

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of Parts 1, 22, 24, 27, 74, 80, 90, 95 and 101 To Establish Uniform License Renewal, Discontinuance of Operations, and Geographic Partitioning and Spectrum Disaggregation Rules and Policies for Certain Wireless Radio Services)	WT Docket No. 10-112
)	
Imposition of a Freeze on the Filing of Competing Renewal Applications for Certain Wireless Radio Services and the Processing of Already-Filed Competing Renewal Applications)	

**SUPPLEMENTAL COMMENTS
OF THE
ENTERPRISE WIRELESS ALLIANCE**

The Enterprise Wireless Alliance (“EWA” or “Alliance”), in response to a request from the Wireless Telecommunications Bureau (“WTB” or “Bureau”),¹ provides the following Supplemental Comments to update the record in the above-entitled proceeding.² The Alliance filed both Comments and Reply Comments in the earlier phase of this proceeding and reaffirms the positions it supported in those filings. However, it agrees with the Bureau that new information and experience in the intervening seven years warrant a refreshment of the record.³

¹ Wireless Telecommunications Bureau Seeks to Update the Record in the Wireless Radio Services Reform Proceeding, WT Docket No. 10-112, *Public Notice*, 82 FR 23246 (WTB May 2, 2017) (“Public Notice”).

² *Notice of Proposed Rulemaking*, WT Docket No. 10-112, 25 FCC Rcd 6996 (2010) (“NPRM”).

³ In fact, the Alliance recommends that the Commission open a new proceeding to address these matters. This docket has also been used to develop a record on the so-called “Spectrum Frontiers” issues. Both of these subjects warrant a proceeding dedicated to their particular issues.

The NPRM described its objective as the articulation of clear, consistent requirements for license renewals and consistent consequences for discontinuance of operation.⁴ It stated that it was seeking “to apply the rules that have worked the best to a larger group of services, and to simplify the regulatory process for licensees.”⁵ The Alliance, and it assumes other interested parties, share these Federal Communications Commission (“FCC” or “Commission”) goals. However, as addressed in the Alliance’s earlier filings in this proceeding and as discussed below, the FCC must recognize not only the similarities, but the differences, among licenses and adopt rules tailored to promote efficient spectrum utilization for all licensee categories.

I. Site-based Licenses

A. License Renewals

The great majority of EWA’s members operate site-based systems that are licensed under Parts 90, 22 (22.501 *et seq.*), and 101 of the Commission’s rules.⁶ What was evident in 2010 is even more apparent in 2017: this subset of wireless licensees, a combination of enterprise companies operating private internal systems and commercial providers offering local two-way dispatch service, must extract maximum utilization from this spectrum, as there is little expectation that the FCC will award additional allocations for site-based licensing.

The Alliance supported the FCC’s proposal to require applicants for site-based renewals to certify that the license represents their actual operating system for just this reason. EWA is concerned not only about the possibility that, inadvertently or intentionally, licenses are renewed for systems that are not operating at all, but also that licensees might fail to delete individual frequencies or sites that are no longer being used when filing a renewal application. The Alliance supports any steps that can be taken to prevent such renewals, as they remove

⁴ NPRM at ¶ 1.

⁵ *Id.*

⁶ As discussed below, a significant number also utilize geographically licensed spectrum from Part 22.

frequencies from the available pool of spectrum that otherwise might be used by another deserving applicant.

This issue has taken on heightened significance since 2010. In the intervening years, the Private Land Mobile Radio (“PLMR”) user community has migrated in significant numbers from single-path analog to multi-path digital technology, a migration driven, in part, by the 2013 narrowbanding mandate.⁷ As technology creates more communications paths per frequency, licensees should need fewer frequencies to accommodate their needs, even with the increased functionality that digital offers. Licensees must be encouraged to consider their actual operating requirements and renew only the frequencies they are using or need for identified growth, rather than automatically seeking renewal of the current authorization in its entirety.

Rule Section 90.127 provides a model for the analyses renewal applicants should follow. It states that applications must limit their requests for subscriber units to the number that will be placed into operation immediately upon grant and those that will be added within eight months. By license renewal, applicants should have a well-defined understanding of the number of units they intend to operate. While there is no specified loading requirement for Part 90 spectrum below 470 MHz, applicants still are bound by that rule and should not overstate the number of units operating on their systems. Applications with a disproportionate number of units versus channels, notwithstanding the spectrum efficiency gains achieved through the use of digital technologies, should be subject to further scrutiny by the FCC to ensure that the applicant has a legitimate need for all of the spectrum being renewed. EWA would be pleased to assist the

⁷ Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended; Promotion of Spectrum Efficient Technologies on Certain Part 90 Frequencies, WT Docket No. 99-87, *Second Report and Order and Second Further Notice of Proposed Rulemaking*, 18 FCC Rcd 3034 (2003).

Commission in any way possible, since promoting efficient spectrum utilization based on legitimate requirements is in the best interest of the entire PLMR user community.

