

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

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Iowa

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(f) The Iowa Department of Natural Resources submitted for program approval rules 567–22.100, 567–22.103 on July 17, 2002, and rules 567–22.105, 567–22.113, on March 11, 2002. These revisions to the Iowa program are approved effective November 17, 2003.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 20

[WT Docket No. 01–309; FCC 03–168]

Hearing Aid-Compatible Telephones

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission modifies the exemption for wireless phones under the Hearing Aid Compatibility Act of 1988 (HAC Act) to require that digital wireless phones be capable of being effectively used with hearing aids. It finds that modifying the exemption will extend the benefits of wireless telecommunications to individuals with hearing disabilities—including emergency, business, and social communications—thereby increasing the value of the wireless network for all Americans.

DATES: Effective November 17, 2003.

FOR FURTHER INFORMATION CONTACT: Mindy Littell, Policy Division, Wireless Telecommunications Bureau, at (202) 418–0789 or Gregory Guice, Policy Division, Wireless Telecommunications Bureau, at (202) 418–0095.

SUPPLEMENTARY INFORMATION: This is a summary of the *Report and Order*, adopted on July 10, 2003, and released on August 14, 2003. The full text of the *Report and Order* is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail qualexint@aol.com.

Overview

1. In the *Report and Order*, the Commission modifies the exemption for wireless phones under the Hearing Aid Compatibility Act of 1988 (HAC Act) to require that digital wireless phones be capable of being effectively used with hearing aids. It finds that modifying the exemption will extend the benefits of wireless telecommunications to individuals with hearing disabilities—including emergency, business, and social communications—thereby increasing the value of the wireless network for all Americans.

2. The Commission takes these actions to facilitate the Congressional goal of ensuring access to telecommunications services for individuals with hearing disabilities. In light of the rising number of calls to emergency services placed by wireless phone users, preserving access to wireless telecommunications for individuals with hearing disabilities is critical. In addition to the public safety benefits, these actions will also extend to individuals with hearing disabilities the social, professional, and convenience benefits offered by wireless telecommunications as well. In light of our society's increased reliance on wireless phones and the growing trend among wireless carriers to move away from analog services in favor of more efficient, feature-rich digital services, these steps will ensure that individuals with hearing disabilities continue to enjoy access to wireless telecommunications devices and services.

Final Regulatory Flexibility Analysis

3. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the § 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones Notice of Proposed Rulemaking (NPRM), 66 FR 58703 (November 23, 2001). The Commission sought written public comment on the proposal in the NPRM, including comment on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

A. Need for, and Objectives of, Adopted Rules

4. In the *Report and Order*, the Commission modifies the exemption for wireless phones under the Hearing Aid Compatibility Act of 1988 (“HAC Act”) to require digital wireless phones to provide for effective use with hearing aids. We find that modifying the exemption in the manner described in

the *Report and Order* will extend the benefits of wireless telecommunication to persons with hearing disabilities, thereby increasing the value of the wireless network for all Americans. The Commission took the following actions:

- i. Adopts certain performance levels set forth in a technical standard established by the American National Standards Institute (ANSI) as the applicable technical standard for compatibility of digital wireless phones with hearing aids;
- ii. requires certain digital wireless phone models to provide reduced radio frequency (RF) interference (*i.e.*, meet a “U3” rating under the ANSI standard), and requires certain digital wireless phone models to provide telecoil coupling capability (*i.e.* meet a “U3T” rating under the ANSI standard);
- iii. requires, within two years, each digital wireless phone manufacturer to make available to carriers and require each carrier providing digital wireless services to make available to consumers at least two handset models for each air interface it offers which provide reduced RF emissions (“U3” rating);
- iv. requires each Tier I wireless carrier providing digital wireless services to make available to consumers within two years at least two handset models for each air interface it offers to provide reduced RF emissions (“U3” rating) or 25 percent of the total number of phone models it offers, whichever is greater;
- v. requires, within three years, each digital wireless phone manufacturer to make available to carriers and require each carrier providing digital wireless services to make available to consumers at least two handset models for each air interface it offers which provide telecoil coupling (“U3T” rating);
- vi. adopts a *de minimis* exception for certain digital wireless phone manufacturers and carriers;
- vii. encourages digital wireless phone manufacturers and service providers to offer at least one compliant handset that is a lower-priced model and one that has higher-end features;
- viii. requires 50 percent of all digital wireless phone models offered by a manufacturer or carrier to be compliant with the reduced RF emissions requirements by February 18, 2008;
- ix. requires wireless carriers and digital wireless handset manufacturers to report semiannually (every six months) on efforts toward compliance during the first three years, then annually thereafter through the fifth year of implementation;
- x. requires manufacturers to label packages containing compliant handsets and to make information available in the package or product manual, and require service providers to make available to consumers the performance ratings of compliant phones;
- xi. commits the Commission staff to deliver a report to the Commission shortly after three years from the effective date of this Order to examine the impact of these requirements, and which will form the basis for the Commission to initiate a proceeding soon after the report is issued to evaluate whether to increase or decrease the 2008 requirement to make 50 percent of phone models with

