

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

In the Matter of	)	
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	)	
Effects of Communications Towers on	)	WT Docket Nos. 03-187
Migratory Birds	)	and 08-61
	)	

To: The Commission

**COMMENTS OF MARANATHA BROADCASTING COMPANY, INC.**

Maranatha Broadcasting Company, Inc. (“MBC”), licensee of WFMZ-TV, Allentown, Pennsylvania, and licensee, permittee or applicant for several related translators and DTS locations, through counsel, files these Comments in response to the FCC’s *Public Notice*, DA 10-2178, released November 12, 2010, concerning a proposed Programmatic Environmental Assessment of the FCC’s Antenna Structure Registration system, pursuant to the decision of the United States Court of Appeals for the District of Columbia Circuit in *American Bird Conservancy, Inc. v. FCC*, 516 F. 3d 1027 (D.C. Cir. 2008). Pursuant to the *Public Notice*, these comments are being filed in WT Docket Nos. 03-187 and 08-61.

MBC previously filed comments in both dockets, which are attached and incorporated by reference.

The Court of Appeals directed the FCC to undertake this preliminary assessment of potential effects of the ASR program on migratory birds. That is all. The FCC has not been directed to adopt any rules. It has not been directed to substitute anecdotal accounts

of bird fatalities resulting from alleged encounters with communications towers for scientific, peer-reviewed studies.

In its previous comments, MBC noted that showed that: (1) measures proposed in WT Docket No. 03-187 had not been confirmed through systematic, peer-reviewed scientific research to have any direct correlation with mitigating adverse effects on bird populations; (2) major “events” of migratory bird collisions with communications towers were episodic, geographically isolated, and the causes not understood; (3) new tower height limitations could impede the deployment of new technologies for delivery of digital television broadcast signals, and (4) adoption of new across-the-board, one-size-fits-all rules on all broadcast licensees would – considering the isolation and infrequency with which such “events” occur, and the absence of any scientific consensus about the possible link between towers, the “events” and the proposed remedies – impose unjustifiable costs, regulatory burdens and uncertainties on broadcast licensees.

These facts remain as they were in May 2009 when MBC and other parties commented, in WT Docket No. 08-61, on a petition by the American Bird Conservancy and others for “Expedited Rule Making” in light of the Court of Appeals decision, to adopt rules proposed in WT Docket No. 03-187 and other measures – none of which was mandated by the Court’s decision. There is nothing new in the record since May 2009 that (1) provides scientific evidence that the vague, inspecific rules put forward in WT Docket No. 03-187 would mitigate assumed adverse effects of communications towers on migratory bird populations; (2) demonstrates a causal relationship between existing tower lighting requirements and collisions between birds and towers; (3) assesses the potential impact of new rules and restrictions on tower heights, locations and lighting on development of

emerging communications technologies, including digital television broadcasting; or (4) justifies the costs, burdens and uncertainties posed by proposed restrictions on uses of broadcast communications towers.

WFMZ-TV's offices and studios are located at the base of a 668-foot guyed tower. MBC has owned a tower of at least 460 feet in height at that location since 1965.<sup>1</sup> The tower site is in an area generally proximate to a recognized migratory bird flyway across Pennsylvania. MBC's president has been WFMZ-TV's director of engineering since 1976 and has been present at the site virtually daily ever since. In all of that time, the only evidence of bird mortality has been an occasional single carcass on the roof of one of the buildings surrounding the tower every few years – for which a collision with the tower is only one potential cause. This 35-year real world history deserves at least as much weight in the FCC's consideration of this subject as the scientifically unsubstantiated anecdotes that are the impetus for this proceeding.

In the *Notice of Proposed Rule Making* in WT Docket No. 03-187, the FCC proposed, in addition to more environmental processing, a variety of rules (without specific language for any of them), including (1) requiring medium-intensity white strobe lighting, (2) limitations on the use of guy wires, (3) limits on tower heights, and (4) restrictions on tower locations, including required co-location of antennas.

