relocate incumbents.) In the *Clearinghouse Order*, ET Docket No. 00–258 and WT Docket No. 02–353, DA 07–1120, the FCC's Wireless Telecommunications Bureau (Bureau) requires the AWS clearinghouses to file reports with the FCC and to make disclosures between the clearinghouses. Separately, in a *Public Notice* issued jointly with the National Telecommunications and Information Administration (NTIA), 71 FR 28696 (May 17, 2006), 21 FCC Rcd 4730 (2006), the FCC set forth procedures for AWS licensees to coordinate with Federal Government operators in the 1.7 GHz band, and AWS licenses are granted with a special condition that requires coordination with Federal operators.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. E7–14803 Filed 7–31–07; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 22, 27 and 101

[ET Docket No. 00–258; WT Docket No. 02–353; DA 07–1120]

Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands

AGENCY: Federal Communications Commission.

ACTION: Final rule; interpretations and general waiver.

SUMMARY: The Wireless Telecommunications Bureau sets forth details of the duties and responsibilities of the clearinghouses that will administer the Commission's cost-sharing plan under the incumbent relocation procedures for the 2110–2200 MHz band. We also address several matters raised by commenters and issue interpretations and a general waiver that are intended to avoid confusion and unnecessary burdens.

DATES: The interpretations and general waiver are effective August 1, 2007.

FOR FURTHER INFORMATION CONTACT: Jennifer Mock, Broadband Division, Wireless Telecommunications Bureau at (202) 418–2483 or via the Internet at *Jennifer.Mock@fcc.gov*.

SUPPLEMENTARY INFORMATION: In the *AWS Relocation and Cost Sharing Report and Order,*[1] 71 FR 29818, (May 24, 2006), the Commission established procedures for the relocation of Broadband Radio Service (BRS) operations from the 2150–2160/62 MHz band and Microwave Service (FS) operations in the 2.1 GHz band, and adopted cost sharing rules to identify the reimbursement obligations for Advanced Wireless Service (AWS) and Mobile Satellite Service (MSS) entrants benefiting from the relocation of incumbent FS and/or BRS operations. The Commission also delegated authority to the Wireless Telecommunications Bureau (WTB or Bureau) to select one or more entities for the creation and management of a neutral, not-for-profit clearinghouse that would facilitate cost sharing among AWS and MSS entrants benefiting from the relocation of FS incumbents in the 2110–2150 MHz and 2160–2200 MHz bands and AWS entrants benefiting from the relocation of BRS incumbents in the 2150–60/62 MHz bands.[2] Mobile Satellite Service (MSS) operators are required to participate in the clearinghouse for Ancillary Terrestrial Component (ATC) base stations, *see e.g.*, 47 CFR 101.82(d), and may elect to submit claims for reimbursement to the AWS clearinghouse for FS links relocated due to interference from the MSS space-to-Earth operations.[3] The Commission stated that selection would be based on criteria established by the Bureau, and that the Bureau would publicly announce the criteria and solicit proposals from qualified parties.[4] The Commission also instructed the Bureau to solicit public comment on all proposals submitted and, after selecting the clearinghouse administrator(s), to announce the effective date of the cost sharing rules, including the filing requirements for reimbursement claims and relocation cost estimates.[5] In doing so, the Commission noted that the Bureau could select more than one clearinghouse.[6]

1. By *public notice* released on June 15, 2006 (*Clearinghouse PN*), 71 FR 38162 (July 5, 2006), the Bureau invited proposals from entities interested in serving as a neutral, not-for-profit clearinghouse responsible for facilitating cost sharing among entrants benefiting from the relocation of incumbent licensees in the 2.1 GHz bands.[7] The *Clearinghouse PN* also sought comment on whether more than one clearinghouse would be feasible, and required certifications that the entity would be able and willing to work with other clearinghouses if WTB selected more than one, as well as a certification that the entity is a not-for-profit organization and will retain its not-for-profit status during the term of its operations. We also sought comment on whether proposals that offer to administer cost sharing for both FS and BRS relocations are preferable to proposals that seek to administer cost sharing for only one of these relocation processes. We received two proposals and each proposed to administer cost sharing for both FS and BRS relocations.[8] Five parties filed

[1] 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 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 (2006) (*recon. pending*) (*AWS Relocation and Cost Sharing Report and Order*).

[2] *See AWS Relocation and Cost Sharing Report and Order* at para. 106–107. The Commission made no determination at the time as to whether a clearinghouse must provide administration for both FS and BRS-related cost sharing. *See id.* at n.374. However, the Commission recognized the efficiencies in a clearinghouse administering the cost sharing processes for the relocation of both FS and BRS incumbents in the subject bands. *See id.* at para. 106.

[3] *See AWS Relocation and Cost Sharing Report and Order* at para. 93–94.

[4] *See id.* at para. 83, 107.

[5] *See id.* at para. 83, 107. Claims for reimbursement are limited to relocation expenses incurred on or after the date when the first AWS license is issued in the relevant AWS band (start date). If a clearinghouse is not selected by that date, claims for reimbursement and notices of operation for activities that occurred after the start date but prior to the clearinghouse selection must be submitted to the clearinghouse within thirty calendar days of the selection date. *See* 47 CFR 27.1166.

[6] *See* 47 CFR 27.1178. *See also AWS Relocation and Cost Sharing Report and Order* at para. 107 (''we delegate to WTB the authority to select one or more entities to create and administer a neutral, not-for-profit clearinghouse'').

