

**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	)	

To: The Secretary, Federal Communications Commission

**CRITICAL MESSAGING ASSOCIATION  
PETITION FOR CLARIFICATION OR RECONSIDERATION**

THE CRITICAL MESSAGING ASSOCIATION (CMA), by its attorney, respectfully petitions the Federal Communications Commission for limited clarification or reconsideration, as necessary, of its Second Report and Order and Further Notice of Proposed Rulemaking (SR&O) in the captioned proceeding, adopted and released August 3, 2017, and published at 82 Fed. Reg. 41530 (September 1, 2017). In support thereof, CMA respectfully states:

**Introduction and Background**

In the SR&O the Commission adopted uniform requirements (with limited exceptions) for licensees in substantially all of the non-broadcast wireless radio services that seek renewal of their station licenses. The essential structure of the new renewal regimen is a two-pronged approach. A licensee may either certify that it meets a “safe harbor” standard for renewal, in which case the renewal application will be processed and granted routinely. Alternatively, if a licensee does not certify that it meets the “safe harbor” standard, it must submit detailed information concerning its operations under the license during the license term and the Commission will make a case-by-case determination as to whether the license should be renewed. If a license is not re-

newed, the spectrum is simply returned to the Commission for relicensing; competing applications and comparative renewal hearings are abolished.

The Commission also addressed certain other matters in the SR&O, including the adoption of uniform rules for determining when a licensee has permanently discontinued service, and the consequence of permanent discontinuance; tweaks in the rules governing geographic partitioning and spectrum disaggregation; and the transition to the new license renewal rules.

#### Interest of Petitioner

CMA is the national trade association representing the interests of the critical messaging industry (historically known as the paging industry) throughout the United States. As wireless services have evolved over approximately the last two decades, the critical messaging industry has increasingly concentrated on serving the specialized, emergency alerting needs of health care providers, first and second responders, and other customers employing critical, time-sensitive messages using a point-to-point protocol that cannot be duplicated by broadband networks.

CMA members include a representative cross-section of carriers operating messaging networks licensed by the Commission under Parts 22, 24 and 90 of its rules, as well as equipment suppliers and other vendors to the carrier industry. As licensees of the Commission's Part 22, 24 and 90 wireless radio services, CMA's members are subject to and directly affected by the rules adopted in the captioned proceeding.

#### Grounds for Clarification or Reconsideration

There are two issues addressed in the SR&O which CMA requests that the Commission clarify or reconsider, as necessary. First, the Commission should make clear that, in the case of geographic licensees that make a detailed renewal showing, the standard for renewal is very different than, and much more lenient than, the "safe harbor" standard which allows routine processing and grant of a license renewal. Second, the Commission should make clear that, in the

case of a site-by-site license renewal “safe harbor” certification, the operational certification applies only to the license in effect at the time of the certification. CMA addresses each issue in turn.

In its discussion of the general license renewal standard, the SR&O explicitly states that a licensee must demonstrate that it either “provided and continues to provide service to the public” over the course of the license term, taking into account applicable buildout requirements, or, in the case of a private licensee, that the licensee “operated and continues to operate over the course of the license term” to address the licensee’s private, internal communications needs, again taking into account applicable buildout requirements. (SR&O at ¶9). This formulation also is codified as the “*Renewal Standard*” in new Section 1.949(d) of the Commission’s rules. See SR&O at Appendix A.

However, to implement that renewal standard, as noted above, a geographic licensee must either certify that it has met applicable construction benchmarks and “continues to use its facilities to provide at least the level of service required . . . [by applicable benchmarks] through the end of the license term” (SR&O at ¶21) (the “safe harbor” certification), or it must submit detailed information in support of the renewal application, to include:

- (1) the level and quality of service/operation provided by the applicant (e.g., for service—the population served, the area served, the number of subscribers, the services offered; for operation—the number of users (if applicable), the operating area, the type of operation);
  - (2) the date service/operation commenced, whether service/operation was ever interrupted, and the duration of any interruption or outage;
  - (3) the extent to which service/operation is provided to/in rural areas;
  - (4) the extent to which service/operation is provided to/in tribal lands; and  
any other factors associated with a licensee’s level of service to the public/level of operation.
- (SR&O at ¶31).

In the latter situation, the Commission will make a case-by-case determination of whether the license should be renewed, based on the “totality of all the factors”. (SR&O at ¶32). Nonetheless, the SR&O articulates absolutely no standards on which the case-by-case evaluation will

be made, and instead leaves the staff with broad discretion in defining exactly what the renewal standard really means.

What the Commission needs to make abundantly clear is that the case-by-case evaluation of the renewal showing is not a license for the staff to progressively ratchet up the standard during the implementation process, or ultimately to make it nearly indistinguishable from the safe harbor standard itself.

By way of illustration, many, if not most Part 22 geographic licensees elected to demonstrate “substantial service” at the final construction deadline in order to meet their buildout obligations. See Section 22.503(k)(3) of the rules. “Substantial service,” in turn is defined as “service that is sound, favorable, and *substantially above* a level of mediocre service that would barely warrant renewal”. (*Id.*). (Emphasis added). Legally, therefore, there is a significant difference between, on the one hand, the level of service that meets the “substantial service” construction requirement and, hence, the renewal “safe harbor” standard, and, on the other hand, the level of service the rules characterize as “mediocre” but still is enough to “warrant renewal”.

However, the SR&O provides little meaningful guidance as to what that difference is and what minimum showing is required to meet the renewal standard codified in new Section 1.949(d) of the rules. The first and second required submission clearly are relevant to a showing that a licensee has provided service throughout its license term. However, the third and fourth required submission seem to introduce qualitative considerations similar to the “substantial service” standard in Part 22 as implemented by the staff. The relevance of those factors to the renewal standard in new Section 1.949(d) is not apparent; and the Commission should clarify the difference between the basic renewal standard and the “safe harbor” option that is available to a licensee.

Additionally, the Commission should clarify the nature of the “safe harbor” certification made by a site-by-site renewal applicant, as it relates to the nature of its operations over the course of the license term. As described in the SR&O, the site-by-site licensee must make a “safe harbor” certification, in relevant part, that it is “continuing to operate consistent with the licensee’s most recently filed construction notification”. (SR&O at ¶19). The Commission should clarify that this certification is in the nature of a “snapshot” at the time the renewal application is filed, and is not a representation that the licensee has so operated during the entire license term.

For example, a CMA member with a Part 90 site-by-site license (e.g., 152.48 MHz or 157.74 MHz) typically has up to six different transmitter locations on a single station license. Over the ten-year term of the license, both the location and technical parameters of the base station transmitters operated under any given license may change for any number of reasons. For that reason, the particulars of the station license at the time the renewal application is filed may, or may not, reflect the licensee’s operations under that license over the course of the license terms. CMA therefore respectfully requests the Commission to make clear that a site-by-site licensee may employ the “safe harbor” certification when the renewal application is filed if the license is an accurate “snapshot” of the licensee’s operations at the time the renewal certification is made.

Respectfully submitted,

CRITICAL MESSAGING ASSOCIATION

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