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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 20

WT Docket No. 15-285; FCC 16-103

Improvements to Benchmarks and Related Requirements Governing Hearing Aid-Compatible Mobile Handsets

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission adopts this Report and Order to implement a historic consensus proposal for ensuring that people with hearing loss have full access to innovative handsets.

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

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SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's Report and Order in WT Docket 15-285, adopted August 4, 2016, and released August 5, 2016. The document is available for download at http://fjallfoss.fcc.gov/edocs_public/. The complete text of this document is also available for inspection and copying during normal business hours in the FCC Reference

Information Center, Portals II, 445 12th Street SW., Room CY-A257, Washington, DC 20554. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to FCC504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

INTRODUCTION

1. In this Report and Order, the Commission takes several steps to implement a historic consensus proposal for ensuring that people with hearing loss have full access to innovative handsets. First, the Commission amends the hearing aid compatibility requirements that are generally applicable to wireless service providers and manufacturers of digital wireless handsets. Specifically, the Commission increases the number of hearing aid-compatible handsets that service providers and manufacturers are required to offer with two new percentage benchmarks: (1) 66 percent of offered handset models must be compliant following a two-year transition period for manufacturers, with additional compliance time for service providers, and (2) 85 percent of offered handset models must be compliant following a five-year transition period for manufacturers, with additional compliance time for service providers. The Commission also expands the de minimis exception to provide a more limited obligation for entities offering four or five handsets.

2. The Commission also reconfirms its commitment to pursuing 100 percent hearing aid compatibility to the extent achievable. The Commission therefore invites consensus plan stakeholders and other interested parties to make supplemental submissions over the next several years on the achievability of a 100 percent hearing aid

compatibility deployment benchmark considering technical and market conditions. As part of this process, the Commission also expects stakeholders to make submissions on additional points of agreement regarding other unresolved issues raised in this proceeding, including using alternative technologies to achieve hearing aid compatibility and establishing a safe harbor for service providers based on a public clearinghouse that claims to identify compliant handsets.

3. In order to advance towards the Commission's proposed 100 percent compatibility deployment benchmark, the Commission seeks to continue the productive collaboration between stakeholders and other interested parties so that it can obtain data and information about the technical and market conditions involving wireless handsets and hearing improvement technologies. In this regard, the Commission suggests a timeline identifying general milestones over the next several years when the consensus plan stakeholders and other interested parties may, at their election, make additional submissions. Based in significant part on the information it receives, the Commission intends to determine the achievability of a 100 percent compliance standard for wireless hearing aid compatibility by no later than 2024.

BACKGROUND

4. The current hearing aid compatibility deployment benchmarks require that, subject to a de minimis exception described below, a handset manufacturer must meet, for each air interface over which its models operate, (1) at least an M3 rating for acoustic coupling for at least one-third of its models using that air interface (rounded down), with a minimum of two models, and (2) at least a T3 rating for inductive coupling for at least one-third of its models using that interface (rounded down), with a minimum of two

models. Similarly, a service provider must meet, for each air interface over which its models operate, (1) at least an M3 rating for acoustic coupling for at least 50 percent of its models using that air interface (rounded up) or ten models, and (2) at least a T3 rating for inductive coupling for at least one-third of its models using that interface (rounded up) or ten models.

5. In general, under the de minimis exception, most manufacturers and service providers that offer two or fewer digital wireless handset models operating over a particular air interface are exempt from the benchmark deployment requirements in connection with that air interface. Larger manufacturers with two or fewer handset models in an air interface have a limited obligation, as do service providers offering two or fewer models that obtain those models only from larger manufacturers. The provision further provides that any manufacturer or service provider that offers three digital wireless handset models operating over a particular air interface must offer at least one such handset model that meets the Commission's acoustic and inductive coupling requirements for that air interface.

6. To help ensure compliance with these benchmarks, the Commission's hearing aid compatibility rules also require wireless handset manufacturers and wireless service providers to submit annual reports to the Commission detailing the covered handsets that they offer for sale, the models that are hearing aid-compatible (and the specific rating), and other information relating to the requirements of the rule. In June 2009, the Commission introduced the electronic FCC Form 655 as the mandatory form for filing these reports, and since that time, both service providers and manufacturers have filed reports using the electronic system. Service provider compliance filings are due January

15 each year and manufacturer reports are due July 15 each year.

7. On November 12, 2015, three consumer advocacy organizations and three industry trade associations submitted a Joint Consensus Proposal (JCP) providing for a process for moving away from the current fractional benchmark regime. The parties to the JCP state that they “agree that hearing aid compatibility for all wireless handsets is the Commission’s collective goal” and that “the Commission’s regulations must balance this goal with the ability to encourage innovations that can benefit all people with disabilities.” With these principles in mind, the JCP proposes staged increases in the applicable deployment benchmarks, culminating in a 100 percent benchmark in eight years, subject to an assessment by the Commission of whether complete compatibility is achievable.

8. Specifically, the JCP provides that within two years of the effective date of the new rules, 66 percent of wireless handset models offered to consumers should be compliant with the Commission’s acoustic coupling (M rating) and inductive coupling (T rating) requirements. The proposal provides further that within five years of the effective date, 85 percent of wireless handset models offered to consumers should be compliant with the Commission’s M and T rating requirements.

