

Before the
FEDERAL COMMUNICATIONS COMMISSION JAN 11 2007
Washington, D.C. 20554

FILED/ACCEPTED
Federal Communications Commission
Office of the Secretary

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

To: The Commission

**COMMENTS
OF
EASTERN SHORE RADIO, INC.**

EASTERN SHORE RADIO, INC. ("ESR"), 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. ESR is the licensee of Radio Stations WESR-AM and WESR-FM at Onley-Onanacok, Virginia. In support hereof, ESR submits the following:

1. ESR is a small business broadcaster operating in a largely rural market with an economy that is seasonally driven by the spring and summer tourists. ESR must work especially hard to produce a positive cash flow each year, and ESR must be extremely practical and frugal on how it spends its money. This is simply a fact of life for the small town broadcaster.

2. 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

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market radio stations such as WESR-AM and WESR-FM.

3. ESR operates in the coastal area of the Delmarva (Delaware-Maryland-Virginia) peninsula, and broadcasters such as ESR are already having difficulty buying tower insurance because of the heavy hurricane damage on the Gulf Coast and Florida over the past few years. Insurance is generally not available, especially to small operators in hurricane prone areas. ESR operates in a hurricane prone area. Therefore, in a worst case scenario, we could be required to build a tower which we could not insure. Getting financing would be impossible.

4. The Commission must also acknowledge that free standing towers are not as capable of withstanding hurricane force winds as good as guyed towers. Therefore, any absolute requirement to construct free standing tower structures would place those of us in hurricane zones to be at a distinct disadvantage.

5. ESR also 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. At ESR's location between the Chesapeake Bay and the Atlantic Ocean, we haven't had any migratory waterfowl deaths since at least 1983. In fact, in late winter there are often tens of thousands of Snow Geese using the field located adjacent to our tower. There have not been any fatalities in 23 years. For the record, our tower structure is 343 feet AGL, and it is guyed and marked with red obstruction lighting.

6. ESR 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."

7. 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.

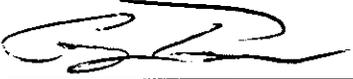
8. "The comments in this proceeding to date support the conclusion that communications towers less than approximately 400 feet do not contribute substantially to migratory bird kills," the ARRL said, adding that no regulatory action is justified beyond what's already in place for aviation safety. The 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, ESR 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,

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