

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

In the Matter of:)	
)	
Amendment of Part 2 of the Commission's)	ET Docket No. 00-258
Rules to Allocate Spectrum Below 3 GHz for)	
Mobile and Fixed Services to Support the)	
Introduction of New Advanced Wireless)	
Services, including Third Generation Wireless)	
Systems)	
)	
Service Rules for Advanced Wireless Services)	WT Docket No. 02-353
In the 1.7 GHz and 2.1 GHz Bands)	

PETITION FOR WAIVER

CTIA¹ respectfully petitions the Wireless Telecommunications Bureau to waive Sections 27.1170 and 27.1186 of the Commission's rules regarding the clearinghouse notification obligations of Advanced Wireless Service ("AWS") licensees.² Section 27.1170 states, "Prior to initiating operations for a newly constructed site or modified existing site, an AWS entity is required to file a notice containing site-specific data with the clearinghouse," and Section 27.1186 requires licensees to file additional deployment information for sites that overlap the 2150-2160/62 MHz band.³ Waiver of the clearinghouse notice requirements is warranted

¹ CTIA – The Wireless Association® ("CTIA") (www.ctia.org) represents the U.S. wireless communications industry and the companies throughout the mobile ecosystem that enable Americans to lead a 21st century connected life. The association's members include wireless carriers, device manufacturers, suppliers as well as apps and content companies. CTIA vigorously advocates at all levels of government for policies that foster continued wireless innovation and investment. The association also coordinates the industry's voluntary best practices, hosts educational events that promote the wireless industry and co-produces the industry's leading wireless tradeshow. CTIA was founded in 1984 and is based in Washington, D.C.

² 47 CFR §§ 27.1170, 27.1186. This waiver is filed pursuant to Section 1.925 of the Commission's rules, 47 CFR § 1.925.

³ *Id.* Section 27.1186 relates to cost-sharing obligations for relocation of BRS systems in the 2150-60/62 MHz band and states, "If an AWS licensee is initiating operations for a newly

because the requirements are no longer necessary, no spectrum clearinghouse will be in operation to receive notices from AWS licensees, and licensees will not reasonably be able to comply with continued application of the rules. In the alternative, the Commission should eliminate the clearinghouse notice requirements in Sections 27.1170 and 27.1186 under the good cause exception of the Administrative Procedure Act (“APA”).⁴

I. BACKGROUND

In 2006, the *AWS Relocation and Cost Sharing Report and Order* established procedures for the relocation of Broadband Radio Service (“BRS”) operations from the 2150-2160/62 MHz band and Microwave Service (“FS”) operations in the 2.1 GHz band.⁵ That *Order* also adopted cost sharing rules to identify the reimbursement obligations for AWS and Mobile Satellite Service (“MSS”) entrants benefiting from the relocation of incumbent BRS and/or FS operations.⁶ Cost-sharing regulations for the AWS bands recognize that a licensee who relocates an incumbent in the 2.1 GHz band may confer a financial benefit on other AWS licensees whose licensed markets and spectrum would also be impacted by the relocated incumbent.⁷ Therefore, at the time another licensee benefits from a prior relocation, an obligation to share, *pro rata*, in

constructed site or modified existing site in the licensed bands overlapping the 2150-2160/62 MHz band, the AWS licensee must file with the clearinghouse, in addition to the site-specific data required by § 27.1170, the above ground level height of the transmitting antenna centerline.” 47 CFR § 27.1186.

⁴ 5 U.S.C. § 553(b)(3)(B).

⁵ *Amendment of Part 2 of the Commission’s Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Service to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems*, Ninth Report and Order and Order, 21 FCC Rcd 4473, ¶ 1 (2006) (“AWS Relocation and Cost Sharing Report and Order”).

