

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

In the Matter of)	
)	
Amendment of the Commission’s Rules)	WT Docket No. 07-250
Governing Hearing Aid-Compatible Mobile)	
Handsets)	
)	
)	
Petition of American National Standards Institute)	
Accredited Standards Committee C63 (EMC))	
ANSI ASC C63®)	

FIRST REPORT AND ORDER

Adopted: February 26, 2008

Released: February 28, 2008

By the Commission: Commissioners Copps, Adelstein, Tate and McDowell issuing separate statements:

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I. INTRODUCTION

1. In this Report and Order, we revise the hearing aid compatibility requirements applicable to providers of public mobile services and manufacturers of digital wireless handsets used in the delivery of those services. Specifically, we adopt benchmark requirements for future deployment of hearing aid-compatible handsets, and related requirements, based on the proposals in a Joint Consensus Plan developed by an Alliance for Telecommunications Industry Solutions (ATIS) working group that included Tier I carriers,¹ handset manufacturers, and several organizations representing the interests of consumers with hearing loss.² We also adopt certain other rule changes to better promote the accessibility of hearing aid-compatible handsets to deaf and hard of hearing consumers. We intend to address other issues raised in the *Notice* in this proceeding but not addressed here in a subsequent report and order.³

2. As a preliminary matter, we take this opportunity to express our deep appreciation for the efforts of the many parties involved in the development of the Joint Consensus Plan, whose recommendations we substantially adopt today. The broad support for the Plan among both industry and consumer advocacy groups, as reflected in the record of this proceeding, testifies to the success of the proffered proposals in meeting the goals of the Hearing Aid Compatibility Act, and in addressing the concerns of manufacturers and service providers while still advancing the interests of consumers with hearing loss in having greater access to advanced digital wireless communications. We strongly encourage the wireless industry, including new entrants, and consumer groups to continue their collaborative efforts in order to ensure the successful implementation of the measures adopted today.

3. The changes we adopt to the handset deployment requirements include (1) modifying the requirement, presently stayed until April 18, 2008, that manufacturers and service providers ensure that 50 percent of their digital wireless handset models meet established standards for radio frequency (RF) interference reduction, and (2) increasing the obligation on manufacturers and service providers to offer handset models that meet an established standard for inductive coupling capability. We adopt a handset

¹ Tier I carriers are Commercial Mobile Radio Service (CMRS) providers with nationwide footprints. See Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems; Phase II Compliance Deadlines for Non-Nationwide Carriers, CC Docket No. 94-102, *Order to Stay*, 17 FCC Rcd 14841, 14843 ¶ 7 (2002). In contrast, Tier II carriers are non-nationwide mid-sized CMRS providers, specifically providers with greater than 500,000 subscribers as of the end of 2001, while Tier III carriers are non-nationwide small CMRS providers with no more than 500,000 subscribers as of the end of 2001. See *id.* at 14846-48 ¶¶ 19-24.

² See Supplemental Comments of ATIS in WT Docket No. 06-203 (filed June 25, 2007) (Joint Consensus Plan).

³ See Amendment of the Commission’s Rules Governing Hearing Aid Compatible Mobile Handsets, Section 68.4(a) of the Commission’s Rules Governing Hearing Aid Compatible Telephones, and Petition of American National Standards Institute Accredited Standards Committee C63 (EMC) ANSI ASC C63®, WT Dockets No. 01-309 and 07-250, *Second Report and Order and Notice of Proposed Rulemaking*, 22 FCC Rcd 19670 (2007) (*Second Report and Order and Notice*, respectively).

“refresh” requirement for manufacturers, obligating manufacturers to ensure annually that a certain percentage of their hearing aid-compatible handset models are newly issued that year, and we require service providers to offer hearing aid-compatible handsets with different levels of functionality.

4. In addition to these modifications to the handset deployment requirements, we adopt an updated version of the technical standard for measuring hearing aid compatibility in both acoustic coupling and inductive coupling modes, provide a phase-in period for its application as the exclusive standard, and create a streamlined mechanism for adopting future revisions of the standard. Because we find that the established technical standard, including the most recent version of that standard adopted today, provides tests for measuring hearing aid compatibility for wireless services operating over a broader range of frequencies than is currently subject to hearing aid compatibility requirements, we extend the scope of these requirements to the full range of frequencies covered by the established standard. To assist us in monitoring the implementation of the new requirements and to provide information to the public, we also require manufacturers and service providers to continue to file annual reports on the status of their compliance with these requirements, and we require manufacturers and service providers to publish up-to-date information on their websites regarding their hearing aid-compatible handset models.

5. We anticipate that these inter-related changes, taken together and largely supported by manufacturers, service providers, and consumers with hearing loss, will further “ensure reasonable access to telephone service by persons with impaired hearing” as required by the Communications Act.⁴ The increased requirements to offer handsets with inductive coupling capability will particularly benefit the most disadvantaged wireless users in the deaf and hard of hearing community, who are more likely to rely on telecoil-equipped hearing aids. We also anticipate that the requirements that manufacturers refresh their products annually and that service providers offer handset models at differing functionality levels will help to ensure that consumers with hearing loss have a variety of handsets available to them, including handsets with innovative features, a goal that we have sought to encourage since the release of the 2003 *Hearing Aid Compatibility Order*.⁵ At the same time, we conclude that the level of obligations and the flexibility provided in the new benchmarks satisfy our obligation to “ensure that regulations adopted to implement [the Hearing Aid Compatibility Act] encourage the use of currently available technology and do not discourage or impair the development of improved technology.”⁶ In particular, these changes help to resolve the technical issues that have been raised regarding the difficulty of producing a wide variety of Global System for Mobile Communications (GSM) handsets that both meet the requisite M3 (or higher) rating for acoustic coupling capability and include certain popular features, and thereby ensure that the impact of the rules remains as technology-impartial as possible while also ensuring the availability of hearing aid-compatible handsets to consumers.

II. EXECUTIVE SUMMARY

6. Under the Commission’s wireless hearing aid compatibility requirements, codified at Section 20.19 of the rules, mobile service providers and handset manufacturers must offer a certain number of digital wireless handset models that are compatible with the use of hearing aids through reductions in the RF interference caused by the handsets and through an internal capacity for inductive coupling with a telecoil. The rules also specify American National Standards Institute (ANSI) C63.19 as the standard for measuring hearing aid compatibility, specifically providing that to be hearing aid-compatible, a handset

⁴ 47 U.S.C. § 610(a).

⁵ See Section 68.4(a) of the Commission’s Rules Governing Hearing Aid-Compatible Telephones, WT Docket 01-309, *Report and Order*, 18 FCC Rcd 16753, 16781 ¶ 70 (2003) (*Hearing Aid Compatibility Order*).

⁶ 47 U.S.C. § 610(e).

must meet, for reduced RF interference, a U3/M3 rating under the ANSI C63.19 standard, and for inductive coupling capability, a U3T/T3 rating.⁷ In addition, the rules impose product labeling requirements, as well as certain obligations regarding outreach and reporting.

7. When the Commission established these requirements in 2003, it also directed Commission staff to deliver a report after three years assessing the impact of the requirements in achieving greater compatibility between hearing aids and digital wireless phones.⁸ It further indicated that this staff report would form the basis of a rulemaking proceeding to determine whether to modify the hearing aid compatibility requirements, consistent with our statutory obligation to “periodically review the regulations established pursuant to [the Hearing Aid Compatibility Act].”⁹ On October 5, 2007, pursuant to the Commission’s directive, the Wireless Telecommunications Bureau (WTB) released the *Staff Report*, reviewing the current status of implementation of the hearing aid compatibility requirements and offering recommendations for further action to facilitate access to digital wireless services by the deaf and hard of hearing.¹⁰ Many of these recommendations drew upon the proposals contained in the Joint Consensus Plan.¹¹

8. In the *Notice* in this proceeding, adopted on November 5, 2007, we tentatively concluded, based on recommendations in the *Staff Report*, to adopt many of the recommendations in the Joint Consensus Plan, and sought comment on these tentative conclusions and related issues. In this regard, we stayed until April 18, 2008, the enforcement of certain benchmarks that had been scheduled to become effective February 18, 2008, pending our action in this proceeding.¹² We also requested comment on various other issues relating to our hearing aid compatibility rules, including such forward-looking issues as the application of hearing aid compatibility obligations in the context of emerging technologies such as Wi-Fi¹³ and in relation to open access platforms.¹⁴ In this Report and Order, we address issues raised in the Joint Consensus Plan and other related matters.

9. We begin by adopting a series of rule changes - many proposed in the Joint Consensus Plan - regarding the handset deployment obligations of both manufacturers and service providers.¹⁵ As part of these rule changes, we significantly increase the future obligations of both manufacturers and mobile service providers to provide handset models that meet a T3 or higher rating for inductive coupling. We

⁷ The 2001 version of ANSI C63.19, which the Commission adopted in the *Hearing Aid Compatibility Order*, used a “U” nomenclature for RF interference reduction, and this nomenclature is referenced in Section 20.19 of the Commission’s rules. Subsequently, the 2006 version of this standard substituted the “M” nomenclature. The 2006 version of ANSI C63.19 substituted a “T” nomenclature for the “UT” terminology that was used in the 2001 version of the standard for inductive coupling capability.

⁸ See *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16782-83 ¶ 74.

⁹ *Id.* at 16783 ¶ 74. See 47 U.S.C. § 610(f).

¹⁰ See Section 68.4(a) of the Commission’s Rules Governing Hearing Aid-Compatible Telephones, WT Docket No. 01-309, WT Docket No. 06-203, *Report on the Status of Implementation of the Commission’s Hearing Aid Compatibility Requirements*, 22 FCC Rcd 17709 (WTB 2007) (*Staff Report*).

¹¹ See, e.g., Joint Consensus Plan at 4.

¹² *Notice*, 22 FCC Rcd at 19706 ¶ 98-99.

¹³ Wi-Fi (Wireless Fidelity) is a wireless local area network access protocol that is specified by the Institute of Electrical and Electronics Engineers (IEEE) 802.11 standard.

¹⁴ *Notice*, 22 FCC Rcd at 19702-06 ¶¶ 89-97.

¹⁵ See Joint Consensus Plan at 6-10.

also modify the requirements going forward to provide wireless handset models that meet an M3 or higher rating for RF interference reduction, establishing a one-third benchmark per air interface for manufacturers and requiring service providers to meet either a 50 percent benchmark or specific numerical targets over the next three years. To address concerns regarding the availability of hearing aid-compatible handsets to smaller service providers, we provide these entities with an additional three months to meet each of the handset deployment benchmarks. Further, to facilitate the continuing availability of a variety of hearing aid-compatible handset models, we impose a new “refresh” obligation on manufacturers, which will require them to ensure that a certain number of their hearing aid-compatible handset models are models newly offered that year. We impose a comparable new requirement on service providers, who will have to offer hearing aid-compatible handset models with differing levels of functionality.

10. We also address how we are applying hearing aid compatibility requirements to handsets that operate over multiple frequency bands and/or air interfaces. Specifically, we provide that, to be certified as hearing aid-compatible, handsets must meet hearing aid compatibility standards in all frequency bands and all air interfaces over which they operate and for which there are established technical standards for measuring hearing aid compatibility. At this time, we leave the record open for further submissions regarding whether a phone that operates in such bands or air interfaces as well as band or air interfaces for which no standards exist should be counted as hearing aid-compatible. However, because there are many Wi-Fi-capable handset models already being offered to consumers, and in order to provide certainty to manufacturers and service providers that are already offering Wi-Fi-capable multi-mode handsets, we will allow as an interim measure such handsets to be offered as hearing aid-compatible so long as they otherwise qualify as hearing aid-compatible under our rules and certain disclosures are made to consumers.

11. In addition to these changes to the deployment requirements, we adopt several rules regarding the technical standard for measuring hearing aid compatibility. In this regard, we adopt the most recent version of that standard approved by ANSI, ANSI C63.19-2007. To enable an efficient transition to the new standard, we provide a phase-in period through 2009 during which parties may rely on either the 2007 version of the standard or the previous 2006 version. We also create a streamlined mechanism through which WTB and the Office of Engineering and Technology (OET) may adopt future revisions that extend the standard to new bands or air interfaces, ensuring that the application of hearing aid compatibility requirements to these bands and air interfaces will not be unduly delayed once established technical standards are available.

12. In addition, we expand the scope of our hearing aid compatibility obligations to include covered services over all frequencies in the 800-950 MHz band and the 1.6-2.5 GHz band, given that the 2006 and 2007 versions of the ANSI C63.19 standard already provide tests for services that employ certain air interfaces over these frequencies. Thus, for example, our action today ensures that such services, when provided over the Advanced Wireless Services (AWS)-1 frequencies auctioned last year, will be subject to hearing aid compatibility obligations as of the effective date of these rules.

13. We also revise the reporting obligations of manufacturers and service providers. In particular, we extend annual reporting requirements for these entities on an open-ended basis, with the first of the new reports due January 15, 2009, and we amend the information that must be included in the reports. These amendments should render the reports much more useful to consumers who wish to know the compatibility ratings of different handset models that have been certified as hearing aid-compatible, as well as to service providers and Commission staff. To ensure the availability of such information on a more current basis to service providers and consumers wishing to offer or purchase hearing aid-compatible handsets, we require manufacturers and service providers to provide up-to-date information on their websites regarding their hearing aid-compatible handset models. We also require manufacturers and service providers to provide the Commission with a contact for accepting informal complaints

regarding compliance with our hearing aid compatibility rules, to be posted on our website. To further facilitate access to available information by consumers, we direct staff to consider and implement, if feasible, other improvements to our hearing aid compatibility complaint process and website. As a final measure, we commit to again review our hearing aid compatibility rules in 2010.

III. BACKGROUND

14. The Commission is required by law to ensure that persons with impaired hearing have reasonable access to telephone service.¹⁶ The Hearing Aid Compatibility Act of 1988 required all telephones manufactured or imported for use in the United States to meet established technical standards for hearing aid compatibility, with certain exceptions, among them an exception for telephones used with mobile wireless services.¹⁷ The statute required the Commission to revoke or limit the exemption if it determined that:

- such revocation or limitation is in the public interest;
- continuation of the exemption without such revocation or limitation would have an adverse effect on hearing-impaired individuals;
- compliance with the requirements adopted is technologically feasible for the telephones to which the exemption applies; and
- compliance with the requirements adopted would not increase costs to such an extent that the telephones to which the exemption applies could not be successfully marketed.¹⁸

15. In the *Hearing Aid Compatibility Order* adopted in 2003, the Commission found that the increasing reliance of consumers on digital mobile telephony, ANSI's establishment of a technical standard to measure compatibility, and technological advances which made compatibility more possible created a situation where the public interest required that the exemption be partially revoked. The Commission laid down requirements for manufacturers and service providers to offer appropriate numbers of hearing aid-compatible handset models to their customers.¹⁹ These requirements were later modified slightly in the *Hearing Aid Compatibility Reconsideration Order and Further Notice* adopted in 2005,²⁰ and reviewed but not changed in the *Second Report and Order* in November 2007.²¹

16. The Commission's requirements apply generally to providers of digital commercial mobile radio services (CMRS) "to the extent that they offer real-time, two-way switched voice or data service that is interconnected with the public switched network and utilizes an in-network switching facility that enables the provider to reuse frequencies and accomplish seamless hand-offs of subscriber calls," as well

¹⁶ See Pub. L. No. 100-394, 102 Stat. 976 (1988), codified at 47 U.S.C. § 610 (Hearing Aid Compatibility Act).

¹⁷ 47 U.S.C. § 610(b)(2)(A)(i). The statute references "public mobile service," which is defined to include certain services covered under Part 22 of our rules. 47 U.S.C. § 610(b)(4)(B); 47 C.F.R. § 68.3. In 1994, Congress amended Section 332 of the Communications Act, replacing the public mobile service and private radio service categories with commercial mobile [radio] services (CMRS) and private mobile [radio] service (PMRS). See *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16764-65 ¶ 26.

¹⁸ 47 U.S.C. § 610(b)(2)(C). In addition, the existence of an established, applicable technical standard is a statutory requirement for imposing hearing aid compatibility obligations. See 47 U.S.C. § 610(b)(1).

¹⁹ See generally *Hearing Aid Compatibility Order*, 18 FCC Rcd 16753.

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

²¹ *Second Report and Order*, 22 FCC Rcd at 19679 ¶ 22.

as to manufacturers of wireless phones used in the delivery of such services.²² Since 2003, Section 20.19 of the rules has subjected Broadband Personal Communications Services (PCS), Cellular Radiotelephone Service (cellular), and Specialized Mobile Radio (SMR) Services in the 800 MHz and 900 MHz bands to specific hearing aid compatibility requirements.²³ Last year, we adopted revisions to Section 20.19 that extend the hearing aid compatibility requirements to all providers of digital CMRS that meet the specified criteria and to manufacturers of handsets capable of providing such services, once applicable technical standards are established in the relevant bands in the future.²⁴ We also established a timetable for the development of the necessary technical standards for new services and frequency bands that have governing service rules in place and for incorporation of requirements based on those standards into our rules.²⁵

17. *Current Hearing Aid Compatibility Requirements.* The Commission's hearing aid compatibility requirements address hearing aids that operate in either of two modes – acoustic coupling or inductive coupling. Hearing aids operating in acoustic coupling mode receive through a microphone and then amplify all sounds surrounding the user, including both desired sounds, such as a telephone's audio signal, and unwanted ambient noise.²⁶ Hearing aids operating in inductive coupling mode turn off the microphone to avoid amplifying unwanted ambient noise, instead using a telecoil to receive only audio signal-based magnetic fields generated by inductive coupling-capable telephones.²⁷

18. The rules codify the ANSI C63.19 performance levels as the applicable technical standard for hearing aid compatibility.²⁸ The Commission staff, pursuant to delegated authority, has permitted applicants for equipment certification to rely on either the 2001, 2005, or 2006 version of the ANSI

²² 47 C.F.R. § 20.19(a); *see also* In the Matter of Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, WT Docket 06-150, *Report and Order and Further Notice of Proposed Rulemaking*, 22 FCC Rcd 8064, 8117-18 ¶¶ 142 (2007) (*700 MHz Service Report and Order*). CMRS is defined as mobile service that is provided for profit, interconnected, and available to the public. 47 C.F.R. § 20.3; *see* 47 U.S.C. § 332(d)(1).

²³ *See* 47 C.F.R. § 20.19(b); *700 MHz Service Report and Order*, 22 FCC Rcd at 8119 ¶¶ 145-147.

²⁴ *700 MHz Service Report and Order*, 22 FCC Rcd at 8117-20 ¶¶ 142-150. The *700 MHz Service Report and Order* specifically identified, as examples of CMRS providers to which these requirements would apply, providers of such service in the 700 MHz, Advanced Wireless Services, and Broadband Radio Service/Educational Broadband Service bands.

²⁵ *Id.* at 8119-20 ¶¶ 148-150. Specifically, we established a 24-month timetable for interested stakeholders to develop standards in these bands. *See id.* We stated that once the appropriate technical standards are established, the Commission would initiate a further proceeding to establish a specific timetable for deployment of hearing aid-compatible handsets for services in the relevant bands. *Id.* at 8119 ¶ 148.

²⁶ The *Hearing Aid Compatibility Order* described acoustic coupling as follows:

In acoustic coupling mode, the microphone picks up surrounding sounds, desired and undesired, and converts them into electrical signals. The electrical signals are amplified as needed and then converted back into sound by the hearing aid speaker.

Hearing Aid Compatibility Order, 18 FCC Rcd at 16763 ¶ 22.

²⁷ In telecoil mode, with the microphone turned off, the telecoil picks up the audio signal-based magnetic field generated by the voice coil of a dynamic speaker in hearing aid-compatible telephones, audio loop systems, or powered neck loops. The hearing aid converts the magnetic field into electrical signals, amplifies them as needed, and converts them back into sound via the speaker. Using a telecoil avoids the feedback that often results from putting a hearing aid up against a telephone earpiece, can help prevent exposure to over amplification, and eliminates background noise, providing improved access to the telephone.

²⁸ *See* 47 C.F.R. § 20.19(b)(1)-(2).

standard.²⁹ Where major changes to the standard are made that could affect compliance, the Commission stated it would initiate an appropriate rulemaking proceeding to consider adoption of updated versions.³⁰

19. With respect to acoustic coupling operation, the Commission generally requires each covered manufacturer and service provider to offer specific numbers of handset models per air interface in its product line (e.g., CDMA, TDMA, GSM, and iDEN)³¹ that meet, at a minimum, an M3 rating (formerly denominated a U3 rating) for reduction of RF interference between handsets and hearing aids operating in acoustic coupling mode, as set forth in the ANSI C63.19 technical standard.³² The Commission also requires manufacturers and service providers to offer at least two handset models per air interface that meet at least a T3 rating (formerly denominated a U3T rating) to enable inductive coupling with hearing aids operating in telecoil mode.³³ The rules further provide that as of February 18, 2008, the requirement for manufacturers and service providers to deploy handsets meeting an M3 or higher rating for RF interference reduction would increase to at least 50 percent of all digital wireless handset models offered per air interface.³⁴ Enforcement of this requirement, however, has been stayed until April 18, 2008, due to the pendency of this proceeding.³⁵

20. The rules also contain a *de minimis* exception to the deployment benchmarks for certain digital wireless handset manufacturers and wireless service providers.³⁶ Specifically, manufacturers or providers that only offer one or two handset models per air interface are exempt from the requirements; those that only offer three models are required to offer one that is hearing aid-compatible.

21. In addition, the 2003 *Hearing Aid Compatibility Order* imposed certain implementation requirements not codified in the rules. Those requirements include an obligation on the part of manufacturers and digital wireless service providers to report every six months on efforts toward compliance with the hearing aid compatibility requirements for the first three years of implementation and

²⁹ See Wireless Telecommunications Bureau and Office of Engineering and Technology Clarify Use of Revised Wireless Phone Hearing Aid Compatibility Standard, *Public Notice*, 21 FCC Rcd 6384 (WTB/OET 2006).

³⁰ See *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16779 ¶ 63.

³¹ See *id.* at 16780 ¶ 65. The term air interface refers to the system that ensures compatibility between mobile radio service equipment, such as handsets, and the service provider's base stations. Currently, the leading air interfaces include Code Division Multiple Access (CDMA), Global System for Mobile Communications (GSM), Integrated Dispatch Enhanced Network (iDEN), Time Division Multiple Access (TDMA) and Wideband Code Division Multiple Access (WCDMA). We note that WCDMA is also known as Universal Mobile Telecommunications System (UMTS).

³² See *id.*; 47 C.F.R. § 20.19(b)(1), (c)(1)-(3). The 2001 version of ANSI C63.19, which the Commission adopted in the *Hearing Aid Compatibility Order*, used a "U" nomenclature for RF interference reduction, and this nomenclature is referenced in Section 20.19 of the Commission's rules. Subsequently, the 2006 version of this standard substituted the "M" nomenclature. For purposes of clarity, we will use the "M" nomenclature throughout this item when referring to RF interference reduction ratings, unless referring to specific text that uses the "U" nomenclature.

³³ See *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16780 ¶ 65; 47 C.F.R. § 20.19(b)(2), (d). The 2006 version of ANSI C63.19 substituted "T" nomenclature for the "UT" terminology that was used in the 2001 version of the standard. For purposes of clarity, we will use the "T" terminology throughout this item when referring to inductive coupling compatibility ratings.

³⁴ 47 C.F.R. § 20.19(c)(1)(ii), (c)(2)(ii).

³⁵ See *Notice*, 22 FCC Rcd at 19708 ¶ 107.

³⁶ 47 C.F.R. § 20.19(e)(1)-(2). See also *Hearing Aid Compatibility Reconsideration Order and Further Notice*, 20 FCC Rcd at 11244 ¶ 53.

then annually thereafter through the fifth year of implementation.³⁷ Other obligations imposed concern product labeling³⁸ and live, in-store consumer testing of digital wireless handsets.³⁹

22. Upon first establishing hearing aid compatibility requirements, the Commission indicated that it would monitor compliance and consider other opportunities to further the ability of persons with hearing disabilities to access digital wireless telecommunications. In particular, the Commission stated that it planned in the future to commence a proceeding to consider: “(1) whether to increase [or] decrease the 2008 requirement to provide 50 percent of phone models that comply with a U3 rating; (2) whether to adopt [hearing aid compatibility] implementation benchmarks beyond 2008; and (3) whether to otherwise modify the [hearing aid compatibility] requirements.”⁴⁰ The Commission also directed that, prior to such a proceeding, staff deliver to the Commission a report on the effectiveness of the hearing aid compatibility rules and the status of their implementation.⁴¹

23. *The Joint Consensus Plan.* On June 25, 2007, in response to WTB’s request for comment on issues to be addressed in the *Staff Report*,⁴² ATIS submitted the Joint Consensus Plan developed by representatives of handset manufacturers, service providers, and members of the hearing impaired community. The Plan is made up of several proposed interrelated rule changes to Section 20.19, including changes to benchmarks and deployment deadlines for hearing aid-compatible phones, adoption of a new version of the ANSI C63.19 standard, and other steps that the Commission should take to adequately address the hearing aid compatibility of wireless handsets.⁴³ Most of these proposals address modifications to rules that would apply to manufacturers and nationwide service providers (Tier I carriers), and do not expressly address the future hearing aid compatibility requirements that would apply to regional or smaller service providers.⁴⁴

24. *The Notice of Proposed Rulemaking.* On November 7, 2007, we issued the *Notice* that drew upon the Joint Consensus Plan and the recommendations of the *Staff Report*. In the *Notice*, we tentatively concluded substantially to adopt the provisions of the Joint Consensus Plan, and sought comment on that and several related matters. In particular, we tentatively concluded to modify the handset deployment deadlines in Section 20.19 using the framework proposed in the Joint Consensus Plan, and to require manufacturers and service providers to include in their portfolios of hearing aid-compatible handsets a certain number of new models as well as models with differing levels of functionality.⁴⁵ In addition to these steps, we tentatively concluded to adopt an updated technical standard as proposed in the Joint

³⁷ See *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16787 ¶¶ 89-91.

³⁸ See 47 C.F.R. § 20.19(f). Phone packaging material for hearing aid-compatible models must display the compatibility ratings, and the owner’s manual or a packaging insert must contain information on the rating system.

³⁹ *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16780 ¶ 65. “Carriers must make available all of their phone models that comply with the requirements of this paragraph for consumers to test in each retail store that carriers own or operate.” See 47 C.F.R. § 20.19(c)(2)(i)(A), (c)(2)(i)(B)(1), (c)(3)(i)(A), (c)(3)(i)(B), (d)(2).

⁴⁰ See *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16782-83 ¶ 74.

⁴¹ *Id.*

⁴² Wireless Telecommunications Bureau Seeks Comments on Topics to be Addressed in Hearing Aid Compatibility Report, *Public Notice*, 21 FCC Rcd 13136 (WTB 2006).

⁴³ See *Notice*, 22 FCC Rcd at 19679 ¶ 21.

⁴⁴ The one exception is the proposal in the Joint Consensus Plan for delaying reporting requirements for Tier II and III carriers. See Joint Consensus Plan at 11.

⁴⁵ *Notice*, 22 FCC Rcd at 19683-90 ¶¶ 36-57.

Consensus Plan,⁴⁶ and we sought comment on proposed new reporting, information, and outreach measures, as well as other interrelated proposals in the Joint Consensus Plan.⁴⁷ While we recognized that the Joint Consensus Plan proposals were developed through significant investigation and negotiation by the working group and its members,⁴⁸ we also sought comment on possible alterations or additions to certain aspects of its proposals that might better implement our hearing aid compatibility goals, including the deployment regime for non-nationwide service providers, who were generally not included within the Joint Consensus Plan's framework.⁴⁹ Finally, in the *Notice*, we stayed enforcement of the February 18, 2008 benchmark requirement that 50 percent of handset models meet acoustic compatibility standards until April 18, 2008.⁵⁰ In doing so, we recognized the need for certainty, and the desirability of providing appropriate and timely notification to manufacturers and service providers as regards their hearing aid compatibility obligations.

