

**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)	

REPLY COMMENTS OF RURAL CELLULAR ASSOCIATION

Rural Cellular Association (RCA)¹ hereby submits these Reply Comments in response to the Federal Communications Commission's (FCC or Commission) Notice of Proposed Rulemaking² seeking comment on its proposal to create consistent renewal and discontinuance of service requirements, and to clarify the construction requirements

¹ RCA is an association representing the interests of nearly 100 regional and rural wireless licensees providing commercial services to subscribers throughout the Nation and licensed to serve more than 80 percent of the country. Most of RCA's members serve fewer than 500,000 customers each.

² *Amendment of Parts 1, 22, 24, 27, 74, 80, 90, 95, and 101 To Establish Uniform License Renewal, Discontinuance of Operation, and Geographic Partitioning and Spectrum Disaggregation Rules and Policies for Certain Wireless Radio Services*, Notice of Proposed Rulemaking and Order, 25 FCC Rcd 6996 (2010) ("NPRM" and "Freeze Order").

applied to partitioned or disaggregated licenses. RCA appreciates the Commission's efforts to harmonize its licensing rules, but the FCC approach will impose significant costs and administrative burdens on rural and regional carriers, cause confusion in the wireless industry, and retroactively impose burdens on FCC licensees. The record in this proceeding demonstrates that the FCC must reject its proposals.

I. The FCC's Proposed Renewal Requirements Impose Burdensome and Costly Requirements on Rural and Regional Carriers

In its *NPRM*, the FCC proposes to modify its license renewal process by requiring a detailed renewal showing at the time of renewal. The FCC proposes to include in the detailed renewal showing a regulatory compliance demonstration. In so doing, the FCC hopes to simplify the regulatory process, eliminate confusion, provide licensees with greater certainty, and encourage investment. However, the FCC's proposal will achieve the exact opposite. In particular, the proposed new renewal showing will significantly increase regulatory compliance costs for RCA members.

Rural and regional carriers have made significant investments in wireless spectrum. For smaller wireless carriers, their spectrum portfolio is one of their largest assets and RCA members have an established record of protecting their spectrum assets through the timely filing of renewal applications. While the current renewal process may not be consistent throughout the various spectrum bands, rural and regional wireless licensees understand and properly follow the current process. The cost and administrative burden on RCA members is minor under the current renewal procedures.

By contrast, the FCC’s proposed license renewal rules would “create investment-killing uncertainty for licensees concerning the security of their licenses.”³

Under the proposed requirements, the FCC would impose costly and burdensome requirements on wireless licensees, particularly rural and regional carriers. Many rural and regional carriers do not have the support staff to prepare information for a detailed renewal showing. Nor do they have the resources to pay attorneys for the same purpose. Increased regulatory and administrative requirements are particularly detrimental to rural and regional carriers. Smaller carriers cannot distribute these administrative costs across a large number of customers, which can mean an exponential increase in the per customer cost of compliance when compared to national carriers.

Additionally, RCA members hold many licenses that cover smaller geographic areas. As CTIA noted, “because an individual renewal showing will be required for each license, the administrative costs and burdens will fall disproportionately on those licensees holding many licenses covering smaller geographic areas, compared to licensees holding a smaller number of larger, regional or nationwide licenses.”⁴ The potential costs to smaller carriers, and the competitive harms on rural and regional carriers, associated with the FCC’s proposed renewal showing outweigh the benefits of consistency. Instead, the FCC should retain the current license renewal process to ensure equity and uniformity.

LightSquared commented that the “Commission’s rules governing renewals should give licensees flexibility in how they demonstrate that spectrum is being used and developed in a manner that is consistent with the public interest. Factors that are relevant

³ USCC Comments at 1.

⁴ CTIA Comments at 12.

to some renewal applications will not be to others”,⁵ particularly in light of the different build-out requirements imposed on rural and regional wireless licensees. “Proposed new renewal standards, [] without reasoned explanation, utterly repudiate the idea of ‘flexibility’ in meeting customer needs.”⁶ If the FCC decides to modify the existing renewal requirements to increase uniformity among the wireless services, RCA supports CTIA’s proposal to require that licensees submit a streamlined service certification and a regulatory compliance demonstration/certification.⁷

II. The FCC’s Proposed Partition and Disaggregation Rules Will Make it Harder for Rural and Regional Carriers to Garner Access to Spectrum

The FCC’s proposal to modify the partitioning and disaggregation rules, to require each party to such arrangements to independently satisfy the construction obligations under the relevant service rules, will make it more challenging for RCA members to access spectrum in the secondary market. The FCC notes that it “specifically envisioned that partitioning and disaggregation would expedite the provision of service to rural and other underserved areas of America as well as to niche markets.”⁸ Additionally, the FCC’s partitioning and disaggregation rules attempt to increase competition through its partitioning and disaggregation policies by encouraging and enabling market entry.⁹

⁵ LightSquared Comments at 2.

