6712-01

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 20

WTB: WT Docket No. 07-250; DA 12-550

Hearing Aid Compatibility Technical Standard

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Wireless Telecommunications Bureau and the Office of Engineering and Technology (Bureaus) adopt the 2011 ANSI Standard for evaluating the hearing aid compatibility of wireless phones. The Bureaus take this action to ensure that a selection of digital wireless handset models is available to consumers with hearing loss.

DATES: These rules are effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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SUPPLEMENTARY INFORMATION:

This is a summary of the Wireless Telecommunications Bureau and the Office of Engineering and Technology's Third Report and Order in WT Docket 07-250, adopted April 9, 2012, and released April 9, 2012. The full text of the Third Report and Order is

available for inspection and copying during business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY-A257, Washington, DC 20554. Also, it may be purchased from the Commission's duplicating contractor at Portals II, 445 12th Street SW., Room CY-B402, Washington DC 20554; the contractor's web site, http://www.bcpiweb.com; or by calling (800) 378-3160, facsimile (202) 488-5563, or email FCC@BCPIWEB.com. Copies of the Third Report and Order also may be obtained via the Commission's Electronic Comment Filing System (ECFS) by entering the docket number, WT Docket No. 07-250. Additionally, the complete item is available on the Federal Communications Commission's Web site at http://www.fcc.gov.

I. INTRODUCTION

1. The Federal Communications Commission (Commission) has wireless hearing aid compatibility rules to ensure that consumers with hearing loss are able to access wireless communications services through a wide selection of handsets without experiencing disabling radio frequency (RF) interference or other technical obstacles. In order to ensure that the hearing aid compatibility rules cover the greatest number of wireless handsets and reflect recent technological advances, the Wireless Telecommunications Bureau (WTB) and Office of Engineering and Technology (OET) (jointly the Bureaus) adopt in this Third Report and Order, pursuant to authority delegated by the Commission, the most current hearing aid compatibility technical standard.

2. The standard that the Bureaus adopt was developed through a voluntary, consensus-driven approach and is broadly supported by both industry and consumer groups. The Bureaus extend its appreciation for the efforts of the many parties involved

in developing this standard. The Bureaus strongly encourage all parties to continue their efforts to refine and develop standards applicable to new telephone technologies that may create potential for interference with hearing aids.

II. BACKGROUND

3. To ensure that a selection of digital wireless handset models is available to consumers with hearing loss, the Commission's rules require both manufacturers and service providers to meet defined benchmarks for deploying hearing aid-compatible wireless phones. Specifically, manufacturers and service providers are required to offer minimum numbers or percentages of handset models that meet technical standards for compatibility with hearing aids operating in both acoustic coupling and inductive coupling modes. These benchmarks apply separately to each air interface for which the manufacturer or service provider offers handsets.

4. To define and measure the hearing aid compatibility of handsets, the Commission's rules reference the 2007 revision of American National Standards Institute (ANSI) technical standard C63.19 (the "2007 ANSI Standard"), formulated by the Accredited Standards Committee C63® – Electromagnetic Compatibility (ASC C63®). A handset is considered hearing aid-compatible for acoustic coupling if it meets a rating of at least M3 under the 2007 ANSI Standard. A handset is considered hearing aid-compatible for inductive coupling if it meets a rating of at least T3. The 2007 ANSI Standard specifies testing procedures for determining the M-rating and T-rating of digital wireless handsets that operate over the air interfaces that, at the time it was promulgated, were commonly used for wireless services in the 800-950 MHz and 1.6-2.5 GHz bands.

5. ASC C63® recently adopted an updated version of ANSI C63.19 (the "2011 ANSI Standard"). The 2011 ANSI Standard was published on May 27, 2011, and ASC C63® subsequently requested that the Commission adopt this newer version of the standard into its rules. The 2011 ANSI Standard expands the operating frequency range for covered wireless devices to 698 MHz - 6 GHz. It also establishes a direct method for measuring the RF interference level of wireless devices to hearing aids, which enables testing procedures to be applied to operations over any RF air interface or protocol. In addition, the 2011 ANSI Standard exempts from testing certain low power transmitters that are unlikely to cause unacceptable RF interference to hearing aids and deems those transmitters to meet an acceptable M rating.

6. To ensure that the hearing aid compatibility standard codified in the rules remains current, the Commission has delegated to the Chief of WTB and the Chief of OET limited authority to update its rules as revisions to ANSI technical standard C63.19 are published. In particular, the Commission delegated the authority to conduct a notice-and-comment rulemaking proceeding on the use of future versions of the standard that do not raise major compliance issues. In addition, the Commission delegated authority to the Chief of WTB and the Chief of OET to conduct rulemaking proceedings to adopt future versions of the ANSI Standard that add frequency bands or air interfaces not covered by previous versions, if the new version does not impose materially greater obligations than those imposed on services already subject to the hearing aid compatibility rules. Under this delegated authority, the Bureaus shall set an effective date for new obligations imposed on manufacturers and Commercial Mobile Radio Service (CMRS) providers as a result of their adoption of technical standards for

additional frequency bands and air interfaces that is no less than one year after release of the order for manufacturers and nationwide (Tier I) carriers and no less than 15 months after release for other service providers.

7. On November 1, 2011, the Bureaus released the Second Further Notice, which drew upon the request of ASC C63® to adopt the 2011 ANSI Standard as an applicable technical standard for evaluating the hearing aid compatibility of wireless handsets. See Amendment of the Commission's Rules Governing Hearing Aid Compatible Mobile Handsets, WT Docket No. 07-250, Second Further Notice of Proposed Rulemaking, 76 FR 77747, Dec. 14, 2011 (Second Further Notice). In the Second Further Notice, the Bureaus tentatively concluded to adopt the 2011 ANSI Standard. The Bureaus proposed a 12-month transition period during which multi-band and/or multi-mode handset models with certain operations not covered by the 2007 ANSI Standard could continue to be tested under that standard and launched as hearing aid-compatible with appropriate disclosure. The Bureaus also sought comment on whether a transition period of two years, with an additional three months for non-Tier I service providers, would be appropriate before applying handset deployment benchmarks to handset operations over air interfaces and frequency bands that are newly covered under the 2011 ANSI Standard.

