

reasonable nexus to our regulatory process.⁸² S&P points out that the Commission does not have a list of non-licensee antenna structure owners and that, alternatively, tenant licensees should be required to forward Commission letters to non-licensee owners.⁸³ In a separate vein, MTEL asks the Commission to provide adequate notice to licensees on the structure of their secondary responsibility to maintain the prescribed painting and/or lighting and the fact that they are still subject to forfeiture.⁸⁴

61. Decision. We will provide notice regarding antenna structure registration and the specific roles of owners and tenant licensees through several methods. First, the Commission will publish a summary of this Report and Order and the final rules in the Federal Register. Second, we will contact site owners associations and communications industry trade publications in order to publish summaries of this action in various media. Third, we urge all tenant licensees to notify non-licensee antenna structure owners regarding the rules outlined herein. These three means of notification should be sufficient to ensure that all owners, including Commission licensees and non-licensees, receive notice of their new responsibilities. Sending notification letters to all existing licensees regarding these new responsibilities would not target non-licensee owners, would not provide a greater level of notification than the three methods described above, and would place a large administrative burden on the Commission. Further, because this is the first time the Commission has attempted to identify antenna structure owners, there is no means at the Commission's disposal to notify structure owners individually.

V. CONCLUSION

62. Accordingly, we are amending Parts 0, 1, 17, 21, 22, 23, 24, 25, 73, 74, 78, 80, 87, 90, 94, 95, and 97 of the Rules to require owners to register antenna structures requiring notification of proposed construction to the FAA, to update the Commission's antenna structure painting and lighting requirements in accordance with the latest FAA Advisory Circulars, and to implement statutory requirements set forth by Congress to hold owners primarily responsible for the installation and maintenance of antenna structure painting and lighting. These actions will serve the public interest: (1) by expediting application and notification processing, (2) by streamlining regulations to ease the public and governmental burdens associated with processing certain applications, (3) by unifying federal regulations regarding antenna structure painting and lighting, (4) by increasing safety of air navigation, and (5) by establishing that primary responsibility for antenna structure operation and maintenance rests with the owner.

VI. FINAL REGULATORY ANALYSIS

⁸² AirTouch/New Vector comments at 2 - 3 and Fryer comments at 5.

⁸³ S&P comments at 4.

⁸⁴ MTEL comments at 4 - 5.

63. Pursuant to the Regulatory Flexibility Act of 1980, the Commission's final analysis is as follows:

I. Need and purpose of this action:

This Report and Order replaces the Commission's current antenna structure clearance procedures, which apply to licensees, with a uniform registration process for structure owners. This action also revises the Commission's antenna structure painting and lighting requirements to incorporate by reference FAA Advisory Circulars AC 70/7460-1H (August 1991), as amended by Change 2 (July 15, 1992), and AC 150/5345-43D (July 1988). Further, this action revises applicable sections of the Commission's rules, making owners primarily responsible for antenna structures which require painting and/or lighting. By these actions, the Commission seeks to reduce the number of filings to the Commission regarding changes to antenna structures, to expedite application and notification processing, to unify and streamline federal painting and lighting regulations, to ease the public and governmental burdens associated with filing and processing certain applications, and to increase safety in air navigation.

II. Summary of the issues raised by the public comments in response to the Initial Regulatory Flexibility Analysis:

There were no comments submitted in response to the Initial Regulatory Flexibility Analysis.

III. Significant alternatives considered:

No significant alternative to this action was contained in the Notice or suggested by commenters. The action represents the best means to achieve the regulatory objective of minimizing the regulatory burden on the public.

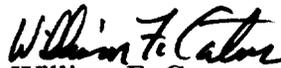
VII. ORDERING CLAUSES

64. Accordingly, IT IS ORDERED that pursuant to the authority contained in Sections 4(i), 303(r), and 307(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), 307(c), Parts 0, 1, 17, 21, 22, 23, 24, 25, 73, 74, 78, 80, 87, 90, , 94, 95, and 97 of the Commission's Rules, 47 C.F.R. Parts 0, 1, 17, 21, 22, 23, 24, 25, 73, 74, 78, 80, 87, 90, 94, 95, and 97 ARE AMENDED as set forth in Appendix D below.

65. IT IS FURTHER ORDERED that this Report and Order will be effective thirty days after publication in the Federal Register.

66. For further information contact Roger Noel of the Wireless Telecommunications Bureau at (202) 418-0680, or Robert Greenberg of the Mass Media Bureau at (202) 418-2720.

