

(AISP.4-HAC) state that they have agreed with representatives of consumers with hearing loss to develop such a proposal.<sup>157</sup> The filing also states that AISP.4-HAC “anticipates filing general principles regarding this consensus plan within three (3) months of the release of [the Commission’s] Order, with more specific information regarding this proposal to be filed within six (6) months of the release of the Order.”<sup>158</sup> ATIS states that, with the exception of devices incorporating Wi-Fi capability, it is unaware of any phones currently available that operate over multiple air interfaces or frequency bands, some of which have hearing aid compatibility standards and some of which do not.<sup>159</sup> Finally, with regard to devices that incorporate Wi-Fi capability, the filing states that the members of AISP.4-HAC support allowing such devices to be labeled as hearing aid-compatible if they satisfy hearing aid compatibility standards for all other frequency bands and air interfaces over which they operate.<sup>160</sup>

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

64. We first adopt the Joint Consensus Plan’s proposal and establish that, to be offered as hearing aid-compatible under Section 20.19, a handset must be hearing aid-compatible for every frequency band and air interface that it uses for which standards have been adopted by the Commission.<sup>161</sup> As we indicated in the *Notice*, we find that requiring a hearing aid-compatible handset to be hearing aid-compatible in all such frequencies and modes of operation will better conform to the expectations of consumers that purchase such handsets. Conversely, allowing manufacturers and carriers to satisfy their deployment requirements with partially-compatible handsets where hearing aid compatibility standards exist, would likely cause significant confusion to consumers who purchase handsets that are labeled and offered as hearing aid-compatible, and who perhaps experience compatibility when the handset is tested in-store, only to discover later that the handset’s compatibility varies depending on which of its frequency bands or air interfaces is in use at any particular moment. We note that we emphasized last year the benefits to hard-of-hearing consumers of being able to rely on a full range of functionality in their hearing

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to Marlene H. Dortch, Secretary, FCC (filed February 20, 2008) at 3. *See also* Letter from Thomas Goode, General Counsel, ATIS, to Marlene H. Dortch, Secretary, FCC (filed Feb. 13, 2008) at 1 (noting that AISP.4-HAC is discussing a “possible way forward” on the multi-mode/band issue “that would address the concerns of wireless service providers, manufacturers, and representatives of consumers with hearing loss”).

<sup>157</sup> ATIS Feb. 14, 2008 E-Mail.

<sup>158</sup> *Id.*

<sup>159</sup> *Id.*

<sup>160</sup> *Id.*

<sup>161</sup> We note that this includes all frequencies in the 800-950 MHz and 1.6-2.5 GHz bands. *See infra* Section IV.B.2.

aid-compatible handsets and of not having to learn all the technical details, such as the frequencies on which their phones operate.<sup>162</sup> Further, although RCA expresses concern that the rule will discourage the manufacture of hearing aid-compatible multi-mode handsets, we note that those manufacturers to comment on the issue all support the rule as proposed in the Joint Consensus Plan, some expressly indicating that the rule will not impede the development of technology.<sup>163</sup>

65. Second, except for our interim ruling below with respect to the Wi-Fi air interface, we do not here resolve whether, or to what extent, multi-band and multi-mode handsets should be counted as hearing aid-compatible if they operate in part over frequency bands or air interfaces for which technical standards have not yet been established. As discussed above, the record contains arguments both in favor of and against treating such handsets as hearing aid-compatible. Moreover, according to industry representatives, no such handsets currently exist, with the exception of devices incorporating Wi-Fi capability.<sup>164</sup> We accept the proposal endorsed by both industry and consumer representatives to leave the record open so that they may develop a consensus plan on this issue in the near term.<sup>165</sup> We look forward to receiving from the parties to the consensus discussions general principles within three months of the release of this Report and Order and a detailed proposal within six months, and we also invite the views of other parties.<sup>166</sup> We anticipate acting on a final order shortly after receiving the detailed consensus proposal. Because our decision to take additional time to resolve this issue turns in part on the current unavailability of such handsets, we expect handset manufacturers to keep us up to date regarding the status of developments of such handsets, and we ask the parties to the consensus discussions to include that information as part of their filings in three and six months. If such handsets are made available in the interim, we will act expeditiously to address the hearing aid compatibility status of those handsets.<sup>167</sup>

66. Finally, we adopt an interim rule to allow handsets with Wi-Fi capability that otherwise meet hearing aid compatibility standards to be certified as hearing aid-compatible. Unlike the situation with future air interfaces and anticipated frequencies (e.g., the 700 MHz band), many handset models are already being produced and offered to consumers with Wi-Fi capability, including a significant proportion of the newest handset models.<sup>168</sup> Moreover, we have not yet addressed the extent to which hearing aid

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<sup>162</sup> See *700 MHz Service Report and Order*, 22 FCC Rcd at 8117 ¶ 143.

<sup>163</sup> See, e.g., ATIS Comments at 11; HIA Comments at 3; Motorola Comments at 3 (supporting the adoption of the Joint Consensus Plan “in its entirety”); RIM Comments at 15; T-Mobile Comments at 7; Sony Ericsson Comments at 7; Nokia Reply Comments at 3-4 (stating that the rule “represents a reasonable standard for hearing-aid compatibility evaluation of multi-mode handsets, and this proposal does not impede advances in technology for the benefit of consumers”). With regard to RCA’s concerns regarding availability of handsets to small carriers, we address this issue elsewhere in this Report and Order.

<sup>164</sup> ATIS Feb. 14, 2008 E-Mail.

<sup>165</sup> See *id.*

<sup>166</sup> We note that the Commission has followed a similar procedure on prior occasions. See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket Nos. 98-67 and 03-123, *Order on Reconsideration*, 20 FCC Rcd 13140, 13155 n.111 (2005); *Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Agency Communication Requirements Through the Year 2010*, WT Docket No. 96-86, *Third Memorandum Opinion and Order and Third Report and Order*, 15 FCC Rcd 19844, 19855 ¶ 25 (2000).

<sup>167</sup> See E-mail from Tom Goode, General Counsel, ATIS, to Bruce Gottlieb, Legal Advisor to Commissioner Copps, *et al.* (dated Feb. 15, 2008), attached to Letter from Deirdre Y. Cheek, Attorney, ATIS, to Marlene H. Dortch, Secretary, FCC (filed February 20, 2008) at 4.

<sup>168</sup> See [http://certifications.wi-fi.org/wbcs\\_certified\\_products.php?lang=en](http://certifications.wi-fi.org/wbcs_certified_products.php?lang=en) (listing 45 models in the category (continued....))

compatibility requirements should apply to handset models in various configurations incorporating Wi-Fi capability (which was not originally developed for voice transmissions), an issue on which we sought comment in the *Notice*.<sup>169</sup> Therefore, we adopt an interim measure to provide certainty and avoid discouraging the use of currently-available Wi-Fi technology during the period until we address the status of Wi-Fi. Specifically, we will not at present preclude a handset model that incorporates a Wi-Fi air interface from being offered as hearing aid-compatible so long as the handset otherwise qualifies as hearing aid-compatible under our rules.

67. To reduce consumer confusion as much as possible, however, we also will require manufacturers and service providers, where they provide hearing aid compatibility ratings for handset models that incorporate operations using a Wi-Fi air interface, to clearly disclose to consumers that the handset has not been rated for hearing aid compatibility with respect to its Wi-Fi operation.<sup>170</sup> We recognize that such disclosure is not likely to fully relieve potential customer confusion regarding handsets that meet established hearing aid compatibility standards for all of their operations except Wi-Fi. As discussed above, however, given the current circumstances, we believe the better course is to require disclosure of the lack of a hearing aid compatibility rating over the Wi-Fi air interface rather than preclude handset models that incorporate a Wi-Fi air interface from being considered hearing aid-compatible.<sup>171</sup> To give manufacturers and service providers sufficient time to develop and implement effective means to disclose this information (*e.g.*, inclusion of call-out cards or other media, revisions to their packaging materials, supplying of information on websites) where hearing aid compatibility ratings are provided, this requirement will become effective six months after the effective date of the rules adopted in this order. We also note that Working Group 6 of the ATIS incubator is developing language to inform consumers when otherwise hearing aid-compatible phones operate in part over frequency bands or air interfaces that do not have hearing aid compatibility standards.<sup>172</sup>

68. When we subsequently address the application of hearing aid compatibility requirements to Wi-Fi operations, we will consider an appropriate transition regime to bring any requirements into effect.<sup>173</sup> Given that Wi-Fi-capable handsets are currently available, we ask whether we should allow a period of time before any requirements to meet hearing aid compatibility standards for handsets that incorporate Wi-Fi capability become effective, and if so what that time period should be. We note that some commenters have argued, without any specific showing, that, due to their low power, Wi-Fi operations are unlikely to cause significant interference to hearing aids.<sup>174</sup> We invite further submissions

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“Phone, dual-mode (Wi-Fi and cellular),” and 84 models in the category “Smartphone, dual-mode (Wi-Fi and cellular)” (last visited Feb. 8, 2008).

<sup>169</sup> See *Notice*, 22 FCC Rcd at 19702 ¶ 89.

<sup>170</sup> This includes phones that may be used to provide Voice over Internet Protocol using a Wi-Fi air interface.

<sup>171</sup> In addition, we expect service providers to train the sales staff at their owned or operated retail outlets regarding the lack of a rating for Wi-Fi operations and its implications.

