

**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)	

**COMMENTS
OF THE
ENTERPRISE WIRELESS ALLIANCE**

The Enterprise Wireless Alliance (“EWA” or “Alliance”), pursuant to Section 1.415 of the Federal Communications Commission (“FCC” or “Commission”) Rules and Regulations,¹ respectfully submits its Comments in the above-entitled proceeding.² In this proceeding, the FCC proposes to harmonize the rules governing license renewals, competitive renewal applications, discontinuance of operations and partitioning/disaggregation for specified wireless radio services.

The Alliance supports certain of the changes proposed, which it believes are consistent with the FCC's objective of applying like requirements to like services and thereby clarifying and simplifying the regulatory process. In particular, EWA strongly favors rules that seek

¹ 47 C.F.R. § 1.415.

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

confirmation at site-based license renewal that the authorized spectrum continues to be used in accordance with the terms of the authorization. However, other aspects of the *NPR* appear overly burdensome for both licensees and the FCC. EWA is concerned that the desire to identify significant amounts of spectrum for broadband use may have influenced aspects of the proposed license renewal requirements, requirements that may be appropriate for certain wireless services, but not necessarily for all that are impacted by the *Notice*. The Alliance urges the FCC to consider rules that more reasonably reflect differences among wireless licensees, in particular in the amount of spectrum and geographic scope of their authorizations, when considering what renewal obligations are in the public interest.

I. INTRODUCTION

EWA is a national trade association representing many business enterprises, wireless sales and service providers, hardware and software system vendors and technology manufacturers. These firms represented by the Alliance range from small businesses to leading national Fortune 500 organizations, including those that are engaged in transportation, petrochemical, manufacturing, retail, utility, construction and other critical national industries. EWA is also a Federal Communications Commission (“FCC”) certified frequency advisory committee that processes in excess of 7,000 frequency selection and licensing transactions annually.

The Alliance also is a member of the Land Mobile Communications Council (“LMCC”), an association of organizations representing virtually all users of land mobile radio systems, providers of land mobile services, and manufacturers of land mobile radio equipment. EWA participated in the preparation of LMCC's Comments in the instant proceeding and incorporates by reference all of the positions advanced by LMCC in that filing.

II. CONSTRUCTION CERTIFICATION

A. Site-Based License Renewals

The LMCC Comments support the FCC's proposal to require a certification with a site-based license renewal confirming that the system continues to operate in accordance with its authorization or its most recent construction notification if one is required. EWA strongly endorses this proposal. An affirmative certification to that effect will impose no additional burden on renewal applicants and should act as a deterrent against unthinking and perhaps even intentional requests to renew licenses for facilities that have been taken out of operation permanently, as defined by the applicable discontinuance of operations rule.

The FCC's discontinuance rules play an essential role in providing an accurate picture of the spectrum landscape, the spectrum dashboard in current parlance, and promote the efficient use of this scarce resource. But the reality is that these rules operate almost exclusively on the honor system. The FCC clearly does not have the resources to inspect on any regular basis the operational status of the hundreds of thousands of licenses it issues. The only way it learns that a license has canceled automatically pursuant to a discontinuance of operations rule is if a third-party complaint is filed, if non-operation is discovered by happenstance during a field investigation or if the licensee self-reports by canceling the authorization in question. Since the first two events are relatively rare, the integrity of the Commission's license database, of necessity, relies almost exclusively on licensees acting in accordance with the affirmative obligation to file for license cancellation if service has been discontinued permanently.

The unfortunate reality is that some licensees renew their authorizations without thought as to the operational status of the particular facilities in question.³ The FCC, to its credit, has

³ Some may renew licenses where service has been permanently discontinued with full knowledge that doing so is a violation of the FCC rules, but the Alliance believes, or at least hopes, that those are the exception and not the rule.

made renewing a license so simple (and routine since it sends written reminders to licensees to do so) that EWA suspects renewal applications are filed essentially automatically, possibly by persons with no actual knowledge about whether the facility in question is operational, but fearful of failing to submit a filing required by a Federal government agency. This may be particularly true in wireless services such as those in Part 22 and Part 90 where licenses are largely site-based and a given licensee may hold many individual authorizations to cover its facilities, each of which has a separate renewal requirement.

