

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

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

REPORT AND ORDER

Adopted: November 15, 2018

Released: November 16, 2018

By the Commission: Chairman Pai and Commissioners O’Rielly, Carr, and Rosenworcel issuing separate statements

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I. INTRODUCTION

1. In this Report and Order, we take steps to improve the information that consumers and the Commission receive about wireless hearing aid compatibility by strengthening our requirements that wireless service providers post handset model information on their public web sites and by requiring those providers to retain information necessary to demonstrate compliance with the Commission’s wireless hearing aid compatibility rules. At the same time, we eliminate unnecessary and outdated reporting requirements and replace them with a streamlined annual certification. The approach we adopt here is broadly supported by consumer groups representing the hearing loss community; nationwide, rural, and regional wireless service providers; and wireless handset manufacturers.

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

2 See, e.g., Letter from Courtney Neville, Associate General Counsel, Competitive Carriers Association, Kara Graves, Director, Regulatory Affairs, CTIA, Savannah Schaefer, Policy Counsel, Government Affairs, Telecommunications Industry Association, and Lise Hamlin, Director of Public Policy, Hearing Loss Association of America (HLAA) to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-228 (filed Oct. 19, 2018) (“Joint Consensus Letter”) (observing that “Form 665 was not intended primarily to provide consumer education” and

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

## II. BACKGROUND

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

4. In 2008, the Commission adopted its new web site rules in order to “ensure the availability of [hearing aid-compatible handset information] on a more current basis to service providers and consumers.”<sup>7</sup> These rules require service providers and device manufacturers to post, among other things, a list of hearing aid-compatible models that they offer (identified by marketing model name/number(s)), the hearing aid compatibility ratings of those models, the level of functionality for each

(Continued from previous page)

agreeing that “the Commission should no longer require service providers to submit Form 655 if—in place of the Form 655 obligations and to ensure consumers can more readily find HAC-rated wireless handsets—the Commission requires service providers to both annually certify compliance with the Commission’s HAC rules and enhance the information on their consumer-facing web sites. These new obligations would be in addition to the existing HAC requirements.”); Letter from Lise Hamlin, on behalf of HLAA and the Deaf/Hard of Hearing Rehabilitation Engineering Research Center, Gallaudet University, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-228, at 1 (filed Oct. 19, 2018) (supporting the joint consensus proposal and making additional requests) (HLAA-RERC Letter); Letter of Zainab Alkebsi, Policy Counsel, National Association of the Deaf, on behalf of the National Association of the Deaf and Telecommunications for the Deaf and Hard of Hearing, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-228 (same) (filed Oct. 24, 2018); Letter of Linda Kozma-Spytek, Co-Director, Deaf/Hard of Hearing Technology Rehabilitation Engineering Research Center, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-228 (filed Oct. 24, 2018) (supporting joint consensus proposal).

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

<sup>4</sup> *Id.* at 16787, para. 89.

<sup>5</sup> *Id.*

<sup>6</sup> See *id.* at 16788, para. 91.

<sup>7</sup> See Amendment of the Commission’s Rules Governing Hearing Aid-Compatible Mobile Handsets, First Report and Order, 23 FCC Rcd 3406, 3410, para. 13 (2008) (2008 Report and Order).

model, and explanations of both the rating system and how the functionality of the handsets varies.<sup>8</sup> The Commission stated that this information should be “updated within thirty days of any relevant changes.”<sup>9</sup>

5. In that same order, the Commission revised its existing hearing aid compatibility reporting requirements. The Commission codified specific reporting requirements on an indefinite basis,<sup>10</sup> explaining that the revised requirements “will help ensure that the reports enable the Commission to fulfill its responsibilities in monitoring the status of access to hearing aid-compatible handsets and verifying compliance with our rules, and will ensure that the public has additional useful information on compatible handsets.”<sup>11</sup>

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

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

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<sup>8</sup> See *Amendment of the Commission’s Rules Governing Hearing Aid-Compatible Mobile Handsets*, First Report and Order, 23 FCC Rcd 3406, 3450, para. 112 (2008) (*2008 Report and Order*); see also 47 CFR § 20.19.

<sup>9</sup> See *2008 Report and Order*, 23 FCC Rcd at 3450, para. 112; see also 47 CFR § 20.19.

<sup>10</sup> See *2008 Report and Order*, 23 FCC Rcd at 3418-3419, paras. 35-36; 47 CFR § 20.19(c)-(e); see also *Improvements to Benchmarks and Related Requirements Governing Hearing Aid-Compatible Mobile Handsets*, Report and Order, 31 FCC Rcd 9336 (2016) (*2016 Report and Order*) (revising the deployment benchmarks upwards).

<sup>11</sup> *2008 Report and Order*, 23 FCC Rcd at 3444, para. 96.

<sup>12</sup> See 47 CFR § 20.19(h)(i).

<sup>13</sup> See *2008 Report and Order*, 23 FCC Rcd at 3410, para. 13.

<sup>14</sup> *Id.* at 3444-46, paras. 95, 98.

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

- (8) status of product labeling;
- (9) outreach efforts; and
- (10) if a public web site is maintained, the web site address at which it provides information relating to the hearing aid-compatible handsets that it offers.<sup>16</sup>

7. Section 20.19 also requires service providers to make hearing aid-compatible models available for consumer testing in retail stores that they own or operate.<sup>17</sup> Service providers must offer hearing aid-compatible models with differing levels of functionality.<sup>18</sup> Service providers must disclose information about their hearing aid-compatible models in packaging materials and at the point-of-sale.<sup>19</sup>

8. Beginning as early as 2014, numerous parties, especially rural and small service providers, asserted that preparing annual status reports is burdensome.<sup>20</sup> For example, the Rural Wireless Association (RWA) asserted that the annual reports “have proven to be extremely problematic for small carriers” and asked the Commission to exempt such service providers from the reporting requirements.<sup>21</sup> RWA stated that “[m]any small companies are forced to have an employee devote several weeks annually to tracking [hearing aid compatibility] ratings,” and it sought immediate relief from FCC Form 655 reporting requirements for these entities.<sup>22</sup>

9. In September 2017, the Commission released a Notice of Proposed Rulemaking seeking comment on revising or eliminating service providers’ hearing aid compatibility reporting requirements, in particular for smaller providers.<sup>23</sup> The Commission asked commenters to address the alternative of requiring certifications instead of requiring reports, and, if certifications would be required, what the certification should include.<sup>24</sup> If the reporting requirement were retained, the Commission asked whether the form could be streamlined to reduce the burden on service providers.<sup>25</sup> The Commission sought

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<sup>16</sup> *2008 Report and Order*, 23 FCC Rcd at 3444-46, paras. 97, 100; *see also* 47 CFR § 20.19(i)(3). The Commission also adopted similar revised report content requirements for manufacturers. *See 2008 Report and Order*, 23 FCC Rcd at 3444-46, paras. 97, 100; *see also* 47 CFR § 20.19(i)(2). The Commission further clarified that manufacturers and service providers must provide the dates on which they began and ceased offering specific models during the past 12 months in order to verify compliance with all of the hearing aid compatibility rules. *See 2008 Report and Order*, 23 FCC Rcd at 3444, para. 96.

<sup>17</sup> *See* 47 CFR § 20.19(c)(4)(i).

<sup>18</sup> *See* 47 CFR § 20.19(c)(4)(ii).

<sup>19</sup> *See* 47 CFR § 20.19(f).

<sup>20</sup> *See Notice*, 32 FCC Rcd at 7865, para. 7 n.15 (referencing submissions filed in 2014 by several smaller service providers).

<sup>21</sup> RWA Comments, WT Docket Nos. 07-250 and 15-285, at 4-5 (filed Jan. 28, 2016).

<sup>22</sup> *Id.* at 5 n.17.

<sup>23</sup> *See generally Notice*. For purposes of this Report and Order, we use the term “smaller” service provider(s) to refer to those service providers other than Tier 1 carriers. Section § 20.19(a)(v) defines a Tier 1 carrier as “a CMRS provider that offers such service nationwide.” 47 CFR § 20.19(a)(v). Thus, “Tier 1 carriers” and “nationwide carriers” are synonymous as used in this order, and “smaller” service providers are those that do not offer nationwide service. We also note that the hearing aid compatibility rules apply to all wireless service providers, including carriers, resellers, MVNOS, and others. Specifically, the rules apply to “providers of digital mobile service in the United States to the extent that they offer terrestrial mobile service that enables two-way real-time voice communications among members of the public or a substantial portion of the public, including both interconnected and non-interconnected VoIP services, and such service is provided over frequencies in the 698 MHz to 6GHz bands.” 47 CFR § 20.19(a)(1)(i).

<sup>24</sup> *Notice*, 32 FCC Rcd at 7869, para. 17.

<sup>25</sup> *Id.*

comment on whether any other changes to its rules would be necessary or appropriate to accommodate or reflect changes to its reporting requirements (including exemptions thereto).<sup>26</sup>

10. In light of various changes in the marketplace since the current reporting requirements were adopted, the Commission also sought comment on additional ways to streamline or update hearing aid compatibility reporting for all service providers, including nationwide carriers.<sup>27</sup> The Commission also asked whether currently collected information could be “combined with other sources” or made part of other data collections,<sup>28</sup> and it specifically sought comment on whether consumers would have sufficient information from existing web site posting requirements to warrant dispensing with the annual reports.<sup>29</sup> The Commission did not seek comment on eliminating or otherwise changing the reporting requirements for handset manufacturers.<sup>30</sup>

### III. DISCUSSION

11. As the consumer groups, service providers, and manufacturers observe, over the past decade, we have witnessed unprecedented growth in the degree to which service providers offer handsets that are hearing aid-compatible.<sup>31</sup> For example, the four largest service providers (Verizon Wireless, AT&T Mobility, T-Mobile US, and Sprint Corporation) have increased the availability of hearing aid-compatible handsets in their inventory from a 30-63% range in December 2010 to 100% in December 2017.<sup>32</sup> Device manufacturers have also increased the availability of hearing aid-compatible handsets from 53% in June 2011 to 93% in June 2018.<sup>33</sup> In light of the growth in hearing aid-compatible handsets, and decreasing public reliance on these reports since they were first adopted by the Commission in 2003,<sup>34</sup> we take two key steps to reform the hearing-aid compatibility reporting regime. In doing so, we acknowledge the hard work taken by consumer groups, manufacturers and service providers to reach a consensus proposal that forms the basis of the actions we take today.<sup>35</sup>

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<sup>26</sup> *Id.* at 7869, para 19.

