Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
Amendment of Part 1 of the Commission's Rules Regarding Environmental Compliance Procedures for Processing Antenna Structure Registration Applications	)	WT Docket No. 08-61
	)	WT Docket No. 03-187
	)	
	)	
	)	
	)	

To: The Commission

COMMENTS OF THE INFRASTRUCTURE COALITION ON PETITION FOR EXPEDITED RULEMAKING AND OTHER RELIEF

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SUMMARY

CTIA - The Wireless Association®, the National Association of Broadcasters, the National Association of Tower Erectors and PCIA - The Wireless Infrastructure Association (collectively, the "Infrastructure Coalition") respectfully submit their comments on the "Petition for Expedited Rulemaking and Other Relief" filed on April 14, 2009 ("*Petition for Expedited Relief*"), by the American Bird Conservancy, Defenders of Wildlife and National Audubon Society (collectively, the "Petitioners").

Petitioners request that the Commission adopt new rules on an expedited basis, which they assert are necessary to carry out the mandate of the U.S. Court of Appeals for the District of Columbia Circuit ("Court" or "D.C. Circuit") in *American Bird Conservancy, Inc. v. FCC*, 516 F.3d 1027 (D.C. Cir. 2008) ("*Remand Order*") and to comply with the National Environmental Policy Act ("NEPA"), the Endangered Species Act ("ESA") and the Migratory Bird Treaty Act ("MBTA"). The Infrastructure Coalition opposes the manner in which the Petitioners propose to implement public notice for ASRs, as well as their following additional proposals:

- Amend the Commission's regulations that implement NEPA, "consistent with Council on Environmental Quality ["CEQ"] regulations and guidance," to "cure deficiencies" and to ensure that only Commission actions that have no significant environmental effects individually or cumulatively are categorically excluded;
- Prepare a programmatic environmental impact statement 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; and
- Consult with the U.S. Fish and Wildlife Service on the Antenna Structure Registration ("ASR") program regarding all effects of towers and antenna structures on endangered and threatened species.

Petitioners' sweeping proposals far exceed what the Court's mandate requires of the FCC and its finite resources. As discussed in detail below, the FCC should focus first on carrying out the mandates enunciated by the Court in the *Remand Order*. In particular, the FCC should adopt

the local notice procedures set forth herein for ASR applications to ensure that interested parties have a meaningful opportunity to participate in the ASR process. In adopting any public notice procedures, however, the Commission must ensure that ASR applications are processed in a rapid and predictable manner so that wireless and broadcast communications facilities can continue to be deployed across the country in furtherance of important FCC policies to facilitate the widespread deployment of broadband, broadcast, and critical public safety and homeland security services.

Second, in accordance with the Court remand the Commission should initiate the preparation of a Gulf Coast region Environmental Assessment. Third, the Commission should continue its work in the WT Docket No. 03-187 rulemaking proceeding to address nationwide migratory bird issues based on good science, including peer-reviewed studies, rather than on anecdotal "evidence."

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CTIA - The Wireless Association® ("CTIA"), the National Association of Broadcasters ("NAB"), the National Association of Tower Erectors ("NATE") and PCIA - The Wireless Infrastructure Association ("PCIA") (collectively, the "Infrastructure Coalition") respectfully submit their comments on the "Petition for Expedited Rulemaking and Other Relief" filed in the above-referenced dockets on April 14, 2009 ("*Petition for Expedited Relief*"), by the American Bird Conservancy, Defenders of Wildlife and National Audubon Society (collectively, the "Petitioners"). Infrastructure Coalition members construct, modify, own, operate, lease and manage tens of thousands of communications towers, which provide invaluable wireless and broadcasting services to the public nationwide while enhancing the nation's economic competitiveness and security.[1] As such, their interests are directly affected by the rules proposed by Petitioners to govern the processing of tower applications.

[1] CTIA is the international organization of the wireless communications industry for both wireless carriers and manufacturers. NAB is a nonprofit trade association that advocates on behalf of more than 8,300
(continued on next page)

I. INTRODUCTION

Petitioners request that the Commission adopt new rules on an expedited basis, which they assert are necessary to carry out the mandate of the U.S. Court of Appeals for the District of Columbia Circuit ("Court" or "D.C. Circuit") in *American Bird Conservancy, Inc. v. FCC*, 516 F.3d 1027 (D.C. Cir. 2008) ("*Remand Order*") and to comply with the National Environmental Policy Act ("NEPA"), the Endangered Species Act ("ESA") and the Migratory Bird Treaty Act ("MBTA"). Petitioners' sweeping proposals, however, far exceed what the Court's mandate requires of the FCC. As discussed below, the FCC should focus first on carrying out the mandates enunciated by the Court in the *Remand Order*. In particular, the FCC should adopt the local notice procedures set forth herein for Antenna Structure Registration ("ASR") applications to ensure that interested parties have a meaningful opportunity to participate in the ASR process. However, as the Commission summarized in its April 29, 2009 *Public Notice* soliciting comments, Petitioners request that the FCC undertake several additional actions, which we oppose, including:

- Amend the Commission's regulations that implement NEPA, "consistent with Council on Environmental Quality ["CEQ"] regulations and guidance," to "cure deficiencies" and to ensure that only Commission actions that have no significant environmental effects individually or cumulatively are categorically excluded;
- Prepare a programmatic environmental impact statement ("PEIS") addressing the environmental consequences of its ASR program on migratory birds, their habitats and the environment;

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free, local radio and television stations and also broadcast networks before Congress, the FCC and other federal agencies and the courts. NATE is a non-profit organization serving as the unified voice of the tower erection, service and maintenance industry. PCIA is a non-profit trade association representing the wireless telecommunications infrastructure industry. CTIA, NAB, NATE and PCIA participated in the appeal before the D.C. Circuit culminating in the *Remand Order*. PCIA also participated directly in the proceeding before the FCC that led to the order being reviewed by the D.C. Circuit.

- Promulgate rules to clarify the roles, responsibilities and obligations of the Commission, applicants, and non-federal representatives in complying with the ESA; and
- Consult with the U.S. Fish and Wildlife Service ("FWS") on the ASR program regarding all effects of towers and antenna structures on endangered and threatened species.

