

Avian Mortality at Communications Towers

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The United States Fish and Wildlife Service, The Ornithological Council, and The American Bird Conservancy.
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Presentation Number 10

Licensing concerns, NEPA, sitings, Telecommunications Act mandates - the FCC perspective

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Al Manville's introduction of the tenth speaker, Holly Berland.

Our first speaker on the second panel is going to be speaking from the back of the room because she unfortunately sprained her ankle here in the last few hours. It's a little easier for her to speak from the back and she does have a portable mike. Holly Berland is a staff attorney with the FCC's Office of General Counsel; she has been with that office since 1984. Her responsibilities have included, among other things, providing advice on environmental, personnel, fee, and tort issues. Before joining the Office of General Counsel, she worked in the FCC's Mass Media Bureau. She's worked in Enforcement and also with the Policy and Rules Division. Holly Berland is going to talk about licensing concerns, NEPA, sitings, and Telecommunication Act mandates – the FCC perspective. Holly.

Holly Berland

Let me begin by telling you that the FCC began in 1927 with the Radio Act. It came about because everybody was broadcasting from Uncle Sam to your Aunt Millie, and as a result there was a lot of interference and no voices were heard. So, they created the FCC as a spectrum management agency. Our statutory mandate is to insure and foster an efficient and nationwide telecommunications network. We are a licensing agency, we are not a land planning agency. Indeed, the FCC does not even have an environmental office for review. We do not get involved in our licensees initial planning or construction phases. We don't have the resources to investigate or monitor sites. But as a Federal agency, we do have environmental responsibilities under NEPA and other various statutes such as the Endangered Species Act.

What the FCC does is delegate our environmental responsibilities to our licensees and our applicants. Mainly, because the FCC as a licensing agency, not involved in our licensees initial planning stages, has a multitude of licenses for various services at a multitude of sites throughout the country and we just simply do not have the resources. So basically our applicants and licensees look to our environmental rules, primarily Section 1.1307 and kind of check off whether this particular site may affect historic sites, could it affect endangered species, would it involve white strobe lights. There are various factors. Migratory birds are not listed under 1.1307. Under Section 1.1307(c) of the FCC's environmental rules we have a safeguard provision. That safeguard provision provides where the Agency is provided with detailed specific information that a particular site may have an adverse effect on the environment, the Agency may require the licensee or applicant to prepare an Environmental Assessment and undergo environmental review prior to construction. Under that safeguard provision, the Agency has on occasion taken into account the effect of particular towers on the migratory bird population.

In other words, our environmental rules today do not require the routine consideration and assessment of towers' impact on migratory bird populations. Any change in the environmental processing requirements at the Agency would obviously require a rule-making proceeding.

The agency also, under Section 303(q) of the Telecommunications Act, is authorized to require tower owners to place specific lighting and painting and marking requirements for the purposes of air navigation safety. To implement that section of the Telecommunications Act, the Agency has recently initiated an antenna registration system, which basically requires any tower owner with a tower of over 200-feet, or within close proximity to an airport, to go to FAA and get FAA approval, and then come to the Agency and register their tower. To insure that environmental considerations are taken into account at the initial planning stages, we require the tower owner to also assess whether that particular tower would have an impact as defined under the [Federal Communication] Commission's environmental rules.

I've talked to some people in our support survey group who are responsible for the antenna registration program. From what I understand, the tower lighting requirements vary and the costs vary depending on the size of the tower, the type of lighting involved – strobe lighting, white lighting apparently could be very costly and could range anywhere up to \$150,000 per tower. Any changes in the requirements would obviously require FAA collaboration, because air safety is one of the primary responsibilities and is specifically set out in 303(q) as one of our responsibilities. The impact of towers on the migratory bird populations is a relatively new issue; Commission staff and Enforcement staff are becoming aware of it. We've received several complaints on specific towers, but we have not really received any studies, any scientific basis or justification to require or consider revising our rules at this time. The FCC staff is obviously interested. We've appeared at several interagency and industry meetings in recent months, and it's under review but the Commission has not addressed the issue other than in specific instances where we have been shown that a specific tower may or may not have an impact on migratory birds.

I'm not going to leave you with the impression that we've imposed mitigation measures on hundreds of towers because we haven't. We haven't been given that data or information. I would say in a handful of cases, we have considered the impact of our towers on birds because we have been given specific detailed information in those instances. We are interested, and that's why we are here. Thank you.

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