§ 10.113 [Revised]

■ 10. Revise § 10.113 by removing the date ''September 25, 2008'' and adding in its place the date ''April 15, 2009''.

PART 12—CERTIFICATION OF SEAMEN

■ 11. The authority citation for part 12 continues to read as follows:

Authority: 31 U.S.C. 9701; 46 U.S.C. 2101, 2103, 2110, 7301, 7302, 7503, 7505, 7701, and 70105; Department of Homeland Security Delegation No. 0170.1.

§ 12.01–11 [Revised]

■ 12. Revise § 12.01–11 by removing the date ''September 25, 2008'' and adding in its place the date ''April 15, 2009''.

PART 15—MANNING REQUIREMENTS

■ 13. The authority citation for part 15 continues to read as follows:

Authority: 46 U.S.C. 2101, 2103, 3306, 3703, 8101, 8102, 8104, 8105, 8301, 8304, 8502, 8503, 8701, 8702, 8901, 8902, 8903, 8904, 8905(b), 8906, 9102, and 8103; and Department of Homeland Security Delegation No. 0170.1.

§ 15.415 [Revised]

■ 14. Revise § 15.415 by removing the date ''September 25, 2008'' and adding in its place the date ''April 15, 2009''.

Title 49—Transportation

CHAPTER XII—TRANSPORTATION SECURITY ADMINISTRATION

Subchapter D—Maritime and Land Transportation Security

PART 1572—CREDENTIALING AND SECURITY THREAT ASSESSMENTS

■ 15. The authority citation for part 1572 continues to read as follows:

Authority: 46 U.S.C. 70105; 49 U.S.C. 114, 5103a, 40113, and 46105; 18 U.S.C. 842, 845; 6 U.S.C. 469.

§ 1572.19 [Revised]

■ 16. Revise § 1572.19(b) by removing the date ''September 25, 2008'' in the two places where it appears, and adding in each place the date ''April 15, 2009''.

Dated: May 2, 2008.

Brian M. Salerno,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety, Security & Stewardship.

Gale Rossides,

Deputy Administrator, Transportation Security Administration.

[FR Doc. E8–10232 Filed 5–6–08; 8:45 am]

BILLING CODE 4910–15–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0, 20, 68

[WT Docket No. 07–250; FCC 08–68; FCC 08–117]

Hearing Aid-Compatible Mobile Handsets, Petition of American National Standards Institute Accredited Standards Committee C63 (EMC) ANSI ASC C63™

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Federal Communications Commission (Commission) adopts various proposals to amend its hearing aid compatibility policies and requirements pertaining to wireless services, including modifications and other requirements along the framework proposed in a consensus plan (Joint Consensus Plan) developed jointly by industry and representatives for the deaf and hard of hearing community. The Commission anticipates that these rule changes, taken together and largely supported by manufacturers, service providers, and consumers with hearing loss, will meet statutory obligations to ensure reasonable access to telephone service by persons with impaired hearing. These requirements are intended to benefit wireless users in the deaf and hard of hearing community, including the most disadvantaged who are more likely to rely on telecoil-equipped hearing aids, as well as to ensure that these consumers have a variety of handsets available to them, including handsets with innovative features.

DATES: Effective June 6, 2008, except for §§ 20.19(f)(2), 20.19(h), and 20.19(i) which contains information collection requirements that are not effective until approved by the Office of Management and Budget. The Commission will publish a document in the **Federal Register** announcing the effective date for those sections. The Commission will send a copy of the *First Report & Order* and *Order on Reconsideration and Erratum* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A). The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of June 6, 2008. Public and agency comments on Information Collection Requirements are due on or before July 7, 2008.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. In addition to filing comments with the Office of the Secretary, a copy of any comments on the Paperwork Reduction Act information collection requirements contained herein should be submitted to Judith Boley, Federal Communications Commission, Room 1–B441, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *PRA@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Thomas McCudden, Room 6118, Michael Rowan, Room 6603, or Peter Trachtenberg, Spectrum & Competition Policy Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW., Portals I, Room 6119, Washington, DC 20554. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, contact Judith Boley, (202) 418–0214, or via the Internet at *PRA@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *First Report & Order (R&O)* in WT Docket No. 07–250 released February 28, 2008, and the Commission's *Order on Reconsideration and Erratum (Recon)* in WT Docket No. 07–250 released April 17, 2008. The complete text of the *R&O* and *Recon* are available for public inspection and copying from 8 a.m. to 4:30 p.m. Monday through Thursday or from 8 a.m. to 11:30 a.m. on Friday at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. [The *R&O* and *Recon* may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–488–5300, facsimile 202–488–5563, or you may contact BCPI at its Web site: *http://www.BCPIWEB.com.* When ordering documents from BCPI, please provide the appropriate FCC document number, FCC 08–68 for the *R&O,* and FCC 08–117 for the *Recon.* The *R&O* and *Recon* are also available on the Internet at the Commission's Web site through its Electronic Document Management System (EDOCS): *http://hraunfoss.fcc.gov/edocs_public/SilverStream/Pages/edocs.html.*]

Paperwork Reduction Act of 1995 Analysis

This document contains new and modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget

(OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collection requirements contained in this proceeding.

In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), the Commission previously sought specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.'' In this present document, the Commission has assessed the effects of the reporting requirements that it has imposed on manufacturers and service providers, and finds that the information required should be readily available even to businesses with fewer than 25 employees, and that it is important to obtain this information in order to monitor compliance with the hearing aid compatibility requirements and to provide consumers with adequate information regarding the handsets available from particular service providers. Similarly, the Commission has assessed the effects of requiring manufacturers and service providers to post certain information regarding the hearing aid-compatible handsets they offer on their Web sites. The Commission notes that this requirement would apply only to entities that maintain a public Web site and is further subject to the *de minimis* exception. Both restrictions should limit, to some extent, the application of the requirement to small businesses with fewer than 25 employees. Moreover, the Commission has concluded that maintaining the limited information required, primarily a list of currently offered hearing aid-compatible handsets along with the associated ratings, will not be unduly burdensome, and that this requirement will significantly benefit consumers by ensuring convenient access to up-to-date information regarding compliant handset availability. Finally, the Commission has determined that requiring manufacturers to provide hearing aid compatibility contact information directly to the Commission will impose little if any additional burden on businesses with fewer than 25 employees. This requirement may even decrease these burdens, to the extent that it will allow consumers wishing to file a complaint to obtain that information from the Commission's Web site rather than contacting the Administrative Council for Terminal Attachment to obtain it from the service provider.

Public and agency comments on Information Collection Requirements are due on or before July 7, 2008. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198 (*see* 44 U.S.C. 3506(c)(4)), the Commission seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.'' The Commission notes, however, that section 213 of the Consolidated Appropriations Act 2000, Public Law 106–113, provides that rules governing frequencies in the 746–806 MHz Band become effective immediately upon publication in the **Federal Register** without regard to certain sections of the Paperwork Reduction Act. The Commission is therefore not inviting comment on any information collections that concern frequencies in the 746–806 MHz Band.

I. Introduction

1. In the *R&O,* the Commission revises the hearing aid compatibility requirements applicable to providers of public mobile services and manufacturers of digital wireless handsets used in the delivery of those services. Specifically, the Commission adopts benchmark requirements for future deployment of hearing aid-compatible handsets, and related requirements, based on the proposals in a Joint Consensus Plan developed by an Alliance for Telecommunications Industry Solutions (ATIS) working group that included nationwide (Tier I) carriers, handset manufacturers, and several organizations representing the interests of consumers with hearing loss. The Commission also adopts certain other rule changes to better promote the accessibility of hearing aid-compatible handsets to deaf and hard of hearing consumers, including rules for the approval of future versions of the hearing aid compatibility technical standard. In the *Recon,* the Commission revises the procedures adopted in the *R&O* for approval of the use of future versions of the hearing aid compatibility technical standard that do not raise major compliance issues. The Commission intends to address other issues raised in its *Notice of Proposed Rulemaking (NPRM),* 72 FR 65494, November 21, 2007, in this proceeding but not addressed here in a subsequent report and order.

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

3. The changes the Commission adopts to the handset deployment requirements include (1) modifying the requirement, presently stayed until April 18, 2008, that manufacturers and service providers ensure that 50 percent of their digital wireless handset models meet established standards for radio frequency (RF) interference reduction, and (2) increasing the obligation on manufacturers and service providers to offer handset models that meet an established standard for inductive coupling capability. The Commission adopts a handset ''refresh'' requirement for manufacturers, obligating manufacturers to ensure annually that a certain percentage of their hearing aid-compatible handset models are newly issued that year, and it requires service providers to offer hearing aid-compatible handsets with different levels of functionality.

4. In addition to these modifications to the handset deployment requirements, the Commission adopts an updated version of the technical standard for measuring hearing aid compatibility in both acoustic coupling and inductive coupling modes, provides a phase-in period for its application as the exclusive standard, and creates a streamlined mechanism for adopting

future revisions of the standard. Because the Commission finds that the established technical standard, including the most recent version of that standard adopted, provides tests for measuring hearing aid compatibility for wireless services operating over a broader range of frequencies than is currently subject to hearing aid compatibility requirements, the Commission extends the scope of these requirements to the full range of frequencies covered by the established standard. To assist the Commission in monitoring the implementation of the new requirements and to provide information to the public, the Commission also requires manufacturers and service providers to continue to file annual reports on the status of their compliance with these requirements, and the Commission requires manufacturers and service providers to publish up-to-date information on their Web sites regarding their hearing aid-compatible handset models.

5. The Commission anticipates that these inter-related changes, taken together and largely supported by manufacturers, service providers, and consumers with hearing loss, will further ''ensure reasonable access to telephone service by persons with impaired hearing'' as required by the Communications Act. 47 U.S.C. 610(a). The increased requirements to offer handsets with inductive coupling capability will particularly benefit the most disadvantaged wireless users in the deaf and hard of hearing community, who are more likely to rely on telecoil-equipped hearing aids. The Commission also anticipates that the requirements that manufacturers refresh their products annually and that service providers offer handset models at differing functionality levels will help to ensure that consumers with hearing loss have a variety of handsets available to them, including handsets with innovative features, a goal that the Commission has sought to encourage since 2003. At the same time, the Commission concludes that the level of obligations and the flexibility provided in the new benchmarks satisfy its obligation to ''ensure that regulations adopted to implement [the Hearing Aid Compatibility Act] encourage the use of currently available technology and do not discourage or impair the development of improved technology.'' 47 U.S.C. 610(e). In particular, these changes help to resolve the technical issues that have been raised regarding the difficulty of producing a wide variety of Global System for Mobile Communications (GSM) handsets that both meet the requisite rating for acoustic coupling capability and include certain popular features, and thereby ensure that the impact of the rules remains as technology-impartial as possible while also ensuring the availability of hearing aid-compatible handsets to consumers.

