

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Year 2000 Biennial Regulatory Review -)	WT Docket No. 01-108
Amendment of Part 22 of the Commission's Rules)	
to Modify or Eliminate Outdated Rules Affecting)	
the Cellular Radiotelephone Service and other)	
Commercial Mobile Radio Services)	

COMMENTS OF AT&T WIRELESS SERVICES, INC.

Pursuant to the Commission's Notice of Proposed Rulemaking, AT&T Wireless Services, Inc. ("AWS") hereby submits its comments in the above captioned proceeding.^{1/}

INTRODUCTION

AWS applauds the Commission's continued efforts to streamline its rules by eliminating or modifying outdated and unnecessary regulations. As the Commission recognizes, because of the increased competition in the commercial mobile radio service ("CMRS") market and new technical developments, many of the Commission's rules no longer serve the public interest and impose unnecessary costs and burdens on both carriers and consumers.

While strongly supporting all of the proposals outlined in the Notice, AWS has a particular interest in the elimination of the cellular analog requirement. Among other things, repealing this outdated rule would encourage the deployment of more efficient digital technologies by cellular carriers in all markets but particularly where carriers face spectrum constraints because of the growth in demand. Market forces will ensure that carriers continue to

^{1/} In the Matter of Year 2000 Biennial Review - Amendment of Part 22 of the Commission's Rules to Modify or Eliminate Outdated Rules Affecting the Cellular Radiotelephone Service and other Commercial Mobile Radio Services, Notice of Proposed Rulemaking, WT Docket No. 01-108 (rel. May 17, 2001) ("Notice").

serve their remaining analog customers and roamers, even in the absence of a rule. Consistent with the Commission's proposal that parties should suggest additional rule changes, AWS also recommends that the Commission modify its rules to eliminate certain cellular unserved area filings, which have become unnecessary and overly burdensome for carriers.

I. ELIMINATION OF THE CELLULAR ANALOG REQUIREMENT WOULD SERVE THE PUBLIC INTEREST

In adopting its original cellular rules in 1981, the Commission included a requirement that cellular carriers design their systems and provide service exclusively in accordance with a specified compatibility standard known as Advanced Mobile Phone Service ("AMPS").^{2/} Although since then the Commission has permitted cellular carriers to offer digital services, it has retained the requirement that they continue to provide AMPS service to the analog customers or roamers remaining on their systems.^{3/} This rule does not apply to other types of wireless providers with whom cellular carriers directly compete and, in AWS's view, the requirement is no longer necessary to facilitate competition or ensure quality service to all wireless consumers.

As the Commission acknowledges, the competitive market for mobile services includes not only the original cellular duopoly, but also PCS and SMR operators.^{4/} Consumers rarely perceive any difference between these various offerings and a subscriber is unlikely to have any concept of which portion of the spectrum band is assigned to its provider. Indeed, when customers sign up for AWS's service, they might be concerned about whether AWS offers digital service (which is viewed as higher quality), but they do not ask whether AWS is "cellular" or "PCS." In addition, cellular and PCS technologies today must be seamlessly

^{2/} Notice at ¶ 18.

^{3/} 47 C.F.R. §§ 22.901(d), 22.933.

^{4/} Notice at ¶ 10.

compatible to meet customer demand for nationwide roaming. Notwithstanding the fungibility and required interoperability of cellular, PCS, and SMR, cellular operators also remain constrained by the outdated and unnecessary application of the analog rule, while their wireless counterparts have no corresponding restrictions.^{5/} Thus, continued imposition of an analog requirement solely on cellular operators is fundamentally inconsistent with Congress's goal of ensuring, through the enactment of Section 332(c), that "services that provide equivalent mobile services are regulated in the same manner."

More importantly, retention of the cellular analog rule is an impediment to spectral efficiency and technological innovation. As the Commission has recognized on numerous occasions, digital service uses significantly less bandwidth than analog and it brings consumers a vast array of new services and enhancements such as voicemail, caller I.D., e-mail, and other data applications.^{6/} Although the Commission has actively promoted the conversion to digital technologies, many cellular carriers are not pursuing the switch as aggressively as they should as a result of the continued analog requirement. Until the Commission makes it clear that analog service will no longer enjoy a protected regulatory status, it is unlikely that all cellular carriers will take the actions necessary to deploy spectrum efficient technologies.

There is also no reason to believe that consumers would be harmed by the elimination of the rule because other regulatory and market-based considerations require carriers to continue to make analog service available. For instance, wireless carriers must still comply with Section 255

^{5/} H.R. REP. NO. 111, 103d Cong., 1st Sess 259 (1993).

^{6/} See, e.g., In the Matter of 2000 Biennial Regulatory Review -- Spectrum Aggregation Limits for Commercial Mobile Radio Services, Notice of Proposed Rulemaking, WT Docket No. 01-14, ¶ 29 (rel. January 23, 2001) (recognizing that spectrum efficiency is a "significant regulatory consideration"); In the Matter of Principles for Promoting the Efficient Use of Spectrum by Encouraging the Development of Secondary Markets, Policy Statement, FCC 00-

of Act, which requires them to offer services that are “accessible to and usable by individuals with disabilities.”^{7/} Although the industry is continuing to move closer to a digital solution for TTY users, current digital wireless systems are not compatible with TTYs and other hearing aid technologies.^{8/} Accordingly, until a digital TTY solution becomes available, cellular carriers will continue to operate some analog capacity in order to meet the requirements of Section 255.

