

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

In the Matter of	)	
	)	
Petition for Expedited Rulemaking and Other	)	WT Docket No. 08-61
Relief Filed on Behalf of American Bird	)	
Conservancy, Defenders of Wildlife, and	)	WT Docket No. 03-187
National Audubon Society Regarding	)	
Commission Implementation of the National	)	DA 09-904
Environmental Policy Act, the Endangered	)	
Species Act, and the Migratory Bird Treaty	)	
Act	)	

**NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION  
INITIAL COMMENTS**



**Respectfully submitted,**

Daniel Mitchell  
Vice President, Legal & Industry

Karlen Reed  
Regulatory Counsel, Legal & Industry

*Its Attorneys*

4121 Wilson Boulevard, 10<sup>th</sup> Floor  
Arlington, VA 22203  
(703) 351-2000

May 29, 2009

**TABLE OF CONTENTS**

	<b>Page</b>
<b>I. SUMMARY .....</b>	<b>2</b>
<b>II. ADDITIONAL REGULATION OF EXISTING TOWERS AND ANTENNAS WILL BURDEN SMALL RURAL WIRELESS PROVIDERS AND THEIR RURAL CUSTOMERS.....</b>	<b>3</b>
<b>A. The 2006 NPRM Addressed Tower Lighting and Siting Requirements. ....</b>	<b>5</b>
<b>B. The 2008 ASR Notice Proceeding Examined Tower Notification Rules. ....</b>	<b>7</b>
<b>III. MORE RECOMMENDATIONS BEFORE REGULATION. ....</b>	<b>8</b>
<b>A. Examine the Data. ....</b>	<b>8</b>
<b>B. White Strobing Lights Impact Vision and Municipal Ordinances.....</b>	<b>9</b>
<b>C. Do Not Lightly Preempt Local Zoning Ordinances Over Cell Towers.....</b>	<b>9</b>
<b>D. Wait for the FAA To Complete Its Conspicuity Study of the Impacts of Tower Light Changes on Aviation Safety. ....</b>	<b>10</b>
<b>E. Allow An Implementation Period and Waiver Procedure. ....</b>	<b>10</b>
<b>IV. CONCLUSION. ....</b>	<b>11</b>

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

In the Matter of	)	
	)	
Petition for Expedited Rulemaking and Other	)	WT Docket No. 08-61
Relief Filed on Behalf of American Bird	)	
Conservancy, Defenders of Wildlife, and	)	WT Docket No. 03-187
National Audubon Society Regarding	)	
Commission Implementation of the National	)	DA 09-904
Environmental Policy Act, the Endangered	)	
Species Act, and the Migratory Bird Treaty	)	
Act	)	

**NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION  
INITIAL COMMENTS**

The National Telecommunications Cooperative Association (NTCA)<sup>1</sup> files its initial comments in response to the Federal Communications Commission’s (Commission’s or FCC’s) Notice (Public Notice) seeking comment on an April 14, 2009 Petition filed by the American Bird Conservancy, Defenders of Wildlife and the National Audubon Society (Bird Group Petition or Petition).<sup>2</sup> The Commission seeks input specifically on the Petition’s request that the Commission: 1) amend FCC rules in accordance with the Council of Environmental Quality’s guidance and exclude from regulation only those FCC actions that have “no significant environmental effects individually or cumulatively;” 2) prepare a program-wide environmental

---

<sup>1</sup> NTCA is the premier industry association representing rural telecommunications providers. Established in 1954 by eight rural telephone companies, today NTCA represents over 580 rural rate-of-return regulated incumbent local exchange carriers (ILECs). All of its members are full service local exchange carriers, and many members provide wireless, cable, Internet, satellite and long distance services to their communities. Each member is a “rural telephone company” as defined in the Communications Act of 1934, as amended (Act). NTCA members are dedicated to providing competitive modern telecommunications services and ensuring the economic future of their rural communities.

