

## APPENDIX A

Parties Filing Comments  
(40 Commenters)

<u>Name of Party</u>	<u>Abbreviation</u>
Alexander Graham Bell Association for the Deaf and Hard of Hearing	AG Bell
American National Standards Institute Accredited Standards Committee C63 for Electromagnetic Compatibility Subcommittee 8 (Medical Devices)	ANSI ASC C63 SC8
Mark Angelo	
Arizona Commission for the Deaf and Hard of Hearing	ACDHH
Association of Access Engineering Specialists	AAES
AT&T Wireless Services	AWS
ATX Technologies, Inc	ATX
Cellular Telecommunications & Internet Association	CTIA
Cingular Wireless LLC	Cingular
Cochlear Americas	
Consumer Action Network	CAN
Council of Organizational Representatives on National Issues Concerning People Who are Deaf or Hard of Hearing	COR
George DeVilbiss	
Curtis F. Dickinson	
Richard C. Diedrichsen	
Dan Harper	
Matthew Hayat	
Hearing Industries Association	HLA
John B. Klein	
Charlene MacKenzie	
Matsushita Electric Corporation of America	MECA
Monty G. McCarley	

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Judith Michelman	
Debbie Mohny	
Alice Murphy	
National Association of the Deaf	NAD
Jack O'Keefe	
Rehabilitation Engineering Research Center on Telecommunications Access	RERC
Shirley Schultz	
Self Help for the Hard of Hearing	SHHH
Self Help for the Hard of Hearing – New Hanover County	
Mary T. Simmons	
Sprint PCS	
Elizabeth K. Stout	
Jonathan Taylor	
Telecommunications for the Deaf, Inc	TDI
Telecommunications Industry Association	TIA
U.S. Access Board	
Ronald H. Vickery	
Betty Hannon Yagi	

APPENDIX B  
FINAL REGULATORY FLEXIBILITY ANALYSIS

1 As required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>220</sup> an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones Notice of Proposed Rulemaking (*Notice*).<sup>221</sup> The Commission sought written public comment on the proposal in the *Notice*, including comment on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.<sup>222</sup>

**A. Need for, and Objectives of, Adopted Rules**

2 In the *Order*, the Commission modifies the exemption for wireless phones under the Hearing Aid Compatibility Act of 1988 ("HAC Act")<sup>223</sup> to require digital wireless phones to provide for effective use with hearing aids. We find that modifying the exemption in the manner described in the *Order* will extend the benefits of wireless telecommunication to persons with hearing disabilities, thereby increasing the value of the wireless network for all Americans. The Commission took the following actions:

- (1) adopted certain performance levels set forth in a technical standard established by the American National Standards Institute (ANSI) as the applicable technical standard for compatibility of digital wireless phones with hearing aids;
- (2) required certain digital wireless phone models to provide reduced radio frequency (RF) interference (*i.e.*, meet a "U3" rating under the ANSI standard), and required certain digital wireless phone models to provide telecoil coupling capability (*i.e.* meet a "U3T" rating under the ANSI standard),
- (3) required, within two years, each digital wireless phone manufacturer to make available to carriers and required each carrier providing digital wireless services to make available to consumers at least two handset models for each air interface it offers which offer reduced RF emissions ("U3" rating);
- (4) required each Tier I wireless carrier providing digital wireless services to make available to consumers within two years at least two handset models for each air interface it offers for reduced RF emissions ("U3" rating) or 25 percent of the total number of phone models it offers, whichever is greater.
- (5) required, within three years, each digital wireless phone manufacturer to make available to carriers and required each carrier providing digital wireless services to make available to consumers at least two handset models for each air interface it offers which provide telecoil coupling ("U3T" rating),
- (6) adopted a *de minimis* exception for certain digital wireless phone manufacturers and carriers;

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<sup>220</sup> See 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996) (CWAA).

