

Before the
Federal Communications Commission
Washington, D.C. 20554

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In the Matter of)
)
2004 and 2006 Biennial Regulatory Reviews - -) WT Docket No. 10-88
Streamlining and Other Revisions of Parts 1 and)
17 of the Commission's Rules Governing)
Construction, Marking and Lighting of Antenna)
Structures)
)
Amendments to Modernize and Clarify Part 17 of) RM 11349
the Commission's Rules Concerning Construction,)
Marking and Lighting of Antenna Structures)

NOTICE OF PROPOSED RULEMAKING

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By the Commission:

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I. INTRODUCTION

1. In this Notice of Proposed Rulemaking (Notice), we seek comment on revisions to the Commission’s Part 17 rules governing the construction, marking, and lighting of antenna structures.¹ We initiate this proceeding to update and modernize the Part 17 rules. These proposed revisions are intended to improve compliance with these rules and allow us to enforce them more effectively, helping to better ensure the safety of pilots and aircraft passengers nationwide.² These proposed revisions would also remove outdated and burdensome requirements without compromising our statutory responsibility to prevent antenna structures from being hazards or menaces to air navigation.³

II. BACKGROUND

2. Section 303(q) of the Communications Act of 1934, as amended (Act) vests in the Commission the authority to require painting and/or lighting of radio towers that may constitute a hazard to air navigation.⁴ Part 17 of the Commission’s rules sets forth procedures for identifying those antenna structures that might affect air navigation, consistent with recommendations made by the Federal Aviation Administration (FAA),⁵ and for registering such structures with the Commission. The Commission

¹ 47 C.F.R. § 17.1 *et seq.* Pursuant to Section 17.2(a) of the rules, “[t]he term antenna structure includes the radiating and/or receive system, its supporting structures and any appurtenances mounted thereon.” 47 C.F.R. § 17.2(a).

² *See, e.g.,* In the Matter of Streamlining the Commission’s Antenna Structure Clearance Procedure and Revision of Part 17 of the Commission’s Rules Concerning Construction, Marking, and Lighting of Antenna Structures, WT Docket No. 95-5, *Report and Order*, 11 FCC Rcd 4272, 4276, para. 6 (1995) (*ASR Streamlining Order*).

³ 47 U.S.C. § 303(q).

⁴ 47 U.S.C. § 303(q).

⁵ Although the Commission has exclusive authority to impose lighting requirements relating to antenna structures, the Commission assigns painting and/or lighting requirements based on the FAA’s recommendation as to what painting and/or lighting (if any) is necessary to promote air safety. *See ASR Streamlining Order*, 11 FCC Rcd at 4281, para. 20 (1995) (noting that the Commission’s registration process is the federal government’s only method of requiring safety lighting, as the FAA does not have statutory authority to mandate the painting or lighting of antenna structures). The Commission has adopted procedures for the registration of antenna structures that are consistent with the FAA’s procedures, which require antenna structure owners to provide the FAA with notification of proposed constructions or alterations. The FAA’s notification requirements are contained in 14 C.F.R. § 77.13 – 17, and are reprinted on FAA Form 7460-1, “Notice of Proposed Construction or Alteration.”

requires owners of antenna structures (rather than the Commission licensees and permittees utilizing those structures)⁶ to register with the Commission those structures that meet the registration criteria and to exercise primary responsibility for the prescribed painting and lighting.⁷

A. Description of the Registration Process

3. Under the Commission's rules, any proposed or existing antenna structure that requires notice of proposed construction to the FAA must be registered with the Commission.⁸ Notification is required for the construction or alteration of any antenna structure that is more than 60.96 meters (200 feet) in height above ground level, or that meets certain other conditions detailed in both sets of rules (such as proximity to an airport runway).⁹ This notification must be made to the FAA using FAA Form 7460-1, Notice of Proposed Construction or Alteration.¹⁰ If the FAA determines that the construction or

⁶ In 1992, Congress amended Sections 303(q) and 503(b)(5) of the Communications Act, respectively, (1) to make non-licensee antenna tower owners, as well as Commission licensees and permittees, responsible for the painting and lighting of antenna structures; and (2) to provide that these non-licensee tower owners may be subject to forfeiture for violations of painting or lighting requirements as specified by the Commission. See Pub. L. No. 102-538, 106 Stat. 3533, enacted October 27, 1992.

⁷ See 47 C.F.R. §§ 17.2(c), 17.4(a). See also *ASR Streamlining Order*, 11 FCC Rcd at 4278, para. 12. The Commission subsequently clarified several registration requirements. See In the Matter of Streamlining the Commission's Antenna Structure Clearance Procedure and Revision of Part 17 of the Commission's Rules Concerning Construction, Marking and Lighting of Antenna Structures, WT Docket No. 95-5, *Memorandum Opinion and Order and Order on Reconsideration*, 15 FCC Rcd 8676 (2000) (*ASR Clarification Order*).

⁸ 47 C.F.R. § 17.4(a).

⁹ See 14 C.F.R. § 77.13; 47 C.F.R. § 17.7. Section 17.7 states:

A notification to the Federal Aviation Administration is required, except as set forth in § 17.14, for any of the following construction or alteration:

(a) Any construction or alteration of more than 60.96 meters (200 feet) in height above ground level at its site.

(b) Any construction or alteration of greater height than an imaginary surface extending outward and upward at one of the following slopes:

(1) 100 to 1 for a horizontal distance of 6.10 kilometers (20,000 feet) from the nearest point of the nearest runway of each airport specified in paragraph (d) of this section with at least one runway more than 0.98 kilometers (3,200 feet) in actual length, excluding heliports.

(2) 50 to 1 for a horizontal distance of 3.05 kilometers (10,000 feet) from the nearest point of the nearest runway of each airport specified in paragraph (d) of this section with its longest runway no more than 0.98 kilometers (3,200 feet) in actual length, excluding heliports.

(3) 25 to 1 for a horizontal distance of 1.52 kilometers (5,000 feet) from the nearest point of the nearest landing and takeoff area of each heliport specified in paragraph (d) of this section.

(c) When requested by the FAA, any construction or alteration that would be in an instrument approach area (defined in the FAA standards governing instrument approach procedures) and available information indicates it might exceed an obstruction standard of the FAA.

(d) Any construction or alteration on any of the following airports (including heliports):

(1) An airport that is available for public use and is listed in the Airport Directory of the current Airman's Information Manual or in either the Alaska or Pacific Airman's Guide and Chart Supplement.

(2) An airport under construction, that is the subject of a notice or proposal on file with the Federal Aviation Administration, and except for military airports, it is clearly indicated that the airport will be available for public use.

(3) An airport that is operated by an armed force of the United States.

¹⁰ 14 C.F.R. § 77.17. These notices provide the FAA a basis for, among other things, "[r]ecommendations for identifying the construction or alteration in accordance with the current Federal Aviation Administration Advisory Circular AC 70/7460-1 entitled "Obstruction Marking and Lighting," [...]" 14 C.F.R. § 77.11(b)(3).

alteration proposed in the notification is subject to lighting or marking standards prescribed in the current version of FAA Advisory Circular AC 70/7460-1, entitled "Obstruction Marking and Lighting," the FAA sends an acknowledgment to the antenna structure owner describing how the structure should be marked and lighted.¹¹ This acknowledgment constitutes a determination of "no hazard to air navigation," meaning that the FAA has determined that the structure will pose no hazard to aircraft provided it is marked and/or lighted consistent with the FAA's recommendations.¹²

4. To register the antenna structure, the antenna structure owner must submit to the Commission the FAA's "no hazard" determination, along with FCC Form 854.¹³ Upon receipt of a registration application, the FCC's computer automatically verifies with the FAA the accuracy of the marking and lighting specifications provided by the applicant, using the FAA reference number supplied on Form 854. If the registration form, along with the determination of "no hazard," is accepted by the Commission, then a Form 854R (antenna structure registration) is issued, which typically incorporates the FAA's specifications for marking and/or lighting the antenna structure, and an antenna structure registration number is assigned to the antenna structure. Once the antenna structure is registered, the owner must ensure that the antenna structure complies with all of the relevant FAA chapters specified on the registration or the owner will be subject to FCC enforcement action.

5. An owner may not change the specifications in the antenna structure registration without prior approval from the FAA and the Commission. An antenna structure owner that wants to change an antenna structure's specifications must first seek FAA review and concurrence with the change, and then file a request with the Commission to amend the antenna structure registration. The owner must receive Commission approval, in the form of an amended antenna structure registration, prior to changing the marking or lighting on the structure.

B. Biennial Review and PCIA Petition for Rulemaking

6. Section 11 of the Act requires that the Commission, in every even-numbered year beginning in 1998, review all regulations that apply to the operations and activities of any provider of telecommunications service.¹⁴ If any regulations are no longer necessary in the public interest as the result of meaningful economic competition between providers of such service, Section 11 instructs the Commission to repeal or modify the regulations.¹⁵ In 2004, pursuant to Section 11, the Commission

¹¹ 14 C.F.R. § 77.19.

