July 27, 2010

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Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW, TW-A325
Washington, D.C. 20554

Re: Written *Ex Parte* Presentation– Hearing Aid Compatibility Principles for Handsets Operating on Multiple Frequency Bands and/or Modes, WT Docket No. 07-250

Dear Ms. Dortch:

On July 26, 2010, Chris Guttmann-McCabe, Vice President, Regulatory Affairs and Matthew Gerst, Counsel, External & State Affairs, CTIA–The Wireless Association® ("CTIA"), along with John Godfrey of Samsung, Praveen Goyal of Research In Motion Limited ("RIM"), Katie Peters of Motorola and Rebecca Schwartz of TIA ("attendees"), met with Angela Giancarlo, Chief of Staff & Senior Legal Advisor to Commissioner Robert McDowell. CTIA and attendees discussed proposals before the Commission to modify the *de minimis* rule to the Commission's Hearing Aid Compatibility ("HAC") requirements, as described in recent *ex parte* submissions in the proceeding. During this meeting, CTIA expressed its support for the current *de minimis* rule and raised concerns that the modifications to the *de minimis* rule proposed in recent *ex partes* appear to be an overcorrection to a more limited concern. CTIA also requested additional time to work with the Commission and representatives of the hearing loss community to address concerns that the *de minimis* rule not be used indefinitely while maintaining the flexibility afforded under the current *de minimis* rule.

If the Commission nevertheless remains intent on adopting changes to the *de minimis* rules without further input, CTIA offers the following suggestions with the goal of addressing the concerns of the hearing loss community while minimizing potential harm to innovation. First, CTIA believes the Commission should incorporate RIM's proposal that the revised *de minimis* rules permit manufacturers or service providers who offer less than three handsets on an air-interface to phase-out of the *de minimis* rule within two years of either 1) a handset entering a new air interface, or 2) the Commission adopting an Order applying the appropriate HAC standard for an air interface pursuant to 47 C.F.R. § 20.19(k), whichever is later.[1] Under this proposal, at least one handset offered by a manufacturer or service provider in an air interface must comply with the Commission's HAC rules once the two-year period has expired (as defined by the triggers above). In addition, the

[1] Ex Parte Comments of Research In Motion Limited, WT Docket 07-250 (filed July 23, 2010).

current rules should continue to apply for manufacturers or service providers who offer more than two handsets in an air-interface. CTIA also agrees with RIM that the Commission should address the application of HAC issues to legacy handsets, *e.g.*, when a manufacturer or service provider is exiting an air interface. Second, and as described more fully below, CTIA recommends that the Commission seek further comment on the proposed "power down" option for HAC compliance through the Commission's further notice, and delay implementation of the revised *de minimis* accordingly. This approach would properly address concerns raised by representatives of the hearing loss community regarding the effect of the "power down" option on service quality and 9-1-1 access in particular. Conditioning any proposed revision of the *de minimis* rule on resolution of the "power down" option will ensure that consumers with hearing loss enjoy the benefit of HAC compliant devices while maintaining quality of service.

In its meeting, CTIA explained that, as the result of the competitive wireless ecosystem, U.S. consumers have the kind of choice and value that consumers around the world strive for. Competition is vigorous among manufacturers to serve all consumers, including persons with disabilities. Manufacturers do this by incorporating "built-in" accessibility features into their devices, including text-to-speech, speech-to-text and screen readers, HAC, support for Tele-Typewriters ("TTY") and Assistive Technology ("AT"), predictive text, word completion, voice activated features and closed captioning.[2] Since the Commission's HAC rules for wireless handsets were first established, the wireless industry has successfully collaborated with representatives of the hearing loss community to develop HAC standards for wireless handsets, implement labeling and consumer awareness initiatives, and address concerns as innovative wireless handsets which are outside the Commission's current HAC rules are introduced to the marketplace. CTIA noted that the Commission has previously committed to conduct a comprehensive review of its HAC rules, scheduled to start later this year, and that CTIA looks forward to participating in that review.[3] CTIA stated that, if the Commission is committed to moving forward with changes in advance of that comprehensive review, it should do so with an eye toward the careful balance that is reflected in the current HAC rules.

With regard to Section 20.19(e) of the Commission's rules (the *de minimis* rule),[4] the Commission adopted the *de minimis* rule to promote innovation and competition from new market entrants and handsets, and has a well-established policy

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[2] Comments of CTIA-The Wireless Association®, GN Docket No. 10-100 (filed June 10, 2010).

