

**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)	WT Docket No. 10-112
)	
Imposition of a Freeze on the Filing of Competing Renewal Applications for Certain Wireless Radio Services and the Processing of Already-Filed Competing Renewal Applications)	
)	

COMMENTS OF VERIZON WIRELESS

John T. Scott, III
Vice President and Deputy General Counsel-
Regulatory Law
Michael Samsock
Counsel

VERIZON WIRELESS
1300 I Street, N.W.
Suite 400 West
Washington, D.C. 20005
(202) 589-3760

Dated: August 6, 2010

SUMMARY

Verizon Wireless is a strong proponent of harmonization in licensing, and supports several of the Commission's proposals to modify the wireless license renewal process because they will harmonize and simplify existing rules. However, the Commission's proposed new renewal showing would be unnecessarily burdensome and ambiguous, and could lead to inefficient investments in wireless services. There is no evidence of any specific problem regarding the level or quality of service that the Commission has explained it is attempting to address with the proposed detailed renewal showing. Moreover, the elements of that showing are vague and thus fail to provide licensees with clear notice of what they would be required to do during the license term in order to provide a sufficient demonstration at renewal time. The lack of clear notice to licensees as to how the Commission would evaluate their renewal showing is a separate problem that the new process would create, and it is particularly serious given the drastic consequences of denial of a renewal application – loss of license.

Application of the proposed renewal framework to judge past license performance would also be unlawfully retroactive. In the *Order* accompanying the *Notice*, the Commission directed parties whose license terms expire during the pendency of this proceeding to file their renewal applications under the current rules and stated that the applications would be granted only on a “conditional basis” subject to any new rules that are later adopted in this proceeding. This action clearly constitutes retroactive rulemaking, because it burdens and potentially penalizes licensees for their past actions by applying to those actions a yet-to-be-determined standard of review. Therefore, regardless of what renewal requirements the Commission ultimately adopts, it cannot impose those requirements to judge the past conduct of a licensee whose license term concluded (or substantially occurred) prior to the effective date of any new rules.

Verizon Wireless proposes that the Commission adopt for all wireless services the same standard “service certification” that it is proposing for site-by-site licensees. This standard would not be burdensome on licensees or on Commission staff charged with reviewing the thousands of renewal applications filed each year, but would give the Commission (in addition to the construction requirements already imposed on various services) information as to the licensee’s record at the end of its license term. Verizon Wireless supports the Commission’s proposals to preclude competing renewal applications and require the return of spectrum for licenses that are not renewed as serving the public interest. It also supports harmonizing the Commission’s discontinuance rules, and recommends that the Commission adopt a single 12-month definition of a permanent discontinuance of service that triggers loss of license, so that spectrum that is fallow for an extended period is returned for auction. Verizon Wireless does not, however, support the proposed changes to existing rules for partitioning and disaggregating spectrum licenses. The current rules have worked well to foster a robust secondary market for spectrum, and there is no factual basis evidencing problems that warrant changing them.

TABLE OF CONTENTS

I. INTRODUCTION 1

II. THE PROPOSED RENEWAL SHOWING IS UNNECESSARILY BURDENSOME AND CONTAINS EXCESSIVELY VAGUE REQUIREMENTS..... 2

III. THE LACK OF A DEFINED STANDARD OF REVIEW FOR RENEWAL APPLICATIONS FAILS TO PROVIDE CLEAR NOTICE TO LICENSEES AS TO WHAT CONDUCT IS REQUIRED TO SECURE RENEWAL 5

IV. APPLICATION OF THE PROPOSED RENEWAL FRAMEWORK TO JUDGE PAST LICENSEE PERFORMANCE WOULD BE UNLAWFULLY RETROACTIVE..... 6

 A. The Proposal Would Constitute Retroactive Rulemaking If It Applies to Conduct During Past License Terms 7

 B. The Proposal Would Also Have Unlawful Secondary Retroactive Effects Because Licensees Have Relied on the Existing Renewal Policy 10

