



Competitive Carriers Association
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June 3, 2016

Via ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: NOTICE OF EX PARTE

WT Docket No. 10-112: *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*

Dear Ms. Dortch:

Competitive Carriers Association (“CCA”) offers the below feedback on the Federal Communication Commission’s (“FCC” or “Commission”) proposed updates to license renewal procedures and requirements.¹ CCA appreciates the opportunity to contribute additional feedback on considerations for new license renewal requirements, and applauds the Commission’s effort to ensure valuable spectrum resources do not lie fallow.² Generally, the Commission should craft renewal procedures that provide stakeholders with sufficient flexibility to ease burdens on competitive carriers’ resources, while continuing to protect valuable spectrum resources and spur innovation.³ CCA also encourages the Commission to issue a Public Notice or Notice of Proposed Rulemaking prior to implementing proposed updates to the license renewal regime.⁴

Renewal Standard

To adequately account for advances in technology since the 2010 NPRM, CCA encourages the Commission to build flexibility into potential service requirements for license renewal. If the Commission were to require licensees to demonstrate that they are consistently using the license

¹ *See 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*, Notice of Proposed Rulemaking and Order, 25 FCC Rcd 6996 (2010) (“2010 NPRM”)

² *See Reply Comments of Rural Cellular Association*, WT Docket No. 10-112 at 1-2 (filed Aug. 23, 2010); *see also Ex Parte Letter from Rebecca Murphy Thompson, EVP & General Counsel, CCA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 10-112* (filed Apr. 1, 2016) (“CCA License Renewal Ex Parte”).

³ *See id.*

⁴ *See id.* at 1.

over the entirety of the license term, CCA suggests the Commission specifically explain what is required to demonstrate “continued service” for the license term.⁵ To help define this standard, CCA offers examples of members’ ongoing, continued service on their networks. For instance, often as a result of resources and other factors, a carrier will implement a phased network buildout plan over a period of years that would first cover a minimum number of points of presence (“POPs”), followed by a market-by-market conversion to densify each market with robust mobility services. During this buildout period, it is not uncommon to experience network downtimes. The Commission’s rules must be flexible enough to allow for experimentation and changes in business plans, as well as technological evolution.

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 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. It also is not uncommon to encounter tower siting challenges that result in a temporary turn-down of a license, particularly when building in rural, remote, and hard to reach areas. Responses to natural disasters, weather conditions, and geographic impediments such as mountainous or icy terrain also can temporarily disrupt service.⁶

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, as opposed to solely focusing on how service itself is sustained over the license term. 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. Allowing licensees greater flexibility in maintaining these licenses will inspire other long-term initiatives such as LTE or 5G deployment that ultimately create competition and extend the provision of services to rural and remote areas.

Finally, if the Commission were to implement a “continued service” requirement, CCA recommends that it be applied only after any updated construction deadline(s) become effective. This will avoid unduly punishing early deployers who are experimenting with certain business models or technologies, and who later deploy a different technology or service.

Safe Harbor Standard of Review

CCA offers the following recommendations in the event the Commission implements a safe harbor standard of review for license renewals.⁷ First, if the Commission were to propose requiring licensees to demonstrate the provision of “broadband service” as an initial factor under a safe harbor, CCA recommends the Commission refine its use of “broadband service” in this context to include the provision of “commercial wireless voice or data service.” The Commission’s definition should allow testing of wireless service and devices as evidence of the provision of “service” during

⁵ *See id.*

⁶ *See 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).

⁷ *See* CCA License Renewal Ex Parte at 1.

the license term.⁸ CCA also recommends the Commission implement a certification mechanism for licensees to demonstrate that spectrum is being reasonably used prior to the renewal process. This would balance the need for providing adequate service with the flexibility to use the spectrum more efficiently, and ameliorate burdensome information collection requirements.

Second, if the Commission were to require licensees to demonstrate that base stations carry traffic on a regular basis, CCA recommends the Commission evaluate this factor on a case-by-case basis using the standard that base stations “have the ability to” carry traffic.⁹ This will mitigate burdens on stakeholders, while aligning with the Commission’s goal to ensure license holders are adequately using their networks. CCA also cautions against requiring licensees to demonstrate that *all* base stations provide service at all times to meet safe harbor renewal standards. Base stations may go in and out of service; some may be placed in service during the license term or require repairs. Many competitive carriers’ base stations also are contingent upon consistent federal funding through programs like the Universal Service Fund (“USF”), and lost or adjusted funding could mean a base station must be taken out of service. Similarly, some CCA members are working to deploy LTE on towers owned by larger companies, which may require relocating certain base stations to new built-to-suit towers if smaller providers are unable to cover the upfront cost of a new tower. While this will not reduce coverage or impact service from a consumers’ perspective, it will result in decommissioning an existing base station and replacing it with a comparable tower. Thus, review under this factor should be flexible enough to evaluate whether the majority of a licensee’s base stations have the ability to offer consistent service to qualify for license renewal.

