

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 87-124

In the Matter of

Access to Telecommunications Equipment
and Services by the Hearing Impaired
and Other Disabled Persons

FIRST REPORT AND ORDER

Adopted: May 4, 1989;

Released: May 11, 1989

By the Commission:

1. On August 17, 1988, the President signed into law the Hearing Aid Compatibility Act of 1988, Public Law 100-394 (HAC Act). The HAC Act requires all "essential" telephones¹ and nearly all telephones manufactured in or imported into this country after August 16, 1989, to be hearing aid compatible (HAC). The new law directs the Commission to "complete Rule Making actions required to implement the amendments made by the Hearing Aid Compatibility Act of 1988 within nine months after the date of enactment of such Act." HAC Act § 710(f). This Report and Order complies with that directive.

BACKGROUND

2. In response to the Telecommunications for the Disabled Act of 1982, Public Law 97-410, (Disabled Act) the Commission, on December 1, 1983, adopted rules designed to improve the availability of telecommunications equipment and services for the hearing impaired and other disabled persons.² These rules: (1) require telephones classified as "essential" to be internally compatible with hearing aids specially designed for telephone use;³ (2) describe the technical standards hearing aid compatible telephones must meet; (3) require each telephone package to denote whether the telephone is hearing aid compatible; and (4) allow carriers to provide "specialized terminal equipment" to persons with hearing, sight, speech or mobility impairments, and permit state commissions to allow carriers to recover through tariffs "reasonable and prudent costs not charged directly to users of such equipment." During the 1982 Congressional hearings leading to the Disabled Act and in preliminary Commission proceedings,⁴ it was evident that a segment of the U.S. population was having difficulty obtaining telecommunications services and equipment because of certain physical disabilities. This Commission believed the rules adopted in its further proceedings⁵ would improve access to telecommunications services by these disabled persons. Subsequently, a number of parties presented arguments to the Commission suggesting that these rules were not adequate to accomplish their intended purpose. In response, the Commission initiated this docket to examine the effectiveness of the current rules, particularly in the wake of

recent technological and other changes. On March 29, 1988, we issued a *Notice of Proposed Rule Making and Further Notice of Inquiry (Notice)*, CC Docket No. 87-124, 3 FCC Rcd 1982 (1988), proposing, among other things, specific rule changes that, if adopted, could increase the ability of the hearing impaired to access telephone services. We proposed to expand the definition of essential telephones to include all credit card-operated telephones and workplace telephones located in common areas likely to be used by hearing impaired employees. In the *Notice* we noted that Section 710(b) of the Disabled Act prohibited the Commission from requiring all telephones to be hearing aid compatible.⁶ The Disabled Act also directed the Commission, in implementing the Act through regulations, to consider the costs and benefits to "all telephone users, including persons with and without hearing impairments" and to adopt rules that "encourage the use of currently available technology and do not discourage . . . the development of improved technology." 47 U.S.C. § 710(e).

3. After we released the *Notice*, the HAC Act was enacted. The HAC Act, with some limited exceptions, requires telephones manufactured in or imported into this country after August 16, 1989, to be HAC, and directs the Commission to adopt appropriate rules. On February 16, 1989, we issued a *Further Notice of Proposed Rule Making (FNPRM)* to comply with the instructions of Congress.⁷ In our FNPRM, we concluded that the HAC Act eliminates the need for the Commission to expand the definition of "essential" telephones as was proposed in the *Notice*.⁸ Our proposed rules were tailored to the HAC Act, providing generally that all telephones manufactured or imported after August 16, 1989 be hearing aid compatible, with some exceptions applying to telephones used with public mobile services, private radio services and cordless telephones.

COMMENTS AND DISCUSSION

4. *The Rules.* We initiated the FNPRM to comply with the instructions of Congress described in the HAC Act. In so doing, we proposed to amend Part 68 of the rules to require all essential telephones and all new telephones manufactured in or imported into this country after August 16, 1989, to be HAC, with the exception of telephones used in public mobile and private radio services, and those classified as secure telephones. In addition, following language of the HAC Act, we proposed that cordless telephones have a grace period of three years after the date of enactment of the HAC Act during which they need not comply with the HAC requirement. We also proposed that the exemptions for telephones used with public mobile and private radio services be periodically reviewed, as required by the HAC Act. We further noted that the HAC Act does not require any retrofitting of units manufactured or imported prior to August 17, 1989, and that it permits the sale of these telephones until stock is depleted.

