

**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Rules to Modify or Eliminate Outdated)	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)	

**SPRINT OPPOSITION
TO PETITION FOR RECONSIDERATION OF
AT&T WIRELESS SERVICES, INC.**

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Summary

In its Petition for Reconsideration, AT&T Wireless Services, Inc. (“AWS”) asks the Commission to reduce the sunset period for the cellular analog requirement from five years to “no more than 30 months.” However, the record provided a range of reasons sufficient to justify the Commission’s decision to set the transition period at five years, rather than the lesser period now sought by AWS.

Commenters established that analog services continue to play an important role in providing ubiquitous access to mobile services throughout the country. This coverage enables nationwide roaming, helps ensure mobile access to emergency services, and provides for continuity of telematics services as new digital telematics hardware is introduced. The Commission noted that a five-year transition would address concerns related to these issues.

The record also established that a five-year transition period is justified to promote critical public interest benefits. Among such benefits are mobile communications access by the deaf and hard of hearing and senior citizens, among others.

In acting to eliminate the AMPS requirement, the Commission did what AWS had requested. AWS’ principal objection to the Order relates to the effective date of the rule repeal adopted by the Commission. Yet, agencies have considerable discretion on matters of timing in rulemaking proceedings.

AWS offers no evidence to suggest that the Commission’s decision was an abuse of its discretion or otherwise violated the Communications Act. The Petition should be denied.

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To: The Commission

**SPRINT OPPOSITION
TO PETITION FOR RECONSIDERATION OF
AT&T WIRELESS SERVICES, INC.**

Sprint Corporation, on behalf of its Wireless Division, Sprint Spectrum L.P., d/b/a/ Sprint PCS ("Sprint"), submits this opposition to the petition for reconsideration ("Petition") filed January 16, 2003 by AT&T Wireless Services, Inc. ("AWS") with respect to the Commission's report and order in the above-captioned proceeding. ^{1/} Sprint believes that the Commission reached the correct result in its order eliminating the AMPS requirement contained in sections 22.901 and 22.933 of the Commission's rules (the "AMPS requirement") and that the five-year sunset provision the Commission established is appropriate and beneficial to consumers, and supported by law.

^{1/} 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, *Report and Order*, WT Docket No. 01-108, 17 FCC Rcd 18401 (2002) ("*Part 22 Order*").

In reaching its decision, the Commission relied on record information demonstrating that the AMPS requirement continues to offer a wide range of benefits to the public. Noting the continued importance of AMPS services, the vast majority of commenters in this proceeding, including many mobile carriers, requested a sunset period. 2/ Sprint commends the Commission for recognizing that the public still relies upon analog services to a measurable degree – enough to justify a five-year sunset period as necessary for a smooth and rational transition to digital service. In its Petition, AWS has asked the Commission to modify this transition period. AWS presents no new facts to contradict the Commission’s initial determination and its Petition should be denied.

I. THE RECORD DEMONSTRATES THAT AMPS PLAYS A CRITICAL ROLE IN PROVIDING MOBILE SERVICE TO THE PUBLIC

Most of the AWS Petition is devoted to rehashing the state of competition in the CMRS marketplace (points already accepted by the Commission) or raising new legal arguments (contradicted by court and Commission precedent as explained, *infra*) regarding the Commission’s responsibilities under the Communications Act (“the Act”). 3/ In fact, AWS devotes only one paragraph to discussing relevant facts upon which the Commission actually based its five-year

2/ See Sprint PCS Jan. 14, 2002 Ex Parte at 6 (citing a list of over 25 commenters supporting a transition period – ranging from five years to 10 years or more).

3/ See 47 U.S.C. § 161.

phase-out of the AMPS requirement. ^{4/} Even here, AWS offers little more than conclusory statements asserting that a five-year transition is not needed to address the concerns of the deaf and hard of hearing and other users.

By contrast, Sprint and other commenters provided substantial evidence that AMPS continues to play a critical role in providing mobile service to the public. One of the main rationales for adopting the AMPS requirement in the first place was to foster ubiquitous nationwide coverage. The record in the proceeding establishes that AMPS is still critical in achieving this goal. Furthermore, AMPS still provides necessary service for certain segments of the public.

A. Ubiquitous Coverage

1. Roaming

The Commission notes in its order that ordinary subscribers to digital service must rely on analog networks for roaming service in many areas. ^{5/} The record in this proceeding demonstrates that ubiquitous coverage is more important to consumers than any other phone feature. ^{6/} The record also shows that AMPS is the dominant technology used in roaming, mainly because AMPS systems provide

^{4/} See Petition at 6.

