

## Appendix D

{SAMPLE}

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### Regional Committee Dispute Resolution Process

#### INTRODUCTION

The Regional Committee is established under section 90.527 of the FCC's rules and regulations which came into effect on (date)\_\_\_\_\_. It is an independent Committee apart from the Federal Communications Commission with authority to evaluate application for public safety uses of the spectrum allocated under FCC Docket 96-86. In addition, appeals from decisions made with respect to a variety of matters regulated by the Regional Committee will be heard. 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 Regional Committee has developed this procedure. Those involved in the appeal process can expect the Committee and its members to follow the procedures (as may be amended from time to time). Where any matter arises during the course of an appeal that is not dealt with in this document, the Committee will do whatever is necessary to enable it to adjudicate fairly, effectively and completely on the appeal. In addition, the Committee may dispense with compliance with any part or all of a particular procedure where it is appropriate in the circumstances. As the Committee gains experience, it will refine and, if necessary, change its policies. Any changes made to the procedure will require a modification to the Regional Plan and will be made available to the public.

The Regional 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 Regional 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 apprehension of bias.

### **Correspondence (Communicating) with the Committee**

To ensure the appeal process is kept open and fair to the participants, any correspondence to the Regional Committee must be sent to the Chair and be copied to all other Committee members and other parties to the appeal, if applicable.

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 from a determination or allocation and shall include the following: i.e. number of channels assigned, ranking in the assignment matrix, interference, or any other criteria that the region shall establish.

#### **Who can appeal**

An official of the entity who filed the original application to the Regional 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 Regional Committee. The notice of appeal may be "delivered" by mail, courier, or hand delivered to the office of the Chair and Members of the Committee as listed in the Official Membership List. The Committee will also accept a notice of appeal by facsimile to the 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. The name and address of the appellant;
2. The name of the person, if any, making the request for an appeal on behalf of the appellant;
3. The address for service of the appellant;
4. The grounds for appeal (a detailed explanation of the appellant's objections to the determination - describe errors in the decision);

5. A description of the relief requested (What do you want the Committee to order at the end of the appeal?);
6. The signature of the appellant or the appellant's representative.

### **Time limit for filing the appeal**

To appeal a determination or allocation the entity who is subject to the determination must deliver a notice of appeal **within three weeks** after receiving the decision. If a notice of appeal is not delivered within the time required, the right to an appeal is lost. However, the Committee is allowed to extend the deadline, either before or after its expiration based upon a majority plus one vote of the Committee.

### **Extension of time to appeal**

The Committee has the discretion to extend the time to appeal either before or after the three week deadline. A request for an extension should be made to the Committee, 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. A request for an extension should accompany the notice of appeal.

In deciding whether to grant an extension, the Committee will consider whether fairness requires an extension. The Committee will take into account the length of the delay, the adequacy of the reasons for the delay, the prejudice to those affected by the delay and any impacts that may result from an extension. Other factors not identified could be relevant depending on the circumstances of the particular case.

### **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 three-week 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 Committee as early as possible. The written request should contain the following information:

- a. The name, address, telephone and fax number, if any, of the person submitting the request;
- b. A detailed description of how the person is “affected” by the notice of appeal and

- c. The reasons why the person should be included in the appeal; and
- d. The signature of the person submitting the request.

### **Intervener status**

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

Someone wanting to take part in an appeal as an intervener should send a written request to the Committee. The written request should contain the following information: (to be determined by RPC)

Prior to inviting or permitting a person 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 (written or oral) hearing**

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 general rule is that 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 Committee, and all other parties to the appeal, with reasonable advance notice that an expert will be called to give an opinion. 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 Committee and all parties to the appeal within a reasonable time before the statement or report is given in evidence. Unless there are compelling reasons for later admission, expert reports should be distributed 30 days prior to the hearing date.

## **Documents**

If a party will be referring to a document that was not provided to the Committee and all parties prior to the hearing, sufficient copies of the document must be brought to the hearing for the Committee and all other parties.

## **APPEALING THE APPEALS SUBCOMMITTEE'S DECISION**

If a party is not satisfied with the decision of the Region's Appeals Subcommittee's Decision, he or she can appeal that decision to the 700 MHz National Planning Oversight Committee.