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FCC ACTS TO PROMOTE ACCESSIBILITY OF DIGITAL WIRELESS PHONES TO INDIVIDUALS WITH HEARING DISABILITIES

Washington, D.C. – Today the FCC adopted a Report and Order requiring wireless manufacturers and service providers to make digital wireless phones accessible to the more than 6 million individuals with hearing disabilities that use hearing aids.

Specifically, the Commission 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. The FCC found that modifying the exemption will extend the benefits of wireless telecommunications to individuals with hearing disabilities, thereby increasing the value of the wireless network for all Americans.

The Commission's actions fulfill the Congressional goal of ensuring access to telecommunications services for individuals with hearing disabilities and are critical in light of the rising number of wireless calls to emergency services and the growing trend among wireless carriers to move away from analog services in favor of more efficient, feature-rich digital services.

In order to make digital wireless phones accessible to individuals who use hearing aids, the Commission found that digital wireless phone manufacturers and service providers should be required to take steps to reduce the amount of interference emitted from digital wireless phones and to provide the internal capability for telecoil coupling.

Background

Hearing aids operate in one of two modes – acoustic coupling or telecoil coupling. Hearing aids operating in acoustic coupling mode receive and amplify all sounds surrounding the user, both desired sounds, such as a telephone's audio signal, as well as unwanted ambient noise. Hearing aids operating in telecoil coupling mode avoid unwanted ambient noise by turning off the microphone and receiving only magnetic fields generated by telecoil-compatible telephones. In the United States, about 25-30 percent of hearing aids contain telecoils, which generally are used by individuals with profound hearing loss.

Approximately six million Americans use hearing aids to improve their hearing. Although analog wireless phones do not generally cause interference problems for hearing aid users, digital wireless phones can cause interference to hearing aids and cochlear implants because of electromagnetic energy emitted by the phone's antenna, backlight, or other components. This interference can be significant enough to prevent individuals with hearing aids from using wireless phones.

The HAC Act and Section 68.4 of the Commission's rules require most telephones to be compatible with hearing aids. However, the statute and rules exempt certain categories of telephones from the hearing aid compatibility requirements, including wireless phones.

To make certain that the HAC Act kept pace with the evolution of telecommunications, Congress directed the Commission to periodically assess whether the exemption for wireless phones should be revoked or limited. Specifically, the statute requires the FCC to "revoke or otherwise limit" the exemptions if the Commission determines that specific requirements have been met.

In the adopted Report and Order, the Commission found that the statutory requirements for modifying the exemption have been met. Modifying the exemption for wireless phones will serve the public interest by facilitating access by individuals with hearing disabilities to digital wireless telecommunications services, including the ability to contact public safety agencies in an emergency.

Specifics of the Adopted Report and Order

The Commission took the following actions in the adopted Report and Order:

- adopted certain performance levels set forth in a technical standard established by the American National Standards Institute (ANSI) as the applicable technical standard for compatibility of digital wireless phones with hearing aids;
- required compliant handsets to provide both reduced radio frequency (RF) interference ("U3" as defined in the ANSI standard) and telecoil coupling capability ("U3T" as defined in the ANSI standard);
- required digital wireless phone manufacturers to make available to carriers within two years at least two HAC-compliant handsets with reduced RF emissions for each air interface it produces; and required each carrier providing digital wireless services, except for nationwide (Tier I) wireless carriers, to make available to consumers within two years at least two HAC-compliant handsets with reduced RF emissions for each air interface it offers;
- required nationwide (Tier I) wireless carriers to offer within two years two HAC-compliant handsets with reduced RF emissions for each air interface it employs, or to ensure that one quarter of its total handset models are HAC-compliant with reduced RF emissions within two years, whichever option yields a greater number of handsets;
- required digital wireless phone manufacturers to make available to carriers within three years at least two HAC-compliant handsets with telecoil coupling for each air interface it produces; and required each carrier providing digital wireless services to make available to consumers within three years at least two HAC-compliant handsets with telecoil coupling for each air interface it offers;
- created a *de minimis* exception exempting digital wireless carriers and manufacturers that offer two or fewer total handset models from offering any HAC-compliant handsets, and permitting digital wireless carriers and manufacturers that offer three handset models to offer only one HAC-compliant handset model;
- encouraged digital wireless phone manufacturers and service providers to offer at least one compliant handset that is a lower-priced model and one that has higher-end features;

