

NOV 16 1982

Mr. James C. Hurr
Office of Assistant Director
for Legislative Reference
Office of Management and Budget
Washington, D.C. 20503

Re: S. 2355

Dear Mr. Hurr:

This is in response to your request for comments on S. 2355 as reported by the House Commerce Committee (House Rep. No. 97-886). The bill would provide that persons with impaired hearing are ensured reasonable access to telephone service.

Previously we provided comments to your office on the version of this bill then being considered by the Senate. (Our letter dated June 23 was in response to your request dated June 14.) Enclosed is a copy of that submittal. It includes the testimony which the Commission presented to a Senate subcommittee and a letter consenting on the bill.

However, the bill as reported by the House Commerce Committee differs somewhat from the Senate version. Consequently, it may be useful to provide additional comments.

The House version would require the FCC to adopt rules within one year to ensure that persons with impaired hearing have access to telephone service by requiring that certain telephones be compatible with hearing aids. The House version would pertain to essential telephones, defined as "coin operated telephones, telephones provided for emergency use, and other telephones frequently needed for use by persons using such hearing aids." The House Report clarifies that this final category would include any newly-installed telephone that is made available for public use. The Report refers to telephones in places of business, workplaces, and hotels and motels. The Senate version was not as broad. It would have mandated such FCC regulations for coin-operated telephones. It would have permitted such regulations for emergency telephones. Thus, the House version would appear to be considerably broader in the scope of the regulations it mandates.

Also, both versions of the bill would require the FCC to adopt technical standards to ensure compatibility and to impose labeling requirements (for telephone packaging materials) to advise consumers on the compatibility of telephones and hearing aids.

As noted in our previous letter to your office, the provisions in the bill are at variance with the Commission's existing role in setting technical standards. In the past, our role has been limited to ensuring that the equipment interconnected with the telecommunications network will not harm the network. The agency's responsibilities generally have not included setting technical standards for terminal equipment nor rules for consumer information labeling, as provided in the bill. The Commission's testimony before the Senate subcommittee reflects reservations to any expansion of the purposes for which technical standards should be imposed. The Commission's concern in this regard has not lessened, particularly given the House Commerce Committee's further expansion of the number of telephones to which such technical requirements would apply.

Sincerely,

Marjorie S. Reed

Marjorie S. Reed
Acting General Counsel

Enclosure

MHayes/ck
11/15/82



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

November 5, 1982

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LEGISLATION DIVISION
OFFICE OF LEGISLATIVE AFFAIRS

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer

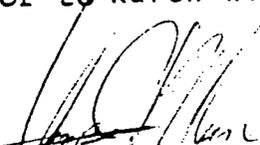
Department of Commerce
Federal Communications Commission
Architectural and Transportation Barriers
Compliance Board
Department of Justice
Department of Health and Human Services
Department of Education

SUBJECT: S. 2355 as reported by the House Commerce
Committee regarding telephones for the
hearing-impaired (House Report No. 97-888)

The Office of Management and Budget requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

A response to this request for your views is needed no later than cob November 16, 1982.

Questions should be referred to Janet Fox (395-4874), the legislative analyst in this office, or to Karen Wilson (395-6156).


James C. Murr for
Assistant Director for
Legislative Reference

Enclosures
cc: Ed Clarke
Dave Reed

TELECOMMUNICATIONS FOR THE DISABLED
ACT OF 1982

SEPTEMBER 28, 1982.—Committed to the Committee of the Whole House on the
State of the Union and ordered to be printed

Mr. DINGELL, from the Committee on Energy and Commerce,
submitted the following

REPORT

[To accompany S. 2855]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (S. 2855) to amend the Communications Act of 1934 to provide that persons with impaired hearing are ensured reasonable access to telephone service, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

That this act may be cited as the "Telecommunications for the Disabled Act of 1982".

SEC. 2. The Congress finds that—

(1) all persons should have available the best telephone service which is technologically and economically feasible;

(2) currently available technology is capable of providing telephone service to some individuals who, because of hearing impairments, require telephone reception by means of hearing aids with induction coils, or other inductive receptors;

(3) the lack of technical standards ensuring compatibility between hearing aids and telephones has prevented receipt of the best telephone service which is technologically and economically feasible; and

(4) adoption of technical standards is required in order to ensure compatibility between telephones and hearing aids, thereby accommodating the needs of individuals with hearing impairments.

SEC. 3. Title VI of the Communications Act of 1934 (47 U.S.C. 601 et seq.) is amended by adding at the end thereof the following new section:

"TELEPHONE SERVICE FOR THE DISABLED

"Sec. 610. (a) The Commission shall establish such regulations as are necessary to ensure reasonable access to telephone service by persons with impaired hearing.

"(b) The Commission shall require that essential telephones provide internal means for effective use with hearing aid that are specially designed for telephone

use. For purposes of this subsection, the term '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.

"(c) The Commission shall establish or approve such technical standards as are required to enforce this section.

"(d) The Commission shall establish such requirements for the labeling of packaging materials for equipment as are needed to provide adequate information to consumers on the compatibility between telephones and hearing aids.

"(e) In any rulemaking to implement the provisions of this section, the Commission shall specifically consider the costs and benefits to all telephone users, including persons with and without hearing impairments. The Commission shall ensure that regulations adopted to implement this section encourage the use of currently available technology and do not discourage or impair the development of improved technology.

"(f) The Commission shall complete rulemaking actions required by this section and issue specific and detailed rules and regulations resulting therefrom within one year after the date of enactment of the Telecommunications for the Disabled Act of 1982. Thereafter the Commission shall periodically review such rules and regulations. Except for coin-operated telephones and telephones provided for emergency use, the Commission may not require the retrofitting of equipment to achieve the purposes of this section.

"(g) Any common carrier or connecting carrier may provide specialized terminal equipment needed by persons whose hearing, speech, vision, or mobility is impaired. The State commission may allow the carrier to recover in its tariffs for regulated service reasonable and prudent costs not charged directly to users of such equipment.

"(h) The Commission shall delegate to each State commission the authority to enforce within such State compliance with the specific regulations that the Commission issues under subsections (a) and (b), conditioned upon the adoption and enforcement of such regulations by the State commission."

Amend the title so as to read:

A bill to amend the Communications Act of 1934 to provide reasonable access to telephone service for persons with impaired hearing and to enable telephone companies to accommodate persons with other physical disabilities.

PURPOSE AND SUMMARY

The Telecommunications for the Disabled Act of 1982 directs the Federal Communications Commission (the Commission) to address the need of persons with impaired hearing to have reasonable access to telephone service. In particular, the Act requires the Commission to establish uniform standards to ensure that essential telephones are compatible with hearing aids throughout the Nation. The legislation also permits States to continue programs that subsidize the provision of specialized terminal equipment to persons with physical disabilities and thereby assures handicapped persons continued access to vital telecommunications services at affordable rates.

