

in the *First Report and Order* similar rule changes, with modified deadlines, for these entities.<sup>9</sup> These requirements and deadlines are intended both to promote the accessibility of hearing aid-compatible handsets to all deaf and hard of hearing consumers, and to recognize the impediments to smaller and regional service providers obtaining the most recent handset models. In order to facilitate the continuing availability of a variety of hearing aid-compatible handset models to consumers, the Commission also adopts a requirement that manufacturers annually “refresh” their hearing aid-compatible offerings with new models, and a requirement that service providers offer hearing aid-compatible models with differing levels of functionality.<sup>10</sup> The Commission further adopts an interim measure whereby phones with Wi-Fi capability that otherwise meet hearing aid compatibility standards may be counted as hearing aid-compatible, but the manufacturer and service provider must clearly disclose that they have not been rated with respect to their Wi-Fi operation.<sup>11</sup> Finally, the Commission revises the annual reporting obligations of manufacturers and service providers. These amendments will, among other things, render the reports more useful to consumers who wish to know the compatibility ratings of different handset models that have been certified as hearing aid-compatible. In addition, to ensure the availability of such information on a more current basis to service providers and consumers wishing to offer or purchase hearing aid-compatible handsets, the Commission requires manufacturers and service providers to provide up-to-date information on their websites regarding their hearing aid-compatible handset models.<sup>12</sup>

4. The Commission states that these inter-related changes, taken together and largely supported by manufacturers, service providers, and consumers with hearing loss, will further the statutory objective to “ensure reasonable access to telephone service by persons with impaired hearing.”<sup>13</sup> Among other things, the Commission explains that the most disadvantaged wireless users in the deaf and hard of hearing community, who are more likely to rely on telecoil-equipped hearing aids, will benefit from rule changes that increase requirements to offer handsets with inductive coupling capability. The Commission further states that that the requirements that manufacturers refresh their product offerings annually and that service providers offer hearing aid-compatible handset models at differing functionality levels will help to ensure that consumers with hearing loss have a variety of handsets available to them, including handsets with innovative user features, a goal that the Commission has sought to promote since 2003.<sup>14</sup> Finally, the Commission notes its objective to ensure that the impact of the rules remains as technology-impartial as possible while also ensuring availability of hearing aid-compatible handsets to consumers.<sup>15</sup>

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

5. No comments specifically addressed the IRFA. Nonetheless, small entity issues raised in comments are addressed in this FRFA in Sections D and E.

(Continued from previous page) \_\_\_\_\_

Compliance Deadlines for Non-Nationwide Carriers, CC Docket No. 94-102, *Order to Stay*, 17 FCC Rcd 14841, 14843 ¶ 7 (2002).

<sup>9</sup> See, e.g., *First Report and Order* at ¶¶ 40-46 (discussion of benchmarks and deadlines for service providers not in Tier I).

<sup>10</sup> See *id.* at ¶¶ 47-52. The objective of these rules is to ensure that hearing aid users can select from a variety of compliant handset models, with varying features and prices.

<sup>11</sup> See *id.* at ¶¶ 58-68; see also *id.* at ¶¶ 77-89 (discussion of technical standard for hearing aid compatibility and procedures for adopting future revisions to the standard).

<sup>12</sup> See *id.* at ¶¶ 90-116. The Commission also adopts certain other changes to Section 20.19 of the rules.

<sup>13</sup> 47 U.S.C. § 610(a).

<sup>14</sup> See, e.g., *First Report and Order* at ¶ 5.

<sup>15</sup> See, e.g., *id.* at ¶ 37.

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

6. The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by the proposed rules, if adopted.<sup>16</sup> The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”<sup>17</sup> In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.<sup>18</sup> A “small business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).<sup>19</sup>

7. **Wireless Communications Services.** This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses in the 2305-2320 MHz and 2345-2360 MHz bands. The Commission defined “small business” for the wireless communications services (WCS) auction as an entity with average gross revenues of \$40 million for each of the three preceding years, and a “very small business” as an entity with average gross revenues of \$15 million for each of the three preceding years.<sup>20</sup> The SBA has approved these definitions.<sup>21</sup> The Commission auctioned geographic area licenses in the WCS service. In the auction, which commenced on April 15, 1997 and closed on April 25, 1997, there were seven bidders that won 31 licenses that qualified as very small business entities, and one bidder that won one license that qualified as a small business entity.

8. **700 MHz Guard Bands Licenses.** In the *700 MHz Guard Bands Order*, the Commission adopted size standards for “small businesses” and “very small businesses” for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.<sup>22</sup> A small business in this service is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$40 million for the preceding three years.<sup>23</sup> Additionally, a “very small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$15 million for the preceding three years.<sup>24</sup> SBA approval of these

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<sup>16</sup> 5 U.S.C. § 604(a)(3).

<sup>17</sup> 5 U.S.C. § 601(6).

<sup>18</sup> 5 U.S.C. § 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

<sup>19</sup> 15 U.S.C. § 632.

<sup>20</sup> Amendment of the Commission’s Rules to Establish Part 27, the Wireless Communications Service (WCS), *Report and Order*, 12 FCC Rcd 10785, 10879 ¶ 194 (1997).

<sup>21</sup> See Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated December 2, 1998.

<sup>22</sup> See Service Rules for the 746-764 MHz Bands, and Revisions to Part 27 of the Commission’s Rules, *Second Report and Order*, 15 FCC Rcd 5299 (2000).

<sup>23</sup> *Id.* at 5343 ¶ 108.

<sup>24</sup> *Id.*

definitions is not required.<sup>25</sup> An auction of 52 Major Economic Area (MEA) licenses for each of two spectrum blocks commenced on September 6, 2000, and closed on September 21, 2000.<sup>26</sup> Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of remaining 700 MHz Guard Bands licenses commenced on February 13, 2001, and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.<sup>27</sup> Subsequently, in the *700 MHz Second Report and Order*, the Commission reorganized the licenses pursuant to an agreement among most of the licensees, resulting in a spectral relocation of the first set of paired spectrum block licenses, and an elimination of the second set of paired spectrum block licenses (many of which were already vacant, reclaimed by the Commission from Nextel).<sup>28</sup> A single licensee that did not participate in the agreement was grandfathered in the initial spectral location for its two licenses in the second set of paired spectrum blocks.<sup>29</sup> Accordingly, at this time there are 54 licenses in the 700 MHz Guard Bands and there is no auction data applicable to determine which are held by small businesses.

9. **700 MHz Band Commercial Licenses.** There is 80 megahertz of non-Guard Band spectrum in the 700 MHz Band that is designated for commercial use: 698-757, 758-763, 776-787, and 788-793 MHz Bands. With one exception, the Commission adopted criteria for defining two groups of small businesses for purposes of determining their eligibility for bidding credits at auction. These two categories are: (1) “small business,” which is defined as an entity that has attributed average annual gross revenues that do not exceed \$40 million during the preceding three years; and (2) “very small business,” which is defined as an entity with attributed average annual gross revenues that do not exceed \$15 million for the preceding three years.<sup>30</sup> In Block C of the Lower 700 MHz Band (710-716 MHz and 740-746 MHz), which was licensed on the basis of 734 Cellular Market Areas, the Commission adopted a third criterion for determining eligibility for bidding credits: an “entrepreneur,” which is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years.<sup>31</sup> The SBA has approved these small size standards.<sup>32</sup>

10. An auction of 740 licenses for Blocks C (710-716 MHz and 740-746 MHz) and D (716-722 MHz) of the Lower 700 MHz Band commenced on August 27, 2002, and closed on September 18, 2002.

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<sup>25</sup> *Id.* at 5343 ¶ 108 n.246 (for the 746-764 MHz and 776-704 MHz bands, the Commission is exempt from 15 U.S.C. § 632, which requires Federal agencies to obtain Small Business Administration approval before adopting small business size standards).

<sup>26</sup> See “700 MHz Guard Bands Auction Closes: Winning Bidders Announced,” *Public Notice*, 15 FCC Rcd 18026 (2000).

<sup>27</sup> See “700 MHz Guard Bands Auctions Closes: Winning Bidders Announced,” *Public Notice*, 16 FCC Rcd 4590 (WTB 2001).

