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

In the Matter of	)	
	)	
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	)	WT Docket No. 01-108

REPLY COMMENTS

ALLTEL Corporation, Dobson Communications Corporation, and Verizon Wireless ("Licensees") hereby reply to comments submitted in response to a Petition for Rulemaking ("Petition") filed jointly by the Alarm Industry Communications Committee ("AICC") and ADT Security Services, Inc. ("Petitioners").[1] As noted in the Motion to Dismiss filed by Licensees on January 19th,[2] the Petition should be dismissed because it (i) misconstrues the scope of the Part 22 analog compatibility requirement which does not apply to fixed, one way devices like those used by the alarm industry, and (ii) is inconsistent with indistinguishable 2002 Commission precedent.

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[1] *See Wireless Telecommunications Bureau Seeks Comment on Petition for Rulemaking to Extend Cellular Analog Sunset Date*, RM No. 11355, *Public Notice*, DA 06-2559 (rel. Dec. 20, 2006) ("*Public Notice*").

[2] Motion of ALLTEL Corporation, Dobson Communications Corporation, and Verizon Wireless to Dismiss, RM No. 11355 (filed Jan. 19, 2007). AICC filed an Opposition and claimed that the motion (and potentially all comments in the docket) was defective and should be dismissed because the pleadings did not contain proof of service and were not served on AICC. *See* Opposition of AICC, RM No. 11355 (filed Jan. 31, 2007) (*citing* 47 C.F.R. §1.405(a)) ("Opposition"). Licensees are filing concurrently a Reply to the AICC Opposition. A copy is attached and the arguments therein are hereby incorporated.

Nevertheless, even if the Petition were considered on the merits, the record does not justify the requested relief — an extension of the analog compatibility requirement for two more years. No party supported the Petition.[3] Moreover, as discussed below, Petitioners' own submissions indicate that an extension of the analog sunset is not necessary. Replacement options for outdated analog cellular equipment are readily available and the alarm industry can replace every analog cellular radio used as a primary alarm link, as well as every analog cellular radio used as a secondary link at government/critical infrastructure facilities. Rather than prioritize replacement of these radios, however, the alarm industry seeks a two year extension to defer the replacement of outdated equipment so that new digital equipment can be diverted to new subscribers. Petitioners further argue that an extension is warranted because it would be time consuming and expensive to replace existing analog cellular equipment by the sunset date. They ignore the costs imposed on the cellular industry that produce higher costs for consumers and potentially delay the introduction and expansion of new services. The Commission should not shift the burden faced by the alarm industry to cellular carriers and consumers. Accordingly, the Petition should be denied.

I. THE ANALOG SUNSET DATE SHOULD NOT BE EXTENDED AND THE PETITION SHOULD BE DISMISSED OR DENIED

Petitioners filed comments ostensibly designed to respond to specific questions posed in the *Public Notice,*[4] but imply that they have not had enough time to assemble the information requested by the Commission:

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[3] Space Data Corporation did suggest, however, that the alarm industry's problems could be solved by effectively reallocating the analog control frequencies for the exclusive use of Space Data Corporation. *See* Comments of Space Data Corporation, WT Docket No. 01-108 (filed Jan. 19, 2007). As discussed *infra,* Licensees oppose this new proposal.

[4] *See* Comments of the Alarm Industry Communications Committee, RM No. 11355 (filed Jan. 19, 2007) ("AICC Comments").

> 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.[5]

This statement is extremely misleading, however, because AICC conducted a membership survey in January 2006 seeking much of the same information requested by the FCC.[6] Indeed, it is not unreasonable to think that information of the type requested should have been known to AICC even before the alarm industry came to the Commission seeking the substantial relief requested in the Petition. Thus, Petitioners should have had the information requested by the FCC well before issuance of the *Public Notice*.

Despite the survey, AICC responds to the *Public Notice* by providing unsubstantiated data. For example, they claim that companies providing data to Petitioners in response to the *Public Notice* "represent approximately 39.27 percent of the AMPS alarm radio usage in the industry."[7] This figure appears out of thin air and no basis is supplied to support it. Yet all the data supplied by Petitioners is based on this assumption.

