

May 14,2007

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street SW
Washington, D.C. 20554

Re: **WRITTEN EX PARTE PRESENTATION**
RM No. 11355
WT Docket No. 01-108

Dear Ms. Dortch:

ALLTEL Corporation, AT&T Inc., on behalf of its affiliate, AT&T Mobility LLC (f/k/a Cingular Wireless LLC), Dobson Communications Corporation, and Verizon Wireless (“Cellular Licensees”), by their attorneys, hereby respond to recent ex parte presentations by the ADT Security Services, Inc. (“ADT”) and the Alarm Industry Communications Committee (“AICC”) (hereinafter collectively referred to as “Alarm Industry”).¹ The Alarm Industry continues to ignore fundamental legal and factual flaws in its petition for rulemaking and related advocacy. Given these significant deficiencies, rather than initiate a rulemaking to consider whether to extend the February 2008 sunset of the analog cellular requirement,² the FCC should dismiss or deny the petition on an expedited basis. This is the only action that will lead to accomplishment of the job at hand – namely, the need for the Alarm Industry to solve the problem it has created, by spending the next nine months focusing on *its* customers by completing any necessary digital

¹ See, e.g., Alarm Industry Ex Parte Notice, RM-11355 at 1 (Apr. 27, 2007); Alarm Industry Ex Parte Notice, RM-11355 (May 2,2007).

² These presentations appear to focus on extending the analog sunset date now, rather than grant the Alarm Industry’s pending petition to initiate a rulemaking. The Commission has previously indicated, however, that it would only extend the analog sunset after initiating a proceeding to fully consider the issue. See *Year 2000 Biennial Review – Amendment of Part 22 of the Commission’s Rules to Modify or Eliminate Outdated Rules Affecting the Cellular Radiotelephone Service and other Commercial Mobile Radio Services*, WT Docket No. 01-108, Report and Order, 17 FCC Rcd 18401, ¶32 (2002) (“Analog Sunset Order”); *Order on Reconsideration*, 19 FCC Rcd. 3239, n.73 (2004) (noting that the Commission “has the option to initiate a proceeding to reinstate the analog requirement”). Consistent therewith, the Alarm Industry filed a Petition for Rulemaking which the Commission placed on public notice. *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) (“Public Notice”).

radio installations. Commencement of a rulemaking will only further encourage the Alarm Industry to delay the replacement of analog cellular equipment.

The Alarm Industry has failed to address several very basic issues in this proceeding. First, the relief sought by the Alarm Industry — an extension of the analog sunset date — would not solve their problems. As repeatedly demonstrated throughout this proceeding, the analog requirement does not apply to the alarm industry:

- Rule Section 22.901(b) requires cellular carriers to offer two-way *mobile* voice AMPS to *cellular telephones*;
- Commission has already determined that the analog rule does not apply to fixed devices, such as those utilized by the alarm industry, even if they have a public safety component.³

Even if the alarm industry were covered by the analog rule, cellular carriers are not required to provide fixed service, it is *permissive* option.⁴

Second, an extension of the analog cellular sunset date is unnecessary because the replacement of analog equipment was and remains within the control of the alarm industry and can be accomplished by the original sunset date — February 18, 2008. As of January 2007, Petitioners admitted that they have been 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*.⁵ This provisioning rate also would allow the alarm industry to replace every analog radio used as a secondary link at government/critical infrastructure facilities.⁶ Rather than expeditiously replace these radios, the Alarm Industry seeks to postpone its obligation by extending the sunset date. It is the alarm industry's continuing failure to utilize the existing supply of readily available digital cellular radios to replace existing analog equipment — not any action or inaction by the cellular industry — that is jeopardizing their ability to complete the transition to digital before the sunset date.

Third, even if there were *NO* digital cellular radios available, there still would be no need for an extension of the analog sunset. There are numerous non-cellular replacement options. The Alarm Industry tries to dismiss these options as “unsatisfactory,” but numerous options do exist. In this regard, Alarm.com has stated for the record that:

Alarm.com radios do not transmit alarm signals via the AMPS [analog] network and . . . the first Alarm.com wireless radios,

³ See *Analog Sunset Order*, 17 FCC Rcd 18416 n.82.

⁴ 47 C.F.R. §22.901(a).