<sup>28</sup> See In the Matter of Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, WT Docket 06-150, *Second Report and Order*, 22 FCC Rcd 15289, 15339-15344 ¶¶ 118-134 (2007) (*700 MHz Second Report and Order*).

<sup>29</sup> *Id.*

<sup>30</sup> See Auction of 700 MHz Band Licenses Scheduled for January 24, 2008, AU Docket No. 07-157, *Notice and Filing Requirements, Minimum Opening Bids, Reserve Prices, Upfront Payments, and Other Procedures for Auctions 73 and 76*, DA 07-4171 at ¶ 70 (WTB rel. Oct. 5, 2007); Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59), *Report and Order*, 17 FCC Rcd 1022, 1087-88 (2002).

<sup>31</sup> *Id.* at 1088.

<sup>32</sup> See Letter to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated August 10, 1999.

Of the 740 licenses available for auction, 484 licenses were sold to 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business, or entrepreneur status and won a total of 329 licenses.<sup>33</sup> A second auction commenced on May 28, 2003, and closed on June 13, 2003, and included 256 licenses: five EAG licenses and 251 CMA licenses.<sup>34</sup> Seventeen winning bidders claimed small or very small business status and won 60 licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses.<sup>35</sup>

11. The auction for the remaining 62 megahertz of commercial spectrum began on January 24, 2008. A total of 214 applicants were found to be qualified bidders, of which 38 applicants claimed status as small businesses and 81 applicants claimed status as very small businesses.

12. **Government Transfer Bands.** The Commission adopted small business size standards for the unpaired 1390-1392 MHz, 1670-1675 MHz, and the paired 1392-1395 MHz and 1432-1435 MHz bands.<sup>36</sup> Specifically, with respect to these bands, the Commission defined an entity with average annual gross revenues for the three preceding years not exceeding \$40 million as a “small business,” and an entity with average annual gross revenues for the three preceding years not exceeding \$15 million as a “very small business.”<sup>37</sup> SBA has approved these small business size standards for the aforementioned bands.<sup>38</sup> Correspondingly, the Commission adopted a bidding credit of 15 percent for “small businesses” and a bidding credit of 25 percent for “very small businesses.”<sup>39</sup> This bidding credit structure was found to have been consistent with the Commission’s schedule of bidding credits, which may be found at Section 1.2110(f)(2) of the Commission’s rules.<sup>40</sup> The Commission found that these two definitions will provide a variety of businesses seeking to provide a variety of services with opportunities to participate in the auction of licenses for this spectrum and will afford such licensees, who may have varying capital

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<sup>33</sup> See “Lower 700 MHz Band Auction Closes,” *Public Notice*, 17 FCC Rcd 17272 (WTB 2002).

<sup>34</sup> See “Lower 700 MHz Band Auction Closes,” *Public Notice*, 18 FCC Rcd 11873 (WTB 2003).

<sup>35</sup> *Id.*

<sup>36</sup> See Amendments to Parts 1, 2, 27 and 90 of the Commission’s Rules to License Services in the 216-220 MHz, 1390-1395 MHz, 1427-1429 MHz, 1429-1432 MHz, 1432-1435 MHz, 1670-1675 MHz, AND 2385-2390 MHz Government Transfer Bands, 17 FCC Rcd 9980 (2002) (*Government Transfer Bands Service Rules Report and Order*).

<sup>37</sup> See *Service Rules Notice*, 17 FCC Rcd at 2550-51 ¶¶ 144-146. To be consistent with the size standard of “very small business” proposed for the 1427-1432 MHz band for those entities with average gross revenues for the three preceding years not exceeding \$3 million, the *Service Rules Notice* proposed to use the terms “entrepreneur” and “small business” to define entities with average gross revenues for the three preceding years not exceeding \$40 million and \$15 million, respectively. Because the Commission is not adopting small business size standards for the 1427-1432 MHz band, it instead uses the terms “small business” and “very small business” to define entities with average gross revenues for the three preceding years not exceeding \$40 million and \$15 million, respectively.

<sup>38</sup> See Letter from Hector V. Barreto, Administrator, Small Business Administration, to Margaret W. Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, dated January 18, 2002.

<sup>39</sup> Such bidding credits are codified for the unpaired 1390-1392 MHz, paired 1392-1395 MHz, and the paired 1432-1435 MHz bands in 47 C.F.R. § 27.807. Such bidding credits are codified for the unpaired 1670-1675 MHz band in 47 C.F.R. § 27.906.

<sup>40</sup> In the *Part 1 Third Report and Order*, the Commission adopted a standard schedule of bidding credits, the levels of which were developed based on its auction experience. *Part 1 Third Report and Order*, 13 FCC Rcd at 403-04 ¶ 47. See also 47 C.F.R. § 1.2110(f)(2).

costs, substantial flexibility for the provision of services.<sup>41</sup> The Commission noted that it had long recognized that bidding preferences for qualifying bidders provide such bidders with an opportunity to compete successfully against large, well-financed entities.<sup>42</sup> The Commission also noted that it had found that the use of tiered or graduated small business definitions is useful in furthering its mandate under Section 309(j) to promote opportunities for and disseminate licenses to a wide variety of applicants.<sup>43</sup> An auction for one license in the 1670-1674 MHz band commenced on April 30, 2003 and closed the same day. One license was awarded.

13. **Advanced Wireless Services.** In the *AWS-1 Report and Order*, the Commission adopted rules that affect applicants who wish to provide service in the 1710-1755 MHz and 2110-2155 MHz bands.<sup>44</sup> The Commission anticipated that the services that will be deployed in these bands may have capital requirements comparable to those in the broadband Personal Communications Service (PCS), and that the licensees in these bands will be presented with issues and costs similar to those presented to broadband PCS licensees. Further, at the time the broadband PCS service was established, it was similarly anticipated that it would facilitate the introduction of a new generation of service. Therefore, the *AWS-1 Report and Order* adopts the same small business size definition that the Commission adopted for the broadband PCS service and that the SBA approved.<sup>45</sup> In particular, the *AWS-1 Report and Order* defines a “small business” as an entity with average annual gross revenues for the preceding three years not exceeding \$40 million, and a “very small business” as an entity with average annual gross revenues for the preceding three years not exceeding \$15 million. The *AWS-1 Report and Order* also provides small businesses with a bidding credit of 15 percent and very small businesses with a bidding credit of 25 percent.

14. **Wireless Cable Systems.** The SBA small business size standard for the broad census category of “Wireless Telecommunications Carriers-except satellite” appears applicable to MDS, ITFS and LMDS. The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees.<sup>46</sup> Wireless cable systems use 2 GHz band frequencies of the Broadband Radio Service (“BRS”), formerly Multipoint Distribution Service (“MDS”),<sup>47</sup> and the

<sup>41</sup> See *Service Rules Notice*, 17 FCC Rcd at 2550-51 ¶ 145.

<sup>42</sup> See, e.g., Revision of Part 22 and Part 90 of the Commission’s Rules to Facilitate Future Development of Paging Systems; Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, WT Docket No. 96-18, PR Docket No. 93-253, *Memorandum Opinion and Order on Reconsideration and Third Report and Order*, 14 FCC Rcd 10030, 10091 ¶ 112 (1999).

<sup>43</sup> 47 U.S.C. § 309(j)(3)(B), (4)(C)-(D). The Commission will also not adopt special preferences for entities owned by minorities or women, and rural telephone companies. The Commission did not receive any comments on this issue, and it does not have an adequate record to support such special provisions under the current standards of judicial review. See *Adarand Constructors v. Peña*, 515 U.S. 200 (1995) (requiring a strict scrutiny standard of review for government mandated race-conscious measures); *United States v. Virginia*, 518 U.S. 515 (1996) (applying an intermediate standard of review to a state program based on gender classification).

<sup>44</sup> Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands, WT Docket No. 02-353, *Report and Order*, 18 FCC Rcd 25162 (2003) (*AWS-1 Report and Order*).

<sup>45</sup> See Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, *Third Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, 10 FCC Rcd 175, 196 (1995); Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, *Fifth Report and Order*, 9 FCC Rcd 5581-5584 (1995); 47 C.F.R. §§ 24.320(b) and 24.720(b).