¹² The FAA has proposed to modify and expand the scope of the above-described notification requirements by amending its Part 77 rules (14 C.F.R. Part 77) to include obstruction standards based on radiofrequency transmission characteristics. Under the FAA's proposal, actions that would trigger a filing requirement would include construction of new facilities that operate on specified frequencies, changes in authorized frequency, addition of new frequencies, increases in effective radiated power or antenna height above certain thresholds, and changes in antenna configuration for communications facilities that operate in specified radio frequency bands, independent of the physical attributes of such facilities. *Notice of Proposed Rulemaking*, Docket No. FAA-2006-25002, Notice No. 06-06, Safe, Efficient Use and Preservation of the Navigable Airspace (*FAA NPRM*), released June 13, 2006. See paras.19-20, *infra*.

¹³ 47 C.F.R. § 17.4(b). The registration process is generally completed online at the Commission's Antenna Structure Registration website <http://wireless.fcc.gov/antenna/>. This website provides comprehensive information about the registration process and the Part 17 rules.

¹⁴ 47 U.S.C. § 161(a).

¹⁵ 47 U.S.C. § 161(b).

initiated a comprehensive review of its regulations.¹⁶ Among the rules under review were the Commission's Part 17 rules.¹⁷ As part of the review, PCIA – the Wireless Infrastructure Association (PCIA), Cingular Wireless LLC (Cingular), and CTIA – the Wireless Association (CTIA) all filed comments or reply comments urging streamlining and harmonization of the Part 17 rules.¹⁸

7. PCIA also filed a petition for rulemaking (RM 11349) to modernize and clarify Part 17 of the Commission's Rules.¹⁹ PCIA's Petition for Rulemaking seeks five changes to Part 17: (1) elimination of or substantial revision of Section 17.47(b) regarding quarterly inspections of automatic control devices or systems associated with antenna structure lighting; (2) amendment of Sections 17.4(e)-(f) and 17.6(c) to eliminate the requirement that antenna structure owners provide tenants with paper copies of the Antenna Structure Registration (ASR); (3) clarification of Section 17.4(g) to expressly permit posting of the ASR number on a tower's compound fence or gate; (4) amendment of Section 17.23 to update a reference to an FAA Circular and to clarify that FCC marking and lighting specifications for a structure do not change unless the FAA recommends new specifications for that particular structure; and (5) amendment of Section 17.57 to change from 24 hours to 5 days the time in which an antenna structure owner must notify the Commission of completion of construction and/or dismantlement, and to change from "immediately" to 5 days the period for notifying the Commission of changes in height or ownership. PCIA's Petition for Rulemaking was placed on Public Notice to allow interested persons to file statements opposing or supporting it.²⁰ Sprint Nextel Corporation (Sprint Nextel), Cingular, Crown Castle USA, Inc. (Crown Castle), and the National Association of Broadcasters (NAB) filed comments.²¹

¹⁶ *The Commission Seeks Public Comment in the 2004 Biennial Review of Telecommunications Regulations, Public Notice*, 19 FCC Rcd 9090 (2004).

¹⁷ Federal Communications Commission 2004 Biennial Regulatory Review, WT Docket No 04-180, *Wireless Telecommunications Bureau Staff Report*, 20 FCC Rcd 124, 158 (WTB 2005) (2004 Biennial Review WTB Staff Report). See also Federal Communications Commission 2002 Biennial Regulatory Review, WT Docket No.02-310, GC Docket No. 02-390, *Staff Report of the Wireless Telecommunications Bureau*, 18 FCC Rcd 4243, 4252, 4278 (WTB 2002). In the 2004 Biennial Review WTB Staff Report, the Wireless Telecommunications Bureau staff concluded that the Part 17 rules pertain to air safety navigation issues and, therefore, competitive developments did not affect the need for this rule part. The staff recommended, however, that while the Part 17 rules remain necessary in the public interest, certain modifications may be in the public interest for reasons other than those related to competitive developments. The staff therefore recommended that the Commission initiate a proceeding to examine the Part 17 rules and to modify or eliminate, without compromising public safety goals, any rules which create unnecessary administrative burdens or are apt to confuse owners and licensees who attempt to comply with the Part 17 rules. 2004 Biennial Review WTB Staff Report, 20 FCC Rcd at 137, 160.

¹⁸ Comments of PCIA-the Wireless Infrastructure Association, filed July 12, 2004 (PCIA 2004 Biennial Review Comments); Reply Comments of Cingular Wireless, LLC, filed August 16, 2004 (Cingular 2004 Biennial Review Reply Comments); and Reply Comments of CTIA-the Wireless Association, filed August 12, 2004 (CTIA 2004 Biennial Review Reply Comments).

¹⁹ Petition for Rulemaking, RM-11349, In the Matter of Amendments to Modernize and Clarify Part 17 of the Commission's Rules Concerning Construction, Marking and Lighting of Antenna Structures, filed by PCIA – The Wireless Infrastructure Association on September 12, 2006. PCIA also filed this Petition for Rulemaking within the 2006 Biennial Review proceeding as its comments therein. See Federal Communications Commission 2006 Biennial Regulatory Review, WT Docket No. 06-156, *Staff Report of the Wireless Telecommunications Bureau*, 22 FCC Rcd 3006, 3019, para. 37, 3035-3036 (WTB 2007).

²⁰ Consumer & Governmental Affairs Bureau Reference Information Center Petition for Rulemakings Filed, *Public Notice*, Report No. 2794 (rel. October 30, 2006).

²¹ Letter from Patrick T. Donovan, Counsel, Sprint Nextel, to Marlene H. Dortch, Secretary, Federal Communications Commission (Nov. 29, 2006) (Sprint Nextel Rulemaking Comments); Comments of Cingular Wireless, L.L.C. (Nov. 29, 2006) (Cingular Rulemaking Comments); Comments of Crown Castle USA Inc. (Nov.

(continued....)

III. DISCUSSION

8. This Notice proposes amendments to the Part 17 rules to update and modernize them, including harmonizing them with FAA rules where appropriate. The following discussion will examine the entirety of Part 17, considering: (1) antenna structure registration and marking and lighting specifications; (2) maintenance of marking and lighting; and (3) other matters.

A. Antenna Structure Registration and Marking and Lighting Specifications

1. Provisions Governing Specification of Marking and Lighting

9. The provisions governing specification of marking and lighting for registered antenna structures are set forth in Sections 17.21 through 17.23 of the rules.²² Section 17.21 specifies that painting and lighting of an antenna structure is required if the structure exceeds 200 feet in height or if it requires aeronautical study, unless an applicant can show that absence of (or lesser) marking would not impair air safety.²³ Section 17.22 provides that the Commission will generally assign specifications for painting and lighting in accordance with FAA Circulars referenced in Section 17.23, but also provides that if such painting or lighting is confusing, or endangers rather than assists airmen, the Commission may specify painting or lighting in the individual situation.²⁴ Section 17.23 provides that, unless otherwise specified by the Commission, each new or altered antenna structure to be registered on or after January 1, 1996, must conform to the FAA's painting and lighting recommendations set forth on the structure's FAA determination of "no hazard" as referenced in FAA Advisory Circulars AC 70/7460-1J ("Obstruction Marking and Lighting") and AC 150/5345-43E ("Specification for Obstruction Lighting Equipment"), both of which are incorporated by reference in accordance with 5 U.S.C. § 552(a).²⁵

10. In its 2004 Biennial Review Comments, PCIA states that FAA Advisory Circular AC 70/460-1J referenced in Section 17.23 has been superseded, creating a conflict between the Commission's marking and lighting requirements and the FAA's.²⁶ In the Biennial Review Proceeding, PCIA, CTIA and Cingular propose that Section 17.23 be amended to reference the most recent versions of the FAA Advisory Circulars.²⁷ PCIA seeks this rule change in its Petition for Rulemaking as well.²⁸ In their comments on PCIA's Petition for Rulemaking, Cingular, Crown Castle and NAB agree that the Commission's rules should be consistent with the most recent FAA painting and lighting

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30, 2006) (Crown Castle Rulemaking Comments); and Comments of the National Association of Broadcasters (Nov. 30, 2006) (NAB Rulemaking Comments).

²² 47 C.F.R. §§ 17.21, 17.22, 17.23.

²³ 47 C.F.R. § 17.21.

²⁴ 47 C.F.R. § 17.22.

²⁵ 47 C.F.R. § 17.23. In addition, Section 17.17 provides that the requirements in Section 17.23 do not apply to antenna structures authorized prior to July 1, 1996, and that previously authorized structures may retain their present painting and lighting specifications so long as the overall structure height and site coordinates remain unchanged. 47 C.F.R. § 17.17.

²⁶ PCIA 2004 Biennial Review Comments at 3.

²⁷ PCIA 2004 Biennial Review Comments at 3; CTIA 2004 Biennial Review Reply Comments at 2; Cingular 2004 Biennial Review Reply Comments at 5-6.

