

DUCKET FILE COPY ORIGINAL

SandraLyn Bailey

From: John A. Prendergast [jap@bloostonlaw.com]
Sent: Tuesday, February 06, 2007 10:18 PM
To: John A. Prendergast; Kevin Martin; Jonathan Adelstein; Michael Copps; Deborah Tate; Robert McDowell
Cc: Fred Campbell; Barry Ohlson; Bruce Gottlieb; Aaron Goldberger; Angela Giancarlo; Roger Noel; Richard Arsenault; Linda Chang; Wilbert Nixon; Moslem Sawez
Subject: RE: Petition for Rulemaking Extending AMPS Sunset Date
Attachments: AMPS RM reply comments FINAL.pdf; AMPS RM reply 01-108 RECEIPT.pdf; AMPS RM reply RM-11355 RECEIPT.pdf

Everyone,

For your convenience, I am forwarding an electronic copy of the Reply Comments of AICC in response to the WTB's December 20, 2006 Public Notice concerning our Petition for Rulemaking regarding the AMPS Sunset (RM-11355).

Please let me know if you have any questions.

Thank you,

John Prendergast

John A. Prendergast
 Blooston, Mordkofsky, Dickens,
 Duffy & Prendergast, LLP
 2120 L Street, NW Suite 300
 Washington, DC 20037
 (202) 828-5540 direct line
 (202) 828-5568 fax

jap@bloostonlaw.com
<http://www.bloostonlaw.com>

FILED/ACCEPTED
MAR 13 2007
 Federal Communications Commission
 Office of the Secretary

No. of Copies rec'd 0
 List ABCDE

From: John A. Prendergast
Sent: Friday, January 19, 2007 10:59 PM
To: John A. Prendergast; 'Kevin.Martin@fcc.gov'; 'Jonathan.Adelstein@fcc.gov'; 'Michael.Copps@fcc.gov'; 'Deborah.Tate@fcc.gov'; 'Robert.McDowell@fcc.gov'
Cc: 'Fred.Campbell@fcc.gov'; 'Barry.Ohlson@fcc.gov'; 'Bruce.Gottlieb@fcc.gov'; 'Aaron.Goldberger@fcc.gov'; 'Angela.Giancarlo@fcc.gov'; 'Roger.Noel@fcc.gov'; 'Richard.Arsenault@fcc.gov'; 'Linda.Chang@fcc.gov'; 'Wilbert.Nixon@fcc.gov'; 'Moslem.Sawez@fcc.gov'
Subject: RE: Petition for Rulemaking Extending AMPS Sunset Date

Everyone,

I am forwarding an electronic copy of the Comments of AICC in response to the WTB's December 20, 2006 Public Notice concerning our Petition for Rulemaking regarding the AMPS Sunset (RM-11355).

Please let me know if you have any questions.

Thank you,

John Prendergast

From: John A. Prendergast
Sent: Thursday, November 30, 2006 7:15 PM
To: 'Kevin.Martin@fcc.gov'; 'Jonathan.Adelstein@fcc.gov'; 'Michael.Copps@fcc.gov'; 'Deborah.Tate@fcc.gov'; 'Robert.McDowell@fcc.gov'
Cc: 'Fred.Campbell@fcc.gov'; 'Barry.Ohlon@fcc.gov'; 'Bruce.Gottlieb@fcc.gov'; 'Aaron.Goldberger@fcc.gov'; 'Angela.Giancarlo@fcc.gov'; 'Roger.Noel@fcc.gov'; 'Richard.Arsenault@fcc.gov'; 'Linda.Chang@fcc.gov'; 'Wilbert.Nixon@fcc.gov'; 'Moslem.Sawez@fcc.gov'
Subject: Petition for Rulemaking Extending AMPS Sunset Date

Everyone,

Thank you again for your valuable input during our meetings earlier this month. Attached is the Petition for Rule Making of AICC and ADT Security Services, Inc. seeking an extension of the AMPS sunset date.

Best regards,

John Prendergast

John A. Prendergast
Blooston, Mordkofsky, Dickens,
Duffy & Prendergast, LLP
2120 L Street, NW Suite 300
Washington, DC 20037
(202) 828-5540 direct line
(202) 828-5568 fax

jap@bloostonlaw.com
<http://www.bloostonlaw.com>

FILED/ACCEPTED
MAR 13 7/11/07
Federal Communications Commission
Office of the Secretary

This message and any attached documents contain information which may be confidential, subject to privilege or exempt from disclosure under applicable law. These materials are intended only for the use of the intended recipient. If you are not the intended recipient of this transmission, you are hereby notified that any distribution, disclosure, printing, copying, storage, modification or the taking of any action in reliance upon this transmission is strictly prohibited. Delivery of this message to any person other than the intended recipient shall not compromise or waive such confidentiality, privilege or exemption from disclosure as to this communication. If you have received this communication in error, please immediately notify the sender and delete the message from your system.

