

September 24, 2012

Via Electronic Filing

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

Re: *Ex Parte* Presentation, CG Docket No. 10-213

Dear Ms. Dortch:

CTIA – The Wireless Association® (“CTIA”) submits this letter in response to the comments filed in the above referenced proceeding regarding the tentative findings of the Federal Communications Commission (“FCC” or “Commission”) for its first biennial report to Congress under the Twenty-First Century Communications and Video Accessibility Act of 2010 (“CVAA” or the “Act”).^{1/} In particular, CTIA addresses the comments and concerns raised by the Consumer Groups^{2/} and the Rehabilitation Engineering Research Center on Telecommunications Access (“RERC-TA”).^{3/} CTIA appreciates the concerns expressed by the Consumer Groups and RERC-TA. However, we respectfully submit that those groups urge the Commission to include in its initial report a number of additional findings that are outside the scope of, and therefore inappropriate for, the report. In addition, Consumer Groups and RERC-TA base their recommendation for those findings – as well as their recommendation that the Commission endorse or impose additional regulatory requirements – on erroneous or incomplete facts about industry efforts to increase accessibility of communications equipment and services.

The Commission should refrain from adopting these proposals and instead adopt its tentative finding, with which the Consumer Groups and RERC-TA do not disagree,^{4/} that the wireless industry is generally meeting or will meet the requirements of the

^{1/} See *Consumer and Governmental Affairs Bureau Seeks Comment on Its Tentative Findings About the Accessibility of Communications Technologies for the First Biennial Report Under the Twenty-First Century Communications and Video Accessibility Act*, Public Notice, DA 12-1391 (rel. Aug. 23, 2012) (“Public Notice”).

^{2/} The Consumer Groups consist of Telecommunications for the Deaf and Hard of Hearing, Inc.; the National Association of the Deaf; the Association of Late-Deafened Adults, Inc.; the Deaf and Hard of Hearing Consumer Advocacy Network; the Cerebral Palsy and Deaf Organization; the Deaf Organization Technology Access Program at Gallaudet University; and the Hearing Loss Association of America.

^{3/} See PN Comments – CVAA Report Tentative Findings – of the Consumers Groups and RERC-TA, CG Docket No. 10-213 (filed July 25, 2012) (“Consumer Groups Comments”).

^{4/} See *id.* at i.

CVAA.^{5/} To the extent, however, that the Commission decides to include the Consumer Groups' and RERC-TA's findings in its report – or to use these findings as a basis for considering or imposing additional regulation under the CVAA – CTIA seeks to clarify a number of matters for the record.

First, CTIA respectfully disagrees with the Consumer Groups' and RERC-TA's assertion that "it is still a significant problem for consumers to find a [hearing aid compatible] HAC mobile phone."^{6/} The Commission's initial conclusion that wireless equipment is generally meeting the HAC needs of consumers pursuant to Section 255, with which even the Consumer Groups and RERC-TA admit they "generally" agree,^{7/} is correct.^{8/}

Wireless service providers and manufacturers currently offer a wide variety of HAC-certified wireless handsets and convey detailed HAC information to consumers. The Commission's HAC reports note that, as of June 30, 2011, over 430 handsets with an M3 or M4 rating, and over 320 handsets with a T3 or T4 rating, were offered during 2010-2011.^{9/} This is up from over 300 M3/M4-rated and over 230 T3/T4-rated handsets during the prior year.^{10/} With few exceptions, almost all of the over 300 service providers that filed such reports indicated that they offer HAC-compliant mobile phones.^{11/} These figures demonstrate not only that there are a significant number of phones that can meet the HAC needs of consumers, but also that substantial ongoing progress is being made to deliver even more devices.

Nor is there any lack of information on the availability of HAC devices. Wireless service providers and equipment manufacturers routinely provide information on HAC compliant wireless handsets on their websites, including the ratings of those devices and an explanation of the rating system,^{12/} as well as at the point of sale.^{13/} The Consumer

^{5/} See Public Notice at Attachment.

^{6/} Consumer Groups Comments at 3.