II. Background

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

III. Discussion

A. Hearing Aid-Compatible Handset Deployment Requirements

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

8. As proposed in the Joint Consensus Plan and the *NPRM,* the Commission first adopts new benchmarks and deadlines for 2008 through 2011 regarding deployment of handsets rated M3 (or higher) under American National Standards Institute (ANSI) Standard C63.19 for RF interference reduction and handsets rated T3 (or higher) under ANSI Standard C63.19 for inductive coupling capability. As regards the requirements for RF interference reduction, the Commission recognizes the difficulties that handset manufacturers and service providers with large product lines face with respect to the 50 percent benchmark originally scheduled to go into effect on February 18, 2008, and the Commission modifies the benchmark in the near term while at the same time ensuring that consumers will have significant and increasing choices of acoustic coupling-compatible models over the next several years. At the same time, the Commission increases the upcoming benchmarks for handset models that have inductive coupling capability. In this regard, to ensure that all consumers will have options regardless of where they reside or from which carrier they obtain service, the Commission adopts the same deployment benchmarks for all service providers, although the Commission extends the compliance deadlines for service providers other than Tier I carriers in recognition of their more limited handset options and their difficulty obtaining the newest offerings. Second, as an integral part of the handset deployment objectives the Commission sets forth, the Commission adopts requirements to ensure the availability of not just more handset models, but also a range of compatible handset models throughout the manufacturer-to-consumer supply and distribution channels. The Commission thus requires all manufacturers to ''refresh'' their hearing aid-compatible handset product offerings annually, and all service providers to offer consumers handset models with differing levels of functionality. Third, the Commission addresses several implementation issues, including the definition of what constitutes a distinct model, the treatment of handset models that operate over multiple frequency bands and/or air interfaces, and the application of the *de minimis* rule. Finally, while the Commission encourages manufacturers and service providers, including new entrants, to deploy handset models that meet the higher hearing aid compatibility standards denoted by M4 and T4 ratings, the Commission determines consistent with the record not to adopt any requirements in this regard at this time.

1. M3 / T3 Standards

9. The parties in this proceeding are nearly unanimous in supporting the *NPRM's* tentative conclusions on the appropriate M3 and T3 benchmarks and deadlines insofar as they apply to manufacturers and Tier I carriers offering nationwide services, referencing the compromise and agreement that culminated in the Joint Consensus Plan. However, six commenting parties representing regional or smaller service providers that are not Tier I carriers—MetroPCS

Communications, Inc. (MetroPCS), SouthernLINC Wireless (SouthernLINC), Virgin Mobile, USA, L.P. (Virgin Mobile), Rural Cellular Association (RCA), Chinook Wireless (Chinook), and Iowa Wireless Services, LLC (i wireless)—argue that they should not be subject to the same benchmarks or any new requirements beyond the existing mandates to offer two M3- and T3-rated (or higher) handset models per air interface. If any new requirements must apply, they argue that the benchmarks in these provisions should be reduced, proposing levels that would be approximately one-half of the Tier I levels. These commenters state that they would be forced to reduce their total product lines in order to meet the Tier I percentage benchmarks. They further contend that they have less access to hearing aid-compatible handsets than Tier I carriers, and that as a practical matter they would essentially be subject to more difficult requirements than Tier I carriers under the Joint Consensus Plan. On the other side of this issue, two advocates for the deaf and hard-of-hearing disagree, and argue that these service providers should be held to the same compatible handset deployment benchmarks as Tier I carriers because, with proper planning, these service providers can meet these benchmarks in the same, or perhaps slightly extended, timeframes.

10. For both RF interference reduction and inductive coupling capability, the Commission adopts the tentative conclusions in the *NPRM* for manufacturers and Tier I carriers, and hereby amends § 20.19(c) and (d) of the Commission's rules to adopt the benchmarks and deadlines proposed in the *NPRM*. For service providers that are not Tier I carriers, the Commission adopts these same benchmarks, but the Commission extends their deadlines for compliance by three months in order to afford these entities additional flexibility to obtain and deploy the requisite numbers of compatible handset models. In consideration of the need for certainty, and in order to provide appropriate notification to manufacturers and service providers as regards the hearing aid compatibility obligations, the Commission had stayed enforcement of the 50 percent benchmark for deployment of handsets meeting an M3 (or higher) rating for RF interference reduction that would have become effective on February 18, 2008, for 60 days, until April 18, 2008. However, given the rule changes adopted in the *R&O*, the need for a stay is moot and it need not be extended.

11. In terms of RF interference reduction for acoustic coupling compatibility, manufacturers as of the effective date of this rule will have to meet a rating of M3 (or higher) for a minimum of one-third of their non-*de minimis* portfolio models offered to service providers per air interface in the United States. If one-third of the total number of models offered over an air interface is a fraction, manufacturers may round this number down, except that manufacturers offering four or five handset models over an air interface must offer at least two models meeting an M3 (or higher) rating. Tier I carriers, as of the effective date of this rule, will have to meet an M3 rating (or higher) for the lesser of 50 percent of their handset models per air interface (rounding fractions up) or a specific number of handset models pursuant to a schedule. For both manufacturers and service providers, these percentage and numerical obligations will remain in effect until such time as they may be changed by future Commission rulemaking action. This schedule requires Tier I carriers to provide an increasing number of handset models per air interface over which they offer service by future dates as follows: Before February 15, 2009: eight M3-rated (or higher) handset models; beginning February 15, 2009: nine M3-rated (or higher) handset models; and beginning February 15, 2010: ten M3-rated (or higher) handset models. The Joint Consensus Plan proposed that these and other deadlines would fall on the 18th of the month. For ease of administration, the Commission changes these deadlines to the 15th. Service providers not in Tier I will be subject to the same requirements, but only beginning three months after the effective date of the rules. As a result, the aforementioned requirements will take effect for such service providers as of May 15 of the respective year, rather than February 15. The Commission notes that under the revisions that it is adopting to § 20.19 of the Commission's rules, these service providers remain required to offer two handset models per air interface rated M3 or higher until the new requirements become effective to them.

12. With respect to inductive coupling capability, the new requirements establish benchmarks for both manufacturers and service providers that combine percentage and numerical measures. For both manufacturers and service providers, these percentage and numerical obligations will remain in effect until such time as they may be changed by future Commission rulemaking action. First, manufacturers will be required to meet the greater of two measures for each air interface for which they offer handsets beginning February 15, 2009: (1) A minimum of two T3-rated (or higher) models for each air interface for which the manufacturer offers four or more handset models to service providers; or (2) at least 20 percent / 25 percent / one-third of models that the manufacturer offers to service providers over each air interface rated T3 (or higher) beginning February 15, 2009 / 2010 / 2011 respectively. These percentage calculations will be rounded down to the nearest whole number in determining the minimum number of handsets to be produced. Each manufacturer that is not subject to the *de minimis* exception (discussed later in this summary) will thus still be required to maintain production of at least two or more T3-rated (or higher) handset models per air interface for which it offers handsets. Prior to February 15, 2009, manufacturers remain subject to the current requirement to offer at least two models rated T3 or higher per air interface.

13. Second, as of the effective date of this rule, Tier I carriers must meet the lesser of the two following measures for each air interface over which they offer service: (1) One-third of digital wireless handset models are T3-rated (or higher) (rounding fractions up); or (2) a schedule as follows: before February 15, 2009: three T3-rated (or higher) handsets; beginning February 15, 2009: five T3-rated (or higher) handsets; beginning February 15, 2010: seven T3-rated (or higher) handsets; and beginning February 15, 2011: ten T3-rated (or higher) handsets.

14. Third, service providers other than Tier I carriers will also be required to meet the same benchmarks as Tier I carriers, but only beginning three months after the effective date of these rules. Again, the scheduled rollout dates will be May 15 of the respective years, rather than February 15. The Commission notes that under the revisions that it is adopting to § 20.19, these service providers remain required to offer two handset models per air interface rated T3 or higher until the new requirements become effective to them.

15. Given the unanimous support in the record, the Commission finds that these benchmarks for both equipment manufacturers and Tier I carriers to deploy M3-rated and T3-rated handsets are in the public interest. The combination, two-option approach for deploying M3-rated handsets provides needed flexibility for Tier I carriers with large product lines to deploy new and additional models over time while still ensuring that substantial numbers of

compatible handset models will be available to consumers. These rule changes are supported by consumer advocates, and the Commission agrees that the balance they achieved with industry representatives in the Joint Consensus Plan represents a beneficial compromise between technological constraints and the needs of hard-of-hearing consumers. No commenting party has argued that these benchmarks for manufacturers and Tier I carriers would be detrimental to consumers. This approach also is more technology-impartial than a single 50 percent requirement, reflecting the uncontroverted technological impediments to meeting the M3 rating standard for many handset models that employ a GSM air interface. Moreover, the Commission adopts this modification in conjunction with new rules requiring manufacturers to ''refresh'' their compatible offerings with new products annually and requiring service providers to make hearing aid-compatible models available with different levels of functionality. These requirements will directly benefit consumers needing handsets with acoustic coupling capabilities.

16. The Commission also makes its decisions regarding the benchmarks for RF interference reduction and inductive coupling capability as an integrated whole. The Commission agrees with Hearing Loss Association of America and Telecommunications for the Deaf and Hard of Hearing, Inc. (HLAA/TDI) that increased requirements for deployment of T3-rated handset models comprise a beneficial trade-off for reducing, in certain circumstances, the thresholds for deploying M3-rated handset models that would have taken effect under the existing § 20.19(c). The record supports the conclusion that customers' options for handsets that enable inductive coupling with hearing aids' telecoils have been more limited than for acoustic coupling compatibility. The current two-model rule for these entities was set in 2003 and has become out-dated, as it does not provide for an expansion of T3-rated handset options. Expanded requirements of this nature should benefit some of the most disadvantaged wireless users in the deaf and hard-of-hearing community, who are more likely to rely on telecoil-equipped hearing aids. The Commission agrees with HLAA/TDI that it is generally in the public interest to increase the benchmarks for manufacturers' and Tier I carriers' deployment of handsets meeting a T3 rating for inductive coupling capability. The Commission agrees as well with Gallaudet University Technology Access program and Rehabilitation Engineering Research Center on Telecommunications Access (Gallaudet/RERC) that additional requirements of this nature will ''significantly benefit individuals with severe to profound hearing loss.'' Thus, the Commission finds that an additional focus of its resources should be on making available additional T3-rated handset models.

17. The Commission also concludes that the same deadlines are appropriate for manufacturers and Tier I carriers. The Commission agrees with ATIS that a single, unified deadline as proposed in the *NPRM* and Joint Consensus Plan will improve compliance and make the rules simpler to administer. Moreover, unlike service providers not in Tier I, Tier I carriers have in the past not submitted waiver requests stating that they have experienced significant problems meeting deployment deadlines in the same time frame as manufacturers. Furthermore, unlike the initial deployment deadlines where manufacturers may have had no models certified as hearing aid-compatible until shortly before the date, Tier I carriers now need only to increase their selection from among available stock. Although AT&T, Inc. (AT&T) states that it prefers a staggering of the compliance deadlines after 2008, AT&T only cites generally the lag time for service providers to obtain handsets from manufacturers and does not provide more specific support evidencing a problem (current or past) with a unified date. The Commission also notes that ATIS, while supporting a unified deadline, states that it ''would not be opposed'' to a six week interval between deadlines for manufacturers and service providers. ATIS Comments at 6. The Commission therefore declines to extend the compliance deadlines for Tier I carriers.

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

19. After carefully considering this record in light of its past experience with non-nationwide service providers, and the costs and benefits of several possible rule change proposals, the Commission concludes that the same deployment benchmark alternatives should apply to all service providers, but it delays the compliance deadlines by three months for service providers that are not Tier I carriers. The Commission is not persuaded that service providers with small product lines will be unable to meet the 50 percent and one-third targets for handset models meeting RF interference reduction and inductive coupling capability targets, respectively. Moreover, the Commission finds that any burdens these requirements impose are necessary to ensure reasonable handset options for all hearing-impaired consumers regardless of where they reside or who they may receive service from, not just the 90 or so percent that may receive their service from Tier I carriers. Nonetheless, in recognition of the stated difficulties smaller service providers face in obtaining the latest handset models, the Commission delays each of their compliance deadlines by three months.

