

**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	)	

**COMMENTS OF SENSUS USA INC. AND SENSUS SPECTRUM LLC**

**I. INTRODUCTION AND SUMMARY**

Sensus USA Inc. and its wholly-owned subsidiary, Sensus Spectrum LLC<sup>1</sup> (collectively “Sensus”), respectfully submit these comments in response to the *Further Notice of Proposed Rulemaking* in the above-captioned proceeding.<sup>2</sup> For the reasons set forth below, the Commission should not require existing geographic licensees to satisfy additional construction requirements for license renewal purposes, but instead should provide incentives to licensees to meet expanded buildout levels. In addition, the Commission should fully consider the range of services already being provided in rural areas before imposing any additional construct requirements that might actually hinder further rural deployments. To the extent the

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

<sup>2</sup> *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) (“*Further Notice*”).

Commission nonetheless adopts the proposal in its *Further Notice*, existing licensees failing to complete additional construction should retain all of the license areas they serve.

## **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 and other similar licensees will be particularly burdened by the FCC’s new license renewal requirements.

## **II. ADDITIONAL CONSTRUCTION REQUIREMENTS SHOULD NOT BE IMPOSED ON EXISTING GEOGRAPHIC LICENSES, BUT SHOULD PROVIDE INCENTIVES TO LICENSEES THAT VOLUNTARILY COMPLETE ADDITIONAL CONSTRUCTION.**

The Commission should not impose additional construction requirements on existing geographic licenses. Doing so would be contrary to the expectations of licensees that acquired licenses via competitive bidding, or in the secondary market, and would be inconsistent with the

public interest. While the Commission may impose additional obligations on new geographic licenses prior to auction, doing so after the fact raises serious legal and policy concerns.<sup>3</sup> As Commissioner O’Rielly noted in his supporting statement:

Licensees made decisions based on the rules at the time and bid accordingly. To consider altering these requirements is beyond bad faith. We certainly wouldn’t have generated the auction bids or revenues we did had participants been on notice, in advance of the auction, that we can alter the terms and conditions, and we risk our sound auction policy, not to mention years of litigation, in the process.<sup>4</sup>

Moreover, “[i]f we can change licensees’ buildout requirements, what other modifications can be made to meet the various policy goals of the day.”<sup>5</sup> Sensus understands the value and importance of serving rural service areas; indeed, as set forth herein, providing service to rural utility companies is a cornerstone of our business model. Yet changing the rules to impose new regulatory conditions on existing licensees undermines investment and opens the door to regulatory over-reach in the future.

If the Commission decides to adopt additional construction benchmarks, it should limit their application to existing geographic licenses that voluntarily accept such obligations. Under this approach, licensees would be allowed to opt-in to additional construction requirements on a license-by-license basis in their renewal applications. Existing licensees demonstrating that they satisfied an additional construction requirement would be entitled to an extended license term proportional to the amount of additional construction completed, with additional credit being given to construction in rural areas or on tribal lands. In the event the Commission finds that an

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<sup>3</sup> It is well established that absent an express grant from Congress, agencies lack authority to adopt rules that have a retroactive effect, and the Communications Act does not grant the Commission such authority. *See Bowen v. Georgetown University Hospital*, 488 U.S. 204, 208-09 (1988). *See also* 47 U.S.C. §§ 154(i), 201(b), 303(r), 307, 309; *see also* 5 U.S.C. § 551(4).

<sup>4</sup> *Further Notice*, Statement of Comm’r Michael O’ Rielly at 1.

<sup>5</sup> *Id.* at 2.

existing licensee failed to satisfy one of the additional construction requirements, the licensee would still be allowed to renew its license for a standard term pursuant to ordinary renewal procedures. This approach would provide licensees with additional incentives to expand coverage in successive license terms in exchange for the value created by an extended license term. In other words, licensees would be able to make informed business decisions about the value of future deployments in areas they do not presently serve.

