Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FCC 95-473

In the Matter of Streamlining the Commission's Antenna Structure Clearance Procedure and Revision of Part 17 of the Commission's Rules Concerning Construction, Marking, and Lighting of Antenna Structures	)	WT Docket No. 95-5

REPORT AND ORDER

Adopted: November 28, 1995; Released: November 30, 1995

By the Commission:

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I. INTRODUCTION

1. This Report and Order adopts rules to streamline the Commission's antenna structure clearance process. We are replacing the current clearance procedures, which apply to Commission licensees and permittees using antenna structures requiring Federal Aviation Administration notification (FAA), with a registration process that applies to the owners of such structures. Additionally, we are updating Part 17 of the Rules, "Construction, Marking, and Lighting of Antenna Structures," (Part 17) to be consistent with FAA air safety recommendations. Further, we are revising the rules to make antenna structure owners primarily responsible for structures that require painting and/or lighting. These actions will decrease burdens on the public and the government by requiring fewer filings with the Commission. Additionally, these actions will expedite the processing of applications requiring FAA notification.

II. EXECUTIVE SUMMARY

2. This proceeding was initiated to explore ways to streamline the Commission's antenna clearance process, to reduce administrative burdens on the public and the Commission, and to ensure safety in air navigation. Currently, the antenna clearance process requires each tenant licensee on a structure to be responsible for painting and lighting requirements, and to notify the Commission of minor changes in site data. The final rules replace the current process with a uniform registration process that applies to antenna structure owners, not tenant licensees. Thus, the registration process will decrease administrative burdens on the public and the Commission by reducing the number of filings. Further, this Report and Order updates Part 17 to be consistent with the latest FAA air safety recommendations. In addition, we will now hold owners, not licensees, primarily responsible for compliance with antenna structure painting and lighting requirements. These changes unify federal guidelines for painting and lighting antenna structures and designate a single point of contact for resolving lighting outages. A summary of the specific benefits is listed

below.

- Registration will reduce the number of entities responsible for antenna structure painting and lighting from 900,000 licensees to 75,000 owners.

- Registration will reduce the number of filings concerning minor changes to site data by a factor of twelve.

- Registration will reduce the time it takes to process antenna structure-related applications and notifications requiring consideration of painting and lighting specifications. There were approximately 17,000 such applications and notifications in 1993.

- Electronic filing procedures will decrease the possibility of processing backlogs by permitting owners to register immediately upon receipt of an FAA "no hazard" determination for the antenna structure.

- Updating Part 17 to be consistent with the latest FAA air safety recommendations will unify federal guidelines concerning the painting and lighting of antenna structures.

III. BACKGROUND

3. The Commission and the FAA each have the statutory responsibility of ensuring that antenna structures do not present a hazard to air safety. Section 303(q) of the Communications Act of 1934, as amended (Communications Act), requires the Commission to "require the painting and/or illumination of radio towers" in cases where there is a "reasonable possibility" that an antenna structure may cause a hazard to air navigation.[1] Similarly, Section 1501 of the Federal Aviation Act authorizes the FAA to require that persons proposing to erect a structure provide notice to the FAA, when such notice will promote air safety. In its efforts to promote safe air commerce, the FAA periodically publishes Advisory Circulars, two of which set forth its recommendations for painting and lighting of structures.[2] In 1992, Congress amended Sections 303(q) and 503(b)(5) of the Communications Act: 1) to make antenna structure owners, as well as Commission "licensees and permittees," (licensees)[3] responsible for the painting and lighting of antenna structures,

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[1] 47 U.S.C. §303(q).

[2] See, e.g., Obstruction Marking and Lighting (AC 70/7460-1H) released in August of 1991, as amended by Change 2, July 15, 1992, and Specification for Obstruction Lighting Equipment (AC 150/5345-43D) released in July of 1988.

[3] Although there is a functional distinction between licensees and permittees, both entities assume the same responsibilities regarding painting and lighting antenna structures. Thus, from this point on, the word "licensees" shall confer the same meaning as the phrase

and 2) to provide that non-licensee antenna structure owners may be subject to forfeiture for violations of painting or lighting requirements as specified by the Commission.[4]

4. Since the late 1950's, the Commission has worked in concert with the FAA to promote air safety through the antenna structure clearance process. Currently, each applicant proposing to construct or alter an antenna structure that is more than 60.96 meters (200 feet) in height, or that may interfere with the approach or departure space of a nearby airport runway must notify the FAA of proposed construction.[5] The FAA determines whether the antenna structure constitutes a potential hazard, and may recommend appropriate painting and lighting for the structure.[6] The Commission then uses the FAA's recommendation to impose specific painting and/or lighting requirements on subject licensees.[7]

5. Approximately 75,000 of the 500,000 antenna structures in the United States require notification to the FAA. On average, there are 12 tenant licensees on each of these 75,000 antenna structures. Currently, each licensee on a structure must notify the Commission of changes in painting and lighting, overall structure height, or corrections to site coordinates. In 1993 alone, licensees filed over 17,000 such notifications. The Notice of Proposed Rule Making (Notice)[8] in this proceeding sought to reduce antenna clearance processing delays by decreasing the number of redundant filings. Thus, in the Notice we proposed to replace the current clearance process with a uniform registration procedure that applies to antenna structure owners. Requiring owners, rather than tenant licensees, to register and notify the Commission concerning changes to these antenna structures will (1)

"licensees and permittees," regarding secondary responsibilities for structure maintenance.

[4] See Pub. L. No. 102-538, 106 Stat. 3533, enacted October 27, 1992. In essence, Section 503(b)(5) authorizes the Commission to assess forfeitures for violations of Section 303(q) of the Communications Act if the owner has been previously notified regarding specific painting and/or lighting obligations. This authority is now reflected in 47 C.F.R. § 1.80(d).

[5] 14 C.F.R. § 77.13.

[6] For instance, the FAA may recommend that the proposed structure be equipped with red beacons and/or white strobe lights and be painted with white and aviation orange bands. In addition, Part 17 of the Commission's Rules sets forth the requirements for painting and lighting of antenna structures, specifying the number, type and location of such lights based upon the height of the structure as well as the colors and pattern to be used in painting the structure.

[7] In most cases, painting and/or lighting requirements are specifically listed on each subject licensee's station authorization.

[8] Notice of Proposed Rule Making, WT Docket No. 95-5, 10 FCC Rcd 2771 (1995).

reduce certain filings by a factor of 12 to 1, (2) eliminate thousands of duplicative notifications from licensees each year, and (3) reduce administrative burdens for 900,000 licensees nationwide. The preponderance of commenters, representing antenna structure owners as well as licensees, support the registration procedure substantially as proposed in the Notice. The commenters views on registering structures are discussed below.

6. In the Notice, we further proposed to revise Part 17 to reflect recent changes to the two FAA Advisory Circulars and implement statutory language holding antenna structure owners primarily responsible for compliance with the Commission's painting and lighting specifications. These actions would unify federal painting and lighting guidelines for antenna structures and increase safety of air navigation by providing a single point of contact by which the FAA and the Commission may quickly resolve emergency lighting outages. A majority of the commenters agree that these actions will help to ensure the safety of pilots and aircraft passengers nationwide.

IV. DISCUSSION

A. Antenna structure registration

(1) Who must register

7. Proposal. In the Notice, we proposed to require the owner of each antenna structure requiring FAA notification to file a registration application with the Commission for each applicable existing or proposed antenna structure. We proposed to register each structure meeting the registration criteria, including structures that make up AM arrays.[9] We asked whether this proposal should be extended to include all antenna structures, regardless of height above ground level or proximity to nearby airports. Further, we asked whether the Commission should register voluntarily painted or lighted structures.[10]

8. Comments. Forty-two commenters representing structure owners, Commission licensees, lighting manufacturers, publishers, consulting engineers, and governmental agencies generally support the Commission's initiative to speed application processing and maintain air safety by registering antenna structures. For example, AirTouch Communications, Inc.. and US WEST New Vector Group, Inc. (AirTouch/New Vector) agrees that registering structures

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[9] Many AM broadcast stations are authorized on the basis of a directional antenna. An AM directional array involves multiple antenna structures. The reference coordinates for such an AM station mark the center of the array, rather than the exact location of each antenna structure. Under our proposal, each structure in the array requiring notice to the FAA would be registered.

[10] Notice at ¶¶ 7, 12, and 16.

which hold several Commission licensees should expedite application processing.[11] Similarly, the Industrial Telecommunications Association, Inc. (ITA), notes that a uniform registration process will improve the Commission's antenna structure clearance process and reduce the public burden in filing certain applications.[12] Commenters also support the creation of an accurate database containing site information for all structures that are painted or lighted. Dutch Hill Tower Antenna Systems, Inc. (Dutch Hill) notes that such a database will be useful to telecommunications firms, pilots, and the federal government.[13] Micro TV, Inc. (Micro TV), the owner of three antenna structures, opposes registration by noting that all of the information to be collected is already on file with the FAA.[14]

9. Dean Brothers Publishing (Dean) recommends limiting registration to those structures requiring FAA notification and notes that registering additional structures would provide little net benefit to the public or the Commission.[15] Similarly, Bell Atlantic Mobile Systems, Inc. (Bell Atlantic) argues that registering additional structures would, "flood the database with information as to tens of thousands of sites which pose no aviation safety issue."[16] Further, Motorola asserts that the enhanced burdens on owners and the Commission in registering an additional 425,000 antenna structures is unwarranted and unjustified.[17] The FAA and the National Oceanic and Atmospheric Administration (NOAA), on the other hand, argue that extending the Commission's registration proposal to include all antenna structures could help identify obstructions to air navigation and simplify application procedures for licensees on all antenna structures, not just those with painting and lighting obligations.[18]

10. The commenters also generally agree that the Commission should only register structures that present a potential hazard to air navigation, not those that are voluntarily

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[11] AirTouch/New Vector comments at 2.

[12] ITA comments at 3.

[13] Dutch Hill comments at 1.

[14] Micro TV at 1 - 2.

[15] Dean comments at 6.

[16] Bell Atlantic comments at 3.

[17] Motorola comments at 8-9.

[18] Capital Cities/ABC, Inc. (Capital Cities/ABC) at 13, FAA comments at 3, and NOAA comments at 2.

painted and/or lighted.[19] The commenters point out that neither the Commission nor the FAA currently specifies painting or lighting requirements for voluntarily painted or lighted structures. Further, in an ex parte statement, the FAA stated that there is no relevant air safety concern regarding voluntarily lighted structures and thus, there is no compelling reason to register such structures.[20]

11. Several commenters oppose registering each antenna structure within AM arrays and point out that AM arrays are currently identified by a single reference point, designated as the "center" of the array. CBS, Inc. (CBS) argues that requiring each applicable structure within an AM array to be registered would actually increase the number of Commission filings and would be inconsistent with our stated goal of a "drastic reduction in the number of Commission filings."[21] Alternatively, CBS suggests requiring a single registration, containing painting and lighting information for all applicable structures within the array, in order to keep filings to a minimum. NOAA, however, supports the proposal and recommends registering each applicable antenna structure, even structures that make up directional arrays.[22]

12. Decision. Based on the overwhelming support exhibited by all sectors of the telecommunications industry, we will replace our current antenna structure clearance procedures with a uniform registration applicable only to the antenna structure owner. As stated in the Notice, we anticipate a 12 to 1 reduction in filings related to changes in structure height, painting, or lighting.[23] A single entity will be responsible for notifying the Commission of changes to the structure, rather than each tenant licensee on the structure.[24] Thus, registering antenna structures will reduce economic and administrative burdens on the public and the Commission. Further, the registration database will increase air safety by allowing the FAA and the Commission rapidly to identify a single responsible entity during

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[19] American Mobile Telecommunications Association, Inc. (AMTA) comments at 7, AFCCE comments at 4, Dutch Hill comments at 1, and Dean Brothers Publishing D/B/A Fryer's Site Guide (Fryer) comments at 9-10.

[20] Ex parte filing of the FAA on July 12, 1995. On June 13, 1995, members of the Commission's Tower Standardization Team met with representatives of the FAA's Office of Chief Council and Airspace Rules and Aeronautical Information Division to clarify the FAA's position on the issues addressed in the Notice.

[21] CBS comments at 3.

[22] NOAA comments at 2.

[23] Notice at ¶ 16.

[24] Licensees remain responsible for compliance with the administrative requirements of their radio services, including notification of changes in site data, if applicable.

lighting outages. This registration requirement does not duplicate information collection burdens already imposed by the FAA. In fact, the FAA does not retain or compile notifications for future reference. Therefore, we cannot fulfill our statutory responsibilities under the Communications Act or improve the antenna structure clearance process using data already provided to the FAA. We intend, however, to work in concert with the FAA to unify public burdens related to clearing potential hazards to air navigation. See paragraph 25 infra.

13. The final rules require the owner of each antenna structure requiring FAA notification to register the structure with the Commission. We see little benefit, however, in broadening our original proposal to include all antenna structures. The initial goal of this proceeding was to streamline the antenna clearance process that affects only 75,000 of the 500,000 antenna structures in the United States. Only those structures that meet FAA notification criteria have been identified as potential hazards to air navigation. The remaining structures are either less than twenty feet above existing terrain, shielded by nearby obstructions, or otherwise well below established flight paths of aircraft. In fact, the record does not show any significant benefits associated with the registration of antenna structures that do not meet the FAA notification criteria. Further, no safety concern has been brought before the Commission to warrant the registration of voluntarily lighted structures. We also note that in certain portions of the telecommunications industry, however, entities often notify the FAA regarding proposed structures, regardless of whether they meet notification criteria, in an effort to decrease perceived potential liabilities. This is evident in the number of unnecessary FAA determinations passed on to the Commission. While we agree that registering such structures would streamline the license modification process for certain licensees, the burden imposed on structure owners and the government would outweigh any benefits. Processing thousands of registrations that are not a potential concern to air safety would decrease speed of disposal for owners of structures that are required to be painted and lighted for air safety purposes. We feel that such filings, in the context of registration, would be contrary to our initial goals, and therefore, the Commission will not register structures that do not meet the FAA notification criteria.