III. DISCUSSION

A. Adoption of the 2011 ANSI Standard

8. The Bureaus adopt the 2011 ANSI Standard, as proposed, as an applicable technical standard for evaluating the hearing aid compatibility of wireless phones. The commenters unanimously support this proposal. Codification of the 2011 ANSI Standard

serves the public interest by applying the Commission's hearing aid compatibility rules to operations over additional frequency bands and air interface technologies. The new testing methodologies in the 2011 ANSI Standard will also greatly improve the measurement of potential hearing aid interference. The Bureaus find that adopting this new technical standard will not raise any major compliance issues or impose materially greater obligations with respect to newly covered frequency bands and air interfaces than those already imposed under the Commission's rules. The Bureaus also find no evidence that adopting the 2011 ANSI Standard will impose significant costs on manufacturers or service providers. If compliance costs increase significantly in the future, the Bureaus will evaluate any such future costs and address them as necessary in the Commission's ongoing hearing aid compatibility proceedings.

9. As set forth in the proposed rules in the Second Further Notice, the new rules will permit new handset models to be tested for certification using either the 2007 or 2011 ANSI Standard. All existing grants of certification issued under the 2007 ANSI Standard, as well as any pre-2010 grants under earlier versions of ANSI C63.19, remain valid, and no existing handset models will need to be retested or recertified as hearing aid-compatible. This is reflected in the rules both as proposed and as adopted. Consistent with existing rules that do not permit a handset model to be certified partly under one version of the ANSI Standard and partly under another, manufacturers must test each new handset model either exclusively under the 2007 ANSI Standard or exclusively under the 2011 ANSI Standard both during and after the 12-month transition period.

10. While supporting adoption of the 2011 ANSI Standard, some commenters

ask the Commission to provide additional guidance on certain testing techniques under the standard so that test equipment can be developed and the relevant tests applied. In particular, Samsung Telecommunications America, LLC (Samsung) states that guidelines are required to facilitate use of the Modulation Interference Factor (MIF) testing technique. Similarly, some commenters contend that guidance is necessary to enable hearing aid compatibility testing under the 2011 ANSI Standard for Voice over Long Term Evolution (VoLTE) transmissions.[1] The Bureaus anticipate that the manufacturers and standards bodies working with OET will be able quickly to develop guidance for the MIF testing techniques and for determination of the M rating for VoLTE transmissions. To the extent such guidance has not been issued, OET will work with manufacturers to the extent of its authority so that the manufacturers can provide test reports that sufficiently demonstrate compliance with the rules as required by Section 2.1033(d) of the rules. The Bureaus recognize, however, that it may take longer to develop guidance for testing the inductive coupling capability of VoLTE transmissions under the 2011 ANSI Standard. Accordingly, until such guidance is issued, OET will adapt its certification procedures so that manufacturers can use the 2011 ANSI Standard for these handsets during a 12-month transition period. The Bureaus further note that under the newly adopted rules, as an alternative to using the 2011 ANSI Standard, handsets introduced during the 12-month transition period may be tested under the 2007 ANSI Standard for their operations that are covered under that standard and treated as hearing aid-compatible only for those operations. Finally, because Section 2.1033(d) currently

[1] VoLTE refers to the native voice capability of an LTE system, and it is distinguished from Voice over Internet Protocol capability that may be provided over LTE through a third-party application. Questions regarding hearing aid compatibility testing for voice capabilities offered through third-party applications will be addressed separately by the Commission.

refers to the U-ratings that were used in early versions of ANSI Standard C63.19, the Bureaus take this opportunity to conform this rule to the terminology used in the 2007 and 2011 ANSI Standards. The Bureaus find good cause not to provide public notice and an opportunity for comment on this rule change under Section 553(b)(3)(B) of the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(B), because the change is purely ministerial and necessary to conform the Commission's written rules to ANSI Standard C63.19.

11. In addition to the need for technical guidance, commenters raise two other issues related to the 2011 ANSI Standard. While it supports the standard's adoption, Hearing Industries Association (HIA) is concerned that certain low power devices that are deemed M4 without testing under the 2011 ANSI Standard because they are unlikely to cause interference may in fact cause interference to hearing aids. As HIA suggests, the Bureaus will work with ASC C63® to monitor how these handsets perform and will consider future action if needed. Also, several consumer groups, in light of the more accurate testing methodology under the 2011 ANSI Standard, advocate eliminating the existing rule that allows phones operating over the Global System for Mobile (GSM) air interface in the 1900 MHz band to be tested with reduced power under some circumstances. As the consumer groups acknowledge, this issue is outside the scope of the Second Further Notice, and the Commission will address it separately.

B. Transitional Testing and Disclosure Requirements for Multi-Band and Multi-Mode Handsets

12. As proposed in the Second Further Notice and in Multi-Band Principles that were previously developed by a working group of industry and consumer

representatives, the Bureaus adopt a 12-month transition period for testing of multi-band and multi-mode handsets that incorporate operations which are not covered under the 2007 ANSI Standard. Specifically, for the 12 months following Federal Register publication of rules adopting the 2011 ANSI Standard, as an alternative to using the 2011 ANSI Standard, the Bureaus will permit manufacturers to certify such handsets as hearing aid-compatible if they meet hearing aid compatibility criteria under the 2007 ANSI Standard for all operations covered under that standard, provided they meet requisite disclosure obligations. After the end of the 12-month transition period, any new handset model containing operations that are not covered under the 2007 ANSI Standard will have to meet hearing aid compatibility criteria under the 2011 ANSI Standard for all of its operations in order to be considered hearing aid-compatible over any air interface. Handset models that are certified under the transitional rule during the 12-month transition period, however, may continue to be counted and marketed as hearing aid-compatible after the transition period has ended without additional testing or certification.

