

**Before the  
Federal Communications Commission  
Washington, D.C. 20554{tc "Washington, D.C. 20554"}**

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or Eliminate Outdated Rules )  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

**OPPOSITION OF TELECOMMUNICATIONS FOR THE DEAF, INC.  
TO PETITION FOR RECONSIDERATION**

Telecommunications for the Deaf, Inc. ("TDI"), pursuant to Rule 1.429(f) of the Federal Communications Commission's ("Commission") Rules, 47 C.F.R. § 1.429(f), and through undersigned counsel, respectfully submits its opposition to the petition for reconsideration of AT&T Wireless Services, Inc. ("AT&T Wireless") in the above-referenced proceeding. AT&T Wireless requests that the Commission reduce the sunset period for the cellular analog requirement from five years to no more than 30 months.<sup>1</sup> For the reasons set forth below, TDI urges the Commission to deny AT&T Wireless's Petition and affirm its five-year transition period for elimination of analog services.

TDI's constituents, persons who are deaf, hard-of-hearing, late-deafened, or deaf-blind, require access to wireless services in order to communicate with friends and relatives, conduct business, and ensure their personal safety. Currently, however, most digital phones cause interference to most hearing aids and cochlear implants. In addition, analog cellular service, unlike digital wireless service, supports TTY and voice carry-over, features particularly important to persons with speech or hearing disabilities. For these reasons, persons with hearing

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<sup>1</sup> AT&T Wireless Petition at 3-9.

disabilities must rely on analog wireless services which do not cause interference with hearing aids or cochlear implants. Therefore, regardless of the existence of meaningful economic competition in the provision of wireless services, the public interest dictates that the Commission affirm its five-year phase out for Advanced Mobile Phone Service (“AMPS”) so as not to harm persons with speech or hearing disabilities before digital alternatives compatible with hearing aids and cochlear implants are readily available at reasonable cost.

## **I. INTRODUCTION**

TDI is a national advocacy organization that seeks to promote equal access issues in telecommunications and media for the 28 million Americans who are deaf, hard-of-hearing, late-deafened, or deaf-blind so that they may enjoy the opportunities and benefits of the telecommunications revolution to which they are entitled. TDI believes that only by ensuring equal access for all Americans will society benefit from the myriad skills and talents of persons with disabilities. TDI filed initial and reply comments in this proceeding addressing TDI’s concerns regarding the elimination of requirements that cellular carriers continue to provide analog cellular service.

## **II. OPPOSITION**

### **A. Contrary to AT&T Wireless’s Claim, The Public Interest Analysis of Section 11 Does Not Warrant Elimination of Advanced Mobile Phone Service.**

AT&T Wireless incorrectly claims that the Commission, in determining whether to repeal or modify its AMPS requirement, may only consider the purposes for which the requirement was originally adopted.<sup>2</sup> AT&T Wireless asserts that, given the extent of competition in the wireless industry today, there is no basis under Section 11 of the Communications Act of 1934 (“Act”)<sup>3</sup> for retaining the analog requirement for five years.<sup>4</sup> Therefore, AT&T Wireless argues, because

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<sup>2</sup> AT&T Wireless Petition at 5-6.

<sup>3</sup> 47 U.S.C. § 161.

<sup>4</sup> AT&T Wireless Petition at 4.

the original purposes for the Commission's AMPs requirement – to develop wireless competition and promote compatibility of wireless equipment – are no longer at issue, the Commission should have repealed the analog requirement under Section 11 and should reduce or eliminate the five-year transition period adopted in this proceeding. AT&T Wireless misinterprets the proper scope of Commission's analysis under Section 11.

Section 11 requires the FCC to review biennially all of its regulations “that apply to the operations or activities of any provider of telecommunications service” and “to determine whether any such regulation is no longer necessary in the public interest as a result of meaningful economic competition between providers of such service.”<sup>5</sup> Further, Section 11 specifically provides that the FCC “shall repeal or modify” any regulation that it determines is no longer necessary in the public interest as a result of meaningful economic competition.<sup>6</sup> However, as the Commission noted in its orders in this proceeding, its analysis under Section 11 does not end with a determination that meaningful economic competition exists, as AT&T Wireless claims. Rather, the analysis must also include a determination whether a rule remains necessary in the public interest.<sup>7</sup> Significantly, AT&T Wireless ignores this significant aspect of the Commission's Section 11 analysis.

Further, in the context of a review of Commission determinations under Section 202(h) of the Telecommunications Act of 1996,<sup>8</sup> the language of which is consistent with that of Section

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<sup>5</sup> 47 U.S.C. § 161.

