Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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

ORDER ON RECONSIDERATION AND FURTHER NOTICE OF PROPOSED RULEMAKING

Adopted: June 9, 2005 **Released: June 21, 2005**

Comment Date: 60 days after publication in the Federal Register
Reply Comment Date: 90 days after publication in the Federal Register

By the Commission: Commissioners Abernathy, Copps and Adelstein issuing statements.

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I. INTRODUCTION

1. In this *Order on Reconsideration and Further Notice of Proposed Rulemaking*, we grant in part and deny in part petitions for reconsideration of the *Hearing Aid Compatibility Order*,[1] which lifted the blanket exemption for digital wireless telephones under the Hearing Aid Compatibility Act of 1988 (HAC Act),[2] and seek comment on two issues relating to the Commission's hearing aid compatibility rules. As set forth below, we affirm, modify, clarify and seek further comment on the Commission's actions toward ensuring that every American has access to the benefits of digital wireless telecommunications, including individuals with hearing disabilities.

II. EXECUTIVE SUMMARY

2. In this *Order on Reconsideration*, we take the following actions:

(a) We affirm the *Hearing Aid Compatibility Order* as follows:

- We affirm the Commission's determination that the American National Standards Institute (ANSI) standard, ANSI C63.19, "American National Standard for Methods of Measurement of Compatibility between Wireless Communication Devices and Hearing Aids, ANSI C63.19-2001," is an appropriate established technical standard. We also affirm the Commission's determination that ANSI C63.19 should not be transformed from a performance measurement standard to a build-to standard. As with most other ANSI standards, ANSI C63.19 is a "living standard" that has been and will continue to be updated and refined. Accordingly, the Commission will expeditiously review future final versions of this standard either on our own motion or upon request.

- We affirm the Commission's authority to establish the preliminary handset deployment benchmark specific to Tier I wireless carriers, and we modify the requirement in order to provide greater certainty while not adversely affecting hearing impaired individuals' access to compatible phones. Specifically, we modify Section 20.19(c) of the Commission's rules on hearing aid compatible mobile handsets to require that, by September 16, 2005, each Tier I wireless carrier offering digital wireless services must make available to consumers, per air interface, four U3-rated handsets, or twenty-five percent of the total number of handsets it offers nationwide; and that, by September 16, 2006, each Tier I wireless carrier offering digital wireless services must make available to consumers, per air interface, five U3-rated handsets, or twenty-five percent of the total number of handsets it offers nationwide.

- We further explain the basis of the Commission's determination that, by February 18, 2008, fifty percent of all handsets offered by digital wireless carriers, service providers and handset manufacturers must meet the U3 hearing aid compatibility requirement for each air interface offered. Petitioners opposed to this benchmark have not provided information that justifies overturning that determination.

- We affirm the requirements established by the Commission for labeling and in-store consumer testing of digital wireless handsets. These requirements are critical to

[1] Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones, WT Docket No. 01-309, *Report and Order*, 18 FCC Rcd 16753 (2003); *Erratum*, WT Docket No. 01-309, 18 FCC Rcd 18047 (2003).

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

consumers and do not unduly hamper the ability of wireless carriers, service providers and handset manufacturers to promote, display and sell their products. We also find that modifying the obligation to report on handset deployment progress, as suggested by some parties, would disserve our objective of having the information necessary to determine compliance with the hearing aid compatibility rules.

(b) We modify Section 20.19(c) of the Commission's rules on hearing aid compatible mobile handsets in response to a petition from wireless carriers operating TDMA networks and overbuilding them to employ alternative air interfaces. These carriers will be considered compliant with the September 16, 2005, preliminary handset deployment benchmark if they: (1) offer two hearing aid-compatible handset models to customers that receive service from the overbuilt (*i.e.*, non-TDMA) portion of the network, (2) are overbuilding (*i.e.*, replacing) their entire network, and (3) complete the overbuild by September 18, 2006.

(c) We clarify the *Hearing Aid Compatibility Order* with respect to the following points:

- As requested by some petitioners, we clarify that the *de minimis* exception, which exempts from the hearing aid compatibility requirements wireless carriers, service providers and handset manufacturers that offer two or fewer digital wireless handset models, applies on a per air interface basis, rather than across an entire product line.

- We affirm that the Commission properly delegated authority to the states to enforce the rules governing the hearing aid compatibility of digital wireless handsets in cases where the states have adopted these rules and provide for enforcement. We clarify, however, that the Commission retains exclusive jurisdiction over the technical standards for hearing aid compatibility.

3. In the *Further Notice of Proposed Rulemaking*, we seek comment on:

- Extending the live, in-store consumer testing requirement to retail outlets that are not directly owned or operated by wireless carriers or service providers; and

- Whether to narrow the *de minimis* exception so as to exempt from the hearing aid compatibility requirements wireless carriers, service providers and handset manufacturers that offer one digital wireless handset model per air interface, as well as other potential ways to narrow the *de minimis* exception.

III. BACKGROUND

4. In 1988, Congress passed the HAC Act to ensure access to telecommunications services for individuals with hearing disabilities. In adopting the HAC Act, Congress stated that "the inability to use all telephones imposes social and economic costs on not only the hearing impaired, but the whole nation."[3] Congress further stated that "the hearing impaired should have access to every telephone like the non-hearing impaired."[4] In the HAC Act, Congress charged the Commission with "establishing regulations as are necessary to ensure reasonable access to telephone service by persons with impaired

[3] H.R. Rep. No. 100-674 at 7 (1988) (*House Report*).

[4] *Id.*

hearing."[5] In this regard, the HAC Act required the Commission to establish regulations to ensure that certain "essential telephones" enumerated in the HAC Act would "provide internal means for effective use with hearing aids designed to be compatible with telephones that meet established technical standards for hearing aid compatibility."[6] Congress also required the Commission to establish requirements for the labeling of packaging materials to provide adequate information to consumers regarding the compatibility between telephones and hearing aids,[7] and to delegate to the states the authority to enforce compliance with the Commission's hearing aid compatibility regulations if adopted by the state.[8]

5. Congress specifically exempted "telephones used with public mobile services" (*i.e.*, wireless phones) from the "essential telephones" designation.[9] At that time, Congress considered wireless phones to be secondary or complementary, rather than "essential telephones."[10] To ensure that the HAC Act kept pace with the evolution of telecommunications, however, Congress granted the Commission a means to revoke or limit the exemption for wireless telephones.[11] Indeed, the statute requires the Commission to periodically assess the appropriateness of continuing Congress' original exemptions.[12]

6. On August 14, 2003, the Commission released the *Hearing Aid Compatibility Order*, finding, among other things, that the statutory criteria to lift the exemption for wireless telephones had been met.[13] Specifically, the Commission determined that continuation of Congress' exemption for wireless telephones would have an adverse effect on individuals with hearing disabilities,[14] and that revoking the exemption was technologically feasible[15] and in the public interest.[16] The Commission further determined that compliance with hearing aid compatibility requirements "would not increase the costs of [wireless] phones to such an extent that they could not be successfully marketed."[17]

7. Based upon these findings, the Commission established requirements for hearing aid

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[5] 47 U.S.C. § 610(a).

[6] *Id*. § 610(b)(1)(B). Congress defined "essential telephones" as "only coin-operated telephones, telephones provided for emergency use, and other telephones frequently needed for use by persons using [compatible] hearing aids." *Id*. § 610(b)(4)(A). We note that the HAC Act precluded the Commission from requiring retrofitting of equipment to achieve compatibility, except for coin-operated telephones and telephones provided for emergency use. *See id*. § 610(f).

[7] *See id.* § 610(d).

[8] *See id.* § 610(h).

[9] *Id*. § 610(b)(2)(A)(i).

[10] *See House Report* at 9.

[11] *See* 47 U.S.C. § 610(b)(2)(C) (to "revoke or otherwise limit" the exemptions, the Commission must determine that: (1) such revocation or limitation is in the public interest; (2) continuation of the exemption without such revocation or limitation would have an adverse effect on individuals with hearing disabilities; and (3) compliance with the rule is technologically feasible, and would not increase costs to such an extent that the telephones could not be successfully marketed).

[12] *See id.* § 610(b)(2)(C).

[13] *See Hearing Aid Compatibility Order*, 18 FCC Rcd at 16764 -75 ¶¶ 26-52.

[14] *See id*. at 16766-68 ¶¶ 30-34.

[15] *See id*. at 16769-75 ¶¶ 38-52.

[16] *See id*. at 16768-69 ¶¶ 35-37.

[17] *Id*. at 16775 ¶ 50. *See also* 47 U.S.C. § 610(b)(2)(C)(iv).

compatibility of digital wireless phones. First, the Commission adopted the ANSI C63.19 performance levels as the applicable technical standard.[18] Second, the Commission established specific, phased-in deployment benchmarks for digital wireless handset manufacturers, wireless carriers and service providers offering digital wireless services.[19] Third, the Commission implemented a framework for labeling and live, in-store consumer testing of digital wireless handsets, as well as an obligation to report on handset deployment progress.[20] Fourth, the Commission adopted a *de minimis* exception, which relieves wireless carriers, service providers and handset manufacturers that offer two or fewer digital wireless handsets in the United States from the hearing aid compatibility compliance obligations.[21] Finally, consistent with the requirements set forth in the HAC Act,[22] the Commission expanded the scope of its rules for enforcing wireline hearing aid compatibility to permit subscribers to digital wireless services to file informal complaints in the event that handset manufacturers or wireless service providers fail to comply with the hearing aid compatibility rules.[23]

8. The Commission received four petitions for reconsideration in response to the *Hearing Aid Compatibility Order*.[24] The petitions seek reconsideration, clarification, or both, of the Commission's

[18] *See Hearing Aid Compatibility Order*, 18 FCC Rcd at 16776-79 ¶¶ 55-64. *See also* 47 C.F.R. §§ 20.19(b)(1)-(2). In this regard, the Commission required that certain digital wireless handsets must provide reduced radio frequency (RF) interference (*i.e.,* the wireless telephones must meet a U3 rating under the ANSI technical standard) and telecoil coupling capability (*i.e.*, the wireless handsets must meet a U3T rating under the ANSI technical standard). *See id.* at 16777 ¶ 56. We note that "telecoil" coupling is also known as "inductive" coupling. We further note that the 2005 draft version of the ANSI C63.19 technical standard uses different letter designations for hearing aid compatibility compliance. *See* Letter from Thomas Goode, counsel for The Alliance for Telecommunications Industry Solutions, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 01-309 (filed May 6, 2005) (ATIS May 6, 2005 Letter). Specifically, the new draft standard uses an "M" rating for RF interference immunity (rather than "U") and a "T" rating for coupling capability (rather than "UT"). *See id.*

[19] *See Hearing Aid Compatibility Order,* 18 FCC Rcd at 16780-85 ¶¶ 65-81. *See also* 47 C.F.R. §§ 20.19(c)-(d). The Commission required that, by September 16, 2005, each digital wireless handset manufacturer must make available to wireless carriers and each wireless carrier providing digital wireless services must make available to consumers at least two handsets for each air interface it offers, which provide the reduced RF emissions (U3 rating) necessary to enable acoustic coupling without interference. Also by September 16, 2005, each Tier I wireless carrier providing digital wireless services must make available to consumers at least two handsets for each air interface it offers to provide reduced RF emissions (U3 rating), or twenty-five percent of the total number of handsets it offers, whichever is greater. The Commission further required that, by September 16, 2006, each digital wireless handset manufacturer must make available to wireless carriers, and each wireless carrier providing digital wireless services must make available to consumers, at least two handset models for each air interface it offers that provide telecoil (inductive) coupling (U3T rating). Finally, the Commission adopted a *de minimis* exception to these benchmarks for certain digital wireless handset manufacturers and wireless carriers. *See Hearing Aid Compatibility Order,* 18 FCC Rcd at 16775-76 ¶ 53. *See also* 47 C.F.R. § 20.19(e)(1)-(2).

[20] *See Hearing Aid Compatibility Order*, 18 FCC Rcd at 16785-87 ¶¶ 82-91.

[21] *See id*. at 16781 ¶ 69 (also specifying that wireless carriers, service providers and handset manufacturers that offer three digital wireless handset models must offer at least one compliant handset by September 16, 2005). *See also* 47 C.F.R. §§ 20.19(e)(1)-(2).

[22] *See* 47 U.S.C. § 610(h).

[23] *See Hearing Aid Compatibility Order*, 18 FCC Rcd at 16789 ¶ 95.

[24] *See* Petition for Reconsideration and Clarification of the Cellular Telecommunications and Internet Association, WT Docket No. 01-309 (filed Oct. 20, 2003) (Corrected Version) (CTIA Petition); Petition for Reconsideration of Research In Motion Limited, WT Docket No. 01-309 (filed Oct. 16, 2003) (RIM Petition); Petition for Reconsideration of the TDMA Carriers and Rural Telecommunications Group, Inc., WT Docket No. 01-309 (filed Oct. 16, 2003) (TMDA Carriers and RTG Petition); Petition for Reconsideration of Verizon Wireless, WT Docket (continued….)

decisions to: (a) adopt the ANSI C63.19 technical standard for hearing aid compatibility; (b) establish a preliminary deployment benchmark exclusive to Tier I wireless carriers;[25] (c) establish a fifty percent handset deployment benchmark; (d) require labeling and live, in-store consumer testing of digital wireless handset models; (e) impose compliance reporting obligations; (f) institute deployment benchmarks for wireless carriers employing a TDMA air interface; (g) adopt a *de minimis* exception for digital wireless carriers, service providers and handset manufacturers; and (h) delegate authority to enforce hearing aid compatibility of wireless phones to the states. Our disposition of these matters is detailed in Section IV., below. Our *Further Notice of Proposed Rulemaking*, which seeks comment on extending the live, in-store consumer testing requirement and narrowing the *de minimis* exception, is set forth in Section V., below.