<sup>27</sup> *Id.* at 7870, para. 20.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at 7866, para. 10.

<sup>30</sup> *Id.*

<sup>31</sup> Joint Consensus Letter at 1 (noting that while in 2003 when the reporting rules were adopted, the number of hearing aid-compatible handsets was “relatively small...[t]oday, the majority of available wireless handsets are HAC-rated...the Commission’s latest data suggest more than 80 percent of wireless handsets available in the market today are HAC-compliant.”); *id.* at 3 (“The landscape of HAC-related wireless handsets has changed dramatically for consumers who use hearing aid devices since the Commission’s HAC Order more than 15 years ago. Consumers today can choose from hundreds of HAC-compliant wireless handsets.”).

<sup>32</sup> AT&T increased the availability of hearing aid-compatible handsets from 54% in December 2010 to 100% in December 2017, Verizon increased from 63% to 100%, T-Mobile increased from 30% to 100%, and Sprint increased from 50% to 100%. See Hearing Aid Compatibility Reports: Service Providers, [http://wireless.fcc.gov/hac/index.htm?job=reports\\_sp](http://wireless.fcc.gov/hac/index.htm?job=reports_sp).

<sup>33</sup> Original data for device manufacturers are from [http://wireless.fcc.gov/hac/index.htm?job=reports\\_dm](http://wireless.fcc.gov/hac/index.htm?job=reports_dm). This progress was recently highlighted by the Commission’s report to Congress. See generally, *Biennial Report to Congress as Required by the Twenty-First Century Communications and Video Accessibility Act of 2010*, Report, DA 18-1036, CG Docket No. 10-213, para. 11 (rel. Oct. 9, 2018) (noting that manufactures are already exceeding their future benchmarks in most cases).

<sup>34</sup> See *infra* para. 41 (discussing changes in web page visits to FCC Form 655 web site).

<sup>35</sup> See *supra* n.2.

12. First, we revise our rules to require service providers to post on their web sites the most critical information currently submitted on FCC Form 655.<sup>36</sup> By requiring all service providers to post this information on publicly accessible web sites that they control, we can ensure that consumers have access to information about the increased numbers of hearing aid-compatible handset models with less burden for both service providers and consumers.<sup>37</sup> This web site information also will allow the Commission to continue to evaluate rule compliance without collecting information directly from service providers. Consumers will benefit from having access to the most up-to-date information about each handset model being offered by service providers.<sup>38</sup>

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

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

15. We note that in a separate docket, the Commission is considering broader changes to the hearing aid compatibility rules that may be appropriate in the event the Commission requires 100% of covered handsets to be hearing aid-compatible.<sup>39</sup> Per the schedule established in that proceeding, which we have no current plan to deviate from, the process through which the Commission would make a determination whether a 100 percent requirement is achievable would conclude at the end of 2022.<sup>40</sup> Revisions to the existing deployment benchmarks and other related rules are outside of the scope of this proceeding,<sup>41</sup> and therefore these requirements will remain in place unless and until the Commission takes further action in that docket. To that end, our decision here is not predicated on further changes that might be under consideration, and thus, does not prejudice any further steps we may take to modify our reporting rules in that proceeding.<sup>42</sup>

#### **A. Improvements to Service Provider Web Site Requirements**

16. *Background.* In the *Notice*, the Commission sought comment on whether any changes to

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<sup>36</sup> See Joint Consensus Letter at 3 (arguing that “in place of the Form 655 obligations and to ensure consumers can more readily find HAC-related wireless handsets” providers should “enhance the information on their consumer facing websites...in additional to the existing HAC requirements.”).

<sup>37</sup> See *id.*

<sup>38</sup> See *id.*

<sup>39</sup> See *Improvements to Benchmarks and Related Requirements Governing Hearing Aid-Compatible Mobile Handsets*, Report and Order, 31 FCC Rcd 9336, 9353-54, para. 43 (2016) (*2016 Report and Order*); Joint Consensus Letter at 3 (“As long as service providers and manufactures are not required to provide 100% HAC offerings, consumers and the Commission need to be able to understand what HAC offerings are available.”).

<sup>40</sup> See *2016 Report and Order*, 31 FCC Rcd at 9353-52, para 41.

<sup>41</sup> See *Notice*, 32 FCC Rcd at 7866, para. 8 (“We seek comment on whether to exempt a service provider that is not a Tier I carrier (Non-Tier I Service Provider) from the annual FCC Form 655 reporting requirements or otherwise to modify these requirements, while maintaining the reporting requirements for Tier I carriers and all handset manufacturers.”).

<sup>42</sup> See *2016 Report and Order*, 31 FCC Rcd at 9353, para. 43.

aspects of the hearing aid compatibility requirements would be necessary or appropriate to accommodate or reflect a reporting exemption or modified reporting requirement, additional ways to streamline reporting for all service providers, and other streamlined or simplified approaches to gathering information that the reports are intended to reflect.<sup>43</sup> The Commission's existing web site provisions require service providers that operate publicly accessible web sites to post on their web sites a list of all hearing aid-compatible models that they currently offer, the hearing aid compatibility ratings of those models, and an explanation of the rating system.<sup>44</sup> These service providers must also specify on their web sites the level of functionality that each hearing aid-compatible model falls under as that service provider defines functionality, as well as an explanation of how the functionality varies at different levels.<sup>45</sup>

17. *Discussion.* We amend our hearing aid compatibility web site requirements for service providers<sup>46</sup> to ensure that the objectives of the FCC Form 655 reporting requirement continue to be met. In doing so, we adopt, in part, the proposal put forth by the Joint Consensus filers. Under our new rules, service providers will continue to comply with the existing web site requirements supplemented with additional content that is useful to consumers.<sup>47</sup> In addition, we will carry over to the new web site posting obligation limited content from the FCC Form 655 necessary to meet the Commission's information, monitoring, and enforcement goals.<sup>48</sup>

18. In addition to the current web site requirements,<sup>49</sup> all service providers that operate publicly accessible web sites (other than *de minimis* service providers, which remain exempt from web site requirements) will now be required to post to their web sites the following additional information:

- (1) a list of all non-hearing aid-compatible handset models currently offered, including the level of functionality of those models;
- (2) among other pieces of data,<sup>50</sup> the marketing model name/number(s) and FCC ID number of each hearing aid-compatible and non-hearing aid-compatible handset model currently offered;<sup>51</sup>
- (3) a link to a third-party web site as designated by the Commission or Wireless Telecommunications Bureau, with information regarding hearing aid-compatible and non-hearing aid-compatible devices OR, alternatively, a clearly marked list of hearing aid-

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<sup>43</sup> See Notice, 32 FCC Rcd at 7869, para. 19.

<sup>44</sup> 47 CFR § 20.19(h).

<sup>45</sup> *Id.*

<sup>46</sup> Our current web site rule only applies to service providers with web sites. See 47 CFR § 20.19(h). We retain that aspect of the rule. Therefore, all obligations here that apply to service providers only apply to such providers if they have a web site.

<sup>47</sup> 47 CFR § 20.19(h) and (i)(3).

<sup>48</sup> See Joint Consensus Letter at 3 (“[S]ervice providers should enhance the information on their public websites to include additional information in a timely manner to help consumers find a wireless handset that meets their unique needs.”).

<sup>49</sup> 47 CFR § 20.19(h).

<sup>50</sup> See Appx. B *infra.*, Section 20.19(h)(1) (describing the information for current handsets that must be posted on the web site).

<sup>51</sup> See Joint Consensus Letter at Appx. A, B (including some of these elements in their proposal). The information that service providers post to their web sites concerning marketing model name or number and FCC ID number must be accurate so that Commission staff can use the information to access the grant note or testing reports for the handset at issue. As necessary, Commission staff can use this information to verify air interfaces and frequency bands to determine compliance with applicable deployment benchmarks.

compatible devices that have been offered in the past 24 months but are no longer offered by that provider.<sup>52</sup> For purposes of initial implementation, the Commission designates the Global Accessibility Reporting Initiative (GARI) web site as the third party web site referred to in this portion of the rule;<sup>53</sup>

- (4) A link to the current FCC web page containing information about the wireless hearing aid compatibility rules and service providers' obligations;<sup>54</sup> and
- (5) A "date stamp" on any web site page containing the above referenced information that indicates when the page was last updated.<sup>55</sup>

19. Service providers must also retain internal records for discontinued models, to be made available upon Commission request of:<sup>56</sup>

- (1) handset model information,<sup>57</sup> including the month year/each hearing aid-compatible and non-hearing aid-compatible handset model was first offered; and
- (2) the month/year each hearing aid-compatible handset model and non-hearing aid-compatible handset was last offered for all discontinued handset models until a period of 24 months has passed from that date.

20. Retaining a trailing list of all handsets offered over the past 24 months will ensure that the Commission can continue to monitor whether service providers meet numerical and percentage-based handset deployment obligations. The obligation to post a link to the GARI web site, or alternatively, post a clearly marked list of hearing aid-compatible devices that have been offered in the past 24 months (which at least one smaller provider has already voluntarily adopted) also permits consumers to locate information about a model they may have recently purchased that is no longer being offered.<sup>58</sup> We

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<sup>52</sup> See Joint Consensus Letter at Appx. A, B (including this element in their proposal); Appx. B, *infra.*, Section 20.19(h)(2)(ii) (describing information that must be included for each handset on the trailing list).

<sup>53</sup> See GARI, What Do You Want to Find? Gari.info, <http://gari.info/> (last visited Oct. 25, 2018) (providing a search field to accessibility information, including handset hearing aid compatibility information). GARI is an ongoing project of the Mobile and Wireless Forum, "an international association of companies with an interest in mobile and wireless communication. . . The MWF focuses on a range of issues concerning mobile and wireless devices including RF health and safety, certification testing standards and requirements, counterfeit, counterfeit issues and accessibility," GARI, Contact GARI, <https://www.gari.info/contact.cfm> (last visited Oct. 22, 2018).

