

July 23, 2012



Radio TechCheck



The Weekly NAB Newsletter for Radio Broadcast Engineers

FCC Issues First Ruling on a Complaint Involving Migratory Birds



On July 16 the Federal Communication Commission (FCC) issued a Letter Ruling on an informal complaint that raised migratory bird issues. This is the first time that the FCC has addressed a potential migratory bird matter since the Interim Antenna Structure Registration (ASR) Rules went into effect on June 18, 2012. This letter is interesting because it provides some insight into how the Commission may deal with matters surrounding towers and migratory birds.

In December, 2011, the FCC adopted an interim Environmental Assessment (EA) requirement to protect migratory birds, which become effective on June 18, 2012, following its approval by the Office of Management and Budget. Under this interim procedure, an EA will be required for any proposed new tower over 450 feet AGL, for replacement or modification of an existing tower over 450 feet in height that involves a substantial increase in size, or for certain delineated changes in lighting to a tower over 450 feet in height.

On March 13, 2012, the (FCC) released a Final Programmatic Environmental Assessment (PEA) which assessed a number of alternative courses of action the FCC could take in modifying its ASR Program to evaluate the impact of communications towers on migratory birds. The final PEA found that the environmental impact of the ASR program on migratory birds would not be significant at the national level under any of the alternatives considered. However, the FCC did note the potential for significant impacts to populations of certain types migratory birds on the local level. (see TechCheck 3/26/2012) The PEA is [here](#).



In May of 2012 the Federal Aviation Administration (FAA) released a Technical Note entitled, *Evaluation of New Obstruction Lighting Techniques to Reduce Avian Fatalities*, DOT/FAA/TC-TN12-9 which announced the results of a study it conducted to evaluate whether the lighting on a communications tower could be altered to help mitigate migratory bird strikes without compromising air safety. The study found that there was no decrease in visibility of towers when the solid red lighting was eliminated, provided that there are flashing lights at two or more vertical levels, and also provided that the flashing rate is very close to 30 flashes per minute. FAA circular is available [here](#).

The July 16 Letter Ruling regards an “Emergency petition to compel compliance” (Petition) filed on April 12, 2012 raising several issues concerning an application to construct a 314-foot tower registered to American Towers in Marshall, Arkansas. Among other things, the petition alleges that this tower would have significant environmental effects on migratory birds and endangered species because the new antenna structure is a very short distance (4000 feet) from a Wildlife Management Area and the connecting National Park land making it abundant with birds and other wildlife including many endangered species.

In the letter the FCC staff found that the petitioner “did not identify any endangered species that may be affected by the tower” and further stated that the petition did not show why migratory birds “may be significantly affected by this particular tower.” Moreover the letter states that the mere “proximity” of the tower to a wildlife management area and a national river park did not “establish that the tower may have a significant effect on the environment.” Additionally, the staff found that the applicant was not required to identify the wildlife management area, approximately 4000 feet away, or the park, about 3 miles away, in its environmental analysis.

The letter is available on the [FCC's web page](#).

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