

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

In the Matter of	)	
	)	
Petition for Expedited Rulemaking for Amendment	)	WT Docket No. 08-61
of Parts 1 and 17 of the Commission's Rules	)	DA 08-1078
Regarding Public Notice Procedures for Processing	)	
Antenna Structure Registration Applications	)	

**COMMENTS OF VERIZON WIRELESS**

Verizon Wireless hereby submits comments in response to the Federal Communications Commission's Public Notice, dated May 6, 2008, seeking comments in response to the above-referenced Petition for Rulemaking ("Petition") filed by CTIA – The Wireless Association, the National Association of Broadcasters, the National Association of Tower Erectors and PCIA – The Wireless Infrastructure Association (collectively the "Infrastructure Coalition").

In light of the United States Court of Appeals decision in *American Bird Conservancy, Inc. v. FCC*,<sup>1</sup> Verizon Wireless supports the antenna structure registration notice, comment and approval process for antenna structure registrations (ASRs) set forth in the Petition. Verizon Wireless believes, however, that the procedures can be further streamlined to only apply to ASR applications proposing new non-temporary antenna structures or modifications to existing non-temporary structures that require lighting, employ guy wires, or are over 200 feet in overall height. Notwithstanding its support for the Petition, Verizon Wireless is very concerned about

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<sup>1</sup> 516 F.3d 1027 ("Remand Order").

the effect these procedures will have on tower siting and urges the Commission, quickly, to take action to find that most, if not all, communications towers have no significant impact on migratory birds and are therefore excluded from requiring review for migratory bird impacts.

## **I. BACKGROUND**

On February 19, 2008, the United States Court of Appeals for the D.C. Circuit decided an appeal brought by the American Bird Conservancy and Forest Conservation Council (Petitioners) challenging an April 2006 *Memorandum Opinion and Order*.<sup>2</sup> In that Order, the FCC denied a petition by Petitioners asking the FCC (1) to prepare an environmental impact statement (EIS) under the National Environmental Policy Act (NEPA) analyzing the effects of all past, present, and reasonably foreseeable tower registrations on migratory birds in the Gulf Coast region; (2) to initiate a formal consultation with the United States Fish and Wildlife Service (FWS) pursuant to the Endangered Species Act (ESA) regarding the Gulf Coast towers' impact on various bird species; (3) to take steps in accordance with the Migratory Bird Treaty Act (MBTA) to reduce bird mortality at Gulf Coast tower sites; and (4) to provide notice of proposed Gulf Coast tower ASR applications and an opportunity to comment on such applications before they are granted. The FCC denied each request stating that there was insufficient evidence to justify the actions requested and that the effect of communications towers on migratory birds will be considered in the context of the FCC's Notice of Proposed Rulemaking considering such effects.<sup>3</sup>

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<sup>2</sup> Petition for National Environmental Policy Act Compliance, *Memorandum Opinion and Order*, 21 FCC Rcd 4462 (2006) ("Gulf Coast Order").

<sup>3</sup> See Effects of Communications Towers on Migratory Birds, *Notice of Proposed Rulemaking*, 21 FCC Rcd 13,241 (2006) ("Bird NPRM").

The Court of Appeals granted the Petition for Review on issues (1), (2) and (4) above, and remanded these issues back to the FCC for action consistent with the Court's decision. The Court denied the Petition with respect to issue (3).

The Petition addresses the Court's decision with respect to providing public notice of ASR applications and providing an opportunity to comment on such applications before they are granted. In particular, the Petition asks the FCC to amend Part 17 of the Commission's Rules to incorporate a notice, comment and approval process for ASR applications modeled on the procedures now in use for transfer and assignment applications. The Petition also asks that the Commission revise its Rules to clarify that any objection to ASR applications must be filed as a Petition to Deny, subject to Section 309(d) of the Communications Act and Section 1.939(d) of the Commission's Rules. As such, entities asking the FCC to reject an ASR application would be required to make specific allegations of fact sufficient to make a prima facie showing that the petitioner is a party of interest and that a grant of the application would be inconsistent with the public interest, convenience and necessity.<sup>4</sup>

## **II. DISCUSSION**

In light of the Court's mandate that the FCC adopt an ASR notice requirement, Verizon Wireless supports the ASR notice, comment and approval process proposed in the Petition, but recommends minor changes to the proposal. The Petition proposed to limit the ASR notice and comment process to ASR's proposing a new antenna structure, increasing the height of an existing structure, or changing the lighting and marking of an existing structure. These

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<sup>4</sup> Infrastructure Coalition Petition at 10-13; 47 U.S.C. § 309(d); 47 CFR § 1.939(d).

limitations were designed to exclude from the ASR notice process those applications that do not present a significant threat to migratory birds.

Verizon Wireless believes that the Infrastructure Coalition proposal should be modified to further limit the ASR applications that are subject to notice and comment. In particular, the ASR notice procedures should be modified to only apply to ASR applications proposing new non-temporary antenna structures or modifications to existing non-temporary structures that require lighting, employ guy wires, or are over 200 feet in overall height. Since there is consensus that structures that are 200 feet or shorter, not lit, and not guyed do not pose a threat to migratory birds, modifying the proposal to exclude applications that do not propose new or modified structures with any of these elements will benefit applicants and the public interest by allowing these ASR applications to go forward without delay.