^{5/} See Part 22 Order at ¶ 23.

^{6/} See Sprint PCS March 7, 2002 Ex Parte at 6 (reporting survey results showing that two-thirds of customers would switch carriers to obtain better coverage and that 92% of consumers feel safer owning a cell phone).

more than twice the geographic coverage of any other mobile air interface standard. 7/

In its decision, the Commission properly recognized that a five-year sunset provision is key to a smooth transition to digital-based roaming. 8/

Ubiquitous coverage is both a major concern of mobile phone users and a stated goal of Congress, 9/ and a transition period is necessary to ensure that mobile carriers can continue to provide the comprehensive roaming ability that consumers expect. 10/

As a relative newcomer to the CMRS market, Sprint is keenly aware of the importance of roaming. Sprint has moved rapidly to build out its all-digital network over the past seven years after receiving its licenses in the Commission's PCS auction. 11/ Despite an unprecedented and aggressive build-out schedule, Sprint still utilizes analog roaming in an effort to provide its subscribers with the most ubiquitous coverage possible – coverage that maximizes customers' ability to use their mobile devices wherever and whenever they desire.

7/ See Sprint PCS Comments at 2-3.

8/ See *Part 22 Order* at ¶ 17.

9/ See H.R. Rep. No. 106-25 at 9 (1999).

10/ See Sprint PCS Comments at 4-5.

11/ During its first five years, Sprint installed more cell sites than the entire cellular industry installed in its first 10 years. See Sprint PCS Jan. 14, 2002 Ex Parte at 4.

2. Personal Security and Public Safety

A significant number of mobile phone subscribers view their mobile phones as safety devices and ubiquitous coverage is a crucial consideration for consumers. 12/ The Commission also recognizes the role mobile phones play in homeland security.

The transition period the Commission has adopted in this proceeding will help ensure that mobile networks can continue to assist consumers in personal and public emergencies. By contrast, more abrupt cessation of the AMPS requirement could disrupt service to the public and impact public safety. 13/

3. Telematics Systems

Telematics systems provide valuable services to automobile drivers, allowing them to place emergency calls when properly-equipped cars are involved in collisions. 14/ The record in this proceeding demonstrates, however, that a more immediate elimination of AMPS would result in reduced availability and effectiveness of telematics services. 15/

Telematics services have been deployed widely throughout the United States. At present, the overwhelming majority of telematics service offerings are

12/ See Sprint PCS March 7, 2002 Ex Parte at 6. In establishing the Homeland Security Policy Council, for example, the Commission explicitly recognized the connection between communications systems, including mobile networks, and national security needs. See *id.* at 8.

13/ See *id.* at 9.

14/ See MBUSA Reply Comments at 3-5.

15/ See MBUSA Reply Comments at 5-7.

provided via AMPS. As commenters explained, it will take a significant amount of time before digital telematics devices are available in the marketplace. 16/ Moreover, the location of telematics equipment in an automobile makes it extremely difficult and expensive to replace, and the product life cycle for most vehicles is dramatically longer than for mobile phones. 17/ Commenters thus requested a transition period in order to allow telematics manufacturers/providers to develop digital alternatives. 18/

The five-year sunset provision provides a rational transition period for the development and deployment of digital telematics offerings. 19/

B. Benefits for Discrete Groups of Consumers

1. Interests of the Deaf and Hard of Hearing

The Commission's decision in this proceeding focuses on the needs of the deaf and hard of hearing. The record shows that many of the digital mobile handsets currently available interfere with hearing aids. 20/ In addition, some

16/ See OnStar Comments at 5-6; Toyota July 26, 2002 Ex Parte at 4-5; MBUSA May 17, 2002 Ex Parte at 6.

17/ See, e.g., Comments of John Deere at 6; MBUSA Reply Comments at 6.

18/ See MBUSA April 18, 2002 Ex Parte at 2 ; OnStar Corp. Aug. 1, 2002 Ex Parte at 3 . See also Part 22 Order at ¶ 20.

19/ See Part 22 Order at ¶ 20.

