

Federal Communications Commission.

**Jennifer Gilsean,**  
Branch Chief, Satellite Policy Branch,  
International Bureau.

**Proposed Rule**

For the reasons stated in the preamble, the Federal Communications

Commission proposes to amend 47 CFR part 1 as follows:

**PART 1—PRACTICE AND PROCEDURE**

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

**Authority:** 47 U.S.C. 151, 154(I), 154(j), 155, 225, 303(r), 309 and 325(e).

2. Section 1.1307 is amended by revising the entry for Satellite Communications in Table 1 to read as follows:

**§ 1.1307 Actions that may have a significant environmental effect, for which Environmental Assessments (EAs) must be prepared.**

\* \* \* \* \*

TABLE 1—TRANSMITTERS, FACILITIES, AND OPERATIONS SUBJECT TO ROUTINE ENVIRONMENTAL EVALUATION

Service (title 47 CFR rule part)	Evaluation required if
Satellite Communications (part 25) .....	Satellite DARS Terrestrial Repeaters: >2000 W EIRP All others included.

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**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 68**

[WT Docket No. 01-309; FCC 01-320]

**Hearing Aid Compatibility with Public Mobile Service Phones**

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document initiates a proceeding in which the Commission considers whether to continue or eliminate the exemption of public mobile service phones from legislatively mandated hearing aid compatibility requirements.

**DATES:** Submit comments on or before January 11, 2002, and submit reply comments on or before February 11, 2002. Written comments on the proposed information collections are due January 22, 2002. Written comments on the proposed information collections must be submitted by the Office Management and Budget (OMB) on the proposed information collections on or before March 25, 2002.

**ADDRESSES:** Send comments and reply comments to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1-C804, 445 12th Street, SW., Washington, DC 20554, or

via the Internet to [jboley@fcc.gov](mailto:jboley@fcc.gov), and to Ed Springer, OMB Desk Officer, 10236 NEOB, 725-17th Street, NW., Washington, DC 20503 or via the Internet to [Edward.Springer@omb.eop.gov](mailto:Edward.Springer@omb.eop.gov).

**FOR FURTHER INFORMATION CONTACT:** Mindy Littell, 202-418-1310 (voice) or (202) 418-1169 (TTY); or Dana Jackson, Consumer Information Bureau, Disabilities Rights Office, (202) 418-2517 (voice) or 418-7898 (TTY). For additional information concerning the information collections contained in this document, contact Judy Boley at 202-418-0214, or via the Internet at [jboley@fcc.gov](mailto:jboley@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making (NPRM) in WT Docket No. 01-309, FCC 01-320, adopted October 29, 2001, and released November 14, 2001. The complete text of the NPRM and Initial Regulatory Flexibility Analysis is available on the Commission's Internet site, at [www.fcc.gov](http://www.fcc.gov). It is also available for inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level, 445 12th Street, SW., Washington, DC, and may be purchased from the Commission's copy contractor, Qualex International, CY-B402, 445 12th Street, SW., Washington, DC. Comments may be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>, or by e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov).

**Synopsis of the NPRM**

1. In this NPRM, the Commission reexamines the exemption, adopted pursuant to the direction of the Hearing Aid Compatibility Act of 1998 (HAC Act), of public mobile service phones from the hearing aid compatibility requirements of that Act. This NPRM is

adopted pursuant to the Commission's obligation under the HAC Act to assess periodically whether the exemptions from the hearing aid compatibility requirement continue to be warranted. Currently, many people who use hearing aids or who have cochlear implants have difficulty finding a digital wireless mobile telephone that functions effectively with those devices because of interference and compatibility problems. A Public Notice was issued in October 2000 seeking comment on a request from the Wireless Access Coalition that the Commission reopen the petition for rulemaking filed in 1995 on behalf of the HEAR-IT NOW Coalition, seeking to revoke the exemption for Person Communications Services (PCS) from the Commission's hearing aid compatibility requirements. The NPRM seeks comment to expand the record thus far in order to establish a reliable, extensive record on which to base its decision to continue, limit, or eliminate the PCS exemption.

2. The HAC Act, as indicated in paragraphs 16 through 18 of the NPRM, mandates that once technical standards for hearing aid compatibility are established, covered telephones must provide internal means for effective use with hearing that are designed to be compatible with telephones that meet such technical standards. (47 U.S.C. 610(b)(1)). This portion of the statute appears to require, first, the establishment of technical standards governing wireless hearing aid compatibility. Therefore, the Commission tentatively concludes that, if it removes or limits the exemption for public mobile services, the industry will be required to develop technical standards for compatibility between covered wireless devices and hearing

aids. The Commission invites comment on this tentative conclusion.