V. VERIZON WIRELESS SUPPORTS A SINGLE SERVICE CERTIFICATION AND COMPLIANCE DEMONSTRATION FOR ALL WIRELESS SERVICES 12

VI. PRECLUDING COMPETING RENEWAL APPLICATIONS AND REQUIRING THE RETURN OF SPECTRUM UPON FINAL DENIAL OF RENEWAL WOULD SERVE THE PUBLIC INTEREST 14

VII. THE COMMISSION SHOULD ADOPT A SINGLE DISCONTINUANCE RULE FOR ALL SERVICES 15

VIII. THE COMMISSION SHOULD NOT CHANGE EXISTING PARTITIONING AND DISAGGREGATION RULES..... 16

IX. CONCLUSION..... 18

**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)	WT Docket No. 10-112
)	
Imposition of a Freeze on the Filing of Competing Renewal Applications for Certain Wireless Radio Services and the Processing of Already-Filed Competing Renewal Applications)	

COMMENTS OF VERIZON WIRELESS

I. INTRODUCTION

Verizon Wireless hereby responds to the Commission’s *Notice of Proposed Rulemaking* seeking comment on uniform license renewal, discontinuance of operations, and geographic partitioning and spectrum disaggregation rules and policies for wireless radio services.¹ Verizon Wireless is a strong proponent of a regulatory environment that will encourage investment in new facilities and services by providing licensees with certainty regarding their license renewal requirements. The Commission’s proposed new renewal standard would, in contrast, inject uncertainty into the renewal process. Verizon Wireless instead supports a “service certification”

¹ 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 10-112, *Notice of Proposed Rulemaking and Order* (rel. May 25, 2010)(“*Notice*” or “*Order*” respectively).

renewal showing, proposed by the Commission for site-by-site licensees, for all wireless providers. Such a showing would not be unduly burdensome on licensees while still providing the Commission with additional information as to the services licensees are providing to the public.

II. THE PROPOSED RENEWAL SHOWING IS UNNECESSARILY BURDENSOME AND CONTAINS EXCESSIVELY VAGUE REQUIREMENTS.

The *Notice*'s goal of harmonizing renewal criteria for multiple wireless services is at first glance supportable. However, the *Notice* fails to identify any specific problem regarding the level or quality of service that it is attempting to address through the proposed renewal showing. Without evidence pointing to problems with the existing rules, harmonization alone is an insufficient reason to impose new rules that would burden licensees and Commission staff. Further, the Commission's current renewal requirements have provided licensees with a good deal of certainty as to the continued validity of their authorization – certainty that promotes even further investment. Verizon Wireless questions whether there is anything significant to be gained by adoption of the proposed renewal showing that would outweigh the administrative burdens and uncertainty it will create.

The proposed renewal showing in Section 1.949² would require a detailed description of the applicant's provision of services during the entire license period and address (1) the level and quality of service provided by the applicants (e.g. the population served, the area served, the number of subscribers, the services offered); (2) the date service commenced, whether service was ever interrupted, and the duration of any interruption or outage; (3) the extent to which service is provided to rural areas; (4) the extent to which service is provided to qualifying tribal

² See *Notice* at ¶¶ 25-28.

land; and (5) any other factors associated with the level of service to the public. In addition, the *Notice* seeks comment on other factors that could be included in a renewal filing, including: 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; a description of its investment in its system; a list, including addresses, of all cell transmitter sites constructed; identification of the type of facilities constructed and their operational status; 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; consideration of whether the licensee's operations serve niche markets or focus on serving populations outside of areas served by other licensees; and consideration of whether the licensee's operations serve populations with limited access to telecommunications services.³

While the proposed renewal showing is similar to the renewal showing placed on 700 MHz licenses, there is a significant difference between those licensees and other CMRS licenses. 700 MHz licensees had prior notice of the construction and renewal requirements when they purchased those licenses at auction. In contrast, in every other case whether licenses were acquired at auction or by other means including secondary markets, licensees were acquiring the licenses and making investments based on different regulations. Billions of dollars of investment have already been made in networks that provide voice, data, and broadband services in reliance on the existing construction and renewal requirements. Changing the rules now would cause unnecessary regulatory burdens without any clear need for doing so. The *Notice*, however, contains no facts or data justifying such changes.

³ See *Notice* at ¶ 27.