<sup>172</sup> See Letter from Karen Peltz Strauss, Legal Consultant, KPS Consulting, to Marlene Dortch, Secretary, FCC (filed Feb. 8, 2008) at 1; Letter from Thomas Goode, General Counsel, ATIS, to Marlene Dortch, Secretary, FCC (filed February 13, 2008) at 1-2.

<sup>173</sup> See *700 MHz Service Report and Order*, 22 FCC Rcd at 8120 ¶ 148 (indicating that the Commission would promulgate a timetable for deployment after hearing aid compatibility technical standards are established for 700 MHz).

<sup>174</sup> ANSI ASC C63@ Comments at 2-3; see also TIA Comments at 8 (noting that “many emerging technologies are designed to be used in close proximity to an access point or base station, allowing these devices to use much lower power”).

to elucidate these matters as we consider hearing aid compatibility issues relating to Wi-Fi operations. If those operations are generally unlikely to cause interference, it may reduce the amount of time necessary to develop a hearing aid compatibility standard and to certify handset models as meeting that standard.

**c. *De minimis* Rule**

69. **Background.** Section 20.19 provides a *de minimis* exception to hearing aid compatibility obligations for those manufacturers and mobile service providers that only offer a small number of handset models.<sup>175</sup> Specifically, Section 20.19(e)(1) provides that manufacturers and mobile service providers offering two handset models or fewer in the United States are exempt from the requirements of Section 20.19.<sup>176</sup> Section 20.19(e)(2) provides that manufacturers or mobile service providers that offer three handset models must offer at least one compliant model.<sup>177</sup> In the 2005 *Hearing Aid Compatibility Reconsideration Order and Further Notice*, the Commission clarified that the *de minimis* exception applies on a per air interface basis rather than across a manufacturer's or service provider's entire product line.<sup>178</sup> It also sought comment on whether the *de minimis* exception should be narrowed in certain respects.<sup>179</sup>

70. We addressed the resulting record in the *Second Report and Order* that was issued together with the *Notice*, and concluded that the record did not support any change to the *de minimis* exception at that time.<sup>180</sup> We also noted, however, that we were seeking comment in the *Notice* on the Joint Consensus Plan, including its proposals regarding the *de minimis* exception.<sup>181</sup> Specifically, the Joint Consensus Plan proposed that the Commission retain the *de minimis* exception but clarify that it applies on a per-air interface basis rather than across a manufacturer's or service provider's entire product line.<sup>182</sup> As noted above, the Commission issued such an interpretation in 2005, but did not codify the clarification. In the *Notice*, we therefore proposed codifying this pre-existing interpretation as part of Section 20.19(e).<sup>183</sup>

71. Most commenters addressing the issue support the Joint Consensus Plan proposal to retain the exception and to codify that the exception applies on a per air interface basis.<sup>184</sup> HLAA/TDI and Gallaudet/RERC propose, however, that the exception be modified so that it not apply on a permanent basis to large businesses that produce only one or two handsets with mass appeal, such as Apple's iPhone.<sup>185</sup> Gallaudet/RERC argues that, if the exception applied to companies like Apple that do not routinely manufacture handsets, their handsets might be subject to the exception indefinitely, and

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<sup>175</sup> See 47 C.F.R. § 20.19(e).

<sup>176</sup> See 47 C.F.R. § 20.19(e)(1).

<sup>177</sup> See 47 C.F.R. § 20.19(e)(2).

<sup>178</sup> See *Hearing Aid Compatibility Reconsideration Order and Further Notice*, 20 FCC Rcd at 11244 ¶ 53.

<sup>179</sup> See *id.* at 11249 ¶ 66.

<sup>180</sup> *Second Report and Order*, 22 FCC Rcd at 19681 ¶ 31.

<sup>181</sup> *Id.*

<sup>182</sup> See *Notice*, 22 FCC Rcd at 19701 ¶ 85 (citing Joint Consensus Plan at 10).

<sup>183</sup> See *Notice*, 22 FCC Rcd at 19701-02 ¶ 85.

<sup>184</sup> See, e.g., ATIS Comments at 14; AT&T Comments at 6; RIM Comments at 17; Sony Ericsson Comments at 7-8; TIA Comments at 9-10; T-Mobile Comments at 10; VON Reply Comments at 10.

<sup>185</sup> See HLAA/TDI Comments at 6; Gallaudet/RERC Comments at 13-14.

consumers with hearing loss might never have the opportunity to use such devices.<sup>186</sup> It further argues that the exception was not intended to permanently relieve large and prosperous companies “whose handsets produce handsome profits” from the obligations of Section 20.19.<sup>187</sup> It therefore suggests that the exception be applicable in such cases only for a certain period of time.<sup>188</sup> HLAA/TDI similarly argues that the exception was only intended to protect small businesses, and should therefore be limited in its application to large businesses like Apple.<sup>189</sup> In response, several commenters oppose the limitations suggested by Gallaudet/RERC and HLAA/TDI, arguing that the exception was not intended to be limited to small businesses, and that the proposed limitations risk undermining the rule’s objective of preserving competition and innovation from new entrants.<sup>190</sup>

72. Discussion. We adopt the proposal of the Joint Consensus Plan to retain the existing *de minimis* exception, which in most of its applications was not opposed in the record. We further adopt the proposal to codify that the exception applies on a per air interface basis. No commenter has objected to applying the exception on a per air interface basis, and we see no reason to depart from our earlier decision that adopted that interpretation. As the Commission indicated in the *Hearing Aid Compatibility Reconsideration Order and Further Notice*, a per air interface approach to the *de minimis* exception to the handset deployment obligations follows from the deployment obligations themselves, which are also applied on a per air interface basis (*i.e.*, manufacturers and service providers must offer the specified number of handsets for each air interface in their product lines).<sup>191</sup> If we were to apply the exception to the total number of handsets across a manufacturer’s total product line while requiring the specified number or percentage of hearing aid-compatible handsets for each air interface, a manufacturer that offered just one handset each for four different interfaces would fall outside the exception for each of the four interfaces. This result would force the manufacturer in question to either significantly increase the number of handsets in its product line to meet a multiple-handset deployment obligation for each air interface or else withdraw some of its existing products from the U.S. wireless market, which “could have the effect of retarding technological progress and limiting competition.”<sup>192</sup>

73. While we do not adopt at this time the new limitation proposed by HLAA/TDI and Gallaudet/RERC, we leave the record open for further comment. We recognize HLAA/TDI’s and Gallaudet/RERC’s concern that if a manufacturer produces only one or two models of a popular handset that is not hearing aid-compatible, consumers with hearing loss may be denied access to attractive features of that handset indefinitely. At the same time, as we have stated previously, the exception was not adopted solely for the benefit of small businesses, but for businesses of any size that sell only a small

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<sup>186</sup> See Gallaudet/RERC Comments at 13.

<sup>187</sup> *Id.* at 14.

<sup>188</sup> *Id.*

<sup>189</sup> HLAA/TDI Comments at 6.

<sup>190</sup> See Apple Reply Comments at 2-5; AT&T Reply Comments at 4-5; CTIA Reply Comments at 6; Motorola Reply Comments at 5-6; TIA Reply Comments at 10; T-Mobile Reply Comments at 7; VON Reply Comments at 10.

<sup>191</sup> See *Hearing Aid Compatibility Reconsideration Order and Further Notice*, 20 FCC Rcd at 11244 ¶ 53 (“This clarification makes explicit the consistency between the handset deployment benchmarks, which expressly apply on a per air interface basis, and the *de minimis* exception . . .”).

<sup>192</sup> *Id.*

number of digital wireless handsets in the United States.<sup>193</sup> We are concerned that the rule not be limited in a manner that would compromise its effectiveness in promoting innovation and competition.<sup>194</sup> We also note that large manufacturers with highly successful initial devices may not continue indefinitely to produce only two or fewer handset models, but instead may expand their product offerings in response to consumer demand for new and different features, thereby bringing themselves under the hearing aid compatibility rules and benefiting consumers both with and without hearing loss.<sup>195</sup> It is also unclear exactly how the changes proposed by Gallaudet/RERC and HLAA/TDI would operate in practice. How would “large business,” “handsome profits,” or “mass appeal” be defined? To the extent the rule’s application would depend on the volume and profitability of sales during the first year, would manufacturers have sufficient ability to anticipate the obligations to which they would be subject and plan accordingly? We therefore leave the record open for commenters to address these questions pursuant to our *ex parte* procedures.<sup>196</sup> In particular, we invite parties to discuss with specificity the operational details and effects of any limitation on the *de minimis* exception that they may propose, as well as the need for the limitation to protect consumers’ access to phones with advanced or desirable technologies and features. We intend to address this issue further, taking into consideration any *ex parte* submissions we receive, in the upcoming Report and Order.

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

#### 4. M4/T4 Standards

75. Background. In the *Notice*, we sought comment on the possibility of establishing additional deadlines or deployment milestones beyond those contained in the Joint Consensus Plan.<sup>197</sup> In particular,

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<sup>193</sup> See *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16781 ¶ 69 (adopting *de minimis* exception in recognition that hearing aid compatibility requirements “could have a disproportionate impact on small phone manufacturers or those that sell only a small number of digital wireless handsets”) (emphasis added).