<sup>46</sup> 13 C.F.R. § 121.201, NAICS code 517210.

<sup>47</sup> MDS, also known as Multichannel Multipoint Distribution Service (“MMDS”), is regulated by Part 21 of the Commission’s rules; see 47 C.F.R. Part 21, subpart K; and has been renamed the Broadband Radio Service (BRS); (continued....)

Educational Broadband Service (“EBS”), formerly Instructional Television Fixed Service (“ITFS”),<sup>48</sup> to transmit video programming and provide broadband services to residential subscribers.<sup>49</sup> These services were originally designed for the delivery of multichannel video programming, similar to that of traditional cable systems, but over the past several years licensees have focused their operations instead on providing two-way high-speed Internet access services.<sup>50</sup> The Commission estimates that the number of wireless cable subscribers is approximately 100,000, as of March 2005. Local Multipoint Distribution Service (“LMDS”) is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications.<sup>51</sup> The SBA small business size standard for the broad census category of Wireless Telecommunications Carriers appears applicable to MDS, ITFS and LMDS.<sup>52</sup> To gauge small business prevalence for MDS, ITFS and LMDS, the Commission must, as discussed below, use current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was: all such firms having \$13.5 million or less in annual receipts.<sup>53</sup> This data was gathered when Cable and Other Program Distribution was the applicable NAICS Code size standard under SBA.

15. The Commission has defined small MDS (now BRS) and LMDS entities in the context of Commission license auctions. In the 1996 MDS auction,<sup>54</sup> the Commission defined a small business as an entity that had annual average gross revenues of less than \$40 million in the previous three calendar years.<sup>55</sup> This definition of a small entity in the context of MDS auctions has been approved by the SBA.<sup>56</sup> In the MDS auction, 67 bidders won 493 licenses. Of the 67 auction winners, 61 claimed status as a small business. At this time, the Commission estimates that of the 61 small business MDS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent MDS licensees that have gross revenues that are not more than

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see Amendment of Parts 1, 21, 73, 74 and 101 of the Commission’s Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands; Part 1 of the Commission’s Rules - Further Competitive Bidding Procedures; Amendment of Parts 21 and 74 to Enable Multipoint Distribution Service and the Instructional Television Fixed Service Amendment of Parts 21 and 74 to Engage in Fixed Two-Way Transmissions; Amendment of Parts 21 and 74 of the Commission’s Rules With Regard to Licensing in the Multipoint Distribution Service and in the Instructional Television Fixed Service for the Gulf of Mexico, 19 FCC Rcd 14165 (2004) (“*MDS/ITFS Order*”).

<sup>48</sup> ITFS systems are regulated by Part 74 of the Commission’s rules; see 47 C.F.R. Part 74, subpart I. ITFS, an educational service, has been renamed the Educational Broadband Service (EBS); see *MDS/ITFS Order*, 19 FCC Rcd 14165. ITFS licensees, however, are permitted to lease spectrum for MDS operation.

<sup>49</sup> See *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Eleventh Annual Report*, 20 FCC Rcd 2507, 2565 ¶ 131 (2006) (“*2006 Cable Competition Report*”).

<sup>50</sup> *Id.*

<sup>51</sup> See *Local Multipoint Distribution Service*, 12 FCC Rcd 12545 (1997).

<sup>52</sup> 13 C.F.R. § 121.201, NAICS code 517210.

<sup>53</sup> 13 C.F.R. § 121.201, NAICS code 517110 (now superseded).

<sup>54</sup> MDS Auction No. 6 began on November 13, 1995, and closed on March 28, 1996. (67 bidders won 493 licenses.)

<sup>55</sup> 47 C.F.R. § 21.961(b)(1).

<sup>56</sup> See *ITFS Order*, 10 FCC Rcd at 9589.

\$40 million and are thus considered small entities.<sup>57</sup> MDS licensees and wireless cable operators that did not receive their licenses as a result of the MDS auction fall under the SBA small business size standard for Cable and Other Program Distribution. Information available to us indicates that there are approximately 850 of these licensees and operators that do not generate revenue in excess of \$13.5 million annually. Therefore, the Commission estimates that there are approximately 850 small entity MDS (or BRS) providers, as defined by the SBA and the Commission's auction rules.

16. Educational institutions are included in this analysis as small entities; however, the Commission has not created a specific small business size standard for ITFS (now EBS).<sup>58</sup> The Commission estimates that there are currently 2,032 ITFS (or EBS) licensees, and all but 100 of the licenses are held by educational institutions. Thus, the Commission estimates that at least 1,932 ITFS licensees are small entities.

17. In the 1998 and 1999 LMDS auctions,<sup>59</sup> the Commission defined a small business as an entity that has annual average gross revenues of less than \$40 million in the previous three calendar years.<sup>60</sup> Moreover, the Commission added an additional classification for a "very small business," which was defined as an entity that had annual average gross revenues of less than \$15 million in the previous three calendar years.<sup>61</sup> These definitions of "small business" and "very small business" in the context of the LMDS auctions have been approved by the SBA.<sup>62</sup> In the first LMDS auction, 104 bidders won 864 licenses. Of the 104 auction winners, 93 claimed status as small or very small businesses. In the LMDS re-auction, 40 bidders won 161 licenses. Based on this information, the Commission believes that the number of small LMDS licenses will include the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers as defined by the SBA and the Commission's auction rules.

18. **Cellular Licensees.** The SBA has developed a small business size standard for small businesses in the category "Wireless Telecommunications Carriers (except satellite)."<sup>63</sup> Under that SBA category, a business is small if it has 1,500 or fewer employees.<sup>64</sup> For the census category of "Cellular and Other Wireless Telecommunications," Census Bureau data for 2002 show that there were 1,397 firms

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<sup>57</sup> 47 U.S.C. § 309(j). Hundreds of stations were licensed to incumbent MDS licensees prior to implementation of Section 309(j) of the Communications Act of 1934, 47 U.S.C. § 309(j). For these pre-auction licenses, the applicable standard is SBA's small business size standards for "other telecommunications" (annual receipts of \$13.5 million or less). See 13 C.F.R. § 121.201, NAICS code 517910.

<sup>58</sup> In addition, the term "small entity" under SBREFA applies to small organizations (nonprofits) and to small governmental jurisdictions (cities, counties, towns, townships, villages, school districts, and special districts with populations of less than 50,000). 5 U.S.C. §§ 601(4)-(6). We do not collect annual revenue data on ITFS licensees.

<sup>59</sup> The Commission has held two LMDS auctions: Auction 17 and Auction 23. Auction No. 17, the first LMDS auction, began on February 18, 1998, and closed on March 25, 1998. (104 bidders won 864 licenses.) Auction No. 23, the LMDS re-auction, began on April 27, 1999, and closed on May 12, 1999. (40 bidders won 161 licenses.)

<sup>60</sup> See *LMDS Order*, 12 FCC Rcd at 12545.

<sup>61</sup> *Id.*

<sup>62</sup> See Letter to Daniel Phythyon, Chief, Wireless Telecommunications Bureau (FCC) from A. Alvarez, Administrator, SBA (January 6, 1998).

<sup>63</sup> 13 C.F.R. § 121.201, NAICS code 517210.

<sup>64</sup> *Id.*

in this category that operated for the entire year.<sup>65</sup> Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.<sup>66</sup> Thus, under this category and size standard, the majority of firms can be considered small.

**19. Broadband Personal Communications Service.** The broadband Personal Communications Service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission has created a small business size standard for Blocks C and F as an entity that has average gross revenues of less than \$40 million in the three previous calendar years.<sup>67</sup> For Block F, an additional small business size standard for “very small business” was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.<sup>68</sup> These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA.<sup>69</sup> No small businesses within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 “small” and “very small” business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F.<sup>70</sup> On March 23, 1999, the Commission reauctioned 155 C, D, E, and F Block licenses; there were 113 small business winning bidders.<sup>71</sup> On January 26, 2001, the Commission completed the auction of 422 C and F PCS licenses in Auction 35.<sup>72</sup> Of the 35 winning bidders in this auction, 29 qualified as “small” or “very small” businesses. Subsequent events concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant.

