

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 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)	

PETITION FOR RECONSIDERATION

**Sensus USA Inc. and
Sensus Spectrum LLC**

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Sensus USA Inc. and its wholly-owned subsidiary, Sensus Spectrum LLC¹ (collectively “Sensus”), pursuant to Section 1.429 of the Commission’s rules,² hereby request reconsideration of the Commission’s *Second Report and Order* in the above-captioned proceeding.³ For the reasons set forth below, the Commission’s new license renewal requirements needlessly complicate the renewal process, impose significant new burdens on licensees, and create regulatory uncertainty that will benefit neither the public nor licensees. In particular, the license renewal safe harbors adopted by the *Second R&O* require expansive certifications regarding information that will be beyond the reach of most licensees. Moreover, the safe harbor

¹ Sensus USA Inc. and Sensus Spectrum LLC are wholly-owned subsidiaries of Xylem Inc., a leading global water technology company.

² 47 C.F.R. § 1.429.

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 Radio Services*, Second Report and Order and Further Notice of Proposed Rulemaking, WT Docket No. 10-112, FCC 17-105 (rel. Aug. 3, 2017) (“*Second R&O*”).

certifications do not take into consideration the unique situation of narrowband licensees, and the safe harbor applicable to partitioned or disaggregated licensees requires clarification. In addition, the license renewal showings required of licensees unable to claim a safe harbor, which the Commission has broad discretion to accept or reject, will inject new uncertainty and risk into the license renewal process. As a result, the *Second R&O* does not meet the Commission's stated goal of providing "clear, consistent rules of the road for WRC licensees,"⁴ which will discourage innovation and chill investment. Accordingly, the Commission should modify its new wireless license renewal rules as described below.

I. INTRODUCTION AND SUMMARY

The Commission's new license renewal requirements are a throwback to an earlier command-and-control regulatory paradigm in which the Commission, rather than the marketplace, determined the best way to maximize spectrum resources. Since the earliest days of the first mass market wireless services, the Commission has taken a light-touch approach to geographic wireless license renewals, assuming that once a licensee satisfied construction requirements in its initial license term, the marketplace would provide all of the necessary economic incentives for a licensee to make efficient and robust use of its spectrum. But the *Second R&O* departs from this longstanding view by imposing a heavy-handed approach to license renewals first proposed seven years ago under Chairman Genachowski. Now, in order to claim an expectancy of renewal via a safe harbor, geographic licensees are required to maintain mandatory-minimum levels of service (defined by the last applicable performance benchmark) regardless of marketplace demand; licensees unable to do so are required to file detailed license

⁴ *Second R&O* at ¶ 1.

renewal showings that the Commission has broad discretion to accept or reject. This is a remarkable and counter-productive change of direction.

The new license renewal requirements adopted by the *Second R&O* are premised on the logical fallacy that by making license renewal requirements equally burdensome on all licensees, *using the most heavily regulated wireless services as a baseline*, the Commission is somehow simplifying the regulatory process for everyone, and that licensees and competition will benefit from this uniformity – even licensees in radio services that flourished under the prior renewal requirements.⁵ Moreover, the license renewal safe harbors that purport to streamline these requirements fail to offer much relief since many licensees, such as those similarly situated to Sensus that acquired licenses in the secondary market, will be unable to make the expansive required certifications and will be required to file detailed license renewal showings instead.

In sum, the *Second R&O* needlessly complicates the wireless license renewal process, thereby undermining three decades of light-touch regulation that ushered in the highly competitive wireless industry we have today.⁶ Sensus opposed the license renewal showing requirement the Commission proposed,⁷ and would have opposed the license renewal safe harbors, as written, had they been put out for public comment prior to adoption. Accordingly, the Commission should modify its license renewal safe harbors to limit the scope of required certifications in order to make the safe harbors more readily available to most licensees.

⁵ Undoubtedly, one of the reasons different radio services had different license performance and renewal requirements is because they were intended to serve the public differently.