IV. ORDER ON RECONSIDERATION

A. ANSI C63.19 Performance Levels as the Established Technical Standard

9. *Background.* As noted earlier, in the *Hearing Aid Compatibility Order*, the Commission adopted the performance levels contained in the ANSI C63.19 technical standard as the basis for ensuring hearing aid compatibility of digital wireless handsets. In finding that this technical standard met the "established" requirement set forth in the HAC Act,[26] the Commission analyzed and relied on numerous submissions supporting ANSI C63.19 as an established technical standard.[27] ANSI, along with the expert entities that informed the Commission's decision-making process, elected to develop the standard as one that measures performance, rather than one that would establish a firm build-to requirement.[28] Based on the record, the Commission determined that this 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.[29] The Commission ruled that adoption of ANSI C63.19 served

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No. 01-309 (filed Oct. 16, 2003) (Verizon Petition). A listing of related pleadings is set forth in Appendix A to this *Order on Reconsideration*. *See also* FCC Petitions for Reconsideration and Clarification of Action in Rulemaking Proceeding, 68 FR 64625 (2003); Wireless Telecommunications Bureau Seeks Comment on Petitions for Reconsideration and/or Clarification of the Hearing Aid Compatible Telephones Report and Order, WT Docket No. 01-309, *Public Notice*, 19 FCC Rcd 3886 (2004).

[25] In 2002, the Commission defined Tier I wireless carriers as the six wireless carriers with national footprints (AT&T Wireless, Cingular Wireless, Nextel Communications, Sprint PCS, Verizon Wireless, and T-Mobile USA). *See* Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, *Order to Stay*, 17 FCC Rcd 14841 (2002) (*Non-Nationwide Carriers Order*) at 14843 ¶ 7. Since that time, the Commission consented to Cingular Wireless' acquisition of AT&T Wireless. *See* Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corp. For Consent To Transfer of Control of Licenses and Authorizations, WT Docket Nos. 04-70, 04-254, 04-323, *Memorandum Opinion and Order*, 19 FCC Rcd 21522 (2004). More recently, the Commission announced that Nextel and Sprint PCS have sought the Commission's consent to transfer control of licenses and authorizations. *See* Nextel Communications, Inc. and Sprint Corporation Seek FCC Consent To Transfer Control of Licenses and Authorizations, WT Docket No. 05-63, *Public Notice*, 20 FCC Rcd 4119 (2005).

[26] 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[]").

[27] *See Hearing Aid Compatibility Order*, 18 FCC Rcd at 16770-71 ¶ 43. In its comments, ANSI noted that ANSI Accredited Standards Committee C63, which devised and adopted ANSI C63.19, "made efforts to assure that all materially affected interests were represented … and that the standard represented the best technical consensus available at the time of publication." ANSI Comments at 2.

[28] *See Hearing Aid Compatibility Order*, 18 FCC Rcd at 16779 ¶ 63.

[29] *See id.* at 16776 ¶ 55.

the public interest because the manufacture of digital wireless handsets comporting with this standard would ensure that "a greater number of hearing aid and coclear implant users will be able to find digital wireless phones that will work for them."[30]

10. The Commission also recognized that alternative approaches toward achieving hearing aid compatibility should be explored, and encouraged activity "as part of an evolutionary process" that would ultimately lead to increased wireless communications accessibility for individuals with hearing disabilities.[31] In this regard, the Commission stated that it would continue to play an active, ongoing role in matters relating to the hearing aid compatibility of digital wireless handsets, expressed its willingness to consider alternatives to the ANSI C63.19 technical standard, and delegated to the Chief, Wireless Telecommunications Bureau (Wireless Bureau), in coordination with the Chief, Office of Engineering and Technology (OET), the authority to approve future versions of the standard.[32] 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.[33]

11. In its petition for reconsideration, CTIA requests that the Commission stay and reconsider the decision to adopt the ANSI C63.19 technical standard.[34] CTIA argues that the ANSI C63.19 technical standard is "not fixed,"[35] and alleges that the Commission's action to adopt the standard was premature because it would prevent standards-setting bodies from completing their work.[36] CTIA adds that the ANSI C63.19 technical standard should be transformed from a performance measurement standard into a build-to standard.[37] In its comments, T-Mobile states that CTIA's request for reconsideration of the Commission's decision to adopt ANSI C63.19 is unnecessary given the Commission's role in the standards-setting process and the policy for treating future requests to upgrade the standard set forth in the *Hearing Aid Compatibility Order*.[38] In its comments, Self Help for Hard of Hearing People (SHHH) states that CTIA "presents nothing new" regarding the ANSI standard and encourages the Commission to affirm its decision.[39] As discussed below, we deny this aspect of the CTIA Petition and affirm the

[30] *Id.* at 16777 ¶ 57.

[31] *See id.* at 16774 ¶ 49.

[32] *See id*. at 16779 ¶ 63.

[33] *See id.*

[34] *See* CTIA Petition at 6. We deny CTIA's request that "the Commission stay the effective date of the rule while it reconsiders its decision on this specific issue." *Id*. The Commission evaluates requests for stay under well-settled principles. To support a stay, a petitioner must demonstrate that: (1) it is likely to prevail on the merits; (2) it will suffer irreparable harm if a stay is not granted; (3) other interested parties will not be harmed if the stay is granted; and (4) the public interest favors granting a stay. *See* Paxson Communications Corp. v. DIRECTV, Inc., 17 FCC Rcd 10944, 10945 at ¶ 4 (2002), *citing Virginia Petroleum Jobbers Ass'n v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958) (*per curiam*). In its petition, CTIA has not addressed any of the necessary criteria, or otherwise provided analysis or other evidence to justify a stay of the Commission's adoption of the ANSI C63.19 technical standard.

[35] *See* CTIA Petition at 3.

[36] *See id.* at 4.

[37] *See id.* at 2. We note that a "performance measurement" standard omits specific instructions and provides the manufacturer the latitude to determine how to best meet the specified needs. On the other hand, a "build-to" standard specifies detailed requirements such as materials to be used, how a requirement is to be achieved, or how an item is to be fabricated or constructed.

[38] *See* T-Mobile Comments at 2-3.

[39] *See* SHHH Comments at 2.

Commission's action in adopting the ANSI C63.19 technical standard.

12. *Discussion*. As a preliminary matter, we disagree with CTIA's contention that an established technical standard must be "fixed."[40] The implication of CTIA's argument is that, if a revision to a standard can be made, it is not an established standard. As ANSI explains, however, technical standards are "living documents" that are continuously reviewed, revised and updated in an ongoing effort to keep them current and to ensure their continued effectiveness.[41] In fact, ANSI informs us that its bylaws require that all standards be reviewed every five years, at a minimum, and provide the means to withdraw a standard if it is not revised or reaffirmed within ten years.[42]

13. We also find that CTIA's claims that the Commission acted prematurely in adopting ANSI C63.19 are without merit. The Commission's decision to adopt ANSI C63.19 as an established technical standard included a means to ensure the standard's ongoing effectiveness. As noted by T-Mobile, the Commission charted a flexible, proactive approach that considered and addressed the need to ensure the continued viability of the established technical standard by encouraging ANSI to work with the relevant stakeholders to review the standard periodically to determine whether improvements are warranted.[43] In the *Hearing Aid Compatibility Order*, the Commission forthrightly acknowledged that the technical standard "presents a workable approach[,]"[44] and recognized that, as the industry engages in testing and design work geared to comply with the performance levels, the standard may need to be revisited.[45] Moreover, the Commission's analysis recognized that some wireless industry parties had asserted that ANSI C63.19 was not a perfect tool for ensuring that any given hearing aid would work with a particular wireless phone,[46] and that future techniques for coupling hearing aids with digital wireless phones might be necessary.[47]

14. In addition, our analysis reveals that the flexible approach set forth in the *Hearing Aid Compatibility Order* accommodates CTIA's request that stakeholders have the ability to choose alternatives or develop proprietary solutions.[48] Indeed, under the current procedure, all interested stakeholders have benefited from the flexibility to consider different yet viable approaches toward meeting the stipulated reduced RF interference and telecoil coupling capability under the ANSI C63.19 technical standard, including consideration of the range of immunity levels of hearing aids manufactured in the United States.[49] In fact, in response to a petition submitted by ANSI on April 12, 2005,[50] OET

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[40] *See* CTIA Petition at 3 (citing no authority for this definition, CTIA contends that, in the context of a standards setting process, "established" means a "fixed, proven method or approach to a technical problem wherein if one uses that approach to build and design, one will achieve the desired result[]").

[41] *See* ANSI Comments at 2. *See also infra* ¶ 15.

[42] *See* ANSI Comments at 2.

[43] *See* T-Mobile Comments at 2-3.

[44] *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16776 ¶ 55.

[45] *See id.* at 16774 ¶ 49.

[46] *See id*. at 16776 ¶ 55.

[47] *See id.* at 16779 ¶ 63.

[48] *See* CTIA Petition at 4. *See also* SHHH Comments at 4-5 (explaining that, under the ANSI C63.19 performance standard, there may be many solutions to meet the interference requirements).

[49] *See* CTIA Petition at 5 (arguing that the Commission failed to consider immunity levels of hearing aids manufactured in the United States).

expeditiously clarified that it would accept applications for certification of equipment tested and rated under either the draft updated version of the hearing aid compatibility technical standard, ANSI C63.19-2005, or under the earlier version that is codified in the Commission's rules.[51] Thus, CTIA's claim that the Commission's adoption of ANSI 63.19 was premature ignores the numerous measures adopted by the Commission that have permitted the industry to play an active, ongoing role to ensure its continued viability.[52]

15. We further determine that CTIA has not made a sustainable argument for converting the ANSI C63.19 technical standard from a performance standard to a build-to standard. We affirm the Commission's finding that the performance levels set forth in the technical standard would afford handset manufacturers the flexibility to continue to develop and offer innovative handsets with new features, while simultaneously ensuring that persons with hearing disabilities will have access to advanced wireless services.[53] Moreover, to the extent that handset manufacturers and other relevant stakeholders wish to develop a build-to standard, the framework for such an undertaking is already established, and nothing in our rules would prevent this effort. We continue to believe that the best approach is to maintain the flexibility associated with the performance levels set forth in the ANSI technical standard, rather than to dictate or otherwise force digital wireless handset manufacturers to follow specific, detailed instructions for achieving the requisite hearing aid compatibility requirements.

16. Finally, mindful of the Commission's obligation to ensure that the standard codified in the rules would remain viable, and in light of the status of the work ANSI is currently undertaking, we reiterate our commitment to undertake an expeditious review of the final version of the ANSI C63.19-2005 technical standard, as well as any other final version of the standard developed in the future, either on our own motion or upon request. As noted earlier, in the *Hearing Aid Compatibility Order*, the Commission delegated authority to the Chief of the Wireless Bureau, in coordination with the Chief, OET, to approve future final versions of ANSI C63.19 to the extent that the changes do not raise major compliance issues.[54] Given that the work of ANSI and the HAC Incubator[55] may soon result in adoption of a final version of the updated technical standard,[56] the Wireless Bureau and OET stand ready to timely review and analyze the final version of the new standard upon request.

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[50] *See* Petition of American National Standards Institute Accredited Standards Committee C63 (EMC) Subcommittee 8 (Medical Devices) ANSI ASC C63 SC8, WT Docket No. 01-309 (filed Apr. 12, 2005) (ANSI Request).

[51] *See* OET Clarifies Use of New Wireless Phone Hearing Aid Compatibility Standard Measurement Procedures and Rating Nomenclature, *Public Notice*, DA 05-1134 (rel. Apr. 25, 2005).

[52] CTIA also asks that the Commission direct the FDA to evaluate hearing aid immunity data. *See* CTIA Petition at 6. Our jurisdiction does not permit us to direct another agency to undertake evaluations on behalf of the Commission. Rather, the Commission has a long history of formally and informally coordinating with other government agencies when matters of mutual concern arise. In fact, the collective effort between the Commission and the FDA contributed to the adoption of the *Hearing Aid Compatibility Order*. *See Hearing Aid Compatibility Order*, 18 FCC Rcd at 16786 ¶ 55.

[53] *See id.* at 16779 ¶ 62.

[54] *See id*. at 16779 ¶ 63.

[55] "The HAC Incubator is a technical body formed by the industry to resolve hearing aid compatibility issues via a 'fast tracked' consensus process." Letter from Megan L. Campbell, General Counsel, Alliance for Telecommunications Industry Solutions, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 01-309 (filed Apr. 22, 2004) at 1.

[56] *See* ANSI Request at 2-3.

B. Preliminary Handset Deployment Benchmark for Tier I Wireless Carriers

17. *Background*. In the *Hearing Aid Compatibility Order*, the Commission found that wireless service has evolved to become increasingly more important to Americans' safety and quality of life, and recognized the corresponding critical need for individuals with hearing disabilities to have access to wireless services.[57] In light of these findings, the Commission took targeted actions to facilitate the congressional goal of ensuring access to telecommunications services for individuals with hearing disabilities. Specifically, the Commission required that, by September 16, 2005, each digital wireless handset manufacturer must make available to wireless carriers and each wireless carrier providing digital wireless services must make available to consumers at least two reduced RF emissions (U3 rating) handsets for each air interface it offers to enable acoustic coupling without interference.[58] The Commission further required that, by September 16, 2005, each Tier I wireless carrier providing digital wireless services must make available to consumers at least two reduced RF emissions (U3 rating) handsets for each air interface it offers, or twenty-five percent of the total number of handsets it offers, whichever is greater.[59] In establishing these preliminary handset deployment benchmarks, the Commission sought to stimulate progress toward achieving hearing aid compatibility of digital wireless telephones.[60]

18. CTIA and Verizon seek reconsideration of the handset deployment benchmark for Tier I wireless carriers. In individual comments, Cingular, Sprint and T-Mobile also object to the requirement. CTIA, Cingular, Sprint and T-Mobile argue that the Commission did not adequately explain the rationale for adopting this requirement and imply that the action violates the Administrative Procedure Act (APA).[61] Similarly, Verizon states that the decision "cannot be squared with [the Commission's] obligation under the [APA] to afford interested parties adequate notice … ."[62] These parties also allege that the requirement is inconsistent with Commission precedent,[63] and argue that the requirement violates the Commission's obligation to maintain regulatory parity as set out in Section 332 of the Communications Act of 1934, as amended (the Communications Act).[64]

19. Most recently, CTIA proposes that the Commission modify the preliminary Tier I deployment benchmark such that Tier I wireless carriers be given the option to make available, per air interface, four compliant digital wireless handset models, or twenty-five percent of the total number of

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[57] *See Hearing Aid Compatibility Order*, 18 FCC Rcd at 16756-57 ¶ 7.

[58] *See id.* at 16780 ¶ 65. *See also* 47 C.F.R. § 20.19(c)(1)(i).

[59] *See Hearing Aid Compatibility Order*, 18 FCC Rcd at 16780 ¶ 65. *See also* 47 C.F.R. § 20.19(c)(3)(i).

[60] *See* Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones, WT Docket No. 01-309, *Notice of Proposed Rulemaking*, 16 FCC Rcd 20558 (2001) (*Hearing Aid Compatibility Notice*) at 20561 ¶ 10.