HEARINGS

The Subcommittee on Telecommunications, Consumer Protection, and Finance held hearings on related provisions of H.R. 5158, the Telecommunications Act of 1982, on February 26, 1982.

COMMITTEE CONSIDERATIONS

On September 23, 1982 the full Committee on Energy and Commerce met in open markup session and, a quorum being present, considered H.R. 7168, adopting one amendment. Following adoption of a motion to discharge the Subcommittee on Telecommunications, Con-

sumer Protection, and Finance from further consideration of S. 2355, a companion Senate bill, the Committee struck the text and long title of S. 2355; substituted therefor the text and long title of H.R. 7168, as amended by the Committee; and by voice vote, ordered S. 2355, as so amended, reported to the House.

BACKGROUND AND NEED FOR LEGISLATION

The Nation's telephone companies have traditionally gone to substantial lengths to accommodate the needs of the physically impaired. Over the years, the Bell System Companies have demonstrated a particular commitment to providing the best feasible service to the handicapped. In fact, Alexander Graham Bell invented the telephone in the course of his endeavors to aid the deaf. One prominent example of the continuing efforts of the industry has been the maintenance of public telephones that are compatible with hearing aids. Today, all coin-operated telephones that the Bell Operating Companies own can be used with specially designed hearing aids; by the end of this year, the same will be true of telephones in territories served by GTE.

Presently, telephone companies also cooperate with State utility commissions to ensure that persons with physical disabilities have access to our telephone network. Dramatic evidence of this cooperation is abundant. The totally deaf may obtain teletypewriters from many local telephone companies. Artificial larynxes developed by Bell Labs give voices to persons otherwise unable to speak. Persons with severe mobility impairments can signal an operator by exhaling on a suspended piece of tin foil that connects to a special telephone. On September 10, 1982, Bell Labs announced another breakthrough for the disabled—a paralyzed individual would be able to activate a telephone with his voice, speak the telephone number, and complete a call without assistance. In many cases, the physically impaired can afford these innovations only because local telephone companies provide these types of equipment below cost. The general ratepayer shares the unrecovered expenses of including disabled persons in the network.

In most States, carriers work with the State commission to develop reasonable programs that meet the needs of the hearing aid user and of other persons with special physical problems. But an unintended consequence of a new government regulation would jeopardize this status quo and make it impossible for the telephone company effectively to serve the handicapped.

The final decision of the Federal Communications Commission in the *Second Computer Inquiry*¹ is popularly known as *Computer II*. This order, which becomes effective in January, 1983, would prohibit telephone companies from subsidizing terminal equipment and require users to pay the full costs of equipment in their homes and places of business. The Commission proposes to rely upon competition to provide telephone equipment at affordable prices. For most ratepayers, deregulation may indeed ensure a competitive market in telephone sets and eliminate subsidies for such sets from local rates. For the disabled, however, the ban on cross-subsidization could mean unregulated price increases on the costly devices that are necessary for them to have access to the telephone network. Disabled persons who are

¹ Docket 20828, final decision released May 2, 1980, 77 F.C.C. 2d 884.

unable to afford the full costs of this equipment will lose access to telephone service. This would dissuade the statutory goal of universal service, deprive many individuals of the opportunity to have gainful employment, and even require institutionalization of those disabled persons whose health must be monitored. The costs to society of such lost access, including impairment of the quality of life for disabled Americans, far exceed the costs of maintaining service that the current system allows telephone companies to include in their general revenue requirements.

The existing regime relies on the private enterprise of telephone carriers, rather than on a government bureaucracy, to ensure that the handicapped have access to the universal telephone network. If the Commission implements *Computer II* without modification, it would be unrealistic to expect State and local governments to establish procurement authorities to purchase and install the equipment vital to the disabled. Even if the States could assume this burden, it is unlikely that they could achieve the task as cost-effectively as the telephone company.

The Committee intends this legislation to benefit a specific class of individuals—those who rely on telephones compatible with hearing aids or who rely on other specialized terminal equipment. For years, the special needs of these groups have not received adequate attention at the Commission. The Commission has taken no action to resolve the issues raised in Docket 78-50, opened four years ago in order to consider standards for hearing aid compatibility and to resolve problems facing the deaf. There is no evidence that the Commission gave any consideration to the needs of the handicapped in the context of the *Second Computer Inquiry*, which precludes State commissions from requiring terminal equipment to be offered under tariff.

The Committee urges the Commission not to underestimate the impact that inability to use the telephone has on a person with impaired hearing or other handicaps. The policies set forth in the Telecommunications for the Disabled Act will ensure that these individuals can participate as self-sustaining employees and consumers in the national economy and that they can safely and conveniently travel from State to State with equal access to airports, hotels, restaurants, and other places of public accommodation.²

Hearing impairments affect a large number of Americans in all age groups.³ The Commission has determined that 10.8 million citizens have sufficiently impaired hearing to require the use of a hearing aid. Four hundred thousand are totally deaf, while twice that number cannot understand any speech that is not amplified to a level that is medically dangerous. One of the most frustrating aspects of hearing impairment and deafness is the inability to use telecommunications media on which modern life has grown so dependent. Persons with normal hearing may be unable fully to appreciate the pervasiveness of the telephone both in commercial transactions and personal contacts. The inability to use this instrument, except through an interpreter, is not only a practical disability but a constant source of dependency and personal frustration. Conversely, the ability independently to use

² Each of these concerns is closely connected with interstate commerce. *Cf. Katzenbach v. McClung*, 379 U.S. 294, 299 (1964); H.R. Rep. No. 914, 85th Cong., 1st Sess., at 18.

³ According to the Office of Demographic Studies at Gallaudet College, more than 7 million Americans suffer from significant loss of hearing in both ears. Hearing disabilities are particularly widespread among the elderly.

the telephone may enable persons with other severe handicaps—such as paralysis or blindness—to lead self-sufficient lives in regular contact with society. The Committee believes that making the benefits of the technological revolution in telecommunications available to all Americans, including those with disabilities, should be a priority of our national telecommunications policy.

