

FCC FACT SHEET*
Wireless Hearing Aid-Compatibility (HAC) R&O
Report and Order - WT Docket No. 17-228

Background: The Commission has rules to ensure that consumers have access to wireless handsets that are compatible with hearing aid devices and can easily find information about which devices serve their needs. Under current regulations, all device manufacturers and wireless service providers are required to file annual reports with the Commission on their hearing aid-compatibility (HAC) deployment and compliance efforts and post certain information on their public websites. The service provider status reports must include the compliant and non-compliant handset models and the air interfaces and frequency bands over which the handsets operate, the total numbers of compliant and non-compliant models, and information regarding retail availability and outreach efforts, among other requirements. Numerous parties, particularly small and rural service providers, assert that preparing these annual status reports is burdensome and the costs of this information collection outweigh any benefits.

In September 2017, the Commission released a Notice of Proposed rulemaking seeking comment on revising or eliminating service providers' hearing aid-compatibility reporting requirements and sought comment on requiring annual certifications.

What the Report and Order Would Do:

- Adopt in large part a Joint Consensus proposal broadly supported by the hearing loss community, nationwide, rural, and regional wireless service providers, and wireless handset manufacturers.
- Enhance all service providers' web site requirements with respect to the hearing aid-compatibility of wireless handsets to provide more up-to-date and accessible information to consumers and Commission staff:
 - Require the disclosure of additional information, including the current non-hearing-aid-compatible handsets offered, the level of functionality of those models, as well as the marketing/model numbers and FCC IDs of both hearing-aid compatible and non hearing-aid compatible handsets.
 - Require disclosure of information about discontinued handsets via a third-party website or a clearly marked list on the service provider's web site; and
 - Require service providers to give more detailed information about currently offered and discontinued handsets, upon Commission request.
- Require that all service providers annually certify compliance with the Commission's hearing aid-compatibility rules, including the web site requirements, and indicate the percentage of hearing aid-compatible handsets offered.
- Eliminate the Commission's burdensome annual FCC Form 655 reporting requirement for all service providers.
- Establish a streamlined transition process for the new web site and certification requirements.

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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Revisions to Reporting Requirements Governing
Hearing Aid-Compatible Mobile Handsets
WT Docket No. 17-228

REPORT AND ORDER*

Adopted: []

Released: []

By the Commission:

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I. INTRODUCTION

1. In this Report and Order, we take steps to improve the information that consumers and the Commission receive about wireless hearing aid compatibility by strengthening our requirements that wireless service providers post handset model information on their public web sites and by requiring those providers to retain information necessary to demonstrate compliance with the Commission’s

*This document has been circulated for tentative consideration by the Commission at its November 15, 2018 open meeting. The issues referenced in this document and the Commission’s ultimate resolution of those issues remain under consideration and subject to change. This document does not constitute any official action by the Commission. However, the Chairman has determined that, in the interest of promoting the public’s ability to understand the nature and scope of issues under consideration, the public interest would be served by making this document publicly available. The FCC’s ex parte rules apply and presentations are subject to “permit-but-disclose” ex parte rules. See, e.g., 47 CFR §§ 1.1206, 1.1200(a). Participants in this proceeding should familiarize themselves with the Commission’s ex parte rules, including the general prohibition on presentations (written and oral) on matters listed on the Sunshine Agenda, which is typically released a week prior to the Commission’s meeting. See 47 CFR §§ 1.1200(a), 1.1203.

wireless hearing aid compatibility rules.¹ At the same time, we eliminate unnecessary and outdated reporting requirements and replace them with a streamlined annual certification. The approach we adopt here is broadly supported by consumer groups representing the hearing loss community; nationwide, rural, and regional wireless service providers; and wireless handset manufacturers.²

2. The existing wireless hearing aid compatibility reporting requirements were intended to provide the Commission with a way to verify compliance with rules requiring service providers and device manufacturers to offer specified numbers of hearing aid-compatible handset models, to monitor the status of hearing aid-compatible handset deployment in the marketplace, and to ensure that consumers have access to information about the handset models that serve their needs. The enhanced web site requirements that we adopt here are an improved means of promoting those goals. In light of these new requirements, and other transformations in the wireless telecommunications marketplace since the Commission first adopted reporting requirements 15 years ago, we find it reasonable to replace annual reporting requirements with an annual certification requirement. Given current reporting requirements that will remain in place for device manufacturers, our enhanced web site requirements and new certification requirements for service providers will benefit consumers.

II. BACKGROUND

3. In 2003, the Commission adopted its first hearing aid compatibility rules for wireless services, which focused on making more hearing aid compatible handsets available to consumers. Those initial rules required wireless service providers and handset manufacturers to offer a certain number or percentage of hearing aid-compatible handset models depending on the total number of models offered and the air interfaces and frequency bands over which the models operate.³ The Commission required service providers and handset manufacturers to report every six months on efforts toward compliance with the deployment requirements during the first three years, and then annually thereafter through the fifth year of implementation.⁴ The purpose of the reports was to assist in monitoring the progress of handset deployment and provide valuable information to the public concerning hearing aid-compatible handsets.⁵ The Commission explained that it would use information from these reports to determine whether to raise deployment requirements beyond their initial thresholds.⁶

4. In 2008, the Commission adopted its new web site rules in order to “ensure the availability of [hearing aid-compatible] handset information on a more current basis to service providers and consumers.” These rules require service providers and device manufacturers to post, among other things, a list of hearing aid-compatible models that they offer (identified by marketing model

¹ See *Revisions to Reporting Requirements Governing Hearing Aid-Compatible Mobile Handsets*, Notice of Proposed Rulemaking, 32 FCC Rcd 7863 (2017) (*Notice*).

² See Letter from Courtney Neville, Associate General Counsel, Competitive Carriers Association, Kara Graves, Director, Regulatory Affairs, CTIA, Savannah Schaefer, Policy Counsel, Government Affairs, Telecommunications Industry Association, and Lise Hamlin, Director of Public Policy, Hearing Loss Association of America (HLAA) to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-228 at (filed Oct. 19, 2018) (“Joint Consensus Letter”) (observing that “Form 665 was not intended primarily to provide consumer education” and agreeing that “the Commission should no longer require service providers to submit Form 655 if—in place of the Form 655 obligations and to ensure consumers can more readily find HAC-rated wireless handsets—the Commission requires service providers to both annually certify compliance with the Commission’s HAC rules and enhance the information on their consumer-facing websites. These new obligations would be in addition to the existing HAC requirements.”).

³ See generally *Section 68.4(a) of the Commission’s Rules Governing Hearing Aid-Compatible Telephones*, Report and Order, 18 FCC Rcd 16753 (2003) (*2003 Report and Order*).

⁴ *Id.* at 16787, para. 89.

⁵ *Id.*

⁶ See *id.* at 16788, para. 91.

name/number(s)), the hearing aid compatibility ratings of those models, the level of functionality for each model, and explanations of both the rating system and how the functionality of the handsets varies.⁷ The Commission stated that this information should be updated within thirty days of any relevant changes.”⁸

5. In that same order, the Commission revised its existing hearing aid compatibility reporting requirements. The Commission codified specific reporting requirements on an indefinite basis,⁹ explaining that the revised requirements “will help ensure that the reports enable the Commission to fulfill its responsibilities in monitoring the status of access to hearing aid-compatible handsets and verifying compliance with our rules, and will ensure that the public has additional useful information on compatible handsets.”¹⁰

6. Under the Section 20.19 reporting rules adopted in 2008, which have remained in place, annual reports must be filed by July 15 for device manufacturers and by January 15 for service providers.¹¹ All service providers and device manufacturers, even those that are exempt from other hearing aid compatibility requirements, must file status reports with the Commission.¹² The rules require the same reporting content for all covered handset manufacturers and service providers, regardless of business size.¹³ Service provider status reports must detail on FCC Form 655:¹⁴

- (1) hearing-aid compatible digital wireless handset models offered to customers since the most recent report, identified by marketing model name/number(s) and FCC ID number;
- (2) for each such model, the air interface(s) and frequency band(s) over which it operates, the hearing aid compatibility ratings under ANSI C63.19 for each frequency band and air interface, and the months in which the model was available since the most recent report;
- (3) non-hearing-aid compatible handset models offered since the most recent report, identifying each model by marketing model name/number(s) and FCC ID number;
- (4) for each non-hearing aid-compatible model, the air interface(s) over which it operates and the months in which the model was available since the most recent report;
- (5) total numbers of hearing-aid compatible and non-hearing-aid compatible handset models offered to customers for each air interface over which the provider offers service as of the time of the report;
- (6) information related to the retail availability of hearing-aid compatible models;

⁷ See *Amendment of the Commission’s Rules Governing Hearing Aid-Compatible Mobile Handsets*, First Report and Order, 23 FCC Rcd 3406, 3450, para. 112 (2008) (*2008 Report and Order*); see also 47 CFR § 20.19.

⁸ See *id.* at 3450, para. 112; see also 47 CFR § 20.19.

⁹ See *2008 Report and Order*, 23 FCC Rcd at 3418-3419, paras. 35-36; 47 CFR § 20.19(c)-(e); see also *Improvements to Benchmarks and Related Requirements Governing Hearing Aid-Compatible Mobile Handsets*, Report and Order, 31 FCC Rcd 9336 (2016) (*2016 Report and Order*) (revising the deployment benchmarks upwards).

¹⁰ *2008 Report and Order*, 23 FCC Rcd at 3444, para. 96.

¹¹ See 47 CFR § 20.19(h)(i).

¹² See *2008 Report and Order*, 23 FCC Rcd at 3410, para. 13.

¹³ *Id.* at 3444-46, paras. 95, 98.

¹⁴ In 2009, the Wireless Telecommunications Bureau (WTB), pursuant to delegated authority, made electronic FCC Form 655 available for service providers and handset manufacturers to use in submitting hearing aid compatibility status reports, and made its use mandatory beginning with the filing deadline for handset manufacturers on July 15, 2009 and for service providers starting on January 15, 2010. See *id.* at 3447, para. 103; see also 47 CFR § 20.19(i)(4).

