

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
Petition for Emergency Relief)	
Due to COVID-Related Delays in)	WC Docket No. GN 21-304
3G Sunset Transition for Central)	
Station Alarm Subscribers)	

**REPLY COMMENTS OF PUBLIC KNOWLEDGE, ACCESS HUMBOLDT, THE
BENTON INSTITUTE FOR BROADBAND & SOCIETY, THE CENTER FOR RURAL
STRATEGIES, AND THE OPEN TECHNOLOGY INSTITUTE AT NEW AMERICA**

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TABLE OF CONTENTS

- I. THE COMMISSION HAS LEGAL AUTHORITY TO EXTEND THE OPERATION OF 3G WIRELESS NETWORKS 4
 - A. *AT&T's 3G Network is Subject to the Commission's Title II Authority*..... 4
 - B. *The Commission Has Authority Beyond Title II to Mediate the 3G Transition* 6
- II. FACTUAL CLAIMS ABOUT TRANSITION DELAYS OR HARMS SHOULD BE ASSESSED BY THE COMMISSION THROUGH FACT-FINDING..... 7
 - A. *The Commission Should Independently Assess the Obstacles Impacting Transition Delays*..... 7
 - B. *The Commission Should Independently Assess the Actual Impact a Delay in 3G Shut-Down Will Have* 9
- III. THE COMMISSION IS THE PARTY IN THE BEST POSITION TO SET A REASONABLE TRANSITION TIMETABLE THAT PROTECTS THE PUBLIC INTEREST 12

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INTRODUCTION & SUMMARY

In its opposition to the petition in the instant matter, AT&T takes the position that (1) the Federal Communications Commission (“FCC” or “the Commission”) does not have legal authority to grant the petitioner’s requested relief and (2) that even if it did, there is no reasonable policy basis for doing so.¹ Public Knowledge (“PK”), Access Humboldt, the Benton Institute for Broadband & Society (“Benton”),² the Center for Rural Strategies (“CRS”), and the Open Technology Institute (“OTI”), respectfully write in reply to the AT&T Opposition to reemphasize the Commission’s clear legal authority in this matter and the compelling public interest reasons for considering the Alarm Industry Communications Committee (“AICC”) Petition.³

¹ *Opposition of AT&T*, WC Docket No. GN 21-304 (filed August 30, 2021) (“AT&T Opposition”).

² Benton, a non-profit, operating foundation, believes that communication policy – rooted in the values of access, equity, and diversity - has the power to deliver new opportunities and strengthen communities to bridge our divides. Our goal is to bring open, affordable, high-capacity and competitive broadband to all people in the U.S. to ensure a thriving democracy. These comments reflect the institutional view of the Benton Institute for Broadband & Society, and, unless obvious from the text, is not intended to reflect the views of its individual officers, directors, or advisors.

³ *Petition for Emergency Relief*, WC Docket No. GN 21-304 (filed May 10, 2021) (“AICC Petition”).

Public Knowledge (“PK”) and the other signatory organizations hope that—with the Commission serving as a mediator and fact-finder—a reasonable, collaborative, and voluntary transition process will be possible. It must be emphasized that there are undoubtedly substantial benefits to the deployment of 5G technology, but for the roll-out of that technology to be considered successful, it must not happen at the expense of public safety, consumer protection, and the public interest. A rushed sunset of 3G networks resulting in significant service disruptions—thereby creating unsafe conditions—for millions of customers in the name of 5G deployment may only serve to create additional obstacles to consumer uptake of the benefits of 5G networks. As outlined in both our August 30, 2021 comment in this matter,⁴ and in the Public Interest Spectrum Coalition (“PISC”) letter dated May 2, 2021,⁵ the Commission may be able to resolve conflicts related to the 3G transition without mandating specific timetables. Nevertheless, if service providers are unwilling to make reasonable accommodations on a voluntary basis, the Commission does have the authority to mandate the continued operation of 3G networks for as long as necessary to protect the public interest.