9. In addition to these two-year and five-year benchmarks, the proposal provides that “[t]he Commission should commit to pursue that 100% of wireless handsets offered to consumers should be compliant with [the M and T rating requirements] within eight years.” The JCP conditions the transition to 100 percent, however, on a Commission determination within seven years of the rules’ effective date that reaching the 100 percent goal is “achievable.” The JCP prescribes the following process for making that

determination:

A task force will be created, including all stakeholders, identifying questions for exploration in year four after the effective date that the benchmarks described above are established. After convening, the stakeholder task force will issue a report to the Commission within two years.

The Commission, after review and receipt of the report described above, will determine whether to implement 100 percent compliance with [the M and T ratings requirements] based on concrete data and information about the technical and market conditions involving wireless handsets and the landscape of hearing improvement technology collected in years four and five. Any new benchmarks resulting from this determination, including 100 percent compliance, would go into effect no less than twenty-four months after the Commission's determination.

Consumer groups and the Wireless Industry shall work together to hold meetings going forward to ensure that the process will include all stakeholders: at a minimum, consumer groups, independent research and technical advisors, wireless industry policy and technical representatives, hearing aid manufacturers and Commission representatives.

10. The proposal provides that these new benchmarks should apply to manufacturers and service providers that offer six or more digital wireless handset models in an air interface, except that compliance dates for Tier I carriers and service providers other than Tier I carriers would be imposed six months and eighteen months, respectively, behind those for manufacturers, to account for the availability of handsets and inventory turn-over rates. The proposal recommends that the existing de minimis

exception continue to apply for manufacturers and service providers that offer three or fewer handset models in an air interface and that manufacturers and service providers that offer four or five digital wireless handset models in an air interface should ensure that at least two of those handsets models are compliant with the Commission's M and T rating requirements. In addition, the proposal provides that these benchmarks should only be applicable if testing protocols are available for a particular air interface.

11. On April 21, 2016 and July 29, 2016, the parties to the JCP filed ex parte letters supplementing their proposal and further addressing the proposed multi-stakeholder task force process.

ADOPTION OF ENHANCED BENCHMARKS

12. As proposed in the JCP and the Notice, in place of the current percentage and minimum number handset deployment obligations, the Commission adopts the 66 and 85 percent benchmarks for manufacturers and service providers who offer six or more handset models per air interface. Manufacturers must comply with these benchmarks following a transition period of two and five years, respectively, running from the effective date of the new rules. Each of these transition periods is further extended by six months for Tier I carriers and 18 months for service providers other than Tier I carriers. To satisfy these new benchmarks, handset models must meet both a rating of M3 or higher for reduced RF interference in acoustic coupling mode and T3 or higher for inductive coupling capability. The Commission will maintain its current rounding rules, which means that the Commission's rules will continue to allow manufacturers to round their fractional deployment obligations down and the Commission's rules will continue to require service providers to round their fractional deployment obligations up.

13. Consistent with the JCP and the Notice, the Commission will also maintain the current de minimis exception that applies to manufacturers and service providers that offer three or fewer handset models in an air interface. In addition, as proposed in the Notice and the JCP, the Commission amends the de minimis rule to additionally provide that when the new benchmarks become applicable, a more limited obligation will apply to manufacturers and service providers that offer 4 or 5 handsets. Specifically, the Commission adopts, in most respects, the amendment proposed in the Notice and the JCP, and provide that (1) manufacturers and service providers that offer four wireless handset models in an air interface must ensure that at least two of those handset models are compliant with the Commission's M and T rating requirements; and (2) manufacturers who offer five wireless handset models in an air interface must similarly offer at least two that are compliant with the Commission's M and T rating requirements.

14. The Commission modifies the JCP's proposed modification to the de minimis rule with regard to service providers that offer five wireless handset models in an air interface. Under the JCP, such service providers, like manufacturers offering that number of handset models, would in the future only have to offer two handset models that are compliant with the Commission's M and T rating requirements. Unlike in the cases discussed above, however, adoption of this requirement would result in a reduction of the obligations that such service providers have under the current rules. The Commission's current acoustic coupling deployment obligation for service providers offering five handset models in an air interface is 50 percent, or 2.5 handset models. Unlike manufacturers, service providers are required to round up when calculating their fractional deployment obligations and, therefore, under the Commission's existing rules

the minimum number of models rated M3 or better for service providers offering five handset models in an air interface is three. No commenter argued that the Commission's current rounding rules should be revised, and considering the broader context—a transition toward universal handset compliance—the Commission is unwilling to reduce the existing obligation. The parties to the JCP argue that fractional obligations for both manufacturers and service providers should be rounded down, but they make this proposal solely on the grounds that it is “consistent with current requirements.” Further, the most recent submission from the parties to the JCP state their understanding that service providers offering five handset models will be required to offer three compatible handsets and raise no objection. Therefore, under the expanded de minimis exception, service providers who offer five handset models will have to ensure that at least three meet the Commission's M and T rating requirements. While this decision results in an increase in the number of T-rated handsets that a service provider who offers five handset models in an air interface currently must offer under the Commission's existing rules (i.e., from two to three), it is consistent with the JCP's proposal that handsets offered to satisfy the new benchmarks meet both an M3 and T3 rating (or better). It is also consistent with a general goal of moving toward 100 percent hearing aid compatibility.

15. The expanded de minimis rule for manufacturers and service providers offering four or five handset models in an air interface will take effect for manufacturers, Tier I carriers, and service providers other than Tier I carriers at the same time in each case as the new 66 percent benchmark (e.g., it will take effect for manufacturers in two years, and for Tier I carriers in two years and six months). This implementation schedule will run from the effective date of the new rules. For enforcement purposes, however, the

Commission will review compliance with the new benchmarks and de minimis requirements starting the first day of the month after the new benchmarks become effective. This approach will eliminate any partial month compliance issues that may arise with the new requirements.

