

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Friends of the Earth, Inc. and Forest Conservation Council, Inc.	)	Various File Nos.
	)	
Various Objections and Petitions to Deny against Applications to Register Antenna Structures (FCC Form 854) with Environmental Assessments	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted:** January 4, 2002

**Released:** January 4, 2002

By the Deputy Chief, Commercial Wireless Division:

**I. INTRODUCTION**

1. In this Order, we dismiss twenty-nine (29) Objections/Petitions to Deny (Petitions) jointly filed by two organizations, the Friends of Earth (FoE) and the Forest Conservation Council (Forest) (collectively, the Petitioners), against 29 Applications for Antenna Structure Registrations - FCC Form 854 (Applications). The applications included Environmental Assessments (EAs), filed pursuant to the Commission's rules implementing the National Environmental Policy Act (NEPA).<sup>1</sup> We dismiss these Petitions because FoE and Forest do not demonstrate standing to file these Petitions. Accordingly, we do not reach the merits of the Petitions. Pursuant to our customary procedure, we direct the Licensing and Technical Analysis Branch, Commercial Wireless Division (Division) to review and resolve each EA in accordance with the Commission's rules.

**II. BACKGROUND**

2. Under Part 17 of the Commission's rules, all antenna structures of more than 200 feet in height or within the flight path of an airport must be registered with the Commission prior to construction.<sup>2</sup> If the antenna structure may have a significant environmental effect, as defined by Section 1.1307 of the Commission's rules,<sup>3</sup> the applicant must file an EA as part of its registration application.<sup>4</sup> Several

<sup>1</sup> 47 C.F.R. §§ 1.1301-1.1319.

<sup>2</sup> 47 C.F.R. § 17.7(a) ("...of more than 60.96 meters (200 feet) in height above ground level.").

<sup>3</sup> 47 C.F.R. § 1.1307.

<sup>4</sup> See 47 C.F.R. § 1.1308; see also *In the Matter of Streamlining the Commission's Antenna Structure Clearance Procedure, Report and Order*, 11 FCC Rcd. 4272, 4289, ¶ 41 (1995).

companies filed a total of 40 applications to register antenna structures in accordance with Section 17.4(c) of the Commission's rules.<sup>5</sup> In accordance with our usual practice, the applications were collected and placed on weekly public notices as accepted for filing. FoE and Forest timely filed their Petitions against every application appearing on each weekly public notice for seven consecutive weeks between February 23, 2001, and April 6, 2001, as well as two other applications that appeared on subsequent public notices.<sup>6</sup>

3. Forest states that it has "over 2,000 individual and business members throughout the United States, including communities affected by the proposed antenna structures as well as associated facilities and infrastructure."<sup>7</sup> FoE states that some unspecified number of its "2,000 members are impacted by the proposed antenna structures as well as the associated facilities, infrastructure and other consequences associated with these structures, including harm they cause directly and indirectly to a wide range of mammals, birds, insects and plants."<sup>8</sup> The Petitions do not contain affidavits or letters from any individuals who reside in or visit the communities where any of the proposed towers are to be located.

4. FoE and Forest make general allegations that all of the EA filings are deficient and lack sufficient documentation for the Commission to make a Finding of No Significant Impact (FONSI).<sup>9</sup> The Petitioners allege that the Commission's rules do not adequately implement the requirements of NEPA, do not consider the Migratory Bird Treaty Act (MBTA), and are inadequate to comply with the Endangered Species Act (ESA). Issues are also raised concerning the potential cumulative environmental effects of antenna structures. The Petitioners further argue that the Commission should perform a series of nationwide studies, reports and consultations with other federal agencies to determine the effect of towers on migratory birds. In addition, the Petitioners argue that the Commission should prepare an Environmental Impact Statement (EIS) for its "antenna structure program." The Petitioners do not make any particularized statements regarding 26 of the 40 applications for antenna structure registrations listed in the Appendices. The Petitions make only conclusory statements regarding the other applications.

