

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

**MEMORANDUM OPINION AND ORDER AND
FURTHER NOTICE OF PROPOSED RULE MAKING**

Adopted: April 12, 1990;

Released: June 7, 1990

By the Commission:

1. The Organization for Use of the Telephone, Inc., the Maryland Office of People's Counsel, the National Center for Law and the Deaf, the New York League for the Hard of Hearing, the Hearing and Speech Agency of Metropolitan Baltimore, Inc., 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 Petitioners) have filed a petition for partial reconsideration of the Commission's *First Report and Order (Order)* in CC Docket No. 87-124, 4 FCC Rcd 4596 (1989). Petitioners ask that the Commission reconsider the decision not to expand the definition of "essential telephones" to include workplace telephones in common areas and all credit card-operated telephones, as the Commission initially had proposed. Petitioners also ask that the Commission take certain additional actions. These include 1) requiring that all workplace telephones be hearing aid compatible; 2) requiring that all hospital, hotel and motel telephones be hearing aid compatible; and 3) requiring that the minimal acceptable field strength of hearing aid compatible (HAC) telephones be increased. The Bell Atlantic Telephone Companies (Bell Atlantic), GTE Service Corporation (GTE), and the User Premises Equipment Division of the Telecommunications Industry Association (TIA/UPED) oppose the petition. Reply comments were filed by the North American Telecommunications Association (NATA) and Petitioners.

I. BACKGROUND

2. The background of the instant proceeding is stated in the *Order*. Very briefly, the Disabled Act of 1982, Public Law 97-410,¹ required, *inter alia*, that all telephones deemed "essential" be compatible with hearing aids. In 1988, responding to comments filed in an earlier phase of this proceeding, the Commission proposed to expand the definition of "essential telephones" to include all workplace telephones located in common areas and all credit card telephones.² The Commission noted in making

this proposal that Congress did not intend for the Commission to require that all telephones be hearing aid compatible. Several months later the Hearing Aid Compatibility Act of 1988, Public Law 100-394 (HAC Act)³ became law. That Act requires that nearly all telephones manufactured or imported for sale in this country after August 16, 1989, be hearing aid compatible.

3. In the *Order*, the Commission decided that because Congress had enacted a law requiring nearly all future telephones to be compatible with hearing aids, redefining "essential" telephones to include workplace telephones in common areas was unwarranted. The Commission noted the difficulty of enforcing a rule defining common areas. The Commission found Congress intended that, over time, nearly all workplace telephones would be replaced with ones compatible with hearing aids. *Order*, 4 FCC Rcd at 4598.

4. With regard to credit card telephones, the Commission observed that under existing Commission rules telephones must be HAC unless a HAC coin operated telephone is "nearby and readily available."⁴ It also noted that the HAC Act did not require it to expand the definition of "essential" telephones to include credit card-operated units. In fact, the Commission concluded that the applicable legislative history was critical of the definitional approach to improving access by the hearing impaired to telephone services that made HAC features dependent on the location of the telephone. It further explained that its Part 68 records demonstrate there are few, if any, non-HAC credit card telephones available for attachment to the telephone network. The Commission concluded that non-HAC credit card telephones, if, indeed, any are in operation, will be replaced by HAC models over time. *Id.* at 4598.

5. In discussing the matter of raising the minimum acceptable field strength of HAC telephones, the *Order* stated that no party provided any technical data demonstrating that the current standards are inadequate or that the matter warrants further consideration. In addition, the Commission noted that Congress, in considering the HAC Act, did not mandate any changes in the standards. The Commission therefore concluded that the current standards were sufficient to meet the needs of the hearing impaired. *Id.* at 4599.

II. COMMENTS AND DISCUSSION

6. *The Rules*. Petitioners contend that the Commission erred in its decision not to expand the definition of "essential telephones" to include all credit card telephones and all telephones in common areas in the workplace. Petitioners charge the legislative history of the HAC Act anticipated that the Commission would adopt its proposed expanded definition of "essential telephones." They argue that Congress adopted a two prong approach for expanding the availability of HAC telephones. First, the enactment of the HAC Act was intended to lead to near universal HAC telephones over time. Second, by maintaining the requirement that HAC telephones be placed in essential locations, Congress was ensuring that the hearing impaired would have access to the telephone network.

