

# LUKAS, NACE GUTIERREZ & SACHS

CHARTERED

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October 2, 2006

***Via Electronic Filing***

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

**Re: Ex Parte Notice  
2002 Biennial Review Proceeding  
WT Docket No. 03-264**

Dear Ms. Dortch:

On September 27, 2006 the undersigned and Charles Townsend met with Angela Giancarlo of Commissioner McDowell's office and addressed the matters discussed in the enclosed copy of a written ex parte submitted in this proceeding on July 18, 2006.

Pursuant to 47 C.F.R. § 1.1206(b)(2), this notice is being submitted electronically in the above-referenced docket. In addition, one copy of this notice is being transmitted via e-mail to Ms. Giancarlo.

Very truly yours,

/s/ Thomas Gutierrez  
Thomas Gutierrez  
*Counsel for Aloha Partners, L.P.*

Enclosure

cc: Angela Giancarlo, Esq.

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July 18, 2006

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Re: Ex Parte Submission  
2002 Biennial Review Proceeding  
WT Docket No. 03-264

Aloha Partners, L.P. ("Aloha"),<sup>1</sup> by counsel, submits this letter (a) in support of the consensus proposal<sup>2</sup> involving, among other entities, CTIA (the "CTIA Proposal") to modify Parts 24 and 27 of the Commission's rules governing Equivalent Isotropically Radiated Power ("EIRP") for certain classes of stations by adding a power spectral density aspect to the Commission's base station power limits; (b) to urge that power be measured based upon average rather than peak power; and (c) to urge that licenses issued pursuant to Subparts C and F of Part 27 of the rules receive the same benefit from these rules as would other licenses.<sup>3</sup>

Distilled to its essence, the CTIA Proposal urges only that the Commission's rules be revised so that wideband operations not be penalized in a manner such that "systems operating in smaller bandwidths are permitted to operate at higher power spectrum density than those operating in larger bandwidths." CTIA, Ex Parte submission of February 7, 2005, at 2. Removal of current restrictions that penalize wideband systems over more narrow ones would accomplish this. Significantly, nothing in the CTIA Proposal would permit total power levels greater than those that are already permitted.

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<sup>1</sup> Aloha is the largest licensee of Lower Band 700 MHz spectrum, currently holding 238 licenses for such services that cover more than 60% of the United States population.

<sup>2</sup> The consensus surrounding this proposal appears to have been organized primarily by the Cellular Telecommunications and Internet Association ("CTIA") but has also been supported by a number of other prominent wireless entities including, but not limited to: Motorola, Inc.; QUALCOMM Inc.; Ericsson, Inc.; and Crown Castle International Corp. ("Crown Castle"). Most significantly, no entity opposed the CTIA Proposal generally, although a small handful of parties questioned applicability to limited spectrum allocations that are not here relevant.

<sup>3</sup> The Lower Band 700 MHz spectrum here at issue is governed by Sections 27.50-27.60 of the Commission's rules.

Much of the discussion associated with the CTIA Proposal has – quite naturally, given its constituents – focused on the Cellular, PCS and AWS bands. More recently, Crown Castle has extended that discussion to the 1670-1675 MHz band, appropriately observing that the many good and valid arguments presented in support of the CTIA plan are equally applicable to other bands as well.<sup>4</sup> Aloha concurs with those views, and submits that the proposed change should also extend to the Lower Band 700 MHz spectrum.

The relief that Aloha requests would serve the public interest in multiple ways. First, it would enhance the potential use of Lower Band 700 MHz spectrum, which is licensed in 6 MHz bandwidths.<sup>5</sup> Second, it would retain the technological and spectrum neutrality that Congress sought when it amended the Communications Act in 1993, and that the Commission has sought for the past decade. Third, it would bring to the public the benefits of greater competition by removing constraints that are both arbitrary and artificial.

For all of the foregoing reasons, Aloha urges that the Commission revise its rules to add a power spectral density component, to measure powers based upon average rather than peak power, and to extend the relief to the Lower Band 700 MHz spectrum.

Very truly yours,

\_\_\_\_\_/s/\_\_\_\_\_  
Thomas Gutierrez  
*Counsel for Aloha Partners, L.P.*

cc: Fred Campbell, Esq.  
Aaron Goldberger, Esq.  
Bruce Gottlieb, Esq.  
Barry Ohlson, Esq.  
Angela Giancarlo, Esq.

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<sup>4</sup> See e.g. Crown Castle Ex Parte submission of May 16, 2005. Although the CTIA Proposal speaks directly of revising rules for PCS and AWS, its request for modification of Section 27.50 would extend to Lower Band 700 MHz spectrum as well.

<sup>5</sup> Aloha has made no final determination regarding the channel bandwidth that it prefers to utilize and is considering bandwidths that vary from as little as 1.25 MHz to as much as 5.0 MHz. Yet, Aloha submits that its determination on this matter should not be driven by regulatory considerations.