

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Petition for Rulemaking to Amend)	RM No. 11355
Rule Section 22.901(b) to Extend)	
Analog Sunset Date)	
)	
Sunset of the Requirement that Cellular)	WT Docket No. 01-108
Systems Maintain Analog Transmission)	
Capacity through February 18, 2008,)	
Rule Section 22.901(b))	

To: The Commission

COMMENTS OF ALARM INDUSTRY COMMUNICATIONS COMMITTEE

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Summary

The Alarm Industry Communications Committee (AICC), on behalf of its constituent members, hereby submits these comments in response to the *Public Notice*, “Wireless Telecommunications Bureau Seeks Comment on Petition for Rulemaking to Extend Cellular Analog Sunset Date,” DA 06-2559, released December 20, 2006 (hereinafter “*Public Notice*”). The comments furnish information about the obstacles facing the alarm industry in transitioning existing analog cellular-based alarm devices ahead of the analog sunset date, in response to those questions posed by the Bureau at pages 2-3 of the *Public Notice* that appear to be intended primarily for alarm industry. As shown herein, the Commission has a strong basis and more than adequate legal authority to extend the analog sunset deadline as requested.

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In the Matter of)	
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Petition for Rulemaking to Amend Rule Section 22.901(b) to Extend Analog Sunset Date)	RM No. 11355
)	
Sunset of the Requirement that Cellular Systems Maintain Analog Transmission Capacity through February 18, 2008, Rule Section 22.901(b))	WT Docket No. 01-108
)	
To: The Commission		

COMMENTS OF AICC

The Alarm Industry Communications Committee (“AICC”) on behalf of its constituent members (hereinafter the “Petitioners”), by their attorneys and pursuant to Rule Section 1.405,¹ hereby submit these comments in response to the *Public Notice*, “Wireless Telecommunications Bureau Seeks Comment on Petition for Rulemaking to Extend Cellular Analog Sunset Date,” DA 06-2559, released December 20, 2006 (hereinafter “*Public Notice*”). The Bureau’s *Public Notice* requests public comment on the Petition for Rule Making (“Petition”) filed by the Petitioners on November 30, 2006, asking that the sunset date for the cellular analog (or “AMPS”) transmission requirement of Rule Section 22.901(b)² be extended an additional two years, *i.e.*, until February 18, 2010. The current deadline of February 18, 2008 was established in Biennial Review – Amendment of Part 22 of the Commission’s Rules to Modify or Eliminate Outdated

¹ 47 CFR § 1.405.

Rules Affecting the Cellular Radiotelephone Service and Other Commercial Mobile Radio Services, WT Docket No. 01-108, *Report and Order*, 17 FCC Rcd. 18401 (2002) (the “AMPS Sunset Order”). Petitioners take this opportunity to provide the following information, in response to those questions posed by the Bureau at pages 2-3 of the *Public Notice* that appear to be intended primarily for the alarm industry.

Petitioners have assembled the requested information as best as possible during the comment period, by seeking input from as many alarm service providers and manufacturers as possible in the time frame allowed. As indicated in the Petition, AICC is comprised of representatives of the Central Station Alarm Association (CSAA), National Burglar & Fire Alarm Association (NBFAA), the Security Industry Association (SIA), ADT Security Services, Inc., Bosch Security Systems, Digital Monitoring Products, Digital Security Control, Telular, HSM (formerly known as Honeywell Monitoring), Honeywell Security, Vector Security, Inc., AES- IntelliNet, GE Security, Alarm.com, Numerex Corp, Aeris.net and Security Network of America. NBFAA, and CSAA representing the alarm dealer segment, have 2434 member companies providing alarm service to the public. Petitioners were able to obtain input from a substantial number of those 2434 member companies during the comment period (which included the holidays), but certainly not all of them. In particular, Petitioners estimate that the responding companies represent approximately 39.27 percent of the AMPS alarm radio usage in the industry. Petitioners have prepared the information set forth below based on industry summaries and estimates derived from this input.

² 47 CFR § 22.901(b).

I. RESPONSES TO BUREAU REQUESTS FOR INFORMATION

1. The number of alarm systems currently installed in the United States using analog-only cellular radios as a primary alarm communications path.

Based on input from those alarm industry members that were able to respond to the inquiries reflected in the *Public Notice*, approximately 15.17 percent of AMPS alarm radios are utilized as the primary alarm communications path to the central station.

Applied to the entire industry, out of the estimated one million analog cellular radios used in alarm systems in the United States, approximately 151,700 AMPS radios would be the primary link. For these customers, the termination of analog cellular service would result in a loss of protection from fire, crime and medical emergencies, because their alarm signals would no longer reach the alarm service provider until it is able to replace the analog radio with a digital alarm unit.