7. Additionally, Petitioners accuse the Commission of employing inconsistent reasoning in deciding not to expand the HAC requirements. On the one hand, Petitioners argue, the Commission contended that a rule based on

"essential telephone" location instead of type is too difficult to enforce. On the other hand, they continue, the Commission insisted on continuing its existing location-based definitions for work station and credit card telephones. Petitioners argue in addition that there is no basis for distinguishing between telephones activated by coins and those activated by credit cards. Hearing impaired persons need access to credit card telephones just as other persons do.

8. Finally, Petitioners argue:

It is also unreasonable to ignore the obvious fact that hotel, motel, and hospital phones frequently serve emergency purposes. All such phones should be HAC, whether existing or new. The costs for retrofitting these especially vital telephones could be minimized by allowing a reasonable phase-in period, agreed upon by all interested parties, including consumers.

Petition at p. 5. To be consistent, Petitioners urge, the Commission should require all workplace and credit card telephones to be HAC, which they contend would be consistent with congressional intent. See Public Law 100-394, *supra*, n. 2. In their view, the Commission has a statutory duty to establish regulations which will ensure the hearing impaired reasonable access to telephone services. See 47 U.S.C. § 610(a).

9. In its opposition, GTE states that the Commission cannot provide the relief Petitioners seek. According to GTE, laws currently enacted do not permit the Commission to require retrofitting of existing telephones, other than coin-operated and emergency telephones. In GTE's view, to include other telephones in this group, the Commission would have to determine that such telephones are coin-operated or emergency telephones.⁵

10. TIA/UPED also takes exception to Petitioners' request. It argues that the passage of the HAC Act mooted the Commission's proposal in the *NPRM* and that the Commission's action in the *Order* complied with the HAC Act. TIA/UPED argues that current laws forbid the Commission from requiring retrofitting of "non-essential" telephones. TIA/UPED states that if Petitioners are seeking an evolutionary change in credit card and workplace telephones the HAC Act and the Commission's *Order* are designed to achieve that intent. It therefore concludes that reconsideration of the matter is unwarranted.

11. In reply, Petitioners challenge what they believe to be GTE and TIA/UPED's position regarding the Commission's authority to reclassify other telephones as "essential." According to Petitioners, ". . . the Commission can designate . . . telephones provided for emergency use as 'essential' and require that they be retrofitted to be hearing aid compatible . . . See 47 U.S.C. § 610(f)." Petitioners' Reply at p. 1. They also contend that the Commission can designate telephones as frequently needed for use by persons using hearing aids and classify them as "essential" on that basis. See 47 U.S.C. § 610(b).⁶ As the HAC Act allows the use of existing and future Commission exempted non-HAC telephones, they urge the Commission to ensure that only HAC telephones be employed at sites of frequently needed telephones in the future.

12. *Discussion.* On August 16, 1988, the HAC Act was enacted to require nearly all telephones imported or manufactured for sale in this country a year after its enactment to be HAC. New Section 710(b)(1) (47 U.S.C. § 610(b)(1)) states:

Except as provided in paragraphs (2) and (3), the Commission shall require that-

(A) all essential telephones, and

(B) all telephones manufactured in the United States (other than for export) more than one year after the date of enactment of the Hearing Aid Compatibility Act of 1988 or imported for use in the United States more than one year after such date, provide 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.

The new law forbids the Commission to require retrofitting of existing telephones, unless it decides that such non-compatible telephones are essential telephones for the hearing impaired, provided for emergency use. 47 U.S.C. § 610(f). Congress expressly noted that its action would not result in an immediate universal HAC telephone environment, but the HAC Act does not preclude the Commission from adopting additional regulations designed to increase access to telephone service by the hearing impaired. The 1988 amendments did not change the preexisting provisions of Section 710(a) which provide the Commission authority to establish such additional regulations, provided it "consider the costs and benefits to all telephone users, including persons with and without hearing impairments." 47 U.S.C. § 610(e). See also H.R. Rept. No. 888, 97th Cong., 2d Sess. 8 (1982). The Commission is not precluded from adding new categories of emergency telephones. Indeed, Section 710(f) provides that the Commission shall periodically review the regulations established pursuant to Section 710.⁷