It is noteworthy that Petitioners do not cite to any peer-reviewed national studies to support their claims of the number of birds killed at communications towers. The lack of valid empirical data to support the various claims is illustrated by Petitioners' citation to the FWS's "estimate" that some four to five million birds are killed at communications towers each year and "that the correct number could be ten times that size."[2] These and other numbers bandied about by the Petitioners are not supported by field reports by tower owners or peer-reviewed studies and cannot be accepted by the Commission without rigorous scrutiny.[3]

Moreover, given its limited resources, the FCC should prioritize its tasks and focus first on the issues subject to the Court's remand. First, the Commission should adopt an ASR public notice procedure that affords the public a meaningful opportunity to participate by providing local public notice. In adopting any public notice procedures, however, the Commission must ensure that ASR applications are processed in a rapid and predictable manner so that wireless and broadcast communications facilities can continue to be deployed across the country in furtherance of important FCC policies to facilitate the widespread deployment of broadband, broadcast, and critical public safety and homeland security services. Second, in accordance with the Court remand the Commission should initiate the preparation of a Gulf Coast region Environmental Assessment. Third, the Commission should continue its work in the WT Docket

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[2] *Petition for Expedited Relief* at 4.

[3] *See, e.g., Comments of Steven Herbert, Chief Engineer of KCRW, KCRI, KCRV and KCRY*, WT Docket Nos. 08-61 and 03-187 (filed May 1, 2009).

No. 03-187 rulemaking proceeding to address nationwide migratory bird issues based on good science, including peer-reviewed studies, rather than defaulting to anecdotal "evidence."

II. GIVEN ITS LIMITED RESOURCES, THE FCC SHOULD FOCUS FIRST ON THE ISSUES ACTUALLY REMANDED BY THE COURT

In their 53-page *Petition for Expedited Relief*, Petitioners set out a sweeping agenda, including newly-proposed NEPA implementation rules, that far exceeds what the Court's mandate requires of the FCC. The FCC, however, is an agency with limited resources and as a result cannot address all of the Petitioners' requests both on an expedited basis and in a thoughtful manner. Fortunately, the Court's remand does not require the FCC to conduct all of these efforts, and what is required can be accomplished by the FCC if it prioritizes the tasks actually before it. The Commission took an important first step when it initiated WT Docket No. 08-61 on May 1, 2008 "in response to the decision of the Court of Appeals for the District of Columbia Circuit in [the Remand Order]."[4] Responding to the Court's remand must be the Commission's primary focus.

A. BACKGROUND OF THE *REMAND ORDER*

The proceedings leading to the *Remand Order* began in 2002, when the American Bird Conservancy *et al.* ("Avian Groups") petitioned the FCC, pursuant to Section 1.1307(c) of its rules, to: (1) order owners of more than 6,000 individual antenna structures in the Gulf Coast region to prepare or amend pending environmental assessments ("EAs") to address impacts on migratory birds; (2) prepare a PEIS under NEPA analyzing the effects of the FCC's registration of antenna structures on migratory birds in the Gulf Coast region; (3) consult with FWS pursuant to the ESA regarding the impact of Gulf Coast towers on threatened and endangered migratory

[4] *FCC Public Notice: Opening of Docket in Response to American Bird Conservancy, Inc. v. FCC, 516 F.3d 1027 (D.C. Cir. 2008)*, DA 08-1040 (rel. May 1, 2008).

birds; (4) take steps under the MBTA to reduce the "takes" from avian-tower collisions in the Gulf Coast region; and (5) provide notice and opportunity to comment on all Gulf Coast ASR applications.[5]

In 2003, the Commission issued its *Migratory Bird NOI* "to gather comment and information on the impact that communications towers may have on migratory birds."[6] The responsive comments expressed conflicting views on the environmental significance of any birds killed in collisions with towers and what actions, if any, should be taken. As a result, the Commission retained an environmental expert, Avatar Environmental, LLC ("Avatar"), to review the record.

Avatar issued its report in 2004,[7] finding that there is no evidence of "mortality that is of sufficient magnitude and importance that it causes the viability of a particular population or species to be affected"[8] and that "[t]here are no studies to date that demonstrate an unambiguous relationship between avian collisions with communications towers and population decline of migratory bird species."[9] The FCC solicited further comments that were filed in 2005.[10] While

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[5] *American Bird Conservancy et al., Petition for National Environmental Policy Act Compliance* (filed Aug. 26, 2002) ("Gulf Coast Petition"). Because impacts to migratory birds are not among the enumerated environmental "triggers" contained in Section 1.1307, this issue currently is categorically excluded from environmental processing under the FCC's rules. *See* 47 C.F.R. §§ 1.1306, 1.1307(a)-(b). Section 1.1307(c), however, provides that: "If an interested person alleges that a particular action, otherwise categorically excluded, will have a significant environmental effect, the person shall submit to the Bureau responsible for processing that action a written petition setting forth in detail the reasons justifying or circumstances necessitating environmental consideration in the decision-making process...."

[6] *Effects of Towers on Migratory Birds, Notice of Inquiry*, 18 FCC Rcd 16938, 16938 ¶ 1 (2003) ("*Migratory Bird NOI*").

[7] *See* Notice of Inquiry Comment Review Avian/Communication Tower Collisions, Final, Prepared for Federal Communications Commission by Avatar Environmental, LLC, *et al.*, WT Docket No. 03-187 September 30, 2004 (filed Dec. 10, 2004) ("Avatar Report").

[8] Avatar Report at § 3.5.4.

[9] *Id.* at § 5.1.

the Commission was deciding whether to proceed with a full rulemaking, it issued an order in 2006 addressing the Avian Groups' Gulf Coast Petition.[11] The *Gulf Coast Order* dismissed or denied all of the Avian Groups' requests except the MBTA claim, which the Commission indicated was being considered in the nationwide proceeding initiated by the *Migratory Bird NOI*.[12] The Avian Groups then appealed to the D.C. Circuit.

The Court affirmed the *Gulf Coast Order* in part and vacated and remanded other issues back to the FCC for further consideration. Specifically, the D.C. Circuit affirmed the Commission's deferral of the MBTA issue to the nationwide proceeding.[13] It vacated and remanded, however, the NEPA, ESA and public notice portions of the *Gulf Coast Order*.[14]

First, on the NEPA issue, the Court found, based on the conflicting comments contained in the record of the nationwide proceeding, that "towers 'may' have [a] significant environmental impact."[15] According to the Court, Section 1.1307(c) of the FCC's rules therefore "mandate[s] at least the completion of an EA before the Commission may refuse to prepare a programmatic EIS."[16] Second, on the ESA issue, the Court directed the FCC to better explain "what kind of

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[10] *Public Notice*, "Wireless Telecommunications Bureau Seeks Comment on Avatar Environmental, LLC Report Regarding Migratory Bird Collisions with Communications Towers," 19 FCC Rcd 24007 (WTB 2004).