The renewal certification proposed by the FCC will not eliminate the possibility that licenses for non-operational stations will be renewed. However, EWA does believe that requiring an affirmative certification will impact the behavior of those licensees that intend to operate in compliance with the Commission's rules. It will be an effective reminder that they need to confirm the status of the facilities before filing a renewal and will, thereby, act as a deterrent against inadvertent failure to comply with this requirement. This measure is particularly important since the FCC has adopted 10-year license terms for most wireless services and the status of radio facilities can change significantly over a 10-year period.

EWA also endorses LMCC's recommendation that the renewal certification obligation apply to licensees in the Part 90 public safety radio services. As explained in LMCC's comments, decades of inter-category sharing have resulted in many public safety licensees holding authorizations that include frequencies allocated to the Industrial/Business Radio Service Pools, a service category to which the *NPR* proposals are applicable, as well as frequencies from the Public Safety Service Pool, which is not covered by the *Notice*. The Alliance also agrees with LMCC's position that extending this requirement to the public safety services would not require a further Notice of Proposed Rulemaking as the obligation to renew only valid licenses

exists already. It is only the form by which licensees demonstrate their compliance with this requirement that is proposed to be altered.

Thus, EWA recommends that this FCC proposal be adopted and extended to include Part 90 Public Safety Pool allocations.

B. Geographic License Renewals

The *NPR* proposes a substantive change in the renamed Renewal Showing⁴ whereby all licensees of geographic systems are to justify a renewal expectancy based on a detailed explanation of current system operations, anticipated expansion and other factors.⁵ EWA agrees with the FCC that there currently are significant differences in the rules regarding renewal showings even among wireless services that are substantially fungible. It is appropriate that the Commission harmonize the showing required to justify license renewal among those like services. The information needed to support a renewal expectancy as proposed in the *Notice* seems generally reasonable for services where licenses are issued for large amounts of spectrum over expansive geographic areas and used to provide commercial third-party service. It may be in the public interest for the FCC to recover spectrum from licensees that have not deployed their ample spectrum resources broadly throughout those areas and that have no near-term plans to do so or to partition/disaggregate spectrum they do not intend to utilize.

EWA questions, however, whether the same showing should be applicable to services where geographic licenses are issued in much smaller spectrum blocks, in some cases as small as 20, 30 or 50 kHz bandwidth channels. By contrast with services such as cellular, PCS, AWS and

⁴ The demonstration of usage at renewal, previously referred to as a substantial service showing, was renamed to distinguish it from the interim benchmark construction obligations applicable to many geographic licenses, some of which also are called substantial service showings.

⁵ The *Notice* does question whether different renewal factors should be considered for wireless systems used exclusively for private, internal communications. Consistent with the LMCC Comments, EWA believes that different standards are appropriate for such systems.

others, where licenses often are awarded for 5 MHz or 10 MHz of contiguous bandwidth, the geographic licenses issued in services such as the 218-219 MHz Service, the 220-222 MHz Service, the 800 and 900 MHz Specialized Mobile Radio ("SMR") Services,⁶ the Narrowband Personal Communications Service, the Paging and Radiotelephone Service and the Public Coast Stations, including Automated Maritime Telecommunications Systems offer much less spectrum, and certainly less than would support the significant levels of capacity sought for current national broadband objectives.

EWA is not persuaded that the FCC should have the same standard for evaluating the Renewal Showing of a licensee of a 20 kHz bandwidth channel in, for example, the Springfield, TN BEA as it does for the 700 MHz C Block winner whose licenses includes that same geographic area. There are only so many locations at which a single 20 kHz channel can be deployed within a BEA without causing intra-system interference and, therefore, only so much geography or population that can be covered. And even in the unlikely event that a licensee could justify the cost of deploying a single channel simulcast system with multiple sites throughout the BEA, a 20 kHz bandwidth channel still is capable of accommodating only a very limited number of communications paths.

