

this regard, our dual notice requirement will enable more interested persons to raise relevant environmental concerns regarding ASR applications than would be achieved with either a national notice or local notice alone. The requirement thus serves the public interest under the Communications Act by ensuring that the agency complies fully with NEPA without unnecessarily prolonging the processing of ASR applications.

64. In sum, as described more fully in Appendix E, we will require prospective ASR applicants to provide local notice of their proposals, either by publication in a local newspaper of general circulation or by other appropriate means. The Commission will also post notice of each prospective application on its website on the date requested by the applicant, which must be on or after the date the applicant provides local notice.¹⁷⁰ Interested parties will have an opportunity to respond to these notices by filing Requests for further environmental review with the Commission.

4. Public Comment on Environmental Notifications

65. As noted above, an interested member of the public who believes that a proposed tower (including a covered tower modification) may have a significant impact on the environment may submit a Request for further environmental review to the Commission pursuant to Section 1.1307(c) of our rules.¹⁷¹ The Request must be received by the Commission within 30 days after notice of the proposed tower both has been provided locally and has been made available nationally through the ASR website.¹⁷² Requests will be subject to the pleading standard that is set forth in Section 1.1307(c) of our rules. Late pleadings or pleadings that do not meet the standards in Section 1.1307(c) may be subject to dismissal.

66. In setting the period to file a Request at 30 days, we apply to all ASR filings subject to the environmental notification process the same time period that is currently in place for challenges to ASR filings with EAs.¹⁷³ We reject the Infrastructure Coalition's proposal to set the period to object at 14 days,¹⁷⁴ as we find that such a timeframe is inadequate to allow for meaningful public participation in this

(Continued from previous page) _____
categorically excluded actions as "environmental documents," *id.*, it does include EAs, and we conclude that providing effective public notice of proposed towers before an EA or an environmental certification has been submitted is within the intent of the regulation.

¹⁷⁰ By requesting the applicant to specify the date for national notice, we allow applicants to coordinate the local and national notice periods as closely as possible, while also assuring that the public has at least 30 days from the date of local notice to file any Requests for further environmental processing. While we expect to post notices on the Commission's website on the date requested by the applicant, in the event a posting is delayed, parties will nonetheless have 30 days from the actual date of national notice on the Commission's website to file any Requests.

¹⁷¹ See 47 C.F.R. § 1.1307(c) ("If an interested person alleges that a particular action, otherwise categorically excluded, will have a significant environmental effect, the person shall submit to the Bureau responsible for processing that action a written petition setting forth in detail the reasons justifying or circumstances necessitating environmental consideration in the decision-making process.").

¹⁷² The time period will be computed according to the general rule prescribed in Section 1.4(c) of the Commission's rules, 47 C.F.R. § 1.4(c).

¹⁷³ Although the 30-day period for commenting on ASR applications with EAs attached is not codified in our rules, it is included in the notice that is published in the *Daily Digest*. See, e.g., http://www.fcc.gov/Daily_Releases/Daily_Business/2010/db0910/DOC-301379A1.pdf ("Objections to the application(s) based on environmental considerations may be filed no later than 30 days from the date of this Public Notice."). By comparison, the 30-day period for commenting on license applications is specified in the rules. See 47 C.F.R. § 1.939(a).

¹⁷⁴ See Infrastructure Coalition Petition at 8; see also *Draft Rules Public Notice Comments of Infrastructure Coalition* at i, 8-9 (15 days after date of national notice); *Draft Rules Public Notice Comments of Verizon Wireless* at 5 (15 days after date of national notice); *Draft Rules Public Notice Comments of NTCH* at 4-5 (20 days after date of national notice).

context. At the same time, we reject the 60-day comment period proposed by the Conservation Groups.¹⁷⁵ We do not believe that interested parties should need that much time to file comments, particularly as we do not require the objecting party to include “a comprehensive study of impacts ... to evaluate whether the requirements of applicable environmental laws ... are properly met.”¹⁷⁶ Rather, as discussed below, it is sufficient that a Request “set[s] forth in detail the reasons justifying or circumstances necessitating environmental consideration in the decision-making process.”¹⁷⁷ Therefore, we conclude that a 60-day comment period would unnecessarily obstruct the timely deployment of services while providing minimal benefit.

67. Pursuant to Section 1.1307(c) of our rules, a request for further environmental processing of an otherwise categorically excluded proposed action must “set[] forth in detail the reasons justifying or circumstances necessitating environmental consideration in the decision-making process.”¹⁷⁸ In addition, Section 1.1307(c) cross-references Section 1.1313 of the rules. Section 1.1313(a) provides that “[i]n the case of an application to which section 309(b) of the Communications Act applies, objections based on environmental considerations shall be filed as petitions to deny.”¹⁷⁹ This means, among other things, that the objection must include “specific allegations of fact sufficient to make a *prima facie* showing that the petitioner is a party in interest and that a grant of the application would be consistent with the public interest, convenience, and necessity.”¹⁸⁰ Section 1.1313(b) provides that informal objections based on environmental considerations must be filed prior to grant of the relevant construction permit or other authorization.¹⁸¹

68. In its Petition, the Infrastructure Coalition asks us to require that any objection on environmental grounds filed against an ASR application must be filed as a petition to deny under Section 1.1313(a). It argues that such procedures are necessary to prevent frivolous objections.¹⁸² Several commenters representing licensees and tower owners support the Infrastructure Coalition’s petition.¹⁸³ The Conservation Groups, however, oppose application of the petition to deny standard to these objections, arguing that it would limit the public’s ability to participate in the NEPA process.¹⁸⁴

69. We decline to apply the petition to deny standard to Requests for further environmental review of prospective registered towers. First, Section 1.1313(a) by its terms does not apply to such Requests. Section 1.1313(a) encompasses objections to applications to which Section 309(b) of the Communications Act applies; i.e., applications for an instrument of authorization for a station in the broadcasting or common carrier services, or in certain other services if the Commission so prescribes by rule.¹⁸⁵ Here, a Request would not be filed in response to any application, but in response to a

¹⁷⁵ See Infrastructure Coalition Petition Comments of Conservation Groups at 18-19.

¹⁷⁶ *Id.* at 18.

¹⁷⁷ 47 C.F.R. § 1.1307(c).

¹⁷⁸ *Id.*

¹⁷⁹ 47 C.F.R. § 1.1313(a).

¹⁸⁰ See 47 C.F.R. § 1.939(d).

¹⁸¹ 47 C.F.R. § 1.1313(b).

¹⁸² Infrastructure Coalition Petition at 12-13.

¹⁸³ See Infrastructure Coalition Petition Comments of Sprint Nextel at 4; Infrastructure Coalition Petition Comments of APCO at 2. See also *Draft Rules Public Notice* Comments of Infrastructure Coalition at i, 10; *Draft Rules Public Notice* Comments of NTCH at 5-6.

¹⁸⁴ Infrastructure Coalition Petition Comments of Conservation Groups at 21-22.

¹⁸⁵ 47 U.S.C. § 309(b); 47 C.F.R. § 1.1313(a).

notification that precedes an application for antenna structure registration. Even if the tower proponent elects to file an associated license application before completion of the environmental notification process, such application will be filed subject to completion of the environmental notification process so that the tower proponent will not yet have made any affirmative certification as to environmental effect.¹⁸⁶ Thus, the Request for environmental processing in response to the environmental notification falls outside the scope of Section 1.1313(a).

70. Moreover, we find it better as a matter of policy to require these Requests only to set forth detailed reasons for environmental consideration as provided in Section 1.1307(c).¹⁸⁷ Section 1500.2(d) of the CEQ regulations requires federal agencies to encourage and facilitate public involvement in decisions that affect the quality of the human environment.¹⁸⁸ Formal pleading requirements, while potentially useful in deterring frivolous submissions and in producing a well-informed record for agency decision-making, could thwart participation in our NEPA procedures by those lacking the legal sophistication or financial wherewithal to participate formally.¹⁸⁹ Also, imposing such formality on public comments submitted in response to the pre-ASR filing environmental notifications would be inappropriate in the context of the streamlined processing of ASR applications, which places significant reliance on members of the public to alert the Commission to proposed facilities that may pose significant environmental effects. Avoidance of unnecessarily strict pleading requirements for environmental requests is also consistent with our existing practice of accepting informal objections to applications where appropriate under Section 1.1313(b).¹⁹⁰ A Request for further environmental review, although not subject to the standards applicable to a petition to deny, must be filed within the prescribed 30-day public comment period and must contain a supported statement explaining the basis for the interested person's belief that the proposed tower may have a significant environmental impact, as required by Section 1.1307(c).¹⁹¹ These requirements provide safeguards that the environmental concerns raised through the environmental notification process will be legitimate claims that will not needlessly delay the processing of ASR applications.

5. Facilities That Also Require Service-Specific Applications

71. Under the Commission's rules, some proposed towers are subject to both ASR and service-specific application requirements.¹⁹² Our current rules and procedures vary by licensed service regarding when and how an EA is submitted for towers that may significantly affect the environment where more than one application is filed. Applications for Wireless Radio Authorization (FCC Form

¹⁸⁶ See *supra*, para. 58, and *infra*, Appendix E.