Third, if the Commission requires licensees to demonstrate that service has not been discontinued during the license period, the Commission should evaluate the “totality of circumstances” of a licensee’s use of the license. For example, if a licensee’s business plan is to provide service only to a particular entity on a particular day (i.e., service to ESPN on Sundays), then discontinuance of service at other times should not preclude a specific license from being renewed under this factor. CCA reiterates its recommendation that the Commission review this prong with sufficient flexibility to avoid unforeseen penalties for legitimate use of a license.¹⁰

Finally, if the Commission decides to consider the extent of coverage provided on the most recent Form 477, CCA again asks the Commission to be mindful of unforeseen circumstances that may result in changes to the Form 477 data at the time of the license renewal. As noted, parties may decommission cell sites and thus decrease coverage for any number of reasons. For example, an entity may decommission a cell site due to lack of USF funds necessary to maintain it. The Commission should allow a licensee to demonstrate a legitimate reason for decommissioning a cell site under certain circumstances, to ensure they are not unnecessarily precluded from safe harbor review.

⁸ *See id.* at 2.

⁹ *Id.*

¹⁰ *Id.*

Discontinuance Rule

CCA also offers recommendations on the FCC's discontinuance rule as referenced in the 2010 NPRM,¹¹ 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. As discussed above, CCA notes that specific or unavoidable situations may warrant a longer timeline and may cause a prolonged period of discontinued service. With this in mind, CCA encourages the Commission to extend the discontinuance period.

Specifically, CCA supports previous recommendations for a 12-month discontinuance period.¹² In the event the FCC requests alternatives, the Commission should consider a 6-month extension under certain circumstances, or a case-by-case standard of review.¹³ At a minimum, CCA encourages the Commission to consider a 12-month discontinuance period with an option for a 6-month extension under certain circumstances.

Staff Review

CCA applauds the Commission for seeking to repurpose valuable spectrum resources and deter licensees from stockpiling spectrum without explanation. If licensees were subject to staff review on an as-needed basis, the FCC should use a defined standard for this process other than "totality of circumstances" or safe harbor review. As noted above, specific circumstances may arise under which a licensee may not qualify for safe harbor review, but could potentially be renewed under staff review. The Commission should highlight these scenarios as examples of "best practices" in an updated proposal.

Compliance Timeline

CCA recommends that any revised compliance timeline be triggered by the effective date of revised rules and the date of a licensee's renewal period. For example, if proposed rules become effective on January 1, 2017, and a license has a 10-year term that expires in 2018, then a potential 5-year compliance deadline would begin to toll for that license in 2018 and the licensee would have until 2023 under the new 5-year timeline to comply with the revised rules.

CCA further recommends that any change in the rules be prospective, and not applied until the next renewal period becomes effective. Competitive carriers increasingly will refarm spectrum as they move to 4G and 5G, which could hinder compliance within a certain period. Indeed, spectrum licenses often get refarmed in pieces (i.e., a group of cell sites in a spectrum band may be refarmed for a year, and another group of cell sites in that spectrum band may be refarmed at a later date). CCA therefore cautions against applying such strict compliance periods that would unnecessarily preclude a valid license from renewal.

¹¹ 2010 NPRM ¶ 54.

¹² See Comments of Verizon Wireless, WT Docket No. 10-11 at 15 (filed Aug. 6, 2010).

¹³ See CCA License Renewal Ex Parte at 2.

Rulemaking

Finally, CCA respectfully requests the Commission issue a Public Notice or Notice of Proposed Rulemaking prior to revising the wireless license renewal regime.¹⁴ Indeed, wireless carriers have made incredible advances in the 6 years since the Commission last released an NPRM in this proceeding.¹⁵ Notice would provide an open forum for further comment and feedback based largely on changes in technology and the current spectrum crunch, which would be beneficial for all stakeholders.

As technology and the wireless ecosystem evolves, CCA commends the Commission's attention to the importance of streamlined license renewal procedures. CCA looks forward to continued discussions with the Commission on this issue.

This *ex parte* notification is being filed electronically with your office pursuant to Section 1.1206 of the Commission's Rules. Please do not hesitate to contact me with any questions or concerns.

Sincerely,

/s/ Rebecca Murphy Thompson

Rebecca Murphy Thompson
EVP & General Counsel
Competitive Carriers Association

cc (via email): Roger Noel
Joyce Jones

¹⁴ *See id.*

¹⁵ *See id.; see also* 2010 NPRM.