

December 7, 2006

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Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
12th Street Lobby, TW-A325
Washington, D.C. 20554

Re: *Ex Parte Presentation*, Advanced Wireless Services Cost-Sharing Clearinghouse, WT Docket No. 02-353, ET Docket No. 00-258; FCC Public Notice DA 06-1984.

Dear Ms. Dortch:

CTIA – The Wireless Association® (“CTIA”) files this *ex parte* letter with reference to the Order in ET Docket No. 00-258 discussed in FCC Public Notice DA 06-1984, which approved the CTIA Clearinghouse as a cost-sharing clearinghouse.¹ In that Public Notice, the Wireless Telecommunications Bureau (“Bureau”) announced its intent to issue an Order that would address certain obligations and duties of Advanced Wireless Service (“AWS”) clearinghouses.² After conferring with members and other industry participants, CTIA hereby requests that the Bureau address the following minor, non-controversial items in the upcoming Order.

First, CTIA has received feedback from its members that it would be preferable for them to receive cost-sharing notices via electronic mail. Section 27.1170 of the Commission’s rules states that “[t]he clearinghouse will . . . notify the AWS entity or MSS/ATC entity in writing of its repayment obligation, if any.”³ Accordingly, CTIA seeks clarification that electronic mail (or “e-mail”) would satisfy the “in writing” requirement for purposes of this rule.

Second, CTIA notes that cost-sharing reimbursement triggers under Section 27.1168 of the FCC’s rules depend entirely on whether the new entrant is co-channel with the relocated link and whether the new entrant’s site locations meet the

¹ See “Wireless Telecommunications Bureau Finds CTIA And PCIA Qualified To Administer The Relocation Cost-Sharing Plan For Licensees In The 2.1 GHz Bands,” *Public Notice*, 21 FCC Rcd 11265, DA 06-1984 (rel. Oct. 4, 2006).

² See *id.* at 2 (stating “[t]he Bureau will issue a subsequent Order setting forth details of the clearinghouses’ duties and responsibilities”).

³ 47 C.F.R. § 27.1170.

Proximity Threshold Test.⁴ Thus, in order to administer cost-sharing obligations for a particular site, a clearinghouse need only know the licensee's licensed band of operation and the location of the site. Section 27.1170, however, requires that licensees additionally provide information such as the polarization and the emissions designator.⁵ Because this information is unnecessary for determining triggers, CTIA suggests that the Bureau forbear from requiring new entrants to file information regarding polarization and emissions designators as specified in Section 27.1170.

Third, Section 27.1170 provides that, prior to initiating operations from a site, an AWS entity or MSS/ATC entity must file certain data "with the clearinghouse."⁶ Inasmuch as the FCC has authorized two clearinghouses to provide cost-sharing coordination, the rule is ambiguous as to whether filing with one clearinghouse is sufficient, or whether licensees are required to file with both clearinghouses. To avoid any potential loss of data, corruption of data between the clearinghouses, or confidentiality issues with respect to site data, CTIA believes the rule should be clarified to establish a separate and independent obligation for AWS and MSS/ATC entities to file site data with "each" clearinghouse.

Finally, CTIA believes that the *Ninth Report and Order*⁷ leaves ambiguous the question of whether—for a given relocated link—a triggering "entity" is a "licensee" or a "license." For example, assume there are sites constructed under three licenses that each would meet the co-channel test and Proximity Threshold Test. If those licenses are owned by three separate licensees, it is clear each would be responsible for one-third of the relocation costs, ignoring depreciation.

However, the rule appears somewhat ambiguous if two of those licenses are owned by the same entity—in such a case, if "entity" is intended to mean "license," the licensee with two licenses would be responsible for two-thirds of the costs. If "entity" is intended to mean "licensee," then the licensee with two licenses would be responsible for only one-half the costs, because only two "triggers" would exist.

In the Personal Communications Service ("PCS") context, the rule was interpreted to mean one trigger per license, not one trigger per licensee, and, from CTIA's discussions with stakeholders, that also appears consistent with the way carriers would prefer to have the matter handled. Indeed, the alternative interpretation would unnecessarily penalize a holding company that determines, for whatever reason, to place its licenses into separate licensee entities, as opposed to holding all of its licenses in a single entity. CTIA notes that parties did seek

⁴ 47 C.F.R. § 27.1168(a)(1)-(a)(3).

⁵ 47 C.F.R. § 27.1170.

⁶ *Id.*

⁷ Amendment of Part 2 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, *Ninth Report and Order*, 21 FCC Rcd 4473 (rel. Apr. 21, 2006) ("*Ninth R&O*").

clarification of this matter previously, but the *Ninth R&O* still refers to “entities” and leaves the matter ambiguous.⁸

CTIA believes that the Bureau’s prompt attention to consideration and clarification of the items noted above does not undermine any of the policies underlying these rules. Further, guidance on these issues would allow cost-sharing to proceed on a consensus basis and in a manner that streamlines the work flow to achieve efficient clearinghouse operations. Accordingly, CTIA requests that the Bureau address the items noted above in the forthcoming Order.

Pursuant to Section 1.1206 of the Commission’s rules, a copy of this letter is being filed via ECFS with your office. Should you have any questions, please do not hesitate to contact the undersigned.

Sincerely,

/s/ Brian M. Josef

Brian M. Josef

cc: Cathleen Massey
Joel Taubenblatt
Peter Daronco
Peter Corea
Stephen Buenzow

⁸ *Id.* at ¶ 80.