⁵ AICC has stated that there are more than 800,000 analog radios utilized as back-up communications paths, but provide no data to support this assumption. See Comments of the Alarm Industry Communications Committee, RM No. 11355 at 3 (filed Jan. 19, 2007) (“AICC Comments”). In contrast, they note that less than 40,000 customers utilize analog radios as back-up for insurance purposes. *Id.* at 6-7.

⁶ AICC estimates that there are approximately 15,223 such links. *Id.* at 9.

which became available in early 2004 used the ReFlex 25 and ReFlex 50 paging networks.⁷

Fourth, the Alarm Industry claims that wireless alarm capabilities are essential to public safety and states that there are 26 million central station alarms! Yet, the Alarm Industry states that there are only “approximately” 151,700 analog radios in use as a primary alarm communications path with another estimated 15,223 wireless links used as secondary communications at government and critical infrastructure industries — which constitute slightly more than one half of 1 percent (0.5%) of the 26 million alarms. Either wireless capabilities are not as critical as the Alarm Industry claims, or the bulk of wireless alarms use non-cellular transmissions.

Fifth, the Alarm Industry claims that it “acted with due diligence in acting on the AMPS sunset order.”⁹ Nothing in the record supports the Alarm Industry’s statement in this regard. It is the Alarm Industry that had the responsibility over the last five years to ensure that equipment would be made available for *its customers*. The issuance of a single RFP by ADT in 2002 is not sufficient.

The Commission has consistently stated that equipment unavailability is a basis for relief only if the party seeking relief can demonstrate and document that it aggressively sought equipment from vendors in a timely manner.” In other words, the requesting party must demonstrate that the equipment unavailability is due to factors beyond its control.⁶ The Alarm Industry has failed to make such a showing. In particular, there is no evidence that:

- Multiple alarm companies (not just ADT) attempted to obtain replacement cellular equipment;
- The Alarm Industry provided substantial incentives for the manufacture of replacement cellular equipment. For example, buyer premiums and clear notice that analog equipment would not be purchased after a date certain;
- Analog cellular radios could not have been promptly replaced with paging equipment or other alternative wireless technologies, given the reliance of other

⁷ Alarm.com Ex Parte Notice, RM-11355 (Feb. 23,2007)

⁸ Alarm Industry Petition for Rulemaking, RM-11355 at 2 (Nov. 30,2006).

⁹ See, e.g., Alarm Industry Ex Parte Notice, RM-11355 at 1 (Apr. 27,2007).

¹⁰ See *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, *Fourth Memorandum Opinion and Order*, 15 FCC Rcd 17442,17456 (2000); *Order*, 18 FCC Rcd 21838,21843-44 (2003).

¹¹ See *Leap Wireless*, 16 FCC Rcd 19573, 19575 (WTB, CWD 2001) (stating that an extension of a construction deadline will be granted to a licensee if the failure to complete construction is due to “causes beyond its control”); *Monet Mobile*, 17 FCC Rcd 6452 (WTB, CWD 2002) (stating that “an extension is supported in this case by the diligence that Monet has demonstrated prior to the acquisition of the licenses . . . Monet states that it began working with equipment vendors to develop the advanced, data-only system before it was authorized to operate the licenses”).

alarm companies on non-cellular frequencies to provide wireless connectivity;
and

- The Alarm Industry could not have replaced analog cellular radios given their admission in January 2007 that they install 19,000 digital radios on a monthly basis.

The Alarm Industry's extension request is veiled as a public safety need, but in reality is simply an attempt to reduce operating expenses by deferring the need to replace analog equipment by an additional two years. As the record in this proceeding makes clear, replacement digital equipment has been available for some time and alternative wireless options have been available since the analog sunset was announced.¹² Rather than act expeditiously nearly five years ago, the Alarm Industry now asks the FCC to require cellular carriers to maintain expensive, antiquated analog networks for an additional two years for the sole benefit of the alarm industry. The cellular industry should not be forced, unlike other wireless service providers with whom they compete, to effectively subsidize alarm service providers that have failed to plan for the transition to newer, more efficient technologies.