Nevertheless, even assuming the data supplied by Petitioners were accurate, it does not support the need to extend the analog compatibility requirement. Petitioners claim that an extension is necessary because:

> [C]entral 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.[8]

This statement is contradicted by both AICC's Comments and the record itself.

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[5] *Id.* at 2.

[6] A copy of the survey is attached. *See* Attachment 3 ("AICC Survey").

[7] AICC Comments at 2.

[8] *Id.* at 23.

First, replacement options did not become available for the first time several months ago.[9] Licensees demonstrated in their initial comments that replacement options have been available for years and that an AICC member was touting the availability of digital replacement equipment shortly after the sunset was adopted.[10] The record demonstrates:

- Numerex, an AICC member, identified two digital replacement options *approximately four years ago*;[11]
- AT&T Mobility's Specialty Vertical Device (non-stock) list contains a number of modules from various manufacturers that are replacement options for use on a GSM network;[12]
- Verizon Wireless' Approved Device List contains many modules from multiple vendors that are replacement options for use on CDMA networks;[13]
- Numerous non-cellular networks are available.[14]

Thus, the alarm industry has had plenty of time to replace analog cellular radios.

Second, despite its claims that a million analog radios must be transitioned and that alarm customers will be stranded without service if the sunset is not extended,[15] Petitioners state that

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[9] The AICC Survey also recognized the availability of non-cellular options: "Note that this AMPS transition **does NOT** affect non-cellular (private radio) devices used for alarm monitoring purposes, such as AES. Thus, customer equipment operating in the 460 MHz (UHF) central station bands pursuant to an FCC license issued to your company are not affected." AICC Survey at 1 (emphasis in original). Despite this tacit recognition that the alarm industry already uses AES equipment, AICC claims in its comments that such equipment should not be viewed as a replacement option for cellular analog radios. *See* AICC Comments at 11-12.

[10] *See* Joint Comments of ALLTEL Corporation, Dobson Communications Corporation, and Verizon Wireless, RM No. 11355, at 12-13 (filed Jan. 19, 2007) ("Licensee Comments") (attached) (*citing* Numerex 2002 Annual Report).

[11] *Id.*

[12] *See* Comments of AT&T Mobility LCC, RM No. 11355, at 11 (filed Jan. 19, 2007).

[13] *See* Licensee Comments at 12.

[14] AICC Comments at 11 (noting the availability of replacement options in the 460 MHz band); Licensee Comments at 14; Comment of CTIA – The Wireless Association, RM No. 11355, at 4-5 (filed Jan. 19, 2007) (noting that availability of Part 90 and Part 101 spectrum as replacement options).

[15] *See* Petition of Alarm Industry Communications Committee and ADT Security Services, Inc. for Rule Making, RM No. 11355, at 16-17, 23 (filed Nov. 30, 2007).

there are "approximately" 151,700 analog radios in use as a primary alarm communications path and 7,779 radios being utilized as a primary communications path for personal protection or for medical emergencies.[16] Absent gross negligence on the part of the alarm industry, these customers should not be stranded without service when the analog compatibility requirement sunsets in February 2008. Petitioners admit that they currently are provisioning 19,000 digital radios each month which, assuming no increase in manufacturer production, equates to provisioning 247,000 digital radios by the sunset date — *nearly 100,000 more than necessary to replace every analog radio used as a primary link by an alarm customer.*[17] This provisioning rate also would allow the alarm industry to replace every analog radio used as a secondary link at government/critical infrastructure facilities.[18]

Rather than use the steady supply of digital radios to transition existing customers, Petitioners want to use those radios to expand their business at the expense of the cellular industry.[19] A group of rural cellular carriers filed comments demonstrating the absurdity associated with such an approach.[20] These carriers demonstrated both that maintenance of an

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[16] *See* AICC Comments at 3, 9. It is unclear whether the 7,779 personal protection devices are included within the estimated 151,700 analog radios utilized as primary links.

[17] Petitioners state that there are more than 800,000 analog radios utilized as back-up communications paths, but provide no data to support this assumption. *Id.* at 3. In contrast, they note that less than 40,000 customers utilize analog radios as back-up for insurance purposes. *Id.* at 6-7.

