

BEFORE THE
Federal Communications Commission
WASHINGTON, DC 20554

In the Matter of)
)
Streamlining the Commission's Antenna)
Structure Clearance Procedure)
)
and)
)
Revision of Part 17 of the Commission's Rules)
Concerning Construction, Marking and Lighting)
of Antenna Structures)
)

WT Docket No. 95-5

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To: The Commission

JOINT COMMENTS

AirTouch Communications, Inc. ("AirTouch") and U S WEST NewVector Group, Inc. ("NewVector") ("Joint Commenters"), by their attorneys, hereby submit these Joint Comments in response to the Notice of Proposed Rulemaking released by the Commission on January 20, 1995.¹ Both AirTouch and NewVector are experienced providers of cellular (and associated microwave) service. Together, the companies operate nearly 2,500 cell sites throughout the United States. Many of the cell sites (and microwave stations) are located on structures leased from structure owners, and many of these structures are subject to both the FAA and FCC marking and lighting requirements. Therefore, both AirTouch's and NewVector's operations will be directly affected by the outcome of the instant proceeding.

¹ In the Matter of Streamlining the Commission's Antenna Structure Clearance Procedure and Revision of Part 17 of the Commission's Rules Concerning Construction, Marking and Lighting of Antenna Structures, Notice of Proposed Rulemaking, WT Docket No 95-5 (released January 20, 1995) ("Notice").

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In this proceeding, the Commission proposes to (1) streamline its antenna structure clearance process by replacing existing procedures with a uniform registration process applicable to structure owners, (2) revise Part 17 of the Rules to incorporate by reference recent FAA Advisory Circulars containing painting and lighting recommendations, and (3) implement statutory requirements established by Congress to make antenna structure owners primarily responsible for structure maintenance. The Joint Commenters commend and generally support the Commission's proposals, which are intended to expedite application processing, unify federal air safety regulations, improve air navigation safety and establish that antenna structure owners are primarily responsible for structure registration and maintenance. Because some of the Commission's proposals may be difficult to implement and enforce, however, the Joint Commenters provide below some practical suggestions.

A. Antenna Structure Owners Must Receive Actual Notice of Their New Structure Registration and Maintenance Obligations

As stated above, Joint Commenters generally support the proposed streamlined registration process and the proposals to make structure owners primarily responsible for structure registration and maintenance. In order to implement and enforce the new requirements, however, the Commission must ensure that all antenna structure owners receive notice of their registration and maintenance obligations. Notice is important for two reasons. First, as addressed in the Notice, antenna structure owners must be given notice before the Commission can impose forfeiture penalties. Second, notice is critical to the licensing process since, from a practical standpoint, licensees will

be unable to obtain FCC authorizations if owners (particularly owners who are not themselves licensees) are unaware of their obligations and therefore do not register structures on a timely basis.

Joint Commenters urge the Commission to provide two forms of notice to ensure that all owners, including non-licensee owners, are made aware of the registration and maintenance requirements. First, a summary of the Commission's final action in this proceeding (as well as its final rules) will be published in the Federal Register. The Commission should ensure that structure owners' obligations are clearly explained in the summary. Although some owners will not be aware of such a publication, this constructive notice will be adequate for the purpose of assessing forfeitures.²

Actual notice is also necessary, however, to ensure that all structures are registered on a timely basis and the licensing process (and service to the public) is not delayed by owners who are unaware of their obligations. Owners who are also Commission licensees are likely to have actual notice from the instant proceeding, related rules and Commission actions. However, in order to ensure that non-licensee owners also receive actual notice, the Joint Commenters suggest the following approach.

First, the Commission should send letters explaining the registration and maintenance requirements and registration forms (FCC Form 854s) to all entities listed as structure owners/licensees/applicants subject to the FAA notification requirements in the

² See Three States Broadcasting Company, Memorandum Opinion and Order, 37 FCC 2d 597, 599 (1972) ("a requirement of actual notice would be contrary to the basic policy behind forfeiture proceedings. . .").

Commission's various antenna structure databases.³ If a listed entity is a licensee leasing space and not the structure owner, the licensee can simply forward the information. This approach will ensure that all existing structure owners receive actual notice of their new obligations.

Second, owners of newly constructed towers can be given actual notice through the FAA notification process. That is, owners who construct new or modified structures requiring FAA clearance in the future will, of course, be required to obtain FAA determinations. Through FCC/FAA coordination efforts, the Commission should ensure that letters explaining the FCC registration and maintenance obligations and FCC registration forms are sent to owners along with the FAA determinations. This practical approach is consistent with ongoing coordination efforts between the Commission and the FAA, as well as the Commission's proposal to unify FCC and FAA regulations.⁴

**B. Owners Must Be Afforded Additional Flexibility in
Delegating Their Registration and Maintenance Responsibilities**

The Notice and the rules proposed therein state that antenna structure owners will be primarily responsible for registering structures, and do not allow entities

³ The letters should explain clearly that owners will be responsible for (1) registering antenna structures; (2) maintaining structure painting and lighting; (3) notifying the Commission of any changes in structure height, coordinates, ownership, painting or lighting; and (4) notifying the Commission upon dismantling structures. It is particularly important that owners be informed of their obligation to notify the Commission of structure ownership changes. This requirement will enable the Commission to be aware of and send notification letters to new owners of existing structures.