20. The Commission rejects the argument that the proposed benchmarks impose a ''greater'' burden on smaller carriers because they offer too few handset models to take advantage of the numerical alternatives, and will therefore be forced to meet the percentage benchmarks. The Commission does not accept that smaller service providers are subject to greater burdens simply because their percentages are higher: service providers with smaller product lines will be required to offer fewer hearing aid-compatible handset models than service providers with larger product lines. The alternative of offering eight to 10 handset models per air interface that meet an M3 or higher rating for RF interference reduction recognizes that carriers with large product lines may have difficulty obtaining sufficient compatible handset models to meet a 50 percent requirement, particularly since the manufacturer production benchmark is one-third going forward. In addition, the Commission finds that the

availability of eight to 10 M3-rated models will provide substantial choice to hard-of-hearing consumers, especially in light of its other requirements, and therefore the Commission is not requiring service providers with large product lines to offer more models. The incremental benefits to consumers of requiring more than eight to 10 compatible models are diminished, and are outweighed by the burdens on the service provider.

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

22. The Commission is also not persuaded by arguments that service providers other than Tier I carriers will be unable to obtain sufficient hearing aid-compatible handset models to meet the benchmark percentages and therefore will have to reduce their product lines. These service providers argue that they have less access to hearing aid-compatible models than Tier I carriers, among other reasons because they must purchase handsets through third-party vendors and because the larger carriers sometimes have exclusive arrangements to obtain certain handset models. The Commission notes, however, that the number of hearing aid-compatible models these service providers must obtain to meet the percentage benchmarks is not large. For example, a service provider that offers 10 handset models over an air interface would need to offer five that meet an M3 (or higher) rating and four that meet a T3 (or higher) rating. Moreover, the percentage requirement for T3-rated (or higher) models would not become effective for such a provider until May 2009. Until then, the service provider could satisfy the rule by offering the numerical alternative of three models meeting this standard. The Commission acknowledges that many smaller service providers' offerings of compatible handsets may currently fall short of these levels. Given the substantial and increasing number of hearing aid-compatible models that are currently available, however, the Commission is convinced that, with reasonable effort, even the smallest non-*de minimis* providers can obtain enough compatible models to satisfy the particular benchmarks that are applicable to them. Commenters offer no evidence that so many hearing aid-compatible models are subject to exclusivity arrangements as to significantly diminish the number that they are able to obtain, or that large numbers of compatible models are unavailable through vendors. As it has stated in the past, the Commission expects that, if a service provider's usual vendors cannot supply appropriate handset models, it will make arrangements with other suppliers. The Commission also remains unpersuaded by Virgin Mobile's general argument that few hearing aid-compatible models are available in the lower price ranges that its customers demand. Although Virgin Mobile may reasonably select the hearing aid-compatible models that are most likely to appeal to its customer base, the Commission continues to believe it should not be relieved of its duty to make hearing aid-compatible options available to its customers simply due to its prediction that customers will not choose to purchase these models. In addition, the Commission anticipates that in the future, manufacturers may produce more hearing aid-compatible models in lower price ranges in order to facilitate carriers' fulfillment of their obligation to offer phones with multiple levels of functionality.

23. Moreover, to the extent the deployment benchmarks that the Commission adopts do impose increased burdens on small carriers, these burdens are outweighed by the benefits to consumers. Commenters representing people with hearing loss support the universal application of these benchmarks, stating that this would assist a great number of hearing aid users. These additional benchmarks, especially the new benchmarks for inductive coupling capability, should provide valuable benefits to affected consumers with profound hearing loss. Regardless of size and product line, every service provider has customers who need hearing aid-compatible phones, and it is incumbent upon each wireless service provider to make arrangements and allocate the resources that are necessary to meet their needs.

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

2. New Requirements for Handset Deployment

25. As an integral part of the handset deployment objectives the Commission sets forth today, the Commission also adopts two new rules that together will

facilitate the offering of not just more handsets, but also a range of compatible handset models throughout the manufacturer-to-consumer supply and distribution channels. The annual product refresh rule for manufacturers and the requirement that service providers offer handset models with different functionality levels should provide consumers with access to hearing aid-compatible handsets with the newest features, as well as more economical models. These proposals are an essential part of the Joint Consensus Plan, and they are broadly supported in the record. Indeed, the record demonstrates that hard-of-hearing consumers demand an increased selection of popular and innovative handsets. While requirements to deploy minimum numbers or percentages of hearing aid-compatible handset models are essential to ensure that such phones will be available to consumers, the Commission finds, based on the record and experience under the existing rules, that these additional requirements are necessary to enable consumers to select a wireless phone that is not only compatible with a given hearing aid, but that also meets their other needs as a consumer, such as offering the latest features. Accordingly, the Commission adopts the product refresh rule for manufacturers and the functionality level rule for service providers.

a. Product Refresh Rule for Manufacturers

26. Every commenter to address the issue supports adoption of the proposed product refresh requirement without modification. The Commission therefore adopts this rule as set forth in § 20.19(c)(1)(ii) of the rules (set forth at the end of this summary). The Commission finds that this rule is necessary to ensure that service providers will be able to offer to consumers a selection of hearing aid-compatible models including those with the latest features. The Commission further finds that the rule will not cause undue costs to manufacturers. Indeed, all commenters representing equipment manufacturers supported the rule on grounds that it would permit them to provide consumers with a variety of devices. The Commission also corrects an apparent typographical error in the rule as proposed in the Joint Consensus Plan. As reproduced in the *NPRM,* the Joint Consensus Plan states that the number of new models to be produced is to be determined by ''multiplying the total number of new [hearing aid-compatible] models offered in the United States by fifty percent.'' 22 FCC Rcd 19670, 19712 App. B (2007). The Commission corrects this to clarify that the relevant figure is 50 percent of the total required number of hearing aid-compatible models.

b. Rule Requiring Service Providers To Offer Models With Differing Levels of Functionality

27. Upon consideration of the record, the Commission adopts the handset functionality rule as proposed and applies it to all service providers. As applied to Tier I carriers, all commenters representing Tier I carriers support a handset functionality rule. The Commission therefore adopts the rule in order to ensure that hearing aid users can select from a variety of compliant handset models, with varying features and prices. Moreover, these commenters agree that service providers should have flexibility to define their product levels because, as ATIS states, ''[i]t is not feasible to identify a uniform set of 'tiers' for all carriers that will appropriately apply to each carrier's unique set of product offerings.'' ATIS Comments at 7–8. The Commission concurs that given the great variety and continual development in handset features, any effort on its part to define criteria of functionality would be infeasible and might deter innovation, and the Commission therefore prescribes no criteria. The Commission does, however, stand by its guidance that a handset's level of functionality may include its capability to operate over multiple frequency bands. While Research in Motion Limited (RIM) objects that the availability or unavailability of a particular frequency band does not represent anything of value to a consumer, the Commission disagrees on the ground that the ability to access additional frequency bands may increase the circumstances under which the consumer can use the phone. The Commission clarifies that no service provider is required to offer phones that operate over multiple bands, and that this is simply one factor a service provider may use to distinguish the functionality of its handset models. In addition, the Commission adopts Gallaudet/RERC's suggestion to require service providers to disclose their functionality criteria in their reports to the Commission and on their Web sites, in order that both the Commission and the public may understand the basis for their distinctions.

28. Finally, the Commission determines to apply the rule to all service providers, not only nationwide Tier I carriers. Several regional and smaller service providers do not support such a requirement, arguing, for example, that such a requirement would be intrusive and that the statute does not require the Commission to ensure that hearing aid users have feature-rich phones. Other commenters, however, contend that the functionality level rule should be applied universally. For the same reasons discussed with respect to the handset deployment benchmarks, the Commission concludes that consumers with hearing loss should not be deprived of a choice of handset features based simply on their place of residence or their service provider. Moreover, given flexibility to define levels, even service providers with relatively small product lines should be able to distinguish among their handset models in a manner that permits them to define levels of functionality appropriate to their situation. The Commission does not expect a provider with four hearing aid-compatible models, for example, necessarily to offer as many levels of functionality or as broad a range of product offerings as a Tier I carrier with eight or more models, but the Commission does expect such a provider to draw some distinctions.

3. Implementation Issues

a. Definition of a Model

29. RIM supports the proposal to accept a manufacturer's determination of whether a device is a distinct model. PerrineCrest Radio Consulting (PerrineCrest Radio) asserts that the Commission should further define a model, or that at a minimum, manufacturers should explain how they distinguish their models. PerrineCrest Radio argues that this would help in monitoring the effectiveness of its requirements. It does not offer any suggestion regarding how the Commission should define a model, however.

30. The Commission concludes that its proposal represents the right approach to determinations of what constitutes a ''model'' under its rule. Consistent with its proposal, the Commission determines that, for purposes of the hearing aid compatibility rules, a manufacturer may not characterize as separate models any devices that do not in fact possess any distinguishing variation in form, features, or capabilities. Thus, under some circumstances, handsets assigned different model numbers by the manufacturer may count as a single model under the rules, such as where multiple model numbers are assigned to the same handset to distinguish units sold to different carriers, or are used to designate other distinctions that do not relate to either form, features, or

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

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

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

b. Multi-Mode and Multi-Band Handsets

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

34. In addition, although most manufacturers and service providers support the basic multi-band/mode proposal where hearing aid compatibility technical standards already exist, they oppose the proposal in the *NPRM* to automatically treat multi-band and multi-mode handsets as non-compatible if they operate over frequency bands or modes without established standards. They assert that the proposal may inhibit or delay deployment of new technologies and converged devices, and that there is no evidence that new frequency bands or air interfaces will cause interference problems. In particular, some commenters express concerns regarding the effect of such a rule on deployment of multi-mode handsets that offer Wi-Fi capability. Commenters further assert that the proposal will mislead consumers with hearing loss into concluding that all handsets operating over new frequency bands or using new technology are incompatible with hearing aid use, even if the handsets can be certified compatible in all operating modes and frequency bands that have established standards. Finally, they argue that the proposal violates the Commission's statutory obligation to ''ensure that regulations adopted to implement this section encourage the use of currently available technology and do not discourage or impair the development of improved technology,'' 47 U.S.C. 610(e), and would also exceed its statutory authority by effectively imposing hearing aid compatibility requirements in the absence of established standards for such compatibility. Instead of the proposed rule, they recommend that the Commission provide ANSI time to identify actual interference concerns and offer specific standards or recommendations, and otherwise permit handsets to be designated hearing aid-compatible so long as they have been certified to meet hearing aid compatibility standards in all frequency bands and operating modes that have established standards.

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

36. A filing on behalf of both industry and consumer group representatives asked that the Commission hold the record open to enable them to develop a consensus proposal regarding multi-mode and multi-band phones that operate in part over air interfaces or frequency bands for which no hearing aid compatibility standards exist. As set forth in this filing, members of ATIS' Incubator Solutions #4 (AISP.4–HAC) state that they have agreed with representatives of consumers with hearing loss to develop such a proposal. The filing also states that AISP.4–HAC anticipates filing general principles regarding this consensus plan within three months of the release of the Commission's Order, with more specific information regarding this proposal to be filed within six months of the release of the Order. ATIS states that, with the exception of devices incorporating Wi-Fi capability, it is unaware of any phones currently available that operate over multiple air interfaces or frequency bands, some of which have hearing aid compatibility standards and some of which do not. Finally, with regard to devices that incorporate Wi-Fi capability, the filing states that the members of AISP.4–HAC support allowing such devices to be labeled as hearing aid-compatible if they satisfy hearing aid compatibility standards for all other frequency bands and air interfaces over which they operate.