[61] *See* CTIA Petition at 8 (the Commission provided "no data or rationale for why the 'two model or 25 percent requirement' should be applied only to Tier I carriers[]"); Cingular Reply Comments at 5 ("[t]here is no basis for the Commission to impose more onerous requirements on Tier I wireless providers …"); Sprint Comments at 4 ("the Commission's decision to impose more onerous requirements on 'Tier I' carriers is completely unexplained[]"); T-Mobile Comments at 3 ("[t]he decision to impose more rigorous obligations on Tier I carriers is not explained[]").

[62] Verizon Petition at 4. Verizon further states that the Commission did not propose obligations based on carrier classifications, and alleges that no party offered such a proposal. *See* Verizon Petition at 3.

[63] *See* CTIA Petition at 7-8; Verizon Petition at 5; T-Mobile Comments at 4.

[64] *See* T-Mobile Comments at 3 (the rule "contravenes the regulatory parity directive of" Section 332 of the Communications Act). *See also* Verizon Petition at 5; Sprint Comments at 5.

digital wireless handset models currently offered by the carriers nationwide, per air interface, by September 16, 2005.[65] In addition, by the following year, September 16, 2006, Tier I carriers would be required to make available five HAC-compliant digital wireless handset models or twenty-five percent of the total number of digital wireless handset models.[66] Should the Commission adopt this approach, CTIA states that the added certainty afforded by this modification would permit Tier I members "to meet the request of consumer groups to include hearing aid compatibility information on 'call out cards,' which are part of the handset display in retail stores."[67] Further, CTIA states that the association's Tier I members "would agree to provide low-end and high-end … compliant handsets."[68] SHHH supports CTIA's proposal, citing CTIA's commitment to provide consumers with increased information through the use of "call out cards" as part of retail displays, and to provide increased options through the provision of phones in different price ranges.[69]

20. *Discussion*. As an initial matter, we affirm the Commission's decision to adopt a preliminary handset deployment benchmark for Tier I wireless carriers. We find that the requirement satisfies the requirements of the APA[70] because the action represents a logical outgrowth of its proposal to modify the hearing aid compatibility rules and is consistent with the rationale set forth in Commission precedent. In addition, the requirement is well within the bounds of the authority granted to the Commission by Congress in the HAC Act and the Communications Act, and does not violate the Commission's obligations set forth in Section 332 of the Communications Act. Our review demonstrates that the preliminary handset deployment benchmark for Tier I wireless carriers represents a reasoned approach that extends the multiple public interest benefits of wireless telecommunications service to persons with hearing disabilities.

21. The Commission's decision to impose a distinct handset deployment requirement on Tier I wireless carriers represents a logical outgrowth of its proposal to modify the hearing aid compatibility rules.[71] The *Hearing Aid Compatibility Notice* expressly recited the Commission's expectation that "changes to digital wireless telephones, and, possibly, hearing aids will be required, which will take time and may not be best accomplished by a 'flash cut'-type of implementation."[72] In addition, the *Hearing Aid Compatibility Notice* sought comment on "whether the best way to implement hearing aid compatibility in the covered telephones is a phased-in approach … ."[73] Thus, the record in this proceeding reflects that the Commission properly alerted interested parties to the possibility that a phased-in approach would be adopted.[74] Furthermore, we note that the APA does not strictly force the

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[65] *See* Letter from Diane Cornell, Vice President, Regulatory Policy, CTIA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 01-309 (filed June 7, 2005) (CTIA June 7 Letter).

[66] *See id*.

[67] *Id*.

[68] *Id*.

[69] *See* Letter from Brenda Battat, Associate Executive Director, SHHH, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 01-309 (filed June 8, 2005) (SHHH June 8 Letter).

[70] *See* 5 U.S.C. § 553.

[71] *See, e.g., Hodge v. Dalton*, 107 F.3d 705 (9th Cir. 1997); *National Electrical Manufacturers Ass'n v. EPA*, 99 F. 3d 1170 (D.C. Cir. 1996); *National Resources Defense Council, Inc. v. Thomas*, 838 F.2d 1224 (D.C. Cir. 1988).

[72] *Hearing Aid Compatibility Notice*, 18 FCC Rcd at 20572 ¶ 32.

[73] *Id.*

[74] *See Kooritzky v. Reich*, 17 F.3d 1509, 1513 (D.C. Cir. 1994).

Commission to act pursuant to comments received; nor does the APA require the Commission to raise every conceivable issue that could be interpreted as modifying statements set forth in a given notice of proposed rulemaking.[75] Our analysis reveals that, in developing a logical, sound policy in furtherance of its proposal to modify the hearing aid compatibility rules, the Commission satisfied the requirements of the APA.[76]

22. Similarly, we determine that the Commission's decision to establish a preliminary handset deployment benchmark applicable to Tier I wireless carriers is consistent with the rationale set forth in Commission precedent. Contrary to the assertions of Sprint[77] and T-Mobile,[78] the Commission's rulings in the E911 context evince the Commission's adoption of unique deployment benchmarks based on carrier size.[79] The same rationale applies here. Indeed, the Commission's action in establishing the Tier I requirement is directly related to the Commission's previous finding that Tier I wireless carriers have formidable means to drive manufacturers' equipment development and deployment efforts, as discussed in the *Non-Nationwide Carriers Order*.[80] We find that, in establishing the preliminary hearing aid-compatible handset deployment benchmark for Tier I wireless carriers, the Commission properly sought to capitalize on the economic efficiencies flowing from the purchasing decisions made by Tier I wireless carriers. The largest carriers have a greater number of subscribers and place the largest orders for compliant equipment, and therefore easily become priority customers for manufacturers and vendors.[81] In contrast to large carriers, smaller wireless carriers may be disadvantaged when they seek to acquire location technologies, network components, and specialized handsets.[82] Because Tier I wireless carriers serve approximately eighty percent of all wireless subscribers,[83] the Commission reasonably expected these entities to lead the way toward expeditious access to hearing aid-compatible handsets for persons with hearing disabilities.[84] The Commission, therefore, justified its decision to adopt a handset

[75] *See Logansport Broadcasting Corp. v. U.S.*, 210 F.2d 24, 28 (D.C. Cir. 1954).

[76] Verizon also asserts that the Commission's Final Regulatory Flexibility Analysis (FRFA) militates against imposing a separate requirement on Tier I wireless carriers. *See* Verizon Petition at 4 (noting that the FRFA set forth in the *Hearing Aid Compatibility Order* states that "[t]he critical nature of hearing aid compatibility with wireless phones limits the Commission's ability to provide small … wireless service providers with a substantially less burdensome set of regulations than that placed on large entities …"). Verizon's allegation, however, is based on an incomplete reading of the FRFA. In a paragraph subsequent to the paragraph in the FRFA cited by Verizon, the Commission explained its rationale for staggering the implementation benchmarks. *See Hearing Aid Compatibility Order*, 18 FCC Rcd at 16799 App. B ¶¶ 12-13. Specifically, the Commission clearly stated its recognition that certain service providers and handset manufacturers have only a small presence in the marketplace. *See id.*

[77] *See* Sprint Comments at 5 (asserting that the Commission has never adopted different public interest mandates based on a carrier's size).

[78] *See* T-Mobile Comments at 4 (asserting that the Commission has not imposed different rules on different carriers based on the total number of customers they serve).

[79] *See, e.g., Non-Nationwide Carriers Order*, 17 FCC Rcd at 14844-47 ¶¶ 12-20.

[80] *See id.*

[81] *See id.* at 14844-45 ¶ 12.

[82] *See id*. at 14846-47 ¶ 20.

[83] *See* Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, WT Docket No. 04-111, *Ninth Report*, 19 FCC Rcd 20597 (2004) at App. A, Tables 2, 4.

[84] In light of our conclusion that the Commission's decision to impose a distinct preliminary handset deployment benchmark on Tier I wireless carriers is consistent with Commission precedent, we disagree with Sprint's assertion (continued….)

deployment benchmark for Tier I wireless carriers in light of the varied circumstances among individual wireless carriers, and pursuant to Congress' mandate that it ensure the orderly and efficient implementation of the hearing aid compatibility requirements.[85]

23. The Commission's decision to establish a distinct preliminary handset deployment benchmark for Tier I wireless carriers is wholly consistent with the mandate set forth in the HAC Act.[86] As noted earlier, Congress specifically required the Commission to establish "regulations as are necessary to ensure reasonable access to telephone service by persons with impaired hearing."[87] In addition, the HAC Act stipulates that the Commission consider the costs and benefits to all consumers, "including persons with and without hearing impairments … and ensure that regulations adopted … encourage the use of currently available technology and do not discourage or impair the development of improved technology."[88] Given this broad mandate, we find that the Commission devised a reasonable means to ensure an orderly and efficient implementation of hearing aid compatibility requirements in the wireless marketplace. In implementing the hearing aid compatibility rules, the Commission sought to expedite the important effort to achieve hearing aid compatibility of digital wireless telephones without disrupting the growth and innovation within and among wireless companies.

24. We find that the Commission's decision to establish a distinct preliminary handset deployment benchmark for Tier I wireless carriers is also consistent with the Commission's authority conferred by Section 4(i) of the Communications Act.[89] Congress long ago granted the Commission broad authority to "perform any and all acts, [and] make such rules and regulations … as may be necessary in the execution of its functions."[90] The parties have not persuaded us that the Commission's action to adopt a preliminary benchmark for Tier I wireless carriers is an inappropriate exercise of the authority granted to the Commission by Congress. On reconsideration, we determine that the Commission's action is appropriately tailored to rectify the lack of progress in implementing hearing aid compatibility and establishes comparable operational rules to ensure the rapid deployment of hearing aid-compatible handsets consistent with the Commission's authority.

25. Finally, the Commission's action to adopt a preliminary handset deployment benchmark for

(Continued from previous page)
that a carrier's total size is not relevant to the number of compliant handsets that it offers to hearing aid users. *See* Sprint Comments at 5-6. *See also* Cingular Reply Comments at 5-6. It may be true that Sprint has fewer subscribers in a given market than a smaller competitor such as ALLTEL. Unlike ALLTEL, or other regional and smaller carriers, however, Sprint has a national presence, and the corresponding ability to offer products on a national basis. We anticipate that all Tier I wireless carriers, including Sprint, may meet their individual requirements through distribution channels that permit a wide selection offering across a broad subscriber base.

[85] *See* Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Petitions for Reconsideration of Phase II Waivers and Compliance Plans of Cingular Wireless, Nextel, and Verizon Wireless; Petitions for Reconsideration of Phase II Compliance Deadlines for Non-Nationwide Carriers of ALLTEL and Dobson, CC Docket 94-102, *Order*, 18 FCC Rcd 21838, 21846, 21847-48 ¶¶ 17, 22-23 (2003) (finding that the revised E911 Phase II requirements justifiably considered differences among the nationwide carriers, as well as between these and smaller carriers).

[86] *Cf.* Verizon Petition at 3 (arguing that the Commission does not square its treatment of Tier I carriers with the terms of the HAC Act).

[87] *See* 47 U.S.C. § 610(a).

[88] 47 U.S.C. § 610(e).

[89] *See id.* § 154(i).

[90] *See id*.

Tier I wireless carriers does not violate the requirements of Section 332 of the Communications Act.[91] Verizon and Sprint argue that the requirement contradicts Congress' goal to ensure that similar services are accorded similar regulatory treatment and is inconsistent with the Commission's finding that consistent rules for competing wireless providers would minimize potential market distortions.[92] We find that Verizon's and Sprint's interpretation concerning Section 332 of the Communications Act is incomplete. While it is true that the Commission has determined that consistent rules would further regulatory certainty, the Commission at the same time stated, "[i]t is important to recognize that a different set of policy goals … may require a different framework for analysis and result in different conclusions regarding the extent of competition."[93] The Commission further stated, "we do not believe that similar services have to have *identical* technical and operational rules,"[94] and recognized that the Communications Act grants the Commission discretion to fashion "comparable rules."[95] Thus, the Commission is not compelled to apply uniform rules rigidly in this context, especially when, as here, the Commission appropriately exercised its discretion and crafted an equitable resolution to an important public interest goal – the provision of wireless services to individuals with hearing disabilities.

26. In light of the foregoing, we find that the Commission's decision to adopt a preliminary deployment benchmark for Tier I wireless carriers is a reasonable approach toward expeditiously extending the important public interest benefits of wireless telecommunications service to persons with hearing disabilities. The preliminary handset deployment benchmark requirement applicable to Tier I wireless carriers is consistent with the APA, the HAC Act, the Communications Act and Commission precedent.

27. We affirm the Commission's determination to establish a preliminary deployment benchmark for Tier I wireless carriers. We modify Section 20.19(c) of the Commission's rules, however, to require that, by September 16, 2005, each Tier I wireless carrier offering digital wireless services must make available to consumers, per air interface, four U3-rated handsets, or twenty-five percent of the total number of handsets it offers nationwide; and that, by September 16, 2006, each Tier I wireless carrier offering digital wireless services must make available to consumers, per air interface, five U3-rated handsets, or twenty-five percent of the total number of handsets it offers nationwide.[96] We believe that providing the carriers the option of meeting our requirement by simply providing a fixed number of phones will provide greater certainty, as carriers need not update their number of compliant phones every time they change their overall inventory.[97] More importantly, we are persuaded that this change will not adversely affect hearing impaired individuals' access to compatible phones. We rely in large part on SHHH's support for the CTIA proposal,[98] and in recognition of CTIA's commitment, on behalf of its Tier

[91] *See id*. § 332.

[92] *See* Verizon Petition at 5; Sprint Comments at 5.

[93] Implementation of Sections 3(n) and 332 of the Communications Act, PR Docket No. 89-553, *Third Report and Order*, 9 FCC Rcd 7988, 8011¶ 42 (1994).

[94] *Id.* at 8036 ¶ 79 (emphasis added).

[95] *Id*. at ¶ 80.

[96] The revised rule is set forth in Appendix B to this *Order on Reconsideration*. With respect to the T-Mobile June 3 Letter, we decline to adopt the company's request that we modify our rule to a numerical two requirement, given CTIA's subsequent representation that the CTIA request is presented on behalf of its Tier I members, which we assume includes T-Mobile.

[97] *See* Letter from Diane Cornell, Vice President, CTIA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 01-309 (filed June 2, 2005) (CTIA June 2 Letter).

[98] SHHH June 8 Letter at 1.