[7] *See* Wireless Telecommunications Bureau Opens Filing Window for Proposals to Develop and Manage the Clearinghouse that will Administer the Relocation Cost Sharing Plan for Licensees in the 2.1 GHz Bands, *Public Notice,* 21 FCC Rcd 6616 (WTB 2006) (*Clearinghouse PN*). The notice invited any entity interested in serving as a clearinghouse to submit a business plan detailing how it would perform the functions of a clearinghouse, including the following elements: a description of the entity proposing to be a clearinghouse and its qualifications; information regarding financial data, including a business plan that addresses how the entity intends to raise start-up funds and how much the entity plans to charge for individual transactions; whether the entity is interested in serving as a clearinghouse for FS relocations, BRS relocations, or both; a detailed description of accounting methods; a description of how the entity intends to remain impartial and how it will prevent any conflicts of interest; a description of how the entity intends to address concerns about confidentiality and a description of security measures the entity will take to safeguard submitted information; a description of how the entity intends to resolve disputes between parties; and an assessment of how long it would take the entity to become operational. *Id.*

[8] *See* CTIA—The Wireless Association® Clearinghouse Plan, filed July 17, 2006 (CTIA Plan); Clearinghouse Proposal of PCIA—The Wireless Infrastructure Association, filed July 17, 2006 (PCIA Plan).

comments related to those proposals, and PCIA filed reply comments.[9] As noted in the *Qualification PN,*[10] two commenters specifically supported designating PCIA as a clearinghouse[11] and one commenter specifically supported selecting CTIA.[12] Two commenters specifically supported designating both PCIA and CTIA as clearinghouses and none of the commenters opposed the selection of multiple clearinghouse administrators.[13]

2. On October 4, 2006, the Bureau concluded that the benefits of having two or more clearinghouses outweigh any disadvantages because offering participants a choice increases the incentive for all clearinghouses to operate in an efficient manner, thus benefiting the consumers of these services.[14] We also found CTIA and PCIA, the two entities that filed proposals, qualified to serve as clearinghouse administrators, and we advised them to begin preparing their clearinghouse operations.[15] As part of establishing the criteria for clearinghouses, the Bureau also stated that it would issue a subsequent Order setting forth details of the clearinghouses' duties and responsibilities.[16]

3. Unless the context requires otherwise in the paragraphs below and for convenience only, we refer to the ''FCC,'' the ''Bureau'' and ''WTB'' interchangeably. Also, for brevity, we refer to ''clearinghouse administrator(s)'' as the ''clearinghouse(s),'' and our references to AWS include MSS/ATC.

A. Duties and Responsibilities of the Clearinghouses

1. Scope; Representations and Acknowledgments

4. As a preliminary matter, we emphasize that the duties and responsibilities of the clearinghouses are set forth chiefly in the Commission's rules and policies adopted in the *AWS Relocation and Cost Sharing Report and Order.* To the extent permitted under our delegated authority, the instant Order clarifies the Commission's cost-sharing rules and policies, including the duties and responsibilities of the clearinghouses delineated therein. In accordance with the Commission's directive and delegation to the Bureau of authority to establish criteria for, and to select one or more, clearinghouse(s), we set forth details of the clearinghouses' duties and responsibilities below.

5. In the *Qualification PN,* the Bureau found CTIA and PCIA qualified to serve as clearinghouses after reviewing each entity's overall plan and the responsive record, but the Bureau did not thereby rule that all provisions of each plan were in accordance with the Commission's rules and policies. Rather, the Bureau relied on each entity's material representations regarding its organization, qualifications, start-up financing, accounting methods, commitment to provide non-discriminatory and impartial services, security measures to protect confidential information, and willingness and capability to cooperate with other clearinghouses in the coordination and sharing of information. Except for these material representations, we are aware that both plans and their projected implementation may need to be modified at some time(s) during the course of the administration of the cost-sharing plan. As such, we do not believe it is necessary to require either PCIA or CTIA to submit a revised plan to include these administrative details, at this juncture.

6. Each clearinghouse will administer the cost-sharing plan by, *inter alia,* determining the cost-sharing obligations of AWS and MSS/ATC entities for the relocation of fixed microwave service (FS) incumbents from the 2110–2150 MHz and the 2160–2200 MHz bands[17] and the cost sharing obligations of AWS entities for the relocation of BRS incumbents from the 2150–2160/62 MHz band.[18] Given the purpose of establishing a private, industry-based cost sharing plan, CTIA and PCIA are each advised that it is responsible for its acts and omissions and that the Commission and its employees, agents, and representatives are not responsible or liable for the actions or inaction of a clearinghouse. Additionally, CTIA and PCIA each must ensure that neither it nor any affiliated entity is a party to any memorandum of understanding or agreement with the FCC or other governmental entities that would interfere with or prohibit it from performing its duties hereunder.

2. Non-Discrimination and Impartiality

7. CTIA and PCIA must provide clearinghouse services on a non-discriminatory, impartial basis.[19] Specifically, if CTIA or PCIA has a direct affiliation with a class of relocators, licensees, operators, or other entities that provide services or products to clearinghouse users, the relationship must not affect the manner in which CTIA or PCIA performs clearinghouse services and the treatment of all relocators, licensees, or operators must be non-discriminatory. CTIA and PCIA may only refuse to provide clearinghouse services for good cause and must do so as soon as is practicable after receiving the request for service.

3. Multiple Clearinghouses; Data Exchange and Related Matters

8. To be qualified, CTIA and PCIA each had to certify that it would be able and willing to work with each other and other clearinghouses that may be selected by the FCC in the future. Cooperation among the clearinghouses includes, among other things, exchanging clearinghouse data. As a general matter, the clearinghouses must exchange clearinghouse data in a secure and timely manner as necessary to ensure that: (1) No clearinghouse participant is required to provide

[9] Comments were filed by Keller and Heckman LLP (Keller and Heckman), Association for Maximum Service Television Inc. (MSTV), Sprint Nextel Corporation (Sprint Nextel), T-Mobile USA, Inc. (T-Mobile), and The Wireless Communications Association International, Inc. (WCA). PCIA filed reply comments.

