

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

In the Matter of)
)
Amendment of Parts 1 and 17 of the) RM – 11688
Commission’s Rules Regarding Public Notice)
Procedures for Processing Antenna Structure)
Registration Applications for Certain)
Temporary Towers)
)

COMMENTS OF AT&T

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I. INTRODUCTION AND EXECUTIVE SUMMARY

AT&T Services, Inc., on behalf of itself and its affiliates (collectively “AT&T”), submits these comments in response to the Petition for Expedited Rulemaking (“Petition”) filed by CTIA in the above-captioned proceeding.¹ The Petition urges the Federal Communications Commission (“Commission”) to amend Section 17.4(c)(1) of the interim antenna structure registration (“ASR”) rules to add a limited exception from the public notice requirements set forth in Section 17.4(c)(3)-(4) for temporary towers that: (1) will be in use for 60 days or less; (2) require the filing of a Form 7460-1 with the Federal Aviation Administration (“FAA”); (3) do not require marking or lighting pursuant to FAA regulations; and (4) will be less than 200 feet in height (hereinafter “Two Month Towers”). The Petition also seeks a blanket waiver exempting Two Month Towers from the ASR public notice requirements during the pendency of the rulemaking proceeding. AT&T strongly supports the proposed exemption because it will enable

¹ See CTIA Petition for Expedited Rulemaking, RM–11688 (filed Dec. 21, 2012) (“Petition”).

wireless carriers² to respond to non-emergency, short-term spikes in demand (planned and unplanned), allow carriers to quickly deploy temporary towers when antennas must be unexpectedly removed from a permanent structure in non-emergency circumstances, and ensure service continuity, all without undermining environmental and air safety concerns or significantly affecting avian mortality.³

II. EXEMPTING TWO MONTH TOWERS FROM THE ASR PUBLIC NOTICE RULES WILL SERVE THE PUBLIC INTEREST.

The proposed exemption for Two Month Towers will enable carriers to rapidly respond to temporary capacity issues caused by non-emergency events and ensure that the public continues to receive quality wireless service—an outcome that is impossible under the current, standard processes if a Two Month Tower requires an ASR. Under the current rules, applicants for new towers that require registration, including temporary towers, must provide two types of notice: local notice in newspapers (or by other appropriate means),⁴ and national notice on the FCC’s website for 30 days.⁵ An applicant may move forward with tower deployment only after satisfying both notice conditions, followed by the Commission acting on its ASR application. This process delays deployment and may prevent wireless carriers from timely responding to temporary spikes in demand.

² AT&T’s comments focus on the benefits of an exemption for wireless carriers. However, to the extent that temporary towers are owned by third parties that are not wireless carriers, those temporary tower owners would also benefit from the exemption.

³ Although the Petition and AT&T’s comments focus on the deployment of temporary towers in non-emergency situations, the exemption requested by CTIA would apply equally to temporary towers deployed in emergencies.

⁴ 47 C.F.R. § 17.4(c)(3).

⁵ *Id.* § 17.4(c)(4).

While Two Month Towers may be expedited by waivers in individual cases, such a process is inefficient. Non-emergency, short-term spikes in demand regularly re-occur, requiring a more permanent solution. As discussed below, an exemption for Two Month Towers from the ASR public notice rules, and a blanket waiver while the rulemaking is pending, would eliminate the uncertainty and inevitable delays resulting from case-by-case waivers and serve the public interest.

A. The Problem: The ASR Notification Requirements May Prevent Wireless Carriers from Responding to Short-Term Network Capacity Issues.

CTIA identifies four broad categories of non-emergency situations in which carriers need—but do not have—the ability to rapidly deploy temporary towers to address significant short-term capacity constraints: (1) newsworthy events that occur without any prior notice, such as the Virginia Tech shooting and train derailments⁶; (2) instances where carriers have less than 30 days advance notice of the need to deploy temporary towers, such as some political events and parades for sports teams⁷; (3) events in which the timing and general location are known but the specific location for placement of the temporary tower is not conveyed from the event managers to the wireless carriers until days before the event, such as state fairs and NASCAR races⁸; and (4) unexpected difficulties with permanent structures that require the deployment of

⁶ In these instances, “demand for wireless services rapidly spikes as news organizations scramble to marshal their resources to cover the event and subscribers use their wireless phones to find out whether friends and family are safe.” Petition at 4. Increased demand from these types of events can remain significant—and thus problematic—for days after the event.

