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

WT Docket No. 04-180

In the Matter of

**The 2004 Biennial Regulatory Review
of Telecommunications Regulations**

REPLY COMMENTS OF CINGULAR WIRELESS LLC

J.R. Carbonell
Carol L. Tacker
M. Robert Sutherland

CINGULAR WIRELESS LLC
5565 Glenridge Connector
Suite 1700
Atlanta, GA 30342

Telephone: (404) 236-6364
Facsimile: (404) 236-5575

Counsel for Cingular Wireless LLC

Date: August 11, 2004

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Cingular Wireless LLC (Cingular), through undersigned counsel, hereby supports the request of PCIA—The Wireless Infrastructure Association (PCIA) that, as part of its 2004 Biennial Review of Telecommunications Regulations,¹ the Commission institute a rulemaking proceeding to update, simplify, and remove unnecessary and burdensome requirements from Part 17 of the Rules.²

In 1992, Congress extended to non-licensee tower owners the Commission’s jurisdiction over the painting and lighting of radio towers that may pose a menace to air navigation.³ In 1995, the Commission revised Part 17 of the Rules to impose primary responsibility for compliance with the painting and lighting rules on antenna structure owners, whether or not the owner is a Commission licensee.⁴ The Commission continued to impose “secondary responsibility” on individual licensees on the structure “to assure that the structure owner maintains prescribed painting and/or lighting, and, if necessary, take steps to maintain painting and/or lighting in the event of default by the structure owner.”⁵

¹ The Commission Seeks Public Comment in the 2004 Biennial Review of Telecommunications Regulations, *Public Notice*, FCC 04-105 (May 11, 2004).

² Part 17—Construction, Marking, and Lighting of Antenna Structures, 47 C.F.R. §§ 17.1 *et seq.* (2002).

³ 47 U.S.C. § 303(q); 47 U.S.C. § 503(b)(5).

⁴ In the Matter of Streamlining the Commission’s Antenna Structure Clearance Procedure, WT Docket No. 95-5, and Revision of Part 17 of the Commission’s Rules Concerning Construction, Marking, and Lighting of Antenna Structures, FCC 95-473, *Report and Order*, 11 FCC Rcd 4272 (1995) (*Report and Order*).

⁵ *Report and Order*, 11 FCC Rcd at 4294, ¶ 52.

In order to update and streamline the Part 17 painting and lighting guidelines to ensure air safety, the Commission incorporated by reference the (then) most recent FAA Advisory Circulars.⁶ The Commission considered and rejected a proposal that the Rules be “automatically amended” whenever the FAA incorporated new guidelines. Instead, the Commission decided that “a notice and comment rule making proceeding should be initiated in order to incorporate future versions of the Advisory Circulars.”⁷

Shortly after the *Report and Order* was released, the FAA made substantive revisions to both Advisory Circulars. The FCC released a Notice of Proposed Rulemaking on November 21, 1996 to, among other things, incorporate the revised FAA Advisory Circulars into Part 17.⁸ The FAA, the only party commenting on this issue, recommended the change. In an Order released March 3, 1999, the Commission adopted by reference the revised FAA Advisory Circulars.⁹ Since then the FAA has again made substantive revisions to Advisory Circular AC 70/7460-1J, again creating a conflict between the FAA’s recommendations and the Commission’s requirements.¹⁰

The *Report and Order* adopted optional procedures for antenna structure owners to file electronically the Application for Antenna Structure Registration, FCC Form 854. By

⁶ “Obstruction Marking and Lighting” (AC 70/7460-1H), August 1991, as amended by Change 2, July 15, 1992, and “Specification for Obstruction Lighting Equipment” (AC 150/5345-43D), July 1988.

⁷ *Report and Order*, 11 FCC Rcd at 4292, ¶ 48.

⁸ Amendment of Part 87 to Permit the Use of 112-118 MHz for Differential Global Positioning System (GPS) Correction Data and the Use of Hand-held Transmitters on Frequencies in the Aeronautical Enroute Service, WT Docket No. 96-211, and Amendment of Part 17 Concerning Construction, Marking and Lighting of Antenna Structures, *Notice of Proposed Rule Making*, 11 FCC Rcd 15391 (1996).

