

**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)
)

To: The Commission

COMMENTS OF THE TELECOMMUNICATIONS INDUSTRY ASSOCIATION

The Telecommunications Industry Association (“TIA”) hereby submits its comments in response to the Commission’s request for additional comments in the above-captioned proceeding on the multi-band and multi-mode devices and the application of the *de minimis* exception.¹ For the reasons discussed below, the Commission should maintain the *de minimis* exception² to its Hearing Aid Compatibility (HAC)³ requirements in its current form, as adopted in the Commission’s *Hearing Aid Compatibility Order* released in 2008.⁴

INTRODUCTION

¹ *Amendment of the Commission’s Rules Governing Hear Aid-Compatible Mobile Handsets*, Second Report and Order and Notice of Proposed Rulemaking, WT Docket Nos. 07-250 and 01-309, FCC 07-192, Rel.: Nov. 7, 2007 (“NPRM”).

² See 47 C.F.R. §20.19(e)(1)

³ See 47 C.F.R. §20.19

⁴ *Amendment of the Commission’s Rules Governing Hear Aid-Compatible Mobile Handsets*, First Report and Order, WT Docket No. 07-250, FCC 08-68, Adopted: February, 26, 2008, Rel.: February 28, 2008 at ¶72 (the “2008 HAC Order”).

TIA is the leading trade association for the information and communications technology (“ICT”) industry, with 600 member companies that manufacture or supply the products and services used in global communications across all technology platforms. TIA represents its members on the full range of public policy issues affecting the ICT industry and forges consensus on industry standards. Among their numerous lines of business, TIA member companies design, produce, and deploy wireless devices subject to the Commission’s Hearing Aid Compatibility (“HAC”) requirements, including some which fall under the *de minimis* exemption.

Wireless handset manufacturers have played an integral role in the testing, development and widespread availability of HAC-compliant handsets for hearing aid users. Several TIA members, including Motorola, Nokia, RIM, Samsung, and Sony Ericsson, were actively involved in the recent fruitful collaboration between the wireless industry and consumers that ultimately led to the Joint Consensus Plan set forth by the Alliance for Telecommunications Industry Solutions (ATIS)⁵, which the Commission recently adopted.⁶

TIA strongly supported the Commission’s decision to adopt the proposal in the Joint Consensus Plan to retain the existing *de minimis* exception and to codify that the exception applies on a per air interface basis.⁷ TIA sees no compelling reason to re-visit this decision or to craft new limitations on the *de minimis* exception as the justifications for its original adoption continue to apply. On the other hand, TIA withholds further comment at this time on the treatment of multi-mode and multi-band devices under the

⁵ Supplemental Comments of ATIS in WT Docket No. 06-203 (filed June 25, 2007) (the “Joint Consensus Plan”).

⁶ See 2008 HAC Order.

⁷ *Id.* at ¶72.

FCC's HAC rules until the ATIS Multi-Band General Principles are submitted to the Commission and are put on public record.

DISCUSSION

I. THE *DE MINIMIS* RULE WAS ESTABLISHED NOT ONLY FOR SMALL COMPANIES BUT FOR MANUFACTURERS THAT SELL ONLY A LIMITED RANGE OF DIGITAL WIRELESS HANDSETS THAT SUPPORT A PARTICULAR AIR INTERFACE.

When first adopting hearing aid compatibility requirements for wireless services in 2003, the Commission recognized that such requirements could have a disproportionate impact on small manufacturers or those that sell only a small number of digital wireless handset models in the United States, as well as impacting service providers that offer only a small number of digital wireless handsets.⁸ In order to address this issue, the Commission adopted the *de minimis* exception as part of its first *Hearing Aid Compatibility Order*.⁹ In 2005 the FCC clarified that the exception applies on a “per air interface” basis, and that without this clarification the rule 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 at all.¹⁰

Clearly the latter outcome was not the intent of the *de minimis* rule. The exception was created to address the competitive pressures and risks involved in bringing new technologies to market applicable to all companies, regardless of size. As explained in

⁸ See *In the Matter of Section 68.4 of the Commission's Rules Governing Hearing Aid-Compatible Telephones* (the “Hearing Aid Compatibility Order”), WT Docket No. 01-309, RM-8658, 18 FCC Rcd at 16781 ¶ 69 Adopted: July 10, 2003, Rel. Aug. 14, 2003; see also *Hearing Aid Compatibility Reconsideration Order and Further Notice*, 20 FCC Rcd at 11244, Adopted: June 9, 2005, Rel.: June 21, 2005 ¶ 51 (the “Hearing Aid Reconsideration Order”).