AT&T’s arguments that the Commission lacks authority are unpersuasive. Even conceding for the sake of argument that AT&T’s IoT contracts are private carriage agreements, that does not deprive the FCC of its authority over AT&T’s common carrier CMRS network. There are millions of people affected by the looming shutdown of services besides alarm systems and those services are unquestionably subject to the FCC’s Title II authority, and that the

⁴ *Comments of Public Knowledge, Access Humboldt, the Benton Institute for Broadband and Society, the Center for Rural Strategies, and the Open Technology Institute at New America*, WC Docket No. GN 21-304 (filed August 30, 2021) (“August 30 Public Interest Comment”).

⁵ Letter from Public Interest Spectrum Coalition to Acting Chairwoman Jessica Rosenworcel, FCC, (May 3, 2021), <https://www.publicknowledge.org/wp-content/uploads/2021/04/PISC-TMO-DISH-FCC-Letter-FINAL.pdf> (“PISC Letter”) (PK, Benton, CRS, and OTI are signatories to both this reply comment and the PISC Letter).

Commission must take steps necessary to protect those users. Even if AT&T were right about the statutory basis for its services to the alarm industry, that does not deprive the FCC of the ability to consider the public interest harms that would result from the shutdown of the CMRS network. For the same reason, AT&T's invocation of Section 332(c)(2) is unavailing. Furthermore, AT&T fails to address the Commission's broad authority over wireless licensees pursuant to Title III – particularly where safety of life is at issue.

AT&T raises several factual objections worthy of investigation by the Commission. Indeed, we have raised precisely these questions with regard to the impact of the chip shortage and the ability of alarm companies to move more rapidly. But AT&T is in no position to make these determinations for itself. The fact that some of the largest alarm companies were able to expand their customer base during the pandemic says nothing about the ability of smaller companies—especially those that have specialized in servicing the sick and elderly, who are especially reluctant to allow technicians into the home—to obtain needed equipment and get access to the already deployed hardware. Indeed, comments from the auto industry,⁶ Alcohol Monitoring Systems, Inc.,⁷ and AARP⁸ all contradict AT&T regarding the impact of the chip shortage and the need for more time.

In short, the FCC has both the authority and responsibility to exercise supervision over this process. But the time for calm and considered action, rather than crisis management, is running out. Carriers such as AT&T and T-Mobile are already shutting down existing 3G

⁶ *The Alliance for Automotive Innovation Comments in Support of the Alarm Industry Communication Committee's Petition for Emergency Relief*, WC Docket No. GN 21-304 (filed August 30, 2021) (“Auto Innovators Comment”).

⁷ *Comments of Alcohol Monitoring Systems, Inc. in Support of the AICC Petition for Emergency Relief*, WC Docket No. GN 21-304 (filed August 30, 2021) (“AMS Comment”).

⁸ *Comments AARP*, WC Docket No. GN 21-304 (filed August 30, 2021) (“AARP Comment”).

networks. The danger of widespread loss of critical services grows daily as the process continues.

I. THE COMMISSION HAS LEGAL AUTHORITY TO EXTEND THE OPERATION OF 3G WIRELESS NETWORKS

The Commission has both the requisite jurisdiction and authority to extend the operation of 3G wireless networks insofar as those networks provide both traditional Title II voice services as well as commercial data services. The Commission has ample authority under Title II as well as additional sources of authority that support its ability to investigate, mediate, and—if necessary—ultimately mandate a reasonable transition timetable.