[10] *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,* DA 06–1984 (rel. October 4, 2006) (*Qualification PN*).

[11] *See Qualification PN* at 1, *citing* Keller and Heckman comments and MSTV comments.

[12] *See Qualification PN* at 2, *citing* T-Mobile comments.

[13] *See Qualification PN* at 2, *citing* Sprint Nextel comments at 2–3 and WCA comments at 2–3.

[14] *See Qualification PN* at 2.

[15] *Id.*

[16] *Id.*

[17] *See* 47 CFR 27.1162.

[18] See 47 CFR 27.1178.

[19] CTIA will establish an Advisory Panel made up of entities from the various affected services, *i.e.*, BRS, FS, AWS, and MSS, to provide policy guidance to the clearinghouse and ensure that parties affected by the cost-sharing and relocation processes have an adequate say in the mechanics of the operations. *See* CTIA Plan at 2. PCIA plans to establish the PCIA AWS Clearinghouse as a non-profit subsidiary with its own by-laws and Board of Directors. PCIA, as the incorporator, will select the initial Board of Directors and the Board will establish the general policies including dispute-resolution policies and will examine those policies from time to time to ensure that they are effective but will play no role in the actual dispute resolution process, which will be handled by the PCIA AWS Clearinghouse staff and dispute resolution experts. *See* PCIA Plan at 10, 15. The PCIA Plan includes further details by reference to the PCIA PCS Microwave Clearinghouse. ''To ensure fairness, any PCS company that either provides funding or pays a transaction fee becomes a member of the PCIA Microwave Clearinghouse. Membership benefits include participation in the election of the board of directors, who set policy around technical and procedural issues associated with relocation cost-sharing.'' PCIA Plan, Exhib. B at 2. See also PCIA Reply Comments at 2 (''PCIA is committed to working with all affected constituencies to ensure that the Commission's relocation cost-sharing rules are implemented in a smooth and efficient manner, on a competitive cost-effective basis that will benefit all affected interests'').

notices or other information relative to a given link or system to more than one clearinghouse; and (2) each clearinghouse has access to the data required to perform its duties. *See, e.g.*, 47 CFR 27.1168 and 27.1184. In the event a clearinghouse makes an error in the shared data, the erring clearinghouse shall be solely responsible for correcting the shared-data error as soon as is practicable.

9. The record reflects that CTIA and PCIA disagree as to certain details of the data exchange (and certain operational or business matters related to the disputed details of the data exchange).[20] Although the scope of this disagreement has narrowed over the past several months, CTIA and PCIA appear to have reached an impasse.[21] Accordingly, to move the cost-sharing process forward, we conclude that the Bureau must set forth additional details that will govern data exchange between the clearinghouses in the absence of a written agreement between CTIA and PCIA.

10. *Registration data.* CTIA avers that a clearinghouse should only be required to exchange registration data for a given relocation when an entity that shares in the cost of that relocation has paid-in-full and selected the other clearinghouse to administer its downstream reimbursement rights.[22] PCIA counters that the clearinghouses should exchange all registration data in real time so each clearinghouse has all of the data necessary to assist customers at any stage of the cost-sharing process.[23] CTIA responds that its proposal merely limits the exchange of registration data and emphasizes that its approach would not impede a party from entering a contract to receive assistance from a particular clearinghouse at any time.[24]

11. We find CTIA's distinction unpersuasive. If a party elects to contract with a clearinghouse, the subject clearinghouse will need access to the relevant registration data in order to provide meaningful assistance to the party.[25] In this connection, we will not second guess PCIA's assessment of the market, based on its experience administering the PCS Microwave Clearinghouse, that participants will seek assistance from a clearinghouse before they have reimbursement rights.[26] CTIA further contends that requiring the clearinghouses to exchange registration data will limit competitive opportunities because ''for the clearinghouses to be competitive, there must be some differentiation in the product offerings and services provided.''[27] It is our view that competition between the clearinghouses should be based on price, speed, and quality of service; [28] competition based on one clearinghouse's superior access to data submitted by licensees would tend to hamper or eliminate competition.

12. Based on our administrative experience generally and considering that CTIA and PCIA reached an impasse on this issue after several months of negotiation, we are concerned that requiring the clearinghouses to exchange registration data selectively at the time a contract is established with a customer will risk opening a door to disputes between the clearinghouses.[29] As such, we believe that establishing a bright-line process, under which the clearinghouses promptly exchange registration data for each relocation, will reduce the risk of confusion or disputes between the clearinghouses and among cost-sharing participants. Furthermore, promptly exchanging data for all registrations also provides an additional safeguard against data loss because both clearinghouses will have complete and current data.[30]

13. *Cost-sharing notices.* PCIA proposes that each clearinghouse should only issue notices of reimbursement obligations (cost-sharing notices) *to* its own customers (*i.e.*, communicate only with its customers) [31] while CTIA proposes that each clearinghouse should only issue cost-sharing notices on behalf of its own customers to any AWS licensee (which could include communications to another clearinghouse's customers).[32] PCIA also proposed that each clearinghouse should exchange, *i.e.*, copy, the other on all cost-sharing notices, as an additional check and courtesy, though it subsequently withdrew this request.[33] CTIA counters that clearinghouses ''are not to 'represent' parties in disputes'' and that clearinghouses are not created ''to recheck the administration of cost-sharing notifications by other clearinghouses.'' [34] PCIA responds that

[20] CTIA and PCIA reported their disagreement in October 2006 and the Bureau met with them several times. CTIA and PCIA also held several private meetings at which verbal and written proposals were exchanged in an attempt to reach an agreement. *See, e.g.*, CTIA *Ex Parte,* filed Oct. 19, 2006; PCIA *Ex Parte,* filed Oct. 20, 2006.

