



TELECOMMUNICATIONS  
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*Via Electronic Filing*

June 19, 2015

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

**Re: *Ex Parte Notice – Request For Updated Information And Comment on Wireless Hearing Aid Compatibility Regulations, WT Docket Nos. 07-250, 10-254***

Dear Ms. Dortch:

The Telecommunications Industry Association (“TIA”)<sup>1</sup> hereby submits this filing to supplement its comments on the record regarding the issues raised in the Federal Communication Commission’s (“Commission”) Public Notice in this proceeding.<sup>2</sup> Here, TIA reemphasizes the need for the Commission to promulgate a notice of proposed rulemaking (“NPRM”) and explains why this is the required next step in the procedural process, based on statute and regulatory history, if the Commission plans to make any changes to the existing hearing aid compatibility (“HAC”) regulatory framework. Further, technical standards must be in place before HAC obligations can be imposed on new technologies and this should be done through a public rulemaking process. While

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<sup>1</sup> TIA is the leading trade association for the information and communications technology (“ICT”) industry, representing companies that manufacture or supply the products and services used in global communications across all technology platforms. TIA represents its members on the full range of 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 a wide variety of devices with the goal of making technology accessible to all Americans. TIA’s standards committees, which operate under an American National Standards Institute-accredited process, create consensus-based voluntary standards for numerous facets of the ICT industry.

<sup>2</sup> *Request for Updated Information and Comment on Wireless Hearing Aid Compatibility Regulations*, Public Notice, WT Docket No. 07-250, 10-254, DA 14-1688 (rel. Nov. 21, 2014) (“PN”).



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the wireless industry shares the Commission’s commitment to expanding communication accessibility, because the Commission has not conducted a rulemaking to determine that established standards are in place for hearing aid compatibility and testing for the wide range of new technologies purported to be covered by the PN, the Commission does not have adequate legal basis to extend HAC obligations “to all mobile wireless devices that can be used for voice communications.”<sup>3</sup>

When the Commission has considered changing the obligations with respect to HAC, it has always conducted a rulemaking before adopting new regulations. This is demonstrated by the history of Commission proceedings. Additionally, when the Commission decided to delegate authority to adopt new versions of the ANSI C63.19 standard to the Wireless Bureau Chief, it explicitly required that changes be adopted by means of a notice and comment rulemaking.<sup>4</sup> This need has been explicitly stated in cases where the Commission seeks to expand HAC regulations to new technologies.

The Hearing Aid Compatibility Act of 1988 (“HAC Act”)<sup>5</sup>, which grants the Commission its authority to impose hearing aid compatibility obligations, states that to be hearing aid compatible a phone must “provide an internal means for effective use with hearing aids that are designed to be compatible with telephones *which meet effective technical standards for hearing aid compatibility.*”<sup>6</sup> This provision establishes the basis for the Commission’s long-standing construction that a technical standard must be in place before HAC regulations can be expanded to new communications technologies. This language has remained constant since 1988 and was not

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<sup>3</sup> *Id.*, ¶ 2.

<sup>4</sup> See Section 68.4(a) of the Commission’s Rules Governing Hearing Aid-Compatible Telephones, WT Docket No. 01-309, RM-8658, *Report and Order*, 18 F.C.C.R. 18047 (2003) ¶ 63 (“Mobile Wireless HAC R&O”).

<sup>5</sup> 47 U.S.C. § 610.

<sup>6</sup> § 610 (b)(1) (emphasis added).