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

FILED/ACCEPTED
MAR 13 2007
Federal Communications Commission
Office of the Secretary

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

REPLY COMMENTS OF AICC

Alarm Industry Communications
Committee

Counsel:

John A. Prendergast
Blooston, Mordkofsky, Dickens,
Duffy & Prendergast, LLP
2120 L Street, N.W.
Suite 300
Washington, D.C. 20037
Tel: 202-828-5540
FAX: 202-828-5568

No. of Copies rec'd 0
List ABCDE

Filed: February 6, 2007

Table of Contents

	<u>Page</u>
Summary	ii
I. The Alarm Industry Does Not Dispute the Need for an AMPS Sunset, And Does Not Seek to Reinstate The AMPS Requirement Indefinitely.....	1
II. The Commission Has Sought to Protect Fixed Users From the Adverse Impact of the AMPS Sunset, Including Consumers Using Alarm Radios	4
III. The Alarm Industry Exercised Diligence in Pursuing the AMPS Transition ...	14
Other Perceived AMPS Transition Solutions Addressed in Comments	
1. Part 90 UHF central station alarm spectrum.....	23
2. Alarmnet-G equipment	24
3. Telematics equipment.....	24
4. CDMA equipment.....	25
5. PCS, SMR, ESMR, and BRS.....	26
6. Wireline and cable alternatives.....	27
IV. The Requested Extension Does Not Impose an Unfair Burden on the Cellular Industry	29
A. Cost Considerations Do Not Preclude the Proposed Extension.	29
B. The Cellular Industry has Not Demonstrated that Capacity Issues Preclude the Proposed Extension.....	33
C. The Cellular Industry was On Notice of a Possible Extension.....	34
D. Petitioners Agree that a Rural Exemption is Justified	35
V. Other Issues Raised in the Petition Remain Unresolved.....	36
1. Digital Cellular Coverage	36
2. The Need for Commission Intervention	37
3. Honoring the Existing Sunset	38
4. Revised Wording of the AMPS Sunset Rule	39
Conclusion	40

Summary

The Alarm Industry Communications Committee (“AICC”) on behalf of its constituent members (hereinafter collectively the “Petitioners”) submits these reply comments relating to their request that the sunset date for the cellular analog (or “AMPS”) transmission requirement of Rule Section 22.901(b) be extended an additional two years, *i.e.*, until February 18, 2010. The Petitioners respectfully submit that the comments in this proceeding do not counter Petitioners’ showing that the adverse impact of the AMPS sunset on central station alarm operations clearly warrants extending the sunset date by two years. Petitioners respond to claims in the comments as follows:

- The analog transition period applies to more than just hearing disability radios; the Commission used the transition period as a “soft landing” for several incumbent analog service users.
- Analog alarm radios are two-way devices, and Rule Section 22.901 includes fixed and mobile services as part of the analog requirement.
- The requested finite extension of the AMPS sunset deadline is not the same as the requests of telematics and callbox operators for an indefinite continuation of the AMPS requirement.
- Commission discussion concerning the eligibility of callboxes for AMPS service was non-binding dicta, contradicted by the Commission’s decision to allow callbox operators to transition under the 5-year sunset period.
- The alarm industry exercised diligence in pursuing the AMPS issue, but was hampered by lack of available replacement equipment. The Numerex replacement digital alarm equipment which certain commenters claim has been available since 2002 is in fact analog equipment that must be replaced.

The Cellular Alarm Technology Ltd. equipment said to be developed never came to market. Other alternatives identified by commenters did not constitute realistic alternatives to a million existing AMPS alarm radios.

- The requested finite extension does not impose an unfair burden on cellular carriers. The cellular industry will receive the benefit of the nearly One Billion Dollar relocation to be undertaken by the alarm industry without compensation; and cellular carriers received their spectrum free.
- The cellular industry is under a mandate to maintain analog capability for the duration of the AMPS sunset period, and has been on notice that it may be extended for an indefinite period.
- Petitioners are proposing a rural exemption and limited MSA exemption that will limit the impact of the proposed extension, and create a source of analog equipment to maintain the existing networks.

**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

REPLY COMMENTS OF AICC

The Alarm Industry Communications Committee (“AICC”), on behalf of its constituent members¹ (hereinafter the “Petitioners”), by their attorneys and pursuant to Rule Section 1.405² hereby submit these reply 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”)

¹ 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), Bosch Security Systems, Digital Monitoring Products, Digital Security Control, Telular, HSM (formerly known as Honeywell Monitoring), Honeywell Security, Vector Security, Inc., ADT Security Services, 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.

² 47 C.F.R. § 1.405.

transmission requirement of Rule Section 22.901(b)³ be extended an additional two years, *i.e.*, until February 18, 2010.

