

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

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

To: The Commission

**COMMENTS OF CTIA – THE WIRELESS ASSOCIATION®**

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October 25, 2010

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## SUMMARY

By any measure, today's wide availability of Hearing Aid Compatible ("HAC") certified wireless handsets and resources for consumers represents remarkable progress that is the result of the collaborative efforts of consumers, industry and the Commission. It is not surprising, then, that Congress largely ratified the Commission's deliberative approach to wireless HAC implementation in the *Twenty-First Century Communications and Video Accessibility Act of 2010* ("Accessibility Act") and applied it to innovative wireless handsets intended to utilize "advanced communications services." CTIA supported passage of the Accessibility Act, and thus generally supports the Commission's proposals to expand the scope of wireless handsets and services covered by the Commission's HAC rules consistent with the newly amended statute.

By enacting the Accessibility Act, Congress has addressed many of the Commission's proposals in the *Further Notice of Proposed Rulemaking*, including requirements for multi-mode handsets and third party voice applications. While expanding the Commission's HAC authority to new wireless handsets, Congress also expressly retained the Commission's current HAC rules and the limited statutory exemption for "public mobile services." CTIA reminds the Commission that, to date, no HAC concerns have been identified for air interfaces beyond current Commercial Mobile Radio Services ("CMRS"), including emerging unlicensed and licensed air interfaces, and the Commission should ensure it does not prematurely impose new regulatory obligations. Despite the absence of identified HAC issues for these air interfaces, the wireless industry has demonstrated a clear commitment to resolve HAC issues by proactively developing an improved method to evaluate and test new wireless technologies, should any issues arise.

As the Commission implements the Accessibility Act, CTIA and its member companies remain committed to addressing ongoing and future HAC policy issues, such as increased consumer awareness of HAC-related information and disclosures, through collaborative processes. CTIA urges consumer representatives to utilize and direct consumers with hearing loss to industry resources, including service provider, manufacturer, and independent retailer publications and CTIA's [www.AccessWireless.Org](http://www.AccessWireless.Org) where consumers can find information about HAC with wireless handsets. In addition, CTIA supports wider availability of the low-power option at GSM 1900 MHz consistent with the obligations provided under the *de minimis* rule. Finally, CTIA urges the Commission to more closely evaluate the role hearing aid technologies can play in improving users' wireless experience through interagency collaboration with the U.S. Food and Drug Administration and the U.S. Department of Veterans Affairs.

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CTIA – The Wireless Association® (“CTIA”) hereby submits these Comments in response to the Commission’s *Further Notice of Proposed Rulemaking* (“FNPRM”) in the above-captioned proceeding, and the Wireless Telecommunications Bureau’s subsequent request for comment on the impact of the Twenty-First Century Communications and Video Accessibility Act of 2010 (“Accessibility Act”).<sup>1</sup> CTIA supported passage of the Accessibility Act, and thus generally supports the Commission’s proposals in the *FNPRM* to expand the scope of covered wireless handsets and services consistent with the newly amended statute. By enacting the Accessibility Act, Congress has addressed many of the Commission’s proposals in the *FNPRM*, including requirements for multi-mode handsets and third party voice applications. CTIA believes the Commission should continue to engage consumer and industry stakeholders in collaborative efforts to identify and recommend solutions to HAC issues, if necessary, and that modifications to the current requirements for “public mobile services” would be inappropriate at

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<sup>1</sup> *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*, 25 FCC Rcd 11167 (2010) (“*FNPRM*”/“*Second Report and Order*”); Public Notice, *Wireless Telecommunications Bureau Requests that Comments in Hearing Aid Compatibility Proceeding Address Effects of New Legislation*, WT Docket No. 07-250, DA 10-1936 (WTB rel. Oct. 12, 2010).

this time. In addition, CTIA supports wider availability of the low-power option at GSM 1900 MHz. Finally, CTIA urges the Commission to more closely evaluate the role hearing aid technologies can play in improving users' wireless experience through interagency collaboration with the U.S. Food and Drug Administration and the U.S. Department of Veterans Affairs.