There are other problems with the proposed elements of the renewal showing in Section 1.949 and the possible additional factors to be included in a renewal filing. First, many are vague and do nothing to reach the Commission’s stated goal of “providing licensees certainty regarding their license renewal requirements.”⁴ For instance, terms like “level and quality of service” and “any other factors associated with the level of service to the public”; consideration of “sophisticated services”; service to “niche markets”; and service to populations with “limited access” to telecommunication services could not be more ambiguous. All would need precise definitions.

Second, many of the proposed requirements request information that the Commission already has, such as service coverage, outages, and enforcement actions taken or pending against the licensee. The benefits of requiring the licensee to generate and file this information would not exceed the costs, raising issues as to whether these proposals comply with the Paperwork Reduction Act.⁵

Third, many elements of the renewal showing the *Notice* discusses would require the development of detailed information that licensees currently do not maintain, such as location of rural and tribal areas within a license area, production of records of expansion (potentially covering the past 15 years), timetables for the construction of new sites in the future (even though such timetables are inevitably dependent on securing local zoning and other approvals), and description of investment (presumably in the network which is associated with the renewal application). Developing and filing all of this additional information will only burden licensee and Commission staff and delay the delay the renewal process.

⁴ See *Notice* at ¶ 7.

⁵ 44 U.S.C. § 3501 et seq. Comments on the *Notice*’s proposed information collection requirements are due September 7, 2010, according to the Federal Register publication of the *Notice*. 75 Fed. Reg. 38959.

Fourth, several proposed factors that could be part of the new renewal standard would require disclosure of competitively sensitive information. Information such as the specific locations of cell sites, past record of expansion, timetable for construction of new sites; and description of investment in the licensee's system would require confidential treatment and could result in a flurry of FOIA requests being filed with the Commission which would surely be contested, imposing yet more burdens on Commission staff. Again, there is no countervailing benefit to requiring such data to be included in a renewal application.

III. THE LACK OF A DEFINED STANDARD OF REVIEW FOR RENEWAL APPLICATIONS FAILS TO PROVIDE CLEAR NOTICE TO LICENSEES AS TO WHAT CONDUCT IS REQUIRED TO SECURE RENEWAL.

The problems with the *Notice's* burdensome and vague elements of a renewal showing would be compounded by uncertainty around what standard of review the Commission would apply to evaluate that showing. As noted above there are over a dozen factors proposed or raised for comment, but the *Notice* provides no guidance as to how those factors will be weighed in determining whether a renewal application should be granted, or whether licensees that have met their build-out requirements and other regulatory obligations will have an expectancy of renewal.

The absence of a concrete standard for reviewing renewal applications would inject further uncertainty – undermining the *Notice's* professed objective of increasing licensees' certainty as to what they must do to secure renewal. For instance, does a licensee need to provide service to rural areas or tribal lands in addition to meeting the applicable construction requirement? How will the Commission define or even evaluate “quality of service”; “record of expansion”; “description of investment”; “specialized or technologically sophisticated service that does not require a high level of coverage to benefit customers”; “niche markets”; or operations serving “populations with limited access to telecommunications services”? Will there

be separate standards for licenses that are used primarily for voice or data? Would quality of service require carriers to collect data relevant to dropped voice calls, or collect information on average data speeds per hour, day, month year, over every license a carrier uses to provide service? And even if it did, how would the Commission evaluate that data for various air interfaces currently in use or those that will be used in the very near future? How will the Commission weigh service interruptions and discontinuances of one license when large carriers like Verizon Wireless operate nationwide networks that seamlessly use multiple licenses in a single network to provide service? These uncertainties could cause many licensees to make inefficient investments in the hope of securing a better likelihood of renewal.

More fundamentally, due process requires the Commission to provide clear notice to licensees of what standard of conduct that is expected – particularly where the penalty for not meeting that standard is the ultimate sanction of loss of license. The D.C. Circuit has stated that, as a matter of due process, a licensee must have “sufficiently fair notice of an agency’s interpretation of a regulation” before the licensee can be punished. The test is “whether by reviewing the regulation and other public statements issued by the agency, a regulated party acting in good faith would be able to identify, *with ascertainable certainty*, the standards with which the agency expects parties to conform.”⁶ The Commission must ensure that it is providing all licensees with this requisite clear notice of what showing is sufficient to obtain renewal.

