example of the exception’s shortcomings and as a basis for the Commission to act beyond the scope of the Joint Consensus Plan.¹⁸ Such action, however, risks undermining the Commission’s objective of preserving competition and innovation in the handset marketplace. These parties also do not dispute the importance of the *de minimis* exception to carriers’ and manufacturers’ ability to economically and efficiently phase out legacy technologies.¹⁹

The RERC-TA’s and HLAA/TDI’s assertion that the *de minimis* exception was adopted solely out of concern for the impact on small entities only tells part of the story.²⁰ While the *de*

¹⁵ Joint Consensus Plan at 12.

¹⁶ *See id.* at Attachment C; *NPRM* at App. B (proposed new rule Section 20.19(c)(3)).

¹⁷ *See* Joint Consensus Plan at 10; *Second Report and Order* at ¶¶ 28-31; AT&T at 6; ATIS at 10; Nokia at 5-6; RIM at 17-19; Sony Ericsson at 7-8; TIA at 9-10; T-Mobile at 10.

¹⁸ HLAA/TDI at 6; RERC-TA at 11-14.

¹⁹ *See* AT&T at 6; ATIS at 10; T-Mobile at 10.

²⁰ HLAA/TDI at 6 (asserting that the Commission’s justification for the *de minimis* exception “was to limit the impact of the rule requiring [HAC] mobile handsets on small
(continued on next page)

de minimis exception was referenced as a relevant RFA consideration, the Commission in its original 2003 *Report and Order* was conscious of both small manufacturers *and* other manufacturers who offer a limited number of handset models in the U.S. market. The Commission “recognize[d] that this implementation approach could have a disproportionate impact on small phone manufacturers *or those that sell only a small number of digital wireless handsets in the United States*, as well as on carriers that offer only a small number of digital wireless handsets.”²¹ Thus, by its terms, the *Report and Order* was not limited to small entities.

The Commission’s 2005 *Order on Reconsideration* affirms this conclusion. In that decision, the Commission clarified at RIM’s request that the rule applies on a per-air interface basis, reasoning that it “d[id] 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.”²² The Commission further held that “this outcome could have the effect of *retarding technological progress and limiting competition*.”²³ Thus, a principal Commission

business concerns” citing the initial Regulatory Flexibility Act (“RFA”) analysis at 68 Fed. Reg. 54175 (Sept. 16, 2003)).

²¹ See *In the Matter of Section 68.4(a) of the Commission’s Rules Governing Hearing Aid-Compatible Telephones*, Report and Order, 18 F.C.C.R. 16753, ¶ 69 (2003) (emphasis added), *aff’d and clarified in relevant part on recon.*, 20 F.C.C.R. 11194, ¶¶ 51-53 (2005) (“*Order on Reconsideration*”).

²² *Order on Reconsideration* at ¶ 53.

²³ *Id.* (emphasis added). The Commission considered and expressly rejected a request to narrow the *de minimis* exception such that a manufacturer with “only one handset in any particular interface ... would be subject to the HAC rule.” *Id.* at ¶ 53 n.173 (citing Self Help for the Hearing Impaired (SHHH) Comments in WT Docket No. 01-309, filed March 22, 2004, at 7 (“SHHH 2004 Comments”)). Similar to the concerns HLAA/TDI and RERC-TA now raise with respect to the iPhone, SHHH then sought “to ensure that people with hearing loss have access to (continued on next page)

objective was to ensure that the HAC requirements did not deter the introduction of new, competitive and innovative technologies – a consideration that is not restricted to small entities, but is also relevant to larger electronics manufacturers who seek to enter the highly competitive U.S. wireless marketplace. All manufacturers and service providers who seek to introduce a new innovative technology will face the same competitive pressures and risks regardless of size, and there can be no guarantee that a particular innovation will survive or thrive.²⁴

AT&T’s experience with RIM’s handset models is noteworthy in this regard. At the time of the Commission’s initial HAC rules, RIM was an international supplier of PDAs but was a new entrant into the U.S. market for voice telephony handset devices. As time has passed RIM has worked to address, with some success, the technical challenges associated with HAC compliance, and AT&T now offers a GSM M3/T3-rated RIM smartphone handset that is HAC compliant – one of the few available “monoblock” style GSM handsets to meet this requirement.

Finally, the iPhone has other features that improve accessibility for persons with other disabilities, including people who are deaf and those with limited mobility.²⁵ AT&T has received consumer feedback that the touch screen has proven particularly useful for some persons with limited mobility, and that deaf persons have found the iPhone’s large display

the kinds of innovations that Blackberry and others are developing – merging of PDAs, phones, computers, and cameras.” SHHH 2004 Comments at 8. The Commission declined to adopt this approach, recognizing at the time that absent the *de minimis* exception, the HAC rules could deter the introduction of new innovative technologies – a conclusion which remains every bit as relevant given the proposed changes to manufacturers’ and carriers’ HAC handset obligations.