⁶ *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*, Twentieth Report, WT Docket No. 17-69, FCC 17-126 (rel. Sept. 27, 2017) (“*Twentieth Competition Report*”).

⁷ Sensus Comments in WT Docket No. 10-112 (June 1, 2017).

Moreover, to the extent the Commission does not significantly modify the safe harbors as requested, for licensees filing renewal showings, the Commission should create a rebuttable presumption of renewal expectancy for licensees certifying compliance with the license renewal standard.

II. BACKGROUND

Sensus holds 584 Multiple Address Service (“MAS”) licenses and 68 narrowband PCS (“NPCS”) licenses. Sensus obtained almost all of its licenses in the secondary market, and most of its NPCS licenses are partitioned regional or nationwide licenses. Sensus uses these geographic licenses to support its innovative and distinctive network communications technology, FlexNet. The FlexNet system is used by critical infrastructure companies, particularly electric, gas and water distribution utilities, and enables secure and reliable connectivity solutions that support multiple applications, including advanced metering, power outage detection, distribution automation and monitoring, water leak detection, demand response, and equipment monitoring and control, among others. There are currently over 2400 FlexNet system users in the United States, the majority of which serve rural areas. Since its customers in most instances lack the scale or expertise to acquire FCC license rights on their own, Sensus’s ability to package its FlexNet technology with spectrum lease rights makes its product offerings especially attractive to smaller utilities, including those that provide service in rural areas. As described below, Sensus will be particularly burdened by the FCC’s new license renewal requirements.

III. THE GEOGRAPHIC LICENSE SAFE HARBOR CERTIFICATION REQUIREMENTS WILL BE UNWORKABLE FOR MANY LICENSEES

Licensees like Sensus, which holds hundreds of geographic licenses, which are used by tens of thousands of base stations (both fixed and mobile), as well as millions of endpoints (*e.g.*,

devices attached to meters and other facilities)., and smaller wireless carriers generally, will be particularly burdened by the license renewal safe harbors. The certification requirements are overly broad in scope, exceed what is necessary under the new renewal standard, and impose substantial new data analysis and recordkeeping requirements. For example, a licensee seeking to claim a safe harbor is required to certify that it used its facilities to provide service at least at the level required to satisfy its last performance requirement.⁸ Moreover, as the *Second R&O* explains, licensees that dip below this level of service for more than 180 days at any time during their previous license term are ineligible to claim a safe harbor.⁹ In other words, the safe harbor requires licensees to maintain mandatory-minimum levels of service throughout the license term.¹⁰ While this may be manageable for larger wireless carriers that provide extensive coverage with a comparatively smaller number of base stations, for many smaller wireless carriers, this creates an enormous compliance burden that goes well beyond what the new renewal standard requires. Specifically, the new renewal standard simply requires licensees to demonstrate that the last performance benchmark was satisfied, that the licensee provided service during the previous license term, and that it is continuing to provide such service as of the license renewal date.

The service certification also imposes burdensome new data analysis and recordkeeping requirements on licensees. In order to make this certification, a licensee will need to have a good

⁸ *Second R&O* at ¶ 21.

⁹ *Id.*

¹⁰ It is unclear how the safe harbor will work in services subject to a substantial service performance requirement, particularly where the Commission has never specified a substantial service safe harbor. Substantial service is a qualitative determination made by the Commission after reviewing the licensee's performance; it is unclear how a licensee can certify that it satisfied such a standard without any Commission review.

faith basis on which to conclude that it has maintained a mandatory-minimum level of service during the entirety of its license term, which in many instances will require the licensee to continually monitor, measure, and analyze the scope of service provided by each of its licenses.¹¹ Generating and analyzing coverage data necessary to confirm compliance with this performance benchmark is a complicated, labor-intensive, and expensive undertaking, especially for smaller licensees. For example, in order to measure service levels for a single license, a licensee must: (i) enter into a RF planning tool the location of every transmitter in its license area, including all applicable technical parameters that determine coverage (*e.g.*, antenna height, antenna pattern, transmitter power, antenna gain, ERP, *etc.*); (ii) determine an appropriate signal strength standard necessary to provide reliable service in the license area (which will vary by frequency band, technology, system design, and the topographical features of the market); and (iii) overlay the composite coverage pattern generated by the RF planning tool onto a license area map using a mapping program to perform complex spatial queries necessary to determine the population or geographic area encompassed by the calculated coverage pattern.¹²

