



The Nation's Voice for People with Hearing Loss

May 18, 2017

Federal Trade Commission
Office of the Secretary
600 Pennsylvania Avenue, NW
Suite CC-5610 (Annex B)
Washington, DC 20580

Re: #690: Hearing Health and Technology Workshop, Matter Number: P171200

The Hearing Loss Association of America (HLAA) thanks the Federal Trade Commission for conducting the workshop, "Now Hear This: Competition, Innovation, and Consumer Protection Issues in Hearing Health Care" and for the opportunity to provide these written comments.

The Hearing Loss Association of America (HLAA), founded in 1979, is the nation's leading organization representing people with hearing loss. According to the National Center for Health Statistics 48 million (20 percent) Americans have some degree of hearing loss. It is the third most prevalent chronic health condition in older adults, after arthritis and heart disease, making it an issue of national concern. HLAA provides assistance and resources for people with hearing loss and their families to learn how to adjust to living with hearing loss. We have an impact on communication access, public policy, research, public awareness, and service delivery related to hearing loss. Our national support network includes a headquarters office in the Washington D.C. area, HLAA Chapters, and state organizations across the country. Most of our members and constituents have hearing loss and have purchased hearing aids or have attempted to do so.

FTC Questions

1. What information about hearing technology and related health care services is available to consumers who may be shopping for these goods and services? How useful do they find this information?

The hearing health care system is currently structured so that it is difficult for consumers to enter into the system or comparison shop when they want to purchase a hearing aid.

The hearing health care system is complex, has multiple entry points, and few ways for the consumer to independently verify the information they need to purchase hearing health technology and services. Most states have laws that require a face-to-face visit with a

licensed professional before the consumer can purchase a hearing aid. Federal regulation requires that all prospective hearing aid users have a medical evaluation by a licensed physician to determine the cause of hearing loss and whether medical or surgical treatments would be more appropriate. Individuals 18 and up may waive the requirement for a medical evaluation by signing a waiver statement.

For some, the doctor is the first person the consumer sees. If that doctor has a practice that includes an audiologist, after the visit with the doctor, the consumer is likely to see and purchase a hearing aid from that practice rather than shopping around. If the consumer finds a hearing health care professional (audiologist or hearing instrument specialist) before seeing a doctor, that consumer typically signs the federal waiver and receives a hearing aid directly from that professional, again without shopping around.

In either case, the consumer takes on faith that the professional is acting in his best interest. If the consumer finds a talented audiologist or hearing instrument specialist who follows best practices, then that consumer may well receive the appropriate hearing aid that is properly fitted for that consumer's needs. But often the consumer, who has nothing to compare the experience with, trusts the professional is doing the best she can. If that consumer receives a poor fitting, typically the consumer will not understand why the hearing aid does not work well. While online information about hearing aids is ubiquitous, there is very little information that helps the consumer understand their options and that allows a comparison of products. Often the consumer who is poorly fit simply stops wearing the hearing aid rather than "bothering" the professional any further.

The system is also set up so that comparison shopping is difficult to do. It is difficult to gauge whether a particular hearing aid is right for an individual until that person tries out that hearing aid. Most states have legal requirements for a trial period, typically 30 days. That trial period is often advertised to be 30 day "free" trial indicating that if the consumer is not satisfied, they will receive a "full refund." In practice, a professional will accept the hearing aid back with no fee charged if that consumer purchases a different hearing aid from the same practice. However, if that consumer chooses to go to a different practice, the professional is entitled to a 5-20 percent return fee, depending on the state's rules.¹ HLAA was contacted by an individual who tried a \$4,000 bi-cross hearing aid. After two weeks, he determined it was not the right hearing aid for him. He was charged \$400 for trying that hearing aid for two weeks. Although it was noted in the fine print of the sales contract, the professional did not talk about the return fee until after the hearing aid was returned. The professional never told the consumer why such a high fee was justified.

We have heard from consumers who tell us that they did not receive a copy of their audiogram and or testing records. We believe this also contributes to restricting the individuals' ability to comparison shop.

¹ Hearing Loss Association of America, Consumer Protection Laws, http://www.hearingloss.org/sites/default/files/docs/Consumer_Protection_Laws.pdf 2013. Downloaded May, 2017.

The industry would have us believe that customer satisfaction is high. We would ask, compared to what? Most consumers generally are shown one or possibly two hearing aids to test. If that hearing aid works to improve hearing at all, they may well be satisfied compared to not hearing at all. But, until they have worn hearing aids for years, consumers have little to compare their experience with. As noted above, the system discourages comparison shopping for a different practice or different hearing aids and does not reward transparency. How is the consumer to know that if they walked down the block they might find a different professional who uses best practices in fitting and programming the hearing aid or a different hearing aid that better fits the needs of that individual?