FEDERAL COMMUNICATIONS COMMISSION


William F. Caton
Acting Secretary

Attachments

APPENDIX A

LIST OF COMMENTERS

Comments

Air Touch/US WEST New Vector Group
Alltel Mobile Communications, Inc.
American Mobile Telecommunications Association, Inc.
American Personal Communications
American Petroleum Institute
Association of Federal Communications Consulting Engineers
AT&T Corp.
Bell Atlantic Mobile Systems, Inc.
Capital Cities/ABC, Inc.
CBS, Inc.
Cellular Telecommunications Industry Association
Cohen, Dippell and Everist, PC
Dean Brothers Publishing
Dutch Hill Tower Antenna Systems, Inc.
EMI Communications Corp.
Federal Aviation Administration
Flash Technology
GTE Service Corporation
Hughey & Phillips, Inc.
Industrial Communications & Electronics, Inc.
Industrial Telecommunications Association, Inc.
Kelly Communications, Inc.
Micro TV, Inc.
Mitchell Energy & Development Corp.
Mobile Telecommunications Technologies Corp.
Motorola
National Association of Broadcasters
Nationwide Communications, Inc.
National Oceanic and Atmospheric Administration-National Ocean Service
OneComm Corporation
Paging Network, Inc.
Pacific Bell/Nevada Bell/Pacific Bell Mobile Services
Personal Communications Industry Association
Smith and Powstenko and the Empire State Building
Southwest Bell Mobile Systems, Inc.
Sprint
UTC

Vernon Telephone Cooperative, Inc.
Wireless Cable Association International, Inc.

Reply comments

American Mobile Telecommunications Association, Inc.
Ameritech Mobile Communications, Inc.
AT&T Corp.
EMI Communications Corp.
GTE Service Corporation
Metropolitan Water District of Southern California
Motorola
Nynex Mobile Communications Company
Personal Communications Industry Association
Signal One, Inc.
Southwest Bell Mobile Systems, Inc.

APPENDIX B
FILING WINDOWS

Window	States/Territories	Approximate # of Filings ¹
Jul 1-31, 1996	MI, MT	3,041
Aug 1-31, 1996	AZ, HI, NC	3,188
Sept 1-30, 1996	AK, NM, NY	3,612
Oct 1-31, 1996	MA, MO	2,994
Nov 1-30, 1996	IL, WY	3,053
Dec 1-31, 1996	NV, OK, PR	3,167
Jan 1 - Feb 28, 1997	CA, OH	6,737
Mar 1-31, 1997	IA, VA	3,273
Apr 1-30, 1997	AS, GA, GM, GU, MP, VI	3,141
May 1-31, 1997	LA, ME, RI	3,077
Jun 1-31, 1997	CO, MN	2,993
Jul 1-31, 1997	NE, PA	3,022
Aug 1 - Sep 30, 1997	FL, IN	6,946
Oct 1-31, 1997	DE, KS, WA	2,961
Nov 1-30, 1997	NH, OR, WI, WV	3,096
Dec 1-31, 1997	AL, DC, MD	2,953
Jan 1-31, 1998	AR, ND, UT	2,943
Feb 1-28, 1998	ID, MS, SD, VT	2,996
Mar 1-31, 1998	KY, TN	3,149
Apr 1-30, 1998	CT, NJ, SC	2,930
May 1 - Jun 30, 1998	TX	8,331

¹ Includes registration of 77,173 existing structures that meet the proposed filing criteria. Does not include new structures.

APPENDIX C

PROCEDURES FOR LICENSEES AND PERMITTEES

As the Commission registers over 75,000 antenna structures between July 1, 1996, and June 30, 1998, there may be cases where site data submitted by the owner conflicts with site data submitted by licensees and permittees. The owner must provide a copy of the structure's registration (FCC Form 854-R) to each tenant licensee and permittee. Licensees and permittees must compare the site data on the registration with the site data shown on their respective FCC authorizations. If the structure height, the latitude, or the longitude does not match, a separate filing may be necessary. Such filings are described below, listed by radio service.

The Commission does not intend to impose administrative sanctions on any licensee or permittee who, through this new registration process, realizes that it has inadvertently provided incorrect structure information in obtaining a station authorization or construction permit. Further, licensees and permittees are not required to cease transmitting while seeking the amendments listed herein. Situations requiring a change in operating parameters will be handled on a case by case basis.

AM, FM, AND TV BROADCAST STATIONS

If the antenna height above average terrain (HAAT) differs by more than 2 meters, or if the latitude or longitude differ, tenant licensees and permittees must file either FCC Form 301 or FCC Form 340. (Note that HAAT could change if there is a change in the determination of the elevation of the site.) Further, if the height of the AM radiator is found to increase or decrease more than two meters, the AM station will have to file Form 301 or Form 340. Applicants may also file simultaneously FCC Form 302 (Application for license). There is no filing fee.

Such filings must be made within 30 days of receipt of FCC Form 854-R from the structure owner.

LOW POWER TV

If the antenna structure site coordinates produce an error of more than 152.4 meters (500 feet), tenant licensees and permittees must file FCC Form 346 (application for construction permit).

If there is an error of 152.4 meters to 200 meters, tenant licensees and permittees may simply file a "minor change" application together with FCC Form 347 (application for station authorization). Errors of more than 200 meters may be reported in this manner, provided that the error does not result in an increase of the station's protected signal contour in any horizontal direction.