<sup>221</sup> See Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones, WT Docket No. 01-309, RM-8658, *Notice of Proposed Rulemaking*, 16 FCC Rcd 20558, 20578 (2001) (*Notice*). See also 47 U.S.C. § 610(b)(2)(c).

<sup>222</sup> See 5 U.S.C. § 604.

<sup>223</sup> Section 710 of the Communications Act of 1934, as amended, 47 U.S.C. § 710(b)(1)(B).

- (7) encouraged digital wireless phone manufacturers and service providers to offer at least one compliant handset that is a lower-priced model and one that has higher-end features;
- (8) required 50 percent of all digital wireless phone models offered by a manufacturer or carrier to be compliant with the reduced RF emissions requirements by February 18, 2008,
- (9) required wireless carriers and digital wireless handset manufacturers to report semiannually (every six months) on efforts toward compliance during the first three years, then annually thereafter through the fifth year of implementation;
- (10) required manufacturers to label packages containing compliant handsets and to make information available in the package or product manual, and required service providers to make available to consumers the performance ratings of compliant phones,
- (11) committed the Commission staff to deliver a report to the Commission shortly after three years from the effective date of this *Order* to examine the impact of these requirements, and which will form the basis for the Commission to initiate a proceeding soon after the report is issued to evaluate whether to increase or decrease the 2008 requirement to make 50 percent of phone models with reduced RF emissions, whether to adopt implementation benchmarks beyond 2008, and whether to otherwise modify the implementation requirements;
- (12) encouraged hearing aid manufacturers to label their pre-customization products according to the ANSI standard, and
- (13) denied the petition of Myers Johnson, Inc , for revision of section 24.232 as it relates to directional wireless phone antennas

3 The Commission takes these actions to ensure that that the Congressional goal of ensuring access to telecommunications services for persons with hearing disabilities is met. In addition, in light of our society's increased reliance on wireless phones and the growing trend among wireless carriers to move away from analog services in favor of more efficient, feature-rich digital services, these steps will ensure that people with hearing disabilities continue to enjoy access to wireless telecommunications devices and services.

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

4 We received no comments directly in response to the IRFA in this proceeding. The Commission, however, considered the potential impact of its rules on smaller handset manufacturers and service providers. To ensure that the rules have a minimal impact on these entities, the Commission, in recognition of the adverse effect its HAC compatibility percentage requirements could have, modified the requirement for manufacturers and service providers. Therefore, the requirement that manufacturers and service providers must make 50 percent of their handsets compliant with the reduced RF emissions level ("U3") was modified to provide that, by February 18, 2008, 50 percent of all phones offered by the entity in the U.S. market must be compliant, or two phones per air interface offered, whichever number of handsets is greater.<sup>224</sup>

#### **C. Description and Estimate of the Number of Small Entities To Which the Adopted Rules Will Apply**

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<sup>224</sup> See *supra* at para 72

5 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 adopted rules, if adopted.<sup>225</sup> The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."<sup>226</sup> In addition, the term "small business" has the same meaning as the term "small business concern" under section 3 of the Small Business Act.<sup>227</sup> Under the Small Business Act, a "small business concern" is one that: (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).<sup>228</sup> A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."<sup>229</sup>

6 **Cellular and Other Wireless Telecommunications or Paging.** The SBA has developed a size standard for small businesses within the two separate categories of Cellular and Other Wireless Telecommunications or Paging. Under that standard, such a business is small if it has 1,500 or fewer employees.<sup>230</sup> According to the FCC's *Telephone Trends Report* data, 1,761 companies reported that they were engaged in the provision of wireless service.<sup>231</sup> Of these 1,761 companies, an estimated 1,175 have 1,500 or fewer employees and 586 have more than 1,500 employees. Consequently, we estimate that a majority of small wireless service providers may be affected by the rules.

