

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

In the Matter of
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
Petition of American National Standards Institute
Accredited Standards Committee C63 (EMC)
ANSI ASC C63™

WT Docket No. 07-250

WT Docket No. 01-309

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SECOND REPORT AND ORDER
AND
NOTICE OF PROPOSED RULEMAKING

Adopted: November 5, 2007

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By the Commission:

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I. INTRODUCTION

1. Over the past four years, wireless service providers and manufacturers have made significant progress in achieving the Commission’s goals to improve wireless services for the deaf and hard of hearing community through increased access to hearing aid-compatible handsets. Nonetheless, with ongoing developments in technology and in the market, ensuring the availability of hearing aid-compatible handsets to hard of hearing consumers, as well as information about such handsets, must remain a high priority for the Commission. In this item, we take steps to ensure that hearing aid users will continue to benefit from the convenience and features offered by the newest wireless communications systems being provided to American consumers, a goal the Commission established in 2003 in the *Hearing Aid Compatibility Order*.¹ To the extent people who use hearing aids have difficulty finding a wireless mobile telephone that functions effectively with those devices because of interference or compatibility problems, a continued expansion in the number and availability of hearing aid-compatible wireless telephones is warranted. The actions we propose are designed to take account of changing market and technological conditions.

2. In this Second Report and Order, we address the two specific potential rule changes on which the Commission sought comment in 2005 in the notice of proposed rulemaking portion of the *Hearing Aid Compatibility Reconsideration Order and Further Notice*.² On the first of these, we conclude that the current record does not support expanding the mandate for in-store demonstrations to independent retailers at this time. As regards the second, we decide, again based on the current record, not to narrow or otherwise change at this time the *de minimis* rule that exempts service providers and manufacturers with small product lines from the hearing aid compatibility regime. We do, however, seek renewed comment on these two issues in the Notice of Proposed Rulemaking (“Notice”) that we are initiating today as part of the Commission’s ongoing effort to evaluate possible rule changes in light of new as well as anticipated technological and market developments.

3. In this Notice, we reexamine the Commission’s existing hearing aid compatibility requirements to ensure that they will continue to be effective in an evolving marketplace of new technologies and services. We undertake this review in accordance with the Commission’s commitment in the 2003 *Hearing Aid Compatibility Order* to initiate a new rulemaking proceeding to evaluate: “(1) whether to increase [or] decrease the 2008 requirement to provide 50 percent of phone models that comply with a U3 rating; (2) whether to adopt [hearing aid compatibility] implementation benchmarks beyond 2008; and (3) whether to otherwise modify the [hearing aid compatibility] requirements.”³ To assist in forming the basis for initiating this rulemaking, the Commission directed that staff deliver to the

¹ 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, 16755 ¶ 4 (2003); *Erratum*, 18 FCC Rcd 18047 (2003) (*Hearing Aid Compatibility Order*).

² See Section 68.4(a) of the Commission’s Rules Governing Hearing Aid-Compatible Telephones, WT Docket No. 01-309, *Order on Reconsideration and Further Notice of Proposed Rulemaking*, 20 FCC Rcd 11221 (2005) (*Hearing Aid Compatibility Reconsideration Order and Further Notice*).

³ See *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16782-83 ¶ 74.

Commission a report that assesses the impact of the hearing aid compatibility rules in achieving greater compatibility between hearing aids and digital wireless phones and that examines the development of new technologies that could provide greater and more efficient accessibility of wireless telecommunications to hearing aid users.⁴ The Wireless Telecommunications Bureau (WTB), in WT Docket No. 06-203, recently released the *Staff Report*, which examines recent developments and includes several recommendations.⁵

4. In light of the current marketplace and in anticipation of future developments in wireless offerings, we seek comment in this Notice on various possible revisions to the Commission's hearing aid compatibility policies and requirements pertaining to wireless services. The proposals set forth herein draw upon recommendations proposed in the *Staff Report*. Several of these proposals, in turn, are based on an interconnected set of rule changes set forth in a consensus plan (Joint Consensus Plan) recently developed jointly by industry and representatives for the deaf and hard of hearing community. The specifics of the Joint Consensus Plan, along with a proposed model rule,⁶ are contained in the Supplemental Comments of the Alliance for Telecommunications Industry Solutions (ATIS), which was submitted as part of the record in WT Docket No. 06-203.⁷ ATIS states that its working group developed a comprehensive plan reflecting the joint input of the wireless industry and consumers with hearing loss.⁸ The participants included many wireless service providers and equipment manufacturers, as well as Alexander Graham Bell Association for the Deaf and Hard of Hearing (AG Bell), Hearing Loss Association of America (HLAA), Gallaudet University Technology Access Program (TAP), and Rehabilitation Engineering Research Center on Telecommunications Access (RERC).⁹

5. As recommended in the *Staff Report*, we tentatively conclude substantially to adopt the provisions of the Joint Consensus Plan, and we seek comment on this tentative conclusion and several related matters. In particular, we tentatively conclude to modify the handset deployment deadlines in Section 20.19 along the framework proposed in the Joint Consensus Plan, including (1) modifying the upcoming February 18, 2008 benchmark that requires that manufacturers and wireless service providers ensure that at least 50 percent of their handset models over each air interface meet a U3/M3 or better rating for radio frequency (RF) interference reduction and (2) imposing new benchmarks for deploying handsets that meet standards for providing inductive coupling capability.¹⁰ We also tentatively conclude in the Notice to impose new requirements on manufacturers and service providers such that they must include in their portfolios of hearing aid-compatible handsets a certain number of new models and models

⁴ *Id.*

⁵ See Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones, WT Docket No. 01-309, WT Docket No. 06-203, *Report on the Status of Implementation of the Commission's Hearing Aid Compatibility Requirements*, DA 07-4151 (WTB rel. Oct. 5, 2007) (*Staff Report*). In November 2006, WTB opened this docket, seeking comment from the public on issues that should be addressed in the staff report. Wireless Telecommunications Bureau Seeks Comments on Topics to be Addressed in Hearing Aid Compatibility Report, *Public Notice*, 21 FCC Rcd 13136 (2006) (*Staff Report Public Notice*). Comments are summarized in the *Staff Report*.

⁶ See *infra* Appendix B (containing changes to Section 20.19 of the Commission's rules proposed in Joint Consensus Plan); see also Letter of ATIS in WT Docket No. 06-203 (filed Oct. 3, 2007) (clarifying text of proposed Section 20.19(c)(1)(iii)(B)).

⁷ See Supplemental Comments of ATIS in WT Docket No. 06-203 (filed June 25, 2007) (Joint Consensus Plan).

⁸ Joint Consensus Plan at 3.

⁹ *Id.*

¹⁰ See 47 C.F.R. § 20.19(c), (d).

with different levels of functionality, including the capability to operate over different frequency bands, in order to ensure that people with hearing loss have access to new, advanced devices. In addition to these steps, we tentatively conclude to adopt an updated technical standard as proposed in the Joint Consensus Plan,¹¹ and we seek comment on proposed new reporting, information, and outreach measures, as well as other interrelated proposals in the Joint Consensus Plan. While we recognize that the Joint Consensus Plan proposals were developed through significant investigation and negotiation by the working group and its members,¹² we also seek comment on possible alterations or additions to certain aspects of its proposals that may better implement our hearing aid compatibility goals. Finally, consistent with the recommendations in the *Staff Report*, we seek comment on how to better employ our hearing aid compatibility regulations in the context of emerging technologies and open platforms for devices and applications.

6. Our intent is to issue a Report and Order addressing the issues raised in this Notice in the near future, in advance of the upcoming February 18, 2008 benchmark. As discussed above, we tentatively conclude that we will revise this benchmark and impose new ones in its place. In consideration of the need for certainty, and in order to provide appropriate notification to manufacturers and service providers as to the applicable hearing aid compatibility obligations, we will stay enforcement of the February 18, 2008 benchmark for 60 days, until April 18, 2008.

II. BACKGROUND

7. In the *Hearing Aid Compatibility Order* adopted in 2003, the Commission took a number of actions to further the ability of persons with hearing disabilities to access digital wireless telecommunications.¹³ The Commission adopted these requirements under authority of the Hearing Aid Compatibility Act of 1988.¹⁴ These requirements were later modified slightly in the *Hearing Aid Compatibility Reconsideration Order and Further Notice* adopted in 2005.¹⁵

8. The Commission's hearing aid compatibility rules apply generally to providers of digital commercial mobile radio services (CMRS) "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," as well as to manufacturers of wireless phones used in the delivery of such services.¹⁶

¹¹ On June 25, 2007, the American National Standards Institute Accredited Standards Committee C63 filed a petition seeking adoption of the 2007 revision of the ANSI C63.19 technical standard in place of the 2001, 2005 draft, and 2006 versions of the technical standard. See Petition of American National Standards Institute (ANSI) Accredited Standards Committee C63 (EMC) - ANSI ASC C63 filed on June 25, 2007, in WT Docket No. 01-309 (ANSI Petition).

¹² See Joint Consensus Plan at 15; see also *id.* at 15-16 (stating "[a]s a result, all elements of this proposal, regardless of how small, are critical to its success").

¹³ See generally *Hearing Aid Compatibility Order*, 18 FCC Rcd 16753.

¹⁴ See Pub. L. No. 100-394, 102 Stat. 976 (1988), codified at 47 U.S.C. § 610.

¹⁵ See *Hearing Aid Compatibility Reconsideration Order*, 20 FCC Rcd at 11208-09 ¶¶ 26-27.

¹⁶ 47 C.F.R. § 20.19(a); see also In the Matter of Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, WT Docket 06-150, *Report and Order and Further Notice of Proposed Rulemaking*, 22 FCC Rcd 8064, 8117-18 ¶ 142 (2007) (*700 MHz Service Report and Order*). CMRS is defined as mobile service that is provided for profit, interconnected, and available to the public. 47 C.F.R. § 20.3; see 47 U.S.C. § 332(d)(1). We note that telephones used with public mobile services, as well as those used with private radio services, are exempt from the general statutory requirement that all telephones meet hearing aid compatibility standards. 47 U.S.C. § 610(b)(2)(A); see also 47 C.F.R. § 68.4. In 1994, Congress amended Section 332 of the Communications Act, replacing the public (continued....)