Petitioners have reviewed the concerns raised by members of the cellular industry and others that have filed comments in response to the Bureau's *Public Notice*.

Petitioners address these concerns below. As shown herein, the public interest requires an extension of the AMPS sunset deadline.

I. The Alarm Industry Does Not Dispute the Need for an AMPS Sunset, And Does Not Seek to Reinstate The AMPS Requirement Indefinitely.

Members of the cellular industry argue extensively that the above-captioned Petition should not be granted because the Commission has decided that digital is a better, more efficient technology, and that the public interest will be served by a migration to digital.⁴ They further argue that the Commission must deny the Petition's request for a two-year extension of the AMPS sunset deadline, because the Commission already considered "virtually identical" arguments by telematics providers and others, and rejected these arguments.⁵ These contentions misconstrue the nature of Petitioners' request for relief. Petitioners do not dispute the desirability of migrating to digital cellular technology. Instead, they are asking the Commission to adjust the transition mechanism that the Commission already created for the AMPS conversion, so as to make sure that consumers, businesses and government installations protected by analog alarm

³ 47 C.F.R. § 22.901(b).

⁴ *See, e.g.*, Joint Comments of ALLTEL Corporation, Dobson Communications Corporation and Verizon Wireless (hereinafter "Joint Comments") at 2-8; Opposition of CTIA – The Wireless Association ("CTIA Opposition") at 1-2; Opposition of AT&T Mobility LLC to Petition for Rulemaking ("AT&T Opposition") at 2-3.

⁵ *See, e.g.*, Joint Comments at 5-6, 12; AT&T Opposition at 4-6; Comments of United States Cellular Corporation ("USCC Comments") at 3.

radios are not endangered while the alarm industry goes about installing replacement equipment that is finally becoming available in quantity. The adjustment that the alarm industry seeks is for a finite period of time.⁶

In contrast, telematics providers and call box advocates were asking for an *indefinite* retention of the AMPS requirement. See Year 2000 Biennial Review – Amendment of Part 22 of the Commission’s Rules, WT Docket No. 01-108, *Report and Order*, 17 FCC Rcd. 18,401 (2002) (“*AMPS Sunset Order*”) at para. 10 (“As described more fully below, a number of factors leads us to conclude that the public interest does not support an indefinite retention of the analog requirement.”); *id.* at para. 19 (“We conclude that arguments advanced by telematics providers do not constitute sufficient basis to warrant the indefinite imposition of an outdated technical standard.”); *id.* at n.82 (“They request that, in the event the Commission removes the analog requirement, that a transition to digital be conducted in a manner that enables SAFEs to maintain the callbox program.”). While the Commission concluded that it could not grant the requests of telematics providers and callbox operators for an indefinite continuation of the AMPS requirement, it did not simply cast these entities aside. Instead, the Commission expressly noted that these entities were entitled to transition their operations to digital during the five-year transition period adopted by the Commission.⁷ Unlike telematics providers and callbox operators, Petitioners do not seek to maintain the analog capability

⁶ Petitioners have requested a two-year extension of the sunset deadline in order to ensure that the digital radio replacement process that is underway can be completed. Petitioners are hopeful that, with a staggered AMPS shut down that will allow the alarm providers to focus their resources geographically, the two-year period can be shortened.

⁷ See *AMPS Sunset Order* at para. 20 (“However, . . . we find that the sunset period we are establishing for other reasons should also mitigate any significant impacts that might affect telematics providers”); *id.* at para. 25 n. 82 (“ . . . we anticipate that the sunset period adopted in this proceeding will

indefinitely, but instead have already commenced the digital replacement process. However, due to a variety of factors described in the Petition, there are simply not enough time and resources to complete the digital conversion by February 18, 2008. Therefore, Petitioners seek only an adjustment to the transition schedule that the Commission saw fit to create.

II. The Commission Has Sought to Protect Fixed Users From the Adverse Impact of the AMPS Sunset, Including Consumers Using Alarm Radios.

The Joint Comments understandably seek to advance a very restrictive interpretation of the analog cellular rule and the *AMPS Sunset Order*. In particular, the Joint Comments argue that the Commission “indicated that the [AMPS] rule would be retained *only* in two circumstances: if hearing –aid compatible devices are not available or if market conditions change.”⁸ While the Commission certainly said that it would retain the AMPS rule under those two circumstances, the Commission did not use the word “only”, and did not otherwise limit itself to extending the AMPS requirement solely under those circumstances. Indeed, in the *AMPS Sunset Order* itself, the Commission made clear its concern about ensuring a smooth transition for various classes of analog dependent consumers, when it adopted the transition period:

Similarly, while the comments suggest that elimination of the analog requirement would not affect the majority of wireless consumers that are already using digital service, we are aware that there are particular classes of consumers, *such as* those that use emergency-only telephones and persons with hearing disabilities, who do not currently have readily available digital alternatives and would be unduly affected by the

nonetheless provide such agencies with a reasonable length of time to transition their callboxes to digital technology if necessary”).

