

June 24, 2005

Ms. Catherine Seidel
Acting Chief
Wireless Telecommunications Bureau
445 12th Street, SW
Washington, DC 20554

Re: Written *Ex Parte* Presentation, WT Docket No. 03-187
Technical Report of Woodlot Alternatives, Inc. to the Longcore, *et al.* Report

Dear Ms. Seidel:

In an effort to provide the Commission with a balanced and objective analysis of the scientific literature on the issue of migratory bird collisions with communications towers, CTIA – The Wireless Association^{TM,1}, National Association of Broadcasters,² and PCIA – The Wireless Infrastructure Association³ (“Industry Coalition”) submit this letter and attached Technical Report into the record of this proceeding. The Industry Coalition recognizes that the preservation of the ecological balance of migratory birds is an important issue, and supports the Commission’s continued effort to gather valid scientific evidence on avian mortality at communications towers before considering further action.

Specifically, we address comments filed by American Bird Conservancy, Forest Conservation Council, the Humane Society of the United States, and Defenders of Wildlife (“Avian Groups”) in response to the FCC’s *Public Notice* seeking comment on the report of Avatar Environmental, LLC (“Avatar”).⁴ The Avian Groups erroneously rely on an analysis

¹ CTIA is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the association covers all Commercial Mobile Radio Service (“CMRS”) providers and manufacturers, including cellular, broadband PCS and ESMR, as well as other providers and manufacturers of wireless data services and products.

² NAB is a nonprofit, incorporated association that serves and represents America’s radio and television broadcast stations.

³ PCIA is the principle trade association representing the wireless telecommunications and broadcast infrastructure industry. PCIA represents numerous companies that own, manage and develop communications towers and antenna facilities for all types of wireless and broadcast services, throughout the United States.

⁴ See Wireless Telecommunications Bureau Seeks Comment on Avatar Environmental, LLC, Report Regarding Migratory Bird Collisions with Communications Towers, *Public Notice*, WT Docket No. 03-187, rel. Dec. 22, 2004.

conducted by Land Protection Partners and authored by Dr. Travis Longcore, Catherine Rich, and Dr. Sidney Gauthreaux, Jr. While the Longcore *et al.* Report opines on the current state of the science and reaches certain conclusions, the Industry Coalition learned from its avian mortality experts, Woodlot Alternatives, Inc. (“Woodlot”), that the Longcore *et al.* Report has significant shortcomings with respect to its statistical analyses and reaches conclusions that are not supported by scientifically valid data and peer reviewed research.

Accordingly, the Industry Coalition engaged Woodlot to conduct a comprehensive review of the Longcore *et al.* Report, including a rigorous, bio-statistical review of the statistical analyses and research methodologies used and relied upon by Longcore *et al.* in their Report. Attached is a copy of Woodlot’s findings and conclusions.

Woodlot’s Report clearly demonstrates that the statistical analyses used in the Longcore *et al.* Report is flawed and does not provide an accurate representation of nationwide avian mortality related to communications towers. Based on its comprehensive review of the scientific literature on this issue and the limited data made available in the Longcore *et al.* Report, Woodlot concludes that the findings in the Longcore *et al.* Report should not be used as a viable estimator of avian mortality and risk to bird populations, particularly with respect to per species mortality – the foundation for their biological significance argument.

In its Technical Report, Woodlot demonstrates how the existing studies used by Longcore *et al.* are inadequate and often inappropriate for estimating avian attrition and biological significance of bird mortality at communications towers. As Woodlot explains, “Materials cited by Longcore on the impact of tower lighting on avian attrition are uncertain, incomplete and unavailable; thus, the Longcore Analysis cannot be reviewed, much less used for decision making and sound policy judgments.”⁵

Woodlot carefully reviewed the biased sample that Longcore *et al.* used, the insufficiency of their sample size, the faulty experimental design and uncertainty in their analyses. Woodlot correctly determines that Longcore *et al.* fails to demonstrate a relationship between tower height and avian attrition, and accordingly such analyses cannot sustain any change in the FCC’s current rules governing the marking and lighting of communications towers.

Woodlot also indicates that while Dr. Gehring’s recent report regarding the Michigan Tower Study provides preliminary results, “[I]t does not provide a viable and legally sufficient basis for the FCC to change its marking and lighting requirements *at this time.*”⁶ While

⁵ Woodlot Alternatives, Inc., Technical Comment on *Scientific Basis to Establish Policy Regulating Communications Towers to Protect Migratory Birds: Response to Avatar Environmental, LLC, Report Regarding Migratory Bird Collisions with Communications Towers, WT Docket No. 03-187, Federal Communications Commission Notice of Inquiry and Reply to Comments Filed With Federal Communications Commission on WT Docket No. 03-187, Avatar Environmental, LLC, Report Regarding Migratory Bird Collisions With Communication Towers* 14 (June 2005)(attached as Exhibit A)(“Woodlot June 2005 Report”).

⁶ Woodlot June 2005 Report, at 13.

Woodlot notes that the Michigan Tower Study currently lacks a significant sample size, it offers constructive observations concerning the sample size, discussion and management implications which may assist Dr. Gehring in her longer-term study.

The Industry Coalition fully agrees with Woodlot that “scientifically valid research work should be conducted and must *be properly reported* before specific design recommendations are incorporated into or amend Federal policy on the build-out and deployment of our nation’s communications infrastructure, specifically broadcast and wireless towers.”⁷ [Andrea-Please Provide Cite]. Contrary to the assertions of the Avian Groups, their comments and materials are neither scientifically sufficient, nor do they warrant further regulatory action by the Commission in this area at this time.

Thank you in advance for your consideration of the attached Technical Report. If you or your staff should have any questions, need further clarification or more information regarding Woodlot Alternative’s Technical Report, please feel free to contact any member of the Industry Coalition. We would be pleased to assist in coordinating a meeting between Woodlot Alternatives and the appropriate Commission staff.

Pursuant to Section 1.1206 of the Commission’s Rules, two copies of this letter and the attachment are being filed in the docket of this proceeding.

Sincerely,



Michael F. Altschul
Senior Vice President & General Counsel
CTIA – THE WIRELESS ASSOCIATION



Marsha MacBride
Executive Vice President, Legal and Regulatory Affairs
NATIONAL ASSOCIATION OF BROADCASTERS



Connie Durcsak
Sr. Director of Industry & Government Relations
PCIA – THE WIRELESS INFRASTRUCTURE
ASSOCIATION

⁷ Woodlot June 2005 Report, at 15 (emphasis added). See also In re Effects of Communications Towers on Migratory Birds, *Notice of Inquiry*, WT Docket No. 03-187, 188 FCC Rcd 16938 (2003) at ¶¶ 1, 2, 13-16.