

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

In the Matter of)	
)	
Amendment of Parts 1, 22, 24, 27, 74, 80,)	WT Docket No. 10-112
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)	

To: The Commission

COMMENTS OF THE BLOOSTON LICENSEES

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SUMMARY

With respect to license renewal, the Blooston Licensees believe the Commission should not require license renewal applicants to make disclosures regarding past compliance proceedings and/or protests. This requirement would unnecessarily confound a renewal process that is working well and with regard to pending matters, it would run afoul of Section 504(c) of the Communications Act, which specifies that a notice of apparent liability “shall not be used in any other proceeding before the Commission, to the prejudice of the person to whom such notice was issued. Likewise, license renewal applicants should not be required to include a list of any pending petitions to deny that have been filed against the license renewal applicant (or its affiliates), since many petitions have absolutely no bearing on the character qualifications of a licensee, such as petitions that merely involve technical issues. Moreover, such a requirement would be unduly burdensome for businesses that hold hundreds or thousands of FCC licenses. The Commission’s proposal that license renewal candidates be required to submit compliance disclosures with respect to “affiliates of the applicant” as defined by Section 1.2105(c)(5) of the Commission’s Rules is overbroad and unduly burdensome.

The Commission should make any proposed construction and service showing requirements in the license renewal context prospective in nature since it would be unfair to change the rules for auction winners and other commercial licensees who valued their spectrum and based their business plans on then-existing performance requirements. The Commission should not use a proceeding designed to “harmonize” license renewal procedures as a vehicle to impose new substantive obligations on auction winners and other CMRS carriers. If the Commission should choose to apply new substantive requirements retroactively, these requirements should only apply to licenses the size of a Major Trading Area (MTA) or larger.

As to all of the proposed new license renewal showing disclosures, the *NPRM* does not explain how the additional information will be used by the Commission, it does

not identify triggers that could result in a finding of non-eligibility, and it does not explain what the consequences will be if there are any perceived deficiencies. To meet due process requirements, the Blooston Licensees respectfully submit that the Commission must explain what standards will be used to evaluate the reported information, and what weight will be applied to each disclosure. In this regard, a licensee that is providing service to the public in accordance with its license and that has met applicable construction requirements should be able to retain its license even if its record of compliance and operational history is not perfect. A licensee should lose its license only upon a finding that it has engaged in conduct so egregious that it must be barred from holding any FCC license. In the case of existing licenses, no portion of a license should be lost due to deficiencies in the factors identified in the NPRM, for the reasons discussed above; and in the case of future licenses, consistent with the scheme adopted for Auction No. 73, the licensee should at a minimum be able to keep that portion of its license that it has constructed, with reasonable room for expansion. Otherwise, it will be impossible to attract investment in telecommunications ventures. The Commission should also consider a six to twelve month “cure” period, in which any purported deficiencies in meeting the renewal standards can be corrected by the licensee.

Additionally, the Commission should recognize that different requirements are needed for paging carriers and auction winners that are private, internal use licensees. It should exempt Part 90 private user licensees and licensees that utilize auctioned spectrum for private, internal communications from compliance with the proposed requirements, other than to verify that they are in operation; and it should take a flexible approach for discontinuance regulations affecting start up operations and paging operations. In this regard, the Part 22 paging stations should have the same discontinuance rules as those proposed for the Part 90 paging licensees since both paging licensees face the same obstacles.

Finally, the Commission should retain the current build out options for partitionees/disaggregatees, at least in rural areas. These options make it possible for rural carriers to seek to provide service to isolated communities that may not meet a traditional coverage requirement but that would otherwise go unserved.

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Imposition of a Freeze on the Filing of Competing Renewal Applications for Certain Wireless Radio Services and the Processing of Already-Filed Competing Renewal Applications)	

To: The Commission

COMMENTS OF THE BLOOSTON LICENSEES

The law firm of Blooston, Mordkofsky, Dickens, Duffy & Prendergast, LLP (“Blooston”), on behalf of its wireless licensee clients listed in Attachment A (the “Blooston Licensees”), respectfully submits the following comments on the Commission’s Notice of Proposed Rulemaking and Order (“*NPRM*”) in the above-captioned proceeding regarding the establishment of uniform license renewal, discontinuance of operation and geographic partitioning and spectrum disaggregation rules for various wireless radio services.¹ In brief, the Commission should (1) refrain from adopting its proposed compliance disclosure requirement, as this will unnecessarily confound a process that is working well, and is contrary to the Communications Act of 1934, as amended (“the Act”); (2) make any new substantive requirements and standards prospective in nature, since past auction winners acquired their spectrum using a business plan based on then-existing performance requirements; (3) clarify the standards that will

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, WT Docket No. 10-112, *Notice of Proposed Rulemaking and Order*, FCC 10-86, 25 FCC Rcd 6996, 75 FR 38959 (July 7, 2010).

be used in evaluating disclosures made in response to the proposed new information requirements, and the consequences of a perceived deficiency; (4) recognize that different requirements are needed for paging carriers, and auction winners that are utilizing their licenses for private, internal uses, as authorized by the Commission; (5) exempt Part 90 private user licensees from compliance with the new requirements, other than to verify that they are in operation; (6) take a flexible approach for discontinuance regulations affecting start up operations and paging operations; and (7) retain the current build out options for partitionees/disaggregates, at least in rural areas.. In support whereof, the following is shown:

I. STATEMENT OF INTEREST

The Blooston Licensees are a diverse group of telephone and telecommunications service providers, paging carriers, electric utilities, manufacturing companies and other private spectrum users. The group (60 companies from 21 different states) includes family-owned businesses that have been passed down over generations, community-owned cooperatives, privately held and publicly-traded entities ranging in size from small businesses to Fortune 500 companies.

II. RENEWAL REQUIREMENTS

The Commission is proposing to modify and to harmonize the license renewal requirements for various Wireless Radio Services. The current rules vary significantly from radio service to radio service. For the Cellular Radiotelephone Service, the Commission's Part 22 rules establish a two-step comparative hearing process for addressing a timely-filed renewal application and timely-filed mutual exclusive applications. Under these rules, an Administrative Law Judge (or "ALJ") must conduct a

threshold hearing to determine whether a cellular renewal applicant is entitled to a renewal expectancy. If so, and if the renewal applicant is otherwise basically qualified, the license is renewed and any competing applications are denied. If not, then all mutually exclusive applications in the renewal filing group are considered in a full comparative hearing.

For PCS, the Part 24 rules contain virtually no guidance regarding comparative renewal applications, they do not specify how or when competing applications are to be filed, they do not establish two-step hearings, and do not enumerate procedures for evaluating renewal applications or specify what is required in a renewal expectancy exhibit.

