



Federal Communications Commission
Washington, D.C. 20554

May 19, 2011

DA 11-909

Small Entity Compliance Guide

Hearing Aid-Compatible Mobile Handsets

FCC 10-145
WT Docket No. 07-250

This Guide is prepared in accordance with the requirements of Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It is intended to help small entities—small businesses, small organizations (non-profits), and small governmental jurisdictions—comply with the new rules adopted in the above-referenced FCC rulemaking docket(s). This Guide is not intended to replace the rules and, therefore, final authority rests solely with the rules. Although we have attempted to cover all parts of the rules that might be especially important to small entities, the coverage may not be exhaustive. This Guide may, perhaps, not apply in a particular situation based upon the circumstances, and the FCC retains the discretion to adopt approaches on a case-by-case basis that may differ from this Guide, where appropriate. Any decisions regarding a particular small entity will be based on the statute and regulations.

In any civil or administrative action against a small entity for a violation of rules, the content of the Small Entity Compliance Guide may be considered as evidence of the reasonableness or appropriateness of proposed fines, penalties or damages. Interested parties are free to file comments regarding this Guide and the appropriateness of its application to a particular situation; the FCC will consider whether the recommendations or interpretations in the Guide are appropriate in that situation. The FCC may decide to revise this Guide without public notice to reflect changes in the FCC's approach to implementing a rule, or to clarify or update the text of the Guide. Direct your comments and recommendations, or calls for further assistance, to the FCC's Consumer Center:

**1-888-CALL-FCC (1-888-225-5322)
TTY: 1-888-TELL-FCC (1-888-835-5322)
Fax: 1-866-418-0232
fccinfo@fcc.gov**

Hearing Aid Compatibility Requirements for Mobile Handsets

1. Objectives of the Proceeding

In the *Policy Statement and Second Report and Order and Further Notice of Proposed Rulemaking* released on August 5, 2010, the Commission made several changes to its existing hearing aid compatibility requirements so that they will continue to ensure that in an evolving marketplace of new technologies and services, consumers with hearing loss will still be able to access wireless communications services through a wide selection of handsets without experiencing disabling interference or other technical obstacles. The Commission strives to ensure that people with hearing loss will have access to new and popular models, while fostering innovation by new entrants and continuing to protect the ability of small companies to compete.

2. New disclosure rules for handsets operating over air interfaces and frequency bands that lack hearing aid compatibility standards.

This rule change ensures that consumers will have the information they need to best evaluate how a handset will operate with their hearing aids. To accomplish this goal, the Commission extended, to all handsets that incorporate new frequency bands and air interfaces usable for voice services other than Wi-Fi, the same counting and disclosure rules that previously applied to handsets with Wi-Fi capability. In other words, a handset that meets hearing aid compatibility requirements over all air interfaces and frequency bands for which technical standards have been established, but that also accommodates voice operations for which standards do not exist, may be counted as hearing aid-compatible provided consumers are clearly informed wherever the Hearing Aid Compatibility rating is provided. Such ratings may be provided at the point of sale and on the company website, and the rating must state that the handset has not been tested for the operations for which there are not standards. Specifically, the disclosure must state:

“This phone has been tested and rated for use with hearing aids for some of the wireless technologies that it uses. However, there may be some newer wireless technologies used in this phone that have not been tested yet for use with hearing aids. It is important to try the different features of this phone thoroughly and in different locations, using your hearing aid or cochlear implant, to determine if you hear any interfering noise. Consult your service provider or phone retailer about its return and exchange policies. Consult your service provider or the manufacturer of this phone for information on hearing aid compatibility. If you have questions about return or exchange policies, consult your service provider or phone retailer.”

However, handsets that are already on the market with other disclosure language that complies with the current rule will not be required to replace this with the newly prescribed language. This disclosure rule will apply to all handsets that operate in part over an air interface or frequency band that is not covered by the current hearing aid compatibility technical standard until the date that rules adopting any new standard become effective.

3. *De minimis* exception.¹

¹ Section 20.19 provides a *de minimis* exception to hearing aid compatibility obligations for those manufacturers and mobile service providers that only offer a small number of handset models. Specifically, 47 C.F.R. § 20.19(e)(1) provides that manufacturers and mobile service providers offering two handset models or fewer in the United States

Although not impacting small entities, the Commission also refined the *de minimis* exception in its existing rule so that companies that are not small entities will be required to offer at least one hearing aid-compatible model after a two-year initial period. The Commission also revised the “refresh” rule to require manufacturers that are not small entities that offer two models over an air interface, after the first two years, to introduce at least one new model rated M3 or higher every other year. Consistent with the Small Business Administration size standards, a wireless communications service provider, together with its parent, subsidiary, or affiliate companies under common ownership or control, is small if it has 1500 or fewer employees; and a wireless communications equipment manufacturer, together with its parent, subsidiary, or affiliate companies under common ownership or control, is small if it has 750 or fewer employees.

