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Before the
Federal Communications Commission
Washington, D.C. 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 Geographic
Partitioning and Spectrum Disaggregation Rules
and Policies for Certain 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
WT Docket No. 10-112

NOTICE OF PROPOSED RULEMAKING AND ORDER

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I. INTRODUCTION

1. The Commission currently has a patchwork of rules governing renewal and discontinuance obligations for wireless services, such as cellular, personal communications services (PCS), specialized mobile radio (SMR), and wireless communications service (WCS). In this proceeding, we propose to create consistent requirements for renewal of licenses and consistent consequences for discontinuance of service, and to clarify construction obligations for spectrum licenses that have been divided, by geographic partitioning or disaggregation of the spectrum. In making these rules clearer and consistent across services, we seek to apply the rules that have worked the best to a larger group of services, and to simplify the regulatory process for licensees.

II. EXECUTIVE SUMMARY

A. Notice of Proposed Rulemaking

2. *License renewals.* We propose to adopt uniform renewal requirements for the renewal of Wireless Radio Services¹ licenses. Specifically, we tentatively conclude to adopt and apply the renewal framework that the Commission established for the 700 MHz Commercial Services Band in the 700 MHz

¹ Section 1.907 of the Commission’s rules defines the term “Wireless Radio Services” as “[a]ll radio services authorized in parts 13, 20, 22, 24, 26, 27, 74, 80, 87, 90, 95, 97 and 101 of this chapter, whether commercial or private in nature.” 47 C.F.R. § 1.907. We note that Part 26 no longer exists.

*First Report and Order*² to services licensed by geographic area and, with certain refinements, to services licensed by site. Consistent with that order, we propose that applicants for renewal of geographic-area licenses file a “renewal showing,” in which they demonstrate that they have and are continuing to provide service to the public,³ and are compliant with the Commission’s rules and policies and the Communications Act of 1934, as amended (Act). For renewal of site-specific licenses, we propose that applicants certify that they are operating as represented in their latest construction notification or authorization (where a construction notification is not required), and that they are compliant with the Commission’s rules and policies and the Act.⁴

3. Consistent with the *700 MHz First Report and Order*, we also tentatively conclude that we should prohibit the filing of applications that are mutually exclusive (*i.e.*, competing) with renewal applications. Further, we tentatively conclude that if the Commission denies a renewal application, then the licensed spectrum will be returned automatically to the Commission for reassignment.⁵

4. *Discontinuance of operations.* We propose to harmonize our requirements regarding discontinuance of operations (and its consequences) by Wireless Radio Services licensees. Specifically, we seek comment on the appropriate period that should be used to define permanent discontinuance of operations and whether the public interest would be served by adoption of a uniform definition for all Wireless Radio Services (other than those licensed by rule or on a “personal” basis or that have no construction/performance obligation).

5. *Partitioning and disaggregation.* We propose to standardize our rules regarding the satisfaction of performance (*i.e.*, construction and operation) obligations in the context of geographic partitioning⁶ and spectrum disaggregation arrangements.⁷ Specifically, we tentatively conclude that the public interest would be served by requiring an*y party holding an FCC spectrum license resulting from

² See Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, WT Docket No. 06-150, *Report and Order and Further Notice of Proposed Rulemaking*, 22 FCC Rcd 8064, 8092-8094 ¶¶ 73-77 (2007) (*700 MHz First Report and Order*) (subsequent history omitted). The Commission adopted the new framework for the 700 MHz Commercial Services Band at 698-757 MHz, 758-763 MHz, 776-787 MHz, and 788-793 MHz. The Commission did not adopt the new framework for the 700 MHz Guard Band Service at 757-758 MHz, 775-776 MHz, 787-788 MHz, and 805-806 MHz.

³ In the *700 MHz First Report and Order*, the Commission referred to a “substantial service” renewal showing. The concept of substantial service for a renewal showing is significantly broader than, and distinct from, the concept (found in some service rules) that licensees demonstrate substantial service to satisfy a performance (also known as a buildout or construction) requirement. As explained below (*see infra* paras. 22-24), we seek to eliminate any confusion that may have resulted from our using the same terminology (but with different meanings) in two contexts, and therefore propose to adopt the term renewal showing rather than substantial service renewal showing. Additionally, we note that the Commission may undertake a separate proceeding to clarify and review wireless radio service performance standards, including consideration of standards other than substantial service.

⁴ We note that in Section III.A.3 we propose to exclude from the scope of our renewal proposals those Wireless Radio Services that are licensed by rule or on a “personal” basis or that have no construction obligation, given that the licensing rules at issue in this proceeding are not applicable to those services in the same manner as the majority of the Wireless Radio Services. *See infra* discussion at Section III.A.3.

⁵ Where a protected site-based incumbent fails to obtain renewal of its license, its spectrum will in some cases revert to an overlay geographic area licensee.

⁶ In geographic partitioning, a licensee assigns a portion of its licensed area to a third party, which then becomes the licensee for the partitioned area.

⁷ In spectrum disaggregation, a licensee assigns discrete portions or “blocks” of its licensed spectrum in a licensed area to a third party, which then becomes the licensee for the disaggregated spectrum.

partitioning or disaggregation to independently meet the applicable construction requirements. We believe this approach will facilitate efficient spectrum use while enabling service providers to configure geographic-area licenses and spectrum blocks to meet their operational needs.

B. Order

6. In the companion Order below, we impose a freeze, effective upon adoption of this order, on the filing of new applications that are mutually exclusive (*i.e.*, competing) with renewal applications. We also establish a process for addressing renewal applications filed during this rulemaking, and address the status of currently pending competing renewal applications.

III. NOTICE OF PROPOSED RULEMAKING

A. Renewal Requirements for Wireless Radio Services

7. One of our principal goals in this proceeding is to harmonize the Commission's varying requirements for the renewal of Wireless Radio Services licenses where such harmonization would advance the public interest. Commission licensing records reflect that, over the next ten years, we can expect more than 30,000 renewal showings to be filed by geographic-area licensees and more than 400,000 by site-based licensees. We seek to implement standardized renewal requirements and expeditious renewal procedures, but only to the extent that such requirements and procedures will ensure that licenses are renewed in the public interest as required by the Act. We find that adoption of uniform renewal policies and procedures will promote the efficient use of spectrum resources, and will serve the public interest by providing licensees certainty regarding their license renewal requirements. We also find that the renewal processes that we propose to adopt below would encourage licensees to invest in new facilities and services, and facilitate their business and network planning. We seek comment on these findings.

1. Current Requirements

8. Section 1.949(a) specifies two universal requirements for filing applications for renewal of licenses in the Wireless Radio Services.⁸ First, the rule establishes a 90-day filing period for renewal applications, beginning 90 days prior to expiration of an authorization and ending on its expiration date.⁹ Second, the rule requires applicants to use the "same form as applications for initial authorization in the same service, *i.e.*, FCC Form 601 or 605."¹⁰ Section 1.949(a) further provides that "[a]dditional renewal requirements applicable to specific services are set forth in the subparts governing those services."¹¹ As explained below, the Commission's current renewal requirements vary widely; some rules include comprehensive procedures, while others contain only minimal guidance.

9. *Part 22.* The Part 22 Cellular Radiotelephone Service rules establish a detailed, two-step comparative hearing process for addressing a timely-filed renewal application and all timely-filed mutually exclusive applications.¹² The rules require an administrative law judge (ALJ) to conduct a threshold hearing to determine whether a cellular renewal applicant is entitled to a renewal expectancy.¹³

⁸ 47 C.F.R. § 1.949(a).

⁹ *Id.* Specifically, renewal applications "must be filed no later than the expiration date of the authorization," but "no sooner than 90 days prior to expiration." *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² See 47 C.F.R. §§ 22.935-22.940.

¹³ A renewal expectancy is awarded if the ALJ finds that the renewal applicant has provided substantial service, and substantially complied with the Commission's rules, policies, and the Communications Act. See 47 C.F.R. (continued....)

If the ALJ determines that the applicant is entitled to a renewal expectancy and is otherwise basically qualified, the license is renewed and any competing applications are denied.¹⁴ If an ALJ determines that a renewal expectancy is unwarranted, however, all mutually exclusive applications in the renewal filing group are considered in a full comparative hearing.¹⁵

10. *Part 24.* In contrast to the detailed Part 22 Cellular renewal rules, our Part 24 Broadband Personal Communications Service (PCS) rules contain virtually no guidance regarding comparative renewal applications, do not specify how or when competing applications are to be filed against a renewal application, do not establish two-step hearings, and do not enumerate procedures for evaluating renewal applications or what is required in a renewal expectancy exhibit.¹⁶

11. *Part 27.* Our Part 27 Miscellaneous Wireless Communications Services (WCS) rules, albeit more detailed than Part 24, contain few specific rules addressing the possibility of competing renewal applications, and affirmatively prohibit such filings against renewal applicants in the 700 MHz Commercial Services Band.¹⁷ Part 27 provides that WCS renewal applicants involved in a comparative renewal proceeding will receive a renewal expectancy if they demonstrate that they have provided substantial service and have substantially complied with the Commission's rules and policies and the Act.¹⁸ Part 27, however, does not specify what type of hearing procedures (two-step or otherwise) would apply to mutually exclusive applications in the WCS renewal context.

12. We note that in response to the Commission's request for comments in the 2008 biennial review proceeding,¹⁹ NextWave Wireless Inc. (NextWave) urges repeal of Part 27 comparative renewal rules for all affected licensees.²⁰ NextWave claims that the increasing competition for spectrum at auction indicates that the Commission's market-oriented Part 27 framework, including substantial service requirements, is successful. NextWave argues that, given such success, Part 27's comparative renewal provisions are not in the public interest, particularly where a licensee has invested considerable sums at auction and in fulfilling its substantial service and other legal requirements.²¹ By contrast, Green Flag

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§§ 22.935(c), 22.940(a). Additional issues (e.g., qualifications of the renewal applicant) also may be specified for consideration by the ALJ. See 47 C.F.R. § 22.935(c).