3. The statute also requires that once these standards are established, the wireless industry will be responsible for providing *internal means* for making the covered telephones compatible with hearing aids. The Commission seeks comment on possible interpretations of "internal means."

4. Third, the HAC Act appears to limit the compatibility requirement to only "hearing aids that are designed to be compatible with telephones that meet established technical standards for hearing aid compatibility." The Commission seeks comment on its assumption that this means that there may be some instances in which a hearing aid is not designed to be compatible with wireless telephones.

5. The Commission also seeks comment on the four criteria specified by the HAC Act which, if satisfied, would compel the Commission to "revoke or otherwise limit" the exemptions. Thus, the Commission seeks comment on whether these criteria are satisfied and on other more specific issues in this regard, as detailed in paragraphs 20 through 29 of the NPRM. These four criteria are: (1) Whether revoking or limiting the exemptions is in the public interest; (2) whether the continuation of the exemptions without revocation or limitation would have an adverse effect on people with hearing disabilities; (3) whether compliance with the requirements of the hearing aid compatibility rule is technologically feasible for the telephones to which the exemption applies; and (4) whether compliance with the requirements of the rule would not increase costs to such an extent that the telephones to which the exemption applies could not be successfully marketed.

6. Paragraphs 30 and 31 of the NPRM seek comment on the proper scope of the exemptions and on possible ways the Commission could limit the exemptions. Included in the discussion of implementation issues in paragraphs 32 through 35 of the NPRM, the Commission solicits comment on the possibility of a phased-in approach to implementation if the exemption is ultimately limited or revoked.

Additionally, the Commission invites comment on ways in which it can stay informed on progress toward compliance by both the wireless industry and the hearing aid manufacturing industry. In this regard, the Commission suggests a quarterly report to help it monitor activities of the involved industries. Also, the Commission seeks comment on possible

complaint procedures if the exemption is either limited or revoked.

#### Initial Regulatory Flexibility Analysis

7. This is a summary of Initial Regulatory Flexibility Act Analysis (IRFA) for the NPRM. The full text of the IRFA may be found in Appendix B of the NPRM.

8. As required by the Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 603, the Commission has prepared an IRFA of the possible significant economic impact on small entities of the policies and rules proposed in the NPRM. The Commission requests written public comment on the analysis. In order to fulfill the mandate of the Contract with America Advancement Act of 1996 regarding the Initial Regulatory Flexibility Analysis, the Commission asks a number of questions in the IRFA regarding the prevalence of small businesses in the affected industries.

#### Initial Regulatory Flexibility Analysis

9. As required by Section 603 of the Regulatory Flexibility Act (RFA), the Commission has prepared this IRFA of the possible significant economic impact on small entities by the policies and rules proposed in this Notice of Proposed Rule Making NPRM. Written public comments are requested on this IRFA. Comments must be identified as responses to this IRFA and must be filed by the deadlines for comments on the NPRM provided in paragraph 38 of the NPRM. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).

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

10. The Commission adopts the NPRM in order to examine the continued appropriateness of the exemption from the requirements of the Hearing Aid Compatibility Act (HAC Act) provided to public mobile services. The HAC Act mandates a periodic review of the exemption, and the Commission believes a proceeding should be initiated to consider whether it is appropriate to revoke or limit the exemption with respect to telephones used with public mobile services. This decision would be based on the four criteria established by the HAC Act that, if satisfied, would compel the Commission to revoke or otherwise limit the exemptions.

#### B. Legal Basis

11. The proposed action is authorized under the Communications Act of 1934 as amended, sections 4(i), 303(r) and

710(a) and (b), 47 U.S.C. 154(i), 303(r) and 610(a) and (b).

#### C. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply

12. 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 proposed rules, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." 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.

13. Neither the Commission nor the SBA has developed definitions for small providers of the specific industries affected. Therefore, throughout our analysis, unless otherwise indicated, the Commission uses the closest applicable definition under the SBA rules, the North American Industry Classification System (NAICS) standards for "Cellular and Other Wireless Telecommunications" and "Wired Telecommunications Carriers." According to this standard, a small entity is one with no more than 1,500 employees. To determine which of the affected entities in the affected services fit into the SBA definition of small business, the Commission has consistently referred to Table 5.3 in *Trends in Telephone Service (Trends)*, a report published annually by the Commission's Common Carrier Bureau.

14. Wireless Telephones Including Cellular, Personal Communications Service (PCS) and SMR Telephony Carriers. There are 806 entities in this category as estimated in *Trends*, and 323 such licensees in combination with their affiliates have 1,500 or fewer employees and thus qualify using the NAICS guide, as small businesses.

15. Other Mobile Service Providers. *Trends* estimates that there are 44 providers of other mobile services, and again using the NAICS standard, 43 providers of other mobile services utilize with their affiliates 1,500 or fewer employees and thus may be considered small entities.

