
Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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| In the Matter of |) | |
| |) | |
| Amendment of the Commission's Rules |) | WT Docket No. 07-250 |
| Governing Hearing Aid-Compatible Mobile |) | |
| Handsets |) | |
| |) | |
| Section 68.4 of the Commission's Rules |) | WT Docket No. 01-309 |
| Governing Hearing Aid Compatible |) | |
| Telephones |) | |
| |) | |
| Petition of American National Standards |) | |
| Institute Accredited Standards Committee C63 |) | |
| (EMC) ANSI ASC C63™ |) | |

COMMENTS OF THE TELECOMMUNICATIONS INDUSTRY ASSOCIATION

December 21, 2007

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SUMMARY

The Telecommunications Industry Association (“TIA”) urges the Commission to incorporate the recommendations of the Alliance for Telecommunications Industry Solutions (“ATIS”) Joint Consensus Plan as expeditiously as possible with regard to the Hearing Aid Compatibility (“HAC”) compliance deadlines and underlying handset model percentage requirements, as well as other aspects of the Joint Consensus Plan. In any case, the Commission should focus its near-term efforts on those provisions of the *Notice of Proposed Rulemaking* relating to the Joint Consensus Plan.

The Commission should promptly adopt the compliance deadlines and model percentage requirements of the Joint Consensus Plan. The participation of industry, consumer groups and hearing aid industry technical experts in developing the Joint Consensus Plan ensures that Congress’s various objectives in the Hearing Aid Compatibility Act of 1988 are taken into account. The Joint Consensus Plan acknowledges the short-term technical realities facing manufacturers and ensures technology neutrality, while also imposing new obligations on manufacturers and service providers to benefit consumers with hearing loss.

The Commission should also incorporate the “product refresh” requirement of the Joint Consensus Plan into the rules, which will help ensure that “[p]eople with hearing loss … have the benefits afforded the non-disabled community by having access to new, advanced devices” and “access to the latest technology.” The product refresh requirements should be adopted as proposed with no further modification at this time.

The Commission should codify the 2007 version of ANSI C63.19 into its rules and adopt the proposed phase-in of the new standard. The Commission should also allow for future adjustments to the standard to accommodate new technologies and retain its current practice of permitting the Wireless Telecommunications Bureau and OET to expeditiously approve or otherwise allow use of updated versions of the standard. Going forward, manufacturers should be able to obtain HAC certifications using prior versions of the standard for a commercially reasonable period of time, consistent with the approach of the Joint Consensus Plan.

The Commission should ensure that its rules timely accommodate multi-band devices and afford manufacturers and carriers an adequate grace period (generally 2-2½ years) to develop and deploy compliant equipment for new bands. The Commission’s proposed approach should apply only with respect to the CMRS offerings that fall within the scope of Section 20.19(a) of the rules.

The Commission should not impose new HAC requirements on emerging technologies at this time, as the imposition of HAC requirements on such devices could deter deployment of and investment in new technologies. Further, the extent to which these technologies will or will not be compatible with hearing aids is uncertain at this time, so regulation at this time is premature. If it is determined that a problem exists for emerging technologies, the Commission should allow industry to address these issues more effectively through voluntary standards-setting.

The Commission should defer action on volume control capabilities until ATIS releases its forthcoming recommendations in that area. A recommendation is currently scheduled for mid-2008, and the Commission should look into this issue after that recommendation is released.

The Commission should maintain the *de minimis* exception as proposed in the Joint Consensus Plan. TIA agrees with ATIS that the exception is important for accommodating both the competitive entry of new air interfaces into the market while allowing for the efficient discontinuance of legacy technologies. A *de minimis* approach will be relevant to emerging IP technologies as well should the Commission impose HAC requirements on those devices.

HAC information on the Commission's website should be enhanced by making that website more user friendly for the purpose of determining the availability of HAC-compliant models. The Commission should not, however, require manufacturers and service providers to add links from the DRO website, as such requirements may not be reflective of a company's marketing practices or its presence in the U.S. market. Companies' voluntary efforts and the already easy accessibility of the DRO's website make such a requirement unnecessary.

