

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

In the Matter of )  
 )  
Revision of the Commission's Rules to ) CC Docket No. 94-102  
Ensure Compatibility With Enhanced 911 )  
Emergency Calling Systems )

To: The Commission

**COMMENTS OF AIRCELL, INC.**

AirCell, Inc. ("AirCell"), by its attorneys, hereby submits these comments in response to the Commission's Further Notice of Proposed Rulemaking in the above-captioned docket. <sup>1/</sup> AirCell limits these comments to the questions in the *Further Notice* relating to the imposition of basic or enhanced 911 ("E911") requirements on resellers of cellular and PCS services. Specifically, AirCell urges the Commission to recognize that, given the differences between traditional terrestrial-based resold services and the airborne-based resold services AirCell offers, any new rule imposing E911 requirements on resellers offering airborne services would be both unworkable and contrary to the public interest.

**I. Background**

A pioneer in providing affordable air-to-ground communications to the general aviation industry, AirCell is a facilities-based reseller of commercial mobile

---

<sup>1/</sup> Revision of the Commission's Rules to Ensure Compatibility With Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, *Further Notice of Proposed Rulemaking*, FCC 02-326 (rel. Dec. 20, 2002) ("*Further Notice*").

radio service, operating pursuant to a waiver of the airborne cellular rule, 47 C.F.R. § 22.925. <sup>2/</sup> AirCell’s system uses special low-power, Federal Aviation Administration-approved cellular terminals owned by AirCell’s customers, in conjunction with AirCell base station components collocated at cell sites of licensed cellular carriers. This configuration permits AirCell to use (on a resale basis) cellular spectrum to provide a competitive alternative to licensed Part 22 air-to-ground services.

Under arrangements with the FAA, AirCell offers a special 911 service to its users. Calls to 911 from AirCell phones are automatically routed to the closest Air-Route Traffic Control Center (“ARTCC”) emergency operations officer. <sup>3/</sup> Given the unique circumstances of in-flight emergency situations, these ARTCC officers are far better positioned to coordinate the provision of emergency assistance to an aircraft’s occupants than any traditional Public Safety Answering Point (“PSAP”).

---

<sup>2/</sup> See AirCell, Inc., Petition, Pursuant to Section 7 of the Act, for a Waiver of the Airborne Cellular Rule, Or, in the Alternative, for a Declaratory Ruling, *Memorandum Opinion and Order*, 15 FCC Rcd 9622 (2000); *AT&T Wireless Services, Inc., et al., v. FCC*, 270 F. 3d 959 (D.C. Cir. 2001), *Order on Remand*, FCC 02-324 (rel. Feb. 10, 2003) (reaffirming the Commission’s earlier decision). See also AirCell, Inc., Petition, Pursuant to Section 7 of the Act, for a Waiver of the Airborne Cellular Rule, Or, in the Alternative, for a Declaratory Ruling, *Order*, 17 FCC Rcd 8258 (WTB 2002) (extending the original waiver grant). The airborne cellular rule prohibits the airborne operation of cellular telephones.

<sup>3/</sup> Because the AirCell phone operates independently of the aircraft’s radio, it provides redundant emergency communications capability in the event the radio is not functioning.

## II. The AirCell System Does Not Satisfy the Criteria for Imposition of 911 Obligations.

The *Further Notice* asks for comment on whether the Commission should require resellers of cellular and PCS service to ensure compliance with its 911 rules, and/or whether underlying facilities-based licensees should bear the responsibility for ensuring that their resellers comply with the 911 rules. <sup>4/</sup> The *Further Notice* proposes to analyze the appropriateness of extending its 911 rules to resellers and other service providers not currently covered by the rules, based on whether the following four criteria are satisfied:

(1) [the service offers] real-time, two-way voice service that is interconnected to the public switched network . . . ; (2) the customers using the service or device have a reasonable expectation of access to 911 and E911 services; (3) the service competes with traditional CMRS or wireline local exchange services; and (4) it is technically and operationally feasible for the service or device to support E911. <sup>5/</sup>

While AirCell takes no position as to the application of 911 requirements to traditional, terrestrial-based wireless resellers, the AirCell system, as described below, does not satisfy three of the four announced criteria. Therefore, the Commission should provide an exemption for resellers offering airborne service from any new rule that imposes 911 obligations on resellers generally.

A. AirCell's customers have no expectation of access to E911 services.

In its *E911 First Report and Order*, the Commission properly exempted Part 22 air-to-ground services from the E911 requirements, finding that airplane

---

<sup>4/</sup> *Further Notice* at ¶ 95.

<sup>5/</sup> *Further Notice* at ¶¶ 13, 94.