- required one half of all digital wireless phone models offered by a manufacturer or carrier to be compliant with the reduced RF emissions requirements by February 18, 2008, the sunset date for the FCC's requirements that wireless carriers offer analog service;
- required wireless carriers and digital wireless handset manufacturers to report semiannually (every six months) on efforts toward compliance during the first three years, then annually thereafter through the fifth year of implementation;
- required manufacturers to label packages containing compliant handsets and to make information available in the package or product manual, and required service providers to make available to consumers the performance ratings of compliant phones;
- committed to compiling an FCC staff report on the progress of the implementation of these rules shortly after the end of three years, and to initiate a proceeding to reevaluate the situation to determine what further steps are required; and
- encouraged hearing aid manufacturers to label their pre-customization products according to the ANSI standard.

The Commission indicated that it expects hearing aid manufacturers to begin labeling hearing aid models with their specific ratings in accordance with the ANSI standard in order to assist consumers in successfully combining digital wireless handsets with hearing aids. If inadequate progress is made by these manufacturers in labeling hearing aids, the Commission plans to examine the scope of its jurisdiction over hearing aid manufacturers in order to facilitate the goal of achieving hearing aid compatibility for consumers.

In addition, the Commission encouraged digital wireless handset manufacturers and service providers to engage in outreach efforts to educate the public on hearing aid use with digital wireless phones, and to help identify compliant phones for consumers and audiologists. The Commission also announced that, through the Consumer & Governmental Affairs Bureau, it would engage in a comprehensive targeted outreach campaign, in coordination with the Food and Drug Administration, to ensure that individuals with hearing disabilities are informed of the actions taken in the Report and Order and the availability of hearing aid compatible wireless digital phones. These coordinated outreach efforts will include fact sheets and other information made available through the FCC's web site and national call center, a Consumer Alert outlining the requirements of this Order, and dissemination of information about the accessibility of HAC-compliant digital wireless phones to schools, to the medical community, and to groups and associations representing individuals with hearing disabilities and audiologists.

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Action by the Commission July 10, 2003, by Report and Order (FCC 03-168). Chairman Powell, Commissioners Abernathy, Copps, Martin, and Adelstein, with Chairman Powell, Commissioners Abernathy, Copps, Martin, and Adelstein issuing separate statements.

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WT Docket: 01-309

**SEPARATE STATEMENT OF
CHAIRMAN MICHAEL K. POWELL**

Re: In the Matter of Section 68.4(a) of the Commission's Rule Governing Hearing Aid-Compatible Telephones; WT Docket No. 01-309 (adopted July 10, 2003)

Today the Commission takes a historic step in making digital wireless technologies accessible by consumers with disabilities by modifying the Hearing Aid Compatibility exemption for wireless phones. For fifteen years, the exemption has remained in place – potentially walling off full access to these groundbreaking technologies for millions of Americans. Today we tear down that wall.

As a society we are diminished by our inability to communicate readily with persons with hearing disabilities. Approximately one in ten Americans has such a disability and experts expect that number only to rise. As the technology and the marketplace have matured, it has become increasingly clear that the exemption is no longer a tenable course.

I fundamentally believe that one of our core obligations as public servants is to ensure that all Americans have access to transformative communications technologies. The Commission has moved aggressively to realize this goal through a number of initiatives including our Section 504 Handbook, funding of IP Relay, and our revised TRS rules. That commitment is further illustrated by today's decision.

Our work is not yet complete. In the months and years ahead, we will continue to work with the phone manufacturers, the hearing aid community and wireless carriers to ensure that the goals established in this order are met. The technical standard we adopt today relies on both cell phone and hearing aid manufacturers to test and label their products in order for consumers to make informed choices in the marketplace. We stand ready to work cooperatively with all of these parties to make sure this process works. Our next steps are not just with industry, however. The Wireless and Consumer and Governmental Affairs Bureaus will be partnering with other government and private groups to educate consumers about compatibility. As part of this effort, I particularly appreciate the Food and Drug Administration's commitment to work with the FCC to educate consumers, audiologists, and other groups to ensure individuals with hearing disabilities may take full advantage of these services.

