

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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

REPLY COMMENTS OF COMPETITIVE CARRIERS ASSOCIATION

Competitive Carriers Association (“CCA”)¹ hereby replies to initial comments in response to the Public Notice (“Notice”)² in the above-captioned proceeding. CCA applauds the Federal Communications Commission (“FCC” or “Commission”) for seeking to update the record in the *Wireless Radio Services Reform Notice of Proposed Rulemaking and Order* proceeding,³ which sought comment on issues regarding proposed license renewal standards, updated discontinuance rules, and clarifications regarding various constructions obligations for spectrum licenses.

¹ CCA is the nation’s leading association for competitive wireless providers and stakeholders across the United States. CCA’s membership includes nearly 100 competitive wireless providers ranging from small, rural carriers serving fewer than 5,000 customers to regional and national providers serving millions of customers. CCA also represents nearly 150 associate members including vendors and suppliers that provide products and services throughout the mobile communications supply chain.

² *Wireless Telecommunications Bureau Seeks to Update the Record in the Wireless Radio Services Reform Proceeding*, WT Docket No. 10-112, Public Notice, DA 17-409 (May 2, 2017) (“Public Notice”).

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*, WT Docket No. 10-112, Notice of Proposed Rulemaking and Order, FCC 10-86, 25 FCC Rcd 6996 (2010) (“*WRS Reform NPRM and Order*” or “*NPRM*”).

I. INTRODUCTION

CCA applauds the Commission's efforts to ensure that valuable spectrum resources are best utilized to deploy next-generation services and 5G networks. Indeed, wireless carriers have made incredible advances in the six years since the Commission last released a Notice of Proposed Rulemaking ("NPRM") in this proceeding. CCA therefore supports the goal to harmonize licensing rules across spectrum bands,⁴ and offers recommendations to ensure that spectrum resources are put to their highest and best use for consumers' benefit, while implementing processes that facilitate innovation and network investment. Specifically, CCA supports the Commission's proposal to adopt a uniform rule regarding the discontinuance of service, so long as the Commission takes into account marketplace realities associated with spectrum construction and deployment. Doing so will spark innovation and strike a careful balance against burdensome regulatory requirements for the benefit of rural consumers and the economy. Unfortunately, however, other proposals in the Notice would impose significant and unnecessary costs and administrative obstacles on wireless carriers, without the counterbalanced benefit to the public interest. The Commission should reject proposals to implement complex and detailed renewal showings for geographic-based wireless services. Rather, to the extent the Commission modifies the current license renewal regime, it should extend the renewal certification rule proposed for site-based wireless services, to geographic-based services. In addition, the Commission should decline to impose stricter construction requirements on

⁴ See *ex parte* Letter from Rebecca Murphy Thompson, EVP & General Counsel, Competitive Carriers Association, to Marlene H. Dortch, Secretary, FCC, WT Docket. 10-112, filed June 3, 2016 ("CCA June 2016 *Ex Parte*"); see also *ex parte* Letter from Rebecca Murphy Thompson, EVP & General Counsel, Competitive Carriers Association, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 10-112 (filed Apr. 1, 2016) ("CCA April 2016 *Ex Parte*").

disaggregated and partitioned spectrum. Instead, the FCC should ensure that any adopted rules provide competitive carriers incentive and ability to access and deploy spectrum.

II. THE PROPOSED RENEWAL STANDARDS ARE BURDENSOME AND UNNECESSARY

To adequately account for advances in technology since the 2010 NPRM, CCA encourages the Commission to build flexibility into potential service requirements for license renewals.⁵ Chairman Pai has recognized that “[b]edrock principles of good government require that we make fact-based decisions that reflect marketplace realities,”⁶ and that “[n]ow is the time to restore the place of economic analysis at the FCC.”⁷ Commissioner O’Rielly echoes this sentiment, and continues to emphasize the Commission’s obligation to “use data to inform and evaluate programs and policies to make them more effective.”⁸ Yet it is difficult to reconcile these statements with the Commission’s proposal to implement a complex and detailed renewal showing for geographic-based licenses.⁹ As proposed, the renewal rules would require licensees to create and maintain detailed records of their operations and to submit voluminous showings related to renewal that appear administratively complex and burdensome.¹⁰

⁵ See CCA June 2016 *Ex Parte* at 1.

