

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 20

[WT Docket No. 17–228; FCC 18–167]

### Reporting Requirements Governing Hearing Aid-Compatible Mobile Handsets

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Federal Communications Commission (“Commission” or “FCC”) revises its rules to require service providers to post on their publicly accessible websites information regarding the hearing aid compatibility of their offered handsets. Service providers are also required to retain information regarding the hearing aid compatibility of handsets previously offered. Through this information, consumers will have access to the most recent data about hearing aid-compatible handsets and the Commission will be able to ensure compliance with the hearing aid compatibility rules and requirements. In addition, the Commission no longer requires providers to file FCC Form 655 on an annual basis. Instead, providers must file an annual certification indicating whether or not they are compliant with the hearing aid compatibility rules.

**DATES:** *Effective Date:* January 7, 2019.

*Compliance Date:* Compliance will not be required for § 20.19(e), (h), and (i), until after approval by the Office of Management and Budget. We will publish a document in the **Federal Register** announcing the compliance date.

**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission’s Report and Order (Order), WT Docket No. 17–228; FCC 18–167, adopted November 15, 2018 and released November 16, 2018. The full text of this document is available for inspection and copying during business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW, Room CY–A257, Washington, DC 20554. Also, it may be purchased from the Commission’s duplicating contractor at Portals II, 445 12th Street SW, Room CY–B402, Washington, DC 20554; the contractor’s

website, <http://www.bcpiweb.com>; or by calling (800) 378–3160, facsimile (202) 488–5563, or email [FCC@BCPIWEB.com](mailto:FCC@BCPIWEB.com). Copies of the Order also may be obtained via the Commission’s Electronic Comment Filing System (ECFS) by entering the docket number WT Docket 17–228. Additionally, the complete item is available on the Federal Communications Commission’s website at <http://www.fcc.gov>.

### Synopsis

#### I. Report and order

1. The Commission has witnessed unprecedented growth in the degree to which service providers offer handsets that are hearing aid-compatible. In light of the growth in hearing aid-compatible handsets and decreasing public reliance on reports since they were first adopted by the Commission in 2003, the Commission takes two key steps to reform the hearing-aid compatibility reporting regime. First, the Commission revises its rules to require service providers to post on their websites the most critical information currently submitted on FCC Form 655. By requiring all service providers to post this information on publicly accessible websites that they control, the Commission can ensure that consumers have access to information about the increased numbers of hearing aid-compatible handset models with less burden for both service providers and consumers. This website information also will allow the Commission to continue to evaluate rule compliance without collecting information directly from service providers. Consumers will benefit from having access to the most up-to-date information about each handset model being offered by service providers.

2. Second, the Commission finds that many of the benefits of annual status reporting by service providers have become increasingly outweighed by the burdens that such information collection places on these entities. Instead of requiring providers to submit the FCC Form 655 on an annual basis, the Commission will require providers to submit annual certifications that require only a statement that a service provider is or is not in full compliance with the Commission’s hearing aid compatibility rules, and if not, explain why. The action the Commission takes here streamlines the Commission’s collection of information while continuing to fulfill the underlying purposes of the current reporting regime.

3. By using streamlined annual certifications combined with website

reporting, the Commission ensures that it meets its objectives of monitoring industry and enforcing compliance with the relevant deployment benchmarks and other hearing aid compatibility provisions in the Commission’s rules. This approach will ensure that consumers have better access to useful, current information about the hearing aid compatibility of the handset models being offered by service providers.

4. The Commission notes that in a separate docket, it is considering broader changes to the hearing aid compatibility rules that may be appropriate in the event the Commission requires 100% of covered handsets to be hearing aid-compatible. Per the schedule established in that proceeding, which the Commission has no current plan to deviate from, the process through which the Commission would make a determination whether a 100 percent requirement is achievable would conclude at the end of 2022. Revisions to the existing deployment benchmarks and other related rules are outside of the scope of this proceeding, and therefore these requirements will remain in place unless and until the Commission takes further action in that docket. To that end, the Commission’s decision here is not predicated on further changes that might be under consideration, and thus, does not prejudice any further steps it may take to modify its reporting rules in that proceeding.

#### A. Improvements to Service Provider Website Requirements

5. The Commission amends its hearing aid compatibility website requirements for service providers to ensure that the objectives of the FCC Form 655 reporting requirement continue to be met. In doing so, the Commission adopts, in part, the proposal put forth by the Joint Consensus filers. Under the Commission’s new rules, service providers will continue to comply with the existing website requirements supplemented with additional content that is useful to consumers. In addition, the Commission will carry over to the new website posting obligation limited content from the FCC Form 655 necessary to meet the Commission’s information, monitoring, and enforcement goals.

6. In addition to the current website requirements, all service providers that operate publicly accessible websites (other than *de minimis* service providers, which remain exempt from website requirements) will now be required to post to their websites the following additional information:

(1) A list of all non-hearing aid-compatible handset models currently offered, including the level of functionality of those models;

(2) among other pieces of data, the marketing model name/number(s) and FCC ID number of each hearing aid-compatible and non-hearing aid-compatible handset model currently offered;

(3) a link to a third-party website as designated by the Commission or Wireless Telecommunications Bureau, with information regarding hearing aid-compatible and non-hearing aid-compatible devices OR, alternatively, a clearly marked list of hearing aid-compatible devices that have been offered in the past 24 months but are no longer offered by that provider. For purposes of initial implementation, the Commission designates the Global Accessibility Reporting Initiative (GARI) website as the third party website referred to in this portion of the rule;

(4) A link to the current FCC web page containing information about the wireless hearing aid compatibility rules and service providers' obligations; and

(5) A "date stamp" on any website page containing the above referenced information that indicates when the page was last updated.