I members, "to include [hearing aid compatibility] information on 'call-out cards[,]' which are part of the handset display in retail stores," and "to provide low-end and high-end [hearing aid-compatible] handsets."[99] We believe that this approach, together with CTIA's commitment on behalf of its members to provide increased hearing aid compatibility information in retail displays and to provide consumers with increased options at differing price points, will facilitate consumers' ability to obtain phones that are suitable for their particular needs. Taken together, we find that the rule modification we adopt today will benefit the public interest by providing increased certainty with respect to compliance with our rules while protecting the interests of consumers with hearing disabilities.

C. Fifty Percent Handset Deployment Benchmark

28. *Background*. On February 18, 2008, wireless carriers have the option to discontinue providing analog service pursuant to the Commission's *Analog Sunset Order*.[100] In the *Hearing Aid Compatibility Order*, the Commission determined that by February 18, 2008, fifty percent of all digital wireless handsets offered by a manufacturer, carrier or service provider must meet the U3 performance level for acoustic coupling.[101] The Commission established the fifty percent handset deployment benchmark as an interim step that would further manufacturers' incorporation of hearing aid-compatible functions into all digital wireless handsets, given the Commission's expectation that analog service would be less prevalent after that date.[102] The Commission also adopted a targeted schedule for revisiting the fifty percent requirement in the future.[103] Specifically, the Commission directed the staff to prepare and deliver a report in 2006, which analyzes and addresses the appropriateness of the fifty percent handset deployment benchmark, and indicated that the staff report would form the basis for initiation of a proceeding to evaluate whether the fifty percent handset deployment benchmark should be increased, decreased, or remain the same.[104]

29. Although the Commission has clearly indicated its intention to revisit the fifty percent deployment benchmark – well in advance of the February 18, 2008, implementation deadline – CTIA seeks reconsideration of the fifty percent requirement prior to the 2006 staff report.[105] CTIA implies that the Commission should have established a handset deployment threshold requirement lower than fifty percent.[106] In its comments, T-Mobile also urges the Commission to reconsider this requirement and to "carefully assess whether the size of the market for hearing aid-compatible handsets is reasonably related to the number of handset models available."[107]

30. *Discussion*. We find that CTIA's request for reconsideration of the fifty percent handset deployment benchmark is premature. As noted above, the Commission intended to monitor closely the

[99] CTIA June 7 Letter at 1.

[100] *See* Year 2000 Biennial Review – Amendment of Part 22 of the Commission's Rules to Modify or Eliminate Outdated Rules Affecting the Cellular Radiotelephone Service and Other Commercial Mobile Radio Services, WT Docket No. 01-108, *Report and Order*, 17 FCC Rcd 18401 (2002).

[101] *See Hearing Aid Compatibility Order*, 18 FCC Rcd at 16780 ¶ 66. *See also* 47 C.F.R. §§ 20.19(c)(1)(i); 20.19(c)(2)(i); 20.19(c)(3)(ii).

[102] *See Hearing Aid Compatibility Order*, 18 FCC Rcd at 16780 ¶ 66.

[103] *See id*. at 16782 ¶ 74.

[104] *See id*.

[105] *See* CTIA Petition at 9-10.

[106] *See id*. at 10.

[107] T-Mobile Comments at 5.

hearing aid compatibility deployment process, including the decision to establish the fifty percent benchmark, and asked staff to examine and analyze the requirement by 2006. The Commission also indicated that the staff report will form the basis for initiation of a proceeding to evaluate the need to modify the fifty percent handset deployment benchmark. All interested parties, including CTIA and T-Mobile, will have an opportunity to submit information to the Commission as part of this undertaking. In light of the targeted schedule for revisiting the fifty percent handset deployment benchmark, we deny this aspect of the CTIA Petition as well as the T-Mobile request.

D. Labeling of Hearing Aid-Compatible Digital Wireless Handsets

31. *Background*. As noted earlier, the HAC Act instructs the Commission to establish requirements for the labeling of packaging materials to provide adequate information to consumers regarding the compatibility between telephones and hearing aids.[108] As set forth in the *Hearing Aid Compatibility Order*, the Commission sought to effectuate this mandate by requiring digital wireless handset manufacturers to: (1) place a label on the exterior packaging containing the wireless handset indicating the technical rating of the wireless handset, and (2) include more detailed information on the ANSI standard in either a product insert or in the wireless telephone's manual.[109] Further, the Commission required service providers to ensure that the label is readily visible to individuals with hearing disabilities so they may easily rule out wireless handsets that would not meet their individual needs.[110] In adopting these requirements, the Commission balanced the need for individuals with hearing disabilities to have information sufficient to make an informed decision against the need for digital wireless handset manufacturers to promote their products with as few encumbrances as possible.[111] In tandem with these requirements, the Commission strongly encouraged digital wireless handset manufacturers and service providers to engage in outreach efforts to assist consumers with hearing disabilities as they shop for wireless phones.[112]

32. In its petition for reconsideration, CTIA recommends that digital wireless handsets that meet the ANSI technical standard should bear exterior labeling stating only, "Meets FCC's Wireless HAC Standard."[113] In its comments, SHHH supports the exterior labeling policy developed by the Commission, and explains that requiring a hearing aid user or family member to purchase the phone, open the package, and then read the documentation to ascertain the U-rating of the wireless handset would place an undue burden on the consumer.[114] In its comments, T-Mobile maintains that the detailed information concerning the hearing aid compatibility of a given handset should be identified at the point of sale or through a web site, rather than in a product insert or in the product manual.[115] In the ATIS May 6, 2005 Letter, ATIS requests that the Commission provide clarification that the exterior labels associated

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[108] *See* 47 U.S.C. § 610(d).

[109] *See Hearing Aid Compatibility Order*, 18 FCC Rcd at 16785 ¶¶ 83, 85-86. *See also* 47 C.F.R. § 20.19(f).

[110] *See Hearing Aid Compatibility Order*, 18 FCC Rcd at 16785-86 ¶¶ 83-87.

[111] *See id*. at 16785 ¶ 83.

[112] *See id.* at 16787-88 ¶ 92.

[113] *See* CTIA Petition at 11. CTIA argues that information regarding the U-rating, as well as details pertaining to additional technical capabilities, should be included in the product manual. *See id.*

[114] *See* SHHH Comments at 6. SHHH also discusses the importance of an educational campaign to increase awareness about phone ratings and its preference that retailers prominently display information relating to the phones. *See id.*

[115] *See* T-Mobile Comments at 6.

with compliant handsets bear the "M" and "T" ratings associated with the 2005 draft version of the ANSI technical standard.[116] As discussed below, we decline to adopt the labeling recommendation set forth in the CTIA Petition and affirm and clarify the labeling requirements established in the *Hearing Aid Compatibility Order*.

33. *Discussion*. We continue to believe that the two-pronged approach -- placement of a prominent exterior label indicating the handset's technical rating, combined with more detailed information located inside the package -- will provide consumers with a quick synopsis of the information necessary to make an informed decision without impairing the ability of digital wireless handset manufacturers and service providers to engage in myriad marketing efforts. The requirement that digital wireless handset manufacturers prominently place an exterior label indicating the handset's U-rating satisfies the need of consumers to learn the U-rating of a given handset at a glance, and enables consumers to make a fast, preliminary determination regarding the hearing aid compatibility of a given digital wireless handset. We disagree with T-Mobile's argument that the consumer will not examine the box until after the handset is purchased.[117] The external labeling requirement established by the Commission permits consumers to quickly determine whether the given handset should comport with their individual hearing aid. In this regard and at ATIS' request, we clarify that the exterior labels associated with compliant handsets bear the "M" and "T" ratings associated with the 2005 draft version of the ANSI technical standard, as appropriate.[118] Finally, we decline to adopt CTIA's proposal that the external label of a compliant handset state only, "Meets FCC's Wireless HAC Standard." We are concerned that this external label may lead consumers to incorrectly conclude that the Commission has itself tested, approved and endorsed the quality of interoperability between the digital wireless handset and a hearing aid.

34. We also affirm the Commission's conclusion that more detailed information pertaining to hearing aid compatibility properly belongs inside the packaging that holds the wireless handset. Once consumers view the exterior label and determine that the handset in question will likely be compatible with their individual hearing aid, they may open the package to obtain additional detail pertaining to the handset. We disagree with SHHH that opening the handset packaging to obtain this information places an undue burden on the consumer. In our experience, retailers typically permit consumers to open packages for the purpose of touching and experimenting with their products prior to purchase. SHHH presents no evidence that wireless retailers do not follow this protocol. In fact, we notice that mobile device retailers typically open the packaging on the customer's behalf for the purpose of programming the handset at the retail center. We further determine that the labeling requirements established by the Commission are sufficiently flexible to allow SHHH or any other interested party to work directly with manufacturers or other marketers of digital wireless handsets to collectively devise a means to convey more information on the handset's external package label.

35. Finally, we find that the Commission provided companies with the necessary latitude to design package labels and provide supplemental information under the handset labeling policy adopted in the *Hearing Aid Compatibility Order*. The Commission did not impose specific, detailed procedures or language requirements, but instead granted handset manufacturers, digital wireless carriers and service providers a good deal of flexibility in determining how best to market compliant handsets. Given the

[116] *See* ATIS May 6, 2005 Letter at 1.

[117] *See* T-Mobile Comments at 5-6.

[118] Because the 2005 and 2001 versions of the ANSI C63.19 standard use the same technical criteria to determine the hearing aid compatibility and inductive coupling capability of a wireless phone, to avoid confusion, the new M and T labeling system may be used for compatibility tests performed under either the 2005 or 2001 version of the standard.

main objective to ensure that consumers have complete information regarding the quality of interoperability between the wireless handset and a hearing aid,[119] we find that the two-pronged approach represents an equitable, balanced means to satisfy the needs of consumers and digital wireless handset providers alike.

36. In light of this analysis, we affirm the labeling requirements established in *Hearing Aid Compatibility Order* and deny this aspect of the CTIA Petition. Moreover, given the obvious importance of educating consumers on hearing aid compatibility of digital wireless phones, we fully expect that all stakeholders will engage in complementary outreach efforts to ensure that consumers can easily identify and purchase digital wireless phones that suit their individual needs. We are hopeful that this outreach would include training retail personnel to provide information to consumers at the point of sale as well as posting information relating to the hearing aid compatibility of given handsets on manufacturer and carrier websites.

E. Live, In-Store Consumer Testing of Digital Wireless Handsets

37. *Background*. In the *Hearing Aid Compatibility Order*, the Commission required that carriers must make all of their hearing aid-compatible handset models available "for consumers to test in each retail store that carriers own or operate."[120] Separately, the Commission encouraged digital wireless service providers "to provide a thirty-day trial period or otherwise be flexible on their return policies for consumers seeking to obtain compliant phones."[121] The Commission reasoned that consumers need ample time within which to experiment with various features and handset models to identify the best match for their individual situation.[122]

38. In its petition for reconsideration, CTIA first requests that we clarify whether all carrier-owned and operated retail outlets must make live, in-store testing available to consumers seeking to purchase digital wireless handsets.[123] Second, CTIA contends that the live testing requirement is unnecessary in view of CTIA's Voluntary Consumer Information Code's fourteen-day trial period for new services, and implies that the Commission should recommend or adopt CTIA's fourteen-day trial period and apply it to all carriers.[124] In its comments, T-Mobile also recommends adoption of the fourteen-day trial period.[125] SHHH asks the Commission to maintain the live, in-store consumer testing requirement because its members "want to test the effectiveness of a product *before* buying it."[126] We clarify and affirm the obligation to provide consumer testing of digital wireless handsets below.

39. *Discussion*. We first clarify that, at this time, all retail outlets owned or operated by wireless carriers or service providers must make live, in-store consumer testing available. We seek comment on extending this requirement in the *Further Notice of Proposed Rulemaking* set forth in Section V., below.

40. Second, we disagree with the suggestions of CTIA and T-Mobile that the live, in-store

[119] *See Hearing Aid Compatibility Order* at 16785 ¶ 85. *See also* 47 C.F.R. § 68.300.

[120] *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16780 ¶ 65. *See also* 47 C.F.R. §§ 20.19(c)(2)(i); 20.19(c)(3)(i); 20.19(d)(2).

[121] *Hearing Aid Compatibility Order,* 18 FCC Rcd at 16788 ¶ 93.

[122] *See id.*

[123] *See* CTIA Petition at 12.

[124] *See id*. at 13.

[125] *See* T-Mobile Comments at 6.

[126] SHHH Comments at 7 (emphasis in original).

consumer testing requirement is unnecessary in view of CTIA's Voluntary Consumer Information Code's fourteen-day trial period for new services. We therefore affirm the live, in-store testing requirement adopted by the Commission. We find that the fourteen-day trial period would not permit consumers to easily determine whether a particular handset meets their individual needs. We agree with SHHH that live testing at the retail outlet permits consumers to undertake a preliminary, but important, evaluation of the volume and interference levels of a given digital wireless phone and will therefore minimize the "hassle" associated with returning the phone at a later time.[127] For this reason, we uphold the live, in-store consumer testing requirement. We also continue to encourage service providers to provide a thirty-day trial period or otherwise adopt a flexible return policy for consumers seeking to obtain hearing aid-compatible digital wireless phones. We strongly believe that mandatory tests conducted live and on-the-spot in retail outlets, in combination with "real-world" testing over the course of thirty days and flexible return policies, which we encourage, will ensure that persons with hearing aids have a meaningful opportunity and sufficient time to identify and become comfortable with digital wireless phones.

F. Compliance Reporting Obligations

41. *Background*. In the *Hearing Aid Compatibility Order*, the Commission required wireless carriers and handset manufacturers to report on compliance efforts every six months from 2004 through 2006, and then annually in 2007 and 2008.[128] The Commission determined that these reports would serve dual purposes: (1) assist the Commission in monitoring handset deployment progress, and (2) provide valuable information to the public concerning the technical testing and commercial availability of hearing aid-compatible handsets.[129] The Commission also stated that the reports would assist its efforts to verify compliance with[130] and undertake an analysis of[131] the fifty percent handset deployment benchmark discussed above.[132] Finally, the Commission permitted digital wireless handset manufacturers and service providers to submit joint reports in order to minimize the reporting burden.[133]

42. In its comments, Sprint recommends that the Commission modify the reporting obligation to permit digital wireless carriers and service providers to file their compliance reports forty-five days after manufacturers file their reports.[134] Sprint submits that this change will result in a more orderly process for all involved because it will permit service providers to reference manufacturer reports in their own compliance reports.[135] In its petition for reconsideration, CTIA argues that information collected through the reports, such as the number of handsets and their retail availability, could be competitively sensitive.[136] Therefore, CTIA seeks clarification on the Commission's use of information set forth in the

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[127] *See id.*

[128] *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).

