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FILED VIA ECFS

Ms. Marlene H. Dortch  
Secretary  
Federal Communication Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

RE: **WT Docket No 10-254 Hearing Aid Compatibility Regulations**

Dear Ms. Dortch:

Pulse Mobile, LLC ("Pulse") offers the following comments on the above-captioned docket in response to the FCC's Public Notice of December 29, 2010.

#### **About Pulse**

Pulse is a small GSM carrier operating in the U.S. Territory of Guam, which has an estimated population of 170,000 persons and 43,000 households. Pulse operates in an insular area that does not have a Tier 1 carrier and where there are three (3) other independent wireless operators. Pulse is the only Guam carrier that operates in only one MTA and is strictly a local service provider, whereas the other three carriers are regional and have coverage on Guam as well as the Commonwealth of Northern Marianas Islands. Pulse, considered a Tier 3 provider, operates approximately 3,820 miles away from the closest Tier 1 carrier in Hawaii and only provides approximately 22% of the total wireless service on Guam<sup>1</sup>.

#### **Appropriate Rules for Smaller Service Providers**

Do the rules appropriately account for the challenges facing smaller service providers?

Pulse believes that the current rules in place do not appropriately accommodate the difficulties faced by non-Tier 1 carriers and especially those carriers who operate

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<sup>1</sup> Information based on high cost data provided to Universal Service Administrative Company FCC Filings 2011 2<sup>nd</sup> Quarter filings HC19 – CETC Reported Lines by Incumbent Study Area – ICLS found at <http://www.usac.org/about/governance/fcc-filings/2011/quarter-2.aspx>

thousands of miles away from U.S. suppliers, do not have purchasing power of Tier 1 or Tier 2 carriers in the U.S. mainland and serve relatively small population centers. Pulse has found that it has incurred burdensome costs and limited supplies in offering hearing aid compatible handsets.

Is there a significant difference in the cost of rule compliance between Tier 1 carriers and non-Tier 1 carriers?

Small non-Tier 1 carriers, such as Pulse, do not have the purchasing power to negotiate volume discounts on handsets, as do Tier 1 carriers. Pulse currently offers handsets from eight manufacturers. It only purchases directly from two manufacturers and utilizes nine distributors to purchase all its other handsets. Pulse estimates that its total cost of acquisition of some hearing aid compatible ("HAC") phones, from the same manufacturer, is 38% higher than comparable non-hearing aid compatible phones. In many instances Pulse is required to purchase a minimum order, which it cannot justify because of its size, before it begins to see significant discounts from its suppliers. Making large bulk purchases does not make business sense for a small market such as Guam.

Pulse's limited customer base and purchasing power make it difficult to obtain the new-modeled handsets. Obtaining new handsets that are HAC compliant is particularly difficult. Once new handsets are offered on the U.S. mainland market, it usually takes at least six to nine months before Pulse is able to obtain those new phones. It is Pulse's experience that manufacturers and distributors give Tier 1 carriers priority over small providers like Pulse in allocating new handset models.

To what extent are smaller service providers delayed in their ability to obtain new and desirable handsets, or are they able to obtain these handsets at all?

Pulse has found it very difficult to find distributors who have the ability to provide HAC compatible phones. Most recently, in 2010, Pulse worked with all nine of its distributors to purchase the minimum number handsets requirement by current benchmarks. In fact, one large multinational distributor that represents over eight manufacturers only had three HAC compliant handsets that can operate on the Pulse network. Similarly, Pulse had a difficult time obtaining compliant handsets from its other distributors. When Pulse was finally able to find compliant phones, it had to purchase minimum orders of two hundred handsets that were previously introduced to the U.S. mainland market in 2008/2009-time period. To meet their obligations under current FCC rules, Tier 3 providers are relegated to purchasing unduly large quantities of outdated phones at high prices. These outdated hearing aid compatible handsets do not sell well and to a great extent end up as stale inventory.

## **Benchmarks**

The current rules, which amount to a one-size fit all approach, are not appropriate for small service providers. De minimis rules should be broadened to include small providers that are too large to qualify under the current de minimis rules. Given differences in carrier size, market size, number of operating carriers, and subscriber base, the current ubiquitous rules are onerous and virtually impossible to comply with, not for reasons of lack of effort, but because of lack of availability to small providers.

Would smaller providers need more than three months additional time to meet any future benchmarks?

