

Cohen, Dippell and Everist, P.C.

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
Cohen, Dippell and Everist, P.C.

The following comments are submitted on behalf of Cohen, Dippell and Everist, P.C. (“CDE”) and is in response to the Notice of Proposed Rulemaking, FCC 10-53, released April 20, 2010. CDE and its predecessors have practiced before the FCC for over 70 years in broadcast and telecommunications matters. The firm or its predecessors have been located in Washington, DC since 1937 and performed professional consulting engineering services to the communications industry.

There are a number of noteworthy problems with the current and proposed FCC procedures in this area. The Federal Communications Commission (“Commission”) in this streamlined process has little, if any, institutional knowledge prior to the adoption of

MM Docket No. 95.-5¹. Further, it has little if any institutional knowledge of the Federal Aviation Agency (“FAA”) attempted activity over the past thirty years.²

History

This office has at its own expense participated since 1984 in various aspects related to the proposed rules. Briefly, these include the Part 77 review at the FAA; bilateral meeting with Canada; meetings at the State Department concerning preparatory items to the Joint Interim Working Party 8/10 (“JIWP 8/10”); delegate at the JIWP 8/10 meeting in Helsinki, Finland and more recently the CCIR study group. Subsequently, this firm responded to FAA’s Request for Comments in Docket No. 26305, Notice No. 90-19 in report entitled, “Comments by Cohen, Dippell and Everist, P.C., In the Matter of Objects Affecting Navigable Airspace (14 CFR Part 77) dated December 1990.

Current

The current and proposed processing procedures are predicated on a perfect processing mechanism with neither regulatory missteps within agencies or missteps between the Commission and the FAA.

¹Entitled, “Streamlining the Antenna Structure Clearance Procedure and Revision of the Rules Concerning Construction, Marking and Lighting of Antenna Structures”

²Federal Aviation Administration, Notice of Proposed Rulemaking (“Notice”) Docket No. 26305, Notice 90-19.

The Commission fails to address the issue that arises when an applicant files with the FCC for a facility;³ and files and receives FAA airspace approval and then for whatever the reason the application is delayed by the Commission in processing for months or years. The applicant is then required to continue filing for FAA airspace approval throughout these Commission processing delays.

Currently, the Commission has thousands upon thousands of pending applications for FM and TV translators that have been on file for more than five years. Some of these applicants could have been required to file FAA Form 7460-1 for a Determination of No Hazard.⁴

In prior years, the FAA Form 7460-1 had the following instructions:⁵

(b) the construction is subject to the licensing authority of the Federal Communications Commission and an application for construction permit made to the FCC on or before the above expiration date in such case the determination expires on the date prescribed by the FCC for completion of construction or on the date the FCC denies the application.

This wording is no longer on the FAA form. Recent inquiries to various FCC staff members produced no explanation or direction concerning appropriate action when an application falls into an FCC related processing delay. Specifically, what step or steps the Commission requires regarding a FAA Determination of No Hazard. Does the FCC and FAA expect an applicant to notify the agencies when an application is still pending or refile

³See Tech Box, FCC Form 301, AM, FM, TV, 346, 349.

⁴Additionally, certain states still require filing of aeronautically significant structures.

⁵FAA Form dated August 1985.

periodically say every 6 months or 1 year? If renotification or refiling is required in just these two areas thousands of additional filings would result. It is requested that the Commission clarify its procedures so as to minimize unnecessary filings.

A second flawed procedure is evidence by what that occurred over 3 years ago. An existing FM station whose channel was near the top of the band was in a rulemaking to be involuntarily moved to Channel 300 to accommodate an upgrade for another FM station in another market. In an effort to determine the possible impact that involuntary channel change (no site change) might have, this office performed an analysis using the FAA Airspace⁶ model. That analysis indicated the change in channel would cause new so-called “hits” to airspace volume of a nearby airport and may not receive approval from the FAA due to electromagnetic considerations. An aeronautical consultant was retained to independently assess using the FAA’s EMI airspace model. The consultant also found that there would be an increase in “hits” to the nearby airport. To further confirm the impact of this station’s involuntarily channel change at this rulemaking stage a submission was made to the FAA.

Incredibly, the FAA found no additional interference. Needless to say, the FAA specialist was not helpful in describing how his analysis was contrary to the two earlier analyses. He further indicated that as far as he was concerned that this station must move to this new channel or otherwise be in violation of FAA Rules and Regulations.

⁶FAA Airspace Analysis Model

The above was never resolved with the FAA specialist. There needs to be simple procedure whereby the Commission and the FAA can resolve these incongruous analysis without a herculean or extraordinary effort so that a correct record can be established.

The third issue seeks clarification on how Electronic News Gathering (“ENG”) vehicles who have masts that extend upward for 21.3 meters⁷ (70 feet) [certainly less than 30 meters (100 feet)] should adhere to the proposed rule revisions of Part 17. These vehicles at any location are temporary (i.e., located for short duration) in nature and mast is constructed to support itself and ENG antennas. It cannot be construed as a substantial structure sufficient to do harm if struck by an overhead object. This is evidenced as a member of this firm was killed when this firm’s vehicle with the mast extended hit an overhead wire. Use of Towair by itself is not of specific value. It is believed prudent that the Commission not require these ENG vehicles to adhere to Part 17 of the Rules as they represent we believe any practical airspace issue. Therefore, guidance (practical and operational) is sought from the Commission.

The next issue makes no provision for the informal policy whereby DTV television stations are not and will not be subject to FAA electromagnetic evaluation. The DTV transition is still in an unsettled stage for many stations and evolving by either changing channel, power or both. This leads to the question with reference to FAA’s Notice of Proposed Rulemaking.⁸ It again raises the issue of managing spectrum for its own purposes notwithstanding the primary

⁷Normal shielding by trees and structures are expected to occur at almost all locations.

⁸Notice 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.

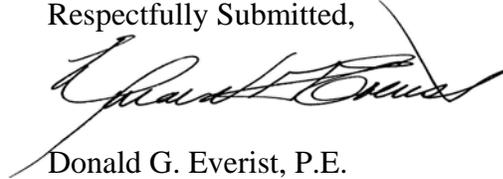
jurisdiction by the Commission in this area. The FAA has based on this firm's experience, a long history of attempting to manage spectrum for its own purposes.

In 1984 this office's informal comments to the FAA Simplification and Reduction Task Group 2-3.2, Part 77 Review, foresaw problems created by an agency considering adoption of regulations which would directly affect a companion agency's processes and its allied industry. In addition, those comments indicated that the FAA would be inundated with requests from the industries for determinations which are regulated by the FCC. Further, it was also stated that in our view the FAA in its operations and the operations of allied industries are entitled to and require unobstructed use of their frequencies. Similarly, broadcast groups are equally entitled to the privilege of airspace without undue or unjustified regulatory interference from a separate governmental agency, to the extent possible. As a matter of principle, we still stand by those statements as recommendations for a policy that will neither burden the FAA, the FCC, nor their allied industries.

As evidenced by the example above where an FAA specialist made an incorrect determination, it is dangerous for an agency that has only one perspective such as the FAA and where there is little or no apparent recourse to have any sway and final say for changes in

authorized frequencies, ERP, specified bands, addition of new frequency usage, etc. for which the Commission has jurisdiction. This idea by the FAA is sheer folly and fraught with problems.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Donald G. Everist", written in a cursive style.

Donald G. Everist, P.E.
DC Registration No. 5714

Date: July 20, 2010