7 **Wireless Communications Equipment Manufacturers.** The SBA has established a small business size standard for radio and television broadcasting and wireless communications equipment manufacturing. Under the standard, firms are considered small if they have 750 or fewer employees.<sup>232</sup> Census Bureau data for 1997 indicates that, for that year, there were a total of 1,215 establishments<sup>233</sup> in this category.<sup>234</sup> Of those, there were 1,150 that had employment under 500, and an additional 37 that had employment of 500 to 999. The percentage of wireless equipment manufacturers in this category is approximately 61.35%,<sup>235</sup> so the Commission estimates that the number of wireless equipment manufacturers with employment under 500 was actually closer to 706, with an additional 23

<sup>225</sup> See 5 U.S.C. § 603(b)(3).

<sup>226</sup> 5 U.S.C. § 601(6).

<sup>227</sup> 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definitions(s) in the Federal Register."

<sup>228</sup> 15 U.S.C. § 632.

<sup>229</sup> *Id.* § 601(4).

<sup>230</sup> 13 C.F.R. § 121.201, NAICS code 513322.

<sup>231</sup> *Telephone Trends Report*, Table 5.3.

<sup>232</sup> 13 C.F.R. § 121.201, NAICS code 334220.

<sup>233</sup> The number of "establishments" is a less helpful indicator of small business prevalence in this context than would be the number of "firms" or "companies," because the latter take into account the concept of common ownership or control. Any single physical location for an entity is an establishment, even though that location may be owned by a different establishment. Thus, the number given may reflect inflated numbers of businesses in this category, including the numbers of small businesses. In this category, the Census break-out data for firms or companies only gives the total number of such entities for 1997, which was 1,089.

<sup>234</sup> U.S. Census Bureau, 1997 Economic Census, Industry Series, Manufacturing, "Industry Statistics by Employment Size," Table 4, NAICS code 334220 (issued August 1999).

<sup>235</sup> *Id.* Table 5, "Industry Statistics by Industry and Primary Product Class Specialization: 1997."

establishments having employment of between 500 and 999. The Commission estimates that the great majority of wireless communications equipment manufacturers are small businesses.

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

8. The reporting, recordkeeping, or other compliance requirements adopted require that any and all of the affected entities to which the Commission's adopted rules apply must comply with the Commission's hearing aid compatibility rules adopted in the *Order*. The Commission has detailed the timeframes for compliance and was mindful of the needs of manufacturers and service providers. The timeframes, therefore, reflect the Commission's balancing of the competing interests. We ensure that access to wireless phones for persons with hearing disabilities is maintained, and also to ensure that manufacturers and service providers are afforded a reasonable amount of time within which to comply with our rules.

9. In the *Order*, the Commission requires wireless carriers and handset manufacturers to report every six months on efforts toward compliance with the requirements of the *Order* during the first three years, and then annually thereafter through the fifth year of implementation. These reports will serve dual purposes: they will assist us in monitoring the progress of implementation, and they will provide valuable information to the public concerning compatible handsets. The reporting requirement will extend through the end of the fifth year following the effective date of the *Order* to assist in verifying compliance with the requirement to make at least 50 percent of all phone models offered compatible by February 18, 2008. Digital wireless phone manufacturers and service providers may submit joint reports, if they wish, in order to minimize the reporting burden. The reports should describe manufacturer and carrier efforts aimed at complying with the requirements of the *Order*. Specifically, the reports should include (1) digital wireless phones tested; (2) laboratory used; (3) test results for each phone tested; (4) identification of compliant phone models and ratings according to ANSI C63.19; (5) report on the status of product labeling; (6) report on outreach efforts; (7) information related to retail availability of compliant phones; (8) information related to incorporating hearing aid compatibility features into newer models of digital wireless phones; (9) any activities related to ANSI C63.19 or other standards work intended to promote compliance with the *Order*; (10) total numbers of compliant and non-compliant phone models offered as of the time of the report, and (11) any ongoing efforts for interoperability testing with hearing aid devices.