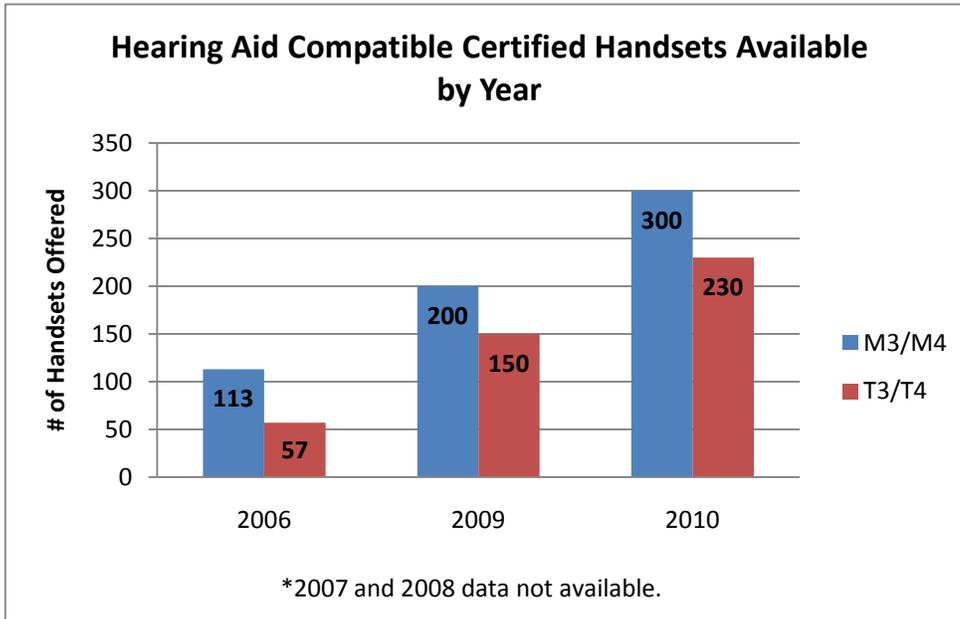
## I. INTRODUCTION

The success of the Commission's wireless hearing aid compatibility ("HAC") rules has resulted from the collaborative efforts of consumers, industry and the Commission. A success that is measurable from the Commission's HAC reports. As of June 30, 2010, over 300 handsets with an M3 or M4 rating, and over 230 with a T3 or T4 rating, were offered during 2009-2010 – up from over 200 M3/M4-rated and over 150 T3/T4-rated handsets during the prior year;<sup>2</sup> in November 2006 manufacturers offered 113 models with an M3/M4 rating, while 57 models met a T3/T4 rating.<sup>3</sup>

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<sup>2</sup> See Summary Report titled "Device Manufacturers Handset Totals by Air Interface," (July 2010) available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-300597A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-300597A1.pdf); and Summary Report titled "Handset Totals by Air Interface," (July 2009), available at <http://wireless.fcc.gov/hac/DeviceManufacturerInformationbyHandsetJuly2009.pdf>.

<sup>3</sup> *Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones*, Report on the Status of Implementation of the Commission's Hearing Aid Compatibility Requirements, 22 FCC Rcd 17703, ¶ 21 (WTB 2007). See also Comments of CTIA – The Wireless Association®, WT Docket No. 10-133 (filed July 30, 2010) (reporting that at least 33 companies manufacture more than 630 unique devices for the U.S. market).



There is clearly a positive trend for consumers who use hearing aids to find a wide-range of accessible wireless handsets. In addition, CTIA urges consumer representatives to utilize and direct consumers with hearing loss to industry resources, including service provider, manufacturer, and independent retailer publications and CTIA’s [www.AccessWireless.Org](http://www.AccessWireless.Org) where consumers can find information about HAC with wireless handsets.<sup>4</sup> By any measure, today’s wide availability of HAC-compliant handsets and resources for consumers represents remarkable progress.

It is not surprising, then, that Congress largely ratified the Commission’s deliberative approach to wireless HAC implementation in the Accessibility Act and applied it to certain

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<sup>4</sup> AccessWireless.Org devotes entire sections of the website to help consumers better understand HAC, including frequently asked questions (“FAQs”) and the Wireless RERC’s video series *Hearing Aid Compatibility: Choosing a Cell Phone that Works for You*. [www.accesswireless.org](http://www.accesswireless.org) (last visited October 25, 2010).

