



September 18, 2025

Federal Communications Commission
Washington, D.C. 20554
Re: WT Docket No. 25-217
Modernizing the Commission's National Environmental Policy Act Rules

Dear Friends:

On behalf of American Bird Conservancy (ABC), which works to conserve bird and their habitats throughout the Americas, and The Maryland Ornithological Society (MOS) a nonprofit, statewide organization of people who are interested in birds and nature, please accept these comments on proposed changes to Federal Communications Commission National Environmental Policy Act implementing regulations.

ABC and MOS have a primary bird conservation interest in reducing the number of birds that collide with communications towers as a result of lighting attraction. Mortality is greatest at the tallest towers over 350ft and we appreciate the progress that is being made by tower operators to turn off the steady burning red lights known to attract the birds. The guidance for towers over 150 ft to only use flashing lights is also important by greatly reducing the threat posed by steady burning lights.

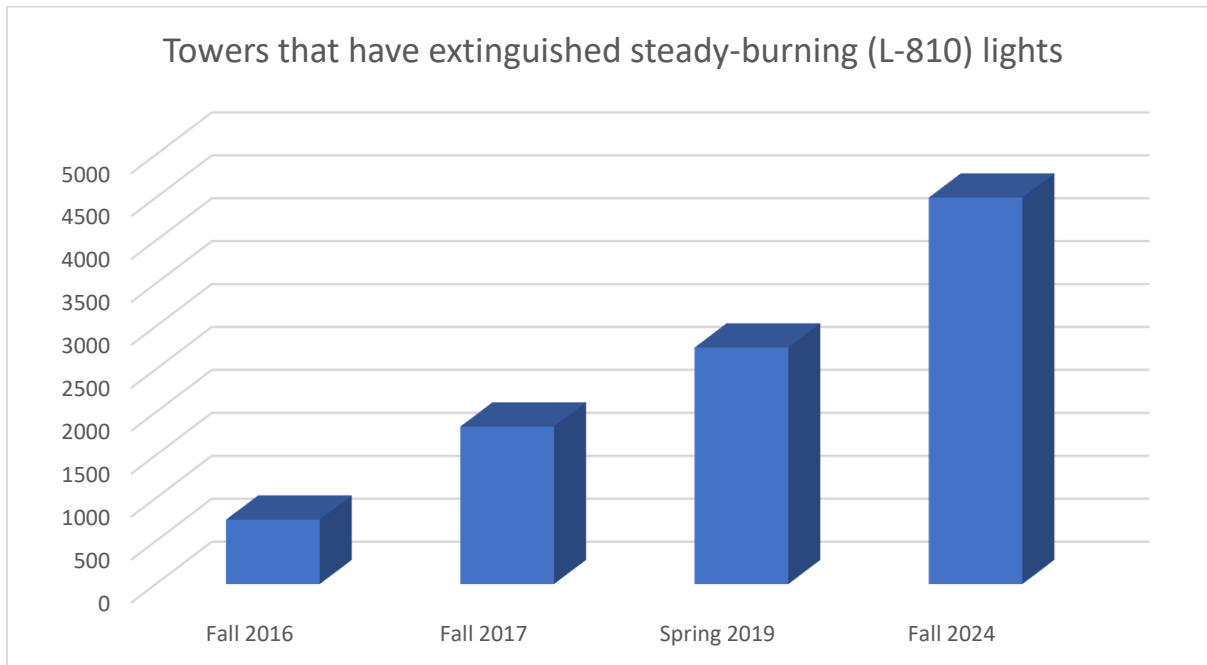
We urge that these standards remain in place, and would support efforts to work with operators of older towers to streamline and accelerate the transition process to the exclusive use of flashing lights.

The cost savings to tower owners gained by turning off steady-burning lights can be substantial, with exact savings dependent on regional electricity costs. Elimination of non-flashing side-markers also reduces maintenance costs. Further, operators no longer have to examine non-flashing lighting systems using tower climbers or drones, or electronically enter notices (NOTAMs) in the FAA database when non-flashing lights aren't working properly.

Every effort is being made to make this transition as easy as possible. The Federal Aviation Administration (FAA) and Federal Communications Commission have created a simple process for tower operators to request and receive official permission to update their lighting systems. Please see: [Recommended Best Practices for Communication Tower Design, Siting, Construction, Operation, Maintenance, and Decommissioning](#). The U.S. Fish and Wildlife Service has also created an excellent video, [Win-win for](#)

[Communications Towers](#), and [webpage](#) to help companies implement the 2020 FAA tower lighting advisory ([FAA AC 70/7460-1L](#)).

