

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

In the Matter of)
)
Amendment of Parts 1, 22, 24, 27, 74, 80,) WT Docket No. 10-112
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)
)
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
LAND MOBILE COMMUNICATIONS COUNCIL**

Respectfully submitted,

By: _____ /s/
Kenton E. Sturdevant
President

Land Mobile Communications Council
8484 Westpark Drive, Suite 630
McLean, VA 22102
703-528-5115

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SUMMARY

LMCC strongly supports the certification of continued operation proposed for site-based renewal applications and also recommends that the FCC clarify that it will apply to the Part 90 public safety services along with the services listed in the *Notice*. LMCC recommends against adoption of the proposed regulatory compliance certification, an obligation it considers unduly burdensome for both licensees and the FCC. At a minimum, the FCC needs to clarify inconsistencies between the text of the *NPR* and the proposed rule governing this certification and also provide guidance about how the Commission intends to use the compliance documentation it proposes to require from renewal applicants. Additionally, LMCC agrees with the Commission that there might appropriately be a difference between factors warranting the renewal of a geographic license used to provide commercial third-party service and factors that justify renewing a geographic license used to meet private, internal communications requirements. With regard to discontinuance of operations rules, LMCC supports the FCC's proposed 180-day standard for most wireless services, including the trunked Specialized Mobile Radio Part 90 service, and retention of the current one-year period for all other Part 90 services.

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OF THE
LAND MOBILE COMMUNICATIONS COUNCIL**

The Land Mobile Communications Council ("LMCC"), pursuant to Section 1.415 of the Federal Communications Commission ("FCC" or "Commission") Rules, 47 C.F.R. § 1.415, hereby respectfully submits its Comments in the above-captioned proceeding.¹

I. INTRODUCTION

LMCC is a non-profit association of organizations representing virtually all users of land mobile radio systems, providers of land mobile services, and manufacturers of land mobile radio equipment. LMCC acts with the consensus, and on behalf of the vast majority of public safety, business, industrial, transportation and private commercial radio users, as well as a diversity of

¹ *Notice of Proposed Rulemaking*, WT Docket No. 10-112, 25 FCC Rcd 6996 (2010) ("*Notice*" or "*NPR*").

land mobile service providers and equipment manufacturers. Membership includes the following organizations:

- American Association of State Highway and Transportation Officials (AASHTO)
- American Automobile Association (AAA)
- American Petroleum Institute (API)
- Association of American Railroads (AAR)
- Association of Fish and Wildlife Agencies (AFWA)
- Association of Public-Safety Communications Officials-International, Inc. (APCO)
- Aviation Spectrum Resources, Inc. (ASRI)
- Central Station Alarm Association (CSAA)
- Enterprise Wireless Alliance (EWA)
- Forest Industries Telecommunications (FIT)
- Forestry-Conservation Communications Association (FCCA)
- Intelligent Transportation Society of America, Inc. (ITSA)
- International Association of Fire Chiefs (IAFC)
- International Municipal Signal Association (IMSA)
- MRFAC, Inc. (MRFAC)
- National Association of State Foresters (NASF)
- PCIA – The Wireless Infrastructure Association (PCIA)
- Telecommunications Industry Association (TIA)
- Utilities Telecom Council (UTC)

The Notice proposes rule changes to harmonize the regulations governing license renewals and discontinuance of operations for certain wireless services, and also to clarify construction obligations for wireless licenses that have been subject to geographic partitioning or spectrum disaggregation. The goal is to "apply the rules that have worked the best to a larger group of services, and to simplify the regulatory process for licensees."²

The members of LMCC represent a significant percentage of the licensees operating under Part 90 of the FCC's rules. A number of the entities these organizations represent also hold authorizations in services governed under Parts 22, 80 and 101.³ Many would be affected

² *NPR* at ¶ 1.