5. During its deliberation of the HAC Act, Congress found that although it had acted earlier to improve hearing impaired persons' access to the telephone network, there are many telephones still inaccessible to the hearing impaired community. Under the Disabled Act, only telephones classified as "essential" are required to be HAC. Except for coin operated telephones, telephones are in this class by virtue of their location, e.g., telephones in

hospital rooms and telephones at hearing impaired persons' work stations are essential. Congress pointed out that it is impossible to adequately define "essential telephones" to cover all possible situations in which hearing impaired persons may need access to a telephone. It stated:

No matter how broadly the FCC defines "essential", it is impossible to specify in advance all the telephones that a hearing aid user might need. The travelling salespeople, repairmen and women, doctors, and others who make house calls or work outside of an office, for instance, often use telephones that would not be classified as "essential". . .

Even if the FCC's rules theoretically covered all the potential situations in which a hearing aid user might need a HAC telephone, it is doubtful such rules could be enforced.

Senate Report at p. 3. To ameliorate the problem, Congress found it best to impose the responsibility for the HAC requirement on telephone manufacturers. It reasoned that this group has fewer members and has a better line of communication among its members. Congress found that migration to HAC telephones would occur naturally over time. Senate Report at p. 5.

6. BellSouth Corporation states that the proposed rules strike the appropriate balance among the interests reflected in the HAC Act and will enhance accessibility to telecommunications services by the hearing impaired. USTA supports the proposed rules, finding the FNPRM responds to the HAC Act. However, USTA offers some editorial suggestions designed, it claims, to focus on the telephone itself rather than communications services. More specifically, USTA suggests that the words:

"telephone used with" be inserted immediately before the words "private radio services" in both proposed section 68.4(a)(1) and proposed section 68.4(a)(4). USTA suggests that a comma be inserted after the words "private radio services" in proposed section 68.4(a)(1). Finally, USTA suggests that the words "telephones used with" also be inserted immediately before the words "public mobile services" in proposed section 68.4(a)(4).

USTA Comments at p. 2.⁹ In addition, USTA recommends that proposed Section 68.4(a)(3), which characterizes a hearing aid compatible telephone, use the language of the HAC Act's Section (b)(1). In the alternative, it suggests that the proposed section should be modified to indicate that Section 68.316 meets the statutory requirement. Also see GTE Comments at p. 3. We agree with these recommendations and, because these are editorial changes not affecting the substance of the rules, we will revise the language of the proposed rules to incorporate these suggestions. We also modify Section 68.4(a)(2) of the

rules proposed in the FNPRM to conform with the existing Section 68.4 as it relates to coin-operated and hotel/motel telephones.

7. USTA concurs with the Commission's conclusion that the HAC Act eliminates the need for the Commission to expand the definition of "essential" telephones as proposed in the *Notice*. While AT&T also supports the proposed rules, it urges the Commission not to forsake the Commission's original proposal to expand the definition of "essential" telephones to include credit card and workplace telephones. It maintains that for a period of time manufacturers may supply these telephones from existing stock, which need not be HAC. The Commission's original proposal, it suggests, would at least ensure that telephones at these locations would be HAC regardless of their manufactured or importation date. NCLD-OUT agrees with AT&T, arguing that the Commission in the *Notice*¹⁰ justified the proposed expansion because the benefits of compatible workplace telephones outweighed their cost.¹¹ It also states that Congress mandated that the Commission proceed with its earlier proposal, citing House Report No. 100-674 (100th Cong. 2d Sess.) at 3, 4 and 15; Senate Report No. 100-391 (100th Cong. 2d Sess.) at 2 and 3; and Public Law 100-394 §§ 2(1) and 2(4). NCLD-OUT also notes:

Not only did Congress direct the FCC not to limit the above definition to telephones at an individual's workstation - and, by implication, to expand the definition of essential telephones in the workplace - but it specifically mandated the Commission to include in that definition *all* telephones operated by credit card. The failure of the FCC to complete its NPRM ignores this Congressional directive.

NCLD-OUT Comments at p.5.

8. In its reply comments, NATA agrees with the Commission's conclusion that the HAC Act removes the need to continue with the proposal to expand the definition of "essential" telephones to include credit card and workplace telephones. It explains that following AT&T's recommendation would lead to the expense and burden that Congress attempted to avoid by not imposing retrofitting requirements for existing telephones and allowing a year grace period for new telephones to meet the HAC standard. It further indicates that Congress did not define workplace telephones as "essential" because it recognized "the burdensomeness and difficulty of enforcing . . . rules defining essential telephones by location instead of by type." NATA Reply at p. 3. Adopting AT&T's proposal, it states, would lead to unenforceable rules and a burden and expense of retrofitting not intended by Congress.

