

July 28, 2016

VIA ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Ex Parte* Notice – *Improvements to Benchmarks and Related Requirements Governing Hearing Aid-Compatible Mobile Handsets*, WT Docket No. 15-285; *Amendment to the Commission's Rules Governing Hearing Aid-Compatible Mobile Handsets*, WT Docket No. 07-250.

Dear Ms. Dortch:

On July 26 and 27, 2016, representatives from Competitive Carriers Association, CTIA®, The Deaf and Hard of Hearing Technology RERC at Gallaudet University, the Hearing Loss Association of America, and the Telecommunications Industry Association (collectively, the "Parties"), representing people who use hearing aid devices and the wireless industry, met with legal advisors to the Chairman and each of the FCC Commissioners to discuss the Consensus Proposal presented by the Parties in November 2015 in the above-captioned dockets.¹ A complete list of attendees at each meeting is attached.

As the Commission considers taking action on the pending Notice of Proposed Rulemaking in these proceedings,² the Parties expressed their gratitude to the Commission for its careful consideration of hearing aid compatibility ("HAC") issues. The Parties have worked together for years to ensure that wireless handsets are accessible to and usable by people who use hearing aid devices, and are pleased to continue their collaboration on this important issue.

During the meetings, the Parties reaffirmed their support for adoption of the historic Consensus Proposal that they presented to the Commission, which balances the goal of hearing aid compatibility for all wireless handsets with the need to encourage continued innovations that can benefit all consumers, including those who use hearing

¹ See Letter from James Reid, Telecommunications Industry Association, Scott Bergmann, CTIA, Rebecca Murphy Thompson, Competitive Carriers Association, Anna Gilmore Hall, Hearing Loss Association of America, Claude Stout, Telecommunications for the Deaf and Hard of Hearing, and Howard A. Rosenblum, National Association of the Deaf, to Marlene H. Dortch, Secretary, FCC, WT Docket Nos. 07-250, 10-254 (filed Nov. 12, 2015) ("Consensus Proposal").

² See *Improvements to Benchmarks and Related Requirements Governing Hearing Aid-Compatible Mobile Handsets; Amendment of the Commission's Rules Governing Hearing Aid-Compatible Mobile Handsets*, Fourth Report and Order and Notice of Proposed Rulemaking, 30 FCC Rcd 13845 (2015) ("NPRM").

aid devices. The Parties also reaffirmed their support for their Proposal Supplement of April 21, 2016, which provides further details about the multi-stakeholder task force ("Task Force") process that is an important part of implementing the Consensus Proposal.³

Specifically, the Parties continued to support the enhanced benchmarks and encouraged the Commission to adopt them as described in the Consensus Proposal, including (but not limited to) the timeline and the additional compliance periods specified for Tier I and non-Tier I service providers.⁴ For carriers and manufacturers that offer five digital wireless handsets in an air interface, the Parties understand that at least three of those models should be compliant under the new benchmarks, but that those carriers or manufacturers offering six or more handsets in an air interface will be able to continue to "round down" the number of compliant devices, consistent with existing requirements.⁵

The Parties also discussed that, in order to enable innovation, the Commission should ensure there is clarity for providers and manufacturers on meeting the increased benchmarks where no testing protocols are available. We also discussed whether the Commission should apply existing processes when no testing protocols are available⁶ and evaluate what steps, if any, are necessary to develop, or provide guidance for, new test protocols.

³ See Letter from James Reid, Telecommunications Industry Association, Scott Bergmann, CTIA, Rebecca Murphy Thompson, Competitive Carriers Association, Barbara Kelley, Hearing Loss Association of America, Claude Stout, Telecommunications for the Deaf and Hard of Hearing, and Howard A. Rosenblum, National Association of the Deaf, to Marlene H. Dortch, Secretary, FCC, WT Docket Nos. 07-250, 10-254 (filed Apr. 21, 2015) ("Proposal Supplement").

⁴ As the Parties previously stated, the new benchmarks "should directly apply to manufacturers and carriers that offer six or more digital wireless handsets in an air interface, with additional compliance periods for Tier I and Non-Tier I carriers of six months and eighteen months, respectively, to account for carriers' availability of handsets and inventory turn-over rates." See Consensus Proposal at 1, n.1. This applies to the benchmarks as well as the 100% compliance requirement, if deemed achievable. See Proposal Supplement at 6, n.11.

⁵ See 47 C.F.R. § 20.19(c)(1)(i)(B).

