

## MEMORANDUM

**FROM:** Liz Sachs and Katherine Patsas Nevitt

**RE:** Refresher on Antenna Structure Registration Procedures

**DATE:** May 31, 2017

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Like many government regulations, the FCC rules regarding towers, including the requirements for obtaining an Antenna Structure Registration (“ASR”), have become more, not less, complicated. A brief refresher on the changes they adopted several years ago follows:

### NEW AND SUBSTANTIALLY MODIFIED ANTENNA STRUCTURES:

EVERY NEW AND SUBSTANTIALLY MODIFIED ANTENNA STRUCTURE, WHETHER OR NOT IT NEEDS AN ASR, MUST COMPLY WITH NATIONAL ENVIRONMENTAL POLICY ACT (“NEPA”) REQUIREMENTS. NEPA is an evaluation of various environmental considerations and must be completed regardless of your tower height, proximity to an airport, or other factors. Contrary to popular belief, applicants filing for a license that will allow them to operate on your tower cannot properly answer “NO” to Item 26 on Schedule D of the FCC 601 Form advising the FCC that there are no environmental issues unless a qualified person has determined that no Environmental Assessment (“EA”) is required.

The NEPA review, which also includes compliance with the National Historic Preservation Act (“NHPA”), considers the following 10 factors:

1. Located in officially designated wilderness areas;
2. Located in officially designated wildlife preserves;
3. Effect on listed endangered species or critical habitats;
4. Jeopardize continued existence or endangered species and critical habitats;
5. Effect on historic properties (NHPA review);
6. Effect on Indian tribes and Indian religious sites;
7. Located in flood plain;
8. Change to surface features such as wetlands, deforestation, water diversion, etc.;
9. Use of high intensity white lights in residential areas; and
10. Exposure of general public to excess radiation.

If a proposed antenna structure falls within one of these categories, an EA must be performed and submitted to the Commission for review. If none of these categories is triggered and tower registration is necessary or elected, the Commission will require a certification in the ASR application that no EA is required. This certification assumes the proper analysis has been completed.

ALTHOUGH EVERY NEW OR SUBSTANTIALLY MODIFIED TOWER MUST COMPLETE A NEPA EVALUATION, NOT EVERY TOWER NEEDS TO BE REGISTERED. Towers that meet certain height and location criteria (generally towers of more than 200 feet, or lower heights if located near an airport/heliport) require notice to the FAA and registration with the FCC. Even if registration is not required, there are instances in which it is desirable for business purposes, since it makes it easier for prospective tenants to find your facility. **IF YOU MUST OR ELECT TO REGISTER YOUR TOWER,** the following regulatory procedures must be followed:

1. Compliance with NEPA;
2. Notification to the Federal Aviation Administration (“FAA”); and
3. ASR registration with the FCC.

The NEPA process is described above. The second step in the process is notification to the FAA, which is required for construction of any antenna structure that is intended to be registered with the FCC, whether on a mandatory or voluntary basis. The FAA notification process identifies potential aeronautical hazards and the corresponding marking and/or lighting requirements. Prior to completing registration with the FCC, the proposed tower owner must have notified the FAA and received an “FAA No Hazard Determination.”

The final step is obtaining the ASR from the FCC following these procedures:

1. Complete pre-application on FCC Form 854. The Form lists all the basic tower information, as well as the additional information now required on the type of tower structure and anticipated lighting specifications. This pre-application can be submitted before or after receiving an FAA No Hazard Determination. If you know an EA is required based on the NEPA evaluation, you must complete the EA prior to submitting the ASR application, as you are required to certify whether or not there is an environmental impact in the application. Moreover, a later filing of an EA is a substantive amendment that would restart the national notice clock described below.

2. Publish proposal locally. An applicant must provide local notice of the tower proposal through publication in a local newspaper of general circulation. In addition to the FCC Form 854 information, the local notice must provide information about the procedure for interested persons to file a request for further environmental review.

3. Specify date for FCC national notice. In the Form 854, the applicant must specify the date on which the FCC should provide national notice of the proposal. The national notice must be on or after the date of local notice.

4. Public comment period. The Commission will provide national notice on its ASR website on the date specified by the applicant. The public will have a 30-day period from the posting of the FCC's national notice to file requests for further environmental review.

5. Notification requirement. Approximately 40 days after the date of national notice and after reviewing any pleadings filed in response, the FCC will either notify the applicant that additional environmental review is required, or determine that no further review is necessary. If no EA was included in the application and no further environmental review is necessary, the ASR application will simply be available in the ASR Online System in the Ready for Certification portal. When an EA is submitted with the application, the tower owner must wait for the Commission to issue a Finding of No Significant Impact ("FONSI"), essentially agreeing that there are no known environmental or historic preservation implications.

6. Complete ASR application. If no further environmental review is required, the applicant may complete its FCC Form 854 certifying that the tower will have no significant environmental impact. If a FONSI was issued, it must be included in the certification application. The application will then be processed.

7. Further review. If the Commission determines that additional environmental review is needed, it will require that the application be amended to include this information. A new 30-day public notice period will be triggered after the amendment is submitted and the steps above repeated. The Commission may also determine an Environmental Impact Statement ("EIS") is necessary, which will likely result in the rejection of the ASR application.

#### YOU'RE NOT DONE YET.

8. Notification of completion. The applicant must file notifications of completion of construction with both the FAA and the FCC. The deadline for construction is governed by the FAA No Hazard Determination and is usually 18 months, unless an extension is granted. The FAA may require notification 10 days prior to commencement of work and/or five days after the tower reaches its greatest height. The FCC requires notification within 5 days of completion of construction. If you are registering a tower for the first time even though the tower was previously constructed, you must file a construction notification within 5 days of obtaining the tower registration and specify the date the tower was constructed, not the date the tower was registered.

#### **GRANDFATHERED TOWERS:**

Towers constructed on or before March 16, 2001 did not require NEPA review, and new antennas may be mounted on them without going through that process, unless:

1. There is a substantial increase in the size of the tower;
2. The tower has been determined to have an unresolved adverse impact on historic properties;
3. The tower is currently undergoing NPHA review; or
4. The FCC has received a written complaint about a potential adverse impact.

Towers constructed on or after March 17, 2001 should have previously completed the NEPA review in order to be registered, and no additional NEPA review is needed, unless:

1. There is a substantial increase in the size of the tower;
2. The tower has been determined to have an unresolved adverse impact on historic properties;
3. The tower is currently undergoing NPHA review; or
4. The FCC has received a written complaint about a potential adverse impact.

If a post-March 17, 2001 tower was improperly registered because it mistakenly certified that there were no environmental issues even though no NEPA evaluation was completed, that error can be corrected by completing the review and notifying the FCC. (This discovery and disclosure sometimes is triggered by a diligent prospective tenant.) While the FCC will accept a late-filed EA certification, such matters typically are referred to the Enforcement Bureau and a forfeiture should be anticipated.

The FAA has no provision to exempt existing towers from its notification process, and the national notice process must be completed even if a tower has never been registered before.

The definition of a “substantial increase in the size of the tower” is complex, but broadly stated involves:

1. A 10% or more increase in the existing tower height;
2. Installation of additional equipment shelters or cabinets to accommodate a proposed antenna;
3. Adding an appurtenance that would protrude horizontally more than 20 feet, or more than the width of the tower at the level of appurtenance; or
4. Excavation outside the current tower site.

Should you have any additional questions about the ASR registration process, or require further elaboration on any of the specific steps, feel free to contact us.