

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

In the Matter of)
)
Amendment of Parts 1 and 17 of the Commission's) RM No. 11688
Rules Regarding Public Notice Procedures for)
Processing Antenna Structure Registration)
Applications for Certain Temporary Towers)

COMMENTS OF VERIZON WIRELESS

Verizon Wireless supports the CTIA Petition for Expedited Rulemaking and blanket waiver request (“Petition”) seeking a limited exception from the antenna structure registration (“ASR”) notice rules¹ for temporary towers that will be in use for 60 days or less, that are under 200 feet tall, and that do not require marking or lighting (“Two Month Towers”).

The rule change is urgently needed because carriers often do not have enough time to await conclusion of the FCC’s new ASR notice and public comment process before deploying cells on wheels (“COWs”) or other temporary antennas to meet service needs at events. As a result, the rules prevent carriers from deploying such towers in some cases, thus depriving the public of needed coverage or capacity. The rule change is warranted because it will clearly benefit the public by enabling carriers to supply wireless capacity where needed. The change will, on the other hand, not risk any significant environmental impacts – which is what the rule was implemented to prevent -- and will not jeopardize air safety. The waiver is equally

¹ See 47 C.F.R. § 17.4(c).

important to allow such towers to be deployed as needed to benefit the public during the pendency of the rulemaking proceeding and should be granted expeditiously.

I. BACKGROUND

The FCC adopted ASR notice and comment rules to provide the public the opportunity to seek environmental review of proposed actions. The rules require carriers, for every proposed facility that requires an ASR application, with limited exceptions, to provide local and national notice of the proposed facility. The rules then allow a 30-day comment period, and additional 10-day and 5-day periods for oppositions and replies. The ASR cannot be granted until after the comment period closes, and until after any issues raised are resolved.² Therefore, the minimum waiting period for an ASR to be granted is 30 days, and much longer if an opposition is filed. In practice, even unopposed ASR applications are typically not granted for 45-60 days.

An unintended consequence of the new ASR notice and comment rules is that carriers proposing to deploy temporary towers requiring ASR applications where the applicant has little advance notice of the need for or the exact location of the tower do not have time to complete the process in time to deploy the facility. While the FCC stated in the ASR Notice Order that it will accept and process special temporary authority (STA) requests for temporary towers needed to restore service in an emergency,³ no such process or exception exists for deploying temporary towers in non-emergency situations.

² *National Environmental Policy Act Compliance for Proposed Tower Registrations, WT Docket No. 08-61; Effects of Communications Towers on Migratory Birds, WT Docket No. 03-187, Order on Remand, 26 FCC Rcd 16700, 16716-16728 (2011) (“ASR Notice Order”), codified at 47 C.F.R. § 17.4(c).*

³ *Id.* at 16717, n.117.

II. THE ASR NOTICE AND COMMENT REQUIREMENTS HAVE PREVENTED VERIZON WIRELESS FROM DEPLOYING TEMPORARY TOWERS.

The need to deploy a temporary tower often arises without enough time to await a 1-2 month regulatory process. For example, the company has deployed temporary towers, either on its own or upon the request of third parties, to handle events such as Presidential vacations, election campaign stops, victory parades for sports teams, increased media coverage in the aftermath of tragedies like the Virginia Tech shootings, and marketing events to promote new products or services. Even when a temporary tower is being deployed to provide coverage for an event that is known beforehand, the exact location where the company will place the temporary tower may not be known far enough in advance to satisfy the notice and comment requirements.

In the relatively short time since the Commission's ASR notice and comment rules became effective last June, the rules have affected a number of Verizon Wireless' temporary tower requests. These effects include not deploying the temporary tower at all, delays in deploying the temporary tower, or altering the characteristics (height and/or location – either of which impacts coverage) of the temporary tower in order to avoid the need for an ASR application. Some of the proposed affected sites to date include:

- A proposed cell on wheels (“COW”) for the Baltimore Ravens victory celebration which was not deployed in part due to concerns with meeting the regulatory requirements.
- Proposed COWs for a larger than usual crowd at an Air Force Academy football game and for an event at Snowmass Ski Resort which were not deployed.
- A proposed COW for the Boise State football stadium which was not deployed.
- A proposed facility at the football stadium used by the University of Hawaii was delayed causing three games to be played without the facility in place.
- Two temporary facilities to cover the 2012 Seattle, WA Seafair event – a widely attended festival in July and August with air shows, boat races, parades, and street performances – were cancelled due to insufficient time to complete the regulatory process.
- A proposed site at the Oregon State University football stadium was not approved in time to be deployed for four games.