⁷ See *id.* at 5-6. These events often occur with only a few days of advance notice, with carriers learning about the need for additional capacity at the last moment.

⁸ See *id.* at 6-7.

temporary towers while permanent facilities are repaired.⁹ In each of these situations, applicants cannot follow the ASR notice process because they either do not have sufficient advance notice of the need to deploy a temporary tower or of the location where the temporary tower will be deployed.

Yet, the current ASR notice rules restrict carriers from deploying the temporary tower until completion of the ASR process.¹⁰ In the best of circumstances, this ASR notice process takes a minimum of about 40 days, as carriers must provide local and national public notice, allow 30 days for the filing of any requests for further environmental review, and wait for the Commission to clear the tower for a final certification.¹¹ If a request for environmental review is filed, the deployment could be delayed even longer, possibly indefinitely, despite, as discussed below, the absence of any significant environmental impact from a Two Month Tower. The practical effect of a 40+ day ASR notice process is that wireless carriers would not receive approval to deploy the temporary tower until after the non-emergency event for which the temporary tower is needed—preventing the deployment of the temporary tower.

⁹ As CTIA explains, these situations are distinct from “emergency” situations where facilities are rendered inoperative due to floods, hurricanes, or other disasters. *See* Petition at 7. Although the causes are less dramatic—such as repairs to a building roof requiring temporary relocation to another site, unexpected equipment failures requiring use of a temporary facility, or localized power outages not associated with an emergency—the wireless network will still be adversely affected and service to customers degraded unless temporary facilities can be rapidly deployed. *Id.*

¹⁰ 47 C.F.R. §1.923(e) (“Environmental review by the Commission must be completed prior to construction.”).

¹¹ *Public Notice, Implementation of the Environmental Notification Process for the Registration of Antenna Structures*, DA 12-731, 27 FCC Rcd 5081, 5082 (2012) (“After approximately 40 days, if the appropriate Bureau has determined that the application does not require additional environmental processing, the applicant will be able to complete [the final ASR].”).

Restricting the deployment of Two Month Towers in this manner significantly impedes the ability of carriers to meet short-term increases in demand, potentially overloading local wireless networks and compromising network reliability and service quality. In situations where Two Month Towers are needed to supplant permanent structures that have operational issues, the absence of a temporary tower would, at best, reduce network capacity, and, at worst, create holes in a wireless carrier's network coverage. These consequences, while perhaps not intended, are not in the public interest.

Over the past year, AT&T has experienced multiple instances where temporary towers requiring an ASR had to be deployed on a timetable that was less than that needed to follow the ASR notice process. For example, AT&T planned to deploy multiple cell sites on wheels ("COWs") for the 2013 Presidential Inauguration, but after coordinating the location of the cell sites with the United States Secret Service and the National Park Service, there was insufficient time to follow the ASR notice process for all of the COWs, deploy the COWs, and integrate and optimize the COWs with the other COWs and AT&T's existing macro network. In another instance, AT&T was forced to deploy a COW on short notice when it was unexpectedly directed to remove antennas from a water tower that required maintenance.

To its credit, the Commission has worked diligently to facilitate deployment of temporary towers as quickly as possible. In each instance where AT&T had insufficient time to follow the ASR notice process, the Commission actively worked with AT&T and granted waivers to allow AT&T to deploy the temporary towers before completion of the ASR notice process. AT&T is grateful to Commission staff for its efforts to accelerate the deployment of these temporary towers. But managing temporary tower deployments through the grant of waivers is not an

efficient process. The regular need for waivers for Two Month Towers highlights the need for the process to be changed.

Requiring waivers in non-emergency situations also is inefficient from a resource perspective, consuming Commission and wireless carrier resources without attendant benefits. Wireless carriers and other temporary tower owners must delay deployment of a temporary tower until the waiver is granted and must expend time and resources gathering information about the site, preparing the waiver request, consulting with Commission staff, and monitoring the status of the waiver request.¹² This process inevitably results in delays. In the case of the unexpected, short-term increases in demand for which Two Month Towers are deployed, even small delays can have a significant impact in terms of impaired and degraded service to the public. Further, despite the best efforts of Commission staff, waivers are not guaranteed. Requiring wireless carriers to rely on the grant of a waiver introduces additional uncertainty, increasing the burden on carriers that are already working on an accelerated timeframe to plan and implement solutions to sudden capacity or coverage concerns.

