

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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	)	
Geographic Partitioning and Spectrum	)	
Disaggregation Rules and Policies for Certain	)	WT Docket No. 10-112
Wireless Radio Services	)	
	)	
Imposition of a Freeze on the Filing of	)	
Competing Renewal Applications for Certain	)	
Wireless Radio Services and the Processing of	)	
Already-Filed Competing Renewal Applications	)	

**COMMENTS OF JAMES EDWIN WHEDBEE**  
**FOR HIMSELF AND ON BEHALF OF WT6945913, INC. AS WELL AS WT6945913, LLC**

ECFS Filed: June 07, 2010

**Effective upon Release of  
NPRM in Federal Register**

To the Commission:

COMES NOW the undersigned, JAMES EDWIN WHEDBEE, for himself in his own behalf and as the Chief Executive Officer of the following juridical entities: WT6945913, Inc. (a Kansas nonprofit corporation) and WT6945913, LLC (a Missouri for-profit limited liability company), who respectfully submits these comments regarding the above-captioned proceeding under the Notice of Proposed Rulemaking and Order of the Commission, dated May 20, 2010 and released May 25, 2010 under document number FCC-10-86A1 (“NPRM” hereinafter).

**Part 1: Introduction: Background and Standing; Identification of Commenter**

[1] Commenter, JAMES EDWIN WHEDBEE, is an interested party in this proceeding in the following particulars. This commenter, in his own individual capacity, holds the following licenses which are or could be subject to the NPRM, unless deemed 'personal' as mentioned in the NPRM...

[WDE6567](#) Active SA 10/23/2008 10/23/2018; [WOCK274](#) Active AF 03/23/2005 03/23/2015;  
[WQDX958](#) Active AC 11/29/2005 11/29/2015; [WQJB301](#) Active LP 07/14/2008 02/01/2014;  
[WQJD930](#) Active ZA 08/06/2008 08/06/2013; [WQJF629](#) Active IG 08/21/2008 08/21/2018;  
[WQJH543](#) Active LV 09/11/2008 09/11/2016; [WQJI780](#) Active NN 09/23/2008 09/23/2018;  
[WQKL700](#) Active RS 07/07/2009 07/07/2019.

[2] Further the Commenter states he is an interested party in this proceeding in his holding of the following license under which he does business as “*Whedbee Broadcasting & Telecommunications Network*” which is subject to this NPRM...

[WQJN936](#) Active IK 11/13/2008 11/13/2018.

[3] Further the Commenter states that those juridical entities for which he is Chief Executive Officer, WT6945913, Inc. and WT6945913, LLC, are also interested parties in this proceeding, in the following particulars. Except as already stated hereinabove, WT6945913, Inc. and WT6945913, LLC hold the following licenses which are or could be subject to the proceedings under this NPRM...

[WQJT551](#) Active IG WT6945913, Inc. 12/24/2008 12/24/2018;  
[WQKH327](#) Active NN WT6945913, Inc. 05/19/2009 05/19/2019;  
[WQJU371](#) Active IK WT6945913, LLC 01/06/2009 01/06/2019;  
[WQJV879](#) Active LV WT6945913, LLC 01/16/2009 01/16/2017;  
[WQKB860](#) Active NN WT6945913, LLC 03/24/2009 03/24/2019;  
[WQKG650](#) Active NN WT6945913, LLC 05/12/2009 05/12/2019.

[4] Further the Commenter states that inasmuch as the submission of these comments are accepted on his own behalf, WT6945913, Inc. and WT6945913, LLC wish also to be associated with these comments, and therefore, the comments are also on their behalf.

## **Part 2: Comments regarding what is in the NPRM**

[5] Subject to the limitations and conditions expressed in the comments the Commission invited

and which follow, with respect to the Commission's Executive Summary in the NPRM, the Commenter concurs with each and every one of the Commission's tentative conclusions.

[6] Subject to the limitations and conditions expressed in the comments the Commission invited and which follow, with respect to the body of the Commission's NPRM, the Commenter concurs with each and every one of the Commission's tentative conclusions.

[7] Regarding those tentative conclusions for which the Commission invited comments, the Commenter specifically amplifies, limits, or conditions his concurrences with comments as follows...