In fact, few professional practices ask for or receive customer satisfaction surveys. It's our understanding that the primary way professionals determine whether they have done a good job is based on the number of hearing aids returned. That entirely discounts the fact that consumers can and do simply cease wearing the hearing aid and never tell the professional. Recently, HLAA was approached by a woman who spent several thousand dollars on a pair of hearing aids, and went back several times to adjust the hearing aid over the course of a year. Having gone well beyond the trial period, she simply deemed this was not working for her, and put them in a drawer. She told us the audiologist neither offered her different hearing aids, nor suggested her hearing loss was too great to be treated with hearing aids. She told us she was done with hearing aids. She simply accepted she would be unable to hear well.

HLAA would argue that there is a need for transparency when dispensing hearing aids:

- Which manufacturers does the professional work with?
- What are the itemized charges for services and for the devices?
- What will they be charged for returning the hearing aid during the trial period?
- What happens if the consumer moves to a different state within the lifespan of the hearing aid?
- Provision of all medical records as part of their business practice.

2. How are hearing aids and other forms of hearing technology commonly distributed and sold? To what extent are new sellers of hearing devices, as well as new methods of distribution and sales, affecting the range of goods, services, and prices available to consumers?

The current model of hearing aid distribution is that the manufacturer sells to the professional (the audiologist or the hearing instrument specialist), who then dispenses to the consumer. It is our understanding that manufacturers may own the professional's business outright, may provide a loan to that business, or have an agreement to provide advertising or marketing of their business.

The professional is often dependent on the manufacturer to provide instruction on the software that programs the hearing aid. We understand some professionals do not even program the device themselves, but rather send the audiogram to the manufacturer who presets the device according to the consumer's audiogram. The professional may not change

the program at all from the manufacturer's settings when dispensing the hearing aid to the consumer.

We do note there are more online sales of less expensive hearing aids than ever before. However, when a consumer purchases online, if that online seller does not have their own local network of professionals to provide face to face services, the consumer is left holding a product that will very likely not be serviced. Several years ago, an individual came to HLAA, telling us he asked an audiologist whether they would provide services if they purchased online. The audiologist quoted a price that was well beyond what it would have cost to purchase the same hearing aid from that audiologist. Had that audiologist offered unbundled services, that consumer might have been able to take advantage of an online purchase, as well as taking advantage of the audiologist's services.

We are also aware that some online sellers are distributing hearing aids without permission of the maker of the hearing aid. At least one manufacturer has made it known to the industry that they will not honor warranties.² However, a consumer who does not do his homework, does not learn that the warranty is not valid, could be left with a device he cannot return to the manufacturer for repair.

3. How are innovations in hearing technology – including hearing aids, personal sound amplification products (PSAPs), and other devices and platforms – changing the competitive landscape and expanding the range of viable options to ameliorate hearing loss? What other innovations and developments are on the horizon?

HLAA does not deny that the traditional hearing aid manufacturers have been working to improve hearing aids over the years.

However, any innovation over the years has had little or no direct consumer input. As a result, the needs and wants of consumers may be discounted or even ignored in favor of the needs and wants of professionals who are in fact the manufacturers' direct clients. For example, there has been a strong, grassroots push for telecoil technology in the hearing aid. Telecoils are inexpensive, do not draw a lot of power, and allow that hearing aid to be more useful to the consumer, both on a phone and when used with wide-area listening systems.. Despite that, the hearing aid industry has been going in a wholly different direction: toward Bluetooth, near-field, or "streamed" technology. Bluetooth requires so much power, that while the hearing aid is "Bluetooth enabled," the hearing aid itself does not have a battery that is large and powerful enough to drive the Bluetooth technology. So, the consumer must spend more money to purchase another often expensive third device, a "streamer," to be able to use Bluetooth connectivity. In addition, at this time there is no wide-area listening system using Bluetooth technology – it simply was not designed for that purpose. In addition, it is flawed as a short-range listening system, because there is a built in latency, that is, the sound is received to the ear later than it actually occurs. That is not a problem for phone call, but if

² Hearing Tracker, "Buyer Beware: BuyHear.com Hearing Aid Warranties May Not Be Honored." <https://www.hearingtracker.com/blog/buyer-beware-buyhear-com-hearing-aid-warranties-may-not-be-honored>. Downloaded May, 2017.

someone is using it as a one to one listening device, lip reading at the same time listening, it is rendered ineffective at best, useless at worst. For all those reasons, as wonderful as Bluetooth may be for phone calls, it is simply less functional and more expensive than that small, inexpensive, multifunctional telecoil.