In order to maintain parity and to allow entities that do not qualify as small entities and that have been relying on the *de minimis* rule a reasonable period for transition, obligations become effective for manufacturers and service providers that offer one or two handset models over an air interface two years after the latest-occurring of the following dates: the date the manufacturer or service provider began offering handsets over the air interface; September 8, 2010; the date a hearing aid compatibility technical standard is adopted for the relevant operation; or the date a previously small entity no longer meets our small entity definition.

Again, this rule change does not impact small entities’ eligibility to claim the *de minimis* exception so long as they remain small entities under the above definitions and for a two-year transition period thereafter. Small entities remain subject to the previous rule.

4. Satisfaction of hearing aid-compatible handset deployment requirements for GSM operations in the 1900 MHz band.

In recognition of specific challenges that the *de minimis* exception rule change will impose for companies offering handsets operating over the legacy GSM air interface in the 1900 MHz band, the Commission permits companies that will no longer qualify for the *de minimis* exception under this rule change to meet hearing aid compatibility requirements by installing software that enables customers to reduce the power output by a limited amount for such operations. Specifically, for handsets operating over the legacy 2G GSM air interface in the 1900 MHz band, the Commission permits companies that would come under the amended *de minimis* rule but for their size to satisfy the hearing aid-compatible handset deployment requirement for GSM using a handset that allows the customer to reduce the maximum output power for GSM operations in the 1900 MHz band by up to 2.5 decibels, except for emergency calls to 911, in order to meet the standard for radio frequency interference reduction. Wherever a manufacturer or service provider provides the hearing aid compatibility rating for such a handset, it shall indicate that user activation of a special mode is necessary to meet the hearing aid compatibility standard. In addition, the handset manual or product insert must explain how to activate the special mode and that doing so may result in a diminution of coverage.

Because this option is available only to companies that would have qualified for the *de minimis* exception but for their size, it does not affect small entities. Small entities that qualify for the *de*

over an air interface are exempt from the requirements of Section 20.19, other than the reporting requirement. 47 C.F.R. § 20.19(e)(2) provides that manufacturers or mobile service providers that offer three handset models over an air interface must offer at least one compliant model.

minimis exception continue not to be required to offer hearing aid-compatible handsets. Small entities that do not qualify for the *de minimis* exception because they offer more than two handsets over the GSM air interface may not use the power-down option.

5. Application of hearing aid-compatible handset deployment benchmarks to handsets that are not distributed through service providers.

Because wireless handsets are increasingly distributed through channels other than service providers, the Commission now applies the hearing aid-compatible handset deployment benchmarks, under Sections 20.19(c) and (d), to all handsets that a wireless handset manufacturer produces for distribution in the United States, including handsets that manufacturers sell to businesses for distribution to their employees, and that are within the scope of Section 20.19(a) of the rule. In other words, the Commission's rules requiring manufacturers to deploy hearing aid-compatible handsets now apply to handsets sold through all distribution channels, and not just to those sold through service providers. Manufacturers will have until September 8, 2011, to come into compliance with this change.

6. Weblinks and Citations

FOR FURTHER INFORMATION CONTACT: Michael Rowan, Wireless Telecommunications Bureau, (202) 418-1883, <mailto:michael.rowan@fcc.gov>, or check out the hearing aid compatible wireless phone section of the Federal Communications Commission's Web site at <http://wireless.fcc.gov/hac/index.htm?job=home>.

Policy Statement and Second Report and Order and Further Notice of Proposed Rulemaking available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-10-145A1.doc (Word document) or http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-10-145A1.pdf (Acrobat document).

Hearing Aid Compatibility Act, Pub. L. No. 100-394, 102 Stat. 976 (1988), codified at 47 U.S.C. § 610 (Hearing Aid Compatibility Act).

Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones, WT Docket 01-309, *Report and Order*, 18 FCC Rcd 16753 (2003).

Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones, WT Docket No. 01-309, *Order on Reconsideration and Further Notice of Proposed Rulemaking*, 20 FCC Rcd 11221 (2005).

Amendment of the Commission's Rules Governing Hearing Aid Compatible Mobile Handsets, Section 68.4(a) of the Commission's Rules Governing Hearing Aid Compatible Telephones, WT Docket No. 01-309, *Second Report and Order and Notice of Proposed Rulemaking*, 22 FCC Rcd 19670 (2007).

Amendment of the Commission's Rules Governing Hearing Aid Compatible Mobile Handsets, WT Docket No. 07-250, *First Report and Order*, 23 FCC Rcd 3406 (2008).