[18] Petitioners estimate that there are approximately 15,223 such links. *Id.* at 9.

[19] *See Id.* at 11; Petition at 17.

[20] *See* Joint Comments of Advantage Cellular Systems, Inc., Artic Slope Telephone Association Cooperative, Inc., CGKC&H No. 2 Rural Cellular Limited Partnership, CT Cube, L.P d/b/a West Central Wireless, Iowa RSA No. 2 Limited Partnership d/b/a Lyrix Wireless, Leaco Rural Telephone Cooperative, Inc., Mid-Tex Cellular Ltd ("Mid-Tex"), Missouri RSA #5 Partnership d/b/a Chariton Valley Wireless Services, Northwest Missouri Cellular L.P. ("NWMC"), Panhandle Telecommunications Systems, Inc., and RSA 1 Limited Partnership d/b/a Cellular 29 Plus, WT Docket No. 01-108 (filed Jan. 19, 2007) ("Rural Carrier Comments").

analog network costs hundreds of thousands of dollars and that these networks serve only a handful of analog subscribers.[21] This paradigm results in gross inequities and would force the wireless industry to incur hundreds of millions of dollars if the sunset was extended.[22] For example, the record demonstrates that Petitioners' request would impose the following costs:

- NWMC would incur an annual cost of more than $15,000 per subscriber;[23]
- ACS Wireless would incur costs of approximately $4.7 million annually to serve 1200 customers, nearly $4000 per customer;[24]
- Mid-Tex would be forced to spend nearly one million dollars to keep its analog network operational.[25]

Petitioners' request also would inevitably result in the need for the Commission to address a plethora of waiver requests. One rural carrier recently requested a waiver based in part on the fact that its analog subscriber base has dropped substantially and accounts for only about one millionth of its call volume, while continuing to provide analog service would require large investments in dedicated CALEA facilities and continued outlays of funds for PSAP connections.[26] While Licensees express no views on the merits of this waiver request here, it demonstrates that the analog requirement imposes substantial costs on cellular licensees for which there is little recompense. Accordingly, Licensees request that the record in WT Docket 07-10 be incorporated by reference into this proceeding. If AICC has its way and the cost

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[21] *Id.* at 2-3.

[22] Comments of United States Cellular Corporation, RM No. 11355, at 4 (filed Jan. 19, 2007).

[23] *See* Rural Carrier Comments at 2-3.

[24] *See* Response of ACS Wireless, Inc. to Public Notice Concerning Need for New Rules Extending Analog Sunset Date, RM No. 11355, at 6-7 (filed Jan. 19, 2007).

[25] *See* Rural Carrier Comments at 2.

[26] *See Wireless Telecommunications Bureau Seeks Comment on Request for Waiver of the Analog Service Requirement,* WT Docket 07-10, *Public Notice*, DA 07-127 (rel. Jan. 22, 2007); Request of Corr Wireless Communications, LLC for Waiver, WT Docket 07-10,, at 7 (filed Jan. 31, 2006); Supplement of Corr Wireless Communications, LLC to Request for Waiver, WT Docket No. 07-10, at 1, 2 (filed Sept. 18, 2006).

associated with analog networks continues to be imposed for two additional years, many additional carriers will be compelled to seek waivers as a result. The administrative burden of associated with a mass of new waiver requests cannot be avoided if AICC's request is granted.

Nevertheless, AICC urges the Commission to extend the sunset because alternative wireless technologies would take time to implement and impose expenses on the alarm industry.[27] There is no basis for shifting the alarm industry's costs to the cellular industry. Moreover, such an approach would penalize numerous companies, such as telematics providers, that have expended considerable resources in reliance on the sunset date. The ATX Group, the second-largest provider of telematics technology and services for the automotive industry, opposed an extension of the analog sunset date on these grounds:

> ATX developed its [automatic crash notification ("ACN")] technology and service around the analog cellular network. From this core technology, location-based emergency assistance capabilities (ACN, Mayday button response, Remote Door Unlock, Stolen Vehicle Recovery), [and] Roadside Assistance, can be provided. The investment of . . . ATX and its competitors replicates the Commission's pursuit of bringing location capability to wireless phones, yet with private investment and without government mandate. Since the Commission's Order in 2002 eliminating the obligation of cellular carriers to provide AMPs service, ATX has devoted significant investment and effort to transition equipment to a digital format. ATX's actions were in reliance of the Commission's decision and will meet the timeframe set by the Commission's rules to sunset carriers' obligations to provide AMPs service.[28]

The Commission should not penalize the telematics industry for its diligence by allowing Petitioners to postpone or avoid making the same investments.

