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

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

COMMENTS OF THE
NATIONAL ASSOCIATION OF BROADCASTERS

The National Association of Broadcasters ("NAB")[1] submits these comments on the Federal Communication Commission's Notice of Proposed Rulemaking ("Notice") in the above-captioned proceeding.[2] NAB supports the Commission's goals of clarifying and modernizing the rules governing antenna structures, and where appropriate, harmonizing them with the relevant rules of the Federal Aviation Administration ("FAA"). The public interest will be served

[1] The National Association of Broadcasters is a nonprofit trade association that advocates on behalf of local radio and television stations and broadcast networks before Congress, the Federal Communications Commission and other federal agencies, and the Courts.

[2] 2004 and 2006 Biennial Regulatory Reviews -- 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 the Commission's Rules Concerning Construction, Marking and Lighting of Antenna Structures, Docket No. WT Docket No. 10-88, *Notice of Proposed Rulemaking* (*rel*. Apr. 20, 2010) ("Notice").

with clearer, more succinct rules regarding antenna structures. However, as discussed in detail below, certain requirements proposed in the Notice have not been justified and may impose undue burdens on antenna structure owners, such as an obligation to retroactively update or reevaluate facilities. It is also important that any new regulations in this area be consistent with pre-existing industry-wide agreements concerning antenna structure requirements related to migratory birds.

I. Certain Notification Requirements Proposed in the Notice Require Additional Justification

The Notice proposes several rules that may impose substantial burdens on tower owners. Under one such proposal, antenna structure owners would be required to repair extinguished lights under a specific time frame, instead of pursuant to the existing duty to repair outages as soon as practicable or possible.[3] NAB submits that setting an inflexible time frame is not appropriate for lighting system repairs, and could be unachievable due to a variety of circumstances beyond a structure owner's control. The outage could be difficult to access, for example, because of the antenna structure's geographic location, or because of severe weather conditions that may have caused the outage in the first place. It is also important to recognize that these repairs are not simply "changing a light bulb." A structure owner must secure the services of qualified tower climbers to repair the outage. There are only a limited number of tower crews in the country, particularly those with experience on tall towers, and it can be difficult to schedule a tower crew within a specific time frame. Moreover, once

[3] Notice at ¶ 27. *See also* 47 C.F.R. §§ 17.48(a) and 17.48(b).

the crew has diagnosed the problem, there could be further unexpected delays in procuring and shipping the replacement equipment.

The burden of these new duties must be weighted against the evidence that the proposed new regulations are necessary. However, the Notice contains no such evidence; nor does the Notice allege that the current standards are ineffective in any way.[4] There is no allegation that antenna structure owners currently fail to promptly repair lighting outages. There is also no evidence that the existing process has caused any danger to avionics. In fact, both the FAA's and Commission's existing rules and policies have a long history of ensuring that lighting outages and similar situations do not pose any problems.

The current rule has been in place, and working effectively, for years. Without evidence of any problem or harm that requires correction, there is no basis for enacting the proposed obligations.[5] Indeed, compliance with the additional, onerous requirements (including additional paperwork) could diminish the valuable time that structure owners may have to resolve the outage. Therefore, NAB suggests that without more concrete evidence of a real-world problem regarding lighting outages or notifications of such outages, the Commission should not enact onerous requirements.

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[4] Notice at ¶ 26.

[5] *See, e.g.*, *Motor Vehicles Mfrs. Ass'n v. State Farm Mut. Auto Ins. Co.*, 463 U.S. 29, 43 (1983) (quoting *Burlington Truck Lines v. United States*, 371 U.S. 156, 168 (1962) (in adopting regulatory requirements, an agency must "examine the relevant data and articulate a satisfactory explanation for its actions including a 'rational connection between the facts and the choice made'"); *Mountain States Telephone and Telegraph Co. v. FCC*, 919 F.2d 1021, 1034 (D.C. Cir. 1991) (if the Commission rejects a "time-tested procedure" and replaces it with a new procedure, then the Commission must be able to show that this "new procedure is superior" because, "if not, why the change?").

II. NAB Supports the Proposed Rules to Harmonize, Clarify, and Coordinate Commission Rules with FAA Standards

NAB generally supports the Commission's proposed clarifications of the rules governing antenna structure inspection requirements, who is responsible for antenna structures for purposes of the rules,[6] and harmonization of the Part 17 rules with FAA standards.[7] Such rules, however, should not impose retroactive obligations that would unnecessarily require antenna structure owners to expend resources to re-survey or alter existing structures.