Such rules could affect not only WFMZ-TV's existing tower but also its ability to fully implement the transition to digital television. Although WFMZ-TV operates, on Channel 46, with effective radiated power of 800 kW, it continues to discover areas in which, in the

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<sup>1</sup> A modification to increase the overall height of the tower to the present height was completed in 1992.

new world of digital broadcasting, it is unable to provide a consistent high quality signal to areas and populations that received reliable service from its analog facility on Channel 69. It is responding to these discoveries, as they appear, through a combination of replacement translators and synchronized distributive transmission system locations. Other television stations have widely-reported similar concerns and are seeking to resolve those problems in the same manner.

Rules such as those proposed in WT Docket No. 03-187 have obvious potential adverse consequences for WFMZ-TV's ability to address the needs of viewers who may have lost service due to the digital transition. Additionally, with the emergence of mobile technology, and as the FCC addresses spectrum requirements in the band between TV channels 2 and 51, it is clear that the last chapter on the tower height and location requirements of digital television broadcasting stations has yet to be written.

It is, therefore, vital that the FCC, in the course of this PEA, not overleap the necessity for a solid scientific foundation for new rules on this subject. Changes in the ASR program, such as those endorsed in a "Memorandum of Understanding" between various communications industry groups and conservation organizations. The changes in the ASR program contemplated by the MOU – on which the parties *are not in complete agreement* – would create an additional, parallel path for the processing of applications involving new or modified communications structures, with additional delay, expense and potential obstruction of improvements in broadcast television service. This in the absence of scientific evidence of either a problem requiring a new industry-wide regulatory scheme or the efficacy of the solution.

Accordingly, the FCC should proceed with the PEA with both caution and skepticism and not jump to conclusions that lack a firm scientific foundation and justification. Absent scientific evidence that has not been forthcoming in these proceedings to date, the FCC should conclude that no revisions to the ASR system are required.

Respectfully submitted,

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January 13, 2011

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

In the Matter of )  
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Effects of Communications Towers on ) WT Docket No. 08-161  
Migratory Birds )  
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To: The Commission

**COMMENTS OF MARANATHA BROADCASTING COMPANY, INC.**

Maranatha Broadcasting Company, Inc. (“MBC”), licensee of independent television broadcast station WFMZ-TV, Channel 69, Allentown, Pennsylvania (and WFMZ-DT), hereby responds to the FCC’s *Public Notice* in WT Docket Nos. 08-61 and 03-137, 74 *Fed. Reg.* 21613 (May 8, 2009), requesting comments concerning a petition by American Bird Conservancy, Defenders of Wildlife and National Audubon Society for “Expedited Rule Making and Other Relief” (the “Petition”). The subject of the Petition is the decision of the United States Court of Appeals for the District of Columbia Circuit in *American Bird Conservancy, Inc. v. FCC*, 516 F. 3d 1027 (D.C. Cir. 2008). The Petition asks, among other things, that the FCC respond to the Court of Appeals decision by (1) preparing an environmental impact statement concerning the effects of the Antenna Registration program on migratory birds, (2) adopt rules implementing the Endangered Species Act, an consult with the U.S. Fish and Wildlife Service concerning the effects of communications towers on endangered species, and (3) adopt measures proposed in WT Docket No. 03-187 to reduce migratory bird deaths from collisions with communications towers.

MBC submitted comments concerning the rules proposed in WT Docket No. 03-187 on April 23, 2007 (attached). In today's comments, MBC reaffirms its position as previously expressed and incorporates its Docket No. 03-187 comments by reference.

In its comments in WT Docket No. 03-187, MBC, as the owner of a guyed communications tower with an overall height of 668 feet above ground level, showed that (1) measures proposed in that proceeding had not been confirmed through systematic, peer-reviewed scientific research to have any direct correlation with mitigating adverse effects on bird populations; (2) major "events" of migratory bird collisions with communications towers were episodic, geographically isolated, and the causes not understood; (3) new tower height limitations could impede the deployment of new technologies for delivery of digital television broadcast signals, and (4) adoption of new across-the-board, one-size-fits-all rules on all broadcast licensees would – considering the isolation and infrequency with which such "events" occur, and the absence of any scientific consensus about the possible link between towers, the "events" and the proposed remedies – impose unjustifiable costs, regulatory burdens and uncertainties on broadcast licensees.

