

SWIDLER BERLIN SHEREFF FRIEDMAN, LLP ORIGINAL

3000 K STREET, NW, SUITE 300  
WASHINGTON, DC 20007-5116  
TELEPHONE (202)424-7500  
FACSIMILE (202) 424-7645  
WWW.SWIDLAW.COM

WILLIAM L. FISHMAN  
DIRECT DIAL (202) 945-6986  
WLFISHMAN@SWIDLAW.COM

NEW YORK OFFICE  
919 THIRD AVENUE  
NEW YORK, NY 10022-9998  
(212) 758-9500 FAX (212) 758-9526  
DUCKET FILE COPY ORIGINAL

July 2, 2001

**VIA HAND DELIVERY**

Magalie Roman Salas  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Room TW-A325  
Washington, D.C. 20554

RECEIVED  
JUL - 2 2001  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Re: *Year 2000 Biennial Regulatory 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of the Commission's Rules to Modify or Eliminate Outdated  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, WT Docket No. 01-108*

Dear Ms. Salas:

Enclosed is an original and four copies of the Comments of Telecommunications for the Deaf, Inc. bearing the above caption. In addition to the required copies we have provided five additional copies for distribution to the Commissioners.

Please date stamp and return the enclosed extra copy of this filing. Any questions should be directed to the undersigned. Thank you very much.

Sincerely,



William L. Fishman

Enclosures

cc: Pam Gregory, CIB  
Karen Peltz Strauss, CIB

No. of Copies rec'd 049  
List ABCDE

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

RECEIVED  
JUL - 2 2001  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

Year 2000 Biennial Regulatory )  
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or Eliminate Outdated Rules )  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 )

WT Docket No. 01-108

**COMMENTS OF  
TELECOMMUNICATIONS FOR THE DEAF, INC.**

Telecommunications for the Deaf, Inc. ("TDI"), by its undersigned counsel, respectfully submits the following comments in response to the Federal Communication Commission's ("Commission") Notice of Proposed Rulemaking,<sup>1</sup> released on May 17, 2001, regarding the above-captioned proceeding.

**I. INTRODUCTION**

TDI is a national advocacy organization actively engaged in representing the interests of the twenty-eight million Americans who are deaf, hard of hearing, late deafened, and deaf-blind. TDI's mission is to promote equal access to media and telecommunications for the aforementioned constituency groups through consumer education and involvement, technical assistance and consulting, application of existing and emerging technologies, networking and collaboration, uniformity of standards, and national policy development and advocacy. Only through equal access will the twenty-eight million Americans who are deaf, hard of hearing, late

---

<sup>1</sup> *In the Matter of Year 2000 Biennial Regulatory 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*, WT Docket No. 01-108, Notice of Proposed Rulemaking, (May 3, 2001), released May 17, 2001.

deafened, and deaf-blind be able to enjoy the opportunities and benefits of the telecommunication revolution to which they are entitled. Furthermore, only by ensuring equal access for all Americans will society benefit from the myriad skills and talents of persons with disabilities.

## **II. BACKGROUND**

Wireless telephones are a common staple of American society. The Cellular Telecommunications and Internet Association estimates that well over 100 million people, or more than one person in three, is a wireless telephone user. Currently, 62% of wireless customers are using digital technology, and there is a steep growth trend in the direction of digital. Access to wireless telephones (particularly digital wireless telephones) has become increasingly important in employment. Wireless telephones help ensure safety.

Deaf and hard of hearing customers who wish to use mobile phones have had to depend on analog cellular service and telephones. Despite its drawbacks, which include higher prices and fewer features, analog cellular service does transmit TTY signals at an acceptable level of accuracy. Direct audio connections are commonly available on analog handsets, and these can be used for connecting to a TTY. Analog cellular technology supports voice carry-over (VCO). Analog cellular telephones do not interfere with hearing aids. Some analog cellular telephones are hearing aid compatible (HAC). Those accessibility benefits cannot be found in digital wireless technology.

Therefore, people with disabilities cannot afford to lose the ability to use mobile telephones, and a long history of public policy on access to telecommunications will be undone if companies are allowed to relinquish their responsibilities to offer analog service before making their digital technology accessible.

Where carriers terminate sales of analog cellular service, deaf and hard of hearing customers will suffer a setback in accessibility, not the steady progress that was expected under the various laws enacted to protect telecommunications accessibility.