[129] *See Hearing Aid Compatibility Order*, 18 FCC Rcd at 16787 ¶ 89.

[130] *See id.*

[131] *See id.* at 16783 ¶ 74.

[132] *See infra*. § IV.C.

[133] *See Hearing Aid Compatibility Order*, 18 FCC Rcd at 16787 ¶ 89.

[134] *See* Sprint Comments at 14.

[135] *See id*.

[136] *See* CTIA Petition at 12. *See also* T-Mobile Comments at 12.

reports, implying that the Commission should afford them confidential treatment.[137] We clarify the hearing aid compatibility reporting obligations below.

43. *Discussion.* We first deny Sprint's request that we permit carriers and service providers to file their compliance reports after those filed by handset manufacturers. Whatever convenience might accrue to Sprint in being able to reference manufacturers' filings is not offset by the Commission's interest in having timely, consolidated information. Furthermore, as noted earlier, the reporting obligation set forth in the *Hearing Aid Compatibility Order* permits digital wireless carriers, service providers and handset manufacturers to share information and submit joint filings.[138] Therefore, we find that this flexibility adequately addresses Sprint's concerns while allowing the Commission to efficiently collect the information it needs to monitor industry progress toward deploying hearing aid-compatible digital wireless handsets.[139]

44. With respect to CTIA's request that we clarify the Commission's use of information provided in the reports, we note that the Commission closely reviews the compliance reports to monitor handset deployment progress, with the goal of proactively resolving any potential for delay. We also analyze the data contained in the reports to comply with Congress' requirement that we periodically review and scrutinize our hearing aid compatibility regulations.[140] Moreover, we analyze the information in the reports in furtherance of the commitment to revisit the February 18, 2008, fifty percent handset deployment benchmark, as noted earlier. Just as important, the compliance reports have been and will continue to be a significant source of information for consumers, particularly those with hearing disabilities.

45. Finally, we find that a blanket issuance of confidentiality is unwarranted given the ongoing and vital need of the Commission and the public to analyze the data contained in the reports. As always, parties that seek to keep a report confidential or to preserve the confidentiality of certain information in a report may request confidential treatment under Section 0.459 of the Commission's rules.[141] We remind parties that the rule requires the requesting party to justify fully its request by providing enough information for the Commission to determine the need for confidential treatment.[142] We further note that the rule requires the party requesting confidential treatment to submit the complete filing as well as a redacted copy omitting the allegedly confidential information from the filing, which the Commission will make available to the public. We will address any requests for confidential treatment of material contained in the compliance reports on a case-by-case basis.[143]

G. TDMA Carrier Compliance with the Preliminary Handset Deployment Benchmark

46. *Background.* As noted earlier, in the *Hearing Aid Compatibility Order*, the Commission established specific benchmarks for the deployment of hearing aid-compatible digital wireless

[137] *See* CTIA Petition at 12.

[138] *See Hearing Aid Compatibility Order*, 18 FCC Rcd at 16787 ¶ 89.

[139] We note that Sprint is a signatory to the compliance report filed by the Alliance for Telecommunications Industry Solutions (ATIS). *See* ATIS Incubator Solutions Program #4, Status Report #2, WT Docket No. 01-309 (filed Nov. 17, 2004) at 9.

[140] *See* 47 U.S.C. § 610(f).

[141] *See* 47 C.F.R. § 0.459.

[142] *See id.* § 0.459(b).

[143] *See* Examination of Current Policy Concerning the Treatment of Confidential Information Submitted, GC Docket No. 96-55, *Order*, 13 FCC Rcd 24816, 24854-55 ¶¶ 66-67 (1998).

handsets.[144] Separate from the preliminary handset deployment benchmark for Tier I wireless carriers discussed above,[145] the Commission adopted a preliminary handset deployment benchmark for all other wireless carriers without regard to the air interface(s) employed by the carriers. Specifically, the Commission required that, by September 16, 2005, each digital wireless handset manufacturer must make available to wireless carriers and each wireless carrier providing digital wireless services must make available to consumers at least two handsets for each air interface it offers, which provide the reduced RF emissions (U3 rating) necessary to enable acoustic coupling without interference.[146] The Commission stated that this benchmark applies to each air interface offered by the digital wireless handset manufacturer and the carrier providing digital wireless services, and did not distinguish among different air interfaces.[147] As noted earlier, in adopting this preliminary benchmark for smaller, non-nationwide wireless carriers, the Commission sought to stimulate access to telecommunications services for individuals with hearing disabilities.

47. We received a joint petition for reconsideration of the handset deployment benchmarks from the TDMA Carriers and Rural Telecommunications Group (RTG).[148] In their joint petition, the TDMA Carriers and RTG express concern that neither new handsets nor enhancements to existing models will be developed for the obsolete TDMA air interface and therefore they will have difficulty complying with the handset deployment benchmarks.[149] They further explain that their members are presently in various stages of overbuilding their existing TDMA networks with different digital air interfaces and thus they envision an ongoing need to continue operating the TDMA networks beyond September 16, 2005, the date for compliance with the preliminary handset deployment benchmark.[150] Therefore, the TDMA Carriers and RTG ask the Commission to consider carriers operating TDMA networks that are overbuilding their networks with alternate digital technologies to be compliant with the September 16, 2005, preliminary handset deployment benchmark if the carriers make handsets associated with the alternate technology available to their customers.[151] In its comments, the Rural Cellular Association (RCA) supports the TDMA Carriers and RTG and asks the Commission to grant relief on a class-wide basis.[152] We grant in part the TDMA Carriers and RTG Petition and modify the obligation of TDMA carriers to comply with the handset deployment benchmarks, as discussed below.

48. Discussion. We modify Section 20.19(c) of our rules to specify that we consider a wireless carrier operating a TDMA network that plans to overbuild (*i.e.*, replace) its network to employ alternative

[144] *See supra* § III. *See also Hearing Aid Compatibility Order*, 18 FCC Rcd at 16775-16776 ¶ 53; 47 C.F.R. §§ 20.19(c)-(d).

[145] *See supra* § IV.B.

[146] *See Hearing Aid Compatibility Order*, 18 FCC Rcd 16775-76 ¶ 53. *See also* 47 C.F.R. §§ 20.19(c)-(d).

[147] *See Hearing Aid Compatibility Order*, 18 FCC Rcd 16775-76 ¶ 53.

[148] The TDMA Carriers (Public Service Cellular, Inc.; Missouri RSA No. 7 Limited Partnership d/b/a Mid-Missouri Cellular; Minnesota Southern Wireless Company d/b/a Hickory Tech; Northwest Missouri Cellular Limited Partnership; Illinois Valley Cellular RSA 2-II Limited Partnership; and Illinois Valley Cellular RSA 2-III Limited Partnership) are a group of smaller carriers that provide wireless services using the TDMA air interface. RTG represents smaller carriers that provide wireless services in rural areas using the TDMA air interface. *See* TDMA Carriers and RTG Petition at 1-2.

[149] *See* TDMA Carriers and RTG Petition at 4.

[150] *See id.*

[151] *See id.* at 5-6.

[152] *See* RCA Comments at 3. *See also* Sprint Comments at 12; Cingular Reply Comments at 1-2.

air interfaces to be compliant with the September 16, 2005, preliminary handset deployment benchmark if the carrier: (1) offers two hearing aid-compatible handset models to its customers that receive service from the overbuilt (*i.e*., non-TDMA) portion of its network, (2) overbuilds (*i.e*., replaces) its entire network, and (3) completes the overbuild by September 18, 2006.[153] Pursuant to RCA's request, we clarify that this relief applies to any wireless carrier that fits these criteria. Nonetheless, we specify that this relief is limited in scope and applies only to carriers that fully intend to completely replace their existing TDMA networks.

49. We provide this rule modification in light of the Commission's recognition that small wireless carriers are often unable to influence vendor product development,[154] and because of the record evidence that supports a conclusion that wireless carriers in general have migrated away from the TDMA air interface.[155] Furthermore, we acknowledge that a technology overbuild represents a considerable undertaking and requires a significant investment. We therefore are hopeful that this limited relief will allow TDMA carriers, which often have small numbers of subscribers and thus lower revenues, to focus their limited resources primarily on upgrading their networks. Finally, we agree that requiring TDMA carriers to offer two compliant TDMA handset models could have the unintended consequence of forcing these carriers to shut down their networks, which may deprive subscribers of service.[156]

50. Finally, we emphasize the importance of ensuring that hearing aid-compatible handsets are made available to consumers in the shortest period possible. In light of the fact that the necessary technology to complete these network overbuilds is readily available, and given the status of TDMA carrier overbuilds,[157] we believe that it is appropriate to establish September 18, 2006, as the date certain by which carriers must complete their TDMA network overbuilds. In circumstances where TDMA carriers do not intend to completely replace existing networks, we will entertain individual requests for relief. We will evaluate these requests on a case-by-case basis under our general waiver standard.[158] We caution at the outset that, to the extent that a carrier is requesting a waiver of the hearing aid compatibility rules in order to accommodate its transition from one air interface to another, it must demonstrate "a clear path to full compliance" by, for example, providing concrete evidence of its documented commitment to a date certain for that transition to be accomplished.[159]

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[153] We note that September 18, 2006, is the date by which each provider of public mobile service must include in their handset offerings at least two handset models for each air interface that provide inductive coupling. *See* 47 C.F.R. § 20.19(d)(2). The revised rule is set forth at Appendix B to this *Order on Reconsideration*.

[154] *See Non-Nationwide Carriers Order*, 17 FCC Rcd at 14844 ¶¶ 10-11.

[155] *See, e.g*., SHHH Comments at 7; Cingular Reply Comments at 2.

[156] *See* Cingular Reply Comments at 2.

[157] *See* Letter from Michael S. Bennet, counsel for RTG, and Joshua Zeldis, counsel for the TDMA Carriers, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 01-309 (filed May 27, 2005).

[158] *See* 47 C.F.R. §§ 1.3, 1.925. *See also WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), *appeal after remand*, 459 F.2d 1203 (D.C. Cir. 1972), *cert. denied*, 409 U.S. 1027 (1972); *see also Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990) (a waiver of the Commission's rules may be granted in instances where the particular facts make strict compliance inconsistent with the public interest if applied to the petitioner and when the relief requested would not undermine the policy objective of the rule in question).

[159] *See* Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Calling Systems, CC Docket No. 94-102, *Order to Stay*, 18 FCC Rcd 20987, 20997 ¶ 27 (2003).

H. The *De Minimis* Exception for Digital Wireless Carriers, Service Providers and Handset Manufacturers

51. *Background*. As noted earlier, the Commission recognized that the hearing aid compatibility requirements adopted in the *Hearing Aid Compatibility Order* could have a disproportionate impact on small manufacturers or those that sell only a small number of digital wireless handsets in the United States, as well as on carriers that offer only a small number of digital wireless handsets.[160] To resolve this concern, the Commission adopted a *de minimis* exception, which relieves wireless carriers, service providers and handset manufacturers that offer two or fewer digital wireless handsets in the United States from the hearing aid compatibility compliance obligations set forth in the *Hearing Aid Compatibility Order*.[161]

52. In its petition for reconsideration, RIM asks the Commission to clarify the *de minimis* exception.[162] RIM explains that it offers nine different BlackBerry Wireless Handheld (BlackBerry) devices – one for each of the iDEN and CDMA air interfaces and seven for the GSM/GPRS air interface.[163] According to RIM, to the extent the *de minimis* exception rule takes into account *all* handsets offered by manufacturers across *all* air interfaces, RIM and other similarly-situated handset manufacturers may not qualify for the *de minimis* exception and thus would be disadvantaged.[164] Therefore, RIM requests that the Commission clarify that the *de minimis* exception is "meant to apply on a per-air interface basis."[165] Likewise, CTIA seeks clarification as to whether the *de minimis* exception applies to a supplier's or carrier's total activity or whether it applies on an air interface-specific basis.[166] Pursuant to its comments, SHHH does not oppose RIM's request that the *de minimis* exception apply on an air interface basis.[167] As set forth below, we grant the RIM Petition and clarify that the *de minimis* exception applies to digital wireless carriers, service providers and handset manufacturers on a per air interface basis.

53. *Discussion*. We clarify that the *de minimis* exception applies on a per air interface basis, rather than across a manufacturer's or carrier's entire product line. This clarification makes explicit the consistency between the handset deployment benchmarks, which expressly apply on a per air interface basis,[168] and the *de minimis* exception, which relieves wireless carriers, service providers and handset manufacturers that offer two or fewer digital wireless handsets in the U.S. from complying with the hearing aid compatibility requirements, including the deployment benchmarks.[169] As written, the *de minimis* exception could appear to require RIM to offer the requisite number of compliant handsets on

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[160] *See supra* § IV.B.

[161] *See Hearing Aid Compatibility Order*, 18 FCC Rcd 16781 ¶ 69 (also specifying that wireless carriers, service providers and handset manufacturers that offer three digital wireless handset models must offer at least one compliant handset by September 16, 2005). *See also* 47 C.F.R. §§ 20.19(e)(1)-(2).

[162] *See* RIM Petition at 1.

[163] *See id.* at 2.

[164] *See id*. at 1 (emphasis added). *See also* Sprint Comments at 12.

[165] RIM Petition at 1.

[166] *See* CTIA Petition at 14.

[167] *See* SHHH Comments at 7.

[168] *See* 47 C.F.R. §§ 20.19(c)-(d).

[169] *See id.* at § 20.19(e).

each of the iDEN, CDMA and GSM/GPRS air interfaces because RIM manufactures a total of nine devices. We agree that the *de minimis* exception could be interpreted as requiring all digital wireless carriers, service providers and handset manufacturers, regardless of size, to either enter the U.S. market with two compliant handsets or not enter the market at all.[170] We do not intend to force RIM or any other similarly-situated digital wireless carrier, service provider or handset manufacturer to potentially either triple its product offering for the iDEN and CDMA air interfaces or withdraw its existing products from the U.S. wireless market.[171] We find that this outcome could have the effect of retarding technological progress and limiting competition.[172] Therefore, we grant the RIM Petition and clarify that the *de minimis* exception applies on a per air interface basis, rather than across the entire product line of a given digital wireless carrier, service provider or handset manufacturer.[173]

I. Enforcement of Hearing Aid Compatibility Matters

54. *Background*. The HAC Act expressly states that "[t]he Commission shall delegate to each State commission the authority to enforce within such State compliance with the specific regulations that the Commission issues under subsections (a) and (b), conditioned upon the adoption and enforcement of such regulations by the State commission."[174] In light of this mandate, the Commission extended Part 68, Subpart E of its rules, which pertain to enforcement of hearing aid compatibility in wired telephones, to permit digital wireless service subscribers to initiate complaints at state commissions in the event that either digital wireless carriers, service providers or handset manufacturers fail to comply with the hearing aid compatibility rules.[175] The Commission reasoned that extension of its Part 68, Subpart E rules into the wireless context would benefit individuals with hearing disabilities because they have experience with these well-established procedures, and that consumers and the public interest would be best served by a uniform, technology-neutral process for resolving complaints.

