

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC**

In the Matter of)	
)	
Amendment of the Commission's Rules Governing)	WT Docket No. 07-250
Hearing Aid-Compatible Mobile Handsets)	
)	

COMMENTS OF CLEARWIRE CORPORATION

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INTRODUCTION

Clearwire Corporation (“Clearwire”) files these comments in response to the Commission’s Further Notice of Proposed Rulemaking (“*FNPRM*”) soliciting comment on potential revisions to its wireless hearing aid compatibility (“HAC”) rules.¹ Clearwire supports the Commission’s action in this proceeding, which strikes the right balance between meeting the needs of individuals with hearing loss, while also providing for the orderly extension of hearing aid compatibility requirements to a rapidly growing and evolving industry. Clearwire supports the Commission’s proposal to extend its HAC rules to new technologies and networks and comments on the appropriate transition period for application of the rules to new technologies. Finally, Clearwire asserts that the Commission’s proposal to establish new rules requiring more flexible return policies for hearing loss customers is unnecessary in light of current industry return policies and practices.

I. BACKGROUND

Clearwire operates open, Internet-Protocol (“IP”) 4G wireless broadband networks in markets across the United States and Europe. These networks provide communities with high-speed residential and mobile Internet and interconnected voice over Internet protocol (VoIP) services. As of October 2010, Clearwire has nearly two million wireless broadband subscribers and is rapidly deploying 4G broadband wireless service that utilizes the WiMAX technology standard in new markets and converting its pre-WiMAX markets to the 4G standard.² Clearwire

¹ *Amendment of the Commission’s Rules Governing Hearing Aid Compatible Mobile Handsets*, Policy Statement and Second Report and Order and Further Notice of Proposed Rulemaking, WT Docket No. 07-250 (rel. Aug. 5, 2010)(“*Policy Statement*,” “*Order*,” “*FNPRM*”).

² CLEAR 4G service is currently available in 56 markets across the United States, including: Minneapolis/St. Paul, Minn.; Nashville, Tenn.; Boston, Mass.; Orlando, Daytona

has announced that by the end of 2010, its 4G WiMAX network is expected to be available in more than 80 markets covering up to 120 million people.³

Clearwire has positioned itself as a “network of networks,” offering a wholesale model to other communications network providers. Clearwire has not only launched its own successful CLEAR service, but also serves as the underlying 4G network of Sprint Nextel, Comcast and Time Warner Cable. These carriers couple Clearwire’s 4G service with their own facilities-based offerings to provide consumers with a varied package of choices among 4G network providers and service packages in those markets where Clearwire has deployed its network. For example, Sprint Nextel launched the country’s first tri-mode 3G/4G/WiFi handset by combining its facilities-based 3G services with Clearwire’s 4G offerings. This device, the HTC EVO™, is the first 3G/4G phone, and includes features such as a 4.3-inch screen, dual 8MP video camera, a front-facing 1.3MP camera, a HDMI output jack and a 1GHz processor. It has simultaneous voice and data capability in 4G or Wi-Fi coverage areas, enabling Web surfing and more during conversation, and has a built-in mobile hotspot for up to eight Wi-Fi enabled devices.⁴ The

Beach and Jacksonville, Fla.; Providence, R.I.; Wilmington, Del.; Grand Rapids, Mich.; Syracuse and Rochester, N.Y.; Atlanta and Milledgeville, Ga.; Baltimore, Md.; Boise, Idaho; Chicago, Ill.; Las Vegas, Nev.; St. Louis and Kansas City, Mo.; Pittsburgh, Philadelphia, Harrisburg, Reading, Lancaster and York, Pa.; Charlotte, Raleigh, and Greensboro, N.C.; Honolulu and Maui, Hawaii; Seattle, Tri-Cities, Yakima and Bellingham, Wash.; Salem, Portland and Eugene, Ore.; Merced, Visalia, Modesto and Stockton, Calif.; Dallas/Ft. Worth, Houston, San Antonio, Austin, Abilene, Amarillo, Corpus Christi, Killeen/Temple, Lubbock, Midland/Odessa, Waco and Wichita Falls, Texas; central Washington, D.C.; Richmond, Va.; and Salt Lake City, Utah.

³ By the end of 2010, CLEAR 4G will also be available in major metropolitan areas such as New York City, Los Angeles, the San Francisco Bay area, Denver, Miami, Cincinnati and Cleveland.

⁴ See “HTC EVO™ 4G Breaks Sales Records for Sprint on Launch Day; America’s First 4G Phone is a Hit with Customers,” June 8, 2010, *available at* http://newsreleases.sprint.com/phoenix.zhtml?c=127149&p=irol-newsArticle_newsroom&ID=1436066. Sprint has also since launched a second 4G handset, the Samsung Epic. See “Second 3G/4G Phone, Samsung Epic 4G, Launches with One of the Best

EVO has obtained HAC ratings for its 3G air interface, but standards do not yet exist for rating the 4G and WiFi modalities.

II. DISCUSSION

a. Clearwire Supports the Commission's Proposed Actions

Clearwire supports the Commission's finding that extending its HAC rules to advanced technologies, specifically, non-commercial mobile radio service ("CMRS") wireless devices that provide "voice communications" is necessary to ensure that individuals with hearing loss have access to the most advanced and innovative communications technologies.⁵ Furthermore, the Commission is correct in its conclusion that the Hearing Aid Compatibility Act⁶ ("HAC Act") is broad enough to encompass all devices that provide "voice communications."⁷ In fact, the Commission's proposed action to extend its HAC rules to all wireless devices that provide "voice communications" is not only permissible, but is now superseded by the recently passed Accessibility Act, which explicitly extends HAC requirements to "[a]ll customer premises equipment used with advanced communications services that is designed to provide 2-way voice communication via a built-in speaker intended to be held to the ear in a manner functionally equivalent to a telephone . . ."⁸ This new statutory definition encompasses the set of devices defined by the Commission in its *FNPRM*.⁹ Therefore, Clearwire agrees that taking action to

First-Day Sales for Any Sprint Device," available at http://newsroom.sprint.com/article_display.cfm?article_id=1620.

