

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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

To: The Commission

**REPLY COMMENTS OF THE
NATIONAL ASSOCIATION OF BROADCASTERS**

The National Association of Broadcasters (“NAB”)¹ submits this reply in support of comments filed in response to the Commission’s *Public Notice* in the above-captioned proceeding.² Stokes Environmental Services has petitioned for a declaratory ruling that the Commission’s rules do not require the submission of an environmental assessment (“EA”) when the U.S. Army Corps of Engineers (“Corps”) has reviewed, approved and permitted the construction of a proposed communications tower in a wetland area. NAB agrees with Sprint Corporation, Cingular Wireless LLC, Verizon Wireless, and PCIA, the Wireless Infrastructure Association³ that, as a matter of both the Commission’s current rules and as a matter of *public*

¹ NAB is a nonprofit, incorporated association that serves and represents America’s radio and television broadcast stations.

² Wireless Telecommunications Bureau Seeks Comment On Petition for Declaratory Ruling Filed By Stokes Environmental Services Regarding Environmental Assessments For Proposed Facilities In Wetlands, *Public Notice*, WTB Docket No. 05-44, Feb. 4, 2005.

³ In the Matter of Petition for Declaratory Ruling Filed by Stokes Environmental Services Regarding Environmental Assessments for Proposed Facilities in Wetlands, WTB Docket No. 05-44, Comments of Sprint Corporation (“Sprint Comments”) at 1,4, Comments of Cingular Wireless LLC (“Cingular Comments”) at 1, Comments of Verizon Wireless (“Verizon

policy, projects covered by the Corps permits should not require a separate EA submission to the FCC.

Specifically, NAB agrees with Sprint Corporation that the Commission has already addressed the facts raised by the instant Petition. Sprint Comments at 2. In *Weigel Broadcasting Company*, the Commission dismissed an objection to the siting of a television tower in a floodplain because the applicant did not submit an EA of the proposed tower. *Weigel Broadcasting Company*, 11 FCC Rcd 17202 (1996). In its dismissal, the Commission relied on Section 1.1311(e) of its rules,⁴ stating:

[b]ecause the Army Corps of Engineers, through the nationwide permit authorization process, has taken responsibility for determining the environmental effect to the wetlands of the proposed construction of an anchor point in the flood plain, Weigel is not required to submit an additional EA to the Commission.

Id. at 17207. Thus, NAB agrees with Cingular and Sprint that a declaratory ruling is not appropriate in this instance because there is no issue at controversy. Cingular Comments at 4, Sprint Comments at 4. A declaratory ruling is appropriate only to “terminate a controversy or remove uncertainty.” 5 U.S.C. § 554(e); *see also* 47 C.F.R. § 1.2. However, to the extent confusion exists as to the applicability of the Commission’s rules,⁵ in lieu of dismissing the Petition, the Commission should clarify that its environmental processing rules do not require an

Comments) at 1,5, Comments of PCIA, the Wireless Infrastructure Association (“PCIA Comments”) at 2-3, filed on March 7, 2005.

⁴ The Commission’s rules state that “[a]n EA need not be submitted to the Commission if another agency of the Federal Government has assumed responsibility for determining whether of [sic] 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.” 47 C.F.R. § 1.1311(e).

⁵ PCIA Comments at 2.

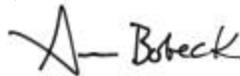
EA submission if another federal agency has assumed responsibility for evaluating environmental impacts.

Indeed, as Cingular points out, the Corps has assumed full responsibility for issuing permits in wetland areas. Prior to issuing a permit to fill the wetlands, the Corps performs a full National Environmental Policy Act review, which includes numerous safeguards and opportunities for public input. Cingular Comments at 2. The Corps, which has primary responsibility for protecting U.S. wetlands, has promulgated extensive regulations for permitting in wetlands. *See* 33 C.F.R. §§ 320 *et seq.* To require a separate EA submission, when the Commission has already stated it would simply “defer to the opinions or judgments of other agencies with expertise over a particular subject matter,”⁶ makes little sense. In this case, the agency with expertise is the Corps, the very agency that has already issued the permit for the communications tower. Thus, NAB agrees with Cingular, PCIA, Sprint and Verizon⁷ that, as a matter of *public policy*, the Commission should not require duplicative and unnecessary compliance procedures.

Respectively submitted,

**NATIONAL ASSOCIATION OF
BROADCASTERS**

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⁶ *See* Wireless Telecommunications Bureau, “NEPA Questions Frequently Asked by Licensees, <http://www.wireless.fcc.gov/siting/npafaq.html> (last visited March 22, 2005).

⁷ Cingular Comments at 4, PCIA Comments at 2-3, Sprint Comments at 2, Verizon Comments at 4.