13. Several commenters explicitly support adopting a transition period for testing of handsets with newly covered operations, and none oppose this proposal. The transitional rule recognizes that at the time the new rules become effective, some manufacturers will be in product fabrication cycles where it will be impractical to initiate testing of upcoming multi-band or multi-mode handsets under the 2011 ANSI Standard. It is also possible, although unlikely, that multi-band or multi-mode handsets may be planned for near-term introduction that meet the hearing aid compatibility criteria for their operations that are covered under the 2007 ANSI Standard but do not meet those criteria for newly covered operations under the 2011 ANSI Standard. Accordingly, a

transition period will ease the burden on handset manufacturers that are close to introducing handsets that would have met hearing aid compatibility requirements under the old rules, but that without an accommodation would require retesting, or in some cases redesign, to be hearing aid-compatible under the new rules.

14. Most commenters that address the issue support the 12-month transition period proposed in the Second Further Notice as sufficient to meet manufacturers' needs. Telecommunications Industry Association (TIA) argues that a 24-month transition period is needed to allow sufficient time for laboratory equipment to be developed and tested, as well as to accommodate possible parts shortages and other unexpected developments. In its comments, TIA does not distinguish clearly between the transition period for multi-band and multi-mode testing and the transition period for applying deployment benchmarks, and to the extent it is concerned about uncertainties that may affect when models can be introduced to or withdrawn from the market, its arguments appear to pertain only to the separate transition for applying existing deployment benchmarks. To the extent TIA is concerned about the availability of testing equipment, the Bureaus note that nearly 10 months have already passed since the 2011 ANSI Standard was published, and that manufacturers have had the opportunity to use that time to develop such equipment. The Bureaus are not persuaded that an additional 24 months is needed, particularly in light of the other comments from manufacturers and service providers indicating that 12 months is sufficient.

15. The Bureaus clarify that during the 12-month transition period, manufacturers that choose to test a multi-band and/or multi-mode handset model only for those operations covered under the 2007 ANSI Standard must use the 2007 ANSI

Standard for such testing. Conversely, if manufacturers choose to use the 2011 ANSI Standard, they must test all operations in the handset that fall within the 2011 ANSI Standard, subject only to an accommodation for VoLTE transmissions. The Bureaus find that permitting use of the 2011 ANSI Standard to test only those operations covered under the 2007 ANSI Standard would be confusing and would discourage early testing of newly covered air interfaces and frequency bands. Accordingly, the Bureaus revise Section 20.19(b)(3)(ii) of the proposed rule to clarify that the 2007 ANSI Standard must be used for these tests during the 12-month transition period. Some commenters express concern that, given the lack of guidance for testing the inductive coupling capability of VoLTE transmissions, a simple choice between these two alternatives would make it impossible to test any handset with VoLTE capability under the 2011 ANSI Standard for any of its operations. In recognition of this concern, until such guidance is issued during the 12-month transition period, OET will permit handsets to be certified for inductive coupling under the 2011 ANSI Standard if they meet at least a T3 rating for all operations covered under that standard other than for VoLTE. Alternatively, to the extent a manufacturer is able to test inductive coupling capability for VoLTE transmissions under the 2011 ANSI Standard prior to the issuance of general guidance, OET will accept such testing if it meets OET's standards under 47 CFR 2.1033(d). Manufacturers and service providers will be required to disclose when handsets have not been tested for all their operations. The Bureaus expect that during the next 12 months, industry members will work with the standards bodies to finalize all guidance necessary to facilitate full application of the 2011 ANSI Standard, and the Bureaus will provide all possible support to this endeavor. In the event sufficient testing guidance has not been completed by the

end of the 12-month period, the Bureaus will recommend that the Commission address this issue.

16. The Commission's existing rules require manufacturers and service providers to inform consumers, using specific prescribed language, when handsets designated as hearing aid-compatible have not been tested over some of their operations. See 47 CFR 20.19(f)(2). This requirement will continue to apply to handsets introduced during the 12-month transition period that the manufacturer has not tested for newly covered operations. However, during the 12-month transition period, there may be handsets that the manufacturer tests and finds not to meet hearing aid compatibility requirements for newly covered operations under the 2011 ANSI Standard. The manufacturer may submit such handsets for certification based on hearing aid compatibility ratings under the 2007 ANSI Standard for operations covered by that standard. The Bureaus proposed in the Second Further Notice to require manufacturers and service providers to disclose to consumers that operations in these handsets had been tested and found not to be hearing aid-compatible. The Bureaus further proposed not to require specific language for this disclosure, but to rely on a general disclosure requirement backed by case-by-case resolution of disputes. In their comments, several consumer groups and HIA each propose specific disclosure language that they say should be required.[2] These parties argue that the Bureaus should prescribe language to fully inform consumers and to remove any possibility of inconsistent information. Other commenters, however, oppose prescribing language so as to maintain their flexibility to disclose the most relevant information about a particular handset model.

17. While the Bureaus recognize that uniform disclosure language can provide benefits of certainty to both regulated entities and consumers, the Bureaus decline to prescribe such language here. Instead, the Bureaus require generally that manufacturers and service providers inform users by clear and effective means about any operations in a hearing aid-compatible handset model that they tested under the 2011 ANSI Standard and found not to meet hearing aid compatibility requirements under that standard. The Bureaus recognize that the Commission already requires specific disclosure language for handset models that have not been tested for some of their operations, and the rule continues to require such disclosure for these handsets, including handsets introduced during the 12-month transition period that the manufacturer has not tested for newly covered operations. See 47 CFR 20.19(f)(2). Unlike that case, however, there is no consensus in the record on specific language to be used for handset models that the manufacturer has tested and found to be non-compliant under the 2011 ANSI Standard for some of their operations, and indeed several commenters oppose prescribing specific language.