The Commission should adopt the Joint Consensus Plan's recommended reporting requirements. These reporting criteria reflect a collaborative effort and provide an appropriate level of information for the Commission's purposes.

Finally, the Commission should defer consideration of issues relating to open platform networks until after the 700 MHz auction has concluded.

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To: The Commission

COMMENTS OF THE TELECOMMUNICATIONS INDUSTRY ASSOCIATION

The Telecommunications Industry Association (“TIA”) hereby submits its comments in response to the Commission’s Notice of Proposed Rulemaking in the above-captioned proceedings.¹ For the reasons discussed below, the Commission should incorporate the recommendations of the Alliance for Telecommunications Industry Solution (“ATIS”) Joint Consensus Plan, as proposed in the *NPRM*, as expeditiously as possible.

INTRODUCTION

TIA is the leading trade association for the information and communications technology (“ICT”) industry, with 600 member companies that manufacture or supply the products and

¹ *In the Matter of Amendment of the Commission's Rules Governing Hearing Aid-Compatible Mobile Handsets, Section 68.4 of the Commission's Rules Governing Hearing Aid Compatible Telephones, Petition of American National Standards Institute Accredited Standards Committee C63 (EMC) ANSI ASC C63™, Second Report and Order and Notice of Proposed Rulemaking, WT Docket Nos. 07-250 and 01-309, FCC 07-192 (rel. Nov. 7, 2007) (“NPRM”).*

services used in global communications across all technology platforms. TIA represents its members on the full range of public policy issues affecting the ICT industry and forges consensus on industry standards. Among their numerous lines of business, TIA member companies design, produce, and deploy wireless devices subject to the Commission's Hearing Aid Compatibility ("HAC") requirements.²

Wireless handset manufacturers have played an integral role in the testing, development and widespread availability of HAC-compliant handsets for hearing aid users. Several TIA members, including Motorola, Nokia, RIM, Samsung, and Sony Ericsson, were actively involved in the recent fruitful collaboration between the wireless industry and consumers that ultimately led to the Joint Consensus Plan set forth by ATIS and on which the Commission has requested public comment.³ TIA strongly supports prompt Commission adoption of the compliance deadlines and underlying handset model percentage requirements and other aspects of the Joint Consensus Plan. The Commission should ensure that its examination of the other issues raised in the *NPRM* does not compromise the expeditious incorporation of the Joint Consensus Plan recommendations into its rules so as to ensure that manufacturers have regulatory certainty and sufficient time to meet their obligations going forward.

DISCUSSION

I. THE COMMISSION SHOULD PROMPTLY ADOPT THE COMPLIANCE DEADLINES AND MODEL PERCENTAGE REQUIREMENTS OF THE JOINT CONSENSUS PLAN

TIA unanimously supports the proposed changes in the HAC compliance deadlines and percentage requirements for manufacturers of wireless handsets and Tier 1 carriers, as set forth

² See 47 C.F.R. § 20.19.

³ See *NPRM* at ¶¶ 5, 32-88; Supplemental Comments of ATIS in WT Docket No. 06-203 (filed June 25, 2007) (the "Joint Consensus Plan").

in the Joint Consensus Plan and proposed in the *NPRM*.⁴ TIA commends the members of industry and the hearing loss community that comprise ATIS Incubator Solutions Program #4 (“AISP.4-HAC”). The members of AISP.4-HAC represent a wide cross section of wireless device manufacturers and service providers, advocacy groups representing consumers with hearing loss, as well as technical experts representing the hearing aid industry. This broad participation ensured that Congress’s various objectives in the Hearing Aid Compatibility Act of 1988 were accounted for in the process.

The Joint Consensus Plan acknowledges the technical reality that the current February 18, 2008 50% requirement for M3-or-better wireless handsets applicable to manufacturers presents challenges to the provision of HAC-compliant equipment for all wireless technologies.⁵ Adoption of the Joint Consensus Plan’s approach, which would lower this requirement to 33% from 50% in order to ease this burden, is warranted for this reason and is consistent with the Commission’s stated objective of ensuring that its rules remain technology-neutral.⁶ Importantly, the Joint Consensus Plan couples this initial relief with supplemental, more stringent regulations on manufacturers and Tier 1 carriers. For example, the Joint Consensus Plan would increase the number of T3-or-better phones that Tier 1 carriers must make available;⁷ require manufacturers to include HAC capability in some of their new models each year (*i.e.*, the

⁴ See *NPRM* at ¶¶ 38-49.