**20. Specialized Mobile Radio.** The Commission awards “small entity” bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than \$15 million in each of the three previous calendar years.<sup>73</sup> The Commission awards “very small entity” bidding credits to firms that had revenues of no more than \$3 million in each of the three previous calendar years.<sup>74</sup> The SBA has approved these small

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<sup>65</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization,” Table 5, NAICS code 517212 (issued Nov. 2005).

<sup>66</sup> *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “1000 employees or more.”

<sup>67</sup> See Amendment of Parts 20 and 24 of the Commission’s Rules – Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, *Report and Order*, 11 FCC Rcd 7824, 7850-7852 ¶¶ 57-60 (1996); see also 47 C.F.R. § 24.720(b).

<sup>68</sup> See Amendment of Parts 20 and 24 of the Commission’s Rules – Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, *Report and Order*, 11 FCC Rcd 7824, 7852 ¶ 60.

<sup>69</sup> See Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated December 2, 1998.

<sup>70</sup> FCC News, “Broadband PCS, D, E and F Block Auction Closes,” No. 71744 (rel. January 14, 1997).

<sup>71</sup> See “C, D, E, and F Block Broadband PCS Auction Closes,” *Public Notice*, 14 FCC Rcd 6688 (WTB 1999).

<sup>72</sup> See “C and F Block Broadband PCS Auction Closes; Winning Bidders Announced,” *Public Notice*, 16 FCC Rcd 2339 (2001).

<sup>73</sup> 47 C.F.R. § 90.814(b)(1).

<sup>74</sup> *Id.*

business size standards for the 900 MHz Service.<sup>75</sup> The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction began on December 5, 1995, and closed on April 15, 1996. Sixty bidders claiming that they qualified as small businesses under the \$15 million size standard won 263 geographic area licenses in the 900 MHz SMR band. The 800 MHz SMR auction for the upper 200 channels began on October 28, 1997, and was completed on December 8, 1997. Ten bidders claiming that they qualified as small businesses under the \$15 million size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR band.<sup>76</sup> A second auction for the 800 MHz band was held on January 10, 2002 and closed on January 17, 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.<sup>77</sup>

21. The auction of the 1,050 800 MHz SMR geographic area licenses for the General Category channels began on August 16, 2000, and was completed on September 1, 2000. Eleven bidders won 108 geographic area licenses for the General Category channels in the 800 MHz SMR band qualified as small businesses under the \$15 million size standard. In an auction completed on December 5, 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were sold. Of the 22 winning bidders, 19 claimed “small business” status and won 129 licenses. Thus, combining all three auctions, 40 winning bidders for geographic licenses in the 800 MHz SMR band claimed status as small business.

22. In addition, there are numerous incumbent site-by-site SMR licensees and licensees with extended implementation authorizations in the 800 and 900 MHz bands. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than \$15 million, or have no more than 1,500 employees. One firm has over \$15 million in revenues. The Commission believes, for purposes of this analysis, that all of the remaining existing extended implementation authorizations are held by small entities, as that small business size standard is established by the SBA.

23. **Rural Radiotelephone Service.** The Commission uses the SBA definition applicable to Wireless Telecommunications Carriers (except satellite),” *i.e.*, an entity employing no more than 1,500 persons.<sup>78</sup> There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies adopted herein.

24. **Air-Ground Radiotelephone Service.** The Commission uses the SBA definition applicable to Wireless Telecommunications Carriers (except satellite),” *i.e.*, an entity employing no more than 1,500 persons.<sup>79</sup> There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and the Commission estimates that almost all of them qualify as small entities under the SBA definition.

25. **Offshore Radiotelephone Service.** This service operates on several ultra high frequency

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<sup>75</sup> See Letter to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated August 10, 1999. We note that, although a request was also sent to the SBA requesting approval for the small business size standard for 800 MHz, approval is still pending.

<sup>76</sup> See “Correction to Public Notice DA 96-586 ‘FCC Announces Winning Bidders in the Auction of 1020 Licenses to Provide 900 MHz SMR in Major Trading Areas,’” *Public Notice*, 18 FCC Rcd 18367 (WTB 1996).

<sup>77</sup> See “Multi-Radio Service Auction Closes,” *Public Notice*, 17 FCC Rcd 1446 (WTB 2002).

<sup>78</sup> 13 C.F.R. § 121.201, NAICS code 517210.

<sup>79</sup> *Id.*

(UHF) TV broadcast channels that are not used for TV broadcasting in the coastal area of the states bordering the Gulf of Mexico. At present, there are approximately 55 licensees in this service. The Commission uses the SBA definition applicable to Wireless Telecommunications Carriers (except satellite),” *i.e.*, an entity employing no more than 1,500 persons.<sup>80</sup> The Commission is unable at this time to estimate the number of licensees that would qualify as small entities under the SBA definition. The Commission assumes, for purposes of this analysis, that all of the 55 licensees are small entities, as that term is defined by the SBA.

26. **Mobile Satellite Service Carriers.** Neither the Commission nor the U.S. Small Business Administration has developed a small business size standard specifically for mobile satellite service licensees. The appropriate size standard is therefore the SBA standard for Satellite Telecommunications, which provides that such entities are small if they have \$13.5 million or less in annual revenues.<sup>81</sup> Currently, the Commission’s records show that there are 31 entities authorized to provide voice and data MSS in the United States. The Commission does not have sufficient information to determine which, if any, of these parties are small entities. The Commission notes that small businesses are not likely to have the financial ability to become MSS system operators because of high implementation costs, including construction of satellite space stations and rocket launch, associated with satellite systems and services.

27. **Wireless Communications Equipment Manufacturers.** The SBA has established a small business size standard for wireless communications equipment manufacturers. Under the Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing standard, firms are considered small if they have 750 or fewer employees.<sup>82</sup> Census Bureau data for 1997 indicates that, for that year, there were a total of 1,215 establishments<sup>83</sup> in this category.<sup>84</sup> Of those, there were 1,150 that had employment under 500, and an additional 37 that had employment of 500 to 999. The Commission estimates that the majority of wireless communications equipment manufacturers are small businesses

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

28. The Commission adopts reporting and outreach requirements that will involve some recordkeeping and other compliance requirements for small entities. Under the decision in the *First Report and Order*, manufacturers and service providers, including those that are small entities, will continue to file regular reports with the Commission detailing their hearing aid compatibility efforts. In order to improve the existing reports for consumers and industry and meet the Commission’s hearing aid compatibility objectives (see Section A above), however, the Commission adopts new content requirements for these reports.<sup>85</sup> The Commission also adopts a new outreach obligation for

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<sup>80</sup> *Id.*

<sup>81</sup> 13 C.F.R. § 121.201, North American Industry Classification System (“NAICS”) code 517410.

<sup>82</sup> 13 C.F.R. § 121.201, NAICS code 334220.

<sup>83</sup> The number of “establishments” is a less helpful indicator of small business prevalence in this context than would be the number of “firms” or “companies,” because the latter take into account the concept of common ownership or control. Any single physical location for an entity is an establishment, even though that location may be owned by a different establishment. Thus, the number given may reflect inflated numbers of businesses in this category, including the numbers of small businesses. In this category, the Census break-out data for firms or companies only gives the total number of such entities for 1997, which was 1,089.

<sup>84</sup> U.S. Census Bureau, *1997 Economic Census*, Industry Series: Manufacturing, “Industry Statistics by Employment Size,” Table 4, NAICS code 334220 (issued August 1999).

