

VIA ECFS

July 29, 2010

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

Re: *Research In Motion*
Written *Ex Parte* Presentation
WT Docket No. 07-250

Dear Ms. Dortch:

Pursuant to section 1.1206 of the Commission's rules, 47 C.F.R. § 1.1206, Research In Motion Limited ("RIM"), by its attorney, hereby submits a written *ex parte* presentation in the above-referenced proceeding. By this filing, RIM provides additional background and legal support for its proposed alternative to the current hearing aid compatibility ("HAC") *de minimis* rule, a copy of which is attached.

INTRODUCTION

RIM has a proud history of incorporating hearing aid compatibility and other accessibility features into its Blackberry® handset products, and has always taken these obligations seriously. RIM is in full compliance with the Commission's HAC requirements for its non-*de minimis* GSM and CDMA handset portfolios and, although it only offers a *de minimis* number of WCDMA handsets, one of those is already fully HAC-compliant as well. HAC compliance for GSM 850 MHz and 1900 MHz technology initially posed significant technical challenges for RIM's smartphone design, but the company worked diligently to resolve those issues, and expects its WCDMA portfolio to remain HAC-compliant once that portfolio exceeds the *de minimis* level.

RIM strongly supports the Commission's objectives of expanding the availability of accessible devices and services for persons with disabilities, including hearing aid users. The

Marlene H. Dortch

July 29, 2010

Page 2

company has showcased its innovative accessibility solutions at events and workshops sponsored by the Commission, accessibility advocates and research organizations over the years in order to demonstrate for policymakers, industry and consumers how innovation and accessibility need not be mutually exclusive.

As discussed in more detail below, however, Section 710 of the Communications Act, as amended, and the Commission's wireless HAC rules, are designed to promote multiple policy objectives – ensuring widespread availability of compatible handsets, while also ensuring that HAC requirements do not impede either the introduction of innovative new devices or the removal of superseded technologies from the market. RIM fears that proposals to eliminate the exception would fail to reflect these multiple interests.

In seeking a solution that achieves all these objectives, RIM has held a number of constructive and informative discussions with Commission staff and other industry and consumer stakeholders over the past several days concerning proposed changes to the *de minimis* rule, which apparently will be considered at the Commission's August 5, 2010 Open Meeting. RIM understands and appreciates the issue that consumer groups such as the Hearing Loss Association of America ("HLAA"), are seeking to address in modifying the *de minimis* exception:¹ i.e., that under the current rule, a manufacturer who continues to offer a *de minimis* number of handsets over time could potentially remain exempt from the HAC rules in perpetuity. This particular business model does not apply to RIM or to most manufacturers selling handsets in the U.S., but changing the rule precipitously could have unintended consequences for consumers and business alike.

In particular, RIM is very concerned that proposals to narrow or eliminate the *de minimis* exception will negatively impact its ability to timely introduce innovative new handset models, thus severely compromising the *de minimis* exception's objective of preserving manufacturers' ability to timely introduce new products to market, and to remove technologies from the market in an orderly manner. As the Commission seeks to encourage mobile operators and device manufacturers to rapidly develop and introduce innovative 4G broadband technologies, services and applications, it should ensure that its actions in this proceeding do not inadvertently undermine those important objectives.

Last week, RIM submitted a detailed proposal for the Commission's consideration that would both (1) squarely address the "exempt in perpetuity" issue by phasing out a company's use of the *de minimis* exception over a set period of time while (2) preserving the pro-innovation and pro-investment objectives the *de minimis* exception helps to preserve.² Specifically, RIM proposes:

¹ 47 C.F.R. § 20.19(e).

² See Research In Motion, *Ex Parte* Presentation in WT Docket No. 07-250, filed July 23, 2010, Attachment ("RIM July 23rd Letter").

Marlene H. Dortch

July 29, 2010

Page 3

- For existing handset technologies, the current *de minimis* exception would remain available to all manufacturers and service providers for two years after Federal Register publication of any modified rule.
- For devices with new air interface protocols introduced after a new C63.19 standard becomes effective, the two-year period would begin once that manufacturer or service provider offers a device with that new air interface protocol.
- For an air interface protocol a manufacturer service provider already offers but to which the C63.19 standard does not yet apply, the two year period would begin when an Order applying the C63.19 standard to that air interface protocol is adopted pursuant to 47 C.F.R. § 20.19(k).³
- Once the applicable two-year period has expired, if three or fewer handsets are offered for an air interface, at least one must be HAC compliant.
- A limited exception would apply after the applicable two-year period for legacy handsets, as follows: if a manufacturer or service provider offers four or more handsets per air interface during a given calendar year (Year 1), in the next calendar year offers three or fewer handsets (Year 2), and in subsequent calendar years offers one or two of *those remaining handsets* (Years 3-onward), then during Years 3-onward the HAC rules would not apply to those handsets.

