

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)
)
Amendment of Parts 1, 22, 24, 27, 74, 80,)
90, 95 and 101 to Establish Uniform)
License Renewal, Discontinuance of)
Operation, and Geographic Partitioning)
and Spectrum Disaggregation Rules and)
Policies for Certain 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 Renewal)
Applications)

WT Docket No. 10-112

Comments of United States Cellular Corporation

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Summary

United States Cellular Corporation ("USCC") believes that the wireless renewal standards proposed in the Notice of Proposed Rulemaking in this proceeding are profoundly ill advised and contrary to the public interest. They would generate enormous and unnecessary new paperwork burdens for wireless licensees and create investment-killing uncertainty concerning the security of wireless licenses.

The proposed new rule would replace cellular and PCS renewal procedures which have worked well and served the public interest. At present, in the absence of competing applications and/or petitions to deny, most cellular and PCS licenses are routinely renewed. Under the proposed rule, the FCC would have to consider a mandatory, detailed renewal expectancy filing in light of "factors" not otherwise reflected in the Commission's actual service rules.

This would introduce an unprecedented level of uncertainty and difficulty into the license renewal process. The new rule would be profoundly unfair to cellular and CPS licensees, as it would alter regulatory expectations with which they have lived for decades and in accordance with which they constructed their systems.

The new standards, without reasoned explanation, repudiate the idea of "flexibility" in meeting customer needs and do not acknowledge either the economic constraints faced by licensees or the problem that sometimes meeting one service objective may mean not being able to meet others. Also, it may be that the FCC will not, in fact, deny license renewal applications by licensees who have met their buildout requirements and otherwise complied with the FCC's rules. If so, there is no reason to adopt this rule.

USCC believes that allowing competing renewal applications serves the public interest and allows real world comparisons of actual and proposed service. They are superior to the "virtual" hearings proposed in the NPRM. USCC believes that the wireless renewal rules can

"harmonized" to comply with the cellular procedural rules now in place, but that different renewal standards can be permitted for different wireless services.

USCC also believes that the NPRM would require that too much extraneous information be filed with renewal applications. Accordingly, USCC proposes that information requirements be limited to the licensee and its parent company and that they should only be required to file adjudicated findings of statutory or rule violations.

Lastly, USCC does not object to requiring partitionees to meet the buildout requirements for their radio services, provided they are given adequate time to do so. However, USCC strongly objects to disaggregatees being required to meet such buildout requirements, because that would make spectrum disaggregation uneconomic.

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Comments of United States Cellular Corporation

Introduction

United States Cellular Corporation ("USCC") hereby files its comments on the Notice of Proposed Rulemaking and Order¹ in the above-captioned proceeding. USCC will focus our comments on the NPRM's proposal to "create consistent requirements for renewal of licenses," and will also briefly discuss aspects of the FCC's proposals regarding to partitioning and disaggregation. USCC has no objection to harmonizing wireless renewal procedures, but believes that the NPRM's proposed procedures and standards are profoundly ill-advised and contrary to the public interest. They would generate enormous and unnecessary new paperwork burdens, and create investment-killing uncertainty for licensees concerning the security of their licenses. The proposed new rule would replace a renewal system which has worked smoothly

¹ 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 Spectrum; 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, released May 25, 2010 ("NPRM").

for more than fifteen years for cellular and PCS licenses and has assisted in the building of our country's splendid wireless network, with one likely to be marked by delays, litigation, costs, and uncertainties with no counterbalancing public benefits. We strongly urge the Commission not to go down this road.

I. The Present Cellular and PCS Renewal Standards Have Served The Country Well

As is noted in the NPRM,² the Part 22 cellular rules "establish a detailed, two-step comparative hearing process for addressing a timely filed renewal application and all timely filed mutually exclusive applications." The NPRM correctly notes the lack of specificity in the Part 24 PCS renewal rules and the inconsistency between the Part 22 rules and the Part 27 WCS renewal rules.³ And the NPRM discusses the different approach to renewal filings taken in the 2007 Report and Order dealing with certain 700 MHz bands, which the NPRM correctly refers to as a "new paradigm"⁴ for renewal filings. The FCC, in the 700 MHz First Report and Order, eliminated competing renewal applications, but required renewal applicants, as part of their renewal filings, to file a detailed renewal showing, demonstrating that they were providing service sufficient to obtaining a "renewal expectancy," formerly referred to as "substantial service." Failure to meet the FCC's performance standards for those licenses will theoretically result in denial of license renewal and the licensee's spectrum being returned to the FCC for reassignment.⁵ The FCC now proposes, in essence, to apply a similar system to all license

² NPRM, ¶9.

