

**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)	

**REPLY 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 Reply Comments in the above-entitled proceeding.² The Comments filed in this proceeding, including those submitted by the Alliance, raise substantive issues about the impact of the Commission's proposals and suggest that more streamlined and clearly defined license renewal requirements would better serve the interests of wireless licensees, the FCC and the public. EWA urges the FCC to revisit certain aspects of the *NPR* in light of the concerns expressed in those filings so that the overarching objective of ensuring appropriate use of

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*”).

licensed spectrum is satisfied without unduly burdening Commission licensees or discouraging investment in communication systems because of uncertainty about the opportunity for license renewal.

In its Comments in this proceeding, the Alliance strongly supported the Commission's proposal to require site-based wireless licensees to certify continued operation of the facility(s) to be renewed. In fact, EWA recommended that this affirmative requirement be extended to licensees of Public Safety Pool spectrum, a position also adopted by the Land Mobile Communications Council ("LMCC")³ whose members include all of the Part 90 FCC-certified public safety Frequency Advisory Committees. Requiring licensees of all site-based wireless systems to certify affirmatively what they represent implicitly by virtue of filing a renewal application – that the license in question has not canceled automatically because of permanent discontinuance of operation and is, therefore, eligible for renewal – should prompt a more meaningful review of the operational status prior to seeking renewal. EWA believes that the record supports this aspect of the *NPR* and urges the FCC to adopt a site-based certification of continued operation.

With regard to renewing geographic licenses, the Alliance noted that there are substantive distinctions among various categories of geographic authorizations. It recommended that the FCC not adopt a "one size fits all" approach to the showing needed to justify license renewal. In particular, EWA agreed with the Commission's tentative finding that the renewal showing for geographic licensees operating private internal systems should not be identical to whatever requirements are adopted for entities providing commercial service to consumers.

³ EWA is a member of the LMCC and incorporated by reference the LMCC Comments in its own filing.

A number of Comments filed in this proceeding echoed or even expanded upon the concerns expressed by the Alliance. For example, Southern Company Services, Inc. ("Southern") questioned the reasonableness of applying a renewal standard that emphasizes service to the public, including subscribers in rural and tribal areas, to licensees whose authorizations expressly indicate that they are being used for private internal communications purposes.⁴ Motorola, Inc. ("Motorola") explained that it had acquired VHF Public Coast spectrum ("VPC") for the express purpose of making it available to support public safety and private land mobile operations away from coastlines and major navigable waterways and is actively engaged in the deployment of systems in various markets throughout the country.⁵ Of course, these systems are not intended to maximize geographic or population coverage within the FCC-defined license area. Rather, they are designed to meet specific, essential communications needs, including those of public safety, critical infrastructure and other business enterprise users, as dictated by the entity's particular coverage requirements. VPC spectrum that had been lying fallow now is being put to productive, publicly beneficial use by virtue of the services provided by these entities. Whatever renewal standards the FCC adopts must recognize that these systems serve the public interest at least as much as the provision of a consumer-oriented commercial subscriber service.

The Comments filed by Sprint Nextel Corporation ("Sprint Nextel") highlight other problems with the renewal standard proposed for geographic licenses. The approach outlined in the *Notice* requires a detailed description of existing and planned spectrum utilization by license, that is, by individual call sign. This might be workable (albeit still duplicative of information already provided to the FCC in response to other Commission data requests) if network

⁴ Southern Comments at 3-4.

⁵ Motorola Comments at 3-4.

deployment were pursued on a call sign by call sign basis. However, as pointed out by Sprint Nextel, "factors such as the description of investment in its network, timetable for construction of new sites to meet changes in demand, system outages, and a list including addresses of all cell site transmitters, usually are not license-specific information or accounted for by license."⁶ Its Comments explained that "in Sprint Nextel's case over 69,000 cell sites would be attributed to multiple geographic areas and submitted in over 5,000 renewal showings."⁷ The obligation to reorganize a licensee's network information for the sole purpose of providing this level of detail to justify license renewal would be extremely burdensome to licensees and to the FCC staff responsible for reviewing the data without any countervailing advancement of the public interest. If the Commission is seeking information to determine license renewal legitimacy for a particular licensee, particular geography or particular spectrum band, it would appear to be far more efficient to seek that information on a case-by-case basis.