13. Upon reconsidering this matter we believe petitioners are correct that all credit card telephones and telephones in common areas of the workplace should be hearing aid compatible and treated as essential telephones provided for emergency use. In reaching this conclusion we observe, first, that the *Order* did not fully consider the potential benefits of this treatment. The use of credit card telephones in our society has proliferated to the point that they are a widely used means of communication. These telephones should be available for emergency use by persons with impaired hearing. It is impossible to determine when and where an emergency will arise, and when it does, whether a HAC credit card telephone will be accessible for a person with impaired hearing. Moreover, it is not clear the availability of a coin telephone nearby is an adequate substitute for a credit card telephone, because not all coin services accept credit card payment. Both traditional telephone companies and private service providers have increased the provision of access to communication services via credit card telephones. Hearing impaired persons' access to such stations should not be restricted simply because of their disability. We also believe that precluding the hearing impaired persons' access to credit card telephones generally impedes their ability to perform as other members of society and adds to their

burden as they attempt to compete in the employment market. Increasing the number of telephones usable by the hearing impaired means they can not only more readily deal with emergencies, but also more readily travel throughout this country and participate fully in the marketplace.

14. Second, while the potential benefits of ensuring that all credit card telephones are hearing aid compatible are significant, the costs of doing so appear to be small. As noted in the *Order*, our Part 68 records suggest there are few, if any, non-HAC credit card telephones available for marketing. Nor is it certain that all of the telephones not listed as compatible are in fact incompatible. Most of these devices were registered before the HAC requirement was instituted, and there is no evidence in the record that any of these still are in use. In any event, we do not foresee substantial expenditures being incurred to meet a HAC requirement. According to the Senate Report, the cost of retrofitting a telephone unit for HAC is \$1.50.⁸ With the limited number of instruments we anticipate to be affected by this rule change, the costs to society of limited or foreclosed credit card-operated telephone use by the hearing impaired exceed the cost of retrofitting or replacing telephones. Moreover, the impact of this rule is further reduced in that service providers will be given one year in which to conform. See Appendix A.

15. With respect to common area workplace telephones, we conclude that the cost to employers would not be substantial in order to comply with Petitioners' request. The benefits are generally the same identified for credit card telephones. Because hearing impaired employees will use common areas, these telephones are appropriately treated as "emergency" in that they may be needed during an emergency and even for frequent use. Although the *Order* is correct that eventually all such telephones will be HAC, the public interest is best served by advancing that time. The costs of this approach should be small, because such telephones are likely to constitute only a small percentage of all telephones in the workplace and most probably are already hearing aid compatible.⁹ Based on the record in this proceeding, we are able to find that the benefits of adopting the common area requirement outweigh the costs. Some commenters sought more specificity with respect to the term "common area." The term is intended to cover such places as libraries, cafeterias, conference rooms and other areas which are equipped with telephones and where employees are reasonably expected to congregate. See Appendix A. While it would be impossible to specifically delineate all such areas exhaustively, employers should resolve questions in favor of ensuring compliance.

16. *Further Notice of Proposed Rule Making.*¹⁰ Our current rules consist of a complex web of requirements. They attempt to anticipate precisely which telephones will be necessary for an emergency (e.g., telephones in subway tunnels, as well as prisons and hospital rooms that do not have an alternative signalling device available (47 C.F.R. § 68.112(b)(1) - (3)) and have required such telephones to be hearing aid compatible since 1985. They also attempt to identify those telephones that, while considered "essential," are only "frequently needed" by the hearing impaired (e.g., their work station telephones, telephones in lobbies or stores, and credit card telephones near pay telephones (47 C.F.R. § 68.112(c)) and therefore are not required to be retrofitted as of 1985 but, when replaced, must be replaced with hearing aid compatible telephones.