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altered by the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA).<sup>7</sup>

The Commission’s own regulatory history shows a clear precedent on the need for a standard to be in place before expanding the scope of HAC rules and that the adoption of a particular technical standard to support expansion to new technologies must be considered by the public through a proposed rulemaking proceeding. In 2001, when the Commission first decided to expand the scope of the HAC requirements beyond wireline phones to public mobile wireless<sup>8</sup>, the agency issued an NPRM and clearly stated that the HAC Act “appears to require . . . the establishment of *technical standards* governing wireless hearing aid compatibility.”<sup>9</sup> Ultimately, in 2003, the Commission decided to adopt changes to the HAC rules only after determining that established standards were available. “Fundamental to deciding to modify the exemption on grounds of technological feasibility is the requirement that there be an established technical standard.”<sup>10</sup>

Furthermore, in 2007, the Commission determined that expansion of HAC requirements to CMRS providers in the 700 MHz band was needed but declined to adopt that obligation, considered through a proposed rulemaking proceeding, because there was no existing technical standard.<sup>11</sup>

“[T]he existence of an established, applicable technical standard is a statutory requirement for imposing hearing aid compatibility requirements. Because no such standard currently exists for any

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<sup>7</sup> Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-260, 124 Stat. 2751 (2010) (as codified in various sections of 47 U.S.C.) (“CVAA”).

<sup>8</sup> Public mobile services are now classified as commercial radio services (“CMRS”).

<sup>9</sup> Section 68.4(a) of the Commission’s Rules Governing Hearing Aid-Compatible Telephones, WT Docket No. 01-309, RM-8658, *Notice of Proposed Rulemaking*, 16 F.C.C.R. 20558, 20578 (2001) ¶ 16. (emphasis added)

<sup>10</sup> Mobile Wireless HAC R&O ¶ 39.

<sup>11</sup> See Section 68.4(a) of the Commission’s Rules Governing Hearing Aid-Compatible Telephones, WT Docket No. 01-309, *Report and Order and Further Notice of Proposed Rulemaking*, 22 F.C.C.R. 8064, 8118 ¶ 142, 145 (2007).



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services beyond the broadband PCS, Cellular, and certain SMR bands, we cannot presently impose hearing aid compatibility requirements on additional services.”

Finally, outside of the Commission’s regulatory history and precedent, the Commission has a *statutory* obligation to conduct a rulemaking before adopting changes to the HAC regulatory framework. The CVAA only strengthened the Commission’s duty to engage in a public rulemaking process. That Act amended the rules for technical standards to state that hearing aid compatibility involves a phone “that is compliant with relevant technical standards developed through a public participation process and in consultation with interested consumer stakeholders.”<sup>12</sup> Accordingly, the Commission must “consult with the public, including people with hearing loss, in establishing technical standards.”<sup>13</sup>

In its Comments and Reply Comments to the PN, TIA explained that new technologies like voice over Wi-Fi “present unique technical challenges for HAC testing,”<sup>14</sup> which is needed for any standard. The Commission itself has also explained: “Wi-Fi is a technology that has a plethora of options, protocols and configurations” that “requires established engineered definitions of the specific options, protocols, configurations” in use in order to conduct hearing aid compatibility testing.<sup>15</sup> To date, in this proceeding, the Commission has only provided high-level points for discussion and comment. The PN does not specifically indicate what technologies the Commission believes need to be covered by the rules that are not currently in scope. Therefore, it is not clear that established technical standards are in place that would support a Commission decision to change the

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<sup>12</sup> CVAA, 47 U.S.C. § 610(c)

<sup>13</sup> *Id.*

<sup>14</sup> See Comments of TIA, WT Docket Nos. 07-250, 10-254 (filed Feb. 5, 2015) at 4; Reply Comments of TIA, WT Docket Nos. 07-250, 10-254 (filed Feb. 20, 2015) at 3.

<sup>15</sup> OET KDB Publication 285076 D02 T-Coil testing for CMRS IP v01r01, fn. 4



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rules without an NPRM that provides technical specificity and allows the development of a full, detailed record.

In conclusion, TIA strongly urges the Commission to use the proper procedural measure, consistent with the agency's regulatory history and prescribed statutory authority, and adopt a notice of proposed rulemaking, in the event, the Commission finds that changes to the HAC regulations are necessary.

Respectfully submitted,

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