[21] *See, e.g.*, CTIA *Ex Parte,* filed Jan. 19, 2007, at 2–3 (stating that FCC should reject PCIA's latest proposal and that significant differences exist between the clearinghouses); PCIA *Ex Parte,* filed Dec. 29, 2006 (describing the disagreement with CTIA and stating that PCIA intends to continue advocating for its approach).

[22] *See CTIA Ex Parte,* filed Jan. 5, 2007, at 1; CTIA *Ex Parte* filed Dec. 21, 2006, at 1. CTIA also notes that the entity receiving a reimbursement is the entity contracting with and paying the clearinghouse. *See CTIA Ex Parte,* filed Jan. 19, 2007, Attachment at 1.

[23] PCIA *Ex Parte,* filed Dec. 21, 2006, at 1 (''[e]ach AWS licensee is subject to the cost-sharing rules and thus, should be entitled to assistance from the clearinghouse that it selects at any stage of the cost-sharing process.''). *See also PCIA Ex Parte,* filed Dec. 29, 2006 (''PCIA disagrees with CTIA's proposal to allow a participant to elect a clearinghouse only after it has cleared certain hurdles.'').

[24] *See, e.g.*, CTIA *Ex Parte,* filed Jan. 19, 2007, Attachment at 2 n.1, *citing* CTIA *Ex Parte,* filed Jan. 5, 2007, at 1 (''[t]here exists no impediment to a party receiving access to assistance in advance of transferring link registration data {between the clearinghouses]'').

[25] We note that CTIA and PCIA have elected to use a fee structure under which they will be compensated only when their customers have received reimbursement. We have no quarrel with this approach but find that the timing of the payments to the clearinghouses should not be a determining factor in our decision on when registration data must be exchanged given the Commission has not dictated a payment scheme.

[26] *See, e.g.*, PCIA *Ex Parte,* filed Jan. 26, 2007, at 2 (stating that it is not unusual for a cost sharing participant to require assistance from a clearinghouse when the particpant first enters the cost-sharing process. PCIA explains that assistance, among other things, involves providing the participant with a better understanding of the FCC's cost-sharing plan, the participant's role in the process, and the basis for its obligations. PCIA also notes that the clearinghouse also serves as a body of knowledge regarding cost-sharing procedures and rules and that the clearinghouse serves as the first-level of dispute resolution. *Id.* at 2–3, citing Ninth Report and Order, 21 FCC Rcd at 4510, 4532 para. 68, 122.

[27] *See, e.g.*, CTIA *Ex Parte,* filed Jan. 19, 2007, Attachment at 2.

[28] *See* PCIA *Ex Parte,* filed Jan. 26, 2007, at 4.

[29] CTIA claims that its proposal mirrors the process used for Wireless Local Numbering Portability (WLNP). *See* CTIA *Ex Parte,* filed Jan 19, 2007, at 2. (CTIA states that the Commission did not require sharing of all data between carriers to effectuate a change in carrier; ''[r]ather, customers were required to make a valid request of their contracted carrier that they desired to port their number to a new carrier.'' *Id.* at n.3, *citing http://www.fcc.gov/cgb/NumberPortability/welcome.html##FAQS.*) We note that the cited webpage actually states that ''[c]onsumers should contact their prospective new carrier, who will start the porting process. The new carrier will first confirm the consumer's identity and then make a porting request of the old carrier.'' Moreover, WLNP is not analogous to the AWS cost-sharing plan because WLNP requests are initiated by consumers voluntarily and expressly for the purpose of contracting with a new carrier whereas most of the data filed with the AWS clearinghouses is mandatory, either prior to operation or to preserve reimbursement rights under the cost-sharing plan. *See also* PCIA *Ex Parte,* filed Jan. 26, 2007, at 4.

[30] We emphasize that nothing in this Order prohibits the clearinghouses from reaching an agreement that revises the scope or schedule of the data exchange, assuming their agreement is consistent with our rules, because our concerns regarding disputes would be sufficiently addressed if both clearinghouses have agreed to such revisions. *See* para. 8, *supra.*

[31] PCIA *Ex Parte,* filed Jan. 11, 2007, at 1.

[32] See CTIA *Ex Parte,* filed Dec. 21, 2006, Attachment at 8.

[33] *See* PCIA *Ex Parte,* filed Jan. 26, 2007, at 4.

[34] CTIA *Ex Parte,* filed Jan. 19, 2007, at 2. CTIA requests that the Commission reject PCIA's (subsequently withdrawn) proposal that the

it does not suggest that a clearinghouse ''represents'' a party in a dispute, and that a clearinghouse's assistance [35] can resolve most disputes with an explanation of the cost-sharing rules and formula, which are objective and precise, thereby avoiding any danger of a clearinghouse favoring one participant over another.[36] Finally, CTIA and PCIA ask us to clarify that cost-sharing notices sent by electronic mail satisfy the requirement that such notices be in writing.[37]

14. We agree with CTIA that each clearinghouse should identify cost-sharing obligations and issue the notices of reimbursement for obligations owed to its customers to give effect to the market choice by each entity—relocators and downstream cost-sharers.[38] Under PCIA's proposal, by comparison, clearinghouse selections made by the relocator and/or the first or second cost-sharers could be negated by a later cost-sharer's selection of a different clearinghouse. Though we agree with PCIA that a clearinghouse does not merely notify participants of reimbursements due,[39] this is undeniably a core function of the clearinghouses, and we agree with CTIA that each participant's selection should be honored through the date of the sunset of the cost-sharing plan. We recognize that, in some situations, a clearinghouse will be issuing/sending cost-sharing notices (for reimbursement obligations owed to its customers) to customers of the other clearinghouse. Finally, we clarify as a general matter that cost-sharing notices sent by electronic mail satisfy the requirement in Section 27.1170 that such notices be in writing.

