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 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 THE
FIXED WIRELESS COMMUNICATIONS COALITION

The Fixed Wireless Communications Coalition (FWCC)[1] files these Reply Comments in the above-captioned proceeding.[2]

Note on scope: These comments concern the proposed rules as they apply to the Fixed Service under Part 101. The FWCC takes no position on their application to other wireless services.

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[1] The FWCC is a coalition of companies, associations, and individuals interested in the fixed service—*i.e.*, in terrestrial fixed microwave communications. Our membership includes manufacturers of microwave equipment, fixed microwave engineering firms, licensees of terrestrial fixed microwave systems and their associations, and communications service providers and their associations. The membership also includes railroads, public utilities, petroleum and pipeline entities, public safety agencies, cable TV and private cable providers, backhaul providers, and/or their respective associations, communications carriers, and telecommunications attorneys and engineers. Our members build, install, and use both licensed and unlicensed point-to-point, point-to-multipoint, and other fixed wireless systems, in frequency bands from 900 MHz to 95 GHz. For more information, see www.fwcc.us.

[2] *Establishment of Uniform License Renewals for Certain Wireless Radio Services*, Notice of Proposed Rulemaking and Order, 25 FCC Rcd 6996 (2010) ("NPRM").

A. INTRODUCTION

The NPRM proposes a requirement that all wireless renewal applicants submit a "regulatory compliance demonstration" showing substantial compliance with the Commission's rules, policies, and the Communications Act.[3] The intent is to facilitate the Commission's evaluation of the applicant's character and other qualifications.[4]

Specifically, a wireless renewal applicant would have to produce:

> copies of all FCC orders finding a violation or an apparent violation of the Communications Act or any FCC rule or policy by the licensee [or its affiliates] (whether or not such an order relates specifically to the license for which renewal is sought).[5]

This disclosure requirement would apply to all orders finding violations during the license term, including orders that are still subject to review.[6]

The applicant would also have to produce a list of any pending petitions to deny against *any* application filed by the applicant or its affiliates—again, even those relating to licenses outside the renewal application.[7]

These requirements would impose a heavy regulatory burden with no clear public benefit, create an impermissibly vague renewal standard, and likely violate both the Paperwork Reduction Act[8] and the Communications Act.[9] The FWCC urges the Commission to abandon these proposals; or, at least, narrow them to more closely match the statutory purpose.

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[3] NPRM at ¶ 17.

[4] NPRM at ¶ 37 (citing 47 U.S.C. § 308(b)).

[5] NPRM at ¶ 38; *see also* Appendix A, proposed Section 1.949(e)(1).

[6] *Id*.

[7] NPRM at Appendix A, proposed Section 1.949(e)(2); *see also* NPRM at ¶¶ 37-38.

[8] Paperwork Reduction Act of 1995, 44 U.S.C. § 3506(c)(3)(2006).

B. THE PROPOSAL IMPOSES A HEAVY BURDEN WITH NO CLEAR PUBLIC BENEFIT.

We strongly agree with AT&T that company-wide production is "simply unreasonable," particularly for larger companies and those having numerous affiliates.[10] As we discuss in more detail below, the required document production is unnecessary and unduly burdensome. The required documents are already in the Commission's possession, and some have no conceivable relevance to the licensee's qualifications. The Commission proposes to further multiply this burden by requiring the licensee to coordinate information and documents across affiliates. It is unlikely that an officer of the licensee could reasonably certify the completeness or accuracy of records obtained from affiliates. Furthermore, this exercise would be required at the renewal of each the licensee's callsigns, and again when its affiliates file renewal applications for each of their licenses, greatly multiplying an enormous and unproductive duplication of effort.

There is little point to assessing a licensee's qualifications by considering the compliance record of entities that are separately managed. Any concern over the affiliate's regulatory compliance is appropriately addressed during that entity's license renewal process.

If the records of affiliated entities are to be used at all in the renewal process, then we agree with Sprint Nextel that the appropriate standard is common control and management.[11] The proposed definition of "affiliate," in contrast, includes by cross-reference the definition currently used to determine the eligibility designated entity for competitive bidding credit.[12]

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9 The Communications Act of 1934, as amended, 47 U.S.C. § 504(c).

10 Comments of AT&T (filed Aug. 6, 2010) at 12.

11 Comments of Sprint Nextel Corporation (filed Aug. 6, 2010) at 14; *see also* Communications Act of 1934, 47 U.S.C. § 153 (1) (defining "affiliate" as "a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person).

12 47 C.F.R. § 1.2110(c)(5).

This casts far too broad a net: common facilities, contractual relationships, and joint venture arrangements can all give rise to an "affiliation." While arguably logical in the bidding credit context, this makes no sense in the context of wireless license renewals.

