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FCC Mail Room

Comments on Notice of Proposed Rulemaking (NPRM)
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This comment will focus primarily on the proposed changes to the FCC National Environmental Policy Act (NEPA) process (and those changes implied by the types of questions asked in the NPRM).

The FCC has the most lax and least rigorous NEPA process of any other Federal Agency. Their NEPA Implementing Instructions are decades old and do not adequately reflect the state of either the science or the law regarding environmental concerns.

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Approximately 30 years ago, a determination was made that "actions not covered under 47 CFR 1.1307 are deemed individually and cumulatively to have no significant effect on the quality of the human environment and are categorically excluded from environmental processing" (47 CFR 1.1306). There does not appear to be an administrative record to back up this assertion nor is it clear where or under what circumstances this determination was made. There also does not appear to be any scientific basis for the statement as numerous Environmental Assessments and Environmental Impact Statements detail the potential issues and environmental concerns associated with telecom deployment and operations. Specifically, trenching (not just towers) can impact endangered species and critical habitats. (Note: a recent telecom project was required to have a formal consultation to address potential impacts to the desert tortoise associated with trenching- they were not building any towers); new construction is no less and no more potentially impactful than any other type of project; there is nothing inherently unique in telecom projects; and new towers, by the FCC's own admission, kill millions of migratory birds each year (FCC Tower and Antenna Siting Guidance).

My concerns with the FCC process as it now stands, and are proposed to be modified by this NPRM, are as follows:

1. At some point in the past, the FCC added a categorical exclusion for any tower under 450 feet as long as none of the conditions outlined in 47 CFR 1.1307 are not triggered (there are 8 circumstances where the FCC has determined an EA should be prepared to determine if a significant impact might occur; they are if a project is located in an officially designated wilderness area; an officially designated wildlife preserve; may affect listed species or designated critical habitat; may affect historic sites, buildings, structures or objects that are listed or eligible for listing on the National Registry of Historic Places; may affect Indian religious sites, are located in a floodplain; will involve significant change in surface features; or equipped with high intensity lighting in residential neighborhoods). That is it. Nothing about Prime Farmland, migratory birds, state or Agency-listed species of

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concern, climate change, air quality, RF radiation, subsistence impacts, or any of dozens of other environmental concerns that can be triggered by telecom deployment and operations.

2. If an APPLICANT determines that any of the 8 conditions are present they are required to prepare an environmental assessment and submit it to the FCC for approval before beginning work on the project. ALL OTHER ACTIONS ARE EXCLUDED FROM FURTHER REVIEW (only those few areas covered in the short list I just mentioned). Which means if the APPLICANT decides none of these conditions are met, they can proceed with the work and absolutely no environmental review is required to take place and they are not required to notify the FCC of the process they followed to make this determination. This differs from every other agency that allows the applicant to make the initial environmental determination (FERC is a good example). In all other cases, the applicant is required to submit to the Agency the information they used to make the determination of the level of NEPA analysis so that the Agency can fulfill their requirements under NEPA and have the information needed to perform a meaningful review. The FCC requires the Applicant check a box on a form. That's pretty much it. In most cases the Applicant is also required to fill out a FORM 854 that has the latitude and longitude of the project and a brief description of the project and a few boxes to check. No supporting information is required. In theory the FCC reviews the 854s before the project proceeds but with a limited staff, it is unlikely that many of the forms are actually reviewed and given the minimal amount of information present on the form, it is unlikely the reviewer would even be able to perform a meaningful review. Clearly the FCC is uninterested in actually reviewing the activities they are licensing. And yet this NPRM indicates that even this MINIMAL level of activity required of the applicant is overly burdensome (Section 2 of the NPRM) and would result in "increased cost of deployment and pose lengthy and often unnecessary delays". Just to focus on the term "unnecessary delays" - the telecom providers determine the level of environmental review, determine themselves if anything they are proposing to do creates an environmental concern, in the majority of circumstances they need only check a box on a form, and yet, even this minimal level of analysis is considered too burdensome. I can't help but wonder if the FCC simply considers all environmental requirements "too burdensome".
3. The fact that the FCC does not address impacts to Migratory Birds (when they are aware such impacts exist) is the most egregious aspect of the current FCC NEPA process. They lost a major court case several years ago that was brought by the American Bird Conservancy to try to remedy this omission. The FCC lost the case, and yet only prepared an Environmental Assessment (EA) to satisfy the requirements of the court. An EA that not surprisingly led to a Finding of No Significant Impact by the FCC, despite acknowledging that millions of birds are killed each year colliding with towers (it did not take into account the potential issues associated with RF Radiation as those issues were still being researched at the time of the court

