
FCC Seeks Comment on Possible Revisions to Its Rules Regarding the Construction, Marking, and Lighting of Towers

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The FCC recently released a Notice of Proposed Rulemaking (“NPRM”) proposing to revise and streamline its Part 17 rules regarding construction, marking, and lighting of antenna structures. Pursuant to the Federal Register publication that occurred today, Comments are due on July 20, 2010, with Reply Comments due on August 19, 2010.

According to the FCC, the NPRM’s proposed rule changes are intended to improve safety for pilots and airplane passengers while also “updating and modernizing” the rules by removing outdated requirements currently included in Part 17 of its Rules. The FCC states that the proposed clarifications and amendments to the Rules will allow antenna structure owners to more efficiently and cost effectively ensure rule compliance. The NPRM is largely based upon a Petition for Rulemaking filed by the Wireless Infrastructure Association seeking changes to Part 17 of the Rules.

The FCC’s rules require owners of antenna structures (rather than the FCC licensees and permittees utilizing those structures) to register certain types of antenna structures with the FCC and to exercise primary responsibility for complying with the appropriate painting and lighting requirements. In general, any proposed or existing antenna structure that is more than 200 feet above ground level (60.96 meters) requires notice of construction or alteration to the Federal Aviation Administration (“FAA”) and must be registered with the FCC.

Among other things, the FCC’s NPRM requests comment on the proposed rule changes outlined below.

Proposals Regarding Antenna Structure Registration, Marking, and Lighting:

Marking and Lighting

- Remove any references to FAA Advisory Circulars because the FCC believes that the cross-references are unnecessary and confusing given that each antenna structure owner is clearly notified

through the antenna structure registration process of the marking and lighting specifications that apply to a particular tower.

- Include a rule provision stating that the FAA's recommended specifications are generally mandatory, but that the FCC may specify additional or different requirements and apply those rules retroactively.

Location and Height Data

- Require that the height information provided on FCC Form 854 be accurate within one foot and the coordinates provided in FCC Form 854 be accurate within one second of longitude and latitude.
- Require that antenna structure owners use the most accurate data available when reporting height information and site coordinates, and consider whether to specify a particular survey method such as GPS technology.
- Add a new subsection specifying that any change in height of one foot or greater or any change in coordinates of one second or greater requires prior approval from the FAA and the FCC.

Structures Requiring FAA Notification

- Delete rule language about certain categories of antenna structures that require notification to the FAA and instead add cross-references to the relevant FAA rules which clarify that the owner of any proposed or existing antenna structure that requires notice of proposed construction to the FAA must register the structure with the FCC.

Pending FAA Rulemaking Proceeding

- Conform the FCC's rules to the outcome of an FAA proceeding currently underway proposing to expand the events that would require a new study based upon the proposed frequency band of spectrum, including construction, changes in authorized frequency, addition of new frequencies, increases in effective radiated power or antenna height above certain thresholds, and changes in antenna configuration.

Maintenance of Marking and Lighting:

Inspection and Maintenance of Lighting

- Delete the requirement that antenna structure owners observe antenna structure lights at least once every 24 hours and conduct quarterly inspections of their lighting alarm systems.
- In the alternative, exempt only certain systems using network operations control center-based monitoring technologies from the requirement to quarterly inspect all automatic or mechanical systems.
- Examine whether the provisions of the FCC's rules requiring that antenna structure owners replace or repair lights "as soon as practicable" or "as soon as possible" are too vague and if the FCC should include specific time frames for replacing or repairing lights.
- Set time limits for correction of extinguished lights (whether due to equipment failure or power outage).

Elimination of Unnecessary Provisions

- Delete as duplicative of FAA specifications those rules relating to the use of temporary warning lights during construction of antenna structures and specifying when the flash tubes in a high intensity obstruction lighting system must be replaced.

Records of Extinguishment or Improper Functioning of Lights

- Determine whether, and if so, how long, the FCC should require antenna structure owners to maintain a record of observed or otherwise known extinguishments or improper functioning of structure lights.

Maintenance of Painting

- Whether to amend the rules to defer to the FAA's "In Service Aviation Orange Tolerance Chart," and whether to compare Chart to the tower at a distance of one quarter mile, or at the base of the tower.

Other Matters:**Definitions**

- Clarify that the obligations of antenna structure owners fall only on the owner of the structure and not on licensees or permittees that are merely tenants on the structure.
- Clarify that an "antenna structure" will continue to be considered an antenna structure subject to Part 17 requirements until such time as that structure is dismantled, regardless of whether it continues to be used for the transmission and/or reception of radio energy.

Structures Not Requiring Registration

- Determine whether owners of antenna structures that do not require registration should be prohibited from registering their towers, and whether antenna structure owners who have voluntarily registered structures should be required to withdraw their registrations from the FCC's antenna structure database.
- Clarify whether the Part 17 rules regarding antenna structures should be enforced against structures that registered voluntarily.

Posting of Antenna Structure Registration Number

- Modify Part 17 to require that antenna structure owners display the ASR number so that it would be visible to a member of the general public who reaches the closest publicly accessible location near the base of the antenna structure.
- Determine whether, where two or more separate entrances for a single antenna structure exist, such as two roads from different directions to a mountaintop site, the ASR number must be posted at each location.

Provision of Antenna Structure Registration to Tenants

- Amend Part 17 to allow antenna structure owners to notify tenant licensees and permittees that the structure has been registered and to provide the ASR number along with a link for the FCC's ASR website via regular mail or e-mail as an alternative to providing a paper copy of Form 854R.

Notification of Construction or Dismantlement

- Determine whether the FCC should change from 24 hours to five days the time for notification of construction or dismantlement, and to change from “immediately” to five days the time for notification of changes in height or ownership.

Facilities on Federal Land

- Delete references in the rules requiring that the FCC be notified of facilities on Forest Service or Bureau of Land Management lands.

As discussed above, comments on these proposals are due by July 20, 2010, and reply comments are due by August 19, 2010. Those interested in filing comments should contact the attorneys in the Communications Practice.

If you have any questions about the content of this advisory, please contact the Pillsbury attorney with whom you regularly work or the authors below.

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