A. AT&T's 3G Network is Subject to the Commission's Title II Authority

AT&T's UMTS 3G network is a Commercial Mobile Radio Service regulated under Title II. AT&T offers telecommunications services to the public, serving millions of customers on their 3G network, placing beyond doubt that they are a common carrier subject to Title II authority. As the operator of a wireless network that provides telecommunications services to the public, AT&T—and other 3G network operators such as T-Mobile—are subject to the FCC's regulatory authority under Title II, specifically pursuant to Section 201(b), which prohibits any unjust or unreasonable practice by a Title II provider.⁹

AT&T endeavors to narrow the Commission's authority in this proceeding by pointing out that the AICC members generally contract for commercial data services with AT&T that they characterize as "private mobile services" pursuant to Section 332(c)(2).¹⁰ This classification is

⁹ The issue of Commission forbearance on market entry and exit requirements for CMRS services was previously addressed the August 30 Public Interest Comment.

¹⁰ AT&T Opposition at 7.

disputed by the petitioners,¹¹ but even if it were accurate, it does not absolve AT&T of its broader obligations under Title II.

The same network that supports AT&T's public telecommunications offerings supports the commercial data services used by the alarm systems operators. AT&T itself points out that the 3G network used by the alarm companies is the same as the one relied upon by mobile customers, noting that the same block of bandwidth needs to be dedicated to the 3G network to support even one 3G user.¹² The AICC Petition highlighted a critical public safety issue, but as public interest and additional industry commenters have pointed out, the unaltered pace of the 3G phase-out in the face of significant transition obstacles presents a broad and urgent threat to the public interest beyond the scope of alarm systems alone.

In addition to industry stakeholders, there are millions of ordinary American consumers who will be affected by a shutdown being carried out at a rapid pace in the ongoing turbulence created by an unprecedented global health emergency. Many of the people likely to be affected by this shutdown are low-income, elderly, or living in underserved areas; the same groups that already struggle with connectivity and have a particular need to be connected to vital services such as 911, health care providers, and caretakers. Thus, even if the commercial mobile services used by the alarm industry are not subject to Sections 201 and 202, the relief the petitioners are seeking would still be within the FCC's regulatory authority over AT&T insofar as they operate their 3G wireless network as a common carrier.

¹¹ Petitioners argue that the service they are provided by AT&T should be classified as a commercial mobile service pursuant to Section 332(c)(1) which would be subject to Title II regulation. *See* AICC Petition at 21.

¹² AT&T Opposition.

B. The Commission Has Authority Beyond Title II to Mediate the 3G Transition

The Commission has broad power to regulate wireless licensees to protect the public. As the D.C. Circuit has found, Section 332(c) “common carrier prohibition” does not shield carriers from FCC authority generally.¹³ The Commission has ample power to adopt service rules for any wireless service to protect “the public interest.”¹⁴ That includes a requirement to maintain network service on a temporary basis to ensure a smooth transition.

Additionally, courts have long recognized the Commission’s general authority under Sections 1 and 4(i) to take necessary actions to protect consumers from loss of vital services.¹⁵ During the sunset of wireless analog service, the Commission entertained a petition for rulemaking by the AICC over objections that it lacked authority to do so. In that proceeding the Commission noted its “well settled” and “broad authority and discretion to implement, revise or retain policies if doing so advances the public interest” and cited Section 4(i).¹⁶ Congress conferred upon the Commission comprehensive powers of oversight to protect the fundamental values of the Communications Act. While the ideal path in this matter is a voluntary settlement through FCC mediation, the Commission must not hesitate to use these powers when the situation requires.

¹³ *Cellco Partnership v. FCC*, 700 F.3d 534 (D.C. Cir. 2012).

¹⁴ 47 C.F.R. §§ 303(b), 303(r), 316(a)(1).

¹⁵ *See generally Rural Tel. Coalition v. FCC*, 838 F.2d 1307 (D.C. Cir. 1988) (power to create universal service fund pursuant to ancillary authority).

¹⁶ *Sunset of the Cellular Radiotelephone Service Analog Service Requirement and Related Matters, Memorandum Opinion and Order*, 22 FCC Rcd 11243, 11267 (2007), <https://docs.fcc.gov/public/attachments/FCC-07-103A1.pdf>.