²⁸ PCIA Petition for Rulemaking at 15-16.

recommendations.²⁹ In its Petition for Rulemaking, PCIA also seeks to amend Section 17.23 to clarify that the lighting and marking specifications assigned to a structure by the Commission upon registration do not change unless the FAA recommends new specifications for that particular structure.³⁰

11. We propose several revisions to these provisions. First, we agree with commenters that the rules should not reference obsolete editions of the Advisory Circulars. Rather than updating the references in the current rules, however, we propose to delete any reference to Advisory Circulars as unnecessary and potentially confusing. Because each antenna structure owner is clearly notified through the registration process of the specifications that apply to a particular structure, first by the FAA itself in its “no hazard” determination, and then by the Commission in the owner’s antenna structure registration, we believe that specific reference in the rules to particular Advisory Circulars is unnecessary. Such references also may cause confusion if the FAA updates the relevant circulars more frequently than the Commission amends its Part 17 rules.³¹ Also, certain older registrations reference discontinued FCC Form 715/715A rather than the Advisory Circulars. To avoid these results, we propose that the rules require the marking and lighting recommended in the FAA determination and associated study, unless otherwise specified, rather than in any particular circular.³² We seek comment on this proposal, and in particular on whether there are any circumstances in which this approach would not be clear.

12. PCIA proposes that we specify in the rules that lighting and marking requirements do not change unless the FAA recommends new specifications for particular structures. PCIA believes this language is necessary to clarify that a revised FAA Circular does not impose new obligations upon already-approved antenna structures.³³ PCIA also indicates that this proposal seeks rule codification of a statement made on the FCC’s website.³⁴ We seek comment on PCIA’s proposal. We also seek comment on whether, in the event the FAA changes its standards, it may instead be preferable for the Commission to have the flexibility to apply any new standards retroactively. Should we defer in the first instance to the FAA as the expert agency on aircraft navigation safety as to whether revised standards should be applied to existing structures, unless otherwise specified by the FCC?

13. Consistent with this discussion, we propose several specific changes to the rules. Section 17.4 of the rules contains an overview of the antenna structure registration process. We propose adding to Section 17.4 a provision clarifying that the FAA’s recommended specifications are generally mandatory, but that the Commission may specify additional or different requirements. We believe stating this simply up front will provide clarity regarding the central obligation of structure owners.³⁵ We also propose to

²⁹ Cingular Rulemaking Comments at 2-3; Crown Castle Rulemaking Comments at 5; NAB Rulemaking Comments at 3.

³⁰ PCIA Petition for Rulemaking at 16.

³¹ We note that in its rules concerning the marking and lighting specifications for structures, the FAA refers to FAA Advisory Circular AC 70/7460-1, *see* 14 C.F.R. § 77.19, or to the “current” FAA Advisory Circular AC 70/7460-1, *see* 14 C.F.R. § 77.11, but does not refer to a particular version. We also note that the FAA has never incorporated by reference specific versions of its advisory circulars into its Part 77 rules. All of the FAA’s advisory circulars, both current and historical, are available on the FAA website: <http://www.faa.gov/>. All of the relevant versions of the FAA Advisory Circular AC 70/7460-1 are also available on the FCC’s website: http://wireless.fcc.gov/antenna/documentation/index.htm?job=documentation_faa.

³² We note that the antenna structure registration issued by the Commission includes the study number for the FAA’s determination.

³³ PCIA Petition for Rulemaking at 16.

³⁴ *Id.* at note 40, citing <http://wireless.fcc.gov/antenna/documentation/paintingLighting.html>, visited July 28, 2006.

³⁵ We also propose a conforming change to Section 1.61(a)(5), 47 C.F.R. § 1.61(a)(5), to reflect this position.

amend Section 17.4 to indicate that no changes may be made to the lighting or marking specifications on an antenna structure registration without prior FAA and Commission approval. We seek comment on these proposals.

14. With respect to Sections 17.21 through 17.23, we first propose to amend Section 17.21(a), which provides that antenna structures shall be painted and lighted when they exceed 60.96 meters (200 feet) in height above ground level or they require special aeronautical study. We propose to instead reference FAA notification requirements.³⁶ We believe that referencing FAA notification requirements will clarify which antenna structures must comply with Section 17.21. We would retain the provision in Section 17.21(b) that the Commission may modify requirements “for painting and/or lighting of antenna structures when it is shown by the applicant that the absence of such marking would not impair the safety of air navigation, or that a lesser marking requirement would insure the safety thereof.”³⁷ We then propose to delete as unnecessary the first sentence of Section 17.22, which provides: “Whenever painting or lighting is required, the Commission will generally assign specifications in accordance with the FAA Advisory Circulars referenced in Section 17.23.”³⁸ We would redesignate as paragraph 17.21(c) the remainder of current Section 17.22, specifying that “[i]f an antenna installation is of such a nature that its painting and lighting in accordance with these specifications are confusing, or endanger rather than assist airmen, or are otherwise inadequate, the Commission will specify the type of painting and lighting or other marking to be used in the individual situation.”³⁹ Finally, we would amend Section 17.23, as discussed above, to replace the reference to specific Advisory Circulars with a more general reference to the FAA’s determination of no hazard and associated study, and to clarify the structure owner’s obligation to comply with any other specifications prescribed by the Commission.⁴⁰ We seek comment on all these proposals.

15. Finally, we propose deleting Section 17.17(a). Our proposed removal of reference to FAA circulars in Section 17.23 would eliminate the need for the stated exception in Section 17.17(a). Moreover, the language in Section 17.17(a) has resulted in some confusion as to what painting and lighting specifications antenna structures authorized prior to July 1, 1996, must maintain.⁴¹ We do not make a specific proposal to amend Section 17.17(b) in this Notice, but we note that we would need to conform Section 17.17(b) to any decision regarding PCIA’s proposal to specify that lighting and marking requirements do not change unless the FAA recommends new specifications for particular structures.⁴² We seek comment on these proposals.

2. Accuracy of Location and Height Data

16. Section 17.4(a)(1) provides that alteration of an existing antenna structure requires a new registration. However, our rules do not define what constitutes an alteration such that a new registration is required. In the *ASR Streamlining Order*, the Commission determined that any change or correction of

³⁶ See 47 C.F.R. § 17.4(a).

³⁷ 47 C.F.R. § 17.21(b).

³⁸ 47 C.F.R. § 17.22.

³⁹ *Id.*

⁴⁰ We also propose a conforming change to Section 17.1, 47 C.F.R. § 17.1.

⁴¹ See, e.g., In the Matter of Haviland Telephone Co., Inc. Owner of Antenna Structure Registration No. 1033509, Haviland, Kansas, File Number EB-02-KC-331, NAL Acct. No. 200232560009, FRN 0005-0815-67, *Forfeiture Order*, 18 FCC Rcd 1472 (EB 2003).

⁴² See paragraph 12, *supra*. As an organizational matter, consistent with other rule changes proposed in this Notice, we propose to move the text of Section 17.17(b) to a new Section 17.24. See proposed Section 17.24.

antenna structure site data of one second or greater in longitude or latitude, or one foot or greater in height, requires a new aeronautical study and a new determination by the FAA.⁴³ The Commission noted that these criteria are consistent with the FAA's standards for when a new notification is required.⁴⁴ In order to clarify the obligations of antenna structure owners, we propose adding a new subsection to Section 17.4 specifying that any change in height of one foot or greater or any change in coordinates of one second or greater requires prior approval from the FAA and the Commission.⁴⁵ We seek comment on this proposal.

17. Consistent with this standard, we also seek comment on whether to amend our rules to require that the height information provided on FCC Form 854 must be accurate within one foot and the coordinates provided in FCC Form 854 must be accurate within one second of longitude and latitude. We further seek comment on whether to require that antenna structure owners must use the most accurate data available when reporting height information and site coordinates, and on whether we should specify a particular survey method. In the *ASR Streamlining Order*, the Commission stated that antenna structure owners "may use surveying tools of differing accuracy, such as maps, GPS receivers, or GPS receivers with differential corrections to obtain site data."⁴⁶ Moreover, in the *ASR Clarification Order*, the Commission declined to mandate a specific accuracy standard for the submission of antenna structure data in deference to the FAA.⁴⁷ It has been our experience, however, that measurements taken using older survey methods may differ significantly from those performed using current GPS technology. In light of developments in technology and practice, we therefore find it appropriate to revisit whether the Commission should specify accuracy standards or survey methods. We ask commenters to address whether we should continue to defer to the FAA's expertise, and whether our promulgation of rules would risk creating conflicts with the FAA's process. Any comments proposing a specific method should explain that method and the benefits of mandating it for new antenna structure registrants.

3. Structures Requiring FAA Notification

18. Section 17.7 of the Commission's rules sets forth which antenna structures require notification to the FAA.⁴⁸ Section 17.14 of the Commission's rules sets forth certain categories of antenna structures that are exempt from notification to the FAA.⁴⁹ Sections 17.7 and 17.14 are restatements of FAA rules. Specifically, Section 17.7 of the Commission's rules is a restatement of Section 77.13 of the FAA's rules.⁵⁰ Section 17.14 of the Commission's rules is a restatement of Section 77.15 of the FAA's rules.⁵¹ These restatements of FAA rules in Commission rules appear to be

⁴³ *ASR Streamlining Order*, 11 FCC Rcd at 4287, para. 35.

⁴⁴ *Id.* at 4287, para. 35, n. 52, citing *ex parte* filing of the FAA dated July 12, 1995.

⁴⁵ See proposed Section 17.4(d).

⁴⁶ *ASR Streamlining Order*, 11 FCC Rcd at 4286, para. 33.

