

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