25. Comments were due December 21, 2007, and reply comments were due January 7, 2008. We received 19 comments and 16 reply comments. Comments came from a wide range of interests, including handset manufacturers, national, regional and small service providers, hearing loss advocacy groups, retail interests, and hearing aid manufacturers.⁵¹ While commenters generally support adoption of the Joint Consensus Plan, the record reveals differences regarding certain aspects of its implementation, as well as issues that are not addressed in the Plan.

IV. DISCUSSION

A. Hearing Aid-Compatible Handset Deployment Requirements

26. In order to promote our objective of furthering the availability of hearing aid-compatible handsets to the deaf and hard-of-hearing community, we adopt several interrelated benchmarks, deadlines, and other requirements governing the deployment of hearing aid-compatible handsets. These actions, which are based largely on the Joint Consensus Plan and the proposals in the *Notice*, balance several different approaches to improving wireless services for deaf and hard-of-hearing consumers. Based on the record, we conclude that these requirements, as a whole, will offer great benefits to those consumers with hearing loss, without imposing undue costs on handset manufacturers, service providers, or consumers generally.

27. As proposed in the Joint Consensus Plan and the *Notice*, we first adopt new benchmarks and deadlines for 2008 through 2011 regarding deployment of handsets rated M3 (or higher) for RF interference reduction and handsets rated T3 (or higher) for inductive coupling capability. As regards the requirements for RF interference reduction, we recognize the difficulties that handset manufacturers and service providers with large product lines face with respect to the 50 percent benchmark originally scheduled to go into effect on February 18, 2008, and we modify the benchmark in the near term while at the same time ensuring that consumers will have significant and increasing choices of acoustic coupling-compatible models over the next several years. At the same time, we increase the upcoming benchmarks

⁴⁶ *Id.* at 19690 ¶¶ 58-62; *see also* Petition of American National Standards Institute (ANSI) Accredited Standards Committee C63 (EMC) - ANSI ASC C63 filed on June 25, 2007, in WT Docket No. 01-309 (ANSI Petition).

⁴⁷ *Notice*, 22 FCC Rcd at 19693-702 ¶¶ 63-88.

⁴⁸ *See* Joint Consensus Plan at 15; *see also id.* at 15-16 (stating “[a]s a result, all elements of this proposal, regardless of how small, are critical to its success”).

⁴⁹ *Notice*, 22 FCC Rcd at 19687-88 ¶¶ 50-51.

⁵⁰ *Id.* at 19706 ¶¶ 98-99.

⁵¹ A full list of commenters and the short forms by which they are referenced is in Appendix A.

for handset models that have inductive coupling capability. In this regard, to ensure that all consumers will have options regardless of where they reside or from which carrier they obtain service, we adopt the same deployment benchmarks for all service providers, although we extend the compliance deadlines for service providers other than Tier I carriers in recognition of their more limited handset options and their difficulty obtaining the newest offerings. Second, as an integral part of the handset deployment objectives we set forth today, we adopt requirements to ensure the availability of not just more handset models, but also a range of compatible handset models throughout the manufacturer-to-consumer supply and distribution channels. We thus require all manufacturers to “refresh” their hearing aid-compatible handset product offerings annually, and all service providers to offer consumers handset models with differing levels of functionality. Third, we address several implementation issues, including the definition of what constitutes a distinct model, the treatment of handset models that operate over multiple frequency bands and/or air interfaces, and the application of the *de minimis* rule. Finally, while we encourage manufacturers and service providers, including new entrants, to deploy handset models that meet the higher hearing aid compatibility standards denoted by M4 and T4 ratings, we determine consistent with the record not to adopt any requirements in this regard at this time.

1. M3 / T3 Standards

28. Background. Section 20.19(c) and (d) of the Commission’s rules contain the current benchmarks and deadlines for deployment of hearing aid-compatible handset models for use with hearing aids operating in acoustic and inductive coupling modes.⁵²

29. With respect to reduced RF interference with hearing aids operating in acoustic mode, Section 20.19(c) currently provides that manufacturers must make available to wireless service providers at least two handset models per air interface that meet an M3 rating or higher. Tier I carriers must make available to consumers at least five handset models per air interface, or 25 percent of the total number of handset models offered, whichever is less, that meet at least an M3 rating. Other digital wireless service providers must make available to consumers at least two handset models per air interface that meet at least an M3 rating. In addition, the rules currently provide that, as of February 18, 2008, at least 50 percent of all digital wireless handset models offered by manufacturers or service providers per air interface must meet an M3 rating or higher, although we stayed enforcement of this requirement until April 18, 2008, pending review of this requirement in this proceeding.

30. With respect to deployment of handset models that meet standards for inductive coupling capability, Section 20.19(d) currently provides that manufacturers must make available to wireless service providers at least two handset models per air interface that meet at least a T3 rating. Digital wireless service providers must similarly make available to consumers at least two handset models per air interface that meet at least a T3 rating.

31. In the *Notice*, we sought comment on several proposals to modify Section 20.19(c) of the rules.⁵³ For requirements relating to both manufacturers and service providers, we sought comment on a tentative conclusion to modify the 2008 benchmarks and establish new benchmarks consistent with the proposals in the Joint Consensus Plan. In place of the 50 percent deployment requirement, we sought comment on a tentative conclusion to require equipment manufacturers to meet or exceed an M3 rating for 33 percent of their handset models per air interface.⁵⁴ For Tier I carriers, we tentatively concluded that these carriers could meet the 50 percent M3-rated or higher deployment threshold, or they could meet

⁵² 47 C.F.R. § 20.19(c), (d).

⁵³ *Id.* § 20.19(c).

⁵⁴ *See Notice*, 22 FCC Rcd at 19685 ¶ 42.

a second option in any individual year to provide a specified number of handset models per air interface rated M3 or higher.⁵⁵ Because the Joint Consensus Plan is silent with respect to service providers that are not Tier I carriers,⁵⁶ we asked commenters for input on the appropriate regime for these wireless service providers to deploy handsets rated M3 or higher.⁵⁷

32. We also sought comment on tentative conclusions to modify Section 20.19(d) of the rules in order to impose additional deployment obligations for inductive coupling-capable mobile telephones.⁵⁸ We recognized that under the current rule section, manufacturers and service providers are not required to deploy additional inductive coupling-capable handset models once they have met the September 18, 2006, deadline of two compliant handset models per air interface.⁵⁹ Under our tentative decision in the *Notice*, manufacturers and Tier I carriers would instead be required to offer increased numbers or percentages of handset models rated T3 or higher for each air interface in 2009 through 2011.⁶⁰ We stated that these new requirements would increase the number of available T3-rated handsets that, as compared to M3-rated handsets, are currently of limited availability.⁶¹ We sought input on whether this same deployment regime should apply to other service providers.⁶²

33. The parties in this proceeding are nearly unanimous in supporting the *Notice's* tentative conclusions on the appropriate M3 and T3 benchmarks and deadlines insofar as they apply to manufacturers and Tier I carriers offering nationwide services,⁶³ referencing the compromise and agreement that culminated in the Joint Consensus Plan.⁶⁴ However, six commenting parties representing regional or smaller service providers that are not Tier I carriers – MetroPCS, SouthernLINC, Virgin Mobile, RCA, Chinook, and i wireless – argue that they should not be subject to the same benchmarks⁶⁵ or any new requirements beyond the existing mandates to offer two M3- and T3-rated (or higher) handset models per air interface.⁶⁶ If any new requirements must apply, they argue that the benchmarks in these provisions should be reduced, proposing levels that would be approximately one-half of the Tier I

⁵⁵ *Id.* at 19685-86 ¶ 44.

⁵⁶ The Joint Consensus Plan only contains deployment deadline rule changes for Tier I carriers. *Id.* at 19687-88 ¶ 50.

⁵⁷ *Id.*

⁵⁸ 47 C.F.R. § 20.19(d).

⁵⁹ *See Notice*, 22 FCC Rcd at 19686-87 ¶¶ 46-47.

⁶⁰ *Id.*

⁶¹ *Id.* at 19687 ¶ 48.

⁶² *Id.* at 19687-88 ¶ 50.

⁶³ *See generally* ATIS Comments at 5-6; Sony Ericsson Comments at 3-4; Motorola Comments at 2, 4-5; Nokia Comments at 2, 3-4; RIM Comments at 5-6; TIA Comments at 2-4; T-Mobile Comments at 4-6; AT&T Comments at 2-3; HLAA/TDI Comments at 2; Gallaudet/RERC Comments at 4-5; Verizon Reply Comments at 1-2; CTIA Reply Comments at 4; i wireless Reply Comments at 1; RCA Comments at 2; *but see* AT&T Comments at 4 (preferring a deviation from the Joint Consensus Plan involving staggered deadlines for manufacturers and service providers after 2008).

⁶⁴ *See, e.g.*, ATIS Comments at 2-5; T-Mobile Comments at 2; AT&T Comments at 2; CTIA Reply Comments at 2-4; Motorola Comments at 2-3; Nokia Comments at 2; RIM Comments at 3-4; TIA Comments at 2.

⁶⁵ *See generally* RCA Comments at 2-5; i wireless Reply Comments at 3-5; Virgin Mobile Reply Comments at 3-4.

⁶⁶ *See generally* Chinook Comments at 2; MetroPCS Comments at 2-5; SouthernLINC Reply Comments at 3-5.

levels.⁶⁷ These commenters state that they would be forced to reduce their total product lines in order to meet the Tier I percentage benchmarks.⁶⁸ They further contend that they have less access to hearing aid-compatible handsets than Tier I carriers, and that as a practical matter they would essentially be subject to more difficult requirements than Tier I carriers under the Joint Consensus Plan.⁶⁹ On the other side of this issue, two advocates for the deaf and hard-of-hearing disagree, and argue that these service providers should be held to the same compatible handset deployment benchmarks as Tier I carriers because, with proper planning, these service providers can meet these benchmarks in the same, or perhaps slightly extended, timeframes.⁷⁰

34. Discussion. For both RF interference reduction and inductive coupling capability, we adopt the tentative conclusions in the *Notice* for manufacturers and Tier I carriers, and hereby amend Section 20.19(c) and (d) to adopt the benchmarks and deadlines proposed in the *Notice*.⁷¹ For service providers that are not Tier I carriers, we adopt these same benchmarks, but we extend their deadlines for compliance by three months in order to afford these entities additional flexibility to obtain and deploy the requisite numbers of compatible handset models.⁷²

35. In terms of RF interference reduction for acoustic coupling compatibility, manufacturers as of the effective date of this rule will have to meet a rating of M3 (or higher) for a minimum of one-third of their non-*de minimis* portfolio models offered to service providers per air interface in the United States.⁷³ Tier I carriers, as of the effective date of this rule, will have to meet an M3 rating (or higher) for the lesser of 50 percent of their handset models per air interface (rounding fractions up) or a specific number of handset models, pursuant to the schedule set forth below.⁷⁴ This schedule requires Tier I carriers to provide an increasing number of handset models per air interface over which they offer service by future

⁶⁷ See, e.g., i wireless Reply Comments at 5 (“fifty percent of the quotas proposed for Tier I carriers”); MetroPCS Comments at 6 (“halving the number of [Tier I] handsets . . . and providing for a percentage alternative”); RCA Comments at 4 (“[i]n keeping with prior ratios, the M3 benchmarks . . . should be about half that for Tier I carriers”); SouthernLINC Reply Comments at 5 (“FCC should cut the Tier I . . . requirements approximately in half”); see also Virgin Mobile Reply Comments at 5.

⁶⁸ See, e.g., i wireless Reply Comments at 4; Chinook Comments at 2; RCA Comments at 2-3; MetroPCS Comments at 3; SouthernLINC Reply Comments at 4; Virgin Mobile Reply Comments at 4.

⁶⁹ See, e.g., i wireless Reply Comments at 2-3; MetroPCS Comments at 3-4, 7; Chinook Comments at 1-2; RCA Comments at 2-5; SouthernLINC Reply Comments at 4; Virgin Mobile Reply Comments at 3-4.

⁷⁰ See HLAA/TDI Comments at 3 (stating that a maximum phase-in of 3 months for Tier II/III carriers may be reasonable); Gallaudet/RERC Comments at 5 (stating no opposition to six week to three month staggering for Tier II/III carriers).

⁷¹ See *Notice*, 22 FCC Rcd at 19685-87 ¶¶ 41-48.

⁷² In consideration of the need for certainty, and in order to provide appropriate notification to manufacturers and service providers as regards the hearing aid compatibility obligations, the Commission stayed enforcement of the 50 percent benchmark for deployment of handsets meeting an M3 (or higher) rating for RF interference reduction that would have become effective on February 18, 2008, for 60 days, until April 18, 2008. See *Notice*, 22 FCC Rcd at 19706 ¶¶ 98-99. However, given the rule changes we adopt here, the need for a stay is moot and it need not be extended.

⁷³ If one-third of the total number of models offered over an air interface is a fraction, manufacturers may round this number down, except that manufacturers offering four or five handset models over an air interface must offer at least two models meeting an M3 (or higher) rating.

⁷⁴ For both manufacturers and service providers, these percentage and numerical obligations will remain in effect until such time as they may be changed by future Commission rulemaking action.

dates as follows:

Before February 15, 2009:⁷⁵ eight M3-rated (or higher) handset models;

Beginning February 15, 2009: nine M3-rated (or higher) handset models; and

Beginning February 15, 2010: ten M3-rated (or higher) handset models.

Service providers not in Tier I will be subject to the same requirements, but only beginning three months after the effective date of these rules. As a result, the above requirements will take effect for such service providers as of May 15 of the respective year, rather than February 15.⁷⁶

36. With respect to inductive coupling capability, the new requirements establish benchmarks for both manufacturers and service providers that combine percentage and numerical measures.⁷⁷ First, manufacturers will be required to meet the greater of two measures for each air interface for which they offer handsets beginning February 15, 2009.⁷⁸

- (1) a minimum of two T3-rated (or higher) models for each air interface for which the manufacturer offers four or more handset models to service providers; or
- (2) at least 20 percent / 25 percent / one-third of models that the manufacturer offers to service providers over each air interface rated T3 (or higher) beginning February 15, 2009 / 2010 / 2011 respectively. These percentage calculations will be rounded down to the nearest whole number in determining the minimum number of handsets to be produced. Each non-*de minimis* manufacturer will thus still be required to maintain production of at least two or more T3-rated (or higher) handset models per air interface for which it offers handsets.

Second, as of the effective date of this rule, Tier I carriers must meet the lesser of the two following measures for each air interface over which they offer service:

- (1) one-third of digital wireless handset models are T3-rated (or higher) (rounding fractions up); or
- (2) a schedule as follows:

Before February 15, 2009: three T3-rated (or higher) handsets.

Beginning February 15, 2009: five T3-rated (or higher) handsets.

Beginning February 15, 2010: seven T3-rated (or higher) handsets.

Beginning February 15, 2011: ten T3-rated (or higher) handsets.

Third, service providers other than Tier I carriers will also be required to meet the same benchmarks as Tier I carriers, but only beginning three months after the effective date of these rules. Again, the

⁷⁵ The Joint Consensus Plan proposed that these and other deadlines would fall on the 18th of the month. For ease of administration, we change these deadlines to the 15th.

⁷⁶ We note that under the revisions we are adopting to Section 20.19, these service providers remain required to offer two handset models per air interface rated M3 or higher until the new requirements become effective to them.

⁷⁷ For both manufacturers and service providers, these percentage and numerical obligations will remain in effect until such time as they may be changed by future Commission rulemaking action.

⁷⁸ Prior to February 15, 2009, manufacturers remain subject to the current requirement to offer at least two models rated T3 or higher per air interface.

scheduled rollout dates will be May 15 of the respective years, rather than February 15.⁷⁹

37. Given the unanimous support in the record, we find that these benchmarks for both equipment manufacturers and Tier I carriers to deploy M3-rated and T3-rated handsets are in the public interest. The combination, two-option approach for deploying M3-rated handsets provides needed flexibility for Tier I carriers with large product lines to deploy new and additional models over time while still ensuring that substantial numbers of compatible handset models will be available to consumers. These rule changes are supported by consumer advocates,⁸⁰ and we agree that the balance they achieved with industry representatives in the Joint Consensus Plan represents a beneficial compromise between technological constraints and the needs of hard-of-hearing consumers.⁸¹ No commenting party has argued that these benchmarks for manufacturers and Tier I carriers would be detrimental to consumers. This approach also is more technology-impartial than a single 50 percent requirement, reflecting the uncontroverted technological impediments to meeting the M3 rating standard for many handset models that employ a GSM air interface.⁸² Moreover, we adopt this modification in conjunction with new rules requiring manufacturers to “refresh” their compatible offerings with new products annually and requiring service providers to make hearing aid-compatible models available with different levels of functionality.⁸³ These requirements will directly benefit consumers needing handsets with acoustic coupling capabilities.

38. We also make our decisions regarding the benchmarks for RF interference reduction and inductive coupling capability as an integrated whole. We agree with HLAA/TDI that increased requirements for deployment of T3-rated handset models comprise “a beneficial trade-off” for reducing, in certain circumstances, the thresholds for deploying M3-rated handset models that would have taken effect under the existing Section 20.19(c).⁸⁴ The record supports the conclusion that customers’ options for handsets that enable inductive coupling with hearing aids’ telecoils have been more limited than for acoustic coupling compatibility.⁸⁵ The current two-model rule for these entities was set in 2003 and has become out-dated, as it does not provide for an expansion of T3-rated handset options. Expanded requirements of this nature should benefit some of the most disadvantaged wireless users in the deaf and hard of hearing community, who are more likely to rely on telecoil-equipped hearing aids. We agree with HLAA/TDI that it is generally in the public interest to increase the benchmarks for manufacturers’ and Tier I carriers’ deployment of handsets meeting a T3 rating for inductive coupling capability.⁸⁶ We agree as well with Gallaudet/RERC that additional requirements of this nature will “significantly benefit

⁷⁹ We note that under the revisions we are adopting to Section 20.19, these service providers remain required to offer two handset models per air interface rated T3 or higher until the new requirements become effective to them.

⁸⁰ See HLAA/TDI Comments at 2; Gallaudet/RERC Comments at 4.

⁸¹ See *supra* note 63 (citing commenters discussing agreement and compromise at core of Joint Consensus Plan); see also *Notice*, 22 FCC Rcd at 19683 ¶ 34 (“The Joint Consensus Plan contains many interrelated provisions, and we note the emphasis that its proponents place on adopting the plan as a whole in order to maintain the balance achieved during negotiations by its various member participants.”).

⁸² See, e.g., ATIS Comments at 5-6; T-Mobile Comments at 5; AT&T Comments at 3; RIM Comments at 5 n.10; TIA Comments at 3; HLAA/TDI Comments at 2; RCA Comments at 2-3.

⁸³ See *infra* section IV.A.2.

⁸⁴ HLAA/TDI Comments at 2.

⁸⁵ See *id.*; see also *Staff Report*, 22 FCC Rcd at 17719-20 ¶ 21.

⁸⁶ HLAA/TDI Comments at 2 (“The current requirement for two T mode handsets is inadequate in the absence of a mechanism to increase the quantity.”).

individuals with severe to profound hearing loss.”⁸⁷ Thus, we find that an additional focus of their resources should be on making available additional T3-rated handset models.

39. We also conclude that the same deadlines are appropriate for manufacturers and Tier I carriers. We agree with ATIS that a single, unified deadline as proposed in the *Notice* and Joint Consensus Plan will improve compliance and make the rules simpler to administer.⁸⁸ Moreover, unlike service providers not in Tier I, Tier I carriers have in the past not submitted waiver requests stating that they have experienced significant problems meeting deployment deadlines in the same time frame as manufacturers. Furthermore, unlike the initial deployment deadlines where manufacturers may have had no models certified as hearing aid-compatible until shortly before the date, Tier I carriers now need only to increase their selection from among available stock. Although AT&T states that “it prefers a staggering of the compliance deadlines” after 2008,⁸⁹ AT&T only cites generally the lag time for service providers to obtain handsets from manufacturers and does not provide more specific support evidencing a problem (current or past) with a unified date.⁹⁰ We therefore decline to extend the compliance deadlines for Tier I carriers.

40. The record raises separate questions regarding whether to apply the same handset deployment benchmarks to service providers other than Tier I carriers. As stated in the *Notice*, the Joint Consensus Plan’s proposals consider appropriate modifications only to the rules for manufacturers and nationwide, Tier I carriers, and they do not address the Commission’s hearing aid compatibility benchmarks for regional or smaller service providers, including Tier II and Tier III carriers, or other service providers like resellers and mobile virtual network operators (MVNOs).⁹¹ In addition, none of the equipment manufacturers or Tier I carriers that have participated in this proceeding submitted comments on this issue. The only record we have before us is comprised of the comments of six parties representing regional or smaller service providers not in Tier I – MetroPCS, SouthernLINC, Virgin Mobile, RCA, Chinook and i wireless – and two consumer advocate representatives, each group disagreeing with the other on this question.⁹²

41. After carefully considering this record in light of our past experience with non-nationwide service providers, and the costs and benefits of several possible rule change proposals,⁹³ we conclude that the same deployment benchmark alternatives should apply to all service providers, but we delay the compliance deadlines by three months for service providers that are not Tier I carriers.⁹⁴ For the reasons discussed below, we are not persuaded that service providers with small product lines will be unable to meet the 50 percent and one-third targets for handset models meeting RF interference reduction and inductive coupling capability targets, respectively. Moreover, we find that any burdens these

⁸⁷ Gallaudet/RERC Comments at 4.

⁸⁸ ATIS Comments at 6.

⁸⁹ AT&T Comments at 4.

⁹⁰ *Id.* We also note that ATIS, while supporting a unified deadline, states that it “would not be opposed” to a six week interval between deadlines for manufacturers and service providers. ATIS Comments at 6.

⁹¹ *See Notice*, 22 FCC Rcd at 19679 ¶ 21.

⁹² *See supra* para. 33 (discussing split in record).

⁹³ Several proposals support reducing the Tier I requirements by 50 percent (or some other significant proportion) for service providers other than Tier I carriers. *See supra* note 67 (quoting commenters’ general positions and/or citing portions of comments proposing alternative deployment regimes for non-Tier I service providers.)

⁹⁴ *See supra* para. 35-36 (describing delayed M3 and T3 deadline dates).

requirements impose are necessary to ensure reasonable handset options for all hearing-impaired consumers regardless of where they reside or who they may receive service from, not just the 90 or so percent that may receive their service from Tier I carriers.⁹⁵ Nonetheless, in recognition of the stated difficulties smaller service providers face in obtaining the latest handset models,⁹⁶ we delay each of their compliance deadlines by three months.

42. Initially, we reject the argument that the proposed benchmarks impose a “greater” burden on smaller carriers because they offer too few handset models to take advantage of the numerical alternatives, and will therefore be forced to meet the percentage benchmarks.⁹⁷ We do not accept that smaller service providers are subject to greater burdens simply because their percentages are higher: service providers with smaller product lines will be required to offer fewer hearing aid-compatible handset models than service providers with larger product lines. As discussed above, the alternative of offering eight to 10 handset models per air interface that meet an M3 or higher rating for RF interference reduction recognizes that carriers with large product lines may have difficulty obtaining sufficient compatible handset models to meet a 50 percent requirement, particularly since the manufacturer production benchmark is one-third going forward. In addition, we find that the availability of eight to 10 M3-rated models will provide substantial choice to hard-of-hearing consumers, especially in light of our other requirements, and therefore we are not requiring service providers with large product lines to offer more models.⁹⁸

43. In fact, we find that the availability of percentage benchmarks is necessary to ensure that smaller service providers are not overly burdened. Even though eight to 10 M3-rated models provide consumers with substantial choice, we do not believe it reasonable to require that eight to 10 compatible models be offered by service providers with smaller product lines, including many non-nationwide service providers.⁹⁹ Therefore, we permit these service providers instead to meet the compatibility standard for 50 percent of their product lines, ranging from two to seven models per air interface depending on the total number of models offered. Similar reasoning underlies the alternative benchmarks for inductive coupling capability. The rule is designed to permit each service provider to meet the benchmark that is less burdensome for it depending on its particular situation, while providing consumers with significant choice no matter which service provider they may use.

44. We are also not persuaded by arguments that service providers other than Tier I carriers will be unable to obtain sufficient hearing aid-compatible handset models to meet the benchmark percentages and therefore will have to reduce their product lines. These service providers argue that they have less access to hearing aid-compatible models than Tier I carriers, among other reasons because they must purchase handsets through third-party vendors and because the larger carriers sometimes have exclusive

⁹⁵ See, e.g., HLAA/TDI Comments at 3; cf. *Staff Report*, 22 FCC Rcd at 17722 ¶¶ 29-30.

⁹⁶ See *supra* note 69 (citing comments of service providers not in Tier I asserting reasons why they have less access to hearing aid-compatible handsets than Tier I carriers).

⁹⁷ See, e.g., i wireless Reply Comments at 4; MetroPCS Comments at 3; Chinook Comments at 2; RCA Comments at 4-5, 9; SouthernLINC Reply Comments at 4; Virgin Mobile Reply Comments at 4. Several of these commenters argue that imposing the same benchmarks would reverse the policy previously set by the Commission to adopt higher deployment targets for M3-rated handset models for Tier I carriers. See, e.g., RCA Comments at 4; SouthernLINC Reply Comments at 3.

⁹⁸ The incremental benefits to consumers of requiring more than eight to 10 compatible models are diminished, and are outweighed by the burdens on the service provider.

⁹⁹ See, e.g., RCA Comments at 3-4.

arrangements to obtain certain handset models.¹⁰⁰ We note, however, that the number of hearing aid-compatible models these service providers must obtain to meet the percentage benchmarks is not large. For example, a service provider that offers 10 handset models over an air interface would need to offer five that meet an M3 (or higher) rating and four that meet a T3 (or higher) rating.¹⁰¹ We acknowledge that many smaller service providers' offerings of compatible handsets may currently fall short of these levels.¹⁰² Given the substantial and increasing number of hearing aid-compatible models that are currently available, however, we are convinced that, with reasonable effort, even the smallest non-*de minimis* providers¹⁰³ can obtain enough compatible models to satisfy the particular benchmarks that are applicable to them.¹⁰⁴ Commenters offer no evidence that so many hearing aid-compatible models are subject to exclusivity arrangements as to significantly diminish the number that they are able to obtain, or that large numbers of compatible models are unavailable through vendors.¹⁰⁵ We also remain unpersuaded by Virgin Mobile's general argument that few hearing aid-compatible models are available in the lower price ranges that its customers demand.¹⁰⁶ Although Virgin Mobile may reasonably select the hearing aid-compatible models that are most likely to appeal to its customer base, we continue to believe it should not be relieved of its duty to make hearing aid-compatible options available to its customers simply due to its prediction that customers will not choose to purchase these models.¹⁰⁷ In addition, we anticipate that in the future, manufacturers may produce more hearing aid-compatible models in lower price ranges in order to facilitate carriers' fulfillment of their obligation to offer phones with multiple levels of functionality.

45. Moreover, to the extent the deployment benchmarks that we adopt do impose increased burdens on small carriers, these burdens are outweighed by the benefits to consumers. Commenters representing people with hearing loss support the universal application of these benchmarks, stating that

¹⁰⁰ See Metro PCS Comments at 3-4; Metro PCS Reply Comments at 3-4, 5; Chinook Comments at 1-2; Virgin Mobile Reply Comments at 3-4; SouthernLINC Reply Comments at 4-5; i wireless Reply Comments at 2-5; RCA Comments at 3-4.