16. Hearing Aid Equipment Manufacturers. Hearing aid manufacturers are not regulated by the Commission, but may be affected by the proposed actions taken in this proceeding. In light of the potential

impact, we have chosen to include hearing aid manufacturers in this IRFA, although we are not required to do so. Hearing aid manufacturers are not licensed, but the Commission estimates that there are approximately 35 to 40 hearing aid manufacturers.

17. **Handset Manufacturers.** The Commission does not license or regulate handset manufacturers. Therefore, no data exists indicating the number of entities manufacturing handsets. The applicable definition of small entity in this respect is the definition under the SBA rules applicable to Communications Services, Not Elsewhere Classified. This definition provides that a small entity is one with \$11 million or less in annual receipts. According to Census Bureau data, there are 848 firms that fall under the category of Communications Services, Not Elsewhere Classified. Of those approximately 775 reported annual receipts of \$11 million or less and qualify as small entities. Thus, the Commission, for purposes of this analysis estimates that no more than 775 handset manufacturers qualify as small entities.

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

18. In the event that the HAC Act exemption is revoked, telephones used with public mobile services will be required to be compatible with hearing aids and cochlear implants. While it is possible that, in this proceeding, the scope of the exemption may be fashioned so that not all telephones used with public mobile services will be subject to the hearing aid compatibility requirements, for purposes of this analysis we will assume the broadest possible impact. The NPRM first seeks comment on ways in which the Commission can stay informed on progress toward compliance by both the wireless industry and the hearing aid manufacturing industry, such as through a quarterly reporting requirement. Also, the NPRM tentatively concludes that, in the event the Commission removes or limits the exemption for public mobile services, the industry will be required to develop technical standards for compatibility between covered wireless devices and hearing aids. One implementation approach proposed by the Cellular Telecommunications & Industry Association, provides that wireless devices would be categorized and "paired" with a categorized hearing aid to enable the use of the two devices together. In the event that the Commission decides to limit or revoke

the exemption, and it determines that the CTIA plan is the appropriate mechanism to satisfy the requirements of the HAC Act, the NPRM seeks comment on the series of steps CTIA asserts will be necessary before such a pairing approach can be implemented, part of which necessitates an educational effort to inform consumers and retail sales personnel about the plan. Finally, if the exemption is either removed or limited, complaint procedures would be adopted and the affected licensees would need to participate in the complaint process.

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

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

20. The NPRM seeks comment on a number of matters related to implementation of hearing aid compatibility in the wireless devices used with public mobile services, all of which could affect small entities. We note that, to the extent that manufacturers would make changes to telephone handsets to enable carriers subject to the hearing aid compatibility requirements to comply with those requirements, in many cases, those updated handsets may be usable by smaller carriers as well as larger carriers. The two most obvious alternatives in this proceeding are whether to keep the exemption or whether to eliminate or limit the exemption. Depending on the final action taken, small entities could be affected. The NPRM seeks comment on the best way to implement the hearing aid compatibility requirements, and indicates that a phased-in approach might be a good way to minimize burdens on all carriers, including small entities. Because of the impact of the rule on people with hearing disabilities, the Commission has little flexibility in terms of providing a less burdensome approach for small entities. The incompatibility between hearing aids and wireless devices affects all persons

with hearing disabilities in the same way regardless of the size of the carrier or manufacturer. In paragraph 26, the NPRM seeks comment on whether the "pairing" approach suggested by CTIA, along with its educational component, would be a satisfactory solution to the incompatibility problem. The NPRM, in paragraph 31, also asks whether the exemptions should be limited with respect to fewer than all telephones used with public mobile services. The Commission invites comment on the impact on small entities of the alternatives here suggested. The Commission further invites interested parties to offer additional alternatives.

21. In paragraph 32, the NPRM seeks comment on whether a reporting requirement is needed to assist the Commission in monitoring the industry's progress toward implementation of hearing aid compatibility in the covered wireless devices. Commenters are encouraged to provide input on the content and frequency of these reports so as to facilitate monitoring and the exchange of information between the wireless industry and the hearing aid manufacturing industry. Because of the compelling public interest in making public service telephones accessible to persons with hearing disabilities, the Commission proposes to require quarterly reports by affected entities to ensure that progress is being made toward achieving hearing aid compatibility. Paragraphs 28 and 29 of the NPRM seek comment on how to minimize the financial burden on those currently exempt from hearing aid compatibility if the exemptions are limited or removed.

#### F. Federal Rules That May Overlap, Duplicate, or Conflict With the Proposed Rules

22. None.

#### Ex Parte Presentations

23. For purposes of this permit-but-disclose notice and comment rulemaking proceeding, members of the public are advised that *ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed under the Commission's Rules. (*See generally* 47 CFR 1.1202, 1.1203, 1.1206(a).)

