Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of

Amendment of Parts 1 and 17 of the Commission's Rules Regarding Procedures For Processing Antenna Structure Registration Applications	)))))	WT Docket No. 08-61
Effects of Communications Towers on Migratory Boards	))	WT Docket No. 03-187

To: The Commission

COMMENTS OF
NATIONAL PUBLIC RADIO, INC.

Introduction

Pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415, National Public Radio ("NPR") hereby responds to the Commission's *Public Notice*, dated August 26, 2011, seeking comment on the Draft Programmatic Environmental Assessment ("PEA") of its Antenna Structure Registration ("ASR") program.[1] The ASR PEA is designed to ensure that the environmental effects of communications towers, including their effects on migratory birds, are considered prior to antenna construction.

NPR is a non-profit membership corporation which produces and distributes noncommercial educational programming through more than 900 public radio stations nationwide. In addition to broadcasting award-winning NPR programming including *All Things*

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[1] *Public Notice*, WT Docket No. 08-61, WT Docket No. 03-187, DA 11-1455 (Aug. 26, 2011) ["*Public Notice*"]. *See Draft Programmatic Environmental Assessment of the Antenna Structure Registration Program*, WT Docket No. 08-61, WT Docket No. 03-187, (Aug. 26, 2011) ["*Draft PEA*"].

Considered, *Morning Edition*, and *Talk Of The Nation*, NPR's Member stations are significant producers of news, information, and cultural programming. NPR also operates the Public Radio Satellite Interconnection System and provides representation and other services to its member stations.

NPR appreciates the work the Commission has done in conducting a programmatic assessment of its ASR process to comply with the decision of the United States Court of Appeals for the District of Columbia Circuit in *American Bird Conservancy, Inc. v. FCC*.[2] The Draft PEA responds to the court's decision by seeking to ensure a meaningful public opportunity to review proposed towers for environmental impacts before ASRs are issued.

Of the proposed actions in the Draft PEA, NPR supports the No Action Alternative, which provides for a continuation of the existing ASR program and the National Environmental Policy Act of 1969 ("NEPA")[3] compliance procedures. This option includes the public notice and 30-day public comment requirement of the Commission draft procedures, which will ensure meaningful public involvement in NEPA review. At the same time, the No Action Alternative avoids imposing additional regulatory burdens and costs of debatable efficacy on tower owners and lessees, including many public radio station licensees.[4]

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[2] 516 F.3d 1027 (D.C. Cir. 2008) ("*American Bird Conservancy*").

[3] 42 U.S.C. §§ 4321-4347.

[4] Public radio stations that do not own their own towers can expect to incur increased environmental regulatory compliance costs as tower lessees.

The No Action Alternative
Complies With The *American Bird Conservancy* Remand Order,
Assures Consideration Of Potential Environmental Affects, And
Avoids Unnecessary Regulatory Burdens And Other Costs

In *American Bird Conservancy*, the court determined that the Commission had not adequately evaluated the potential effects that its current ASR program had on threatened and endangered species and migratory birds.[5] The court held that, in order for the Commission to comply with its obligations under NEPA and the Endangered Species Act of 1973 ("ESA"),[6] the Commission must consider whether the potential significant environmental impacts from the ASR program require preparation of a Programmatic Environmental Impact Statement ("PEIS").[7] The court stated that the Commission could begin this evaluation with a PEA.[8] The court also instructed the Commission to reconsider whether potential effects on threatened and endangered species require programmatic consultation with the United States Fish and Wildlife Service ("USFWS") under the ESA.[9] In addition, the court required the Commission to provide

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[5] "The Commission gave two reasons for dismissing the request for a programmatic EIS: (1) 'the lack of specific evidence . . . concerning the impact of towers on the human environment,' and (2) 'the lack of consensus among scientists regarding the impact of communications towers on migratory birds.' Order, 21 F.C.C.R. at 4466 P 11. Neither reason is sufficient to sustain the Commission's refusal to take action pursuant to NEPA . . .." *Am. Bird Conservancy*, 516 F.3d at 1033.

[6] 16 U.S.C. §§ 1531-1534.

[7] *See Am. Bird Conservancy*, 516 F.3d at 1033.

[8] *See id.* (Section 1.1307(c) applies to the petition and requires an EA when an action "may" have a significant environmental effect).