<sup>85</sup> See *First Report and Order* at ¶¶ 90-103.

manufacturers and service providers that maintain public websites to post up-to-date information involving some of this content, and to report and keep updated to the Commission a working link to the web location at which this information is posted.<sup>86</sup> Finally, because many handset models are currently being offered that operate over both established CMRS interfaces and the Wi-Fi air interface for which no established hearing aid compatibility standards exist, the Commission allows such phones on an interim basis to be counted as hearing aid-compatible if they otherwise qualify as hearing aid-compatible under its rules, but requires consumers to be informed that those phones have not been rated for hearing aid compatibility with respect to their Wi-Fi operations.<sup>87</sup> Section E below summarizes additional detail about these reporting and outreach requirements that the Commission adopts in the *First Report and Order*.<sup>88</sup>

29. The projected reporting, recordkeeping, and other compliance requirements resulting from the *First Report and Order* will apply to all entities in the same manner. As discussed in Section E below,<sup>89</sup> the Commission finds that applying the same rules equally to all entities in this context promotes fairness. The Commission does not believe that the costs and/or administrative burdens associated with the rules will unduly burden small entities. Moreover, any costs and burdens assumed by small entities will be offset by the benefits obtained by consumers. The revisions the Commission adopts should benefit consumers by giving them more information and more options for gaining access to hearing aid compatibility information.

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

30. The RFA requires an agency to describe in the IRFA any significant alternatives that it has considered in reaching its proposed approach, which may include (among others) the following four alternatives: (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.<sup>90</sup> The Commission considered these alternatives with respect to all of the requirements that it is imposing on small entities in the *First Report and Order*, and this FRFA incorporates by reference all discussion in the *First Report and Order* that considers the impact on small entities of the rules adopted by the Commission. In addition, the Commission's consideration of those issues as to which the impact on small entities was specifically discussed in the record is summarized below:

31. Hearing Aid-Compatible Handset Deployment Benchmarks and Deadlines. In accordance with its objective of furthering the availability of hearing aid-compatible handsets to the deaf and hard-of-hearing community, the Commission considered several different proposals for handset deployment benchmarks and deadlines. These alternatives balanced several different approaches to improving wireless services for deaf and hard-of-hearing consumers. For example, the Commission considered the possibility of applying to small entities different benchmarks for offering handset models meeting M3 and

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<sup>86</sup> See *id.* at ¶¶ 104-116.

<sup>87</sup> See *id.* at ¶¶ 58-68.

<sup>88</sup> See *infra* Section E. Section E also discusses the steps taken and alternatives considered for these rule changes.

<sup>89</sup> See *infra* Section E.

<sup>90</sup> 5 U.S.C. § 603(c).

T3 (or higher) hearing aid compatibility ratings. Six parties representing regional or smaller service providers submitted comments in favor of lower benchmarks for smaller service providers.

32. Ultimately, the Commission adopted identical benchmark alternatives for all manufacturers and all service providers (including small manufacturers and service providers). The Commission decided on a single set of deployment benchmark alternatives for all service providers (other than those coming under the *de minimis* exception) in accordance with its objective of furthering the availability of hearing aid-compatible handsets for all consumers regardless of where they reside. Under these alternatives for both M3 and T3 ratings, service providers may meet hearing aid compatibility standards for either a minimum number or minimum percentage of the handset models that they offer, whichever is less. Thus, under the percentage alternative, service providers with smaller product lines, including many small entities, are relieved of the burden of having to offer larger numbers of hearing aid-compatible models required of larger service providers. The Commission considered the alternative of reducing the benchmarks still further for smaller service providers, but determined that the increased relief of burdens that would be achieved by doing so was outweighed by the public interest in ensuring availability of hearing aid-compatible handsets to all consumers who need them, which is the primary objective of this proceeding.

33. In addition, to minimize the economic burden to service providers that are small entities, the Commission extended future hearing aid compatibility compliance deadlines for non-nationwide service providers by three months. The Commission provided this additional time in recognition that smaller service providers have few handset options and more difficulty in obtaining the newest offerings than their nationwide counterparts. In reaching this decision, the Commission considered and rejected other alternatives. In particular, five non-nationwide carriers submitted comments asking for extended deadlines of six months to one year following Tier I carriers' deadlines. The Commission did not agree with the extension of deadlines beyond three months, because it determined that such action would amount to an unacceptable and unnecessary denial of handset benefits to consumers. The Commission noted that the extension of three months is consistent with past orders where it has found that many smaller service providers justified waivers of approximately three months from prior hearing aid compatibility deadlines, but denied most requests for longer periods of delay.

34. In considering these deployment benchmarks and deadlines, the Commission also adopted the proposal of the Joint Consensus plan to retain the existing *de minimis* exception. Under this exception, manufacturers and service providers that offer two or fewer digital wireless handset models in the U.S. per air interface are exempt from hearing aid compatibility requirements (other than certain reporting requirements), and those offering three handset models per air interface are required to offer one hearing aid-compatible model. The Commission kept this rule, which minimizes economic impact on certain small entities, in recognition that exempting from hearing aid compatibility requirements all companies with very small product lines promotes innovation and competition.

35. Other Hearing Aid-Compatible Handset Deployment Obligations. In addition to handset deployment benchmarks and deadlines, the Commission adopted rules requiring handset manufacturers to refresh their hearing aid-compatible product offerings annually, and requiring service providers to offer to consumers hearing aid-compatible handsets with differing levels of functionality. The objective of these rules is to ensure that hearing aid users can select from a variety of complaint handset models, with varying features and prices. In adopting these rules, the Commission considered comments of several smaller service providers that the requirement to offer compatible models with differing levels of functionality is unnecessary and intrusive as applied to non-nationwide service providers. In response, the Commission acknowledged that it does not expect a service provider with four hearing aid-compatible models, for example, necessarily to offer as many levels of functionality or as broad a range of product offerings as a provider with eight or more models. Therefore, the Commission crafted the rule to afford service providers flexibility to define their levels of functionality in a manner appropriate to their

situation. Nonetheless, the Commission determined that even the smallest service providers should be able to distinguish among their offerings in some manner, and that requiring them to do so offers benefits to consumers that outweigh the relatively small burden on small entities.

36. Reporting, Information, and Outreach. As noted in Section D above, the Commission adopted reporting and other compliance requirements that will apply to all entities irrespective of their size. The *First Report and Order* requires manufacturers and all service providers to file reports annually. This requirement to file annual reports continues a requirement that exists under the current rules. However, the *First Report and Order* adds new required content to the reports, including: (1) model name/numbers and FCC ID numbers; (2) the air interfaces and frequency bands over which each model operates; (3) information regarding handset models offered throughout the period since the previous report, including the months during which each model was available; and (4) for service providers, their models' levels of functionality and their methodology for dividing hearing aid-compatible handset models into different levels of functionality.

37. The Commission in the past has stated that annual hearing aid compatibility reports serve a dual purpose of assisting the Commission in monitoring handset deployment progress and providing valuable information to the public concerning the technical testing and commercial availability of hearing aid compatible handsets for consumers.<sup>91</sup> The new content requirements in the *First Report and Order* will result in better information to the Commission and to consumers. Some comments on the *Notice* asserted that additional reporting requirements would be burdensome, particularly to smaller service providers, and the Commission considered whether any alternatives could serve consumers' needs in a manner less burdensome to small entities. As the Commission found, however, all of the information to be included in the reports is either within the service provider's control or can be readily gathered from manufacturers' websites or their previous reports. Thus, the Commission found that these reports will not impose any unreasonable burden on manufacturers and service providers, whether large or small. Furthermore, in order to ensure proper implementation of the hearing aid compatibility rules and to inform consumers, the Commission found it extremely important to obtain the information in question from all service providers without exception. Accordingly, the Commission found that other alternatives would not provide it with the information necessary to accomplish its objectives.

38. The Commission also considered whether, as advocated by one commenter, the initial reports under the new rules should be delayed by one year for service providers that are not Tier I carriers. The Commission found that this proposal would create an unacceptable and unnecessary gap in the availability of information. Moreover, in order to ease the burden of compliance for all manufacturers and service providers, the Commission determined not to require the next reports from any entities until January 15, 2009.

39. The Commission further authorized the Wireless Telecommunications Bureau to prescribe a uniform template for the annual reports and require electronic filing. The Commission considered whether to allow regulated entities, including small entities, alternatively to use a narrative format. To assist the Commission and consumers in understanding and analyzing the reports, it concluded that a uniform, electronic format will not impose a significant increase in economic burdens.

40. In addition to regular reporting, the *First Report and Order* will require manufacturers and service providers that have public websites to post certain information, including the hearing aid-compatible handset models that they offer, the ratings of those models, an explanation of the rating system, and, for service providers, those models' levels of functionality and their methodology for determining levels of functionality. This information must be kept current within 30 days. In addition, service providers must include this web address in their reports to the Commission, and inform the

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<sup>91</sup> See also *supra* Section A.