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[27] AICC Comments at 11-12.

[28] Comments of the ATX Group, RM No. 11355, at 2-3 (filed Jan. 19, 2007) (citation omitted).

II. SPACE DATA'S PROPOSAL IS BEYOND THE SCOPE OF THE PETITION AND SHOULD BE DISMISSED

Space Data Corporation ("Space Data") filed comments that go well beyond the scope of the *Public Notice* and, in fact, "d[id] not take a position on the prudence of generally extending the Commission's analog service requirements."[29] Instead, Space Data "generously" proposes to use its balloon-based network to offer analog service over cellular frequencies, provided they are able to obtain cellular analog control frequencies for free or at below-market prices.[30] These comments should be dismissed as outside the scope of the Petition.

Space Data's proposal simply is unworkable. No party has alleged that analog service will be universally discontinued on the sunset date. Nevertheless, Space Data's proposal would require access to analog frequencies on a nationwide basis as of the sunset date.

Further, the premise underlying Space Data's proposal — that analog control channels will be lying fallow[31] — is fundamentally flawed. As discussed above, there is no evidence that analog cellular service will be universally discontinued on the sunset date. Even if analog cellular service is discontinued in a particular market, however, the analog cellular control channels will not necessarily lie fallow. There are many ways in which these channels could be used, given market incentives. For example, analog cellular control channels on the two cellular blocks could be aggregated to support an additional digital channel, or licensees may be able to reconfigure their digital channels to make optimal use of not only the control channels but also the voice channels that would be freed up by the elimination of obsolete legacy analog

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[29] Comments of Space Data Corporation, RM No. 11355, at 1-5 (filed Jan. 19, 2007).

[30] *See id.* at 5, 8-10.

[31] *Id.* at 4-6.

operations. New technologies also may permit the use of these frequencies in a post-analog environment for specialized services or new and innovative applications.

Cellular licensees were granted exclusive use to the cellular frequencies and the Commission has adopted rules designed to facilitate secondary market transactions. To the extent a cellular carrier discontinues service and is not utilizing certain portions of spectrum, the carrier is entitled to lease that spectrum in a market-based transaction. Space Data is free to negotiate for the use of cellular spectrum in the secondary market. The Commission should not insulate Space Data from market forces, however, by granting the company a right to acquire analog cellular control channels through a *de facto* reallocation and an unjustified and unnecessary massive modification of existing licenses.

For the reasons set forth above and in Licensees' Comments, the Petition should be denied.

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February 6, 2007

ATTACHMENT 1

MOTION TO DISMISS

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

In the Matter of	)	
	)	
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 Wireless Telecommunications Bureau

MOTION TO DISMISS

ALLTEL Corporation, Dobson Communications Corporation, and Verizon Wireless ("Licensees") hereby move to dismiss the Petition for Rulemaking ("Petition") filed jointly by the Alarm Industry Communications Committee and ADT Security Services, Inc. ("Petitioners"). The Petition was filed for the sole purpose of asking the FCC to commence a rulemaking proceeding to consider extending the analog compatibility requirement contained in Section 22.901(b) of the Commission's rules for two additional years so that the alarm industry would have more time to replace its fixed analog cellular equipment with digital equipment.[1] As discussed below, the Petition should be dismissed pursuant to Section 1.401(e) of the Commission's rules which states:[2]

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[1] The Commission placed the Petition on public notice and sought comment on "statutory, case law, and other legal authority that would support an extension of the sunset date." *Wireless Telecommunications Bureau Seeks Comment on Petition for Rulemaking to Extend Cellular Analog Sunset Date*, RM No. 11355, *Public Notice*, DA 06-2559, at 3 (Dec. 20, 2006).