- A proposed site at the Atlanta Motor Speedway to cover the September 3, 2012 race was not approved in time to be deployed.
- A proposed site at the Charlotte Motor Speedway for an October 13, 2012 race had to be lowered from 125 feet to 101 feet so as not to require an ASR application.

In each of these cases, additional capacity needed to handle traffic volumes at these events was not made available to the public or was diminished due to insufficient time to complete the regulatory process in advance of the event. An exception to the current rule for Two Month Towers and an interim waiver of rule during the pendency of the rulemaking are needed to allow temporary towers to be deployed to serve the public going forward.

III. THE REQUESTED RULE CHANGE AND WAIVER WILL BENEFIT THE PUBLIC AND WILL NOT AFFECT THE ENVIRONMENT OR JEOPARDIZE AIR SAFETY.

Temporary towers are deployed by carriers during events where the expected demand for wireless services is likely to exceed the available capacity or coverage in the area of the event. It is beyond question that deploying such towers for these events benefits the public by helping to ensure reliable wireless communications capabilities for persons attending the events, for 911 connectivity, and for first responders and public safety users. Indeed, in a News Release announcing the Public Notice seeking comment on the Petition, Chairman Genachowski touted the proceeding as a means of expediting the placement of temporary towers, and stated that “[p]roviding . . . more flexibility to carriers to meet extraordinary, short-term service needs will accelerate private and public investment to strengthen our nation’s communications networks.”⁴ Accordingly, it is clear that taking action to remove barriers to deploying temporary towers will serve the public interest.

⁴ *FCC Chairman Julius Genachowski Announces New Broadband Acceleration Initiative Actions; Clarifies Rules to Speed Wireless Infrastructure Deployment; Moves to Expedite Temporary Cell Towers*, News Release (January 25, 2013).

The requested exception for Two Month Towers will not affect the environment or jeopardize air safety. The Commission adopted the ASR notice and comment rules “so that members of the public will have a meaningful opportunity to comment on the environmental effects of proposed antenna structures that require registration with the Commission.”⁵ The Commission noted in adopting the rule that it had “wide discretion in fashioning its own procedures to implement its environmental obligations.”⁶ The Commission exercised that discretion in adopting exclusions from the notice and comment requirements for certain ASR applications that are not likely to affect the environment. These exceptions apply for administrative changes, height reductions or increases that are not deemed “substantial,” removal of lighting or changing to lighting systems that are no less preferred in terms of their impact to migratory birds, replacement towers that are not deemed to constitute substantial increases in the size of the tower, and other changes that do not alter the physical structure, lighting or location of the tower.⁷

The proposed exception for Two Month Towers, like the exceptions previously adopted by the Commission, is extremely unlikely to affect the environment. To date, none of Verizon Wireless’ temporary towers requiring ASR applications has received any opposition from any interested party – a fact that demonstrates that the towers do not raise environmental concerns. In addition, CTIA carefully crafted the proposed exception for Two Month Towers so that the applications granted without notice and comment under the exception are extremely unlikely to have an effect on migratory birds or any other environmental resource covered in the

⁵ ASR Notice Order at 16701.

⁶ *Id.* at 16717 (internal quotations omitted).

⁷ 47 C.F.R. § 17.4(c)(1)(A)-(E).

Commission's rules.⁸ The proposed exception is limited to Two Month Towers, which will be in place for 60 days or less, do not require marking or lighting, and will be less than 200 feet tall.⁹ As CTIA noted, the proposed limitations in duration, marking, lighting and height will protect migratory birds from significant impact from any excluded Two Month Tower.¹⁰ In addition, these factors, together with the fact that temporary towers are deployed with no significant ground disturbance and typically in areas that are previously disturbed will ensure that excluded temporary towers do not impact other environmental resources. As a result, no environmental resource will be harmed by adopting the proposed rule change or granting the requested waiver.