⁴⁷ *ASR Clarification Order*, 15 FCC Rcd at 8678–8679, para. 5. Specifically, the Commission found that "the requirement that antenna structure owners first obtain an aeronautical study from the FAA insures reliability of the antenna structure site data and promotes air safety. [. . .] Because the FAA in the first instance determines whether an antenna structure poses a hazard to air navigation and recommends appropriate painting and lighting, we conclude that it is appropriate that the FAA – and not the FCC – specify the accuracy of site information that is necessary to make its determination."

⁴⁸ 47 C.F.R. § 17.7.

⁴⁹ 47 C.F.R. § 17.14.

⁵⁰ 14 C.F.R. § 77.13.

⁵¹ 14 C.F.R. § 77.15.

unnecessary and duplicative, and their inclusion risks creating confusion in the event the FAA were to change its criteria. We therefore propose to delete Sections 17.7 and 17.14 of the Commission's rules. In lieu of these full restatements of FAA rules, we propose adding cross-references to relevant FAA rules in Section 17.4 of the Commission's rules, which provides that the owner of any proposed or existing antenna structure that requires notice of proposed construction to the FAA must register the structure with the Commission.⁵² We seek comment on this tentative conclusion, and on whether there is any reason the Commission should retain language in its own rules stating which antenna structures require notification to the FAA.

4. Pending FAA Rulemaking Proceeding

19. The FAA's current Part 77 rules set forth regulations pertaining to the physical attributes of objects (including communications facilities) that may affect navigable airspace.⁵³ Under these rules, parties proposing to construct or modify a structure must file a "Notice of Proposed Construction or Alteration" with the FAA. The FAA then conducts an obstruction evaluation to determine whether the proposed structure will pose a hazard to air navigation. The Commission has, in turn, required any antenna structure for which a Notice of Proposed Construction or Alteration must be filed with the FAA to be registered with the Commission as well. As discussed in more detail above, this registration requirement is the vehicle by which the Commission exercises its authority under the Communications Act to require painting and lighting of towers that may constitute a hazard to air navigation.⁵⁴

20. In a Notice of Proposed Rulemaking released in June, 2006, the FAA has proposed to modify its notification rules. Under the FAA's proposal, among other things, events that give rise to a notification requirement would be expanded to include construction of new facilities that operate on specified frequency bands, changes in authorized frequency, addition of new frequencies, increases in effective radiated power or antenna height above certain thresholds; and changes in antenna configuration for communications facilities that operate in specified radio frequency bands, independent of the physical attributes of such facilities.⁵⁵ We seek comment on how the outcome of the proceeding initiated by the *FAA NPRM* may affect any of the matters being considered in the instant proceeding. In particular, we seek comment on whether, if the FAA were to adopt its proposed rules in whole or in part, the Commission should modify any of its rules or change any proposed approaches to issues addressed in this proceeding. In this regard, one such significant issue is whether we should continue to require all instances of "Notice of Proposed Construction or Alteration" required by the FAA to result in an antenna structure registration or amendment of antenna structure registration with the Commission.⁵⁶

B. Maintenance of Marking and Lighting

21. The Part 17 rules also detail certain requirements that concern the maintenance of the marking and lighting on antenna structures. These requirements include inspection and maintenance of lighting, records of extinguishment or improper functioning of lights, and maintenance of painting. We

⁵² 47 C.F.R. § 17.4.

⁵³ 14 C.F.R. Part 77.

⁵⁴ See para. 2, *supra*.

⁵⁵ *Notice of Proposed Rulemaking*, Docket No. FAA-2006-25002, Notice No. 06-06, Safe, Efficient Use and Preservation of the Navigable Airspace (*FAA NPRM*), released June 13, 2006; 71 Fed.Reg. 34028 (June 13, 2006).

⁵⁶ We recognize that, in response to the record developed in its proceeding, the FAA may ultimately determine that it serves the public interest to adopt rules that differ from, or are less extensive than, those proposed in the *FAA NPRM*.

believe that some of these requirements are unnecessarily burdensome to antenna structure owners and may be less effective at preventing hazards to air navigation than certain alternatives. We also believe that some interpretations of these requirements overly complicate our enforcement efforts in this important public safety area. Therefore, we are proposing several amendments and deletions to streamline and clarify these rules.

1. Inspection and Maintenance of Lighting

22. The basic regime governing inspection and maintenance of required lighting is set forth in Sections 17.47, 17.48, and 17.56(a) of the rules. Section 17.47 of the rules requires antenna structure owners to make an observation of the antenna structure's lights at least once each 24 hours either visually or by observing an automatic properly maintained indicator designed to register any failure of such lights or, alternatively, to provide and properly maintain an automatic alarm system designed to detect any failure of such lights and to provide indication of such failure to the owner.⁵⁷ Section 17.47 also requires antenna structure owners to inspect at intervals not to exceed 3 months all automatic or mechanical control devices, indicators, and alarm systems associated with the antenna structure lighting to insure that such apparatus is functioning properly.⁵⁸ Section 17.48(a) of the Rules requires immediate notification to the nearest Flight Service Station (FSS) or office of the FAA of any observed or otherwise known extinguishment or improper functioning of any top steady burning light or any flashing obstruction light, regardless of its position on the antenna structure, not corrected within 30 minutes.⁵⁹ Upon notification of such an incident, the FAA issues a Notice to Airmen (NOTAM) to alert aircraft of the light outage. Section 17.48(b) of the Rules provides that “[a]n extinguishment or improper functioning of a steady burning side intermediate light or lights, shall be corrected as soon as possible, but notification to the FAA or [sic] such extinguishment or improper functioning is not required.”⁶⁰ Section 17.56(a) of the rules requires antenna structure owners to replace or repair lights, automatic indicators or automatic control or alarm systems as soon as practicable.⁶¹

23. In their comments to the 2004 Biennial Review, PCIA, CTIA and Cingular argue that quarterly physical inspection of antenna structures imposes needless and costly burdens and adds nothing to the reliability of the system.⁶² Also, the Commission, initially, and later the Wireless Telecommunications Bureau on delegated authority, have granted several tower owners waivers of Section 17.47(b) of the Rules to permit annual rather than quarterly inspections for their automatic or mechanical control devices, indicators and alarm systems associated with their antenna structure lighting, on the basis that they use advanced monitoring systems.⁶³ In its Petition for Rulemaking, PCIA,

⁵⁷ 47 C.F.R. § 17.47(a).

⁵⁸ 47 C.F.R. § 17.47(b).

⁵⁹ 47 C.F.R. § 17.48(a).

⁶⁰ 47 C.F.R. § 17.48(b).

⁶¹ 47 C.F.R. § 17.56(a).

⁶² PCIA 2004 Biennial Review Comments at 3-4; CTIA 2004 Biennial Review Reply Comments at 2; Cingular 2004 Biennial Review Reply Comments at 6-7.

⁶³ See In the Matter of Requests of American Tower Corporation and Global Signal, Inc. to Waive Section 17.47(b) of the Commission's Rules, WT Docket No. 05-326, *Memorandum Opinion and Order*, 22 FCC Rcd 9743 (2007) (*ATC/GSI Waiver Order*); In the Matter of Petition of Optasite Towers L.L.C. for Waiver of Section 17.47(b) of the Commission's Rules, *Memorandum Opinion and Order*, 22 FCC Rcd 18456 (WTB 2007); In the Matter of Crown Castle USA Inc. Request for Waiver of 47 C.F.R. § 17.47(b), *Memorandum Opinion and Order*, 22 FCC Rcd 21881 (WTB 2007); In the Matter of Request of Global Tower LLC for Waiver of 47 C.F.R. § 17.47(b), *Memorandum Opinion and Order*, 23 FCC Rcd 16531 (WTB 2008); In the Matter of TowerSentry LLC Request for Waiver of 47

(continued....)

consistent with these waiver requests, recommends amendment of Section 17.47(b) of the rules to exempt systems using network operations control (NOC) center-based monitoring technologies from any requirement to regularly inspect all automatic or mechanical systems associated with antenna structure lighting.⁶⁴ Sprint Nextel, Cingular, Crown Castle and NAB all support such a rule amendment.⁶⁵ In its comments on the ATC waiver request, Hark Tower Systems, Inc., also supported this approach.⁶⁶

24. We seek comment on two possible alternative changes to Section 17.47. First, we seek comment on whether to delete Section 17.47 of the rules in its entirety. We are concerned that the current regime, which includes separate requirements for inspecting lighting systems, providing notice of extinguished lights, and replacing malfunctioning lights and monitoring systems, may create ambiguity for antenna structure owners regarding their regulatory obligations. In particular, an antenna structure owner may incorrectly conclude that so long as it performs the inspections required under Section 17.47, it will not be subject to enforcement action if its lights fail to function. Eliminating the inspection requirements under Section 17.47 would make clear that what matters is that the lighting required under the antenna structure registration remains on, or, if required lights become extinguished, that the structure owner promptly request a NOTAM. If these requirements are not met, we may subject the structure owner to enforcement action regardless of the measures it followed to inspect its lighting and monitoring systems; and if these requirements are met, it would be immaterial to us how the structure owner ensured that its lights would remain functioning or NOTAMs would be requested. We seek comment on this possible approach, including on whether inspection requirements are necessary to ensure responsible monitoring of lighting systems.