<sup>54</sup> This information can be currently found at <https://www.fcc.gov/hearing-aid-compatibility-wireless-telephones> (last visited Nov. 11, 2018). See, e.g., Letter of Lise Hamlin, Hearing Loss Association of America, to Marlene H Dortch, Secretary, FCC, WT Docket No. 17-228 at 3 (filed Nov. 8, 2018) (HLAA Nov. 8 Letter) (arguing that such information would be extremely helpful for consumers).

<sup>55</sup> See HLAA Nov. 8 Letter (arguing that a date stamp will assist the Commission to readily determine if the web site information is up to date).

<sup>56</sup> See *id.* Under these record retention rules, once the rule becomes effective 30 days after Federal Register Publication of notice of OMB approval, providers must retain handset information covering the months from January 2018 onward. The number of months of historical handset information providers must retain will increase until it reaches 24 months in January 2020. By February 2020, providers will no longer be required to retain handset information for January 2018.

<sup>57</sup> See Appx. B, *infra.*, Section 20.19(h)(5) (describing handset information that must be retained).

<sup>58</sup> Appalachian Reply at 2 (noting that they list on their web site "[hearing aid-compatible] devices that are no longer available for purchase from Appalachian Wireless, but which have been sold in recent months and are reasonably likely to still be in use. Since many customers use the same device for two years or more Appalachian Wireless



conclude that it can serve as a useful tool for consumers to obtain hearing aid compatibility information regarding past handsets offered.<sup>59</sup> Past handset information is useful not only to consumers who purchase devices via re-sale, but also to consumers who, for instance, start using a hearing aid or change hearing aids and want to check on whether their current device is compatible. So that service providers have flexibility, we will not prescribe a standard template for posting and retaining this information. In addition, service providers can rely on the information from device manufacturers' FCC Form 655 as a safe harbor, similar to the Commission's policy in the past for service providers' FCC Form 655 filings.<sup>60</sup>

21. We do not anticipate that it will be difficult or burdensome for service providers to gather and post this additional information on their web sites or to retain it. Service providers must continue to meet applicable deployment benchmarks and maintain compliance with all other hearing aid compatibility requirements. Therefore, service providers would likely need to track the information outlined above, some of which service providers need in order to run their businesses independent of our requirements (e.g., when a handset is first offered and no longer offered). Posting this information to their web sites and/or retaining it for their records should impose on providers only a minimal additional burden. This conclusion is confirmed by the record in this proceeding showing that service providers already post some of this newly required information and the willingness of the Joint Consensus filers to endorse a similar approach.<sup>61</sup>

22. We find that our new web site and record retention requirements should better serve the Commission's objectives because the information on web sites will be more up-to-date than the data submitted on FCC Form 655.<sup>62</sup> The current web site rules require providers to update the web site information within 30 days of any relevant changes.<sup>63</sup> As we stated when we adopted the web site posting requirement, "updated website postings are necessary. . . so that consumers can obtain up-to-date hearing aid compatibility information from their service providers."<sup>64</sup> To ensure that providers are aware that their web sites need to be kept up to date, we codify this requirement.<sup>65</sup>

23. We will be able to use the information on a service provider's web site to ensure that it is in compliance with the appropriate deployment benchmarks on a month-by-month basis. We believe this

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does not immediately remove information about a device from the HAC Chart simply because it is not currently available for online purchase.").

<sup>59</sup> We direct the Bureau to designate a different third-party web site or require the posting of a two-year trailing list if the GARI web site is either eliminated or not updated in a timely manner.

<sup>60</sup> The Commission has stated that a service provider is compliant with the hearing aid compatibility rules to the extent that its compliance is based on its reasonable reliance on data contained in, or aggregated from, manufacturers' FCC Form 655 submissions. *See 2016 Report and Order*, 31 FCC Rcd, at 9356-57, para. 49 (2016). Manufacturer FCC Form 655 reports can be found on the Commission web site. *See* [http://wireless.fcc.gov/hac/index.htm?job=reports\\_dm](http://wireless.fcc.gov/hac/index.htm?job=reports_dm).

<sup>61</sup> *See, e.g.*, Appalachian Reply at 1-3 (posting information about handsets no longer offered); CTIA/CCA Reply at 3. *See generally*, Joint Consensus Letter at Appx. A.

<sup>62</sup> Blooston Rural Carriers Reply at 2-3 (stating that "the elimination of a costly and burdensome regulatory filing obligation will allow [Non-Tier I Service Providers] to utilize the savings in time and money to maintain and improve their web sites and other outreach materials that are more readily accessible to consumers.").

<sup>63</sup> *2008 Report and Order*, 23 FCC Rcd at 3450, para. 112.

<sup>64</sup> *Id.*

<sup>65</sup> Appx. B, *infra*. Letter of Lise Hamlin, Hearing Loss Association of America, and Linda Kozma-Spytek, Gallaudet University Technology Access Program (TAP), WT Docket No. 17-228, at 2 (filed Oct. 18, 2018) (arguing for the codification of the existing 30-day web site update requirement so that "consumers. . . have access to the most accurate and complete information available when searching for a HAC handset.").

is a better approach than other options, such as, for example, relying on informal complaints.<sup>66</sup> We also can use the posted information to monitor the state of the provision of hearing aid-compatible handsets by the wireless industry and the effectiveness of our hearing aid compatibility requirements. We also believe that the proceeding in which the Commission is considering whether to require 100% of handsets to be hearing aid-compatible allows the Commission to monitor industry progress without requiring individual hearing aid compatibility status data from service providers.<sup>67</sup> These revisions to our web site posting requirements will allow consumers better access to more current information about the hearing aid compatibility features of current handset models offered by their service providers, and the information will be in a clearer format than is currently possible on FCC Form 655.<sup>68</sup>

24. The web site and record retention requirements we adopt here differ slightly from the approach outlined in the Joint Consensus Letter and the separate request of HLAA-RERC.<sup>69</sup> The requirement to post information about non-hearing aid-compatible handsets, for instance, is not addressed by the Joint Consensus filers.<sup>70</sup> Nevertheless, we conclude that requiring the posting of this information, along with information regarding currently offered hearing aid-compatible handsets on providers' web sites, provides an easy means for the Commission and interested third parties to quickly derive a percentage of hearing aid-compatible handsets to determine whether the provider is meeting the relevant benchmarks. The Commission would not have to wait for the annual certification or make a request for internal data from the provider to determine whether the provider is currently compliant. Because the majority of handsets are hearing aid-compatible, this requirement imposes a limited burden compared to the compliance benefit.

25. HLAA-RERC argue that service providers should post on their web sites updated percentages of hearing aid-compatible handsets by air interface in near-real time and make additional web site changes and disclosures.<sup>71</sup> For the most part, we conclude that this information is not necessary to fulfill the purpose of our reforms today and therefore would impose an unjustified burden. In particular, a requirement to post air interface information, updated every 30 days, would likely be even more burdensome than the current, similar FCC Form 655 requirement where providers assemble that

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<sup>66</sup> Between November 2014 and July 2017, the Commission identified 27 informal complaints that involved wireless service and related in some way or in part to hearing aids (<https://opendata.fcc.gov/Consumer/CGB-Consumer-Complaints-Data/3xyp-aqkj>). Very few of these complaints appear to allege a violation of the rule. Many of these cases involve a customer claiming that a particular handset that they purchased was not working well with their hearing aid. In most cases, the complaint appears to have been resolved to the consumer's satisfaction. Typically, consumers with devices not working with their hearing aids were provided the opportunity to exchange them for alternative devices that would work better.

<sup>67</sup> The Commission has an ongoing proceeding in which data on the state of hearing aid compatibility in the wireless industry will be collected and analyzed, thus lessening the need for collecting hearing aid compatibility status data from individual service providers. *See 2016 Report and Order*, 31 FCC Rcd at 9350-57, paras. 36-50.

<sup>68</sup> This approach will address much of the concern expressed by consumer groups and the Gallaudet RERC about whether service provider web sites are accurate, up-to-date, and reliable sources of information for consumers. *See HLAA et al.*, Comments at 2-4.

<sup>69</sup> *See* Joint Consensus Letter at Appx. B; HLAA-RERC Letter at Appx. A, B; *see also* Letter from Lise Hamlin, on behalf of Hearing Loss Association of America and Rehabilitation Engineering Research Center on Technology for the Deaf and Hard of Hearing, Gallaudet University, WT Docket No. 17-228 (filed Nov. 7, 2018) (reiterating original requests and, in the alternative, arguing that service providers be required to post a list of the basic requirements under the rules that impact consumers); HLAA Nov. 8 Letter (same).

<sup>70</sup> *See* Joint Consensus Letter at Appx. B.

