

**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

REPLY COMMENTS OF T-MOBILE USA, INC.

T-Mobile USA, Inc. (“T-Mobile”) respectfully submits these reply comments in response to the Commission’s *Further Notice of Proposed Rulemaking* in the above-referenced proceeding.¹ As discussed in more detail below, the record demonstrates that the Commission’s hearing-aid compatibility (“HAC”) rules generally should extend to new wireless services only where statutorily required technical feasibility and marketability considerations are carefully assessed with respect to new VoIP-based advanced communications services. And such HAC requirements should apply only to handset functions supporting such new services – not to functions that support third-party “add-on” applications. Further, the Commission has previously considered and rejected proposals to require independent retailers to provide in-store handset testing, and nothing in the current record warrants a reversal of that determination. Finally, T-Mobile agrees with commenters who support an extension of the 2.5 dB power reduction option for GSM handset compatibility measurements to all carriers and manufacturers.

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, 25 FCC Rcd 11167 (2010) (“*FNPRM*”), “Wireless Telecommunications Bureau Requests that Comments in Hearing Aid Compatibility Proceeding Address Effects of New Legislation,” Public Notice, DA 10-1936 (Oct. 12, 2010).

I. HAC REGULATIONS SHOULD REFLECT TECHNICAL FEASIBILITY AND MARKETING REALITIES

T-Mobile has long supported Commission efforts to ensure that consumers using hearing aids have “access to innovative products that embrace the latest technologies,”² where technically and commercially feasible. Indeed, T-Mobile was a charter carrier member of the Joint Consensus Plan (“JCP”), and engaged with direct discussions with consumer stakeholders on modernizing the HAC rules. The JCP recommendations were substantially incorporated into the rules in the Commission’s *First Report and Order* in this proceeding,³ which largely endorsed the JCP’s approach supporting increased access to wireless products and services for consumers with hearing loss while also recognizing vendor and carrier technical feasibility and market considerations.

The Twenty-First Century Communications and Video Accessibility Act of 2010 (“Accessibility Act”),⁴ expressly affirms the Commission’s obligation to address technical feasibility and product marketability concerns in implementing HAC requirements. Pursuant to Section 102(c)(2) of the Accessibility Act, the Commission must adopt timetables and benchmarks for the implementation of HAC requirements for advanced communications services to the extent necessary to address technical feasibility and marketability factors.⁵ The Accessibility Act and the Commission’s approach to wireless HAC implementation reflect an

² See generally, Reply Comments of T-Mobile, WT Docket 07-250 at 5 (Jan. 7, 2008).

³ 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*”).

⁴ Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. Nos. 111-260 & 111-265 (2010) (“Accessibility Act”).

⁵ *Id.* at § 102(c)(2) (to be codified at 47 U.S.C. § 610(e)); see CTIA Comments at 5-7, 11-12 (Oct. 25, 2010); Clearwire Comments at 4 (Oct. 25, 2010); Telecommunications Industry Association (“TIA”) Comments at 4 (Oct. 25, 2010).

intent to promote innovation and investment in new technologies that ensures that new technologies will be more widely available to and usable by consumers looking for accessibility options. The Accessibility Act's amendments to Section 710 underscore Congress's sound judgment that the widespread availability of new technologies to all consumers cannot be achieved unless the Commission pays close attention to real-world concerns surrounding technical feasibility and marketability in crafting its HAC policies.

As a GSM-based carrier, T-Mobile is well aware of the need for timetables and benchmarks for addressing HAC issues in new technologies. In this regard, the feasibility and appropriate timeline for achieving HAC compliance for GSM and other digital handsets operating over CMRS networks were the subject of extensive discussion and analysis before the Commission extended HAC requirements to these devices.⁶ The technical feasibility and marketability of services that would be subject to HAC requirements for the first time as a result of this proceeding have yet to be considered.⁷ These issues must be addressed before HAC requirements and implementation deadlines can be imposed on such services.⁸ Importantly, this approach is mandated by the Accessibility Act⁹ and cannot be addressed solely through a waiver process, as suggested by the Hearing Industries Association.¹⁰ T-Mobile also agrees with CTIA

⁶ See, e.g., *Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones*, Report and Order, WT Docket No. 01-309, 18 FCC Rcd 16753 (2003).

⁷ CTIA – The Wireless Association® (“CTIA”) Comments at 5.

⁸ In this regard, T-Mobile agrees with the Commission's proposal “not to extend the HAC rules to certain non-interconnected systems that are used solely for internal communications, such as public safety or dispatch networks.” *FNPRM* at ¶ 82. Section 710 of the Communications Act specifically exempts “telephones used with private radio services” from HAC requirements. 47 U.S.C. § 610(b)(2)(A)(ii). Thus, the HAC requirements should not apply to private, non-interconnected services. See TIA Comments at 4-5.