<sup>194</sup> See *Hearing Aid Compatibility Reconsideration Order and Further Notice*, 20 FCC Rcd at 11245 ¶ 53 (adopting per-air-interface interpretation to ensure that hearing aid compatibility rules do not “have the effect of retarding technological progress and limiting competition”). See also Apple Reply Comments at 4 & n.5 (stating that *de minimis* exception allowed Apple to enter the handset market with advanced technology, and noting that iPhone has spurred user interface improvements in competing handsets).

<sup>195</sup> See Nokia Reply Comments at 8. We note, for example, that RIM, whose CDMA offerings in the CMRS market initially fell under the *de minimis* exception, has gone on to expand its CDMA lines and as of November 1, 2007, offered four hearing aid-compatible CDMA handsets. See *Hearing Aid Compatibility Reconsideration Order and Further Notice*, 20 FCC Rcd at 11244 ¶ 52 (noting that RIM offered only one CDMA device); Section 68.4(a) of the Commission’s Rules Governing Hearing Aid Compatibility Telephones, WT Docket 01-309, Hearing Aid Compatibility Compliance Efforts Status Report #7 Submitted by the Alliance for Telecommunications Industry Solutions (ATIS) on behalf of the ATIS Incubator Solutions Program #4, filed Nov. 19, 2007, Attach. A (RIM Status Report).

<sup>196</sup> See 47 C.F.R. § 1.1206.

<sup>197</sup> See *Notice*, 22 FCC Rcd at 19687 ¶ 49.

we asked commenters to address whether we should adopt some requirement to deploy M4- or T4-rated handsets before our next review of the rules.<sup>198</sup> Most commenters that address this issue advise against the adoption of such requirements,<sup>199</sup> or state a preference to wait until the 2010 review to consider any such standards.<sup>200</sup> Wireless RERC states, on the other hand, that “the FCC needs to expand the rules . . . to increase the number of models available with M4/T4 compatibility.”<sup>201</sup> HIA states generally that it supports mandating M4/T4 performance by handsets “if and when such performance is reasonably achievable.”<sup>202</sup>

76. Discussion. Given the weight of the record, especially the fact that no commenter submitted any specific proposals for new standards or rules, we determine not to impose any additional benchmarks based on hearing aid compatibility standards more stringent than the M3 / T3 standards in our rules and in the Joint Consensus Plan. Without more, we find that technology and the market are not yet fully enough developed to support a specific requirement at this time. Nevertheless, we agree with Gallaudet/RERC that the matter of requirements to deploy M4- or T4-rated handsets should be “on the agenda” for the rulemaking review that we plan to initiate in 2010.<sup>203</sup> In the meantime, given the surveys and studies submitted by Wireless RERC, and the comments of HIA, we encourage manufacturers and service providers, including new entrants, to develop and deploy wireless phones that meet M4 and T4 standards in order to give greater options to consumers with hearing loss.<sup>204</sup> In our 2010 review, we will look closely at the extent to which these handsets are commercially available, whether achieving these standards is technically feasible for all interfaces and frequency bands, and the degree to which hearing aid technologies may have improved so as to make achieving such standards unnecessary.

## B. 2007 ANSI C63.19 Technical Standard

### 1. Adoption of the 2007 Standard and Phase-in

77. Background. Section 20.19(b) of the Commission’s rules contains the current technical standards defining hearing aid compatibility.<sup>205</sup> In the 2003 *Hearing Aid Compatibility Order*, the Commission adopted the performance levels in the 2001 version of the ANSI C63.19 technical standard as the basis for ensuring hearing aid compatibility of digital wireless handsets.<sup>206</sup> In finding that the technical standard in Section 20.19(b) met the “established” requirement set forth in the Hearing Aid Compatibility Act,<sup>207</sup> the Commission analyzed and relied on numerous submissions supporting ANSI C63.19 as an established technical standard.<sup>208</sup> The Commission determined that the standard presents a

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<sup>198</sup> *Id.*

<sup>199</sup> See, e.g., Nokia Comments at 9; Nokia Reply Comments at 5; RIM Comments at 7-9.

<sup>200</sup> See, e.g., AT&T Comments at 3; HLAA/TDI Comments at 2; Gallaudet/RERC Comments at 5-6.

<sup>201</sup> Wireless RERC Comments at 5.

<sup>202</sup> HIA Comments at 2 n.2

<sup>203</sup> Gallaudet/RERC Comments at 6; see also *infra* para. 117.

<sup>204</sup> See also HLAA/TDI Comments at 2; Gallaudet/RERC Comments at 5-6 (supporting doing this where “technically feasible”).

<sup>205</sup> 47 C.F.R. § 20.19(b).

<sup>206</sup> See *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16779 ¶ 63.

<sup>207</sup> 47 U.S.C. § 610(b)(1)(B) (providing that hearing aid compatibility requirements shall be based on “established technical standards for hearing aid compatibility”).

<sup>208</sup> See *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16770-71 ¶ 43.

workable approach to measuring levels of interference that digital wireless handsets could cause to hearing aids and the inductive coupling capability of wireless handsets, as well as for measuring the interference immunity of hearing aids.<sup>209</sup> The Commission further ruled that codification of ANSI C63.19 served the public interest because the manufacture of digital wireless handsets comporting with this standard would ensure that “a greater number of hearing aid and cochlear implant users will be able to find digital wireless phones that will work for them.”<sup>210</sup>

78. To ensure that the standard codified in the rules would remain viable, the Commission delegated to the Chief of WTB, in coordination with the Chief of OET, the authority to approve future versions of the standard that do not raise major compliance issues.<sup>211</sup> Where major changes to the standard are made that could affect compliance, the Commission stated that it would initiate an appropriate rulemaking proceeding to consider adoption of updated versions. The Commission also encouraged ANSI to work with the relevant stakeholders to review the standard periodically to determine whether improvements to the standard are warranted.<sup>212</sup> As a result, acting on delegated authority in 2005, OET clarified that applicants for certification of equipment could rely on either the 2001 or a draft 2005 update of the ANSI C63.19 standard.<sup>213</sup> In addition, in 2006, WTB and OET released a public notice on delegated authority stating that OET would accept applications for certification of equipment tested and rated under a 2006 revised standard (ANSI C63.19-2006) for wireless phone hearing aid compatibility.<sup>214</sup> WTB and OET also explained that applicants for certification may rely on only one of the three versions (2001, 2005, or 2006) of the ANSI C63.19 standard.<sup>215</sup>

79. On June 25, 2007, the American National Standards Institute Accredited Standards Committee C63® filed a petition seeking adoption of the 2007 revision of the ANSI C63.19 technical standard in place of the 2001, 2005 draft, and 2006 versions of the technical standard. ANSI stated in its petition that further improvements have been made to the technical standard to reflect changes in technology, and efficiencies and improvements in testing procedures.<sup>216</sup> The Joint Consensus Plan also recommended adoption of the new standard, together with a transition plan under which use of either the 2007 or 2006 standard would be permitted immediately, and the 2007 standard would become mandatory for grants of equipment authorization beginning January 1, 2010.<sup>217</sup>

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<sup>209</sup> See *id.* at 16776 ¶ 55.

<sup>210</sup> *Id.* at 16777 ¶ 57.

<sup>211</sup> See *id.* at 16779 ¶ 63.

<sup>212</sup> See *id.*

<sup>213</sup> See Public Notice, “OET Clarifies Use of Revised Wireless Phone Hearing Aid Compatibility Standard Measurement Procedures and Rating Nomenclature,” 20 FCC Rcd 8188 (OET 2005).

<sup>214</sup> See generally 2006 ANSI Standard Public Notice, 21 FCC Rcd at 6384-85.

<sup>215</sup> *Id.*

<sup>216</sup> ANSI Petition at 2. Specifically, (1) the distance between the cell phone under measurement and the measuring probe to be used when establishing the “M” rating has been increased from 1.0 cm to 1.5 cm, (2) the (signal+noise)-to-noise ratio to be used in determining the “T” rating has been increased (resulting in lower noise relative to the audible signal and improved performance of the wireless device), (3) the “T” rating for T-Coil capable wireless devices has been separated from the “M” rating, allowing a “T” rating that is greater than the “M” rating for the same wireless device, and (4) the axial T-coil coupling field intensity value has been changed from  $\geq -13$  dB (A/m) at 1 kHz to  $\geq -18$  dB (A/m) at 1 kHz, resulting in the same T-coil field intensity value for both the axial and radial test positions.

<sup>217</sup> Joint Consensus Plan at 13.