²⁴ A foreign manufacturer offering a new innovative handset technology abroad may be reluctant to offer a potentially desirable handset model in the highly competitive U.S. market if it is required to incur the added costs of redesigning or reconfiguring the device for HAC compliance purposes before it is even aware of whether the U.S. market will support the device.

²⁵ See <http://www.apple.com/accessibility/>.

appealing. The iPhone also has the capability to display TV-like captioning, a feature that may prove useful for persons with hearing loss or limited English proficiency. For this reason as well, the Commission should ensure that its HAC rules do not inadvertently deter the introduction of new technologies that may have tangible benefits for other market segments.

IV. THE COMMISSION SHOULD NOT ADOPT ITS PROPOSED REQUIREMENTS FOR MULTI-MODE HANDSET CERTIFICATION

The Commission tentatively concluded “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.”²⁶ This proposal was not part of the Joint Consensus Plan,²⁷ and AT&T shares concerns that the Commission’s proposal will unnecessarily preclude HAC certification for wireless manufacturers, thus adversely affecting service providers’ ability to comply with the Commission’s rules in some cases.²⁸

The agreement reached in the Joint Consensus Plan was intended to ensure wireless carriers and consumers have a selection of HAC devices covering the U.S. licensed spectrum bands for voice services and carrier-defined transmission parameters for those devices. There are new spectrum bands and new air interfaces on the horizon, and C63.19 is being expanded to accommodate them via an open and structured process. The RERC-TA and HIA’s assertions that the HAC requirements should automatically apply to new bands are premature, since the

²⁶ *NPRM* at ¶ 84.

²⁷ The Joint Consensus Plan (at 10) provides that “a handset that has multiple air interfaces must satisfy the C63.19 Standard with respect to all air interfaces for U.S. frequency bands.”

²⁸ See Motorola at 7-8; Nokia at 7-8; RIM at 15-17; Sony Ericsson at 5-7; TIA at 6-7; T-Mobile at 7-8.

majority of the mobility traffic is carried on spectrum bands and air interfaces defined by the C63.19-2007 standard.²⁹ C63® is equipped to investigate potential interference from new spectrum bands and new air interfaces, and is the appropriate forum for all stakeholders to work collaboratively to present information on these issues.

The Commission's proposal is at best premature and at worst could inhibit or delay the introduction of innovative technologies and undermine carriers' own compliance efforts. The Commission should therefore not adopt its proposed rule at this time.

V. CONSUMER OUTREACH REQUIREMENTS SHOULD REMAIN FLEXIBLE TO ACCOMMODATE WIDE VARIATIONS IN MARKETING PRACTICES AND BUSINESS MODELS

AT&T agrees with the substantial number of commenters who emphasize that service providers and manufacturers require flexibility with respect to outreach obligations and that there can be no "one-size-fits-all" requirements.³⁰ Carriers are already subject to Section 255 rules regarding the provision of accessibility and usability information to consumers, and AT&T agrees with those commenters arguing that there is no need for additional mandates here.³¹

RERC-TA and HLAA/TDI advocate a number of specific consumer outreach proposals that echo or expand upon what the Commission suggested in the *NPRM*.³² While many of the specific proposals suggested by RERC-TA and HLAA/TDI have merit, they should be deemed

²⁹ See RERC-TA at 14; HIA at 3. Emerging technologies such as Bluetooth and WiFi do not depend on a macro cellular network topology and work on unlicensed spectrum bands. Further, the Commission's rules are concerned with voice telephony, and it is premature to assume that a particular device or carrier will use the new band for such services.

³⁰ Rural Cellular Ass'n at 7-9; TIA at 11; T-Mobile at 8-9.

³¹ See 47 C.F.R. § 6.11.

³² See HLAA/TDI at 4-5; RERC-TA at 8-11.

potential “best practices” to be worked out between industry and consumer groups, not mandates. For example, outreach methods that are effective and feasible at a retail store may not be so for an independent big box retailer, where the carrier has very limited influence over personnel and product display matters. Similarly, retail store outreach methods may be infeasible for a mall kiosk, which typically faces significant space, usage and resource limits.

RERC-TA and HLAA/TDI also specifically advocate that published brochures regarding HAC information, in particular the brochure resulting from the efforts of HAC Incubator Working Group 6 (“WG-6”) be widely available from carriers.³³ Carriers should be expected to provide the relevant information on request, but they require flexibility in the manner in which this information is made available to customers. Some carriers may find it more efficient and effective to post the WG-6 brochure itself online, whereas smaller carriers who do not market online may find it more feasible and effective to maintain and distribute hard copies at a retail location. In other cases, maintaining hard copies at small stores or kiosks could be problematic given space limitations. In any event, carriers should be allowed to provide information from the WG-6 brochure in modified form – to ensure that necessary updates to the brochure are incorporated and to accommodate carrier-specific limitations in delivering the information.