In addition, temporary structures that require ASR applications should be excluded from the ASR notice process.<sup>5</sup> These structures are put in place to address short-term or emergency coverage or capacity needs. Given the exigent circumstances under which temporary sites are put in place and the minimal chance that a temporary structure will have a significant impact on migratory birds, the Commission should find that, on balance, the public interest is best served by excluding temporary sites from the ASR notice process.

Last, the Commission should establish a fast waiver review process for ASR applications proposing new or modified antenna structures that are necessary for homeland security or E911

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<sup>5</sup> In the context of historic preservation reviews, the FCC has determined that a temporary structure is one that is erected for a period not to exceed twenty-four months. Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process, *Report and Order*, 20 FCC Rcd 1073, 1090 (2004).

purposes. If an applicant is able to demonstrate that a waiver of the notice and comment procedures is justified based on the homeland security and/or E911 benefits that a site will provide, then the Commission should be ready and able to grant such waivers and exclude particular sites from the ASR notice process.

The FCC should adopt the procedures proposed by the Infrastructure Coalition with these changes, because these procedures would fully comply with the Court's mandate to provide public notice of ASR applications prior to the date on which they are granted and to provide an opportunity for interested parties to comment on the effect that towers may have on migratory birds. The procedures also strike an appropriate balance between providing an opportunity to comment and meeting applicant needs by (1) imposing short, but reasonable deadlines on parties wishing to challenge such applications and on FCC staff for acting on the applications; (2) requiring parties challenging ASR applications to meet Petition to Deny evidentiary standards; and (3) limiting the pre-grant notice procedures only to ASR applications registering structures that might impact migratory birds.

Carriers are facing ever-increasing demands to add new antenna sites to their networks in order to meet consumer demand in a highly competitive market and to meet FCC coverage requirements put in place as a condition of the spectrum licenses that carriers hold. Because any ASR notice and comment procedure will impose further regulatory delays on the tower siting process, it is vital to carrier needs and the public interest that the above-listed elements be included in the ASR notice and comment process adopted by the Commission. Absent these evidentiary, time, and ASR type limitations, carriers will potentially face numerous challenges to tower sites and face long, open-ended delays waiting for ASR applications to be approved by the FCC.

The Court's mandate to adopt an ASR notice and comment process highlights the need for the FCC to act quickly to make findings with respect to the effect that different types of Communications towers may have on migratory birds. The regulations that the FCC may adopt in order to satisfy the Court's mandate with respect to ASR application notice and the other aspects of the Court's remand threaten to impose significant tower siting delays. These delays are at odds with the public's interest in carriers expanding and improving wireless service offerings and with the needs of the public safety community in having more ubiquitous wireless services. The Commission therefore should take action as soon as possible to minimize the impact to tower siting that these migratory bird procedures will impose.

One step the Commission should take quickly is to find in the context of the Bird NPRM that some or all communications towers are excluded from migratory bird reviews. In comments filed in response to the Bird NPRM, Verizon Wireless argued that scientific evidence does not support a finding that communications towers have a significant impact on migratory birds. Verizon Wireless argued, further, that even if the FCC reaches a conclusion that some communications towers do impact migratory birds, there is almost no evidence of the effect on bird mortality of different tower heights, support systems, or lighting systems.<sup>6</sup> Accordingly, even if the FCC were ultimately to find that some communications towers have a significant impact on migratory birds and impose requirements on applicants to protect bird populations, the evidence submitted would support the Commission adopting exclusions for towers that are below a certain height, do not employ guy wires, or use lighting systems that are determined to pose less of a threat to migratory birds. Verizon Wireless urges the Commission to act quickly to conclude

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<sup>6</sup> Comments of Verizon Wireless, WT Docket No. 03-187, filed April 23, 2007, at 2-7.

its Bird NPRM proceeding and make the findings necessary to exclude all or some communications towers from requiring reviews for impacts on migratory birds.

### III. CONCLUSION

Verizon Wireless supports the Infrastructure Coalition Petition for Rulemaking proposing ASR application notice and comment procedures. Verizon Wireless believes, however, that the proposed rules should be modified to exclude applications that do not proposed structures that are lit, guyed, or over 200 feet in overall height. The Commission should also exclude temporary structures from the ASR process and be ready to act quickly on any waiver requests for structures that serve vital homeland security or E911 needs.

Respectfully submitted,

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Dated: May 27, 2008

### Certificate of Service

I hereby certify that on this 27<sup>th</sup> day of May copies of the foregoing "Comments of Verizon Wireless" in WT Docket 08-61 were sent by US Mail to the following parties:

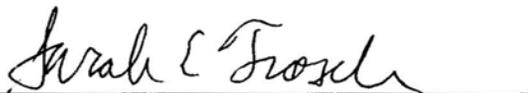
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