January 19, 2007

Electronic Filing

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
12th Street Lobby, TW-A325
Washington, DC 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* filing to respond to the January 11, 2007 *ex parte* of PCIA – The Wireless Infrastructure Association ("PCIA"). This latest PCIA filing was styled as a purported compromise position, but the proposal does not acknowledge or address the real differences between the proposals by PCIA and CTIA. Furthermore, the *ex parte* continues to misrepresent CTIA's clearinghouse proposal,[1] conflate unrelated concepts, require sharing and intermingling of data in an anticompetitive fashion, and advocate a role for clearinghouses that appears to violate the Commission's neutrality principles.

As discussed in more detail in the attachment to this letter, the proper framework for analyzing the proposals is to consider—as separate matters—*which* entity should choose a clearinghouse, *when* that entity should choose a clearinghouse, and *how* that entity should choose a clearinghouse.

In addition, PCIA continues to demonstrate significant misunderstandings of how the cost-sharing process works and repeatedly mischaracterizes clearly stated processes of the CTIA proposal. CTIA believes its proposal best serves the goals of the Commission and the public interest by allowing for portability of relocation rights, engendering competition between clearinghouses, maintaining neutrality of

[1] To correct the record, CTIA's clearinghouse proposal does not "[w]ithhold[] a participant's access to link data as an enforcement mechanism to ensure payment of reimbursement obligations." PCIA *Ex Parte* Notice, WT Docket No. 02-353, ET Docket No. 00-258 (Jan. 11, 2007) at 1. In fact, as CTIA has noted in PCIA's presence at the December 20, 2006 meeting, all cost-sharing notices contain the link data necessary to support an identified obligation. CTIA does not, and frankly cannot, "withhold" data already in the possession of a participant.

cost-sharing administration, and streamlining the administrative processes and data sharing in the most efficient and effective manner. As described in more detail below, the need for extensive data sharing and clearinghouse neutrality are two key areas of dispute between CTIA and PCIA.

Data Sharing Between Clearinghouses. PCIA argues that sharing of data would not adversely affect parties, as confidential treatment of material would be assured.[2] However, PCIA fundamentally misunderstands CTIA's concerns about unnecessary data sharing. The administration of cost-sharing is supposed to be handled by neutral, third party clearinghouses on a competitive basis. For the clearinghouses to be competitive, there must be some differentiation in the product offerings and services provided. Under the PCIA scheme, all of the customer information and data would be shared by both clearinghouses, a result that necessarily will limit competitive opportunities. Contrary to PCIA suggestions, CTIA continues to oppose unnecessary sharing of cost-sharing data to provide for robust competition in cost-sharing administration. Instead, CTIA asserts that sharing of data, on an as needed basis as was done to initiate Wireless Local Number Portability, is the right path to ensure that each clearinghouse will be able to effectively compete and provide differentiated services to cost-sharing participants.[3]

Clearinghouse as a Neutral Third Party. CTIA notes that PCIA appears to have a continuing, basic misunderstanding of the Commission's requirement that each clearinghouse administer cost-sharing rights on a neutral, third party basis. PCIA has consistently argued that parties should be "represented" by the clearinghouse of their choice at all stages of the process, including during dispute resolution. In this latest filing, PCIA continues to expand on this "representation" by a clearinghouse by requiring courtesy copies of reimbursement notifications to be shared between clearinghouses. The only apparent rationale for such frivolous data sharing is to ensure that clearinghouses can "represent" their "customers."

CTIA believes that PCIA's proposals are inconsistent with the directives of the Commission. Cost-sharing clearinghouses are to contract with parties to administer cost-sharing obligations. They are not to "represent" parties in disputes nor or they created to recheck the administration of cost-sharing notifications by other clearinghouses. Rather, they are to be "a neutral, not-for-profit clearinghouse to administer the cost-sharing plan" for relocation of incumbents.[4] CTIA asks that the

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[2] PCIA *Ex Parte* Notice, WT Docket No. 02-353, ET Docket No. 00-258 (Jan. 11, 2007) at 2.

[3] In the Wireless Local Number Portability context, the Commission did not require sharing of all data between carriers to effectuate a change in carrier. Rather, customers were required to make a valid request of their contracted carrier that they desired to port their number to a new carrier. Only at that point was any data shared between carriers. The CTIA proposal mirrors this process for data sharing. *See* http://www.fcc.gov/cgb/NumberPortability/welcome.html#FAQS.