⁸ Joint Comments at 6 (*emphasis added*); see also Joint Comments at 8 (“the sunset date would be extended *only* if hearing aid compatible handsets were unavailable or CMRS market conditions changed”) (*emphasis added*).

immediate elimination of analog service. Accordingly, we conclude that the public interest favors the adoption of a five-year transition prior to elimination of the analog rule.

AMPS Sunset Order, *id.* at para. 22 (*emphasis added*). The phrase “such as” does not mean “exclusively”. Instead, this phrase is defined as meaning “of the kind specified” or “for example”.⁹ Thus, existing analog users other than persons with hearing disabilities were intended beneficiaries of the AMPS transition period.¹⁰

Indeed, alarm customers using analog radios arguably fall into the other named example of beneficiaries under the transition plan, those that use emergency-only cellular radios. Such alarm customers are using AMPS radios, and the only use of such radios is to report an emergency. As described in the Petition, the events reported by such radios include fires, carbon monoxide poisoning, medical crises, and attacks by intruders (including abusive partners), all categories of emergencies that trigger a public interest in ensuring a seamless transition of such radios to digital replacements. Moreover, alarm emergency radio users are consumers, and these consumers did not have a digital alternative radio until recently.¹¹ If such consumers do not fall into the specific definition of “emergency-only” cellular users, they are nonetheless a class of consumers that will

⁹ See Dictionary.com Unabridged Volume 1.1 (Based on the Random House Unabridged Dictionary, © Random House, Inc. 2006).

¹⁰ In this regard, the AT&T Opposition (at pp. 6-7) misses the mark when it argues that the Petition must be denied because of the Commission’s treatment of telematics providers in its reconsideration of the *AMPS Sunset Order*. On reconsideration, the Commission again gave telematics providers the benefit of the transition period. Year 2000 Biennial Regulatory Review – Amendment of Part 22 of the Commission’s Rules to Modify or Eliminate Outdated Rules Affecting Cellular Radiotelephone Service and Other Commercial Mobile Radio Services, WT Docket No. 01-108, *Order on Reconsideration*, 19 FCC Rcd. 3239 (2004) (“*AMPS Reconsideration Order*”) at para. 33. Indeed, in the same order the Commission observed that it is “permissible to retain the analog requirement for other reasons if [the Commission] concludes that it is in the public interest to do so.” *Id.* at para. 9.

¹¹ A person that purchased an analog alarm radio is as much a consumer as a person that purchased an emergency-only mobile phone, or a person that purchased a hearing aid compatible phone.

suffer a threat to their safety if the AMPS transition process is not adjusted to accommodate their unique circumstances.¹²

In this regard, it is somewhat startling for AT&T to argue that battered women with emergency-only analog radios are entitled to protection from the adverse effects of the AMPS sunset, but battered women with analog panic button radios are not entitled to such protection.¹³ It defies common sense that a victim of domestic abuse should be exposed to life-threatening risk because they happen to be holding the wrong kind of AMPS radio. As discussed below, the Commission is not constrained to make its decisions based on such artificial classifications, but is instead empowered by Congress to take actions consistent with the public interest.

The fact that alarm radio users fall into the class of affected consumers “such as those that use emergency-only telephones and persons with hearing disabilities” is confirmed by the Wireless Telecommunications Bureau’s specific request that the nationwide cellular carriers provide information about the impact of the AMPS transition on alarm customers. In particular, in 2005 the Bureau provided instructions to the nationwide carriers for filing their AMPS transition reports as mandated in the *AMPS Sunset Order*.¹⁴ The carriers were instructed that 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

¹² Indeed, analog alarm radios can save lives when traditional emergency-only radios would not succeed. Such alarm radios can report fires and carbon monoxide poisoning cases that occur when the consumer may be sleeping or overcome by fumes.

¹³ AT&T Opposition at 13-14.

tracking *and alarm systems*.”¹⁵ On January 22, 2007, the Bureau issued a Public Notice providing instructions for the next AMPS transition report.¹⁶ This Public Notice instructs each nationwide carrier to provide a detailed accounting of current AMPS usage on its network, including “alarm monitoring systems using the provider’s AMPS network . . .”¹⁷ The Bureau is charged with implementing the AMPS transition, and played a key role in formulating the AMPS sunset scheme that was ultimately adopted by the Commission. The AT&T Opposition argues (at p. 7) that the Bureau’s inquiry into analog alarm usage goes beyond the scope of considerations allowed by the Commission’s ruling in the *AMPS Sunset Order*. However, as shown above, the Commission’s concerns about analog users that would be affected by the AMPS sunset are not as narrow as argued by the cellular industry. Instead, the Commission designed a transition period that it assumed would be sufficient to take care of the needs of all such users. Thus, the Bureau’s inquiries about the impact on alarm usage are appropriate, and should be factored into the Commission’s decision as to whether the AMPS sunset should be extended.

