

Before the
Federal Communications Commission
Washington, D.C.

In the Matter of:)	47 CFR Part 20
)	
Hearing Aid-Compatible Mobile Handsets)	WT Docket No. 07-250
Petition of American National Standards)	
Institute Accredited Standards Committee C63)	
(EMC) ANSI ASC C63)	

COMMENTS OF:

**HEARING LOSS ASSOCIATION OF AMERICA;
TELECOMMUNICATIONS FOR THE DEAF AND HARD OF HEARING, Inc.;
ASSOCIATION OF LATE-DEAFENED ADULTS, Inc.;
DEAF & HARD OF HEARING CONSUMER ADVOCACY NETWORK; and
NATIONAL ASSOCIATION OF THE DEAF**

Hearing Loss Association of America (“HLAA”), Telecommunications for the Deaf and Hard of Hearing, Inc. (“TDI”), Association of Late-Deafened Adults, Inc. (“ALDA”), and Deaf & Hard of Hearing Consumer Advocacy Network (“DHHCAN”), National Association of the Deaf (“NAD”) (collectively, “Consumer Organizations”) submit these comments in response to the Federal Communications Commission’s (the “FCC”) request for comments regarding the *de minimis* exemption to its hearing aid compatibility rules.

Hearing Loss Association of America (HLAA) is the nation’s leading consumer organization representing people with hearing loss. HLAA impacts accessibility, public policy, research, public awareness, and service delivery related to hearing loss on a national and global level. HLAA’s national support network includes an office in the Washington D.C. area, 14 state organizations, and 200 local chapters. The HLAA mission is to open the world of communication to people with hearing loss through information, education, advocacy, and support. HLAA provides cutting edge information to consumers, policy makers, business professionals and family members through our dynamic website, www.hearingloss.org, an award -winning publication, Hearing Loss, an online newsletter, ENews, message boards. In addition, we bring consumers and policy makers together to learn about hearing accessibility issues at our national and regional conventions.

Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI) is a national advocacy organization focusing its energies and resources to address equal access issues in

telecommunications, media, and information technology for four constituencies in deafness and hearing loss, specifically people who are deaf, hard-of-hearing, late-deafened, or deaf-blind.

The Association of Late-Deafened Adults, Inc. (ALDA) works collaboratively with other organizations around the world serving the needs of late-deafened people. Through its chapters and groups around the country, ALDA promotes public and private programs designed to alleviate the problems of late-deafness and for reintegrating late-deafened adults into all aspects of society. ALDA also provides educational information concerning issues affecting late-deafened adults, as well as advocacy on behalf of, and support for, late-deafened adults and their families and friends.

The Deaf and Hard of Hearing Consumer Advocacy Network (DHHCAN) serves as the national coalition of organizations representing the interests of deaf and/or hard of hearing citizens in public policy and legislative issues relating to rights, quality of life, equal access, and self-representation. DHHCAN also provides a forum for proactive discussion on issues of importance and movement toward universal, barrier-free access with emphasis on quality, certification, and standards.

The National Association of the Deaf (NAD) was established in 1880 by deaf leaders who believed in the right of the American deaf community to use sign language, to congregate on issues important to them, and to have its interests represented at the national level. These beliefs remain true to this day, with American Sign Language as a core value. As a nonprofit federation, the mission of the NAD is to preserve, protect, and promote the civil, human, and linguistic rights of deaf and hard of hearing individuals in the United States of America. The advocacy scope of the NAD is broad, covering the breadth of a lifetime and impacting future generations in the areas of early intervention, education, employment, health care, technology, telecommunications, youth leadership, and more. For more information, please visit www.nad.org.

The Federal Communications Commission (FCC) requests comments on the *de minimis* exception applicable to hearing aid compatible mobile telephones. 73 Fed.Reg. 33324 (June 12, 2008). The existing *de minimis* rule, appearing at 47 CFR § 20.19(e), provides an unqualified exception to hearing aid compatibility requirements for manufacturers and service providers that offer two or fewer handsets.