As recently noted by two dozen bipartisan members of the U.S. House of Representatives, the Commission should not extend the analog sunset date because:

- "continuation of this requirement would undermine spectral efficiency and impose additional costs, especially on rural wireless carriers;"¹³
- "the continued provision of analog service prevents wireless carriers from using that spectrum more efficiently and effectively for wireless broadband services;"¹⁴
- "a more complete transition to digital service will pay dividends for public safety . . . Digital phones give consumers access to state-of-the-art E9 11 location capabilities, while old analog phones do not. Digital handsets also can offer customers better voice quality, longer battery life, and GPS-navigation capabilities;"¹⁵ and
- "the existing transition has provided an adequate amount of time to prepare for the end of analog service."¹⁶

¹² See, e.g., AICC Comments at 3 (stating that the alarm industry is provisioning digital transmitters at a rate of 19,000 per month); Alarm.com Ex Parte Notice, RM-11355 (Feb. 23, 2007) (noting that they do not use cellular frequencies, but instead have been relying on paging since 2004).

¹³ Letter from Congressman Jay Inslee, *et. al* to Chairman Kevin J. Martin, Federal Communications Commission at 1 (May 4,2007).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* at 2.

Finally, attached is a supplement that responds to many of the misleading statements contained in the Alarm Industry's April 27th ex parte.

If you have any questions concerning this notice, please contact the undersigned.

Respectfully submitted,

/s/Kathryn A. Zachem
Kathryn A. Zachem

Cc (via email):

Erika Olsen
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Cathleen Massey
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SETTING THE RECORD STRAIGHT

1. **MYTH: An extension of the analog sunset date will preserve the ability of the alarm industry to utilize analog cellular alarm equipment**

- **FACT:** The analog requirement does not apply to the alarm industry:
 - Rule Section 22.901(b) requires cellular carriers to offer two-way *mobile* voice AMPS to *cellular telephones*;
 - Commission has already determined that the analog rule does not apply to fixed devices, such as those utilized by the alarm industry, even if they have a public safety component.¹
- **FACT:** Even if the alarm industry were covered by the analog rule, cellular carriers are not required to provide fixed service.²

2. **MYTH: An extension of the analog sunset is necessary because replacement equipment is unavailable and the Alarm Industry acted with due diligence to replace cellular analog equipment**

- **FACT:** Non-cellular replacement options have always been available. Alarm.com stated that it provides wireless alarm capabilities, but does not rely on cellular service. Instead, Alarm.com has provided wireless options via paging since early 2004.³
- **FACT:** The Alarm Industry admitted in January 2007 that it was capable of installing 19,000 digital radios per month. Assuming no increase in manufacturer production, this equates to 247,000 digital radios available by the sunset date — *nearly 100,000 more than necessary to replace every analog radio used as a primary link by an alarm customer.*⁴ This provisioning rate also would allow the alarm industry to replace every analog radio used as a secondary link at government/critical infrastructure facilities.⁵
- **FACT:** The Alarm Industry states that there are 26 million central station alarms,⁶ yet demonstrate that there are “approximately” 151,700 analog radios in use as a primary

¹ See *Analog Sunset Order*, 17 FCC Rcd 18401, 18416 n.82 (2002).

² 47 C.F.R. §22.901(a).

³ Alarm.com Ex Parte Notice, RM-11355 (Feb. 23, 2007)

⁴ See AICC Comments at 3, 9 .

⁵ Petitioners estimate that there are approximately 15,223 such links. *Id.* at 9.

⁶ Alarm Industry Petition for Rulemaking, RM-11355 at 2 (Nov. 30, 2006).

alarm communications path with another estimated 15,223 wireless links used as secondary communications at government and critical infrastructure industries — less than 1 percent of the 26 million alarms. Either wireless capabilities are not as critical as the Alarm Industry claims, or the bulk of wireless alarms use non-cellular transmissions.

- **FACT:** The issuance of a single RFP by ADT in 2002 hardly demonstrates due diligence by the Alarm Industry, especially given the availability of non-cellular replacement options.
- **FACT:** Two of the leading alarm companies — ADT and Telular — are affiliated with leading manufacturers of alarms or other electronics.⁷ Thus, they certainly were not “powerless” to ensure the availability of replacement equipment.

3. **MYTH: Alarm Industry implies that only two rural parties opposed an extension of the sunset**

- **FACT:** The following 18 rural companies and organizations opposed an extension:
 - Advantage Cellular Systems, Inc.⁸
 - Alaska Communications Systems;⁹
 - Artic Slope Telephone Association Cooperative, Inc.;¹⁰
 - Bluegrass Cellular, Inc.;¹¹
 - Carolina West Wireless;¹²
 - Cellular One of East Central Illinois;¹³
 - CGKC&H No. 2 Rural Cellular Limited Partnership;¹⁴
 - CT Cube, L.P. d/b/a West Central Wireless;¹⁵

⁷ ADT is a subsidiary of Tyco International, Ltd., a multi-national group of manufacturing and service companies, active in security, telecommunications and electronics. See <http://www.tyco.com>. Telular is both a manufacturer of alarm equipment and “the premiere provider of wireless security systems and monitoring.” See <http://www.telular.com>.