Commission within 30 days if the address ceases to be functional. As with the annual reports, the Commission considered whether it could adopt less burdensome requirements for small entities, and concluded that it needed to impose the same requirements on all manufacturers and service providers to serve the purpose of providing critical information to all consumers. Moreover, because all of the information to be posted is also required in the reports to the Commission or in packaging inserts, the burden of maintaining it on the website should be small. Finally, as with the reports, the Commission eased the burden of coming into compliance for all entities by delaying the effective date of this requirement until January 15, 2009.

#### **F. Report to Congress**

41. The Commission will send a copy of the *First Report and Order*, including this FRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act.<sup>92</sup> In addition, the Commission will send a copy of the *First Report and Order*, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *First Report and Order* and FRFA (or summaries thereof) will also be published in the Federal Register.<sup>93</sup>

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<sup>92</sup> See 5 U.S.C. § 801(a)(1)(A).

<sup>93</sup> See 5 U.S.C. § 604(b).

## APPENDIX C

## Final Rules

**Part 0 of Title 47 of the Code of Federal Regulations is amended as follows:**

1. The authority citation for Part 0 reads as follows:

AUTHORITY: Sec. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155.

2. Section 0.241 is amended by revising paragraph (a)(1) to read as follows:

**§ 0.241 Authority delegated.**

(a) \* \* \*

(1) Notices of proposed rulemaking and of inquiry and final orders in rulemaking proceedings, inquiry proceedings and non-editorial orders making changes, except that:

(i) The Chief of the Office of Engineering and Technology is delegated authority to make the revisions to the filing system and template necessary to improve the efficiency of reporting and to reduce, where reasonably possible, the time for providers to prepare, and for the Commission staff to review, the communications disruption reports required to be filed pursuant to part 4 of this chapter; and

(ii) The Chief of the Office of Engineering and Technology is delegated authority, together with the Chief of the Wireless Telecommunications Bureau, to adopt certain technical standards applicable to hearing aid compatibility under § 20.19 of this chapter, as specified in § 20.19(k).

3. Section 0.331 is amended by adding a new sentence after the second sentence in paragraph (d) to read as follows:

**§ 0.331 Authority delegated.**

\* \* \* \* \*

(d) \* \* \* Adoption of certain technical standards applicable to hearing aid compatibility under § 20.19 of this chapter made together with the Chief of the Office of Engineering and Technology, as specified in § 20.19(k), also need not be referred to the Commission. \* \* \*

\* \* \* \* \*

**Part 20 of Title 47 of the Code of Federal Regulations is amended as follows:**

4. The authority citation for Part 20 reads as follows:

AUTHORITY: 47 U.S.C. 154, 160, 201, 251-254, 303, 332, and 710 unless otherwise noted.

5. Section 20.19 is amended by replacing the existing text of Section 20.19 with the following:

**§ 20.19 Hearing aid-compatible mobile handsets.**

(a) *Scope of section; definitions.*

(1) The hearing aid compatibility requirements of this section apply to providers of digital CMRS in the United States to the extent that they offer real-time, two-way switched voice or data service that is interconnected with the public switched network and utilizes an in-network switching facility that enables the provider to reuse frequencies and accomplish seamless hand-offs of subscriber calls, and such service is provided over frequencies in the 800-950 MHz or 1.6-2.5 GHz bands using any air interface for which technical standards are stated in the standard document "American National Standard for Methods of Measurement of Compatibility between Wireless Communication Devices and Hearing Aids," American National Standards Institute (ANSI) C63.19-2007 (incorporated by reference, see paragraph (b)(5)).

(2) The requirements of this section also apply to the manufacturers of the wireless handsets that are used in delivery of the services specified in paragraph (a)(1) of this section.

(3) *Definitions.* For purposes of this section:

(i) "Manufacturer" refers to a wireless handset manufacturer to which the requirements of this section apply.

(ii) "Model" refers to a wireless handset device that a manufacturer has designated as a distinct device model, consistent with its own marketing practices. However, if a manufacturer assigns different model device designations solely to distinguish units sold to different carriers, or to signify other distinctions that do not relate to either form, features, or capabilities, such designations shall not count as distinct models for purposes of this section.

(iii) "Service provider" refers to a provider of digital CMRS to which the requirements of this section apply.

(iv) "Tier I carrier" refers to a CMRS provider that offers such service nationwide.

(b) *Hearing aid compatibility; technical standards.* A wireless handset used for digital CMRS only over the frequency bands and air interfaces referenced in paragraph (a)(1) is hearing aid-compatible with regard to radio frequency interference or inductive coupling if it meets the applicable technical standard(s) set forth in paragraphs (b)(1)-(2) for all frequency bands and air interfaces over which it operates, and the handset has been certified as compliant with the test requirements for the applicable standard pursuant to Section 2.1033(d) of this chapter. A wireless handset that incorporates a Wi-Fi air interface is hearing aid-compatible if the handset otherwise satisfies the requirements of this paragraph.

(1) For radio frequency interference.

(i) *Applicable technical standards prior to 2010.* Beginning [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] and until January 1, 2010, a wireless handset submitted for equipment certification or for a permissive change relating to hearing aid compatibility must meet, at a minimum, the M3 rating associated with the technical standard set forth in either the standard document "American National Standard for Methods of Measurement of Compatibility between Wireless Communication Devices and Hearing Aids," ANSI C63.19-2006 (published June 12, 2006) (incorporated by reference, see paragraph (b)(5)) or ANSI C63.19-2007 (published June 8, 2007) (incorporated by reference, see paragraph (b)(5)) -- each available for purchase from the American National Standards Institute -- or the M3 rating associated with any subsequently adopted version of

ANSI C63.19 as may be permitted pursuant to paragraph (b)(3). Any grants of certification issued before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**] under previous versions of ANSI C63.19 remain valid for hearing aid compatibility purposes.

(ii) *Applicable technical standards beginning in 2010.* On or after January 1, 2010, a wireless handset submitted for equipment certification or for a permissive change relating to hearing aid compatibility must meet, at a minimum, the M3 rating associated with the technical standard set forth in ANSI C63.19-2007 (incorporated by reference, see paragraph (b)(5)), or any subsequently adopted version as may be permitted pursuant to paragraph (b)(3). Any grants of certification issued before January 1, 2010, under the earlier versions of ANSI C63.19 remain valid for hearing aid compatibility purposes.

(2) For inductive coupling.

(i) *Applicable technical standards prior to 2010.* Beginning [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**] and until January 1, 2010, a wireless handset submitted for equipment certification or for a permissive change relating to hearing aid compatibility must meet, at a minimum, the T3 rating associated with the technical standard set forth in either the standard document “American National Standard for Methods of Measurement of Compatibility between Wireless Communication Devices and Hearing Aids,” ANSI C63.19-2006 (published June 12, 2006) (incorporated by reference, see paragraph (b)(5)) or ANSI C63.19-2007 (published June 8, 2007) (incorporated by reference, see paragraph (b)(5)) – available for purchase from the American National Standards Institute – or the T3 rating associated with any subsequently adopted version of ANSI C63.19 as may be permitted pursuant to paragraph (b)(3). Any grants of certification issued before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**] under previous versions of ANSI C63.19 remain valid for hearing aid compatibility purposes.

(ii) *Applicable technical standards beginning in 2010.* On or after January 1, 2010, a wireless handset submitted for equipment certification or for a permissive change relating to hearing aid compatibility must meet, at a minimum, the T3 rating associated with the technical standard set forth in ANSI C63.19-2007 (incorporated by reference, see paragraph (b)(5)), or any subsequently adopted version as may be permitted pursuant to paragraph (b)(3). Any grants of certification issued before January 1, 2010, under the earlier versions of ANSI C63.19 remain valid for hearing aid compatibility purposes.

