

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

In the Matter of)	
)	
Amendment of Part 2 of the Commission’s Rules to)	ET Docket No. 00-258
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)	

ORDER

Adopted: July 26, 2019

Released: July 26, 2019

By the Chief, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. Pursuant to section 1.925 of the Commission’s rules, we grant CTIA’s Petition for Waiver of sections 27.1170 and 27.1186 of the Commission’s rules, regarding the clearinghouse notification obligations of Advanced Wireless Service (AWS) licensees.¹ Because there is no longer a clearinghouse to receive notices, AWS licensees are unable to comply with these notification rules, which in any event no longer are necessary to efficiently identify cost sharing obligations related to incumbent relocations in certain AWS bands.²

II. BACKGROUND

A. AWS Relocation and Cost Sharing

2. Frequencies in the 2.1 GHz band have been reallocated from Fixed Microwave and Broadband Radio Services to AWS with AWS licensees required to relocate the existing incumbents in the bands before operating if interference would occur.³ AWS entities that benefit from the clearance of this spectrum by other AWS licensees or from a microwave incumbent’s voluntary self-relocation must contribute to the relocation costs.⁴ The Wireless Telecommunications Bureau (Bureau) selected two entities to operate as clearinghouses to administer the cost sharing plan by, *inter alia*, determining the cost-sharing obligations of AWS licenses for the relocation of incumbents.⁵ AWS entities may satisfy

¹ 47 CFR §§ 1.925, 27.1170, 27.1186; CTIA – The Wireless Association® (CTIA) Petition for Waiver, ET Docket No. 00-258, WT Docket No. 02-353 (filed Apr. 5, 2019) (Petition).

² See Petition at 5-7.

³ See 47 CFR §§ 27.1160, 27.1176. See also ET Docket No. 00-258, Ninth Report and Order and Order, 21 FCC Rcd 4473 (2006) (AWS Relocation and Cost Sharing Report and Order).

⁴ *Id.*

⁵ These two clearinghouses were CTIA Spectrum Clearinghouse, LLC (CTIA Clearinghouse), and PCIA – The Wireless Infrastructure Association (PCIA Clearinghouse). See ET Docket No. 00-258, WT Docket No. 02-353, *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 (WTB 2006), Order, 22 FCC Rcd 4680

(continued....)

their reimbursement requirement by entering into private cost-sharing agreements or agreeing to terms other than those specified in the Commission's cost-sharing formulas in sections 27.1164 and 27.1180.⁶ The cost sharing plan is in effect for each band until the relocation sunset date for each band.⁷ Sections 27.1170 and 27.1186 of the Commission's rules require AWS licensees to file with the clearinghouse a notice containing site-specific data prior to initiating operation from a newly constructed or modified site.⁸ The clearinghouse uses this data—along with data filed with it on relocation payments made by other AWS licensees (or by the microwave incumbents themselves, in cases of voluntary self-relocation)⁹—to determine whether the site has triggered a reimbursement obligation based on a nearby relocation.¹⁰

B. CTIA's Petition

3. On April 5, 2019, CTIA filed the Petition for waiver of the clearinghouse notification requirements in sections 27.1170 and 27.1186 of the Commission's rules.¹¹ CTIA explains that on April 2, 2019, the CTIA Clearinghouse notified the Commission that it would cease providing clearinghouse services on July 1, 2019.¹² CTIA asserts that waiver of sections 27.1170 and 27.1186 is warranted because there are no clearinghouses and thus no way for AWS licensees to comply with the clearinghouse notification requirements. Additionally, CTIA states that the notification requirements no longer are necessary to assist in identifying cost-sharing obligations related to incumbent relocations in the AWS bands.¹³ CTIA explains that sections 27.1170 and 27.1186 were adopted to ensure that all cost-sharing triggers could be identified by a clearinghouse in an environment with a high number of relocators, licensees, and potential triggers. CTIA reports, however, that the cost-sharing environment has changed significantly since the rules were adopted and that now there are very few potential triggers to assess.¹⁴ Specifically, CTIA notes that there are few remaining microwave incumbents, a limited number of AWS-3 licensees, a single AWS-4 licensee, and a single main licensee for BRS spectrum.¹⁵ Because of these circumstances, and as evidenced by the shutdown of both clearinghouses, CTIA states the transaction costs for licensees to relocate incumbents, monitor for trigger activity, and conclude private agreements

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(WTB 2007). *See also* 47 CFR §§ 27.1162, 27.1178. CTIA states that the PCIA Clearinghouse appears to have ceased operations given that it last filed a semi-annual report with the Commission in 2013, has no active internet presence, and ceased to exchange cost-sharing data with the CTIA Clearinghouse. Petition at 4.

⁶ 47 CFR §§ 27.1164, 27.1180.

⁷ *See* 47 CFR §§ 27.1174, 27.1190.

⁸ *See* 47 CFR §§ 27.1170, 27.1186.

⁹ Under the Commission's rules, AWS relocators and voluntarily self-relocating microwave incumbents file cost data with the clearinghouse within 30 days of signing an agreement or notifying the Commission that the link is decommissioned, respectively. *See* 47 CFR §§ 27.1166, 27.1182. As of July 1, 2019, these filing requirements are hereby waived for the same reasons provided herein for granting CTIA's Petition.

¹⁰ *See* 47 CFR §§ 27.1168, 27.1184.

