

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
Amendment of the Commission's Rules) WT Docket No. 07-250
Governing Hearing Aid-Compatible Mobile)
Handsets)
)
Petition of the American National Standards)
Institute Accredited Standards Committee C63)
(EMC) ANSI ACS C63™)

To: The Commission

**COMMENTS OF
RESEARCH IN MOTION LIMITED**

Research In Motion Limited ("RIM") herewith submits additional comments in response to the Commission's Request for Comments on "the application of the *de minimis* exception to" the hearing aid compatibility ("HAC") rules.¹ For the reasons discussed herein, the Commission should retain the *de minimis* exception in its current form, and continue to monitor the availability of HAC-certified handsets in the future.²

I. BACKGROUND/INTRODUCTION

RIM is a leading designer, manufacturer and marketer of innovative wireless solutions for the worldwide mobile communications market. RIM's flagship BlackBerry platform of wireless devices, software and services is available from over 350 carrier and channel partners, and serves more than 16 million subscribers worldwide. RIM has significant experience working

¹ *Hearing Aid Compatible Mobile Handsets, Petition of American National Standards Institute Accredited Standards Committee C63 (EMC) ANSI ASC C63™*, Request for comments, WT Docket No. 07-250, 73 Fed. Reg. 33324 (June 12, 2008) ("Request for Comments").

² The Request for Comments also sought comment on the "treatment ... of multi-mode and multi-band handsets" under its HAC rules. RIM will address this issue once ATIS submits a consensus proposal in the near future.

to meet the Commission's HAC requirements in its handset products, which increasingly operate over multiple spectrum bands using multiple air interface protocols in order to meet the global demands of its carrier customers and their end user subscribers. It is critical to RIM and other manufacturers – and, for that matter, carriers and consumers – that the Commission's application of its HAC rules not inadvertently deter the introduction of new technologies or unnecessarily restrict the diversity of their handset offerings.

As a threshold matter, any further modification of the HAC requirements must account for important statutory considerations. The HAC Act imposes a general exemption from its requirements for mobile wireless devices; the Commission, in turn, may revoke or limit this exemption only when, among other things, compliance is “technologically feasible,” and “in the public interest.”³ Consistent with its public interest mandate, in limiting the scope of the exemption in various orders since 2003 the Commission has consistently sought to preserve customer choice and competition in the handset marketplace.⁴ Any further narrowing of the mobile wireless services exemption in this proceeding must account for these policy objectives and statutory criteria, which are most effectively addressed through retention of the current *de minimis* exception, as well as through adoption of a consensus approach for multi-band/multi-

³ See 47 U.S.C. § 610(b)(2)(A)(i) and (C); *In the Matter of Amendment of the Commission's Rules Governing Hearing Aid-Compatible Mobile Handsets, Petition of the American National Standards Institute Accredited Standards Committee C63 (EMC) ANSI ACS C63™*, First Report and Order, WT Docket No. 07-250, 23 FCC Rcd. 3406, 3411-12 ¶¶ 14-15 (2008) (“*First Report and Order*”) (explaining that mobile services exemption was “partially revoked”).

⁴ See *First Report and Order*, 23 FCC Rcd. at 3433 ¶ 67 (interim measure adopted in part to “avoid discouraging the use of currently-available Wi-Fi technology”); *In the Matter of Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones*, Order on Reconsideration and Further Notice of Proposed Rulemaking, 20 FCC Rcd. 11194, 11244-45 ¶ 53 (2005) (affirming *de minimis* rule to avoid “retarding technological progress and limiting competition” in the handset marketplace).

mode handsets, which RIM will address in more detail once it is submitted by ATIS in the near future.

II. THE COMMISSION SHOULD NOT MODIFY THE *DE MINIMIS* EXEMPTION

In the *First Report and Order*, the Commission reiterated its objective that the HAC Act not be applied to wireless handsets in a manner that compels a manufacturer to “withdraw some of its existing products from the U.S. wireless market.”⁵ Such an approach, the Commission reaffirmed, “could have the effect of retarding technological progress and limiting competition.”⁶ The Commission nevertheless left the record open for additional comment on proposals from consumers to further limit the scope of *de minimis* exemption to address concerns that carriers who are “large businesses,” have “handsome profits,” or offer products (such as the iPhone) with “mass appeal,” should be excluded.

