

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 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
SOUTHERN COMPANY SERVICES, INC.**

In the above-captioned proceeding, the Commission seeks comment on the appropriate criteria and processes for the renewal of wireless licenses.¹ Southern Company Services, Inc. (“Southern”) encourages the Commission to adopt rules that take into account the nature of licenses used for private networks, without imposing unduly burdensome filing requirements.

I. Introduction

Southern is a wholly-owned subsidiary service company of Southern Company, a super-regional energy company in the Southeast United States. Southern Company also owns four electric utility subsidiaries -- Alabama Power Company, Georgia Power Company, Gulf Power Company, and Mississippi Power Company -- which provide retail and wholesale electric

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 Radio Services, WT Docket No. 10-112, *Notice of Proposed Rulemaking*, FCC 10-86 (rel. May 25, 2010) (“*Notice*”) at ¶ 1.

service throughout a 120,000 square mile service territory in Georgia, most of Alabama and parts of Florida and Mississippi.

Southern and its electric operating company affiliates hold licenses for, among other things, private land mobile radio systems under Part 90 and for point-to-point microwave systems and point-to-multipoint Multiple Address Systems (MAS) under Part 101 that are used in support of their provision of electric service to the public. In addition, Southern has acquired at auction or through assignment of license certain geographic licenses issued under Part 101 for Multiple Address System frequencies. The spectrum authorized under these geographic area MAS licenses is also used by Southern to support the provision of electric service and is not used to provide commercial wireless service. Southern therefore has an interest in the FCC's proposals relating to the renewal of site-based licenses as well as geographic area licenses that are used for private, internal communications, and is pleased to offer these comments on the proposals raised in the *Notice*.

II. The Rules Should Provide Clear Requirements for Renewal of Geographic Licenses Used for Private, Internal Communications

The Commission proposes to adopt uniform renewal requirements for licenses in the wireless radio services that are licensed both by geographic area and by site.² Under the Commission's proposed rules, a wireless radio service licensee would be required to make a "renewal showing" that describes its service using prescribed factors.³ However, the proposed factors often do not apply to licenses that are used for private, internal communications. As explained herein, the Commission should instead permit a licensee using its spectrum for internal

² *Notice* at ¶ 2.

³ *Notice* at Appendix A, proposed §1.949(c).

communications to certify it is operating consistent with its most recent substantial service showing or application for authorization.

The Commission recognizes the distinction between renewal applicants that provide service to the public and those that, “when allowed under the relevant service rules or pursuant to waiver, [use] the spectrum for private, internal communication.”⁴ Yet, the proposed renewal factors stress service to the *public*, including rural and tribal areas, and the breadth and continuity of service to *subscribers*. The Commission has authorized licensees to use spectrum for internal communication purposes by rule or by rule waiver.⁵ It would be grossly unfair to now penalize that use by denying license renewals, or undermining licensees’ expectations of renewals, under these new factors.

Southern appreciates the Commission’s desire for uniformity across the wireless services, and has no objection to the Commission’s proposed renewal showing factors, *per se*. If the licensee of a private, internal network wishes to submit a showing under the Commission’s proposed factors, it should be able to do so. However, when the factors simply do not apply given the actual use of the license, the licensee should not be required to try describe its use of the spectrum by reference to factors that are primarily, if not exclusively, relevant to commercial wireless networks used to provide communications service to the public. For example, Southern typically uses MAS frequencies for supervisory control and data acquisition (SCADA) operations by which it can remotely monitor and control key components of its electric system.⁶

⁴ *Id.* at ¶ 17. The Commission specifically seeks comment on the appropriate renewal factors for facilities that are used to meet a licensee’s private, internal communications needs. *Notice* at ¶ 28.

⁵ The geographic MAS licenses held by Southern may be used for either commercial or private internal service, at the licensee’s election, and without the need for rule waiver.

⁶ SCADA systems are part of what has become known as “smart grid” technologies.

Therefore, the renewal factors proposed by the Commission (*e.g.*, “population served, the area served, the number of subscribers, the services offered,” and “other factors associated with the level of service to the public”) are simply irrelevant to the kind of use Southern makes of its MAS spectrum.

Rather than forcing renewal applicants to describe their use of the spectrum under factors that are irrelevant to their actual operations, such applicants should have an alternative option. When the holder of a geographic area license has been authorized to use the spectrum for private, internal communications pursuant to Commission rules or a rule waiver, it should be permitted to certify that it is operating consistent with its most recently filed substantial service showing or its most recently filed application for authorization. and expect the license to be renewed.⁷ In this regard, the showing could relate to its initial application for license in which it explained how it intended to use the spectrum for private, internal use; it could relate to an application for modification of license, if the licensee converted from commercial use of the spectrum to private; or it could relate to the showing included by the prospective assignee in an application for Commission consent to assignment of license.