⁹ Accessibility Act at § 102(c)(2).

¹⁰ Hearing Industries Association (“HIA”) Comments at 5 (Oct. 25, 2010).

that the Accessibility Act mandates that the scope of HAC obligations for new services be established through a collaborative process.¹¹

Moreover, once the Commission adopts HAC standards for new services, a transition period should be adopted to provide sufficient lead time for new handsets to be designed and produced pursuant to the new standards. As the Commission noted in the *FNPRM*:

Ever since the Commission adopted the first wireless hearing aid compatibility rules in 2003, we have consistently recognized that it takes time for handsets with new specifications to be designed, produced, and brought to market, and accordingly we have afforded meaningful transition periods before new hearing aid-compatible handset deployment benchmarks and other requirements have become effective. For example, the initial benchmarks for acoustic coupling compatibility became effective only two years after the *2003 Hearing Aid Compatibility Order*. For inductive coupling capability, we afforded three years in recognition that greater design changes might be necessary to meet the standard.¹²

The Commission thus sought comment on “whether a two-year transition”, or some other transition period, would be appropriate.¹³ T-Mobile agrees with those commenters supporting adoption of a minimum two-year transition period.¹⁴ As noted by CTIA, this period should commence “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.”¹⁵

¹¹ CTIA Comments at 5 (citing Accessibility Act § 102(b)); *id.* at 9.

¹² *FNPRM* at ¶ 92 (internal citations omitted).

¹³ *FNPRM* at ¶ 93.

¹⁴ See CTIA Comments at 11-12; Clearwire Corporation (“Clearwire”) Comments at 5 (Oct. 25, 2010); HIA Comments at 18 (supporting a transition period that corresponds to the product development cycle); Motorola, Inc. (“Motorola”) Comments at 10-11 (Oct. 25, 2010) (supporting a two-year transition period because it “roughly corresponds to the product development cycle”); Rural Telecommunications Group, Inc. (“RTG”) Comments at 4 (Oct. 25, 2010).

¹⁵ CTIA Comments at 11.

II. HAC REQUIREMENTS SHOULD NOT APPLY TO THIRD-PARTY APPLICATIONS

The Commission has sought comment on whether HAC requirements should apply to third party applications that enable voice communication.¹⁶ The record demonstrates that such requirements should not be imposed.¹⁷ As noted by the Hearing Loss Association of America, Telecommunications for the Deaf and Hard of Hearing, Inc., Association of Late-Deafened Adults, Inc., Deaf & Hard of Hearing Consumer Advocacy Network, National Association of the Deaf, and Alexander Graham Bell Association for the Deaf and Hard of Hearing (collectively “Hearing Loss Advocates”):

AISP.4-HAC calls attention to the fact that neither manufacturers nor service providers have control over how a handset will function once a consumer installs after-market software applications. We agree that in cases where manufacturers or service providers have no control over the software installed by consumers, they cannot be held accountable for the impact that software has on hearing aid compatibility.¹⁸

Notably, Congress also addressed this issue in the Accessibility Act by excluding manufacturers and service providers from liability for violations of Section 710 of the Communications Act resulting from the acts or omissions of third parties.¹⁹

As an industry leader in the Android market, T-Mobile is particularly concerned that the imposition of HAC requirements on third-party applications would be extremely problematic for

¹⁶ *FNPRM* at ¶ 89.

¹⁷ See Alliance for Telecommunications Industry Solutions (“ATIS”) Comments at 4-5 (Oct. 25, 2010); AT&T Comments at 3 (Oct. 25, 2010); CTIA Comments at 9-11; Hearing Loss Advocates Comments at 5-6 (Oct. 25, 2010); MetroPCS Comments at 6-8 (Oct. 25, 2010); Motorola Comments at 9-10; TIA Comments at 5-6.

¹⁸ Hearing Loss Advocates Comments at 5-6. AISP.4-HAC was the collaborative vendor-carrier-consumer forum instituted by ATIS for the discussion of hearing aid compatibility issues. The JCP was one of the consensus work products of AISP.4-HAC.

