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Before the
Federal Communications Commission
Washington, D.C. 20554

MAILED

APR 21 2008

In the Matter of)
)
Amendment of the Commission's Rules)
Governing Hearing Aid-Compatible Mobile)
Handsets)
)
Petition of American National Standards Institute)
Accredited Standards Committee C63 (EMC))
ANSI ASC C63®)

WT Docket No. 07-250

ORDER ON RECONSIDERATION AND ERRATUM

Adopted: April 17, 2008

Released: April 17, 2008

By the Commission:

I. INTRODUCTION

1. In this *Order on Reconsideration and Erratum*, we take action on our own motion relating to the *First Report and Order* on wireless hearing aid compatibility that we released on February 28, 2008.¹ In the *Erratum*, we correct two errors in the *First Report and Order*.² In the *Order on Reconsideration*, we extend the stay of enforcement of the existing requirements that 50 percent of handset models per air interface meet the hearing aid compatibility threshold for radio frequency (RF) interference reduction until 30 days after publication of the *First Report and Order* in the Federal Register. We also revise the procedures adopted in the *First Report and Order* by which the Wireless Telecommunications Bureau and the Office of Engineering and Technology may approve the use of future versions of the hearing aid compatibility technical standard that do not raise major compliance issues.³

II. ERRATUM

2. The text of paragraph 48 of the *First Report and Order* and the text of section 0.241(a)(1) of the Final Rules as adopted in Appendix C of the *First Report and Order* are corrected as set forth in Appendix A.

¹ See Amendment of the Commission's Rules Governing Hearing Aid Compatible Mobile Handsets, Section 68.4(a) of the Commission's Rules Governing Hearing Aid Compatible Telephones, and Petition of American National Standards Institute Accredited Standards Committee C63 (EMC) ANSI ASC C63®, WT Docket No. 07-250, *First Report and Order*, FCC 08-68 (rel. Feb. 28, 2008) (*First Report and Order*).

² The corrections to the *First Report and Order* are listed in Appendix A.

³ Rules changes on reconsideration are listed in Appendix B.

III. ORDER ON RECONSIDERATION

A. Stay of February 18, 2008 Benchmark

3. Background. On November 7, 2007, the Commission released a *Second Report and Order and Notice of Proposed Rulemaking* in the above-captioned proceeding,⁴ in which, among other things, we stayed enforcement of the February 18, 2008 hearing aid-compatible handset benchmark in Sections 20.19(c)(1)(ii), 20.19(c)(2)(ii), and 20.19(c)(3)(ii) of the Commission's rules⁵ until April 18, 2008. Under existing rules, manufacturers and wireless service providers are required to ensure that, by February 18, 2008, at least 50 percent of their handset models over each air interface meet a U3/M3 (or higher) rating⁶ for RF interference reduction, as codified in Section 20.19 of our rules.⁷ However, in the *Notice* we tentatively concluded to modify this particular hearing aid compatibility benchmark by including, among other things, an alternative to the February 18, 2008 benchmark, and we stated our intent to issue a Report and Order by February 18.⁸ In consideration of the need for certainty, and in order to provide appropriate notification to manufacturers and service providers as regards the hearing aid compatibility obligations, we therefore determined that it was in the public interest to stay enforcement of that particular benchmark for 60 days, until April 18, 2008.⁹

4. On February 28, 2008, we released the *First Report and Order*, in which we adopted modified rules governing hearing aid-compatible handsets. In the course of doing so, we decided not to extend the stay of enforcement.¹⁰ The rules adopted in the February 28, 2008 *First Report and Order* will become effective 30 days after publication in the Federal Register. The *First Report and Order* has not yet been published. Therefore, the current rules, enforcement of which was stayed until April 18, 2008, remain in effect.

5. Discussion. In order to enable an orderly transition to the modified rules we adopted in the *First Report and Order*, we reconsider, on our own motion, our decision not to stay enforcement of the current rules beyond the April 18, 2008 date established in the *Second Report and Order and Notice*.¹¹ Specifically, we stay enforcement of the 50 percent benchmark in Sections 20.19(c)(1)(ii),

⁴ See Amendment of the Commission's Rules Governing Hearing Aid Compatible Mobile Handsets, Section 68.4(a) of the Commission's Rules Governing Hearing Aid Compatible Telephones, and Petition of American National Standards Institute Accredited Standards Committee C63 (EMC) ANSI ASC C63®, WT Dockets No. 01-309 and 07-250, *Second Report and Order and Notice of Proposed Rulemaking*, 22 FCC Rcd 19670 (2007) (*Second Report and Order and Notice*, respectively).

⁵ 47 C.F.R. §§ 20.19(c)(1)(ii), 20.19(c)(2)(ii), and 20.19(c)(3)(ii).