(3) *Applicability of subsequently adopted versions of ANSI C63.19 for radio frequency interference or inductive coupling.* Versions of technical standards for radio frequency interference or inductive coupling adopted subsequently to ANSI C63.19-2007 also will be applicable for purposes of determining whether a wireless handset meets the appropriate rating, provided that the changes do not raise major compliance issues and provided that the Wireless Telecommunications Bureau and the Office of Engineering and Technology have, by public notice, approved the use, in the alternative, of such versions of standard document ANSI C63.19 to establish hearing aid compatibility.

(4) All factual questions of whether a wireless handset meets the technical standard(s) of this subsection shall be referred for resolution to the Chief, Office of Engineering and Technology, Federal Communications Commission, 445 12th Street SW, Washington, D.C. 20554.

(5) The standards listed in this paragraph are incorporated by reference in this section. These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. § 552(a) and 1 C.F.R. part 51. These materials are incorporated as they exist on the date of the

approval, and notice of any change in these materials will be published in the Federal Register. The materials are available for inspection at the Federal Communications Commission (FCC), 445 12th St., SW., Reference Information Center, Room CY-A257, Washington, DC 20554 and at the National Archives and Records Administration (NARA). For information on the availability of these materials at NARA, call 202-741-6030, or go to:

[http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

The materials are also available for purchase from <http://www.ieee.org/portal/site>.

(i) American National Standards Institute Accredited Standards Committee on Electromagnetic Compatibility, C63® , “American National Standard for Methods of Measurement of Compatibility between Wireless Communication Devices and Hearing Aids,” ANSI C63.19-2006 (published June 12, 2006), Institute of Electrical and Electronics Engineers, Inc., publisher, IBR approved for § 20.19.

(ii) American National Standards Institute Accredited Standards Committee on Electromagnetic Compatibility, C63® , “American National Standard for Methods of Measurement of Compatibility between Wireless Communication Devices and Hearing Aids,” ANSI C63.19-2007 (published June 8, 2007), Institute of Electrical and Electronics Engineers, Inc., publisher, IBR approved for § 20.19.

(c) *Phase-in of requirements relating to radio frequency interference.* The following applies to each manufacturer and service provider that offers wireless handsets used in the delivery of the services specified in paragraph (a) and that does not fall within the *de minimis* exception set forth in paragraph (e).

(1) *Manufacturers.*

(i) *Number of hearing aid-compatible handset models offered.* For each digital air interface for which it offers wireless handsets to service providers, each manufacturer of wireless handsets must:

(A) If it offers four to six models, ensure that at least two of its handset models offered to service providers comply with the requirements set forth in paragraph (b)(1) of this section; or

(B) If it offers more than six models, ensure that at least one-third of its handset models offered to service providers (rounded down to the nearest whole number) comply with the requirements set forth in paragraph (b)(1) of this section.

(ii) *Refresh requirement.* Beginning in calendar year 2009, and for each year thereafter that it elects to produce a new model, each manufacturer that offers any new model for a particular air interface during the calendar year must “refresh” its offerings of hearing aid-compatible handset models by offering a mix of new and existing models that comply with paragraph (b)(1) of this section according to the following requirements:

(A) For manufacturers that offer three models per air interface, at least one new model rated M3 or higher shall be introduced every other calendar year.

(B) For manufacturers that offer four or more models operating over a particular air interface, the number of models rated M3 or higher that must be new models introduced during that calendar year is equal to one-half of the minimum number of models rated M3 or higher required for that air interface (rounded up to the nearest whole number).

(2) *Tier I carriers.* For each digital air interface for which it offers wireless handsets to customers, each Tier I carrier must either:

(i) Ensure that at least fifty (50) percent of the handset models it offers comply with paragraph (b)(1) of this section, calculated based on the total number of unique digital wireless handset models the carrier offers nationwide; or

(ii) Ensure that it offers, at a minimum, the following specified number of handset models that comply with paragraph 20.19(b)(1) of this section:

(A) prior to February 15, 2009, at least eight (8) handset models;

(B) beginning February 15, 2009, at least nine (9) handset models; and

(C) beginning February 15, 2010, at least ten (10) handset models.

(3) *Service providers other than Tier I carriers.* For each digital air interface for which it offers wireless handsets to customers, each service provider other than a Tier I carrier must:

(i) Prior to [INSERT DATE FOUR MONTHS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**], include in the handset models it offers at least two handset models that comply with paragraph (b)(1) of this section;

(ii) Beginning [INSERT DATE FOUR MONTHS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**], either:

(A) ensure that at least fifty (50) percent of the handset models it offers comply with paragraph (b)(1) of this section, calculated based on the total number of unique digital wireless handset models the service provider offers nationwide; or

(B) ensure that it offers, at a minimum, the following specified number of handset models that comply with paragraph (b)(1) of this section:

(1) until May 15, 2009, at least eight (8) handset models;

(2) beginning May 15, 2009, at least nine (9) handset models; and

(3) beginning May 15, 2010, at least ten (10) handset models.

(4) *All service providers.* The following requirements apply to Tier I carriers and all other service providers.

(i) *In-store testing.* Each service provider must make available for consumers to test, in each retail store owned or operated by the provider, all of its handset models that comply with paragraph (b)(1) of this section.

(ii) *Offering models with differing levels of functionality.* Each service provider must offer its customers a range of hearing aid-compatible models with differing levels of functionality (e.g., operating capabilities, features offered, prices). Each provider may determine the criteria for determining these differing levels of functionality, and must disclose its methodology to the Commission pursuant to paragraph (i)(3)(G) of this section.

(d) *Phase-in of requirements relating to inductive coupling capability.* The following applies to each manufacturer and service provider that offers wireless handsets used in the delivery of the services specified in paragraph (a) and that does not fall within the *de minimis* exception set forth in paragraph (e).

(1) *Manufacturers.* Each manufacturer offering to service providers four or more handset models in a digital air interface for use in the United States or imported for use in the United States must ensure that it offers to service providers, at a minimum, the following number of handset models that comply with the requirements set forth in paragraph (b)(2) of this section, whichever number is greater in any given year:

(i) at least two (2) handset models in that air interface; or

(ii) at least the following percentage of handset models (rounded down to the nearest whole number):

(A) beginning February 15, 2009, at least twenty (20) percent of its handset models in that air interface, provided that, of any such models introduced during calendar year 2009, one model may be rated using ANSI C63.19-2006 (incorporated by reference, see paragraph (b)(5)), and all other models introduced during that year or subsequent years shall be rated using ANSI C63.19-2007 (incorporated by reference, see paragraph (b)(5)) or subsequently adopted version;

(B) beginning February 15, 2010, at least twenty-five (25) percent of its handset models in that air interface; and

(C) beginning February 15, 2011, at least one-third of its handset models in that air interface.

(2) *Tier I carriers.* For each digital air interface for which it offers wireless handsets to service providers, each Tier I carrier must:

(i) Ensure that at least one-third of the handset models it offers comply with paragraph (b)(2) of this section, calculated based on the total number of unique digital wireless handset models the carrier offers nationwide; or

(ii) Ensure that it offers, at a minimum, the following specified number of handset models that comply with paragraph (b)(2) of this section:

(A) prior to February 15, 2009, at least three (3) handset models;

(B) beginning February 15, 2009, at least five (5) handset models;

(C) beginning February 15, 2010, at least seven (7) handset models; and

(D) beginning February 15, 2011, at least ten (10) handset models.

(3) *Service providers other than Tier I carriers.* For each digital air interface for which it offers wireless handsets to customers, each service provider other than a Tier I carrier must:

(i) Prior to [INSERT DATE FOUR MONTHS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**], include in the handset models it offers at least two handset models that comply with paragraph (b)(2) of this section;

(ii) Beginning [INSERT DATE FOUR MONTHS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], either:

(A) ensure that at least one-third of the handset models it offers comply with paragraph (b)(2) of this section, calculated based on the total number of unique digital wireless handset models the carrier offers nationwide; or

(B) ensure that it offers, at a minimum, the following specified number of handset models that comply with paragraph (b)(2) of this section:

- (1) until May 15, 2009, at least three (3) handset models;
- (2) beginning May 15, 2009, at least five (5) handset models;
- (3) beginning May 15, 2010, at least seven (7) handset models; and
- (4) beginning May 15, 2011, at least ten (10) handset models.

