



PUBLIC NOTICE

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WIRELESS TELECOMMUNICATIONS BUREAU SEEKS COMMENT ON PETITIONS FOR RECONSIDERATION AND/OR CLARIFICATION OF THE HEARING AID COMPATIBLE TELEPHONES REPORT AND ORDER

(WT Docket No. 01-309)

Comments Due: March 29, 2004

Reply Comments Due: April 13, 2004

On August 14, 2003, the Federal Communications Commission (Commission) released a *Report and Order* that modified the exemption for wireless phones under the Hearing Aid Compatibility Act of 1988 (HAC Act) to require that digital wireless phones be capable of being effectively used with hearing aids.¹ The *Report and Order* requires digital phone manufacturers and service providers to take steps to reduce the amount of interference emitted from digital wireless phones and to provide the internal capability for telecoil coupling. On October 16, 2003, several interested parties filed petitions requesting the Commission to reconsider and/or clarify various aspects of its decision.² By this Public Notice, the Wireless Telecommunications Bureau seeks comment on the issues raised in these petitions.³

¹ *Section 68.4(a) of the Commission's Rules Governing Hearing Aid Compatibility*, WT Docket No. 01-309, FCC 03-168 (rel. August 14, 2003) (*Report and Order*). See also, *Erratum*, WT Docket No. 01-309, DA 03-2743 (rel. August 27, 2003).

² See *Section 68.4(a) of the Commission's Rules Governing Hearing Aid Compatibility*, WT Docket No. 01-309, Public Service Cellular Inc., Missouri RSA No.7 Limited Partnership dba Mid Missouri Cellular; Minnesota Southern Wireless Company dba Hickory Tech, Northwest Missouri Cellular Limited Partnership, Illinois Valley Cellular RSA 2-1 Limited Partnership, Illinois Valley Cellular 2-II Limited Partnership and Illinois Valley RSA 2-III Limited Partnership (TDMA Carriers) and the Rural Telecommunications Group (RTG) Petition for Reconsideration, filed October 16, 2003 (TMDA Carriers and RTG Petition); *Section 68.4(a) of the Commission's Rules Governing Hearing Aid Compatibility*, WT Docket No. 01-309, Verizon Wireless Petition for Reconsideration, filed October 16, 2003 (Verizon Wireless Petition); *Section 68.4(a) of the Commission's Rules Governing Hearing Aid Compatibility*, WT Docket No. 01-309, Research in Motion Limited (RIM) Petition for Reconsideration, filed October 16, 2003 (RIM Petition); and *Section 68.4(a) of the Commission's Rules Governing Hearing Aid Compatibility*, WT Docket No. 01-309, Petition for Reconsideration and Clarification of the Cellular Telecommunications and Internet Association (CTIA), filed October 20, 2003 (Correct Version)(CTIA Petition).

³ See Petitions for Reconsideration and Clarification of Action in Rulemaking Proceeding, *Public Notice*, Report No. 2636 (rel. October 31, 2003). On October 31, 2003, the Commission issued a general Public Notice announcing the filing of the Petitions for Reconsideration in this proceeding. Comments filed in pursuant to the Commission's October 31, 2003, Public Notice will be considered along with comments filed pursuant to this Public Notice.

The ANSI C63.19 Standard: The Commission's *Report and Order* adopts the ANSI C63.19⁴ standard as an established technical standard for digital wireless phone compatibility with hearing aids.⁵ Cellular Telecommunications and Internet Association (CTIA) asks the Commission to reconsider its decision to adopt the ANSI C63.19 standard, as well as other aspects concerning the standard.

The De minimis Exception: In the *Report and Order*, the Commission adopts a *de minimis* exception for manufacturers and carriers that offer a small number of handset models in the U.S.⁶ Specifically, if a manufacturer or carrier offers two or fewer digital wireless handset models in the U.S., it is exempt from the compatibility requirements in the *Report and Order*. If a manufacturer or carrier offers three digital wireless handset models, it is required to make at least one compliant phone model in two years.

Research in Motion Limited (RIM) and CTIA petition the Commission to reconsider and clarify that the *de minimis* exception.⁷ For example, RIM contends that the Commission's *Report and Order* seems to require all suppliers of handsets, irrespective of size, to enter the new market with two compliant handsets or none at all.

State Regulation and Enforcement of HAC Rules: In the *Report and Order*, the Commission delegates enforcement of the hearing aid compatibility rules to those states which have adopted and provided for enforcement of the hearing aid compatibility rules.⁸ The *Report and Order* requires that the procedures set forth in Part 68, Subpart E are to be followed and establishes a 30-day period after complaints are filed, to resolve disputes on an informal basis.⁹ The *Report and Order* further provides that in the absence of state laws adopting the hearing aid compatibility requirements, the Commission will hear informal complaints.¹⁰

Verizon Wireless and CTIA petition the Commission to reconsider its creation of a separate regulatory and enforcement role for the states.¹¹ For example, CTIA challenges the Commission's expansion of the scope of the Part 68, Subpart E rules to wireless carriers.¹²

⁴ "American National Standard for Methods of Measurement between Wireless Communication Devices and Hearing Aids ANSI C63-19-2001" (ANSI C63.19). ANSI C63.19 which is a voluntary standard developed by a Task Group that included several wireless phone manufacturers, wireless carriers, representatives of the FCC and FDA, and other interested parties, provides guidance on measuring digital wireless' phones RF emissions and hearing aid's immunity levels to the RF emissions, and specifies rating categories.