Only Broadband Personal Communications Services (PCS), Cellular Radiotelephone Service (cellular), and Specialized Mobile Radio (SMR) Services in the 800 MHz and 900 MHz bands currently are subject to specific hearing aid compatibility standards pursuant to Section 20.19 of the rules.¹⁷ Earlier this year, in the *700 MHz Service Report and Order*, we extended the hearing aid compatibility requirements to all providers of digital CMRS that meet the specified criteria, including providers of such service in the 700 MHz, Advanced Wireless Services, and Broadband Radio Service/Educational Broadband Service bands, and to manufacturers of handsets capable of providing such services, once applicable technical standards are established in the relevant bands.¹⁸ We also established a timetable for the development of the necessary technical standards for new services and frequency bands that have governing service rules in place and for incorporation of requirements based on those standards into our rules.¹⁹

9. *Current Hearing Aid Compatibility Requirements.* Under the Commission's existing hearing aid compatibility requirements, both manufacturers and digital wireless service providers must take steps to increase the number of hearing aid-compatible handset models available according to a phased-in deployment schedule.²⁰ The Commission's hearing aid compatibility requirements address hearing aids that operate in either of two modes – acoustic coupling or inductive coupling. Hearing aids operating in acoustic coupling mode receive and amplify all sounds surrounding the user, including desired sounds, such as a telephone's audio signal, as well as unwanted ambient noise.²¹ Hearing aids operating in inductive coupling mode avoid amplifying unwanted ambient noise by turning off the microphone and using a telecoil to receive only audio signal-based magnetic fields generated by telecoil-compatible telephones.²²

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mobile service and private radio service categories with CMRS and private mobile [radio] service (PMRS). See *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16764-65 ¶ 26. "Public mobile service" is defined to include certain services covered under Part 22 of our rules. 47 U.S.C. § 610(b)(4)(B); 47 C.F.R. § 68.3.

¹⁷ See 47 C.F.R. § 20.19(b); *700 MHz Service Report and Order*, 22 FCC Rcd at 8119 ¶¶ 145-147. The existence of an established, applicable technical standard is a statutory requirement for imposing hearing aid compatibility requirements. See 47 U.S.C. § 610.

¹⁸ *700 MHz Service Report and Order*, 22 FCC Rcd 8117-20 ¶¶ 142-150.

¹⁹ *Id.* at 8119-20 ¶¶ 148-150. Specifically, we established a 24-month timetable for interested stakeholders to develop standards in these bands. See *id.* We stated that once the appropriate technical standards are established, the Commission would initiate a further proceeding to establish a specific timetable for deployment of hearing aid-compatible handsets for services in the relevant bands. *Id.* at 8119 ¶ 148.

²⁰ See *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16780 ¶¶ 65-66; 47 C.F.R. § 20.19(c), (d).

²¹ The *Hearing Aid Compatibility Order* described acoustic coupling as follows:

In acoustic coupling mode, the microphone picks up surrounding sounds, desired and undesired, and converts them into electrical signals. The electrical signals are amplified as needed and then converted back into sound by the hearing aid speaker.

Hearing Aid Compatibility Order, 18 FCC Rcd at 16763 ¶ 22.

²² In telecoil mode, with the microphone turned off, the telecoil picks up the audio signal-based magnetic field generated by the voice coil of a dynamic speaker in hearing aid-compatible telephones, audio loop systems, or powered neck loops. The hearing aid converts the magnetic field into electrical signals, amplifies them as needed, and converts them back into sound via the speaker. Using a telecoil avoids the feedback that often results from putting a hearing aid up against a telephone earpiece, can help prevent exposure to over amplification, and eliminates background noise, providing improved access to the telephone.

10. The rules codify the American National Standards Institute (ANSI) C63.19 performance levels as the applicable technical standard for hearing aid compatibility.²³ The Commission determined that the standard presents a workable approach to measuring levels of interference that digital wireless handsets could cause to hearing aids, as well as for measuring the interference immunity of hearing aids.²⁴ To ensure that the standard codified in the rules would remain viable, the Commission delegated to the Chief of WTB, in coordination with the Chief of the Office of Engineering and Technology (OET), the authority to approve future versions of the standard that do not raise major compliance issues. Pursuant to this authority, the Commission staff has permitted applicants for equipment certification to rely on either the 2001, 2005, or 2006 version of the ANSI standard.²⁵ Where major changes to the standard are made that could affect compliance, the Commission stated it would initiate an appropriate rulemaking proceeding to consider adoption of updated versions.²⁶ The Commission also encouraged ANSI to work with the relevant stakeholders to review the standard periodically to determine whether improvements to the standard are warranted.²⁷

11. With respect to acoustic coupling operation, the Commission generally requires each covered manufacturer and service provider to offer specific numbers of handset models per air interface in its product line (*i.e.*, CDMA, TDMA, GSM, and iDEN)²⁸ that meet, at a minimum, an M3 rating (formerly denominated a U3 rating) for reduction of RF interference between handsets and hearing aids in acoustic coupling mode, as set forth in the ANSI C63.19 technical standard.²⁹ The Commission also established separate requirements to offer specific numbers of handset models per air interface that meet at least a T3 rating (formerly denominated a U3T rating) to enable inductive coupling with hearing aids operating in telecoil mode.³⁰ If a handset manufacturer or service provider offers a multi-band handset in order to comply with these requirements, the handset must be hearing aid-compatible in each frequency band.³¹

²³ See 47 C.F.R. § 20.19(b)(1)-(2).

²⁴ See *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16776 ¶ 55.

²⁵ See Wireless Telecommunications Bureau and Office of Engineering and Technology Clarify Use of Revised Wireless Phone Hearing Aid Compatibility Standard, *Public Notice*, 21 FCC Rcd 6384 (WTB/OET 2006).

²⁶ See *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16779 ¶ 63.

²⁷ See *id.*

²⁸ See *id.* at 16780 ¶ 65. The term air interface refers to the system that ensures compatibility between mobile radio service equipment, such as handsets, and the service provider's base stations. Currently, the leading air interfaces include Code Division Multiple Access (CDMA), Global System for Mobile Communications (GSM), Integrated Dispatch Enhanced Network (iDEN), Time Division Multiple Access (TDMA) and Wideband Code Division Multiple Access (WCDMA). We note that WCDMA is also known as Universal Mobile Telecommunications System (UMTS).

²⁹ See *id.*; 47 C.F.R. § 20.19(b)(1), (c)(1)-(3). The 2001 version of ANSI Standard C63.19, which the Commission adopted in the *Hearing Aid Compatibility Order*, used a "U" nomenclature for RF interference reduction, and this nomenclature is referenced in Section 20.19 of the Commission's rules. Subsequently, the 2006 version of this standard substituted the "M" nomenclature. For purposes of clarity, we will use the "M" nomenclature throughout this item when referring to RF interference reduction ratings, unless referring to specific text that uses the "U" nomenclature.

³⁰ See *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16780 ¶ 65; 47 C.F.R. § 20.19(b)(2), (d). The 2006 version of ANSI Standard C63.19 substituted "T" nomenclature for the "UT" terminology that was used in the 2001 version of the standard. For purposes of clarity, we will use the "T" terminology throughout this item when referring to inductive coupling compatibility ratings.

³¹ See Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones, Cingular Wireless LLC Petition for Waiver of Section 20.19(c)(3)(i)(A) of the Commission's Rules, *Memorandum Opinion* (continued....)

The Commission further established that, before a handset can be offered in satisfaction of these obligations, the handset manufacturer must first certify that it is compliant with the compatibility requirements through the Commission's equipment authorization process as set forth in Section 2.1033(d) of the Commission's rules.³²

12. The hearing aid compatibility rules set forth a series of specific, phased-in benchmarks for manufacturers and service providers to deploy handsets that meet these compatibility thresholds between 2005 and 2008.³³ The rules required that:

- by September 16, 2005, each digital wireless handset manufacturer make available to wireless service providers, and each such provider make available to consumers, at least two handset models for each air interface it offers which provide the reduced RF emissions (M3 rating) necessary to enable acoustic coupling without interference;
- by September 16, 2005, each Tier I (*i.e.*, nationwide) wireless carrier³⁴ providing digital wireless services make available to consumers at least four handset models for each air interface it offers that provides reduced RF emissions (M3 rating), or 25 percent of the total number of handset models it offers, whichever is greater;
- by September 16, 2006, each Tier I wireless carrier providing digital wireless services make available to consumers at least five handset models for each air interface it offers that provides reduced RF emissions (M3 rating), or 25 percent of the total number of handset models it offers, whichever is greater; and
- by September 16, 2006, each digital wireless handset manufacturer make available to wireless service providers, and each provider of public mobile radio services make available to consumers, at least two handset models for each air interface it offers that provide telecoil (inductive) coupling capability (T3 rating).

13. The requirements to offer specific numbers of compatible handset models for "each air interface" mean that the manufacturer or service provider must offer that number of compatible models capable of operating over that air interface. Thus, for example, a manufacturer that produces handsets capable of operating over the GSM air interface, regardless of whether some or all of those models also operate over other air interfaces, must produce at least two such models (either single-mode or multi-mode) that meet an M3 or higher rating.

14. The current handset deployment benchmarks also currently require that by February 18, 2008, at least 50 percent of all digital wireless handset models offered by manufacturers or digital wireless service providers per air interface offered must meet an M3 rating.³⁵ Finally, the rules contain a

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and Order, WT Docket No. 01-309, 20 FCC Rcd 15108, 15115 ¶ 17 (2005) (*Dual-Band GSM Waiver Order*) (Commission permitted handset manufacturers and service providers offering dual-band GSM wireless handsets operating in both the 850 MHz and 1900 MHz bands additional time, until August 1, 2006, for making available handsets with a U3 (*i.e.*, M3) or higher rating in both bands).