While the remaining AMPS alarm radio units have been installed at the customer premises as a “secondary” medium for the transmission of signals to the central station alarm monitoring center, this secondary designation does not mean that these radios do not serve an important purpose; and a loss of AMPS service before these radios can be replaced will certainly diminish the security of the affected customers. As described in the Petition, use of wireless monitoring links as an alternative signaling path has become widespread, because a burglar or arsonist will often attempt to disable the transmission of alarm signals to the Central Station by cutting the telephone lines ordinarily used to transmit these signals. The alarm industry encounters thousands of line cuts each year. Based on a 2001 study of this issue, SIA has concluded that line-cuts are increasing in

frequency; line-cut is happening in homes almost as often as businesses; and it is being done by young amateurs (not just professional thieves). *See also, e.g.*, Dorchester Reporter, “Recent Break-in Pattern Targets Local Pubs”, January 27, 2005 (“The burglars cut phone lines, disabling the alarm system, and broke the back door lock . . .”);³ Victorville Daily Press, “California Book Theft Ring Broken”, February 17, 2006 (“The M.O. was to cut the phone lines to disable the alarm systems and then they would take the security tapes before they left.”);⁴ Longford Today, “Thieves Target Home of Prominent Publican”, January 3, 2007 (“The cutting of the phone lines disabled Kevin’s burglar alarm, allowing the culprits to access the premises . . .”);⁵ The Gallop Independent, “Guns, Jeep Stolen in Oso Ridge Burglary”, June 18, 2005 (“On June 13 the owners found the telephone wires to the house cut, the burglar alarm disabled and the items missing.”);⁶ Capitol Notebook, “Damron, Who Cut Phone Lines, Denied Release”, October 12, 2004 (“Damron, 41, is a former North Dakota State University engineering student who has been in prison since 1977 for causing a \$1 million Qwest phone outage when he cut 19 cables to disable burglar alarms at Site on Sound.”);⁷ Star Bulletin, “Critters, Cash Taken from Store”, October 24, 2005 (“There is some speculation that the

³ *See* Dorchester Reporter, “Recent Break-in Pattern Targets Local Pubs”, January 27, 2005 www.dotnews.com/recentbreakins.html (accessed January 19, 2007).

⁴ *See* Victorville Daily Press, “California Book Theft Ring Broken”, February 17, 2006 www.palimpsest.stanford.edu/byform/mailling-lists/exlibris/2006/o2/msg00251.html (accessed January 19, 2007).

⁵ *See* Longford Today, “Thieves Target Home of Prominent Publican”, January 3, 2007 www.longfordtoday.ie/ViewArticle2.aspx?SectionID=2627&ArticleID=1954272 (accessed January 19, 2007).

⁶ *See* Gallop Independent, “Guns, Jeep Stolen in Oso Ridge burglary”, June 18, 2005 www.gallupindependent.com/2005/june/061805burglary.html (accessed January 19, 2007).

⁷ *See* Capitol Notebook, “Damron, who cut phone lines, denied release”, October 12, 2004 www.in-forum.com/specials/capitolnotebook/?page=ndarticles&id=72369%20-%2037k (accessed January 19, 2007).

suspect could have been a former employee, Baker said, adding that the thief knew to cut the store's phone wires in order to partly disable its alarm system").⁸ Cellular alarm radios not only serve as the secondary link to the central station, but also often have the ability to signal the alarm company when a line cut occurs. This can place the alarm company in the position of contacting the customer or local authorities before the break-in has been accomplished.

Moreover, wireless alarm devices are intended to allow fire, medical and carbon monoxide alarm signals to go through even if fire, storms, snow, fallen trees or other frequently occurring problems have damaged the telephone connection. Such loss of phone service is not uncommon. See, e.g., Centre Daily Times, "Area Braces for Ice", January 14, 2007 ("At one point, that storm, one of the worst ice storms on record, left a large portion of Texarkana without power, water and phone service.");⁹ Disaster News Network, "NY Still Struggling After Storm", October 16, 2006 ("To add to the misery, some 300,000 people are still without power and phone lines from last week's winter storm.");¹⁰ Palm Beach Post, "Bellsouth Targets Post-Storm Problems", February 12, 2006 ("It took 30 days – until Nov. 23 – to get 99 percent of the disrupted coverage restored, according to the company.");¹¹ National Oceanic and Atmospheric Administration, "Winter Storm Leaves Long Track of Snow, Ice Across the U.S.",

⁸ See Star Bulletin, "Critters, Cash Taken from Store", October 24, 2005 <http://starbulletin.com/print/2005.php?fr=/2005/10/24/news/story02.html> (accessed January 19, 2007).

⁹ See Centre Daily Times, "Area Braces for Ice", January 14, 2007 www.centredaily.com/mld/centredaily/news/nation/16459641.htm (accessed January 19, 2007).

¹⁰ See Disaster News Network, "NY Still Struggling After Storm", October 16, 2006 www.disasternews.net/news/news.php?articleid=3347 (accessed January 19, 2007).

¹¹ See Palm Beach Post, "Bellsouth Targets Post-Storm Problems", February 12, 2006 http://www.palmbeachpost.com/storm/content/business/epaper/2006/02/12/a1f_bellsouth_0212.html (accessed January 19, 2007).