RIM respectfully submits that its proposed approach promotes the important statutory and public interest objectives underlying the HAC rules, as discussed in additional detail below.

DISCUSSION

I. THE HAC RULES ARE INTENDED TO PROMOTE THE WIDESPREAD AVAILABILITY OF HAC-COMPLIANT HANDSETS WHILE ALSO ENABLING THE TIMELY COMPETITIVE ENTRY OF NEW DEVICES

The Commission's wireless HAC rules have proven enormously successful in achieving the important statutory objective of promoting "reasonable access to telephone service by persons with impaired hearing."⁴ From the outset, though, the Commission has also recognized that, absent the *de minimis* exception, the handset deployment requirements would "have a disproportionate impact on small phone manufacturers *or those that sell only a small number of digital wireless handsets in the United States.*"⁵ In 2005, the Commission affirmed the *de minimis* exception and explained that it did "not intend to force" manufacturers to increase their

³ ANSI ASC C63® has advised the Commission that the revised C63.19 standard, which if adopted by the Commission would expand the rule to cover devices from 698 MHz to 6 GHz and cover multiple air interface protocols, is to be balloted shortly. See ANSI ASC C63 Report and Comments, filed July 12, 2010.

⁴ 47 U.S.C. § 610(a).

⁵ Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones, Report and Order, 18 FCC Rcd 16753, ¶ 69 (2003) (emphasis added).

Marlene H. Dortch
July 29, 2010
Page 4

product offerings “or withdraw [their] existing products from the U.S. wireless market,” as “this outcome could have the effect of retarding technological progress and limiting competition.”⁶

Even as the Commission sought comment in 2005 and again in 2007 “on whether to narrow the *de minimis* exception,”⁷ it recognized that such an approach could adversely affect competition and innovation in the handset market. In 2005, the Commission expressly asked “whether any particular modification that would narrow the *de minimis* exception would increase costs to all consumers, including those with and without hearing disabilities, or discourage market entry by manufacturers.”⁸ The record in that proceeding overwhelmingly explained how narrowing the exception would have those very effects,⁹ and in its *2007 Order and NPRM*, the Commission found that the record did “not support any change to the *de minimis* exception at th[at] time.”¹⁰

Since then, in its *2008 Order* the Commission substantially increased the number of compliant handsets that manufacturers and service providers must offer, even as the *de minimis* exception remained unchanged.¹¹ The Commission reiterated that the exception “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.” While it kept the issue open for comment, the Commission remained “concerned that the rule not be limited in a manner that would compromise its effectiveness in promoting innovation and competition.”¹²

II. THE *DE MINIMIS* EXCEPTION HAS WORKED AS INTENDED AND REMAINS RELEVANT TODAY IN ORDER TO FACILITATE THE COMMISSION’S MOBILE BROADBAND POLICY OBJECTIVES

The record indicates that parties advocating repeal or a narrowing of the *de minimis* exception have been principally concerned for one particular business model not used by the

⁶ Section 68.4(a) of the Commission’s Rules Governing Hearing Aid-Compatible Telephones, 20 FCC Rcd 11221, ¶ 53 (2005) (“*2005 Order and FNPRM*”).

⁷ *Id.* at ¶ 66.

⁸ *Id.* at ¶ 66 (emphasis added).

⁹ See CTIA Comments filed Aug. 28, 2008, at 2-9; Motorola Comments filed Aug. 28, 2008, at 2-4 (noting Motorola’s experience with WCDMA air interface); RIM Comments, filed Aug. 28, 2008, at 2-5; TIA Comments filed Aug. 28, 2008, at 2-6; RIM Comments, filed Dec. 21, 2007, at 17-19; Nokia Comments filed Dec. 21, 2007, at 5-6.

¹⁰ *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®, Second Report and Order and Notice of Proposed Rulemaking*, 22 FCC Rcd 19670, ¶¶ 31, 85 (2007) (“*2007 NPRM*”).

