Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Streamlining the Commission's Antenna Structure Clearance Procedure	)	
and	)	WT Docket No. 95-5
Revision of Part 17 of the Commission's Rules Concerning Construction, Marking and Lighting of Antenna Structures	)	DOCKET FILE COPY ORIGINAL

TO: The Commission

COMMENTS OF UTC

Jeffrey L. Sheldon
General Counsel

UTC
1140 Connecticut Ave., N.W.
Suite 1140
Washington, D.C. 20036

Dated: March 21, 1995

No. of Copies rec'd 0+4
List ABCDE

TABLE OF CONTENTS

I. Introduction 2

II. UTC Generally Supports the Antenna Structure Registration Proposal 3

III. FCC Form 854 Should Be Streamlined or Combined with FAA Form 7460-1 5

IV. Phase-In Should Be By License Renewal or Geographically 6

V. Registration of Voluntarily Marked/Lighted Towers Should Not Be Required 7

VI. UTC Supports Electronic Filing of Structure Registrations 7

VII. A Reasonable Renewal Period, Such as 10 Years, May Be Appropriate 8

VIII. Registration Fees Should Not Be Imposed 9

IX. The FCC Should Not Require Registration of All Antenna Structures 9

X. "Notice" to Antenna Structure, Owners Under Section 503(b) Should Be Written, Mailed Notice 11

XI. FAA Advisory Circulars Should Be Incorporated in the FCC's Rules 12

XII. Antenna Structure Owners Should Be Held Primarily Liable for Compliance with Marking/Lighting Requirements 13

XIII. Conclusion 15

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Streamlining the Commission's Antenna Structure Clearance Procedure	)	
and	)	WT Docket No. 95-5
Revision of Part 17 of the Commission's Rules Concerning Construction, Marking and Lighting of Antenna Structures	)	

TO: The Commission

COMMENTS OF UTC

Pursuant to Section 1.415 of the FCC's Rules, UTC[1/] hereby submits its Comments on the Notice of Proposed Rule Making, FCC 95-16, released January 20, 1995, in the above-captioned matter. In this proceeding, the FCC has proposed to revise its procedures for clearing antenna structures, modify the rules on structure marking and lighting requirements, and make structure owners primarily responsible for compliance with marking/lighting requirements. As explained below, UTC generally supports these goals, and offers some recommendations to further streamline this process.

[1/] UTC, The Telecommunications Association, was formerly known as the Utilities Telecommunications Council.

I. Introduction

UTC is the national representative on communications matters for the nation's electric, gas, and water utilities and natural gas pipelines. Approximately 2,000 utilities and pipelines are members of UTC, ranging in size from large combination electric-gas-water utilities serving millions of consumers, to small rural electric cooperatives and water districts serving only a few thousand customers each. Most, if not all of UTC's members, own and/or use antenna structures in connection with private land mobile or private microwave communications facilities. UTC is also the FCC's certified frequency coordinator for the Power Radio Service. Thus, UTC is very interested in the present proceeding and its potential to streamline the licensing process and clarify certain tower marking/lighting requirements.

In order to reduce the amount of information collected from license applicants concerning the antenna structures and compliance with painting and lighting requirements, the FCC is proposing to require such information only from the structure owner. Registration would be accomplished by filing FCC Form 854 prior to construction or alteration of an existing antenna structure. Form 854 would also be filed upon a change in ownership of the structure or a dismantlement of the structure. All antenna structures requiring notification to the Federal Aviation Administration would be subject to this requirement.

The FCC will return to the registrant a Form 854R, which will prescribe any relevant painting/lighting conditions, and will assign a Registration Number to the structure. The owner must provide a copy of Form 854R to all station licensees using the structure, and must display the Registration Number on or near the antenna structure. The structure owner must also notify the FCC within 24 hours of completing construction or dismantlement of the antenna structure.