⁶ *Id.*

⁷ *See id.* at 4507, ¶ 64.

certain relocation costs, adjusted by depreciation, is “triggered” under the rules.⁸ In order to manage this cost-sharing process, the Commission and industry developed a mechanism to identify “triggers” administered by FCC-approved clearinghouses. Cost-sharing obligations for AWS-1 FS relocations sunset on November 29, 2016.⁹

To implement the cost-sharing regulatory framework, on March 8, 2007, the Commission issued an *Order* which set forth the duties and responsibilities of the clearinghouses and formally selected CTIA and PCIA—The Wireless Infrastructure Association (“PCIA”) to act as clearinghouses for the purposes of the Commission’s rules.¹⁰ The Commission charged the clearinghouses with several duties, including accepting data from new entrant relocators on the costs related to moving incumbents, receiving notices from new entrants when they initiate service from new sites, and, using those datasets, determining when cost-sharing obligations exist and the amount of those obligations. If newly deployed sites triggered a cost-sharing obligation, the clearinghouses would notify the affected parties. In order to ensure that all triggers could be identified, the Commission adopted the requirements in Section 27.1170 and Section 27.1186 that AWS licensees notify a clearinghouse prior to deploying any new or modified site. The Commission adopted a cost-sharing formula in its rules which the

⁸ *Id.* at ¶ 116.

⁹ 47 C.F.R. § 27.1124; *id.* at ¶ 60.

¹⁰ *Amendment of the Commission’s Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems*, Order, 22 FCC Rcd 4680, 4681, ¶ 1 (2007) (“Cost-Sharing Order”).

clearinghouses would implement, but also explicitly permitted licensees to satisfy cost-sharing obligations through private agreements.¹¹

As noted above, the cost-sharing obligations for relocations of AWS-1 fixed microwave incumbents sunset in November 2016. The CTIA Spectrum Clearinghouse ceased providing services related to AWS-1 FS relocation on January 31, 2018 after providing notice to users.¹² For several years, the CTIA Spectrum Clearinghouse provided AWS licensees, incumbents, and other interested parties an efficient, cost-effective benefit for administering AWS cost-sharing. However, its users no longer require clearinghouse services for remaining bands due to the very small number of triggers and limited cost-sharing benefits in the 2.1 GHz band. Therefore, the CTIA Spectrum Clearinghouse filed a notice of termination with the Commission on April 2, 2019 indicating that it will cease providing clearinghouse services on July 1, 2019. The PCIA AWS Clearinghouse last filed a semi-annual report in 2013.¹³ CTIA presumes the PCIA AWS Clearinghouse has ceased operations, given that it has no active internet presence and ceased to exchange cost-sharing data with CTIA.

¹¹ 47 CFR § 27.1160 (“AWS entities may satisfy their reimbursement requirement by entering into private cost-sharing agreements or agreeing to terms other than those specified in §27.1164.”); 47 CFR § 1176 (relating to BRS relocations).

¹² See Report of the CTIA Spectrum Clearinghouse, LLC at 2-3, ET Docket No. 00-258, WT Docket 02-353 (filed Jan. 22, 2018) (“2018 CTIA Report”); Report of the CTIA Spectrum Clearinghouse, LLC at 2, ET Docket No. 00-258, WT Docket 02-353 (filed Jan. 31, 2019) (“2019 CTIA Report”).

¹³ See *Amendment of the Commission’s Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems*, Semi-Annual Report of PCIA—The Wireless Infrastructure Association on the Status of the PCIA AWS Clearinghouse (filed Jan. 31, 2013).

II. THE FCC SHOULD ISSUE A BLANKET WAIVER OF THE CLEARINGHOUSE NOTIFICATION REQUIREMENTS FOR GOOD CAUSE.

A. The Commission Should Issue a Waiver of the Clearinghouse Notification Requirements Under the Provisions of Section 1.925 of the Commission's Rules.

Under Section 1.925 of the Commission's rules, the Commission may grant a request for waiver if it is shown that either:

- 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 the view of unique or unusual factual 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.¹⁴

As demonstrated below, the blanket waiver request meets the requirements of both alternatives and should be granted. Under either prong of the analysis, the most significant public interest consideration for continued application of Sections 27.1170 and 27.1186 is that there will be no clearinghouses with which to file site notifications. Therefore, AWS entities will have no way to reasonably comply with the rules. Additionally, the requirements are no longer necessary to efficiently identify cost-sharing obligations related to incumbent relocations in the AWS bands.

