



NEWS

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See MCI v. FCC, 515 F 2d 385 (D.C. Circ 1974).

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FCC REAFFIRMS RULES FOR HEARING AID COMPATIBLE DIGITAL WIRELESS TELEPHONES

Action Continues Process of Improving Access for All Americans to Wireless Phones

WASHINGTON, D.C. -- Today, the Federal Communications Commission reaffirmed the timetable for the development and sale of digital wireless telephones that are compatible with hearing aids, and also sought comment on whether additional rule changes are necessary to ensure that people with hearing loss have reasonable access to digital wireless technologies. The Commission originally adopted rules in 2003 to make digital wireless telephones compatible with hearing aids and cochlear implants.

Ruling on several petitions for reconsideration of its 2003 *Hearing Aid Compatibility Order*, the Commission reconsidered its earlier conclusion regarding the appropriate interim benchmark for the number of handset models that “Tier I” wireless carriers – meaning the five largest wireless carriers – must make available to consumers this year. The Commission determined that, by September 16, 2005, Tier I wireless carriers must, per air interface, either make four hearing aid-compatible handset models available or ensure that 25% of their handset models are hearing aid-compatible. By September 16, 2006, the Tier I wireless carriers must, per air interface, either make five hearing aid-compatible handset models available or ensure that 25% of their handset models are hearing aid-compatible. The Commission did not alter the obligation for all wireless carriers to ensure that 50% of their handset models are compatible with hearing aids by February 18, 2008.

The Commission also recognized the commitment of the carriers to include hearing aid compatibility information on “call-out cards” as part of the handset display in retail stores and the commitment to ensure that both low-end and high-end hearing aid-compatible handsets are available. The Commission concluded that the revised benchmark along with these additional commitments will facilitate consumers’ ability to obtain phones that are suitable for their particular needs.

The Commission affirmed the requirement that hearing aid-compatible digital wireless phones have prominent exterior labeling indicating the handset's technical rating and that more detailed information must be included inside the package. The Commission determined that this level of information is required to allow a consumer to determine quickly and easily which phones are compatible with his or her hearing aid, while not impairing the ability of phone manufacturers and service providers to undertake a variety of marketing efforts.

With respect to in-store testing, the Commission clarified that all carrier-owned and operated retail outlets must make live, in-store consumer testing available. The Commission stated that mandatory tests conducted live and on-the-spot in retail outlets, in combination with "real-world" testing over the course of thirty days and flexible return policies, both of which the Commission encouraged, will ensure that people with hearing aids have a meaningful opportunity and sufficient time to identify suitable wireless phones and become comfortable with them. The Commission sought comment on extending the in-store testing requirements to more types of outlets that sell wireless services.

With respect to the number of compatible handset models, the Commission clarified that the "*de minimis* exception" applies on a "per air interface" basis. Therefore, wireless carriers, service providers and handset manufacturers are exempt from the HAC rules only to the extent that they offer two or fewer digital wireless handset models with respect to a particular air interface. The Commission sought comment, however, on reducing the *de minimis* exception to only those wireless carriers, service providers, and handset manufacturers that offer only one handset per air interface, rather than two.

The Commission reaffirmed that American National Standards Institute standard, ANSI C63.19, is the appropriate technical standard and should be applied as a "performance-based" standard to measure the actual performance of wireless devices, rather than a "build-to" standard which applies to how devices are manufactured. The Commission also reaffirmed that any future versions of ANSI C63.19, or other proposed performance measures that would meet the criteria in the FCC's rules, would be reviewed expeditiously to determine their suitability under the hearing aid compatibility rules.

The Commission also reviewed the equipment availability requirements applicable to wireless carriers who are replacing older TDMA networks with a different technology and gave them until September 18, 2006 to complete the overbuilds and comply with the hearing aid compatibility rules, provided they meet certain conditions. In addition, the Commission affirmed the reporting obligation of carriers and manufacturers to enable the Commission to monitor deployment efforts and to provide consumers with access to information that may be useful in making decisions regarding wireless services and handsets.

Finally, the Commission affirmed its decision to delegate authority to the states to enforce the hearing aid compatibility rules. The Commission clarified its decision, however, by explaining that the Commission retains exclusive jurisdiction over the technical standards for hearing aid compatibility. The Commission explained that its exclusive jurisdiction over technical standards extends to determinations whether equipment complies with its standards.

Thus, although states have authority over enforcement generally, they must refer questions of whether particular equipment complies with the Commission's technical standards to the Commission's Office of Engineering and Technology.

Action by the Commission on June 9, 2005 by *Order on Reconsideration and Further Notice of Proposed Rulemaking* (FCC 05-122). Chairman Martin, Commissioners Abernathy, Copps, and Adelstein. Separate statements issued by Commissioners Abernathy, Copps, and Adelstein.

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