Age	Deaf since childhood	Significant bilateral loss	Hearing impaired	Total population
Less than 5	6,000	43,000	70,000	16,344,000
5 to 14	67,000	298,000	645,000	34,938,000
15 to 24	72,000	366,000	1,159,000	42,474,000
25 to 44	75,000	650,000	2,837,000	62,787,000
45 to 64	100,000	1,993,000	4,479,000	44,497,000
Over 65	158,000	4,437,000	7,920,000	75,544,000

Reliance on the private sector to provide access to telecommunications is particularly appropriate in times of fiscal austerity and contraction of government. Ensuring the availability of specialized equipment may enable handicapped individuals to support themselves, and in many cases to avoid institutionalization. The Committee is particularly interested in promoting devices that enable the elderly and the disabled safely to lead independent self-supporting lives. For the paralyzed veterans, "hands-off" telephone equipment may mean the difference between being able to live at home and work in an office or leading a life of constant surveillance in a hospital. Recently, radio devices have been developed that alert a patient's doctor if he fails to signal periodically that he is not in need of medical assistance. The Telecommunications for the Disabled Act allows these various devices to be offered at affordable rates, whether or not a patient is institutionalized, thereby reducing hospital costs and encouraging more economic treatment of the physically impaired as outpatients.

The purpose of the reported bill is not to freeze technology, but rather to ensure that all persons enjoy the benefits of technological improvements in the telephone network, whether or not they are disabled. The Committee recognizes that some new technologies will make improved service possible for the ordinary user, but also may have potentially adverse impacts on disabled individuals. For example, the telephone company may in the future replace operator-assisted directory listings with a video terminal. While offering substantial economies and improved service to most individuals, such a change would eliminate a feature of the network upon which the blind currently rely. Instead of continuing to offer directly assistance for the blind, the most economical solution may be to provide specialized terminal equipment, perhaps actuated by voice, for use by these individuals. Subsection (g) permits the telephone company to implement these efficient solutions to the problems of the disabled. It allows certain terminal equipment to be treated as if it were "part of the network," the costs of which all users share in order to preserve and enhance universality of service.

The Communications Act of 1934 mandates universal service, as do most State statutes that regulate intrastate communications. To the extent that a change in the network (such as a reduction in power lev-

els) confers substantial benefits on most users, but impairs universality of service by excluding disabled groups (such as persons using hearing aids), the Commission or State commission may require carriers to continue using current technologies. By allowing carriers to internalize in the ratebase the costs of making terminal equipment compatible with the technological development of the network, the regulatory authority can reconcile the competing policies and reach an economically superior result. In testimony, Mr. Dennis Sullivan of AT&T discussed this need for such flexibility with regard to the hearing impaired:

The door must be left open for future developments. . . . There may be other solutions to the coupling problem that are far superior to today's inductive coupling. Signal processing technology—currently available on a chip—could someday (perhaps within a decade)—through the use of noise cancellation techniques and low-frequency emphasis—facilitate vastly improved acoustic coupling in hearing aids. This technology is being used today in satellite transmission circuits. *Hearing aid wearers are entitled to benefit from these and other advantages that might result from advancing technology.*

This is particularly important in light of the obvious trend in future telephone technology which is moving toward low-power, lightwave and digital systems. These future systems are expected to use new types of receiver units which will offer many advantages: smaller size, lighter weight, improved voice quality reception, significantly lower manufacturing costs and correspondingly lower consumer rates. Unfortunately, these future systems will also make built-in inductive coupling capability prohibitively expensive. [Emphasis supplied.]

Effective use of telephones by persons with impaired hearing is the goal that this legislation seeks to realize. The current arrangements for inductive coupling are only a means to achieve that goal. The legislation does not seek to entrench this technology, but rather to promote new, compatible technologies that provide improved service to all persons, with or without hearing impairments. Consistent with this policy, new Section 610(g) of the Communications Act of 1934 maintains an efficient financial mechanism to assure that telephone companies continue their historic role in making available the best technologically and economically feasible service to persons with impaired hearing or other physical disabilities.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause (2)(1)(3)(A) of Rule XI of the Rules of the House of Representatives, the Committee has made oversight findings as set forth in this report.

COMMITTEE ON GOVERNMENT OPERATIONS

Pursuant to clause 2(1)(3)(D) of Rule XI of the Rules of the House of Representatives, the Committee on Government Operations has submitted no oversight findings to the Committee.

COMMITTEE COST ESTIMATE

In compliance with clause 7(a) of Rule XIII of the Rules of the House of Representatives, the Committee does not believe that S. 2355 as reported will impose costs on the Federal government. Although the legislation provides specific instructions with regard to a pending rulemaking, it believes that expeditious action along the lines suggested is necessary in any event. In all other regards, the Committee adopted the estimate provided by the Congressional Budget Office.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., September 24, 1982.

HON. JOHN D. DINGELL,
Chairman, Committee on Energy and Commerce, U.S. House of Representatives, Rayburn House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed S. 2355, the Telecommunications for the Disabled Act of 1982, as ordered reported by the House Committee on Energy and Commerce, September 22, 1982.

S. 2355 would require the Federal Communications Commission (FCC) to develop regulations to ensure reasonable access to telephone service to the hearing impaired. While a similar rulemaking has been initiated by the FCC, the legislation would broaden the authority of the FCC in this area. Based on information provided by the FCC, it is estimated that an additional \$200,000 could be required for staff time plus overhead in 1983 in order to complete this rulemaking within one year after the date of enactment, as required in the bill. In addition, it is likely that a minimum level of monitoring and enforcement would be required for approximately one year after completion of the rulemaking, although the cost of these activities is not expected to be significant.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

ALICE M. RIVLIN, Director.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(1)(4) of Rule XI of the Rules of the House of Representatives, the Committee states that S. 2355 as reported will have no measurable impact on wages and prices in the national economy.

SECTION BY SECTION ANALYSIS

Section 1. This section states the short title of the legislation is "The Telecommunications for the Disabled Act of 1982."

Section 2. This section sets forth findings that establish the need to make available technologies that accommodate persons with impaired hearing, and states the policy that all persons, including the

disabled, should have available the best telecommunications service that is technologically and economically feasible.

Section 3. This section adds a new section 610, entitled "Telephone Service for the Disabled," to the Communications Act of 1934. Such new section consists of nine subsections, as follows:

SUBSECTION (a) OF NEW SECTION 610: REASONABLE ACCESS FOR THE HEARING IMPAIRED

This subsection directs the attention of the Commission to the special problems of persons with impaired hearing. The mandate of the Commission to ensure reasonable access to telephone service is limited to regulations and technical standards that ensure the availability of terminal equipment and transmission service for persons with impaired hearing and that govern the use of such equipment and its interconnection with telephone services for the transmission of voice or data.

These regulations may not impose unnecessary or unjustifiable costs on any party. Before promulgating any regulation under this subsection, the Commission must consider the costs the proposed requirements would impose and the benefits that would result for the hearing impaired and those with whom they communicate.

SUBSECTION (b) OF NEW SECTION 610: COMPATIBILITY OF ESSENTIAL TELEPHONES

The legislation requires that essential telephones provide internal means for effective use with hearing aids that are specially designed for telephone use. Most hearing aids have a built-in telephone pickup, 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. Unless this type of hearing aid becomes technologically obsolete at some future time and disappears from popular use, it will be considered "specially designed for telephone use." Currently, these hearing aids are activated by the strong magnetic field generated by some 90 percent of all telephone receivers, such as the Western Electric 500 set.