¹¹ The requirements for telecoil coupling will increase again beginning in February 2011, and the Commission has committed to beginning a further review of these rules later this year.

¹² *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®, First Report and Order*, 23 FCC Rcd 3406, ¶ 73 (2008) (“*2008 Order*”).

Marlene H. Dortch

July 29, 2010

Page 5

majority of U.S. manufacturers that potentially enables a company to remain exempt from the HAC rules in perpetuity.¹³ The *de minimis* exception, however, remains relevant for manufacturers and service providers of all sizes, particularly as industry incorporates new 4G handset technologies and as multimode handsets become increasingly important to consumers and the competitive deployment of mobile broadband services.

Even with the *de minimis* exception, the Commission's rules already compel manufacturers and service providers to closely monitor and, in some cases, tailor their handset portfolios, including launch and discontinuance dates, in order to meet the percentage thresholds of the HAC rules. This challenge has been particularly acute for air interface protocols for which HAC compliance has been technically difficult, such as GSM and iDEN. By enabling manufacturers to quickly get product to market, the *de minimis* rule has mitigated the potentially market-distorting impact of the handset benchmarks and helped manufacturers and service providers to timely introduce new innovative handset technologies, while also enabling manufacturers and service providers to make hundreds of HAC-certified models available to hearing aid users. The *de minimis* exception facilitated RIM's ability to establish a toehold in the market for GSM, iDEN and now WCDMA devices. Importantly, the availability of the exception has not undermined RIM's incentive to achieve full compliance. RIM undertakes to make *all* of its handset models HAC compliant if it can. Each device is unique, however, with its own combination of antennas, displays, form factors, and electronics that will affect an M and T rating. While engineers can learn from past experience and endeavor to apply tested techniques to new models, achieving HAC compliance is never simple, easy, or inexpensive.

As the National Broadband Plan observes, “[c]ompetition, often from companies that were not market leaders, has driven innovation and investment in devices in the past and must continue to do so in the future.”¹⁴ The Commission is now properly seeking to facilitate wireless carriers' deployment of 4G technologies through a variety of means.¹⁵ Commission policies that enable manufacturers to more quickly get new innovative broadband products to market must be preserved for the Commission to achieve these objectives. Eliminating the *de minimis* exception, however, risks *delaying* the introduction of new innovative devices that incorporate new spectrum bands, air interface protocols, and other technical features that may pose new technical and engineering challenges with respect to HAC certification. RIM's proposed alternative to the

¹³ See HLA A et al. Comments filed Aug. 28, 2008, at 3; see also RERC-TA Comments filed Aug. 28, 2008, at 2-4; HLA A/TDI Comments filed Dec. 21, 2007 at 6.

¹⁴ National Broadband Plan, § 4.2 (2010).

¹⁵ See Prepared Remarks of Chairman Julius Genachowski, Federal Communications Commission, at the New America Foundation, Washington, DC, “*Mobile Broadband: A 21st Century Plan for U.S. Competitiveness, Innovation and Job Creation*,” (Feb. 24, 2010) available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-296490A1.doc; see also *Fostering Innovation and Investment in the Wireless Communications Market; A National Broadband Plan For Our Future*, Notice of Inquiry, 24 FCC Rcd 11322, ¶ 48 (2009) (affirming the Commission's intention to “facilitate continued innovation and investment in” wireless network infrastructure, end-user devices, and applications and services).

Marlene H. Dortch
 July 29, 2010
 Page 6

de minimis exception ensures that the rules continue to accommodate these important technical feasibility considerations.

III. ANY CHANGE TO THE *DE MINIMIS* EXCEPTION MUST BE CONSISTENT WITH THE PUBLIC INTEREST AND HAVE RECORD SUPPORT

Any elimination or further narrowing of the *de minimis* exception must meet important statutory prerequisites. Section 710 of the Communications Act, as implemented by the Hearing Aid Compatibility Act of 1988 (the “HAC Act”), imposes a general blanket exemption from its requirements for public mobile services; the Commission, in turn, may revoke or further limit this exemption only when, among other things, compliance is “technologically feasible” and “in the public interest,” and where added costs do not render the device unmarketable.¹⁶ Consistent with this mandate, even as it has expanded the number of wireless handsets that must be HAC-compliant over the years, the Commission has also consistently sought to ensure that the HAC rules do not undermine the public interest objective of preserving customer choice and competition in the handset marketplace.¹⁷ The *de minimis* exception has been integral to achieving that important objective.