The Court of Appeals decision in *American Bird Conservancy, Inc.*, does *not* direct the FCC to immediately adopt any of the measures proposed in WT Docket No. 03-187, or indeed any specific tower height limitations or obstruction lighting rules at all. To that extent, the Petition overreaches. The Court said only, with respect to the particular case before it, "Guided by this opinion, the Commission should be able to proceed with dispatch on remand to resolve the *Gulf Coast* petition, whether separately or as part of the

nationwide proceeding.” *American Bird Conservancy, Inc.* (slip op. p. 14.) (emphasis added).

Not only did the Court *not* address specific tower lighting requirements proposed in WT Docket No. 03-187, its direction to the FCC actually militates that the agency refrain from acting on those proposals prematurely. The Court directed the FCC to (1) undertake at least an Environmental Assessment, and potentially an Environmental Impact Statement, with respect to the effects of towers on migratory birds and their habitats and (2) consult with the Fish and Wildlife Service concerning the effects of communications towers on endangered species. The absence of a scientific consensus on either (1) the causes of migratory bird “events” that arise from communications towers or (2) the mitigating effects of the measures proposed means that it would be improper for the agency to mandate *any* of those measures *until* the processes required by the Court’s decision are completed.

For the foregoing reasons, the FCC should resist pressure to enact into rule any of the proposals in WT Docket No. 03-187, *unless and until* reliable scientific studies and consultations with expert agencies in the course of implementing the Court’s mandate confirm both (1) the link between communications towers and significant adverse effects on bird populations *and* (2) the efficacy of the proposed solutions.

Even then, as noted in MBC’s previous comments, most communications towers have never been the cause of significant bird kills. If that is the case – and it assuredly is – restrictive, then across-the-board limitations on tower heights and one-size-fits-all requirements for obstruction lighting make no sense. To effectively carry out the objectives

of the petitioners, the FCC would have to also regulate tall buildings and reflective surfaces across the country.

Therefore, the FCC should limit its response to *American Bird Conservancy, Inc.*, to the issues on which the Court has clearly directed the agency to act. It *should not* jump to adopt broadly applicable rules and restrictions that lack – and almost certainly do not have -- a firm scientific foundation and justification.

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May 29, 2009

ATTACHMENT (filed April 23, 2007)

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

In the Matter of )  
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Effects of Communications Towers on ) WT Docket No. 03-187  
Migratory Birds )  
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To: The Commission

**COMMENTS OF MARANATHA BROADCASTING COMPANY, INC.<sup>2</sup>**

Maranatha Broadcasting Company, Inc. (“MBC”), licensee of independent television broadcast station WFMZ-TV, Channel 69, Allentown, Pennsylvania (and WFMZ-DT), hereby responds to the FCC’s *Notice of Proposed Rule Making*, FCC No. 06-164, released November 7, 2006 (the “*NPRM*”), concerning the effects of communications towers on migratory birds. In the *NPRM*, the FCC tentatively concludes that “medium intensity white strobe lights . . . [are] to be considered the preferred system over red obstruction lighting systems to the maximum extent possible without compromising safety.” *NPRM*, ¶ 3. In particular, the FCC also asks (*NPRM*, ¶ 47), what action should be taken regarding the lighting of existing towers, e.g., whether existing tower lighting specifications set forth on station licenses should be re-evaluated (by the FCC and the FAA), and whether existing red obstruction lights should be replaced or within a specific time frame. The *NPRM* also

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<sup>2</sup> These comments were originally submitted through the FCC’s electronic comment filing system on April 23, 2007. Notwithstanding several attempts, we were unable to proceed beyond the “confirm this transaction and receive confirmation message.” Acceptance as timely filed is respectfully requested.

asks for comments concerning possible marking requirements for tower guy wires, including those on existing towers (*NPRM*, ¶ 55). As the licensee of WFMZ-TV, and the owner of a guyed communications tower with an overall height of 740 feet above ground level, MBC's primary concern is the FCC's proposed application of new regulations to existing towers (although those regulations, particularly restrictions on tower height, could also have significant implications for the adoption of different transmission models for delivery of digital television broadcast signals).