The chart below shows that companies are transitioning away from steady burning lights since the 2015 guidance was put into place. In Maryland, approximately 120 tall towers have not yet turned off the steady burning lights.



Many communications tower operators have already updated the lighting systems on tall towers over 350 feet by turning off their steady-burning (L-810) red lights that attract birds. Since 2016, more than 4,500 of about 13,900 tall towers in U.S. have made this change, reducing tower electricity and maintenance costs. This change will lower energy and tower maintenance costs while reducing migratory bird collisions by as much as 70%.

In an (undated) FCC Publication titled "[Tower and Antenna Siting](#)¹," the Commission notes:

As of September 28, 2016, the Federal Aviation Administration (FAA) no longer permits red non-flashing lights on any new tower above 150 feet AGL. The FAA has asked owners of existing towers to submit plans for eliminating the use of non-flashing lights on existing towers; and the FCC and FAA have developed a [process](#) by which registrants may do so. [Emphasis added.]

See also the FCC Public Notice of December 7, 2015², "Wireless Telecommunications Bureau Announces New Federal Aviation Administration Antenna Structure Marking and Lighting Requirements," noting that the FAA acted to protect migratory birds.

¹ <https://www.fcc.gov/wireless/bureau-divisions/competition-infrastructure-policy-division/tower-and-antenna-siting>

² <https://www.fcc.gov/document/new-structure-marking-lighting-requirements-faa>

These provisions appear in the FCC regulations. See 47 CFR § 17.23, "Specifications for painting and lighting antenna structures," saying that "each new or altered antenna structure must conform to the FAA's painting and lighting specifications set forth in the FAA's final determination of "no hazard" and the associated FAA study for that particular structure." See also 47 CFR § 17.4(c)(iii), referring to the FAA Advisory Circular.

FCC currently excludes this transition process from NEPA. The Antenna Structure Registration regulations require towers to be "registered." 47 C.F.R. § 17.4 sets out the rules. It requires registration of a "proposed antenna structure or alteration of an existing antenna structure," § 17.4(a)(1) (emphasis added), and requires the tower owner to file FCC Form 854 with the Commission. § 17.4(b).

Section 17.4(c) provides that applicants must complete an *environmental notification process* by giving local newspaper notice and that the Commission must give website notice as well, offering interested persons the opportunity to ask the Commission to require NEPA processing of the proposed action, meaning the operator's preparation of an EA and then an EIS unless a FONSI is appropriate.

But: § 17.4(c) creates an exception when Form 854 "is submitted solely for" several listed actions which "the Commission has determined are unlikely to have a significant environmental effect." Notice of Proposed Rulemaking at p. 40301. One of those excepted actions is a switch from steady red lights to flashing lights. Thus, § 17.4(c)(iii) provides for an exception when Form 854 is submitted only:

For removal of lighting from an antenna structure or adoption of a more preferred or equally preferred lighting style. For this purpose lighting styles are ranked as follows (with the most preferred lighting style listed first and the least preferred listed last): no lights; FAA Lighting Styles that do not involve use of red steady lights; and FAA Lighting Styles that involve use of red steady lights.

We commend tower operators who have turned off their steady-burning lights and estimates that hundreds of thousands of migratory birds are now being saved each year as a result. Keeping the current tower lighting rules in place is a win-win and we urge that this rulemaking not change this effective and cost-saving mitigation strategy.

General Comments on Proposed Rule

We support the intent of NEPA to analyze environmental impacts, provide alternatives, and engage the public and public comment.³ In regard to tower construction a number of mitigation strategies are available and the NEPA process can help determine if collocating, reducing tower height, and avoiding the need for support wires are the preferred alternative.

³ [Comments for National Environmental Policy Act Implementing Regulations Interim Final Rule DOI-2025-0004-0001](#)

We recommend maintaining or expanding extraordinary circumstances in connect with the use of categorical exclusions to construct new towers. These include:

1. Areas along major migratory bird pathways and near stopover sites,
2. Endangered species habitat,
3. Greater Sage-Grouse priority habitat,
4. wetlands and grasslands, and
5. interior forests where avoiding or minimizing fragmentation is important for conservation of birds⁴ such as Wood Thrush, Cerulean Warbler, Worm-eating Warbler, Kentucky Warbler, Bachman's Sparrow, and Red-headed Woodpecker.

Federal land management agencies restrict the construction of tall structures within 4 miles of a Greater Sage-Grouse leks. The structures can serve as perches for sage grouse predators such as ravens and raptors, and over time grouse will avoid using the area.

