§ 52.1920 Identification of plan.

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EPA-APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE OKLAHOMA SIP

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanation
*	*	*	*	*
Infrastructure for the 1997 Ozone and the 1997 and 2006 $PM_{2.5}$ NAAQS.	Statewide	12/5/2007 6/24/2010 4/5/2011	1/26/2012 [Insert FR page number where document begins].	Approval for 110(a)(2)(A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).
Interstate transport for the 2006 $PM_{2.5}$ NAAQS (Noninterference with measures required to prevent significant deterioration of air quality in any other State).	Statewide	4/5/2011	1/26/2012 [Insert FR page number where document begins].	Approval for 110(a)(2)(D)(i)(II).

[FR Doc. 2012–1534 Filed 1–25–12; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 17, 22, 24, 25, 27, 80, 87 and 90

[WT Docket No. 08–61; WT Docket No. 03–187; FCC 11–181]

National Environmental Policy Act Compliance for Proposed Tower Registrations; Effects of Communications Towers on Migratory Birds

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (FCC or Commission) adopts a rule that affects the process of tower construction by instituting a pre-application notification process 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. As an interim measure pending completion of a programmatic environmental analysis and subsequent rulemaking proceeding, the Commission also requires that an EA be prepared for any proposed tower over 450 feet in height.

DATES: The rules in this document contain information collection requirements that have not been approved by OMB. The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date.

FOR FURTHER INFORMATION CONTACT: Mania Baghdadi, Wireless Telecommunications Bureau, (202) 418–2133, email *Mania.Baghdadi@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order on Remand in WT Docket Nos. 08–61 and 03–187, adopted December 6, 2011, and released December 9, 2011. The full text of the Order on Remand is available for public inspection and copying during business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. It also may be purchased from the Commission's duplicating contractor at Portals II, 445 12th Street SW., Room CY–B402, Washington, DC 20554; the contractor's Web site, *http://www.bcpiweb.com* or by calling (800) 378–3160, facsimile (202) 488–5563, or email *FCC@BCPIWEB.com*. Copies of the Order on Remand also may be obtained via the Commission's Electronic Comment Filing System (ECFS) by entering the docket numbers WT Docket No. 08–61 or WT Docket No. 03–187. Additionally, the complete item is available on the Federal Communications Commission's Web site at *http://www.fcc.gov*.

I. Introduction

1. In this Order, the Commission takes procedural measures to ensure, consistent with its obligations under Federal environmental statutes, that the environmental effects of proposed communications towers, including their effects on migratory birds, are fully considered prior to construction. The Commission institutes a pre-application notification process 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. As an interim measure pending completion of a programmatic environmental analysis and subsequent rulemaking proceeding, the Commission also requires that an Environmental Assessment (EA) be prepared for any proposed tower over 450 feet in height. Through these actions and the Commission's related ongoing initiatives, the Commission endeavors to minimize the impact of communications towers on migratory birds while preserving the ability of communications providers rapidly to offer innovative and valuable services to the public.

2. The Commission's actions in this Order respond to the decision of the Court of Appeals for the District of Columbia Circuit in *American Bird Conservancy* v. *FCC,* 516 F.3d 1027 (DC Cir. 2008) (*American Bird Conservancy*). In *American Bird Conservancy,* the court held that the Commission's current antenna structure registration (ASR) procedures impermissibly fail to offer members of the public a meaningful opportunity to request an EA for proposed towers that the Commission considers categorically excluded from review under the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.* The notification process that the Commission adopts today addresses that holding of the court. In addition, the court held that the Commission must perform a programmatic analysis of the impact on migratory birds of registered antenna structures in the Gulf of Mexico region. The Commission is already responding to this holding by conducting a nationwide environmental assessment of the ASR program. The Commission has also asked the U.S. Fish and Wildlife Service (FWS) to perform a conservation review of the ASR program under the Endangered Species Act (ESA), 16 U.S.C. 1531 *et seq.*

3. The Commission's action also occurs in the context of its ongoing rulemaking proceeding addressing the effects of communications towers on migratory birds. In 2006, the Commission sought comment on what

this impact may be and what requirements, if any, the Commission should adopt to ameliorate it. Effects of Communications Towers on Migratory Birds, WT Docket No. 03–187, *Notice of Proposed Rulemaking,* 71 FR 67510 (November 22, 2006) (*Migratory Birds NPRM* or Migratory Birds proceeding). Evidence in the record of that proceeding indicates, among other things, that the likely impact of towers on migratory birds increases with tower height. Consistent with that evidence and with a Memorandum of Understanding (MOU) submitted May 4, 2010, by representatives of communications providers, tower companies, and conservation groups, the Commission requires, as an interim measure, that an EA be prepared for any proposed tower over 450 feet in height. The Commission expects to take final action in the Migratory Birds proceeding following completion of the programmatic EA and, if necessary, any subsequent programmatic Environmental Impact Statement (EIS).

4. Specifically, the Commission takes the following actions in this Order:

- The Commission requires that prior to the filing of an ASR application for a new antenna structure, members of the public be given an opportunity to comment on the environmental effects of the proposal. The applicant will provide notice of the proposal to the local community and the Commission will post information about the proposal on its Web site. Commission staff will consider any comments received from the public to determine whether an EA is required for the tower.
- Environmental notice will also be required if an ASR applicant changes the lighting of existing tower to a less preferred lighting style.
- The Commission modifies its procedures so that EAs for those registered towers that require EAs will also be filed and considered prior to the ASR application. Those EAs are currently filed together with either the ASR application or a service-specific license or permit application.
- The Commission institutes an interim procedural requirement that an EA be filed for all proposed registered towers over 450 feet in height. Staff will review the EA to determine whether the tower will have a significant environmental impact. This processing requirement is an interim measure pending completion of the ongoing programmatic environmental analysis of the ASR program.

5. Also pending before the Commission are two Petitions for Expedited Rulemaking: one filed May 2, 2008, by CTIA—The Wireless Association, National Association of Broadcasters, National Association of Tower Erectors, and PCIA—The Wireless Association; and another filed April 24, 2009, by American Bird Conservancy, Defenders of Wildlife and National Audubon Society. In light of the Commission's adoption of an environmental notification process that provides a meaningful opportunity for the public to raise environmental concerns as to prospective ASR applications, together with the commencement of the programmatic EA, the Commission grants in part and dismisses in part these petitions for expedited rulemaking. To the extent that this Order adopts a notification process for prospective ASR applications and otherwise responds to concerns raised by the court, the Petitions are granted in part. Insofar as the Petitions seek relief beyond the scope of this Remand Order, they are dismissed without prejudice. Either Petition may be refiled to seek relief on any issues that may remain relevant following completion of the programmatic NEPA analysis.

II. Background

A. NEPA and CEQ Rules

6. NEPA requires all Federal agencies, including the FCC, to identify and take into account environmental effects when deciding whether to authorize or undertake a major Federal action. Although NEPA does not impose substantive requirements upon agency decision-making, Title I requires Federal agencies to take a ''hard look'' at proposed major Federal actions that may have significant environmental consequences and to disseminate relevant information to the public. *Robertson* v. *Methow Valley Citizens Council,* 490 U.S. 332, 349–50 (1989). Specifically, Section 102(2)(C) of NEPA requires the preparation of a detailed EIS for any ''major Federal action[] significantly affecting the quality of the human environment. * * *'' 42 U.S.C. 4332(2)(C). In preparing the EIS, the action agency must consult with any other Federal agency with jurisdiction or expertise over any environmental impact involved.

7. Section 204 of NEPA, 42 U.S.C. 4344, created the Council on Environmental Quality (CEQ) and entrusted it with oversight responsibility regarding the NEPA activities of Federal agencies. To implement Section 102(2) of NEPA, CEQ promulgated regulations, 40 CFR parts 1500–1508, that ''tell federal agencies what they must do to comply with the procedures and achieve the goals of the Act.'' 40 CFR 1500.1(a). These regulations are ''applicable to and binding on all Federal agencies for implementing the procedural provisions of [NEPA] * * * except where compliance would be inconsistent with other statutory requirements.'' 40 CFR 1500.3. Thus, as mandated by NEPA, each Federal agency issues its own regulations and procedures that implement its NEPA responsibility to identify and account for the environmental impacts of projects it undertakes or authorizes. 42 U.S.C. 4332(2)(B). Such regulations must follow the requirements specified in CEQ regulations. 40 CFR 1507.1, 1507.3.

8. CEQ's regulations direct agencies to identify their major Federal actions as falling into one of three categories. 40 CFR 1507.3(b)(2). The first such category encompasses those actions that normally have a significant environmental impact. These actions always require an EIS. 42 U.S.C. 4332(2)(C). *See also* 40 CFR 1508.11. A second category of agency actions includes those actions that ordinarily may, but do not routinely, have a significant environmental impact. For actions in this category, an agency may conduct an EA in lieu of an EIS. 47 CFR 1.1307. *See also* 47 CFR 1.1308(b). An EA is briefer than an EIS, and its purpose is to determine whether an EIS is required, 40 CFR 1508.9. *See also* 40 CFR 1501.4(b). If an EA shows that a proposed action will have no significant environmental impact, then the agency issues a Finding of No Significant Impact (FONSI), *see* 40 CFR 1508.13, and the proposed action can proceed. However, if an EA indicates that the action will have a significant environmental impact, the agency must proceed with the EIS process.

