

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	
Amendment of Parts 1, 22, 24, 27, 74, 80, 90, 95 and 101	)	WT Docket No. 10-112
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

**REPLY COMMENTS  
OF  
ENTERGY SERVICES, INC.**

Entergy Services, Inc. (“Entergy”), on behalf of itself and its operating affiliates, submits reply comments in response to the Federal Communications Commission’s (“FCC’s” or “Commission’s”) *Notice of Proposed Rulemaking* on the establishment of uniform license renewal and discontinuance of operation rules for wireless radio services.<sup>1</sup> Entergy agrees with commenters in this proceeding who argue that the FCC’s proposed “Regulatory Compliance Demonstration” criteria create an undue burden on renewal applicants and should be rejected. Further, the submission of extensive regulatory compliance data to the FCC is unnecessary in

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<sup>1</sup> 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, 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, *Notice of Proposed Rulemaking and Order*, WT Docket No. 10-112, FCC 10-86 (rel. May 25, 2010) (“NPRM”).

light of data already maintained by the Commission. Entergy also supports the FCC's tentative conclusion to retain the one-year discontinuance of operations standard for most Part 90 services.

## **I. INTRODUCTION**

Entergy is a wholly owned subsidiary service company of Entergy Corporation, an integrated energy company engaged primarily in electric power production and retail distribution operations. Through its subsidiaries, Entergy Corporation owns and operates power plants with approximately 30,000 megawatts of electric generating capacity, is the second-largest generator of nuclear power in the U.S., and delivers electricity to 2.7 million utility customers in Arkansas, Louisiana, Mississippi, and Texas.<sup>2</sup> With its affiliates in the Gulf Coast, Northeast, and Midwest regions of the U.S., Entergy holds approximately 350 active Part 90 FCC licenses and approximately 150 Part 101 private microwave licenses that it uses to support employee communications, security, and emergency functions for public utility systems, as well as nuclear power plant operations.

## **II. ENTERGY OPPOSES THE FCC'S REGULATORY COMPLIANCE DEMONSTRATION PROPOSAL**

### **A. Submission of the Regulatory Compliance Data Would Be Duplicative and Inefficient**

Commenters argue that the materials the FCC proposes to collect would duplicate data that the Commission already has in its possession. The joint comments of PacifiCorp *et al.*, for

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<sup>2</sup> Entergy Corporation's electric public utility operating company members include: Entergy Arkansas, Inc.; Entergy Gulf States Louisiana, L.L.C.; Entergy Louisiana, LLC; Entergy Mississippi, Inc.; Entergy New Orleans, Inc.; and Entergy Texas, Inc. Entergy Solutions LLC, Entergy Solutions District Cooling, LP and Entergy Thermal, LLC offer large-scale district commercial cooling worldwide. Entergy Nuclear operates twelve nuclear units at ten plant sites around the U.S.

example, argue that the burden of acquiring data from multiple companies and conducting due diligence to verify accuracy and completeness is unnecessary in light of the Commission's ability to assemble this data from its own records.<sup>3</sup> Further, PacifiCorp *et al.* and Southern Company propose that it would be more efficient for the Commission to track licensee compliance through internal FCC processes using the FCC Registration Number (FRN) assigned to each licensee and to correlate that information with existing records in the FCC's licensing databases, such as the Universal Licensing System.<sup>4</sup> CTIA adds that requiring licensees to submit copies of pending petitions to deny and the Commission's own orders and letter rulings is "unnecessary and duplicative" because electronic copies of the Commission's orders and letter rulings are available online, and petitions to deny must be filed with the Commission.<sup>5</sup>

Entergy shares these views and submits that there should be no need for it, or other renewal applicants, to compile and submit historical FCC enforcement records when the FCC already has such information available in its files and electronic databases. A requirement to submit such materials would be redundant and unnecessary in light of the data already maintained by the Commission.

**B. Submission of the Regulatory Compliance Data Would Be Unduly Burdensome**

Entergy shares the concerns of commenters in this proceeding that the FCC's proposal to require submission of a "Regulatory Compliance Demonstration" at the time of renewal, including past agency orders and letter rulings, is overly burdensome. Specifically, the NPRM provides as follows:

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<sup>3</sup> Joint comments of PacifiCorp, *et al.* at 7.

<sup>4</sup> *Id.* at 8 and Comments of Southern Company at 6.

<sup>5</sup> Comments of CTIA-The Wireless Association® at 19.

To aid review of a renewal applicant's regulatory compliance, we tentatively conclude that an applicant must file copies of all FCC orders [including letter rulings] 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).<sup>6</sup>

Alternatively, if there are no FCC orders finding violations of the Communications Act or any FCC rule or policy, the NPRM proposes that a licensee certify the absence of any such findings as part of the renewal application.<sup>7</sup> In addition, proposed Rule Section 1.949(e)(2) would require a renewal applicant to provide a list of any pending petitions to deny any application filed by the applicant or an affiliated entity.<sup>8</sup>

Commenters universally agree that such a requirement is overreaching and that compliance would be impractical. Entergy concurs. For example, Southern Company and joint commenters PacifiCorp, MidAmerican Energy Company, and Puget Sound Energy, argue that larger companies holding hundreds of licenses directly or through affiliates would face an enormous task of due diligence before every license renewal filing, and that the Commission should collect regulatory compliance information through a process that imposes the least administrative costs and burdens on licensees as well as the agency.<sup>9</sup> Sprint Nextel adds that the Commission's proposal would impose an unnecessary, often duplicative and substantial administrative burden which, in many cases, would be inapplicable to the renewal of individual

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<sup>6</sup> NPRM at ¶ 38. Relevant FCC orders would include any Notice of Apparent Liability for Forfeiture, Forfeiture Order, Admonishment, Notice of Violation, Memorandum Opinion and Order, or Order on Review finding a violation or an apparent violation of the Communications Act or any FCC rule or policy by the licensee.