[9] *See id.* at 1034-35 (finding the Commission's explanation for declining to consult with the USFWS inadequate).

notice of ASR applications that would ensure "meaningful public involvement in NEPA review."[10]

The Commission's *Public Notice* responds to the *American Bird Conservancy* remand by seeking comment on several alternative draft procedures. Under the No Action Alternative, the existing ASR Program would continue with the existing FAA-permitted lighting configurations. The No Action Alternative would require: (1) applicants for new tower registration to provide a 30-day opportunity for public comment on the environmental effects of the proposed construction; and (2) on an interim basis pending completion of the PEA, preparation of an Environmental Assessment ("EA") for a proposed tower more than 450 feet in height to address its potential impact on migratory birds.[11] Given the considerable uncertainty associated with estimating avian mortality caused by communications towers[12] and the limited resources of many station licensees, including those operating public radio stations, NPR believes the No Action Alternative assures appropriate consideration of potential environmental affects while minimizing unnecessary regulatory burdens.

The No Action Alternative will ensure that the Commission complies with the *American Bird Conservancy* remand order. First, the No Action Alternative is the product of an assessment whether (1) the potential significant environmental impacts from the ASR program require preparation of a PEIS and (2) the potential effects on threatened and endangered species require programmatic consultation with the USFWS under the ESA.[13] Thus, the Draft PEA and

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10 *Id.* at 1035.

11 *Draft PEA* at 1-4.

12 *Id.* at 4-13.

13 *Id.* at 1-4 to 1-5 & 5-10 to 5-11.

adoption of the No Action Alternative would satisfy the Commission's obligations under NEPA and the ESA.

The No Action Alternative also provides interested parties the information needed to make an informed decision whether to petition the Commission for further environmental review of a proposed antenna structure.[14] Due to the Commission's obligation to coordinate with the USFWS and to prepare EAs in appropriate cases, the No Action Alternative is expected to have short- to long-term negligible-to-minor impacts to threatened and endangered species and critical habitat.[15] Thus, this option ensures that adverse effects to threatened and endangered species will be mitigated if not avoided.[16]

The Commission must also be mindful of the potential regulatory burdens and costs associated with any reform of the ASR program. Public radio stations are traditionally under-resourced non-profit or governmental entities, they operate non-commercially, and they rely heavily on the financial support of their listeners.[17] Even "minor" economic adverse impacts on public radio stations can have very major consequences. Overly burdensome regulations could result in fewer programs, less journalism, and eventually the loss of public radio stations, particularly in rural and economically distressed communities.

According to the Draft PEA, the No Action Alternative would have a short- to long-term minor adverse economic impact on applicants proposing new towers for registration as a result of

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[14] *Id.* (applicants for new tower registration to provide a 30-day opportunity for public comment on the environmental effects of the proposed construction).

[15] *Id*. at 5-11.

[16] *Id*.

[17] www.npr.org/about/aboutnpr/publicradiofinances.html

the increased cost associated with the new notice requirement under the Commission's draft procedures.[18] Even so, this option is preferable to the other proposed options that could result in even greater costs to public radio stations with debatable benefits for reducing avian mortality. Under the Alternative 2 options, the Commission expects short- to long-term moderate adverse impacts on applicants due to increased costs for applicants to prepare anywhere from 130 to 2,800 additional EAs annually.[19] These alternatives all result in even greater costs to tower owners and lessees, with the smallest estimate of 130 additional EAs annually equaling roughly triple the amount of EAs required under the No Action Alternative.[20]

Finally, the No Action Alternative will facilitate simultaneous review of a proposed antenna structure by the Commission and local authorities, thereby minimizing delay in tower construction.[21] This option is preferable to the other proposed options which could delay the construction of new towers by the time necessary for the applicant to prepare and Commission to review the expected additional EAs.[22]

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[18] *Draft PEA* at 5-28.

[19] *Id*. at 5-28 to 5-30 (using a conservative estimate of the number of new registered towers anticipated to be constructed each year).

[20] *Id*. at 5-29 (total number of EAs expected to be similar to the recent range of 65 to 75 per year).

[21] *Id*. at 5-29.

[22] *Id*. at 5-28 to 5-30 (to the extent these tasks cannot be completed concurrently with other pre-construction activities).

Conclusion

NPR supports the Commission's efforts to evaluate the environmental effects of its current ASR program. Given the considerable uncertainty associated with estimating avian mortality caused by communications towers and the need to avoid imposing unnecessary additional regulatory burdens and other costs on tower owners and lessees, NPR urges the Commission to adopt the No Action Alternative.

Respectfully Submitted,

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