¹⁰¹ Moreover, the percentage requirement for T3-rated (or higher) models would not become effective for such a provider until May 2009. Until then, the service provider could satisfy the rule by offering the numerical alternative of three models meeting this standard.

¹⁰² See, e.g., RCA Comments at 3-4.

¹⁰³ Section 20.19(e)(1) provides that manufacturers and mobile service providers offering two handset models or fewer in the United States are exempt from the requirements of section 20.19. See 47 C.F.R. § 20.19(e)(1).

¹⁰⁴ See *Staff Report*, 22 FCC Rcd at 17720 ¶ 26 (citing 79 CDMA models rated M3 or higher, 34 CDMA models rated T3 or higher, 20 GSM models rated M3 or higher, and 12 GSM models rated T3 or higher available from manufacturers); see also ATIS November 2007 Compliance Report at 7 (listing 103 hearing aid-compatible CDMA devices and 30 hearing aid-compatible GSM devices as of November 2007).

¹⁰⁵ As we have stated in the past, we expect that, if a service provider's usual vendors cannot supply appropriate handset models, it will make arrangements with other suppliers. See Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones, WT Docket No. 01-309, Petitions for Waiver of Section 20.19 of the Commission's Rules, *Memorandum Opinion and Order*, 22 FCC Rcd 20459, 20473 ¶ 31 (2007).

¹⁰⁶ See Virgin Mobile Reply Comments at 3 (stating without any detail that hearing aid compatibility is "generally available only on more expensive handset models" and "[m]anufacturers have yet to offer a wide range of low-priced handsets").

¹⁰⁷ See In the Matter of Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones, Petitions for Waiver of Section 20.19 of the Commission's Rules, WT Docket No. 01-309, *Memorandum Opinion and Order*, FCC 08-067 (rel. Feb. 27, 2008) at ¶72. (*Inductive Coupling Compatibility Waiver Order*)

this would assist a great number of hearing aid users.¹⁰⁸ These additional benchmarks, especially the new benchmarks for inductive coupling capability, should provide valuable benefits to affected consumers with profound hearing loss. Regardless of size and product line, every service provider has customers who need hearing aid-compatible phones,¹⁰⁹ and it is incumbent upon each wireless service provider to make arrangements and allocate the resources that are necessary to meet their needs.

46. We conclude that a three-month extension of deadlines for meeting these benchmarks, however, is appropriate with regard to service providers that are not Tier I nationwide providers, including regional and smaller providers, such as Tier II and Tier III carriers, and other service providers such as resellers and MVNOs. Five non-Tier I commenting parties argue that if they are subjected to new deployment benchmarks, they should receive extended deadlines of six months to one year following Tier I carriers' deadlines.¹¹⁰ We agree with the position of consumer advocate groups, however, that a three-month delay is more appropriate.¹¹¹ While we recognize that smaller service providers may reasonably require some additional time to obtain up-to-date compliant products through vendors, we are concerned that a longer delay would unnecessarily and unacceptably deny the benefits of our rules to consumers. Moreover, a three-month delay is consistent with past instances where the Commission has recognized that waivers of up to approximately three months for non-Tier I service providers have often been justified, but has generally denied requests for longer periods.¹¹² For the reasons the Commission has previously stated, we find that an extension beyond three months may only serve to excuse poor planning, inferior oversight, or some other factor within a service provider's control. Indeed, given that service providers have known for years that they would likely become subject to a 50 percent benchmark for handset models with RF interference reduction, which will remain the operative requirement for many of them, and at most they will have to obtain one additional handset model to satisfy the first new benchmark for inductive coupling capability, we would arguably be justified, at least for the 2008 benchmarks, to afford no extension at all beyond that granted Tier I service providers. We therefore conclude that a three-month delay will provide ample time for service providers not in Tier I to obtain the compliant handset models that they need to satisfy both the 2008 and future benchmarks.

2. New Requirements for Handset Deployment

47. As an integral part of the handset deployment objectives we set forth today, we also adopt two new rules that together will facilitate the offering of not just more handsets, but also a range of compatible handset models throughout the manufacturer-to-consumer supply and distribution channels. The annual product refresh rule for manufacturers and the requirement that service providers offer handset models with different functionality levels should provide consumers with access to hearing aid-compatible handsets with the newest features, as well as more economical models. These proposals are an essential part of the Joint Consensus Plan,¹¹³ and they are broadly supported in the record. Indeed, the record demonstrates that hard of hearing consumers demand an increased selection of popular and

¹⁰⁸ See HLAA/TDI Comments at 2, 3; Gallaudet/RERC Comments at 4-5.

¹⁰⁹ See, e.g., Wireless RERC Comments at 3.

¹¹⁰ See i wireless Reply Comments at 3; SouthernLINC Reply Comments at 5; Virgin Mobile Reply Comments at 5; RCA Comments at 4-5; MetroPCS Reply Comments at 6 n.20.

¹¹¹ See HLAA/TDI Comments at 3; Gallaudet/RERC Comments at 5.

¹¹² See Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones, WT Docket No. 01-309, Petitions for Waiver of Section 20.19 of the Commission's Rules, *Memorandum Opinion and Order*, 22 FCC Rcd 7171 (2007); *Inductive Coupling Compatibility Waiver Order*.

¹¹³ See Joint Consensus Plan at 9-10, 12.

innovative handsets.¹¹⁴ While requirements to deploy minimum numbers or percentages of hearing aid-compatible handset models are essential to ensure that such phones will be available to consumers, we find, based on the record and experience under the existing rules, that these additional requirements are necessary to enable consumers to select a wireless phone that is not only compatible with a given hearing aid, but that also meets their other needs as a consumer, such as offering the latest features. Accordingly, we adopt the product refresh rule for manufacturers and the functionality level rule for service providers discussed below.

a. **Product Refresh Rule for Manufacturers**

48. Background. In the *Notice*, we tentatively concluded that our rules should require equipment manufacturers to meet a “product refresh” requirement, as recommended in the *Staff Report* and described in the Joint Consensus Plan.¹¹⁵ This proposal would mandate that manufacturers meet RF interference reduction thresholds for acoustic coupling compatibility in some of their new models each year, enough so that, for manufacturers offering four or more handset models using a given air interface, one-half of the minimum required number of M3-rated or higher handset models would be new models introduced during the calendar year. To make this calculation, the number of new compliant models to be produced would be 50 percent of the total required number of compliant models, rounded up to the nearest whole number. For manufacturers that produce three total M3-rated models per air interface, at least one new M3-rated (or higher) model would be required every other calendar year. If a manufacturer does not introduce a new model in a calendar year, then under the proposed rule it would not be required to refresh its list of compliant handsets.

49. Discussion. Every commenter to address the issue supports adoption of the proposed product refresh requirement without modification.¹¹⁶ We therefore adopt this rule as set forth in Section 20.19(c)(1)(ii) in Appendix C. As discussed above, we find that this rule is necessary to ensure that service providers will be able to offer to consumers a selection of hearing aid-compatible models including those with the latest features. We further find that the rule will not cause undue costs to manufacturers. Indeed, all commenters representing equipment manufacturers supported the rule on grounds that it would permit them to provide consumers with a variety of devices.¹¹⁷

b. **Rule Requiring Service Providers to Offer Models with Differing Levels of Functionality**

50. Background. We also tentatively concluded in the *Notice* that our rules should require that Tier I carriers offer to consumers hearing aid-compatible handsets with differing levels of functionality.¹¹⁸

¹¹⁴ See, e.g., HLAA/TDI Comments at 3.

¹¹⁵ See *Notice*, 22 FCC Rcd at 19689 ¶ 54.

¹¹⁶ See, e.g., ATIS Comments at 6-7; Sony Ericsson Comments at 8; Motorola Comments at 5; Nokia Comments at 3-4; RIM Comments at 9; TIA Comments at 4-5; T-Mobile Comments at 6; AT&T Comments at 2; HLAA/TDI Comments at 3; Gallaudet/RERC Comments at 6; CTIA Reply Comments at 5. To the extent these comments address the definition of a model for these purposes, we discuss that below in Section IV.A.3.a.

¹¹⁷ We do correct an apparent typographical error in the rule as proposed in the Joint Consensus Plan. As reproduced in the *Notice*, the Joint Consensus Plan states that the number of new models to be produced is to be determined by “multiplying the total number of new [hearing aid-compatible] models offered in the United States by fifty percent.” See *Notice*, 22 FCC Rcd at 19712 App. B. We hereby correct this to clarify that the relevant figure is 50 percent of the total required number of hearing aid-compatible models. See Joint Consensus Plan at 9 (stating “one-half of the M3-or-better models should be new models introduced in that calendar year”) (emphasis added).

¹¹⁸ See *Notice*, 22 FCC Rcd at 19690 ¶ 56.

The proposed requirement would obligate Tier I carriers to offer handset models from “multiple tiers,” and include a concomitant requirement that these providers’ reports “include information on the carriers’ implementation of ‘tiering.’”¹¹⁹ We referenced the Joint Consensus Plan’s statement that the demarcation of tiers should be left to the industry.¹²⁰ In the context of the language in the Joint Consensus Plan stating that carriers will self-define their tiers, we indicated that we would interpret the term “tiers” to refer to levels of functionality.¹²¹ We further stated that we intended functionality to include the extent to which a handset model has the capability to operate over multiple frequency bands for which hearing aid compatibility standards have been established. Finally, we sought comment on whether these requirements relating to functionality should be extended to service providers not in Tier I.¹²²

51. Discussion. Upon consideration of the record, we adopt the handset functionality rule as proposed and apply it to all service providers. As applied to Tier I carriers, all commenters representing Tier I carriers support a handset functionality rule.¹²³ We therefore adopt the rule in order to ensure that hearing aid users can select from a variety of compliant handset models, with varying features and prices. Moreover, these commenters agree that service providers should have flexibility to define their product levels because, as ATIS states, “[i]t is not feasible to identify a uniform set of ‘tiers’ for all carriers that will appropriately apply to each carrier’s unique set of product offerings.”¹²⁴ We concur that given the great variety and continual development in handset features, any effort on our part to define criteria of functionality would be infeasible and might deter innovation, and we therefore prescribe no criteria. We do, however, stand by our guidance that a handset’s level of functionality may include its capability to operate over multiple frequency bands. While RIM objects that the availability or unavailability of a particular frequency band does not represent anything of value to a consumer,¹²⁵ we disagree on the ground that the ability to access additional frequency bands may increase the circumstances under which the consumer can use the phone. We clarify that no service provider is required to offer phones that operate over multiple bands, and that this is simply one factor a service provider may use to distinguish the functionality of its handset models. In addition, as discussed below, we adopt Gallaudet/RERC’s suggestion to require service providers to disclose their functionality criteria in their reports to the Commission and on their websites, in order that both the Commission and the public may understand the basis for their distinctions.¹²⁶

52. Finally, we determine to apply the rule to all service providers, not only nationwide Tier I carriers. Several regional and smaller service providers do not support such a requirement,¹²⁷ arguing, for example, that such a requirement would be intrusive and that the statute does not require the Commission

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ Moreover, to avoid confusion with the tiers defining carrier size, we stated that a different term such as “levels of functionality” may be preferable. *Id.* at 19690 ¶ 56 n.119.

¹²² *Id.* at 19690 ¶ 57.

¹²³ See, e.g., T-Mobile Comments at 6-7; AT&T Comments at 2; Verizon Reply Comments at 1-2; CTIA Reply Comments at 5.

¹²⁴ ATIS Comments at 7-8.

¹²⁵ See RIM Comments at 10-11.

¹²⁶ Gallaudet/RERC Comments at 6-7; see also *infra* Section IV.C.

¹²⁷ See, e.g., MetroPCS Reply Comments at 7; RCA Comments at 6; SouthernLINC Reply Comments at 3, 7.

to ensure that hearing aid users have feature-rich phones.¹²⁸ Other commenters, however, contend that the functionality level rule should be applied universally.¹²⁹ For the same reasons discussed above with respect to the handset deployment benchmarks, we conclude that consumers with hearing loss should not be deprived of a choice of handset features based simply on their place of residence or their service provider. Moreover, given flexibility to define levels, even service providers with relatively small product lines should be able to distinguish among their handset models in a manner that permits them to define levels of functionality appropriate to their situation. We do not expect a provider with four hearing aid-compatible models, for example, necessarily to offer as many levels of functionality or as broad a range of product offerings as a Tier I carrier with eight or more models, but we do expect such a provider to draw some distinctions.

3. Implementation Issues

a. Definition of a Model

53. Background. Hearing aid compatibility obligations under Section 20.19 require manufacturers and mobile service providers to offer a certain number of hearing aid-compatible “models,” but the Commission has not previously addressed what constitutes a “model” for purposes of compliance with Section 20.19. In the *Notice*, we raised this issue in the context of seeking comment on manufacturers’ future obligations to report the status of their compliance with hearing aid compatibility obligations.¹³⁰ We proposed to accept the manufacturer’s determination of whether a device is a distinct model consistent with the manufacturer’s marketing practices, so long as models that have no distinguishing variations of form, features, or user capabilities, or that only differentiate units sold to a particular carrier, are not counted as distinct models to customers.¹³¹

54. RIM supports the proposal to accept a manufacturer’s determination of whether a device is a distinct model.¹³² PerrineCrest Radio asserts that we should further define a model, or that at a minimum, manufacturers should explain how they distinguish their models.¹³³ PerrineCrest Radio argues that this would help in monitoring the effectiveness of our requirements.¹³⁴ It does not offer any suggestion regarding how we should define a model, however.

55. Discussion. We conclude that our proposal represents the right approach to determinations of what constitutes a “model” under our rule. Consistent with our proposal, we determine that, for purposes of the hearing aid compatibility rules, a manufacturer may not characterize as separate models any devices that do not in fact possess any distinguishing variation in form, features, or capabilities.¹³⁵

¹²⁸ See RCA Comments at 6 (stating “[s]uch activity is beyond the Congressional directive of the [Hearing Aid Compatibility] Act ‘to ensure reasonable access to telephone service by persons with impaired hearing,’ citing 47 U.S.C. §610(b)).

¹²⁹ See, e.g., HLAA/TDI Comments at 3; Gallaudet/RERC Comments at 7.

¹³⁰ See *Notice*, 22 FCC Rcd at 19696 ¶ 68.

¹³¹ *Id.*

¹³² RIM Comments at 13.

¹³³ PerrineCrest Radio Reply Comments at 2.

¹³⁴ *Id.*

¹³⁵ Thus, under some circumstances, handsets assigned different model numbers by the manufacturer may count as a single model under our rules, such as where multiple model numbers are assigned to the same handset to distinguish units sold to different carriers, or are used to designate other distinctions that do not relate to either form, features, or capabilities.

Otherwise, we find it appropriate to defer to manufacturers regarding which devices constitute distinct models, consistent with how those devices are marketed to the public, because manufacturers are best positioned to determine when and how to market their own devices as distinct models. We note that we have, to date, deferred to manufacturer designation of distinct model lines and have not come across any instance in which such designations were made in bad faith to escape hearing aid compatibility obligations or did not otherwise reflect legitimate differences between devices. We have no reason to believe that manufacturers will not continue to act in good faith in this regard. Accordingly, we will accept manufacturers' determination of whether a device is a distinct model, subject only to the restrictions noted above.

56. While we do not generally establish specific requirements regarding model distinctions, we specify one circumstance in which we require a device to be given a distinct model designation. Specifically, where changes are made to a device that result in a change in the hearing aid compatibility rating, we require manufacturers, and service providers down the distribution chain, to provide the altered device a model name/number that is distinct from the original device's designation. Based on our previous experience and the need for service providers and consumers to determine easily the compatibility of particular handset models, manufacturers and service providers should not be simultaneously offering two or more identically designated models with different hearing aid compatibility ratings.¹³⁶

57. We will not require a new model designation where a change in rating is not the product of a change in the device but is simply the result of certifying for hearing aid compatibility a model that was not previously so certified. We further clarify that in such an instance, once the model has been certified, service providers offering that model may offer it to satisfy their deployment obligations, even if the particular units they offer were obtained from the manufacturer prior to date of certification. They must, however, ensure that such models comply with hearing aid compatibility labeling obligations, if necessary by contacting the manufacturer and requesting appropriate external labeling and inserts. Further, they may not count any model as hearing aid-compatible for periods prior to the date on which the model was certified for hearing aid compatibility.

b. Multi-Mode and Multi-Band Handsets

58. Background. The Commission has held that, to meet the Commission's requirements for hearing aid compatibility, a handset operating over several frequency bands must be hearing aid-compatible in each frequency band over which it operates.¹³⁷ In the *Notice*, we proposed to codify this multi-band principle and to extend the principle to handsets with multiple air interfaces as well as those with multiple bands. Specifically, we tentatively concluded to adopt the proposal in the Joint Consensus Plan that a handset operating over multiple air interfaces (multi-mode handset) will not be counted as a hearing aid-compatible handset unless it is compatible in all air interfaces over which it operates.¹³⁸ We

¹³⁶ See *Inductive Coupling Compatibility Waiver Order*, ¶ 66 and n. 217 (discussing Motorola's offering of two different versions of its V3i handset with different hearing aid compatibility ratings).

¹³⁷ See *Notice*, 22 FCC Rcd at 19675 ¶ 11 (citing Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones, Cingular Wireless LLC Petition for Waiver of Section 20.19(c)(3)(i)(A) of the Commission's Rules, WT Docket No. 01-309, *Memorandum Opinion and Order*, 20 FCC Rcd 15108, 15115 ¶ 17 (2005) (*Dual-Band GSM Waiver Order*)). See also Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones, Petitions for Waiver of Section 20.19 of the Commission's Rules, WT Docket No. 01-309, *Memorandum Opinion and Order*, 22 FCC Rcd 20459, 20468-69 ¶ 19 ("dual-band GSM handset models certified under the *Dual-Band GSM Waiver Order* cannot be used to satisfy the obligations of either the manufacturer or the carrier under Section 20.19(c) unless they both meet an M3 rating and have been formally recertified in both bands").

¹³⁸ See *Notice*, 22 FCC Rcd at 19701 ¶ 84.

also proposed that a multi-band or multi-mode handset would not count as hearing aid-compatible if it operates over frequency bands or air interfaces for which technical standards for determining hearing aid compatibility have not yet been established, even if it meets hearing aid compatibility standards over all of its operating frequency bands and air interfaces for which standards have been established.¹³⁹ We did not specifically propose an exception to this principle for handsets with Wi-Fi capability, but did seek comment elsewhere in the *Notice* on the extent to which hearing aid compatibility requirements should apply to handsets incorporating Wi-Fi and other emerging technologies.¹⁴⁰

59. Commenters generally support the proposal that a handset be considered hearing aid-compatible only if it is compatible in all frequency bands and modes over which it operates and for which there are established standards.¹⁴¹ RCA, however, opposes the proposal, arguing that it will reduce availability of hearing aid-compatible handsets, and will particularly harm small service providers whose access to such handsets is already limited.¹⁴²

60. In addition, although most manufacturers and service providers support the basic multi-band/mode proposal where hearing aid compatibility technical standards already exist, they oppose the proposal in the *Notice* to automatically treat multi-band and multi-mode handsets as non-compatible if they operate over frequency bands or modes without established standards.¹⁴³ They assert that the proposal may inhibit or delay deployment of new technologies and converged devices,¹⁴⁴ and that there is no evidence that new frequency bands or air interfaces will cause interference problems.¹⁴⁵ In particular, some commenters express concerns regarding the effect of such a rule on deployment of multi-mode handsets that offer Wi-Fi capability.¹⁴⁶ Commenters further assert that the proposal will mislead consumers with hearing loss into concluding that all handsets operating over new frequency bands or using new technology are incompatible with hearing aid use, even if the handsets can be certified

¹³⁹ *See id.* at 19700 ¶ 81.

¹⁴⁰ *Id.* at 19702-05 ¶¶ 89-94.

¹⁴¹ *See, e.g.*, ATIS Comments at 11; HIA Comments at 3; Motorola Comments at 3 (supporting the adoption of the Joint Consensus Plan “in its entirety”); RIM Comments at 15; T-Mobile Comments at 7; Sony Ericsson Comments at 7; Nokia Reply Comments at 3-4.

¹⁴² *See* RCA Comments at 6-7.

¹⁴³ *See* Motorola Comments at 7-8; Nokia Comments at 6-8; RIM Comments at 17; T-Mobile Comments at 7-8; Sony Ericsson Comments at 5-6; Apple Reply Comments at 5-6; AT&T Reply Comments at 7-8; CTIA Reply Comments at 5-6; Verizon Reply Comments at 3; VON Reply Comments at 10.

¹⁴⁴ *See* Nokia Comments at 7-8 (rule will result in delayed deployment); RIM Comments at 16 (rule will create “significant disincentives”); Sony Ericsson Comments at 6 (rule “could slow down the roll out of new technologies in the U.S. market”); Apple Reply Comments at 7 (proposal will “delay the adoption of new technologies”); AT&T Reply Comments at 8 (rule could inhibit or delay introduction of new technology); CTIA Reply Comments at 5; Nokia Reply Comments at 4 (proposal will “stifle industry incentives to develop new equipment”); Verizon Reply Comments at 3 (rule will reduce access to new technology); VON Reply Comments at 10.

¹⁴⁵ *See* Motorola Comments at 8; Nokia Comments at 7; RIM Comments at 16; Sony Ericsson Comments at 6; Apple Reply Comments at 7 (proposal will constrain multi-mode and multi-band devices “whether or not the new frequency bands or modes actually cause any interference”); Nokia Reply Comments at 4. *See also* ANSI ASC C63® Reply Comments at 3 (“the concern being expressed is theoretical and not founded in field reports of interference to hearing aids”).

¹⁴⁶ *See, e.g.*, CTIA Reply Comments at 5; T-Mobile Reply Comments at 5-6.

compatible in all operating modes and frequency bands that have established standards.¹⁴⁷ Finally, they argue that the proposal violates the Commission's statutory obligation to "ensure that regulations adopted to implement this section encourage the use of currently available technology and do not discourage or impair the development of improved technology,"¹⁴⁸ and would also exceed our statutory authority by effectively imposing hearing aid compatibility requirements in the absence of established standards for such compatibility.¹⁴⁹ Instead of the proposed rule, they recommend that the Commission provide ANSI time to identify actual interference concerns and offer specific standards or recommendations, and otherwise permit handsets to be designated hearing aid-compatible so long as they have been certified to meet hearing aid compatibility standards in all frequency bands and operating modes that have established standards.¹⁵⁰

61. Gallaudet/RERC supports the proposal in the *Notice*, arguing that consumers who purchase handsets labeled hearing aid-compatible have an expectation that such phones are compatible in all of their operations, and that the proposed rule will therefore prevent consumer confusion regarding hearing aid compatibility when the phone is operating over frequency bands or air interfaces that do not have standards.¹⁵¹ Gallaudet/RERC further argues that the rule will provide incentives to the wireless industry to establish standards in a timely fashion.¹⁵² Commenters in opposition respond that the Commission can address confusion concerns with disclosure requirements,¹⁵³ and that there is no reason to believe that the rule will hasten development of standards.¹⁵⁴ These commenters also disagree that the rule is justified to induce more rapid adoption of new standards.¹⁵⁵

62. More recently, a filing on behalf of both industry and consumer group representatives has asked that we hold the record open to enable them to develop a consensus proposal regarding multi-mode and multi-band phones that operate in part over air interfaces or frequency bands for which no hearing aid compatibility standards exist.¹⁵⁶ As set forth in this filing, members of ATIS' Incubator Solutions #4

¹⁴⁷ See Nokia Comments at 7 (consumers with hearing loss "may be inhibited from taking advantage of new multi-mode devices that incorporate a [hearing aid-compatible] interface and new air interfaces"); T-Mobile Reply Comments at 5-6.

¹⁴⁸ 47 U.S.C. § 610(e). See Apple Reply Comments at 5-6.

¹⁴⁹ See RIM Comments at 16; Apple Reply Comments at 6. See also Motorola Reply Comments at 7-8.

¹⁵⁰ See Motorola Comments at 8; Sony Ericsson Comments at 6; Apple Reply Comments at 8; Nokia Reply Comments at 4. See also Nokia Comments at 7 (recommending that the Commission "allow the industry to investigate and evaluate each new technology on a case-by-case basis for interference issues").

¹⁵¹ See Gallaudet/RERC Comments at 14.

¹⁵² See *id.* See also HIA Comments at 3-4 (stating that it is "especially important that [hearing aid compatibility] certification be granted only to handsets that are compliant in all frequency bands and modes in which they operate" for reasons similar to those expressed by Gallaudet/RERC).

¹⁵³ See Motorola Comments at 8 (allow manufacturers to declare handsets hearing aid-compatible but note any bands or technology for which hearing aid compatibility standards do not exist and for which compliance therefore could not be measured); Sony Ericsson Comments at 6; Apple Reply Comments at 7 (confusion can be alleviated by a label clearly informing consumers that phones have not been tested for hearing aid compatibility for operations for which no standards exist).

¹⁵⁴ See Apple Reply Comments at 7.

¹⁵⁵ See RIM Comments at 17; Apple Reply Comments at 7.

¹⁵⁶ E-mail from Tom Goode, General Counsel, ATIS, to Bruce Gottlieb, Legal Advisor to Commissioner Copps, *et al.* (dated Feb. 14, 2008) (ATIS Feb. 14, 2008 E-Mail), *attached to* Letter from Deirdre Y. Cheek, Attorney, ATIS, (continued....)

(AISP.4-HAC) state that they have agreed with representatives of consumers with hearing loss to develop such a proposal.¹⁵⁷ The filing also states that AISP.4-HAC “anticipates filing general principles regarding this consensus plan within three (3) months of the release of [the Commission’s] Order, with more specific information regarding this proposal to be filed within six (6) months of the release of the Order.”¹⁵⁸ ATIS states that, with the exception of devices incorporating Wi-Fi capability, it is unaware of any phones currently available that operate over multiple air interfaces or frequency bands, some of which have hearing aid compatibility standards and some of which do not.¹⁵⁹ Finally, with regard to devices that incorporate Wi-Fi capability, the filing states that the members of AISP.4-HAC support allowing such devices to be labeled as hearing aid-compatible if they satisfy hearing aid compatibility standards for all other frequency bands and air interfaces over which they operate.¹⁶⁰

63. Discussion. In order to both protect consumers and provide clarity to industry with respect to handset offerings that already exist, while allowing further consideration of the longer-term issues, we take the following steps at this time. First, we adopt the Joint Consensus Plan’s proposal to clarify that, to be counted as compatible, a handset model must be hearing aid-compatible for each air interface and frequency band it uses as long as standards exist for each of those bands and interfaces. Second, at this time we leave the record open for further submissions in the near term, including an anticipated consensus proposal, regarding whether a phone that operates in part in bands or air interfaces for which no standards exist should be counted as compatible, if it is compatible in all bands and air interfaces for which hearing aid compatibility standards exist. Finally, because there already exist a large number of handset models that operate over the Wi-Fi air interface as well as in bands and air interfaces for which there are hearing aid compatibility standards, we will allow such phones on an interim basis to be counted as hearing aid-compatible if they otherwise qualify as hearing aid-compatible under our rules, but will require consumers to be informed that those phones have not been rated for hearing aid compatibility with respect to their Wi-Fi operations.