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

10. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its adopted approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.<sup>236</sup>

11. The critical nature of hearing aid compatibility with wireless phones limits the Commission's ability to provide small manufacturers of wireless handsets and wireless service providers with a substantially less burdensome set of regulations than that placed on large entities. In the *Order*, the Commission concludes that continuing the exemption afforded wireless phones under the HAC Act would have an adverse effect on individuals with hearing disabilities. Consumers who use hearing aids or cochlear implants indicate they have had difficulty finding either wireless phones they can use without

<sup>236</sup> See 5 U.S.C. § 603(c)(1)-(c)(4).

suffering from annoying and sometimes painful interference, or without resorting to expensive and cumbersome external attachments. Consumers state that it is becoming very difficult to find analog wireless phones and services, and they are unable to use most digital wireless phones because of the resulting interference. By not being able to take advantage of most newer, digital wireless phones and services, hearing aid users assert they cannot take advantage of the attractive pricing and service plans available to other consumers, many of which include free or reduced-price phones, because the phones offered do not work with their hearing aids. Some consumers point out that their lack of ability to use a digital wireless phone causes them problems in their employment, particularly since many employers now rely on digital phones and services to stay in contact with employees in the field. A few consumers reported difficulty in finding a phone that works with their hearing aids because they were unable to test the phone before purchasing it. Some consumers expressed a desire to use a wireless phone for emergency use while away from home. However, because they are unable to find one they can use, they are forced to accept greater risks than non-hearing aid users since they are unable to call 911 even if they have access to a digital wireless phone.

12. In the *Order*, however, the Commission recognizes that certain manufacturers and service providers may have only a small presence in the market. For those manufacturers and service providers, the Commission adopted a *de minimis* exception. Specifically, if a manufacturer or carrier offers two or fewer digital wireless handset models in the U.S., it is exempt from the compatibility requirements in this *Order*. If a manufacturer or carrier offers three digital wireless handset models, it must make at least one compliant phone model available in two years. Furthermore, to the extent there are digital wireless providers that obtain handsets only from manufacturers that offer two or fewer digital wireless phone models in the U.S., the service provider would likewise be exempt from the rules. Similarly, if a service provider obtains handsets only from manufacturers that offer three digital wireless phone models in the U.S., that service provider would only have to offer one compliant handset model.<sup>237</sup>

13. In addition, in considering the possible impact of our rules on the many small business owners that act as agents for service providers, the Commission crafted its labeling rules to allow these entities flexibility in how they convey the information persons with hearing disabilities will need to make an informed purchase.<sup>238</sup>

#### G. Report to Congress

14. The Commission will send a copy of the *Order*, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.<sup>239</sup> In addition, the Commission will send a copy of the *Order*, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Order* and FRFA (or summaries thereof) will also be published in the Federal Register. See 5 U.S.C. § 604(b).

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<sup>237</sup> See *supra* at para 69

<sup>238</sup> See *supra* at para 87

<sup>239</sup> See 5 U.S.C. § 801(a)(1)(A)

**H. Effective Date of Adopted Rules**

15 Pursuant to 5 U.S.C. § 553(d),<sup>240</sup> the rules adopted herein shall take effect thirty (30) days after publication in the Federal Register

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<sup>240</sup> 5 U.S.C. § 553(d)

## APPENDIX C – FINAL RULES

Revise Part 20 to include New Hearing Aid Compatibility Provision as follows:

[§ 20.19] Hearing Aid-Compatible Mobile Handsets.

(a) *Scope of section.* This section is applicable to providers of Broadband Personal Communications Services (part 24, subpart E of this chapter), Cellular Radio Telephone Service (part 22, subpart H of this chapter), and Specialized Mobile Radio Services in the 800 MHz and 900 MHz bands (included in part 90, subpart S of this chapter) if such providers 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. This section also applies to the manufacturers of the wireless phones used in delivery of these services.