³ Some members of LMCC organizations may hold licenses for Part 22 cellular, Part 24 or Part 27 spectrum, but they would be the rare exception since that spectrum is licensed only by auction for commercial service and in allocations that far exceed the spectrum requirements of the typical LMCC constituent.

by the Notice because they hold either geographic or site-based licenses in services governed under those FCC Rule Parts that are included in the Commission's proposals.⁴

LMCC strongly supports a regulatory framework in which like services are subject to consistent rules, particularly when those rules simplify the regulatory process for licensees. It agrees with the FCC that the current patchwork of regulations in these areas would benefit from clarification and simplification. This is particularly true for licensees that have integrated spectrum from different FCC Rule Parts into a single system.

Therefore, consistent with the FCC's objective, which LMCC shares, LMCC recommends that the FCC either clarify that the certification of continued operation proposed for site-based renewal applications will apply to the Part 90 public safety services along with the services listed in the Notice or expand the scope of the proceeding to include public safety. For the reasons detailed below, LMCC recommends against adoption of the proposed regulatory compliance certification. Additionally, LMCC agrees with the Commission that there might appropriately be a difference between factors warranting the renewal of a geographic license used to provide commercial third-party service and factors that justify renewing a geographic license used to meet private, internal communications requirements. With regard to discontinuance of operations rules, LMCC supports the FCC's proposed 180-day standard for most wireless services, including the trunked Specialized Mobile Radio (“SMR”) Part 90 service, and retention of the current one-year period for all other Part 90 services.

⁴ *Id.* at ¶¶ 20 and 34.

II. LICENSE RENEWALS

A. Site-Based Licenses

The great majority of licensees represented within LMCC hold only site-based licenses. Most are in the heavily encumbered Part 90 low-band, VHF and UHF spectrum where licenses are awarded on a first-come, first-served basis and channels typically are shared by multiple parties within a geographic area. Some also hold site-based licenses issued under Parts 22, 80 and 101.

The *NPR* proposes only modest changes to site-based renewal applications with regard to confirmation of their operating status. The Commission seemingly recognizes that the substantial service showings that have become the norm for geographic licenses are not appropriate for this type of license. Holders of site-based licenses must deploy the specific frequency(s) for which they are licensed at the transmitter location(s) identified on their authorization and are not permitted to operate on other frequencies or at other locations without modifying their licenses. The only service they can provide (if licensed as commercial operators) or utilize (if operating private internal systems) is defined precisely by the technical parameters of their licenses. No further information about their operations is needed.

The *Notice* proposes to require a certification that the renewal applicant is continuing to operate consistent with the terms of its authorization or with its most recent construction notification if such a notification is required. LMCC strongly endorses the inclusion of this affirmative certification in site-based renewal filings. While the act of filing for license renewal implicitly certifies to the FCC that the authorization for the station has not canceled automatically in accordance with the applicable discontinuance of operations rule, requiring an

affirmative certification to that effect will be a potent reminder to licensees that only valid station licenses are eligible for renewal.

Although the *NPR* does not identify Part 90 public safety services as those to which this proposed rule would apply, LMCC encourages the FCC to clarify that public safety licensees will be required to submit this certification as well. This is not a substantive rule change that would require notice under the Administrative Procedures Act, since only valid licenses qualify for renewal in any event. The certification requirement does not alter the underlying obligation, only the manner in which applicants are required to demonstrate their conformance with it. Applying it to all Part 90 services would be consistent with the FCC's goal of promoting uniformity among like services, would simplify the regulatory process and would eliminate any confusion about whether there are different obligations for public safety entities that operate on Part 90 spectrum designated for public safety use versus those that operate on Industrial/Business Radio Pool spectrum obtained under inter-category sharing provisions. LMCC urges the FCC to confirm that the affirmative certification regarding the operational status of the station being renewed is applicable to public safety services as well as those listed in the *Notice*.⁵

The second certification is more troubling.⁶ The FCC proposes to require applicants to make a "regulatory compliance demonstration"⁷ that the *NPR* describes as including the following:

...copies of all FCC orders finding a violation or an apparent violation of the Communications Act or any FCC rule or policy by the licensee, an entity that

⁵ This certification is particularly important since the FCC has adopted ten-year, rather than five-year, license terms.

