



TO: FCC Office of General Counsel

FROM: PCIA/The Wireless Infrastructure Association Regulatory Affairs Committee

RE: Summary of proposed NEPA notice process

DATE: January 14, 2009

In its February 19, 2008, decision, the U.S. Court of Appeals for the D.C. Circuit ordered the Commission to devise a method of providing notice to interested parties of proposed wireless communications tower builds.¹ PCIA believes that the Commission should adopt a local public notice procedure to fulfill the court's mandate. The sample public notice attached hereto (the "Sample Notice") provides interested parties notice of forthcoming tower applications and a method by which such parties can allege that the proposed tower would have "significant environmental effects" pursuant to 42 USC § 4332(2)(C), thereby satisfying the Commission's responsibilities.

The Council on Environmental Quality ("CEQ"), which implements federal environmental efforts including NEPA, has developed specific rules for federal agencies to "involve the public in preparing and implementing their NEPA procedures."² According to the CEQ, [i]n the case of an action with effects primarily of local concern the notice may include . . . publication in local newspapers (in papers of general circulation rather than legal papers).³ The Sample Notice, which applicants would publish in local general circulation newspapers to fulfill the CEQ requirement, includes all NEPA categories under which interested parties can allege such effects. Further, wireless infrastructure providers already utilize a version of the Sample Notice for compliance with the notice regime established by the Nationwide Programmatic Agreement with the National Conference of State Historic Preservation Officers and the Advisory Council on Historic Preservation (otherwise known as the "Historic NPA"). As such, the Commission could establish the implementation of the Sample Notice immediately, in order to comply with

¹ *Am. Bird Conservancy, Inc., v. FCC*, 516 F.3d 1027, 1035 (D.C. Cir., 2008) ("We vacate the notice part of the Order and remand for the Commission to determine how it will provide notice of pending tower applications that will ensure meaningful public involvement in implementing NEPA procedures.").

² 40 C.F.R. § 1506.6(a) (2008).

³ *Id.* at § (b)(3)(iv).

the D.C. Circuit's order to provide the public with meaningful notice and public involvement.

As the Sample Notice indicates, an interested party alleging "significant environmental effects" has 30 days from the date of publication to notify both the applicant and the Commission of the grounds for alleging "significant environmental effects" requiring an environmental assessment. We respectfully submit that 30 days is a reasonable timeframe within which interested parties should be expected to provide justification for their claims. The Sample Notice provides for both electronic and paper submission of comments by interested parties; we respectfully submit that it is reasonable to expect that applicants will forward all paper submissions it receives to the Commission.

The Sample Notice provides a process by which interested parties notify not only the Commission, but also the applicant itself. In this way, applicants and interested parties have a line of communication by which compromise can be reached. A similar process is in place for the Historic NPA, and our members report that the opening of communication between commenting parties and applicants can often lead to resolution of issues without the involvement of the Commission or other regulatory agencies.

We reiterate the standards expressed in the Joint Petition of PCIA with CTIA, NAB and NATE that any claims of "significant environmental impact" be phrased as "petitions to deny" pursuant to Section 1.939(d) of the Commission's rules. Adherence to this standard will ensure that commenting parties provide specific factual allegations for the Commission to review.

As we indicated previously, we respectfully submit that local notice of proposed facilities is appropriate for compliance with NEPA obligations. Nation-wide notice of such facilities is not required by NEPA.⁴ We submit that the Sample Notice provides adequate notice and meaningful opportunity to comment, in furtherance of NEPA's goals and the D.C. Circuit's order. Therefore, we respectfully request that the Commission authorize the Sample Notice by its Public Notice procedures.

⁴ See *Kleppe v. Sierra Club*, 427 U.S. 390 (1976) (concluding that NEPA does not require preparation of environmental impact statement for regional environmental effects of a proposed federal action with only local impacts).

FCC NEPA PUBLIC NOTICE PROPOSAL

[APPLICANT] proposes to construct a telecommunications facility and [xx]-foot-tall [TYPE OF TOWER] tower at [LOCATION OR ADDRESS IF AVAILABLE] and seeks comment on the effects, if any, from this project to: (1) officially designated wilderness areas or wildlife preserves; (2) listed, proposed or candidate threatened or endangered species or critical habitats; (3) migratory birds; (4) historic properties listed in or eligible for the National Register of Historic Places; (5) Indian religious sites; (6) 100-year flood plains; and/or (7) surface features including wetlands, forests or water courses. Please submit comments to [name, address, email and telephone info for applicant or consultant]. Per the environmental rules of the Federal Communications Commission ("FCC") (47 C.F.R. Sections 1.1301-1.1319, and Part 1, Appendices B and C), any interested person alleging that the facility may cause significant environmental effect(s) may, within 30 days of the date of this notice, submit to the FCC at [WTB mail and email addresses], with a copy to [APPLICANT], a written petition setting forth the environmental effect(s) alleged and the circumstances requiring an environmental assessment.

174 words total