16. The Commission concludes that the changes it adopts today satisfy the Commission's statutory obligations. The Commission notes that the Section 710(b)(2)(b) four-part test for lifting an exemption does not apply here where the Commission is assessing benchmarks for services and equipment already within the scope of Section 20.19 of the rules. Section 710(e), however, requires the Commission to "consider costs and benefits to all telephone users, including persons with and without hearing loss," and to "ensure that regulations adopted to implement [the Hearing Aid Compatibility Act] encourage the use of currently available technology and do not discourage or impair the development of improved technology." Section 710(e) further directs that the Commission should use appropriate timetables and benchmarks to the extent necessary due to technical feasibility or to ensure marketability or availability of new technologies to users. As discussed below, considering the costs and benefits to all end users, including persons with and without hearing loss and the impact on the use and development of technology, the Commission finds the new benchmarks and implementation schedule to be appropriate, reasonable, and technically feasible, and therefore in the public interest. The Commission further finds, given the acceptance of these benchmarks by both industry and consumer stakeholders, there does not appear to be any suggestion or evidence that they would impede the marketability and availability of new technologies to users.

17. As reflected in the wide and unanimous support in the record for revising the Commission's hearing aid compatibility requirements as described above, these changes strike an appropriate balance between the interests of handset manufacturers, large and small service providers, and consumers with hearing loss. The Commission's actions today will provide significant benefits by expanding access to hearing aid-compatible handsets, while preserving the flexibility that allows competition and innovation in devices to flourish. Consumers with hearing loss, including those who rely on hearing aids or cochlear implants, will have more compatible handsets from which to choose when purchasing new phones, and manufacturers and service providers will have the time they need to meet the Commission's new benchmark requirements. This approach properly accounts for the realities of technology constraints as well as the needs of those with hearing loss. Further, no commenting party has argued that the costs of complying with the new benchmarks and their related implementation provisions would be detrimental to any consumers, with or without hearing loss. In fact, commenters broadly support the new benchmarks, timelines, additional implementation periods, and related provisions.

18. In addition to benefitting hearing aid users generally, raising the benchmarks to increase the percentage of handset models with at least a T3 rating will be particularly beneficial to wireless users in the deaf and hard of hearing community who rely on telecoil-equipped hearing aids and cochlear implants. Further, given that these benchmarks were agreed to by the parties to the JCP, the stakeholders have already agreed that the associated costs of meeting hearing aid compatibility requirements for a higher percentage of models are reasonable. In light of the support for these changes

from both consumers and the industries that would bear the costs, and given the lack of any significant related opposition or evidence to the contrary, the Commission finds it reasonable, consistent with the mandate of Section 710(e), to conclude that the benefits of adopting these benchmarks will exceed their costs.

19. Further, the Commission finds that the transition periods the Commission adopts today are reasonable and are in the public interest. The Commission notes in particular that the JCP stakeholders crafted and proposed them, signaling broad support for these timelines. Moreover, the Commission has previously determined that two years is an appropriate period to accommodate the typical handset industry product cycle. The Commission believes that the transition periods identified in the JCP provide adequate time for handset manufacturers and service providers to adjust handset portfolios to ensure compliance with the new benchmarks, and the Commission therefore adopts them.

20. While RWA argues that the compliance deadline for small service providers should be 24 months beyond the end of the two and five year transition periods for manufacturers, the Commission finds that the additional 18 months proposed in the JCP and the Notice is sufficient to address their concerns. In the Fourth Report and Order, the Commission allowed such providers only an additional three months after the compliance date for manufacturers and Tier I carriers to meet new deployment benchmarks and related requirements. In prior hearing aid compatibility transitions, the Commission has consistently allowed service providers that are not Tier I carriers no more than three months' time beyond the transition period provided to Tier I carriers. Here, the Commission is allowing service providers other than Tier I carriers an additional 12 months beyond the compliance date for Tier I carriers before they must be in compliance,

and 18 months after manufacturers have to meet the new benchmarks. Therefore, there should be sufficient hearing aid-compatible handsets available to small service providers to integrate into their product lines. The Commission also notes that other commenters—including commenters that represent small wireless service providers—support the transition period for small providers proposed in the JCP and the Notice. Taking into account that the latest hearing aid compatibility reports show a high rate of compliance for such providers, but also considering the significant increase the Commission is adopting in the applicable benchmarks, the Commission believes the agreed upon transition period for service providers other than Tier I carriers is reasonable.

21. In addition, the Commission finds it in the public interest to continue to use the M3 and T3 ratings as the minimum that covered handsets must meet. The Commission declines to adopt ACI Alliance's proposal to put in place a benchmark or other mechanism that would require manufacturers to offer M4 and T4 rated handsets. The Commission believes this issue is better considered in the ANSI standards setting process or the ongoing stakeholder consensus process. Further, the Commission disagrees with ACI Alliance's assertion that the number of M4 and T4 rated handsets has been decreasing. In fact, manufacturers' compliance filings show the opposite. In light of this increase, it does not appear necessary to revise this component of the hearing aid compatibility requirements at this time.