IV. APPLICATION OF THE PROPOSED RENEWAL FRAMEWORK TO JUDGE PAST LICENSEE PERFORMANCE WOULD BE UNLAWFULLY RETROACTIVE.

In the *Order* accompanying the *Notice*, the Commission directed parties whose license terms run during the pendency of the proceeding to file their renewal applications under the

⁶ *Trinity Broadcasting v. FCC*, 211 F.3d 618, 628 (D.C. Cir. 2000) (emphasis added).

current rules, and these applications will be granted “on a conditional basis, subject to the outcome of this proceeding.”⁷ This action raises the specter of retroactive rulemaking, which exceeds the Commission’s authority.⁸ The Commission should take care not to apply new requirements or standards to the renewal grants conditioned on the outcome of the rulemaking. Specifically, the Commission should refrain from imposing any new renewal showing or standard – and resulting new legal consequences – against the past conduct of a licensee whose license term concluded (or substantially occurred) prior to the effective date of any such rule.

A. The Proposal Would Constitute Retroactive Rulemaking If It Applies to Conduct During Past License Terms.

In *Landgraf v USI Film Products*, the Supreme Court explained that “[e]lementary considerations of fairness dictate that individuals should have an opportunity to know what the law is and to conform their conduct accordingly,” and thus “the legal effect of conduct should ordinarily be assessed under the law that existed when the conduct took place”⁹ The Commission has subsequently recognized that an unlawfully retroactive rule is “one that ‘would impair rights a party possessed when he acted, . . . or impose new duties with respect to transactions already completed.’”¹⁰

The *Order’s* language – granting renewal applications “on a conditional basis, subject to the outcome of the proceeding” – could be construed to mean that cellular and PCS licensees that

⁷ Notice at ¶ 113.

⁸ It is well established that absent an express grant from Congress, agencies lack authority to adopt rules that have a retroactive effect, and the Communications Act does not grant the Commission such authority. See *Bowen v. Georgetown University Hospital*, 488 U.S. 204, 208-09 (1988). See also 47 U.S.C. §§ 154(i), 201(b), 303(r), 307, 309; see also 5 U.S.C. § 551(4).

⁹ 511 U.S. 244, 265 (1994) (quoting *Kaiser Aluminum & Chemical Corp. v. Bonjorno*, 494 U.S. 827, 855 (1990) (Scalia, J., concurring)).

¹⁰ *Petition to Establish Procedural Requirements to Govern Proceedings for Forbearance Under Section 10 of the Communications Act*, Report and Order, 24 FCC Rcd 9543, 9563 n.131 (2009) (quoting *Landgraf*, 511 U.S. at 280).

receive conditional grants will have their eligibility for renewal reevaluated under the new rules to be adopted. Indeed, while the Commission proposed a delayed application of the new renewal requirements to certain BRS and EBS licensees (proposing instead to apply any new rules only in their next license term¹¹), the absence of any similar limitation for other services suggests that the new renewal framework would otherwise apply to all other licensees, including those whose license terms already expired and were renewed conditioned on the outcome of the proceeding.

The Commission would appear to violate the principles set forth in *Landgraf* if the new renewal framework were applied to licenses whose terms predated the rule. Certainly, any application of a new renewal framework resulting in denial of a renewal license that had been granted on a conditional basis would constitute unlawful retroactive agency action. Verizon Wireless urges the Commission not to embark on any such unlawful path.

By way of background, the central feature of the new renewal framework is the requirement that renewal applicants submit a “renewal showing” that will be used to determine whether the licensee warrants renewal. Renewal applicants would be required to provide information that has not previously been required for evaluation of cellular or PCS renewals in the absence of a competing application – including information concerning the population and area served, the number of subscribers, the services offered, the duration of any service interruptions or outages, and the extent of service to rural areas and tribal land.¹² The *Notice* also sought comment on a wide variety of potential additional requirements, such as the system’s history of expansion, a description of investments in the system, and a list of all cell site addresses.¹³ Further, the proposed framework would establish a new legal standard for all

¹¹ See *Notice* at ¶ 32.