CTIA's proposal was also crafted to ensure that air safety is not jeopardized. The proposed requirement that the exception will not apply to temporary towers that are marked or lit or over 200 feet tall coincides with FAA requirements for structures that could affect air safety. In addition, since CTIA proposed that applicants will still need to provide FAA notice for Two Month Towers that require filing of FAA Form 7460-1, the FAA will continue to have the opportunity to determine if any Two Month Tower will affect navigational beacons.¹¹

Because the proposed exception to the ASR notice and comment rule will benefit the public, will not risk harm to any environmental resources the rule was designed to protect, and will not jeopardize air safety, the Commission should grant CTIA's petition.

⁸ See 47 C.F.R. § 1.1307(a)(1)-(8).

⁹ Petition at 1.

¹⁰ *Id.* at 9-11.

¹¹ The industry is concurrently exploring with the FAA whether some air navigation impact studies can be eliminated and whether expedited review procedures can be adopted for temporary towers.

IV. THE COMMISSION SHOULD GRANT A BLANKET WAIVER TO APPLY DURING THE PENDENCY OF THE RULEMAKING.

Verizon Wireless also supports CTIA's request for a blanket waiver of the ASR notice and comment period for Two Month Towers during the pendency of the rulemaking proceeding. The Petition demonstrated that "good cause" exists for granting the waiver request and that continued application of the rule would be unduly burdensome and contrary to the public interest.¹² CTIA also noted that the Commission has previously granted similar waivers of rules during the pendency of rulemaking proceedings seeking to amend those rules.¹³

As discussed above, the ASR notice and comment rule uniquely and unintentionally affects the deployment of temporary towers because the need for these towers or their exact location is not known far enough in advance to complete the regulatory process. As a result, there have been several instances where towers that would have provided additional capacity and coverage either could not be deployed or had to be delayed or significantly altered, thus depriving the public from the benefits of the tower.¹⁴ These situations will recur so long as the current rule is in place and continues to apply to Two Month Towers. Because rulemaking proceedings are typically lengthy, Verizon Wireless is concerned that it will be unable to deploy many more Two Month Towers (or will have to deploy them in a less optimal manner) during the pendency of the rulemaking proceeding, thus limiting the public interest benefits of these towers. Therefore, to enable carriers to serve the public interest by deploying Two Month Towers in a timely and effective manner, the Commission should immediately waive the ASR

¹² Petition at 11-12. *See* 47 C.F.R. §§ 1.3, 1.925.

¹³ Petition at 11.

¹⁴ *See* Section II, *infra*, at 3-4.

notice and comment rules for Two Month Towers while it considers permanent amendments to the rule.

V. CONCLUSION

The Commission should grant CTIA's request to adopt an exception to the ASR notice and comment rules for Two Month Towers and grant a blanket waiver of those rules during the pendency of the rulemaking proceeding. The rule should be amended because it has prevented and will continue to prevent carriers from deploying temporary towers to meet increased short-term demand for wireless services during events. The rule change also will not harm environmental resources or jeopardize air safety. The waiver should be granted expeditiously so that carriers will not be prevented from deploying temporary towers while the rule change is being considered.

Respectfully submitted,

VERIZON WIRELESS

By: John T. Scott, III

John T. Scott, III
Andre J. Lachance
VERIZON
1300 I Street, N.W.
Suite 400-West
Washington, D.C. 20005
(202) 515-2412

Michael E. Glover
Of Counsel

Attorneys for Verizon Wireless

Dated: February 25, 2013

Certificate of Service

I hereby certify that on this 25th day of February, copies of the foregoing “Comments of Verizon Wireless” in RM No. 11688 were sent by electronic mail to:

Brian Josef
CTIA- The Wireless Association®
bjosef@ctia.org

Mania K. Baghdadi
Spectrum and Competition Policy Division
Wireless Telecommunications Bureau
Federal Communications Commission
Mania.Baghdadi@fcc.gov

Best Copy and Printing, Inc.
FCC Copy Contractor
fcc@bcpiweb.com

/s/
Sarah E. Trosch