



# United States Department of the Interior

FISH AND WILDLIFE SERVICE Received & Inspected  
Washington, D.C. 20240



In Reply Refer To:  
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FCC Mall Room

Mr. Aaron Goldschmidt  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

Dear Mr. Goldschmidt:

I am pleased to cooperate with the Federal Communications Commission (FCC) in conducting a Section 7 consultation on its Antenna Structure Registration (ASR) program. Section 7(a)(1) states that “[a]ll other Federal agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species. . . .” In addition, Section 7(a)(2) states that “[e]ach Federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action authorized, funded, or carried out by such agency . . . is not likely to jeopardize the continued existence of any endangered species. . . .”

Given that the ASR program results in construction throughout the United States, and that the exact locations of future tower construction and the characteristics of each tower are unknown, describing and quantifying the program’s effects to listed species under Section 7(a)(2) would require making assumptions that would be highly speculative. It is therefore unlikely that any take could be quantified on the programmatic level. Accordingly, we suggest that the FCC consider a conservation review with the Service under Section 7(a)(1), with follow-up consultation under Section 7(a)(2) as needed for tower sites, either individually or in appropriate groupings.

A conservation review under Section 7(a)(1) will focus on procedures instituted at a programmatic level intended to promote the conservation of listed species and to avoid or minimize any adverse effects to these species or their habitats caused by the ASR program. Section 7(a)(1) of the Endangered Species Act (Act) requires all Federal agencies to “...utilize their authorities in furtherance of the purposes of this Act...” Consequently, it will be important for the Fish and Wildlife Service to fully understand the authorities FCC exercises in connection with the ASR program, and the nature and limits of its discretion in exercising these authorities.

To prepare for the review, I invite FCC to share any information relevant to its authorities and procedures, any indications of past beneficial or adverse effects of the ASR program on endangered or threatened species or their habitats, any potential changes to the ASR program that might tend to promote better compliance with the requirements of the Act, or any other information or materials it believes would assist in conducting the review.



Mr. Aaron Goldschmidt:

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I anticipate the outcome of the review to be an evaluation of the degree to which the ASR program contributes to furthering the purposes of the Act, along with any recommendations the Service may have to improve or enhance this contribution, and a description of any subsequent consultation that may be required between the Service and FCC at a less aggregated regional or local scale. Consultation at a smaller scale may consider more specific effects to species than will be possible in the conservation review, and may address compliance with section 7(a)(2) of the Act, which prohibits a Federal agency from authorizing, funding or carrying out any action that is likely to jeopardize a listed species or adversely modify its critical habitat. It is my hope that an effective programmatic conservation review will allow FCC to avoid any potential future violation of section 7(a)(2).

Please contact me or Dr. John J. Fay (703/358-2353) of my staff about planning our next steps in carrying out this review.

Sincerely,

A handwritten signature in blue ink that reads "Richard E. Sayers". The signature is written in a cursive style with a large, stylized initial "R".

Richard E. Sayers, Chief  
Division of Consultation, HCPs,  
Recovery and State Grants