For the reasons discussed in its comments and reply comments in this proceeding, RIM continues to oppose modifications to the *de minimis* exemption. The Commission is rightly concerned “that the rule not be limited in a manner that would compromise its effectiveness in promoting innovation and competition.”⁷ As RIM has explained, “[t]he *de minimis* exemption remains a critical avenue for manufacturers of all 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.”⁸ For example, without the availability of the *de minimis* exemption, RIM would have been forced to withdraw its iDEN products from the

⁵ See *First Report and Order* 23 FCC Rcd. at 3435 ¶ 72 (citing *2005 Recon Order*, 20 FCC Rcd. at 11244 ¶ 53).

⁶ *Id.*

⁷ See *id.* at 3435-36 ¶ 73; Request for Comments at 33325; RIM Comments in WT Docket No. 07-250, filed Dec. 21, 2007, at 17-19; RIM Reply Comments in WT Docket No. 07-250, filed Jan. 7, 2008, at 3-5.

⁸ RIM Comments at 18.

U.S. market, depriving U.S. consumers of access to BlackBerry devices in the iDEN air interface. Meanwhile, RIM has continued to make HAC-compliant devices available in other air interfaces. For example, when RIM introduced BlackBerry devices in the CDMA interface, RIM would have been eligible to take advantage of the *de minimis* exemption but was nonetheless still able to meet 100% HAC-compliance for these new products. Indeed, as RIM stated in previous comments, the latest HAC status reports show that large proportions of manufacturer and carrier handset offerings are HAC-compliant, notwithstanding the availability of the *de minimis* exemption.⁹

Furthermore, the classifications proposed by consumer groups are either subjective, impracticable, or both. Given the economies of scale required to compete in a global marketplace, most handset manufacturers would appear to be “large businesses” by most standards, yet many of those companies have suffered enormous losses or upheavals in recent years, making their investment in new technologies riskier even without the burden of additional HAC obligations.¹⁰ Other suggested criteria, such as profitability and product appeal, have little significance in today’s environment. Profits can fluctuate wildly in a competitive market and often must be reinvested into new product research and development, and handset products with “mass appeal” are, by their very nature, likely to prompt the development of new competing handsets with similar form features.¹¹ Finally, excluding non-HAC certified handsets from the

⁹ See *id* at 18-19.

¹⁰ Simply defining “large” is problematic. Would affiliates and parent companies be included? What about large foreign manufacturers with a minimal U.S. presence?

¹¹ This latter trend is evidenced by the HAC-certified LG Dare and Samsung Instinct touchscreen smartphones which compete with the Apple iPhone, and by the multitude of QWERTY keyboard smartphones competing with RIM’s BlackBerry products.

U.S. market could have the unintended effect of precluding the availability of handsets that may not yet be HAC but nonetheless may improve accessibility for persons with other disabilities.¹²

As stated in its reply comments, RIM does not wish to minimize the concerns raised by consumer groups. Nevertheless, a substantial number of HAC handsets are available in the marketplace, and more will become available as the benchmarks adopted in the *First Report and Order* go into effect. Moreover, based on RIM's own experience, many of the concerns for the current *de minimis* exception are likely to be addressed by market forces, whether through technology improvements or competitive pressures. Further, the Commission's product refresh and functionality rules, which will place added pressure on manufacturers and carriers alike to ensure that HAC capabilities are increasingly available across the diversity of their handset products, are to go into full effect in 2009, and further action at this time is premature.¹³

Finally, to the extent that the Commission and consumers still have concerns about the impact of the *de minimis* exception, they will be able to closely monitor the availability of HAC handsets, and the pervasiveness of HAC certification across product lines, through manufacturers' and service providers' annual reports.¹⁴ To the extent the Commission remains concerned for the effectiveness of the existing rules and the wireless marketplace, the exemption may be revisited when the Commission reviews the rules again in 2010, as it has committed to do.¹⁵ For these reasons, modifying the *de minimis* rule at this time is premature as well.

¹² In this regard, BlackBerry email and text messaging functionality, as well as facilitating connectivity with third party IP Relay providers, has improved the accessibility of mobile devices and services for deaf and hard of hearing users.

¹³ See 47 C.F.R. §§ 20.19(c)(1)(ii), (e)(4)(ii).

¹⁴ See *id.* § 20.19(i).

¹⁵ See *First Report and Order* at 3451 ¶ 117.

III. CONCLUSION

For the foregoing reasons, the Commission should maintain the *de minimis* exception in its current form.

Respectfully submitted,

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