[2] 47 C.F.R. § 1.401(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.[3]

The Petition does not warrant consideration because it misconstrues the scope of the analog compatibility standard, is inconsistent with indistinguishable Commission precedent and cannot serve to give Petitioners the relief they are seeking. In fact, the Commission previously considered and rejected a similar request based on the same threshold problem that exists with respect to the Petitioners filing – *i.e.*, because the devices at issue are "not mobile devices . . . service to such equipment is not covered by the analog requirement."[4] Thus, an extension of the analog compatibility requirement to allow Petitioners additional time to replace *fixed* devices *would* be contrary to the analog rule itself and directly inconsistent with applicable Commission precedent. Given this basic defect, consideration of the Petition would waste scarce Commission resources on a request that, even if granted, would not address Petitioners' concerns.

The analog compatibility requirement applies only to *mobile cellular telephones* and, thus, does not apply to fixed devices. Section 22.901(b) states:

> Until February 18, 2008, each cellular system that provides *two-way* cellular *mobile* radiotelephone service must —
> (1) Maintain the capability to provide compatible analog service ("AMPS") to cellular telephones designed in conformance with the specifications contained in sections 1 and 2 of the standard document ANSI TIA/EIA-553-A-1999 ***Mobile Station – Base Station Compatibility Standard*** (approved October 14, 1999) . . .;
> (2) Provide AMPS, upon request, to subscribers and roamers using such cellular telephones . . .[5]

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[3] *Id.*; *see Reallocation of 30 MHz of 700 MHz Spectrum (747-762/777-792 MHz) from Commercial Use*, RM No. 11348, *Order*,DA 06-2278 (PSHSB rel. Nov. 3, 2006); Letter from John B. Muleta, Chief, Wireless Telecommunications Bureau, FCC, to Michael W. Grady, Vice President, Technology, Engineering and Quality and Sector Chief Technical Officer, Northrop Grumman Information Technology, DA 03-2940 (Sept. 24, 2003).

[4] *See Year 2000 Biennial Regulatory Review*, WT Docket No. 01-108, *Report and Order*, 17 FCC Rcd 18401, 18416 n.82 (2002) ("*Analog Sunset Order*").

[5] 47 C.F.R. § 22.901(b) (emphasis added).

The rule, which is referred to as the analog compatibility requirement, only requires cellular licensees to provide AMPS to *cellular telephones* designed in conformance with ANSI TIA/EIA-553-A-1999 Mobile Station – Base Station Compatibility Standard (approved October 14, 1999) ("Bulletin 553-A"). The devices utilized by the alarm industry are not covered by this requirement — they are not cellular telephones designed in accordance with Bulletin 553-A.

Bulletin 553-A was adopted "to ensure that a *mobile* station can obtain cellular service in any cellular system manufactured according to this standard."[6] The very title of the standard indicates that it governs compatibility between mobile and base stations. The standard sets forth detailed requirements for *two-way* radio systems.[7]

The Petition concedes that the alarm industry utilizes "specialized fixed radios" to transmit alarm systems and seeks a two-year extension of the analog compatibility standard because it claims that it will be unable to replace all of these fixed devices prior to the sunset of the analog compatibility requirement on February 18, 2008.[8] One of the Petitioners, AICC, also claims that a two-year extension is necessary so that two-way digital devices can be designed to replace the existing one-way analog devices.[9] The devices utilized by the alarm industry are not

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[6] Bulletin 553-A at i.

[7] *Id.*

[8] *See* Petition for Rulemaking to Amend Rule Section 22.901(b) to Extend Analog Sunset Date, WT Docket No. 01-108, at 12 (filed Nov. 30, 2006) ("Petition"); *see also id.* at 15 (stating that "Alarm signaling radios are generally mounted in attics, crawlspaces and other locations not readily accessible"); Comments of the Alarm Industry Communications Committee, WT Docket No. 01-108 at 2, 7 (Feb. 21, 2006) (noting that "AICC member companies use radio units *installed* at the customer premises"(emphasis added)) ("AICC Comments"). Although the alarm industry references a limited number of devices that may qualify as mobile, these devices do not constitute cellular telephones and do not involve two-way communication. Petition at 18-22.