^{7/} See *id.*

^{8/} See Public Notice at Attachment ¶ 23.

^{9/} See FCC Hearing Aid Compatibility Summary Reports, Device Manufacturer Handset Totals by Manufacturer; Reporting Period from July 1, 2010 to June 30, 2011, *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-309477A1.pdf.

^{10/} See Hearing Aid Compatibility Summary Reports, Device Manufacturer Handset Totals by Manufacturer; Reporting Period from July 1, 2009 to June 30, 2010, *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-309478A1.pdf.

^{11/} See FCC Hearing Aid Compatibility Summary Reports, Service Provider Handsets by Air Interface and HAC Rating, January 1, 2011 - December 31, 2011, *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-313051A1.pdf.

^{12/} See, e.g., Motorola, Hearing Aid Compatibility in the U.S., http://responsibility.motorola.com/index.php/consumers/accessibility/hac_models/ (last visited Sept. 24, 2012) (providing information on over 30 HAC mobile phones); Samsung, Wireless Products and Accessibility, <http://www.samsung.com/us/consumer/learningresources/>

Groups and RERC-TA even acknowledge that the Mobile Manufacturers Forum’s Global Accessibility Reporting Initiative offered by CTIA on its award-winning website AccessWireless.org offers HAC related information in a consumer-friendly manner and serves as a “valuable tool to the deaf and hard of hearing community.”^{14/} There is therefore strong evidence that the wireless industry is working hard to ensure that consumers are able to find HAC-compliant handsets and that the industry is meeting the HAC needs of people with hearing loss pursuant to Section 255 of the CVAA.

CTIA agrees with the Consumer Groups and RERC-TA^{15/} that an effective method of improving access to and information on HAC handsets further would be to ensure that hearing aid manufacturers are subject to the same disclosure requirements as wireless service providers and manufacturers and that hearing aid manufacturers actively participate in the HAC rating process. As CTIA has previously explained, only hearing aid manufacturers, working with representatives of hearing aid users, can meaningfully address the capabilities of and technical issues associated with particular hearing aid devices and hearing technologies.^{16/} Their cooperation is therefore critical to improving the wireless experience of consumers that utilize hearing aids.

Second, the Consumer Groups’ and RERC-TA’s suggestion that “without more fact-finding it is premature to assume that” the industry will comply with Section 716 of the Act once it is effective is unnecessarily pessimistic.^{17/} As the Commission acknowledges, the steps the wireless industry has taken to comply with Section 716 should result in the availability of accessible advanced communications equipment and services once that provision becomes fully effective.^{18/} There is no reason to doubt that

mobile/accessibility/pop_accessibility.html (last visited Sept. 24, 2012) (setting forth Samsung’s current HAC mobile devices and categorizing them by provider); AT&T, Hearing Aid Compatibility, <http://www.wireless.att.com/learn/articles-resources/disability-resources/hearing-aid-compatibility.jsp> (last visited Sept. 24, 2012) (listing over 40 mobile devices that have been tested and rated for HAC); T-Mobile, Accessibility Policy, http://www.t-mobile.com/Company/CompanyInfo.aspx?tp=Abt_Tab_ConsumerInfo&tsp=Abt_Sub_AccessibilityPolicy (last visited Sept. 24, 2012) (noting T-Mobile’s HAC devices, including its flagship handsets Samsung Galaxy S III, HTC One S, and Blackberry Bold 9900, and separating them by “functionality criteria” such as “Best/Premium” and “Good” devices).

^{13/} See, e.g., Letter from Tamara Preiss, Vice President, Federal Regulatory Affairs, Verizon, to Marlene H. Dortch, Secretary, FCC, CG Docket No. 10-213 (filed Sept. 6, 2012) (explaining that the HAC ratings of all of Verizon Wireless’ devices “are included on the call-out-cards that are located adjacent to its handsets in stores” and that “[t]he handsets are available for in-store testing with a consumer’s hearing aid”).

^{14/} Consumer Groups Comments at 3.

