timely payment of winning bids and any applicable late fees.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 20

[WT Docket No. 01–309; FCC 05–122]

Hearing Aid-Compatible Telephones

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In an *Order on Reconsideration*, the Commission granted in part and denied in part the petitions for reconsideration of the *Hearing Aid Compatibility Order*, which lifted the blanket exemption for digital wireless telephones under the Hearing Aid Compatibility Act of 1988 (HAC Act). In this document, in order to ensure that the Commission fully effectuates Congress' requirement that it ''establish such regulations as are necessary to ensure reasonable access to telephone service by persons with impaired hearing,'' the Commission seeks comment on two issues related to the Commission's hearing aid compatibility rules.

DATES: Submit comments on or before September 26, 2005 and reply comments are due on or before October 25, 2005.

ADDRESSES: You may submit comments, identified by WT Docket No. 01–309; FCC 05–122, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Federal Communications Commission's Web site: *http://www.fcc.gov/cgb/ecfs/*. Follow the instructions for submitting comments.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or phone 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document. Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. See **SUPPLEMENTARY INFORMATION** for filing instructions.

FOR FURTHER INFORMATION CONTACT: Andra Cunningham, *Andra.Cunningham@fcc.gov*, Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau, (202) 418–1630 or TTY (202) 418–7233.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communication Commission's *Further Notice of Proposed Rulemaking*, FCC 05–122, adopted on June 9, 2005, and released on June 21, 2005. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: *http://www.fcc.gov*. 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).

1. In the *Order on Reconsideration*, we clarified that the live, in-store consumer testing requirement applies to all retail outlets owned or operated by wireless carriers or service providers. In addition, we clarified that the *de minimis* exception, which exempts from the hearing aid compatibility requirements wireless carriers, service providers and handset manufacturers that offer two or fewer digital wireless handset models, applies on a per air interface basis, rather than across an entire product line. As set forth below, we seek comment on: (1) Extending the live, in-store consumer testing requirement to retail outlets that are not directly owned or operated by wireless carriers or service providers, and (2) whether to narrow the *de minimis* exception.

2. First, we seek comment on extending the live, in-store consumer testing requirement to retail outlets that are not directly owned or operated by wireless carriers or service providers. Although we clarified today that all retail outlets owned or operated by wireless carriers or service providers must make live, in-store consumer testing available, we are concerned that limiting this requirement to these retail outlets may prevent us from fully effectuating Congress' requirement that we ''establish such regulations as are necessary to ensure reasonable access to telephone service by persons with impaired hearing.'' Moreover, in its petition, the Cellular Telecommunications and Internet Association (CTIA) asks the Commission to ''clarify whether the [Commission] has legal authority and the scope of that authority to require retail stores to comply'' with the live, in-store testing requirement. Accordingly, we seek comment on this CTIA request. If we find that we have the authority explicitly to extend our hearing aid compatibility rules to independent retailers, should we do so?

3. We also seek comment on the impact that this proposal would have on small business retailers and independent retailers. Would extending this requirement create a more level playing field for different types of retailers? Or, would extending this requirement create an unacceptable burden for independent retailers, small business retailers, or both? For instance, will small business retailers have the physical space to fulfill this requirement? Do small business retailers have the sales volume to support implementation of this requirement? We encourage commenters to be specific as to the impact of this proposed modification.

4. We note that the relationship between independent retailers, whether large or small, and wireless carriers and service providers could have an impact on enforcement of a live, in-store consumer testing requirement. We further note that independent retailers act as agents for wireless carriers and service providers in selling wireless services. As section 217 of the Communications Act explicitly makes carriers responsible for the acts, omissions, and failures of their agents, among others, we seek comment on the nature of any contract provisions that would require the retailers to provide live, in-store consumer testing. Further, because section 217 does not apply to service providers who are not carriers, we seek comment on, whether under provisions of general agency law and the HAC Act, we could require those service providers, in their contracts with retailers selling their wireless services, to require live, in-store consumer testing. We also seek comment on the extent to which carriers and service providers should be expected to monitor and enforce such contract provisions regarding this testing requirement.