⁵ See 47 C.F.R. § 20.19(c)(1)(ii).

⁶ See *NPRM* at ¶ 43 (noting the technology challenges for GSM technology and seeking comment on whether differences between GSM and other technologies “justify this lower benchmark” for the initial February 18, 2008 deadline); *Section 68.4(a) of the Commission’s Rules Governing Hearing Aid-Compatible Telephones*, Report and Order, 18 FCC Rcd 16753, ¶ 76 (2003) (“HAC Order”) (“the Commission is committed to the principle of technological neutrality in its regulatory requirements.”).

⁷ *NPRM* at ¶¶ 45-46.

“Product Refresh” requirement);⁸ implement a phase-in of the ASC C63™ C63.19 2007 Standard for HAC testing;⁹ require manufacturers and carriers to regularly report on availability of products;¹⁰ and establish a further review by the Commission in 2010.¹¹

These measures will provide significant benefits to consumers who use hearing aids, while mitigating some of the technical challenges faced by manufacturers of wireless devices. The Joint Consensus Plan achieves a reasonable accommodation of the Hearing Aid Compatibility Act’s objective of “ensur[ing] reasonable access to telephone service by persons with impaired hearing” and also ensuring that the Commission’s regulations also reflect technical realities and limitations.¹² Given the strong consensus among all interested parties and the upcoming deadlines, TIA urges the Commission to promptly adopt and incorporate the Joint Consensus Plan’s provisions into its rules.

II. THE COMMISSION SHOULD INCORPORATE THE JOINT CONSENSUS PLAN’S PRODUCT REFRESH COMPONENT AS PROPOSED, WITHOUT MODIFICATION

TIA supports the Commission’s tentative conclusion to incorporate the so-called “product refresh” requirement of the Joint Consensus Plan into the HAC compliance deadlines and percentage requirements for manufacturers.¹³ As ATIS has explained to the Commission, the product refresh requirement of the Joint Consensus Plan reflects a consensus approach to ensuring that “[p]eople with hearing loss … have the benefits afforded the non-disabled

⁸ *Id.* at ¶¶ 54-55.

⁹ *Id.* at ¶¶ 58-62.

¹⁰ *Id.* at ¶¶ 63-71.

¹¹ *Id.* at ¶ 86.

¹² See 47 U.S.C. §§ 610(a), (b)(2)(C).

¹³ Nprm at ¶¶ 54-55.

community by having access to new, advanced devices” and “access to the latest technology.”¹⁴

TIA agrees that the product refresh requirement, combined with the other requirements of the Joint Consensus Plan, will help to meet this objective.

The proposed product refresh requirements are already stringent, and TIA does not support further modification of the Joint Consensus Plan’s approach at this time.¹⁵ TIA believes that the product refresh requirements, in conjunction with the tiering requirements proposed for service providers and the other proposed changes to manufacturers’ and service providers’ handset deployment obligations, will ensure that hearing aid users will have a wide choice of wireless devices and features consistent with the Congress’s and the Commission’s objectives. In any event, the Commission already proposes to initiate a further review of these requirements beginning in the 2010-2012 period, and the Commission can revisit the issue at that time.¹⁶

III. THE COMMISSION SHOULD CODIFY THE 2007 VERSION OF ANSI C63.19 INTO ITS RULES AND ADOPT THE PROPOSED PHASE-IN OF THE NEW STANDARD

TIA supports the Commission’s tentative conclusion that it should codify a single version (2007) of the C63.19 industry standard.¹⁷ The Commission should also ensure, however, that it allows for timely adjustments to the standard to accommodate new technologies. (ANSI ASC C63® has *already* notified the Commission of contemplated amendments to the 2007 version, so this issue is not merely academic.)¹⁸ In this regard, the Commission indicated that it would retain its current practice of permitting the Wireless Telecommunications Bureau and OET to

¹⁴ See ATIS Comments in WT Docket No. 06-203, filed June 25, 2007, at 9-10.