18. In the absence of a consensus or a demonstrated problem, the Bureaus find it prudent not to prescribe language that may hinder regulated entities from developing and employing more effective disclosures. Moreover, as explained in the Second Further Notice, it is likely that few handsets that meet hearing aid compatibility standards for operations that are covered under the 2007 ANSI Standard will not also meet the hearing aid compatibility standards for newly covered operations. Nonetheless, the Bureaus note that the language proposed by the consumer groups appears to provide appropriate

[2] The consumer groups also propose requirements regarding the font and location of the disclosure. These

information to consumers, and to the extent it is applicable to their particular circumstances, the Bureaus encourage manufacturers and service providers to consider modeling their disclosures on this language. The Bureaus note that the consumer groups modeled their disclosure after the existing language for handsets with untested operations that was previously agreed to by representatives of all interests. The Bureaus will resolve any disputes over the adequacy of individual disclosures on a case-by-case basis. In addition, the Bureaus will revisit the possibility of prescribing disclosure language in the event disputes or misunderstandings develop in practice.

19. The Bureaus find that the language in Section 20.19(f)(2) will also constitute sufficient disclosure for multi-band and/or multi-mode handsets tested under the 2011 ANSI Standard during the 12-month transition period that have not been tested for inductive coupling capability over VoLTE transmissions. Alternatively, manufacturers or service providers may develop more descriptive and informative disclosure language for these handsets. The Bureaus advise manufacturers and service providers to consult with WTB staff before using any alternative language.

C. Transition Period for Applying Deployment Benchmarks

20. The 2011 ANSI Standard enables handsets to be tested for hearing aid compatibility over a broad range of frequency bands and independent of air interface technology. Therefore, following the adoption of this new standard and completion of the applicable transition period, the Commission's benchmark rules for hearing aid-compatible handset deployment will apply to handset operations over additional air interfaces and frequency bands. Under 47 CFR 20.19(k)(1), the Bureaus shall set the

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matters are outside the scope of the Second Further Notice, and they will be addressed separately by the

date when existing deployment benchmarks, and other attendant Section 20.19 hearing aid compatibility obligations, shall begin to apply to handset operations over newly covered air interfaces and frequency bands no earlier than one year after release of the order for manufacturers and Tier I carriers and no earlier than 15 months after release for other service providers.

21. As proposed in the Second Further Notice, the Bureaus adopt a 24-month transition period for manufacturers and Tier I service providers, and 27 months for non-Tier I service providers, to apply the Commission's existing deployment benchmarks to handset operations over air interfaces and frequency bands that are not covered under the 2007 ANSI Standard but are covered under the 2011 ANSI Standard. Several consumer groups argue that the Bureaus should adopt the minimum permissible 12-month and 15-month transition periods in order to serve the needs of consumers with hearing loss, stating that the changes in the standard are not dramatic and that manufacturers and service providers have had ample time to anticipate any possible effects. Indeed, the consumer groups state that they would prefer an even tighter schedule. HIA also states generally that it supports expeditious transition periods. Other commenters contend, however, that a longer, two-year period is necessary to allow affected parties to adjust existing handset inventories.

22. While the Bureaus recognize that a shorter transition period would benefit consumers if sufficient hearing aid-compatible models were in fact made available within that period to meet the benchmarks, the Bureaus are not persuaded that meeting these targets is generally feasible for manufacturers and service providers. Meeting

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Commission.

deployment benchmarks requires not only that hearing aid-compatible handsets be designed and tested under the new standard, but that manufacturers and service providers adjust their portfolios over each air interface to include sufficient numbers of models to meet the benchmarks. Moreover, under the newly adopted rules, many new handset models may not even be tested under the new standard during the first 12 months. The Bureaus agree with CTIA – The Wireless Association (CTIA) that the 12-month transition period for testing will help ensure that handsets tested under the 2011 ANSI HAC Standard will be available to service providers and manufacturers so that they can be offered to consumers within the 24-month benchmark compliance period. The Bureaus also note that a two-year transition period for applying hearing aid compatibility benchmarks and other requirements is consistent with the Commission's proposals in a separate pending Notice for wireless handsets that fall outside the subset of CMRS that is currently covered by Section 20.19(a) of the rules. While the Bureaus expect manufacturers and service providers to begin offering hearing aid-compatible handsets over the newly covered air interfaces and frequency bands well before the end of the transition period, the Bureaus agree with most of the commenters that a two-year period will appropriately accommodate their design, engineering, and marketing needs as they adjust their inventories to offer enough of these handset models to meet the benchmarks. In order to ease the burdens on non-Tier I service providers that often have difficulty obtaining the newest handset models, the Bureaus afford these providers an additional three months to meet newly applicable deployment benchmarks.

IV. PROCEDURAL MATTERS

A. Final Regulatory Flexibility Analysis

23. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Second Further Notice of Proposed Rulemaking. The Wireless Telecommunications Bureau (WTB) and the Office of Engineering and Technology (OET) (jointly the Bureaus) sought written public comment on the proposals in the Second Further Notice, including comment on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

24. 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 Bureaus believe that it would serve the public interest to analyze the possible significant economic impact of the proposed policy and rule changes in this band on small entities. Accordingly, this FRFA contains an analysis of this impact in connection with all spectrum that falls within the scope of this Third Report and Order, including spectrum in the 746-806 MHz Band.

1. Need for, and Objectives of, the Third Report and Order

25. The Third Report and Order amends Section 20.19 of the Commission's rules by adopting the new ANSI C63.19-2011 standard (the "2011 ANSI Standard") as an applicable hearing aid compatibility technical standard. The standard specifies testing procedures to establish the M-rating (acoustic coupling) and T-rating (inductive coupling) to gauge the hearing aid compatibility of handsets. Specifically, the Third Report and Order finds that adoption of the new 2011 ANSI Standard will raise no major compliance issues and will not impose materially greater obligations with respect to proposed newly covered frequency bands and air interfaces than those already imposed under the Commission's rules. By bringing operations over additional frequency bands and air

interfaces under the hearing aid compatibility regime, and by aligning the Commission's rules with the most current measurement practices, this rule change will help ensure that consumers with hearing loss are able to access wireless communications services through a wide selection of handsets without experiencing disabling interference or other technical obstacles.

