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To: John F. Morrall III/OMB/EOP@EOP

cc:

Subject: CTIA Comments on OMB Draft Report To Congress

Mr. Morrall:

On behalf of CTIA, I am pleased to submit CTIA's Comments on the OMB Draft Report to Congress on the Costs and Benefits of Federal Regulation. Please give me a call if you have difficulty opening this document, or have any questions regarding the substance of the comments. I also would appreciate confirmation of your receipt of these comments.

Thank you very much.

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I.

Building The Wireless Future™
Cellular Telecommunications & Internet Association

*By Electronic Mail to:
jmorrall@omb.eop.gov*

May 28, 2002

Mr. John Morrall
Office of Information and
Regulatory Affairs
Office of Management and
Budget
NEOPB, Room 10235
725 17th Street, NW
Washington, DC 20503

*Re: Comments of the Cellular Telecommunications & Internet
Association on the OMB Draft Report to Congress on the
Costs and Benefits of Federal Regulations*

Dear Mr. Morrall:

The Cellular Telecommunications & Internet Association ("CTIA")¹ hereby submits its Comments on the *Draft Report to Congress on the Costs and Benefits of Federal Regulations*.² As referenced in the *Notice* published in the March 28, 2002, Federal Register,³ OMB is required to submit a report to Congress on the costs and benefits of Federal regulations together with recommendations for reform pursuant to Section 624 of the FY 2001 Treasury and General Government Appropriations Act, also known as the "Regulatory Right-to-Know Act."

¹ CTIA is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the association 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 See *Notice and Request for Comments, Draft Report to Congress on the Costs and Benefits of Federal Regulations*, Office of Management and Budget, 67 Fed. Reg. 15014 (2002) ("Draft Report").

³ *Id.*



CTIA applauds this critically important initiative to reform the Federal regulatory process. In particular, CTJA, whose wireless carrier members are licensed and regulated by the Federal Communications Commission, supports institutionalizing the formal Regulatory Impact Analysis (“RIA”) that includes an assessment of the benefits and costs (quantitative and qualitative) of regulation, and a rigorous analysis of several regulatory alternatives. As OMB observes in the *Notice*, “[t]he public and Congress have an interest in benefit and cost information, regardless of whether it plays a central role in decisionmaking under the agency’s statute.”⁴

In this regard, CTIA has submitted comments to the Federal Communications Commission in CC Docket No. 99-200 and WT Docket No. 01-184 concerning the FCC’s imposition of the wireless Local Number Portability mandate without the required cost-benefit analysis.⁵ In its comments, CTIA noted that the FCC’s wireless Local Number Portability mandate has been estimated to cost almost \$900 million to install, and \$500 million in annual recurring costs to maintain, but the Commission has never conducted a cost-benefit analysis or considered the competitive alternatives that this investment could support. Moreover, CTIA observed that the wireline Local Number Portability mandate has resulted in \$3 billion in end-user costs, while consumers have not received commensurate benefits. In its February 13, 2002, letter, CTIA urged the Commission to consider both the costs and benefits associated with wireless Local Number Portability, and use this analysis to determine whether the regulatory mandate is truly warranted.⁶

The *Notice* also states that “[t]he Bush Administration supports federal regulations that are sensible and based on sound science, economics, and law”⁷ and seeks

⁴ *Id.*, at 15019. As the General Accounting Office (“GAO”) reported pursuant to the congressional review provisions of the Small Business Regulatory Enforcement Fairness Act (“SBREFA”), for the period of April 1, 2000, to September 30, 2001, in contrast to other agencies, the Federal Communications Commission did not prepare benefit-cost analyses in its rulemaking processes. *See id.*, at 15029.

⁵ *See* CTIA *ex parte* submission, WT Docket No. 01-184 (Jan. 24, 2002); and CTIA *ex parte* submission, CC Docket No. 99-200 and WT Docket No. 01-184 (Feb. 13, 2002).

⁶ In addition to CTIA’s advocacy, Verizon Wireless has petitioned the FCC seeking forbearance of the wireless Local Number Portability mandate. Verizon’s Forbearance Petition thoroughly sets forth the cost-benefit analysis associated with this mandate. *See Verizon Petition for Forbearance*, WT Docket No. 01-184 (filed July 26, 2001), available at http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6512761920.

⁷ *Id.*, at 15015.

Public Comment on reforms to “specific existing regulations that, if adopted, would increase overall net benefits to the public.... These reforms might include simplifying or modifying existing rules or rescinding outmoded or unnecessary rules.” CTIA recently completed its own review of the Federal Communications Commission’s regulations affecting CMRS carriers. Our review identified numerous rules that should be modified or rescinded because they are outmoded or unnecessary.

In response to OMB’s *Notice and Request for Comments*, CTIA offers the following list of regulations affecting CMRS carriers that should be modified or rescinded. The rules are organized for simplicity in the order they are listed in the Code of Federal Regulations. There doubtlessly are many other outmoded or unnecessary regulations affecting CMRS carriers, not included on this list, that are no longer necessary. CTIA has urged the Federal Communications Commission to consider repealing or modifying all such regulations during the Commission’s Congressionally-mandated 2002 Biennial Review.

PART 1 – PRACTICE AND PROCEDURE: SUBPART E – COMPLAINTS, APPLICATIONS, TARIFFS, AND REPORTS INVOLVING COMMON CARRIERS

The Commission should eliminate Section 1.815 of the Commission’s Rules, which requires licensees to file an annual employment report.’ Section 1.815 duplicates the reports that carriers must file with the federal and state EEO agencies and the annual reporting requirement serves no FCC regulatory purpose. The Commission should eliminate this provision since it is nothing more than a duplicative filing and a needless burden of paperwork.

PART 1 – PRACTICE AND PROCEDURE: SUBPART F – WIRELESS TELECOMMUNICATIONS SERVICES APPLICATIONS AND PROCEEDINGS

Under Section 1.923, applicants filing ULS Forms 601 and 603 are required to provide all requested information, including information regarding “pending” non-FCC litigation.¹⁰ The Commission has repeatedly stated that unless and until there is an adverse judgment, pending litigation is not material to a licensee’s qualifications. Requiring information relating to non-FCC litigation results in “offlining” applications, burdening staff, and delaying swift action on routine filings. The question on the ULS

⁸ *Id.*

⁹ **47 CFR § 1.815** (requiring each licensee with 16 or more full time employees to file an annual employment report).

¹⁰ *See* **47 CFR § 1.923** (stating “Applications must contain all information requested on the applicable form and any additional information required by the rules in this chapter”); **47 CFR § 1.923(b)(ii)** (describing applicant information on litigation: title of the proceeding, the docket number, and any legal citations).