The Committee chose not to specify that telephones necessarily use this method, known as "inductive coupling," in order to encourage any new technology which is at least equal to the quality of use that inductive coupling currently provides.⁴ A telephone that couples inductively (without the use of a portable adapter) would, however, satisfy this requirement to provide internal means for effective use with hearing aids specially designed for telephone use.⁵ Subsection (b) does not require telephones to include internal amplifiers; these devices, which are available in some public telephones, enhance use of the telephone by some persons with impaired hearing, whether or not their hearing aids are specially designed for telephone use.

⁴ Although the additional costs of making telephones that are compatible with hearing aids are not now significant, it is possible that improvements in the network—such as a reduction in power levels—may increase this differential in cost.

⁵ Persons with impaired hearing have complained that external adapters are too bulky to carry conveniently, draw attention to an apparent disability that has been overcome in all other situations, are susceptible to loss and damage, and require replacement of batteries after 90 hours of use (potentially at an inconvenient time). Western Electric has announced plans to introduce a newly designed adapter that will mitigate some of these inconveniences.

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.

"Essential Telephones"

The reported bill sets forth three classes of "essential telephones," each of which must be precisely delineated in the rulemaking that the Commission conducts under new section 610(f). Under no circumstances may the Commission designate as an essential telephone any residential telephone or any other telephone if all the persons who would normally use it do not have hearing impairments. The requirements that federal regulations issued pursuant to this subsection impose will preempt any existing or future State or local regulations that require telephones to provide internal means for effective use with hearing aids.

"Coin-Operated Telephones"

The term "coin-operated telephone" includes any telephone which is operated with coins, whether it is located on public property or in a "semipublic" location (such as a drug store, gas station, or private club). Since significant electrical power is required to accept coins, compatibility is now economical and should continue to be so in the future. Although the requirement that coin-operated telephones be retrofitted is universal in application, the overwhelming majority of coin phones are already hearing-aid compatible.

"Telephones Provided for Emergency Use"

The definition that the rulemaking adopts for "telephone provided for emergency use" must enumerate the types of locations in which access to a telephone may save persons from serious bodily injury, theft, or a life-threatening situation. The Committee intends that the term be defined to include voice-carrying devices in elevators, minshafts, and other places where a person with impaired hearing might be isolated in an emergency. The term must also include telephones specifically installed to alert the police, fire department, or other emergency authorities; typically such a telephone cannot reach other persons on the network. Finally, the Commission should prescribe specific guidelines for telephones provided to avoid life-threatening situations in hospitals and other institutions in which persons with impaired hearing may be confined.

"Telephones Frequently Needed by Persons with Impaired Hearing"

The third group of essential telephones to be defined by rule, those "frequently needed by persons with impaired hearing," must be hearing-aid compatible, but the legislation specifically prohibits the Commission from requiring equipment installed prior to the effective date of the Act to be retrofitted. This class includes any telephone that a carrier makes available for public use that is not either coin-operated or provided for emergency use. For example, after the date of enactment, new "Charge-a-Call" phones (or at least a reasonable number

at each location) must be compatible with hearing aids unless they are in the proximity of compatible phones providing the same range of service. The Committee intends that the Commission employ a common-sense approach; if a usable pay phone is nearby and readily available, the incompatible instrument is not "needed by the hearing impaired."

The Committee further intends that the Commission include essential telephones operated by persons other than carriers in this category after a detailed examination of the costs involved and of the benefits that the hearing-impaired and those with whom they communicate will realize. The definitions must be specific and provide detailed guidance as to the locations where such telephones must be available. These federal standards will preempt any additional or inconsistent requirements by State of local authorities.

Although the following examples of "telephones frequently needed by persons with impaired hearing" illustrate the intent of the Committee, it may be necessary periodically to revise the definition of such telephones if the incremental cost of making the telephones compatible increases or decreases.

Places of Business.—In the absence of extraordinary costs of implementation, persons with impaired hearing should be confident that they can effectively use any telephone made generally available to invitees in a place of business or in a public building, including phones restricted to local calling areas or to internal extensions.

Workplaces.—The Committee is also concerned that inability to use telephones should not impair the productivity of persons using a hearing aid in their place of work. An employee with impaired hearing should have access to at least one compatible telephone unless his duties would not involve the use of such a telephone if it were available. Regulations must be sufficiently specific to enable employers to comply without undue risk of an unexpectedly adverse interpretation in a subsequent proceeding for compliance.

Hotels and Motels.—The Committee observes that current law allows the Commission directly to regulate the offering of telephone service by hotel and motel owners. See *Ambassador, Inc. v. United States*, 325 U.S. 317 (1944). The legislation does not, however, impose costly requirements on these businesses. As an alternative to providing compatible telephones in every room, a hotel may set aside a reasonable number of rooms (under a formula that the regulations will specify) for the hearing impaired. Alternatively, the hotel owner may maintain a supply of compatible instruments and install them at the request of a guest who uses a hearing aid.

"Require That Essential Telephones Provide"

The Committee was concerned that the phrase requiring essential telephones to "be designed, manufactured, and operated so as to provide internal means for effective use with hearing aids" could be construed to permit the FCC to impose a requirement on manufacturers to design or produce compatible equipment. The reported bill resolves any such ambiguity by using more direct language: "The Commission shall require that essential telephones provide internal means for effective use. . . ." This clarifies the intent of the Committee that compliance depend on how an instrument is used, not how it is manufac-

tured. It would not violate the Act to design or manufacture a non-compatible phone, if it is labeled according to applicable regulations. It would violate the Act, however, to use or to connect with the network a noncompatible instrument under circumstances causing it to be designated an "essential telephone."

The legislation does not impose an obligation on any specific person to manufacture compatible equipment. The Committee expects competitive markets to supply equipment for use with hearing aids at affordable prices. For example, equipment such as the Bell System's "U-Type" handset, introduced by Western Electric more than 20 years ago, has also been manufactured by Northern Telecom, ITT, and Stromberg Carlson. According to the Electronic Industries Association, over 80 percent of all telephones in the United States are now compatible. An even larger percentage of essential telephones is already in compliance. The Bell System has installed auxiliary coils to make all of its coin-operated telephones and "Charge-a-Call" stations compatible, and GTE has announced that it will complete a similar program by the end of the year. Western Electric will shortly introduce a new generation of compatible handsets, so compatible equipment should be widely available in the foreseeable future.