<sup>6</sup> 47 U.S.C. § 161(b).

<sup>7</sup> *Year2000 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*, Report and Order, WT Docket No. 01-108, 17 FCC Rcd. 18401, at ¶ 4 (2002) (“*Report and Order*”); *Year2000 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*, Second Report and Order, WT Docket No. 01-108, 17 FCC Rcd 18485, at ¶ 6 (rel. Sept. 24, 2002) (“*Second Report and Order*”).

<sup>8</sup> Section 202(h) states: “The Commission shall review its rules adopted pursuant to this section and all of its ownership rules biennially as part of its regulatory reform review under section 11 of the Communications Act of 1935 and shall determine whether any such rules are necessary in the public interest as the result of competition. The Commission shall repeal or modify any regulation it determines to be no longer in the public interest.”

11, the U.S. Court of Appeals for the District of Columbia Circuit found that when the Commission is determining whether or not a rule remains necessary, the Commission's analysis is not limited to the original purpose of the rule, but may include grounds other than the original purpose for which the Commission adopted the rule.<sup>9</sup>

Therefore, before eliminating a rule under Section 11, the Commission not only may consider whether the reasons for which it originally adopted the rule remain valid, but also may consider whether other grounds exist to retain those rules to avoid harm to the public interest. In this case, the Commission appropriately determined that the unique needs of persons with speech or hearing disabilities, E911-only users, and others justified retention of its AMPS requirement.<sup>10</sup> AT&T Wireless has offered no supportable basis for the Commission to revise its determination or to shorten the transition period.<sup>11</sup>

**B. The Deaf and Hard-of-Hearing Population Continue to Rely Upon Analog Cellular Service for Safety, Business, and Other Purposes.**

Wireless telephones have become almost commonplace in the United States, and wireless subscribers rely upon those telephones to communicate with business colleagues, clients, employers, and friends and family. In fact, access to wireless telephones (particularly digital wireless telephones) has become increasingly important, if not essential, to employment. Wireless telephones help ensure safety and, in many circumstances, may be a subscriber's only means of obtaining access to emergency services. Therefore, as the Commission noted in the

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<sup>9</sup> *Fox Television Stations, Inc. v. FCC*, 280 F.3d 1027, 1050 (D.C. Cir. 2002) ("Nothing in § 202(h) suggests the grounds upon which the Commission may conclude that a rule is necessary in the public interest are limited to the grounds upon which it adopted the rule in the first place.")

<sup>10</sup> *Report and Order*, at 26-29.

<sup>11</sup> Indeed, as Commissioners Copps and Martin noted, if the Commission modifies its five-year transition period at all, it should be to extend it indefinitely until the industry can demonstrate that digital wireless technologies are fully compatible with hearing aids, cochlear implants, and other hearing assistance devices. *See Report and Order*, Statement of Commissioner Michael J. Copps, at p. 1-2; Consolidated Separate Statement of Kevin J. Martin, at p. 1-2

*Report and Order* “we recognize that telecommunications technology has become an essential component of every life, and those without ready access are at a disadvantage in areas such as emergency services as well as routine daily activities.”<sup>12</sup>

Deaf and hard-of-hearing consumers would prefer to use the latest wireless technology if it were available; however, at this time deaf and hard-of-hearing consumers who wish to use mobile telephones must rely upon analog cellular service and telephones because most digital technologies have been shown to cause interference with hearing aids and cochlear implants. In addition, unlike most current digital technologies, analog cellular service is capable of transmitting TTY signals at an acceptable level of accuracy and supports voice carry-over. Therefore, while most wireless subscribers can utilize a variety of mobile technologies and services, including digital wireless technology, deaf and hard-of-hearing consumers must continue to have access to analog cellular telephones in order to utilize wireless services. Indeed, the unique requirements of persons with hearing disabilities were a central element of the Commission’s determination to establish a five-year transition period before the elimination of its analog requirement.<sup>13</sup> AT&T Wireless has offered no supportable basis for the Commission to now reject these findings or to shorten the transition period.

**C. AT&T Wireless’s Competition Arguments Do Not Outweigh the Harm to the Public Interest that Would Result from Elimination of the Analog Requirement.**

AT&T Wireless claims that there is sufficient economic competition in the wireless market to warrant a shortening of the five-year transition period.<sup>14</sup> While the existence of competition in the wireless industry may provide certain benefits to some consumers, AT&T

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<sup>12</sup> *Report and Order*, at ¶ 27.