20/ See In the Matter of Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones, WT Docket No. 01-309, *Notice of Proposed Rulemaking*, 16 FCC Rcd 20558, 20560 (¶ 7) (2001) ("*Hearing Aid Compatibility NPRM*"); Self Help for Hard of Hearing People Comments at 3; League for the Hard of Hearing Comments at 1; Nat'l Assn. for the Deaf Reply Comments at 4-6.

mobile carriers have experienced challenges that prevent them from complying with the Commission's E911 TTY compatibility rules. 21/ As a result, many deaf and hard of hearing persons rely on analog service. 22/ These factors led the Commission to conclude that a sunset period was needed prior to elimination of the AMPS requirement. 23/

2. Interests of Senior Citizens

The record also demonstrates that a sunset period of less than five years could have a negative impact upon senior citizens. In its comments, AARP expressed concern that seniors who have analog service could have trouble learning about and adjusting to digital service, and recommended that the Commission retain the AMPS requirement "for the foreseeable future." 24/ The five-year transition period set by the Commission provides appropriate time needed to educate these consumers and provide uninterrupted service.

21/ See Nat'l Assn. for the Deaf Comments at 5; see also Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, *Order*, CC Docket No. 94-102, 17 FCC Rcd 12084 (2002). (Sprint's PCS division did not file any such waivers and implemented TTY on its nationwide network on June 19, 2002.)

22/ See Nat'l Assn. of the Deaf Comments at 4-6; Telecommunications for the Deaf Comments at 2-3.

23/ See *Part 22 Order* at ¶ 28.

24/ *Id.* at ¶¶ 23-25.

3. Consumer Education Issues and Need for National Digital Transition Plan

Finally, the record in this proceeding demonstrated the importance of permitting time for consumer education and of establishing a fixed date for the elimination of the AMPS requirement in order to provide clarity and certainty to carriers and consumers alike. Allowing sufficient time for consumer adjustment to elimination of the AMPS requirement is important for all analog mobile phone users. 25/

In sum, the record supports the Commission's decision to impose a five-year transition period in an effort to continue the benefits provided by the analog network and to minimize disruption to existing analog users.

II. THE COMMISSION DID NOT VIOLATE THE COMMUNICATIONS ACT BY ESTABLISHING A FIVE-YEAR PHASE-OUT OF THE AMPS REQUIREMENT

A. Section 11 Does Not Prohibit the Commission From Considering New Rationales that Justify Delaying the Elimination of the AMPS Requirement

AWS puts forth a flawed analysis of the Commission's obligations under section 11. AWS is correct that the Commission determined in the *Part 22 Order* that the AMPS requirement is no longer necessary to promote competition or

25/ See Sprint PCS Comments at 7.

to enable roaming in many parts of the country. AWS is incorrect, however, in asserting that the Commission's analysis must end with such a determination. 26/

The Commission has never held that its biennial review of rules pursuant to section 11 requires it to ignore public interest considerations that may not be related to a rule's original purpose. Indeed, the Commission has made clear that other factors are also considered. 27/ Moreover, in the *Part 22 NPRM*, the Commission sought comment on a wide range of issues that went well beyond assessing whether the AMPS requirement was still necessary to enable nationwide roaming and facilitate competition. 28/ The Commission emphasized that "we are mindful that [we] must consider the ramifications of eliminating the analog compatibility standard for consumers" who may not have "readily available . . . alternatives to analog for mobile services." 29/ The Commission sought specific comment regarding, *inter alia*, the potential impact of eliminating the AMPS requirement on those with hearing disabilities and emergency-only mobile phone

26/ See Petition at 6 ("the Commission may consider only the purposes for which the rule was adopted – not *post hoc* justifications – in deciding whether to retain a regulation").

27/ See *Part 22 Order* at ¶ 4, n. 16, citing *Fox Television Stations, Inc. v. FCC*, 280 F.3d 1027 (D.C. Cir. 2002). The court's interpretation of section 202(h) would apply equally to section 11. Section 202(h) contains language that mirrors that found in section 11.

28/ See 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, *Notice of Proposed Rulemaking*, WT Docket No. 01-108, 16 FCC Rcd 11169, 11179, ¶¶ 23-30, (2001) ("*Part 22 NPRM*").

29/ *Id.* at ¶ 23.

users, as well as telematics services. 30/ AWS was on notice that the Commission would consider retaining the AMPS requirement based on factors not envisioned when it was originally imposed.

B. The Commission Eliminated the AMPS Requirement, Albeit With An Effective Date Supported by the Record

In its filings in the Part 22 proceeding, AWS urged the Commission to eliminate the AMPS requirement. The Commission did just that. 31/ Thus, AWS's objection to the Commission's *Part 22 Order* is not with the overall outcome, but rather, the specific effective date of the rule's repeal chosen by the Commission.

