

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

In the Matter of)
Petition of ACS Wireless, Inc. for Limited Waiver) File No. 0002764176
of Analog Service Rule)

ORDER

Adopted: December 18, 2006

Released: December 18, 2006

By the Acting Chief, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. In this Order, we address the request of ACS Wireless, Inc. (ACSW),¹ a cellular radiotelephone service (cellular) provider in Alaska,² for a limited waiver of Section 22.901(b) of the Commission’s Rules,³ which requires cellular licensees to provide analog service to subscribers and roamers whose mobile equipment conforms to the Advanced Mobile Phone Service (AMPS)⁴ standard until February 18, 2008 (the analog sunset date).⁵ Specifically, based upon the unique circumstances presented and the fact that ACSW’s request is limited to seven remote sites,⁶ we grant ACSW a waiver of the analog service requirement at these sites, subject to the condition that ACSW provide, until February 18, 2008, free hearing aid-compatible and emergency-only digital handsets to consumers residing in the affected service areas and who currently are reliant on analog hearing aid-compatible or emergency-only

1 See Petition of ACS Wireless for Limited Waiver of Analog Transition Rule for Certain New Remote CDMA Locations, filed March 10, 2006 (ACSW Petition or Petition of ACS Wireless, Inc. for Limited Waiver of Analog Service Rule).

2 ACSW’s network extends from Ketchikan in Southeast, to Barrow and Deadhorse on the North Slope, to Homer in Southcentral, Alaska, an area of approximately 325,000 square miles, the majority of it sparsely populated, with small villages and communities separated by hundreds of miles and, in many cases, inaccessible by road. Id. at 4.

3 See 47 C.F.R. § 22.901(b).

4 AMPS is one type of analog technology.

5 See Year 2000 Biennial Review – Amendment of Part 22 of the Commission’s Rules to Modify or Eliminate Outdated Rules Affecting the Cellular Radiotelephone Service and Other Commercial Mobile Radio Services, WT Docket No. 01-108, Report and Order, 17 FCC Rcd 18401 (2002) (AMPS Sunset Order). In order: “1) to enable subscribers of one cellular system to be able to use their existing terminal equipment (i.e. mobile handset) in a cellular market in a different part of the country (roaming); and 2) to facilitate competition by eliminating the need for cellular consumers to acquire different handset equipment in order to switch between the two competing carriers within the consumers’ home market ... all carriers were required to provide service exclusively in accordance with the then-existing compatibility standard for analog systems,” (emphasis added). Id. at 18405 ¶ 5.

6 The sites are located in Cape Spencer (inside the Glacier Bay National Park and Preserve in Southeast Alaska), Ratz Mountain (on North Central Prince of Wales Island), Hoonah (on the northeast shore of Chichkof Island), Gunnuk (located on Kupreanof Island), High Mountain (in the Misty Fjords National Monument area), Manley (inside the Tongass National Forest on Baranof Island), and Craig, Alaska.

equipment.

II. BACKGROUND

A. The Analog Service Requirement

2. Pursuant to its Year 2000 Biennial Review Proceeding, the Commission, in 2002, found that the requirement that all cellular licensees provide AMPS analog service had substantially achieved its original goals of ensuring that the public has access to seamless, nationwide cellular service, and low-cost, compatible mobile equipment, and concluded that it was therefore unnecessary to continue to require all cellular carriers to support analog service indefinitely in light of the competitive marketplace.⁷ The record in that proceeding, however, disclosed that persons with hearing disabilities and individuals who have analog phones exclusively for accessing 911 emergency services⁸ may not have affordable and readily accessible alternatives.⁹ In order to accommodate these two groups of users—those with hearing disabilities and those with 911-only phones—the Commission established a five-year sunset period, which ends on February 18, 2008, during which all cellular carriers must maintain analog service.¹⁰ As a general matter, the Commission established a five-year sunset of the AMPS requirement to provide industry time to transition these two groups to digital handsets, after which carriers would have the option of discontinuing the provision of AMPS service. At the beginning of the third and fourth years of the analog sunset period, *i.e.* February 2006 and February 2007, respectively, all cellular carriers offering nationwide service must file reports on the availability of hearing aid-compatible digital phones and 911-only digital phones.¹¹ If those reports show unsatisfactory progress in making hearing aid compatible and digital 911-only phones available, the Commission may consider initiating a proceeding to extend the sunset period or take appropriate enforcement action.¹²

⁷ See *AMPS Sunset Order*, 17 FCC Rcd at 18406 ¶ 8.