5. Finally, we seek comment on how many small business and independent retailers have adopted the fourteen-day trial period for new services set forth in the CTIA Voluntary Consumer Information Code (CTIA Code). Which retailers are bound by the CTIA Code

and offer a fourteen-day trial period? Are there major independent retailers that do not have a two week return policy? What percentage of carriers' service plans is purchased through independent retailers? Do manufacturers own any retail stores? If so, what percentage of manufacturers' handsets is purchased through an independent retailer? Are independent retailers currently preparing to comport with our hearing aid compatibility rules, specifically with our rules on the number of compliant handsets that must be offered for sale and our live, in-store consumer testing rules? Relatedly, we also seek comment on how parties envision consumers with hearing disabilities will be impacted in instances where independent retailers do not provide live, in-store testing or a thirty-day trial period, which the Commission encourages. If some independent retailers do not engage in practices that comport with our hearing aid compatibility rules, how will this present problems for hearing-impaired consumers? For instance, do parties foresee instances where independent retailers would claim that certain wireless phone models are compliant yet would not allow consumers to return handsets if hearing aid compatibility-related problems arose? Have there already been instances where independent retailers have claimed that certain phone models were hearing aid-compatible but refused to allow consumers to return handsets if hearing aid compatibility-related problems arose? We have determined that the ability to return handsets that do not comply with our rules is not a substitute for an in-store testing requirement for stores owned or operated by wireless carriers or service providers. What characteristics or independent retailers would support a different determination for the application of the in-store testing requirement in their case? Would returning wireless phones that present hearing aid compatibility-related problems be more difficult when handsets are purchased from an independent retailer or a small business retailer? We intend to follow these developments closely after the September 16, 2005, handset deployment date. As noted earlier, we believe that persons with hearing disabilities must have a meaningful opportunity and sufficient time to identify and become familiar with digital wireless phones.

6. Second, we seek comment on whether to narrow the *de minimis* exception so as to exempt from the hearing aid compatibility requirements wireless carriers, service providers and handset manufacturers that offer one digital wireless handset model per air interface, or whether we should narrow the *de minimis* exception in some other way. Specifically, we seek comment on whether the current rule reduces the ability of consumers with hearing aids and cochlear implants to have access to wireless devices. We seek comment on whether any particular modification that would narrow the *de minimis* exception would increase costs to all consumers, including those with and without hearing disabilities, or discourage market entry by manufacturers. We seek comment on the number of wireless carriers, service providers and manufacturers that would be affected by any such change in the rule, including the impact on small businesses. We encourage commenters to be specific and to provide empirical evidence as to the impact of narrowing the *de minimis* exception.

I. Procedural Matters

A. Ex Parte Rules—Permit-But-Disclose Proceeding

7. This is a permit-but-disclose rulemaking proceeding, subject to the ''permit-but-disclose'' requirements under § 1.1206(b) of the Commission's rules. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed pursuant to the Commission's rules.

B. Comment Dates

8. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before September 26, 2005 and reply comments on or before October 25, 2005. All filings related to this *Notice of Proposed Rulemaking* should refer to WT Docket No. 01–309.

9. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS), the Federal Government's eRulemaking Portal, or by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

10. Comments may be filed electronically using the Internet by accessing the ECFS: *http://www.fcc.gov/cgb/ecfs/* or the Federal eRulemaking Portal: *http://www.regulations.gov.* Filers should follow the instructions provided on the Web site for submitting comments.

11. For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov,* and include the following words in the body of the message, ''get form.'' A sample form and directions will be sent in response.

12. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

13. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

14. The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

15. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

16. U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington DC 20554.

17. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. Parties shall also serve one copy with the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (202) 488–5300, or via e-mail to *fcc@bcpiweb.com.*

18. *Availability of documents.* The public may view the documents filed in this proceeding during regular business hours in the FCC Reference Information Center, Federal Communications Commission, 445 12th Street, SW.,

Room CY–A257, Washington, DC 20554, and on the Commission's Internet Home Page: *http://www.fcc.gov.* Copies of comments and reply comments are also available through the Commission's duplicating contractor: Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160, or via e-mail at the following e-mail address: *http://www.bcpiweb.com.* 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).

C. Paperwork Reduction Act

19. This document does not contain proposed information collection(s) 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).

II. Initial Regulatory Flexibility Analysis

20. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules proposed in this *Further Notice of Proposed Rule Making.* Written public comments are requested regarding this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *FNPRM* provided in paragraph 77 of the Commission's order. The Commission will send a copy of the *FNPRM,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the *Further Notice of Proposed Rulemaking* and IRFA (or summaries thereof) will be published in the **Federal Register**.

Need for, and Objectives of, the Proposed Rules

21. In the *Order on Reconsideration,* we clarified that the live, in-store consumer testing requirement applies to all carrier-owned and operated retail outlets. In addition, we clarified that the *de minimis* exception, which exempts from the hearing aid compatibility requirements wireless carriers, service providers and handset manufacturers that offer two or fewer digital wireless handset models, applies on a per air interface basis, rather than across an entire product line.

22. In the *Further Notice of Proposed Rulemaking,* the Commission seeks comment on:

- Extending the live, in-store consumer testing requirement to retail outlets that are not directly owned or operated by wireless carriers or service providers; and
- Whether to narrow the *de minimis* exception so as to exempt from the hearing aid compatibility requirements wireless carriers, service providers and handset manufacturers that offer one digital wireless handset model per air interface, as well as other potential ways to narrow the *de minimis* exception.