As previously explained, Sections 27.1170 and 27.1186 were adopted to ensure that all cost-sharing triggers could be identified by a cost-sharing clearinghouse. Without a clearinghouse, the cost-sharing process would not have been efficient in an environment with a high number of relocators, licensees, and potential triggers. However, the cost-sharing environment has changed significantly since the rules were adopted. Now, there are very few potential triggers to assess. Specifically, there are:

¹⁴ See 47 CFR § 1.925; *see also* *WAIT Radio v. FCC*, 418 F.2d 1153, 1156 (D.C. Cir. 1969).

- Very few remaining microwave incumbents;¹⁵
- A limited number of AWS-3 licensees;¹⁶
- A single AWS-4 licensee; and
- A single main licensee for BRS spectrum.¹⁷

Because of these circumstances, and as evidenced by the shutdown of both clearinghouses, the transaction costs for licensees to relocate incumbents, monitor for trigger activity, and conclude private agreements are sufficiently low that the maintaining the infrastructure of a clearinghouse has become inefficient. Eliminating the obligation to file notifications for new and modified sites with a clearinghouse would not eliminate cost-sharing obligations. Instead, it would remove the role of a clearinghouse in identifying obligations. Because meeting cost-sharing obligations is now more efficient without using a clearinghouse, the underlying purpose of the clearinghouse notification requirements in Sections 27.1170 and 27.1186 would not be served by continued application of the requirements. Instead, granting a waiver of the rule would serve the public interest by allowing licensees to meet their cost-sharing obligations in a more efficient manner.

¹⁵ The Universal Licensing System indicates that, as of March 18, 2019, there are only 71 active microwave licensees remaining in the 2110-2200 MHz band. Many of these licenses are for temporary fixed facilities not eligible for protection.

¹⁶ Prior to the filing of this Petition for Waiver, the CTIA Spectrum Clearinghouse sent notices to all AWS-3 licensees that the Clearinghouse will terminate cost-sharing activities effective July 1, 2019.

¹⁷ Further, only a single licensee is projected to benefit from future triggers related to BRS relocations, and that licensee has indicated that it is not interested in participating in the clearinghouse.

B. Continued Application of Sections 27.1170 and 27.1186 Would Be Inequitable, Unduly Burdensome and Contrary to the Public Interest, and There Are No Reasonable Alternatives.

With respect to the second alternative under Section 1.925, the unique circumstances of the limited number of licensees and the consequently constrained number of potential triggers in the AWS bands have given rise to a situation that was not contemplated when the Commission adopted the AWS rules, which is that the clearinghouse system now lacks economic viability. Under these unique circumstances, application of a rule that requires clearinghouse notification filings as a prerequisite to deployment is no longer equitable, but rather is unduly burdensome. Broadband deployment is in the public interest, and continued application of a rule that is no longer necessary is contrary to the public interest.

There are, moreover, no reasonable alternatives to a blanket waiver. With no clearinghouse in operation, there will be no mechanism to file clearinghouse notifications and, therefore, no way to comply with the rule. While the Commission could initiate a rulemaking to eliminate the rule, the time-consuming nature of that process would also be overly burdensome to licensees with no way to comply with the rule.

III. IN THE ALTERNATIVE, THE COMMISSION SHOULD ELIMINATE THE CLEARINGHOUSE NOTIFICATION REQUIREMENTS UNDER THE GOOD CAUSE EXCEPTION OF THE APA.

Section 553 of the APA, known as the “good cause” exception to general rulemaking procedures, permits agencies to forgo the notice and comment process when the agency “for good cause finds” that compliance with the rule would be “impracticable, unnecessary, or contrary to the public interest.”¹⁸ As stated above, continued application of the clearinghouse notification requirements in Sections 27.1170 and 27.1186 would be contrary to the public

¹⁸ 5 U.S.C. § 553(b)(3)(B).

interest and impose an unnecessary and burdensome requirement on carriers that prevents the efficient and fair deployment of wireless services.

IV. CONCLUSION.

CTIA requests that the Wireless Telecommunications Bureau waive the clearinghouse notification requirements in Sections 27.1170 and 27.1186 of the Commission's rules in furtherance of the public interest and to eliminate the unnecessary and unduly burdensome notice requirement. Alternatively, CTIA requests that the Commission eliminate the clearinghouse notification requirements in Sections 27.1170 and 27.1186 under the good cause exception of the APA.

Respectfully submitted,

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