reduced RF emissions, whether to adopt implementation benchmarks beyond 2008, and whether to otherwise modify the implementation requirements;

xii. encourages hearing aid manufacturers to label their pre-customization products according to the ANSI standard; and

xiii. denies the petition of Myers Johnson, Inc., for revision of § 24.232 as it relates to directional wireless phone antennas.

5. The Commission takes these actions to ensure that that the Congressional goal of ensuring access to telecommunications services for persons with hearing disabilities is met. In addition, in light of our society's increased reliance on wireless phones and the growing trend among wireless carriers to move away from analog services in favor of more efficient, feature-rich digital services, these steps will ensure that people with hearing disabilities continue to enjoy access to wireless telecommunications devices and services.

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

6. We received no comments directly in response to the IRFA in this proceeding. The Commission, however, considered the potential impact of its rules on smaller handset manufacturers and service providers. To ensure that the rules have a minimal impact on these entities, the Commission, in recognition of the adverse effect its HAC compatibility percentage requirements could have, modified the requirement for manufacturers and service providers. Therefore, the requirement that manufacturers and service providers must make 50 percent of their handsets compliant with the reduced RF emissions level ("U3") was modified to provide that, by February 18, 2008, 50 percent of all phones offered by the entity in the U.S. market must be compliant, or two phones per air interface offered, whichever number of handsets is greater.

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

7. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the adopted 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." In addition, the term "small business" has the same meaning as the term "small business concern" under section 3 of the Small Business

Act. Under the Small business Act, a "small business concern" is one that: (i) Is independently owned and operated; (ii) is not dominant in its field of operation; and (iii) satisfies any additional criteria established by the Small Business Administration (SBA). A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."

8. Cellular and Other Wireless Telecommunications or Paging. The SBA has developed a size standard for small businesses within the two separate categories of Cellular and Other Wireless Telecommunications or Paging. Under that standard, such a business is small if it has 1,500 or fewer employees. According to the FCC's *Telephone Trends Report* data, 1,761 companies reported that they were engaged in the provision of wireless service. Of these 1,761 companies, an estimated 1,175 have 1,500 or fewer employees and 586 have more than 1,500 employees. Consequently, we estimate that a majority of small wireless service providers may be affected by the rules.

9. Wireless Communications Equipment Manufacturers. The SBA has established a small business size standard for radio and television broadcasting and wireless communications equipment manufacturing. Under the standard, firms are considered small if they have 750 or fewer employees. Census Bureau data for 1997 indicates that, for that year, there were a total of 1,215 establishments in this category. Of those, there were 1,150 that had employment under 500, and an additional 37 that had employment of 500 to 999. The percentage of wireless equipment manufacturers in this category is approximately 61.35%, so the Commission estimates that the number of wireless equipment manufacturers with employment under 500 was actually closer to 706, with an additional 23 establishments having employment of between 500 and 999. The Commission estimates that the great majority of wireless communications equipment manufacturers are small businesses.

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

10. The reporting, recordkeeping, or other compliance requirements adopted require that any and all of the affected entities to which the Commission's adopted rules apply must comply with the Commission's hearing aid compatibility rules adopted in the

Report and Order. The Commission has detailed the timeframes for compliance and was mindful of the needs of manufacturers and service providers. The timeframes, therefore, reflect the Commission's balancing of the competing interests. We ensure that access to wireless phones for persons with hearing disabilities is maintained, and also to ensure that manufacturers and service providers are afforded a reasonable amount of time within which to comply with our rules.