Moreover, under the Administrative Procedure Act (“APA”), the Commission may not modify the *de minimis* exception and abandon the underlying policy basis for that exemption absent “a reasoned analysis,”¹⁸ and a showing that “prior policies and standards are being deliberately changed, not casually ignored”¹⁹ The Supreme Court recently clarified that “[i]t would be arbitrary and capricious to ignore such matters” in circumstances “when, for example, [the Commission’s] new policy rests upon factual findings that contradict those which underlay its prior policy; or when its prior policy has engendered serious reliance interests that must be taken into account.”²⁰ In those circumstances, the “reasoned explanation” required under the APA “is needed for disregarding facts and circumstances that underlay or were engendered by

¹⁶ See 47 U.S.C. § 610(b)(2)(A)(i) and (C); 2008 Order at ¶¶ 14-15 (“*First Report and Order*”) (explaining that mobile services exemption was “partially revoked”).

¹⁷ See 2008 Order at ¶ 67 (interim measure adopted in part to “avoid discouraging the use of currently-available Wi-Fi technology”); 2005 Order and FNPRM at ¶ 53 (2005) (affirming *de minimis* rule to avoid “retarding technological progress and limiting competition” in the handset marketplace).

¹⁸ See *Motor Vehicle Mfrs. Ass’n of the United States v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 57 (1983) (internal quotation marks omitted).

¹⁹ See *Greater Boston Television Corp. v. FCC*, 444 F.2d 841, 852 (D.C. Cir. 1970); see also *FCC v. Fox Television Stations, Inc.*, 129 S. Ct. 1800, 1811 (2009) (“[T]he requirement that an agency provide reasoned explanation for its action would ordinarily demand that it display awareness that it is changing position.”). The Commission also “must examine the relevant data and articulate a satisfactory explanation for its action including a ‘rational connection between the facts found and the choice made.’” See *Globalstar, Inc. v. FCC*, 564 F.3d 476, 483 (D.C. Cir. 2009) (quoting *State Farm*, 463 U.S. at 43 and *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)).

²⁰ See *Fox Television Stations, Inc.*, 129 S. Ct. at 1811 (citing *Smiley v. Citibank (South Dakota), N. A.*, 517 U.S. 735, 742 (1996)).

Marlene H. Dortch
July 29, 2010
Page 7

the prior policy.”²¹ The Court has thus established a high burden for any kind of an abrupt policy change here, particularly insofar as elimination of the exception would adversely affect the very broadband services and devices the Commission has determined are in the public interest, as well as manufacturers’ and service providers’ reliance interests in designing and marketing handsets under the current rules.

RIM submits that of the proposals in the record of this proceeding for modifying the exception, only RIM’s meets these standards of the HAC Act and the APA. Only RIM’s proposal sufficiently accounts for the Commission’s HAC Act public interest objective of preserving innovation and the entry of new devices into the market, and the Commission’s statutory responsibility to address technological feasibility and marketability issues. For the reasons discussed above, RIM submits that the record in this proceeding and the public interest support the continued application of the *de minimis* exception to all manufacturers and service providers for the interim periods RIM has proposed. The record certainly does not support abandonment of the Commission’s original rationale for the exception.

RIM is also concerned for proposals to allow a manufacturer to “power down” its handset at the GSM 1900 MHz band in order to achieve an M3 rating.²² In any event, adoption of such a proposal does not provide a reasoned basis for eliminating or modifying the *de minimis* rule. At a basic level, such a rule change cannot appropriately be viewed as a phase in of a narrowed *de minimis* exception, but instead is a change to the M3/M4 rule at Section 20.19(b)(1) of the rules. Additionally, RIM and other parties have previously expressed concern for this approach with respect to handset performance, particularly in emergency situations – thus raising important policy issues which should be considered on a more comprehensive record.²³

Further, as HLAA notes (and ANSI ASC C63® confirms), the soon-to-be-balloted revised C63.19 standard calls for a 2.2 dB relaxation in measured RF emissions for GSM. This could well facilitate manufacturers’ ability to achieve an M3 rating *without* a power down option – thus rendering it unnecessary.²⁴ Moreover, if the Commission maintains the *de minimis* exception for a period of time after adoption (as RIM and other parties have advocated), a manufacturer may well find it unnecessary to avail itself of the power-down option in the first place. These facts further militate *against* modifying the *de minimis* exception, as they indicate that an apparent factual underpinning for modifying or eliminating the exception may well disappear in the not-too-distant future.