14. The final rules require registration for each subject antenna structure, including structures that make up AM directional arrays. In order to streamline the antenna clearance process, we must individually register each structure. By using a "group" registration, as suggested by CBS, we would merely create a new set of administrative burdens which would slow down the processing of structure modifications. For example, structures in an AM array may routinely be located hundreds of meters apart, vary in height, and have different painting and lighting requirements. By registering each applicable structure within AM arrays, we can easily identify the painting and lighting requirements for each structure. Registering a "group" of structures, however, would require a detailed filing, describing the layout of the array and the FAA recommendations for each applicable structure. The "group" would not benefit from the expedited processing of future modifications to the registration because there would be no automated means to discern exactly which structure within the array requires modification. Further, registering "groups" of structures would lengthen and complicate the registration form and effectively prevent electronic registration for these structures. In

making this decision, we are aware that the owners of approximately 1,800 AM arrays will be required to file multiple registration forms. We do not believe, however, that this is an unreasonable burden when balanced against the public interest benefits of ensuring safety in air navigation, streamlining our clearance process, speeding the disposal of simple modifications, and obtaining an accurate database for air safety purposes. We also note that completing the one-page Form 854 by the structure owner and processing by the staff requires a modest amount of time, and does not require an accompanying fee.[25]

15. Consistent with our stated policy, however, we will only require registration of antenna structures that require FAA notification. Thus, not every structure within an AM array would necessarily be registered. Further, the registration number issued to structures within a given array would not be related numerically or otherwise. There is no compelling air safety concern to offset the significant administrative burdens associated with providing special registration numbers for antenna structure arrays. Notwithstanding our registration requirements, we will continue to solicit the coordinates for the center of the array when a licensee files for a construction permit using FCC Form 301, inasmuch as we use the center coordinates for calculating signal coverage.

(2) When to register

16. Proposal. In the Notice, we proposed to require all new structures, after January 1, 1996, meeting FAA notification criteria to be registered prior to construction. For example, a prospective owner would notify the FAA of proposed construction, receive a determination from the FAA, and then register the structure with the Commission prior to construction. Additionally, we asked whether the registration process for existing structures should be implemented initially by geographic region, by antenna structure height, upon license renewal, or any other logical grouping that would expedite implementation.[26]

17. Comments. The commenters generally favor implementation by filing windows for geographic regions or by filing windows defined by the number of commonly owned antenna structures.[27] Specifically, GTE Service Corporation (GTE) and Southwestern Bell Mobile Systems, Inc. (SW Bell) suggest that the Commission register structures by FAA

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[25] Similarly, the effort required to complete and process Form 854 to reflect a change in structure height, change in painting and/or lighting requirements, or dismantlement of the structure is minimal. See paragraph 27 infra.

[26] Notice at ¶¶ 8 and 11.

[27] Seven commenters favor geographic implementation while five propose filing based on the number of commonly owned structures.

Region.[28] A majority of commenters agree that implementation by license renewal would be too slow, while a scheme involving antenna height would be unnecessarily cumbersome and confusing for both the Commission and owners.[29]

18. Further, several commenters argue that owners should be permitted to begin construction upon receipt of the FAA determination, and should not be delayed by the registration process. For example, Motorola urges the Commission to speed the deployment of the upcoming personal communications service infrastructure, without sacrificing air safety, by permitting owners to construct prior to completing the Commission's registration process.[30]

19. Decision. After July 1, 1996, all new antenna structures meeting the notification criteria must be registered with the Commission. However, for existing antenna structures, we agree with a majority of the commenters that prescribing filing windows by region is the simplest method to register these structures. Therefore, we are requiring owners to register existing structures by state, in accordance with the filing windows set forth in Appendix B. In this manner, existing structures will be registered over the two year period between July 1, 1996, and June 30, 1998. Notwithstanding the filing windows, owners registering existing antenna structures that require re-notification to the FAA (e.g., owners correcting an error in site data) must register immediately upon receipt of the new FAA determination. In cases where an entity owns multiple structures in various states, it may be economically or otherwise beneficial for the owner to register all structures at once, rather than on a state by state basis. Such owners may apply for waiver of the filing window requirement in accordance with 47 C.F.R. § 1.931.

20. Further, we will require that each applicable antenna structure be registered prior to construction, as proposed in the Notice. Proposed antenna structures that are determined by the FAA to present a potential hazard to air navigation must be lighted during construction. The Commission's registration process will be the federal government's only method of requiring such safety lighting, as the FAA does not have statutory authority to mandate the painting or lighting of antenna structures. Further, the timely registration of all applicalbe antenna structures is essential to the integrity of the new registration database. We intend to eliminate the possible processing delay mentioned by the commenters by permitting owners to register electronically. In cases where a structure owner wishes to begin construction immediately upon receipt of the FAA determination for the structure, the electronic filing capability will enable the owner to register the structure with the Commission

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[28] GTE comments at 16. SW Bell reply comments at 2. The FAA has nine regional offices that process aeronautical studies. Each region, excluding the Alaskan Region, is made up of at least four neighboring states.

[29] For example, see GTE comments at 16 and SW Bell reply comments at 2.

[30] Motorola comments at 14-17.

and receive a registration number within minutes.[31] By providing an electronic filing option, we can satisfy the concerns of the personal communications service industry regarding speed of service, while registering antenna structures in a timely manner.[32]

(3) How to register

21. Proposal. In the Notice, we attached a draft copy of revised FCC Form 854 "Application for Antenna Structure Registration" and sought comment on ways to streamline the form and expedite processing, such as permitting electronic filing. We also asked whether a registration fee should be imposed in order to recover the administrative costs associated with processing applications, administering the new registration database, and providing database access to the public and other government agencies. And finally, we asked whether a registration renewal process would be necessary in order to maintain the integrity of the data.

22. Comments. The FAA and NOAA suggest specific changes to the revised Form 854 in order to clarify the requested information and lessen the filing burden on structure owners.[33] Additionally, a majority of the commenters urge the Commission to permit FCC Form 854 to be filed electronically.[34] Further, Motorola, NOAA, NYNEX Mobile Communications Company (NMCC), and the Personal Communications Industry Association (PCIA) suggest that the Commission work with the FAA to combine FCC Form 854 and FAA Form 7460-1 "Notice of Proposed Construction or Alteration," the form used to notify the FAA prior to construction.[35] These commenters point out that much of the information requested on the two forms is duplicative and governmental coordination would be simplified if a single form is required for both agencies.

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[31] See paragraph 26 infra.

[32] In a related matter, the Cellular Telecommunications Industry Association (CTIA) asks the Commission to preempt state and local laws governing antenna structure clearance in cases where, "such laws arbitrarily prohibit or substantially delay the entry or provision of wireless communications services to consumers." CTIA comments at 7. See also Signal One, Inc., reply comments at 1 - 2, and AMTA comments at 6. This is the subject of a separate rule making and thus is beyond the scope of this proceeding. Amendment of the Commission's Rules to Preempt State and Local Regulation of Tower Siting for Commercial Mobile Service Providers, RM-8577, Petition for Rule Making filed December 22, 1994.

[33] FAA comments at 6-7 and NOAA comments at 2-3.

[34] For example, AT&T comments at 8, ITA comments at 4, and PageNet comments at 15.

[35] GTE comments at 18, NOAA comments at 3, NMCC reply comments at 4, and PCIA comments at 3.

23. Some commenters, such as the American Mobile Telecommunications Association, Inc. (AMTA), support a nominal registration fee solely to recover administrative costs.[36] Other commenters, such as the National Association of Broadcasters (NAB), oppose even a nominal registration fee and argue that the Commission should fund the registration initiative through the projected savings incurred by streamlining the antenna clearance process.[37] Similarly, NOAA argues that a registration fee will deter some owners, especially those with hundreds of structures, from coming forward to register in a timely manner.[38]

24. Many commenters, such as AMTA, support a ten year renewal process whereby owners would renew the registration for each applicable antenna structure at least once every ten years.[39] AT&T Corp. (AT&T) disagrees, pointing out that the Commission intends to collect accurate data initially, and will require owners to amend their registrations upon a change in overall height of the structure, correction of site coordinates, or dismantlement of the structure.[40] The FAA acknowledges that there is little to gain in burdening owners with a five or ten year renewal process when the Commission already has a mechanism to amend registrations and will require owners to keep the registration information up to date.[41]

25. Decision. Although some of the same site information is required on FAA Form 7460-1 (FAA form) and the revised FCC Form 854, the forms are incompatible to the extent that neither agency can adopt the other's form in its current format. In our case, using the FAA Form would significantly delay or possibly prevent the processing of registration requests. For example, we seek to obtain information concerning the owners of antenna structures. The FAA form, however, does not specifically request information about the structure owner. Additionally, the questions on the FAA form are, for the most part, not compatible with electronic filing, which will be a major component of our new registration process. Notwithstanding the difficulties involved in developing a dual-use form to satisfy the information gathering needs of both agencies, the Commission will continue to work closely with the FAA, site owners organizations, and other interested parties to seek ways to decrease the public burden related to antenna structure registration. One possible solution might be to combine the forms to fulfill the needs of both agencies. At present, however, the

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[36] AMTA comments at 7.

[37] NAB comments at 3.

[38] NOAA comments at 2.

[39] AMTA comments at 7.

[40] AT&T comments at 12.

[41] Ex parte filing of the FAA on July 12, 1995.

Commission will use revised FCC Form 854 as the sole means to register antenna structures.[42]

26. Based on the overwhelming support of the commenters, the Commission will permit owners, at their option, to register electronically. As stated in paragraph 20, permitting owners to file electronically will eliminate processing delays by registering antenna structures within minutes of filing an application. Not all owners will have similar needs when filing FCC Form 854, thus the Commission intends to permit owners to file electronically or in the traditional manner via mail. Using either filing method, the owner of a proposed structure could begin construction as soon as a registration number is obtained. Detailed instructions on how to register electronically will be described in a future Public Notice and published in the Federal Register.

27. We will not require owners to pay a registration fee. Although there may be significant start-up costs involved in implementing the registration process, we agree that a nominal registration fee could deter some owners from registering structures, would reduce the speed of service in processing registrations, and would complicate electronic filing procedures. Instead, we will seek to recover administrative costs through the economic benefits of the streamlined system and by charging a nominal fee to those who wish to access the antenna registration database. The site information contained in the new database will be of considerable interest to law firms and communications engineers. Therefore, after a majority of the existing structures are registered, we may consider permitting on-line queries of the antenna registration database through a "900" telephone number on a fee-per-minute basis. Prior to providing a "900" telephone number service, the Commission will initiate a notice and comment proceeding concerning applicable fees.[43] Such fee-per-minute charges would only apply to value-added access to the database, such as on-line status reports for registration applications. Database searches and copies of the entire database, however, would continue to be available through the Commission's copy contractor or free of charge through the Internet. Further, we will continue to investigate the creation of other tools, such as providing the registration database in CD ROM format. This means of recouping the administrative costs would allow the users of the registration information, rather than the suppliers of the information, to fund the initiative.

28. Finally, we are not requiring owners periodically to renew their registration. While it is important to maintain the validity of the site data contained in the registration database, there is little benefit in mandating a renewal process for tens of thousands of owners, when only a small percentage will need to update registration information in the next five or ten years. Therefore, we will not require owners to renew their antenna structure

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[42] Upon release of final rules in this proceeding, the revised FCC Form 854 will be submitted to the Office of Management and Budget for approval pursuant to the Paperwork Reduction Act. The Commission will issue a Public Notice upon approval of the form.

[43] See, for example, WT Docket No. 95-69, 10 FCC Rcd 7066 (1995).

registrations on a periodic basis. Instead, owners must notify the Commission, using FCC Form 854, of any change of structure height, ownership, owner's address, or upon dismantling the structure.

(4) Supplemental filing/posting requirements

29. Proposal. In registering over 75,000 antenna structures, many owners will likely initiate site surveys to ensure the validity of site information. With the proliferation of inexpensive, satellite-based, locating devices such as Global Positioning System (GPS) receivers, some structures that may have been previously located using an area map can now be easily located to a higher degree of accuracy. In the Notice, we asked whether we should require owners to specify site latitude and longitude to the nearest second and structure height to the nearest meter. Further, we proposed to require that the antenna structure registration number be displayed and be readily visible from the base of each registered structure.[44]

30. Comments. Commenters generally favor a standard format for location data and agree that the advent of satellite surveying technologies allows site locations to be plotted to the nearest second in an economical fashion. Specifically, the American Petroleum Institute (API) and AT&T urge the Commission to request location data in a single format, regardless of which radio service is involved.[45] The commenters support a single accuracy standard for structure heights, coordinates, and datum to be used when submitting applications to any licensing branch within the Commission.

31. The commenters also point out that owners might submit location data that differ slightly in longitude or latitude from the site data already in the Commission's records for the tenant licensees on a particular structure. Commenters question whether such a change in location could affect the licensing status of tenants and may require the owner to notify the FAA and obtain a new determination of "no hazard" to air navigation. In the interest of creating an accurate database, the commenters urge the Commission to establish an "amnesty period" during which owners could submit location data that supersedes coordinates previously submitted by tenant licensees without the possibility of administrative sanctions being imposed on the antenna structure owner or tenant licensees. For example, Nationwide urges the Commission to allow licensees to file a letter or other informal notification in order to correct minor errors in site data.[46] Further, PCIA points out that owners may be unwilling to submit accurate data if they fear sanctions.[47] Similarly, Motorola argues that owners may simply submit the same, yet slightly incorrect, data as the tenant licensee(s) in order to avoid

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[44] Notice at ¶¶ 8 and 11.