⁶ Statement of Commissioner Ajit Pai, *On the FCC’s Ostrich-Like Approach to Competition in the Wireless Market* (rel. Dec. 23, 2015), available at https://apps.fcc.gov/edocs_public/attachmatch/DOC-337035A1.pdf.

⁷ Ajit Pai, Chairman, FCC, Remarks at the Hudson Institute: The Importance of Economic Analysis at the FCC at 1-2 (Apr. 5, 2017) (“*Hudson Institute Remarks*”).

⁸ Michael O’Rielly, Commissioner, FCC, Remarks at TPRC 44: Research Conference on Communications, Information and Internet Policy at 2 (Sept. 30, 2016).

⁹ Any significant revisions to the license renewal regime must take into account the significant concerns detailed by CCA in June 2016, which are hereby incorporated by reference. See CCA June 2016 *Ex Parte*.

¹⁰ If the Commission decides to move toward a license renewal showing regime, it must not condition coverage requirements based on Form 477 data. Indeed, the Commission recently acknowledged the flawed data currently available to the FCC and set up a challenge process in the *Mobility Fund II Report & Order* to help standardize its information. See Ajit Pai, Chairman, FCC, Statement, *Connect America Fund*, WC Docket No. 10-90; *Universal Service Reform –Mobility Fund*, WT Docket No. 10-208 (Mar. 7,

Competitive carriers do not have the administrative or financial resources to prepare the breadth of information relevant to the proposal. Indeed, many competitive carriers have licenses that cover smaller geographic areas such as Cellular Market Area (“CMA”) licenses, which would necessitate separate individual showings for each of the licenses under the proposal. As noted previously by CCA, “[s]maller carriers cannot distribute these administrative costs across a large number of customers, which can mean an exponential increase in the per customer cost of compliance when compared to national carriers.”¹¹

Moreover, the eight “factors” proposed to support a license renewal showing are extremely vague, and do not provide a legitimate or clear roadmap for licensees to protect their licenses. Such a process would essentially create a “black box” in terms of how the Commission could weigh various factors, and effectively gut certainty associated with a license renewal expectancy. CCA cautions that this ambiguity could detrimentally affect spectrum values and ultimately chill broadband investment.¹² The Commission should instead ensure that licensees are able to reasonably identify and comply with the FCC’s standards.¹³

The Commission’s rules also should consider that licensees may encounter unavoidable interruptions during the provision of “continued” service. Many carriers are focused on meeting

2017) (“we seek public comment on establishing a robust challenge process for determining the set of areas eligible for bidding. This will allow parties to help ensure that our data about what’s covered and what’s not is accurate so we can target funding to the areas that lack service.”). As the Commission itself determined, Form 477 data supports, at best, coverage *estimates*, and in any event, shapefiles that are the subject of recent debate “do not indicate the extent to which providers affirmatively offer service to residents in the covered areas.” *Id.* at ¶ 57, n. 143.

¹¹ Reply Comments of Rural Cellular Association, WT Docket No. 10-112 at 3 (filed Aug. 23, 2010) (“CCA 2010 Reply Comments”).

¹² Even if the Commission proceeds with the proposed regime, it must not apply revised rules retroactively on licensees that have been providing services for decades under existing rules. Retroactively applying vague license renewal factors would be unlawful and fail to serve the public interest. *See Verizon Comments* at 5.

¹³ *See id.*

consumers’ increasing demands by upgrading their networks; however, when upgrading to 3G and 4G networks, specifically, coverage may vary depending on the stage of construction. For example, carriers may experience interim, temporary outages when building out infrastructure. Responses to natural disasters, weather conditions, and geographic impediments such as mountainous or icy terrain also can temporarily disrupt service.¹⁴ As a result, CCA encourages the Commission to consider a license renewal standard that reviews a licensee’s use of a license on an aggregated, “totality of circumstances” standard. Allowing licensees greater flexibility in maintaining their licenses, while also ensuring the spectrum is put to good use, will inspire other long-term initiatives such as LTE or 5G deployment that ultimately spur competition and extend the provision of services to rural and remote areas.