³² See *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16783 ¶ 75; 47 C.F.R. § 20.19(b)(3).

³³ See 47 C.F.R. § 20.19(c)-(d).

³⁴ The four (formerly six) nationwide CMRS carriers, AT&T Services, Inc., Verizon Wireless, Sprint Nextel, and T-Mobile USA are considered Tier I carriers. See *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Phase II Compliance Deadlines for Non-Nationwide CMRS Carriers, Order to Stay*, 17 FCC Rcd 14841, 14843 ¶ 7 (2002) (*Non-Nationwide Carriers Order*).

³⁵ 47 C.F.R. § 20.19(c).

de minimis exception to these benchmarks for certain digital wireless handset manufacturers and wireless service providers.³⁶

15. In addition, the 2003 *Hearing Aid Compatibility Order* imposed certain implementation requirements not codified in the rules. Those requirements include an obligation on the part of manufacturers and digital wireless service providers to report every six months on efforts toward compliance with the hearing aid compatibility requirements for the first three years of implementation and then annually thereafter through the fifth year of implementation.³⁷ Other obligations imposed concerned product labeling and live, in-store consumer testing of digital wireless handsets.³⁸

16. Upon first establishing hearing aid compatibility requirements, the Commission indicated that it would monitor compliance and consider other opportunities to further the ability of persons with hearing disabilities to access digital wireless telecommunications. In the 2003 *Hearing Aid Compatibility Order*, the Commission set forth three aspects of its rules that it planned to consider prior to 2008: “(1) whether to increase [or] decrease the 2008 requirement to provide 50 percent of phone models that comply with a U3 rating; (2) whether to adopt [hearing aid compatibility] implementation benchmarks beyond 2008; and (3) whether to otherwise modify the [hearing aid compatibility] requirements.”³⁹ The Commission also stated that prior to such a proceeding, “FCC staff will deliver to the Commission a report” on: (1) “the impact of our rules in achieving greater compatibility between hearing aids and digital wireless phones”; (2) “the development of new technologies that could provide greater or more efficient accessibility of wireless telecommunications to hearing aid users”; and (3) “the impact of this Order’s compatibility requirements on cochlear implant and middle ear implant users and their ability to use digital wireless phones.”⁴⁰ Moreover, in reconsidering certain aspects of Section 20.19 in the 2005 *Hearing Aid Compatibility Reconsideration Order and Further Notice*,⁴¹ the Commission explained that it collects data on hearing aid compatibility to comply with Congress’ requirement that the Commission periodically review and scrutinize its hearing aid compatibility regulations.⁴² The Commission also reiterated its commitment to revisit the February 18, 2008, 50 percent handset deployment benchmark.⁴³

17. *Hearing Aid Compatibility Further Notice*. In the notice portion of the 2005 *Hearing Aid Compatibility Reconsideration Order and Further Notice*, the Commission sought comment on two outstanding issues: (1) whether to extend the live, in-store consumer testing requirement to retail outlets that are not directly owned or operated by wireless carriers or service providers; and (2) whether to narrow the *de minimis* exception, for instance by exempting from the hearing aid compatibility requirements only wireless carriers, service providers, and handset manufacturers that offer one digital

³⁶ 47 C.F.R. § 20.19(e)(1)-(2) .

³⁷ See *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16787 ¶¶ 89-91.

³⁸ See 47 C.F.R. § 20.19(f).

³⁹ See *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16782-83 ¶ 74.

⁴⁰ *Id.*

⁴¹ The Commission modified the preliminary handset deployment benchmark specific to Tier I wireless carriers to provide greater regulatory certainty, while simultaneously ensuring a broad array of choices for persons with hearing disabilities who seek to purchase hearing aid-compatible wireless phones. See *Hearing Aid Compatibility Reconsideration Order and FNPRM*, 20 FCC Rcd at 11208-09 ¶¶ 26-27.

⁴² See *id.* at 11241 ¶ 44; see also 47 U.S.C. § 610(f).

⁴³ *Hearing Aid Compatibility Reconsideration Order and Further Notice*, 20 FCC Rcd at 11241 ¶ 44.

wireless handset model per air interface.⁴⁴ Four parties filed comments in the proceeding, and three filed replies.⁴⁵

18. Five commenters argue that the Commission should not extend the testing requirement to independent retailers, arguing that the Commission lacks legal authority to do so and that, even if it had such authority, the lack of a record of problems experienced by purchasers, combined with the practical difficulties of implementation, would make a decision to do so inadvisable.⁴⁶ One commenter – a hearing aid manufacturers’ association – favors extending this requirement, asserting the Commission has the necessary jurisdiction and that doing so would create a “level playing field” for all handset vendors.⁴⁷ Only two commenters address the *de minimis* issue, and both oppose any changes to the *de minimis* rule.⁴⁸

19. *Staff Report*. As discussed above, in the 2003 *Hearing Aid Compatibility Order* the Commission directed that Commission staff deliver to the Commission a report that assesses the impact of the hearing aid compatibility rules in achieving greater compatibility between hearing aids and digital wireless phones and that examines the development of new technologies that could provide greater and more efficient accessibility of wireless telecommunications to hearing aid users.⁴⁹ On November 8, 2006, the Wireless Telecommunications Bureau (WTB) sought comment on possible topics for evaluation in its report to the Commission.⁵⁰ Twenty comments and thirteen replies were filed.⁵¹

20. Recently released, the *Staff Report* reviews the status of implementation of the Commission’s hearing aid compatibility requirements and offers specific recommendations to assist the Commission in making additional changes to those requirements so that they may remain effective in the evolving marketplace of new technologies and services. Among other things, Commission staff recommend that we seek input on how to promote more complete compatibility between wireless communications devices and hearing aids by: considering how to improve in-store testing and the availability of public information regarding hearing aid-compatible handsets; considering how to improve the quality and usefulness of the information reported in the wireless industry’s compliance reports; continuing to monitor enhancements to existing wireless technologies as well as hearing aid labeling and related issues; and seeking comment on emerging issues, including issues arising out of the development of wireless Voice over Internet Protocol (VoIP) applications⁵² and “open platform” networks.⁵³

⁴⁴ See *id.* at 11248-49 ¶¶ 62-65.

⁴⁵ Party names and short forms are listed in Appendix A.

⁴⁶ See, e.g., Cingular Comments at 1; RadioShack Comments at 4-5; T-Mobile Reply Comments at 3.

⁴⁷ HIA Reply Comments at 2.

⁴⁸ See Research in Motion Comments at 1-2; Cingular Comments at 4.

⁴⁹ See *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16782-83 ¶ 74.

⁵⁰ *Staff Report Public Notice*, 21 FCC Rcd 13136.

⁵¹ See *Staff Report*, Appendix.

⁵² Wireless VoIP refers to VoIP service provided over wireless networks, including cellular system architecture networks as well as wireless networks utilizing WiFi and WiMax technologies. See *infra* Section IV.E. WiFi (Wireless Fidelity) is a wireless technology that is based on the Institute of Electrical and Electronics Engineers (IEEE) 802.11 standards. WiMAX (Worldwide Interoperability for Maximum Access) is a wireless technology that is based on the IEEE 802.16 standards.

⁵³ See *Staff Report* at ¶ 86.

21. In addition, the *Staff Report* specifically recommends seeking comment on the several proposed rule changes set forth in the Joint Consensus Plan filed by ATIS on June 25, 2007, in WT Docket No. 06-203.⁵⁴ The Joint Consensus Plan is made up of several proposed interrelated rule changes to Section 20.19. ATIS urges the Commission to act on these proposals “expeditiously so that the industry can meet the obligations by February 18, 2008.”⁵⁵ First, the Joint Consensus Plan proposes several changes to the deadlines and other provisions requiring service providers and manufacturers to make available certain types of hearing aid-compatible phones, including: (1) “provid[ing] Tier I carriers with an alternative to the 50 percent rule for M-rated phones”; (2) “increas[ing] the number of T3-or-better phones that Tier I carriers must make available”; (3) “requir[ing] manufacturers to offer thirty three (33) percent of wireless phones at the M3-or-better level”; and (4) requiring “each manufacturer not subject to the *de minimis* exception . . . [to] produce at least two or more T3-or-better handsets.”⁵⁶ These changes include new rules requiring manufacturers each year to include a certain number of new products among their hearing aid-compatible models, and requiring Tier I carriers to provide hearing aid-compatible models from multiple tiers of functionality.⁵⁷ Second, the Joint Consensus Plan proposes a transition to phase-in the 2007 version of the ANSI C63.19 standard for hearing aid compatibility testing.⁵⁸ Third, the Joint Consensus Plan proposes that service providers and manufacturers report regularly on the availability of products under updated criteria for information submissions.⁵⁹ Finally, to further accessibility to hearing aid-compatible phones, the Joint Consensus Plan proposes other steps that the Commission should take to adequately address hearing aid compatibility of wireless handsets.⁶⁰ Most of these proposals consider appropriate modifications only to rules for manufacturers and Tier I carriers, and do not address the Commission’s future hearing aid compatibility requirements for Tier II and Tier III carriers, or other service providers.⁶¹

III. SECOND REPORT AND ORDER

22. In the Second Report and Order, we discuss the two specific issues on which the Commission sought comment in the *Hearing Aid Compatibility Further Notice*: (1) whether to extend to independent retailers the requirement to make hearing aid-compatible handset models offered for sale available for consumer testing in the store; and (2) whether to narrow or otherwise change the *de minimis* rule that exempts service providers and manufacturers with small product lines from hearing aid compatibility requirements. As discussed below, we determine that the record does not support any revisions on these issues at this time. We do, however, provide the opportunity for additional comment on these issues in response to the Notice we are initiating.