- (7) the levels of functionality into which the hearing-aid compatible models fall and an explanation of the service provider's methodology for determining levels of functionality;
- (8) status of product labeling;
- (9) outreach efforts; and
- (10) if a public web site is maintained, the web site address at which it provides information relating to the hearing aid-compatible handsets that it offers.¹⁵

7. Section 20.19 also requires service providers to make hearing aid-compatible models available for consumer testing in retail stores that they own or operate.¹⁶ Service providers must offer hearing aid-compatible models with differing levels of functionality.¹⁷ Service providers must disclose information about their hearing aid-compatible models in packaging materials and at the point-of-sale.¹⁸

8. Beginning as early as 2014, numerous parties, especially rural and small service providers, asserted that preparing annual status reports is burdensome.¹⁹ For example, the Rural Wireless Association (RWA) asserted that the annual reports "have proven to be extremely problematic for small carriers" and asked the Commission to exempt such service providers from the reporting requirements.²⁰ RWA stated that "[m]any small companies are forced to have an employee devote several weeks annually to tracking [hearing aid compatibility] ratings," and it sought immediate relief from FCC Form 655 reporting requirements for these entities.²¹

9. In September 2017, the Commission released a Notice of Proposed Rulemaking seeking comment on revising or eliminating service providers' hearing aid compatibility reporting requirements, in particular for smaller providers.²² The Commission asked commenters to address the alternative of requiring certifications instead of requiring reports, and, if certifications would be required, what the certification should include.²³ If the reporting requirement were retained, the Commission asked whether

¹⁵ *2008 Report and Order*, 23 FCC Rcd at 3444-46, paras. 97, 100; *see also* 47 CFR § 20.19(i)(3). The Commission also adopted similar revised report content requirements for manufacturers. *See 2008 Report and Order*, 23 FCC Rcd at 3444-46, paras. 97, 100; *see also* 47 CFR § 20.19(i)(2). The Commission further clarified that manufacturers and service providers must provide the dates on which they began and ceased offering specific models during the past 12 months in order to verify compliance with all of the hearing aid compatibility rules. *See 2008 Report and Order*, 23 FCC Rcd at 3444, para. 96.

¹⁶ *See* 47 CFR § 20.19(c)(4)(i).

¹⁷ *See* 47 CFR § 20.19(c)(4)(ii).

¹⁸ *See* 47 CFR § 20.19(f).

¹⁹ *See Notice*, 32 FCC Rcd at 7865, para. 7 n.15 (referencing submissions filed in 2014 by several smaller service providers).

²⁰ RWA Comments, WT Docket No. 07-250 and 15-285, at 4-5 (filed Jan. 28, 2016).

²¹ *Id.* at 5 n.17.

²² *See generally Notice*. For purposes of this Report and Order, we use the term "smaller" service provider(s) to refer to those service providers other than Tier 1 carriers. Section § 20.19(a)(v) defines a Tier 1 carrier as "a CMRS provider that offers such service nationwide." 47 CFR § 20.19(a)(v). Thus, "Tier 1 carriers" and "nationwide carriers" are synonymous as used in this order, and "smaller" service providers are those that do not offer nationwide service. We also note that the hearing aid compatibility rules apply to all wireless service providers, including carriers, resellers, MVNOS, and others. Specifically, the rules apply to "providers of digital mobile service in the United States to the extent that they offer terrestrial mobile service that enables two-way real-time voice communications among members of the public or a substantial portion of the public, including both interconnected and non-interconnected VoIP services, and such service is provided over frequencies in the 698 MHz to 6GHz bands." 47 CFR § 20.19(a)(1)(i).

²³ *Notice*, 32 FCC Rcd at 7869, para. 17.

the form could be streamlined to reduce the burden on service providers.²⁴ The Commission sought comment on whether any other changes to its rules would be necessary or appropriate to accommodate or reflect changes to its reporting requirements (including exemptions thereto).²⁵

10. In light of various changes in the marketplace since the current reporting requirements were adopted, the Commission also sought comment on additional ways to streamline or update hearing aid compatibility reporting for all service providers, including nationwide carriers.²⁶ The Commission also asked whether currently collected information could be “combined with other sources” or made part of other data collections,²⁷ and it specifically sought comment on whether consumers would have sufficient information from existing web site posting requirements to warrant dispensing with the annual reports.²⁸ The Commission did not seek comment on eliminating or otherwise changing the reporting requirements for handset manufacturers.²⁹

III. DISCUSSION

11. As the consumer groups, service providers, and manufacturers observe, over the past decade, we have witnessed unprecedented growth in the degree to which service providers offer handsets that are hearing aid-compatible.³⁰ For example, the four largest service providers (Verizon Wireless, AT&T Mobility, T-Mobile US, and Sprint Corporation) have increased the availability of hearing aid-compatible handsets in their inventory from a 30-63% range in December 2010 to 100% in December 2017.³¹ Device manufacturers have also increased the availability of hearing aid-compatible handsets from 53% in June 2011 to 93% in June 2018.³² In light of the growth in hearing aid-compatible handsets, and decreasing public reliance on these reports since they were first adopted by the Commission in 2003,³³ we take two key steps to reform the hearing-aid compatibility reporting regime. In doing so, we acknowledge the hard work taken by consumer groups, manufacturers and service providers to reach a consensus proposal that forms the basis of the actions we take today.³⁴

²⁴ *Id.*

²⁵ *Id.* at 7869, para 19.

²⁶ *Id.* at 7870, para. 20.

²⁷ *Id.*

²⁸ *Id.* at 7866, para. 10.

²⁹ *Id.*

³⁰ Joint Consensus Letter at 1 (noting that while in 2003 when the reporting rules were adopted, the number of hearing aid-compatible handsets was “relatively small...[t]oday, the majority of available wireless handsets are HAC-rated...the Commission’s latest data suggest more than 80 percent of wireless handsets available in the market today are HAC-compliant.”); *id.* at 3 (“The landscape of HAC-related wireless handsets has changed dramatically for consumers who use hearing aid devices since the Commission’s HAC Order more than 15 years ago. Consumers today can choose from hundreds of HAC-compliant wireless handsets.”).

³¹ AT&T increased the availability of hearing aid-compatible handsets from 54% in December 2010 to 100% in December 2017, Verizon increased from 63% to 100%, T-Mobile increased from 30% to 100%, and Sprint increased from 50% to 100%. See Hearing Aid Compatibility Reports: Service Providers, http://wireless.fcc.gov/hac/index.htm?job=reports_sp.

³² Original data for device manufacturers are from http://wireless.fcc.gov/hac/index.htm?job=reports_dm. This progress was recently highlighted by the Commission’s report to Congress. See generally, *Biennial Report to Congress as Required by the Twenty-First Century Communications and Video Accessibility Act of 2010*, Report, DA 18-1036, CG Docket No. 10-213, para. 11 (rel. Oct. 9, 2018) (noting that manufactures are already exceeding their future benchmarks in most cases).

³³ See *infra* para. 40 (discussing changes in web page visits to FCC Form 655 web site).

³⁴ See generally, Joint Consensus Letter.

12. First, we revise our rules to require service providers to post on their web sites the most critical information currently submitted on FCC Form 655.³⁵ By requiring all service providers to post this information on publicly accessible web sites that they control, we can ensure that consumers have access to information about the increased numbers of hearing aid-compatible handset models with less burden for both service providers and consumers.³⁶ This web site information also will allow the Commission to continue to evaluate rule compliance without collecting information directly from service providers. Consumers will benefit from having access to the most up-to-date information about each handset model being offered by service providers.³⁷

13. Second, we find that many of the benefits of annual status reporting by service providers have become increasingly outweighed by the burdens that such information collection places on these entities. Instead of requiring providers to submit the FCC Form 655 on an annual basis, the Commission will require providers to submit annual certifications that require only a statement that a service provider is or is not in full compliance with the Commission's hearing aid compatibility rules, and if not in full compliance, to explain why. The action we take here streamlines the Commission's collection of information while continuing to fulfill the underlying purposes of the current reporting regime.

14. By using streamlined annual certifications combined with web site reporting, we can ensure that the Commission meets its objectives of monitoring industry and enforcing compliance with the relevant deployment benchmarks and other hearing aid compatibility provisions in the Commission's rules. This approach will ensure that consumers have better access to useful, current information about the hearing aid compatibility of the handset models being offered by service providers.

15. We note that in a separate docket, the Commission is considering broader changes to the hearing aid compatibility rules that may be appropriate in the event the Commission requires 100% of covered handsets to be hearing aid compatible.³⁸ Revisions to the existing deployment benchmarks and other related rules are outside of the scope of this proceeding,³⁹ and therefore these requirements will remain in place unless and until the Commission takes further action in that docket. To that end, our decision here is not predicated on further changes that might be under consideration, and thus, does not prejudge any further steps we may take to modify our reporting rules in that proceeding.⁴⁰

A. Improvements to Service Provider Web Site Requirements

16. *Background.* In the *Notice*, the Commission sought comment on whether any changes to aspects of the hearing aid compatibility requirements would be necessary or appropriate to accommodate or reflect a reporting exemption or modified reporting requirement, additional ways to streamline reporting for all service providers, and other streamlined or simplified approaches to gathering

³⁵ See Joint Consensus Letter at 3 (arguing that “in place of the Form 655 obligations and to ensure consumers can more readily find HAC-related wireless handsets” providers should “enhance the information on their consumer facing websites...in additional to the existing HAC requirements.”).

³⁶ See *id.*

³⁷ See *id.*

³⁸ See *Improvements to Benchmarks and Related Requirements Governing Hearing Aid-Compatible Mobile Handsets*, Report and Order, 31 FCC Rcd 9336, 9353-54, para. 43 (2016) (*2016 Report and Order*) Joint Consensus Letter at 3 (“As long as service providers and manufactures are not required to provide 100% HAC offerings, consumers and the Commission need to be able to understand what HAC offerings are available.”).

³⁹ See *Notice*, 32 FCC Rcd at 7866, para. 8 (“We seek comment on whether to exempt a service provider that is not a Tier I carrier (Non-Tier I Service Provider) from the annual FCC Form 655 reporting requirements or otherwise to modify these requirements, while maintaining the reporting requirements for Tier I carriers and all handset manufacturers.”).

⁴⁰ See *2016 Report and Order*, 31 FCC Rcd at 9353, para. 43.

information that the reports are intended to reflect.⁴¹ The Commission's existing web site provisions require service providers that operate publicly accessible web sites to post on their web sites a list of all hearing aid-compatible models that they currently offer, the hearing aid compatibility ratings of those models, and an explanation of the rating system.⁴² These service providers must also specify on their web sites the level of functionality that each hearing aid-compatible model falls under as that service provider defines functionality.⁴³

17. *Discussion.* We amend our hearing aid compatibility web site requirements for service providers⁴⁴ to ensure that the objectives of the FCC Form 655 reporting requirement continue to be met. In doing so, we adopt, in part, the proposal put forth by the Joint Consensus filers. Under our new rules, service providers will continue to comply with the existing web site requirements supplemented with additional content that is useful to consumers.⁴⁵ In addition, we will carry over to the new web site posting obligation limited content from the FCC Form 655 necessary to meet the Commission's information, monitoring, and enforcement goals.⁴⁶

18. In addition to the current web site requirements,⁴⁷ all service providers that operate publicly accessible web sites (other than *de minimis* service providers, which remain exempt from web site requirements) will now be required to post to their web sites the following additional information:

- (1) a list of all non-hearing aid-compatible handset models currently offered, including the level of functionality of those models;
- (2) the marketing model name/number(s) and FCC ID number of each hearing aid-compatible and non-hearing aid-compatible handset offered;⁴⁸ and
- (3) a link to the Global Accessibility Reporting Initiative (GARI)⁴⁹ website, with information regarding hearing aid-compatible and non-hearing aid compatible devices OR, alternatively, a

⁴¹ See Notice, 32 FCC Rcd at 7869, para. 19.

⁴² 47 CFR § 20.19(h).