^{15/} See, e.g., *id.* at 3-4 (proposing that the FCC require hearing aid manufacturers to label devices with an unadjusted baseline).

^{16/} See Comments of CTIA – The Wireless Association®, WT Docket No. 10-254, at 10 (filed Feb. 14, 2012).

^{17/} See Consumer Groups Comments at 5-6.

^{18/} See Public Notice at Attachment ¶ 24.

conclusion – indeed, the wireless industry already has made significant strides to meet the needs of persons with disabilities by offering numerous accessible devices, services and applications,^{19/} and the pace of innovation in the wireless market continues to accelerate.^{20/} This fact is supported by the statistics above on the increase in the number of HAC compliant phones from 2010 to 2011. The assertion that the wireless industry has not made substantial progress^{21/} is simply unfounded.

While the Consumer Groups and RERC-TA express particular concern over the availability of service plans for the deaf and hard of hearing community,^{22/} the wireless industry offers a variety of service plans specifically for persons with disabilities. As explained in CTIA’s initial comments, wireless carriers offer a number of data plans that include Internet usage and text messages designed to accommodate individuals who are deaf, hard of hearing or have a speech disability.^{23/} Sprint Nextel, for example, offers unlimited data plans with no data caps, speed limits or overages,^{24/} and T-Mobile and MetroPCS Communications have recently made announcements that they intend to follow suit.^{25/}

^{19/} See generally Comments of CTIA – The Wireless Association®, CG Docket No. 10-213 (filed July 25, 2012) (“CTIA CVAA Comments”).

^{20/} See, e.g., CTIA, *By the Numbers: The App Economy*, CTIA BLOG (Sept. 12, 2012), available at <http://blog.ctia.org/2012/09/12/by-the-numbers-the-app-economy/> (noting that, for example, that the app space has grown from almost zero to a nearly \$10 billion market from 2007 to 2011 and that as of September 2012, there are more than 2.4 million apps on more than 11 different operating systems from more than 28 independent non-carrier stores); see also Verizon Wireless, Mobile Accessibility, http://aboutus.verizonwireless.com/accessibility/mobile_accessibility.html (last visited Sept. 24, 2012) (describing Verizon Wireless’ newest accessibility app, Mobile Accessibility, which is “a screen-access application that allows people who are blind or have low vision to use an Android™ to its full extent”); Apps4Android, <http://apps4android.org> (last visited Sept. 24, 2012) (describing mobile applications that enhance the quality-of-life, independence, and employability of people with disabilities and listing the Android™ devices on which the applications have been installed, including the HTC One S and Samsung Galaxy S III offered by T-Mobile).

^{21/} See, e.g., Letter from John G. Paré Jr., Executive Director for Strategic Initiatives, National Federation of the Blind, to Mr. Kris Monteith, Acting Bureau Chief, Consumer and Governmental Affairs Bureau, FCC, CG Docket No. 10-213 (filed Sept. 7, 2012) (asserting that “the progress being reported is not very significant and the progress seen in the marketplace is so minimal that we do not believe members of the industry have fundamentally changed the way they view accessibility at all”).

^{22/} See Consumer Groups Comments at 8-9.

^{23/} CTIA CVAA Comments at 6-7.

^{24/} See Sprint Nextel, Say No to Sharing Data, <http://www.sprint.com/landings/compare/index.html?ECID=vanity:unlimited> (last visited Sept. 24, 2012).

^{25/} See T-Mobile Release, *T-Mobile Celebrates 10 Years of Innovation with Launch of Unlimited Nationwide 4G Data Plans* (Sept. 5, 2012), available at <http://newsroom.t-mobile.com/articles/t-mobile-celebrates-10-years-and-launches-unlimited-nationwide-4g-data->

In addition to a diverse range of service plans, the pace of technology has enabled carriers and manufacturers to offer more helpful tools to persons with disabilities. All of the innovations that the Consumers Groups and RERC-TA suggest serve as the ideal model (*i.e.*, Apple’s iPhone, Android’s Jelly Bean, etc.) have only developed in the last five years. There is no reason to suspect that more will not follow. Indeed, a recent report issued by Cisco predicts that “[b]y the end of 2012, the number of mobile-connected devices will exceed the number of people on earth, and by 2016 there will be 1.4 mobile devices per capita.”^{26/}