Performing a single coverage analysis can take dozens of hours, or more, depending on the number of transmitters involved. Previously, most licensees were required to undertake this effort only once or twice per license, providing the Commission with a snapshot of their coverage at a particular time. The new service certification, however, will require licensees to

¹¹ Sensus acknowledges that in some instances, a geographic licensee may have exceeded the performance benchmark by such a significant degree that it may not see the need to continually measure and analyze coverage data as a basis for making the required certification in good faith. Given the penalties for making a certification that is false or lacking in good faith, however, licensees with construction levels anywhere near mandatory-minimum coverage levels would be foolhardy to take such a cavalier approach.

¹² The Commission has never specified a methodology for making population coverage calculations where a service contour encompasses only a portion of a census block – the smallest geographic area in which the U.S. Census Bureau measures population.

continually compile and analyze service data to ensure compliance with minimum-mandatory service levels – particularly whenever they make network modifications that might cause them to fall below the service benchmark.¹³ This new data analysis and recordkeeping requirement will create a particular burden on licensees, like Sensus, that hold hundreds of geographic licenses, served by tens of thousands of base stations, and that primarily lease their spectrum to rural third parties as part of an integrated service offering.

For example, as it indicated in its comments, Sensus has approximately 2,300 customer deployments, and it would be tremendously time consuming for Sensus to continuously calculate whether these deployments satisfy minimum-mandatory service requirements on a license-by-license, user-by-user basis.¹⁴ In order to do so, Sensus would need to require its customers to provide real-time data regarding equipment deployments and re-deployments, and would need to reserve for itself a right to veto any network changes that might jeopardize its license renewal safe harbor; similarly, any type of technology or equipment upgrade would need to be thoroughly evaluated from a safe harbor standpoint prior to implementation. Such a situation would be infeasible, and would defeat one of the primary advantages of the FlexNet radio system – to allow customers, primarily rural utility companies, to dynamically deploy and relocate transmitters as circumstances warrant using state of the art technology throughout their service areas.¹⁵

Equally problematic is the fact that the substantial compliance and permanent discontinuance certifications are overly broad and impermissibly vague, and fail to give licensees

¹³ *But see supra* n. 11.

¹⁴ Sensus Comments at 3-4.

¹⁵ Sensus Comments in WT Docket No. 10-112 at 3 - 4 (June 1, 2017).

sufficient notice of what conduct is required to obtain renewal.¹⁶ The FCC has never explained what it means for a licensee to “substantially comply” with all applicable rules, policies and the Act. Moreover, while a licensee will be able to certify that it has never permanently discontinued operations of a particular license that it has held since the initial grant dates, such certification becomes more difficult for licenses obtained in the secondary market for which license records may be incomplete or non-existent.

In sum, the safe harbors adopted by the *Second R&O* are burdensome, overly-broad and vague, fail to address special circumstances for licenses obtained in the secondary market, and leave many questions unanswered, yet licensees are required to certify compliance under penalty of perjury in order to claim a safe harbor. Accordingly, the safe harbors should be more narrowly-tailored to make them practical for most licensees, and to more closely conform to the requirements of the new license renewal standard. For example, a geographic wireless licensee that can certify: (1) that the last performance benchmark applicable to its license was satisfied, (2) that it provided service to the public during its license term, and (3) that it continues to provide service to the public as of the filing of its renewal application, has demonstrated that it satisfies the license renewal standard – and this alone should be sufficient. Requiring a licensee to certify that it maintained mandatory-minimum levels of service throughout its license term, that operations were not permanently discontinued, and that the licensee “substantially complied” with all applicable rules, policies and the Act, is not required by the license renewal standard, and creates enormous practical challenges that limit the utility of the license renewal

¹⁶ See also, discussion *infra* at VI regarding the vagueness of the review standard the Commission adopted to evaluate license renewal showings.

safe harbors for Sensus, and for smaller wireless carriers generally, with no corresponding public interest benefit.

