

**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
Petition of American National Standards Institute)	
Accredited Standards Committee C63 (EMC))	
ANSI ASC C63™)	

EX PARTE: FURTHER COMMENTS OF MOTOROLA, INC.

Motorola, Inc. (“Motorola”) respectfully submits these comments in response to the *Federal Register* notice seeking *ex parte* comments on the *de minimis* exception to the hearing aid compatibility (“HAC”) rules.¹ As further discussed below, the *de minimis* exception must be maintained in its current form to ensure that innovation is not stifled.² To remain effective, the *de minimis* exception must be applied to all manufacturers and service providers, regardless of size. Further, the proposed standards, “large business,” “handsome profits,” and “mass appeal,” are unworkable. Finally, any narrowing of the *de minimis* exception based on the volume and profitability of sales during the first year

¹ Hearing Aid-Compatible Mobile Handsets, Petition of American National Standards Institute Accredited Standards Committee C63 (EMC) ANSI ASC C63™, Federal Communications Commission, Request for Comments, 73 Fed. Reg. 33324 (June 12, 2008).

² Section 20.19(e) of the Commission’s Rules provides a *de minimis* exception to hearing aid compatibility obligations for those manufacturers and mobile service providers that offer two or fewer handset models. This exception applies on a per air interface basis rather than across a manufacturer’s or service provider’s entire product line. See 47 C.F.R. § 20.19(e).

would not give manufacturers sufficient time to anticipate future obligations and plan accordingly.

I. The *De Minimis* Exception Effectively Promotes Innovation and Competition While Also Ensuring That an Ever-Increasing Number of Handsets are HAC-Compliant.

The *de minimis* exception allows manufacturers and service providers to develop innovative devices and bring them to the market quickly. After testing a new technology in the crucible of the market, both manufacturers and service providers use customer demand and feedback to continue (or discontinue) new products and services, as well as to identify improvements to future generations of the device.³ Therefore, the *de minimis* exception ensures that manufacturers can avoid diverting resources to technologies that do not prove to be successful.⁴ Moreover, the exception facilitates entry into the handset market by new entrants thus increasing competition.⁵

The *de minimis* exception balances the flexibility needed by manufacturers with the needs of consumers with hearing loss. The Commission has noted the importance of this regulatory policy balance in the past: “We expect that different companies, faced with their unique circumstances, may well come to different conclusions about deployment of accessibility features. We believe that is a desirable outcome that will maximize the range and depth of accessible products and service available to customers

³ See, e.g., Reply Comments of Research In Motion Limited, WT Docket No. 07-250 at 3 (Jan. 7, 2008).

⁴ See Comments of Alliance for Telecommunications Industry Solutions, WT Docket No. 07-250 at 10 (Dec. 21, 2007).

⁵ See Amendment of the Commission’s Rules Governing Hearing Aid-Compatible Mobile Handsets, First Report & Order, 23 FCC Rcd 3406, 3436 n.194 (2008) (“HAC First Report & Order”).

and will capitalize on the positive forces of competition.”⁶ The *de minimis* exception properly strikes that policy balance and ensures that through technology advances, all consumers, including those with hearing loss, benefit. If the *de minimis* exception is narrowed, however, all consumers will lose, as it will become difficult for manufacturers to experiment in the marketplace with advanced services and devices.

II. To Remain Effective, the *De Minimis* Exception Should Be Applied To All Manufacturers and Service Providers, Regardless of Size.

As the Commission recently noted, “the exception was not adopted solely for the benefit of small businesses, but for businesses of any size that sell only a small number of digital wireless handsets in the United States.”⁷ New entrants, regardless of size, can introduce new products and spark competition in the wireless industry. For example, after Apple introduced the iPhone, known for its advanced visual interface, other manufacturers began to introduce competing devices with expanded visual features.

Apple, like several other manufacturers, including Motorola,⁸ has successfully produced initial devices and fallen under the *de minimis* exception. But there is no evidence showing that Apple will continue to produce only two or fewer handset models indefinitely. Based on general practices in the handset industry, it seems quite probable that Apple and other new entrants, after a successful initial device, will “expand their product offerings in response to consumer demand for new and different features, thereby

⁶ See *Implementation of Sections 255 and 251(a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996*, Report & Order and Further Notice of Inquiry, 16 FCC Rcd 6417, 6442, ¶ 54.

⁷ See HAC First Report & Order at 3436, ¶ 73.

⁸ Motorola initially introduced a non-HAC WCDMA device which did not meet HAC standards, but since then, Motorola has continued to grow the WCDMA portfolio and now offers HAC WCDMA devices.

bringing themselves under the hearing aid compatibility rules and benefiting consumers both with and without hearing loss.”⁹ In fact, if the iPod experience is examined, Apple eventually produced multiple models to maintain its market leadership. It is reasonable to think Apple, or any manufacturer of a very successful product, will outgrow the *de minimis* exception. The fact that Apple notes that it is researching how to make its devices compatible with hearing aids lends credence that it is seeking a HAC solution.¹⁰

III. None of the Proposed Standards By Which To Narrow the De Minimis Exception are Workable.

The standards “large business,” “handsome profits,” and “mass appeal” are not, and cannot be, clearly defined in the wireless industry. Profit calculations could vary greatly depending upon the nature of the manufacturer’s overall business model. And the definition, “large business,” could also vary greatly depending on how the “business” is measured. In addition, as explained above, standards aimed at cutting out larger companies from the *de minimis* exception will ruin the effectiveness of the rule as larger companies have been greater innovators and contributors to advanced handset technologies.

IV. Any Specific Volume or Profitability Limitation Based on One Year of Sales Would Not Give Manufacturers Enough Time to Plan.

Similarly, the Commission should not establish any limitation on the *de minimis* exception that is based on volume or profitability measured after one year of sales because such a rule would not allow manufacturers sufficient time to anticipate obligations and plan accordingly.

⁹ See HAC First Report & Order at 3436, ¶ 73.

¹⁰ See Comments of Apple Inc. at 5.

V. Conclusion

The *de minimis* exception should be retained because it benefits all consumers. It spurs innovation and competition among handset manufacturers and service providers. Yet, at the same time, the *de minimis* exception is limited to ensure that an ever-increasing number and wide variety of handsets are HAC-Compliant. And the Commission can monitor the status of all devices that fall under the *de minimis* exception through its reporting requirements.¹¹

Respectfully submitted:

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¹¹ See HAC First Report & Order at 3444, ¶ 95.