¹⁴ See 47 C.F.R. § 22.935(c).

¹⁵ See 47 C.F.R. § 22.935(c). The specific elements to be considered by the ALJ in comparing the competing applications are delineated in the rules. See 47 C.F.R. § 22.940.

¹⁶ See 47 C.F.R. § 24.16; see generally 47 C.F.R. Pt. 24.

¹⁷ See 47 C.F.R. § 27.14(e).

¹⁸ See 47 C.F.R. § 27.14(b). Section 27.14(c) of the Commission's rules, 47 C.F.R. § 27.14(c), specifies the minimum information to be included by a "WCS renewal applicant" to establish a renewal expectancy, similar to the rules governing the cellular service.

¹⁹ See "The Commission Seeks Public Comment in the 2008 Biennial Review of Telecommunications Regulations," WT Docket No. 08-182 *et seq.*, Public Notice, 23 FCC Rcd 13636 (2008) ("2008 Biennial Review PN"). Under Section 11 of the Act, 47 U.S.C. § 161, every even-numbered year, the Commission must review regulations that apply to the operations or activities of any telecommunications service provider, and determine whether such regulations continue to be necessary. 2008 Biennial Review PN, 23 FCC Rcd at 13636.

²⁰ See generally Comments of NextWave Wireless Inc., WT Docket No. 08-182 (filed Oct. 7, 2008).

²¹ *Id.* at 2. NextWave further contends that: comparative renewals create uncertainty and deter competition; petitions to deny and subsequent reacquisition of spectrum held by licensees determined to not be providing substantial service achieve the same goal (*i.e.*, efficient spectrum use); and licensing procedures and renewal expectancies should be consistent to promote competition for all Part 27 spectrum. *Id.* at 3.

Wireless Communications, LLC, CWC License Holding, Inc., and James McCotter urge us to retain the current Part 27 comparative renewal rules, and characterize NextWave's biennial review comments as an attempt to "end run" their applications that compete with the WCS renewal applications of NextWave and other WCS incumbents.²²

13. *Part 90.* The Part 90 Commercial Mobile Radio Service (CMRS)²³ rules present another situation. The Commission has stated that Part 90 CMRS licensees would be afforded a renewal expectancy and that "[t]he applicable sections of Part 22 governing . . . renewal expectancy will be incorporated into Part 90."²⁴ At present, however, only two sections in Part 90 address CMRS renewal situations.²⁵

14. Part 90 does include specific provisions regarding the renewal of 220-222 MHz licenses, which are similar to the Part 27 rules in providing that renewal applicants must demonstrate that they have provided substantial service during the past license term and have substantially complied with applicable FCC rules and policies and the Act.²⁶ Section 90.743 further provides that, for a 220-222 MHz renewal applicant to receive a renewal expectancy, it must include a description of its current service in terms of geographic coverage and population served, an explanation of its record of expansion including a timetable for new station construction to meet changes in service demand, a description of investments, copies of any FCC orders finding that the renewal applicant has violated the Act or any FCC rule or policy, and a list of any pending proceedings that relate to any such violation.²⁷ This section does not, however, specify the procedures for processing competing renewal applications.

15. *Part 101.* Part 101 includes a number of renewal rules that are similar to those found in Part 27. Section 101.1011(c), for example, requires a renewal applicant for a local multipoint distribution service license to file detailed information to demonstrate substantial service in a comparative renewal proceeding, but such information is not required to demonstrate substantial service as a performance requirement.²⁸ AT&T Inc. (AT&T), which supports NextWave's proposal to eliminate comparative renewals for all Part 27 licensees,²⁹ urges us to eliminate similar Part 101 renewal rules.³⁰ AT&T argues

²² See generally Reply Comments of Green Flag Wireless Communications, LLC, CWC License Holding, Inc., and James McCotter, WT Docket No. 08-182 (filed Oct. 28, 2008).

²³ Section 332(d) of the Act defines commercial mobile radio service (CMRS) as any mobile service "that is provided for profit and makes interconnected service available to (A) the public or (B) to such classes of eligible users as to be effectively available to a substantial portion of the public, as specified by regulation by the Commission." 47 U.S.C. § 332(d). See also 47 C.F.R. § 20.9 (enumerating the mobile services presumed to be CMRS).

²⁴ See Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, GN Docket No. 93-252, *Third Report and Order*, 9 FCC Rcd 7988, 8157 ¶ 386 (1994), citing 47 C.F.R. § 22.940.

²⁵ Section 90.165 addresses procedures for mutually exclusive applications, and includes provisions related to defining and processing a "renewal filing group." 47 C.F.R. § 90.165(b)(1), (c)(3)(i), and (c)(4)(i).

²⁶ 47 C.F.R. § 90.743(a).

²⁷ 47 C.F.R. § 90.743(b).

²⁸ 47 C.F.R. § 101.1011(c).

²⁹ See *supra* para. 12.

³⁰ See generally Reply Comments of AT&T Inc., WT Docket No. 08-182 (filed Oct. 27, 2008) ("AT&T Reply Comments"). AT&T states that the comparative renewal procedures at 47 C.F.R. §§ 101.17 (38.6-40.0 GHz), 101.529 (24 GHz), 101.1011 (local multipoint distribution service), 101.1327 (multiple address systems), and (continued....)

that the comparative renewal procedures for Part 27 and Part 101 auctionable services impose unnecessary burdens and costs on both the Commission and licensees.³¹ AT&T concludes that we should apply our Part 27 700 MHz Commercial Services Band licensee renewal framework—barring competing renewal applications and described in the next paragraph—to other Part 27 and Part 101 services.³²

2. Proposed Requirements

16. In the *700 MHz First Report and Order*, the Commission adopted a new paradigm for renewal of wireless licenses. Specifically, the Commission determined that renewal applicants in the 700 MHz Commercial Services Band will not be subject to competing applications and that if a renewal application is not granted, the licensed spectrum will be returned to the Commission for reassignment.³³ The Commission also determined that renewal applicants in these bands must affirmatively demonstrate that they have provided “substantial service” to the public during their license term, and are in compliance with the Commission’s rules and policies and the Act.³⁴

17. We propose to adopt renewal requirements for numerous Wireless Radio Services based on the Commission’s model for the 700 MHz Commercial Services Band licensees.³⁵ Under this three-part approach:

- (1) renewal applicants must file a detailed renewal showing, demonstrating that they are providing service to the public (or, when allowed under the relevant service rules or pursuant to waiver, using the spectrum for private, internal communication), and substantially complying with the Commission’s rules (including any applicable performance requirements) and policies and the Communications Act;
- (2) competing renewal applications are prohibited; and
- (3) if a license is not renewed, the associated spectrum is returned to the Commission for reassignment.³⁶

18. We propose to modify the first part of this approach for services licensed by site by requiring affected licensees to certify that they are continuing to operate consistent with their applicable construction notification(s) or authorization(s) (where the filing of construction notifications is not required), rather than making a renewal showing. Wireless Radio Services licensed by rule or on a “personal” basis or that have no construction/performance obligation are beyond the scope of this proceeding.

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101.1413 (multichannel video distribution and data service) are similar to the renewal rules of section 27.14(b)-(d), and should be removed.

³¹ *Id.* at 2. AT&T notes that the Commission has estimated that a routine comparative renewal proceeding can take up to five years. *Id.* at 2-3, citing Implementation of Section 309(j) of the Telecommunications Act – Competitive Bidding for Commercial Broadcast and Instructional Fixed Service Licenses, *First Report and Order*, 13 FCC Rcd 15920, 15933-34 ¶ 36 (1998).

³² AT&T Reply Comments at 5-6.

³³ See *700 MHz First Report and Order*, 22 FCC Rcd at 8093-8094 ¶¶ 75-77. See also 47 C.F.R. § 27.14(e).

³⁴ *700 MHz First Report and Order*, 22 FCC Rcd at 8093 ¶ 75.

³⁵ We note that we may make conforming changes to the renewal rules for the 700 MHz Commercial Services Band consistent with the policies we may ultimately adopt in this proceeding.

³⁶ *700 MHz First Report and Order*, 22 FCC Rcd at 8093-8094 ¶¶ 75-77.

19. We propose to revise section 1.949³⁷ to specify the renewal showing requirements and procedures that will be applied to Wireless Radio Services. The proposed language of revised section 1.949 is set forth in Appendix A. We specifically seek comment on the draft rule provisions. In addition to revising the generally applicable Part 1 renewal rule governing Wireless Radio Services, we propose a number of rule revisions and deletions in the rule sections governing specific Wireless Radio Services. We specifically request comment on these proposed rule revisions.

a. Geographically Licensed Services—Renewal Showing

20. We tentatively conclude that the public interest would be served by adopting and applying the Commission's 700 MHz three-part renewal paradigm to the following Wireless Radio Services, which are licensed on a geographic-area basis:

- 1.4 GHz Service;³⁸
- 1.6 GHz Service;³⁹
- 24 GHz Service;⁴⁰
- 39 GHz Service;⁴¹
- 218-219 MHz Service (formerly Interactive Video Data Service);⁴²
- 220-222 MHz Service;⁴³
- 700 MHz Guard Band Service;⁴⁴
- 800 MHz Specialized Mobile Radio Service;⁴⁵
- 900 MHz Specialized Mobile Radio Service;⁴⁶
- Advanced Wireless Service;⁴⁷
- Air-Ground Radiotelephone Service (Commercial Aviation);⁴⁸
- Broadband Personal Communications Service;⁴⁹

³⁷ 47 C.F.R. § 1.949.

³⁸ See 47 C.F.R. Pt. 27, Subpt. I.

³⁹ See 47 C.F.R. Pt. 27, Subpt. J.