⁴³ *Id.*

⁴⁴ Our current web site rule only applies to service providers with web sites. See 47 CFR § 20.19(h). We retain that aspect of the rule. Therefore, all obligations here that apply to service providers only apply to such providers if they have a web site.

⁴⁵ 47 CFR § 20.19(h) and (i)(3).

⁴⁶ See Joint Consensus Letter at 3 (“[S]ervice providers should enhance the information on their public websites to include additional information in a timely manner to help consumers find a wireless handset that meets their unique needs.”).

⁴⁷ 47 CFR § 20.19(h).

⁴⁸ See Joint Consensus Letter at Appx. A, B (including some of these elements in their proposal). The information that service providers post to their web sites concerning marketing model name or number and FCC ID number must be accurate so that Commission staff can use the information to access the grant note or testing reports for the handset at issue. As necessary, Commission staff can use this information to verify air interfaces and frequency bands to determine compliance with applicable deployment benchmarks.

⁴⁹ GARI is an ongoing project of the Mobile and Wireless Forum, “an international association of companies with an interest in mobile and wireless communication. . . The MWF focuses on a range of issues concerning mobile and wireless devices including RF health and safety, certification testing standards and requirements, counterfeit, counterfeit issues and accessibility,” GARI, Contact GARI, <https://www.gari.info/contact.cfm> (last visited Oct. 22, 2018).

clearly marked list of hearing aid compatible devices that have been sold in the past two years but are no longer commercially available from that provider.⁵⁰

19. Service Providers must also retain internal records, to be made available upon Commission request of:⁵¹

(1) the month year/each hearing aid compatible and non-hearing aid compatible handset model was first offered; and

(2) the month/year each hearing aid compatible handset model and non-hearing aid compatible handset was last offered for all discontinued handset models until a period of 24 months has passed from that date.

20. Retaining a trailing list of all handsets offered over the past 24 months will ensure that the Commission can continue to monitor whether service providers meet numerical and percentage-based handset deployment obligations. The obligation to post a link to the GARI web site, or alternatively, post a clearly marked list of hearing aid compatible devices that have been sold in the past two years (which at least one smaller provider has already voluntarily adopted) also permits consumers to locate information about a model they may have recently purchased that is no longer being sold.⁵² We conclude that it can serve as a useful tool for consumers to obtain hearing-aid compatibility information regarding past handsets sold.⁵³ So that service providers have flexibility, we will not prescribe a standard template for posting and retaining this information. In addition, service providers can rely on the information from device manufacturers' FCC Form 655 as a safe harbor, similar to the Commission's policy in the past for service providers' FCC Form 655 filings.⁵⁴

21. We do not anticipate that it will be difficult or burdensome for service providers to gather and post this additional information on their web sites or to retain it. Service providers must continue to meet applicable deployment benchmarks and maintain compliance with all other hearing aid compatibility requirements. Therefore, service providers would likely need to track the information outlined above, some of which service providers need in order to run their businesses independent of our requirements (e.g., when a handset is first sold and no longer sold). Posting this information to their web sites and/or retaining it for their records should impose on providers only a minimal additional burden. This conclusion is confirmed by the record in this proceeding showing that service providers already post some

⁵⁰ See Joint Consensus Letter at Appx. A, B (including this element in their proposal).

⁵¹ See *id.* Under these record retention rules, once the rule becomes effective 30 days after Federal Register Publication of notice of OMB approval, providers must retain handset information covering the months from January 2018 onward. The number of months of historical handset information providers must retain will increase until it reaches 24 months in January 2020. By February 2020, the providers will no longer be required to retain handset information for January 2018.

⁵² Appalachian Reply at 2 (noting that they list on their web site “[hearing aid-compatible] devices that are no longer available for purchase from Appalachian Wireless, but which have been sold in recent months and are reasonably likely to still be in use. Since many customers use the same device for two years or more Appalachian Wireless does not immediately remove information about a device from the HAC Chart simply because it is not currently available for online purchase.”).

⁵³ We direct the Bureau to designate a different third-party web site or require the posting of a two-year trailing list if the GARI web site is either eliminated or not updated in a timely manner.

⁵⁴ The Commission has stated that a service provider is compliant with the hearing aid compatibility rules to the extent that its compliance is based on its reasonable reliance on data contained in, or aggregated from, manufacturers' FCC Form 655 submissions. See *2016 Report and Order*, 31 FCC Rcd, at 9356-57, para. 49 (2016).

of this newly required information and the willingness of the Joint Consensus filers to endorse a similar approach.⁵⁵

22. We find that our new web site and record retention requirements should better serve the Commission's objectives because the information on web sites will be more up-to-date than the data submitted on FCC Form 655.⁵⁶ The current web site rules require providers to update the web site information within 30 days of any relevant changes.⁵⁷ As we stated when we adopted the web site posting requirement, "updated website postings are necessary . . . so that consumers can obtain up-to-date hearing aid compatibility information from their service providers."⁵⁸ To ensure that providers are aware that their web sites need to be kept up to date, we codify this requirement.⁵⁹

23. We will be able to use the information on a service provider's web site to ensure that it is in compliance with the appropriate deployment benchmarks on a month-by-month basis. We believe this is a better approach than other options, such as, for example, relying on informal complaints.⁶⁰ We also can use the posted information to monitor the state of the provision of hearing aid compatibility by the wireless industry and the effectiveness of our hearing aid compatibility requirements. We also believe that the proceeding in which the Commission is considering whether to require 100% of handsets to be hearing-aid compatible allows the Commission to monitor industry progress without requiring individual hearing aid compatibility status data from service providers.⁶¹ These revisions to our web site posting requirements will allow consumers better access to more current information about the hearing aid compatibility features of current handset models offered by their service providers, and the information will be in a clearer format than is currently possible on FCC Form 655.⁶²

24. The web site and record retention requirements we adopt here differs slightly from the approach outlined in the Joint Consensus Letter and the separate request of HLAA-RERC. The requirement to post information about non-hearing-aid compatible handsets, for instance, is not addressed

⁵⁵ See, e.g., Appalachian Reply Comments at 1-3 (posting information about handsets no longer offered); CTIA/CCA Reply Comments at 3. See generally, Joint Consensus Letter at Appx. A.

⁵⁶ Blooston Rural Carriers Reply Comments at 2-3 (stating that "the elimination of a costly and burdensome regulatory filing obligation will allow [Non-Tier I Service Providers] to utilize the savings in time and money to maintain and improve their web sites and other outreach materials that are more readily accessible to consumers").

⁵⁷ 2008 Report and Order, 23 FCC Rcd at 3450, para. 112.

⁵⁸ *Id.* at 3450, para. 112.

⁵⁹ Appendix B. Letter of Lise Hamlin, Hearing Loss Association of America, and Linda Kozma-Spytek, Gallaudet University Technology Access Program (TAP), WT Docket No. 17-228, at 2 (filed Oct. 18, 2018) (arguing for the codification of the existing 30-day web site update requirement so that "consumers. . . have access to the most accurate and complete information available when searching for a HAC handset.").

⁶⁰ Between November 2014 and July 2017, the Commission identified 27 informal complaints that involved wireless service and related in some way or in part to hearing aids (<https://opendata.fcc.gov/Consumer/CGB-Consumer-Complaints-Data/3xyp-aqkj>). Very few of these complaints appear to allege a violation of the rule. Many of these cases involve a customer claiming that a particular handset that they purchased was not working well with their hearing aid. In most cases, the complaint appears to have been resolved to the consumer's satisfaction. Typically, consumers with devices not working with their hearing aids were provided the opportunity to exchange them for alternative devices that would work better.

⁶¹ The Commission has an ongoing proceeding in which data on the state of hearing aid compatibility in the wireless industry will be collected and analyzed, thus lessening the need for collecting hearing aid compatibility status data from individual service providers. See generally 2016 Report and Order, 31 FCC Rcd at 9350-57, paras. 36-50.

⁶² This approach will address much of the concern expressed by Consumer Groups and the Gallaudet RERC about whether service provider web sites are accurate, up-to-date, and reliable sources of information for consumers. See HLAA *et al.*, Comments at 2-4.

by the Joint Consensus filers.⁶³ Nevertheless, we conclude that requiring the posting of this information, along with information regarding currently offered hearing-aid compatible handsets on providers' websites, provides an easy means for the Commission and interested third parties to quickly derive a percentage of hearing-aid compatible handsets to determine whether the provider is meeting the relevant benchmarks. The Commission would not have to wait for the annual certification or make a request for internal data from the provider to determine whether the provider is currently compliant. Because the majority of handsets are hearing-aid compatible, this requirement imposes a limited burden compared to the compliance benefit.

25. HLAA-RERC argue that service providers should post on their web sites updated percentages of hearing aid-compliant (HAC) handsets by interface in near-real time and make additional web site changes and disclosures.⁶⁴ This information is not necessary to fulfill the purpose of our reforms today and therefore would impose an unjustified burden. In particular, a requirement to post interface air information, updated every 30 days, would likely be even more burdensome than the current, similar FCC Form 655 requirement where providers assemble that information once at the end of the year. Additionally, HLAA-RERC does not explain how posting whether a non-HAC compatible phone was tested and failed, or was simply not tested, would aid either consumers or the Commission's enforcement efforts. We also find that their other proposals to mandate the configuration of service providers' web sites, such as requiring service providers to place hearing aid-compatibility information into the specifications of each handset or provide certain links to the Commission's web site, would overly restrict providers' flexibility to design and administer their sites without any clearly demonstrated benefit.

B. Adoption of Service Provider Certification Requirement to Replace Annual Reporting Requirements

26. *Background.* In the *Notice*, the Commission sought comment on requiring service providers to submit a certification to the Commission, annually or otherwise, that they have met the deployment benchmarks and other hearing aid compatibility requirements.⁶⁵ The Commission asked what information service providers should certify to if the Commission adopted a certification approach to replace the current reporting requirement.⁶⁶ For instance, the Commission asked if the certification form should simply contain a box to check that requirements have been met or whether the certification form should require providers to submit more detailed information regarding service provider compliance.⁶⁷ Finally, the Commission asked what are the costs and benefits of using a certification approach instead of the existing reporting approach.⁶⁸

27. The Commission also sought comment on whether to exempt all service providers, or only smaller providers, from annual FCC Form 655 reporting requirements.⁶⁹ It sought comment on the

⁶³ See Joint Consensus Letter at Appx. B.

⁶⁴ This includes (1) the total number of hearing aid compatible and non-hearing aid compatible handsets by air interface offered by the provider; (2) the date of any updates to their web pages with hearing aid-compatibility information; (3) whether a non-hearing aid compatible handset was tested and failed or was not tested at all; (4) hearing aid compatibility ratings placed in the handset specifications listing; and (5) a link to the Commission's hearing aid compatibility fact sheet, complaint center, and a listing of certain rules. See Letter from Lise Hamlin, on behalf of HLAA and the Rehabilitation Engineering Research Center on Technology for the Deaf and Hard of Hearing, Gallaudet University (HLAA-RERC), WT Docket No. 17-228, at 4 (filed Oct. 19, 2018).