For the Part 27 Miscellaneous Wireless Communications Services (WCS) rules, which apply to a number of radio services including AWS and 700 MHz bands, the license renewal provisions are more detailed than Part 24 but contain few specific rules addressing the possibility of competing renewal applications. However, they affirmatively prohibit such filings against renewal applicants in the 700 MHz Commercial Services Band.

Under the Part 90 Commercial Mobile Radio Service (CMRS) rules, the Commission has stated that licensees would be afforded a renewal expectancy and that “[t]he applicable sections of Part 22 governing . . . renewal expectancy will be incorporated into Part 90.”² For a 220-222 MHz renewal applicant to receive a renewal expectancy, Rule Section 90.743 requires it to provide: (1) a description of its current

² See Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, GN Docket No. 93-252, *Third Report and Order*, 9 FCC Rcd 7988, 8157 ¶ 386 (1994), citing 47 C.F.R. § 22.940.

service in terms of geographic coverage and population served; (2) an explanation of its record of expansion including a timetable for new station construction to meet changes in service demand; (3) a description of investments; (4) copies of any Commission orders finding that the renewal applicant has violated the Act or any Commission rule or policy; and (5) a list of any pending proceedings that relate to any such violation. However, the rules do not specify the procedures for processing competing renewal applications.

The Part 101 rules for Fixed Microwave Services include a number of renewal rules that are similar to those found in Part 27. For example, Rule Section 101.1011(c) requires an LMDS renewal applicant to file detailed information to demonstrate substantial service in a comparative renewal proceeding, but this same information is not required to demonstrate substantial service as a performance requirement.

The Blooston Licensees believe it makes sense for the Commission to eliminate any references to comparative renewal applications with respect to radio services that are licensed by auction, in order to eliminate ambiguity and uncertainty in the Commission's rules. While the ability to file competing renewal applications once played a significant role in ensuring that spectrum was put to use in the public interest, the existing ability for challengers to file petitions to deny and procedures calling for reauction of licenses that are not renewed arguably serve this purpose even better. Revising the rules in this manner will take away the incentive for challengers to file speculative applications in the hope of coming away with valuable spectrum rights. Comparative renewal proceedings are unnecessary under the existing rules, they are costly for licensees to defend, and they utilize limited FCC staff resources with little assurance of benefit. In contrast, reauction of the returned spectrum helps to ensure that a portion of the value for this public resource accrues to the US Treasury, and it helps ensure that the spectrum is assigned to a

person or entity that is likely to put it to use. However, as discussed below, certain safeguards must be built into the new rules, and certain licensees should be exempt or governed by a modified version of the new rules.

A. Proposed Renewal Showing

For market-based licensees, the Commission is proposing to adopt renewal requirements for numerous Wireless Radio Services that are based on its three-step approach for the renewal of 700 MHz Commercial Services Band licensees:

- (1) renewal applicants must file a detailed renewal showing, demonstrating that they are providing service to the public (or, when allowed under the relevant service rules or pursuant to waiver, using the spectrum for private, internal communication), and substantially complying with the Commission's rules (including any applicable performance requirements) and policies and the Communications Act;
- (2) competing renewal applications are prohibited; and
- (3) if a license is not renewed, the associated spectrum is returned to the Commission for reassignment

Under the Commission's proposal, the renewal showing must include a detailed description of the applicant's provision of service during the entire license period and address:

- a. 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);
- b. the date service commenced, whether service was ever interrupted, and the duration of any interruption or outage;
- c. the extent to which service is provided to rural areas;
- d. the extent to which service is provided to qualifying tribal land as defined in § 1.2110(e)(3)(i) of this chapter; and
- e. any other factors associated with the level of service to the public.

For site-based licensees (such as paging and fixed microwave radio services), the

Commission is proposing to modify the first part of the market-based approach by requiring affected licensees to certify that they are continuing to operate consistent with their applicable construction notification(s) or authorization(s) (where the filing of construction notifications is not required), and make a certification of regulatory compliance similar to geographic area licensees. *See NPRM at para. 34.*

B. The Commission Should Not Require Disclosures Regarding Past Compliance Proceedings and Protests

The Commission proposes to require both geographic area and site-based renewal applicants to make a "regulatory compliance demonstration" that the *NPRM* describes as including the following disclosures:

...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 (whether or not such an order relates specifically to the license for which renewal is sought). The disclosure requirement would apply to all orders finding such violations during the license term for which renewal is sought, including orders that are, or could be, the subject of administrative or judicial review.³

Similarly, proposed Rule Section 1.949(e) ("*Regulatory Compliance Demonstration*") describes the certification requirement as follows:

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

³ *NPRM* at ¶ 38.

(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).

As described below, it is respectfully submitted that the Commission should eliminate the proposed compliance certification/disclosure requirement. The certification/disclosure requirement will confound a licensing system that has heretofore worked efficiently, for little substantive gain.

As shown above, the text of the *NPRM* would appear to require copies of orders finding an "apparent" violation of the Act or the Commission's rules, as opposed to only those orders wherein a violation was determined to have actually occurred. The Blooston Licensees believe such requirement would run afoul of Section 504(c) of the Act, which specifies that a notice of apparent liability "shall not be used, in any other proceeding before the Commission, to the prejudice of the person to whom such notice was issued, unless (i) the forfeiture has been paid, or (ii) a court of competent jurisdiction has ordered payment of such forfeiture, and such order has become final."⁴ Since the Commission presumably intends to use the requested additional information in evaluating whether or not a renewal application should be granted, an adverse finding, by definition, would be prejudicial to the applicant and cannot be part of a regulatory compliance showing. The Commission should clarify that no such information will be required. Similarly, the Commission should not require the disclosure of consent decree orders in which the licensee specifically did not admit guilt, but instead agreed to the decree in the interest of settling a disputed violation situation.

⁴ 47 U.S.C. § 504(c).

The Blooston licensees are also concerned about the proposed requirement that renewal applicants include a list of any pending petitions to deny filed against the renewal applicant. This requirement would create an unnecessary burden on applicants and the Commission, and could create an incentive for competitors and others to file such pleadings. Many petitions (including informal objections against private radio licensees) have no bearing on a licensee's fitness to hold its license(s), and can be triggered by concerns about a frequency coordinator's actions, or perceived potential for harmful interference. Such issues do not give rise to licensee qualification concerns. To the extent that an issue is raised which does reflect on a licensee's character and fitness to hold a license, the Commission should address the qualifications issue in the context of the petition proceeding, and not in the context of a license renewal application that may not even concern the challenged call sign.

