WILTSHIRE & GRANNIS LLP

July 9, 2010

**Ex Parte**

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

*Re: Amendment of the Commission's Rules Governing Hearing Aid-Compatible Mobile Handsets; Petition of American National Standards Institute Accredited Standards Committee C63 (EMC) ANSI ASC C63®, WT Docket No. 07-250*

Dear Ms. Dortch:

On July 9, 2010, I spoke via telephone on behalf of Apple Inc., with David Goldman of the Wireless Technology Bureau on the topic of hearing aid compatibility ("HAC"). I made the following points related to the HAC *de minimis* exception.

The *de minimis* exception remains important because it allows innovation by companies that do not offer large numbers of handset models and because of the technical difficulties of achieving an M3 rating on legacy 2G networks. Indeed, the Commission has recognized the *de minimis* exception's "effectiveness in promoting innovation and competition," specifically citing the iPhone.[1] And the Commission has acknowledged that there remain "uncontroverted technological impediments to meeting the M3 rating standard for many handset models that employ a GSM air interface."[2] Achieving hearing aid compatibility in the 1900 MHz frequency band when operating on legacy GSM 2G networks presents a particularly difficult technical challenge for manufacturers, especially for desirable handset form factors with thin enclosures.

Despite these findings, the Commission has left the record on the *de minimis* exception open to determine if the exception could be narrowed while at the same time ensuring "consumer[] access to phones with advanced or desirable technologies and features."[3] The Commission should not change the *de minimis* exception. The *de minimis* exception promotes new entrants into the mobile industry, as well as continual innovation in mobile handset design, technology, and business models. It recognizes that the HAC regulatory structure is designed for

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1 *Amendment of the Commission's Rules Governing Hearing Aid-Compatible Mobile Handsets*, First Report and Order, 23 FCC Rcd 3406, 3436 ¶ 73 (2008).

2 *Id*. at 3420 ¶ 37.

3 *Id*. at 3436 ¶ 73.

established mobile handset manufacturers that offer dozens of handset models, and that new entrants may need to focus on fewer models with advanced technology in order to compete. The Commission should not assume that the *de minimis* exception is important only to small companies. The economics of the handset industry are such that only companies with significant resources and innovative technology and business models can enter the market and compete effectively with established players. Eliminating the *de minimis* exception would impose far greater regulatory burdens on the most innovative companies. It would therefore be a mistake to alter the exception. But if the Commission determines it must take this step, it should recognize that companies have made significant investments and have developed technologies and business models with the expectation that the exception would remain in place.

In order to account for these expectations and the specific technical roadblock on GSM 2G networks at 1900 MHz, the Commission could phase in the impact of any changes to the *de minimis* exception. It could do so by permitting manufacturers to comply with HAC rules by giving consumers an optional phone setting that improves hearing aid compatibility in the problematic legacy GSM 2G 1900 MHz situation through a small reduction in transmit power when the consumer uses his or her handset in this unique situation, and only in this situation. To ensure that a manufacturer does not reduce power significantly to achieve compatibility, the Commission rules could state that this setting may only reduce maximum transmit power by up to 2.5 decibels to achieve HAC compliance. This will ensure that the power reduction does not have an unacceptable impact on performance.

Such a setting could be implemented in a manner similar to "HAC Mode" menu settings already used by a number of handsets on the market today—including models made by Research in Motion, HTC, Motorola, Samsung, and Hewlett-Packard—to activate the telecoil or adjust volume output.[4] FCC action is needed here to enable a setting that would reduce maximum transmit power, since the Office of Engineering and Technology last year issued guidance indicating that handsets with user instructions that reduce RF output power should not be certified as HAC-compliant.[5] The Commission would be fully justified in changing this

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[4] *See, e.g.*, Blackberry, User Guide-Blackberry Curve 8330 Smartphone, Turn on Telecoil Mode, http://docs.blackberry.com/en/smartphone_users/deliverables/1487/Turn_on_telecoil_mode_29322_11.jsp; HTC Droid Incredible User Guide at 49, *available at* http://member.america.htc.com/download/Web_materials/Manual/HTC_INCREDIBLE(Verizon)/100421_IncredibleC_VZW_WWE_UM.pdf; HP iPAQ Glisten User Manual at 137, *available at* http://bizsupport1.austin.hp.com/bc/docs/support/SupportManual/c01950341/c01950341.pdf; Motorola Krave ZN4 User Guide at 47, *available at* http://www.motorola.com/staticfiles/Support/US-EN/Mobile%20Phones/Motorola%20Krave%20ZN4/US-EN/_Documents/Static%20Files/ZN4_UserG_Verizon_68000201369D.pdf; Samsung SGH-T239 User Manual at 65, *available at* http://org.downloadcenter.samsung.com/downloadfile/ContentsFile.aspx?CDSite=US&CttFileID=2277334&CDCttType=UM&ModelType=N&ModelName=SGH-T239&VPath=UM/200904/20090422025122656/tmobile_t239_ug_eng.pdf.

[5] FCC Office of Engineering and Technology, Equipment Authorization Guidance for Hearing Aid Compatibility, KDB 285076, at 4 (Oct. 2009). Similarly, the standard referenced in the HAC rules requires a handset to be tested using its maximum rated RF output power. *See generally* IEEE American National Standard Methods of Measurement of Compatibility between Wireless Communications Devices and Hearing Aids, ANSI C63.19-2007. Nevertheless, OET retains ultimate discretion under the rules to determine whether a

guidance if it determines that it must change the *de minimis* exception in a manner that recognizes the technological challenges of the legacy 2G 1900 MHz band and manufacturer expectations about the continued availability of the *de minimis* exception. This action would have the further benefit of empowering manufacturers to make cutting-edge handsets available to more Americans with hearing aids. Finally, this action would be limited in scope, as the user-adjustable setting would only be available with respect to the legacy 2G network, meaning that as the country continues to convert to 3G the use of the setting would become unnecessary.

Pursuant to the Commission's rules, a copy of this notice is being filed electronically in the above-referenced docket. If you require any additional information please contact the undersigned.

Sincerely yours,

*/s/ Paul Margie*

Paul Margie
*Counsel for Apple Inc.*

cc: David Goldman (via email)

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handset meets the requirements of the standard. *See* 47 C.F.R. § 20.19(b)(4). Virtually all CMRS handsets on the market today are limited by software to transmit well below those devices' theoretical maximum output power, and are tested for HAC compliance at that software-capped power level. Moreover, the ANSI standard contemplates that the device will be operated "in a manner that is consistent with the recommendations of the manufacturer with regards to maximum efficiency," even if certain "user controllable configurations," such as adjustable antenna position, would not result in a complaint rating. *See* ANSI C63.19-2007 § 4.3.3. Thus, the FCC has ample authority to modify its rules to permit the limited hearing aid mode described above.