⁵ See *Report and Order* at paras. 43-44.

⁶ See *Report and Order* at para. 53.

⁷ RIM Petition at 2.

⁸ See *Report and Order* at para. 95.

⁹ See *Report and Order* Appendix C, Amendments to Section 20.19(g).

¹⁰ See *Report and Order* at para. 95.

¹¹ Verizon Wireless Petition at 6-10.

¹² CTIA Petition at 14-17.

The 25 % and 50% Requirements for Tier I Carriers: The Commission's *Report and Order* requires each Tier I wireless carrier providing digital wireless services to make available to consumers within two years at least two handset models for each air interface it offers for reduced RF emissions ("U3" rating) or 25 % of the total number of phone models it offers, whichever is greater.¹³ By February 18, 2008, the Commission requires that 50 % of all digital wireless phone models offered by a manufacturer or carrier be compliant with the reduced RF emissions requirements.¹⁴

CTIA and Verizon Wireless challenge the Commission's imposition of the 25 % and the 50 % requirement. For instance, Verizon Wireless petitions the Commission to modify Section 20.19 (c) which it argues imposes a stricter requirement on Tier I carriers than on all other wireless carriers.¹⁵

The Availability of HAC Handsets:

In the *Report and Order*, the Commission requires, that within two years, each digital wireless handset manufacturer and each carrier providing digital wireless services make commercially available at least two handsets for each air interface in its product line (*i.e.*, CDMA, TDMA, GSM, and iDEN) which meet the U3 performance level (acoustic coupling) under ANSI C63.19.¹⁶ This means that carriers must offer consumers at least two compliant phone models for each air interface they offer, but not necessarily two for every manufacturer they carry. By the end of three years, manufacturers and carriers must offer at least two digital wireless handsets meeting the U3T performance level for providing telecoil coupling capability (inductive coupling) for each air interface offered.¹⁷

RTG and TDMA Carriers request that the Commission reconsider its decision. RTG and TDMA Carriers request, for example, that carrier obligations be based on the actual availability of HAC handsets.¹⁸ RTG and TDMA Carriers assert that where a carrier operating a TDMA network has overbuilt an alternate digital technology for which HAC handsets are available, the Commission should consider exempting TDMA networks or apply the *de minimis* exemption on a technology specific basis.¹⁹

Labeling, Reporting, and Live Testing Requirements: In the *Report and Order*, the Commission requires manufacturers to label packages containing compliant handsets and to make information available in the package or product manual, and require service providers to make available to consumers the performance ratings of compliant phones.²⁰ Additionally, the *Report and Order* requires wireless carriers and digital wireless handset manufacturers to report on efforts toward compliance.²¹

¹³ *Report and Order* at para. 53.

¹⁴ *Report and Order* at para. 54.

¹⁵ Verizon Wireless Petition at 2.

¹⁶ *Report and Order* at para. 65.

¹⁷ *Id.*

¹⁸ RTG and TMDA Carriers Petition at 3.

¹⁹ *Id.* at 8-9.

²⁰ *Report and Order* at paras. 83-89.

²¹ *Report and Order* at paras. 89-92.

CTIA challenges the *Report and Order's* labeling, reporting, and live testing requirements.²² For example, CTIA requests the Commission to clarify how commercially sensitive information in compliance reports should be handled and asks whether all carrier owned and operated stores must have live testing available.²³

We seek comment on the issues raised by these Petitions for Reconsideration and/or Clarification. Interested parties may file comments to the petitions on or before March 29, 2004. Reply comments are due April 13, 2004. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.²⁴

This is a "permit but disclose" proceeding pursuant to § 1.1206 of the Commission's Rules.²⁵ *Ex parte* presentations that are made with respect to the issues involved with regard to the petitions will be allowed but must be disclosed in accordance with the requirements of § 1.1206(b) of the Commission's Rules.²⁶

Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, filing parties should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, parties should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply. Commenters also may obtain a copy of the ASCII Electronic Transmittal Form (FORM-ET) at <http://www.fcc.gov/e-file/email.html>.

Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistrionix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. In addition, a diskette copy should be sent to the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, S.W., Room CY-B402, Washington, DC, 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail to qualexint@aol.com.

The full text of the petitions and responsive comments will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th

²² CTIA Petition at 10-13.

²³ CTIA Petition at 12.

²⁴ See *Electronic Filing of Documents in Rulemaking Proceedings*, GC Docket No. 97-113, Report and Order, 13 FCC Rcd 11322, 11326, para. 8 (1998); 63 Fed. Reg. 24121 (1998).

²⁵ 47 C.F.R. § 1.1206.

²⁶ 47 C.F.R. § 1.1206(b).

Street, SW, Room CY-A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor. Alternative formats (computer diskette, large print, audio recording and Braille) are available to persons with disabilities by contacting Brian Millin, of the Consumer and Governmental Affairs Bureau, at (202) 418-7426 (voice) or (202) 418-7365 (TTY), or at bmillin@fcc.gov. This Public Notice can also be downloaded in Text and ASCII formats at: <http://www.fcc.gov/cib/dro>. For further information concerning this proceeding, contact Andra Cunningham, Public Safety and Critical Infrastructure, Wireless Telecommunications Bureau, at (202) 418-1630 (voice) or (202) 418-1169 (TTY).

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