⁴⁰ See 47 C.F.R. Pt. 101, Subpt. G.

⁴¹ See 47 C.F.R. Pt. 101, Subpt. B.

⁴² See 47 C.F.R. Pt. 95, Subpt. F.

⁴³ See 47 C.F.R. Pt. 90, Subpt. T.

⁴⁴ See 47 C.F.R. Pt. 27, Subpt. G. The 700 MHz guard bands include Block A 757-758, 787-788 MHz, and Block B 775-776, 805-806 MHz.

⁴⁵ See 47 C.F.R. Pt. 90, Subpt. S.

⁴⁶ See 47 C.F.R. Pt. 90, Subpt. S.

⁴⁷ See 47 C.F.R. Pt. 27, Subpt. L.

⁴⁸ See 47 C.F.R. Pt. 22, Subpt. G.

- Cellular Radiotelephone Service;⁵⁰
- Dedicated Short Range Communications Service;⁵¹
- Local Multipoint Distribution Service;⁵²
- Multichannel Video Distribution and Data Service;⁵³
- Multilateration Location and Monitoring Service;⁵⁴
- Multiple Address Systems (EAs);⁵⁵
- Narrowband Personal Communications Service;⁵⁶
- Paging and Radiotelephone Service;⁵⁷
- Public Coast Stations, including Automated Maritime Telecommunications Systems;⁵⁸ and
- Wireless Communications Service.⁵⁹

21. In the *700 MHz First Report and Order*, the Commission determined that 700 MHz Commercial Services Band licensees must file a renewal application pursuant to section 1.949, demonstrating “that they have provided substantial service during their past license term, which is defined as service that is sound, favorable, and substantially above a level of mediocre service that just might minimally warrant renewal.”⁶⁰ The Commission explained that the substantial service showing made in support of a renewal application is distinct from any substantial service performance showing (also

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⁴⁹ See 47 C.F.R. Pt. 24, Subpt. E.

⁵⁰ See 47 C.F.R. Pt. 22, Subpt. H. The Cellular Radiotelephone Service is currently licensed by site. We note that CTIA – The Wireless Association has filed a petition for rulemaking seeking the transition of the service to geographic-area licensing. See CTIA – The Wireless Association Petition for Rulemaking Regarding the Transition of Part 22 Cellular Services to Geographic Market-Area Licensing, RM No. 11510 (filed Oct. 8, 2008). The Commission has sought comment on CTIA’s petition. See “Wireless Telecommunications Bureau Seeks Comment on Petition for Rulemaking to Transition Part 22 Cellular Services to Geographic Market-Area Licensing,” RM No. 11510, *Public Notice*, 24 FCC Rcd 27 (WTB 2009).

⁵¹ See 47 C.F.R. Pt. 90, Subpt. M. Non-reserved Dedicated Short Range Communications Service frequencies in the 5850-5925 MHz band are licensed on the basis of non-exclusive geographic areas. Such licenses serve as a prerequisite for registering individual Roadside Units (RSUs) located within the licensed geographic area. See 47 C.F.R. § 90.375.

⁵² See 47 C.F.R. Pt. 101, Subpt. L.

⁵³ See 47 C.F.R. Pt. 101, Subpt. P.

⁵⁴ See 47 C.F.R. Pt. 90, Subpt. M.

⁵⁵ See 47 C.F.R. Pt. 101, Subpt. O.

⁵⁶ See 47 C.F.R. Pt. 24, Subpt. D.

⁵⁷ See 47 C.F.R. Pt. 22, Subpt. E; 47 C.F.R. Pt. 90, Subpt. P.

⁵⁸ See 47 C.F.R. Pt. 80, Subpt. J.

⁵⁹ See 47 C.F.R. Pt. 27, Subpt. D.

⁶⁰ See *700 MHz First Report and Order*, 22 FCC Rcd at 8093 ¶ 75.

known as a buildout or construction showing) under the Commission's service rules.⁶¹ The Commission emphasized that "a licensee that meets the applicable performance requirements might nevertheless fail to meet the substantial service standard at renewal."⁶²

22. Many of the Commission's specific service rules require performance showings to be made at the midpoint and end of an initial license term regarding population or area covered.⁶³ For some services, licensees must demonstrate, or may elect to demonstrate, substantial service as their performance requirement during their initial license term.⁶⁴ Thus, under our current rules, some licensees could make two distinct substantial service showings, one to support their renewal application and one for performance purposes, at the end of their initial license term.⁶⁵ Under our performance requirement rules, a licensee generally provides a snapshot in time (usually as of or near the date on which the notification or other filing is submitted) of the level of service that it is providing to the public.⁶⁶ By contrast, a substantial service showing for renewal requires more detailed information regarding a licensee's services and related matters for its entire license period than one made for performance purposes.⁶⁷

⁶¹ See *id.*

⁶² *Id.* In this regard, section 27.14(e) of the Commission rules, adopted in the 700 MHz proceeding, provides that a renewal applicant "must make a showing of substantial service, independent of its performance requirements, as a condition for renewal at the end of each license term." 47 C.F.R. § 27.14(e).

⁶³ See, e.g., 47 C.F.R. §§ 22.503(k)(1), (2) (paging MEA and EA licensees); 24.103(a)-(c) (narrowband PCS); 24.203(a), (b) (broadband PCS); 27.14(g), (h) (WCS 700 MHz licensees); 90.155(d) (multilateration LMS EA licensees); 90.665(c) (SMR MTA licensees); 90.685(b) (SMR EA licensees); 90.767 (220-222 MHz EA and Regional licensees); 90.769 (220-222 MHz Phase II nationwide licensees); 101.1325 (MAS EA licensees); 101.1413 (MVDDS).

⁶⁴ See, e.g., 47 C.F.R. §§ 22.503(k)(3) (paging MEA and EA licensees); 22.873 (commercial aviation air-ground licensees); 24.103(a)-(d) (narrowband PCS); 24.203(d) (broadband PCS); 27.14(a) (AWS and WCS); 80.49(a)(1) (VHF public coast station geographic area licensees); 80.49(a)(3) (AMTS); 90.155(d) (multilateration LMS EA licensees); 90.665(c) (SMR MTA licensees); 90.685(b) (SMR EA licensees); 90.767 (220-222 MHz EA and Regional licensees); 90.769 (220-222 MHz Phase II nationwide licensees); 95.833(a) (218-219 MHz Service); 101.17 (39 GHz Services); 101.143 (MVDDS); 101.527 (24 GHz Service); 101.1011 (LMDS); 101.1325 (MAS EA licensees).

⁶⁵ Pursuant to 47 C.F.R. § 1.946(c), if a licensee in the Wireless Radio Services fails to commence service or operations by the expiration of its construction period or to meet its coverage or substantial service obligations by the expiration of its coverage period, its authorization terminates automatically, without specific Commission action, on the date the construction or coverage period expires. 47 C.F.R. § 1.946(c); see also 47 C.F.R. § 1.955(a)(2) ("Authorizations automatically terminate (in whole or in part as set forth in the service rules), without specific Commission action, if the licensee fails to meet applicable construction or coverage requirements.").

⁶⁶ Some of the Commission's performance rules require a licensee to provide service to a minimum percentage of the population in a licensed market area or to a minimum portion of a geographic area. Other performance rules require a licensee to demonstrate that it is providing substantial service in the licensed area. Still other rules require a licensee to certify that it has constructed and is operating the facilities proposed in the underlying application.

⁶⁷ See, e.g., 47 C.F.R. §§ 27.14(b)-(c) (substantial service demonstration required to establish a right to a renewal expectancy must include specific information regarding the level of investment and service during a licensee's past license term that is not required to demonstrate substantial service to satisfy the performance requirements under 47 C.F.R. § 27.14(a)); 90.743 (to demonstrate the provision of substantial service in support of a renewal application, a 220-222 MHz licensee must include specific information that is not required for a licensee to demonstrate that it has provided substantial service to satisfy the performance requirements under either 47 C.F.R. § 90.767 or 90.769); 101.1413(c) (requiring the renewal application of an MVDDS licensee to include specific information at the end of the ten-year license term that is not required to be submitted to demonstrate substantial service at "the end of five (continued....)");

23. Specifically, in the *700 MHz First Report and Order*, the Commission explained that “[s]ubstantial service in the renewal context . . . encompasses Commission consideration of a variety of factors including [1] the level and quality of service, [2] whether service was ever interrupted or discontinued, [3] whether service has been provided to rural areas, and [4] any other factors associated with a licensee’s level of service to the public.”⁶⁸ We tentatively conclude that these same factors should be considered by the Commission when evaluating renewal showings for the Wireless Radio Services licensed on a geographic-area basis that are identified above. We request comment regarding our proposed list of Wireless Radio Services that would be subject to the renewal showing requirement. Interested parties that recommend revising the proposed list should specifically describe the proposed change and the rationale for any such change.

24. We also seek to eliminate any confusion that may have arisen from our using the “substantial service” terminology in both the renewal and performance contexts. Accordingly, to avoid the potential for confusion and to better reflect the broad array of factors that the Commission considers when evaluating a renewal application, we propose to change the applicable nomenclature and require that licensees make a “renewal showing,” rather than a “substantial service” renewal showing. We also note that, in a separate proceeding, we may seek to clarify wireless radio service performance standards, including consideration of standards other than substantial service.

25. Pursuant to Section 308(b) of the Communications Act, the Commission may require renewal applicants to “set forth such facts as the Commission by regulation may prescribe as to the citizenship, character, and financial, technical, and other qualifications of the applicant to operate the station” as well as “such other information as it may require.”⁶⁹ We seek comment on whether factors in addition to those identified above should be considered by the Commission when evaluating applications for renewal.

