

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

In the Matter of)

Access to Telecommunications)
Equipment and Services)
by Persons with Disabilities)

CC Docket No. 87-124

ORDER ON RECONSIDERATION

Adopted: July 3, 1997

Released: July 11, 1997

By the Commission:

I. INTRODUCTION

1. On July 3, 1996, the Commission amended Part 68¹ of its rules to, among other things, require that all telephones manufactured or imported for use in the United States after November 1, 1998 contain a volume control feature.² On September 13, 1996, the Consumer Electronics Manufacturers Association (CEMA) filed a petition for reconsideration of the *HAC Order*. CEMA argues that the Commission should amend its rules so that only new telephone models that are registered under Part 68 after November 1, 1998 are required to have volume control, rather than requiring that all telephones manufactured or imported after November 1, 1998 have volume control.³ In this order, we deny CEMA the specific relief requested in its petition. We conclude, however, that the deadline for compliance with Part 68's volume control manufacturing requirements should be extended to January 1, 2000.

¹ 47 C.F.R. § 68 *et seq.* Part 68 prescribes uniform standards for the protection of the telephone network from harm caused by the connection of terminal equipment and associated wiring, and requires the compatibility of hearing aids and telephones so that persons with hearing aids have reasonable access to the telephone network. 47 C.F.R. § 68.1.

² See Access to Telecommunications Equipment and Services by Persons with Disabilities, *Report and Order*, CC Docket No. 87-124, 11 FCC Rcd. 8249, 8283 (July 3, 1996) (*HAC Order*). The volume control manufacturing requirement established by the *HAC Order*, the subject of this reconsideration, is codified at 47 C.F.R. § 68.6.

³ *Id.* See CEMA Petition for Reconsideration (CEMA Petition) at 1-2. Comments in support of the CEMA Petition were filed by Cobra Electronics Corporation, Sprint, Tandy Corporation, Thompson Consumer Electronics (TCE), and Uniden America Corp. No comments in opposition to the CEMA Petition were received.

II. THE PETITION

2. CEMA objects to the imposition of volume control requirements on all telephone models, including models already registered under Part 68 prior to November 1, 1998. CEMA argues that this requirement is inconsistent with the intent of the Hearing Aid Compatibility Act of 1988 (HAC Act)⁴, because the costs involved go beyond the degree of "reasonable access" to telephone service that is mandated by the HAC Act.⁵ In support of its argument, CEMA states that Congress required the Commission to consider the costs and benefits to all telephone users, including persons with and without hearing impairments, of HAC requirements it imposes, and that the imposition of volume control requirements on all telephone models is an "unnecessarily broad mandate" that Congress intended the Commission to "eschew."⁶ CEMA argues that the Commission only considered manufacturing costs in the *HAC Order*, and if "distributor and retailer mark-ups" are included, the cost of the volume control requirements would increase to \$2.00 to \$3.00 per telephone, as opposed to the \$0.50 to \$1.00 per telephone cited by Thompson Consumer Electronics (TCE) in its comments in the *HAC Order* proceeding.⁷ CEMA also asserts that the "severe implementation schedule" of the *HAC Order* will impose financial burdens on manufacturers greater than those envisioned by Congress.⁸

3. CEMA asserts that, at a minimum, the Commission should only require that new telephone models (as opposed to products) registered under Part 68 after November 1, 1998 contain volume control.⁹ In other words, telephone models that are in existence as of November 1, 1998 should be "grandfathered," thus allowing the manufacture of these models to continue, even if such models do not have a volume control feature.¹⁰ CEMA argues that requiring existing telephone models to be manufactured with volume control after November 1, 1998 would impose

⁴ 47 U.S.C. § 610.

⁵ CEMA Petition at 2, 4-5.

⁶ *Id.* at 4 (citing 47 U.S.C. § 610(e)).

⁷ *Id.* at 7. TCE also filed comments in support of CEMA's petition supporting these facts. While TCE also stated that the volume control requirement would add "millions of dollars" in additional start-up costs, such as costs to redesign circuitry and cabinetry, TCE did not include any "retail mark-up" costs in its comments during the rulemaking which led to the *HAC Order*. See *HAC Order*, 11 FCC Rcd at 8279-80.

⁸ CEMA Petition at 5.

⁹ *Id.* at 5-8.