Each licensee using the structure will be required to provide the Registration Number with each application for a new, modified or renewed station authorization. If Form 854 is filed at the same time as the license application, processing of the license application will be delayed until the Registration Number is assigned to the structure.

The FCC proposes to begin the registration process on January 1, 1996, and has requested comment on whether registration of existing antenna structures should be accomplished by geographic region, by structure height, or upon license renewal by structure tenants.

II. UTC Generally Supports the Antenna Structure Registration Proposal

To the extent a registration process would streamline the license application process, UTC enthusiastically supports such

a procedure. Where multiple licensees share an antenna structure, it creates additional paperwork burdens for each applicant/licensee to provide separate information concerning the antenna structure and compliance with FAA notification requirements. By requiring each applicant/licensee to resubmit this information, errors are bound to occur, which will add to the FCC staff's processing burden, and which can lead to discrepancies in the FCC database. One of UTC's members reports that some applicants, without the knowledge of the utility, have filed revised notifications with the FAA concerning the utility's antenna structures. By eliminating the need for each applicant to provide this information, structure owners will be able to maintain greater control over the information that is on file with the FCC and FAA concerning their facilities.

A process that places most of the burden on the structure owner makes good, practical sense and would conform the FCC's requirements with marketplace realities. Although the FCC's rules currently impose burdens for tower maintenance on the individual licensees, structure owners typically do not expect, yet alone permit, licensees to unilaterally conduct maintenance on the antenna structure. Similarly, when preparing an application for license, the applicant typically looks to the tower owner for information regarding structure location, height, and FAA notification. It only makes sense for the FCC

to collect this information directly from the structure owner rather than accepting it second-hand from one or more lessees.

III. FCC Form 854 Should Be Streamlined or Combined With FAA Form 7460-1

To further streamline the process, UTC recommends revising or eliminating FCC Form 854 and relying to a greater degree on the information already provided by the applicant on FAA Form 7460-1. Much of the information on FCC Form 854 is already required on FAA Form 7460-1. Since the goal of this proceeding is to streamline the tower clearance process and minimize the possibilities for errors or delays, it would be appropriate for the FCC and the FAA to closely coordinate their information gathering requirements to the greatest degree possible.

UTC is also concerned that with the recent conversion of geographic coordinates in the FAA's database to North American Datum of 1983 (NAD-83), the prevalent use of NAD-27 by the FCC, and the FCC's recent conversion to metric units of measurement, the two agencies should be more closely coordinating the collection of structure information. UTC therefore urges adoption of a single form that could be used by both agencies. Alternatively, FCC Form 854 should be revised to require only that information which is not provided on FAA Form 7460-1.

IV. Phase-In Should Be By License Renewal or Geographically

UTC recommends that registration of existing towers be phased-in as licenses are requested, modified or renewed on each tower. To the extent that the goal of this proceeding is to minimize application burdens, it is unnecessary to require registration of existing antenna structure before anyone proposes to add a new antenna or modify an existing facility or requests license renewal. In fact, requiring registration of all existing towers according to an arbitrary schedule would add to the FCC's workload with no immediate benefit.

By requiring each applicant to have a Registration Number when applying for a new license, a modified license or a renewed license, the registration process will be phased-in over no more than 10 years. This will place some of the burden on the first tenant on the structure whose license comes up for renewal or who requests a new license or a modification of license. However, this burden should be limited to timely notifying the structure owner of the need to register. Under this procedure, structure owners should be permitted to register at any time.

As a second alternative, UTC recommends phase-in on a geographic basis by state. This procedure would help minimize confusion as to when, exactly, a structure would have to be

registered. However, it may require registration of structures long before there is any real need.