7. Service providers must also retain internal records for discontinued models, to be made available upon Commission request of:

(1) Handset model information, including the month year/each hearing aid-compatible and non-hearing aid-compatible handset model was first offered; and

(2) the month/year each hearing aid-compatible handset model and non-hearing aid-compatible handset was last offered for all discontinued handset models until a period of 24 months has passed from that date.

8. Retaining a trailing list of all handsets offered over the past 24 months will ensure that the Commission can continue to monitor whether service providers meet numerical and percentage-based handset deployment obligations. The obligation to post a link to the GARI website, or alternatively, post a clearly marked list of hearing aid compatible devices that have been offered in the past 24 months (which at least one smaller provider has already voluntarily adopted) also permits consumers to locate information about a model they may have recently purchased that is no longer being offered. The Commission concludes that it can serve as a useful tool for consumers to obtain hearing aid compatibility information regarding past handsets offered. Past handset

information is useful not only to consumers who purchase devices via resale, but also to consumers who, for instance, start using a hearing aid or change hearing aids and want to check on whether their current device is compatible. So that service providers have flexibility, the Commission will not prescribe a standard template for posting and retaining this information. In addition, service providers can rely on the information from device manufacturers' FCC Form 655 as a safe harbor, similar to the Commission's policy in the past for service providers' FCC Form 655 filings.

9. The Commission does not anticipate that it will be difficult or burdensome for service providers to gather and post this additional information on their websites or to retain it. Service providers must continue to meet applicable deployment benchmarks and maintain compliance with all other hearing aid compatibility requirements. Therefore, service providers would likely need to track the information outlined above, some of which service providers need in order to run their businesses independent of the Commission's requirements (e.g., when a handset is first offered and no longer offered). Posting this information to their websites and/or retaining it for their records should impose on providers only a minimal additional burden. This conclusion is confirmed by the record in this proceeding showing that service providers already post some of this newly required information and the willingness of the Joint Consensus filers to endorse a similar approach.

10. The Commission finds that its new website and record retention requirements should better serve the Commission's objectives because the information on websites will be more up-to-date than the data submitted on FCC Form 655. The current website rules require providers to update the website information within 30 days of any relevant changes. As the Commission stated when it adopted the website posting requirement, "updated website postings are necessary . . . so that consumers can obtain up-to-date hearing aid compatibility information from their service providers." To ensure that providers are aware that their websites need to be kept up to date, the Commission codifies this requirement.

11. The Commission will be able to use the information on a service provider's website to ensure that it is in compliance with the appropriate deployment benchmarks on a month-by-month basis. The Commission believes this is a better approach than other options, such as, for example, relying on

informal complaints. The Commission also can use the posted information to monitor the state of the provision of hearing aid-compatible handsets by the wireless industry and the effectiveness of its hearing aid compatibility requirements. The Commission also believes that the proceeding in which the Commission is considering whether to require 100% of handsets to be hearing aid-compatible allows the Commission to monitor industry progress without requiring individual hearing aid compatibility status data from service providers. These revisions to the Commission's website posting requirements will allow consumers better access to more current information about the hearing aid compatibility features of current handset models offered by their service providers, and the information will be in a clearer format than is currently possible on FCC Form 655.

12. The website and record retention requirements the Commission adopts here differ slightly from the approach outlined in the Joint Consensus Letter and the separate request of HLAA-RERC. The requirement to post information about non-hearing aid-compatible handsets, for instance, is not addressed by the Joint Consensus filers. Nevertheless, the Commission concludes that requiring the posting of this information, along with information regarding currently offered hearing aid-compatible handsets on providers' websites, provides an easy means for the Commission and interested third parties to quickly derive a percentage of hearing aid-compatible handsets to determine whether the provider is meeting the relevant benchmarks. The Commission would not have to wait for the annual certification or make a request for internal data from the provider to determine whether the provider is currently compliant. Because the majority of handsets are hearing aid-compatible, this requirement imposes a limited burden compared to the compliance benefit.

#### *B. Adoption of Service Provider Certification Requirement To Replace Annual Reporting Requirements*

13. The Commission adopts a requirement that all service providers certify whether they are in compliance with all of the Commission's wireless hearing aid compatibility requirements. Service providers should affirmatively state their compliance with the hearing aid compatibility rules through an annual certification. The Commission adopts the Joint Consensus proposal with some modifications. This new annual certification requirement applies

to all service providers including *de minimis* service providers. It will assure the public and the Commission that service providers have a strong incentive to comply fully with all of the Commission's hearing aid compatibility requirements, including deployment, website, labeling, and disclosure requirements, among others. Under this new rule, service providers will be required to file a certification by January 15 of each calendar year using the existing electronic interface for the FCC Form 655 and stating as follows:

I am a knowledgeable executive [of company x] regarding compliance with the Federal Communications Commission's wireless hearing aid compatibility requirements at a wireless service provider covered by those requirements.

I certify that the provider was [(in full compliance/not in full compliance)] [choose one] at all times during the applicable time period with the Commission's wireless hearing aid compatibility deployment benchmarks and all other relevant wireless hearing aid compatibility requirements.