⁶⁵ *Notice*, 32 FCC Rcd at 7869, para. 17.

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.* at 7866, para. 8.

extent to which consumers rely on these annual reports for information about handset models, the role reports play in monitoring service providers' compliance with the Commission's rules, and the Commission's objective of gauging the overall state of access to hearing aid-compatible handset models. The Commission asked whether the burden of complying with these reporting requirements outweighs the associated benefits.⁷⁰

28. *Discussion.* In conjunction with our new web site and record retention rules, we adopt a requirement that all service providers certify whether they are in compliance with all of the Commission's wireless hearing aid compatibility requirements.⁷¹ An original purpose of the annual filing requirement was to place an affirmative obligation on service providers to confirm compliance with all of the Commission's hearing aid compatibility requirements, including the handset deployment benchmarks.⁷² We agree with several parties, including the Joint Consensus filers, that service providers should affirmatively state whether they are in compliance with all of the hearing aid compatibility rules through an annual certification.⁷³ We adopt the Joint Consensus proposal with some modifications.

29. This new annual certification requirement applies to all service providers including *de minimis* service providers.⁷⁴ It will assure the public and the Commission that service providers have a strong incentive to comply fully with all of the Commission's hearing aid compatibility requirements, including deployment, web site, labeling, and disclosure requirements, among others. Under this new rule, service providers will be required to file an officer certification by January 15 of each calendar year using the existing electronic interface for the FCC Form 655 and stating as follows:⁷⁵

As an officer of a wireless service provider covered by the wireless hearing aid compatibility provisions of the Federal Communications Commission's rules, I certify that I have personal knowledge that the provider was [(in full compliance)/(not in full compliance)] [choose one] at all times during the applicable time period with the Commission's wireless hearing aid compatibility deployment benchmarks and all other relevant wireless hearing aid compatibility requirements.

The company represents and warrants, and I certify by this declaration under penalty of perjury pursuant to 47 CFR § 1.16 that the above certification is consistent with 47 CFR § 1.17, which requires truthful and accurate statements to the Commission. The company also acknowledges that false statements and misrepresentations to the Commission are punishable under Title 18 of the U.S. Code and may subject it to enforcement action pursuant to Sections 501 and 503 of the Act.

30. If the certification states that the provider is "not in full compliance," it must include an explanation of which wireless hearing aid compatibility requirements the wireless service provider is not in compliance with, and when non-compliance began and (if applicable) ended with respect to each

⁷⁰ *Id.* at 7866, para. 9.

⁷¹ 47 CFR § 20.19.

⁷² *See, e.g.*, AT&T Comments at 7-8.

⁷³ *See* Joint Consensus Letter at Appx. A (describing proposed certification requirement); AT&T Comments at 8 (giving precedent of wireless service providers certifying annually to their compliance with accessibility requirements imposed by Section 717 of the Communications Act); *see also, e.g.*, CTIA/CCA Comments at 3, 9; T-Mobile Reply Comments at 4. The Joint Consensus filers suggest that providers should certify "that the service provider complies with the HAC rules," CITE, but they do not specify what should occur when a provider is unable to make that certification. Our rule fills that gap by requiring such providers to explain the extent of any noncompliance.

⁷⁴ *De minimis* service providers remain subject to Section 20.19(i) of the Commission's rules, which contains the new certification requirement for service providers. *See* Appendix B.

⁷⁵ *See* FCC, Hearing Aid Compatibility Status Reporting, available at <http://wireless.fcc.gov/hac/index.htm?job=home#d36e2>.

requirement. In addition, as part of the certification, the service provider must submit the name of the signing officer, his or her contact information, the web site address (if applicable) of pages(s) containing hearing aid compatibility information required by Section 20.19(h), and the FCC FRN and the name of the company(ies) covered by the certification. We expect to rely on this affirmative statement of compliance in any enforcement action.⁷⁶

31. The service provider must also indicate on the certification form the percentage of hearing aid compatible wireless handsets it made available that year.⁷⁷ Providers will derive this percentage by determining the number of HAC-compatible handsets sold across all air interfaces during the year divided by the total number of handsets sold during the year. This requirement will help the Commission and consumers quickly determine the state of the hearing aid-compatibility marketplace. The Commission will rely on website postings of current handsets and the document retention requirements we adopt here to monitor carrier compliance with the deployment benchmarks by air interface.

32. Our simple, streamlined certification approach will emphasize the importance of compliance with our rules and focus service providers on assessing their performance.⁷⁸ For example, knowing that they must affirmatively certify to compliance will provide a powerful incentive for companies to formulate a process to ensure their web sites contain all required information in an up-to-date manner.⁷⁹ At the same time, it should reduce the administrative burden compared to gathering, formatting, and submitting data for the more detailed FCC Form 655.⁸⁰ Commenters generally support replacing the current annual reporting with a certification, arguing that the change would reduce unnecessary regulatory burdens.⁸¹

33. We do not adopt two of the elements of the Joint Consensus letter regarding the certification. First, we do not adopt the Joint Consensus Letter request to state in the rules that providers may request confidentiality when submitting records to the Commission because providers already have the right to make such a request and such requests are typically ruled upon at the time the information is submitted.⁸² Finally, we require an officer, not a “knowledgeable executive” as proposed, to sign the certification in order to enhance the accountability of the company’s certification.⁸³

34. Given our improved web site posting obligations, the new, streamlined certification requirements, and manufacturers’ continued submission of FCC Form 655s, it is no longer necessary to require service providers to file FCC Form 655. The revised web site and certification requirements we adopt in this Report and Order fulfill the objectives underlying the filing requirement with increased consumer benefits and less burden. For example, service providers will no longer be required to list the

⁷⁶ The Commission has used affirmative certifications of compliance in other contexts. For example, to enforce Sections 255, 716, and 718 of the Communication’s Act, the Commission requires service providers subject to these provisions to sign and file an annual compliance certificate with the Commission. *See* 47 CFR 14.31(b).

⁷⁷ *See* Joint Consensus Letter at Appx. A (“The certification also could include input fields where service providers could indicate to the Commission the percentage of wireless handsets made available by the service provider to consumers that are HAC-complaint.”).

⁷⁸ *See* Letter of Lise Hamlin, Director of Public Policy, HLAA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-228 (Nov. 15, 2017) (arguing that some web sites are inaccurate or do not reflect current HAC - inventory).

⁷⁹ HLAA *et al.*, Reply at 3.

⁸⁰ AT&T Comments at 7-8; T-Mobile Reply Comments at 4.

⁸¹ CTIA/CCA Comments at 3, 9; CTIA/CCA Reply Comments at 4; AT&T Comments at 7-8; Bluegrass Cellular Reply Comments at 3-4; T-Mobile Reply Comments at 4.

⁸² *See* 47 CFR § 0.459.

⁸³ *See* Joint Consensus Letter Appx. B.

air interface(s) and frequency band(s) over which an offered model operates, information that they say is particularly burdensome to gather and list in their filings.⁸⁴ Moreover, this information duplicates what manufacturers are filing for the same handsets.⁸⁵ As long as service providers correctly and clearly identify the models that they currently offer and have recently offered for sale on their web sites, the Commission will be able to use this information to compare the handsets offered to Commission databases and derive the relevant information for enforcement purposes, and consumers will have much simpler access to this data.

35. Further, the Commission will be able to determine benchmark compliance by air interface by examining the data on service providers' web sites by cross referencing that information on manufacturers' FCC Form 655. Service providers will not need to answer or provide a description in response to the several questions on the status of product labeling and outreach efforts.⁸⁶ Service providers will no longer have the burden of identifying the total number of hearing aid-compatible and non-hearing aid compatible models they offer to customers for each air interface over which the service provider offers service by month, or answer company information questions regarding their status as it relates to the *de minimis* exception.⁸⁷

36. Based on the record, we therefore modify our rules to eliminate the FCC Form 655 reporting requirement for all service providers.⁸⁸ The Joint Consensus filers support eliminating the FCC Form 655 if other safeguards are put in place, and with minor deviations, we are adopting the safeguards they propose.⁸⁹ Moreover, small service providers, such as members of RWA, agree that the burden of reporting is not justified and that the costs saved by eliminating the requirement will allow them to maintain and improve their web sites and other outreach materials that are more readily accessible to consumers.⁹⁰ And CTIA/CCA state that a certification approach would not harm consumers' ability to obtain information about hearing aid-compatible handsets from other publicly available sources of information.⁹¹

⁸⁴ AT&T Comments at 8; T-Mobile Reply Comments at 4-5.

⁸⁵ *See supra* para. 19.

⁸⁶ In almost every case, these questions are answered with "Yes" or "N/A" responses on the FCC Form 655. In that respect, the questions function like a certification. For example, all service providers answered the product labeling questions with "Yes" or "N/A" in their reports filed in January 2018.

⁸⁷ 47 CFR § 20.19(i)(3)(v).

⁸⁸ Under our rule change, service providers that qualify for the *de minimis* exception, 47 CFR § 20.19(e), will no longer be required to report on their handset model offerings but will be subject to the same annual certification requirements as other providers. Because these service providers are already exempt from current web site requirements, they will not be required to meet our enhanced web site requirements. *See generally* 47 CFR § 20.19(e) (exempting *de minimis* providers from all of the requirements of 47 CFR § 20.19 *et seq.*, including web site requirements in Section 20.19(h), except for the reporting requirements in Section 20.19(i)). Device manufacturers, who are not within the scope of this proceeding, will continue to file FCC Form 655 on an annual basis. *See supra* para. 15. In January 2018, 213 service providers that offered at least one handset model filed their HAC - status reports (http://wireless.fcc.gov/hac/index.htm?job=reports_sp). In July 2018, 20 device manufacturers filed their HAC - status reports (http://wireless.fcc.gov/hac/index.htm?job=reports_dm).

⁸⁹ Joint Consensus Letter at 3 (supporting elimination of Form 655 if revised website and certification rules are adopted).

⁹⁰ Blooston Rural Carriers Comments at 2; Blooston Rural Carriers Reply Comments at 1-3; Bluegrass Cellular Reply Comments at 3; PTI Reply Comments at 1-2; RWA Reply Comments at 3.

⁹¹ CTIA/CCA Comments at 3, 9; CTIA/CCA Reply Comments at 4; AT&T Comments at 7-8; *see also* T-Mobile Reply Comments at 4.