⁴ Notice at 14. As the Commission has noted, "[s]ince the late 1950's, [it] has worked in concert with the FAA to promote air safety through the antenna structure clearance process." Id. at 2.

other than owners (such as licensees) to also register structures, except under extremely limited circumstances. Specifically, proposed Section 17.2(d) defines “owner” as “either the entity that owns the structure or the entity designated by the owner to maintain the antenna structure. . . . The antenna structure owner, however, is ultimately responsible for compliance with the requirements of this part.”

Based on this definition, an entity other than an owner would only be able to register an antenna structure if that entity has been specifically designated by the owner to “maintain the antenna structure.” As a result, under the proposed definition, licensees would have to either (1) agree to be responsible for overall antenna structure maintenance (including painting and lighting) in order to become responsible for registration, or (2) rely on non-licensee owners to register structures, which could result in licensing delays if owners do not register on a timely basis.⁵ Also, because the definition of “owner” includes designees, such designees could become “ultimately responsible for compliance” rather than the owners themselves.

Therefore, Joint Commenters suggest that “owner” instead be defined as follows: “For the purposes of this part, an antenna structure owner is the entity that owns the structure. An antenna structure owner may designate an entity to register and/or maintain a structure. The antenna structure owner, however, is ultimately responsible for

⁵ The cellular licensing rules permit licensees such as Joint Commenters to respond quickly to the public’s need for service. These rules and licensees’ ability to provide timely service could be undermined if licensees are not afforded any options other than to coordinate with structure owners to obtain structure registration prior to obtaining cellular and microwave authorizations. Such an outcome would be directly contrary to the Commission’s efforts in the instant proceeding to “expedite application and notification processing.” Notice at 14.

compliance with the requirements of this part.” The revised definition will (1) clarify that owners, and not their designees, are ultimately responsible for Part 17 compliance, and (2) provide all interested parties with maximum flexibility in determining the best way to satisfy the registration and maintenance requirements.⁶ As long as the entity registering a structure is designated by the owner, the Commission can be assured that all filings will be made through a centralized point, thereby avoiding the submission of inconsistent or inaccurate information.⁷

C. **The Commission Should Adopt Uniform Standards of Accuracy for Measuring Antenna Structures**

The Commission has asked for comment on whether it should require owners to specify structure coordinates to the nearest second and height to the nearest meter, and whether this accuracy is needed for antenna structures in all radio services. Joint Commenters support the amendment of Part 17 to include the accuracy standards, and agree that owners should be required to specify coordinates to the nearest second. However, Joint Commenters suggest that owners be required to specify structure height

⁶ The revised definition is consistent with the Commission’s efforts to make owners primarily responsible for antenna structure registration, since a registering entity would be designated by the owner and therefore serve as the owner’s agent. Also, Congress’ overall intent in making owners, as well as licensees, responsible for antenna structures was to improve air safety. See Telecommunications Authorization Act of 1992, Pub. L. No. 102-538, § 210, 106 Stat. 3533 (1992). Joint Commenters’ proposal is consistent with Congress’ intent, since it would enable owners and licensees to work together to ensure that each aspect of structure compliance is handled by the entity best equipped to do so.

⁷ In situations where several licensees are located on a single structure, the parties will need to agree that only one entity (either the owner or one of the licensees designated by the owner) will be responsible for registration.

to the nearest 0.3 meters (one foot) consistent with current practice. The adoption of such standards will assist in avoiding coordinate and height discrepancies between licensee information (such as frequency coordination) and information provided by owners as part of the registration process. Moreover, uniform standards should apply to all antenna structures in all radio services so that coordinate and height information is determined in the same way by a structure owner and all licensees on the structure.

D. Some Revisions/Additions to the Proposed Rules Are Necessary

In addition to revising the proposed Section 17.2(d) definition of “owner,” Joint Commenters suggest the following additional rule revisions/additions:

1. The wording of proposed Section 17.4(a) and (b) should be revised as follows to reflect that structure owners, and not Commission applicants, will be responsible for FAA notification and FCC antenna structure registration:

(a) All applications are reviewed to determine whether there is a requirement that the ~~applicant~~ *structure owner* file a Notice of Proposed Construction or Alteration (FAA Form 7460-1) with the Federal Aviation Administration.

(b) Whenever applications require the filing of a notice of proposed construction or alteration (FAA Form 7460-1), the applicant will be advised ~~to~~ *that the structure owner must do so*

2. Proposed Section 22.365(b), which is applicable to cellular licensees, authorizes the existence of maintenance contracts. Joint Commenters propose that similar provisions be included in the Part 21 (fixed point-to-point microwave) and Part

94 (private operational-fixed microwave) rules. No such provisions are currently proposed.

3. The Commission should ensure that the new Part 101 Rules currently under consideration in WT Docket No. 94-148 (in which the Commission is proposing to consolidate and simplify the Part 21 (common carrier microwave) and Part 94 (private operational-fixed microwave) rules) include the newly proposed antenna structure requirements.

CONCLUSION

The Joint Commenters generally support the Commission's efforts to streamline the antenna structure clearance process and make owners primarily responsible for structure registration and maintenance. Adoption of the suggestions discussed above will assist the Commission in implementing the proposed rules and procedures.

Respectfully submitted,

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