



July 13, 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 13, 2010, I spoke via telephone 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.

In comments submitted in December 2007 to the Commission 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. 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") submitted additional comments in response to the Federal Communications Commission's (the "Commission") request for comments regarding the *de minimis* exemption to its hearing aid compatibility rules August 28, 2008. 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) and filed additional comments August 28, 2008.

As stated in our comments, 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." Our concern is with large businesses that have the resources to fully comply with the hearing aid compatibility requirements and compete effectively in the marketplace. We proposed in our comments, and still believe 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.



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Alternately, as we suggested in our comments, if the Commission is unwilling to establish reasonable limitations, such as contained in our proposal, we believe the Commission 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.

However, we are mindful that some companies have made significant investments and have developed technologies and business models with the expectation that the exception would remain in place. 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. One way it could do is by 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.

Commission 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. The Commission would be fully justified in changing this 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 allowing 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.

However, we are also cognizant that a new version of the C63.19 standard is being considered for ballot in the coming weeks or months. The current revision of the C63.19-2007 standard that is being considered for ballot includes an adjustment to the M category limits for wireless devices. In particular, if the revision to the standard is adopted as it currently stands, there will be a 2.2 dB relaxation in measured RF-emissions for the GSM technology, regardless of frequency band. This is nearly equivalent to the 2.5 dB reduction to antenna input power in the 1900 MHz band of the 2G/GSM network proposed in the ex parte letter filed by Apple Inc, on July 9, 2010, thus potentially eliminating the need for a power down to meet an M3 category rating.

We are, however, concerned that in emergency situations the power-down might result in dropped or garbled calls. If the Commission accepts the solution offered by Apple, Inc., it should also consider ways to work with industry to ensure that emergency calls can be completed. Solutions to be considered include an automatic power increase in the impacted 2G GSM network in the 1900 MHz band when an individual is attempting to reach 9-1-1.



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In conclusion, we find we can support a 2.5 dB reduction to antenna input power in the 2G GSM network operating in the 1900 MHz band, if the Commission reexamines this power relaxation for elimination or adjustment at the point that a new version of the C63.19 standard has been adopted. In addition, if the suggested relaxation of 2.5 dB for 2G GSM in the 1900 MHz band has been accepted and not previously eliminated, we believe the Commission should again review this proposed power down within five years (2015) for possible elimination or adjustment.

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,

A handwritten signature in blue ink that reads "Lise Hamlin". The signature is written in a cursive, flowing style.

Lise Hamlin
Director of Public Policy

cc: David Goldman (via email)