Forms 601 and 603 should be deleted, because there is no reason why the collection of such information from carriers is necessary in a competitive market.

Applicants filing ULS Forms 601 and 603 are also required to provide a significant amount of data regarding foreign ownership even when the Commission has already approved such ownership. Thus, the foreign ownership question on ULS Forms 601 and 603 is an unnecessary and burdensome reporting requirement that has little, if any, correlation to the FCC's Section 310(b) analysis required *prior to* approval of such ownership. Accordingly, the question should be deleted from ULS Forms 601 and 603, and replaced with a simple yes/no question as to whether the applicant complies with Section 310(b).

The Commission also should amend Section 1.924(d), which requires a CMRS provider to obtain approval for wireless facilities within the FCC Quiet Zone Rules for the Arecibo Observatory.¹¹ The Commission should eliminate this unnecessary interval of FCC approval, particularly since the Observatory is willing to provide written approval for wireless modifications.¹² As explained in the 2000 Biennial Review proceeding concerning Quiet Zones application procedures, the provision should be eliminated because it creates unnecessary delay in the provisioning of service in Puerto Rico.¹³

Section 1.935 requires applicants to obtain Commission approval of agreements to withdraw applications, petitions, informal objections or other pleadings against an application.¹⁴ The Commission's approval process for such agreements is often the cause of lengthy delays. Moreover, the approval of such agreements is unnecessary in a competitive CMRS market, particularly when the Commission has the authority to request documents in specific cases. Thus, Section 1.935 should be eliminated.

PART 1 – PRACTICE AND PROCEDURE: SUBPART Q – COMPETITIVE BIDDING PROCEEDINGS

Section 1.2105 requires applicants to submit a Short-Form application providing detailed information regarding the ownership of the applicant.¹⁵ Such ownership information is unnecessary because the information will be relevant only if the applicant

¹¹ 47 CFR § 1.924(d).

¹² See *In the Matter of Review of Quiet Zones Application Procedures Notice of Proposed Rulemaking*, FCC 01-333, WT Docket No. 01-319, Biennial Review 2000 Comments of Alloy LLC (“Cingular Comments”) at 8 (filed Jan. 22, 2002).

¹³ See *Id.*

¹⁴ 47 CFR § 1.935 (Agreements to dismiss applications, amendments or pleadings.).

¹⁵ 47 CFR § 1.2105(a)(2)(ii)(B) (requiring applicants to submit applicant ownership information as set forth in § 1.2112 in the Short-Form application).

is a high bidder, and at that time the applicant is required to submit a Long-Form application disclosing ownership data. Section 1.2105 places a burden of needless paperwork on auction applicants.

Section 1.2111(b) requires applicants for transfers of control or assignments of licenses obtained through competitive bidding to file certain transaction documents and other materials with the Commission.¹⁶ This requirement, however, is duplicative and unnecessary given that the Commission already has separate rules governing unjust enrichment, which are sufficient to ensure that auction winners benefiting unfairly from bidding credits disgorge such benefits.” Furthermore, the scope of the current rule is so broad that it applies to all applicants, regardless whether the transfer of control or assignment involves a license obtained pursuant to the FCC’s eligible designated entities rules.

PART 1 – PRACTICE AND PROCEDURE: SUBPART I – PROCEDURES IMPLEMENTING THE NATIONAL ENVIRONMENTAL POLICY ACT OF 1969 (“NEPA”)

To ensure that market forces continue to spur growth in CMRS services as well as stimulate the deployment of competitive broadband wireless services, the Commission must streamline NEPA compliance and review procedures imposed on CMRS providers. Moreover, it is critical that the Commission implement these streamlined procedures in a timely manner. As demonstrated in CTIA’s Biennial Review 2000 Comments,¹⁸ the FCC’s existing NEPA procedures cannot be squared with respect to the prompt and reasonable resolution of issues related to the siting of wireless facilities on or near historic properties. Six years after the passage of the Telecommunications Act, the Commission and other Federal agencies persist in fostering an unwieldy bureaucracy that cannot respond effectively and quickly to market and government demands for the swift deployment of competitive wireless services.¹⁹

¹⁶ 47 CFR § 1.211(b).

¹⁷ See e.g., 47 CFR § 22.943(b).

¹⁸ See *Public Notice*, Biennial Review 2000 Staff Report Released, FCC 00-346 (rel. Sept. 19, 2000), CC Docket No. 00-175, Biennial Review 2000 Comments of the Cellular Telecommunications Industry Association (“CTIA Biennial Review 2000 Comments”), at 11-14.

¹⁹ While the Commission, the Advisory Council on Historic Preservation (“ACHP”) and the National Council of State Historic Preservation Officers (“NCSHPO”) adopted the Nationwide Collocation Programmatic Agreement (“Agreement”) in March 2001, it took the Commission over ten (10) months to issue the requisite guidance document instructing CMRS service providers and SHPOs on how they should implement the Agreement. Consequently, many SHPOs refused to implement the Agreement until the FCC issued its guidance thereby using the Agreement as a sword, rather than as a shield, against unreasonable delays in the siting process.

Wireless carriers compete for subscribers based on coverage area, network quality and network reliability. These dynamics are contingent on the timely and cost effective manner in which carriers can construct and site wireless facilities. It is imperative under the Biennial Review process that the Commission takes appropriate and timely action to streamline the NEPA process as discussed below.

Section 1.1307(a)(4) defines actions that may have a significant environmental effect for which Environmental Assessments (EAs) must be prepared.²⁰ In its recent efforts to streamline the Section 106 process, the Commission recognized the futility and significant delays in deployment caused by its practice of requiring applicants to file an Environmental Assessment (“EA”) even when there is a finding of “no effect” or “no adverse effect.”²¹ Accordingly, the Commission recently adopted a policy whereby it no longer requires applicants to file an EA with the Commission under Section 1.1307(a)(4) if a State Historic Preservation Officer (“SHPO”) has concurred in a proposed finding of “no effect” or “no adverse effect” on a property listed or eligible for listing in the National Register. Furthermore, the Commission has streamlined Section 1.1307(a)(4) by limiting its scope wherein the rule does not apply to collocations that are exempted under the Nationwide Collocation Programmatic Agreement. To ensure the consistent regulatory treatment of a “no effect” or “no adverse” finding, the Commission should amend Section 1.1307(a)(4) to reflect this change in practice.