¹⁸⁷ We recognize that interested persons voicing environmental concerns regarding a non-ASR application for a license or construction permit will be subject to stricter pleading standards than apply to those concerned about the environmental effects of a proposed tower for which an ASR application will be filed. Our experience is that a majority of proposed towers with potentially significant environmental effects are subject to registration under Part 17.

¹⁸⁸ 40 C.F.R. § 1500.2(d).

¹⁸⁹ For similar reasons, we decline to require a settlement meeting among the parties after the filing of a Request. See *Draft Rules Public Notice Comments of NTCH* at 6. Requiring such a meeting may impose an unreasonable burden on the party filing the Request. The parties are free to agree to such meetings.

¹⁹⁰ See 47 C.F.R. § 1.1313(b).

¹⁹¹ 47 C.F.R. § 1.1307(c).

¹⁹² For example, a Wireless Radio Service facility that may have a significant environmental effect and is over 200 feet in height would both constitute a major license modification under 47 C.F.R. § 1.939(a)(4) and require registration under Part 17.

601)¹⁹³ involving major modifications (including all applications for facilities that may have a significant environmental effect) are routinely placed on public notice, but that notice does not distinguish applications filed with attached EAs from other license applications that may not involve tower construction or potential environmental effects. An applicant may attach an EA to either its Form 601 or Form 854 application, and may rely on a resulting FONSI to certify on the other application that its action will have no significant environmental effect. Broadcast construction¹⁹⁴ and satellite earth station¹⁹⁵ applicants whose proposed facilities require registration in the ASR system must submit their EAs as an exhibit to their service-specific applications regardless of any other application requirement, and have been permitted to attach EAs to their service-specific applications in lieu of submitting those EAs with their FCC Forms 854.

72. Some commenters argue that Section 1506.6 of the CEQ rules requires that we notify the public separately regarding each application associated with a proposed antenna structure subject to registration under Part 17.¹⁹⁶ Others contend that it is sufficient to provide a single opportunity, in connection with the ASR process, for the public to comment on the environmental effects of each proposed tower.¹⁹⁷ Consistent with current procedures that generally require only one NEPA review for a single proposed antenna structure, we are not persuaded that, from an environmental standpoint, the decision-making involved in processing service-specific construction permit or license applications raises discrete issues from those involved in determining whether to register a tower from which licensed communications service will be provided. Our obligation to accommodate public participation in our NEPA procedures for registering communications towers does not require that the public be afforded multiple opportunities to comment on the environmental effects of a single tower project simply because both a tower registration and a construction permit or license are required to authorize operation from the proposed tower.

73. At the same time, it is important that every registered tower (other than the exceptions discussed above) complete procedures that ensure a specific opportunity for the public to voice environmental concerns, as stated in the court's order. The public may not have this opportunity if applicants can avoid environmental notification by attaching any required EA for a proposed antenna structure to a service-specific construction permit or license application (*e.g.*, FCC Form 301, 601), for which the public notice may not expressly mention the EA or indicate that tower construction is involved. Accordingly, we will require that any required EA for a registered tower be submitted through the notification process that precedes submission of the complete ASR application, regardless of whether the licensee must also attach the EA to an associated service-specific construction permit or license application.¹⁹⁸ Procedures for achieving this end in each of the licensed services are set out in Appendix E.

¹⁹³ FCC Form 601, Application for Wireless Telecommunications Bureau Radio Service Authorization, available at <http://www.fcc.gov/Forms/Form601/601.html>.

¹⁹⁴ See FCC Form 301, Application for Construction Permit for a Commercial Broadcast Station; FCC Form 318, Application for Construction Permit for a Low Power FM Broadcast Station; FCC Form 340, Application for Construction Permit for Reserved Channel Noncommercial Educational Broadcast Station; FCC Form 346, Application for Authority to Construct or Make Changes in a Low Power TV, TV Translator or TV Booster Station; FCC Form 349, Application for Authority to Construct or Make changes in a FM Translator, or FM Booster Station, available at <http://www.fcc.gov/formpage.html>.

¹⁹⁵ See FCC Form 312, Application for Satellite Space and Earth Station Authorizations, available at <http://www.fcc.gov/formpage.html>.

¹⁹⁶ See Infrastructure Coalition Petition Comments of Conservation Groups at 16-17.

¹⁹⁷ See Infrastructure Coalition Petition at 8 n. 32.

¹⁹⁸ An applicant that does not make an ASR filing should continue to attach any required EA to the appropriate licensing form.

74. We also implement procedures that will enable applicants for licenses that require frequency coordination to submit FCC Form 601 before completing the environmental notification process. Under the Commission's current procedures, FCC Form 601 cannot be filed for a facility that requires antenna structure registration until antenna structure registration has been granted. LMCC expresses concern that if we were to continue to require grant of ASR before the FCC Form 601 could be filed, a party whose environmental notification generated an environmental Request necessitating review could lose its frequency to a second party whose later notification generated no Requests and that the notice process itself might alert a potential competing applicant to the benefit of such action.¹⁹⁹ To address such concerns, we will permit wireless radio, public safety, and other license applicants whose proposed towers are subject to registration to file FCC Form 601 before completing the environmental notification process so long as the applicant has obtained its FAA No Hazard Determination and notice has been provided both locally and through the Commission's website. In addition, in order to guard against speculative reservations of frequencies or sites, we also require FCC Form 601 applicants that have not yet obtained their ASR Registration Number to provide the Bureau with an update of the status of their environmental review every 60 days. Further details of this process are provided in Appendix E.

75. We clarify that the environmental process will not affect the processing of a licensing application for a collocation on an existing tower that has an ASR application pending for a change that is unrelated to the collocation. For example, the tower owner may have a pending application to change the lighting system or increase the tower height to accommodate a different collocator. In such instances, the processing of the license application for the unrelated collocation will proceed independently of the ASR application.²⁰⁰

6. Applications Pending on the Effective Date of the Environmental Notification Process

76. The effective date of the environmental notification requirements will be established in a Public Notice to be issued by the Wireless Telecommunications Bureau. ASR applications that are pending on the effective date ordinarily will not be required to complete the environmental notification process. However, an amendment to an ASR filing that occurs after the effective date will be subject to the environmental notification requirements as set forth *supra* in Section III.A.1. Similarly, amendments to an EA may require environmental notification.

B. The Processing of ASR Applications Pending Completion of the Commission's Programmatic NEPA Analysis

77. We are obligated under NEPA to avoid irretrievable commitments of resources without assessing the environmental effects of our actions and "to predict the environmental effects of a proposed action before the action is taken and those effects are fully known."²⁰¹ Accordingly, we take interim measures to protect migratory birds pending completion of the programmatic EA and this proceeding. Our expectation is that the record developed in the course of preparing the nationwide programmatic EA may provide a basis to determine what, if any, permanent rule changes are necessary to effectuate the Commission's NEPA responsibilities regarding migratory bird impacts when processing ASR applications. At the conclusion of the programmatic EA and any subsequent programmatic EIS, the Commission will take whatever steps it finds necessary to effectuate the conclusions reached in the final programmatic NEPA document, including steps to resolve any issues that may remain in the outstanding rulemaking in WT Docket No. 03-187.

¹⁹⁹ See Infrastructure Coalition Petition Comments of LMCC at 3-5.

²⁰⁰ See Draft Rules Public Notice Comments of Verizon Wireless at 9.

²⁰¹ *American Bird Conservancy*, 516 F.3d at 1033 (citing *Scientists' Inst. for Pub. Info., Inc. v. Atomic Energy Comm'n*, 481 F.2d 1079, 1091-92 (D.C. Cir. 1973)).

78. Meanwhile, we establish interim processing procedures to protect migratory birds pending the completion of this process.²⁰² Specifically, we apply Section 1.1307(d) of the Commission's rules²⁰³ to require that an EA that includes a discussion of potential impacts on migratory birds be submitted for any proposed new registered tower over 450 feet in height AGL. This requirement will also apply to: replacement towers over 450 feet in height AGL that involve a substantial increase in size to the tower being replaced; expansions of existing towers over 450 feet in height AGL that constitute a substantial increase in size; and conversions of a tower over 450 feet in height AGL to a less preferred lighting style.²⁰⁴ For all other registered towers, an EA will not be routinely required except as specified in Section 1.1307(a) or (b).²⁰⁵ The Bureau will continue to apply Section 1.1307(c) and (d) on a case-by-case basis to determine whether an EA is required for any such tower, taking into consideration any Requests received during the public notice period.