Applicants may correct site coordinates, regardless of the magnitude of the error, by filing minor change applications, together with a cover letter explaining the purpose of the application and the magnitude of the coordinate error. If the coordinate error exceeds the normal definition of a minor change (given above), the staff will determine whether the station meets the Commission's interference protection rules at the correct coordinates and antenna height. If so, the application will be accepted for filing and placed on a public notice proposing its grant and inviting the filing of petitions to deny within 30-days of the issuance of the notice. If interference is predicted to a protected facility, the Commission staff will proceed on a case by case basis, first determining whether the coordinate error has resulted in actual impermissible interference. If so, the station licensee or permittee will be directed to take immediate action to eliminate unwanted interference; for example, by requesting temporary authority to operate the station at reduced power. The minor change application will be returned to the applicant, who will be directed to file a major change application in the next LPTV window. If interference is predicted from a licensed facility and the potentially affected entity concurs that interference has not occurred or will not occur, the application will be accepted for filing and proposed for grant by Commission public notice.

Such filings must be made within 30 days of receipt of FCC Form 854-R from the structure owner.

MULTIPOINT DISTRIBUTION SERVICE

If the latitude or longitude differs by ten seconds or less, tenant licensees and permittees must file FCC Form 304. There is no filing fee. Corrections of more than 10 seconds will require the filing and FCC authorization of a major change application, also using FCC Form 304.

Such filings must be made within 30 days of receipt of FCC Form 854-R from the structure owner.

INSTRUCTIONAL TELEVISION FIXED SERVICE

Tenant licensees and permittees will be governed by the current rules for station modifications. Any modification submitted to correct errant information associated with their facility must be submitted on an application for authorization to construct new or make changes in an instructional television fixed and/or response station(s), or to assign or transfer such station(s)(FCC Form 330). For licensees and permittees qualifying under Rule Section 1.1113 there will be no filing fee associated with these modifications. Filing fees for commercial ITFS licensees will be governed by the rules set forth for MDS station licensees and conditional licensees. Upon grant of the application for modification, licenses for ITFS facilities will be reissued.

Such filings must be made within 30 days of receipt of FCC Form 854-R from the structure owner.

FM TRANSLATORS AND BOOSTERS

Applicants must file FCC Forms 349 and 350, construction permit and license applications, respectively, to correct the discrepancies of antenna tower location coordinates where the distance exceeds a change of greater than 152.4 meters (500 feet). See Section 74.1251(b)(5). We will permit each correction to be made with a "minor" change filing on Form 349, with a simultaneous license application filing on Form 350.

In the case of a necessary "major" change correction, i.e. greater than a ten percent increase in the previously authorized coverage contour (translators only) as set forth in 47 C.F.R. §§ 74.1201(g) and 74.1233(a)(1), we shall follow our usual procedure of placing the tendered Form 349 application on a Public Notice "cut-off" list for the requisite 30 day period. Where necessary, as determined on a case by case basis, we shall require the filing of a special temporary authority (STA) request for the continued operation of the "major" change facility while the processing of the application is being completed. Subsequently, a modified construction permit will be issued which will require the filing of a follow-up FCC Form 350. No filing fee is required in either case.

Such filings must be made within 30 days of receipt of FCC Form 854-R from the structure owner.

CABLE TELEVISION RELAY SERVICE (CARS) STATIONS

CARS licensees shall file a request for Special Temporary Authority (STA) if, the latitude and/or longitude differ(s) by 1 second or more, the height of the transmit antenna above ground level (AGL) differs by 1 meter or more, or the height above mean sea level (AMSL) at the structure site differs by 1 meter or more. At the same time, licensees must file FCC Form 327 modifying their existing authorization and perform a frequency coordination analysis in accordance with 47 C.F.R. § 78.36. Other license deviations shall follow the major and minor change requirements of Part 78 of the Rules.

Such filings shall be made within 30 days of receipt of FCC Form 854-R from the structure owner.

ALL OTHER SERVICES

Tenant licensees and permittees must report any difference in structure height, latitude, or longitude upon the next modification or renewal of their station authorizations. No immediate filing is required.

APPENDIX D

FINAL RULES

Chapter I of Title 47 of the Code of Federal Regulations, Parts 0, 1, 17, 21, 22, 23, 24, 25, 73, 74, 78, 80, 87, 90, 94, 95, and 97 are amended as follows:

I. Part 0 - Commission Organization

1. The authority citation for Part 0 continues to read as follows:

AUTHORITY: Secs. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155, 225, unless otherwise noted.

2. Section 0.131 is amended by revising paragraph (j) to read as follows:

§ 0.131 Functions of the Bureau.

* * * * *

(j) Administers the Commission's commercial radio operator program (part 13) and the Commission's program for registration, construction, marking and lighting of antenna structures (part 17).