Although not proposed in the NPRM, the Alliance urges the Commission to take this opportunity to revisit the 10-year license term for site-based Part 90 PLMR licenses. Lengthy license terms may be preferred by companies that are engaged in telecommunications as their core business. EWA has become convinced that they are not beneficial for enterprise licensees that use communications as a tool in support of their primary activities.⁸

The majority of Part 90 PLMR licensees are not telecommunications companies. They are businesses of every type and size, from international manufacturing and transportation companies to retail organizations that have thousands of stores nationwide. They rely on wireless communications to run their operations more efficiently, cost-effectively and competitively. Because technology is changing at an ever-increasing pace, they routinely evaluate their options and migrate to different equipment and/or networks as they deem appropriate. It is not uncommon for that migration to occur more than once during a 10-year period. It also is an unfortunate fact that some businesses fail in less than a decade. In both these situations, the licensee is required to cancel its authorization under Rule Section 1.955(a)(3), but that does not always happen. When they do not proactively cancel their licenses, the license data remains in ULS until the authorization is not renewed. This often prevents other entities from using vacant spectrum, or prevents them from qualifying for a protected service area under Rule Section 90.187, and thereby limits their ability to deploy the most efficient digital technologies.

⁸ For the reasons herein, EWA believes 5-year license terms would be preferable for public safety licensees as well.

A 5-year renewal requirement would bring this issue to the attention of licensees sooner, which might prompt them to cancel their licenses. If they did not, it still would allow the FCC to terminate the authorizations for failure to renew at an earlier date. EWA recognizes that a shorter license term will not resolve all such issues, but it would help clear out no longer valid ULS data at a more accelerated pace. This will improve the spectrum landscape for all PLMR users at the relatively nominal cost of paying two FCC renewal application processing fees in each 10-year cycle rather than one. Given the ease of filing electronic renewal applications, EWA's members agree that the spectrum efficiency enhancements achieved from the removal of outdated license information in the ULS far outweighs the modest additional costs associated with renewal application processing.⁹

The Alliance also recognizes that the Commission recently extended the license term for General Mobile Radio Service ("GMRS") licenses regulated under Part 95 from five to ten years.¹⁰ However, as explained in the Part 95 Order, "...all GMRS channels are available to all GMRS licensees on a shared 'commons' basis anywhere in the country without the need for frequency coordination and no expectation of exclusive use of the channels."¹¹ It went on to say, "Whereas, Part 90 licensees obtain authorization for specific channels in specific areas through a frequency coordination process designed to avoid the 'commons' sharing method used in GMRS."¹² It is for just that reason that shorter license terms are appropriate for the Part 90 services. They will assist in creating a more accurate ULS database and thereby facilitate the

⁹ The regulatory fees for these licenses would not change, as they are assessed on an annual basis, although paid upfront for the entire license term.

¹⁰ Review of the Commission's Part 95 Personal Radio Service Rules, WT Docket No. 10-119, Report and Order, FCC 17-57 at ¶ 34 (rel. May 19, 2017) ("Part 95 Order").

¹¹ *Id.* at ¶ 29.

¹² *Id.*

identification of channels that can support the more efficient digital technologies that increasingly are the choice of Part 90 licensees.

Finally, for the reasons addressed in its previous filings, the Alliance recommends against adoption of the Regulatory Compliance Demonstration proposed in the NPRM. The record in this proceeding graphically demonstrates the burden this would impose on site-based PLMR licensees. Some of these entities hold hundreds or even thousands of individual licenses, a quantity dictated by the FCC licensing rules and the limitations of ULS, not by licensee choice. It is not reasonable to require them to provide compliance information related to every affiliated license when filing a renewal application for any license, particularly since that information is already in the FCC's possession. If the Commission believes that its current method of tracking licensee compliance issues is not adequate, it should consider an approach like that proposed by Southern Company Services, Inc. and associate all compliance matters with the licensee's FRN so that the data would be readily searchable by the FCC. Importantly, if the Commission nonetheless adopts such a requirement, it must also address the discrepancies between the proposed rule and the text of the NPRM as noted in the Comments of the Land Mobile Communications Council ("LMCC"),¹³ and it must explain how this information will be used in evaluating renewal applications.

B. Discontinuance of Operation

EWA is a member of the LMCC and supports its position that 180 days is a reasonable discontinuance rule for most wireless services. The Alliance also agrees that the current 1-year rule should be retained for the Part 90 services, other than the trunked Specialized Mobile Radio service to which the 180-day rule should apply.

¹³ LMCC Comments at pp. 6-8.

II. Geographic Licenses

A. License Renewals

The earlier filings of EWA and the LMCC in this proceeding highlight the issues that arise when the FCC attempts to “harmonize” the renewal showing required of all geographic licensees.

