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August 1, 2001

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

VIA HAND DELIVERY

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

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of the Commission's Rules to Modify or Eliminate Outdated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 Reply 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

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

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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or Eliminate Outdated Rules)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

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

Telecommunications for the Deaf, Inc. ("TDI"), by the undersigned, respectfully submits the following Reply Comments in the above-captioned matter. In its Notice of Proposed Rulemaking ("NPRM") in this matter the Commission sought comments on a wide variety of proposed changes to Part 22 of the rules to modify or eliminate regulations that have become outdated as a result of technical, service, or market developments occurring since the current rules were adopted. In particular the NPRM focuses on Subpart I of Part 22, dealing with cellular service. TDI, an organization which represents the interests of 28 million Americans who are deaf, hard of hearing, late-deafened, and deaf-blind, filed Initial Comments in this proceeding. These are its Reply Comments.

TDI's particular concern with the present docket is the Commission's consideration of amendments to section 22.901 of the rules¹ to eliminate the requirement that cellular carriers continue to provide analogue cellular service.

¹ 47 C.F.R. § 22.901.

I. VIEWS EXPRESSED IN INITIAL COMMENTS

As TDI noted in its Initial Comments, because digital cellular service is not currently compatible with TTY or many hearing aid devices, the disappearance of analogue cellular service would have substantial adverse consequences for a large number of subscribers suffering from a variety of hearing disabilities.

In the Initial Comments of others there is no dispute that, at the present time, digital service is not compatible with the needs of the disabled. In fact there emerges from the Initial Comments a strong consensus that the Commission's rules should not be modified to permit market forces alone to dictate the continued availability of analogue cellular service. While many other commenters share TDI's particular concerns for the disabled, the majority of industry commenters also recognize that a large number of analogue subscribers have continuing need for such service, including charitable organizations, the elderly, those relying on 911 services, the disabled, rural area subscribers, and numerous telematics users and that existing digital facilities and services simply cannot meet those needs currently.

Among these commenters there appears to be a common view that a transition period should be adopted by the Commission allowing analogue service to be withdrawn, but only when the newer digital technologies have achieved a sufficient degree of compatibility with the needs of those currently relying on analogue service, so that the disappearance of analogue service will not constitute a disservice to the public. TDI shares this view, and recommends that the Commission adopt a tentative ten year transition, subject to a review in the last six months of the ten year period to confirm that digital mobile equipment and service exist, at reasonable prices, to meet the needs of the disabled.

In addition to TDI, a number of other organizations which are focused on the needs of the disabled filed Initial Comments: The Alexander Graham Bell Association for the Deaf and Hard of Hearing ("AG Bell"); National Association of the Deaf ("NAD"); League for Hard of Hearing ("LHH"); Council of Organizational Representatives on National Issues Concerning People who are Deaf or Hard of Hearing ("COR"); and Self Help for Hard of Hearing People ("SHHH"). A brief summary of these organizations' Initial Comments indicates a strong consensus that those relying on TTY, hearing aids, or cochlear implants could be severely disadvantaged by the loss of analogue service at this time.

A. AGBell notes that the digital industry has not kept prior commitments. The FCC has never acted on WAC's petition for an end to the hearing aid compatibility exemption to the digital wireless handset rules. Six years after their introduction, digital wireless handsets remain largely inaccessible to those relying on hearing aids or cochlear implants. AGBell concludes that the market does not work in this context. Service area data must also be retained in the rules to aid those with disabilities.

B. SHHH states that analogue service must be continued, but FCC should establish a definite date by which digital service must be fully accessible to the hearing-impaired. SHHH contends that the FCC has not done periodic reviews of the hearing aid incompatibility issue, as it earlier promised. If digital service is inaccessible to a significant portion of the population, it is therefore spectrally inefficient. SHHH claims that manufacturers have interpreted the qualifying phrase in section 255 of "readily achievable" to mean "cheap and easy."

C. The League for the Hard of Hearing strongly opposes any elimination of the analog service requirement or mandatory analog compatibility standard, since doing so would greatly weaken the ability of the deaf or hard of hearing to access mobile communications.

D. Similarly, the National Association of the Deaf opposes the FCC's proposed marketplace solutions because they don't work in the case of consumers with special needs. That is why, says the NAD, Congress passed the Hearing Aid Compatibility Act, Telecommunications for the Disabled Act, and Section 255 of the Communications Act. It requests that the FCC follow through with a regulatory solution based on these statutory mandates, rather than leave solutions to the marketplace.

It is not at all surprising, of course, that these groups would adopt the positions outlined above. What is remarkable, however, is that numerous industry commenters agree, albeit to a greater or lesser degree. Among these are the following:

A. CTIA – The relevant rules are no longer required because 91% of the public has access to 3 or more carriers. The private sector should be setting standards, not the FCC and analogue technology is spectrum inefficient. However, notes CTIA, a transition period for TTY-type issues is appropriate.