[4] *See* 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, ET Docket No. 00-258, Service Rules for Advances Wireless Services

Commission affirmatively reject the latest proposal of PCIA for courtesy copies of reimbursement notifications and to clarify the neutral status of clearinghouses administering cost-sharing rights.

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In sum, significant differences exist between the two clearinghouse approaches. CTIA strongly believes that the payee of cost-sharing reimbursements should be the party that chooses a clearinghouse to administer future cost-sharing rights. CTIA also believes that such rights should only accrue once a party has actually expended money to obtain cost-sharing rights. The Commission should reaffirm that a cost-sharing clearinghouse is to be a neutral third party and reject requests by PCIA to require unnecessary sharing of cost-sharing data that inhibits the ability for clearinghouses to compete effectively in the marketplace.

Sincerely,

/s/ Brian M. Josef

Brian M. Josef

cc: Cathleen Massey
Joel Taubenblatt
Peter Daronco

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in the 1.7 GHz and 2.1 GHz Bands, WT Docket No. 02-353, *Ninth Report and Order and Order*, 21 FCC Rcd 4473 at ¶ 83 (2006) (*recon. pending*).

ATTACHMENT

Which Entity Should Choose a Clearinghouse.

Each cost-sharing payment is a transaction that implicates two parties, a payee (*i.e.*, the entity receiving a reimbursement for relocation costs paid) and a payor (*i.e.*, the entity obligated to pay a reimbursement due to triggering a specific link). Three possibilities exist: (i) the payee chooses the forum in which cost-sharing rights are administered, (ii) the payor chooses, or (iii) both choose. In an environment where the forum is required to be neutral, as mandated by the FCC, allowing conflicting choices leads to duplication and unnecessary imposition of costs on the industry. Even worse, the selection of a clearinghouse by each participant creates an environment—which appears to be what PCIA is advocating—whereby the clearinghouse is not a neutral party and, in fact, is acting as a champion for a specific participant. From this skewed vantage, PCIA argues that CTIA's proposal (wherein the payee chooses) somehow denies participation to the payor or disenfranchises the payor. In fact, CTIA believes a single neutral forum is the only way to ensure that both parties receive equitable, unbiased treatment.

CTIA believes "payee choice" is the appropriate mechanism for determining the forum for cost-sharing for a number of reasons:

- *First*, as a traditional matter—and consistent with PCIA's proposal—it is the payee that bears financial responsibility to the clearinghouse for transaction fees. In other words, the payee is the entity paying the clearinghouse, the payee is therefore contracting with the clearinghouse, and payee choice is therefore consistent with competitive goals.

- *Second*, payee choice is more easily administered by cost-sharing participants. Payee choice requires only maintaining choices for each cost-sharing link that the payee is involved in. In contrast, payor choice requires each AWS license holder to choose for each PCN containing site construction data—and the number of sites constructed will generally be several orders of magnitude larger than the number of links implicated in cost-sharing. Among other things, payor choice creates administrative barriers to switching clearinghouses (*i.e.*, filing hundreds, or hundreds of thousands, of site updates), and payor choice can lead to situations where both clearinghouses are unintentionally selected. Neither situation arises in payee choice.

- *Third*, payee choice is consistent across the cost-sharing universe. The first entity—whether relocator or self-relocating incumbent—must select a clearinghouse, something acknowledged even by PCIA. Under payee choice, the holder of the potential future rights to cost-sharing is

preserved. In PCIA's model, the choice appears to switch after the first participant from payee choice to payor choice.

When an Entity Should Choose a Clearinghouse

PCIA's arguments also tend to conflate ***when an entity chooses the clearinghouse*** with ***when cost-sharing obligations arise***—two unrelated concepts. CTIA has advocated having participants choose a clearinghouse at the time a potential right to future compensation arises. In CTIA's view, this occurs when a participant either registers a relocated link or when a trigger pays an obligation.[1]

For example, if Company A triggers an obligation but does not pay, and a subsequently triggering site is built by Company B, CTIA does not believe Company B has an obligation to Company A unless and until Company A has paid its existing cost-sharing obligations. Under PCIA's proposal, Company B could well receive a cost-sharing notice (and be required by law to pay Company A), notwithstanding that Company A has not paid *any* cost-sharing. This dispute, which is a difference in the interpretation of the rules, should not be interpreted to dictate when a party chooses a clearinghouse.[2]

To be clear, CTIA advocates permitting participants to switch their clearinghouse at any time, and CTIA's proposal is geared towards making that portability administratively simple. But, the difficulty is not when a clear choice has been expressed by a participant, but rather when obligations arise and an entity is implicated that has ***not*** elected a clearinghouse. Thus, the real question is when—and what—measures should be undertaken to insist on a choice of clearinghouse.