22. As proposed by the JCP and the Notice, meeting the new benchmarks of 66 and 85 percent will require offering handset models that have both an M3 rating (or higher) and a T3 rating (or higher). The current rules allow manufacturers and service providers to meet their M rating and T rating benchmarks with handset models that meet

one rating but not the other. As a practical matter, however, all T3-rated handsets already meet the M3 rating standard as well. None of the comments the Commission received indicate that requiring manufacturers and service providers to meet their benchmarks only with handsets that meet both standards is technically infeasible or will affect the marketability of these handsets in the United States. The Commission's approach encourages the use of currently available technology by relying on existing M3 and T3 coupling standards. Further, handsets that are hearing aid-compatible in either acoustic or telecoil mode will further benefit consumers with hearing loss by reducing the need for consumers to research whether a handset works only in one mode or the other. Moreover, the Commission's approach will not discourage or impair the development of improved technology. The Commission notes that wireless technology has continued to evolve rapidly over the years that the hearing aid compatibility rules have been in effect. The Commission anticipates that such innovation will continue with these revised benchmarks in place.

23. The JCP proposed that the new benchmarks apply only "if testing protocols are available for a particular interface." The Commission notes that, as with the current deployment requirements and consistent with past Commission precedent, manufacturers and service providers will be required to meet the new benchmarks only for technologies operating in the frequency bands covered by the approved technical standards. Further, these approved technical standards specify testing protocols for determining M and T ratings for mobile devices operating within the frequency range covered by the standards. Accordingly, the Commission does not agree that testing protocols are unavailable for new technologies within the scope of the standards. The Commission acknowledges,

however, that, there may be cases of new technologies for which additional guidance or clarification on the application of the procedures may be helpful, and that temporary relief may be appropriate pending such guidance. In the past, the Commission has considered such issues on a case-by-case basis as they are raised by parties, and the Commission finds no reason to depart from this approach, given that there is no indication that this approach has not been successful in addressing any industry concerns. Accordingly, to the extent that parties request further guidance on testing procedures in connection with a particular new technology deployed in those bands, the Commission will, as it has in the past, address such requests on a case-by-case basis and provide appropriate guidance, or tailored accommodations pending guidance from the Commission or appropriate standards-setting bodies, as needed. The Commission would not, however, want the development of such testing protocols to delay hearing aid compatibility for new air interfaces or equipment. Therefore, the Commission expects the timely development of such testing protocols, and caution against unnecessary delays.

24. The Commission also finds that it is in the public interest to retain the existing de minimis exception for manufacturers and service providers that offer three handset models or less, and to expand it to manufacturers and service providers that offer four or five digital wireless handset models in an air interface. No commenter objects to retaining or expanding the current de minimis rule while the new benchmarks of 66 and 85 percent are in effect. The Commission's expansion of the de minimis rule is generally consistent with the JCP and will reduce the burden on small and new industry participants. As discussed above, however, the Commission will require service providers who offer five handset models in an air interface to ensure that at least three

meet the Commission's M and T rating requirements. The Commission believes the de minimis rule as revised today appropriately balances the goal of facilitating widespread deployment of hearing aid-compatible devices to consumers while reducing burdens on small and new industry participants.

25. The Commission finds it in the public interest to maintain the Commission's current rounding rules for fractional deployment obligations. Currently, when calculating the total number of handset models that must be offered over an air interface results in a fractional deployment obligation, manufacturers may round this number down, but service providers must round this number up. The Commission sees no reason to change this current practice.

**ADVANCEMENT OF A 100 PERCENT COMPATIBILITY
DEPLOYMENT BENCHMARK**

26. By no later than 2024, the Commission intends to make a determination regarding the Commission's proposed requirement that 100 percent of covered handsets be hearing aid-compatible. In consideration of the fact that both the hearing aid and mobile device markets will evolve during the time before the Commission makes this determination, the Commission will keep this docket open for all relevant submissions. The Commission anticipates that it will provide additional notice of wireless hearing aid compatibility proposals as they arise and become appropriate for more specific comment by manufacturers, service providers, consumer groups, and members of the public. The Commission believes this open process will afford all interested parties the same flexibility with which the Commission and stakeholders worked in the past to achieve consensus and establish the current hearing aid compatibility benchmarks and related

requirements.

27. In the discussion below, the Commission sets forth a process and timeline, consistent with the proposals in the JCP and the supplemental filings, for stakeholders to submit information individually or collectively, including from any independent task force or consensus group that they create. The Commission also identifies for specific consideration additional issues. Although the Commission is making a decision to leave many issues open and the Commission defers action on any final rule codifying a possible 100 percent compatibility deployment benchmark, the Commission sets a pathway of milestones for submissions over the next several years that will ensure a resolution of this proceeding within the timeframe agreed to by the parties to the JCP and consistent with the Commission's intent that the Commission revisit this issue. These submissions are purely voluntary, however; the Commission does not require any party to make them, or to make them in the timeframes discussed, and will take no enforcement or other action against any party for failure to file. Further, in making these submissions, parties are not expected to produce any confidential, proprietary, or work product documents, nor, prior to the final report on achievability, does the Commission ask parties to provide more than summary descriptions of activities or any information or data being collected. In addition, the Commission does not expect any submissions to be filed until an independent task force or other consensus group to implement the JCP's commitments is created, and the Commission primarily expects these submissions to be filed by or on behalf of such a group. The Commission welcomes submissions from other parties, however, as well as submissions prior to the creation of the task force to the extent parties find it appropriate, particularly if they experience unanticipated difficulties

in convening such a group.