11. In the *Report and Order*, the Commission requires wireless carriers and handset manufacturers to report every six months on efforts toward compliance with the requirements of the *Report and Order* during the first three years, then annually thereafter through the fifth year of implementation. These reports will serve dual purposes: They will assist us in monitoring the progress of implementation, and they will provide valuable information to the public concerning compatible handsets. The reporting requirement will extend through the end of the fifth year following the effective date of the *Report and Order* to assist in verifying compliance with the requirement to make at least 50 percent of all phone models offered compatible by February 18, 2008. Digital wireless phone manufacturers and service providers may submit joint reports, if they wish, in order to minimize the reporting burden. The reports should describe manufacturer and carrier efforts aimed at complying with the requirements of the *Report and Order*. Specifically, the reports should include (i) digital wireless phones tested; (ii) laboratory used; (iii) test results for each phone tested; (iv) identification of compliant phone models and ratings according to ANSI C63.19; (v) report on the status of product labeling; (vi) report on outreach efforts; (vii) information related to retail availability of compliant phones; (viii) information related to incorporating hearing aid compatibility features into newer models of digital wireless phones; (ix) any activities related to ANSI C63.19 or other standards work intended to promote compliance with the *Report and Order*; (x) total numbers of compliant and non-compliant phone models offered as of the time of the report; and (xi) any ongoing efforts for interoperability testing with hearing aid devices.

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

12. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its adopted

approach, which may include the following four alternatives (among others): (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (ii) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (iii) the use of performance, rather than design, standards; and (iv) an exemption from coverage of the rule, or any part thereof, for small entities.

13. The critical nature of hearing aid compatibility with wireless phones limits the Commission's ability to provide small manufacturers of wireless handsets and wireless service providers with a substantially less burdensome set of regulations than that placed on large entities. In the *Report and Order*, the Commission concludes that continuing the exemption afforded wireless phones under the HAC Act would have an adverse effect on individuals with hearing disabilities. Consumers who use hearing aids or cochlear implants indicate they have had difficulty finding either wireless phones they can use without suffering from annoying and sometimes painful interference, or without resorting to expensive and cumbersome external attachments. Consumers state that it is becoming very difficult to find analog wireless phones and services, and they are unable to use most digital wireless phones because of the resulting interference. By not being able to take advantage of most newer, digital wireless phones and services, hearing aid users assert they cannot take advantage of the attractive pricing and service plans available to other consumers, many of which include free or reduced-price phones, because the phones offered do not work with their hearing aids. Some consumers point out that their lack of ability to use a digital wireless phone causes them problems in their employment, particularly since many employers now rely on digital phones and services to stay in contact with employees in the field. A few consumers reported difficulty in finding a phone that works with their hearing aids because they were unable to test the phone before purchasing it. Some consumers expressed a desire to use a wireless phone for emergency use while away from home. However, because they are unable to find one they can use, they are forced to accept greater risks than non-hearing aid users since they are unable to call 911 even if they have access to a digital wireless phone.

14. In the *Report and Order*, however, the Commission recognizes that certain manufacturers and service providers

may have only a small presence in the market. For those manufacturers and service providers, the Commission adopted a *de minimis* exception. Specifically, if a manufacturer or carrier offers two or fewer digital wireless handset models in the U.S., it is exempt from the compatibility requirements in this *Report and Order*. If a manufacturer or carrier offers three digital wireless handset models, it must make at least one compliant phone model available in two years. Furthermore, to the extent there are digital wireless providers that obtain handsets only from manufacturers that offer two or fewer digital wireless phone models in the U.S., the service provider would likewise be exempt from the rules. Similarly, if a service provider obtains handsets only from manufacturers that offer three digital wireless phone models in the U.S., that service provider would only have to offer one compliant handset model.

15. In addition, in considering the possible impact of our rules on the many small business owners that act as agents for service providers, the Commission crafted its labeling rules to allow these entities flexibility in how they convey the information persons with hearing disabilities will need to make an informed purchase.

F. Report to Congress

16. The Commission will send a copy of the *Report and Order*, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the *Report and Order*, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

G. Effective Date of Adopted Rules

17. Pursuant to 5 U.S.C. 553(d), the rules adopted herein shall become effective November 17, 2003.

Ordering Clauses

18. Pursuant to the authority of sections 1, 4(i), 7, 10, 201, 202, 208, 214, 301, 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, 303, 308, 309(j), 310, and 610, the rule changes are amended as set forth below and shall become effective November 17, 2003.

List of Subjects in 47 CFR Parts 2 and 20

Communications common carriers.

Federal Communications Commission.

Marlene H. Dortch,
Secretary.

Final Rules

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR Parts 2 and 20 as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

■ 1. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

■ 2. Amend § 2.1033 by adding paragraph (d) to read as follows:

§ 2.1033 Application for certification.