¹⁵ See NPRM at ¶ 55 (seeking comment on “whether this requirement should be modified in any way”).

¹⁶ See *id.* at ¶ 86.

¹⁷ See *id.* at ¶ 60.

¹⁸ See ANSI ASC C63® Comments in WT Docket no. 01-309, filed December 11, 2007.

approve or otherwise allow use of updated versions of the standard – an approach which TIA believes has generally worked well to date and should be continued.¹⁹

The Commission should also ensure that, as the standard is modified over time, manufacturers may obtain HAC certifications using prior versions of the standard for a commercially reasonable period to provide manufacturers with sufficient time to incorporate the new standard into their product offerings. Consistent with that general policy, the Commission seeks comment on a proposed timetable for phasing in the 2007 standard consistent with the Joint Consensus Plan.²⁰ TIA supports the approach set forth in the Joint Consensus Plan, as proposed in the *NPRM*. To provide sufficient time for manufacturers to build to the new standard, the Commission should, as proposed, allow manufacturers to obtain HAC certification either the 2006 or 2007 version of the standard through 2009.

IV. THE COMMISSION SHOULD ENSURE THAT ITS RULES TIMELY ACCOMMODATE MULTI-BAND DEVICES AND AFFORD MANUFACTURERS AND CARRIERS AN ADEQUATE GRACE PERIOD

The Commission seeks comment on “whether any further action is necessary or appropriate” to ensure that HAC requirements apply to additional CMRS service offerings. As a new HAC standard is developed (or an existing standard updated) for CMRS offerings in additional spectrum bands, under the current rules that band automatically falls under the scope of Section 20.19(a) without the need for an additional rulemaking proceeding. Although, under the statute, the C63.19 standard requirement of Section 20.19(b) may not formally apply to a given frequency band until that spectrum is incorporated into the standard.²¹ New CMRS

¹⁹ See *NPRM* at ¶ 60 n.131.

²⁰ *Id.* at ¶ 61.

²¹ See 47 U.S.C. § 610(b)(1)(B); 47 C.F.R. §§ 20.19(a), (b). The Commission has eliminated the cross-references in Section 20.19(a) to various service-specific rule parts. See *In the Matter of Service Rules for* (continued on next page)

technologies and services within the scope of Section 20.19(a) should automatically be subject to the rules as the C63.19 standard becomes applicable, although it is also critical in this regard that, as new frequencies become subject to the standard, the Commission afford manufacturers a grace period (*e.g.*, two to two-and-a-half years) in order to develop and deploy compliant equipment for those bands.²² This grace period may need to be extended depending on technology- or band-specific obstacles that may arise.

TIA emphasizes that under this approach and the Commission’s current rules, new technologies will be incorporated into the rules only with respect to the CMRS services that fall within the scope of Section 20.19(a). For reasons discussed below, other wireless services employing Wi-Fi and other unlicensed IP-based technologies are not CMRS and do not fall within the scope of Section 20.19.²³ As discussed below, these technologies have not been the focus of industry standards efforts to date and raise different technical challenges than CMRS devices and should be addressed separately.

V. ANY REGULATIONS GOVERNING EMERGING TECHNOLOGIES FOR HAC COMPLIANCE WOULD BE PREMATURE.

The Commission seeks comment on a number of issues relating to “whether [its HAC] rules should be modified to address new technologies being used and offered by manufacturers

the 698-746, 747-762 and 777-792 MHz Bands, et al., Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd. 8064, ¶ 142 (2007) (“all digital CMRS providers ... should be subject to [HAC] requirements under § 20.19 to the extent they offer real-time, two-way switched voice or data service that is interconnected with the public switched network and utilizes an in-network switching facility that enables the provider to reuse frequencies and accomplish seamless hand-offs of subscriber calls.”).

²² Consistent with TIA’s recommended approach here, with respect to CMRS offerings in various Part 27 bands the Commission has committed to “proceed based on the adopted standards and ... initiat[e] a further proceeding at that time *to establish a specific timetable for deployment of hearing aid compatible handsets for services in the relevant bands that meet the criteria discussed above.*” *NPRM* at ¶ 148 (emphasis added).