B. The Solution: Exempt Two Month Towers from the ASR Notice Rules and Grant a Blanket Waiver for the Duration of the Rulemaking.

By exempting Two Month Towers from the ASR notice rules, the Commission will help wireless carriers protect the integrity of their networks and meet consumer needs during non-emergency, short-term spikes in demand. Indeed, carriers will be able to immediately deploy COWs and cell sites on light trucks (“COLTs”) in response to these non-emergency events—as they successfully did, without complaint, before the new rules were adopted. For example,

¹² Even when the Commission grants a waiver, it is often conditioned on a post-deployment local and national notice. This post-deployment notice even further needlessly consumes the resources of temporary tower owners and the Commission, as many temporary tower deployments will be completed once the notice period has expired and because the deployments do not have a significant impact on the environment.

AT&T maintains a fleet of hundreds of COWs and COLTs that the company is able to deploy as needed to temporarily boost capacity in response to emergency and non-emergency events.

AT&T also has a DAS on Wheels (“DOW”), a portable Distributed Antenna System (“DAS”), which can be deployed in a matter of hours.¹³ Further, AT&T has five National Disaster Recovery (NDR) warehouses in the U.S., which allow it to pre-position equipment in advance of expected events—such as political appearances and sporting events—and to deploy equipment rapidly in response to sudden events. In many cases, emergency communications vehicles can begin providing services within 30 minutes of arriving on site.

However, under the current ASR rules AT&T is often unable to efficiently leverage its planning and investment to address sudden increases in traffic caused by non-emergency events without delay. A rule change permanently exempting Two Month Towers from the notice rules would facilitate wireless carriers’ efforts to rapidly respond to such events and offer customers sustained, high-quality services at all times. As detailed in CTIA’s Petition, this will ensure that news organizations can effectively cover important, late-breaking events, that wireless customers can continue to make personal calls and 911 calls at gatherings with large crowds, and that public safety can rely on commercial networks regardless of surges in network demand.¹⁴

Pending conclusion of the proposed rulemaking, the Commission should grant immediate relief via a blanket waiver. Granting a blanket waiver in this case satisfies the Commission’s “good cause” waiver standard.¹⁵ A limited exemption from the public notice requirement for

¹³ AT&T introduced the DOW at the 2012 Democratic National Convention when the event’s organizers made a last-minute decision to move President Obama’s acceptance speech to Charlotte’s Time Warner Cable Arena.

¹⁴ Petition at 5-7.

¹⁵ Pursuant to Section 1.3, the Commission may waive its rules for “good cause shown.” 47 C.F.R. § 1.3.

Two Month Towers would allow carriers to respond to temporary capacity issues and ensure service continuity without undermining meaningful review of environmental or air safety concerns or significantly impacting avian mortality.¹⁶ Further, pursuant to Section 1.925, a waiver is appropriate because enforcement of the ASR notice requirement would be unduly burdensome and contrary to the public interest.¹⁷ Specifically, the requirement may preclude deployment of Two Month Towers necessary to address non-emergency, short-term spikes in demand and ensure continuity of service to the public. Accordingly, a blanket waiver should be granted.

III. EXEMPTING TWO MONTH TOWERS FROM THE NEW ASR NOTICE RULES WILL NOT POSE ENVIRONMENTAL OR AIR SAFETY CONCERNS OR SIGNIFICANTLY AFFECT AVIAN MORTALITY.

Exempting Two Month Towers from the ASR notice rules will allow carriers to respond to temporary capacity issues and ensure service continuity, including allowing consumers to place emergency calls, without: (1) undermining meaningful review of environmental or air safety concerns; or (2) significantly impacting avian mortality.

No Environmental Concerns. Importantly, the proposed exemption would not obviate the need for an ASR applicant to conduct its standard NEPA screening analysis. Thus, the ASR applicant must still certify on the Form 854 that the proposed Two Month Tower does not have a significant environmental effect.

Further, there is precedent for exempting temporary towers from environmental review. In the Section 106 context, the Commission, the Advisory Council on Historic Preservation, and the National Commission of State Historic Preservation Officers jointly determined in the 2004

¹⁶ See Petition at 12.

¹⁷ 47 C.F.R. § 1.925.