⁹ See *Hearing Aid Compatibility Order* at ¶ 69.

¹⁰ See *Hearing Aid Compatibility Reconsideration Order and Further Notice* at ¶ 51.

the Joint Consensus Plan, the exception ensures that new technologies “entering the market have the opportunity to develop adequately prior to the imposition of stringent HAC regulatory obligations,” while permitting manufacturers to avoid “diverting unnecessary resources” to soon-to-be discontinued technologies.¹¹

As TIA has noted in the past, the *de minimis* exception is important for all manufacturers, regardless of size.¹² It enables manufacturers to expeditiously bring innovative products to market and determine whether consumer demand warrants a more expansive deployment of the new technology that may trigger HAC requirements in the future. The rule also enables manufacturers to phase-out products used with older and less efficient technologies.

II. THE COMMISSION SHOULD CONTINUE TO FOSTER INNOVATION THROUGH RETENTION OF THE EXISTING *DE MINIMIS* RULE

a. The *de minimis* exception is critical to industry’s ability to promote innovation through new technologies.

The FCC has always encouraged the development of innovative technologies for the benefit of all consumers, including those who are hearing impaired. Overbroad application of HAC regulations would frustrate this policy by chilling innovation and the development of new products, as well as reducing competition. The *de minimis* rule insures that manufacturers are not dissuaded from developing and introducing innovative products due to HAC obligations that may prove too burdensome relative to the uncertain market opportunity. The exception remains a critical avenue for manufacturers of all

¹¹ *Joint Consensus Plan* at 10.

¹² See Telecommunications Industry Association Comments in WT Docket No. 07-250 (filed Dec. 21, 2007).

sizes to introduce small portfolios of new products using new technologies— already representing a significant and risky engineering challenge even in the absence of a HAC requirement.¹³

The rule provides the flexibility necessary not only for increasing the amount of products offered on certain air interfaces but the flexibility necessary to withdraw products from other air interfaces as they become outdated.

b. The *de minimis* rule is not an absolute barrier to products covered by the rule eventually becoming hearing aid compatible.

As certain air interfaces become more popular, the market for products that support them will grow and competition will spur manufacturers to increase correlating products. This means smaller companies or new entrants may become more significant wireless market participants, and that larger companies new to a technology may expand their portfolios. This is precisely the purpose behind the *de minimis* rule.

The Commission itself notes in its request for additional comments that “large manufacturers with highly successful initial devices may not continue indefinitely to produce only two or fewer handset models, but instead may expand their features, thereby bringing themselves under the hearing aid compatibility rules and benefiting consumers with and without hearing loss.”¹⁴

Notwithstanding the existence of the *de minimis* rule, a wide variety of hearing aid compatible wireless handsets currently are available on the market. The latest Status Report submitted by ATIS shows that, in aggregate, 60% of manufacturers’ wireless

¹³ See Research in Motion Comments in WT Docket No. 07-250 (filed Dec. 21, 2007) at 18.

¹⁴ Hearing Aid-Compatible Mobile Handsets, Petition of American National Standards Institute Accredited Standards Committee C63 (EMC) ANSI ASC C63™, 73 Fed. Reg. 33325 (June 12, 2008).

handsets and 50% of CMRS carriers' handset offerings are HAC compliant.¹⁵ This is well above the 33% required of individual companies by the *2008 Hearing Aid Compatibility Order*. Further, instances have occurred and likely will continue to occur in the future in which a manufacturer could invoke the *de minimis* rule but nonetheless makes the product hearing aid compatible. When RIM initially developed its CDMA™ models they fell under the exemption but RIM was still able to make 100% of these products HAC compliant. TIA fully appreciates and acknowledges the Commission's guidance that manufacturers consider hearing aid compatibility as an integral and early part of handset design and incorporate hearing aid compatibility into new handset designs wherever feasible.

CONCLUSION

For the foregoing reasons, the Commission should retain the *de minimis* rule in its current form.

Respectfully submitted,

Telecommunications Industry Association

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¹⁵ See "Hearing Aid Compatibility Compliance Efforts, Status Report #7," submitted by the Alliance for Telecommunications Solutions on behalf of the ATIS Incubator Solutions Program #4, WT Docket No. 01-309 (filed Nov. 19, 2007) at 7-8 (Tables 1 and 2).

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