Contrast these technical limitations with the build-out of a system authorized for 5 MHz of spectrum. As the Commission knows, it is not possible, or at least not economically rational, to invest in a cellular architecture system without having a reasonable depth of spectrum position. However, once that critical mass of spectrum is available, it can be deployed throughout a geographic area. The FCC does not expect, and the rules do not require, all 5 MHz

⁶Sprint Nextel Corporation and Southern Communications Services, Inc. d/b/a SouthernLINC Wireless have been authorized by the FCC to use 800 MHz and 900 MHz SMR spectrum, including geographic licenses, in cellular architecture systems that more closely resemble large commercial systems in their scale, geographic scope and services offered than they do other 800 MHz and 900 MHz geographic systems, which may be licensed for only 125 kHz of total spectrum bandwidth.

to be available at all sites that collectively comprise the composite coverage area. Rather, it is understood that only some portion of the 5 MHz will be operational at any given location. Thus, more generous spectrum allocations permit greater geographic coverage.

It is now well-established that the FCC in most instances favors awarding wireless licenses on a geographic basis through competitive bidding.⁷ The result is that applicants that might prefer a site-based authorization if it provided the necessary level of interference protection instead purchase spectrum at auction because that is the only means by which it can be acquired. But there are fundamental differences between a party that purchases a 20 kHz Part 22 two-way channel to meet its internal communications needs or even to provide a third-party service to a handful of dispatch users and a party that purchases a multi-MHz geographic license to provide a commercial consumer service. They both are geographic licenses, but they have no commonality in terms of technical or operational capabilities. Their authorizations are not for "like" systems and should not have identical Renewal Showing obligations. The Commission should conduct a more granular analysis of the wireless services covered by the *NPR* and adopt Renewal Showing obligations appropriate for their different capabilities.

III. REGULATORY COMPLIANCE DEMONSTRATION

For all the reasons detailed in the LMCC Comments, EWA also urges the FCC not to adopt a Regulatory Compliance Demonstration requirement for renewal applicants. The Alliance, like LMCC, fully appreciates that the FCC has the right to make a public interest finding that license renewal may not be warranted for a party that exhibits continued disregard for substantive FCC rules. But such findings in the past have been and in the future presumably

⁷ The Alliance is pleased that the Commission has recognized certain situations in which site-based licensing will remain the operative licensing mechanism. *See* Amendment of Part 90 of the Commission's Rules to Provide for Flexible Use of the 896-901 MHz and 935-940 MHz Bands Allotted to the Business and Industrial Land Transportation Pool, *Report and Order*, WT Docket No. 05-62, 23 FCC Rcd 15856 (2008).

will be extraordinarily rare. Moreover, parties whose conduct rises to such levels presumably are known to the Commission, or at least to the FCC's Enforcement Bureau that investigates violations of the FCC rules and issues violation notices based on its determinations. The demonstration proposed in the *NPR* will be unnecessarily burdensome for licensees and the FCC for the reasons described by LMCC and is not needed to enable the FCC to make the requisite public interest findings with regard to renewal applications.

IV. CONCLUSION

For the reasons described herein, EWA requests the Commission to adopt rules consistent with the positions detailed in these Comments.

Respectfully submitted,

ENTERPRISE WIRELESS ALLIANCE

By: _____ /s/
Mark E. Crosby
President/CEO
8484 Westpark Drive, Suite 630
McLean, Virginia 22102
(703) 528-5115

Counsel:

Elizabeth R. Sachs
Lukas, Nace, Gutierrez & Sachs, LLP
8300 Greensboro Drive, Ste. 1200
McLean, VA 22102
(703) 584-8678

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