<sup>71</sup> This includes (1) the total number of hearing aid-compatible and non-hearing aid-compatible handsets by air interface offered by the provider; (2) the date of any updates to their web pages with hearing aid compatibility information; (3) whether a non-hearing aid-compatible handset was tested and failed or was not tested at all; (4) hearing aid compatibility ratings placed in the handset specifications listing; and (5) a link to the Commission's hearing aid compatibility fact sheet, complaint center, and a listing of certain rules. *See* HLAA-RERC Letter at 4.

information once at the end of the year. Additionally, HLAA-RERC does not explain how posting whether a non-hearing aid-compatible handset was tested and failed, or was simply not tested, would aid either consumers or the Commission's enforcement efforts. We also find that, other than their requests we adopt here to require service providers to post a link to the Commission page with information about the hearing aid compatibility rules and indicate on relevant web page(s) when the hearing aid compatibility-related information on those pages was last updated, HLAA's other proposals to mandate the configuration of service providers' web sites, such as requiring service providers to place hearing aid compatibility information into the specifications of each handset, would overly restrict providers' flexibility to design and administer their sites without any clearly demonstrated benefit. Requiring a date stamp when each web page is updated should require minimal additional effort by service providers, and will facilitate the enforcement of the newly codified requirement for service providers to update the information on their web site every 30 days.<sup>72</sup>

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

26. *Background.* In the *Notice*, the Commission sought comment on requiring service providers to submit a certification to the Commission, annually or otherwise, that they have met the deployment benchmarks and other hearing aid compatibility requirements.<sup>73</sup> The Commission asked what information service providers should certify to if the Commission adopted a certification approach to replace the current reporting requirement.<sup>74</sup> For instance, the Commission asked if the certification form should simply contain a box to check that requirements have been met or whether the certification form should require providers to submit more detailed information regarding service provider compliance.<sup>75</sup> Finally, the Commission asked what are the costs and benefits of using a certification approach instead of the existing reporting approach.<sup>76</sup>

27. The Commission also sought comment on whether to exempt all service providers, or only smaller providers, from annual FCC Form 655 reporting requirements.<sup>77</sup> It sought comment on the extent to which consumers rely on these annual reports for information about handset models, the role reports play in monitoring service providers' compliance with the Commission's rules, and the Commission's objective of gauging the overall state of access to hearing aid-compatible handset models. The Commission asked whether the burden of complying with these reporting requirements outweighs the associated benefits.<sup>78</sup>

28. *Discussion.* In conjunction with our new web site and record retention rules, we adopt a requirement that all service providers certify whether they are in compliance with all of the Commission's wireless hearing aid compatibility requirements.<sup>79</sup> An original purpose of the annual filing requirement was to place an affirmative obligation on service providers to confirm compliance with all of the Commission's hearing aid compatibility requirements, including the handset deployment benchmarks.<sup>80</sup> We agree with several parties, including the Joint Consensus filers, that service providers should affirmatively state their compliance with the hearing aid compatibility rules through an annual

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<sup>72</sup> HLAA Nov. 8 Letter at 3.

<sup>73</sup> *Notice*, 32 FCC Rcd at 7869, para. 17.

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> *Id.* at 7866, para. 8.

<sup>78</sup> *Id.* at 7866, para. 9.

<sup>79</sup> 47 CFR § 20.19.

<sup>80</sup> *See, e.g.*, AT&T Comments at 7-8.

certification.<sup>81</sup> We adopt the Joint Consensus proposal with some modifications.

29. This new annual certification requirement applies to all service providers including *de minimis* service providers.<sup>82</sup> It will assure the public and the Commission that service providers have a strong incentive to comply fully with all of the Commission's hearing aid compatibility requirements, including deployment, web site, labeling, and disclosure requirements, among others. Under this new rule, service providers will be required to file a certification by January 15 of each calendar year using the existing electronic interface for the FCC Form 655 and stating as follows:<sup>83</sup>

I am a knowledgeable executive [of company x] regarding compliance with the Federal Communications Commission's wireless hearing aid compatibility requirements at a wireless service provider covered by those requirements.

I certify that the provider was [(in full compliance/not in full compliance)] [choose one] at all times during the applicable time period with the Commission's wireless hearing aid compatibility deployment benchmarks and all other relevant wireless hearing aid compatibility requirements.

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

30. If the certification states that the provider is "not in full compliance", it must include an explanation of which wireless hearing aid compatibility requirements the wireless service provider was not in full compliance with, and when non-compliance began and (if applicable) ended with respect to each requirement. In addition, as part of the certification, the service provider must submit the name of the signing executive, his or her contact information, the web site address (if applicable) of pages(s) containing hearing aid compatibility information required by Section 20.19(h), and the FCC FRN and the name of the company(ies) covered by the certification. We expect to rely on this affirmative statement of compliance in any enforcement action.<sup>84</sup>

31. The service provider must also indicate on the certification form the percentage of

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<sup>81</sup> See Joint Consensus Letter at Appx. A (describing proposed certification requirement); AT&T Comments at 8 (giving precedent of wireless service providers certifying annually to their compliance with accessibility requirements imposed by Section 717 of the Communications Act); *see also, e.g.*, CTIA/CCA Comments at 3, 9; T-Mobile Reply at 4; Letter of Courtney Neville, *et al.*, Associate General Counsel, Competitive Carriers Association, to Marlene H Dortch, Secretary, FCC, WT Docket No. 17-228 at 2 (filed Nov. 2, 2018) (CCA *et al.* Nov. 2 Letter) (advocating the adoption of a certification standard closer to the current CVAA certification requiring that a company certify that there are procedures in place to ensure compliance with the rules); *see also* 47 CFR § 14.31(b)(1). The Joint Consensus filers suggest that providers should certify "that the service provider complies with the HAC rules," (Joint Consensus Letter at 6), but they do not specify what should occur when a provider is unable to make that certification. Our rule fills that gap by requiring such providers to explain the extent of any noncompliance.

<sup>82</sup> *De minimis* service providers remain subject to Section 20.19(i) of the Commission's rules, which contains the new certification requirement for service providers. *See also*, Appx. B, *infra*.

<sup>83</sup> See FCC, Hearing Aid Compatibility Status Reporting, <http://wireless.fcc.gov/hac/index.htm?job=home#d336e2>.

<sup>84</sup> The Commission has used affirmative certifications in other contexts. For example, to enforce Sections 255, 716, and 718 of the Communication's Act, the Commission requires service providers subject to these provisions to sign and file an annual compliance certificate with the Commission.

hearing aid-compatible wireless handsets it made available that year.<sup>85</sup> Providers will derive this percentage by determining the number of hearing aid-compatible handsets offered across all air interfaces during the year divided by the total number of handsets offered during the year. This requirement, while not directly related to service providers' compliance, will help the Commission and consumers quickly determine the state of the hearing aid compatibility marketplace. The Commission will rely on web site postings of current handsets and the document retention requirements we adopt here to monitor carrier compliance with the deployment benchmarks by air interface.

32. Our simple, streamlined certification approach will emphasize the importance of compliance with our rules and focus service providers on assessing their performance.<sup>86</sup> For example, knowing that they must affirmatively certify to compliance with the wireless hearing aid compatibility requirements will provide a powerful incentive for companies to formulate a process to ensure their web sites contain all required information in an up-to-date manner.<sup>87</sup> At the same time, it should reduce the administrative burden compared to gathering, formatting, and submitting data for the more detailed FCC Form 655.<sup>88</sup> Commenters generally support replacing the current annual reporting requirement with a certification, arguing that the change would reduce unnecessary regulatory burdens.<sup>89</sup>

33. We do not adopt one element of the Joint Consensus Letter regarding the certification. Specifically, we do not adopt the Joint Consensus Letter request to state in the rules that providers may request confidentiality when submitting records to the Commission because providers already have the right to make such a request and such requests are typically ruled upon subsequent to the information submission.<sup>90</sup> We also adopt the requirement proposed by CTIA, CCA and TIA that a "knowledgeable executive," rather than an officer, sign the certification in order to increase service providers' flexibility and consistency with the language of the Form FCC 655 certification.<sup>91</sup> We do not however, adopt their proposal that the knowledgeable executive certify only that the company has procedures in place to ensure compliance with the rules.<sup>92</sup> Requiring the executive to certify that the company is in fact in compliance increases service providers' accountability and is necessary to provide the Commission and the public with a clear picture of each company's compliance as well as industry-wide compliance levels.

34. Given our improved web site posting obligations, the new, streamlined certification requirements, and manufacturers' continued submission of FCC Form 655s, it is no longer necessary to require service providers to file FCC Form 655. The revised web site and certification requirements we adopt in this Report and Order fulfill the objectives underlying the filing requirement with increased consumer benefits and less burden. For example, service providers will no longer be required to list the air interface(s) and frequency band(s) over which an offered model operates, information that they say is

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<sup>85</sup> See Joint Consensus Letter at Appx. A ("The certification also could include input fields where service providers could indicate to the Commission the percentage of wireless handsets made available by the service provider to consumers that are HAC-compliant.").

<sup>86</sup> See Letter of Lise Hamlin, Director of Public Policy, HLAA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-228 (Nov. 15, 2017) (arguing that some web sites are inaccurate or do not reflect current hearing aid-compatible handset inventory).

<sup>87</sup> HLAA *et al.*, Reply at 3.

<sup>88</sup> AT&T Comments at 7-8; T-Mobile Reply at 4.

<sup>89</sup> CTIA/CCA Comments at 3, 9; CTIA/CCA Reply at 4; AT&T Comments at 7-8; Bluegrass Cellular Reply at 3-4; T-Mobile Reply at 4.

<sup>90</sup> See 47 CFR § 0.459.

<sup>91</sup> See CCA *et al.* Nov. 2 Letter at 2.

<sup>92</sup> See *id.*

particularly burdensome to gather and list in their filings.<sup>93</sup> Moreover, this information duplicates what manufacturers are filing for the same handsets.<sup>94</sup> As long as service providers correctly and clearly identify on their web sites the models that they currently offer and retain historical handset information, the Commission will be able to use this information to compare the handsets offered to Commission databases and derive the relevant information for enforcement purposes, and consumers will have much simpler access to this data.

35. Further, the Commission will be able to determine benchmark compliance by air interface by examining the data on service providers' web sites by cross referencing that information on manufacturers' FCC Form 655. Service providers will not need to answer or provide a description in response to the several questions on the status of product labeling and outreach efforts.<sup>95</sup> Service providers will no longer have the burden of identifying the total number of hearing aid-compatible and non-hearing aid-compatible models they offer to customers for each air interface over which the service provider offers service by month, or answer company information questions regarding their status as it relates to the *de minimis* exception.<sup>96</sup>

36. Based on the record, we therefore modify our rules to eliminate the FCC Form 655 reporting requirement for all service providers.<sup>97</sup> The Joint Consensus filers support eliminating the FCC Form 655 if other safeguards are put in place, and with minor deviations, we are adopting the safeguards they propose.<sup>98</sup> Moreover, small service providers, such as members of RWA, agree that the burden of reporting is not justified and that the costs saved by eliminating the requirement will allow them to maintain and improve their web sites and other outreach materials that are more readily accessible to consumers.<sup>99</sup> And CTIA/CCA state that a certification approach would not harm consumers' ability to obtain information about hearing aid-compatible handsets from other publicly available sources of information.<sup>100</sup>

37. As greater percentages of hearing aid-compatible handsets are offered by service providers, the annual reports provide little benefit as a monitoring and compliance tool. Annual hearing aid compatibility status reports now show near universal offerings of hearing aid-compatible handset

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<sup>93</sup> AT&T Comments at 8; T-Mobile Reply at 4-5.