64. We first adopt the Joint Consensus Plan’s proposal and establish that, to be offered as hearing aid-compatible under Section 20.19, a handset must be hearing aid-compatible for every frequency band and air interface that it uses for which standards have been adopted by the Commission.¹⁶¹ As we indicated in the *Notice*, we find that requiring a hearing aid-compatible handset to be hearing aid-compatible in all such frequencies and modes of operation will better conform to the expectations of consumers that purchase such handsets. Conversely, allowing manufacturers and carriers to satisfy their deployment requirements with partially-compatible handsets where hearing aid compatibility standards exist, would likely cause significant confusion to consumers who purchase handsets that are labeled and offered as hearing aid-compatible, and who perhaps experience compatibility when the handset is tested in-store, only to discover later that the handset’s compatibility varies depending on which of its frequency bands or air interfaces is in use at any particular moment. We note that we emphasized last year the benefits to hard-of-hearing consumers of being able to rely on a full range of functionality in their hearing

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to Marlene H. Dortch, Secretary, FCC (filed February 20, 2008) at 3. *See also* Letter from Thomas Goode, General Counsel, ATIS, to Marlene H. Dortch, Secretary, FCC (filed Feb. 13, 2008) at 1 (noting that AISP.4-HAC is discussing a “possible way forward” on the multi-mode/band issue “that would address the concerns of wireless service providers, manufacturers, and representatives of consumers with hearing loss”).

¹⁵⁷ ATIS Feb. 14, 2008 E-Mail.

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ We note that this includes all frequencies in the 800-950 MHz and 1.6-2.5 GHz bands. *See infra* Section IV.B.2.

aid-compatible handsets and of not having to learn all the technical details, such as the frequencies on which their phones operate.¹⁶² Further, although RCA expresses concern that the rule will discourage the manufacture of hearing aid-compatible multi-mode handsets, we note that those manufacturers to comment on the issue all support the rule as proposed in the Joint Consensus Plan, some expressly indicating that the rule will not impede the development of technology.¹⁶³

65. Second, except for our interim ruling below with respect to the Wi-Fi air interface, we do not here resolve whether, or to what extent, multi-band and multi-mode handsets should be counted as hearing aid-compatible if they operate in part over frequency bands or air interfaces for which technical standards have not yet been established. As discussed above, the record contains arguments both in favor of and against treating such handsets as hearing aid-compatible. Moreover, according to industry representatives, no such handsets currently exist, with the exception of devices incorporating Wi-Fi capability.¹⁶⁴ We accept the proposal endorsed by both industry and consumer representatives to leave the record open so that they may develop a consensus plan on this issue in the near term.¹⁶⁵ We look forward to receiving from the parties to the consensus discussions general principles within three months of the release of this Report and Order and a detailed proposal within six months, and we also invite the views of other parties.¹⁶⁶ We anticipate acting on a final order shortly after receiving the detailed consensus proposal. Because our decision to take additional time to resolve this issue turns in part on the current unavailability of such handsets, we expect handset manufacturers to keep us up to date regarding the status of developments of such handsets, and we ask the parties to the consensus discussions to include that information as part of their filings in three and six months. If such handsets are made available in the interim, we will act expeditiously to address the hearing aid compatibility status of those handsets.¹⁶⁷

66. Finally, we adopt an interim rule to allow handsets with Wi-Fi capability that otherwise meet hearing aid compatibility standards to be certified as hearing aid-compatible. Unlike the situation with future air interfaces and anticipated frequencies (*e.g.*, the 700 MHz band), many handset models are already being produced and offered to consumers with Wi-Fi capability, including a significant proportion of the newest handset models.¹⁶⁸ Moreover, we have not yet addressed the extent to which hearing aid

¹⁶² See *700 MHz Service Report and Order*, 22 FCC Rcd at 8117 ¶ 143.

¹⁶³ See, *e.g.*, ATIS Comments at 11; HIA Comments at 3; Motorola Comments at 3 (supporting the adoption of the Joint Consensus Plan “in its entirety”); RIM Comments at 15; T-Mobile Comments at 7; Sony Ericsson Comments at 7; Nokia Reply Comments at 3-4 (stating that the rule “represents a reasonable standard for hearing-aid compatibility evaluation of multi-mode handsets, and this proposal does not impede advances in technology for the benefit of consumers”). With regard to RCA’s concerns regarding availability of handsets to small carriers, we address this issue elsewhere in this Report and Order.

¹⁶⁴ ATIS Feb. 14, 2008 E-Mail.

¹⁶⁵ See *id.*

¹⁶⁶ We note that the Commission has followed a similar procedure on prior occasions. See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket Nos. 98-67 and 03-123, *Order on Reconsideration*, 20 FCC Rcd 13140, 13155 n.111 (2005); *Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Agency Communication Requirements Through the Year 2010*, WT Docket No. 96-86, *Third Memorandum Opinion and Order and Third Report and Order*, 15 FCC Rcd 19844, 19855 ¶ 25 (2000).

¹⁶⁷ See E-mail from Tom Goode, General Counsel, ATIS, to Bruce Gottlieb, Legal Advisor to Commissioner Copps, *et al.* (dated Feb. 15, 2008), *attached to* Letter from Deirdre Y. Cheek, Attorney, ATIS, to Marlene H. Dortch, Secretary, FCC (filed February 20, 2008) at 4.

¹⁶⁸ See http://certifications.wi-fi.org/wbcs_certified_products.php?lang=en (listing 45 models in the category (continued....))

compatibility requirements should apply to handset models in various configurations incorporating Wi-Fi capability (which was not originally developed for voice transmissions), an issue on which we sought comment in the *Notice*.¹⁶⁹ Therefore, we adopt an interim measure to provide certainty and avoid discouraging the use of currently-available Wi-Fi technology during the period until we address the status of Wi-Fi. Specifically, we will not at present preclude a handset model that incorporates a Wi-Fi air interface from being offered as hearing aid-compatible so long as the handset otherwise qualifies as hearing aid-compatible under our rules.

67. To reduce consumer confusion as much as possible, however, we also will require manufacturers and service providers, where they provide hearing aid compatibility ratings for handset models that incorporate operations using a Wi-Fi air interface, to clearly disclose to consumers that the handset has not been rated for hearing aid compatibility with respect to its Wi-Fi operation.¹⁷⁰ We recognize that such disclosure is not likely to fully relieve potential customer confusion regarding handsets that meet established hearing aid compatibility standards for all of their operations except Wi-Fi. As discussed above, however, given the current circumstances, we believe the better course is to require disclosure of the lack of a hearing aid compatibility rating over the Wi-Fi air interface rather than preclude handset models that incorporate a Wi-Fi air interface from being considered hearing aid-compatible.¹⁷¹ To give manufacturers and service providers sufficient time to develop and implement effective means to disclose this information (*e.g.*, inclusion of call-out cards or other media, revisions to their packaging materials, supplying of information on websites) where hearing aid compatibility ratings are provided, this requirement will become effective six months after the effective date of the rules adopted in this order. We also note that Working Group 6 of the ATIS incubator is developing language to inform consumers when otherwise hearing aid-compatible phones operate in part over frequency bands or air interfaces that do not have hearing aid compatibility standards.¹⁷²

68. When we subsequently address the application of hearing aid compatibility requirements to Wi-Fi operations, we will consider an appropriate transition regime to bring any requirements into effect.¹⁷³ Given that Wi-Fi-capable handsets are currently available, we ask whether we should allow a period of time before any requirements to meet hearing aid compatibility standards for handsets that incorporate Wi-Fi capability become effective, and if so what that time period should be. We note that some commenters have argued, without any specific showing, that, due to their low power, Wi-Fi operations are unlikely to cause significant interference to hearing aids.¹⁷⁴ We invite further submissions

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“Phone, dual-mode (Wi-Fi and cellular),” and 84 models in the category “Smartphone, dual-mode (Wi-Fi and cellular)” (last visited Feb. 8, 2008).

¹⁶⁹ See *Notice*, 22 FCC Rcd at 19702 ¶ 89.

¹⁷⁰ This includes phones that may be used to provide Voice over Internet Protocol using a Wi-Fi air interface.

¹⁷¹ In addition, we expect service providers to train the sales staff at their owned or operated retail outlets regarding the lack of a rating for Wi-Fi operations and its implications.

¹⁷² See Letter from Karen Peltz Strauss, Legal Consultant, KPS Consulting, to Marlene Dortch, Secretary, FCC (filed Feb. 8, 2008) at 1; Letter from Thomas Goode, General Counsel, ATIS, to Marlene Dortch, Secretary, FCC (filed February 13, 2008) at 1-2.

¹⁷³ See *700 MHz Service Report and Order*, 22 FCC Rcd at 8120 ¶ 148 (indicating that the Commission would promulgate a timetable for deployment after hearing aid compatibility technical standards are established for 700 MHz).

¹⁷⁴ ANSI ASC C63® Comments at 2-3; see also TIA Comments at 8 (noting that “many emerging technologies are designed to be used in close proximity to an access point or base station, allowing these devices to use much lower power”).

to elucidate these matters as we consider hearing aid compatibility issues relating to Wi-Fi operations. If those operations are generally unlikely to cause interference, it may reduce the amount of time necessary to develop a hearing aid compatibility standard and to certify handset models as meeting that standard.

c. *De minimis* Rule

69. Background. Section 20.19 provides a *de minimis* exception to hearing aid compatibility obligations for those manufacturers and mobile service providers that only offer a small number of handset models.¹⁷⁵ Specifically, Section 20.19(e)(1) provides that manufacturers and mobile service providers offering two handset models or fewer in the United States are exempt from the requirements of Section 20.19.¹⁷⁶ Section 20.19(e)(2) provides that manufacturers or mobile service providers that offer three handset models must offer at least one compliant model.¹⁷⁷ In the 2005 *Hearing Aid Compatibility Reconsideration Order and Further Notice*, the Commission clarified that the *de minimis* exception applies on a per air interface basis rather than across a manufacturer's or service provider's entire product line.¹⁷⁸ It also sought comment on whether the *de minimis* exception should be narrowed in certain respects.¹⁷⁹

70. We addressed the resulting record in the *Second Report and Order* that was issued together with the *Notice*, and concluded that the record did not support any change to the *de minimis* exception at that time.¹⁸⁰ We also noted, however, that we were seeking comment in the *Notice* on the Joint Consensus Plan, including its proposals regarding the *de minimis* exception.¹⁸¹ Specifically, the Joint Consensus Plan proposed that the Commission retain the *de minimis* exception but clarify that it applies on a per-air interface basis rather than across a manufacturer's or service provider's entire product line.¹⁸² As noted above, the Commission issued such an interpretation in 2005, but did not codify the clarification. In the *Notice*, we therefore proposed codifying this pre-existing interpretation as part of Section 20.19(e).¹⁸³

71. Most commenters addressing the issue support the Joint Consensus Plan proposal to retain the exception and to codify that the exception applies on a per air interface basis.¹⁸⁴ HLAA/TDI and Gallaudet/RERC propose, however, that the exception be modified so that it not apply on a permanent basis to large businesses that produce only one or two handsets with mass appeal, such as Apple's iPhone.¹⁸⁵ Gallaudet/RERC argues that, if the exception applied to companies like Apple that do not routinely manufacture handsets, their handsets might be subject to the exception indefinitely, and

¹⁷⁵ See 47 C.F.R. § 20.19(e).

¹⁷⁶ See 47 C.F.R. § 20.19(e)(1).

¹⁷⁷ See 47 C.F.R. § 20.19(e)(2).

¹⁷⁸ See *Hearing Aid Compatibility Reconsideration Order and Further Notice*, 20 FCC Rcd at 11244 ¶ 53.

¹⁷⁹ See *id.* at 11249 ¶ 66.

¹⁸⁰ *Second Report and Order*, 22 FCC Rcd at 19681 ¶ 31.

¹⁸¹ *Id.*

¹⁸² See *Notice*, 22 FCC Rcd at 19701 ¶ 85 (citing Joint Consensus Plan at 10).

¹⁸³ See *Notice*, 22 FCC Rcd at 19701-02 ¶ 85.

¹⁸⁴ See, e.g., ATIS Comments at 14; AT&T Comments at 6; RIM Comments at 17; Sony Ericsson Comments at 7-8; TIA Comments at 9-10; T-Mobile Comments at 10; VON Reply Comments at 10.

¹⁸⁵ See HLAA/TDI Comments at 6; Gallaudet/RERC Comments at 13-14.

consumers with hearing loss might never have the opportunity to use such devices.¹⁸⁶ It further argues that the exception was not intended to permanently relieve large and prosperous companies “whose handsets produce handsome profits” from the obligations of Section 20.19.¹⁸⁷ It therefore suggests that the exception be applicable in such cases only for a certain period of time.¹⁸⁸ HLAA/TDI similarly argues that the exception was only intended to protect small businesses, and should therefore be limited in its application to large businesses like Apple.¹⁸⁹ In response, several commenters oppose the limitations suggested by Gallaudet/RERC and HLAA/TDI, arguing that the exception was not intended to be limited to small businesses, and that the proposed limitations risk undermining the rule’s objective of preserving competition and innovation from new entrants.¹⁹⁰

72. Discussion. We adopt the proposal of the Joint Consensus Plan to retain the existing *de minimis* exception, which in most of its applications was not opposed in the record. We further adopt the proposal to codify that the exception applies on a per air interface basis. No commenter has objected to applying the exception on a per air interface basis, and we see no reason to depart from our earlier decision that adopted that interpretation. As the Commission indicated in the *Hearing Aid Compatibility Reconsideration Order and Further Notice*, a per air interface approach to the *de minimis* exception to the handset deployment obligations follows from the deployment obligations themselves, which are also applied on a per air interface basis (*i.e.*, manufacturers and service providers must offer the specified number of handsets for each air interface in their product lines).¹⁹¹ If we were to apply the exception to the total number of handsets across a manufacturer’s total product line while requiring the specified number or percentage of hearing aid-compatible handsets for each air interface, a manufacturer that offered just one handset each for four different interfaces would fall outside the exception for each of the four interfaces. This result would force the manufacturer in question to either significantly increase the number of handsets in its product line to meet a multiple-handset deployment obligation for each air interface or else withdraw some of its existing products from the U.S. wireless market, which “could have the effect of retarding technological progress and limiting competition.”¹⁹²

73. While we do not adopt at this time the new limitation proposed by HLAA/TDI and Gallaudet/RERC, we leave the record open for further comment. We recognize HLAA/TDI’s and Gallaudet/RERC’s concern that if a manufacturer produces only one or two models of a popular handset that is not hearing aid-compatible, consumers with hearing loss may be denied access to attractive features of that handset indefinitely. At the same time, as we have stated previously, the exception was not adopted solely for the benefit of small businesses, but for businesses of any size that sell only a small

¹⁸⁶ See Gallaudet/RERC Comments at 13.

¹⁸⁷ *Id.* at 14.

¹⁸⁸ *Id.*

¹⁸⁹ HLAA/TDI Comments at 6.

¹⁹⁰ See Apple Reply Comments at 2-5; AT&T Reply Comments at 4-5; CTIA Reply Comments at 6; Motorola Reply Comments at 5-6; TIA Reply Comments at 10; T-Mobile Reply Comments at 7; VON Reply Comments at 10.

¹⁹¹ See *Hearing Aid Compatibility Reconsideration Order and Further Notice*, 20 FCC Rcd at 11244 ¶ 53 (“This clarification makes explicit the consistency between the handset deployment benchmarks, which expressly apply on a per air interface basis, and the *de minimis* exception . . .”).

¹⁹² *Id.*

number of digital wireless handsets in the United States.¹⁹³ We are concerned that the rule not be limited in a manner that would compromise its effectiveness in promoting innovation and competition.¹⁹⁴ We also note that large manufacturers with highly successful initial devices may not continue indefinitely to produce only two or fewer handset models, but instead may expand their product offerings in response to consumer demand for new and different features, thereby bringing themselves under the hearing aid compatibility rules and benefiting consumers both with and without hearing loss.¹⁹⁵ It is also unclear exactly how the changes proposed by Gallaudet/RERC and HLAA/TDI would operate in practice. How would “large business,” “handsome profits,” or “mass appeal” be defined? To the extent the rule’s application would depend on the volume and profitability of sales during the first year, would manufacturers have sufficient ability to anticipate the obligations to which they would be subject and plan accordingly? We therefore leave the record open for commenters to address these questions pursuant to our *ex parte* procedures.¹⁹⁶ In particular, we invite parties to discuss with specificity the operational details and effects of any limitation on the *de minimis* exception that they may propose, as well as the need for the limitation to protect consumers’ access to phones with advanced or desirable technologies and features. We intend to address this issue further, taking into consideration any *ex parte* submissions we receive, in the upcoming Report and Order.

74. In addition, regardless of whether or how we subsequently modify the application of the *de minimis* exception, we strongly encourage all manufacturers, including those falling within the *de minimis* exception, to consider hearing aid compatibility as an integral and early part of their handset design process and to incorporate hearing aid compatibility into their new designs wherever feasible. We also strongly encourage all manufacturers, including new entrants as well as established companies, to participate in the standards-setting process so as to keep abreast of developments in this area, and to incorporate any revisions in the hearing aid compatibility standard at an early stage when designing and testing their handsets.

4. M4/T4 Standards

75. Background. In the *Notice*, we sought comment on the possibility of establishing additional deadlines or deployment milestones beyond those contained in the Joint Consensus Plan.¹⁹⁷ In particular,

¹⁹³ See *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16781 ¶ 69 (adopting *de minimis* exception in recognition that hearing aid compatibility requirements “could have a disproportionate impact on small phone manufacturers or those that sell only a small number of digital wireless handsets”) (emphasis added).

¹⁹⁴ See *Hearing Aid Compatibility Reconsideration Order and Further Notice*, 20 FCC Rcd at 11245 ¶ 53 (adopting per-air-interface interpretation to ensure that hearing aid compatibility rules do not “have the effect of retarding technological progress and limiting competition”). See also Apple Reply Comments at 4 & n.5 (stating that *de minimis* exception allowed Apple to enter the handset market with advanced technology, and noting that iPhone has spurred user interface improvements in competing handsets).

¹⁹⁵ See Nokia Reply Comments at 8. We note, for example, that RIM, whose CDMA offerings in the CMRS market initially fell under the *de minimis* exception, has gone on to expand its CDMA lines and as of November 1, 2007, offered four hearing aid-compatible CDMA handsets. See *Hearing Aid Compatibility Reconsideration Order and Further Notice*, 20 FCC Rcd at 11244 ¶ 52 (noting that RIM offered only one CDMA device); Section 68.4(a) of the Commission’s Rules Governing Hearing Aid Compatibility Telephones, WT Docket 01-309, Hearing Aid Compatibility Compliance Efforts Status Report #7 Submitted by the Alliance for Telecommunications Industry Solutions (ATIS) on behalf of the ATIS Incubator Solutions Program #4, filed Nov. 19, 2007, Attach. A (RIM Status Report).

¹⁹⁶ See 47 C.F.R. § 1.1206.

¹⁹⁷ See *Notice*, 22 FCC Rcd at 19687 ¶ 49.

we asked commenters to address whether we should adopt some requirement to deploy M4- or T4-rated handsets before our next review of the rules.¹⁹⁸ Most commenters that address this issue advise against the adoption of such requirements,¹⁹⁹ or state a preference to wait until the 2010 review to consider any such standards.²⁰⁰ Wireless RERC states, on the other hand, that “the FCC needs to expand the rules . . . to increase the number of models available with M4/T4 compatibility.”²⁰¹ HIA states generally that it supports mandating M4/T4 performance by handsets “if and when such performance is reasonably achievable.”²⁰²

76. Discussion. Given the weight of the record, especially the fact that no commenter submitted any specific proposals for new standards or rules, we determine not to impose any additional benchmarks based on hearing aid compatibility standards more stringent than the M3 / T3 standards in our rules and in the Joint Consensus Plan. Without more, we find that technology and the market are not yet fully enough developed to support a specific requirement at this time. Nevertheless, we agree with Gallaudet/RERC that the matter of requirements to deploy M4- or T4-rated handsets should be “on the agenda” for the rulemaking review that we plan to initiate in 2010.²⁰³ In the meantime, given the surveys and studies submitted by Wireless RERC, and the comments of HIA, we encourage manufacturers and service providers, including new entrants, to develop and deploy wireless phones that meet M4 and T4 standards in order to give greater options to consumers with hearing loss.²⁰⁴ In our 2010 review, we will look closely at the extent to which these handsets are commercially available, whether achieving these standards is technically feasible for all interfaces and frequency bands, and the degree to which hearing aid technologies may have improved so as to make achieving such standards unnecessary.

B. 2007 ANSI C63.19 Technical Standard

1. Adoption of the 2007 Standard and Phase-in

77. Background. Section 20.19(b) of the Commission’s rules contains the current technical standards defining hearing aid compatibility.²⁰⁵ In the 2003 *Hearing Aid Compatibility Order*, the Commission adopted the performance levels in the 2001 version of the ANSI C63.19 technical standard as the basis for ensuring hearing aid compatibility of digital wireless handsets.²⁰⁶ In finding that the technical standard in Section 20.19(b) met the “established” requirement set forth in the Hearing Aid Compatibility Act,²⁰⁷ the Commission analyzed and relied on numerous submissions supporting ANSI C63.19 as an established technical standard.²⁰⁸ The Commission determined that the standard presents a

¹⁹⁸ *Id.*

¹⁹⁹ *See, e.g.,* Nokia Comments at 9; Nokia Reply Comments at 5; RIM Comments at 7-9.

²⁰⁰ *See, e.g.,* AT&T Comments at 3; HLAA/TDI Comments at 2; Gallaudet/RERC Comments at 5-6.

²⁰¹ Wireless RERC Comments at 5.

²⁰² HIA Comments at 2 n.2

²⁰³ Gallaudet/RERC Comments at 6; *see also infra* para. 117.

²⁰⁴ *See also* HLAA/TDI Comments at 2; Gallaudet/RERC Comments at 5-6 (supporting doing this where “technically feasible”).

²⁰⁵ 47 C.F.R. § 20.19(b).

²⁰⁶ *See Hearing Aid Compatibility Order*, 18 FCC Rcd at 16779 ¶ 63.

²⁰⁷ 47 U.S.C. § 610(b)(1)(B) (providing that hearing aid compatibility requirements shall be based on “established technical standards for hearing aid compatibility”).

²⁰⁸ *See Hearing Aid Compatibility Order*, 18 FCC Rcd at 16770-71 ¶ 43.

workable approach to measuring levels of interference that digital wireless handsets could cause to hearing aids and the inductive coupling capability of wireless handsets, as well as for measuring the interference immunity of hearing aids.²⁰⁹ The Commission further ruled that codification of ANSI C63.19 served the public interest because the manufacture of digital wireless handsets comporting with this standard would ensure that “a greater number of hearing aid and cochlear implant users will be able to find digital wireless phones that will work for them.”²¹⁰

78. To ensure that the standard codified in the rules would remain viable, the Commission delegated to the Chief of WTB, in coordination with the Chief of OET, the authority to approve future versions of the standard that do not raise major compliance issues.²¹¹ Where major changes to the standard are made that could affect compliance, the Commission stated that it would initiate an appropriate rulemaking proceeding to consider adoption of updated versions. The Commission also encouraged ANSI to work with the relevant stakeholders to review the standard periodically to determine whether improvements to the standard are warranted.²¹² As a result, acting on delegated authority in 2005, OET clarified that applicants for certification of equipment could rely on either the 2001 or a draft 2005 update of the ANSI C63.19 standard.²¹³ In addition, in 2006, WTB and OET released a public notice on delegated authority stating that OET would accept applications for certification of equipment tested and rated under a 2006 revised standard (ANSI C63.19-2006) for wireless phone hearing aid compatibility.²¹⁴ WTB and OET also explained that applicants for certification may rely on only one of the three versions (2001, 2005, or 2006) of the ANSI C63.19 standard.²¹⁵

79. On June 25, 2007, the American National Standards Institute Accredited Standards Committee C63® filed a petition seeking adoption of the 2007 revision of the ANSI C63.19 technical standard in place of the 2001, 2005 draft, and 2006 versions of the technical standard. ANSI stated in its petition that further improvements have been made to the technical standard to reflect changes in technology, and efficiencies and improvements in testing procedures.²¹⁶ The Joint Consensus Plan also recommended adoption of the new standard, together with a transition plan under which use of either the 2007 or 2006 standard would be permitted immediately, and the 2007 standard would become mandatory for grants of equipment authorization beginning January 1, 2010.²¹⁷

²⁰⁹ *See id.* at 16776 ¶ 55.

²¹⁰ *Id.* at 16777 ¶ 57.

²¹¹ *See id.* at 16779 ¶ 63.

²¹² *See id.*

²¹³ *See* Public Notice, “OET Clarifies Use of Revised Wireless Phone Hearing Aid Compatibility Standard Measurement Procedures and Rating Nomenclature,” 20 FCC Rcd 8188 (OET 2005).

²¹⁴ *See generally* 2006 ANSI Standard Public Notice, 21 FCC Rcd at 6384-85.

²¹⁵ *Id.*

²¹⁶ ANSI Petition at 2. Specifically, (1) the distance between the cell phone under measurement and the measuring probe to be used when establishing the “M” rating has been increased from 1.0 cm to 1.5 cm, (2) the (signal+noise)-to-noise ratio to be used in determining the “T” rating has been increased (resulting in lower noise relative to the audible signal and improved performance of the wireless device), (3) the “T” rating for T-Coil capable wireless devices has been separated from the “M” rating, allowing a “T” rating that is greater than the “M” rating for the same wireless device, and (4) the axial T-coil coupling field intensity value has been changed from ≥ -13 dB (A/m) at 1 kHz to ≥ -18 dB (A/m) at 1 kHz, resulting in the same T-coil field intensity value for both the axial and radial test positions.

²¹⁷ Joint Consensus Plan at 13.

80. Because the standard that has been adopted by ANSI is stricter in some respects than prior versions,²¹⁸ and is the result of broad participation from diverse groups,²¹⁹ we proposed in the *Notice* that the standard be codified in our rules in order to better promote the development of hearing aid-compatible handsets that hearing-impaired consumers can readily use. We also proposed to adopt and sought comment on the phase-in process as outlined in the Joint Consensus Plan.²²⁰ We further asked whether we should require handsets certified under earlier versions of the standard to be recertified, and whether we should permit use of the 2001 and 2005, as well as 2006, versions of the standard during the transition period.²²¹ Seventeen of the 35 comments and replies address these issues. All of these commenters support adoption of the 2007 standard, and none are opposed to any aspect of the proposed transition plan.²²²

81. Discussion. Consistent with the Joint Consensus Plan and the unanimous view of commenters, we adopt the 2007 ANSI C63.19 standard as a replacement for the 2001, 2005, and 2006 versions of the standard. We conclude that the use of the most current testing and rating techniques will best ensure that consumers with hearing loss can obtain wireless phones that meet their needs. We also adopt the transition schedule set forth in the Joint Consensus Plan, agreeing with commenters that this affords manufacturers appropriate time to begin producing phones to the new standard.²²³ We further determine not to require recertification of handsets previously certified under one of the older standards, but instead to continue recognizing such phones as hearing aid-compatible even after the 2007 standard becomes mandatory for new certifications. As AT&T observes, older models are likely to be “phased out of circulation through marketplace attrition,” which should obviate the issue.²²⁴ Finally, no commenter addressed whether the 2001 and 2005 versions of the standard should continue to be permissible for new certifications during the transition period until 2010. To the contrary, the comments consistently assume that the choice during the transition period is between the 2006 and 2007 versions of the standard.²²⁵ As proposed in the Joint Consensus Plan, therefore, we do not provide for the continued use of earlier versions.

82. In its comments, ANSI notes that the phase-in requirement contains an unspoken assumption, that “this would require any given mobile phone handset to be qualified under a complete version of either the 2006 or 2007 standard.”²²⁶ We agree. Accordingly, we clarify that a party can use either the 2006 or 2007 standard for new certifications through 2009, but must use a single version for all certification tests and criteria for both the M and T ratings with respect to a given device. The particular version of the standard used should be specified in the party’s application for equipment certification.

83. To summarize, under the rules we adopt today, a newly-certified handset model or a handset model submitted for a permissive change relating to hearing aid compatibility will have to meet, at

²¹⁸ *Id.*

²¹⁹ ANSI Petition at 2.

²²⁰ *See Notice*, 22 FCC Rcd at 19692 ¶ 60.

²²¹ *Id.* at ¶ 62.