The company represents and warrants, and I certify by this declaration under penalty of perjury pursuant to 47 CFR 1.16 that the above certification is consistent with 47 CFR 1.17, which requires truthful and accurate statements to the Commission. The company also acknowledges that false statements and misrepresentations to the Commission are punishable under Title 18 of the U.S. Code and may subject it to enforcement action pursuant to sections 501 and 503 of the Act.

14. If the certification states that the provider is "not in full compliance," it must include an explanation of which wireless hearing aid compatibility requirements the wireless service provider was not in full compliance with, and when non-compliance began and (if applicable) ended with respect to each requirement. In addition, as part of the certification, the service provider must submit the name of the signing executive, his or her contact information, the website address (if applicable) of page(s) containing hearing aid compatibility information required by section 20.19(h), and the FCC FRN and the name of the company(ies) covered by the certification. The Commission expects to rely on this affirmative statement of compliance in any enforcement action.

15. The service provider must also indicate on the certification form the percentage of hearing aid compatible wireless handsets it made available that year. Providers will derive this

percentage by determining the number of hearing aid-compatible handsets offered across all air interfaces during the year divided by the total number of handsets offered during the year. This requirement, while not directly related to service providers' compliance, will help the Commission and consumers quickly determine the state of the hearing aid compatibility marketplace. The Commission will rely on website postings of current handsets and the document retention requirements it adopts here to monitor carrier compliance with the deployment benchmarks by air interface.

16. The Commission does not adopt one element of the Joint Consensus Letter regarding the certification. Specifically, it does not adopt the Joint Consensus Letter request to state in the rules that providers may request confidentiality when submitting records to the Commission because providers already have the right to make such a request and such requests are typically ruled upon subsequent to the information submission. The Commission also adopts the requirement proposed by CTIA, CCA and TIA that a "knowledgeable executive," rather than an officer, sign the certification in order to increase service providers' flexibility and consistency with the language of the Form FCC 655 certification. The Commission does not however, adopt their proposal that the knowledgeable executive certify only that the company has procedures in place to ensure compliance with the rules. Requiring the executive to certify that the company is in fact in compliance increases service providers' accountability and is necessary to provide the Commission and the public with a clear picture of each company's compliance as well as industry-wide compliance levels.

17. Given the Commission's improved website posting obligations, the new, streamlined certification requirements, and manufacturers' continued submission of FCC Form 655s, it is no longer necessary to require service providers to file FCC Form 655. The revised website and certification requirements the Commission adopts in this Order fulfill the objectives underlying the filing requirement with increased consumer benefits and less burden. For example, service providers will no longer be required to list the air interface(s) and frequency band(s) over which an offered model operates, information that they say is particularly burdensome to gather and list in their filings. Moreover, this information duplicates what manufacturers are filing

for the same handsets. As long as service providers correctly and clearly identify on their websites the models that they currently offer and retain historical handset information, the Commission will be able to use this information to compare the handsets offered to Commission databases and derive the relevant information for enforcement purposes, and consumers will have much simpler access to this data.

18. Further, the Commission will be able to determine benchmark compliance by air interface by examining the data on service providers' websites by cross referencing that information on manufacturers' FCC Form 655. Service providers will not need to answer or provide a description in response to the several questions on the status of product labeling and outreach efforts. Service providers will no longer have the burden of identifying the total number of hearing aid-compatible and non-hearing aid-compatible models they offer to customers for each air interface over which the service provider offers service by month, or answer company information questions regarding their status as it relates to the *de minimis* exception.

19. Based on the record, the Commission therefore modifies its rules to eliminate the FCC Form 655 reporting requirement for all service providers. The Joint Consensus filers support eliminating the FCC Form 655 if other safeguards are put in place, and with minor deviations, the Commission is adopting the safeguards they propose. Moreover, small service providers, such as members of RWA, agree that the burden of reporting is not justified and that the costs saved by eliminating the requirement will allow them to maintain and improve their websites and other outreach materials that are more readily accessible to consumers. And CTIA/CCA state that a certification approach would not harm consumers' ability to obtain information about hearing aid-compatible handsets from other publicly available sources of information.

20. For small, rural, and regional service providers, especially, the burden of reporting is substantial. The record indicates that such service providers must devote substantial time and resources to tracking and collecting the information necessary to fill out the form. These efforts are a strain on these providers' limited resources. The financial cost of the reporting requirement is disproportionate to the number of customers served by these providers. For example, in January

2018, compared to the reports from the four largest carriers (which serve more than 98% of wireless subscribers), 209 smaller providers filed annual Form 655 status reports. Even for nationwide carriers, the costs of reporting are no longer justified given their high level of compliance with deployment benchmarks and the information the Commission already collects from device manufacturers.

21. The Commission expects that service providers' percentages of hearing aid-compatible handset models being offered, as well as their compliance levels with deployment benchmarks, are unlikely to decline for the foreseeable future because nearly all handsets offered by manufacturers are hearing aid-compatible, reducing the need for up-front detailed information in FCC Form 655. The Commission recognizes that the implementation of new, unforeseen technologies could affect handset manufacturers' and providers' ability to offer hearing aid-compatible handsets in the future. The Commission will therefore continue to monitor the wireless handset marketplace to assess the need for further amendments to its rules.

22. The Commission notes that it is eliminating certain reporting requirements, such as reporting on the status of outreach efforts and product labelling, because they are no longer useful for the Commission or consumers, and the burden of these requirements outweighs the benefits.