The burden that this new reporting requirement would impose on applicants (and the Commission) should not be underestimated. Some licensees hold hundreds or thousands of licenses. Some of the licensed locations will eventually receive Commission violation notices for various minor technical problems. Under the proposed compliance certification/disclosure requirement, all violations that have occurred over a ten-year period, plus any petitions, would have to be included with each application to renew any of the licensee's call signs. The Commission then will need to review and consider the significance of each of these disclosures, even if unrelated to the license that is up for renewal. Suddenly, a relatively straightforward license renewal application will become a complicated matter requiring the off-lining of the application for legal review – over and over as each call sign held by the same licensee comes up for renewal. Again, the Commission will have already had the opportunity, in the appropriate context, to pass

judgment on the impact that any violation or protest should have on the licensee's fitness. As the Commission is aware, when a violation is evaluated, the Commission looks at the licensee's overall compliance record (including other past violations) in determining whether to mitigate or aggravate the fine. See 47 CFR §1.80(b)(4).

1. The Proposed License Renewal Regulatory Compliance Demonstration is Overreaching

As part of the regulatory compliance demonstration proposed in the NPRM, license renewal applicants would be required to submit compliance disclosures with respect to the applicant and any "affiliates". The term "affiliate of the applicant" would be defined by Section 1.2110(c)(5) of the Commission's Rules. It is respectfully submitted that the regulatory compliance demonstration is overreaching, inasmuch as it far exceeds the traditional concept of control regulated by Section 310(d) of the Act, and forces the applicant to provide copies of documents that should already be in the Commission's internal files.

The use of Section 1.2110(c)(5) to define affiliation for purposes of making the regulatory compliance demonstration is overbroad and inappropriate. Rule Section 1.2110(c)(5) was adopted by the Commission in order to limit the conveyance of special governmental benefits (*i.e.*, bid credits), in order to avoid "unjust enrichment". Here, the proposed requirement is punitive in nature, in that the applicant could be found ineligible for license renewal and thus stripped of the ability to operate a radio system in which it has already invested significant money and on which its business depends.

The following example illustrates the issue with the Commission's proposed definition of affiliation. Under Rule Section 1.2110(c)(5), Company A (a manufacturing

company located in Washington, DC) would be presumed to be an affiliate of Company B (a small pizza delivery service in California) simply because the sibling of Company A's owner is married to the owner of Company B, an unrelated business venture in another state. Thus, if the Commission has issued any findings of non-compliance against Company B, or Company B has been the subject of petitions to deny, those findings and/or petitions would be imputed to Company A under the Commission's definition of "kindred" affiliation, even though there was no actual relationship or control between the companies. While Rule Section 1.2110(c)(5)(iii)(B) indicates that the presumption could be rebutted, it could only be rebutted by requiring the licensee's owners to confer with all family members listed under Rule Section 1.2110(c)(5)(iii)(B) each time it has an Commission license up for renewal, and then preparing a detailed showing if necessary. This requirement places an unnecessary burden on the applicant.

Even more disconcerting are the requirements of Section 1.2110(c)(5)(viii) – (x) to classify as "affiliates" relationships that a licensee may have with other entities through use of common facilities, contractual relationships or joint ventures. Rural telecom carriers must enter into contractual relationships with larger carriers to gain interconnection rights, or to present a viable product to their rural subscribers. They must also enter into joint ventures with other rural carriers to achieve the critical mass necessary to bring advanced services to their subscribers, such as fiber optic backhaul and equal access. These small carriers can be required to share facilities pursuant to such relationships. It is not fair or practical to require them to gather compliance information about all other entities with which they have such necessary relationships, or to punish them for violations by such other entities. They do not have the ability to control the actions of all joint venturers or contractual relationships. As a result, the Commission

should limit its definition of affiliation to the span of control under Section 310(d) of the Act.

C. The Commission Should Make its Proposed Construction and Service Showing Requirements in the License Renewal Context Prospective in Nature

The Commission has proposed to utilize a three-part license renewal model that was established for the 700 MHz Service in Auction No. 73 for the other auctioned services and certain commercial site-by-site services. Under this model, applicants will be required to demonstrate in their license renewal applications (a) the level and quality of the service provided by the applicant (e.g., population served, the area served, the number of subscribers and services offered); (b) the date service to the public commenced and whether service has ever been interrupted (and if so, the duration of any service interruption or outage); (c) the extent to which service is provided to rural areas; (d) the extent to which services are provided to qualifying tribal lands (as defined by the Commission's Rules); and (e) any other factors that might be associated with the level of service to the public, including but not limited to factors that are already considered in certain radio services. The Commission has also asked whether it should consider requiring (a) a description of the licensee's current service in terms of geographic coverage and population served; (b) an explanation of the licensee's record of expansion (including a timetable for the construction of new stations in order to meet demands for service), (c) a description of investments in the system, (d) a list of addresses for all cell towers and (e) identification of the type of facilities and their construction status. *See NPRM at para. 27.* Further, the Commission is asking whether it should give consideration to whether (a) the licensee is offering a specialized service or technologically sophisticated service that does not require a high level of coverage in

order to be beneficial to customers, (b) the licensee's operations serve niche markets or focus on populations outside of areas served by other licensees; and (c) the licensee's operations serve populations with limited access to telecommunications services. *Id.*

This "renewal" showing will be more comprehensive, and thus more onerous, than the current substantial service showing requirement that is used to meet the Commission's construction build-out benchmarks for market-area licensees. As a result, while a licensee may be able to satisfy its underlying construction obligation by making a substantial service showing, that very same showing could be insufficient to warrant license renewal, since the Commission has proposed that the license renewal showing require far more detail, and meet a higher standard, as described above.

The Blooston Licensees understand the Commission's desire to ensure that (a) spectrum is put to the best use possible and (b) spectrum warehousing is minimized. The desire for some amount of additional information is also understandable. However, with respect to *existing* geographic area licenses, the Commission should not use a proceeding designed to "harmonize" license renewal procedures as a vehicle to impose new and significant substantive obligations on auction winners. The Commission auctioned those license rights for substantial amounts of money that required most applicants to develop detailed business plans in order to obtain debt financing and/or investors. Indeed, in many cases the applicant's bidding efforts were gauged to the business plan developed ahead of the auction. The Commission's proposed renewal rules would make significant changes to the rules of the game, after these licensees have invested millions of dollars (and in some cases as much as hundreds of millions of dollars) in acquiring their license rights and building their systems out. As a result, these proposed obligations, if adopted by the Commission, would be inconsistent with the business cases that were developed to

justify the underlying auction purchases and system construction plans. For this reason, the requirement should only apply to future auction licenses and new site-based commercial licenses that are not related to existing systems. Otherwise, it will become even harder for market-area licensees to attract capital. Why would lenders or investors put their money at risk in a project that could be subject to significant additional costs at the whim of an administrative agency?

