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

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of ) DOCKET FILE COPY ORIGINAL  
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FCC Accountability and Responsibility for ) RM No. 9913  
Environmental Transgressions, and Petition )  
for Rulemaking Regarding NEPA, NHPA, and )  
Part 1, Subpart I Of the Commission's Rules )

OPPOSITION OF VERIZON WIRELESS

Verizon Wireless hereby submits its opposition to the above-captioned Petition for Rulemaking ("Petition") filed by the Public Employees for Environmental Responsibility ("PEER") on May 17, 2000. In the Petition, PEER asks the Federal Communications Commission ("FCC" or "Commission"), *inter alia*, to require applicants for submarine cable landing licenses, entities extending fiber optic cables, and licensees for use of all public spectrum requiring the use of communications towers to submit an environmental assessment ("EA") or an environmental impact statement ("EIS") along with applications for a license or authority.

Verizon Wireless is a holder of FCC licenses for use of public spectrum. Verizon Wireless opposes the PEER Petition because (1) PEER has not alleged facts warranting increased regulatory burdens for spectrum licensees; (2) the regulations requested by PEER would be highly costly and burdensome for both applicants and the Commission; and (3) FCC mechanisms already in place ensure compliance with environmental rules.

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## I. BACKGROUND

In the Petition, PEER argues that the FCC has failed to fulfill its duties under the National Environmental Policy Act of 1969 (“NEPA”) and under the National Historic Preservation Act of 1966 (“NHPA”). In particular, PEER argues that relying upon applicants for Commission authority to state without verification that no environmental impact will result from the Commission action fails to ensure Commission and applicant compliance with the NEPA and NHPA. In support of this claim, PEER cites examples involving submarine cable landings approved by the FCC in the Virgin Islands, Maine and Florida which it claims have caused or will cause significant damage to the environment.<sup>1</sup>

In order to remedy the situation, PEER requests that the Commission (1) conduct a joint rulemaking with the Environmental Protection Agency (“EPA”) and the Advisory Commission on Historical Preservation (“ACHP”) to determine whether the Commission’s environmental rules are being properly applied in the case of submarine cable landing licenses, extensions of fiber optic cables, and construction of wireless communications towers;<sup>2</sup> (2) conduct an expedited rulemaking to consider creating an “Office of Environmental Compliance” to prevent further violations of the environmental laws by the FCC; and (3) require all Section 214 certificate holders and applicants (including entities acting under blanket Section 214 authority), all spectrum license

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<sup>1</sup> Petition at 3.

<sup>2</sup> Verizon notes that this first request is procedurally incorrect. The FCC conducts rulemaking proceedings to consider adopting or amending rules, not to determine if existing rules are being lawfully applied.

holders and applicants, all submarine cable operators operating in United States territorial waters, and all cable landing license applicants to file either an EA or an EIS along with every application.<sup>3</sup>

## II. DISCUSSION

Verizon Wireless opposes each of the actions requested in the PEER Petition. PEER has failed to allege any facts that would warrant heightened environmental regulatory requirements. The requirements requested by PEER would impose enormous and harmful administrative and financial burdens on applicants and on the Commission. Mechanisms already in place in the Commission's rules ensure compliance with FCC environmental rules.

### **A. The PEER Petition does not allege facts sufficient to warrant additional environmental regulations on FCC applicants.**

PEER offers scant support for the sweeping changes it proposes. Thus, PEER states that stronger environmental rules are needed because absent an EA or an EIS an applicant's statement that an action will have no environmental impact is nothing more than a "guess" as to whether the environment is endangered.<sup>4</sup> PEER attempts to demonstrate that the environment is not being protected by citing three alleged examples of environmental harm in submarine cable landing situations.

The "support" provided, however, cannot be the basis for any Commission action, much less the draconian measures proposed by PEER. First, PEER does not

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<sup>3</sup> Petition at 2.

<sup>4</sup> *Id.* at 5.

purport to know the measures taken by carriers to investigate the environmental impact of an action prior to constructing a new facility. In fact, FCC policies and rules require carriers to conduct a field examination of each of the environmental impacts listed in the FCC's rules prior to applying for or constructing a new facility.<sup>5</sup> Verizon Wireless regularly contracts with environmental consultants to perform field investigations prior to constructing a new facility. Thus, far from a "guess," these field investigations result in a fairly comprehensive review of environmental impacts prior to new construction.

Second, the examples of alleged environmental harm cited by PEER do not constitute the basis for more stringent FCC rules, especially for wireless carriers. Given all of the applications filed and processed by the Commission each year, the fact that PEER could only cite to three submarine cable landing situations as examples of alleged environmental harm constitutes evidence that the Commission's rules are in fact working to protect the environment. Even if these examples were sufficient to justify additional environmental regulations, and they are not, these examples of submarine cable landing situations in no way support a finding that wireless licensees like Verizon Wireless are endangering the environment. Thus, the PEER Petition provides no basis for additional environmental regulations for wireless licensees.