In 47 CFR § 1.1306NOTE 1, the Commission supports and encourages the use of existing buildings, towers or corridors as an environmentally desirable alternative to the construction of new facilities, *i.e.*, collocation. While the Commission’s rules generally provide for an exclusion for “for the mounting of antenna(s) on an existing building or antenna tower,” this exclusion is not applicable to historic preservation considerations.²² In an effort to streamline the Section 106 process, the Collocation Programmatic Agreement exempts all collocations of antennas on pre-existing towers or structures from Section 106 review, unless one of the exceptions set forth in the Agreement applies. While the Agreement is an initial step in streamlining the Section 106 process, it stops short of “grandfathering” pre-existing towers and structures that have not undergone Section 106 review prior to March 16, 2001. Thus, the underlying tower or structure that supports the collocation could still be challenged under the Section 106 review process, independent of the collocation process. Such a result undermines the Commission’s

²⁰ 47 CFR § 1.1307(a)(4).

²¹ *Public Notice*, Wireless Telecommunications Bureau and the Mass Media Bureau Announce the Release of a Fact Sheet Regarding the March 16, 2001 Antenna Collocation Programmatic Agreement, DA 02-28, rel. Jan. 10, 2002, 10 (“Fact Sheet”) (<http://wireless.fcc.gov/siting/environment.html#collocation>). *See also Public Notice*, Wireless Telecommunications Bureau Announces Execution of Programmatic Agreement with Respect to Collocating Wireless Antennas on Existing Structures (“Collocation Programmatic Agreement”), DA 01-691, rel. March 16, 2001.

²² 47 C.F.R. § 1.1306(b)(3), Note 1.

policy and support for collocation. Furthermore, it significantly reduces any incentive for carriers and public safety agencies to collocate on the thousands of towers or structures built prior to March 16,2001.²³

It is not economically feasible for the Commission, the ACHP or SHPOs to conduct a Section 106 review of the large number of commercial, government and public safety towers that were erected prior to March 16,2001, but have not undergone Section 106 review. These pre-existing towers and structures are built and permit commercial, government and public safety entities to provide services to the public. Requiring applicants to dismantle or make major modifications to the towers or other structures would not serve the public interest. Accordingly, CTIA recommends that the Commission exempt towers or structures built prior to March 16,2001, from the Section 106 review process.

Pursuant to 47 CFR § 1.1308(b) NOTE 2, the Commission must solicit the comments of the Department of Interior with respect to threatened or endangered species or designated critical habitats, and the SHPO and ACHP with respect to historic properties, in accordance with their established procedures. While CTIA, the ACHP, the Commission, and the NCSHPO have worked cooperatively to streamline the SHPO and ACHPs review and comment process, there has been very little progress to date. There are far too many SHPOs that prolong the Section 106 review process well beyond the 30-day comment period established under the ACHP's Section 106 procedural rules.²⁴ The FCC's failure or refusal to hold SHPOs to the requisite period of time has resulted in significant delays in the FCC's approval of applications seeking to construct wireless facilities on or near historic properties. Moreover, the SHPO's ineffective and arbitrary implementation of the FCC's and ACHP's procedures and deadlines have significantly impeded the timely review of pending applications. Too often, SHPOs implement and interpret the FCC's and ACHP's streamlined procedures and time schedules as they deem appropriate. These inconsistent interpretations of federal rules, and inconsistent local implementation efforts often vary within the same office or from one state to another.²⁵

²³ According to CTIA's Semi-Annual Wireless Industry Survey, there are more than 104,000 cell sites in commercial service as of December 31, 2000. This number does not include government and public safety cell sites or cell sites owned by tower companies. See CTIA's Wireless Industry Indices: Semi-Annual Data Survey Results, at 122 (rel. July 2001).

²⁴ See 36 CFR § 800.3(c)(4)(2001).

²⁵ See, e.g., Delaware State Historic Preservation Office, *Guidelines for Architectural and Archaeological Surveys in the State of Delaware* (visited Dec. 19, 2001) <<http://www.state.de.us/shpo/survey%20manual%20for%20draft%20circulation.txt>>; Oregon State Historic Preservation Office, *Section 106 Cell Tower Guidelines* (visited Dec. 19, 2001) <<http://lshpo.prd.state.or.us/images/pdf/shpo sect106 celltower.pdf>>; New Mexico State Historic Preservation Office, *Guidelines for Evaluating Proposed Telecommunications Facilities under Section 106 of the National Historic Preservation*

Such varied interpretations and implementation result in inconsistent determinations and create significant uncertainty for wireless telecommunications companies attempting to site on or near historic properties. Consequently, the FCC's regulations generally have had a dilatory effect, which contravenes the goals, and policies the Commission and the ACHP attempted to achieve by streamlining their processes to facilitate timely Section 106 review.

Accordingly, CTIA recommends that the Commission eliminate its practice of allowing SHPOs to delay their response to the Commission's solicitation of comments. Rather, the Commission must enforce the 30-day time limit for a SHPO's response. While many SHPOs contend that they do not receive sufficient documentation from an applicant to provide a timely review, this contention can be quickly resolved by the Commission adopting the Standard Documentation Guidelines developed by the ACHP's Tower Working Group. Such action would be a significant step in streamlining the FCC's Section 106 process.²⁶

There are several major issues associated with the FCC's policies and procedures governing the solicitation of SHPO review and comments that significantly hinder the construction and buildout of the wireless infrastructure. While the Section 106 historic review process requires applicants to consult with State Historic Preservations Officers ("SHPOs") in determining whether a siting project may have a significant adverse impact on the historic property, there are no limitation on the SHPOs' review authority, nor any standards upon which SHPOs must base their objections. As a result, there are no means of reviewing the reasonableness of SHPO objections. SHPOs are free to pick any point on the map, between one inch and 100 miles, to object to a proposed siting project. The fact that SHPO review lacks adequate standards is amply demonstrated in the several examples that CTIA provided in its comments to the ACHP's proposed Section 106 rules and NTIA's inquiry concerning broadband deployment.²⁷

Act (visited Dec. 19, 2001), <<http://www.nmmnh-abq.mus.nm.us/hpd/about/contents/forms/cellguidelines.pdf>>. See also, Florida Department of State Division of Historical Resource, *Guidelines for Section 106 Review of Proposed Cellular Tower Locations* (visited Dec. 19, 2001), <<http://dhr.dos.state.fl.us/bhp/compliance/106_FCCGuidelines2.pdf>>; Missouri Department of Natural Resources Historic Preservation Program (HPP), *Section 106 Project Information Form, HPP 106 Survey Memo Form, and A Guide to the Completion of the HPP 106 Survey Memo*, (visited Dec. 19, 2001), <<http://www.mostateparks.com/hpp/sectionrev.shtm>>.