December 5, 2002 (“Freezing rain and sleet combined with the snow in some areas, all of which resulted in hazardous driving conditions, downed power and telephone lines, and closed schools.”);¹² National Weather Service Forecast Office, Oklahoma Ice Storm of January 29-31, 2002 (Power and telephone lines downed by ice storm over three day period);¹³ CNN.com, “Roads Blocked, Power Lost in Many U.S. Regions as Winter Storm Sweeps Eastward”, December 28, 2000 (“Many people lost telephone or water service as the storm brought down telephone lines, and power outages disabled municipal water pumps.”).¹⁴ When telephone service is disrupted, the wireless alarm device is the only way to send the necessary alarm signal.

In many instances, insurance companies require alarm companies to utilize two methods of monitoring protected premises, especially in the case of businesses and sensitive facilities that could become the target of terrorist attacks or other life threatening events. For commercial fire installations, Underwriters Laboratories and the National Fire Code (NFPA 72) require two communications paths.¹⁵ Insurance companies impose this requirement on alarm system users to meet the Code, and cellular has been widely used as one of the communication paths. Based on alarm service provider input, it is estimated that at least 39,546 customers are using analog cellular

¹² See National Oceanic and Atmospheric Administration, “Winter Storm Leaves Long Track of Snow, Ice Across the U.S.”, December 5, 2002 www.noaanews.noaa.gov/stories/s1072.htm (accessed January 19, 2007).

¹³ See National Weather Service Forecast Office, Oklahoma Ice Storm of January 29-31, 2002 www.srh.noaa.gov/oun/storms/20020129/ (accessed January 19, 2007).

¹⁴ See CNN.com, “Roads Blocked, Power Lost in Many U.S. Regions as Winter Storm Sweeps Eastward”, December 28, 2000 <http://archives.cnn.com/2000/WEATHER/12/28/winter.weather.01/index.html> (accessed January 19, 2007).

radios based on insurance or similar obligations. Many alarm companies do not inquire as to whether a radio link is required by insurance, so this number is likely much larger. If thousands of businesses lose their insurance coverage suddenly because of the AMPS sunset, it will create a crisis for these businesses and their customers.

“Secondary” alarm radios have also become vital as more and more Americans have switched to Voice over Internet Protocol (“VoIP”) telephone service. As indicated in the Petition at p. 13, this is a growing phenomenon, which has spurred a significant increase in the demand for wireless alarm units. VoIP phone service may not only be disrupted by damage to the telephone line or cable connecting a computer to the Internet, but also by viruses that infect the computer. The security concerns affecting VoIP systems resemble those affecting any IP network. In particular, VoIP networks are known to be particularly susceptible to Denial of Service (DoS) and Distributed DoS attacks.¹⁶ Moreover, VoIP phones can also fall victim to viruses, such as so-called 'Phone Flu', designed to disrupt service by rebooting or clearing the phone's configuration information.¹⁷ These phones also fail when primary power is disrupted.

¹⁵ While NFPA 72 allows a second telephone line to be used as the second path, the industry standard practice calls for a wireless second path, because issues affecting the primary telephone path (such as a line cut or weather event) will affect both lines.

¹⁶ Denial of Service (DoS) is an attack designed to disable or disrupt VoIP service delivery by overwhelming the network and bringing it down by sending malformed packets or by exhausting resources that flood the service until it can no longer process legitimate requests.

¹⁷ See Curran, P. “Just how risky is a phone call over the Internet.” Microsoft Business & Industry Web Site (as viewed on 1/18/07): <http://www.microsoft.com/uk/business/security/VoIP.msp>

2. The number and types of federal, state, local, and critical infrastructure facilities (e.g., airports, power plants, and hospitals) using analog-only cellular radios as a primary alarm communications path.

The alarm service providers that were able to respond within the allotted time indicate that at least 476 governmental/critical infrastructure facilities are being served using analog cellular radios as the primary alarm communications path. Projected over the entire industry, this would amount to approximately 1,212 such facilities being protected by AMPS as the primary link to the central station. The protected facilities reported by responding companies include:

Governmental Facilities

Airports
Department of Defense facilities
Department of Homeland Security facilities
U.S. Marshals Service facilities
Federal courthouses
State Highway Administration
State Government Offices
Federal Government Offices supporting National security efforts of Department of Energy, Central Intelligence Agency, and National Security Agency
Municipal Utilities
New Jersey Motor Vehicle Commission facilities
County water treatment plants
Public dams
Public port facilities
Public libraries
Municipal museums

Critical Infrastructure Facilities

Hospitals
Domestic abuse shelters
Power plants
Pharmaceutical plants
Chemical plants
Banks and credit unions
State and private educational institutions

Obviously, the termination of AMPS-based protection service to Department of Defense and Department of Homeland Security facilities could have national security implications. The same can be said of a loss of protection to public port facilities and airports.

The above list does not take into account the thousands of government and critical infrastructure facilities that are protected by AMPS radios as a secondary link to the central station. Moreover, the responding alarm companies indicate that they are using AMPS to serve another 5,978 government/critical infrastructure facilities that are required to maintain a secondary alarm link by insurance, contractual or other obligations. Projected over the entire industry, this would amount to an estimated 15,223 additional government/critical infrastructure facilities that are required to have a secondary link.

3. The number of individuals in the United States using analog-only cellular radios as a primary alarm communications path either for personal protection or for medical emergencies.