5. Most of the applicants filed Oppositions to the Petitions. The applicants argue that the Petitioners do not have standing to file their Petitions and that the Petitions are vague and contain only general allegations. Each applicant also argues that its application complies with the requirements of the

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<sup>5</sup> The applicants, file numbers, dates of public notice and pleadings for each of the 29 applications addressed in this Memorandum Opinion and Order are listed in Appendix A. The petitioners have withdrawn their objections against five applications. The Division has approved the withdrawals and granted these applications as indicated in Appendix B. In addition, six applications have been withdrawn by the applicants, and we have previously dismissed the petitions filed against these applications as moot. These applications are listed in Appendix C.

<sup>6</sup> See Appendices A, B and C.

<sup>7</sup> See Objections and Petition to Deny Antenna Tower Registration Applications against applications by Crown Communications, Inc., A0182506; American Tower Limited Partnership, A0181954; American Tower, L.P., A0183735; GeoNet Towers, Inc., A0183825; and Crown Communications Inc., A0160814, dated April 30, 2001. Each of the Petitions makes the same general arguments, which are then accompanied by allegations particular to some of the applications.

<sup>8</sup> *Id.*

<sup>9</sup> A FONSI is a finding that the proposed structure will not have a significant impact because the applicant has mitigated the potential environmental effect under Section 1.1307. Each FONSI is supported by the underlying Environmental Assessment. For example, in the case of an antenna structure that may have an adverse effect on a property listed or eligible for listing in the National Register of Historic Places, the applicant and the Commission may have entered into a Memorandum of Agreement specifying mitigation measures with a State Historic Preservation Officer.

Commission's environmental rules, among other things. The Petitioners filed Replies to the Oppositions. Attached to their Replies are affidavits from John Talberth, Vice President of Forest, Dr. Brent Blackwelder, President of FoE, and Bryan Bird, a biologist.<sup>10</sup>

### III. DISCUSSION

6. In order to establish standing, we have required that parties challenging an application allege sufficient facts to demonstrate that grant of the application would cause the petitioner to suffer a direct injury.<sup>11</sup> Under this standard, the petitioner must demonstrate a causal link between the claimed injury and the challenged action. To demonstrate a causal link, a petitioner must establish that: (a) the injury fairly can be traced to the challenged action; and (b) the injury would be prevented or redressed by the relief requested.<sup>12</sup>

7. A demonstration of standing in the context of petitions to deny antenna structure registrations and other applications is important to the efficient and orderly conduct of the Commission's business. Specifically, demonstrating that standing elements are present helps protect the Commission from having to address generalized and speculative petitions that will slow the processing of applications. Both Congress and the courts have recognized that the petition to deny process is not intended to facilitate disruption of the Commission's proceedings by individuals or groups who cannot show a particularized interest in those proceedings.<sup>13</sup>

8. The Commission processes thousands of antenna structure registrations each year. Of these registrations, hundreds of applications include environmental assessments. Hundreds of additional EAs are filed annually with license applications or in other contexts. To the extent a party raises specific substantive allegations against an EA, those allegations must be fully considered. In order that we may process these applications efficiently and with full consideration of the merits, however, a petitioner must demonstrate with specificity how the grant of the application would affect its interests, aggrieve or injure the petitioner. Given the substantial time and Commission resources these matters entail, it is only appropriate that we direct and limit our attention to those petitions that make specific allegations and specify parties that would actually be harmed by the proposed antenna structure.

9. In the instant cases, the Petitioners have not alleged sufficient facts to demonstrate that the proposed applications would cause them to suffer an injury. Rather, the Petitioners have filed global Petitions against every application that appeared on consecutive public notices for seven weeks. The Petitioners use the same cover letter for each Petition while merely changing the applicants' names and file numbers. The Petitions contain virtually the same general allegations except for a few statements specific

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<sup>10</sup> See Affidavits of John Talberth, Vice President of Forest, dated June 1, 2001 (Talberth Affidavit), Dr. Brent Blackwelder, President of FoE, dated June 1, 2001 (Blackwelder Affidavit), and Bryan Bird, dated June 1, 2001.

<sup>11</sup> In the Matter of Los Angeles Cellular Telephone Company, *Memorandum Opinion and Order*, 13 FCC Rcd. 4601, 4604 (WTB/CWD, 1998).