It is well settled that retroactive application of administrative rules and policies is looked upon with disfavor by the Courts. *See e.g., Bowen v. Georgetown University Hospital*, 488 U.S. 208 (1988) (Retroactivity not favored in law); *Yakima Valley Cablevision v. FCC*, 794 F.2d 737, 745 (D.C. Cir. 1986) ("Courts have long hesitated to permit retroactive rulemaking and have noted its troubling nature."). In *Georgetown University*, Justice Scalia stated in his concurring opinion that "A rule that has unreasonable secondary retroactivity -- for example altering future regulation in a manner that makes worthless substantial past investment incurred in reliance upon the prior rule - - may for that reason be 'arbitrary' or 'capricious,' and thus invalid. *Georgetown University* at 220. In *McElroy Electronics Corporation v. FCC*, 990 F. 2d 1351, 1365 (DC Cir 1993), the Court of Appeals noted that retroactive enforcement of a rule is improper if the "ill effect of the retroactive application of the rule outweighs the 'mischief' of frustrating the interests the rule promotes." In this case, there would be significant ill effect in frustrating investment expectations regarding fledgling licensees, for the sake of "harmonizing" renewal procedures. This is especially true since there are less restrictive ways to achieve such harmonization, as discussed above.

If the Commission makes its renewal showing applicable to existing licensees, the Blooston Licensees urges the Commission to make it far less onerous than currently

proposed. Adverse economic conditions and changes in technology may render additional investment in existing systems beyond what is required to satisfy minimum construction requirements unfeasible. The Commission can take official notice that the most recent economic downturn resulted in a significant tightening of credit that forced the business community to reevaluate all expenditures, including capital expenditures, and to defer any expense that was not essential. In many cases revenues were reduced and loan commitments rescinded through no fault of the licensee. A certification that a commercial licensee is continuing to provide service and has not otherwise permanently discontinued operation should be sufficient to ensure that service to the public is being provided. The licensee's auction investment, and its desire to build a successful business, creates incentives for the licensee to provide a valuable service to the public.

If the Commission were to apply new substantive requirements retroactively, such requirements should only apply to licenses the size of a Major Trading Area (MTA) or larger. Basic Trading Area (BTA) and Cellular Market Area (CMA) licensees must already serve a significant portion of their license area, because the licenses are smaller and most do not contain any large city/population center (especially in the case of CMAs that are Rural Service Areas, or RSAs). In contrast, MTAs, Regional Economic Area Groupings (REAGs) and other large license areas can often be served simply by building out to the major cities and towns in the market area. For many such large licenses, it will never be necessary to build out to rural areas within the market boundary.

D. The Commission Should Clarify How the New Disclosures Will Be Utilized, and What Standards Will Apply to the Renewal Process.

The proposed renewal rules require a significant amount of information not currently required in either the renewal context or in market-area build out showings. As

discussed above, the Blooston Licensees believe that the Commission should refrain from imposing compliance disclosure requirements, and should only impose changes in substantive service requirements prospectively. However, as to all of the proposed new disclosure requirements, the *NPRM* does not explain how the additional information will be used by the Commission, or what the consequences will be if there are any perceived deficiencies. It is respectfully submitted that the Commission must explain what standards will be used to evaluate the reported information, and what weight will be applied to each disclosure. Without such guidance, licensees will face uncertainty as to what may result in a loss of their licenses through the renewal process. Determining what weight should be accorded to factors such as whether a licensee may not have expanded service rapidly enough or invested enough in its license is in significant part a subjective judgment.

In this regard, while the proposed elimination of competing applications would appear to eliminate the traditional concept of a “renewal expectancy”, it is important for the Commission to establish that a licensee’s investment in its operations will not be entirely lost due to a few missed reports or other factors identified by the *NPRM* as reportable matters. A licensee providing service to the public in accordance with its license and any build out requirement should be able to retain its license even if its record of compliance and operational history is not perfect. A licensee in such circumstances should lose its license only upon a finding that the licensee has engaged in conduct so egregious that it must be barred from holding any Commission license. In the case of existing licenses, no portion of the license should be lost due to deficiencies in the factors identified in the *NPRM*, for the reasons discussed above; and in the case of future

licenses, consistent with the “keep what you use” scheme adopted for Auction No. 73,⁵ the licensee should at a minimum be able to keep that portion of its license that it has constructed, with reasonable room for expansion. Otherwise, it will be impossible to attract investment in telecommunications ventures. The Commission should also consider a six to twelve month “cure” period (depending on the type of license and scope of operations), in which any purported deficiencies in meeting the renewal standards can be corrected by the licensee. Such measure would help to mitigate the unfairness of the subjective renewal criteria proposed in this proceeding.

With respect to the Commission’s proposed contents for a market-based license renewal showing, the Blooston Licensees do not believe that the rules should elicit licensees to disclose information about their subscriber counts. For many small and mid-sized carriers – especially those that are privately held - subscriber counts are closely guarded confidential information. Any suggestion that subscriber count is indicative of the “level and quality” of a carrier’s service would be prejudicial to those businesses that have chosen to provide service in sparsely populated rural areas, that have chosen to operate “roam only” systems, or that have chosen to serve niche markets. To the extent that the Rules suggest that a carrier’s renewal prospects might be improved by disclosing its subscriber count (even if this is voluntary), failure to include such information might leave the Commission’s staff with a false impression about the licensee’s actual level and quality of service. Affiliation or partnership opportunities may not be available for small carriers that have acquired licenses in rural markets, and the prospects for operating a stand-alone wireless business may be limited. The Blooston Licensees believe that licensees should instead be encouraged to describe the level and quality of their service in

⁵ See 700 MHz Second Report and Order, 22 FCC Rcd at 15356-58 ¶¶ 182-188.

their own terms, which will vary from service to service, as well as from situation to situation.

Likewise, the Blooston Licensees believe that the renewal showing for market-based licenses should not require licensees to disclose the date on which they commenced service. Many factors – including several that are beyond a licensee’s control – may influence a licensee’s ability to initiate service. This is especially the case for small and rural carriers who often do not have the same access to capital markets as larger and publicly traded carriers, and who may be affected more deeply by normal business cycles, larger economic downturns, severe weather, short construction seasons, loss of key employees, and any of a number of other factors. Including this requirement in a renewal showing ignores the realities faced by many small and rural businesses and creates an inherent “sooner is better” bias in the rules that could prejudice the license renewal prospects for these entities and prevent them from pursuing a strategy of building rural areas first (such as a rural telephone company’s wireline service area) instead of initiating the service in more populated areas, which are much easier to build quickly. As a practical matter, it will impose additional (and unspecific) “soft” buildout and service requirements beyond those that are already included in the Commission’s rules, if a small business must make sure that a vague standard is met. Instead of injecting greater uncertainty into the license renewal process, the Commission should rely on enforcement of its existing performance requirements to provide licensees with the incentives to provide service quickly, lest renewal showings for small businesses and entrepreneurs become detailed “apology letters” explaining why a particular licensee was unable to initiate its service sooner, and Commission staff be tempted to make a negative finding bearing on license renewal if a carrier had not initiated its service before some arbitrary

date other than the build out deadline on the license.

