

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20054**

In the Matter of)	
)	
2004 and 2006 Biennial Regulatory Review --)	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)	

To: The Commission
Marlene H. Dortch, Secretary

COMMENTS OF FLASH TECHNOLOGY

Flash Technology ("Flash"),¹ a division of SPX Corporation, by its attorneys, hereby provides targeted comments in response to the Notice of Proposed Rulemaking (the "NPRM") in the above-captioned proceeding. These comments focus on changes proposed in the NPRM to the Federal Communications Commission's ("FCC" or "Commission") rules governing the inspection and maintenance of antenna structure lighting (the "Tower Lighting Inspection Rules")² and the FCC rules' requirement that

¹ Flash Technology developed and designed the Eagle Monitoring System, which provides continuous, real-time monitoring of antenna structure lighting systems through advanced, on-location monitoring devices, each of which is connected to a fully-staffed network operations control ("NOC") center.

² See 47 C.F.R. § 17.47.

tower owners be required to extend Notices to Airmen (“NOTAMs”) in certain circumstances.³

I. The Tower Lighting Inspection Rules Should Not Be Eliminated Wholesale.

The NPRM seeks comment on whether the Tower Lighting Inspection Rules should be eliminated in their entirety.⁴ The Commission expresses concern that tower owners might incorrectly assume that compliance with tower *inspection* requirements satisfies *all* compliance obligations, leading to a failure to meet the related obligation to contact the Federal Aviation Administration (“FAA”) to request issuance of a NOTAM in the event of a lighting malfunction that is not corrected within 30 minutes.

The NPRM cites no evidence that tower owners are confused as to the totality of their obligations under the FCC’s rules with regard to tower lighting issues. Moreover, even if such confusion were evident, that confusion would not justify eliminating all tower inspection obligations, but would instead support clarifying the wording of the regulations.

Ensuring that tower structure lighting systems function properly is critical to aeronautical safety. As discussed below, the FCC has taken incremental steps to waive certain aspects of its Tower Lighting Inspection Rules in response to carefully supported, data-driven requests submitted by parties utilizing the most advanced tower lighting monitoring systems and technology. But to the extent that some tower structure owners continue to rely on older, now outdated, monitoring systems that have no proven track record of reliably and immediately notifying an owner of lighting malfunctions, the

³ The NPRM was issued by the FCC on April 20, 2010, with notice published in the Federal Register on May 21, 2010. These comments are timely filed.

⁴ NPRM at ¶ 24.

obligation to periodically ensure that the lighting and monitoring systems are properly functioning remains a necessity. Aeronautical safety concerns can never take a “back seat” to deregulation for its own sake.

II. Tower Structures Reliably Monitored by NOC-Based Systems Should Be Exempt From The Tower Lighting Inspection Rules.

While the Tower Lighting Inspection Rules should not be completely eliminated, Flash strongly advocates that they be revised, consistent with Section III below, to exempt tower structures that employ qualifying NOC-based monitoring technologies from the requirement that their lighting control devices, indicators and alarm systems be inspected at least every three months (hereinafter a “QLI”). As the NPRM notes, the Commission has recognized the effectiveness of these systems, which provide the equivalent of a continuous inspection of lighting control devices, by granting requested waivers of the QLI requirement for towers that are monitored by NOC-based systems which are demonstrably reliable (“NOC-Based Systems”).⁵ Incorporation of the relevant waiver standards into the Tower Lighting Inspection Rules would yield significant benefits for air safety.

By revising the Tower Lighting Inspection Rules to exempt antenna structures monitored by NOC-Based Systems, the Commission would strongly incentivize tower owners to invest in such state-of-the art systems. As the Commission itself has noted, such NOC-Based Systems provide “the benefits of more rapid response where there has

⁵ *Requests of American Tower Corporation and Global Signal, Inc. to Waive Section 17.47(b) of the Commission’s Rules*, 22 FCC Rcd 9743 (2007) (“*ATC QLI Waiver Order*”); *Request of Mobilitie, LLC for Waiver of 47 CFR §17.47(b) and Flash Technology Request for Waiver of 47 CFR §17.47*, 24 FCC Rcd 11949 (WTB 2009).

been a lighting failure.”⁶ Indeed, because a NOC-Based System can alert tower owners of lighting system malfunctions that might otherwise go undetected for up to three months, use of these systems substantially enhances aeronautical safety. Moreover, the Commission has also noted that NOC-Based Systems “provide sufficiently robust monitoring of the control devices, indicators and alarm systems so as to render [QLIs] unnecessary.”⁷

Providing an exemption for NOC-Based Systems in the Tower Lighting Inspection Rules would also relieve the Commission’s Staff of the administrative burden associated with the processing of future waiver requests. Even though the Commission’s Staff has adopted a streamlined waiver process, Staff resources are still required to review and process waiver requests under the current procedures.⁸

In addition, an exemption from the QLI requirements for towers monitored by NOC-Based Systems could result in a significant financial benefit to tower owners, allowing them to save money that would otherwise be “unnecessarily spent on quarterly inspections.”⁹ The promise of such cost savings would provide further encouragement to tower owners to adopt a NOC-Based System.

