

Sunset Order, the Commission should revisit this assumption and extend the Sunset deadline.<sup>27</sup>

**V. Commission precedent supports modifying the AMPS sunset in the face of changed circumstances.**

Case precedent dictates that, under the circumstances present here, the sunset date be extended by an additional two years. As noted above, in specifying the five-year sunset period, the Commission predicted that by February 18, 2008 digital alternatives would be widely available to classes of customers who were forced to rely upon analog service as of the time the AMPS Sunset Order was released. Those predictions have proven untrue in the case of AMPS alarm radio users, as described above. Reviewing courts have held that the Commission must review its predictive judgments when circumstances change. *See, e.g., Cellnet Communications, Inc. v. FCC*, 149 F.3d 429, 442 (6<sup>th</sup> Cir. 1998) (deferring to the Commission’s predictions about the level of competition, but stating that, if the predictions do not materialize, the Commission “will of course need to reconsider its [decision] in accordance with its continuing obligation to practice reasoned decision-making”); Aeronautical Radio, Inc. v. FCC, 928 F.2d 428, 445 (D.C. Cir. 1991) (deferring to the Commission’s predictive judgment “with the caveat, however, that, should the Commission’s predictions ... prove erroneous, the Commission will need to reconsider its [decision] in accordance with its continuing obligation to practice reasoned decisionmaking”). In this proceeding, the Commission based the AMPS sunset date in part on the *assumption* that five years would be adequate for

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<sup>27</sup> Unfortunately, the provision of panic button service to domestic violence victims has not been a high profile program, and it has not been a subject of focus by either the cellular industry or the Commission in evaluating the impact of the AMPS Sunset. Thus, to date there has been no “customer outreach” to this category of AMPS users, and no reporting about this aspect of the impending analog shut

battered women, emergency-only radio users, alarm system users and others to migrate to digital technology based on the introduction of digital substitutes through natural churn. AMPS Sunset Order, para. 25. Unfortunately, substitute digital alarm equipment was not available for the first three years of the transition, and is still not available in all necessary formats and in sufficient quantities to upgrade all customers. Moreover, the "radio exchange" process will take much longer for fixed AMPS alarm radios, because they must be installed by a trained technician (as opposed to AMPS mobile phones, which can be traded in by the customer when they wish to upgrade their handset). Therefore, the Commission's assumption about the timetable for the AMPS transition must be corrected.

In the past, the Commission has extended regulatory compliance deadlines where the equipment necessary to meet the deadline was not readily available to a distinct class of persons. E-911 Non-Nationwide Carriers Order (Order to Stay), 17 FCC Rcd. 14841 (2002); see also Leap Wireless International, Inc., 16 FCC Rcd. 19573 (Comm. Wir. Div., WTB 2001)(granting extension of time so that licensee might deploy high data rate wireless technology that was not available in time to meet five-year construction requirement); Monet Mobile Networks, Inc., 17 FCC Rcd. 6452 (Comm. Wir. Div., WTB 2002) (granting extension of time so that licensee might deploy high data rate wireless technology that was not available in time to meet five-year construction requirement); and Warren C. Havens, Mimeo DA 04-2100, adopted July 12, 2004 (granting extension of the five-year construction requirement for 220 MHz licensees due to unavailability of equipment in time to meet construction deadline).

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down. Petitioners urge the Commission to take this important safety program into consideration in deciding whether to extend the Sunset deadline.

Petitioners note that the need of the central station alarm industry to seek an extension of the sunset date may be attributable, at least in part, to or limited notification by the nationwide cellular carriers to AICC member companies regarding the upcoming sunset date. Additional notification could have encouraged the industry to internally ramp up for the replacement effort, and prod the equipment manufacturers into developing the necessary replacement equipment and making sufficient quantities commercially available in time to meet the February 18, 2008 sunset date. The only instance of notification that AICC has been able to identify is a communication from Verizon to equipment manufacturer Telular last summer, nearly three years after the AMPS sunset was decided by the FCC. Customer education about the analog sunset is key to a smooth transition, and the Commission has made it clear that education efforts are to be reviewed in the context of the current reporting requirement:

Such carriers, in their reports, may also be required to describe their plan for informing its subscribers, the public and other interested parties regarding plans to discontinue analog service.

AMPS Sunset Order, para. 31. In making this observation, AICC is not seeking to cast blame on the cellular industry, for analog cellular alarm signaling is not one of the higher profile uses of the AMPS capability. Indeed, the impact of the AMPS sunset on the radios used in alarm customer premises was not immediately apparent to the alarm industry. Nonetheless, the lack of awareness of how the AMPS sunset would affect alarm operations, and the lack of adequate notice or discussion about the issue, has hampered the ability of the alarm industry to react to this situation, and perhaps has also negatively impacted manufacturer readiness to provide digital replacement equipment for

alarm monitoring functions. The Commission should take this fact into consideration when determining whether an extension is warranted.

Upon learning of the impact of the AMPS sunset on alarm operations, Petitioners have consulted with both the Cellular Telecommunications & Internet Association (CTIA) and the largest cellular carriers, all of whom were willing to discuss the alarm industry's AMPS transition issues. Petitioners will continue discussions with the major cellular carriers to work toward what will hopefully be a mutually agreeable AMPS transition plan. However, at this time, it does not appear that the alarm industry can replace all of the incumbent AMPS radios by February 18, 2008, and cannot be assured that the cellular industry will voluntarily extend the deadline. Therefore, Petitioners compelled to urge that the Commission extend the sunset date.