³ NPRM, ¶¶10-12.

⁴ 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); NPRM, ¶16.

⁵ NPRM, ¶16. The FCC now proposes to refer to a "substantial service" showing in the renewal context as its "renewal showing," to avoid confusion with "substantial service" buildout requirements.

renewal applications for wireless services licensed by geographic areas, including cellular licenses.⁶

Reading the NPRM, it is not clear whether the FCC is aware that it is proposing a radical change in the cellular and PCS license renewal process. The crucial difference between the present system and what the NPRM proposes, which is not discussed in the NPRM, is that today there is no requirement to make an elaborate renewal expectancy showing unless the license renewal application is subject to competing applications or petitions to deny. Under the current rules, cellular and PCS renewal applicants need file only the "Renewal Only" portion of FCC Form 601, answering the questions and making the certifications required by that form. The applications are placed on public notice, providing an opportunity to file competing applications or petitions to deny.

In the absence of such applications or petitions, or of issues the FCC wishes independently to review, cellular and PCS licenses are generally routinely renewed for ten year license terms. The simplicity and certainty of this process have had great public benefits. The system has worked. Regulatory predictability is the indispensable ally of investment and nothing has been more critical to wireless investment than a reasonable certainty on the part of wireless licensees that if they met their buildout requirements and complied with the FCC's Rules that their licenses would be renewed. Over the past 15 years, during both good and bad economic times, the performance of the US wireless industry in serving the public interest is beyond peradventure. A few comparative statistics for the USA tell the story. In 1985, CTIA estimates that there were 340, 123 wireless "connections." In 2009, there were 285, 646, 191 such connections. In 1985, industry revenues were \$482,428,000. In 2009 revenues were \$152,551,854,000. During the same period, the number of cell sites has increased from 913 to

⁶ NPRM, ¶20.

247,081 and the number of "direct service provider employees" from 2,727 to 249,247.⁷ A ubiquitous national wireless network has been created. It was not created by magic. Rather it came into being through the entrepreneurial efforts of thousands of Americans employed in the wireless industry, and through the wise and "light handed" regulatory policies of the FCC. Among those being policies which provided reasonable certainty of license renewal for all carriers meeting the specific and well defined build-out obligations required of them. The current system of wireless license renewal is not a "problem" and does not need to be "solved." As will be shown below, the proposals in the NPRM are no "solution" at all and if implemented would create massive problems for wireless licensees.

II. The NPRM's Proposals Are Unnecessary and Counterproductive

Under proposed Section 1.949, renewal of a wireless applicant's license would now depend on the applicant's filing a "detailed description" of its service during the "entire license period." The FCC would consider the following five "factors:" (1) the level and quality of a licensee's service, including population and area served, the number of subscribers and services offered; (2) the date service was commenced, whether service was ever interrupted, and the duration of any interruption or voltage; (3) the extent to which service is provided to rural areas; (4) the extent to which service has been provided to tribal lands and (5) any other factors associated with "levels of service to the public." Adding to the uncertainty, the NPRM also proposes consideration of factors in addition to those in the proposed rule, including an applicant's "investments" in its system, and whether the licensee has offered a "specialized or

⁷ Source: CTIA – The Wireless Association, Annualized Wireless Industry Survey Results – December 1985 to December 2009.

technologically sophisticated" service or is serving "niche" markets or "populations with limited access to telecommunications services."⁸