Moreover, CCA agrees that “the record supplies no evidence of problems that justify imposing the burdens of a detailed, onerous renewal showing, or what tangible benefits it would produce in driving expanded or improved service.”¹⁵ Wireless providers have invested billions of dollars deploying and upgrading their networks.¹⁶ The FCC should ensure that network buildout, unavoidable interruptions to service, and unforeseen complications during network upgrades, do not disqualify a licensee from demonstrating “consistent” use of a license for renewal purposes.¹⁷ Indeed, spectrum licenses often are the most valuable asset of wireless carriers, and every competitive carrier has an incentive to construct their spectrum to maintain these resources and to provide competitive services to consumers.

¹⁴ See CCA June 2016 *Ex Parte* at 2; *ex parte* Letter from Rebecca Murphy Thompson, EVP & General Counsel, CCA, to Marlene H. Dortch, Secretary, FCC, PS Docket Nos. 13-239, 11-60 at 2 (filed May 31, 2016).

¹⁵ Comments of Verizon, WT Docket No. 10-112 at 4 (filed June 1, 2017) (“Verizon Comments”).

¹⁶ Further Comments of CTIA, WT Docket No. 10-112 at 4 (filed June 1, 2017) (“CTIA Comments”).

¹⁷ CCA June 2016 *Ex Parte* at 2.

This is particularly true in today's marketplace. The wireless industry is on the brink of a technological shift. While many carriers in rural areas still maintain 2G networks, other wireless providers are currently transitioning from 3G to 4G networks or are turning down their 2G and 3G networks altogether. Similarly, some carriers are looking forward to deployment of 5G next-generation technologies.¹⁸ The capacity needed for 5G connections will depend on a sound regulatory framework that promotes and facilitates next generation network infrastructure facility deployment. Indeed, uncertainty could negatively impact broadband investment at a time where Chairman Pai continues to emphasize that closing the digital divide is a top priority during his tenure as FCC Chairman.¹⁹ Competitive carriers therefore have every incentive to construct their licenses as quickly as possible to meet consumer demand, and should continue to dedicate resources to doing so rather than engaging in administrative gamesmanship to meet arbitrary construction showings.

To the extent the Commission decides to modify existing renewal requirements, it should extend the renewal certification rule proposed for site-based wireless services, to all wireless services, to create greater certainty thereby inducing more incentive in the mobile market.²⁰ If adopted, this rule must be sufficiently flexible to allow licensees to upgrade their facilities and to more efficiently use their spectrum through refarming techniques that provide new technologies

¹⁸ See, e.g., TelecomsTech, *Ericsson and SoftBank to conduct 5G trials on 28GHz spectrum* (Mar. 27, 2017), <https://www.telecomstechnews.com/news/2017/mar/27/ericsson-and-softbank-conduct-5g-trials-28ghz-spectrum/>; News Release, C Spire Ramps Up 5G Testing to Develop Next-Generation Network (July 19, 2016), https://www.cspire.com/company_info/about/news_detail.jsp?entryId=26700006.

¹⁹ See, e.g., Ajit Pai, *Setting the Record Straight on the Digital Divide*, FCC BLOG (Feb. 7, 2017, 12:45 PM), <https://www.fcc.gov/news-events/blog/2017/02/07/setting-record-straight-digital-divide>; Ajit Pai, Chairman, FCC, Remarks (Jan. 24, 2017); Ajit Pai, Former Comm'r, FCC, Prepared Remarks at the Brandy: "A Digital Empowerment Agenda" (Sept. 13, 2016).