9. GTE contends that AT&T has mischaracterized the HAC Act. It explains that AT&T claims the new law narrows the definition of "essential" telephones. But, according to GTE, the HAC Act did not alter the definition of essential telephones, nor introduce any changes in the Disabled Act or the Commission's rules. Nevertheless, GTE agrees with AT&T that the new law did not expand the definition of "essential" telephones as proposed by the Commission in the *Notice*. Congress, it states, took a different approach, *i.e.*, enacting a law requiring virtually universal hearing aid compatibility for telephones. The

remaining question, according to GTE, is whether the Commission ought to expand the definition of "frequently needed" telephones while complying with the mandate of the HAC Act. GTE believes the Commission should not because the difference is marginal. Moreover, it notes, except for coin-operated and emergency telephones, the Commission is precluded from requiring retrofitting of telephones to achieve hearing aid compatibility. Therefore, already installed non-HAC credit card telephones "in stock" before August 17 would continue to be non-compatible. If AT&T's rule were adopted, such telephones would become surplus equipment and probably junked, argues GTE. In its view, the marginal increase in available HAC telephones does not justify discarding serviceable equipment, nor did Congress require such action, it concludes.

10. *Discussion.* In light of the action taken by Congress, expanding the definition of "essential" telephones to include workplace telephones in common areas appears unwarranted.¹² Moreover, the definition of common areas could not be sufficiently defined to cover all areas where the hearing impaired might need a telephone in the work environment. The ambiguity of the term could lead to challenges and could put the Commission in the position of being unable to enforce the requirement. Congress recognized the difficulty of enforcing rules of this nature. Thus, we will adopt Congress' approach to the overall problem of hearing aid users, *i.e.*, require nearly all telephones to be hearing compatible. As Congress noted, this scheme will not guarantee immediate universal hearing aid compatibility, but over time that goal will be realized.

11. We now turn to the issue of whether all credit card telephones should be included in the definition of "essential" telephones. Currently, credit card telephones must be hearing aid compatible "unless a hearing aid compatible coin-operated telephone providing similar services is nearby and readily available." 47 C.F.R. § 68.112(c)(1). Contrary to NCLD-OUT's view, the new law does not require that we expand the definition of "essential" telephones.¹³ In fact, the applicable legislative history¹⁴ is critical of the definitional approach to remedying the difficulties the hearing impaired encounter in using telephones. Moreover, the perceived unavailability of HAC credit card telephones does not appear to be as acute as NCLD-OUT implies. Our Part 68 records indicate that there are 16 registered series of credit card telephones that may be attached to the network. Of these, four do not contain a statement that they are HAC. This does not necessarily mean that all four of these units are, in fact, not HAC because some were registered prior to the adoption of our HAC standards and requirements. No evidence has been submitted regarding (1) how many credit card telephones are not hearing aid compatible, or (2), if any, how many have caused inconvenience to the hearing impaired. Thus, it is not apparent that there is a need to include all credit card telephones in the definition. Moreover, such inclusion would be inconsistent with that part of the HAC Act that allows manufacturers to deplete existing stocks of incompatible telephones.¹⁵ Finally, because we have no record data concerning the size of the extant stock of incompatible credit card telephones, we cannot engage in the cost/benefit analysis required by the Disabled Act. 47 U.S.C. § 710(e). For these reasons we do not adopt AT&T's and NCLD-OUT's proposal to require

all credit card telephones to be HAC immediately. We believe that, if there are such telephones, they will become HAC as they are replaced over time.

12. *Complex Equipment.* GTE expresses concern about the treatment of telephones used as components of complex devices, such as facsimile machines and private branch exchanges (PBXs). It believes that an assembly, *i.e.*, a complex device, qualifies as a "telephone" under the Commission's proposed rules. It argues that if the complex device is assembled after August 16, 1989, but contains a non-HAC telephone manufactured prior to August 17, 1989, the entire device is exempt from the HAC Act. In other words, if a complex equipment manufacturer purchases non-HAC telephones manufactured or imported prior to August 17, 1989, the finally assembled device need not comply with the HAC Act to be sold. However, it states that such devices must continue to comply with Sections 68.112 (identifies locations where "essential" telephones, *i.e.*, HAC telephones, must be placed), 68.218 (details the responsibility of grantee of equipment registration) and 68.224 (requires grantee of equipment registration to provide notice of hearing aid-compatibility) of the rules.