(b) *Technical standard for hearing aid compatibility.* A wireless phone used for public mobile radio services is hearing aid compatible for the purposes of this section if it meets, at a minimum:

(1) for radio frequency interference: U3 as set forth in the standard document ANSI C63.19-2001 “American National Standard for Methods of Measurement of Compatibility between Wireless Communication Devices and Hearing Aids, ANSI C63.19-2001” (published October 8, 2001 – available for purchase from the American National Standards Institute); and

(2) for inductive coupling: U3T rating as set forth in the standard document ANSI C63.19-2001 “American National Standard for Methods of Measurement of Compatibility between Wireless Communication Devices and Hearing Aids, ANSI C63.19-2001” (published October 8, 2001 – available for purchase from the American National Standards Institute).

(3) Manufacturers must certify compliance with the test requirements and indicate the appropriate U-rating for the wireless phone as set forth in section 2.1033(d).

(c) *Phase-in for public mobile service handsets concerning radio frequency interference.*

(1) Each manufacturer of handsets used with public mobile services for use in the United States or imported for use in the United States must

(A) offer to service providers at least two handset models for each air interface offered that comply with § 20.19(b)(1) by [two years after publication in the Federal Register]; and

(B) ensure at least 50 percent of their handset offerings for each air interface offered comply with § 20.19(b)(1) by February 18, 2008.

(2) And each provider of public mobile service must

(A) include in their handset offerings at least two handset models per air interface that comply with § 20.19(b)(1) by [two years after publication in the Federal Register] and make available in each retail store owned or operated by the provider all of these handset models for consumers to test in the store; and

(B) ensure that at least 50 percent of their handset models for each air interface comply with § 20.19(b)(1) by February 18, 2008, calculated based on the total number of unique digital wireless handset models the carrier offers nationwide.

(3) Each Tier I carrier must

(A) include in their handset offerings at least two handset models or 25 percent of the total number of unique digital wireless handset models offered by the carrier

nationwide (calculated based on the total number of unique digital wireless handset models the carrier offers nationwide), whichever is greater, for each air interface that comply with § 20.19(b)(1) by [two years after publication in the Federal Register], and make available in each retail store owned or operated by the carrier all of these handset models for consumers to test in the store; and

(B) ensure that at least 50 percent of their handset models for each air interface comply with § 20.19(b)(1) by February 18, 2008, calculated based on the total number of unique digital wireless phone models the carrier offers nationwide.

(d) *Phase-in for public mobile service handsets concerning inductive coupling.*

(1) Each manufacturer of handsets used with public mobile services for use in the United States or imported for use in the United States must offer to service providers at least two handset models for each air interface offered that comply with § 20.19(b)(2) by [three years after publication in the Federal Register].

(2) And each provider of public mobile service must include in their handset offerings at least two handset models for each air interface that comply with § 20.19(b)(2) by [three years after publication in the Federal Register], and make available in each retail store owned or operated by the provider all of these handset models for consumers to test in the store.

(e) *De minimis exception.*

(1) Manufacturers or mobile service providers that offer two or fewer digital wireless handsets in the U.S. are exempt from the requirements of this section.

(A) For mobile service providers that obtain handsets only from manufacturers that offer two or fewer digital wireless phone models in the U.S., the service provider would likewise be exempt from the requirements of this section.

(2) Manufacturers or mobile service providers that offer three digital wireless handset models, must make at least one compliant phone in two years.

(A) Mobile service providers that obtain handsets only from manufacturers that offer three digital wireless phone models in the U.S. would be required to offer at least one compliant handset.

(f) *Labeling requirements.* Handsets used with public mobile services that are hearing aid compatible, as defined in § 20.19(b) of this chapter, shall clearly display the U-rating, as defined in 20.19(b)(1), (2) on the packaging material of the handset. An explanation of the ANSI C63.19-2001 U-rating system shall also be included in the owner's manual or as an insert in the packaging material for the handset.

