

SEPARATE STATEMENT OF COMMISSIONER KATHLEEN ABERNATHY

In re: Section 68.4 of the Commission's Rules Governing Hearing Aid-Compatible Telephones, WT Docket No. 01-309, RM-8658, Notice of Proposed Rulemaking (rel. November 14, 2001).

I write to give my strong support for today's Notice. It is past time that we evaluate whether it is appropriate to uphold hearing aid compatibility exemptions for public mobile services. Not only is hearing aid accessibility an important issue for many members of the American public, but review of these exemptions is long overdue.

There are more than 28 million Americans with hearing loss. We can only expect that number to increase in future years, because of noise exposure and people living longer lives.¹ Thirty percent of people between the age of 65 and 74 experience difficulty hearing.

Moreover, wireless telephony – inaccessible to many people with hearing loss – continues to grow in importance, providing an essential means for connecting employees, friends, and family members. Today roughly 124 million Americans use wireless telephones.²

Unfortunately, despite countless advances in wireless telephony technology over the past decade, the FCC failed to review mobile services' ability to provide access to Americans with hearing loss. Indeed, it has been twelve years since the Commission has looked at hearing aid accessibility exemptions. This failure to act conflicts with our statutory obligations. Congress, in the Hearing Aid Compatibility Act, mandated that "the Commission shall periodically assess" whether or not it should continue the exemptions.³ It is unlikely that Congress contemplated a 12-year period between assessments. I am disappointed by the fact that over the past decade time and resources were devoted to many discretionary proceedings, while Congress's mandate for a review of hearing aid accessibility exemptions went unanswered.

A critical statutory policy goal is at issue here. Congress provides a clear guide for the Commission's priorities: "a provider of telecommunications service shall ensure that the service is accessible to and usable by individuals with disabilities, if readily achievable."⁴ Congress laid out a policy map for the FCC, yet we have failed to follow the legislators' explicit directives.

Just as troubling is the fact that the Commission ignored its own guidelines. In 1989, the FCC declared that, regardless of technological developments, it would review hearing aid access exemptions at

¹ Comment of Self Help for Hard of Hearing People (SHHH), In the Matter of Reallocation of the 216-220 MHz (filed February 15, 2001).

² Cellular Telecommunications and Internet Association web site (<http://www.wow-com.com/>).

³ 47 U.S.C. § 610.

⁴ 47 U.S.C. § 255.

least once every five years.⁵ Thus, even by our own timetable today's review comes seven years late. Failing to live up to our own commitments undermines our credibility and effectiveness.

I am, therefore, pleased to vote in favor of this Notice of Proposed Rulemaking, and I look forward to a full record on hearing aid compatibility – and a prompt decision by the Commission.

⁵ Access to Telecommunications Equipment and Services by the Hearing Impaired and Other Disabled Persons, 4 FCC Rcd 4600 (1989).