Especially for the cellular and PCS licenses scheduled for renewal in the next few years, adoption of anything like the proposed rule would introduce an unprecedented level of uncertainty and difficulty into what has been a routine process. First, this would suddenly impose a huge paperwork burden on licensees, requiring them to "reconstruct" or "construct" records concerning "in service" dates for "interior" cells which cellular licensees have not had to keep since 1992, and which PCS licensees have never had to keep. For example, USCC, a mid-sized carrier, has over 63 cellular licenses up for renewal this year. Having to assemble the kind of data contemplated by such filings would be difficult, expensive and time consuming. Such burdens require a serious public interest justification, which is utterly lacking in the NPRM. In fact, the proposed renewal rule, Section 1.949, would be subject to the same legal infirmities as the FCC's proposed "back up power," a/k/a "Katrina rules," and its adoption would likely have a similar outcome.⁹

Second, the newly proposed rules would be profoundly unfair to cellular and PCS licensees. The newly proposed rule would alter regulatory expectations with which licensees have lived for decades and make license renewal, the lifeblood of any FCC regulated business, dependent on new and extraneous "factors." USCC, for example, is one of the few remaining mid-sized wireless carriers. Its licenses up for renewal this year have been renewed at least once before. These are licenses for cellular systems in which millions of dollars have been invested and in which hundreds of cells have been built, whose buildout requirements have been long

⁸ NPRM, ¶¶27-28.

⁹ See, CTIA v. FCC, No. 07-1475, Order, United States Court of Appeals for the District of Columbia Circuit, released July 31, 2009 (vacating FCC "back up" power rules following November 25, 2008 action by the White House Office of Management and Budget "disapproving" the relevant "information collection.").

since been met and far surpassed. At the very least, the proposed rules should not be made retroactive for this year's renewal filings or for any renewal filing made over the next several years, since carriers will have relied on the existing requirements for the planning and operation of their wireless businesses for the bulk of the prior 10 year license period. Thus, contrary to the action taken in the order accompanying the NPRM (§103), any renewal grant for this year's wireless findings should be final.

The renewal of those licenses and thus the future of wireless carriers should not have to depend on whether FCC lawyers and economists believe that USCC's or any other licensee's service to "niche" markets or "rural" areas, however defined, meets their expectations. If the Commission wishes to require that certain types of service or service to certain types of areas must be provided it should do so in its service rules, and not through the renewal process.

It should be noted that USCC, like other wireless carriers, has continually expanded its network and upgraded its service, from analog to digital, from first to third wireless generation. USCC employs 1xRTT and 1xEV-DO technology. It offers the Android phone and a wide variety of other handsets. Since the beginning of 2007 alone, USCC has constructed approximately 1,467 wireless base stations. In short, USCC strives in every way to improve its service to keep and win customers in a competitive environment. It does not need the FCC looking over its shoulder and second guessing its investment and service deployment decisions.

Third, the proposed new renewal standards, again without reasoned explanation, utterly repudiate the idea of "flexibility" in meeting customer needs. Nowhere in the NPRM does the FCC acknowledge that for a licensee to meet one objective, say service to a "niche" market, may mean not being able to meet other objectives, such as service to rural areas or tribal lands. All

are simply included as "factors" to be weighed in the renewal decision at the discretion of the regulator. This is not in the public interest.

Also, the NPRM contains no acknowledgement that for a licensee to be able to meet a laudable social goal, such as service to tribal lands or rural areas, may not be economically possible in certain circumstances, especially where universal service support is not available. For a licensee to have to defend its investment and resource allocation decisions in the context of a license renewal proceeding, years after they were made, would be a nightmare. Moreover, this reverses FCC policies concerning renewals adopted as recently as five years ago. Formerly, the FCC understood and embraced the creative possibilities of flexibility in adopting renewal rules for the Broadband Radio Service and Educational Broadband Service, which permitted licensees in those services to meet alternative "safe harbor" renewal criteria, including service to a fixed percentage of the market area, or a niche market, or rural areas.¹⁰ The NPRM recognizes that BRS and EBS systems will thus not comply with its new renewal rule and proposes to grant BRS licensees whose licenses expire next May a one time reprieve from the new renewal standards.¹¹ However, we would suggest that BRS and EBS licensees should not subsequently be forced to conform to renewal requirements which may well be uneconomic for them and result in the same problems which caused the FCC to embrace flexibility for those frequency bands in the first place. The FCC should consider allowing different renewal standards in different wireless services, even it adopts uniform procedures.