²⁶

The Standard Documentation Guidelines provide SHPOs with a checklist of appropriate documents and data that an applicant should provide for a Section 106 review. Once the SHPO receives the appropriate documentation from the applicant, the 30-day review period commences. Hence, the SHPO's receipt of the documentation is the objective basis for triggering the 30-day SHPO review.

²⁷

See *Request for Comments on Deployment of Broadband Networks and Advanced Telecommunications*, Department of Commerce, National Telecommunications

Too often, wireless carriers encounter significant delays in the siting process because the eligibility of a historic property is undetermined or has been pending for a considerable period of time. While the SHPO is responsible for maintaining and ensuring that the state's register of historic properties is current, wireless carriers often encounter instances in which a state register is outdated or missing significant information concerning eligible historic property. It is very difficult for carriers to assess the impact of a proposed site when the information concerning the eligibility of a historic property is uncertain or the information concerning a specific property is outdated or incomplete.

This issue can be addressed by providing SHPOs with an incentive to address the eligibility of a historic property in a timely and reliable manner. There should be a streamlined regulatory process that creates a rebuttable presumption that a carrier has met its obligations under Section 106 by making reasonable efforts to determine whether the siting of a wireless facility on or near a historic property has a significant adverse effect, unless the SHPO has previously made a formal determination concerning the eligibility of a historic property and that determination is duly recorded in the appropriate public files.

The FCC's and the ACHP's current Section 106 rules and procedures do not provide appropriate incentives for carriers to site wireless facilities within areas that fall within certain categorical exclusions or exempted federal undertakings.²⁸ While the FCC

and Information Administration, *Notice*, Docket No. 01-1109273-1273-01 (Nov. 10, 2001); Comments of the Cellular Telecommunications & Internet Association, 22-23 (filed Dec. 20, 2001). *See also* Comments on Proposed Rules to Revise 36 CFR Part 800 *et. seg.*, "Protection of Historic Properties" Filed on Behalf of the Cellular Telecommunications Industry Association, 18-20, <http://www.wow-com.com/filing/pdf/ctia090100.pdf>.

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While the Commission has indicated that the construction and registration of towers are federal undertakings, CTIA strongly recommends that the Commission revisit this decision, particularly in light of the evolution of wireless services since 1988, *i.e.*, the deployment of PCS and ESMR services, wireless information services, broadband and advanced wireless services. In *Cellular Telecomm. Industry Ass'n v. Slater et al.*, the Court determined that it is the Federal agency, not the ACHP, that has the authority to determine what agency activities constitute a federal undertaking under the National Historic Preservation Act. As demonstrated in Sprint PCS' Petitions for Reconsideration of the Nationwide Collocation Programmatic Agreement and Verizon Wireless' Comments filed a year ago, the Commission allocates and licenses spectrum to wireless carriers and does not license or issue construction permits for the siting of wireless facilities. Thus, it is highly questionable whether the siting of wireless facilities on or near historic properties even constitutes a federal undertaking to bring such activities within the purview of the Section 106 process. *See In the Matter of Nationwide Programmatic Agreement for the Collocation of Wireless Antennas*, DA 00-2907, Sprint PCS Petition for Reconsideration and Clarification (filed May 2, 2001); Comments of Verizon Wireless (filed May 14, 2001).

supports the desire of the wireless industry, the ACHP, and the National Council of State Historic Preservation Officers to address these impediments in a Programmatic Agreement, there is significant concern that the Federal agencies will not develop and implement the Programmatic Agreement in a reasonable and timely manner.

PART 6 -- ACCESS TO TELECOMMUNICATIONS SERVICE, TELECOMMUNICATIONS EQUIPMENT AND CUSTOMER PREMISES EQUIPMENT BY PERSONS WITH DISABILITIES; AND PART 7 -- ACCESS TO VOICEMAIL AND INTERACTIVE MENU SERVICES AND EQUIPMENT BY PEOPLE WITH DISABILITIES

Competition, not regulation, has brought wireless technological innovations and solutions to people with disabilities, particularly those who are embracing non-regulated, advanced wireless services, rather than antiquated technology, to meet their needs.

To bring the benefits of emergency and advanced telecommunications to people with disabilities, the Commission has imposed several regulatory mandates under ~~Part 6~~, Part 7, and Section 20.18(c) of the Commission's Rules. However, the unintended consequence of such mandates is that the Commission continues to rely on regulatory fiat, rather than competition, to bring wireless technological innovations and solutions to consumers with disabilities. Indeed, the underlying assumption is that consumers benefit more from heavy-handed regulation than the proven track record of innovations that characterize competitive wireless services. Moreover, the Commission's mandates require CMRS carriers to invest significant resources to develop "backwards compatible" technical solutions in order to achieve accessibility, *i.e.*, making advanced digital technologies compatible with antiquated technologies, rather than supporting a regulatory philosophy and process that encourages consumers with disabilities to migrate from antiquated technologies to advanced digital technologies that offer the functions and benefits they desire. This regulatory philosophy has resulted in inefficient and short-term solutions that do not meet consumers' needs nearly as well as new technologies. SMS messaging is just one example of how wireless information services are providing people with disabilities access to telecommunications and emergency services.³⁰

²⁹ See *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, *Fourth Report and Order* (rel. Dec. 14, 2002). See also *Public Notice*, Wireless Telecommunications Bureau Seeks Comment on Request for Temporary Waiver of Deadline By Which Digital Wireless Systems Must Be Capable of Transmitting 911 Calls from TTY Devices, CC Docket No. 94-102 (Mar. 19, 2002) (seeking comment on two waiver requests from wireless service providers to extend the deadline to upgrade their systems to achieve TTY compatibility and to integrate TTY compatibility with the PSAP).

³⁰ In January 2002, a local police department in London introduced a mobile phone text messaging service to help people who are deaf or hard of hearing contact police in an emergency. A survey conducted in conjunction with the British Institute of the Deaf "revealed that 98 percent of hearing impaired people use text messages to communicate, while 85 percent said they would find the link with the police useful, and

Accordingly, the Commission should eliminate accessibility rules that impose backward compatibility solutions on advanced digital technologies.

The convergence of telecommunications and information services provides competitive alternatives that negate the need for disparate rules for similar services that fall under the very different Title II and Title I requirements. As the Commission establishes the appropriate regulatory treatment for information and broadband services that are not covered under Title II, *i.e.*, voice over IP, text messages (including SMS offered by CMRS carriers), and unlicensed (“wi-fi”) wireless services connected to a cable modem, it should forbear from the burdensome regulations that may thwart the development of innovative services. To the extent that competitive alternatives exist, the Commission should treat telecommunications services and their close-substitutes information services alike, and not apply Parts 6 and 7 of the Commission’s Rules to these similar services.³¹ The Commission’s recent authorization of cost recovery for Internet Protocol (“IP”) relay service is one step towards meeting the Commission’s goals of providing such benefits to the disabilities community.³²

83 percent of those surveyed said they would be keen to sign up to the service.” *See* Samantha Clarke, *Police Add Message Texting to Armoury; Hard of Hearing Will Find It Much Easier to Contact Officers*, COVENTRY EVENING TELEGRAPH, Dec. 29, 2001, at 16.