⁶ The regulatory compliance certification is proposed for both site-based and geographic licensees.

⁷ The *Notice* suggests that this information is required already. "This list [of factors justifying a renewal expectancy] does not include the near universal requirement that an applicant provide copies of all FCC orders finding the licensee to have violated the Act or any FCC rule or policy and a list of any pending proceedings relating to such matters involving the licensee." *Id.* at n. 74. LMCC is unaware of any such requirement and does not believe that wireless licensees typically, if ever, submit that information with their renewal applications.

owns or controls the licensee, an entity that is owned or controlled by the licensee, or an entity that is under common control with the licensee (whether or not such an order relates specifically to the license for which renewal is sought). The disclosure requirement would apply to all orders finding such violations during the license term for which renewal is sought, including orders that are, or could be, the subject of administrative or judicial review.⁸

Proposed Rule Section 1.949(e), *Regulatory Compliance Demonstration*, describes the certification somewhat differently:

An applicant for renewal of an authorization in the Wireless Radio Services identified in paragraphs (c) and (d) of this section must make a Regulatory Compliance Demonstration as a condition of renewal. A Regulatory Compliance Demonstration must include:

- (1) A copy of each FCC order and letter ruling, which may or may not have been assigned a delegated authority number, finding a violation of the Communications Act or any FCC rule or policy by the applicant, an entity that owns or controls the applicant, an entity that is owned or controlled by the applicant, an entity that is under common control with the applicant, or an affiliate of the applicant (whether or not such an order or letter ruling relates specifically to the license for which renewal is sought); and
- (2) A list of any pending petitions to deny any application filed by the applicant, an entity that owns or controls the applicant, an entity that is owned or controlled by the applicant, an entity that is under common control with the applicant, or an affiliate of the applicant (whether or not the petition to deny relates specifically to the license for which renewal is sought).

Putting aside the question of why the FCC would require renewal applicants to submit documentation that already is in the Commission's possession, it is essential that the FCC clarify certain discrepancies between the certification outlined in the text of the *NPR* and the proposed rule and also clarify the purpose of requiring this information at license renewal.

Specifically, the proposed rule, as opposed to the text of the Notice, does not require copies of FCC orders finding an "apparent" violation of the Act or the FCC rules. The rule requires that renewal applicants identify only those instances where there has been a finding by

⁸ *NPR* at ¶ 38.

the FCC that a violation occurred.⁹ LMCC believes this distinction is mandated by Section 504(c) of the Communications Act, which specifies that a notice of apparent liability "shall not be used, in any other proceeding before the Commission, to the prejudice of the person to whom such notice was issued, unless (i) the forfeiture has been paid, or (ii) a court of competent jurisdiction has ordered payment of such forfeiture, and such order has become final."¹⁰ Since the FCC intends to use the information in the Regulatory Compliance Demonstration to determine whether or not a renewal application should be granted,¹¹ a refusal to grant the renewal based, even in part, on a notice of apparent liability, by definition, would be prejudicial to the applicant and cannot be part of a regulatory compliance showing. The Commission should clarify that no such information will be required.

LMCC also is concerned about the requirement in the proposed rule that renewal applicants include a list of pending petitions to deny any applications related to the renewing entity. This is not addressed in the *NPR* and, in LMCC's opinion, creates an unnecessary burden on applicants and the FCC, as well as an inducement for parties to file such pleadings.

Many Petitions to Deny have nothing whatsoever to do with a licensee's propensity to violate FCC rules, at least in the Part 90 services.¹² Rather, they relate to issues about whether a

⁹ This inconsistency is repeated in Appendix B, Initial Regulatory Flexibility Analysis. Contrary to the language of the proposed rule itself, the Initial Regulatory Flexibility Analysis takes its cue from the text of the *NPR* and states, "The Commission also proposes that a renewal applicant must provide a list of any pending FCC proceedings or investigations that relate to a potential violation...." *NPR*, Appendix B at ¶15.