26. Under the rules that the Bureaus adopt, a manufacturer is permitted to submit handsets for certification using either ANSI C63.19-2007 ("the 2007 ANSI Standard") or the 2011 ANSI Standard. A multi-band and/or multi-mode handset model launched earlier than 12 months after Federal Register publication of these rules codifying the 2011 ANSI Standard may be considered hearing aid-compatible if its operations that are covered under the current 2007 ANSI Standard meet the requirements for hearing aid compatibility, as determined under the 2007 ANSI Standard. For multi-band and/or multi-mode handset models launched after this period, as well as for handset models that only include operations covered under the 2007 ANSI Standard, the Commission will continue to apply the current principle that a handset model must meet ANSI C63.19 technical standards over all frequency bands and air interfaces over which it operates in order to be considered hearing aid-compatible over any air interface. The purpose of the transitional rule for models launched within 12 months after Federal Register publication is to limit the compliance burdens on businesses, both large and small, with respect to handset models that are already deployed or in development at the time these final rules become effective.

27. The Third Report and Order also adopts rules to phase in over a defined period of time expanded handset deployment requirements that result from adopting the

2011 ANSI Standard. The Bureaus adopt a two-year period for applying the hearing aid-compatible handset deployment benchmarks to handset operations over newly covered air interfaces and frequency bands. The Bureaus also afford non-Tier I service providers three months additional time to meet these deployment benchmarks in order to account for the difficulties they face in timely obtaining new handset models. The purpose of this rule change is to create a time frame for implementation that would be the most efficient and least burdensome for businesses, both large and small, while ensuring that consumers with hearing loss have timely access to wireless communications.

28. Finally, the Third Report and Order adopts a requirement that manufacturers and service providers disclose the hearing aid compatibility status of handsets that meet hearing aid compatibility criteria over previously covered frequency bands or air interfaces but have been tested and found not to meet such criteria over frequency bands or air interfaces that are outside the 2007 ANSI Standard. The Third Report and Order declines to require specific language for this disclosure. This rule change is a minimally intrusive means of ensuring that consumers with hearing loss have the information they need to choose a handset that will operate compatibly with their hearing aid or cochlear implant.

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

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

3. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Would Apply

30. The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by the rules adopted herein. 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).

31. Small Businesses, Small Organizations, and Small Governmental Jurisdictions. The Bureaus' action may, over time, affect small entities that are not easily categorized at present. The Bureaus therefore describe here, at the outset, three comprehensive, statutory small entity size standards. First, nationwide, there are a total of approximately 27.5 million small businesses, according to the SBA. In addition, a "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Nationwide, as of 2007, there were approximately 1,621,315 small organizations. Finally, the term "small governmental jurisdiction" is defined generally as "governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand." Census Bureau data for 2011 indicate that there were 89,476 local governmental jurisdictions in the United States. The Bureaus estimate that, of this total, as many as 88,506 entities may qualify as "small governmental jurisdictions." Thus, the Bureaus estimate that most governmental jurisdictions are small.

32. 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. The census category of "Cellular and Other Wireless Telecommunications" is no longer used and has been superseded by the larger category "Wireless Telecommunications Carriers (except satellite)". The Census Bureau defines this larger category to include ". . . establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular phone services, paging services, wireless Internet access, and wireless video services."

33. In this category, the SBA has deemed a wireless telecommunications carrier to be small if it has fewer than 1,500 employees. For this category of carriers, Census data for 2007 shows 1,383 firms in this category. Of these 1,383 firms, only 15 (approximately 1%) had 1,000 or more employees. While there is no precise Census data on the number of firms in the group with fewer than 1,500 employees, it is clear that at least the 1,368 firms with fewer than 1,000 employees would be found in that group. Thus, at least 1,368 of these 1,383 firms (approximately 99%) had fewer than 1,500 employees. Accordingly, the Commission estimates that at least 1,368 (approximately 99%) had fewer than 1,500 employees and, thus, would be considered small under the applicable SBA size standard.

34. Broadband Personal Communications Service. The broadband personal communications services (PCS) spectrum is divided into six frequency blocks designated

A through F, and the Commission has held auctions for each block. The Commission initially defined a "small business" for C- and F-Block licenses as an entity that has average gross revenues of $40 million or less in the three previous calendar years. For F-Block licenses, 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 claimed small business status in the first two C-Block auctions. A total of 93 bidders that claimed small business status won approximately 40 percent of the 1,479 licenses in the first auction for the D, E, and F Blocks. On April 15, 1999, the Commission completed the re-auction of 347 C-, D-, E-, and F-Block licenses in Auction No. 22. Of the 57 winning bidders in that auction, 48 claimed small business status and won 277 licenses.

35. On January 26, 2001, the Commission completed the auction of 422 C and F Block Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in that auction, 29 claimed small business status. 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. On February 15, 2005, the Commission completed an auction of 242 C-, D-, E-, and F-Block licenses in Auction No. 58. Of the 24 winning bidders in that auction, 16 claimed small business status and won 156 licenses. On May 21, 2007, the Commission completed an auction of 33 licenses in the A, C, and F Blocks

in Auction No. 71. Of the 12 winning bidders in that auction, five claimed small business status and won 18 licenses. On August 20, 2008, the Commission completed the auction of 20 C-, D-, E-, and F-Block Broadband PCS licenses in Auction No. 78. Of the eight winning bidders for Broadband PCS licenses in that auction, six claimed small business status and won 14 licenses.

36. 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 was completed in 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 was conducted in 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 conducted in 2002 and included 23 Basic Economic Area licenses. One bidder claiming small business status won five licenses.