See also Jane Bird, *When It’s Handsets to the Rescue*, THE LONDON TIMES, Mar. 28, 2002; *Deaf Driver to Text AA*, GLASGOW EVENING TIMES, July 16, 2001, at 18 (announcing a new system that allows motorists who are deaf and who have speech or hearing difficulties to contact an auto club directly when their cars breakdown on a highway with the use of text messaging from mobile phones). Vandana Sinha, *Instant Messaging Aids Communication for Disabled People*, THE VIRGINIAN-PILOT, Nov. 26, 2001 (noting that text messaging “opened up a whole new world” for a 17-year old student who is deaf. “It enabled us [his parents] to let him move around freely...He feels a sense of independence.”)

“In the past year [2000-2001] the number of SMS messages sent worldwide increased fivefold, to 200 billion. In December [2000] alone, Germans sent a staggering 1.8 billion.” Daniel Rubin, *Messaging Connects the Deaf to the Mobile Phone Universe*, SAINT PAUL PIONEER PRESS, Sept. 17, 2001, at E1 (underscoring the widespread use of SMS messaging over mobile phones in Europe and Asia, and how people who are deaf and hard of hearing are embracing the technology.) *See also SMS Allows Hearing-Impaired Enjoy Mobile Lifestyle*, CHANNEL NEWSASIA, Aug. 10, 2001.

³¹

The Commission also should modify 47 CFR §51.100(a)(2), which prohibits telecommunications carriers from installing the most advanced new technologies and capabilities unless they comply with Section 255 and 256 of the Act, to the extent there are competitive services being offered by non-telecommunications carriers.

³²

See News Release, FCC Authorizes Recovery of Costs for New Technology for TRS Users, CC Docket No. 98-67 (rel. Apr. 18, 2002).

PART 17 – CONSTRUCTION, MARKING, AND LIGHTING OF ANTENNA STRUCTURES

In the 2000 Biennial Review, CTIA, among others, urged the Commission to streamline Part 17 of its rules, which sets forth the requirements for construction and coordination of wireless communications facilities.³³ While the Commission has recognized that some of its Part 17 rules warrant modification,³⁴ the Commission has failed to synchronize the FAA and FCC regulations.³⁵ The Advisory Circulars, the FAA recommendations for painting and lighting of antenna structures that are mandatory under the FCC Rules, impose obligations with respect to notification of modifications that conflict with Section 17.23.³⁶ Furthermore, the Commission should work with the FAA to adopt the FCC’s 20-foot rule exemption, a proposal made in the 2000 Biennial Review.³⁷ Until the Commission takes further action, the tower siting rules in Part 17 will continue to be misleading and confusing.

PART 20 – 911 SERVICES

The Commission should modify Section 20.18 to reflect changes it has made to its rules with respect to the deployment of Phase I and Phase II Enhanced 911 (“E-911”) services. Specifically, the Commission’s cost recovery rules now provide for a negotiation process between carriers and PSAPs that is not consistent with Section 20.18.³⁸ The Commission should modify the language requiring carriers to deploy network-based or handset-based location technology within six months of a PSAP request to permit carriers and PSAPs to negotiate a mutually-agreed upon implementation period. In addition, the Commission should modify its rules to affirm that the six-month

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See CTIA’s Biennial Review 2000 Reply Comments; Cingular Biennial Review 2000 Comments at 7; USTA Biennial Review 2000 Comments at 9.

³⁴ See Biennial Review 2000 Staff Report, Appendix IV, at 21 (stating that certain rules “could be modified or eliminated without compromising the public safety goals embodied in this rule part.”)

³⁵

See *id.* at nn. 47-49 (stating that Sections 17.45, 17.48, 17.53, 17.54, 17.4, 17.57 warrant review).

³⁶

See CTIA’s Biennial Review 2000 Reply Comments at 4-6.

³⁷

See Cingular’s Biennial Review 2000 Comments at 7. See also 47 CFR § 17.14(b).

³⁸

See 47 CFR § 20.18(d) (stating that a licensee must provide Phase I service “within 6 months of a PSAP request”); 47 CFR § 20.18 (f), (g) (stating that a licensee must provide Phase II service “within 6 months of a PSAP request”).

implementation period is tolled while a PSAP assembles supporting documentation or during a “readiness dispute.”³⁹

The Commission also should amend its E-911 rules to account for the widespread use of non-initialized (or more properly, non-subscribed) phones. While the Commission’s E-911 mandate requires CMRS carriers to “transmit all wireless 911 calls without respect to their call validation,”⁴⁰ the Phase II accuracy requirements and deployment measures required under Section 20.18 fail to account for calls from non-subscribed calls to a PSAP that cannot be validated. As CTIA stated in comments responding to the Commission’s *Further Notice of Proposed Rulemaking*, the Commission must clarify its 911 rules to reflect the technical obstacles to providing the enhanced features of E911 to non-subscribed handsets.⁴¹

Finally, the Commission should modify sections 20.18(f), (g), (h) and (i) of the Commission’s rules⁴² to clarify that any provider of commercial mobile services subject to those sections may choose to comply with the requirements of any FCC order granting a waiver of these sections.

PART 22, SUBPART C – OPERATIONAL AND TECHNICAL REQUIREMENTS; AND SUBPART H – CELLULAR RADIOTELEPHONE SERVICE

The Commission still has not acted on its 2000 Biennial Review staff recommendations to conduct a comprehensive review of the cellular service rules in Part 22.⁴³ As the Commission has acknowledged, the wireless marketplace is drastically different than what it was when the Part 22 rules were promulgated, and the Commission should eliminate unnecessary cellular rules in view of the introduction of new technologies and the increased competition between wireless carriers.

In the last Biennial Review, the Commission committed to “undertake a comprehensive review of the Part 22 cellular rules as well as other portions of Part 22

³⁹ See CTIA Comments on Cingular Petition for Reconsideration, *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102 (Jan. 18, 2002).

⁴⁰ 47 CFR § 20.18(b).

⁴¹ See CTIA’s Comments and Reply Comments on the Revision of the Commission’s Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, *Further Notice of Proposed Rulemaking*, CC Docket No. 94-102 (Aug. 8, 2001).