IV. THE SAFE HARBORS DO NOT TAKE INTO ACCOUNT THE UNIQUE SITUATION OF NARROWBAND LICENSEES.

Sensus holds 68 NPCS licenses. In order to qualify for a license renewal safe harbor for these licenses, Sensus must certify that it has maintained the same level of construction necessary to satisfy the final performance benchmark. For NPCS licenses, this means certifying compliance with performance requirements created more than 20 years ago when the licenses were held by a different party and the narrowband industry was much different than it is today.

The rules for the NPCS radio service were adopted in 1993.¹⁷ At the time, the Commission expected that NPCS would be used to provide a variety of narrowband services, including “advanced voice paging, two way acknowledgement paging, data messaging, and both one-way and two-way messaging and facsimile,” though based on the stated interests of commenters, advanced messaging and paging were expected to be the predominant NPCS services.¹⁸ Consistent with these expectations, the Commission licensed NPCS using nationwide, regional and MTA market definitions, and adopted aggressive “construction benchmarks that emphasize[d] service to the public.”¹⁹ By the end of their initial license terms, NPCS licenses were required to construct base stations that covered a significant portion of their geographic territory or serve a significant portion of the population located within their license

¹⁷ *Amendment of the Commission’s Rules to Establish New Narrowband Personal Communications Services*, First Report and Order, 8 FCC Rcd 7162 (1993).

¹⁸ *Id.* at 7164.

¹⁹ *Amendment of the Commission’s Rules to Establish New Narrowband Personal Communications Services*, Memorandum Opinion and Order, 9 FCC Rcd 1309, 1319 (1994).

areas.²⁰ Each of these requirements was premised on digital narrowband services being provided directly to individual consumers on ubiquitous wireless networks.

By the time construction deadlines starting coming due for NPCS licensees, however, the mass market for the narrowband services contemplated by the Commission was in fast decline due to competition from broadband carriers, and the carriers that survived scaled back their business models accordingly. As the Commission recently observed, “[n]arrowband data and paging service [today] comprise a specialized market segment of the mobile wireless industry . . . [providing services] consumed primarily by businesses, government users, and other institutions.”²¹

Sensus does not sell mass market, individual consumer-oriented communications services, and it does not construct the kinds of ubiquitous wireless networks needed to serve such customers. Moreover, as indicated above, Sensus does not construct networks and then market its services; rather, it sells an integrated communications solution, FlexNet, consisting of technology, equipment and leased spectrum. This service is marketed to critical infrastructure providers, including water, gas and electric distribution utilities, many of which are located in rural areas. By number, the majority of Sensus system users are smaller utilities, principally located in rural areas. Sensus’s customers determine where service is needed, and then work with Sensus to deploy infrastructure necessary to serve those areas. This is a very different business model than the one envisioned when the Commission adopted its NPCS performance requirements. As a result, the safe harbor coverage certification adopted by the Commission, which requires compliance with performance benchmarks premised on mass market services,

²⁰ 47 C.F.R. § 24.103. In the alternative, NPCS licensees could satisfy their final performance benchmark by demonstrating substantial service.

²¹ *Twentieth Competition Report* at ¶ 18.

will be of limited use to Sensus or other similarly situated NPCS or other narrowband licensees that have adapted to industry changes. Accordingly, the Commission should modify the geographic safe harbor as requested above to more narrowly follow the explicit requirements of the new renewal standard and to reflect the changes in the industry that have occurred over the last 20 years.