9. The third category of actions—''categorical exclusions''—are those actions agencies have identified ''which do not individually or cumulatively have a significant effect on the human environment * * * and for which * * * neither an environmental assessment nor an environmental impact statement is required.'' *See* 40 CFR 1507.3(b)(2)(ii). *See also* 40 CFR 1508.4. CEQ regulations require that an agency that chooses to establish categorical exclusions must also provide for ''extraordinary circumstances'' under which a normally excluded action may have a significant effect. CEQ regulations also state that an agency may decide, in its procedures or otherwise, to prepare EAs for specific reasons even when not required to do so. Thus, although categorically excluded actions presumptively are exempt from environmental review,

agency decisions or ''extraordinary circumstances'' may require their review in the form of the preparation of EAs or EISs. 40 CFR 1508.4, 1507(b)(1).

10. One of NEPA's central goals is to facilitate public involvement in agency decisions that may affect the environment. 40 CFR 1500.1(b), 1500.2(d). Section 1506.6 of CEQ's regulations governs public involvement in federal agencies' implementation of NEPA. 40 CFR 1506.6. Section 1506.6(a) provides generally that agencies shall ''make diligent efforts to involve the public in preparing and implementing their NEPA procedures.'' Section 1506.6(b) specifically directs agencies to provide ''public notice of * * * the availability of environmental documents'' to parties who may be interested in or affected by a proposed action. Environmental documents include EAs, EISs, FONSIs, and Notices of Intent (NOIs). 40 CFR 1508.10. For actions ''with effects primarily of local concern,'' Section 1506.6(b)(3) suggests nine ways of providing local public notice, while Section 1506.6(b)(2) discusses methods of providing notice for actions ''with effects of national concern.'' In a memorandum to agencies, the CEQ has explained that ''[a] combination of methods may be used to give notice, and the methods used should be tailored to the needs of particular cases.'' *Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations,* 46 FR 18026 March 23, 1981.

B. The Commission's NEPA Process

11. *The NEPA Rules.* CEQ has approved the Commission's rules implementing NEPA, 47 CFR 1.1301 through 1.1319. *See* Petition by Forest Conservation Council, American Bird Conservancy and Friends of the Earth for National Environmental Policy Act Compliance, *Memorandum Opinion and Order,* 21 FCC Rcd 4462, 4468, para. 18 (2006). These rules apply to the processing of antenna structure registration applications, which the Commission has deemed to constitute a major Federal action. Streamlining the Commission's Antenna Structure Clearance Procedure, *Report and Order,* 61 FR 4359 (February 6, 1996) (*Antenna Structure Clearance R&O).* Consistent with CEQ regulations, the Commission's current environmental procedures: (1) Require preparation of an EIS for any proposed action deemed to significantly affect the quality of the human environment, 47 CFR 1.1305, 1.1314, 1.1315, 1.1317; (2) require preparation of an EA for any proposed action that may have a significant environmental effect, 47 CFR 1.1307; and (3) categorically exclude from environmental processing proposed actions deemed individually and cumulatively to have no significant environmental effect, 47 CFR 1.1306.

12. Sections 1.1307(a) and (b) of the Commission's existing rules identify those types of communications facilities that may significantly affect the environment and for which applicants must always prepare an EA that must be evaluated by the Commission as part of its decision-making process. Thus, Commission licensees and applicants must currently ascertain, prior to construction or application for Commission authorization or approval, whether their proposed facilities may have any of the specific environmental effects identified in these rules. 47 CFR 1.1308. The rules currently do not identify facilities that may affect migratory birds as requiring preparation of an EA. The Commission notes, however, that licensees and applicants must consider effects on migratory birds that are listed or proposed as endangered or threatened species under the ESA. *See* 47 CFR 1.1307(a)(3).

13. Under the existing rules, actions not within the categories for which EAs are required under Sections 1.1307(a) and (b) of the Commission's rules ''are deemed individually and cumulatively to have no significant effect on the quality of the human environment and are categorically excluded from environmental processing * * * [e]xcept as provided in Sections 1.1307(c) and (d).'' 47 CFR 1.1306(a). Thus, most antenna structure registrations are categorically excluded from environmental processing. Under Sections 1.1307(c) and (d), the agency shall require an EA if it determines that an otherwise categorically excluded action may have a significant environmental impact. These provisions satisfy Section 1508.4 of CEQ's rules, 40 CFR 1508.4, requiring that ''[a]ny [categorical exclusion] provisions shall provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect.'' Thus, even though a potentially significant effect on migratory birds is not one of the categories of proposed actions identified in Section 1.1307(a) of the rules as requiring an EA, the Commission has on several occasions considered the impact of particular proposed construction projects on migratory birds and, in appropriate circumstances, has required modifications to protect them.

14. *NEPA Review for Towers Subject to ASR.* Section 303(q) of the Communications Act vests the Commission with authority to require the painting and/or lighting of radio towers if and when in its judgment such structures constitute, or there is a reasonable possibility that they may constitute, a menace to air navigation. 47 U.S.C. 303(q). To implement this provision, Part 17 of the Commission's rules requires that, if notification of proposed construction must be provided to the Federal Aviation Administration (FAA) under its rules, then such proposed antenna structures or modifications to antenna structures must also be registered in the Commission's ASR System prior to construction. 47 CFR 17.4(a). Notification to the FAA is generally required for any antenna structure that is over 200 feet in height above ground level or that meets certain other criteria, such as proximity to an airport runway. 14 CFR 77.13; 47 CFR 17.7. Before the antenna structure is registered with the FCC, the tower owner must obtain a No Hazard to Air Traffic Determination (No Hazard Determination) from the FAA. The Commission has determined that the process of FAA clearance and FCC registration effectively constitutes a pre-construction approval process within the Commission's Section 303(q) authority and is therefore subject to the provisions of NEPA and other Federal environmental statutes. *Antenna Structure Clearance R&O,* 61 FR 4359 (February 6, 1996).

15. To register an antenna structure, the antenna structure owner must submit to the Commission a valid ASR application (FCC Form 854, Application for Antenna Registration), along with the No Hazard Determination from the FAA. Because the processing of ASR applications is a major Federal action, the tower owner must certify in response to current Question 38 on Form 854 (the number may change on the revised form) whether the proposed antenna structure may have a significant environmental effect, as defined by Sections 1.1307(a) and (b) of the rules, for which an EA must be prepared. The Commission will not process an ASR application if Question 38 is not answered. A ''no'' answer signifies that none of the circumstances delineated in Sections 1.1307(a) and (b) of the Commission's rules apply to the proposed tower and that an EA is not required to be submitted with the application. In that event, the ASR system verifies against the FAA's database the accuracy of the lighting and marking specifications provided by the applicant. The ASR system then issues an antenna structure registration (Form 854R) without the Commission

having provided prior public notice of the pending ASR application.

16. If the response to Question 38 is ''yes,'' the applicant must submit an EA, along with supporting documentation, when it files the ASR application with the Commission. This means that the application will not be processed until the Bureau has resolved the environmental concerns addressed in the EA. 47 CFR 17.4(c). Such an application is placed on public notice for thirty (30) days, by publication of a notice in the Daily Digest. This process affords interested persons an opportunity to comment on the EA and also, pursuant to Section 1.1307(c), to seek environmental review with respect to effects, such as impact on migratory birds, that do not routinely require preparation of an environmental assessment.

17. Under the Commission's rules, applicants for some proposed towers may be required not only to file an ASR application but also to file service-specific applications. For example, applicants for certain public safety and wireless radio service facility authorizations may be required to file both an ASR application and a site-by-site license application. The license application (Form 601, Application for Wireless Telecommunications Bureau Radio Service Authorization) may be placed on public notice pursuant to the Commission's licensing rules. To date, those applicants have been permitted to choose whether to attach any required EA to FCC Form 854 or FCC Form 601. Broadcast construction applicants are, on the other hand, required to submit the EA, if any is required, with the service-specific application and do not submit a copy of the EA with the associated FCC Form 854. Similarly, while pre-construction approval is generally not required for satellite earth stations, if an EA is required, the applicant must submit a service-specific application on FCC Form 312 (Application for Satellite Space and Earth Station Authorizations) and attach the EA to that application, which is then placed on 30-day public notice, prior to construction. 47 CFR 25.115, 25.151.