37. The auction of the 1,050 800 MHz SMR geographic area licenses for the General Category channels was conducted in 2000. Eleven bidders that 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 in 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were awarded. Of the 22 winning bidders, 19 claimed "small business" status and won 129 licenses. Thus, combining all three auctions, 40 winning bidders for geographic area licenses in the 800 MHz SMR band claimed status as small business.

38. 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 Bureaus do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. In addition, the Bureaus do not know how many of these firms have 1500 or fewer employees. The Bureaus assume, 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 approved by the SBA.

39. Advanced Wireless Services (1710–1755 MHz and 2110–2155 MHz bands (AWS-1); 1915–1920 MHz, 1995–2000 MHz, 2020–2025 MHz and 2175–2180 MHz bands (AWS-2); 2155–2175 MHz band (AWS-3)). For the AWS-1 bands, the Commission has defined 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. In 2006, the Commission conducted its first auction of AWS-

1 licenses. In that initial AWS-1 auction, 31 winning bidders identified themselves as very small businesses. Twenty-six of the winning bidders identified themselves as small businesses. In a subsequent 2008 auction, the Commission offered 35 AWS-1 licenses. Four winning bidders identified themselves as very small businesses, and three of the winning bidders identified themselves as small businesses. For AWS-2 and AWS-3, although the Bureaus do not know for certain which entities are likely to apply for these frequencies, the Bureaus note that these bands are comparable to those used for cellular service and personal communications service. The Commission has not yet adopted size standards for the AWS-2 or AWS-3 bands but has proposed to treat both AWS-2 and AWS-3 similarly to broadband PCS service and AWS-1 service due to the comparable capital requirements and other factors, such as issues involved in relocating incumbents and developing markets, technologies, and services.

40. Rural Radiotelephone Service. The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System ("BETRS"). In the present context, the Bureaus will use the SBA's small business size standard 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 Bureaus estimate 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.

41. 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.

42. 700 MHz Guard Band Licenses. In the 700 MHz Guard Band 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. In 2000, the Commission conducted an auction of 52 Major Economic Area ("MEA") licenses. 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 700 MHz Guard Band licenses commenced and closed in 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.

43. Upper 700 MHz Band Licenses. In the 700 MHz Second Report and Order, the Commission revised its rules regarding Upper 700 MHz licenses. On January 24, 2008, the Commission commenced Auction 73 in which several licenses in the Upper 700 MHz band were available for licensing: 12 Regional Economic Area Grouping licenses in the C Block, and one nationwide license in the D Block. The auction concluded on March 18, 2008, with 3 winning bidders claiming very small business status (those with attributable average annual gross revenues that do not exceed $15 million for the preceding three years) and winning five licenses.

44. Lower 700 MHz Band Licenses. The Commission previously adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits. The Commission defined a "small business" as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years. A "very small business" is defined as 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. Additionally, the lower 700 MHz Service had a third category of small business status for Metropolitan/Rural Service Area (MSA/RSA) licenses—"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 approved these small size standards. An auction of 740 licenses (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings (EAGs)) was conducted in 2002. Of the 740 licenses available for auction, 484 licenses were won by 102 winning bidders. Seventy-two of the

winning bidders claimed small business, very small business or entrepreneur status and won licenses. A second auction commenced on May 28, 2003, closed on June 13, 2003, and included 256 licenses. Seventeen winning bidders claimed small or very small business status, and nine winning bidders claimed entrepreneur status. In 2005, the Commission completed an auction of 5 licenses in the Lower 700 MHz band. All three winning bidders claimed small business status.

45. In 2007, the Commission reexamined its rules governing the 700 MHz band. An auction of A, B and E block 700 MHz licenses was held in 2008. Twenty winning bidders claimed small business status (those with attributable average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years). Thirty three winning bidders claimed very small business status (those with attributable average annual gross revenues that do not exceed $15 million for the preceding three years).

46. Offshore Radiotelephone Service. This service operates on several UHF television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico. There are presently approximately 55 licensees in this service. The Commission is unable to estimate at this time the number of Offshore Radiotelephone Service licensees that would qualify as small under the SBA's small business size standard for the category of Wireless Telecommunications Carriers (except Satellite). Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees. Census data for 2007 show that there were 1,383 firms in this category that operated that year. Of those 1,383, 1,368 had fewer than 1000 employees, and 15 firms had more than 1000 employees. Thus under this category

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

47. Broadband Radio Service and Educational Broadband Service. Broadband Radio Service systems, previously referred to as Multipoint Distribution Service ("MDS") and Multichannel Multipoint Distribution Service ("MMDS") systems, and "wireless cable," transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service ("BRS") and Educational Broadband Service ("EBS") (previously referred to as the Instructional Television Fixed Service ("ITFS")). In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of no more than $40 million in the previous three calendar years. The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas ("BTAs"). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, the Bureaus estimate that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent BRS licensees that are considered small entities. After adding the number of small business auction licensees to the number of incumbent licensees not already counted, the Bureaus find that there are currently approximately 440 BRS licensees that are defined as small businesses under either the SBA standard or the Commission's rules. In 2009, the Commission conducted Auction 86, the sale of 78 licenses in the BRS areas. The Commission offered three levels of bidding credits: (i) a bidder with attributed average

annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years (small business) received a 15 percent discount on its winning bid; (ii) a bidder with attributed average annual gross revenues that exceed $3 million and do not exceed $15 million for the preceding three years (very small business) received a 25 percent discount on its winning bid; and (iii) a bidder with attributed average annual gross revenues that do not exceed $3 million for the preceding three years (entrepreneur) received a 35 percent discount on its winning bid. Auction 86 concluded in 2009 with the sale of 61 licenses. Of the ten winning bidders, two bidders that claimed small business status won four licenses; one bidder that claimed very small business status won three licenses; and two bidders that claimed entrepreneur status won six licenses.