15. We further believe that clearinghouses cannot compete and cannot fully serve their customers if they do not possess complete information. Because a clearinghouse may send a notice on behalf of its own customer to a customer of the other clearinghouse, the second clearinghouse needs to be informed of the contents of the cost-sharing notice in order to complete its records. We believe that this can most readily be accomplished by requiring each clearinghouse to copy the other clearinghouse on all cost-sharing notices because this method will be more convenient for clearinghouse participants. Under CTIA's proposal, the second clearinghouse only would receive this information if its customer communicates the contents of any notices the participant receives. We believe this would place an unnecessary burden on clearinghouse participants, particularly when it should be relatively simple for the clearinghouses to exchange copies of cost-sharing notices electronically. This exchange will ensure that the clearinghouses use the same data and allows for early resolution of any mistakes or disagreements.

16. *Site-notice data.* CTIA asks us to clarify that § 27.1170's requirement to file site data ''with the clearinghouse'' is a requirement to file such data with both clearinghouses given that we have selected two clearinghouses.[40] PCIA opposes CTIA's request [41] and urges us to clarify that by filing a site notice with a particular clearinghouse, the filer is thereby selecting that clearinghouse's services including assistance for any cost-sharing obligations that may be triggered by the site notice and administration of any reimbursement rights that may arise in the future.

17. We decline both requests for clarification. We find no ambiguity in § 27.1170's requirement to file with a clearinghouse; nor is the Commission's intention made ambiguous by WTB's selection of multiple clearinghouses after the rule was adopted in the *AWS Relocation and Cost Sharing Report and Order.* Indeed, the *AWS Relocation and Cost Sharing Report and Order* makes clear that the Commission envisioned that the Bureau might select multiple clearinghouses.[42]

18. Regarding PCIA's request to clarify that participants select their clearinghouse by filing site notices, we agree that each stakeholder should have a choice of which clearinghouse to use—independent of other filers' choices relative to a given relocation.[43] Indeed, although CTIA and PCIA disagree as to timing, CTIA also ''advocates permitting participants to switch their clearinghouse at any time.'' [44] In this connection, we clarify that merely filing a site notice with a clearinghouse does not form a contract between the filer and the clearinghouse under the Commission's Rules, though a clearinghouse is free to offer its services to the participant and to present a contract.[45] We need not provide additional details in this Order because the formation of contracts is generally a matter of state and local law. However, we note that the record reflects that CTIA and PCIA agree that it is a simple matter to add a column for participants to designate its clearinghouse when filing site notices.[46]

19. Finally, CTIA and PCIA agree that there is no need to require site notices to include the polarization and emission designator of the relevant station because this data is not needed for clearinghouses to determine cost-sharing obligations.[47] CTIA's and PCIA's point is well taken, though modifying § 27.1170 to eliminate this data collection is beyond the scope of the Bureau's delegated authority. Nonetheless, given that both clearinghouses state that requiring new entrants to submit this data is unnecessary to administer the cost-sharing plan, we find that good cause exists for waiving the requirement that all site notices include this data in the first instance.[48] Accordingly, new entrants will be required to submit the polarization and/or emission designator of a given station to a clearinghouse only upon request.

20. *Operational matters.* Clearinghouses must exchange registration, site-notice data, and cost-sharing notices, electronically at least once per business day (if a clearinghouse has no new data it shall so indicate) and such data exchange shall include, but is not limited to, both the registration data required under 47 CFR 27.1166 and 1182, and the site-notice data required by and copies of cost-sharing notices issued under 47 CFR 27.1170 and 27.1186. We direct CTIA and PCIA, within ten (10) calendar days of the release of the instant Order, to establish the exact technical format of these required data exchanges and to report jointly to the Bureau that such an agreement has been

clearinghouses provide courtesy copies of cost-sharing notifications. Id. at 2–3.

[35] *See* note 26, supra.

[36] *See* PCIA *Ex Parte,* filed Jan. 26, 2007, at 3.

[37] *See* CTIA *Ex Parte,* filed Dec. 7, 2006, at 1; PCIA *Ex Parte,* filed Dec. 21, 2006, at 2.

[38] *See* CTIA *Ex Parte,* filed Dec. 21, 2006, Attachment at 8.

[39] *See* PCIA *Ex Parte,* filed Jan. 26, 2007, at 2.

[40] *See* CTIA *Ex Parte,* filed Dec. 7, 2007, at 2, *quoting* 47 CFR 27.1170. ''Inasmuch as the FCC has authorized two clearinghouses * * * the rule is ambiguous as to whether filing with one clearinghouse is sufficient * * * .'' *Id.,* CTIA *Ex Parte.*

[41] *See* PCIA *Ex Parte,* filed Dec. 21, 2006, at 2.

[42] *See, e.g.*, 47 CFR 27.1162 (WTB will select one or more entities to operate as a * * * clearinghouse(s).'' *See also* 47 CFR 27.1166(a) (''[t]o obtain reimbursement, an AWS relocator * * * must submit documentation * * * to the clearinghouse * * * .'').

[43] *See* PCIA *Ex Parte,* filed Dec. 21, 2006, at 3.

[44] *See* CTIA *Ex Parte,* filed Jan. 19, 2007, Attachment at 2.

[45] We understand that all or most site notices (as well as registrations) will be filed online.

[46] *See* PCIA *Ex Parte,* filed Jan. 26, 2007, at 3; CTIA *Ex Parte,* filed Jan. 19, 2007, Attachment at 3.

[47] *See* CTIA *Ex Parte,* filed Dec. 7, 2006, at 2; PCIA *Ex Parte,* filed Dec. 21, 2006, at 2.

[48] *See* 47 CFR 1.3 (any provision of the rules may be waived by the Commission on its own motion for good cause shown).

reached.[49] The Bureau expressly reserves the right to revisit this matter in the future, if the public interest so requires.