<sup>2</sup> *Petition for Expedited Rulemaking and Other Relief Filed on Behalf of American Bird Conservancy, Defenders of Wildlife, and National Audubon Society Regarding Commission Implementation of the National Environmental Policy Act, the Endangered Species Act, and the Migratory Bird Treaty Act*, WT Docket No. 08-61, WT Docket No. 03-187 (filed Apr. 14, 2009) (Bird Group Petition or Petition).

impact statement (EIS) that would examine bird impacts on tower registration procedures; 3) create rules that require the FCC, tower registrants and others to comply with the Endangered Species Act (ESA); 4) consult with the U.S. Fish and Wildlife Service on tower and antenna registration; and 5) create rules designed to reduce migratory bird deaths as part of the FCC's ongoing 2006 Notice of Proposed Rulemaking (2006 NPRM) proceeding.<sup>3</sup> This Petition raises issues discussed in the Commission's pending 2006 NPRM and in the pending 2008 Antenna Structure Registration (ASR) notice proceeding.<sup>4</sup>

## **I. SUMMARY**

New regulations for tower and antenna siting and lighting will adversely impact NTCA's small wireless providers and their rural customers by increasing the costs of providing services, as shown in previous NTCA filings in the 2006 NPRM and the 2008 ASR notice proceedings. Before issuing any new regulations in response to the Bird Group Petition, the Commission should review carefully the data used to assert mass bird kills by tower collisions. Also, the Commission should consider the human visual impacts of the proposed white strobing lights and whether preemption of local zoning ordinances for tower siting is in the public interest. The Commission should wait until the Federal Aviation Administration (FAA) completes its aviation safety conspicuity studies on the proposed lighting systems. Finally, the Commission should allow small wireless providers a reasonable implementation period and waiver procedures for any new rules adopted.

---

<sup>3</sup> *In the Matter of Effects of Communications Towers on Migratory Birds*, WT Docket No. 03-187, Notice of Proposed Rulemaking (rel. Nov. 7, 2006) (2006 NPRM); Order extending time for comments, DA 07-72 (filed Jan. 12, 2007); Public Notice, pp. 1-2.

<sup>4</sup> *See In the Matter of Petition for Expedited Rulemaking of CTIA—The Wireless Association et al. For Amendments of Parts 1 and 17 of the Commission's Rules Regarding Public Notice Procedures for Processing Antenna Structure Registration Applications*, WT Docket No. 08-61, DA 08-1078 (2008 ASR Notice Proceeding), NTCA Initial Comments (filed May 27, 2008).

## **II. ADDITIONAL REGULATION OF EXISTING TOWERS AND ANTENNAS WILL BURDEN SMALL RURAL WIRELESS PROVIDERS AND THEIR RURAL CUSTOMERS.**

NTCA represents more than 580 rural rate-of-return incumbent local exchange carriers (ILECs) throughout the United States, and about 300 of them are providing wireless services (including broadband data, voice and/or text messaging) to their customers, as shown in the NTCA 2008 Wireless Survey Report.<sup>5</sup> Many NTCA members use their own cell towers and antennas to provide service or collocate on other towers.

The Commission's May 22, 2009 *Rural Broadband Strategy Report to Congress* reflects an accurate analysis of the relationship between infrastructure costs and deployment of wireless broadband networks in rural areas. "Wireless broadband development in rural areas will depend in part on the ability of providers to access towers and other structures for the deployment of their network facilities, either through new tower construction or collocation on existing towers or other structures."<sup>6</sup> The Commission cited to the 2006 NPRM proceeding in the newly-released 2009 Rural Broadband Strategy Report, noting that "there are several open Commission proceedings that may affect the pace or cost of tower construction."<sup>7</sup>

NTCA's 2008 Wireless Survey Report shows that the ongoing economic downturn is being felt by rural wireless providers, and adding regulations for existing towers and antennas, or modifications of existing towers and antennas, will increase the regulatory costs for small rural providers and their rural customers. Rural areas are more difficult and costly to serve than urban

---

<sup>5</sup> NTCA 2008 Wireless Survey Report, released January 2009, pp. 3, 6, publicly available at: <http://www.ntca.org/images/stories/Documents/Advocacy/SurveyReports/2008ntcawirelessurveyreport.pdf>.