¹⁰ See, Amendment of Parts 1, 21, 23, 24, 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 and Order and Third Memorandum and Order and Second Report and Order, 21 FCC Red 5606, ¶286 (2006).

¹¹ NPRM, ¶32.

Fourth, it may be that these apprehensions are misplaced and that the FCC would not, in fact, decline to renew the license of a cellular or PCS renewal applicant which had met its buildout requirements, complied with the FCC's rules, and provided excellent service to its customers, while perhaps not meeting one of the FCC's new criteria for judging licensee performance. But if that is the case, there is no reason to adopt this rule in the first place.

III. It Is Not Necessary To Get Rid of Competing Renewal Applications

The NPRM assumes that it is very important to get rid of competing renewal applications, alleging that the current process is "unduly burdensome for an incumbent licensee and strain[s] available Commission resources."¹² However, in return for this "favor," the FCC would, in essence, require a "virtual" comparative proceeding for every license renewal filing. This contrasts with the present situation, in which competing applications are rare. The "burden" of the proposed system will thus be far greater than the present system, both for licensees and the FCC, which will be plunged each year into hundreds of renewal "proceedings," which will be litigated to the Supreme Court in every case in which a renewal application is denied.

Moreover, the present system is actually fairer than the proposed alternative. At present, if an entity believes that it could provide better cellular or PCS service than an incumbent licensee in a given market, it can file a competing application and make its case. Its proposed service can be weighed against that of the incumbent in an adversary proceeding in which competing claims can be assessed in light of real world economic constraints. By contrast, in the "virtual" proceeding contemplated by the proposed rule, the FCC would consider the incumbent's service, not in relation to a concrete competing proposal by an actual applicant but only in

¹² NPRM, ¶40.

accordance with its own standards, which may be perfectionist and impractical in a given circumstance.¹³

USCC would note, however, that we support the NPRM's wise proposal to allow renewal applicants in site-based services to obtain license renewal by a certification and a demonstration of compliance with FCC rules and policies.¹⁴

IV. The FCC's Rules Can Be Harmonized In Accordance With The Cellular Rules

The NPRM correctly notes that the renewal standards for wireless services are inconsistent and that some 700 MHz frequencies are now subject to renewal standards and procedures similar to those now contemplated for all wireless services in the NPRM.¹⁵ But the NPRM wrongly assumes that the FCC's decision in 2007 in relation to 700 MHz renewal standards and procedures was correct and that the Part 22, Part 24, and Part 27 renewal standards should be brought into conformance with it. We would suggest that that assumption is mistaken and that the FCC should reconsider its decision in the 700 MHz First Report and Order, especially since those 700 MHz licensees must now meet demanding, EA based, area buildout requirements, amounting to 70 percent coverage by the eighth year of their license term.¹⁶ Again, it is difficult to imagine a licensee which had met a buildout standard that arduous and otherwise complied with all FCC requirements being denied renewal of its license.

However, since those 700 MHz licenses will not come up for renewal until 2019 at the earliest, it is less urgent to revise that rule than not to impose its misguided and counterproductive requirements on cellular and PCS systems up for renewal in the next few years. At least 700 MHz license holders have the benefit of knowing what license renewal

¹³ We obviously assume the entire good faith of FCC staff members, but they would be administering a standardless rule, always an invitation to various types of administrative arbitrariness.

¹⁴ NPRM, ¶¶ 33-35.

¹⁵ NPRM, ¶¶ 20-29.

¹⁶ See, Section 27.14(g) of the FCC's Rules.

procedures they will be subject to for the duration of their license term so that they can plan accordingly, thereby mitigating some of the burdens created. However, there is no pressing need or indeed any need for the FCC to take the actions proposed in the NPRM for cellular and PCS license renewals. Indeed, there is every reason not to. The FCC should certainly not adopt proposed Section 1.949.