⁵⁴ *Id.*

⁵⁵ Joint Consensus Plan at 14.

⁵⁶ *Id.* at 4, 9 n.14.

⁵⁷ *Id.* at 4, 12.

⁵⁸ *Id.* at 4. In its separate petition, ANSI states that the 2007 standard includes further improvements that have been made to the technical standard to reflect changes in technology, and efficiencies and improvements in testing procedures. See ANSI Petition at 2.

⁵⁹ Joint Consensus Plan at 4.

⁶⁰ See *infra* ¶ 86 (seeking comment on *inter alia* a further review of hearing aid compatibility rules in 2010).

⁶¹ The one exception is the proposal in the Joint Consensus Plan for delaying reporting requirements for Tier II and III carriers. See *infra* ¶ 70. Tier II carriers are non-nationwide wireless radio service providers with more than 500,000 subscribers. Tier III carriers are non-nationwide wireless radio service providers with 500,000 or fewer subscribers. See *Non-Nationwide Carriers Order*, 17 FCC Rcd at 14847 ¶¶ 22-24.

A. In-Store Testing

23. **Background.** Section 20.19(c) and (d) of the Commission's rules requires that wireless service providers make their hearing aid-compatible handset models available for consumer testing in each retail store that they own or operate.⁶² In the *Hearing Aid Compatibility Reconsideration Order and Further Notice*, the Commission clarified that this requirement applies to retail outlets owned or operated by wireless carriers or service providers, but not to independent retailers.⁶³ The Commission sought further comment on whether extending that requirement to independent retailers would be within the Commission's authority, and if so whether it should be done.⁶⁴ The Commission was specifically concerned that limiting the testing requirement to carrier-owned or -operated retail outlets might interfere with full implementation of Congress' requirement that the Commission "establish such regulations as are necessary to ensure reasonable access to telephone service by persons with impaired hearing."⁶⁵ The Commission also sought comment on the impact that this proposal would have on small business retailers and independent retailers, whether extending this requirement would create a more level playing field for different types of retailers, and the extent to which extending this requirement might create an unacceptable burden for independent retailers, small business retailers, or both.⁶⁶

24. At the same time, the Commission sought comment on whether it had legal authority to impose such a requirement on independent retailers, and if so, the scope of that authority.⁶⁷ In this regard, the Commission specifically sought comment on the degree to which the relationship between independent retailers, whether large or small, and wireless carriers and service providers could have an impact on enforcement of a live, in-store consumer testing requirement.⁶⁸ This included whether, under Section 217 of the Communications Act,⁶⁹ the Hearing Aid Compatibility Act,⁷⁰ or general principles of agency law, the Commission could require those service providers, in their contracts with retailers selling their wireless services, to offer live, in-store consumer testing.⁷¹ Six parties filed comments or reply comments addressing this issue.

25. Cingular, T-Mobile, CompUSA, CERC, and Radio Shack strongly oppose extension of the in-store testing requirement both on practical grounds and on the grounds that the Commission lacks jurisdiction to impose such a requirement. These parties argue that nothing in the Hearing Aid Compatibility Act or any other statute grants such authority⁷² and that the Commission's ancillary jurisdiction to regulate in areas not expressly covered by statute is limited.⁷³ Regardless of whether the

⁶² 47 C.F.R. § 20.19(c), (d).

⁶³ *Hearing Aid Compatibility Reconsideration Order and Further Notice*, 20 FCC Rcd at 11239 ¶ 39.

⁶⁴ *Id.* at 11248-49 ¶¶ 62-65.

⁶⁵ 47 U.S.C. § 610(a).

⁶⁶ *Hearing Aid Compatibility Reconsideration Order and Further Notice*, 20 FCC Rcd at 11248 ¶ 63.

⁶⁷ *Id.* at 11249 ¶¶ 62-65.

⁶⁸ *Id.*

⁶⁹ 47 U.S.C. § 217.

⁷⁰ 47 U.S.C. § 610(b).

⁷¹ *Hearing Aid Compatibility Reconsideration Order and Further Notice*, 20 FCC Rcd at 11249 ¶ 64.

⁷² Cingular Comments at 1; Radio Shack Comments at 4-5.

⁷³ See Radio Shack Comments at 9 (citing *Am'n Library Ass'n v. FCC*, 406 F.3d 689 (D.C. Cir. 2005)); see also CERC Comments at 4 (stating that the Commission has, "at best," power to remove a product from the market, (continued...))

Commission has the authority to act, the same commenters advise against it on policy grounds, noting that the logistics of implementation would be daunting, requiring viable connections to all networks in all stores, and stating that security and theft of handsets would be a problem.⁷⁴ Moreover, they state that sales staff are not trained for such practices,⁷⁵ the cost of manpower and demonstration phones would be high,⁷⁶ and retailers already honor a 30-day return policy for mobile phones, which allows for extensive real-world environment testing.⁷⁷

26. The Hearing Industries Association (HIA), a hearing aid manufacturers' association, supports extending the in-store demonstration requirement. HIA argues that "Congress could not have been clearer in its intent"⁷⁸ to authorize regulation to ensure access to telephone service by persons with impaired hearing, citing Section 710(a) of the Communications Act, which states that "[t]he Commission shall establish such regulations as are necessary to ensure reasonable access to telephone service by persons with impaired hearing."⁷⁹ HIA cites the "surely substantial"⁸⁰ numbers of handsets sold by retailers such as Radio Shack, Best Buy, and Circuit City, and it argues that the ability to test phones before activating a service contract is crucial.⁸¹

27. Discussion. We note that no advocates for the hard of hearing community chose to file comments on this proposed rulemaking. Given this, and considering the concerns about the possible burden on retailers, we find that the record at this time does not support a change to the in-store demonstration requirement. However, in the Notice below, we seek further comment on the issue in light of changes to the marketplace and regulatory environment since 2005.

B. The *De Minimis* Exception

28. Background. When first adopting hearing aid compatibility requirements involving wireless services in 2003, the Commission recognized that such requirements could have a disproportionate impact on small manufacturers or those that sell only a small number of digital wireless handset models in the United States, as well as on service providers that offer only a small number of digital wireless handset models.⁸² To resolve this concern, the Commission adopted a *de minimis* exception, which relieves wireless service providers and handset manufacturers that offer two or fewer digital wireless handset models in the United States from the hearing aid compatibility compliance obligations set forth in the *Hearing Aid Compatibility Order*.⁸³

(Continued from previous page) _____

which is a "far cry" from regulating the stocking, marketing and merchandising choices of retailers with respect to products not recalled from commerce); CompUSA Reply Comments at 2-3.

⁷⁴ See Cingular Comments at 2; CompUSA Reply Comments at 2.

⁷⁵ T-Mobile Comments at 7.

⁷⁶ Radio Shack Comments at 16.

⁷⁷ CERC Comments at 7.

⁷⁸ HIA Reply Comments at 2.

⁷⁹ 47 U.S.C. § 610(a).

⁸⁰ HIA Reply Comments at 3. HIA notes that the retailers in question did not provide data on their market share. *Id.*

⁸¹ *Id.*

⁸² See *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16781 ¶ 69; see also *Hearing Aid Compatibility Reconsideration Order and Further Notice*, 20 FCC Rcd at 11244 ¶ 51.

⁸³ 47 C.F.R. §§ 20.19(e)(1)-(2).

29. In the 2005 *Hearing Aid Compatibility Reconsideration Order and Further Notice*, the Commission clarified that the *de minimis* exception applies on a per air interface basis, rather than across a manufacturer's or service provider's entire product line.⁸⁴ The Commission also sought comment on whether to narrow the *de minimis* exception so as to exempt from the hearing aid compatibility requirements only those wireless service providers and handset manufacturers that offer one digital wireless handset model per air interface, or whether the *de minimis* exception should be narrowed in some other way.⁸⁵ Specifically, the Commission sought comment: on whether the current rule reduces the access of consumers with hearing aids and cochlear implants to wireless devices; on whether any particular modification that would narrow the *de minimis* exception would increase costs to all consumers, including those with and without hearing disabilities, or discourage market entry by manufacturers; and on the number of wireless service providers and manufacturers that would be affected by any such change in the rule, including the impact on small businesses.⁸⁶ Only two parties commented.

30. Cingular opposes any change to the *de minimis* rule, noting that the Commission did not cite any examples of problems with the existing exception and Cingular knows of none.⁸⁷ Research in Motion also opposes such a change, noting that a one-phone *de minimis* exception would be almost meaningless and would require small and specialty manufacturers to make virtually all of their phones compliant.⁸⁸

31. Discussion. We find that the record does not support any change to the *de minimis* exception at this time. No commenter has challenged the current scope of this exception or otherwise raised concerns about the Commission's justification for such an exception. We note that, in the Notice below, we seek comment on the Joint Consensus Plan, including its proposal to retain the existing *de minimis* exception.⁸⁹ In that context, wireless service providers and affected consumers will have another opportunity to raise any arguments for narrowing or otherwise modifying the exception that are not in the current record. Pending our review of any such comments, we take no action at this time.

IV. NOTICE OF PROPOSED RULEMAKING

32. In the Notice that we are initiating, we seek comment on recommendations in the *Staff Report* and on the various proposals set forth in the Joint Consensus Plan. We make a number of tentative conclusions based on the broad consensus established by those participating in the development of the Joint Consensus Plan.

33. Specifically, as recommended in the *Staff Report* and the Joint Consensus Plan, we tentatively conclude to adopt new M3- and T3-rated handset deployment benchmarks through 2011, among other things modifying the upcoming February 18, 2008 requirement to provide 50 percent of phone models that comply with an M3 rating. We also tentatively conclude to take the following steps: (1) implement a "product refresh" rule for manufacturers and a new requirement that service providers include in their portfolios of hearing aid-compatible handsets a certain number of models with different levels of functionality, including the capability to operate over different frequency bands; (2) adopt, after a suitable phase-in period, the use of a single version of the ANSI C63.19 standard, ANSI C63.19-2007; (3) adopt new content and timelines for hearing aid compatibility reporting requirements; (4) retain the current *de*

⁸⁴ *Hearing Aid Compatibility Reconsideration Order and Further Notice*, 20 FCC Rcd at 11244 ¶ 53.