case). The EA was poorly documented and while complying with the letter of the law, did not result in any meaningful changes to the FCC NEPA process, despite the overwhelming evidence that towers kill birds in vast numbers every year. In the FCC Tower and Antenna Siting Guidance they state that there is a requirement to prepare an EA for towers over 450 feet and that "almost any height tower has the potential to harm migratory birds". If any height tower can harm migratory birds- what is so special about 450 foot towers? I have been unable to find any resource that states that towers over 450 feet are particularly terrible for migratory birds, and in fact, the US Fish and Wildlife Service has issues Voluntary Guidelines for Communication Tower Design, Construction, Operation, Retrofitting, and Decommissioning that state very clearly they "strongly recommend that new tower (s) should be no more than 199 feet above ground level and the construction should not use guy wires". The FCC links to this document in their Siting Guidance and states "Tower owners should considering incorporating these guidelines into their tower projects and maintenance operations". So while giving lip service to the FWS guidelines, they fall far short of actually requiring anything approaching the level of protection for migratory birds identified by the FWS (who presumably know a bit more about migratory birds than does the FCC as they ARE the agency with jurisdiction by law for protecting Migratory Birds).

4. NEPA (40 CFR 1500-1508) is very clear in Section 1502.2 that "Each Agency shall utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences... in planning and decision making which may have an impact on man's environment". NEPA does not ever state that this decision making process is handed over to a third party. Particularly a third party with a vested interest in deploying with a minimum of delays or additional costs that might be required to fully comply with environmental laws. And now, this Proposed Rulemaking is suggesting that the applicant is overly burdened by even having the appearance of compliance with the law.
5. In recent years, as touched on earlier, concerns over RF radiation (both for humans and wildlife) have significantly delayed (or even required a rescoping) of some projects and led to considerable concern expressed by the US Fish and Wildlife Service, notable scientists, and academia. The FCC has not undertaken a review of their existing RF regulations that only, at best, address potential issues associated with thermal radiation issues on humans and does not even touch on the potential issues for birds and bats. They have been asked by Montgomery County Maryland to review their current RF regulations but had declined to do so. Given the current exposure levels associated with our technologically advanced society are very different than those envisioned when these standards were promulgated, the FCC should absolutely undertake a third party review of those standards as well as evaluate the potential impacts of RF Radiation to birds and bats.

In conclusion, it is my sincere hope that the FCC will actually begin to take their role seriously as an Agency responsible for NEPA compliance. Their 30+ year old NEPA Implementing Instructions should be updated to reflect the proliferation of telecom facilities over the last decade and they should not only acknowledge that their telecom facilities kill millions of migratory birds a year, but they should actually DO something about that by requiring tower owners (and those retrofitting towers) to comply with the FWS Voluntary Guidelines and to require telecom providers to, at the very least, prepare an Environmental Assessment for all new towers regardless of the height.

As for this Notice of Proposed Rulemaking, it seems very clear that the FCC is not interested in protecting the environment, but only in making it easier for telecom providers to deploy quickly and with minimum cost and annoyance. Whether is it trying to force an arbitrary time-frame that State and Local governments must follow, re-writing decades of tribal consultation requirements, or trying to further gut NEPA, the FCC is clearly pandering to the telecom providers and is not interested in producing meaningful regulations that would be protective of States, municipalities, tribal, or environmental interests.

I look forward to reading the other comments you receive on this deadful NPRM.

Thank you for reading my comments.

Mrs. S. Quick

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