25. Second, if we determine not to eliminate all inspection requirements, we seek comment on whether to amend Section 17.47(b) to exempt certain systems using NOC center-based monitoring technologies from the requirement to quarterly inspect all automatic or mechanical systems associated with antenna structure lighting. As explained in the *ATC/GSI Waiver Order*, the types of systems used by ATC, GSI, and others reliably diagnose problems, including any failures of control devices, indicators and alarm systems, within real time. Thus, quarterly inspections of such systems may unnecessarily burden antenna structure owners without promoting aircraft navigation safety, and relieving inspection requirements for such towers may encourage tower owners to adopt state-of-the-art systems.⁶⁷ In granting the ATC and GSI waiver requests, the Commission found that the use of advanced technology in those instances provided the benefits of more rapid response for lighting failures, with attendant aircraft safety benefits.⁶⁸ We seek comment on the benefits and drawbacks of eliminating quarterly inspection requirements for systems utilizing advanced self-monitoring technology, and on whether required regular inspections that are less frequent, such as annually, should be retained. We also seek comment as to how the systems to be exempted from the quarterly inspection requirement should be defined.

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C.F.R. § 17.47(b) and Joint Petition of Diamond Communications LLC and Diamond Towers LLC for Waiver of 47 C.F.R. § 17.47(b), *Memorandum Opinion and Order*, 24 FCC Rcd 10274 (WTB 2009); In the Matter of Request of Mobilite, LLC for Waiver of 47 C.F.R. § 17.47(b) and Flash Technology Request for Waiver of 47 C.F.R. § 17.47, *Memorandum Opinion and Order*, 24 FCC Rcd 11949 (WTB 2009).

⁶⁴ PCIA Petition for Rulemaking at 5-11.

⁶⁵ Sprint Nextel Rulemaking Comments at 1; Cingular Rulemaking Comments at 2; Crown Castle Rulemaking Comments at 2-4; NAB Rulemaking Comments at 2.

⁶⁶ Comments of Hark Tower Systems, Inc., on Request of American Tower Corp. for Waiver of Quarterly Inspections Required by Part 17, WT Docket No. 05-326, filed February 23, 2006, at 4.

⁶⁷ *ATC/GSI Waiver Order*, 22 FCC Rcd at 9748-9749, para. 18.

⁶⁸ *Id.* at 9747, para. 11, 9748, para. 17.

26. We propose to retain the requirement in Section 17.48(a) that antenna structure owners promptly report outages of top steady burning lights or flashing antenna structure lights to the FAA. However, we believe amendment of this provision is necessary to ensure that a NOTAM is maintained so long as any outage continues. The FAA cancels all such notices within 15 days.⁶⁹ However, our rules do not currently require antenna structure owners to notify the FAA if repairs to an antenna structure's lights require more than 15 days. Therefore, we propose to require antenna structure owners to provide continuously active NOTAM notice to the FAA of these lighting outages in accordance with current FAA requirements. Accordingly, antenna structure owners would be required to contact the FAA to extend the lighting outage date after 15 days and provide a return to service date. We seek comment on this proposal. We specifically ask commenters to discuss how we should balance the public interest benefit of having antenna structure owners contact the FAA every 15 days during a light outage against the burden on antenna structure owners of continual notification requirements. We also note that the reporting requirement of Section 17.48(a) requires that the FAA be notified "by telephone or telegraph."⁷⁰ We tentatively conclude that this rule should be updated to require notification by means acceptable to the FAA, which currently is by a nationwide toll-free telephone number for reporting lighting outages,⁷¹ and we seek comment on this proposal.

27. Finally, we request comment on whether our rules should include time frames for replacing or repairing extinguished lights notwithstanding the issuance of a NOTAM, and if so, what those time frames should be. We believe that the current requirements to replace or repair lights "as soon as practicable" (in Section 17.56(a)) or "as soon as possible" (in Section 17.48(b)) may be overly vague, and may engender confusion as to whether diligent efforts to correct lighting malfunctions obviate the need for a NOTAM. Accordingly, we tentatively conclude that these provisions should be deleted. By proposing to delete these rule sections, however, we do not intend to provide antenna structure owners with an unlimited amount of time to repair the lighting systems on their antenna structures, nor do we suggest that antenna structure owners may avoid repairing the lighting systems on their antenna structures indefinitely by continually filing for NOTAMs. Moreover, because the FAA does not accept notifications or issue NOTAMs for extinguished steady burning side intermediate lights, in the absence of Section 17.48(b) our rules would contain no requirements relating to maintenance of these lights. We therefore seek comment on whether we should implement a time limitation for lighting system repairs. If such a requirement is implemented, should it be based on the geographic location of the antenna structure? Should weather conditions be considered when determining the reasonableness of a time period requirement? We seek comment on these proposals.

2. Elimination of Unnecessary Provisions

28. Sections 17.45, 17.51, and 17.56(b) each set forth specific requirements for antenna structure owners to follow in exhibiting or maintaining lights. Section 17.45 of the rules specifies the type of temporary warning lights to be used during construction of antenna structures for which red obstruction lighting is required.⁷² Section 17.51 of the rules requires red obstruction lighting to be on

⁶⁹ "After 15 days, the NOTAM is automatically deleted from the system." See FAA Circular AC-70/7460-1K, Chapter 2 (Light Failure Notification). See also <http://www.faa.gov/atpubs/NTM/NTM.pdf>.

⁷⁰ 47 C.F.R. § 17.48(a).

⁷¹ See <https://oeaaa.faa.gov/oeaaa/external/content/lightOutageReporting.jsp>. The telephone number is 877-487-6867.

⁷² 47 C.F.R. § 17.45.

from sunset to sunrise and high intensity and medium intensity lighting to burn continuously.⁷³ Section 17.56(b) requires that the flash tubes in a high intensity obstruction lighting system shall be replaced whenever the peak effective daytime intensity falls below 200,000 candelas.⁷⁴

29. We note that in their 2004 Biennial Review comments, PCIA, CTIA and Cingular ask that Section 17.51 be amended to harmonize it with Section 17.48 (Notification of Extinguishment or Improper Functioning Lights).⁷⁵ Specifically, PCIA states that Section 17.51 should be revised to provide that a malfunctioning flashing light does not violate Section 17.51, so long as a NOTAM has been sought by the tower owner or operator and issued by the FAA.⁷⁶ PCIA also suggests that Section 17.51 should provide that it is not violated when a malfunction is beyond the control of the tower owner/operator (such as in a power failure).⁷⁷

30. We tentatively conclude that each of these provisions should be deleted because the relevant requirements are specified in the FAA determination of no hazard and associated study for each tower, and the separate identification of specific requirements in our rules is therefore unnecessary and may create ambiguity in cases of conflict. Any antenna structure which is assigned specifications by the FAA for lighting is also assigned Chapter 4 (Lighting Guideline) of FAA Advisory Circular AC 70/7460-1.⁷⁸ This chapter details the type of construction lights, both red and white, that should be used during construction. Chapter 4 also details requirements for the inspection, repair and maintenance of lights. Any antenna structure which is assigned red obstruction, high intensity or medium intensity lighting by the FAA is also assigned the applicable chapter (Chapter 5, 6 or 7) of the same FAA Advisory Circular (AC 70/7460-1) on its antenna structure registration.⁷⁹ We therefore propose to delete each of these rule provisions in order to promote clarity and avoid potential conflicts. We seek comment on this tentative conclusion, and in particular on whether there are any instances in which the FAA would not assign the relevant specifications in its Advisory Circular.

31. We do not agree with the commenters' position that our lighting requirements should include an exception where lights are extinguished due to loss of power beyond the structure owner's control. As discussed above, we are proposing amending Section 17.48 to clearly state the basic requirement to maintain the required lighting or, if lights become extinguished, obtain and maintain a NOTAM. Thus, if lights become extinguished due to loss of power, the structure owner will remain in

⁷³ 47 C.F.R. § 17.51.

⁷⁴ 47 C.F.R. § 17.56(b).

⁷⁵ PCIA 2004 Biennial Review Comments at 4-5; CTIA 2004 Biennial Review Reply Comments at 2; Cingular 2004 Biennial Review Reply Comments at 7-8.

⁷⁶ PCIA 2004 Biennial Review Comments at 4-5.

⁷⁷ *Id.* at 5.

⁷⁸ *See also*, former FCC Form 715/715A, Paragraph 22.

⁷⁹ *See, e.g.*, FAA Circular AC-70/7460-1K, Chapter 5 (Red Obstruction Light System), Chapter 6 (Medium Intensity Flashing White Obstruction Light Systems) and Chapter 7 (High Intensity Flashing White Obstruction Light Systems). These chapters indicate the time of day each of these lighting systems should be used. For examples of FCC Paragraphs concerning these types of lighting systems, *see* former FCC Form 715/715A, Paragraphs 2, 11-20. Where necessary, the Wireless Telecommunications Bureau will specify one or more paragraphs from former FCC Form 715/715A as part of an antenna structure registration. Use of this language is an example of exercise, by delegated authority, of the Commission's authority to modify painting or lighting specifications provided by the FAA, articulated in current Sections 17.21(a), 17.22 and 17.23 of the Commission's rules, 47 C.F.R. §§ 17.21(a), 17.22, 17.23. The proposed rules are not intended to affect this practice, and would permit continued exercise of the Commission's authority in this manner.

compliance with the rules if it immediately notifies the FAA and renews the notification every 15 days. We do not believe it is either necessary or consistent with aircraft navigation safety to exempt outages due to loss of power from this process. Moreover, we are not persuaded that the effects of power outages are beyond the control of antenna structure owners, or beyond their ability to remedy. In paragraph 27, above, we seek comment on whether we should establish time limits for repair or replacement of extinguished lights. Any rules that we might adopt setting such time limits would apply to lights that are off due to a power outage. We seek comment on this analysis.