[9] *See* AICC Comments at 10 (stating that AMPS alarm transmitters "are generally one-way devices – they send alarm signals only" and requesting additional time to develop two-way GSM alarm transmitters).

covered, however, by the analog compatibility standard. The standard governs the provision of two-way service between mobile stations and base stations. The alarm industry utilizes fixed, one-way transmitters.[10]

Moreover, contrary to Petitioners' claims, Commission precedent does not support an extension of the analog requirement.[11] In the 2000 *Analog Sunset Order*, in which the Commission adopted the 5 year analog sunset at issue in Petitioners' filing, the Commission confirmed that cellular licensees are not required to provide analog service to fixed devices such as those used by the alarm industry.[12] In that proceeding, a number of local government entities and U.S. Senators expressed concern that the elimination of the analog compatibility requirement would undermine public safety because highway call boxes rely on AMPS.[13] In response, the Commission noted that "callboxes are not mobile devices by definition, and thus service to such equipment is not covered by the analog requirement."[14] That same analysis applies to the alarm industry. If fixed highway call boxes operated by local government entities for public safety purposes are not covered by the analog requirement, fixed alarm transmitters operated by for-profit companies certainly are not covered.

Consistent with the Commission's determination regarding fixed, highway emergency call boxes, the Commission stated that the analog requirement had only two objectives: (i) to permit roaming by mobile handsets; and (ii) to ensure reasonable consumer mobile handset costs

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[10] Petition at 3; AICC Comments at 10.

[11] Petition at 22-25.

[12] *See Analog Sunset Order,* 17 FCC Rcd at 18416 n.82.

[13] *Id.*

[14] *Id.* The Commission also noted that the five year transition period provided sufficient time to transition any analog devices to digital equipment. *Id.*

for consumers.[15] Neither policy objective would be furthered by an extension of the sunset date to accommodate the continued use of fixed, analog devices by the alarm industry.

Based on the foregoing, the Petition should be dismissed pursuant to Section 1.401(e) of the Commission's rules.

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January 19, 2007

[15] *Id.* at 18405.

ATTACHMENT 2

REPLY TO AICC OPPOSITION TO MOTION TO DISMISS

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

In the Matter of	)	
	)	
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	)	WT Docket No. 01-108

REPLY TO OPPOSITION

ALLTEL Corporation, Dobson Communications Corporation, and Verizon Wireless ("Licensees") hereby reply to the Opposition[1] to their Motion to Dismiss ("Motion")[2] filed by the Alarm Industry Communications Committee ("AICC") in the captioned proceeding.[3] The Motion urged dismissal of a Petition for Rulemaking ("Petition") filed by AICC in an attempt to extend the analog sunset date. The Motion demonstrated that the Petition does not warrant consideration because it misconstrues the scope of the analog compatibility standard, is inconsistent with indistinguishable Commission precedent, and cannot serve to give AICC the relief it seeks. Thus, Licensees urged dismissal pursuant to Section 1.401(e) of the Commission's rules which states:[4]

> 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.[5]

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[1] Opposition of AICC, RM No. 11355 (filed Jan. 31, 2007).

[2] Motion to Dismiss of ALLTEL Corporation, Dobson Communications Corporation, and Verizon Wireless, RM No. 11355 (filed Jan. 19, 2007).

[3] *See Wireless Telecommunications Bureau Seeks Comment on Petition for Rulemaking to Extend Cellular Analog Sunset Date*, RM No. 11355, *Public Notice*, DA 06-2559 (rel. Dec. 20, 2006) ("*Public Notice*").

[4] 47 C.F.R. § 1.401(e).

[5] *Id.*; *see Reallocation of 30 MHz of 700 MHz Spectrum (747-762/777-792 MHz) from Commercial Use*, RM No. 11348, *Order*, DA 06-2278 (PSHSB rel. Nov. 3, 2006); Letter from

The key underpinning of the Motion was a prior Commission determination — a determination made in the specific context of the analog sunset — that fixed devices are "not mobile devices by definition, and thus service to such equipment is not covered by the analog requirement."[6] Thus, an extension of the analog compatibility requirement to provide AICC's members additional time to replace *fixed* devices *would* be contrary to the analog rule itself and directly inconsistent with applicable Commission precedent.