Even among "frequently needed" telephones, not all need be replaced by HAC telephones. For example, if at least 10 percent of hotel or motel telephones are HAC, newly purchased telephones need not be (47 C.F.R. § 68.112(c)(4)).¹¹

17. Our tentative conclusion is that it now is appropriate to propose that all but one category of essential telephones identified as frequently needed be treated as provided for emergency use and therefore be made hearing aid compatible by May 1, 1992. We also tentatively conclude that all workplace telephones should be made hearing aid compatible. First, as a practical matter, we do not believe reliable judgments can be made as to which of these telephones will or will not be in a place "where a hearing impaired person might be isolated in the event of an emergency." Note 7, *supra*. Thus, we believe they properly may be treated as emergency telephones required to be retrofitted or replaced as of May 1, 1992. Second, although the HAC Act does not suspend the cost/benefit analysis requirement of Section 710(e) of the Act, its purpose was to expand access by the hearing impaired. We believe our proposal both serves the emergency needs of the hearing impaired and expands their access to telephone services generally.

18. As to workplace telephones, the rules currently provide only that each hearing impaired employee's primary telephone should be HAC. That requirement would appear to restrict the movement of hearing impaired persons in the work environment, thereby reducing their effectiveness as employees and potentially limiting their upward mobility, and could be life threatening in an emergency situation. Creating a work environment in which the hearing impaired can be more safe and productive improves their output and independence and provides hearing impaired employees the same access to telephones enjoyed by other employees. Moreover, establishing a rule for all workplace telephones -- subject to the limited exemptions established in the HAC Act of 1988 -- merely has the effect of advancing the time when such telephones will be HAC. We now propose to establish that time as May 1, 1992. See Appendix B. This should provide adequate transition time for businesses to comply. Commenters should provide information regarding the costs and benefits of this approach.

19. Regarding Petitioners' request for a rule requiring all hotel, motel and hospital telephones to be HAC, we note first that the current rules address telephones in hospitals and other confined settings. If no other emergency signalling device is available, telephones in these confined settings are "emergency use" telephones and have been HAC since January 1, 1985. Where another signalling device is available, such telephones are "frequently needed" and all new installations since January 1, 1985, have been HAC. See Subsections 68.112(b)(3) and (c)(5). We believe there are few, if any, non HAC telephones in the hospital environment, so the costs of making all such telephones HAC is small. The benefits of guaranteeing access in this environment cannot be questioned, and will remove definitional issues of what are emergency signalling devices and whether they are adequate. We therefore propose that all hospital telephones be required to be hearing aid compatible by May 1, 1992.¹² The rules also require that at least ten percent of all hotel and motel rooms be equipped with a HAC telephone upon replacement. Congress has cited evidence that "many hotel and motel residents have trouble finding

HAC telephones.¹³ This situation is intolerable given the possibility of emergencies. We propose that all hotel and motel telephones also be required to be hearing aid compatible by May 1, 1992. See Appendix B. The benefits of wider access, especially emergency access, as well as greater mobility for the hearing impaired, can be readily seen. However, we request commenters to provide information regarding costs and benefits.

20. The only remaining essential telephones not treated as emergency telephones under our proposal are those in lobbies, stores and public transportation terminals used for internal, or closed circuit, communications. Examples include telephones in stores used to order merchandise and telephones in public transportation terminals used to call taxis or to reserve rental automobiles. Although Petitioners are correct that we may require retrofitting of emergency telephones, that discretion is not unbounded. Closed circuit telephones of this type are not useful in emergency situations because, unlike other telephones considered here, they cannot be used to contact emergency personnel directly. Also unlike some of the other categories of telephones, many closed circuit service telephones are likely to be HAC, given the economic incentives providers have to encourage the patronage of the hearing impaired. This may be why Petitioners did not propose they be retrofitted. In any event, we cannot conclude the benefits of according closed circuit telephones emergency treatment outweigh the costs. See 47 C.F.R. § 68.112(c)(3).

21. Section 68.316. According to Petitioners, just as it was unreasonable for the Commission not to expand the definition of "essential telephones," it was unreasonable not to raise the magnetic field strength standard telephones must meet to be HAC. Petitioners explain that consumers' contribution to the current hearing aid compatibility standards was based on scant experience and minimal technical expertise. After several years of experience with the present standards, consumers find that the magnetic field strength is too low, and should be raised six decibels, Petitioners assert.