¹⁹ Accessibility Act § 2(a); see CTIA Comments at 9-11; TIA Comments at 5-6.

the open-access business model. It simply is not technically or administratively feasible to require manufacturers and service providers to account for every third-party application that may adversely impact HAC compatibility. If such requirements were imposed, the current robustness of the open-access environment, that is responsible for the explosion of hundreds of thousands of new and innovative applications, would potentially be impacted because manufacturers and service providers would have no way to comprehensively monitor, test, and control applications from the HAC-compliance perspective before they could be released. Further, it would be impossible for carriers and manufacturers to guarantee compliance because third-party applications in an open-access environment can be loaded on handsets independent of manufacturer or carrier channels.²⁰

III. IN-STORE TESTING REQUIREMENTS SHOULD NOT BE EXTENDED TO INDEPENDENT RETAILERS

The Commission seeks comment on whether the existing in-store testing requirement should be extended to independent retailers.²¹ T-Mobile urges the Commission to uphold its earlier determination and reaffirm that the imposition of such a requirement is not warranted.²²

Previously, when the Commission sought comment on the expansion of in-store testing, T-Mobile discouraged the imposition of such a requirement.²³ T-Mobile maintains that the

²⁰ See MetroPCS Comments at 7.

²¹ *FNPRM* at ¶¶ 94-98; *Amendment of the Commission's Rules Governing Hearing Aid-Compatible Mobile Handsets*, Second Report and Order and Notice of Proposed Rulemaking, WT Docket No. 07-250, 22 FCC Rcd 19670, 19706 (2007) (“2007 NPRM” or “2007 Order”); *Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones*, Order on Reconsideration and Further Notice of Proposed Rulemaking, WT Docket No. 01-309, 20 FCC Rcd 11221, 11248-49 (2005).

²² See *2007 Order*, 22 FCC Rcd at 19681; accord Consumer Electronics Retailers Coalition (“CERC”) Comments at 3 (Oct. 25, 2010).

²³ Comments of T-Mobile, WT Docket 07-250 at 8-9 (Dec. 21, 2007) (“T-Mobile 2007 Comments”); Reply Comments of T-Mobile, WT Docket No. 01-309 (Oct. 25, 2005).

current marketplace and legal landscape still does not warrant such an expansion.²⁴ Currently, service providers already must offer customers the opportunity to test HAC handsets in company-owned and -operated stores.²⁵ With informal complaints against wireless service providers on HAC-related matters at minimal levels,²⁶ T-Mobile urges the Commission to take into account handset return policies employed by independent retailers, coupled with product disclosures. These methods are sufficient to ensure that consumers are not saddled with a device that is not compatible with their hearing aids.

IV. ALL CARRIERS AND MANUFACTURERS SHOULD BE PERMITTED TO MEET HAC STANDARDS BY REDUCING HANDSET POWER FOR GSM OPERATIONS

T-Mobile agrees with the Hearing Loss Advocates, as well as the vast majority of commenters addressing the issue, that the technical exception allowing for a reduction in power of GSM operations to achieve HAC compliance should be extended to all manufacturers and service providers.²⁷ As currently written, the exception only benefits a narrow class of manufacturers and service providers without any rational basis for excluding the vast majority of manufacturers and service providers. The Commission should broaden the exception to ensure that it is competitively neutral and that customers of other carriers can benefit from the enhanced availability of HAC-certified handsets.

²⁴ See Blooston Rural Carriers Comments at 6-8 (Oct. 25, 2010); CERC Comments at 2, 6-10; MetroPCS Comments at 8-13.

²⁵ See 47 C.F.R. §§ 20.19(c)(4), (d)(4).

²⁶ HAC-related complaints have been very low historically. See, e.g., *Report on Informal Consumer Complaints Regarding Access to Communications for People with Disabilities*, at 1 (CGB rel. Apr. 2, 2010) (reporting no informal HAC complaints).

²⁷ See Hearing Loss Associations Comments at 7; see also ATIS Comments at 5-6; CTIA Comments at 13; TIA Comments at 9-10.

CONCLUSION

For the foregoing reasons, the Commission should extend its HAC requirements to new wireless services, provided that any such requirements account for technical feasibility and marketability considerations associated with the deployment of new services consistent with the Accessibility Act. Any new HAC requirements should (1) not extend to handset compatibility while supporting third-party applications; (2) apply only after a minimum two-year transition period; (3) exclude independent retailers from any in-store handset testing requirements; and (4) extend the 2.5 dB power reduction option for GSM handset compatibility measurements to all carriers and manufacturers. Such action is fully supported by the record developed in this proceeding.

Respectfully submitted,

T-MOBILE USA, INC.

By: /s/ Kathleen O'Brien Ham
Kathleen O'Brien Ham
Harold Salters
Shellie Blakeney

T-MOBILE USA, INC.
401 Ninth Street, NW Suite 550
Washington, DC 20005
(202) 654-5900

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