(a) Regarding the proposed list of Wireless Radio Services subject to the renewal showing requirement of substantial service, the Commenter agrees with the list as stated in the NPRM; however, as a general limitation to this agreement, the Commenter suggests the Commission bear the burden of proof regarding any qualitative factor while the licensee bear the burden of proof regarding any quantitative factor. Qualitative factors for which this Commenter believes the Commission must bear the burden of proof are quality of service and interruptions to service. All other factors are deemed quantitative by this Commenter.

Regarding these burden of proof requirements, this Commenter intends that the Commission have the burden of proof that a licensee is not meeting the aforementioned qualitative factors of the substantial service requirement with respect to license renewal and that the licensee has the the burden of proof that it is meeting the substantial service requirement with respect to quantitative factors. The degree of any burden of proof should be by a preponderance of evidence. Licensees should have no difficulty meeting their burden with respect to quantitative factors because those are measurable and

can be stated affirmatively in the renewal application. Qualitative factors are, by virtue of being non-quantifiable, subject to differences of opinion: especially when customer opinions could weigh in on interruptions or quality. Such differences of opinion expose licensees to the very real prospect of the Commission determining which service providers should live or die based on hearsay or inexperienced opinions rather than direct evidence; a function that existing law, including the Communications Act of 1934 as amended, does not confer upon the Commission, and would therefore be an extralegal action by the Commission beyond its jurisdiction and in violation of the First Amendment of the U.S. Constitution. For these subjective matters, while the licensee should be expected to disclose the nature of their services in the renewal application, the Commission bears the burden that service is so poor as to warrant non-renewal. It is the objective of these burden of proof requirements to eliminate any misunderstandings in renewal proceedings which undoubtedly might arise were such requirements left to case-by-case interpretation. Moreover, leaving out such burden of proof requirements exposes application renewal proceedings to extended litigation anytime there is a difference of opinion between a licensee and the Commission.

(b) Regarding BRS and EBS services, the Commenter agrees the Commission's proposal appropriately balances the needs of those services and the public interests the NPRM intends to serve.

(c) Regarding Wireless Radio Services subject to the NPRM's certification process for site-based services, the Commission's proposal appropriately balances the needs of those services and the public interests the NPRM intends to serve, and the list of services the Commission suggests is appropriate.

(d) Regarding the Regulatory Compliance requirements for renewal suggested by the NPRM,

the Commenter is surprised that any licensee would not already be subject to non-renewal if that licensee failed to comply with the Commission's rules and regulations; accordingly, while it seems duplicitous that the Commission might need mention obedience to its rules and regulations as regards any license application-including renewal-the proposal is appropriate.

(e) Regarding the filing of competing new applications against renewal applications, while this Commenter disagrees with Commission's premise that spectrum auctions determine who values the spectrum the most (if this was so, there would not be so many auction participants whom either do not fulfill bids or finish build-outs absent compulsion) in light of the litigation it would resolve, the Commission's NPRM fairly balances the public interests represented by the NPRM with the interests of new and renewal applicants; accordingly, no further comment is offered with respect thereto.

With respect to this faulty premise that spectrum auctions determine who values the spectrum the most, and therefore, who should have that spectrum, I would caution the Commission as follows. In particular light of the Commission's National Broadband Policy initiative which bears on this proceeding inasmuch as the frequencies and radio services impacted under this NPRM, the Commission should be warned that licensees and courts may eventually find that property rights in licenses exist which are paramount to the Commission's regulatory powers due to the Commission's overdependence on auctions and willingness to engage in forbearance. Were this Commenter in the Commission's position regarding this proceeding, the final rule would strike reference to auctions entirely and rely entirely on the Petition to Deny process in association with renewal proceedings.

(f) Regarding the radio services excluded from the NPRM due to their personal nature, no further comments are required aside from this Commenter's agreement with the Commission's NPRM.

(g) Regarding the provisions of the NPRM regarding permanent discontinuance of service, subject to Part 3 of these Comments, the Commenter states the following.