“passengers and crews do not rely on ground-based rescue operations.” <sup>6/</sup> The same reasoning applies to AirCell’s service. Because airplane passengers and crew generally do not rely on traditional (*i.e.*, non-airport-based) fire, police and ambulance services in an emergency, they would have no expectation that the delivery of call-back number and location information to a PSAP would be available in-flight, or that such information would be useful even if it were technically feasible. <sup>7/</sup>

B. AirCell service does not compete with traditional CMRS or wireline local exchange services.

Although it uses CMRS spectrum, AirCell competes not with terrestrial wireless providers, but with licensees in the Part 22 air-to-ground services. <sup>8/</sup> Nothing in the *Further Notice* suggests that 911 requirements should be considered for air-to-ground licensees, which were previously exempted from the Commission’s 911 rules. <sup>9/</sup> As a matter regulatory parity, AirCell should not be saddled with obligations not imposed on its competitors.

---

<sup>6/</sup> Revision of the Commission’s Rules to Ensure Compatibility With Enhanced 911 Emergency Calling Systems, *Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd 18676, 18717 (1996) (“*E911 First Report and Order*”) at ¶ 82.

<sup>7/</sup> Although AirCell currently provides service using specialized terminal equipment in general aviation aircraft, the analysis would not change even if the service were being provided through ordinary mobile handsets on commercial flights. In either situation, passengers would not expect effective assistance from traditional PSAPs.

<sup>8/</sup> See 47 C.F.R. § 22.801 *et seq.*

<sup>9/</sup> See *E911 First Report and Order* at ¶ 82; *Further Notice* at ¶¶ 5, 13.

- C. It is neither practical nor operationally feasible for the AirCell system to comply with the E911 rules.

Even if the AirCell terminals could be modified to transmit automatic number information (“ANI”) and automatic location information (“ALI”), it would not be feasible to route this information to the appropriate PSAP. For example, if the data were relayed to the PSAP for the jurisdiction located immediately below the aircraft’s position when the call is initiated, it is unlikely in most cases that the aircraft would still be within this same jurisdiction once it made an emergency or unplanned landing. It would be nearly impossible for the AirCell system to predict the location at which emergency services may be required once the aircraft reached the ground. Moreover, PSAP personnel are not properly trained to provide advice to callers regarding emergency situations in airborne environments. Indeed, airborne 911 calls would unnecessarily burden the receiving PSAP and would poorly serve the 911 caller, especially if it precludes a more useful option, such as AirCell’s current routing of 911 calls. Accordingly, applying the Commission’s 911 rules to the AirCell system would be contrary to the public interest.

**III. Additional 911 obligations are not needed to ensure that AirCell provides safety-related communications services.**

As the Commission has previously determined, AirCell already provides safety-related public interest benefits. <sup>10/</sup> The capabilities currently

---

<sup>10/</sup> AirCell, Inc., Petition, Pursuant to Section 7 of the Act, For a Waiver of the Airborne Cellular Rule, or, in the Alternative, for a Declaratory Ruling, *Memorandum Opinion and Order*, 15 FCC Rcd 9622, 9644 (2000) at ¶ 43 (stating that “we find few viable alternatives that may provide safety-related voice communications between pilots and emergency personnel, and can be used to uplink

offered by AirCell are, in fact, more relevant to in-flight safety than those prescribed by the Commission's E911 rules. 11/ Moreover, because the AirCell solution offers a substantial improvement in terms of size, weight and cost over pre-existing technologies, more aircraft users are able to augment the standard aeronautical radio with this additional safety-enhancing communications option.

---

in-cockpit, up-to-the-minute weather and air traffic information [and] potentially provide in-flight monitoring of airframe and engine operations, serving to better inform ground personnel of aircraft operations”).

11/ For example, AirCell has developed several innovative products for its unique airborne cellular platform. AirCell's FlightGuardian is a software package designed for Compaq handheld computers that, when used together with an AirCell transceiver, allows pilots to download current weather images. AirCell also has developed a “virtual radar” product that allows customers to use UPS Aviation software that includes moving maps and allows precise data on the aircraft's position via global positioning system (“GPS”) to be used in conjunction with weather data provided through AirCell's transceivers.

#### **IV. Conclusion**

For the reasons described above, AirCell requests that the Commission use care in drafting any new rules that would impose 911/E911 obligations on wireless resellers. The Commission should ensure that any new rules are not so broad as to cover the AirCell system (or similar airborne systems developed in the future), which would have the unintended consequence of subjecting AirCell's users to an impractical and infeasible form of emergency communications, and could place AirCell at a competitive disadvantage vis-à-vis its Part 22 air-to-ground service competitors.

Respectfully submitted,

**AIRCELL, INC.**

By: /s/ Michele C. Farquhar  
Michele C. Farquhar  
David L. Martin  
HOGAN & HARTSON L.L.P.  
555 Thirteenth Street, N.W.  
Washington, D.C. 20004-1109  
(202) 637-5600

Its Attorneys

Dated: February 18, 2003