

**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)	
)	

REPLY COMMENTS OF T-MOBILE USA, INC.

Commenters in the above-referenced proceeding¹ overwhelmingly agree with T-Mobile USA, Inc. (“T-Mobile”) that although harmonizing renewal requirements on a prospective basis serves the public interest, the Commission’s proposed subjective “renewal showing” should be rejected. Commenters agree that the proposal would increase the complexity and ambiguity of the renewal process, which in turn would discourage investment and encourage litigation, to the detriment of competition and consumers. Commenters further agree that the proposed “regulatory compliance demonstration” is unreasonable and unduly burdensome.

Accordingly, T-Mobile urges the Commission to reject the renewal showing and compliance demonstration outlined in the *Licensing NPRM*. In the alternative, T-Mobile urges

¹ See *Amendment of Parts 1, 22, 24, 27, 74, 80, 90, 95, and 101 To Establish Uniform License Renewal, Discontinuance of Operation, and Geographic Partitioning and Spectrum Disaggregation Rules and Policies for Certain Wireless Radio Services*, Notice of Proposed Rulemaking and Order, 25 FCC Rcd 6996 (2010) (the “*Licensing NPRM*”). All comments filed in response to the *Licensing NPRM* will hereinafter be short-cited.

the Commission to adopt a more reasonable and objective proposal supported by CTIA – The Wireless Association (“CTIA”) and others, which requires a licensee to file with its renewal application: (1) a “service certification” verifying that, at the time of renewal, its operations are consistent with the licensee’s most recent construction notifications and/or authorizations; and (2) a “compliance certification” verifying substantial compliance with applicable statutes, rules, and policies by the licensee and entities within its direct ownership chain.

I. COMMENTERS AGREE THAT THE PROPOSED “RENEWAL SHOWING” DOES NOT SERVE THE PUBLIC INTEREST

Commenters by a wide margin strongly oppose the renewal showing outlined in the *Licensing NPRM*, which would subject licensees to a long and non-exclusive list of vague renewal factors and unreasonable documentation requirements. In fact, the record conclusively shows that the Commission’s proposal is subject to legal challenge under the Administrative Procedure Act, the Paperwork Reduction Act, and the U.S. Constitution.² Many commenters agree that the renewal factors raise more questions than they answer and create significant uncertainty for licensees.³ Specifically, the renewal showing is vague and fails to clearly articulate any standard by which renewal applications can be judged fairly. As CTIA points out, “there is no indication of the relative importance of each [renewal] criteria, whether some or all

² See AT&T Inc. (“AT&T”) Comments at 22-28; CTIA Comments at 8-10, 15-17; Sensus USA, Inc. (“Sensus”) Comments at 7-8; Verizon Wireless Comments at 6.

³ See T-Mobile Comments at 4-11; AT&T Comments at 6-7, 12-14; Blooston Licensees Comments at 14-18; Catholic Television Network and the National EBS Association (“CTN/NEBSA”) Comments at 4-5; Clearwire Corporation (“Clearwire”) Comments at 4-5; ComSpec Corporation (“ComSpec”) Comments at 2; CTIA Comments at 5-7, 10-15; MetroPCS Communications, Inc. (“MetroPCS”) Comments at 19-25; Sensus Comments at 5-7, 10; Sprint Nextel Corporation (“Sprint Nextel”) Comments at 3-9; United States Cellular Corporation (“USCC”) Comments at 4-8; Verizon Wireless Comments at 5-6; WCS Coalition Comments at 5-8; Wireless Communications Association International, Inc. (“WCAI”) Comments at 5-6.

are optional, or what level of performance under each criteria will be deemed sufficient to justify license renewal.”⁴

The existing renewal process may vary across wireless services, but it provides licensees with certainty regarding applicable renewal requirements and their chances for successfully renewing their licenses. This process has fostered significant investment and innovation in the wireless marketplace. In contrast, the ambiguous and burdensome renewal factors proposed in the *Licensing NPRM* would introduce great uncertainty into the renewal process, even if a licensee meets its applicable build out requirements.⁵ This uncertainty would diminish licensees’ incentives to further invest in facilities and services and to innovate, forcing them instead to focus on satisfying the myriad of renewal factors.⁶ The Commission provides no justification for a more stringent and ambiguous renewal showing, and fails to show a need to change the current renewal process that has helped foster the continuing evolution of new wireless technologies and services.⁷

The Commission also should reject USA Mobility Inc.’s suggestion that it evaluate renewal applications in light of “prevalent technological and market conditions.”⁸ This proposal would increase the ambiguity of the renewal process as licensees would have to contend with constantly changing renewal factors. In fact, commenters agree that the proposed renewal showing puts the Commission staff in the untenable position of arbitrarily judging renewal

⁴ CTIA Comments at 5.

⁵ See AT&T Comments at 7; Clearwire Comments at 5; CTIA Comments at 6; Sprint Nextel Comments at 9; WCAI Comments at 7-9.

⁶ See T-Mobile Comments at 5-6; AT&T Comments at 6-7, 15-17; CTIA Comments at 6; MetroPCS Comments at 23; Sprint Nextel Comments at 5.

⁷ See AT&T Comments at 8-10, 15; Clearwire Comments at 5; CTIA Comments at 4; USCC Comments at 2-4; Verizon Wireless Comments at 2-3.