80. Because the standard that has been adopted by ANSI is stricter in some respects than prior versions,<sup>218</sup> and is the result of broad participation from diverse groups,<sup>219</sup> we proposed in the *Notice* that the standard be codified in our rules in order to better promote the development of hearing aid-compatible handsets that hearing-impaired consumers can readily use. We also proposed to adopt and sought comment on the phase-in process as outlined in the Joint Consensus Plan.<sup>220</sup> We further asked whether we should require handsets certified under earlier versions of the standard to be recertified, and whether we should permit use of the 2001 and 2005, as well as 2006, versions of the standard during the transition period.<sup>221</sup> Seventeen of the 35 comments and replies address these issues. All of these commenters support adoption of the 2007 standard, and none are opposed to any aspect of the proposed transition plan.<sup>222</sup>

81. Discussion. Consistent with the Joint Consensus Plan and the unanimous view of commenters, we adopt the 2007 ANSI C63.19 standard as a replacement for the 2001, 2005, and 2006 versions of the standard. We conclude that the use of the most current testing and rating techniques will best ensure that consumers with hearing loss can obtain wireless phones that meet their needs. We also adopt the transition schedule set forth in the Joint Consensus Plan, agreeing with commenters that this affords manufacturers appropriate time to begin producing phones to the new standard.<sup>223</sup> We further determine not to require recertification of handsets previously certified under one of the older standards, but instead to continue recognizing such phones as hearing aid-compatible even after the 2007 standard becomes mandatory for new certifications. As AT&T observes, older models are likely to be “phased out of circulation through marketplace attrition,” which should obviate the issue.<sup>224</sup> Finally, no commenter addressed whether the 2001 and 2005 versions of the standard should continue to be permissible for new certifications during the transition period until 2010. To the contrary, the comments consistently assume that the choice during the transition period is between the 2006 and 2007 versions of the standard.<sup>225</sup> As proposed in the Joint Consensus Plan, therefore, we do not provide for the continued use of earlier versions.

82. In its comments, ANSI notes that the phase-in requirement contains an unspoken assumption, that “this would require any given mobile phone handset to be qualified under a complete version of either the 2006 or 2007 standard.”<sup>226</sup> We agree. Accordingly, we clarify that a party can use either the 2006 or 2007 standard for new certifications through 2009, but must use a single version for all certification tests and criteria for both the M and T ratings with respect to a given device. The particular version of the standard used should be specified in the party’s application for equipment certification.

83. To summarize, under the rules we adopt today, a newly-certified handset model or a handset model submitted for a permissive change relating to hearing aid compatibility will have to meet, at

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<sup>218</sup> *Id.*

<sup>219</sup> ANSI Petition at 2.

<sup>220</sup> *See Notice*, 22 FCC Rcd at 19692 ¶ 60.

<sup>221</sup> *Id.* at ¶ 62.

<sup>222</sup> *See, e.g.*, Gallaudet/RERC Comments at 7; ATIS Comments at 8; HLAA Comments at 3; Research in Motion Comments at 11; Motorola Reply Comments at 3; TIA Comments at 5-6.

<sup>223</sup> *See, e.g.*, Motorola Comments at 3; T-Mobile Comments at 10; CTIA Reply Comments at 4-5.

<sup>224</sup> AT&T Comments at 6. *See also* RIM Comments at 11.

<sup>225</sup> *See, e.g.*, ANSI Technical Comment at 2 (referencing 2006 and 2007 standards).

<sup>226</sup> *Id.*

minimum, an M3 rating (for radio frequency interference reduction) or T3 rating (for inductive coupling capability) as set forth in either the 2006 or 2007 revision of the ANSI C63.19 standard to be considered compatible. Grants of equipment certification previously issued under earlier versions of the standard will remain valid for hearing aid compatibility purposes, and if a permissive change is submitted for a reason not related primarily to a handset model's hearing aid compatibility status, the analysis of the effect of that change on a phone's compliance status may use the version of the ANSI C63.19 standard under which the hearing aid compatibility certification for that model was first made.<sup>227</sup> However, a manufacturer that is required to meet a T3 rating for 20 percent of its models under Section 20.19(d)(1)(i) will only be able to count toward this requirement one model manufactured after January 1, 2009, and certified under a pre-2007 standard.<sup>228</sup> Then, beginning on January 1, 2010, we will only permit use of the 2007 version of the standard for obtaining new grants of equipment certification, while continuing to recognize the validity of existing grants under previous versions of the standard.<sup>229</sup>

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

84. Background. In the *Notice*, we observed that the 2007 version of the ANSI C63.19 standard includes target values for hearing aid compatibility procedures for operation over specific air interfaces at frequencies in the ranges of 800-950 MHz and 1.6-2.5 GHz, a broader range of frequencies than is currently covered by Section 20.19(a).<sup>230</sup> We had previously stated that, once technical standards were established for a new frequency band, we would establish a timetable for deployment.<sup>231</sup> Accordingly, we tentatively concluded in the *Notice* to revise the hearing aid compatibility rule to include services operating over any frequencies within these two bands, to the extent they employ air interfaces for which technical standards have been established, and sought comment on this conclusion.<sup>232</sup> No commenter discussed the issue.

85. Discussion. We adopt our proposal to revise the rule to include services over any frequency band within the range covered by the ANSI C63.19-2007 standard, specifically, the 800-950 MHz and 1.6-2.5 GHz bands, to the extent that they employ air interfaces for which technical standards are established in that standard.<sup>233</sup> We note that no commenter objects to this revision or indicates that any delay is necessary to meet hearing aid compatibility obligations within this frequency range. Accordingly, as of the effective date of these rules, providers of commercial mobile radio services that are operating over these frequency bands and are otherwise within the scope of Section 20.19, as well as

<sup>227</sup> Consistent with the requirement to use a single version of the standard for all tests and criteria, however, if a permissive change is submitted for one of the hearing aid compatibility ratings, the manufacturer must also reevaluate the other hearing aid compatibility rating using the same version of the ANSI C63.19 standard.

<sup>228</sup> This qualification was proposed in the Joint Consensus Plan at page C-3 of Appendix C to the Plan. See Final Rules in Appendix C, § 20.19(d)(1)(i).

<sup>229</sup> Joint Consensus Plan at 13.

<sup>230</sup> See *Notice*, 22 FCC Rcd at 19700 ¶ 82. We also note that the 2006 version of the standard includes target values for operation at the same frequency bands.

<sup>231</sup> *700 MHz Service Report and Order*, 22 FCC Rcd at 8119 ¶ 148.

<sup>232</sup> See *Notice*, 22 FCC Rcd at 19700 ¶ 82.

<sup>233</sup> We note that Wi-Fi technologies often operate in the 2.4 GHz band, within the frequency range addressed by the ANSI C63.19 standard. However, as noted elsewhere, we have not yet determined the extent to which services and operations based on emerging technologies such as Wi-Fi should be subject to hearing aid compatibility obligations. See *supra* para. 65.

manufacturers of wireless phones used in the delivery of such services, will be subject to the same benchmark requirements that providers of cellular, PCS, and SMR services have to deploy hearing aid-compatible handset models as determined using either the 2006 or 2007 version of ANSI standard C63.19.<sup>234</sup>

### 3. Future Revisions and Extensions to the Technical Standard

86. Background. In the *Hearing Aid Compatibility Order*, the Commission, as noted above, delegated to the Chief of WTB, in coordination with the Chief of OET, the authority to approve future versions of the standard that do not raise major compliance issues.<sup>235</sup> In the *Notice*, we sought comment on whether we should establish a mechanism under which hearing aid compatibility obligations would become applicable to additional frequency bands as soon as or within a defined period after applicable technical standards are established, without the need for an additional rulemaking.<sup>236</sup> We asked commenters whether such standards should be established upon promulgation by ANSI ASC Committee C63®, or whether there should additionally be a process for Commission review and approval.<sup>237</sup>

87. Discussion. To help ensure that our rules continue to reflect the most current standard as ANSI adopts new revisions to the standard, we again delegate to the Chief, Wireless Telecommunications Bureau, and the Chief, Office of Engineering and Technology, the authority to jointly adopt future versions of the ANSI C63.19 standard to the extent that the changes to the standard do not raise major compliance issues. In addition, as indicated below, we expand our delegation to a limited extent, *i.e.*, to allow Commission staff to administer a mechanism by which new frequency bands and air interfaces for which technical standards do not currently exist may be made subject to hearing aid compatibility obligations once such standards have been established. Specifically, where future versions of the ANSI C63.19 standard have been promulgated that provide technical standards for additional frequency bands or air interfaces not covered by previous versions, we direct the Chief, WTB, and the Chief, OET, to initiate a rulemaking proceeding, adopting the standards as established technical standards for the new frequency bands or air interfaces if they determine, based on the record, that the standards do not impose with respect to such frequency bands or air interfaces materially greater obligations than those imposed on services already subject to Section 20.19. To ensure that manufacturers and service providers have adequate time to comply with their obligations, we further impose a limitation that WTB and OET may not require manufacturers and Tier I carriers to meet deployment requirements for the relevant bands or air interfaces until at least one year after release of an order adopting standards for those bands or air interfaces, and may not require service providers other than Tier I carriers to meet such requirements sooner than 15 months after release of such order. However, manufacturers will be able to obtain hearing aid compatibility certification of handsets that can operate over the new bands or air interfaces, consistent with the multi-band/multi-mode rule discussed elsewhere, immediately upon the effective date of the rules adopted in such order.<sup>238</sup>

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<sup>234</sup> We note that the *Notice* also requested comment on how our rules apply to mobile satellite service (MSS) providers and whether any rule revisions are necessary respecting such providers. See *Notice*, 22 FCC Rcd at 19700 ¶ 79. We defer these issues to a future Report and Order. Accordingly, the rules we adopt today do not apply to MSS unless they fall within the existing scope of Section 20.19(a).

<sup>235</sup> See *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16779 ¶ 63.

<sup>236</sup> See *Notice*, 22 FCC Rcd at 19701 ¶ 83.