⁴² 47 C.F.R. 20.18(f), (g), (h), and (i).

⁴³ See Staff Report at 32.

that have not received recent scrutiny,” based on the fact that CMRS providers, including those licensed under Part 22, “operate in an environment that is marked by significant and increasing competition in mobile telephony.”⁴⁴ The Commission, however, has failed to deliver on its commitment to review the Part 22 rules. There is no need to address the pending issues in the 2002 Biennial Review; the Commission should resolve the following issues, using the *Fox* standard, as part of the still-pending 2000 review.

CTIA urges the Commission to adhere to a policy of regulatory parity and eliminate unnecessary regulatory burdens imposed upon cellular service providers. For example, Section 22.303 requires cellular providers to mark every transmitting facility with a station call sign,⁴⁵ and Section 22.367 imposes a vertical polarization requirement on cellular licensees⁴⁶—neither of which obligation is imposed upon other non-cellular CMRS providers. CTIA also urges the Commission to transfer the management of the assignment of cellular system identification numbers (SIDs), *i.e.*, to CTIA’s CIBERNET subsidiary, and amend Section 22.941 accordingly.⁴⁷

The Commission also should clarify Section 22.919 to allow carriers to use alternative mechanisms to the Electronic Serial Numbers (“ESN”), *i.e.*, SIM cards. In the alternative, the Commission should eliminate the provision since there is no equivalent of ESN requirement for broadband PCS.⁴⁸ Finally, the Commission should eliminate the Cellular Cross-Interest Rule for Rural Service Areas (“RSA”) as it has done for Metropolitan Statistical Areas (“MSA”).⁴⁹ As Cingular Wireless and Dobson Communications stated in their recent Petitions for Reconsideration, a separate rural cross ownership rule is not needed -- the case-by-case competitive analysis applied to all other CMRS transfers will protect the public interest.⁵⁰

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See Staff Report at 39; See *id.* at 38.

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47 CFR § 22.303. See also Verizon Wireless Biennial Review 2000 Comments at 8 (explaining that Part 22 should allow either vertical or horizontal polarization).

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47 CFR § 22.367(a). See also Verizon Wireless Biennial Review 2000 Comments at 8.

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47 CFR § 22.941. See CTIA Biennial Review 2000 Comments and Reply Comments at 7-8.

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47 CFR § 22.919.

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See 47 CFR § 22.942 (limiting the interests licensees can hold in channel blocks in an area).

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See Petitions for Reconsideration of Action in Rulemaking Proceeding Report No. 2540, filed by Dobson Communications Corporation, Western Wireless Corporation, and Rural Cellular Corporation, and the Petition for Reconsideration filed by Cingular Wireless LLC, WT Docket No. 01-14 (Feb. 13,2002).

While CTIA applauds the Commission's efforts to streamline the licensing process for wireless carriers and its establishment of a Universal Licensing System ("ULS") database,⁵¹ the Commission has overlooked certain regulations, such as the requirement in Section 22.953 to file both full-sized maps and reduced maps with minor modifications, that are inconsistent with the policies of ULS implementation. Accordingly, the Commission should eliminate such regulations.⁵²

PART 22, SUBPART J – REQUIRED NEW CAPABILITIES PURSUANT TO THE COMMUNICATIONS ASSISTANCE FOR LAW ENFORCEMENT ACT (CALEA)

In the 2000 Biennial Review proceeding, CTIA, among others, explained that the Commission should modify Section 22.1 103 to reflect the D.C. Circuit's decision vacating part of the Commission's rules and suspending the compliance deadline for the outstanding punch-list items pending completion of the Commission's remand proceeding.⁵³ On April 11, 2002, the Commission released its *Order on Remand*, which established June 30, 2002, as the new deadline for CALEA compliance to provide four capabilities plus the two additional punch list capabilities that were not challenged.⁵⁴ The Commission should clarify Section 22.1 103 to account for changes in CALEA capability deadlines for cellular telecommunications carriers.⁵⁵

PART 24 – PERSONAL COMMUNICATIONS SERVICES, SUBPART B – APPLICATIONS AND LICENSES

Principles of regulatory symmetry require the Commission to treat comparable services the same and that any difference in regulation must be based upon relevant

⁵¹ See Amendments of Parts 0, 1, 13, 22, 24, 26, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Service, *Report and Order*, WT Docket No. 98-20 (1998); Amendments of Parts 0, 1, 13, 22, 24, 26, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Service, *Memorandum Opinion and Order on Reconsideration*, WT Docket No. 98-20 (1999).

⁵² 47 CFR § 22.953.

⁵³ See CTIA Comments at 8-9; USTA Comments at 12.

⁵⁴ See Communications Assistance for Law Enforcement, *Order on Remand*, CC Docket No. 97-213 (April 11, 2002) (The FCC decision restored all four contested surveillance capabilities: dialed digit extraction; party hold/join/drop messages; subject-initiated dialing and signaling information; and in-band and out-of-band signaling information.).

⁵⁵ 47 CFR § 22.1 103.

differences in circumstances or competition. In 1999, CTIA asked the Commission in a Petition for Rulemaking to amend certain provisions of Part 24 to make the PCS license renewal process consistent with the cellular renewal process.⁵⁶ CTIA raised this issue in the Commission's 2000 Biennial Review proceeding, and raises it again in this Petition. Section 24.16 of the PCS rules does not contain the same two-step process for resolving renewal challenges that is included in the cellular renewal rules.⁵⁷ Since the issue continues to be relevant, the Commission should modify the rules governing the PCS license renewal process as part of the still-pending 2000 review and in accordance with the legal standard of review appropriately defined in the *Fox* decision.

PART 24, SUBPART J – REQUIRED NEW CAPABILITIES PURSUANT TO THE COMMUNICATIONS ASSISTANCE FOR LAW ENFORCEMENT ACT (CALEA)

For the reasons stated in the preceding paragraph, the Commission should modify its PCS rules, Section 24.903, and conform the CALEA capabilities requirement for broadband PCS telecommunications carriers to the compliance deadlines established in the Commission's recent *Order on Remand*.⁵⁸

PART 43 – REPORTS OF COMMUNICATIONS COMMON CARRIERS AND CERTAIN AFFILIATES

The Commission has taken significant steps to streamline the international reporting requirements found in Part 43 of its Rules.⁵⁹ The Commission reduced the regulatory burden on non-dominant carriers by clarifying the contract filing requirement in Section 43.51⁶⁰ and Section 20.15(d) for CMRS providers. Consistent with the

⁵⁶ See CTIA's Petition for Rulemaking to Extend the Part 22 Cellular Renewal Rules to the Part 24 Personal Communications Service (Dec. 21, 1999) (stating that when the Commission adopted the PCS renewal rules it expressly stated that it was adopting a ten year license term and "provisions regarding renewal expectancy that currently apply to the cellular service"), *citing* Amendment of the Commission's Rules to Establish New Personal Communications Services, *Second Report and Order*, Gen Docket No. 90-314 at ¶131 (1993).