II. FACTUAL CLAIMS ABOUT TRANSITION DELAYS OR HARMS SHOULD BE ASSESSED BY THE COMMISSION THROUGH FACT-FINDING

Service providers and stakeholders like the AICC have divergent views of the facts and potential harms surrounding the 3G transition. There need not be malicious intent or incompetence at work to create these divergent narratives: industry actors are simply poorly positioned to accurately assess and evaluate the challenges, obstacles, and plans of other actors. Therefore, the Commission ought to engage in fact-finding to independently assess the obstacles facing the ongoing phase-out of 3G networks and the true potential adverse impacts for a wide array of contingencies.

A. The Commission Should Independently Assess the Obstacles Impacting Transition Delays

The core factual question facing the Commission in this matter is: will 3G wireless customers, the alarm industry, and other similarly situated parties be able to successfully migrate enough customers from 3G technology to substantially mitigate adverse effects of the shutdown? For its part, the AICC Petition answers with a resounding “no” and lays out a compounding series of challenges facing alarm industry actors in meeting the current deadline set by AT&T. Similar challenges have been described by DISH,¹⁷ Rural Wireless Association members,¹⁸ the automotive industry,¹⁹ and criminal justice monitoring system operators.²⁰ Yet, the AT&T Opposition dismisses and downplays each of these concerns, suggesting that there is no

¹⁷ See PISC Letter.

¹⁸ *Id.*

¹⁹ *The Alliance for Automotive Innovation Comments in Support of the Alarm Industry Communication Committee’s Petition for Emergency Relief*, WC Docket No. GN 21-304 (filed August 30, 2021) (“Auto Innovators Comment”).

²⁰ *Comments of Alcohol Monitoring Systems, Inc. in Support of the AICC Petition for Emergency Relief*, WC Docket No. GN 21-304 (filed August 30, 2021) (“AMS Comment”).

significant obstacle to the migration from 3G technology for these various stakeholders. Where there is such a basic factual conflict over the core question at hand, the Commission ought to intervene to at least apprise itself of the facts on the ground.

Certainly, the weight of the evidence seems to suggest that there are some very real problems facing these industries. In particular, the ongoing global chipset shortage is well-documented and specifically called out to be an issue by each of the industry commenters.²¹ AT&T concedes the reality of the chip set shortage, but dismisses it as a genuine obstacle in two ways: first, it contends that the AICC Petition did not sufficiently substantiate and detail the specifics of how the shortage is affecting its transition work; and second, it contends that the likely effect of the shortage is increased cost rather than actual unavailability which would necessitate delay. Both contentions are misplaced as they rely either on the absence of facts that can be addressed by the Commission through fact-finding, or supposition and speculation rather than contrary factual evidence.

The AT&T Opposition relies heavily on vague investor statements to craft a narrative in which the chip set shortage does not appear to be affecting the alarm industry; those statements are entirely statements of generalities and do not specifically address the factual issue at hand. For example, one statement quoted in the opposition reads:

*Are [component shortages] materially impacting the commercial service providers today? No. A service provider can say, okay, I don't have this particular device at the moment, but I have a substitute device that is almost as good or almost as effective in this situation, I'm going to install that one.*²²

²¹ AICC Petition; Auto Innovators Comment; AMS Comment.

²² AT&T Opposition at 24, (quoting Alarm.com Holdings, Inc., FQ2 2021 Earnings Call Transcripts at 12 [S&P Glob. Mkt. Intel. Aug. 5, 2021]) (emphasis in AT&T Opposition).

AT&T emphasizes the first line of the quoted section, choosing to interpret it as meaning that 4G capable equipment is readily available. However, the next line of the statement could easily be read to mean that where 4G and 5G capable devices are unavailable the alarm service providers are installing more 3G systems, hoping to update them as hardware devices like CellBounce—described in the AICC Petition²³—become available. This reading is equally speculative and only serves to highlight the indeterminate nature of these statements.