18. *Towers Not Subject to ASR.* Licensees may also construct and use towers that do not require registration with the Commission. In the event an EA is required for one of these towers, it is filed with the appropriate license application and processed by the Bureau responsible for licensing that service. If a tower company that is not a licensee or license applicant wishes to construct a tower that does not require antenna structure registration, but does require an EA, that company typically registers the tower by filing an FCC Form 854 as a vehicle for submitting the EA. This Order does not change processing procedures for towers that do not require ASR filings.

19. *Collocations.* Licensees are often able to collocate antennas on existing buildings or structures. Under the Nationwide Programmatic Agreement for the Collocation of Wireless Antennas, 47 CFR part 1, appendix B, collocation is defined as ''the mounting or installation of an antenna on an existing tower, building or structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.'' Because collocations are unlikely to have environmental effects, with limited exceptions they are not subject to environmental processing, except upon a determination by the processing Bureau under Section 1.1307(c) or (d), based on its examination of a petition submitted by an interested person or its own motion, that the proposed collocation may significantly affect the environment. 47 CFR 1.1306 (Note 1); *see* 47 CFR 1.1307(c)–(d). The procedures adopted in this Order will apply only to certain collocations that may have a significant effect on migratory birds because they involve a substantial increase in size of a registered tower.

C. The Gulf Petition and Litigation

20. *The Gulf Petition.* Alleging that the Gulf Coast is critically important for migratory birds, Forest Conservation Council, American Bird Conservancy, and Friends of the Earth (petitioners) filed in 2002 a ''Petition for National Environmental Policy Act Compliance'' asking the Commission to, *inter alia:* (1) Implement public participation procedures set forth in 40 CFR 1506.6 by providing notice and opportunity to comment on all proposed ASR applications for the Gulf Coast region; (2) commence preparation of an EIS evaluating, analyzing, and mitigating the direct, indirect, and cumulative effects of all past, present and reasonably foreseeable antenna structure registrations on migratory birds in the Gulf Coast region; and (3) initiate formal Section 7 ESA consultation with FWS with respect to the impact of the Commission's ASR decisions on endangered and threatened species in the Gulf Coast region. Forest Conservation Council, American Bird Conservancy, and Friends of the Earth, Petition for National Environmental Policy Act Compliance, submitted August 26, 2002 (Gulf Petition).

21. *The Gulf Memorandum Opinion and Order.* In its 2006 *Memorandum Opinion and Order* addressing the Gulf Petition, the Commission dismissed that petition in part and denied it in part. Petition by Forest Conservation Council, American Bird Conservancy and Friends of the Earth for National Environmental Policy Act Compliance, *Memorandum Opinion and Order,* 61 FR 4359 (February 6, 2006) (*Gulf Memorandum Opinion and Order*). Of relevance here, the Commission declined to implement new public notice procedures, declined to commence a programmatic EIS, and denied the request to initiate formal Section 7 consultation on the cumulative effects that towers in the Gulf Coast region have on endangered and threatened species. The Commission also deferred to the ongoing Migratory Birds proceeding petitioners' request that it take action under the Migratory Bird Treaty Act (MBTA), 16 U.S.C. 703–712, to reduce intentional and unintentional takes of migratory birds.

22. *The American Bird Conservancy Decision.* In *American Bird Conservancy,* the court affirmed the Commission's deferral of the MBTA issues already under consideration in the ongoing nationwide Migratory Birds proceeding. However, it vacated the NEPA and ESA portions of the *Gulf Memorandum Opinion and Order* as well as the Commission's decision not to implement new public notice procedures.

23. First, the court rejected the Commission's dismissal of petitioners' request for an EIS. The court held that neither the lack of specific evidence concerning the impact of towers on the environment, nor the lack of consensus among scientists regarding the impact of communications towers on migratory birds, was sufficient to render a NEPA analysis unnecessary. Rather, because the court found there is no real dispute that towers *may* have a significant environmental impact, it directed that the Commission address petitioners' request for a programmatic EIS based on a less stringent threshold for NEPA analysis. Although petitioners had requested an EIS, the court stated that the Commission could initially prepare an EA in order to determine whether an EIS is required.

24. Second, the court vacated the Commission's refusal to engage in programmatic consultation with FWS under the ESA. The court remanded the issue, holding that the Commission had failed to describe what kind of showing, short of petitioners conducting an EIS themselves, could demonstrate sufficient environmental effects to

justify the programmatic consultation sought by petitioners.

25. Third, the court ordered the Commission on remand to determine how it will provide notice of pending tower registration applications that will ensure meaningful public involvement in implementing NEPA procedures. The court noted that while the Commission's rules permit interested persons to seek environmental review of a particular action otherwise categorically excluded from environmental processing, its process confers ''a hollow opportunity to participate in NEPA procedures'' because ''the Commission provides public notice of individual tower applications only *after* approving them * * * [and] [i]nterested persons cannot request an EA for actions * * * already completed.'' The court noted the ''suggest[ion] during oral argument that a simple solution would be for the Commission to update its Web site when it receives individual tower applications.''

D. Migratory Birds Rulemaking Proceeding

26. Meanwhile, the Commission had a related proceeding ongoing—the Migratory Birds rulemaking. On August 20, 2003, the Commission had issued the *Migratory Birds NOI* ''to gather comment and information on the impact that communications towers may have on migratory birds.'' Effects of Communications Towers on Migratory Birds, *Notice of Inquiry,* WT Docket No. 03–187, 68 FR 53696 (September 12, 2003) (*Migratory Birds NOI*). While the Gulf Petition focused on the environmental effects of registered towers in the Gulf Coast region, particularly with respect to migratory birds, the *Migratory Birds NOI* (and the subsequent rulemaking notice) addressed the effects of communications towers on migratory birds nationwide. In response to the *Migratory Birds NOI,* the Commission received a number of comments and reply comments that referred to studies of past incidents of migratory birds colliding with communications towers. To help the Commission evaluate these studies, the Commission retained Avatar Environmental, LLC (Avatar), an environmental risk consulting firm. After reviewing the scientific studies referenced in the comments and reply comments, Avatar submitted a report of its findings. *See* Notice of Inquiry Comment Review Avian/Communication Tower Collisions, Final, Prepared for Federal Communications Commission, by Avatar Environmental, LLC, WT Docket No. 03–187 (filed December 10, 2004) (Avatar Report).

27. After reviewing the comments and the Avatar Report, the Commission in 2006 issued the *Migratory Birds NPRM* seeking comment on whether it should adopt regulations specifically for the protection of migratory birds nationwide. Effects of Communications Towers on Migratory Birds, *Notice of Proposed Rule Making,* WT Docket No. 03–187, 71 FR 67510 November 22, 2006 (*Migratory Birds NPRM*). In particular, the Commission sought comment on scientific and technical issues relevant to the environmental effects of communications towers on migratory birds, on its authority and responsibility to adopt regulations specifically for the protection of migratory birds, and on what scientifically supported measures it could take to reduce any such impacts. It tentatively concluded that its obligation, under NEPA, to identify and to take into account the environmental effects of actions that it undertakes may provide a basis for the Commission to make the requisite public interest determination under the Communications Act to support regulations specifically for the protection of migratory birds. The Commission also tentatively concluded that, for communications towers subject to its Part 17 rules, the use of medium intensity white strobe lights for nighttime conspicuity (i.e., visibility) is to be considered the preferred system over red obstruction lighting systems to the maximum extent possible without compromising safety. Finally, it specifically sought comment on whether to amend Section 1.1307(a) to routinely require environmental processing with respect to migratory birds and, if so, whether such revisions should apply to all new tower construction or only to antenna structures having certain physical characteristics deemed most problematic in terms of potential environmental impacts on migratory birds.

28. The Commission received more than 2400 comments and reply comments in response to the *Migratory Birds NPRM.* In this Order, the Commission does not take final action in the Migratory Birds rulemaking, but rather defers such action until it is able to consider the results of the programmatic EA and any subsequent EIS. The Commission does, however, consider the record in that proceeding in adopting an interim processing measure to reduce potential impacts on migratory birds pending completion of the environmental analysis.

E. The Rulemaking Petitions and the Memorandum of Understanding

29. *Petitions for Expedited Rulemaking.* On May 2, 2008, CTIA—The Wireless Association, the National Association of Broadcasters, the National Association of Tower Erectors, and PCIA—The Wireless Infrastructure Association (the Infrastructure Coalition) filed the Infrastructure Coalition Petition. The Infrastructure Coalition Petition asks the Commission to respond to the remand in *American Bird Conservancy* by initiating a rulemaking to institute a notice, comment, and approval process for ASR applications modeled after the process for applications for assignments and transfers of authorizations. According to the Infrastructure Coalition, the assignment and transfer process rules were designed to minimize delays and reduce transaction costs, and these goals apply to processing ASR applications. Further, the Infrastructure Coalition Petition asks the Commission to apply Section 1.939 of the Commission's rules, 47 CFR 1.939, which establishes criteria for filing a petition to deny, to objections to proposed ASR structures in order to prevent frivolous objections.