¹⁰ 47 U.S.C. § 504(c).

¹¹ Proposed Rule Section 1.949(h) states that if the FCC or the Wireless Telecommunications Bureau finds that an applicant's "Regulatory Compliance Certification under paragraph (f) of this section is insufficient, its renewal application will be denied...." There is no explanation of what "insufficient" might mean in this very critical context.

¹² In fact, neither the Communications Act of 1934, as amended, 47 U.S.C. §§309(a), (b), (d), nor the FCC Rules provide for the filing of Petitions to Deny against Private Land Mobile Radio Service ("PLMRS") licensees, the regulatory status of most, but not all, Part 90 licensees. Nonetheless, the Commission historically has accepted functionally equivalent pleadings submitted under FCC Rule Section 1.41, 47 C.F.R. §1.41, as informal requests for Commission action, some of which nonetheless are captioned as Petitions to Deny.

third party frequency coordination was performed correctly and/or whether the FCC's technical requirements all have been satisfied. These are not issues that would give rise to licensee qualification concerns.

Moreover, the Commission is all too familiar with both "strike" and "greenmail" filings, pleadings submitted for purely obstructive purposes or in the hope of being compensated to withdraw an objection.¹³ While there are regulations in place that are intended to deter such activities, it seems inevitable that the number of Petitions and similar pleadings will increase if disclosure becomes a mandatory element in each renewal application. It must be assumed that the Commission will consider any and all such pleadings in its evaluation of whether or not to renew an authorization, since otherwise there would be no purpose in requiring that they be identified. The fact that such a filing will create a degree of uncertainty about the prospect of license renewal, even the renewal of an entirely unrelated authorization and irrespective of the merits of the Petition, sends a wrong message to those inclined to abuse the FCC's processes.

LMCC also believes that the FCC underestimates the burden that these obligations will impose on applicants and the FCC itself. Some Part 90 licensees hold hundreds or even thousands of site-based licenses. There are retail establishments that have licensed facilities all over the country. Some of these locations undoubtedly will receive FCC violation orders for relatively minor, easily corrected technical problems. Yet under this proposal, all such violations that have occurred over a ten-year period – plus any Petitions to Deny – will need to be included with each application to renew the license for each and every facility. The FCC then will need to review and consider the significance of each of these documents, even if entirely unrelated to the system whose renewal is sought.

¹³ 47 C.F.R. §1.935.

This leads to the larger issue about the FCC's proposed regulatory compliance disclosure.¹⁴ It is unclear how the Commission plans to use the information it is requesting. Does it intend to adopt a policy whereby licenses that are being operated entirely in accordance with the terms of the authorization and the FCC rules nonetheless are not renewed based on a finding that the compliance information disclosed means that continued operation would be inconsistent with the public interest, convenience and necessity? Will such determinations be made even absent a finding that the applicant does not possess the character qualifications to hold an FCC authorization, subsequent to the hearing mandated by the Communications Act? If so, then the Commission must clarify at the outset what findings outside of fundamental character deficiencies confirmed in a hearing would cause it to deny a license renewal. Does the FCC intend to attribute different weights to different violations and Petitions and establish a cumulative benchmark figure that would trigger non-renewal? Will those weights and that benchmark be made publicly available? Alternatively, will the Commission make an individualized decision on each renewal application without reference to a regulatory compliance formula of some sort? Has the FCC calculated what resources will be required to conduct these license renewals and how this will affect application processing time?

LMCC believes the regulatory compliance certification proposal should be rejected. If the FCC is concerned that it is renewing licenses for entities that have exhibited a pattern of FCC violations or about which issues have been raised in Petitions to Deny that warrant investigation of the entity's qualifications to hold FCC licenses, there is a well-established process in place whereby the FCC can take action on such matters.

