

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
Updated Information and Comment Sought on) WT Docket No. 10-254
Review of Hearing Aid Compatibility Regulations)
)

COMMENTS OF THE RURAL TELECOMMUNICATIONS GROUP, INC.

The Rural Telecommunications Group, Inc. (“RTG”),¹ by its attorneys, hereby submits its comments in response to the Federal Communications Commission’s (“FCC” or “Commission”) Public Notice in the above-captioned proceeding seeking updated comment on the operation and effectiveness of the Commission’s rules relating to hearing aid compatibility (“HAC”) of wireless handsets.² The *Public Notice* seeks comment on a number of issues regarding the effectiveness of the FCC’s HAC rules, including “whether the rules appropriately account for the challenges facing smaller service providers.” These comments focus on the adverse impact that certain HAC rules have on small wireless carriers. Specifically, these comments focus on the impact on small carriers of: (1) the minimum number of handsets that must be offered by small carriers; (2) HAC reporting requirements; and (3) the FCC’s new HAC enforcement policy.

¹ RTG is a Section 501(c)(6) trade association dedicated to promoting wireless opportunities for rural telecommunications companies through advocacy and education. RTG’s members have joined together to speed delivery of new, efficient and innovative communications technologies to consumers living, working and traveling in remote and underserved sections of the country. Many of RTG’s members are competitive eligible telecommunications carriers. RTG’s members are comprised of both independent wireless carriers and wireless carriers that are affiliated with rural telephone companies. Each of RTG’s members serves fewer than 100,000 subscribers.

² *Updated Information and Comment Sought on Review of Hearing Aid Compatibility Regulations*, Public Notice, WT Docket No. 10-254, DA 12-1745, rel. Nov. 1, 2012 (“*Public Notice*”).

I. The FCC Should Reduce the Minimum Number of T and M-Rated Handsets that Must be Offered by Small Carriers

Section 20.19 of the FCC's Rules requires that non-Tier I carriers ensure that at least 50% of the handset models offered to their customers, or at least 10 handset models, are M-rated and that at least one third of the handset models offered to their customers, or at least 10 handset models, are T-rated. While most small, rural carriers are capable of meeting these requirements, they are able to do so only at significant cost. These requirements effectively force many small carriers to carry additional handset models that their customers do not want solely to meet the FCC's handset minimums. Customers of small carriers demand the same feature-rich handsets that the large carriers offer. However, because such handsets are typically not made available to smaller carriers until well after they are made available to the big carriers, small carriers are forced to acquire less desirable handset models in order to meet their HAC obligations.³ Because their customers have little interest in such models, they typically sit in inventory and do not allow carriers to recover their costs.

To address these issues, RTG proposes that the Commission modify its handset requirements for Tier III carriers (wireless carriers with 500,000 or fewer subscribers) to require them to offer a minimum of six T-Rated and six M-Rated handsets, including at least two T-Rated and two M-Rated handsets in each of the following three categories: (1) low-cost (less than \$100); (2) moderate-cost (\$100-\$250); and (3) high-end/feature-rich (more than \$250). The dollar amounts of each of these categories will change over time, and the Commission may wish to seek comment on appropriate definitions for these categories. The purpose of the categories is to ensure that customers have available to them a choice of hearing aid compatible phones at each of the price points that they may typically be interested in. Such a requirement, combined

³ Another way of addressing this issue is to require handset manufacturers to make all hearing aid compatible handsets available to Tier II and Tier III carriers at the same time as they are made available to Tier I carriers.

with competitive market forces⁴, should be more than sufficient to ensure that each Tier III wireless carrier offers a reasonable choice of hearing aid compatible handsets.

The proposed reduction in the number of required HAC handsets in reality is unlikely to result in small carriers offering substantially fewer than ten different HAC compliant handsets. Due to the small numbers of certain handset models typically carried by small carriers⁵, the sale of a single handset may suddenly remove that model from the carrier's inventory, and cause it to suddenly drop below the required number of compliant handsets. Because of the frequent fluctuations in small carrier handset inventories, such carriers typically have to maintain substantially more than ten HAC compliant handsets in their inventory to ensure compliance with the FCC's HAC requirements.

To afford small carriers greater flexibility in meeting their HAC requirements, the Commission should also modify its rules to allow Tier III carriers to meet their handset minimums by ensuring that at least 30 percent of the handset models they offer are M-rated and that at least 20 percent of the handset models they offer are T-rated. By lowering this percentage in proportion to the percentage reduction proposed above, the FCC will allow additional flexibility to struggling smaller carriers seeking to comply with the HAC rules.