Open Docket for Supplemental Submissions

28. In the July Supplemental Filing, the parties to the JCP discussed “how the Commission can be kept apprised of the status of the Task force’s progress once the Task Force is established.” Recognizing the need for transparency through the process, they “acknowledge that an annual report once the Task Force is established could satisfy the Commission’s interest in the Task Force’s activities.” They further recommend that, “[r]ather than prescribe the specific contents of any additional reports . . . the Commission should permit the Task Force the flexibility to work together to determine the best way to communicate the status of the determination process to the FCC and the public.” The consumer group signatories further suggest that “so long as the language is not proscriptive, they would not object to guidance from the Commission on the kind of information that could be included in the yearly reports.”

29. Consistent with these proposals, and to allow stakeholders to reach further consensus on the various proposals set forth in the JCP and raised in the Commission’s subsequent Notice, the Commission asks interested parties to file additional comments, reports, and other submissions in this docket in accordance with the timeline detailed below. The Commission will use this open docket to develop a record on whether and when a regime under which all wireless handsets are required to be hearing aid-compatible is “achievable.” The Commission will also use this docket to collect additional points of consensus on the question of a 100 percent wireless hearing aid compatibility deployment requirement, alternative hearing aid compatibility standards, and the other issues raised in the Commission’s Notice.

30. The Commission finds that maintaining an open docket is the best method to reach an outcome that reflects a consensus among all interested parties. Although the Commission's open docket will permit broad participation among many interested participants over the next several years, the Commission expects that parties will continue to work together to establish whatever task force and/or working groups are necessary to submit consensus filings. The Commission therefore does not expect that every party affected by the outstanding issues in this proceeding will file reports or other submissions, and anticipates that such filings will most likely be filed solely by the task force or other groups that are established. Stakeholders themselves are best positioned to work collectively to obtain and report the data necessary to craft a regime that ensures full hearing aid compatibility while protecting market incentives to innovate and invest. The Commission encourages the formation of groups that represent the broadest number of participants, including representatives of consumers who use hearing aid devices, research and technical advisors, wireless industry policy and technical representatives, and hearing aid manufacturers.

31. With the assumption that interested parties will convene a task force to make submissions in this docket, the Commission notes that such a group would be established by the stakeholders themselves and would operate separate from the Commission. Although the Commission anticipates that any such task force group will use its best efforts to reach compromises that result in consensus positions, the Commission realizes that it may not be possible in all cases to achieve agreement among all participants or on all issues. Accordingly, by maintaining an open docket for submissions from all interested parties, the Commission also provides an opportunity for any individual, as

well as any minority, positions to be presented to the Commission during the course of this proceeding.

Timeline for Submissions

32. The Commission asks interested parties to make submissions in accordance with the timeframes outlined below. These timeframes generally correspond to the timeline in the April 21, 2016 ex parte filing from the parties to the JCP, which describes the steps leading to a report helping to inform the Commission whether 100 percent hearing aid compatibility is “achievable considering technical and market conditions.” For example, it states that the signatories will determine appropriate task force participants “within two years, but no later than the start of year four.” The filing states that the parties will develop questions and explore the scope of the issues prior to year four, and that the official start of the achievability determination process will begin in year four. It also states that the task force will take all reasonable steps to file a report with the Commission by no later than the end of year six and, at that point, disband. The proposed submissions described below are intended to encourage transparency and to facilitate a collaborative process among hearing aid manufacturers, digital wireless handset manufacturers, consumer groups representing those with hearing loss, and wireless service providers.

33. The Commission clarifies that the submissions described below are intended to be illustrative and that it will be up to any task force or consensus group to determine the best means of apprising the Commission of its activities. Guided by the additional data, information, and reports the Commission expects to receive, the Commission’s intent is to make a final determination in this proceeding by no later than 2024. The

Commission expects that interested parties will work independently and collectively to obtain valuable information and assist the Commission's ultimate achievability determination by making submissions as follows:

Stakeholder Participation:

By December 31, 2017 (end of Year 1) –

Report on outreach efforts by or to relevant stakeholders to gain commitments to participate in a consensus group.

Report on the formation of any stakeholder consensus group(s), including membership, leadership, and operations.

By December 31, 2018 (end of Year 2) –

Report on outreach efforts by or to relevant stakeholders to gain commitments to participate in a consensus group.

Report on the formation of any stakeholder consensus group(s), including membership, leadership, and operations.

Consensus Issues and Data:

By December 31, 2019 (end of Year 3) –

Report on any meetings, operations, and accomplishments to date of any stakeholder consensus group(s).

Report on the questions and scope of hearing aid compatibility issues to be evaluated by any stakeholder consensus group(s).

Report on any information and data planned to be collected by any stakeholder consensus group(s).

Report on any developments regarding the matters identified above under Stakeholder Participation (if applicable).

By December 31, 2020 (end of Year 4) –

Report on any meetings, operations, and accomplishments to date of any stakeholder consensus group(s).

Report on the information and data collected over Year 4 on those hearing aid compatibility issues being evaluated by any stakeholder consensus group(s).

By December 31, 2021 (end of Year 5) –

Report on any meetings, operations, and accomplishments to date of any stakeholder consensus group(s).

Report on the information and data collected over Year 5 on those hearing aid compatibility issues being evaluated by any stakeholder consensus group(s).

Determination and Report:

By December 31, 2022 (end of Year 6) –

Report on any meetings, operations, and accomplishments to date of any stakeholder consensus group(s).

Report on the information and data collected over Years 4 and 5 on those hearing aid compatibility issues being evaluated by any stakeholder consensus group(s).

Submit final report on the achievability of a 100 percent hearing aid compatibility deployment benchmark and on other hearing aid

compatibility issues being evaluated by any stakeholder consensus group(s).