<sup>94</sup> *See supra* para. 20.

<sup>95</sup> In almost every case, these questions are answered with "Yes" or "N/A" responses on the FCC Form 655. In that respect, the questions function like a certification. For example, all service providers answered the product labeling questions with "Yes" or "N/A" in their reports filed in January 2018.

<sup>96</sup> 47 CFR § 20.19(i)(3)(v).

<sup>97</sup> Under our rule change, service providers that qualify for the *de minimis* exception, 47 CFR § 20.19(e), will no longer be required to report on their handset model offerings but will be subject to the same annual certification requirements as other providers. Because these service providers are already exempt from current web site requirements, they will not be required to meet our enhanced web site requirements. *See generally* 47 CFR § 20.19(e) (exempting *de minimis* providers from all of the requirements of 47 CFR § 20.19, including web site requirements in Section 20.19(h), except for the requirements in Section 20.19(i)). Device manufacturers, who are not within the scope of this proceeding, will continue to file FCC Form 655 on an annual basis. *See supra* para. 15. In January 2018, 213 service providers that offered at least one handset model filed their hearing aid compatibility status reports ([http://wireless.fcc.gov/hac/index.htm?job=reports\\_sp](http://wireless.fcc.gov/hac/index.htm?job=reports_sp)). In July 2018, 20 device manufacturers filed their hearing aid compatibility status reports ([http://wireless.fcc.gov/hac/index.htm?job=reports\\_dm](http://wireless.fcc.gov/hac/index.htm?job=reports_dm)).

<sup>98</sup> Joint Consensus Letter at 3 (supporting elimination of Form 655 if revised web site and certification rules are adopted).

<sup>99</sup> Blooston Rural Carriers Comments at 2; Blooston Rural Carriers Reply at 1-3; Bluegrass Cellular Reply at 3; PTI Reply at 1-2; RWA Reply at 3.

<sup>100</sup> CTIA/CCA Comments at 3, 9; CTIA/CCA Reply at 4; AT&T Comments at 7-8; *see also* T-Mobile Reply at 4.

models.<sup>101</sup> For example, the average percentage of hearing aid-compatible handsets being offered has increased from 42% in December 2010 to 100% in December 2017 for nationwide carriers, and from 39% to 86% for smaller service providers for the same period.<sup>102</sup>

38. For small, rural, and regional service providers, especially, the burden of reporting is substantial. The record indicates that such service providers must devote substantial time and resources to tracking and collecting the information necessary to fill out the form. These efforts are a strain on these providers' limited resources.<sup>103</sup> The financial cost of the reporting requirement is disproportionate to the number of customers served by these providers.<sup>104</sup> For example, in January 2018, compared to the reports from the four largest carriers (which serve more than 98% of wireless subscribers),<sup>105</sup> 209 smaller providers filed annual Form 655 status reports.<sup>106</sup>

39. Even for nationwide carriers, the costs of reporting are no longer justified given their high level of compliance with deployment benchmarks and the information the Commission already collects from device manufacturers. Nationwide carriers claim that the reporting requirement places unnecessary burdens on all service providers given the availability of multiple sources of information about hearing aid-compatible handsets and the fact that compliance generally well exceeds current requirements.<sup>107</sup> We agree with AT&T's assertion that handset manufacturers are in the best position to file detailed annual status reports, and that service provider reports add little because, in many instances, the information on the service providers' reports is based on the manufacturers' own reports.<sup>108</sup> Although the nationwide carriers serve the vast majority of consumers in the United States, we conclude that the consistently high levels of compliance with the deployment benchmarks significantly reduce the benefit of ongoing, detailed reporting. Indeed, nationwide carriers have been fully compliant with deployment benchmarks for the past seven years.<sup>109</sup>

40. We expect that service providers' percentages of hearing aid-compatible handset models being offered, as well as their compliance levels with deployment benchmarks, are unlikely to decline for the foreseeable future because nearly all handsets offered by manufacturers are hearing aid-compatible, reducing the need for up-front detailed information in FCC Form 655. For example, based on hearing aid compatibility status reports filed by device manufacturers in July 2018, many smartphone manufacturers, including Apple, Samsung Electronics America, LG Electronics, MobileComm USA, Motorola Mobility, Sony Mobile Communications, and HTC America, were offering only hearing aid-compatible handset models as of June 2018.<sup>110</sup> The vast majority of handset models offered by manufacturers that are not

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<sup>101</sup> See generally FCC, Hearing Aid Compatibility Reports: Service Providers, Individual Company Filings, [http://wireless.fcc.gov/hac/index.htm?job=rpt\\_sp\\_c](http://wireless.fcc.gov/hac/index.htm?job=rpt_sp_c) (last visited July 5, 2018). See also *supra* para. 11.

<sup>102</sup> For service provider reports, see FCC, Hearing Aid Compatibility Reports: Service Providers, Summary Reports, [http://wireless.fcc.gov/hac/index.htm?job=reports\\_sp](http://wireless.fcc.gov/hac/index.htm?job=reports_sp).

<sup>103</sup> See, e.g., Bluegrass Reply at 3.

<sup>104</sup> Blooston Rural Carriers Comments at 2; Blooston Rural Carriers Reply at 1-2; PTI Reply at 2.

<sup>105</sup> See Notice, 32 FCC Rcd at 7866, at n.24.

<sup>106</sup> For service provider reports, see FCC, Hearing Aid Compatibility Reports: Service Providers, Summary Reports, [http://wireless.fcc.gov/hac/index.htm?job=reports\\_sp](http://wireless.fcc.gov/hac/index.htm?job=reports_sp).

<sup>107</sup> CTIA/CCA Comments at 3, 8; CTIA/CCA Reply at 1, 4; T-Mobile Reply at 2, 4.

<sup>108</sup> AT&T Comments at 4.

<sup>109</sup> For service provider reports, see, FCC, Hearing Aid Compatibility Reports: Service Providers, Summary Reports, e [http://wireless.fcc.gov/hac/index.htm?job=reports\\_sp](http://wireless.fcc.gov/hac/index.htm?job=reports_sp).

<sup>110</sup> A list of all handsets offered by manufacturers can be found at, [http://wireless.fcc.gov/hac/index.htm?job=reports\\_dm](http://wireless.fcc.gov/hac/index.htm?job=reports_dm).

rated for hearing aid compatibility include models with operations over the GSM air interface.<sup>111</sup> As GSM networks are phased out of operation over the next several years, the risk of reductions in manufacturer offerings of hearing aid-compatible handset models, and subsequent reductions in hearing aid-compatible handset offerings by service providers, will further diminish.<sup>112</sup> Nevertheless, we recognize that the implementation of new, unforeseen technologies could affect handset manufacturers' and providers' ability to offer hearing aid-compatible handsets in the future. We will therefore continue to monitor the wireless handset marketplace to assess the need for further amendments to our rules.

41. We agree with the majority of commenters that the FCC Form 655 is no longer well-suited for consumer use.<sup>113</sup> The web site requirements that we adopt here will better serve the purpose of informing consumers about hearing aid-compatible handset models.<sup>114</sup> It is logical to assume that the typical consumer will turn to a company's web site before thinking to look for a completed FCC form. To the extent consumers once used FCC Form 655 data to find information about current handset models, they are no longer doing so to any great extent. As shown in Chart I below, during non-filing months (*i.e.*, excluding December and January when web site page visits are high due to the annual FCC Form 655 submissions), there were only approximately 30 pageviews from outside the Commission to the service provider FCC Form 655 reporting page per month over the last seven years, and that number dropped substantially last year.<sup>115</sup> At least a portion of these limited number of pageviews was likely from service providers and manufacturers, not consumers. Given this data, we expect that eliminating the reporting requirement will have little impact on consumers and will relieve a substantial information collection burden on service providers.

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<sup>111</sup> Hearing aid comparability information by air interface for manufacturer reports can be found at, [http://wireless.fcc.gov/hac/index.htm?job=reports\\_dm](http://wireless.fcc.gov/hac/index.htm?job=reports_dm) (“View Handset Totals by Air Interface”).

<sup>112</sup> AT&T shut down its GSM network on December 31, 2016. AT&T blog, John Donovan, *2G Sunset Brings Faster Speeds, Newer Technologies*, Jan. 16, 2017 ([http://about.att.com/innovationblog/2g\\_sunset](http://about.att.com/innovationblog/2g_sunset)). T-Mobile may sunset its GSM network by 2020. Digital Trend, *T-Mobile and Ericsson hope to ditch 2G/3G, switch to gigabit LTE by 2019*, Mar. 1, 2017 (<https://www.digitaltrends.com/mobile/t-mobile-all-lte-mwc17/>).

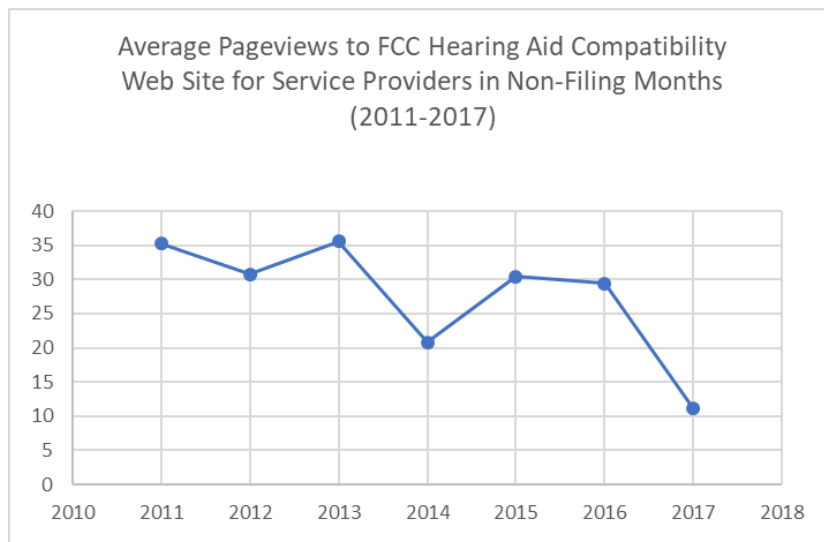
<sup>113</sup> Joint Consensus Letter at 2 (arguing that “Form 655 was not indeed primarily to provide consumer education.”); AT&T Comments at 4-5; CTIA/CCA Comments at 3.