3. Records of Extinguishment or Improper Functioning of Lights

32. Section 17.49 requires antenna structure owners to maintain a record of observed or otherwise known extinguishments or improper functioning of structure lights.⁸⁰ We propose to amend this provision by adding a requirement to maintain such records for two years and provide the records to the Commission upon request. We tentatively conclude that this retention period best balances the Commission's need to determine the compliance record against the burden of record retention on antenna structure owners. We seek comment on this tentative conclusion, and in particular on whether two years is the appropriate retention period. We encourage commenters to provide data regarding the burden this record retention would impose on antenna structure owners, and we invite comment on whether we should eliminate the recordkeeping requirement entirely.

4. Maintenance of Painting

33. Section 17.50 of the rules specifies that antenna structures requiring painting under Part 17 shall be cleaned or repainted as often as necessary to maintain good visibility.⁸¹ In their 2004 Biennial Review Comments, PCIA, CTIA and Cingular argue that the Commission needs an unambiguous standard for measuring good visibility, and suggest that the rule be amended to reflect the standard used by the FAA.⁸² In particular, PCIA proposes that we amend Section 17.50 to require that the "paint on the structure must be within the color tolerance depicted on the FAA's 'In Service Aviation Orange Tolerance Chart' as measured against the base of the tower from a distance of one-quarter mile."⁸³ Cingular states that the current lack of a standard for "good visibility" "leads to the potential for inconsistent enforcement."⁸⁴

34. We request comment on whether to amend Section 17.50 to specifically provide for use of the FAA's 'In Service Aviation Orange Tolerance Chart' to determine whether a structure needs to be cleaned or repainted.⁸⁵ In the field, our Enforcement Bureau currently determines whether a structure needs to be cleaned or repainted by comparing it to the FAA's In Service Aviation Orange Tolerance Chart at the base of the structure and/or by observing the structure at one-quarter mile distance from the structure. We believe that each of these approaches has certain benefits. On one hand, a close inspection of the tower may provide more information about the condition of the paint (*e.g.*, whether it is flaking) and about the actual color and how closely it matches the required parameters. On the other hand, a view from one-quarter mile distance, although subjective, may closely approximate tower visibility and

⁸⁰ 47 C.F.R. § 17.49.

⁸¹ 47 C.F.R. § 17.50.

⁸² PCIA 2004 Biennial Review Comments at 4; CTIA 2004 Biennial Review Reply Comments at 2; Cingular 2004 Biennial Review Reply Comments at 7.

⁸³ See PCIA 2004 Biennial Review Comments at 4.

⁸⁴ Cingular 2004 Biennial Review Reply Comments at 7.

⁸⁵ We note that Section 17.53 of the rules details further the type of paint to be used. 47 C.F.R. § 17.53.

conspicuity that pilots would encounter and therefore may better ensure that towers are visible. However, a view from a distance may be subject to inconsistencies depending upon such factors as direction, time of day, weather conditions, and silhouetting. Adding a specific reference to the color chart in Section 17.50 could provide a more objective standard for gauging the condition of required painting and may provide better guidance for antenna structure owners and promote consistent enforcement. We therefore seek comment on whether to incorporate such a reference.

35. If we do amend the rules to defer to the In Service Aviation Orange Tolerance Chart, we further seek comment on whether to compare the FAA's In Service Aviation Orange Tolerance Chart to the tower at a distance of one quarter mile, as PCIA proposes, or at the base of the tower, as is the Enforcement Bureau's practice. The instructions on the FAA chart direct that "to use the charts place each directly over the surface to be examined."⁸⁶ However, a more distant view may be most consistent with the FAA's Advisory Circular on Obstruction Marking and Lighting, which indicates that "the color should be sampled on the upper half of the structure, since weathering is greater there."⁸⁷ We seek comment on which of these methods of using the chart, or both or neither, should be referenced in the rule. We also seek comment on whether, and if so how, the rule should combine use of the chart with other methods of gauging visibility, as well as any other suggestions on how the rule should be drafted.

C. Other Matters

1. Definitions

36. Section 17.2(a) of the rules defines an "antenna structure" as including "the radiating and/or receive system, its supporting structures and any appurtenances mounted thereon."⁸⁸ Section 17.2(c) defines an "antenna structure owner" as the individual or entity vested with ownership, equitable ownership, dominion, or title to the antenna structure.⁸⁹ Commenters argue that because the definition of "antenna structure" includes antennas and other appurtenances, the definition of "antenna structure owner" could be read to include the service providers who own these antennas.⁹⁰ Commenters therefore urge us to amend our rules to clarify that the obligations of antenna structure owners fall only on the owner of the underlying structure. Specifically, in their comments to the 2004 Biennial Review, PCIA, CTIA and Cingular urge us to revise the definition of antenna structure so that compliance obligations of infrastructure providers and licensed carriers are not ambiguous.⁹¹ PCIA and Cingular both argue that the definition needs to be revised to reinforce Commission decisions that the antenna structure owner is responsible for marking, lighting and notification responsibilities relating to the structure.⁹²

37. The Commission has previously made clear that registration responsibilities fall squarely on the antenna structure owners, and not on the licensees or permittees that are merely tenants of the

⁸⁶ In Service Aviation Orange Tolerance Chart.

⁸⁷ FAA Circular AC-70/7460-1K, Chapter 3 (Marking Guidelines), para. 32(a) [Note].

⁸⁸ 47 C.F.R. § 17.2(a).

⁸⁹ 47 C.F.R. § 17.2(c).

⁹⁰ Appurtenances are included in the definition of "antenna structure" because they need to be accounted for in determining height. *See* 14 C.F.R. § 77.5(b).

⁹¹ PCIA 2004 Biennial Review Comments at 2; CTIA 2004 Biennial Review Reply Comments at 2; Cingular 2004 Biennial Review Reply Comments at 4-5.

⁹² PCIA 2004 Biennial Review Comments at 2; Cingular 2004 Biennial Review Reply Comments at 4-5.

structures.⁹³ Nonetheless, we agree that incorporating a more precise definition into our rules would promote clarity for all parties. We therefore propose amending Section 17.2(c) to provide that the antenna structure owner is the owner of “the underlying structure that supports or is intended to support antennas and other appurtenances.” We seek comment on this proposal, including any unintended consequences that may result from this change.

38. We also tentatively conclude that Section 17.2(a) should be amended to clarify both when a structure becomes, and when a structure ceases to be, an “antenna structure” under our rules. Section 303(q) of the Act provides that “[i]n the event that the tower ceases to be licensed by the Commission for the transmission of radio energy, the owner of the tower shall maintain the prescribed painting and/or illumination of such tower until it is dismantled”⁹⁴ Consistent with this provision, we propose amending Section 17.2(a) to provide that a structure will continue to be considered an antenna structure and subject to our Part 17 requirements until such time as that structure is dismantled, regardless of whether the structure continues to be used for the transmission and/or receipt of radio energy. Similarly, we believe it is consistent with the intent of Section 303(q) that a structure constructed for the primary purpose of transmitting or receiving radio energy be treated as an antenna structure subject to our rules from the time construction begins, regardless of whether the structure immediately is being used for its intended purpose. We therefore propose amending Section 17.2(a) to reflect this tentative conclusion as well. We seek comment on these proposals. Finally, we note that the term “antenna structure” is defined in both Sections 1.907 and 17.2(a) of the Commission’s rules.⁹⁵ We seek comment on whether these two definitions should be harmonized.

2. Structures Not Requiring Registration

39. Under the Commission’s rules, not all antenna structures must be registered with the Commission, only those of certain heights, depending on their location. Despite this limitation, some antenna structure owners have voluntarily registered their structures with the Commission, even though such registration is not required. We seek comment on whether the rules concerning antenna structures should be enforced against such voluntarily registered structures. In addition, we seek comment on whether owners of antenna structures that do not require registration should be prohibited from registering their towers, and whether antenna structure owners who have voluntarily registered structures should be required to withdraw their registrations from the Commission’s antenna structure database. Such an action could reduce confusion concerning the regulatory status of these structures. We seek comment on both the benefits and drawbacks to the Commission and the public of keeping voluntarily registered structures in the database, as well as of permitting additional structures to be voluntarily registered. In this regard, we note that antenna structure owners often register structures that fall below the Commission’s height thresholds in order to file an Environmental Assessment and obtain a Finding Of No Significant Impact under the Commission’s environmental rules.⁹⁶ We invite comment regarding what changes to our environmental processing may be necessary if antenna structure registration under these circumstances were to be limited.

3. Posting of Antenna Structure Registration Number

⁹³ *ASR Streamlining Order*, 11 FCC Rcd at 4278-4279, para. 12. See also 47 C.F.R. § 17.2(c). We note, however, that “[i]n the event of non-compliance by the antenna structure owner, the Commission may require each licensee and permittee authorized on an antenna structure to maintain the structure, for an indefinite period, in accordance with the Antenna Structure Registration (FCC Form 854R) and the requirements of this part.” 47 C.F.R. § 17.6(b).