The Blooston Licensees agree with the Commission that it is in the public interest for market area license renewal showings to include detailed descriptions of the extent to which service is provided to rural areas and the extent to which service is provided to qualifying tribal land. Licensees should also be encouraged to explain any other factors that they believe relevant to evaluating their particular level of service to the public.

E. The Commission Should Create Special License Renewal, Construction and Discontinuance Rules for Geographic Area Licenses that are Utilized for Private Internal Purposes

The Commission can take official notice that local governmental entities, automobile clubs and other licensees have applied to utilize auction spectrum for private internal purposes in order to meet their internal communications needs. This course has been necessitated in part by the reallocation of most 800 MHz private spectrum to use by Sprint/Nextel. Where necessary, the Commission has routinely granted rule waivers in order to grant Form 601 long-form applications which requested authority to provide communications on a private, internal basis. Because these facilities are being utilized to provide private, internal communications, the Commission's proposed requirements, which are based upon demonstrations of service to the public, are inappropriate.

When licenses are obtained for internal operations, the Commission's expectation should be that the licensee will make the necessary investment to utilize and maintain those licenses to meet its private internal communications needs. Relying on a percentage of population coverage or the Commission's substantial service showing guidelines is unrealistic, since these licensees are not providing services to the public. Instead, it must be realized that business conditions will change from time-to-time that

require the closing of certain plants and/or manufacturing facilities and the opening of others, many times in different locations. As a result, the test for geographic area licenses that are being used for private, internal operations, should be the same as that applied to site-based private radio licenses authorized under Part 90 of the Commission's Rules. In this way, licensees will have the maximum flexibility to utilize these facilities in a manner that meets their internal communications needs without being required to make unnecessary expenditures.⁶

With respect to the paging frequencies authorized under Part 22 of the Commission's Rules, the Commission can take official notice that Rule Section 22.7 was amended to lift the common carrier eligibility requirement and permit "any entity" to be eligible to hold a Part 22 authorization. As a result, construction coverage requirements of Rule Section 22.503(k)(2), which were adopted prior to the amendment of Rule Section 22.7, should not apply to private internal communications, where the object of the communications is to meet the licensee's internal needs rather than providing commercial service to the public. Additionally, the Blooston Licensees believes that any geographic area license that has been authorized by the Commission for private internal communications should be treated as a private radio license, meaning that (a) the licensee must complete construction of its system in accordance with applicable technical rules within the time specified for that spectrum; (b) that the licensee be allowed to discontinue

⁶ The Commission can take official notice that it has authorized the licensing of geographic area licenses for private, internal communications. Some of these authorizations have occurred in the Paging and Radiotelephone Service while others have been in the 900 MHz MAS Service, to name a few. Private land mobile licensees have acquired these licenses directly from the Commission during the actual auction event or in the secondary market because no other spectrum was available to meet their private internal communications needs. As a result, the Commission should not be surprised that in some cases the best use of spectrum (especially for that purchased at auction) was private internal communications. The Commission's flexible use doctrine for the auctions is based upon allowing the market place determine the best use of the spectrum so long as the use is consistent with the technical service rules.

operation for up to one (1) year, before the license is deemed to have permanently discontinued operation and (c) that at the time of license renewal, the licensee is merely required to certify that facilities are constructed under the license and that those facilities have not permanently discontinued operation.

F. Site-Based License Renewals Require a Different Approach

Just as market-based licenses used for private internal purposes require special consideration, so too do site-based licenses. With respect to renewal showings for site-based licenses, the Blooston Licensees support the Commission's proposal to require licensees to certify that they are continuing to operate consistent with their applicable construction notification(s) or authorization(s), with certain clarifications. First, the Blooston Licensees agree with the tenor of the NPRM that the "substantial service" renewal standard is not really applicable to site-based licensees. Since site-based licenses allow little room for expansion or modification of service areas or service types without the grant of modification applications, the technical parameters displayed on the license largely define the nature of the operation.

There are two basic types of site-based licensees at this juncture: Part 90 private radio licensees that are using their radio systems internally, and the last of the commercial paging and SMR-type operations. As discussed below, the Commission's revised renewal regulations should recognize that Part 90 private radio operations are primarily dictated by the internal communications needs of the licensee, and therefore a simple certification that the station is operating consistent with the applicable authorization is all that is necessary; and for commercial paging operations, the Commission's renewal inquiry should also be limited, in recognition of the historic changes that are still unfolding for the paging industry.

a. The Commission Should Exclude the All Part 80, 90 and 101 Private Radio Services from the Renewal Certification Showings

Under the Commission’s proposal, the Public Safety Pool frequencies are excluded from the Commission’s license renewal proposal that would require applicants to “certify that they are continuing to operate consistent with the applicable filed construction notification(s) (NT) or most recent authorization(s) (when no NT is required under the Commission’s Rules” and to make the required substantial regulatory compliance demonstration.⁷ The Blooston Licensees urge the Commission to exclude the Part 80, 90 and 101 private radio services from these requirements for the very same reasons that the Commission has chosen to exempt the public safety services. For most private user licensees, the additional reporting requirements and paperwork burdens would be onerous and would make what is now a fairly simple license renewal process unduly complex and burdensome; particularly for smaller companies that do not have the sophistication to understand all of the Commission’s processes. The Blooston Licensees note that private radio licensees are exempt from providing the Commission with the detailed ownership information that is collected from commercial wireless licensees. As a result, these licensees have never been required to undertake developing their ownership structure in accordance with the detail required under Section 1.2110(c)(5) of the Commission’s Rules, and should not be since they are not regulated as commercial service providers. As the Commission should well be aware, spectrum in these services is utilized for internal communications as an adjunct to the licensee’s core business activities. Simply put, radio is a tool for these entities, but they are not in the business of

⁷ See *NPRM* at 16. The FCC notes further that it is possible that a site-based licensee will have been granted a license modification for which the construction deadline will not have past until after the license renewal deadline. In that circumstance, the FCC proposes that the licensee be able to include the authorized, but not yet constructed facilities within the scope of the license renewal. *Id.* at Note 92.

providing radio service. Thus, they are not as immersed in Commission regulations as commercial licensees.