79. We adopt these interim measures pursuant to the mandate in Section 1.1307(d) of the Commission's rules that the processing Bureau shall require an EA if it determines that an otherwise categorically excluded proposal may have a significant environmental effect.²⁰⁶ In *American Bird Conservancy*, the court found that the Section 1.1307(c) threshold for requiring EAs had been met for at least some towers in the Gulf Coast region.²⁰⁷ Accordingly, on our own motion, we adopt these interim standards to require an EA for certain categories of towers that are most likely to have significant effects on migratory birds.²⁰⁸

80. Our selection of 450 feet AGL as the threshold for the interim EA filing requirement is consistent with evidence in the Migratory Birds rulemaking record and elsewhere. Data from existing studies show no evidence of large-scale mortality for towers less than approximately that height.²⁰⁹ Data from the peer-reviewed Michigan Bird Study, for instance, confirm the relevance of tower height in

²⁰² As we have begun the programmatic analysis with an EA rather than an EIS, the Commission is not subject to Section 1506.1 of CEQ's rules. 40 C.F.R. § 1506.1 (Limitations on actions during the NEPA Process). Section 1506.1(c)(2) provides that "[w]hile work on a required program environmental impact statement is in progress and the action is not covered by an existing program statement, agencies shall not undertake in the interim any major Federal action which may significantly affect the quality of the human environment unless such action: ... (2) [i]s itself accompanied by an adequate environmental impact statement."

²⁰³ 47 C.F.R. § 1.1307(d).

²⁰⁴ See *supra*, paras. 53-54. An EA will not be required for replacement towers that do not involve a substantial increase in size, changes to a more preferred or equally preferred lighting style under the rankings adopted herein, administrative filings, and other minor ASR submissions that are not required to complete the pre-ASR filing environmental notification process, regardless of tower height. See *supra*, paras. 53-54.

²⁰⁵ 47 C.F.R. § 1.1307(a), (b).

²⁰⁶ 47 C.F.R. § 1.1307(d). Sections 4(i) and 4(j) of the Act provide additional authority for the adoption of the interim processing guidelines set forth in this Section. Section 4(i) of the Communications Act authorizes the Commission to "perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent [with the express provisions of the Act], as may be necessary in the execution of its functions." 47 U.S.C. § 154(i). See *New England Tel. & Tel. Co. v. FCC*, 826 F.2d 1101, 1108 (D.C. Cir. 1987) (the "wide-ranging source of authority" in Section 4(i) empowers the Commission to take "appropriate and reasonable" actions in furtherance of its regulatory responsibilities.). See also *City of New York v. FCC*, 486 U.S. 57, 66 (1988); *Capital Cities Cable, Inc. v. Crisp*, 467 U.S. 691, 700 (1984). Additionally, Section 4(j) of the Communications Act gives the Commission authority to "conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice." 47 U.S.C. § 154(j).

²⁰⁷ *American Bird Conservancy*, 516 F.3d at 1033-34.

²⁰⁸ 47 C.F.R. § 1.1307(c).

²⁰⁹ See Draft Programmatic EA, Figure 12: Mean Annual Bird Mortality and Tower Heights (<600 feet).

assessing the degree of risk to migratory birds at individual towers.²¹⁰ That study suggests that avian collisions occur 68-86 percent less frequently at towers between 380 and 480 feet AGL compared with towers greater than 1,000 feet AGL.²¹¹ Other studies have also recognized tower height as a factor potentially affecting avian collisions.²¹² Thus, while there is not consensus as to whether sufficient scientific research exists to support adoption of permanent rule changes designed to protect migratory birds,²¹³ we find that there is sufficient evidence to give special attention to tall towers on an interim basis while we complete the programmatic EA and any subsequent programmatic EIS, if required.

81. We adopt the EA requirement for proposed towers over 450 feet in height AGL as a reasonable measure for the protection of migratory birds pending completion of the programmatic EA, which will evaluate whether scientific evidence supports adoption of permanent measures.²¹⁴ Further, the interim measure is temporary and is consistent with the tower height threshold for requiring an EA proposed in the consensus MOU between industry representatives and environmental groups.²¹⁵ In particular, under the MOU, new towers taller than 450 feet AGL would require an EA for avian effects.²¹⁶ New towers of a height of 450 feet or less AGL, as well as replacement towers and other ASR filings, would not initially require an EA as a categorical matter.²¹⁷ The inclusion in the MOU of a 450-foot threshold for an interim EA filing requirement supports our conclusion that this interim requirement strikes an appropriate balance between protecting migratory birds and ensuring that ASR applications can be processed in a manner that facilitates the rapid deployment of communications services.

²¹⁰ Joelle Gehring, Paul Kerlinger, and Albert M. Manville II, *The Role of Tower Height and Guy Wires on Avian Collisions with Communications Towers*, 75 *The Journal of Wildlife Management* 848 (2011).

²¹¹ *Id.* at 851.

²¹² The Avatar report commissioned by the FCC identified height and lighting as tower characteristics that increase hazards to migratory birds. Notice of Inquiry Comment Review Avian/Communications Tower Collisions, filed by Avatar Environmental, LLC, WT Docket No. 03-187 (Dec. 10, 2004). An Avian Risk Assessment for a specific project prepared by Dr. Paul Kerlinger concluded, *inter alia*, that decreasing the heights of specific towers would virtually eliminate the risk to birds. *Mr. Andrew Skotland*, 23 FCC Rcd 8574 (Media Bur. Audio Div 2008). *See also* Draft Programmatic EA, Figure 11: Mean Annual Bird Mortality and Tower Heights (compiling existing studies that collectively show avian mortality generally to increase as tower height increases, with a greater rate of increase at taller heights).

²¹³ *See, e.g.*, Letter from Patrick Howey, Executive Director, National Association of Tower Erectors to Austin Schlick, General Counsel, FCC, dated May 6, 2010 (“[T]he Industry Coalition has consistently and forcefully maintained that there is insufficient research to warrant either mitigation steps or punitive action, despite assertions by the U.S. Fish and Wildlife and certain avian interests to the contrary. We continue to hold that view. ... Absent appropriate and necessary research, it will be difficult to convince our members to accept additional voluntary steps.”)

²¹⁴ The Commission has wide discretion to draw rational lines in implementing its statutory mandates. *See Providence Yakima Medical Center v. Sebelius*, 611 F.3d 1181, 1190 (9th Cir. 2010) (“Where [an] agency’s line-drawing does not appear irrational and the party challenging the agency action has not shown that the consequences of the line-drawing are in any respect dire, courts will leave that line-drawing to the agency’s discretion.”) (internal quotations omitted); *Blaustein & Reich, Inc. v. Buckles*, 365 F.3d 281, 291 (4th Cir. 2004) (same); *Covad Communications Co. v. FCC*, 450 F.3d 528, 541 (D.C. Cir. 2006) (quoting *AT & T Corp. v. FCC*, 220 F.3d 607, 627 (D.C. Cir. 2000) (“[T]he Commission has “wide discretion to determine where to draw administrative lines”));

²¹⁵ The Commission has in the past attached significance to proposals jointly presented by divergent interest groups when making public interest judgments on controversial issues. *See Cable Television Report and Order*, 36 FCC 2d 143, 165-68 (1972).

²¹⁶ MOU, §§ II.A.1, II.B.1.

²¹⁷ MOU, §§ I.A.4., II.A.2-3, II.B.2-3.

82. In assessing, pursuant to Section 1.1307(c) and (d), whether further environmental processing is necessary for particular towers 450 feet in height or less AGL, we expect that the processing Bureau will consider factors including the height of the tower and the lighting to be used. Consistent with the MOU, we recognize that a tower close to 450 feet in height AGL is more likely to have a significant environmental impact on migratory birds than a tower closer to 200 feet in height. We further expect that the Bureau will afford significant weight to the absence of public objection in response to the notice of proposed construction that we require today.²¹⁸

83. We clarify that if a proposed tower is initially submitted for environmental notification with a height of 450 feet AGL or less and the submission is subsequently amended so that the height will exceed 450 feet AGL, an EA will be required even if the change does not constitute a substantial increase in size. We find that this provision is necessary in order to ensure that prospective applicants for towers just above 450 feet AGL do not game the system.

84. For purposes of clarity, we add a note to Section 1.1307(d) of the Commission's rules to describe the circumstances in which the Wireless Telecommunications Bureau shall require, or consider whether to require, an environmental assessment with respect to migratory birds for antenna structures subject to registration under Part 17 of the rules. This note will remain in effect pending the outcome of the programmatic EA and any subsequent programmatic EIS if required, and pending the completion of this rulemaking by means of a decisional order. We delegate authority to the Wireless Telecommunications Bureau to adopt appropriate changes to its processing procedures, processes, and forms to apply these interim standards.

IV. PROCEDURAL MATTERS

A. Regulatory Flexibility Analysis

85. The Commission has determined that the environmental notification rules contained in Appendix D and the implementation of interim processing standards, pursuant to Section 1.1307(d), do not require the publication of a general notice of proposed rulemaking so as to require the preparation of a Regulatory Flexibility Analysis pursuant to the Regulatory Flexibility Act, 5 U.S.C. §§ 603, 604 (RFA).

B. Paperwork Reduction Act of 1995 Analysis

86. This document contains modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. It will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

V. ORDERING CLAUSES

87. Accordingly, IT IS ORDERED that, pursuant to Sections 1, 2, 4(i), 303(q), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 303(q), 303(r), and 309(j), Section 102(C) of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. § 4332(C), and Section 1506.6 of the regulations of the Council on Environmental Quality, 40 C.F.R. §

²¹⁸ *See Black Citizens for a Fair Media v. FCC*, 719 F.2d 407, 414 (D.C. Cir. 1983) (recognizing the importance of public silence as supporting a public interest finding in the context of upholding streamlined license renewal procedures).