In this rule making proceeding, the FCC must be very careful not to make decisions reflecting (A) "checkbook" conservationism, (B) "check-list" conservationism, or (C) "feel-good" conservationism. "Checkbook" conservationism would be action which imposes costs on communications licensees with little and in many cases no consequent reduction in the effects of communications towers on migratory birds. "Check-list" conservationism would include re-authorization procedures (e.g, new aeronautical hazard studies) and reporting requirements, accompanied by expenses, delays and uncertainty without regard to the existence of documented instances of significant effects on migratory birds. "Feel-good" conservationism would be the adoption, to satisfy conservation groups and other governmental agencies, of measures that systematic, peer-reviewed scientific research has not confirmed to have any direct correlation with significant adverse effects on bird populations.

WFMZ-TV has operated from its present transmitter location since 1976. In addition to WFMZ-TV, the tower accommodates the antennas of several other radio and television

stations and other communications services.<sup>3</sup> It is marked with standard steady-burning red obstruction lights required under FAA regulations. Recently, MBC replaced the incandescent lamps with LED obstruction lights, which (in addition to using less energy and requiring less maintenance) are thought to be less likely to interfere with birds' direction-finding mechanisms. The tower site is shared with the studios and offices of WFMZ-TV and its affiliated companies. During all that time, MBC management and employees have never observed any significant number of bird carcasses attributable to collisions with the tower. To the contrary, over that period, there have been only a relative handful of bird fatalities, generally no more than one or two a year.

Under no circumstances can this minimal number of avian fatalities be considered "significant," let alone justify the costs, regulatory burdens and uncertainty that would be imposed on MBC by requiring replacement of the existing lighting system and/or re-opening of its FAA no-hazard determination. (To illustrate the uncertainty inherent in any application of new lighting requirements to existing towers, current FAA guidelines do not recommend white strobe lights in urban areas or in close proximity to airports, and do not permit *red* strobe lighting or blinking red obstruction lights except in conjunction with steady-burning red lights.<sup>4</sup>)

There is no reason to believe that installation of new lighting on the WFMZ-TV tower, or attaching markers to the guy wires, would have *any* effect on the number of bird

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<sup>3</sup> Prior to the construction of the television station, the site accommodated the transmission tower of a co-owned FM station.

<sup>4</sup> Presumably, no one suggests that aeronautical safety requirements should be compromised to achieve marginal – if any – reductions in the number of migratory birds that collide with communications towers.

fatalities resulting from collisions with the tower. Birds collide with towers already marked with white strobe lights, with towers that are not guyed , and with towers that are less than 200 feet tall. Not only are there no standardized studies showing a direct correlation between communications towers and bird populations, the causes of major “events” are not understood, and the (largely anecdotal) evidence that exists shows that such events are episodic (not regularly recurring) and geographically isolated.<sup>5</sup>

A blanket extension of new tower lighting and guy wire-marking requirements to existing towers, therefore, would represent the worst of “checkbook,” “check-list” and “feel-good” conservationism: the imposition of costs and regulatory burdens on licensees in the absence of any demonstrated need for new rules, or reliable scientific studies confirming either the link between communications towers and significant adverse effects on bird populations or the efficacy of the proposed solutions.

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<sup>5</sup> Different species have different flyways, some species appear to be more likely to collide with towers than others, and so on.

For the foregoing reasons, the FCC should not adopt any new regulations regarding the lighting, marking or environmental effects of communications towers at this time.

Respectfully submitted,

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April 23, 2007