⁶ The Commission established technical standards that digital wireless handsets must meet to be considered hearing aid-compatible, including a standard for radio frequency interference (the "U3" or "M3" rating) that would enable acoustic coupling between digital wireless phones and hearing aids operating in acoustic coupling (a.k.a. microphone) mode. See Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones, WT Docket No. 01-309, *Report and Order*, 18 FCC Rcd 16753 (2003); *erratum*, 18 Rcd 18047 (2003) 18 FCC Rcd at 16763 ¶ 22.

⁷ See 47 C.F.R. § 20.19(c).

⁸ See *Second Report and Order and Notice*, 22 FCC Rcd at 19673, 19685-86 ¶¶ 6, 41-44.

⁹ *Id.* at 19706 ¶ 99.

¹⁰ *First Report and Order* at 13 n.72.

¹¹ See 47 C.F.R. § 1.108 (Commission may, on its own motion, set aside any action made or taken by it within 30 days from the date of public notice of such action); see also 47 C.F.R. § 1.4(b)(1) (date of public notice for action in notice and comment rulemaking proceeding is date of publication in the Federal Register).

20.19(c)(2)(ii), and 20.19(c)(3)(ii) of the Commission's rules, 47 C.F.R. §§ 20.19(c)(1)(ii), 20.19(c)(2)(ii), and 20.19(c)(3)(ii), until 30 days after publication of the *First Report and Order* in the Federal Register.

B. Future Revisions to the Technical Standard

6. Background. In the *First Report and Order*, we adopted the 2007 version of the ANSI C63.19 standard as the applicable technical standard to determine if a particular handset model meets the requisite hearing aid compatibility ratings for radio frequency interference and inductive coupling, and we provided a transition period during which a handset model could be certified using either the 2007 version or the previous 2006 version.¹² At the same time, we grandfathered models already certified under earlier versions of the standard, providing that any grants of certification issued by the Commission under prior versions of ANSI C63.19 would remain valid for hearing aid compatibility purposes.¹³

7. To help ensure that the hearing aid compatibility rules would continue to reflect the most current standard, we also delegated to the Chief, Wireless Telecommunications Bureau (WTB), and the Chief, Office of Engineering and Technology (OET) (collectively, the Chiefs), the authority to jointly approve the use of newer versions of the ANSI C63.19 standard (*i.e.*, versions adopted after the 2007 version) to the extent that the changes to the standard do not raise major compliance issues.¹⁴ We specified that such approval by the Chiefs must be for the use of new versions "in the alternative," meaning that manufacturers could not be prohibited from continuing to rely on an older version of the standard that was otherwise authorized under the rule, such as the 2007 version.¹⁵ We further provided that WTB and OET could accomplish the approval of new versions that do not raise major compliance issues through release of a public notice.¹⁶

8. As noted, the above process was limited to approval of new versions that do not raise major compliance issues. We adopted a different process to govern the approval of future versions of ANSI C63.19 that provide technical standards for frequency bands and/or air interfaces that are not covered by any previous version of the standard, and which would therefore be subject to hearing aid compatibility obligations for the first time once the new technical standard is approved. For such cases, we delegated authority to the Chief, WTB, and the Chief, OET, pursuant to Section 5(c)(1) of the Communications Act, to amend Section 20.19 through notice-and-comment rulemaking as necessary to adopt the standards for the additional frequency bands and/or air interfaces.¹⁷

9. Discussion. We conclude, on further consideration, that approvals by the Chiefs of new versions of the ANSI C63.19 standard that do not raise major compliance issues, and that are approved for use only as optional alternatives to the other approved versions of the standard, should be codified in the rules rather than just approved by public notice. As a result, we here modify the delegation of authority by which the Chiefs may approve new versions of the ANSI C63.19 technical standard that do not raise major compliance issues. Specifically, if the Chiefs determine that such a new version of the hearing aid compatibility technical standard should be approved, we require them to issue an order

¹² See *First Report and Order* at ¶¶ 81-83.

¹³ See *id.* at App. C, Section 20.19(b)(1), (2).

¹⁴ See *id.* at ¶ 87.

¹⁵ See *id.* at App. C, Section 20.19(b)(3).

¹⁶ See *id.* at App. C, Section 20.19(b)(3).

¹⁷ See *id.* at ¶¶ 87, 89; App. C, Section 20.19(k).

amending Section 20.19 as necessary to codify the approval of the new version for use in determining and certifying hearing aid compatibility of covered handsets. Accordingly, just as we did for the approval of future versions of ANSI C63.19 that provide technical standards for frequency bands and/or air interfaces that are not covered by any previous version of the standard, we specifically delegate to the Chiefs the authority to conduct a notice-and-comment proceeding, to the extent required by statute or otherwise in the public interest, to adopt the requisite rule changes. We note, however, that we do not require adoption by notice-and-comment procedures if such procedures are not otherwise required by statute.¹⁸

10. As before, we only authorize the Chiefs to approve new versions of the ANSI C63.19 standard pursuant to this delegation of authority where changes in the new standard do not raise major compliance issues, and subject to the limitation that the Chiefs may only permit, not require, the use of such subsequent versions of ANSI C63.19 to establish hearing aid compatibility. We do not otherwise modify the authority delegated to the Chiefs to approve new versions of the ANSI C63.19 standard.