<sup>237</sup> *Id.*

<sup>238</sup> In the *700 MHz Service Report and Order*, the Commission established a 24-month period for the development of standards for all of the frequencies listed in Section 27.1(b) of the rules, and provided that, if such standards were promulgated within that period, the Commission would initiate “a further proceeding at that time to establish a (continued....)

88. Our action in this regard is broadly supported by the record. In particular, every commenter that addresses the issue generally supports establishment of a streamlined mechanism for the approval of revised standards that provide tests for new frequency bands and air interfaces.<sup>239</sup> Moreover, our process addresses concerns expressed by some commenters that the Commission should provide the public an opportunity to comment on the new standard before formally approving the standard in cases where the approval of the standard will result in extending hearing aid compatibility requirements to new bands or air interfaces.<sup>240</sup> TIA advocates that we allow at least a two year period after adoption of a new standard before requiring compliance.<sup>241</sup> We find, however, that a one year interval is generally both sufficient for industry and necessary in order to bring the benefits of hearing aid-compatible handsets promptly to consumers.<sup>242</sup> Because manufacturers are already on notice that new bands and air interfaces will be subject to hearing aid compatibility requirements upon the establishment of standards, and given that manufacturers will likely be involved themselves in the standards development process, we expect that they will be in a position to at least begin the process of developing hearing aid-compatible handsets for the new bands and air interfaces even before the relevant standards are approved by ANSI, not to mention during the pendency of the rulemaking proceeding. Furthermore, the industry's years of experience with hearing aid compatibility in other bands and air interfaces will enable them to achieve hearing aid-compatible designs more quickly than before. We therefore adopt a minimum one year period for manufacturers and Tier I carriers in order to ensure the offering of hearing aid-compatible handsets for new bands and air interfaces as early as reasonably possible. Consistent with our recognition elsewhere of the difficulties smaller service providers may have in procuring up-to-date handsets, we prescribe a 15-month minimum interval for service providers other than Tier I carriers to begin offering hearing aid-compatible handsets for new bands and/or air interfaces.

89. Thus, in order to ensure that our rules continue to protect the ability of consumers with hearing loss to utilize services over all frequency bands and air interfaces for which standards exist, we delegate authority to WTB and OET to implement rule changes to conform our rules to ANSI standards. We take this action pursuant to Section 5(c)(1) of the Communications Act, which grants the Commission authority to delegate any of its functions, with certain exceptions not relevant here.<sup>243</sup> We find that such rule changes do not involve novel questions of fact, law, or policy, and therefore are appropriately made under delegated authority.<sup>244</sup> We amend Sections 0.241(a)(1), 0.331(d), and 20.19 of our rules to provide the Chiefs of WTB and OET with this delegated authority.<sup>245</sup> These amendments pertain to agency (Continued from previous page) \_\_\_\_\_  
specific timetable for deployment of hearing aid-compatible handsets for services in the relevant bands that meet the criteria discussed above." See *700 MHz Service Report and Order*, 22 FCC Rcd at 8120 ¶ 148. Pursuant to our action today, this rulemaking proceeding referenced in the *700 MHz Report and Order* may be undertaken by WTB and OET under delegated authority.

<sup>239</sup> See, e.g., ANSI ASC C63® Comments at 3; HLAA/TDI Comments at 5; TIA Comments at 6-7.

<sup>240</sup> See Motorola Comments at 9 (notice and comment will allow parties to raise concerns with a standard before it is implemented, and is required under the Administrative Procedure Act); ATIS Reply Comments at 3 (Commission should seek public comment before adopting future revisions to the standard); RIM Reply Comments at 3 (Commission should maintain its oversight of future revisions through notice and comment process).

<sup>241</sup> See TIA Comments at 6-7.

<sup>242</sup> See, e.g., Gallaudet/RERC Comments at 15 (proposing that regulations automatically become applicable to new frequency bands "as soon as or within a defined period after technical standards are established" for an air interface).

<sup>243</sup> 47 U.S.C. § 155(c)(1).

<sup>244</sup> Cf. 47 C.F.R. § 0.331(d) (delegating authority to WTB to issue orders involving certain conforming amendments to rules "where novel questions of fact, law, or policy are not involved").

<sup>245</sup> 47 C.F.R. §§ 0.241(a)(1), 0.331(d), 20.19.

organization, procedure and practice. Consequently, the notice and comment provisions of the Administrative Procedure Act contained in 5 U.S.C. § 553(b) are inapplicable.<sup>246</sup>

### C. Reporting, Information, and Outreach

#### 1. Reporting

90. Background. In the *Hearing Aid Compatibility Order*, the Commission established a schedule requiring manufacturers and wireless service providers to report on compliance efforts every six months from 2004 through 2006, and then annually in 2007 and 2008. Thus, manufacturers and wireless service providers filed their most recent compliance reports on November 19, 2007.<sup>247</sup> These reports include a variety of required information describing manufacturers' and service providers' efforts aimed at complying with Commission requirements for hearing aid compatibility.<sup>248</sup>

91. As the Commission has stated, these reports are intended to serve dual purposes. First, the reports assist the Commission in monitoring handset deployment progress. In addition, the reports provide valuable information to the public concerning the technical testing and commercial availability of hearing aid-compatible handsets,<sup>249</sup> both for consumers, particularly those with hearing disabilities, and for service providers seeking information regarding the hearing aid compatibility of manufacturers' products.<sup>250</sup>

92. The Joint Consensus Plan proposed to retain the requirement that manufacturers and service providers file annual reports with the Commission. It further proposed certain refinements to the contents of the reports so as to render them more helpful to consumers and others. The Joint Consensus Plan proposed a staggered schedule whereby manufacturers would be required to provide an annual status report to the Commission beginning November 30, 2007, Tier I carriers would be required to provide an annual status report to the Commission six months later beginning May 30, 2008, and Tier II and Tier III carriers would be required to provide an annual status report beginning May 30, 2009.<sup>251</sup> These reporting requirements would continue annually through the November report in 2012.<sup>252</sup>

93. In the *Notice*, we sought comment on the reporting provisions of the Joint Consensus Plan and on potential additional content requirements, including requiring both manufacturers and service providers to provide the model number and FCC ID number directly associated with each model that they are reporting as compatible, together with the "M" and "T" rating that each such model has been certified as achieving under the ANSI C63.19 standard.<sup>253</sup> We also sought comment on the proposed reporting schedule. In particular, we sought comment on the appropriate start date for new reports, given that the November 2007 reports under the existing rules were expected to be filed on time, and on the appropriateness of delaying for a year or more the next reports for service providers other than Tier I carriers.<sup>254</sup> We further proposed to delegate to WTB authority to develop a standardized format for these

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<sup>246</sup> 5 U.S.C. § 553(b).

<sup>247</sup> See *Notice*, 22 FCC Rcd at 19696 ¶ 70.

<sup>248</sup> *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16787 ¶ 89.

<sup>249</sup> See *id.*

<sup>250</sup> See *Staff Report*, 22 FCC Rcd at 17732-33 ¶¶ 52-53.

<sup>251</sup> Joint Consensus Plan. at 11.

<sup>252</sup> *Id.*

<sup>253</sup> *Notice*, 22 FCC Rcd at 19695 ¶ 67.

<sup>254</sup> See *id.* at 19696 ¶ 70.

reports, and we sought comment on this and related issues.<sup>255</sup>

94. Although there is broad support among commenters on the need for additional reporting beyond 2007,<sup>256</sup> some commenters advocate limiting the reporting information to that listed in the Joint Consensus Plan, asserting that additional content requirements for the reports would be burdensome.<sup>257</sup> ATIS supports retaining the original schedule, with manufacturers reporting on November 30, and service providers on May 30.<sup>258</sup> RCA supports having non-nationwide service providers (Tier II /Tier III carriers) begin reporting a year later than Tier I carriers.<sup>259</sup>

95. Discussion. We adopt substantially the reporting requirements proposed in the *Notice*, along with certain additions and changes. First, we elaborate on the required content of the reports in order to ensure that they will provide complete information to the Commission and to consumers. We further determine to require the same content from all providers, regardless of size. Furthermore, we clarify that the reporting requirements apply to all manufacturers and service providers, including those that come under the *de minimis* exception to the deployment benchmarks. We establish new timelines for the filing of the reports. Finally, we delegate authority to prescribe a template, including the authority to require electronic filing, to WTB.

96. Initially, we adopt the reporting content requirements proposed in the *Notice* with certain elaborations and clarifications. These revised requirements will help ensure that the reports enable the Commission to fulfill its responsibilities in monitoring the status of access to hearing aid-compatible handsets and verifying compliance with our rules, and will ensure that the public has additional useful information on compatible handsets. Specifically, we clarify that manufacturers and service providers must provide the dates on which they began and ended offering specific models during the past 12 months in order to demonstrate compliance over time, instead of providing a once a year “snapshot.” We further require manufacturers to indicate if devices that they market under separate model numbers constitute a single model for purposes of the hearing aid compatibility rules. This information will enable us to verify compliance with all of the hearing aid compatibility rules at all relevant times. Finally, we require each service provider to include an explanation of its methodology for dividing its hearing aid-compatible phones into different levels of functionality, which will help the Commission as well as the public know the range of compatible handsets that are being made available.<sup>260</sup> As discussed more fully below, we require that these reports be filed by all manufacturers and service providers, even those that fall within the *de minimis* exception, although not all data categories will apply to *de minimis* entities.