Issues for Consensus

34. Although the Commission has decided to generally leave matters open and defer action until a future proceeding, the Commission expects stakeholders and other interested parties to use their best efforts to reach consensus on the remaining issues and proposals set forth in the JCP filed on November 12, 2015 and raised in the subsequent Notice. The Commission encourages interested parties to address four issues in particular: (1) whether 100 percent compatibility is achievable, with any analysis framed under the standard articulated in Section 710(e) of the Act, as appropriate; (2) how a 100 percent deployment benchmark could rely in part or in whole on alternative hearing aid compatibility technologies, bearing in mind the importance of ensuring interoperability between hearing aids and alternative technologies; (3) whether service providers should be able to legally rely on information in the Accessibility Clearinghouse in connection with meeting applicable benchmarks; and (4) whether the Commission should establish a fixed period of time or shot clock for the resolution of petitions for waiver of the hearing aid compatibility requirements. The Commission further discusses these issues below in the context of the record that has developed to date.

35. The Commission's ultimate approach on the outstanding issues from the JCP and the subsequent Notice depends in many cases on the outcome of the achievability determination. Accordingly, in these cases, the Commission plans to defer specific action on final rules regarding compliance processes, legacy models, burden reduction, the appropriate transition period for any new deployment requirements the Commission

adopts, and other alternatives and implementation issues until the point at which the Commission receives a final report on the achievability of a 100 percent hearing aid compatibility standard from the stakeholder consensus group(s) that the Commission anticipates will participate in this proceeding. As such issues are relevant to the milestones the Commission describes above, however, the Commission expects that interested parties will make submissions as appropriate, as these issues remain open for consideration within the scope of this proceeding. Moreover, as interested parties seek points of agreement on these issues separate from the aforementioned milestones, the Commission expects they will make submissions summarizing points of consensus.

36. Determination of Achievability. The Commission intends to base the determination of the achievability of a 100 percent compatibility deployment benchmark on the factors identified in Section 710(e) of the Act. Section 710(e) requires the Commission to “consider costs and benefits to all telephone users, including persons with and without hearing loss,” and to “ensure that regulations adopted to implement [the Hearing Aid Compatibility Act] encourage the use of currently available technology and do not discourage or impair the development of improved technology.” Section 710(e) further directs that the Commission should use appropriate timetables and benchmarks to the extent necessary due to technical feasibility or to ensure marketability or availability of new technologies to users.

37. The Commission notes that in response to the Notice, Wireless Associations and Consumer Groups recommend that the Commission use a Section 710 analysis (as opposed to the achievability requirements of Section 716 and 718) to determine whether a 100 percent standard is achievable. The Commission agrees with this recommendation,

as it intends to rely on the factors identified in Section 710(e) of the Act. This approach is consistent with the analysis undertaken by the Commission in the 2008 First Report and Order when it adopted modifications to the then-current deployment benchmarks. The Commission does not plan to base its determination of achievability on certain other Section 710 provisions, however, such as Section 710(b)(2)(B) which directs the Commission to use a four-part test to periodically reassess exemptions from the hearing aid compatibility requirements for wireless handsets. Accordingly, as interested parties prepare a report on the achievability of a 100 percent hearing aid compatibility deployment benchmark, the Commission encourages them to submit conclusions based on the factors identified in Section 710(e), including cost/benefit, technical feasibility, marketability, and availability of new technologies.

38. Alternative Hearing Aid Compatibility Technologies. In connection with the achievability assessment, the Commission encourages stakeholders to work towards consensus submissions on whether a 100 percent standard should permit technologies other than those designed to meet the current M and T rating requirements, and to “consider which data would be needed to determine if the existing definition of [hearing aid compatibility] is the most effective means for ensuring access to wireless handsets for consumers who use hearing aids while encouraging technological innovation.” The JCP provides that the Commission should consider “whether wireless handsets can be deemed compliant with the HAC rules through means other than by measuring RF interference and inductive coupling.” In the Notice, the Commission sought comment on whether any new benchmarks should specifically require both a minimum M3 and T3 rating, or whether manufacturers should be allowed to meet the requirement by incorporating other

methods of achieving compatibility with hearing aids, such as Bluetooth®. In response to the Notice, Apple and ASTAC both support rules that recognize solutions such as Bluetooth as alternative hearing aid compatibility technologies, while HIA and other individual commenters oppose permitting certification of Bluetooth profiles that are not universally standardized in the same way as the telecoils found in hearing aids and cochlear implants. Wireless Associations, Consumer Groups, and T-Mobile state that the Commission should use the stakeholder process to evaluate new and innovative ways to consider the definition of hearing aid compatibility.

39. As interested parties prepare a report on the achievability of a 100 percent hearing aid compatibility deployment benchmark, the Commission expects that they will consider alternative hearing aid compatibility technologies, along with emerging technologies and devices designed to assist in modifying or amplifying sound for individuals with hearing loss, such as personal sound amplification (PSA) products. The Commission also invites parties to explain how these technologies and devices should be incorporated into a future benchmark framework. Because telecoils may be comparable to analog technologies, the Commission invites submissions regarding the inclusion of digital technologies, such as Bluetooth, within the rules as alternatives for meeting some or all of any future deployment benchmark(s). The Commission emphasizes the importance of broad interoperability between hearing aids and compatibility technologies, and the Commission flags the costs the consumers could face if certain technologies work only with select hearing aids. The Commission is encouraged by the extent to which Apple's proprietary solutions may lead to further research towards more universal standards that can someday be recognized by a standards body like ANSI,

particularly if they lead to interoperable alternative solutions that can be deployed more widely across all manufacturers' devices and can work reliably with more than just certain select hearing aid models.