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

**Revise Section 2.1033:**

**[\$2.1033(d)] Applications for certification of equipment operating under Part 20, that a manufacturer is seeking to certify as hearing aid compatible, as set forth in section 20.19 of that part, shall include a statement indicating compliance with the test requirements of section 20.19 and indicating the appropriate U-rating for the equipment. The manufacturer of the equipment shall be responsible for maintaining the test results.**

**SEPARATE STATEMENT OF  
CHAIRMAN MICHAEL K. POWELL**

*Re In the Matter of Section 68.4(a) of the Commission's Rule Governing Hearing Aid-Compatible Telephones, WT Docket No. 01-309*

Today the Commission takes a historic step in making digital wireless technologies accessible by consumers with disabilities by modifying the Hearing Aid Compatibility exemption for wireless phones. For fifteen years, the exemption has remained in place – potentially walling off full access to these groundbreaking technologies for millions of Americans. Today we tear down that wall.

As a society, we are diminished by our inability to communicate readily with persons with hearing disabilities. Approximately one in ten Americans has such a disability and experts expect that number *only to rise*. As the technology and the marketplace have matured, it has become increasingly clear that the exemption is no longer a tenable course.

I fundamentally believe that one of our core obligations as public servants is to ensure that all Americans have access to transformative communications technologies. The Commission has moved aggressively to realize this goal through a number of initiatives including our Section 504 Handbook, funding of IP Relay, and our revised TRS rules. That commitment is further illustrated by today's decision.

*Our work is not yet complete. In the months and years ahead, we will continue to work with the phone manufacturers, the hearing aid community and wireless carriers to ensure that the goals established in this order are met. The technical standard we adopt today relies on both cell phone and hearing aid manufacturers to test and label their products in order for consumers to make informed choices in the marketplace. We stand ready to work cooperatively with all of these parties to make sure this process works. Our next steps are not just with industry, however. The Wireless and Consumer and Governmental Affairs Bureaus will be partnering with other government and private groups to educate consumers about compatibility. As part of this effort, I particularly appreciate the Food and Drug Administration's commitment to work with the FCC to educate consumers, audiologists, and other groups to ensure individuals with hearing disabilities may take full advantage of these services.*

**SEPARATE STATEMENT OF  
COMMISSIONER KATHLEEN Q. ABERNATHY**

*Re Section 68.4(a) of the Commission's Rules Governing Hearing Aid Compatible Telephones, WT Docket No. 01-309 RM-8658*

Over the past few years, an increasing number of American consumers have come to rely on their wireless phones for safety, business and personal reasons. Accordingly, as wireless phones become even more pervasive, it is imperative that we ensure these phones are available for use by all consumers. Unfortunately, not all digital wireless phones provide access to consumers who use hearing aids because of interference and other technological issues. In today's item, we take an important step in increasing digital wireless access by the hearing disabled community. We are addressing the technological hurdles by requiring equipment manufacturers and wireless service providers to reduce the amount of interference emitted from digital wireless phones and to provide the internal capability for telecoil coupling. This action will result in members of the hearing disabled community having dramatically increased access to digital wireless phones – access that will improve their lives and promote their safety.

The starting point for this proceeding is the Hearing Aid Compatibility Act which states that when technology allows, wireless phones must come into compliance with the Act's mandate. In this situation, we are driven by Congressional intent, not by market forces. In light of changed circumstances and improved technological capabilities, I believe that continuing the blanket exemption for wireless phones from the Hearing Aid Compatibility Act would be inconsistent with the intent of the Act, as well as being detrimental to individuals with hearing disabilities. Further, the record in this proceeding affirmatively demonstrates that it is technologically feasible to manufacture a digital wireless phone at a reasonable and marketable rate. The FCC, as required by the Hearing Aid Compatibility Act, must respond to these changed circumstances by updating its rules. Accordingly, I fully support modifying the blanket exemption contained in the Hearing Aid Compatibility Act for wireless phones to ensure that hearing disabled consumers have access to the digital wireless world.