<sup>6</sup> *Bringing Broadband to Rural America, Report on a Rural Broadband Strategy*, FCC report to Congress, available at [www.fcc.gov](http://www.fcc.gov) (rel. May 22, 2009), ¶ 158.

<sup>7</sup> *Ibid.*

and suburban areas for a variety of reasons, such as extreme topography, low population density, and difficulty in obtaining appropriate spectrum. Thirty-five percent of the survey respondents characterized the process of obtaining financing for wireless projects as “very difficult” or “virtually impossible,” so increasing the financial burden through additional regulation on tower registration, siting and lighting procedures will impact heavily the rural wireless providers and their rural customers.<sup>8</sup> For these reasons, NTCA wireless provider members find themselves aligned in general with the interests of the “Tower Coalition” in this proceeding, a loose coalition of tower infrastructure related organizations including CTIA—The Wireless Association (CTIA), PCIA—The Wireless Infrastructure Association (PCIA), the National Association of Broadcasters (NAB) and the National Association of Tower Erectors (NATE).

The Bird Group Petition seeks restrictions on tower construction and operation that its Petitioners claim would “greatly reduce the number and frequency of avian collisions by employing lighting other than non-blinking lights, by reducing the height of towers and by construction self-supported towers.”<sup>9</sup> The Petition asserts that “eliminating steady-burning aviation safety lights (L-810s) could reduce bird deaths by up to 70% without in any way impeding the provision of communication service.”<sup>10</sup> Furthermore, the Petition suggests that “reducing tower height can also reduce the number of bird deaths” and that “using unguyed towers in place of guyed towers of the same height – and of the same lighting – can also reduce bird deaths.”<sup>11</sup>

---

<sup>8</sup> *Id.* at 3.

<sup>9</sup> Petition, p. 6.

<sup>10</sup> *Id.* at 7.

<sup>11</sup> Petition, p. 7.

The Bird Group Petition addresses several issues already raised and discussed in the Commission's pending 2006 NPRM regarding the effects of cell tower lighting on migratory birds and in the pending 2008 ASR notice proceeding.<sup>12</sup> The Commission should incorporate by reference and review the filings in both proceedings as part of its determination on the Bird Group Petition. NTCA has filed comments in each docket and, for convenience sake, has incorporated the salient points of its earlier filings into these comments.

**A. The 2006 NPRM Addressed Tower Lighting and Siting Requirements.**

In the 2006 NPRM, the Commission sought comment on whether it should take measures to reduce the number of migratory bird collisions with communications towers.<sup>13</sup> The Commission's 2006 NPRM also sought comment on issues surrounding the impact of communications towers on bird populations.<sup>14</sup> The Commission tentatively concluded that bird collisions with communications towers can be reduced if towers are equipped with white strobing, medium intensity lights, rather than red lights.<sup>15</sup> The Commission asked whether it should regulate tower height, tower location, use of guy wires and collocation on communication towers.<sup>16</sup>

NTCA participated in the 2006 NPRM and urged the Commission to not enact tower lighting or other regulations until presented with more evidence from avian/tower studies since retrofitting existing towers under 200 feet high with white strobing lights will cost at least

---

<sup>12</sup> 2006 NPRM; Order extending time for comments, DA 07-72 (filed Jan. 12, 2007); 2008 ASR Notice Proceeding.

<sup>13</sup> 2006 NPRM, ¶ 1.

<sup>14</sup> *Ibid.*

<sup>15</sup> *Id.*, ¶¶ 3, 32.

<sup>16</sup> *Id.*, ¶ 32.