97. The revised report content requirements are as follows:

Manufacturers:

- (1) digital wireless phone handset models tested since the most recent report;

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<sup>255</sup> *Id.* at 19696 ¶ 69.

<sup>256</sup> *See, e.g.*, Gallaudet/RERC Comments at 8; Motorola Comments at 6; HLAA Comments at 3; Research in Motion Comments at 3; ATIS Comments at 9; Nokia Comments at 5.

<sup>257</sup> SouthernLINC Wireless Reply Comments at 7; *see also* TIA Comments at 12; RCA Comments at 7 (air interface and frequency band information “is difficult to obtain and verify, and it is irrelevant to a reporting carrier’s single-interface obligation”).

<sup>258</sup> ATIS Comments at 9.

<sup>259</sup> RCA Comments at 7.

<sup>260</sup> *See supra* Section IV.A.2.b.

- (2) compliant phone models offered to service providers since the most recent report,<sup>261</sup> identified by marketing model name/number(s) and FCC ID number;
- (3) for each such model, the air interface(s) and frequency band(s) over which it operates, the hearing aid compatibility ratings under ANSI C63.19 for each frequency band and air interface, the ANSI C63.19 version used, and the months in which the model was available since the most recent report;
- (4) non-compliant phone models offered to service providers since the most recent report, identifying each model by marketing model name/number(s) and FCC ID number;
- (5) for each non-compliant model, the air interface(s) over which it operates and the months in which the model was available since the most recent report;
- (6) total numbers of compliant and non-compliant phone models offered to service providers for each air interface as of the time of the report;
- (7) any instance, as of the date of the report or since the most recent report, in which multiple compliant or non-compliant devices are marketed under separate model name/numbers but constitute a single model for purposes of the hearing aid compatibility rules, identifying each device by marketing model name/number and FCC ID number;
- (8) status of product labeling; and
- (9) outreach efforts.

Service providers:

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

98. We further determine that the same reporting requirements should apply to all service providers. We reject arguments by RCA and SouthernLINC that less information should be required of

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<sup>261</sup> As discussed below, information relating to compliant and non-complaint phone models offered in manufacturers' and service providers' initial reports under the new rule need only be provided for the previous six months.

service providers that are not Tier I carriers.<sup>262</sup> We find that uniform application of reporting requirements is necessary to inform all consumers, and we are unconvinced by arguments that the reports will impose unreasonable burdens. In this regard, we disagree with those commenters that suggest that some of this information can be difficult to obtain or verify. Rather, in light of the requirements we adopt today, this information should be readily available to service providers either from the manufacturer's previous reports to the Commission, from the manufacturer's own website, or from the manufacturer directly. We further reject the proposition that some of this information, in particular the frequency bands and air interfaces over which a phone operates, is unnecessary. To the contrary, this information is essential to ensure correct application of our rules requiring deployment of hearing aid-compatible phones on a per-air interface basis, as well as our requirements that phones meet hearing aid compatibility standards for all air interfaces and frequency bands over which they operate. We note that even if a provider offers service over only one air interface, hearing aid compatibility over multiple air interfaces may be important to its customers who may use their phones when roaming.

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

100. In addition, we require each manufacturer and service provider that is required to offer one or more hearing aid-compatible handset models to identify in its report, if it maintains a public website, the specific website address at which it provides information relating to the hearing aid-compatible handsets that it offers.<sup>263</sup>

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

102. We find that this schedule appropriately balances manufacturers' and service providers' need for time to collect the information that will be required under the new reports with the public's interest in maintaining a steady flow of information. In particular, requiring the first reports to be filed in January 2009, two months after the next reports would have been filed under our existing rules and 14 months after the most recent reports, affords manufacturers and service providers a reasonable period to begin collecting the new information. Although this schedule departs from the November and May dates

<sup>262</sup> RCA Comments at 7; SouthernLINC Reply Comments at 6.

<sup>263</sup> See *infra* para. 112 (discussion of requirement that manufacturers and service providers post certain information on their websites).

proposed in the Joint Consensus Plan, the differences are not great, and indeed our adopted rule expands the period of time some entities are afforded before making their first reports.<sup>264</sup> This time period also gives WTB an opportunity to devise and promulgate a standard electronic format for reporting. Consistent with the Joint Consensus Plan, we find that staggering the deadlines after the initial reports will allow service providers better to incorporate more recent manufacturer information into their reports, as well as facilitating efficient administrative review. In addition, we disagree with the Joint Consensus Plan's provision for a year's delay in reporting for service providers that are not Tier I carriers, particularly in light of our decision not to require any reports until January 2009.<sup>265</sup> We note that in the past all service providers have had the same reporting obligations, and find that this proposal would create an unacceptable and unnecessary gap in the availability of information. Only one party, RCA, filed comments supporting this aspect of the Joint Consensus Plan, and one smaller service provider, i wireless, specifically rejected the year's delay.<sup>266</sup>

103. Finally, we delegate authority to prescribe a template, including the authority to require electronic filing, to WTB. We find that a standardized form would improve the quality and utility of the reports for the Commission, industry, and the public. Although at least one commenter prefers to rely on a narrative report format,<sup>267</sup> we conclude that a standardized format will assist the Commission and the public in understanding and analyzing the reports.

## 2. Information and Outreach

104. Background. In addition to the reports, the *Notice* sought comment on other ways to increase the availability of hearing aid compatibility information to consumers, service providers, and other interested parties.<sup>268</sup> As explained in the *Staff Report*, the Commission's and industry's existing databases and websites are of limited value for these purposes.<sup>269</sup>

105. The *Notice* sought comment both on possible changes to the Commission's website and databases and possible new requirements on manufacturers and service providers. For example, it is difficult, particularly for an inexperienced user, to search for information on hearing aid compatibility certification in the OET equipment authorization databases<sup>270</sup> because the information is based on FCC ID numbers, not model numbers, and many of the data points of interest to consumers are reported in narrative sections, which cannot be searched automatically and which may vary in wording. We therefore sought comment on ways to improve the utility of this database, as well as the disability access website

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<sup>264</sup> The Joint Consensus Plan was apparently drafted with the assumption that new rules would be in place before November 2007, and accordingly it is not clear how the proponents would intend to apply its proposed schedule in the current time frame. It is at least arguable, however, that Tier I carriers would be required to file their initial reports in May 2008. Manufacturers would file their first reports in November 2008.

<sup>265</sup> Joint Consensus Plan at 11.

<sup>266</sup> See RCA Comments at 6; Iowa Wireless Services Comments at 5 (noting that a delay in reporting would not delay other obligations under the rule).

<sup>267</sup> See SouthernLINC Wireless Comments at 7; but see RCA Comments at 7 ("Provision ... of a standardized [hearing aid compatibility] report form or template is not necessary. .... However, RCA has no objection to staff development of an electronic form...").

<sup>268</sup> *Notice*, 22 FCC Rcd at 19698-99 ¶¶ 74-77.

<sup>269</sup> See *Staff Report*, 22 FCC Rcd at 17730 -31 ¶¶ 47-49.

<sup>270</sup> See §§ 2.907 ("Certification is an equipment authorization issued by the Commission based on representations and test data submitted by the applicant."); 2.1033 ("Application for Certification").

maintained by the Commission's Disability Rights Office (DRO). We specifically sought comment on whether we should require manufacturers to include in their equipment certification filings the handset model name/numbers associated with each FCC ID number and to update this information when they introduce new models, and whether we should adopt new Part 2 rules to require a filing for permissive changes that includes trade names and model numbers.<sup>271</sup> Moreover, we requested comment on whether to require manufacturers and service providers subject to the Commission's hearing aid compatibility rules to follow the same procedures as those applicable to complaints regarding access to telecommunications services by persons with disabilities under Section 255 of the Communications Act,<sup>272</sup> in particular whether to have the Commission publish hearing aid compatibility designated agents' contact information on its DRO website. In addition, we solicited comment on whether to require manufacturers and service providers to post certain information on their websites, and generally on other means to improve the availability of hearing aid compatibility information to the public.<sup>273</sup>

106. In their comments, HLAA and Gallaudet/RERC offer several proposals for changes to the Commission's website and databases, as well as proposed requirements and recommendations for manufacturers and service providers.<sup>274</sup>

107. Discussion. We agree with HLAA and Gallaudet/RERC that improvements in the outreach activities of the Commission, manufacturers, and service providers would enhance the ability of consumers easily to obtain information about hearing aid-compatible handsets that meet their needs. We therefore take action on their recommendations, as described below.

108. First, HLAA and Gallaudet/RERC propose several changes to the Commission's website, databases, and processes, including:

- Develop a single location or website where hearing aid users can find the ratings and model numbers of compliant handsets offered by manufacturers and service providers;
- Add a search function to the FCC's equipment authorization database that will enable consumers to browse among phone features by category;
- Add links to manufacturers' and service providers' websites from DRO's web page; and
- Adopt a consumer-friendly method of handling hearing aid compatibility complaints that (1) requires FCC resolution within 90 days; (2) provides for a separate and identifiable electronic and telephonic FCC receptacle for hearing aid compatibility complaints; and (3) facilitates the filing of formal hearing aid compatibility complaints.

