

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
Programmatic Environmental Assessment of the) WT Docket No. 08-61
FCC's Antenna Structure Registration Program)
)
)

COMMENTS OF THE UTILITIES TELECOM COUNCIL

The Utilities Telecom Council (UTC) hereby files its comments in response to the Commission's *Public Notice* in the above-referenced matter.¹ UTC supports the Commission's effort to address the environmental impact of towers on migratory birds and other resources under the National Environmental Policy Act of 1969, as amended (NEPA), and the Endangered Species Act of 1973 (ESA), and in response to the decision in *American Bird Conservancy, Inc. v. FCC*, 516 F.3d 1027 (DC Cir. 2008). UTC recommends that the Commission adopt the No Action Alternative or Alternative 1, as described in the PEA.

Under the No Action Alternative, antenna structure registrations would be subject to a 30 day public notice period and there would be an interim requirement that any tower over 450 feet would need an EA. The Commission concluded that "there would be no significant adverse environmental impacts at the national level to any resources, including migratory birds," under the No Action Alternative, even though the impact under the current program would continue.² Specifically, the PEA concluded that the impact on resources other than migratory birds would be negligible to minor.³ For migratory birds, the PEA concluded that there would be continued short and long term major adverse impacts to migratory birds, and it estimated that annual bird mortality would be expected to increase from approximately 5 million currently to approximately 6.6 million in the year 2021, based on an estimated 2,800 new towers

¹ *Wireless Telecommunications Bureau Seeks Comment and Announces Public Meeting on its Draft Programmatic Environmental Assessment of the Antenna Structure Registration Program*, Public Notice, WT Docket No. 08-61, 2011 WL 3800241 ("PEA").

² PEA at x.

³ PEA at Table 1, xiv-xv.

built annually.⁴ However, it concluded that the relative impact from towers was small, considering that it is “only 0.05 percent of the overall U.S. bird population, which is estimated at 10 billion birds,” and that “when evaluated in context with other sources of avian mortality, towers cause approximately 0.2 percent of annual avian mortality.” Finally, the PEA determined that there was no scientific evidence that the impact on particular bird species was significant.⁵ Therefore, the PEA ultimately concluded that the impact on migratory birds was not significant.

Of the alternatives offered in the PEA, the No Action Alternative represents the best choice, but even it is not without its issues. Comments on the record in the proceeding express concerns that the public notice process could delay the deployment of new towers or the modification of existing towers. UTC shares those concerns and urges the Commission to adopt public notice processes that avoid unreasonable delays and undue burdens. Similarly, comments on the record in this proceeding express concerns about additional costs and delays that could result to tower siting and/or modifications, if the Commission requires more environmental assessments (EAs). UTC shares those concerns and urges the Commission to avoid requiring additional EAs, even on an interim basis. As the PEA notes, EA preparation for a tower typically costs between \$5000 and \$15000 (with exceptional cases costing \$25000) depending on the complexity of issues and resources to be addressed; and a typical EA takes approximately 45 to 50 days to process from receipt until issuance of a FONSI.⁶ Based upon the PEA’s “conservative estimate” of 2800 new towers to be registered each year over the next ten years,⁷ the annual EA costs in the aggregate -- just for new towers alone -- would be between \$14 million and \$42 million, if all towers required an EA. While there are certainly fewer towers taller than 450 feet, nonetheless the additional cost and delay in preparing and processing EAs for those towers, even on an interim basis would be significant.

The No Change Alternative would continue to consider the impact on environmental resources,

⁴ *Id.*

⁵ *Id.*

⁶ *Id.* at 4-28. A FONSI is a finding of no significant impact.

⁷ *Id.* at 4-4.

including migratory birds. Consistent with the existing FCC rules, registrants would continue to be required to file an EA with their application if the tower was expected to have a significant impact, including if it is located in a wilderness area or if it would impact threatened or endangered species.⁸ As the PEA explained, this would ensure that more localized potentially significant environmental effects will be identified and considered at each individual site. Thus, the No Action Alternative would protect against significant environmental impacts from new towers or modifications that require an ASR.

Therefore, UTC prefers the No Change Alternative, but if it is not adopted, UTC would support Alternative 1. Under Alternative 1, the existing ASR process would continue, but revisions to the FAA lighting requirements would permit future towers that use red flashing lights to not also have steady-burning lights. The PEA concludes that this would greatly reduce the impact of new towers on avian mortality, even though the number of bird collisions with towers would increase in proportion to the number of new towers constructed.⁹ According to the PEA, a tower without red steady-burning lights is estimated to result in 50 to 70 percent less avian mortality than if it uses red steady-burning lights. In addition, site-specific NEPA documents would be required under Alternative 1 when existing ASR program criteria are triggered, similar to the process under the No Action Alternative. Thus, Alternative 1 would protect environmental resources, including many migratory birds without unreasonable increases in costs and/or processing delays for new tower or modifications of existing towers.

⁸ *Id.* at 4-11.

⁹ *Id.*