⁹⁴ 47 U.S.C. § 303(q).

⁹⁵ 47 C.F.R. §§ 1.907, 17.2(a).

⁹⁶ See 47 C.F.R. §§ 1.1307, 1.1308.

40. Section 17.4(g) provides: “Except as provided in paragraph (h) of this section, the Antenna Structure Registration number must be displayed in a conspicuous place so that it is readily visible near the base of the antenna structure.”⁹⁷ In its Petition for Rulemaking, PCIA contends that it is not always possible to post the ASR number so that it is both “readily visible” and “near the base” of the tower.⁹⁸ PCIA and Cingular both comment that the Commission’s “Posting Guidelines” indicate that in such instances an appropriate place to post the ASR number is “along a perimeter fence” or “at the point of entry of the gate.”⁹⁹ PCIA recommends amendment of the rule to expressly permit posting of the ASR number at a compound fence or gate.¹⁰⁰ Sprint Nextel, Crown Castle, NAB and Cingular concur.¹⁰¹

41. The purpose of Section 17.4(g) is to ensure that a member of the general public can identify the structure in the event of a light outage or other air safety hazard and report the problem to the Commission and/or the FAA, as well as to ensure that FCC and FAA personnel can readily identify the structure. As currently written, however, the rule does not require that the ASR number be posted in a place that would be visible to the general public. We therefore propose to modify Section 17.4 to require that antenna structure owners display the ASR number so that it would be visible to a member of the general public who reaches the closest publicly accessible location near the base of the antenna structure.¹⁰² Where two or more separate locations of this nature exist for a single antenna structure, such as two roads from different directions to a mountaintop site, we would require posting the Antenna Structure Registration number at each such location. We tentatively conclude that amending the rule in this manner would both clarify the obligations of antenna structure owners and promote timely remediation when lighting is observed to be malfunctioning or extinguished. We further tentatively conclude that it is unnecessary for the ASR number to be posted both at the base of the tower and at a point that is visible to the general public. We seek comment on these tentative conclusions, including whether there would be benefits to requiring an additional posting of the ASR number near the base of the tower where that location is not readily visible to the public. We also seek comment on how the rule should address those situations where two towers having separate ASR numbers may be located within a single fenced area, as well as situations in which an antenna structure is located on a building.

4. Provision of Antenna Structure Registration To Tenants

42. Section 17.4(f) requires that antenna structure owners immediately provide copies of FCC Form 854R (antenna structure registration) to each tenant licensee and permittee.¹⁰³ In their Biennial Review comments, PCIA, CTIA and Cingular propose that we eliminate this requirement altogether, and shift the burden to the Commission’s licensees and permittees to obtain a copy of the

⁹⁷ 47 C.F.R. § 17.4(g).

⁹⁸ PCIA Petition for Rulemaking at 14.

⁹⁹ PCIA Petition for Rulemaking at 4, *citing* <<http://wireless.fcc.gov/antenna/about/postingguidelines.html>>; Cingular Rulemaking Comments at 3.

¹⁰⁰ PCIA Petition for Rulemaking at 15.

¹⁰¹ Sprint Nextel Rulemaking Comments at 1-2; Crown Castle Rulemaking Comments at 5; NAB Rulemaking Comments at 3; Cingular Rulemaking Comments at 3.

¹⁰² For example, if a member of the general public enters the premises by a path and is stopped by a locked gate or fence, then the ASR Number should be displayed on or near the gate or the fence.

¹⁰³ 47 C.F.R. § 17.4(f). Sections 17.4(e) and 17.6(c) impose a similar requirement on the first licensee where the antenna structure owner is unable to file Form 854 because it is subject to a denial of Federal benefits under the Anti-Drug Abuse Act of 1988. 47 C.F.R. §§ 17.4(e), 17.6(c); *see* 21 U.S.C. § 862.

Form 854R from the Commission's website.¹⁰⁴ In its Petition for Rulemaking, PCIA specifically recommends that the rule should instead require antenna structure owners to provide tenants with the ASR number or some indication that the ASR has been changed or updated, so that licensees and permittees may obtain relevant Form 854R (antenna structure registration) information from the FCC's ASR Online System.¹⁰⁵ Sprint Nextel, Cingular, Crown Castle and NAB agree, arguing that the requirement to provide paper copies no longer serves any practical purpose and imposes unnecessary costs.¹⁰⁶

43. We agree that antenna structure owners should no longer be required to provide paper copies of the Form 854R to their tenants, as the relevant information and access to the form can ordinarily be provided at least as effectively, and more economically, by electronic means. However, we believe it is essential that the tenant licensees and permittees know when the antenna structure has been registered, and how to access the registration form. We therefore propose to amend the relevant rules to allow antenna structure owners, as an alternative to providing a copy of Form 854R, to notify tenant licensees and permittees that the structure has been registered, and give the tenant licensees and permittees the antenna structure's registration number along with the link for the Commission's antenna structure registration website. This notification may be done using paper mail or electronic mail. We seek comment on this proposal.

5. Notification of Construction or Dismantlement

44. Section 17.57 requires that antenna structure owners notify the Commission within 24 hours of construction or dismantlement of an antenna structure, and immediately for changes in height or ownership.¹⁰⁷ In its Biennial Review comments, PCIA recommends changing Section 17.57 to harmonize the timing for these requirements with FAA rules.¹⁰⁸ In its Petition for Rulemaking, PCIA indicates specifically that its proposal in this regard would be to change from 24 hours to five days the time for notification of construction or dismantlement, and to change from "immediately" to five days the time for notification of changes in height or ownership.¹⁰⁹ Cingular and NAB support the concept of harmonization of the Commission's rules with FAA rules regarding notification of construction and/or dismantlement.¹¹⁰

45. We tentatively conclude that we should not adopt these proposed changes. Initially, we note that neither PCIA nor Cingular cites the relevant FAA requirements or explains why they are appropriate for the Commission's purposes. In any event, these FCC notification requirements promote accuracy of the Commission's information, and it would not appear to create any conflict for them to be stricter than the FAA's. Given the simple nature of notification filings, commenters have not shown that the time frames are unreasonably burdensome. We seek comment on this issue, including discussion of any burdens that the existing rule may impose.

¹⁰⁴ PCIA 2004 Biennial Review Comments at 2-3; CTIA 2004 Biennial Review Reply Comments at 2; Cingular 2004 Biennial Review Reply Comments at 5.

¹⁰⁵ PCIA Petition for Rulemaking at 11-13.

¹⁰⁶ Sprint Nextel Rulemaking Comments at 1; Cingular Rulemaking Comments at 2; Crown Castle Rulemaking Comments at 4-5; NAB Rulemaking Comments at 2-3.

¹⁰⁷ 47 C.F.R. § 17.57.

¹⁰⁸ PCIA 2004 Biennial Review Comments at 5-6.

¹⁰⁹ PCIA Petition for Rulemaking at 17.

¹¹⁰ Cingular Rulemaking Comments at 3; NAB Rulemaking Comments at 3.

6. Facilities on Federal Land

46. Section 17.58 of our rules provides that any application proposing new or modified transmitting facilities to be located on land under the jurisdiction of the U.S. Forest Service or the Bureau of Land Management shall include a statement that the facilities will be so located, and that the applicant shall comply with the requirements of Section 1.70 of the rules. This rule was adopted in 1967, along with former Section 1.70, which prescribed procedures for handling applications involving the use of certain lands and reservations under the jurisdiction of the U.S. Government.¹¹¹ Those procedures were abolished in 1977 at the request of the Department of Agriculture and the Department of the Interior, at which point that iteration of Section 1.70 was deleted.¹¹² As Section 17.58 was intended to promote compliance with procedures that no longer exist, we now propose to delete Section 17.58. We seek comment on this proposal, including whether there is any reason to retain a requirement that the Commission be notified of facilities on Forest Service or Bureau of Land Management lands.

IV. CONCLUSION

47. By this Notice, we propose various clarifications and amendments to the Part 17 rules, in order to allow antenna structure owners to more efficiently and cost effectively ensure their compliance with those rules. We seek comment on these proposals.

V. PROCEDURAL MATTERS

A. Regulatory Flexibility Act

48. As required by the Regulatory Flexibility Act, 5 U.S.C. § 603, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules addressed in this Notice. The IRFA is set forth in Appendix B. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments filed in response to this Notice and must have a separate and distinct heading designating them as responses to the IRFA.

B. Paperwork Reduction Act

49. This document contains proposed new information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

¹¹¹ 32 Fed.Reg. 2890 (Feb. 15, 1967).

¹¹² In the Matter of Amendment of Parts 1, 21, 23, 73, 74, 81, 87, 89, 91, 93, 94, 95, 97 and 99 of the Commission's Rules and Regulations to eliminate the coordination procedures with the U.S. Department of Agriculture and the U.S. Department of Interior when proposing to install or modify transmitting facilities on certain lands under the jurisdiction of these Departments, *Order*, 64 FCC2d 940 (1977).