¹¹ *See* Petition at 1. CTIA states that it represents the U.S. wireless communications industry and the companies throughout the mobile ecosystem and that the association's members include wireless carriers, device manufacturers, suppliers as well as apps and content companies. *Id.*

¹² *See* Petition at 4 (noting that the CTIA Clearinghouse notified the Commission that it was terminating operations as of July 1, 2019). *See also* Letter from Thomas C. Power, Secretary/Treasurer, CTIA Spectrum Clearinghouse, LLC, to Marlene H. Dortch, Secretary, FCC at 1 (Apr. 2, 2019) (Termination Notice) (noting the November 29, 2016, sunset date for fixed microwave service relocation by AWS-1 licensees, the relatively few number of remaining links and the relatively few number of distinct licensees in the remaining AWS bands).

¹³ *See* Petition at 5.

¹⁴ *See* Petition at 5.

are sufficiently low that maintaining the infrastructure of a clearinghouse has become inefficient.¹⁶

III. DISCUSSION

4. We may waive any rule (a) if the underlying purpose of the rule would not be served or would be frustrated by application to the instant case, and grant of the requested waiver would be in the public interest or (b) in light of unique or unusual circumstances, application of the rule would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.¹⁷ We find that waiving rules 27.1170 and 27.1186 is justified in these circumstances.

5. *For one*, we find that compliance with the rules is impossible for licensees when no clearinghouse is operating. Accordingly, the only effect of these rules would be to prohibit AWS licensees from taking the actions that would trigger the notification requirement—i.e., “initiating operations for a newly constructed site or modified existing site.”¹⁸ Given that the underlying purpose of the cost-sharing/clearinghouse provisions of our rules was to facilitate swift deployment (by assuring early deployers of compensation when later deployments arrive), strict application of these rules in this circumstance would frustrate the underlying purpose of the rule and be contrary to the public interest. That, coupled with the unique circumstances that the Commission did not originally envision—that there would be no clearinghouse in operation—and the public interest benefit of continued deployment in these bands, justifies a waiver of the rules under both prongs.

6. *For another*, and in any event, we find that the clearinghouse rules have largely served their purpose: Given the limited number of licensees in the affected bands as well as the constrained number of potential triggers for needed action (with the vast majority of clearing already complete), we find that third-party coordination of cost-sharing arrangements through a clearinghouse is no longer necessary to satisfy the Commission’s objectives in establishing these rules. Specifically, we find that continuing application of these rules in these unique circumstances would not serve the underlying purpose of the rule, would be unduly burdensome, and that granting a waiver would be in the public interest.¹⁹

7. We further find that CTIA has shown that, in light of unique circumstances, continued application of sections 27.1170 and 27.1186 would be inequitable, unduly burdensome, and contrary to the public interest, and that licensees have no reasonable alternatives. Specifically, the unique circumstances of the relatively limited number of AWS and incumbent 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 is no

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¹⁵ See Petition at 5. CTIA states that ULS reflects only 71 active microwave licensees in the 2110-2200 MHz band, (many of which are temporary fixed facilities ineligible for protection), *id.* at 6, n.15, that the Clearinghouse sent notices to all AWS-3 licensees that it would be terminating services effective July 1, 2019, *id.* at n.16, and that the single licensee projected to benefit from future triggers related BRS relocations has indicated that it is not interested in participating in the clearinghouse, *id.* at n.17.

¹⁶ See Petition at 6.

¹⁷ See 47 CFR § 1.925.

¹⁸ 47 CFR §27.1170. See also 47 CFR § 27.1186.

¹⁹ See Petition at 6-7. We reiterate that new entrants into these AWS bands continue to bear the cost-sharing obligations contemplated by our rules. To discharge these obligations, we expect AWS licensees to notify other licensees with potential reimbursement rights in the relevant area, promptly after construction of the applicable newly constructed or modified existing sites. Based on the limited number of incumbents identified in the record, we anticipate that parties will be able to satisfy any remaining obligations through voluntary negotiations and agreements, which continue to be contemplated by our rules. 47 CFR §§ 27.1160, 27.1176.

longer economically viable.²⁰ As a result, the two original clearinghouses have ceased operation. With no clearinghouse in operation, there will be no mechanism to file clearinghouse notifications and, therefore, no way to comply with the rule. As CTIA notes, 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.²¹ Accordingly, we waive the clearinghouse notification obligations.

IV. CONCLUSION AND ORDERING CLAUSES

8. CTIA's Petition has demonstrated that waiver of sections 27.1170 and 27.1186 is justified. As CTIA notes, waiver of these rules does not eliminate the Commission's relocation and cost sharing requirements.

9. Accordingly, IT IS ORDERED, pursuant to sections 4(i) and 303(i) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(i), and section 1.925 of the Commission's rules, 47 CFR § 1.925, that the Petition for Waiver of sections 27.1170 and 27.1186 of the Commission's rules, filed by CTIA on April 5, 2019, IS GRANTED.

10. This action is taken under delegated authority pursuant to sections 0.131 and 0.331 of the Commission's rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Donald K. Stockdale, Jr.
Chief, Wireless Telecommunications Bureau

²⁰ Petition at 7. *See also* Termination Notice at 1 ("Given the relatively few number of remaining links and the relatively few number of distinct licensees in the remaining AWS bands, a clearinghouse is no longer an efficient mechanism for licensees to determine cost-sharing obligations.").

²¹ *See* Petition at 7.