13. *Discussion.* GTE's analysis that these devices would be treated as telephones under the rules is correct. Equity requires that we permit the incorporation of non-HAC telephone handsets in other telecommunications devices after August 17. It would be unfair to permit retail of non-HAC telephone handsets after that date as self-contained units and forbid their use in other products. Congress recognized that the supply of non-compatible telephones would not be exhausted by the effective date of the new law, and therefore provided for their retail until the stock is depleted. The requirements which apply to the handsets are equally applicable to the equipment in which handsets are incorporated. Congress placed no restraints on the use of these non-compatible devices, and the policy against retroactive application of the HAC requirement argues in favor of GTE's interpretation, except they may not be employed at sites where telephones are deemed "essential". See 47 U.S.C. § 710(b)(1)(A) and 47 C.F.R. § 68.112.

14. *Secure Telephones.* The HAC Act exempts "secure" telephones from the HAC requirement. The HAC Act defines "secure" telephones as "telephones that are approved by the United States Government for the transmission of classified or sensitive voice communications." Section 710(b)(4)(D). AT&T requests that the Commission allow private customers to also use exempt secure telephones, stating that private customers may have a need for these telephones. It states that "secure telephones" do not generate an external magnetic field, "thus, it is infeasible for them to also provide a HAC capability." AT&T Comments at p. 5. In its view, because of their limited application, and approval by the U. S. Government, private use of these telephones would have little impact on the hearing impaired community.

15. In response to AT&T's request, GTE agrees with the results, but believes private use of these telephones is implicit in the HAC Act. It states that "[t]he law does not exempt such telephones only when 'used' by the Government, but merely requires that they be 'approved' by the Government for such use." Therefore, it concludes that private use of these telephones is already covered.

16. *Discussion.* The focus of the exemption is on telephones that are properly approved, independent of who actually uses them or where they are installed. Thus, for example, subsequent sale of Section 710(b)(4)(D) secure telephones in the surplus market would not convert them to HAC-subject telephones. Such telephones are designed not to contain fields susceptible to telecoil access. Therefore, their value after use in a secure environment would be reduced to zero were the exemption not to attach permanently. If Government-approved secure telephones are available to private users, we cannot conclude that they need be HAC, by the terms of the statute.¹⁶ This, we believe, was not Congress' intent. Congress was concerned that there remain available telephones usable for conducting conversations for secure purposes. The resulting statutory provision does not affect private, lawful use of such telephones. We therefore do not find it necessary to amend the proposed rule. However, these telephones when marketed to private consumers must comply with Sections 68.112, 68.218 and 68.224. That is, they may not be used as "essential" telephones and their packaging must contain proper instructions regarding places of use and a notation that they are not HAC.

17. *Section 68.316.* NCLD-OUT again requests the Commission to raise the minimum acceptable field strength of HAC telephones by at least six decibels. The basis for this request is outlined in comments NCLD-OUT submitted earlier in this proceeding.¹⁷ NCLD-OUT claims that some telephones classified as HAC emit energy at a level sufficient to meet the legal standard but ineffective in fulfilling the needs of some hearing aid users. Both AT&T and GTE oppose NCLD-OUT's suggestion. They explain that no data are offered demonstrating that these standards are inadequate. They note that the standards were developed with the cooperation of the Hearing Industries Association, an organization of hearing aid manufacturers. To achieve true compatibility, they argue, requires standardization of the hearing aid design.

18. *Discussion.* In the *Notice* at p. 1989, where we discussed other means of improving the disabled's access to telecommunications services, we observed:

There is little information on record concerning the hearing aid's role in these matters. It would certainly appear to play an integral role in the way the hearing impaired access telephone service. An assessment of how the quality of the hearing aid relates to the user's ability to access the telephone or use telephone services is required to determine what Commission action is appropriate. Further, it would be helpful to know if efforts are underway to standardize the hearing aid telecoil performance requirements, and the levels being proposed. . . .

Responses to this request provided no technical data demonstrating that our current standards are inadequate or indicating that the matter warrants further consideration. The record suggests that the range of hearing aids' performance levels continues to be extremely broad. Although the Senate Report does not address the issue, the House Report contains language which directs the Commission to maintain the current standards of Section 68.316. House Report at pp. 12 and 13. We therefore conclude that the current standards are adequate.