Specific Comments on FCC proposed actions

1. Existing FCC regulations say that MFAs – Major Federal Actions – are subject to NEPA. There are exclusions for “non-federal actions.”

The Commission is now considering adding to the exclusions the construction of any communications facility that involves no federal funding. Assuming that towers are “communication facilities,” this would mean that new tower construction not involving federal funds would not likely come to the public’s attention.

We recommend that all new towers continue to be subject to NEPA to ensure that direct, indirect, and substantial landscape-scale impacts on birds and key habitats are considered.

We are concerned by the breadth of current categorical exclusions and exclusion of important extraordinary circumstances necessary to conserve birds and their habitats. FCC regulations now require an EA for any new tower over 450 feet, and the Commission does not propose to change that.

Given the high risk to birds from colliding with the wires typically used for this type of very tall tower and other potential impacts, we agree that this standard should remain.

2. As noted above, the FCC and the FAA have developed a process by which owners of existing towers may submit plans for eliminating the use of non-flashing lights on existing towers. The process can be found in a 2017 FCC document entitled “[Opportunities to Reduce Bird Collisions with Communications Towers While Reducing Tower Lighting Costs⁵](#),”. It requires operators to file Form 854.

⁴ A Guide to the Conservation of Forest Interior Dwelling Birds in the Chesapeake Bay Critical Area https://dnr.maryland.gov/criticalarea/Documents/forms_navbar/tweetyjune_2000.pdf

⁵ www.fcc.gov/sites/default/files/Light_Changes_Information_Update_Jan_2017.pdf

Simplifying this process would benefit birds and tower operators. The Commission asks at NPRM p. 403010: "Are there changes the Commission should consider making to the process, including changes that could be made to streamline this process?" We urge the Commission to work with the FAA and tower operators to create a more efficient and speedy process for a switch to flashing lights. [Form 854](#) states on its face that it takes 45 minutes to fill out, and for those with a large number of licenses it allows each additional tower numbers to be added to the same application if it is for the same purpose such as turning off steady burning lights. Perhaps still more could be done.

Accordingly, we urge the Commission to substitute a simpler process such as pre-filled forms for signature when the only change proposed by an operator is a switch from steady to flashing lights, or to turn off existing steady burning lights on pre-2016 towers over 350ft. That change would "streamline th[e] process." NPRM p. 403010.

3. The Commission is considering whether to stop providing notices the Court required to resolve the 2008 case brought by ABC:

[W]e seek comment on whether the Commission is legally required to retain its environmental notification process, codified at §17.4(c) of its rules, and, if not, whether it should retain these rules. Given the court's finding that communications towers may affect migratory birds protected by the MBTA, is the Commission legally required to provide public notice of pending ASR applications? How does this analysis change if the Commission chooses to delete §1.1307(c)? Are there other ways in which the Commission could evaluate the potential effects of ASR towers on migratory birds?

As noted above, §17.4(c) requires the operator and the Commission to give notice after which interested persons may ask the Commission to require NEPA processing of the proposed action,

We see no basis for changing the response to the 2008 court decision. We believe that the Commission is still "legally required to provide notice," because NEPA's public participation goals require it as does the reason for the Court's ruling.

4. FCC Regulation 47 CFR §1.1307(a) lists the facilities that are presumed to have an environmental effect and require an EA, including facilities located in wilderness areas, wildlife preserves, areas affecting endangered species or their habitats, and historic sites. Section 1.1307(d) says that an FCC Bureau responsible for processing a particular action that is categorically excluded from the NEPA process may determine that in fact it may have a significant environmental impact, and require the applicant to submit an EA.

In 2011 the Commission added a "Note" to that section that provides that

"[p]ending a final determination as to what, if any, permanent measures should be adopted specifically for the protection of migratory birds, the Bureau shall require an Environmental Assessment for an otherwise

categorically excluded action involving a new or existing antenna structure, for which an antenna structure registration application (FCC Form 854) is required under [part 17 of this chapter](#) if the proposed antenna structure will be over 450 feet in height above ground level (AGL) ”

The Note applies to: (1) the construction of a new antenna structure; (2) the modification or replacement of an existing antenna structure involving a substantial increase in size; or (3) the addition of lighting or the adoption of a less preferred lighting style (i.e., flashing to steady red).

The NPRM at p. 40304 says that the Note “codifies the main provision of a 2010 Memorandum of Understanding between industry and conservation groups in which the parties agreed that an EA should be required for all towers over 450 tall AGL to evaluate potential significant effects to migratory birds.”