⁸ USA Mobility Inc. (“USA Mobility”) Comments at 3.

applications based upon the success of individual company business plans and decisions.⁹ The Commission should reject undefined qualitative and subjective renewal factors and instead base its review on objective, standardized measurements. For example, T-Mobile supports the proposal that the Commission require both site-based and geographic-based licensees to submit with their renewal applications a “service certification” verifying that at the time of renewal their operations are consistent with their most recent construction notifications and/or authorizations.¹⁰ The service certification would accomplish the Commission’s goal of harmonizing the renewal requirements for wireless licensees by providing a clear, streamlined, and efficient renewal process without “unduly burdening renewal applicants and Commission staff.”¹¹

II. THE RECORD ESTABLISHES THAT THE PROPOSED “REGULATORY COMPLIANCE DEMONSTRATION” IS UNREASONABLY BURDENSOME, OVERLY BROAD, AND PUNITIVE

Commenters overwhelmingly oppose the Commission’s proposal that, as part of a regulatory compliance demonstration, licensees must provide with their renewal applications copies of (1) all orders or rulings related to potential or actual violations of applicable statutes, rules, or policies and (2) any pending petitions to deny.¹² Furthermore, the proposed

⁹ See T-Mobile Comments at 5-6; CTIA Comments at 6-7; MetroPCS Comments at 21; Sensus Comments at 5; USCC Comments at 6.

¹⁰ See Clearwire Comments at 6; ComSpec Comments at 2-3; CTIA Comments at 17-18; Verizon Wireless Comments at 12-13; WCAI Comments at 9.

¹¹ *Licensing NPRM*, 25 FCC Rcd at 7011. The Commission also should reject the Enterprise Wireless Alliance (“EWA”) suggestion that the Commission apply the proposed renewal showing to larger licenses but not smaller licenses. EWA Comments at 5-7. The Commission’s renewal requirements should apply equally to all wireless licenses identified in the *Licensing NPRM*. Otherwise, the benefits of harmonizing those requirements will be lost. EWA’s acknowledgement that the proposed renewal showing may adversely affect holders of smaller licenses proves the point that the proposal does not serve the public interest.

¹² See T-Mobile Comments at 11-13; AT&T Comments at 13-14; Blooston Licensees Comments at 8-9; CTIA Comments at 18-21; CTN/NEBSA Comments at 6; EWA Comments at 7-8; Hispanic Information and Telecommunications Network, Inc. Comments at 4; New York State Electric & Gas Corporation

requirements would necessitate a tremendous amount of due diligence for numerous affiliates and operations (including those which may not even be related to the licensee's wireless business) covering many years.¹³ It is unreasonable to expect licensees to be able to certify that they have made *all* of the requisite disclosures concerning prior compliance as mandated by the proposed rules.

T-Mobile generally does not oppose a reasonable requirement that licensees demonstrate their compliance with applicable laws and policies at the time of renewal. It agrees with other commenters that requiring a licensee to submit a certification that it *substantially* complies with the Communications Act of 1934, as amended,¹⁴ and Commission rules and policies is reasonable.¹⁵ The certification, however, should apply only to the licensee and any entities within its direct ownership chain, and it should not cover periods beyond the license term or during which a license was not under the control of the renewal applicant.¹⁶

III. ANY NEW RENEWAL REQUIREMENTS ADOPTED IN THIS PROCEEDING CAN BE LAWFULLY APPLIED ONLY PROSPECTIVELY

The vast majority of commenters agree with T-Mobile that holding licensees accountable to a renewal standard that did not exist during their license terms and for which they had no notice is unreasonable and subject to legal challenge as retroactive rulemaking under the

(“NYSEGC”) Comments at 5-6; Sprint Nextel Comments at 13-14; USCC Comments at 11; Verizon Wireless Comments at 13-14.

¹³ See T-Mobile Comments at 11-13; AT&T Comments at 13-14; Blooston Licensees Comments at 9-11; CTIA Comments at 18-21; MetroPCS Comments at 29-30; NYSEGC Comments at 5-6; PacifiCorp et al. Comments at 6-7; Southern Company Services, Inc. Comments at 5-6; Sprint Nextel Comments at 13-14; Verizon Wireless Comments at 13-14.

¹⁴ 47 U.S.C. §§ 151 *et seq.*

¹⁵ See CTIA Comments at 19; LightSquared Inc. (“LightSquared”) Comments at 4-5.

¹⁶ See AT&T Comments at 14; Blooston Licensees Comments at 9-15; CTIA Comments at 19-20; LightSquared Comments at 5; Sprint Nextel Comments at 14; USCC Comments at 11; Verizon Wireless Comments at 14.

Administrative Procedure Act.¹⁷ Accordingly, the Commission should apply any changes to its wireless renewal procedures prospectively and apply existing rules to any licensees' actions (or inactions) taken prior to the effective date of the new rules.

IV. CONCLUSION

The record in this proceeding shows widespread support for harmonizing the Commission's wireless license renewal requirements. The Commission, however, should heed the public interest and legal concerns expressed by a majority of commenters and reject the specific renewal and regulatory compliance proposals set forth in the *Licensing NPRM*. Rather, the Commission's renewal requirements should be prospective and based upon reasonable, clear, and objective standards that provide licensees with certainty regarding the renewal process.

Respectfully submitted,

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August 23, 2010

¹⁷ See T-Mobile Comments at 13-14; AT&T Comments at 18-22; Blooston Licensees Comments at 11-14; CTIA Comments at 21-27; LightSquared Comments at 4; MetroPCS Comments at 12-19; Sprint Nextel Comments at 7-8; Verizon Wireless Comments at 6-12. Similarly, several parties have sought reconsideration of the Commission's order directing the Wireless Telecommunications Bureau to conditionally grant all license renewal applications filed prior to the release of final rules in this proceeding, subject to the outcome of the proceeding. See, e.g., Petition for Reconsideration of CTIA – The Wireless Association, et al., WT Docket No. 10-112 (Aug. 6, 2010); Wireless Communications Association International, Inc. Petition for Partial Reconsideration, WT Docket No. 10-112 (Aug. 6, 2010).