¹⁰ "Grandfathering" under Part 68 refers to the practice of allowing products in existence at the time new standards are enacted to remain in service without re-registration, even if such products are not in compliance with the new standards. See, e.g. 47 C.F.R. § 68.2 (c) - (k). The customary "grandfather" period under Part 68 is eighteen (18) months. See, e.g., Petition to Amend Part 68 of the Commission's Rules to Include Terminal Equipment Connected to Basic Rate Access Service Provided via Integrated Services Digital Network Access Technology, *Order on Reconsideration*, CC Docket No. 93-268, FCC 97-126, at para. 5 (rel. Apr. 10, 1997).

unnecessary and significant burdens upon manufacturers, vendors and consumers.¹¹ In support of this argument, CEMA states that requiring volume control on existing models would cause interruptions both in the development of new models and in the production of existing models, and "retooling" production lines would "result in millions of dollars of expenditures."¹² CEMA, among other things, states that the average production run of a telephone model, for its member manufacturers, is a minimum of three (3) years.¹³

III. DISCUSSION

4. We decline to apply our volume control requirements only to new telephone models registered under Part 68 after November 1, 1998. We conclude that such an approach would fall short of the HAC Act's requirement that persons with hearing disabilities have reasonable access to the telephone network. This is because there would be no assurance that manufacturers will phase out the production of existing models without volume control. By requiring volume control as a standard feature in the manufacture of all telephones, and thus ensuring that volume control telephones are universally available, we further the intent of the HAC Act by minimizing the risk that persons with hearing disabilities will be unable to access the telephone network in the event of an emergency.¹⁴ If we were to adopt CEMA's proposal, some models would never comply with our volume control requirements. This would not meet the intent of the HAC Act because there would be no assurance that after a fixed date every newly purchased telephone possessed volume control.¹⁵ In short, the benefits to be derived from CEMA's proposal are outweighed by the disadvantages of not having a date certain by which all new telephones must meet our volume control requirement.

5. We also find CEMA's argument that we have failed to consider the costs and benefits of our volume control requirement for all telephone users to be without merit. In the *HAC Order*, the Commission specifically considered the costs and benefits of imposing this rule, and concluded that this rule would not impose significant additional costs on telephone users or consumers.¹⁶ Even if the "mark-up" costs from distributors and retailers that CEMA now posits in this proceeding are accurate estimates, CEMA does not present new facts that would convince us to depart from our conclusion in the *HAC Order* that the cost of a volume control requirement

¹¹ *Id.* at 5.

¹² *Id.* at 7-8.

¹³ Letter from David A. Nall, Squire, Sanders and Dempsey, to William F. Caton, FCC, dated January 31, 1997. By "production run," we mean the amount of time that an individual telephone model remains in production before it is discontinued to make room for new models.

¹⁴ See *HAC Order*, 11 FCC Rcd at 8278-79.

¹⁵ See *id.*

¹⁶ See *id.*, 11 FCC Rcd at 8279-81.

is not a "major obstacle as to negate the benefits to be derived from requiring volume control."¹⁷ We specifically found in the *HAC Order* that volume control telephones "often cost no more at the retail level than telephones without volume control," and CEMA has not presented evidence that would compel us to abandon this finding.¹⁸ Finally, in the *HAC Order*, we specifically considered the additional "millions of dollars in start-up costs" cited by TCE, and we did not conclude that such costs outweighed the benefits of volume control.¹⁹

6. It remains our desire, however, to ensure that our volume control rules are implemented with minimal burden on manufacturers of telecommunications equipment. Because CEMA has indicated that the average life of a telephone model is approximately three years, we conclude that our November 1, 1998 compliance deadline should be extended to January 1, 2000. On January 1, 2000, manufacturers will have had three and a half years since our July 1996 *HAC Order* to adjust their production cycles to comply with new volume control manufacturing requirements. This is a generous compliance timetable. We conclude, therefore, that as of January 1, 2000, manufacturers must ensure that all telephones manufactured or imported for use in the United States contain a volume control feature consistent with the technical standards at 47 C.F.R. § 68.317. For consistency, we will also adjust our existing rules that require workplaces, hotels and motels and confined settings to provide telephones with volume control as of November 1, 1998, so that such establishments will not be required to comply until January 1, 2000, parallel with the manufacturing requirements.²⁰

IV. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED that pursuant to Sections 1, 4, 405, and 710 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, 405 and 610, Part 68 of the Commission's rules IS AMENDED as set forth in the attached Appendix A.

8. IT IS FURTHER ORDERED that, pursuant to Sections 1, 4, 405, and 710 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, 405 and 610, the Petition for Reconsideration filed by the Consumer Electronics Manufacturers Association is GRANTED to

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* Furthermore, we conclude that neither CEMA nor TCE has demonstrated, as required by 47 C.F.R. § 1.429(b)(2), that the additional cost data they now present could not have been developed through the exercise of ordinary diligence and presented to the Commission during the HAC Order proceedings. See also Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, *Order*, CC Docket No. 92-90, 7 FCC Rcd 8660, 8662 (1992)(denying manufacturer's association request for stay pending reconsideration of 47 C.F.R. § 68.318(c)(3) because, *inter alia*, petitioners had "ample opportunity in the rulemaking proceeding" to address the issues).