¹⁴ PCIA recommends that the Commission treat such pending Commission actions going forward as it always has in the past, with the only differentiation now being a licensee's responsibility to affirmatively notify the Commission personnel responsible for license renewals of items that may be pending before other Commission personnel.

B. Geographic Licenses

As detailed in the *Notice*, the current rules governing geographic license renewals vary widely from wireless service to wireless service. LMCC supports the FCC's desire to harmonize those requirements and to adopt standards that will ensure spectrum is being used productively.

In the *Notice*, the FCC explains its intention to distinguish between the substantial service showings that are used to demonstrate system coverage, typically at defined benchmarks during the license term, and the documentation needed to support license renewal. (To avoid confusion, the FCC now calls the latter a "renewal showing.") Specifically, the FCC has stated that it proposes to adopt renewal requirements similar to those applicable to the 700 MHz Commercial Service Bands, a showing that is defined in the *NPR* and which is significantly more detailed than the showings applicable to many other wireless services.

LMCC takes no position on whether the model proposed by the FCC is generally appropriate for geographic licenses. However, it does encourage the FCC to provide as much clarity as possible with regard to the information needed to warrant license renewal, since uncertainty not only puts licensees in an unfair position, but has a chilling effect on the marketplace. LMCC notes that different renewal information is described in paragraphs 17 and 27 and proposed Rule Section 1.949(c). Whatever rules ultimately are adopted should be spelled out in sufficient detail to provide a reasonable level of predictability as to an entity's renewal expectancy.

LMCC does agree that factors other than those described in the *Notice* should be applied when a geographic license is used to satisfy a licensee's private, internal communications requirements. The *NPR* factors are designed to ensure that commercial operators who have acquired significant amounts of spectrum, often 5 to 10 MHz, over large geographic areas do not

confine their service offerings to the most densely populated portions of those areas. The renewal requirements encourage them to move beyond these most lucrative markets so that service is provided even in more rural communities.

By contrast, licensees of private internal systems have clearly defined areas in which they conduct their businesses that require communications capabilities. Since they do not use spectrum to provide commercial service, they do not monetize their holdings in the same way as a commercial operator and have no motivation to restrict service to more populated markets within the geographic license. They build where they need to build to serve their own requirements and their renewal showing requirement should reflect this fundamental difference. Private internal licensees that have satisfied the applicable build-out requirement should only need to certify continued operation in accordance with their previous construction notification to justify renewal of a geographic license.

III. PERMANENT DISCONTINUANCE OF OPERATIONS

As with license renewals, the *NPR* proposes to standardize the rules governing permanent discontinuance of operations in the identified wireless services for both site-based and geographic licenses. The current rules vary significantly, with some services subject to as brief a period as 30 days, while others have a 90-day provision and still other services have no specific time period at all. Since the permanent discontinuance of service triggers automatic license cancellation, it is imperative that these regulations be clear and preferable that they be consistent.

LMCC endorses the proposed 180-day discontinuance rule for most wireless services. A period of 180 days provides a reasonable balance between ensuring that spectrum remains in productive use, while recognizing that there are circumstances that dictate limited periods of service discontinuance. Adopting a uniform period also will simplify regulatory obligations for

entities that operate systems in a variety of the affected services and thereby enhance compliance.

LMCC strongly supports the FCC's tentative conclusion that it should retain the one-year discontinuance of operations rule for Part 90 services other than the trunked SMR service. The systems licensed under Part 90 largely are used by entities that are meeting private, internal communications requirements or by small commercial operators serving those same types of specialized requirements. As noted by the FCC, a number of these systems are employed in seasonal operations that do not lend themselves to the more abbreviated discontinuance rules applicable to large commercial wireless systems.¹⁵ Thus, LMCC agrees with the FCC's tentative conclusion to retain the one-year rule for these Part 90 services.

For the reasons described herein, LMCC respectfully requests the Commission to adopt rules consistent with the positions detailed above and in the proposed revisions to the FCC's draft Rule Section 90.187.

¹⁵ *NPR* at ¶ 68.