SUBSECTION (c) OF NEW SECTION 610: TECHNICAL STANDARDS

The Committee notes that the hearing aid industry and the telephone industry have made substantial progress toward establishing technical standards to ensure compatibility of hearing aids and telephones and expects similar efforts to resolve most conflicting standards on other areas. The Committee intends the Commission to rely on the development of standards by industry, but this section also gives the Commission authority to set such standards in the absence of industry agreement or in the event consumers establish that the standard fails to provide satisfactory results.

The Committee does not intend technical standards to freeze technology by specifying a permissible design and excluding potentially superior alternatives. The Commission should expeditiously accept any new design which is compatible with existing technologies and provides results which are equivalent or superior to those achieved by an existing standard.

The Committee intends that any standards established by the Commission (or developed by industry and approved by the Commission) should be nationally uniform, and that States be preempted from establishing conflicting technical standards. With the exception of this subsection and subsection (b), nothing in the legislation changes the division of jurisdictional responsibility between the Commission and the State commissions or in any other way diminishes the rights and authorities of the States as they existed on the date of enactment.

The Committee intends that the application of technical standards take place in the context of current Commission regulations. Part 68 of the rules of the Commission requires customers connecting terminal equipment to the public switched network to supply the telephone company with registration numbers for the types of equipment to be connected.⁶ In order to make their equipment marketable, manufac-

⁶ 47 C.F.R. 68.102.

turers submit each equipment type to the Commission for registration, which is approved only if it is determined that the use of the equipment will not harm the network. The conditions for registration include the performance of environmental simulations, which test the equipment to be registered in its intended use.¹ The Committee expects that the Commission will require manufacturers applying for type registrations of telephone sets to specify whether the equipment provides internal means for effective use with hearing aids, and that engineering tests will verify that equipment intended for such use meets the technical standards established pursuant to this subsection. For telephone sets not meeting these standards, the Commission would issue a registration condition on the use of the instrument only in circumstances that would not cause it to be designated an "essential telephone." This limitation would be clearly disclosed to the purchaser, who would be prohibited from using the instrument except as a non-essential telephone.

SUBSECTION (d) OF NEW SECTION 610: LABELING OF PACKAGING MATERIALS

Subsection (d) directs the Commission to develop requirements for packaging materials that explain, in a clear understandable manner, whether and how persons with impaired hearing may use such equipment effectively. Although the legislation does not specifically require manufacturers to label telephone equipment, the Committee observes that it would be desirable for persons using hearing aids to be able to identify noncompatible telephones whenever traveling outside their homes.

SUBSECTION (e) OF NEW SECTION 610: REGULATORY CONSIDERATIONS

The legislation delegates to the Commission the establishment of precise requirements in an area of considerable complexity. Moreover, the Committee expects economic and technological possibilities and constraints to shift rapidly. Therefore, this subsection states the policies that the Committee intends to guide the initial rulemaking and any subsequent revisions.

The Commission must consider the costs and benefits of any regulation implemented or rescinded pursuant to this section. Although the statutory language refers to "all telephone users, with or without hearing impairments," the Committee also intends a consideration of social costs and benefits indirectly related to telephone use, including the benefits of reduced institutionalization, increased mobility, and enhanced productivity by disabled persons.

SUBSECTION (f) OF NEW SECTION 610: RULEMAKING; PROSPECTIVITY

The Committee is concerned by the failure of the Commission expeditiously to conclude Docket 78-50, "Telecommunications for the Deaf and Hearing Impaired." Accordingly, it mandates that the Commission take final action in this rulemaking and issue the regulations that this section requires within one year.

The Committee also intends that the Commission review regulations issued under subsections (a), (b), and (c) in order to assure that they

¹ 47 C.F.R. 68.802.

continue to provide the most cost-effective solution consistent with changing technology.

In order to implement subsection (g), the Committee expects the Commission to issue conforming modifications relating to specialized terminal equipment prior to January 1, 1983, the effective date of its final decision in *Computer II*.

The legislation prohibits the Commission from requiring that telephones "frequently needed for use by persons using hearing aids" be retrofitted. This prohibition applies only to those telephones which fit into neither of the other categories ("coin-operated telephones" or "telephones provided for emergency use") and which were not compatible on the date of enactment. In the event that, after enactment, a person obtains an instrument that is not compatible with hearing aids for installation as an essential telephone, this subsection does not preclude an order requiring that the instruments be brought into compliance.

SUBSECTION (g) OF NEW SECTION 610: SPECIALIZED TERMINAL EQUIPMENT

In its *Computer II* decision, the Commission required the provision by carriers of terminal equipment for use in conjunction with the interstate telecommunications network to "be separate and distinct from the provision of common carrier communications services and not offered on a tariffed basis."² The detariffing of terminal equipment will cause competition to drive prices to costs and will effectively prevent the State commissions from regulating the price and other terms under which the consumer obtains terminal equipment. The Committee believes that, as applied to disabled persons, such a policy could lead to substantial price increases and reductions in the access to the nationwide network which persons with disabilities currently enjoy.³ It is the purpose of this legislation to increase the access of the physically impaired to new technologies and not to allow the level of service currently available to deteriorate.

The Committee emphasizes that the exception required from *Computer II* only applies to equipment actually needed by disabled persons. Any tariffs or subsidies from the rate base must be restricted to those persons, to institutions which serve them, and to associates who require compatible equipment regularly in order to communicate with them.

Examples make clear the limited scope of the statutory exception. Speakerphones may be vital to a person with impaired mobility; to a businessman they are a mere convenience. This subsection would only authorize a subsidy directed exclusively at the disabled. In the case

² 47 C.F.R. 44.702(e), as added, 77 F.C.C. 2d at 499.

³ A study recently commissioned by the Department of Commerce observed:

"Although . . . deregulation may generate new industry competition and superior products at lower prices, *Computer Inquiry II* probably will bring with it a shift to cost-based pricing; thus, consumers will be forced to bear more and more of the actual cost of the individual services they use. . . . This type of pricing could cause substantial problems for deaf users.

"*A Nationwide Communications System for the Hearing Impaired: Strategies Toward Commercial Implementation*, NTIA Contract No. NT-81-SAC-00070, prepared by SRI International, at 10 (October 1981)."

of equipment for non-voice communications by the disabled, the State commission could extend a subsidy to non-handicapped persons who require such equipment regularly to communicate with the disabled.

* * * * *
TITLE VI—MISCELLANEOUS PROVISIONS
* * * * *

TELEPHONE SERVICE FOR THE DISABLED

SEC. 610. (a) The Commission shall establish such regulations as are necessary to ensure reasonable access to telephone service by persons with impaired hearing.

(b) The Commission shall require that essential telephones provide internal means for effective use with hearing aids that are specially designed for telephone use. For purposes of this subsection, the term "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.

(c) The Commission shall establish or approve such technical standards as are required to enforce this section.