40. Relying on the Accessibility Clearinghouse. The Commission also sought comment in the Notice on whether and how compatibility information that manufacturers supply on Form 655 could be used to automatically supplement the Accessibility Clearinghouse database, and whether service providers should be able to rely on information in the Accessibility Clearinghouse or in manufacturers' Form 655 submissions as a compliance safe harbor. Very few commenters address these issues, and those that did offered only general support without input on how these measures could or should be implemented. The Commission notes that the existing Accessibility Clearinghouse database contains information gathered from and curated by third parties and, despite questions on this issue in the Notice, no commenters addressed whether the database reliably identifies devices that are in fact fully compliant with the hearing aid compatibility rules. The Commission therefore invites interested parties to address these issues regarding the Clearinghouse in supplemental submissions, and the Commission encourages them to offer consensus positions to the extent possible. Because these issues may become less impactful in the event the Commission transitions to 100 percent compatibility, it would be most beneficial to receive stakeholders' views toward the beginning of the timetable presented above.

41. While the Commission reaches no conclusion at this time about a safe harbor based on the Accessibility Clearinghouse, it finds that the hearing aid compatibility rating information contained in manufacturers' Form 655 reports is reliable. In those reports,

manufacturers must identify each handset model's hearing aid compatibility rating, which in turn must reflect the testing results produced by a Commission-approved Telecommunications Certification Body. Manufacturers are further required to certify that statements reported in the form "are accurate, true and correct." Because the Commission concludes that this information is reliable, it will treat a service provider as compliant with the hearing aid compatibility rules to the extent that its compliance is based on its reasonable reliance on data contained in, or aggregated from, manufacturers' Form 655 submissions.

42. Waiver Requests. The Commission also sought comment in the Notice on potential modifications to the Commission's compliance processes in the context of implementing the JCP, including how best to apply the Section 710(b)(3) waiver process. In particular, the Commission sought comment on whether it should establish a fixed time period within which the Commission must take action on waiver requests, and if so, whether 180 days or another amount of time would be appropriate considering both the need to develop a full record and the importance of avoiding delay in the introduction of new technologies. While some commenters recommend that a waiver process should continue to be available to provide relief in appropriate cases, no commenter addresses the adoption of such a time period. The Commission again invites interested parties to address in this proceeding the adoption of a shot clock on the resolution of hearing aid compatibility waiver requests involving new technologies or other circumstances, and the extent to which such a measure (or other modifications to the waiver process or the Commission's other compliance processes) may contribute to the achievability of a 100 percent requirement, to addressing the concerns of small entities, or to ensuring that

hearing aid compatibility requirements do not hinder the development or deployment of new technologies.

PROCEDURAL MATTERS

A. Final Regulatory Flexibility Analysis

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

43. To ensure that a wide selection of digital wireless handset models are available to consumers with hearing loss, the Commission's rules require both manufacturers and service providers to meet defined benchmarks for offering hearing aid-compatible wireless phones.

44. As proposed in the Joint Consensus Proposal (JCP) and the Notice, the Commission adopted the 66 and 85 percent benchmarks for manufacturers and service providers who offer six or more handset models per air interface, with the two and five year transition periods, respectively, for manufacturers and the additional transition periods of six months for Tier I carriers and 18 months for non-Tier I carriers. To satisfy these benchmarks, handset models must meet both a rating of M3 or higher for acoustic coupling and T3 or higher for inductive coupling capability. The Commission determined to maintain its current rounding rules that allow manufacturers to round their fractional deployment obligations down, but require service providers to round their fractional deployment obligations up.

45. Consistent with the JCP, the Commission also determined to maintain the current de minimis exception that applies to manufacturers and service providers that offer three or fewer handset models in an air interface and provides that manufacturers

and service providers that offer four wireless handset models in an air interface must ensure that at least two of those handsets models are compliant with the Commission's M and T rating requirements.

46. In the Report and Order, the Commission also set forth a process and timeline, consistent with the proposals in the JCP, for interested parties to make submissions individually or collectively, including from any independent task force or consensus group that they create. The Commission determined to leave many hearing aid compatibility issues open and deferred action on a final rule codifying a 100 percent compatibility deployment benchmark. It also identified for specific consideration several issues raised by parties to the JCP and the Notice. The Commission explained that it will use submissions over the next several years to develop a record on whether and when a regime under which all wireless handsets are required to be hearing aid-compatible is "achievable." The Commission further explained that it will use this docket to collect additional points of consensus that it anticipates will be the basis for a final rule that codifies a 100 percent wireless hearing aid compatibility deployment standard and addresses the other hearing aid compatibility requirements raised in the Notice.

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

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

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

48. Pursuant to the Small Business Jobs Act of 2010, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

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

49. The following small entity licensees and regulatees may be affected by the rules changes adopted in the Report and Order: Small Businesses, Small Organizations, and Small Governmental Jurisdictions; Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing; Part 15 Handset Manufacturers; Wireless Telecommunications Carriers (except satellite); Internet Service Providers; and All Other Information and Telecommunications Services.

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

50. The current hearing aid compatibility regulations impose a number of obligations on covered wireless service providers and the manufacturers of digital wireless handsets used with those services, including: (1) requirements to deploy a certain number or percentage of handset models that meet hearing aid compatibility standards, (2) “refresh” requirements on manufacturers to meet their hearing aid-compatible handset deployment benchmarks in part using new models, (3) a requirement that service providers offer hearing aid-compatible handsets with varying levels of functionality, (4) a requirement that service providers make their hearing aid-compatible

models available to consumers for testing at their owned or operated stores, (5) point of sale disclosure requirements, (6) requirements to make consumer information available on the manufacturer's or service provider's website, and (7) annual reporting requirements. In the Report and Order, the Commission did not impose any additional reporting, record keeping, or other compliance requirements.