55. Verizon and CTIA ask us to reconsider the Commission's decision to delegate authority to the states to enforce our rules governing the hearing aid compatibility of digital wireless phones, urging us to assert such authority based on the Commission's exclusive jurisdiction over radio frequency emissions.[176] Cingular, T-Mobile and Sprint agree, arguing that the states have little or no legal authority

[170] *See* RIM Petition at 2. *See also* CTIA Petition at 13; Sprint Comments at 11; Cingular Reply Comments at 3.

[171] *See* Cingular Reply Comments at 3.

[172] *See* RIM Petition at 2.

[173] SHHH also asks the Commission to narrow the *de minimis* exception by clarifying that "when a manufacturer has only one handset in any particular interface, that it would be subject to the HAC rule." SHHH Comments at 7. RIM responds that the SHHH request would "actually set a higher standard of compliance for smaller manufacturers than for larger ones, clearly not the intent of the Commission in establishing the exception in the first place." RIM Reply Comments at 1. We address issues related to this and other ways of potentially narrowing the *de minimis* exception in the *Further Notice of Proposed Rulemaking* set forth in Section V., below.

[174] 47 U.S.C. § 610(h).

[175] *See* 47 C.F.R. §§ 68.414-423. *See also Hearing Aid Compatibility Order*, 18 FCC Rcd at 16789 ¶ 95; 47 C.F.R. § 20.19(g). We note that the Commission's rules provide that enforcement of hearing aid compatibility is delegated to those states that adopt the Commission's rules and provide for enforcement of the rules. *See id*. § 68.414. The Commission's rules further provide that persons with complaints that are not addressed by the states may bring informal complaints to the Commission's Consumer & Governmental Affairs Bureau. *See id.* at § 68.415.

[176] *See* CTIA Petition at 14-17; Verizon Petition at 6-10. *See also* Letter from Robert G. Morse, Wilkinson, Barker, Knauer, LLP, Counsel to CTIA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 01-309 (filed Aug. 25, 2004).

over the technical aspects of wireless services and equipment.[177]

56. *Discussion*. We find that the Commission properly delegated authority to the states to enforce our rules governing the hearing aid compatibility of digital wireless handsets in cases where the states have adopted these rules and provide for enforcement. We clarify, however, that the Commission retains exclusive jurisdiction over the technical standards for hearing aid compatibility. Subsection (c) of Section 710 states that "The Commission shall establish or approve such technical standards as are required to enforce this section."[178] As explained below, we believe that our exclusive jurisdiction over technical standards extends to determinations whether particular equipment complies with our standards. Thus, states must refer questions that arise in the context of an enforcement action as to whether particular equipment complies with our technical standards to the Commission's Office of Engineering and Technology. OET will determine whether particular equipment complies with the Part 20 hearing aid compatibility rules, including the ANSI C63.19 technical standard (which directly relates to RF emissions, interference and telecoil inductive coupling). Once OET has made such a determination based on a referral from a state, the state retains authority to determine and pursue appropriate enforcement action. We modify Section 20.19 of our rules accordingly.[179]

57. There are several reasons for our conclusion that our exclusive jurisdiction over technical standards extends to determinations whether particular equipment complies with our standards. Whether equipment complies with our technical standards is a highly complex determination that requires particular expertise. Slight variations in measurement techniques or in reading a testing report can lead to widely varying results. At the same time, most wireless phones are marketed nationwide, and our hearing aid compatibility requirements apply nationwide. Moreover, the Commission certifies equipment on a nationwide basis.[180] Under our equipment certification procedures, usually, a manufacturer supplies its test data with its application to the Commission for equipment authorization.[181] Alternatively, the Commission may designate Telecommunication Certification Bodies (TCBs) to approve equipment as required under Part 2 of our rules.[182] If one state commission were to find that a particular handset is not compliant with the Commission's rules, that state would effectively be making a determination for the entire nation.[183] Even worse, if different states came to different conclusions on whether a particular handset complies with our rules, manufacturers and carriers might have difficulty continuing to provide service at all.[184] In both cases, the Commission's reliance on certification would be undermined.[185] Inconsistent technical analysis and testing methodologies thus threaten to render our technical standards

[177] *See* Cingular Reply Comments at 4; Sprint Comments at 10; T-Mobile Comments at 7.

[178] 47 U.S.C. § 610(c). This is consistent with the Commission's longstanding jurisdiction over radiofrequency interference and related technical matters. *See Broyde v. Gotham Tower, Inc*., 13 F.3d 994 (6th Cir. 1994), *citing Head v. New Mexico Board of Examiners in Optometry*, 374 U.S. 424, 430 n. 6 (1963) ("[T]he FCC's … jurisdiction over the regulation of radio frequency interference [and] 'over technical matters' associated with the transmission of radio signals 'is clearly exclusive.'") and *Freeman v. Burlington Broadcasters, Inc*., 204 F.3d 311, 321 (2nd Cir. 2000) ("Congress intended that the FCC enjoy exclusive jurisdiction to regulate RF interference.").

[179] The revised rule is set forth at Appendix B to this *Order on Reconsideration*.

[180] *See* 47 C.F.R. Part 2, Subpart J.

[181] *See* 47 C.F.R. § 2.907(a).

[182] *See* 47 C.F.R. § 2.960(a).

[183] *See* CTIA June 2 Letter.

[184] *See id.*

[185] *See id.*

ineffective. Accordingly, as stated above, we clarify that our exclusive jurisdiction over technical standards extends to determinations of whether particular wireless handsets comply with those standards, and expressly incorporate compliance determinations into our rules.

58. We conclude that unless we retain this degree of control over the administration of the technical standards we have promulgated under Section 710(c), our rules will likely cease to function as a standard, given the complexity of the technology involved and the special expertise necessary to test and evaluate whether a wireless phone complies with our HAC Act-based technical standards. If the States were to assume this role, we predict that the standards would be applied unevenly, which would disrupt the certainty and uniformity of regulation necessary to realize economies of scale in manufacturing and distribution, and to market phones on a nationwide basis.[186] Because our continued oversight of the technical standards is therefore an integral part of our ability to establish workable standards that serve the public interest, our performance of this evaluative function (*i.e.*, the continued oversight) constitutes an exercise of our mandate under Section 710(c) rather than Sections 710(a) or (b). Thus, the delegation requirement of Section 710(h) – which applies only to "specific regulations that the Commission issues under subsections (a) and (b)"[187] – does not require us to delegate this fact-finding function to the States. Accordingly, where a State chooses to adopt the Commission's hearing aid compatibility rules, and hence, is delegated authority for enforcement pursuant to Section 710(h), the State shall refer to the Commission's Office of Engineering and Technology any questions involving factual determinations of compliance with the standard. OET will render a determination in response to each request so that the State can properly carry out the State's enforcement role, including interactions with the complainant and equipment supplier, and the determination of the appropriate remedy.

59. We recognize that CTIA and Verizon seek the Commission to go further, and to take enforcement matters entirely away from the states. We believe this argument is incompatible with the language of the HAC Act. As noted, the HAC Act states that "[t]he Commission shall delegate to each State commission the authority to enforce within such State compliance with the specific regulations that the Commission issues under subsections (a) and (b), conditioned upon the adoption and enforcement of such regulations by the State commission."[188] No party has raised a compelling argument to counter this plain language, and we thus conclude that states that have adopted our rules and provide for enforcement continue to have enforcement authority. Moreover, we conclude that allowing states to make factual determinations incidental to enforcement other than those involving compliance with our technical rules – such as determining compliance with our labeling requirements, for example – do not run the same risk of undermining standards within exclusive Commission jurisdiction. Such determinations do not require specialized expertise, are not highly complex, and are unlikely to vary significantly from state to state. Accordingly, states that have adopted our rules and provide for enforcement may continue to make such determinations.

60. Finally, consistent with our affirmation that states may handle enforcement of the Commission's hearing aid compatibility requirements where they have adopted our rules and provide for such enforcement, we affirm the Commission's decision to apply the obligations and procedures applicable in the wireline telephone context (set forth in Part 68, Subpart E of our rules) to parties named in informal complaints involving hearing aid compatibility of digital wireless phones. The deadlines set forth in these rules ensure that these informal complaints will be addressed in an expeditious manner (by

[186] *See id*.

[187] 47 U.S.C. § 610(h).

[188] *Id*.

providing a thirty-day period during which time state personnel shall attempt to resolve the dispute),[189] and permit consumers or states to refer complaints to the Commission within six months where the state fails to act or has not adopted or incorporated the Commission's rules.[190] We continue to believe that the deadlines contained in the rules will ensure that states address informal complaints quickly and efficiently, and will create more certainty for consumers and wireless carriers.[191]

V. FURTHER NOTICE OF PROPOSED RULEMAKING

61. *Background*. In the *Order on Reconsideration*, above, we clarified that the live, in-store consumer testing requirement applies to all retail outlets owned or operated by wireless carriers or service providers.[192] In addition, we clarified that the *de minimis* exception, which exempts from the hearing aid compatibility requirements wireless carriers, service providers and handset manufacturers that offer two or fewer digital wireless handset models, applies on a per air interface basis, rather than across an entire product line.[193] As set forth below, we seek comment on: (1) extending 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.

A. Extending the Obligation to Provide Live, In-Store Consumer Testing

62. First, we seek comment on extending the live, in-store consumer testing requirement to retail outlets that are not directly owned or operated by wireless carriers or service providers. Although we clarified today that all retail outlets owned or operated by wireless carriers or service providers must make live, in-store consumer testing available, we are concerned that limiting this requirement to these retail outlets may prevent us from fully effectuating Congress' requirement that we "establish such regulations as are necessary to ensure reasonable access to telephone service by persons with impaired hearing."[194] Moreover, in its petition, CTIA asks the Commission to "clarify whether the [Commission] has legal authority and the scope of that authority to require retail stores to comply"[195] with the live, in-store testing requirement. Accordingly, we seek comment on this CTIA request. If we find that we have the authority explicitly to extend our hearing aid compatibility rules to independent retailers, should we do so?

63. We also seek comment on the impact that this proposal would have on small business retailers and independent retailers. Would extending this requirement create a more level playing field for different types of retailers? Or, would extending this requirement create an unacceptable burden for independent retailers, small business retailers, or both? For instance, will small business retailers have the physical space to fulfill this requirement? Do small business retailers have the sales volume to support implementation of this requirement? We encourage commenters to be specific as to the impact of this

[189] *See* 47 C.F.R. § 68.414 (stating that state procedures for enforcing hearing aid compatibility rules must provide a thirty-day period after a complaint is filed, "during which time state personnel shall attempt to resolve a dispute on an informal basis[]").

[190] *See id*. (stating that "[i]f the state has not adopted or incorporated" the Commission's rules, or "failed to act within six months from the filing of a complaint with the state public utility commission, the Commission will accept such complaints[]").

[191] *Cf.* T-Mobile Comments at 7 (arguing that "an entirely different system" would potentially confuse customers and complicate matters for carriers).

[192] *See supra* § IV.E.

[193] *See supra* § IV.H.

[194] 47 U.S.C. § 610(a).

[195] CTIA Petition at 12.

proposed modification.

64. We note that 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. We further note that independent retailers act as agents for wireless carriers and service providers in selling wireless services. As Section 217 of the Communications Act explicitly makes carriers responsible for the acts, omissions, and failures of their agents, among others, we seek comment on the nature of any contract provisions that would require the retailers to provide live, in-store consumer testing.[196] Further, because Section 217 does not apply to service providers who are not carriers, we seek comment on, whether under provisions of general agency law and the HAC Act, we could require those service providers, in their contracts with retailers selling their wireless services, to require live, in-store consumer testing. We also seek comment on the extent to which carriers and service providers should be expected to monitor and enforce such contract provisions regarding this testing requirement.

65. Finally, we seek comment on how many small business and independent retailers have adopted the fourteen-day trial period for new services set forth in the CTIA Voluntary Consumer Information Code (CTIA Code). Which retailers are bound by the CTIA Code and offer a fourteen-day trial period? Are there major independent retailers that do not have a two week return policy? What percentage of carriers' service plans is purchased through independent retailers? Do manufacturers own any retail stores? If so, what percentage of manufacturers' handsets is purchased through an independent retailer? Are independent retailers currently preparing to comport with our hearing aid compatibility rules, specifically with our rules on the number of compliant handsets that must be offered for sale and our live, in-store consumer testing rules? Relatedly, we also seek comment on how parties envision consumers with hearing disabilities will be impacted in instances where independent retailers do not provide live, in-store testing or a thirty-day trial period, which the Commission encourages. If some independent retailers do not engage in practices that comport with our hearing aid compatibility rules, how will this present problems for hearing-impaired consumers? For instance, do parties foresee instances where independent retailers would claim that certain wireless phone models are compliant yet would not allow consumers to return handsets if hearing aid compatibility-related problems arose? Have there already been instances where independent retailers have claimed that certain phone models were hearing aid-compatible but refused to allow consumers to return handsets if hearing aid compatibility-related problems arose? We have determined that the ability to return handsets that do not comply with our rules is not a substitute for an in-store testing requirement for stores owned or operated by wireless carriers or service providers. What characteristics or independent retailers would support a different determination for the application of the in-store testing requirement in their case? Would returning wireless phones that present hearing aid compatibility-related problems be more difficult when handsets are purchased from an independent retailer or a small business retailer? We intend to follow these developments closely after the September 16, 2005, handset deployment date. As noted earlier, we believe that persons with hearing disabilities must have a meaningful opportunity and sufficient time to identify and become familiar with digital wireless phones.