(d) The Commission shall establish such requirements for the labeling of packaging materials for equipment as are needed to provide adequate information to consumers on the compatibility between telephones and hearing aids.

(e) In any rulemaking to implement the provisions of this section, the Commission shall specifically consider the costs and benefits to all telephone users, including persons with and without hearing impairments. The Commission shall ensure that regulations adopted to implement this section encourage the use of currently available technology and do not discourage or impair the development of improved technology.

(f) The Commission shall complete rulemaking actions required by this section and issue specific and detailed rules and regulations resulting therefrom within one year after the date of enactment of the Telecommunications for the Disabled Act of 1934. Thereafter the Commission shall periodically review such rules and regulations. Except for coin-operated telephones and telephones provided for emergency use, the Commission may not require the retrofitting of equipment to achieve the purposes of this section.

(g) Any common carrier or connecting carrier may provide specialized terminal equipment needed by persons whose hearing, speech, vision, or mobility is impaired. The State commission may allow the carrier to recover in its tariffs for regulated services reasonable and prudent costs not charged directly to users of such equipment.

(h) The Commission shall delegate to each State commission the authority to enforce within such State compliance with the specific regulations that the Commission issues under subsections (a) and (b), conditioned upon the adoption and enforcement of such regulations by the State commission.

The State commission may allow only reasonable and prudent costs to be included in any tariff. The Committee intends that any excessive costs resulting from discriminatory procurement practices would not be considered reasonable and prudent. To allow recovery in excess of reasonable and prudent costs would severely distort the nationwide market for terminal equipment.

Subsection (g) does not specify that offerings of specialized equipment by carriers be under tariff. As a result of this legislation, it will be permissible to offer such equipment under tariff or on a deregulated basis. Carriers may offer such equipment directly or through a separate corporate entity under common control. In light of the record of voluntary cooperation by the industry, the Committee found it unnecessary specifically to address the possibility of a "recalcitrant carrier" that might decline to participate in a program of subsidized offerings sanctioned by the State commission. Nor does the legislation address the possible offering of terminal equipment to the handicapped under federal tariffs. These matters may be considered, if necessary, in formulating the required modifications to *Computer II*.

SUBSECTION (h) OF NEW SECTION 610: ENFORCEMENT

The Committee believes that to avoid the imposition of undue regulatory burdens on carriers and other persons required to make compatible telephones available, uniform national standards are necessary. Therefore, the legislation preempts the authority of States to issue differing technical standards or substantive requirements relating to the compatibility of telephones with hearing aids. However, the Committee believes that State enforcement of these uniform national standards would be cost-effective as it would avoid Federal adjudication of disputes that are essentially local in nature. Accordingly, subsection (h) requires the Commission to delegate the enforcement of subsections (a) and (b) to any State commission that adopts the Federal regulations issued thereunder as its own. The delegation is revoked if the State commission fails to enforce the regulations. The Commission is expected to take all feasible steps to encourage the States to accept enforcement responsibilities.

The Committee expects the Commission to act promptly—no later than one year after the effective date of this Act—to establish detailed standards for compliance. At the conclusion of this rulemaking, the Commission should issue an order directing compliance with the regulations and publish such order, with an easily understood explanation thereof, in the *Federal Register*. The Committee believes that voluntary or expeditious compliance will be encouraged if a complainant or State commission serves a copy of such order on the alleged violator prior to commencement of any proceeding. The regulations should therefore provide a brief period after notification for compliance with the order before any formal compliance proceeding may commence.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

JUN 28 1982

Mr. Robert E. Carlstrom
Office of Assistant Director
for Legislative Reference
Office of Management and Budget
Washington, D.C. 20503

Re: S.2355

Dear Mr. Carlstrom:

This is in response to your request for comments on the draft report of the Department of Commerce on S.2355, a bill which would provide that persons with impaired hearing are ensured reasonable access to telephone service.

In brief, the Department of Commerce generally supports the bill but recommends that the bill be amended to require that the Federal Communications Commission establish performance standards to ensure compatibility between telephones and hearing aids.

On May 6, 1982, a representative of the Commission testified on this bill and on S.604 at a hearing before the Subcommittee on Communications of the Senate Committee on Commerce, Science, and Transportation, chaired by Senator Goldwater. Enclosed is a copy of that testimony which discusses this legislation. In response to specific questions that arose at the hearing, the agency's witness prepared a letter (also enclosed) for Senator Goldwater dated May 20, 1982 which addresses certain contingencies.

In general, these views are consistent with the draft of the Department of Commerce. However, the draft envisions the FCC setting performance standards for compatibility between telephones and hearing aids. In that regard the proposal is at variance with the Commission's existing role in setting technical standards. Specifically, our role in that respect has been limited to ensuring that equipment interconnected with the

telecommunications network will not harm the network. Our technical standards have been narrowly directed to this end. The enclosed testimony reflects reservations to any expansion of the purposes for which technical standards should be imposed.

Sincerely yours,



Stephen A. Sharp
General Counsel

Enclosures

MHayes/ck
6/28/82

United States Senate
Committee on Commerce, Science and Transportation
Subcommittee on Communications

S. 604

and

S. 2355

Testimony of
Leon M. Kestenbaum
Deputy Chief (Policy)
Common Carrier Bureau
Federal Communications Commission

May 6, 1982

Mr. Chairman and Members of the Committee:

Thank you for extending this invitation to me to testify concerning S. 604 and S. 2355. I think there can be no disagreement about the importance of the problems addressed in S. 604 and S. 2355 and the need to take all reasonable steps to facilitate use of the telephone by the hearing impaired.

Before analyzing and commenting on the two bills now before the Senate, I would mention that the FCC has undertaken an inquiry (CC Docket No. 78-50) to determine whether federal regulatory action is required to improve telecommunications services for both the deaf and the hearing impaired. In this docket the Commission intended to offer a forum in which communications common carriers and communications equipment vendors could come to better understand the communications needs of the hearing impaired and the deaf community. The Commission also sought to generate sufficient information to assist in formulating any possible policies or rules governing telecommunications service for the deaf and hearing impaired. Among the issues being considered in Docket No. 78-50 are: (1) whether magnetic leakage standards should be established to make telephones compatible with existing hearing aids; and (2) whether disclosure or labeling requirements should be established to advise subscribers or users that certain telephones are not compatible with existing hearing aids.

This inquiry has not yet been completed. The views expressed in this testimony are, of course, not intended to in any way prejudice, or even foreshadow,

the FCC's decision in Docket No. 78-50. In fact, I have no way of knowing at this time what the Commission will ultimately decide in that proceeding. Therefore, to the extent that any analysis here of S. 604 and S. 2355 touches upon issues similar to those raised in Docket 78-50, my views can in no way be regarded as binding on the Commission or affecting its decision in that docket.