19. *Labelling.* Section 68.224 currently requires that telephone packaging contain a statement as to whether the telephone is HAC. AT&T urges the Commission to discontinue the telephone packaging labelling requirement. It feels that since the HAC Act requires nearly all telephones to be HAC, the labelling requirement of Section 68.224 is unnecessary, and its removal would reduce costs. AT&T notes, however, that should the Commission believe that labelling is needed, it should apply only to non-hearing aid compatible telephones. NCLD-OUT acknowledges the cost factor but opposes AT&T's proposal to eliminate the requirement at this time because it believes a large volume of possible non-compatible telephones will remain in the marketplace after the effective date of the new law and the Commission's rules. If adopted, it suggests, AT&T's proposal would deny consumers a means of determining whether a telephone is HAC. In the alternative, NCLD-OUT urges that the Commission retain the labelling requirement for at least three years.

20. *Discussion.* On the effective date of the HAC Act, there still will be a number of non-compatible telephones available for retail. We will continue to require that these telephones be labelled as non-HAC. AT&T requests that we discontinue the labelling requirement altogether. Without any labelling consumers would have no way of determining whether or which models are HAC. Over time, our new rules will bring about a virtually universal HAC environment, which means there will be few, if any, non-HAC telephones available for sale to the public. This tilts the cost/benefit analysis in favor of eliminating the labelling requirement for HAC telephones and to continuing to require the labelling only of non-HAC telephones. NCLD-OUT's proposal to remove the labelling requirement after three years would cause an unnecessary procedural complication. Instead, we believe reducing the HAC labelling requirement now, with implementation of our new rules, will at once reduce a regulatory burden, reduce unnecessary manufacturing costs and reflect the implicit expectation that a telephone purchased in the market place — unless otherwise noted on the packaging — is HAC. If we did not retain the packaging labelling requirement for non-compatible devices, the goal of the HAC Act that those persons with hearing impairments be afforded access to telephone service will be undermined. Therefore, we reject NCLD-OUT's proposal and adopt AT&T's alternative that only non-compatible telephones need comply with Section 68.224. See Appendix, amended Section 68.224.

21. *Refurbished Telephones.* In the FNPRM, we said refurbished telephones are not covered by the HAC Act. According to NCLD-OUT, the House Committee on Energy and Commerce authorized the Commission to impose HAC requirements on refurbished telephones. See House Report 100-674 at 12. Based on the nation's goal of universal telephone service, NCLD-OUT urges the Commission to require these telephones to be HAC whether or not they are HAC when submitted for refurbishment. Such a requirement, in its view, would serve the public interest. AT&T, however, concludes the Commission is correct in observing that the HAC Act does not apply to refurbished telephones. First, it indicates NCLD-OUT's reliance on the House Report is misplaced. AT&T relates "that the House Bill was adopted after it was amended to contain the text of the Senate Bill."¹⁸ AT&T Reply at p. 2. Therefore, it argues, the Senate Report represents the legislative history of the act — which provides no Commis-

sion authority to require refurbished telephones to be HAC. Second, it points to explicit language in the Senate Report and the Communications Act which excuses application of the new law to refurbished telephones. Senate Report at pp. 7-9 and 47 U.S.C. § 710(f). Even the House Report, AT&T explains, under its definition of refurbished telephones, would preclude application of the HAC Act in this instance. It states that "[t]o require that refurbished phones be made hearing aid compatible is to require retrofitting. Like the Senate Report, the House Report spoke strongly against a retrofitting requirement: ..." AT&T Reply at p. 3.

22. *Discussion.* The report of the Senate Committee on Commerce, Science, and Transportation indicates that the Committee considered application of the new law to refurbished telephones, but concluded it would be too expensive. At pages 4 and 5 of the Senate Report, the Committee stated that it

believes that an HAC requirement [for new telephones] would impose no additional cost on consumers. On the other hand, retrofitting telephones currently in use to make them HAC or requiring refurbished telephones to be compatible appears to be too costly at this time. [Emphasis added.]

After finding it too costly to impose the HAC requirement on refurbished telephones, the Committee's report implies that the issue would disappear as old telephones are replaced by new ones. Senate Report at p. 5. There is other language in this report which explicitly excludes refurbished telephones from the HAC requirement. For example, at pages 8 and 9, it is stated: "The bill does not apply to refurbished, repaired, or resold phones. . . . The bill does not require retrofitting of non-HAC telephones manufactured before the effective date of the legislation." Requiring refurbished telephones to meet the HAC standard would necessitate some retrofitting. Other than coin-operated and emergency telephones, the Commission cannot require telephones to be retrofitted to meet the HAC standard. See HAC Act § 710(f).

