



PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

News Media Information 202-418-0500
Internet: www.fcc.gov
TTY: 888-835-5322

DA 23-250

Released: March 23, 2023

WIRELESS TELECOMMUNICATIONS BUREAU SEEKS COMMENT ON ATIS WAIVER REQUEST ON BEHALF OF THE COVERED ENTITIES OF THE HEARING AID COMPATIBILITY TASK FORCE

WT Docket No. 20-3

Comment Date: 30 days after publication in the *Federal Register*

Reply Comment Date: 45 days after publication in the *Federal Register*

1. The Wireless Telecommunications Bureau seeks comment on a petition for waiver (Petition)¹ filed by ATIS requesting waiver of section 20.19(b)(1) and (b)(3) of the Commission's rules² for all entities subject to the hearing aid compatibility rules. The Petition seeks to allow wireless handsets to satisfy a reduced volume control testing methodology to be certified as hearing-aid compatible.³ In particular, we seek comment on this waiver request in the context of the Commission's commitment to attaining 100% hearing aid compatibility of covered wireless handsets, as soon as achievable,⁴ as well as the Commission's previous finding that a volume control requirement is necessary "to ensure the provision of effective telecommunications for people with hearing loss."⁵

2. The Commission's commitment to a volume control requirement dates back to the original hearing aid compatibility order in 2003.⁶ Since then, the Commission has repeatedly explored

¹ Petition of ATIS on Behalf of the Covered Entities of the Hearing Aid Compatibility Task Force for Limited, Interim Waiver, WT Docket Nos. 15-285 and 20-3 (filed Dec. 16, 2022), <https://www.fcc.gov/ecfs/document/1216020115086/1>. The covered entities of the Hearing Aid Compatibility Task Force (Task Force) include Apple, Inc.; AT&T; Competitive Carriers Association; Consumer Technology Association; CTIA; Google; Mobile & Wireless Forum; Samsung Research America; T-Mobile USA; Telecommunications Industry Association ("TIA"); Union Telephone Company; UScellular; and Verizon. *Id.* at 1& n.1.

² 47 CFR § 20.19(b)(1), (b)(3).

³ Petition at 1-2.

⁴ See, e.g., *Improvements to Benchmarks and Related Requirements Governing Hearing Aid Compatible Mobile Handsets*, WT Docket No. 15-285, Report and Order, 31 FCC Rcd 9336, 9337, 9345, paras. 4, 22 (2016) (*2016 Revised Benchmark Order*); *Amendment of the Commission's Rules Governing Standards for Hearing Aid-Compatible Handsets*, WT Docket No. 20-3, Report and Order, 36 FCC Rcd 4566, 4566, para. 1 (2021) (*2021 HAC Order*).

⁵ See *Amendment of the Commission's Rules Governing Hearing Aid-Compatible Mobile Handsets*, WT Docket No. 07-250, Report and Order and Order on Reconsideration, 32 FCC Rcd 9063, 9073-074, para. 23 (2017) (*Volume Control Order*).

⁶ Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones, WT Docket No. 01-309, Report and Order, 18 FCC Rcd 16753, 16778, para. 57 (2003).

the issue⁷ and in 2017 concluded that “the public interest and the objectives mandated by section 710 of the Act will be served by modifying the Commission’s acoustic coupling HAC rules for wireless handsets to include a volume control requirement designed to accommodate people with hearing loss.”⁸ The Commission affirmed its belief “that a volume control requirement that specifies certain levels of amplification as an element of hearing aid compatibility is just as necessary for wireless handsets as it is for wireline phones, to ensure the provision of effective telecommunications for people with hearing loss.”⁹ In deciding to adopt a wireless volume control requirement, the Commission stated that “a volume control requirement will not only improve communications for those using hearing aids and cochlear implants, it also will help millions of Americans with hearing loss who do not use these devices.”¹⁰

3. While the Commission adopted a volume control requirement in 2017, the Commission delayed compliance with the requirement until March 1, 2021.¹¹ At the time the Commission adopted this rule, there was no standard for volume control, but the Commission anticipated that ANSI would adopt a standard that the Commission could incorporate into its rules. The Commission expected to adopt the ANSI volume control standard by 2019 in order to give manufacturers two years following adoption to build the standard into new handsets. It was not until 2019, however, that ANSI submitted to the Commission as part of the 2019 ANSI Standard the ANSI/TIA-5050-2018 Volume Control Standard (ANSI/TIA Volume Control Standard), which is incorporated into the 2019 ANSI Standard.¹² Commenters broadly supported the adoption of the 2019 ANSI Standard and the related ANSI/TIA Volume Control Standard.¹³ Both standards are incorporated into the Commission’s rules by reference (i.e., the standards are part of the Commission’s rules).¹⁴ Under the Commission’s rules, beginning on June 5, 2023, a handset will be considered “hearing aid compatible” if it “meets the 2019 ANSI Standard for all frequency bands that are specified in the ANSI standard and all air interfaces over which it operates on those frequency bands, and the handset has been certified as compliant with the ANSI/TIA-Volume Control Standard.”¹⁵