The successful implementation of our rules will require that wireless phone equipment manufacturers and service providers, consumer advocacy groups and hearing aid manufacturers work together to ensure that the hearing disabled have access to the digital wireless phone that works best for them. For instance, while our rules mandate the availability of digital wireless phones that meet established ANSI standards for interference, this does not necessarily mean that these phones will work with every hearing aid. Accordingly, we encourage industry and consumer advocacy groups to work together and be creative in reaching out to specific segments of consumers, such as the elderly, to make sure that they are aware of the choices available to them through our ruling today. In addition, it is important that the hearing aid and wireless phone industries institute policies to allow the hearing disabled additional flexibility in ensuring that their digital wireless phones and hearing aids work successfully together. At the end of the day our goal, and the goal of Congress in passing the Hearing Aid Compatibility Act is that "[t]he hearing impaired should have access to every telephone like the non-hearing impaired."<sup>241</sup>

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<sup>241</sup> H R. Report No. 100-674, at 7 (1988)

**SEPARATE STATEMENT OF  
COMMISSIONER MICHAEL J. COPPS**

*Re Section 68.4 of the Commission's Rules Governing Hearing Aid-Compatible Telephones, Notice of Proposed Rulemaking*

We all often talk about the power of technology to make American's lives better. We talk about the transformative potential of innovation and communications advances. We all recognize that it is the duty of this Commission to work to make technology available to all Americans.

This duty comes into sharp focus in Orders like this. The first speech I gave as a FCC Commissioner was in Sioux Falls, South Dakota, at the 14<sup>th</sup> International Conference of Telecommunications for the Deaf. This is where our responsibilities in this area became clear to me. I, along with my colleagues, recognize the unique challenges faced by hard-of-hearing Americans and the unique possibilities presented by communications technologies to this community.

Congress also recognizes these challenges and opportunities, and has told us that we must make communications technologies accessible by people with disabilities. So my goal as a FCC Commissioner is to follow the directive of Congress and to help bring the best, most accessible and cost-effective telecommunications system in the world to our people – and I mean all of our people. That means that each and every American should have access to the wonders of wireless telecommunications.

Today we take an important step toward that goal. We adopt the ANSI performance standard and phase in a requirement that mobile phones meet this standard. In two years 25 percent of all Tier One carriers' phones must comply. On the day that the analog standard disappears a little under five years from now, hard-of-hearing Americans will find that 50 percent of all wireless phones are compatible with their hearing aids. And we don't stop there. Three years from now, when we have more information on how implementation is progressing, we commit to begin a proceeding to explore setting additional benchmarks above 50 percent. Importantly, we state that our goal is 100 percent compliance. We have a long way to go. But this is a good start.

With this action our Commission adds to a list of actions the past Commission took to promote accessibility. The previous Commission wrote new rules to ensure that communications products and services are accessible to those with disabilities, as Congress directed, in Section 255, overhauled and updated our Telecommunications Relay Services (TRS) rules to provide for faster, more effective relay services, established 711 for relay services so that consumers will no longer need to remember different TRS numbers and TRS users will be able to put one number on their business cards, thereby making it easier for people to call them, and took action on captioning to ensure that everyone has access to televised information, including, most importantly, warnings about emergency situations. This Commission has maintained and in some instances built upon these actions, and I'm happy to say that we continue this trend today.

Furthermore, I want to recognize the dedication of the wireless industry to serving people with disabilities. Over my tenure here I've seen a new and vigorous commitment by manufacturers and carriers. These manufacturers and the carriers are the ones who will make this Order work, and their recent performance has been commendable.

I also want to congratulate the wide range of organizations that represent people with hearing loss. They have been pushing the Commission to take action for years and years on this proceeding. They represent their community ably and professionally. And I want to stress again the importance of this Commission always making special efforts to reach out to our disabilities communities whose

resources are stretched thin but who are so profoundly affected by so many of the proceedings before the FCC

Finally I want to thank my colleagues and the staff for their hard work on this item. They were flexible and open to compromise. I appreciate that and think that in the end the process of working together led to a far better Order.