* * * * *

II. Part 1 - Practice and Procedure

1. The authority citation for Part 1 continues to read as follows:

AUTHORITY: 47 U.S.C. 154, 303, 503(b)(5); 5 U.S.C. 552, 21 U.S.C. 853a, unless otherwise noted.

2. Section 1.61 is amended by revising paragraphs (a) and (b), deleting paragraphs (c), (d), (e), and (f), and revising and redesignating paragraph (g) as paragraph (c) to read as follows:

§ 1.61 Procedures for handling applications requiring special aeronautical study.

(a) Antenna Structure Registration is conducted by the Wireless Telecommunications Bureau as follows:

(1) Each antenna structure owner that must notify the FAA of proposed construction using FAA Form 7460-1 shall, upon proposing new or modified construction, register that antenna structure with the Wireless Telecommunications Bureau using FCC Form 854.

(2) If an Environmental Assessment is required under § 1.1307 of this part, the Bureau will address the environmental concerns prior to processing the registration.

(3) If a final FAA determination of "no hazard" is not submitted along with FCC Form 854, processing of the registration may be delayed or disapproved.

(4) If the owner of the antenna structure cannot file FCC Form 854 because it is subject to a denial of federal benefits under the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 862, the first licensee authorized to locate on the structure must register the structure using FCC Form 854, and provide a copy of the Antenna Structure Registration (FCC Form 854R) to the owner. The owner remains responsible for providing a copy of FCC Form 854R to all tenant licensees on the structure and for posting the registration number as required by § 17.4(g) of this part.

(5) Upon receipt of FCC Form 854, and attached final FAA determination of "no hazard," the Bureau prescribes antenna structure painting and/or lighting specifications or other conditions in accordance with the FAA airspace recommendation and returns a completed Antenna Structure Registration (FCC Form 854R) to the registrant. If the proposed structure is disapproved the registrant is so advised.

(b) Each operating Bureau or Office examines the applications for Commission authorization for which it is responsible to ensure compliance with FAA notification procedures as well as Commission Antenna Structure Registration as follows:

(1) If Antenna Structure Registration is required, the operating Bureau reviews the application for the Antenna Structure Registration Number and proceeds as follows:

(i) If the application contains the Antenna Structure Registration Number or if the applicant seeks a Cellular or PCS system authorization, the operating Bureau processes the application.

(ii) If the application does not contain the Antenna Structure Registration Number, but the structure owner has already filed FCC Form 854, the operating Bureau places the application on hold until Registration can be confirmed, so long as the owner exhibits due diligence in filing.

(iii) If the application does not contain the Antenna Structure Registration Number, and the structure owner has not filed FCC Form 854, the operating Bureau notifies the applicant that FCC Form 854 must be filed and places the application on hold until Registration can be confirmed, so long as the owner exhibits due diligence in filing.

(2) If Antenna Structure Registration is not required, the operating Bureau processes the application.

(c) Where one or more antenna farm areas have been designated for a community or communities (see § 17.9 of this chapter), an application proposing the erection * * *

* * * * *

III. Part 17 - Construction, Marking, and Lighting of Antenna Structures

1. The authority citation for Part 17 continues to read as follows:

AUTHORITY: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 309, 48 Stat. 1081, 1085 as amended; 47 U.S.C. 301, 309.

2. Section 17.1 is amended by revising paragraphs (a) and (b) to read as follows:

§ 17.1 Basis and purpose.

(a) * * *and necessity would be served thereby, and to require the painting, and/or illumination of antenna structures if and when in its judgment such structures constitute* * *

(b) * * *part is to prescribe certain procedures for antenna structure registration and standards with respect to the Commission's consideration of proposed antenna structures which will serve as a guide to antenna structure owners. The standards are referenced from two Federal Aviation Administration (FAA) Advisory Circulars.

3. Section 17.2 is amended by revising paragraph (a) and adding new paragraphs (c) and (d) to read as follows:

§ 17.2 Definitions.

(a) *Antenna structure.* The term antenna structure includes the* * *

(b) * * *

(c) *Antenna Structure Owner.* For the purposes of this part, an antenna structure owner is the individual or entity vested with ownership, equitable ownership, dominion, or title to the antenna structure. Notwithstanding any agreements made between the owner and any entity designated by the owner to maintain the antenna structure, the owner is ultimately responsible for compliance with the requirements of this part.

(d) *Antenna Structure Registration Number.* A unique number, issued by the Commission during the registration process, which identifies an antenna structure. Once obtained, this number must be used in all filings related to this structure.

4. Section 17.4 is amended by revising the section to read as follows:

§ 17.4 Antenna Structure Registration.

(a) Effective July 1, 1996, the owner of any proposed or existing antenna structure that requires notice of proposed construction to the Federal Aviation Administration must register the structure with the Commission. This includes those structures used as part of stations licensed by the Commission for the transmission of radio energy, or to be used as part of a cable television head end system. If a Federal Government antenna structure is to be used by a Commission licensee, the structure must be registered with the Commission.