**SEPARATE STATEMENT OF
COMMISSIONER KATHLEEN Q. ABERNATHY**

Re: Section 68.4(a) of the Commission's Rules Governing Hearing Aid Compatible Telephones, WTC Docket No. 01-309, RM-8658

Over the past few years, an increasing number of American consumers have come to rely on their wireless phones for safety, business and personal reasons. Accordingly, as wireless phones become even more pervasive, it is imperative that we ensure these phones are available for use by all consumers. Unfortunately, not all digital wireless phones provide access to consumers who use hearing aids because of interference and other technological issues. In today's item, we take an important step in increasing wireless access by the hearing disabled community. We are addressing the technological hurdles by requiring equipment manufacturers and wireless service providers to reduce the amount of interference emitted from digital wireless phones and to provide the internal capability for telecoil coupling. This action will result in members of the hearing disabled community having dramatically increased access to digital wireless phones – access that will improve their lives and promote their safety.

Specifically, I believe that continuing the blanket exemption for wireless phones from the Hearing Aid Compatibility Act would be detrimental to individuals with hearing disabilities since they would not be able to benefit from the many advantageous features of wireless phones. Further, the record in this proceeding affirmatively demonstrates that it is technologically feasible to manufacture a digital wireless phone at a reasonable and marketable rate. The FCC must respond to these changed circumstances by updating its rules. Accordingly, I fully support modifying the blanket exemption contained in the Hearing Aid Compatibility Act for wireless phones to ensure that hearing disabled consumers have access to the digital wireless world.

The successful implementation of our rules will require that wireless phone equipment manufacturers and service providers, consumer advocacy groups and hearing aid manufacturers work together to ensure that the hearing disabled have access to the digital wireless phone that works best for them. For instance, while our rules mandate the availability of digital wireless phones that meet established ANSI standards for interference, this does not necessarily mean that these phones will work with every hearing aid. Accordingly, we encourage industry and consumer advocacy groups to work together and be creative in reaching out to specific segments of consumers, such as the elderly, to make sure that they are aware of the choices available to them through our ruling today. In addition, it is important that the hearing aid and wireless phone industries institute policies to allow the hearing disabled additional flexibility in ensuring that their digital wireless phones and hearing aids work successfully together. At the end of the day our goal, and the goal of Congress in passing the Hearing Aid Compatibility Act is that “[t]he hearing impaired should have access to every telephone like the non-hearing impaired.”¹

¹ H.R. Report No. 100-674, at 7 (1988).

Separate Statement of Commissioner Michael J. Copps

Re: *Section 68.4 of the Commission's Rules Governing Hearing Aid-Compatible Telephones, Notice of Proposed Rulemaking (July 10, 2003).*

We all often talk about the power of technology to make American's lives better. We talk about the transformative potential of innovation and communications advances. We all recognize that it is the duty of this Commission to work to make technology available to all Americans.

This duty comes into sharp focus in Orders like this. The first speech I gave as a FCC Commissioner was in Sioux Falls, South Dakota, at the 14th International Conference of Telecommunications for the Deaf. This is where our responsibilities in this area became clear to me. I, along with my colleagues, recognize the unique challenges faced by hard-of-hearing Americans and the unique possibilities presented by communications technologies to this community.

Congress also recognizes these challenges and opportunities, and has told us that we must make communications technologies accessible by people with disabilities. So my goal as a FCC Commissioner is to follow the directive of Congress and to help bring the best, most accessible and cost-effective telecommunications system in the world to our people – and I mean all of our people. That means that each and every American should have access to the wonders of wireless telecommunications.

Today we take an important step toward that goal. We adopt the ANSI performance standard and phase in a requirement that mobile phones meet this standard. In two years 25 percent of all Tier One carriers' phones must comply. On the day that the analog standard disappears a little under five years from now, hard-of-hearing Americans will find that 50 percent of all wireless phones are compatible with their hearing aids. And we don't stop there. Three years from now, when we have more information on how implementation is progressing, we commit to begin a proceeding to explore setting additional benchmarks above 50 percent. Importantly, we state that our goal is 100 percent compliance. We have a long way to go. But this is a good start.

With this action our Commission adds to a list of actions the past Commission took to promote accessibility. The previous Commission wrote new rules to ensure that communications products and services are accessible to those with disabilities, as Congress directed, in Section 255; overhauled and updated our Telecommunications Relay Services (TRS) rules to provide for faster, more effective relay services; established 711 for relay services so that consumers will no longer need to remember different TRS numbers and TRS users will be able to put one number on their business cards, thereby making it easier for people to call them; and took action on captioning to ensure that everyone has access to televised information, including, most importantly, warnings about emergency situations. This Commission has maintained and in some instances built upon these actions, and I'm happy to say that we continue this trend today.