⁸ Emergency or 911-only users include (1) “unsubscribed” consumers of recycled phones that were previously, but are no longer, service-initialized by a wireless carrier, and have been reissued under some type of donor program, and (2) subscribers of newly manufactured 911-only phones that can only make 911 calls but are incapable of receiving any incoming calls.

⁹ See *AMPS Sunset Order*, 17 FCC Rcd at 18406 ¶ 8. Initially, persons with hearing disabilities relied on analog phones because most available digital phones caused interference to certain types of hearing aids and cochlear implants. *Id.* at 18416 ¶ 26. The Commission further observed in the *AMPS Sunset Order* that a primary reason for the growth of mobile telephony is that wireless phones can be used for emergency calls. Many consumers purchase phones that are only capable of making 911 calls because they cannot afford or do not want basic wireless service. *Id.* at 18414 ¶ 23.

¹⁰ In the *AMPS Sunset Order*, the Commission concluded that roaming and interoperability concerns advanced by entities such as small and regional carriers and telematics providers were not sufficient in themselves to justify an indefinite retention of the analog requirement because difficulties experienced by such entities derive from business decisions that are within the control of the individual provider. See *AMPS Sunset Order*, 17 FCC Rcd at 18410-18411 ¶¶ 14-16. However, although the Commission established a sunset period primarily to ensure continued wireless access for persons with hearing disabilities and 911-only consumers, the Commission nonetheless determined that the five-year transition period would be useful in mitigating any significant impacts that an immediate elimination of the analog requirement might cause. *Id.* at 18411 ¶ 17.

¹¹ See *AMPS Sunset Order*, 17 FCC Rcd at 18406, 18419 ¶¶ 8 and 31, respectively. Upon release of the *AMPS Sunset Order*, there were three nationwide cellular service operators, AT&T Wireless, Verizon Wireless, and Cingular Wireless, subject to the analog service requirement. With the subsequent merger of Cingular Wireless and AT&T Wireless, there are now two nationwide cellular service providers: Cingular Wireless and Verizon Wireless.

¹² See *AMPS Sunset Order*, 17 FCC Rcd at 18418 ¶ 29-31.

B. The ACSW Petition

3. ACSW states that it is upgrading its entire network to CDMA technology to comply with the Commission's E911 location capability requirements,¹³ and is seeking approval to discontinue AMPS service at seven extremely remote sites as part of that process.¹⁴ ACSW argues that a limited waiver of the analog requirement is warranted in light of the unique and unusual operating characteristics of these sites, six of which can only be reached by helicopter and therefore are difficult and costly to maintain and operate.¹⁵ ACSW states that each individual site presents unique factual circumstances justifying a waiver of the analog service rule.¹⁶ ACSW states that to perform maintenance, its technicians must first fly from Anchorage to southeast Alaska, and then charter a smaller aircraft to reach the sites—a process that can take several days.¹⁷ ACSW notes that five of the sites are on national park land or in undeveloped, unpopulated areas, and that only two serve populated areas.¹⁸

4. ACSW argues that requiring it to continue to provide analog service at the seven sites is not necessary to serve the underlying purpose of the analog service rule. ACSW claims the needs of its subscribers with hearing disabilities and those using 911-only handsets will be fully addressed even if it is permitted to discontinue analog service at the sites.¹⁹ ACSW states that hearing-impaired customers will be able to use ACSW's hearing aid-compatible (HAC) CDMA handsets to receive service at these locations, and will not need to rely on analog service for access to the network.²⁰ ACSW also claims, unsubscribed 911-only handset users will be able to default to another carrier's analog facilities at each site or have their calls carried by ACSW's CDMA facilities.²¹ ACSW also claims that it has aggressively transitioned its customer base from AMPS/TDMA to CDMA by offering free handsets and upgrades, and has recently begun offering a CDMA-based bag phone to its subscribers.²²

5. ACSW emphasizes that it is seeking a waiver of the analog service requirement for only seven of its more than 100 sites providing analog service today.²³ ACSW asserts that requiring it to maintain analog facilities at these isolated sites would be unduly burdensome, inequitable, and contrary to

¹³ The Commission's E911 Phase II rules require wireless licensees to provide Public Safety Answering Points (PSAPs) with Automatic Location Identification (ALI) information for 911 calls. *See* 47 C.F.R. § 20.18(e). Licensees can provide ALI information by deploying location information technology in their networks (a network-based solution), Global Positioning System (GPS) technology in the subscribers' handsets (a handset-based solution), or a combination of location technology in both the network and handsets (a hybrid solution). Carriers offering a handset-based location solution, such as ACSW, were required to upgrade existing phones lacking location capability, and achieve 95 percent penetration of location-capable handsets among their subscribers by December 31, 2005. *See* Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems; Petition of ACS Wireless for Limited Waiver, CC Docket No. 94-102, *Order*, 21 FCC Rcd 7789 (2006). ACSW was granted a waiver of that deadline and plans to meet the 95 percent handset penetration requirement by January 1, 2007.

