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EX PARTE OR LATE FILED

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To: Marlene H. Dortch
Secretary,
Federal Communications Commission

From: Lee Martin,
Attorney, Administrative Law Division
Office of General Counsel

FILED/ACCEPTED
SEP 30 2009
Federal Communications Commission
Office of the Secretary

Subject: Notice of Ex Parte Presentations
WTB Docket Nos. 08-61 and 03-187

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On October 29, 2009 the Office of General Counsel and the Wireless Telecommunications Bureau held a Collaborative Meeting at the Federal Communications Commission to discuss issues raised by the court's remand order in *American Bird Conservancy v. FCC,* 516 F.3d 1027 (D.C. Cir. 2008). The Agenda reflecting the issues discussed at the meeting is attached. Also attached is a list of those who attended the meeting. This notice should be filed in WTB Docket Nos. 08-61 and 03-187.

For ex parte purposes the meeting was audio taped and is being transcribed. A copy of the transcript will be placed in the record in WTB Docket Nos. 08-61 and 03-187 in approximately 10 days.

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AGENDA

Introduction

The purpose of this meeting is to facilitate discussion among the parties regarding the issues raised in the D.C. Circuit's Gulf Coast remand, identify any areas of agreement, and identify other issues where further talks might produce consensus.

Public Notice of Pending Tower Applications

What methodology should the Commission employ to ensure that it provides adequate notice of proposed individual tower applications so as to afford interested persons a meaningful opportunity to request environmental review of a proposed tower before the agency acts on the application?

(A) Should the Commission provide Public Notice locally; provide Public Notice nationally; or provide both notice types?

(B) Should the Commission provide Public Notice of all ASR applications, or of only ASR applications located in the Gulf Coast?

(C) May environmental concerns be raised informally, or will they be considered only if raised in a petition to deny?

(D) How long should, or must, the staff delay action on a noticed application to ensure that all potentially concerned or interested parties have notice and meaningful opportunity to raise environmental concerns about a proposed tower?

(E) Should the filing of an environmental objection prevent approval of an application until the objection is resolved by the bureau, or should the application be deemed granted if the Commission takes no action on the objection?

II. Programmatic NEPA Analysis of Any Impacts of Telecommunications Towers On Migratory Birds

(A) Should the Commission complete the nationwide rulemaking on the effects of communications towers on migratory birds in WT Docket No. 03-187 before commencing the preparation of any programmatic NEPA analysis?

(B) Should any programmatic NEPA analysis be limited to the impacts on migratory birds of towers located in the Gulf Coast, or should it include the potential impacts of towers nationwide?

(C) Should the FCC commence any programmatic analysis with an environmental assessment ("EA"), as an interim step to determine whether there is a potentially significant environmental impact on migratory birds that requires preparation of a programmatic environmental impact statement ("EIS"), or should the agency dispense with the programmatic EA and prepare a programmatic EIS?

III. Interim Approach Pending Completion of Programmatic NEPA Analysis

(A) Should the FCC as an interim measure require tower-specific EAs for additional proposed registered towers to address potential effects on migratory birds?

1. If yes to (A), should such requirement be nationwide or limited to towers in the Gulf Coast?

2. If yes to (A), should this requirement apply to all registered towers or only those meeting certain criteria, e.g., the proposed tower exceeds a specified height, will require guy wires, and/or will have red steady lights? Should an EA be required in all cases unless FWS states that there is no potentially significant environmental impact on migratory birds?

(B) Should FCC rely on its own analysis or on FWS in reviewing the EA to determine whether to issue a FONSI or Notice of Intent to prepare an EIS?

IV. Other Issues

Additional matters that any participant proposes for discussion.

Collaborative Meeting on Gulf Coast Remand
Thursday, October 29, 2009
10:00 a.m. – 12 noon
Federal Communications Commission
445 Twelfth Street, S.W., 8th Floor (8-B516)
Washington, DC 20554

List of Attendees

American Bird Conservancy
Darin Schroeder, *Vice President of Conservation Advocacy*

American Tower Corporation
Paul A. Roberts, *Vice President;* **Jenna Metznik**, *Director of Environmental Compliance*

Association of Public-Safety Communications Officials
Robert M. Gurss, *Director*

Council on Environmental Quality
Edward A. Boling, *Senior Counsel,*

Crown Castle USA, Inc.
Monica Gambino, *Associate General Counsel, Regulatory Affairs*

CTIA–The Wireless Association
Andrea Williams, *Vice President of Law & Assistant General Counsel;* **Brian Josef**, *Director of Regulatory Affairs*

Defenders of Wildlife
Michael Senatore, *Vice President;* **Caroline Kennedy**, *Senior Director of Field Conservation;* **Kara Gillon**, *Senior Staff Attorney* (participating by telephone)

Land Mobile Communications Council
Donald Vasek, *Secretary-Treasurer*

National Association of Broadcasters
Ann Bobeck, *Senior Vice President & Deputy General Counsel*

National Association of Tower Erectors
Jim Goldwater, *Counsel*

National Audubon Society
Greer S. Goldman, *Assistant General Counsel* ; **Michael Daulton**, *Legislative Director*

PCIA–The Wireless Infrastructure Association
Michael D. Saperstein, Jr., *Public Policy Analyst*

SBA Communications
Ed Roach, Associate General Counsel for Regulatory Compliance

Sprint Nextel
Tony Traini, *Manager-Government Affairs*
Ray Rothermel, *Counsel-Regulatory*

Wilkinson, Barker, Knauer, LLP
William J. Sill, *Counsel/* **David H. Solomon**, *Counsel*

FCC

Office of General Counsel
Austin Schlick, *General Counsel;* **Joseph Palmore**, *Deputy General Counsel;*
Daniel Armstrong, *Associate General Counsel*, Litigation Division; **Lee Martin**, *Attorney Advisor*, Administrative Law Division; **Aliza Katz**, *Attorney Advisor*, Administrative Law Division

Media Bureau
Michael Wagner, *Assistant Chief*, Audio Division; **Adrienne Denysyk**, *Attorney Advisor*, Video Division

Public Safety Homeland Security Bureau
Gregory Intoccia, *Attorney Advisor*, Policy Division

Wireless Telecommunications Bureau
Jane Jackson, *Associate Chief;* **Jeffrey Steinberg**, *Deputy Chief/***Nicole McGinnis**, *Assistant Division Chief/***Aaron Goldschmidt**, *Assistant Chief/***Won Kim**, *Senior Attorney*, Spectrum and Competition Policy Division