²⁰ See *NPRM* ¶ 34. See also CTIA Comments at 3; CCA 2010 Reply Comments at 4.

to consumers. Accordingly, a licensee should not be precluded from renewal if they have reduced operations due to a necessary network or technology upgrade.²¹

III. THE COMMISSION SHOULD MAINTAIN ITS CURRENT DISAGGREGATION AND PARTITIONING RULES

CCA continues to oppose the proposal to modify the disaggregation and partitioning construction rules to require each party to independently satisfy the construction obligations under the relevant service rules.²² Such a proposal belies the fact that the current rules have been successful in promoting spectrum use, particularly in rural areas, via secondary market transactions. As CCA previously noted, “the FCC’s partition rules have allowed rural and regional carriers to partner with larger carriers to help construct wireless service in less populated areas.”²³ CCA agrees with CTIA that “[p]articularly in areas that are sparsely populated or that encompass difficult terrain that makes coverage challenging, a rule that requires both parties to meet buildout mandates may deter such arrangements.”²⁴ Modifying the current regime could discourage rural deployment, in direct contrast to Chairman Pai’s efforts to bridge the digital divide. Accordingly, the Commission should refrain from revising its current construction rules related to disaggregation and partitioning.

²¹ See CTIA Comments at 4.

²² See CCA 2010 Reply Comments at 4.

²³ *Id.* at 5. Spectrum is a scarce and finite resource, and it is becoming increasingly difficult for Congress and the Commission to find additional spectrum for entities to provide critical services to consumers. To that end, CCA also applauds legislative vehicles such as H.R. 1814, the Rural Spectrum Accessibility Act, which would establish a program to allow wireless carriers to partition or disaggregate a license to make unused spectrum available to carriers serving certain rural areas.

²⁴ CTIA Comments at 7.

IV. THE COMMISSION SHOULD ADOPT A REVISED DISCONTINUANCE STANDARD THAT REFLECTS MARKET REALITIES

CCA also offers recommendations on the FCC's discontinuance rule,²⁵ which prohibits a licensee from renewal if service has been discontinued for more than 180 days. Under this rule, a licensee is required to provide evidence to refute a permanent discontinuation of service. CCA supports the adoption of a revised discontinuance of service rule that would uniformly apply across all wireless services. However, as discussed above, CCA notes that specific or unavoidable situations may warrant a longer timeline and may cause a prolonged period of discontinued service. CCA therefore encourages the Commission to adopt a 12-month discontinuance period, or, at a minimum, a 180-day discontinuance period with a flexible option for a 6-month extension.²⁶

Regardless of the ultimate period adopted by the Commission, CCA encourages the Commission to allow proper flexibility for this rule. Wireless carriers are consistently upgrading and revising their networks to provide new and efficient technologies to consumers, which often result in discontinuance of operations for longer than 180 days. In addition, "often as a result of resources and other factors, a carrier will implement a phased network buildout plan of a period of years," which also could lead to longer discontinuance of services on specific licenses.²⁷ These network-based events should not negatively affect a wireless carrier's license. CCA therefore encourages the Commission to extend the discontinuance period.²⁸ CCA likewise agrees that the Commission should adopt a procedure to grant an extension of any revised

²⁵ *NPRM* ¶ 54.

²⁶ *See CCA June 2016 Ex Parte* at 4.

²⁷ *Id.* at 2.

²⁸ *See id.* 2.

discontinuance period “based on the licensee’s showing that a longer period is necessary to complete upgrades to its network.”²⁹

V. CONCLUSION

As technology and the wireless ecosystem evolves, CCA commends the Commission’s attention to the importance of streamlined license renewal procedures. However, as reflected in the record, CCA cautions that some of the Commission’s proposed license renewal modifications are burdensome and unnecessary. The Commission must walk a line between ensuring that spectrum, a taxpayer-owned resource, is put to its best and highest use, while fostering certainty for wireless carriers, and encouraging investment and innovation. The Commission should adopt CCA’s recommendations to support this careful balance.

Respectfully submitted,

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²⁹ Verizon Comments at 8. CCA also agrees that the Commission should “set an effective date for the new rule that gives licensees reasonable time to modify their operating systems, train their employees, and take other actions to ensure they fully comply with the new obligation,” since the Commission has not imposed discontinuance rules for numerous wireless services. *Id.*