37. As greater percentages of hearing aid-compatible handsets are offered by service providers, the annual reports provide little benefit as a monitoring and compliance tool. Annual hearing aid compatibility status reports now show near universal offerings of hearing aid compatible handset models.⁹² For example, the average percentage of hearing aid-compatible handsets being offered has increased from 42% in December 2010 to 100% in December 2017 for nationwide carriers, and from 39% to 86% for smaller service providers for the same period.⁹³

38. For small, rural, and regional service providers, especially, the burden of reporting is substantial. The record indicates that such service providers must devote substantial time and resources to tracking and collecting the information necessary to fill out the form. These efforts are a strain on these providers' limited resources.⁹⁴ The financial cost of the reporting requirement is disproportionate to the number of customers served by these providers.⁹⁵ For example, in January 2018, compared to the reports from the four largest carriers (which serve more than 98% of wireless subscribers),⁹⁶ 209 smaller providers filed annual Form 655 status reports.⁹⁷

39. Even for nationwide carriers, the costs of reporting are no longer justified given their high level of compliance with deployment benchmarks and the information the Commission already collects from device manufacturers. Nationwide carriers claim that the reporting requirement places unnecessary burdens on all service providers given the availability of multiple sources of information about hearing aid-compatible handsets and the fact that compliance generally well exceeds current requirements.⁹⁸ We agree with AT&T's assertion that handset manufacturers are in the best position to file detailed annual status reports, and that service provider reports add little because, in many instances, the information on the service providers' reports is based on the manufacturers' own reports.⁹⁹ Although the nationwide carriers serve the vast majority of consumers in the United States, we conclude that the consistently high levels of compliance with the deployment benchmarks significantly reduce the benefit of ongoing, detailed reporting. Indeed, nationwide carriers have been fully compliant with deployment benchmarks for the past seven years.¹⁰⁰

40. We expect that service providers' percentages of hearing aid-compatible handset models being offered, as well as their compliance levels with deployment benchmarks, are unlikely to decline for the foreseeable future because nearly all handsets offered by manufacturers are hearing aid-compatible, reducing the need for up-front detailed information in FCC Form 655. For example, based on hearing aid compatibility status reports filed by device manufacturers in July 2018, many smartphone manufacturers, including Apple, Samsung Electronics America, LG Electronics, MobileComm USA, Motorola Mobility, Sony Mobile Communications, and HTC America, were offering only hearing aid-compatible handset models as of June 2018.¹⁰¹ The vast majority of handset models offered by manufacturers that are not

⁹² See generally http://wireless.fcc.gov/hac/index.htm?job=rpt_sp_c (last visited July 5, 2018). See also *supra* para. 11.

⁹³ For service provider reports, see http://wireless.fcc.gov/hac/index.htm?job=reports_sp.

⁹⁴ See, e.g., Bluegrass Reply Comments at 3.

⁹⁵ Blooston Rural Carriers Comments at 2; Blooston Rural Carriers Reply Comments at 1-2; PTI Reply Comments at 2.

⁹⁶ See Notice, 32 FCC Rcd at 7866, at n.24

⁹⁷ Service provider reports, see http://wireless.fcc.gov/hac/index.htm?job=reports_sp.

⁹⁸ CTIA/CCA Comments at 3, 8; CTIA/CCA Reply Comments at 1, 4; T-Mobile Reply Comments at 2, 4.

⁹⁹ AT&T Comments at 4.

¹⁰⁰ Service provider reports are available at http://wireless.fcc.gov/hac/index.htm?job=reports_sp.

¹⁰¹ A list of all handsets offered by manufacturers can be found at http://wireless.fcc.gov/hac/index.htm?job=reports_dm.

rated for hearing aid-compatibility include models with operations over the GSM air interface.¹⁰² As GSM networks are phased out of operation over the next several years, the risk of reductions in manufacturer offerings of hearing aid-compatible handset models, and subsequent reductions in hearing aid-compatible handset offerings by service providers, will further diminish.¹⁰³ Nevertheless, we recognize that the implementation of new, unforeseen technologies could affect handset manufacturers' and providers' ability to offer hearing aid-compatible handsets in the future. We will therefore continue to monitor the hearing aid-compatibility marketplace to assess the need for further amendments to our rules.

41. We agree with the majority of commenters that the FCC Form 655 is no longer well-suited for consumer use.¹⁰⁴ The web site requirements that we adopt here will better serve the purpose of informing consumers about hearing aid-compatible handset models.¹⁰⁵ It is logical to assume that the typical consumer will turn to a company's web site before thinking to look for a completed FCC form. To the extent consumers once used FCC Form 655 data to find information about current handset models, they are no longer doing so to any great extent. As shown in Chart I below, during non-filing months (i.e., excluding December and January when web site page visits are high due to the annual FCC Form 655 submissions), there were only approximately 30 pageviews from outside the Commission to the service provider FCC Form 655 reporting page per month over the last seven years, and that number dropped substantially last year.¹⁰⁶ At least a portion of these limited number of pageviews was likely from service providers and manufacturers, not consumers. Given this data, we expect that eliminating the reporting requirement will have little impact on consumers and will relieve a substantial information collection burden on service providers.

¹⁰² Hearing aid comparability information by air interface for manufacturer reports can be found at http://wireless.fcc.gov/hac/index.htm?job=reports_dm ("View Handset Totals by Air Interface").

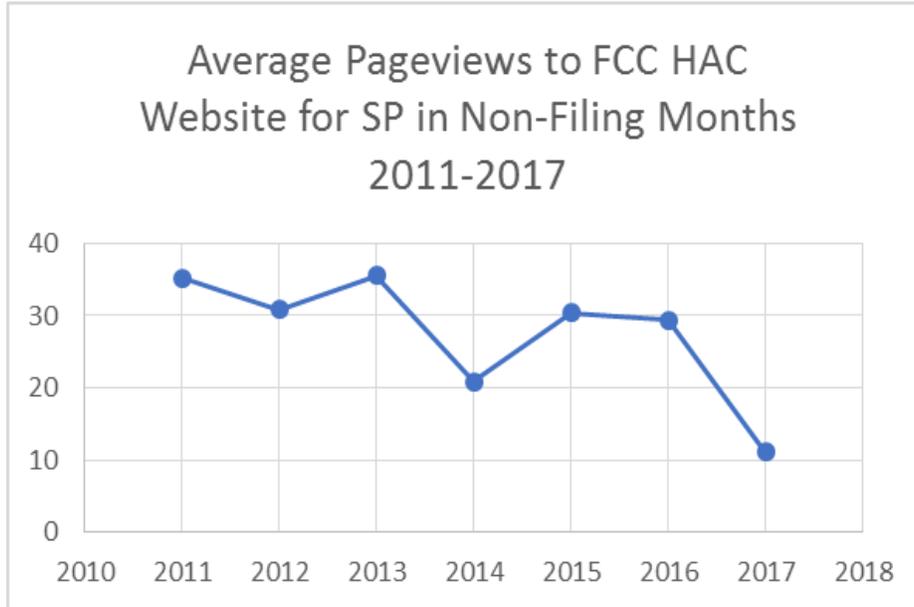
¹⁰³ AT&T shut down its GSM network on December 31, 2016. AT&T blog, John Donovan, *2G Sunset Brings Faster Speeds, Newer Technologies*, January 16, 2017 (http://about.att.com/innovationblog/2g_sunset). T-Mobile may sunset its GSM network by 2020. Digital Trend, *T-Mobile and Ericsson hope to ditch 2G/3G, switch to gigabit LTE by 2019*, March 1, 2017 (<https://www.digitaltrends.com/mobile/t-mobile-all-lte-mwc17/>).

¹⁰⁴ Joint Consensus Letter at 2 (arguing that "Form 655 was not indeed primarily to provide consumer education."); AT&T Comments at 4-5; CTIA/CCA Comments at 3.

¹⁰⁵ See Joint Consensus Letter at 1.

¹⁰⁶ Per data collected by FCC staff for the period between September 2010 and September 2017 for page visits at the Commission's HAC - web site for service providers (http://wireless.fcc.gov/hac/index.htm?job=reports_sp).

Chart I. Average Pageviews to FCC Form 655 Web Site for Service Providers in Non-Filing Months



42. Much of the detailed service provider handset data the Commission receives from providers is duplicative. The record indicates that many nationwide carriers are resubmitting information for handsets that is already being provided by handset manufacturers on their own FCC Form 655 filings.¹⁰⁷ Based on the status reports filed by service providers in January 2018, about 71% of handset models offered in December 2017 by nationwide carriers have been reported by device manufacturers in previous years, and approximately 15% were newer handset models (i.e., those available after device manufacturers filed their FCC Form 655 status reports in July 2017).¹⁰⁸ Similarly, out of 1025 handset models offered in December 2017 by smaller providers, 623 (or 61%) have been reported by device manufacturers in previous years, and 33 (or 3%) were newer models reported by device manufacturers in July 2018.¹⁰⁹

43. Further, retaining the FCC Form 655 itself but streamlining the information collected, as some request, will provide fewer public interest benefits than eliminating the form reporting requirement and relying on enhanced web site requirements and annual certification of compliance for service providers.¹¹⁰ For example, even a significantly streamlined form would not improve the timeliness of the information submitted as many newer handsets offered by service providers each year between Thanksgiving and New Year's Day are not reported by device manufacturers until July of the following year.¹¹¹ Moreover, service providers would also have to continue to work within the Commission's

¹⁰⁷ AT&T Comments at 4.

¹⁰⁸ Approximately 14% handset models offered by nationwide carriers were either models not offered by device manufacturers in the last five years or produced by some foreign device manufacturers that did not file HAC status reports. See http://wireless.fcc.gov/hac/index.htm?job=reports_dm.

¹⁰⁹ 369 (or 36%) handset models offered by smaller service providers were either models not offered by device manufacturers in the last five years or produced by some foreign device manufacturers that did not file HAC status reports. See http://wireless.fcc.gov/hac/index.htm?job=reports_dm.

¹¹⁰ See, e.g., RWA Comments at 3; Blooston Rural Carriers Reply Comments at 2.

¹¹¹ Device manufacturers file their HAC status reports in June and July while service providers file their HAC reports in December and the following January.

electronic reporting system environment and any streamlined information would still not be as readily available to consumers. Our new approach, by contrast, effectively streamlines the current collection by requiring service providers to continue to make available only the most critical pieces of information in a timely and more easily accessible manner to the public.

44. We note that we are eliminating certain reporting requirements, such as reporting on the status of outreach efforts and product labelling, because they are no longer useful for the Commission or consumers, and the burden of these requirements outweighs the benefits. Consumer groups did not advocate for their retention as part of the shift to a new regime.¹¹² Providers often submit limited narrative responses that, while compliant with our rules, do not provide useful information to the Commission and consumers of their efforts.¹¹³ We find that the robust certification regime we adopt here and the industry's recommitment to the obligations underlying these reporting rules justifies eliminating the obligation to report compliance efforts.

45. Finally, we make clear that our decision today does not affect our wireless hearing aid-compatibility rules outside of our reporting and web site requirements, including those designed to facilitate consumer access to hearing aid-compatible devices. Although service providers will no longer be required to complete the FCC Form 655, the Commission's hearing aid-compatibility rules still require service providers to comply with all labeling, disclosure, in-store testing, and level of functionality requirements.¹¹⁴ We applaud the recommitment of the industry to meet these ongoing duties.¹¹⁵ And we continue to encourage providers to engage in outreach efforts to educate the public, audiologists, hearing aid dispensers, and retail personnel concerning the use of digital wireless phones with hearing aids.¹¹⁶

C. Transition and Implementation Issues

46. *Background.* The existing reporting rule requires all service providers to file FCC Form 655 status reports with the Commission each year by January 15 covering the prior calendar year.¹¹⁷ Although service providers are required to provide this information annually to the Commission, the Commission's web site posting rule requires each service provider that operates a web site to post an ongoing list of the hearing aid-compatible models that it offers (identified by marketing model name/number(s)), the hearing aid-compatibility ratings of those models, and an explanation of the rating system, as well as the level of functionality for each model and an explanation of the service provider's methodology for designating levels of functionality.¹¹⁸

¹¹² See generally Joint Consensus Letter; HLA A-RERC Letter (not advocating for the retention of this information).