[11] *Petition for National Environmental Policy Act Compliance, Memorandum Opinion and Order*, 21 FCC Rcd 4462 (2006) ("*Gulf Coast Order*").

[12] *See Gulf Coast Order*, 21 FCC Rcd at 4464-69 ¶¶ 5-20.

[13] *Remand Order*, 516 F.3d at 1031-32. While the appeal was pending, the FCC issued its *Migratory Bird NPRM* in the nationwide proceeding seeking comment on "the extent of any effect of communications towers on migratory birds"; "whether any such effect warrants regulations specifically designed to protect migratory birds"; and "the legal framework governing the Commission's obligations in this area," including pursuant to the MBTA. *See Effects of Communications Towers on Migratory Birds, Notice of Proposed Rulemaking*, 21 FCC Rcd 13241, 13256 ¶ 32 (2006) ("*Migratory Bird NPRM*").

[14] *Remand Order*, 516 F.3d at 1032-35.

[15] *Id.*, 516 F.3d at 1033.

[16] *See id.*, 516 F.3d at 1034. Pursuant to Section 1.1307(c), if a written petition is submitted setting forth in detail the reasons why a particular action, otherwise categorically excluded, will have a significant environmental effect, the Bureau must review the petition. If the Bureau determines that the action "may
(continued on next page)

showing . . . could demonstrate sufficient environmental effects to justify the 'programmatic consultation' [between the FCC and FWS] that Petitioners seek."[17] Third, the *Remand Order* vacated and remanded the notice portion of the *Gulf Coast Order*. The Court recognized that although "Commission regulations permit parties to file petitions for EAs to be conducted for the otherwise categorically excluded tower applications,"[18] "the Commission provides public notice of individual tower applications only *after* approving them."[19] Because "[i]nterested persons cannot request an EA for actions they do not know about," the court directed the Commission on remand to "determine how it will provide notice of pending tower applications that will ensure meaningful public involvement in implementing NEPA procedures."[20]

B. ADDRESSING THE PETITIONERS' SWEEPING REQUESTS FOR RELIEF WOULD SLOW THE COMMISSION'S RESPONSES TO THE COURT'S REMAND

The Petitioners expend significant effort arguing that the Commission should totally revamp its NEPA regulations.[21] Before commencing such a massive undertaking, however, the Commission must recognize that the Court's *Remand Order* does not require it to do so. In fact, following Petitioners' requested path would actually delay Commission action on the important issues the Court's remand requires the Commission to consider.[22]

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have a significant environmental impact," an EA must be prepared to serve as the basis to decide "whether to proceed with or terminate environmental processing." 47 C.F.R. § 1.1307(c).

[17] *Remand Order*, 516 F.3d at 1034-35.

[18] *Id.*, 516 F.3d at 1035 (citing 47 C.F.R. § 1.1307(c)).

[19] *Id.*, 516 F.3d at 1035 (emphasis in original).

[20] *Id.*

[21] *See Petition for Expedited Relief* at 11-32.

[22] The degree of delay the FCC would encounter to address the Petitioners' laundry list of suggestions is hinted at by the fact that it took the Petitioners nearly a year to prepare and file their *Petition for Expedited Relief* despite their promise in May 2008 to file the petition "shortly." Comments of American Bird Conservancy, Defenders of Wildlife, and National Audubon Society, WT Docket No. 08-61 at 3 (May 27, 2008) ("we will be filing our own petition for expedited rulemaking shortly that will address
(continued on next page)

A careful examination of the *Remand Order* reveals the disparity between what the Court required and what the Petitioners propose. First, the Court does not require the Commission to undertake a nationwide PEIS. To the contrary, while the Court found "there is no real dispute that towers 'may' have a significant environmental impact" on migratory birds in the Gulf Coast region,[23] the court also found that the FCC rules do not require a programmatic EIS for the Gulf Coast region. Rather, the Court expressly ruled that "[p]ursuant to its own regulations, the Commission may commence such analysis" of whether a programmatic EIS is necessary "through the preparation of an EA."[24] As discussed in Section IV(B) below in greater detail, the Commission should follow the Court's instructions to prepare an EA for the Gulf Coast region before starting down a long, arduous path toward a nationwide PEIS that may well prove to be unnecessary. Indeed, the Court noted that the EA could lead to a Finding of No Significant Impact ("FONSI") and thus obviate the need to conduct an EIS.[25]

Second, the Court did not require the establishment of an open-ended, complex consultation process with the FWS. With respect to individual towers, the FCC in the *Gulf Coast Order* analyzed its process of delegating to applicants the decision of when to consult with FWS concerning whether an *individual* tower "may affect" listed species,[26] and found that "Petitioners

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considerations beyond those raised by the narrow petition filed by the Infrastructure Coalition [on the public notice issues remanded by the Court]").

[23] *Remand Order,* 516 F.3d at 1033-34; *see also id.* at 1029 (generally vacating and remanding the *Gulf Coast Order*, which denied in part and dismissed in part the Gulf Coast Petition "seeking protection of migratory birds from collisions with communications towers in *the Gulf Coast region*") (emphasis added); *id.* at 1031 (describing among the issues before the Court the Avian Groups' contention that "NEPA . . . require[s] changes to the Commission's rules and procedures regarding communications towers *in the Gulf Coast region*") (emphasis added). As the Infrastructure Coalition demonstrated in the pending nationwide migratory bird proceeding, there is insufficient broad-based, peer-reviewed evidence for the FCC to conclude that any avian-tower impacts significantly affect the human environment. *See* Comments of the Infrastructure Coalition, WT Docket 03-187 (filed Apr. 23, 2007).

[24] *Remand Order,* 516 F.3d at 1034.

[25] *See id.*, 516 F.3d at 1034.

[26] *See Gulf Coast Order*, 21 FCC Rcd at 4467-68 ¶ 13.

have not demonstrated that the owners of any of the communications towers that it identifies have failed to participate in informal consultation with the USFWS as authorized by the Commission's environmental processing procedures or that there was any basis to initiate formal Section 7 consultation with the USFWS."[27] The Court did not disturb that finding. Thus, the *Remand Order* does not alter the current process for analyzing whether an *individual* tower may affect listed species, and the recommendations of the Infrastructure Coalition herein are limited to *programmatic* consultation considerations.