¹² *Notice* at Appendix A, proposed Rule 1.949(c)(1)-(4); see also *id.* at ¶ 23.

¹³ *Notice* at ¶¶ 27-28.

renewal applicants — licensees will have to demonstrate that their service is “substantially *above* a level of mediocre service that just might minimally warrant renewal.”¹⁴

Under *Landgraf*, when the Commission “imposes new duties [on licensees] with respect to transactions already completed” during past license terms, and “attaches new legal consequences to events completed before [adoption of the rule]” – *i.e.*, requires licensees to meet the requirements of the new renewal showing and holds them liable for their failure to carry out those unanticipated duties by placing their renewal at risk of denial – it engages in unlawful retroactive rulemaking.¹⁵ Any licensee who is evaluated under the new standards based on a license term that concluded before the new standards were made effective will be subject to having its past behavior, sufficient for a renewal under the old standard, deemed insufficient to warrant renewal under the new standard. A licensee that cannot comply with the proposed renewal showing – for example, one that cannot document the locations of cell sites last used a decade ago, or that cannot separate out the investments made in individual licenses when its multiple-licensed system operates as an integrated whole – would have negative legal consequences attached to those facts and could lose the legal entitlement to renewal it would otherwise have had.

To avoid retroactive rulemaking, the Commission should, at a minimum, modify its renewal framework to make it forward-looking only, by requiring renewal showings and applying its new standards only to licensees who are seeking renewal based on conduct during license terms that begin *after* the new rules go into effect. Alternatively, if the Commission did

¹⁴ Notice at ¶ 21 (emphasis added). This is a substantive standard that had previously been applicable to cellular and PCS licensees only in comparative renewal proceedings – *i.e.*, when a competing application was on file. See 47 C.F.R. §§ 22.940(a)(1)(i), 24.16(a).

¹⁵ 511 U.S. at 280, 269-70. See *Cort v. Crabtree*, 113 F.3d 1081, 1086-87 (9th Cir. 1997) (new definition of non-violent offense found unlawfully retroactive as applied to render prisoners ineligible for a sentence reduction program who were previously eligible).

not intend to subject cellular and PCS licensees to evaluation under new standards for license terms that are already over, and chose to use conditional grants simply to preserve the *status quo* regarding competing applications,¹⁶ it should make that clear.

B. The Proposal Would Also Have Unlawful Secondary Retroactive Effects Because Licensees Have Relied on the Existing Renewal Policy.

The case law recognizes that some rules or statutes do not directly apply legal consequences to past acts, but nevertheless upset investments based on a reasonable expectation that the *status quo* will be continued.¹⁷ Such rules, which “regulate secondary rather than primary conduct,”¹⁸ are unlawful when they are unreasonable, violating the arbitrary and capricious standard.¹⁹ Applying the proposed renewal framework to cellular and PCS renewals based on prior license terms would be unreasonable for many reasons.

First, requiring a showing *in every case* that is comparable to what would be required only in the extraordinary event of a renewal challenge, in the absence of any evidence of underperformance by the licensee in particular or cellular and PCS licensees in general, has no basis and would upset the expectations of licensees who have collectively invested billions of dollars in reliance on the existing rules and standards. The *Notice* does not cite *any* problem with respect to cellular or PCS licensees’ performance generally; cellular and PCS licensees have virtually never been subject to competing applications at renewal²⁰; and thousands of renewals

¹⁶ The *Notice* proposed to disallow competing applications and placed a freeze on filing them pending the outcome of the proceeding; it recognized, however, that if the Commission ultimately decides to permit competing applications, it will need to establish a process that allows competing applications against renewals filed during the pendency of the proceeding. *Notice* at ¶¶ 99-101.

¹⁷ *Mobile Relay Associates, Inc. v. FCC*, 457 F.3d 1, 11 (D.C. Cir. 2006).

¹⁸ *Landgraf*, 511 U.S. at 275.

¹⁹ *See Mobile Relay Associates*, 457 F.3d at 11.