The statements quoted by AT&T are vague, investor-focused statements that do not specifically address the factual issue of how the chip set shortage is or is not affecting the alarm industry. As stated at the outset of this section, AT&T—reading into these public statements rather than relying on any concrete facts—is a poor judge of the actual obstacles facing AICC members and other similarly positioned stakeholders. AT&T’s concerns regarding substantiation, specificity, and availability can all be addressed through Commission fact-finding.

The Commission should seek detailed and specific information from the alarm industry—and more broadly from other affected stakeholders—to assess what real obstacles exist in upgrading 3G technology. These facts will equip the Commission to make an informed decision on the issue presented in the AICC Petition as well as better evaluate what a safe and realistic transition will look like throughout other sectors.

B. The Commission Should Independently Assess the Actual Impact a Delay in 3G Shut-Down Will Have

The potential harms posed by the premature shutdown of 3G wireless networks for alarm industry customers were described in detail the AICC Petition, expanded to include other classes

²³ AICC Petition at 7.

of vulnerable consumers in our August 30 Public Interest Comment, and further expanded to include other stakeholders in comments by the automotive industry and criminal justice monitoring systems operators. The AT&T Opposition did not directly challenge the potential harms raised by the alarm industry, instead taking the position that they would not occur because the alarm industry could—or should—be able transition in time to meet AT&T’s deadline.²⁴ Yet, it simultaneously asks the Commission to weigh its own nebulous statement of potential harms resulting from a delay in the 3G network as outweighing the potential harms of any other stakeholders. Just as the Commission should undertake an investigation of the current obstacles to a transition, it should also investigate and independently assess the actual impact a delay in the 3G transition would have on AT&T customers at various timescales.

AT&T has claims that a delay in its 5G rollout “could affect tens of millions of customers over the course of 2022”²⁵ under the premise that as 5G demand grows, the service provided to those customers will be impacted—in the form of blocked and dropped calls at peak hours—if they are not able to transition their 3G spectrum to 5G. This assertion is presented glancingly in the declaration of an AT&T employee and seems to represent an aggregated harm for the full year of 2022. However, given that around only 1% of wireless customers currently use 5G service, compared to the approximately 17% that currently rely solely on 3G,²⁶ the balance of harms would favor a controlled transition that will allow AT&T’s customers more time to

²⁴ AT&T has not yet had the opportunity to respond to the potential harms raised by the August 30 Public Interest Comment as the AT&T Opposition was filed concurrently with comments. It may file reply comments concurrently with these addressing those concerns, but as of the date of writing AT&T has not taken any affirmative steps to address the concerns raised in the comments or indicate that its position has changed.

²⁵ Declaration of Kevin Hetrick at ¶ 7 (“Hetrick Declaration”).

²⁶ See Carl Weinschenk, *Report: Amidst 5G Rush, 17% of U.S. Subscribers Still on 3G*, telecompetitor (Dec. 19, 2019), <https://www.telecompetitor.com/report-17-of-u-s-subscribers-still-on-3g/>.

transition from 3G to 4G and 5G devices and services. It seems unlikely that AT&T's projected 5G customer base would swell at such significant rate that it would overtake AT&T's 5G network capacity resulting in the claimed service degradation.

Additionally, AT&T has provided no information about the biggest piece of the puzzle: the 4G LTE network. This is a particularly curious omission since AT&T repeatedly contends that the alarm industry should primarily have been able to transition to the 4G network. For example, the opposition papers specifically flag Johnson Controls 4G devices being available in 2018, the CellBounce device that converts 3G signals to 4G signals, and it calls into question the availability of 4G radio chipsets.²⁷ At no point does AT&T suggest that the alarm industry, or its other customers, will—or need to—migrate to 5G networks. In fact, it states the exact opposite, that “AT&T will need to maintain its 4G/LTE network on existing spectrum bands for years to come, given the sheer volume of devices in operation today that are not 5G-capable.”²⁸ This begs the question whether AT&T's ominous predictions of degraded service quality on the 5G network tracks with the reality that the vast majority of its customers are using their well-supported 4G networks.