With respect to programmatic consultation, the court took issue with the FCC's explanation[28] of why it did not need, pursuant to Section 7 of the ESA, to consult with the FWS concerning the cumulative effect of Gulf Coast ASRs on threatened and endangered species.[29] However, the Court did not order consultation with the FWS. Instead, the Court required the Commission to provide an explanation that would "describe[] what kind of showing in the ESA context could demonstrate sufficient environmental effects to justify the 'programmatic consultation' that Petitioners seek."[30]

As the Infrastructure Coalition has previously recommended,[31] rather than attempt to define the myriad factual circumstances under which programmatic consultation may be

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[27] *Id.* at 4468 ¶ 13; *see Remand Order*, 516 F.3d at 1034-35.

[28] The Commission declined to require consultation, citing the lack of "evidence of any synergies" among towers that "would cause them cumulatively to have significant environmental impacts." *Gulf Coast Order*, 21 FCC Rcd at 4467 ¶ 14, *cited in Remand Order*, 516 F.3d at 1034.

[29] According to the Court, Section 7 and its implementing regulations generally require federal agencies to ensure that their actions are "not likely to jeopardize" any threatened or endangered species, and to consult with the FWS to make this determination if a proposed action "may affect" any ESA-listed species. *See Remand Order,* 516 F.3d at 1034 (citing 16 U.S.C. §§ 1536(a)(2), 1536(a)(4); 50 C.F.R. §§ 402.10, 402.14(a)-(b)).

[30] *Remand Order*, 516 F.3d at 1035.

[31] *See* Letter to Jeffrey S. Steinberg, Deputy Chief, Infrastructure Policy, Spectrum and Competition Policy Division, Wireless Telecommunications Bureau, FCC, from CTIA, NAB, NATE, and PCIA, WT Docket No. 08-61 at 5 (May 9, 2008).

required, the Commission's better course is to consider, during the preparation of the programmatic EA recommended above, whether ASRs in the Gulf Coast region cumulatively may affect ESA-listed species based upon the standard in the CEQ regulations. To provide unbiased scientific analysis, the FCC should work with an independent environmental expert to inform its determination[32] or, alternatively, hire a biological expert. With this expertise, the FCC will be better positioned to determine whether the "incremental impact" of "reasonably foreseeable future" ASRs in the Gulf Coast region, when added to other past and present ASRs in the region, may result in a "collectively significant action[]" regarding any particular listed species.[33] Only if the FCC makes an affirmative finding that the cumulative impact of its ASR program in the Gulf "may affect" listed birds should the agency then initiate programmatic consultation for the Gulf Coast with the FWS, pursuant to Section 7 of the ESA, to determine whether its program cumulatively is likely to jeopardize listed birds in the Gulf Coast region.[34]

Third, the Court did not impose a timeframe for ruling on MBTA matters. The Court found that the Commission acted reasonably when it deferred consideration of the MBTA issues to the nationwide proceeding designed to obtain additional relevant information.[35] The Commission initiated WT Docket No. 03-187 to gather information on related issues, and it recently noted that the staff of the Federal Aviation Administration ("FAA") indicated that the

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[32] One option would be to utilize the services of Avatar to aid the Commission in making this determination.

[33] *See* 40 C.F.R. § 1.1507.

[34] *See Remand Order*, 516 F.3d at 1034 ("If an agency determines that an action 'may affect' endangered or threatened species or critical habitats, the agency must initiate formal consultation with the [FWS] . . . ."); *see also Defenders of Wildlife v. Flowers*, 414 F.3d 1066, 1070 (9th Cir. 2005) ("The determination of possible effects is the Federal agency's responsibility.") (quoting 51 Fed. Reg. 19926, 19949 (June 3, 1986)); *Pacific Rivers Council v. Thomas*, 30 F.3d 1050, 1054 n.8 (9th Cir. 1994) ("If the agency determines that a particular action will have no effect on an endangered or threatened species, the consultation requirements are not triggered.").

[35] *Remand Order*, 516 F.3d at 1032.

FAA plans to conduct a conspicuity study concerning the effect on aviation safety of utilizing red strobe lights on communications towers without accompanying red steady lights.[36] The Commission should complete the MBTA proceeding only after it compiles an adequate record, including the promised FAA conspicuity study, and should not be side-tracked from its top priority of instituting a public notice procedure for ASRs.

III. ANY CHANGES TO THE FCC'S RULES AND PROCEDURES SHOULD PROMOTE THE DUAL GOALS OF CRITICAL INFRASTRUCTURE DEPLOYMENT AND MEANINGFUL PUBLIC PARTICIPATION

It is critical that any FCC actions taken in response to the Court's remand be designed to also ensure that ASR applications are processed in a rapid and predictable manner so that wireless and broadcast communications facilities can continue to be deployed across the country for the provision of critical services to the public.[37] This result is compelled by the Telecommunications Act of 1996, which directs the FCC to encourage the deployment of advanced telecommunications capability by minimizing barriers to infrastructure investment.[38] Moreover, the Commission has recognized the critical role infrastructure plays in many areas,

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[36] *See* letter from Louis Peraertz, Special Counsel, Wireless Telecommunications Bureau, FCC, to Mr. Alexander Roe, WT Docket No. 03-187 (March 27, 2009).

[37] *See, e.g., Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process,* 20 FCC Rcd 1073, 1227 (2004) ("*2004 NPA*") (any FCC environmental action plan must "promote the timely deployment of necessary communications infrastructure while, at the same time, improving the Commission's ability to protect valuable . . . environmental resources") (Joint Statement of Chairman Michael K. Powell and Commissioner Jonathan S. Adelstein).