One particular advantage of extending the license terms for licensees that construct in rural areas, however, is that it does not create additional reliance on government subsidies, such as the Universal Service Fund. The Commission already uses incentives-based regulation to encourage rural buildout, such as bidding credits for rural service providers and deployments on tribal lands, and should continue to use these tools. An incentives-based approach to regulation thus serves the public interest by facilitating the conditions in which coverage to rural areas can be made economical.

By contrast, imposing additional construction requirements on existing licenses as a condition of license renewal would fundamentally undermine the value calculation made by licensees when deciding to acquire geographic wireless licenses, would impact the results of future auctions and the prices paid for licenses in the secondary market, and is not necessary to provide incentives for existing licensees to deploy facilities in rural areas.

### **III. ANY ENHANCED CONSTRUCTION REQUIREMENTS SHOULD FULLY CONSIDER HOW WIRELESS SERVICE IS ALREADY BEING PROVIDED IN RURAL AREAS, AND NOT DISCOURAGE FURTHER RURAL DEPLOYMENT**

The underlying premise of the *Further Notice* is that the Commission's current approach to wireless license construction benchmarks (*e.g.*, requiring 70 percent geographic coverage within 10 years) "likely leaves significant portions of rural America, where deployment costs

may be higher and demand lower, without meaningful mobile coverage.”<sup>6</sup> Of course, this assumes that all wireless services are targeted to the mass, consumer market, and that wireless licensees will not provide service to rural areas in the absence of a government mandate. These assumptions are incorrect with respect to Sensus and the services it provides.

Sensus does not sell mass market, consumer-oriented communications services, and it does not construct the kinds of ubiquitous wireless networks needed to serve such customers. As indicated above, Sensus sells an integrated and customized communications solution, FlexNet, consisting of technology, equipment and leased spectrum. This service is marketed primarily to smaller critical infrastructure providers, including water, gas and electric utilities, many of which are 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. In sum, Sensus’s business model enables customers in rural areas to realize the benefits of wireless communications.

The Commission’s proposal to impose additional construction requirements on renewed license terms is therefore not needed to encourage Sensus to serve customers in rural areas, and may have the opposite effect. Specifically, the Commission’s proposal could not only render Sensus’s business model infeasible, it actually could have the perverse effect of discouraging investments in rural areas. This result would not achieve the Commission’s objectives nor serve the best interests of end-users.

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<sup>6</sup> *Further Notice* at ¶ 99.

#### **IV. ANY PENALTIES SHOULD ALLOW LICENSEES TO KEEP THE LICENSE AREAS THEY SERVE.**

Should the Commission nevertheless adopt additional requirements, it should allow existing licensees to retain license rights to the areas they serve. Any broader penalty, such as total loss of license rights, would improperly deprive licensees of the value of their investments, and would harm the licensee's customers, both of which would be contrary to the public interest. This is particularly true for licensees like Sensus that primarily serve critical infrastructure companies in rural areas.

The *Further Notice* incorrectly assumes that rural areas are always the last areas served by geographic wireless licensees. The *Further Notice* asks whether a "keep what you serve" penalty provides sufficient incentive to meet additional construction obligations.<sup>7</sup> This is not the case for Sensus, or for other licensees in wireless radio services that provide services targeted to specific classes of end-users other than mass market consumers.

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<sup>7</sup> *Further Notice* at ¶ 114.

## V. CONCLUSION

The Commission should not impose additional construction obligations on existing geographic licenses, but instead should allow licensees to opt-in to such requirements in exchange for extended license terms. In any event, before imposing new construction requirements on geographic wireless licenses, the Commission should fully consider the services being provided in rural areas, and whether its new requirements will help or hinder additional rural deployment. Should the Commission nonetheless impose additional construction requirements on existing geographic licenses, licensees unable to satisfy these obligations should be allowed to keep license rights to the areas they serve.

Respectfully submitted,

By: /s/ David Alban

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