109. We direct CGB, OET, and WTB to take these recommendations under advisement and to implement them to the extent feasible. We conclude that all of these recommended actions, if feasible, would assist consumers. In particular, we direct the Commission's DRO to include, on its website, links to the website addresses maintained by manufacturers and service providers that provide information on the hearing aid-compatible models that they offer.<sup>275</sup> The idea that consumers should be able to access as

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<sup>271</sup> See 47 C.F.R §§ 2.924 & 2.1043.

<sup>272</sup> 47 U.S.C. § 255.

<sup>273</sup> Notice, 22 FCC Rcd at 19698 ¶ 74.

<sup>274</sup> Gallaudet/RERC Comments at 8-11; HLAA Comments at 4-5; see also Nokia Comments at 10 ("The Commission can do more to facilitate access").

<sup>275</sup> See *infra* para. 112 (discussion of requirement that manufacturers and service providers post certain information on their websites). Compare TIA Comments at 11 (opposing requiring manufacturers and service providers to add links from the Commission's DRO website to their own websites).

much information as possible through easily accessible connections to relevant material is a fundamental one. We note, however, that because OET's database and the Part 2 rules were designed to serve the equipment authorization process, there may be limits to their adaptability to provide accessible information on hearing aid compatibility certifications.<sup>276</sup> We decline at this time, in the absence of a more complete record, to require that hearing aid compatibility complaints be resolved within a particular time period, such as 90 days. We do, however, expect that staff will make every effort to resolve such complaints within the shortest reasonable time frame, ideally within 90 days. We also note that, with its recent implementation of FCC Form 2000 online, the Commission has taken additional action to improve the manner in which it handles consumer complaints. In particular, FCC Form 2000C, the portion of Form 2000 that is used for disability access complaints, includes specific provisions for complaints relating to the hearing aid compatibility of wireless telephone equipment and service. The form is designed to be user-friendly, asking consumers targeted questions intended to facilitate processing of the complaint.<sup>277</sup>

110. HLAA specifically advocates adopting in the context of hearing aid compatibility complaints the contact information requirements for manufacturers and service providers that currently apply to complaints under Section 255.<sup>278</sup> Nokia and AT&T oppose this proposal, stating that "[a]dditional actions by the Commission are not necessary," and that "manufacturers should not be required to comply with Section 255's reporting requirements in the [hearing aid compatibility] context."<sup>279</sup>

111. After review of the record, we adopt the proposal in the *Notice* and amend our rules accordingly. Contrary to the arguments of some parties, the proposal from the *Notice* was not to create a new mandate, but simply to alter the process under the existing Part 68 mandate governing public complaints regarding hearing aid compatibility to make it conform to the Part 6 rules that govern complaints under Section 255.<sup>280</sup> Under the Commission's Part 68 complaint procedures, which are applicable to wireless hearing aid compatibility complaints,<sup>281</sup> manufacturers and service providers are required to designate a service agent to the Administrative Council for Terminal Attachment (ACTA).<sup>282</sup> A consumer wishing to make a complaint must first approach ACTA to secure the contact information for the relevant industry entity, only after which can the consumer actually file a complaint. This differs from the process for Section 255 complaints in Part 6 of the rules, under which the contact information is provided directly to the Commission and made available to the public via the DRO website.<sup>283</sup> We conclude that requiring provision of hearing aid compatibility contact information directly to the Commission for posting on our website – without otherwise changing the procedures for handling such complaints – will assist consumers and will impose little if any additional burden on manufacturers and service providers, who are already required to make the same information available to a third party.

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<sup>276</sup> In the *Notice*, we sought comment on whether to amend Part 2 to require additional information regarding handset models in equipment authorization filings. We defer action on these issues to a future Report and Order.

<sup>277</sup> See FCC Form 2000C.

<sup>278</sup> See HLAA Comments at 4.

<sup>279</sup> Nokia Comments at 10. See also AT&T Reply Comments 8 (“[t]here is no need for additional mandates here”).

<sup>280</sup> See 47 C.F.R. § 6.18.

<sup>281</sup> See 47 C.F.R. § 20.19(g).

<sup>282</sup> 47 C.F.R. § 68.418(b).

<sup>283</sup> See <http://www.fcc.gov/cgb/dro/section255.html> (last visited January 19, 2008); 47 C.F.R. § 6.18.

112. In addition to improvements to the Commission's website, databases, and processes, we find it essential to the proper functioning of our hearing aid compatibility rules that manufacturers and service providers make certain limited categories of up-to-date information available on their websites. Specifically, we require manufacturers and service providers, beginning January 15, 2009, to post a list of the hearing aid-compatible models that they offer (identified by marketing model name/number(s)), the hearing aid compatibility ratings of those models, and an explanation of the rating system. In addition, as suggested by Gallaudet/RERC, we require service providers to post the level of functionality for each model and an explanation of the service provider's methodology for designating levels of functionality.<sup>284</sup> This list and related information should be updated within thirty days of any relevant changes. Although manufacturers and service providers are also required to provide this information annually to the Commission, such information will inevitably become dated over the course of a year. Thus, updated website postings are necessary both so that consumers can obtain up-to-date hearing aid compatibility information from their service providers and so that service providers can readily obtain such information from their manufacturer suppliers. Because all of the information that we are requiring to be posted on websites is already required either in annual reports or on product packaging and inserts, we disagree with assertions that it would be unduly burdensome for manufacturers and service providers to procure and maintain such information.<sup>285</sup> As noted above with respect to service providers' annual reports, although information regarding handset compatibility is in the first instance under the control of manufacturers, the requirement that manufacturers post the information means it should be readily accessible for service providers to post as well. Consistent with our decision regarding reporting requirements above, in order to afford manufacturers and service providers time to compile the requisite information and make the necessary changes to their websites, we delay the effective date of these posting requirements until January 15, 2009.

113. As noted above, we also require manufacturers and service providers to include in their annual reports to the Commission the website address at which this information is posted.<sup>286</sup> Further, if this website address ceases to be functional at any time prior to the next report, we require the manufacturer or service provider to inform the DRO of the revised address within 30 days of the change. These reporting requirements will enable the DRO to maintain up-to-date links for the public on its website.<sup>287</sup>

114. In addition to this required information, HLAA advocates that we "strongly encourage[ ]" industry to post certain other information on their websites, including:

- A search function for hearing aid compatibility data to allow consumers to browse within the category for features they want;
- A listing of hearing aid compatibility ratings for all handset models, not just those with ratings of 3 and 4 (because hearing aid ratings are now available to consumers),<sup>288</sup>

<sup>284</sup> Gallaudet/RERC Comments at 6.

<sup>285</sup> See SouthernLINC Reply Comments at 7; see also TIA Comments at 12; RCA Comments at 7 (air interface and frequency band information "is difficult to obtain and verify, and it is irrelevant to a reporting carrier's single-interface obligation"); CTIA Reply Comments at 8 (in light of ongoing voluntary outreach efforts by industry, "additional regulations are premature").

<sup>286</sup> See *supra* para. 100.

<sup>287</sup> See *supra* para. 109.

<sup>288</sup> We note that the Joint Consensus Plan states that, "to assist consumers in choosing a wireless device, the manufacturers have agreed voluntarily to place the [hearing aid compatibility] ratings for all devices, including those rated "M1" or "M2," on their web sites," and that therefore "[m]odification to the FCC's [hearing aid compatibility] rules is not required to implement this proposal." Joint Consensus Plan at 14.

- Volume control levels on phones;
- Vibrating feature on phones;
- Ring tones most suitable for people with hearing loss – those with low frequencies;
- Devices with QWERTY keyboards that can make it easier to send emails and instant messages that supplement hearing aid compatibility;
- Other features and functions on handsets;
- A downloadable version of a brochure on hearing aid-compatible handsets developed by ATIS WG6 (print version of brochure should be available in every store, including independent stores); and
- A downloadable version of a phone evaluation tool that the RERC at Gallaudet is now testing<sup>289</sup> on its websites and in its advertising.

115. We agree that this information would be useful to consumers, and we urge manufacturers and service providers to include it on their websites and in other publicity to the extent feasible. In recognition of the great variety of products, marketing practices, and website designs, however, we do not at present require the posting of any specific information other than that described above.<sup>290</sup>

116. Finally, we clarify that under the labeling requirement in Section 20.19(f), the M and T ratings that are required on the label are the overall, worst case ratings for the handset. We recognize that a multi-band or multi-mode handset may have different hearing aid compatibility ratings for different frequency bands or air interfaces. Consistent with our holding above regarding the compatibility status of multi-band and multi-mode handsets, we find that the most useful information for consumers is a single “worst case” rating constituting the handset’s lowest rating for any air interface or frequency band. Accordingly, while we expect that the reports to the Commission will include all hearing aid compatibility ratings assigned to a particular model, the labeling accompanying a hearing aid-compatible handset, as well as the information on a manufacturer or service provider’s website, shall include only the lowest such rating as the rating for the handset.

#### D. 2010 Review

117. In the *Notice*, we sought comment on when to conduct the next review of the Commission’s hearing aid compatibility rules for digital wireless services and handsets. The Joint Consensus Plan proposes that we establish a further review of the hearing aid compatibility rules in 2010.<sup>291</sup> We tentatively concluded to adopt this proposal, and sought comment, including on whether such a review would be more appropriate at a later date, such as in 2012.<sup>292</sup> No commenters objected to the 2010 date, although AT&T suggested that 2012 would be appropriate as well.<sup>293</sup> We therefore conclude to begin a further review of the Commission’s hearing aid rules in 2010, after the May 2010 deployment benchmarks have passed.

