

APPENDIX D

NEW ENGLAND REGION 19 700 MHZ COMMITTEE DISPUTE RESOLUTION PROCESS

INTRODUCTION

The New England Region 19 700 MHz Committee is established under section 90.527 of the Federal Communications Commission's (FCC) rules and regulations. It is an independent Committee apart from the Federal Communications Commission with authority to evaluate applications for public safety uses of the spectrum allocated under FCC Docket 96-86 and amended under FCC Docket 07-132, Second Report and Order. In addition, the Committee hears appeals of the decisions and allocations which it has made. The formal requirements of the appeal process are set out below.

In order to ensure that the appeal process is open and understandable to the public, the New England Region 19 700 MHz Committee has developed this procedure. The Committee and its members will follow this procedure (as may be amended). Any changes made to this process will require a modification to the Regional Plan and will be made available to the public.

The New England Region 19 700 MHz Committee will make every effort to process appeals in a timely fashion and issue decisions expeditiously.

APPEALS COMMITTEE

Members

The Regional Chair may organize the Committee into Sub-Committees, each comprised of one or more members. The Appeals Sub-Committee is one of those Sub-Committees. Where an appeal is scheduled to be heard by this Sub-Committee, the chair is determined as follows:

- (a) if the chair of the Committee is on the Sub-Committee, he/she will be the chair;
- (b) if the chair of the Committee is not on the Sub-Committee but the vice-chair is, the vice-chair will be the chair; and
- (c) if neither the chair nor the vice-chair is on the Sub-Committee, the New England Region 19 700 MHz Committee will designate one of the members to be the chair.

Withdrawal or Disqualification of a Committee Member on the Grounds of Bias

Where the chair or a Committee member becomes aware of any facts that would lead an informed person, viewing the matter reasonably and practically, to conclude that a member, whether consciously or unconsciously, would not decide a matter fairly, the member will be prohibited from conducting the appeal unless consent is obtained from all parties to continue. In addition, any party to an appeal may challenge a member on the basis of real or a reasonable appearance of bias.

Correspondence (Communicating) with the Committee

To ensure the appeal process is kept open and fair to the participants, all correspondence to the New England Region 19 700 MHz Committee must be sent to the chair, vice-chair and secretary and other parties to the appeal.

Committee members will not contact a party on any matter relevant to the merits of the appeal, unless that member puts all other parties on notice and gives them an opportunity to participate. The appeal process is public in nature and all meetings regarding the appeal will be open to the public.

THE APPEAL PROCESS

Filing an Appeal

What can be appealed

The Committee hears appeals of decisions or allocations.

Who can appeal

An official of the entity who filed the original application to the New England Region 19 700 MHz Committee must be the person who files the appeal on behalf of the entity.

How to appeal

A notice of appeal must be served upon the New England Region 19 700 MHz Committee. The notice of appeal may be "delivered" by mail, courier, or hand delivered to the office of the chair, vice-chair and secretary as listed in the Official Membership List. The Committee will also accept a notice of appeal by facsimile to the chair, vice-chair and secretary with the original copy of the notice of appeal served as indicated above.

Certain things must be included in a notice of appeal for it to be accepted. The notice of appeal **must** include:

1. name and address of the appellant;
2. name of the person, if any, making the request for an appeal on behalf of the appellant;
3. address for service of the appellant;
4. grounds for appeal (a detailed explanation of the appellant's objections to the determination - describe errors in the decision);
5. description of the relief requested; and
6. signature of the appellant or the appellant's representative.

Time limit for filing the appeal

To appeal a decision or allocation, the entity who is subject to the decision must deliver a notice of appeal **within thirty calendar days** after receiving the decision.

Extension of time to appeal

The Committee is allowed to extend the deadline, either before or after its expiration based upon a majority plus one vote of the Committee.

A request for an extension should be made to the chair, vice-chair and secretary in writing, and include the reasons for the delay in filing the notice of appeal and any other reasons which the requester believes support the granting of an extension of time to file the appeal.

Rejection of a notice of appeal

The Committee may reject a notice of appeal if:

- (a) it is determined that the appellant does not have standing to appeal; or
- (b) the Committee does not have jurisdiction over the subject matter or the remedy sought.

Before a notice of appeal is rejected, the Committee will inform the appellant of this in writing, with reasons, and give the appellant a thirty calendar day opportunity to make submissions and any potential parties with an opportunity to respond.

Adding parties to the appeal

In addition to the parties mentioned above, the Committee has the discretion to add any other person who may be “affected” by the appeal as a party to the appeal.

Anyone wanting to obtain party status should make a written request to the chair, vice-chair and secretary no less than thirty calendar days prior to the hearing date. The written request should contain the following information:

- (a) name, address, telephone, fax number and email of the person submitting the request,
- (b) detailed description of how the person is “affected” by the notice of appeal,
- (c) reasons why the person should be included in the appeal,
- (d) signature of the person submitting the request.

Intervener status

The Committee may also invite or permit an individual or organization to participate in a hearing as an intervener. Interveners are generally individuals or organizations that do not meet the criteria to become a party (i.e. “may be affected by the appeal”) but have sufficient interest in, or relevant expertise or view in relation to the subject matter of the appeal.

An individual or organization wanting to take part in an appeal as an intervener should send a written request to the chair, vice-chair and secretary. The written request should contain the following information:

- (a) name, address, telephone, fax number and email of the person or organization submitting the request,
- (b) detailed description of the interest or relevant expertise of the person or organization in relation to the subject matter of the appeal,
- (c) reason why the person or organization should be allowed to participate as an intervener in the appeal,
- (d) signature of the person submitting the request.

Prior to inviting or permitting an individual or organization to participate in a proceeding as an intervener, or deciding on the extent of that participation, the Committee will provide all parties with an opportunity to make representations if they wish to do so.

Type of appeal hearing (written or oral)

An appeal may be conducted by way of written submissions, oral hearing or a combination of both. The Committee will determine the appropriate type of appeal after a complete notice of appeal has been received. The Committee will normally conduct an oral hearing although it may order that a hearing proceed by way of written submissions in certain cases. Where a hearing by written submissions is being considered by the Committee, the Committee may request input from the parties.

Burden of proof

The burden or responsibility for proving a fact is on the person who asserts it.

Notification of expert evidence

The Committee requires any party that intends to present expert evidence at a hearing to provide the chair, vice-chair and secretary, and all other parties to the appeal, with advance notice that an expert will be called to give an opinion. Advance notice shall be no less than thirty calendar days. The notice should include a brief statement of the expert's qualifications and areas of expertise.

If a party intends to produce, at a hearing, a written statement or report prepared by an expert, a copy of the statement or report should be provided to the chair, vice-chair and secretary, and all parties to the appeal before the statement or report is given in evidence. Expert statements or reports are to be distributed no less than thirty calendar days prior to the hearing date.

Documents

If a party will be referring to a document, that document must be provided to the chair, vice-chair and secretary and all parties no less than thirty calendar days prior to the hearing.

APPEALING THE APPEALS DECISION

If a party is not satisfied with the decision of the Region, he or she can appeal that decision to the Federal Communications Commission.