Consumers should be able to demand the products that provide the kind of functionality they want and need. They should be able to purchase those devices with the features they most like and need. Instead, they are dependent on professionals who may filter information and steer the consumer to the products they want to sell, that are easier to fit and explain to the user, rather than the products the consumer wants or needs. If the professional does not like or want to work with a telecoil, they may not even mention that the device exists. HLAA Chapters have experienced this time and again when a new member attends their meetings that have hearing induction loops installed, only to find that the new member has no idea what a telecoil is.

HLAA believes that opening the market to new players who are not the traditional hearing aid manufacturers will open up opportunities for innovative approaches to hearing devices. For example, it is our understanding that it was Apple, Inc, who initiated the idea of the “made for Apple” hearing aids, not the manufacturers. Those devices not only provide a direct connection between the iPhone and the hearing aid, but allow the consumer to use an iOS device to control the hearing aid, check the hearing aid's battery life, adjust the volume, or become a remote microphone that sends sound to the Made for iPhone hearing aid, acting as an assistive listening device. Using a cell phone for all this increases the functionality of both the hearing aid and the cell phone. It was a creative, new direction for hearing aids.

We hope to see more innovation, more and different products to compete with Apple. We are already seeing researchers looking at hearing in noise, and developers working on designing apps for mobile devices beyond iOS, to Android and perhaps other platforms, as well. We believe that if the market is open, more and different products will be offered that better fit the needs of consumers.

4. To what extent are hearing aids, PSAPs, or “hearables” interoperable with different adjustment or programming tools, as well as other technologies and communications systems? What standard setting efforts are underway and how might standard setting further competition and innovation (or fail to do so)?

We do not have direct information on the extent to which hearing aids, PSAPs and hearables are interoperable with different programming tools. In regard to hearing aids, it's our understanding that manufacturers often “lock” the program so that only the original professional has the “key” to programming a given hearing aid. If the consumer who purchased the hearing aid moves to a different state, that consumer may not be able to find anyone who can adjust the hearing aid. In addition, even if a professional is available who can do so, because the purchase price is bundled with services, the original professional has received all the fees upfront. A second professional is unlikely to want to take on the cost of service a hearing dispensed by someone else without a fee, possibly a hefty fee.

Voluntary industry standards for PSAPs were released in February, 2017. We believe these standards are necessary and useful. These kinds of standards can provide baseline functionality for the PSAP, OTC or hearable. For example, we understand these standards will provide for limiting output of the product so that product will not harm residual hearing. These standards will allow, along with proper labeling, the consumer with a way to compare products and guide them in their comparison shopping. When consumers have a means to directly compare products, the marketplace is incentivized to come up with better products that will distinguish themselves from other products. Without such standards, the consumer has no way to determine whether or not the product will perform as advertised and has no baseline to compare with other similar products.

5. To what extent might existing federal and state regulations be modified or streamlined to better accommodate new technologies and business models, consistent with promoting competition and innovation while meeting legitimate consumer protection objectives?

HLAA supports preempting state regulations that require that the only way a product is delivered is via a hearing health care professional. According to the U.S. Department of Labor (DOL), Bureau of Labor statistics, in 2014, the most recent year for statistics, there were only 13,200 jobs for audiologist, with only another 3,800 joining their ranks by 2024.³ According to DOL, 6,740 hearing instrument specialists were employed in 2016.⁴

The National Institutes of Health reports that approximately 28 million American adults could benefit from hearing aids.⁵ Clearly some 24,000 professionals will be hard pressed to serve the current market, must less handle what is expected to be a growing surge of baby boomers ageing into hearing loss. We need state law to adjust so that more people who need to hear have access to the products that can help them.

At the same time, HLAA is a long-time proponent of consumer protection. We believe the FDA has a role to ensure safety and efficacy for hearing aids. We believe there should be a way for consumers to return products that are faulty or just don't work for them, and that there should be a way for consumers to have recourse when bad actors take advantage of them.

The time has come for the market place to adjust, to address the growing need for more and better access to hearing health care and ensure that hearing devices are not just available for people who are rich.

³ US Department of Labor, Bureau of Labor Statistics, "Occupational Outlook Handbook." <https://www.bls.gov/ooh/healthcare/audiologists.htm> Downloaded May 2017

⁴ US Department of Labor, Bureau of Labor Statistics, "Occupational Employment and Wages, May 2016, 29-2092 Hearing Aid Specialist." <https://www.bls.gov/oes/current/oes292092.htm> Downloaded May, 2017.

⁵ National Institutes of Health, National Institute on Deafness and Other Communication Disorders, "Quick Statistics About Hearing." <https://www.nidcd.nih.gov/health/statistics/quick-statistics-hearing> Downloaded May, 2017

Thank you for this opportunity to provide comments.

Sincerely,

/S/

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Executive Director