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<sup>5</sup> See "Compliance with Commission's Rules Implementing the National Environmental Policy Act of 1969," released by the Wireless Telecommunications Bureau Enforcement Division on March 4, 1998. The Bureau makes clear that it expects applicants to provide evidence of these field tests in the event the Bureau later conducts an investigation of the environmental impact of a particular action.

**B. The regulations requested by PEER would place significant and harmful burdens on FCC applicants and on the Commission.**

The regulations proposed by PEER, principally the requirement that applicants prepare and file an EA or an EIS with every application, would place a substantial financial and administrative burden on both applicants and the FCC. Verizon Wireless has tens of thousands of cell sites and microwave towers. In addition, Verizon Wireless is investing billions to enhance its nationwide network by adding new cellular and PCS cell sites. Verizon Wireless estimates that it costs the company between \$3000 and \$5000 per site to hire an environmental consultant to prepare an EA. Thus, a requirement that would require Verizon Wireless to prepare an EA for each site it owns today could cost the company about \$50 million to comply. Costs of this magnitude would likely come at the expense of capital improvement projects that directly benefit Verizon Wireless' customers.

A requirement that applicants prepare and file EAs or EISs would also impose substantial delays in tower siting.<sup>6</sup> This is due both to the time involved in preparing the EA or EIS, and to Commission review process. The Commission typically puts EAs on Public Notice so that interested parties may comment. In addition, the Commission may consult experts in the environmental issues raised by the action in considering the EA.<sup>7</sup> All told, preparing and considering an EA can delay cell site construction and

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<sup>6</sup> Commission rules call for EAs to be completed by the applicant and EISs to be prepared by the Commission based on its review of the EA. As such, it is not clear what PEER contemplates when it requests that applicants file EISs for certain types of actions.

<sup>7</sup> See 47 C.F.R. § 1.1308.

implementation by several months, thus delaying service expansion or improvements. While this time consuming process may be warranted in the case where a field investigation reveals a potential environmental impact, it is contrary to the public interest to impose such delays where the field investigation reveals no potential impact.

Finally, the proposed EA/EIS requirement would strain Commission resources. Assuming Commission staff levels remain constant, staff would need to be diverted from other projects in order to review countless unnecessary EAs and EISs. Thus, if the PEER proposal is adopted, the Commission will face manpower shortages and increased delays in important regulatory proceedings.

**C. The FCC already has mechanisms in place to ensure compliance with FCC environmental rules.**

As discussed above, the PEER Petition does not allege a system of noncompliance with environmental rules sufficient to warrant additional environmental regulations, particularly in the case of wireless licensees. Indeed, should instances of alleged noncompliance arise, the Commission already has mechanisms in place to remedy the situation. First, the Commission's NEPA rules allow interested third parties to object to applications based on environmental concerns. Thus, Section 1.1313 of the Commission's rules states that objections to applications based on environmental concerns may be filed as petitions to deny the application.<sup>8</sup> As such, environmental

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<sup>8</sup> 47 C.F.R. § 1.1313. In addition, Section 1.1307(c), 47 C.F.R. § 1.1307(c), provides that interested parties may raise environmental issues even if the action is considered categorically excluded under the Commission's rules.

groups, like PEER, may participate in Commission processes should they believe a proposed action would have a harmful environmental effect.

Second, Commission enforcement mechanisms stand as a deterrent to prevent carriers from violating the Commission's environmental rules. Thus, an entity harmed by violation of Commission rules may bring an informal or formal FCC complaint against the offending party.<sup>9</sup> In addition, the Commission may elect to conduct an investigation of a carrier's compliance with environmental rules and impose forfeiture penalties should a rule violation be determined.<sup>10</sup> Moreover, any repeated violation of FCC rules can serve as the basis of a license revocation or suspension proceeding.<sup>11</sup> These enforcement mechanisms and the threat of damages, forfeitures, and adverse license actions stand as a strong deterrent against violating FCC environmental rules. Given the availability of a wide array of mechanisms in the Commission's rules to both prevent and punish environmental rules violations, Verizon Wireless submits that no additional FCC rules are needed to ensure compliance with existing environmental rules.

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<sup>9</sup> See 47 C.F.R. §§ 1.716, 1.720.

<sup>10</sup> See 47 C.F.R. § 1.80.

<sup>11</sup> See 47 U.S.C. §§ 303(m)(1)(A); 312(a)(4).

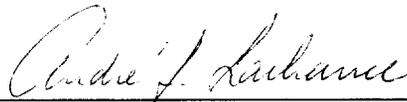
### III. CONCLUSION

Verizon Wireless opposes the PEER Petition for Rulemaking. PEER has failed to demonstrate that existing FCC environmental policies and rules fail to ensure compliance with existing rules or to protect the environment. Accordingly, the Commission should deny the PEER Petition.

Respectfully submitted,

Verizon Wireless

By



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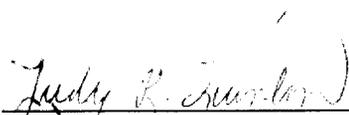
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## CERTIFICATE OF SERVICE

I, Judy R. Quinlan, hereby certify that copies of the foregoing "Opposition of Verizon Wireless" have been sent by first class United States mail, postage prepaid, on August 14, 2000 to the party listed below:

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