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

51. In the Report and Order, the Commission adopted a number of provisions to help small businesses in meeting the new hearing aid compatibility deployment requirements. Specifically, the Commission decided to keep in place and expand the existing de minimis exception. In addition, the Commission allowed small business service providers an additional 18 months after the effective date of the new rules to comply with the new benchmarks.

6. Federal Rules that Might Duplicate, Overlap, or Conflict with the Rules

52. None.

7. Report to Congress

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

B. Final Paperwork Reduction Act Analysis

54. The Report and Order does not contain substantive new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any substantive 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

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

ORDERING CLAUSES

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

57. IT IS FURTHER ORDERED that the rule amendments set forth in Appendix B WILL BECOME EFFECTIVE 30 days after publication in the Federal Register.

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

List of Subjects

47 CFR Part 20

Communications common carriers, Communications equipment, Radio

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary.

Final Rules

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

PART 20 - - COMMERCIAL MOBILE SERVICES

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

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

2. Section 20.19 is amended by adding paragraphs (c)(1)(i)(C) and (D), (c)(2)(iii), (c)(3)(iii), (c)(3)(iv), (d)(1)(ii)(D) and (E), (d)(2)(iii), (d)(3)(iii), (d)(3)(iv), and (e)(3) to read as follows:

§ 20.19 Hearing aid-compatible mobile handsets.

* * * * *

(c) * * *

(1) * * *

(i) * * *

(C) Beginning October 3, 2018, at least sixty-six (66) percent of those handset models (rounded down to the nearest whole number) must comply with the requirements set forth in paragraphs (b)(1) and (2) of this section.

(D) Beginning October 4, 2021, at least eighty-five (85) percent of those handset models (rounded down to the nearest whole number) must comply with the requirements set forth in paragraphs (b)(1) and (2) of this section.

(2) * * *

(iii) Beginning April 3, 2019, each Tier I carrier must ensure that at least sixty-six (66) percent of the handset models it offers comply with paragraphs (b)(1) and (2) of this section, calculated based on the total number of unique digital wireless handset models the carrier offers nationwide. Beginning April 4, 2022, each Tier I carrier must ensure that at least eighty-five (85) percent of the handset models it offers comply with paragraphs (b)(1) and (2) of this section, calculated based on the total number of unique digital wireless handset models the carrier offers nationwide.

* * * * *

(3) * * *

(iii) Beginning April 3, 2020, ensure that at least sixty-six (66) percent of the handset models it offers comply with paragraphs (b)(1) and (2) of this section, calculated based on the total number of unique digital wireless handset models the carrier offers.

(iv) Beginning April 3, 2023, ensure that at least eighty-five (85) percent of the handset models it offers comply with paragraphs (b)(1) and (2) of this section, calculated based on the total number of unique digital wireless handset models the carrier offers.

* * * * *

(d) * * *

(1) * * *

(ii) * * *

(D) Beginning October 3, 2018, at least sixty-six (66) percent of the handset models in that air interface, which must comply with paragraphs (b)(1) and (2) of this section.

(E) Beginning October 4, 2021, at least eighty-five (85) percent of the handset models in that air interface, which must comply with paragraphs (b)(1) and (2) of this section.

* * * * *

(2) * * *

(iii) Beginning April 3, 2019, each Tier I carrier must ensure that at least sixty-six (66) percent of the handset models it offers comply with paragraphs (b)(1) and (2) of this section, calculated based on the total number of unique digital wireless handset models the carrier offers nationwide. Beginning April 4, 2022, each Tier I carrier must ensure that at least eighty-five (85) percent of the handset models it offers comply with paragraphs (b)(1) and (2) of this section, calculated based on the total number of unique digital wireless handset models the carrier offers nationwide.

* * * * *

(3) * * *

(iii) Beginning April 3, 2020, ensure that at least sixty-six (66) percent of the handset models it offers comply with paragraphs (b)(1) and (2) of this section, calculated based on the total number of unique digital wireless handset models the carrier offers;

(iv) Beginning April 3, 2023, ensure that at least eighty-five (85) percent of the handset models it offers comply with paragraphs (b)(1) and (2) of this section, calculated based on the total number of unique digital wireless handset models the carrier offers.

* * * * *

(e) * * *

(3) Beginning October 3, 2018, manufacturers that offer four or five digital wireless handset models in an air interface must offer at least two handset models compliant with paragraphs (b)(1) and (2) of this section in that air interface. Beginning April 3, 2019, Tier I carriers who offer four digital wireless handset models in an air interface must offer at least two handsets compliant with paragraphs (b)(1) and (2) of this section in that air interface and Tier I carriers who offer five digital wireless handset models in an air interface must offer at least three handsets compliant with paragraphs (b)(1) and (2) of this section in that air interface. Beginning April 3, 2020, service providers, other than Tier I carriers, who offer four digital wireless handset models in an air interface must offer at least two handset models compliant with paragraphs (b)(1) and (2) of this section in that air interface and service providers, other than Tier I carriers, who offer five digital wireless handset models in an air interface must offer at least three handsets compliant with paragraphs (b)(1) and (2) of this section in that air interface.

* * * * *

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