²⁰ See 47 C.F.R. §§ 68.112 (b)(3)(B) - (D), (b)(5)(B), and (b)(6)(A). See Appendix A for rule amendments.

the extent indicated herein, and otherwise DENIED.

9. IT IS FURTHER ORDERED that the Supplemental Final Regulatory Flexibility Analysis set forth in the attached Appendix B is ADOPTED.

10. IT IS FURTHER ORDERED that the rule amendments set forth in the attached Appendix A SHALL BE EFFECTIVE 30 days after publication in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

APPENDIX A: AMENDED RULES

Part 68 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 68 - CONNECTION OF TERMINAL EQUIPMENT TO THE TELEPHONE NETWORK

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 68.6 is amended to read as follows:

§ 68.6 Telephones with volume control.

As of January 1, 2000, all telephones, including cordless telephones, as defined in Section 15.3(j) of these rules, manufactured in the United States (other than for export) or imported for use in the United States, must have volume control in accordance with Section 68.317 of these rules. Secure telephones, as defined by Section 68.3 of these rules, are exempt from this section, as are telephones used with public mobile services or private radio services.

3. Section 68.112 is amended by revising paragraphs (b)(3) - (6), as follows:

§ 68.112 Hearing Aid Compatibility

* * * *

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

(1) ***

(2) ***

(3) ***

(i) ***

(ii) As of January 1, 2000 or January 1, 2005, whichever date is applicable, there shall be a rebuttable presumption that all telephones located in the workplace are hearing

aid compatible, as defined in Section 68.316. Any person who identifies a telephone as non-hearing aid-compatible, as defined in Section 68.316, may rebut this presumption. Such telephone must be replaced within fifteen working days with a hearing aid compatible telephone, as defined in Section 68.316, including, on or after January 1, 2000, with volume control, as defined in Section 68.317.

(iii) Telephones, not including headsets, except those headsets furnished under Section 68.112(b)(3)(A), that are purchased, or replaced with newly acquired telephones, must be:

(A) Hearing aid compatible, as defined in Section 68.316, after the effective date of Section 68.112(b)(3); and

(B) Include volume control, as defined in Section 68.317, on or after January 1, 2000.

(iv) When a telephone under Subsection (C) is replaced with a telephone from inventory existing before the effective date of amended Section 68.112(b)(3), any person may make a bona fide request that such telephone be hearing aid compatible, as defined in Section 68.316. If the replacement occurs on or after January 1, 2000, the telephone must have volume control, as defined in Section 68.317. The telephone shall be provided within fifteen working days.

(v) ***

(4) ***

(5) 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, and convalescent homes.

(i) ***

(ii) Telephones that are purchased, or replaced with newly acquired telephones, must be:

(A) Hearing aid compatible, as defined in Section 68.116, after the effective date of amended Section 68.112(b)(5); and

(B) Include volume control, as defined in Section 68.317, on or after January 1, 2000.

(iii) ***

(6) ***

(i) Anytime after the effective date of amended Section 68.112(b)(6), if a hotel or motel room is renovated or newly constructed, or the telephone in a hotel or motel room or is replaced or substantially, internally repaired, the telephone in that room must be:

(A) Hearing aid compatible, as defined in Section 68.316, after the effective date of amended Section 68.112(b)(6); and

(B) Include volume control, as defined in Section 68.317, on or after January 1, 2000.

APPENDIX B: SUPPLEMENTAL FINAL REGULATORY FLEXIBILITY ANALYSIS

1. Supplemental Final Regulatory Flexibility Analysis: As required by the Regulatory Flexibility Act (RFA), 5 U.S.C. § 603, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking (NPRM).²¹ The Commission sought written public comments in the NPRM, including on the IRFA. In addition, pursuant to the RFA, 5 U.S.C. § 603, a Final Regulatory Flexibility Analysis (FRFA) was incorporated in the Report and Order.²² Those analyses conformed to the RFA. This Supplemental Final Regulatory Flexibility Analysis (SFRFA) in this Order on Reconsideration also conforms to the SBREFA. The Commission's SFRFA in this Order on Reconsideration is as follows:

a. Need for, and Objectives of this Order on Reconsideration: The need for and objectives of the rules adopted in this Order on Reconsideration are the same as those discussed in the FRFA in the Report and Order.²³ In general, the rules adopted herein amend the Commission's rules at 47 C.F.R. § 68.6 to require that as of January 1, 2000, all wireline telephones manufactured or imported for use in the United States must have volume control. This represents an amendment of the original final rule in the Report and Order requiring all telephones manufactured or imported for use in the U.S. after November 1, 1998, to have volume control.²⁴ For reasons explained in this Order and Reconsideration, the Commission has decided to extend its original November 1, 1998 compliance timeline for this rule by fourteen (14) months, to January 1, 2000. The Commission has also made conforming amendments to portions of 47 C.F.R. § 68.112, which require establishments such as workplaces, hospitals and hotels to provide volume control telephones in their facilities. These establishments will not be required to ensure that newly replaced or installed telephones must have volume control until after January 1, 2000. This likewise reflects a 14-month extension of the original November 1, 1998 timelines for such establishments adopted in the Report and Order.²⁵

b. Summary of Significant Issues Raised by the Public Comments In Response to the FRFA: No comments were submitted specifically in response to the FRFA. In its

²¹ Access to Telecommunications Equipment and Services by Persons with Disabilities, Notice of Proposed Rulemaking, CC Docket No. 87-124, 11 FCC Rcd 4338 (1995). The RFA, see 5 U.S.C. § 601 et seq., has been amended by the Contract with America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

²² Access to Telecommunications Equipment and Services by Persons with Disabilities, Report and Order, CC Docket No. 87-124, 11 FCC Rcd 8249 (1996).

²³ Report and Order, 11 FCC Rcd at 8297.

²⁴ 47 C.F.R. § 68.6. Report and Order, 11 FCC Rcd at 8282 - 8283.

²⁵ 47 C.F.R. § 68.112 (b)(3) - (6). Report and Order, 11 FCC Rcd. at 8268, 8271 - 8272, 8274.

petition for reconsideration, which was the initiating document for this Order on Reconsideration, the Consumer Electronics Manufacturers Association (CEMA) asserted, *inter alia*, that if 47 C.F.R. § 68.6 was to be applicable to all telephone models on the compliance date, and not only to new models which are registered under Part 68 of the Commission's rules after that date, manufacturers would incur significant expenses caused by the "retooling" of existing production cycles prior to November 1, 1998. Several telephone equipment manufacturers also submitted comments in support of CEMA's petition for reconsideration, stating that the rule as adopted in the Report and Order would impose undue burdens on their manufacturing processes and resources.

c. Description and Estimate of Number of Small Entities to Which Rules Will Apply:

(1) Under the RFA, small entities may include small organizations, small businesses, and small governmental organizations. The RFA generally defines the term "small business" as having the same meaning as the term "small business concern" under the Small Business Act, 15 U.S.C. § 632. 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 Small Business Administration (SBA). *Id.*

(2) The description and estimate of the number of small businesses to which the rules will apply set forth in the FRFA in the Report and Order also applies to the rules adopted in this Order on Reconsideration.²⁶ The same four industry categories identified in the FRFA are also subject to the rules adopted in this Order on Reconsideration: (a) workplaces; (b) confined settings, such as hospitals and nursing homes; (c) hotels and motels; and (d) importers and manufacturers of telephones for use in the United States. The determination of whether or not an entity within these industry groups is small is made by the Small Business Administration (SBA). These standards also apply in determining whether an entity is a small business for purposes of the RFA. The detailed analysis and estimate of the number of small entities within each of these above four industry categories in the FRFA to the Report and Order is also applicable to the rules adopted in this Order on Reconsideration.²⁷

d. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements:

(1) Reporting and Recordkeeping: No additional reporting requirements beyond those identified in the FRFA to the Report and Order are imposed by this Order on Reconsideration.²⁸

²⁶ Report and Order, 11 FCC Rcd at 8298 - 8300.

²⁷ *Id.*

²⁸ Report and Order, 11 FCC Rcd at 8300 - 8301.

(2) Other Compliance Requirements:

(a) The rules adopted in this Report and Order require that on or after January 1, 2000, owners of workplaces, confined settings, and hotels and motels must ensure that newly installed or replacement telephones have volume control.²⁹ These requirements will affect owners of workplaces, confined settings, and hotels and motels.