For purposes of clarity, Flash emphasizes that all exempt NOC-Based Systems must satisfy the strict criteria set forth in Section III below. Flash also recommends that

⁶ *ATC QLI Waiver Order, supra*, 22 FCC Rcd at 9747.

⁷ *Id.*

⁸ As a less desirable alternative, the Commission could leave the streamlined waiver process in place, and reference the availability of an exemption in its rules.

⁹ 22 FCC Rcd at 9747.

the tower inspection exemption for antenna structures monitored by NOC-Based Systems be absolute, without mandated annual on-site inspections.

When the Commission first granted waivers of the tower inspection requirements for structures monitored by NOC-Based Systems, continuing to require annual inspections was an appropriate interim step. However, tower owners utilizing systems such as those provided by Flash have operated pursuant to these waivers for several years without incident. It is therefore now appropriate that an exemption incorporated into the Commission's rules should eliminate completely the inspection requirements for towers monitored by NOC-Based Systems. A complete exemption would recognize that such inspections, even on an annual basis, are unnecessary due to the advanced sophistication and demonstrable success of NOC-Based Systems. A complete elimination of the inspection requirement for qualifying tower structures would also increase the incentive for adoption of a NOC-Based System, with aeronautical safety the ultimate beneficiary. Indeed, to the extent that improving aeronautical safety is the underlying goal of the Tower Lighting Inspection Rules, they should be crafted to provide the strongest incentive encouraging tower owners to adopt state-of-the-art NOC-based lighting control monitoring systems.

III. Strict Criteria Should Be Established For Exemption Eligibility.

In order to ensure that the goals underlying the Tower Lighting Inspection Rules continue to be fulfilled and that air safety is not compromised, the Commission should adopt strict criteria that must be met by a NOC-Based System in order for a tower lighting control system to qualify for an exemption of the QLI requirements. Those criteria should include:

- A NOC that is continuously staffed by personnel sufficiently trained in responding to lighting system malfunction alarms and maintaining the integrity of the monitoring system.
- A continuous and permanent two-way connection between the NOC and each tower structure being monitored. Such a connection is necessary to ensure that the NOC staff is promptly alerted of potential lighting system malfunctions.
- Continuous outreach polling by the NOC monitoring system of both the tower lighting equipment and communications systems to ensure they are properly functioning.
- The ability of the NOC to initiate a detailed diagnostic test of each on-site monitoring device and tower lighting system at any time.
- A backup power system that will permit continued, uninterrupted communications between the NOC and each monitored tower in the event of a power outage at either the NOC or an individual tower location.
- An active failsafe component that will initiate an alarm in the event of any communications failure between the NOC and an individual tower location. An adequate failsafe component might utilize a powered system with an active, affirmative signal light indicating successful communication between the NOC and each individual tower. In the event of any communications failure, the failsafe circuit would be broken and the affirmative signal light would fail, indicating a communications issue.
- The monitoring of sufficient data to constitute the equivalent of a continuous QLI.

Tower monitoring systems that rely on passive, open or unpowered communication relays between individual towers and the NOC may not adequately detect monitoring system failures and should not be eligible for exemption from the QLI requirement.

Given the importance of properly functioning tower lighting systems to aeronautical safety, Flash recommends that the Commission adopt a third-party certification process for tower owners wishing to take advantage of the proposed QLI exemption from the Tower Lighting Inspection Rules. Such a program could be modeled

on the FAA's Airport Lighting Equipment Certification Program,¹⁰ whereby third-party bodies, such as ETL, would review proprietary NOC-Based Systems and determine whether each would qualify for an exemption of the QLI requirement.

This certification program would ensure that NOC-Based Systems claiming eligibility for an exemption of the QLI requirements actually meet the waiver criteria established in the Commission's rules based upon a review by a qualified and independent third party.

IV. The FCC's NOTAM Rule Should Conform With The FAA Requirements.

Flash supports the proposal to revise Section 17.48 of the Commission's rules to require antenna structure owners, if a lighting malfunction requiring a NOTAM cannot be repaired within 15 days, to notify the FAA and extend the NOTAM until the malfunction is ultimately repaired. The rules should also be revised to require tower owners to provide the FAA with a projected "return to service" date of malfunctioning lighting systems.

Adoption of these proposed changes would conform the Commission's Rules to the existing requirements under the FAA's regulations. The proposed changes would not create any additional burden on tower structure owners. By contrast, the proposed change would increase air safety by reminding tower structure owners of these requirements and ensuring that NOTAM's are properly issued to reflect existing tower lighting malfunctions. As a result, adoption of these proposed changes would further the public interest.

¹⁰ See Federal Aviation Administration, *Advisory Circular 150-5345-53C*, Sept. 30, 2005.

V. **Conclusion.**

For the reasons contained herein, Flash Technology respectfully requests that the Commission: (i) retain QLI requirements for antenna structure owners that do not employ conforming NOC-Based Systems; and (ii) revise its Tower Lighting Inspection Rules to provide an exemption from those rules for each antenna structure owner that employs a NOC-Based System that meets criteria newly specified in the FCC rules, as certified by an independent third party. In addition, the Commission should revise its NOTAM rules as outlined above.

Respectfully submitted,

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July 20, 2010

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