23. The House Report on which NCLD-OUT relies is inapplicable to this point. As AT&T states, the House adopted the Senate version of the new law and therefore it is the Senate's characterization of the legislative history which is pertinent here because the two houses' views differed. Accordingly, as we noted in the FNPRM, at p. 4, the new law expressly does not apply to refurbished telephones.¹⁹ Nor, as demonstrated above, do we have authority to require application. We therefore reject NCLD-OUT's proposal.

24. *Exemptions.* GTE points out that some telephones may fit more than one category of exemption, entitling such units to be exempt on multiple grounds. For example, GTE states it uses cordless telephones in the provision of its air-to-ground telephone services. It states that under the HAC Act these cordless telephones are exempt because (1) they are cordless telephones (exempt until August 16, 1991), and/or (2) they are used with public mobile service. GTE therefore believes "final rules should recognize that equipment may properly fit more than one category. If the equipment is not categorically excluded by the exemption. . . then the equipment may still be exempt based upon the application for which it is used. . . ." GTE Comments at pp. 4 and 5.

25. For its part, NCLD-OUT states that while the HAC Act exempts some telephones from the HAC requirement, it requires the Commission to periodically review the exemptions to determine whether they still serve the public interest. NCLD-OUT explains that although the HAC Act does not specify the interval in which this review is to occur, it recommends that the Commission do so every two years. It contends that technology changes rapidly. By assessing the exemptions every two years, NCLD maintains that the Commission would be assuring that the exemptions remain temporary.

26. *Discussion.* Some non-HAC telephones, such as cordless telephones, which are exempted presently until 1991, may be directly connected to the telephone network, or may be used indefinitely with an exempted service (such as public mobile services). The provision for telephones used with public mobile services was crafted by Congress because it was demonstrated that there was a potential for interference between hearing aids and the mobile telephone when operated in that environment, making operational compatibility impossible in that case.²⁰ See House Report at pp. 7 and 13. This potential level of interference does not necessarily exist in other environments or with other services. Thus, the exemption provided to all devices for a given service does not automatically apply to those devices for all purposes. The HAC requirement is applicable to all telephones, except when employed in those situations specifically exempted under the rules, e.g., those used with public mobile services. The same telephone used with residential telephone services, for example, would need to be HAC. We find this approach consistent with the intent of the HAC Act.

27. NCLD-OUT's recommendation of biennial exemption review is not sufficiently supported. A more practical approach would entail an appraisal either *sua sponte* or upon submission of information demonstrating that the interference problem has been addressed and the exemption is no longer warranted. Under NCLD-OUT's proposal, if there is no change in technology in two years which eliminates the interference problem on which the exemption is founded, no useful purpose would be served by a proceeding, nor would such a proceeding be a prudent use of Commission resources. Absent any evidence that the noise problem has been eliminated, we will review the exemption every five years to fulfill the requirement of the HAC Act. We will rely on this approach and our observation of marketplace and technological changes to initiate an assessment of the continued utility of the exemptions.

28. *Other Matters.* Finally, NCLD-OUT questions whether the Commission has abandoned consideration of other issues raised in the *Notice* affecting services for the hearing impaired, such as interstate relay service for users of Telecommunications Devices for the Deaf, amplifiers for pay telephones and the establishment of an advisory committee. These and other issues will be addressed in a subsequent phase of this proceeding.

CONCLUSION AND ORDERING CLAUSES

29. The new rules contained herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose a new or modified information collection requirement on the public. Implementation of these new rules will be subject to approval by the Office of Management and Budget as prescribed by the Act.

30. For the purposes of the Regulatory Flexibility Act, 5 U.S.C. § 604, the Commission certifies that this report and order will not have a substantial economic impact on a significant number of entities. Where alternative resolutions were available, we have chosen the least costly alternative and in some instances have eliminated unnecessary requirements. This order fulfills the instructions of Congress described in the HAC Act.

31. Accordingly, IT IS ORDERED, pursuant to Sections 1 and 4(i) of the Communications Act, 47 U.S.C. §§ 151 and 154(i), and the Hearing Aid Compatibility Act of 1988, Public Law 100-394, that Part 68 of the Commission's Rules and Regulations is amended as set forth in the attached appendix.