4. Confidential (Sensitive Commercial) Information

21. With respect to the issue of maintaining the confidentiality of information, both PCIA and CTIA assert that they will collect and disseminate only that information which is essential to the performance of the clearinghouse functions and will execute confidentiality agreements with all participating entities. Such procedures adequately ensure the necessary confidentiality. We continue to believe that designating multiple clearinghouses is the appropriate approach and believe that the safeguards instituted by both PCIA and CTIA will adequately protect participants from the inadvertent release of any confidential information. We reserve the right, however, to review at any time, the safeguards instituted by both clearinghouses to protect the confidentiality of certain information. Should breach of confidentiality issues develop, we will take the appropriate steps to rectify the situation.

5. Dispute Resolution

22. The Wireless Communications Association International (WCA) emphasizes in comments filed in response to the *Clearinghouse PN* that the role of the clearinghouses is limited to administration of cost sharing among the AWS and MSS licensees who will benefit from the relocation of BRS and other incumbents in the 2.1 GHz band.[50] Put differently, WCA avers that the clearinghouses do not administer the BRS relocation rules. We are unaware of any claim by CTIA, PCIA, or other commenters that suggest that the clearinghouses will administer BRS relocation. As such, we note that there does not appear to be any dispute on this point.

23. We also note that the Commission's rules provide that ''disputes arising out of *the cost sharing plan*, such as disputes over the amount of reimbursement required, must be brought in the first instance to the clearinghouse for resolution.[51] To the extent that disputes cannot be so resolved, the clearinghouse shall encourage the parties to use expedited Alternative Dispute Resolution (ADR) procedures, such as binding arbitration, mediation, or other ADR techniques. To the extent that disputes cannot be resolved using ADR and one or all parties seek to bring the dispute to the FCC for resolution, the clearinghouse shall cooperate with the parties and the FCC in attending any status conference(s) called by the staff and in producing whatever reports or records that are necessary for FCC resolution of the dispute.[52] The initial FCC point of contact is: Chief, Broadband Division, Wireless Telecommunications Bureau, FCC. In the event a mistake is made by a clearinghouse, it shall be responsible for correcting the mistake as part of any dispute resolution.

6. Term; Suspension or Termination

24. The FCC anticipates that, once selected, a clearinghouse will continue its operation until after the sunset date for all relevant AWS bands. However, the FCC's selection of CTIA or PCIA may be terminated by the FCC for cause at any time, upon sixty (60) days written notice, or suspended for up to 90 days, upon ten (10) days written notice. Should the FCC give notice of termination due to a breach or violation, the subject clearinghouse will have sixty (60) days from the date notice is effective to cure such breach or violation. Should the FCC give notice of suspension due to a breach or violation, the subject clearinghouse will have ten (10) days from the date the notice is effective to cure such breach or violation. A breach or violation is a failure of a clearinghouse to perform its duties and responsibilities in accordance with the Commission's rules and policies and/or the instant Order. A clearinghouse also may terminate its service after ninety (90) days written notification to the FCC; however, this provision does not absolve the clearinghouse of any private contractual obligations. Notifications required by this paragraph must be provided by Certified Mail—Return Receipt Requested. However, changes associated with rule amendments or decisions adopted by the FCC will be effective on the same date that the rule amendments and/or FCC decisions are effective and we advise CTIA and PCIA that a petition for reconsideration of the *AWS Relocation and Cost Sharing Report and Order* is pending before the FCC in ET Docket No. 00–258 and WT Docket No. 02–353. Nothing in the instant Order limits or otherwise prejudices the Commission's actions in that proceeding(s) and we reserve the discretion to add or delete clearinghouse selections at a later date if circumstances indicate that such action is warranted.

7. No Assignment or Transfer; Notice of Impairment

25. The FCC's clearinghouse selections, *i.e.*, the selections of CTIA and PCIA, may not be sold, assigned, or transferred to any party without the prior written approval of the FCC. Except as explicitly provided herein, the instant Order does not provide and shall not be construed to provide any third party with any remedy, claim, liability, reimbursement, cause of action or other right or privilege. In addition, CTIA and PCIA must agree to report to the FCC, within thirty (30) days of an occurrence, of any matters that could reasonably be expected to impair its ability to perform the duties authorized under this Agreement, including, but not limited to, a filing for bankruptcy or any legal or administrative proceeding that may bear upon CTIA's or PCIA's ability to perform the duties of a clearinghouse under the Commission's rules and policies or the instant Order.

8. Activity Reports and Special Reports to the FCC

26. As noted above, we are aware that both plans and their projected implementation may need to be modified at some time(s) during the course of the administration of the cost-sharing plan. In this connection, we find it appropriate to monitor both PCIA's and CTIA's implementation of their plans and require that both parties submit reports to the Commission at six-month intervals. The first report will be due on July 31, 2007 (covering the period from the release date of the instant Order through June 30, 2007), and every six months thereafter, *e.g.*, the second report will cover July 1, 2007, through December 31, 2007, and will be due on January 31, 2008. The reports must include an update on the number of links relocated, the amounts paid to relocate these links, updated cost and revenue projections, and any adjustments to existing fee structures. We also reserve the right at any time to

[49] We note that CTIA and PCIA have already agreed upon the specific data format and structure to be included in the exchange of site-notice data. *See* CTIA *Ex Parte,* filed October 19, 2006.

[50] *See* WCA comments at 3 (the process of moving BRS incumbents in the 2.1 GHz band, including the reimbursement of displaced BRS incumbents for their relocation costs, is a separate process from the allocation of responsibility for those costs among multiple AWS licensees who benefit from the relocation).

[51] *See* 47 CFR 27.1172 and 27.1188 (*emphasis added*). *See also* 47 CFR 27.1178 (the clearinghouse(s) will administer the cost-sharing plan by *inter alia*, determining the cost sharing obligation of AWS entities for the relocation of BRS incumbents from the 2150–2162 MHz band).