Some improvements in telecommunications services for the deaf and hearing impaired have been made since the Commission instituted CC Docket No. 78-50. On August 20, 1981, the Common Carrier Bureau granted AT&T special permission to revise its tariff on normal statutory notice, without supporting cost data, to provide reduced rates for hearing or speech impaired customers on interstate station-to-station calls which do not require intervention of an operator. In this tariff revision AT&T proposes that calls for which day rates are normally charged be priced at the evening rate and that calls for which evening rates are normally charged be priced at the night rate. This rate reduction, according to AT&T, is a way to mitigate the higher expense of toll network use incurred by deaf customers. These customers, who communicate by teletypewriter (TTY), must maintain the toll system connection by TTYS while typing messages. Ordinarily, the message can be conveyed orally faster than it can be typed. Therefore, the time taken, and hence the toll charge, is greater for the same message when conveyed via TTY when the same rates are applied to both communications. The AT&T proposed rate reduction for deaf customers alleviates this cost burden.

In a step toward better serving the hearing impaired, the Commission released its Report and Order in PR Docket 79-315 on February 26, 1981. Here the Commission amended its rules to provide two frequencies for paging and response for the hearing impaired, blind and physically disabled.

The Common Carrier Bureau is in the process of assessing the record in CC Docket No. 78-50 in light of these developments and of its decision in the Second Computer Inquiry. In that decision the Commission decided that customer premises equipment charges will not be subject to regulation by this Commission after an appropriate transition period. The Common Carrier Bureau plans to bring issues raised in CC Docket No. 78-50 and subsequent developments to the Commission for its consideration in the near future.

The comments in Docket 78-50 and testimony submitted to Congress when it was considering H.R. 5022 (a predecessor of S. 604) revealed much disagreement—both factual and philosophical—between the various organizations representing the hearing impaired, on the one hand, and the telephone companies and electronic equipment manufacturers, on the other. One idea, however, for which there does appear to be complete agreement, is the proposal that all coin operated telephones should be hearing aid compatible. The Commission has been informed that AT&T, GTE, and Continental have all undertaken to insure such compatibility and that in the case of AT&T (and perhaps other carriers as well) all coin telephones are now equipped with special coils

to permit inductive coupling for hearing aid users. These specially equipped telephones are known as "blue grommet" telephones. In my view there can be little doubt as to the need for coin telephones to be made compatible with hearing aid use. Such compatibility is required not only as a matter of convenience but of safety as well. I further believe that such compatibility should be extended to all non-coin phones which are used by the public in emergency situations. Examples of such situations would include phones in elevators and phones used to transmit fire alarms.

On the other hand, there would appear to be less need to insure that all residential phones be compatible with hearing aid use. The use of residential phones by the hearing impaired would probably be limited to their own homes or to the homes of friends or relatives. They would normally not have access to and would not use the vast majority of residential phones. In such circumstances we must consider whether there is need to insure the hearing aid compatibility of all residential phones and whether such need might be overridden by the right of residential users to obtain and utilize any equipment they please so long as it does not harm the telephone network. Thus, it might be sufficient if hearing aid compatible phones were simply made available for those who wish to obtain them rather than being legislatively mandated for the general population of subscribers who have no special use for such phones.

Apart from coin telephones and telephones for emergency use (where the need for compatibility would seem almost self-evident) and residential phones

(where such need as a general matter is certainly less compelling), there are a number of other categories of telephone use where the needs of the hearing impaired would seem to fall somewhere in between. In some locations such as hospitals, hotels and motels, and dormitories, phones are installed for the use of the public and not the subscriber paying directly for the service. If the cost were reasonable, it would clearly be desirable to make these phones compatible with hearing aid use so that hearing impaired persons are not inconvenienced when they have to spend time away from home.

Finally, there is the question of the need to insure hearing aid compatibility with telephones in the workplace. I expect that the circumstances one finds in working situations would be quite varied. In some cases it might be sufficient if a hearing aid person were provided with a compatible phone at his or her workplace. In other instances it might be extremely important or, at least, desirable for all telephones at a business establishment to be compatible with the needs of hearing impaired employees.

Given these differences, and the gradation of need for compatibility from coin telephones and emergency telephones, at one end of the spectrum, to residential phones, on the other, the approach adopted in S. 604, which would ban all non-compatible instruments, seems overly broad. I believe that it would be preferable to adopt the approach in S. 2355 and, in each case where restrictions are contemplated on the manufacture or sale of telephones, to weigh the costs of such restrictions against the benefits which can be expected to result for the hearing impaired.

At the present it would seem extremely difficult to know where to draw the line in placing any restrictions on non-compatible equipment. The reason for this is that most of the facts upon which any cost-benefit analysis would rely seem to be unknown or in dispute. For example:

1. We do not know how many hearing impaired people actually use their hearing aids to listen to the telephone by means of inductive coupling. Many hearing aids are not equipped with an inductive coupling or "telecoil" position and the view has been expressed by some that even when this feature is available it is not always used. Estimates of the number of hearing impaired people who use the phone through inductive coupling vary from one half million to over two million. After looking at the comments in Docket No. 78-50, it seems to me that we simply do not know what the correct numbers are and that in order to accurately measure the benefits of any large scale restrictions additional information must be developed.

2. We do not have reliable information about the efficacy or practicality of using external adapters to modify non-compatible instruments to permit inductive coupling. There have been complaints in the past that the adapters provided by telephone companies did not function in a satisfactory fashion. It may be, however, that any

technical problems with the adapters could be overcome. Indeed, it may be that such problems have already been overcome and that the adapters now available are functioning correctly. AT&T claims that it has available in light-weight adapter that can be strapped to a telephone receiver to permit inductive coupling and that it is selling such a device on a non-profit basis for only \$15. Before adopting a more expensive solution, and one that may have adverse impact on the rights of the non-hearing impaired, it might be advisable to try to determine with some certainty whether the compatibility problems faced by the hearing impaired can be solved either now or in the near future through the use of adapters.

3. We do not know the cost of imposing a ban on the sale of non-compatible equipment. There is some evidence in Docket 78-50 that the lighter, more rugged equipment introduced into the marketplace within the last few years does not produce a sufficient electromagnetic field so as to allow inductive coupling. Whether magnetic leakage can be increased without otherwise changing or diminishing the advantages of such telephones is unknown to me. How much it would cost to modify such telephones by adding a special coil so that inductive coupling would be possible is also not a matter of record. The cost of adding such a coil varies from almost nothing to over \$2.00 per instrument depending upon whose views one wishes to accept.