²³ The Commission has acknowledged that such devices fall outside the scope of the rules. *See id.* at ¶ 89.

and providers in their wireless handsets and networks.”²⁴ The application of the Commission’s HAC rules to new technologies, such as Wi-Fi, could result in inadvertent and unexpected consequences without improving access to these technologies for consumers with hearing loss. Accordingly, the Commission should not impose these obligations on new technologies at this time.

The imposition of HAC requirements on new technologies could deter deployment of and investment in new technologies. The incorporation of HAC features into new technologies is a very lengthy and expensive process. Standards must be set, equipment must be designed and redesigned, specific models must be tested. Manufacturers, however, are unlikely to invest in this process for unproven new technologies. Therefore, any rush to subject such emerging technologies to HAC obligations may be unnecessary and, potentially, counterproductive.

In addition, it is unclear whether these new technologies will interfere with hearing aids. To date, there is no evidence showing that consumers with hearing loss would not be able to use new technologies, such as Wi-Fi, without any interference to their hearing aids. Indeed, many new emerging technologies are not phone-based, but are data-based (laptops, data cards, etc.) and might not be used in a manner that places the devices close to hearing aids. Moreover, many emerging technologies are designed to be used in close proximity to an access point or base station, allowing these devices to use much lower power. TIA submits that any prejudging of technologies, such that they are precluded from being available to consumers with hearing loss, would be an improvident policy and should not be promulgated by the Commission. Rather, the Commission should instead cautiously approach new technologies, without any pre-judgment as

²⁴ See *id.* at ¶¶ 89-94.

to the necessary scope of any HAC obligations, to enable testing and compatibility to be developed in a reasoned, scientific-based manner.

If it is determined a problem exists for emerging technologies, TIA believes that the Commission should allow industry to address these issues more effectively through a voluntary standards-setting process. TIA has considerable and relevant experience in this regard. Such a voluntary approach to industry standards development is always preferable to formal regulation, as standards can be adopted more quickly with broad participation by affected parties.

VI. THE COMMISSION SHOULD DEFER TO ATIS'S FORTHCOMING RECOMMENDATIONS ON VOLUME CONTROL CAPABILITIES

The Commission notes that the Joint Consensus Plan calls for incorporating volume control capabilities into wireless handsets and seeks comment on whether to incorporate such requirements into the rules.²⁵ Working Group 11 of AISP.4-HAC is currently reviewing this issue with manufacturer, service provider, and hearing loss technology expert participation, and a recommendation is currently scheduled for mid-2008. In light of these efforts, the Commission should look into these issues more thoroughly once ATIS issues its recommendations.

VII. THE COMMISSION SHOULD MAINTAIN THE *DE MINIMIS* EXCEPTION AS PROPOSED IN THE JOINT CONSENSUS PLAN

The Commission tentatively concludes (consistent with the Joint Consensus Plan) that the per-air-interface clarification should be incorporated into the rules and that the *de minimis* exception otherwise be left unchanged.²⁶ TIA supports the rule without change, consistent with the tentative conclusion. The *de minimis* exception is important for all manufacturers, regardless of size, to enable them to expeditiously bring new innovative products to market and determine

²⁵ See *id.* at ¶ 87.

²⁶ See *id.* at ¶ 85.

whether consumer demand warrants a more expansive deployment of the new technology that may trigger the HAC requirements later on. As ATIS explained, the exception ensures that “new air interfaces entering the market have the opportunity to develop adequately” while also “permit[ting] the phase-out of older air interfaces based on market considerations without diverting resources to interfaces that soon will be discontinued.”²⁷ The substantive criteria for this exception should not be changed. When a new technology is developed, it is new to all companies and faces the same market pressures, regardless of the size of the company offering the technology.

TIA believes that a *de minimis* exception will be relevant to other emerging IP technologies as well, which will face the competitive pressures similar to existing wireless services.²⁸ The market demand to quickly bring new innovative products to market, and the risk that they may or may not find consumer acceptance, are significant factors for manufacturers of both existing and new wireless devices. As the Commission considers applying HAC requirements to new technologies (whether or not through the existing proceeding and ANSI C63.19 standard), these considerations militate in favor of a similar *de minimis* approach beyond the CMRS context.

²⁷ See Joint Consensus Plan at 10.