32. IT IS FURTHER ORDERED, that the Secretary shall cause a copy of this order to be printed in the Federal Register and shall send a copy to the Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act (5 U.S.C. § 601 *et. seq.*, 1980).

33. IT IS FURTHER ORDERED, that the rule amendments adopted herein shall become effective August 17, 1989.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

APPENDIX

Part 68 of the Commission's Rules and Regulations (Chapter I of Title 47 of the Code of Federal Regulations, Part 68) is amended as follows:

1. Section 68.3 is amended to add the following definitions:

§ 68.3. Definitions.

Essential Telephones: Means only coin-operated telephones, telephones provided for emergency use, and other telephones frequently needed for use by persons using such hearing aids.

Public Mobile Services: Means air-to-ground radiotelephone services, cellular radio telecommunications services, offshore radio, rural radio service, public land mobile telephone service, and other common carrier radio communication services covered by Part 22 of Title 47 of the Code of Federal Regulations.

Private Radio Services: Means private land mobile radio services and other communications services characterized by the Commission in its rules as private radio services.

Secure Telephones: Means telephones that are approved by the United States Government for the transmission of classified or sensitive voice communications.

2. Section 68.4 is revised to read as follows:

§ 68.4 Hearing aid - compatible telephones.

(a)(1) Except for telephones used with public mobile services, telephones used with private radio services, and cordless and secure telephones, every telephone manufactured in the United States (other than for export) or imported for use in the United States after August 16, 1989, must be hearing aid compatible. Every cordless telephone manufactured in the United States (other than for export) or imported into the United States after August 16, 1991, must be hearing aid compatible.

(2) Except as provided in § 68.112(c)(1) and (4), every telephone listed in § 68.112 shall be hearing aid-compatible.

(3) A telephone is hearing aid-compatible if it provides internal means for effective use with hearing aids that are designed to be compatible with telephones which meet established technical standards for hearing aid compatibility.

(4) The Commission shall revoke or otherwise limit the exemptions of subsection (a)(1) of this section for telephones used with public mobile services or telephones used with private radio services if it determines that (a) such revocation or limitation is in the public interest; (b) continuation of the exemption without such revocation or limitation would have an adverse effect on hearing-impaired individuals; (c) compliance with the requirements of Section 68.4(a)(1) is technologically feasible for the telephones to which the exemption applies; and (d) compliance with the requirements of Section 68.4(a)(1) would not increase costs to such an extent that the telephones to which the exemption applies could not be successfully marketed.

3. Section 68.5 is added to Part 68 to read as follows:

§ 68.5 Waivers.

The Commission may, upon the application of any interested person, initiate a proceeding to waive the requirements of Section 68.4(a)(1) with respect to new telephones, or telephones associated with a new technology or service. The Commission shall not grant such a waiver unless it determines, on the basis of evidence in the record of such proceeding, that such telephones, or such technology or service, are in the public interest, and that (A) compliance with the requirements of Section 68.4(a)(1) is technologically infeasible, or (B) compliance with such requirements would increase the costs of the telephones, or of the technology or service, to such an extent that such telephones, technology, or service could not be successfully marketed. In any proceeding under this section to grant a waiver from the requirements of Section 68.4(a)(1), the Commission shall consider the effect on hearing-impaired individuals of granting the waiver. The Commission shall periodically review and determine the continuing need for any waiver granted pursuant to this section.

4. Section 68.224 is revised to read as follows:

§ 68.224 Notice of Non - hearing aid compatibility.

Every non-hearing aid compatible telephone offered for sale to the public on or after August 17, 1989, whether previously-registered, newly registered or refurbished shall:

(a) Contain in a conspicuous location on the surface of its packaging a statement that the telephone is not hearing aid-compatible, as is defined in § 68.4(a)(3) of these rules, or if offered for sale without a surrounding package, shall be affixed with a written statement that the telephone is not hearing aid-compatible, as defined in § 68.4(a)(3) of these rules; and

(b) Be accompanied by instructions in accordance with § 68.218(b)(5) of the rules.

FOOTNOTES

¹ "Essential Telephones" include only coin-operated telephones, telephones provided for emergency use, and other telephones frequently needed for use by persons using hearing aids specially designed for telephone use. 47 U.S.C. § 710(b).