[52] We note that CTIA and PCIA are each required to follow the conditions and terms of any separate agreement (MOU) concerning the resolution of interference complaints that it may have with the Commission.

inspect the records of or require additional information or reports from CTIA and/or PCIA.

B. Requests for Clarification

1. Definition of Triggering ''Entity'' Under the Cost-sharing Formula

27. CTIA and PCIA request a clarification that—for a given relocated link—a triggering ''entity'' is a ''license,'' not a ''licensee'' [53] and, based on discussions with stakeholders, CTIA states that this is the way that carriers would prefer to have the matter handled.[54] CTIA notes that parties sought clarification of this matter previously and avers that the Commission's response leaves the matter ambiguous.[55]

28. In the *AWS Relocation and Cost Sharing Report and Order*, the Commission addressed a similar proposal [56] by noting that the cost-sharing formula already explicitly states that the *pro rata* reimbursement formula is based on the number of entities that would have interfered with the link. Accordingly, the Commission found that the need for a clarification had not been demonstrated in the record before it.[57] Given this procedural history, we note that the deadline for petitions for reconsideration of the *AWS Relocation and Cost Sharing Report and Order* was June 23, 2006,[58] and that the requested clarification is beyond the scope of the authority that the Commission delegated to the Bureau to select clearinghouses.[59] Therefore, we decline to clarify the rule as requested herein. Regarding CTIA's statement that carriers would prefer to share costs on a per license basis, we note that the cost-sharing obligations established by the Commission's cost-sharing plan merely serves as defaults. As in the PCS cost sharing rules, parties remain free to enter into private cost-sharing arrangements that alter some or all of these default obligations.[60]

2. BAS in the 2025–2110 MHz Band

29. The Association for Maximum Service Television (MSTV) notes in comments filed in response to the *Clearinghouse PN* that ''first-in-time'' TV Broadcast Auxiliary operations will continue to operate in the portion of the spectrum from 2025 to 2110 MHz (adjacent to the 2110–2025 band).[61] MSTV urges that all clearinghouses fully inform all new adjacent channel AWS licensees of their responsibility to protect ''first-in-time'' primary adjacent channel operations. MSTV states that this practice will ensure that all parties are fully aware of their responsibilities with regard to the protection of adjacent channel operations.[62] MSTV notes that PCIA has pledged to work closely with it to ensure that adjacent channel TV broadcast auxiliary operations are taken into account and MSTV has pledged to work similarly with all clearinghouses.[63] Although not within the scope of the Commission's cost-sharing plan, we applaud and encourage these private efforts to inform licensees of their obligations under the Commission's rules.

3. Procedures for Federal Coordination and Relocation

30. T-Mobile USA, Inc. (T-Mobile), in comments filed in response to the *Clearinghouse PN*, asks the Commission and NTIA to clarify the procedures for AWS deployments in the 1.7 GHz band.[64] T-Mobile notes that the Commission will be able to grant licenses prior to the relocation of federal government operations in the 1710–1755 MHz band and that the Commission and NTIA have released procedures that must be followed when AWS licensees deploy services in this band.[65] T-Mobile states that these procedures require new licensees to contact the appropriate federal agency to obtain the necessary information to conduct an interference analysis and that the agency must provide the necessary information within 30 days of the request.[66] However, T-Mobile contends that the current procedures do not specify how the information is to be shared, for example, whether it must be in electronic format and what file format should be used.[67] As such, T-Mobile states that it would like the affected federal agencies to begin to create a ready database of microwave system information to facilitate the exchange of data as soon as possible.[68] Additionally, T-Mobile is concerned that Federal agencies will not be prepared to respond to the quantity of requests they may receive at the close of the auction.[69] Accordingly, T-Mobile requests that the Commission and NTIA also clarify the repercussions for federal agencies that do not provide the necessary information within the 30-day time limit they have established.[70]

31. We find that T-Mobile's request is beyond the scope of the *Clearinghouse PN* and raises matters that are not within the scope of the Commission's directive and delegation to the Bureau of authority to select one or more clearinghouse(s) and to set forth details of the clearinghouses' duties and responsibilities. Accordingly, we do not reach T-Mobile's request herein.

C. Thirty-day Deadline for Submitting Claims and Notices to Clearinghouse for Activities That Occurred Between November 29, 2006 and the Clearinghouse ''Selection Date''

32. Claims for reimbursement are limited to relocation expenses incurred on or after November 29, 2006 (the ''start date'') [71] and, to obtain reimbursement under the cost-sharing plan, an AWS relocator or MSS/ATC relocator must submit documentation of the relocation agreement to the clearinghouse within 30 calendar days of the date a relocation agreement is signed with an incumbent.[72] In addition, prior to initiating operations for a newly constructed site or modified existing site, an AWS entity or MSS/ATC entity is required to file a notice containing site-specific data with the

[53] *See* CTIA *Ex Parte*, filed Dec. 7, 2006, at 2; PCIA *Ex Parte*, filed Dec. 21, 2006, at 2.

[54] *Id.*, CTIA *Ex Parte.*

[55] *Id.*, CTIA *Ex Parte, citing AWS Relocation and Cost Sharing Report and Order.*

[56] *AWS Relocation and Cost Sharing Report and Order*, 21 FCC Rcd at 4511–12 para. 71 and n.244, *citing* T-Mobile's and PCIA's comments in response to the *Fifth Notice* in ET Docket No. 00–258. (T-Mobile sought a ruling that a new entrant may only trigger a cost sharing obligation for a relocated link only once per license, regardless of the size of the license. PCIA stated that numerous disputes arose as to why larger area licensees did not trigger an obligation for each BTA where sites were in the proximity box and urged the Commission to affirm a ''one license—one trigger rule.'' *Id.*, n.244.