Apart from these specialized obligations, carriers have legitimate business reasons to ensure that consumers continue to have access to analog technology. Most wireless carriers have entered into roaming agreements that require them to support analog service throughout the term of the agreements. Moreover, even after these contracts expire, cellular carriers would readily continue to offer analog-service if customer demand existed. In this regard, a number of consumers have not yet made the transition to digital only or dual mode handsets and, thus, will still require analog service from their providers.^{9/} Regardless of regulatory mandates, carriers will take the steps necessary to ensure that all of their customers’ needs are met. By removing the analog requirement, however, the Commission would allow market considerations, not artificially imposed regulatory schedules, to shape the emerging wireless marketplace.

401, ¶ 7 (rel. December 1, 2000) (noting that the introduction of more efficient digital technologies increases the potential capacity of spectrum to provide communications services).

^{7/} 47 U.S.C. § 255(c).

^{8/} Because of this problem and the industry’s ongoing efforts to develop a digital TTY solution, the Commission has suspended its requirement that digital wireless carriers transmit 911 calls made with TTY devices on wireless systems until June 30, 2002. See Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Fourth Report and Order, CC Docket 94-102, ¶¶ 27-28 (rel. December 14, 2000).

^{9/} See Data Access Fosters Growth in Cellular Handset Market (July 25, 2000), available at <http://www.wow-com.com/research/index.cfm> (explaining that the introduction of new data technologies has greatly disrupted the normal replacement cycle for wireless handsets).

II. MODIFYING THE COMMISSION’S CELLULAR UNSERVED AREA LICENSING PROCESS WOULD REDUCE BURDENS ON CARRIERS AND THE COMMISSION

In addition to the specific rule modifications suggested in the Notice, the Commission encourages parties to submit comments on other Part 22 rules that may no longer be necessary or are counterproductive.^{10/} In response to this invitation, AWS proposes that the Commission eliminate filings associated with the Commission’s unserved area licensing process^{11/} when the unserved area is less than 50 square miles and is completely surrounded by the service area boundaries of the existing licensee. Under these conditions, the incumbent is the only possible provider of service to the unserved area because any other carrier would run afoul of Section 22.951^{12/} AWS sees no conceivable reason, however, for requiring the incumbent to submit an unserved area application before it can begin serving the territory.

The application process is time consuming and expensive for both carriers and the Commission staff. It can also lead to unnecessary service delays during the review period. In the context of de minimis unserved area build-outs, this process confers little if any benefit on cellular carriers or the Commission. To the extent there are any aviation, environmental, or antenna siting requirements associated with the operator’s expansion of service, they are covered under other rule provisions. And, as noted, there is no need to protect other potential carriers because they are not eligible to apply to serve the unserved area. Consistent with the deregulatory and streamlining purpose of this biennial review process, AWS urges the

^{10/} Notice at ¶ 12.

^{11/} 47 C.F.R. § 22.949.

^{12/} 47 C.F.R. § 22.951 (“Applications for authority to operate a new cellular system in an unserved area, other than those filed by the licensee of an existing system that abuts the unserved area, must propose a contiguous cellular geographical service area (CGSA) of at least 130 square kilometers (50 square miles).”).

Commission to “cede” unserved areas meeting the foregoing description to the existing licensee upon notification that the licensee intends to serve the area.

CONCLUSION

For the foregoing reasons, AWS supports modification of the Part 22 rules as proposed in the Notice, and specifically requests that the Commission eliminate the cellular analog rule. In addition, the Commission should modify its unserved area licensing process to eliminate the unnecessary and burdensome filings associated with some types of unserved areas.

Respectfully submitted,

AT&T WIRELESS SERVICES, INC.

Howard J. Symons
Sara F. Leibman
Mintz, Levin, Cohn, Ferris, Glovsky
and Popeo, P.C.
701 Pennsylvania Avenue, N.W.
Suite 900
Washington, D.C. 20004
(202) 434-7300

Of Counsel

Dated: July 2, 2001

/s/ Douglas I. Brandon

Douglas I. Brandon
Vice President - External Affairs
David C. Jatlow
Vice President - Federal Regulatory Affairs
1150 Connecticut Avenue, N.W.
Fourth Floor
Washington, D.C. 20036
(202) 223-9222

CERTIFICATE OF SERVICE

I, Angela Collins, hereby certify that on this 2nd day of July, 2001, copies of the foregoing Comments of AT&T Wireless Services, Inc. were sent via hand delivery to the following:

ITS
445 12th Street, S.W.
Washington, D.C. 20554

Gerald P. Vaughan
Deputy Bureau Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Lauren Van Wazer
Legal Advisor
Office of Commissioner Michael Copps
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

William Kunze
Chief
Commercial Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

/s/ Angela Collins

Angela Collins