Furthermore, I want to recognize the dedication of the wireless industry to serving people with disabilities. Over my tenure here I've seen a new and vigorous commitment by manufacturers and carriers. These manufacturers and the carriers are the ones who will make this Order work, and their recent performance has been commendable.

I also want to congratulate the wide range of organizations that represent people with hearing loss. They have been pushing the Commission to take action for years and years on this proceeding. They represent their community ably and professionally. And I want to stress again the importance of this Commission always making special efforts to reach out to our disabilities communities whose resources are stretched thin but who are so profoundly affected by so many of the proceedings before the FCC.

Finally, I want to thank my colleagues and the staff for their hard work on this item. They were flexible and open to compromise. I appreciate that and think that in the end the process of working together led to a far better Order.

Thank you.

**SEPARATE STATEMENT OF
COMMISSIONER KEVIN J. MARTIN**

Re: Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Phones, Report and Order, WT Docket No. 01-309, RM-8658

This item addresses a very important issue. Approximately one in ten Americans – and one in three over the age of 65 – suffers from some level of hearing loss. Many of these people are able to mitigate their loss through the use of hearing aids and cochlear implants. Consumers that use these devices, however, may suffer annoying and sometimes painful interference when using digital wireless phones. Unlike analog wireless phones, which do not generally cause interference for hearing aid users, the electromagnetic energy emitted by digital phones' antenna, backlight, and other components can cause interference to hearing aids and cochlear implants. But digital phones have become pervasive. Analog phones are not only becoming less and less available, they increasingly do not offer the same services and pricing packages as digital phones.

At the same time, the importance of wireless phones has grown dramatically since Congress passed the Hearing Aid Compatibility Act of 1988 (HAC Act). Consumers have come to rely on the phones for emergencies. Some are now substituting wireless phones for their landline phones. Many employers now rely on wireless phones to stay in contact with employees in the field.

This item recognizes the importance of wireless phones for all Americans and concludes that, to the extent possible, hearing impaired individuals should not be excluded. While exactly how to make this happen is a difficult question, this item takes some important steps in the right direction. Most importantly, this item adopts a standard for hearing aid compatibility and establishes a specific timeframe for manufacturers and carriers to make available hearing aid-compatible digital wireless phones. These actions promote the Congressional goal of ensuring access to telecommunications services for individuals with hearing disabilities and are critical in light of the rising importance of wireless phones. I am thus pleased to support the Order.

**SEPARATE STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN**

*Re: Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible
Telephones; WT Docket No. 01-309*

I am very pleased to support today's Report and Order because it takes significant steps toward improving the access to digital mobile wireless phones by those Americans who use hearing aids.

While the Hearing Aid Compatibility Act of 1988 (HAC Act) exempted mobile wireless phones from hearing aid compatibility, Congress specifically entrusted this Commission with periodically assessing the appropriateness of continuing this exemption. Today, we take that obligation to heart and rightly modify the exemption as it currently applies to digital mobile wireless phones.

As I said recently, public interest issues, especially the rights of those with hearing impairments, always should remain in the forefront of our decisions. While a staff member in the U.S. Senate, I worked on the Americans with Disabilities Act and devoted a great amount of attention to the Social Security Disability Insurance program. These concerns remain central to me on the Commission, as well.

I recognize that some may argue that it has taken the Commission too long to reach the decision to modify the exemption and that our Report and Order does not go far enough. Conversely, others may take the view that we are exceeding our mandate in adopting requirements to accommodate a relatively small number of customers. I believe that our decision strikes the right balance between these divergent views. This is consistent with the requirements of the HAC Act to consider a number of competing issues in assessing the exemption such as the public interest, the effect of the exemption on hearing-impaired individuals, the state of technology, and the cost of compliance.

Most importantly, as a Commission, we have made a unanimous decision to greatly improve accessibility to digital wireless telecommunications by those with hearing impairments by requiring mobile wireless carriers and manufacturers to increase the number of wireless phones that can be used effectively with hearing aids. We also expressed our expectation that the manufacturers of hearing aids take specific actions to assist their customers in finding compatible hearing aids and digital wireless handsets. We have stepped in where the market did not step up. I can think of no more an appropriate action for a government agency to take than the one we do today.

I would like to thank the staff of the Wireless Telecommunication Bureau and its Policy Division for their hard work on an often challenging item. Our decision is thoughtful but firm in its resolve. I look forward to tracking the progress of our decision and its positive impact on the hearing impaired community over the upcoming years.