Moreover, the need to determine for each license renewal all “affiliate” relationships, including contractual relationships or shared facilities that may get dragged into the definition by Section 1.2110(c)(5), will turn the renewal process into an undue burden for licensees and the Commission alike. Such difficulty for *shared* spectrum licenses is particularly unjustified.

The Blooston Licensees understand that the Commission maintains enforcement records and that many of these records include the offender’s FRN. Presumably, the Commission has indexed its records by FRN and name, and thus, should be in a position to understand whether or not the applicant has an enforcement history with the Commission. Unlike commercial carriers, in the private radio arena, the vast majority of larger companies decentralize their radio operations to the local level. Additionally, it is not uncommon for there to be high turn-over or changed responsibilities among company personnel. As a result, current internal licensing personnel may not be aware of adverse regulatory compliance findings by the Commission if they were not directly involved (or quite frankly, may not remember them after a period of years). Because the Commission’s enforcement records include the offender’s FRN, the Commission has sufficient information with respect to each licensee to determine whether their history of regulatory compliance is so horrific as to justify being classified as ineligible to hold an FCC radio license.

b. Paging Services Require Special Consideration

The Blooston Law Firm represents numerous small and medium sized paging companies which primarily serve small to medium and rural markets. These paging services have become more important to subscribers who require paging services as the larger, national carriers have pulled out of less profitable markets. Typical paging customers include public safety entities, such as police, fire and EMS agencies as well as medical professionals, hospitals and specialized industrial users where other means of communications may not be practicable.

The Commission can take official notice that the paging and messaging services authorized under Parts 22 and Part 90 of the Commission's Rules are in decline. As indicated in the Commission's FY2010 Regulatory Fee Order, "[s]ince 1997, the number of paging subscribers has declined [84 percent], from 40.8 million to 6.5 million, and there does not appear to be any sign of recovery to the subscriber levels of 1997-1999."⁸ As a result of this precipitous decline in subscriber base, the Commission has continued to maintain messaging regulatory fees at 2003 levels. *Id.* at para 24. Because of these conditions, paging carriers have been forced to eliminate unprofitable transmitters and focus on areas where their remaining subscribers require service. The Commission cannot expect paging carriers to add transmitters merely for the sake of expanding service where there is not a strong business case to do so. Likewise, if it is no longer cost effective for paging carriers to maintain certain paging sites, they should be free to eliminate unprofitable transmitter locations without fear of retribution from the Commission for what would otherwise be a sound business decision. Further, those

⁸ See *Assessment and Collection of Regulatory Fees for Fiscal Year 2010*, Report and Order, MD Docket 10-87 (Rel. July 9, 2010), para. 22, fn.53.

paging carriers with site-based licenses authorized pursuant to Part 22 of the Commission's Rules may not be in a position to relocate transmitters or expand services due to constraints imposed by the Commission's paging order which imposed a permanent freeze on applications for new site-by-site paging facilities.⁹ Under the *Paging Order*, the Commission limited modifications of site-by-site paging authorizations to the carrier's composite interference contour. As a result, Part 22 site-by-site licensees are not free to expand their systems in order to meet subscriber demand if the proposed site would be outside the composite service area established by the *Paging Order*, and in fact, may be forced to decommission unprofitable paging transmitters if there is little or no demand for service in those areas. Because of this and other limitations, the Blooston Licensees urge the Commission to require a simple certification as part of the license renewal application that the paging carriers are utilizing their licenses to provide paging services to the public. Such approach would recognize that the paging industry is in a decline that will require periodic reductions of service, but that the remaining six million paging customers are overwhelmingly engaged in public safety and healthcare related activities.

III. PERMANENT DISCONTINUANCE OF OPERATION

The Blooston Licensees believe the Commission should adopt a uniform definition for "permanent discontinuance of operation" as twelve (12) consecutive months during which a licensee does not operate or, for CMRS providers, does not serve at least one subscriber that is not affiliated with, controlled by, or related to the providing

⁹ See Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems and Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, 11 FCC Rcd 16570 (1996) (*Paging Order*), see also "Wireless Telecommunications Bureau Establishes Interim Procedures for Filing of Common Carrier and Private Carrier Paging Applications," Public Notice, 12 FCC Rcd 8740 (WTB May 10, 1996).

carrier. Adoption of a uniform rule will eliminate uncertainty that currently exists due to the lack of an existing definition for “permanent discontinuance” under Parts 24 and 27 of the Commission’s Rules, and it will ensure that similarly-situated licensees are afforded comparable regulatory treatment.

Setting the discontinuance period for CMRS operations at 12 consecutive months (as opposed to 180 consecutive days) makes sense because of the additional time that small and rural carriers often need to implement technology upgrades, due to shortened construction seasons in remote areas prone to severe weather, and due to delays that small companies often face when seeking network financing. Unlike larger carriers that have the spectrum, funding and manpower necessary to manage operations of “overlay” networks, most small and rural CMRS carriers lack these resources and would benefit from additional time to suspend their operations (if necessary), as well as the availability of in-market voice and data roaming services, to complete this process. The Commission does not need to worry that one year is too long a discontinuance period because carriers already have a significant financial incentive to put their spectrum to use and to make any discontinuance of operations as short as possible. A one-year discontinuance period for CMRS operations would also be consistent with the Commission’s proposed 365-day permanent discontinuance rule for radio services regulated under Parts 90 and 101 of the Commission’s Rules.

With respect to the requirement that licensees notify the Commission of a permanent discontinuance, the Blooston Licensees believe that the Commission should modify its proposed 10-day deadline for requesting license cancellation after a permanent discontinuance, to become a 30-day deadline (consistent with Rule Section 1.65). The Blooston Licensees agree with the Commission that all licensees should also have the

ability to file a request for a longer discontinuance period for good cause, and that such an extension request must be filed at least 30 days before the end of the discontinuance period.

A. The Commission Should Accept the Offering of Roaming Service to the Public as Adequate to Prevent Discontinuance of Operation

Some market-based licensees have built their business case on providing service to roamers, especially when they first complete construction. This allows the carrier to minimize operating expenses until revenues have risen to the level to support significant marketing and customer care efforts. The Commission should continue to recognize that such roaming arrangements constitute a valuable service to the public, and should prevent a discontinuance of operation.