- (i) Radio services licensed by geographic area – This Commenter agrees with the Commission; however, this Commenter would recommend that the Commission require any licensee to obtain a Special Temporary Authorization (STA) to discontinue operations longer than thirty (30) days, as is the case with broadcast licensees. This STA would be valid for a term of one hundred fifty (150) days and the licensee could not reapply for the STA unless a valid reason for tolling the original STA existed, and then, only in the Commission's discretion. Once a licensee has not operated for one hundred eighty (180) consecutive days, the license would automatically lapse and revert back to the Commission.
- (ii) Radio services licensed on a site-by-site basis – This Commenter agrees with the Commission; however, this Commenter would recommend that the Commission require any licensee to obtain a Special Temporary Authorization (STA) to discontinue operations longer than one hundred eighty-five (185) days. This STA would be valid for a term of one hundred eighty (180) days and the licensee could not reapply for the STA unless a valid reason for tolling the original STA existed, and then, only in the Commission's discretion. Once a licensee has not operated for three hundred sixty-five (365) days, the license would automatically lapse and revert back to the Commission.
- (iii) Regarding the tolling of the aforementioned STA time periods, this Commenter recommends the Commission toll any time period for licensees within the following categories: licensees in areas subject to a Presidential Disaster Declaration or otherwise subject to the Stafford Act; licensees in bankruptcy proceedings under Title 11 of the United States Code in which the automatic stay has not been lifted as regards their license; licensees whose facilities are destroyed by earthquake, hurricane, tornado, or similar natural or man-made emergency, disaster, or catastrophe, but for which application of the Stafford Act has not yet been made; and, deceased individual licensees whose facilities are being transferred in accordance with the licensee's estate planning documents or probate court.
- (iv) Regarding timely filing of STA requests, licensees must request the STA prior to the thirty (30) day period ending for radio services licensed by geographic area or the one hundred eighty-five (185) day period ending for radio services licensed on a site-by-site basis. Should a licensee discontinue operations and not make timely application for STA within these periods, the license would automatically lapse and revert back to the Commission.
- (v) Regarding STA requests for discontinuance of operation in a disaster area or with respect to any licensee whose facilities are destroyed in an emergency, disaster, or catastrophe, any correspondence by e-mail, letter by mail, or other form acceptable to the Commission shall be deemed a request for STA to discontinue operation pending receipt of the official application in a form and manner

acceptable to the Commission but for the disaster or event destroying the station.

(h) Regarding construction periods, the Commenter desires that the Commission exclude construction periods from required periods of operation for the purposes of determining if a licensee has permanently discontinued operations. It is not reasonable, nor desirable from an investment standpoint, to expect licensees during construction periods to provide service; however, once a licensee notifies the Commission that its station is constructed within the terms of the license, or any modifications thereto, operations are required for purposes of determining if a licensee has permanently discontinued operations.

(i) With respect to partitioning and disaggregation, the Commenter agrees with the totality of the Commission's NPRM and believes it appropriately balances the interests of licensees and public interests without further recommendation.

### **Part 3: Comments regarding what is omitted from the NPRM**

[8] Further the Commenter states that it is his comment, finding, and conclusion that the NPRM is incomplete in its present form.

[9] In its NPRM, the Commission states that the purpose of the NPRM is to harmonize renewal processes among the Wireless Radio Services; however, it leaves a great deal unresolved in its present form.

[10] Incorporating the above paragraphs eight [8] and nine [9] herein by reference as if set out fully

hereinbelow, the Commenter suggests the Commission issue a Further Notice of Proposed Rulemaking (FNPRM) in its Order under the current NPRM which contains the further harmonization of Wireless Radio Service renewals. Specifically, the Commenter recommends the creation of Master Licenses: a wireless radio service master license issued on a geographic basis; a wireless radio service master license issued on a site-by-site basis; and, a wireless radio service license issued on a personal basis. The details of master licensing are:

(a) MASTER LICENSING: SIMILAR RADIO SERVICES UNDER A SINGLE AUTHORIZATION AND CALLSIGN. Radio services licensed on a geographic basis should all be held under a single instrument of authorization (master license) with a common expiration date. Separately, radio services licensed on a site-by-site basis should all be held under a single instrument of authorization (master license) with a common expiration date. A single call-sign will be issued to a licensee with a license held in one or more radio services that are licensed on a geographic basis. A separate single call-sign will be issued to a licensee with a license held in one or more radio services that are licensed on a site-by-site basis. When a licensee receives Commission approval for a new license within one or the other forms of Wireless Radio Service, the new radio service will be added to the appropriate master license and identified under the call-sign previously issued. Each master license will identify those radio services for which a licensee is authorized to operate separately by radio service code employed by the Universal Licensing System (ULS).