#### Pleading Dates

24. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before January 11, 2002, and reply comments on or before February 11, 2002. All relevant and timely comments will be

considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, interested parties must file an original and four copies of all comments, reply comments, and supporting comments. If interested parties want each Commissioner to receive a personal copy of their comments, they must file an original plus nine copies. Interested parties should send comments and reply comments to the Office of the Secretary, Federal Communications Commission, Room TW-A325, 445 Twelfth Street, SW., Washington, DC 20554, with a copy to Mindy Littell, Policy Division, Wireless Telecommunications Bureau, 445 Twelfth Street, SW., Washington, DC 20554.

25. Comments may also be filed using the Commission's Electronic Comment Filing System (ECFS). Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet E-Mail. To obtain filing instructions for E-Mail comments, commenters should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and should include the following words in the body of the message, "get form <your E-Mail address>." A sample form and directions will be sent in reply.

26. Comments and reply comments will be available for public inspection during regular business hours at the FCC Reference Center, Room CY-A257, at the Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. Copies of comments and reply comments are available through the Commission's duplicating contractor: Qualex International, CY-B402, 445 12th Street, SW., Washington, DC 20054, (202) 863-2893, e-mail [QUALEXINT@AOL.COM](mailto:QUALEXINT@AOL.COM).

#### Ordering Clauses

27. Authority for the issuance of this Notice of Proposed Rule Making is contained in sections 4(i), 303(r) and 710(a) and (b) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r) and 610(a) and (b).

28. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this Notice of Proposed Rule Making, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

#### Paperwork Reduction Analysis

33. This NPRM contains proposed information collections. As part of our continuing effort to reduce paperwork burdens, the Commission invites the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Public and agency comments are due January 22, 2002. OMB comments are due March 25, 2002. Comments should address: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (2) the accuracy of the Commission's burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

*OMB Approval Number:* 3060-XXXX.

*Title:* Exemption of Public Mobile Service Phone from the Hearing Aid Compatibility Act: Notice of Proposed Rulemaking (NPRM).

*Form No.:* N.A.

*Type of Review:* New collection.

*Respondents:* Individuals or households; business or other for profit.

*Number of Respondents:* 965 respondents; 3,860 responses.

*Estimated Time Per Response:* 2 to 8 hours.

*Frequency of Response:* On occasion and quarterly reporting requirement and third party disclosure requirement.

*Total Annual Burden:* 20,265 hours.

*Total Annual Cost Burden:* N/A.

*Needs and Uses:* The reporting requirement, if adopted, will be used by the Commission to monitor wireless carriers and handset and hearing aid manufacturers progress towards compliance with hearing aid compatibility requirements, if the current exemption is limited or revoked. Technical standards are mandated by the Hearing Aid Compatibility Act of 1988, if the Commission decides to limit or revoke the current exemption, and will be used as a guide to compliance with hearing aid compatibility requirements.

#### List of Subjects in 47 CFR Part 68

Communications common carriers, Communications equipment.

Federal Communications Commission.

**William F. Caton,**

*Deputy Secretary.*

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#### DEPARTMENT OF THE INTERIOR

##### Fish and Wildlife Service

#### 50 CFR Part 17

RIN 1018-AF45

#### Endangered and Threatened Wildlife and Plants; Reopening of Comment Period on the Proposed Rule To List the Southwestern Washington/Columbia River Coastal Cutthroat Trout in Washington and Oregon as Threatened

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule; reopening of comment period.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service) are reopening the comment period on the proposed rule to list the Southwestern Washington/Columbia River coastal cutthroat trout Distinct Population Segment (DPS) in Washington and Oregon to collect new information that may be available concerning coastal cutthroat trout in the proposed area.

**DATES:** We will accept public comments until December 24, 2001.

**ADDRESSES:** Comments and materials concerning this notice should be sent to U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office, 2600 SE 98th Avenue, Suite 100, Portland, Oregon 97266, or email:

[coastal\\_cutthroat@fws.gov](mailto:coastal_cutthroat@fws.gov). Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Kemper McMaster, State Supervisor at the above address, or telephone 503/231-6179; facsimile 503/231-6195

#### SUPPLEMENTARY INFORMATION

##### Background

On April 5, 1999, the National Marine Fisheries Service (NMFS) and the Service published a notice in the **Federal Register** (64 FR 16397) proposing to list the coastal cutthroat trout (*Oncorhynchus clarki clarki*) population in southwestern Washington and the Columbia River, excluding the Willamette River above Willamette Falls, as threatened pursuant to the Endangered Species Act of 1973, as