Pulse also believes that smaller providers need more than three months additional time to meet future benchmarks. If the Commission imposes additional benchmarks, small providers should be given at least nine months to comply. It is Pulse's experience that obtaining new phones, particularly smart phones that are initially released to Tier 1 providers from manufacturers, takes an average of six to nine months before making it to the smaller markets. Therefore, three months of additional time to meet any future benchmarks is not reasonable. Pulse continues to struggle to meet current benchmarks in obtaining the minimum number of required phones, as well as keeping HAC phones in stock. For example, Pulse recently issued a purchase order to its distributor for the introduction of new HAC compliant phones to meet the 2011 deadline, only to ultimately have that model not shipped because the distributor suddenly stopped carrying the handset. Pulse now is forced to scramble to meet its minimum handset requirements for 2011. Additional benchmarks should account for distribution conditions that small non-Tier 1 carriers face and therefore a minimum of nine months is more appropriate for implementation of any additional benchmarks.

Are the current benchmarks appropriate for non-Tier 1 carriers or should they be reduced?

Current benchmarks as to number of different hearing aid compatible models that must be made available are not appropriate for non-Tier 1 carriers. Current benchmarks should be reduced because of distribution and cost burden on Tier 2 and Tier 3 carriers. The additional costs that fall on small providers must be passed on to purchasers of both HAC compatible and non-HAC compatible phones. Because these cost burdens are not as great, on a per-customer basis, for larger providers, this inhibits competition, as entrants inevitably enter on a smaller basis than incumbents. Benchmarks should therefore be reset to accommodate Tier 2 and Tier 3 providers based on total subscribers on their networks. This would include service providers that operate in multiple MTA markets.

Should different rules apply to non-Tier 1 providers, if so on what criteria should these tiers be based?

Pulse recommends that current benchmarks be based on a tiered approach that takes total subscribers into account for handset requirements. Pulse recommends that the Commission apply benchmarks based on the following formula:

1 – 25,000 Subscribers - De minimis rules apply  
25,001 to 50,000 Subscribers - 25% of the Tier 1 benchmarks apply  
50,001 to 75,000 Subscribers - 50% of the Tier 1 benchmarks apply  
75,001 to 100,000 Subscribers - 75% of the Tier 1 benchmarks apply  
100,001+ Subscribers - Tier 1 benchmarks apply

Pulse believes that such a tiered approach is a fair and reasonable approach to compliance with benchmarks. As service providers gain in subscribership, they also gain purchasing power to obtain phones from manufacturers as well as distributors to meet benchmark obligations, and can spread the additional cost of maintaining an inventory of

numerous HAC compatible models over a larger customer base. For smaller providers that are struggling to meet benchmark requirements, this type of tiered approach provides needed relief. As market conditions improve or change, service providers should move between the tiers. All providers should be required to attest to their subscriber numbers as well as to file the necessary FCC Form 655 as part of annual filings. For carriers who are CETC certified, verification of their customer count can easily be obtained from the Universal Service Administrative Company.

Should FCC consider amending de minimis rules to exempt some small entities from offering HAC phones? Would customers of small carriers in rural areas still have access to HAC Phones?

The Commission should amend its current de minimis rules to require that all service providers offer at least one handset model that is compliant with M3/M4 and T3/T4 requirements. Pulse believes that this approach would ensure that all customers have access to at least one HAC compliant phone while taking business conditions into account for small Tier 3 carriers, including small resellers.

### **Sufficiency of Information**

Is the electronic Form 655 an efficient means of collecting information? What burdens does the reporting impose on device manufacturers and service providers? What changes to the system might improve its operation?

Pulse believes that the current reporting requirements utilizing FCC Form 655 are sufficient for status of compliance for service providers. Pulse believes that the Commission should work more closely with manufacturers to ensure that the latest information is loaded into the FCC's database to allow service providers to utilize drop down menus to help ensure that all providers are reporting similar data. Centralizing a database of handsets in a drop down type menu will help minimize duplicative information reported by service providers.

In addition, Pulse believes that the Commission should be the ultimate repository of handset information. All manufacturers should be required to update the Commission with details on the compliance of their handsets with the FCC's HAC rules, so that service providers have one central location to verify benchmark compliance. Pulse has experienced a few instances in which its distributor incorrectly attested to HAC compliance. Pulse recognizes that requiring each manufacturer to complete a FCC Form 655 for each handset when it does a market launch may involve burden, but it will allow service providers an opportunity to have absolute verification before making expensive purchases of handsets and better serve the customers.

### **Conclusion**

Pulse urges the Commission to change the current benchmark requirements on Tier 2 and Tier 3 providers. Current requirements are unduly burdensome for most non-Tier 1 providers. Pulse has proposed an alternative that will meet the market conditions faced by Tier 2 and Tier 3 carriers. Changing de minimis rules, as proposed by Pulse, will ensure that all customers in all markets have access to at least one compliant handset. Lastly, slight modifications to the current reporting requirements of manufacturers and

having the Commission act in a repository role will further facilitate compliance by all carriers with benchmark requirements.

Sincerely,

A handwritten signature in blue ink, appearing to read "Eric N. Votaw". The signature is fluid and cursive, with a prominent initial "E" and a long, sweeping tail.

Eric N. Votaw  
Vice President – Regulatory