

**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)	

To: The Commission

Reply Comments of Sensus USA Inc.

Sensus USA Inc., along with its wholly owned subsidiary, Sensus Spectrum LLC (collectively “Sensus”), submits these Reply Comments in the above captioned docket. Commenters in this docket generally oppose Proposed Rule Section 1.949, which would govern license renewal applications. Sensus concurs with commenters that make the following points in opposition to proposed Rule Section 1.949.

I. The Current Renewal System Works Reasonably Well and the NPRM Does Not Articulate A Need For A Burdensome Renewal Process

Sensus concurs with United States Cellular Corporation (“USCC”), which says the following:

The simplicity and certainty of [the current license renewal] process have had great public benefits. The system has worked. Regulatory predictability is the indispensable ally of investment and nothing has been more critical to wireless investment than a reasonable certainty on the part of wireless licensees that if they met their buildout requirements and complied with the FCC's Rules that their licenses would be renewed. Over the past 15 years, during both good and bad economic times, the performance of the US wireless industry in serving the public interest is beyond peradventure. A few comparative statistics for the USA tell the story. In 1985, CTIA estimates that there were 340,123 wireless "connections." In 2009, there were 285,646,191 such connections. In 1985, industry revenues were \$482,428,000. In 2009 revenues were \$152,551,854,000. During the same period, the number of cell sites has increased from 913 to 247,081 and the number of "direct service provider employees" from 2,727 to 249,247. A ubiquitous national wireless network has been created. It was not created by magic. Rather it came into being through the entrepreneurial efforts of thousands of Americans employed in the wireless industry, and through the wise and "light handed" regulatory policies of the FCC. Among those being policies which provided reasonable certainty of license renewal for all carriers

meeting the specific and well defined build-out obligations required of them. The current system of wireless license renewal is not a "problem" and does not need to be "solved."

USCC Comments 3-4 (footnotes omitted). Other commenters noted that the NPRM does not identify a problem or specify a need for the burdensome renewal showings proposed. See Comments of AT&T Inc. 2 and CTIA – The Wireless Association (“CTIA”) 3. See also Comments of Sensus 8-9. Sensus continues to believe that “if it ain’t broke, don’t fix it” and urges the Commission to abandon proposed Rule Section 1.949.

II. Proposed Rule 1.949 Would Violate the Law and Be Subject to Legal Challenge

Sensus concurs with CTIA – The Wireless Association which says:

The Absence Of A Clear Renewal Standard Is Vulnerable To Judicial Challenge. Courts do not give “substantial deference” to an agency’s interpretation of its own rules if the agency has failed to adopt “an intelligible decisional standard.” If the Commission does have a new renewal standard in mind, the *NPRM* has failed delineate it in reasonable detail or to put parties on adequate notice. Thus, if the *NPRM*’s proposal is adopted, the Commission will likely face the same criticism from the D.C. Circuit as it did in *Northeast Cellular*, where the court remanded a decision as arbitrary and capricious, finding that the Commission had “nothing more than a we-know-it-when-we-see-it” standard,” and had “not simply deviated from [existing] standards; [but had] never stated any standards in the first place.” Therefore, the Commission will need to issue a further public notice to seek comment on its proposed renewal standard, describing “the range of alternatives being considered with reasonable specificity” in order to satisfy the requirements of the Administrative Procedure Act.

Comments of CTIA – The Wireless Association i (footnotes omitted). CTIA’s Comments identify a litany of legal deficiencies, CTIA 3-17, as do other Comments. See Sensus 4-8, Verizon Wireless 5-6, Sprint Nextel ii, 3-9 and AT&T 18-29.

III. The Proposed Rules Would Leave A Vague Or Non-Existent Renewal Standard, Thereby Injecting Risk And Harming Investment.

Many commenters noted the absence of a clear renewal standard and that this would introduce greater risk and harm investment. See Comments of Sensus 4-7, Blooston Licensees 15, MetroPCS Communications, Inc. 19-20, MariTel, Inc. 1, WCS Coalition 5-8, Verizon Wireless 2-6, USSC 2-3, CTIA 3-10, T-Mobile USA Inc. (“T-Mobile”) 4-7, Sprint Nextel ii, 3-9, Land Mobile Communications

Council 10, Clearwire Corporation 4-5, AT&T 26-28, Wireless Communications Association International, Inc. 2-10 and CTIA 8-10.

IV. Renewal Standards Need Flexibility To Be Relevant To Different Services, Business Models

Consistent with its one-size-fits-all approach, the NPRM presumes a cellular-type business model. However, licensees affected by the NPRM utilize widely varying business models. This is particularly so in the narrowband services. As Sensus noted in its Comments, a licensee providing broadband, mass-market, common carrier mobile service is very different from a utility that uses its fixed-station microwave or MAS licenses for internal use. And these two are in turn different from a company, like Sensus, that provides spectrum as one element of a packaged communication system offering for critical infrastructure utilities. Sensus 11.

Heretofore, the Bureau has utilized the flexible concept of “substantial service” to acknowledge and accommodate these and other very different approaches to providing service over licensed spectrum. However, the NPRM appears to eliminate this and other familiar benchmarks. *See e.g.* NPRM para. 21. Sensus concurs with other narrowband, and broadband, commenters who believe the NPRM is mistaken to abandon the individualized standards that have applied to different radio services and business models. See Comments of Southern Company Services, Inc. 2-5, Blooston 18-24, LightSquared Inc. (“LightSquared”) 2-4, FiberTower Corporation 2-4, USSC 5-6 and Enterprise Wireless Alliance 2-7.

V. The NPRM Engages In Retroactive Rulemaking.

In addition to the legal deficiencies identified above, commenters noted that the NPRM engages in impermissible retroactive rulemaking. This subjects the NPRM to further legal challenge, and impermissibly changes the rules in the middle of the game, making investment in spectrum and wireless infrastructure more risky and less attractive. Blooston 11-14, CTIA at 21-28, MetroPCS 12-19, LightSquared 4, Verizon Wireless 6-12, T-Mobile 13-14 and AT&T 18-22.

IN CONCLUSION, Sensus urges the Commission to reject Proposed Rule Section 1.949.

Respectfully Submitted,

SENSUS USA INC.
SENSUS SPECTRUM LLC

A handwritten signature in black ink, appearing to read "Geo Uram", with a long horizontal line extending to the right.

George Uram
Vice President, Industry and Regulatory Affairs
Sensus USA Inc.
1501 Ardmore Blvd., Sixth Floor
Pittsburgh, PA 15221
Telephone: (724) 425-7596

Julian Gehman
Gehman Law PLLC
910 17th Street, NW, Suite 800
Washington, DC 20006
Telephone: (202) 223-1177
Facsimile: (202) 955-1177
julian@gehmanlaw.com

Counsel to Sensus

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