[38] Pub. L. No. 104-104, § 706(a), 110 Stat. 56, 153 (directing the Commission to "encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans . . . by utilizing, in a manner consistent with the public interest, convenience, and necessity . . . regulating methods that remove barriers to infrastructure investment") (reproduced in the notes under 47 U.S.C. § 157); *see also Remarks of Jonathan S. Adelstein, Commissioner, Federal Communications Commission; PCIA - Wireless Infrastructure Show, Orlando, FL,* 2007 FCC LEXIS 7144, *2 (Oct. 2, 2007) ("Adelstein Remarks") ("I see it as our role to promote the expansion of communications infrastructure. The construction of communications towers and other improvements will drive the rapid deployment so many people want.").

including facilitating the build out of 700 MHz services;[39] supporting the widespread deployment of broadband services, including to rural and underserved areas;[40] serving as the backbone of the transition to digital television;[41] digital radio; and underpinning critical public safety and homeland security services.[42] Thus, the FCC's response to the Court's remand, and in particular the adoption of public notice rules, must be consciously formulated to minimize any delay to communications infrastructure deployment so as not to frustrate these important FCC policies.[43]

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[39] *See, e.g., Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, Second Report and Order*, 22 FCC Rcd 15289, 15348 (2007) ("*700 MHz Second R&O*") (acknowledging that notwithstanding the excellent propagation characteristics of 700 MHz spectrum, "towers will be needed to serve a given license area" in order to meet the stringent build out requirements for 700 MHz spectrum); *id.* at 15351 ¶ 164 ("[W]e are mindful of the significant capital investment and logistical challenges associated with building a regional or nationwide system without an existing infrastructure."); *see also Written Statement Of The Honorable Kevin J. Martin, Chairman, Federal Communications Commission; Before the Committee on Energy and Commerce, U.S. House of Representatives*, 2008 FCC LEXIS 3348, *9 (Apr. 15, 2008) ("To help ensure that rural and underserved areas of the country benefit from the new services that this spectrum will facilitate, the Commission adopted the most aggressive build-out requirements ever applied to wireless spectrum.").

[40] *See, e.g., Connected On the Go Broadband Goes Wireless; Overview of the Wireless Broadband Access Task Force Report*, 2005 FCC LEXIS 1087, *16-17 (2005) ("Sufficient infrastructure, particularly antennas and towers, is critical to ensuring the degree of reliability, higher speeds, and lower latency that are required to provide high-quality broadband services."); *Written Statement Of The Honorable Kevin J. Martin, Chairman, Federal Communications Commission; Before the Committee on Energy and Commerce, U.S. House of Representatives*, 2007 FCC LEXIS 5523, *17 (July 24, 2007) ("The government must set the right rules and policies in place to encourage the deployment of the next generation of infrastructure and the introduction and [sic] new and innovative services over this infrastructure.").

[41] *See, e.g.,* Adelstein Remarks, 2007 FCC LEXIS 7144 ("Towers will . . . form the backbone of the transition to digital television . . . .").

[42] *See, e.g., 700 MHz Second R&O*, 22 FCC Rcd at 15569 ("[O]ur wireless infrastructure, including commercial wireless infrastructure, plays an important role in supporting public safety and homeland security.") (statement of Commissioner Deborah Taylor Tate); Adelstein Remarks, 2007 FCC LEXIS 7144, *2 ("Towers . . . are used around the clock by public safety and are a critical component of our nation's homeland security efforts."); *2004 NPA*, 20 FCC Rcd at 1227 ("The construction of communications towers and other infrastructure improvements is essential . . . for public safety and homeland security.") (Joint Statement of Chairman Michael K. Powell and Commissioner Jonathan S. Adelstein).

[43] *See, e.g., Written Statement of The Honorable Kevin J. Martin, Chairman, Federal Communications Commission; Before the Committee on Commerce, Science & Transportation, U.S. Senate*, 2007 FCC LEXIS 9317, *17-18 (Dec. 13, 2007) (In order to help spur broadband deployment, it is important to minimize or "remove[] regulatory obstacles that discourage[] infrastructure investment and slow[] deployment.").

For example, if the FCC were to adopt a public notice procedure that significantly increased the time period necessary for the grant of an ASR, the Commission's action would have the unintended result of frustrating its goal of accelerating build out of new facilities. The Commission recently adopted the most aggressive build out requirements in its history for the 700 MHz band. Cellular Market Area ("CMA") and Economic Area licensees must provide coverage to 35% of the geographic area within their markets, and Regional Economic Area Grouping ('REAG") licensees must provide coverage to 40% of the population of their licensed areas, on an Economic Area-by-Economic Area basis, by June 2013, or the end of the fourth year of the license term (for any 700 MHz licenses granted after June 13, 2009).[44] The penalty for failing to meet these demanding construction benchmarks are severe, ranging from monetary forfeitures to shortened license terms and even loss of licenses. It would be inequitable for the Commission to impose these stringent construction obligations and then subsequently design a procedure that interjected such delay into the siting process that it became impossible for licensees to meet their build out requirements.

As recently as this past week, the FCC emphasized how critical antenna structures are to the fulfillment of the promise of ubiquitous mobile broadband. In its Rural Broadband Strategy Report, the Commission stated:

> [w]ireless broadband development in rural areas will depend in part on the ability of providers to access towers and other structures for the deployment of their network facilities, either through new tower construction or collocation on existing towers or other structures. For instance, one study concludes that, in order to achieve ubiquitous mobile broadband coverage, approximately

[44] In addition, by the end of their license term, CMA and Economic Area licensees must provide coverage to 70% of the geographic area in their licensed areas, and REAG licensees must provide coverage to 75% of the population in their licensed areas – again on an Economic Area-by-Economic Area basis.

> 16,000 new towers will need to be constructed, disproportionately in rural areas.[45]

The FCC also acknowledged that certain of its open proceedings may affect the pace or cost of tower construction, citing, inter alia, the Migratory Bird proceeding.[46]

Just as the FCC has stressed the essential nature of timeliness in constructing new facilities, Congress has made expeditious build out a keystone of its economic stimulus program. In an unprecedented effort between the Executive and Legislative Branches, Congress passed the American Recovery and Reinvestment Act of 2009 ("ARRA"), with the goal of stimulating our nation's economy by, among other things, fostering rapid broadband deployment. In the legislation, Congress expressed a strong preference for projects that could be commenced and completely promptly. For example, under the Rural Utilities Service's Distance Learning, Telemedicine and Broadband programs, projects that "can commence promptly following approval"[47] enjoy priority status. Under the National Telecommunications and Information Administration ("NTIA") Broadband Technology Opportunities Program, the NTIA Assistant Secretary is required to "seek such assurances as may be necessary or appropriate from grantees under the program that they will substantially complete projects supported by the program in accordance with project timelines, not to exceed 2 years following an award."[48] Indeed, funding of these broadband programs is only available for grant until the end of Fiscal Year 2010.[49] The ARRA programs and Congress' historic effort to jump start our economy would be significantly

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[45] *Bringing Broadband to Rural America: Report on a Rural Broadband Strategy*, FCC, ¶ 158 (May 22, 2009), available at www.fcc.gov.

