

Before the Federal Communications Commission

Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In Re the Telecommunications Industry's)
Environmental Civil Violations in U.S. Territorial)
Waters (South Florida and the Virgin Islands)
And along the Coastal Wetlands of Maine):)
FCC Accountability and Responsibility for)
Environmental Transgressions, and Petition for)
Rulemaking Regarding the NEPA, NHPA and)
Part 1, Subpart I of the Commission's Rules)

RM 9913 /

**COMMENTS OF
SBC COMMUNICATIONS INC.**

SBC Communications Inc., by its attorneys, files this response to the Commission's request for comments opposing or supporting the Petition for Rulemaking filed by Public Employees for Environmental Responsibility ("PEER").¹ PEER requests a rulemaking to review and rewrite the Commission's regulations regarding the National Environmental Policy Act of 1969 ("NEPA") and the National Historic Preservation Act of 1966 ("NHPA").² Specifically, PEER suggests the Commission adopt rules whereby all actions would be treated as potentially damaging to the environment and require a filed Environmental Assessment ("EA") for those elements which remain a "public entity" and a full Environmental Impact Statement ("EIS") to those elements which are deemed facility elements of a "private" utility under PEERs suggested new regulatory paradigm. PEER acknowledges that they must justify the need to grant their Petition and

¹ In Re the Telecommunications Industry's Environmental Civil Violations in U.S. Territorial Waters (South Florida and the Virgin Islands and along the Coastal Wetlands of Maine: FCC Accountability and Responsibility for Environmental Transgressions, and Petition for the Rulemaking Regarding the NEPA, NHPA, and Part 1, Subpart I of the Commission's Rules, RM. 9913 (filed 5/17/00) Public Comment Requested 7/14/00. ("Peer Petition").
² PEER Petition, pp. 1-2.

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embark the Commission and the industry on such a complete rewrite of the regulatory compliance system promulgated and currently followed by the Commission. The PEER Petition fails to justify such an undertaking.

While the PEER Petition takes poetic license in attempting to analogize between 19th century railroad industry harms (clear-cut forests, pits of arsenic, sulfur, lead and heavy metals) and those supposedly caused by the telecommunications industry, the analogy simply is not justified. The stretch of the PEER Petition is seen in its inclusion of an environmental violation against not a FCC licensee, but rather a manufacturer of ceramics used in building communications towers.³ The PEER Petition cites the incident as evidence that “telecommunication technologies” are not “cleaner” and “greener” than their “pre-Information Revolution ‘smokestack’ predecessors”.⁴ The violation cited however was not related to “telecommunications technologies” but rather the ceramic industry—to view otherwise would make the Commission responsible for the manufacturing processes of all component parts of any instrument that may find its way into the telecommunications industry and all parts of the construction process and methods used therein. What the PEER Petition fails to take into account is that there are Environmental Protection laws at both the state and federal level that are directed at such harmful activities, as evidenced by the guilty plea and fine in the ceramics case.

The PEER Petition criticizes the Commission’s established regulatory scheme of NEPA and NHPA enforcement via initial assessment requirements being placed on the Applicant along with the subsequent certification or, depending on the outcome of the assessment, the filing of an EA. The PEER Petition’s criticism of the Commission’s

³ PEER Petition, p. 1 & Exhibit 1.

⁴ PEER Petition p. 1.

“self-certification” process is unjustified. While the Petition characterizes the certification as a “mere stipulation” it is in fact a certification that the Commission’s rules have been complied with. The Petition fails to take into account the fines and forfeitures that can attach to a violation of the Commission’s rules in addition to the penalties for perjury that can attach to falsifying information on Commission forms. For example, form FCC 601- “FCC Application for Wireless Telecommunications Bureau Radio Service Authorization” provides immediately below the signature line that “WILLFUL FALSE STATEMENTS MADE ON THIS FORM OR ANY ATTACHMENTS ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT (U.S. Code, Title 18 Section 1001) AND/OR REVOCATION OF ANY STATION LICENSE OR CONSTRUCTION PERMIT (U.S. Code Title 47 Section 312(a)(1)), AND/OR FORFEITURE (U.S. Code, Title 47 Section 503). (Emphasis in original). Line 26 of Schedule D of the form specifically states:

Would Commission Authority of Authorization for this location be an action which may have a significant environmental effect? See Section 1.1307 of 47 CFR.

If ‘Yes’, submit an environmental assessment as required by 47 CFR Sections 1.1308 and 1.1311”.

The same certification warning and EA statement is included on FCC Form 854 “FCC Application for Antenna Structure Registration”. The enforcement penalties for failing to comply with the Commission’s environmental rules are a deterrent to non-compliance. Further, the fact that the Commission regulates an entity does not somehow grant the entity immunity from *all state and federal environmental protection laws*. The Commission’s role is not to take the place of state or federal environmental protection agencies as to the telecommunication industry. To assume that the telecommunications

industry is ignoring or simply unaware of environmental protection laws is simply unjustified.

Finally, the PEER Petition's suggestion that every Commission action should be treated as potentially damaging to the environment thus requiring the filing of an EA or EIS would result in inefficiency and unnecessary cost due to needless preparation and review of such EAs and EISs. SBC Wireless alone makes approximately 100-120 filings a week regarding the operation of its wireless systems. To require an EA or EIS for each filing would impose a tremendous burden and expense not only on SBC Wireless but also on the Commission who would be required to review each EA or EIS filed. Unfortunately, the cost of such inefficiency is likely to be borne by the consumer in the form of higher cost of government and higher cost of service. The suggestion of such a filing for every Commission action should be rejected.

CONCLUSION

The broad rewrite of the Commission's environmental rules as suggested by the PEER Petition is unwarranted and should be rejected.

SBC COMMUNICATIONS INC.

By *Bruce E. Beard*
Bruce E. Beard

General Attorney
SBC Wireless Inc.
2000 W. Ameritech Center Drive
Hoffman Estates, IL 60195-5000

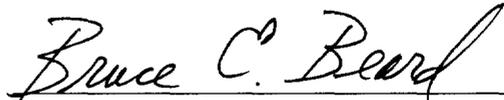
Carol Tacker
Vice President-General Counsel
SBC Wireless Inc.
17330 Preston Road
Dallas, TX 75252

Roger Toppins
Errol Phipps
SBC Communications Inc.
1401 I Street, N.W. – Suite 1100
Washington, D.C. 20005

Certificate of Service

I hereby certify that a true and correct copy of the foregoing Comments of SBC Communications Inc. was mailed via first class mail, postage prepaid, to the following party on the 14th day of August, 2000:

Daniel P. Meyer
Public Employees for Environmental Responsibility (PEER)
2001 S Street, N.W. – Suite 570
Washington, D.C. 20009


Bruce E. Beard