

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Parts 1, 22, 24, 27, 74, 80, 90,)	WT Docket No. 10-112
95 and 101 To Establish Uniform License Renewal,)	
Discontinuance of Operation, and Geographic)	
Partitioning and Spectrum Disaggregation Rules)	
and Policies for Certain Wireless Radio Services)	

To: The Commission

REQUEST FOR CLARIFICATION

The Enterprise Wireless Alliance (“EWA” or “Alliance”), in accordance with Section 1.429(a) of the Federal Communications Commission (“FCC” or “Commission”) rules and regulations, respectfully requests clarification of one aspect of the Report and Order in the above-entitled proceeding.¹ The Alliance generally supports the Commission’s effort to clarify and unify the various wireless radio service (“WRS”) rules governing license renewals, discontinuance of operation, and partitioning/disaggregation. It also endorses the FCC’s intention to use “safe harbors” to minimize the administrative burden on licensees and the FCC staff in the license renewal process and appreciates the further changes made to the draft decision in response to recommendations from a number of wireless licensees.

However, consistent with the filings submitted by the Alliance and the Land Mobile Communications Council (“LMCC”) in response to the original Notice of Proposed Rulemaking in this proceeding, EWA disagrees with the FCC’s decision to exempt public safety licensees from the revised renewal procedures as doing so makes unclear exactly what a public safety licensee is representing to the FCC when filing a renewal application. For avoidance of

¹ Amendment of Parts 1, 22, 24, 27, 74, 80, 90, 95, and 101 to Establish Uniform License Renewal, Discontinuance of Operation, and Geographic Partitioning and Spectrum Disaggregation Rules and Policies for Certain Wireless Services, *Second Report and Order and Further Notice of Proposed Rulemaking*, WT Docket No. 10-112, 82 FR 41530 (rel. August 3, 2017) (“R&O”).

confusion, the Alliance urges the Commission to clarify its intention in exempting public safety entities from renewal requirements applicable to all other wireless licensees.

I INTRODUCTION

EWA is a national trade association representing business enterprises, wireless sales and service providers, hardware and software system vendors, and technology manufacturers. Its members hold FCC authorizations in many of the bands addressed in this proceeding, with the majority licensed under Parts 22, 90 and 101 of the FCC rules. Most of these licenses are site-based, although a number of members also hold geographic licenses on spectrum regulated under Part 22, Subpart E, and Part 90, Subparts S and T.

The Alliance also provides application preparation services for many wireless licensees, including those eligible as public safety entities. As it already has been asked to explain the legal significance of the public safety renewal exemption, clarification of the Commission's intention is needed.

II DOES EXEMPTING PUBLIC SAFETY ENTITIES FROM THE NEW RENEWAL CERTIFICATIONS MEAN THAT THEIR RENEWAL APPLICATIONS ARE SUBJECT TO A DIFFERENT STANDARD THAN THOSE OF OTHER WIRELESS LICENSEES?

For more than eight decades, since the enactment of the Communications Act of 1934,² radio systems licensed to entities classified as “public safety” have been subject to the same license renewal rules as other licensees operating in the same spectrum bands. Specifically, in the Part 90 radio services, where most public safety systems are authorized, public safety, Industrial/Business, and commercial entities operate on channels that are adjacent to or interleaved with one another. All have been subject to the general FCC renewal requirement set out in Rule Section 1.949.

² 47 U.S.C. § 151 *et seq.*

For reasons unexplained, indeed entirely unaddressed, in the 2010 Notice of Proposed Rulemaking in this proceeding,³ the Commission proposed to exempt, and in the R&O has exempted, public safety licensees from the new renewal requirements set out in Rule Section 1.949(d)-(h) by expressly excluding them from the “Covered Geographic Licenses” and “Covered Site-based Licenses” definitions in Rule Section 1.907.⁴ Thus, pursuant to the new safe harbor provisions, public safety renewal applicants for site-based facilities will not be required to certify that they are continuing to operate their systems consistent with their most recently filed construction notification and that there has been no permanent discontinuance of operation. Those filing renewal applications for geographic licenses would be classified as “private systems” but, because of the exemption, they will not need to certify that they have met any interim or final performance requirement and continue to use their facilities “to further the applicant’s private business or public interest/public safety needs” at or above the reported performance requirement.⁵ Moreover, by exempting public safety applicants from the new renewal requirements, the FCC not only is excusing them from the safe harbor certifications required of qualified wireless licensees, but allows them to avoid making the more substantive renewal showing required of licensees that do not meet the safe harbor standard.