⁸⁵ *Id.* at 11249 ¶ 66.

⁸⁶ *Id.*

⁸⁷ Cingular Comments at 4.

⁸⁸ Research in Motion Comments at 1-2.

⁸⁹ *See infra* ¶ 85.

minimis exception for manufacturers and carriers with small product lines and codify that it applies on a per-air interface basis; (5) codify that multi-mode and multi-band handsets must be compliant over each air interface and frequency band over which they operate in order to be counted as compliant; (6) clarify that multi-band and multi-mode phones cannot be counted as compatible in any band or mode if they operate over air interfaces or frequency bands for which technical standards have not been established; (7) extend the hearing aid compatibility rules to cover services offered over any frequency in the 800-950 MHz and 1.6-2.5 GHz bands that employ air interfaces for which technical standards have been established as part of ANSI C63.19, as approved by the Commission; and (8) commence a further review of all issues related to hearing aid compatibility in 2010. In the context of several of these tentative conclusions, we also request comment regarding the appropriate deployment regime for Tier II/III carriers and other service providers that are not Tier I carriers, which generally were not included within the Joint Consensus Plan's framework. We also seek comment on the possibility of staggered handset deployment deadlines, additional reporting/outreach obligations, and other measures not addressed by the Joint Consensus Plan. Finally, following upon the recommendations in the *Staff Report*, the Notice invites comments on new hearing aid compatibility issues implicated by nascent technologies, including VoIP and wireless data connections, and regulatory environments, including "open platform" networks.

34. We request that manufacturers and service providers be as specific as possible regarding the impact of these proposals on their operations, and that any alternative proposals be supported by evidence as to their feasibility and effectiveness. Affected consumers, including those with hearing difficulties, should support any new proposals with explanations of not only the benefits but also the costs to service providers, manufacturers, or other consumers, and why such costs are outweighed by the benefits. The Joint Consensus Plan contains many interrelated provisions, and we note the emphasis that its proponents place on adopting the plan as a whole in order to maintain the balance achieved during negotiations by its various member participants.⁹⁰

35. Discussion of these proposals is divided into six parts: (1) new requirements and deadlines for hearing aid-compatible handsets; (2) adoption of the 2007 version of the ANSI technical standard; (3) reporting, information submissions, and outreach efforts; (4) miscellaneous aspects of the Joint Consensus Plan; (5) emerging wireless technologies using VoIP; and (6) issues regarding open platforms for devices and applications.

A. Requirements and Deadlines for Hearing Aid-Compatible Handset Deployment

36. We seek comment on a set of new requirements for manufacturers and certain carriers as they deploy hearing aid-compatible handsets in the years to come. The first proposal in the Joint Consensus Plan is to modify several deployment deadlines as set forth in Section 20.19 of the Commission's rules, including the requirement that manufacturers and wireless service providers ensure that, by February 18, 2008, at least 50 percent of their handset models over each air interface offered meet a U3/M3 or better rating for RF interference reduction,⁹¹ as well as the requirements for deployment of handsets that meet a T3 rating for inductive coupling capability. In this context, the plan also proposes new "product refresh" and "multiple tier" requirements in order to ensure people with hearing loss have access to new, advanced devices.

1. Deployment Benchmarks and Deadlines

37. In this section, we seek comment on tentative conclusions to adopt new hearing aid-compatible handset deployment benchmarks for manufacturers and service providers between 2008 and 2011, consistent with those recommended in the *Staff Report* and proposed as part of the Joint Consensus

⁹⁰ See, e.g., Joint Consensus Plan at 5, 15-16.

⁹¹ See 47 C.F.R. § 20.19(c).

Plan. These include proposals (1) to modify requirements currently in effect for February 18, 2008, and establish future requirements to provide handsets that incorporate reduced RF interference in recognition of technology and market obstacles currently faced by manufacturers and service providers, and (2) to provide more options to consumers with severe hearing loss by imposing additional requirements on both service providers and manufacturers to make handsets available that are compatible with hearing aids operating in the telecoil mode. In addition to seeking comment on the recommendations and proposals in the Joint Consensus Plan, we ask commenters to address specifically questions raised in the *Staff Report*, including those concerning appropriate benchmarks and deadlines to apply to service providers other than Tier I carriers, and those concerning whether staggering of deadlines between manufacturers and service providers is appropriate.

38. *M3- and T3-Rated Benchmarks/Deadlines.* Section 20.19(c) and (d) of the Commission's rules contains the current deadlines for deployment of public mobile radio service handset models that meet both the M3 (or higher) and T3 (or higher) ratings for compatibility with hearing aids.

39. The following table summarizes the deadlines applicable to both manufacturers and service providers to deploy handsets that meet an M3 (or higher) rating for reduced radio frequency interference to enable acoustic coupling between the handset and hearing aids:⁹²

Manufacturer:

- *By September 16, 2005* – provide at least two hearing aid-compatible models for each air interface offered.
- *By February 18, 2008* – ensure 50% of models offered are hearing aid-compatible for each air interface offered.

Service Provider:

- *By September 16, 2005* –
 - Tier I Carriers: provide at least four digital hearing aid-compatible models per air interface or 25% of digital wireless models offered nationwide for each air interface offered.
 - Other Service Providers: provide at least two hearing aid-compatible models for each air interface offered.
- *By September 16, 2006* –
 - Tier I Carriers: provide at least five hearing aid-compatible digital models per air interface or 25% of digital wireless models offered nationwide for each air interface offered.
- *By February 18, 2008* –
 - All Service Providers: ensure 50% of models offered are hearing aid-compatible for each air interface offered (based on digital wireless models offered nationwide).

40. The following table summarizes the rule's deployment deadlines by which both manufacturers and service providers must offer digital wireless T3-rated (or higher) handset models that enable inductive coupling between the handset and hearing aids:⁹³

⁹² 47 C.F.R. § 20.19(c).

⁹³ *Id.* § 20.19(d).

Manufacturer:

- *By September 18, 2006* – provide at least two hearing aid-compatible models for each air interface offered.

Service Provider:

- *By September 18, 2006* – provide at least two hearing aid-compatible models for each air interface offered.

41. We seek comment on modifying these provisions consistent with the proposals in the Joint Consensus Plan, both by adopting reduced and alternative benchmarks for deploying handsets compatible with hearing aids operating in acoustic coupling (also known as microphone) mode and by increasing future benchmarks for compatibility with hearing aids operating in inductive coupling (also known as telecoil) mode.

42. With respect to acoustic coupling compatibility, in recognition of marketplace and technical realities we seek comment on a tentative conclusion to adopt a lower threshold for equipment manufacturers to deploy M3-rated (or higher) handsets. In place of the current requirement that 50 percent of handset models per air interface meet hearing aid compatibility standards by February 18, 2008, we propose that manufacturers be obligated, for each air interface for which they offer handsets, to meet the requirement, as proposed in the Joint Consensus Plan, of “33% of manufacturers’ non-*de minimis* portfolio models offered to service providers in the United States.”⁹⁴ Thus, for example, if a manufacturer produces a total of 12 models capable of operating over the GSM air interface (regardless of whether these are single-mode or multi-mode models), at least four of those models would have to meet an M3 or higher rating.⁹⁵

43. We note that technological issues make it difficult to produce a wide variety of Global System for Mobile Communications (GSM) handsets that both meet the M3 standard for reduced RF interference for acoustic coupling and include certain popular features, and we seek to promulgate rules that are as technology-impartial as possible.⁹⁶ We tentatively conclude that, in context with the other proposals in the Joint Consensus Plan, these reduced thresholds strike an appropriate balance between maintaining technological neutrality and ensuring availability of hearing aid-compatible handsets to affected consumers. Do differences, in terms of the nature of the signals emitted and burdens of the formulae used to calculate compliance ratings under the ANSI technical standard, support our tentative conclusion and justify this lower benchmark? Under the rule change proposed here, would either the GSM or Code Division Multiple Access (CDMA) air interface have an advantage over the other in terms of rule compliance? Would any impacts to hard of hearing consumers due to the production of fewer numbers of compatible handset models be offset by the requirement that manufacturers regularly include new compatible models in their product lines, as discussed below?

44. For Tier I carriers, we seek comment on a tentative conclusion to adopt an alternative schedule to the 50 percent M3-rated (or higher) February 18, 2008 deployment deadline. These carriers

⁹⁴ Joint Consensus Plan at 8.

⁹⁵ *See Id.* A multi-mode handset could not be counted as compatible over any air interface unless it is compatible in all air interfaces over which it operates. *See infra* ¶ 84.

⁹⁶ ATIS has provided the Commission a detailed report describing a variety of technological constraints impacting the wireless industry’s further progress towards compatibility with hearing aids, particularly with respect to GSM. *See Staff Report* at ¶ 32. *See also* Joint Consensus Plan at 8 (“This high percentage is currently not possible in a technology-neutral manner because commercially popular handset form factors in certain air interfaces have extreme difficulty achieving [hearing aid compatibility] compliance.”).

would have the choice of complying with either the current rule or a new schedule based on total numbers of compliant handset models.⁹⁷ This schedule would create obligations for service providers to provide an increasing number of handset models per air interface over which they offer service by future dates as follows:

February 18, 2008: eight M3-rated (or higher) handset models.

February 18, 2009: nine M3-rated (or higher) handset models.