1506.6, the environmental notification procedures set forth in the attached Appendix D ARE ADOPTED.

88. IT IS FURTHER ORDERED that the rules adopted herein WILL BECOME EFFECTIVE upon Commission publication of a notice in the Federal Register announcing their approval by the Office of Management and Budget (OMB). The rules and procedures adopted in this Order contain new or modified information collections that require approval by OMB under the Paperwork Reduction Act.

89. IT IS FURTHER ORDERED that, pursuant to Sections 4(i) and 4(j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 154(j), and Section 1.1307(d) of the Commission's Rules, 47 C.F.R. § 1.1307(d), the Wireless Telecommunications Bureau SHALL apply the interim antenna structure registration standards set forth in Section III.B of this Order.

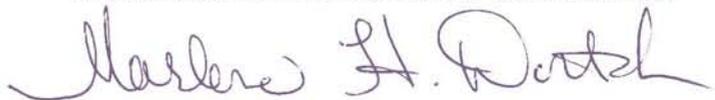
90. IT IS FURTHER ORDERED that the Wireless Telecommunications Bureau is delegated authority to make all necessary changes to its procedures, processing standards, electronic database systems, and forms to apply the procedures and interim standards adopted in this Order.

91. IT IS FURTHER ORDERED that, pursuant to Sections 4(i), 4(j), 303(r), and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 303(r), and 309, the Petitions for Expedited Rulemaking filed on May 2, 2008, by the Infrastructure Coalition and on April 14, 2009 by the Conservation Groups ARE GRANTED to the extent reflected herein and otherwise ARE DISMISSED without prejudice.

92. IT IS FURTHER ORDERED that, pursuant to Sections 4(i), 4(j), 303(r), 309, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 303(r), 309, and 405, the Petition for Reconsideration filed on April 25, 2011, by Blooston, Mordkofsky, Dickens, Duffy & Prendergast, LLP IS DISMISSED.

93. IT IS FURTHER ORDERED that the Commission SHALL SEND a copy of this Order in a report to be sent to Congress and the General Accounting Office pursuant to the Congressional Review Act, 5 U.S.C. § 801(a)(1)(A).

FEDERAL COMMUNICATIONS COMMISSION



Marlene H. Dortch
Secretary

APPENDIX A

List of Commenters in WT Docket No. 08-61

Commenters in Response to Infrastructure Coalition's Petition for Expedited Rulemaking*Comments*

American Bird Conservancy, Defenders of Wildlife, and National Audubon Society (Conservation Groups)
American Tower Corporation (ATC)
The Association of Public-Safety Communications Officials-International, Inc. (APCO)
AT&T, Inc., on behalf of AT&T Mobility LLC and its wholly owned and controlled wireless affiliates (AT&T)
Crown Castle USA (Crown Castle)
The Land Mobile Communications Council (LMCC)
National Telecommunications Cooperative Association (NTCA)
Sprint Nextel Corporation (Sprint Nextel)
United States Cellular Corporation (USCC)
Verizon Wireless

Commenters in Response to Conservation Groups' Petition for Expedited Rulemaking*Comments*

Alachua Audubon Society
Association of Public-Safety Communications Officials-International, Inc. (APCO)
Audubon Society of Central Arkansas
Aviation Spectrum Resources, Inc. (ASRI)
Buena Vista Audubon Society
Choctawhatchee Audubon Society
CTIA – The Wireless Association, National Association of Broadcasters, National Association of Tower Erectors, and PCIA – The Wireless Infrastructure Association (Collectively known as The Infrastructure Coalition)
Defenders of Wildlife
Fixed Wireless Communications Coalition (FWCC)
Herbert, Steven
Houston Audubon Society
Maranatha Broadcasting Company, Inc. (Maranatha)
National Telecommunications Cooperative Association (NTCA)
Naugatuck Valley Audubon Society
New Jersey Audubon Society, Virginia Society of Ornithology, The Audubon Society of Northern Virginia, Bird Conservation Network, Massachusetts Audubon Society, Songbirds of Northern Indiana, Inc., Endangered Habitats League, ECOAN, Golden Gate Raptor Observatory, Manistee Audubon Society, Friends of Dyke Marsh, Salem Audubon Society, Central New Mexico Audubon Society, The Swan Research Program, Inc., Otter Creek Audubon Society, Connecticut Audubon Society, The Institute for Bird Populations, Riveredge Bird Club, Delaware Valley Ornithological Club, Pomona Valley Audubon, Maryland Ornithological Society, Howard County Bird Club, New York City Audubon, Desert Cities Bird Club, Cornell Lab of Ornithology, Conservation Chair, Ric Zarwell, Endangered Habitats League, Avian Research and Conservation Institute, Rainforest Biodiversity Group, Inc., Birds & Buildings Forum, Seattle Audubon, Chicago Ornithological Society, Madison Audubon Society, Golden Gate Audubon, Wisconsin Audubon Council, Tennessee Ornithological Society, Wildlife Center of Virginia,

North Fork Audubon Society, and Oregon Wild (New Jersey Audubon Society *et al.*).
OCAS, Inc.
Pomona Valley Audubon Society
Verizon Wireless
West Pasco Audubon Society

Reply Comments

American Bird Conservancy, Defenders of Wildlife and National Audubon Society (Petitioners)
Christian Broadcasting System, Ltd.
CTIA – The Wireless Association, National Association of Broadcasters, National Association of Tower Erectors, and PCIA – The Wireless Infrastructure Association (Collectively known as The Infrastructure Coalition)
United States Cellular Corporation (USCC)

APPENDIX B

List of Commenters in WT Docket No. 03-187¹*Comments*

Advantage Cellular Systems, Inc. d/b/a DTC Wireless
Alabama Ornithological Society
American Bird Conservancy
American Bird Conservancy, Center for Sustainable Economy (Formerly Forest Conservation Council),
National Audubon, The Humane Society of the United States, Friends of the Earth
Anne Arundel County, Maryland
Applied Technology Group, Inc.
The Association of Public Television Stations
AT&T Mobility
Audubon Connecticut
Berliner, Steve
Birmingham Audubon Society
Bridgeport Indian Colony
Center for Sustainable Economy (Formerly Forest Conservation Council)
Citicasters Licenses, L.P.
Cotton, Karen Imparato
CTIA – The Wireless Association, National Association of Broadcasters, National Association of Tower Erectors, PCIA – The Wireless Infrastructure Association, The Wireless Communications Association International, Inc., and the Association for Maximum Service Television, Inc. (Infrastructure Coalition)
Damro, Kenneth
Defenders of Wildlife and the National Audubon Society
Derig, Gene and Marilyn
Dornan, Laura
Eastern Band of Cherokee Indians Tribal Historic Preservation Office
Eastern Shore Radio
The EMR Policy Institute
Evans, William R.
Fenwick, Dr. George
Fortney, Judith
Friends of the Earth
Gehring, Dr. Joelle
Harrison, Maryanne
Hector, Town of
Holian, Holy Holily
The Hopi Tribe
The Humane Society of the United States
Kormendy, John
Kosek, Kateri
Land Mobile Communications Council (LMCC)
Land Protection Partners, on behalf of American Bird Conservancy, Center for a Sustainable Economy,

¹ In addition to the comments listed here, the Commission received more than 2,300 brief comments and reply comments from concerned citizens. Brief comments are not listed but are considered in this Order.

and The Humane Society of the United States
Leggett, Nickolaus E.
Louisiana Mosquito Control Association
McClelland, Marilyn
McDonald, Neil
McGee, Jean
Manville, Dr. Albert M.
Maranatha Broadcasting Company, Inc. (Maranatha)
Maryland Institute for Emergency Medical Services Systems, State of MD
Maryland State Highway Administration, State of Maryland
Mason, Andrew
Michigan Department of Information Technology, State of Michigan
Michigan Department of Natural Resources
Miller, Wayne R.
The Mobile Bay Audubon Society
Morgan, David
Morris Broadcasting Company of New Jersey, Inc.
Named State Broadcasters Associations (Alabama Broadcasters Association, Alaska Broadcasters Association, Arizona Broadcasters Association, Arkansas Broadcasters Association, California Broadcasters Association, Colorado Broadcasters Association, Connecticut Broadcasters Association, Florida Association of Broadcasters, Idaho State Broadcasters Association, Illinois Broadcasters Association, Indiana Broadcasters Association, Iowa Broadcasters Association, Kansas Association of Broadcasters, Kentucky Broadcasters Association, Louisiana Broadcasters Association, Maine Association of Broadcasters, MD/DC/DE Broadcasters Association, Massachusetts Broadcasters Association, Michigan Broadcasters Association, Minnesota Broadcasters Association, Mississippi Association of Broadcasters, Missouri Broadcasters Association, Montana Broadcasters Association, Nebraska Broadcasters Association, Nevada Broadcasters Association, New Hampshire Association of Broadcasters, New Mexico Broadcasters Association, The New York State Broadcasters Association, North Dakota Broadcasters Association, Ohio Association of Broadcasters, Oklahoma Association of Broadcasters, Oregon Association of Broadcasters, Pennsylvania Association of Broadcasters, South Carolina Broadcasters Association, South Dakota Broadcasters Association, Tennessee Association of Broadcasters, Texas Association of Broadcasters, Utah Broadcasters Association, Vermont Association of Broadcasters, Washington State Association of Broadcasters, Wisconsin Broadcasters Association, and Wyoming Association of Broadcasters)
National Public Safety Telecommunications Council
National Telecommunications Cooperative Association (NCTA)
New Mexico, State of, Department of Game and Fish
New York City Audubon
The New York State Ornithological Association, Inc.
Nudd, Rick
Oeid, Lynda
Olsen, Anne
Positive Alternative Radio, Inc., Positive Radio Group, Inc. (Ohio), Big River Radio, Inc., Base Communications, Inc., WKGM, Inc., WAMN, Inc.
Potyak, Joseph
Prince George's County, Maryland
Regional Planning Committee 42 for 800 MHz
Riveredge Bird Club
Robitzsch, John and Jane
St. Tammany Parish Mosquito Abatement District 2
Scott, Barbara
Scotts Valley Band of Pomo Indians