II. Carriers Need an Easily Accessed, Accurate and Up-to-Date List of all Hearing Aid Compatible Handsets

The annual HAC reports required by the FCC's rules have proven to be extremely problematic for small carriers. Current HAC reporting requirements have caused such carriers to spend unnecessary resources attempting to ascertain the HAC status of various handsets, and due

⁴ If consumers deem a particular small carrier's handset selection to be inadequate, their decision to take their business to a large carrier with more expansive handset offerings should provide ample incentive to the small carrier to beef up its handset offerings.

⁵ Small carriers have little to no control over much of their handset inventory, obtaining handsets only at such times and in such quantities as their vendors choose to or are able to make available.

to the unreliability of such information, have frequently found themselves expending further substantial resources dealing with the FCC's Enforcement Bureau. In the absence of a single, easily accessible source of accurate and up-to-date HAC-rating data, carriers have had to rely on numerous unreliable sources of information for such rating data to the detriment of their compliance efforts. Many carriers have relied on information provided on handset packaging or on discussions with handset manufacturers or vendors, and have found, upon receipt of a Notice of Apparent Liability for Forfeiture, that such information was unreliable. While the Commission has informally pointed carriers to the Office of Engineering and Technology database for HAC-rating data, that database is complex and difficult for small carriers to properly utilize without great expenditures of time and effort⁶ (expenditures vastly disproportionate to those made by Tier I carriers), and is updated infrequently, thus exposing even those carriers who are able to maneuver their way through the database to the risk of relying on inaccurate HAC handset ratings.

To address these issues, RTG proposes that the Commission require handset manufacturers to provide the Commission with an updated list of their HAC compliant phones on a monthly basis. The Commission should then establish and maintain an updated list of HAC compliant handsets and reference the location of this list in its HAC rules. The rules should make clear that carriers that rely on this list in preparing their HAC reports are not penalized for listing a handset in their reports as HAC compliant that later turns out not to have such rating.

⁶ Many small companies are forced to have an employee devote several weeks annually to tracking HAC handset ratings, a considerable burden for small companies with few employees.

III. The FCC's Forfeiture Criteria for HAC Violations are Unfair and Excessively Punitive

As discussed above the FCC's HAC rules make it difficult for small wireless carriers to comply with handset minimums. The harmful impact on such carriers was recently exacerbated by the Enforcement Bureau's Notice of Apparent Liability for Forfeiture issued against T-Mobile that substantially changed the Bureau's approach to calculating forfeiture penalties for HAC violations.⁷ In doing away with its previous "highest handset shortfall approach", and replacing it with a formula based on a multiplication of a \$15,000 base forfeiture number by the number of months out of compliance with each requirement, the Bureau has adopted forfeiture criteria which virtually guarantee that a small carrier that falls short of its compliance benchmarks will be hit with an astronomically high forfeiture penalty. For example, a carrier that is able to offer nine T-rated handsets and nine M-rated handsets to its customers (only one handset short of the requirement, and three more than an amount that would give customers a choice of multiple handsets in each price category) throughout a twelve month period will be subject to a forfeiture penalty of \$360,000. This amount is so vastly disproportionate to forfeiture penalties applied to comparable violations, it is comical.⁸ While RTG recognizes that the Bureau takes into account a company's financial situation when making adjustments to a base forfeiture proposal, the mere fact that a company has to engage in litigation with the Bureau over such matters causes significant and completely unnecessary expense, and the uncertainty over potentially massive financial penalties makes planning and obtaining funding for network buildouts substantially

⁷ *In the Matter of T-Mobile USA, Inc.*, File No. EB-10-SE-127, NAL/Acct. No. 201232100024, FRN 0006945950, Notice of Apparent Liability for Forfeiture, FCC 12-39 (rel. April 13, 2012) (*T-Mobile NAL*).

⁸ For example, compare a forfeiture penalty of \$360,000 for falling one handset short of the required minimum with base forfeiture penalties for the following substantially more significant FCC rule violations: (1) operating without a license (\$10,000); (2) unauthorized substantial transfer of control (\$8,000); (3) false distress communications (\$8,000); (4) Emergency Alert System equipment not installed or operational (\$8,000); and (5) alien ownership violation (\$7,000). 47 C.F.R. §1.80. Each of these violations raises serious public safety concerns, yet the penalties for such violations are only a fraction of the penalty proposed for failure to provide consumers (who already have a choice of eight HAC compliant handset models) with the choice of one additional handset model.

more difficult and expensive. The Commission should amend its forfeiture criteria for HAC violations to make penalties for HAC violations comparable to those imposed for comparable violations.

Respectfully submitted,

RURAL TELECOMMUNICATIONS GROUP, INC.

By: */s/ Caressa D. Bennet*

Caressa D. Bennet
Michael R. Bennet
Bennet & Bennet, PLLC
6124 MacArthur Boulevard
Bethesda, MD 20816-3210
(202) 371-1500
Its Attorneys

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