[45] API comments at 7 and AT&T comments at 13.

[46] Nationwide comments at 5.

[47] PCIA reply comments at 4 - 5.

sanctioning by the Commission.[48] Eighteen of the thirty-nine commenters addressing this issue note that the integrity of the database is of the utmost importance, and urge the Commission to take steps to encourage, rather than discourage, owners to correct site data where applicable.

32. There is no consensus among the commenters regarding the proposed requirement to post the antenna structure registration number at the base of the structure. API supports the Commission's proposal and points out that such a posting will speed the identification of the structure owner by the Commission and the FAA when attempting to remedy lighting outages.[49] Smith and Powstenko and the Empire State Building (S&P), representing the Empire State Building, argues that such a posting requirement is unreasonable in the context of large buildings and landmarks.[50]

33. Decision. Based on the commenters' support for a standard format, we will request location data in terms of degrees, minutes, and seconds, and height data to the nearest meter. The antenna structure registration database will accept latitude and longitude data, in either the NAD 27 or NAD 83 datum, up to an accuracy of one second and height to one meter. Owners must specify which datum is used and may use surveying tools of differing accuracy, such as maps, GPS receivers, or GPS receivers with differential corrections to obtain site data. It is left to each owner, however, to evaluate the surveying method being used and round to the appropriate significant digit.[51]

34. We also agree with the commenters' view that we should facilitate the submission of accurate data by structure owners and provide a means for owners and licensees to correct inaccurate data. Therefore, in general, we will not issue forfeitures to owners or licensees attempting to correct errant site data during registration. Commission authorizations and FAA determinations of "no hazard" to air navigation, however, are based on the originally submitted site data. Thus, changing the coordinates on tenant licensees' authorizations, depending on the magnitude of the error, may violate the interference protection criteria set forth in the rules or may invalidate the original FAA determination for the site. For example, a five-second error in longitude may have caused a broadcast station to be authorized too close to an airport, another broadcast station, a radio frequency quiet zone, or an international border.

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[48] Motorola comments at 14 - 17.

[49] API comments at 7.

[50] S&P comments at 7-8.

[51] Seven and one-half minute geological maps may yield accuracies within 1 second; GPS receivers may be accurate to 100 meters ($\approx$ 3.3 seconds), while GPS receivers using differential corrections may be accurate to 1 meter ($\approx$ 0.05 second).

35. Therefore, we take this opportunity to clarify the procedures by which owners and tenant licensees may ensure that correct site data appear in the Commission's registration and licensing databases. Owners must submit accurate site data without regard to the height or coordinates listed on tenant licensees' station authorizations. Existing structures will be assigned painting and lighting specifications upon registration based on site data from the original FAA determination for the structure, or site data referenced in the Commission's current antenna clearance database. Corrections of previously submitted site data of less than one second in latitude or longitude, or of less than a foot in height will not require a new aeronautical study, and the structure will retain the previously assigned painting and/or lighting specifications. The FAA, however, requires a new aeronautical study for corrections in latitude or longitude of one second or more, or a correction in height of one foot or more.[52] In this case, the owner must seek a new FAA determination prior to registration, and the structure will be assigned painting and/or lighting requirements based on the new FAA determination.[53] Tenant licensees should note any discrepancies in the site data appearing on the registration (FCC Form 854-R) and their station authorizations and notify the appropriate licensing branch as described in Appendix C.[54] Tenant licensees will not be required to submit a filing fee when correcting site data. In cases where a correction of site data for a tenant licensee would be in violation of the Commission's Rules for a particular radio service, the tenant license(s) involved may be required to take measures to avoid harmful interference, such as decreasing antenna height, reducing power, or employing a directional radiator. In general, however, we will not require tenant licensees to cease operations while the owner seeks a new FAA determination or while coordinating corrections with the individual licensing branches within the Commission.

36. We agree that antenna structures on large buildings or landmarks may require a different posting requirement than free-standing antenna structures. Therefore, in the case of antenna structures located on top of buildings, we will clarify the rules to require that the registration number be posted at the base of the antenna structure, not the base of the building. Further, we will not require the registration number to be conspicuously posted at the base of antenna structures in cases where a federal, state, or local government entity determines that such a posting would detract from the appearance of a historic landmark. In such cases, however, the owner must make the registration number available to representatives of the Commission and the FAA or members of the general public upon reasonable demand.

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[52] Ex parte filing of the FAA on July 12, 1995.

[53] Each antenna structure owner must provide a copy of the registration to all tenant licensees.

[54] The Commission intends to revise all application forms permitting applicants to supply an antenna structure registration number or numbers. The Commission will release a Public Notice noting the revision of applicable forms.

(5) Statutory considerations

37. Proposal. In the Notice, we asked whether the proposed antenna structure registration process would require any changes to the Commission's environmental rules, 47 C.F.R. §§ 1.1301-1.1319. Specifically, we sought comments on whether our registration requirements constitute an "action" under the National Environmental Policy Act of 1969 (NEPA) or an "undertaking" under the National Historic Preservation Act (NHPA). Further, the draft FCC Form 854 attached to the Notice also included a proposed certification required under the Anti-Drug Abuse Act of 1988 (ADA).[55] Currently, Commission licensees must comply with the provisions of NEPA and certify their status under the ADA prior to receiving a station authorization.

38. Comments. Commenters addressing the applicability of NEPA to the registration proposal generally urge the Commission to place at least some responsibility for compliance with NEPA on antenna structure owners. Paging Network, Inc. (PageNet), as well as S&P, submitted comments stating that the registration process is not an "action" under the federal environmental laws.[56] S&P argues that registration is merely a clerical action and points out that "registering" an antenna structure is vastly different from "authorizing" a station. GTE, on the other hand, argues that the proposed registration process, though seemingly insignificant, rises to the level of "federal action" because: our current rules require compliance with NEPA and the NHPA, registration will impose the responsibility for compliance with our current rules on a group of individuals (owners) who are not required to comply at present, and the imposition of responsibility that accompanies the registration "requir[es] such owners to take action pursuant to federal law."[57]

39. Alternatively, PageNet and NAB argue that responsibility for compliance with federal environmental laws must be shared by owners and tenant licensees. PageNet points out, however, that pertinent radio frequency radiation information such as power and emission levels may not be available to owners during registration.[58] NAB urges a clear division of responsibility in our rules, shared by owners and tenant licensees. NAB proposes that antenna structure owners should be responsible for those aspects of our rules that pertain only to the proposed site (i.e., location, effect on existing habitats/wetlands, high intensity white lights near residential neighborhoods, and other aspects found in Section 1.1307(a)(1)-(8) of the Commission's Rules). Similarly, NAB points out that tenant licensees should be responsible for those aspects that pertain to radio frequency radiation (i.e., power and emission levels in conformance with the guidelines specified in 47 C.F.R. §§ 1.1305 and

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[55] Notice at ¶¶ 9 and 16.

[56] PageNet comments at 19 and S&P comments at 4.

[57] GTE comment at 24.

[58] PageNet comments at 19.

1.1307(b)).[59]

40. AT&T and GTE oppose the inclusion of an ADA certification on the registration form. The commenters argue that the application for registration is not a "benefit" or "authorization" by the Commission, and therefore no certification should be required. Further, the commenters point out that such a certification would unduly burden owners by requiring lengthy background searches of employees and stockholders, which could conceivably affect the ability to register structures that have already hosted Commission licensees for years.

41. Decision. We agree with GTE that registering a structure constitutes a "federal action" or "federal undertaking," such that the imposition of environmental responsibilities on the structure owner is justified. At the outset, the owner may be proposing to register and construct a structure at a location that significantly affects the quality of the human environment within the context of NEPA. We believe that by requiring owners to assume responsibility for environmental compliance at the outset, irreparable harm to the environment may be avoided. Moreover, we believe that such a requirement will effectuate the implementation of federal environmental policies which require that environmental considerations be integrated into the early planning stages of authorized actions and undertakings.[60] This is particularly true here because the location of an antenna structure in a sensitive site area, as defined by Section 1.1307(a) of our Rules, will, in most situations, have the greatest effect on the environment. The subsequent application for an authorization on the structure is a federal action which may have little, if any, additional environmental consequences.

42. Further, we will divide the responsibility to comply with our environmental rules between owners and tenant licensees, as appropriate. Clearly a distinction exists between environmental responsibilities pertaining to structural matters and responsibilities pertaining to radio frequency radiation levels. In order to clarify the division of responsibility for compliance with our environmental rules between owners and licensees and to notify non-licensee owners of their new responsibilities in this regard, we will revise FCC Form 854 to state which environmental concerns must be taken into account by the owner at registration, and which concerns are the responsibility of the licensee filing for an authorization. In general, owners who file FCC Form 854 must also comply with federal environmental rules pertaining to the site at the time of registration, while radio frequency radiation levels at the site will be the responsibility of the tenant licensee(s). For new structures, under our environmental rules, a structure owner will be required initially to identify whether the

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[59] NAB comments at 6 - 7.

[60] See 40 C.F.R. §§ 1500.5(a), 1501.2 (regulations by the Council on Environmental Quality); 50 C.F.R. § 402.11 (regulations by the Fish and Wildlife Service); and 36 C.F.R. §§ 800.1(b), 800.3(c) (regulations by the Advisory Council on Historic Preservation).

proposed site is in a sensitive location under Section 1.1307 of our Rules. If so, the structure owner must prepare and file an Environmental Assessment, which must be reviewed by the Commission staff prior to the structure's registration and construction.[61] For existing structures, tenant licensees presumably have complied with our environmental rules in locating their facilities. In the event that the owner is unable to register the structure due to the ADA, the first tenant licensee authorized on the structure would be responsible for registering the structure and complying with NEPA pertaining to the site, as well as radio frequency radiation levels, at the time of registration. Notwithstanding the procedures set forth above, licensees authorized on antenna structures not subject to registration would remain responsible for fully complying with the Commission's environmental rules.

43. In accordance with the ADA, revised FCC Form 854 will include an anti-drug certification, consistent with Amendment of Part 1 of the Commission's Rules to Implement Section 5301 of the Anti-Drug Abuse Act of 1988, 6 FCC Rcd 7551 (1991) ("Anti-Drug Order"). In the Anti-Drug Order, we adopted the APA definition of "license," which broadly construes a "professional and/or commercial license" to include "the whole or part of an agency permit, certificate, approval, registration, charter, membership, statutory exemption or other form of permission. [emphasis added]."[62] This broad definition of "license" clearly encompasses antenna registration. If the owner of a structure is denied registration because he cannot so certify, we would not require existing tenant licensees to vacate the structure, nor would future tenant licensees be precluded from placing antennas on the structure. Rather, the first tenant licensee authorized on the structure would be responsible for registering the structure and providing a copy of the registration (FCC Form 854-R) to the owner. The owner would still be responsible for painting and lighting the structure, providing a copy of the registration to all tenant licensees, and posting the registration number.

B. Part 17 update

44. Proposal. In the Notice, we noted that parties intending to construct or modify an antenna structure may be required to seek a determination from the FAA as to whether the proposed structure is a potential hazard to air navigation. In cases where an antenna structure may pose a hazard to air navigation, the FAA may recommend painting and/or lighting in accordance with two of its Advisory Circulars, "Obstruction Marking and Lighting" (AC 70/7460-IH), August 1991, as amended by Change 2, July 15, 1992, and "Specification for Obstruction Lighting Equipment" (AC 150/5345-43D), July 1988. Part 17 of the Rules sets forth requirements for painting and lighting antenna structures, which generally reflect earlier versions of the two FAA Advisory Circulars. The Commission has the authority to specify painting and lighting requirements other than those listed in Part 17 in

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[61] An Environmental Assessment is the document that explains the environmental consequences of a proposed structure. See 47 C.F.R. §§ 1.1311-1.1312.

[62] See 6 FCC Rcd 7551 (1991).

cases where current guidelines are inadequate to ensure air safety.[63] Pursuant to this authority, the Commission generally relies on the FAA's recommendation, and not Part 17 of the Rules, when prescribing painting and/or lighting for each licensee on a given antenna structure.

45. In order to update our rules in accordance with the most recent FAA Advisory Circulars, and streamline Part 17, we proposed to incorporate by reference into Part 17 the painting and lighting recommendations contained in the Advisory Circulars listed above.[64] Under our proposal, owners of antenna structures that received clearance prior to January 1, 1996, would retain the old painting and/or lighting requirements but would be required to comply with the Advisory Circulars within ten years. Further, each owner registering a new antenna structure would be assigned painting and/or lighting requirements referenced in Part 17 at the time of registration. We proposed that, once a new or existing structure has been assigned painting and/or lighting requirements via the registration process, the structure could be maintained in accordance with the registration for an indefinite period.

46. Comments. Capital Cities/ABC, Inc. (Capital Cities/ABC) opposes the proposal, contending that the FAA Advisory Circulars are intended to be general in nature and are not necessarily applicable to every antenna structure. Capital Cities/ABC also notes that the FAA makes its painting and/or lighting recommendation on a case-by-case basis and requiring "automatic, across-the-board compliance with new guidelines would remove from the process the FAA's expertise and its sensitivity to the differing circumstances raised by each antenna structure."[65] In a similar vein, NAB argues that the Commission's Rules should not be "automatically amended" to incorporate FAA regulatory changes. Instead, NAB urges the Commission to conduct its own notice and comment rule making whenever it wishes to incorporate FAA recommendations into its Rules.[66] AMTA, Industrial Communications & Electronics, Inc. (IC&E), and Sprint Corporation (Sprint), however, support incorporating the Advisory Circulars by reference as an effort to implement more current air safety recommendations while conserving Commission resources.[67] UTC also supports our proposal to reference FAA painting and lighting recommendations, but urges the Commission to retain primary jurisdiction over electromagnetic interference issues.[68]

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[63] 47 C.F.R. § 17.22.