4. According to ATIS’s Petition, during the course of the hearing aid compatibility Task Force’s work this past spring, the Task Force discovered “significant and material problems with the methodology used for testing volume control.”¹⁶ Specifically, Working Group 3 of the Task Force received data on eighteen mobile handsets that were tested under the new standards.¹⁷ ATIS states that

⁷ *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, 25 FCC Rcd 11167, 11191-92, paras. 69-70 (2010); *Comments Sought on 2010 Review of Hearing Aid Compatibility Regulations*, Public Notice, 25 FCC Rcd 17566, 17576-77 (WTB 2010); *Updated Information and Comment Sought on Review of Hearing Aid Compatibility Regulations*, Public Notice, 27 FCC Rcd 13448, 13452 (WTB 2012).

⁸ *Volume Control Order*, 32 FCC Rcd at 9073-074, para. 23.

⁹ *Volume Control Order*, 32 FCC Rcd at 9074, para. 23.

¹⁰ *Volume Control Order*, 32 FCC Rcd at 9074, para. 23.

¹¹ *Volume Control Order*, 32 FCC Rcd at 9080-081, paras. 34-35.

¹² *2021 HAC Order*, 36 FCC Rcd at 4568-69, para. 6 & n.19; ANSI/TIA5050:2018, *Telecommunications – Communications Products – Receive Volume Control Requirements for Wireless (Mobile) Devices* (approved Jan. 17, 2018) (ANSI/TIA Volume Control Standard).

¹³ *2021 HAC Order*, 36 FCC Rcd at 4571-72, para. 11.

¹⁴ 47 CFR § 20.19(l).

¹⁵ *Id.* § 20.19(b)(3).

¹⁶ Petition at 3.

¹⁷ Petition at 3.

the ANSI/TIA Volume Control Standard's methodology for testing volume control resulted in every current HAC-certified handset they tested failing to pass the standard.¹⁸

5. Accordingly, ATIS specifically requests a waiver of section 20.19(b)(1) and (b)(3), asking us to allow wireless handsets to satisfy a reduced volume control testing methodology instead of the full ANSI/TIA Volume Control Standard in order to be certified as hearing-aid compatible. ATIS asserts that there is a "problem with the underlying testing methodology" in the ANSI/TIA Volume Control Standard that renders compliance with the ANSI 2019 Standard functionally impossible for handsets.¹⁹ ATIS proposes that, for the duration of the waiver, the Commission allow a handset to be certified as hearing-aid compatible if it:

- i. Meets the following clauses of the 2019 ANSI Standard:
 - a. RF Immunity Test (M – "clause 4") and
 - b. T-Coil Compatibility Test (T – "clause 6")
- ii. Passes the conversational gain test in the ANSI/TIA Volume Control Standard for all available codecs and air interface combinations at the 2N level²⁰; and
- iii. Obtains passing results for at least one of the device's available codecs for the distortion and frequency response requirements in the ANSI/TIA Volume Control Standard.²¹

Under the proposed waiver, ATIS also requests that test codecs be limited to those that are in scope for the ANSI/TIA Volume Control Standard, which include narrowband and wideband codecs.²²

6. ATIS asserts that TIA is in the process of "reinitializing" its standards committee to revise the ANSI/TIA Volume Control Standard. ATIS then notes that stakeholders would need a period of time for testing and implementation of the standard before the Commission considers adopting the revised standard into its rules. ATIS requests that the waiver remain in effect until the Commission has had the opportunity to review the revised standard.

7. In the context of the Commission's commitment to attaining 100% hearing aid compatibility for handsets, to the extent achievable, as well as the significance of the volume control standard for improving accessibility to handsets for consumers with hearing loss, we seek comment on how to address any request for waiver of the volume control standard, as well as the scope of this particular request.

8. We note that when the Commission adopted a volume control requirement for mobile handsets in October 2017, work on a wireless volume control standard was already well underway.²³ In 2019, the current standard was completed and was submitted to the Commission by the ASC C63 Committee with a request that it be incorporated in the Commission's rules.²⁴ In the ensuing rulemaking, industry commenters supported adoption of the standard,²⁵ and no party raised concerns about the

¹⁸ Petition at 3.

¹⁹ Petition at 3-4.

²⁰ Under the waiver requested by petitioners, manufacturers would be relieved of their obligation to certify that handsets pass this test at the 8N force used for testing requirements for persons without hearing aids. Petition at 11, 13.

²¹ Petition at 4.

²² Petition at 4.