#### V. CONCLUSION

118. In this Report and Order, we adopt a number of inter-related changes to our wireless hearing aid compatibility rules, largely based on proposals in the Joint Consensus Plan. These changes update the requirements regarding deployment of hearing aid-compatible handsets, reporting, and

<sup>289</sup> HLAA Comments at 4. *See also* Gallaudet/RERC Comments at 9.

<sup>290</sup> *See supra* para. 112.

<sup>291</sup> Joint Consensus Plan at 12.

<sup>292</sup> *Notice*, 22 FCC Rcd at 19702 ¶ 86.

<sup>293</sup> AT&T Comments at 3.

outreach, as well as the standards by which hearing aid compatibility will be determined. We conclude that the changes will improve access to wireless telecommunications services for persons with hearing disabilities, which continues to be a critical goal of the Commission as society increasingly relies on wireless services for social, business, and emergency communications.

## VI. PROCEDURAL MATTERS

### A. Regulatory Flexibility Act

119. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>294</sup> the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) of the possible significant economic impact on small entities of the policies and rules addressed in this item. The FRFA is set forth in Appendix B.

### B. Paperwork Reduction Analysis

120. This document contains new and modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. It will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collection requirements contained in this proceeding.

121. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4), we previously sought specific comment on how the Commission might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”

122. In this present document, we have assessed the effects of the reporting requirements we have imposed on manufacturers and service providers, and find that the information required should be readily available even to businesses with fewer than 25 employees, and that it is important to obtain this information in order to monitor compliance with the hearing aid compatibility requirements and to provide consumers with adequate information regarding the handsets available from particular service providers.<sup>295</sup>

123. Similarly, we have assessed the effects of requiring manufacturers and service providers to post certain information regarding the hearing aid-compatible handsets they offer on their websites.<sup>296</sup> We note that this requirement would apply only to entities that maintain a public website and is further subject to the *de minimis* exception. Both restrictions should limit, to some extent, the application of the requirement to small businesses with fewer than 25 employees. Moreover, we have concluded that maintaining the limited information required, primarily a list of currently offered hearing aid-compatible handsets along with the associated ratings, will not be unduly burdensome, and that this requirement will significantly benefit consumers by ensuring convenient access to up-to-date information regarding compliant handset availability.

124. Finally, we have determined that requiring manufacturers to provide hearing aid compatibility contact information directly to the Commission will impose little if any additional burden

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<sup>294</sup> The RFA, *see* 5 U.S.C. § 601 *et. seq.*, was amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

<sup>295</sup> *See supra* para. 98.

<sup>296</sup> *See supra* para. 112.

on businesses with fewer than 25 employees.<sup>297</sup> This requirement may even decrease these burdens, to the extent that it will allow consumers wishing to file a complaint to obtain that information from the Commission's website rather than contacting ACTA to obtain it from the service provider.

**C. Congressional Review Act.**

125. The Commission will send a copy of this *First 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).

**D. Accessible Formats**

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

**VII. ORDERING CLAUSES**

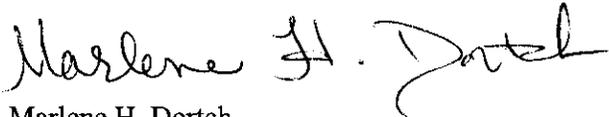
127. IT IS ORDERED that, pursuant to the authority of Sections 4(i), 303(r), and 710 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and 610, this Report and Order IS HEREBY ADOPTED.

128. IT IS FURTHER ORDERED that Parts 0, 20 and 68 of the Commission's Rules, 47 C.F.R. Parts 0, 20 and 68, are AMENDED as specified in Appendix C, effective 30 days after publication of the Order in the Federal Register.

129. IT IS FURTHER ORDERED that the information collections contained in this Report and Order WILL BECOME EFFECTIVE following approval by the Office of Management and Budget. The Commission will publish a document at a later date establishing the effective date.

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

FEDERAL COMMUNICATIONS COMMISSION



Marlene H. Dortch  
Secretary

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<sup>297</sup> See *supra* para. 111.

**APPENDIX A****Parties Filing Comments****Comments**

Alliance for Telecommunications Industry Solutions (ATIS)  
American National Standards Institute Accredited Standards Committee C63® (ANSI ASC C63®)  
(Two submissions, one labeled “Technical Comments”)  
AT&T, Inc. (AT&T)  
Chinook Wireless (Chinook)  
Consumer Electronics Retailers Coalition (CERC)  
Gallaudet University Technology Access program and Rehabilitation Engineering Research Center on  
Telecommunications Access (Gallaudet/RERC)  
Hearing Industries Association (HIA)  
Hearing Loss Association of America and Telecommunications for the Deaf and Hard of Hearing,  
Inc. (HLAA/TDI)  
MetroPCS Communications, Inc. (MetroPCS)  
Motorola, Inc. (Motorola)  
Nokia Inc. (Nokia)  
Radioshack Corporation  
Rehabilitation Engineering Research Center for Wireless Technologies (Wireless RERC)  
Research in Motion Limited (RIM)  
Rural Cellular Association (RCA)  
The Satellite Industry Association (SIA)  
Sony Ericsson Mobile Communications (Sony Ericsson)  
T-Mobile USA, Inc. (T-Mobile)  
Telecommunications Industry Association (TIA)

**Reply Comments**

ANSI ASC C63®  
Apple, Inc. (Apple)  
AT&T  
ATIS  
CTIA – The Wireless Association (CTIA)  
Iowa Wireless Services, LLC (i wireless)  
MetroPCS  
Motorola  
Nokia  
PerrineCrest Radio Consulting (PerrineCrest Radio)  
RIM  
SouthernLINC Wireless (SouthernLINC)  
T-Mobile  
Verizon Wireless (Verizon)  
Voice on the Net Coalition (VON)  
Virgin Mobile, USA, L.P. (Virgin Mobile)

## APPENDIX B

## Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>1</sup> the Federal Communications Commission (Commission) included an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities of the policies and rules considered in the *Notice* in WT Docket No. 07-250.<sup>2</sup> The Commission sought written public comment on the *Notice* in this docket, including comment on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

2. Although Section 213 of the Consolidated Appropriations Act of 2000 provides that the RFA shall not apply to the rules and competitive bidding procedures for frequencies in the 746-806 MHz Band,<sup>3</sup> the Commission believes that it would serve the public interest to analyze the possible significant economic impact of the proposed policy and rule changes in this band on small entities. Accordingly, this FRFA contains an analysis of this impact in connection with all spectrum that falls within the scope of this *First Report and Order*, including spectrum in the 746-806 MHz Band.

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

3. In the *First Report and Order*,<sup>4</sup> the Commission revises Section 20.19 of the rules containing the hearing aid compatibility requirements applicable to providers of public mobile services and manufacturers of digital wireless handsets used in the delivery of those services. Specifically, the Commission adopts benchmark requirements for future deployment of hearing aid-compatible handsets,<sup>5</sup> and related requirements,<sup>6</sup> based on the proposals set forth in the *Notice* and based on a Joint Consensus Plan developed by an Alliance for Telecommunications Industry Solutions (ATIS) working group that included nationwide carriers, handset manufacturers, and several organizations representing the interests of consumers with hearing loss.<sup>7</sup> The Commission finds that these new handset deployment obligations for both manufacturers and service providers will ensure that its rules continue to be effective in an evolving marketplace of new technologies and services. Because service providers not in the Tier I category<sup>8</sup> were not included in the Joint Consensus Plan, the Commission sought comment on and adopts

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<sup>1</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).

<sup>2</sup> Amendment of the Commission's Rules Governing Hearing Aid-Compatible Mobile Handsets, WT Docket No. 07-250, Section 68.4(a) of the Commission's Rules Governing Hearing Aid Compatible Telephones, WT Docket No. 01-309, Petition of American National Standards Institute Accredited Standards Committee C63 (EMC) ANSI ASC C63®, *Notice of Proposed Rulemaking*, 22 FCC Rcd 19760 (2007) (*Notice*).

<sup>3</sup> In particular, this exemption extends to the requirements imposed by Chapter 6 of Title 5, United States Code, Section 3 of the Small Business Act (15 U.S.C. § 632) and Sections 3507 and 3512 of Title 44, United States Code. Consolidated Appropriations Act of 2000, Pub. L. No. 106-113, 113 Stat. 2502, App. E, Sec. 213(a)(4)(A)-(B); see 145 Cong. Rec. H12493-94 (Nov. 17, 1999); 47 U.S.C.A. § 337 note at Sec. 213(a)(4)(A)-(B).

<sup>4</sup> Amendment of the Commission's Rules Governing Hearing Aid-Compatible Mobile Handsets, WT Docket No. 07-250, Petition of American National Standards Institute Accredited Standards Committee C63 (EMC) ANSI ASC C63®, *First Report and Order*, FCC 08-68 (rel. Feb. 27, 2008) (*First Report and Order*).

<sup>5</sup> See *id.* at ¶¶ 26-46.

<sup>6</sup> See *id.* at ¶¶ 47-76.

<sup>7</sup> See *id.* at ¶ 23 (describing Joint Consensus Plan).

<sup>8</sup> Tier I carriers are Commercial Mobile Radio Service (CMRS) providers with nationwide footprints. See Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems; Phase II (continued....)