(4) *All service providers.* The following requirements apply to Tier I carriers and all other service providers.

(i) *In-store testing.* Each service provider must make available for consumers to test, in each retail store owned or operated by the provider, all of its handset models that comply with paragraph (b)(2) of this section.

(ii) *Offering models with differing levels of functionality.* Each service provider must offer its customers a range of hearing aid-compatible models with differing levels of functionality (e.g., operating capabilities, features offered, prices). Each provider may determine the criteria for determining these differing levels of functionality, and must disclose its methodology to the Commission pursuant to paragraph (i)(3)(G) of this section.

(e) *De minimis exception.*

(1) Manufacturers or service providers that offer two or fewer digital wireless handsets in an air interface in the United States are exempt from the requirements of this section in connection with that air interface, except with regard to the reporting requirements in paragraph (i) of this section. Service providers that obtain handsets only from manufacturers that offer two or fewer digital wireless handset models in an air interface in the United States are likewise exempt from the requirements of this section other than subsection (i) in connection with that air interface.

(2) Manufacturers or service providers that offer three digital wireless handset models in an air interface must offer at least one handset model compliant with paragraphs (b)(1) and (b)(2) of this section in that air interface. Service providers that obtain handsets only from manufacturers that offer three digital wireless handset models in an air interface in the United States are required to offer at least one handset model in that air interface compliant with paragraphs (b)(1) and (b)(2).

(f) *Labeling and disclosure requirements.*

(1) *Labeling requirements.* Manufacturers and service providers shall ensure that handsets that are hearing aid-compatible, as defined in paragraph (b) of this section, clearly display the rating, as defined in

paragraphs (b)(1) and (b)(2) of this section, on the packaging material of the handset. In the event that a hearing aid-compatible handset achieves different radio interference or inductive coupling ratings over different air interfaces or different frequency bands, the RF interference reduction and inductive coupling capability ratings displayed shall be the lowest rating assigned to that handset for any air interface or frequency band. An explanation of the ANSI C63.19 rating system must also be included in the device's user's manual or as an insert in the packaging material for the handset.

(2) *Disclosure requirement relating to handsets with Wi-Fi capability.* Beginning [INSERT DATE SEVEN MONTHS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**], each manufacturer and service provider shall ensure that, wherever it provides hearing aid compatibility ratings for a handset model that incorporates a Wi-Fi air interface, it discloses to consumers, by clear and effective means (e.g., inclusion of call-out cards or other media, revisions to packaging materials, supplying of information on websites) that the handset has not been rated for hearing aid compatibility with respect to Wi-Fi operation.

(g) *Model designation requirements.* Where a manufacturer has made physical changes to a handset that result in a change in the hearing aid compatibility rating under paragraph (b)(1) or (b)(2) of this section, the altered handset must be given a model designation distinct from that of the handset prior to its alteration.

(h) *Website requirements.* Beginning January 15, 2009, each manufacturer and service provider subject to this section that operates a publicly-accessible website must make available on its website a list of all hearing aid-compatible models currently offered, the ratings of those models, and an explanation of the rating system. Each service provider must also specify on its website, based on the levels of functionality that the service provider has defined, the level that each hearing aid-compatible model falls under as well as an explanation of how the functionality of the handsets varies at the different levels .

(i) *Reporting requirements.*

(1) *Reporting dates.* Manufacturers shall submit reports on efforts toward compliance with the requirements of this section on January 15, 2009 and on July 15, 2009, and on an annual basis on July 15 thereafter. Service providers shall submit reports on efforts toward compliance with the requirements of this section on January 15, 2009, and annually thereafter. Information in the reports must be up-to-date as of the last day of the calendar month preceding the due date of the report.

(2) *Content of manufacturer reports.* Reports filed by manufacturers must include:

(A) Digital wireless handset models tested, since the most recent report, for compliance with the applicable hearing aid compatibility technical ratings;

(B) Compliant handset models offered to service providers since the most recent report, identifying each model by marketing model name/number(s) and FCC ID number;

(C) For each compliant model, the air interface(s) and frequency band(s) over which it operates, the hearing aid compatibility ratings for each frequency band and air interface under ANSI Standard C63.19, the ANSI Standard C63.19 version used, and the months in which the model was available to service providers since the most recent report;

(D) Non-compliant models offered to service providers since the most recent report, identifying each model by marketing model name/number(s) and FCC ID number;

(E) For each non-compliant model, the air interface(s) over which it operates and the months in which the model was available to service providers since the most recent report;

(F) Total numbers of compliant and non-compliant models offered to service providers for each air interface as of the time of the report;

(G) Any instance, as of the date of the report or since the most recent report, in which multiple compliant or non-compliant devices were 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;

(H) Status of product labeling;

(I) Outreach efforts; and

(J) If the manufacturer maintains a public website, the website address of the page(s) containing the information regarding hearing aid-compatible handset models required by paragraph (h) of this section.

NOTE TO PARAGRAPH (i)(2): For reports due on January 15, 2009, information provided with respect to paragraphs (i)(2)(B)-(E) and (i)(2)(G)-(H) need be provided only for the six-month period from July 1 to December 31, 2008.

(3) *Content of service provider reports.* Reports filed by service providers must include:

(A) Compliant handset models offered to customers since the most recent report, identifying each model by marketing model name/number(s) and FCC ID number;

(B) For each compliant model, the air interface(s) and frequency band(s) over which it operates, the hearing aid compatibility ratings for each frequency band and air interface under ANSI Standard C63.19, and the months in which the model was available since the most recent report;

(C) Non-compliant models offered since the most recent report, identifying each model by marketing model name/number(s) and FCC ID number;

(D) 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;

(E) Total numbers of compliant and non-compliant models offered to customers for each air interface over which the service provider offers service as of the time of the report;

(F) Information related to the retail availability of compliant handset models;

(G) The levels of functionality into which the compliant handsets fall and an explanation of the service provider's methodology for determining levels of functionality;

(H) Status of product labeling;

(I) Outreach efforts; and

(J) If the service provider maintains a public website, the website address of the page(s) containing the information regarding hearing aid-compatible handset models required by paragraph (h) of this section.

NOTE TO PARAGRAPH (i)(3): For reports due on January 15, 2009, information provided with respect to paragraphs (i)(3)(A)-(D) and (i)(3)(F)-(H) need be provided only for the six-month period from July 1 to December 31, 2008.

(4) *Format.* The Wireless Telecommunications Bureau is delegated authority to approve or prescribe formats and methods for submission of these reports. Any format that the Bureau may approve or prescribe shall be made available on the Bureau's website.

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

(k) *Delegation of rulemaking authority.* The Chief of the Wireless Telecommunications Bureau and the Chief of the Office of Engineering and Technology are delegated authority, by notice-and-comment rulemaking, to issue an order amending this section to the extent necessary to adopt technical standards for additional frequency bands and/or air interfaces upon the establishment of such standards by ANSI Accredited Standards Committee C63®, provided that the standards do not impose with respect to such frequency bands or air interfaces materially greater obligations than those imposed on other services subject to this section. Any new obligations on manufacturers and Tier I carriers pursuant to paragraphs (c)-(i) of this section as a result of such standards shall become effective no less than one year after release of the order adopting such standards, and any new obligations on other service providers shall become effective no less than 15 months after the release of such order.

**Part 68 of Title 47 of the Code of Federal Regulations is amended as follows:**

6. The authority citation for Part 68 reads as follows:

Authority: Secs. 4, 5, 303, 48 Stat., as amended, 1066, 1068, 1082; (47 U.S.C. 154, 155, 303).

7. Section 68 is amended by replacing the existing text of Section 68.418(b) with the following:

**§ 68.418 Procedure; Designation of Agents for Service.**

\* \* \* \* \*

(b) To ensure prompt and effective service of informal complaints filed under this subpart, every responsible party of equipment approved pursuant to this part shall designate and identify one or more agents upon whom service may be made of all notices, inquiries, orders, decisions, and other pronouncements of the Commission in any matter before the Commission. Such designation shall be provided to the Commission and shall include a name or department designation, business address, telephone number, and, if available, TTY number, facsimile number, and Internet e-mail address. The

Commission shall make this information available to the public.