Voice of Internet Protocol (“VoIP”)-capable handsets.<sup>5</sup> While expanding the Commission’s section 710 authority to new wireless handsets, Congress also expressly retained the limited statutory exemption for “public mobile services” and the four enumerated criteria that must be met for the Commission to further limit that exemption.<sup>6</sup> Congress further mandated that the Commission employ a similar approach with respect to newly-covered handsets used with “advanced communications services.”<sup>7</sup> The Commission’s proposed expansion of the HAC requirements must comply with this statutory framework to facilitate continued investment and innovation in wireless technologies consistent with Congress’s Accessibility Act objectives and the FCC’s *Hearing Aid Compatibility Policy Statement*.<sup>8</sup>

Importantly, Congress also required that new HAC standards be established through collaborative processes.<sup>9</sup> CTIA reminds the Commission that, to date, HAC concerns have not been identified for air interfaces beyond current Commercial Mobile Radio Services (“CMRS”), including emerging unlicensed and licensed air interfaces, and the Commission should ensure it does not prematurely impose new regulatory obligations. Despite the absence of identified HAC issues for these air interfaces, industry has developed an improved method to evaluate and test

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<sup>5</sup> See *The Twenty-First Century Communications and Video Accessibility Act of 2010*, § 102, S.3304 and S.3878, Public Law Nos. 111-260 and 111-265 (2010) (the “Accessibility Act”).

<sup>6</sup> Accessibility Act § 102(a)(2). These four factors relate to (i) the public interest, (ii) the effect on hearing-impaired individuals, (iii) technological feasibility, and (iv) cost and marketability. 47 U.S.C. § 610(b)(2)(C).

<sup>7</sup> *Id.* § 102(c)(2) (to be codified at 47 U.S.C. § 610(e)). New section 710(e) of the Act requires that HAC requirements for such handsets “use appropriate timetables or benchmarks to the extent necessary (1) due to technical feasibility, or (2) to ensure the marketability or availability of new technologies to users.”

<sup>8</sup> *Id.*; *Second Report & Order* at ¶ 18.

<sup>9</sup> The Accessibility Act (1) presumes a handset is HAC-compliant when it functions in accordance with a relevant technical standard and (2) provides such standards will be developed through a collaborative process of consumer and industry stakeholders. Accessibility Act § 102(b) (to be codified at 47 U.S.C. § 610(c)).

new technologies, should any issues arise, with the ANSI C63.19-2010 standard scheduled for balloting later this year. As the Commission implements the Accessibility Act, CTIA and its member companies remain committed to addressing ongoing and future HAC policy issues, such as increased consumer awareness of HAC-related information and disclosures, through collaborative processes.

## **II. CONGRESS HAS EXPLICITLY AUTHORIZED HAC REQUIREMENTS FOR WIRELESS HANDSETS USED WITH ADVANCED COMMUNICATIONS SERVICES, SUBJECT TO IMPORTANT PARAMETERS**

### **A. Wireless HAC Requirements Should Apply to Handsets Used with Advanced Communications Services Consistent with the Accessibility Act**

In line with Congress's expressed intent, CTIA supports extension of the Commission's wireless HAC requirements to handsets that are designed to provide two-way wireless voice communications via a built-in speaker intended to be held to the ear in a manner functionally equivalent to a telephone.<sup>10</sup> However, any new HAC requirements must be implemented consistent with the Accessibility Act's requirements that the Commission account for technology feasibility challenges and product marketability.<sup>11</sup> While the *FNPRM* proposes that the Commission's existing HAC rules apply to a similar class of handsets,<sup>12</sup> to support its proposal the Commission would have to confront complex statutory questions, including the definition of "telephone," the interconnected or public nature of the service in question, and the statute's

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<sup>10</sup> See Accessibility Act § 102(a) (to be codified at 47 U.S.C. § 610(b)(1)(C)).

<sup>11</sup> See Accessibility Act § 102(c)(2) (to be codified at 47 U.S.C. § 610(e)).