²⁰ *See Notice* at ¶¶ 103-05 (citing one cellular and two PCS renewal challenges).

have been routinely granted. Under these circumstances, there is no “rational connection” between the factual record and the proposed renewal showing requirement.²¹

Second, unless the Commission has a record basis for requiring a detailed showing, it would be arbitrary and capricious to require mountains of information, especially when, in the case of prior license terms, that information could not lawfully be used to judge the licensee’s past performance.²² It is not reasonable to require the filing of information not appropriate for the evaluation of those prior-term renewal applications. It would be unreasonable for the Commission to require every one of today’s cellular and PCS licensees to reconstruct records regarding their historical network development for each license, when they had no reason to keep the detailed records needed to make this kind of renewal showing. Carrier resources are much better devoted to serving customers. And, if in fact the Commission did not intend to base its renewal decisions on the renewal showing it prescribed, requiring that the showing be filed anyway would be arbitrary and capricious. It also would raise serious questions as to compliance with the Paperwork Reduction Act, which requires the agency to justify substantial collection requirements.²³

Third, the reason the Commission gave for retroactive application of its new renewal regime to applications filed during the pendency of the rulemaking – avoiding the “uncertainty”

²¹ See *Motor Vehicle Manufacturers Association v. State Farm Mutual Insurance Co.*, 463 U.S. 29, 52 (1983) (an agency “must explain the evidence which is available, and must offer a ‘rational connection between the facts found and the choice made.’”) (quoting *Burlington Truck Lines, Inc. v. United States*, 371 U. S. 156, 168 (1962)).

²² The renewal showing could not be used to evaluate the licensee’s past performance because (as discussed above) applying new standards to evaluate past performance would be unlawfully retroactive rulemaking.

²³ See 44 U.S.C. §§ 3506(b)-(c), 3508.

caused by leaving renewal applications pending²⁴ – is irrational, because subjecting pending renewals to rules not yet adopted causes even greater uncertainty than simply granting them.

In sum, the Commission should simply avoid the possibility of unlawful retroactive agency action by making clear that renewal applications granted on a conditional basis are not subject to any new renewal showing or renewal standard and any new rules apply to license terms beginning after their effective date.

V. VERIZON WIRELESS SUPPORTS A SINGLE SERVICE CERTIFICATION AND COMPLIANCE DEMONSTRATION FOR ALL WIRELESS SERVICES.

As discussed above, unnecessary and disruptive changes to the renewal standard and review process should be avoided. Instead Verizon Wireless recommends that the Commission adopt the “service certification” renewal showing that it proposed in the *Notice*²⁵ and in new rule 1.949(d) for site-by-site licensees, and extend it to all wireless services. A showing where the licensee certifies that it is continuing to operate consistent with its most recently filed construction notification or most recent authorization would provide the Commission with additional and sufficient information by confirming that there has been no diminution of service between the time a licensee filed a construction notice and when it files for renewal – a reasonable requirement that is not unduly burdensome on a renewal applicant. Moreover, this would achieve the *Notice*’s stated objective of harmonizing renewal procedures across different wireless services.

In addition, the Commission should make clear that licensees that are migrating from one technology to another where changes to existing coverage is necessary may reduce or otherwise modify the coverage provided in the most recently filed construction notification or most recent

²⁴ See *Notice* at ¶ 113.

²⁵ *Notice* at ¶¶ 33-35.

authorization, as the licensee is actively engaged in transitioning to new technology and or services. Otherwise licensees could be required to maintain unneeded or outdated technology on spectrum resources that are needed for other technologies. This flexibility is also necessary following an acquisition because the acquired technology may be outdated, may not be the best technology for providing advanced services, or may not be compatible with the acquiring licensee's network. Such flexibility will allow licenses to quickly respond to the demands of customers for new technologies and services.

The *Notice* also proposes a “regulatory compliance demonstration” that would require renewal applicants to file copies of Commission orders and letter rulings regarding Commission violations and a list of any pending petitions to deny applications. Alternatively, an applicant must file a regulatory compliance certification confirming the absence of such violations or pending petitions.²⁶ Verizon Wireless opposes a requirement that licensees file copies of such documents for the simple reason that those materials are already in the Commission's possession.