The Joint Comments and AT&T Opposition both argue that the Petition must be denied because “the analog sunset was designed to benefit only the users of mobile

¹⁴ See Public Notice, “Wireless Telecommunications Bureau Reminds Cellular Licensees Of Analog Reporting Requirement,” Mimeo DA 05-3015, released November 30, 2005 (the “November 30, 2005 Public Notice”).

¹⁵ See November 30, 2005 Public Notice at p. 3 (*Emphasis added*).

¹⁶ See Public Notice, “Wireless Telecommunications Bureau Announces Cellular Advanced Mobile Phone Service Report and Filing Requirements”, Mimeo DA 07-131, released January 22, 2007.

¹⁷ *Id.* at p. 3.

telephones, not other users of the analog network.”¹⁸ The basis for this claim is the wording of Rule Section 22.901(b), which states in pertinent part as follows:

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); or, the corresponding portions, applicable to mobile stations, of whichever of the predecessor standard documents was in effect at the time of the manufacture of the telephone . . .
- (2) Provide AMPS, upon request, to subscribers and roamers using such cellular telephones while such subscribers are located in any portion of the cellular system’s CGSA where facilities have been constructed and service to subscribers has commenced. See also §20.12 of this Chapter. Cellular licensees must allot sufficient system resources such that the quality of AMPS provided, in terms of geographic coverage and traffic capacity, is fully adequate to satisfy the concurrent need for AMPS availability.

However, nothing in the wording of Section 22.901(b) states that the analog users protected by the AMPS transition must use their radios for mobile service. Instead, this rule section merely instructs the cellular carrier to maintain a mobile capability. This requirement makes sense inasmuch as mobile cellular service is by far the more complex function of cellular systems, since it requires high-speed signal hand-off between cell sites. By requiring cellular carriers to maintain the mobility configuration of their systems, the Commission ensured that carriers would not try to satisfy the AMPS transition by stripping their analog system down to a simple point-to-multipoint fixed operation. Such configuration would be useless to mobile emergency-only phone users and persons with hearing disabilities trying to use their cell phones. Thus, Section

¹⁸ AT&T Opposition at 9; *see also* Joint Comments at 8-10.

22.901(b) prescribes a technical format, not a mode of use for consumers. Instead, this technical requirement must be read in conjunction with Rule Section 22.901(a), which makes it clear that fixed and mobile services provided over a cellular system “are considered to be co-primary services.” If the Commission intended that only mobile services were to be provided during the AMPS transition, it would have revised Section 22.901(a) accordingly. Instead, Section 22.901(b) instructs cellular carriers to “allot sufficient system resources such that the quality of AMPS provided, in terms of geographic coverage and traffic capacity, is fully adequate *to satisfy the concurrent need for AMPS availability.*” This rule does not limit the “concurrent need for AMPS availability” to mobile use. Otherwise, the cellular carriers would have the right to disable service to emergency-only users and hearing disabled persons that utilize their cellular service in a fixed mode.

In this regard, the Joint Comments argue (at p. 9) that, because analog alarm radios are fixed, “one-way” devices, “grant of the petition would not ensure that Petitioners continue receiving fixed services from cellular carriers.” First, Petitioners have a reasonable expectation that, so long as a cellular carrier maintains the present level of analog service in operation with no further degradation of any channels or towers, alarm companies can implement the analog transition in the manner requested. Thus, in meeting its obligation to maintain the AMPS capability for all analog users as would be required by an extension of the sunset rule, a cellular carrier should be continuing to operate the network elements that would allow analog alarm radios to continue functioning. Petitioners have verified this expectation with Honeywell, one of the largest manufacturers.

Second, the analog alarm devices are actually two-way radios. AICC did indeed indicate at page 10 of its February Comments that analog alarm transmitters “are generally one-way devices – they send alarm signals only”. However, this referred to the limited utilization of the current generation of analog radios in sending substantive communications, versus the potential use of digital replacement radios that certain manufacturers envision. It was not describing the operation of the radio for purposes of Rule Section 22.901. The very next sentence in the Comments stated: “GSM radios, on the other hand, can take data back into the protected premises, and can download information at those premises.” Thus, the context of AICC’s statement was the desire of the manufacturers to devote the effort necessary to make the GSM replacement radios vastly more capable than the analog units, and able to actually perform complex functions on the alarm panel remotely. Nonetheless, the AMPS alarm radios in use today are capable of providing, and do provide, *two-way* communications. Messages transmitted by the alarm control panel are positively acknowledged back to the alarm radio by the alarm receiver at the central station. In addition, there is a limited return communications capability beyond mere acknowledgement. Most using this feature on analog radios deploy it for a remote smoke detector reset, or to disable the panel if necessary. The alarm industry has a large population of two types of AMP radios, those that send communications over the analog cellular control channel, and those that use the actual AMPS voice channels.

