Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
Amendment of Parts 1 and 63	)	IB Docket No. 04-47
of the Commission's Rules	)	

REPLY COMMENTS OF CTIA – THE WIRELESS ASSOCIATION™

CTIA – The Wireless Association™ ("CTIA")[1] hereby submits its reply comments in the above-captioned proceeding.[2] By this filing, CTIA responds to concerns expressed by the Department of Defense ("DOD") and other Executive Branch Agencies (collectively the "Executive Branch") regarding proposals to allow non-wholly-owned subsidiaries to provide international service pursuant to the Section 214 authorizations of their parent companies. As discussed herein, revising the rule in the limited manner in which CTIA and Cingular Wireless LLC ("Cingular") have proposed in their comments will preserve the Executive Branch's ability to address national security and law enforcement interests.

DISCUSSION

CTIA and Cingular demonstrated in their comments that the current Part 63 rules as applied to CMRS providers' non-wholly-owned subsidiaries are not necessary to meet the

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[1] CTIA – The Wireless Association™ (formally known as the Cellular Telecommunications & Internet Association) is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the organization covers all Commercial Mobile Radio Service ("CMRS") providers and manufacturers, including cellular, broadband PCS, ESMR, as well as providers and manufacturers of wireless data services and products.

[2] *Amendment of Parts 1 and 63 of the Commission's Rules*, IB Docket No. 03-128, *Notice of Proposed Rulemaking*, FCC 04-40 (rel. March 4, 2004) ("*NPRM*"); *see also Amendment of the Commission's Rules*, 69 Fed. Reg. 13276 (Mar. 22, 2004); *Public Notice, Comments and Reply Comment Dates for Amendment of Parts 1 and 63 Notice of Proposed Rulemaking*, IB Docket No. 04-47, DA 04-763 (rel. Mar. 23, 2004) (setting June 7, 2004, date for reply comments).

Executive Branch's objectives, and thus impose substantial costs and burdens on CMRS providers and Commission staff with no countervailing public interest benefit. In their comments, the Executive Branch expressed concern "that the rule is necessary to allow consideration of whether it is in the public interest that a person or entity be allowed to provide Section 214 services before such services commence."[3] The rule, they posit, "preserves the Commission's ability to prevent parties who should not possess Section 214 authorizations from obtaining them indirectly, *i.e.*, by obtaining non-controlling interests in subsidiaries of licensees."[4] DOD in particular agreed with prior Commission reasoning that such ownership 'may raise issues that require separate review, such as additional foreign affiliations or minority ownership or beneficial interest by persons or entities that are barred from holding a Commission authorization."[5] DOD thus "requests that this rule be retained in its current form so it may continue to receive notification of proposed shifts in foreign ownership interests prior to any action by the Commission."[6]

The Commission has long acknowledged that national security and law enforcement matters are legitimate issues for consideration in determining the public interest implications of granting a Commission Title III license or Section 214 authorization.[7] CTIA agrees that the Commission should preserve the Executive Branch's interest in ensuring that licensing decisions do not raise national security and law enforcement concerns. Nothing about the rule changes

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[3] Executive Branch Agencies Comments at 3.

[4] *Id.*

[5] Department of Defense Comments at 4.

[6] *Id.*

[7] *See Rules and Policies on Foreign Participation in the U.S. Telecommunications Market; Market Entry and Regulation of Foreign-Affiliated Entities*, 12 FCC Rcd 23891, ¶ 63 (1997).

proposed by wireless carriers in their comments, however, undermines the policy objectives the Executive Branch seeks to preserve.