23. Finally, the Commission makes clear that its decision today does not affect its wireless hearing aid compatibility rules outside of its reporting and website requirements, including those designed to facilitate consumer access to hearing aid-compatible devices. Although service providers will no longer be required to complete the FCC Form 655, the Commission's hearing aid compatibility rules still require service providers to comply with all labeling, disclosure, in-store testing, and level of functionality requirements. The Commission continues to encourage providers to continue engaging in outreach efforts to educate the public, audiologists, hearing aid dispensers, and retail personnel concerning the use of digital wireless phones with hearing aids.

### *C. Transition and Implementation Issues*

24. In order that service providers focus future efforts toward an orderly transition to the new website and annual certification requirements that the Commission adopted in this Report and Order, it waived, on its own

motion, the requirement that service providers file the hearing aid status report currently due by January 15, 2019. This waiver will last from public release of the Report and Order until its effective date whereupon this reporting requirement will be deleted from the rules. The first annual certification will cover calendar year 2018, the same period that would be covered by the FCC Form 655 for which the Commission is providing a waiver. Subsequent annual certifications starting in 2020 will be due by January 15 each year.

25. The Commission finds good cause to grant a waiver under the circumstances presented. The Commission intends to relieve providers of the current reporting burden as soon as possible and a limited waiver both effectuates this purpose as efficiently as possible and avoids duplicate collections of the same 2018 calendar-year handset information. The certification that would substitute for the January 2019 report fully satisfies the Commission's goals. And although the certification will occur somewhat later than January in order to obtain the necessary OMB approval, this minor delay will not significantly undercut the purpose underlying the certification in part because the revisions the Commission adopts here require posting and retention of data for the 2018 calendar year, not just data from approval of the information collection requirements onward. Service providers will still have an affirmative obligation to confirm compliance with all of the Commission's hearing aid-compatibility requirements, including the handset deployment benchmarks, and the Commission and public will have an opportunity to evaluate that statement against the Commission's revised website deployment obligations. In addition, because manufacturers will continue to file even more detailed handset information on their Form 655 to which consumers may refer, the Commission believes that any harm from this limited waiver would be minimal. Finally, while the Commission does not choose to eliminate the existing reporting rule immediately upon publication of this Report and Order in the **Federal Register**, it observes that the exception to the Administrative Procedure Act to adopt a "substantive rule which . . . relieves a restriction" supports its recognition of the public interest served by its grant of this waiver. The Commission therefore finds it in the public interest to waive the annual reporting requirements for service providers.

26. The Commission also provides for a transition for the revised website and data retention obligations. Thirty days following publication in the **Federal Register** of a notice that OMB has approved the information collection requirements related to the new website posting rule, service providers will be required to post and retain the prescribed handset model information. This information will include posting information on all handsets currently offered, retaining information on handsets previously offered starting January 1, 2018 and thereafter, as well as either posting information on handsets previously offered starting on January 1, 2018 or providing a link to the GARI website with previously offered handset information.

27. Per the new 24-month handset history rule, the number of months of historical handset information providers must post to the website and retain will increase until it reaches 24 months in January 2020, at which time providers will no longer have an obligation to retain or post data from January 2018. Until the revised rule takes effect, providers must still meet current website requirements and post an ongoing list of all hearing aid-compatible models that they currently offer, the ratings of those models, and an explanation of the rating system, as well as other information about handset functionality levels, and update the website information within thirty days of any relevant change.

28. The Commission finds that this website and data retention transition period and the FCC Form 655 waiver affords service providers time to compile the requisite information and make the necessary changes to their websites and internal compliance processes. This schedule appropriately balances service providers' need for time to collect the information that will be required with the public's interest in maintaining a steady flow of handset information. By having the revised certification and website rule become effective at the same time, they work in tandem to ensure compliance with the Commission's wireless hearing aid compatibility rules in 2018 and subsequent years.

29. Amendments to § 20.19(e), § 20.19(h), and § 20.19(i) contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13, that are not effective until approved by the Office of Management and Budget (OMB). The Commission will publish a document in the **Federal Register** announcing the effective date once OMB approves.

## II. Procedural Matters

### A. Final Regulatory Flexibility Analysis

30. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking (NPRM), released in September 2017. The Commission sought written public comment on the proposals in the NPRM, including comment on the IRFA. The comments received are addressed below in section 2. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

#### 1. Need for, and Objectives of, the Proposed Rules

31. In the Report and Order, the Commission modifies its wireless hearing aid compatibility rules, eliminates unnecessary and outdated reporting requirements, and improves its collection of information regarding the status of hearing aid-compatible handsets. The Commission finds that many of the benefits of annual status reporting by service providers have been realized and increasingly have become outweighed by the burdens that such information collection places on these entities. The Commission's new streamlined approach will continue to serve the underlying purposes of the Commission's annual reporting requirements without the burdens associated with that filing.

32. Specifically, the Commission waives the requirement for service providers to file the FCC Form 655 annual filing by January 15, 2019 and eliminates the requirement in subsequent years. Under the Commission's new approach, only wireless device manufacturers will continue to be obligated to file FCC Form 655 by July 15 of each calendar year. Next, the Commission amends its existing website requirements to ensure that consumers have access to the most up-to-date and useful information about the hearing aid compatibility of the handset models offered by service providers, and the Commission has sufficient information to verify compliance with the benchmark requirements. Only the most critical pieces of information currently submitted as part of the FCC Form 655 must continue to be made available on service providers' websites. The Commission will also require the service providers to file a simple, new, annual certification to enhance the ability of the Commission to enforce the hearing aid compatibility rules. The Commission also requires service providers to retain data regarding

handsets no longer offered to verify compliance with its rules.