The alarm service providers that were able to respond within the allotted time indicate that at least 3,055 customers are being monitored for medical emergencies using analog cellular radios as the primary alarm communications path. Projected over the entire industry, this would amount to 7,779 such persons being protected by AMPS as the primary link to the central station. The responding carriers also indicated that several thousand more of their customers are being monitored for medical alerts using AMPS as a secondary link.

With regard to personal protection, the alarm service providers that were able to respond within the allotted time indicate that at least 5,756 customers have “panic button” personal safety devices using analog cellular radios as the primary alarm communications path. Projected over the entire industry, this would amount to 14,657 such persons being protected by AMPS as the primary link to the central station. The responding carriers also indicated that approximately 316,396 additional customers have panic button-type personal safety devices being monitored using AMPS as a secondary link. It is believed that this number is so high because many persons arranging for panic button service anticipate the possibility that the threat source will disable the telephone line.

4. The availability of personal protection or medical-emergency digital alarm radios to the public.

The medical emergency and personal protection features of alarm radios are adjunct to the basic digital alarm radios themselves, adapted to the customer’s requirements. As of February 2006, the first digital residential alarm radios (manufactured by Telular Corporation) were being installed. And Honeywell, one of the largest manufacturers of AMPS alarm radios, just started making digital alarm radios available for commercial use in October 2006.¹⁸ As indicated in the Petition, smaller manufacturers are beginning to offer products as well. These manufacturers face the inevitable process of “working out the bugs” as they attempt to mass produce their radios; and there have already been three recalls of such equipment.

¹⁸ A third entity, Alarm.com, has recently begun manufacturing GSM-based radios that will be usable for certain alarm systems having a compatible alarm panel.

5. The number of digital alarm radios that members of the alarm industry have installed as either a primary or secondary alarm communications path.

The alarm service providers Alarm manufacturers that were able to respond within the allotted time indicate that they have shipped at least 135,000 digital cellular radios as replacements for existing analog radios or new customer installations.

6. The number of digital alarm radios that members of the alarm industry are provisioning to new subscribers each month.

The alarm manufacturers that were able to respond within the allotted time indicate that they are provisioning 19,000 digital alarm radios to new customers each month. As noted in the Petition at p. 13, the scarcity of digital replacement radios has been exacerbated by a significant demand by *new* alarm customers for the digital radios that are coming off the assembly line. The growing trend among alarm customers is to demand a radio device as their primary connection to the central station. This trend is due in part to the increase in persons that use their mobile phone as their primary line, meaning that there is no landline connection in their home. Moreover, as more customers adopt VoIP and other digital technologies in place of traditional landline phone service, the demand for cellular alarm radios has skyrocketed.

7. The current and anticipated future availability of digital alarm radios for various spectrum bands, including spectrum in the bands used by providers of Personal Communications Service, and Specialized Mobile Radio Service.

AES Intellinet is now making an FSK “digital over analog” radio that can be used to transmit alarm signals in the 460 MHz band. However, in order to utilize this radio as a replacement for existing AMPS radios, the alarm company would have to implement an AES network to control these radios and process the data. In contrast, cellular digital replacement radios can utilize the existing cellular network, removing the time and

expense of implementing a stand alone network. Therefore, the AES radio is not a truly fungible substitute for existing analog alarm radios, and is best suited to situations involving clusters of customers.

Certain alarm companies had begun using Velocita's Mobitex 800 MHz data service as an alternative to AMPS. However, Velocita was subsequently acquired by Sprint, and has indicated that the Mobitex service will not be provided past March of 2008. Therefore, Mobitex is no longer a feasible alternative to cellular radios. Certain alarm companies also explored the use of Nextel's 800 MHz band "IDEN" SMR service. However, the acquisition of Nextel by Sprint, and subsequent changes to the future course of IDEN service, appear to have have derailed this service as an alternative for AMPS radio replacement.

8. Specific initiatives undertaken by the alarm industry to notify consumers, businesses, and others that their analog-only equipment may no longer function in certain areas should the cellular licensees serving such areas elect to no longer support analog cellular service after February 18, 2008.

In 2004 (i.e., the year after the AMPS Sunset Order became effective), AICC and NBFAA became aware of the fact that replacement equipment was not yet available for alarm companies to use in upgrading AMPS-based alarm devices. These entities began meetings to identify the scope of the AMPS sunset issue, and to formulate a plan to address this issue. At that time, these organizations began communicating with their members about the AMPS transition, and the problems facing alarm companies in complying with the sunset deadline. Information about this issue has been sent to member companies through periodic stories in their newsletters and special communications starting in 2004.

In turn, the member companies (which include the vast majority of alarm service providers in the United States) have engaged in a variety of efforts to communicate to their customers about the AMPS issue. However, these efforts have been confounded by the fact that, until recently, replacement digital radios have not been available. As detailed in the Petition and above, the first Telular replacement radios were not installed until February 2006 (three years after the AMPS sunset was announced). The largest manufacturer of alarm radios, Honeywell, was not able to make its replacement digital radios available until October 2006. This dynamic was beyond the control of alarm service providers, and reflected the manufacturers' scramble to develop digital equipment in response to a government mandate. Thus, until less than a year ago, service providers were unable to provide their customers with information about the remedy and timetable for replacement of existing AMPS radios.