<sup>12</sup> The Commission proposes to apply the HAC rules to handsets "used to provide wireless voice communications over any type of network among members of the public or a substantial portion of the public via a built-in speaker where the equipment is typically held to the ear" if "technologically feasible and would not increase costs to an extent that would preclude successful marketing." *FNPRM* at ¶ 77.

applicability to “multi-use devices.”<sup>13</sup> It is unnecessary for the Commission to confront these statutory issues because the Accessibility Act expressly addresses the handsets and services intended to be covered by the *FNPRM*.

The Accessibility Act explicitly extends the Commission’s HAC authority to a defined class of wireless handsets used for “advanced communications services” – a term also expressly defined in the Accessibility Act<sup>14</sup> – whose primary and intended purpose is to be held to the ear for real-time, two-way voice communications. The Accessibility Act, moreover, does not modify the Commission’s current HAC rules for covered CMRS handsets in any way,<sup>15</sup> and explicitly clarifies the meaning of the term “public mobile services” for section 710 purposes.<sup>16</sup> Thus, there is no need to reinterpret those statutory provisions in order to achieve the Commission’s basic objectives.

**B. The Commission Should Not Further Narrow the Existing Wireless HAC Exemptions In This Proceeding**

Any further narrowing of the existing statutory HAC exemption for “public mobile services” is inappropriate at this time. As noted, the Accessibility Act left the wireless HAC rules untouched, and wireless handsets used “in whole or in part” with “public mobile services,” including such handsets that include an “advanced communications service” component, remain subject to the limited “public mobile services” exemption covered by those rules, as well as the

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<sup>13</sup> *FNPRM* at ¶¶ 79-83.

<sup>14</sup> *See* Accessibility Act § 101(1) (to be codified at 47 U.S.C. § 153(25), (36)).

<sup>15</sup> *See id.* § 102(d) (to be codified at 47 U.S.C. § 610(h)).

<sup>16</sup> Accessibility Act § 102(a)(2)(B). The Accessibility Act modifies the definition of a telephone used with a “public mobile service” to include handsets used in whole or in part with wireless common carrier services, as well as “any functionally equivalent unlicensed wireless service.”

four statutory criteria that must be met for the Commission to further limit the exemption.<sup>17</sup> Therefore, the Accessibility Act does not compel the Commission to further modify the benchmarks or other marketing-related obligations at this time.

In any event, the Commission has indicated that issues regarding the sufficiency of the current benchmarks for the availability of HAC-certified handsets to consumers will be evaluated in the 2010 Review, *not* this *FNPRM*.<sup>18</sup> As previously noted, any reasonable measure of the availability of HAC-compliant wireless handsets demonstrates that the wireless industry is meeting the Commission's current benchmarks.<sup>19</sup> Moreover, those benchmarks have yet to be fully implemented.<sup>20</sup> For these reasons as well, the Commission should remain focused on collaborative processes to address technical and standards-related issues associated with expanding the coverage of the HAC rules and defer any consideration of the existing compliance benchmarks.

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<sup>17</sup> Accessibility Act § 102(a)(2)(B).

<sup>18</sup> See *FNPRM* at ¶ 17.

<sup>19</sup> See Summary Report titled "Device Manufacturers Handset Totals by Air Interface," (July 2010) available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-300597A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-300597A1.pdf); and Summary Report titled "Handset Totals by Air Interface," (July 2009), available at <http://wireless.fcc.gov/hac/DeviceManufacturerInformationbyHandsetJuly2009.pdf>

<sup>20</sup> See *Amendment of the Commission's Rules Governing Hearing Aid-Compatible Mobile Handsets*, First Report and Order, 23 FCC Rcd 3406 (2008) ("*First Report and Order*") (adopting new benchmarks and deadlines for 2008 through 2011 regarding deployment of handsets rated M3 (or higher) for RF interference reduction and handsets rated T3 (or higher) for inductive coupling capability).

