

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
2010 Review of Hearing Aid) WT Docket No. 10-254
Compatibility Regulations)

COMMENTS OF COMPETITIVE CARRIERS ASSOCIATION

Competitive Carriers Association (CCA)¹ respectfully submits these comments in response to the Commission’s Public Notice in the above-captioned proceeding.² CCA applauds the Commission for reviewing both the operation and effectiveness of its rules related to hearing aid compatible (HAC) wireless handsets.³ While the number of manufactured HAC devices continues to grow and consumers now have more information about those devices at their disposal, challenges (especially for small and mid-sized carrier members) still exist. Particularly, lack of interoperability in the Lower 700 MHz Band and other regulatory and business obstacles beyond these carriers’ control restrict access to devices. CCA asks the Commission to address these serious policy concerns for the benefit of all American consumers. Additionally, CCA offers four targeted proposals specific to the HAC rules which would help alleviate some of the burdens compliance causes carriers.

INTRODUCTION

CCA is the principal association representing competitive wireless providers across the United States. CCA’s more than 100 carrier members include rural, regional and nationwide service providers. CCA also represents almost 200 associate members who include vendors and

¹ CCA recently changed its name from RCA – the Competitive Carriers Association, to more accurately reflect the composition of its membership.

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

³ *Id.* at ¶ 1.

suppliers that provide products and services throughout the mobile communications supply chain.

As a result of the collaborative work of the Commission, disability rights groups, carriers, manufacturers and other stakeholders, an increasing number of HAC devices are manufactured each year (along with other hearing-assistance technologies), and consumers today have access to a host of information concerning these devices and technologies. Yet CCA's carrier members face certain obstacles to obtaining access to these devices—especially “iconic” 4G devices demanded by consumers. Fragmentation of the Lower 700 MHz Band has severely limited 700 MHz A Block licensees' access to devices. In fact, many CCA members do not have direct relationships with handset manufacturers but rather purchase handsets through third-party vendors or distributors, or through buying consortiums, which limits the number of available handsets these carriers have access to.

The Commission should act to help alleviate challenges faced by smaller providers to remaining HAC compliant. Specifically, while the Commission has improved its electronic Form 655, a uniform database of HAC information on which carriers (and consumers) could rely would streamline the reporting process, as would carriers' ability to rely on information provided by manufacturers in their HAC reports and on FCC summary information. The Commission should also move its January 15 reporting deadline further into the year (such as to January 31 or February 15). CCA also asks the Commission to exempt from liability (or, at a minimum, to take into consideration) carriers who are unable to obtain compliant handsets from manufacturers despite their best efforts. Finally, the Commission should expressly limit carriers' HAC requirements to voice services.

DISCUSSION

I. MANUFACTURERS ARE MAKING A GROWING NUMBER OF HAC COMPLIANT DEVICES, AND AN ADEQUATE AMOUNT OF INFORMATION CONCERNING THOSE DEVICES IS CURRENTLY AVAILABLE

Evidence shows that HAC handsets continue to be manufactured in growing numbers. The total number of handsets manufactured with an M3 or M4 rating increased from 322 as of July 2010 to 357 in July 2011.⁴ Likewise, the total number of handsets manufactured with a T3 or T4 rating increased from 250 to 291 over the same years.⁵ And the number of RF-interference compliant handsets is likely to increase for the 2012 reporting period due to the 2011 revision of ANSI Standard C63.19, which through direct measurement methodology has made it easier for GSM handsets to receive an M3 rating.⁶ In light of this revision, CCA expects that statistics for the 2012 reporting year, particularly the number of handsets operating over GSM air interfaces that achieve an M3 rating, will likely increase.

The Commission should also recognize the impact that “add-on” technologies available to consumers have had in assisting hard-of-hearing populations in using their wireless phones. For example, Bluetooth-capable hearing aids are becoming increasingly available to consumers, which can improve hearing aid-using consumers’ mobile experiences. As touted by one hearing-aid manufacturer, these devices “keep the interference at a minimum and make conversations clearer and more enjoyable.”⁷ This is in addition to hearing aids with direct audio input (DAI) connections.