30. Ten parties filed comments on the Infrastructure Coalition Petition. Comments from communications providers and tower companies generally support the Infrastructure Coalition Petition, with some differences as to certain details. These commenters assert that the Infrastructure Coalition's proposed rules reasonably balance the goals of rapid deployment of wireless infrastructure and public involvement, in compliance with the court's decision. Commenters representing environmental protection groups, however, reject the rules and procedures proposed by the Infrastructure Coalition as not ensuring meaningful public involvement, and they ask for the cessation of registration of all antenna structures until the Commission complies with NEPA.

31. On April 14, 2009, American Bird Conservancy, Defenders of Wildlife, and National Audubon Society (Conservation Groups) filed the Conservation Groups Petition. The Conservation Groups Petition asks the Commission to adopt new rules on an expedited basis to comply with NEPA, the MBTA, and the court's mandate in *American Bird Conservancy.* It asks the Commission to: amend the NEPA regulations to ensure that only Commission actions that have no significant environmental effects individually or cumulatively are categorically excluded; prepare a

programmatic EIS addressing the environmental consequences of its ASR program on migratory birds, their habitats, and the environment; promulgate rules to clarify the roles, responsibilities, and obligations of the Commission, applicants, and non-Federal representatives in complying with the ESA; consult with FWS on the ASR program regarding all effects of antenna structures on endangered and threatened species; and complete the rulemaking in WT Docket No. 03–187 to adopt measures to reduce migratory bird deaths in compliance with the MBTA. Citing 12 sources by 14 authors, the Conservation Groups Petition argues that communications towers have impacts on migratory birds that are both demonstrable and avoidable. The Conservation Groups Petition also points out specific instances in which FWS has requested that the Commission undertake a programmatic EIS with regard to the ASR process or otherwise requested that the Commission take action to mitigate the impact of communications towers on migratory birds.

32. The Commission received 19 comments and four replies in response to the Conservation Groups Petition. Those conservations organizations that filed comments generally support the Conservation Groups Petition. Opponents of the Conservation Groups Petition argue that communications towers do not have a significant environmental impact on migratory birds, and they challenge the validity of the estimates and evidence submitted in the Conservation Groups Petition. On reply, the Conservation Groups cite additional studies that they state establish a link between bird deaths and towers.

33. *Memorandum Of Understanding.* On May 4, 2010, the Infrastructure Coalition and the Conservation Groups filed a Memorandum of Understanding (MOU) setting forth their joint proposal as to how the Commission could best fulfill its environmental responsibilities under NEPA with respect to towers during the interim period while it considers permanent rule changes to implement the court's decision in *American Bird Conservancy.* Under this joint proposal, ASR applications for new towers taller than 450 feet above ground level (AGL) would require an EA for avian effects and a public notice and an opportunity to comment. New towers of a height of 351 to 450 feet AGL or ASR applications involving a change of lighting system from a more preferred to a less preferred FAA Lighting Style would not initially require an EA based on avian concerns, but would be placed on public notice, and the Commission would determine, after reviewing the application and any comments filed in response to the public notice, whether to require an EA. Under the MOU, no EA would be required for ASR applications for new towers with a height of 350 feet AGL or less, replacement towers, minor applications, and lighting system changes from a less preferred to a more preferred FAA Lighting Style. The parties to the MOU are divided as to whether public notice should be required for these applications.

F. The Programmatic Environmental Assessment

34. In *American Bird Conservancy,* the court vacated the Commission's denial of the Gulf Petition's request for a programmatic EIS. In compliance with the court's decision, Commission staff, in September 2010, began work on a nationwide programmatic environmental assessment, which will provide a comprehensive analysis upon which to base the Commission's consideration of the environmental effects of future proposed towers. The programmatic EA will cover the entire United States, not merely the Gulf Coast, because migratory bird pathways are dispersed throughout the continental United States, and because similar environmental effects may occur nationwide. On August 26, 2011, the Wireless Telecommunications Bureau released and sought comments on a draft programmatic EA. Wireless Telecommunications Bureau Seeks Comment and Announces Public Meeting on its Draft Programmatic Environmental Assessment of the Antenna Structure Registration Program, *Public Notice,* WT Docket Nos. 08–61, 03–187, 76 FR 54422 (September 1, 2011).

35. The programmatic EA will provide the basis for the agency to determine whether an EIS is warranted. The Commission will commence the preparation of a programmatic EIS if the programmatic EA demonstrates that ''*any* 'significant' environmental impacts might result from the proposed agency action. * * *'' *American Bird Conservancy,* 516 F.3d at 1034. Otherwise, the Commission will make a Finding of no Significant Impact and will terminate the programmatic environmental review. *See* 47 CFR 1.1308(d). As set forth in the draft programmatic EA, in determining whether the programmatic EA supports a FONSI or whether an EIS is required, the Commission will consider whether the evidence enables it to identify specific tower characteristics (*e.g.,* tower height, structure, lighting, or location) that are likely to cause an adverse environmental impact on migratory birds, whether requiring site-specific environmental reviews for such towers would sufficiently address any adverse environmental impact that registered towers would otherwise have, and whether there are any other appropriate measures that may substantially mitigate and minimize any adverse environmental impacts.

36. In response to the court's remand and in conjunction with the programmatic EA, the Commission also recently initiated programmatic consultation with FWS under Section 7(a)(1) of the ESA, 16 U.S.C. 1536(a)(1), regarding the effects of registered towers on threatened and endangered species and designated or proposed critical habitats. The Commission already incorporates and implements in Section 1.1307(a) of the Commission's rules its responsibility, under Section 7 of the ESA, to ensure, in consultation with the Secretary of the Interior, that individual proposed Commission actions are not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. However, the court in *American Bird Conservancy* additionally required the Commission to address what environmental showing would require formal programmatic consultation with FWS over the cumulative effects of registered towers. FWS recommended, and the Wireless Telecommunications Bureau agreed, to proceed by means of a conservation review under Section 7(a)(1). Through this conservation review, FWS will evaluate the degree to which the ASR Program contributes to furthering the purposes of the ESA, and make possible recommendations to improve or enhance this contribution. The conservation review will also identify any subsequent formal consultation under Section 7(a)(2) that may be required for tower sites, either individually or in appropriate groupings. The conservation review will focus on procedures instituted at a programmatic level to promote the conservation of listed species and to avoid or minimize any adverse effects of the ASR program to these species or their habitats.

III. Discussion

37. Below, the Commission first describes a new notice regime to afford members of the public an opportunity to comment on the environmental effects of prospective ASR applications. The Commission then discusses an interim

procedural requirement under which an EA will be filed for all proposed registered towers over 450 feet in height.

38. The Commission has consulted with CEQ regarding these rules and procedures as required under CEQ's rules. 40 CFR 1507.3(a). Under CEQ's rules, before adopting procedures implementing NEPA an agency must publish its proposed procedures in the **Federal Register** for comment, and CEQ must determine that the procedures conform with NEPA and CEQ's regulations. 40 CFR 1506.6(a), 1507.3(a). In compliance with these rules, the Wireless Telecommunications Bureau issued a Public Notice inviting comment on the draft rules and interim procedures. Wireless Telecommunications Bureau Invites Comment on Draft Environmental Notice Requirements and Interim Procedures Affecting the Antenna Structure Registration Program, WT Docket Nos. 08–61, 03–187, *Public Notice,* 76 FR 18679 (April 5, 2011) (*Draft Rules Public Notice*). Thirteen formal comments were received in response to the *Draft Rules Public Notice.* In addition, Blooston, Mordkofsky, Dickens, Duffy & Prendergast, LLP, on behalf of its affected clients, submitted a Petition for Reconsideration of the *Draft Rules Public Notice* (Blooston Commenters Petition). The Commission dismisses the Blooston Commenters Petition because the *Draft Rules Public Notice* is not a final action subject to reconsideration. *See* 47 CFR 1.106(a)(1). Blooston Commenters argue that the *Draft Rules Public Notice* represents a final decision not to follow notice and comment procedures that it says are required under the Administrative Procedure Act (APA), 5 U.S.C. 553, and Sections 1.412(a)(1) and 1.415(c) of the Commission's rules, 47 CFR 1.412(a)(1), 1.415(c). However, the APA requires these procedures as a precondition for adopting certain rules. Since the *Draft Rules Public Notice* adopted no rules, it does not constitute a final action. Nevertheless, the Commission treats the Blooston Commenters Petition as comments on the *Draft Rules Public Notice* and addresses its arguments below.

39. The Commission's final rules take into account the comments submitted in response to the *Draft Rules Public Notice.* None of the comments addresses the conformity of the environmental notice and interim processing rules with NEPA and CEQ's regulations. On August 1, 2011, CEQ advised that the rules the Commission is adopting in this Order conform with NEPA and CEQ's regulations.