33. This new light-touch regulatory approach will enable the Commission to fulfill its responsibilities and objectives for wireless hearing aid compatibility. By requiring all service providers to post consistent content and information on their publicly available websites, the Commission ensures that consumers can access the information they need about the hearing aid compatibility of the handsets being offered. This website information will also allow the Commission to evaluate compliance with the relevant benchmarks and other hearing aid compatibility provisions in its rules. In addition to being able to verify compliance with its rules when necessary, the Commission will also be able to monitor the overall status of access to hearing aid-compatible handsets. The Commission's ability to verify and enforce compliance and monitor industry developments will also be served by requiring all service providers to annually file a certification stating whether or not they are in compliance with the Commission's hearing aid compatibility provisions.

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

34. There were no comments filed that specifically addressed the rules and policies proposed in the IRFA.

#### 3. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

35. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments.

36. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

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

37. 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 rules adopted herein. 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 the Small Business Act. 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 SBA.

38. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* The Commission's actions, over time, may affect small entities that are not easily categorized at present. The Commission therefore describe here, at the outset, three broad groups of small entities that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA's Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States which translates to 28.8 million businesses.

39. Next, the type of small entity described as a "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Nationwide, as of August 2016, there were approximately 356,494 small organizations based on registration and tax data filed by nonprofits with the Internal Revenue Service (IRS).

40. Finally, the small entity described as a "small governmental jurisdiction" is defined generally as "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand." U.S. Census Bureau data from the 2012 Census of Governments indicate that there were 90,056 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number there were 37,132 General purpose governments (county, municipal and town or township) with populations of less than 50,000 and 12,184 Special purpose governments (independent school districts and special districts) with populations of less than 50,000. The 2012 U.S. Census Bureau data for most types of governments in the local government category show that the majority of these governments have populations of less than 50,000. Based on this data the Commission estimates that at least 49,316 local government jurisdictions fall in the category of "small governmental jurisdictions."

41. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* This industry comprises

establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment, including unlicensed devices. Examples of products made by these establishments are: Transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, radio and television studio and broadcasting equipment. The Small Business Administration has established a size standard for this industry of 750 employees or less. U.S. Census data for 2012, shows that 841 establishments operated in this industry in that year. Of that number, 828 establishments operated with fewer than 1,000 employees, 7 establishments operated with between 1,000 and 2,499 employees and 6 establishments operated with 2,500 or more employees. Based on this data, the Commission concludes that a majority of manufacturers in this industry is small.

42. *Part 15 Handset Manufacturers.* The Commission has not developed a definition of small entities applicable to unlicensed communications handset manufacturers. The SBA category of Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing is the closest NAICS code category for Part 15 Handset Manufacturers. The Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing industry is comprised of establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: Transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.” The SBA has developed a small business size standard for Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, as firms having 750 or fewer employees. U.S. Census data for 2012, shows that 841 establishments operated in this industry in that year. Of that number, 828 establishments operated with fewer than 1,000 employees, 7 establishments operated with between 1,000 and 2,499 employees and 6 establishments operated with 2,500 or more employees. Thus, under this size standard, the majority of firms can be considered small.

43. *Wireless Telecommunications Carriers (except Satellite).* This industry

comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular phone services, paging services, wireless internet access, and wireless video services.” The appropriate size standard under SBA rules is for the category Wireless Telecommunications Carriers (except Satellite) is that a business is small if it has 1,500 or fewer employees. For this industry, U.S. Census data for 2012 shows that there were 967 firms that operated for the entire year. Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more. Thus, under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities.

44. The Commission’s own data—available in its Universal Licensing System—indicate that, as of October 25, 2016, there are 280 Cellular licensees that will be affected by the Commission’s actions here. The Commission does not know how many of these licensees are small, as the Commission does not collect that information for these types of entities. Similarly, according to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) Telephony services. Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Thus, using available data, the Commission estimates that the majority of wireless firms can be considered small.

45. Also included in this classification is Personal Radio Services, which provide short-range, low power radio for personal communications, radio signaling, and business communications not provided for in other services. The Personal Radio Services include spectrum licensed under part 95 of the Commission’s rules. These services include Citizen Band Radio Service (“CB”), General Mobile Radio Service (“GMRS”), Radio Control Radio Service (“R/C”), Family Radio Service (“FRS”), Wireless Medical Telemetry Service (“WMTS”), Medical Implant Communications Service (“MICS”), Low Power Radio Service (“LPRS”), and Multi-Use Radio Service (“MURS”). The Commission notes that many of the licensees in these services

are individuals, and thus are not small entities. In addition, due to the mostly unlicensed and shared nature of the spectrum utilized in many of these services, the Commission lacks direct information upon which to base a more specific estimation of the number of small entities under an SBA definition that might be directly affected by its action.

46. *Wireless Resellers.* The SBA has not developed a small business size standard specifically for Wireless Resellers. The SBA category of Telecommunications Resellers is the closest NAICS code category for wireless resellers. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry. Under the SBA’s size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census data for 2012 shows that 1,341 firms provided resale services during that year. Of that number, all operated with fewer than 1,000 employees. Thus, under this category and the associated small business size standard, the majority of these resellers can be considered small entities.