Legal Basis

23. Authority for issuance of this item is contained in sections 1, 4(i), 7, 10, 201, 202, 208, 214, 301, 303, 308, 309(j), and 310 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 157, 160, 201, 202, 208, 214, 301, 303, 308, 309(j), and 310.

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

24. 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). As of the year 2002, according to SBA data, there were approximately 22.4 million small businesses nationwide.

25. Neither the Commission nor the SBA has developed specific definitions for small providers of the industries affected. Therefore, throughout our analysis, unless otherwise indicated, the Commission uses the applicable generic definitions under the SBA rules, and the North American Industry Classification System (NAICS) categories. In addition, to facilitate our analysis, we utilize the Commission's report, *Trends in Telephone Service (Trends),* published annually by the Commission's Wireline Competition Bureau. Below, we further describe and estimate the number of small entities that may be affected by the proposed rules, if adopted.

26. *Cellular and Other Wireless Telecommunications and Paging.* The SBA has developed a size standard for wireless small businesses within the two separate categories of Cellular and Other Wireless Telecommunications, and Paging. Under that standard, such a business is small if it has 1,500 or fewer employees. According to the FCC's *Telephone Trends Report* data, 975 companies reported that they were engaged in the provision of wireless service. Of these 975 companies, an estimated 767 have 1,500 or fewer employees and 208 have more than 1,500 employees. Consequently, we estimate that a majority of small wireless service providers may be affected by the proposed rules, if adopted.

27. *Wireless Communications Equipment Manufacturers.* The SBA has established a small business size standard for wireless communications equipment manufacturing. Under the 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.

28. *Radio, Television, and Other Electronics Stores.* ''This U.S. industry comprises: (1) Establishments known as consumer electronics stores primarily engaged in retailing a general line of new consumer-type electronic products; (2) establishments specializing in retailing a single line of consumer-type electronic products (except computers); or (3) establishments primarily engaged in retailing these new electronic products in combination with repair services.'' The SBA has developed a small business size standard for this category of retail store; that size standard is $7.5 or less in annual revenues. According to Census Bureau data for 1997, there were 8,328 firms in this category that operated for the entire year. Of these, 8,088 firms had annual sales of under $5 million, and an additional 132 had annual sales of $5 million to $9,999,999. Therefore, the majority of these businesses may be considered to be small.

Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

29. The *FNPRM* seeks comment on two of the Commission's existing hearing aid compatibility rules. First, all retail outlets owned or operated by wireless carriers or service providers must make live, in-store consumer testing available at this time. The Commission is seeking comment on extending this requirement to additional retail outlets. Second, the *de minimis* exception currently exempts from the hearing aid compatibility requirements wireless carriers, service providers and handset manufacturers that offer two or fewer digital wireless handset models, and applies on a per air interface basis. The Commission is seeking comment on narrowing the *de minimis* exception so as to exempt from the hearing aid compatibility requirements wireless carriers, service providers and handset manufacturers that offer one digital wireless handset model per air interface, as well as other potential ways to narrow the *de minimis* exception.

30. The proposals set forth in the *FNPRM* do not entail reporting, recordkeeping, and/or third-party consultation. The *FNPRM* seeks comment on two of the Commission's existing hearing aid compatibility rules.

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

31. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance 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.

32. The *FNPRM* seeks comment two of the Commission's hearing aid compatibility rules and could impact small entities. As noted in the *Hearing Aid Compatibility Order,* however, the critical nature of hearing aid compatibility with wireless phones limits the Commission's ability to provide small wireless carriers, service providers and handset manufacturers with a substantially less burdensome set of regulations than that placed on larger entities. Nonetheless, as set forth in the *Order on Reconsideration* and the *FNPRM,* the Commission continues to recognize that certain manufacturers and service providers, which may have only a small presence in the market, may be impacted by any future actions. We specifically seek comment on alternatives that might lessen any adverse economic impact on small entities, while fulfilling the goals of this proceeding.

Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

33. None.

III. Ordering Clauses

34. Pursuant to the authority of sections 1, 4(i), 7, 10, 201, 202, 208, 214, 301, 302, 303, 308, 309(j), 310, and 710 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 157, 160, 201, 202, 208, 214, 301, 302, 303, 308, 309(j), 310, and 610, this *FNPRM* is adopted.

35. It is further ordered that pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415, 1.419, interested parties may file comments on the *Further Notice of Proposed Rulemaking* on or before September 26, 2005 and reply comments on or before October 25, 2005.

36. It is further ordered that the Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of the *Further Notice of Proposed Rulemaking* and the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 20

Communications common carriers.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–14614 Filed 7–26–05; 8:45 am]

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