⁴ Compare January 2011 Report of Service Providers’ Hearing Aid Compatibility Handset Totals by Air Interface, available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-304640A1.pdf, with January 2012 Report of Service Providers’ Hearing Aid Compatibility Handset Totals by Air Interface, available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-313050A1.pdf.

⁵ *Id.*

⁶ Public Notice ¶ 10.

⁷ Patrick Freuler, *Into the Wireless Age: An Introduction to Bluetooth Hearing Aids*, Audicus Hearing Aids Blog (Apr. 23, 2012), available at <http://www.audicus.com/blogs/hearing-aids-blog/6071806-into-the-wireless-age-an-introduction-to-bluetooth-hearing-aids>.

Beyond the increased number of HAC devices (and consumer “add-ons”) available in the marketplace, the Commission’s rules also provide for a flow of information to consumers about the HAC devices offered by service providers. Manufacturers and carriers subject to the Commissions’ HAC rules that operate a publicly accessible website are required to make available on their site a list of all HAC devices currently offered, the ratings of those models, and an explanation of the rating system.⁸ Likewise, the Commission’s rules require that service providers make available for consumers (in each retail store owned or operated by the provider) all of the carrier’s handset models that comply with the RF interference and inductive coupling technical standards for testing.⁹

The increase in the number of HAC devices being manufactured (along with hearing assistance technologies available to consumers) and the amount of information available to consumers are encouraging advances made because of the HAC rules.

II. A LACK OF ACCESS TO DEVICES BASED ON SCOPE AND SCALE IS TO BLAME IN THOSE INSTANCES WHERE LIMITED HAC DEVICES ARE AVAILABLE

But in spite of the increase in hearing aid compatible devices, carriers (particularly smaller rural and regional carriers) continue to face challenges in gaining access to these handsets based on scope and scale. CCA encourages the Commission to take two actions to combat these challenges and improve product markets for HAC devices: (1) restore interoperability in the Lower 700 MHz Band, and (2) closely monitor handset exclusivity arrangements.

Many of CCA’s members operate networks on or lease spectrum located in the Lower 700 MHz Band. As the Commission is aware, following the FCC’s auction of this spectrum the

⁸ 47 C.F.R. § 20.19(h).

⁹ 47 C.F.R. §§ 20.19(c)(4)(i), (d)(4)(i).

Lower 700 MHz A Block was segregated from the B and C Blocks through the creation of Band Class 12 and Band Class 17 by 3G Partnership Project (3GPP) standards. As CCA and its members have repeatedly demonstrated in the record, there are no technical justifications for this segregation.¹⁰ On the other hand, one of the primary benefits of making the Lower 700 MHz interoperable would be to improve the timeliness and affordability of consumers' (and carriers') access to devices—in addition to lowering costs for consumers to move from carrier to carrier, accelerating technical innovations in the 700 MHz band, and removing the cloud of uncertainty that has frustrated private-sector investment and deployment in the A Block.¹¹ Lower 700 MHz licensees' increased access to devices resulting from interoperability would include iconic, hearing aid compatible handsets. A rulemaking has been initiated to address the issue,¹² and CCA continues to urge the Commission to act swiftly to restore interoperability to the Lower 700 MHz Band.

Likewise, the Commission should remain cognizant of the effect device exclusivity arrangements have on smaller carriers' ability to access HAC handsets. Exclusivity arrangements give the largest carriers anticompetitive control over devices and limit non-dominant carriers' and their subscribers' access to the same.¹³ And while Verizon has committed to small wireless carriers (and to the United States Congress and to this Commission) that any new exclusivity arrangements it enters into with handset makers will last no longer than

¹⁰ See, e.g., Letter from Rebecca Murphy Thompson, General Counsel, Competitive Carriers Association to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 12-69 (Jan. 4, 2013) (and accompanying presentation).