In any event, AT&T's vehement opposition focuses solely on the impact of granting petitioner's full request for relief—that being a delay of an additional year to match Verizon's transition timetable. But this is not a binary choice between denying the Petition on the one hand and granting a full year on the other. AT&T's argument that it is in a significantly different position than Verizon due to their use of different underlying 3G technologies is well taken, and not to be discounted. The Commission should not glance over these important factual

²⁷ See AT&T Opposition at 13, 21, 23.

²⁸ Hetrick Declaration at ¶ 8.

distinctions but rather should seek additional information to allow all sides to come to a better-informed transition timetable; it may well be the case that there is a shorter period of delay than the one contemplated by both AICC and AT&T that allows both parties to meet their transition goals with minimal impact on consumers. These facts are simply unknown at this junction, and the Commission must act swiftly to investigate these pressing questions.

Specifically, the Commission should gather specific information from AT&T—and other 3G service providers—about their current 3G network load, 4G network capacity, projected 5G network capacity needs, and, most importantly, concrete estimates of what impacts on their customers can be expected from transition delays of varying lengths. The Commission should also convene the parties (and possibly other stakeholders) so that they can engage in full and frank discussions without exposing proprietary data or potentially violating the antitrust laws. We continue to believe that the best solution will emerge if the FCC acts as an honest broker between the parties, to ensure that the burdens created by COVID do not fall disproportionately on one party over another.

III. THE COMMISSION IS THE PARTY IN THE BEST POSITION TO SET A REASONABLE TRANSITION TIMETABLE THAT PROTECTS THE PUBLIC INTEREST

The AT&T Opposition argues that the alarm industry had sufficient notice to complete the transition and because of that alone no delay is warranted. Conversely, the petitioners request a revised timetable that delays AT&T's transition until the end of 2022. This disparity in requested remedies—especially when considered in the context of other unresolved 3G sunset issues like the conflict between T-Mobile and DISH—suggests that the Commission is needed to act as an honest broker and neutral mediator between these parties as the transition deadlines begin to loom closer.

AT&T's position that mere advance notice to the alarm industry is sufficient to warrant adherence to its established timeline is unreasonable. The Commission will be able to gather additional information about the scope of potential harms, but right now the balance of evidence indicates that regulatory inaction will result in consumer harm and public safety issues. AT&T's suggestion that it should be allowed to eliminate service, and even create unsafe conditions, for its 3G legacy customers because of adherence to formal process requirements represents a contravention its responsibilities as a public service provider and demands Commission intervention. Even considering AT&T's three-year advance notice to the alarm industry, when considering the massive number of devices now at issue—two and a half times the number of devices as during the four-year-long 2G sunset²⁹—the timetable was already particularly demanding. With the added disruption of the COVID-19 pandemic over the last year and a half, to demand adherence to the original timeline due to advance notice is clearly untenable. The Commission's impartial judgement is required to evaluate the facts and either bring the parties to the table to devise a fair compromise, or to establish a reasonable timetable that minimizes harms and accounts for the public interest.

The widespread deployment of 5G technology will undoubtedly be a boon for wireless customers, however the process of transitioning from antiquated 3G networks must be one that respects service provider obligations to public safety, protects vulnerable consumers, and is realistic based on the ongoing disruptions caused by the global pandemic. Service providers and stakeholder like AICC have competing and conflicting interests in the transition process and these interests do not necessarily align with public interest priorities. Therefore, the Commission

²⁹ AICC Petition at 5.

is the party in the best position to independently evaluate the facts, balance potential harms, and mediate between the parties to ensure that a reasonable transition timetable is established.

Respectfully submitted,

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