⁶ USCC Comments at 6.

⁷ CTIA Comments at 17.

⁸ See, *NPRM* ¶ 75; see e.g., *CMRS Partitioning and Disaggregation Order*, 11 FCC Rcd at 21843 ¶ 14 (“increasing the number of parties that may obtain partitioned PCS licenses will lead to more efficient use of PCS spectrum and will speed service to underserved or rural areas”).

⁹ See, *NPRM* ¶ 76

RCA wholeheartedly agrees that these goals must remain paramount when developing a national strategy to bring broadband to all Americans.¹⁰

The current rules “have served the public interest by permitting flexible arrangements which have increased the wireless services available to the public.”¹¹ In particular, the FCC’s partition rules have allowed rural and regional carriers to partner with larger carriers to help construct wireless service in less populated areas. Rural and regional carriers can efficiently utilize smaller portions of spectrum than the larger carriers, due to a smaller subscriber base. The FCC’s disaggregation rules have provided RCA members with access to spectrum in instances when they may not have had the financial resources to acquire spectrum at auction. However, independent construction requirements could discourage larger carriers from providing rural and regional carriers access to spectrum through private transactions because of the threat that either party might lose control over the spectrum.

Additionally, these rules disallow parties the flexibility to determine how best to manage their spectrum efficiently. The FCC even noted in its NPRM that its proposal “contrasts with current wireless rules which permit for greater flexibility in meeting applicable buildout requirements.”¹²

¹⁰ See, NPRM ¶ 75, See, e.g., Connecting America: The National Broadband Plan (2010), available at <http://www.broadband.gov/plan/>; Bringing Broadband to Rural America: Report on a Rural Broadband Strategy, 2009 WL 1480862 (F.C.C.) (May 22, 2009) (*Rural Broadband Report*), available at <http://wireless.fcc.gov/outreach/ruralbroadband>.

¹¹ USCC Comments at 11.

¹² USCC Comments at 12.

III. The FCC Cannot Retroactively Apply Its Proposed Renewal Showing

“The Commission must guard against retroactive application of any adopted rule changes.”¹³ If the FCC decides to adopt its ill-conceived proposed renewal showing, the FCC must only apply its new rules prospectively.¹⁴ RCA agrees with CTIA that the FCC will need to issue a further public notice before it can adopt its proposed changes to the renewal process. As CITA notes, the FCC will “need to provide clear notice and opportunity to comment on how it intends to evaluate any new detailed factors and what level of service is sufficient for renewal. The many wireless licensees that have purchased their licenses at auction or in the secondary market and have made substantial investments in deployment over the past 16 years are entitled to a renewal process that clearly articulates the Commission’s standard for achieving renewal.”

In addition to the NPRM’s possible retroactive impact, RCA, in conjunction with CTIA and wireless carriers, filed a Petition for Reconsideration of the Commission’s decision in the *Freeze Order* to condition all renewal application grants on the ultimate outcome of this proceeding.¹⁵ This *Freeze Order* will result in impermissible primary retroactivity under well-established court precedent, as the Commission has no explicit statutory authority to apply rules retroactively. It will also constitute impermissible secondary retroactivity because altering future legal consequences based on the licensee’s past conduct cannot be considered “reasonably related” to the Commission’s stated goals.

¹³ CTIA Comments at 21.

¹⁴ USCC Comments at 6.

¹⁵ See Petition for Reconsideration of CTIA – The Wireless Association®, AT&T Services, Inc., Cricket Communications, Inc., Rural Cellular Association, Sprint Nextel Corporation, T-Mobile USA, United States Cellular Corporation, and Verizon, WT Docket No. 10-112 (August 6, 2010).

Retroactivity would also occur with regard to many renewal applications filed after new rules are adopted, especially where most of the license terms had already elapsed.

IV. Conclusion

As the record reflects, the FCC's proposed rules are harmful to flexible, innovative efficient use of spectrum and would do great harm to rural and regional carriers as well as discourage the deployment of mobile broadband services in rural America. The uncertainty, confusion and unnecessary costs created as a result of these proposed license renewal process rules will cripple competitive, innovation and efficient use of spectrum. The FCC should reject its proposals.

Respectfully Submitted,



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The Voice of Rural & Regional Carriers

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August 23, 2010