37. In order to both protect consumers and provide clarity to industry with respect to handset offerings that already

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

38. The Commission first adopts the Joint Consensus Plan's proposal and establishes that, to be offered as hearing aid-compatible, a handset must be hearing aid-compatible for every frequency band and air interface that it uses for which standards have been adopted by the Commission. As indicated in the *NPRM*, the Commission finds that requiring a hearing aid-compatible handset to be hearing aid-compatible in all such frequencies and modes of operation will better conform to the expectations of consumers that purchase such handsets. Conversely, allowing manufacturers and carriers to satisfy their deployment requirements with partially-compatible handsets where hearing aid compatibility standards exist, would likely cause significant confusion to consumers who purchase handsets that are labeled and offered as hearing aid-compatible, and who perhaps experience compatibility when the handset is tested in-store, only to discover later that the handset's compatibility varies depending on which of its frequency bands or air interfaces is in use at any particular moment. The Commission notes that it emphasized the benefits to hard-of-hearing consumers of being able to rely on a full range of functionality in their hearing aid-compatible handsets and of not having to learn all the technical details, such as the frequencies on which their phones operate. Further, although RCA expresses concern that the rule will discourage the manufacture of hearing aid-compatible multi-mode handsets, the Commission notes that those manufacturers to comment on the issue all support the rule as proposed in the Joint Consensus Plan, some expressly indicating that the rule will not impede the development of technology.

39. Second, except for its interim ruling with respect to the Wi-Fi air interface, the Commission does not here resolve whether, or to what extent, multi-band and multi-mode handsets should be counted as hearing aid-compatible if they operate in part over frequency bands or air interfaces for which technical standards have not yet been established. The record contains arguments both in favor of and against treating such handsets as hearing aid-compatible. Moreover, according to industry representatives, no such handsets currently exist, with the exception of devices incorporating Wi-Fi capability. The Commission accepts the proposal endorsed by both industry and consumer representatives to leave the record open so that they may develop a consensus plan on this issue in the near term. When the Commission subsequently addresses the application of hearing aid compatibility requirements to Wi-Fi operations, it will consider an appropriate transition regime to bring any requirements into effect.

40. Finally, the Commission adopts an interim rule to allow handsets with Wi-Fi capability that otherwise meet hearing aid compatibility standards to be certified as hearing aid-compatible. Unlike the situation with future air interfaces and anticipated frequencies (*e.g.*, the 700 MHz band), many handset models are already being produced and offered to consumers with Wi-Fi capability, including a significant proportion of the newest handset models. Moreover, the Commission has not yet addressed the extent to which hearing aid compatibility requirements should apply to handset models in various configurations incorporating Wi-Fi capability (which was not originally developed for voice transmissions), an issue on which the Commission sought comment in the *NPRM*. Therefore, the Commission adopts an interim measure to provide certainty and avoid discouraging the use of currently-available Wi-Fi technology during the period until the Commission addresses the status of Wi-Fi. Specifically, the Commission will not at present preclude a handset model that incorporates a Wi-Fi air interface from being offered as hearing aid-compatible so long as the handset otherwise qualifies as hearing aid-compatible under its rules.

41. To reduce consumer confusion as much as possible, however, the Commission also will require manufacturers and service providers, where they provide hearing aid compatibility ratings for handset models that incorporate operations using a Wi-Fi air interface, to clearly disclose to consumers that the handset has not been rated for hearing aid compatibility with respect to its Wi-Fi operation. This includes phones that may be used to provide Voice over Internet Protocol using a Wi-Fi air interface. The Commission recognizes that such disclosure is not likely to fully relieve potential customer confusion regarding handsets that meet established hearing aid compatibility standards for all of their operations except Wi-Fi. Given the current circumstances, however, the Commission believes the better course is to require disclosure of the lack of a hearing aid compatibility rating over the Wi-Fi air interface rather than preclude handset models that incorporate a Wi-Fi air interface from being considered hearing aid-compatible. In addition, the Commission expects service providers to train the sales staff at their owned or operated retail outlets regarding the lack of a rating for Wi-Fi operations and its implications. To give manufacturers and service providers sufficient time to develop and implement effective means to disclose this information (*e.g.*, inclusion of call-out cards or other media, revisions to their packaging materials, supplying of information on Web sites) where hearing aid compatibility ratings are provided, this requirement will become effective six months after the effective date of the rules adopted in the *R&O*. The Commission also notes that Working Group 6 of the ATIS incubator is developing language to inform consumers when otherwise hearing aid-compatible phones operate in part over frequency bands or air interfaces that do not have hearing aid compatibility standards.

c. *De minimis* Rule

42. Most commenters addressing the issue support the Joint Consensus Plan proposal to retain the *de minimis* exception to hearing aid compatibility requirements and to codify that the exception applies on a per air interface basis. HLAA/TDI and Gallaudet/RERC propose, however, that the exception be modified so that it not apply on a

permanent basis to large businesses that produce only one or two handsets with mass appeal, such as Apple's iPhone. Gallaudet/RERC argues that, if the exception applied to companies like Apple that do not routinely manufacture handsets, their handsets might be subject to the exception indefinitely, and consumers with hearing loss might never have the opportunity to use such devices. It further argues that the exception was not intended to permanently relieve large and prosperous companies whose handsets produce large profits from the obligations of § 20.19. It therefore suggests that the exception be applicable in such cases only for a certain period of time. HLAA/TDI similarly argues that the exception was only intended to protect small businesses, and should therefore be limited in its application to large businesses like Apple. In response, several commenters oppose the limitations suggested by Gallaudet/RERC and HLAA/TDI, arguing that the exception was not intended to be limited to small businesses, and that the proposed limitations risk undermining the rule's objective of preserving competition and innovation from new entrants.

43. The Commission adopts the proposal of the Joint Consensus Plan to retain the existing *de minimis* exception, which in most of its applications was not opposed in the record. The Commission further adopts the proposal to codify that the exception applies on a per air interface basis. No commenter has objected to applying the exception on a per air interface basis, and the Commission sees no reason to depart from an earlier decision that adopted that interpretation. As the Commission previously indicated, a per air interface approach to the *de minimis* exception to the handset deployment obligations follows from the deployment obligations themselves, which are also applied on a per air interface basis (*i.e.*, manufacturers and service providers must offer the specified number of handsets for each air interface in their product lines). If the Commission were to apply the exception to the total number of handsets across a manufacturer's total product line while requiring the specified number or percentage of hearing aid-compatible handsets for each air interface, a manufacturer that offered just one handset each for four different interfaces would fall outside the exception for each of the four interfaces. This result would force the manufacturer in question to either significantly increase the number of handsets in its product line to meet a multiple-handset deployment obligation for each air interface or else withdraw some of its existing products from the U.S. wireless market, which could retard technological progress and limit competition.

44. While the Commission does not adopt at this time the new limitation proposed by HLAA/TDI and Gallaudet/RERC, the Commission leaves the record open for further comment. The Commission intends to address this issue further, taking into consideration any *ex parte* submissions it receives, in an upcoming Report and Order.

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

4. M4/T4 Standards

46. Most commenters that address this issue advise against the adoption of M4/T4 requirements, or state a preference to wait until the hearing aid compatibility rules are next reviewed in 2010 to consider any such standards. Rehabilitation Engineering Research Center for Wireless Technologies (Wireless RERC) states, on the other hand, that ''the FCC needs to expand the rules * * * to increase the number of models available with M4/T4 compatibility.'' Wireless RERC Comments at 5. Hearing Industries Association (HIA) states generally that it supports mandating M4/T4 performance by handsets ''if and when such performance is reasonably achievable.''

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

B. 2007 ANSI C63.19 Technical Standard

1. Adoption of the 2007 Standard and Phase-in

48. Consistent with the Joint Consensus Plan and the unanimous view of commenters, the Commission adopts the 2007 ANSI C63.19 standard as a replacement for the 2001, 2005, and 2006 versions of the standard. The Commission concludes that the use of the most current testing and rating techniques will best ensure that consumers with hearing loss can obtain wireless phones that meet their needs. The Commission also adopts the transition schedule set forth in the Joint Consensus Plan (under which use of either the 2007 or 2006 standard would be permitted immediately, and the 2007 standard would become mandatory for grants of equipment authorization beginning January 1, 2010), agreeing with commenters that this affords manufacturers appropriate time to begin producing phones to the new standard. The Commission further determines not to require recertification of handsets previously certified under one of the older standards, but instead to continue recognizing such phones as hearing aid-compatible even after the 2007 standard becomes mandatory for new certifications. As AT&T observes, older models are likely to be ''phased out of circulation through marketplace attrition,'' which should obviate the issue. AT&T Comments at 6. Finally, no commenter addressed whether the 2001 and 2005 versions of the standard should continue to be permissible for

new certifications during the transition period until 2010. To the contrary, the comments consistently assume that the choice during the transition period is between the 2006 and 2007 versions of the standard. As proposed in the Joint Consensus Plan, therefore, the Commission does not provide for the continued use of earlier versions.

49. In its comments, ANSI notes that the phase-in requirement contains an unspoken assumption, that ''this would require any given mobile phone handset to be qualified under a complete version of either the 2006 or 2007 standard.'' ANSI Technical Comment at 2. The Commission agrees. Accordingly, the Commission clarifies that a party can use either the 2006 or 2007 standard for new certifications through 2009, but must use a single version for all certification tests and criteria for both the M and T ratings with respect to a given device. The particular version of the standard used should be specified in the party's application for equipment certification.

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

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

51. In the *NPRM,* the Commission observed that the 2007 version of the ANSI C63.19 standard includes target values for hearing aid compatibility procedures for operation over specific air interfaces at frequencies in the ranges of 800–950 MHz and 1.6–2.5 GHz, a broader range of frequencies than is currently covered by § 20.19(a). The Commission adopts its proposal to revise the rule to include services over any frequency band within the range covered by the ANSI C63.19–2007 standard, specifically, the 800–950 MHz and 1.6–2.5 GHz bands, to the extent that they employ air interfaces for which technical standards are established in that standard. The Commission notes that Wi-Fi technologies often operate in the 2.4 GHz band, within the frequency range addressed by the ANSI C63.19 standard. However, as noted elsewhere, the Commission has not yet determined the extent to which services and operations based on emerging technologies such as Wi-Fi should be subject to hearing aid compatibility obligations. The Commission notes that no commenter objects to this revision or indicates that any delay is necessary to meet hearing aid compatibility obligations within this frequency range. Accordingly, as of the effective date of the rules, providers of commercial mobile radio services that are operating over these frequency bands and are otherwise within the scope of § 20.19, as well as manufacturers of wireless phones used in the delivery of such services, will be subject to the same benchmark requirements that providers of cellular, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) services have to deploy hearing aid-compatible handset models as determined using either the 2006 or 2007 version of ANSI standard C63.19. The Commission notes that the *NPRM* also requested comment on how the rules apply to mobile satellite service (MSS) providers and whether any rule revisions are necessary respecting such providers. The Commission defers these issues to a future Report and Order. The rules it adopts in the *R&O* do not apply to MSS unless they fall within the existing scope of § 20.19(a).

3. Future Revisions and Extensions to the Technical Standard

a. Rules Adopted in *R&O*

52. In the *R&O,* to help ensure that its rules continue to reflect the most current standard as ANSI adopts new revisions to the standard, the Commission, as it has previously done, delegates to the Chief, Wireless Telecommunications Bureau (WTB), and the Chief, Office of Engineering and Technology (OET), the authority to jointly adopt future versions of the ANSI C63.19 standard to the extent that the changes to the standard do not raise major compliance issues. In addition, the Commission expands its delegation to a limited extent, *i.e.*, to allow Commission staff to administer a mechanism by which new frequency bands and air interfaces for which technical standards do not currently exist may be made subject to hearing aid compatibility obligations once such standards have been established. Specifically, where future versions of the ANSI C63.19 standard have been promulgated that provide technical standards for additional frequency bands or air interfaces not covered by previous versions, the Commission directs the Chief, Wireless Telecommunications Bureau (WTB), and the Chief, Office of Engineering and Technology (OET), to initiate a rulemaking proceeding, adopting the standards as established technical standards for the new frequency bands or air interfaces if they determine, based on the record, that the standards do not impose with respect to such frequency bands or air interfaces materially greater obligations than those imposed on services already subject to § 20.19. To ensure that manufacturers and service providers have adequate time to comply with their obligations, the Commission further imposes a limitation that WTB and OET may not require manufacturers and Tier I carriers to meet deployment requirements for the relevant bands or air interfaces until at least one year after release of an order adopting standards for those bands or air interfaces, and may not require service providers other than Tier I carriers to meet such requirements sooner than 15 months after release of such order. However, manufacturers will be able to obtain hearing aid compatibility certification of handsets that can operate over the new bands or air interfaces, consistent with the multi-band/multi-mode rule, immediately upon the effective date of the rules adopted in such order. In a Report and Order regarding the 700 MHz Service, the Commission established a 24-month period for the

development of standards for all of the frequencies listed in § 27.1(b) of the rules, and provided that, if such standards were promulgated within that period, the Commission would initiate ''a further proceeding at that time to establish a specific timetable for deployment of hearing aid-compatible handsets for services in the relevant bands that meet the criteria discussed above.'' 22 FCC Rcd 8064, 8120 (2007). Pursuant to the Commission's action in the *R&O,* this rulemaking proceeding referenced in the 700 MHz Report and Order may be undertaken by WTB and OET under delegated authority.