<sup>12</sup> *Id.*

<sup>13</sup> In the Matter of Formulation of Policies And Rules Relating to Broadcast Renewal Applicants, Competing Applicants, and Other Participants to the Comparative Renewal Process and to the Prevention of Abuses of the Renewal Process, *Second Further Notice of Inquiry and Notice of Proposed Rule Making*, 3 FCC Rcd. 5179, 5184 (¶ 31) (1988) (citing *Office of Communication of the United Church of Christ v. FCC*, 779 F.2d 702, 709-710 (D.C. Cir. 1985)).

to only a few applications on each public notice. Upon reviewing the Petitions, we have not found any allegations, other than these general arguments, with respect to many of the applications.

10. In place of specific facts about each antenna structure, the Petitions rely on speculative, general allegations and argue that antenna structures kill migratory birds. However, the Petitioners do not show any traceable injury or provide the Commission with any documentation demonstrating that the construction of the individual antenna structures will result in damage. Furthermore, the Petitioners do not show a direct link between the individual antenna structures and how the organization or its members will be aggrieved by the antenna structure.

11. The Petitioners do make statements that are specific to 14 of the applications. However, FoE and Forest do not show how either organization, its members, or any individuals would be harmed or affected by any of these proposed structures. Rather, Petitioners simply allege in conclusory fashion that the application is deficient in some respect, without attempting to show any nexus to any injury. For example, in Application File No. A0183825,<sup>14</sup> the Petitioners allege that the applicant's statement "that structures built within the 100-year old floodplain will be constructed at an elevation one foot above the flood plain" does not provide sufficient information or analysis.<sup>15</sup> The Petitioners do not even attempt to show how they would be affected by the structure's construction in the flood plain. In Application File No. A0180818,<sup>16</sup> the Petitioners allege that the application is insufficient because the proposed structure will not protect migratory birds. In this application, the applicant attached a letter from the U.S. Fish and Wildlife Service, which states that no federally listed threatened or endangered species or critical habitats are known to occur within the project area of the proposed structure.<sup>17</sup> The Petitioners merely cite boilerplate language regarding migratory birds in this letter to allege a deficiency in the application without showing how this proposed structure will harm migratory birds or cause injury to the organization or its members. In each instance when the Petitioners raise an allegation about a specific application, they fail to show any injury to a person. As noted above, the Division will evaluate each EA pursuant to the Division's normal procedures and the Commission's rules.

12. We note that in prior cases where an EA has been challenged, the petitioner has been a member of the community and has demonstrated how the proposed antenna structure may affect or injure the petitioner. For example, in *SCANA Communications*, the petitioner was a member of the community who challenged the proposed tower's effect on a historic district in Georgetown, South Carolina.<sup>18</sup> Similarly, in numerous license renewal proceedings involving TV or radio stations, petitions filed by organizations like FoE and Forest regularly include a joint filing by a person who resides within the listening audience of the petitioned station.<sup>19</sup> Here, the Petitions do not contain any affidavits or letters from any person who would be affected by the registration or construction of the tower. We note that the Petitioners did submit

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<sup>14</sup> See Application File No. A0183825, GeoNet Towers, Inc., *Public Notice*, dated April 6, 2001.

<sup>15</sup> See Petition filed April 30, 2001 at p. 3.

<sup>16</sup> See Application File No. A0180818, American Tower, L.P., *Public Notice*, dated March 30, 2001.

<sup>17</sup> See Petition filed April 24, 2001 at p. 8.

<sup>18</sup> See *In the Matter of SCANA Communications, Memorandum Opinion and Order*, 15 FCC Rcd. 9203, 9204 (¶ 3) (WTB/CWD 2000); see also *In the Matter of Mid-Missouri Communications, Memorandum Opinion and Order*, 13 FCC Rcd. 15390 (WTB/CWD 1998).

<sup>19</sup> See *In Re Application of KGET(TV), Inc. for Renewal of License of Station KGET(TV), Bakersfield, CA, Memorandum Opinion and Order*, 11 FCC Rcd. 4168, 4169 (1996).

affidavits in their Replies. However, those affidavits are from officers of the respective organizations, including Forest's vice president and FoE's president, as well as a biologist. The affidavits contain general allegations and do not identify any residents of the community or other persons who would be injured.<sup>20</sup>