Sessions, Senator Jeff, on behalf of Georgie K. Stanford
Sharp, John
Sheehan, Robbie
Shire, Gavin
Sierra Club National Wildlife & Endangered Species Committee
South Dakota, State of
South Dakota Bureau of Information and Telecommunications
South Dakota Public Utilities Commission
Sprint Nextel Corporation (Sprint Nextel)
Swanson, Sandra
Thomas, David
Union Telephone Company
United States Cellular Corporation (USCC)
United States Fish and Wildlife Service
Urban Conservation Treaty for Migratory Birds Partners of Portland, Oregon
Utilities Telecom Council
Verizon Wireless
Virginia, the Commonwealth of
Wagner, James P.
Walsh, Elizabeth
Winstanley Broadcasting, Inc.
Young, Eugene A.

Reply Comments

American Bird Conservancy, Center for Sustainable Economy (Formerly Forest Conservation Council), National Audubon Society, The Humane Society of the United States, and Friends of the Earth
American Tower Corporation
AT&T Mobility LLC
Blooston, Mordkofsky, Dickens, Duffy & Prendergast, LLP
CTIA – The Wireless Association, National Association of Broadcasters, National Association of Tower Erectors, PCIA – The Wireless Infrastructure Association, The Wireless Communications Association International, Inc., and the Association for Maximum Service Television, Inc. (Infrastructure Coalition)
Fenwick, Dr. George
Hawaii Association of Broadcasters and Rhode Island Broadcasters Association
Island Airwaves, Inc.
National Telecommunications Cooperative Association (NCTA)
RC Technologies Corporation
United States Cellular Corporation (USCC)

APPENDIX C**List of Commenters in WT Docket No. 08-61
in Response to *Draft Rules Public Notice***

American Bird Conservancy, Defenders of Wildlife, and Audubon (Conservation Groups)
AT&T, Inc. (AT&T)
Blooston, Mordkofsky, Dickens, Duffy & Prendergast, LLP (Blooston Commenters)
Commonwealth of Virginia Department of State Police (Virginia State Police)
CTIA – The Wireless Association, National Association of Broadcasters, National Association of Tower Erectors, and PCIA – The Wireless Infrastructure Association (Infrastructure Coalition)
James, H. J.
National Telecommunications Cooperative Association (NTCA)
NextG Networks, Inc. (NextG)
NTCH, Inc. (NTCH)
Southern Company Services, Inc. (Southern)
United States Department of Interior, Office of Environmental Policy and Compliance (DOI)
Vanhooser, Mike (President, Nova Electronics)
Verizon Wireless

APPENDIX D

Final Rules

Part 1 of the Commission's Rules is amended as follows:

PART 1 – PRACTICE AND PROCEDURE

1. The authority citation for Part 1 continues to read as follows:

Authority: 15 U.S.C. § 79 et seq.; 47 U.S.C. §§ 151, 154(j), 160, 201, 225, and 303.

2. Section 1.61 is amended by revising paragraph (a)(2) to read as follows:

§ 1.61 Procedures for handling applications requiring special aeronautical study.

- (a) *****

(2) In accordance with § 1.1307 and § 17.4(c) of this chapter, the Bureau will address any environmental concerns prior to processing the registration.

3. Section 1.923 is amended by revising paragraphs (d) and (e) to read as follows:

§ 1.923 Content of applications.

(d) *Antenna Structure Registration.* Owners of certain antenna structures must notify the Federal Aviation Administration and register with the Commission as required by Part 17 of this chapter. Applications proposing the use of one or more new or existing antenna structures must contain the FCC Antenna Structure Registration Number(s) of each structure for which registration is required. To facilitate frequency coordination or for other purposes, the Bureau shall accept for filing an application that does not contain the FCC Antenna Structure Registration Number so long as (1) the antenna structure owner has filed an antenna structure registration application (FCC Form 854); (2) the antenna structure owner has provided local notice and the Commission has posted notification of the proposed construction on its website pursuant to § 17.4(c)(3) and (4) of this chapter; and (3) the antenna structure owner has obtained a Determination of No Hazard to Aircraft Navigation from the Federal Aviation Administration. In such instances, the applicant shall provide the FCC Form 854 File Number on its application. Once the antenna structure owner has obtained the Antenna Structure Registration Number, the applicant shall amend its application to provide the Antenna Structure Registration Number, and the Commission shall not grant the application before the Antenna Structure Registration Number has been provided. If registration is not required, the applicant must provide information in its application sufficient for the Commission to verify this fact.

- (e) *Environmental Concerns.*

(1) Environmental processing shall be completed pursuant to the process set forth in § 17.4(c) of this chapter for any facilities that use one or more new or existing antenna structures for which a new or amended registration is required by Part 17 of this chapter. Environmental review by the Commission must be completed prior to construction.

(2) For applications that propose any facilities that are not subject to the process set forth in § 17.4(c) of this chapter, the applicant is required to indicate at the time its application is filed whether or

not a Commission grant of the application for those facilities may have a significant environmental effect as defined by § 1.1307 of this chapter. If the applicant answers affirmatively, an Environmental Assessment, required by § 1.1311 of this chapter, must be filed with the application and environmental review by the Commission must be completed prior to construction.

4. Section 1.929 is amended by revising paragraph (a)(4) to read as follows:

§ 1.929 Classification of filings as major or minor.

(a)*****

4) Application or amendment requesting authorization for a facility that may have a significant environmental effect as defined in § 1.1307 of this chapter, unless the facility has been determined not to have a significant environmental effect through the process set forth in § 17.4(c) of this chapter.

5. Section 1.934 is amended by adding a new paragraph (g) to read as follows:

§ 1.934 Defective applications and dismissal.

(g) *Dismissal for failure to pursue environmental review.* The Commission may dismiss license applications (FCC Form 601) associated with proposed antenna structure(s) subject to § 17.4(c) of this chapter, if pending more than 60 days and awaiting submission of an Environmental Assessment or other environmental information from the applicant, unless the applicant has provided an affirmative statement reflecting active pursuit during the previous 60 days of environmental review for the proposed antenna structure(s). To avoid potential dismissal of its license application, the license applicant must provide updates every 60 days unless or until the applicant has submitted the material requested by the Bureau.

6. Section 1.1306 is amended by revising Note 2 to read as follows:

§ 1.1306 Actions which are categorically excluded from environmental processing.

Note 2: The specific height of an antenna tower or supporting structure, as well as the specific diameter of a satellite earth station, in and of itself, will not be deemed sufficient to warrant environmental processing, *see* §§ 1.1307 and 1.1308, except as required by the Bureau pursuant to the Note to § 1.1307(d).

7. Section 1.1307 is amended by adding a note to paragraph (d) that reads as follows:

§ 1.1307 Actions that may have a significant environmental effect, for which Environmental Assessments (EAs) must be prepared.

(d) *****

Note to paragraph (d). Pending a final determination as to what, if any, permanent measures

should be adopted specifically for the protection of migratory birds, the Bureau shall require an Environmental Assessment for an otherwise categorically excluded action involving a new or existing antenna structure, for which an antenna structure registration application (FCC Form 854) is required under Part 17 of this chapter, if the proposed antenna structure will be over 450 feet in height above ground level (AGL) and involves either: (1) construction of a new antenna structure; (2) modification or replacement of an existing antenna structure involving a substantial increase in size as defined in § I(C)(1)-(3) of Appendix B to Part 1 of this chapter; or (3) addition of lighting or adoption of a less preferred lighting style as defined in § 17.4(c)(1)(C) of this chapter. The Bureau shall consider whether to require an EA for other antenna structures subject to § 17.4(c) of this chapter in accordance with § 17.4(c)(8) of this chapter. An Environmental Assessment required pursuant to this note will be subject to the same procedures that apply to any Environmental Assessment required for a proposed tower or modification of an existing tower for which an antenna structure registration application (FCC Form 854) is required, as set forth in § 17.4(c) of this chapter.

Part 17 of the Commission's Rules is amended as follows:

PART 17 – CONSTRUCTION, MARKING, AND LIGHTING OF ANTENNA STRUCTURES

1. The authority citation for Part 17 continues to read as follows:

Authority: §§ 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. §§ 154, 303, Interpret or apply §§ 301, 309, 48 Stat. 1081, 1085, as amended; 47 U.S.C. §§ 301, 309.

