

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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)	

COMMENTS OF AT&T INC.

AT&T Inc., on behalf of itself and its subsidiaries, hereby comments on the Notice of Proposed Rulemaking (NPRM) issued in the captioned proceeding released April 20, 2010. A summary of the NPRM was published in the Federal Register on May 21, 2010, 75 Fed. Reg. 28317. The NPRM seeks comment on proposals to update and modernize the Part 17 rules governing the construction, marking and lighting of antenna structures. The proposals seek to improve compliance with the rules, facilitate more effective enforcement, and most importantly, ensure the safety of pilots and aircraft passengers nationwide. AT&T supports the Commission's intent in initiating this rulemaking and, subject to the comments below, generally supports the proposed rule revisions and clarifications.

The Commission's authority to require marking and lighting of communications towers stems from the Communications Act. Section 303(q) of the Communications Act states that the Commission shall:

Have authority to require the painting and/or illumination of radio towers if and when in its judgment such towers constitute, or there is a reasonable possibility that they may constitute, a menace to air navigation. . . .

The Commission has implemented this statutory mandate through Part 17 of its rules.¹ The Part 17 rules last were significantly updated and streamlined in 1995.² Subsequently, Congress passed the Telecommunications Act of 1996 which requires that the Commission conduct biennial reviews of its regulations and modify or repeal those no longer necessary in the public interest.³ In comments in the 2004 biennial review, PCIA recommended several modifications and clarifications to the Part 17 rules. AT&T's wireless affiliate, Cingular Wireless LLC, supported the PCIA request.⁴ In 2006, PCIA filed a Petition for Rulemaking again requesting that the Commission update and simplify the Part 17 Rules. Cingular filed in support of the PCIA petition.⁵ In response to the current NPRM, AT&T provided input to PCIA to develop the Comments that PCIA is filing in this docket. AT&T endorses the positions taken by PCIA, including its analysis of the issues raised in the NPRM and the specific proposals advanced by PCIA. AT&T offers the following additional comments on certain issues raised in the NPRM.

Reference to FAA Advisory Circulars.

The existing rules make reference to specific FAA advisory circulars. The NPRM acknowledges that in the past the FAA has revised its advisory circulars more often than the FCC has revised Part 17. This has resulted in inconsistency between the FCC's rules and the latest

¹ 47 C.F.R. § 17.1-17.58.

² 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*, FCC 05-473, 11 FCC Rcd 4272 (1995).

³ 47 U.S.C.A. § 161.

⁴ *In the Matter of the 1004 Biennial Regulatory Review of Telecommunications Regulations*, WT Docket No. 04-180, Reply Comments of Cingular Wireless LLC (August 18, 2004).

⁵ *In the Matter of Amendments to Modernize and Clarify Part 17 of the Commission's Rules Concerning Construction, Marking and Lighting of Antenna Structures*, RM-11349, Comments of Cingular Wireless LLC (Nov. 29, 10906).

FAA recommendations. The NPRM proposes to eliminate reference to specific advisory circulars and instead mandate that the tower be marked and lit in accordance with the FAA's specification in its "no hazard determination."⁶ AT&T supports this proposal. Since the FAA specifies the specific marking and lighting recommendations for each antenna structure, it is appropriate for the FCC to require antenna structure owners to follow those recommendations in its registration process, unless the FCC specifies otherwise with regard to a particular tower.

Retroactivity.

The NPRM seeks comment on PCIA's proposal that the Commission's rules specify that the lighting and marking requirements do not change unless the FAA recommends new specifications for particular structures.⁷ AT&T agrees that once a tower is registered and is marked and lit in accordance with the specifications in its registration, there should be no requirement that it be remarked and relit simply because the FAA changes its advisory circular. It is extremely burdensome to retrofit an existing tower. This should be required only in the rare circumstance that the FAA or the FCC finds that the existing tower lighting/marking regime on a specific tower poses an unreasonable risk to air safety. AT&T also supports conforming Section 17.17(b) to specify that the lighting and marking requirements do not change unless the FAA recommends new specifications for particular structures.⁸

Survey Methods.

As noted in the NPRM, the FCC has previously determined that because the FAA insures the reliability of the antenna structure site data in making its "no hazard" determination, it is appropriate that the FAA, not the FCC, specify the accuracy of the site information necessary to make its determination. The NPRM asks whether the FCC should continue to defer to the FAA's

⁶ NPRM, ¶ 11.

⁷ NPRM, ¶ 12.

⁸ NPRM, ¶ 15.

expertise or whether the FCC should specify accuracy standards or survey methods.⁹ AT&T supports the present rule in which the FCC defers to the FAA on site location accuracy and survey methods. If the FCC adopts specific accuracy requirements and/or survey methods it runs the risk that the FAA and FCC requirements will be different over time, i.e., the same risk that the Commission is trying to correct by eliminating references to specific FAA advisory circulars in its rules. The Commission would also run the risk of “locking in” particular survey methods that would deter the development of more accurate survey technologies in the future.

Pending FAA Rulemaking Proceeding

The FAA’s current part 77 rules pertain to the physical attributes of facilities, including antenna structures, that may affect navigable airspace. As noted in the NPRM, the FAA is currently conducting a rulemaking proceeding which proposes to expand the scope of its notification rules to include non-physical changes to objects, such as changes in the radio frequency bands utilized by antennas on the structure, changes in effective radiated power levels and other factors that are independent of the physical attributes of the facilities. The NPRM asks whether the Commission should continue to require all instances of “Notice of Proposed Construction or Alteration” filings at the FAA to result in an antenna structure registration or amendment of antenna structure registration with the Commission.¹⁰

The Commission’s statutory authority to require painting and lighting of towers is tied to the physical attributes of towers that may constitute a menace to air navigation.¹¹ Therefore, the Commission should only require an antenna structure registration or an amendment thereto based on the physical characteristics of the structure. In its Comments, PCIA has proposed modifying the language of Section 17.4 to limit registration to those structures that require a notice of

⁹ NPRM, ¶ 17.