* * * * *

(d) Applications for certification of equipment operating under part 20, that a manufacturer is seeking to certify as hearing aid compatible, as set forth in § 20.19 of that part, shall include a statement indicating compliance with the test requirements of § 20.19 and indicating the appropriate U-rating for the equipment. The manufacturer of the equipment shall be responsible for maintaining the test results.

PART 20—COMMERCIAL MOBILE RADIO SERVICES

■ 3. The authority citation for part 20 continues to read as follows:

Authority: 47 U.S.C. 154, 160, 251–254, 303, and 332 unless otherwise noted.

■ 4. Amend part 20 by adding § 20.19 to read as follows:

§ 20.19 Hearing aid-compatible mobile handsets.

(a) *Scope of section.* This section is applicable to providers of Broadband Personal Communications Services (part 24, subpart E of this chapter), Cellular Radio Telephone Service (part 22, subpart H of this chapter), and Specialized Mobile Radio Services in the 800 MHz and 900 MHz bands (included in part 90, subpart S of this chapter) if such providers offer real-time, two-way switched voice or data service that is interconnected with the public switched network and utilizes an in-network switching facility that enables the provider to reuse frequencies and accomplish seamless hand-offs of subscriber calls. This section also applies to the manufacturers of the wireless phones used in delivery of these services.

(b) *Technical standard for hearing aid compatibility.* A wireless phone used for

public mobile radio services is hearing aid compatible for the purposes of this section if it meets, at a minimum:

(1) For radio frequency interference: U3 as set forth in the standard document ANSI C63.19–2001 “American National Standard for Methods of Measurement of Compatibility between Wireless Communication Devices and Hearing Aids, ANSI C63.19–2001” (published October 8, 2001—available for purchase from the American National Standards Institute); and

(2) For inductive coupling: U3T rating as set forth in the standard document ANSI C63.19–2001 “American National Standard for Methods of Measurement of Compatibility between Wireless Communication Devices and Hearing Aids, ANSI C63.19–2001” (published October 8, 2001—available for purchase from the American National Standards Institute).

(3) Manufacturers must certify compliance with the test requirements and indicate the appropriate U-rating for the wireless phone as set forth in § 2.1033(d) of this chapter.

(c) *Phase-in for public mobile service handsets concerning radio frequency interference.*

(1) Each manufacturer of handsets used with public mobile services for use in the United States or imported for use in the United States must:

(i) Offer to service providers at least two handset models for each air interface offered that comply with § 20.19(b)(1) by September 16, 2005; and

(ii) Ensure at least 50 percent of their handset offerings for each air interface offered comply with § 20.19(b)(1) by February 18, 2008.

(2) And each provider of public mobile service must:

(i) Include in their 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; and

(ii) Ensure that at least 50 percent of their 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) Each Tier I carrier must:

(i) Include in their handset offerings at least two handset models or 25 percent of the total number of unique 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), whichever is greater, for each 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

(ii) Ensure that at least 50 percent of their 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 phone models the carrier offers nationwide.

(d) *Phase-in for public mobile service handsets concerning inductive coupling.*

(1) Each manufacturer of handsets used with public mobile services for use in the United States or imported for use in the United States must offer to service providers at least two handset models for each air interface offered that comply with § 20.19(b)(2) by September 18, 2006.

(2) And each provider of public mobile service must include in their handset offerings at least two handset models for each air interface that comply with § 20.19(b)(2) by September 18, 2006 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.

(e) *De minimis exception.*

(1) Manufacturers or mobile service providers that offer two or fewer digital

wireless handsets in the U.S. are exempt from the requirements of this section.

For mobile service providers that obtain handsets only from manufacturers that offer two or fewer digital wireless phone models in the U.S., the service provider would likewise be exempt from the requirements of this section.

(2) Manufacturers or mobile service providers that offer three digital wireless handset models, must make at least one compliant phone model in two years. Mobile service providers that obtain handsets only from manufacturers that offer three digital wireless phone models in the U.S. would be required to offer at least one compliant handset model.

(f) *Labeling requirements.* Handsets used with public mobile services that are hearing aid compatible, as defined in § 20.19(b) of this chapter, shall clearly display the U-rating, as defined in 20.19(b)(1), (2) on the packaging material of the handset. An explanation of the ANSI C63.19–2001 U-rating system shall also be included in the owner's manual or as an insert in the packaging material for the handset.

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

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