[46] *Id.*

[47] ARRA, Division A, Title I.

[48] ARRA, Division B, Title VI, Section 6001(d)(3).

[49] ARRA, Division A, Title XVI, Section 1603; ARRA, Division B, Title VI, Section 6001(d)(2).

undermined if the FCC were to create an unwieldy, open-ended tower siting process that resulted in grantees being unable to construct their facilities within the strict ARRA-imposed timeframes.

The concern that any new FCC procedures foster certainty and not frustrate build out is felt by the public safety community as well as the commercial wireless and broadcasting industries. Previously, representatives of the public safety community have urged the FCC to adopt ASR procedures that would "prevent delays in the processing of public safety radio frequency applications," noting that public safety system deployments are typically driven by "current system deficiencies and/or seasonal factors" such as the limited construction windows available in winter months in northern and mountain regions, and the need to deploy facilities prior to hurricane season in the Gulf Coast area.[50]

The procedures and rules the Infrastructure Coalition proposes in Section IV will promote both goals, without disrupting, and indeed helping to enhance, the nation's economy, public safety and the ability to receive emergency information. The proposed rules and procedures focus on accomplishing what the Court required the FCC to address in the *Remand Order* and prioritize these efforts so that each requirement can be achieved within the context of the FCC's limited resources. Without this focus, the timely provision of meaningful public involvement in the ASR application process, the undertaking of an EA with respect to structures in the Gulf Coast area, and analysis of whether coordination with the FWS is required under the ESA would not be possible. The Infrastructure Coalition's proposals set forth in the following section also minimize any delay in the deployment of communications infrastructure by creating clearly-defined vehicles for proceeding, predictable processing timeframes, and clear standards for filing

[50] *See*, Comments of APCO, WT Docket No. 08-61 (filed May 9, 2008) ("APCO Comments").

environmental objections to ASR applications. Accordingly, the Infrastructure Coalition's proposed rule changes will serve the public interest and should be adopted.[51]

IV. THE COMMISSION MUST PRIORITIZE THE ISSUES TEED UP BY THE COURT'S *REMAND ORDER*

As noted previously, the Commission's first priority with respect to migratory bird issues must be to respond to the *Remand Order*. There, the Court spelled out its specific concerns with the Commission's procedures and determined which issues could be deferred for later consideration.

A. THE COMMISSION SHOULD EXPEDITIOUSLY ADOPT AN ASR PUBLIC NOTICE PROCEDURE THAT AFFORDS INTERESTED PARTIES A MEANINGFUL OPPORTUNITY TO PARTICIPATE

The Petitioners urge the Commission to adopt rules to involve the public in the consideration of, and afford interested parties the opportunity to comment on, proposed antenna structures that require ASRs. The Infrastructure Coalition agrees that FCC rules should be revised to provide the public with a meaningful opportunity to comment on such proposed structures and suggests that the FCC revise its rules to provide for local public notice and comment on ASR applications. Such rule changes would be both consistent with the letter and spirit of the CEQ regulations, and would address the public notice issue remanded to the FCC by the Court in the *Remand Order*.

As a threshold matter, the *Remand Order* recognized that the Commission "enjoys wide discretion in fashioning its own procedures,"[52] as long as it "compl[ies] with the CEQ

[51] *See, e.g.*, Adelstein Remarks, 2007 FCC LEXIS 7144, *2-3 (A "streamlined and tailored . . . review process for communications towers and other Commission-licensed facilities" is "a good way to manage our communications infrastructure – in a manner that best preserves our nation's environmental . . . resources while still facilitating deployment.").

regulations and its own regulations."[53] The CEQ regulations require agencies to "[m]ake diligent efforts to involve the public in preparing and implementing their NEPA procedures."[54] These regulations, however, are "general in approach"[55] and "do not mandate any particular form of notice."[56] As discussed below, the rules proposed herein would meaningfully involve the public by providing interested parties with notice of, and an opportunity to comment on, "pending tower applications." Thus, the rules proposed by the Infrastructure Coalition, and attached as Appendix A, are consistent with the Court's guidance and the regulations of the CEQ.

1. The FCC Should Adopt a Local Public Notice Requirement for ASRs

Following review and consideration of the *Remand Order* and the comments received in response to the Infrastructure Coalition's May 2008 Petition for Expedited Rulemaking, the Infrastructure Coalition respectfully submits that the most effective method for ensuring meaningful input by interested parties is to rely on local public notice of ASR filings to register new antenna structures. Applications on Form 854 for any other action would be processed pursuant to immediate approval procedures, whereby consent and the issuance of a registration number would be reflected in the FCC's ASR System the next day. Such actions include, but are not limited to, administrative updates, ownership changes, notification of structure dismantlement, cancellation of an existing registration, withdrawal of an application, notification

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[52] *City of Angels Broadcasting, Inc. v. FCC*, 745 F.2d 656, 664 (D.C. Cir. 1984), *quoted in Remand Order*, 516 F.3d at 1035.

[53] *See Remand Order*, 516 F.3d at 1035. The CEQ was created by Congress to provide guidance on NEPA and the regulations adopted by Federal agencies to implement that statute.

[54] 40 C.F.R. § 1506.6(a); *see Remand Order*, 516 F.3d at 1035; *see also* 40 C.F.R. § 1506.6(b) (agencies shall "[p]rovide public notice of NEPA-related hearings, public meetings, and the availability of environmental documents so as to inform those persons and agencies who may be interested or affected"); *id.* § 1506.6(d) (agencies shall "[s]olicit appropriate information from the public").

[55] *Bering Strait Citizens for Responsible Res. Dev. v. United States Army Corps of Eng'rs*, 511 F.3d 1011, 1025 (9th Cir. 2008) (citing 40 C.F.R. § 1506.6).

[56] *Environmental Coalition v. Brown*, 72 F.3d 1411, 1415 (9th Cir. 1995) (citing 40 C.F.R. § 1506.6(b)).

of completion of a previously-approved registered structure, and corrections to data for constructed registered towers.[57] To facilitate processing, the Infrastructure Coalition recommends that the Form 854 be revised to require a certification as to whether or not the application qualifies for immediate approval procedures.[58]

The local notice of ASRs pertaining to new antenna structures would provide information concerning the proposed structure as well as notify interested parties of their right to file a Petition to Deny with the FCC within a specified timeframe after the public notice (as discussed below, the Infrastructure Coalition proposes a 30-day petition period). A template of the proposed local notice is provided at Appendix B.

