

**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

REPLY COMMENTS OF AICC

The Alarm Industry Communications Committee (“AICC”), on behalf of its members, submits these Reply Comments in the above referenced proceeding, in which the Commission proposes modifications to its Rules governing license renewal, discontinuance of operation and partitioning/disaggregation of spectrum. As discussed below, AICC supports the industry consensus that the proposed renewal rule changes are overly broad and unduly burdensome; and AICC supports the proposal of the Blooston Licensees that Part 90 Private Land Mobile Radio licensees be exempted from the proposed rule changes.

I. Statement of Interest

AICC is comprised of representatives of the Central Station Alarm Association (CSAA), Electronic Security Association (ESA),¹ Bosch Security Systems, Digital

¹ CSAA and ESA are associations comprised of central station alarm companies, alarm monitoring centers, alarm installation companies and alarm manufacturing companies. Their memberships represent the majority of such companies operating in the United States.

Monitoring Products, Digital Security Control, Telular Corp, Stanley Works (alarm division, formerly known as Honeywell Monitoring), Honeywell Security, Vector Security, Inc., ADT Security Services, Inc., AES- IntelliNet, GE Security, Alarm.com, Bay Alarm, Intertek Testing, RSI Videofied, Security Network of America, United Control Center, Linear Corp LLC, and the Underwriters Laboratories.

ESA and CSAA, representing the alarm dealer segment, have 2434 member companies providing alarm service to the public. AICC member companies protect a wide range of sensitive facilities and their occupants from fire, burglaries, sabotage and other emergencies. Protected facilities include government offices, power plants, hospitals, dam and water authorities, pharmaceutical plants, chemical plants, banks, schools and universities. In addition to these commercial and governmental applications, alarm companies protect a large and ever increasing number of residences and their occupants from fire, intruders, and carbon monoxide poisoning. Alarm companies also provide medical alert services for obtaining ambulances in the event of medical emergencies. It is important that AICC member companies be able to utilize radio spectrum, frequently licensed under Part 90 of the Commission's Rules, in order to send wireless alarm signals to the monitoring central station, and to communicate with security guards/response personnel.

II. AICC Agrees that the Commission's Proposed Renewal Requirements are Problematic and Should Not be Adopted

In their initial comments, the Blooston Licensees raised numerous objections to the Commission's proposed "renewal showing" and urged the Commission to eliminate its proposed regulatory compliance demonstration because it would "confound a

licensing system that has heretofore worked efficiently, for little substantive gain.”² The Commission should not require renewal applicants to provide disclosures regarding pending compliance proceedings, since this 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.”³ At the same time, the requirement that renewal applicants include a list of any pending protests would create an unnecessary burden on applicants and the Commission, and could create an incentive for competitors to file such pleadings in hopes of delaying or adding unnecessary expense to the license renewal process. Finally, the Blooston Licensees opposed a compliance disclosure requirement for any licensee and its “affiliates”, especially one that used the overreaching definition of affiliates contained in Rule Section 1.2105 (c)(5).

AICC supports the above arguments, and agrees with nearly every commenter that the proposed renewal showing is problematic and that most of the proposals in the NPRM would create more problems than they would solve. T-Mobile correctly observes that the proposed renewal showing will increase the complexity and uncertainty of the renewal process, because the renewal showing factors suggested in the NPRM “are ambiguous, fail to establish a specific and objective standard by which renewal applications can be judged fairly, and will compel the disclosure of highly sensitive commercial and competitive data that is unnecessary to determine whether a licensee’s

² Blooston Comments at pp. 5-20.

use of the spectrum is sufficient to warrant renewal.”⁴

Moreover, the FCC's proposed definition of affiliate can include companies with whom the licensee is involved in a joint venture, or other contractual relationships. It may not be possible to get timely compliance information from such otherwise unrelated companies, and it should not be necessary. For closely held businesses, the definition of “affiliate” can even drag in family members and their unrelated business ventures. While these relationships may have some relevance to the award of bid credits in a spectrum auction under Rule Section 1.2110(c)(5), they are not properly applied in a punitive fashion to the renewal context.

AICC agrees with NYSEG that even if the FCC limits the scope of affiliation to that of Section 310(d), the regulatory burden could be significant, especially if a company has numerous affiliates and licensees.⁵ In this regard, the FCC can take official notice that many large corporations which utilize private land mobile radios have multiple business lines and complex corporate structures with numerous subsidiaries and affiliates. These subsidiaries and affiliates may have decentralized their operations to the local level. This is particularly true if certain affiliates are a different division or business line. Because of this decentralization, it may not be feasible or practicable for information to be traded across corporate boundaries down to the personnel responsible for handling the entity’s licensing matters in a timely manner to meet the potential volume of license

³ 47 U.S.C. § 504(c).

⁴ T-Mobile Comments at pp. 4-5.