Now that equipment is finally becoming available in appreciable numbers, AICC and NBFAA have sent messages to their members urging service providers to proceed urgently with the AMPS transition process, and providing these providers with information about replacement equipment sources. Alarm service providers have begun the replacement process, and are communicating to their affected customers about the AMPS transition and the digital replacement process. Many service providers have indicated to AICC that they are contacting customers on a one-on-one basis, to explain the current situation, and to schedule the installation of a replacement radio if possible. Other providers indicate that they have sent a letter explaining the AMPS issue to all affected customers, and have sent representatives to discuss the matter in person with larger customers. Some of these companies have sent their letters by certified mail to

emphasize to their affected customers the importance of the matter. Certain providers have advised their customers about the AMPS issue through mass mailings, generally followed up with telephone calls to affected customers. The vast majority of service providers responding to the inquiries of AICC and NBFAA have indicated that they have commenced systematic communications to customers about the AMPS transition process.

9. The costs and other challenges that consumers, businesses, and others who currently rely on analog alarm radios would face if the analog sunset date is not extended (e.g., whether insurance coverage or premiums would be impacted).

The greatest cost that persons relying on analog alarm radios would face if the AMPS sunset is not extended is of course the increased risk to their life, health and safety. Simply put, if the analog alarm radio no longer works and it is either the primary link to the central station, or becomes the primary link due to a line cut, storm, computer virus, etc., the alarm system that helps to protect the person(s) experiencing an emergency is unable to send an alarm signal. Neither the alarm industry nor anyone else can properly place a price tag on the safety of life and health that will be better protected by allowing an orderly transition from AMPS to digital replacement radios.

As for monetary costs, there are many. First and foremost, those alarm customers relying on their analog radios to satisfy insurance obligations could lose their insurance if replacement digital radios cannot be installed before a loss of analog service. A lack of insurance can force many businesses to close down. And the many alarm customers that purchased their AMPS radio within the past few years will face the cost of a replacement radio installation when there is still a significant service life to be expected from the AMPS device. As indicated in the AICC's February 23, 2006 Comments in this

proceeding (at p. 8), AICC members estimate that the cost of replacing the existing analog customer premises equipment with a digital air interface unit will vary from \$450.00 to \$750.00 per installation, excluding the cost of the equipment. The replacement radios (hardware only) are expected to cost approximately \$150 to \$300 each. Similarly, there will be a substantial cost to the alarm industry in resources needed to accomplish the digital conversions, as detailed in the Petition (at pp. 16-18). These costs are not the focus of the alarm industry in seeking an extension, but in response to the Bureau's inquiry, they are costs nonetheless.

Of far greater concern to the alarm industry are the challenges that they face in accomplishing the replacement of all AMPS alarm radios, since these obstacles may prevent a timely conversion and therefore place the public at risk. As described in the Petition and relayed by alarm companies responding to the *Public Notice*, the challenges facing a successful AMPS conversion include:

1. The *timely* availability of replacement digital radios in the quantities needed to accomplish the conversion.
2. The incompatibility of replacement radios compatible with certain existing alarm panels.
3. The lack of a sufficient number of trained alarm technicians to accomplish all of the truck rolls necessary to replace all AMPS radios in less than 13 months, at the same time as they try to complete new customer installations.

4. The fact that digital cellular coverage, while improving every day, does not yet duplicate AMPS coverage with a signal reliable enough to reach alarm radios installed at fixed locations inside buildings. As discussed in the Petition at pp.13-14, there are certain areas in which there is poor digital cellular coverage, leaving no alternative to the AMPS radios. For instance, several locations in Virginia, Iowa, Illinois, Connecticut and Arizona have been identified where the digital coverage is significantly inferior to analog coverage, including Peoria and Dunlap, Illinois; West Hartford and Old Greenwich, Connecticut, Roanoke, Virginia; Des Moines, Iowa; and portions of Arizona. In these areas, installation of digital equipment would lead to poor or no service, putting alarm customers at risk that their alarm signal could not be transmitted.

5. The fact that there are no CDMA alarm radios, meaning that the digital replacement radios currently available will not work in an area where the only cellular coverage is CDMA-based. As discussed at page 15 of the Petition, there are several areas in the United States that are affected by this issue. ADT estimates that the lack of CDMA alarm radios will affect 40,000 to 50,000 alarm industry customers that currently utilize AMPS alarm devices in areas that do not have reliable GSM coverage.

6. The fact that every replacement of an analog radio will require contacting the customer, explaining the situation, arranging a replacement appointment, and implementing the replacement.

7. If AMPS service is terminated before all of the AMPS alarm radios can be replaced, the remaining alarm radios will go into “trouble” mode, giving customers audible and visual indications of their condition. This will result in many alarm systems “chirping” and flashing lights at all hours until the radio can be replaced. This phenomenon is likely to result in an overwhelming volume of complaint calls to the alarm providers, the Commission, and the Federal Trade Commission, as consumers will literally not be able to sleep until their radios are replaced. More importantly, it will likely cause the consumers to ignore a genuine trouble signal from their alarm system, thereby leading to compromised protection during a real emergency. Again, lives and property may be placed at greater risk.