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

54. Thus, in order to ensure that its rules continue to protect the ability of consumers with hearing loss to utilize services over all frequency bands and air interfaces for which standards exist, the Commission delegates authority to WTB and OET to implement rule changes to conform its rules to ANSI standards. The Commission takes this action pursuant to Section 5(c)(1) of the Communications Act, which grants the Commission authority to delegate any of its functions, with certain exceptions not relevant here. 47 U.S.C. 155(c)(1). The Commission finds that such rule changes do not involve novel questions of fact, law, or policy, and therefore are appropriately made under delegated authority. The Commission amends §§ 0.241(a)(1), 0.331(d), and 20.19 of its rules to provide the Chiefs of WTB and OET with this delegated authority. These amendments pertain to agency organization, procedure and practice. Consequently, the notice and comment provisions of the Administrative Procedure Act contained in 5 U.S.C. 553(b) are inapplicable. *See* 5 U.S.C. 553(b).

b. Rules Adopted in *Recon*

55. In the *Recon,* the Commission modifies the delegated authority and procedures adopted in the *R&O* by which WTB and OET may approve the use of future versions of the ANSI C63.19 standard to the extent that the changes to the standard do not raise major compliance issues. The Commission concludes, on further consideration, that approval by the Chiefs of new versions of the ANSI C63.19 standard that do not raise major compliance issues, and that are approved for use only as optional alternatives to the other approved versions of the standard, should be codified in the rules. Therefore, if the Chiefs determine that such a new version of the hearing aid compatibility technical standard should be approved, the Commission requires them to issue an order amending § 20.19 as necessary to codify the approval of the new version for use in determining and certifying hearing aid compatibility of covered handsets, and the Commission delegates to the Chiefs the authority to conduct a notice-and-comment proceeding, to the extent required by statute or otherwise in the public interest, to adopt the requisite rule changes. The Commission does not, however, require adoption by notice-and-comment procedures if such procedures are not otherwise required by statute.

56. As before, the Commission only authorizes the Chiefs to approve new versions of the ANSI C63.19 standard pursuant to this delegation of authority where changes in the new standard do not raise major compliance issues, and subject to the limitation that the Chiefs may only permit, not require, the use of such subsequent versions of ANSI C63.19 to establish hearing aid compatibility.

C. Reporting, Information, and Outreach

1. Reporting

57. The Commission adopts substantially the reporting requirements proposed in the *NPRM,* along with certain additions and changes. First, the Commission elaborates on the required content of the reports in order to ensure that they will provide complete information to the Commission and to consumers. The Commission further determines to require the same content from all providers, regardless of size. Furthermore, the Commission clarifies that the reporting requirements apply to all manufacturers and service providers, including those that come under the *de minimis* exception to the deployment benchmarks. The Commission establishes new timelines for the filing of the reports. Finally, the Commission delegates authority to prescribe a template, including the authority to require electronic filing, to WTB.

58. The Commission adopts the reporting content requirements proposed in the *NPRM* with certain elaborations and clarifications. These revised requirements will help ensure that the reports enable the Commission to fulfill its responsibilities in monitoring the status of access to hearing aid-compatible handsets and verifying compliance with its rules, and will ensure that the public has additional useful information on compatible handsets. Specifically, the Commission clarifies that manufacturers and service providers must provide the dates on which they began and ended offering specific models during the past 12 months in order to demonstrate compliance over time, instead of providing a once a year ''snapshot.'' The Commission further requires manufacturers to indicate if devices that

they market under separate model numbers constitute a single model for purposes of the hearing aid compatibility rules. This information will enable the Commission to verify compliance with all of the hearing aid compatibility rules at all relevant times. Finally, the Commission requires each service provider to include an explanation of its methodology for dividing its hearing aid-compatible phones into different levels of functionality, which will help the Commission as well as the public know the range of compatible handsets that are being made available. The Commission requires that these reports be filed by all manufacturers and service providers, even those that fall within the *de minimis* exception, although not all data categories will apply to *de minimis* entities.

59. *The revised report content requirements are as follows for manufacturers:* (1) Digital wireless phone handset models tested since the most recent report; (2) compliant phone models offered to service providers since the most recent report, identified by marketing model name/number(s) and FCC ID number; (3) for each such model, the air interface(s) and frequency band(s) over which it operates, the hearing aid compatibility ratings under ANSI C63.19 for each frequency band and air interface, the ANSI C63.19 version used, and the months in which the model was available since the most recent report; (4) non-compliant phone models offered to service providers since the most recent report, identifying each model by marketing model name/number(s) and FCC ID number; (5) for each non-compliant model, the air interface(s) over which it operates and the months in which the model was available since the most recent report; (6) total numbers of compliant and non-compliant phone models offered to service providers for each air interface as of the time of the report; (7) any instance, as of the date of the report or since the most recent report, in which multiple compliant or non-compliant devices are marketed under separate model name/numbers but constitute a single model for purposes of the hearing aid compatibility rules, identifying each device by marketing model name/number and FCC ID number; (8) status of product labeling; and (9) outreach efforts.

60. *The revised report content requirements are as follows for service providers:* (1) Compliant digital wireless phone handset models offered to customers since the most recent report, identified by marketing model name/number(s) and FCC ID number; (2) for each such model, the air interface(s) and frequency band(s) over which it operates, the hearing aid compatibility ratings under ANSI C63.19 for each frequency band and air interface, and the months in which the model was available since the most recent report; (3) non-compliant phone models offered since the most recent report, identifying each model by marketing model name/number(s) and FCC ID number; (4) for each non-compliant model, the air interface(s) over which it operates and the months in which the model was available since the most recent report; (5) total numbers of compliant and non-compliant phone models offered to customers for each air interface over which the provider offers service as of the time of the report; (6) information related to the retail availability of compliant phones; (7) status of product labeling; (8) outreach efforts; and (9) the levels of functionality into which the compliant phones fall and an explanation of the service provider's methodology for determining levels of functionality.

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

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

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

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

65. The Commission finds that this schedule appropriately balances

manufacturers' and service providers' need for time to collect the information that will be required under the new reports with the public's interest in maintaining a steady flow of information. In particular, requiring the first reports to be filed in January 2009, two months after the next reports would have been filed under existing rules and 14 months after the most recent reports, affords manufacturers and service providers a reasonable period to begin collecting the new information. Although this schedule departs from the November and May dates proposed in the Joint Consensus Plan, the differences are not great, and the Commission's adopted rule expands the period of time some entities are afforded before making their first reports. The Joint Consensus Plan was apparently drafted with the assumption that new rules would be in place before November 2007, and accordingly it is not clear how the proponents would intend to apply its proposed schedule in the current time frame. It is at least arguable, however, that Tier I carriers would be required to file their initial reports in May 2008. Manufacturers would file their first reports in November 2008. This time period also gives WTB an opportunity to devise and promulgate a standard electronic format for reporting. Consistent with the Joint Consensus Plan, the Commission finds that staggering the deadlines after the initial reports will allow service providers better to incorporate more recent manufacturer information into their reports, as well as facilitating efficient administrative review. In addition, the Commission disagrees with the Joint Consensus Plan's provision for a year's delay in reporting for service providers that are not Tier I carriers, particularly in light of its decision not to require any reports until January 2009. The Commission notes that in the past all service providers have had the same reporting obligations, and finds that this proposal would create an unacceptable and unnecessary gap in the availability of information. Only one party, RCA, filed comments supporting this aspect of the Joint Consensus Plan, and one smaller service provider, i wireless, specifically rejected the year's delay.

66. Finally, the Commission delegates authority to prescribe a template, including the authority to require electronic filing, to WTB. The Commission finds that a standardized form would improve the quality and utility of the reports for the Commission, industry, and the public. Although at least one commenter prefers to rely on a narrative report format, the Commission concludes that a standardized format will assist the Commission and the public in understanding and analyzing the reports.

2. Information and Outreach

67. In their comments, HLAA/TDI and Gallaudet/RERC offer several proposals for changes to the Commission's Web site and databases, as well as proposed requirements and recommendations for manufacturers and service providers. The Commission agrees with HLAA/TDI and Gallaudet/RERC that improvements in the outreach activities of the Commission, manufacturers, and service providers would enhance the ability of consumers easily to obtain information about hearing aid-compatible handsets that meet their needs. The Commission therefore takes action on their recommendations.

68. First, HLAA/TDI and Gallaudet/RERC propose several changes to the Commission's Web site, databases, and processes, including: Developing a single location or Web site where hearing aid users can find the ratings and model numbers of compliant handsets offered by manufacturers and service providers; adding a search function to the FCC's equipment authorization database that will enable consumers to browse among phone features by category; adding links to manufacturers' and service providers' Web sites from the Commission's Disability Rights Office (DRO)'s web page; and adopting a consumer-friendly method of handling hearing aid compatibility complaints that (1) Requires FCC resolution within 90 days, (2) provides for a separate and identifiable electronic and telephonic FCC receptacle for hearing aid compatibility complaints, and (3) facilitates the filing of formal hearing aid compatibility complaints.

69. The Commission directs the Consumer and Governmental Affairs Bureau (CGB), OET, and WTB to take these recommendations under advisement and to implement them to the extent feasible. The Commission concludes that all of these recommended actions, if feasible, would assist consumers. In particular, the Commission directs the Commission's DRO to include, on its Web site, links to the Web site addresses maintained by manufacturers and service providers that provide information on the hearing aid-compatible models that they offer. The idea that consumers should be able to access as much information as possible through easily accessible connections to relevant material is a fundamental one. The Commission notes, however, that because OET's database and the part 2 rules were designed to serve the equipment authorization process, there may be limits to their adaptability to provide accessible information on hearing aid compatibility certifications. In the *NPRM,* the Commission sought comment on whether to amend part 2 to require additional information regarding handset models in equipment authorization filings. The Commission defers action on these issues to a future Report and Order. The Commission declines at this time, in the absence of a more complete record, to require that hearing aid compatibility complaints be resolved within a particular time period, such as 90 days. The Commission does, however, expect that staff will make every effort to resolve such complaints within the shortest reasonable time frame, ideally within 90 days. The Commission also notes that, with its recent implementation of FCC Form 2000 online, the Commission has taken additional action to improve the manner in which it handles consumer complaints. In particular, FCC Form 2000C, the portion of Form 2000 that is used for disability access complaints, includes specific provisions for complaints relating to the hearing aid compatibility of wireless telephone equipment and service. The form is designed to be user-friendly, asking consumers targeted questions intended to facilitate processing of the complaint.