(1) For a proposed antenna structure or alteration of an existing antenna structure, the owner must register the structure prior to construction or alteration.

(2) For an existing antenna structure that had been assigned painting or lighting requirements prior to July 1, 1996, the owner must register the structure prior to July 1, 1998.

(3) For a structure that did not originally fall under the definition of "antenna structure," the owner must register the structure prior to hosting a Commission licensee.

(b) Except as provided in paragraph (e) below, each owner must file FCC Form 854 with the Commission. Additionally, each owner of a proposed structure referred to in (a)(1) or (a)(3) above must submit a valid FAA determination of "no hazard." In order to be considered valid by the Commission, the FAA determination of "no hazard" must not have expired prior to the date on which FCC Form 854 is received by the Commission. The height of the structure will include the highest point of the structure including any obstruction lighting or lighting arrester.

(c) If an Environmental Assessment is required under § 1.1307 of this part, the Bureau will address the environmental concerns prior to processing the registration.

(d) If a final FAA determination of "no hazard" is not submitted along with FCC Form 854, processing of the registration may be delayed or disapproved.

(e) If the owner of the antenna structure cannot file FCC Form 854 because it is subject to a denial of federal benefits under the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 862, the first tenant licensee authorized to locate on the structure (excluding tenants that no longer occupy the structure) must register the structure using FCC Form 854, and provide a copy of the Antenna Structure Registration (FCC Form 854R) to the owner. The owner remains responsible for providing a copy of FCC Form 854R to all tenant licensees on the structure and for posting the registration number as required by paragraph (g) below.

(f) The Commission shall issue, to the registrant, FCC Form 854R, Antenna Structure Registration, which assigns a unique Antenna Structure Registration Number. The structure

owner shall immediately provide a copy of Form 854R to each tenant licensee and permittee.

(g) Except as described in (g)(1), the Antenna Structure Registration Number must be displayed in a conspicuous place so that it is readily visible near the base of the antenna structure. Materials used to display the Antenna Structure Registration Number must be weather-resistant and of sufficient size to be easily seen at the base of the antenna structure.

(1) The owner is not required to post the Antenna Structure Registration Number in cases where a federal, state, or local government entity provides written notice to the owner that such a posting would detract from the appearance of a historic landmark. In this case, the owner must make the Antenna Structure Registration Number available to representatives of the Commission, the FAA, and the general public upon reasonable demand.

5. Section 17.5 is added under Subpart A to read as follows:

§ 17.5 Commission consideration of applications for station authorization.

(a) Applications for station authorization, excluding services authorized on a geographic basis, are reviewed to determine whether there is a requirement that the antenna structure in question must be registered with the Commission.

(b) If registration is required, the registrant must supply the structure's registration number upon request by the Commission.

(c) If registration is not required, the application for authorization will be processed without further regard to this chapter.

6. Section 17.6 is added under Subpart A to read as follows:

§ 17.6 Responsibility of Commission licensees and permittees.

(a) The antenna structure owner is responsible for maintaining the painting and lighting in accordance with this Part. However, if a licensee or permittee authorized on an antenna structure is aware that the structure is not being maintained in accordance with the specifications set forth on the Antenna Structure Registration (FCC Form 854R) or the requirements of this Part, or otherwise has reason to question whether the antenna structure owner is carrying out its responsibility under this Part, the licensee or permittee must take immediate steps to ensure that the antenna structure is brought into compliance and remains in compliance. The licensee must:

(1) Immediately notify the structure owner;

(2) Immediately notify the site management company (if applicable);

- (3) Immediately notify the Commission; and,
- (4) Make a diligent effort to immediately bring the structure into compliance.

(b) In the event of non-compliance by the antenna structure owner, the Commission may require each licensee and permittee authorized on an antenna structure to maintain the structure, for an indefinite period, in accordance with the Antenna Structure Registration (FCC Form 854R) and the requirements of this Part.

(c) If the owner of the antenna structure cannot file FCC Form 854 because it is subject to a denial of federal benefits under the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 862, the first licensee authorized to locate on the structure must register the structure using FCC Form 854, and provide a copy of the Antenna Structure Registration (FCC Form 854R) to the owner. The owner remains responsible for providing a copy of FCC Form 854R to all tenant licensees on the structure and for posting the registration number as required by § 17.4(g) of this part.

7. The title Subpart B is revised to read as follows:

Subpart B-Federal Aviation Administration Notification Criteria

8. Section 17.10 is amended by revising the introductory paragraph to read as follows:

§ 17.10 Antenna structures over 304.80 meters (1,000 feet) in height.

Where one or more antenna farm areas have been designated for a community or communities (see §17.9), the Commission will not accept for filing an application to construct a new station or to increase * * *

* * * * *

9. Section 17.14 is amended by revising paragraph (a) to read as follows:

§ 17.14 Certain antenna structures exempt from notification to the FAA.