Finally, insofar as the Commission might view the 2.5dB “power down” option as part and parcel to a narrowed *de minimis* exception, the Commission has never requested comment on this proposal in that context. RIM further submits that the power down option cannot be

²¹ *See id.*

²² *See* Apple July 9th Letter at 2.

²³ *See* RIM July 23rd Letter; CTIA *Ex Parte* in WT Docket No. 07-250, filed July 26, 2010, at 3.

²⁴ *See* HLAA July 13th *Ex Parte* at 2; ANSI ASC C63 Report and Comments, filed July 12, 2010, at 5.

Marlene H. Dortch

July 29, 2010

Page 8

deemed a logical outgrowth of the 2007 NPRM's request for comment on the *de minimis* exception. The Commission had already characterized that and similar options as "undesirable fixes," both in its *Cingular Waiver Order* and as reflected in OET's equipment authorization procedures.²⁵ In previously rejecting this approach in the *Cingular Waiver Order*, the Commission specifically cited to concerns "that this type of 'fix' could include introduction of 'HAC Mode' handsets, which would require the user to first find and then activate a separate operational mode that would reduce the interference potential of the handset by reducing its power, but with a consequent reduction in coverage."²⁶ The Commission also noted concerns from Self-Help for the Hard of Hearing (now HLAA) "that persons with hearing disabilities would not find such handsets acceptable because they would be difficult to use, could potentially have poorer service and coverage, and would revert to full power for 911 calls, increasing the chance of interference in emergencies."²⁷ Adopting this very proposal now would reflect a major 180-degree turnabout that could not have been anticipated given the Commission's previous explicit and resounding rejection of it.²⁸

If the Commission decides to modify the *de minimis* exception, it should narrowly tailor any changes to address the principal concern raised in the record of the proceeding: that the *de minimis* exception not enable large, well-heeled manufacturers or service providers to remain exempt from the HAC requirements in perpetuity. RIM has proposed an appropriate and targeted phase-in approach that is consistent with the requirements of the HAC Act and the APA, that preserves the demonstrable public interest benefits of the *de minimis* exception, and that achieves HLAA's ultimate objective of phasing it out.²⁹

²⁵ See Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones, *Cingular Wireless LLC Petition for Waiver of Section 20.19(c)(3)(i)(A) of the Commission's Rules*, Memorandum Opinion and Order, 20 FCC Rcd 15108, ¶ 10 (2005) ("*Cingular Waiver Order*"); Office of Engineering and Technology, *Equipment Authorization Guidance for Hearing Aid Compatibility*, at 4 (OET Oct. 1, 2009) ("A handset model with user instructions that disable any of its features, degrade performance, reduce RF output power . . . , etc. for the purpose of meeting HAC compliance is not permitted").

²⁶ *Cingular Waiver Order* at ¶ 10.

²⁷ *Id.*

²⁸ See *Environmental Integrity Project v. EPA*, 425 F.3d 992, 996-97 (D.C. Cir. 2005) (logical outgrowth requirement precludes agencies from "us[ing] the rulemaking process to pull a surprise switcheroo on regulated entities"); *International Union, United Mine Workers of America v. MSHA*, 407 F.3d 1250, 1261 (D.C. Cir. 2005) (agency "did not afford a . . . public notice of its intent to adopt, much less an opportunity to comment on" the adopted rule); *Omnipoint Corp. v. FCC*, 78 F.3d 620, 631 (D.C. Cir. 1996) ("a final rule is not a logical outgrowth of a proposed rule 'when the changes are so major that the original notice did not adequately frame the subjects for discussion.'") (quoting *Connecticut Light and Power Co. v. NRC*, 673 F.2d 525, 533 (D.C. Cir.), cert. denied, 459 U.S. 835 (1982)); *Shell Oil Co. v. EPA*, 950 F.2d 741, 751 (D.C. Cir. 1991) ("an unexpressed intention cannot convert a final rule into a 'logical outgrowth' that the public should have anticipated" and "[i]nterested parties cannot be expected to divining the [agency's] unspoken thoughts").