²³ *Volume Control Order*, 32 FCC Rcd at 9073, para. 22 (noting that the working groups of the relevant standards development committees were already focused on the issue and "have made considerable progress on the completion of a standard for this purpose").

²⁴ *2021 HAC Order*, 36 FCC Rcd at 4568-69, para. 6.

²⁵ *2021 HAC Order*, 36 FCC Rcd at 4571-72, para. 11.

suitability of the testing requirements for volume control. Accordingly, we seek comment on what steps the covered entities took, prior to the recent testing conducted by the Task Force, to ensure that they would be able to comply with the adopted standard, which was developed by technical committees on which affected manufacturers ordinarily are well represented.²⁶

9. We seek comment on the potential impact of this waiver request on consumers, as well as the application of the Commission's established waiver standard.²⁷ In particular, we seek comment on the impact of the requested waiver of the volume control requirement on the more than 30 million Americans who have hearing loss. Would a grant be consistent with the Commission's commitment to implementing a volume control standard to improve accessibility and with our statutory duties under section 710 of the Communications Act of 1934, as modified?²⁸ How would a denial of the requested waiver impact consumers? In addition, we seek comment on whether and how the requested waiver would further our goal of making 100% of wireless handsets hearing-aid compatible. Do individuals and consumer groups representing individuals who are deaf and hard of hearing support the scope of the waiver request?

10. We also seek comment on the scope of the waiver request. The waiver request seeks a departure from the volume control standard previously supported by parties and adopted into the Commission's rules. Is the alternative volume control testing methodology proposed by ATIS sufficient to ensure that handsets have adequate volume control? Did the covered entities perform any testing to ensure that this alternative volume control testing methodology would ensure that handsets have sufficient volume control? If so, we encourage industry to share data related to this testing in their comments.

11. We seek comment on the portion of the waiver related to conversational gain and the scope of that request. The waiver proposes to test only the 2N force, which replicates the experience of hearing aid users. The ANSI/TIA Volume Control Standard, however, also requires testing of conversational gain at the 8N force, which is intended to replicate the experience of those consumers with hearing loss who do not use hearing aids. The waiver request does not specify why covered entities need a waiver of the 8N force portion of the conversational gain test, other than the "high failure rate" at the 8N force.²⁹ What specific problem with the 8N testing requirement makes compliance with the test problematic? Are there steps manufacturers could take that would address such problems and enable their devices to pass the test? How would the testing methodology proposed by ATIS, which would include a waiver of the requirement to test conversational gain at the 8N force, ensure that a handset's conversational gain is suitable for those consumers with hearing loss that do not use hearing aids? Should we maintain the testing requirement at the 8N force, as specified in the ANSI/TIA Volume Control Standard?

12. We seek comment on the portion of the waiver request related to distortion and frequency response and its scope. Guidance from the Office of Engineering and Technology Knowledge Database (KDB) requires the worst-case test result to be submitted for certification—which ATIS suggests "implicitly require[es] an all-codec approach."³⁰ With this in mind, would it be sufficient to test and

²⁶ Cf. *Blanca Tel. Co. v. FCC*, 743 F.3d 860 (D.C. Cir. 2014) (affirming the Commission's denial of *nunc pro tunc* waivers of hearing aid compatibility rules to non-complying carriers that failed to show they exercised reasonable diligence in attempting to meet compliance deadline set by the Commission); *Section 68.4 of the Commission's Rules Regarding Hearing-Aid Compatible Telephones; Petitions for Waiver of Section 20.19 of the Commission's Rules*, WT Docket 01-309, Memorandum Opinion and Order, 23 FCC Rcd 3352, 3368-69, para. 34 (2008) (noting "inattention does not constitute extraordinary circumstances to support a waiver").

²⁷ See 47 CFR §§ 1.3, 1.925.

²⁸ 47 U.S.C. § 610.

²⁹ Petition at 11.

³⁰ The Commission requires that a handset meet the applicable ANSI standard for all frequency bands and all air interfaces over which it operates to be counted towards the deployment benchmarks. 47 CFR § 20.19(b)(3). KDB guidance explains that the report submitted with equipment authorization will document the worst-case test

(continued....)

document only one of a device's available codecs for the distortion and frequency response requirements of the ANSI/TIA Volume Control Standard, as ATIS requests? What was the basis for the Task Force working group's finding that "meeting the distortion and frequency response requirements when tested with a single codec" is "sufficient to indicate that the amplifier/speaker combination is capable of producing the desired output signal quality and level"?³¹ Did the working group or covered entities perform any testing to ensure that this would be the case? How can we be sure that the consumer experience would not be negatively affected if testing only one of the device's available codecs for distortion and frequency response? If testing only one of a device's available codecs is sufficient, why was the ANSI/TIA Volume Control Standard developed to test both narrowband and wideband codecs?³² Which specific types of codecs are incompatible with the pulse-noise test? If we were to grant a waiver, is there a way to tailor the request more narrowly for relief to address ATIS's concerns with the pulse-noise signal test? For example, could we limit the tests to only those codecs within the scope of the ANSI/TIA Volume Control Standard?