February 18, 2010: ten M3-rated (or higher) handset models.⁹⁸

Such a schedule could provide needed flexibility for Tier I carriers to deploy new and additional models over time, particularly in the context of reduced production benchmarks for manufacturers. We also note that, while this proposal may result in fewer numbers of compatible handset models being offered by certain service providers to hard of hearing consumers, these consumers would, under another proposal discussed below, be assured a large number of compliant handsets at multiple levels of functionality, or tiers.⁹⁹ We seek comment on our tentative conclusion to modify the rule as proposed.

45. Along with these proposals to modify the deployment requirements regarding reduced RF interference for acoustic coupling compatibility, we also seek comment on a tentative conclusion to increase the benchmarks for manufacturers' and Tier I carriers' deployment of handsets meeting a T3 (or higher) rating for inductive coupling capability. Because customers' options for handsets that enable inductive coupling with telecoils have been more limited than for acoustic coupling compatibility,¹⁰⁰ additional requirements of this nature could benefit some of the most disadvantaged wireless users in the deaf and hard of hearing community, who are more likely to rely on telecoil-equipped hearing aids.¹⁰¹

46. As discussed above, under current rules manufacturers are not required to provide additional T3-rated handsets once they have met the September 18, 2006 deadline for offering two compliant handset models per air interface. Under our proposed rule changes, we would now require manufacturers to meet the greater of two measures for each air interface for which they offer handsets in 2009 through 2011, as follows:

- (1) a minimum of two T3-rated (or higher) models for each air interface for which the manufacturer offers four or more handset models to service providers; or
- (2) at least 20% / 25% / 33% of models that the manufacturer offers over each air interface rated T3 (or higher) by February 18, 2009 / 2010 / 2011 respectively.

As proposed, these percentage calculations would be rounded down to the nearest whole number in determining the minimum number of handsets to be produced. In addition, we note that each non-*de minimis* manufacturer would still be required to produce at least two or more T3-rated (or higher)

⁹⁷ See Joint Consensus Plan at 6-7.

⁹⁸ The Joint Consensus Plan also states that each Tier I carrier choosing the alternative schedule shall "[e]nsure that at least ten (10) of its handset models for each air interface comply with § 20.19(b)(1) by February 18, 2011." *Id.* at C-3. Consistent with the apparent intent of the Joint Consensus Plan, we intend that the February 2010 deployment obligation would remain in effect until such time as it may be changed by future Commission rulemaking action.

⁹⁹ See *infra* ¶¶ 56-57.

¹⁰⁰ See *Staff Report* at ¶ 21.

¹⁰¹ The number of individuals using telecoil-equipped hearing aids is increasing and includes some with the most profound hearing loss. See, e.g., *Staff Report* at ¶ 35 n.91.

handsets per air interface for which it offers handsets.¹⁰²

47. Similarly, service providers are currently not required to deploy additional T3-rated (or higher) handset models once they have met the September 18, 2006 deadline for offering two compliant handset models per air interface. Under our proposed rule changes, we would now require Tier I carriers to meet the lesser of the following requirements for each air interface over which they offer service:

- (1) February 18, 2008: 33% of digital wireless handset models are T3-rated (or higher); or
- (2) a schedule as follows:

February 18, 2008: three T3-rated (or higher) handsets.

February 18, 2009: five T3-rated (or higher) handsets.

February 18, 2010: seven T3-rated (or higher) handsets.

February 18, 2011: ten T3-rated (or higher) handsets.

48. We tentatively conclude that these increased requirements for deployment of T3-rated (or higher) handsets are necessary and appropriate for both manufacturers and Tier I carriers. These additional benchmarks would provide valuable benefits to affected consumers with profound hearing loss. Because customers' options for handsets that enable inductive coupling with telecoils have been more limited than for those that reduce RF interference with acoustic coupling operation,¹⁰³ and advocacy groups representing people with hearing loss have indicated that increased numbers of inductive coupling-capable handsets would assist a greater number of people with hearing loss, especially those with profound hearing loss,¹⁰⁴ we tentatively conclude that manufacturers should be striving to produce, and service providers should be striving to deploy, more handset models of this type. We understand the Joint Consensus Plan to reflect the consensus of the submitting parties that the targets set forth therein are technologically and economically feasible. Moreover, we note that the alternative benchmarks for Tier I carriers give those who offer a large number of handset models over a given air interface the flexibility to satisfy their obligations by offering a substantial number of compatible handset models. We seek comment on our tentative conclusion.

49. We also seek comment on any additional deadlines or deployment milestones that may be appropriate to adopt at this time. Although we seek comment below on conducting another rulemaking in 2010, as recommended in the *Staff Report*,¹⁰⁵ we will also consider any appropriate deployment benchmarks that commenters might support. For example, should we consider adopting any future M4 or T4 handset compliance requirements? What technological and market constraints should be considered when evaluating any additional future hearing aid compatibility deployments?

50. *Service Providers Other than Tier I Carriers*. As explained in the *Staff Report*, the Joint Consensus Plan is silent with respect to service providers that are not Tier I carriers.¹⁰⁶ Accordingly, we seek comment generally on the appropriate deployment regime for these wireless service providers. As a general matter, in order to make the benefits of compatible handsets available to all consumers who need them, all service providers should be expected to meet the same benchmarks unless they cannot

¹⁰² See Joint Consensus Plan at 9 n.14.

¹⁰³ See *Staff Report* at ¶ 21.

¹⁰⁴ See *id.* at ¶ 35 n.91.

¹⁰⁵ See *Staff Report* at ¶ 101; see also Joint Consensus Plan at 12.

¹⁰⁶ The Joint Consensus Plan only contains deployment deadline rule changes for Tier I carriers.

reasonably do so. At the same time, we note that in the past numerous Tier II and Tier III carriers have requested, and many have been granted, extension of compatible handset deployment deadlines because they were unable timely to obtain compliant handsets in sufficient quantities from manufacturers.¹⁰⁷ We therefore ask commenters to address whether there is anything inherent in the characteristics of Tier II and Tier III carriers, resellers, and mobile virtual network operators (MVNOs), or other categories of smaller service providers, that would prevent them from meeting either the RF interference reduction or inductive coupling-capable handset numbers and percentages set out above for Tier I carriers. Commenters should discuss with specificity any alternative requirements or schedules that they propose for these types of service providers, and the reasons for those alternatives.

51. *Staggered Deadlines for Deployment.* We also specifically seek comment on whether, with respect to offering compliant handsets, we should require different, staggered deployment deadlines for manufacturers and service providers. Should manufacturers be required to offer compliant handsets at some time prior to all service providers, or to some subset of smaller providers? We note that many Tier II and Tier III carriers have requested waivers of hearing aid compatibility deadlines, complaining among other things that manufacturers have not made compliant handsets available sufficiently in advance of the deadline so that these service providers could, in turn, make them available to consumers.¹⁰⁸ Instituting a short interval between the manufacturers' and some or all service providers' deadlines might be appropriate to address the circumstances that have engendered these waiver requests. Because of market realities, Tier II and Tier III carriers may have more difficulty than Tier I carriers in obtaining handsets. We note that the Joint Consensus Plan does not request any staggered deadlines for Tier I carriers. We ask commenters to address specifically whether staggering of deadlines is appropriate in the context of our proposed future hearing aid compatibility requirements, and if so, for how long and for what subset of service providers.

2. New Requirements for Handset Deployment

52. In the 2003 *Hearing Aid Compatibility Order*, the Commission urged service providers and manufacturers to make hearing aid-compatible phones available in lower-priced models as well as in models that include higher-end features:

[I]n meeting the two- and three-year requirements [in 2005 and 2006], we encourage digital wireless phone manufacturers and service providers to provide at least one compliant phone that is a lower-priced model and one model that has higher-end features. For purposes of meeting the 50 percent level [in 2008], manufacturers and carriers should continue to offer one lower-priced model and one model with higher-end features, and the features and prices of any additional compliant phones are at the discretion of the manufacturer or carrier. These steps should help to ensure that consumers have a variety of technology and feature choices. We also expect that these digital wireless phones will be offered in conjunction with attractive service plans and be as equivalent to other non-hearing aid-compatible phones as possible. These measures will ensure that individuals with hearing disabilities will enjoy many of the same choices in wireless telecommunications options that are available to individuals without hearing

¹⁰⁷ See Section 68.4 (a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones, Petitions for Waiver of Section 20.19 of the Commission's Rules, WT Docket No. 01-309, *Memorandum Opinion and Order*, 22 FCC Rcd 7171 (2007) (resolving 19 requests for waiver of the September 18, 2005 acoustic coupling compatibility deployment deadline); [add cites to other waiver orders when released].

¹⁰⁸ *Id.*

disabilities.¹⁰⁹

53. We now propose, in accord with the *Staff Report* and the Joint Consensus Plan,¹¹⁰ additional specific measures to ensure that such a range of compatible handset models will be available so that consumers will have access to hearing aid-compatible handsets with the newest features, as well as more economical models. We expect that these measures will increase the selection of popular and innovative handsets available to consumers with hearing loss. Moreover, as standards are promulgated and equipment is developed for new frequency bands, we anticipate that these rules will result in hearing aid-compatible phones being made available across the multiple frequency bands being used for a particular air interface.

54. We tentatively conclude that our rules should require equipment manufacturers to meet a “product refresh” requirement, as recommended in the *Staff Report* and described in the Joint Consensus Plan.¹¹¹ This proposal would mandate that manufacturers meet RF interference reduction thresholds for acoustic coupling compatibility in some of their new models each year, enough so that, for manufacturers offering four or more handsets using a given air interface, half of the minimum required number of M3-rated or higher handset models would be new models introduced during the calendar year.¹¹² To make this calculation, the number of new compliant models to be produced would be 50 percent of the total required number of compliant models, rounded up to the nearest whole number.¹¹³ For manufacturers that produce three total M3-rated models per air interface, at least one new M3-rated (or higher) model shall be introduced every other calendar year.¹¹⁴ If a manufacturer is not introducing a new model in a calendar year, then under the proposed rule it would not be required to refresh its list of compliant handsets.¹¹⁵

55. Notwithstanding our tentative conclusion, we seek comment on whether this requirement should be modified in any way. For example, are there any modifications that would better promote hard of hearing individuals’ access to new handset models without causing undue costs to other parties? Would the proposed “product refresh” requirement sufficiently ensure that, over time, compatible phones become available across all frequency bands as standards are promulgated and equipment is rolled out? We also solicit comment on whether there are any possible less burdensome or intrusive approaches or incentives that would enable the deaf and hard of hearing community to select fresh models on a regular basis. For any proposal, we ask commenters to address the disadvantages of deviating from the standard proposed under the Joint Consensus Plan. Finally, we seek comment on any implementation issues, such as reporting requirements that may be necessary with regard to these obligations,¹¹⁶ and any enforcement issues.