The costs of compatibility are not so high as to prevent the modification of a limited number of phones such as coin telephones or emergency telephones. However, if most of the 170 million phones in the country have to be modified, or if all new phones must be modified, the total price could be quite steep even though the cost per phone is relatively inexpensive. It would make sense to impose a requirement for widespread modification only if commensurate benefits for the hearing impaired were expected.

Until questions such as these are answered, it would be very difficult to get any firm idea of the costs and benefits which would result from a ban upon non-compatible telephones. Careful investigation of all disputed questions of fact is required. Moreover, whatever the present costs and benefits are, they would almost certainly change over time. Thus, the cost of producing telephones so that they are compatible with the needs of the hearing impaired can be expected to be quite different (perhaps higher, perhaps lower) with an all-digital telephone system. Equally important, assuming that they are not already available, adapters may be refined so that they are cheap, light-weight, easy to use, and effective. This would eliminate the need to make all phones capable of operating through inductive coupling.

In short, because of the complexities discussed here and the shifting nature of any cost-benefit analysis, I believe that the more flexible approach contained in S. 2355 is to be preferred over a flat ban on all incompatible telephone receivers. In my view we do not have sufficient facts to enable the Congress to determine that the complete prohibition of non-compatible telephones would be in the public interest. I also share the concern of the sponsors of S. 2355 that the adoption of a magnetic leakage standard as required by S. 604 would inhibit the development of new and more efficient telephone receivers.

One further problem here concerns the advisability of the role assigned to the FCC in enforcing S. 604 and S. 2355. The FCC has been charged in the Communications Act of 1934 with regulating communications utility service. As already noted, in its recent Second Computer Inquiry decision the Commission determined that the provision of telephones and other terminal equipment was not really part of such utility service and that it should be provided in an open market without any regulatory constraints. In other words, telephones would be treated the same as gas and electric appliances such as ranges, toasters, light bulbs and furnaces, which are now provided separate from gas and electric utility service.

In the recent proposed modification of the AT&T consent decree, AT&T has agreed with the Justice Department that the local telephone companies which are to be divested by AT&T would no longer provide any telephone instruments or other terminal equipment. Bills in both houses of Congress have also proposed that terminal equipment be provided on an unregulated basis.

Even when telephones were provided as part of utility service, the FCC was never involved in setting standards for acceptable terminal equipment or in consumer information labeling. Its role has been limited to ensuring that equipment interconnected with the network does not do harm to the network. Its technical standards for telephones, set forth in Part 68 of its Rules, are narrowly directed to this end. S. 604 and S. 2355 impose restrictions upon or regulate the telephone instruments themselves. S. 2355 also imposes labeling requirements. They are not concerned with the regulation of communications utility service.

Under these circumstances, the assignment of a role here to the FCC is at least questionable. The Committee may want to consider the assignment of an administrative role to another federal agency which has more experience in dealing with this type of program.

The FCC staff is certainly amenable to conveying to you information which we have gathered in CC Docket No. 78-50 on ways to afford improved telephone service for the deaf and hearing impaired. The staff also is available to assist you in any other way.

Thank you.

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

May 28, 1982

IN REPLY REFER TO:

Honorable Barry Goldwater
Committee on Commerce, Science and
Transportation
United States Senate
Washington, D. C. 20510

Attention: Dan Phythyon

Dear Senator Goldwater:

On May 6, 1982, you made two requests at the hearing before the Subcommittee on Communications about S. 604 and S. 2355, bills on telephone compability with hearing aid devices and other telephone access for those with hearing impediments. This letter responds to them.

First, you requested that we submit suggested language to clarify, and expand, if necessary, our jurisdiction so that the Federal Communications Commission would have the authority to discharge responsibilities assigned to it under S. 2355. I would suggest that subpart 225(a) be amended to read as follows:

The Commission shall establish such regulations governing the manufacture, sale, lease or interconnection of terminal equipment as are necessary to ensure reasonable access to telephone service by persons with impaired hearing. (The underscored words are the suggested additional ones.)

This language would be helpful if the Commission were to regulate hearing aid compability of various classes of telephones, such as hospital telephones, and to establish labeling and packaging requirements. As you know, in the Second Computer Inquiry the Commission deregulated the provision of terminal equipment by public utility telephone companies. We have taken the position that we have, at present, limited jurisdiction over terminal equipment. Thus far, we have exercised jurisdiction over such equipment very cautiously. For example, in our Part 68 program

Honorable Barry Goldwater
Page 2.

discussed below, we focus solely on the technical design of terminal equipment so as to ensure that it can be physically interconnected with, and will not harm, the telecommunications network.

We have also considered whether asserting jurisdiction over either telephone equipment consumers or the telephone companies with which terminal equipment is interconnected is a good way to implement S. 2355. However, under this approach we could not enforce the labeling and packaging requirements in subpart (d). In addition, except for regulating pay telephone offerings of telephone companies which we now have the jurisdiction to do, we have concluded that it would be very difficult to enforce requirements against telephone companies that only hearing aid-compatible equipment be interconnected. Since under the Second Computer Inquiry telephones will not be part of public utility service, telephone companies would not routinely be able to determine whether a subscriber's terminal is compatible with the needs of the hearing impaired. We have also decided that enforcement of a regulation prohibiting installation of non-hearing aid compatible equipment against consumers would be difficult.

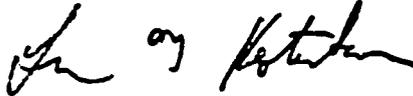
It is possible to require finite classes of consumers, such as municipalities, hospital and nursing home owners, and owners of elevators with emergency telephone equipment, to interconnect only compatible equipment. If the Senate chose to take this approach, subpart (b) of S. 2355 would have to be modified so as to be directly applicable to owners of hospitals and other public places. Under this approach, the Commission would still need a grant of broad jurisdiction over manufacturers under subpart (a), or a somewhat narrower grant under subparts (c) and (d) to establish technical standards or labeling requirements.

You also inquired at the hearing about the compatibility of imported terminal equipment with the telecommunications network. Our Part 68 program sets uniform technical standards to protect the telephone network from any harm which would be caused by interconnection of defective terminal equipment. It applies to all terminal equipment, manufactured here or abroad, to be installed in the United States. Under the Part 68 program this Commission registers terminal equipment which complies with our technical interconnection standards. Consumers who buy equipment with an FCC registration number are, then, certain that they can connect this equipment with the telephone network. At present, of the approximately 900 registration grantees, about 34 are U.S. subsidiaries of foreign companies and about 58 are foreign companies located abroad. We have no direct information as to what percentage of terminal equipment installed in this country is of foreign origin.

Honorable Barry Goldwater
Page 3.

If I can be of further assistance to you on these or any other matters,
please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Leon M. Kestenbaum".

Leon M. Kestenbaum
Deputy Chief (Policy)
Common Carrier Bureau