2. Section 17.4 is amended by revising paragraph (c) to read as follows:

§ 17.4 Antenna structure registration.

(c) Each prospective applicant must complete the environmental notification process described in this paragraph, except as specified in paragraph (c)(1) of this section.

(1) *Exceptions from the environmental notification process.* Completion of the environmental notification process is not required when FCC Form 854 is submitted solely for the following purposes:

(A) For notification only, such as to report a change in ownership or contact information, or the dismantlement of an antenna structure;

(B) For a reduction in height of an antenna structure or an increase in height that does not constitute a substantial increase in size as defined in § I(C)(1)-(3) of Appendix B to Part 1 of this chapter, provided that there is no construction or excavation more than 30 feet beyond the existing antenna structure property;

(C) For removal of lighting from an antenna structure or adoption of a more preferred or equally preferred lighting style. For this purpose lighting styles are ranked as follows (with the most preferred lighting style listed first and the least preferred listed last): (1) no lights; (2) FAA Lighting Styles that do not involve use of red steady lights; and (3) FAA Lighting Styles that involve use of red steady lights. A complete description of each FAA Lighting Style and the manner in which it is to be deployed can be found in the current version of FAA, U.S. Dept. of Transportation, Advisory Circular: Obstruction Marking and Lighting, AC 70/7460;

(D) For replacement of an existing antenna structure at the same geographic location that does not require an Environmental Assessment (EA) under Sections 1.1307(a)-(d) of this chapter, provided the new structure will not use a less preferred lighting style, there will be no substantial increase in size as defined in § I(C)(1)-(3) of Appendix B to Part 1 of this chapter, and there will be no construction or excavation more than 30 feet beyond the existing antenna structure property;

(E) For any other change that does not alter the physical structure, lighting, or geographic location of an existing structure; or

(F) For construction, modification, or replacement of an antenna structure on federal land where another federal agency has assumed responsibility for evaluating the potentially significant environmental effect of the proposed antenna structure on the quality of the human environment and for invoking any required environmental impact statement process, or for any other structure where another federal agency has assumed such responsibilities pursuant to a written agreement with the Commission. See § 1.1311(e) of this chapter.

(2) *Commencement of the environmental notification process.* The prospective applicant shall commence the environmental notification process by filing information about the proposed antenna structure with the Commission. This information shall include, at a minimum, all of the information required on FCC Form 854 regarding ownership and contact information, geographic location, and height, as well as the type of structure and anticipated lighting. The Wireless Telecommunications Bureau may utilize a partially completed FCC Form 854 to collect this information.

(3) *Local notice.* The prospective applicant must provide local notice of the proposed new antenna structure or modification of an existing antenna structure through publication in a newspaper of general circulation or other appropriate means, such as through the public notification provisions of the relevant local zoning process. The local notice shall contain all of the descriptive information as to geographic location, configuration, height and anticipated lighting specifications reflected in the submission required pursuant to paragraph (c)(2) of this section. It must also provide information as to the procedure for interested persons to file Requests for environmental processing pursuant to §§ 1.1307(c) and 1.1313(b) of this chapter, including any assigned file number, and state that such Requests may only raise environmental concerns.

(4) *National notice.* On or after the local notice date provided by the prospective applicant, the Commission shall post notification of the proposed construction on its website. This posting shall include the information contained in the initial filing with the Commission or a link to such information. The posting shall remain on the Commission's website for a period of 30 days.

(5) *Requests for environmental processing.* Any Request filed by an interested person pursuant to §§ 1.1307(c) and 1.1313(b) of this chapter must be received by the Commission no later than 30 days after the proposed antenna structure goes on notice pursuant to paragraph (c)(4) of this section. The Wireless Telecommunications Bureau shall establish by Public Notice the process for filing Requests for environmental processing and responsive pleadings consistent with the following provisions.

(A) *Service and pleading cycle.* The interested person or entity shall serve a copy of its Request on the prospective ASR applicant pursuant to § 1.47 of this chapter. Oppositions may be filed no later than 10 days after the time for filing Requests has expired. Replies to oppositions may be filed no later than 5 days after the time for filing oppositions has expired. Oppositions shall be served upon the Requester, and replies shall be served upon the prospective applicant.

(B) *Content.* An Environmental Request must state why the interested person or entity believes that the proposed antenna structure or physical modification of an existing antenna structure may have a significant impact on the quality of the human environment for which an Environmental Assessment must be considered by the Commission as required by § 1.1307 of this chapter, or why an Environmental Assessment submitted by the prospective ASR applicant does not adequately evaluate the potentially significant environmental effects of the proposal. The Request must be submitted as a written petition filed either electronically or by hard copy setting forth in detail the reasons supporting Requester's contentions.

(6) *Amendments.* The prospective applicant must file an amendment to report any substantial change in the information provided to the Commission. An amendment will not require further local or national notice if the only reported change is a reduction in the height of the proposed new or modified antenna structure; if proposed lighting is removed or changed to a more preferred or equally preferred lighting style as set forth in paragraph (c)(1)(C) of this section; or if the amendment reports only administrative changes that are not subject to the requirements specified in this paragraph. All other changes to the physical structure, lighting, or geographic location data for a proposed registered antenna structure require additional local and national notice and a new period for filing Requests pursuant to

paragraphs (c)(3), (c)(4), and (c)(5) of this section.

(7) *Environmental Assessments.* If an Environmental Assessment (EA) is required under § 1.1307 of this chapter, the antenna structure registration applicant shall attach the EA to its environmental submission, regardless of any requirement that the EA also be attached to an associated service-specific license or construction permit application. The contents of an EA are described in §§ 1.1308 and 1.1311 of this chapter. The EA may be provided either with the initial environmental submission or as an amendment. If the EA is submitted as an amendment, the Commission shall post notification on its website for another 30 days pursuant to paragraph (c)(4) of this section and accept additional Requests pursuant to paragraph (c)(5) of this section. However, additional local notice pursuant to paragraph (c)(3) of this section shall not be required unless information has changed pursuant to paragraph (c)(6) of this section. The applicant shall serve a copy of the EA upon any party that has previously filed a Request pursuant to paragraph (c)(5) of this section.

(8) *Disposition.* The processing Bureau shall resolve all environmental issues, in accordance with the environmental regulations (47 C.F.R. §§1.1301-1.1319) specified in Part 1 of this chapter, before the tower owner, or the first tenant licensee acting on behalf of the owner, may complete the antenna structure registration application. In a case where no EA is submitted, the Bureau shall notify the applicant whether an EA is required under § 1.1307(c) or (d) of this chapter. In a case where an EA is submitted, the Bureau shall either grant a Finding of No Significant Impact (FONSI) or notify the applicant that further environmental processing is required pursuant to § 1.1308 of this chapter. Upon filing the completed antenna structure registration application, the applicant shall certify that the construction will not have a significant environmental impact, unless an Environmental Impact Statement is prepared pursuant to § 1.1314 of this chapter.

(9) *Transition rule.* An antenna structure registration application that is pending with the Commission as of [INSERT EFFECTIVE DATE OF RULE] shall not be required to complete the environmental notification process set forth in this paragraph. However, if such an application is amended in a manner that would require additional notice pursuant to paragraph (c)(6) of this section, then such notice shall be required.

PART 22 – PUBLIC MOBILE SERVICES

1. The authority citation for Part 22 continues to read as follows:

Authority: 47 U.S.C. §§ 154, 222, 303, 309 and 332.

2. Section 22.143 is amended by revising paragraph (d)(4) to read as follows:

§ 22.143 Construction prior to grant of application.

(d)*****

(4) For any construction or alteration that would exceed the requirements of § 17.7 of this chapter, the licensee has notified the appropriate Regional Office of the Federal Aviation Administration (FAA Form 7460-1), secured a valid FAA determination of “no hazard,” and received antenna height clearance and obstruction marking and lighting specifications (FCC Form 854R) from the FCC for the proposed construction or alteration.

PART 24 – PERSONAL COMMUNICATION SERVICES

1. The authority citation for Part 24 continues to read as follows:

Authority: 47 U.S.C. §§ 154, 301, 302, 303, 309 and 332.

2. Section 24.2 is amended by revising paragraphs (b) and (f) to read as follows:

§ 24.2 Other applicable rule parts.

(b) *Part 1.* This part includes rules of practice and procedure for license applications, adjudicatory proceedings, procedures for reconsideration and review of the Commission's actions; provisions concerning violation notices and forfeiture proceedings; and the environmental requirements that, together with the procedures specified in § 17.4(c) of this chapter, if applicable, must be complied with prior to the initiation of construction. Subpart F includes the rules for the Wireless Telecommunications Services and the procedures for filing electronically via the ULS.

(f) *Part 17.* This part contains requirements for the construction, marking and lighting of antenna towers, and the environmental notification process that must be completed before filing certain antenna structure registration applications.