<sup>13</sup> *Report and Order*, at ¶¶ 26-29.

<sup>14</sup> AT&T Wireless Petition at 3-5.

Wireless's claim ignores that prematurely eliminating the AMPS requirement will have a significant negative impact on *all* deaf or hard-of-hearing consumers who currently obtain or may wish to obtain access to wireless services.

If the Commission modifies the five-year transition period adopted in the *Report and Order*, and thus removes the requirement that wireless carriers provide access to analog services, it is unlikely that wireless carriers will continue to offer such services, whether or not hearing-aid compatible digital devices have been developed.<sup>15</sup> As the Commission recognized in the *Report and Order*, “[w]hile we anticipate that market mechanisms will, for the most part, ensure access to digital services for most consumers, we agree that the same economic incentives do not exist that would ensure that persons with hearing disabilities have adequate access to digital wireless service because they account for only a small percentage of mobile telephony users.”<sup>16</sup> Consequently, if the Commission eliminates its analog requirement before compatible digital technologies are readily available, persons with speech and/or hearing disabilities will be left without access to any wireless technology.

**D. Section 255 Will Not Ensure that Analog Service Options Remain Available to Persons with Speech or Hearing Disabilities.**

AT&T Wireless asserts that if the Commission were to eliminate or modify the five-year transition period for phase of AMPS, Section 255 of the Act will require cellular carriers to

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<sup>15</sup> See *Report and Order*, at ¶ 28 (“We find that, given the scarcity of digital devices that may be used with hearing aids, persons with hearing disabilities could be left without access to mobile telephony services in the event that the analog requirement is removed immediately and carriers are able to shut down their analog facilities.”). As discussed below, Section 255 will not provide a sufficient basis for ensure that wireless carriers continue to provide analog service to persons with disabilities following expiration of the transition period. The Commission can avoid this result by explicitly reaffirming its reservation of the right to extend the sunset period in the industry has not developed hearing aid-compatibility digital technologies. See *Report and Order*, at ¶ 29.

<sup>16</sup> *Report and Order*, at ¶ 28.

ensure that their facilities and services are available to individuals with disabilities.<sup>17</sup> Contrary to AT&T Wireless's claims, Section 255 will not provide sufficient safeguards to ensure the continued availability of analog services to persons with speech or hearing disabilities.

As an initial matter, TDI cautions the Commission not to fall victim to AT&T Wireless's claim that the existence of Section 255 alone will protect the ability of individuals with disabilities to access telecommunications services. The Commission refused to do so in its *Report and Order*, finding that, "the independent requirements of section 255 notwithstanding," a transition period was appropriate to address digital handset compatibility issues.<sup>18</sup> Many wireless providers point to the availability of their analog services for persons with hearing disabilities as an indication that they are complying with Section 255, while at the same time phasing out such services before compatible digital technologies are available. Without a specific requirement that wireless providers continue to offer analog service until hearing-aid compatible digital technology is readily available, wireless providers have less incentive to develop such technologies.

In addition, the existence of Section 255 does not guarantee access to telecommunications services to individuals with disabilities in cases such as this where technology limitations make compliance with Section 255 impossible and there is no consensus in the industry when compliant technology will be available. AT&T Wireless has not demonstrated that there is any reason for the Commission to now conclude that Section 255 alone will offer sufficient protections to consumers with speech or hearing disabilities. In fact, AT&T Wireless does not offer any evidence to support such a claim. On the contrary, AT&T Wireless's Petition itself includes statements that indicate that Section 255 may not provide sufficient incentives for wireless carriers to continue to offer analog service in the absence of a requirement that they do so during the transition period.

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<sup>17</sup> AT&T Wireless Petition at p. 6.

<sup>18</sup> *Report and Order*, at ¶ 30.

For instance, AT&T Wireless states that retaining the analog requirements will impose unnecessary operating costs on cellular providers and impede their spectral efficiency.<sup>19</sup> AT&T Wireless further states that the analog requirement prevents cellular providers from providing the full panoply of advanced services that may be available over digital technologies.<sup>20</sup> While these are not new arguments from AT&T Wireless, they do demonstrate that cellular carriers have significant incentives to stop providing analog services entirely upon expiration of the analog requirement in five years. On the other hand, given that persons with disabilities account for a small percentage of mobile telephone users, cellular providers have little economic incentive to retain their analog services until such time as hearing-aid-compatible digital technology is widely available. Therefore, while Section 255 may provide some incentive for carriers and manufacturers to develop hearing-aid-compatible digital technologies at some point in the future, Section 255 is not sufficient, in the absence of specific requirements regarding analog services, to require carriers to continue to make analog services available to persons with disabilities in the interim. Only the Commission's current rules, rules that it may potentially eliminate in five years, provide this protection.