CTIA has previously stated that the actual timing of when a clearinghouse choice is made is arbitrary. The FCC could, as PCIA has suggested, force a choice at the time of filing prior coordination notice ("PCN") data. The FCC could, as CTIA has suggested, solicit a choice at the time the choice becomes relevant—when a possibility of a future right to compensation exists. Or, the FCC could simply issue a public notice requiring licensees to choose a default clearinghouse on or by a fixed date.

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[1] CTIA has already clarified that its proposal in no way prevents a participant from entering into a contract with a particular clearinghouse until payment of any reimbursement obligations that it may owe, as PCIA suggests. *See, e.g.*, CTIA *Ex Parte* Notice, WT Docket No. 02-353, ET Docket No. 00-258 (Jan. 5, 2007) at 1. Under CTIA's approach, there exists no impediment to a party receiving access to assistance in advance of transferring link registration data.

[2] While CTIA does not advocate creating obligations even though prior obligations have not been paid, should the Commission determine that is appropriate, CTIA can adjust its procedures accordingly. Were the Commission to desire that obligation notices be issued even if prerequisite obligations have not been paid, CTIA would then advocate requesting a clearinghouse election for future obligations from any participant receiving a cost-sharing notice for a link.

While each of these choices have unique benefits and drawbacks, CTIA believes that forcing the choice at the time PCN data is filed is the worst of the options available to the Commission. PCN data is unrelated to specific obligations in the sense that licensees may be making many, many choices that are, for all intents and purposes, irrelevant to cost-sharing because those sites never trigger any links. As CTIA has previously explained, this gives rise to the problems involved with payor choice—difficulty in a carrier determining which clearinghouse it has selected for what obligations and barriers to switching clearinghouses. The only potential positive is that, because carriers are required to file PCN data, forcing a choice at that point would at least eliminate the potential that no choice has been made.

CTIA's proposal, on the other hand, is based on the concept that parties should choose at the time when they actually have some reason to choose. If they have a potential future obligation, selection is appropriate. The only drawback of this proposal is that carriers are not explicitly forced to choose, and therefore a carrier that has made no election—even upon being informed they should make a selection—may not have its link rights administered. Notably, however, this does not financially affect any parties to the process beyond the carrier refusing to select a clearinghouse, as the cost-sharing process continues to be administered with other parties who have repaid obligations and selected a clearinghouse.[3]

How an Entity Should Choose a Clearinghouse

PCIA also conflates ***when*** the choice of clearinghouse is made with ***how*** the choice of clearinghouse is made. If the FCC were to determine that it is appropriate to force a choice at the time PCN data is filed, that choice does not need to be effectuated by requiring carriers to file PCN data at one clearinghouse or the other. Given the data fields that are required for all PCN data filings, it would be a simple matter, on a site-by-site basis, to simply add another column to designate either CTIA or PCIA for a given PCN data set. Quite simply, how the designation occurs is separate and independent of when the designation occurs.

While some of these choices regarding which, when and how clearinghouses are selected may seem arbitrary, one of the more dire consequences of PCIA's proposal is that PCIA's choices appear engineered to limit competition. Specifically, PCIA's choices result in a manufactured situation where the two clearinghouses are required to exchange data continuously and engage in substantial coordination of their policies and procedures. While this would ensure that neither clearinghouse proceeds without the other, it also slows down the process of resolving disputes, limits innovation by clearinghouses, and reduces substantially the bases upon which clearinghouses compete. CTIA submits that tying the two clearinghouses together in such a fashion does not serve the Commission's competitive goals or the industry's interest in rapidly, administratively efficient clearinghouse processes.

[3] *See, e.g.*, CTIA *Ex Parte* Notice, WT Docket No. 02-353, ET Docket No. 00-258 (Jan. 5, 2007) at 1.