B. Narrowing the *De Minimis* Exception

66. Second, we seek comment on whether to narrow the *de minimis* exception so as to exempt from the hearing aid compatibility requirements wireless carriers, service providers and handset manufacturers that offer one digital wireless handset model per air interface, or whether we should narrow

[196] *See* 47 U.S.C. § 217.

the *de minimis* exception in some other way.[197] Specifically, we seek comment on whether the current rule reduces the ability of consumers with hearing aids and cochlear implants to have access to wireless devices.[198] We seek comment 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.[199] We seek comment on the number of wireless carriers, service providers and manufacturers that would be affected by any such change in the rule, including the impact on small businesses. We encourage commenters to be specific and to provide empirical evidence as to the impact of narrowing the *de minimis* exception.

VI. CONCLUSION

67. In this *Order on Reconsideration*, we affirm the Commission's decision to adopt the ANSI C63.19 technical standard as an established technical standard and reiterate the Commission's ongoing commitment to expeditiously review final updated versions of the standard either on our own motion or upon request. We also affirm the Commission's authority to establish the preliminary handset deployment benchmark specific to Tier I wireless carriers, and we modify the requirement in order to provide greater certainty while not adversely affecting hearing impaired individuals' access to compatible phones. In addition, we affirm the handset labeling and live, in-store consumer testing framework, as well as the compliance reporting obligation. We modify with conditions the preliminary handset deployment obligation for digital wireless carriers employing TDMA technology, given our recognition that the TDMA air interface has become increasingly obsolete. We clarify that the *de minimis* exception applies on a per air interface basis. We also clarify that the Commission retains exclusive jurisdiction over the technical standards for hearing aid compatibility. In this *Further Notice of Proposed Rulemaking*, we seek comment on: (1) extending 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 to narrow the *de minimis* exception so as to exempt from the hearing aid compatibility requirements wireless carriers, service providers and handset manufacturers that offer one digital wireless handset model per air interface, as well as other potential ways to narrow the *de minimis* exception. Our actions today further Congress' goal of ensuring access to telecommunications services by individuals with hearing disabilities and are critical in light of the rising importance of wireless communication.

VII. PROCEDURAL MATTERS

A. Comment Filing Procedures

68. *Comments and reply comments*. Pursuant to the applicable procedures set forth in sections 1.415 and 1.419 of the Commission's rules,[200] interested parties may file comments in response to the *Further Notice of Proposed Rulemaking* on or before 60 days after publication in the Federal Register, and reply comments on or before 90 days after publication in the Federal Register. **All filings related to this Order on Reconsideration and Notice of Proposed Rulemaking should refer to WT Docket No. 01-309**.

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[197] For example, SHHH requests that we should require a manufacturer that has only one handset in any particular interface to make the phone compliant with our hearing aid compatibility requirements. *See* SHHH Comments at 7. We note that although a number of parties expressed general support for the SHHH comments, these parties did not expressly comment on or endorse the SHHH proposal. *See, e.g.,* IHS Comments at 1; ALDA Comments at 1. Further, only RIM expressly commented on this proposal. *See* RIM Reply Comments at 1; *see supra* n.173.

[198] *See* SHHH Comments at 7-8.

[199] *See* RIM Petition at 2.

[200] *See* 47 C.F.R. §§ 1.415, 1.419.

Comments may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: http://www.fcc.gov/cgb/ecfs/ or the Federal eRulemaking Portal: http://www.regulations.gov. Filers should follow the instructions provided on the website for submitting comments.

    - For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.

- Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

    Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

    - The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

    - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

    - U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW, Washington DC 20554.

All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554. Parties shall also serve one copy with the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW, Room CY-B402, Washington, D.C. 20554, (202) 488-5300, or via e-mail to fcc@bcpiweb.com.

69. *Availability of documents*. The public may view the documents filed in this proceeding during regular business hours in the FCC Reference Information Center, Federal Communications Commission, 445 12th Street, S.W., Room CY-A257, Washington, D. C. 20554, and on the Commission's Internet Home Page: <http://www.fcc.gov>. Copies of comments and reply comments are also available through the Commission's duplicating contractor: Best Copy and Printing, Inc. (BCPI), Portals II, 445

12th Street, SW, Room CY-B402, Washington, DC 20554, telephone 1-800-378-3160, or via e-mail at the following e-mail address: <WWW.BCPIWEB.COM>. Accessible formats (computer diskettes, large print, audio recording and Braille) are available to persons with disabilities by contacting Brian Millin, of the Consumer & Governmental Affairs Bureau, at (202) 418-7426, TTY (202) 418-7365, or at <bmillin@fcc.gov>.

B. *Ex Parte* Presentations

70. The *Further Notice of Proposed Rulemaking* is a permit-but-disclose rulemaking proceeding, subject to the "permit-but-disclose" requirements under Section 1.1206(b) of the Commission's rules.[201] *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed pursuant to the Commission's Rules.[202]

C. Regulatory Flexibility Act

71. The Regulatory Flexibility Act of 1980, as amended (RFA),[203] requires that a regulatory flexibility analysis be prepared for notice-and-comment rule making proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."[204] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[205] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[206] A "small business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[207]

72. Final Regulatory Flexibility Certification. As required by the RFA,[208] the Commission has prepared a Final Regulatory Flexibility Certification of the possible impact on small entities of the proposals in the *Order on Reconsideration*. In this proceeding the Commission acts to ensure that every American has access to the benefits of digital wireless telecommunications, including individuals with hearing disabilities. The Commission grants in part and denies in part petitions for reconsideration of the *Hearing Aid Compatibility Order*, which lifted the blanket exemption for digital wireless telephones under the HAC Act.

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[201] *See* 47 C.F.R. § 1.1206(b)(2).

[202] *See generally id.* at §§ 1.1202, 1.1203, 1.1206.

[203] The RFA, *see* 5 U.S.C. §§ 601 – 612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

[204] 5 U.S.C. § 605(b).

[205] *Id*. at § 601(6).

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

[207] 15 U.S.C. § 632.

[208] *See* 5 U.S.C. § 603. The RFA has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996). *See id.* at §§ 601-612.

73. Pursuant to the RFA,[209] a Final Regulatory Flexibility Analysis (FRFA) was incorporated into the *Hearing Aid Compatibility Notice*.[210] The instant *Order on Reconsideration* modifies Section 20.19(c) of the Commission's rules on hearing aid compatible mobile handsets in response to a petition from wireless carriers operating TDMA networks and overbuilding them to employ alternative air interfaces. These carriers will be considered compliant with the September 16, 2005, preliminary handset deployment benchmark if they: (1) offer two hearing aid-compatible handset models to customers that receive service from the overbuilt (*i.e*., non-TDMA) portion of the network, (2) are overbuilding (*i.e*., replacing) their entire network, and (3) complete the overbuild by September 18, 2006. Therefore, because we find the action taken in the instant *Order on Reconsideration* amounts to an exception and maintains the status quo for affected entities for a period of approximately one year, and that any impact overall is positive, we certify that the action described will not result in a significant economic impact on a substantial number of small entities.

74. In addition, we certify that our decision to modify the preliminary handset deployment benchmark for Tier I wireless carriers will not have a significant economic impact on a substantial number of small entities. Tier I wireless carriers are not small.

75. The Commission will send a copy of the *Order on Reconsideration*, including a copy of this Final Regulatory Flexibility Certification, in a report to Congress pursuant to the Congressional Review Act.[211] In addition, the *Order on Reconsideration* and this final certification will be sent to the Chief Counsel for Advocacy of the SBA, and will be published in the Federal Register.[212]

76. *Initial Regulatory Flexibility Analysis*. As required by the RFA, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible impact on small entities of the proposals in the instant *Further Notice of Proposed Rulemaking*.[213] The IRFA is set forth in Appendix C. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines for comments on the *Further Notice of Proposed Rulemaking*, and must have a separate and distinct heading designating them as responses to the IRFA. The Commission will send a copy of the *Further Notice of Proposed Rulemaking*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.[214]

D. Paperwork Reduction Analysis

77. The *Order on Reconsideration* does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law No. 104-13. In addition, therefore, it does not contain any new or modified "information collection burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506 (c)(4).

78. Likewise, the *Further Notice of Proposed Rulemaking* does not contain proposed information collection (s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any proposed "information collection burden for small business concerns

[209] *See id.* at § 603. The RFA has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996). *See id*. at §§ 601-612.

[210] *See Hearing Aid Compatibility Order*, 18 FCC Rcd at 16795.

[211] *See* 5 U.S.C. § 801(a)(1)(A).

[212] *See id.* at § 605(b).

[213] *See generally* 5 U.S.C. § 603.

[214] *Id.*

with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506 (c)(4).

VIII. ORDERING CLAUSES

79. IT IS ORDERED that, pursuant to the authority of sections 1, 4(i), 7, 10, 201, 202, 208, 214, 301, 302, 303, 308, 309(j), 310, and 710 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 157, 160, 201, 202, 208, 214, 301, 302, 303, 308, 309(j), 310, and 610, this *Order on Reconsideration and Further Notice of Proposed Rulemaking* IS HEREBY ADOPTED

80. IT IS FURTHER ORDERED that Part 20 of the Commission's rules, 47 C.F.R. Part 20, is AMENDED as specified in Appendix B, effective 30 days after publication of the *Order on Reconsideration* in the Federal Register.

81. IT IS FURTHER ORDERED that pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments on the *Further Notice of Proposed Rulemaking* on or before 60 days after publication of the *Further Notice of Proposed Rulemaking* in the Federal Register and reply comments on or before 90 days after publication in the Federal Register.

82. IT IS FURTHER ORDERED that the petition for reconsideration of the *Hearing Aid Compatibility Order* filed by the Cellular Telecommunications and Internet Association IS GRANTED IN PART AND DENIED IN PART to the extent set forth herein.

83. IT IS FURTHER ORDERED that the petition for reconsideration of the *Hearing Aid Compatibility Order* filed by Verizon Wireless IS GRANTED IN PART AND DENIED IN PART to the extent set forth herein.

84. IT IS FURTHER ORDERED that the petition for reconsideration of the *Hearing Aid Compatibility Order* filed by Research in Motion Limited IS GRANTED to the extent set forth herein.

85. IT IS FURTHER ORDERED that the petition for reconsideration of the *Hearing Aid Compatibility Order* filed by the TDMA Carriers (Public Service Cellular Inc., Missouri RSA No.7 Limited Partnership dba Mid Missouri Cellular; Minnesota Southern Wireless Company dba Hickory Tech, Northwest Missouri Cellular Limited Partnership, Illinois Valley Cellular RSA 2-1 Limited Partnership, Illinois Valley Cellular 2-II Limited Partnership and Illinois Valley RSA 2-III Limited Partnership) and Rural Telecommunications Group and IS GRANTED IN PART to the extent set forth herein.

86. IT IS FURTHER ORDERED that the Commission's Consumer Information Bureau, Reference Information Center, SHALL SEND a copy of the *Order on Reconsideration and Further Notice of Proposed Rulemaking*, including the Final Regulatory Flexibility Certification and the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

PARTIES

Parties Filing Petitions (4)

Name of Party	Abbreviation
Cellular Telecommunications and Internet Association	CTIA
Research in Motion Limited	RIM
TDMA Carriers and the Rural Telecommunications Group (joint)	TDMA Carriers and RTG
Verizon Wireless	Verizon

Parties Filing Comments As of June 2, 2005 (83)

Name of Party	Abbreviation
Alan J. Brown	
Algene Ott Mendiola	
American National Standards Institute Accredited Standards Committee C63 (EMC) Subcommittee 8 (Medical Devices)	ANSI
Andrew B. Finlayson	
Angela Wieker	
Anne Pope	
Arlene Romoff	
Association of Late-Deafened Adults, Inc.	ALDA
Barbara Bryan	
Barbara S. Dagen	
BJ Hoffstadt	
Carol Burns	
Carrie Welter	
Cathy A. Sanders	

Charles J. Kantor

Clark O. Anderson

Dana L. Simon

Daniel J. Sheridan

David S. Viers

Dawn Hayes

Debbie Mohney

Diana Bender

Don Pickens

Don Senger

Donald J. Ray

Electone, Inc.

Esther Snively

Frances J Bawden

George De Vilbiss

Harvey David Branfield

Hearing Industries Association

Helen Drosak

Henry Dozier

Horst Arndt

International Hearing Society IHS

Jeffrey Winick and Wendy Samuelson

Joan De Graaff

Joan Haber

John Klein

Judy Ginsburg

Julia M. Olson

Julie Springer

Karen Frohib

Kathy Patrick

Lawrence T. Hagen/Micro-Tech Hearing Instruments

Lillian Trussell

Linda Day

Lois Itchkawitz

Louis T. Gnecco and Paula Gnecco/Better Hearing, Inc. and Tempest, Inc.

Lynn Toschi

Malisa W. Janes, RH.D.

Marcia M. Finisdore

Marilyn Voorhies

Martha Meyer

Mary Amorello

Mary Jo Russell

Mary Mitchell

Mary Shannon

Michael Eckert

Nancy Dietrich

Nellie Rader

Norma Bauer

Pamela Foody

Patrick Nagle

Paul Darkes	
Paul E. Hammerschlag, MD, FACS	
Priscilla Bade, MD	
Qualitone Hearing Instruments	
Rachel Joy	
Raegene Castle	
Roberta Schiffer	
Ronda Kiser	
Rural Cellular Association	RCA
Ruth D. Bernstein	
Sara B. Wilson	
Self Help for Hard of Hearing People	SHHH
Shelene Chang	
Sprint Corporation on behalf of Spectrum L.P., d/b/a Sprint PCS	Sprint
Terry LaBarbera	
T-Mobile USA, Inc.	T-Mobile
Tommy Wells	
Tom Victorian	
Zachary A. Hammock/Omni Hearing Systems	

Parties Filing Reply Comments (4)

Name of Party	Abbreviation
Cingular Wireless LLC	Cingular
CTIA	
RIM	
RTG	

APPENDIX B

FINAL RULES

For the reasons discussed above, the Federal Communications Commission amends title 47 of the Code of Federal Regulations, Part 20, as follows:

PART 20 – COMMERCIAL MOBILE RADIO SERVICES

§ 20.19 Hearing aid-compatible mobile handsets.