(b) The rules also require that on or after January 1, 2000, all telephones manufactured or imported for use in the United States must have volume control.³⁰ These rules would affect small as well as large domestic manufacturers and importers of telephones.

e. Steps Taken to Minimize Significant Economic Burdens on Small Entities, and Significant Alternatives Considered:

(1) The Commission's efforts to learn of and respond to small business concerns detailed in the FRFA to the Report and Order are likewise applicable to this SFRFA.³¹ In applying the rules adopted in this Order on Reconsideration, the Commission has sought to minimize any disproportionate burden on small entities. The Commission efforts described in the FRFA to the Report and Order are also applicable to the rules adopted in this Order on Reconsideration.³² In particular, the Commission's decision in this Order on Reconsideration to extend the date by which all telephones manufactured or imported for use in the United States must have volume control is a direct result of the Commission's consideration of the impact of the rule on small entities and manufacturers. Furthermore, the Commission's decision to also extend compliance dates for workplaces, confined settings, and hotels is a result of consideration of the potential impact of the rule on small business establishments.

(2) Under Section 610(e) of the Hearing Aid Compatibility Act, the Commission must consider the costs, as well as the benefits, of the proposed rules to all telephone users, including persons with and without hearing disabilities.³³ In the NPRM, the Commission solicited comment on the costs to establishments of providing volume control and hearing aid compatible telephones.³⁴ After reviewing the comments, the Commission concluded in the Report and Order that the new rules will not impose significant additional

²⁹ See amendments to 47 CFR § 68.112 in Appendix A.

³⁰ See 47 C.F.R. § 68.6 in Appendix A.

³¹ Report and Order, 11 FCC Rcd at 8301 - 8302.

³² Report and Order, 11 FCC Rcd at 8302 - 8303.

³³ 47 U.S.C. § 610 (e).

³⁴ NPRM, 11 FCC Rcd at 4351 - 4352, 4359, 4361, 4372.

costs on telephone users, manufacturers or establishments, and that any costs are significantly outweighed by the benefits to be achieved.³⁵ Likewise, in this Order on Reconsideration the Commission specifically considered the costs and benefits of the rules to all telephone users in its decision to extend the original compliance date for volume control by fourteen (14) months.

(3) Small entities will be among the beneficiaries of the Commission's new rules. Under the new rules, telephones in workplaces, confined settings and hotels and motels will be more accessible to persons with hearing disabilities. These changes may lead to new business for hotels and motels and confined settings, and workplaces may be able to hire better employees, since the pool of potential employees will be widened to include persons with hearing disabilities. In addition, the level of public safety will increase in all three settings, thereby benefitting both the business setting and the public at large. The volume control manufacturing requirement probably will increase the consumer demand for volume control telephones, benefitting large and small manufacturers alike, due to the fact that volume control is a feature useful not only to people with hearing disabilities, but to non-disabled telephone users as well. Furthermore, to the extent that the rule amendments may allow smaller manufacturers and suppliers more time to recoup costs sunk in any remaining equipment inventory and allow them to expand their marketing options, they are consistent with section 257 of the Communications Act, as amended, 47 U.S.C. § 257. That section requires, among other things, that the Commission eliminate market entry barriers for small businesses who may provide parts or services to providers of telecommunications services and information services. Id. at § 257(a).³⁶

(4) The Commission rejected the proposal of the Consumer Electronics Manufacturers Association in its petition for reconsideration that the volume control rules apply only to new telephone models registered under Part 68 of the Commission's rules after the compliance date. The Commission concluded that this approach would mean that upon the compliance date, some telephone models would be without volume control, which would not further Congressional intent in the HAC Act that persons with hearing disabilities have reasonable access to the telephone network. Rather, the Commission concluded that by extending the compliance timeline by an additional fourteen (14) months, potential burdens on small entities could be reduced, while at the same time furthering the goals of the HAC Act to provide access to the telephone network for people with hearing disabilities.

f. Summary of Projected Reporting, Recordkeeping, and Other Compliance Requirements:

On or after of January 1, 2000, all telephones manufactured or imported for use

³⁵ Report and Order, 11 FCC Rcd. at 8275, 8280 - 8281.

³⁶ The Commission recently issued a report in GN Docket No. 96-113 regarding its implementation of section 257. See Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses, Report No. 97-8, 1997 WL 232120 (1997).

in the United States must have volume control; and newly purchased and replacement telephones in workplaces, confined settings and hotels and motels must have volume control on or after January 1, 2000. There are no other recordkeeping or other compliance requirements.³⁷

g. Report to Congress: The Commission will include a copy of this Supplementary Final Regulatory Flexibility Analysis, along with this Order on Reconsideration, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. Section 801(a)(1)(A). A copy of this SFRFA (or summary thereof) will also be published in the Federal Register.

³⁷ This summary represents only a general statement of requirements for establishments, manufacturers and importers. For a complete and particular statement, see the Amended Rules in Appendix A.