[64] Notice at ¶ 18.

[65] Capital Cities/ABC comments at 6 - 7.

[66] NAB comments at 8.

[67] AMTA comments at 9. See also IC&E comments at 8 and Sprint comments at 6.

[68] UTC comments at 12 - 13.

47. Three commenters support the Commission's proposal to require compliance with the Advisory Circulars within a five or ten year time frame. For example, Sprint asserts that all antenna structures should be brought into compliance with the most recent FAA recommendations as soon as economically possible.[69] The Association of Federal Communications Consulting Engineers (AFCCE), FAA, and S&P oppose this new requirement, noting that neither the Commission nor the FAA has ever required structures to update painting and lighting requirements. Opposing commenters also point out that the economic burdens associated with updating the painting and lighting for a large portion of the 75,000 existing antenna structures is unreasonable and unwarranted because such structures are not a hazard to air navigation.[70]

48. Decision. We will incorporate by reference FAA Advisory Circulars, "Obstruction Marking and Lighting" (AC 70/7460-IH), August 1991, as amended by Change 2. July 15, 1992, and "Specification for Obstruction Lighting Equipment" (AC 150/5345-43D), July 1988, in Part 17 of the Rules.[71] In doing so, we wish to address the matters raised by the opposing commenters. We agree with Capital Cities/ABC to the extent that the Advisory Circulars are sufficiently broad in scope as to not only apply to antenna structures, but many other man-made hazards such as water towers and windmills. The Advisory Circulars, however, have specific chapters and diagrams describing in detail the FAA painting and lighting recommendations for antenna structures. Thus, even though the Advisory Circulars are broad in nature, the chapters are specific, eliminating ambiguity in painting and lighting requirements for structures of a given height. We also agree with NAB's contention that a notice and comment rule making proceeding should be initiated in order to incorporate future versions of the Advisory Circulars. As we stated in the Notice, if the FAA makes substantive amendments to either of the Advisory Circulars, the Commission must initiate a public proceeding prior to updating Part 17 of the Rules.[72] Non-substantive changes could be handled by simply issuing an Order. Substantive changes, for example, include increasing the number of red beacons on all structures, while non-substantive changes could include updating an address or phone number listed in the documents. Regarding UTC's comments, our proposal is merely to incorporate by reference the current FAA painting and lighting recommendations into Part 17 of the Rules. This will not change, in any way, the current procedure in which the FAA recommends specific painting and/or lighting

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[69] Sprint comments at 6. See also IC&E comments at 8 and NAB comments at 8.

[70] AFCCE comments at 5, ex parte filing of the FAA on July 12, 1995, and Smith at 6.

[71] This incorporation by reference was approved by the Director of the Federal Register, in accordance with 5 U.S.C. 552(a) and 1 C.F.R. Part 51, to be effective 30 days after publication of final rules in the Federal Register.

[72] See Notice at ¶ 18. See also 5 U.S.C. § 553(c). In addition, the Commission would again seek an authorization from the Director of the Federal Register to incorporate any subsequent FAA Advisory Circulars or substantive amendments.

specifications for a particular structure. We will continue to use the FAA recommendation in meeting our statutory responsibility under Section 303(q) of the Communications Act to prescribe appropriate painting and/or lighting requirements for antenna structures.

49. We will not require owners to update painting and lighting requirements unless specifically recommended by the FAA. At present, the FAA recommends painting and lighting for antenna structures prior to construction only, and thereafter does not recommend periodic updates. We agree with the commenters that requiring owners to update painting and lighting requirements in accordance with Advisory Circulars would place significant new economic and administrative burdens on owners. Based on the arguments above, we will not require owners to comply with the new Advisory Circulars unless such action is specifically recommended by the FAA. For existing structures, Form 854R (antenna structure registration) will, in most cases, denote the specific painting and lighting requirements originally assigned to the structure. Owners may retain the original painting and lighting requirements indefinitely or may apply to paint and light in accordance with current FAA recommendations. For new construction or alteration of existing structures, Form 854R will reference the FAA Advisory Circulars found in Part 17 of the Commission's Rules at the time of registration.

C. New requirements for antenna structure owners

(1) Primary responsibility

50. Proposal. In the Notice, we stated that, under the proposed antenna structure registration procedure, the antenna structure owner would be primarily responsible for maintaining prescribed structure painting and/or lighting in accordance with Part 17. We then stated that, if the owner cannot be reached or reliance on the owner to maintain prescribed structure painting and/or lighting proves to be ineffective, we would then turn to the individual tenant licensees as the entities who bear secondary responsibility for the structure's proper maintenance.[73]

51. Comments. A majority of the commenters oppose a secondary responsibility on individual tenant licensees. Capital Cities/ABC argues that, in most cases, tenant licensees do not own the antenna structure and therefore have no legal right to make alterations (including replacing lights or repainting) to the structure.[74] Several parties, including AT&T, Nationwide, and Wireless Cable Association International, Inc. (WCAI), request that the Commission clarify the nature and extent of the secondary liability.[75] Further, IC&E points out that licensees should be given a chance to facilitate compliance by the structure owner,

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[73] Notice at ¶ 21.

[74] Capital Cities/ABC comments at 4 - 6.

[75] AT&T comments at 4, Nationwide comments at 3, and WCAI comments at 3.

rather than being immediately sanctioned.[76]

52. Decision. After careful consideration of these comments, we continue to believe that the antenna structure owner should have the primary responsibility for maintaining the prescribed painting and lighting of the structure, while a secondary responsibility should be imposed on the individual licensees on the structure. We reject the view that licensees on the structure should be relieved of all responsibility for maintaining the prescribed painting and lighting of the structure. The reason is twofold. First, in enacting Public Law No. 102-538, 106 Stat. 3533 (making structure owners as well as Commission licensees responsible for the painting and lighting of antenna structures and making non-licensee structure owners subject to forfeitures), Congress did not, in any way, suggest that licensees should be relieved of their responsibility to maintain the prescribed structure painting and/or lighting. Second, one of the Commission's primary responsibilities in this area is ensuring that antenna structures do not pose a threat to air safety. Thus, for compelling public safety reasons the Commission must have means to ensure that prescribed structure painting and/or lighting is maintained at all times and that lighting outages will be promptly rectified. To this end, we believe that continuing to impose a responsibility on licensees will make it incumbent on them to assure that the structure owner maintains prescribed painting and/or lighting, and, if necessary, take steps to maintain painting and/or lighting in the event of default by the structure owner.

53. We emphasize that under normal circumstances, we will only look to the structure owner to maintain the prescribed painting and/or lighting. However, in the event the structure owner is unable to maintain the prescribed painting or lighting, e.g., in cases including but not limited to abandonment, negligence, or bankruptcy, we would require that individual licensees on the structure undertake efforts to maintain painting and lighting upon request by the Commission. Additionally, if a tenant licensee has reason to believe that the structure is not in compliance or that the owner is not carrying out its responsibility to maintain the structure as required by Part 17 of the Rules, the licensee must immediately notify the owner, notify the site management company (if applicable), notify the Commission, and make a diligent effort to ensure that the antenna structure is brought into compliance. We are not, however, requiring licensees to independently monitor the antenna structure. Instead, licensees must assume responsibility and take appropriate action if circumstances would lead a reasonable person to question whether the structure is being maintained. For example, if a licensee becomes aware that electrical power is no longer available at the site or has rental payment for antenna space returned due to unavailability of the owner, the licensee must take reasonable actions to ensure that the structure is immediately brought into compliance. Under these circumstances, any sanction that may be directed to a licensee will be determined on a case-by-case basis depending upon the magnitude of noncompliance. its length of time, access of the licensee to the structure and the diligence of the licensee to rectify the noncompliance with the prescribed painting or lighting or to alert the Commission

[76] IC&E comments at 9.

or the FAA.

(2) Definition of "owner"

54. Proposal. The rules proposed in the Notice defined the owner of an antenna structure as, ". . . either the entity that owns the structure or the entity designated by the owner to maintain the antenna structure in accordance with this part." The definition also states that the entity who owns the structure is ultimately responsible for compliance with the requirements found in Part 17.[77]

55. Comments. Several commenters sought clarification of, or modifications to, our proposed definition of an owner. As an illustration, GTE asks the Commission to clarify the situation in which the structure owner erects a structure on leased land.[78] Commenters also point out that structure owners and licensees may have contractual arrangements with another party, such as a site management company, to maintain the prescribed painting and/or lighting of the structure. According to Capital Cities/ABC, some licensees, who are not owners of the structure, may not even have legal access to the structure.[79] AFCCE suggests that site management companies be defined as an owner for the purposes of Part 17 of the Rules. In support of this suggestion, AFCCE states that the site management company "who has some interest in and involvement with the telecommunications industry is likely to be much more informed and responsive to Commission objectives and requirements than a trust company, deed holder or other financial fiduciary entity."[80]

56. Decision. For the purposes of Part 17, we will define the owner as the individual or entity vested with ownership, equitable ownership, dominion or title to the structure. In this regard, where a party leases land and then builds a structure, during the term of the lease only the structure owner will be deemed to be an "owner" under the rules and have primary responsibility to maintain the prescribed structure painting and/or lighting. In the event the land owner acquires possession of the structure, the land owner would then become the structure owner.

57. We agree with the underlying concern of the AFCCE that in situations where the legal owner is a financial fiduciary entity (such as a bank or mortgage company), the ownership entity may not be responsive, nor aware of the painting or lighting requirements. It is for this reason that we have included "equitable owner" and "dominion" within our definition of owner. By these terms, we mean the party in possession or control of the

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[77] Notice at Appendix B, 47 C.F.R. § 17.2(d).

[78] GTE comments at 12.

[79] Capital Cities/ABC comments at 4.

[80] AFCCE comments at 2.

antenna structure irrespective of any mortgage or lien on the property or the antenna structure. In the event of acquisition by default, foreclosure, or other process that may result in a transfer of ownership to or among financial institutions, we will proceed on two fronts. First, to cover the immediate maintenance requirements of an antenna structure of uncertain or contested ownership, we expect licensees on the structure to assume their secondary responsibility to maintain the required painting and/or lighting. Second, upon ascertaining the identity of any new ownership entity, we will inform and hold it responsible for maintaining the prescribed structure painting or lighting.

58. In none of these situations, however, will either the owner or licensee be relieved of responsibility for maintaining the prescribed painting and/or lighting of the structure. There is nothing contained in the 1992 revision of Sections 303(q) and 503(b)(5) of the Communications Act which authorizes making structure owners responsible for the painting and lighting of antenna structures, that suggests that a site management company without any ownership connection to the structure should fall within the definition of "owner." As such, there is no statutory basis to assess a forfeiture against a site management company. It is also our view that it would not be in the public interest to permit licensees to circumvent their secondary responsibility to maintain prescribed painting and/or lighting by merely entering into a contractual arrangement with the structure owner or site management company which precludes access to the structure. Notwithstanding private contractual arrangements, licensees and structure owners, are and will continue to be, held responsible for maintaining the prescribed structure painting and/or lighting. Any resolution concerning a failure to perform pursuant to a private contractual arrangement, including appropriate remedies or damages, are matters to be resolved in a local forum.

(3) Notice to owners and licensees

59. Proposal. Both Section 503(b) of the Communications Act and Section 1.80(d) of the Commission's Rules, 47 C.F.R. § 1.80(d), require that non-licensee antenna structure owners be given notice of their painting and/or lighting obligations prior to the issuance of a forfeiture penalty. In the Notice, we asked what form of notification would be sufficient to inform owners of their obligation to register, paint, and light their structures.[81]

60. Comments. AirTouch/New Vector and Dean Brothers Publishing D/B/A Fryer's Site Guide (Fryer) suggest that we publish final rules in the Federal Register and provide notice by letter to non-licensee tower owners of their obligation to assume the primary responsibility for maintaining the prescribed painting and/or lighting of antenna structures. Specifically, the commenters argue that, while publishing a summary of our final rules in the Federal Register would constitute adequate notice to those owners who already possess a substantial interest in the Commission's activities, many non-licensee owners have no such interest, and cannot be expected to stay abreast of Commission decisions without a

[81] Notice at ¶ 16.

reasonable nexus to our regulatory process.[82] S&P points out that the Commission does not have a list of non-licensee antenna structure owners and that, alternatively, tenant licensees should be required to forward Commission letters to non-licensee owners.[83] In a separate vein, MTEL asks the Commission to provide adequate notice to licensees on the structure of their secondary responsibility to maintain the prescribed painting and/or lighting and the fact that they are still subject to forfeiture.[84]

61. Decision. We will provide notice regarding antenna structure registration and the specific roles of owners and tenant licensees through several methods. First, the Commission will publish a summary of this Report and Order and the final rules in the Federal Register. Second, we will contact site owners associations and communications industry trade publications in order to publish summaries of this action in various media. Third, we urge all tenant licensees to notify non-licensee antenna structure owners regarding the rules outlined herein. These three means of notification should be sufficient to ensure that all owners, including Commission licensees and non-licensees, receive notice of their new responsibilities. Sending notification letters to all existing licensees regarding these new responsibilities would not target non-licensee owners, would not provide a greater level of notification than the three methods described above, and would place a large administrative burden on the Commission. Further, because this is the first time the Commission has attempted to identify antenna structure owners, there is no means at the Commission's disposal to notify structure owners individually.