Because there is significant evidence that the wireless industry consistently considers the needs of persons with disabilities, and that the current wireless environment encourages manufacturers and service providers to offer a wide array of service plans and products benefitting persons with disabilities, there is no need for the type of regulatory interference into wireless service offerings and pricing that the Consumer Groups and RERC-TA suggest. Indeed, such intrusion would more likely stifle the pace of innovation and investment that characterizes today’s marketplace. Rather, such issues are adequately and more appropriately addressed by the competitive wireless ecosystem, in which consumers have the ability to choose the service plans and provider that best meet their needs. If, however, the Commission has specific concerns about accessible products and services, then it should, as CTIA has previously suggested,^{27/} move expeditiously to provide the prospective guidance required by the CVAA that will help wireless providers and manufacturers better understand their obligations under the CVAA.

Third, the Consumer Groups and RERC-TA urge the Commission “not to adopt the ‘flexible’ approach to recordkeeping” recommended by CTIA and “to require industry participants to produce periodic activity reports that specifically account for research and development activities that directly involve the deaf and hard of hearing community.”^{28/} CTIA respectfully submits that the Commission should refrain from adopting these proposals.

Congress specifically outlined recordkeeping and certification requirements under the CVAA.^{29/} As CTIA previously demonstrated, expanding such requirements to

plans; MetroPCS Communications News Release, *MetroPCS Delivers 4G LTE for All with Even More Affordable 4G LTE Android Smartphone and Unbeatable Unlimited 4G LTE Data Plan* (Aug. 21, 2012), available at <http://www.metropcs.com/metro/presscenter/pressArticles.jsp?artTitle=http%3A//www.metropcs.com/assets/presscenter/assets/htm/mpcs-news-20120821-print.htm>.

^{26/} See Cisco, *Cisco Visual Networking Index: Global Mobile Data Traffic Forecast Update, 2011–2016*, at 3 (Feb. 14, 2012), available at http://www.cisco.com/en/US/solutions/collateral/ns341/ns525/ns537/ns705/ns827/white_paper_c11-520862.pdf.

^{27/} See CTIA CVAA Comments at 20.

^{28/} Consumer Groups Comments at 10-11.

^{29/} See 47 U.S.C. § 618(a)(5).

include additional reporting obligations would be beyond the scope of the statute and thus unauthorized.^{30/}

Moreover, requiring periodic “activity reports” would impose the type of negative impact on innovation that Congress explicitly sought to avoid. In the highly competitive wireless environment, wireless equipment manufacturers and service providers must continually update their handset portfolios to bring the most innovative devices to market in accordance with evolving consumer needs. Their research and development teams produce highly sensitive proprietary information as part of these efforts. Disclosure of such information through “activity reports” would cause significant competitive harm to the provider. Indeed, required sharing of plans for innovation with competitors, depriving the provider of the benefit of that innovation, would create a significant disincentive for providers to attempt to distinguish themselves in the marketplace, to the detriment of all consumers. Wireless service providers and device manufacturers currently have substantial incentives to invest in developing innovative handsets with a wide range of features for individuals who are deaf or hard of hearing. These efforts should not be deterred by the imposition of unnecessary and unauthorized reporting obligations such as those proposed by the Consumer Groups and RERC-TA.

Pursuant to Section 1.1206 of the Commission’s rules,^{31/} this letter is being electronically filed via ECFS with your office. Please let the undersigned know if you have any questions regarding this filing.

Sincerely,

/s/ Krista L. Witanowski

Krista L. Witanowski
Assistant Vice President, Regulatory Affairs
CTIA-The Wireless Association®

^{30/} See Comments of CTIA – The Wireless Association®, CG Docket No. 10-213, WT Docket No. 96-198, CG Docket No. 10-145, at 31 (filed April 25, 2011).

^{31/} 47 C.F.R. § 1.1206.