B. TIA – Supports FCC proposal to eliminate the analogue service requirement but is working on disability issues. "Wireless industry has made great strides..." and compatibility by June 30, 2002 can be expected.

C. Verizon – There are still over 40 million analogue subscribers. Real issues exist in respect to TTY and hearing aid compatibility. A transition period to digital should be not less than five years.

D. Secure Alert, Inc. – Maintain analogue service for various groups with special needs, including the 6 million who use hearing aids or cochlear implants, elderly relying on M911 receive-only services, rural subscribers, charitable organizations using donated analogue telephones, etc.

E. Cingular Wireless – Requirement to offer analogue service should be terminated so that marketplace can make such judgments. It can be expected that the TTY problem will be solved by June 30, 2002. Hearing aid compatibility requires intense work but industry is already addressing the issues. FCC and FDA should push industry to develop compatibility standards.

F. Mid-Missouri Cellular – Analogue service should be retained at least until the TTY issue is solved.

G. Sprint PCS – There should be a five year transition period to all-digital, which should be sufficient to address and resolve hearing disability issues.

H. Rural Telecommunications Group – Until digital carriers can "fully meet the panoply of disability requirements," the FCC should do nothing to decrease use of analog networks.

TDI does not necessarily fully agree with the Comments of any of these parties. It summarizes them, however, to illustrate that, even among industry commenters, there is a wide recognition that for those with hearing disabilities who are relying on a variety of devices to assist them, there is a clear need to retain analogue service until digital technology is able to handle the needs of these individuals and that digital cannot currently do so.

Other commenters oppose eliminating the requirement for analogue cellular for reasons having nothing to do with the needs of the disabled. Case, OnStar, Deere, and ATX oppose elimination of the analog rule because the availability of analog is essential to telematics services. Indeed, these companies chose analog for their telematics systems because it is the only common standard that exists throughout the U.S. Case recommends a ten-year sunset period to begin after a new digital nationwide standard is operational to provide existing and near term vehicles with continued geographic coverage equivalent to that of analog today. Secure Alert opposes the FCC's

proposal because the availability of low-cost personal safety devices (911-only phones) that use only analog technology will be threatened if the analog requirement is removed.

II. DISCUSSION

The NPRM fully recognizes that an important issue exists with respect to the needs of certain segments of the public currently using analogue cellular equipment and services.² The NPRM thus recognizes the adverse impact which the abrupt elimination of analogue service could have on the elderly, charitable organizations, telematics applications such as GM's "OnStar" system, and the disabled. The NPRM clearly and unequivocally states that the Commission "will not take any action that would undermine service to persons with disabilities," and goes on to quote section 255 of the Act. As the Commission notes, section 255 requires that providers of telecommunications service ensure that the service "is accessible to and usable by individuals with disabilities, if readily achievable."³ The NPRM then concludes that, in light of that section, if the Commission were to delete the requirement that cellular carriers provide analog service, "this section would still require TTY and hearing aid compatibility, as well as other accessibility features to be incorporated into cellular systems, where readily achievable."⁴ The NPRM asks whether the independent requirements of Section 255 would sufficiently address any such problems.⁵

TDI is deeply appreciative of the Commission's sensitivity to the needs of consumers with hearing loss and believes that the NPRM reflects a genuine desire to protect and enhance

² See in particular, ¶¶ 23, 26, 29, and 30.

³ 47 U.S.C. § 255(c).

⁴ NPRM, ¶ 30.

⁵ *Id.*

accessibility of the disabled to mobile communications services.⁶ Nevertheless, TDI respectfully suggests that in paragraph 30 the Commission is actually using section 255 not as an aid to the disabled but rather in a way which may actually have the perverse effect of disserving the interests of those the law was intended to protect. That is, if section 255 is looked upon as a kind of stop-loss provision its presence may be thought to give the Commission the latitude to take steps which it might otherwise be unwilling to take under its broad public interest standard, *e.g.*, to allow analogue service to be discontinued. TDI believes that it is dangerous and unwise to look at section 255 in this way, as doing so may facilitate the very regulatory steps Congress intended to inhibit by passing that section.⁷ In the present context, TDI urges the Commission to conclude that section 255 mandates the continued availability of analogue service unless and until digital equipment and service is fully adequate to meet the needs of the disabled; the law must not become an excuse to allow services required today by the disabled to disappear on the supposition that somewhere down the road section 255 will protect the disabled.⁸

⁶ This sensitivity appears in other proceedings as well. *See, e.g., In the Matter of Revision of the Commissions's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Memorandum Opinion and Order, 12 FCC Rcd 22665 (1997), ¶ 53* (people with hearing and speech disabilities who rely on TTYs to communicate are entitled to the same rapid and efficient access to help in emergencies as other Americans). *See also* ¶ 58 ("Any unnecessary or premature delay in TTY compatibility with 911 impairs the public health and safety and runs counter to the policies of the ADA. We reiterate that the wireless industry and other interested parties must give TTY compatibility the priority that the law demands.")