⁵⁷ See 47 CFR § 24.16 (PCS renewal process); 47 CFR §§ 22.935-40 (Cellular renewal process).

⁵⁸ 47 CFR § 24.903(b).

⁵⁹ Verizon Wireless, Cingular, and others supported the Commission decision to commence a proceeding to consider the international reporting requirements. See Verizon Wireless Comments at 2; Cingular Comments at 3, filed October 10, 2000.

⁶⁰ The Commission amended Section 43.51 so that the reporting requirement applies solely to carriers classified as dominant for reasons other than foreign affiliation;

Commission's deregulatory approach, and the increased competition in international markets, the Commission should eliminate Section **43.53**, a reporting requirement for the transmission or reception of international telegraph communications.⁶¹ As demonstrated by parties commenting in the **2000 Biennial Review** proceeding, this provision is no longer necessary.

The Commission also should eliminate Section **43.61**, which requires carriers to report actual traffic and revenue data for international traffic and overseas traffic (between the United States and U.S. territories), as a duplicative obligation to carriers holding Section **214** authorizations.⁶² Furthermore, the Commission should eliminate the International Circuit status report requirement in Section **43.82** as it is also duplicative of the Section **214** reporting requirements.⁶³

PART 52 – NUMBERING

The Commission has assigned abbreviated dialing codes, or N11 service codes, to enable callers to connect to a location that otherwise would be accessible only via a seven or ten-digit telephone number.⁶⁴ CTIA strongly urges the Commission to modify its existing rules for these services to allow the competitive offering of 211-, 311-, and 511-services.

As explained in CTIA's Petition for Rulemaking, the Commission's mandate for 511 travel services provided by "a governmental entity" inhibits carriers from competing in these services and from designing a service based on customer demand.⁶⁵ The 511-experiment during the Salt Lake City Olympics has only reinforced these concerns. After

and carriers, whether classified as dominant or non-dominant, contracting directly for services with foreign carriers that possess market power.

⁶¹ **47 CFR § 43.53; 43.61; See 47 CFR § 63.21** (below).

⁶² **47 CFR § 43.61.**

⁶³ **47 CFR § 43.82.**

⁶⁴ The Commission has established the following N11 code-assignments for the eight N11 codes: **211**: Assigned for community information and referral services; **311**: Assigned nationwide for non-emergency police and other government services; **411**: Unassigned, but used virtually nationwide by carriers for directory assistance; **511**: Assigned for traffic and transportation information; **611**: Unassigned, but used broadly by carriers for repair service; **711**: Assigned nationwide for access to Telecom Relay Services; **811**: Unassigned, but used by local exchanged carriers for business office use; **911**: Unassigned, but mandated by Congress for use nationwide for emergency services.

⁶⁵ CTIA's Petition for Reconsideration, CC Docket No. 92-102 (March **12, 2001**).

turning up 511 service for the Olympic events, a major wireless received less than thirty 511-calls in Utah during the six week Olympic period. In a recent Order, the Commission committed to reexamine in 2005 its assignment of the 511 and 211 service codes, access to traveler information services and access to community information and referral services.⁶⁶ The Commission should expedite this review and modify its rules to account for competitive CMRS implementation.

PART 52, SUBPART C – NUMBER PORTABILITY

To the extent that any of the provisions of Section 52.31 of the Commission's Rules are not addressed by the Commission's response to the pending Verizon Wireless Petition for Forbearance (filed pursuant to Section 10 of the Communications Act), the Commission should apply the *Fox* standard, and eliminate the local number portability ("LNP") mandate for CMRS carriers.⁶⁷ As explained in the Verizon Forbearance Petition, the FCC imposed the portability requirement upon CMRS providers with no showing of competitive justification and improperly linked the ability of wireless carriers to port with the technical solution required for thousands-block number pooling.⁶⁸ CTIA again urges the FCC to forbear from the LNP mandate, or in the alternative, to grant a transition period to avoid the very real risks to the network integrity caused by the flash-cut simultaneous deployment of two mandates: porting and pooling.

PART 63; SECTION 63.21 – CONDITIONS APPLICABLE TO ALL INTERNATIONAL SECTION 214 AUTHORIZATIONS

As explained above, the Commission should eliminate Section 63.21, which requires carriers holding Section 214 authorizations to file international interexchange service reports, or a Section 43.61 report.⁶⁹ In the 2000 Biennial Review proceeding, Verizon Wireless explains that Section 63.21, which forces carriers to file annual reports

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See Petition by the United States Department of Transportation for Assignment of an Abbreviated Dialing Code (N11) to Access Intelligent Transportation System (ITS) Services Nationwide; The Use of N11 codes and Other Abbreviated Dialing Arrangements, *Third Report and Order and Order on Reconsideration*, CC Docket No. 92-105 (July 31, 2001) at ¶53 (stating that the "Commission shall reexamine the deployment of 511 for access to traveler information services, and of 211 for access to community information and referral services five years after the effective date of this *Third Report and Order*).

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See Verizon Wireless Petition for Forbearance, WT Docket No. 01-184 (filed August 2, 2001) ("Verizon Forbearance Petition").

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See Verizon Forbearance Petition at 15-30, Appendix A.

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47 CFR § 63.21(d).

of overseas telecom traffic for all international Section 214 authorizations, has neither been justified by the Commission as necessary in the public interest nor is it beneficial.⁷⁰ In the alternative, the Commission should modify the rule by narrowing the scope of Section 43.61 and clarify that only facilities-based carriers are required to file Section 43.61 reports.

PART 64, SUBPART U – CUSTOMER PROPRIETARY NETWORK INFORMATION

On remand from the Tenth Circuit’s decision,⁷¹ the Commission recently issued a *Clarification Order and Second Further Notice of Proposed Rulemaking* addressing the obligation of carriers under Section 222 of the Telecommunications Act of 1996 to protect customer proprietary network information (“CPNI”). While the Commission takes the position that the Tenth Circuit’s vacatur applied only to a single provision of the CPNI rules, 47 C.F.R. 64.2007(c), the court vacated the entire Section 64.2007 rulemaking as constitutionally inadequate.⁷² As CTIA explained in its Comments,⁷³ the Commission must eliminate all of its rules on the use of CPNI that were vacated by the Tenth Circuit.⁷⁴ Furthermore, in light of the Tenth Circuit’s vacatur Order, the Commission should abandon its prior approach to CPNI rules, and adopt modified rules based on the Federal Trade Commission’s Fair Information Practices.⁷⁵

⁷⁰ See Verizon Wireless Comments at 6 (stating “there is no valid regulatory purpose that justifies requiring international CMRS resellers to file the Section 43.61 report”).