The Petitioners erroneously claim that the impact of a particular antenna structure on migratory birds is national in scope, and therefore argue that ASR applications should be published in the Federal Register, and that notification of such applications should be sent by mail to national organizations "reasonably expected to be interested in the matter."[59] The Infrastructure Coalition disagrees with Petitioners' characterization and believes that the method of public notice should be determined by one consideration – what single method would best reach the residents of the community in which the tower would be located. As discussed in greater detail below, the impact of a facility that is the subject of an ASR is local in nature, as evidenced by the Commission's enforcement of its standing requirement, and rejection of challenges filed by national groups that fail to demonstrate injury to persons living in, or visiting, the specific area in which a facility is proposed to be located.[60]

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[57] *See* Appendix A, 47 C.F.R. § 17.4(c)(2) (proposed).

[58] *See* § 17.4(c)(2)(i) (proposed).

[59] Comments of American Bird Conservancy, Defenders of Wildlife, and National Audubon Society, WT Docket No. 08-61 at 16-17 (filed May 27, 2008) ("Petitioners' May 2008 Comments").

[60] *See infra* footnotes 64 and 65, and accompanying text.

Local public notice is the most appropriate form of public notice as it brings the news of the filing down to the specific community where the tower would be located. Residents of the community will be able to learn of the proposed tower by reading their local newspaper. Publishing a local notice would be a far more effective manner of empowering the public than publishing a notice in the FCC Daily Digest thousands of miles away. A resident is more likely to pick up his or her local paper and read it than he or she is to go online to www.fcc.gov and pour over a multitude of public notices listing numerous applications for facilities that are located in disparate communities with which the reader has no interest or nexus. Clearly, local public notice would best ensure that interested parties are advised of a potential new facility. In addition, the Commission has noted in the past that not all Americans have readily available access to the Internet.[61] The local notice publication requirement has the additional advantage of reaching all interested parties – not just those with Internet access.

Local public notice is consistent with the CEQ regulations. Section 1506.6 of CEQ regulations provides that "[i]n the case of an action with effects primarily of local concern the notice may include: ... (iv) [p]ublication in local newspapers (in papers of general circulation rather than legal papers)."[62] Moreover, this approach is consistent with that adopted in connection with implementation of the Section 106 consultation process contained in the National Historic Preservation Act. In recognition of the similarly local nature of the concern

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[61] *See, A National Broadband Plan for Our Future, Notice of Inquiry*, 24 FCC Rcd 4342, ¶ 3 (2009) ("[w]hile Internet access -- whether provided by wireline, wireless, or satellite technology -- is now available at faster speeds, in more locations, and on smaller, easier-to-use devices, its benefits are not yet ubiquitous"); Michael Copps, *Bringing Broadband to Rural America: Report on a Rural Broadband Strategy* at ¶ 106 n.245 (FCC May 22, 2009) ("[o]ne estimate of the demand for Internet access services indicates that approximately 29% of the U.S. population in 2007 did not use the Internet. Internet use is defined as a household with subscription to either broadband or dial-up or use of a terminal outside of the home to access the Internet," citing, U.S.Census Bureau Table 1118, *Household Internet Usage in and Outside of the Home by Selected Characteristics* (2007) *available at* http://www.census.gov/compendia/statab/tables/09s1118.pdf (last visited May 27, 2009)).

[62] 40 C.F.R. § 1506.6(b)(3)(iv).

about the impact of particular facilities on structures listed in, or eligible for listing in, the National Register of Historic Places, the Commission adopted a local public notice requirement, allowing applicants to either publish notice of a proposed facility in a local newspaper of general circulation, or through public notice provisions of the local zoning or local historic preservation process for the facility.[63] As this process is already in place for historic preservation purposes, applicants and the FCC could promptly implement the proposed local public notice requirement.

Finally, local notice is the most appropriate procedure to guarantee that the parties that have standing have the opportunity to comment. Any party seeking to file a petition to deny an ASR application is required by the FCC's rules to have standing.[64] To satisfy the standing requirement, the petitioner must demonstrate a nexus – a causal link demonstrating how the proposed action would injure the petitioner. Indeed, the Commission has dismissed petitions for lack of standing where petitioners have failed to support their petitions with affidavits or letters from "individuals who reside in or visit the communities where any of the proposed towers are to be located."[65]

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[63] *2004 NPA*, Section V.B. Other governmental agencies also have adopted a local public notice approach where a proposed action is of local concern. For example, the EPA issues NPDES permits which allow the permittee to discharge pollutants into waterways, based on public notice published in the local newspaper (see http://www.epa.gov/npdes/pubs/chapt_11.pdf); the Texas Commission on Environmental Quality requires public notice through a newspaper for all air permits issued by the Agency (see http://www.tceq.state.tx.us/permitting/air/bilingual/how1_2_pn.html and http://www.tceq.state.tx.us/permitting/air/bilingual/pnreq_tvapp.html); and the North Carolina Department of Environment and Natural Resources requires public notice in a newspaper if the project is in an area that does not have zoning controls (see http://daq.state.nc.us/news/pr/2004/perm_wo_zoning_03312004.shtml).

[64] 47 C.F.R. § 1.939.

[65] *Friends of the Earth, Inc. and Forest Conservation Council, Inc., Memorandum Opinion and Order*, 17 FCC Rcd 201 (Com. Wir. Div. 2002).

2. Interested Parties Should Have 30 Days from Public Notice to File Petitions to Deny ASRs and Raise Environmental Issues

To provide interested parties with sufficient time to consider the environmental impact of a proposed antenna structure, the Infrastructure Coalition proposes that interested parties be given 30 days from the date of local public notice of the ASR filing to file a Petition to Deny with the FCC. The FCC's rules also should provide that the applicant must file its ASR either prior to or concurrent with the publication of local public notice, to ensure that the ASR is pending with the FCC during the public notice period.

To assist the Commission in processing the ASR and ensuring that the public notice and comment period has been provided, the FCC Form 854 should be revised to include a field that would allow the applicant to specify when the public notice period has expired (which field the applicant would complete only after local public notice had been published, and the 30-day comment period had expired). The FCC would act on the pending ASR only after the public notice and comment period had expired.