8. The alarm industry and consumers may be paying higher monthly costs for digital cellular service since only GSM hardware is available. Without any CDMA product availability, the alarm industry has not had the benefit of competitive market forces for monthly service pricing. Since Cingular’s purchase of the AT&T Wireless network and the subsequent AT&T/Cingular merger, the alarm industry has not been able to shop competitively for nationwide 850 MHz alarm service, since T-Mobile does not offer 850 MHz service directly (i.e. 850 MHz is needed in many areas where 1900 MHz has demonstrated problems). If the alarm industry must use only GSM products, the industry does not have a competitive opportunity for lower monthly service pricing. The end consumer, public safety and government agencies will bear the burden of these costs.

10. Statutory, case law, and other legal authority that would support an extension of the sunset date to enable the alarm industry to transition users from analog to digital alarm radios.

In its *Public Notice*, the Bureau has requested detailed information and comment on “[s]tatutory, case law, and other legal authority that would support an extension of the [analog] sunset date to enable the alarm industry to transition users from analog to digital alarm radios.” Based upon a review of the relevant points and authorities, it is apparent that the same statutory authority that authorized the Commission to originally enact the regulation allows the Commission to revisit the issue and extend the sunset by the two additional years requested; and an extension of time is justified by precedent.

A. The Commission Has Statutory Authority to Extend the Sunset Date.

The February 18, 2008 analog sunset was adopted by the Commission in its Year 2000 Biennial review, conducted pursuant to Section 11 of the Communications Act of 1934, as amended (“the Act”). Sections 11(a)(1) and (2) of the Act collectively specify that in “every even-numbered year (beginning with 1998), the Commission shall review all regulations issued under this Act in effect at the time of the review that apply to the operations or activities of any provider of telecommunications service; and shall determine whether any such regulation is no longer necessary in the public interest as the result of meaningful economic competition between providers of such service.” Section 11(b) specified that the “Commission shall repeal or modify any regulation it determines to be no longer necessary in the public interest.” The Commission has determined that the term “necessary in the public interest” contained in Section 11 of the Act means the

same thing that comparable language means in the sections of the Act granting the Commission general rulemaking authority. *The 2002 Biennial Review, GC Docket No. 02-390, Report*, 18 FCC Rcd. 4,726 (2003), Para. Nos. 14 – 21. Thus, the term does not mean “essential” or “indispensable,” but instead means “useful,” “convenient,” or “appropriate.” The Commission’s statutory interpretation has been upheld as “eminently reasonable” by the United States Court of Appeals, District of Columbia Circuit in Cellco Partnership, d/b/a Verizon Wireless v. Federal Communications Commission, 31 CR 1114, 357 F3d 88 (D.C. Cir. 2004). The Court went on to say:

The Commission has interpreted §11 in light of the fact that the phrase “necessary in the public interest” in §11(a) and (b) was the same phrase that Congress used in delegating rulemaking authority to the Commission. This is consistent with the general proposition that “identical words used in different parts of the same act are intended to have the same meaning.” [citing Gustafson v. Alloyd Co., Inc., 513 U.S. 561, 570 (1995)]

As the plain wording demonstrates, Section 11 of the Act does not constitute a grant or rulemaking authority. The Commission is free to amend, suspend or repeal its regulations at any time under its general rulemaking authority; and nothing in the sections of the Act conferring general rulemaking authority precludes the Commission from using the analytical model contained in Section 11. As the plain wording of Section 11 also discloses, nothing in Section 11 expands the scope of this authority; nor does anything in Section 11 contract or otherwise restrict this general rulemaking authority. Section 11 merely requires the Commission, under its general rulemaking authority, to conduct a specific type of review every two years. Indeed, Paragraph 92 of the Order adopting the AMPS sunset nowhere mentions Section 11 as constituting a grant of authority for the

Commission's actions. Instead, the Commission adopted its analog cellular sunset rule pursuant to the authority of Sections 4(i)¹⁹, 7, 303(c), 303(f), 303(g), 303(r)²⁰ and 332 of the Communications Act, as shown in the Ordering Clause of the AMPS Sunset Order. The cited sections of the Act clearly give the Commission authority that is broad enough to modify or temporarily suspend the AMPS sunset.

In addition, it should be noted that the alarm industry is not disputing the need to eliminate the analog capacity requirement. All would agree that analog is an obsolete technology, and that the requirement to maintain analog capacity should terminate at some point in the future. The alarm industry is simply requesting that the sunset date be extended by two years. Rule Section 1.3 (47 C.F.R. § 1.3) provides that “[t]he provisions of this chapter may be suspended, revoked, amended or waived for good cause shown, in whole or in part, at any time by the Commission, subject to the provisions of the Administrative Procedure Act and the provisions of this chapter. Any provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefor is shown.”

¹⁹ Section 4(i) of the Act provides: “The Commission may perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this Act, as may be necessary in the execution of its functions.”