Moreover, Honeywell, has indicated for Petitioners that its AMPS alarm radios are compliant with ANSI TIA/EIA-553-A-1999. Therefore, analog alarm operations are two-way devices.¹⁹

The Joint Comments and AT&T Opposition also claim “Commission precedent expressly confirms that cellular licensees are not required to provide analog service to fixed devices such as those used by the alarm industry.” The basis for this claim is the statement in the *AMPS Sunset Order* that “callboxes are not mobile devices by definition, and thus service to such equipment is not covered by the analog requirement.”²⁰ While this language does indeed appear in the *AMPS Sunset Order*, it is respectfully submitted that this discussion constitutes non-binding *dicta*. The above quoted language is not the operative language used by the Commission to address the issues raised by the callbox operators, but instead is a passing comment in a footnote: “*While we note that callboxes are not mobile devices by definition, and thus service to such equipment is not covered by the analog requirement, we anticipate that the sunset period adopted in this proceeding will nonetheless provide such agencies with a reasonable length of time to transition their callboxes to digital technology if necessary.*”²¹ Thus, the Commission’s footnote does not appear to give careful consideration to the merits of fixed service under the AMPS sunset, but instead merely makes a non-dispositive observation on its way to sweeping the callbox operators under the same “you will be given five years to transition” umbrella that the Commission applied to other users affected by the AMPS transition. *Dicta* has

¹⁹ AICC notes that in any event, Rule Section 22.901(a) contemplates the provision of one-way services (e.g., paging) over cellular networks.

²⁰ *AMPS Sunset Order*, 17 FCC Red. at 18416 n. 82.

²¹ *Id.* (*Emphasis added*).

been defined as statements in a ruling “that could have been deleted without seriously impairing the analytical foundations of the holding that, being peripheral, may not have received the full and careful [consideration] of the court that uttered [them].”²² The FCC follows the general principle that statements deemed to be *dicta* are non-binding. *See e.g., Calling Party Pays Service Offering in the Commercial Mobile Radio Services, Declaratory Ruling and Notice of Proposed Rule Making*, WT Docket No. 97-207, 14 FCC Rcd 10861, 16 CR 659, 64 FR 38313 (1999) at para. 19. (Commission rejects its own statements from an earlier case characterizing CPP as a CMRS billing practice, since this finding “was not essential to the decision and therefore dicta.”).

The comment about fixed service could have been deleted in footnote 82 of the *AMPS Sunset Order*, since the Commission ultimately gave the callbox operators the same five-year transition as everyone else. Indeed, if the Commission had meant to specifically rule that fixed devices were not entitled to analog service, it would not have stated that “the sunset period adopted in this proceeding will nonetheless provide such agencies with a reasonable length of time to transition their callboxes to digital technology”. For under the interpretation advanced by the Joint Comments, the cellular carrier could have shut down the callbox operations the day that the *AMPS Sunset Order* became effective.

Furthermore, the statement contained in footnote 82 of the *AMPS Sunset Order* is *dicta* because it fails to set forth a consistent reading of Rule Sections 22.901(a) and (b).

²² *Patel v. Sun Co.*, 141 F.3d 447, 462 (3rd Cir. 1998) (quoting *Sarnoff v. American Home Prods. Corp.*, 798 F.2d 1075, 1084 (7th Cir.1986). The concept that *dicta* are non-binding has been applied to Federal administrative agencies. *See Zelleka Getahun v. Dupont Pharmaceuticals Company*, 8 OCAHO 1029, at 422-23 (1999).

As noted above, Rule Section 22.901(a) classifies mobile and fixed cellular service as co-primary, which means that the provision of fixed service is within the scope of, and to be provided under the AMPS technical specifications set forth in, Rule Section 22.901(b). It seems clear that the two regulations must be read *in pari materia*, because to do otherwise would produce obviously illogical results. For example, under the cellular industry's interpretation of the rule, a cellular licensee would be required to provide analog service to a car-mounted unit, but not to the exact same unit if it were set up as a fixed station in a customer's home. Clearly, the regulation acknowledges that the customer has a need for the analog service, regardless of whether the unit is vehicle-mounted or, alternatively, is set up as a co-primary fixed station installed in the customer's home. The intent of the regulation is that, in either scenario, both the subscriber unit and the cellular system network equipment be mutually compatible so that customer can receive service.