The Notice proposes to eliminate or amend Section 17.47, which contains distinct requirements for inspecting lighting systems, providing notice of extinguished lights, and replacing malfunctioning lights and monitoring systems.[8] Apparently, the text and interpretation of this multifaceted regime can be confusing for structure owners, as it leads some to believe that routine inspection of one's lights is sufficient to absolve them of enforcement actions for failed lights, when the rule intends no such thing. The Commission proposes to resolve this confusion by deleting the inspection requirements. This would appropriately focus attention on the overriding goal of the rule, namely, that lighting required under the Commission's rule remain functional, and if this and the other obligations under the rule are not satisfied, the antenna structure owner may be subject to enforcement, regardless of the owner's inspection practice. NAB agrees with the Commission's approach.

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[6] Notice at ¶¶ 24-25, 36-37.
[7] *Id.* at ¶ 38.
[8] *Id.* at ¶¶ 24-25; 47 C.F.R. § 17.47.

The Commission also proposes to clarify the definition of “antenna structure owner” under Section 17.47(c) of its rules, for purposes of identifying who is responsible for ensuring that an antenna structure is in compliance with the Commission’s rules. 47 C.F.R. § 17.47(c); Notice at ¶¶ 36.-37. As the Notice explains, the rule’s text may be read to include service providers that own the antennas and other attachments mounted on antenna structures, as opposed to just the owners of antenna structures, because the Commission’s separate definition of “antenna structure” includes both the structure itself and any “appurtenances mounted thereon” 47 C.F.R. § 17.47(a). NAB has no objections to the Commission’s proposal to clarify that registration and other antenna structure obligations fall squarely on only the owners of such structures. Notice at ¶ 37.

NAB also supports the Commission’s proposal to delete references in its rules to particular FAA Advisory Circulars. Such a change will eliminate situations where a specific circular is superseded by another FAA circular, but the Commission’s rules have not been updated to reflect the FAA’s actions. Notice at ¶¶ 10-11. It is also important, however, that this change not lead to unintended consequences. For example, deleting references to specific prior circulars, and the FAA directions contained therein, should not obligate antenna structure owners to re-measure, re-survey or otherwise update the data on file concerning their structures, in order to comply with the new circulars. This would impose substantial monetary and other burdens on structure owners, for no commensurate public service benefit.

Similarly, NAB urges the Commission not to retroactively apply its proposed amendment that the height information on FCC Form 854 must be accurate within one foot and the relevant coordinates must be accurate within one second of longitude and latitude. Notice at ¶ 17. NAB agrees that modern measuring tools may improve the accuracy of such measurements. We also agree with the Commission's intentions to harmonize its rules for how structures are measured with those of the FAA. However, it is imperative that any rule changes in this area not force antenna structure owners to update the antenna structure measurement data on file with the Commission. The unnecessary expense of such a change would not necessarily produce any tangible benefits. Absent a major alteration of the structure, the Commission should not require owners to re-measure their structures in a different manner than under the existing process.

III. The Proposed Rules on ASRs Should Not Conflict with the Pre-Existing Memorandum of Understanding Governing Migratory Birds

Under the current regime, only some antenna structures, based on their height and location, must be registered with the Commission. Nevertheless, some structure owners who are not required to register their structures do so voluntarily. Notice at ¶ 39. The Notice inquires whether the Commission should prohibit such voluntarily registration of structures to prevent confusion over the regulatory status of these facilities. *Id*.

The Commission must carefully consider the impact of this proposal on the recently adopted Memorandum of Understanding ("MOU") between industry and conservatory groups that developed interim standards for the Antenna

Structure Registration ("ASR") program, for purposes of safeguarding migratory birds.[9] The MOU was the result of more than six months of negotiations and applies to all antenna structures where an ASR must be filed. The MOU sets forth specific criteria for when an Environmental Assessment ("EA") is to be conducted, or when an EA need not be conducted; however, the ASR must be placed on Public Notice by the Commission.[10]

NAB submits that the Commission should not change any policy or practice regarding ASRs that may upend this agreement. The compromises reached between the parties to the MOU represent the most equitable EA and notification standards possible, and need to be preserved as the Commission considers this rulemaking proceeding. Thus, with respect to the particular question at hand in the Notice, NAB has no objections to clarifying the regulatory status of antenna structures that need not be registered, so long as the agreements reached in the migratory bird MOU are preserved.

IV. Conclusion

For the above reasons, NAB largely supports the proposals set forth in the Notice, provided that any rule changes do not require antenna structure owners to retroactively re-survey their facilities, or change the existing criteria for submitting ASRs or conducting EAs. In certain areas, NAB encourages the Commission to provide further justification for proposed modifications, and in all

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[9] *See generally* Memorandum of Understanding Between the Infrastructure Coalition and Conservation Groups Concerning Interim Antenna Structure Registration Standards ("MOU") (Apr. 23, 2010).
[10] *Id.* at 2-3.

cases, should carefully balance the demonstrated need for a rule change with the resulting burdens of the changes on antenna structure owners.

Respectfully submitted,

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