B. The Commission’s Permanent Discontinuance Rules for the Part 22 Messaging Services Should Mirror those Proposed for the Part 90 Paging Services

For the Part 90 paging services, the Commission has proposed to allow a one-year period for permanent discontinuance. *Id.* at para 68. This is because the Commission has noted that “[s]ome Part 90 services are used for seasonal operations such as ski resort operations or beach patrols.” *Id.* Since these types of operations may be conducted for less than six months (180 days) out of the calendar year, the Commission concluded that it should retain the one-year discontinuance of operation rule for the Part 90 services.¹⁰ The logic expressed by the Commission for the Part 90 CMRS operations is also applicable to Part 22 CMRS operations, and in particular certain paging and IMTS operations. Certain paging and IMTS systems are operated on a seasonal basis associated

¹⁰ The Commission also proposes that Part 90 CMRS operations be required to provide service to at least one unaffiliated subscriber during the one-year period. *See Id.*

with winter-only or summer-only activities, or events. It is well known that many resort areas shut down during the off seasons and are only open during the tourist seasons, which may last for only four to five months. Additionally, paging activities that are associated with ranching and farming are likewise seasonal in nature, and depending upon weather conditions, may be for less than six months out of the year. For these reasons, the Blooston Licensees urge the Commission to apply the proposed service discontinuance standard for Part 90 CMRS facilities to the Part 22 Paging and Radiotelephone Service.

IV. GEOGRAPHIC PARTITIONING AND SPECTRUM DISAGGREGATION RULES AND POLICIES

The Commission first adopted geographic partitioning and spectrum disaggregation rules for Broadband PCS in 1996. At the time, the Commission stated its goals were to: “(1) facilitate the efficient use of spectrum by providing licensees with the flexibility to make offerings directly responsive to market demands for particular types of service; (2) increase competition by allowing market entry by new entrants; and (3) expedite the provision of service to areas that otherwise may not receive broadband PCS service in the near term.”¹¹ The Commission subsequently adopted partitioning and disaggregation rules similar to the PCS rules for the 800 MHz and 900 MHz Specialized Mobile Radio (SMR) Services, 39 GHz Service, Wireless Communications Service (WCS), 220-222 MHz Service, and Cellular Radiotelephone Service. The Commission now seeks to modify its partitioning and disaggregation rules, due to concerns that the current rules enable parties to avoid timely construction.

¹¹ Geographic Partitioning and Spectrum Disaggregation by Commercial Mobile Radio Service Licensees, WT Docket No. 96-148, *Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd 21831 ¶ 1 (1996) (*CMRS Partitioning and Disaggregation Order*).

While the Blooston Licensees agree that the Commission’s rules should not enable parties to avoid timely construction, they urge the Commission not to eliminate the “partitioner only” construction option for licensees of wireless radio services that currently have this option. If the Commission is concerned about a perceived problem or “loophole” in Rule Section 27.15(d)(1)(i) – which applies to licensees in the 1.4 GHz, 1.6 GHz, 2.3 GHz, and certain 700 MHz bands (*i.e.*, Lower 700 MHz Band licenses that were available for bidding in Auctions No. 44 and 49), it should address the perceived problem directly and clarify that substantial service buildout requirements apply to all wireless radio services at the time of license renewal, unless other service-specific requirements are applicable. The “partitioner only” construction option is extremely valuable because it allows small and rural carriers and entrepreneurs to take risks that they might not otherwise take by agreeing to partition small and/or sparsely populated rural areas from a license that the original licensee has no intention to serve, and that the original licensee may not ever need to serve under its existing buildout obligations. Imposing an obligation for both the partitioner and partitionee to independently satisfy the service-specific construction obligations (*i.e.*, requiring the partitionee to meet intermediate construction benchmarks in addition to a substantial service obligation at renewal) significantly reduces the flexibility that parties currently have to craft partitioning arrangements to fit unique situations. Small businesses, rural carriers and entrepreneurs are often the only service providers that are willing and able to serve niche markets and unserved/underserved areas. It would be counterintuitive and contrary to many of the Commission’s policy goals, as well as provisions of the Communications Act and the National Broadband Plan that seek to promote the ability of small businesses to compete in the provision of advanced wireless services, for the FCC

to force partitionees in all cases to assume service-specific performance obligations that they may only later find are impossible for them to meet.

The same arguments apply to the partitioning option that currently exists for numerous radio services, including many of the 700 MHz channel blocks, for the partitioner and the partitionee to collectively share responsibility for meeting the construction requirement for the entire license area. Eliminating this option effectively eliminates a significant negotiating point for small businesses and rural telephone companies when seeking to partition spectrum from larger entities (such as AT&T and Verizon) and offering to help the larger carrier by sharing costs to meet the stricter performance requirements.

Rural telephone companies often serve vast geographic areas where population densities are extremely low. Examples of these low population densities are shown in Attachment B, demonstrating that vast areas in North and South Dakota fall well below the 100 person per square mile definition of “rural” contained in the Commission’s rules.

If it is deemed necessary to limit the partitioning/disaggregation rule as proposed, the Commission should at least preserve its partitioner-only and collective construction options for partitioning transactions involving rural areas. At the same time, it should amend its rules to provide a “substantial service” option for all partitionees of rural areas (using the Commission’s definition of “rural” as counties having a population density of 100 persons per square mile or less) and make this available for all wireless services. Such regulatory flexibility is appropriate because it recognizes the economic challenges faced by carriers that have chosen to serve rural areas (as defined in the *Rural Spectrum*

Attachment A

Blooston Licensees

3 Rivers Telephone Cooperative, Inc.
Alliance Communications Cooperative, Inc.
Automobile Club of Southern California
BEK Communications Cooperative
Cal-Ore Telephone Company
Calumet Radio Dispatch
Caterpillar of Delaware, Inc.
Command Connect, LLC
Consolidated Edison Company of New York
Consolidated Telcom
Cook Telecom, Inc.
C.W. Wright Construction Company, Inc.
Dakota Central Telecommunications Cooperative
Fidelity Communications Company
Golden West Telecommunications Cooperative, Inc.
Griggs County Telephone
Hanson Communications, Inc.
Harrisonville Telephone Company
Horizon Telcom, Inc.
Interstate Telecommunications Cooperative, Inc.
Johnson Telephone Company
KTC AWS LLC
Kennebec Telephone Company, Inc.
LCDW Wireless Limited Partnership
Lubbock Radio Paging Service, Inc.
Metropolitan Water District of Southern California
Midstate Communications, Inc.
Midvale Telephone Exchange, Inc.
Mobile Communications Service
Moore & Liberty Telephone
Nortex Communications
North Dakota Network Company
Nucla-Naturita Telephone Company
Omnicom Paging Plus LLC
Oregon Telephone Corporation
Penasco Valley Telephone Cooperative, Inc.
Pioneer Telephone Cooperative
Powell Valley Electric Cooperative, Inc.
Professional Answering Service, Inc.
Redi-Call Communications Company
Rockwell Telephone Cooperative Association, Inc.
Rural Telephone Service Company, Inc.
Santel Communications Cooperative, Inc.
Sky Com 700MHz, LLC
South Central Utah Telephone Association, Inc.
South Slope Cooperative Telephone Company, Inc.
SRT Communications, Inc.
Triangle Telephone Cooperative Association
TrioTel Communications, Inc.
Torrance Memorial Medical Center
TTP Licenses, Inc.
Uintah Basin Electronic Telecommunications
United Wireless
Valley Telecommunications Cooperative, Inc.
Van Buren Telephone Company
Vector Security
Venture Communications Cooperative
Walnut Telephone Company
Webster-Calhoun Cooperative
West River Cooperative Telephone Company
West River Telecommunications Cooperative