²²² *See, e.g.*, Gallaudet/RERC Comments at 7; ATIS Comments at 8; HLAA Comments at 3; Research in Motion Comments at 11; Motorola Reply Comments at 3; TIA Comments at 5-6.

²²³ *See, e.g.*, Motorola Comments at 3; T-Mobile Comments at 10; CTIA Reply Comments at 4-5.

²²⁴ AT&T Comments at 6. *See also* RIM Comments at 11.

²²⁵ *See, e.g.*, ANSI Technical Comment at 2 (referencing 2006 and 2007 standards).

²²⁶ *Id.*

minimum, an M3 rating (for radio frequency interference reduction) or T3 rating (for inductive coupling capability) as set forth in either the 2006 or 2007 revision of the ANSI C63.19 standard to be considered compatible. Grants of equipment certification previously issued under earlier versions of the standard will remain valid for hearing aid compatibility purposes, and if a permissive change is submitted for a reason not related primarily to a handset model's hearing aid compatibility status, the analysis of the effect of that change on a phone's compliance status may use the version of the ANSI C63.19 standard under which the hearing aid compatibility certification for that model was first made.²²⁷ However, a manufacturer that is required to meet a T3 rating for 20 percent of its models under Section 20.19(d)(1)(i) will only be able to count toward this requirement one model manufactured after January 1, 2009, and certified under a pre-2007 standard.²²⁸ Then, beginning on January 1, 2010, we will only permit use of the 2007 version of the standard for obtaining new grants of equipment certification, while continuing to recognize the validity of existing grants under previous versions of the standard.²²⁹

2. Application to Services in the 800-950 MHz and 1.6-2.5 GHz Bands

84. Background. In the *Notice*, we observed that the 2007 version of the ANSI C63.19 standard includes target values for hearing aid compatibility procedures for operation over specific air interfaces at frequencies in the ranges of 800-950 MHz and 1.6-2.5 GHz, a broader range of frequencies than is currently covered by Section 20.19(a).²³⁰ We had previously stated that, once technical standards were established for a new frequency band, we would establish a timetable for deployment.²³¹ Accordingly, we tentatively concluded in the *Notice* to revise the hearing aid compatibility rule to include services operating over any frequencies within these two bands, to the extent they employ air interfaces for which technical standards have been established, and sought comment on this conclusion.²³² No commenter discussed the issue.

85. Discussion. We adopt our proposal to revise the rule to include services over any frequency band within the range covered by the ANSI C63.19-2007 standard, specifically, the 800-950 MHz and 1.6-2.5 GHz bands, to the extent that they employ air interfaces for which technical standards are established in that standard.²³³ We note that no commenter objects to this revision or indicates that any delay is necessary to meet hearing aid compatibility obligations within this frequency range. Accordingly, as of the effective date of these rules, providers of commercial mobile radio services that are operating over these frequency bands and are otherwise within the scope of Section 20.19, as well as

²²⁷ Consistent with the requirement to use a single version of the standard for all tests and criteria, however, if a permissive change is submitted for one of the hearing aid compatibility ratings, the manufacturer must also reevaluate the other hearing aid compatibility rating using the same version of the ANSI C63.19 standard.

²²⁸ This qualification was proposed in the Joint Consensus Plan at page C-3 of Appendix C to the Plan. *See* Final Rules in Appendix C, § 20.19(d)(1)(i).

²²⁹ Joint Consensus Plan at 13.

²³⁰ *See Notice*, 22 FCC Rcd at 19700 ¶ 82. We also note that the 2006 version of the standard includes target values for operation at the same frequency bands.

²³¹ *700 MHz Service Report and Order*, 22 FCC Rcd at 8119 ¶ 148.

²³² *See Notice*, 22 FCC Rcd at 19700 ¶ 82.

²³³ We note that Wi-Fi technologies often operate in the 2.4 GHz band, within the frequency range addressed by the ANSI C63.19 standard. However, as noted elsewhere, we have not yet determined the extent to which services and operations based on emerging technologies such as Wi-Fi should be subject to hearing aid compatibility obligations. *See supra* para. 65.

manufacturers of wireless phones used in the delivery of such services, will be subject to the same benchmark requirements that providers of cellular, PCS, and SMR services have to deploy hearing aid-compatible handset models as determined using either the 2006 or 2007 version of ANSI standard C63.19.²³⁴

3. Future Revisions and Extensions to the Technical Standard

86. Background. In the *Hearing Aid Compatibility Order*, the Commission, as noted above, delegated to the Chief of WTB, in coordination with the Chief of OET, the authority to approve future versions of the standard that do not raise major compliance issues.²³⁵ In the *Notice*, we sought comment on whether we should establish a mechanism under which hearing aid compatibility obligations would become applicable to additional frequency bands as soon as or within a defined period after applicable technical standards are established, without the need for an additional rulemaking.²³⁶ We asked commenters whether such standards should be established upon promulgation by ANSI ASC Committee C63®, or whether there should additionally be a process for Commission review and approval.²³⁷

87. Discussion. To help ensure that our rules continue to reflect the most current standard as ANSI adopts new revisions to the standard, we again delegate to the Chief, Wireless Telecommunications Bureau, and the Chief, Office of Engineering and Technology, the authority to jointly adopt future versions of the ANSI C63.19 standard to the extent that the changes to the standard do not raise major compliance issues. In addition, as indicated below, we expand our delegation to a limited extent, *i.e.*, to allow Commission staff to administer a mechanism by which new frequency bands and air interfaces for which technical standards do not currently exist may be made subject to hearing aid compatibility obligations once such standards have been established. Specifically, where future versions of the ANSI C63.19 standard have been promulgated that provide technical standards for additional frequency bands or air interfaces not covered by previous versions, we direct the Chief, WTB, and the Chief, OET, to initiate a rulemaking proceeding, adopting the standards as established technical standards for the new frequency bands or air interfaces if they determine, based on the record, that the standards do not impose with respect to such frequency bands or air interfaces materially greater obligations than those imposed on services already subject to Section 20.19. To ensure that manufacturers and service providers have adequate time to comply with their obligations, we further impose a limitation that WTB and OET may not require manufacturers and Tier I carriers to meet deployment requirements for the relevant bands or air interfaces until at least one year after release of an order adopting standards for those bands or air interfaces, and may not require service providers other than Tier I carriers to meet such requirements sooner than 15 months after release of such order. However, manufacturers will be able to obtain hearing aid compatibility certification of handsets that can operate over the new bands or air interfaces, consistent with the multi-band/multi-mode rule discussed elsewhere, immediately upon the effective date of the rules adopted in such order.²³⁸

²³⁴ We note that the *Notice* also requested comment on how our rules apply to mobile satellite service (MSS) providers and whether any rule revisions are necessary respecting such providers. *See Notice*, 22 FCC Rcd at 19700 ¶ 79. We defer these issues to a future Report and Order. Accordingly, the rules we adopt today do not apply to MSS unless they fall within the existing scope of Section 20.19(a).

²³⁵ *See Hearing Aid Compatibility Order*, 18 FCC Rcd at 16779 ¶ 63.

²³⁶ *See Notice*, 22 FCC Rcd at 19701 ¶ 83.

²³⁷ *Id.*

²³⁸ In the *700 MHz Service Report and Order*, the Commission established a 24-month period for the development of standards for all of the frequencies listed in Section 27.1(b) of the rules, and provided that, if such standards were promulgated within that period, the Commission would initiate “a further proceeding at that time to establish a (continued....)

88. Our action in this regard is broadly supported by the record. In particular, every commenter that addresses the issue generally supports establishment of a streamlined mechanism for the approval of revised standards that provide tests for new frequency bands and air interfaces.²³⁹ Moreover, our process addresses concerns expressed by some commenters that the Commission should provide the public an opportunity to comment on the new standard before formally approving the standard in cases where the approval of the standard will result in extending hearing aid compatibility requirements to new bands or air interfaces.²⁴⁰ TIA advocates that we allow at least a two year period after adoption of a new standard before requiring compliance.²⁴¹ We find, however, that a one year interval is generally both sufficient for industry and necessary in order to bring the benefits of hearing aid-compatible handsets promptly to consumers.²⁴² Because manufacturers are already on notice that new bands and air interfaces will be subject to hearing aid compatibility requirements upon the establishment of standards, and given that manufacturers will likely be involved themselves in the standards development process, we expect that they will be in a position to at least begin the process of developing hearing aid-compatible handsets for the new bands and air interfaces even before the relevant standards are approved by ANSI, not to mention during the pendency of the rulemaking proceeding. Furthermore, the industry's years of experience with hearing aid compatibility in other bands and air interfaces will enable them to achieve hearing aid-compatible designs more quickly than before. We therefore adopt a minimum one year period for manufacturers and Tier I carriers in order to ensure the offering of hearing aid-compatible handsets for new bands and air interfaces as early as reasonably possible. Consistent with our recognition elsewhere of the difficulties smaller service providers may have in procuring up-to-date handsets, we prescribe a 15-month minimum interval for service providers other than Tier I carriers to begin offering hearing aid-compatible handsets for new bands and/or air interfaces.

89. Thus, in order to ensure that our rules continue to protect the ability of consumers with hearing loss to utilize services over all frequency bands and air interfaces for which standards exist, we delegate authority to WTB and OET to implement rule changes to conform our rules to ANSI standards. We take this action pursuant to Section 5(c)(1) of the Communications Act, which grants the Commission authority to delegate any of its functions, with certain exceptions not relevant here.²⁴³ We find that such rule changes do not involve novel questions of fact, law, or policy, and therefore are appropriately made under delegated authority.²⁴⁴ We amend Sections 0.241(a)(1), 0.331(d), and 20.19 of our rules to provide the Chiefs of WTB and OET with this delegated authority.²⁴⁵ These amendments pertain to agency

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specific timetable for deployment of hearing aid-compatible handsets for services in the relevant bands that meet the criteria discussed above.” See *700 MHz Service Report and Order*, 22 FCC Rcd at 8120 ¶ 148. Pursuant to our action today, this rulemaking proceeding referenced in the *700 MHz Report and Order* may be undertaken by WTB and OET under delegated authority.

²³⁹ See, e.g., ANSI ASC C63® Comments at 3; HLAA/TDI Comments at 5; TIA Comments at 6-7.

²⁴⁰ See Motorola Comments at 9 (notice and comment will allow parties to raise concerns with a standard before it is implemented, and is required under the Administrative Procedure Act); ATIS Reply Comments at 3 (Commission should seek public comment before adopting future revisions to the standard); RIM Reply Comments at 3 (Commission should maintain its oversight of future revisions through notice and comment process).

²⁴¹ See TIA Comments at 6-7.

²⁴² See, e.g., Gallaudet/RERC Comments at 15 (proposing that regulations automatically become applicable to new frequency bands “as soon as or within a defined period after technical standards are established” for an air interface).

²⁴³ 47 U.S.C. § 155(c)(1).

²⁴⁴ Cf. 47 C.F.R. § 0.331(d) (delegating authority to WTB to issue orders involving certain conforming amendments to rules “where novel questions of fact, law, or policy are not involved”).

²⁴⁵ 47 C.F.R. §§ 0.241(a)(1), 0.331(d), 20.19.

organization, procedure and practice. Consequently, the notice and comment provisions of the Administrative Procedure Act contained in 5 U.S.C. § 553(b) are inapplicable.²⁴⁶

C. Reporting, Information, and Outreach

1. Reporting

90. Background. In the *Hearing Aid Compatibility Order*, the Commission established a schedule requiring manufacturers and wireless service providers to report on compliance efforts every six months from 2004 through 2006, and then annually in 2007 and 2008. Thus, manufacturers and wireless service providers filed their most recent compliance reports on November 19, 2007.²⁴⁷ These reports include a variety of required information describing manufacturers' and service providers' efforts aimed at complying with Commission requirements for hearing aid compatibility.²⁴⁸

91. As the Commission has stated, these reports are intended to serve dual purposes. First, the reports assist the Commission in monitoring handset deployment progress. In addition, the reports provide valuable information to the public concerning the technical testing and commercial availability of hearing aid-compatible handsets,²⁴⁹ both for consumers, particularly those with hearing disabilities, and for service providers seeking information regarding the hearing aid compatibility of manufacturers' products.²⁵⁰

92. The Joint Consensus Plan proposed to retain the requirement that manufacturers and service providers file annual reports with the Commission. It further proposed certain refinements to the contents of the reports so as to render them more helpful to consumers and others. The Joint Consensus Plan proposed a staggered schedule whereby manufacturers would be required to provide an annual status report to the Commission beginning November 30, 2007, Tier I carriers would be required to provide an annual status report to the Commission six months later beginning May 30, 2008, and Tier II and Tier III carriers would be required to provide an annual status report beginning May 30, 2009.²⁵¹ These reporting requirements would continue annually through the November report in 2012.²⁵²

93. In the *Notice*, we sought comment on the reporting provisions of the Joint Consensus Plan and on potential additional content requirements, including requiring both manufacturers and service providers to provide the model number and FCC ID number directly associated with each model that they are reporting as compatible, together with the "M" and "T" rating that each such model has been certified as achieving under the ANSI C63.19 standard.²⁵³ We also sought comment on the proposed reporting schedule. In particular, we sought comment on the appropriate start date for new reports, given that the November 2007 reports under the existing rules were expected to be filed on time, and on the appropriateness of delaying for a year or more the next reports for service providers other than Tier I carriers.²⁵⁴ We further proposed to delegate to WTB authority to develop a standardized format for these

²⁴⁶ 5 U.S.C. § 553(b).

²⁴⁷ See *Notice*, 22 FCC Rcd at 19696 ¶ 70.

²⁴⁸ *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16787 ¶ 89.

²⁴⁹ See *id.*

²⁵⁰ See *Staff Report*, 22 FCC Rcd at 17732-33 ¶¶ 52-53.

²⁵¹ Joint Consensus Plan. at 11.

²⁵² *Id.*

²⁵³ *Notice*, 22 FCC Rcd at 19695 ¶ 67.

²⁵⁴ See *id.* at 19696 ¶ 70.

reports, and we sought comment on this and related issues.²⁵⁵

94. Although there is broad support among commenters on the need for additional reporting beyond 2007,²⁵⁶ some commenters advocate limiting the reporting information to that listed in the Joint Consensus Plan, asserting that additional content requirements for the reports would be burdensome.²⁵⁷ ATIS supports retaining the original schedule, with manufacturers reporting on November 30, and service providers on May 30.²⁵⁸ RCA supports having non-nationwide service providers (Tier II /Tier III carriers) begin reporting a year later than Tier I carriers.²⁵⁹

95. Discussion. We adopt substantially the reporting requirements proposed in the *Notice*, along with certain additions and changes. First, we elaborate on the required content of the reports in order to ensure that they will provide complete information to the Commission and to consumers. We further determine to require the same content from all providers, regardless of size. Furthermore, we clarify that the reporting requirements apply to all manufacturers and service providers, including those that come under the *de minimis* exception to the deployment benchmarks. We establish new timelines for the filing of the reports. Finally, we delegate authority to prescribe a template, including the authority to require electronic filing, to WTB.

96. Initially, we adopt the reporting content requirements proposed in the *Notice* with certain elaborations and clarifications. These 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. Specifically, we clarify that manufacturers and service providers must provide the dates on which they began and ended offering specific models during the past 12 months in order to demonstrate compliance over time, instead of providing a once a year “snapshot.” We further require manufacturers to indicate if devices that they market under separate model numbers constitute a single model for purposes of the hearing aid compatibility rules. This information will enable us to verify compliance with all of the hearing aid compatibility rules at all relevant times. Finally, we require each service provider to include an explanation of its methodology for dividing its hearing aid-compatible phones into different levels of functionality, which will help the Commission as well as the public know the range of compatible handsets that are being made available.²⁶⁰ As discussed more fully below, we require that these reports be filed by all manufacturers and service providers, even those that fall within the *de minimis* exception, although not all data categories will apply to *de minimis* entities.

97. The revised report content requirements are as follows:

Manufacturers:

- (1) digital wireless phone handset models tested since the most recent report;

²⁵⁵ *Id.* at 19696 ¶ 69.

²⁵⁶ *See, e.g.*, Gallaudet/RERC Comments at 8; Motorola Comments at 6; HLAA Comments at 3; Research in Motion Comments at 3; ATIS Comments at 9; Nokia Comments at 5.

²⁵⁷ SouthernLINC Wireless Reply Comments at 7; *see also* TIA Comments at 12; RCA Comments at 7 (air interface and frequency band information “is difficult to obtain and verify, and it is irrelevant to a reporting carrier’s single-interface obligation”).

²⁵⁸ ATIS Comments at 9.

²⁵⁹ RCA Comments at 7.

²⁶⁰ *See supra* Section IV.A.2.b.

- (2) compliant phone models offered to service providers since the most recent report,²⁶¹ identified by marketing model name/number(s) and FCC ID number;
- (3) 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, the ANSI C63.19 version used, and the months in which the model was available since the most recent report;
- (4) non-compliant phone models offered to service providers since the most recent report, identifying each model by marketing model name/number(s) and FCC ID number;
- (5) for each non-compliant model, the air interface(s) over which it operates and the months in which the model was available since the most recent report;
- (6) total numbers of compliant and non-compliant phone models offered to service providers for each air interface as of the time of the report;
- (7) any instance, as of the date of the report or since the most recent report, in which multiple compliant or non-compliant devices are marketed under separate model name/numbers but constitute a single model for purposes of the hearing aid compatibility rules, identifying each device by marketing model name/number and FCC ID number;
- (8) status of product labeling; and
- (9) outreach efforts.

Service providers:

- (1) compliant digital wireless phone 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-compliant phone models offered since the most recent report, identifying each model by marketing model name/number(s) and FCC ID number;
- (4) for each non-compliant 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 compliant and non-compliant phone 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 compliant phones;
- (7) status of product labeling;
- (8) outreach efforts; and
- (9) the levels of functionality into which the compliant phones fall and an explanation of the service provider's methodology for determining levels of functionality.

98. We further determine that the same reporting requirements should apply to all service providers. We reject arguments by RCA and SouthernLINC that less information should be required of

²⁶¹ As discussed below, information relating to compliant and non-complaint phone models offered in manufacturers' and service providers' initial reports under the new rule need only be provided for the previous six months.

service providers that are not Tier I carriers.²⁶² We find that uniform application of reporting requirements is necessary to inform all consumers, and we are unconvinced by arguments that the reports will impose unreasonable burdens. In this regard, we disagree with those commenters that suggest that some of this information can be difficult to obtain or verify. Rather, in light of the requirements we adopt today, this information should be readily available to service providers either from the manufacturer's previous reports to the Commission, from the manufacturer's own website, or from the manufacturer directly. We further reject the proposition that some of this information, in particular the frequency bands and air interfaces over which a phone operates, is unnecessary. To the contrary, this information is essential to ensure correct application of our rules requiring deployment of hearing aid-compatible phones on a per-air interface basis, as well as our requirements that phones meet hearing aid compatibility standards for all air interfaces and frequency bands over which they operate. We note that even if a provider offers service over only one air interface, hearing aid compatibility over multiple air interfaces may be important to its customers who may use their phones when roaming.

99. Furthermore, we clarify that even manufacturers and service providers that come under the *de minimis* exception to the deployment benchmarks are under an obligation to file reports to the Commission. Even though these entities may be exempt from other requirements under Section 20.19, it is still necessary to obtain information from them in order to form a complete picture of the availability of hearing aid-compatible handsets, as well as to inform consumers. For instance, consumers would benefit, if *de minimis* entities do produce or market handset models that have been tested and found to be hearing aid-compatible, from having access to information about those handsets. In addition, information regarding all handset models that these entities offer will enable us to verify their eligibility for the exception. Entities that come under the *de minimis* exception will not be required to provide information other than that relating to the handset models that they offer. For example, as they are not subject to product labeling requirements, they need not provide information on labeling.

100. In addition, we require each manufacturer and service provider that is required to offer one or more hearing aid-compatible handset models to identify in its report, if it maintains a public website, the specific website address at which it provides information relating to the hearing aid-compatible handsets that it offers.²⁶³

101. We require manufacturers and service providers to file their initial reports under the new rules on January 15, 2009. Thereafter, the reports will be filed annually beginning July 15, 2009, for manufacturers and January 15, 2010, for service providers. The information in the reports shall be current through the end of the calendar month preceding the filing date, and the reports shall include historical information for the period since the entity filed its last report (which in most instances will be 12 months). In order to afford sufficient time for manufacturers and service providers to transition to the new data collecting and reporting regime, however, the reports filed in January 2009 will need to include information relating to compliant and non-compliant handset models offered only for the previous six months (*i.e.*, beginning July 2008).

102. We find that this schedule appropriately balances manufacturers' and service providers' need for time to collect the information that will be required under the new reports with the public's interest in maintaining a steady flow of information. In particular, requiring the first reports to be filed in January 2009, two months after the next reports would have been filed under our existing rules and 14 months after the most recent reports, affords manufacturers and service providers a reasonable period to begin collecting the new information. Although this schedule departs from the November and May dates

²⁶² RCA Comments at 7; SouthernLINC Reply Comments at 6.

²⁶³ See *infra* para. 112 (discussion of requirement that manufacturers and service providers post certain information on their websites).

proposed in the Joint Consensus Plan, the differences are not great, and indeed our adopted rule expands the period of time some entities are afforded before making their first reports.²⁶⁴ This time period also gives WTB an opportunity to devise and promulgate a standard electronic format for reporting. Consistent with the Joint Consensus Plan, we find that staggering the deadlines after the initial reports will allow service providers better to incorporate more recent manufacturer information into their reports, as well as facilitating efficient administrative review. In addition, we disagree with the Joint Consensus Plan's provision for a year's delay in reporting for service providers that are not Tier I carriers, particularly in light of our decision not to require any reports until January 2009.²⁶⁵ We note that in the past all service providers have had the same reporting obligations, and find that this proposal would create an unacceptable and unnecessary gap in the availability of information. Only one party, RCA, filed comments supporting this aspect of the Joint Consensus Plan, and one smaller service provider, i wireless, specifically rejected the year's delay.²⁶⁶

103. Finally, we delegate authority to prescribe a template, including the authority to require electronic filing, to WTB. We find that a standardized form would improve the quality and utility of the reports for the Commission, industry, and the public. Although at least one commenter prefers to rely on a narrative report format,²⁶⁷ we conclude that a standardized format will assist the Commission and the public in understanding and analyzing the reports.

2. Information and Outreach

104. Background. In addition to the reports, the *Notice* sought comment on other ways to increase the availability of hearing aid compatibility information to consumers, service providers, and other interested parties.²⁶⁸ As explained in the *Staff Report*, the Commission's and industry's existing databases and websites are of limited value for these purposes.²⁶⁹

105. The *Notice* sought comment both on possible changes to the Commission's website and databases and possible new requirements on manufacturers and service providers. For example, it is difficult, particularly for an inexperienced user, to search for information on hearing aid compatibility certification in the OET equipment authorization databases²⁷⁰ because the information is based on FCC ID numbers, not model numbers, and many of the data points of interest to consumers are reported in narrative sections, which cannot be searched automatically and which may vary in wording. We therefore sought comment on ways to improve the utility of this database, as well as the disability access website

²⁶⁴ The Joint Consensus Plan was apparently drafted with the assumption that new rules would be in place before November 2007, and accordingly it is not clear how the proponents would intend to apply its proposed schedule in the current time frame. It is at least arguable, however, that Tier I carriers would be required to file their initial reports in May 2008. Manufacturers would file their first reports in November 2008.

²⁶⁵ Joint Consensus Plan at 11.

²⁶⁶ See RCA Comments at 6; Iowa Wireless Services Comments at 5 (noting that a delay in reporting would not delay other obligations under the rule).

²⁶⁷ See SouthernLINC Wireless Comments at 7; but see RCA Comments at 7 ("Provision ... of a standardized [hearing aid compatibility] report form or template is not necessary. However, RCA has no objection to staff development of an electronic form...").

²⁶⁸ *Notice*, 22 FCC Rcd at 19698-99 ¶¶ 74-77.

²⁶⁹ See *Staff Report*, 22 FCC Rcd at 17730 -31 ¶¶ 47-49.

²⁷⁰ See §§ 2.907 ("Certification is an equipment authorization issued by the Commission based on representations and test data submitted by the applicant."); 2.1033 ("Application for Certification").

maintained by the Commission's Disability Rights Office (DRO). We specifically sought comment on whether we should require manufacturers to include in their equipment certification filings the handset model name/numbers associated with each FCC ID number and to update this information when they introduce new models, and whether we should adopt new Part 2 rules to require a filing for permissive changes that includes trade names and model numbers.²⁷¹ Moreover, we requested comment on whether to require manufacturers and service providers subject to the Commission's hearing aid compatibility rules to follow the same procedures as those applicable to complaints regarding access to telecommunications services by persons with disabilities under Section 255 of the Communications Act,²⁷² in particular whether to have the Commission publish hearing aid compatibility designated agents' contact information on its DRO website. In addition, we solicited comment on whether to require manufacturers and service providers to post certain information on their websites, and generally on other means to improve the availability of hearing aid compatibility information to the public.²⁷³

106. In their comments, HLAA and Gallaudet/RERC offer several proposals for changes to the Commission's website and databases, as well as proposed requirements and recommendations for manufacturers and service providers.²⁷⁴

107. Discussion. We agree with HLAA and Gallaudet/RERC that improvements in the outreach activities of the Commission, manufacturers, and service providers would enhance the ability of consumers easily to obtain information about hearing aid-compatible handsets that meet their needs. We therefore take action on their recommendations, as described below.

108. First, HLAA and Gallaudet/RERC propose several changes to the Commission's website, databases, and processes, including:

- Develop a single location or website where hearing aid users can find the ratings and model numbers of compliant handsets offered by manufacturers and service providers;
- Add a search function to the FCC's equipment authorization database that will enable consumers to browse among phone features by category;
- Add links to manufacturers' and service providers' websites from DRO's web page; and
- Adopt a consumer-friendly method of handling hearing aid compatibility complaints that (1) requires FCC resolution within 90 days; (2) provides for a separate and identifiable electronic and telephonic FCC receptacle for hearing aid compatibility complaints; and (3) facilitates the filing of formal hearing aid compatibility complaints.

109. We direct CGB, OET, and WTB to take these recommendations under advisement and to implement them to the extent feasible. We conclude that all of these recommended actions, if feasible, would assist consumers. In particular, we direct the Commission's DRO to include, on its website, links to the website addresses maintained by manufacturers and service providers that provide information on the hearing aid-compatible models that they offer.²⁷⁵ The idea that consumers should be able to access as

²⁷¹ See 47 C.F.R. §§ 2.924 & 2.1043.

²⁷² 47 U.S.C. § 255.

²⁷³ Notice, 22 FCC Rcd at 19698 ¶ 74.

²⁷⁴ Gallaudet/RERC Comments at 8-11; HLAA Comments at 4-5; see also Nokia Comments at 10 ("The Commission can do more to facilitate access").