Southern uses geographically-licensed spectrum in part to deploy secure and reliable internal networks that support critical infrastructure. Without a workable renewal framework, the future of those networks could be jeopardized. Moreover, licensees such as Southern that have invested in infrastructure to develop private, internal communications systems on this spectrum should not be compelled to risk that investment by attempting to demonstrate

⁷ The Commission proposed a similar requirement for site-based licenses as it recognized that the proposed renewal factors “would not be appropriate” for such licenses. *Notice* at ¶ 33. The Commission further states that the certification process will streamline the renewal process while ensuring that the licenses are being operated as authorized. Again, the same rationale applies. The Commission previously authorized private use of the licenses being discussed here. At renewal, it should be sufficient that the license is being used in accordance with that specific authorization.

compliance with renewal standards that are irrelevant to the private, internal communications purposes for which the spectrum was authorized to them. The Commission can prevent that problem by adopting the modification to the proposed rule as shown in Appendix A.

III. Regulatory Compliance Demonstration

The FCC proposes that all license renewal applicants must file a detailed renewal showing demonstrating that they are substantially complying with the Commission's rules, policies, and the Communications Act.⁸ The Commission tentatively concluded that an applicant must file copies of all FCC orders 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.⁹ The FCC therefore seeks comment on the costs and benefits of this proposed regulatory compliance framework to licensees and the Commission.¹⁰

Southern urges the Commission to either abandon this proposal or adopt a much more streamlined requirement that would not impose such a significant logistical and administrative burden on licensees. While such a requirement might not be a burden for a small licensee with no affiliates and only a few licenses, larger companies such as Southern that hold hundreds of

⁸ *NPRM*, *supra* note 1, ¶ 17.

⁹ 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. If there are no FCC orders finding violations of the Communications Act or any FCC rule or policy, the Commission proposes that a licensee certify the absence of any such findings as part of the renewal application. *NPRM*, *supra* note 1, ¶ 38.

¹⁰ *NPRM*, *supra* note 1, ¶ 39.

licenses directly or through affiliates could be put to an enormous task of due diligence before filing each and every application for license renewal.

To reduce the administrative burden to license applicants, Southern believes that the Commission should be able to develop internal processes and databases to track information on licensee compliance. For example, it would seem reasonable for the Commission to be able to track licensee compliance using the FCC Registration Number (FRN) assigned to each licensee and to correlate that information with records in the FCC's various licensing databases, such as the Universal Licensing System. Such an update to the Commission's internal databases would ensure that notices of violations are available in a searchable fashion, allowing the Commission to search for notices of violations for a particular licensee upon receipt of a renewal application.

The Commission proposes to collect regulatory compliance information in order to meet the statutory requirement that the Commission evaluate the character and other qualifications of a renewal applicant.¹¹ However, this requirement should be met through a process that imposes the least administrative costs and burdens on licensees as well as the agency. Indeed, the Commission has stated that it seeks to implement standardized renewal requirements and expeditious renewal procedures.¹² The least burdensome method for implementing the regulatory compliance requirement is to update the Commission's existing electronic systems to organize information that is already maintained by the Commission.¹³

¹¹ *NPRM*, *supra* note 1, ¶ 37. "All applications for station licenses, or modifications or renewals thereof, shall 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 . . ." 47 U.S.C. § 308(b).

¹² *NPRM*, *supra* note 1, ¶ 7.

¹³ The cost of an upgrade to an existing electronic system to gather data already electronically housed in an agency was addressed in *Baystate Medical Center v. Leavitt*, 545 F. Supp. 2d 20, 53 n.34 (D.D.C. 2008). There the court found that adjustments to an agency's computer system to capture data that is

The administrative burden of the Commission’s proposal must also be evaluated under the Paperwork Reduction Act (“PRA”), which requires that for every proposed collection of information by an agency, the agency must certify, *inter alia*, that the collection (1) is necessary for the proper performance of the functions of the agency (including that the information has practical utility), (2) is not unnecessarily duplicative of information otherwise reasonably accessible to the Commission, and (3) reduces the burden on the persons who are required to provide the information.¹⁴