PART 25 – SATELLITE COMMUNICATIONS

1. The authority citation for Part 25 continues to read as follows:

Authority: 47 U.S.C. §§ 701-744. Interprets or applies Sections 4, 301, 302, 303, 307, 309, and 332 of the Communications Act, as amended, 47 U.S.C. §§ 154, 301, 302, 303, 307, 309, and 332.

2. Section 25.113 is amended by revising paragraph (a) to read as follows:

§ 25.113 Station licenses and launch authority

(a) Construction permits are not required for satellite earth stations. Construction of such stations may commence prior to grant of a license at the applicant's own risk. Applicants must comply with the provisions of 47 C.F.R. § 1.1312 relating to environmental processing prior to commencing construction. Applicants filing applications that propose the use of one or more new or existing antenna structures requiring registration under Part 17 of this chapter must also comply with any applicable environmental notification process specified in § 17.4(c) of this chapter.

3. Section 25.115 is amended by revising paragraph (c)(2)(vi)(A)(4) to read as follows:

§ 25.115 Applications for earth station authorizations.

(c)(2)(vi)(A) *****

(4) The applicant has determined that the facility(ies) will not significantly affect the environment as defined in § 1.1307 of this chapter after complying with any applicable environmental notification procedures specified in § 17.4(c) of this chapter.

PART 27 – MISCELLANEOUS WIRELESS COMMUNICATION SERVICES

1. The authority citation for Part 27 continues to read as follows:

Authority: 47 U.S.C. §§ 154, 301, 302, 303, 307, 309, 332, 336 and 337.

2. Section 27.3 is amended by revising paragraphs (b) and (f) to read as follows:

§ 27.3 Other applicable rule parts.

(b) *Part 1.* This part includes rules of practice and procedure for license applications, adjudicatory proceedings, procedures for reconsideration and review of the Commission's actions; provisions concerning violation notices and forfeiture proceedings; competitive bidding procedures; and the environmental requirements that, together with the procedures specified in § 17.4(c) of this chapter, if applicable, must be complied with prior to the initiation of construction. Subpart F includes the rules for the Wireless Telecommunications Services and the procedures for filing electronically via the ULS.

(f) *Part 17.* This part contains requirements for the construction, marking and lighting of antenna towers, and the environmental notification process that must be completed before filing certain antenna structure registration applications.

PART 80 – STATIONS IN THE MARITIME SERVICES

1. The authority citation for Part 80 continues to read as follows:

Authority: 47 U.S.C. §§ 154, 303, 307(e), 309, and 332.

2. Section 80.3 is amended by revising paragraphs (b) and (e) to read as follows:

§ 80.3 Other applicable rule parts of this chapter.

(b) *Part 1.* This part includes rules of practice and procedure for license applications, adjudicatory proceedings, procedures for reconsideration and review of the Commission's actions; provisions concerning violation notices and forfeiture proceedings; and the environmental processing requirements that, together with the procedures specified in § 17.4(c) of this chapter, if applicable, must be complied with prior to the initiation of construction. Subpart Q of Part 1 contains rules governing competitive bidding procedures for resolving mutually exclusive applications for certain initial licenses.

(e) *Part 17*. This part contains requirements for the construction, marking and lighting of antenna towers, and the environmental notification process that must be completed before filing certain antenna structure registration applications.

PART 87 – AVIATION SERVICES

1. The authority citation for Part 87 continues to read as follows:

Authority: 47 U.S.C. §§ 154, 303, and 307(e).

2. Section 87.3 is amended by revising paragraphs (b) and (e) to read as follows:

§ 87.3 Other applicable rule parts.

(b) *Part 1* contains rules of practice and procedure for license applications, adjudicatory proceedings, rule making proceedings, procedures for reconsideration and review of the Commission's actions; provisions concerning violation notices and forfeiture proceedings; and the environmental processing requirements that, together with the procedures specified in § 17.4(c) of this chapter, if applicable, must be complied with prior to the initiation of construction.

(e) *Part 17* contains requirements for construction, marking and lighting of antenna towers, and the environmental notification process that must be completed before filing certain antenna structure registration applications.

PART 90 – PRIVATE LAND MOBILE RADIO SERVICES

1. The authority citation for Part 90 continues to read as follows:

Authority: 47 U.S.C. §§ 154(i), 11, 303(g), 303(r) and 332(c)(7).

2. Section 90.5 is amended by revising paragraphs (b) and (f) to read as follows:

§ 90.5 Other applicable rule parts.

(b) *Part 1* includes rules of practice and procedure for the filing of applications for stations to operate in the Wireless Telecommunications Services, adjudicatory proceedings including hearing proceedings, and rule making proceedings; procedures for reconsideration and review of the Commission's actions; provisions concerning violation notices and forfeiture proceedings; and the environmental processing requirements that, together with the procedures specified in § 17.4(c) of this chapter, if applicable, must be complied with prior to initiating construction.

(f) *Part 17* contains requirements for construction, marking and lighting of antenna towers, and the environmental notification process that must be completed before filing certain antenna structure registration applications.

3. Section 90.129 is amended by revising paragraph (g) to read as follows:

§ 90.129 Supplemental information to be routinely submitted with applications.

(g) The environmental assessment required by §§ 1.1307 and 1.1311 of this chapter, if applicable. If an application filed under this part proposes the use of one or more new or existing antenna structures that require registration under Part 17 of this chapter, any required environmental assessment should be submitted pursuant to the process set forth in § 17.4(c) of this chapter rather than with the application filed under this part.

APPENDIX E

Steps in the Environmental Notification Process

This Appendix outlines the environmental notification process that an applicant for the registration of an antenna structure must undertake before filing a completed Antenna Structure Registration (ASR) application on FCC Form 854.¹ Technical details about the process for submitting this pre-filing notification will be provided in a Public Notice that will be released before the rules take effect. We delegate to the Wireless Telecommunications Bureau (WTB) the authority to change procedural aspects of the process outlined below by Public Notice so long as those changes do not affect the substantive rights of any party.

I. Commencement of the Process

- Applicants will commence the process by submitting information on FCC Form 854, including information regarding the location, height, type, and lighting of the proposed structure. This is a pre-application submission that does not constitute the filing of a completed application.
 - The applicant may commence the environmental notification process on Form 854 either before or after it receives an FAA No Hazard Determination. If the applicant commences the process before the No Hazard Determination is received, the applicant must provide the anticipated lighting and must later amend its submission if the FAA-approved lighting is different.
 - The environmental notification process may be conducted simultaneously with other processes, including environmental reviews that may require consultation with other federal agencies and local zoning procedures.
 - The FCC will assign the proposed construction a unique file number when the partially completed Form 854 is submitted.
- Following the initial Form 854 submission, the applicant shall provide local notice either by publication in a local newspaper of general circulation or by other appropriate means, such as by following local zoning public notice requirements.
 - The text of the local notice must include:
 - The descriptive information submitted in the Form 854 as part of the environmental notification process;
 - Instructions for filing any Request for further environmental review no later than 30 days after information on the proposed tower is posted on the FCC's website, including the relevant electronic and regular mail addresses and the unique Form 854 File Number issued by the FCC; and
 - Instructions for serving a copy of any Request upon the applicant.

¹ Section III.A.1 of the Order, *supra*, discusses which actions are subject to the notification process.

- Applicants may provide local notice under both this process and the Commission's procedures implementing section 106 of the National Historic Preservation Act (NHPA)² through a single publication, provided that:
 - The single notice satisfies the timing requirements of both provisions, and it clearly describes and distinguishes both the requirement to file environmental Requests with the Commission and the separate process for submitting comments regarding potentially affected historic properties to the applicant.
 - The applicant forwards any comment that substantially relates to potentially affected historic properties to the State Historic Preservation Officer or Tribal Historic Preservation Officer, in accordance with the terms of the Nationwide Programmatic Agreement.
- The applicant shall state in its initial FCC Form 854 submission the date on which it requests that the FCC provide national notice of the proposed construction. This date must be on or after the date the applicant provides local notice.
 - On or after the national notice date the applicant has requested, the Commission will post the information contained in the applicant's initial Form 854 submission, or a link to such information, in searchable form on its website. This information will remain posted for 30 days.
 - If local notice is not provided before the requested national notice date, the applicant must amend its Form 854 submission to provide a new national notice date.

II. Facilities That Also Require Service-Specific Applications

- Applicants that submit both an ASR application and a service-specific application for a particular tower must complete the environmental notification process on Form 854 and submit any required Environmental Assessment (EA) through that process. Depending on the service, the applicant may also be required to file a copy of the EA with its service-specific application.

A. ULS Applicants.

- Wireless radio, public safety, and other applicants whose proposed towers are subject to registration and require a license application on FCC Form 601 must have begun the Form 854 environmental notification process before filing Form 601, but may file Form 601 before completing the Form 854 environmental notification process.
 - In the event an EA is required, it shall be submitted only in connection with Form 854. WTB will provide instructions at a later date for completing the environmental question on Form 601 in such situations.
 - Applicants whose proposed towers require an EA but do not require registration shall continue to file an EA with Form 601.

² See 47 C.F.R. Pt. 1, App. C, § V (Nationwide Programmatic Agreement).