Moreover, because individuals with disabilities often obtain donor or other second-hand wireless telephones, these individuals are unlikely to be able immediately to obtain access to new, hearing-aid-compatible digital technologies when such technologies become available. Consequently, even if the industry develops digital technologies that do not interfere with hearing aids or other hearing assistance devices, those new technologies may not be readily available to persons with disabilities as required by Section 255. Therefore, until such devices are readily available to all consumers, and in particular to those with speech or hearing disabilities, it is imperative that the Commission retain its analog requirements.

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<sup>19</sup> AT&T Wireless Petition at p. 6.

<sup>20</sup> *Id.*

**E. The Wireless Industry is Not Yet Able to Offer Digital Services that are Compatible with Hearing Devices.**

While TDI appreciates AT&T Wireless's apparent commitment to assist in the development of hearing-aid-compatibility digital technologies, few, if any, such devices are currently available in the marketplace, and it is unclear when such devices will be readily available to consumers. The Commission recognized this fact in its *Report and Order*, and the Commission specifically cited the lack of such devices as the basis for its decision to retain its analog requirement for a minimum of five years.<sup>21</sup> Until such time as hearing-aid-compatible digital devices and services are readily available for persons with speech or hearing disabilities, the Commission must ensure that wireless carriers are required to continue to provide analog services. Accordingly, TDI urges the Commission to reaffirm its five-year sunset period for analog services and to explicitly state that the Commission will extend the analog requirement should the Commission determine at the end of the sunset period that hearing-aid-compatible digital services are not readily available to persons with disabilities.

**F. AT&T Wireless Has Raised no New Arguments Justifying Reconsideration Under Section 1.429 of the Commission's Rules.**

Section 1.429 of the Commission's Rules, 47 C.F.R. § 1.429, requires that petitions for reconsideration include new facts not previously presented to the Commission that arose or changed after the last opportunity to present such evidence to the Commission.<sup>22</sup> The facts presented and arguments raised by AT&T Wireless are virtually the same as those raised in its comments filed in this proceeding and, thus, they have already been considered and rejected by the Commission in reaching its decision to retain its analog requirements for five years. AT&T Wireless's Petition does not offer any new evidence or arguments supporting a reduction or elimination of the sunset period established by the Commission in its *Report and Order*. Therefore, there is no reason or legal or factual basis for the Commission to modify its previous

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<sup>21</sup> *Report and Order*, at ¶ 28.

<sup>22</sup> 47 C.F.R. § 1.429(b).

decision. Accordingly, the Commission should deny AT&T Wireless's Petition and affirm its five-year sunset period for analog services.

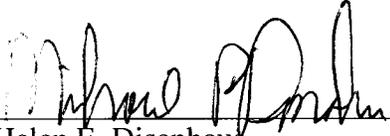
### III. CONCLUSION

As the Commission found in its *Report and Order*, the public interest requirement of Section 11 does not warrant elimination of the Commission's analog requirements at this time. The Commission appropriately determined that the unique needs of persons with speech or hearing disabilities combined with the absence of readily available hearing-aid-compatible digital technologies, warrant retention of the Commission's analog requirements for a minimum of five years. In order to ensure the continued availability of wireless services, and all of the related benefits of such services, to persons with disabilities, the Commission must retain its analog requirements until such time as it determines that hearing-aid-compatible digital technologies are readily available to persons with speech or hearing disabilities. AT&T Wireless has not presented any new facts or evidence or raised any new arguments that support modification of the five-year transition period.

Accordingly, TDI respectfully requests that the Commission deny AT&T Wireless's Petition for reconsideration, affirm its establishment of a five-year transition period for analog services and explicitly state that the Commission will reevaluate the availability of hearing-aid-compatible digital technologies prior to eliminating the analog requirements in the future.

Respectfully submitted,

By:



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April 1, 2003

## CERTIFICATE OF SERVICE

I, Michael P. Donahue, hereby certify that on this 1<sup>st</sup> day of April, 2003, copies of the foregoing "Opposition of Telecommunications for the Deaf, Inc. to Petition for Reconsideration" were sent via e-mail to the following:

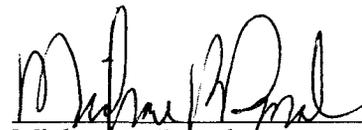
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