#### 5. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

47. In the Report and Order, the Commission is eliminating a substantial reporting requirement that all service providers—large and small—argue is burdensome and unnecessary. The Commission finds that as the percentage of hearing aid-compatible handsets offered by service providers increases, the burden of the annual reporting requirement outweighs its usefulness as a monitoring and compliance tool. The Commission has determined that annual hearing aid compatibility status reports show a near universal compliance with the Commission’s hearing aid compatibility requirements. Further, the Commission finds that the information that service providers submit as part of their FCC Form 655 filing requirement is duplicative of information that wireless device manufacturers are already providing and will continue to provide to the Commission in their annual filings. By eliminating the FCC

Form 655 filing requirement for all service providers, the Commission eliminates an unnecessary and outdated reporting requirement and streamlines its collection of information regarding the status of hearing aid-compatible handsets. In addition, the Commission finds that the elimination of the reporting requirement will allow service providers to utilize the cost savings in time and money to maintain and improve their websites and other outreach materials that are more readily accessible to consumers.

48. While the Commission is eliminating a reporting requirement that all service providers argue should be eliminated, the Commission's new light-touch regulatory approach will continue to allow it to fulfill its responsibilities and objectives for wireless hearing aid compatibility. Service providers will continue to have to meet relevant hearing aid compatibility handset benchmarks and comply with product labeling and disclosure requirements. Further, service providers will have to continue to post certain information about their handsets on their publicly accessible websites along with certain information that they previously included as part of their FCC Form 655 annual reporting requirement. The Commission is not prescribing a standard template for posting this information on their websites and the Commission finds that service providers may rely on information that device manufacturers included in their FCC Form 655 filings as a safe harbor. The record in this proceeding shows that some service providers already post some of this information to their websites and both large and small service providers support the use of web posting as an alternative to the FCC Form 655 filing requirement. Service providers will also be required to retain information regarding past handsets offered.

49. In addition to web posting and data retention requirements, the Commission is requiring all service providers to certify whether or not the provider is in full compliance with the Commission's hearing aid compatibility provisions and if they are not, a requirement to explain why. This requirement includes a short statement and information about who is making the certification. Commenters in the proceeding supported replacing the annual filing requirement with a certification requirement. The Commission does not anticipate that it will be difficult or burdensome for service providers to gather and post information on their website or to make the required certification. While the

Commission is eliminating FCC Form 655 reporting requirements for all service providers, the Commission is not eliminating the requirement that they continue to meet applicable deployment benchmarks and maintain compliance with all other hearing aid compatibility provisions. Therefore, all service providers would likely need to maintain information demonstrating compliance with the rules in the normal course of business and posting this information to their websites and making the required certification should only impose a minimal additional incremental burden and, and, be substantially less than the burden associated with filing FCC Form 655 each year.

#### 6. Steps Proposed To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

50. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its 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 and reporting requirements under the rule for such 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 such small entities."

51. The Commission considered but rejected more burdensome compliance requirements. For instance, the Commission considered retaining but streamlining the information that is collected in the FCC Form 655. The Commission found that this approach would only result in a minimal reduction of regulatory burdens for service providers. Given the passage of time and the current state of availability of information about handset hearing aid compatibility, the burden of collecting the information necessary to fill out the form and file it, the Commission found that even in a streamlined format the benefit of filing the form was not outweighed by any benefit to consumers or the Commission. The Commission determined that streamlining the form will only result in a minimal reduction of regulatory burden with no corresponding benefit to the public interest. As a result, the Commission rejected the solution of streamlining the form and continuing the requirement

that service providers file the form on an annual basis.

52. The Commission also chose to make the elimination of the FCC Form 655 reporting requirement for service providers effective 30 days after publication of the rule in the **Federal Register**. Therefore, service providers will benefit from the Commission's new rules almost immediately while the new website posting, and certification requirements will be effective 30 days following notice of OMB approval of the relevant information collection requirements. This approach affords service providers sufficient time to make any necessary preparations required by the new certification approach.

#### 7. Report to Congress

53. The Commission will send a copy of the Report and Order, including this FRFA, in a report to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the Report and Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the Report and Order and FRFA (or summaries thereof) also will be published in the **Federal Register**.

#### B. Paperwork Reduction Act

54. The requirements in revised section 20.19(e), (h) and (i) constitute new or modified collections subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. They will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new information collection requirements contained in this proceeding. This document will be submitted to OMB for review under section 3507(d) of the PRA. In addition, the Commission notes that, pursuant to the Small Business Paperwork Relief Act of 2002, it previously sought, but did not receive, specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees. The Commission describes impacts that might affect small businesses, which includes more businesses with fewer than 25 employees, in the Final Regulatory Flexibility Analysis in Appendix C.

#### C. Congressional Review Act

55. The Commission will include a copy of this Report and Order in a report to be sent to Congress and the Government Accountability Office

pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

### III. Ordering Clauses

56. Accordingly, *it is ordered*, pursuant to sections 4(i), 303(r), and 710 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), and 610, this Report and Order *is hereby adopted*.

57. *It is further ordered* that Part 20 of the Commission's rules *is amended* as set forth in Appendix B.

58. *It is further ordered* that the amendments of the Commission's rules as set forth in Appendix B *are adopted*, effective thirty days from the date of publication in the **Federal Register**. Section 20.19, paragraphs (e), (h) and (i) contain new or modified information collection requirements that require review by the OMB under the PRA. The Commission directs the Bureau to announce the compliance date for those information collections in a document published in the **Federal Register** after the Commission receives OMB approval and directs the Bureau to cause section 20.19(m) to be revised accordingly.

59. *It is further ordered* that, pursuant to the authority of section 4(i) of the Communications Act, as amended, 47 U.S.C. 154(i), and section 1.3 of the Commission's rules, 47 CFR 1.3, the requirements of section 20.19(i) of the Commission's rules, 47 CFR 20.19(i), *are waived* to the extent described herein.