26. We note that a number of our existing service rules enumerate factors that a renewal applicant must address to obtain a renewal expectancy.⁷⁰ For example, Part 90 requires a 220-222 MHz Service renewal applicant to provide: “(1) A description of its current service in terms of geographic coverage and population served; (2) For an EA, Regional, or nationwide licensee, an explanation of its record of expansion, including a timetable of the construction of new stations to meet changes in demand for service; (3) A description of its investments in its system; (4) Copies of all FCC orders finding the licensee to have violated the Communications Act or any FCC rule or policy; and (5) A list of any pending proceedings that relate to any matter described in this paragraph.”⁷¹ The Part 22 Cellular Radiotelephone Service and Part 95 218-219 MHz Service rules contain similar renewal showing requirements.⁷² Part 101 requires 39 GHz Service renewal applicants to describe their current service in

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years into the license term” pursuant to 47 C.F.R. § 101.1413(b); 101.1327 (requiring an MAS EA renewal applicant to provide specific information at the end of the ten-year license term that is not required for licensees that opt to satisfy their mid-term performance requirement via a substantial service showing pursuant to 47 C.F.R. § 101.1325(b)).

⁶⁸ See *700 MHz First Report and Order*, 22 FCC Rcd at 8093 ¶ 75.

⁶⁹ 47 U.S.C. § 308(b).

⁷⁰ The Commission has defined the concept of a renewal expectancy in the cellular context as “a significant comparative preference in comparative cellular renewal proceedings.” Amendment of Part 22 of the Commission’s Rules Relating to License Renewals in the Domestic Public Cellular Radio Telecommunications Service, CC Docket No. 90-358, *Report and Order*, 7 FCC Rcd 719 (1992) (subsequent history omitted).

⁷¹ 47 C.F.R. § 90.743(b).

terms of geographic coverage, population served, additional services provided during the license period, and investments in their systems, including the type of facilities constructed and their operational status.⁷³

27. In order to facilitate public review and assessment of the factors set forth in various current rules for demonstrating that the applicant should receive a renewal expectancy, we include a listing of those factors for comment.⁷⁴

- A description of the licensee's current service in terms of geographic coverage and population served;⁷⁵
- An explanation of the licensee's record of expansion, including a timetable for the construction of new sites to meet changes in demand for service;⁷⁶
- A description of its investments in its system;⁷⁷
- A list, including addresses, of all cell transmitter stations constructed;⁷⁸
- Identification of type of facilities constructed and their operational status;⁷⁹

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⁷² A cellular renewal applicant must provide "(i) A description of its current service in terms of geographic coverage and population served, as well as the system's ability to accommodate the needs of roamers; (ii) An explanation of its record of expansion, including a timetable of the construction of new cell sites to meet changes in demand for cellular service; (iii) A description of its investments in its cellular system; and (iv) Copies of all FCC orders finding the licensee to have violated the Communications Act or any FCC rule or policy; and a list of any pending proceedings that relate to any matter described in this paragraph." 47 C.F.R. § 22.940(a)(2). *See also* 47 C.F.R. § 95.833(b) (218-219 MHz Service renewal showing requirements).

⁷³ 47 C.F.R. § 101.176(a). An LMDS renewal applicant involved in a comparative renewal proceeding must submit a showing explaining why it should receive a renewal expectancy and include, at a minimum, a description of its current service in terms of geographic coverage and population served; an explanation of its record of expansion, including a timetable of new construction to meet changes in demand for service; a description of its investments in its LMDS system; copies of all FCC orders finding the licensee to have violated the Communications Act or any FCC rule or policy; and a list of any pending proceedings relating to such issues. *See* 47 C.F.R. § 101.1011(c).

⁷⁴ This list does not include the near universal requirement that an applicant provide copies of all FCC orders finding the licensee to have violated the Act or any FCC rule or policy and a list of any pending proceedings relating to such matters involving the licensee.

⁷⁵ *See* 47 C.F.R. §§ 22.940(a)(2)(i) (for cellular licensees, this factor also includes a discussion of the system's ability to accommodate the needs of roamers); 27.14(c)(1) (WCS); 90.743(b)(1) (220-222 MHz); 90.816(b)(2)(i) (900 MHz SMR); 95.833(b)(1) (218-219 MHz); 101.17(a)(1), (2) (for 39 GHz licensees, also include a description of any additional service provided during the license term); 101.527(b)(1) (for 24 GHz licensees, to be supported by a report, maps, and other documents); 101.1011(c)(1) (LMDS); and 101.1413(c)(1), (2) (MVDDS licensees must include, as part of this showing, a coverage map depicting the served and unserved areas, and may show transmitter locations in the served areas).

⁷⁶ *See* 47 C.F.R. §§ 22.940(a)(2)(ii) (cellular); 27.14(c)(2) (WCS); 90.743(b)(2) (220-222 MHz); 90.816(b)(2)(ii) (900 MHz SMR); 95.833(b)(2) (218-219 MHz); 101.1011(c)(2) (LMDS); and 101.1327(a)(3) (MAS EA licensees).

⁷⁷ *See* 47 C.F.R. §§ 22.940(a)(2)(iii) (cellular); 27.14(c)(3) (WCS); 90.743(b)(3) (220-222 MHz); 90.816(b)(2)(iii) (900 MHz SMR); 95.833(b)(3) (218-219 MHz); 101.17(b)(3) (39 GHz); 101.527(b)(1) (24 GHz); 101.1011(c)(3) (LMDS); and 101.1327(a)(4) (MAS EA licensees).

⁷⁸ *See* 47 C.F.R. § 95.833(b)(4) (218-219 MHz).

⁷⁹ *See* 47 C.F.R. § 101.17(a)(2) (39 GHz).

- Consideration of whether the licensee is offering a specialized or technologically sophisticated service that does not require a high level of coverage to benefit customers;⁸⁰
- Consideration of whether the licensee's operations serve niche markets or focus on serving populations outside of areas served by other licensees;⁸¹ and
- Consideration of whether the licensee's operations serve populations with limited access to telecommunications services.⁸²

28. We seek comment regarding whether, in addition to the factors that the Commission specified in the *700 MHz First Report and Order*, the public interest would be served by consideration of any of the factors enumerated above when assessing whether a licensee has demonstrated a level of service warranting renewal. We encourage parties to address whether these or other factors would enhance our ability to assess whether a license should be renewed, and the degree to which a factor could reasonably be demonstrated by renewal applicants. We further encourage parties to address whether these or other factors should be used where facilities are used to meet a licensee's private, internal communication needs.

29. We also seek comment on whether the public interest would be served by codifying in section 1.949 a nonexclusive list of the factors that applicants should address in renewal showings. Enumerating such factors in one rule for all affected services would provide members of the wireless industry regulatory certainty in an area where there currently is scant precedent and varying requirements in our service rules. Our objective in suggesting a standardized codification of relevant factors is to conform the current service-specific rules with the proposed policies discussed herein and to eliminate any potential confusion. We request comment on this proposal.

30. *Broadband Radio Service and Educational Broadband Service.* We conclude that modification of our renewal showing proposal is appropriate to address the unique circumstances of the Broadband Radio Service (BRS) and Educational Broadband Service (EBS). In 2004, the Commission found that the 2500-2690 MHz band was underutilized.⁸³ To encourage the development of new and innovative wireless services in the band, the Commission adopted rules that fundamentally changed the band plan and technical rules.⁸⁴ The former band plan consisted of interleaved channel blocks.⁸⁵ The new band plan consists of two low-power segments, the Lower Band Segment (LBS) and the Upper Band Segment (UBS), and a high-power segment, the Middle Band Segment (MBS).⁸⁶

⁸⁰ See 47 C.F.R. § 101.1327(b)(1) (MAS EA licensees).

⁸¹ See 47 C.F.R. §§ 101.1327(b)(2) (MAS EA licensees); 101.1413(b)(1) (MVDDS).

⁸² See 47 C.F.R. § 101.1413(b)(2) (MVDDS).

⁸³ See Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, *et al.*, WT Docket Nos. 03-66, *et al.*, *Report and Order and Further Notice of Proposed Rulemaking*, 19 FCC Rcd 14165 (2004) (*BRS/EBS R&O*).

⁸⁴ *Id.* at 14165-14169 ¶¶ 1-4.

⁸⁵ See Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, WT Docket No. 03-66, *Notice of Proposed Rulemaking and Memorandum Opinion and Order*, 18 FCC Rcd 6722, 6744 ¶ 47 (2003) (*NPRM*).

⁸⁶ *BRS/EBS R&O*, 19 FCC Rcd at 14169 ¶ 6.

31. Under the new band plan, licensees are given contiguous channel blocks in the LBS and UBS.⁸⁷ The MBS includes seven high-power channels for those licensees that wish to transmit video programming.⁸⁸ The *BRS/EBS R&O* further established a plan to transition EBS and BRS licensees from their interleaved channel locations to their new channel locations in the LBS, UBS, or MBS.⁸⁹ In addition to changing spectrum locations, licensees must change the architecture of their operations to conform to the new technical rules. Thus, to facilitate the transition to the new band plan and the development and deployment of new and innovative wireless services, the Commission eliminated the discontinuance of service rules,⁹⁰ and adopted in their place a substantial service standard under which all BRS and EBS licensees must show substantial service on or before May 1, 2011.⁹¹

32. Given the Commission's decision to allow BRS and EBS licensees to discontinue service and to require substantial service as of May 1, 2011, we generally believe it would not be appropriate to apply our proposed renewal framework to BRS or EBS licenses with a term that is scheduled to expire on or before that date. Accordingly, given that most BRS incumbent licenses expire on May 1, 2011, we propose to apply this renewal framework to BRS incumbent licenses starting with their new license term. We also tentatively conclude that it would be premature to apply this renewal framework to EBS licenses with ten-year license terms scheduled to expire on or before May 1, 2011. We seek comment on the appropriate effective date for applying this renewal paradigm to EBS licensees with ten-year license terms scheduled to expire after that date. In addition, we propose to apply the renewal framework to BRS Basic Trading Authorizations, most of which are scheduled to expire in 2016. We believe such licensees will have sufficient time to complete the transition and make the required renewal showing over the period from 2011 to 2016. We seek comment on these proposals and any other issues related to renewals for BRS and EBS.

b. Site-Based Licensed Services—Certification Requirement

33. We find that Wireless Radio Services licensed by site generally are subject to licensing and renewal policies under which requiring a showing of substantial service to support grant of renewal would not be appropriate. In site-based services, a licensee's initial application for authorization provides the exact technical parameters of its planned operations, and the licensee's subsequent notification that it has completed construction confirms that the facilities have been constructed consistent with its authorization (or with minor modifications as may be permitted by the applicable service rules). A licensee also may file to modify its license, which may lead to a modified authorization and the submission of a subsequent construction notification. Consequently, at the time a site-based service

⁸⁷ *Id.* at 14183-14184 ¶ 37.

⁸⁸ *Id.* at 14197-14198 ¶ 72. Generally, licensees in the A-group through G-group channels will receive one MBS channel in addition to three LBS or UBS channels. *Id.* at 14183-14184 ¶ 37.

⁸⁹ *Id.* at 14194-14208 ¶¶ 68-103.

⁹⁰ For EBS stations, former section 74.932(d) provided that a station that had not operated for one year was considered to have permanently discontinued operation. 47 C.F.R. § 74.932(d) (2004). For BRS licensees, former section 21.44(a)(3) provided that a BRS license automatically forfeited upon the voluntary removal or alteration of facilities, so as to render the station not operational for a period of 30 days or more. 47 C.F.R. § 21.44(a)(3) (2004). Former section 21.303(d) required a licensee to turn in for cancellation or modification, as appropriate, a license if frequencies were unused for one year. 47 C.F.R. § 21.303(d) (2004).

⁹¹ *BRS/EBS R&O*, 19 FCC Rcd at 14254 ¶ 231. See Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, *et al.*, WT Docket Nos. 03-66, *et al.*, Order on Reconsideration and Fifth Memorandum Opinion and Order and Third Memorandum Opinion and Order and Second Report and Order, 21 FCC Rcd 5606, 5733 ¶ 303 (2006) (*BRS/EBS 3rd MO&O*).

provider files a renewal application, it should be operating as licensed or not operating. Under either scenario, the concept of substantial service is inapposite.

34. Accordingly, for site-based services, we propose to revise the Commission's Form 601 application to require renewal applicants to certify that they are continuing to operate consistent with the applicable filed construction notification(s) (NT) or most recent authorization(s) (when no NT is required under the Commission's rules).⁹² We tentatively conclude that if a licensee makes the required certification and demonstrates substantial compliance with the Commission's rules and policies and the Communications Act, we will renew the license. Licensees in the site-based services thus would not be required to make a substantial service renewal showing. We tentatively conclude that the following services should be subject to this certification process:

- 220-222 MHz Service (site-based),⁹³
- 800/900 MHz (SMR and Business and Industrial Land Transportation Pool),⁹⁴
- Air-Ground Radiotelephone Service (General Aviation),⁹⁵
- Broadcast Auxiliary Service,⁹⁶
- Common Carrier Fixed Point-to-Point, Microwave Service,⁹⁷
- Digital Electronic Message Service,⁹⁸
- Industrial/Business Radio Pool,⁹⁹
- Local Television Transmission Service,¹⁰⁰
- Multiple Address Systems (site-based), excluding systems licensed to public safety entities,¹⁰¹
- Non-Multilateration Location and Monitoring Service,¹⁰²
- Offshore Radiotelephone Service,¹⁰³

⁹² It is possible that a site-based licensee will have been granted a license modification for which the construction will not need to be completed as of the renewal application filing date. The licensee will be able to include the authorized but not yet constructed facilities within the scope of the renewal application. In the event that the license is renewed with the authorized but not yet constructed parameters, and the licensee fails to construct pursuant to the modification authorization, the renewed license will no longer encompass those revised parameters.

⁹³ See 47 C.F.R. Pt. 90, Subpt. T.

⁹⁴ See 47 C.F.R. Pt. 90, Subpt. S.

⁹⁵ See 47 C.F.R. Pt. 22, Subpt. G.

⁹⁶ See 47 C.F.R. Pt. 74, Subpt. F.

⁹⁷ See 47 C.F.R. Pt. 101, Subpt. I.

⁹⁸ See 47 C.F.R. Pt. 101, Subpt. G.

⁹⁹ See 47 C.F.R. Pt. 90, Subpt. C.

¹⁰⁰ See 47 C.F.R. Pt. 101, Subpt. J.

¹⁰¹ See 47 C.F.R. Pt. 101, Subpt. O.

¹⁰² See 47 C.F.R. Pt. 90, Subpt. M.

- Paging and Radiotelephone Service (site-based);¹⁰⁴
- Private Carrier Paging;¹⁰⁵
- Private Operational Fixed Point-to-Point Microwave Service, excluding licenses held by public safety entities;¹⁰⁶ and
- Rural Radiotelephone Service (including Basic Exchange Telephone Radio Service).¹⁰⁷

35. We believe that adoption of a streamlined certification process for renewal of licenses in these site-based services will avoid unduly burdening renewal applicants and Commission staff. At the same time, applying the certification process to site-based services will ensure that renewed licenses in these services are being operated as authorized. We request comment on our proposed identification of Wireless Radio Services subject to the certification requirement in lieu of a required substantial service showing. Interested parties that recommend that our designation of services be revised should specifically describe the proposed change and the rationale for any change. We also request comment whether, in our consideration of renewal applications involving site-based licenses, there are any additional factors we should consider.

c. Geographically and Site-Based Licensed Services—Other Requirements

36. As explained above, we propose to adopt a renewal showing requirement for renewal applicants in Wireless Radio Services licensed by geographic area and a streamlined certification requirement for renewal applicants in services licensed by site. Below, we propose to apply a single regulatory compliance demonstration requirement to all renewal applicants, whether licensed by geographic area or by site. We also propose to prohibit the filing of competing applications against such renewal applications and that, if a renewal application is denied, the associated spectrum generally will be returned to the Commission.

(i) Regulatory Compliance Demonstration

37. In the *700 MHz First Report and Order*, the Commission stated that in addition to demonstrating that they are providing substantial service to the public, renewal applicants must demonstrate “that they have substantially complied with all applicable Commission rules, policies, and the Communications Act of 1934, as amended, including any applicable performance requirements.”¹⁰⁸ Such a regulatory compliance demonstration serves the public interest by facilitating the Commission’s evaluation of the character and other qualifications of a renewal applicant.¹⁰⁹ We therefore propose that renewal applicants in the geographic-area and site-based Wireless Radio Services identified in paragraphs 20 and 34, above, be required to demonstrate regulatory compliance.

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¹⁰³ See 47 C.F.R. Pt. 22, Subpt. I.

¹⁰⁴ See 47 C.F.R. Pt. 22, Subpt. E.

¹⁰⁵ See 47 C.F.R. Pt. 90, Subpt. P.

¹⁰⁶ See 47 C.F.R. Pt. 101, Subpt. H.

¹⁰⁷ See 47 C.F.R. Pt. 22, Subpt. F.

¹⁰⁸ See *700 MHz First Report and Order*, 22 FCC Rcd at 8093 ¶ 75.

¹⁰⁹ See 47 U.S.C. § 308(b).

38. To aid review of a renewal applicant's regulatory compliance, we tentatively conclude that an applicant must file copies of all FCC orders¹¹⁰ finding a violation or an apparent violation of the Communications Act or any FCC rule or policy by the licensee, an entity that owns or controls the licensee, an entity that is owned or controlled by the licensee, or an entity that is under common control with the licensee (whether or not such an order relates specifically to the license for which renewal is sought). This disclosure requirement would apply to all orders finding such violations during the license term for which renewal is sought, including orders that are, or could be, the subject of administrative or judicial review. For purposes of this disclosure requirement, relevant FCC orders would include, but would not be limited to, any Notice of Apparent Liability for Forfeiture, Forfeiture Order, Admonishment, Notice of Violation, Memorandum Opinion and Order, or Order on Review finding a violation or an apparent violation of the Communications Act or any FCC rule or policy by the licensee.¹¹¹ We propose to rely upon the definition of "affiliate" in section 1.2110(c)(5)¹¹² to define the scope of entities related to the renewal applicant that are encompassed within these proposed disclosure requirements.

39. If there are no FCC orders finding violations of the Communications Act or any FCC rule or policy, we propose that a licensee certify the absence of any such findings as part of the renewal application. We seek comment on the costs and benefits of our proposed framework to licensees, interested parties, and the Commission, and whether additional information would aid the Commission's review of an applicant's regulatory compliance.

(ii) Prohibition of Competing Renewal Applications

40. Consistent with the Commission's renewal approach for the 700 MHz Commercial Services Band, we tentatively conclude to prohibit the filing of competing (*i.e.*, mutually exclusive) applications against renewal applications for the Wireless Radio Services identified above, whether licensed by site or geographic area.¹¹³ In the *700 MHz First Report and Order*, the Commission noted "the potential costs and the burdens [that competing applications] impose on both the Commission and licensees."¹¹⁴ The Commission's experience has shown that the comparative renewal process can result in protracted litigation that may be unduly burdensome for an incumbent licensee and strain available Commission resources.¹¹⁵ A renewal applicant may have to devote considerable resources to defend its authorization against competing applications, resources that might otherwise be used to improve service to the public. At bottom, the public interest is ill served if a renewal applicant must operate under a cloud of litigation.

¹¹⁰ FCC orders include letter rulings, which may or may not have been assigned a delegated authority number.

¹¹¹ A Consent Decree would be a relevant FCC order for purposes of the disclosure requirement only to the extent that it includes an admission by the licensee of a violation of the Communications Act or any FCC rule or policy.

¹¹² 47 C.F.R. 1.2110(c)(5).

¹¹³ See *700 MHz First Report and Order*, 22 FCC Rcd at 8093-8094 ¶¶ 76-77. Some of our Wireless Radio Services already provide no opportunity for the filing of competing renewal applications.

¹¹⁴ *Id.* at 8093 ¶ 76.

¹¹⁵ We note that when Congress sought to eliminate the comparative renewal process for broadcast stations, it recognized that the change would "lead to a more efficient method" of renewal and "should result in a significant cost saving to the Commission." H.R. Rep. No. 104-204(I), at 123 (1995), reprinted in 1996 U.S.C.A.N. 10, 91 (ultimately resulting in amendment of Section 309 of the Communications Act by adding new subsection (k), as part of the Telecommunications Act of 1996 (1996 Act)) (*House Committee Report*). See 47 U.S.C. § 309(k).

41. We find that the Commission's established petition to deny process¹¹⁶ affords interested parties an appropriate mechanism to challenge the level of service and qualifications of licensees seeking renewal. In this regard, the Commission found in the *700 MHz Report and Order* that the ability of a party to file a petition to deny and participate in an auction of spectrum if the licensed spectrum is returned to the Commission will provide "sufficient incentives to challenge inferior service or poor qualifications of licensees at renewal."¹¹⁷ Interested parties that might otherwise file a competing application would, under our proposed framework, have the opportunity to participate in the auction of spectrum recovered from any geographic licensee or to apply for spectrum recovered from a site-based licensee (provided the spectrum did not revert to a geographic overlay licensee). The Commission has repeatedly concluded that spectrum auctions most likely will result in the licensing of spectrum to a party that most highly values the spectrum.¹¹⁸ Moreover, as the Commission has moved from comparative licensing regimes to competitive bidding processes for awarding spectrum licenses, eliminating the filing of competing renewal applications will harmonize our renewal processes with those for granting initial authorizations.

42. We also find that the public interest would be served by preventing parties from interposing "strike" applications against a renewal applicant for possible anticompetitive purposes, to harass an applicant, or to exact a payoff.¹¹⁹ We note that in other contexts, the Commission has found that even "weak applicants who may have a very slim chance of prevailing can file no-risk, no-cost [competing renewal] applications because they are virtually assured of recovering at least attorney's fees and costs for dismissing their applications."¹²⁰ The comparative renewal process was never intended to invite such abuse, and specious challenges needlessly drain Commission resources and disserve the public interest.¹²¹ While abuse of process is not the driving force behind our tentative conclusion to eliminate comparative renewal applications, we nonetheless invite comment on whether such abuse, either actual or

¹¹⁶ Existing provisions in Part 1 provide procedures for petitions to deny, application dismissals, and rules for subsequent re-licensing through competitive bidding. *See generally* 47 C.F.R. § 1.901 *et seq.*

¹¹⁷ *See 700 MHz First Report and Order*, 22 FCC Rcd at 8093 ¶ 76. We also note that when Congress proposed to eliminate the filing of competing applications against applications for renewal of broadcast authorizations, it found that such a change would "not jeopardize the ability of the public to participate actively in the renewal process through the use of petitions to deny and informal complaints." *House Committee Report, supra* note 115, at 123.

¹¹⁸ *See, e.g., BRS/EBS R&O*, 19 FCC Rcd at 14265-66 ¶ 266 (2004) (stating that "[a]n auction is most likely to assign the license to the qualified licensee that most highly values it if the auction is open to all potentially qualified licensees") (citing Implementation of Section 309(j) of the Communications Act - Competitive Bidding, PP Docket No. 93-253, *Second Report and Order*, 9 FCC Rcd 2348, 2360-2361 ¶¶ 70-71 (1994)).

¹¹⁹ Although section 1.935 of our rules provides that any potential settlement payment that a renewal applicant may make to a competing applicant to withdraw its filing is limited to the filing party's reasonable and prudent expenses (*see* 47 C.F.R. § 1.935), we remain concerned that the potential for abuse of the Commission's processes nevertheless exists. Abuses of the comparative renewal process can be difficult to prove. *See, e.g., Formulation of Policies and Rules Relating to Broadcast Renewal Applicants, Competing Applicants, and Other Participants to the Comparative Renewal Process and to the Prevention of Abuses of the Renewal Process, Second Further Notice of Inquiry and Notice of Proposed Rule Making*, BC Docket No. 81-742, 3 FCC Rcd 5179, 5182-83 ¶ 26 (1989) (stating there is "[n]o satisfactory direct method of divining intent . . . that is capable of separating wholly sincere applicants from those whose objective is simply to prey upon the inadequacies of the regulatory process for private gain.").

¹²⁰ *Formulation of Policies and Rules Relating to Broadcast Renewal Applicants, Competing Applicants, and Other Participants to the Comparative Renewal Process and to the Prevention of Abuses of the Renewal Process, First Report and Order*, 4 FCC Rcd 4780, 4784 ¶ 31 (1989) (*1989 Broadcast Renewal Order*).

¹²¹ *See, e.g., id.* at 4782-83 ¶ 22.

potential, is a concern to renewal applicants. We seek comment on the costs and benefits to the public, the Commission, and licensees that may be associated with our tentative conclusion to prohibit the filing of competing renewal applications.

(iii) Return of Spectrum to Commission If Renewal Application Denied

43. Consistent with the Commission's approach for 700 MHz Commercial Services Band licensees, we tentatively conclude that if a renewal applicant fails to demonstrate substantial service (for services licensed by geographic area) or does not certify that it is continuing to operate consistent with the applicable construction notification(s) or authorization(s), as applicable (for services licensed by site), its renewal application will be denied and its licensed spectrum generally will be returned automatically to the Commission for reassignment by auction or other mechanism that the Commission concludes would serve the public interest. We note that even if a licensee demonstrates substantial service or makes the required certification, the Commission could nevertheless find that a license should not be renewed based on substantial regulatory non-compliance (e.g., where a licensee has been found to have abused Commission processes or committed fraud).

44. We also note that in the case of the non-renewal of a site-based license, the Commission has established a general policy of the spectrum reverting to the geographic area licensee on the same spectrum.¹²² We propose to continue the Commission's policy of having spectrum revert to a geographic area licensee if an underlying site-based authorization is not renewed. We tentatively conclude that adoption of these policies would serve the public interest and invite comment on our findings.

3. Wireless Radio Services Excluded From Rulemaking

45. Finally, we tentatively conclude that various Wireless Radio Services should not be affected by the renewal proposals in this rulemaking. Specifically, we tentatively conclude that we will not apply the revised renewal paradigm to Wireless Radio Services where operations are licensed by rule (and thus there is no "license" to renew) or to Wireless Radio Services that can be considered to involve a "personal" license or that have no construction obligation.

46. The following services are licensed by rule and therefore there is no individual license to renew (or to cancel automatically) and no basis to adopt any of the proposals discussed above:

- Citizens Band Radio Service;¹²³
- Dedicated Short Range Communications Service (On-Board Units operating in the 5850-5925 MHz band);¹²⁴
- Family Radio Service;¹²⁵

¹²² See, e.g., 47 C.F.R. §§ 27.1206 (defining the Geographic Service Area (GSA) for incumbent site-based licensees of BRS stations and stating that, "[i]f the license for an incumbent BRS station cancels or is forfeited, the GSA area of the incumbent station shall dissolve and the right to operate in that area automatically reverts to the [geographic] licensee . . ."); 101.1331 (same concerning frequencies associated with incumbent authorizations in the 928/959 MHz bands (Multiple Address Systems)). See also 47 C.F.R. §§ 80.385(c) (providing that any AMTS frequency blocks that are "recovered" will "revert automatically to the holder of the geographic area license within which such frequencies are included," and "where there is no geographic area licensee," the blocks will be "retained by the Commission for future licensing."); 90.175(n) (same regarding any recovered channels in the 800 MHz SMR service).

¹²³ See 47 C.F.R. Pt. 95, Subpt. D.

¹²⁴ See 47 C.F.R. Pt. 95, Subpt. L (On-Board Units operating in the 5850-5925 MHz band are licensed by rule).

- Low Power Radio Service;¹²⁶
- Medical Device Radiocommunication Service;¹²⁷
- Multi-Use Radio Service;¹²⁸
- Personal Locator Beacons;¹²⁹
- Radio Control Radio Service;¹³⁰ and
- Wireless Medical Telemetry Service.¹³¹

47. The following services, which we also propose to exclude from the proposals in this Notice, involve licenses that are granted on a personal basis or that have no construction/performance requirement. Without a construction obligation, our proposal to require renewal applicants to make a showing of substantial service or to certify that they are operating consistent with prior filings regarding construction is inapplicable.

- 70-80-90 GHz Service (licenses in these bands are non-exclusive and do not authorize transmission unless/until each “pencil beam” link is registered in a private-sector database);¹³²
- Aeronautical Advisory Stations (Unicom);¹³³
- Aeronautical Enroute and Aeronautical Fixed Stations;¹³⁴
- Aeronautical Multicom Stations;¹³⁵
- Aeronautical Search and Rescue Stations;¹³⁶
- Aeronautical Utility Mobile Stations;¹³⁷
- Aircraft Stations;¹³⁸
- Airport Control Tower Stations;¹³⁹

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¹²⁵ See 47 C.F.R. Pt. 95, Subpt. B.

¹²⁶ See 47 C.F.R. Pt. 95, Subpt. G.

¹²⁷ See 47 C.F.R. Pt. 95, Subpt. I.

¹²⁸ See 47 C.F.R. Pt. 95, Subpt. J.

¹²⁹ See 47 C.F.R. Pt. 95, Subpt. K.

¹³⁰ See 47 C.F.R. Pt. 95, Subpt. C.

¹³¹ See 47 C.F.R. Pt. 95, Subpt. H.