### **III. HAC TECHNICAL STANDARDS AND CERTIFICATION TESTING MUST RESULT FROM COLLABORATIVE STAKEHOLDER EFFORTS AND REFLECT THE ACCESSIBILITY ACT'S IMPLEMENTATION CRITERIA**

#### **A. Standards Developed Via Collaborative Processes Are Required Under the Accessibility Act and Are Essential to Meeting Section 710's Technical Feasibility Prongs**

The Commission seeks comment on the applicability of the existing ANSI C63.19 or similar standard to newly-covered handsets.<sup>21</sup> The Commission will be evaluating the forthcoming ANSI C63.19-2010 standard in the near future, which will allow for HAC testing and facilitate certification for handsets utilizing new technologies, and evaluation of the standard to newly covered services is appropriate at that time. Nonetheless, CTIA generally agrees with the Commission that, with respect to section 710's technological feasibility prongs,<sup>22</sup> new HAC requirements for handsets covered by the Accessibility Act are appropriate, *to the extent that* HAC standards are available for manufacturers and service providers through the collaborative process mandated under the Accessibility Act.

#### **B. The Commission Should Not Impose Standards and Testing Requirements for Potential Third Party Voice Applications or Services**

The Commission seeks comment on a number of issues concerning manufacturers' and service providers' HAC responsibilities in circumstances when a consumer enables a third party voice application on a handset.<sup>23</sup> For HAC certification purposes, manufacturers should not be required to test voice functions that are not available at the point of purchase or that the user may add thereafter. In the Accessibility Act, Congress specifically provided that manufacturers and service providers may not be held liable for violations of section 710 of the Communications Act

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<sup>21</sup> *FNPRM* at ¶ 88.

<sup>22</sup> *Id.*

<sup>23</sup> *FNPRM* at ¶ 89.

associated with such applications and services.<sup>24</sup> In today’s market-driven “open access” environment, manufacturers and service providers are not able to anticipate or review all of the software and applications an end user may add to a handset. This approach is also consistent with the Multi-Band Principles Agreement concerning future handset testing and certification.<sup>25</sup> By their terms the Multi-Band Principles applied to “handsets operating *in a normal voice mode*” and to “*carrier configured* modes of operation,” and reflects consensus among industry and consumer stakeholders that manufacturers’ and service providers’ responsibilities should be limited to the functionalities they included in the handset.<sup>26</sup>

For these same reasons, manufacturers should not be precluded from receiving HAC certification on handsets that provide the end user the ability to add their choice of applications or features.<sup>27</sup> The Commission effectively would penalize the manufacturer and the service provider for the acts or omissions of an unaffiliated third party software or application provider and for providing the “open access” ecosystem called for by consumers, numerous policy makers and public interest representatives. Consumer education and disclosure concerning HAC testing, similar to that provided under the current rules and the Multi-Band Principles, is the appropriate means of addressing this issue. Precluding the possibility of HAC certification for new

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<sup>24</sup> Section 2(a) of the Accessibility Act applies not only to liability for a “violation of the requirements of this Act” but to violations “of the provisions of the Communications Act of 1934 that are amended or added by this Act” which, by definition, includes violations of section 710 of the Communications Act. Accessibility Act § 2(a).

<sup>25</sup> See ATIS, *Ex Parte* Presentation in WT Docket No. 07-250, filed Sept. 11, 2008 (the “Multi-Band Principles”).

<sup>26</sup> *Id.* Attachment at 1, 3 (Multi-Band Principles 1 and 9, emphasis added).

<sup>27</sup> See *FNPRM* at ¶ 89.

innovative handsets, however, would be a draconian measure that will only disserve hearing aid and non-hearing aid consumers alike.<sup>28</sup>

**C. The Accessibility Act Requires that New Standards Be Implemented After Consideration of Technical Feasibility and Marketability And Through an Appropriate Transition Period**

The Accessibility Act does not compel the Commission to take immediate action on the implementation of new standards under its wireless HAC rules, and the agency should ensure that its actions here do not prejudice the outcome of the 2010 Review. Consistent with new section 710(h) of the Act and the preservation of the “public mobile services” exemption, the Commission in this *FNPRM* should remain focused on the technical feasibility and related issues raised by newly-covered wireless services and handsets. While no HAC related concerns have been identified for new wireless technologies, the modification or adoption of new benchmarks for “public mobile service” providers and equipment manufacturers should be addressed as part of the 2010 Review – as the Commission has previously indicated is its intention.