- An applicant that chooses to file FCC Form 601 before the environmental notification process is complete must have already obtained an FAA No Hazard Determination and provided local notice of the proposed construction, and the FCC must have posted notification of the proposed construction on its website.
 - Such an applicant shall provide its Form 854 File Number in place of the ASR Registration Number that is currently required.
 - Upon grant of the ASR application, the applicant must amend the FCC Form 601 to replace the Form 854 File Number with the ASR Registration Number.
- FCC Form 601 applicants that have not yet obtained their ASR Registration Number must provide the Bureau with an update of the status of their environmental review every 60 days from the date the FCC Form 601 was filed. Failure to provide the update may result in dismissal of the FCC Form 601 application.
 - Such an update must reflect active pursuit of the environmental review.
 - Updates will not be required while action on the environmental notification submission is pending at the Commission, such as when the Commission is considering whether to grant a Request for further environmental processing or is reviewing a submitted EA.
 - WTB will prescribe by public notice the procedures for providing such updates.
- An applicant electing to file the associated license application after completion of environmental processing should use its ASR Registration Number to file FCC Form 601 in the first instance, as is the practice today.

B. Broadcast Applicants.

- An applicant to build a facility in any broadcast service that also requires the completion of FCC Form 854 will now be required to complete the Form 854 environmental notification process and, when necessary, attach an EA to both its Form 854 environmental notification submission and its application for a broadcast construction permit, FCC Form 301, 318, 340, 346, or 349.
 - The same EA must be submitted with both the broadcast construction permit application and the Form 854 environmental notification submission.
 - Applicants whose proposals do not require registration but do require an EA under Section 1.1307 (such as construction in a flood plain that does not require ASR) should file the EA only with the construction permit application form.
- The Media Bureau may continue to accept applications requiring ASR that are submitted prior to obtaining an ASR Registration Number, with the caveat that such applications will not be granted until the environmental notification process has been completed and the ASR Registration Number supplied.
 - Applicants whose applications can be filed outside specified filing windows, such as applications for minor changes to existing authorizations, and whose tower projects

require registration, may elect to file their construction permit applications either before or after completing the Form 854 environmental notification process.

- Applicants that file the construction permit application after completing the environmental notification process and obtaining a grant of Antenna Structure Registration shall either answer “Yes,” or “No” with an attached EA, in response to the environmental certification question on the construction permit application.
- Applicants that file their construction permit applications before completion of the environmental notification process are advised to check “No” in response to the environmental certification question on the construction permit application, indicating that the project has not been determined to be excluded from environmental processing.
 - Such an applicant should also attach to the Application an Exhibit (called for by the environmental certification item in each broadcast construction permit form) explaining whether or not the applicant has commenced the evaluation of the environmental effects of any proposed construction and where the applicant is in that process.
- Applicants for new construction permits or major changes that are subject to the Commission’s competitive bidding procedures initiate the process with the generic FCC Form 175 (Application to Participate in an FCC Auction) rather than a service-specific application (such as those listed above) containing an environmental certification.
 - FCC Form 175 does not contain an environmental certification, and no environmental review or environmental notice is necessary to submit it.
 - Only the winning bidder who has made the final bid payment will need to submit a “long-form,” service-specific application, and it is at that time that an applicant subject to ASR will need to undertake the pre-ASR environmental notification process and complete Form 854.
 - Similarly, after a dispositive preference is awarded under Section 307(b) of the Communications Act, an applicant subject to ASR will need to undertake the pre-ASR environmental notification process and complete Form 854.

C. Earth Station Applicants.

- An earth station license applicant using FCC Form 312 or 312EZ, which is required under Part 17 to notify the FAA of its plans to construct an antenna structure (e.g., an earth station), must complete the environmental notification process prior to filing a complete FCC Form 854 to register the antenna structure.
 - An applicant filing FCC Form 312 will be required to attach a completed FCC Form 854 to its FCC Form 312 application.
 - An applicant filing FCC Form 312EZ electronically will instead be required to provide its ASR Registration Number in the appropriate Section of the FCC Form 312EZ.
 - If an EA was required as part of the environmental notification process and the Bureau issued a Finding of No Significant Impact (FONSI), the applicant will no longer be

required to submit an EA with its FCC Form 312 or 312EZ. Instead, the applicant will be able to rely on the FONSI in order to indicate on its license application that the proposed earth station will not have a significant environmental effect.

III. Amendments

- Amendments to FCC Form 854 that are filed after the provision of local notice or posting on the FCC's website do not require new local or national notice if made only for the following purposes:
 - Changes to administrative information or other changes not affecting the structure's location, height, lighting, or physical configuration.
 - Changes to a more preferred or equally preferred lighting style, including removal of proposed lighting.³
 - Reduction in the height of the structure, unaccompanied by any other change in the physical structure of the proposed tower.
- All other changes to the location, physical characteristics, or lighting of the proposed structure will require an additional local notice, an additional national notice, and re-initiation of the 30-day period for interested persons to submit Requests for further environmental review.
 - Such changes include any increase in the height of the structure even if the increase does not constitute a substantial increase in size.
- An amendment to add an EA will require a new posting on the FCC's website and opportunity for comment but not a new local notice (*see* Section VI below).

IV. Requests for Further Environmental Review

- Requests for further environmental review must be received by the Commission within 30 days after information regarding a proposed construction is posted on the Commission's website. Late filed Requests may be subject to dismissal.
 - WTB will make provision for filing of Requests either electronically or by mail. To ensure timely receipt and to facilitate processing, electronic filing will be strongly encouraged.
 - Requests must be served on the prospective applicant.
- Oppositions will be due 10 calendar days after expiration of the time for filing Requests. Replies will be due 5 business days after expiration of the time for filing oppositions. Oppositions and replies must be served on the parties to the proceeding.

³ See amended rule section 17.4(c)(1)(C).

- Proceedings involving environmental submissions for a specific structure are restricted proceedings under Section 1.1208 of the Commission's rules. Information presented to the Bureau must be served on all parties pursuant to Section 1.1202(d) of the Commission's rules.

V. Disposition of Filings without EAs

- After completion of the 30-day notice period and after reviewing any Requests, the Commission staff will notify the applicant whether an EA is required under Section 1.1307(c) or (d) of its rules. Staff will make every effort to provide this notification as promptly as possible, particularly in cases where no Requests are received.
- If no EA is required based on the Form 854 filing and any Requests, and if the applicant has determined that no EA is otherwise required under Section 1.1307(a) or (b), it may then update Form 854 to certify that the tower will have no significant environmental impact.
- At this point, if all other required information has been provided, the Form 854 will be deemed complete and can be processed accordingly.

VI. Filings with EAs

- If an applicant is required, under the Commission's rules, to file an Environmental Assessment (EA) in connection with a structure that is required to be registered, such EA must be submitted as part of the environmental notification process.
 - An applicant may determine that an EA is necessary when it makes its initial submission, in which case it will attach the EA to that submission.
 - Alternatively, an EA may be supplied at a later date by amending a previous submission, if either the applicant or the Commission determines that a potentially significant environmental effect may exist.
- Regardless of when in the process it is filed, the EA will be placed on notice on the Commission's website, thus commencing a 30-day period for public comment.
 - If the EA is submitted with the initial partially completed Form 854 submission, it must also be placed on local notice in the same manner as an environmental notification submission without an attached EA.
 - If the EA is added to a Form 854 submission that has already gone on local notice, additional local notice is not required in most instances.
 - The prospective applicant must serve the EA on any party that has filed a Request in response to the earlier notice.
 - A second publication in a local newspaper of general circulation or equivalent local notice will be required if there has been a change in the proposed structure's geographic location, height, configuration, or lighting, other than a reduction in height or a change to a more preferred or equally preferred lighting style.

- After considering the EA and any Requests, the Bureau will either issue a Finding Of No Significant Impact (FONSI), require amendments to the EA, or determine that an Environmental Impact Statement is needed.
- Upon issuance of a FONSI, the applicant may complete the Form 854 filing to certify that the tower will have no significant environmental impact.

**STATEMENT OF
COMMISSIONER MICHAEL J. COPPS**

Re: In the Matter of National Environmental Policy Act Compliance for Proposed Tower Registrations; In the Matter of Effects of Communications Towers On Migratory Birds, WT Docket No. 08-61, WT Docket No. 03-187, Order on Remand

Today, at long last, the Commission has responded to the DC Circuit's rebuke to our previous rules that fell short of meeting our responsibilities under the National Environmental Policy Act, the Endangered Species Act, and the Migratory Bird Treaty Act.

While I am disappointed it has taken nearly four years to respond to the court, I am encouraged these interim rules will give more parties greater opportunity to register their concerns about migratory birds when a tower goes up, including ranking tower lighting styles based on their effects on migratory birds. To be sure, we are mindful of the need for towers for quality voice and data services. But this isn't an either/or proposition - we can fulfill both these critical purposes with some careful work.

I applaud the Infrastructure Coalition and Conservation Groups for working together to offer proposals that respond to the court and pave the way to interim rules. I also want to thank the Wireless Bureau and Office of General Counsel for their roles in getting us here, including our ongoing coordination with the Federal Aviation Administration on tower lighting and its effects on migratory birds.

We have waited far too long for these interim requirements. Let's hope that we do not have to wait nearly as long to get permanent rules in place.