Petitioners also requests that the Commission build into any order concerning the AMPS transition an instruction that all affected parties work together to develop a reasonable notification procedure, so that AMPS radio users have fair notice (preferably at least 180 days) in advance of when AMPS will be shut down in a particular geographic area. This notification process would allow alarm companies and other affected AMPS customers to devote their transition resources in an orderly and efficient fashion, rather than scrambling to change out radios throughout the entire country all at once. This procedure has been discussed with cellular industry representatives, and AICC will continue to pursue the specifics of a notification procedure in voluntary discussions with the cellular industry. However, it would be in the public interest to incorporate this requirement into the framework of a revised AMPS transition protocol.

**VI. The Commission should decide on the issue of extending the AMPS sunset expeditiously, in response to this Petition.**

As described above, the replacement of more than one million AMPS alarm devices will be a massive undertaking, requiring the alarm industry to marshal significant resources. Certainly, an extension of this deadline as requested herein will benefit this effort greatly. However, in order for an extension of the AMPS sunset date to afford alarm service providers the ability to logically plan the deployment of their resources, it should be issued as soon as possible, and preferably at least nine months to a year before the current AMPS sunset of February 18, 2008. Otherwise, alarm companies are placed in the position of attempting to replace all AMPS radios all at once, rather than systematically planning replacement efforts. Without a systematic plan, more companies will be vying for the limited equipment and limited trained resources thereby decreasing the odds for success.

**VII. The Commission should ensure that AMPS service is not prematurely reduced.**

The Commission adopted the analog cellular sunset rule as part of its Year 2000 Biennial Regulatory Review of regulations codified in Part 22 of the Rules. As described above, the rule provides that, “[u]ntil February 18, 2008, each cellular system that provides two-way cellular mobile radiotelephone service” must “maintain the capability to provide compatible analog service (‘AMPS’) to cellular telephones designed” to operate using the analog air interface,<sup>28</sup> and to “[p]rovide AMPS, upon request, to subscribers and roamers using such cellular telephones while such subscribers are located in any portion of the cellular system’s CGSA where facilities have been constructed and

<sup>28</sup> Rule Section 22.901(b)(1).

service to subscribers has commenced.”<sup>29</sup> As a concurrent requirement, the Commission specified that, until February 18, 2008, “[c]ellular licensees must allot sufficient system resources such that the quality of AMPS provided, in terms of geographic coverage and traffic capacity, is fully adequate to satisfy the concurrent need for AMPS availability.”<sup>30</sup>

Despite these clear cut requirements of Rule Section 22.901, the alarm industry is finding that analog service has suffered degradation in certain areas, with potentially harmful consequences for existing users. For example, ADT has already documented instances of reduced AMPS service quality in several metropolitan areas, including markets such as Miami, Florida, Totowa, New Jersey and the Gulf Coast region. The potentially adverse consequences of these analog service reductions are immediate, since ADT’s customers may be unknowingly left without service to ADT’s Central Monitoring Center at the time of an emergency. Thus, if an emergency occurs, secured premises in areas in which AMPS coverage has been compromised may not be able to reach help via their alarm radios.

Such service problems across the country appear to be due to the reconfiguration or removal of AMPS channels ahead of the February 2008 Sunset date. Some network operators are reclaiming part of the spectrum devoted to analog service ahead of time, apparently in the mistaken belief that sufficient analog coverage still exists from nearby towers. This practice has put thousands of customers at risk that their alarm signals may not be transmitted. In several cases, the cellular carrier has restored service when the issue was brought to their attention, but only after the reliability of the alarm customers

<sup>29</sup> Rule Section 22.901(b)(2).

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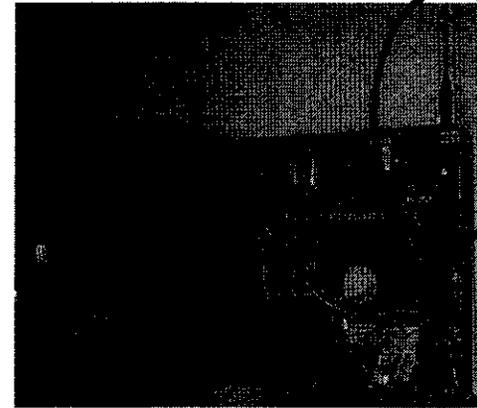
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**ATTACHMENT A**

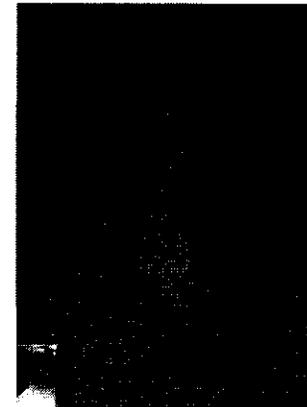


# Upgrade Requires Trained Personnel

- Approximately one-million analog cellular alarm radios are currently installed in homes, businesses and government locations nationwide.
- Every unit requires an on-site visit by a trained technician to: remove the analog unit; install a new digital unit; and establish a connection with the Central Monitoring Center.
  - License requirements vary by state
  - Estimated average install time is 2.5 hrs
- Upgrades CAN NOT be self-installed by customers.



Analog radio in control panel



Analog radio attached to control panel

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