70. As proposed in the *NPRM,* HLAA/TDI specifically advocates adopting in the context of hearing aid compatibility complaints the contact information requirements for manufacturers and service providers that currently apply to complaints under Section 255 of the Communications Act, which governs access to telecommunications services by people with disabilities. Nokia Inc. (Nokia) and AT&T oppose this proposal, stating that ''[a]dditional actions by the Commission are not necessary,'' and that ''manufacturers should not be required to comply with Section 255's reporting requirements in the [hearing aid compatibility] context.'' Nokia Comments at 10.

71. After review of the record, the Commission adopts the proposal in the *NPRM* and amends its rules accordingly. Contrary to the arguments of some parties, the proposal from the *NPRM* was not to create a new mandate, but simply to alter the process under the existing part 68 mandate governing public complaints regarding hearing aid compatibility to make it conform to the part 6 rules that govern complaints under Section 255. Under the

Commission's part 68 complaint procedures, which are applicable to wireless hearing aid compatibility complaints, manufacturers and service providers are required to designate a service agent to the Administrative Council for Terminal Attachment (ACTA). A consumer wishing to make a complaint must first approach ACTA to secure the contact information for the relevant industry entity, only after which can the consumer actually file a complaint. This differs from the process for Section 255 complaints in part 6 of the rules, under which the contact information is provided directly to the Commission and made available to the public via the DRO Web site. The Commission concludes that requiring provision of hearing aid compatibility contact information directly to the Commission for posting on its Web site—without otherwise changing the procedures for handling such complaints—will assist consumers and will impose little if any additional burden on manufacturers and service providers, who are already required to make the same information available to a third party.

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

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

74. In addition to this required information, HLAA/TDI advocates that the Commission strongly urge industry to post certain other information on their Web sites, including: A search function for hearing aid compatibility data to allow consumers to browse within the category for features they want; a listing of hearing aid compatibility ratings for all handset models, not just those with ratings of 3 and 4 (because hearing aid ratings are now available to consumers); volume control levels on phones; vibrating feature on phones; ring tones most suitable for people with hearing loss—those with low frequencies; devices with QWERTY keyboards that can make it easier to send e-mails and instant messages that supplement hearing aid compatibility; other features and functions on handsets; a downloadable version of a brochure on hearing aid-compatible handsets developed by ATIS WG6 (print version of brochure should be available in every store, including independent stores); and a downloadable version of a phone evaluation tool that the RERC at Gallaudet is now testing on its Web sites and in its advertising.

75. The Commission agrees that this information would be useful to consumers, and the Commission urges manufacturers and service providers to include it on their Web sites and in other publicity to the extent feasible. In recognition of the great variety of products, marketing practices, and Web site designs, however, the Commission does not at present require the posting of any specific information other than that previously described.

76. Finally, the Commission clarifies that under the labeling requirement in § 20.19(f), the M and T ratings that are required on the label are the overall, worst case ratings for the handset. The Commission recognizes that a multi-band or multi-mode handset may have different hearing aid compatibility ratings for different frequency bands or air interfaces. Consistent with its holding regarding the compatibility status of multi-band and multi-mode handsets, the Commission finds that the most useful information for consumers is a single ''worst case'' rating constituting the handset's lowest rating for any air interface or frequency band. Accordingly, while the Commission expects that the reports will include all hearing aid compatibility ratings assigned to a particular model, the labeling accompanying a hearing aid-compatible handset, as well as the information on a manufacturer or service provider's Web site, shall include only the lowest such rating as the rating for the handset.

D. 2010 Review

77. No commenters objected to the proposed 2010 date for the next review of the hearing aid compatibility rules, although AT&T suggested that 2012 would be appropriate as well. The Commission therefore concludes to begin a further review of its hearing aid rules in 2010, after the May 2010 deployment benchmarks have passed.

IV. Conclusion

78. In the *R&O,* the Commission adopts a number of inter-related changes to its wireless hearing aid compatibility rules, largely based on proposals in the Joint Consensus Plan. These changes update the requirements regarding deployment of hearing aid-compatible handsets, reporting, and outreach, as well as the standards by which hearing aid compatibility will be determined. The Commission concludes that the changes will improve access to wireless telecommunications services for persons with hearing disabilities, which continues to be a critical goal of

the Commission as society increasingly relies on wireless services for social, business, and emergency communications.

V. Procedural Matters

A. Regulatory Flexibility Act

79. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) of the possible significant economic impact on small entities of the policies and rules addressed in the *R&O*. The FRFA is set forth in an appendix to the *R&O*.

B. Congressional Review Act

80. The Commission will send a copy of the *R&O* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

C. Accessible Formats

81. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *FCC504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

VI. Final Regulatory Flexibility Analysis

82. As required by the RFA, the Commission included an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities of the policies and rules considered in the *NPRM* in WT Docket No. 07–250. The Commission sought written public comment on the *NPRM* in this docket, including comment on the IRFA. The FRFA conforms to the RFA.

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

A. Need for, and Objectives of, the Rules

84. In the *R&O*, the Commission revises § 20.19 of the rules containing the hearing aid compatibility requirements applicable to providers of public mobile services and manufacturers of digital wireless handsets used in the delivery of those services. Specifically, the Commission adopts benchmark requirements for future deployment of hearing aid-compatible handsets, and related requirements, based on the proposals set forth in the *NPRM* and based on a Joint Consensus Plan developed by an ATIS working group that included nationwide carriers, handset manufacturers, and several organizations representing the interests of consumers with hearing loss. The Commission finds that these new handset deployment obligations for both manufacturers and service providers will ensure that its rules continue to be effective in an evolving marketplace of new technologies and services. Because service providers not in the Tier I category were not included in the Joint Consensus Plan, the Commission sought comment on and adopts in the *R&O* similar rule changes, with modified deadlines, for these entities. These requirements and deadlines are intended both to promote the accessibility of hearing aid-compatible handsets to all deaf and hard-of-hearing consumers, and to recognize the impediments to smaller and regional service providers obtaining the most recent handset models. In order to facilitate the continuing availability of a variety of hearing aid-compatible handset models to consumers, the Commission also adopts a requirement that manufacturers annually ''refresh'' their hearing aid-compatible offerings with new models, and a requirement that service providers offer hearing aid-compatible models with differing levels of functionality. The Commission further adopts an interim measure whereby phones with Wi-Fi capability that otherwise meet hearing aid compatibility standards may be counted as hearing aid-compatible, but the manufacturer and service provider must clearly disclose that they have not been rated with respect to their Wi-Fi operation. Finally, the Commission revises the annual reporting obligations of manufacturers and service providers. These amendments will, among other things, render the reports more useful to consumers who wish to know the compatibility ratings of different handset models that have been certified as hearing aid-compatible. In addition, to ensure the availability of such information on a more current basis to service providers and consumers wishing to offer or purchase hearing aid-compatible handsets, the Commission requires manufacturers and service providers to provide up-to-date information on their Web sites regarding their hearing aid-compatible handset models.

85. The Commission states that these inter-related changes, taken together and largely supported by manufacturers, service providers, and consumers with hearing loss, will further the statutory objective to ''ensure reasonable access to telephone service by persons with impaired hearing.'' 47 U.S.C. 610(a). Among other things, the Commission explains that the most disadvantaged wireless users in the deaf and hard-of-hearing community, who are more likely to rely on telecoil-equipped hearing aids, will benefit from rule changes that increase requirements to offer handsets with inductive coupling capability. The Commission further states that the requirements that manufacturers refresh their product offerings annually and that service providers offer hearing aid-compatible handset models at differing functionality levels will help to ensure that consumers with hearing loss have a variety of handsets available to them, including handsets with innovative user features, a goal that the Commission has sought to promote since 2003. Finally, the Commission notes its objective to ensure that the impact of the rules remains as technology-impartial as possible while also ensuring availability of hearing aid-compatible handsets to consumers.

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

86. No comments specifically addressed the IRFA. Nonetheless, small entity issues raised in comments are addressed in the FRFA in sections D and E.

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

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

established by the Small Business Administration (SBA).

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

89. *700 MHz Guard Bands Licenses.* In the 700 MHz Guard Bands Order, the Commission adopted size standards for ''small businesses'' and ''very small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A small business in this service is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years. Additionally, a ''very small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years. SBA approval of these definitions is not required. An auction of 52 Major Economic Area (MEA) licenses for each of two spectrum blocks commenced on September 6, 2000, and closed on September 21, 2000. Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of remaining 700 MHz Guard Bands licenses commenced on February 13, 2001, and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses. Subsequently, in the 700 MHz Second Report and Order, the Commission reorganized the licenses pursuant to an agreement among most of the licensees, resulting in a spectral relocation of the first set of paired spectrum block licenses, and an elimination of the second set of paired spectrum block licenses (many of which were already vacant, reclaimed by the Commission from Nextel). A single licensee that did not participate in the agreement was grandfathered in the initial spectral location for its two licenses in the second set of paired spectrum blocks. Accordingly, at this time there are 54 licenses in the 700 MHz Guard Bands and there is no auction data applicable to determine which are held by small businesses.

90. *700 MHz Band Commercial Licenses.* There is 80 megahertz of non-Guard Band spectrum in the 700 MHz Band that is designated for commercial use: 698–757, 758–763, 776–787, and 788–793 MHz Bands. With one exception, the Commission adopted criteria for defining two groups of small businesses for purposes of determining their eligibility for bidding credits at auction. These two categories are: (1) ''Small business,'' which is defined as an entity that has attributed average annual gross revenues that do not exceed $40 million during the preceding three years; and (2) ''very small business,'' which is defined as an entity with attributed average annual gross revenues that do not exceed $15 million for the preceding three years. In Block C of the Lower 700 MHz Band (710–716 MHz and 740–746 MHz), which was licensed on the basis of 734 Cellular Market Areas, the Commission adopted a third criterion for determining eligibility for bidding credits: An ''entrepreneur,'' which is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. The SBA has approved these small size standards.

91. An auction of 740 licenses for Blocks C (710–716 MHz and 740–746 MHz) and D (716–722 MHz) of the Lower 700 MHz Band commenced on August 27, 2002, and closed on September 18, 2002. Of the 740 licenses available for auction, 484 licenses were sold to 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business, or entrepreneur status and won a total of 329 licenses. A second auction commenced on May 28, 2003, and closed on June 13, 2003, and included 256 licenses: Five EAG licenses and 251 CMA licenses. Seventeen winning bidders claimed small or very small business status and won 60 licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses.

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

93. *Government Transfer Bands.* The Commission adopted small business size standards for the unpaired 1390–1392 MHz, 1670–1675 MHz, and the paired 1392–1395 MHz and 1432–1435 MHz bands. Specifically, with respect to these bands, the Commission defined an entity with average annual gross revenues for the three preceding years not exceeding $40 million as a ''small business,'' and an entity with average annual gross revenues for the three preceding years not exceeding $15 million as a ''very small business.'' SBA has approved these small business size standards for the aforementioned bands. Correspondingly, the Commission adopted a bidding credit of 15 percent for ''small businesses'' and a bidding credit of 25 percent for ''very small businesses.'' This bidding credit structure was found to have been consistent with the Commission's schedule of bidding credits, which may be found at § 1.2110(f)(2) of the Commission's rules. The Commission found that these two definitions will provide a variety of businesses seeking to provide a variety of services with opportunities to participate in the auction of licenses for this spectrum and will afford such licensees, who may have varying capital costs, substantial flexibility for the provision of services. The Commission noted that it had long recognized that bidding preferences for qualifying bidders provide such bidders with an opportunity to compete successfully against large, well-financed entities. The Commission also noted that it had found that the use of tiered or graduated small business definitions is useful in furthering its mandate under Section 309(j) to promote opportunities for and disseminate licenses to a wide variety of applicants. An auction for one license in the 1670–1674 MHz band commenced on April 30, 2003 and closed the same day. One license was awarded.

