

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Amendment of Part 1 of the Commission’s)	WT Docket No. 08–61
Rules Regarding Environmental Compliance)	WT Docket No. 03–187
Procedures for Processing Antenna Structure)	
Registration Applications)	
)	
Wireless Telecommunications Bureau Invites)	DA 11–558
Comment on Draft Environmental Notice)	
Requirements and Interim Procedures)	
Affecting the Antenna Structure Registration)	
Program)	

To: Chief, Wireless Telecommunications Bureau

JOINT OPPOSITION TO
PETITION FOR RECONSIDERATION

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”) and the American Bird Conservancy, Inc., Defenders of Wildlife, and the National Audubon Society (collectively, the “Conservation Groups”) hereby oppose the Petition for Reconsideration filed in the name of the Blooston law firm¹ with respect to a footnote in the Wireless Telecommunications Bureau’s *Public Notice* seeking comment on proposed interim rules for the Antenna Structure Registration process.²

Section 1.106(a)(1) of the Commission’s Rules requires dismissal of the Petition without consideration. That rule permits petitions for reconsideration of “final actions” by the Commission or delegated authority, and only allows petitions for reconsideration of a *single* type

¹ Blooston, Mordkofsky, Dickens, Duffy & Prendergast, LLP, Petition for Reconsideration, WT Docket Nos. 08–61 & 03–187 (filed April 25, 2011) (“Petition”).

² *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*, DA 11–558 (WTB Mar. 25, 2011), summarized, 76 Fed. Reg. 18679 (Apr. 5, 2011) (“*Public Notice*”).

of interlocutory action that is in no way relevant here.³ The rule unequivocally states: “[p]etitions for reconsideration of other interlocutory actions will not be entertained.” The Commission has strictly applied this rule.⁴

It is beyond peradventure that the Petition seeks reconsideration of a footnote in a Public Notice that merely sought comment on proposed rules, rather than a final action by the FCC. The footnote at issue stated that notice and comment were not required because the proposed rules were procedural.⁵ The proper vehicle for raising issues concerning a Public Notice seeking comment is a comment, not a petition for reconsideration. The Commission has expressly held that there is no “final action” taken in a Public Notice merely seeking comment, and a petition for reconsideration of such a Public Notice must be dismissed.⁶

Because the rules declare that petitions for reconsideration of interlocutory actions such as the *Public Notice* “will not be entertained,” the Bureau should promptly dismiss the Petition.⁷

³ This exception applies only to a hearing designation order that rules against a request by a party to participate in a hearing. *See* 47 C.F.R. § 1.106(a)(1).

⁴ *See, e.g., Eligibility Restrictions on C Block Licenses in the Broadband Personal Communication Services*, 19 FCC Rcd 20321, 20326 (2004); *Family Broadcasting, Inc.*, 16 FCC Rcd 12801, 12802-03 (2001).

⁵ *Public Notice* at 1 n.3.

⁶ *Eligibility Restrictions on C Block*, 19 FCC Rcd at 20326.

⁷ In addition, the Petition also fails to identify the basis for Blooston’s standing to file the Petition. Section 1.106(b) requires that: “If the petition is filed by a person who is not a party to the proceeding, it shall state with particularity the manner in which the person’s interests are adversely affected by the action taken.” The Petition was filed in the name of the law firm, not any of its clients. There is no attempt to state with particularity how Blooston’s own interests are adversely affected as an organization by the issuance of the *Public Notice*, and thus it lacks organizational standing. *See, e.g., NAACP v. City of Kyle*, 626 F.3d 233, 238-39 (5th Cir. 2010). The Petition, in fact, suggests that the affected parties are firm clients who are “small businesses that provide telecommunications service and/or are in the tower construction and rental business,” but no such client or clients are identified. In any event, a law firm is not ordinarily a membership organization that has associational standing to represent its members. *See APCC v. Sprint Communications Co.*, 418 F.3d 1238, (D.C. Cir. 2005) (“[Payphone] aggregators are in no sense membership organizations[,] . . . and their clients are no more their ‘members’ than a law firm’s clients are the firm’s ‘members.’”), *vacated on other grounds*, 550 U.S. 901 (2007). And

(continued)

Respectfully submitted,

THE INFRASTRUCTURE COALITION

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May 5, 2011

(footnote continued)

even a public interest law firm that was a membership organization was found to lack organizational standing to represent its members in *McKinney v. Dept. of Treasury*, 799 F.2d 1544, 1553 (Fed. Cir. 1986).

CERTIFICATE OF SERVICE

I, Vernell Garey, do hereby certify that a copy of the foregoing “Joint Opposition to Petition for Reconsideration” was served this 5th day of May 2011, via first class U.S. Mail, on the following:

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Your submission has been accepted

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Proceedings

Name	Subject
08-61	Opening of docket in response to American Bird Conservancy V. FCC, 516 F.3d 1027 (2008).
03-187	Effects of Communications Towers on Migratory Birds.

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