22. GTE believes that the current field strength standard is sufficient to meet the needs of hearing aid users. It feels that Petitioners have not provided adequate support for their requested change.¹⁴ It notes that information Petitioners rely on does not demonstrate whether the telephones complained of were HAC or met the HAC technical standards, or whether the hearing aids were designed to meet the HAC standards. GTE states that if hearing aids incompatible with telephones are being sold, this problem should be remedied by consumers not purchasing such hearing aids, or by hearing aid manufacturers building compatible ones.

23. For its part, TIA/UPED states that some of the problems hearing aid users may be encountering could stem from poor telephone connections, a condition which even hearing individuals would find unsatisfactory. TIA/UPED also states that

Hearing aid compatibility is not a black or white proposition. The standards require, in addition to a specific field strength, field shape factors and frequency response. Most telephones which are rated as not hearing aid compatible are capable of providing some sort of output through the magnetic pickup (telecoil) of a hearing aid, but may not provide the prescribed frequency response or ori-

entation requirements. Most hearing aid users would be unable to detect these factors, and might falsely assume that they were using "compatible" telephones which for some reason were not "loud" enough.

TIA/UPED Opposition at p. 3, n. 4.

24. *Discussion.* The *Order* found that the record contained no evidence that would support a change in the current standards or warrant further consideration of the proposal to raise the field strength standard. *Order*, 4 FCC Rcd at 4599. Petitioners have not provided any additional information demonstrating that an increase of six decibels is warranted. They fail to show that any specific problem of HAC is a result of the current field strength standards being too low. There are many possible reasons why hearing aid users experience hearing difficulties when using a telephone, ranging from a poorly designed hearing aid to a faulty line. Moreover, there would appear to be substantial costs involved in adopting a new field strength standard. Petitioners must carry the burden of demonstrating the benefits of their proposal in light of the costs it would impose.

25. *Other matters.* Other issues Petitioners raise outside the matters they seek reconsidered, e.g., a payphone amplification requirement, and interstate relay service for users of Telecommunications Devices for the Deaf (TDDs), are being addressed in our proceeding examining the establishment of an interstate TDD relay system, *Order Completing Inquiry and Providing Further Notice of Proposed Rule Making*, 4 FCC Rcd 6214 (1989).

III. CONCLUSION

26. Petitioners' request that the Commission reconsider its prior order and require that all credit card and common area telephones be made hearing aid compatible is granted. We believe substantial benefits will result, while the costs of retrofitting or replacing sooner than otherwise would be the case should be small. Petitioners' request that we go beyond the initial proposal to reach all workplace, hospital, hotel and motel telephones also is granted to the extent we propose to adopt a rule that would treat nearly all essential telephones as emergency. The effect of the rule would be to advance the time at which these telephones will be HAC. Petitioners have not requested, and we do not believe, that "closed circuit" telephones should be accorded emergency treatment. Parties commenting on the proposals made here should evaluate the costs and benefits.

PAPERWORK REDUCTION ACT

27. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and has been found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements; and will not increase burden hours imposed on the public.

INITIAL REGULATORY FLEXIBILITY ANALYSIS

28. In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. § 601 *et seq.*, the Commission issues the following initial regulatory flexibility analysis with regard to the Further Notice of Proposed Rule Making:

A. Action Contemplated and Reason for Action.

(a) By this Further Notice of Proposed Rule Making, the Commission seeks to elicit comment on a proposal to change its rules to provide the hearing impaired with greater access to telecommunications services.

B. Objective.

(a) The objective of this Rule Making is to ensure that the hearing impaired have reasonable access to telecommunications services.

C. Legal Basis.

(a) The legal authority for this action is contained in Sections 1, 4(i) and (j) and 710 of the Communications Act, 47 U.S.C. §§ 151, 154(i) and (j) and 610.

D. Description, Potential Impact and Number of Small Entities Affected.

(a) The effect of the proposed rule will depend upon whether hospitals, hotels, motels and employers have already installed hearing aid compatible telephones in rooms or the workplace, respectively. The overall economic impact of the proposed rule should be small. It is believed that most employers and hospitals have purchased HAC telephones or will be acquiring new telephones in the near future. Because the rules currently require manufacture of exclusively HAC telephones for retail sale in the domestic market, buyers' selections of telephones now are limited almost entirely to HAC telephones. The proposed rule's effect on hotel and motel owners may be more dramatic as they are currently only required to equip 10 percent of their rooms with HAC telephones. However, most telephones that they have and are continuing to purchase are HAC, and the anticipated benefits of the proposed rule are expected to outweigh the additional costs.