IV. PROCEDURAL MATTERS

11. *Final Regulatory Flexibility Certification.* The Regulatory Flexibility Act of 1980, as amended (RFA),¹⁹ requires that a regulatory flexibility analysis be prepared for notice and comment proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."²⁰ The RFA generally defines "small entity" as having the same meaning as the term "small business," "small organization," and "small governmental jurisdiction."²¹ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate to its activities.²² Under the Small Business Act, a "small business concern" is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA).²³

12. In the *First Report and Order*, the Commission modified the rules governing the provision of hearing aid-compatible handsets. In this *Order on Reconsideration*, the Commission retains the status quo concerning possible compliance burdens on all wireless manufacturers and service providers, including small entities, by continuing to stay enforcement of the current rules until such time as the modified rules become effective. Further, the modifications to the Commission process for

¹⁸ See 5 U.S.C. § 553(b) (specifying when notice-and-comment rulemaking is required). For the reasons stated in the *First Report and Order*, we find that this delegation is within our authority under Section 5(c)(1) of the Communications Act. See *First Report and Order* at ¶ 89.

¹⁹ The RFA, see 5 U.S.C. § 601-612, has been modified 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).

²⁰ 5 U.S.C. § 605(b).

²¹ 5 U.S.C. § 601(6).

²² 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 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 in the Federal Register."

²³ 15 U.S.C. § 632.

approving new versions of the hearing aid compatibility technical standard do not place any new burdens on small entities. Therefore, we certify, pursuant to section 605(b) of the RFA, that the action taken herein will not have a significant economic impact on a substantial number of small entities.

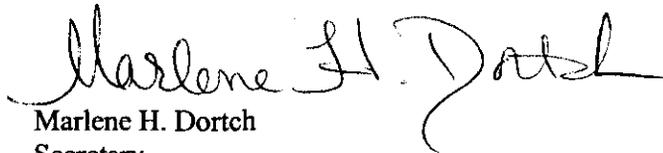
V. ORDERING CLAUSES

13. 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, and Section 1.108 of the Commission's rules, 47 C.F.R. § 1.108, this Order on Reconsideration and Erratum IS HEREBY ADOPTED.

14. IT IS FURTHER ORDERED that, pursuant to the authority of section 4(i) of the Communications Act, as amended, 47 U.S.C. § 154(i), and section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, the requirements of sections 20.19(c)(1)(ii), 20.19(c)(2)(ii), and 20.19(c)(3)(ii) of the Commission's rules, 47 C.F.R. §§ 20.19(c)(1)(ii), 20.19(c)(2)(ii), 20.19(c)(3)(ii), ARE STAYED until 30 days after publication of the *First Report and Order* in the Federal Register.

15. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of the Order on Reconsideration and Erratum, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION



Marlene H. Dortch
Secretary

APPENDIX A

Erratum to First Report and Order

1. The penultimate sentence in paragraph 48 of the *First Report and Order* is corrected to read as follows:

For manufacturers that produce three models per air interface, at least one new M3-rated (or higher) model would be required every other calendar year.

2. Section 0.241(a)(1) of the Final Rules as adopted in Appendix C of the *First Report and Order* is corrected to read as follows:

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

APPENDIX B

Final Rules on Reconsideration

For the reasons discussed above, Part 20 of Title 47 of the Code of Federal Regulations is amended as follows:

Revise paragraphs (b)(1), (b)(2), (b)(3), and (k) of section 20.19 as follows:

§ 20.19 Hearing aid-compatible mobile handsets.

* * * * *

(b) * * *

(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. 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)). 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. 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)). 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) [Reserved].

* * * * *

(k) *Delegation of rulemaking authority.*

(1) 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.

(2) 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 if required by statute or otherwise in the public interest, to issue an order amending this section to the extent necessary to approve any version of the technical standards for radio frequency interference or inductive coupling adopted subsequently to ANSI C63.19-2007 for use in determining whether a wireless handset meets the appropriate rating over frequency bands and air interfaces for which technical standards have previously been adopted either by the Commission or pursuant to paragraph (k)(1). This delegation is limited to the approval of changes to the technical standard that do not raise major compliance issues. Further, by such approvals, the Chiefs may only permit, and not require, the use of such subsequent versions of standard document ANSI C63.19 to establish hearing aid compatibility.