Attachment B

Population Density of South Dakota Counties

Name	STATE	2000 Census	Population Density (POPs/SqMi)
Aurora	SD	3,058	4.32
Beadle	SD	17,023	13.52
Bennett	SD	3,574	3.02
Bon Homme	SD	7,260	12.89
Brookings	SD	28,220	35.52
Brown	SD	35,460	20.70
Brule	SD	5,364	6.55
Buffalo	SD	2,032	4.32
Butte	SD	9,094	4.04
Campbell	SD	1,782	2.42
Charles Mix	SD	9,350	8.52
Clark	SD	4,143	4.32
Clay	SD	13,537	32.89
Codington	SD	25,897	37.66
Corson	SD	4,181	1.69
Custer	SD	7,275	4.67
Davison	SD	18,741	43.04
Day	SD	6,267	6.09
Deuel	SD	4,498	7.21
Dewey	SD	5,972	2.59
Douglas	SD	3,458	7.98
Edmunds	SD	4,367	3.81
Fall River	SD	7,453	4.28
Faulk	SD	2,640	2.64
Grant	SD	7,847	11.50
Gregory	SD	4,792	4.72
Haakon	SD	2,196	1.21
Hamlin	SD	5,540	10.93
Hand	SD	3,741	2.60
Hanson	SD	3,139	7.22
Harding	SD	1,353	0.51
Hughes	SD	16,481	22.24
Hutchinson	SD	8,075	9.93

Name	STATE	2000 Census	Population Density (POPs/SqMi)
Hyde	SD	1,671	1.94
Jackson	SD	2,930	1.57
Jerauld	SD	2,295	4.33
Jones	SD	1,193	1.23
Kingsbury	SD	5,815	6.94
Lake	SD	1,276	20.02
Lawrence	SD	21,802	27.25
Lincoln	SD	24,131	41.74
Lyman	SD	3,895	2.38
Marshall	SD	4,576	5.46
McCook	SD	5,832	10.15
McPherson	SD	2,904	2.55
Meade	SD	24,253	6.99
Mellette	SD	2,083	1.59
Miner	SD	2,884	5.06
Minnehaha	SD	148,281	183.14
Moody	SD	6,595	12.69
Pennington	SD	88,565	31.90
Perkins	SD	3,363	1.17
Potter	SD	2,693	3.11
Roberts	SD	10,016	9.09
Sanborn	SD	2,675	4.70
Shannon	SD	12,466	5.95
Spink	SD	7,454	4.96
Stanley	SD	2,772	1.92
Sully	SD	1,556	1.55
Todd	SD	9,050	6.52
Tripp	SD	6,430	3.99
Turner	SD	8,849	14.35
Union	SD	12,584	27.33
Walworth	SD	5,974	8.44
Yankton	SD	21,652	41.51
Ziebach	SD	2,519	1.28

Average population density of SD's sixty-six counties is **12.85 persons/square mile**. The FCC defines "rural areas" as counties having a population density of less than 100 persons/square mile. By this measure, all but one of sixty-six counties in the State (Minnehaha County) qualifies as a rural area.

Attachment B

Population Density of North Dakota Counties

County Name	2000 Census	Land Area Square Miles	Pop Density	County Name	2000 Census	Land Area Square Miles	Pop Density
Adams	2,593	987.9135	2.62	McLean	9,311	2109.955	4.41
Barnes	11,775	1491.647	7.89	Mercer	8,644	1045.489	8.27
Benson	6,964	1380.6	5.04	Morton	25,303	1926.268	13.14
Billings	888	1151.41	0.77	Mountrail	6,631	1823.933	3.64
Bottineau	7,149	1668.586	4.28	Nelson	3,715	981.6215	3.78
Bowman	3,242	1162.047	2.79	Oliver	2,065	723.5216	2.85
Burke	2,242	1103.529	2.03	Pembina	8,585	1118.752	7.67
Burleigh	69,416	1633.089	42.51	Pierce	4,675	1017.818	4.59
Cass	123,138	1765.229	69.76	Ramsey	12,066	1184.846	10.18
Cavalier	4,831	1488.459	3.25	Ransom	5,890	862.7471	6.83
Dickey	5,757	1131	5.09	Renville	2,610	874.7658	2.98
Divide	2,283	1259.529	1.81	Richland	17,998	1436.712	12.53
Dunn	3,600	2009.599	1.79	Rolette	13,674	902.4538	15.15
Eddy	2,757	630.1185	4.38	Sargent	4,366	858.7536	5.08
Emmons	4,331	1509.883	2.87	Sheridan	1,710	971.7514	1.76
Foster	3,759	635.2005	5.92	Sioux	4,044	1094.12	3.70
Golden Valley	1,924	1001.99	1.92	Slope	767	1217.94	0.63
Grand Forks	66,109	1437.806	45.98	Stark	22,636	1338.162	16.92
Grant	2,841	1659.462	1.71	Steele	2,258	712.3614	3.17
Griggs	2,754	708.5013	3.89	Stutsman	21,908	2221.403	9.86
Hettinger	2,715	1132.252	2.40	Towner	2,876	1024.552	2.81
Kidder	2,753	1350.786	2.04	Traill	8,477	861.8875	9.84
LaMoure	4,701	1147.177	4.10	Walsh	12,389	1281.742	9.67
Logan	2,308	992.6411	2.33	Ward	58,795	2012.884	29.21
McHenry	5,987	1874.091	3.19	Wells	5,102	1271.277	4.01
McIntosh	3,390	975.194	3.48	Williams	19,761	2070.457	9.54
McKenzie	5,737	2742.018	2.09				

Average population density of ND fifty-three counties is just **8.26 persons/square mile**. The FCC defines “rural areas” as counties having a population density of less than 100 persons/square mile. By this measure, the entire State of North Dakota qualifies as a rural area.

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