²⁷⁵ See *infra* para. 112 (discussion of requirement that manufacturers and service providers post certain information on their websites). Compare TIA Comments at 11 (opposing requiring manufacturers and service providers to add links from the Commission's DRO website to their own websites).

much information as possible through easily accessible connections to relevant material is a fundamental one. We note, however, that because OET's database and the Part 2 rules were designed to serve the equipment authorization process, there may be limits to their adaptability to provide accessible information on hearing aid compatibility certifications.²⁷⁶ We decline at this time, in the absence of a more complete record, to require that hearing aid compatibility complaints be resolved within a particular time period, such as 90 days. We do, however, expect that staff will make every effort to resolve such complaints within the shortest reasonable time frame, ideally within 90 days. We also note that, with its recent implementation of FCC Form 2000 online, the Commission has taken additional action to improve the manner in which it handles consumer complaints. In particular, FCC Form 2000C, the portion of Form 2000 that is used for disability access complaints, includes specific provisions for complaints relating to the hearing aid compatibility of wireless telephone equipment and service. The form is designed to be user-friendly, asking consumers targeted questions intended to facilitate processing of the complaint.²⁷⁷

110. HLAA specifically advocates adopting in the context of hearing aid compatibility complaints the contact information requirements for manufacturers and service providers that currently apply to complaints under Section 255.²⁷⁸ Nokia and AT&T oppose this proposal, stating that “[a]dditional actions by the Commission are not necessary,” and that “manufacturers should not be required to comply with Section 255’s reporting requirements in the [hearing aid compatibility] context.”²⁷⁹

111. After review of the record, we adopt the proposal in the *Notice* and amend our rules accordingly. Contrary to the arguments of some parties, the proposal from the *Notice* was not to create a new mandate, but simply to alter the process under the existing Part 68 mandate governing public complaints regarding hearing aid compatibility to make it conform to the Part 6 rules that govern complaints under Section 255.²⁸⁰ Under the Commission’s Part 68 complaint procedures, which are applicable to wireless hearing aid compatibility complaints,²⁸¹ manufacturers and service providers are required to designate a service agent to the Administrative Council for Terminal Attachment (ACTA).²⁸² A consumer wishing to make a complaint must first approach ACTA to secure the contact information for the relevant industry entity, only after which can the consumer actually file a complaint. This differs from the process for Section 255 complaints in Part 6 of the rules, under which the contact information is provided directly to the Commission and made available to the public via the DRO website.²⁸³ We conclude that requiring provision of hearing aid compatibility contact information directly to the Commission for posting on our website – without otherwise changing the procedures for handling such complaints – will assist consumers and will impose little if any additional burden on manufacturers and service providers, who are already required to make the same information available to a third party.

²⁷⁶ In the *Notice*, we sought comment on whether to amend Part 2 to require additional information regarding handset models in equipment authorization filings. We defer action on these issues to a future Report and Order.

²⁷⁷ See FCC Form 2000C.

²⁷⁸ See HLAA Comments at 4.

²⁷⁹ Nokia Comments at 10. See also AT&T Reply Comments 8 (“[t]here is no need for additional mandates here”).

²⁸⁰ See 47 C.F.R. § 6.18.

²⁸¹ See 47 C.F.R. § 20.19(g).

²⁸² 47 C.F.R. § 68.418(b).

²⁸³ See <http://www.fcc.gov/cgb/dro/section255.html> (last visited January 19, 2008); 47 C.F.R. § 6.18.

112. In addition to improvements to the Commission's website, databases, and processes, we find it essential to the proper functioning of our hearing aid compatibility rules that manufacturers and service providers make certain limited categories of up-to-date information available on their websites. Specifically, we require manufacturers and service providers, beginning January 15, 2009, to post a list of the hearing aid-compatible models that they offer (identified by marketing model name/number(s)), the hearing aid compatibility ratings of those models, and an explanation of the rating system. In addition, as suggested by Gallaudet/RERC, we require service providers to post the level of functionality for each model and an explanation of the service provider's methodology for designating levels of functionality.²⁸⁴ This list and related information should be updated within thirty days of any relevant changes. Although manufacturers and service providers are also required to provide this information annually to the Commission, such information will inevitably become dated over the course of a year. Thus, updated website postings are necessary both so that consumers can obtain up-to-date hearing aid compatibility information from their service providers and so that service providers can readily obtain such information from their manufacturer suppliers. Because all of the information that we are requiring to be posted on websites is already required either in annual reports or on product packaging and inserts, we disagree with assertions that it would be unduly burdensome for manufacturers and service providers to procure and maintain such information.²⁸⁵ As noted above with respect to service providers' annual reports, although information regarding handset compatibility is in the first instance under the control of manufacturers, the requirement that manufacturers post the information means it should be readily accessible for service providers to post as well. Consistent with our decision regarding reporting requirements above, in order to afford manufacturers and service providers time to compile the requisite information and make the necessary changes to their websites, we delay the effective date of these posting requirements until January 15, 2009.

113. As noted above, we also require manufacturers and service providers to include in their annual reports to the Commission the website address at which this information is posted.²⁸⁶ Further, if this website address ceases to be functional at any time prior to the next report, we require the manufacturer or service provider to inform the DRO of the revised address within 30 days of the change. These reporting requirements will enable the DRO to maintain up-to-date links for the public on its website.²⁸⁷

114. In addition to this required information, HLLA advocates that we "strongly encourage[]" industry to post certain other information on their websites, including:

- A search function for hearing aid compatibility data to allow consumers to browse within the category for features they want;
- A listing of hearing aid compatibility ratings for all handset models, not just those with ratings of 3 and 4 (because hearing aid ratings are now available to consumers);²⁸⁸

²⁸⁴ Gallaudet/RERC Comments at 6.

²⁸⁵ See SouthernLINC Reply Comments at 7; see also TIA Comments at 12; RCA Comments at 7 (air interface and frequency band information "is difficult to obtain and verify, and it is irrelevant to a reporting carrier's single-interface obligation"); CTIA Reply Comments at 8 (in light of ongoing voluntary outreach efforts by industry, "additional regulations are premature").

²⁸⁶ See *supra* para. 100.

²⁸⁷ See *supra* para. 109.

²⁸⁸ We note that the Joint Consensus Plan states that, "to assist consumers in choosing a wireless device, the manufacturers have agreed voluntarily to place the [hearing aid compatibility] ratings for all devices, including those rated "M1" or "M2," on their web sites," and that therefore "[m]odification to the FCC's [hearing aid compatibility] rules is not required to implement this proposal." Joint Consensus Plan at 14.

- Volume control levels on phones;
- Vibrating feature on phones;
- Ring tones most suitable for people with hearing loss – those with low frequencies;
- Devices with QWERTY keyboards that can make it easier to send emails and instant messages that supplement hearing aid compatibility;
- Other features and functions on handsets;
- A downloadable version of a brochure on hearing aid-compatible handsets developed by ATIS WG6 (print version of brochure should be available in every store, including independent stores); and
- A downloadable version of a phone evaluation tool that the RERC at Gallaudet is now testing²⁸⁹ on its websites and in its advertising.

115. We agree that this information would be useful to consumers, and we urge manufacturers and service providers to include it on their websites and in other publicity to the extent feasible. In recognition of the great variety of products, marketing practices, and website designs, however, we do not at present require the posting of any specific information other than that described above.²⁹⁰

116. Finally, we clarify that under the labeling requirement in Section 20.19(f), the M and T ratings that are required on the label are the overall, worst case ratings for the handset. We recognize that a multi-band or multi-mode handset may have different hearing aid compatibility ratings for different frequency bands or air interfaces. Consistent with our holding above regarding the compatibility status of multi-band and multi-mode handsets, we find that the most useful information for consumers is a single “worst case” rating constituting the handset’s lowest rating for any air interface or frequency band. Accordingly, while we expect that the reports to the Commission will include all hearing aid compatibility ratings assigned to a particular model, the labeling accompanying a hearing aid-compatible handset, as well as the information on a manufacturer or service provider’s website, shall include only the lowest such rating as the rating for the handset.

D. 2010 Review

117. In the *Notice*, we sought comment on when to conduct the next review of the Commission’s hearing aid compatibility rules for digital wireless services and handsets. The Joint Consensus Plan proposes that we establish a further review of the hearing aid compatibility rules in 2010.²⁹¹ We tentatively concluded to adopt this proposal, and sought comment, including on whether such a review would be more appropriate at a later date, such as in 2012.²⁹² No commenters objected to the 2010 date, although AT&T suggested that 2012 would be appropriate as well.²⁹³ We therefore conclude to begin a further review of the Commission’s hearing aid rules in 2010, after the May 2010 deployment benchmarks have passed.

V. CONCLUSION

118. In this Report and Order, we adopt a number of inter-related changes to our wireless hearing aid compatibility rules, largely based on proposals in the Joint Consensus Plan. These changes update the requirements regarding deployment of hearing aid-compatible handsets, reporting, and

²⁸⁹ HLA Comments at 4. *See also* Gallaudet/RERC Comments at 9.

²⁹⁰ *See supra* para. 112.

²⁹¹ Joint Consensus Plan at 12.

²⁹² *Notice*, 22 FCC Rcd at 19702 ¶ 86.

²⁹³ AT&T Comments at 3.

outreach, as well as the standards by which hearing aid compatibility will be determined. We conclude that the changes will improve access to wireless telecommunications services for persons with hearing disabilities, which continues to be a critical goal of the Commission as society increasingly relies on wireless services for social, business, and emergency communications.

VI. PROCEDURAL MATTERS

A. Regulatory Flexibility Act

119. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),²⁹⁴ the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) of the possible significant economic impact on small entities of the policies and rules addressed in this item. The FRFA is set forth in Appendix B.

B. Paperwork Reduction Analysis

120. This document contains new and modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. It 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 or modified information collection requirements contained in this proceeding.

121. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4), we previously sought specific comment on how the Commission might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”

122. In this present document, we have assessed the effects of the reporting requirements we have imposed on manufacturers and service providers, and find that the information required should be readily available even to businesses with fewer than 25 employees, and that it is important to obtain this information in order to monitor compliance with the hearing aid compatibility requirements and to provide consumers with adequate information regarding the handsets available from particular service providers.²⁹⁵

123. Similarly, we have assessed the effects of requiring manufacturers and service providers to post certain information regarding the hearing aid-compatible handsets they offer on their websites.²⁹⁶ We note that this requirement would apply only to entities that maintain a public website and is further subject to the *de minimis* exception. Both restrictions should limit, to some extent, the application of the requirement to small businesses with fewer than 25 employees. Moreover, we have concluded that maintaining the limited information required, primarily a list of currently offered hearing aid-compatible handsets along with the associated ratings, will not be unduly burdensome, and that this requirement will significantly benefit consumers by ensuring convenient access to up-to-date information regarding compliant handset availability.

124. Finally, we have determined that requiring manufacturers to provide hearing aid compatibility contact information directly to the Commission will impose little if any additional burden

²⁹⁴ The RFA, *see* 5 U.S.C. § 601 *et. seq.*, was amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

²⁹⁵ *See supra* para. 98.

²⁹⁶ *See supra* para. 112.

on businesses with fewer than 25 employees.²⁹⁷ This requirement may even decrease these burdens, to the extent that it will allow consumers wishing to file a complaint to obtain that information from the Commission's website rather than contacting ACTA to obtain it from the service provider.

C. Congressional Review Act.

125. The Commission will send a copy of this *First 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).

D. Accessible Formats

126. 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).

VII. ORDERING CLAUSES

127. IT IS ORDERED that, pursuant to the authority of 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.

128. IT IS FURTHER ORDERED that Parts 0, 20 and 68 of the Commission's Rules, 47 C.F.R. Parts 0, 20 and 68, are AMENDED as specified in Appendix C, effective 30 days after publication of the Order in the Federal Register.

129. IT IS FURTHER ORDERED that the information collections contained in this Report and Order WILL BECOME EFFECTIVE following approval by the Office of Management and Budget. The Commission will publish a document at a later date establishing the effective date.

130. IT IS FURTHER ORDERED that the Commission's Consumer Information Bureau, Reference Information Center, SHALL SEND a copy of the First Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

²⁹⁷ *See supra* para. 111.

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

Alliance for Telecommunications Industry Solutions (ATIS)
American National Standards Institute Accredited Standards Committee C63® (ANSI ASC C63®)
(Two submissions, one labeled “Technical Comments”)
AT&T, Inc. (AT&T)
Chinook Wireless (Chinook)
Consumer Electronics Retailers Coalition (CERC)
Gallaudet University Technology Access program and Rehabilitation Engineering Research Center on
Telecommunications Access (Gallaudet/RERC)
Hearing Industries Association (HIA)
Hearing Loss Association of America and Telecommunications for the Deaf and Hard of Hearing,
Inc. (HLAA/TDI)
MetroPCS Communications, Inc. (MetroPCS)
Motorola, Inc. (Motorola)
Nokia Inc. (Nokia)
Radioshack Corporation
Rehabilitation Engineering Research Center for Wireless Technologies (Wireless RERC)
Research in Motion Limited (RIM)
Rural Cellular Association (RCA)
The Satellite Industry Association (SIA)
Sony Ericsson Mobile Communications (Sony Ericsson)
T-Mobile USA, Inc. (T-Mobile)
Telecommunications Industry Association (TIA)

Reply Comments

ANSI ASC C63®
Apple, Inc. (Apple)
AT&T
ATIS
CTIA – The Wireless Association (CTIA)
Iowa Wireless Services, LLC (i wireless)
MetroPCS
Motorola
Nokia
PerrineCrest Radio Consulting (PerrineCrest Radio)
RIM
SouthernLINC Wireless (SouthernLINC)
T-Mobile
Verizon Wireless (Verizon)
Voice on the Net Coalition (VON)
Virgin Mobile, USA, L.P. (Virgin Mobile)

APPENDIX B

Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ the Federal Communications Commission (Commission) included an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities of the policies and rules considered in the *Notice* in WT Docket No. 07-250.² The Commission sought written public comment on the *Notice* in this docket, including comment on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

2. Although Section 213 of the Consolidated Appropriations Act of 2000 provides that the RFA shall not apply to the rules and competitive bidding procedures for frequencies in the 746-806 MHz Band,³ the Commission believes that it would serve the public interest to analyze the possible significant economic impact of the proposed policy and rule changes in this band on small entities. Accordingly, this FRFA contains an analysis of this impact in connection with all spectrum that falls within the scope of this *First Report and Order*, including spectrum in the 746-806 MHz Band.

A. Need for, and Objectives of, the Rules

3. In the *First Report and Order*,⁴ the Commission revises Section 20.19 of the rules containing the hearing aid compatibility requirements applicable to providers of public mobile services and manufacturers of digital wireless handsets used in the delivery of those services. Specifically, the Commission adopts benchmark requirements for future deployment of hearing aid-compatible handsets,⁵ and related requirements,⁶ based on the proposals set forth in the *Notice* and based on a Joint Consensus Plan developed by an Alliance for Telecommunications Industry Solutions (ATIS) working group that included nationwide carriers, handset manufacturers, and several organizations representing the interests of consumers with hearing loss.⁷ The Commission finds that these new handset deployment obligations for both manufacturers and service providers will ensure that its rules continue to be effective in an evolving marketplace of new technologies and services. Because service providers not in the Tier I category⁸ were not included in the Joint Consensus Plan, the Commission sought comment on and adopts

¹ See 5 U.S.C. § 603. 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).

² Amendment of the Commission's Rules Governing Hearing Aid-Compatible Mobile Handsets, WT Docket No. 07-250, Section 68.4(a) of the Commission's Rules Governing Hearing Aid Compatible Telephones, WT Docket No. 01-309, Petition of American National Standards Institute Accredited Standards Committee C63 (EMC) ANSI ASC C63®, *Notice of Proposed Rulemaking*, 22 FCC Rcd 19760 (2007) (*Notice*).

³ In particular, this exemption extends to the requirements imposed by Chapter 6 of Title 5, United States Code, Section 3 of the Small Business Act (15 U.S.C. § 632) and Sections 3507 and 3512 of Title 44, United States Code. Consolidated Appropriations Act of 2000, Pub. L. No. 106-113, 113 Stat. 2502, App. E, Sec. 213(a)(4)(A)-(B); see 145 Cong. Rec. H12493-94 (Nov. 17, 1999); 47 U.S.C.A. § 337 note at Sec. 213(a)(4)(A)-(B).

⁴ Amendment of the Commission's Rules Governing Hearing Aid-Compatible Mobile Handsets, WT Docket No. 07-250, Petition of American National Standards Institute Accredited Standards Committee C63 (EMC) ANSI ASC C63®, *First Report and Order*, FCC 08-68 (rel. Feb. 27, 2008) (*First Report and Order*).

⁵ See *id.* at ¶¶ 26-46.

⁶ See *id.* at ¶¶ 47-76.

⁷ See *id.* at ¶ 23 (describing Joint Consensus Plan).

⁸ Tier I carriers are Commercial Mobile Radio Service (CMRS) providers with nationwide footprints. See Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems; Phase II (continued....)

in the *First Report and Order* similar rule changes, with modified deadlines, for these entities.⁹ These requirements and deadlines are intended both to promote the accessibility of hearing aid-compatible handsets to all deaf and hard of hearing consumers, and to recognize the impediments to smaller and regional service providers obtaining the most recent handset models. In order to facilitate the continuing availability of a variety of hearing aid-compatible handset models to consumers, the Commission also adopts a requirement that manufacturers annually “refresh” their hearing aid-compatible offerings with new models, and a requirement that service providers offer hearing aid-compatible models with differing levels of functionality.¹⁰ The Commission further adopts an interim measure whereby phones with Wi-Fi capability that otherwise meet hearing aid compatibility standards may be counted as hearing aid-compatible, but the manufacturer and service provider must clearly disclose that they have not been rated with respect to their Wi-Fi operation.¹¹ Finally, the Commission revises the annual reporting obligations of manufacturers and service providers. These amendments will, among other things, render the reports more useful to consumers who wish to know the compatibility ratings of different handset models that have been certified as hearing aid-compatible. In addition, to ensure the availability of such information on a more current basis to service providers and consumers wishing to offer or purchase hearing aid-compatible handsets, the Commission requires manufacturers and service providers to provide up-to-date information on their websites regarding their hearing aid-compatible handset models.¹²

4. The Commission states that these inter-related changes, taken together and largely supported by manufacturers, service providers, and consumers with hearing loss, will further the statutory objective to “ensure reasonable access to telephone service by persons with impaired hearing.”¹³ Among other things, the Commission explains that the most disadvantaged wireless users in the deaf and hard of hearing community, who are more likely to rely on telecoil-equipped hearing aids, will benefit from rule changes that increase requirements to offer handsets with inductive coupling capability. The Commission further states that the requirements that manufacturers refresh their product offerings annually and that service providers offer hearing aid-compatible handset models at differing functionality levels will help to ensure that consumers with hearing loss have a variety of handsets available to them, including handsets with innovative user features, a goal that the Commission has sought to promote since 2003.¹⁴ Finally, the Commission notes its objective to ensure that the impact of the rules remains as technology-impartial as possible while also ensuring availability of hearing aid-compatible handsets to consumers.¹⁵

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

5. No comments specifically addressed the IRFA. Nonetheless, small entity issues raised in comments are addressed in this FRFA in Sections D and E.

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Compliance Deadlines for Non-Nationwide Carriers, CC Docket No. 94-102, *Order to Stay*, 17 FCC Rcd 14841, 14843 ¶ 7 (2002).

⁹ See, e.g., *First Report and Order* at ¶¶ 40-46 (discussion of benchmarks and deadlines for service providers not in Tier I).

¹⁰ See *id.* at ¶¶ 47-52. The objective of these rules is to ensure that hearing aid users can select from a variety of compliant handset models, with varying features and prices.

¹¹ See *id.* at ¶¶ 58-68; see also *id.* at ¶¶ 77-89 (discussion of technical standard for hearing aid compatibility and procedures for adopting future revisions to the standard).

¹² See *id.* at ¶¶ 90-116. The Commission also adopts certain other changes to Section 20.19 of the rules.

¹³ 47 U.S.C. § 610(a).

¹⁴ See, e.g., *First Report and Order* at ¶ 5.

¹⁵ See, e.g., *id.* at ¶ 37.

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

6. 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 proposed rules, if adopted.¹⁶ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”¹⁷ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.¹⁸ 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 Small Business Administration (SBA).¹⁹

7. **Wireless Communications Services.** This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses in the 2305-2320 MHz and 2345-2360 MHz bands. The Commission defined “small business” for the wireless communications services (WCS) auction as an entity with average gross revenues of \$40 million for each of the three preceding years, and a “very small business” as an entity with average gross revenues of \$15 million for each of the three preceding years.²⁰ The SBA has approved these definitions.²¹ The Commission auctioned geographic area licenses in the WCS service. In the auction, which commenced on April 15, 1997 and closed on April 25, 1997, there were seven bidders that won 31 licenses that qualified as very small business entities, and one bidder that won one license that qualified as a small business entity.

8. **700 MHz Guard Bands Licenses.** In the *700 MHz Guard Bands Order*, the Commission adopted size standards for “small businesses” and “very small businesses” for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.²² A small business in this service is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$40 million for the preceding three years.²³ Additionally, a “very small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$15 million for the preceding three years.²⁴ SBA approval of these

¹⁶ 5 U.S.C. § 604(a)(3).

¹⁷ 5 U.S.C. § 601(6).

¹⁸ 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.”

¹⁹ 15 U.S.C. § 632.

²⁰ Amendment of the Commission’s Rules to Establish Part 27, the Wireless Communications Service (WCS), *Report and Order*, 12 FCC Rcd 10785, 10879 ¶ 194 (1997).

²¹ See Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated December 2, 1998.

²² See Service Rules for the 746-764 MHz Bands, and Revisions to Part 27 of the Commission’s Rules, *Second Report and Order*, 15 FCC Rcd 5299 (2000).

²³ *Id.* at 5343 ¶ 108.

²⁴ *Id.*

definitions is not required.²⁵ An auction of 52 Major Economic Area (MEA) licenses for each of two spectrum blocks commenced on September 6, 2000, and closed on September 21, 2000.²⁶ Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of remaining 700 MHz Guard Bands licenses commenced on February 13, 2001, and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.²⁷ Subsequently, in the *700 MHz Second Report and Order*, the Commission reorganized the licenses pursuant to an agreement among most of the licensees, resulting in a spectral relocation of the first set of paired spectrum block licenses, and an elimination of the second set of paired spectrum block licenses (many of which were already vacant, reclaimed by the Commission from Nextel).²⁸ A single licensee that did not participate in the agreement was grandfathered in the initial spectral location for its two licenses in the second set of paired spectrum blocks.²⁹ Accordingly, at this time there are 54 licenses in the 700 MHz Guard Bands and there is no auction data applicable to determine which are held by small businesses.

9. **700 MHz Band Commercial Licenses.** There is 80 megahertz of non-Guard Band spectrum in the 700 MHz Band that is designated for commercial use: 698-757, 758-763, 776-787, and 788-793 MHz Bands. With one exception, the Commission adopted criteria for defining two groups of small businesses for purposes of determining their eligibility for bidding credits at auction. These two categories are: (1) “small business,” which is defined as an entity that has attributed average annual gross revenues that do not exceed \$40 million during the preceding three years; and (2) “very small business,” which is defined as an entity with attributed average annual gross revenues that do not exceed \$15 million for the preceding three years.³⁰ In Block C of the Lower 700 MHz Band (710-716 MHz and 740-746 MHz), which was licensed on the basis of 734 Cellular Market Areas, the Commission adopted a third criterion for determining eligibility for bidding credits: an “entrepreneur,” which is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years.³¹ The SBA has approved these small size standards.³²

10. An auction of 740 licenses for Blocks C (710-716 MHz and 740-746 MHz) and D (716-722 MHz) of the Lower 700 MHz Band commenced on August 27, 2002, and closed on September 18, 2002.

²⁵ *Id.* at 5343 ¶ 108 n.246 (for the 746-764 MHz and 776-704 MHz bands, the Commission is exempt from 15 U.S.C. § 632, which requires Federal agencies to obtain Small Business Administration approval before adopting small business size standards).

²⁶ See “700 MHz Guard Bands Auction Closes: Winning Bidders Announced,” *Public Notice*, 15 FCC Rcd 18026 (2000).

²⁷ See “700 MHz Guard Bands Auctions Closes: Winning Bidders Announced,” *Public Notice*, 16 FCC Rcd 4590 (WTB 2001).

²⁸ See *In the Matter of Service Rules for the 698-746, 747-762 and 777-792 MHz Bands*, WT Docket 06-150, *Second Report and Order*, 22 FCC Rcd 15289, 15339-15344 ¶¶ 118-134 (2007) (*700 MHz Second Report and Order*).

²⁹ *Id.*

³⁰ See *Auction of 700 MHz Band Licenses Scheduled for January 24, 2008*, AU Docket No. 07-157, *Notice and Filing Requirements, Minimum Opening Bids, Reserve Prices, Upfront Payments, and Other Procedures for Auctions 73 and 76*, DA 07-4171 at ¶ 70 (WTB rel. Oct. 5, 2007); *Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59)*, *Report and Order*, 17 FCC Rcd 1022, 1087-88 (2002).

³¹ *Id.* at 1088.

³² See Letter to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated August 10, 1999.

Of the 740 licenses available for auction, 484 licenses were sold to 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business, or entrepreneur status and won a total of 329 licenses.³³ A second auction commenced on May 28, 2003, and closed on June 13, 2003, and included 256 licenses: five EAG licenses and 251 CMA licenses.³⁴ Seventeen winning bidders claimed small or very small business status and won 60 licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses.³⁵

11. The auction for the remaining 62 megahertz of commercial spectrum began on January 24, 2008. A total of 214 applicants were found to be qualified bidders, of which 38 applicants claimed status as small businesses and 81 applicants claimed status as very small businesses.

12. **Government Transfer Bands.** The Commission adopted small business size standards for the unpaired 1390-1392 MHz, 1670-1675 MHz, and the paired 1392-1395 MHz and 1432-1435 MHz bands.³⁶ Specifically, with respect to these bands, the Commission defined an entity with average annual gross revenues for the three preceding years not exceeding \$40 million as a “small business,” and an entity with average annual gross revenues for the three preceding years not exceeding \$15 million as a “very small business.”³⁷ SBA has approved these small business size standards for the aforementioned bands.³⁸ Correspondingly, the Commission adopted a bidding credit of 15 percent for “small businesses” and a bidding credit of 25 percent for “very small businesses.”³⁹ This bidding credit structure was found to have been consistent with the Commission’s schedule of bidding credits, which may be found at Section 1.2110(f)(2) of the Commission’s rules.⁴⁰ The Commission found that these two definitions will provide a variety of businesses seeking to provide a variety of services with opportunities to participate in the auction of licenses for this spectrum and will afford such licensees, who may have varying capital

³³ See “Lower 700 MHz Band Auction Closes,” *Public Notice*, 17 FCC Rcd 17272 (WTB 2002).

³⁴ See “Lower 700 MHz Band Auction Closes,” *Public Notice*, 18 FCC Rcd 11873 (WTB 2003).

³⁵ *Id.*

³⁶ See Amendments to Parts 1, 2, 27 and 90 of the Commission’s Rules to License Services in the 216-220 MHz, 1390-1395 MHz, 1427-1429 MHz, 1429-1432 MHz, 1432-1435 MHz, 1670-1675 MHz, AND 2385-2390 MHz Government Transfer Bands, 17 FCC Rcd 9980 (2002) (*Government Transfer Bands Service Rules Report and Order*).

³⁷ See *Service Rules Notice*, 17 FCC Rcd at 2550-51 ¶¶ 144-146. To be consistent with the size standard of “very small business” proposed for the 1427-1432 MHz band for those entities with average gross revenues for the three preceding years not exceeding \$3 million, the *Service Rules Notice* proposed to use the terms “entrepreneur” and “small business” to define entities with average gross revenues for the three preceding years not exceeding \$40 million and \$15 million, respectively. Because the Commission is not adopting small business size standards for the 1427-1432 MHz band, it instead uses the terms “small business” and “very small business” to define entities with average gross revenues for the three preceding years not exceeding \$40 million and \$15 million, respectively.

³⁸ See Letter from Hector V. Barreto, Administrator, Small Business Administration, to Margaret W. Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, dated January 18, 2002.

³⁹ Such bidding credits are codified for the unpaired 1390-1392 MHz, paired 1392-1395 MHz, and the paired 1432-1435 MHz bands in 47 C.F.R. § 27.807. Such bidding credits are codified for the unpaired 1670-1675 MHz band in 47 C.F.R. § 27.906.