The wireless industry has known about the problems of TTY compatibility and hearing aid interference since the mid-1990s. The Commission has repeatedly granted extensions and exemptions from accessibility and compatibility requirements to wireless service providers and manufacturers. For example, the Commission extended the original deadline for the E-911 rule requiring service providers to pass TTY calls, for nearly five years, from September 30, 1997 to June 30, 2002.<sup>2</sup> The disability community reluctantly agreed to the exemptions because analog service has been available, albeit as a high-priced alternative.

Congress exempted the wireless industry from the requirement placed on landline telephones in the Hearing Aid Compatibility Act<sup>3</sup> (HAC). The act requires all telephones made for sale in the United States be compatible with hearing aids. But, under Section 255,<sup>4</sup> where readily achievable, the HAC is covered under Section 255. Thus, to this day, digital wireless technology is still not compatible with text telephone devices and the majority of hearing aids in use today.

### **III. PROPOSED RULES**

TDI is very enthusiastic about the advent of technology and looks forward to all Americans, including the disabled, benefiting from the advancements in digital wireless technology. In fact, with the ability to surf the web wirelessly and text-messaging paging services, the deaf and hard of hearing population is now able to *partially* benefit from the digital

---

<sup>2</sup> 12 FCC Rcd 22665, ¶ 59 (1998); 13 FCC Rcd 21746, ¶ 8 (1998); 14 FCC Rcd 694, ¶ 10 (1998); 14 FCC Rcd 1700, ¶ 4 (1998); 14 FCC Rcd 3304 (1999); FCC 00-436, CC Docket No 94-102 (released December 14, 2000) ¶¶27-8.

<sup>3</sup> 47 U.S.C. § 610(b)(2)(A)(i)

<sup>4</sup> 47 U.S.C. § 255(c)

revolution. However, we cannot call 9-1-1 on these devices and cannot have live conversations with most organizations such as retail businesses, school personnel, and other places that are easily accessed by telephone but who may not be watching their Internet screen at all times. Coverage of the new products is usually limited compared to coverage for many wireless telephone networks.

TDI understands the need to develop a new set of rules to regulate the burgeoning development of wireless digital technology, as the rules were primarily created for analog services twenty years ago. But even in light of the technological advancements, the answer to the question of whether “the Commission’s analog service compatibility requirements remain necessary or useful to facilitate competition or to ensure the availability of valuable service to all consumers”<sup>5</sup> is very clear. The Commission must not eliminate the analog regulations at this time. Analog service compatibility requirements remain very necessary **and** very useful for consumers who are deaf and hard of hearing, as it is the only existing technology that is accessible for all Americans.

With the Notice, the Commission is seeking to harmonize requirements for the industry’s benefit, and this is understandable. But we respectfully point out that harmonization should also apply to accessibility. The withdrawal of analog service should be contingent on the carriers’ and manufacturers’ ability to provide digital wireless telephone accessibility. At a minimum, the carriers should require that all of the handsets they support be tested according to ANSI C.63.19 and the results be made easily available. The carriers should be able to show that the interference levels between the handsets they support and hearing aids are becoming less of a barrier, and that, where necessary to provide HAC through accessories, these are easily available.

---

<sup>5</sup> Notice, p. 11

With regard to TTY access, analog service should not be withdrawn until digital wireless telephones and services are accessible, including support for voice carry over.

The elimination of analog services requirements would provide a disincentive for the providers to respond appropriately to the concerns of their analog consumers, including those with TTYs and hearing aids. Recently we started to receive reports from consumers whose analog wireless providers are telling them that they must convert to digital wireless telephone service. Then, when the consumer attempts to try the digital wireless telephones being offered, they discover that they do not work with their TTY or hearing aid. Based on these reports, it does not appear that the carriers have prepared themselves by requiring manufacturers to deliver products that are accessible, and by adequately training customer service personnel. Even if carriers agree to retain existing customers who must have analog service for reasons of accessibility, their rates should not be raised, and in fact rates should be comparable to rates for digital service.

What will happen to TTY and hearing aid users who are seeking to buy wireless services for the first time? The trend toward eliminating analog service *as a product for sale* is clear. Over the past two years, some of the carriers who were legally able to eliminate analog cellular as a service offering have done so in at least some markets, and we fear that the carriers now required to offer analog service will follow suit as soon as they are allowed. To illustrate, for more than a year, a cellular service provider has told customers in the metro Washington, D.C. area outlets that they do not sell analog service, although their network is equipped for it. A major consumer electronics retailer in Maryland had its personnel instruct potential analog customers last summer that they could write a service contract for analog cellular service through a major telecommunications provider for only one year. In the latter case, we are not sure

whether this was a retailer policy or a service provider policy, but the bottom line for consumer is this: It is already difficult to buy analog service. TDI has received reports of similar customer frustration from several parts of the country including Massachusetts, Oklahoma, Georgia and Pennsylvania to name a few. By eliminating analog regulations, U.S. policy is creating a new barrier to people with hearing disabilities, as service will become difficult to find.