Instead, the Commission can simply require the licensee to certify that there are no adjudicated violations or, if there are, to list the orders finding such violations. Moreover, there is no reason for the proposed requirement to provide pending petitions to deny. Again, this information is in the Commission's possession. More importantly, the existence of pending petitions is irrelevant to a licensee's qualifications for renewal unless and until it results in *adjudicated* finding of violations of relevant laws or Commission Rules.²⁷

The compliance demonstration in Proposed Rule 1.949(e) is also overbroad in requiring documentation of any violations or petitions to deny concerning any licenses held not only by the

²⁶ *Notice* at ¶¶ 37-39, Proposed Rule 1.949(e).

²⁷ *Cf.* Amendment of Part 22 of the Commission's Rules Relating to License Renewals in the Domestic Public Cellular Radiotelephone Service, 7 FCC Rcd 719, 720 (1992) (discussing application of Character Qualifications Policy to cellular license renewal proceedings).

renewal applicant, but also by any affiliates of the applicant, including parents, subsidiaries, or entities under common control. Such a certification should be limited to the licensee and its direct ownership chain, but should not include all entities under common control as large carriers like Verizon Wireless hold licenses through numerous entities.²⁸ Further, those entities will be subject to the same certification requirement when they file for renewal. The Commission will thus have a full opportunity to consider any adjudicated violations at that time.

VI. PRECLUDING COMPETING RENEWAL APPLICATIONS AND REQUIRING THE RETURN OF SPECTRUM UPON FINAL DENIAL OF RENEWAL WOULD SERVE THE PUBLIC INTEREST.

Verizon Wireless supports the Commission's proposal prohibiting competing applications and requiring the return of non-renewed spectrum, because it will reduce the potential administrative burdens for both licensees and the Commission as long as the competing applications are permitted, and will further streamline the renewal process. As the Commission notes,²⁹ the prohibition of renewal applications will eliminate the risk of protracted litigation that will tax both an incumbent licensee and Commission resources. Further, the petition to deny process of Section 1.901 of the Commission's rules will continue to afford interested parties a mechanism to challenge the level of service and qualification of a renewal applicant. As the Commission notes, any spectrum that is returned to the Commission as a result of a non-renewal will be made available to all potential licensees through the Commission's auction process, a

²⁸ In contrast to Proposed Rule 1.949(e), Section 22.940, the existing rule governing the renewal showings for licensee in the Part 22 cellular radiotelephone service, calls for copies of violations involving only the licensee, not all of its affiliates. This approach should be continued in the new rules governing all wireless renewal applications.

²⁹ Notice at ¶¶ 40-42.

process that the Commission has found most likely will result in the licensing of spectrum to a party that most highly values the spectrum.³⁰

VII. THE COMMISSION SHOULD ADOPT A SINGLE DISCONTINUANCE RULE FOR ALL SERVICES.

Verizon Wireless supports the *Notice*'s proposal that a new Section 1.953 of the Commission's rules be adopted for discontinuance of service. However, consistent with the *Notice*'s goals of harmonizing rules, rather than specify different definitions of "permanent discontinuance" for different types of licenses, the Commission should adopt a single, 12-month period. If a licensee does not operate or provide service to at least one unaffiliated subscriber throughout that period, it will be subject to this rule.³¹ A 12-month period of non-operation applied to all services is not an excessively long period of time. It provides licensees that are engaged in transitioning from one technology to another, for instance 3G to 4G air interfaces, ample time to change-out existing equipment, test the new system, and place it into operation thus ensuring the best possible consumer experience. A 12 month period would increase the certainty a licensee has that its license will not be subject to termination for non-operation, and would give licensees that acquire a license through the secondary markets time to construct, test, and launch service, as opposed to constructing a minimally compliant system that wastes investment. Further, the Commission should confirm that provisioning of roaming only service is sufficient to satisfy the service requirement, as the Commission has encouraged, in the context of merger reviews that carriers commit to maintain roaming only service for a period of time.³²

³⁰ *Notice* at ¶ 41.

³¹ *Notice* at ¶ 55.

³² Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC, *Memorandum Opinion and Order and Declaratory Ruling*, 23 FCC Rcd 17444, 17502 ¶ 126 (2008).