13. We recognize that allegations of environmental harm are necessarily somewhat generalized, and that principles of standing must be applied in the context of the harm that the underlying statute seeks to address. We further recognize that judicial principles of standing need not apply before the Commission.<sup>21</sup> Nonetheless, it is instructive that the courts have consistently denied standing on facts similar to those presented here. For example, in *Lujan v. National Wildlife Federation*,<sup>22</sup> the U.S. Supreme Court found that an environmental group did not demonstrate standing to challenge 1,250 permits issued by the U.S. Bureau of Land Management based on the organization's characterization of the grants as part of a "land withdrawal program,"<sup>23</sup> various claimed injuries to recreational use and aesthetic enjoyment, and other general allegations. The Court determined that the organization's interest, based on the affidavits presented, was insufficient to show an injury because the respondents could not show they were actually affected by the permit decisions.<sup>24</sup> Similarly, in *Florida Audubon Society v. Bentsen*,<sup>25</sup> the U.S. Court of Appeals for the District of Columbia Circuit found that the organization did not have standing to challenge a government program for credits to grow corn for ethanol based merely on speculation that wildlife areas would be at risk, without demonstrating that the program would reduce the wildlife areas for bird watching by the organization or its members. We believe the policies reflected in these decisions support our denial of standing in the matters before us.

14. Finally, we note that many of the Petitioners' arguments are directed not at the approval of any EA under the Commission's existing rules, but at the rules themselves. Thus, the Petitioners argue that the Commission's rules do not comply with NEPA and the ESA, and challenge the Commission's alleged failure to include effects on migratory birds among the factors that require an EA under Section 1.1307(a) of the Commission's rules. The Petitioners also make allegations about and question the adequacy of an "antenna structure program."<sup>26</sup> These arguments are properly the focus of a rulemaking proceeding, rather than objections to individual applications.

#### IV. CONCLUSION

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<sup>20</sup> See, e.g., Affidavit of Dr. Brent Blackwelder, President, Friends of the Earth, dated June 1, 2001 (stating generally that "the mission of FOE is to protect the planet from environmental degradation" and that its members would be harmed by adverse effects on wildlife, including bird watching, among other things).

<sup>21</sup> See 5 U.S.C. § 702. (A party filing suit under the Administrative Procedure Act must show that the action by the federal government causes him or her to be adversely affected or aggrieved.).

<sup>22</sup> *Lujan v. National Wildlife Federation*, 497 U.S. 871 (1990) (*Lujan I*).

<sup>23</sup> *Id.* at 890. The "land withdrawal program" was a name self-styled by the organization.

<sup>24</sup> *Id.*; see also *Lujan v. Defenders of National Wildlife*, 504 U.S. 555 (1991) (*Lujan II*) (the Court found that complainant, an environmental organization, did not demonstrate standing under the Endangered Species Act because the complaint was purely speculative); *Duke Power Co. v. Carolina Environmental Study Group*, 438 U.S. 59, 80 (1978) (the Court declined to grant standing where the harm asserted amounted only to a generalized grievance shared by a large number of citizens in a substantially equal measure).

<sup>25</sup> *Florida Audubon Society v. Bentsen*, 94 F.3d 658 (D.C. Cir. 1996).

<sup>26</sup> The "antenna structure program" is a name self-styled by the Petitioners. See *Lujan I*, *supra* at ¶ 13 and note 23. No "program" exists in the Commission's rules. The Commission registers towers that are required to comply with the painting and lighting restrictions of the Federal Aviation Administration. 47 C.F.R. § 17.23.

15. We find that the Petitioners have not demonstrated standing to file their Petitions because the Petitions are speculative and do not show how the construction of these towers would affect the interests of any identified person. The Licensing and Technical Analysis Branch will evaluate the pending EAs and either grant or deny the applications or request supplemental information as set forth in Section 1.1308(b) of the Commission's rules.<sup>27</sup>

#### **V. ORDERING CLAUSE**

16. Accordingly, IT IS ORDERED that, pursuant to Section 4(i) of the Communications Act, as amended, 47 U.S.C. § 154(i), and section 1.1313 of the Commission's Rules, 47 C.F.R. § 1.1313, the 29 Objections/Petitions to Deny, jointly filed by the Friends of Earth and the Forest Conservation Council against 29 Applications for Antenna Structure Registrations, ARE DISMISSED.

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<sup>27</sup> 47 C.F.R. § 1.1308(b).