Rather than address this Commission determination, AICC merely ignores it. Instead, AICC claims that fixed devices are covered by the analog compatibility requirement simply because (i) a different provision authorizes cellular carriers to provide fixed service, and (ii) the Wireless Telecommunications Bureau issued a public notice seeking information on the number of alarm systems served by the national cellular carriers.[7] These arguments are unavailing.

Quite remarkably, the discussion of the critical legal question — whether fixed devices are covered by the analog compatibility requirement — is limited to little more than a single page.[8] AICC instead urges the Commission to reject the Motion on procedural grounds.[9] AICC claims the motion (and potentially all comments in the docket) was defective and should be dismissed because the pleadings did not contain proof of service and were not served on AICC pursuant to Section 1.405(a).[10] The *Public Notice* set forth specific procedures for responding to the Petition that differed from those specified by Section 1.405 and did not require service on

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John B. Muleta, Chief, Wireless Telecommunications Bureau, FCC, to Michael W. Grady, Vice President, Technology, Engineering and Quality and Sector Chief Technical Officer, Northrop Grumman Information Technology, DA 03-2940 (Sept. 24, 2003).

[6] *Year 2000 Biennial Regulatory Review*, WT Docket No. 01-108, *Report and Order*, 17 F.C.C.R. 18401, 18416 n.82 (2002) ("*Analog Sunset Order*"); Motion at 2 (quoting same).

[7] *See* Opposition at 6.

[8] *Id.* at 6-7.

[9] *Id.* at 1, 5-6.

[10] *See* Opposition at 5-6.

AICC.[11] Licensees filed their pleadings — a motion to dismiss and comments — pursuant to the procedures set forth in the Public Notice. Nevertheless, to the extent the service requirement contained in Section 1.405 applied, the Commission has indicated that electronically filed pleadings that "are received after the deadlines, or that fail to meet the necessary formalities, will be treated as informal or *ex parte* filings."[12] Thus, the pleadings must be included in the record and should not be rejected.[13]

Finally, to the extent Section 1.405(a) required service of pleadings on AICC despite the procedures set forth in the *Public Notice*, Licensees request a waiver of the requirement.[14] The purpose of the service obligation contained in Section 1.405(a) is to ensure that petitioners such as AICC have an opportunity to respond to pleadings commenting on or challenging their

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[11] *See Public Notice* at 3-4 (setting forth filing requirements). In other contexts, similar public notices have required parties to comply with Section 1.405. *See National Association Of Broadcasters And Association Of Local Television Stations Seek Modification Or Clarification Of Broadcast Carriage Rules For Satellite Carriers*, CS Docket No. 00-96, *Public Notice,* DA 02-0031 (Jan. 9, 2002). Here, the *Public Notice* contained no such provision and, in fact, established a reply comment filing deadline that exceeded the time set forth under Section 1.405. *Cf. Public Notice* at 1 (establishing a 16 day period for filing replies) *with* 47 C.F.R. §1.405(b) (stating that replies may be filed "no later than 15 days" after the comment deadline).

[12] *Electronic Filing of Documents in Rulemaking Proceedings,* GC Docket No. 97-113, *Report and Order,* 13 F.C.C.R. 11322, 11326 (1998) (citation omitted).

[13] Even if the Motion was dismissed, the Commission is authorized to dismiss petitions for rulemaking that are frivolous and the Petition seeks to extend the analog sunset date in order to extend service to devices that were never covered by the analog requirement. To the extent AICC argues that the Motion is unauthorized and should not be considered, the argument is moot. The Motion also was attached to Licensees' comments and incorporated therein. Thus, the arguments remain before the Commission even if the Motion were dismissed. Moreover, the rule specifically authorizes parties to file a "statement in support of or in opposition to a petition for rule making." *See* 47 C.F.R. § 1.405(a). The rule does not specify any particular labeling for these statements and, clearly a motion to dismiss constitutes a statement in opposition.