[3] Amendment of the Commission's Rules Governing Hearing Aid Compatibility Telephones, Petition of American National Standards Institute Accredited Standards Committee C63 (EMC) ANSI ASC C63™, WT Docket No. 07-250, *First Report and Order*, 23 FCC Rcd. 3406, 3451 ¶117 (2008) ("*HAC First Report and Order*").

[4] The Commission limited the scope of the public mobile services exemption to the Hearing Aid Compatibility Act of 1988 by adopting a *de minimis* rule. 47 C.F.R. § 20.19 (e).

that the *de minimis* rule should be available to any businesses, regardless of size, that offer a limited number of digital wireless handsets on an air interface.[5] In the meeting, CTIA noted that the *de minimis* rule is working exactly as intended by the Commission: it has encouraged innovation and competition while also assuring consumers a wide choice of HAC wireless handsets. CTIA and attendees described how proposed modifications of the *de minimis* rule could undermine the Commission's objectives with regard to the development and deployment of innovative wireless broadband handsets and services.

Specifically, CTIA raised concerns that the modifications to the *de minimis* rule proposed in recent *ex partes* appear to be an overcorrection to a more limited concern and have the potential to inflict unintended consequences on the vibrant wireless ecosystem. For example, with regard to "4G" wireless technologies, manufacturers and service providers are already relying on the *de minimis* rule, not because there are concerns with HAC for "4G" handsets, but because the tests and standards which would likely certify a "4G" handset's HAC compliance has not yet been adopted. Therefore, proposals to eliminate the *de minimis* rule in advance of the development of compliance standards have the potential to deter the very entry that the Commission and the wireless industry seek to achieve. Similarly, proposed changes to the *de minimis* rule should not foreclose manufacturers from availing themselves of the established framework as they exit particular air interfaces.

CTIA also noted that, with regard to the proposed "power down" option, the Hearing Loss Association of America ("HLAA") has raised concerns about the use of such option for emergency situations and requested the Commission find ways to work with industry to ensure emergency calls may be completed when a device is operating with this option.[6] In addition, the Commission's Office of Engineering and Technology ("OET") issued guidance stating that a device which utilizes the "power down" option should not be certified as HAC-compliant.[7] It is also not clear that the Commission has addressed other significant issues with the "power down" option including, requiring that handsets be set to "full power" when originally given to a consumer, applying the "power down" option in a technologically neutral manner,

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[5] *See* In the Matter of Section 68.4(a) of the Commission's Rules Governing Hearing Aid Compatibility Telephones, WT Docket No. 01-309, Report and Order, 18 FCC Rcd 16753, 16781 ¶ 69 (2003) ("*HAC Order*") (adopting the *de minimis* rule in recognition that HAC requirements "could have a disproportionate impact on small phone manufacturers *or those that sell only a small number of digital wireless handsets*"), *aff'd. on reconsideration*, 20 FCC Rcd 11221, 11225 ¶¶ 51-53 (2005) (modifying the *de minimis* rule to HAC obligations by adopting a per-air-interface interpretation) ("*HAC Order on Reconsideration*") (emphasis added); *HAC First Report and Order*, 23 FCC Rcd. 3406, 3435 ¶73 ("…as we have stated previously, the rule was not adopted solely for the benefit of small businesses, but for businesses of any size that sell only a small number of digital wireless handsets in the United States.").

[6] Ex Parte Comments of the Hearing Loss Association of America ("HLAA"), WT Docket No. 07-250 (filed July 13, 2010).

[7] Ex Parte Comments of Apple, Inc., WT Docket No. 07-250 (filed July 9, 2010).

reductions in coverage area and liability from resulting call quality and consumer education about these "power down" issues. CTIA believes that these issues merit further testing and discussion with service providers and representatives of the hearing loss community before such an option is implemented.[8]

Given these concerns, CTIA requested additional time to work with the Commission and representatives of the hearing loss community to develop a modification to the *de minimis* rule which does not fundamentally alter the current rule while addressing the concerns of the Commission and hearing loss community that the rule not be used indefinitely.

Please contact the undersigned or Matthew Gerst if there are questions concerning this filing.

Respectfully Submitted,

/s/ Chris Guttmann-McCabe

Chris Guttmann-McCabe
Vice President, Regulatory Affairs

cc: Angela Giancarlo

[8] CTIA also notes that the Commission's proposed modification to the *de minimis* rule without the "power down" option for GSM 1900 MHz would appear to undermine the Commission's intent to bring more wireless handsets into compliance with Commission's HAC rules. *See* Ex Parte Comments of Apple, Inc., WT Docket No. 07-250 (filed July 9, 2010).