¹¹³ Service provider reports are available at http://wireless.fcc.gov/hac/index.htm?job=reports_sp.

¹¹⁴ See 47 CFR § 20.19(f).

¹¹⁵ See Joint Consensus Letter at 2 (noting that the signatories "continue to work together to educate and inform consumers...For example, service providers and manufactures are required to provide consumers with [handset] information through retail and online shopping experiences, including availability of in-store 'try before you buy' testing; handset packaging materials; and technical support and customer service call and service centers...If carriers consistently comply with these rules, customers may find the information they need...").

¹¹⁶ 2003 Report and Order, 18 FCC Rcd at 16776, para. 54 (encouraging such outreach); Joint Consensus Letter at 4, n.4 (discussing the role audiologists and manufacturers can play in educating consumers); *id.* at 2 (touting voluntary industry outreach efforts).

¹¹⁷ See generally 47 CFR § 20.19(i)(1) (setting forth timeline for service provider status reports). Information in the reports must be up-to-date as of the last day of the calendar month preceding the due date of the report. *Id.*

¹¹⁸ See 47 CFR § 20.19(h). We remind service providers that these web site lists and related information must be updated within 30 days of any relevant change. 2008 Report and Order, 23 FCC Rcd at 3450, para. 112; see also *supra* para. 21 (codifying this requirement).

47. In the *Notice*, the Commission sought comment on when and how any changes to its hearing aid-compatibility rules should become effective.¹¹⁹ In seeking comment on these implementation issues, the Commission framed possible rule changes within the larger context of the specific timing considerations governing current requirements. For example, it sought comment on whether any changes should become effective as soon as possible (e.g., such as at the soonest applicable FCC Form 655 filing deadline) or after some additional period of time.¹²⁰ In the alternative, the Commission sought comment on tying any changes to some point in time after a certain trigger is met (e.g., only after meeting either the 66% or 85% enhanced deployment benchmarks that the Commission adopted in 2016).¹²¹

48. *Discussion.* In order that service providers focus future efforts toward an orderly transition to the new web site and annual certification requirements that we adopt in this Report and Order, we waive, on our own motion, the requirement that service providers file the hearing aid status report currently due by January 15, 2019,¹²² on the condition that they instead submit their first annual certification under the revised rules 30 days following Federal Register publication of notice of OMB approval. The certification will cover calendar year 2018, the same period that would be covered by the Form 655 for which we are providing a waiver. Subsequent annual certifications starting in 2020 will be due by January 15 each year.

49. We find good cause to grant a waiver under the circumstances presented.¹²³ The Commission intends to relieve providers of the current reporting burden as soon as possible and a limited waiver both effectuates this purpose as efficiently as possible and avoids duplicate collections of the same 2018 calendar-year handset information. The certification that would substitute for the January 2019 report fully satisfies the Commission's goals. And although the certification will occur somewhat later than January in order to obtain the necessary OMB approval, this minor delay will not significantly undercut the purpose underlying the certification in part because the revisions we adopt here require posting and retention of data for the 2018 calendar year, not just data from approval of the information collection requirements onward. Service providers will still have an affirmative obligation to confirm compliance with all of the Commission's hearing aid-compatibility requirements, including the handset deployment benchmarks, and the Commission and public will have an opportunity to evaluate that statement against our revised web site deployment obligations. We therefore find it in the public interest to waive the annual reporting requirements for service providers.

50. We also provide for a transition for the revised web site deployment obligations. Thirty days following publication in the Federal Register of a notice that OMB has approved the information collection requirements related to the new web site posting rule, service providers will be required to post and/or retain the prescribed handset model information. This information will include posting all handsets currently offered and either posting or retaining information on those handsets offered starting January 1, 2018 and thereafter.

¹¹⁹ See *Notice*, 32 FCC Rcd at 7869, para. 18.

¹²⁰ See *id.* at 7869, para. 18.

¹²¹ See *id.*

¹²² 47 CFR § 1.3 (“Any provision of the rules may be waived by the Commission on its own motion or on petition if good cause is therefore shown.”); cf. *Amendment of the Commission's Rules Governing Hearing Aid-Compatible Mobile Handsets*, Order on Reconsideration and Erratum, 23 FCC Rcd 7249, 7250, paras. 3-5 (2018) (staying a rule deadline under similar circumstances).

¹²³ See *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir 1990) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159); *Rural Call Completion*, DA 18-411 at 1 (rel. Apr. 24, 2018) (granting a temporary waiver of the rural call completion deadline “to effectuate the Commission's intent to relieve covered providers of the need to submit the otherwise-required . . . quarterly filing.”).

51. Per the new 24-month handset history rule, an additional month of data must be retained each month until February 2020, at which time providers will no longer have an obligation to retain data from January 2018. Until the revised rule takes effect, providers must still meet current web site requirements and post an ongoing list of all hearing aid-compatible models that they currently offer, the ratings of those models, and an explanation of the rating system, as well as other information about handset functionality levels,¹²⁴ and update the web site information within thirty days of any relevant change.¹²⁵

52. We find that this web site transition period and the FCC Form 655 waiver affords service providers time to compile the requisite information and make the necessary changes to their web sites and internal compliance processes. This schedule appropriately balances service providers' need for time to collect the information that will be required with the public's interest in maintaining a steady flow of handset information. By having the revised certification and web site rule become effective at the same time, they work in tandem to ensure compliance with our wireless hearing aid-compatibility rules in 2018 and subsequent years.

IV. PROCEDURAL MATTERS

53. *Final Regulatory Flexibility Act.* As required by the Regulatory Flexibility Act of 1980 ("RFA"),¹²⁶ the Commission has prepared a Final Regulatory Flexibility Analysis ("FRFA") relating to this Report and Order. The FRFA is set forth in Appendix C.

54. *Paperwork Reduction Act.* The requirements in revised Sections 20.19(e), (h) and (i) constitute new information collections subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13, and the requirements in revised section 90.175(b) constitutes a modified information collection. They will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new information collection requirements contained in this proceeding. This document will be submitted to OMB for review under section 3507(d) of the PRA. In addition, we note that, pursuant to the Small Business Paperwork Relief Act of 2002, we previously sought, but did not receive, specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees. We describe impacts that might affect small businesses, which includes more businesses with fewer than 25 employees, in the Final Regulatory Flexibility Analysis in Appendix C.

55. *Congressional Review Act.* The Commission will include a copy of this Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

56. *Accessible Formats.* People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY), or 844-432-2275 (videophone).

57. *Further Information.* For further information regarding the Report and Order contact Weiren Wang, Wireless Telecommunications Bureau, (202) 418-7275, e-mail Weiren.Wang@fcc.gov, and Michael Rowan, Wireless Telecommunications Bureau, (202) 418-1883, e-mail Michael.Rowan@fcc.gov.

¹²⁴ 47 CFR § 20.19(h).

¹²⁵ 2008 Report and Order, 23 FCC Rcd at 3450, para. 112.

¹²⁶ *See* 5 U.S.C. § 604. The RFA, *see* 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA"), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996). The SBREFA was enacted as Title II of the Contract with America Advancement Act of 1996 (CWAAA).

V. ORDERING CLAUSES

58. Accordingly, IT IS ORDERED, pursuant to Sections 4(i), 303(r), and 710 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and 610, this Report and Order IS HEREBY ADOPTED.

59. IT IS FURTHER ORDERED that Part 20 of the Commission's rules IS AMENDED as set forth in Appendix B.

60. IT IS FURTHER ORDERED that the amendments of the Commission's rules as set forth in Appendix B ARE ADOPTED, effective thirty days from the date of publication in the Federal Register Sections 20.19 (e), (h) and (i) contain new or modified information collection requirements that require review by the OMB under the PRA. The Commission directs the Bureaus to announce the effective date of those information collections in a document published in the Federal Register after the Commission receives OMB approval.

61. IT IS FURTHER ORDERED that, pursuant to the authority of section 4(i) of the Communications Act, as amended, 47 U.S.C. § 154(i), and section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, the requirements of section 20.19(i) of the Commission's rules, 47 CFR § 20.19(i), ARE WAIVED to the extent described herein.

62. IT IS FURTHER ORDERED that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the SBA.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A**Parties Filing Comments****Comments**

AT&T

Blooston Rural Carriers

CTIA and Competitive Carriers Association (collectively, CTIA/CCA)

Hearing Industries Association (HIA)

Hearing Loss Association of America (HLAA), Telecommunications for the Deaf and Hard of Hearing, Inc., the Deaf and Hard of Hearing Consumer Advocacy Network, and the National Association of the Deaf (collectively, Consumer Groups), and the Deaf/Hard of Hearing Technology RERC (the Gallaudet RERC) (collectively, HLAA *et al.*)

Rural Wireless Association, Inc. (RWA)

Reply Comments

CTIA/CCA

Blooston Rural Carriers

Bluegrass Cellular, Inc. and its affiliates, Kentucky RSA #3 Cellular General Partnership, Kentucky RSA 4 Cellular General Partnership, Cumberland Cellular Partnership and Bluegrass Wireless LLC (collectively, Bluegrass Cellular)

HLAA *et al.*,

East Kentucky Network, LLC d/b/a Appalachian Wireless (Appalachian Wireless)

PTI Pacifica Inc. dba IT&E (PTI)

T-Mobile USA, Inc. (T-Mobile)

APPENDIX B
Final Rules

Part 20 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 20 – COMMERCIAL MOBILE RADIO SERVICES

1. The authority citation for Part 20 continues to read as follows:

AUTHORITY: 47 U.S.C. 151, 152(a), 154(i), 157, 160, 201, 214, 222, 251(e) 301, 302, 303, 303(b), 303(r), 307(a), 309, 309(j)(3), 310, 316, 316(a), 332, 610, 615, 615a, 615b, 615c, unless otherwise noted.

Amend section 20.19 by revising paragraphs (c), (d), (e), (h) and (i) to read as follows:

§ 20.19 Hearing aid-compatible mobile handsets.

* * * * *

(c) * * *

(4) * * *

(ii) *Offering models with differing levels of functionality.* Each service provider must offer its customers a range of hearing aid-compatible models with differing levels of functionality (e.g., operating capabilities, features offered, prices). Each provider may determine the criteria for determining these differing levels of functionality.

(d) * * *

(4) * * *

(ii) Each service provider must offer its customers a range of hearing aid-compatible models with differing levels of functionality (e.g., operating capabilities, features offered, prices). Each provider may determine the criteria for determining these differing levels of functionality.