Nevertheless, the Commission as a general matter should adopt a two-year transition period for all entities to come into compliance with new technical standards for handsets used for with “advanced communications services.” This period should begin not earlier than the Commission’s (1) adoption of HAC standards for such handsets, or (2) incorporation of “advanced communications services” compliance benchmarks into the wireless HAC rules – whichever is later. Such an approach is consistent with the implementation period adopted in the

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<sup>28</sup> Otherwise, handsets that consumers may desire will be precluded from HAC certification, even though they may otherwise qualify for a high HAC rating on all of the bands and air interface protocols on which the particular user will be placing calls and for which the service provider itself is offering voice telephony service.

Commission's August 2010 Order with respect to changes to the *de minimis* rule.<sup>29</sup> The Commission there appropriately determined that the two-year period is reflective "of typical industry product cycles," and the same flexibility is warranted for new "advanced communications service" handsets as well.<sup>30</sup>

Moreover, any modified rules must account for the Accessibility Act's requirement that "appropriate timetables or benchmarks" for "advanced communications service" handsets are established "(1) due to technical feasibility, or (2) to ensure the marketability or availability of new technologies to users."<sup>31</sup> As the Commission considers these implementation issues in the context of the 2010 Review, the Commission must exercise the same caution it has used in the wireless context to reflect these engineering and marketplace realities, as full compliance may not be attainable for all newly-covered handsets.

**D. The Commission Should Look Anew at the Role of Hearing Aid Technologies In Considering New Requirements for Handsets Used with Advanced Communications Services**

As it moves forward to implement its modified statutory responsibilities, the Commission should look holistically at HAC technical challenges by also examining issues concerning hearing aid immunity. Specifically, before imposing new standards or benchmarks in later proceedings, the Commission should work with relevant federal agencies and other stakeholders to determine the compatibility and immunity capabilities that would be appropriate for hearing aid devices. While some hearing aid manufacturers have developed solutions to address HAC issues, the wireless industry has devoted substantial resources to design, test and educate

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<sup>29</sup> See *Second Report and Order* at ¶¶ 49-50.

<sup>30</sup> See *id.* at ¶ 49.

<sup>31</sup> Accessibility Act § 102(c)(2) (to be codified at 47 U.S.C. § 610(e)).

consumers about HAC for wireless handsets and services, and U.S. hearing aid manufacturers (unlike their European counterparts) have not been subject to *any* commensurate obligations for their own products. Congress explicitly recognized this disparity by requiring compatibility “with hearing aids *that are designed to be compatible* with” handsets that meet an applicable industry standard.<sup>32</sup> The Commission can best ensure that this statutory consideration remains meaningful in light of innovative wireless technologies through interagency collaboration with the U.S. Food and Drug Administration and the U.S. Department of Veterans Affairs.

#### **IV. THE COMMISSION SHOULD ALLOW HAC CERTIFICATION FOR ALL HANDSETS UTILIZING A LOW POWER OPTION BEYOND DE MINIMIS GSM MODELS AT 1900 MHZ**

The Commission should permit all manufacturers and service providers generally, regardless of size, to utilize a software solution that enables the end user to reduce the maximum power of a GSM handset at 1900 MHz in all circumstances with appropriate disclosures. Even with the adoption of a new HAC testing standard, the use of a generally available power reduction option at 1900 MHz will serve the public interest by increasing the availability of new and innovative handsets that are HAC-certified. CTIA thus agrees with the Commission that the application of the power reduction option should be generally available, consistent with the consumer disclosure and related requirements provided under the new *de minimis* rule.<sup>33</sup>

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<sup>32</sup> 47 U.S.C. § 610(b).

<sup>33</sup> *Second Report & Order* at ¶ 55-56 (requiring that handsets utilizing the power-down option for *de minimis* purposes have a default-setting of full power, utilize full power for 9-1-1 emergency calling, and inform consumers about the power-down settings and related considerations).

## V. CONCLUSION

For the foregoing reasons and to the extent described above, CTIA supports expansion of the HAC requirements to handsets used with “advanced communications services,” consistent with the provisions of the Accessibility Act, to ensure that the Commission’s rules meet the dual statutory objectives of improving the accessibility of wireless handsets for hearing aid users while also preserving innovation in the wireless marketplace. CTIA also supports wider availability of the low-power option at GSM 1900 MHz, and urges the Commission to more closely evaluate the role hearing aid devices can play in improving users’ wireless experience.

Respectfully submitted,

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