* * * * *

(a) * * *topographic features of equal or greater height, **and** would be located in the congested area* * *

* * * * *

10. Section 17.17 is amended by revising paragraph (a) to read as follows:

§ 17.17 Existing structures.

(a) The requirements found in 17.23 of this Part relating to painting and lighting of antenna structures shall not apply to those structures authorized prior to July 1, 1996. Previously authorized structures may retain their present painting and lighting specifications, so long as the overall structure height or site coordinates do not change. The Antenna Structure Registration requirements found in Section 17.5 of this Part, however, shall apply to all antenna structures that have been assigned painting or lighting requirements by the Commission, regardless of prior authorization.

* * * * *

11. Section 17.22 is amended by revising the first sentence to read as follows:

§ 17.22 Particular specifications to be used.

Whenever painting or lighting is required, the Commission will generally assign specifications in accordance with the FAA Advisory Circulars referenced in section 17.23 of this part.

* * * * *

12. Section 17.23 is revised to read as follows:

§ 17.23 Specifications for painting and lighting antenna structures.

Unless otherwise specified by the Commission, each new or altered antenna structure to be registered on or after July 1, 1996, must conform to the FAA's painting and lighting recommendations set forth on the structure's FAA determination of "no hazard," as referenced in the following FAA Advisory Circulars: AC 70/7460-1H, "Obstruction Marking and Lighting," August 1, 1991, as amended by Change 2, July 15, 1992, and AC 150/5345-43D, "Specification for Obstruction Lighting Equipment," July 15, 1988. These documents are incorporated by reference in accordance with 5 U.S.C. 552(a). The documents contain FAA recommendations for painting and lighting structures which pose a potential hazard to air navigation. For purposes of this part, the specifications, standards, and general requirements stated in these documents are mandatory. The Advisory Circulars listed above are available for inspection at the Commission Headquarters in Washington, DC, or may be obtained from Department of Transportation, Utilization and Storage Section (Publications), M443.2, 400 7th Street SW, Washington, DC 20590, telephone (202) 366-0039 or (202) 366-0451.

13. Sections 17.24 through 17.43 are deleted from this Part.

14. Section 17.47 is amended by revising the title, introductory paragraph, and paragraphs (a)(1), (a)(2), and (b) to read as follows:

§ 17.47 Inspection of antenna structure lights and associated control equipment.

The owner of any antenna structure which is registered with the Commission and has been assigned lighting specifications referenced in this part* * *

(a)(1) Shall make an observation of the antenna structure's lights at least once* * *

(2) * * *provide indication of such failure to the owner.

(b) * * *alarm systems associated with the antenna structure lighting to insure that such apparatus is functioning properly.

15. Section 17.48 is amended by revising the introductory paragraph and paragraph (a) to read as follows:

§ 17.48 Notification of extinguishment or improper functioning of lights.

The owner of any antenna structure which is registered with the Commission and has been assigned lighting specifications referenced in this part* * *

(a) * * *the circumstances which caused the failure, the probable date for restoration of service, the FCC Antenna Structure Registration Number, the height of the structure (AGL and AMSL if known) and the name, title, address, and telephone number of the person making the report. Further notification* * *

* * * * *

16. Section 17.49 is amended by revising the title, the introductory paragraph, and paragraph (c) and adding a new paragraph (d) to read as follows:

§17.49 Recording of antenna structure light inspections in the owner record.

The owner of each antenna structure which is registered with the Commission and has been assigned lighting specifications referenced in this part must maintain a record of any observed or otherwise known extinguishment or improper functioning of a structure light and include the following information for each such event:

* * * * *

(c) Date and time of FAA notification, if applicable.

(d) The date, time and nature of adjustments, repairs, or replacements made.

17. Section 17.50 is amended by revising the sentence to read as follows:

§ 17.50 Cleaning and repainting.

Antenna structures requiring painting under this Part shall be cleaned or repainted as often as necessary to maintain good visibility.

18. Section 17.51 is amended by revising paragraph (b) to read as follows:

§ 17.51 Time when lights should be exhibited.

* * * * *

(b) All high intensity and medium intensity obstruction lighting shall be exhibited continuously unless otherwise specified.

19. Section 17.57 is amended by revising the previous text to read as follows:

§ 17.57 Report of radio transmitting antenna construction, alteration, and/or removal.

The owner of an antenna structure for which an Antenna Structure Registration Number has been obtained must notify the Commission within 24 hours of completion of construction (FCC Form 854-R) and/or dismantlement (FCC Form 854). The owner must also immediately notify the Commission using FCC Form 854 upon any change in structure height or change in ownership information.

IV. Part 21 - Domestic Public Fixed Radio Services

1. The authority citation for Part 21 continues to read as follows:

AUTHORITY: Secs. 1, 2, 4, 201-205, 208, 215, 218, 303, 307, 313, 403, 404, 410, 602, 48 Stat. as amended, 1064, 1066, 1070-1073, 1076, 1077, 1080, 1082, 1083, 1087, 1094, 1098, 1102; 47 U.S.C. 151, 154, 201-205, 208, 215, 218, 303, 307, 313, 314, 403, 404, 602; 47 U.S.C. 552, 554.