94. *Advanced Wireless Services.* In the AWS–1 Report and Order, the Commission adopted rules that affect applicants who wish to provide service in the 1710–1755 MHz and 2110–2155 MHz bands. The Commission anticipated that the services that will be deployed in these bands may have capital requirements comparable to those in the broadband Personal Communications Service (PCS), and that the licensees in these bands will be presented with issues and costs similar to those presented to broadband PCS licensees. Further, at the time the broadband PCS service was established,

it was similarly anticipated that it would facilitate the introduction of a new generation of service. Therefore, the AWS–1 Report and Order adopts the same small business size definition that the Commission adopted for the broadband PCS service and that the SBA approved. In particular, the AWS–1 Report and Order defines a ''small business'' as an entity with average annual gross revenues for the preceding three years not exceeding $40 million, and a ''very small business'' as an entity with average annual gross revenues for the preceding three years not exceeding $15 million. The AWS–1 Report and Order also provides small businesses with a bidding credit of 15 percent and very small businesses with a bidding credit of 25 percent.

95. *Wireless Cable Systems.* The SBA small business size standard for the broad census category of ''Wireless Telecommunications Carriers-except satellite'' appears applicable to MDS, ITFS and LMDS. The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. Wireless cable systems use 2 GHz band frequencies of the Broadband Radio Service (''BRS''), formerly Multipoint Distribution Service (''MDS''), and the Educational Broadband Service (''EBS''), formerly Instructional Television Fixed Service (''ITFS''), to transmit video programming and provide broadband services to residential subscribers. These services were originally designed for the delivery of multichannel video programming, similar to that of traditional cable systems, but over the past several years licensees have focused their operations instead on providing two-way high-speed Internet access services. The Commission estimates that the number of wireless cable subscribers is approximately 100,000, as of March 2005. Local Multipoint Distribution Service (''LMDS'') is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications. The SBA small business size standard for the broad census category of Wireless Telecommunications Carriers appears applicable to MDS, ITFS and LMDS. To gauge small business prevalence for MDS, ITFS and LMDS, the Commission must use current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was: All such firms having $13.5 million or less in annual receipts. This data was gathered when Cable and Other Program Distribution was the applicable NAICS Code size standard under SBA.

96. The Commission has defined small MDS (now BRS) and LMDS entities in the context of Commission license auctions. In the 1996 MDS auction, the Commission defined a small business as an entity that had annual average gross revenues of less than $40 million in the previous three calendar years. This definition of a small entity in the context of MDS auctions has been approved by the SBA. In the MDS auction, 67 bidders won 493 licenses. Of the 67 auction winners, 61 claimed status as a small business. At this time, the Commission estimates that of the 61 small business MDS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent MDS licensees that have gross revenues that are not more than $40 million and are thus considered small entities. MDS licensees and wireless cable operators that did not receive their licenses as a result of the MDS auction fall under the SBA small business size standard for Cable and Other Program Distribution. Information available to us indicates that there are approximately 850 of these licensees and operators that do not generate revenue in excess of $13.5 million annually. Therefore, the Commission estimates that there are approximately 850 small entity MDS (or BRS) providers, as defined by the SBA and the Commission's auction rules.

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

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

99. *Cellular Licensees.* The SBA has developed a small business size standard for small businesses in the category ''Wireless Telecommunications Carriers (except satellite).'' Under that SBA category, a business is small if it has 1,500 or fewer employees. For the census category of ''Cellular and Other Wireless Telecommunications,'' Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year. Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more. Thus, under this category and size standard, the majority of firms can be considered small.

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

judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant.

101. *Specialized Mobile Radio.* The Commission awards ''small entity'' bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than $15 million in each of the three previous calendar years. The Commission awards ''very small entity'' bidding credits to firms that had revenues of no more than $3 million in each of the three previous calendar years. The SBA has approved these small business size standards for the 900 MHz Service. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction began on December 5, 1995, and closed on April 15, 1996. Sixty bidders claiming that they qualified as small businesses under the $15 million size standard won 263 geographic area licenses in the 900 MHz SMR band. The 800 MHz SMR auction for the upper 200 channels began on October 28, 1997, and was completed on December 8, 1997. Ten bidders claiming that they qualified as small businesses under the $15 million size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR band. A second auction for the 800 MHz band was held on January 10, 2002 and closed on January 17, 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.

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

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

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

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

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

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

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

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

109. The Commission adopts reporting and outreach requirements that will involve some recordkeeping and other compliance requirements for small entities. Under the decision in the *R&O*, manufacturers and service providers, including those that are small entities, will continue to file regular reports with the Commission detailing their hearing aid compatibility efforts. In order to improve the existing reports for consumers and industry and meet the Commission's hearing aid compatibility objectives (see section A), however, the Commission adopts new content requirements for these reports. The Commission also adopts a new outreach obligation for manufacturers and service providers that maintain public Web sites to post up-to-date information involving some of this content, and to report and keep updated to the Commission a working link to the web location at which this information is posted. Finally, because many handset models are currently being offered that operate over both established CMRS interfaces and the Wi-Fi air interface for which no established hearing aid compatibility standards exist, the Commission allows such phones on an interim basis to be counted as hearing aid-compatible if

they otherwise qualify as hearing aid-compatible under its rules, but requires consumers to be informed that those phones have not been rated for hearing aid compatibility with respect to their Wi-Fi operations. Section E summarizes additional detail about these reporting and outreach requirements that the Commission adopts in the *R&O.*

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

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

111. The RFA requires an agency to describe in the IRFA any significant alternatives that it has considered in reaching its proposed approach, which may include (among others) the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. The Commission considered these alternatives with respect to all of the requirements that it is imposing on small entities in the *R&O,* and this FRFA incorporates by reference all discussion in the *R&O* that considers the impact on small entities of the rules adopted by the Commission. In addition, the Commission's consideration of those issues as to which the impact on small entities was specifically discussed in the record is summarized as follows:

112. *Hearing Aid-Compatible Handset Deployment Benchmarks and Deadlines.* In accordance with its objective of furthering the availability of hearing aid-compatible handsets to the deaf and hard-of-hearing community, the Commission considered several different proposals for handset deployment benchmarks and deadlines. These alternatives balanced several different approaches to improving wireless services for deaf and hard-of-hearing consumers. For example, the Commission considered the possibility of applying to small entities different benchmarks for offering handset models meeting M3 and T3 (or higher) hearing aid compatibility ratings. Six parties representing regional or smaller service providers submitted comments in favor of lower benchmarks for smaller service providers.

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

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

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

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

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

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

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

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

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

121. In addition to regular reporting, the *R&O* will require manufacturers and service providers that have public Web sites to post certain information, including the hearing aid-compatible handset models that they offer, the ratings of those models, an explanation of the rating system, and, for service providers, those models' levels of functionality and their methodology for determining levels of functionality. This information must be kept current within 30 days. In addition, service providers must include this web address in their reports to the Commission, and inform the Commission within 30 days if the address ceases to be functional. As with the annual reports, the Commission considered whether it could adopt less burdensome requirements for small entities, and concluded that it needed to impose the same requirements on all manufacturers and service providers to serve the purpose of providing critical information to all consumers. Moreover, because all of the information to be posted is also required in the reports to the Commission or in packaging inserts, the burden of maintaining it on the Web site should be small. Finally, as with the reports, the Commission eased the burden of coming into compliance for all entities by delaying the effective date of this requirement until January 15, 2009.

122. *Final Regulatory Flexibility Certification (FRFC) for Order on Reconsideration and Erratum.* The modifications in the *Recon* to the Commission process for approving new versions of the hearing aid compatibility technical standard do not place any new burdens on small entities. Therefore, the Commission certifies, pursuant to Section 605(b) of the RFA, that the action taken in the *Recon* will not have a significant economic impact on a substantial number of small entities.

F. Report to Congress

123. The Commission will send a copy of the *R&O,* including the FRFA, and a copy of the *Recon,* including the FRFC, in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the *R&O,* including the FRFA, and a copy of the *Recon,* including the FRFC, to the Chief Counsel for Advocacy of the SBA. Copies of the *R&O* and FRFA and the *Recon* and FRFC (or summaries thereof) are also being published in the **Federal Register**.

VII. Ordering Clauses

124. *It is ordered* that, pursuant to the authority of Sections 4(i), 303(r), and 710 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), and 610, the *R&O* is hereby adopted.

125. *It is further ordered* that parts 0, 20 and 68 of the Commission's Rules, 47 CFR parts 0, 20 and 68, are amended as specified in an Appendix to the *R&O,* effective June 6, 2008.

126. *It is further ordered* that the information collections contained in the *R&O will become effective* following approval by the Office of Management and Budget. The Commission will publish a document at a later date establishing the effective date.

127. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of the *R&O,* including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

128. *It is further ordered* that, pursuant to the authority of Sections 4(i), 303(r), and 710 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), and 610, and Section 1.108 of the Commission's rules, 47 CFR 1.108, the *Recon* is hereby adopted.

129. *It is further ordered* that the Commission's Consumer and

Governmental Affairs Bureau, Reference Information Center, shall send a copy of the *Recon*, including the FRFC, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 0

Organization and functions (government agencies).

47 CFR Part 20

Communications common carriers, Communications equipment. Incorporation by Reference.

47 CFR Part 68

Administrative practice and procedure.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rules

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 0, 20, and 68 as follows:

PART 0—COMMISSION ORGANIZATION

■ 1. The authority citation for part 0 continues to read as follows:

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

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

§ 0.241 Authority delegated.

(a) * * *

(1) Notices of proposed rulemaking and of inquiry and final orders in rulemaking proceedings, inquiry proceedings and non-editorial orders making changes, except that the Chief of the Office of Engineering and Technology is delegated authority, together with the Chief of the Wireless Telecommunications Bureau, to adopt certain technical standards applicable to hearing aid compatibility under § 20.19 of this chapter, as specified in § 20.19(k).

* * * * *

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

§ 0.331 Authority delegated.

* * * * *

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

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PART 20—COMMERCIAL MOBILE RADIO SERVICES

■ 4. The authority citation for part 20 continues to read as follows:

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

■ 5. Section 20.19 is revised to read as follows:

§ 20.19 Hearing aid-compatible mobile handsets.

(a) Scope of section; definitions. (1) The hearing aid compatibility requirements of this section apply to providers of digital CMRS in the United States to the extent that they offer real-time, two-way switched voice or data service that is interconnected with the public switched network and utilizes an in-network switching facility that enables the provider to reuse frequencies and accomplish seamless hand-offs of subscriber calls, and such service is provided over frequencies in the 800–950 MHz or 1.6–2.5 GHz bands using any air interface for which technical standards are stated in the standard document ''American National Standard Methods of Measurement of Compatibility Between Wireless Communication Devices and Hearing Aids,'' American National Standards Institute (ANSI) C63.19–2007 (June 8, 2007).

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

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

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

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

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

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

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

(1) For radio frequency interference.

(i) *Applicable technical standards prior to 2010.* Beginning June 6, 2008 and until January 1, 2010, a wireless handset submitted for equipment certification or for a permissive change relating to hearing aid compatibility must meet, at a minimum, the M3 rating associated with the technical standard set forth in either the standard document ''American National Standard Methods of Measurement of Compatibility Between Wireless Communication Devices and Hearing Aids,'' ANSI C63.19–2006 (June 12, 2006) or ANSI C63.19–2007 (June 8, 2007)—each available for purchase from the American National Standards Institute. Any grants of certification issued before June 6, 2008 under previous versions of ANSI C63.19 remain valid for hearing aid compatibility purposes.