⁷ In its Comments AT&T Wireless falls into the same trap: it agrees that TTY compatibility problems exist but asserts that section 255 assures that analogue service will remain available. Similarly, Erickson claims that the elimination of AMPS standards is acceptable because the FCC's rules and the Commission itself will assure TTY and hearing aid issues are properly addressed.

⁸ Mention should be made as well of 47 U.S.C. § 251(a)(2) which imposes the specific duty on carriers to adhere to § 255.

This concern is all the more realistic in light of the fact that no one commenting in this proceeding — or anywhere else to TDI's knowledge — has made a firm commitment to a date by which digital technology will be compatible with TTY, hearing aid, or cochlear implant technology. In such circumstances, reliance on a transition period as is frequently mentioned in the Comments seems reasonable to TDI, and it recommends that the Commission amend its rules to extend the requirement for analogue cellular service for an additional ten years subject to an on-the-record demonstration that digital service will be adequate at that time to meet all the needs set forth in this record. But TDI would also support a Commission decision indicating that it will review the continued need for analogue service earlier than the presumptive ten year period, upon a persuasive showing of the adequacy of digital service to meet the needs of the disabled in terms of price, availability and functionality. In other words, such a showing could accelerate the presumptive ten year termination date.

This approach appears in principle to be acceptable to many commenters but has the great advantage that it turns ultimately not on predictions of success, but on proof of success. Moreover, it puts the burden of proof on those carriers wishing to withdraw from analogue service and it provides motivation for the industry to develop digital technology and services in exchange for the privilege of withdrawing from analogue service. On the other hand, if the proof of adequacy of digital technology is not offered, or if it is offered but fails to convince the Commission, the presumptive analogue termination date should be cancelled or further postponed, subject to the receipt of an acceptable showing in the future.

III. CONCLUSION

The Initial Comments submitted to this proceeding establish that the digital equipment and services currently available are not adequate to reasonably meet the needs of the disabled. This is

attested to not only by those organizations whose constituencies are most immediately affected, but also by a wide variety of industry parties. This proceeding aptly illustrates the Commission's observation that the

Inability to use telecommunications equipment and services can be life-threatening in emergency situations, can severely limit educational and employment opportunities, and can otherwise interfere with full participation in business, family, social, and other activities. We must do all we can to ensure that people with disabilities are not left behind in the telecommunications revolution and consequently isolated from contemporary life.⁹

Apart from the particular concerns of the disabled there are other powerful reasons not to allow analogue cellular service to disappear in the immediate future: these include the needs of rural subscribers, those who need ubiquitous roaming capability, the elderly, those requiring M911 services, charitable organizations such as shelters for battered women, and the nationwide telematics systems which are currently in place. Until it can be demonstrated that the needs of these subscribers can be adequately met by digital facilities and services – and no such showing has been made nor even attempted in this proceeding – analogue service must remain available.

In his recent remarks to TDI's 14th Biennial International Conference and Expo on July 10, 2001 in Sioux Falls, S.D., newly-appointed Commissioner Copps noted that every American is a stakeholder in communications "because each of us is affected in so many important ways by how the public spectrum is used. Our freedoms, our diversity and our values all come into play."¹⁰ TDI

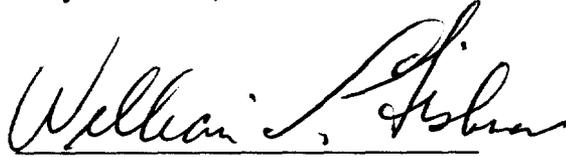
⁹ *Implementation of Section 255 of the Telecommunications Act of 1996; Access to Telecommunications Services, Telecommunications Equipment, and customer Premises Equipment By Persons with Disabilities*, Notice of Proposed Rulemaking, WT Docket No. 96-198, 14 FCC Rcd 20391 (1998), ¶ 2

¹⁰ Remarks of Commissioner Michael J. Copps at the 14th Biennial International Conference Telecommunications for the Deaf, Inc., Sioux Falls, South Dakota, July 10, 2001.

is honored that Commissioner Copps chose its conference to make his inaugural speech as a Commissioner. Moreover, TDI could not put the ultimate issue presented here more eloquently.

Respectfully submitted,

By:



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