The regulations of the Office of Management and Budget elaborate on the meaning of the PRA’s practical utility requirement: “practical utility” means the actual usefulness of information to an agency, taking into account its accuracy, and reliability, and the agency’s ability to timely process the information it collects.¹⁵ However, and as discussed above, the Commission’s proposal threatens to reduce the accuracy of the information and increase the processing time of renewal applications by requiring licensees with numerous affiliates to collect information that is potentially spread among various companies and facilities. The accuracy and reliability of the data are more certain, and the timely processing of the data is far more expeditious, if the Commission assumes responsibility of collecting and verifying this data against its own records.

already housed electronically in the agency’s possession would be routine, simple, and not time consuming. The court considered this solution to data collection to be a low administrative burden on the agency. Likewise, an upgrade to the Commission’s existing data systems to store and correlate regulatory compliance data would be a low administrative burden on the Commission, especially when compared to the administrative burden that would be imposed upon many thousands of licensees under the Commission’s proposal.

¹⁴ Paperwork Reduction Act of 1995, 44 U.S.C. § 3506(c)(3) (2006).

¹⁵ 5 C.F.R. § 1320.3(1).

The Commission already has access to information regarding enforcement matters affecting applicants for license renewal. Therefore, the Commission's proposal that a renewal applicant must collect this same information to submit with each and every renewal application filed by that applicant and all of its affiliates requires a collection of information that is unnecessarily duplicative of information already accessible, or could be made accessible, to the Commission in a centralized location.

The PRA defines the term 'burden' to mean time, effort, or financial resources expended to generate, maintain, or provide the information, including the resources expended for reviewing instructions; acquiring, installing, and utilizing technology and systems; completing and reviewing the collection of information; and transmitting, or otherwise disclosing the information.¹⁶ As discussed above, the potential burden created by the Commission's proposal is significant in terms of the time, effort, and financial resources required of the licensees. Most burdensome will be acquiring the data from multiple sources and conducting the necessary due diligence to verify accuracy and completeness, and then submitting that information with the renewal applications. This burden appears unnecessary in light of the Commission's ability to assemble this data from its own records.

IV. Conclusion

The Commission should adopt a renewal framework that makes sense for geographic-area licenses that are used for private, internal communications. Southern has made significant investments in infrastructure to utilize this spectrum, and it relies on these systems in support of its provision of electric service to the public. As an alternative to the showing that would be required of commercial service providers, the FCC's renewal requirements should allow

¹⁶ 44 U.S.C. § 3502.

Southern and similarly-situated private licensees to certify that they have used the spectrum consistent with the representations made in their most recently filed substantial service showing or their most recent application for authorization. At the same time, the Commission should not burden renewal applicants with unnecessary administrative paperwork regarding compliance issues when the information to be submitted is readily available in the Commission's own records.

WHEREFORE, THE PREMISES CONSIDERED, Southern Company Services, Inc. respectfully requests that the Commission take action in this proceeding consistent with the views expressed herein.

Respectfully submitted,

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**SUGGESTED MODIFICATION TO
FCC'S PROPOSED REVISIONS TO SECTION 1.949**

§ 1.949 Application for renewal of authorization.

(a) *Filing Requirements.* Applications for renewal of authorizations in the Wireless Radio Services must be filed no later than the expiration date of the authorization, and no sooner than 90 days prior to the expiration date. Renewal applications must be filed on the same form as applications for initial authorization in the same service, *i.e.*, FCC Form 601 or 605.

(b) *Common Expiration Date.* Licensees with multiple authorizations in the same service may request a common date on which such authorizations expire for renewal purposes. License terms may be shortened by up to one year but will not be extended.

(c) *Renewal Showing.* An applicant for renewal of a geographic-area authorization in the following services regulated under this chapter must make a Renewal Showing, independent of its performance requirements, as a condition of renewal: 1.4 GHz Service (part 27, subpart I); 1.6 GHz Service (part 27, subpart J); 24 GHz Service (part 101, subpart G); 39 GHz Service (part 101, subpart B.); 218-219 MHz Service (part 95, subpart F); 220-222 MHz Service (part 90, subpart T); 700 MHz Commercial Services (part 27, subpart F); 700 MHz Guard Band Service (part 27, subpart G); 800 MHz Specialized Mobile Radio Service (part 90, subpart S); 900 MHz Specialized Mobile Radio Service (part 90, subpart S); Advanced Wireless Service (part 27, subpart L); Air-Ground Radiotelephone Service (Commercial Aviation) (part 22, subpart G); Broadband Personal Communications Service (part 24, subpart E); Cellular Radiotelephone Service (part 22, subpart H); Dedicated Short Range Communications Service (part 90, subpart M); Local Multipoint Distribution Service (part 101, subpart L); Multichannel Video Distribution and Data Service (part 101, subpart P); Multilateration Location and Monitoring Service (part 90, subpart M); Multiple Address Systems (EAs) (part 101, subpart O); Narrowband Personal Communications Service (part 24, subpart D); Paging and Radiotelephone Service (part 22, subpart E; part 90, subpart P); Public Coast Stations, including Automated Maritime Telecommunications Systems (part 80, subpart J); and Wireless Communications Service (part 27, subpart D). For the Broadband Radio Service and Educational Broadband Service, this requirement shall not apply to any license that expires on or before May 1, 2011. The showing must include a detailed description of the applicant's provision of service during the entire license period and address:

(1) the level and quality of service provided by the applicant (*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 land as defined in § 1.2110(e)(3)(i) of this chapter; and

(5) any other factors associated with the level of service to the public.

In the alternative, an applicant for renewal of license for spectrum licensed on a geographic-area basis and used exclusively for private, internal communications, when allowed under relevant service rules or pursuant to rule waiver, may make a Renewal Showing by certifying that the applicant is continuing to operate consistent with its most recently filed substantial service showing or its most recent application for authorization, if the applicant was not previously required to submit a substantial service showing.

(d) *Service Certification.* An applicant for renewal of a site-by-site authorization in the following services regulated under this chapter must make a Service Certification with its application: 220-222 MHz Service (site-based) (part 90, subpart T); 800/900 MHz (SMR and Business and Industrial Land Transportation Pool) (part 90, subpart S); Air-Ground Radiotelephone Service (General Aviation) (part 22, subpart G); Broadcast Auxiliary Service (part 74, subpart F); Common Carrier Fixed Point-to-Point, Microwave Service (part 101, subpart I); Digital Electronic Message Service (part 101, subpart G); Industrial/Business Radio Pool (part 90, subpart C); Local Television Transmission Service (part 101, subpart J); Multiple Address Systems (site-based), excluding systems licensed to public safety entities (part 101, subpart O); Non-Multilateration Location and Monitoring Service (part 90, subpart M); Offshore Radiotelephone Service (part 22, subpart I); Paging and Radiotelephone Service (site-based) (part 22, subpart E); Private Carrier Paging (part 90, subpart P); Private Operational Fixed Point-to-Point Microwave Service, excluding licenses held by public safety entities (part 101, subpart H); and Rural Radiotelephone Service (including Basic Exchange Telephone Radio Service) (part 22, subpart F). The Service Certification must certify that the applicant is continuing to operate consistent with its most recently filed construction notification (NT) or most recent authorization, when no NT is required to be filed under the Commission's rules.

(e) *Regulatory Compliance Demonstration.* An applicant for renewal of an authorization in the Wireless Radio Services identified in paragraphs (c) and (d) of this section must make a Regulatory Compliance Demonstration as a condition of renewal. A Regulatory Compliance Demonstration must include:

(1) A copy of each FCC order and letter ruling, which may or may not have been assigned a delegated authority number, finding a violation of the Communications Act or any FCC rule or policy by the applicant, an entity that owns or controls the applicant, an entity that is owned or controlled by the applicant, an entity that is under common control with the applicant, or an affiliate of the applicant (whether or not such an order or letter ruling relates specifically to the license for which renewal is sought);

and

(2) A list of any pending petitions to deny any application filed by the applicant, an entity that owns or controls the applicant, an entity that is owned or controlled by the applicant, an entity that is under common control with the applicant, or an affiliate of the applicant (whether or not the petition to deny relates specifically to the license for which renewal is sought).

(f) *Regulatory Compliance Certification.* An applicant for renewal of an authorization in the Wireless Radio Services identified in paragraphs (c) and (d) of this section may, instead of

making a Regulatory Compliance Demonstration as part of the renewal application, make a Regulatory Compliance Certification certifying the absence of any findings under paragraph (e)(1) of this section, and any pending petitions to deny under paragraph (e)(2) of this section

(g) For the purposes of paragraphs (e)(1) and (e)(2) of this section, the term affiliate means affiliate as defined in § 1.2110(c)(5) of this chapter.

(h) If the Commission, or the Wireless Telecommunications Bureau acting under delegated authority, finds that a licensee's Renewal Showing under paragraph (c) of this section, its Service Certification under paragraph (d) of this section, its Regulatory Compliance Demonstration under paragraph (e) of this section, or its Regulatory Compliance Certification under paragraph (f) of this section is insufficient, its renewal application will be denied, and its licensed spectrum will return automatically to the Commission for reassignment (by auction or other mechanism). In the case of certain services licensed site-by-site, the spectrum will revert automatically to the holder of the related overlay geographic-area license.

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