

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

In the Matter of	)	
	)	
Petition for Declaratory Ruling Filed by Stokes	)	WTB Docket No. 05-44
Environmental Services Regarding Environmental	)	DA 05-313
Assessments for Proposed Facilities in Wetlands	)	

**COMMENTS OF VERIZON WIRELESS**

Verizon Wireless hereby submits these comments in response to the Public Notice issued by the Federal Communications Commission (“FCC” or “Commission”) in the above-captioned proceeding. In the Public Notice, the Commission seeks comment on a Petition filed by Stokes Environmental Services (“Petition”) asking the Commission to declare that environmental assessments (“EAs”) are not required where a project that will impact wetlands has been reviewed, approved and permitted by the U.S. Army Corps of Engineers (“Corps”) or their designated permitting agency.

Verizon Wireless supports the Petition and urges the Commission expeditiously to confirm and declare that sites with wetlands effects that are permitted by the Corps or its designated agencies do not require an EA. Issuing the requested declaratory ruling is entirely consistent with applicable law and will eliminate unnecessary and burdensome processes that will only serve to further delay antenna siting.

## I. APPLICABLE LAW DOES NOT REQUIRE AN EA TO BE FILED

The Commission should grant the Petition because Commission rules implementing the National Environmental Policy Act of 1969 (“NEPA”)<sup>1</sup> do not require that an EA be filed. The FCC’s duties with respect to environmental compliance arise under NEPA. The FCC’s rules implementing NEPA require that an EA be filed only when the project “may significantly affect the environment.”<sup>2</sup> Among the environmental impacts that Commission rules require applicants to consider are “facilities whose construction will involve significant changes in surface features (e.g., wetland fill, deforestation or water diversion).”<sup>3</sup> In determining whether a project will significantly affect surface features, the FCC states that it defers to the opinions and judgements of the Corps, recognized by the FCC as the expert agency on environmental impacts in this area.<sup>4</sup>

Based on the FCC’s guidance, applicants seek Corps permits whenever the project to be constructed could have some impact on surface features. In some cases, the project may be approved under a Nationwide Permit issued by the Corps. The Corps regulations governing Nationwide Permits state that such permits will only be issued where the Corps determines the activities involved will have minimal environmental impacts.<sup>5</sup> Thus, where a Nationwide Permit

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<sup>1</sup> 42 U.S.C. §§ 4321-4335.

<sup>2</sup> 47 C.F.R. § 1.1307(a).

<sup>3</sup> 47 C.F.R. § 1.1307(a)(7).

<sup>4</sup> See FCC, Wireless Telecommunications Bureau, “NEPA Questions Frequently Asked By Licensees.” This document can be found on the FCC’s website at: <http://wireless.fcc.gov/siting/npafaq.html>Questions.

<sup>5</sup> 33 C.F.R. § 330.1(b).

applies, by definition, the project will not have a significant environmental effect on surface features. Accordingly, Section 1.1307(a) does not require applicants to submit an EA.

Where a Nationwide Permit does not apply, an applicant, in most cases,<sup>6</sup> must seek an individual permit from the Corps. The Corps' permitting regulations require that permitting decisions be based upon an environmental assessment or an environmental impact statement ("EIS"), unless the project is included within a categorical exclusion.<sup>7</sup> It is clear from these regulations that the Corps will fully consider the environmental impacts of the project before issuing a permit. If the Corps decision to issue a permit is based on a determination that the project will not significantly affect the environment, then the EA requirement in Section 1.1307(a) of the Commission's rules – which applies only when a project may significantly affect the environment – does not require applicants to file an EA with the FCC.

Even if the Corps issues the individual permit after a finding that the project will have a significant environmental impact, the FCC rules, however, do not require an EA to be filed. Section 1.1311(e) of the Commission's rules states that "[a]n EA need not be submitted to the Commission if another agency of the Federal Government has assumed responsibility for determining whether [] the facilities in question will have a significant effect on the quality of the human environment and, if it will, for invoking the environmental impact statement process." It is clear that where the Corps issues a permit, it has assumed responsibility for determining whether the project will have a significant effect on the environment. Section 325.2(a)(4) of the Corps regulations also makes clear that the Corps has responsibility for invoking the EIS process.

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<sup>6</sup> In some cases, a regional permit may apply.

<sup>7</sup> 33 C.F.R. § 325.2(a)(4). *See also* 33 C.F.R. § 325.2(a)(6).

Accordingly, the FCC's rules do not require an applicant to submit an EA under any circumstances when the project is permitted by the Corps.<sup>8</sup>

## **II. REQUIRING APPLICANTS TO FILE EAS FOR PROJECTS PERMITTED BY THE ARMY CORPS OF ENGINEERS WOULD BE BAD POLICY AND CONTRARY TO THE COMMISSIONS STATED GOALS**

Requiring applicants to prepare and submit EAs in situations where the only potential environmental impact is to surface features would also be bad policy. As discussed above, the Corps fully considers the environmental effects of projects approved pursuant to permits issued by the Corps. Therefore, requiring applicants to prepare and submit EAs would be unnecessary and impose needless costs, burdens and delays on applicants.

Moreover, requiring applicants to submit EAs in these situations would be contrary to the FCC's Environmental and Historic Preservation Action Plan.<sup>9</sup> In that plan, the Commission stated one of its goals was to invoke "more efficient and effective Commission processes." In furtherance of that goal, Chairman Powell stated that the Commission would "examine current processes for streamlining opportunities." Requiring applicants to prepare and submit EAs for projects permitted by the Corps would be neither efficient nor effective and would be contrary to the Commission's objective to streamline its processes.

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<sup>8</sup> Apparently, the Council for Environmental Quality concurs that an EA is not required in this situation. Petition at 1.

<sup>9</sup> News Release, Environmental and Historic Preservation Action Plan, Statement by FCC Chairman Michael K. Powell, released May 1, 2003.

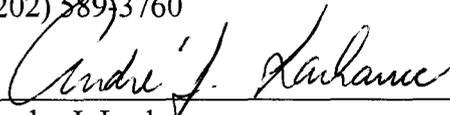
### III. CONCLUSION

The Commission should expeditiously clarify that EAs are not required for antenna siting projects where the only potential impact to the human environment is to surface features and where the project is authorized under a permit issued by the Army Corps of Engineers. The FCC's rules do not require EAs to be filed in such circumstances and requiring EAs to be filed would be bad public policy.

Respectfully submitted,

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Dated: March 7, 2005

**Certificate of Service**

I hereby certify that on this 7<sup>th</sup> day of March copies of the foregoing "Comments of Verizon Wireless" in WT Docket 05-44 were sent by first class mail to the following party:

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