<sup>114</sup> See Joint Consensus Letter at 1.

<sup>115</sup> Per data collected by FCC staff for the period between September 2010 and September 2017 for page visits at the Commission's hearing aid compatibility web site for service providers. See [http://wireless.fcc.gov/hac/index.htm?job=reports\\_sp](http://wireless.fcc.gov/hac/index.htm?job=reports_sp).



**Chart I. Average Pageviews to FCC Form 655 Web Site for Service Providers in Non-Filing Months 2011-2017**



42. Much of the detailed service provider handset data the Commission receives from providers is duplicative. The record indicates that many nationwide carriers are resubmitting information for handsets that is already being provided by handset manufacturers on their own FCC Form 655 filings.<sup>116</sup> Based on the status reports filed by service providers in January 2018, about 71% of handset models offered in December 2017 by nationwide carriers have been reported by device manufacturers in previous years, and approximately 15% were newer handset models (*i.e.*, those available after device manufacturers filed their FCC Form 655 status reports in July 2017).<sup>117</sup> Similarly, out of 1025 handset models offered in December 2017 by smaller providers, 623 (or 61%) have been reported by device manufacturers in previous years, and 33 (or 3%) were newer models reported by device manufacturers in July 2018.<sup>118</sup>

43. Further, retaining the FCC Form 655 itself but streamlining the information collected, as some request, will provide fewer public interest benefits than eliminating the form reporting requirement and relying on enhanced web site requirements and annual certifications of compliance for service providers.<sup>119</sup> For example, even a significantly streamlined form would not improve the timeliness of the information submitted as many newer handsets offered by service providers each year between Thanksgiving and New Year's Day are not reported by device manufacturers until July of the following year.<sup>120</sup> Moreover, service providers would also have to continue to work within the Commission's

<sup>116</sup> AT&T Comments at 4.

<sup>117</sup> Approximately 14% of handset models offered by nationwide carriers were either models not offered by device manufacturers in the last five years or produced by some foreign device manufacturers that did not file hearing aid compatibility status reports. See [http://wireless.fcc.gov/hac/index.htm?job=reports\\_dm](http://wireless.fcc.gov/hac/index.htm?job=reports_dm).

<sup>118</sup> 369 (or 36%) of handset models offered by smaller service providers were either models not offered by device manufacturers in the last five years or produced by some foreign device manufacturers that did not file hearing aid compatibility status reports. See [http://wireless.fcc.gov/hac/index.htm?job=reports\\_dm](http://wireless.fcc.gov/hac/index.htm?job=reports_dm).

<sup>119</sup> See, *e.g.*, RWA Comments at 3; Blooston Rural Carriers Reply at 2.

<sup>120</sup> Device manufacturers file their hearing aid compatibility status reports in June and July while service providers file their hearing aid compatibility reports in December and the following January.

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

44. We note that we are eliminating certain reporting requirements, such as reporting on the status of outreach efforts and product labelling, because they are no longer useful for the Commission or consumers, and the burden of these requirements outweighs the benefits. Consumer groups did not advocate for their retention as part of the shift to a new regime.<sup>121</sup> Providers often submit limited narrative responses that, while compliant with our rules, do not provide useful information to the Commission and consumers of their efforts.<sup>122</sup> We find that the robust certification regime we adopt here and the industry's recommitment to the obligations underlying these reporting rules justifies eliminating the obligation to report on these compliance efforts.

45. Finally, we make clear that our decision today does not affect our wireless hearing aid compatibility rules outside of our reporting and web site requirements, including those designed to facilitate consumer access to hearing aid-compatible devices. Although service providers will no longer be required to complete the FCC Form 655, the Commission's hearing aid compatibility rules still require service providers to comply with all labeling, disclosure, in-store testing, and level of functionality requirements.<sup>123</sup> We applaud the continued commitment of the industry to meet these ongoing duties.<sup>124</sup> And we continue to encourage providers to continue engaging in outreach efforts to educate the public, audiologists, hearing aid dispensers, and retail personnel concerning the use of digital wireless phones with hearing aids.<sup>125</sup>

### C. Transition and Implementation Issues

46. *Background.* The existing reporting rule requires all service providers to file FCC Form 655 status reports with the Commission each year by January 15 covering the prior calendar year.<sup>126</sup> Although service providers are required to provide this information annually to the Commission, the Commission's web site posting rule requires each service provider that operates a web site to post an ongoing list of the hearing aid-compatible models that it offers (identified by marketing model name/number(s)), the hearing aid compatibility ratings of those models, and an explanation of the rating system, as well as the level of functionality for each model and an explanation of the service provider's methodology for designating levels of functionality.<sup>127</sup>

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<sup>121</sup> See generally Joint Consensus Letter; HAAA-RERC Letter (not advocating for the retention of this information).

<sup>122</sup> Service provider reports are available at, [http://wireless.fcc.gov/hac/index.htm?job=reports\\_sp](http://wireless.fcc.gov/hac/index.htm?job=reports_sp).

<sup>123</sup> See 47 CFR § 20.19(f).

<sup>124</sup> See Joint Consensus Letter at 2 (noting that the signatories "continue to work together to educate and inform consumers...For example, service providers and manufactures are required to provide consumers with [handset] information through retail and online shopping experiences, including availability of in-store 'try before you buy' testing; handset packaging materials; and technical support and customer service call and service centers....If carriers consistently comply with these rules, customers may find the information they need...").

<sup>125</sup> 2003 Report and Order, 18 FCC Rcd at 16776, para. 54 (encouraging such outreach); Joint Consensus Letter at 4, n.4 (discussing the role audiologists and manufacturers can play in educating consumers); *id.* at 2 (touting voluntary industry outreach efforts).

<sup>126</sup> See generally 47 CFR § 20.19(i)(1) (setting forth timeline for service provider status reports). Information in the reports must be up-to-date as of the last day of the calendar month preceding the due date of the report. *Id.*

<sup>127</sup> See 47 CFR § 20.19(h). We remind service providers that these web site lists and related information must be updated within 30 days of any relevant change. 2008 Report and Order, 23 FCC Rcd at 3450, para. 112; see also *supra* para. 22 (codifying this requirement).

47. In the *Notice*, the Commission sought comment on when and how any changes to its hearing aid compatibility rules should become effective.<sup>128</sup> In seeking comment on these implementation issues, the Commission framed possible rule changes within the larger context of the specific timing considerations governing current requirements. For example, it sought comment on whether any changes should become effective as soon as possible (e.g., such as at the soonest applicable FCC Form 655 filing deadline) or after some additional period of time.<sup>129</sup> In the alternative, the Commission sought comment on tying any changes to some point in time after a certain trigger is met (e.g., only after meeting either the 66% or 85% enhanced deployment benchmarks that the Commission adopted in 2016).<sup>130</sup>

48. *Discussion.* In order that service providers focus future efforts toward an orderly transition to the new web site and annual certification requirements that we adopt in this Report and Order, we waive, on our own motion, the requirement that service providers file the hearing aid status report currently due by January 15, 2019.<sup>131</sup> This waiver will last from public release of the Report and Order until its effective date whereupon this reporting requirement will be deleted from the rules. The first annual certification will cover calendar year 2018, the same period that would be covered by the FCC Form 655 for which we are providing a waiver. Subsequent annual certifications starting in 2020 will be due by January 15 each year.

49. We find good cause to grant a waiver under the circumstances presented.<sup>132</sup> The Commission intends to relieve providers of the current reporting burden as soon as possible and a limited waiver both effectuates this purpose as efficiently as possible and avoids duplicate collections of the same 2018 calendar-year handset information. The certification that would substitute for the January 2019 report fully satisfies the Commission's goals. And although the certification will occur somewhat later than January in order to obtain the necessary OMB approval, this minor delay will not significantly undercut the purpose underlying the certification in part because the revisions we adopt here require posting and retention of data for the 2018 calendar year, not just data from approval of the information collection requirements onward. Service providers will still have an affirmative obligation to confirm compliance with all of the Commission's hearing aid compatibility requirements, including the handset deployment benchmarks, and the Commission and public will have an opportunity to evaluate that statement against our revised web site deployment obligations. In addition, because manufacturers will continue to file even more detailed handset information on their FCC Form 655<sup>133</sup> to which consumers may refer, we believe that any harm from this limited waiver would be minimal. Finally, while we do not choose to eliminate the existing reporting rule immediately upon publication of this Report and Order in the Federal Register, we observe that the exception to the Administrative Procedure Act to adopt a "substantive rule which. . . relieves a restriction"<sup>134</sup> supports our recognition of the public interest served by our grant of this waiver. We therefore find it in the public interest to waive the annual reporting

<sup>128</sup> See *Notice*, 32 FCC Rcd at 7869, para. 18.

<sup>129</sup> See *id.* at 7869, para. 18.

<sup>130</sup> See *id.*

<sup>131</sup> 47 CFR § 1.3 ("Any provision of the rules may be waived by the Commission on its own motion or on petition if good cause is therefore shown."); cf. *Amendment of the Commission's Rules Governing Hearing Aid-Compatible Mobile Handsets*, Order on Reconsideration and Erratum, 23 FCC Rcd 7249, 7250, paras. 3-5 (2008) (staying a rule deadline under similar circumstances).

<sup>132</sup> See *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir 1990) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159); *Rural Call Completion*, DA 18-411 at 1 (rel. Apr. 24, 2018) (granting a temporary waiver of the rural call completion deadline "to effectuate the Commission's intent to relieve covered providers of the need to submit the otherwise-required. . . quarterly filing.").