Thank you

**SEPARATE STATEMENT OF  
COMMISSIONER KEVIN J. MARTIN**

*Re Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Phones, Report and Order, WT Docket No. 01-309, RM-8658*

This item addresses a very important issue. Approximately one in ten Americans – and one in three over the age of 65 – suffers from some level of hearing loss. Many of these people are able to mitigate their loss through the use of hearing aids and cochlear implants. Consumers that use these devices, however, may suffer annoying and sometimes painful interference when using digital wireless phones. Unlike analog wireless phones, which do not generally cause interference for hearing aid users, the electromagnetic energy emitted by digital phones' antenna, backlight, and other components can cause interference to hearing aids and cochlear implants. But digital phones have become pervasive. Analog phones are not only becoming less and less available, they increasingly do not offer the same services and pricing packages as digital phones.

At the same time, the importance of wireless phones has grown dramatically since Congress passed the Hearing Aid Compatibility Act of 1988 (HAC Act). Consumers have come to rely on the phones for emergencies. Some are now substituting wireless phones for their landline phones. Many employers now rely on wireless phones to stay in contact with employees in the field.

This item recognizes the importance of wireless phones for all Americans and concludes that, to the extent possible, hearing impaired individuals should not be excluded. While exactly how to make this happen is a difficult question, this item takes some important steps in the right direction. Most importantly, this item adopts a standard for hearing aid compatibility and establishes a specific timeframe for manufacturers and carriers to make available hearing aid-compatible digital wireless phones. These actions promote the Congressional goal of ensuring access to telecommunications services for individuals with hearing disabilities and are critical in light of the rising importance of wireless phones. I am thus pleased to support the Order.

**SEPARATE STATEMENT OF  
COMMISSIONER JONATHAN S. ADELSTEIN**

*Re Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones, WT Docket No. 01-309*

I am very pleased to support today's Report and Order because it takes significant steps toward improving the access to digital mobile wireless phones by those Americans who use hearing aids.

While the Hearing Aid Compatibility Act of 1988 (HAC Act) exempted mobile wireless phones from hearing aid compatibility, Congress specifically entrusted this Commission with periodically assessing the appropriateness of continuing this exemption. Today, we take that obligation to heart and rightly modify the exemption as it currently applies to digital mobile wireless phones.

As I said recently, public interest issues, especially the rights of those with hearing impairments, always should remain in the forefront of our decisions. While a staff member in the U.S. Senate, I worked on the Americans with Disabilities Act and devoted a great amount of attention to the Social Security Disability Insurance program. These concerns remain central to me on the Commission, as well.

I recognize that some may argue that it has taken the Commission too long to reach the decision to modify the exemption and that our Report and Order does not go far enough. Conversely, others may take the view that we are exceeding our mandate in adopting requirements to accommodate a relatively small number of customers. I believe that our decision strikes the right balance between these divergent views. This is consistent with the requirements of the HAC Act to consider a number of competing issues in assessing the exemption such as the public interest, the effect of the exemption on hearing-impaired individuals, the state of technology, and the cost of compliance.

Most importantly, as a Commission, we have made a unanimous decision to greatly improve accessibility to digital wireless telecommunications by those with hearing impairments by requiring mobile wireless carriers and manufacturers to increase the number of wireless phones that can be used effectively with hearing aids. We also expressed our expectation that the manufacturers of hearing aids take specific actions to assist their customers in finding compatible hearing aids and digital wireless handsets. We have stepped in where the market did not step up. I can think of no more an appropriate action for a government agency to take than the one we do today.

I would like to thank the staff of the Wireless Telecommunication Bureau and its Policy Division for their hard work on an often challenging item. Our decision is thoughtful but firm in its resolve. I look forward to tracking the progress of our decision and its positive impact on the hearing impaired community over the upcoming years.