⁶ See, .e.g., *Amendment of the Comm'n's Rules Governing Hearing Aid-Compatible Mobile Handsets*, Fourth Report and Order and Notice of Proposed Rulemaking, 30 FCC Rcd 13845, 13872 ¶ 53 (explaining that "due to a lack of testing equipment availability, manufacturers are currently permitted to obtain certification of handset models for inductive coupling capability under the 2011 ANSI Standard without testing and rating any present VoLTE or Wi-Fi Calling operations, subject to a disclosure that such handsets have not been tested and rated for all of their operations"); *Amendment of the Comm'n's Rules Governing Hearing Aid-Compatible Mobile Handsets*, Third Report and Order, 27 FCC Rcd 3732, 3737, 3739 ¶¶ 12, 17 (2012) (observing that testing the inductive coupling capability of VoLTE transmissions under the 2011 ANSI Standard was not complete, but permitting handsets to be certified for inductive coupling under the 2011 ANSI Standard, subject to a disclosure that such handsets have not been tested for all their operations).

Additionally, the Parties continued to recommend that the Commission pursue a goal that 100% of wireless handsets offered to consumers be compliant with the Commission's HAC rules, subject to a determination by the Commission that reaching the goal is achievable considering technical and market conditions.⁷ The Parties noted that the Commission will receive a final report from the Task Force that will inform the Commission's determination, and which will include summaries of Task Force activities and provide the data collected to support the summaries as the Task Force deems necessary. Regarding the Task Force participants and the timeline for Task Force action, the Parties urged the Commission to adopt the details as described in the Consensus Proposal and Proposal Supplement.⁸ The Parties reiterated that it should be left to the Task Force to take a holistic view of conditions in the wireless and hearing aid industries as they exist at the time of the determination process review and to consider which data would be needed to determine if the existing definition of HAC is the most effective means for ensuring access to wireless handsets for consumers who use hearing aids while encouraging technological innovation.⁹

Finally, the Parties discussed how the Commission can be kept apprised of the status of the Task Force's progress once the Task Force is established. The Parties understand and support the need for transparency throughout the Task Force process. If the Commission seeks to be kept apprised beyond the report already envisioned in the Consensus Proposal and Proposal Supplement, the Parties acknowledge that an annual report once the Task Force is established could satisfy the Commission's interest in the Task Force's activities. Rather than prescribe the specific contents of any additional reports, however, the Commission should permit the Task Force the flexibility to work together to determine the best way to communicate the status of the determination process to the FCC and the public. Consumers did note that so long as the language is not proscriptive, they would not object to guidance from the Commission on the kind of information that could be included in the yearly reports. The Commission also should clarify that the Task Force is responsible for filing reports and that the Task Force or its participants would not be expected to produce any confidential, proprietary, or work product documents. This approach will enable the free flow of information regarding the state of the wireless and hearing aid markets without creating an overly burdensome obligation, breaching confidentiality, or triggering Commission burden reduction obligations.

* * * * *

The Parties urge the Commission to adopt a Report and Order in these proceedings that reflects the Parties' collaborative proposals as submitted, without modification. Adoption of the carefully negotiated details in the Consensus Proposal

⁷ Consensus Proposal at 2. The Consensus Proposal provides that any new benchmarks resulting from the Commission's determination, including 100% compliance, shall go into effect no less than 24 months after the Commission's "achievability" determination. *Id.*; see also Proposal Supplement at 2, 4.

⁸ Proposal Supplement at 2-4.

⁹ *Id.* at 5.

and Proposal Supplement will further the shared goal of providing accessible wireless services and equipment to all Americans—including those who use hearing aid devices—while encouraging innovation and advancement to the benefit of all consumers.

Pursuant to Section 1.1206 of the Commission's rules, this letter is being electronically filed with your office and a copy of this submission is being provided to the meeting attendees from the Commission. Please let the undersigned know if you have any questions regarding this filing.

Sincerely,

Rebecca Murphy Thompson
EVP & General Counsel
Competitive Carriers Association

Matthew Gerst
Director, Regulatory Affairs
CTIA®

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Access Program
Co-Director, Rehabilitation Engineering
Research Center on Technology for the Deaf
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Gallaudet University

Lise Hamlin
Director of Public Policy
Hearing Loss Association of America

Avonne Bell
Sr. Manager, Government Affairs
Telecommunications Industry Association

Attachment

cc: Edward ("Smitty") Smith
Daudeline Meme
Johanna Thomas
Brendan Carr
Erin McGrath
Jessica Cameron
David Nayer

Attachment A

July 26, 2016 Meeting Participants

Office of Commissioner Rosenworcel

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July 27, 2016 Meetings

Office of Commissioner O’Rielly

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