



United States
General Accounting Office
Washington, D.C. 20548

Office of the General Counsel

B-274142

August 29, 1996

The Honorable Larry Pressler
Chairman
The Honorable Ernest F. Hollings
Ranking Minority Member
Committee on Commerce, Science, and Transportation
United States Senate

The Honorable Thomas J. Bliley, Jr.
Chairman
The Honorable John D. Dingell
Ranking Minority Member
Committee on Commerce
House of Representatives

Subject: Federal Communications Commission: Access to Telecommunications
Equipment and Services by Persons With Disabilities

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Federal Communications Commission, entitled "Access to Telecommunications Equipment and Services by Persons With Disabilities" (FCC-96-285). We received the rule on July 12, 1996. It was published in the Federal Register as a final rule on August 14, 1996. 61 Fed. Reg. 42181.

In adopting this Report and Order, the Commission amends its rules to require that, either at specific dates in the future or on a phased-in basis, all telephones in workplaces, confined settings (such as hospitals and nursing homes), and hotels and motels be hearing aid compatible; have volume control; and have the letters "HAC" affixed to them. The Report and Order also requires that, as of November 1998, importers and manufacturers include volume control in all new phones for use in the United States. The Commission believed these actions were needed to provide greater access to telephones by persons with hearing disabilities, as required by the Hearing Aid Compatibility Act of 1988, 47 U.S.C. § 610.

Enclosed is our assessment of the Federal Communications Commission's compliance with the procedural steps required by sections 801(a)(1)(B)(i) through (iv) of title 5 with respect to this Final Report and Order. Our review indicates that the Federal Communications Commission complied with the applicable requirements.

If you have any questions about this report, please contact Kathleen E. Wannisky, Associate General Counsel for Operations, at (202) 512-5207. The official responsible for GAO evaluation work relating to the Federal Communications Commission is John Anderson, Director of Transportation and Telecommunications Issues. Mr. Anderson can be reached at (202) 512-2834.

Robert P. Murphy
General Counsel

Enclosure

cc: Mr. Andrew S. Fishel
Managing Director
Federal Communications Commission

ENCLOSURE

ANALYSIS UNDER 5 U.S.C. § 801(a)(1)(B)(i)-(iv) OF A MAJOR RULE
ISSUED BY
THE FEDERAL COMMUNICATIONS COMMISSION
ENTITLED
"ACCESS TO TELECOMMUNICATIONS EQUIPMENT AND SERVICES BY
PERSONS WITH DISABILITIES"
(FCC-96-285)

BACKGROUND OF REPORT AND ORDER

In 1992 the Federal Communications Commission (FCC) adopted rules to implement the requirements of the Hearing Aid Compatibility Act of 1988, 47 U.S.C. § 610. In 1993, reacting to petitions filed by establishments affected by the rules, the Commission suspended portions of the rules stating that these establishments were experiencing serious difficulties in their attempts to comply with the rules. (8 FCC Rcd 4958 (1993), 58 Fed. Reg. 26692). The Commission later announced the formation of the Hearing Aid Compatibility Negotiated Rulemaking Committee, an advisory committee that would consider whether the rule suspension should be lifted and whether new rules should be proposed. (59 Fed. Reg. 60343, 58 Fed. Reg. 1539, and 60 Fed. Reg. 27945). The Committee's members included telephone equipment manufacturers, employers, hospitals and nursing homes, hotels and motels, persons with disabilities, and an FCC representative. The Committee's Final Report, adopted by unanimous consent, was filed with the FCC in August 1995.

(i) Cost-benefit analysis

Section 610(e) of the Hearing Aid Compatibility Act of 1988, 47 U.S.C. § 610, requires the Commission to consider the costs and benefits of proposed rules to all telephone users, including persons with and without hearing disabilities. In the Notice of Proposed Rulemaking the Commission solicited comments on the costs to establishments of providing volume control and hearing aid compatibility. After reviewing the comments, the Commission concluded that the \$.50 to \$1.00 per unit increase in manufacturing costs does not impose a significant additional cost to users, especially considering the lengthy phase-in period for the requirements. It also concluded that any costs are significantly outweighed by the benefits to be achieved.

(ii) Agency actions relevant to the Regulatory Flexibility Act, 5 U.S.C. §§ 603-605, 607 and 609

Section 603: Initial Regulatory Flexibility Analysis

The Commission initiated this proceeding with a Notice of Proposed Rulemaking (11 FCC Rcd 4338) that reflected the recommendations of the Hearing Aid Compatibility Negotiated Rulemaking Committee. That notice was summarized in the Federal Register (60 Fed. Reg. 63667). In the Notice, the Commission published an Initial Regulatory Flexibility Analysis and invited written public comments on the proposed rulemaking, including comments on the Initial Regulatory Flexibility Analysis.

The analysis included in the proposed rulemaking provides the information required by sections 603(b)(1) and (2), describing the reasons for the proposed action and its objectives and legal basis. The information required by sections 603(b)(3) and (4) concerning the estimate of the classes of small entities subject to the Report and Order and the projected reporting, recordkeeping and other compliance requirements of the proposed rulemaking is also included.