[57] *AWS Relocation and Cost Sharing Report and Order*, 21 FCC Rcd at 4516–17 para. 80, citing 47 CFR 24.243 (PCS cost-sharing formula). *See also* 47 CFR 27.1164 and 27.1180 (AWS cost-sharing formula for FS and BRS relocations, respectively).

[58] The *AWS Relocation and Cost Sharing Report and Order* was published in the **Federal Register** on May 24, 2006 (71 FR 29818) and the deadline for filing petitions for reconsideration or clarification was thirty-days thereafter. *See* 47 CFR 1.429(d).

[59] *See* 47 CFR 27.1162 and 27.1178. *See also* 47 CFR 1.429(a) (''[w]here the action was taken by the Commission, the petition will be acted on by the Commission'').

[60] *See AWS Relocation and Cost Sharing Report and Order*, 21 FCC Rcd at 4509–4510, 4531 para. 67, 123.

[61] MSTV comments at 1–2.

[62] *Id.*

[63] *Id.* at 2.

[64] T-Mobile comments at 4–5.

[65] The Federal Communications Commission and the National Telecommunications and Information Administration—Coordination Procedures in the 1710–1755 MHz Band, *public notice* 21 FCC Rcd 4730 (2006).

[66] T-Mobile comments at 4.

[67] *Id.* at 5.

[68] *Id.* at 4–5.

[69] *Id.*

[70] *Id.*

[71] *See* 47 CFR 27.1166(a), defining the ''start date'' as the date when the first AWS license is issued in the relevant AWS band. *See* also Wireless Telecommunications Bureau Grants Advanced Wireless Service Licenses, *public notice,* 21 FCC Rcd 13883 (2006) (announcing the grant of the first AWS licenses on November 29, 2006).

[72] *See* 47 CFR 27.1166(a)(1) and 27.1182(a).

clearinghouse.[73] The clearinghouse filing requirements do not take effect until a clearinghouse is selected.[74] Registrations and notices for activities that occurred after the start date but prior to the clearinghouse selection date must be submitted to a clearinghouse within 30 calendar days of the selection date.[75] We clarify that the selection date for calculating the initial 30-day deadline under these rules will be the date that the instant Order, or a summary thereof, is published in the **Federal Register**, *i.e.*, August 1, 2007. We further clarify that any registrations or notices submitted to a clearinghouse on or after November 29, 2006, need not be resubmitted merely because a clearinghouse received them prior to the selection date.[76]

II. Ordering Clauses

33. *It is ordered* that CTIA—The Wireless Association® (CTIA) and PCIA—The Wireless Infrastructure Association (PCIA) are each selected pursuant to 47 CFR 27.1162 and 27.1178, to serve as a neutral, not-for-profit clearinghouse to administer the Commission's cost-sharing plan in accordance with the Commission's rules, policies, and the instant Order.

34. *It is further ordered* that CTIA and PCIA shall submit to the Wireless Telecommunications Bureau reports on progress in implementing their respective plans beginning July 31, 2007 (for the period beginning today, *i.e.*, March 8, 2007, and ending on June 30, 2007), and every six months thereafter until the services of the clearinghouses are no longer needed.

35. This action is taken under delegated authority pursuant to §§ 0.131, 0.331, 27.1162, and 27.1178 of the Commission's rules, 47 CFR 0.131, 0.331, 27.1162 and 27.1178.

Federal Communications Commission.

Joel D. Taubenblatt,

Chief, Broadband Division, Wireless Telecommunications Bureau.

[FR Doc. E7–14872 Filed 7–31–07; 8:45 am]

BILLING CODE 6712–01–P

[73] *See* 47 CFR 27.1170 and 27.1186.

[74] *See* 47 CFR 27.1162, 27.1166(a) and 27.1178.

[75] *Id.*

[76] The Bureau found CTIA and PCIA qualified to serve as clearinghouses on October 4, 2006. *See* note 15, *supra* and accompanying text.

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 07–3153; MB Docket No. 05–273; RM–11273; RM–11307]

Radio Broadcasting Services; Charleston and Englewood, TN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division, at the request of Englewood Wireless, allots Channel 250A at Englewood, Tennessee, as the community's first local FM service. Channel 250A can be allotted to Englewood, Tennessee, in compliance with the Commission's minimum distance separation requirements with a site restriction of 13.4 km (8.3 miles) at the following reference coordinates: 35–21–05 North Latitude and 84–36–18 West Longitude.

DATES: Effective August 27, 2007.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Deborah Dupont, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MB Docket No. 05–273, adopted July 11, 2007, and released July 13, 2007. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, (800) 378–3160, or via the company's Web site, *http://www.bcpiweb.com.* The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR part 73

Radio, Radio broadcasting.

■ As stated in the preamble, the Federal Communications Commission amends 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Tennessee, is amended by adding Englewood, Channel 250A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E7–14932 Filed 7–31–07; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 07–3156; MM Docket No. 99–275; RM–9704]

Radio Broadcasting Services; Keno, OR

AGENCY: Federal Communications Commission.

ACTION: Final rule, dismissal of petition for reconsideration.

SUMMARY: This document dismisses a Petition for Reconsideration filed by Renaissance Community Improvement Association, Inc. directed against the dismissal of its Petition for Rule Making proposing the allotment of Channel 235A at Keno, Oregon. With this action, this proceeding is terminated.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Media Bureau, (202) 418–2177.

SUPPLEMENTARY INFORMATION: This is a synopsis of the *Memorandum Opinion and Order* in MM Docket No. 99–275, adopted July 11, 2007, and released July 13, 2007. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Information Center at Portals ll, CY–A257, 445 12th Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copying and Printing, Inc. 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.* This document is not subject to the Congressional Review Act. (The Commission is, therefore, not required to submit a copy of this Report and Order to GAO, pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A), because the petition for reconsideration was dismissed.)