<sup>133</sup> See *supra* para. 34.

<sup>134</sup> See 5 USC § 553(d)(1); *Section 25.119(F) of the Commission's Rules to Modify the Consummation Deadline for Satellite Space and Earth Station License Assignments and Transfers of Control*, Order, 29 FCC Rcd 9737 (2014) (applying the exception in 5 USC § 553(d)(1) to make order effective upon Federal Register publication).

requirements for service providers.

50. We also provide for a transition for the revised web site and data retention obligations. Thirty days following publication in the Federal Register of a notice that OMB has approved the information collection requirements related to the new web site posting rule, service providers will be required to post and retain the prescribed handset model information. This information will include posting information on all handsets currently offered, retaining information on handsets previously offered starting January 1, 2018 and thereafter, as well as either posting information on handsets previously offered starting on January 1, 2018 *or* providing a link to the GARI web site with previously offered handset information.<sup>135</sup>

51. Per the new 24-month handset history rule, the number of months of historical handset information providers must post to the web site and retain will increase until it reaches 24 months in January 2020, at which time providers will no longer have an obligation to retain or post data from January 2018. Until the revised rule takes effect, providers must still meet current web site requirements and post an ongoing list of all hearing aid-compatible models that they currently offer, the ratings of those models, and an explanation of the rating system, as well as other information about handset functionality levels,<sup>136</sup> and update the web site information within thirty days of any relevant change.<sup>137</sup>

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

#### IV. PROCEDURAL MATTERS

53. *Final Regulatory Flexibility Act.* As required by the Regulatory Flexibility Act of 1980 ("RFA"),<sup>138</sup> the Commission has prepared a Final Regulatory Flexibility Analysis ("FRFA") relating to this Report and Order. The FRFA is set forth in Appendix C.

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

55. *Congressional Review Act.* The Commission will include a copy of this Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the

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<sup>135</sup> See *supra* para. 18 (describing carrier obligations, including the option of posting a trailing list of hearing aid-compatible handsets or providing a link to the GARI web site).

<sup>136</sup> 47 CFR § 20.19(h).

<sup>137</sup> 2008 Report and Order, 23 FCC Rcd at 3450, para. 112.

<sup>138</sup> See 5 U.S.C. § 604. The RFA, see 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA"), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996). The SBREFA was enacted as Title II of the Contract with America Advancement Act of 1996 (CWAAA).

Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

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

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

## V. ORDERING CLAUSES

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

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

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

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

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

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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

AT&T

Blooston Rural Carriers

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

Hearing Industries Association (HIA)

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

Rural Wireless Association, Inc. (RWA)

**Reply Comments**

CTIA/CCA

Blooston Rural Carriers

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

HLAA *et al.*,

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

PTI Pacifica Inc. dba IT&E (PTI)

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

## APPENDIX B

## Final Rules

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

**PART 20 – COMMERCIAL MOBILE RADIO SERVICES**

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

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

2. Section 20.19 is amended by revising paragraphs (c), (d), (e), (h), (i) and (m) to read as follows:

**§ 20.19 Hearing aid-compatible mobile handsets.**

\* \* \* \* \*

(c) \* \* \*

(4) \* \* \*

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

(d) \* \* \*

(4) \* \* \*

(ii) *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.

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

\* \* \* \* \*

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

offered, including the level of functionality that each of those models falls under, an explanation of how the functionality of the handsets varies at the different levels as well as a link to the current FCC web page containing information about the wireless hearing aid compatibility rules and service providers' obligations. Each service provider must also include the marketing model name/number(s) and FCC ID number of each hearing aid-compatible and non-hearing aid-compatible model currently offered.

(2) Service providers must maintain on their Web site either:

(i) A link to a third-party Web site as designated by the Commission or Wireless Telecommunications Bureau with information regarding hearing aid-compatible and non-hearing aid-compatible handset models; or

(ii) A clearly marked list of hearing aid-compatible handset models that are no longer offered if the calendar month/year that model was last offered is within 24 months of the current calendar month/year and was last offered in January 2018 or later along with the information listed in (h)(1) for each hearing aid-compatible handset

(3) If the Wireless Telecommunications Bureau determines that the third-party Web site has been eliminated or is not updated in a timely manner, it may select another Web site or require service providers to comply with paragraph (h)(2)(ii) of this section.

(4) The information on the Web site must be updated within 30 days of any relevant changes, and any Web site pages containing information so updated must indicate the day on which the update occurred.

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

(i) *Reporting and certification requirements—(1) Reporting and certification dates.* Manufacturers shall submit reports on efforts toward compliance with the requirements of this section on an annual basis on July 15. Service providers shall submit certifications on their compliance with the requirements of this section by January 15 of each year. Information in each report and certification must be up-to-date as of the last day of the calendar month preceding the due date of each report and certification.

(2) \* \* \*

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

(i) The name of the signing executive and contact information;

(ii) The company(ies) covered by the certification;



(iii) the FCC Registration Number (FRN);

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

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

(vi) The following language:

I am a knowledgeable executive [of company x] regarding compliance with the Federal Communications Commission's wireless hearing aid compatibility requirements at a wireless service provider covered by those requirements.

I certify that the provider was [(in full compliance/not in full compliance)] [choose one] at all times during the applicable time period with the Commission's wireless hearing aid compatibility deployment benchmarks and all other relevant wireless hearing aid compatibility requirements.

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

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

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

\* \* \* \* \*

(m) *Compliance date.* Paragraphs (e), (h), and (i) of this section contain new or modified information-collection and recordkeeping requirements adopted in FCC 18-167. Compliance with these information-collection and recordkeeping requirements will not be required until after approval by the Office of Management and Budget. The Commission will publish a document in the Federal Register announcing that compliance date and revising this paragraph accordingly.

## APPENDIX C

## Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>1</sup> an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking (NPRM), released in September 2017.<sup>2</sup> The Commission sought written public comment on the proposals in the NPRM, including comment on the IRFA. The comments received are addressed below in Section 2. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

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

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

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

4. This new light-touch regulatory approach will enable the Commission to fulfill its responsibilities and objectives for wireless hearing aid compatibility. By requiring all service providers to post consistent content and information on their publicly available web sites, the Commission ensures that consumers can access the information they need about the hearing aid compatibility of the handsets being offered. This web site information will also allow the Commission to evaluate compliance with the relevant benchmarks and other hearing aid compatibility provisions in its rules. In addition to being able to verify compliance with its rules when necessary, the Commission will also be able to monitor the overall status of access to hearing aid-compatible handsets. The Commission's ability to verify and enforce compliance and monitor industry developments will also be served by requiring all service providers to annually file a certification stating whether or not they are in compliance with the Commission's hearing aid compatibility provisions.

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

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

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

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

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

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

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

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

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

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

10. Next, the type of small entity described as a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”<sup>11</sup>

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<sup>3</sup> 5 U.S.C. § 604(a)(3).

<sup>4</sup> See 5 U.S.C. § 604(a)(3).

<sup>5</sup> 5 U.S.C. § 601(6).

<sup>6</sup> 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.”

<sup>7</sup> 15 U.S.C. § 632.

<sup>8</sup> See 5 U.S.C. § 601(3)-(6).

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

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

<sup>11</sup> 5 U.S.C. § 601(4).

Nationwide, as of August 2016, there were approximately 356,494 small organizations based on registration and tax data filed by nonprofits with the Internal Revenue Service (IRS).<sup>12</sup>

11. Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”<sup>13</sup> U.S. Census Bureau data from the 2012 Census of Governments<sup>14</sup> indicate that there were 90,056 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.<sup>15</sup> Of this number there were 37, 132 General purpose governments (county<sup>16</sup>, municipal and town or township<sup>17</sup>) with populations of less than 50,000 and 12,184 Special purpose governments (independent school districts<sup>18</sup> and special districts<sup>19</sup>) with populations of less than 50,000. The 2012 U.S. Census Bureau data for most types of governments in the local government category show that the majority of these governments have populations of less than 50,000.<sup>20</sup> Based on this data we estimate that at least 49,316 local government

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

<sup>13</sup> 5 U.S.C. § 601(5).

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

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

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

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

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

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

<sup>20</sup> See U.S. Census Bureau, 2012 Census of Governments, County Governments by Population-Size Group and State: 2012 - United States-States - <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG06.US01>; Subcounty General-Purpose Governments by Population-Size Group and State: 2012 - United States—States - <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG07.US01>; and Elementary and Secondary School Systems by Enrollment-Size Group and State: 2012 - United States-States.

jurisdictions fall in the category of “small governmental jurisdictions.”<sup>21</sup>.

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

13. *Part 15 Handset Manufacturers.* The Commission has not developed a definition of small entities applicable to unlicensed communications handset manufacturers. The SBA category of Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing is the closest NAICS code category for Part 15 Handset Manufacturers. The Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing industry is comprised of establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.<sup>25</sup> The SBA has developed a small business size standard for Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, as firms having 750 or fewer employees.<sup>26</sup> U.S. Census data for 2012, shows that 841 establishments operated in this industry in that year. Of that number, 828 establishments operated with fewer than 1,000 employees, 7 establishments operated with between 1,000 and 2,499 employees and 6 establishments operated with 2,500 or more employees.<sup>27</sup> Thus, under this

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<https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG11.US01>. While U.S. Census Bureau data did not provide a population breakout for special district governments, if the population of less than 50,000 for this category of local government is consistent with the other types of local governments the majority of the 38, 266 special district governments have populations of less than 50,000.

<sup>21</sup> *Id.*

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

<sup>23</sup> 13 CFR § 121.201, NAICS Code 334220.

<sup>24</sup> U.S. Census Bureau, American FactFinder; Industry Statistics for Subsectors and Industries by Employment Size: 2012, [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_31SG2&prodType=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_31SG2&prodType=table).

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

<sup>26</sup> 13 CFR § 121.201, NAICS Code 334220.

<sup>27</sup> U.S. Census Bureau, American FactFinder; Industry Statistics for Subsectors and Industries by Employment Size: 2012,

size standard, the majority of firms can be considered small.