A. The Environmental Notification Process

40. In this Order, the Commission adopts public notice rules and establishes a pre-ASR filing environmental notification process so that members of the public have an avenue for raising environmental concerns, and the agency has a mechanism for addressing those concerns, before an antenna structure registration application is completed and filed with the Commission. We thereby provide a meaningful opportunity for interested parties to seek an EA for actions that do not ordinarily require an EA, as required by the court in *American Bird Conservancy.*

41. Under the process that the Commission adopts today, described in detail below and in a Public Notice that will be issued by the Wireless Telecommunications Bureau before the environmental notification process becomes operational, each prospective applicant for a new tower that requires antenna structure registration, or for a modification of a registered tower that is substantial enough to potentially have a significant environmental impact, must initially submit into the ASR system a partially completed FCC Form 854 that includes information about the proposed antenna structure but is not yet complete for filing. This will consist substantially of information that is already required on Form 854, augmented to include the type of tower structure and the anticipated lighting. The applicant must also provide local notice of its proposed tower through publication in a newspaper or other appropriate means, such as by following the local zoning public notice 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), 16 U.S.C. 470f, through a single publication. *See* 47 CFR part 1, appendix C, Section V.

42. After local public notice has been provided, the Commission will post the partially completed FCC Form 854 on its ASR Web site in searchable form for 30 days. Members of the public will have an opportunity to file a request for further environmental review (Request) of the proposed tower during this 30-day period. 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.

43. Upon completion of the 30-day notice period, the Commission staff, after reviewing any Requests, will notify the applicant whether an EA is required under Section 1.1307(c) or (d) of the Commission's rules. If no EA is required based on the partially completed Form 854 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 and file Form 854 certifying 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.

44. The Commission recognizes that cases may arise that involve emergency situations, such as where temporary towers need to be built quickly to restore lost communications. Such situations often require grants of special temporary authority (STAs). In such cases, upon an appropriate showing and at the request of the applicant, the processing Bureau may waive or postpone this notice requirement. The Bureau shall ordinarily require in such cases that notice be provided within a short period after authorization or construction, unless the Bureau concludes in a particular case that provision of such notice would be impracticable or not in the public interest. In appropriate circumstances, where a temporary facility constructed in an emergency situation will be replaced by a permanent tower, environmental notification for the temporary and permanent towers may be combined.

45. In addition, after the effective date of these rules, the pre-application process will also become the procedural vehicle for filing and reviewing EAs for registered towers that require an EA. The applicant either may include an EA when it first initiates the environmental notification process if it has determined that the tower meets one of the criteria set forth in Section 1.1307(a) or (b) of the Commission's rules, or it may subsequently submit an EA if the applicant or the Commission later determines that an EA is necessary. The EA will then be posted on the ASR Web site, and members of the public will have the opportunity to object in much the same manner as they can file petitions to deny ASR applications filed with EAs today. However, local notice will be required only once for any tower unless there is a change in location, significant increase in height, or other change in parameters that may cause the tower to have a greater environmental impact. After considering the EA and any Requests, the Commission will

either issue a FONSI, require amendments to the EA, or determine that an EIS is needed. Upon issuance of a FONSI, the applicant may complete the Form 854 filing and certify no significant environmental impact.

46. The Commission takes these actions pursuant to its ''wide discretion in fashioning its own procedures'' to implement its environmental obligations. *American Bird Conservancy,* 516 F.3d at 1035. Because the Commission is only changing its procedures governing the submission of certain applications, these rule changes qualify for the procedural exception to the APA's requirements of notice and an opportunity for public comment. 5 U.S.C. 553(b)(A). For the same reason, the rules and interim procedures adopted herein do not require the preparation of a Regulatory Flexibility Analysis pursuant to the Regulatory Flexibility Act (RFA). 5 U.S.C. 604(a). ''[T]he 'critical feature' of the procedural exception 'is that it covers agency actions that do not themselves alter the rights or interests of parties, although it may alter the manner in which the parties present themselves or their viewpoints to the agency.' '' *JEM Broadcasting Co.* v. *FCC,* 22 F.3d 320, 326 (D.C. Cir. 1994). In other words, whether or not a rule has a ''substantial impact,'' it qualifies for the procedural exception where, as here, it does not ''purport to regulate or limit [parties'] substantive rights.'' *Public Citizen* v. *Dep't. of State,* 276 F.3d 634, 640 (D.C. Cir. 2002); *James V. Hurson Associates, Inc.* v. *Glickman,* 229 F.3d 277, 281 (D.C. Cir. 2000). For example, in *JEM Broadcasting Co.,* the Court of Appeals held that the Commission's ''hard look'' rules requiring dismissal of defective applications after the expiration of a fixed filing period with no opportunity to amend were procedural rules that were exempt from the notice and comment requirements because the rules ''did not change the *substantive standards* by which the FCC evaluates license applications.'' *JEM Broadcasting Co.* v. *FCC,* 22 F.3d at 327.

47. Like the ''hard look'' rules in *JEM Broadcasting Co.,* the public notice rules adopted in this Order govern the processing of certain types of applications without affecting the substantive standards by which those applications are evaluated. The public notice rules do not ''put[ ] a stamp of [agency] approval or disapproval on a given type of behavior'' or ''encode[ ] a substantive value judgment.'' *Chamber of Commerce of U.S.* v. *U.S. Dep't of Labor,* 174 F.3d 206, 211 (D.C. Cir. 1999); *Public Citizen* v. *Dep't of State,* 276 F.3d at 640. Instead, they merely require a tower proponent to notify the Commission and the local community of information about its proposal in advance of filing the completed ASR application with the Commission. The tower proponent will do so by submitting a partially completed ASR application consisting mostly of information that is already required on the existing Form 854. In the case where an environmental notification has an EA attached, the information is substantially the same as currently required for EAs filed with ASR applications. Although Blooston Commenters and National Telecommunications Cooperative Association state that the draft rules afford third parties new substantive rights to receive notice of ASR applications and to request further environmental processing, the right of the public to request environmental processing is already established in the Commission's rules. The notice requirements that the Commission adopts only enables members of the public more fully to exercise their existing rights of participation, consistent with the D.C. Circuit's opinion in *American Bird Conservancy.* For similar reasons, the Commission rejects Blooston Commenters' argument that notice and comment rulemaking, including an opportunity to file reply comments, is required under Sections 1.412(a)(1) and 1.415(c) of the Commission's rules. Section 1.412(b)(5) of the rules expressly states: ''Rule changes (including adoption, amendment, or repeal of a rule or rules) relating to the following matters will ordinarily be adopted without prior notice: * * * (5) Rules of Commission organization, procedure, or practice.'' The rule changes adopted in this Order relate to matters of Commission procedure, and the Wireless Telecommunications Bureau sought comment on draft rules not due to APA requirements, but to comply with Section 1507.3 of CEQ's rules. Therefore, these rule changes are outside the scope of Section 1.412(a)(1) as well as Section 1.415.

48. The Commission also notes that the record in this proceeding includes two petitions for expedited rulemaking, numerous pleadings in response to two Public Notices seeking comment on the two petitions, and several *ex parte* filings. In addition, in the *Draft Rules Public Notice,* the Wireless Telecommunications Bureau invited and received public comment on draft rules and interim procedures in this proceeding, as required by CEQ's rules. As under the APA's notice-and-comment procedures, parties have had a full opportunity to participate in the Commission's decisionmaking process. Furthermore, the Commission takes the suggestions in the petitions, as well as other filings in this proceeding, into account in this Order.

49. In this Section, the Commission begins by setting out the actions subject to the new environmental notification process. Second, the Commission discusses the timing of the environmental notification process. Third, the Commission explains its decision to require both local and national notice. Fourth, the Commission discusses the timing and pleading standards governing Requests for further environmental review. Fifth, the Commission discusses applications that require a service-specific application in addition to FCC Form 854. Finally, the Commission discusses the treatment of applications that are pending on the effective date of the new environmental notification rules and procedures.

1. Actions Subject to Notice

50. *National applicability.* The environmental notification process adopted herein will apply throughout the nation regardless of the geographic location of the proposed antenna structure for which an ASR application must be filed. Although the Gulf Petition and the court's resulting decision applied specifically to communications towers in the Gulf Coast region, the logic of the court's analysis, which hinged on the Commission's failure to provide public notice prior to grant of pending ASR applications, is not confined to that region. The concern that the current notice regime effectively deprives interested persons of the opportunity conferred by Section 1.1307(c) encompasses any proposed tower (and some types of modifications to an existing tower) that is subject to registration under the Commission's part 17 rules. The Commission finds no basis to limit the environmental notification process adopted herein to the Gulf Coast towers at issue in the court case.

51. *Types of actions subject to notice.* Under the new environmental notification process, notice will be required for new towers and modifications that could have a significant environmental impact, but not for administrative changes and modifications that are unlikely to have a significant environmental impact. The environmental notification process is necessary to effectuate fully the opportunity conferred by Section 1.1307(c) for interested persons to allege

that an EA should be prepared for an otherwise categorically excluded ASR application due to ''circumstances necessitating environmental consideration in the decision-making process.'' The notice provided through this process also serves to facilitate meaningful public participation in the NEPA process for proposed towers that require an EA. The environmental notification process must therefore be completed for all types of ASR applications that could potentially have a significant environmental impact.