2. Section 21.11 is amended by revising paragraph (g) to read as follows:

§ 21.11 Miscellaneous forms shared by all domestic public radio services.

* * * * *

(g) Antenna Structure Registration. FCC Form 854 (Application for Antenna Structure Registration) accompanied by a final Federal Aviation Administration (FAA) determination of "no hazard" must be filed by the antenna structure owner to receive an antenna structure registration number. Criteria used to determine whether FAA notification and registration is required for a particular antenna structure are contained in Part 17 of this chapter.

3. Section 21.15 is amended by revising paragraph (d), inserting a new paragraph (e), and redesignating paragraphs (e), (f), and (g) as (f), (g), and (h), respectively.

§ 21.15 Technical content of applications.

* * * * *

(d) FAA notification. Before the construction of a new antenna structure or alteration in the height of an existing structure (including a receive-only or passive repeater) is authorized by the FCC, a Federal Aviation Administration (FAA) determination of "no hazard" may be required. To apply for this determination, antenna structure owners must notify the FAA of the planned construction. Criteria used to determine whether FAA notification is required for a particular antenna structure are contained in Part 17 of this chapter. Applications proposing construction of a new antenna structure or alteration of the overall height of an existing antenna structure, where FAA notification prior to such construction or alteration is not required by Part 17 of this chapter, must indicate such and, unless the reason is obvious (e.g. structure height is less than 6.1 meters AGL) must state why FAA notification is not required. See also 21.111 if the structure is used by more than one station.

(e) Antenna Structure Registration Number. Applications proposing construction of a new antenna structure or alteration of the overall height of an existing antenna structure, where FAA notification prior to such construction or alteration is required by Part 17 of this

chapter, must include the FCC Antenna Structure Registration Number for the affected structure. If no such number has been assigned at the time the application is filed, the applicant must state in the application whether or not the antenna structure owner has notified the FAA of the proposed construction or alteration and applied to the FCC for an Antenna Structure Registration Number in accordance with Part 17 of this structure for the antenna structure in question.

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4. Section 21.41 is amended by revising paragraph (c)(3) to read as follows:

§ 21.41 Special processing of applications for minor facilities modifications.

* * * * *

(c) * * *

(3) Changes in the geographical coordinates of a transmit station, receive station or passive facility by ten seconds or less of latitude, longitude or both, provided that when notice to the FAA of proposed construction is required by Part 17 of the rules for the antenna structure at the previously authorized coordinates (or will be required at the new location) the applicant must comply with the provisions of 21.15(e).

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5. Section 21.42 is amended by revising paragraph (c)(6) to read as follows:

§ 21.42 Certain modifications not requiring prior authorizations.

* * * * *

(c) * * *

(6) Decreases in the overall height of an antenna structure, provided that, when notice to the FAA of proposed construction was required by Part 17 of the Rules for the antenna structure at the previously authorized height, the applicant must comply with the provisions of 21.15(d) and 21.15(e).

* * * * *

6. Section 21.111 is revised to read as follows:

§ 21.111 Use of common antenna structure.

The simultaneous use of a common antenna structure by more than one station authorized under this part, or by one or more stations of any other service may be authorized. The owner, however, of each antenna structure required to be painted and/or illuminated

under the provisions of Section 303(q) of the Communications Act of 1934, as amended, shall install and maintain the antenna structure painting and lighting in accordance with Part 17 of this chapter. In the event of default by the owner, each licensee or permittee shall be individually responsible for conforming to the requirements pertaining to antenna structure painting and lighting.

7. Section 21.112 is revised to read as follows:

§ 21.112 Marking of antenna structures.

No owner, conditional licensee, or licensee of an antenna structure for which obstruction marking or lighting is required and for which an antenna structure registration number has been obtained, shall discontinue the required painting or lighting without having obtained prior written authorization therefor from the Commission. (For complete regulations relative to antenna marking requirements, see Part 17 of this chapter.)

8. Section 21.117 is amended by revising paragraph (b) to read as follows:

§ 21.117 Transmitter location.

* * * * *

(b) The owner of the antenna structure should locate and construct such structure as to avoid making them hazardous to air navigation. (See Part 17 of this chapter for provisions relating to antenna structures.) Such installation shall be maintained in good structural condition together with any required painting or lighting.

V. Part 22 - Public Mobile Services

1. The authority citation for Part 22 continues to read as follows:

Authority: 47 U.S.C. 154, 303, unless otherwise noted.

2. Section 22.115 is amended by revising paragraphs (a)(2) and (a)(3) to read as follows:

§ 22.115 Content of applications.