C. Other Procedural Matters

1. Ex Parte Presentations

50. The rulemaking this Notice initiates shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s ex parte rules.¹¹³ Persons making oral ex parte presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented generally is required.¹¹⁴ Other requirements pertaining to oral and written presentations are set forth in section 1.1206(b) of the Commission’s rules.¹¹⁵

2. Comment Filing Procedures

51. Pursuant to sections 1.415 and 1.419 of the Commission’s rules,¹¹⁶ interested parties may file comments and reply comments regarding the Notice on or before the dates indicated on the first page of this document. All filings related to this Notice of Proposed Rulemaking should refer to WT Docket No. 10-88. Comments may be filed using: (1) the Commission’s Electronic Comment Filing System (ECFS), (2) the Federal Government’s eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the website for submitting comments.
- **ECFS filers** must transmit one electronic copy of the comments for WT Docket No. 10-88. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message, “get form.” A sample form and directions will be sent in response.
- **Paper Filers:** Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission’s Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554.
- All hand-delivered or messenger-delivered paper filings for the Commission’s Secretary must be delivered to FCC Headquarters at 445 12th Street, S.W., Room TW-A325, Washington, DC 20554. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

¹¹³ 47 C.F.R. §§ 1.200 *et seq.*

¹¹⁴ *See* 47 C.F.R. § 1.1206(b)(2).

¹¹⁵ 47 C.F.R. § 1.1206(b).

¹¹⁶ 47 C.F.R. §§ 1.415, 1.419.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, S.W., Washington D.C. 20554.

52. Parties should send a copy of their filings to **John Borkowski**, Federal Communications Commission, Room 6404, 445 12th Street, S.W., Washington, D.C. 20554, or by e-mail to **John.Borkowski@fcc.gov**. Parties shall also serve one copy with the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, (202) 488-5300, or via e-mail to fcc@bcpiweb.com.

53. Documents in WT Docket No. 10-88 will be available for public inspection and copying during business hours at the FCC Reference Information Center, Portals II, 445 12th Street S.W., Room CY-A257, Washington, D.C. 20554. The documents may also be purchased from BCPI, telephone (202) 488-5300, facsimile (202) 488-5563, TTY (202) 488-5562, e-mail fcc@bcpiweb.com.

3. Accessible Formats

54. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice) or 202-418-0432 (TTY). Contact the FCC to request reasonable accommodations for filing comments (accessible format documents, sign language interpreters, CART, etc.) by e-mail: FCC504@fcc.gov; phone: 202-418-0530 or TTY: 202-418-0432.

VI. ORDERING CLAUSES

55. Accordingly, IT IS ORDERED, pursuant to sections 4(i), 4(j), 11 and 303(q) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i)-(j), 161, 303(q), that this Notice in WT Docket No. 10-88 IS ADOPTED.

56. IT IS FURTHER ORDERED that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Notice, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A**Proposed Rule Changes**

The Federal Communications Commission proposes to amend 47 C.F.R. Parts 1 and 17 as set forth below:

PART 1 – PRACTICE AND PROCEDURE

1. The authority citation for Part 1 would continue to read as follows:

Authority: 15 U.S.C. 79 *et. seq.*; 47 U.S.C. 151, 154(j), 155, 157, 225, and 303(r).

2. Section 1.61 would be amended by revising subparagraph (5) of paragraph (a) to read as follows:

§ 1.61 Procedures for handling applications requiring special aeronautical study.

* * * * *

(5) Upon receipt of FCC Form 854, and attached FAA final determination of “no hazard,” the Bureau may prescribe antenna structure painting and/or lighting specifications or other conditions in accordance with the FAA airspace recommendation. Unless otherwise specified by the Bureau, the antenna structure must conform to the FAA’s painting and lighting recommendations set forth in the FAA’s determination of “no hazard” and the associated FAA study number. The Bureau returns a completed Antenna Structure Registration (FCC Form 854R) to the registrant. If the proposed structure is disapproved the registrant is so advised.

* * * * *

PART 17 – CONSTRUCTION, MARKING, AND LIGHTING OF ANTENNA STRUCTURES

1. The authority citation for Part 17 would continue to read as follows:

Authority: 47 U.S.C. §§ 154, 303.

2. Section 17.1 would be amended by revising paragraph (b) to read as follows:

§ 17.1 Basis and purpose.

* * * * *

(b) The purpose of this part is to prescribe certain procedures for antenna structure registration and standards with respect to the Commission's consideration of proposed antenna structures which will serve

as a guide to antenna structure owners.

3. Section 17.2 would be amended by revising paragraphs (a), (b) and (c) to read as follows:

§ 17.2 Definitions.

(a) *Antenna structure.* The term antenna structure means a structure that is constructed or used for the primary purpose of supporting antennas to transmit and/or receive radio energy, and any antennas and other appurtenances mounted thereon, from the time construction of the supporting structure begins until such time as the supporting structure is dismantled.

(b) *Antenna farm area.* A geographical location, with established boundaries, designated by the Federal Communications Commission, in which antenna towers with a common impact on aviation may be grouped.

(c) *Antenna structure owner.* For the purposes of this part, an antenna structure owner is the individual or entity vested with ownership, equitable ownership, dominion, or title to the underlying structure that supports or is intended to support antennas and other appurtenances. Notwithstanding any agreements made between the owner and any entity designated by the owner to maintain the antenna structure, the owner is ultimately responsible for compliance with the requirements of this part.

(d) * * *

4. Section 17.4 would be amended by revising it in its entirety to read as follows:

§ 17.4 Antenna structure registration.

(a) The owner of any proposed or existing antenna structure that requires notice of proposed construction to the Federal Aviation Administration (FAA) must register the structure with the Commission. (See 14 C.F.R. § 77.13 for FAA notification requirements.) This includes those structures used as part of stations licensed by the Commission for the transmission of radio energy, or to be used as part of a cable television head end system. If a Federal Government antenna structure is to be used by a Commission licensee, the structure must be registered with the Commission. If the FAA exempts an antenna structure from notification, it is exempt from registration with the Commission. (See 14 C.F.R. § 77.15 for FAA exemptions to its notification requirements.)

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- (1) For a proposed antenna structure or alteration of an existing antenna structure, the owner must register the structure prior to construction or alteration.
- (2) For a structure that did not originally fall under the definition of "antenna structure," the owner must register the structure prior to hosting a Commission licensee.
- (b) Except as provided in paragraph (i) of this section, each owner must file FCC Form 854 with the Commission. Additionally, each owner of a proposed structure referred to in paragraph (a) of this section must submit a valid FAA determination of "no hazard." In order to be considered valid by the Commission, the FAA determination of "no hazard" must not have expired prior to the date on which FCC Form 854 is received by the Commission. The height of the structure will include the highest point of the structure including any obstruction lighting or lightning arrester.
- (c) Absent Commission specification, the painting and lighting specifications recommended by the FAA are mandatory (see Section 17.23). However, the Commission may specify painting and/or lighting requirements for each antenna structure registration in addition to or different from those specified by the FAA.
- (d) Any change in the overall height of one foot or greater or coordinates of one second or greater in longitude or latitude of an antenna structure requires prior approval from the FAA and the Commission.
- (e) Any change in the marking and lighting specifications described on any antenna structure registration requires prior approval from the FAA and the Commission.
- (f) If an Environmental Assessment is required under § 1.1307 of this chapter, the Bureau will address the environmental concerns prior to processing the registration.
- (g) If a final FAA determination of "no hazard" is not submitted along with FCC Form 854, processing of the registration may be delayed or disapproved.
- (h) The Commission shall issue, to the registrant, FCC Form 854R, Antenna Structure Registration, which assigns a unique Antenna Structure Registration Number. The structure owner shall immediately provide to all tenant licensees and permittees notification that the structure has been registered, along with either a copy of Form 854R or the Antenna Structure Registration Number and a link to the FCC antenna

structure website <http://wireless.fcc.gov/antenna/>. This notification may be done electronically or via paper mail.

(i) If the owner of the antenna structure cannot file FCC Form 854 because it is subject to a denial of Federal benefits under the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 862, the first tenant licensee authorized to locate on the structure (excluding tenants that no longer occupy the structure) must register the structure using FCC Form 854, and provide a copy of the Antenna Structure Registration (FCC Form 854R) to the owner. The owner remains responsible for providing to all tenant licensees and permittees notification that the structure has been registered, consistent with paragraph (h) of this section, and for posting the registration number as required by paragraph (j) of this section.

(j) Except as described in paragraph (k) of this section, the Antenna Structure Registration Number must be displayed so that it is conspicuously visible and legible from the publicly accessible area nearest the base of the antenna structure along the publicly accessible roadway or path. If the base of the antenna structure has more than one point of ingress/egress, the Antenna Structure Registration Number must be posted at the publicly accessible area nearest each such point of ingress/egress. Materials used to display the Antenna Structure Registration Number must be weather-resistant and of sufficient size to be easily seen at the base of the antenna structure or at a publicly accessible location.

(k) The owner is not required to post the Antenna Structure Registration Number in cases where a federal, state, or local government entity provides written notice to the owner that such a posting would detract from the appearance of a historic landmark. In this case, the owner must make the Antenna Structure Registration Number available to representatives of the Commission, the FAA, and the general public upon reasonable demand.

5. Section 17.6 would be amended by revising its caption, and by revising paragraph (c), to read as follows:

§ 17.6 Responsibility for painting and lighting compliance.

* * * * *