V. CONCLUSION

62. Accordingly, we are amending Parts 0, 1, 17, 21, 22, 23, 24, 25, 73, 74, 78, 80, 87, 90, 94, 95, and 97 of the Rules to require owners to register antenna structures requiring notification of proposed construction to the FAA, to update the Commission's antenna structure painting and lighting requirements in accordance with the latest FAA Advisory Circulars, and to implement statutory requirements set forth by Congress to hold owners primarily responsible for the installation and maintenance of antenna structure painting and lighting. These actions will serve the public interest: (1) by expediting application and notification processing, (2) by streamlining regulations to ease the public and governmental burdens associated with processing certain applications, (3) by unifying federal regulations regarding antenna structure painting and lighting, (4) by increasing safety of air navigation, and (5) by establishing that primary responsibility for antenna structure operation and maintenance rests with the owner.

VI. FINAL REGULATORY ANALYSIS

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[82] AirTouch/New Vector comments at 2 - 3 and Fryer comments at 5.

[83] S&P comments at 4.

[84] MTEL comments at 4 - 5.

63. Pursuant to the Regulatory Flexibility Act of 1980, the Commission's final analysis is as follows:

I. Need and purpose of this action:

This Report and Order replaces the Commission's current antenna structure clearance procedures, which apply to licensees, with a uniform registration process for structure owners. This action also revises the Commission's antenna structure painting and lighting requirements to incorporate by reference FAA Advisory Circulars AC 70/7460-1H (August 1991), as amended by Change 2 (July 15, 1992), and AC 150/5345-43D (July 1988). Further, this action revises applicable sections of the Commission's rules, making owners primarily responsible for antenna structures which require painting and/or lighting. By these actions, the Commission seeks to reduce the number of filings to the Commission regarding changes to antenna structures, to expedite application and notification processing, to unify and streamline federal painting and lighting regulations, to ease the public and governmental burdens associated with filing and processing certain applications, and to increase safety in air navigation.

II. Summary of the issues raised by the public comments in response to the Initial Regulatory Flexibility Analysis:

There were no comments submitted in response to the Initial Regulatory Flexibility Analysis.

III. Significant alternatives considered:

No significant alternative to this action was contained in the Notice or suggested by commenters. The action represents the best means to achieve the regulatory objective of minimizing the regulatory burden on the public.

VII. ORDERING CLAUSES

64. Accordingly, IT IS ORDERED that pursuant to the authority contained in Sections 4(i), 303(r), and 307(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), 307(c), Parts 0, 1, 17, 21, 22, 23, 24, 25, 73, 74, 78, 80, 87, 90, , 94, 95, and 97 of the Commission's Rules, 47 C.F.R. Parts 0, 1, 17, 21, 22, 23, 24, 25, 73, 74, 78, 80, 87, 90, 94, 95, and 97 ARE AMENDED as set forth in Appendix D below.

65. IT IS FURTHER ORDERED that this Report and Order will be effective thirty days after publication in the Federal Register.

66. For further information contact Roger Noel of the Wireless Telecommunications Bureau at (202) 418-0680, or Robert Greenberg of the Mass Media Bureau at (202) 418-2720.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

Attachments

APPENDIX A

LIST OF COMMENTERS

Comments

Air Touch/US WEST New Vector Group
Alltel Mobile Communications, Inc.
American Mobile Telecommunications Association, Inc.
American Personal Communications
American Petroleum Institute
Association of Federal Communications Consulting Engineers
AT&T Corp.
Bell Atlantic Mobile Systems, Inc.
Capital Cities/ABC, Inc.
CBS, Inc.
Cellular Telecommunications Industry Association
Cohen, Dippell and Everist, PC
Dean Brothers Publishing
Dutch Hill Tower Antenna Systems, Inc.
EMI Communications Corp.
Federal Aviation Administration
Flash Technology
GTE Service Corporation
Hughey & Phillips, Inc.
Industrial Communications & Electronics, Inc.
Industrial Telecommunications Association, Inc.
Kelly Communications, Inc.
Micro TV, Inc.
Mitchell Energy & Development Corp.
Mobile Telecommunications Technologies Corp.
Motorola
National Association of Broadcasters
Nationwide Communications, Inc.
National Oceanic and Atmospheric Administration-National Ocean Service
OneComm Corporation
Paging Network, Inc.
Pacific Bell/Nevada Bell/Pacific Bell Mobile Services
Personal Communications Industry Association
Smith and Powstenko and the Empire State Building
Southwest Bell Mobile Systems, Inc.
Sprint
UTC

Vernon Telephone Coorperative, Inc.
Wireless Cable Association International, Inc.

Reply comments

American Mobile Telecommunications Association, Inc.
Ameritech Mobile Communications, Inc.
AT&T Corp.
EMI Communications Corp.
GTE Service Corporation
Metropolitan Water District of Southern California
Motorola
Nynex Mobile Communications Company
Personal Communications Industry Association
Signal One, Inc.
Southwest Bell Mobile Systems, Inc.

APPENDIX B

FILING WINDOWS

Window	States/Territories	Approximate # of Filings[1]
Jul 1-31, 1996	MI, MT	3,041
Aug 1-31, 1996	AZ, HI, NC	3,188
Sept 1-30, 1996	AK, NM, NY	3,612
Oct 1-31, 1996	MA, MO	2,994
Nov 1-30, 1996	IL, WY	3,053
Dec 1-31, 1996	NV, OK, PR	3,167
Jan 1 - Feb 28, 1997	CA, OH	6,737
Mar 1-31, 1997	IA, VA	3,273
Apr 1-30, 1997	AS, GA, GM, GU, MP, VI	3,141
May 1-31, 1997	LA, ME, RI	3,077
Jun 1-31, 1997	CO, MN	2,993
Jul 1-31, 1997	NE, PA	3,022
Aug 1 - Sep 30, 1997	FL, IN	6,946
Oct 1-31, 1997	DE, KS, WA	2,961
Nov 1-30, 1997	NH, OR, WI, WV	3,096
Dec 1-31, 1997	AL, DC, MD	2,953
Jan 1-31, 1998	AR, ND, UT	2,943
Feb 1-28, 1998	ID, MS, SD, VT	2,996
Mar 1-31, 1998	KY, TN	3,149
Apr 1-30, 1998	CT, NJ, SC	2,930
May 1 - Jun 30, 1998	TX	8,331

[1] Includes registration of 77,173 existing structures that meet the proposed filing criteria. Does not include new structures.

APPENDIX C

PROCEDURES FOR LICENSEES AND PERMITTEES

As the Commission registers over 75,000 antenna structures between July 1, 1996, and June 30, 1998, there may be cases where site data submitted by the owner conflicts with site data submitted by licensees and permittees. The owner must provide a copy of the structure's registration (FCC Form 854-R) to each tenant licensee and permittee. Licensees and permittees must compare the site data on the registration with the site data shown on their respective FCC authorizations. If the structure height, the latitude, or the longitude does not match, a separate filing may be necessary. Such filings are described below, listed by radio service.

The Commission does not intend to impose administrative sanctions on any licensee or permittee who, through this new registration process, realizes that it has inadvertently provided incorrect structure information in obtaining a station authorization or construction permit. Further, licencees and permittees are not required to cease transmitting while seeking the amendments listed herein. Situations requiring a change in operating parameters will be handled on a case by case basis.

AM, FM, AND TV BROADCAST STATIONS

If the antenna height above average terrain (HAAT) differs by more than 2 meters, or if the latitude or longitude differ, tenant licensees and permittees must file either FCC Form 301 or FCC Form 340. (Note that HAAT could change if there is a change in the determination of the elevation of the site.) Further, if the height of the AM radiator is found to increase or decrease more than two meters, the AM station will have to file Form 301 or Form 340. Applicants may also file simultaneously FCC Form 302 (Application for license). There is no filing fee.

Such filings must be made within 30 days of receipt of FCC Form 854-R from the structure owner.

LOW POWER TV

If the antenna structure site coordinates produce an error of more than 152.4 meters (500 feet), tenant licensees and permittees must file FCC Form 346 (application for construction permit).

If there is an error of 152.4 meters to 200 meters, tenant licensees and permittees may simply file a "minor change" application together with FCC Form 347 (application for station authorization). Errors of more than 200 meters may be reported in this manner, provided that the error does not result in an increase of the station's protected signal contour in any horizontal direction.

Applicants may correct site coordinates, regardless of the magnitude of the error, by filing minor change applications, together with a cover letter explaining the purpose of the application and the magnitude of the coordinate error. If the coordinate error exceeds the normal definition of a minor change (given above), the staff will determine whether the station meets the Commission's interference protection rules at the correct coordinates and antenna height. If so, the application will be accepted for filing and placed on a public notice proposing its grant and inviting the filing of petitions to deny within 30-days of the issuance of the notice. If interference is predicted to a protected facility, the Commission staff will proceed on a case by case basis, first determining whether the coordinate error has resulted in actual impermissible interference. If so, the station licensee or permittee will be directed to take immediate action to eliminate unwanted interference; for example, by requesting temporary authority to operate the station at reduced power. The minor change application will be returned to the applicant, who will be directed to file a major change application in the next LPTV window. If interference is predicted from a licensed facility and the potentially affected entity concurs that interference has not occurred or will not occur, the application will be accepted for filing and proposed for grant by Commission public notice.

Such filings must be made within 30 days of receipt of FCC Form 854-R from the structure owner.

MULTIPOINT DISTRIBUTION SERVICE

If the latitude or longitude differs by ten seconds or less, tenant licensees and permittees must file FCC Form 304. There is no filing fee. Corrections of more than 10 seconds will require the filing and FCC authorization of a major change application, also using FCC Form 304.

Such filings must be made within 30 days of receipt of FCC Form 854-R from the structure owner.

INSTRUCTIONAL TELEVISION FIXED SERVICE

Tenant licensees and permittees will be governed by the current rules for station modifications. Any modification submitted to correct errant information associated with their facility must be submitted on an application for authorization to construct new or make changes in an instructional television fixed and/or response station(s), or to assign or transfer such station(s)(FCC Form 330). For licensees and permittees qualifying under Rule Section 1.1113 there will be no filing fee associated with these modifications. Filing fees for commercial ITFS licensees will be governed by the rules set forth for MDS station licensees and conditional licensees. Upon grant of the application for modification, licenses for ITFS facilities will be reissued.

Such filings must be made within 30 days of receipt of FCC Form 854-R from the structure owner.

FM TRANSLATORS AND BOOSTERS

Applicants must file FCC Forms 349 and 350, construction permit and license applications, respectively, to correct the discrepancies of antenna tower location coordinates where the distance exceeds a change of greater than 152.4 meters (500 feet). See Section 74.1251(b)(5). We will permit each correction to be made with a "minor" change filing on Form 349, with a simultaneous license application filing on Form 350.

In the case of a necessary "major" change correction, i.e. greater than a ten percent increase in the previously authorized coverage contour (translators only) as set forth in 47 C.F.R. §§ 74.1201(g) and 74.1233(a)(1), we shall follow our usual procedure of placing the tendered Form 349 application on a Public Notice "cut-off" list for the requisite 30 day period. Where necessary, as determined on a case by case basis, we shall require the filing of a special temporary authority (STA) request for the continued operation of the "major" change facility while the processing of the application is being completed. Subsequently, a modified construction permit will be issued which will require the filing of a follow-up FCC Form 350. No filing fee is required in either case.

Such filings must be made within 30 days of receipt of FCC Form 854-R from the structure owner.

CABLE TELEVISION RELAY SERVICE (CARS) STATIONS

CARS licensees shall file a request for Special Temporary Authority (STA) if, the latitude and/or longitude differ(s) by 1 second or more, the height of the transmit antenna above ground level (AGL) differs by 1 meter or more, or the height above mean sea level (AMSL) at the structure site differs by 1 meter or more. At the same time, licensees must file FCC Form 327 modifying their existing authorization and perform a frequency coordination analysis in accordance with 47 C.F.R. § 78.36. Other license deviations shall follow the major and minor change requirements of Part 78 of the Rules.

Such filings shall be made within 30 days of receipt of FCC Form 854-R from the structure owner.

ALL OTHER SERVICES

Tenant licensees and permittees must report any difference in structure height, latitude, or longitude upon the next modification or renewal of their station authorizations. No immediate filing is required.

APPENDIX D

FINAL RULES

Chapter I of Title 47 of the Code of Federal Regulations, Parts 0, 1, 17, 21, 22, 23, 24, 25, 73, 74, 78, 80, 87, 90, 94, 95, and 97 are amended as follows:

I. Part 0 - Commission Organization

1. The authority citation for Part 0 continues to read as follows:

AUTHORITY: Secs. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155, 225, unless otherwise noted.

2. Section 0.131 is amended by revising paragraph (j) to read as follows:

§ 0.131 Functions of the Bureau.

* * * * *

(j) Administers the Commission's commercial radio operator program (part 13) and the Commission's program for registration, construction, marking and lighting of antenna structures (part 17).

* * * * *

II. Part 1 - Practice and Procedure

1. The authority citation for Part 1 continues to read as follows:

AUTHORITY: 47 U.S.C. 154, 303, 503(b)(5); 5 U.S.C. 552, 21 U.S.C. 853a, unless otherwise noted.

2. Section 1.61 is amended by revising paragraphs (a) and (b), deleting paragraphs (c), (d), (e), and (f), and revising and redesignating paragraph (g) as paragraph (c) to read as follows:

§ 1.61 Procedures for handling applications requiring special aeronautical study.