²⁰ Section 303(r) of the Act provides: “Except as otherwise provided in this Act, the Commission from time to time, as public convenience, interest, or necessity requires, shall --

(r) Make such rules and regulations and prescribe such restrictions and conditions, not inconsistent with law, as may be necessary to carry out the provisions of this Act, or any international radio or wire communications treaty or convention, or regulations annexed thereto, including any treaty or convention insofar as it relates to the use of radio, to which the United States is or may hereafter become a party.”

Since the analog cellular sunset rule is codified in Chapter 47 of the Code of Federal Regulations, the FCC may exercise its general authority (under 47 C.F.R. § 1.3) to suspend, revoke or extend the rule.

B. The Commission Reserved Continuing Jurisdiction to Modify the Sunset Date.

The Commission specified that the analog cellular capacity requirement would expire five years following the date of publication of the AMPS Sunset Order in the Federal Register, because the Commission concluded that a five-year transition should be sufficient time to allow the more widespread availability of digital air interface technologies (*e.g.*, CDMA and GSM) to meet the needs of certain classifications of consumers, such as persons with hearing disabilities, telematics providers, and emergency-only users (*e.g.*, the elderly and battered women) who continue to rely on analog service due to the absence of digital alternatives.²¹ However, the Commission clearly expressed concern for the possibility that this five-year transition may not be adequate.²² As the Commission has noted, “we seek to ensure that eliminating the analog compatibility standard does not adversely affect existing analog subscribers, or groups that are particularly dependent on access to analog-based cellular technology. We are

²¹ AMPS Sunset Order, Para. Nos. 6, 8, 18-20, 22, 23, 24, 28 and 29.

²² Indeed, Commissioner Copps expressly warned about the possibility of adverse consequences due to the Commission’s assumption that the AMPS transition could take place within five years: “Yet today the majority finds that the analog standard is no longer ‘necessary,’ even though compatible services are not yet available. It guesses that such devices will soon be available, but fails to support this prognostication with any record evidence. Based on this guess, the majority delays final elimination of the rule for five years.” Commissioner Copps accordingly warned that the Commission may have to revisit its assumption that five years is an adequate transition, and observed that a sunset based on the actual availability of digital equipment was preferable. See AMPS Sunset Order, Statement of Commissioner Michael J. Copps agreeing in part and dissenting in part, at p. 2. While Commissioner Copps’ observations were primarily

therefore reluctant to eliminate this requirement if doing so will significantly impair the access of these users to wireless telecommunications services.”²³ Therefore, it imposed a requirement that nationwide carriers file periodic reports as the five-year sunset date draws near.²⁴ These reports must “address the continued need or demand for ancillary use of features and protocols that are part of the [analog] standard for various purposes such as CDPD, telemetry, telematics, vehicle tracking *and alarm systems*.”²⁵ The Commission further indicated that “other interested parties will be able to file reports or comments as appropriate. . .”²⁶ The information contained in these reports “*will be used to determine whether or not the Commission will initiate a proceeding to extend the sunset date or take enforcement action under Section 255.*”²⁷ Thus, the Commission unequivocally reserved continuing jurisdiction over the exact date on which the AMPS sunset would go into effect, due to compelling public interest concerns.

The above quoted language of the AMPS Sunset Order and the related November 30, 2005 Public Notice, and the mandatory reporting/public comment process established therein, indicate the Commission’s significant concern about the needs of persons relying on AMPS. These documents also reflect that the impact of the AMPS transition on “alarm systems” is at issue as well.²⁸ The Petitioners respectfully submit that the

focused on the unavailability of hearing aid compatible equipment, the same concerns apply to the transition of alarm equipment to digital.

²³ Year 2000 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, WT Docket No. 01-108, Notice of Proposed Rule Making, 16 FCC Rcd. 11169 (2001) (the “AMPS Sunset NPRM”), at Para. No. 31.

²⁴ AMPS Sunset Order, Para. Nos. 31 – 34.

²⁵ See November 30, 2005 Public Notice, Mimeo No. DA 05-3015 at p. 3 (*Emphasis added*).

²⁶ AMPS Sunset Order, Para. Nos. 31-32.

²⁷ AMPS Sunset Order, Para. No. 32(*Emphasis added*).

²⁸ November 30, 2005 Public Notice, pg. 3.

Commission's concerns are well founded, and that the adverse impact of the AMPS sunset on central station alarm operations clearly warrants extending the sunset date by an additional two years. As discussed in the Petition, central station alarm companies simply will not be able to transition approximately one million consumers, businesses and government facilities from analog service to digital alternatives. Digital replacement radios have only become available in the past several months, and in limited numbers. Even if digital replacement radios were to become available in unlimited numbers today, the time it will take to identify the specific locations with analog radios and schedule a truck roll to replace them will be well over two years, based on the limited number of trained and licensed alarm technicians. Moreover, digital cellular service has not yet fully duplicated analog coverage; and because CDMA alarm radios have not yet been developed, there is no AMPS alternative where GSM service is not available. Due to the combination of these factors, there is a high probability that the alarm industry will not be able to complete upgrades to digital cellular alarm radios by the February 18, 2008 sunset, thus putting public safety at risk. Moreover, the AMPS sunset will have an adverse impact on the victims of domestic abuse that depend on analog alarm radios (including a wireless "panic button" service) for their personal safety.