V. Registration of Voluntarily Marked/Lighted Towers Should Not Be Required

The FCC has requested comment on whether structures that are voluntarily painted or lit should be registered with the FCC. UTC opposes such a requirement. Generally, towers are voluntarily painted or lit as an added safety measure for a local flying service (e.g., medical evacuation or traffic control). The FCC should encourage such voluntary safety measures, and should not impose any regulatory requirements that might tend to discourage this practice. At most, registration of such structures should be permitted as an option for the structure owner

VI. UTC Supports Electronic Filing of Structure Registrations

There would be many advantages to a system whereby structure owners could file the required information electronically. Electronic filing could expedite the process of issuing a Registration Number, which in turn would expedite the licensing process. Accuracy of the FCC's database would also be enhanced since it would eliminate the possibility of data entry errors by the FCC staff. Software could be developed and used that would provide basic error-correction and English/metric unit conversions. To the extent

registration can be streamlined through an electronic filing process, the compliance rate will probably increase.

A disadvantage of electronic filing would be the need for applicants to purchase hardware or software or go through a value-added service if electronic filing is mandatory. UTC therefore recommends that the Commission pursue an electronic filing option using readily available data formats. For example, instructions could be developed to create datafiles using standard database formats that could be either uploaded to a bulletin board system, through the Internet, or submitted on diskette. These options would be particularly attractive for licensees or others having a large number of antenna structures.

VII. A Reasonable Renewal Period, Such as 10 Years, May Be Appropriate

The principal reason for requiring renewal of an antenna structure registration would be to ensure the integrity of the FCC's database. This should not be a major concern, however, as the rules will require structure owners to file amended registrations whenever there are significant changes in the height, location, or ownership of a structure. In addition, as licensees make application for radio facilities on previously-registered towers, there will be an opportunity to discover discrepancies on tower coordinates or heights.

UTC therefore recommends that a reasonable renewal period would be 10 years. This would be consistent with the renewal period for many other FCC authorizations and would provide a reasonable balance between the need to verify the continuing accuracy of the FCC's antenna structure database and the transaction costs involved in requiring more frequent renewal filings.

VIII. Registration Fees Should Not Be Imposed

At present, the FCC's costs of reviewing tower clearances and updating the FCC's databases are covered by the application fees paid by license applicants. Therefore, the FCC already has a procedure in place to recoup its costs of administering the antenna structure database and there is no need to impose additional paperwork or filing fee burdens on the public. In fact, if the tower registration procedure significantly reduces the number of filings the FCC will have to review as the FCC predicts, one would also expect the FCC's overall cost of application processing to decline with a concomitant reduction in application fees in future years.

IX. The FCC Should Not Require Registration of All Antenna Structures

The FCC has requested comment on whether a comprehensive compilation of antenna structures would increase FCC efficiency in conducting studies of high radio frequency (RF) levels at

certain sites. UTC does not see the need to impose an additional paperwork burden on antenna structure owners. It is unclear what advantage there would be in having a database of antenna structures when most of the information needed to conduct an interference study or RF radiation study can be derived from the FCC's licensing records. If certain structures do not require notification to the FAA, they should not require registration with the FCC. Requiring registration of every structure that supports a licensed radio transmitting facility would dramatically increase the number of required filings, and could not be justified.

On the other hand, there may be some public benefit in permitting voluntary registration of antenna structures. For example, with the expected growth of commercial mobile radio services, new system licensees will need to locate suitable antenna structures. A publicly available database of antenna structures might provide a convenient means for new licensees to locate antenna structures and their owners. This registration procedure should be voluntary, however, since many antenna structure owners will not be interested in leasing space to other licensees.

X. "Notice" to Antenna Structure Owners Under section 503(b) Should Be Written, Mailed Notice

Section 503(b)(5) of the Communications Act of 1934, as amended, provides that an antenna structure owner must be given notice of its obligations under Section 303(q) prior to the issuance of a forfeiture penalty. The FCC has requested comment on the form such notice should take.