(a) Antenna Structure Registration is conducted by the Wireless Telecommunications Bureau as follows:

(1) Each antenna structure owner that must notify the FAA of proposed construction using FAA Form 7460-1 shall, upon proposing new or modified construction, register that antenna structure with the Wireless Telecommunications Bureau using FCC Form 854.

(2) If an Environmental Assessment is required under § 1.1307 of this part, the Bureau will address the environmental concerns prior to processing the registration.

(3) If a final FAA determination of "no hazard" is not submitted along with FCC Form 854, processing of the registration may be delayed or disapproved.

(4) If the owner of the antenna structure cannot file FCC Form 854 because it is subject to a denial of federal benefits under the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 862, the first licensee authorized to locate on the structure must register the structure using FCC Form 854, and provide a copy of the Antenna Structure Registration (FCC Form 854R) to the owner. The owner remains responsible for providing a copy of FCC Form 854R to all tenant licensees on the structure and for posting the registration number as required by § 17.4(g) of this part.

(5) Upon receipt of FCC Form 854, and attached final FAA determination of "no hazard," the Bureau prescribes antenna structure painting and/or lighting specifications or other conditions in accordance with the FAA airspace recommendation and returns a completed Antenna Structure Registration (FCC Form 854R) to the registrant. If the proposed structure is disapproved the registrant is so advised.

(b) Each operating Bureau or Office examines the applications for Commission authorization for which it is responsible to ensure compliance with FAA notification procedures as well as Commission Antenna Structure Registration as follows:

(1) If Antenna Structure Registration is required, the operating Bureau reviews the application for the Antenna Structure Registration Number and proceeds as follows:

(i) If the application contains the Antenna Structure Registration Number or if the applicant seeks a Cellular or PCS system authorization, the operating Bureau processes the application.

(ii) If the application does not contain the Antenna Structure Registration Number, but the structure owner has already filed FCC Form 854, the operating Bureau places the application on hold until Registration can be confirmed, so long as the owner exhibits due diligence in filing.

(iii) If the application does not contain the Antenna Structure Registration Number, and the structure owner has not filed FCC Form 854, the operating Bureau notifies the applicant that FCC Form 854 must be filed and places the application on hold until Registration can be confirmed, so long as the owner exhibits due diligence in filing.

(2) If Antenna Structure Registration is not required, the operating Bureau processes the application.

(c) Where one or more antenna farm areas have been designated for a community or communities (see § 17.9 of this chapter), an application proposing the erection * * *

* * * * *

III. Part 17 - Construction, Marking, and Lighting of Antenna Structures

1. The authority citation for Part 17 continues to read as follows:

AUTHORITY: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 309, 48 Stat. 1081, 1085 as amended; 47 U.S.C. 301, 309.

2. Section 17.1 is amended by revising paragraphs (a) and (b) to read as follows:

§ 17.1 Basis and purpose.

(a) * * *and necessity would be served thereby, and to require the painting, and/or illumination of antenna structures if and when in its judgment such structures constitute* * *

(b) * * *part is to prescribe certain procedures for antenna structure registration and standards with respect to the Commission's consideration of proposed antenna structures which will serve as a guide to antenna structure owners. The standards are referenced from two Federal Aviation Administration (FAA) Advisory Circulars.

3. Section 17.2 is amended by revising paragraph (a) and adding new paragraphs (c) and (d) to read as follows:

§ 17.2 Definitions.

(a) *Antenna structure.* The term antenna structure includes the* * *

(b) * * *

(c) *Antenna Structure Owner.* For the purposes of this part, an antenna structure owner is the individual or entity vested with ownership, equitable ownership, dominion, or title to the antenna structure. Notwithstanding any agreements made between the owner and any entity designated by the owner to maintain the antenna structure, the owner is ultimately responsibile for compliance with the requirements of this part.

(d) *Antenna Structure Registration Number.* A unique number, issued by the Commission during the registration process, which identifies an antenna structure. Once obtained, this number must be used in all filings related to this structure.

4. Section 17.4 is amended by revising the section to read as follows:

§ 17.4 Antenna Structure Registration.

(a) Effective July 1, 1996, the owner of any proposed or existing antenna structure that requires notice of proposed construction to the Federal Aviation Administration must register the structure with the Commission. This includes those structures used as part of stations licensed by the Commission for the transmission of radio energy, or to be used as part of a cable television head end system. If a Federal Government antenna structure is to be used by a Commission licensee, the structure must be registered with the Commission.

(1) For a proposed antenna structure or alteration of an existing antenna structure, the owner must register the structure prior to construction or alteration.

(2) For an existing antenna structure that had been assigned painting or lighting requirements prior to July 1, 1996, the owner must register the structure prior to July 1, 1998.

(3) For a structure that did not originally fall under the definition of "antenna structure," the owner must register the structure prior to hosting a Commission licensee.

(b) Except as provided in paragraph (e) below, each owner must file FCC Form 854 with the Commission. Additionally, each owner of a proposed structure referred to in (a)(1) or (a)(3) above must submit a valid FAA determination of "no hazard." In order to be considered valid by the Commission, the FAA determination of "no hazard" must not have expired prior to the date on which FCC Form 854 is received by the Commission. The height of the structure will include the highest point of the structure including any obstruction lighting or lighting arrester.

(c) If an Environmental Assessment is required under § 1.1307 of this part, the Bureau will address the environmental concerns prior to processing the registration.

(d) If a final FAA determination of "no hazard" is not submitted along with FCC Form 854, processing of the registration may be delayed or disapproved.

(e) If the owner of the antenna structure cannot file FCC Form 854 because it is subject to a denial of federal benefits under the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 862, the first tenant licensee authorized to locate on the structure (excluding tenants that no longer occupy the structure) must register the structure using FCC Form 854, and provide a copy of the Antenna Structure Registration (FCC Form 854R) to the owner. The owner remains responsible for providing a copy of FCC Form 854R to all tenant licensees on the structure and for posting the registration number as required by paragraph (g) below.

(f) The Commission shall issue, to the registrant, FCC Form 854R, Antenna Structure Registration, which assigns a unique Antenna Structure Registration Number. The structure

owner shall immediately provide a copy of Form 854R to each tenant licensee and permittee.

(g) Except as described in (g)(1), the Antenna Structure Registration Number must be displayed in a conspicuous place so that it is readily visible near the base of the antenna structure. Materials used to display the Antenna Structure Registration Number must be weather-resistant and of sufficient size to be easily seen at the base of the antenna structure.

(1) The owner is not required to post the Antenna Stucture Registration Number in cases where a federal, state, or local government entity provides written notice to the owner that such a posting would detract from the appearance of a historic landmark. In this case, the owner must make the Antenna Structure Registration Number available to representatives of the Commission, the FAA, and the general public upon reasonable demand.

5. Section 17.5 is added under Subpart A to read as follows:

§ 17.5 Commission consideration of applications for station authorization.

(a) Applications for station authorization, excluding services authorized on a geographic basis, are reviewed to determine whether there is a requirement that the antenna structure in question must be registered with the Commission.

(b) If registration is required, the registrant must supply the structure's registration number upon request by the Commission.

(c) If registration is not required, the application for authorization will be processed without further regard to this chapter.

6. Section 17.6 is added under Subpart A to read as follows:

§ 17.6 Responsibility of Commission licensees and permittees.

(a) The antenna structure owner is responsible for maintaining the painting and lighting in accordance with this Part. However, if a licensee or permittee authorized on an antenna structure is aware that the structure is not being maintained in accordance with the specifications set forth on the Antenna Structure Registration (FCC Form 854R) or the requirements of this Part, or otherwise has reason to question whether the antenna structure owner is carrying out its responsibility under this Part, the licensee or permittee must take immediate steps to ensure that the antenna structure is brought into compliance and remains in compliance. The licensee must:

(1) Immediately notify the structure owner;

(2) Immediately notify the site management company (if applicable);

(3) Immediately notify the Commission; and,

(4) Make a diligent effort to immediately bring the structure into compliance.

(b) In the event of non-compliance by the antenna structure owner, the Commission may require each licensee and permittee authorized on an antenna structure to maintain the structure, for an indefinite period, in accordance with the Antenna Structure Registration (FCC Form 854R) and the requirements of this Part.

(c) If the owner of the antenna structure cannot file FCC Form 854 because it is subject to a denial of federal benefits under the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 862, the first licensee authorized to locate on the structure must register the structure using FCC Form 854, and provide a copy of the Antenna Structure Registration (FCC Form 854R) to the owner. The owner remains responsible for providing a copy of FCC Form 854R to all tenant licensees on the structure and for posting the registration number as required by § 17.4(g) of this part.

7. The title Subpart B is revised to read as follows:

Subpart B-Federal Aviation Administration Notification Criteria

8. Section 17.10 is amended by revising the introductory paragraph to read as follows:

§ 17.10 Antenna structures over 304.80 meters (1,000 feet) in height.

Where one or more antenna farm areas have been designated for a community or communities (see §17.9), the Commission will not accept for filing an application to construct a new station or to increase * * *

* * * * *

9. Section 17.14 is amended by revising paragraph (a) to read as follows:

§ 17.14 Certain antenna structures exempt from notification to the FAA.
* * * * *

(a) * * *topographic features of equal or greater height, **and** would be located in the congested area* * *
* * * * *

10. Section 17.17 is amended by revising paragraph (a) to read as follows:

§ 17.17 Existing structures.

(a) The requirements found in 17.23 of this Part relating to painting and lighting of antenna structures shall not apply to those structures authorized prior to July 1, 1996. Previously authorized structures may retain their present painting and lighting specifications, so long as the overall structure height or site coordinates do not change. The Antenna Structure Registration requirements found in Section 17.5 of this Part, however, shall apply to all antenna structures that have been assigned painting or lighting requirements by the Commission, regardless of prior authorization.

* * * * *

11. Section 17.22 is amended by revising the first sentence to read as follows:

§ 17.22 Particular specifications to be used.

Whenever painting or lighting is required, the Commission will generally assign specifications in accordance with the FAA Advisory Circulars referenced in section 17.23 of this part.

* * * * *

12. Section 17.23 is revised to read as follows:

§ 17.23 Specifications for painting and lighting antenna structures.

Unless otherwise specified by the Commisison, each new or altered antenna structure to be registered on or after July 1, 1996, must conform to the FAA's painting and lighting recommendations set forth on the structure's FAA determination of "no hazard," as referenced in the following FAA Advisory Circulars: AC 70/7460-1H, "Obstruction Marking and Lighting," August 1, 1991, as amended by Change 2, July 15, 1992, and AC 150/5345-43D, "Specification for Obstruction Lighting Equipment," July 15, 1988. These documents are incorporated by reference in accordance with 5 U.S.C. 552(a). The documents contain FAA recommendations for painting and lighting structures which pose a potential hazard to air navigation. For purposes of this part, the specifications, standards, and general requirements stated in these documents are mandatory. The Advisory Circulars listed above are available for inspection at the Commission Headquarters in Washington, DC, or may be obtained from Department of Transportation, Utilization and Storage Section (Publications), M443.2, 400 7th Street SW, Washington, DC 20590, telephone (202) 366-0039 or (202) 366-0451.

13. Sections 17.24 through 17.43 are deleted from this Part.

14. Section 17.47 is amended by revising the title, introductory paragraph, and paragraphs (a)(1), (a)(2), and (b) to read as follows:

§ 17.47 Inspection of antenna structure lights and associated control equipment.

The owner of any antenna structure which is registered with the Commission and has been assigned lighting specifications referenced in this part* * *

(a)(1) Shall make an observation of the antenna structure's lights at least once* * *

(2) * * *provide indication of such failure to the owner.

(b) * * *alarm systems associated with the antenna structure lighting to insure that such apparatus is functioning properly.

15. Section 17.48 is amended by revising the introductory paragraph and paragraph (a) to read as follows:

§ 17.48 Notification of extinguishment or improper functioning of lights.

The owner of any antenna structure which is registered with the Commission and has been assigned lighting specifications referenced in this part* * *

(a) * * *the circumstances which caused the failure, the probable date for restoration of service, the FCC Antenna Structure Registration Number, the height of the structure (AGL and AMSL if known) and the name, title, address, and telephone number of the person making the report. Further notification* * *

* * * * *

16. Section 17.49 is amended by revising the title, the introductory paragraph, and paragraph (c) and adding a new paragraph (d) to read as follows:

§17.49 Recording of antenna structure light inspections in the owner record.

The owner of each antenna structure which is registered with the Commission and has been assigned lighting specifications referenced in this part must maintain a record of any observed or otherwise known extinguishment or improper functioning of a structure light and include the following information for each such event:

* * * * *

(c) Date and time of FAA notification, if applicable.

(d) The date, time and nature of adjustments, repairs, or replacements made.

17. Section 17.50 is amended by revising the sentence to read as follows:

§ 17.50 Cleaning and repainting.

Antenna structures requiring painting under this Part shall be cleaned or repainted as often as necessary to maintain good visibility.

18. Section 17.51 is amended by revising paragraph (b) to read as follows:

§ 17.51 Time when lights should be exhibited.

* * * * *

(b) All high intensity and medium intensity obstruction lighting shall be exhibited continuously unless otherwise specified.

19. Section 17.57 is amended by revising the previous text to read as follows:

§ 17.57 Report of radio transmitting antenna construction, alteration, and/or removal.

The owner of an antenna structure for which an Antenna Structure Registration Number has been obtained must notify the Commission within 24 hours of completion of construction (FCC Form 854-R) and/or dismantlement (FCC Form 854). The owner must also immediately notify the Commission using FCC Form 854 upon any change in structure height or change in ownership information.