52. Consistent with this principle, the Commission applies the environmental notification process to all ASR applications for new towers (except as described in paragraph 57, *infra*). The Commission rejects the Infrastructure Coalition's proposal not to require public notice for an ASR application for a tower 350 feet or less in height for which the applicant believes an EA is not required, as well as other suggestions to exclude towers from the notice requirement based on their height or lack of lighting. While the Commission recognizes that shorter towers are less likely to have significant environmental effects, including effects on migratory birds, than taller towers, nothing in the court's opinion, NEPA, or CEQ's implementing rules would support dispensing with public notice, even on an interim basis, for any ASR action that reasonably might have a significant environmental impact. Based on currently available evidence, the Commission cannot ignore the possibility that a registered tower over 200 feet in height, or a tower under 200 feet that requires FAA notification, may have a significant environmental impact that is not otherwise captured in the Commission's rules. The Commission therefore applies the environmental notification requirement to registered towers under 350 feet in height. Although the Commission decides that such towers will be placed on public notice, the Commission contemplates that a particularly clear showing would be required to demonstrate that such towers may have effects on migratory birds. For similar reasons, the Commission also declines to adopt exemptions for facilities used in connection with distributed antenna system (DAS) networks that otherwise require registration, or for state-owned towers under 450 feet in height AGL that are used for public safety purposes. While Virginia State Police suggests security concerns about identifying the specific locations of such towers, the Commission notes that the coordinates of these towers are public information in the ASR database and that local notice of these proposed towers is already required for purposes of NHPA compliance under the Nationwide Programmatic Agreement, 47 CFR part 1, appendix C, sections V.B., V.C. No commenter expresses concern about those existing disclosures.

53. FCC Forms 854 that are submitted for purely administrative purposes or to report modifications of a nature that do not have a potentially significant environmental effect will not be subject to the environmental notification process. Thus, where an applicant is required to submit an FCC Form 854 only for notification purposes, such as to report a change in ownership or contact information, the dismantlement of a registered tower, tower repair, replacement of tower parts, or any modification that does not involve the physical structure, lighting, or geographic location of a registered antenna structure, the applicant will not have to complete the environmental notification process prior to submitting the Form 854. Instead, the applicant will be able to indicate that it is submitting the application form only to effect an administrative change or notification, for which the pre-application environmental notification process is not required.

54. In the case of replacement towers or modifications to existing towers, including collocations on existing towers or other structures, the applicability of the environmental notification process will depend upon the nature of any change to the existing structure. The MOU defines a Replacement Tower for which public notice should not be required as a communications tower the construction of which does not involve a substantial increase in size to the tower it is replacing, as defined in Section III.B. of the Nationwide Programmatic Agreement for Review of Effects on Historic Properties for Certain Undertakings Approved by the Federal Communications Commission (NPA), 47 CFR part 1, appendix C, or construction or excavation more than 30 feet beyond the existing tower property. Consistent with this recommendation, as an interim measure pending completion of its programmatic environmental analysis, the Commission will not require the environmental notification process for any replacement tower at the same location as an existing tower, not involving a change in lighting, so long as it does not involve a substantial increase in size under Section III.B of the NPA or construction or excavation more than 30 feet beyond the tower property. The Commission considers a replacement tower located less than one second longitude and latitude from an existing tower which does not require a new aeronautical study with an FAA determination to be at the same location. Similarly, the Commission will not require notice where an antenna is being placed on an existing tower or non-tower structure and the placement of the antenna does not involve a substantial increase in size or excavation more than 30 feet beyond the property. If a proposed tower replaces another tower but involves a substantial increase in size or construction or excavation more than thirty feet beyond the tower property, it is not exempted from the environmental notification process as a replacement tower. Additionally, where an EA is required to be filed for a replacement tower under Section 1.1307(a) or (b) of the Commission's rules or if the Bureau determines that an EA is required under Section 1.1307(c) or (d) of the Commission's rules, such a tower is not exempted from the environmental notification process.

55. The notice regime for ASR applications that involve changes in lighting to existing towers or replacement towers will depend on the nature of the lighting change. The parties to the MOU developed a ranking of FAA Lighting Styles based on their likely effect on migratory birds and recommended that public notice be required for a change to a less preferred but not to a more preferred FAA Lighting Style. However, recommendations from the Department of Interior Office of Environmental Policy and Compliance and FWS based on recent scientific literature strongly suggest that L–810 steady-burning lights pose the greatest danger of migratory bird mortality and that the differences among styles of flashing or blinking lights are not statistically significant. Therefore, the Commission declines Blooston Commenters' proposal to base decisions regarding environmental processing on whether red or white lights are used. There is insufficient evidence in the record that the color of lighting is a critical factor in determining avian mortality. In addition, Conservation Groups recommend that the Commission verify the continuing accuracy of the order of tower lighting styles specified in the MOU. Furthermore, the FAA may soon consider changes to Advisory Circular AC 70/7460 that would permit use of red flashing or blinking lights without steady-burning L–810s. In these circumstances, pending completion of its programmatic environmental

analysis, the Commission will replace the ranking of FAA Lighting Styles in the MOU with a three-tiered system, which ranks styles from most preferred to least depending on whether they employ: (1) No lights; (2) no red steady lights; or (3) red steady lights. The ranking focuses on use of red steady lights because none of the FAA Lighting Styles use white steady lights, only white medium intensity or high intensity flashing lights. The environmental notification process will not be required where the lighting is changed to a lighting style that is more preferred or within the same tier of this ranking system, but will be required where the lighting is changed to a less preferred lighting style. As recognized in the MOU, any change in lighting must be consistent with the applicable version of FAA Advisory Circular AC 70/7460, FAA policies, and local zoning requirements, whether the change is to a less preferred lighting style or to a more preferred lighting style. Furthermore, use of high intensity white lights in a residentially zoned neighborhood requires an EA under the Bureau existing rules. 47 CFR 1.1307(a)(8).

56. Where information pertaining to a prospective antenna structure registration is amended after environmental notification but prior to grant of an ASR application, the Commission generally will require a new environmental notification only if the amendment is of a nature that would have required environmental notification in the context of an application for replacement or modification of an existing tower. To prevent abuse, however, the Commission will require the applicant to provide a new environmental notification to the public for any amendment that increases the proposed tower height, even if it does not constitute a substantial increase in size.

57. *Exception for certain towers reviewed by other Federal agencies.* The Commission provides a very limited exemption from the environmental notification process for antenna structures to be located on Federal land. CEQ regulations provide for the designation of a lead agency and one or more cooperating agencies when more than one Federal agency is involved in a proposed action. *See* 40 CFR 1508.16 (lead agency) and 40 CFR 1508.5 (cooperating agency). Consistent with these regulations, Section 1.1311(e) of the Commission's rules provides that an EA need not be submitted to the Commission if another Federal agency has assumed responsibility for determining whether the facility will have a significant environmental effect and, if it will, for invoking the EIS process. For example, if a proposed facility that requires registration in the ASR system is to be located on Federal land, the landholding agency ordinarily functions as the lead agency and the Commission does not perform an environmental review except as necessary to ensure that the EA prepared by the lead agency satisfies the Commission's responsibility. The Commission cautions that the exemption is limited in scope only to towers located on Federal land, for which the landholding agency routinely assumes lead agency responsibilities. The exemption will not routinely apply in other situations where proposed antenna structures must secure environmental clearance from other Federal agencies. In those circumstances, the Commission cannot assume the other agency to be the lead agency. Rather, as part of the process of reviewing a Request filed in response to the pre-application public notice, the Commission will consider whether ongoing NEPA review of the proposed antenna structure by another Federal agency relieves the applicant of having to submit an EA to the Commission under Section 1.1311(e). The Commission delegates to the Wireless Telecommunications Bureau authority to enter into agreements with other Federal agencies that would designate the other agency as the lead agency for specified categories of actions and thereby obviate the need for the Commission's environmental notification process. We decline to adopt an exemption from notice requirements for towers that have already been reviewed by FWS, as requested by Verizon Wireless. The Commission's environmental notification process and environmental processing are not limited to concerns that would be addressed by FWS.

58. *Limitation to towers subject to antenna structure registration.* The Commission clarifies that the environmental notification process will be applicable only to towers that are registered pursuant to Part 17 of its rules, including towers constructed by non-licensee tower companies that do not require FAA notification but that are registered as the vehicle for filing an EA. The Commission notes, however, that towers that are not subject to registration under Part 17 of the rules must comply with the Commission's environmental rules. Objections based on environmental considerations to such non-ASR applications remain subject to the petition to deny standard specified in Section 1.1313(a). The Commission will also continue to entertain informal objections to such construction based on environmental considerations pursuant to Section 1.1313(b).