\$10,000 per tower, according to NTCA, Verizon Wireless and others.<sup>17</sup> The Commission should recognize that not all tower owners are regional or national wireless service providers, and that regulations that may have a tolerable financial impact on large carriers can devastate small rural carriers. NTCA members who own cell towers report cost estimates of \$10,000 per tower to retrofit existing short (under 350 feet tall) towers from red lights to white lights, and \$16,000 for medium towers that are 350 - 500 feet in height.<sup>18</sup> The effort to retrofit an existing tower requires far more than just changing the light bulbs. Everything on the tower needs to be replaced, including the power cable going up the towers. The white strobe lights require installation of five to seven conductors, depending on the tower height, and control panels and light housings would have to be changed. There is also a labor cost for removing the old lamp, housing and cable. These cost estimates do not include the expenses for computer monitoring or battery backup of the tower systems. Others have estimated the costs of implementing white strobing light rules at more than \$100,000 per tower for taller towers.

While some may consider this amount a small price to pay to protect birds, the Commission must realize that the sum a small rural carrier spends on bird protection affects that carrier's financial ability to expand and improve its network and deployment of advanced telecommunication services. One NTCA member in Kentucky reports that \$10,000 per tower to retrofit his existing towers reflects 10% of his company's annual capital expenditure budget – funds that the small rural provider could have used to upgrade his network for improved voice, video and data services. These per-tower expenditures will strain small rural carriers' budgets

---

<sup>17</sup> 2006 NPRM, NTCA Initial Comment, pp. 6-7 (filed April 23, 2007); NTCA Reply Comment, pp. 1, 4 (filed May 23, 2007).

<sup>18</sup> NTCA members report that the FAA designates towers that are 100 – 350 feet tall use a “D-1” lighting system, and towers that are 351-500 feet tall use a “D-2” lighting system.

and will hinder their deployment strategies for advanced telecommunications services, including mobile and fixed wireless voice, video and data.

**B. The 2008 ASR Notice Proceeding Examined Tower Notification Rules.**

In the 2008 ASR notice proceeding, the Commission examined the May 2, 2008 Petition for Expedited Rulemaking for Amendment of Parts 1 and 17 of the Commission's Rules Regarding Public Notice Procedures for Processing Antenna Structure Registration Applications (Petition) filed by the Tower Coalition.<sup>19</sup> The Tower Coalition asked that the Commission adopt certain notice procedures for ASR applications while clarifying that any environmental objection to an ASR application must be presented as a petition to deny, per the Commission's established standards.<sup>20</sup> The Coalition contended that its proposed rules would promote critical infrastructure deployment and meaningful public participation and would be consistent with the federal appeals court's directive.<sup>21</sup> These rules would present a public notice and an opportunity to comment on pending tower applications. The Coalition's proposed notice ASR applications procedures are modeled after the existing process for transfer and assignment applications and incorporate a notice, comment and approval process.<sup>22</sup>

NTCA agreed with the Coalition's request for an expedited rulemaking as appropriate given the federal court's directive to revise the Commission's notice procedures. Prompt

---

<sup>19</sup> *Petition for Expedited Rulemaking for Amendment of Parts 1 and 17 of the Commission's Rules Regarding Public Notice Procedures for Processing Antenna Structure Registration Applications*, WT Docket No. 08-61, (filed May 2, 2008) (Tower Coalition Petition); Notice, p. 1.

<sup>20</sup> Tower Coalition Petition, pp. 1-2, 10-13.

<sup>21</sup> *Id.*, at 6, 7.

<sup>22</sup> The Commission adopted streamlined transfer and assignment procedures in 2003 to increase the public benefits from using radio spectrum. *Promoting Efficient Use of Spectrum Through Elimination of Barriers to the development of Secondary Markets*, 18 FCC Rcd 20604, 20607-08 ¶¶ 1, 5 (2003), recon., 19 FCC Rcd 17503 (2004); 47 C.F.R. § 1.948(j).

opening and resolution of the notice procedures for ASR applications will speed infrastructure development and, consequently, broadband deployment. Furthermore, the Coalition's proposed rules regarding the notice application process and the clarification that objections are to be considered as petitions to deny, subject to the proof standards set by the Commission's rules, are reasonable. The Commission already has rules and a body of law developed around the standard, which lends predictability to the ASR application process. Finally, the process takes less than 90 days and is already in use on a related telecommunications procedure – transfer and assignment applications.

