

**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)	

REPLY COMMENTS

Sensus USA Inc. and its wholly-owned subsidiary, Sensus Spectrum LLC¹ (collectively “Sensus”), submit these reply comments in support of the *unopposed* petitions for reconsideration² of the Commission’s *Second Report and Order* in the above-captioned proceeding.³ As Sensus explained in its Petition for Reconsideration, 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 in the *Second R&O* require

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

² Sensus USA Inc. and Sensus Spectrum LLC Petition for Reconsideration, WT Docket No. 10-112 (filed Oct. 2, 2017) (“Sensus Petition”); American Messaging Services, LLC Petition for Partial Reconsideration or Clarification, WT Docket No. 10-112 (filed Oct. 2, 2017); Critical Messaging Association Petition for Clarification or Reconsideration, WT Docket No. 10-112 (filed Oct. 2, 2017)

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*”).

expansive certifications regarding information that will be beyond the reach of most licensees, particularly narrowband licensees, and is beyond what is required for license renewal. In this regard, the Commission should consider adopting a new license renewal safe harbor for geographically-licensed narrowband services. Moreover, 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, discouraging investment and innovation in the process. To address this risk, the Commission should adopt a rebuttable presumption of license renewal for licensees certifying compliance with the license renewal standard.

The Commission's new unified license renewal standard for the Wireless Radio Services simply requires that:

to qualify for renewal, each [Wireless Radio Service] licensee must demonstrate that over the course of the license term, the licensee either: (1) provided and continues to provide service to the public, taking into account the periods of time the applicable service-specific rules give licensees to construct facilities and meet performance benchmarks, or (2) 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 the applicable service-specific rules give licensees to construct facilities and meet performance benchmarks.⁴

To simplify the demonstration requirement in the license renewal standard, and to provide licensees with an alternative to the more extensive license renewal showing requirements first proposed in 2010 under Chairman Genachowski, the Commission in the *Second R&O* adopted various license renewal safe harbors. In order to qualify for one of these safe harbors, however, licensees are required to make a number of expansive certifications that may be difficult or impossible for many licensees to make. Specifically, licensees are required to certify that service

⁴ *Second R&O* at 4.

was not permanently discontinued at any time during the prior license term, and that the licensee substantially complied with all Commission rules, policies and the Act during the prior license term. These certifications are not required by the new license renewal standard and therefore should not be required to invoke the license renewal safe harbor. Accordingly, to further simplify the license renewal process, licensees should be allowed to certify compliance with the license renewal standard quoted above, and the other safe harbor certification requirements should be repealed.

If the Commission decides to maintain the license renewal safe harbor certification requirements, these requirements must be narrowed and clarified. Commenters on the petitions for reconsideration agree that the safe harbor certification requirements as adopted are overly broad and impermissibly vague.⁵ Not only will it be difficult for licensees to certify that licenses acquired on the secondary market did not “permanently discontinue” operations during the prior license term, but certifying “substantial compliance” with the Commission’s rules, policies and Act – a term which is not defined, and has never been adjudicated in this context – may well be impossible. Both certification requirements require further refinement if the safe harbors are to become a meaningful alternative to the license renewal showing requirement. For example, Sensus agrees with PacifiCorp that the Commission should clarify that a licensee serving a market with co-channel transmitters physically located in an adjacent market has not permanently discontinued operations.⁶

⁵ Space Data Corporation Comments, WT Docket No. 10-112 (filed Feb. 12, 2018) (“Space Data Comments”) at 2; PacifiCorp Comments, WT Docket No. 10-112 (filed Feb. 12, 2018) (“PacifiCorp Comments”) at 10.

⁶ PacifiCorp Comments at 10-12

But perhaps most problematic is the safe harbor requirement that licensees certify they have maintained the same level of coverage necessary to satisfy their last performance requirement. For geographic area licenses, this is tantamount to requiring licensees to maintain mandatory minimum levels of coverage throughout their license terms as a condition for expeditious license renewal under a safe harbor. Not only does this implement a burdensome new undertaking that will require licensees to perform expensive and complex coverage analyses on an on-going basis, but it represents a remarkable departure from long-standing Commission policy that favors market forces, rather than command and control spectrum management, as the best way to ensure that licenses are put to their most valuable use.

The mandatory minimum coverage requirement also ignores larger changes that have taken place in the communications industry since performance requirements were first established, particularly with respect to the narrowband services (*e.g.*, paging, multiple address systems (“MAS”) and narrowband PCS (“NPCS”)). When the Commission first adopted performance requirements for the narrowband services more than twenty years ago, it assumed that licensees primarily would construct wide area networks to serve retail customers. This business model bears little resemblance to how narrowband licenses are being used today. As Space Data correctly observes, “[t]he narrowband service market has changed dramatically from mass market consumer-oriented paging and messaging services to one focused on M2M telemetry, tracking, and messaging services for limited enterprise and public safety uses.”⁷ This is certainly the case with respect to Sensus, which uses its extensive portfolio of MAS and NPCS licenses to provide communications solutions to critical infrastructure companies, such as gas, electric, and water distribution utilities.

⁷ Space Data Comments at 2.

Put simply, performance metrics based on residential population coverage adopted decades ago for narrowband operations have little relevance to today's narrowband industry.⁸ Moreover, the Commission must provide further guidance regarding certification requirements for narrowband licensees subject to a "substantial service" performance requirement. As PacifiCorp observes, "[i]t will be very difficult for a licensee to certify that it has continued to provide 'substantial service' throughout the license term without knowing whether the Commission would agree with that assessment, which could only be done after a case-by-case review of the licensee's performance throughout the 10-year license term."⁹

In order to make the license renewal safe harbor a more meaningful alternative for narrowband licensees, the Commission should reconsider and revise its rules to adopt a new safe harbor. Specifically, the Commission should adopt a new license renewal safe harbor for narrowband licenses that simply requires licensees to certify that: (1) the last performance benchmark applicable to its license was satisfied, (2) it provided service to the public during its license term, and (3) it continues to provide service as of the filing of its license renewal application.¹⁰ This safe harbor is entirely consistent with the Commission's new license renewal standard, and is a more appropriate standard for narrowband licensees given their current business model. Should the Commission decide to adopt such a safe harbor, but also require permanent discontinuance and substantial compliance certifications as it does with its other safe harbors (even though the license renewal standard does not require them), the Commission should narrow and clarify the scope of these requirements as indicated above.

⁸ PacifiCorp Comments at 6-7.

⁹ *Id.* at 7-8.

¹⁰ Space Data Comments at 3.

The Commission should also clarify the standards under which it will review license renewal showings filed by licensees unable to claim a safe harbor. Sensus's proposal, which Space Data supports, is to create a rebuttable standard for license renewal for licensees certifying compliance with the license renewal standard.¹¹ Licensees would still be required to submit all of the information requested by Section 1.949(f), but would be entitled to a presumption of license renewal which the Commission, following its review of the license renewal showing, could rebut with a written finding, issued with a specific timeframe, that the licensee did not satisfy the license renewal standard. This approach would provide much needed clarity to the license renewal showing process, reducing regulatory uncertainty regarding the significant risk of license non-renewal, thus encouraging innovation and investment.¹²

¹¹ *Id.*

¹² *Id.*

For the reasons set forth above, Sensus reiterates its request that the Commission reconsider and improve the wireless license renewal rules adopted in the *Second R&O*. Sensus's unopposed petition for reconsideration is supported by other commenters in the proceeding, and is consistent with the unopposed petitions for reconsideration filed by other parties. 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.

Respectfully submitted,

By: /s/ David Alban

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