

**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

**REQUEST FOR WAIVER/EXTENSION OF TIME**

The Alarm Industry Communications Committee (“AICC”) on behalf of its constituent members (hereinafter collectively the “Petitioners”), by their attorneys, hereby requests a two-day waiver/extension of the time limit specified in Rule Section 1.45 to submit an opposition to the January 19, 2007 Motion to Dismiss (“Motion”) filed by ALLTEL Corporation, Dobson Communications Corporation and Verizon Wireless (hereinafter “Licensees”) in the above-captioned matter. The Motion requests dismissal of 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) be extended an additional two days, *i.e.*, until February 18, 2010.<sup>1</sup> AICC would have filed an opposition sooner, but counsel for

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<sup>1</sup> The AMPS Sunset was adopted in Year 2000 Biennial Review – Amendment of Part 22 of the Commission’s Rules to Modify or Eliminate Outdated Rules Affecting the Cellular Radiotelephone Service and Other Commercial Mobile Radio Services, WT Docket No. 01-108, *Report and Order*, 17 FCC Rcd. 18401 (2002) (the “AMPS Sunset Order”). *See also Public Notice, “Wireless Telecommunications Bureau Reminds Cellular Licensees Of Analog Reporting Requirement,”* Mimeo DA 05-3015, dated November 30, 2005 (the “November 30, 2005 Public Notice”) and *Public Notice, “Electronic Filing Of Analog Cellular Status Reports Will Be Available Through The Internet Beginning January 25, 2006 (Reports due by February 21, 2006)”*, Mimeo DA 06-133, dated January 23, 2006.

Petitioners did not see Licensees' Motion or related Joint Comments in the ECFS database for RM-11355, despite reviewing ECFS for relevant documents in this rule making as late as January 24, 2007. Instead, counsel only discovered these documents on January 30, 2007. Counsel for Licensees have been notified of the instant extension request, and have reserved the right to object. Counsel for the Licensees advised the undersigned that an ECFS glitch prevented the posting of the Motion and Joint Comments under RM-11355 for several days.

It is not clear that an extension of time is needed. While the ten-day opposition period of Rule Section 1.45 would have normally ended on January 29, 2007, Petitioners believe that the correct deadline is three days later, or February 1, 2007, because the Motion was not served on Petitioners. In particular, the Licensees have requested that the Commission dismiss the Petition pursuant to Rule Section 1.401(e). This rule section provides that:

(e) Petitions which are moot, premature, repetitive, frivolous, or which plainly do not warrant consideration by the Commission may be denied or dismissed without prejudice to the petitioner.

Rule Section 1.401(e) creates a screening procedure for the Commission's staff, but does not create a protest right for the public. Rule Section 1.405(c) provides that, other than statements in response to a petition for rulemaking, "no additional pleadings may be filed unless specifically requested by the Commission or authorized by it." It does not appear that the Commission either requested or authorized the Motion.

Therefore, Licensees' filing, which relies on arguments about the merits of the Petition,<sup>2</sup> must be viewed as a "responsive statement" opposing to the Petition. Rule Section

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<sup>2</sup> See Motion at pp. 2-3.

1.405(a) provides that responses to petitions must be “accompanied by proof of service upon the petitioner on or prior to the date of filing.” Service must be made in accordance with Rule Section 1.47. In this case, the Motion does not include the required proof of service, and counsel for Petitioners received no service of the Motion (or the Joint Comments for that matter). Rule Sections 1.47 (c) and (d) make it clear that filing a document with the Commission, electronically or otherwise, does not constitute service on a party as required by the Commission’s Rules.

Because Licensees were required to serve Petitioners with the Motion and failed to do so, it is respectfully submitted that Petitioners should be entitled to the three additional days for submitting an opposition specified in Rule Section 1.4(h). While Section 1.4(h) normally contemplates that service was in fact sent by mail (rather than a faster method), there is no slower method than no service at all. Therefore, AICC’s opposition should be viewed as timely. Out of an abundance of caution, Petitioners are hereby requesting a very brief (two day) extension of time, in the event that the Commission calculates AICC’s response time differently. It is respectfully submitted that the ECFS glitch and lack of service (both matters beyond Petitioners’ control) prevented Petitioners from becoming aware of the Motion in a timely manner; and the public interest would be served by allowing Petitioners to address the merits of the Motion before the Commission acts on it. The Commission has granted additional time for other instances in which a procedural glitch has created a brief filing delay. *See, e.g.,* NPCR, Inc. Petition for Waiver of Section 54.802(a) of the Commission’s Rules, DA 07-110 (WCB released January 18, 2007), at para. 8 n. 23.

**Conclusion**

In light of the foregoing, it is respectfully requested that additional time be granted for Petitioners' opposition, to the extent deemed necessary by the Commission.

Respectfully submitted,

**Alarm Industry Communications  
Committee**

By:   
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Filed: January 31, 2007

## CERTIFICATE OF SERVICE

I, Cary Mitchell, hereby certify that a copy of the foregoing Request for Waiver/ Extension of time was served this 31<sup>st</sup> day of January, 2007, by hand delivery or by U.S. Mail, postage prepaid, to the following individuals at the addresses listed below:

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D. Cary Mitchell

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