(e) * * *

(1)(i) Manufacturers or service providers that offer two or fewer digital wireless handsets in an air interface in the United States are exempt from the requirements of this section in connection with that air interface, except with regard to the reporting and certification requirements in paragraph (i) of this section. Service providers that obtain handsets only from manufacturers that offer two or fewer digital wireless handset models in an air interface in the United States are likewise exempt from the requirements of this section other than paragraph (i) of this section in connection with that air interface.

* * *

(h) *Web site and record retention requirements.*

(1) Each manufacturer and service provider that operates a publicly accessible web site must make available on its web site a list of all hearing aid-compatible models currently offered, the ratings of those models, and an explanation of the rating system. Each service provider must also specify on its Web site, based on the levels of functionality and rating that the service provider has defined, the level that each hearing aid-compatible model falls under as well as an explanation of how the functionality of the handsets varies at the different levels. Each service provider must also include on its web site: a list of

all non-hearing aid-compatible models currently offered, including the level of functionality that each of those models falls under. Each service provider must also include the marketing model name/number(s) and FCC ID number of each hearing aid-compatible and non-hearing aid-compatible model currently offered.

(2) Service providers subject to this section must either maintain on their web site either:

(i) a link to a third-party website with information regarding current and historical information regarding hearing aid-compatible and non-hearing aid compatible handsets; or

(ii) a clearly marked list of hearing aid-compatible handsets that are no longer offered if the calendar month/year that model was last offered is within 24 months of the current calendar month/year and was last offered in January 2018 or later.

(iii) If the Wireless Telecommunications Bureau determines that the third-party website is not sufficiently updated or is otherwise no longer consistent with the purposes of the hearing aid-compatibility rules, it may select another web site or require carriers to comply with (2)(ii) above.

(3) The information on the web site must be updated within 30 days of any relevant changes.

(4) Service providers subject to this section must maintain internal records including the ratings, if applicable, of all hearing aid-compatible and non-hearing aid-compatible models no longer offered (if the calendar month/year that model was last offered is within 24 months of the current calendar month/year and was last offered in January 2018 or later); the calendar month/year each currently offered hearing aid-compatible and non-hearing aid-compatible model was first offered; for models no longer offered (if the calendar month/year that model was last offered is within 24 months of the current calendar month/year), the calendar months and years each hearing aid-compatible and non-hearing aid-compatible model was first and last offered; and the marketing model name/number(s) and FCC ID number of each hearing aid-compatible and non-hearing aid-compatible model no longer offered (if the calendar month/year that model was last offered is within 24 months of the current calendar month/year and was last offered in January 2018 or later).

(i) *Reporting and certification requirements—(1) Reporting and certification dates.*

Manufacturers shall submit reports on efforts toward compliance with the requirements of this section on an annual basis on July 15. Service providers shall submit certifications on their compliance with the requirements of this section by January 15 of each year. Information in each report and certification must be up-to-date as of the last day of the calendar month preceding the due date of each report and certification.

(2) * * *

(3) *Content of service provider certifications.* Certifications filed by service providers must include:

(i) the name of the signing officer and contact information;

(ii) the companie(s) covered by the certification;

(iii) the FCC FRN;

(iv) if the service provider is subject to paragraph (h) of this section, the web site address of the page(s) containing the required information regarding handset models;

(v) the percentage of handsets offered that are hearing aid-compatible. Providers will derive this percentage by determining the number of hearing aid-compatible handsets sold across all air interfaces during the year divided by the total number of handsets sold during the year; and

(vi) the following language:

As an officer of a wireless service provider covered by the wireless hearing aid compatibility provisions of the Federal Communications Commission's rules, I certify that I have personal knowledge that the provider was [(in full compliance)/(not in full compliance)] [choose one] at all times during the applicable time period with the Commission's wireless hearing aid compatibility deployment benchmarks and all other relevant wireless hearing aid compatibility requirements.

The company represents and warrants, and I certify by this declaration under penalty of perjury pursuant to 47 CFR § 1.16 that the above certification is consistent with 47 CFR § 1.17, which requires truthful and accurate statements to the Commission. The company also acknowledges that false statements and misrepresentations to the Commission are punishable under Title 18 of the U.S. Code and may subject it to enforcement action pursuant to Sections 501 and 503 of the Act;

(vii) if the company selected "not in full compliance," an explanation of which hearing aid compatibility requirements the wireless service provider is not in compliance with and when non-compliance began and (if applicable) ended with respect to each requirement.

(4) *Format.* The Wireless Telecommunications Bureau is delegated authority to approve or prescribe formats and methods for submission of the reports and certifications required by this section. Any format that the Bureau may approve or prescribe shall be made available on the Bureau's Web site.

* * * * *

APPENDIX C

Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking (NPRM), released in September 2017.² The Commission sought written public comment on the proposals in the NPRM, including comment on the IRFA. The comments received are addressed below in Section 2. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

A. Need for, and Objectives of, the Proposed Rules

2. In the *Report and Order*, the Commission modifies its wireless hearing aid compatibility rules, eliminates unnecessary and outdated reporting requirements, and improves its collection of information regarding the status of hearing aid-compatible handsets. The Commission finds that many of the benefits of annual status reporting by service providers have been realized and increasingly have become outweighed by the burdens that such information collection places on these entities. The Commission's new streamlined approach will continue to serve the underlying purposes of the Commission's annual reporting requirements without the burdens associated with that filing.

3. Specifically, the Commission waives the requirement for service providers to file the FCC Form 655 annual filing by January 15, 2019 and eliminates the requirement in subsequent years. Under the Commission's new approach, only wireless device manufacturers will continue to be obligated to file FCC Form 655 by July 15 of each calendar year. Next, the Commission amends its existing web site requirements to ensure that consumers have access to the most up-to-date and useful information about the hearing aid compatibility of the handset models offered by service providers, and the Commission has sufficient information to verify compliance with the benchmark requirements. Only the most critical pieces of information currently submitted as part of the FCC Form 655 must continue to be made available on service providers' web sites. The Commission will also require the service providers to file a simple, new annual certification to enhance the ability of the Commission to enforce the hearing aid compatibility rules. The Commission also requires service providers to retain data regarding handsets no longer sold to verify compliance with our rules.

4. This new light-touch regulatory approach will enable the Commission to fulfill its responsibilities and objectives for wireless hearing aid compatibility. By requiring all service providers to post consistent content and information on their publicly available web sites, the Commission ensures that consumers can access the information they need about the hearing aid compatibility of the handsets being offered. This web site information will also allow the Commission to evaluate compliance with the relevant benchmarks and other hearing aid compatibility provisions in its rules. In addition to being able to verify compliance with its rules when necessary, the Commission will also be able to monitor the overall status of access to hearing aid-compatible handsets. The Commission's ability to verify and enforce compliance and monitor industry developments will also be served by requiring all service providers to annually file a certification statement that they are fully in compliance with the Commission's hearing aid compatibility provisions.

¹ See 5 U.S.C. § 603. The RFA has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). See Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

² *Revisions to Reporting Requirements Governing Hearing Aid-Compatible Mobile Handsets*, Notice of Proposed Rulemaking, 31 FCC Rcd 7863 (2017).

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

5. There were no comments filed that specifically addressed the rules and policies proposed in the IRFA.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

6. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments.³

7. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

D. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

8. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein.⁴ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”⁵ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.⁶ A “small business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.⁷

9. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three broad groups of small entities that could be directly affected herein.⁸ First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA’s Office of Advocacy, in general a small business is an independent business having fewer than 500 employees.⁹ These types of small businesses represent 99.9% of all businesses in the United States which translates to 28.8 million businesses.¹⁰

³ 5 U.S.C. § 604(a)(3).

⁴ See 5 U.S.C. § 604(a)(3).

⁵ 5 U.S.C. § 601(6).

⁶ 5 U.S.C. § 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

⁷ 15 U.S.C. § 632.

⁸ See 5 U.S.C. § 601(3)-(6).

⁹ See SBA, Office of Advocacy, “Frequently Asked Questions, Question 1—What is a small business?” https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2016_WEB.pdf (June 2016).

¹⁰ See SBA, Office of Advocacy, “Frequently Asked Questions, Question 2- How many small businesses are there in the U.S.?” https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2016_WEB.pdf (June 2016).

10. Next, the type of small entity described as a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”¹¹ Nationwide, as of August 2016, there were approximately 356,494 small organizations based on registration and tax data filed by nonprofits with the Internal Revenue Service (IRS).¹²

11. Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”¹³ U.S. Census Bureau data from the 2012 Census of Governments¹⁴ indicate that there were 90,056 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.¹⁵ Of this number there were 37,132 General purpose governments (county¹⁶, municipal and town or township¹⁷) with populations of less than 50,000 and 12,184 Special purpose governments (independent school districts¹⁸ and special districts¹⁹) with populations of less than 50,000. The 2012 U.S. Census Bureau data for most types of governments in the local government category show that the majority of these governments have

¹¹ 5 U.S.C. § 601(4).

¹² Data from the Urban Institute, National Center for Charitable Statistics (NCCS) reporting on nonprofit organizations registered with the IRS was used to estimate the number of small organizations. Reports generated using the NCCS online database indicated that as of August 2016 there were 356,494 registered nonprofits with total revenues of less than \$100,000. Of this number, 326,897 entities filed tax returns with 65,113 registered nonprofits reporting total revenues of \$50,000 or less on the IRS Form 990-N for Small Exempt Organizations and 261,784 nonprofits reporting total revenues of \$100,000 or less on some other version of the IRS Form 990 within 24 months of the August 2016 data release date. See <http://nccs.urban.org/sites/all/nccs-archive/html/tablewiz/tw.php> where the report showing this data can be generated by selecting the following data fields: Report: “The Number and Finances of All Registered 501(c) Nonprofits”; Show: “Registered Nonprofits”; By: “Total Revenue Level (years 1995, Aug to 2016, Aug)”; and For: “2016, Aug” then selecting “Show Results”.

¹³ 5 U.S.C. § 601(5).

¹⁴ See 13 U.S.C. § 161. The Census of Government is conducted every five (5) years compiling data for years ending with “2” and “7”. See also Program Description Census of Government <https://factfinder.census.gov/faces/affhelp/jsf/pages/metadata.xhtml?lang=en&type=program&id=program.en.COG>.

¹⁵ See U.S. Census Bureau, 2012 Census of Governments, Local Governments by Type and State: 2012 - United States-States. <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG02.US01>. Local governmental jurisdictions are classified in two categories - General purpose governments (county, municipal and town or township) and Special purpose governments (special districts and independent school districts).

¹⁶ See U.S. Census Bureau, 2012 Census of Governments, County Governments by Population-Size Group and State: 2012 - United States-States. <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG06.US01>. There were 2,114 county governments with populations less than 50,000.

¹⁷ See U.S. Census Bureau, 2012 Census of Governments, Subcounty General-Purpose Governments by Population-Size Group and State: 2012 - United States—States. <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG07.US01>. There were 18,811 municipal and 16,207 town and township governments with populations less than 50,000.