E. Recording, Recordkeeping, and Other Compliance Requirements.

(a) No additional burdens anticipated.

F. Federal Rules that overlap, Duplicate or Conflict with these Proposed Rules.

(a) None.

G. Any Significant Alternatives to Minimize the Impact on Small Entities.

(a) None.

29. Written comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Further Notice of Proposed Rule Making, but they must have a separate and distinct heading designating them as responses to the regulatory flexibility analysis.

FINAL REGULATORY FLEXIBILITY ANALYSIS

30. Pursuant to the Regulatory Flexibility Act of 1980, the Commission's final analysis with regard to the Memorandum Opinion and Order is as follows:

I. Need and purpose of this action:

The regulations affected by this Memorandum Opinion and Order were required by the Hearing Aid Compatibility Act of 1988. On reexamination of the rules adopted pursuant to that Act, the Commission finds that certain amendments are necessary to fulfill the goals established by Congress.

II. Summary of issues raised by the public comments in response to the Initial Regulatory Flexibility Analysis:

No additional comments were filed in response to the initial Regulatory Flexibility Analysis.

III. Significant alternatives considered and rejected:

The Commission considered the alternatives raised by the parties in this proceeding and considered all the timely filed comments directed to those issues. After carefully weighing all aspects of this proceeding, the Commission has adopted the most reasonable course of action under the mandate of the Hearing Aid Compatibility Act and the Communications Act, as amended.

EX PARTE PRESENTATIONS

31. For purposes of this non-restricted notice and comment Rule Making proceeding, members of the public are advised that *ex parte* presentations are permitted except during the Sunshine Agenda period. See generally Section 1.1206(a). The Sunshine Agenda period is the period of time which commences with the release of a public notice that a matter has been placed on the Sunshine Agenda and terminates when the Commission (1) releases the text of a decision or order in the matter; (2) issues a public notice stating that the matter has been deleted from the Sunshine Agenda; or (3) issues a public notice stating that the matter has been returned to the staff for further consideration, whichever occurs first. Section 1.1202(f). During the Sunshine Agenda period, no presentations, *ex parte* or otherwise, are permitted unless specifically requested by the Commission or staff for the clarification or adduction of evidence or the resolution of issues in the proceeding. Section 1.1203.

32. In general, an *ex parte* presentation is any presentation directed to the merits or outcome of the proceeding made to decision-making personnel which (1) if written, is not served on the parties to the proceeding, or (2), if oral, is made without advance notice to the parties to the proceeding and without opportunity for them to be present. Section 1.1202(b). Any person who makes or submits a written *ex parte* presentation shall provide on the same day it is submitted two copies of same under separate cover to the Commission's Secretary for inclusion in the public record. The presentation (as well as any transmittal letter) must clearly indicate on its face the docket number of the particular proceeding(s) to which it relates and the fact that two copies of it have been submitted to the Secretary, and must be labeled or captioned as an *ex parte* presentation.

33. Any person who in making an oral *ex parte* presentation presents data or arguments not already reflected in that person's written comments, memoranda, or other previous filings in that proceeding shall provide on the day of the oral presentation an original and one copy of a written memorandum to the Secretary (with a copy to the Commissioner or staff member involved) which summa-

izes the data and arguments. The memorandum (as well as any transmittal letter) must clearly indicate on its face the docket number of the particular proceeding and the fact that an original and one copy of it have been submitted to the Secretary, and must be labeled or captioned as an *ex parte* presentation, Section 1.1206.

ORDERING CLAUSES

34. 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 August 1, 1990, and reply comments on or before September 7, 1990. 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, participants must file an original and four copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the Dockets Reference Room (Room 239) of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C.

35. Accordingly, pursuant to Sections 1, 4(i) and (j) and 710 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i) and (j) and 610, IT IS ORDERED that a Further Notice of Proposed Rule Making IS INSTITUTED.

