

DOCKET NO. 03-187

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

Federal Communications Commission
Office of the Secretary

In the Matter of)
)
Effects of Communications Towers) WT Docket No. 03-187
on Migratory Birds)

To: The Commission

**COMMENTS
OF
MORRIS BROADCASTING COMPANY OF NEW JERSEY, INC.**

MORRIS BROADCASTING COMPANY OF NEW JERSEY, INC. ("**Morris Broadcasting**"), by Counsel and pursuant to *Notice of Proposed Rulemaking ("NPRM"), FCC 06-164 (released November 7, 2006)*, hereby submits these Comments in the above-captioned rule making proceeding regarding a regulatory proposal for the Federal Communications Commission ("FCC") to take measures to reduce the number of instances in which migratory birds collide with communications towers. Morris Broadcasting is the licensee of Radio Station WIMG-AM at Ewing, New Jersey. In support hereof, Morris Broadcasting submits the following:

1. Morris Broadcasting is a small business broadcaster operating in a very competitive radio market located in between the New York City and Philadelphia metro areas. Morris Broadcasting hosts a minority-oriented format tailored to American Urban and gospel audiences. Almost all of the employees of Morris Broadcasting are minorities, and maintaining a positive cash flow does not come easy. Without a doubt, Morris Broadcasting must be extremely practical and frugal on how it spends its money.

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2. Morris Broadcasting owns and maintains a four-tower array, and each tower is supported with guy wires. Maintaining the tower structures and ground systems of such an AM system is not cheap, and general tower insurance has risen significantly during the fifteen (15) years that Morris Broadcasting has owned WIMG-AM.

3. Any requirement to replace existing guyed towers with free-standing structures, as is suggested in the NPRM, regardless of whether existing structures are grandfathered or not, would pose a very serious financial hardship on small business broadcasters such as Morris Broadcasting. The WIMG-AM towers are located in an urban area, and guy wires are often viewed as a safety feature to prevent a wild and violent incident should the towers fall due to weather or an act of violence. If guy wires were suddenly prohibited, Morris Broadcasting might not be able to obtain affordable insurance.

4. Morris Broadcasting strongly suggests that any new regulations in this area must be carefully tailored to the areas most prone to experience incidents of migratory bird fatalities. In the fifteen (15) years that Morris Broadcasting has owned WIMG-AM not one dead bird has ever been found at the WIMG transmitting site.

5. Morris Broadcasting supports the position previously submitted by the American Radio Relay League ("ARRL") in this proceeding in 2003. The ARRL asked the FCC to specifically exempt antennas and support structures less than 400 feet tall from routine environmental processing relative to their impact on migratory birds. In reply comments filed by ARRL on December 1, 2003, it was stated that there is no scientific evidence that antenna structures below that height contribute significantly to migratory bird mortality. As the ARRL accurately indicated, the

migratory bird issue often arises at municipal land use hearings and in the drafting of ordinances regulating antenna structures. "At public hearings before city, town and county authorities, those who are opposed to communications antennas for aesthetic reasons typically raise issues such as migratory bird mortality as one of several arguments" against permitting antennas or limiting their placement," the ARRL comments said. "ARRL's research into the scientific literature reveals that communications towers below 400 feet are almost universally considered not to be contributors to bird mortality."

6. Among other studies, the ARRL cited *Avian Mortality at Communication Towers: A Review of Recent Literature, Research and Methodology*, a March 2000 paper prepared by Paul Kerlinger under a US Fish and Wildlife Service (FWS) contract. Kerlinger's review suggested that bird kills associated with communications towers "involve tall towers almost exclusively." Unpublished studies cited by Kerlinger that indicate towers lower than 400 or 500 feet are not as dangerous to migrating songbirds than towers above 500 feet.

7. "The comments in this proceeding to date support the conclusion that communications towers less than approximately 400 feet do not contribute substantially to migratory bird kills," the ARRL said, adding that no regulatory action is justified beyond what's already in place for aviation safety. The ARRL also pointed to FWS guidelines released in 2000 that urge communications service providers to utilize towers less than 199 feet above ground level. The FWS concedes, however, that "tower height alone may not necessarily be a critical issue that results in mortality" and that bird kills documented at tall TV towers might be due to the effects of tower lighting rather than height.

WHEREFORE, the foregoing premises considered, Morris Broadcasting submits that instead of blanket regulations for everyone, the FCC should narrow its new regulations to towers that have a history of significant wildlife fatalities. The Administrative Procedures Act simply requires all federal regulations to be narrowly tailored to specific needs, rather than arbitrary and capricious. If these new regulations are not carefully crafted, they will be subject to administrative and judicial scrutiny and appeal for years to come. A careful, narrow and prudent approach is in the public interest.

Respectfully submitted,

**MORRIS BROADCASTING COMPANY
OF NEW JERSEY, INC.**

By: 
Cary S. Tepper

Its Counsel

Booth, Freret, Imlay & Tepper, P.C.
7900 Wisconsin Avenue
Suite 304
Bethesda, MD 20814-3628

(301) 718-1818

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