We respectfully request that the Commission retain the requirement that analog service be offered for the time being until the next biennial review. The next review must be contingent upon meeting the TTY-compatibility requirements and providing access to digital wireless telephones by people using hearing aids. Scrutiny on accessibility issues that are unique to the analog-to-digital transition should be done not only on carriers affected by this ruling, but should be applied on a level playing field to all digital wireless carriers and manufacturers.

At the end of 2000, digital wireless consumers made up 62 percent of the industry total, up from 30 percent in 1998 so it is certain that wireless providers will soon migrate all of their services to digital. With the market and industry's desire to migrate completely, the Commission *must* ensure that no one be left behind. Analog is considered the most reliable option for deaf and hard of hearing. It is the safest choice and it must be kept in place until technology permits us to do so. In fact, the FCC permitted extensions of deadlines for digital wireless TTY compatibility, because they noted that TTY users could use the analog network in the interim.<sup>6</sup> The rules for analog compatibility standards must not be eliminated *until* it is readily achievable for digital wireless providers to provide equal service to all individuals, including those with hearing loss.

---

<sup>6</sup> *E-911 Proceeding Fourth Report and Order*, FCC 00-436, CC Docket No. 94-102 (rel. Dec. 14, 2000) ¶ 7 (“[T]his deadline is needed for the industry to maintain TTY access as a priority. Because the technology did not exist to enable TTY signals to be transmitted over digital wireless systems at the time the rule was originally implemented . . .”).

History serves as a powerful lesson for us—the disability organizations, the industry, and the Commission. When the telephone was invented, deaf people did not have access to the innovation until the late 1950s and early 1960s when deaf engineers modified the outdated military equipment handed down after World War II, resulting in the invention of acoustic coupler for the teletypewriting devices. While the deaf community came to grips with TTY technology, the industry advanced further to far better technological innovations that had no equal access. As a result, deaf individuals were always at a disadvantage. This is relevant to the situation at hand. We have a much better technology—digital wireless—but deaf and hard of hearing people still do not have equal access. We must do more—work together—to find a solution that will meet the basic usability needs of everyone.

#### **IV. CONCLUSION**

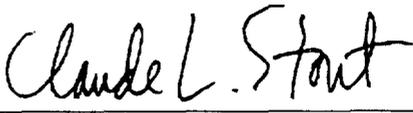
We realize that there is a danger of ghettoizing deaf and hard of hearing consumers by allowing industry to provide for accessibility only by retaining a technologically obsolete service. This is not our intention in encouraging a continuation of analog service. However, Section 255 of the Telecommunications Act requires telecommunications manufacturers and service providers to make their products and services accessible to people with disabilities. Implementing the proposed rules without change will run contrary to the spirit of Section 255. The legislative history on access to telecommunications for deaf and hard of hearing people could not be more clear: Accessible telecommunications is U.S. policy. It would be unthinkable that the Commission would allow a condition to arise that will disable the deaf and hard of hearing even further. Since accessibility to digital technology is not a reality today, the proposed rules will eliminate the only means of access. In conclusion, the analog compatibility standard must remain, at least for the near future. At the same time, the development of solutions for the

accessibility of digital technologies should be accelerated. Once digital becomes fully accessible, equal access will ensue. This ensures the competitive markets will flourish within the spirit of Section 255.

Respectfully submitted,

By: 

William L. Fishman  
SWIDLER BERLIN SHEREFF FRIEDMAN, LLC  
3000 K Street, N.W., Suite 300  
Washington, D.C. 20007-5116  
Telephone: (202) 945-6986  
Facsimile: (202) 424-7645  
Counsel to Telecommunications for the  
Deaf, Inc.

By: 

Claude Stout  
Executive Director  
Telecommunications for the Deaf, Inc.  
8630 Fenton Street, Suite 604  
Silver Spring, MD 20910-3803  
Telephone: (800) 735-2258 (MD Relay)  
(301) 589-3006 (TTY)  
Facsimile: (301) 589-3797

380729