48. In addition, the SBA's Cable Television Distribution Services small business size standard is applicable to EBS. There are presently 2,032 EBS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities. Thus, the Bureaus estimate that at least 1,932 licensees are small businesses. Since 2007, Cable Television Distribution Services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies." For these services, the Commission uses the SBA small business size standard for the category "Wireless Telecommunications Carriers (except satellite),"

which is 1,500 or fewer employees. To gauge small business prevalence for these cable services the Bureaus must, however, use the most current census data. Census data for 2007 show that there were 1,383 firms that operated that year. Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small.

49. 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 Section 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. The winning bidder was not a small entity.

50. Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing. The Census Bureau defines this category as follows: "This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment." The SBA has developed a small business size standard for Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, which is: all such firms having 750 or fewer employees. According to Census Bureau data for 2007, there were a total of 939 establishments in this category that operated for part or all of the entire year. Of this total, 784 had fewer than 500 employees and 155 had more than 100 employees. Thus, under this size standard, the majority of firms can be considered small.

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

51. The rules will not impose any new reporting or recordkeeping requirements on small entities. As described in Section A of this FRFA, manufacturers

and service providers, including small entities, will be required after a transition period, when applying the existing hearing aid-compatible handset deployment benchmarks, to include handset operations over air interfaces and frequency bands that are newly covered under the 2011 ANSI Standard. Non-Tier I carriers, many of which are small entities, will have an additional three months to meet this requirement. For handset models introduced during the first 12 months after the rules are published in the Federal Register, manufacturers and service providers will be required, when disclosing hearing aid compatibility information about a handset, to indicate if a handset has been tested and found not to meet hearing aid compatibility criteria over frequency bands and air interfaces that are outside the 2007 ANSI Standard. Manufacturers and service providers, including small entities, are already subject to similar requirements under the existing hearing aid compatibility rules, and the new rules will not impose materially greater compliance obligations on these entities.

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

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

53. In adopting the Third Report and Order, the Bureaus codify the new 2011 ANSI Standard as an applicable technical standard, in addition to the 2007 ANSI Standard, for evaluating the hearing aid compatibility of wireless phones. Permitting a choice of standards within the rule may ease burdens on manufacturers, including small entities. Commenters, including those representing the interests of small wireless carriers, requested that the Bureaus clarify that handsets already certified under the 2007 ANSI Standard will continue to be treated as hearing aid-compatible without any need for recertification. Under the new rules, existing handset models will not need to be retested or recertified as hearing aid-compatible.

54. The Bureaus also adopt a 12-month transition period for testing of new multi-band and multi-mode handset models in order to reduce burdens on small entities and others with respect to handset models that are currently in development. Under the new rules, multi-band and multi-mode handset models launched earlier than 12 months after Federal Register publication of these rule changes will be considered hearing aid-compatible for operations covered under the 2007 ANSI Standard even if they are not certified as hearing aid-compatible for their other operations. The Bureaus considered the alternative proposal of a 24-month testing transition period. The Bureaus conclude based on all the comments that a 12-month period is sufficient for manufacturers, including small entities, to arrange for testing under the new rules of their products that are in development, and that a shorter period would better meet the needs of consumers with hearing loss.

55. For handsets launched during the 12-month transition period that meet hearing aid compatibility criteria over previously covered air interfaces and frequency

bands, but that have been tested and found not to meet such criteria over one or more newly covered air interfaces or frequency bands, the new rules require that manufacturers and service providers disclose to consumers by clear and effective means that the handset does not meet hearing aid compatibility ratings for some of its operations. The Bureaus considered the alternative proposal of prescribing specific disclosure language, but the Bureaus find it more prudent to rely on a general disclosure requirement backed by case-by-case resolution in the event of disputes given the lack of consensus for specific language and the fact that the situation is likely rarely to occur. Nonetheless, to the extent it will reduce burdens for affected small entities, the Bureaus encourage them to consider modeling their disclosures on language proposed by groups representing the interest of consumers with hearing loss.

56. Finally, the Bureaus adopt a transition period before the deployment benchmark rules set forth in paragraphs (c) and (d) of Section 20.19 begin to apply to handset operations over newly covered frequency bands and air interfaces. The Bureaus sought comment on several alternatives in order to appropriately balance the design, engineering, and marketing requirements of manufacturers and service providers with the needs of consumers with hearing loss for compatible handsets that operate over the newest network technologies. While the Bureaus adopt a 24-month transition period for manufacturers and Tier I service providers, the Bureaus afford non-Tier I service providers, including small entities, an additional three months before the expanded benchmark requirements become applicable to them. The Bureaus take this step in order to ease the burden of compliance on these entities that often have difficulty obtaining the newest handset models.

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

B. Final Paperwork Reduction Act Analysis

58. This Third Report and Order does not contain 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).

C. Congressional Review Act

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

V. ORDERING CLAUSES

60. Accordingly, IT IS ORDERED, pursuant to sections 4(i), 303(r), and 710 of the Communications Act of 1934, 47 U.S.C. 154(i), 303(r), and 610, that this Third Report and Order IS HEREBY ADOPTED.

61. IT IS FURTHER ORDERED that Parts 2 and 20 of the Commission's Rules, 47 CFR Parts 2 and 20, ARE AMENDED, effective 30 days after publication of

the Third Report and Order in the Federal Register.

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

63. This action is taken under delegated authority pursuant to Sections 0.241(a)(1), 0.331(d), and 20.19(k) of the Commission's rules, 47 CFR 0.241(a)(1), 0.331(d), and 20.19(k).

List of Subjects

47 CFR Part 2

Communications equipment, Reporting and recordkeeping requirements, Telecommunications

47 CFR Part 20

Communications common carriers, Communications equipment, Incorporation by reference, Radio

FEDERAL COMMUNICATIONS COMMISSION

Jane E. Jackson
Associate Chief, Wireless Telecommunications Bureau

Ronald Repasi
Deputy Chief, Office of Engineering and Technology

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends parts 2 and 20 of title 47 of the Code of Federal Regulations as follows:

PART 2 - - FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation for Part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

2. Section 2.1033 is amended by revising paragraph (d) to read as follows:

§ 2.1033 Application for certification.