13. We also seek comment on whether we should impose other conditions on the waiver, if granted. For example, should we require labeling specifying that a handset tested under this methodology did not meet the full volume control standard? What other conditions are necessary to ensure that consumers with hearing loss have access to hearing-aid compatible handsets that meet established technical standards?

14. Finally, we seek comment on the timeframe contemplated for the waiver. We note that the request does not seek a specific length of time for the waiver. If granted, should we set additional time limits or reporting requirements on the waiver? For example, should we consider requiring ATIS to submit quarterly reports on the progress of revising the volume control standard? In order to ensure hearing aid compatibility compliance pursuant to the ATIS waiver and because timely hearing aid compatibility compliance is in the public interest, should we consider requiring the waiver's covered entities to participate in the TIA standards-setting process? Should we establish a period of time for testing and implementation of the standard?

15. ATIS cites as evidence the Task Force's concurrently filed Final Report and Recommendation (Report),³³ which recommends revisions to our hearing aid compatibility rules—including revisions to the standards for volume control testing.³⁴ However, we do not seek feedback here on the Report or its recommendations, except to the extent that ATIS relies on studies in the Report as support for its waiver request.³⁵ We only solicit comment on ATIS's specific waiver request, and on any alternate relief that may be appropriate.

16. We note that the Commission adopted an Initial Regulatory Flexibility Analysis (IRFA) and a Final Regulatory Flexibility Analysis (FRFA) in the proceeding that adopted the volume-control

(Continued from previous page) _____
conditions and document the codec test. See FCC, OET, *Guidance for Performing Volume Control Measurements on Mobile Handsets – KDB 285076 – HAC Guidance v06r01*, at Section 2 (Oct. 25, 2022), <https://bit.ly/3hDX1yZ>. ATIS notes that this "implicitly requir[es] an all-codec approach. Petition at 4 & n.9.

³¹ Petition at 10.

³² In laying out the testing methodology, ANSI/TIA Volume Control Standard specifies using one codec each in narrowband and wideband modes (if supported) over any air-interface available in the device. See ANSI/TIA Volume Control Standard at 5-7.

³³ HAC Task Force Final Report and Recommendation, WT Docket No. 15-285 (filed Dec. 16, 2022), <https://www.fcc.gov/ecfs/document/1216940802129/1>.

³⁴ See Petition at 5-6, 8-11, 19.

³⁵ See *Wireless Telecommunications Bureau Requests Comment on the Hearing Aid Compatibility Task Force's Final Report and Recommendation*, WT Docket No. 15-285, DA 23-251 (WTB 2023).

standard.³⁶ The FRFA, among other things, analyzes the objectives and the economic effects on small entities of the requirement that ATIS asks us to waive. We seek comment on how the proposed waiver and the alternatives discussed herein could affect the IRFA and the FRFA previously adopted by the Commission. How could action in response to ATIS's petition ensure that we are minimizing burdens on small entities?

17. *Paperwork Reduction Act.* This document may seek comment on potential new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document as required by the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

18. *Filing Requirements.* Interested parties may file comments on or before the date indicated on the first page of this document.³⁷ All filings must refer to Docket No. 20-3. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS).³⁸

- Electronic Filers: Comments may be filed electronically using the Internet by accessing ECFS: <https://www.fcc.gov/ecfs/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.
- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19.³⁹

19. *People with Disabilities:* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Government Affairs Bureau at (202) 418-0530.

³⁶ *See Amendment of the Commission's Rules Governing Hearing Aid-Compatible Mobile Handsets*, WT Docket Nos. 07-250, 10-254, Notice of Proposed Rulemaking, 30 FCC Rcd 12219, 12261, Appendix C (2015) Initial Regulatory Flexibility Analysis (IRFA); *Volume Control Order*, 32 FCC Rcd at 9097, Appendix C (2017) Final Regulatory Flexibility Analysis (FRFA).

³⁷ *See* 47 CFR §§ 1.2, 1.405, and 1.419.

³⁸ *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (1998).

³⁹ *See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (Mar. 19, 2020), <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.

20. *Ex Parte Rules.* This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.⁴⁰ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must: (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made; and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenters written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with section 1.1206(b) of the Commission’s rules. In proceedings governed by section 1.49(f) of the rules or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf).⁴¹ Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

21. For further information regarding this proceeding, please contact Eli Johnson at eli.johnson@fcc.gov.

- FCC -

⁴⁰ See 47 CFR §§ 1.1200 *et seq.*

⁴¹ *Id.* § 1.1206(b).