⁵ Comments of NYSEG at 5 – 6.

renewal applications.⁶

AICC agrees with LMCC that the use of pending protests as a means for determining regulatory compliance is inappropriate, especially for private user license operations.⁷ As LMCC aptly points out, protests in the private user context generally do not focus on a licensee's or applicants qualifications to hold a radio license. Rather, such protests are usually aimed at technical issues, including whether an application was properly coordinated or whether harmful interference will result from a grant of the application.⁸ Because the potential for abusive filings in response to the proposed rule change outweighs any meaningful benefits, AICC urges the FCC not to utilize pending protests as a means for determining regulatory compliance.

Finally, AICC agrees with LMCC that the FCC currently has an adequate arsenal of tools at its disposal to eliminate licensees who it deems are not qualified to hold an FCC radio license.⁹

III. Commenters Have Urged the Commission to Avoid Retroactive Application of any New License Renewal Requirements

To the extent that the Commission should adopt its proposed renewal showing, AICC agrees with the Blooston Licensees that the new rules should not be applied to licensees retroactively.¹⁰ Other commenters agree that retroactive application of the proposed new license renewal requirements to existing licensees would be unfair and

⁶ See Comments of LMCC at 8 (the same considerations could apply even where radio frequency management is centralized because of the administrative burden created by having to track each and every regulatory violation associated with each location).

⁷ Comments of LMCC at 7 – 8.

⁸ *Id.* at 8.

⁹ Comments of LMCC at 9.

unlawful. Verizon Wireless correctly notes that applying the proposed renewal framework to cellular and PCS renewals based on prior license terms would be unreasonable and would upset investments based on a reasonable expectation that the *status quo* will be continued.¹¹ AICC agrees that rules which “regulate secondary rather than primary conduct” are unlawful when they are unreasonable and that this would violate the arbitrary and capricious standard.¹²

IV. The Record Shows that the FCC Should Give Special Consideration to Facilities that are Utilized for Private Land Mobile Operations.

In their comments, the Blooston Licensees urged the Commission to provide special considerations to licensees that utilize geographic area licenses in order to meet their private, internal communications needs.¹³ The Blooston Licensees also argued that Part 90 private radio licensees should be exempt from the proposed rule changes. These sentiments are well supported by the record in this proceeding for a variety of reasons that center on the unique characteristics of private, internal use communications.¹⁴

The Blooston Licensees’ arguments are supported by NYSEG’s observation that private radio eligibles utilize radio as a tool to meet their private, internal communications needs, rather than as a means to provide commercial communications services to the public.¹⁵ The FCC’s proposals in the NPRM are geared to commercial service, inasmuch as the FCC is providing various measures of service in order to

¹⁰ Blooston Comments at pp. 11-14.

¹¹ Verizon Comments at pp. 10-12.

¹² *Id.*

¹³ Blooston Comments at pp. 18-20.

¹⁴ See Comments of New York State Electric & Gas Corporation at 3-5; Comments of Land Mobile Communications Council at 10 – 11; Comments of Enterprise Wireless Alliance at 5 – 6.

¹⁵ NYSEG Comments at 4

determine (a) whether a license warrants renewal or (b) whether the station has been permanently discontinued. Inasmuch as these standards essentially look to “service to the public” as the base measure, AICC agrees with NYSEG, LMCC and EWA that such factors are *not* relevant to radio facilities that are being used for private, internal use purposes rather than commercial service to the public.

Unlike commercial service operations licensed on a wide-area or geographic basis, private land mobile operations have clearly defined their areas of operation. These areas of operation are designed to meet the licensee’s internal communications needs associated with its business activities, whether it be in manufacturing, retail sales, automobile emergency road services or even public safety communications. As a result, private user licensees utilizing auctioned spectrum for private, internal purposes install their facilities based upon where those communications facilities will best meet their internal communications needs and not where those facilities could best be used to provide communications services to the public on a commercial, for-profit basis.

To require private internal users to submit a geographic area or population coverage showing, or a substantial service showing would be inconsistent with the purpose of authorizing the use of spectrum for private, internal use communications – namely, to ensure that private licensees have the means to utilize radio as a tool to meet their private internal communications needs in order to meet their core business requirements.

AICC supports the proposal of the Blooston Licensees that the Commission exempt Part 90 licensees from the proposed renewal rules, since the current system for renewal of Part 90 licenses is very automated, works well and has yielded timely license

renewals. The record supports the Blooston Licensees' showing that Part 90 internal use licensees are less immersed in radio regulation; that "free" licenses granted for shared spectrum use do not raise the same concerns as auctioned commercial use licenses; and that the application of the proposed rules to Part 90 licenses (as well as Part 80 and Part 101 internal use licenses) would only confound a system that has worked well. It should be noted that, for Part 90 private radio licensees, the application for an initial license does not even ask the sort of compliance questions now proposed by the Commission.

CONCLUSION

In conclusion, AICC strongly encourages the Commission to modify its proposed rules to address the above concerns, and to exempt private radio licensees as discussed herein.

Respectfully submitted,

**Alarm Industry Communications
Committee**

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