2. Timing of Environmental Notice

59. Applicants will be required to complete environmental notification before filing their completed ASR applications, and may do so before receiving the FAA's No Hazard Determination. (A prospective applicant that submits its environmental notification information before receiving a No Hazard Determination should specify the lighting that it expects will be prescribed for the tower. In the event the FAA specifies a less preferred lighting style, it will have to provide a second notice with the corrected information.) Thus, the environmental notification process constitutes a notification, not a certification, and submission of the partially completed Form 854 without an EA is not a representation to the Commission that the tower will have no significant environmental effects. This certification will be required when the environmental notification process is complete and the applicant files its completed FCC Form 854. Completing the pre-ASR filing environmental notification process as an initial step before a complete ASR application can be filed with the Commission ensures that interested persons have a timely opportunity to participate in a manner that can inform the Commission's decision-making with respect to an individual ASR application. This is also consistent with Section 1501.2 of the CEQ regulations, which generally directs that the Federal agency commence the NEPA process as early as possible and before there has been any inadvertent, irretrievable commitment of resources. 40 CFR 1501.2(d)(3). Earlier completion of the notification process further serves the public interest because it requires less change to the automated ASR system, upon which the FAA currently relies to ensure air navigation safety, and that has operated for more than a decade efficiently and without material error. Moreover, from a processing standpoint, applicants can complete the notice process simultaneously with other processes, including environmental reviews that may require consultation with other Federal agencies, obtaining the FAA No Hazard Determination, and local zoning. Therefore, the environmental notification process will not ordinarily cause additional delays unless environmental issues are raised.

60. In addition, under the new process EAs for proposed registered towers will be filed, made available for public comment, and reviewed prior to filing of the ASR application. Accordingly, the 30-day comment period will be announced on the Commission's ASR Web site instead of through a notice published in the *Daily Digest.* To avoid any confusion, for an initial period of six months, the Commission will place a note in the *Daily Digest* weekly advising that notice of all proposed registered towers, along with any associated EA, is now provided on the Commission's ASR Web site. Otherwise, the processing of EAs for registered towers will be substantially the same as today. Because the environmental notification process the Commission adopts today expressly seeks environmental comments and provides pertinent details of the proposed tower, it makes it easier for interested members of the public to access pertinent information about an EA, and thus better comports with the objectives underlying NEPA than the non-specific Public Notices that currently are published in the *Daily Digest.* Moreover, apart from encouraging public involvement, a uniform system of environmental processing for all ASR applications, whether or not EAs are required pursuant to Section 1.1307(a) or (b), will be easier for the Commission to administer and less confusing to applicants.

3. National and Local Notice

61. The Commission requires both national and local notice for towers that must be registered in the ASR system in order fully to inform all parties that may be interested in or affected by the environmental consequences of a proposed tower. The Commission recognizes that the environmental effects of a specific proposed tower construction may be of national concern, of local concern, or of both national and local concern. Conservation groups and some industry parties have urged that the Commission adopt national notice, while other industry commenters have suggested that the Commission adopt local notice. Their reasons in favor of one approach or another are discussed here, but in effect those reasons support using both forms of notice.

62. National notice provided online at the Commission's Web site was an approach suggested by the *American Bird Conservancy* court. The Commission finds that the ASR Web site is an efficient, efficacious means of providing notice to agencies and persons outside of the local community, including national environmental groups, that may have regional or national perspectives as to the environmental values of proposed antenna structures. In particular, national notice will aid in informing bird watchers who are not located near a proposed tower but who may be affected by the harm it would cause to migrating birds, given that migratory birds are by definition transient. The web-based process that the Commission is creating will provide national accessibility, result in the creation of an electronic database, and reduce the potential for human error and application backlogs. The Commission declines to adopt the suggestion of Southern Company Services, Inc. (Southern) that instead of requiring applicants to submit a preliminary Form 854 to commence the environmental notification process, the FCC should provide a link to the FAA's Web site so that interested parties can review the information available on the FAA Web site and file any petitions based on that information. Southern has failed to demonstrate that a link to the FAA's information about towers submitted for aeronautical study is a practical means of providing the public sufficient notice regarding proposed towers, in a manner that can be accessed easily and understood by the public. This broadly inclusive approach to notice and comment for NEPA purposes before a complete application is filed is not necessarily determinative of which individuals and/or agencies will have standing to participate in proceedings relating to the application. A variety of factors, including the environmental concern in question, will factor into that analysis.

63. Local notice complements the broad reach of national notice by enabling persons likely to be directly affected by the potential environmental effects of proposed antenna structures at specific locations to raise concerns of which national entities may not be aware. It also reaches those persons or entities without an institutional concern in safeguarding a particular aspect of the environment but with a potential interest in the effects of tower sitings in their immediate communities. The Commission has successfully implemented local notice for historic preservation review and for radio broadcast applications, and the local notice requirements the Commission promulgates today are modeled after those regimes. *See* 47 CFR part 1, appendix C, sections V.B, V.C; 47 CFR 73.3580(b), (f).

64. The Commission finds that by requiring both local and national notice, it can best meet its statutory responsibility regarding the development of procedures that incorporate environmental considerations into agency decision-making. 42 U.S.C. 4331(b), 4332(2)(B). In particular, these requirements effectuate the mandate of Section 1506.6(b) of the CEQ regulations that Federal agencies shall ''provide public notice of NEPA-related hearings, public meetings, and the availability of environmental documents so as to inform those persons and agencies that may be interested or affected.'' 40 CFR 1506.6(b). CEQ has further clarified that ''[t]he objective is to notify all interested or affected parties,'' and that ''[a] combination of methods may be used to give notice.'' *Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations,* 46 FR 18026 (March 23, 1981). Although CEQ's guidance does not identify notifications of proposed categorically excluded actions as ''environmental documents,'' it does include EAs, and the Commission concludes 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. In this regard, the Commission's 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.

65. In sum, the Commission 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 Web site on the date requested by the applicant, which must be on or after the date the applicant provides local notice. Interested parties will have an opportunity to respond to these notices by filing Requests for further environmental review with the Commission. By requesting the applicant to specify the date for national notice, the Commission allows 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 the Commission expects to post notices on its Web site 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 Web site to file any Requests.

4. Public Comment on Environmental Notifications

66. 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 the Commission's rules. 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 Web site. The time period will be computed according to the general rule prescribed in Section 1.4(c) of the Commission's rules. Requests will be subject to the pleading standard that is set forth in Section 1.1307(c) of the Commission's rules. Late pleadings or pleadings that do not meet the standards in Section 1.1307(c) may be subject to dismissal.

67. In setting the period to file a Request at 30 days, the Commission applies 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. The Commission rejects the Infrastructure Coalition's proposal to set the period to object at 14 days, as well as proposals by other commenters to set the time period at 15 to 20 days, as the Commission finds that such a timeframe is inadequate to allow for meaningful public participation in this context. At the same time, the Commission rejects the 60-day comment period proposed by the Conservation Groups. The Commission does not believe that interested parties should need that much time to file comments, particularly as it does not require the objecting party to include a comprehensive study of impacts to evaluate whether the requirements of applicable environmental laws are properly met. 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.'' 47 CFR 1.1307(c). Therefore, the Commission concludes that a 60-day comment period would unnecessarily obstruct the timely deployment of services while providing minimal benefit.

68. Pursuant to Section 1.1307(c) of the Commission's 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.'' 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.'' 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.'' *See* 47 CFR 1.939(d). 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.

69. In its Petition, the Infrastructure Coalition asks the Commission 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. Several commenters representing licensees and tower owners support the Infrastructure Coalition's petition. 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.

70. The Commission declines 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. Here, a Request would not be filed in response to any application, but in response to 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. Thus, the Request for environmental processing in response to the environmental notification falls outside the scope of Section 1.1313(a).

71. Moreover, the Commission finds 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). 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. *See* 40 CFR 1500.2(d). 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 the Commission's NEPA procedures by those lacking the legal sophistication or financial wherewithal to participate formally. 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 the Commission's existing practice of accepting informal objections to applications where appropriate under Section 1.1313(b). 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). 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. For similar reasons, we decline to require a settlement meeting among the parties after the filing of a Request, as suggested by NTCH, Inc.

Requiring such a meeting may impose an unreasonable burden on the party filing the Request. The parties are free to agree to such meetings.

5. Facilities That Also Require Service-Specific Applications

72. Under the Commission's rules, some proposed towers are subject to both ASR and service-specific application requirements. The Commission's 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 601) 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 construction (*see* FCC Form 301) and satellite earth station (*see* FCC Form 312) 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.

73. Some commenters argue that Section 1506.6 of the CEQ rules requires that the Commission notify the public separately regarding each application associated with a proposed antenna structure subject to registration under part 17. 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. Consistent with current procedures that generally require only one NEPA review for a single proposed antenna structure, the Commission is not persuaded that, from an environmental standpoint, the decision-making involved in processing service-specific construction permits or license applications raises discrete issues from those involved in determining whether to register a tower from which licensed communications service will be provided. The Commission's obligation to accommodate public participation in its 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.