UTC believes that "notice," as used in these sections means actual written notice addressed to the antenna structure owner; not merely constructive notice such as publication in the Federal Register. The wording of Section 503(b)(5) relating to the notice to antenna structure owners may be contrasted with the treatment to be afforded persons involved in activities for which a "license, permit, certificate or other authorization is required." In these situations, the FCC is not required to first issue a written notice before commencing an action to impose a forfeiture penalty. However, in the case of a "nonlicensee tower owner," a written citation must be given unless the nonlicensee tower owner "has previously received notice of the obligation imposed by section 303(q) of this title from the Commission or the permittee or licensee who uses that tower." This would strongly indicate that Congress intended nonlicensee tower owners to receive actual notice of their statutory obligations.

As to the form of such notice, UTC suggests that the notice could be by letter addressed to the tower owner. In the alternative (or in addition), radio station licensees could be advised of the tower registration requirements and corresponding requirements of Section 303(q) in the context of license applications and license renewal applications, with the recommendation to forward the information to the tower owner. Proof of delivery of the Section 303(q) notice to the tower owner could then be used by the licensee as a defense to any alleged forfeiture liability for failure to comply with the tower marking or lighting requirements. Appropriate notices to tower owners could also be printed on the Antenna Structure Registration.

XI. FAA Advisory Circulars Should Be Incorporated in the FCC's Rules

UTC supports the FCC's proposal to replace its tower marking and lighting specifications with a general reference to the applicable standards of the FAA. UTC supports this procedure. Because the FCC generally relies on the FAA's recommendations when specifying marking and lighting requirements, it only makes sense to incorporate these provisions in the FCC's Rules.

UTC cautions the FCC, however, not to incorporate by reference any and all FAA guidelines relating to antenna support structures or communications facilities. For example,

the FCC must maintain primary jurisdiction over matters relating to the interference potential of radio transmitting devices and should not create a situation under which the FAA's guidelines on what it deems "harmful interference" will supersede the FCC's legitimate authority in this area. Revision of Part 17 to incorporate FAA guidelines should be limited to painting and lighting specifications only.

XII. Antenna Structure Owners Should Be Held Primarily Liable for Compliance With Marking/Lighting Requirements

Because of recent changes in Sections 503(b) and 303(q), the FCC proposes to hold antenna structure owners primarily liable for structure painting and lighting. UTC agrees with this proposal. As noted above, antenna structure owners are in the best position to maintain their structures in compliance with the FCC's requirements, and in many situations do not permit individual licensees to unilaterally provide maintenance on the tower.

However, UTC does not necessarily agree with the FCC's proposal to continue holding individual licensees liable "where reliance on the structure owner proves ineffective."[2/] In the proposed rules, the FCC proposes to hold each licensee individually responsible "in the event of default by the

---

[2/] NPRM, para. 21.

owner." The FCC states, by way of example, that this would give the FCC the option of requiring tenant licensees and permittees to maintain the structure "if the structure owner cannot be reached."

UTC believes the preferred course of action would be to hold the antenna structure owner solely liable for tower maintenance unless it can be shown that the structure owner did not have effective notice of its obligations under Section 303(q). Liability would fall on the individual licensees unless they can show that one or more of the licensees on the tower gave notice to the structure owner of the requirements of Section 303(q).

As to the possibility that a structure owner cannot be reached when a lighting or marking violation is discovered, a licensee using the tower should not be subject to forfeiture penalty unless the licensee unreasonably refuses to cooperate with the FCC in resolving any problems with the tower. Reasonable cooperation could include, for example, locating the tower owner and advising it of the responsibility to maintain the tower.

XIII. Conclusion

UTC supports the FCC's efforts to streamline the process for clearing antenna structures during the license application process, and urges minor modifications to these procedures to further limit the burden on the FCC staff and the applicant public.

WHEREFORE, THE PREMISES CONSIDERED, UTC respectfully urges the FCC to take action in this docket consistent with the views expressed herein.

Respectfully submitted,

UTC

By: _____

Jeffrey L. Sheldon
General Counsel

UTC
1140 Connecticut Ave., N.W.
Suite 1140
Washington, D.C. 20036

Dated: March 21, 1995