¹⁰⁹ See *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16781 ¶ 70.

¹¹⁰ See Joint Consensus Plan at 9-10, 12. As HLAA noted in its comments, the Apple iPhone has been rolled out, in part, on AT&T’s EDGE network but is not yet hearing aid-compatible, and Apple has not been involved in any discussions regarding hearing aid compatibility. See *Staff Report* at ¶ 82. We expect these proposals will increase the selection of popular and innovative handsets such as the iPhone available to consumers with hearing loss. We note that, to our knowledge, Apple currently manufactures fewer than three handset models, and as such, it is not required under Section 20.19(e) of our hearing aid compatibility rules to offer hearing aid-compatible phones.

¹¹¹ See *Staff Report* at ¶ 40; Joint Consensus Plan at 9-10.

¹¹² See *id.* at Attachment C.

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ See *id.*; Joint Consensus Plan at 10.

¹¹⁶ See *infra* ¶¶ 65-71.

56. In addition to a “product refresh” rule for manufacturers, we tentatively conclude that our hearing aid compatibility rules should require Tier I carriers to offer to consumers hearing aid-compatible handsets with different levels of functionality. As described in the *Staff Report*, a proposed requirement set forth in the Joint Consensus Plan would obligate Tier I carriers to offer handset models from “multiple tiers,” and include a concomitant requirement that these providers’ reports “include information on the carriers’ implementation of ‘tiering.’”¹¹⁷ The Joint Consensus Plan further explains: “To provide the necessary flexibility and to address the difference among product lines offered by different carriers and manufacturers, the demarcation of tiers should be left to the industry.”¹¹⁸ In the context of the language in the Joint Consensus Plan stating carriers will self-define their tiers, we interpret the term “tiers” to refer to levels of functionality.¹¹⁹ We further intend functionality to include the extent to which a handset model has the capability to operate over multiple frequency bands for which hearing aid compatibility standards have been established.

57. We seek comment on a tentative conclusion to require Tier I carriers to provide access to handsets with different levels of functionality. If commenters support this tentative conclusion, we ask them to specifically address how such an obligation might be effectively implemented and enforced in our rules. For instance, is there a need to define the obligation more precisely so that hard of hearing consumers have greater assurances that their carrier is providing access to feature-rich, as well as more economical, handsets, and so that service providers can better understand what the rule requires of them? Should we require service providers, as part of their reports and/or in store displays, to explain their “tiering” methodology so that it is clear to the Commission and public how these groupings and categories of compliant handsets break down by function and frequency band? Should service providers other than Tier I carriers be required to meet such an obligation? We welcome any comments on whether such modifications would provide improved benefits to consumers without unreasonably constraining service providers’ flexibility, or whether we should adopt the model rule as is given the development of and consensus on such an obligation in the Joint Consensus Plan. Finally, commenters should also consider how any such tiering requirement(s) should be modified to the extent we modify any of the proposed new deployment deadlines that we tentatively conclude to adopt above.

B. 2007 ANSI C63.19 Technical Standard

58. We seek comment on changing the current hearing aid compatibility technical standard codified in Section 20.19(b) of the Commission’s rules.¹²⁰ In the 2003 *Hearing Aid Compatibility Order*, the Commission adopted the performance levels in the 2001 version of the ANSI C63.19 technical standard as the basis for ensuring hearing aid compatibility of digital wireless handsets.¹²¹ In finding that the technical standard in Section 20.19(b) met the “established” requirement set forth in the Hearing Aid Compatibility Act,¹²² the Commission analyzed and relied on numerous submissions supporting ANSI C63.19 as an established technical standard.¹²³ The Commission determined that the standard presents a

¹¹⁷ Joint Consensus Plan at 12.

¹¹⁸ *Id.*

¹¹⁹ Moreover, to avoid confusion with the tiers defining carrier size, we believe a different term such as “levels of functionality” may be preferable.

¹²⁰ 47 C.F.R. § 20.19(b).

¹²¹ See *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16779 ¶ 63.

¹²² 47 U.S.C. § 610(b)(1)(B) (requiring all telephones manufactured in the U.S. to “meet established technical standards for hearing aid compatibility”).

¹²³ See *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16770-71 ¶ 43.

workable approach to measuring levels of interference that digital wireless handsets could cause to hearing aids, as well as for measuring the interference immunity of hearing aids.¹²⁴ The Commission further ruled that codification of ANSI C63.19 served the public interest because the manufacture of digital wireless handsets comporting with this standard would ensure that “a greater number of hearing aid and cochlear implant users will be able to find digital wireless phones that will work for them.”¹²⁵

59. To ensure that the standard codified in the rules would remain viable, the Commission delegated to the Chief of WTB, in coordination with the Chief of the Office of Engineering and Technology (OET), the authority to approve future versions of the standard that do not raise major compliance issues. Where major changes to the standard are made that could affect compliance, the Commission stated that it would initiate an appropriate rulemaking proceeding to consider adoption of updated versions.¹²⁶ The Commission also encouraged ANSI to work with the relevant stakeholders to review the standard periodically to determine whether improvements to the standard are warranted.¹²⁷ As a result, acting on delegated authority in 2005, OET clarified that applicants for certification could rely on either the 2001 or a draft 2005 update of the ANSI C63.19 standard.¹²⁸ In addition, in 2006, WTB and OET released a public notice on delegated authority stating that applications for certification of equipment could be tested and rated under a 2006 revised standard (ANSI C63.19-2006) for wireless phone hearing aid compatibility.¹²⁹ WTB and OET also explained that applicants for certification may rely on only one of the three versions (2001, 2005, or 2006) of the ANSI C63.19 standard.¹³⁰

¹²⁴ *See id.* at 16776 ¶ 55.

¹²⁵ *Id.* at 16777 ¶ 57. ANSI elected to develop the standard as one that measures performance, rather than one that would establish a firm build-to requirement. *See id.* at 16779 ¶ 63. To use a digital wireless phone with a hearing aid or cochlear implant in acoustic coupling mode, RF interference and other electromagnetic interference (EMI) from the wireless phone must be controlled. Based on recommended audio signal-to-interference ratios and other assumptions about wireless phones' performance, ANSI C63.19 specifies ratings for digital wireless phones, M1 through M4 (originally U1 through U4), based on their RF emission levels, with M1 being the highest emissions and M4 the lowest emissions. The standard also provides a methodology for rating hearing aids from M1 to M4 based on their immunity to interference, with M1 being the least immune and M4 the most immune. To determine whether a particular digital wireless phone will not interfere with a particular hearing aid, the immunity rating of the hearing aid is added to the emissions rating of the wireless phone. A sum of 4 would indicate that the wireless phone is usable; a sum of 5 would indicate that the wireless phone would provide normal use; and a sum of 6 or greater would indicate that the wireless phone would provide excellent performance with that hearing aid.

¹²⁶ *See id.* at 16779 ¶ 63.

¹²⁷ *See id.*

¹²⁸ ANSI had released a draft version of the hearing aid compatibility standard, ANSI C63.19-2005. *See* Public Notice, “OET Clarifies Use of Revised Wireless Phone Hearing Aid Compatibility Standard Measurement Procedures and Rating Nomenclature,” 20 FCC Rcd 8188 (OET 2005)

¹²⁹ *See generally* 2006 ANSI Standard Public Notice. In 2006, ANSI had adopted a revised version 3.12 of standard C63.19. This revision, among other things, redesignated the U3 rating as M3, redesignated the U3T rating as T3, revised the testing standard for meeting an M3 rating for phones operating below 960 MHz, and made some changes in GSM testing standards in other frequency bands. *See* American National Standard for Methods of Measurement of Compatibility between Wireless Communications Devices and Hearing Aids, ANSI C63.19-2006, at 1, 52-53, 65-66; *see also supra* note 125.

¹³⁰ 2006 ANSI Standard Public Notice, 21 FCC Rcd at 6384-85.

60. We seek comment on a tentative conclusion to change this current practice permitting use of multiple versions of ANSI C63.19 and, instead, codify a single 2007 version of the testing standard.¹³¹ ANSI C63.19-2007, an updated version of the technical standard for determining hearing aid compatibility, has been recently approved by the Accredited Standards Committee on Electromagnetic Compatibility, C63™ and adopted by ANSI.¹³² The differences between the previous version of the standard, ANSI C63.19-2006, and the ANSI C63.19-2007 version include:

- The distance between the cell phone under measurement and the measuring probe to be used when establishing the “M” rating has been increased from 1.0 cm to 1.5 cm.
- The (signal+noise)-to-noise ratio to be used in determining the “T” rating has been increased. This will result in lower noise relative to the audible signal and improved performance of the wireless device.
- The “T” rating for T-Coil capable wireless devices has been separated from the “M” rating. The new standard permits a “T” rating that is greater than the “M” rating for the same wireless device.
- The axial T-coil coupling field intensity value was changed from ≥ -13 dB (A/m) at 1 kHz to ≥ -18 dB (A/m) at 1 kHz. The standard now has the same T-coil field intensity value for both the axial and radial test positions.¹³³

Under our proposal, this new 2007 standard would replace the 2001, 2005 draft, and 2006 versions of the technical standard. As stated above, ANSI filed a petition this year requesting that the Commission adopt this 2007 revision of the ANSI C63.19 technical standard as the permanent standard.¹³⁴ ANSI states in its petition that further improvements have been made to the technical standard to reflect changes in technology, and efficiencies and improvements in testing procedures.¹³⁵ Because the standard that has been adopted by ANSI is stricter in some respects than prior versions,¹³⁶ and is the result of broad participation from diverse groups,¹³⁷ we propose that the standard be codified in our rules in order to better promote the development of hearing aid-compatible handsets that hearing-impaired consumers can readily use. Commenters should address whether they support such a rule change, and if not, identify an acceptable alternative to our tentative conclusion.¹³⁸

61. We also seek comment on a tentative conclusion to phase in the 2007 standard. Under this proposal, we would permit both the 2006 and 2007 versions of the standard to be used for new RF interference and inductive coupling hearing aid compatibility certifications through 2009.¹³⁹ A newly-

¹³¹ We would retain the current practice of permitting the Chief of WTB, in coordination with the Chief of OET, on delegated authority, to approve use of future versions of the standard, including multiple alternative versions, to the extent that the changes do not raise major compliance issues.