¹³² See 47 C.F.R. Pt. 101, Subpt. Q.

¹³³ See 47 C.F.R. Pt. 87, Subpt. G.

¹³⁴ See 47 C.F.R. Pt. 87, Subpt. I.

¹³⁵ See 47 C.F.R. Pt. 87, Subpt. H.

¹³⁶ See 47 C.F.R. Pt. 87, Subpt. M.

¹³⁷ See 47 C.F.R. Pt. 87, Subpt. L.

¹³⁸ See 47 C.F.R. Pt. 87, Subpt. F.

- Alaska Fixed Stations;¹⁴⁰
- Amateur Radio Service;¹⁴¹
- Automatic Weather Stations;¹⁴²
- Aviation Support Stations;¹⁴³
- Commercial Radio Operator License Program;¹⁴⁴
- Flight Test Stations;¹⁴⁵
- General Mobile Radio Service;¹⁴⁶
- Maritime Support Stations;¹⁴⁷
- Part 80 Operational Fixed Stations;¹⁴⁸
- Private Coast Stations and Marine Utility Stations;¹⁴⁹
- Radiodetermination Service Stations;¹⁵⁰
- Ship Stations,¹⁵¹ and
- Wireless Broadband Services in the 3650–3700 MHz Band (licenses in these bands are nationwide, non-exclusive, and do not authorize transmission unless and until each fixed or base station is registered; an unlimited number of base and fixed stations may be registered (not licensed) in this band on a nationwide, non-exclusive basis).¹⁵²

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¹³⁹ See 47 C.F.R. Pt. 87, Subpt. O.

¹⁴⁰ See 47 C.F.R. Pt. 80, Subpt. O.

¹⁴¹ See 47 C.F.R. Pt. 97.

¹⁴² See 47 C.F.R. Pt. 87, Subpt. S.

¹⁴³ See 47 C.F.R. Pt. 87, Subpt. K.

¹⁴⁴ See 47 C.F.R. Pt. 13.

¹⁴⁵ See 47 C.F.R. Pt. 87, Subpt. J.

¹⁴⁶ See 47 C.F.R. Pt. 95, Subpt. A.

¹⁴⁷ See 47 C.F.R. Pt. 80, Subpt. N.

¹⁴⁸ See 47 C.F.R. Pt. 80, Subpt. L.

¹⁴⁹ See 47 C.F.R. Pt. 80, Subpt. K.

¹⁵⁰ See 47 C.F.R. Pt. 80, Subpt. M.

¹⁵¹ See 47 C.F.R. § 80.13(c).

¹⁵² See 47 C.F.R. Pt. 90, Subpt. Z. The Commission delegated to the Wireless Telecommunications Bureau the authority to adopt rules regarding the reporting of database information, including reporting of any license or station transfers. In November 2007, the Bureau emphasized that the requirement to register fixed and base stations prior to operation is ongoing and that the Commission's rules require registrations for "unused" fixed and base stations to be deleted. See 47 C.F.R. § 90.1307. For purposes of this requirement, the Bureau stated that it will generally consider a fixed or base station to be "unused" if it has not operated for one year or more. See Wireless Telecommunications Bureau Announces Start Date for Licensing and Registration Process for the 3650-3700 MHz Band, *Public Notice*, (continued....)

48. We request comment on our proposed identification of Wireless Radio Services to be excluded entirely from our revised renewal rules. Interested parties that recommend that our designation of services be revised should describe in detail the nature of the proposed change and the rationale for any such change.

B. Permanent Discontinuance of Operations for Wireless Radio Services

49. We propose to adopt a uniform regulatory framework governing the permanent discontinuance of operations for Wireless Radio Services under Parts 22, 24, 27, 80, 90, 95 and 101 of the Commission's rules. Our goal is to adopt a standardized approach for all services, whether licensed by geographic area or by site, to the maximum extent practicable. Our rules governing the permanent discontinuance of operations are intended to afford Wireless Radio Services licensees operational flexibility to use their spectrum efficiently while ensuring that spectrum does not lay idle for extended periods.¹⁵³

50. Because an authorization will "automatically terminate, without specific Commission action, if service is *permanently discontinued*,"¹⁵⁴ it is imperative that our rules provide a clear and consistent definition of permanent discontinuance of operations; they do not. The definition varies by service, and some service rules contain no clear definition.¹⁵⁵ We believe that standardizing the definition of permanent discontinuance of operations will serve the public interest by providing licensees and other interested parties much needed certainty and by affording similarly-situated licensees and like services comparable regulatory treatment.

1. Current Requirements

51. Under section 1.955(a)(3), "[t]he Commission authorization or the individual service rules govern the definition of permanent discontinuance for purposes of this section."¹⁵⁶ Part 22,¹⁵⁷ for example, provides that a "station that has not provided *service to subscribers* for 90 continuous days is considered to have been permanently discontinued"¹⁵⁸ Section 90.157(a), which applies to most Part 90 services, provides that "[a]n authorization shall cancel automatically upon permanent discontinuance

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22 FCC Rcd 19802, 19811 (2007). The Bureau further noted that additional reporting or periodic certification requirements may be necessary to maintain accurate and current registration data and it reserved the right to revisit the matter after the Bureau, as well as licensees, have the opportunity to gauge the effectiveness of the existing requirements for this service. *Id.* at 19810-11.

¹⁵³ See Amendment of Parts 1 and 90 of the Commission's Rules Concerning the Construction, Licensing, and Operation of Private Land Mobile Radio Stations, PR Docket No. 90-481, *Report and Order*, 6 FCC Rcd 7297, 7299 ¶ 14 (1991) ("The year-long period for discontinuance strikes a balance between the licensee's need for operational flexibility and our need to ensure efficient utilization of authorized channels.").

¹⁵⁴ 47 C.F.R. § 1.955(a)(3) (emphasis added). Section 1.955(a)(3) requires licensees to "notify the Commission of the discontinuance of operations by submitting FCC Form 601 or 605 requesting license cancellation." *Id.* We emphasize that an authorization automatically terminates if service is permanently discontinued, even if a licensee fails to file the required form requesting license cancellation.

¹⁵⁵ In some services, a licensee must obtain prior Commission authorization before voluntarily discontinuing service. See, e.g., 47 C.F.R. § 27.66(b), citing 47 C.F.R. § 63.71.

¹⁵⁶ 47 C.F.R. § 1.955(a)(3).

¹⁵⁷ Part 22 governs operations in the Paging and Radiotelephone Service, Rural Radiotelephone Service, Air-Ground Radiotelephone Service, Cellular Radiotelephone Service, and Offshore Radiotelephone Service.

¹⁵⁸ 47 C.F.R. § 22.317 (emphasis added).

of operations.”¹⁵⁹ The rule further provides that “for the purposes of this section, any station which has not operated for one year or more is considered to have been permanently discontinued.”¹⁶⁰

52. In contrast to the Part 22 and Part 90 rules, many services, including those authorized by competitive bidding (such as our Part 24 Personal Communications Service rules and our Part 27 Miscellaneous Wireless Communication Services rules) contain no definition of permanent discontinuance. Thus, subject to meeting any service-specific construction and renewal requirements, a Part 24 or Part 27 licensee might conclude that it could discontinue service for a long period without fear of automatic license termination. Licensees in these services thus might retain their spectrum while it lies idle for extended periods, while Part 22 licensees (including cellular service licensees, which may provide directly competing services) are subject to automatic license termination if they discontinue service to subscribers for 90 days (120 days with a 30-day extension).¹⁶¹ The public interest is not served by such marked regulatory disparities.

2. Proposed Requirements

53. As explained below, we believe that adoption of a uniform discontinuance of service rule for Part 22, 24, 27, 80, 90, 95 and 101 Wireless Radio Services will serve the public interest by ensuring that similarly situated licensees are afforded comparable regulatory treatment. Under our proposal, Part 24 and Part 27 licensees would be definitely subject to the consequence of a discontinuance of service rule—*i.e.*, automatic termination of an authorization. We also believe that adoption of uniform permanent discontinuance policies will serve the public interest by ensuring that valuable spectrum is not underutilized, and by providing certainty to licensees, investors, and other interested parties, which will facilitate business and network planning. Accordingly, we seek comment on the appropriate definition of permanent discontinuance of operations and whether to adopt a single definition for Wireless Radio Services licensed either by geographic area or by site.

54. We seek comment on the length of the period that should be used to define permanent discontinuance of service that would trigger automatic license termination. Our goal is to strike an appropriate balance between providing licensees operational flexibility while ensuring that spectrum does not lie fallow. As noted above, Part 22 licensees are now afforded up to a 120-day discontinuance of service period. Technologies continue to evolve rapidly and we seek to encourage technological innovation by Commission licensees. We believe that a discontinuance of service period longer than 90 or 120 days, such as 180 days, might better enable licensees to implement technology upgrades involving reconfiguration and possible relocation of cell sites and other network elements.

55. We seek comment on the costs and benefits of defining permanent discontinuance as 180 consecutive days or 12 consecutive months during which a licensee does not operate or, for certain services, does not serve at least one subscriber that is not affiliated with, controlled by, or related to the providing carrier. We also request that interested parties address whether a 180-day or 12-month discontinuance period would enable spectrum warehousing.

56. Subject to certain limited exceptions noted below, we tentatively conclude that for any Wireless Radio Service for which prior approval to discontinue service is not required, permanent discontinuance of service should be defined as 180 consecutive days during which a licensee does not

¹⁵⁹ 47 C.F.R. § 90.157(a).