* * * * *

1. Amend § 20.19 by revising paragraph (b) to add subsection (4) as follows:

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

* * * * *

2. Amend § 20.19 by revising paragraph (c)(2) to read as follows:

(2) And each provider of public mobile radio services must:

(i) (A) Include in its handset offerings at least two handset models per air interface that comply with § 20.19(b)(1) by September 16, 2005, and make available in each retail store owned or operated by the provider all of these handset models for consumers to test in the store; or (B) In the event a provider of public mobile radio services is using a TDMA air interface and plans to overbuild (*i.e.*, replace) its network to employ alternative air interface(s), it must: (1) offer two handset models that comply with § 20.19(b)(1) by September 16, 2005, to its customers that receive service from the overbuilt (*i.e.*, non-TDMA) portion of its network, and make available in each retail store it owns or operates all of these handset models for consumers to test in the store, (2) overbuild (*i.e.*, replace) its entire network to employ alternative air interface(s), and (3) complete the overbuild by September 18, 2006; and

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

* * * * *

3. Amend § 20.19 by revising paragraph (c)(3)(i) to read as follows:

(3) Each Tier I carrier must:

(i) (A) Include in its handset offerings four digital wireless handset models per air interface or twenty-five percent of the total number of digital wireless handset models offered by the carrier nationwide (calculated based on the total number of unique digital wireless handset models the carrier offers nationwide) per air interface that comply with § 20.19(b)(1) by September 16, 2005, and make available in each retail store owned or operated by the carrier all of these handset models for consumers to test in the store; and (B) Include in its handset offerings five digital wireless handset models per air interface or twenty-five percent of the total number of digital wireless handset models offered by the carrier nationwide (calculated based on the total number of unique digital wireless handset models the carrier offers nationwide) per air interface that comply with § 20.19(b)(1) by September 16, 2006, and make available in each retail store owned or operated by the carrier all of these handset models for consumers to test in the store; and

* * * * *

APPENDIX C

INITIAL REGULATORY FLEXIBILITY ANALYSIS
(*Further Notice of Proposed Rulemaking*)

As required by the Regulatory Flexibility Act (RFA),[215] the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules proposed in this *Further Notice of Proposed Rule Making* (*FNPRM*). Written public comments are requested regarding this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *FNPRM* provided in paragraph 77. The Commission will send a copy of the *FNPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.[216] In addition, the *Further Notice of Proposed Rulemaking* and IRFA (or summaries thereof) will be published in the Federal Register.[217]

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

In the *Order on Reconsideration*, above, we clarified that the live, in-store consumer testing requirement applies to all carrier-owned and operated retail outlets.[218] In addition, we clarified that the *de minimis* exception, which exempts from the hearing aid compatibility requirements wireless carriers, service providers and handset manufacturers that offer two or fewer digital wireless handset models, applies on a per air interface basis, rather than across an entire product line.[219]

In the *Further Notice of Proposed Rulemaking* we seek comment on:

- Extending the live, in-store consumer testing requirement to retail outlets that are not directly owned or operated by wireless carriers or service providers; and

- Whether to narrow the *de minimis* exception so as to exempt from the hearing aid compatibility requirements wireless carriers, service providers and handset manufacturers that offer one digital wireless handset model per air interface, as well as other potential ways to narrow the *de minimis* exception.

B. Legal Basis

Authority for issuance of this item is contained in Sections 1, 4(i), 7, 10, 201, 202, 208, 214, 301, 302, 303, 308, 309(j), 310, and 710 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 157, 160, 201, 202, 208, 214, 301, 302, 303, 308, 309(j), 310, and 610.

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

The RFA directs agencies to provide a description of and, where feasible, an estimate of the

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

[216] *See* 5 U.S.C. § 603(a).

[217] *See id*.

[218] *See supra* § IV.E.

[219] *See supra* § IV.H.

number of small entities that may be affected by the proposed rules if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[220] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[221] A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[222] As of the year 2002, according to SBA data, there were approximately 22.4 million small businesses nationwide.[223]

Neither the Commission nor the SBA has developed specific definitions for small providers of the industries affected. Therefore, throughout our analysis, unless otherwise indicated, the Commission uses the applicable generic definitions under the SBA rules, and the North American Industry Classification System (NAICS) categories. In addition, to facilitate our analysis, we utilize the Commission's report, *Trends in Telephone Service* (*Trends*), published annually by the Commission's Wireline Competition Bureau.[224] Below, we further describe and estimate the number of small entities that may be affected by the proposed rules, if adopted.

Cellular and Other Wireless Telecommunications, and Paging. The SBA has developed a size standard for wireless small businesses within the two separate categories of Cellular and Other Wireless Telecommunications, and Paging. Under that standard, such a business is small if it has 1,500 or fewer employees.[225] According to the FCC's *Telephone Trends Report* data, 975 companies reported that they were engaged in the provision of wireless service.[226] Of these 975 companies, an estimated 767 have 1,500 or fewer employees and 208 have more than 1,500 employees. Consequently, we estimate that a majority of small wireless service providers may be affected by the proposed rules, if adopted.

Wireless Communications Equipment Manufacturers. The SBA has established a small business size standard for wireless communications equipment manufacturing. Under the standard, firms are considered small if they have 750 or fewer employees.[227] Census Bureau data for 1997 indicates that, for that year, there were a total of 1,215 establishments[228] in this category.[229] Of those, there were 1,150 that

[220] *See* 5 U.S.C. § 601(6).

[221] 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632). Pursuant to the RFA, the statutory definition of a small business applies unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.

[222] Small Business Act, 5 U.S.C. § 632 (1996).

[223] *See* SBA, Programs and Services, SBA Pamphlet No. CO-0028, at page 40 (July 2002).

[224] FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, *Trends in Telephone* Service, Table 5.3, page 5-5 (May 2004). This source uses data that are current as of October 22, 2003.

[225] 13 C.F.R. § 121.201, NAICS codes 517211 and 517212.

[226] *Telephone Trends Report*, Table 5.3.

[227] 13 C.F.R. § 121.201, NAICS code 334220.

[228] The number of "establishments" is a less helpful indicator of small business prevalence in this context than would be the number of "firms" or "companies," because the latter take into account the concept of common ownership or control. Any single physical location for an entity is an establishment, even though that location may (continued….)

had employment under 500, and an additional 37 that had employment of 500 to 999. The Commission estimates that the majority of wireless communications equipment manufacturers are small businesses.

Radio, Television, and Other Electronics Stores. "This U.S. industry comprises: (1) establishments known as consumer electronics stores primarily engaged in retailing a general line of new consumer-type electronic products; (2) establishments specializing in retailing a single line of consumer-type electronic products (except computers); or (3) establishments primarily engaged in retailing these new electronic products in combination with repair services."[230] The SBA has developed a small business size standard for this category of retail store; that size standard is $7.5 or less in annual revenues.[231] According to Census Bureau data for 1997, there were 8,328 firms in this category that operated for the entire year.[232] Of these, 8,088 firms had annual sales of under $5 million, and an additional 132 had annual sales of $5 million to $9,999,999. Therefore, the majority of these businesses may be considered to be small.[233]

D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

The *FNPRM* seeks comment on two of the Commission's existing hearing aid compatibility rules. First, all retail outlets owned or operated by wireless carriers or service providers must make live, in-store consumer testing available at this time.[234] The Commission is seeking comment on extending this requirement to additional retail outlets. Second, the *de minimis* exception currently exempts from the hearing aid compatibility requirements wireless carriers, service providers and handset manufacturers that offer two or fewer digital wireless handset models, and applies on a per air interface basis. The Commission is seeking comment on narrowing the *de minimis* exception so as to exempt from the hearing aid compatibility requirements wireless carriers, service providers and handset manufacturers that offer one digital wireless handset model per air interface, as well as other potential ways to narrow the *de minimis* exception.

The proposals set forth in the *FNPRM* do not entail reporting, recordkeeping, and/or third-party consultation. The *FNPRM* seeks comment on two of the Commission's existing hearing aid compatibility rules.

(Continued from previous page)
be owned by a different establishment. Thus, the number given may reflect inflated numbers of businesses in this category, including the numbers of small businesses. In this category, the Census break-out data for firms or companies only gives the total number of such entities for 1997, which was 1,089.

[229] U.S. Census Bureau, *1997 Economic Census*, Industry Series: Manufacturing, "Industry Statistics by Employment Size," Table 4, NAICS code 334220 (issued August 1999).

[230] U.S. Census Bureau, "2002 NAICS Definitions: 443112 Radio, Television, and Other Electronics Stores," www.census.gov (last modified on May 5, 2003).

[231] 13 C.F.R. § 121.201, NAICS code 443112.

[232] U.S. Census Bureau, 1997 Economic Census, Subject Series: Retail Trade, "Radio, Television, and other Electronics Stores," Table 4, NAICS code 443112 (issued Oct. 2000). These data indicate the estimated annual "sales size" for the firms.

[233] *Id*.

[234] *See Order on Reconsideration* at § IV.E.

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

The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.[235]

The *FNPRM* seeks comment two of the Commission's hearing aid compatibility rules and could impact small entities. As noted in the *Hearing Aid Compatibility Order*, however, the critical nature of hearing aid compatibility with wireless phones limits the Commission's ability to provide small wireless carriers, service providers and handset manufacturers with a substantially less burdensome set of regulations than that placed on larger entities.[236] Nonetheless, as set forth in the *Order on Reconsideration and FNPRM*, the Commission continues to recognize that certain manufacturers and service providers, which may have only a small presence in the market, may be impacted by any future actions. We specifically seek comment on alternatives that might lessen any adverse economic impact on small entities, while fulfilling the goals of this proceeding.

F. Federal Rules that may Duplicate, Overlap, or Conflict with the Proposed Rules

None.

[235] 5 U.S.C. § 603(c).

[236] *See Hearing Aid Compatibility Order*, App. B., 18 FCC Rcd at 16798 ¶ 11.

STATEMENT OF
COMMISSIONER KATHLEEN Q. ABERNATHY

Re: Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones, Order on Reconsideration and Further Notice of Proposed Rulemaking, WT Docket No. 01-309

This Order reaffirms and clarifies our implementation of Congress's important goal of ensuring access to telecommunications services for individuals with hearing disabilities. Our action reiterates the Commission's commitment to making sure members of the hearing-impaired community are able to take full advantage of the potential for digital wireless technologies to improve lives and promote safety. I also am encouraged by the collaborative efforts by wireless phone manufacturers, service providers, and the hearing aid community to carry out this public interest goal and to make it a reality.

I would sound a note of caution about today's further notice, however. In it, the Commission seeks comment on extending the in-store consumer testing requirement to retail stores that are not owned or operated directly by wireless carriers. While I continue to support testing requirements in connection with the carriers' own retail sales and urge independent retailers to do the same, I believe we should be circumspect about any attempt to extend well beyond our traditional jurisdiction to compel action by independent retailers without a clear directive from Congress to do so. I have been a strong proponent of improving access for consumers with hearing disabilities and I continue to support strict enforcement of our existing rules, but we should not propose rules that we may well lack authority to adopt and, in any case, probably cannot enforce. The Commission should proceed very cautiously in this inquiry.

STATEMENT OF
COMMISSIONER MICHAEL J. COPPS

RE: Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones, Order on Reconsideration and Further Notice of Proposed Rulemaking (WT Docket No. 01-309).

I'm happy to support today's Order, which largely maintains our hearing aid compatibility rules as they apply to wireless phones and clarifies the Commission's continuing commitment to ensure access to digital wireless services by individuals with hearing loss. Strong and clear rules here are critical to accomplishing the statutory goal of ensuring that our Nation's telecommunications networks are accessible to Americans with hearing loss. We heard from consumers across the country about the importance of one of our rules in particular, the rule that requires retailers to make in-store testing of hearing aid compatible phones available upon request. We wisely decide to maintain this rule today, and explore whether we should extend it to retailers that are not owned or operated by wireless carriers.

We also alter our rules on the number of hearing aid compatible handsets that must be made available to customers. This change is the result of discussions between Self Help for the Hard of Hearing and CTIA. I'm hopeful that our new arrangement will benefit both consumers and carriers. I'd like to commend Brenda Battat of SHHH and Steve Largent of CTIA for the commitment their organizations have shown to working together. I've long advocated closer and more regular exchanges between advocates for Americans with disabilities and the communications industry; I'm glad these discussions appear to be bearing fruit; and I look forward to their continuation to ensure that the changes we make today lead to better access and bring no unintended consequence. I also look forward to the broadening of these kinds of discussions to other issues of mutual interest.

STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN

Re: Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones; Order on Reconsideration and Further Notice of Proposed Rulemaking; WT Docket No. 01-309

I am very pleased to support today's decision because it reaffirms our strong commitment to improving access to digital mobile wireless phones by those Americans who use hearing aids.

Over the past couple of years, I have talked a lot about what the public interest means to me as an FCC commissioner – about how I have been guided in making decisions by one key principle: that the public interest means securing access to communications for everyone, including those the market may leave behind.

Whether it's in the field of broadcasting, spectrum-based services, or competitive telecommunications services, I have tried to address this goal by providing for access by non-English speakers, people with disabilities, rural and low-income consumers, small businesses, and many others. Public interest issues, such as protecting the rights of people who use hearing aids, always should remain in the forefront of our decisions.

While the Hearing Aid Compatibility (HAC) Act of 1988 exempted mobile wireless phones from hearing aid compatibility, Congress specifically entrusted this Commission with assessing the appropriateness of continuing the exemption. Soon after I joined the Commission, we took that obligation to heart and modified the exemption as it then applied to digital mobile wireless phones. Today, we rightly affirm the large majority of that decision.

However, we do make one significant change to our rules by allowing Tier I carriers the option of making available four digital wireless handset models per air interface to satisfy the September 16, 2005 initial benchmark. This option, which is supported by consumer groups, will provide carriers with a level of certainty that should greatly facilitate the management of their supply chain.

It must be highlighted that in advocating for this change, CTIA reports this increased certainty would enable Tier I members to provide HAC information on "call-out cards" that are a part of the handset display in retail stores. The Tier I carriers also would agree to provide low-end and high-end HAC-complaint handsets. I very much support this mutually agreeable solution. I applaud CTIA's commitment and look forward to the timely implementation of these additional consumer benefits.

I am also encouraged by the progress in hearing aid compatibility that's been made since our earlier decision. The American National Standards Institute (ANSI) committee working on this issue recently adopted and released a draft version of an updated hearing aid compatibility standard. And we are hearing good reports about the level of cooperation between service providers, handset manufacturers, and representatives of the hard of hearing community in working towards upcoming compliance deadlines.

Finally, we pose important questions about two aspects of our rules relating to expanding our in-store testing requirements to more outlets and the scope of our *de minimis* exception. These issues came up during the reconsideration discussion, and I am glad that we have teed them up for further comment. We want to make sure we have a full record before considering whether or not to further address these issues.