C. THE PROPOSAL VIOLATES THE PAPERWORK REDUCTION ACT AND THE COMMUNICATIONS ACT.

The Paperwork Reduction Act requires that every proposed collection of information by an agency must include an agency certification that the collection (1) is necessary for the proper performance of the functions of the agency, (2) is not unnecessarily duplicative of information otherwise reasonably accessible to the Commission, and (3) reduces the burden on the persons who are required to provide the information.[13] Here, demanding that licensees produce copies of records already in the Commission's files is, paradigmatically, "unnecessarily duplicative of information otherwise reasonably accessible" to the Commission.

Requiring the production of petitions to deny not only constitutes an unnecessary burden, but affirmatively encourages competitors and other potential opponents to file frivolous petitions for the sole purpose of complicating or delaying renewal. Most petitions to deny have nothing to do with a licensee's basic qualifications, but rather rest on as technical or frequency coordination issues. Furthermore, knowing that a petition to deny may resurface years later would provide an incentive for "greenmail" and other abusive filings.

The FWCC agrees with LMCC that a refusal to renew a license on the basis of a notice of apparent liability (NAL), even in part, would violate Section 504(c) of the Communications Act, which expressly forbids using an NAL against the person to whom it was issued.[14] An NAL

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[13] Paperwork Reduction Act of 1995, 44 U.S.C. § 3506(c)(3)(2006).

[14] Comments of LMCC (Filed Aug. 6, 2010); 47 U.S.C. § 504(c) ("In any case where the Commission issues a notice of apparent liability looking toward the imposition of a forfeiture under this chapter, that fact shall not be used, in any other proceeding before the Commission, to

concerns "apparent"—not actual—liability, is preliminary to a finding of rule violation, is sometimes successfully countered, and should not be treated as probative of a licensee's fitness. If any documents are to be produced, they also should not include NALs or any other documents short of an adjudicated finding of a violation.

Finally, this proposal will cast a cloud over the enforcement process, creating uncertainty for both licensees and the Enforcement Bureau as to the final resolution of enforcement cases. Matters that were presumably resolved or settled can resurface years later in the renewal process, creating a regulatory double-jeopardy.

D. THE PROPOSAL WOULD IMPOSE AN IMPERMISSIBLY VAGUE RENEWAL STANDARD.

The NPRM provides no indication of how the required information would be used, what weight would be given to which facts, and what might constitute a finding of non-eligibility. Applicants are entitled to know more about the proposed standard in order to make operational and investment choices with some degree of certainty. "We'll know it when we see it" is not enough.[15]

Commenters in this rulemaking proceeding are likewise entitled to more information. The proposed rules state that a renewal will be denied if the regulatory compliance demonstration is "insufficient,"[16] but does not tell commenters what that means. Notice of a proposed rule must include sufficient detail on its content and basis in law to allow for

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the prejudice of the person to whom such notice was issued . . . .") Omitted are exceptions not relevant here.

[15] *Bamford v. FCC*, 535 F.2d 78, 82 (D.C. Cir. 1976) ("It is beyond dispute that an applicant should not be placed in the position of going forward with an application without knowledge of requirements established by the Commission, and elementary fairness requires clarity of standards sufficient to apprise an applicant of what is expected.").

[16] NPRM at Appendix A, proposed Section 1.949(h).

meaningful and informed comment.[17] The NPRM falls well short of this standard; therefore, it is not only substantively but also procedurally deficient.[18]

CONCLUSION

The Commission should abandon the proposed "regulatory compliance demonstration" as overly burdensome, impermissibly vague, and duplicative of readily-accessible information and of the Commission's existing enforcement mechanisms. Any demonstration of the licensee's good citizenship should be limited to a certification of the applicant entity's substantial compliance with the Commission's rules, similar to that required of broadcast licensees. This would fulfill the Commission's mandate to protect the public interest by ensuring the character qualifications of spectrum licensees, without imposing an unnecessary burden on renewal applicants.

Respectfully submitted,

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[17] *American Medical Ass'n v. Reno*, 57 F.3d 1129, 1132 (D.C. Cir. 1995) (remanding for adequate notice and comment); *see also Connecticut Light and Power Co. v. Nuclear Regulatory Comm'n*, 673 F.2d 525, 530 (D.C. Cir. 1982), *cert. denied,* 459 U.S. 835 (1982).

[18] The Commission must also resolve the discrepancies between the main text of the NPRM and the text of the proposed rule in Attachment A. Specifically, notices of apparent liability are included in the main text but not the proposed rule, whereas petitions to deny are required by the proposed rule but not discussed in the main text.

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