¹⁴ ACSW Petition at 1.

¹⁵ *Id.*

¹⁶ *Id.* at 6-9. The seventh site is the only site that is accessible by boat or helicopter.

¹⁷ *Id.* at 6.

¹⁸ *Id.*

¹⁹ *Id.* at 2, 11.

²⁰ *Id.*

²¹ *Id.* at 11-13.

²² *See* September 19, 2006 ACSW Ex Parte Presentation at 4 (ACSW Presentation).

²³ *See* ACSW Petition at 4.

the public interest.²⁴ ACSW argues that the inaccessibility of the seven sites, and the difficulty of operating and maintaining facilities under extreme conditions distinguishes its circumstances from other carriers, and is unduly burdensome in light of the limited population that would be affected.²⁵

III. DISCUSSION

6. We may grant a waiver of the Commission's rules if it is shown that the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or, in view of the unique or unusual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest or the applicant has no reasonable alternative.²⁶ Based upon the unique circumstances presented in ACSW's petition, as well as the narrow scope of the relief requested, we find that a limited, conditional waiver permitting ACSW to discontinue analog service at seven of its more than 100 sites would relieve an undue burden on ACSW. We conclude that relief is warranted in light of the unusual climatic and operating conditions associated with these sites, as well as the limited number of consumers potentially affected, and we therefore grant ACSW's petition for waiver as explained below.

7. We agree with ACSW that to continue to require it to provide analog service at these remote locations would be unduly burdensome in light of the unique operational characteristics of these particular cell sites.²⁷ Operations at these seven locations are unusually difficult, involving logistical complications generally not experienced with other sites. As ACSW notes, because there are no roads to these sites, all resources necessary to maintain and operate these facilities—such as personnel, equipment, even diesel fuel for generators that power the sites—must be flown to these locations.²⁸ Further, given the reliance on air transport, weather conditions make servicing the sites very difficult, in that the sites are in areas with often heavy cloud cover, wind, and rain, and for a number of months, heavy snow. ACSW notes that technicians are often delayed by weather, as long as two weeks, before they can access these sites.²⁹ ACSW further notes that accessing the sites can be particularly problematic from October to April due to heavy snowfall, that its technicians have been stranded on site for several days because severe weather prevented helicopter travel, and that it therefore maintains survival supplies at each site as a precaution.³⁰ For example, ACSW notes that in the spring of 2006 snow prevented ACSW from transporting diesel fuel to the sites for three weeks, forcing ACSW and the site owner to power down individual pieces of equipment to preserve fuel for the generators.³¹ ACSW, moreover, states that the difficulties of operating each site are compounded because it must maintain two separate systems, increasing the amount of resources necessary to maintain the networks; for example, to avoid having to “turn down” equipment, ACSW must fly in diesel fuel sufficient to support all the equipment for both systems at each site. Maintaining two systems also increases the possibility that ACSW will be required to send its technicians to the sites for repairs as the networks do not break down at the same time. ACSW states that, in particular, the analog system is much more prone to failure, noting that the analog

²⁴ See *id.* at 1.

²⁵ See *id.* at 13-14.

²⁶ See 47 C.F.R. § 1.925(b)(3)(i)-(ii).

²⁷ ACSW also contends that the underlying purpose of the rule would not be served because advances in technology in the past few years have lessened the need for it to continue analog operations until the end of the analog transition period. We note that we are not granting relief on this basis. See *infra* para. 9.

²⁸ See ACSW Presentation at 3 and ACSW Petition at 5-9.

²⁹ *Id.* at 2.

