



Federal Communications Commission  
Washington, D.C. 20554

July 9, 2003

Mr. Steve Williams, Director  
U.S. Fish and Wildlife Service  
U.S. Department of the Interior  
1849 C Street, N.W.  
Washington, DC 20240

**BY FIRST CLASS MAIL AND FACSIMILE (202) 208-6965**

Dear Mr. Williams:

We have received requests from various U.S. Fish and Wildlife Service (FWS) field offices for a designation letter from the Federal Communications Commission (FCC) for FCC licensees, applicants, tower companies and their representatives when they request informal consultations and/or request species lists pursuant to Section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. §§ 1531-1543) (ESA). Pursuant to 50 C.F.R. § 402.08 and in accordance with FCC rules, this letter formally designates all FCC licensees, applicants, tower companies and their representatives as non-federal representatives for purposes of Section 7 consultation. We recognize that the Commission retains ultimate responsibility for Section 7 obligations. *See* 47 C.F.R. §§ 1.1308(b), 1.1312(b).

In accordance with the interagency cooperation regulations at 50 C.F.R. § 402.08, non-Federal representatives may be involved in an informal consultation process and may request and receive species lists, prepare the biological assessment, and provide information for a formal consultation. Because the FCC has deregulated the construction of communications facilities, the Commission is not involved in most of its regulatees' planning and construction activities unless they affect certain categories of environmental concerns. (The FCC still does issue construction permits for broadcast facilities.) Thus, the FCC does not individually authorize and does not require notice of most communications towers. The FCC's rules require its licensees, applicants, and tower companies to determine, in the first instance, the environmental effects of their proposed towers. *See* 47 C.F.R. § 1.1312(a).

In accordance with this policy, the FCC's environmental rules require that all licensees and applicants prepare and file with the FCC an Environmental Assessment (EA) if, among other things, their proposed facilities "may affect" or "are likely to jeopardize" listed or proposed threatened or endangered species or designated critical habitats.<sup>1</sup> In order to

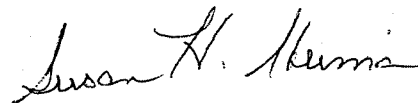
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<sup>1</sup> 47 C.F.R. § 1.1307(a)(3) requires the preparation of an EA for facilities that: "(i) May affect listed threatened or endangered species or designated critical habitats; or (ii) are likely to jeopardize the continued

determine whether an EA is required, an applicant may need to request information from and informally consult with FWS. Moreover, the Note to Section 1.1307(a)(3) of the FCC's environmental rules<sup>2</sup> specifically authorizes FCC licensees and applicants and their representatives to contact FWS to determine whether their proposed facilities will affect threatened or endangered species or designated critical habitats. We understand that the FWS rules require parties that are engaged in informal consultation to include the information described in 50 C.F.R. § 402.12, which may be different from information required under the National Environmental Policy Act. Once it is established that threatened or endangered species or their critical habitats may be affected, licensees and applicants are required to base their analysis on the "best scientific and commercial data available." See 47 C.F.R. § 1.1311(a)(6).

Accordingly, under the FCC's environmental rules, all FCC licensees, applicants, tower companies and their representatives have a blanket designation and are authorized to contact and work with the FWS to ensure that any effects on threatened and endangered species and their critical habitats are evaluated in siting proposed communications facilities. The FCC intends to post this letter on the FCC website, <http://wireless.fcc.gov/siting>.

Sincerely,



Susan H. Steiman  
Associate General Counsel

Cc: Richard Sayers, Endangered Species Division

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existence of any proposed endangered or threatened species or likely to result in the destruction or adverse modification of proposed critical habitats, as determined by the Secretary of the Interior pursuant to the Endangered Species Act of 1973."

<sup>2</sup> 47 C.F.R. § 1.1307(a)(3) Note.