²⁹ See RIM Ex Parte Letter in WT Docket No. 07-250, July 23 2010, at Attachment. The Commission is "required 'to consider responsible alternatives to its chosen policy and to give a reasoned explanation for its rejection of such alternatives.'" See *Am. Radio Relay League, Inc. v. FCC*, 524 F.3d 227, 242 (D.C. Cir. 2008) (quoting *City of Brookings Mun. Tel. Co. v. FCC*, 822 F.2d 1153, 1169 (D.C. Cir. 1987)).

Marlene H. Dortch
July 29, 2010
Page 9

CONCLUSION

For the foregoing reasons, RIM urges the Commission to ensure that any modification of the *de minimis* rule is narrowly targeted toward any demonstrable shortcomings in the current HAC rules, consistent with the HAC Act and the underlying record in this proceeding. RIM respectfully submits that its proposal provides a compelling basis for achieving these objectives.

Respectfully submitted,

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RESEARCH IN MOTION LIMITED
WT DOCKET NO. 07-250
PROPOSED ALTERNATIVE TO THE HEARING AID COMPATIBILITY
DE MINIMIS EXCEPTION

- ***For existing handset technologies the current de minimis exception should remain available to all manufacturers and service providers for at least two years after Federal Register publication of any modified rule.*** Ongoing product and portfolio development has relied on the current exemption. Manufacturers and service providers will need *at least two years* after the rule is promulgated to adapt their product design and marketing portfolios to help ensure compliance with the updated rules.
- ***For air interface protocols that have not yet been launched (e.g. LTE), and existing air interface protocols to which the C63.19 standard does not yet apply (e.g. WiMax), an appropriate trigger for the minimum two year period is warranted.*** Any time limit on the period during which a manufacturer or service provider may rely on the exception should apply *on a per air interface* basis. Additionally:
 - For devices with new air interface protocols, the two-year period should begin once a manufacturer or service provider offers a device with that new air interface protocol;
 - For an air interface protocol already on the market but to which the C63.19 standard does not yet apply, the two year period begins when an Order applying the C63.19 standard to that air interface protocol is adopted pursuant to 47 C.F.R. § 20.19(k).

Under either scenario, manufacturers will need sufficient time to incorporate product features (*e.g.* form factors, shielding, antenna placement, etc.) that facilitate a minimum M3 and T3 rating under a new standard, as well as test to the new standard. Manufacturers and service providers alike will need time to begin introducing those devices into the marketplace through marketing channels, and modify their handset portfolios to ensure that the minimum handset requirements are maintained.

- ***Once the applicable two-year period has expired, RIM proposes that if three or fewer handsets are offered for an air interface, at least one must be HAC compliant.*** Once the *de minimis* exception expires after the applicable two-year period, RIM proposes that, if three or fewer models are offered for a given air interface, at least one must be fully HAC compliant; accordingly, if only one model continues to be offered in a given air interface then that model must be fully HAC compliant. This proposal addresses the concern that, under the current rules, a manufacturer offering only one or two models could remain *de minimis* in perpetuity.
- ***A limited exception should be retained after the two-year period for legacy handsets.*** All manufacturers and service providers will still need some mechanism to address potential “outlier” scenarios in which the *de minimis* exception would otherwise have provided relief. At minimum, some exception is necessary for legacy technologies being phased out of a portfolio.

- For example, if a manufacturer or service provider is phasing out a particular air interface but still offers two or three handsets for a particular air interface, absent the current *de minimis* exception or a similar provision it would be compelled (regardless of carrier or consumer demand) to either discontinue all of the models concurrently with the HAC model, or maintain the HAC model solely for the purposes of enabling it to continue offering the non-HAC model(s).
- To address this situation, RIM recommends that the Commission exempt a manufacturer's and carrier's handsets from the HAC rule in the following circumstances: If a manufacturer or service provider offers four or more handsets per air interface during a given calendar year (Year 1), in the next calendar year offers three or fewer handsets (Year 2), and in subsequent calendar years offers one or two of *those remaining handsets* (Years 3-onward), then during Years 3-onward the HAC rules would not apply to those handsets. RIM believes that this approach effectively targets air interface technologies that are being phased out of production or retail sales, and is reflective of the Commission's treatment of TDMA technology under the HAC rules and the current "product refresh" requirement.