V. THE COMMISSION SHOULD CLARIFY HOW THE SAFE HARBORS APPLY TO PARTITIONED LICENSES.

Many of Sensus's NPCS licenses have been partitioned, or were created by partitioning. In some cases, the performance requirement was retained by the original license holder, but in other cases it was assumed by the licensee receiving the new license. As a result, some of these licenses will be subject to the geographic license safe harbor, while others will be subject to the safe harbor for partitioned or disaggregated licenses.

Should the Commission decide not to modify the license renewal safe harbor for geographic licenses as requested above, it must make clear how coverage metrics should be calculated for partitioned licenses. Specifically, where a license has been partitioned, the Commission should clarify that applicable service benchmarks are proportionally adjusted (for license renewal purposes) to correspond to the population or geographic area that remains associated with a license area (*e.g.*, a partitioned nationwide NPCS license that covers two states would need to cover 15 percent of the geographic area,²² or 75 percent of the population, within its license area). Otherwise, the licensee of a partitioned license would be required to certify compliance with a performance benchmark that applied to its license before it was partitioned,

²² Nationwide NPCS licenses are required to cover 1,500,000 square kilometers (which is approximately 15 percent of the U.S.) or serve 75 percent of the population at the end of their license term. 47 C.F.R. § 24.103(a).

which might be impossible even if it covered 100 percent of the population and territory within its license area. Similarly, the Commission should clarify that licensees may count toward the benchmark all service provided on spectrum partitioned and sold to third parties.²³ Both of these clarifications would be consistent with the Commission’s finding that the “[t]he goal of our construction requirements in both the partitioning and disaggregation contexts is to ensure that the spectrum is used to the same degree that would have been required had the partitioning not taken place.”²⁴

VI. THE RENEWAL SHOWING REQUIREMENT SHOULD BE MODIFIED TO INCLUDE A PRESUMPTION THAT RENEWAL APPLICATIONS WILL BE GRANTED WHERE THE LICENSEE CERTIFIES COMPLIANCE WITH THE LICENSE RENEWAL STANDARD.

If the Commission decides not to significantly modify the safe harbors as requested, it should adopt a rebuttable presumption of renewal for licensees that certify compliance with the renewal standard. Doing so would provide much needed clarity and reduce regulatory uncertainty regarding the significant risk of license non-renewal.

The *Second R&O* provides that licensees that are unable to claim a license renewal safe harbor may nonetheless satisfy the license renewal standard by submitting a renewal showing detailing: (1) the level and quality of the service provided by the applicant; (2) the date service/operation commenced, whether service/operation was ever interrupted, and duration of any interruption or outage; (3) the extent to which service/operation is provided in/to rural areas; (4) the extent to which service/operation is provided to/in tribal lands; and (5) any other factors

²³ Some of Sensus’s larger FlexNet utility customers chose to acquire the spectrum license that they were leasing from Sensus post initial deployment, converting the leased license into a regulatory asset.

²⁴ *Further Notice* at ¶ 26.

associated with a licensee's level of service to the public/level of operation.²⁵ The *Second R&O* further provides that when reviewing such showings, the Commission "will consider the totality of all the factors on a case-by-case basis to determine if a licensee has demonstrated over the course of its license term that it has provided and continues to provide service to the public. . . ."²⁶ No other review standard is specified, and licensees are left to speculate, with no certainty, what kind of service the Commission might find sufficient to warrant license renewal at the end of their license term, what future Commissions might conclude, or how to balance all of this for business planning purposes.

The Commission seems to have adopted this broad standard in order to provide itself with flexibility to make license renewal decisions based on the public interest. The upside to this approach is that it allows the Commission to renew licenses where a licensee might not be able to satisfy a minimum coverage standard, but is nonetheless serving the public interest by providing an innovative product, or serving underserved communities. The Commission had the same intentions in mind when it adopted "substantial service" as a license performance benchmark for wireless licenses in the 1990s.²⁷

The downside to adopting such a broad, flexible standard, however, is that it prevents licensees and investors from being able to quantify regulatory risk, inhibiting their ability to make well-informed business decisions. Put differently, in order to encourage investments in new network deployment, the Commission must provide some assurances to licensees and

²⁵ *Second R&O* at ¶ 31; 47 C.F.R. § 1.949(f).