<sup>7</sup> *Id.* at ¶ 39.

<sup>8</sup> *Id.* at Appendix A.

<sup>9</sup> Comments of Southern Company at 5-6; Joint Comments PacifiCorp *et al.* at 6-7.

licenses that do not support the objective of implementing an expeditious, clear and simplified renewal process.<sup>10</sup>

New York State Electric & Gas Corporation (“NYSEG”) argues that its affiliates as defined under the FCC’s rules are “completely separate business entities,” and the time and effort required of NYSEG and similarly situated entities to make the regulatory compliance demonstration or regulatory compliance certification are likely to be unduly burdensome.<sup>11</sup> Verizon Wireless agrees that the compliance demonstration in Proposed Rule 1.949(e) is overbroad in requiring documentation of any violations or petitions to deny concerning any licenses held not only by the renewal applicant, but also by any affiliates of the applicant, including parents, subsidiaries, or entities under common control.<sup>12</sup>

Further, T-Mobile argues that as a practical matter, the identification and disclosure of all orders, letters, and pending petitions to deny for all affiliates across all lines of business over potentially decades of time would require an unheralded level of due diligence and it is unlikely that any licensee will be able to provide the assurances the Commission seeks, particularly concerning licenses and operations acquired from another entity.<sup>13</sup> Thus, T-Mobile says, the Commission cannot reasonably expect licensees to certify that they have made all of the requisite disclosures.<sup>14</sup>

Entergy agrees that a requirement for renewal applicants to collect and submit data on behalf of itself and affiliates at the time of each renewal filing is unduly burdensome and

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<sup>10</sup> Comments of Sprint Nextel at 4-5.

<sup>11</sup> Comments of NYSEG at 5.

<sup>12</sup> Comments of Verizon Wireless at 13-14.

<sup>13</sup> Comments of T-Mobile at 12.

<sup>14</sup> *Id.*

impractical. Entergy's affiliate organizations collectively hold approximately 350 active Part 90 licenses and approximately 150 Part 101 microwave licenses. Under the Commission's proposal, each affiliate, when filing a renewal application, would be required to poll the other affiliates to determine if any regulatory compliance disclosures are needed. Entergy's affiliates are spread across multiple regions of the U.S. Just the requirement to collect this data at the time of each renewal filing will add to licensees' costs because additional time and manpower will be needed to complete each application. In addition, the accuracy of data would be difficult to verify because Entergy has a very long FCC licensing history, including several approved license transfers. Most of these transactions date back to before 2000, and are complicated in nature. To include all historical compliance documents would be redundant, since these decisions were all approved by the FCC originally.

### **III. ENTERGY SUPPORTS THE FCC'S PROPOSAL TO RETAIN THE ONE-YEAR DISCONTINUANCE STANDARD FOR PART 90 SERVICES**

Entergy strongly supports the FCC's proposal to retain the one-year discontinuance of operations rule for Part 90 services other than the trunked SMR service.<sup>15</sup> As noted by the Land Mobile Communications Council ("LMCC"), systems licensed under Part 90 are typically used by entities to meet their private, internal communications requirements or by small commercial operators serving those same types of specialized requirements.<sup>16</sup> LMCC recognizes that a number of these systems are employed in seasonal operations that do not lend themselves to the more abbreviated discontinuance rules applicable to large commercial wireless systems.<sup>17</sup>

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<sup>15</sup> See NPRM at ¶ 68.

<sup>16</sup> Comments of Land Mobile Communications Council at 15.

<sup>17</sup> *Id.* citing NPRM at ¶ 68.

Entergy, which uses Part 90 authorizations for storm restoration operations, agrees with the LMCC that Part 90 licenses should remain subject to the one-year discontinuance standard. This period of time strikes a reasonable balance between the Commission's desire to ensure that spectrum is not allowed to lie fallow while also granting licensees assurance that they will not risk loss of license for radio systems that might be used only sporadically to meet seasonal or emergency operations.

#### **IV. CONCLUSION**

Entergy agrees with commenters who argue that the FCC's proposal to require submission of all agency orders as well as a list of any pending petitions to deny applications of the licensee or any of its affiliates is overly burdensome and unnecessary in light of data already maintained by the Commission. Entergy supports those who urge the Commission to either abandon its "regulatory compliance showing" proposal altogether or to update the Commission's existing electronic systems to organize information that is already maintained by the Commission.<sup>18</sup> Further, Entergy agrees with the FCC's tentative conclusion to retain the one-year discontinuance of operations standard for most Part 90 services.

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<sup>18</sup> *Id.*

**WHEREFORE, THE PREMISES CONSIDERED**, Entergy Services, Inc. respectfully requests the Commission to take action in this docket consistent with the views expressed herein.

Respectfully submitted,

**ENTERGY SERVICES, INC.**

/s/ Shirley S. Fujimoto

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