²⁸ The Commission seeks comment on additional regulatory issues “raised by emerging wireless technologies” accounting for, among other things, “economic, technological, and legal constraints.” See NPRM at ¶ 94. As TIA discusses *supra* at Section V, there are threshold legal issues and different technical issues with respect to HAC requirements for such technologies, and it is premature to address those issues here.

VIII. HAC INFORMATION ON THE COMMISSION’S WEBSITE SHOULD BE ENHANCED BUT ADDITIONAL ONLINE CONTENT REQUIREMENTS FOR MANUFACTURERS AND CARRIERS ARE UNNECESSARY

The Commission seeks comment on a number of possible means of improving the online public availability of HAC M- and T-rating information.²⁹ Many of these proposals, such as improving the “user friendliness” of the Commission’s online equipment authorization database for that purpose, have merit and probably could be implemented as a matter of the Commission’s own internal management. The Commission also seeks comment, however, on whether to go even further by requiring manufacturers and service providers to add links from the Commission’s Disability Rights Office (“DRO”) website.³⁰ Such a requirement would unnecessarily involve the Commission and impose a one-size-fits-all obligation that may not be reflective of a company’s marketing practices or even its presence in the U.S. market. A number of TIA’s members have already agreed to voluntarily provide HAC rating information online and, indeed, many manufacturers and service providers already provide information regarding handsets’ HAC ratings for purposes of their Section 255 compliance efforts.³¹ Finally, the DRO’s website itself is just one “click” away from the Commission’s online home page,³² so it seems unnecessary to impose a new information collection burden on manufacturers and service providers at this time.³³

²⁹ See *id.* at ¶¶ 72-77.

³⁰ See *id.* at ¶ 74.

³¹ See 47 C.F.R. § 6.11(a) (“Manufacturers and service providers shall ensure access to information and documentation it provides to its customers, if readily achievable.”).

³² See <<http://www.fcc.gov/cgb/dro/hearing.html>>. The DRO’s website is accessible via a link on the left-hand column of the Commission’s www.fcc.gov homepage.

³³ See *Policy and Rules Concerning the Interstate, Interexchange Marketplace; Implementation of Section 254(g) of the Communications Act of 1934, as amended*, 14 FCC Rcd. 6004, 6026-27, App. C at ¶ 14 (1999) (obligation to post service rates online was a “new collection[] of information within the meaning of the [Paperwork Reduction Act]”, citing 44 U.S.C. §§ 3501-3520).

IX. TIA SUPPORTS THE JOINT CONSENSUS PLAN'S RECOMMENDED REPORTING REQUIREMENTS

The Commission seeks comment on its proposal to adopt the modified reporting requirements proposed in the Joint Consensus Plan.³⁴ The reporting criteria set forth in the Joint Consensus Plan were the product of joint industry-consumer group collaboration and reflect an appropriate level of information that will promote the Commission's stated objectives for these reports.³⁵ The Commission should therefore adopt the requirements as recommended in the Joint Consensus Plan.

X. THE COMMISSION SHOULD DEFER CONSIDERATION OF ISSUES RELATING TO OPEN PLATFORM NETWORKS UNTIL AFTER THE AUCTION HAS CONCLUDED

The Commission seeks comment on whether and how to extend HAC obligations to "the context of open platform networks," particularly in light of the Commission's regulatory approach adopted for the Upper 700 MHz Band C Block in the upcoming auction.³⁶ The Commission has presented a number of issues for discussion. TIA is concerned that the anti-collusion rules currently in effect for that auction will limit the extent to which interested parties may be able to discuss these issues openly, thus undermining the likelihood of a comprehensive record. TIA therefore urges the Commission to seek further comment on this issue *after* the auction has closed and the anti-collusion rule is lifted, while focusing its near-term efforts on the other provisions of the *NPRM* relating to the Joint Consensus Plan.

³⁴ See *NPRM* at ¶ 68.

³⁵ See *id.* at ¶¶ 66-67.

³⁶ See *id.* at ¶¶ 95-97.

CONCLUSION

For the foregoing reasons, the Commission should expeditiously incorporate the Joint Consensus Plan's recommendations into its rules.

Respectfully submitted,

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