¹⁰ NPRM, ¶ 20.

¹¹ 47 U.S.C. § 303(q).

proposed construction to the FAA because the structure would physically obstruct airspace. AT&T agrees with this proposed modification to the Commission's rules. If the Commission does not limit the trigger for registration to physical attributes of towers that implicate lighting and marking requirements it may be flooded by registrations that are irrelevant to the Commission's statutory mandate.

Inspection and Maintenance of Lighting

The NPRM seeks comment on whether the Commission should eliminate Section 17.47 of the rules in its entirety.¹² Section 17.47 requires inspections of antenna structure lights and associated control equipment. The manual inspections required by Section 17.47 have long been rendered obsolete by modern alarm systems that result in real-time notification to the tower owner if lights malfunction on a tower. As the NPRM observes, what matters is that the lighting required under the antenna structure registration remains on, or if required lights are extinguished, the tower owner promptly requests a NOTAM from the FAA.¹³ The inspection requirements contained in Section 17.47 are no longer needed to monitor lighting systems. AT&T supports eliminating Section 17.47 in its entirety.

Maintenance of Painting

The NPRM seeks comment on whether to amend Section 17.50 to specifically provide for the use of the FAA's "In Service Orange Tolerance Chart" to determine whether a structure needs to be cleaned or repainted.¹⁴ AT&T supports using the chart as the most objective means for ensuring compliance with the maintenance requirements. AT&T supports using the chart against the base of the tower. While a view from one-quarter mile distance may better simulate a view that pilots would encounter, it introduces more variables such as time of day, weather

¹² NPRM, ¶ 24.

¹³ Id.

¹⁴ NPRM, ¶ 34.

conditions and direction that render the comparison more subjective and risks inconsistent enforcement.

Structures Not Requiring Registration

The NPRM notes that some antenna structure owners have voluntarily registered structures that do not require notification to the FAA and hence do not require registration under the Commission's rules. The Commission seeks comment on whether owners of such structures should be prohibited from registering them voluntarily and whether owners of voluntarily registered towers should be required to withdraw their registrations from the Commission's antenna structure database.¹⁵ There are many valid reasons why antenna structure owners may register voluntarily lit and marked towers that do not require notice to the FAA. Local authorities may require towers to be marked and lit in rural areas where crop dusters fly well below the flight paths utilized by commercial aviation. Tower owners may need to register towers in environmentally sensitive areas in order to submit an Environmental Assessment to the Commission. In such cases, voluntary registration may promote air safety and other public interest goals. For example, AT&T received a call that the lights on a voluntarily lit tower were no longer functioning. The caller informed AT&T that the tower lights were used as a landmark by the local medevac team and requested that the lights be restored. In another instance, AT&T was contacted by a person in Alaska to report a tower light outage. The voluntarily lit site was located between two large mountains. The pilots who ferry supplies for an oil pipeline used the lights as a guide to help them navigate through the mountainous region. In each of these cases, registering and maintaining the lights on voluntarily lit towers served the public interest. The Commission should not prohibit voluntary registrations.

¹⁵ NPRM, ¶ 39.

In any event, the Commission should not require owners of voluntarily registered structures to remove them from the database. It would impose an enormous burden on existing tower owners to make an after-the-fact determination as to whether registration of each antenna structure was mandatory or voluntary, and to remove voluntarily lit towers from the FCC's database..

Posting of Antenna Structure Registration Number

Section 17.4(g) governs the posting of the antenna structure registration number in a conspicuous place near the base of the tower. The purpose of the posting requirement is so that FCC field personnel and members of the general public can identify the tower in the event of a light outage and report the outage to the tower owner.¹⁶ AT&T supports clarification of the posting requirement to provide that if a structure is surrounded by a perimeter fence, the ASR number should be posted on the gate. If there is no perimeter fence, the ASR number should be posted at the base of the tower. In its Comments, PCIA has proposed specific language to modify Section 17.4(g) to incorporate this clarification. AT&T supports the PCIA-proposed rule modification.

Provision of Antenna Structure Registration to Tenants

Section 17.4(f) requires antenna structure owners to provide copies of Form 854R to each tenant licensee or permittee immediately upon the issuance of the registration. The NPRM proposes that the requirement to provide a paper copy of Form 854R be modified to permit electronic notification. The Commission proposes to allow the owner to notify tenants that the structure has been registered and to give the tenant the ASR number along with a link to the Commission's ASR website, either by paper mail or electronic mail.¹⁷ AT&T concurs with the

¹⁶ NPRM, ¶¶ 40-41.

¹⁷ NPRM, ¶ 43.

proposed rule change. Electronic notification is more efficient and effective than mailing paper copies of the registration form.

Conclusion

AT&T commends the Commission for undertaking to modernize its antenna structure marking and lighting rules. The rule changes proposed in the NPRM will streamline and modernize the tower marking and lighting rules and will improve the protections for air safety that are the purpose of the FCC and FAA regulations.

AT&T INC.

By: /s/ M. Robert Sutherland

Paul K. Mancini

Gary L. Phillips

Michael P. Goggin

M. Robert Sutherland

1120 20th Street, NW

Washington, DC 20036

(202) 457-2057

Its Attorneys

July 20, 2010