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Office of the Secretary
Federal Communications Commission
Washington, D.C. 20554

Mr. William Kennard
Chairman
Federal Communications Commission
1919 M Street, N.W. Room 814
Washington, D.C. 20554

Re: FCC Docket No. 97-296 and MM Docket No. 970182

Dear Chairman Kennard:

I am hereby submitting comments regarding the Federal Communications Commission's Notice of Proposed Rule Making in the Matter of Preemption of State and Local Zoning and Land Use Restrictions on the Siting, Placement, and Construction of Broadcast Station Transmission Facilities. The FCC is seeking comments on whether the above-referenced proposal would have a significant environmental effect on the environment, and therefore would require the FCC to prepare an Environmental Impact Statement.

The National Environmental Policy Act, 42 U.C.S. 4321 et seq. (NEPA), requires the Commission and all other federal agencies to conduct an Environmental Impact Statement (EIS) for all major federal actions affecting the environment. The NEPA requirements supersede all other Commission rules that may be inconsistent with NEPA. 47 C.F.R. 1.1303. A federal decision to preempt state and local laws governing the construction of hundreds of broadcast towers is unquestionably a major federal action; giving broadcasters free rein to ignore state and local environmental laws would have significant and lasting harmful impacts. Moreover, the Commission's regulations at 47 CFR §1.1307(a) require thorough environmental analysis of any action that may affect a listed species or may lead to construction in wetlands. For the following additional reasons, I believe that the FCC is required to conduct an EIS with respect to the above-referenced federal register notice.

The FCC's proposal relates to all radio and television towers. Broadcast towers can have substantial environmental effects. Many of these broadcast towers are more than one thousand feet high, some reaching heights of two thousand feet or more. Many towers are located in or near wetland areas, streams, and other protected areas. Other towers are located or planned to be located at the tops of mountains, many in remote and sensitive areas. Conducting a federal NEPA review of this proposed federal action would allow the FCC to determine whether the exemption of so many different sites from state and local environmental review would have "cumulative" environmental impacts and consequences.

Many people have been concerned with the proliferation of radio, television, and telephone towers in environmentally sensitive areas, and in particular with the documented high levels of bird mortality that result when these towers are sited on high ground in the four major migratory flyways. It is estimate by some that between 2 million and 4 million migratory bird are killed each year as a result of collisions with TV and radio towers alone. Moreover, the red safety lights often used on towers have been found to attract flocks of migrating birds, leading to increased bird injury and mortality.¹ The impacts of poorly sited

¹ TV Towers Take Deadly Toll on Night-Migrating Birds, Buffalo News, October 6, 1996, 1C; Mysterious Flights. Under Cover of Night, Chicago Tribune, November 3, 1985, F14.

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transmission towers on migrating birds are well documented. For example, a 38-year study of a single television tower in west central Wisconsin documented 121,560 birds killed representing 123 species, primarily long-distance neotropical migrants.² Many species of neotropical migratory birds are experiencing steep population declines; the siting of numerous new broadcast towers in migration corridors could greatly exacerbate this problem. See attached chart of documented bird kills. The siting of broadcast towers in environmentally sensitive areas may also negatively impact other wildlife species.

In addition, the federal government has significant responsibility for the conservation of migratory birds and their habitats under four migratory bird treaties (with Mexico, Canada, Japan, and the former Soviet Union) that would be undermined by the proposed rule. The four treaties cover numerous species of neotropical migratory birds, many of which are experiencing steep declines in populations due in some part to collisions with tall structures in migratory flyways, including broadcast towers. In line with the federal government's treaty obligations for the protection of migratory birds, current FCC policy calls for locating broadcast towers outside of migratory bird flyways wherever possible.³

I believe that your proposed rule will exacerbate this problem by removing necessary avenues of environmental oversight that could otherwise lead to more environmentally sound siting decisions for broadcast towers. State and local laws that govern the siting and operation of broadcast towers help avert or reduce these impacts. By preempting these laws, the proposed rule would ensure that construction and operation of broadcast towers will cause significantly greater harm than state and local laws currently permit.

Moreover, before the Commission can resolve to issue the proposed rule, it must consult with the USFWS to ensure that the proposed rule will not harm any threatened and endangered species. Section § 7(d) of the Endangered Species Act requires consultation whenever a federal action may affect a protected species. Threatened and endangered migratory birds are among those that suffer from collisions with broadcast towers. Thus, rule in addition to preparing an EIS, the Commission must consult with USFWS before proceeding with the proposed rule.

In closing, in the absence of an EIS, I oppose the rule to preempt state and local zoning and land use restrictions on the placement and construction of broadcast station transmission facilities. Thank you for your consideration of these comments. If the Commission decides to move ahead with the EIS, please add me to the public comment list so that I may submit comments on the draft EIS.

Sincerely,

DW Hedgecock

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Walnut Creek, CA 94596

² C. Kemper, A Study of Bird Mortality at a West Central Wisconsin TV Tower from 1957-1995, The Passenger Pigeon, Vol. 58, No. 3, 1996.

³ In the Matter of Implementation of the National Environmental Policy Act of 1969, 49 F.C.C.2d 1313.