We agree with this conclusion and therefore urge that the Note remain in effect.

5. The Commission asks whether that Note to §1.1307(d) should be moved to §1.1307(a), and, if so, whether the Commission should closed: WT Dockets 03–187 and 08–61 regarding the effects of communications towers on migratory birds and the ABC 2008 court decision.

We believe that moving the Note from subsection d to subsection a is acceptable, particularly as “incorporate[ing] permanent measures for the protection of migratory birds.”

As for closing the two Dockets: The first is the Matter of Effects of Communications Towers on Migratory Birds, *Notice of Proposed Rule Making*, WT Docket No. 03-187, [71 FR 67510](#), 21 FCC Rcd 13241, November 22, 2006). The second was opened in response to the 2008 decision, and was consolidated with the first: Opening of Docket in *Response to American Bird Conservancy, Inc. v. FCC*, 516 F.3d 1027 (D.C. Cir. 2008), WT Docket No. 08-61, 23 FCC Rcd 7163 (WTB 2008).

On January 26, 2012, the Commission adopted a Rule in response to the 2008 court case that instituted “a pre-application notification process so that members of the public” can comment on the environmental effects of proposed antenna structures and, “[a]s an interim measure pending completion of a programmatic environmental analysis and subsequent rulemaking proceeding,” the Commission required “that an EA be prepared for any proposed tower over 450 feet in height.”

[This 2012 document refers to both WT Dockets](#)⁶. As to WT Docket No. 03-187, it says that the Commission was not taking final action in that rulemaking until it finished the programmatic EA and any subsequent EIS, but considered the record in that proceeding

⁶ <https://www.federalregister.gov/documents/2012/01/26/2012-1535/national-environmental-policy-act-compliance-for-proposed-tower-registrations-effects-of>

"in adopting an interim processing measure to reduce potential impacts on migratory birds."

As to WT Docket 08-61, it said that the Commission had drafted the programmatic EA and noticed it for comment. See Wireless Telecommunications Bureau Seeks Comment and Announces Public Meeting on its Draft Programmatic Environmental Assessment of the Antenna Structure Registration Program, *Public Notice*, WT Docket Nos. 08-61, 03-187, [76 FR 54422](#) (September 1, 2011).

On March 13, 2012, the Commission issued a Public Notice in both Dockets announcing the release of the final PEA completed by the Wireless Telecommunications Bureau. It also said that the Bureau "intends in the near future to recommend to the Commission a further notice of proposed rulemaking in WT Docket Numbers 08-61 and 03-187 that will invite public comment on what actions the Commission should take to comply with NEPA in light of the analysis in the final PEA. At the conclusion of the rulemaking, based on the findings and possible actions taken therein, the Commission will either issue a Finding of No Significant Impact or initiate further environmental processing."

We object to the closure of these two dockets pending a clear timeline for the elimination of the use of steady burning red lights on pre-2016 towers over 150ft, as well as other mitigation measures to address mortality unrelated to lighting such as wires and habitat loss, or displacement from tall structures.

6. The NPRM asks whether the Commission "should change any of the other aspects of the EA requirement set forth in the note to §1.1307(d) [requiring an EA for any tower over 450 feet]." The NPRM continues:

For example, the FAA's 2015 Advisory Circular updated lighting requirements to only require steady-burning red lights for a subset of towers under 150 feet in height AGL, and to use flashing lights for all towers 151 feet or taller. Should the Commission retain the requirement to complete an EA for any towers over 450 feet tall AGL that adopt or add a less-preferred lighting style? If so, should the Commission amend this EA trigger to only require an EA where lighting is added to an unlit tower?

7. The NPRM at p. 40307 addresses the issue of public comment on submitted EAs. The existing rules for antennas (47 C.F.R. 17.4(c)(5) and (7)) require EAs to go on public notice on the Commission's website for a 30-day comment period.

The NPRM notes that NEPA requires a public comment period for an EIS but not an EA, and the NPRM asks whether the FCC should continue to require EAs to be placed on public notice as well. The NPRM also asks whether there are "procedural requirements under the Administrative Procedure Act or other environmental statutes that should inform our approach to these issues."

Given the strong public interest in migratory bird conservation, we urge that public notice and comment be retained for EAs in addition to EISs.

Thank you for considering these comments from American Bird Conservancy and Maryland Ornithological Society. Please let us know if you have any questions or if we can be of assistance.

Sincerely,

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