IV. Part 21 - Domestic Public Fixed Radio Services

1. The authority citation for Part 21 continues to read as follows:

AUTHORITY: Secs. 1, 2, 4, 201-205, 208, 215, 218, 303, 307, 313, 403, 404, 410, 602, 48 Stat. as amended, 1064, 1066, 1070-1073, 1076, 1077, 1080, 1082, 1083, 1087, 1094, 1098, 1102; 47 U.S.C. 151, 154, 201-205, 208, 215, 218, 303, 307, 313, 314, 403, 404, 602; 47 U.S.C. 552, 554.

2. Section 21.11 is amended by revising paragraph (g) to read as follows:

§ 21.11 Miscellaneous forms shared by all domestic public radio services.

* * * * *

(g) Antenna Structure Registration. FCC Form 854 (Application for Antenna Structure Registration) accompanied by a final Federal Aviation Administration (FAA) determination of "no hazard" must be filed by the antenna structure owner to receive an antenna structure registration number. Criteria used to determine whether FAA notification and registration is required for a particular antenna structure are contained in Part 17 of this chapter.

3. Section 21.15 is amended by revising paragraph (d), inserting a new paragraph (e), and redesignating paragraphs (e), (f), and (g) as (f), (g), and (h), respectively.

§ 21.15 Technical content of applications.

* * * * *

(d) FAA notification. Before the construction of a new antenna structure or alteration in the height of an existing structure (including a receive-only or passive repeater) is authorized by the FCC, a Federal Aviation Administration (FAA) determination of "no hazard" may be required. To apply for this determination, antenna structure owners must notify the FAA of the planned construction. Criteria used to determine whether FAA notification is required for a particular antenna structure are contained in Part 17 of this chapter. Applications proposing construction of a new antenna structure or alteration of the overall height of an existing antenna structure, where FAA notification prior to such construction or alteration is not required by Part 17 of this chapter, must indicate such and, unless the reason is obvious (e.g. structure height is less than 6.1 meters AGL) must state why FAA notification is not required. See also 21.111 if the structure is used by more than one station.

(e) Antenna Structure Registration Number. Applications proposing construction of a new antenna structure or alteration of the overall height of an existing antenna structure, where FAA notification prior to such construction or alteration is required by Part 17 of this

chapter, must include the FCC Antenna Structure Registration Number for the affected structure. If no such number has been assigned at the time the application is filed, the applicant must state in the application whether or not the antenna structure owner has notified the FAA of the proposed construction or alteration and applied to the FCC for an Antenna Structure Registration Number in accordance with Part 17 of this structure for the antenna structure in question.

* * * * *

4. Section 21.41 is amended by revising paragraph (c)(3) to read as follows:

§ 21.41 Special processing of applications for minor facilities modifications.

* * * * *

(c) * * *

(3) Changes in the geographical coordinates of a transmit station, receive station or passive facility by ten seconds or less of latitude, longitude or both, provided that when notice to the FAA of proposed construction is required by Part 17 of the rules for the antenna structure at the previously authorized coordinates (or will be required at the new location) the applicant must comply with the provisions of 21.15(e).

* * * * *

5. Section 21.42 is amended by revising paragraph (c)(6) to read as follows:

§ 21.42 Certain modifications not requiring prior authorizations.

* * * * *

(c) * * *

(6) Decreases in the overall height of an antenna structure, provided that, when notice to the FAA of proposed construction was required by Part 17 of the Rules for the antenna structure at the previously authorized height, the applicant must comply with the provisions of 21.15(d) and 21.15(e).

* * * * *

6. Section 21.111 is revised to read as follows:

§ 21.111 Use of common antenna structure.

The simultaneous use of a common antenna structure by more than one station authorized under this part, or by one or more stations of any other service may be authorized. The owner, however, of each antenna structure required to be painted and/or illuminated

under the provisions of Section 303(q) of the Communications Act of 1934, as amended, shall install and maintain the antenna structure painting and lighting in accordance with Part 17 of this chapter. In the event of default by the owner, each licensee or permittee shall be individually responsible for conforming to the requirements pertaining to antenna structure painting and lighting.

7. Section 21.112 is revised to read as follows:

§ 21.112 Marking of antenna structures.

No owner, conditional licensee, or licensee of an antenna structure for which obstruction marking or lighting is required and for which an antenna structure registration number has been obtained, shall discontinue the required painting or lighting without having obtained prior written authorization therefor from the Commission. (For complete regulations relative to antenna marking requirements, see Part 17 of this chapter.)

8. Section 21.117 is amended by revising paragraph (b) to read as follows:

§ 21.117 Transmitter location.
* * * * *

(b) The owner of the antenna structure should locate and construct such structure as to avoid making them hazardous to air navigation. (See Part 17 of this chapter for provisions relating to antenna structures.) Such installation shall be maintained in good structural condition together with any required painting or lighting.

V. Part 22 - Public Mobile Services

1. The authority citation for Part 22 continues to read as follows:

Authority: 47 U.S.C. 154, 303, unless otherwise noted.

2. Section 22.115 is amended by revising paragraphs (a)(2) and (a)(3) to read as follows:

§ 22.115 Content of applications.
* * * * *

(a) * * *

(2) Antenna structure registration. Applications proposing the use of one or more new or existing antenna structures must contain the FCC Antenna Structure Registration Number, if assigned, of each such antenna structure for which Federal Aviation Administration (FAA) notification is or was required by Part 17 of this chapter prior to its construction. If, at the time an application is filed, an FCC Antenna Structure Registration Number has not been assigned for any such antenna structure, the applicant must indicate in the application whether or not, as of the date the application is filed, the antenna structure owner has registered the antenna structure with the FCC in accordance with Part 17 of this chapter.

(3) FAA notification. Before constructing a new antenna structure or increasing the height of an existing structure, an antenna structure owner may be required to obtain an FAA determination of No Hazard to Air Navigation. To obtain this determination, the FAA must be notified of the planned construction or alteration. Criteria used to determine whether FAA notification is required for any particular antenna structure are contained in Part 17 of this chapter.

(i) Applications proposing to use a new antenna structure or an existing antenna structure for which the height is increased must indicate whether FAA notification is required by Part 17 of this chapter.

(ii) If FAA notification is required by Part 17 of this chapter, a copy of the FAA determination should be included in the application. However, if the FAA determination is not available at the time the application is filed, the application must include the following information in regard to the FAA notification: the name of the person that submitted the notification, the date the notification was submitted, and the location of the FAA office to which the notification was submitted.

(iii) If FAA notification is not required by Part 17 of this chapter, the application must indicate such and, unless the reason therefor is obvious (*e.g.* antenna structure height is

less than 6.10 meters above ground level), must contain a statement explaining why FAA notification is not required.

* * * * *

3. Section 22.365 is revised to read as follows:

§ 22.365 Antenna structures; air navigation safety.

Licensees that own their antenna structures must not allow these antenna structures to become a hazard to air navigation. In general, antenna structure owners are responsible for registering antenna structures with the FCC if required by Part 17 of this chapter, and for installing and maintaining any required marking and lighting. However, in the event of default of this responsibility by an antenna structure owner, each FCC permittee or licensee authorized to use an affected antenna structure will be held responsible by the FCC for ensuring that the antenna structure continues to meet the requirements of Part 17 of this chapter. *See* § 17.6 of this chapter.

(a) Marking and lighting. Antenna structures must be marked, lighted and maintained in accordance with Part 17 of this chapter and all applicable rules and requirements of the Federal Aviation Administration.

(b) Maintenance contracts. Antenna structure owners (or licensees and permittees, in the event of default by an antenna structure owner) may enter into contracts with other entities to monitor and carry out necessary maintenance of antenna structures. Antenna structure owners (or licensees and permittees, in the event of default by an antenna structure owner) that make such contractual arrangements continue to be responsible for the maintenance of antenna structures in regard to air navigation safety.

VI. Part 23 - International Fixed Public Radiocommunication Services

1. The authority citation for Part 23 continues to read as follows:

AUTHORITY: Secs. 4, 303, 48 Stat. 1066, 1082 as amended; 47 U.S.C. 154, 303. Interpret or apply sec. 301, 48 Stat. 1081; 47 U.S.C. 301.

2. Section 23.28 is amended by adding a new paragraph (c) to read as follows:

§ 23.28 Special Temporary Authorization.
* * * * *

(c) Each application proposing construction of one or more new antenna structures or alteration of the overall height of one or more existing antenna structures, where FAA notification prior to such construction or alteration is required by Part 17 of this chapter, must include the FCC Antenna Structure Registration Number(s) for the affected structure(s). If no such number has been assigned at the time the application(s) is filed, the applicant must state in the application whether the owner has notified the FAA of the proposed construction or alteration and applied to the FCC for an Antenna Structure Registration Number in accordance with Part 17 of this chapter. Applications proposing construction of one or more new antenna structures or alteration of the overall height of one or more existing antenna structures, where FAA notification prior to such construction or alteration is not required by Part 17 of this chapter, must indicate such and, unless the stucture is 6.10-meters or less above ground level (AGL), must contain a statement explaining why FAA notification is not required.

3. Section 23.39 is amended by revising the title and replacing the previous text with new paragraphs (a), (b), and (c) to read as follows:

§ 23.39 Antenna Structures.

(a) FAA notification. Before the construction of new antenna structures or alteration in the height of existing antenna structures is authorized by the FCC, a Federal Aviation Administration (FAA) determination of "no hazard" may be required. To apply for this determination, the FAA must be notified of the planned construction. Criteria used to determine whether FAA notification is required for a particular antenna structure are contained in Part 17 of this chapter. Applications proposing construction of one or more new antenna structures or alteration of the overall height of one or more exsiting antenna structures, where FAA notification prior to such construction or alteration is not required by Part 17 of this chapter, must indicate such and, unless the reason is obvious (e.g. structure height is less than 6.10 meters AGL) must contain a statement explaining why FAA notification is not required.

(b) Painting and lighting. The owner of each antenna structure required to be painted

and/or illuminated under the provisions of Section 303(q) of the Communications Act of 1934, as amended, shall operate and maintain the antenna structure painting and lighting in accordance with Part 17 of this chapter. In the event of default by the owner, each licensee or permittee shall be individually responsible for conforming to the requirements pertaining to antenna structure painting and lighting.

(c) Antenna Structure Registration Number. Applications proposing construction of one or more new antenna structures or alteration of the overall height of one or more existing structures, where FAA notification prior to such construction or alteration is required by Part 17 of this chapter, must include the FCC Antenna Structure Registration Number(s) for the affected structure(s). If no such number has been assigned at the time the application is filed, the applicant must state in the application whether or not the antenna structure owner has notified the FAA of the proposed construction or alteration and applied to the FCC for an Antenna Structure Registration Number in accordance with Part 17 of this chapter for the antenna structure in question.

4. Section 23.40 is amended by revising the title and deleting the previous text to read as follows:

§ 23.40 [Reserved]

* * * * *

VII. Part 24 - Personal Communications Services

1. The authority citation for Part 24 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302, 303, 309, and 332, unless otherwise noted.

2. A new Section 24.55 is added to read as follows:

§ 24.55 Antenna structures; air navigation safety.

Licensees that own their antenna structures must not allow these antenna structures to become a hazard to air navigation. In general, antenna structure owners are responsible for registering antenna structures with the FCC if required by Part 17 of this chapter, and for installing and maintaining any required marking and lighting. However, in the event of default of this responsibility by an antenna structure owner, each FCC permittee or licensee authorized to use an affected antenna structure will be held responsible by the FCC for ensuring that the antenna structure continues to meet the requirements of Part 17 of this chapter. *See* § 17.6 of this chapter.

(a) Marking and lighting. Antenna structures must be marked, lighted and maintained in accordance with Part 17 of this chapter and all applicable rules and requirements of the Federal Aviation Administration.

(b) Maintenance contracts. Antenna structure owners (or licensees and permittees, in the event of default by an antenna structure owner) may enter into contracts with other entities to monitor and carry out necessary maintenance of antenna structures. Antenna structure owners (or licensees and permittees, in the event of default by an antenna structure owner) that make such contractual arrangements continue to be responsible for the maintenance of antenna structures in regard to air navigation safety.

3. Section 24.416 is removed.

4. Section 24.816 is removed.

VIII. Part 25 - Satellite Communications

1. The authority citation for Part 25 continues to read as follows:

AUTHORITY: Secs. 25.101 to 25.601 issued under Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interpret or apply secs. 101-104, 76 Stat. 419-427; 47 U.S.C. 701-744; 47 U.S.C. 554.

2. Section 25.113 is amended by revising paragraph (c), redesignating paragraph (d) as paragraph (f), and adding two new paragraphs (d) and (e) to read as follows:

§ 25.113 Construction Permits.

* * * * *

(c) FAA notification. Before the construction of new antenna structures or alteration in the height of existing antenna structures is authorized by the FCC, a Federal Aviation Administration (FAA) determination of "no hazard" may be required. To apply for this determination, the FAA must be notified of the planned construction. Criteria used to determine whether FAA notification is required for a particular antenna structure are contained in Part 17 of this chapter. Applications proposing construction of one or more new antenna structures or alteration of the overall height of one or more exsiting antenna structures, where FAA notification prior to such construction or alteration is not required by Part 17 of this chapter, must indicate such and, unless the reason is obvious (e.g. structure height is less than 6.10 meters AGL) must contain a statement explaining why FAA notification is not required.

(d) Painting and lighting. The owner of each antenna structure required to be painted and/or illuminated under the provisions of Section 303(q) of the Communications Act of 1934, as amended, shall operate and maintain the antenna structure painting and lighting in accordance with Part 17 of this chapter. In the event of default by the owner, each licensee or permittee shall be individually responsible for conforming to the requirements pertaining to antenna structure painting and lighting.

