

**STATEMENT OF  
COMMISSIONER MICHAEL O'RIELLY  
APPROVING IN PART, DISSENTING IN PART**

*Re: Access to Telecommunications Equipment and Services by Persons with Disabilities, CG Docket No. 12-32; Petition for Rulemaking Filed by the Telecommunication Industry Association Regarding Hearing Aid Compatibility Volume Control Requirements, CG Docket No. 13-46; Amendment of the Commission's Rules Governing Hearing Aid-Compatible Mobile Handsets, WT Docket No. 07-250; Comment Sought on 2010 Review of Hearing Aid Compatibility Regulations, WT Docket No. 10-254.*

I have stated on several occasions that I am a strong proponent of a periodic review of the Commission's rules to see if they need to be updated or eliminated. Similarly, the Commission must undertake proceedings in order to implement congressional directives set forth by statute. For these reasons, I will support most of this notice seeking comment on potential changes to the volume control standards and other hearing aid compatibility rules. Although I will support seeking public input, I will reserve judgment on these issues until I am able to review the resulting record and meet with stakeholders about the costs and benefits of any proposed modifications.

I do have significant concerns about the portion of the notice that seeks comment on how to implement section 701(c) of the Twenty-First Century Communications and Video Accessibility Act of 2010.<sup>1</sup> In this section, Congress created a means by which equipment that meets technical standards set by applicable standards setting bodies would be considered hearing aid compatible. More specifically, the statute states that:

[E]quipment that is compliant with relevant technical standards developed through a public participation process and in consultation with interested consumer stakeholders (designated by the Commission for the purposes of this section) will be considered hearing aid compatible for the purposes of this section, until such time as the Commission may determine otherwise.<sup>2</sup>

The ideas and proposals set forth in this item, if adopted, may lead to an overly expansive interpretation of the statute, allow for inappropriate Commission intervention in the standards process, and permit excessive delegation to Commission staff, all of which I cannot support.

First, the notice seeks comment on allowing the Consumer and Governmental Affairs Bureau (CGB), with recommendations from the Disability Advisory Committee (DAC), to designate the "interested consumer stakeholders" that will be part of the consultation process. This disgraceful practice extends the inaccurate assertion made in several items recently that the use of "Commission" in the statute can be interpreted to exclude input from or review by the Commissioners. And, the involvement of the DAC does not make this process any less subjective, since those members are selected by CGB without the oversight of the Commissioners. To make matters worse, there appears to be no limitation on the number of interested consumer stakeholders that staff could designate to take part in the sham standards setting process.

Second, I strenuously disagree with how the Commission may interpret Congress's directive that the technical standard must be developed "in consultation with" these public interest groups. To me,

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<sup>1</sup> 47 U.S.C. § 610(c).

<sup>2</sup> *Id.*

consultation is just that – the need to consult with the interested consumer stakeholders. The notice, however, suggests that standards setting bodies would be required to do more than just consult with these public interest groups. For instance, the idea is teed up that standards setting bodies may have to invite these entities to serve as voting members of relevant committees. The item even goes so far as to question whether standards setting bodies should waive membership fees and cover the costs for these groups to participate. Such proposals cannot be located in law or legislative history and amount to mere procedures to institute biased outcomes in the standard setting bodies. While the standards setting bodies may or may not be willing or already set up to make such accommodations, mandating such actions goes far beyond the consultation level required in the statute.

Third, the notice proposes that, once the standards setting body, with the staff-appointed interested consumer stakeholders, develops a standard, the Commission's review of whether the standard should or should not be incorporated into our rules will be conducted by the relevant bureau staff. Yet again, with no Commission oversight. This will allow staff to codify a new hearing aid compatibility standard and terminate an old standard found in the rules without a Commission-level proceeding or vote. So, let me get this straight, staff will be able to designate an unlimited number of entities to sway the decisions of a so-called independent standards setting body and then have the right to codify the standard that they influenced. That could not possibly be the Commission's, or Congress's, intent and places the Commission's objective to be technologically neutral at great risk.

For these reasons, I must dissent in part to this section of the notice. In sum, I do not agree with the delegation of authority to the staff to hand-pick stakeholders, or proxies, to participate in the standards setting process and to codify these standards in the Commission rules. More generally, I remain opposed to the Commission being involved in the standards setting process, whether it be in the context of hearing aid compatibility standards or the development of LTE-U. These independent bodies have been successful because the Commission has not interfered. The Commission, and in this case its designees, should not be involved in standards setting, selecting technologies to be deployed, or picking winners and losers.