(ii) *Applicable technical standards beginning in 2010.* On or after January 1, 2010, a wireless handset submitted for equipment certification or for a permissive change relating to hearing aid compatibility must meet, at a minimum, the M3 rating associated with the technical standard set forth in ANSI C63.19–2007 (June 8, 2007). Any grants of certification issued before January 1, 2010, under the earlier versions of ANSI C63.19 remain valid for hearing aid compatibility purposes.

(2) For inductive coupling.

(i) *Applicable technical standards prior to 2010.* Beginning June 6, 2008 and until January 1, 2010, a wireless handset submitted for equipment certification or for a permissive change relating to hearing aid compatibility must meet, at a minimum, the T3 rating associated with the technical standard set forth in either the standard

document ''American National Standard Methods of Measurement of Compatibility Between Wireless Communication Devices and Hearing Aids,'' ANSI C63.19–2006 (June 12, 2006) or ANSI C63.19–2007 (June 8, 2007). Any grants of certification issued before June 6, 2008 under previous versions of ANSI C63.19 remain valid for hearing aid compatibility purposes.

(ii) *Applicable technical standards beginning in 2010.* On or after January 1, 2010, a wireless handset submitted for equipment certification or for a permissive change relating to hearing aid compatibility must meet, at a minimum, the T3 rating associated with the technical standard set forth in ANSI C63.19–2007 (June 8, 2007). Any grants of certification issued before January 1, 2010, under the earlier versions of ANSI C63.19 remain valid for hearing aid compatibility purposes.

(3) [Reserved].

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

(5) The following standards are incorporated by reference in this section: American National Standards Institute Accredited Standards Committee on Electromagnetic Compatibility, C63™, ''American National Standard Methods of Measurement of Compatibility Between Wireless Communication Devices and Hearing Aids,'' ANSI C63.19–2006 (June 12, 2006), Institute of Electrical and Electronics Engineers, Inc., publisher; and American National Standards Institute Accredited Standards Committee on Electromagnetic Compatibility, C63™, ''American National Standard Methods of Measurement of Compatibility Between Wireless Communication Devices and Hearing Aids,'' ANSI C63.19–2007 (June 8, 2007), Institute of Electrical and Electronics Engineers, Inc., publisher. These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated as they exist on the date of the approval, and notice of any change in these materials will be published in the **Federal Register**. The materials are available for inspection at the Federal Communications Commission (FCC), 445 12th St., SW., Reference Information Center, Room CY–A257, Washington, DC 20554 and at the National Archives and Records Administration (NARA). For information on the availability of these materials at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

The materials are also available for purchase from IEEE Operations Center, 445 Hoes Lane, Piscataway, NJ 08854–4141, by calling (732) 981–0060, or going to *http://www.ieee.org/portal/site*.

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

(1) *Manufacturers.*

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) Prior to September 7, 2008, include in the handset models it offers at least two handset models that comply with paragraph (b)(1) of this section;

(ii) Beginning September 7, 2008, either:

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

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

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

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

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

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

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

(ii) *Offering models with differing levels of functionality.* Each service provider must offer its customers a range of hearing aid-compatible models with differing levels of functionality (*e.g.*, operating capabilities, features offered, prices). Each provider may determine the criteria for determining these differing levels of functionality, and must disclose its methodology to the Commission pursuant to paragraph (i)(3)(vii) of this section.

(d) *Phase-in of requirements relating to inductive coupling capability.* The following applies to each manufacturer

and service provider that offers wireless handsets used in the delivery of the services specified in paragraph (a) of this section and that does not fall within the *de minimis* exception set forth in paragraph (e) of this section.

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

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

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

(A) Beginning February 15, 2009, at least twenty (20) percent of its handset models in that air interface, provided that, of any such models introduced during calendar year 2009, one model may be rated using ANSI C63.19–2006 (June 12, 2006), and all other models introduced during that year or subsequent years shall be rated using ANSI C63.19–2007 (June 8, 2007) or subsequently adopted version as may be approved pursuant to paragraph (k);

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

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

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

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

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

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

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

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

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

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

(i) Prior to September 7, 2008, include in the handset models it offers at least two handset models that comply with paragraph (b)(2) of this section;

(ii) Beginning September 7, 2008, either:

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

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

(*1*) Until May 15, 2009, at least three (3) handset models;

(*2*) Beginning May 15, 2009, at least five (5) handset models;

(*3*) Beginning May 15, 2010, at least seven (7) handset models; and

(*4*) Beginning May 15, 2011, at least ten (10) handset models.

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

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

(ii) *Offering models with differing levels of functionality.* Each service provider must offer its customers a range of hearing aid-compatible models with differing levels of functionality (*e.g.*, operating capabilities, features offered, prices). Each provider may determine the criteria for determining these differing levels of functionality, and must disclose its methodology to the Commission pursuant to paragraph (i)(3)(vii) of this section.

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

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

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

(2) *Disclosure requirement relating to handsets with Wi-Fi capability.* Beginning December 7, 2008, each manufacturer and service provider shall ensure that, wherever it provides hearing aid compatibility ratings for a handset model that incorporates a Wi-Fi air interface, it discloses to consumers, by clear and effective means (*e.g.*, inclusion of call-out cards or other media, revisions to packaging materials, supplying of information on Web sites) that the handset has not been rated for hearing aid compatibility with respect to Wi-Fi operation.

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

(h) *Web site requirements.* Beginning January 15, 2009, each manufacturer and service provider subject to this section 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 that the service provider has defined, the level that each hearing aid-compatible model falls under as well as an explanation of how the

functionality of the handsets varies at the different levels.

(i) *Reporting requirements.*

(1) *Reporting dates.* Manufacturers shall submit reports on efforts toward compliance with the requirements of this section on January 15, 2009 and on July 15, 2009, and on an annual basis on July 15 thereafter. Service providers shall submit reports on efforts toward compliance with the requirements of this section on January 15, 2009, and annually thereafter. Information in the reports must be up-to-date as of the last day of the calendar month preceding the due date of the report.

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

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

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

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

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

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

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

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

(viii) Status of product labeling;

(ix) Outreach efforts; and

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

Note to Paragraph (i)(2): For reports due on January 15, 2009, information provided with respect to paragraphs (i)(2)(ii) through(i)(2)(v) and (i)(2)(vii) and (i)(2)(viii) need be provided only for the six-month period from July 1 to December 31, 2008.

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

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

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

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

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

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

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

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

(viii) Status of product labeling;

(ix) Outreach efforts; and

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

Note to Paragraph (i)(3): For reports due on January 15, 2009, information provided with respect to paragraphs (i)(3)(i) through (i)(3)(iv) and (i)(3)(vi) through (i)(3)(viii) need be provided only for the six-month period from July 1 to December 31, 2008.

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

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

(k) *Delegation of rulemaking authority.*

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

(2) The Chief of the Wireless Telecommunications Bureau and the Chief of the Office of Engineering and Technology are delegated authority, by notice-and-comment rulemaking if required by statute or otherwise in the public interest, to issue an order amending this section to the extent necessary to approve any version of the technical standards for radio frequency interference or inductive coupling adopted subsequently to ANSI C63.19–2007 for use in determining whether a wireless handset meets the appropriate rating over frequency bands and air interfaces for which technical standards have previously been adopted either by the Commission or pursuant to paragraph (k)(1) of this section. This delegation is limited to the approval of changes to the technical standard that

do not raise major compliance issues. Further, by such approvals, the Chiefs may only permit, and not require, the use of such subsequent versions of standard document ANSI C63.19 to establish hearing aid compatibility.

PART 68—CONNECTION OF TERMINAL EQUIPMENT TO THE TELEPHONE NETWORK

■ 6. The authority citation for part 68 continues to read as follows:

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

■ 7. Section 68.418 is amended by revising paragraph (b) to read as follows:

§ 68.418 Procedure; designation of agents for service.

* * * * *

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

[FR Doc. E8–9855 Filed 5–6–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[IB Docket No. 07–253; FCC 08–98]

Ancillary Terrestrial Components in the 1.6/2.4 GHz Big LEO Bands

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Currently, Globalstar, Inc. (Globalstar) operates a Mobile-Satellite Service (MSS) system in the 1610–1626.5 MHz band (Big LEO L–band) and the 2483.5–2500 MHz band (Big LEO S–band). Globalstar, a code division multiple access (CDMA) system, is authorized to operate an ancillary terrestrial component (ATC) in the 1610–1615.5 MHz and 2487.5–2493 MHz segments of the Big LEO bands. By this decision, the Federal Communications Commission (Commission) increases the spectrum in which Big LEO MSS systems using CDMA technology operate ATC. As a result, the Commission increases the spectrum in which Globalstar may operate ATC in the Big LEO L–band to include the 1610–1617.775 MHz band, an increase of 2.275 megahertz, and in the Big LEO S–band to include the 2483.5–2495 MHz band, an increase of six megahertz.

DATES: Effective June 6, 2008.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Howard Griboff, 202/418–0657.

SUPPLEMENTARY INFORMATION: The 1610–1626.5 MHz band and 2483.5–2500 MHz band were allocated to the MSS for low-earth orbiting satellites in 1994. Currently, CDMA MSS systems, of which Globalstar is the only operational system, have exclusive MSS use of the 1610–1617.775 MHz segment of the L–band and the 2483.5–2500 MHz segment of the L–band.

ATC allows MSS systems to provide coverage in areas where the satellite signal is blocked, particularly in side buildings, by using terrestrial base stations that operate in the same frequency bands as the satellite systems. In order for an MSS system to operate ATC, it must meet several criteria to ensure that the ATC is part of the MSS system and not a stand-alone terrestrial system.

In 2003, the Commission authorized CDMA Big LEO MSS systems to operate ATC in 11 megahertz of their authorized spectrum: 5.5 megahertz at 1610–1615.5 MHz in the Big LEO L–band, and 5.5 megahertz at 2487.5–2493 MHz in the Big LEO S–band. In 2006, Globalstar requested that the Commission authorize it to operate ATC in all of the spectrum assigned to Globalstar, currently the 1610–1618.725 MHz and 2483.5–2500 MHz bands.

By a Report and Order and Order Proposing Modification, the Commission increases the spectrum in which CDMA Big LEO MSS systems may operate ATC to 7.775 megahertz at 1610–1617.775 MHz in the Big LEO L–band and 11.5 megahertz at 2483.5–2495 MHz in the Big LEO S–band, a total increase of 8.775 megahertz from the previous ATC authorization of eleven megahertz to an ATC authorization of 19.275 megahertz. The Commission does not authorize CDMA Big LEO MSS operators to operate ATC in the L–band segment at 1617.775–1618.725 MHz because that segment is shared time division multiple access (TDMA) Big LEO MSS, and it is highly likely that ATC would cause harmful interference to the only TDMA Big LEO MSS currently operational, operated by Iridium Satellite LLC. The Commission also does not authorize ATC in the 2495–2500 MHz segment of the Big LEO S–band because that segment is shared with the fixed and mobile services, including the Broadband Radio Service/Educational Broadband Service (BRS/EBS), and it is highly likely that ATC would cause harmful interference to that service.

The Commission also establishes strict out-of-band emissions limits for the upper edge of the ATC S–band (2495 MHz) to ensure that ATC will not cause harmful interference to BRS Channel 1 operations in the 2496–2502 MHz band.

The Commission proposes to modify Globalstar's MSS license pursuant to its authority under Section 316 of the Communications Act, to reflect that Globalstar will have authority to operate ATC in the bands 1610–1617.775 MHz and 2483.5–2495 MHz. This license modification will serve the public interest by providing more capable and flexible MSS/ATC service offerings in the Big LEO bands. Globalstar may protest the proposed modification of its license within 30 days of publication of this Report and Order and Order Proposing Modification in the **Federal Register**.

This Report and Order and Order Proposing Modification does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified ''information collection burden for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4).

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

List of Subjects in 47 CFR Part 25

Satellites.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rules

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 25 to read as follows: