

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

In the Matter of )  
)  
Amendment of Parts 1, 22, 24, 27, 74, 80, 90, ) WT Docket No. 10-112  
95 and 101 To Establish Uniform License )  
Renewal, Discontinuance of Operations, 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 )

To: The Commission

**COMMENTS  
OF  
THE METROPOLITAN TRANSPORTATION AUTHORITY**

The Metropolitan Transportation Authority (“MTA”), through counsel and pursuant to Section 1.415 and 1.419 of the Commission’s Rules, 47 C.F.R. §§1.415, 1.419, hereby submits its Comments in the above-captioned proceeding.<sup>1</sup>

**I. BACKGROUND**

**A. The Metropolitan Transportation Authority**

The MTA is a public benefit corporation responsible for public transportation in twelve (12) counties in southeastern New York, along with two (2) counties in southwestern Connecticut. The

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<sup>1</sup> Notice of Proposed Rulemaking, WT Docket No. 10-112, 25 FCC Rcd 6996 (2010)(“Notice” or “NPRM”).

MTA carries over 11 million passengers on an average weekday systemwide, and over 800,000 vehicles on its nine toll bridges and tunnels per weekday.

MTA Long Island Rail Road (“LIRR”) and MTA Metro-North Railroad (“Metro-North”) (collectively, “the Railroads” or “the MTA Railroads”) are, respectively, the first and second largest and busiest commuter railroads in the United States. Together, the two railroads, which share track with Amtrak and freight carriers, provide a critical link between New York City’s Central Business Districts and cities, towns and villages east and north of the City. They carry nearly 600,000 customers on an average weekday on over 2,000 rail cars that travel over nearly 1,500 miles of track.<sup>2</sup>

**1. The Long Island Rail Road**

The LIRR is the busiest commuter railroad in North America, carrying 83 million customers last year with 300,000 passengers traveling each weekday on 735 daily trains. Chartered on April 24, 1834, it is also the oldest railroad in the U.S. still operating under its original name. The LIRR is comprised of over 700 miles of track on 11 different branches, stretching from Montauk, on the eastern tip of Long Island to Penn Station in the heart of Manhattan, approximately 120 miles away. The LIRR service territory covers five counties in New York State - Nassau, Suffolk, Queens, Brooklyn and New York - and extends from three major New York City terminals, Penn Station in Manhattan, Atlantic Terminal in Brooklyn and Hunterspoint Avenue in Queens through a major transfer hub in Jamaica, Queens to the easternmost tip of Long Island. Along these extensive routes,

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<sup>2</sup> Attached hereto as Exhibit 1 is a map which depicts the Metro-North and LIRR track lines, together with a depiction of the FCC’s 218-219 MHz Radio Service Auction Blocks.

LIRR services passengers at 124 stations over 319 route miles and 289 highway-rail and 6 pedestrian grade crossings.

## **2. The Metro-North Railroad**

Metro-North carried 80.5 million customers last year, providing 275,000 customer trips each weekday. Metro-North was established in 1983 to operate service formerly provided by Conrail and its various predecessor railroads. Metro-North has 795 miles of track in nine counties. Metro-North serves 120 stations over 380 route miles and 98 highway-rail and pedestrian grade crossings in New York, Bronx, Westchester, Putnam, Dutchess, Orange and Rockland counties in New York, and Fairfield and New Haven counties in Connecticut.

The three lines east of the Hudson River, the Hudson, Harlem, and New Haven, each terminate at Grand Central Terminal, which has 44 platform tracks and 33 miles of track on two levels within its 49 acres. Each day more than 700,000 people pass through the landmarked, historic Terminal.

New Haven Line service, including the Main Line service and three branch lines in Connecticut, is operated pursuant to an agreement with the Connecticut Department of Transportation. Two West-of-Hudson Lines terminating in Hoboken, New Jersey are operated by New Jersey Transit under agreement with Metro-North.

In this capacity, the MTA or its subsidiaries hold licenses authorized under Part 90 of the Commission's Rules, and the MTA is also one of several railroads reviewing the usability of spectrum licensed under other Parts for Positive Train Control ("PTC") use.

**B. FCC Proposals In This Proceeding**

In this proceeding, the Commission seeks to clarify and make consistent across multiple radio services rules regarding construction, discontinance of operation and renewal of authorizations. In proposing these amendments, the Commission notes the background which led to the development of some of the rules, and the potential harm from inconsistent application of policies. The NPRM also recognizes that some differences exist between site-based and geographic-based licenses.