⁸ Comments, RM-11355 (Jan. 19,2007).

⁹ Ex Parte Presentation, RM-11355 (Apr. 30,2007).

¹⁰ Comments, RM-11355 (Jan. 19,2007).

¹¹ Ex Parte Presentation, RM-11355 (Apr. 30,2007).

¹² Ex Parte Presentation, RM-11355 (Apr. 30,2007).

¹³ Ex Parte Presentation, RM-11355 (Apr. 30,2007).

¹⁴ Comments, RM-11355 (Jan. 19,2007).

¹⁵ Comments, RM-11355 (Jan. 19,2007).

- Iowa RSA No. 2 Limited Partnership, d/b/a Lyrix Wireless;¹⁶
 - Leaco Rural Telephone Cooperative, Inc.;¹⁷
 - Mid-Tex Cellular Ltd;¹⁸
 - Missouri RSA#5 Partnership, d/b/a Chariton Valley Wireless Services;¹⁹
 - Mohave Wireless;²⁰
 - National Telecommunications Cooperative Association;²¹
 - Northwest Missouri Cellular, L.P.;²²
 - Panhandle Telecommunications Systems, Inc.;²³
 - Pioneer/Enid Cellular;²⁴ and
 - RSA 1 Limited Partnership d/b/a Cellular 29 Plus.²⁵
- **FACT:** Two dozen members of the U.S. House of Representatives urged the Commission NOT to extend the analog sunset date because of the adverse impact on rural carriers and consumers.²⁶

4. MYTH: Analog service must be maintained to serve rural areas

- **FACT:** The record demonstrates that digital and analog coverage is virtually identical;²⁷
- **FACT:** Analog phones do not provide superior coverage to digital alternatives. There are dual mode bag phones

¹⁶ Comments, RM-11355 (Jan. 19,2007).

¹⁷ Comments, RM-11355 (Jan. 19,2007).

¹⁸ Comments, RM-11355 (Jan. 19,2007).

¹⁹ Comments, RM-11355 (Jan. 19,2007).

²⁰ Ex Parte Presentation, RM-11355 (Apr. 30,2007).

²¹ NTCA Reply Comments, RM-11355 (Feb. 6,2007).

²² Comments, RM-11355 (Jan. 19,2007).

²³ Comments, RM-11355 (Jan. 19,2007).

²⁴ Ex Parte Presentation, RM-11355 (Apr. 30,2007).

²⁵ Comments, RM-11355 (Jan. 19,2007).

²⁶ Letter from Congressman Jay Inslee, *et. al* to Chairman Kevin J. Martin, Federal Communications Commission (May 4, 2007).

²⁷ See USCC Ex Parte, RM-11355 (Mar. 8,2007); Cingular Wireless LLC, Second Analog Sunset Report, at 14 (Feb . 20,2007); Verizon Wireless, Analog Sunset Report, at 7 (March 2, 2007).

available²⁸ and the effective range of digital handsets is superior to analog bag phones in many instances. For example, CDMA handsets have a 6 to 10 dB advantage over higher-powered analog units (13 dB based on signal to noise ratio alone), which means that they are capable of operating at much greater distances from their base stations. An analog handset, for example, is limited to about a fifteen-mile range, while a CDMA handset operating at 5 dB lower power has a range of up to 26.8 miles.

5. MYTH: An extension is necessary because motorists will benefit

- **FACT:** The telematics industry has opposed an extension of the analog sunset date. The ATX Group, the second-largest provider of telematics technology and services for the automotive industry, has specifically stated:

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. . . . 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.²⁹

6. MYTH: An extension is necessary because customer conversion is difficult

- **FACT:** No evidence that the Alarm Industry has provided customers with incentives to convert to digital radios or taken aggressive steps to educate them regarding the impact of the analog sunset.

²⁸ See Alltel Communications, Inc., Voluntary Report at 2 (Mar. 19,2007); AT&T Mobility LLC Ex Parte, RM-11355 at 1 (May 11,2007).

²⁹ Comments of the ATX Group, RM No. 11355, at 2-3 (filed Jan. 19,2007) (citation omitted).