### **III. MORE RECOMMENDATIONS BEFORE REGULATION.**

Before issuing any new regulations in response to the Bird Group Petition, the Commission should review carefully the data used to assert mass bird kills by tower collisions. Also the Commission should consider the human visual impacts of the proposed strobing lights and whether preemption of local zoning ordinances for tower siting is in the public interest. The Commission should wait until the FAA completes its aviation safety conspicuity studies on the proposed lighting systems. Finally, the Commission should allow a reasonable implementation period and waiver procedures for any new rules adopted for small rural wireless providers.

#### **A. Examine the Data.**

Determining whether the scientific studies being used to advance regulation were appropriately conducted is a key step for the Commission prior to enacting any new tower siting/lighting regulations. Also key is whether the statistical analyses are valid and accurate, whether the extrapolations and underlying assumptions are reasonable and logical. Filings by NTCA and the Tower Group reveal numerous holes in the Bird Group's conclusions which are

based on extrapolation, incomplete studies and irreproducible results.<sup>23</sup> The Commission must scrutinize the proffered studies carefully.

**B. White Strobing Lights Impact Vision and Municipal Ordinances.**

Also, the Commission should consider the human visual impacts that will occur if the lighting systems are altered near residential homes. Municipalities have repeatedly insisted that rural carriers comply with local government siting rules, and those rules often include directives that require slow red pulsing lights for towers that must be lit, rather than fast white strobing lights. One NTCA rural carrier in Texas expressed serious concern over the community backlash that would result if his cell tower located by city hall in a small town of 300 people had to be changed to white strobes due to the proposed FCC regulation. Communities that place human visual impacts above bird visual impacts will find it difficult to understand the need for white strobing lights.

**C. Do Not Lightly Preempt Local Zoning Ordinances Over Cell Towers.**

Another factor the Commission should consider is whether it is in the public interest to preempt local control over tower siting, which includes determinations regarding lighting, tower height, and tower support systems (guy wires). Many municipalities have established zoning ordinances for cell towers, and federal regulations that demand different requirements may preempt this traditional exercise of local police powers. The Commission should consider whether it is appropriate in this circumstance to preempt local governments' traditional control over tower siting. Enforcement of such rules could overwhelm the Commission's resources, and local governments are ideally suited for tower siting decisions. As for guy wires, location and collocation requirements, rural carriers work with local communities and governments to design

---

<sup>23</sup> See NTCA Reply Comments, WT Docket No. 03-187, filed May 23, 2007 ("the underlying basic assumption (millions of birds are killed by towers each year) has not been proven through adequate peer-reviewed studies.").

their cell tower arrays to comply with local government rules and local terrain. Local zoning boards and city councils traditionally play a large role in deciding where and when cell towers are erected and what impact mitigation techniques (visual, safety, historical) must be employed in siting the towers. If the FCC claims authority to determine whether guy wires are needed or where towers are located, this will usurp and preempt a significant, vital municipal function.

**D. Wait for the FAA To Complete Its Conspicuity Study of the Impacts of Tower Light Changes on Aviation Safety.**

Not all existing towers are required by the FAA to be lit. In general, the FAA does not consider towers under 200' to be a threat to aviation and, consequently, the FAA does not require most cell towers under 200' to be lit. The FAA may exempt certain existing towers over 200' from lighting requirements given the specific terrain and distance of the towers from known aircraft flight paths. The Commission should be cautious in setting aviation safety lighting rules which the FAA traditionally regulate to prevent aircraft from colliding into the structures and other aircraft. This is a critical public safety purpose that the FCC should recognize and grant substantial deference. The Commission should not issue any new rules until the FCC reviews the FAA's study results and conclusions.