⁴⁰ In the *Part 1 Third Report and Order*, the Commission adopted a standard schedule of bidding credits, the levels of which were developed based on its auction experience. *Part 1 Third Report and Order*, 13 FCC Rcd at 403-04 ¶ 47. See also 47 C.F.R. § 1.2110(f)(2).

costs, substantial flexibility for the provision of services.⁴¹ The Commission noted that it had long recognized that bidding preferences for qualifying bidders provide such bidders with an opportunity to compete successfully against large, well-financed entities.⁴² The Commission also noted that it had found that the use of tiered or graduated small business definitions is useful in furthering its mandate under Section 309(j) to promote opportunities for and disseminate licenses to a wide variety of applicants.⁴³ An auction for one license in the 1670-1674 MHz band commenced on April 30, 2003 and closed the same day. One license was awarded.

13. **Advanced Wireless Services.** In the *AWS-1 Report and Order*, the Commission adopted rules that affect applicants who wish to provide service in the 1710-1755 MHz and 2110-2155 MHz bands.⁴⁴ The Commission anticipated that the services that will be deployed in these bands may have capital requirements comparable to those in the broadband Personal Communications Service (PCS), and that the licensees in these bands will be presented with issues and costs similar to those presented to broadband PCS licensees. Further, at the time the broadband PCS service was established, it was similarly anticipated that it would facilitate the introduction of a new generation of service. Therefore, the *AWS-1 Report and Order* adopts the same small business size definition that the Commission adopted for the broadband PCS service and that the SBA approved.⁴⁵ In particular, the *AWS-1 Report and Order* defines a “small business” as an entity with average annual gross revenues for the preceding three years not exceeding \$40 million, and a “very small business” as an entity with average annual gross revenues for the preceding three years not exceeding \$15 million. The *AWS-1 Report and Order* also provides small businesses with a bidding credit of 15 percent and very small businesses with a bidding credit of 25 percent.

14. **Wireless Cable Systems.** The SBA small business size standard for the broad census category of “Wireless Telecommunications Carriers-except satellite” appears applicable to MDS, ITFS and LMDS. The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees.⁴⁶ Wireless cable systems use 2 GHz band frequencies of the Broadband Radio Service (“BRS”), formerly Multipoint Distribution Service (“MDS”),⁴⁷ and the

⁴¹ See *Service Rules Notice*, 17 FCC Rcd at 2550-51 ¶ 145.

⁴² See, e.g., Revision of Part 22 and Part 90 of the Commission’s Rules to Facilitate Future Development of Paging Systems; Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, WT Docket No. 96-18, PR Docket No. 93-253, *Memorandum Opinion and Order on Reconsideration and Third Report and Order*, 14 FCC Rcd 10030, 10091 ¶ 112 (1999).

⁴³ 47 U.S.C. § 309(j)(3)(B), (4)(C)-(D). The Commission will also not adopt special preferences for entities owned by minorities or women, and rural telephone companies. The Commission did not receive any comments on this issue, and it does not have an adequate record to support such special provisions under the current standards of judicial review. See *Adarand Constructors v. Peña*, 515 U.S. 200 (1995) (requiring a strict scrutiny standard of review for government mandated race-conscious measures); *United States v. Virginia*, 518 U.S. 515 (1996) (applying an intermediate standard of review to a state program based on gender classification).

⁴⁴ Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands, WT Docket No. 02-353, *Report and Order*, 18 FCC Rcd 25162 (2003) (*AWS-1 Report and Order*).

⁴⁵ See Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, *Third Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, 10 FCC Rcd 175, 196 (1995); Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, *Fifth Report and Order*, 9 FCC Rcd 5581-5584 (1995); 47 C.F.R. §§ 24.320(b) and 24.720(b).

⁴⁶ 13 C.F.R. § 121.201, NAICS code 517210.

⁴⁷ MDS, also known as Multichannel Multipoint Distribution Service (“MMDS”), is regulated by Part 21 of the Commission’s rules; see 47 C.F.R. Part 21, subpart K; and has been renamed the Broadband Radio Service (BRS); (continued....)

Educational Broadband Service (“EBS”), formerly Instructional Television Fixed Service (“ITFS”),⁴⁸ to transmit video programming and provide broadband services to residential subscribers.⁴⁹ These services were originally designed for the delivery of multichannel video programming, similar to that of traditional cable systems, but over the past several years licensees have focused their operations instead on providing two-way high-speed Internet access services.⁵⁰ The Commission estimates that the number of wireless cable subscribers is approximately 100,000, as of March 2005. Local Multipoint Distribution Service (“LMDS”) is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications.⁵¹ The SBA small business size standard for the broad census category of Wireless Telecommunications Carriers appears applicable to MDS, ITFS and LMDS.⁵² To gauge small business prevalence for MDS, ITFS and LMDS, the Commission must, as discussed below, use current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was: all such firms having \$13.5 million or less in annual receipts.⁵³ This data was gathered when Cable and Other Program Distribution was the applicable NAICS Code size standard under SBA.

15. The Commission has defined small MDS (now BRS) and LMDS entities in the context of Commission license auctions. In the 1996 MDS auction,⁵⁴ the Commission defined a small business as an entity that had annual average gross revenues of less than \$40 million in the previous three calendar years.⁵⁵ This definition of a small entity in the context of MDS auctions has been approved by the SBA.⁵⁶ In the MDS auction, 67 bidders won 493 licenses. Of the 67 auction winners, 61 claimed status as a small business. At this time, the Commission estimates that of the 61 small business MDS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent MDS licensees that have gross revenues that are not more than

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see Amendment of Parts 1, 21, 73, 74 and 101 of the Commission’s Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands; Part 1 of the Commission’s Rules - Further Competitive Bidding Procedures; Amendment of Parts 21 and 74 to Enable Multipoint Distribution Service and the Instructional Television Fixed Service Amendment of Parts 21 and 74 to Engage in Fixed Two-Way Transmissions; Amendment of Parts 21 and 74 of the Commission’s Rules With Regard to Licensing in the Multipoint Distribution Service and in the Instructional Television Fixed Service for the Gulf of Mexico, 19 FCC Rcd 14165 (2004) (“MDS/ITFS Order”).

⁴⁸ ITFS systems are regulated by Part 74 of the Commission’s rules; see 47 C.F.R. Part 74, subpart I. ITFS, an educational service, has been renamed the Educational Broadband Service (EBS); see MDS/ITFS Order, 19 FCC Rcd 14165. ITFS licensees, however, are permitted to lease spectrum for MDS operation.

⁴⁹ See *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Eleventh Annual Report*, 20 FCC Rcd 2507, 2565 ¶ 131 (2006) (“2006 Cable Competition Report”).

⁵⁰ *Id.*

⁵¹ See Local Multipoint Distribution Service, 12 FCC Rcd 12545 (1997).

⁵² 13 C.F.R. § 121.201, NAICS code 517210.

⁵³ 13 C.F.R. § 121.201, NAICS code 517110 (now superseded).

⁵⁴ MDS Auction No. 6 began on November 13, 1995, and closed on March 28, 1996. (67 bidders won 493 licenses.)

⁵⁵ 47 C.F.R. § 21.961(b)(1).

⁵⁶ See *ITFS Order*, 10 FCC Rcd at 9589.

\$40 million and are thus considered small entities.⁵⁷ MDS licensees and wireless cable operators that did not receive their licenses as a result of the MDS auction fall under the SBA small business size standard for Cable and Other Program Distribution. Information available to us indicates that there are approximately 850 of these licensees and operators that do not generate revenue in excess of \$13.5 million annually. Therefore, the Commission estimates that there are approximately 850 small entity MDS (or BRS) providers, as defined by the SBA and the Commission's auction rules.

16. Educational institutions are included in this analysis as small entities; however, the Commission has not created a specific small business size standard for ITFS (now EBS).⁵⁸ The Commission estimates that there are currently 2,032 ITFS (or EBS) licensees, and all but 100 of the licenses are held by educational institutions. Thus, the Commission estimates that at least 1,932 ITFS licensees are small entities.

17. In the 1998 and 1999 LMDS auctions,⁵⁹ the Commission defined a small business as an entity that has annual average gross revenues of less than \$40 million in the previous three calendar years.⁶⁰ Moreover, the Commission added an additional classification for a "very small business," which was defined as an entity that had annual average gross revenues of less than \$15 million in the previous three calendar years.⁶¹ These definitions of "small business" and "very small business" in the context of the LMDS auctions have been approved by the SBA.⁶² In the first LMDS auction, 104 bidders won 864 licenses. Of the 104 auction winners, 93 claimed status as small or very small businesses. In the LMDS re-auction, 40 bidders won 161 licenses. Based on this information, the Commission believes that the number of small LMDS licenses will include the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers as defined by the SBA and the Commission's auction rules.

18. **Cellular Licensees.** The SBA has developed a small business size standard for small businesses in the category "Wireless Telecommunications Carriers (except satellite)."⁶³ Under that SBA category, a business is small if it has 1,500 or fewer employees.⁶⁴ For the census category of "Cellular and Other Wireless Telecommunications," Census Bureau data for 2002 show that there were 1,397 firms

⁵⁷ 47 U.S.C. § 309(j). Hundreds of stations were licensed to incumbent MDS licensees prior to implementation of Section 309(j) of the Communications Act of 1934, 47 U.S.C. § 309(j). For these pre-auction licenses, the applicable standard is SBA's small business size standards for "other telecommunications" (annual receipts of \$13.5 million or less). See 13 C.F.R. § 121.201, NAICS code 517910.

⁵⁸ In addition, the term "small entity" under SBREFA applies to small organizations (nonprofits) and to small governmental jurisdictions (cities, counties, towns, townships, villages, school districts, and special districts with populations of less than 50,000). 5 U.S.C. §§ 601(4)-(6). We do not collect annual revenue data on ITFS licensees.

⁵⁹ The Commission has held two LMDS auctions: Auction 17 and Auction 23. Auction No. 17, the first LMDS auction, began on February 18, 1998, and closed on March 25, 1998. (104 bidders won 864 licenses.) Auction No. 23, the LMDS re-auction, began on April 27, 1999, and closed on May 12, 1999. (40 bidders won 161 licenses.)

⁶⁰ See *LMDS Order*, 12 FCC Rcd at 12545.

⁶¹ *Id.*

⁶² See Letter to Daniel Phythyon, Chief, Wireless Telecommunications Bureau (FCC) from A. Alvarez, Administrator, SBA (January 6, 1998).

⁶³ 13 C.F.R. § 121.201, NAICS code 517210.

⁶⁴ *Id.*

in this category that operated for the entire year.⁶⁵ Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.⁶⁶ Thus, under this category and size standard, the majority of firms can be considered small.

19. Broadband Personal Communications Service. The broadband Personal Communications Service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission has created a small business size standard for Blocks C and F as an entity that has average gross revenues of less than \$40 million in the three previous calendar years.⁶⁷ For Block F, an additional small business size standard for “very small business” was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.⁶⁸ These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA.⁶⁹ No small businesses within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 “small” and “very small” business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F.⁷⁰ On March 23, 1999, the Commission reaucted 155 C, D, E, and F Block licenses; there were 113 small business winning bidders.⁷¹ On January 26, 2001, the Commission completed the auction of 422 C and F PCS licenses in Auction 35.⁷² Of the 35 winning bidders in this auction, 29 qualified as “small” or “very small” businesses. Subsequent events concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant.

20. Specialized Mobile Radio. The Commission awards “small entity” bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than \$15 million in each of the three previous calendar years.⁷³ The Commission awards “very small entity” bidding credits to firms that had revenues of no more than \$3 million in each of the three previous calendar years.⁷⁴ The SBA has approved these small

⁶⁵ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization,” Table 5, NAICS code 517212 (issued Nov. 2005).

⁶⁶ *Id.* The 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.”

⁶⁷ See Amendment of Parts 20 and 24 of the Commission’s Rules – Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, *Report and Order*, 11 FCC Rcd 7824, 7850-7852 ¶¶ 57-60 (1996); see also 47 C.F.R. § 24.720(b).

⁶⁸ See Amendment of Parts 20 and 24 of the Commission’s Rules – Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, *Report and Order*, 11 FCC Rcd 7824, 7852 ¶ 60.

⁶⁹ See Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated December 2, 1998.

⁷⁰ FCC News, “Broadband PCS, D, E and F Block Auction Closes,” No. 71744 (rel. January 14, 1997).

⁷¹ See “C, D, E, and F Block Broadband PCS Auction Closes,” *Public Notice*, 14 FCC Rcd 6688 (WTB 1999).

⁷² See “C and F Block Broadband PCS Auction Closes; Winning Bidders Announced,” *Public Notice*, 16 FCC Rcd 2339 (2001).

⁷³ 47 C.F.R. § 90.814(b)(1).

⁷⁴ *Id.*

business size standards for the 900 MHz Service.⁷⁵ The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction began on December 5, 1995, and closed on April 15, 1996. Sixty bidders claiming that they qualified as small businesses under the \$15 million size standard won 263 geographic area licenses in the 900 MHz SMR band. The 800 MHz SMR auction for the upper 200 channels began on October 28, 1997, and was completed on December 8, 1997. Ten bidders claiming that they qualified as small businesses under the \$15 million size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR band.⁷⁶ A second auction for the 800 MHz band was held on January 10, 2002 and closed on January 17, 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.⁷⁷

21. The auction of the 1,050 800 MHz SMR geographic area licenses for the General Category channels began on August 16, 2000, and was completed on September 1, 2000. Eleven bidders won 108 geographic area licenses for the General Category channels in the 800 MHz SMR band qualified as small businesses under the \$15 million size standard. In an auction completed on December 5, 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were sold. Of the 22 winning bidders, 19 claimed “small business” status and won 129 licenses. Thus, combining all three auctions, 40 winning bidders for geographic licenses in the 800 MHz SMR band claimed status as small business.

22. In addition, there are numerous incumbent site-by-site SMR licensees and licensees with extended implementation authorizations in the 800 and 900 MHz bands. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than \$15 million, or have no more than 1,500 employees. One firm has over \$15 million in revenues. The Commission believes, for purposes of this analysis, that all of the remaining existing extended implementation authorizations are held by small entities, as that small business size standard is established by the SBA.

23. **Rural Radiotelephone Service.** The Commission uses the SBA definition applicable to Wireless Telecommunications Carriers (except satellite),” *i.e.*, an entity employing no more than 1,500 persons.⁷⁸ There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies adopted herein.

24. **Air-Ground Radiotelephone Service.** The Commission uses the SBA definition applicable to Wireless Telecommunications Carriers (except satellite),” *i.e.*, an entity employing no more than 1,500 persons.⁷⁹ There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and the Commission estimates that almost all of them qualify as small entities under the SBA definition.

25. **Offshore Radiotelephone Service.** This service operates on several ultra high frequency

⁷⁵ See Letter to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated August 10, 1999. We note that, although a request was also sent to the SBA requesting approval for the small business size standard for 800 MHz, approval is still pending.

⁷⁶ See “Correction to Public Notice DA 96-586 ‘FCC Announces Winning Bidders in the Auction of 1020 Licenses to Provide 900 MHz SMR in Major Trading Areas,’” *Public Notice*, 18 FCC Rcd 18367 (WTB 1996).

⁷⁷ See “Multi-Radio Service Auction Closes,” *Public Notice*, 17 FCC Rcd 1446 (WTB 2002).

⁷⁸ 13 C.F.R. § 121.201, NAICS code 517210.

⁷⁹ *Id.*

(UHF) TV broadcast channels that are not used for TV broadcasting in the coastal area of the states bordering the Gulf of Mexico. At present, there are approximately 55 licensees in this service. The Commission uses the SBA definition applicable to Wireless Telecommunications Carriers (except satellite),” *i.e.*, an entity employing no more than 1,500 persons.⁸⁰ The Commission is unable at this time to estimate the number of licensees that would qualify as small entities under the SBA definition. The Commission assumes, for purposes of this analysis, that all of the 55 licensees are small entities, as that term is defined by the SBA.

26. **Mobile Satellite Service Carriers.** Neither the Commission nor the U.S. Small Business Administration has developed a small business size standard specifically for mobile satellite service licensees. The appropriate size standard is therefore the SBA standard for Satellite Telecommunications, which provides that such entities are small if they have \$13.5 million or less in annual revenues.⁸¹ Currently, the Commission’s records show that there are 31 entities authorized to provide voice and data MSS in the United States. The Commission does not have sufficient information to determine which, if any, of these parties are small entities. The Commission notes that small businesses are not likely to have the financial ability to become MSS system operators because of high implementation costs, including construction of satellite space stations and rocket launch, associated with satellite systems and services.

27. **Wireless Communications Equipment Manufacturers.** The SBA has established a small business size standard for wireless communications equipment manufacturers. Under the Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing standard, firms are considered small if they have 750 or fewer employees.⁸² Census Bureau data for 1997 indicates that, for that year, there were a total of 1,215 establishments⁸³ in this category.⁸⁴ Of those, there were 1,150 that had employment under 500, and an additional 37 that had employment of 500 to 999. The Commission estimates that the majority of wireless communications equipment manufacturers are small businesses

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

28. The Commission adopts reporting and outreach requirements that will involve some recordkeeping and other compliance requirements for small entities. Under the decision in the *First Report and Order*, manufacturers and service providers, including those that are small entities, will continue to file regular reports with the Commission detailing their hearing aid compatibility efforts. In order to improve the existing reports for consumers and industry and meet the Commission’s hearing aid compatibility objectives (see Section A above), however, the Commission adopts new content requirements for these reports.⁸⁵ The Commission also adopts a new outreach obligation for

⁸⁰ *Id.*

⁸¹ 13 C.F.R. § 121.201, North American Industry Classification System (“NAICS”) code 517410.

⁸² 13 C.F.R. § 121.201, NAICS code 334220.

⁸³ The number of “establishments” is a less helpful indicator of small business prevalence in this context than would be the number of “firms” or “companies,” because the latter take into account the concept of common ownership or control. Any single physical location for an entity is an establishment, even though that location may be owned by a different establishment. Thus, the number given may reflect inflated numbers of businesses in this category, including the numbers of small businesses. In this category, the Census break-out data for firms or companies only gives the total number of such entities for 1997, which was 1,089.

⁸⁴ U.S. Census Bureau, *1997 Economic Census*, Industry Series: Manufacturing, “Industry Statistics by Employment Size,” Table 4, NAICS code 334220 (issued August 1999).

⁸⁵ See *First Report and Order* at ¶¶ 90-103.

manufacturers and service providers that maintain public websites to post up-to-date information involving some of this content, and to report and keep updated to the Commission a working link to the web location at which this information is posted.⁸⁶ Finally, because many handset models are currently being offered that operate over both established CMRS interfaces and the Wi-Fi air interface for which no established hearing aid compatibility standards exist, the Commission allows such phones on an interim basis to be counted as hearing aid-compatible if they otherwise qualify as hearing aid-compatible under its rules, but requires consumers to be informed that those phones have not been rated for hearing aid compatibility with respect to their Wi-Fi operations.⁸⁷ Section E below summarizes additional detail about these reporting and outreach requirements that the Commission adopts in the *First Report and Order*.⁸⁸

29. The projected reporting, recordkeeping, and other compliance requirements resulting from the *First Report and Order* will apply to all entities in the same manner. As discussed in Section E below,⁸⁹ the Commission finds that applying the same rules equally to all entities in this context promotes fairness. The Commission does not believe that the costs and/or administrative burdens associated with the rules will unduly burden small entities. Moreover, any costs and burdens assumed by small entities will be offset by the benefits obtained by consumers. The revisions the Commission adopts should benefit consumers by giving them more information and more options for gaining access to hearing aid compatibility information.

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

30. The RFA requires an agency to describe in the IRFA any significant alternatives that it has considered in reaching its proposed approach, which may include (among others) the following four alternatives: (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 or reporting requirements under the rule for 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 small entities.⁹⁰ The Commission considered these alternatives with respect to all of the requirements that it is imposing on small entities in the *First Report and Order*, and this FRFA incorporates by reference all discussion in the *First Report and Order* that considers the impact on small entities of the rules adopted by the Commission. In addition, the Commission's consideration of those issues as to which the impact on small entities was specifically discussed in the record is summarized below:

31. Hearing Aid-Compatible Handset Deployment Benchmarks and Deadlines. In accordance with its objective of furthering the availability of hearing aid-compatible handsets to the deaf and hard-of-hearing community, the Commission considered several different proposals for handset deployment benchmarks and deadlines. These alternatives balanced several different approaches to improving wireless services for deaf and hard-of-hearing consumers. For example, the Commission considered the possibility of applying to small entities different benchmarks for offering handset models meeting M3 and

⁸⁶ See *id.* at ¶¶ 104-116.

⁸⁷ See *id.* at ¶¶ 58-68.

⁸⁸ See *infra* Section E. Section E also discusses the steps taken and alternatives considered for these rule changes.

⁸⁹ See *infra* Section E.

⁹⁰ 5 U.S.C. § 603(c).

T3 (or higher) hearing aid compatibility ratings. Six parties representing regional or smaller service providers submitted comments in favor of lower benchmarks for smaller service providers.

32. Ultimately, the Commission adopted identical benchmark alternatives for all manufacturers and all service providers (including small manufacturers and service providers). The Commission decided on a single set of deployment benchmark alternatives for all service providers (other than those coming under the *de minimis* exception) in accordance with its objective of furthering the availability of hearing aid-compatible handsets for all consumers regardless of where they reside. Under these alternatives for both M3 and T3 ratings, service providers may meet hearing aid compatibility standards for either a minimum number or minimum percentage of the handset models that they offer, whichever is less. Thus, under the percentage alternative, service providers with smaller product lines, including many small entities, are relieved of the burden of having to offer larger numbers of hearing aid-compatible models required of larger service providers. The Commission considered the alternative of reducing the benchmarks still further for smaller service providers, but determined that the increased relief of burdens that would be achieved by doing so was outweighed by the public interest in ensuring availability of hearing aid-compatible handsets to all consumers who need them, which is the primary objective of this proceeding.

33. In addition, to minimize the economic burden to service providers that are small entities, the Commission extended future hearing aid compatibility compliance deadlines for non-nationwide service providers by three months. The Commission provided this additional time in recognition that smaller service providers have few handset options and more difficulty in obtaining the newest offerings than their nationwide counterparts. In reaching this decision, the Commission considered and rejected other alternatives. In particular, five non-nationwide carriers submitted comments asking for extended deadlines of six months to one year following Tier I carriers' deadlines. The Commission did not agree with the extension of deadlines beyond three months, because it determined that such action would amount to an unacceptable and unnecessary denial of handset benefits to consumers. The Commission noted that the extension of three months is consistent with past orders where it has found that many smaller service providers justified waivers of approximately three months from prior hearing aid compatibility deadlines, but denied most requests for longer periods of delay.

34. In considering these deployment benchmarks and deadlines, the Commission also adopted the proposal of the Joint Consensus plan to retain the existing *de minimis* exception. Under this exception, manufacturers and service providers that offer two or fewer digital wireless handset models in the U.S. per air interface are exempt from hearing aid compatibility requirements (other than certain reporting requirements), and those offering three handset models per air interface are required to offer one hearing aid-compatible model. The Commission kept this rule, which minimizes economic impact on certain small entities, in recognition that exempting from hearing aid compatibility requirements all companies with very small product lines promotes innovation and competition.

35. Other Hearing Aid-Compatible Handset Deployment Obligations. In addition to handset deployment benchmarks and deadlines, the Commission adopted rules requiring handset manufacturers to refresh their hearing aid-compatible product offerings annually, and requiring service providers to offer to consumers hearing aid-compatible handsets with differing levels of functionality. The objective of these rules is to ensure that hearing aid users can select from a variety of complaint handset models, with varying features and prices. In adopting these rules, the Commission considered comments of several smaller service providers that the requirement to offer compatible models with differing levels of functionality is unnecessary and intrusive as applied to non-nationwide service providers. In response, the Commission acknowledged that it does not expect a service provider with four hearing aid-compatible models, for example, necessarily to offer as many levels of functionality or as broad a range of product offerings as a provider with eight or more models. Therefore, the Commission crafted the rule to afford service providers flexibility to define their levels of functionality in a manner appropriate to their

situation. Nonetheless, the Commission determined that even the smallest service providers should be able to distinguish among their offerings in some manner, and that requiring them to do so offers benefits to consumers that outweigh the relatively small burden on small entities.

36. Reporting, Information, and Outreach. As noted in Section D above, the Commission adopted reporting and other compliance requirements that will apply to all entities irrespective of their size. The *First Report and Order* requires manufacturers and all service providers to file reports annually. This requirement to file annual reports continues a requirement that exists under the current rules. However, the *First Report and Order* adds new required content to the reports, including: (1) model name/numbers and FCC ID numbers; (2) the air interfaces and frequency bands over which each model operates; (3) information regarding handset models offered throughout the period since the previous report, including the months during which each model was available; and (4) for service providers, their models' levels of functionality and their methodology for dividing hearing aid-compatible handset models into different levels of functionality.

37. The Commission in the past has stated that annual hearing aid compatibility reports serve a dual purpose of assisting the Commission in monitoring handset deployment progress and providing valuable information to the public concerning the technical testing and commercial availability of hearing aid compatible handsets for consumers.⁹¹ The new content requirements in the *First Report and Order* will result in better information to the Commission and to consumers. Some comments on the *Notice* asserted that additional reporting requirements would be burdensome, particularly to smaller service providers, and the Commission considered whether any alternatives could serve consumers' needs in a manner less burdensome to small entities. As the Commission found, however, all of the information to be included in the reports is either within the service provider's control or can be readily gathered from manufacturers' websites or their previous reports. Thus, the Commission found that these reports will not impose any unreasonable burden on manufacturers and service providers, whether large or small. Furthermore, in order to ensure proper implementation of the hearing aid compatibility rules and to inform consumers, the Commission found it extremely important to obtain the information in question from all service providers without exception. Accordingly, the Commission found that other alternatives would not provide it with the information necessary to accomplish its objectives.

38. The Commission also considered whether, as advocated by one commenter, the initial reports under the new rules should be delayed by one year for service providers that are not Tier I carriers. The Commission found that this proposal would create an unacceptable and unnecessary gap in the availability of information. Moreover, in order to ease the burden of compliance for all manufacturers and service providers, the Commission determined not to require the next reports from any entities until January 15, 2009.

39. The Commission further authorized the Wireless Telecommunications Bureau to prescribe a uniform template for the annual reports and require electronic filing. The Commission considered whether to allow regulated entities, including small entities, alternatively to use a narrative format. To assist the Commission and consumers in understanding and analyzing the reports, it concluded that a uniform, electronic format will not impose a significant increase in economic burdens.

40. In addition to regular reporting, the *First Report and Order* will require manufacturers and service providers that have public websites to post certain information, including the hearing aid-compatible handset models that they offer, the ratings of those models, an explanation of the rating system, and, for service providers, those models' levels of functionality and their methodology for determining levels of functionality. This information must be kept current within 30 days. In addition, service providers must include this web address in their reports to the Commission, and inform the

⁹¹ See also *supra* Section A.

Commission within 30 days if the address ceases to be functional. As with the annual reports, the Commission considered whether it could adopt less burdensome requirements for small entities, and concluded that it needed to impose the same requirements on all manufacturers and service providers to serve the purpose of providing critical information to all consumers. Moreover, because all of the information to be posted is also required in the reports to the Commission or in packaging inserts, the burden of maintaining it on the website should be small. Finally, as with the reports, the Commission eased the burden of coming into compliance for all entities by delaying the effective date of this requirement until January 15, 2009.

F. Report to Congress

41. The Commission will send a copy of the *First Report and Order*, including this FRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act.⁹² In addition, the Commission will send a copy of the *First Report and Order*, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *First Report and Order* and FRFA (or summaries thereof) will also be published in the Federal Register.⁹³

⁹² See 5 U.S.C. § 801(a)(1)(A).

⁹³ See 5 U.S.C. § 604(b).

APPENDIX C

Final Rules

Part 0 of Title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 0 reads as follows:

AUTHORITY: Sec. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155.