(b) EXISTING LICENSEES: AUTOMATIC CONSOLIDATION AND EXTENSION OF EXISTING LICENSES. Within the Wireless Radio Services, existing licenses with one or more licenses which are geographically based should have all licenses automatically extended to the expiration date of the most recently issued license and consolidated under that call-sign as the master

license aforementioned. Existing licensees with one or more licenses which are site based have all licenses automatically extended to the expiration date of the most recently issued license and consolidated under that call-sign as the master license aforementioned. Call-signs of those services and stations which are no longer master license call-signs will return to the processing queue for use by the Commission.

(c) MASTER LICENSES: DISCONTINUANCE OF OPERATION. With respect to licenses which lapse due to permanent discontinuance of operation, only the radio service and radio service code shall be deleted unless the master license is for a single radio service and only one radio service code is imprinted thereupon, in which case, the master license itself lapses and the call-sign returns to processing queue for use by the Commission.

(d) MASTER LICENSES: EXTENSION TO CERTAIN AERONAUTICAL, MARITIME, ALASKA FIXED STATIONS, AUTOMATIC WEATHER STATIONS, MICROWAVE, AND GENERAL MOBILE RADIO SERVICE LICENSEES. Certain radio services licensed on a personal basis (aeronautical, maritime, Alaska fixed, microwave, GMRS, and automatic weather stations not considered licensed on a geographic or site-by-site basis) should all be held under a single instrument of authorization (master license) with a common expiration date which is issued separately from geographically based or site based master licenses within the Wireless Radio Services. A single call-sign will be issued to a licensee with a license held in one or more radio services that are licensed on a personal basis. When a licensee receives Commission approval for a new license within one or the other forms of Wireless Radio Service, the new radio service will be added to the appropriate master license and identified under the call-sign previously issued. Each master license will identify those radio services for which a licensee is authorized to operate separately by radio service code employed

by the Universal Licensing System (ULS). The above provisions for extending licenses to the longest-held personal basis license would apply, as would the return of call letters to the Commission's processing queue which are no longer used.

(e) EXISTING LICENSES AND ULS. Master licenses in the Wireless Radio Services for geographically based radio services; site-by-site based radio services; and personally based radio services would automatically update in ULS and be available for licensees to print on their own; however, no new instrument of authorization would be issued until the appropriate renewal date or until a new radio service is added under the master license. Instead, existing licensees will continue to post and retain their existing licenses pending the issuance of the master license following renewal or the addition of a new radio service.

(f) RENEWAL AND APPLICATION FILING FEES; REGULATORY FEES. Application filing fees for new radio services and renewals will be premised on the radio services appearing in the master license as due for renewal or in the application for a new license/radio service. Likewise, annual regulatory fees for master licenses will be determined by the number and type of radio services identified in the master license. Accordingly, except as for the automatic extension of existing licenses hereinabove for renewal purposes, there is no change in the number, amount, and due dates of filing fees and regulatory fees.

[11] The Commenter believes master licensing would be in the public interest inasmuch as it is consistent with the Commission's NPRM in harmonizing when renewals are expected by licensees, would immensely reduce the paperwork burdens on licensees and the Commission alike, and allow for expeditious disposition of filing and regulatory fees.

[12] The Commenter excludes from master licensing amateur radio licenses, commercial radio operator licenses, and radio services licensed by rule. To the extent licenses are issued for those, those shall be continued as before without impact under the NPRM or any FNPRM, if adopted by the Commission.

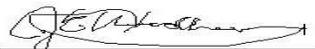
#### **Part Four – Conclusions**

[13] While this Commenter broadly agrees with the NPRM as it stands, I would refine it as stated hereinabove to meet the Commission's precedents in other radio services (i.e., broadcasting).

[14] While this Commenter broadly agrees with the NPRM as it stands, I would issue a FNPRM to further refine the harmonization of renewals to include master licensing in three broad categories of the Wireless Radio Services: personal, site-based, and geographically-based.

WHEREFORE, the Commenter requests Commission adopt the recommendations made in the comments hereinabove in any Order under the above-captioned proceedings.

Respectfully Submitted:

  
**James Edwin Whedbee, M.Ed.**

Signed: June 6, 2010

JAMES EDWIN WHEDBEE  
5816 NE BUTTONWOOD TREE LN  
GLADSTONE, MO 64119-2236  
816.694.5913