¹¹ *Id.* at 1.

¹² Promoting Interoperability in the 700 MHz Commercial Spectrum, WT Docket No. 12-69, *Notice of Proposed Rulemaking* (rel. Mar. 21, 2012).

¹³ Letter from Rebecca Murphy Thompson, General Counsel, Competitive Carriers Association to Marlene H. Dortch, Secretary, Federal Communications Commission, RM-11497 (May 11, 2012) (*CCA Exclusivity Withdrawal Letter*).

six months,¹⁴ AT&T has made no such commitment, and even a six month exclusivity period restricts access to a large number of devices for half of any given HAC reporting period. While it remains a concern, eliminating device exclusivity will mean little if devices are not interoperable. Restoring interoperability alone would help advance the deployment and availability of HAC devices, particularly for subscribers on smaller networks.

III. THE COMMISSION SHOULD ADOPT TARGETED, COMMON SENSE PROPOSALS TO HELP ALLEVIATE CHALLENGES FACING SMALLER SERVICE PROVIDERS

In addition to the larger policy concerns set forth above, the Commission can make a few small—but important—changes and clarifications to the HAC enforcement regime which would benefit all service providers, but particularly rural and regional providers.

A. The Commission Should Create a Uniform Database of Handset HAC Information

The Commission's improvements to the electronic version of FCC Form 655 are helpful. In particular, the device manufacturer information that auto-populates reduces the amount of time required to complete submissions. But manufacturers regularly make permissive changes to devices that result to changes in HAC ratings, and carriers are not notified if or when these changes occur. Carriers are therefore forced to comb through the FCC's OET authorizations system to collect the most up-to-date information on devices when submitting their Form 655. The OET authorization system, in addition to being cumbersome, contains a host of non-HAC related information.

To alleviate the some of the burden placed on carriers, the FCC should host and manage a uniform database of HAC information on which both carriers and consumers could rely. Ideally,

¹⁴ See Letter from John T. Scott, Vice President & Deputy General Counsel, Verizon Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission, RM-11497 (July 17, 2009) (attaching letters from Lowell McAdam to Representative Rick Boucher, Senator John F. Kerry and Senator John D. Rockefeller IV memorializing Verizon Wireless's new policy on handset exclusivity arrangements).

such a bank of information would allow manufacturers to add information on new devices and modify information related to current devices. When modifications are made in the database, an alert could be automatically generated to points of contact for carriers who listed the device as one of their HAC handsets in a previous reporting year.

Having a mechanism like the one described above would not only ease the burden placed on smaller carriers by the HAC reporting requirements, but would also help carriers stay HAC compliant throughout any given reporting year. Without this real-time information, carriers are often times subjected to enforcement actions based upon changes to handsets for which they were never even aware during the applicable time period. In the absence of such a universal database, carriers should not be penalized or otherwise subject to forfeitures when they have relied on representations made by manufacturers or FCC summary information.

B. The Commission Should Allow Additional Time for Carriers to Submit Compliance Reports

Currently, service providers are required to submit compliance reports on January 15th of each year.¹⁵ For most smaller carriers, a director of sales or other marketing professional in charge of handset line-ups is also the point of contact for HAC reporting and compliance. As these individuals are occupied through December with holiday sales (as well as other end-of-year administrative duties), little time is left to complete and file the FCC Form 655 by January 15th. Delaying the reporting deadline set out in the Commission's rules to January 31st (or February 15th even) would not adversely impact consumers, but would allow for smaller carriers' staff to complete their end-of-year sales cycles and also prepare and file these reports.

¹⁵ 47 C.F.R. § 20.19(i)

C. The Commission Should Account for the Fact That Many Carriers Do Not Have Direct Relationships with Manufacturers When Issuing Notices of Apparent Liability or other Enforcement Actions

Many CCA Carrier Members, and particularly smaller carriers, do not have direct relationships with original equipment manufacturers. These members rely on indirect relationships with distributors and other vendors to get access to devices, or make acquisitions through buying consortiums, or both.¹⁶ Not having direct access to original equipment manufacturers impacts smaller carriers' ability to obtain HAC devices in a timely manner, and should be taken into account when the Commission considers notices of apparent liability or other enforcement actions.