V. **The Proposed Rule Would Request Too Much Irrelevant Information With Renewal Applications**

As discussed above, the FCC should not alter the present cellular and PCS renewal procedures. If, however, the FCC does decide to amend the existing requirements, USCC urges the FCC not to adopt certain of the documentation requirements now being considered in proposed Section 1.949 of the Rules.

As part of the proposed "regulatory compliance demonstration" being considered in the NPRM, the FCC is considering requiring a renewal applicant to file:

"copies of all FCC orders finding a violation or 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 the renewal is sought)."¹⁷
(emphasis added)

The NPRM goes on to state that for this purpose 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 in Review finding a violation or an apparent violation of the Communications Act or my FCC rule or policy."¹⁸

¹⁷ NPRM, ¶38.

¹⁸ Ibid.

Consent decrees would not be included, unless they included an admission of violation of a rule or policy.¹⁹

Such requirements would be overbroad and unfair. First, it would not be reasonable to require a licensee to supply copies of all notices of violation or notions of "apparent" liability (which may or not have resulted in a finding of violation) for all commonly owned subsidiaries for a ten year period. For example, how would a failure by one cellular licensee subsidiary in Maine to advise the FAA of the restoration of lighting on a tower in 2003 legitimately bear on the qualifications of an affiliated cellular licensee in Iowa to have its license renewed in 2010?

Second, only adjudicated findings of rule violations should be relevant in any case. USCC has, on many occasions, explained to the FCC in response to notices of violation or even notices of apparent liability that in fact no violation of the rules had taken place. The FCC has responded by cancelling the relevant notice or otherwise advising USCC that the matter was closed. Licensees should not have to report such mistaken notices in their applications, let alone the mistaken notices sent to commonly owned licensees.

If the FCC believes it necessary to change the existing rule, the reporting requirement should be limited to the licensee and its parent company or companies and should be limited to adjudicated findings of statutory or rule violations.

VI. The FCC Should Not Change The Disaggregation Rules

The NPRM proposes to modify the FCC's geographic partitioning and spectrum disaggregation rules to require each party to such arrangements to have to independently satisfy the construction obligations under the relevant service rules.²⁰ As the NPRM notes, this

¹⁹ Ibid, Footnote 111.

²⁰ NPRM, ¶72.

contrasts with current wireless rules which permit for greater flexibility in meeting applicable buildout requirements.²¹

Again, USCC sees no need to change the current rules, which we believe, have served the public interest by permitting flexible arrangements which have increased the wireless services available to the public. However, USCC would not object to a requirement which required partitionees to meet applicable buildout requirements for their partitioned service areas, provided they are given adequate time to comply with this new requirement, which alters the legal landscape in which they have entered into such arrangements. We would suggest that all existing partitionees be given five years to bring their systems into compliance with the new rules and all future partitionees have five years from acquiring their newly licensed service areas to do so.

However, USCC strongly opposes any such buildout requirements for disaggregatees. It is possible under current rules, for example, for a disaggregatee to acquire five megahertz of spectrum in a PCS MTA service area, leaving the incumbent licensee with 25 MHz. The incumbent disaggregator may meet the ten year 66 2/3 percent of population coverage requirements for both parties.²² However, the disaggregatee is now subject to a "substantial service" requirement in a renewal proceeding.²³

The FCC could make the latter requirement clearer and more explicit, but should not impose requirements that the disaggregatee also cover two thirds of the MTA's population while holding only 5 MHz of spectrum, or, for example, adopt a rule which would require a 700 MHz disaggregatee to cover 70 percent of the area of an EA. We believe that adoption of this rule would be a huge disincentive to spectrum disaggregation, which is contrary to the FCC's

²¹ Ibid, ¶¶ 74-90.

²² See, Section 24.104(g)(i) of the FCC's Rules.

²³ See, Section 24.16(a) of the FCC's rules.

previously announced goal to increase spectrum sharing and leasing. In this, as with other proposals in the NPRM, excessive regulation will prove counterproductive.

Conclusion

For the foregoing reasons, the FCC should not adopt the license renewal proposals made in the NPRM and should modify its proposed information requests connected with renewals to make them less burdensome. The FCC should also not adopt the disaggregation proposals contained in the NPRM.

Respectfully submitted,

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