The D.C. Circuit has long held that “[w]hen the statute authorizing agency action fails to specify a timetable for effectiveness of decisions, the agency normally retains considerable discretion to choose an effective date.” 32/ In general, “an agency’s control over the timetable of a rulemaking proceeding is entitled to considerable deference,” and a court’s review of any delayed action is “limited to examining an agency’s reasons for deferred action and determining whether that delay is inconsistent with the agency’s discretion under the applicable statutory scheme.” 33/ In this case, AWS has failed to establish that the five-year transition

30/ See *id.* at ¶¶ 29-30.

31/ See *Part 22 Order* at Appendix A (deleting section 22.933 and amending section 22.901(d) to include a 5-year sunset provision).

32/ *Recording Industry Association of America v. Copyright Royalty Tribunal*, 662 F.2d 1, 14 (D.C. Cir. 1981).

33/ *Sierra Club v. Gorsuch*, 715 F.2d 653, 658-59 (D.C. Cir. 1983). See also *National Congress of Hispanic American Citizens v. Usery*, 554 F.2d 1196, 1200 (D.C. Cir. 1977) (citing the existence of “traditional agency discretion to alter priorities

period established in the *Part 22 Order* in any way resulted from arbitrary or capricious rulemaking, or that the Commission has otherwise abused its broad discretion to establish an effective date for the elimination of the AMPS requirement.

C. The AMPS Requirement Does Not Unduly Discriminate Against Cellular Providers

AWS also argues that the AMPS requirement should be eliminated because it unduly discriminates against cellular providers. 34/ As the Commission has stated, however, “parity for its own sake is not required by any provision of the Act.” 35/ Sprint indicated in its Reply Comments in this proceeding various reasons why asymmetric regulation in this limited instance is appropriate, including the fact that retention of the AMPS requirement for a reasonable period would promote the Congressional policy of encouraging the operation of ubiquitous wireless networks and allow for an orderly transition to digital services for the millions of mobile subscribers who currently depend on AMPS. 36/

and defer action due to legitimate statutory considerations”); *Cobell v. Norton*, 240 F.3d 1081, 1096 (D.C. Cir. 2001) (“Failure to provide a statutory timetable may indicate that Congress sought to leave the timing of reform to agency discretion.”).

34/ Petition at 7.

35/ *Arizona CMRS Rate Petition Order*, 10 FCC Rcd 7824, 7833 ¶ 37 (1995). See also *Second CMRS Order*, 9 FCC Rcd 1411, 1463 ¶ 124, 1474-75 ¶ 162 (1994); *AT&T/McCaw Merger Order*, 9 FCC Rcd 5836, 5858 ¶ 32 (1994), aff’d *SBC v. FCC*, 56 F.3d 1484 (D.C. Cir. 1995).

36/ Sprint Reply Comments at 6-7.

As noted above, asymmetric regulation is also warranted in view of the Commission's finding that a sunset period of less than five years could leave deaf and hard of hearing users without adequate mobile service. 37/

Finally, based on the record, the burdens associated with maintaining the AMPS requirement for an additional five years do not outweigh the public interest benefits of the transition period. Although cellular providers incur costs to maintain their analog networks, they are not prohibited from recouping such costs. Moreover, as Verizon Wireless has indicated, elimination of the AMPS requirement "will not free up a significant amount of spectrum for other uses" and "will not have a significant effect on the availability of spectrum in the markets where additional spectrum is needed most." 38/ Thus, the record in this proceeding provides support for the limited asymmetric regulation imposed.

37/ *Part 22 Order* at ¶ 28.

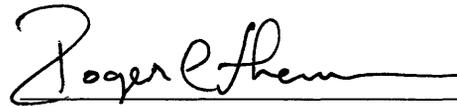
38/ *Verizon Comments* at 10-11.

Conclusion

For the foregoing reasons, the Commission's decision to establish a five-year transition period for the elimination of the AMPS requirement was legally sound and justified based on the record. The AWS Petition should be denied.

Respectfully submitted,

**SPRINT CORPORATION
(ON BEHALF OF ITS WIRELESS
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CERTIFICATE OF SERVICE

I, Jo-Ann Monroe, do hereby certify that the foregoing Opposition of the Sprint Corporation was served this 1st day of April, 2003, by first-class U.S. mail on:

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