²⁶ *Second R&O* at ¶ 32.

²⁷ See e.g., *Personal Communications Services (Reconsideration of Second Report and Order)*, Memorandum Opinion and Order, 9 FCC Rcd 4957, 5018-19 (1994)(establishing substantial service as an alternative performance requirement to ensure an economical deployment of PCS and to promote opportunities for licensees to provide niche services).

investors regarding what will be found insufficient to satisfy the Commission's license renewal showing requirements. This is particularly true for innovative new network deployments targeted at niche customers that do not satisfy applicable performance benchmarks. Most reasonable licensees and their investors would not commit significant capital without these assurances, given the uncertainty of the risks involved, including potential shifts in the political winds. In sum, while there are public interest benefits in using a broad standard of review to evaluate renewal showings, it also creates regulatory uncertainty about what is acceptable, and this uncertainty will discourage innovation and chill investment.

To address similar concerns with the substantial service performance benchmark, the Commission adopted safe harbors setting forth specific levels of coverage that would satisfy Commission requirements.²⁸ The Commission reasoned that these safe harbors would provide "licensees with a degree of certainty as to how to comply with the substantial service requirement by the end of the initial license term."²⁹ The Commission adopted the license renewal safe harbors described above for the same reason, and should afford similar relief to licensees required to file license renewal showings instead.

Specifically, the Commission could bring more certainty to the license renewal showing process by allowing licensees to establish a rebuttable presumption that they are entitled to license renewal. Licensees would still be required to submit all of the information requested by Section 1.949(f), but also would be allowed to certify that they satisfied the license renewal

²⁸ In 1997, for example, the Commission determined that a WCS licensee providing mobile services covering 20 percent of the population in its license area, or providing fixed services where it has four permanent links per one million people in its licensed service area, would be deemed to constitute substantial service. *Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service ("WCS")*, Report and Order, 12 FCC Rcd 10785, 10844 (1997).

²⁹ *Id.*

standard. For example, geographic area licensees could, on a license-by-license basis, certify that: (1) the last performance benchmark applicable to the license was satisfied; (2) the license was used to provide service to customers in the license area during the prior license term; and (3) the license is currently being used to provide such service. Licensees making such certifications would be entitled to a presumption of license renewal which the Commission, following its review of the license renewal showing, would be entitled to rebut with a finding that the licensee did not satisfy the license renewal standard.

Creating such a rebuttable presumption would reduce regulatory risks of non-renewal for licensees that choose to deploy innovative service offerings that might not satisfy applicable performance benchmarks necessary to claim a safe harbor. A rebuttable presumption in this context would provide similar relief to a safe harbor, and would serve the public interest by bringing greater clarity and certainty to how license renewal showings will be reviewed. As discussed above, the uncertainty of the license renewal showing process could be significantly mitigated were the Commission to make changes to its license renewal safe harbor certification requirements so that the safe harbors would be a more feasible alternative for most licensees. Such an approach would also reduce burdens on the Commission's limited resources by decreasing the number of renewal showings requiring review.

VII. CONCLUSION

One of the principal objectives of the *Second R&O* is to simplify the regulatory process for licensees. Sensus respectfully submits that, for the reasons set forth above, the *Second R&O* does not satisfy this objective. Rather, the license renewal safe harbor and license renewal showing requirements adopted by the Commission needlessly complicate the renewal process, impose significant new burdens on licensees, and create regulatory uncertainty that will benefit neither the public nor licensees. Moreover, the safe harbor certifications do not take into consideration the unique situation of narrowband licensees, and the safe harbor applicable to partitioned or disaggregated licensees requires clarification. Accordingly, the Commission should reconsider its decision in the *Second R&O* in order to bring greater clarity and certainty to the wireless license renewal process.

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