36. IT IS FURTHER ORDERED, pursuant to Sections 1, 4(i) and 710 of the Communications Act, 47 U.S.C. §§ 151, 154(i) and 610, that Part 68 of the Commission's Rules and Regulations is amended as set forth in Appendix A below.

37. IT IS FURTHER ORDERED, that the Secretary shall cause summaries of this Order and this Further Notice of Proposed Rule Making to be printed in the Federal Register and shall send a copy to the Chief 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)).

38. IT IS FURTHER ORDERED, that the rule amendments adopted herein shall become effective 60 days after publication in the Federal Register.

39. IT IS FURTHER ORDERED, that the petition for partial reconsideration filed by Petitioners IS GRANTED IN PART, to the extent indicated herein, but is OTHERWISE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

APPENDIX A

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. The authority citation for Part 68, continues to read as follows:

Authority: Secs. 4, 5, 303, 48 Stat., as amended, 1066, 1068, 1082; (47 U. S. C. 154, 155, 303).

2. Section 68.4 is amended by revising paragraph (a)(2) to read as follows:

§ 68.4 Hearing aid-compatible telephones.

(a)(2) Unless otherwise stated and except as provided in Section 68.112(c)(3), every telephone installed on or after January 1, 1985, which is subject to Section 68.112 must be hearing aid-compatible.

3. Section 68.112 is amended by removing paragraph c(1); redesignating paragraphs c(2), (3), (4) and (5) as c(1), (2), (3) and (4); adding paragraph b(4) and revising paragraph b(1) to read as follows:

§ 68.112 Hearing aid-compatibility.

(b) Emergency use telephones. Telephones "provided for emergency use" include the following:

(1) Telephones in places where a person with impaired hearing might be isolated in an emergency, including, but not limited to, elevators, automobile, railroad or subway tunnels, highways and common areas of the workplace, including libraries, reception areas, and similar locations where employees are reasonably expected to congregate. Telephones located in common areas of the workplace are required to be hearing aid-compatible no later than May 1, 1991.

(4) All credit card operated telephones, whether located on public property or in a semi-public location (e.g. drugstore, gas station, private club), unless a hearing aid-compatible coin-operated telephone providing similar services is nearby and readily available. However, regardless of coin-operated telephone availability, all credit card operated telephones must be made hearing aid compatible when replaced, or by May 1, 1991, whichever comes sooner.

APPENDIX B

It is proposed to amend Part 68 of the Commission's Rules and Regulations (Chapter 1 of Title 47 of the Code of Federal Regulations, Part 68) as follows:

1. The authority citation for Part 68, continues to read as follows:

Authority: Secs. 4, 5, 303, 48 Stat., as amended, 1066, 1068, 1082; (47 U.S.C. 154, 155, 303).

2. Section 68.4 is proposed to be amended by revising paragraph (a)(2) to read as follows:

§ 68.4 Hearing aid-compatible telephones.

(a)(2) Unless otherwise stated and except for telephones used with public mobile services, telephones used with private radio services and secure telephones, every telephone listed in Section 68.112 must be hearing aid-compatible.

3. Section 68.112 is proposed to be amended by removing paragraphs (c)(1), (c)(3) and (c)(4); revising and redesignating paragraph (c)(2) as paragraph (c); adding paragraph (b)(5) and revising paragraphs (b)(1) and (b)(3) to read as follows:

§ 68.112 Hearing aid-compatibility.

(b) *Emergency use telephones.* Telephones "provided for emergency use" include the following:

(1) Telephones in places where a person with impaired hearing might be isolated in an emergency, including, but not limited to, elevators, automobile, railroad or subway tunnels, highways and all areas of the workplace, including common areas (libraries, reception areas and similar locations where employees are reasonably expected to congregate). With respect to the workplace, non-common area telephones are not required to be hearing aid-compatible until May 1, 1992, except for telephones made available to a hearing impaired employee for use by that employee in his or her employment duty. Such telephones shall be hearing aid-compatible prior to that date, if and when replaced.

(3) Telephones needed to signal life-threatening or emergency situations in confined settings, including, but not limited to, rooms in hospitals, residential health care facilities for senior citizens, convalescent homes, and prisons. If an alternative means of signalling life-threatening or emergency situations is available, a hearing aid-compatible telephone is not required until May 1, 1992, unless replaced before that time.

