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

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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.

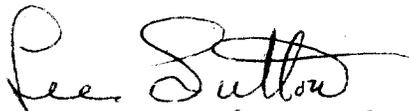
In addition, the federal government has significant responsibility for the conservation of migratory birds and their habitats under four migratory bird treaties (with Mexico, Canada, Japan, and the former Soviet Union) that would be undermined by the proposed rule. The four treaties cover numerous species 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,


Lee Sutton
Conservation Co-chair
Wenacrest Audubon Society

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.

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Collision Course:**The Hazards of Lighted Structures and Windows to Migrating Birds**A Special Report by Lesley J. Evans Ogden for World Wildlife Fund Canada
and the Fatal Light Awareness Program, September 1996APPENDIX 1, Bird Collision Literature Summary Table
(TV Tower Collisions)

Locations	Years	No. Killed	No. Species	Predominant Species/Groups	Reference *
WJBF-TV, Aiken, SC, USA	1962	400	32	Red eyed Vireo	766
Alleman, Iowa, USA	1972	726		406 (40%) Warbler	420
Baltimore, MD, USA	1964	1032	37	300 (29%) Ovenbird	669
Barrie, ON, CAN	1974	4900		1000 (20%) Bay-breasted Warbler, 900 (18%) Ovenbird	337
Boston, MA, USA	1958	300		Warbler, Vireo	63
Boyleston, MA, USA	1971	158	29	134 (85%) Warbler, 95 (60%) Blackpoll Warbler	62
Boylston, MA, USA	1970	350	29	266 (76%) Warbler	61
Buffalo, NY, USA	1978	359	51	44 (15%) Blackpoll Warbler, 36 (10%) Ovenbird, 35 (10%) Swainson's Thrush, 25 (7%) Red-eyed Vireo	892
Buffalo, NY, USA	1974	651		Warbler	169
Buffalo, NY, USA	1970	534	46	105 (20%) Yellow-rumped Warbler, 63 (12%) Black-throated Blue Warbler	775
Carolinas, USA	1962	4189	61	American Redstart, Ovenbird, Vireo	5
Cedar Rapids, IA, USA	1963			Thrush, Warbler	585
Chapel Hill, NC, USA	1956	2500	40	Warbler, Thrush	Chat (1957) Mar
Chapel Hill, NC, USA	1956	2500		Warbler	159
Charleston, NC, USA	1954	1000- E18	24	Warbler, Common Yellowthroat	Chat (1954) 18(4)
Charleston, SC, USA	1962			Red-eyed Vireo, Ovenbird, American Redstart	766
CHRE-TV, Regina, SK, CAN	1965	172		Warbler	90
CKCK-TV, Regina, SK, CAN	1965	227		Warbler	90
CKVR-TV, Barrie, ON, CAN	1975	175		Bay-breasted Warbler, Ovenbird, 414 (10%) Red-eyed Vireo, 313 (8%) Chestnut-sided Warbler	840
Columbia, MN, USA	1963	941		Red-eyed Vireo, Ovenbird	585
Dallas TX, USA	1960	11	1	Yellow Rail	85
Davenport, IA, USA	1960	281	25	Thrush, Warbler	506
Dayton, OH, USA	1966	305	49	Red-eyed Vireo, Golden-crowned Kinglet, Ovenbird	590
Des Moines, IA, USA	1974	1500		750 (50%) Red-eyed Vireo	415
WEAU-TV, Eau Clair, WI, USA	1957	1525	40	Warbler	404

WEAU-TV, Eau Clair, WI, USA	1957	2972	42	Warbler	116
Elmira, NY, USA	1966	270		Ovenbird	644
Elmira, NY, USA	1969	300		Bay-breasted Warbler	647
Elmira, NY, USA	1972	540	55	Warbler	649
Elmira, NY, USA	1975	800	40	198 (25%) Bay-breasted Warbler, 78 (9.8%) Ovenbird, 110 (14%) Magnolia Warbler	411
Erie County, NY, USA	1977	1397	50	168 (12%) Bay-breasted Warbler, 154 (11%) Ovenbird, 112 (8%) Magnolia Warbler	172
FL, USA	1964	4707	37	4646 (99%) Warbler	154
FL, USA	1971	2500	42	Warbler	394
FL, USA	1972	1347	49	1199 (89%) Warbler	744
Grand Bahama Is, USA	1966	136	22	Gray-cheeked Thrush, Blackpoll Warbler	401
Jacksonville, FL, USA	1964	2000		1900 (95%) Warbler, 273 (14%) Blackpoll Warbler	193
Jacksonville, USA	1970	146		Warbler	633
Jacksonville, USA	1967	174		Ovenbird	635
KCMO-TV, KS, MO, USA	1975	67		23 (34%) Mourning Dove	289
KOMU-TV, Columbia, MO, USA	1954	1887	63	354 (19%) Common Yellowthroats, 313 (17%) Gray Catbird	290
KROC-TV, Ostrander, MN, USA	1961-62, 1972-74	3507	84	619 (18%) Northern Waterthrush, 516(15%) Red-eyed Vireo	729
KTOL-TV, Coweta, OK, USA	1974	117	28	64 (55%) Nashville Warbler	554
Lawrence, KS, USA	1969	19		Thrush and Sparrow	545
Lennox Power Plant, Barrie, London TV ON, CAN	1974	7550		1359 (18%) Bay-breasted Warbler, 1129 (15%) Red-eyed Vireo, 1038 (14%) Ovenbird, 920 (12%) Magnolia Warbler	283
London, ON, CAN	1970			Ovenbird, Warbler	279
Madison, WI, USA	1968	493	33	Thrush, Warbler, Warbler	677
Maryville, MO, USA	1972	71	33	Sparrow	69
MI, USA	1954	230		Blackpoll Warbler	224
Moosejaw, SK, CAN	1959	33	13	Yellow-rumped Warbler, Orange-crowned Warbler	426
NY, USA	1959	110		Warbler, Vireo	663
Olney, IL, USA	1978	622	36	498 (80%) Warbler	351
Omega Tower, LaMoure, ND, USA	1973	1417	51	Finch	38
Omega Tower, LaMoure, ND, USA	1972	255	58	Finch	39
Omega Tower, LaMoure, ND, USA	1972	226	66	Warbler	39
Omega Tower, LaMoure, ND, USA	1971-73	937	102	Warbler, Vireo	42
Omega Tower, LaMoure, ND, USA	1971	152	41	Warbler, Vireo	25
ON, CAN	1961	1115	57	156 (14%) Ovenbird, 99 (8.9%) Chestnut-sided Warbler, 91(8.2%) Bay-breasted Warbler, 91 (8.2%)	64