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December 17, 2003

Revised Ex Parte Memorandum

Marlene H. Dortch, Secretary
Federal Communications Commission
445 – 12th Street, S.W., Room TW-A325
Washington, DC 20554

Re: In the Matter of Petition of Wireless Consumers Alliance *et al.*
for a Declaratory Ruling Regarding Cellphone 911 Requirements
in Response to Referral from the United States District Court for
the Northern District of Illinois, dated October 3, 2003 (WT Docket No. 99-328)

In the Matter of Petition for Declaratory Ruling on 911 Call Processing
Modes, AT&T Wireless Services, Inc., *et al.*, dated October 14, 2003, (WT
Docket No. 99-328)

Dear Ms. Dortch:

On October 24, 2003, Carl B. Hilliard, Alan R. Plutzik, Robert Zicker and the undersigned, representing Wireless Consumers Alliance (WCA), met with various persons at the Commission to discuss the above-referenced petitions for declaratory ruling recently filed with the Commission in response to a referral order issued by the United States District Court for the Northern District of Illinois. The meetings were held with Commissioner Kevin J. Martin and his Special Assistant Jason Williams; Sheryl Wilkerson, Legal Advisor to Chairman Powell; Paul Margie, Legal Advisor to Commissioner Copps, with Intern Jared Weaver; John Muleta, Chief, Wireless Telecommunications Bureau, together with Cathy Seidel, Scott Delacourt, Aaron Goldberger and Nese Guendelsberger of the Bureau's staff.

At the meetings, the WCA representatives reviewed the history of the Commission's *Second Report and Order*, and subsequent *Nokia* and *Ericsson* waiver proceedings, which provided the background for the Court's referral order now before the Commission. WCA's position paper distributed to the participants in the meetings has been revised to clarify two factual statements that may have created a misimpression due to editing. The revised paper is enclosed.

Should there be any questions concerning this matter, kindly contact the undersigned.

Very truly yours,

s/Kenneth E. Hardman

Kenneth E. Hardman

Enclosure

ANTI-LOCK-IN PRESENTATION

1. In the *Second Report and Order* in its *E911* Proceeding, the Commission adopted certain requirements to protect the safety of consumers placing emergency 911 calls.
 - a. The Commission mandated that when an emergency 911 call is made from a cellphone operating in analog mode, the handset must seek to connect the call on the nonpreferred system if the call has not been connected to the landline carrier on the preferred system within 17 seconds (the “Anti-Lock-In Rule”).
 - b. This requirement was adopted to combat “lock-in,” which occurs when the phone has received a voice channel assignment but no voice communication is possible. Emergency 911 cellphone callers have suffered death or injury when their calls were not connected due to lock-in.
2. The industry has not complied with the Anti-Lock-In Rule. Tests conducted by Wireless Consumers Alliance (“WCA”) and at the laboratories of Consumer Reports magazine showed that all of the 33 cellphones tested were non-compliant. WCA and cellphone subscribers accordingly filed suit to compel compliance with the Anti-Lock-In Rule.
3. The Court has asked the Commission for clarification of its Anti-Lock-In requirements. WCA and the cellphone subscribers have filed a petition for declaratory relief requesting the Commission to respond to the Court’s request for clarification by December 3, 2003. The industry has also filed its own petition for declaratory relief.
4. The industry is trying to rewrite history to excuse its failure to comply with the Anti-Lock-In Rule.
 - a. Now that its non-compliance with the Commission’s requirements has been exposed, the industry is trying to rewrite history by arguing that all that has to happen within 17 seconds is for the handset to have received a voice channel assignment, without regard to whether that voice channel is capable of voice communications. In other words, the industry contends that its cellphones need do no more than comply with the A/B-IR method *without* its anti-lock-in provisions.
 - b. At all times, the industry has known and understood the requirements of the Anti-Lock-In Rule. Staff proceedings regarding Nokia, Ericsson and others that occurred after the issuance of the *Second Report and Order* further confirmed that understanding. The industry promised to comply and the Commission relied on that commitment.
 - c. The interpretation of the Anti-Lock-In Rule that the industry now advances is contradicted by the language of the *Second Report and Order*, which

explicitly says that what must happen within 17 seconds is the delivery of the call to the landline carrier. The *Second Report and Order* expressly rejects the industry's theory that all that must be accomplished within 17 seconds is the assignment of a voice channel.

- d. The industry's interpretation is completely inconsistent with the spirit and central rationale for adopting the Anti-Lock-In Rule in the first place, which was to combat "lock-in." The industry's revisionist interpretation of the rule would do nothing to prevent "lock-in."
5. The industry's non-compliance with the Anti-Lock-In Rule potentially imperils the safety of millions of cellphone callers. ~~Each year, a~~According to a 2003 Consumer Union survey, 4% of cellphone calls to 911 never connected at all and 15% had difficulty establishing a connection. Based on these findings, WCA projects that each year there are approximately 1.5 million 911 calls made from mobile phones that fail to be connected and approximately 5.5 million that experience difficulty in completing the call.