³ Amendment of Parts 1, 22, 24, 27, 74, 80, 90, 95, and 101 to Establish Uniform License Renewal, Discontinuance of Operation, and Geographic Partitioning and Spectrum Disaggregation Rules and Policies for Certain Wireless Services, WT Docket No. 10-112, *Notice of Proposed Rulemaking and Order*, 25 FCC Rcd 6996 (2010) (“NPRM”).

⁴ EWA and the LMCC both urged the FCC to apply any changes in its license renewal and discontinuance of operations rules to public safety entities in Comments filed in response to the NPRM. The LMCC includes the following organizations that coordinate public safety applications and represent the interests of their respective constituencies: American Association of State Highway and Transportation Officials (“AASHTO”), Association of Public-Safety Communications Officials-International, Inc. (“APCO”), Forestry-Conservation Communications Association (“FCCA”), International Association of Fire Chiefs (“IAFC”) International Municipal Signal Association (“IMSA”), and National Association of State Foresters (“NASF”). Thus, the statement in the R&O that “no public safety entity has commented in the proceeding requesting application of the renewal framework to public safety licensees” is incorrect. R&O at n. 28. APCO alone subsequently reversed its position and no longer supports LMCC’s Comments, but the other public safety organizations have not taken positions contrary to the original LMCC filing.

⁵ Since public safety entities are exempt from the certification requirement, it is unclear what geographic renewal applicant would certify that it is using its facilities to “further its public safety needs.”

It is EWA's understanding that these safe harbor certifications will be appended to the FCC Form 601 used for wireless renewal filings as boxes to be checked yes or no, similar to other certifications that all applicants must make. Clearly, it would not be burdensome for public safety renewal applicants to be required to check the appropriate box, so the exemption must have a more substantive, legal significance.

EWA is concerned that it will be, and in the absence of any explanation of the FCC's intention must be, read to allow public safety licensees to renew an authorization without confirming that they are operating the system as licensed and that there has been no permanent discontinuance of operation. While the Alliance had always understood that the filing of a renewal application implicitly included both those representations, the Commission's decision to require an affirmative certification to that effect from all but public safety licensees calls into question just what a public safety applicant is representing to the FCC when it submits a renewal application.

This issue is of particular concern to EWA in light of the FCC's acceptance of assertions that public safety applicants should be granted waivers to access Industrial/Business spectrum, because there are no assignable public safety channels without independent verification.⁶ The frequency coordinator's determination as to public safety channel availability, of necessity, is based primarily on ULS license records. If public safety applicants are no longer obligated to confirm that the licenses they are renewing are fully operational, both as to frequencies and sites,

⁶ "The Commission defers to the [frequency coordinator's] technical determination that there is no suitable public safety pool spectrum available and that the selected I/B frequencies are appropriate and avoid or minimize interference to other users, and reviews *de novo* the legal issue of whether the applicant meets the Commission's well-established waiver standard." Letter to Mark E. Crosby, CEO, Enterprise Wireless Association, William K. Brownlow, Chair, Public Safety Communications Council, from David G. Simpson, Rear Admiral, USN (Ret.), Chief, Public Safety and Homeland Security Bureau, and Roger C. Sherman, Acting Chief, Wireless Telecommunications Bureau, Letter, 29 FCC Rcd 250 at 252-253 (PSHSB and WTB 2014).

and that there has been no permanent discontinuance of operation, the ULS database will reflect greater usage of public safety spectrum than actually is the case.

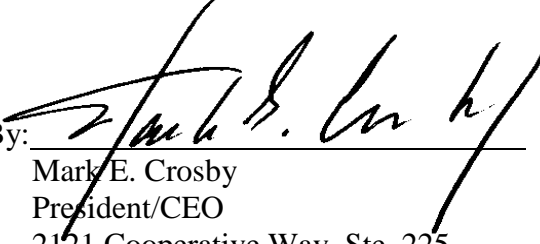
The FCC seems to assume that all public safety licensees voluntarily modify or cancel FCC authorizations for facilities that are no longer in use, or at least would not renew them. EWA shares that hope, but believes the more prudent course is that suggested by President Reagan: trust, but verify. The certification required of wireless renewal applicants provides that verification. In its absence, it is unclear what a public safety renewal application represents.

III CONCLUSION

Exempting public safety applicants from including in their renewal applications certifications as to the validity of the licenses being renewed, that are required of all other wireless licensees, introduces uncertainty with regard to public safety renewal obligations. EWA urges the FCC to clarify the significance of the public safety exemption at its earliest opportunity.

Respectfully submitted,

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