* * * * *

(a) * * *

(2) Antenna structure registration. Applications proposing the use of one or more new or existing antenna structures must contain the FCC Antenna Structure Registration Number, if assigned, of each such antenna structure for which Federal Aviation Administration (FAA) notification is or was required by Part 17 of this chapter prior to its construction. If, at the time an application is filed, an FCC Antenna Structure Registration Number has not been assigned for any such antenna structure, the applicant must indicate in the application whether or not, as of the date the application is filed, the antenna structure owner has registered the antenna structure with the FCC in accordance with Part 17 of this chapter.

(3) FAA notification. Before constructing a new antenna structure or increasing the height of an existing structure, an antenna structure owner may be required to obtain an FAA determination of No Hazard to Air Navigation. To obtain this determination, the FAA must be notified of the planned construction or alteration. Criteria used to determine whether FAA notification is required for any particular antenna structure are contained in Part 17 of this chapter.

(i) Applications proposing to use a new antenna structure or an existing antenna structure for which the height is increased must indicate whether FAA notification is required by Part 17 of this chapter.

(ii) If FAA notification is required by Part 17 of this chapter, a copy of the FAA determination should be included in the application. However, if the FAA determination is not available at the time the application is filed, the application must include the following information in regard to the FAA notification: the name of the person that submitted the notification, the date the notification was submitted, and the location of the FAA office to which the notification was submitted.

(iii) If FAA notification is not required by Part 17 of this chapter, the application must indicate such and, unless the reason therefor is obvious (*e.g.* antenna structure height is

less than 6.10 meters above ground level), must contain a statement explaining why FAA notification is not required.

* * * * *

3. Section 22.365 is revised to read as follows:

§ 22.365 Antenna structures; air navigation safety.

Licensees that own their antenna structures must not allow these antenna structures to become a hazard to air navigation. In general, antenna structure owners are responsible for registering antenna structures with the FCC if required by Part 17 of this chapter, and for installing and maintaining any required marking and lighting. However, in the event of default of this responsibility by an antenna structure owner, each FCC permittee or licensee authorized to use an affected antenna structure will be held responsible by the FCC for ensuring that the antenna structure continues to meet the requirements of Part 17 of this chapter. See § 17.6 of this chapter.

(a) Marking and lighting. Antenna structures must be marked, lighted and maintained in accordance with Part 17 of this chapter and all applicable rules and requirements of the Federal Aviation Administration.

(b) Maintenance contracts. Antenna structure owners (or licensees and permittees, in the event of default by an antenna structure owner) may enter into contracts with other entities to monitor and carry out necessary maintenance of antenna structures. Antenna structure owners (or licensees and permittees, in the event of default by an antenna structure owner) that make such contractual arrangements continue to be responsible for the maintenance of antenna structures in regard to air navigation safety.

VI. Part 23 - International Fixed Public Radiocommunication Services

1. The authority citation for Part 23 continues to read as follows:

AUTHORITY: Secs. 4, 303, 48 Stat. 1066, 1082 as amended; 47 U.S.C. 154, 303. Interpret or apply sec. 301, 48 Stat. 1081; 47 U.S.C. 301.

2. Section 23.28 is amended by adding a new paragraph (c) to read as follows:

§ 23.28 Special Temporary Authorization.

* * * * *

(c) Each application proposing construction of one or more new antenna structures or alteration of the overall height of one or more existing antenna structures, where FAA notification prior to such construction or alteration is required by Part 17 of this chapter, must include the FCC Antenna Structure Registration Number(s) for the affected structure(s). If no such number has been assigned at the time the application(s) is filed, the applicant must state in the application whether the owner has notified the FAA of the proposed construction or alteration and applied to the FCC for an Antenna Structure Registration Number in accordance with Part 17 of this chapter. Applications proposing construction of one or more new antenna structures or alteration of the overall height of one or more existing antenna structures, where FAA notification prior to such construction or alteration is not required by Part 17 of this chapter, must indicate such and, unless the structure is 6.10-meters or less above ground level (AGL), must contain a statement explaining why FAA notification is not required.

3. Section 23.39 is amended by revising the title and replacing the previous text with new paragraphs (a), (b), and (c) to read as follows:

§ 23.39 Antenna Structures.

(a) FAA notification. Before the construction of new antenna structures or alteration in the height of existing antenna structures is authorized by the FCC, a Federal Aviation Administration (FAA) determination of "no hazard" may be required. To apply for this determination, the FAA must be notified of the planned construction. Criteria used to determine whether FAA notification is required for a particular antenna structure are contained in Part 17 of this chapter. Applications proposing construction of one or more new antenna structures or alteration of the overall height of one or more existing antenna structures, where FAA notification prior to such construction or alteration is not required by Part 17 of this chapter, must indicate such and, unless the reason is obvious (e.g. structure height is less than 6.10 meters AGL) must contain a statement explaining why FAA notification is not required.

- (b) Painting and lighting. The owner of each antenna structure required to be painted