While the *Petition for Expedited Relief* does not propose a specific timeframe for public notice and comment,[66] Petitioners previously urged a 60-day comment period.[67] This is highly problematic for two reasons. First, Petitioners failed to provide any meaningful justification for a departure from what they themselves characterize as the FCC's "generally applicable" comment period of 30 days,[68] apart from general assertions that it is difficult for them to "repeatedly scour the FCC web site,"[69] review tower applications and assess their potential

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[66] *See Petition for Expedited Relief* at 26-28 (arguing, generally, for increased public involvement in the process, and noting the several options available to the FCC under the CEQ rules).

[67] *See* Petitioners' May 2008 Comments at 18-19.

[68] *See id.* at 18.

[69] *Id.*

environmental impact. As discussed herein, one of these hurdles – the requirement to "repeatedly scour the FCC's website" – would be addressed by adopting the Infrastructure Coalition's proposal to provide localized, targeted public notice of ASR applications. As the other asserted hurdles have not been documented, the Commission should not be swayed to deviate from its standard 30-day public notice period. Second, the Petitioners fail to appreciate that creating an open-ended, lengthy process (whether it be for public notice or consultation with other agencies) will have consequences that are contrary to the public interest. See Section III for a detailed discussion of the adverse consequences of infusing delay and uncertainty into the ASR process.

3. The FCC Should Permit ASRs to be Filed and Processed While FAA Determinations of No Hazard are Pending

To allow environmental considerations to be addressed earlier in the process, the FCC should also revise its rules to allow for ASRs to be *filed* prior to an applicant's receipt of an FAA Determination of "No Hazard" ("FAA Determination"). However, the rules would provide that the inclusion in the ASR of the FAA Study Number and Issue Date of the FAA Determination would be a pre-condition to the FCC *grant* of the ASR. Presently, FCC rules preclude applicants from submitting ASRs until they have received an FAA Determination.[70] Such determinations take, on average, 60-90 days to secure. Thus, unless that restriction is lifted, both public notice and comment on the potential environmental effect of a proposed facility, and frequency coordination[71] for that facility, will be unnecessarily delayed by an additional 60-90 days. In the context of improvements to public safety systems, and in connection with the deployment of broadcast facilities and wireless networks in winter months or in areas of difficult terrain, such

[70] 47 C.F.R. § 17.4(b) (of currently effective rules).

[71] *See*, APCO Comments.

delays can have substantial negative impacts on public safety, the provision of new service and wireless broadband deployment. Adopting this rule change would allow the FAA and environmental considerations to proceed simultaneously, without diminishing the FAA's ability to thoroughly review the proposed structure.

4. The FCC Should Clarify that Environmental Objections Must Be Filed as Petitions to Deny

The Commission also should clarify that the directive in Section 1.1313 of its rules that an environmental objection be filed as a Petition to Deny applies to ASR applications.[72] Section 1.1313 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."[73] Section 309(b) applies to applications covered by Section 308 which, in turn, covers applications for "station licenses."[74] The term "station license" means an instrument of authorization "for the use or operation of apparatus for transmission of energy, or communications, or signals by radio."[75] While the Commission has previously treated Section 1.1313's Petition to Deny provisions as applying to objections filed against a Form 854 ASR application,[76] this practice should be codified in Section 1.1313 to avoid confusion.

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[72] *See* Attachment A, 47 C.F.R. § 1.1313(a) (proposed).

[73] 47 C.F.R. § 1.1313(a).

[74] *See* 47 U.S.C. §§ 308, 309(b).

[75] 47 U.S.C. § 153(42).

[76] *See Application of American Tower Corporation for Tower Registration with Environmental Assessment, Memorandum Opinion and Order*, 21 FCC Rcd 1680, 1680 ¶ 1 & n.2, 1682-83 ¶ 7 (WTB/SCPD 2006) ("*American Tower Corporation*"); *State of Ohio Department of Administrative Services, Application for Antenna Structure Registration - Deersville, OH; Petition to Deny - Forest Conservation Council and the American Bird Conservancy, Memorandum Opinion and Order,* 19 FCC Rcd 18149, 18153 ¶ 16 (WTB/SCPD 2004); *Tower Registration of SCANA Communications, Inc., Order,* 13 FCC Rcd 23693, 23693 ¶¶ 1-2 (WTB/ECID 1998).

The Commission should reaffirm and make clear in its rules that a Petition to Deny any application on environmental grounds must be filed in accordance with Section 309(d) of the Communications Act and comply with the procedural requirements in Section 1.939 of the Commission's rules.[77] Section 1.41 states that informal pleadings may be filed "[e]xcept where formal procedures are required under provisions of this chapter."[78] Thus, informal objections need not be entertained if Section 1.1313 is revised to require that any environmental objection must be filed as a Petition to Deny.

Under both the statute and Section 1.939, a petitioner must set forth specific allegations of fact sufficient to make a *prima facie* case that grant of the application would not be in the public interest.[79] Such allegations must be supported by affidavit of a person with personal knowledge of the facts alleged.[80] The Commission has previously applied the evidentiary standards in Section 1.939(d) to objections filed against ASR applications,[81] and has made clear that the Petition to Deny reference in Section 1.1313 incorporates the mirrored Section 309(d) standard.[82] Thus, the requested rule changes simply codify in the Commission's rules the established practice of the agency. Application of these basic and longstanding requirements to objections filed against ASR applications is a critical component of any notice and comment

[77] *See* Attachment A, 47 C.F.R. §§ 1.1307(c) (proposed), 1.1313(a) (proposed); *see also* § 17.4(c)(3) (proposed).

[78] 47 C.F.R. § 1.41.

[79] 47 U.S.C. § 309(d); 47 C.F.R. § 1.939(d).

[80] 47 U.S.C. § 309(d); 47 C.F.R. § 1.939(d).

[81] *See American Tower Corporation*, 21 FCC Rcd at 1680 ¶ 1 & n.2, 1682-83 ¶¶ 7-8, 1685 ¶ 15 (stating, in the context of a challenge against an ASR application, that "[p]etitions to deny an application must comply with the procedural requirements in Section 1.939 of the Commission's rules").

[82] *See Missouri RSA No. 7 Limited Partnership dba Mid-Missouri Cellular*, 13 FCC Rcd 15390, 15396-97 ¶ 12 (WTB/CWD 1998) ("Section 1.1313 of the Commission's NEPA rules states that 'objections based on environmental considerations shall be filed as petitions to deny.' Under section 309(d) of the Communications Act . . . , a party filing a petition to deny an application must make specific allegations of fact sufficient to show that the petitioner is a party in interest and that a grant of the application would be prima facie inconsistent with the public interest, convenience, and necessity.").