

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	)	WT Docket No. 10-112
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	)	

**PETITION FOR PARTIAL RECONSIDERATION**

The Wireless Communications Association International, Inc. (“WCAI”), the trade association of the wireless broadband industry, hereby petitions the Commission pursuant to Section 1.429 of the Commission’s Rules to reconsider and clarify that portion of the May 25, 2010 *Order* in this proceeding that directs the Wireless Telecommunications Bureau to grant pending Wireless Radio Service renewal applications and future renewal applications submitted during the pendency of this proceeding only “on a conditional basis, subject to the outcome of this proceeding . . . .”<sup>1</sup>

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<sup>1</sup> See 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, *Notice of Proposed Rulemaking and Order*, 25 FCC Rcd 6996, 7042 (2010) [“*NPRM and Order*”]. WCAI’s membership includes, among others, licensed wireless broadband service providers who operate in the spectrum bands encompassed by the *Notice of Proposed Rulemaking* (“*NPRM*”). Many of these service providers either have renewal applications currently pending before the Commission or will be seeking license renewals during the pendency of this proceeding, and thus could be adversely impacted by the Commission’s decision that until this proceeding is completed, future license renewals should be granted “on a conditional basis, subject to the outcome of (continued on next page)

WCAI has been an active participant in the wireless broadband industry's effort to replace the comparative license renewal process imposed on Part 27 and Part 101 auctionable services with one that utilizes competitive bidding to license any spectrum relinquished to the Commission when a renewal application is denied on its merits.<sup>2</sup> Thus, as WCAI discusses in more detail in the formal comments it is filing today in response to the *NPRM*, it applauds the Commission's proposal to do exactly that.<sup>3</sup> Eliminating the threat of competing applications and potentially lengthy and expensive comparative renewal hearings will reduce regulatory uncertainty and promote the investment necessary for timely deployment of wireless broadband services, particularly in unserved or underserved areas.<sup>4</sup> Indeed, given the Commission's recognition of the harm that competing applications has recently caused to WCAI members holding 2.3 GHz band licenses, we believe the Commission has acted wisely in precluding the filing of more competing applications in the Wireless Radio Services during the pendency of this proceeding.<sup>5</sup>

WCAI appreciates that, as a *quid pro quo* for suspending the filing of competing applications during this proceeding, the Commission may be compelled to add a condition to those renewed licenses issued during this proceeding to the effect that, should the Commission not eliminate competing applications as proposed in the *NPRM*, an opportunity for the filing of

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this proceeding." WCAI thus has an immediate and substantial interest in securing reconsideration of the *Order*.

<sup>2</sup> See Letter from Paul J. Sinderbrand, Esq., Counsel for The Wireless Communications Ass'n Int'l, Inc., to Kevin Martin, Chairman, Federal Communications Commission, re: License Renewal Processes for Part 27 and 101 Auctionable Wireless Services (filed Oct. 16, 2008) ["WCAI Letter"].

<sup>3</sup> See *NPRM and Order*, 25 FCC Rcd at 7002, 7012-13.

<sup>4</sup> See Comments of Wireless Communications Ass'n Int'l, Inc., WT Docket No. 10-112, at 2 (filed Aug. 6, 2010). See also WCAI Letter at 1-2.

<sup>5</sup> See *NPRM and Order*, 25 FCC Rcd at 7012-13.

competing applications and a competitive selection process may occur. To be clear, WCAI has no quarrel with the *Order* if the Commission's intent is to automatically render all conditionally-renewed licenses unconditional if and when the Commission eliminates the competing application process in the Wireless Radio Services.<sup>6</sup> Unfortunately, although it appears from the discussion in the *Order* that this likely is the Commission's intent, the discussion is far from clear. One could read the *Order* differently – for example, to suggest that even those licensees that receive a conditional renewal during the pendency of this proceeding will be required to make a “renewal showing” and submit a “regulatory compliance certification” should those new concepts be adopted in response to the *NPRM*.

Such an approach is impossible to square with the Administrative Procedure Act.<sup>7</sup> As a practical matter, it would retroactively subject licensees that receive conditional renewals to newly-adopted renewal requirements that had not been adopted pursuant to a notice and comment rulemaking process when their renewal applications were due. The Commission cannot deny renewal of a license for failure to comply with a rule that was not adopted until after the license had expired and the renewal application filed.

Moreover, such an approach would run counter to the Commission's objective of providing a measure of certainty to those licensees who, by luck of the draw, just happen to have renewal applications due prior to the culmination of this proceeding.<sup>8</sup> To the contrary, it would introduce substantial uncertainty into the renewal process because the holders of conditionally-renewed licenses will have no knowledge of the showings they will be required to make until the

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<sup>6</sup> *See id.*

<sup>7</sup> *See* 5 U.S.C. § 553.

<sup>8</sup> *See NPRM and Order*, 25 FCC Rcd at 7039 (The Commission is “concerned about the uncertainty that a long-standing ‘pending’ renewal application can create within the Wireless Radio Services, and believe[s] such conditional grants will mitigate some of that uncertainty.”).

conclusion of this proceeding. As we discuss further in our comments regarding the *NPRM*, nowhere does the *NPRM* define or even discuss what standard a “renewal showing” must satisfy in order to earn a renewal expectancy. Rather, the Commission merely lists potential factors that might be relevant to license renewal and requests comment on whether it should use those factors to determine “whether a licensee has demonstrated a level of service warranting renewal,” without indicating what that “level of service” might be.<sup>9</sup> Licensees will take little comfort in a conditional renewal when they have no basis for evaluating what the condition is, and whether it is likely to be satisfied.

As such, the uncertainty created by *Order* threatens to deter investment in broadband facilities at the very time the Commission is attempting to promote broadband. Licensees holding conditionally-renewed licenses will be loathe to invest in new or upgraded facilities until this proceeding runs its course and the Commission provides greater certainty. Clarifying the *Order* as we suggest, in contrast, will limit the uncertainty to a minimum, and licensees will be well-positioned to assess the limited risk of making further investments.

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<sup>9</sup> *Id.* at 7008.

WHEREFORE, for the reasons set forth above, WCAI requests that the Commission reconsider the *Order* and make clear that should the Commission ultimately elect to eliminate the rules that allow the filing of competing applications, all conditionally-renewed Wireless Radio Service licenses automatically will be deemed unconditional.

Respectfully submitted,

WIRELESS COMMUNICATIONS ASSOCIATION  
INTERNATIONAL, INC.

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