**E. Allow An Implementation Period and Waiver Procedure.**

Finally, the Commission should allow a reasonable implementation period for any new rules adopted for small rural wireless providers. Small rural carriers will have to adjust their business plans and pricing structures to reflect the additional expense of compliance. The Commission should also provide for a waiver procedure so that small rural carriers can seek either additional time for compliance or exemption from the rules under specified circumstances. Allowing an implementation period and waivers will also minimize the economic impacts of new regulations on small businesses, which include all of NTCA's member companies.

#### IV. CONCLUSION.

For these reasons, the Commission should hesitate before adding new tower regulations that will increase the financial burdens on NTCA's small wireless providers and their rural customers, as shown in previous NTCA filings in the 2006 NPRM and the 2008 ASR notice proceedings. Before issuing any new regulations in response to the Bird Group Petition, the Commission should review carefully the data used to assert mass bird kills by tower collisions. Also, the Commission should consider the human visual impacts of the proposed strobing lights and whether preemption of local zoning ordinances for tower siting is in the public interest. The Commission should wait until the Federal Aviation Administration (FAA) completes its aviation safety conspicuity studies on the proposed lighting systems. Finally, the Commission should allow a reasonable implementation period for any new rules or best practices guidelines.

Respectfully submitted,



Richard J. Schadelbauer  
*Economist*

By: /s/ Daniel Mitchell  
Daniel Mitchell

By: /s/ Karlen Reed  
Karlen Reed

*Its Attorneys*

4121 Wilson Boulevard, 10<sup>th</sup> Floor  
Arlington, VA 22203  
(703) 351-2000

May 29, 2009

**CERTIFICATE OF SERVICE**

I, Adrienne L. Rolls, certify that a copy of the foregoing Initial Comments of the National Telecommunications Cooperative Association in WT Docket No. 08-61 and WT Docket No. 03-187, DA 09-904, was served on this 29<sup>th</sup> day of May 2009 by first-class, United States mail, postage prepaid, or via electronic mail to the following persons:

Commissioner Michael J. Copps  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW, Room 8-B115  
Washington, D.C. 20554  
[Michael.Copps@fcc.gov](mailto:Michael.Copps@fcc.gov)

Angela E. Giancarlo  
*Chief of Staff & Senior Legal Advisor,  
Wireless & International to  
Commissioner McDowell*  
[Angela.Giancarlo@fcc.gov](mailto:Angela.Giancarlo@fcc.gov)

Commissioner Jonathan S. Adelstein  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW, Room 8-A302  
Washington, D.C. 20554  
[Jonathan.Adelstein@fcc.gov](mailto:Jonathan.Adelstein@fcc.gov)

Jane Jackson  
*Associate Bureau Chief*  
FCC-WTB  
[Jane.Jackson@fcc.gov](mailto:Jane.Jackson@fcc.gov)

Commissioner Robert M. McDowell  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW, Room 8-C302  
Washington, D.C. 20554  
[Robert.McDowell@fcc.gov](mailto:Robert.McDowell@fcc.gov)

Aaron Goldschmidt  
FCC-WTB  
[Aaron.Goldschmidt@fcc.gov](mailto:Aaron.Goldschmidt@fcc.gov)

Jeffrey Steinberg  
FCC-WTB  
[Jeffrey.Steinberg@fcc.gov](mailto:Jeffrey.Steinberg@fcc.gov)

Best Copy and Printing, Inc.  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW, Room CY-B402  
Washington, D.C. 20554  
[fcc@bcpiweb.com](mailto:fcc@bcpiweb.com)

/s/ Adrienne L. Rolls  
Adrienne L. Rolls

Paul Murray  
Legal Advisor, Commissioner Copps  
[Paul.Murray@fcc.gov](mailto:Paul.Murray@fcc.gov)

Renée Crittendon  
*Chief of Staff and Senior Legal Advisor for  
Spectrum & International to  
Commissioner Adelstein*  
[Renee.Crittendon@fcc.gov](mailto:Renee.Crittendon@fcc.gov)