In the analysis, the Commission stated its belief that the proposed Report and Order does not duplicate, overlap, or conflict with any other relevant federal rules in accordance with the provisions of section 603(b)(5).

The Initial Regulatory Flexibility Analysis did not discuss any significant alternatives minimizing the impact on small entities.

Section 604: Final Regulatory Flexibility Analysis

The Supplementary Information published in the Federal Register includes the full text of the Commission's Final Regulatory Flexibility Analysis. 61 Fed. Reg. 42181. That analysis includes information required by section 604, including a description of the need for and purpose of this Report and Order.

Although no comments were submitted in direct response to the Initial Regulatory Flexibility Analysis, the Commission noted that a number of the general comments on the Notice of Proposed Rulemaking raised issues that could affect small entities. In response to comments, the Commission extended the compliance deadline for volume control from 1 year to 2 years and for HAC labelling of telephones by 6 months.

The analysis describes and estimates the number of small entities affected by the Report and Order, addressing separately workplaces, confined settings such as hospitals and nursing homes, hotels and motels, and importers and manufacturers

of telephones for use in the United States. The analysis also discusses the projected reporting, recordkeeping and other compliance requirements of the Report and Order.

Finally, the Commission considered two significant alternatives that could minimize the impact on small businesses: (1) not including within the purview of "telephones provided for emergency use" those telephones in workplace noncommon areas, in confined settings and in hotels and motels and (2) not requiring volume controls on the covered telephones. The Commission stated that it rejected both alternatives because both seriously decreased the ability of hearing-impaired individuals to gain access to phones in emergency situations.

Commission officials confirmed that copies of both the Initial and the Final Regulatory Flexibility Analyses were submitted to the Chief Counsel, Small Business Administration.

Section 609: Participation by small entities

The Report and Order, in large part, adopts the unanimous recommendations of the Hearing Aid Compatibility Negotiated Rulemaking Committee, an advisory committee established by the Federal Communications Commission in 1995. According to the Commission, the Committee's membership included small businesses and associations representing both large and small businesses as well as a telecommunication association representing end-users, some of whom are small entities.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

As an independent regulatory agency, the Commission is not subject to Title II of the Unfunded Mandates Reform Act of 1995.

(iv) Other relevant information or requirements under Acts and Executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

The Commission promulgated this rule under the notice and comment procedures of 5 U.S.C. § 553. A Notice of Proposed Rulemaking was released on November 28, 1995 (11 FCC Rcd 4338). A summary of the notice was published in the Federal Register (60 Fed. Reg. 63667). In response to the Notice, 31 parties filed comments, 45 parties filed informal comment letters, and 6 parties filed reply comments. Appendix A to the Report and Order lists the parties filing comments and reply comments. The Report and Order provides a discussion of these comments and Commission reaction to them.

Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520

The Notice of Proposed Rulemaking solicited public comment on specific aspects of the collections and was submitted to OMB for review pursuant to 44 U.S.C. § 3507(d)(1). OMB assigned control number 3060-0687 to the collection and approved several of the proposals while filing comment on one of the proposed requirements.

The Notice of Proposed Rulemaking discussed three requirements subject to the Paperwork Reduction Act of 1995. First, the item proposed that importers and manufacturers of new telephones for use in the United States be required to stamp the date of manufacture on new telephones. Under current rules, the date of manufacture is optional. The Commission stated that a date stamp on a telephone would indicate to users that a telephone is hearing aid compatible if it were imported or manufactured after August 16, 1989, when all new telephones were required to be hearing aid compatible. Second, until the rules for all workplace telephones go into effect, the Commission proposed that employers designate certain hearing aid compatible telephones for emergency use. Third, the Commission proposed to amend a Commission rule regarding packaging to clarify that the type of hearing aid compatibility referred to is electro-magnetic coil compatibility.

As a result of comments from groups representing persons with hearing disabilities and the Office of Management and Budget, the Commission modified its date stamp proposal in the Report and Order. Instead of requiring a date stamp, the Report and Order required that new telephones be stamped with the letters "HAC." Commenters stated that a date stamp would be meaningless to many installers and users, but that a letter stamp would be much more informative. The Commission also changed the effective date of the letter stamping requirement from the effective date of the Report and Order to April 1, 1997, to give importers and manufacturers time to make equipment changes.

The Commission also confirmed, in its Report and Order, its proposal to require employers to designate emergency use telephones until the new hearing aid compatibility rules are implemented. The Commission rejected suggestions to issue specific signage requirements, saying that the requirement that employers designate the telephones was sufficient. The Commission also amended its rule regarding packaging to clarify the type of hearing aid compatibility to which the rule refers.

The final requirements were submitted to OMB on July 23, 1996, pursuant to 44 U.S.C. § 3507(d)(2) for approval. The Report and Order is effective October 23, 1996, 70 days after the August 14, 1996, publication of the Report and Order in the Federal Register.

Statutory authorization for the rule

The Commission has promulgated this rule pursuant to provisions of the Hearing Aid Compatibility Act of 1988 (47 U.S.C. § 610).

The Commission did not identify any other statutes or executive orders imposing requirements relevant to this Report and Order.