³⁰ *Id.*

³¹ *Id.*

equipment is older and that there are no upgrades available that would improve functionality.³²

8. ACSW also argues that the extraordinary costs of operating and maintaining two systems at these locations warrant relief.³³ We note that, as a general matter, we would not accept cost considerations as sufficient basis to support a waiver of the analog service requirement. In the *AMPS Sunset Order*, the Commission recognized that continuing to require carriers to comply with the AMPS compatibility standard may impose additional operating costs on carriers preferring to concentrate on digital technology.³⁴ The Commission acknowledged that not only does the analog requirement compel a cellular carrier to bear expenses necessary to operate two separate systems, the operation and maintenance costs associated with the digital network may be higher because the carrier is not able to optimize the system as efficiently as it would if there was only one network.³⁵ Although the Commission found that the analog requirement compels cellular carriers to incur additional costs and burdens, it nonetheless determined that it was in the public interest to continue to require cellular carriers to provide analog service until the end of the sunset period.³⁶ Here, however, it is not simply the cost of maintaining two networks that is at issue. ACSW also faces extraordinary operational difficulties at these particular locations that impose upon it burdens unlike those normally assumed by cellular carriers that operate both analog and digital networks. As noted above, ACSW must transport all personnel, fuel, and equipment necessary to maintain the seven sites via aircraft at the cost of \$3,500 to \$5,000 per visit.³⁷

9. Further, the limited number of individuals that could be impacted leads us to conclude that minimal adverse affect will result from a grant of ACSW's requested waiver. ACSW indicates that only two of the seven sites have resident populations, totaling approximately 2,200 persons. Also, the remote location of these areas as well as factors such as weather and the seasonal nature of roaming traffic limit the number of non-residents who may be affected by the absence of analog service. Given the foregoing, we believe that the concerns underlying the analog sunset period—that elimination of analog service will cause persons with hearing disabilities and persons using emergency-only phones to lose access to wireless service—are mitigated by the fact that ACSW's request for relief is limited to the seven particular cell sites. Accordingly, given the unique operational difficulties associated with maintaining facilities at these remote sites as well as the limited number of individuals who potentially may be affected, we conclude that it is appropriate to grant ACSW's request for relief.

10. Although there are a limited number of individuals in these seven areas and fewer still that have hearing disabilities or who rely on emergency-only analog service, we remain concerned that any such individuals must be served during the balance of the analog sunset period. Accordingly, to ensure that such individuals can reasonably continue to receive service, we hereby require ACSW to provide, until February 18, 2008, free hearing aid-compatible and emergency-only digital equipment to any individuals residing in the seven areas affected by the discontinuation of analog service and who currently are reliant on analog hearing aid-compatible or emergency-only equipment.³⁸ As part of this obligation, we expect ACSW to conduct outreach to ensure that members of the public are aware that

³² *See id.*

³³ ACSW Petition at 1.

³⁴ *See AMPS Sunset Order*, 17 FCC Rcd at 18407, 18408 ¶¶ 10, 12.

³⁵ *Id.* at 18408 ¶ 12.

³⁶ *See id.* at 18413 ¶ 22.

³⁷ *See* ACSW Petition at 6-9.

³⁸ ACSW states that it offers at least two CDMA handsets that meet the U-3/M-3 hearing-aid compatibility standard under Section 20.19. *See* ACSW Letter dated September 25, 2006 at 1, citing 47 C.F.R. § 20.19. As part of this condition, ACSW must reasonably allow affected individuals to test ACSW hearing aid-compliant digital phones for compatibility with their hearing aids.

such free equipment is available to them should they be affected by ACSW's discontinuation of analog service.

IV. ORDERING CLAUSES

11. Accordingly, IT IS ORDERED that, pursuant to Sections 1.925(b)(3) and 22.901(b) of the Commission's rules, 47 C.F.R. §§ 1.925(b)(3) and 22.901(b), the Petition of ACS Wireless, Inc. for Limited Waiver of Analog Service Rule, filed March 10, 2006, File No. 0002764176, IS GRANTED as provided herein, and ACS Wireless, Inc. IS ALLOWED to discontinue providing analog service at its Cape Spencer, Ratz Mountain, Hoonah, Gunnuk, High Mountain, Manley, and Craig, Alaska, cell sites.

12. IT IS FURTHER ORDERED that ACS Wireless, Inc. must provide, until February 18, 2008, free hearing aid-compatible and emergency-only digital equipment to any individuals residing in the areas affected by the discontinuation of analog service from the seven sites identified above and who currently are reliant on analog hearing aid-compatible or emergency-only equipment..

13. These actions are taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131 and 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Catherine W. Seidel
Acting Chief, Wireless Telecommunications Bureau