60. *It is further ordered* that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the SBA.

#### List of Subjects in 47 CFR Part 20

Communications common carriers, Communications equipment, Radio.

Federal Communications Commission.

**Katura Jackson,**

*Federal Register Liaison, Office of the Secretary.*

#### Final Rules

For the reasons set forth in the preamble, part 20 of title 47 of the Code of Federal Regulations is amended as follows:

#### PART 20—COMMERCIAL MOBILE RADIO SERVICES

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

**Authority:** 47 U.S.C. 151, 152(a), 154(i), 157, 160, 201, 214, 222, 251(e) 301, 302, 303, 303(b), 303(r), 307, 307(a), 309, 309(j)(3), 316,

316(a), 332, 610, 615, 615a, 615b, 615c, unless otherwise noted.

■ 2. Section 20.19 is amended by revising paragraphs (c)(4)(ii), (d)(4)(ii), (e)(1)(i), (h), (i)(1), (i)(3), and (i)(4), and adding paragraph (m) to read as follows:

#### § 20.19 Hearing aid-compatible mobile handsets.

\* \* \* \* \*

(c) \* \* \*

(4) \* \* \*

(ii) *Offering models with differing levels of functionality.* Each service provider must offer its customers a range of hearing aid-compatible models with differing levels of functionality (*e.g.*, operating capabilities, features offered, prices). Each provider may determine the criteria for determining these differing levels of functionality.

(d) \* \* \*

(4) \* \* \*

(ii) *Offering models with differing levels of functionality.* Each service provider must offer its customers a range of hearing aid-compatible models with differing levels of functionality (*e.g.*, operating capabilities, features offered, prices). Each provider may determine the criteria for determining these differing levels of functionality.

(e) *De minimis exception.* (1)(i) Manufacturers or service providers that offer two or fewer digital wireless handsets in an air interface in the United States are exempt from the requirements of this section in connection with that air interface, except with regard to the reporting and certification requirements in paragraph (i) of this section. Service providers that obtain handsets only from manufacturers that offer two or fewer digital wireless handset models in an air interface in the United States are likewise exempt from the requirements of this section other than paragraph (i) of this section in connection with that air interface.

\* \* \* \* \*

(h) *Website and record retention requirements*—(1) Each manufacturer and service provider that operates a publicly-accessible website must make available on its website a list of all hearing aid-compatible models currently offered, the ratings of those models, and an explanation of the rating system. Each service provider must also specify on its website, based on the levels of functionality and rating that the service provider has defined, the level that each hearing aid-compatible model falls under, as well as an explanation of how the functionality of the handsets varies at the different levels. Each service provider must also

include on its website: A list of all non-hearing aid-compatible models currently offered, including the level of functionality that each of those models falls under, an explanation of how the functionality of the handsets varies at the different levels as well as a link to the current FCC web page containing information about the wireless hearing aid compatibility rules and service providers' obligations. Each service provider must also include the marketing model name/number(s) and FCC ID number of each hearing aid-compatible and non-hearing aid-compatible model currently offered.

(2) Service providers must maintain on their website either:

(i) A link to a third-party website as designated by the Commission or Wireless Telecommunications Bureau with information regarding hearing aid-compatible and non-hearing aid-compatible handset models; or

(ii) A clearly marked list of hearing aid-compatible handset models that are no longer offered if the calendar month/year that model was last offered is within 24 months of the current calendar month/year and was last offered in January 2018 or later along with the information listed in paragraph (h)(1) of this section for each hearing aid-compatible handset.

(3) If the Wireless Telecommunications Bureau determines that the third-party website has been eliminated or is not updated in a timely manner, it may select another website or require service providers to comply with paragraph (h)(2)(ii) of this section.

(4) The information on the website must be updated within 30 days of any relevant changes, and any website pages containing information so updated must indicate the day on which the update occurred.

(5) Service providers must maintain internal records including the ratings, if applicable, of all hearing aid-compatible and non-hearing aid-compatible models no longer offered (if the calendar month/year that model was last offered is within 24 months of the current calendar month/year and was last offered in January 2018 or later); for models no longer offered (if the calendar month/year that model was last offered is within 24 months of the current calendar month/year), the calendar months and years each hearing aid-compatible and non-hearing aid-compatible model was first and last offered; and the marketing model name/number(s) and FCC ID number of each hearing aid-compatible and non-hearing aid-compatible model no longer offered (if the calendar month/year that model was last offered is within 24 months of

the current calendar month/year and was last offered in January 2018 or later).

(i) *Reporting and certification requirements*—(1) *Reporting and certification dates*. Manufacturers shall submit reports on efforts toward compliance with the requirements of this section on an annual basis on July 15. Service providers shall submit certifications on their compliance with the requirements of this section by January 15 of each year. Information in each report and certification must be up-to-date as of the last day of the calendar month preceding the due date of each report and certification.

\* \* \* \* \*

(3) *Content of service provider certifications*. Certifications filed by service providers must include:

(i) The name of the signing executive and contact information;

(ii) The company(ies) covered by the certification;

(iii) The FCC Registration Number (FRN);

(iv) If the service provider is subject to paragraph (h) of this section, the website address of the page(s) containing the required information regarding handset models;

(v) The percentage of handsets offered that are hearing aid-compatible (providers will derive this percentage by determining the number of hearing aid-compatible handsets offered across all air interfaces during the year divided by the total number of handsets offered during the year); and

(vi) The following language:

I am a knowledgeable executive [of company x] regarding compliance with the Federal Communications Commission's wireless hearing aid compatibility requirements at a wireless service provider covered by those requirements.