In comments submitted in December 2007 to the FCC under WT Docket 07-250 (*Report & Order* issued February 28, 2008), HLAA/TDI urged that the exception be revised to exclude large businesses that produce only one or two mobile phones with an expected large presence in the market, such as Apple's iPhone. The Consumer Organizations welcome the opportunity to provide additional comments on this issue. Similarly, the Rehabilitation Engineering Research Center raised concerns about applying this exception to companies that have significant resources to incorporate accessibility into their products,

and whose phones are likely to have mass appeal (Comments of RERC-TA, December 21, 2007).

The FCC has long recognized that people with hearing loss are affected by mobile phones, produced or marketed by any manufacturer or service provider, that are incompatible with hearing aids. The FCC's long term objective (consistent with that of the Consumer Organizations) is to have all handsets hearing aid compatible. In working toward this objective, it was reasonable for the FCC to adopt the *de minimis* exception in 2003 for those manufacturers and service providers that may have "only a small presence in the market," *i.e.*, offering two or fewer handsets. 68 Fed. Reg. 54175 (September 16, 2003). The economic burdens associated with producing compliant mobile phones may unfairly impact the competitive position of these particular entities.

In its request for comments, the FCC states that its primary concern is "that the rule not be limited in a manner that would compromise its effectiveness in promoting innovation and competition." (73 Fed. Reg. 33325). The Consumer Organizations do not desire to stifle innovation or competition. However, to begin with, the *de minimis* rule was not intended to be a tool to promote innovation, or new technology. There is nothing in the original rule-making process under which the *de minimis* exception was adopted that cites "innovation" as a rationale for the rule.

The underlying statute, the Hearing Aid Compatibility (HAC) Act provides a process for a waiver of the hearing aid compatibility requirements for "new telephones, or telephones associated with a new technology or service." 47 U.S.C. § 610(b)(3). This statutory authority gives the FCC the responsibility to determine whether or not the HAC requirements should be waived to facilitate the introduction of a new technology. If any manufacturer or service provider believes that the HAC requirements impose a burden on their ability to innovate, they should be required to seek and obtain a waiver from the FCC rather than rely on the automatic application of the *de minimis* exception.

The focus of the *de minimis* rule should be on competition; namely, whether the hearing aid compatibility requirements impede the competitiveness of manufacturers and service providers that have a "small presence in the market." As stated previously, the Consumer Organizations' concern is with large businesses that have the resources to fully comply with the hearing aid compatibility requirements and compete effectively in the marketplace. These business concerns, exemplified by Apple and AT&T in producing and offering the iPhone, should not be able to automatically hide behind the *de minimis* rule to deny consumers with hearing loss access to the features of their mobile phones indefinitely. We note that not only is the first generation of the iPhone not hearing aid compatible; the second generation of this phone is not accessible to hearing aid users either.

The Consumer Organizations propose that the existing automatic *de minimis* exception apply **only** to small business concerns that qualify under the Small Business Administration's size standards for this industry. Small business concerns that

manufacture or offer two or fewer handsets will almost necessarily have a small presence in the market. With more limited financial and logistical resources, these concerns should be entitled to the protection of the *de minimis* exception to effectively compete. This approach would be consistent with, and thus require no modifications of, the regulatory flexibility analysis supporting the existing rule. Also, such a bright line approach would be easy to enforce and administer.

In sum, the Consumer Organizations propose that the *de minimis* exception be limited in its application to small business concerns that qualify under the pertinent SBA size standards.

The Consumer Organizations believe that this proposed approach reasonably limits the application of the *de minimis* exception and is fully consistent with the FCC's intent in adopting this exception. The exception is being misused by large, well capitalized entities such as Apple and AT&T. Other large companies with substantial resources may choose to enter the mobile phone market and claim the exception. Manufacturers and providers, who currently produce and offer hearing aid compatible handsets and services, may be adversely affected in maintaining their places in the market. The availability of the exception, as it is currently written, may have the effect of reducing access to mobile wireless services by those with hearing loss, a result contrary to the intent of the HAC and the objectives of the FCC. If the FCC is unwilling to establish reasonable limitations, such as contained in this proposal, we believe the FCC should seriously consider elimination of the exception. That action would negate potential abuse and have the benefit of expediting full access by those with hearing loss.

The Consumer Organizations appreciate the opportunity to submit comments on this important matter.

Respectfully submitted,



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