⁹ Amendment of Part 87 of the Commission’s Rules to Permit Automatic Operation of Aeronautical Advisory Stations (Unicom), WT Docket No. 96-1, and Amendment of Part 87 to Permit the Use of 112-118 MHz for Differential Global Positioning System (GPS) Correction Data and the Use of Hand-held Transmitters on Frequencies in the Aeronautical Enroute Service, WT Docket No. 96-211, and Amendment of Part 17 Concerning Construction, Marking and Lighting of Antenna Structures, *Report and Order*, 14 FCC Rcd 3722, 3734 (1999), incorporating by reference FAA Advisory Circulars: AC 70/7460-1J, “Obstruction Marking and Lighting” (Jan. 1, 1996) and AC 150/5345-43E, “Specification for Obstruction Lighting Equipment” (Oct. 19, 1995).

¹⁰ PCIA Comments at 3.

filing electronically, owners can receive an antenna structure registration number in a matter of minutes, thereby permitting the owner to commence construction at once.¹¹ The Commission has continuously upgraded its electronic filing capabilities.¹² These capabilities allow carriers to file and the public to access antenna structure registration information over the Internet.

In its Comments, PCIA notes the rapid changes that have occurred in the communications infrastructure industry since the Commission adopted the *Report and Order*. There has been a dramatic shift from licensee-owned antenna structures to antenna structures owned by non-licensed providers. PCIA asserts that today roughly half of the sites used to support wireless services are provided by non-licensed infrastructure providers. These providers compete vigorously with each other for the placement of carrier facilities.¹³ Cingular concurs with PCIA's observation. Cingular now routinely contracts with non-licensed infrastructure owners for the placement of its facilities. Such deals save Cingular capital expenditures, facilitate collocation, and promote efficient utilization of antenna structures.

PCIA asserts that the definitions of "antenna structure" and "antenna structure owner" include both the radio facilities and the structure on which the radio equipment is located. PCIA states that this creates an ambiguity as to which party is responsible for which compliance obligations, "resulting at best in wasteful, duplicative compliance efforts by both entities."¹⁴ PCIA seeks Commission clarification of the definitions in Section 17.2 so as to

¹¹ *Report and Order*, 11 FCC Rcd at 4284, ¶ 26.

¹² *See, e.g.*, Commission Adopts Rules to Implement Universal Licensing System for Wireless Services, *Public Notice*, Report No. WT 98-34 (Sept. 17, 1998); Commission Announces New Procedures for Antenna Structure Registration, *Public Notice*, DA 99-1186 (June 21, 1999).

¹³ PCIA Comments at 1-2.

¹⁴ PCIA Comments at 2.

“make it clear who has marking, lighting, and notification obligations under the Commission’s Part 17 rules.”¹⁵ Cingular agrees and recommends that the Commission reinforce Commission decisions that the tower owner is responsible for the marking, lighting and notification of towers. In cases where a licensee becomes aware of non-compliance, the licensee should notify the Commission of such non-compliance and the Commission should take necessary action.

Section 17.4(f) requires that upon receipt of an Antenna Structure Registration Number, the structure owner shall immediately provide a copy of Form 854R to each tenant licensee and permittee. PCIA asserts that this requirement is no longer necessary, as the structure registration number is readily available to licensees in the Commission’s Universal Licensing System (ULS) database. Cingular concurs. When this notification requirement was adopted, the Commission was changing from a licensing regime in which the registration requirement was being shifted from Commission licensees to non-licensed antenna structure owners for the first time. In such a circumstance, it made sense to require the tower owner to notify its tenants that registration had been granted and service could commence. With the roll-out and refinement of the ULS database, the fact that registration has been granted to the tower owner is instantly available to the carrier/customers electronically. There is no need for the tower owner to submit paper copies of the Form 854R to its tenants. Both the antenna structure owner and its carrier/tenants would benefit from the elimination of this requirement.

PCIA notes that Section 17.23 of the current Commission Rules makes mandatory compliance with FAA Advisory Circular AC 70/7460-1J, which has been superceded. PCIA

¹⁵ *Id.*

asks the Commission to revise Section 17.23 to “conform—in all respects—its requirements to those of the FAA on an ongoing basis.”¹⁶

Cingular concurs. As discussed above, the FAA revised AC 70/7460-1J in 1996, but it was not incorporated into the FCC’s Part 17 Rules until 1999. The current rules are again in conflict with the FAA’s latest advice on how best to maintain air safety, and no rulemaking has been initiated by the Commission to end the conflict. In the *Report and Order*, the Commission considered and rejected incorporating changes in the FAA Advisory Circulars “automatically”. This was undoubtedly driven by concerns that making substantive changes in the rules without notice and comment would run afoul of the Administrative Procedures Act. Cingular understands this concern, but urges the Commission to monitor changes to the FAA’s Advisory Circulars and promptly initiate an expedited notice and comment proceeding to bring the Commission’s rules back into consistency with the FAA’s guidance. As PCIA correctly notes, “marking and lighting are matters affecting public safety and all ambiguity regarding such obligations should be removed.”¹⁷ This issue alone warrants the Commission to take immediate rulemaking action in response to PCIA’s comments.