In comments filed in response to the Commission's *2010 Review of Hearing Aid Compatibility Regulations*, CCA argued that "a mere three months of additional time [for non-Tier I carriers] to meet the current HAC benchmarks is an inadequate grace period, particularly in light of the clear discrepancies in handset access between the nation's largest wireless carriers and [CCA]'s carrier members."¹⁷ CCA asked the Commission to exempt carriers from liability under the HAC rules where, despite their efforts, carriers are unable to obtain compliant handsets from manufacturers.¹⁸ And again last year CCA pointed out the various challenges faced by small and mid-sized carriers who are constrained in their ability to introduce new devices, and who have longer product development cycles compared to their larger competitors.¹⁹

Since the Commission's rules currently require *all* service providers to offer the same number of HAC devices—regardless of their size—CCA urges the Commission to consider

¹⁶ For example, CCA facilitates a GSM Buying Alliance through which its smaller members can leverage their collective purchasing power for better handset access and pricing for consumers.

¹⁷ Comments of Rural Cellular Association, *2010 Review of Hearing Aid Compatibility Regulations*, WT Docket No. 10-254, at 3-4 (filed Feb. 14, 2011).

¹⁸ *Id.* at 5, n.7.

¹⁹ See Reply Comments of RCA – The Competitive Carriers Association, *Amendment of the Commission's Rules Governing Hearing Aid-Compatible Mobile Handsets*, WT Docket No. 07-250, at 2 (filed Jan. 30, 2012).

smaller carriers' formidable challenges to gaining access to handsets when deciding notices of apparent liability or other enforcement proceedings. At a minimum, the Commission should establish a policy of not tacking-on "enhanced" monetary penalties or onerous compliance mechanisms to those smaller carriers who show their difficulties in obtaining devices.²⁰

D. The Commission Should Limit HAC Requirements to Voice Services (and Not Apply the Rules to Applications or Over The Top (OTT) Products)

Finally, the Commission should expressly recognize that its HAC requirements do not apply to Voice over Internet Protocol (VoIP) services and other technologies. In its *Policy Statement and Second Report and Order and Further Notice of Proposed Rulemaking*, the Commission considered applying its HAC requirements "to all customer equipment used to provide wireless voice communications over any type of network among members of the public or a substantial portion of the public"²¹ Carriers do not control what applications or "over-the-top" content subscribers download to their devices, and extending to carriers HAC requirements for services other than voice services provided over the carrier's network would be an unmanageable undertaking at this point in time.

CONCLUSION

The relevant stakeholders have done an admirable job to increase the availability of hearing aid compatible devices and access to information concerning those devices. There are, however, several policy issues and targeted proposals that could, should the Commission address them, do even more to improve consumers' access to these devices and assist carriers in providing the most comprehensive information available related to those devices. Finally,

²⁰ CCA would renew this request to the extent that manufacturers are unable to meet the phase-in requirements for the ANSI C63.19-2011 standards for all air interfaces.

²¹ Amendment of the Commission's Rules Governing Hearing Aid-Compatible Mobile Handsets, WT Docket No. 07-250, *Policy Statement and Second Report and Order and Further Notice of Proposed Rulemaking*, FCC 10-145 at ¶ 77 (rel. Aug. 5, 2010).

smaller carriers should be afforded a measure a leniency by the Commission for circumstances beyond their control.

Respectfully submitted,

/s/ Rebecca Murphy Thompson
Rebecca Murphy Thompson
C. Sean Spivey
COMPETITIVE CARRIERS ASSOCIATION
805 15th Street, N.W., Suite 401
Washington, DC 20005
(202) 449-9866

January 22, 2013