(5) Until May 1, 1992, telephones in hotel and motel rooms replaced after January 1, 1985, must be hearing aid-compatible unless at least ten percent of the rooms in a hotel or motel are equipped to accommodate a hearing impaired customer. A room is equipped to accommodate a hearing impaired customer if (i) it contains a permanently installed hearing aid-compatible telephone; or (ii) it contains a telephone which will accept a plug-in hearing aid-compatible handset, which shall be provided to the hearing impaired customer by the hotel or motel; or (iii) the room contains a jack into which a hearing aid-compatible telephone provided to the customer by the hotel or motel may be plugged (*i.e.*, in addition to a permanently installed telephone which is not hearing aid-compatible). If fewer than ten percent of the rooms in a hotel or motel are hearing aid-compatible, when replacing a telephone the hotel or motel must, until the ten percent minimum is reached: (A) replace it with a hearing aid-compatible telephone, or (B) procure and maintain a plug-in hearing aid-compatible telephone handset which will provide to a hearing impaired customer upon request at check-in. As of May 1, 1992, all telephones in hotels and motels rooms are required to be hearing aid-compatible.

(c) *Telephones frequently needed by the hearing impaired.* Closed circuit telephones, *i.e.*, telephones which cannot directly access the public switched network, such as telephones located in lobbies of hotels or apartment buildings; telephones in stores, which are used by patrons to order merchandise; telephones in public transportation terminals which are used to call taxis or to reserve rental automobiles, need not be hearing aid-compatible until replaced.

FOOTNOTES

¹ The Telecommunications for the Disabled Act of 1982, Public Law 97-410, 96 Stat. 2043, as codified in Section 710 of the Communications Act of 1934, as amended, (the Act), 47 U.S.C. § 610.

² See Notice of Proposed Rule Making and Further Notice of Inquiry (*NPRM*), CC Docket No. 87-124, 3 FCC Rcd 1982, 1984-85 at paras. 23 and 24 (1988).

³ The Hearing Aid Compatibility Act of 1988, Public Law 100-394, 102 Stat. 976, codified as 47 U.S.C. § 610.

⁴ See 47 C.F.R. § 68.112(c)(1).

⁵ NATA also supports this view. See NATA Reply at p. 2.

⁶ Petitioners note that telephones classified as frequently needed are not required to be retrofitted even though they are deemed "essential." See 47 U.S.C. § 610(f).

⁷ The House Report accompanying the HAC Act of 1988 specifically provides that "The Committee intends the term [telephones provided for emergency use] be defined to include, but not be limited to telephones in elevators, mine shafts, and any other place where a hearing impaired person might be isolated in the event of an emergency." H.R. Rept. No. 100-674, 100th Cong. 2d Sess. (1988) at 15. See also Report and Order in CC Docket No. 83-427, 49 Fed. Reg. 1352 (1983) at para. 27 (Commission will consider adding new categories of emergency use telephones in the future).

⁸ Senate Report No. 100-391, 100th Cong. 2d Sess. at p. 5 (1988).

⁹ Because of the small number of non-HAC telephones at issue here, we believe the Commission's earlier discussion in the *Order* regarding enforceability problems was overstated. See 4 FCC Red at 4598.

¹⁰ Appendix B contains the proposed rules.

¹¹ The issue was further confused by the *Order* implementing the HAC Act. Section 68.4 was inadvertently reworded in a way to require retrofitting of all hearing impaired employee work station telephones, not just those telephones replaced after January 1, 1985. The rewording had a similar effect for telephones in lobbies (47 C.F.R. § 68.112(c)(3) and hospital rooms without alternative signalling devices (47 C.F.R. § 68.112(1)(5)). None of the commenters has raised this issue on reconsideration, but in this order we return to the *status quo ante*. The existing anomalies should be cured upon implementation of the rules proposed in the further notice.

¹² We include in this proposal the other "confined settings" addressed in Section 68.112(b)(3) and (c)(5), including residential health care facilities for senior citizens, convalescent homes, and prisons.

¹³ Senate Report, note 8 *supra*, at p. 3.

¹⁴ See also Bell Atlantic Comments at p. 2.