

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

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

To: The Commission

**REPLY COMMENTS OF
CTIA – THE WIRELESS ASSOCIATION™**

CTIA – The Wireless Association™ (“CTIA”)¹ hereby submits its reply comments on the Petition for Declaratory Ruling sought by Stokes Environmental Services, Inc. (“Stokes Petition”), which requests that the Commission declare construction projects that have been “reviewed, approved, and permitted” by the U.S. Army Corps of Engineers (“Army Corps”) do not require an environmental assessment (“EA”) under the Commission’s rules.² CTIA supports the Stokes Petition and urges the Commission to promptly affirm that no EA needs to be filed with the FCC for sites that have been granted permit by the Corps or its designated agencies. Granting the requested

¹ CTIA – The Wireless Association™ (formally known as the Cellular Telecommunications & Internet Association) is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the organization covers all Commercial Mobile Radio Service (“CMRS”) providers and manufacturers, including cellular, broadband PCS, ESMR, as well as providers and manufacturers of wireless data services and products.

² See Letter from Thomas L. Stokes, Jr., Stokes Environmental Services, LLC to Jeffrey Steinberg, Esq., Deputy Chief, Spectrum and Competition Policy Division, dated May 28, 2004 (“Stokes Letter”).

declaratory ruling is consistent with applicable law and the Commission's policy to provide an efficient, streamlined process that "promotes the expansion of communications infrastructure in a way that best preserves our Nation's environmental and historic resources."³

DISCUSSION

CTIA submits that the Commission should grant Stokes request for a declaratory ruling, confirming that an EA is not required under 47 CFR § 1.1307 when a proposed project will result in wetland impacts; and such impacts have been reviewed, approved and permitted by the Army Corps.⁴ The Commission's rules require an EA to be filed only when the project "may have a significant environmental effect."⁵ If construction of a proposed communication facility involves a significant environmental effect, such as a change in surface features (*e.g.*, wetland fill, deforestation or water diversion) and the proposed facility would be located in a wetland, the Commission specifically directs the

³ See Statement by FCC Chairman Michael K. Powell *Environmental and Historic Preservation Action Plan*, News Release, rel. May 1, 2003 (acknowledging "additional communications towers and other infrastructure improvements are critical to the rapid deployment to the American public of ubiquitous, advanced, and competitive communications services, as well as for public safety and homeland security" and streamlined processes are an effective means for achieving the requisite balance between protecting environmental and historic resources and the rapid buildout of the nation's wireless communications infrastructure.)

⁴ *Stokes Letter* at 1.

⁵ 40 C.F.R § 1.1307.

applicant to seek the Army Corps' approval for construction of the proposed antenna structure.⁶

CTIA concurs with industry commenters that the Commission's rules are clear in its implementation of NEPA – an Army Corps' permit is sufficient to preclude the FCC from requiring an EA for wetlands impacts.⁷ The Commission itself acknowledges that it is not an expert on environmental matters and defers to the expertise of other relevant federal agencies to evaluate EAs prepared and filed by a licensee pursuant to NEPA.⁸ With regard to surface features, the Commission specifically directs licensees to the Army Corps to help determine whether the construction of a proposed communication facility may require an EA.⁹

Congress has empowered the Army Corps as the expert agency to fulfill the responsibility of evaluating communications projects and issue the requisite permits to

⁶ 47 C.F.R. § 1.1307 (a)(7); *See* NEPA Deficiency Checklist http://wireless.fcc.gov/siting/ea-deficiency-checklist2_1.pdf at p.5 (“**If proposed facility would be located in a wetland**, provide a copy of the permit the applicant or its consultant received from the U.S. Army Corps of Engineers permitted the construction of the proposed antenna structure.”)

⁷ *See Comments of Verizon Wireless, Petition for Declaratory Ruling Filed by Stokes Environmental Services Regarding Environmental Assessments for Proposed Facilities in Wetlands*, WTB Docket No. 05-44 (filed Mar. 7, 2005); *Comments of Cingular Wireless LLC*, WTB Docket No. 05-44 (filed Mar. 7, 2005); and *Sprint Comments*, WTB Docket No. 05-44 (filed Mar. 7, 2005) (“*Sprint Comments*”) (collectively “industry commenters”).

⁸ *See* Wireless Telecommunications Bureau, “NEPA Questions Frequently asked by Licensees,” available at <http://wireless.fcc.gov/siting/npafaq.html> (visited Mar. 18, 2005).

⁹ *Id.*

fill wetlands.¹⁰ In order to issue a permit, the Army Corps performs an extensive NEPA review of the environmental impact of the proposed project, allows an opportunity for public comment, and conducts a thorough analysis of the project's potential effect on wetlands, fish and wildlife, water quality and historic properties.¹¹ The Commission's rules specify that an EA need not be submitted to the Commission if another federal government agency has assumed responsibility for determining whether the proposed facility will have a significant impact on the quality of the human environment.¹² Ostensibly, in situations in which Army Corps has issued a permit, the agency has assumed the responsibility for determining whether the project will have a significant environmental impact, and therefore the licensee need not file an EA with the Commission. For the Commission to require an additional EA after the licensee has obtained the requisite permit from the Army Corps is redundant, inefficient and needlessly prolongs the construction of facilities necessary for the deployment of advanced wireless telecommunications services.

The need for timely construction of vital communications towers must be balanced with the protection of valuable historic and environmental resources.¹³ Yet, the public interest is not well served if the Commission requires licensees and applicants to

¹⁰ See Federal Water Pollution Control Act, 33 U.S.C. 1344; Clean Water Act § 404.

¹¹ See *Comments of PCIA*, WTB Docket No. 05-44 (filed Mar. 7, 2005) at 12-15.

¹² 47 C.F.R. § 1.131(e).

¹³ See Joint Statement of Chairman Michael K. Powell and Commissioner Jonathan S. Adelstein, *Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process*, REPORT & ORDER, WTB Docket No. 03-128 (rel. Oct. 5, 2004).

seek duplicative determinations from both the FCC and the Army Corps. The Army Corps fully considers the environmental effects of a proposed project prior to issuing a permit. As Sprint correctly notes in its comments, compelling licensees to incur costs and delays associated with processing gratuitous EAs, when the Army Corp has already approved the project, undermines carriers' efforts to buildout and deploy quality wireless services for their customers.¹⁴ Moreover, such duplicative efforts contravene the statutory goals of the Telecommunications Act of 1996 and Commission's policy to promote the efficient and timely buildout of our nation's communications infrastructure that is vital to the delivery of quality communications services, both commercial and public safety.

¹⁴ *See Sprint Comments* at 3-4.

CONCLUSION

For all the foregoing reasons, CTIA respectfully requests that the Commission issue a statement finding that projects associated with the construction and siting of proposed telecommunications facilities that have been reviewed, approved, and permitted by the U.S. Army Corps of Engineers do not require an environmental assessment under the Commission's rules.

Respectfully submitted,

_____/s/ Marlo Go

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Dated: March 22, 2005

CERTIFICATE OF SERVICE

I, Vanessa Ortiz, hereby certify that a copy of the foregoing “Reply Comments of CTIA – The Wireless Association™” was sent on this 22nd day of March, by first class U.S. Mail, postage prepaid, to the following:

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/s/ Vanessa Ortiz
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