[14] *See* 47 C.F.R. §1.3 (noting that the Commission's rules can be waived on its own motion or for good cause); §1.925 (finding that a waiver of the Commission's rules is appropriate where the petitioner demonstrates that (1) the underlying purpose of the rule would not be served or would be frustrated by application to the instant case, and (2) that a grant of the requested waiver would be in the public interest). A waiver is appropriate under either standard.

proposals.[15] The purpose of the rule has been served. AICC had actual notice of the Motion; the Opposition acknowledges that a copy was downloaded from the Commission's Electronic Comment Filing System. In fact, AICC has already responded to the Motion. Thus, a waiver of the Section 1.405(a) service requirement is appropriate.[16]

For the reasons set forth above, as well as those set forth in Licensees' Motion to Dismiss, the Petition should be dismissed pursuant to Section 1.401(e).

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February 6, 2007

[15] *See Amendment of parts 2 and 97 of the Commission's Rules to Create a Low Frequency Allocation for the Amateur Radio Service*, ET Docket No. 02-98, *Notice of Proposed Rulemaking*, 17 F.C.C.R. 8954, 8960 n.39 (2002) ("We believe that it is in the public interest to have as complete a record as possible in this proceeding. We further note that while [the Petitioner] was not properly served, their [Motion to Strike] included a substantive response these comments.... Therefore we deny [the Petitioner's] Motion to Strike.").

[16] *Id.*

ATTACHMENT 3

ALARM INDUSTRY COMMUNICATIONS COUNCIL CELLULAR AMPS TRANSITION SURVEY

ALARM INDUSTRY COMMUNICATIONS COUNCIL

CELLULAR AMPS TRANSITION SURVEY

Effective February 18, 2008, cellular carriers will no longer be required to provide analog (or "AMPS") service. This could have an adverse impact on the thousands of alarm customers that have analog cellular (800 MHz) communicators installed in their homes or businesses for the purpose of relaying alarm signals. This includes **Honeywell's AlarmNet C, Telular, Uplink, DSC's Sky Route, Numerex and similar cellular-based products.** The Alarm Industry Communications Council (AICC) is in the process of gathering information about the impact this rule change will have on the alarm industry, so that we can help the FCC to determine whether the February 2008 sunset date should be extended. Note that this AMPS transition **does NOT** affect non-cellular (private radio) devices used for alarm monitoring purposes, such as AES. Thus, customer equipment operating in the 460 MHz (UHF) central station bands pursuant to an FCC license issued to your company are not affected. IF YOU ARE UNSURE ABOUT WHETHER YOUR CUSTOMER EQUIPMENT IS AFFECTED, PLEASE CONTACT YOUR EQUIPMENT VENDOR ASAP.

Please complete this survey as promptly as possible and return it by January 20, 2006 to:

AICC
C/o Central Station Alarm Association
440 Maple Avenue East, Suite 201
Vienna, VA 22180
Fax (703)242-4675

1. Name and Contact Information of Alarm Monitoring Service Provider:

_____

_____

_____

2. Do your customers use analog cellular equipment to relay alarm signals? _____

3. If yes, what brand of equipment? _____

4. How many analog cellular customer radios are currently deployed?_____

5. What is the average age of such cellular radios? _____

6. What percentage of the cellular radios are less than 2 years old? _____

7. Describe the steps that would be necessary to replace such equipment by Feb. 2008:

_____

_____

_____

_____

8. How many of your customers use the analog cellular radios to transmit fire signals?

_____

9. How many of your customers use the analog cellular radios to transmit medical alert signals?

_____

10. How many of your customers are disabled/handicapped? _____

11. Will you be able to replace all customer analog cellular radios by Feb. 2008?

_____

12. Describe obstacles you will face in such transition effort: _____

_____

13. Other comments? _____

_____

Name of person completing this survey: _____

Date: _____

Phone: _____

Email: _____

PLEASE CALL LOU FIORE OF AICC (973)726-8300 OR JOHN PRENDERGAST, ESQ. (202)828-5540 WITH ANY QUESTIONS.

CERTIFICATE OF SERVICE

I, Paula Lewis, do hereby certify that a copy of the foregoing "Reply Comments" was served this 6th day of February 2006, via first class U.S. Mail, on the following:

John A. Prendergast
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Paula Lewis