¹⁸ See U.S. Census Bureau, 2012 Census of Governments, Elementary and Secondary School Systems by Enrollment-Size Group and State: 2012 - United States-States. <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG11.US01>. There were 12,184 independent school districts with enrollment populations less than 50,000.

¹⁹ See U.S. Census Bureau, 2012 Census of Governments, Special District Governments by Function and State: 2012 - United States-States. <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG09.US01>. The U.S. Census Bureau data did not provide a population breakout for special district governments.

populations of less than 50,000.²⁰ Based on this data we estimate that at least 49,316 local government jurisdictions fall in the category of “small governmental jurisdictions.”²¹

12. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment, including unlicensed devices. Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, radio and television studio and broadcasting equipment.²² The Small Business Administration has established a size standard for this industry of 750 employees or less.²³ U.S. Census data for 2012, shows that 841 establishments operated in this industry in that year. Of that number, 828 establishments operated with fewer than 1,000 employees, 7 establishments operated with between 1,000 and 2,499 employees and 6 establishments operated with 2,500 or more employees.²⁴ Based on this data, we conclude that a majority of manufacturers in this industry is small.

13. *Part 15 Handset Manufacturers.* The Commission has not developed a definition of small entities applicable to unlicensed communications handset manufacturers. The SBA category of Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing is the closest NAICS code category for Part 15 Handset Manufacturers. The Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing industry is comprised of establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.”²⁵ The SBA has developed a small business size standard for Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, as firms having 750 or fewer employees.²⁶ U.S. Census data for 2012, shows that 841 establishments operated in this industry in that year. Of that number, 828

²⁰ See U.S. Census Bureau, 2012 Census of Governments, County Governments by Population-Size Group and State: 2012 - United States-States - <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG06.US01>; Subcounty General-Purpose Governments by Population-Size Group and State: 2012 - United States–States - <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG07.US01>; and Elementary and Secondary School Systems by Enrollment-Size Group and State: 2012 - United States-States. <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG11.US01>. While U.S. Census Bureau data did not provide a population breakout for special district governments, if the population of less than 50,000 for this category of local government is consistent with the other types of local governments the majority of the 38, 266 special district governments have populations of less than 50,000.

²¹ *Id.*

²² See U.S. Census Bureau, North American Industry Classification System (NAICS): Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

²³ 13 CFR § 121.201, NAICS Code 334220.

²⁴ U.S. Census Bureau, American FactFinder; Industry Statistics for Subsectors and Industries by Employment Size: 2012, http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_31SG2&prodType=table.

²⁵ U.S. Census Bureau, 2002 NAICS Definitions, 334220 Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, <http://www.census.gov/epcd/naics02/def/NDEF334.HTM#N3342>.

²⁶ 13 CFR § 121.201, NAICS Code 334220.

establishments operated with fewer than 1,000 employees, 7 establishments operated with between 1,000 and 2,499 employees and 6 establishments operated with 2,500 or more employees.²⁷ Thus, under this size standard, the majority of firms can be considered small.

14. *Wireless Telecommunications Carriers (except Satellite)*. This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular phone services, paging services, wireless Internet access, and wireless video services.²⁸ The appropriate size standard under SBA rules is for the category Wireless Telecommunications Carriers (except Satellite) is that a business is small if it has 1,500 or fewer employees.²⁹ For this industry, U.S. Census data for 2012 shows that there were 967 firms that operated for the entire year.³⁰ Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more.³¹ Thus under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities.

15. The Commission's own data—available in its Universal Licensing System—indicate that, as of October 25, 2016, there are 280 Cellular licensees that will be affected by our actions here.³² The Commission does not know how many of these licensees are small, as the Commission does not collect that information for these types of entities. Similarly, according to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) Telephony services.³³ Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees.³⁴ Thus, using available data, we estimate that the majority of wireless firms can be considered small.

16. Also included in this classification is Personal Radio Services, which provide short-range, low power radio for personal communications, radio signaling, and business communications not provided for in other services. The Personal Radio Services include spectrum licensed under Part 95 of

²⁷ U.S. Census Bureau, American FactFinder; Industry Statistics for Subsectors and Industries by Employment Size: 2012, http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_31SG2&prodType=table.

²⁸ U.S. Census Bureau, 2012 NAICS Definitions: 517210 Wireless Telecommunications Carriers (except Satellite), <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517210&search=2012>.

²⁹ 13 CFR § 121.201, NAICS Code 517210.

³⁰ U.S. Census Bureau, American FactFinder; Industry Statistics for Subsectors and Industries by Employment Size: 2012, http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.

³¹ *Id.* Available census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “1000 employees or more.”

³² See Federal Communications Commission, Wireless Telecommunications, <http://wireless.fcc.gov/uls>. For the purposes of this IRFA, consistent with Commission practice for wireless services, the Commission estimates the number of licensees based on the number of unique FCC Registration Numbers.

³³ See Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, Trends in Telephone Service at Tbl. 5.3 (Sept. 2010), https://apps.fcc.gov/edocs_public/attachmatch/DOC-301823A1.pdf.

³⁴ See *id.*

the Commission's rules. These services include Citizen Band Radio Service (“CB”), General Mobile Radio Service (“GMRS”), Radio Control Radio Service (“R/C”), Family Radio Service (“FRS”), Wireless Medical Telemetry Service (“WMTS”), Medical Implant Communications Service (“MICS”), Low Power Radio Service (“LPRS”), and Multi-Use Radio Service (“MURS”). We note that many of the licensees in these services are individuals, and thus are not small entities. In addition, due to the mostly unlicensed and shared nature of the spectrum utilized in many of these services, the Commission lacks direct information upon which to base a more specific estimation of the number of small entities under an SBA definition that might be directly affected by our action.

17. *Wireless Resellers.* The SBA has not developed a small business size standard specifically for Wireless Resellers. The SBA category of Telecommunications Resellers is the closest NAICS code category for wireless resellers. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry.³⁵ Under the SBA’s size standard, such a business is small if it has 1,500 or fewer employees.³⁶ U.S. Census data for 2012 shows that 1,341 firms provided resale services during that year. Of that number, all operated with fewer than 1,000 employees.³⁷ Thus, under this category and the associated small business size standard, the majority of these resellers can be considered small entities.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

18. In the *Report and Order*, the Commission is eliminating a substantial reporting requirement that all service providers – large and small – argue is burdensome and unnecessary. The Commission finds that as the percentage of hearing aid-compatible handsets offered by service providers increases, the burden of the annual reporting requirement outweighs its usefulness as a monitoring and compliance tool. The Commission has determined that annual hearing aid compatibility status reports show a near universal compliance with the Commission’s hearing aid compatibility requirements. Further, the Commission finds that the information that service providers submit as part of their FCC Form 655 filing requirement is duplicative of information that wireless device manufacturers are already providing and will continue to provide to the Commission in their annual filings. By eliminating the FCC Form 655 filing requirement for all service providers, the Commission eliminates an unnecessary and outdated reporting requirement and streamlines its collection of information regarding the status of hearing aid-compatible handsets. In addition, the Commission finds that the elimination of the reporting requirement will allow service providers to utilize the cost savings in time and money to maintain and improve their web sites and other outreach materials that are more readily accessible to consumers.

19. While the Commission is eliminating a reporting requirement that all service providers argue should be eliminated, the Commission’s new light-touch regulatory approach will continue to allow it to fulfill its responsibilities and objectives for wireless hearing aid compatibility. Service providers will continue to have to meet relevant hearing aid compatibility handset benchmarks and comply with product labeling and disclosure requirements. Further, service providers will have to continue to post certain

³⁵ U.S. Census Bureau, 2012 NAICS Definitions 517911 Telecommunications Resellers, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=517911&search=2012+NAICS+Search&search=2012>.

³⁶ 13 CFR § 121.201, NAICS Code 517911.

³⁷ U.S. Census Bureau, 2012 Economic Census, Subject Series: Information, “Establishment and Firm Size,” NAICS Code 517911.

information about their handsets on their publicly accessible web sites along with certain information that they previously included as part of their FCC Form 655 annual reporting requirement. The Commission is not prescribing a standard template for posting this information on their web sites and the Commission finds that service providers may rely on information that device manufacturers included in their FCC Form 655 filings as a safe harbor. The record in this proceeding shows that some service providers already post some of this information to their web sites and both large and small service providers support the use of web posting as an alternative to the FCC Form 655 filing requirement. Service providers will also be required to retain information regarding past handsets sold.

20. In addition to web posting and data retention requirements, the Commission is requiring all service providers to certify once a year that they are in full compliance with the Commission's hearing aid compatibility provisions and if they are not in full compliance, a requirement to explain why. This requirement includes a short statement and information about who is making the certification. Commenters in the proceeding supported replacing the annual filing requirement with a certification requirement. The Commission does not anticipate that it will be difficult or burdensome for service providers to gather and post information on their web site or to make the required certification. While the Commission is eliminating FCC Form 655 reporting requirements for all service providers, the Commission is not eliminating the requirement that they continue to meet applicable deployment benchmarks and maintain compliance with all other hearing aid compatibility provisions. Therefore, all service providers would likely need to maintain information demonstrating compliance with the rules in the normal course of business and posting this information to their web sites and making the required certification should only impose a minimal additional incremental burden and, and, be substantially less than the burden associated with filing FCC Form 655 each year.

E. Steps Proposed to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

21. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.”³⁸

22. The Commission considered but rejected more burdensome compliance requirements. For instance, the Commission considered retaining but streamlining the information that is collected in the FCC Form 655. The Commission found that this approach would only result in a minimal reduction of regulatory burdens for service providers. Given the passage of time and the current state of availability of information about handset hearing aid compatibility, the burden of collecting the information necessary to fill out the form and file it, the Commission found that even in a streamlined format the benefit of filing the form was not outweighed by any benefit to consumers or the Commission. The Commission determined that streamlining the form will only result in a minimal reduction of regulatory burden with no corresponding benefit to the public interest. As a result, the Commission rejected the solution of streamlining the form and continuing the requirement that service providers file the form on an annual basis.

23. The Commission also chose to make the elimination of the FCC Form 655 reporting requirement for service providers effective 30 days after publication of the rule in the Federal Register. Therefore, service providers will benefit from the Commission's new rules almost immediately. while the

³⁸ 5 U.S.C. § 603(c)(1)-(4).

new web site posting and certification requirements will be effective 30 days following notice of OMB approval of the relevant information collection requirements. This approach affords service providers sufficient time to make any necessary preparations required by the new certification approach.

Report to Congress

²⁴ The Commission will send a copy of the *Report and Order*, including this FRFA, in a report to Congress pursuant to the Congressional Review Act.³⁹ In addition, the Commission will send a copy of the *Report and Order*, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *Report and Order* and FRFA (or summaries thereof) also will be published in the *Federal Register*.⁴⁰

³⁹ 5 U.S.C. § 801(a)(1)(A).

⁴⁰ 5 U.S.C. § 604(b).