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

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

16. Also included in this classification is Personal Radio Services, which provide short-range, low power radio for personal communications, radio signaling, and business communications not provided for in other services. The Personal Radio Services include spectrum licensed under Part 95 of the Commission's rules. These services include Citizen Band Radio Service (“CB”), General Mobile Radio Service (“GMRS”), Radio Control Radio Service (“R/C”), Family Radio Service (“FRS”), Wireless Medical Telemetry Service (“WMTS”), Medical Implant Communications Service (“MICS”), Low Power Radio Service (“LPRS”), and Multi-Use Radio Service (“MURS”). We note that many of the licensees in these services are individuals, and thus are not small entities. In addition, due to the mostly

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[http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_31SG2&prodType=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_31SG2&prodType=table).

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

<sup>29</sup> 13 CFR § 121.201, NAICS Code 517210.

<sup>30</sup> U.S. Census Bureau, American FactFinder; Industry Statistics for Subsectors and Industries by Employment Size: 2012, [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ5&prodType=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table).

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

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

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

<sup>34</sup> See *id.*

unlicensed and shared nature of the spectrum utilized in many of these services, the Commission lacks direct information upon which to base a more specific estimation of the number of small entities under an SBA definition that might be directly affected by our action.

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

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

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

19. While the Commission is eliminating a reporting requirement that all service providers argue should be eliminated, the Commission's new light-touch regulatory approach will continue to allow it to fulfill its responsibilities and objectives for wireless hearing aid compatibility. Service providers will continue to have to meet relevant hearing aid compatibility handset benchmarks and comply with product labeling and disclosure requirements. Further, service providers will have to continue to post certain information about their handsets on their publicly accessible web sites along with certain information that they previously included as part of their FCC Form 655 annual reporting requirement. The Commission is not prescribing a standard template for posting this information on their web sites and the Commission finds that service providers may rely on information that device manufacturers included in their FCC Form 655 filings as a safe harbor. The record in this proceeding shows that some service providers already post some of this information to their web sites and both large and small service providers support the use of web posting as an alternative to the FCC Form 655 filing requirement. Service providers will

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

<sup>36</sup> 13 CFR § 121.201, NAICS Code 517911.

<sup>37</sup> U.S. Census Bureau, 2012 Economic Census, Subject Series: Information, "Establishment and Firm Size," NAICS Code 517911.

also be required to retain information regarding past handsets offered.

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

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

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

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

23. The Commission also chose to make the elimination of the FCC Form 655 reporting requirement for service providers effective 30 days after publication of the rule in the Federal Register. Therefore, service providers will benefit from the Commission's new rules almost immediately while the new web site posting and certification requirements will be effective 30 days following notice of OMB approval of the relevant information collection requirements. This approach affords service providers sufficient time to make any necessary preparations required by the new certification approach.

**Report to Congress**

24. The Commission will send a copy of the *Report and Order*, including this FRFA, in a

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<sup>38</sup> 5 U.S.C. § 603(c)(1)-(4).



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

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<sup>39</sup> 5 U.S.C. § 801(a)(1)(A).

<sup>40</sup> 5 U.S.C. § 604(b).

**STATEMENT OF  
CHAIRMAN AJIT PAI**

Re: *Revisions to Reporting Requirements Governing Hearing Aid-Compatible Mobile Handsets*, WT Docket No. 17-228

In 2003, the Commission adopted rules to require wireless service providers to make more handsets available that were compatible with hearing aids. These regulations achieved their objective, and now far more hearing aid compatible devices are being sold than was the case back then.

Today, in light of changes in the marketplace, we're modernizing our hearing aid compatibility rules. Specifically, we're improving our hearing aid compatibility reporting requirements to ensure that information is available to consumers in the places they most often go looking for it.

We revise our rules to require service providers to post on their websites the most critical information currently submitted on FCC Form 655, an annual report that providers have been required to file with the Commission. This step is broadly supported by the hearing loss community, nationwide, rural, and regional wireless service providers, and handset manufacturers. This revision to our website disclosure rule will enable consumers to obtain the relevant information they need about the availability of hearing aid-compatible devices. It will also allow the Commission to ensure compliance with a minimal burden.

Given this new disclosure obligation, we are relieving providers of their annual reporting requirement and replacing it with an annual certification of compliance with the Commission's hearing aid compatibility rules.

Because current reporting requirements will remain in place for device manufacturers, we believe that the rules we adopt today will make it easier for consumers to find the information they need while simultaneously relieving small companies from filling out unnecessary paperwork.

Many thanks to the hard work of our dedicated staff on this item: Garnet Hanly, Eli Johnson, Jonathan Lechter, Michael Rowan, Becky Schwartz, Dana Shaffer, Suzanne Tetreault, and Weiren Wang of the Wireless Telecommunications Bureau; Susan Bahr, Eliot Greenwald, Suzy Rose Singleton, and Karen Peltz Strauss of the Consumer and Governmental Affairs Bureau; Pamera Hairston of the Enforcement Bureau; Chana Wilkerson of the Office of Communications Business Opportunities; and Bill Richardson and Anjali Singh of the Office of General Counsel.

**STATEMENT OF  
COMMISSIONER MICHAEL O'RIELLY**

Re: *Revisions to Reporting Requirements Governing Hearing Aid-Compatible Mobile Handsets*, WT Docket No. 17-228

Let me start by thanking the Chairman for preparing this item, which reduces reporting burdens on industry, while ensuring the hearing loss community has the information they need to make informed choices about handset purchases. This decision is, in part, possible because consumer groups, the wireless industry, and handset manufacturers came together to propose a reasonable and acceptable consensus-based solution, to make additional hearing aid compatible handset information available online and allow the Commission to replace a burdensome reporting requirement with a simple certification. I thank participating entities for their efforts.

I always found it farfetched that consumers would get information about hearing aid compatibility by trying to locate and flip through separate reports filed at the FCC. Thankfully, we fix that situation today. This effort, combined with the spreadsheet of manufacturer-compliant devices and the appropriate safe harbor from 2016, will truly empower consumers with actual helpful data. Accordingly, going forward, consumers will have fulsome access to the information they need via provider websites, the spreadsheet with manufacturer information, and the Global Accessibility Reporting Initiative (GARI) website.

I appreciate that my colleagues agreed to broaden the scope of those persons eligible to sign the certification to also include knowledgeable executives, as opposed to only officers. However, I proposed to change the language of the certification to substitute the personal knowledge attestation with a certification that procedures are in place to ensure the provider is complying with the Commission's hearing aid compatibility rules. While the words "personal knowledge" have been removed, an executive still must certify that the provider was or was not in full compliance with the rules. First, I can't imagine why an executive would agree to sign anything where he or she would have to certify that every rule is being followed. An executive does not have the ability, for instance, to determine whether each and every store employee selling handsets is complying with our rules. Second, while the Joint consensus letter is not as clear as some would like, this decision completely ignores language that the certification here should be similar to the annual certification put in place to ensure compliance with the CVAA. So, a word to the wise, do not put flowery language into an agreement that you think will curry favor with some. Cross every "t" and dot every "i," because clear intent is not sufficient. Even if you think you struck a deal, it will not necessarily be upheld or honored. Third, changing the language in the certification would not have watered-down the Commission's – or the wireless provider's – commitment to ensuring the effectiveness of hearing aid compatible devices; wireless providers would still have to comply with all of our hearing aid compatibility rules. Unfortunately, we have a certification that looks to be rather unworkable, that entities may refuse to sign, and may have to be reconsidered down the road. I will, however, approve of today's item, as it does a lot of good otherwise and eliminates a reporting requirement.

**STATEMENT OF  
COMMISSIONER BRENDAN CARR**

Re: *Revisions to Reporting Requirements Governing Hearing Aid-Compatible Mobile Handsets*, WT Docket No. 17-228

I am glad that carriers and manufacturers alike are taking steps to ensure all Americans can benefit from next-gen technologies. For instance, as today's decision notes, 100% of handsets sold by the four largest wireless carriers are now hearing aid-compatible. This is up from just a third to two-thirds of phones only a few years ago. And on the manufacturer side, 93% of devices are now HAC-compliant compared to nearly half that figure in 2010.

All of this supports today's decision, which updates and modernizes our approach to ensuring that the public has the right information about hearing aid-compatible devices. I would like to commend the consumer groups, carriers, and manufacturers who worked together on the consensus proposal. This decision strikes the right balance between updating our rules to reflect changes in the marketplace while still ensuring the availability of information consumers need to make informed purchasing decisions. I would also like to acknowledge Commissioner O'Rielly, who has long pushed for greater clarity and reform in this area.

Thank you to the staff of the Wireless Telecommunications Bureau for your work on this item. It has my support.

**STATEMENT OF  
COMMISSIONER JESSICA ROSENWORCEL**

Re: *Revisions to Reporting Requirements Governing Hearing Aid-Compatible Mobile Handsets*, WT Docket No. 17-228

The National Institutes of Health reports that over 37 million adults have some trouble hearing and close to thirty million Americans could benefit from the use of hearing aids. They are your friends, your relatives, and your neighbors. An increasing number of them are veterans. In fact, hearing problems are the most common service-connected difficulty experienced by those who have served and military personnel who are repeatedly exposed to gunfire and explosives face special risk.

So it was good news two years ago when this agency set out on a path to make sure all covered handsets offered by carriers will be hearing-aid compatible in the not-too-distant future. In the meantime, we are taking steps to ensure our paperwork keeps up. To this end, we eliminate the use of a dated form by which wireless providers demonstrate that their devices comply with our hearing-aid compatibility rules. Instead, we require that more information be available to consumers online in a more accessible manner. At the same time, we require carriers to certify compliance with our hearing aid compatibility requirements.

This approach is modern and has my support. I'd like to thank my colleagues for working with me to make sure that the information available online features a date and includes a link to this agency's hearing-aid compatibility resources. This will help those with difficulty hearing access information more easily about how to seek devices that meet their needs.

Thank you to the Wireless Telecommunications Bureau and Consumer and Governmental Affairs Bureau for your work to make this happen.