**II. COMMENTS**

The MTA supports the Commission's goals in this proceeding. With many entities licensed under multiple Parts of the Commission's Rules, clarification, simplification and consistency in the Commission's construction, operation and renewal rules is important to ensure that licensees do not accidentally lose authorizations resulting from simple misunderstanding. Equally important, the Commission must ensure that spectrum is not held for years, even decades, by entities with no real intention to construct, operate and/or (where required) serve the public.

**A. The Application Of Renewal And Operation Rules For Site-Based Licenses**

Generally, the Commission's Part 90 Rules provide that licensees may discontinue operation for up to one year (without specific Commission authorization) and maintain their authorization. Thus far, this rule has seemed to work well, as the rule takes into account those licensees that temporarily deconstruct systems in order to modify the systems. Further, the rule permits licensees with seasonal operations the ability to maintain their authorizations.<sup>3</sup>

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<sup>3</sup> However, the Commission should be wary of licensees that repeatedly construct their licenses for brief periods, then immediately deconstruct for a year. *See*, for example, Letter from William H. Kellett, Attorney, Licensing Division, to Lloyd W. Coward, Esquire, 93F553, dated

The MTA encourages the Commission to maintain this rule for Part 90 site-based licenses, as well review its usefulness for other site-based services. In addition, the MTA encourages the Commission to discuss in its final Report & Order in this proceeding the history developed with regard to Part 90 authorizations in determining whether a station should be considered non-operational. For example, the Commission has established some of the following criteria in reviewing whether stations have been placed in operation (or have been removed from service):

1. Authorizations must be placed in operation at authorized locations with antenna height and effective radiated power (“ERP”) consistent with their authorizations;<sup>4</sup>
2. Commercial licensees must be providing service to at least one unaffiliated subscriber unit (for conventional licensees) or two unaffiliated subscriber units (for trunked systems) in order to be considered operational;
3. Parties claiming that an authorization is unconstructed must provide more than mere sporadic monitoring information.<sup>5</sup>

In addition, the MTA agrees that the Commission should no longer recognize “multi-frequency repeaters” as a valid means of construction.<sup>6</sup> The use of such units has led to significant spectrum warehousing, robbing entities such as the MTA of the ability to access unused spectrum which is critically needed.

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December 29, 1993 (regarding construction for less than two weeks).

<sup>4</sup> *Robert A. Berry*, DA 93-1200, released October 12, 1993.

<sup>5</sup> *See*, for example, Letter from William H. Kellett, Attorney, Office of Operations, to Marilyn I. Suchecki, Esquire, 94F275, dated April 26, 1995.

<sup>6</sup> In contrast, *See, Aeronautical Radio, Inc.*, DA 88-1851, released December 7, 1988 (construction of one channel does not constitute construction of all channels at the site); Letter from W. Riley Hollingsworth, Deputy Associate Bureau Chief, to Elizabeth R. Sachs, Esquire, 93F602, dated May 18, 1997 (“A reasonable interpretation of the requirement would not have included periodic programming of frequencies and temporary sharing of existing transmitters...”).

Provided that the Commission's operational rules are followed, Part 90 site-based licensees should have a renewal expectancy. The MTA agrees that it is appropriate that such licensees should provide a certification at renewal that the facilities are operational consistent with the Commission's Rules, without a specific showing with regard to each facility.

**B. The Application Of Renewal And Operation Rules For Geographic-Based Licenses**

Generally, the MTA supports the Commission's proposals with regard to geographic-based licenses. However, the MTA believes that the Commission must recognize that mere inconsistency across rule Parts regarding operational status does not give licensees carte blanche to claim that facilities that have been non-operational for years are not "permanently discontinued" because of lack of mention of specific time frames for non-operation. Rather, the MTA encourages the Commission to be aggressive in seeking recovery of spectrum where the licensee has done nothing more than make some minimal effort to meet construction rules, then de-constructed the facilities for years without any attempt to re-construct. At a time when spectrum is an important part of our nation's public safety and economy, the Commission must not reward spectrum warehousing.

**III. CONCLUSION**

WHEREFORE, the premises considered, it is respectfully requested that the Commission act in accordance with the views expressed herein.

Respectfully submitted,

METROPOLITAN TRANSPORTATION  
AUTHORITY

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