First, there are fundamental differences among geographic licenses based on the amount of spectrum and geography authorized. The proposed Renewal Showing in the NPRM is premised on the assumption that all geographic licensees can and should expand their operations beyond meeting their build-out requirements. That may be a reasonable expectation for licensees that utilize 5, 10, or 20 **MHz** of spectrum to offer wireless services to the consumer marketplace over expansive amounts of geography. It often is not realistic when a license is authorized for only 20, 30, 50, or 125 **kHz** of bandwidth, typically for use within a single Basic Economic Area (“BEA”). Generous amounts of spectrum can be sub-divided and reused throughout a large operating area so continued expansion is possible. That is not an option for licensees whose individual channels cannot readily be duplicated within their authorized area of operation without generating intra-system interference.

It often is exceedingly challenging to meet the FCC’s build-out requirements when working with very limited amounts of spectrum. The requirements for these allocations mirror those of entirely dissimilar services, ones with substantial bandwidth such as broadband, where there is no expectation that all of the authorized bandwidth will be in operation at every location. By contrast, for example, the Part 22 Paging and Radiotelephone Service geographic licenses that now are heavily used by PLMR licensees are authorized for 30 and 20 kHz bandwidths,

respectively, for VHF and UHF channels.¹⁴ The build-out rules require that each channel provide coverage to two-thirds of the population within the BEA and require coverage to be calculated using an exceedingly conservative methodology that was designed to prevent interference between co-channel site-based systems, not for determining satisfactory geographic coverage thresholds.

Licensees in this service struggle to satisfy even the bare minimum build-out standard given the limited spectrum capacity provided in these kHz, not MHz-defined authorizations. It takes very careful system design to meet the build-out requirement on each individual channel, while deploying a system that does not experience intra-system interference. EWA urges the FCC not to exacerbate this problem by adopting Renewal Showings that treat all geographic licenses as comparable, rather than tailoring them to the specific spectrum and geographic limitations of various services.¹⁵

Second, if the FCC is going to adopt a Renewal Showing for geographic licenses, it must distinguish between licenses used to provide commercial service and those used to meet the private, internal communications needs of business enterprise and governmental entities. These licensees typically acquire geographic authorizations because they are the only option for securing the necessary degree of channel exclusivity. Their coverage requirements are defined by their business or governmental operations. Their utilization should not be measured with the same yardstick as the FCC uses to evaluate licensees providing commercial service.

Third, before the FCC adopts a Renewal Showing requirement, it must advise licensees of the standard it intends to use when considering those showings. This point was emphasized

¹⁴ The actual operating bandwidths are even narrower.

¹⁵ Unlike licenses in services such as cellular, PCS, AWS and other commercial offerings, it is not practical to promote greater spectrum utilization by partitioning or disaggregating licenses that start with such small channel increments and limited geographic scope either to meet a renewal requirement or to avoid a discontinuance violation.

by numerous parties in the earlier stage of this proceeding. It is not sufficient for the Commission simply to outline the information it will require licensees to provide. It also must define what responses would warrant license renewal and which would justify denial of a renewal application. Licensees, particularly those that have purchased their spectrum, cannot be forced to guess what activity levels the FCC would consider satisfactory, only to find after the fact that what they have done is not considered sufficient.

B. Discontinuance of Operation

EWA agrees that the discontinuance of operation rules needs attention. As noted in the NPRM, some wireless services have specific periods of permitted discontinuance, although those periods vary significantly among services, while others have no defined time limits at all. Moreover, where the rules do have a defined discontinuance period, they typically were adopted in the context of a site- and frequency-specific licensing structure and determining compliance with a rule was relatively clear-cut. A particular station licensed on particular frequencies at a particular location was either in operation or had been taken off the air.

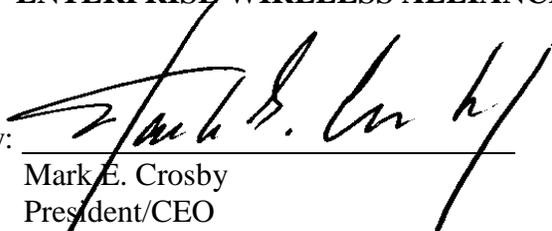
The discontinuance concept becomes more fluid when licensees are authorized for a block of spectrum that can be used anywhere within the defined geographic area. EWA believes that the FCC's proposed definition – the failure to operate a private internal system or, for commercial systems, to serve at least one unaffiliated subscriber over 180 consecutive days – is reasonable. The Alliance also supports the proposed inclusion in the rules of an extension request provision rather than requiring a waiver. There are any number of situations that might justify an extended discontinuance period, including the migration to a more advanced technology. As long as there is a clear path toward putting spectrum back into operation in a

reasonable timeframe, the Alliance supports flexibility in the application of the discontinuance rule.

EWA requests that the Commission consider these recommendations and the earlier filings of the Alliance and the LMCC when adopting rules governing site-based and geographic licenses operated by PLMR entities.

Respectfully submitted,

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