However, to the extent that the wording of Section 22.901(b) and the *dicta* in footnote 82 create any uncertainty, the instant rule making proceeding affords the Commission the opportunity to remedy such uncertainty by making it clear that cellular carriers must maintain AMPS service to existing fixed users, including analog alarm radios. Doing so will not create a need to reconfigure their cellular system, since they are serving such users now. As Petitioners demonstrated in their January 19, 2007 Comments in this proceeding (at pp. 18-20), the Commission has ample authority under the Communications Act of 1934, as amended ("the Act") and Rule Section 1.3 to adjust the AMPS Sunset rule as necessary to protect the public interest. The *AMPS Sunset Order* makes it clear that the Commission fashioned the five-year transition period as an

attempt to ensure that existing AMPS users depending on the analog system for safety-related communications (including, in the end, telematics providers, callbox operators, and others) would have a smooth transition to digital alternatives. The Commission also made it abundantly clear that the transition process would be subject to fine-tuning, including possible extensions. While the goals of the AMPS rule may have originally been mobility and roaming, the goal of the transition rule is a “soft landing” for existing analog users, which include both fixed and mobile users. As the Commission observed in the *AMPS Reconsideration Order*, “there is no language in Section 11 [of the Act] which suggests that the Commission is limited to the original purpose behind a rule in determining whether or not it should be retained. Indeed, it is unreasonable to interpret Section 11 as requiring that a rule must be repealed if it has accomplished its original goals but yet remains necessary with respect to another purpose.” *Id. at para. 9*.

Extending the transition period for a finite time, and clarifying its applicability to fixed alarm radios, would ensure that the public interest and safety purposes of the transition requirement are met.

III. The Alarm Industry Exercised Diligence in Pursuing the AMPS Transition.

Contrary to the claims of certain commenters, the alarm industry has exercised reasonable diligence in pursuing the AMPS transition. As noted in the Petition at pp. 11-12, many alarm service providers were slow to learn about the impact of the of AMPS sunset, especially since they did not deal directly with cellular companies, but instead received service through resellers. Many alarm providers received no communications from cellular carriers or resellers about this issue. This fact hindered industry efforts to organize a response to the AMPS issue.

The Joint Comments (at p. 15) state that AICC “claims ignorance of the analog sunset proceeding and implies that the first notice of the analog sunset to the alarm industry came from Verizon Wireless in the summer of 2005.” This statement is not an entirely accurate recounting of AICC’s representations. AICC indicated that the *impact* of the AMPS transition on alarm radios was not readily apparent. Petition at p. 12. AICC also indicated that it had knowledge of only one instance in which one of its members had been directly contacted by a cellular carrier about the AMPS sunset, during Summer 2005. However, the same document reported that in 2004, the year after the AMPS order became effective, ADT and a major manufacturer were already working on an equipment replacement plan with a target date of 2005. Petition at p. 12. While the Joint Comments (at p. 15) make the cursory statement that “Cellular carriers have been advising the alarm industry of the sunset date since at least 2003”, no details are provided. Larger alarm providers like ADT engaged in communications with cellular carriers upon learning of the impact of the AMPS transition. However, many alarm service providers (especially smaller companies) remained in the dark about the impact of the AMPS issue, and received no communications from the cellular industry on this matter, despite the Commission’s directive to cellular carriers to educate their AMPS customers.²³ And as discussed below, confusion over what constitutes “digital” cellular service versus analog service has added to the importance of open communications from the cellular carrier.

²³ See, e.g., AMPS Sunset Order, para. 31. ACS Wireless, Inc. argues in its comments (at p. 4) that cellular carriers indirectly notified alarm customers that analog was on its way out by providing broad notice that they were upgrading their networks to accommodate location-capable handsets. However, this E911 upgrade did not prevent the continued provision of AMPS, so it is not clear how alarm providers were put on notice by this development. ACS also indicates that the Petitioners ignored “multiple carrier reports filed publicly regarding the analog shutoff.” *Id.* at 3. If ACS is referring to the transition reports required

The Joint Comments (at p. 15) make the sweeping statement that in 2001, “the alarm industry knew that it could not rely on the continuation of analog service and would need to transition to digital equipment.” The support for this claim is a citation to an article in RCR Wireless News dated March 19, 2001, when the AMPS sunset was merely a proposal. However, RCR Wireless News does not represent the alarm industry; and this publication is not geared to the alarm industry, but rather to wireless operators such as cellular carriers. Therefore, this publication is not widely read by alarm service providers. It should be noted that the article cited by the Joint Comments included the observation that “many alarm companies are not even aware that carriers could soon be allowed to switch those frequencies to digital.” One could wonder if reading this statement in a CMRS-oriented trade publication should have spurred cellular carriers to more vigorously pursue the customer outreach efforts prescribed by the Commission.²⁴

While many alarm service providers did not immediately learn about the impact of the AMPS sunset, as a practical matter, these providers could do little until they had replacement equipment available to them. One provider that learned about the AMPS impact early on was ADT, the largest alarm company. ADT issued an RFP in 2002 (i.e., the same year when the Analog Sunset Order was released) seeking a manufacturer proposal to provide digital replacement radios for ADT’s analog alarm customers. See Attachment A hereto. Following up on this initiative, ADT and a major manufacturer

of the nationwide cellular carriers, the first such reports were not required to be filed until February 2006. AICC filed comments within the reporting deadline, raising the alarm industry’s AMPS related issues.