* * * * *

(d) Applications for certification of equipment operating under part 20 of this chapter, that a manufacturer is seeking to certify as hearing aid compatible, as set forth in § 20.19 of this chapter, shall include a statement indicating compliance with the test requirements of § 20.19 of this chapter and indicating the appropriate M–rating and T-rating for the equipment. The manufacturer of the equipment shall be responsible for maintaining the test results.

* * * * *

PART 20 - - COMMERCIAL MOBILE SERVICES

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

Authority: 47 U.S.C. 154, 160, 201, 251-254, 301, 303, 316, and 332 unless otherwise noted. Section 20.12 is also issued under 47 U.S.C. 1302.

4. Section 20.19 is amended by:

a. Revising paragraph (a)(1),

b. Removing the introductory text from paragraph (b),

c. Revising paragraphs (b)(1) and (b)(2),

d. Adding paragraph (b)(3),

e. Removing paragraph (b)(5),

f. Revising paragraphs (c) introductory text, (d) introductory text,

g. Adding introductory text to paragraph (f)(2),

h. Revising paragraph (f)(2)(i), and

i. Adding paragraphs (f)(2)(iii) and (l).

The additions and revisions read as follows:

§ 20.19 Hearing aid-compatible mobile handsets.

(a) * * *

(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 698 MHz to 6 GHz bands.

* * * * *

(b) Hearing aid compatibility; technical standards -- (1) For radio frequency interference. 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 C63.19-2007 or ANSI C63.19-2011. Any grants of

certification issued before January 1, 2010, under previous versions of ANSI C63.19 remain valid for hearing aid compatibility purposes.

(2) For inductive coupling. 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 C63.19-2007 or ANSI C63.19-2011 Any grants of certification issued before January 1, 2010, under previous versions of ANSI C63.19 remain valid for hearing aid compatibility purposes.

(3) Handsets operating over multiple frequency bands or air interfaces. (i) Except as provided in paragraph (b)(3)(ii) of this section, a wireless handset used for digital CMRS only over the 698 MHz to 6 GHz frequency bands is hearing aid-compatible with regard to radio frequency interference or inductive coupling if it meets the applicable technical standard set forth in paragraph (b)(1) or (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 operations outside the 698 MHz to 6 GHz frequency bands is hearing aid-compatible if the handset otherwise satisfies the requirements of this paragraph.

(ii) A handset that is introduced by the manufacturer prior to July 17, 2013, and that does not meet the requirements for hearing aid compatibility under paragraph (b)(3)(i) of this section, is hearing aid-compatible for radio frequency interference or inductive coupling only with respect to those frequency bands and air interfaces for which technical

standards are stated in ANSI C63.19-2007 if it meets, at a minimum, an M3 rating (for radio frequency interference) or a T3 rating (for inductive coupling) under ANSI C63.19-2007 for all such 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.

* * * * *

(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. However, prior to July 17, 2014 for manufacturers and Tier I carriers and October 17, 2014 for service providers other than Tier I carriers, the requirements of this section do not apply to handset operations over frequency bands and air interfaces for which technical standards are not stated in ANSI C63.19-2007.

* * * * *

(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. However, prior to July 17, 2014 for manufacturers and Tier I carriers and October 17, 2014 for service providers other than Tier I carriers, the requirements of this section do not apply to handset operations over frequency bands and air interfaces for which technical standards are not stated in ANSI C63.19-2007.

* * * * *

(f) * * *

(2) Disclosure requirements relating to handsets treated as hearing aid-compatible over fewer than all their operations.

(i) Each manufacturer and service provider shall ensure that, wherever it provides hearing aid compatibility ratings for a handset that is considered hearing aid-compatible under paragraph (b)(3)(ii) of this section only with respect to those frequency bands and air interfaces for which technical standards are stated in ANSI C63.19-2007 and that has not been tested for hearing aid compatibility under ANSI C63.19-2011, or any handset that operates over frequencies outside of the 698 MHz to 6 GHz bands, 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 some of its operation(s). This disclosure shall include the following language:

> This phone has been tested and rated for use with hearing aids for some of the wireless technologies that it uses. However, there may be some newer wireless technologies used in this phone that have not been tested yet for use with hearing aids. It is important to try the different features of this phone thoroughly and in different locations, using your hearing aid or cochlear implant, to determine if you hear any interfering noise. Consult your service provider or the manufacturer of this phone for information on hearing aid compatibility. If you have questions about return or exchange policies, consult your service provider or phone retailer.

* * * * *

(iii) Each manufacturer and service provider shall ensure that, wherever it provides hearing aid compatibility ratings for a handset that is considered hearing aid-compatible under paragraph (b)(3)(ii) of this section only with respect to those frequency bands and air interfaces for which technical standards are stated in ANSI C63.19-2007, and that the manufacturer has tested and found not to meet hearing aid compatibility requirements under ANSI C63.19-2011 for operations over one or more air interfaces or frequency bands for which technical standards are not stated in ANSI C63.19-2007, 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 does not meet the relevant rating or ratings with respect to such operation(s).

* * * * *

(l) The standards required in this section are incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than those specified in this section, the FCC must publish notice of change in the Federal Register and the material must be available to the public. All approved material is available for inspection at the Federal Communications Commission (FCC), 445 12th St., SW., Reference Information Center, Room CY-A257, Washington, DC 20554 and is available from the sources indicated below. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202□741□6030 or go to http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_ locations.htm

(1) IEEE Operations Center, 445 Hoes Lane, Piscataway, NJ 08854-4141, (732) 981-0060, http://www.ieee.org/portal/site

(i) ANSI C63.19-2007, American National Standard Methods of Measurement of Compatibility between Wireless Communication Devices and Hearing Aids, June 8, 2007

(ii) ANSI C63.19-2011, American National Standard Methods of Measurement of Compatibility between Wireless Communication Devices and Hearing Aids, May 27, 2011

(2) [Reserved]

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