² Access to Telecommunications Equipment by the Hearing Impaired and Other Disabled Persons, Order, CC Docket No. 83-427, 49 Fed. Reg. 1352 (January 11, 1984), *modified*, 49 Fed. Reg. 19666 (May 9, 1984), *further modified*, FCC 84-382 (released August 13, 1984) (Hearing Impaired proceeding); 47 C.F.R. Part 64, subpart F, Sections 68.4, 68.112, 68.218, 68.224 and 68.316.

³ Most external hearing aids have a built-in telephone pick-up, or "telecoil," which is activated by a switch on the hearing aid. When this switch is placed in the "telephone" position, the microphone is turned off and the hearing aid can be used at full volume without feedback and with minimal background noise. These hearing aids are activated by the magnetic field generated by telephone handsets. In-the-ear hearing aids generally rely on audio amplification rather than electromagnetic coupling (and a telecoil) to provide the wearer with telephone access. Unless otherwise indicated, references to hearing aid compatible telephones refer to equipment which is compatible with a telecoil type hearing aid. See House Report No. 97-888, 97th Cong., 2d Sess., at 8.

⁴ See Telecommunications Services for the Deaf and Hearing Impaired, Notice of Inquiry, CC Docket No. 78-50, 667 FCC 2d 1602 (1978), *terminated*, FCC 83-177 (released May 3, 1983).

⁵ See note 2 *supra*.

⁶ The House Report accompanying the Disabled Act states:

The reported bill does not require all telephones to be compatible with hearing aids. Rather, the bill preserves consumer choice while ensuring that the needs of the hearing impaired are fully served. The legislation focuses on those "essential telephones" to which the hearing impaired must have access if they are to function effectively in modern society. Companies are free to manufacture and to market non-compatible telephones, and businesses and consumers may purchase these instruments for use by persons who do not have hearing impairments.

House Report No. 97-888, 97th Cong., 2d Sess., at 9.

⁷ 4 FCC Rcd 2250 (1989).

⁸ Comments were filed by the American Telephone and Telegraph Company (AT&T); BellSouth Corporation; GTE Service Corporation (GTE); the National Center for Law and the Deaf, the Organization for Use of the Telephone, Inc., the Maryland Office of People's Counsel, the New York League for the Hard of Hearing, the Hearing and Speech Agency of Metropolitan Baltimore, Inc., the Maryland Governor's Commission on Hearing Impairments, the Maryland Governor's Office for Handicapped Individuals, Telecommunications Exchange for the Deaf,

Inc., Telecommunications for the Deaf, Inc., and Minnesota Telecommunications Access for Communicatively Impaired Persons (collectively NCLD-OUT); and the United States Telephone Association (USTA). Reply comments were filed by AT&T; GTE; NCLD-OUT and the North American Telecommunications Association (NATA).

⁹ GTE offers similar comments. GTE Comments at pp. 2 and 3. See Appendix for entire rule language as adopted in this proceeding.

¹⁰ See Access to Telecommunications Equipment and services by the Hearing Impaired and Other Disabled Persons, 3 FCC Rcd 1982 (1988).

¹¹ NCLD-OUT favors expansion of the definition of "essential" telephones and requests that the definition include telephones in hospitals, hotels and motels. NCLD-OUT Comments at p. 3.

¹² The Senate Report at p. 11 states that "[e]ssential" telephones are defined in this new section exactly as they are defined in the 1982 Act" (Disabled Act).

¹³ Our current definition of coin-operated telephones reflects the language contained in the Disabled Act. See 47 C.F.R. § 68.112(c)(1).

¹⁴ See para. 23, *infra*.

¹⁵ We note too that Congress concluded that retrofitting existing non-compatible telephones to be HAC is too costly. It specifically stated that the HAC Act is inapplicable to these telephones at this time: "The Committee believes that the benefits of requiring all telephones to be HAC at this time are outweighed by [retrofitting] costs." Senate Report at p. 5.

¹⁶ Generally, these telephones are not available for public use. The Government normally contracts with a manufacturer for a specifically designed telephone for a governmental application. Such telephones are normally limited to use by the Government and its outside private contractors for discussion of sensitive matters. Therefore, we anticipate that only a small quantity of these telephones will enter the public market.

¹⁷ Comments of NCLD-OUT filed July 26, 1988.

¹⁸ AT&T Reply at p. 2, citing [1988] U.S. Code Cong. and Adm. News 1345.

¹⁹ Senate Report at pp. 7-8.

²⁰ See Appendix, amended Section 68.4.