I certify that the provider was [(in full compliance/not in full compliance)] [choose one] at all times during the applicable time period with the Commission's wireless hearing aid compatibility deployment benchmarks and all other relevant wireless hearing aid compatibility requirements.

The company represents and warrants, and I certify by this declaration under penalty of perjury pursuant to 47 CFR 1.16 that the above certification is consistent with 47 CFR 1.17, which requires truthful and accurate statements to the Commission. The company also acknowledges that false statements and misrepresentations to the Commission are punishable under Title 18 of the U.S. Code and may subject it to enforcement action pursuant to Sections 501 and 503 of the Act.

(vii) If the company selected that it was not in full compliance, an explanation of which wireless hearing aid compatibility requirements it was not in compliance with, when the non-

compliance began and (if applicable) ended with respect to each requirement.

(4) *Format*. The Wireless Telecommunications Bureau is delegated authority to approve or prescribe formats and methods for submission of the reports and certifications required by this section. Any format that the Bureau may approve or prescribe shall be made available on the Bureau's website.

\* \* \* \* \*

(m) *Compliance date*. Paragraphs (e), (h), and (i) of this section contain new or modified information-collection and recordkeeping requirements adopted in FCC 18-167. Compliance with these information-collection and recordkeeping requirements will not be required until after approval by the Office of Management and Budget. The Commission will publish a document in the **Federal Register** announcing that compliance date and revising this paragraph accordingly.

[FR Doc. 2018-26037 Filed 12-6-18; 8:45 am]

**BILLING CODE 6712-01-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

#### 49 CFR Part 270

[Docket No. FRA-2011-0060, Notice No. 9]

RIN 2130-AC79

#### System Safety Program

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).

**ACTION:** Final rule; stay of regulations.

**SUMMARY:** On August 12, 2016, FRA published a final rule requiring commuter and intercity passenger railroads to develop and implement a system safety program (SSP) to improve the safety of their operations. FRA has stayed the SSP final rule's requirements until December 4, 2018. FRA is issuing this final rule to extend that stay until September 4, 2019.

**DATES:** Effective December 4, 2018, the stay of 49 CFR part 270 is extended until September 4, 2019.

**ADDRESSES:** *Docket:* For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> and follow the online instructions for accessing the docket.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth A. Gross, Attorney, U.S. Department of Transportation, Federal Railroad Administration, Office of Chief

Counsel; telephone: 202-493-1342; email: [Elizabeth.Gross@dot.gov](mailto:Elizabeth.Gross@dot.gov).

**SUPPLEMENTARY INFORMATION:** On August 12, 2016, FRA published a final rule requiring commuter and intercity passenger railroads to develop and implement an SSP to improve the safety of their operations. See 81 FR 53850. On February 10, 2017, FRA stayed the SSP final rule's requirements until March 21, 2017, consistent with the new Administration's guidance issued January 20, 2017, intended to provide the Administration an adequate opportunity to review new and pending regulations. See 82 FR 10443 (Feb. 13, 2017). To provide additional time for that review, FRA extended the stay until May 22, 2017, June 5, 2017, December 4, 2017, and then December 4, 2018. See 82 FR 14476 (Mar. 21, 2017); 82 FR 23150 (May 22, 2017); 82 FR 26359 (June 7, 2017); and 82 FR 56744 (Nov. 30, 2017).<sup>1</sup> In that November 2017 document, FRA stated that the stays of the rule's requirements did not affect the SSP final rule's information protection provisions in 49 CFR 270.105, which took effect on August 14, 2017, for information a railroad compiles or collects after that date solely for SSP purposes.

FRA's review included petitions for reconsideration of the SSP final rule (Petitions). Various rail labor organizations (Labor Organizations) filed a single joint petition.<sup>2</sup> State and local transportation departments and authorities (States) filed the three other petitions, one of which was a joint petition (State Joint Petition).<sup>3</sup> The State Joint Petition requested that FRA stay the SSP final rule, and NCDOT specifically requested that FRA stay the rule while FRA was considering the

<sup>1</sup> FRA notes it inadvertently published two notifications in the **Federal Register** identified as Notice No. 6 for this docket. See 82 FR 23150 (May 22, 2017), Docket No. FRA-2011-0060-0043; and 82 FR 26359 (June 7, 2017), Docket No. FRA-2011-0060-0044. Before identifying the duplication, FRA published a subsequent Notice No. 7. See 82 FR 56744 (Nov. 30, 2017), Docket No. FRA-2011-0060-0047. FRA is numbering this document as Notice No. 9, to reflect that it is actually the ninth notification published for this docket.

<sup>2</sup> The labor organizations that filed the joint petition are: The American Train Dispatchers Association (ATDA), Brotherhood of Locomotive Engineers and Trainmen (BLET), Brotherhood of Maintenance of Way Employees Division (BMWED), the Brotherhood of Railroad Signalmen (BRS), Brotherhood Railway Carmen Division (TCU/IAM), and Transport Workers Union of America (TWU).

<sup>3</sup> The Capitol Corridor Joint Powers Authority (CCJPA), Indiana Department of Transportation (INDOT), Northern New England Passenger Rail Authority (NNEPRA), and San Joaquin Joint Powers Authority (SJJPA) filed a joint petition (Joint Petition). The North Carolina Department of Transportation (NCDOT) and State of Vermont Agency of Transportation (VTTrans) each filed separate petitions.