



July 29, 2010

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

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

Dear Ms. Dortch:

Motorola, Inc. ("Motorola") submits these remarks to provide its perspective on certain proposals for modifying Hearing Aid Compatibility ("HAC") rules reportedly being considered by the Commission. We have significant concerns regarding the proposed actions and support the approach outlined in the CTIA *ex parte* comments on this matter.¹

Motorola strives to make its products accessible to individuals with disabilities, and has long been a technological and market leader in this area. Motorola has offered, and will continue to offer, dozens of HAC compliant phones, including models ranging from its most advanced smartphones to its entry level feature phones. Motorola's designers are continually working to improve the accessibility of its products. In addition, Motorola has formed affiliations with manufacturers that make assistive devices for people with special needs, helping to provide for compatibility with our products. Moreover, Motorola has been attentive to and supportive of consumers with hearing loss, specifically through close cooperation with the Hearing Loss Association of America ("HLAA") over the last decade.

The Commission has released a tentative agenda for its August 5, 2010, meeting that includes consideration of a Report and Order and Further Notice of Proposed Rulemaking that are designed to benefit consumers with hearing loss by ensuring that advanced and innovative devices that provide telephone voice communications are hearing aid-compatible.² Based on recent discussions with Commission staff, Motorola expects the Commission to consider a revision to the *de minimis* rule that is applicable to the Commission's HAC rules. Under the *de minimis* rule, manufacturers that offer one or two digital wireless handsets compatible with a particular air interface are exempt from the HAC requirements in connection with that air interface technology.³ The *de minimis*

¹ See Letter from Chris Guttman-McCabe, CTIA – The Wireless Association to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 07-250 (filed July 27, 2010).

² See FCC Announces Tentative Agenda for August 5th Open Meeting, *News Release* (rel. July 15, 2010) available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-299850A1.pdf.

³ See 47 C.F.R. § 20.19(e).

rule was adopted to ensure that the Commission's HAC rules do not thwart innovation and competition from new market entrants, new technologies, and new handsets. By these metrics, the *de minimis* rule has been successful, and strikes the right balance between encouraging innovation and ensuring the availability of a broad range of technologically advanced and fully featured products appropriate for use by all consumers. Motorola therefore believes that the spirit of *de minimis* rule should be retained.

It is clear, however, that some manufacturers have exploited the flexibility offered by the *de minimis* rule to the detriment of consumers with hearing loss. Motorola does not believe, however, that this should lead the Commission to eliminate the rule altogether or limit its applicability by excluding "large businesses" from its scope.⁴ The preponderance of innovation is delivered to the market by large businesses that may be forced to delay the introduction of new air interfaces in order to implement HAC compatibility if the Commission's rules do not provide an exception for new technologies. A small business exception would also conflict with the Commission's stated position that, "...the [*de minimis*] 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."⁵

The Commission should consider mechanisms that limit the ability of manufacturers to avoid HAC compliance on a continuing and indefinite basis. Some manufacturers have twisted the rationale of the *de minimis* rule by manufacturing less than three models, thus claiming its additional flexibility, despite the fact that they sell far more than "only a small number of digital wireless handsets in the United States." The Commission's HAC rules are rightfully intended to ensure that individuals with hearing loss have access to high quality, affordable, and accessible products, and such market behavior undermines this important goal.

As such, if the Commission does act to modify the *de minimis* rule, Motorola urges the Commission to adopt the proposal put forth by Research In Motion⁶ and endorsed by the Telecommunications Industry Association⁷ regarding a new framework for application of the rule. Specifically, Motorola recommends that:

1. With respect to existing handset technologies, the *de minimis* rule continue to apply to all manufacturers and service providers for at least two years after publication of any new rule.

⁴ See, e.g., Letter from Lise Hamlin, Hearing Loss Association of America, to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 07-250 (filed July 13, 2010) ("HLAA Ex Parte").

⁵ See 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, 3435 ¶ 73 (2008).

⁶ See Letter from Robert G. Morse, Counsel for Research In Motion Limited to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 07-250 (filed July 23, 2010).

⁷ See Letter from Rebecca Schwartz, Telecommunications Industry Association to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 07-250 (filed July 26, 2010).

2. With respect to air interfaces that have not been launched yet or for which the ANSI C63.19 standard does not yet apply, continue the *de minimis* rule with incorporation of appropriate triggers for application of the two year limit. Specifically, for new air interface technologies, the two year period should begin upon offering a device using the new interface. For existing interfaces not yet covered by the C63.19 standard, the two year period should begin with an *Order* applying the standard to that interface is adopted.
3. Upon the expiration of the two year period, the HAC rules would apply to all manufacturers and service providers. If three or fewer models are offered for a specific air interface, at least one must be HAC compliant.
4. Finally, notwithstanding number 3, a limited exception should be retained after the two-year period for legacy handsets to accommodate the phasing-out of technologies.

Motorola also understands that the Commission is considering changing the existing HAC rules to allow manufacturers of GSM handsets operating in the 1900 MHz band to implement a software-based “power down” functionality to support hearing aid compatibility when operating on 2G networks, as requested by Apple.⁸ Motorola is concerned that there has been insufficient time to properly conduct testing of this proposal, and further cautions the Commission that such a proposal would be contrary to its longstanding and successful policy of technology neutrality. As such, Motorola respectfully requests that the Commission defer adopting such a proposal in any upcoming Report and Order, and instead issue a Further Notice of Proposed Rulemaking to allow industry and the public to comment on the power-down proposal.

The Hearing Loss Association of America, which has conditionally supported the power-down proposal, has expressed concerns about the potential for this proposal to, “...result in dropped or garbled calls.”⁹ As HLAA points out, this potential for call disruption would be particularly problematic in emergency situations, when life-saving 9-1-1 calls could be prevented. Unfortunately, the true extent of this risk is unknown at this time, as there appears to be no technical evidence in the record supporting such a rule change. Modern systems already control transmit power to maximize battery life and system capacity such that the maximum output power is only used when absolutely required for reliable transmission. The practical effect of the proposed rule might well be to effectively limit the service area for applicable devices such that devices at the extremes of coverage would be HAC compatible but unable to communicate reliably. Consequently, the Commission should not move forward with the power-down proposal without first initiating a Further Notice of Proposed Rulemaking to examine its impact.

Additionally, making a special exception to the HAC rules for 1900 MHz GSM systems is not competitively neutral. Any exception for 1900 MHz systems should also be considered for 800 MHz systems as well. Issuing a Further Notice of Proposed

⁸ See Letter from Paul Margi, Counsel for Apple Inc. to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 07-250 (filed July 9, 2010).

⁹ See HLAA Ex Parte at 2.

Rulemaking to examine these issues would ensure that the Commission crafts a rule that is best for consumers, and not simply tailored to a specific technology or business model. Moreover, as raised by HLAA in its recent letter, the ANSI C63.19 standard is in an ongoing state of development.¹⁰ The Commission should consider allowing the standards setting process to proceed before establishing regulations.

Given the concerns addressed above, Motorola respectfully requests the Commission refrain from modifying the existing *de minimis* rule, which has effectively served its intended purpose of promoting innovation and new entry into the device market. However, if the Commission does decide to revise the *de minimis* rule, it should do so pursuant to the framework discussed above. Moreover, Motorola respectfully suggests the Commission initiate a Further Notice of Proposed Rulemaking regarding any potential adoption of the power-down proposal, as such a proceeding will allow for more complete testing and analysis of the proposals ramifications.

Respectfully Submitted,

/S/ Katie Peters

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Id.