Verizon Wireless supports the proposed new Section 1.953(e), which would require a licensee that permanently discontinues service to notify the Commission, but believes a 30-day notification requirement would be sufficient. Requiring notification would make unused spectrum available for auction more promptly. Verizon Wireless also supports the tentative conclusion that the permanent discontinuance rule would apply commencing on the date a licensee makes its initial construction showing or notification, but as discussed above believes a 12-month period is more appropriate.

Verizon Wireless agrees with the tentative conclusion that operation of so-called channel keepers – devices that transmit test signals, tone and/or color bars – will not constitute operation as these transmissions do not provide any service at any time to any customer. However, the Commission should make clear that facilities that are available to carry customer traffic, but that are used on an as-needed basis depending on capacity demands, do constitute operation. These facilities are in a “standby” mode with equipment and antennae systems fully connected and capable of providing service to customers as the traffic load on the network demands. Such systems are necessary to allow licensees to maximize the efficiency of their spectrum resources and network investment and maintain optimal performance levels while providing seamless service to customers across multiple licenses in the same market.

VIII. THE COMMISSION SHOULD NOT CHANGE EXISTING PARTITIONING AND DISAGREGATION RULES.

Verizon Wireless supports the Notice’s proposal to consolidate and harmonize the existing service-specific market partition and spectrum disaggregation rules into a single new rule, Proposed 1.950. However, subsection (g) would impose additional build out requirements on the parties to a partition or disaggregation that are above and beyond the level that would be

required if the license were not partitioned and/or disaggregated.³³ The *Notice* does not provide data demonstrating that the existing rules need to be changed in this manner and thus does not articulate a sound basis for this change. Moreover, such a change could have a detrimental affect on secondary market activity by decreasing the number of partitioning and disaggregation transactions. In many cases these transactions make unused spectrum/geographic areas available to a competitor that may not currently have spectrum in the market or may need additional spectrum to increase capacity and/or offer new advanced services, including services to rural areas.³⁴ The Commission should not change a mechanism that has clearly promoted secondary market transactions and thus has benefited the public, without compelling evidence that change is needed. The Commission’s concern that absent a specific requirement a partitioned or disaggregated license might sit fallow is unfounded absent evidence of that practice; moreover there is no economic incentive for carriers to acquire a new license for spectrum or geographic areas in the secondary markets and then do nothing with it. Further, under the existing rules, all licensees, whether they have a specific build out obligation or not, are required to provide “substantial service” at renewal.

If the Commission were to adopt its proposed changes to the partitioning and disaggregation rules, it should not (consistent with the discussion in Section IV above) apply the changes retroactively, but only to applications for portioning or disaggregation that are filed after

³³ *Notice* at ¶¶ 72-91.

³⁴ The National Broadband Plan has recognized that secondary markets may provide “the most expedient path to repurposing spectrum to broadband,” National Broadband Plan at 85. Verizon Wireless documented the benefits of the secondary market for CMRS spectrum in general, and the important role that portioning and disaggregation in particular has played in the growth of the secondary market, in its recent comments on the state of competition in the wireless industry, *See* Comments of Verizon Wireless, WT Docket No. 10-133 at 34-40 (filed July 30, 2010).

the effective date of the new rules. Further, the Commission should exempt wholly-owned subsidiaries and controlled or managed affiliates from any separate or independent build-out requirements, because partitioning and disaggregation have been used to better rationalize license holdings between administratively and financially separate areas or regions within large companies.

IX. CONCLUSION

The Commission should adopt a simple certification process in lieu of the onerous proposed renewal requirements. In any event, whatever changes it makes to the renewal application process cannot, consistent with due process and the APA, be imposed retroactively to renewal applications filed before the effective date of those new rules. With the exception of the proposed partitioning and disaggregation rules, Verizon Wireless supports the Commission's other proposals to preclude competing renewal applications and to adopt uniform service discontinuance rules.

Respectfully submitted,

A handwritten signature in black ink that reads "John T. Scott, III". The signature is written in a cursive style with a horizontal line underneath the name.

John T. Scott, III
Vice President and Deputy General Counsel-
Regulatory Law
Michael Samscock
Counsel

VERIZON WIRELESS
1300 I Street, N.W.
Suite 400 West
Washington, D.C. 20005
(202) 589-3760

Dated: August 6, 2010