Additionally, LMCC's Comments, which were endorsed by EWA, stated that "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,"⁸ a level of detail that LMCC found lacking in both the NPR and the proposed geographic renewal showing rule. Other commenting parties noted this same concern. Sprint Nextel expressed alarm that "*the Renewal NPRM does not articulate the standard the Commission intends to use to evaluate the proposed substantial service renewal showing data.*"⁹ It concluded that this lack of clarity about the standard to be applied when evaluating the information proposed to be required at renewal was contrary to the

⁶ Sprint Nextel Comments at 6. Sprint Nextel also noted that some of this information is commercially sensitive and not routinely available to the public.

⁷ *Id.* at 7.

⁸ LMCC Comments at 10.

⁹ Sprint Nextel Comments at 7 (original emphasis).

FCC's stated desire to bring greater certainty to the renewal process. Sensus USA Inc. ("Sensus") agreed and warned that a standard, "a clear statement of the conditions under which renewal or renewal expectancy will be granted,"¹⁰ is essential to promoting continued investment in spectrum and infrastructure.¹¹ It is clear that a standard for evaluating renewal showings, not simply the elements that will be considered in those showings, must be defined if the FCC is to pursue this aspect of the *NPR*. Moreover, these standards must be in place sufficiently in advance of any renewal showing deadline so that licensees have a fair opportunity to satisfy whatever standard the Commission adopts. Whether that standard (or standards as recommended by EWA) include a safe harbor showing, as suggested by some licensees, or other requirements they must be well-defined, applied consistently and demonstrably in the public interest.

Finally, many parties commenting in this proceeding questioned the wisdom of the FCC's proposed regulatory compliance showing. LMCC reminded the Commission that some Part 90 licensees hold thousands of individual authorizations. The renewal application for each would have to include the regulatory documentation proposed in the *Notice* even though that documentation was issued by the FCC and thus assumed to be in the agency's possession already. In fact, LMCC underestimated the number of licenses that might be held by certain entities such as Sprint Nextel, which explained that it holds over 50,000 geographic area and site-based wireless licenses, each of which has an individual renewal requirement.¹² Southern raised the same concern about the burden this obligation would impose stating that "While such a requirement might not be a burden for a small licensee with no affiliates and only a few licenses, larger companies such as Southern that hold hundreds of licenses directly or through affiliates

¹⁰ Sensus Comments at 6.

¹¹ *Id.* at 10.

¹² Sprint Nextel Comments at 2.

could be put to an enormous task of due diligence before filing each and every application for license renewal."¹³

Instead of making the reproduction of this documentation a licensee obligation at license renewal, Southern has made the eminently sensible suggestion that the FCC develop an internal process (assuming it does not have one already) whereby it tracks licensee compliance using the FCC Registration Number ("FRN") assigned to each licensee.¹⁴ This could be similar to the Commission's Red Light Display System that identifies licensees with outstanding FCC and Universal Service Administrative Company payment obligations. EWA endorses that recommendation and urges the FCC to implement what would be a much simpler and less burdensome process for the FCC itself and its licensees. Additionally, however, as with the geographic license renewal showing and as highlighted in LMCC's Comments, the Commission needs to define how it intends to evaluate these regulatory matters in the context of a renewal application. If this information will have a substantive impact on renewal expectancy, licensees have a right to know, in advance, what weight will be given to it when the FCC considers whether or not to renew a license.

It is in the interest of FCC licensees and the public that unused spectrum not lie fallow when it might be put to productive use if recovered and made available to other parties. However, that broad policy objective cannot be allowed to override the rights of licensees to know with specificity by what standard their renewal applications will be evaluated. These two interests must be properly balanced if the Commission wishes to promote continued investment in and expansion of communications capabilities in this country. The Alliance urges the FCC to revisit the proposals in the *NPR* in light of the record in this proceeding and develop wireless

¹³ Southern Comments at 5-6.

¹⁴ Southern Comments at 6.

renewal standards that will enhance efficient spectrum utilization while also establishing reasonable rules of the road for the wide variety of wireless licenses issued by the Commission.

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

August 23, 2010