Many of the HLAA/TDI and RERC-TA recommendations relate to carriers’ in-store testing and customer care practices.³⁴ Again, many of these recommendations have merit as informal guidance. Individual carriers, however, will have different staffing, technology, and other resource limitations, that would make detailed requirements unworkable. Moreover, a

³³ See HLAA/TDI at 4; RERC-TA at 9.

³⁴ See HLAA/TDI at 4-5; RERC-TA at 8-11.

general business trend in retailing is to limit the paper “clutter” that shoppers receive. AT&T recommends that the Commission work with consumer groups and industry to highlight best practices in this regard. A similar flexible approach is warranted with respect to the posting of Disability Rights Office (“DRO”) and manufacturers’ website information on carriers’ websites. Further, AT&T notes that such information is only as useful as the DRO’s and manufacturers’ websites themselves, which would need to be maintained and updated to the extent that the Commission and manufacturers intend that consumers be able to rely on those websites for up-to-date, reliable HAC information. In no event, however, should carriers be required to post HAC information for handsets that do not meet an M3/M4 or T3/T4 standard. Manufacturers have committed to providing such information, which will require that they employ their own expertise and judgment. In any event, given service providers’ direct relationship to customers they should not be in the position of representing the compatibility of particular handsets that have not obtained FCC/TCB HAC certification.

VI. TERRESTRIAL-CAPABLE MSS/ATC HANDSET DEVICES SHOULD BE SUBJECT TO HAC REQUIREMENTS AND DEADLINES

The Satellite Industry Association opposes new HAC requirements for MSS-only and MSS/ATC devices, or alternatively advocates a 3-year compliance period. The Commission, however, has emphasized that “[i]f MSS licensees seek to provide terrestrial mobile service in MSS bands, then the terrestrial component of the MSS ATC service shall be subject to the same regulatory treatment as any other operator providing the same or similar services in any other band.”³⁵ While the Commission’s near term efforts should focus on the Joint Consensus Plan,

³⁵ *Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Bands; Review of the Spectrum Sharing Plan*
(continued on next page)

appropriate but prompt deadlines for terrestrial ATC should be promulgated soon thereafter and it is incumbent on MSS providers to be engaged in the standards development process to meet the Commission's expectations.³⁶ MSS licensees have obtained or seek authority for the provision of ATC operations, and in some circumstances may offer terrestrial-only devices.³⁷ The importance the Commission has placed on HAC and other accessibility requirements, as well as basic principles of regulatory parity, support AT&T's position in this regard.

VII. COMMISSION ACTION ON ALL ISSUES CONCERNING EMERGING TECHNOLOGIES AND OPEN PLATFORMS SHOULD BE DEFERRED

With one exception, commenters generally support deferring issues raised in the *NPRM* concerning emerging technologies and open platforms until a later date.³⁸ RERC-TA alone proposes that WiFi/VoIP technologies be subject to HAC in the near term, but commenters have raised a number of concerns regarding such an approach.³⁹ Thus, in no event should any Commission action in this area delay prompt implementation of the Joint Consensus Plan.

Among Non-Geostationary Satellite Orbit Mobile Satellite Service Systems in the 1.6/2.4 GHz Bands, Report and Order and Notice of Proposed Rulemaking, 18 F.C.C.R. 1962, ¶ 243 (2003).

³⁶ The Commission afforded terrestrial CMRS providers two years to come into compliance with the HAC rules, but much of the work and technical analysis necessary to incorporate 1.6/2.4 GHz and 2 GHz MSS licensees into the standard has been done already.

³⁷ *Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Bands; Review of the Spectrum Sharing Plan Among Non-Geostationary Satellite Orbit Mobile Satellite Service Systems in the 1.6/2.4 GHz Bands*, Memorandum Opinion and Order and Second Order on Reconsideration, 20 F.C.C.R. 4616, ¶ 83 (2005) ("MSS/ATC operators choosing to use handsets or digital devices that are not dual-mode will be required to demonstrate that they offer integrated service.").

³⁸ See ANSI C63 at 2-3; AT&T at 7; HLAA/TDI at 6; Motorola at 10-12; Nokia at 6-7; RIM at 20-21; Sony Ericsson at 8-9; TIA at 7-8.

³⁹ See RERC-TA at 18; *supra* note 38.

VIII. CONCLUSION

For the reasons discussed above and in AT&T's comments, the Commission should expeditiously adopt the provisions of the Joint Consensus Plan and defer other issues to a later date.

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