¹⁶⁰ *Id.*

¹⁶¹ See 47 C.F.R. § 22.317 (“any station that has not provided service to subscribers for 90 continuous days is considered to have been permanently discontinued, unless the applicant notified the FCC otherwise prior to the end of the 90 day period and provided a date on which operation will resume, which date must not be in excess of 30 additional days”).

operate or, in the case of Commercial Mobile Radio Service providers,¹⁶² does not provide service to at least one subscriber that is not affiliated with, controlled by, or related to the providing carrier. We propose to consolidate the Commission's permanent discontinuance of service requirements in a new section 1.953 (set forth in Appendix A), and seek detailed comment on the proposed language of section 1.953, and all aspects of our proposal. We point out that new section 1.953 would require a licensee that permanently discontinues service to notify the Commission of the discontinuance by filing FCC Form 601 or 605 requesting license cancellation. We seek comment on this provision and whether there may be alternatives to such a self-reporting requirement.

57. We also tentatively conclude that that our proposed permanent discontinuance rule should apply commencing on the date a licensee makes its initial construction showing or notification. Under this approach, if a CMRS provider makes a five-year construction showing, it would have to serve at least one subscriber that is not affiliated with, controlled by, or related to it in any ensuing 180-day period or else it would be deemed to have permanently discontinued service and its license would automatically terminate without specific Commission action. We question whether in the Narrowband PCS, for example, it would be inequitable for the Commission to reclaim spectrum from a licensee that meets its five-year construction obligation, and then discontinues operations for 180 days before the end of its license term, while only applying a ten-year construction obligation to licensees that elect to demonstrate substantial service. We seek comment whether, under these circumstances, the public interest would be better served if the Commission applied its permanent discontinuance of operations rule only after the initial license term.

58. We note that if the Commission were to adopt a 180-day discontinuance period, a licensee could request more time to implement a network upgrade or to complete a distress sale, for example. The text of proposed section 1.953(f) sets forth a process under which a request for a longer discontinuance period may be filed for good cause, and subject to the requirement that it is filed at least 30 days before the end of the discontinuance period. Under the proposed rule, the filing of a request would automatically extend the discontinuance period a minimum of the latter of an additional 30 days or the date upon which the Wireless Telecommunications Bureau acts on the request. We seek comment on these proposed provisions.

59. In addition, we tentatively conclude that operation of so-called channel keepers—devices that transmit test signals, tones and/or color bars, for example—will not constitute operation for the purposes of our permanent discontinuance rules.¹⁶³ We seek comment below on the application of this proposed framework to various services.

a. Part 22 Public Mobile Services

60. The Commission's Part 22 rules govern operations in the Paging and Radiotelephone Service, Rural Radiotelephone Service, Air-Ground Radiotelephone Service, Cellular Radiotelephone Service, and Offshore Radiotelephone Service.¹⁶⁴ Under Part 22, "any station that has not provided *service to subscribers* for 90 continuous days is considered to have been permanently discontinued, unless the applicant notified the FCC otherwise prior to the end of the 90 day period and provided a date on

¹⁶² See *supra* note 23, defining CMRS.

¹⁶³ See Application of San Diego MDS Company, *Memorandum Opinion and Order*, 19 FCC Rcd 23120, 23126-27 ¶¶ 13-14 (2004) (*San Diego MDS*). See also *BRS/EBS 3rd MO&O*, 21 FCC Rcd at 5731 ¶ 297 (favorably citing *San Diego MDS* when affirming that "transmission of test signals and/or color bars by a BRS/EBS licensee or lessee does not constitute substantial service").

¹⁶⁴ 47 C.F.R. Part 22, Subpts. E, F, G, H, and I.

which operations will resume, which date must not be in excess of 30 additional days.”¹⁶⁵ *Service to subscribers* is defined as “[s]ervice to at least one subscriber that is not affiliated with, controlled by or related to the providing carrier.”¹⁶⁶ We seek comment on whether for each Part 22 service (some of which are licensed by geographic area and some by site), the public interest would be served by defining permanent discontinuance as 180 consecutive days during which a licensee does not provide service to at least one subscriber that is not affiliated with, controlled by, or related to the providing carrier. We seek specific comment on whether the additional operational flexibility that would be afforded by a 180-day or longer period would be beneficial.

b. Part 24 Personal Communications Services

61. Section 1.955(a)(3) provides that an authorization will “automatically terminate, without specific Commission action, if service is permanently discontinued.”¹⁶⁷ The rule also provides that “[t]he Commission authorization or the individual service rules govern the definition of permanent discontinuance for purposes of this section.”¹⁶⁸ For many of the Commission’s services authorized by competitive bidding (such as PCS), the specific service rules do not define permanent discontinuance of operations.

62. We seek comment on whether, for Broadband and Narrowband PCS, the public interest would be served by defining permanent discontinuance as 180 consecutive days during which a licensee does not provide service to at least one subscriber that is not affiliated with, controlled by, or related to the providing carrier. We note that the mid- and end-of-term performance requirements for these services vary based on the size of a market area and authorized bandwidth.¹⁶⁹ Moreover, a narrowband PCS licensee may elect to forego making a five-year mid-term geographic area or population-based construction showing and, instead, elect to demonstrate substantial service by the end of its license term.¹⁷⁰

c. Part 27 Miscellaneous Wireless Communications Services

63. The Commission’s Part 27 Miscellaneous Wireless Communications Services include: (1) 700 MHz Commercial Service (Lower and Upper 700 MHz Bands);¹⁷¹ (2) 700 MHz Guard Band Service;¹⁷² (3) 1.4 GHz Service;¹⁷³ (4) 1.6 GHz Service;¹⁷⁴ (5) Advanced Wireless Service (AWS-1, 1710-1755 MHz, 2110-2155 MHz);¹⁷⁵ (6) Wireless Communications Service (WCS, 2305-2320 and 2345-2360 MHz),¹⁷⁶ and (7) the Broadband Radio Service and Educational Broadband Service.¹⁷⁷ Part 27 does not

¹⁶⁵ 47 C.F.R. § 22.317 (emphasis added).

¹⁶⁶ 47 C.F.R. § 22.99.

¹⁶⁷ 47 C.F.R. § 1.955(a)(3).

¹⁶⁸ *Id.*

¹⁶⁹ See 47 C.F.R. §§ 24.103, 24.203 (narrowband PCS and broadband PCS construction requirements, respectively).

¹⁷⁰ 47 C.F.R. § 24.103(d).

¹⁷¹ 47 C.F.R. Pt. 27, Subpt. F.

¹⁷² 47 C.F.R. Pt. 27, Subpt. G.

¹⁷³ 47 C.F.R. Pt. 27, Subpt. I.

¹⁷⁴ 47 C.F.R. Pt. 27, Subpt. J.

¹⁷⁵ 47 C.F.R. Pt. 27, Subpt. L.

¹⁷⁶ 47 C.F.R. Pt. 27, Subpt. D.

define permanent discontinuance for any of these services. Section 27.66(b), however, requires fixed common carriers in any of these services to obtain prior Commission authorization before voluntarily discontinuing service to a community or part of a community, which will be granted “within 31 days after filing if no objections have been received.”¹⁷⁸ Fixed non-common carrier licensees, on the other hand, may voluntarily discontinue service without prior Commission authorization and need only provide the Commission notice within seven days of such discontinuance.¹⁷⁹

64. Many Part 27 licensees must, as a performance requirement (*i.e.*, construction requirement), make a showing of “substantial service” in their license area during their license term.¹⁸⁰ For these Part 27 licensees, we propose to apply the permanent discontinuance rule effective on the date that a licensee makes its performance showing. Thus, if a licensee makes its substantial service performance showing in year six of its initial license term, thereafter it must serve at least one subscriber that is not affiliated with, controlled by, or related to it in any ensuing 180-day period or else it would be deemed to have permanently discontinued service and its license would automatically terminate without specific Commission action. We seek comment on application of our proposed permanent discontinuance rule to licensees that must make a showing of substantial service in their license area within their initial license term.

65. Rather than demonstrate substantial service as their performance requirement, Part 27 licensees that hold 700 MHz Commercial Services Band authorizations for Blocks A, B, C, and E¹⁸¹ must satisfy population-based or geographic-area performance requirements.¹⁸² Licensees in these spectrum blocks must make their initial construction showing no later than June 13, 2013, or four years from license grant if an initial authorization is granted after June 13, 2009.¹⁸³ We propose to apply a permanent discontinuance rule to these licensees effective upon the date that a licensee makes its first performance showing. We note that, unlike Narrowband PCS licensees, this group of 700 MHz licensees will not have the option of electing to show substantial service at the end of their license term in lieu of making an interim performance showing. Under these circumstances, we find the public interest would be served if we apply our proposed permanent discontinuance rule effective upon a licensee making its first performance showing. We seek comment on our findings and application of our proposed permanent discontinuance rules to licensees for 700 MHz Blocks A, B, C, and E.

66. *Broadband Radio Service and Educational Broadband Service.* As noted above, the Commission is implementing a new plan for BRS and EBS.¹⁸⁴ To enable licensees to transition to the new band plan and deploy new and innovative wireless services, the Commission eliminated its discontinuance of service rules,¹⁸⁵ and adopted a substantial service standard under which all licensees

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¹⁷⁷ 47 C.F.R. Pt. 27, Subpt. M.

¹⁷⁸ 47 C.F.R. § 27.66(b), citing 47 C.F.R. § 63.71.

¹⁷⁹ 47 C.F.R. § 27.66(c).

¹⁸⁰ 47 C.F.R. § 27.14(a). As explained above, a substantial service performance showing is not as comprehensive as the substantial service showing required to support renewal of a license. *See supra* paras. 21-23.

¹⁸¹ Block A corresponds to the 698–704 MHz and 728–734 MHz bands, Block B to the 704–710 MHz and 734–740 MHz bands, Block C to the 746–757 MHz and 776–787 MHz bands, and Block E to the 722–728 MHz band.

¹⁸² 47 C.F.R. § 27.14(g), (h), (i).

¹⁸³ 47 C.F.R. § 27.14 (g), (h).

¹⁸⁴ *See supra* paras. 30-32.

¹⁸⁵ *See supra* para. 31 and note 90.