

**STATEMENT OF
COMMISSIONER MICHAEL O'RIELLY**

Re: *Improvements to Benchmarks and Related Requirements Governing Hearing Aid-Compatible Mobile Handsets*, WT Docket No. 15-285

Today's order demonstrates a careful balancing of potentially competing interests – providing more hearing aid compatible phones while ensuring that innovation will not be delayed. In doing so, we increase the hearing aid compatibility benchmarks for wireless providers and manufacturers to 66 and 85 percent after specified transition periods, but will *evaluate* whether a 100 percent benchmark is achievable at a later time. I appreciate all of the work done by industry and the hearing impaired community to come to a compromise that both sides find acceptable.

The real work, however, is actually about to begin. According to the joint consensus proposal, a “task force” will be formed to consider whether moving towards that 100 percent hearing aid compatibility compliance is achievable and makes sense. In contemplating a 100 percent benchmark, the task force – and eventually the Commission – will weigh whether it is not only technically feasible but also the potential effects on the handset market and the costs and benefits of such a requirement. While the ultimate goal is laudable, it should not be done at the expense of the deployment of new technologies and the development of the next generation of handsets.

As an aside, I must admit that I find it ironic that we encourage the task force to consider costs and benefits in making its determination, but we once again fail to provide a quantitative cost-benefit analysis in this order. Just because there is a consensus proposal does not abrogate the Commission's responsibility to thoroughly analyze the costs and benefits of its regulations. Additionally, I am hopeful that this task force will be more balanced and neutral in coming to their conclusions than some of the Commission's advisory committees.

To encourage transparency, the item recommends the submission of annual reports about the formation and activities of the task force. I am able to approve this portion of the order because it clearly states that “[t]hese submissions are purely voluntary.”¹ The proposed reports, the suggested content and the submission timeframes are solely illustrative, and it will be left to the task force “to determine the best means of apprising the Commission of its activities.”² The item also states that, to the extent a report is filed, the Commission will not expect the disclosure of confidential or proprietary information, data or work product. Further, there will be no enforcement actions or other repercussions if reports are not filed by the task force, after its formation, or by any interested party on its own behalf. I thank the Chairman for accepting my edits clarifying these points.

Finally, since I joined the Commission, small and rural wireless providers have told me that there has been confusion about which handsets are and are not compliant with our hearing aid compatible requirements. As I explained when we considered the NPRM, misunderstandings and faulty information have led to unnecessary enforcement actions for companies seeking to comply.³ In this item, we are

¹ See *supra* ¶ 35.

² *Id.* ¶ 41.

³ See, e.g., *Indigo Wireless, Inc.*, EB-SED-13-00009306, Forfeiture Order, 29 FCC Rcd 7404, 7405-06 ¶ 5 (2014); *General Communication, Inc., d/b/a Alaska DigiTel LLC and Alaska Wireless Communications, LLC*, EB-SED-13-00009563, Order, 29 FCC Rcd. 3505, 3510 ¶ 4 (2014); *Cordova Wireless Communications, LLC*, File No. EB-SED-13-00009239, Order, 28 FCC Rcd 12915, 12919 ¶ 3 (2013); *DOCOMO Pacific, Inc.*, EB-10-SE-109, Order, 28 FCC Rcd 4069, 4073 ¶ 3 (2013); *Airadigm Communications, Inc. dba Airfire Mobile*, EB-11-SE-045; EB-SED-12-

making it clear that wireless providers that reasonably rely on the hearing aid compatibility rating information filed by manufacturers on their Form 655s will be shielded from FCC enforcement actions.⁴ In other words, rely on the Commission's information and you will not get penalized. Call it a safe-harbor, if you will. This Form 655 information is contained in a spreadsheet that is placed on the Commission's hearing aid compatibility websites.⁵ While this spreadsheet is only updated annually, it is a start, and it is my understanding that an updated list will be available shortly. Going forward, I hope interested parties and consumers will provide us with suggestions about how this list can be improved and made more effective. I appreciate that the Chairman, his staff and the Wireless Telecommunications Bureau worked with me to accomplish this common sense approach to protect wireless providers that are doing what they can to comply with our rules.

00003753, Order, 28 FCC Rcd 8842, 8847 ¶ 5 (2013); *Ztar Mobile, Inc.*, EB-11-SE-061, EB-10-SE-126, EB-08-TC-6092, Order, 27 FCC Rcd 4712, 4717 ¶ 3 (2012); *Smith Bagley, Inc. dba Cellular One*, EB-10-SE-121, EB-09-SE-161, Order, 27 FCC Rcd 9142, 9147 ¶ 4 (2012); *Epic Touch Co., Inc.*, EB-10-SE-111, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 17848, 17850-51 ¶ 5 (2010).

⁴ Manufacturers also must certify to the accuracy of the report. "Willful false statements in a Form 655 can be punished by fine and/or imprisonment under Title 18 of the United States Code, 18 U.S.C. § 1001." *Instructions for Hearing Aid Compatibility Status Reporting Form (FCC Form 655)*, <http://wireless.fcc.gov/hac/FCCForm655Instructions.pdf> (last visited Aug. 3, 2016).

⁵ *Device Manufacturers Information by Handset, Reporting Period July 1, 2014 to June 30, 2015*, https://apps.fcc.gov/edocs_public/attachmatch/DOC-334865A1.pdf (last visited Aug. 3, 2016). Access to this spreadsheet can also be reached through the following websites: *Hearing Aid Compatibility Status Reporting*, <http://wireless.fcc.gov/hac/index.htm?job=home> (last visited Aug. 3, 2016); *Hearing Aid Compatibility Reports: Device Manufacturers*, http://wireless.fcc.gov/hac/index.htm?job=reports_dm (last visited Aug. 3, 2016); and *Hearing Aid Compatibility (HAC)*, <https://www.fcc.gov/general/hearing-aid-compatibility-hac> (last visited Aug. 3, 2016).