¹³² See ANSI Petition at 1-2.

¹³³ See American National Standard for Methods of Measurement of Compatibility between Wireless Communications Devices and Hearing Aids, ANSI C63.19-2007, at 21-22, 56-57 (*ANSI C63.19-2007 Standard*).

¹³⁴ See *supra* ¶ 60.

¹³⁵ ANSI Petition at 2.

¹³⁶ Joint Consensus Plan at 13.

¹³⁷ ANSI Petition at 2.

¹³⁸ Some of the commenters in the proceeding on WTB’s *Staff Report* supported the ANSI petition. See *Staff Report* at ¶ 9 n.34.

¹³⁹ Joint Consensus Plan at 13.

certified handset would therefore have to meet, at minimum, an M3 or T3 rating as set forth in either the 2006 or 2007 revision of the ANSI C63.19 standard to be considered compatible, while grants of equipment authorization previously issued under other versions of the standard would remain valid for hearing aid compatibility purposes.¹⁴⁰ Then, beginning on January 1, 2010, we would only permit use of the 2007 version of the standard for obtaining new grants of equipment authorization, while continuing to recognize the validity of existing grants under previous versions of the standard.¹⁴¹

62. We seek comment on whether this two step phase-in period appropriately balances the interests in bringing state-of-the-art compatible handsets to hard of hearing consumers and in avoiding unreasonable burdens on manufacturers and service providers. Are there alternative implementations of the 2007 standard that would better serve these goals? For example, would there be any advantage in retaining the 2001 and 2005 versions as permitted standards for new M3 and/or T3 handset certifications during the transition period? Our understanding is that manufacturers generally no longer use these standards, but we seek comment on whether we should deviate from this proposal if there is any benefit in terms of flexibility without offsetting costs to affected consumers. We also seek comment on whether a shorter passage of time for the transition would afford a greater benefit to the deaf and hard of hearing community without unreasonably burdening manufacturers and service providers, or whether the industry needs a longer transition period. In addition, we seek comment on whether the grandfathering provisions for previously-certified handsets strike an appropriate balance, or whether at some point we should require handsets to be recertified under the 2007 standard in order to be considered compatible. Unless commenting parties support a different process, we are prepared to grant the ANSI Petition and adopt the phase-in process as outlined in the Joint Consensus Plan.¹⁴² Commenters should focus on any details that may need to be resolved in order to make such a transition smooth and transparent to users of hearing aid-compatible handsets.

C. Reporting Obligations, Public Information, and Outreach

63. In this section, we seek comment on proposed requirements relating to manufacturers' and service providers' filing of hearing aid compatibility reports with the Commission, as well as other public information and outreach measures.

64. As discussed below, since 2003 manufacturers and service providers have filed regular reports with the Commission detailing their hearing aid compatibility efforts. In order to address shortcomings that have been observed in the existing reports and to render future reports as transparent and useful as possible for consumers, industry, and Commission staff responsible for helping to ensure that the Commission's hearing aid compatibility requirements are fully implemented, we tentatively conclude to adopt new content requirements, as recommended in the *Staff Report* and proposed in the Joint Consensus Plan. We also seek comment on additional ways to improve the reports. In addition, we request comment on questions relating to the timing of future reports. Finally, we seek comment on other potential measures to improve the availability of information to the public, both through the Commission and directly from manufacturers and service providers.

¹⁴⁰ However, under the Joint Consensus Plan, a manufacturer that is required to meet a T3 rating for 20 percent of its models under proposed Section 20.19(d)(1)(i) would only be able to count toward this requirement one model manufactured after January 1, 2009, and certified under a pre-2007 standard. See Appendix B.

¹⁴¹ Joint Consensus Plan at 13.

¹⁴² *Id.*

1. Reporting

65. Background. In the *Hearing Aid Compatibility Order*, the Commission established a schedule requiring manufacturers and wireless service providers to report on compliance efforts every six months from 2004 through 2006,¹⁴³ and then annually in 2007 and 2008.¹⁴⁴ Thus, manufacturers and wireless service providers filed their most recent compliance reports on November 17, 2006.¹⁴⁵ These reports include a variety of required information describing manufacturers' and service providers' efforts aimed at complying with Commission requirements for hearing aid compatibility. Specifically, the Commission requires that these reports include the following content:

- (1) digital wireless phones tested;
- (2) laboratory used;
- (3) test results for each phone tested;
- (4) identification of compliant phone models and ratings according to ANSI C63.19;
- (5) report on the status of product labeling;
- (6) report on outreach efforts;
- (7) information related to retail availability of compliant phones;
- (8) information related to incorporating hearing aid compatibility features into newer models of digital wireless phones;
- (9) any activities related to ANSI C63.19 or other standards work intended to promote compliance with the *Hearing Aid Compatibility Order*;
- (10) total numbers of compliant and non-compliant phone models offered as of the time of the report; and
- (11) any ongoing efforts for interoperability testing with hearing aid devices.¹⁴⁶

66. As the Commission has stated, these reports are intended to serve dual purposes: (1) assisting the Commission in monitoring handset deployment progress, and (2) providing valuable information to the public concerning the technical testing and commercial availability of hearing aid-compatible handsets.¹⁴⁷ The Commission also stated that the reports would assist its efforts to verify compliance with,¹⁴⁸ and undertake an analysis of,¹⁴⁹ the 50 percent handset deployment benchmarks in 2008 discussed

¹⁴³ Reports were due on May 17, 2004, November 17, 2004, May 17, 2005, November 17, 2005, May 17, 2006, and November 17, 2006. See *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16787 ¶ 89; see also Wireless Telecommunications Bureau Announces Hearing Aid Compatibility Reporting Dates for Wireless Carriers and Manufacturers, WT Docket No. 01-309, *Public Notice*, 19 FCC Rcd 4097 (2004).

¹⁴⁴ These reports are due on November 19, 2007, and November 17, 2008. *Id.* The Commission permitted digital wireless handset manufacturers and service providers to submit joint reports in order to minimize the reporting burden. See *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16787 ¶ 89.

¹⁴⁵ See *Staff Report* at ¶ 19.

¹⁴⁶ *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16787 ¶ 89. The Commission also asked digital wireless service providers to highlight in these reports any differences in handset offerings among regions of their service areas. See *id.*

¹⁴⁷ See *id.*

¹⁴⁸ See *id.*

above.¹⁵⁰ Accordingly, we closely reviewed the information in the reports to monitor handset deployment progress, with the goal of proactively resolving any potential for delay. Commission staff has also analyzed the data contained in the reports to comply with Congress' requirement that the Commission periodically review and scrutinize its hearing aid compatibility regulations.¹⁵¹ Finally, these reports can be a very important source of information, both for consumers, particularly those with hearing disabilities, and for service providers seeking information regarding the hearing aid compatibility of manufacturers' products.¹⁵²

67. Discussion. Given the importance of these objectives, we tentatively conclude not only to continue requiring service providers and manufacturers to report regularly on the availability of hearing aid-compatible products, but to enhance and improve the content of the reports that are filed. As reported in the *Staff Report*, there is evidence in the record that some of the information in the existing compliance reports may not be as complete or as helpful as possible for consumers, wireless service providers, or the Commission.¹⁵³ Furthermore, WTB staff encountered difficulties when verifying the ratings for certain handset models identified in compliance reports, because many of the compliance reports referenced the handset manufacturer and model number but did not include the associated FCC ID.¹⁵⁴ In order to address these shortcomings, the Joint Consensus Plan includes proposed requirements that will render the reports more helpful to consumers and others by providing them with better information concerning the commercial availability of compliant handsets. Specifically, the Joint Consensus Plan recommends that reports include:¹⁵⁵

Manufacturers:

- (1) digital wireless phones tested;
- (2) compliant phone models using the FCC ID number and ratings according to C63.19;
- (3) status of product labeling;
- (4) outreach efforts;
- (5) total numbers of compliant phone models offered as of the time of the report; and
- (6) information pertaining to product refresh.

Service providers:

- (1) compliant phone models using the FCC ID number and ratings according to C63.19;
- (2) status of product labeling;
- (3) outreach efforts;
- (4) information related to the retail availability of compliant phones;
- (5) total numbers of compliant and non-compliant phone models offered as of the time of the

(Continued from previous page) _____

¹⁴⁹ See *id.* at 16783 ¶ 74.

¹⁵⁰ See *supra* ¶ 39.

¹⁵¹ See 47 U.S.C. § 610(f).

¹⁵² See *Staff Report* at ¶¶ 52-53.

¹⁵³ See, e.g., *id.* at ¶ 49 (noting problems associating the manufacturer model number with the FCC ID).

¹⁵⁴ *Id.*

¹⁵⁵ Joint Consensus Plan at 11 nn.17-18.