

FILED/ACCEPTED

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Federal Communications Commission
Office of the Secretary

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

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

To: The Commission

**CONSOLIDATED COMMENTS
OF
POSITIVE ALTERNATIVE RADIO, INC.,
POSITIVE RADIO GROUP, INC. (OHIO),
BIG RIVER RADIO, INC.,
BASE COMMUNICATIONS, INC.,
WKGM, INC
AND
WAMN, INC.**

POSITIVE ALTERNATIVE RADIO, INC., POSITIVE RADIO GROUP, INC. (OHIO), BIG RIVER RADIO, INC., BASE COMMUNICATIONS, INC., WKGM, INC. and WAMN, INC., by Counsel and pursuant to *Notice of Proposed Rulemaking ("NPRM"), FCC 06-164 (released November 7, 2006)*, hereby submits these Consolidated 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.

Each of the above-listed parties have common attributable ownership interests, and in support hereof these affiliated broadcast companies submit the following:

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List A B C D E

1. Positive Alternative Radio, Inc. is the licensee of twenty-one noncommercial full power FM radio stations, each of which transmits from a guyed tower structure. Two of those structures are registered with the FCC: Registration No. 1034183 for a 138 foot tower used by WPIB-FM (Bluefield, West Virginia), and Registration No. 1007573 for a 328 foot tower structure used by WXRI-FM (Winston-Salem, North Carolina).

2. Positive Radio Group, Inc. (Ohio) is the licensee of three commercial radio stations, each of which transmits from a guyed tower structure. Two of those structures are registered with the FCC: Registration No. 1014505 for a 333 foot tower used by WTGR-FM (Union City, Ohio), and Registration No. 1210352 for a 239 foot tower used by WYVK-FM (Middleport, Ohio).

3. Big River Radio, Inc. is the licensee of four radio stations in West Virginia, each of which transmits from a guyed tower structure. One of those structures is registered with the FCC: Registration No. 1055167 for a 210 foot tower structure used by WCEF-FM (Ripley, West Virginia).

4. Base Communications, Inc. is the licensee of five radio stations in Virginia, each of which transmits from a guyed tower structure. One of those structures is registered with the FCC: Registration No. 1018164 for a 203 foot tower used by WKEX-AM (Blacksburg, Virginia).

5. WKGM, Inc. is the licensee of WKGM-AM (Smithfield, Virginia), which transmits from a four-tower directional array. All four towers host guy wires. Two of the four towers are registered with the FCC: Registration No. 1017443 for a 309 foot

guyed tower structure, and Registration No. 1017442 for a 493 foot guyed tower structure.

6. WAMN, Inc. is the licensee of WAMN-AM (Green Valley, West Virginia), which transmits from a 261 foot guyed tower structure that is registered with the FCC as Registration No. 1035117.

7. It should be noted that many other non-registered tower structures are used by the above-listed parties for its other radio stations, and each such structure has guy wires.

8. 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 market radio stations such as those noted herein. Broadcasters are already finding it difficult to obtain affordable tower insurance and any blanket elimination of guyed towers will cause a big spike in insurance rates since 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.

9. Each of the parties to this consolidated filing 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. None of the parties has ever found one dead bird at their respective station's transmitting site.

10. Each of the parties to this consolidated filing 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."

11. 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.

12. "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.

13. The principals to each of the parties to this consolidated filing have more than eighty (80) combined years of broadcast ownership and management experience. In their experience more birds are killed by high voltage power lines and power poles than by tower structures less than 500 feet tall. The FCC and other federal and state agencies must not view this matter in a vacuum as the vast majority of tower structures pose absolutely no measurable risk to migratory birds.

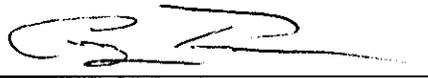
WHEREFORE, the foregoing premises considered, Positive Alternative Radio, Inc., Positive Radio Group, Inc. (Ohio), Big River Radio, Inc., Base Communications, Inc., WKGM, Inc. and WAMN, Inc. submit that instead of blanket regulations for everyone, the FCC should narrow its new regulations to towers that 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,

**POSITIVE ALTERNATIVE RADIO, INC.,
POSITIVE RADIO GROUP, INC. (OHIO),
BIG RIVER RADIO, INC.,
BASE COMMUNICATIONS, INC., and
WKGM, INC.
WAMN, INC.**

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