First, CTIA and Cingular propose that the Commission revise its current restrictions *only with respect to CMRS licensees*.[8] The CMRS licensee entities covered by the proposed rule change therefore *already* hold a Commission authorization. Furthermore, Section 310(b)(4) of the Act already requires CMRS licensees to obtain Commission approval of foreign ownership in excess of 25 percent.[9] Thus, the foreign ownership of any CMRS licensee would already have been subject to public notice and comment and vetted by the Commission. Indeed, Section 310(b)(4) is in many respects even more restrictive than the Part 63 rules in that (1) it requires CMRS providers to obtain prior Commission approval of even non-controlling levels of foreign investment, and (2) it applies to any foreign investment, not just investment by foreign carriers. Moreover, the Commission typically requires far more detailed ownership information of Section 310(b)(4) petitioners than that required in the Part 63 rules. Accordingly, Title III of the Act and the Commission's rules already afford the Executive Branch with the ability and the opportunity to address national security and law enforcement concerns related to foreign ownership in CMRS licensees.

In their comments, CTIA and Cingular also point out additional existing safeguards and proposed means of ensuring that the Executive Branch's concerns are addressed. For example, information concerning 10 percent or greater ownership of CMRS licensees is disclosed in initial applications for Title III licensees and remains updated via the filing of Form 602 ownership reports (which are now available online). In addition, the proposed rule revisions would apply

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[8] CTIA Comments at 7-8; Cingular Comments at 5-7.

[9] CTIA Comments at 8; Cingular Comments at 4-5, 7.

only to those subsidiaries in which a parent company holds a *sole* controlling ownership interest.[10] Thus, a subsidiary in which another entity also holds *de jure* or *de facto* control, such as a 50-50 joint venture entity, would still be required to obtain its own authorization. Moreover, significant changes in ownership (including foreign ownership) resulting in a substantial transfer of control always are subject to Section 310(d) of the Act (and Section 310(b)(4) if foreign ownership is involved) and require prior Commission approval.[11]

As discussed in its comments, CTIA believes that the Commission's proposed notification rule, whereby a commonly-controlled subsidiary would "notify the Commission within 30 days after beginning to provide service under its parent's authorization," would afford the Executive Branch with notice and opportunity to review the entity's ownership.[12] As an alternative, Cingular suggested a threshold of 20 percent or greater ownership by an entity or entities other than the parent company.[13] While CTIA submits that such a threshold is still unnecessarily strict, it would likely provide some relief to CMRS providers by ensuring that small noncontrolling or passive interests do not trigger an unnecessarily redundant filing burden.

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[10] Cingular Comments at 6, n.16.

[11] *See* Cingular Comments at 5 n.13 (citing *Application of VoiceStream Wireless Corporation, et al.,* Memorandum Opinion and Order, 16 FCC Rcd. 9779 (2001); *Applications of Vodafone AirTouch, PLC and Bell Atlantic Corporation*, Memorandum Opinion and Order, 15 FCC Rcd. 16507 (2000)).

[12] *See* CTIA Comments at 8. This proposal is akin to the international Section 214 post-consummation notification requirements for *pro forma* transfers of control, or the foreign carrier affiliation notification rule whereby authorized carriers notify the Commission of new affiliations via a post-consummation notification public notice and comment procedure. *See* 47 C.F.R. §§ 63.11, 63.24.

[13] Cingular Comments at 7.

Finally, as Cingular noted in its comments, the Commission's foreign carrier affiliation requirements will continue to apply.[14] Indeed, Section 63.11 applies generally to "a carrier … authorized by the Commission … to provide service between the United States and a particular foreign destination …."[15] As a non-wholly-owned subsidiary would be "authorized by the Commission" to provide international services, by definition it would be subject to Section 63.11. Thus, Section 63.11 by its own terms would require a non-wholly-owned subsidiary offering international services pursuant to its parent's authorization to disclose a foreign carrier's direct ownership in excess of 25 percent. For this reason as well, the Commission's rules already largely address the Executive Branch's concerns.

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[14] *See* Cingular Wireless Comments at 7.

[15] *See* 47 C.F.R. § 63.11.

CONCLUSION

For the foregoing reasons and those discussed in CTIA's and Cingular's comments, the Commission should revise its rules to allow non-wholly-owned subsidiaries in which the Section 214-authorized parent company holds a sole controlling ownership interest to provide international service pursuant to the parent company's authorization.

Respectfully submitted,

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Dated: June 7, 2004