²⁴ The Joint Comments (at pp. 15-16) cite to a website notice by Vector Security and a bulletin by NBFSA about the AMPS issue, as indications that the alarm industry “has had ample notice of the analog sunset.” However, the NBFSA bulletin was not posted until April 2005, and the Vector notice was not posted until December 2006. Thus, these announcements hardly constitute proof that the alarm industry “had ample notice” but instead reflect the industry’s reaction as equipment development finally started to

met with AT&T Wireless in 2003 and 2004 seeking its guidance on the implementation of AMPS alternatives. As described in the Petition, ADT then received early information from Honeywell, a leading supplier of alarm communication products that their intention was to provide a GSM-based digital replacement radio in the Fall 2005 timeframe. However, due to the complexity of the development effort, coupled with the necessary carrier approvals and connectivity implementation, the solution came to market later than planned.

In early 2005, ADT became concerned that the above-mentioned commitment would not yield a functional product on schedule. Therefore, ADT engaged with Verizon, Sprint and Nextel to explore alternatives. ADT decided to investigate the possibility of a Nextel-compatible product. ADT requested and received development kits from Nextel. During this analysis period, Sprint acquired Nextel, and ADT was informed that the longevity of the iDEN network was in question and that it might be shutdown in the future. Therefore, ADT suspended all activities with respect to Nextel/iDEN and shifted efforts to other options.

Sprint's CDMA network was reviewed but the lack of 850 MHz coverage in major areas already served with 850 MHz caused concerns about coverage and the ability to provide reliable quality service. ADT also had discussions with Verizon Wireless, but was not able to get a commitment from a manufacturer to pursue that avenue. In the fourth quarter of 2005, ADT learned that several GSM products were being developed and engaged in discussions with Cingular (who had acquired AT&T Wireless) for

move forward. As described in the Petition, without replacement equipment, there was little that alarm providers could do for their analog customers.

permission and terms to use its network. Cingular indicated that, while the GSM wireless network could support a large number of alarm radios, its land based network for alarm activation and traffic had some limitations. In addition, the need for activation by installers in less than 24 hours required new procedures and new network hardware by many parties, since a very fast activation time is required for alarm installations (because the installer must verify successful integration with the alarm panel while the installer is in the home or business). If this expedited activation cannot be delivered, two truck rolls to every location would be required, doubling the time and resources needed to complete the AMPS to digital conversion.²⁵

Therefore, despite best efforts, products for a large scale AMPS radio replacement were not available in 2005. ADT was able to begin using Telular product in 2006. The Honeywell equipment became available to the general market in October 2006 and the DSC product has just now entered the market with product limitations by Motorola described below.

Thus, the largest alarm service provider exercised due diligence in pursuing the AMPS transition once this obligation was decreed, including a review of other technologies such as iDEN, CDMA and Mobitex. Other alarm service providers followed suit once they became aware of the impact of AMPS on their operations. Likewise, the major alarm manufacturers exercised such diligence, as evidenced by the above described alarm industry meetings in 2003 and 2004 with AT&T Wireless. Moreover, once the AMPS equipment availability issue came to the attention of AICC

²⁵ As indicated in AICC's January 19, 2007 Comments, certain alarm companies had also tried 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.

and member organization NBFAA, these organizations began educating their membership to the extent possible, starting in 2004. See January 19, 2007 Comments at p. 12-13. However, until replacement equipment was available, there was little progress that could be made.

The AT&T Opposition (at p. 10) claims that the Petition offers no explanation as to why digital alarm radios are just becoming available. However, as discussed in the Petition at p. 12, the alarm manufacturers were thrust into a position of developing digital replacement equipment on a short time frame. The alarm manufacturers did not create this predicament. The cellular industry had engaged in the development of digital cell phones for several years prior to the issuance of the *AMPS Sunset Order*, and the order reflects an expectation that most analog-dependant consumers could be transitioned to new digital cell phones. However, as shown in Attachment A to the Petition, the cellular radios used to transmit alarm signals are specialized fixed radios that had to be developed by niche manufacturers such as Honeywell and Telular, and must be compatible with the particular alarm panels in which they are installed. These manufacturers have exercised due diligence in developing the replacement radios as quickly as possible. They had no incentive to delay such development, since the AMPS sunset is forcing alarm providers to purchase a million replacement digital radios, along with the digital radios needed for new installations.

Moreover, AT&T has first hand information as to other obstacles that have hampered the widespread deployment of replacement alarm radios. AT&T Wireless and Cingular (i.e. the new AT&T) have been working directly with large alarm service companies such as ADT and alarm radio manufacturers to address deployment issues for