Nationwide Programmatic Agreement (“2004 NPA”) that temporary towers can be exempted from the Section 106 requirements without adversely impacting historic structures.¹⁸ In the case of the 2004 NPA, temporary towers consist of towers that remain in place for up to *twenty-four months*. And the Commission, in adopting the 2004 NPA, emphasized that temporary facilities, by their nature, “usually involve little or no excavation,”¹⁹ and so long as no excavation will occur on previously undisturbed ground, the “risk of damage to archeological or other historic properties from a temporary facility is small.”²⁰ The Commission also concluded that exempting temporary facilities from NHPA review would benefit the public interest because temporary facilities play an important role “in respon[ding] to exigent circumstances where it is important that they be erected quickly.”²¹ Here, CTIA requests a much more limited exemption for NEPA purposes by circumscribing the subset of towers to only those towers that will remain in place for *no more than 60 days*.

No Air Safety Concerns. Exempting Two Month Towers from the new ASR public notice requirements will not diminish air safety. Tower owners will still need to determine whether Two Month Towers—just like other towers—require an FAA determination of No Air Hazard. If a “Determination of No Air Hazard” is required, the applicant must still file a Form 854, so the Commission and the FAA are aware of the tower and its status. Further, the proposed exemption does not alter the FAA’s opportunity to fully consider what effect, if any,

¹⁸ See *Nationwide Programmatic Agreement for Review of Effects on Historic Properties for Certain Undertakings Approved by the Federal Communications Commission*, 20 FCC Rcd 1073, 1091 (2004) (“2004 NPA”).

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

the temporary tower will have on air safety. As explained in the Petition, if the FAA concludes that a tower requires marking or lighting, then such a tower does not fit the definition of a Two Month Tower and is thus ineligible for the exemption.

No Significant, Increased Threat to Avian Mortality. AT&T agrees with CTIA that a Two Month Tower that is eligible for the proposed exemption will not significantly threaten avian mortality. This position is consistent with Commission conclusions in related proceedings. In the *2011 Order on Remand*, for example, the Commission highlighted that towers below 450 feet in height do not pose a significant threat to migratory birds.²² Here, the proposed exemption would be limited to towers that do not exceed 200 feet in height.

The Wireless Bureau's conclusions in the Final Programmatic Environmental Assessment ("PEA") also confirm that the proposed exemption will not significantly affect avian mortality. The PEA identified "[t]all towers, steady-burning lights, and guy wires" as the primary tower characteristics contributing to avian mortality.²³ Two Month Towers—by CTIA's definition—would be neither tall nor lighted, nor would they require guying.²⁴

²² Specifically, in the 2011 Order on Remand, the Commission concluded that "[d]ata from existing studies show no evidence of large-scale mortality for towers less than approximately [450 feet]." *National Environmental Policy Act Compliance for Proposed Tower Registrations*, Order on Remand, 26 FCC Rcd 16700, 16731-32 (2011) ("*Remand Order*"). The Commission further stated that the "450-foot threshold for an interim EA filing requirement supports [a] 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." *Id.* at 16732.

²³ See *Final Programmatic Env'tl. Assessment for the Antenna Structure Registration Program*, 2012 WL 871792, at § 7.8 (Mar. 13, 2012), http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0313/DOC-312921A1.pdf. ("Tall towers, steady-burning lights, and guy wires are the primary tower characteristics contributing to avian mortality.").

²⁴ The Petition proposes to limit the exemption to towers that are no more than 200 feet. At this height, guying likely will not be necessary.

Further, according to the PEA, the impacts from operating a tower are limited to the length of time a tower is in place.²⁵ While an average tower's useful life is often measured in decades, Two Month Towers, by definition, would only be permitted for a maximum of 60 days. Accordingly, their potential impact on avian mortality is much less than that of traditional towers. The PEA also explains that "impacts from construction of towers are [generally] negligible or minor, given the relatively small footprints of the towers" and, in most instances, "temporary."²⁶ That would also be true for Two Month Towers. Indeed, most Two Month Towers will be COLTs and COWs, which by their nature are turn-key towers that do not require any construction prior to operation.

IV. CONCLUSION

For the foregoing reasons, AT&T urges the Commission to adopt the Petition and exempt Two Month Towers from the ASR notice rules. Such an exemption will enable wireless carriers to respond to non-emergency, unplanned spikes in capacity and ensure service continuity without undermining environmental and air safety concerns or significantly impacting avian mortality.

Respectfully submitted,

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²⁵ See *id.* at § 5.3.

²⁶ *Id.*