2. Section 0.241 is amended by revising paragraph (a)(1) to read as follows:

§ 0.241 Authority delegated.

(a) * * *

(1) Notices of proposed rulemaking and of inquiry and final orders in rulemaking proceedings, inquiry proceedings and non-editorial orders making changes, except that:

(i) The Chief of the Office of Engineering and Technology is delegated authority to make the revisions to the filing system and template necessary to improve the efficiency of reporting and to reduce, where reasonably possible, the time for providers to prepare, and for the Commission staff to review, the communications disruption reports required to be filed pursuant to part 4 of this chapter; and

(ii) The Chief of the Office of Engineering and Technology is delegated authority, together with the Chief of the Wireless Telecommunications Bureau, to adopt certain technical standards applicable to hearing aid compatibility under § 20.19 of this chapter, as specified in § 20.19(k).

3. Section 0.331 is amended by adding a new sentence after the second sentence in paragraph (d) to read as follows:

§ 0.331 Authority delegated.

* * * * *

(d) * * * Adoption of certain technical standards applicable to hearing aid compatibility under § 20.19 of this chapter made together with the Chief of the Office of Engineering and Technology, as specified in § 20.19(k), also need not be referred to the Commission. * * *

* * * * *

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

4. The authority citation for Part 20 reads as follows:

AUTHORITY: 47 U.S.C. 154, 160, 201, 251-254, 303, 332, and 710 unless otherwise noted.

5. Section 20.19 is amended by replacing the existing text of Section 20.19 with the following:

§ 20.19 Hearing aid-compatible mobile handsets.

(a) *Scope of section; definitions.*

(1) The hearing aid compatibility requirements of this section apply to providers of digital CMRS in the United States to the extent that they offer real-time, two-way switched voice or data service that is interconnected with the public switched network and utilizes an in-network switching facility that enables the provider to reuse frequencies and accomplish seamless hand-offs of subscriber calls, and such service is provided over frequencies in the 800-950 MHz or 1.6-2.5 GHz bands using any air interface for which technical standards are stated in the standard document “American National Standard for Methods of Measurement of Compatibility between Wireless Communication Devices and Hearing Aids,” American National Standards Institute (ANSI) C63.19-2007 (incorporated by reference, see paragraph (b)(5)).

(2) The requirements of this section also apply to the manufacturers of the wireless handsets that are used in delivery of the services specified in paragraph (a)(1) of this section.

(3) *Definitions.* For purposes of this section:

(i) “Manufacturer” refers to a wireless handset manufacturer to which the requirements of this section apply.

(ii) “Model” refers to a wireless handset device that a manufacturer has designated as a distinct device model, consistent with its own marketing practices. However, if a manufacturer assigns different model device designations solely to distinguish units sold to different carriers, or to signify other distinctions that do not relate to either form, features, or capabilities, such designations shall not count as distinct models for purposes of this section.

(iii) “Service provider” refers to a provider of digital CMRS to which the requirements of this section apply.

(iv) “Tier I carrier” refers to a CMRS provider that offers such service nationwide.

(b) *Hearing aid compatibility; technical standards.* A wireless handset used for digital CMRS only over the frequency bands and air interfaces referenced in paragraph (a)(1) is hearing aid-compatible with regard to radio frequency interference or inductive coupling if it meets the applicable technical standard(s) set forth in paragraphs (b)(1)-(2) for all frequency bands and air interfaces over which it operates, and the handset has been certified as compliant with the test requirements for the applicable standard pursuant to Section 2.1033(d) of this chapter. A wireless handset that incorporates a Wi-Fi air interface is hearing aid-compatible if the handset otherwise satisfies the requirements of this paragraph.

(1) For radio frequency interference.

(i) *Applicable technical standards prior to 2010.* Beginning [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**] and until January 1, 2010, a wireless handset submitted for equipment certification or for a permissive change relating to hearing aid compatibility must meet, at a minimum, the M3 rating associated with the technical standard set forth in either the standard document “American National Standard for Methods of Measurement of Compatibility between Wireless Communication Devices and Hearing Aids,” ANSI C63.19-2006 (published June 12, 2006) (incorporated by reference, see paragraph (b)(5)) or ANSI C63.19-2007 (published June 8, 2007) (incorporated by reference, see paragraph (b)(5)) – each available for purchase from the American National Standards Institute -- or the M3 rating associated with any subsequently adopted version of

ANSI C63.19 as may be permitted pursuant to paragraph (b)(3). Any grants of certification issued before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**] under previous versions of ANSI C63.19 remain valid for hearing aid compatibility purposes.

(ii) *Applicable technical standards beginning in 2010.* On or after January 1, 2010, a wireless handset submitted for equipment certification or for a permissive change relating to hearing aid compatibility must meet, at a minimum, the M3 rating associated with the technical standard set forth in ANSI C63.19-2007 (incorporated by reference, see paragraph (b)(5)), or any subsequently adopted version as may be permitted pursuant to paragraph (b)(3). Any grants of certification issued before January 1, 2010, under the earlier versions of ANSI C63.19 remain valid for hearing aid compatibility purposes.

(2) For inductive coupling.

(i) *Applicable technical standards prior to 2010.* Beginning [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**] and until January 1, 2010, a wireless handset submitted for equipment certification or for a permissive change relating to hearing aid compatibility must meet, at a minimum, the T3 rating associated with the technical standard set forth in either the standard document “American National Standard for Methods of Measurement of Compatibility between Wireless Communication Devices and Hearing Aids,” ANSI C63.19-2006 (published June 12, 2006) (incorporated by reference, see paragraph (b)(5)) or ANSI C63.19-2007 (published June 8, 2007) (incorporated by reference, see paragraph (b)(5)) – available for purchase from the American National Standards Institute – or the T3 rating associated with any subsequently adopted version of ANSI C63.19 as may be permitted pursuant to paragraph (b)(3). Any grants of certification issued before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**] under previous versions of ANSI C63.19 remain valid for hearing aid compatibility purposes.

(ii) *Applicable technical standards beginning in 2010.* On or after January 1, 2010, a wireless handset submitted for equipment certification or for a permissive change relating to hearing aid compatibility must meet, at a minimum, the T3 rating associated with the technical standard set forth in ANSI C63.19-2007 (incorporated by reference, see paragraph (b)(5)), or any subsequently adopted version as may be permitted pursuant to paragraph (b)(3). Any grants of certification issued before January 1, 2010, under the earlier versions of ANSI C63.19 remain valid for hearing aid compatibility purposes.

(3) *Applicability of subsequently adopted versions of ANSI C63.19 for radio frequency interference or inductive coupling.* Versions of technical standards for radio frequency interference or inductive coupling adopted subsequently to ANSI C63.19-2007 also will be applicable for purposes of determining whether a wireless handset meets the appropriate rating, provided that the changes do not raise major compliance issues and provided that the Wireless Telecommunications Bureau and the Office of Engineering and Technology have, by public notice, approved the use, in the alternative, of such versions of standard document ANSI C63.19 to establish hearing aid compatibility.

(4) All factual questions of whether a wireless handset meets the technical standard(s) of this subsection shall be referred for resolution to the Chief, Office of Engineering and Technology, Federal Communications Commission, 445 12th Street SW, Washington, D.C. 20554.

(5) The standards listed in this paragraph are incorporated by reference in this section. These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. § 552(a) and 1 C.F.R. part 51. These materials are incorporated as they exist on the date of the

approval, and notice of any change in these materials will be published in the Federal Register. The materials are available for inspection at the Federal Communications Commission (FCC), 445 12th St., SW., Reference Information Center, Room CY-A257, Washington, DC 20554 and at the National Archives and Records Administration (NARA). For information on the availability of these materials at NARA, call 202-741-6030, or go to:

http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

The materials are also available for purchase from <http://www.ieee.org/portal/site>.

(i) American National Standards Institute Accredited Standards Committee on Electromagnetic Compatibility, C63® , “American National Standard for Methods of Measurement of Compatibility between Wireless Communication Devices and Hearing Aids,” ANSI C63.19-2006 (published June 12, 2006), Institute of Electrical and Electronics Engineers, Inc., publisher, IBR approved for § 20.19.

(ii) American National Standards Institute Accredited Standards Committee on Electromagnetic Compatibility, C63® , “American National Standard for Methods of Measurement of Compatibility between Wireless Communication Devices and Hearing Aids,” ANSI C63.19-2007 (published June 8, 2007), Institute of Electrical and Electronics Engineers, Inc., publisher, IBR approved for § 20.19.

(c) *Phase-in of requirements relating to radio frequency interference.* The following applies to each manufacturer and service provider that offers wireless handsets used in the delivery of the services specified in paragraph (a) and that does not fall within the *de minimis* exception set forth in paragraph (e).

(1) *Manufacturers.*

(i) *Number of hearing aid-compatible handset models offered.* For each digital air interface for which it offers wireless handsets to service providers, each manufacturer of wireless handsets must:

(A) If it offers four to six models, ensure that at least two of its handset models offered to service providers comply with the requirements set forth in paragraph (b)(1) of this section; or

(B) If it offers more than six models, ensure that at least one-third of its handset models offered to service providers (rounded down to the nearest whole number) comply with the requirements set forth in paragraph (b)(1) of this section.

(ii) *Refresh requirement.* Beginning in calendar year 2009, and for each year thereafter that it elects to produce a new model, each manufacturer that offers any new model for a particular air interface during the calendar year must “refresh” its offerings of hearing aid-compatible handset models by offering a mix of new and existing models that comply with paragraph (b)(1) of this section according to the following requirements:

(A) For manufacturers that offer three models per air interface, at least one new model rated M3 or higher shall be introduced every other calendar year.

(B) For manufacturers that offer four or more models operating over a particular air interface, the number of models rated M3 or higher that must be new models introduced during that calendar year is equal to one-half of the minimum number of models rated M3 or higher required for that air interface (rounded up to the nearest whole number).

(2) *Tier I carriers.* For each digital air interface for which it offers wireless handsets to customers, each Tier I carrier must either:

(i) Ensure that at least fifty (50) percent of the handset models it offers comply with paragraph (b)(1) of this section, calculated based on the total number of unique digital wireless handset models the carrier offers nationwide; or

(ii) Ensure that it offers, at a minimum, the following specified number of handset models that comply with paragraph 20.19(b)(1) of this section:

(A) prior to February 15, 2009, at least eight (8) handset models;

(B) beginning February 15, 2009, at least nine (9) handset models; and

(C) beginning February 15, 2010, at least ten (10) handset models.

(3) *Service providers other than Tier I carriers.* For each digital air interface for which it offers wireless handsets to customers, each service provider other than a Tier I carrier must:

(i) Prior to [INSERT DATE FOUR MONTHS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**], include in the handset models it offers at least two handset models that comply with paragraph (b)(1) of this section;

(ii) Beginning [INSERT DATE FOUR MONTHS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**], either:

(A) ensure that at least fifty (50) percent of the handset models it offers comply with paragraph (b)(1) of this section, calculated based on the total number of unique digital wireless handset models the service provider offers nationwide; or

(B) ensure that it offers, at a minimum, the following specified number of handset models that comply with paragraph (b)(1) of this section:

(1) until May 15, 2009, at least eight (8) handset models;

(2) beginning May 15, 2009, at least nine (9) handset models; and

(3) beginning May 15, 2010, at least ten (10) handset models.

(4) *All service providers.* The following requirements apply to Tier I carriers and all other service providers.

(i) *In-store testing.* Each service provider must make available for consumers to test, in each retail store owned or operated by the provider, all of its handset models that comply with paragraph (b)(1) of this section.

(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, and must disclose its methodology to the Commission pursuant to paragraph (i)(3)(G) of this section.

(d) *Phase-in of requirements relating to inductive coupling capability.* The following applies to each manufacturer and service provider that offers wireless handsets used in the delivery of the services specified in paragraph (a) and that does not fall within the *de minimis* exception set forth in paragraph (e).

(1) *Manufacturers.* Each manufacturer offering to service providers four or more handset models in a digital air interface for use in the United States or imported for use in the United States must ensure that it offers to service providers, at a minimum, the following number of handset models that comply with the requirements set forth in paragraph (b)(2) of this section, whichever number is greater in any given year:

(i) at least two (2) handset models in that air interface; or

(ii) at least the following percentage of handset models (rounded down to the nearest whole number):

(A) beginning February 15, 2009, at least twenty (20) percent of its handset models in that air interface, provided that, of any such models introduced during calendar year 2009, one model may be rated using ANSI C63.19-2006 (incorporated by reference, see paragraph (b)(5)), and all other models introduced during that year or subsequent years shall be rated using ANSI C63.19-2007 (incorporated by reference, see paragraph (b)(5)) or subsequently adopted version;

(B) beginning February 15, 2010, at least twenty-five (25) percent of its handset models in that air interface; and

(C) beginning February 15, 2011, at least one-third of its handset models in that air interface.

(2) *Tier I carriers.* For each digital air interface for which it offers wireless handsets to service providers, each Tier I carrier must:

(i) Ensure that at least one-third of the handset models it offers comply with paragraph (b)(2) of this section, calculated based on the total number of unique digital wireless handset models the carrier offers nationwide; or

(ii) Ensure that it offers, at a minimum, the following specified number of handset models that comply with paragraph (b)(2) of this section:

(A) prior to February 15, 2009, at least three (3) handset models;

(B) beginning February 15, 2009, at least five (5) handset models;

(C) beginning February 15, 2010, at least seven (7) handset models; and

(D) beginning February 15, 2011, at least ten (10) handset models.

(3) *Service providers other than Tier I carriers.* For each digital air interface for which it offers wireless handsets to customers, each service provider other than a Tier I carrier must:

(i) Prior to [INSERT DATE FOUR MONTHS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**], include in the handset models it offers at least two handset models that comply with paragraph (b)(2) of this section;

(ii) Beginning [INSERT DATE FOUR MONTHS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**], either:

(A) ensure that at least one-third of the handset models it offers comply with paragraph (b)(2) of this section, calculated based on the total number of unique digital wireless handset models the carrier offers nationwide; or

(B) ensure that it offers, at a minimum, the following specified number of handset models that comply with paragraph (b)(2) of this section:

- (1) until May 15, 2009, at least three (3) handset models;
- (2) beginning May 15, 2009, at least five (5) handset models;
- (3) beginning May 15, 2010, at least seven (7) handset models; and
- (4) beginning May 15, 2011, at least ten (10) handset models.

(4) *All service providers.* The following requirements apply to Tier I carriers and all other service providers.

(i) *In-store testing.* Each service provider must make available for consumers to test, in each retail store owned or operated by the provider, all of its handset models that comply with paragraph (b)(2) of this section.

(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, and must disclose its methodology to the Commission pursuant to paragraph (i)(3)(G) of this section.

(e) *De minimis exception.*

(1) 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 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 subsection (i) in connection with that air interface.

(2) Manufacturers or service providers that offer three digital wireless handset models in an air interface must offer at least one handset model compliant with paragraphs (b)(1) and (b)(2) of this section in that air interface. Service providers that obtain handsets only from manufacturers that offer three digital wireless handset models in an air interface in the United States are required to offer at least one handset model in that air interface compliant with paragraphs (b)(1) and (b)(2).

(f) *Labeling and disclosure requirements.*

(1) *Labeling requirements.* Manufacturers and service providers shall ensure that handsets that are hearing aid-compatible, as defined in paragraph (b) of this section, clearly display the rating, as defined in

paragraphs (b)(1) and (b)(2) of this section, on the packaging material of the handset. In the event that a hearing aid-compatible handset achieves different radio interference or inductive coupling ratings over different air interfaces or different frequency bands, the RF interference reduction and inductive coupling capability ratings displayed shall be the lowest rating assigned to that handset for any air interface or frequency band. An explanation of the ANSI C63.19 rating system must also be included in the device's user's manual or as an insert in the packaging material for the handset.

(2) *Disclosure requirement relating to handsets with Wi-Fi capability.* Beginning [INSERT DATE SEVEN MONTHS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**], each manufacturer and service provider shall ensure that, wherever it provides hearing aid compatibility ratings for a handset model that incorporates a Wi-Fi air interface, it discloses to consumers, by clear and effective means (e.g., inclusion of call-out cards or other media, revisions to packaging materials, supplying of information on websites) that the handset has not been rated for hearing aid compatibility with respect to Wi-Fi operation.

(g) *Model designation requirements.* Where a manufacturer has made physical changes to a handset that result in a change in the hearing aid compatibility rating under paragraph (b)(1) or (b)(2) of this section, the altered handset must be given a model designation distinct from that of the handset prior to its alteration.

(h) *Website requirements.* Beginning January 15, 2009, each manufacturer and service provider subject to this section that operates a publicly-accessible website must make available on its website 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 website, based on the levels of functionality 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 .

(i) *Reporting requirements.*

(1) *Reporting dates.* Manufacturers shall submit reports on efforts toward compliance with the requirements of this section on January 15, 2009 and on July 15, 2009, and on an annual basis on July 15 thereafter. Service providers shall submit reports on efforts toward compliance with the requirements of this section on January 15, 2009, and annually thereafter. 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.

(2) *Content of manufacturer reports.* Reports filed by manufacturers must include:

(A) Digital wireless handset models tested, since the most recent report, for compliance with the applicable hearing aid compatibility technical ratings;

(B) Compliant handset models offered to service providers since the most recent report, identifying each model by marketing model name/number(s) and FCC ID number;

(C) For each compliant model, the air interface(s) and frequency band(s) over which it operates, the hearing aid compatibility ratings for each frequency band and air interface under ANSI Standard C63.19, the ANSI Standard C63.19 version used, and the months in which the model was available to service providers since the most recent report;

(D) Non-compliant models offered to service providers since the most recent report, identifying each model by marketing model name/number(s) and FCC ID number;

(E) For each non-compliant model, the air interface(s) over which it operates and the months in which the model was available to service providers since the most recent report;

(F) Total numbers of compliant and non-compliant models offered to service providers for each air interface as of the time of the report;

(G) Any instance, as of the date of the report or since the most recent report, in which multiple compliant or non-compliant devices were marketed under separate model name/numbers but constitute a single model for purposes of the hearing aid compatibility rules, identifying each device by marketing model name/number and FCC ID number;

(H) Status of product labeling;

(I) Outreach efforts; and

(J) If the manufacturer maintains a public website, the website address of the page(s) containing the information regarding hearing aid-compatible handset models required by paragraph (h) of this section.

NOTE TO PARAGRAPH (i)(2): For reports due on January 15, 2009, information provided with respect to paragraphs (i)(2)(B)-(E) and (i)(2)(G)-(H) need be provided only for the six-month period from July 1 to December 31, 2008.

(3) *Content of service provider reports.* Reports filed by service providers must include:

(A) Compliant handset models offered to customers since the most recent report, identifying each model by marketing model name/number(s) and FCC ID number;

(B) For each compliant model, the air interface(s) and frequency band(s) over which it operates, the hearing aid compatibility ratings for each frequency band and air interface under ANSI Standard C63.19, and the months in which the model was available since the most recent report;

(C) Non-compliant models offered since the most recent report, identifying each model by marketing model name/number(s) and FCC ID number;

(D) For each non-compliant model, the air interface(s) over which it operates and the months in which the model was available since the most recent report;

(E) Total numbers of compliant and non-compliant models offered to customers for each air interface over which the service provider offers service as of the time of the report;

(F) Information related to the retail availability of compliant handset models;

(G) The levels of functionality into which the compliant handsets fall and an explanation of the service provider's methodology for determining levels of functionality;

(H) Status of product labeling;

(I) Outreach efforts; and

(J) If the service provider maintains a public website, the website address of the page(s) containing the information regarding hearing aid-compatible handset models required by paragraph (h) of this section.

NOTE TO PARAGRAPH (i)(3): For reports due on January 15, 2009, information provided with respect to paragraphs (i)(3)(A)-(D) and (i)(3)(F)-(H) need be provided only for the six-month period from July 1 to December 31, 2008.

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

(j) *Enforcement.* Enforcement of this section is hereby delegated to those states that adopt this section and provide for enforcement. The procedures followed by a state to enforce this section shall provide a 30-day period after a complaint is filed, during which time state personnel shall attempt to resolve a dispute on an informal basis. If a state has not adopted or incorporated this section, or failed to act within six (6) months from the filing of a complaint with the state public utility commission, the Commission will accept such complaints. A written notification to the complainant that the state believes action is unwarranted is not a failure to act. The procedures set forth in Part 68, Subpart E of this chapter are to be followed.

(k) *Delegation of rulemaking authority.* The Chief of the Wireless Telecommunications Bureau and the Chief of the Office of Engineering and Technology are delegated authority, by notice-and-comment rulemaking, to issue an order amending this section to the extent necessary to adopt technical standards for additional frequency bands and/or air interfaces upon the establishment of such standards by ANSI Accredited Standards Committee C63®, provided that the standards do not impose with respect to such frequency bands or air interfaces materially greater obligations than those imposed on other services subject to this section. Any new obligations on manufacturers and Tier I carriers pursuant to paragraphs (c)-(i) of this section as a result of such standards shall become effective no less than one year after release of the order adopting such standards, and any new obligations on other service providers shall become effective no less than 15 months after the release of such order.

Part 68 of Title 47 of the Code of Federal Regulations is amended as follows:

6. The authority citation for Part 68 reads as follows:

Authority: Secs. 4, 5, 303, 48 Stat., as amended, 1066, 1068, 1082; (47 U.S.C. 154, 155, 303).

7. Section 68 is amended by replacing the existing text of Section 68.418(b) with the following:

§ 68.418 Procedure; Designation of Agents for Service.

* * * * *

(b) To ensure prompt and effective service of informal complaints filed under this subpart, every responsible party of equipment approved pursuant to this part shall designate and identify one or more agents upon whom service may be made of all notices, inquiries, orders, decisions, and other pronouncements of the Commission in any matter before the Commission. Such designation shall be provided to the Commission and shall include a name or department designation, business address, telephone number, and, if available, TTY number, facsimile number, and Internet e-mail address. The

Commission shall make this information available to the public.

**STATEMENT OF
COMMISSIONER MICHAEL J. COPPS**

Re: Section 68.4(a) of the Commission's Rules Governing Hearing-Aid Compatible Telephones, Petition of American National Standards Institute Accredited Standards Committee C63 (EMC) ANSI ASC C63®, WT Docket No. 07-250.

I am pleased to vote for today's item, which will improve the access of Americans with hearing loss to cutting-edge wireless handsets. As I have stated many times before, one of the FCC's most solemn responsibilities is to ensure that *all* Americans have access to the nation's communications system. Our ongoing work in creating hearing aid compatibility (HAC) requirements for wireless digital phones is a critical part of fulfilling that mission. I am pleased that today's item continues the FCC's commitment to ensuring that Americans with hearing-loss will benefit from the exciting and on-going advances in the wireless marketplace.

I am especially pleased that the HAC framework we adopt today arises out of a Joint Consensus Plan developed by consumer advocates, wireless carriers and handset manufacturers. I know it took a great deal of hard work and dedication by the parties to reach this common ground, and I salute them for their efforts. This example of partnership among diverse stakeholders—as well as the private and the public sector—is a valuable and important model that I hope the Commission can encourage and replicate in other areas of its responsibility.

I also am glad that we provide a mechanism for these stakeholders to continue to work together to develop a proposal for how to deal with multi-mode handsets that use air interfaces and frequency bands (other than Wi-Fi) for which HAC standards have not yet been developed. I look forward to receiving this proposal within 3 months (and a more detailed proposal within 6 months) and then working with my colleagues to issue rules on this subject shortly thereafter. This timeframe permits us to resolve this important issue, in a way that provides clear rules of the road for consumers and industry, well before any such phones are brought to market.

**STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN**

Re: Amendment of the Commission's Rules Governing Hearing Aid-Compatible Mobile Handsets; Section 68.4(a) of the Commission's Rules Governing Hearing Aid Compatible Telephones; Petition of American National Standards Institute Accredited Standards Committee C63 (EMC)ANSI ASC C63®; WT Docket No. 07-250.

I support today's Report and Order because it makes great advances towards improving the access to digital mobile wireless phones by those Americans who use hearing aids. It is essential that the rights of those with hearing impairments always remain in the forefront of our decisions, so I'm pleased that we have taken to heart our obligations to address such an important public interest issue.

In addition to adopting new benchmarks and deadlines through 2011 for hearing aid compatible handsets, it is significant that we also adopt today a new product refresh requirement for manufacturers, as well as a requirement for differing handset functionality levels for service providers. Together, these requirements will greatly improve the accessibility to and available options for digital wireless telecommunications by those with hearing impairments.

I would like to thank the extraordinary efforts of the hearing aid community, consumer advocacy groups and those in industry that worked diligently to develop the recommendations in the Joint Consensus Plan – the recommendations from which we formulated core aspects of our order. I am also pleased that we have incorporated a further review of our hearing aid requirements in the second half of 2010, and I look forward to tracking the progress of our decision and its positive impact on the hearing impaired community over the upcoming years.

**STATEMENT OF
COMMISSIONER DEBORAH TAYLOR TATE**

*Re: Amendment of the Commission's Rules Governing Hearing Aid-Compatible Mobile Handsets;
Petition of American National Standards Institute Accredited Standards Committee C63 (EMC) ANSI
ASC C63®, WT Docket No. 07-250.*

Today's item provides another example of the importance of input from consumers, especially those who may be most dependent on new technologies for education, work, or help in an emergency. Government's best work is done through cooperation and collaboration, whether public-private partnerships or, as in this case, through recommendations of the Joint Consensus Plan. Accordingly, I am pleased to vote for today's item, which provides important clarifications and modifications to the Commission's hearing aid compatibility (HAC) rules. The recommendations of the Joint Consensus Plan, upon which these rules are based, are the result of a cooperative effort by representatives of wireless service providers and device manufacturers, as well as those representing consumers with hearing loss, especially the Hearing Loss Association of America and Gallaudet University. These parties have the best knowledge, both of the needs of the hearing impaired and of the technologies that can help meet those needs. Following their recommendations is a victory for good policymaking.

As the Commission continues to consider the needs of consumers with hearing loss, I encourage the continued involvement of all parties involved in crafting the Joint Consensus Plan. Going forward, for example, the Commission must consider appropriate rules for multi-band devices when HAC standards have not been developed for all bands in which such devices operate. I value the input of those involved in this process and anticipate that future rules, like those adopted today, will effectively serve consumers with hearing loss.

**STATEMENT OF
COMMISSIONER ROBERT M. McDOWELL**

*Re: Amendment of the Commission's Rules Governing Hearing Aid-Compatible Mobile Handsets;
Petition of American National Standards Institute Accredited Standards Committee C63 (EMC)
ANSI ASC C63®, WT Docket No. 07-250.*

I would like to thank my fellow commissioners for taking the time to work with me to ensure that this order correctly captures the requests of the Hearing Aid Compatibility Joint Consensus Working Group. I commend this group, comprised of organizations representing the interests of consumers with hearing loss, wireless carriers and handset manufacturers, for its hard work on these important issues. In adopting the Joint Consensus Plan, the Commission is not only advancing the goals established by Congress in the Hearing Aid Compatibility Act, we are also recognizing the working group's expertise and rewarding its dedication. Common sense has prevailed.

History has taught us time and time again that government is no match for the private sector. Collaborative partnerships are far better equipped to quickly resolve technical challenges and satisfy consumer demand than government mandates. This is especially true at a time when wireless technologies are evolving so rapidly. For instance, I question the wisdom in seeking to impose additional regulations on voice-based capabilities given the surge toward broadband, data-based applications, which may ultimately be of greater value to Americans with hearing loss.

Given the ongoing nature of this proceeding, I am hopeful that the working group will continue its efforts, and will expand to include new entrants to the manufacturing and carrier industries. We must all work together to ensure that consumers with hearing loss can improve their lives and transform their futures through use of the innovative products and services developed and offered by the wireless marketplace.