

New FCC Rules Regarding Broadcast and Communications Towers; Further Steps Taken to Protect Migratory Birds

January 29, 2012 by [Brendan Holland](#)

With the recent publication in the Federal Register, several new Commission rules and policies regarding communications towers and migratory birds are now on the books, however, they are not yet effective as the collection of information still requires OMB approval. The Commission's new rules are an outgrowth of a decision from the Court of Appeals in 2008 in which the court found the FCC's tower registration procedures to be inadequate. In its [Order on Remand](#) released December 9, 2011, the Commission revised its rules governing the review and registration of proposed broadcast and communications towers to provide greater opportunity for comment by the public and interested parties. In addition, while this Order does not resolve the ongoing FCC rule making regarding the impact of towers on migratory birds it does adopt interim policies regarding certain tower proposals. The Commission's new rules require the following:

- Prior to the filing of an antenna structure registration for a new tower or antenna structure, members of the public must be given an opportunity to comment on the potential environmental effects of a proposal. Thus, an applicant for a new tower that requires antenna structure registration, or a modification of a registered tower that would have a significant environmental impact, must initially submit a partially completed tower registration form (Form 854) and give local notice of the proposed tower through a local newspaper or local zoning public notice process. After local notice has been provided, the FCC will post the partially completed registration form on its tower website for 30 days notice. Members of the public may then file comments or to request further environmental review of the proposed tower. The FCC staff will consider any comments received from the public to determine whether an Environmental Assessment is required for the tower. Notably, this additional period for public review and comment will be required for all towers requiring registration in the FCC's ASR database, even if the applicant has determined that the proposed tower will not have a significant environmental impact and that a complete Environmental Assessment is not required.
- Environmental notice will also be required if an applicant seeking to register an antenna structure changes the lighting of an existing tower to a less preferred lighting style.
- Proposed towers that require an Environmental Assessment must file such assessments with the antenna structure registration application and the Environmental Assessment will be considered in the context of the tower registration, rather than considered with a service-specific license or permit application. Previously, some environmental assessments were filed with the license application and considered by the FCC Bureau issuing the service license or permit (for example, by the Media Bureau as it issued a radio or television station construction permit.)
- Institute an interim procedural requirement that an Environmental Assessment must be filed for all proposed registered towers over 450 feet in height. FCC staff will review the Assessment 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 FCC's antenna structure registration program to determine what changes, if any, are necessary to consider the impact of towers and tower lighting on migratory birds.

Once OMB approval is received for the collection of information required by these new rules, the FCC's Wireless Telecommunications Bureau will issue a further Public Notice establishing the date on which these new environmental notification requirements will become effective. According to the Order, antenna structure registration applications that are pending on the effective date ordinarily will not be required to complete the new environmental notification process. Given the new requirements for public notice and the ability for interested parties to file comments electronically through the FCC's tower registration database, these additional procedures will add more time to the process of proposing and building a new broadcast or communications tower. Stations or parties interested in building new towers are advised to review the Commission's new procedures carefully and plan on additional lead time when considering new construction.

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