(e) Antenna Structure Registration Number. Applications proposing construction of one or more new antenna structures or alteration of the overall height of one or more existing structures, where FAA notification prior to such construction or alteration is required by Part 17 of this chapter, must include the FCC Antenna Structure Registration Number(s) for the affected structure(s). If no such number has been assigned at the time the application is filed, the applicant must state in the application whether or not the antenna structure owner has notified the FAA of the proposed construction or alteration and applied to the FCC for an Antenna Structure Registration Number in accordance with Part 17 of this chapter for the antenna structure in question.

* * * * *

3. Section 25.119 is amended by adding a new paragraph (c) to read as follows:

§ 25.119 Application for special temporary authorization.

* * * * *

(c) Each application proposing construction of one or more earth station antennas or alteration of the overall height of one or more existing earth station antenna structures, where FAA notification prior to such construction or alteration is required by Part 17 of this chapter, must include the FCC Antenna Structure Registration Number (s) for the affected satellite earth station antenna(s). If no such number has been assigned at the time the application(s) is filed, the applicant must state in the application whether the satellite earth station antenna owner has notified the FAA of the proposed construction or alteration and applied to the FCC for an Antenna Structure Registration Number in accordance with Part 17 of this chapter. Applications proposing construction of one or more earth station antennas or alteration of the overall height of one or more existing earth station antennas, where FAA notification prior to such construction or alteration is not required by Part 17 of this chapter, must indicate such and, unless the satellite earth station antenna is 6.10 meters or less above ground level (AGL), must contain a statement explaining why FAA notification is not required.

4. Section 25.130 is amended by adding a new paragraph (e) to read as follows:

§ 25.130 Filing requirements for transmitting earth stations.

* * * * *

(e) Each application proposing construction of one or more earth station antennas or alteration of the overall height of one or more existing earth station antennas, where FAA notification prior to such construction or alteration is required by Part 17 of this chapter, must include the FCC Antenna Structure Registration Number(s) for the affected satellite earth station antenna(s). If no such number has been assigned at the time the application(s) is filed, the applicant must state in the application whether the satellite earth station antenna owner has notified the FAA of the proposed construction or alteration and applied to the FCC for an antenna Structure Registration Number in accordance with Part 17 of this chapter. Applications proposing construction of one or more earth station antennas or alteration of the overall height of one or more existing earth station antennas, where FAA notification prior to such construction or notification or alteration is not required by Part 17 of this chapter, must indicate such and, unless the satellite earth station antenna is 6.10 meters or less above ground level (AGL), must contain a statement explaining why FAA notification is not required.

5. Section 25.300 is amended by revising paragraph (h) to read as follows:

§ 25.300 Developmental Operations.

* * * * *

(h) Each application for developmental operation proposing construction of one or more earth station antennas or alteration of the overall height of one or more existing earth station antennas, where FAA notification prior to such construction or alteration is required by Part 17 of this chapter, must include the FCC Antenna Structure Registration Number(s) for the affected satellite earth station antenna(s). If no such number has been assigned at the time the application is filed, the applicant must state in the application whether the satellite earth station antenna owner has notified the FAA of the proposed construction or alteration and applied to the FCC for an Antenna Structure Registration Number in accordance with Part 17 of this chapter. Applications proposing construction of one or more earth station antennas or alteration of the overall height of none or more existing earth station antennas, where FAA notification prior to such construction or notification or alteration is <u>not</u> required by Part 17 of this chapter, must indicate such and, unless the satellite earth station antenna is 6.10 meters or less above ground level (AGL), must contain a statement explaining why FAA notification is not required.

* * * * *

IX. Part 73 - Radio Broadcast Services

1. The authority citation for Part 73 continues to read as follows:

AUTHORITY: 47 U.S.C. 154, 303, 334.

2. Section 73.1213 is amended by revising paragraphs (a) and (b) and deleting paragraph (c) to read as follows:

§73.1213 Antenna structure, marking and lighting.

(a) The provisions of Part 17 of this chapter (Construction, Marking, and Lighting of Antenna Structures), requires certain antenna structures to be painted and/or lighted in accordance with that part.

(b) The owner of each antenna structure is responsbile for ensuring that the structure, if required, is painted and/or illuminated in accordance with Part 17 of this chapter. In the event of default by the owner, each licensee or permittee shall be responsible for ensuring that the structure complies with applicable painting and lighting requirements.

3. Section 73.1690 is amended by revising paragraph (b)(1) to read as follows:

§73.1690 Modification of transmission systems.
* * * * *

(b) * * *

(1) Any change in the location, or directional radiation characteristics of a directional antenna system. (See §73.45 and §73.150, AM; §73.316, FM; or §73.685, TV.)
* * * * *

4. Section 73.3533 is amended by adding a new paragraph (c) to read as follows:

§73.3533 Application for construction permit or modification of construction permit.

* * * * *

(c) In each application referred to in subsection (a), the applicant will provide the Antenna Structure Registration Number (FCC Form 854R) of the antenna structure upon which it will locate its proposed antenna. In the event the antenna structure does not already have a Registration Number, either the antenna structure owner shall file FCC Form 854 ("Application for Antenna Structure Registration") in accordance with Part 17 of this chapter or the applicant shall provide a detailed explanation why registration and clearance of the antenna structure is not necessary.

X. Part 74 - Experimental, Auxiliary, and Special Broadcast and Other Program Distributional Services

1. The authority citation for Part 74 continues to read as follows:

AUTHORITY: Secs. 4, 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303, 554.

2. Section 74.22 is amended to read as follows:

§74.22 Use of common antenna structure.

The simultaneous use of a common antenna structure by more than one station authorized under this part, or by one or more stations of any other service may be authorized. The owner of each antenna structure is responsbile for ensuring that the structure, if required, is painted and/or illuminated in accordance with Part 17 of this chapter. In the event of default by the owner, each licensee or permittee shall be responsible for ensuring that the structure complies with applicable painting and lighting requirements.

3. Section 74.551 is amended by adding a new paragraph (c) to read as follows:

§74.551 Equipment changes.
* * * * *

(c) Any application proposing a change in the height of the antenna structure or its location must also include the Antenna Structure Registration Number (FCC Form 854R) of the antenna structure upon which it will locate its proposed antenna. In the event the antenna structure does not have a Registration Number, either the antenna structure owner shall file FCC Form 854 ("Application for Antenna Structure Registration") in accordance with Part 17 of this chapter or the applicant shall provide a detailed explanation why registration and clearance are not necessary.

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Dial Commercial:

To dial local:
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To dial long distance:
78-PAUSE-1-area code & fax number set or green start button

To dial International (overseas):
78-PAUSE-011-PAUSE-COUNTRY CODE-PAUSE-fax number-set or green start button

To dial DOC Canada:
78-PAUSE-1-PAUSE-613-pause-952-9871 set or green start button

Dial Operator:
Pick up handset press 78-(you will hear dial tone)-0-area code & fax number (wait on line to talk to the operator) Press set or green start button to begin fax once the other party's fax machine answers.

Dial to bill on a Calling Card: Pick up handset press 78-(you will hear dial tone)-0-area code & fax number (key calling card number as recording instructs)-press set or green start button to begin fax.

4. Section 74.651 is amended by adding a new paragraph (d) to read as follows:

§74.651 Equipment changes.

* * * * *

(d) Any application proposing a change in the height of the antenna or its location must also include the Antenna Structure Registration Number (FCC Form 854R) of the antenna structure upon which it will locate its proposed antenna. In the event the antenna structure does not have a Registration Number, either the antenna structure owner shall file FCC Form 854 ("Application for Antenna Structure Registration") in accordance with Part 17 of this chapter or the applicant shall provide a detailed explanation why registration and clearance are not necessary.

5. Section 74.1251 is amended by adding a new paragraph (d) to read as follows:

§74.1251 Technical and equipment modifications.

* * * * *

(d) Any application proposing a change in the height of the antenna structure or its location must also include the Antenna Structure Registration Number (FCC Form 854R) of the antenna structure upon which it proposes to locate its antenna. In the event the antenna structure does not have a Registration Number, either the antenna structure owner shall file FCC Form 854 ("Application for Antenna Structure Registration") in accordance with Part 17 of this chapter or the applicant shall provide a detailed explanation why registration and clearance are not required.

XI. Part 78 - Cable Television Relay Service

1. The authority citation for Part 78 continues to read as follows:

AUTHORITY: Secs. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended, 1064, 1065, 1066, 1081, 1082, 1084, 1085; 47 U.S.C. 152, 153, 154, 301, 303, 307, 308, 309.

2. Section 78.63 is revised in its entirety to read as follows:

§78.63 Antenna structure marking and lighting.

The owner of each antenna structure is responsible for ensuring that the structure, if required, is painted and/or illuminated in accordance with Part 17 of this chapter. In the event of default by the owner, each licensee shall be responsible for ensuring that the structure complies with applicable painting and lighting requirements.

3. Section 78.109 is amended by deleting paragraph (a)(3), redesignating paragraphs (a)(4), (a)(5), (a)(6), (a)(7), and (a)(8) as (a)(3), (a)(4), (a)(5), (a)(6), and (a)(7) respectively, and adding a new paragraph (c) to read as follows:

§78.109 Equipment changes.

* * * * *

(c) Any application proposing a change in the height of the antenna structure or its location shall include the Antenna Structure Registration Number (FCC Form 854R) of the structure upon which it proposes to locate its antenna. In the event the antenna structure does not have a Registration Number, the owner of the antenna structure shall file an FCC Form 854 ("Application for Antenna Structure Registration") in accordance with Part 17 of this chapter or the applicant shall provide a detailed explanation as to why registration and clearance are not required.

XII. Part 80 - Stations in the Maritime Services

1. The authority citation for Part 80 continues to read as follows:

AUTHORITY: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064-1068, 1081-1105, as amended; 47 U.S.C. 151-155, 301-609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

2. Section 80.110 is amended by revising the title and initial paragraph to read as follows:

§ 80.110 Inspection and maintenance of antenna structure markings and associated control equipment.

The owner of each antenna structure required to be painted and/or illuminated under the provisions of Section 303(q) of the Communications Act of 1934, as amended, shall operate and maintain the antenna structure painting and lighting in accordance with Part 17 of this chapter. In the event of default by the owner, each licensee or permittee shall be individually responsible for conforming to the requirements pertaining to antenna structure painting and lighting.

* * * * *

XIII. Part 87 - Aviation Services

1. The authority citation for Part 87 continues to read as follows:

AUTHORITY: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064-1068, 1081-1105, as amended; 47 U.S.C. 151-156, 301-609.

2. Section 87.75 is amended by revising the title and initial paragraph to read as follows:

§ 87.75 Maintenance of antenna structure marking and control equipment.

The owner of each antenna structure required to be painted and/or illuminated under the provisions of Section 303(q) of the Communications Act of 1934, as amended, shall operate and maintain the antenna structure painting and lighting in accordance with Part 17 of this chapter. In the event of default by the owner, each licensee or permittee shall be individually responsible for conforming to the requirements pertaining to antenna structure painting and lighting.

* * * * *

XIV. Part 90 - Private Land Mobile Radio Services

1. The authority citation for Part 90 continues to read as follows:

AUTHORITY: Sections 4, 303, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, and 332, unless otherwise noted

2. Section 90.441 is amended by revising paragraph (a) and deleting paragraph (b) to read as follows:

§ 90.441 Inspection and maintenance of antenna structure marking and associated control equipment.

(a) The owner of each antenna structure required to be painted and/or illuminated under the provisions of Section 303(q) of the Communications Act of 1934, as amended, shall operate and maintain the antenna structure painting and lighting in accordance with Part 17 of this chapter. In the event of default by the owner, each licensee or permittee shall be individually responsible for conforming to the requirements pertaining to antenna structure painting and lighting.

3. Section 90.443 is amended by deleting paragraph (c) and redesignating paragraph (d) as paragraph (c).

XV. Part 94 - Private Operational-Fixed Microwave Service

1. The authority citation for Part 94 continues to read as follows:

AUTHORITY: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303 and 332, unless otherwise noted.

2. Section 94.111 is amended by revising the title and initial paragraph to read as follows:

§ 94.111 Inspection and maintenance of antenna structure marking and associated control equipment.

The owner of each antenna structure required to be painted and/or illuminated under the provisions of Section 303(q) of the Communications Act of 1934, as amended, shall operate and maintain the antenna structure painting and lighting in accordance with Part 17 of this chapter. In the event of default by the owner, each licensee or permittee shall be individually responsible for conforming to the requirements pertaining to antenna structure painting and lighting.

3. Section 94.113 is deleted.

XVI. Part 95 - Personal Radio Services

1. The authority citation for Part 95 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C 154, 303, unless otherwise noted.

2. Section 95.83 is amended by adding a new paragraph (a)(3) to read as follows:

§ 95.83 Additional information for stations with antennas higher than normally allowed.

(a) * * *

* * * * *

(3) Register the structure by submitting FCC Form 854. The requirements for antenna structure registration, painting, and lighting are found in Part 17 of the FCC Rules.

* * * * *

XVII. Part 97 - Amateur Radio Service

1. The authority citation for Part 97 continues to read as follows:

AUTHORITY: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply 48 Stat. 1064-1068, 1081-1105, as amended; 47 U.S.C. 151-155, 201-609, unless otherwise noted.

2. Section 97.15 is amended by revising paragraph (d) to read as follows:

§ 97.15 Station antenna structures.

* * * * *

(d) Further details as to whether an aeronautical study is required or if the structure must be registered, painted, or lighted are contained in Part 17 of the FCC Rules, Construction, Marking, and Lighting of Antenna Structures. To request approval to place an antenna structure higher than the limits specified in paragraphs (a), (b), and (c) of this section, the licensee must notify the FAA using FAA Form 7460-1 and the structure owner must register the structure using FCC Form 854.

* * * * *