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

75. The Commission also implements 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. The Land Mobile Communications Council expresses concern that if the Commission 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. To address such concerns, the Commission 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 Web site. In addition, in order to guard against speculative reservations of frequencies or sites, the Commission also requires FCC Form 601 applicants that have not yet obtained their ASR Registration Number to provide the Commission with an update of the status of their environmental review every 60 days.

76. The Commission clarifies 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.

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

77. 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 above. Similarly, amendments to an EA may require environmental notification.

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

78. The Commission is obligated under NEPA to avoid irretrievable commitments of resources without assessing the environmental effects of its actions and ''to predict the environmental effects of a proposed action before the action is taken and those effects are fully known.'' *American Bird Conservancy,* 516 F.3d at 2033. Accordingly, the Commission takes interim measures to protect migratory birds pending completion of the programmatic EA and this proceeding. The Commission's 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 its 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 Migratory Birds rulemaking.

79. Meanwhile, the Commission establishes interim processing procedures to protect migratory birds pending the completion of this process. Specifically, the Commission applies Section 1.1307(d) of its rules, 47 CFR 1.1307(d) to require that an EA that includes a discussion of potential impacts on migratory birds be filed 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. For all other registered towers, an EA will not be routinely required except as specified in Section 1.1307(a) or (b). The Commission 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.

80. The Commission adopts these interim measures pursuant to the mandate in Section 1.1307(d) of its rules that the processing Bureau shall require an EA if it determines that an otherwise categorically excluded proposal may have a significant environmental effect. 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. Accordingly, on its own motion, the Commission adopts these interim standards to require an EA for certain categories of towers that are most likely to have significant effects on migratory birds. Sections 4(i) and 4(j) of the Communications Act provide additional authority for the adoption of the interim processing guidelines set forth in this Section. 47 U.S.C. 154(i), (j); 47 CFR 1.1307(c).

81. The Commission's 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. As illustrated in Figure 12 of the Draft Programmatic Environmental Assessment of the Antenna Structure Registration Program (Aug. 26, 2011) (Draft Programmatic EA), data from existing studies show no evidence of large-scale mortality for towers less than approximately that height. Data from the peer-reviewed Michigan Bird Study, for instance, confirm the relevance of tower height in assessing the degree of risk to migratory birds at individual towers. 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. 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). Other bird studies have also recognized tower height as a factor potentially affecting avian collisions. For example, 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 Skotdal,* 23 FCC Rcd 8574 (Media Bur. Audio Div. 2008). *See also* Draft Programmatic EA, Figure 11: Mean Annual Bird Mortality and Tower Heights. 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, the Commission finds that there is sufficient evidence to give special attention to tall towers on an interim basis while it completes the programmatic EA and any subsequent programmatic EIS, if required.

82. The Commission adopts the EA requirement for proposed towers over 450 feet in height AGL as a reasonable, temporary measure for the protection of migratory birds pending completion of the programmatic EA, which will evaluate whether scientific evidence supports adoption of permanent measures. 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. In particular, under the MOU, new towers taller than 450 feet AGL would require an EA for avian effects. 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. The inclusion in the MOU of a 450-foot threshold for an interim EA filing requirement supports the Commission's 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.

83. In assessing, pursuant to Sections 1.1307(c) and (d), whether further environmental processing is necessary for particular towers 450 feet in height or less AGL, the Commission expects that the processing Bureau will consider factors including the height of the tower and the lighting to be used. Consistent with the MOU, the Commission recognizes 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. The Commission further expects that the Bureau will afford significant weight to the absence of public objection in response to the notice of proposed construction that the Commission requires today.

84. The Commission clarifies 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. The Commission finds that this provision is necessary in order to ensure that prospective applicants for towers just above 450 feet AGL do not game the system.

85. For purposes of clarity, the Commission adds a note to Section 1.1307(d) of its 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 its 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. The Commission delegates authority to the Wireless Telecommunications Bureau to adopt

appropriate changes to its processing procedures, processes, and forms to apply these interim standards.

IV. Steps in the Environmental Notification Process

86. This Section 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. 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. The Commission delegates 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.

A. 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 Web site, 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.

○ Applicants may provide through a single publication local notice under both this process and the Commission's procedures implementing section 106 of the National Historic Preservation Act (NHPA), *see* 47 CFR part 1, appendix C, section V (Nationwide Programmatic Agreement), 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 Web site. 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.

• 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.

1. 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 filed only 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.

• 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 Web site.

○ 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 filing 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 filed 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.

2. 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 submit a Form 854 environmental notification filing and,

when necessary, attach an EA to both its Form 854 environmental notification filing 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.

3. 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 submission of 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.

B. Amendments

• Amendments to FCC Form 854 that are filed after the provision of local notice or posting on the FCC's Web site 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 as set forth in amended rule Section 17.4(c)(1)(iii), including removal of proposed lighting.

○ 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 Web site and opportunity for comment but not a new local notice (see Section F below).

C. 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 Web site. Late filed Requests may be subject to dismissal.

○ The Wireless Telecommunications Bureau 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.

• Proceedings involving environmental filings 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.

D. 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.

E. 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 filed as part of the environmental notification process.

○ An applicant may determine that an EA is necessary when it makes its initial filing, in which case it will attach the EA to that filing.

○ Alternatively, an EA may be supplied at a later date by amending an existing filing, 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 Web site, thus commencing a 30-day period for public comment.

○ If the EA is filed with the initial Form 854 submission, it must also be placed on local notice in the same manner as an environmental notification filing 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.

V. Procedural Matters

A. Regulatory Flexibility Analysis

87. The Commission has determined that the environmental notification rules 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

88. 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), the Commission seeks specific comment on how it might further reduce the information collection burden for small business concerns with fewer than 25 employees.

C. Congressional Review Act

89. The Commission will send a copy of this Order on Remand to Congress and the Government Accountability Office, pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

D. Accessible Formats

90. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Government Affairs Bureau at (201) 418–0530 (voice) or (202) 418–0432 (TTY).

VI. Ordering Clauses

91. 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 CFR 1506.6, the environmental notification procedures *are adopted.*

92. *It is further ordered* that the rules adopted herein *will become effective* upon Commission publication of a notice in the **Federal Register** announcing such approval. The rules and procedures adopted in this Order contain new or modified information collections that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

93. *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 CFR 1.1307(d), the Wireless Telecommunications Bureau *shall* apply the interim antenna structure registration standards set forth in this Order.

94. *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.

95. *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.

96. *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.*

97. *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).

List of Subjects

47 CFR Part 1

Administrative practice and procedure, Environmental impact statements, and Reporting and recordkeeping requirements.

47 CFR Part 17

Aviation safety, Communications equipment, and Reporting and recordkeeping requirements.

47 CFR Parts 22, 25, 80 and 87

Communications equipment, and Reporting and recordkeeping requirements.

47 CFR Parts 24 and 90

Administrative practice and procedure, Communications equipment, and Reporting and recordkeeping requirements.

47 CFR Part 27

Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 1, 7, 22, 24, 25, 27, 80, 87 and 90 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(i),154(j), 160, 201, 225, 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 Web site 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. If the applicant answers affirmatively, an Environmental Assessment, required by § 1.1311 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, 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 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 following paragraph (b) to read as follows:

§ 1.1306 Actions which are categorically excluded from environmental processing.

* * * * *

(b) * * *

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) to read 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 paragraph 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)(iii) 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—CONSTRUCTION, MARKING, AND LIGHTING OF ANTENNA STRUCTURES

■ 8. 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.

■ 9. 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:

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

(ii) 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 paragraph 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;

(iii) 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): no lights; FAA Lighting Styles that do not involve use of red steady lights; and 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;

(iv) For replacement of an existing antenna structure at the same geographic location that does not require an Environmental Assessment (EA) under § 1.1307(a) through (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 paragraph 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;

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

(vi) 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 Web site. 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 Web site 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.

(i) *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.

(ii) *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)(iii) 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 Web site 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 CFR 1.1301 through 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 the effective date of this paragraph (c) shall not be required to complete the environmental notification process set forth in this paragraph. The Commission will publish a document in the **Federal Register** announcing the effective date. 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

■ 10. The authority citation for part 22 continues to read as follows:

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

■ 11. 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

■ 12. The authority citation for part 24 continues to read as follows:

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

■ 13. 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

■ 14. 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, 332.

■ 15. 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 CFR 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.

* * * * *

■ 16. 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

■ 17. The authority citation for part 27 continues to read as follows:

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

■ 18. 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

■ 19. The authority citation for part 80 continues to read as follows:

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

■ 20. 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

■ 21. The authority citation for part 87 continues to read as follows:

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

■ 22. 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

■ 23. The authority citation for part 90 continues to read as follows:

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

■ 24. 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.

* * * * *

■ 25. 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.

* * * * *

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