

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 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

REPLY COMMENTS OF THE BLOOSTON RURAL CARRIERS

The law firm of Blooston, Mordkofsky, Dickens, Duffy & Prendergast, LLP (“Blooston”), on behalf of the rural wireless carriers and private radio service providers listed in Attachment A (the “Blooston Rural Carriers”) and pursuant to Section 1.415 of the Commission’s Rules, respectfully submits the following reply comments on the Commission’s Further Notice of Proposed Rulemaking in the above-captioned proceeding regarding the establishment of regulations to ensure reasonable access to telephone service by persons with impaired hearing (the “*HAC Further Notice*”).

I. Extension of Hearing Aid Compatibility Rules to New Technologies and Networks

A majority of commenters, including the Blooston Rural Carriers, expressed support for the Commission’s efforts to extend 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, whenever this is technologically and economically feasible.¹ However, there are various

¹ See, e.g., Comments of CTIA-The Wireless Association, filed October 25, 2010 (“*CTIA Comments*”) at p. 6; Comments of Motorola, Inc., filed October 25, 2010 (“*Motorola Comments*”) at p.4; Comments of Hearing Industries Association, filed October 25, 2010 (“*Hearing Industries Comments*”) at p.4; Comments of the Hearing Loss Association of America, et. al., filed October 25, 2010 (“*Consumer Group Comments*”) at p.2

communications services that do not involve the use of an interconnected telephone-like handset, such as walkie-talkies, non-CMRS “push to talk” transceivers and similar non-telephone radio communications devices, that currently fill an important niche for industrial operations and small fleet dispatch operations. The Blooston Rural Carriers believe that these type of operations should remain exempt from the HAC requirement and none of the commenters in this proceeding have urged otherwise. In amending Section 610 of the Communications Act, Congress specifically retained its exemption from HAC regulatory obligations for telephones used with private radio services, as well as the four enumerated criteria that must be met by the FCC to limit that exemption. No HAC concerns have been raised to date concerning systems that are used solely for internal communications and/or for-profit private land mobile services, such as public safety or dispatch networks. This is especially true for non-interconnected operations. Moreover, recent legislation should not compel the FCC to consider limiting the statutory exemption, because these operations are not viewed by the public as functionally equivalent to telephone service.

The Blooston Rural Carriers agree with commenters who believe the FCC should extend hearing aid compatibility requirements to all telephone services that are truly offered to the public at large (or a substantial portion thereof), without regard to regulatory status, whenever this is technologically and economically feasible. In this regard, the public interest would be served by extending HAC requirements to Mobile Satellite Service (“MSS”) operators that offer devices with an ancillary terrestrial component, as urged by AT&T.² Terrestrial-capable MSS devices will be used by

² Comments of AT&T, filed October 25, 2010 (“AT&T Comments”) at pp. 2-3.

consumers for voice and data communications services in the same manner as mobile telephones, and providers of MSS should be subject to the same regulatory treatment as any other operator providing the same or similar services in any other band. HAC requirements should also apply to non-CMRS mobile WiMAX networks that utilize BRS/EBS spectrum, as acknowledged by Clearwire Corporation.³

Whenever the FCC imposes HAC requirements for new technologies and networks, the Blooston Rural Carriers agree with Clearwire that 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.⁴ For this reason, it makes sense to provide additional time to achieve regulatory compliance to any Tier III service providers that offer services with newly covered technologies. These entities do not benefit from the same economies of scale as larger service providers and, as a result, they do not have access to new devices on the same timetable as nationwide and regional carriers. Requiring manufacturers to deploy hearing aid-compatible handsets through all of their distribution channels (such as third-party retailers), would further help to ensure that small carriers are not left as the “have nots” when it comes to having access to a wide selection of compliant devices.

³ Comments of Clearwire Corporation, *filed* October 25, 2010 (“*Clearwire Comments*”) at pp. 3-4.

⁴ *Clearwire Comments* at p. 5.

II. In-Store Testing Requirement for Independent Retailers

The *HAC Further Notice* sought comment on whether the in-store testing requirement should be extended to retail outlets other than those owned or operated by service providers. In this regard, the Blooston Rural Carriers agree with commenters who have demonstrated that the FCC lacks authority to impose HAC regulatory obligations on independent retailers.⁵ It is unnecessary for the Commission to impose requirements such as in-store testing and mandatory 30-day return policies on independent retailers, because standard return policies for mobile devices are sufficiently generous to aid consumers in selecting the best phone for their needs; and imposing a demonstration obligation in a variety of independent retail contexts would unnecessarily degrade the level of service that can be offered to customers generally.

In-store testing has played an important role in helping consumers to correctly select an appropriate handset that will function with their hearing aid. While the Commission lacks the specific grant of authority needed to impose regulations on independent retailers, it should encourage them to voluntarily participate in wireless industry educational and outreach efforts, such as CTIA's www.accesswireless.org, where employees and consumers can find information about hearing aid compatibility with wireless handsets. As part of this effort, advocates for the hearing impaired should work with retail federations to develop a set of retail "best practices" to meet the needs of consumers with hearing disabilities.

⁵ Comments of the Consumer Electronics Retailers Coalition, *filed* October 25, 2010 ("*Consumer Electronics Retailers Comments*") at pp. 3-4; Comments of MetroPCS Communications, Inc., *filed* October 25, 2010 ("*MetroPCS Comments*") at pp. 8-13.

With respect to other retail practices, such as providing a 30-day trial period with flexible return policies, there is no evidence in the record that existing voluntary retail policies have failed to serve the public interest. The Blooston Rural Carriers agree with Clearwire Corporation that the Commission should not seek to regulate service providers' return policies in the absence of clear evidence that such rules are necessary.⁶

III. GSM Operations at 1900 MHz

Commenters generally agree that the Commission should permit manufacturers and service providers 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.⁷ The Blooston Rural Carriers join CTIA in calling for wider availability of the low-power option for handsets, beyond *de minimis* GSM models at 1900 MHz. So long as handset manufacturers clearly label these products for consumers, the additional choice in handset availability is in the public interest for consumers that have hearing disabilities and those who do not.

⁶ *Clearwire Comments* at pp. 5-6.

⁷ *CTIA Comments* at p. 13

The Blooston Rural Carriers

Airwave Wireless, LLC	Kimball, SD
BEK Communications Cooperative.....	Steele, ND
Buggs Island Telephone Cooperative, Inc.	Bracey, VA
CTC Telcom/Mosaic Wireless.....	Cameron, WI
CL Tel Wireless, Inc.	Clear Lake, IA
Clarkson Construction Co.....	Kansas City, MO
Consolidated Telcom	Dickinson, ND
Dave's Communications, Inc.	Fort Pierce, FL
Dickey Rural Networks.....	Ellendale, ND
East Buchanan Telephone Cooperative	Winthrop, IA
FMTC Wireless, Inc. d/b/a Omnitel	Nora Springs, IA
Lubbock Radio Paging Service.....	Lubbock, TX
Public Service Telephone Company	Reynolds, GA
Rockwell Cooperative Telephone.....	Rockwell, IA
Smithville Telephone Company, Inc.	Ellettsville, IN
South Slope Cooperative Communications	North Liberty, IA
Star Communications.....	Baton Rouge, LA
Uintah Basin Electronic Communications.....	Roosevelt, UT
Van Buren Wireless, Inc.	Keosauqua, IA
Walnut Telephone Co.	Walnut, IA
Wapsi Wireless, LLC.....	Cascade, IA
Webster-Calhoun Cooperative Telephone.....	Gowrie, IA
West River Telecommunications Cooperative	Hazen, ND