PCIA asks the Commission to reconsider and possibly remove the requirement in Section 17.47(b) of the Rules that antenna structure owners manually inspect all automatic or mechanical control devices, indicators, and alarm systems associated with antenna structure lighting at least every three months.¹⁸ Cingular agrees. Modern alarm systems are automatically monitored on a near real-time basis, and any failure in tower lighting or the alarm system will be known immediately to the tower owner. Section 17.47(a) of the Rules already requires tower owners to verify that the tower’s lights are functioning at least once

¹⁶ PCIA Comments at 3.

¹⁷ *Id.*

¹⁸ PCIA Comments at 3-4.

every 24 hours “either visually or by observing an automatic properly maintained indicator designed to register any failure of such lights....” An antenna structure owner complying with Section 17.47(a) to “properly maintain” its alarm system has no need to conduct a redundant mechanical inspection every three months. A manual inspection every three months adds nothing to the reliability of the system. At a minimum, the Commission should grant PCIA’s suggestion that tower owners employing such modern outage detection systems be relieved of the manual inspection requirement.

Section 17.50 requires that antenna structures “shall be cleaned or repainted as often as necessary to maintain good visibility.” There are no standards in the rule to guide FCC field agents in determining what constitutes “good visibility.” This leads to the potential for inconsistent enforcement. PCIA recommends that the Commission modify this section to state that the visibility standards are met “if the paint on the structure is within the color tolerance depicted on the FAA’s ‘In Service Aviation Orange Tolerance Chart,’ as measured against the base of the tower from a distance of one-quarter mile.”¹⁹ Cingular concurs. Tower owners and the Commission staff need an unambiguous standard for measuring tower fade so that tower owners can verify compliance and the Commission’s inspectors employ consistent methods to determine compliance with this rule section.

PCIA points out that Section 17.51 of the rules is in conflict with the FAA’s procedures for handling tower light outages. The FAA requires that when a tower lighting outage occurs, the owner file a Notice to Airmen (NOTAM) with the FAA. The FCC’s rules do not acknowledge the FAA’s NOTAM procedures. PCIA recommends that the Commission revise its rules to recognize the NOTAM procedure and to recognize that process

¹⁹ PCIA Comments at 4.

as in compliance with Section 17.51.²⁰ Cingular agrees. The absolute requirements of Section 17.51 do not accommodate inevitable tower lighting outages. The Commission should include PCIA's suggested change in this rule in a Notice of Proposed Rulemaking to update and streamline the Part 17 Rules.

PCIA also requests that the Commission harmonize the time limits for notification to the Commission of tower construction, dismantlement or change of ownership contained in Section 17.57 with comparable FAA requirements.²¹ Cingular agrees that consistency between the FCC's rules and the FAA's requirements would reduce compliance burdens and costs on both industry and regulators without compromising air safety.

The Commission promptly should initiate a rulemaking proceeding to consider PCIA's proposals.

Respectfully submitted,

J.R. Carbonell
Carol L. Tacker
M. Robert Sutherland

CINGULAR WIRELESS LLC
5565 Glenridge Connector, Suite 1700
Atlanta, GA 30342
(404) 236-6364
Counsel for Cingular Wireless LLC

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²⁰ PCIA Comments at 5.

²¹ *Id.*

CERTIFICATE OF SERVICE

I, Lydia Byrd, an employee in the Legal Department of Cingular Wireless LLC, hereby certify that on this 11th day of August, 2004, courtesy copies of the foregoing Comments of Cingular Wireless were sent via first class mail, postage prepaid to the following:

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
9300 East Hampton Drive
Capitol Heights, MD 20743

John Muleta, Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street SW
Washington, D.C. 20554

In addition, the document was filed electronically in the Commission's Electronic Comment Filing System on the FCC website.

s/ Lydia Byrd
Lydia Byrd