⁵ See *Policy Statement* at ¶ 18; *FNPRM* at ¶ 78, 82.

⁶ See 47 U.S.C. § 610.

⁷ See *FNPRM* at ¶ 78.

⁸ Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-260, 124 Stat. 2751 at § 102(a)(1).

⁹ The Commission's proposal would extend the HAC rules to "all customer equipment used to provide wireless voice communications over any type of network among members of the

include these new technologies serves the public interest in the same manner it did when the Commission chose to remove the exemption for digital wireless phones; without running afoul of any other regulatory or statutory classification provisions.¹⁰

As recognized by the Commission, and now Congress, developments in technology and usage patterns have greatly expanded the pool of devices that function as “telephones” from the perspective of the consumer. Clearwire urges the Commission to continue to carefully examine the technological feasibility and cost of extending its HAC rules to new devices, pursuant to the statutory criteria that must be met under the HAC Act.¹¹ Currently, extension of the HAC rules to the group of devices defined in the Accessibility Act appears to be generally technologically feasible for most carriers and handset manufacturers, many of which have already developed multiple HAC compliant handsets for the CMRS industry.¹² But, it is possible that technological feasibility and cost may become an issue for future devices under some set of unforeseeable circumstances. The Commission should therefore continue to use the statutorily required technological feasibility standard as the yardstick for considering compliance and requests for waiver.

public or a substantial portion of the public via a built-in speaker where the equipment is typically held to the ear.” *FNPRM* at ¶77.

¹⁰ See *FNPRM* at ¶¶ 79-80, 84-90.

¹¹ The Hearing Aid Compatibility Act requires four statutory criteria to be met before the exemption can be revoked or limited for new technologies. (1) such revocation or limitation is in the public interest; (2) continuation of the exemption without such revocation or limitation would have an adverse effect on individuals with hearing loss; (3) compliance with the requirements adopted is technologically feasible for the telephones to which the exemption applies; and (4) compliance with the requirements adopted would not increase costs to such an extent that the telephones to which the exemption applies could not be successfully marketed. See 47 U.S.C. § 610(b)(2)(c).

¹² See e.g., the lists of T-Mobile USA, Inc. and Sprint HAC certified handsets; available at http://www.tmobile.com/Company/Community.aspx?tp=Abt_Tab_Safety&tsp=Abt_Sub_TTYPOlicity; http://www.sprint.com/landings/accessibility/docs/HAC_PDF_List.pdf.

Finally, Clearwire urges the Commission to provide as much time as reasonably possible for carriers and manufacturers to comply with the HAC rules for all non-CMRS handsets and supports the proposed two-year timeframe suggested by the Commission.¹³ As alluded to in the *FNPRM*, the two year time frame afforded to CMRS providers and manufacturers when the Commission removed the HAC exemption for CMRS handsets in 2003, is a reasonable starting point for new non-CMRS devices.¹⁴ As mentioned above, the Commission should also take into consideration both technological feasibility and economies of scale when deciding how much time to afford carriers and manufacturers developing and deploying these newly covered technologies. In some instances, carriers and manufacturers may face unique technical hurdles, and may require additional time to develop technical standards for HAC compliance. In fact, the Commission very recently acknowledged the industry's need for additional time to develop HAC standards for multi-mode handsets in its *Order* in this proceeding.¹⁵ If the Commission implements similar timeframes for new non-CMRS devices going forward, it will best serve the needs of both consumers with hearing loss and the industry.

b. New Rules Addressing Return Policies are Unnecessary

The Commission's proposal to mandate the adoption of more flexible return policies for hearing loss customers is unnecessary, and could discourage carrier return policies that are more flexible than those contemplated by the Commission.¹⁶ Carriers already have incentives to make return policies as flexible as possible for hearing loss customers. If those customers cannot use their service because the device they have chosen interferes with his or her hearing aid, those

¹³ See *NPRM* at ¶ 93.

¹⁴ See *FNPRM* at ¶¶ 92-93.

¹⁵ See *Order* at ¶¶ 22-27.

¹⁶ See *NPRM* at ¶ 96.

customers will ultimately cancel their service altogether if not provided the opportunity to replace it with a device that does not interfere. Furthermore, many carriers have already adopted generous return policies.

Carriers may also choose to differentiate themselves through carefully tailored and, ultimately, very generous return policies that apply across all product lines. Any proposed change in the Commission's rules, applicable to only one customer segment, even if less restrictive than what the carrier would have adopted voluntarily, could eliminate any incentive that a carrier has to adopt a return policy that is more flexible than required by a mandate. Therefore, Clearwire urges the Commission to refrain from adopting rigid guidelines applicable to return policies for hearing loss customers.

CONCLUSION

In conclusion, Clearwire supports the Commission's ongoing efforts to review and strengthen its HAC rules, which will ensure that individuals with hearing loss are not deprived access to new technologies and devices. The path the Commission has taken in its *FNPRM* acknowledges the needs of both consumers and industry, and asks the necessary questions to enable it to further the goals of the Hearing Aid Compatibility Act without overly burdening a nascent industry and future technologies. Clearwire urges the Commission to continue to balance the needs of both the consumers and industry, going forward, during its 2010 review of its HAC rules.

Respectfully submitted,
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