

AMERICAN BIRD CONSERVANCY
DEFENDERS OF WILDLIFE
NATIONAL AUDUBON SOCIETY

November 6, 2009

Mr. Austin Schlick
General Counsel
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Dear Austin:

This is to respond to the questions you posed at the end of the meeting on October 29th regarding possible interim measures for the ASR program while the FCC prepares, proposes, and finalizes a new rule to comply with the environmental laws. As we said at that meeting, our principal goal for the interim measures is to focus FCC environmental review on the towers that potentially cause the greatest environmental harm and to provide for towers that do not involve significant environmental effects to be processed without significant administrative burdens.

As we understand your first question, you asked whether it could be productive for conservation organizations and industry to engage in further discussions aimed at crafting an interim procedure for the review of ASR applications. Provided an FCC staff member chairs those meetings, representatives of CEQ and FWS are invited to attend, and there is a reasonable deadline to complete the process, we would welcome the opportunity to participate. We believe a reasonable deadline would be mid-January 2010. If that process has not resulted in a mutually acceptable formulation of interim measures by that time, we believe that the FCC must act, with input from CEQ and FWS, and establish the interim procedures.

As we understand your second question, you asked whether it would be desirable for the interim approach to establish three categories of towers as follows, based on criteria to be determined: (1) towers that entail significant environmental effects based on the criteria and require environmental assessments; (2) towers that may entail significant environmental effects based on the criteria, for which environmental information would be provided by the applicant and evaluated by the FCC to determine if an environmental assessment is required; (3) towers that are not likely to entail significant environmental effects based on the criteria, for which no environmental assessments would be required.

Regarding the third category, you asked whether we would agree that where no environmental assessment is required based on the criteria, public notice of the ASR application would also not be required. We are concerned that if the public has no notice of these ASR applications, there will be no opportunity for the public to question the applicant's assessment of the tower's likely effects. If a member of the public provides information that a proposed tower is likely to entail significant

environmental effects, an environmental assessment should be done. We believe this issue should be explored in the context of the discussions of the interim measures.

Finally, we would like to clarify our response to your question at the end of the meeting regarding FCC consultation with FWS regarding ESA compliance. You asked whether programmatic consultation would be sufficient. We urge you to address that question with FWS. We believe that consultation on a nationwide basis is not sufficient. At a minimum, consultation must occur at least at the regional level, and may be required for individual towers depending on what the regional consultation shows and what conditions are established in that regional consultation. While it is reasonable for the applicant, who has a great amount of information about the tower and the site, to begin the consultation process, it is the responsibility of the FCC to consult with FWS, and that function cannot be completely delegated. While the July 9, 2009 letter to which Ms. Katz and Ms. Martin referred at the meeting purported to give licensees and applicants “a blanket designation” to consult with FWS, with no role retained by the FCC, there is no indication that FWS concurred in the that approach. Again, we urge you to engage with FWS to ensure that the Commission is carrying out its responsibilities under the ESA and the other environmental laws.

We thank you for initiating this dialogue and look forward to continuing this process.

Respectfully,

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