⁷¹ See *U.S. West v. FCC*, 182 F.3d 1224 (10th Cir. 1999), cert. denied, 147 L. Ed. 2d 248, 120 S. Ct. 2215 (2000).

⁷² *In the Matter of Implementation of the Telecommunications Act of 1996: Telecommunications Carriers’ Use of Customer Proprietary Network Information and Other Customer Information; Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, As Amended*, Clarification Order and Second Further Notice of Proposed Rulemaking, CC Docket Nos. 96-115 and 96-149 (Rel. Sept. 7, 2001) (“*Clarification Order*,”) at 7 (Section 64.2007(c), according to the Commission, is “the only provision inextricably tied to the opt-in mechanism.”).

⁷³ CTIA Comments (Nov. 1, 2001).

⁷⁴ See 47 CFR §§ 64.2005; 64.2007.

⁷⁵ The FTC’s Fair Information Practices are set out in CTIA’s *Location Petition*. See *In the Matter of Petition of the Cellular Telecommunications & Internet Association for a Rulemaking to Establish Fair Location Information Practices*, Notice of Request for Comments, DA –1-696, WT Docket No. 01-72 (Mar. 16, 2001).

PART 90 – PRIVATE LAND MOBILE RADIO SERVICES- SUBPART H – POLICIES GOVERNING THE ASSIGNMENT OF FREQUENCIES

Section 91.175 sets forth the general frequency coordination requirements for licensees regulated by Part 90 of the Commission’s Rules. Section 90.175(i)(8) identifies applications that do not require frequency coordination.⁷⁶ While applications for removing a frequency from a license do not require frequency coordination, Section 90.175(i)(8) does not exclude such applications from the Commission’s general requirements governing frequency coordination. The Commission should modify its rules to clarify that applications removing a frequency from a license do not require frequency coordination. The Commission should also clarify in subparagraph (8) that the auctioned-over SMR General Category frequencies (channels 1-150) do not require frequency coordination by including Section 90.615 to the list of exceptions in Section 90.175(i)(8).

PART 90. SUBPART S – POLICIES GOVERNING THE PROCESSING OF APPLICATIONS AND THE SECTION AND ASSIGNMENT OF FREQUENCIES FOR USE IN THE 806-824, 851-869, 869-901, AND 935-940 MHZ BANDS

The Commission’s Rules provide that a co-channel licensee may reduce the separation between the co-channel systems if it submits letters of concurrence with an application.⁷⁷ The Commission should eliminate the requirement in Section 90.621(b)(5) for each co-channel licensees submitting a letter of concurrence to certify that its system is “constructed and fully operational.”⁷⁸ By eliminating this requirement, the Commission will increase spectrum flexibility and reduce the delays in pending construction.

The Commission should eliminate the loading requirement in Section 90.658 as an obsolete reporting rule for Specialized Mobile Radio (“SMR”) base station licensees.⁷⁹ Specifically, this provision requires all licensees applying for a first renewal in a waiting list area for a system licenses before 1993 to report loading data to the Commission. Similarly, Section 90.631(i), which requires certain licensees of trunked systems to satisfy loading thresholds, should be eliminated as an obsolete regulation since it applies

⁷⁶ 47 CFR § 90.175(i)(8)

⁷⁷ 47 CFR § 90.621(b)(4) and (5).

⁷⁸ 47 CFR § 90.621(b)(5) (Separation Between Co-Channel Systems).

⁷⁹ 47 CFR § 90.658.

to certain SMR licenses that should have already met this requirement.⁸⁰ Section 90.629(e) should be eliminated since this provision only applied to a specific proceeding whereby the Commission extended certain SMR licenses in March 1996.⁸¹ Finally, the Commission should eliminate Section 90.653, an obsolete SMR licensing rule that was codified in 1982.⁸²

PART 90, SUBPART U – COMPETITIVE BIDDING PROCEDURES FOR 900 MHz SPECIALIZED MOBILE RADIO SERVICE; AND SUBPART V – COMPETITIVE BIDDING PROCEDURES FOR 800 MHz SPECIALIZED MOBILE RADIO SERVICE

Sections 90.813 and 90.911 of the Commission’s Rules authorize and set forth the procedure for 800 MHz and 900 MHz licensees to partition and disaggregate their spectrum.⁸³ The Commission should modify its rules to reflect that geographic area licenses may be consolidated and aggregated, as well as partitioned and disaggregated, just as it has done for Part 22 and Part 24 licensees. In addition, the Commission should modify Sections 90.813(f) and 90.911(f) to clarify that the partitionee/disaggregatee, as well as the original licensee, is allowed to certify that it will satisfy the requirements for “substantial service” for the entire market.⁸⁴

⁸⁰ 47 CFR § 90.631(i) (imposing loading requirements on SMR category trunked systems licensed in the 896-901/935-940MHz band, other than MTA-licensed systems).

⁸¹ 47 CFR § 90.653 (requiring certain licensees to justify their licensees granted an extended implementation period).

⁸² 47 CFR § 90.653 (imposing no limit on the number of systems authorized to operate in any one given area).

⁸³ 47 CFR § 90.813 (stating rules for partitioned licenses and disaggregated spectrum for 900 MHz licensees); 47 CFR § 90.911 (stating rules for partitioned licenses and disaggregated spectrum for 80 MHz licensees).

⁸⁴ 47 CFR §§ 90.911(f); 90.813(f) (the current rules allow the disaggregating parties to elect for the original licensee to submit supporting documents for the construction requirements for the entire market).

As described in the above comments to OMB, CTIA respectfully submits that the public interest requires that the Federal Communications Commission review, on an expedited basis, *all* regulations affecting CMRS carriers. Moreover, the FCC's review should be guided by the cost-benefit analysis required under Section 624 of the Regulatory Right-to-Know Act. As the GAO has noted, the FCC has not made it a practice to consider the costs of its regulatory mandates on carriers and consumers along with the claimed benefits. In this regard, CTIA urges the Federal Communications Commission to conduct a cost-benefit analysis with respect to its Local Number Portability mandate and its other regulations for wireless carriers, and consistent with the Bush Administration's approach to regulatory review, regulations that do not measure up should be repealed or amended. Finally, CTIA supports the adoption of the Regulatory Impact Analysis as a formal cost-benefit analysis.

Respectfully submitted,

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