C. Commission Precedent Supports an Extension of the AMPS Sunset Date.

Commission 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 at length in the Petition. 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 (6th 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 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).

Similarly, the Commission exercised its general waiver authority under 47 C.F.R. § 1.3 to issue a temporary stay of certain E911 Phase II deadlines for smaller CMRS carriers due to equipment delays, including the unavailability of network components and handsets. See Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems; Phase II Compliance Deadlines for Non-Nationwide Carriers, *Order to Stay*, CC Docket No. 94-102, 17 FCC Rcd 14841 (2002).

And in December of 2004, the Wireless Bureau granted Warren C. Havens a three-year extension of the five-year construction requirement applicable to his Multilateration Location and Monitoring Service (M-LMS) Economic Area (EA) licenses. *See Request of Warren C. Havens for Waiver of the Five-Year Construction Requirement for his Multilateration Location and Monitoring Service Economic Area Licenses, Memorandum Opinion and Order*, DA 04-3864, 19 FCC Rcd 23742 (December 9, 2004).

The alarm industry is asking the Commission to suspend the AMPS sunset date due to the untimely and inadequate availability of replacement digital equipment. The above cases demonstrate that these equipment problems, and the related logistical issues, support a grant of additional time. Indeed, the Commission has suspended various other sunset deadlines in the past:

a. The Commission's *Data Gathering Order* established a reporting program (using the FCC Form 477) to collect basic information about the deployment of broadband services and the development of local telephone service competition. *See Local Competition and Broadband Reporting*, CC Docket No. 99-301, *Report and Order*, 15 FCC Rcd 7717 (2000) (*Data Gathering Order*). The *Data Gathering Order* included a sunset provision pursuant to which the collection program terminates after five years (*i.e.*, in March 2005) unless the Commission acts to extend it. *Data Gathering Order*, 15 FCC Rcd at 7764, para. 104. However, in a November 2004 *Report and Order* adopted in WC Docket No. 04-141 (FCC 04-266), the FCC decided to extend the Form 477

program for an additional five years beyond the March 2005 sunset date, in light of the Commission's statutory obligations to study and report on the availability of broadband capability (under Section 706 of the Act) as well as its continuing obligation to promote telecommunications services competition generally. *See Local Competition and Broadband Reporting*, WC Docket No. 04-141, *Report and Order*, 34 CR 570, 19 FCC Rcd 22340 (2004) at Para. 6.

b. Section 628(c)(2)(D) of the Act, as amended generally prohibits, in areas served by a cable operator, exclusive contracts for satellite cable programming or satellite broadcast programming between vertically integrated programming vendors and cable operators. Section 628(c)(5) directs that the prohibition on exclusive programming contracts contained in Section 628(c)(2)(D) shall cease to be effective on October 5, 2002, unless the Commission finds that such prohibition "continues to be necessary to preserve and protect competition and diversity in the distribution of video programming." After a rulemaking in CS Docket No. 01-290, the Commission determined that it should retain for five years, until October 5, 2007, the prohibition on exclusive programming contracts contained in Section 628(c)(2)(D). *See Implementation of the Cable Television Consumer Protection and Competition Act of 1992 - Development of Competition and Diversity in Video Programming Distribution: Section 628(c)(5) of the Communications Act: Sunset of Exclusive Contract Prohibition*, *Report and Order*, 27 CR 149, 17 FCC Rcd 12124, 2002 FCC LEXIS 3150 (2002).

c. The 1992 Cable Act required the Commission to determine, in 2002, whether the exclusivity provisions should sunset or should be renewed. See 47 USC §548(c)(5). The Commission renewed the exclusivity provisions for a period of five years, until October 5, 2007. See *Program Access Order*, 17 FCC Rcd at 12161 ¶80; 47 CFR §76.1002(c)(6). The Commission indicated in the Program Access Order that, during the year before the October 5, 2007 expiration of the exclusivity provisions of the program access rules, it would commence a rulemaking seeking comment on whether the current prohibition on exclusive contracts should be extended beyond 2007. In its *Memorandum Opinion and Order* in WT 01-184, 17 FCC Rcd 14,972 (2002), the Commission extended the local number portability (LNP) deadline for one year, to allow adequate time to resolve all outstanding LNP implementation issues, including public safety coordination. This extension was granted in response to the petition of Verizon Wireless.

It is respectfully submitted that the above extensions of sunset deadlines demonstrate the Commission's ability to grant the temporary relief requested by the Petitioners.

Conclusion

The Petitioners have provided the information as requested by the Public Notice, and wish to thank the Bureau for its prompt advancement of this proceeding. As shown above, a strong basis exists to extend the AMPS sunset, and the Commission has authority to do so. The Petitioners continue to urge that the Commission proceed with the proposed rule making on an expedited basis, so that alarm service providers will be

able to scope and scale deployment of the massive resources needed to satisfy the AMPS transition.

Respectfully submitted,

**Alarm Industry Communications
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