

May 4, 2010

**Via Electronic Filing**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, DC 20554

Re: Written Ex Parte Presentation  
WT Docket Nos. 08-61 & 03-187

Dear Ms. Dortch:

The Infrastructure Coalition (consisting of CTIA–The Wireless Association<sup>®</sup>, the National Association of Broadcasters, PCIA–The Wireless Infrastructure Association, and the National Association of Tower Erectors) and the Conservation Groups (consisting of the American Bird Conservancy, Inc., Defenders of Wildlife, and the National Audubon Society) hereby jointly submit an executed copy of the “Memorandum of Understanding between the Infrastructure Coalition and the Conservation Groups concerning Interim ASR Standards” (“MOU”).

The MOU is the result of more than six months of negotiation between the Infrastructure Coalition and the Conservation Groups. It calls for the development of interim standards for the Antenna Structure Registration (ASR) program and thus covers towers for which an ASR is required to be filed. In addition, the MOU: a) provides a preferred lighting scheme for existing tower owners to utilize if it they opt to change lighting schemes; and b) recommends several other courses of action.

Respectfully submitted,



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Enclosure



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**MEMORANDUM OF UNDERSTANDING  
BETWEEN THE INFRASTRUCTURE COALITION  
AND THE CONSERVATION GROUPS  
CONCERNING INTERIM ANTENNA STRUCTURE REGISTRATION STANDARDS**

WHEREAS, the Infrastructure Coalition (“Coalition”), a coalition consisting of CTIA–The Wireless Association<sup>®</sup>, the National Association of Broadcasters, PCIA–The Wireless Infrastructure Association, and the National Association of Tower Erectors, and the Conservation Groups (“Groups”), consisting of the American Bird Conservancy, Inc., Defenders of Wildlife, and the National Audubon Society, have each filed comments and Petitions for Expedited Rulemaking with the Federal Communications Commission (“FCC”) in WT Dockets 08-61 and 03-187 (the “Dockets”); and,

WHEREAS, the Coalition and the Groups and the organizations comprising them (collectively, the “Parties”) have desired to develop mutually agreeable interim standards for the processing of FCC’s Antenna Structure Registration (“ASR”) applications, pending completion of final rules in the Dockets, and provide those standards to the FCC for its consideration; and

WHEREAS, the Coalition and the Groups agree that this Memorandum of Understanding (“MOU”) is intended to cover only those towers for which an ASR is required to be filed;

WHEREAS, the Parties were unable to reach full agreement on certain matters under discussion, as described herein, but those differences are explained in detail below and provided to the FCC for its consideration.

NOW THEREFORE, the Parties have entered into this MOU to provide the FCC with a framework for interim ASR processing standards (“Interim Standards”) and will jointly file this MOU in WT Dockets 08-61 and 03-187.

**I. Definitions**

A. The Parties agree that the following definitions govern this MOU:

1. “Replacement Tower.”
  - (a) For purposes of this MOU, a Replacement Tower shall be defined as a communications tower the construction of which does not involve a substantial increase in size, or construction or excavation more than 30 feet beyond the tower property. *See* Nationwide Programmatic Agreement for Review of Effects on Historic Properties for Certain Undertakings Approved by the Federal Communications Commission, § III.B, *codified at* 47 C.F.R. Part 1, App. C (“2004 Nationwide Programmatic Agreement”).
  - (b) As used in paragraph (a), a “substantial increase in size” is defined, as in § III.B of the 2004 Nationwide Programmatic Agreement, by reference to Elements 1-3 of Stipulation I.C of the Nationwide Programmatic Agreement for the Collocation of Wireless

Antennas, *codified at 47 C.F.R. Part 1, App. B* (“2001 Collocation Agreement”). Those elements are:

- (1) The mounting of the proposed antenna on the tower would increase the existing height of the tower by more than 10%, or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater, except that the mounting of the proposed antenna may exceed the size limits set forth in this paragraph if necessary to avoid interference with existing antennas; or
- (2) The mounting of the proposed antenna would involve the installation of more than the standard number of new equipment cabinets for the technology involved, not to exceed four, or more than one new equipment shelter; or
- (3) The mounting of the proposed antenna would involve adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than twenty feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater, except that the mounting of the proposed antenna may exceed the size limits set forth in this paragraph if necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via cable.

2. “Minor ASR” is defined as an ASR for any of the following actions: administrative changes; changes in ownership; dismantlement of towers; minor changes/corrections to existing towers; tower repair; replacement of tower parts.
3. “New Tower” is defined as any proposed tower which is neither a Replacement Tower (as defined in Section A.1) nor a Minor ASR (as defined in Section A.2).
4. “Lighting Changes.”
  - (a) The Groups have developed a ranking of FAA Style Lighting (hereafter “Lighting Preference Chart” which is attached to the MOU, as Attachment 1).
  - (b) In the event the owner of an existing tower plans to change from one FAA Lighting Style to another the Lighting Preference Chart will be utilized to determine whether the change would require a Category #2 or Category #3 ASR to be filed:
    - 1) A change of lighting system from a less preferred FAA Lighting Style to a more preferred FAA Lighting Style would require the filing of a Category #3 ASR. It is understood that any change in FAA Lighting Style must be consistent with the

FAA Advisory Circular AC 70/7460-1K, FAA policies and local zoning requirements; and

- 2) A change of lighting system from a more preferred FAA Lighting Style to a less preferred FAA Lighting Style would require the filing of a Category #2 ASR. It is understood that any change in FAA Lighting Style must be consistent with the FAA Advisory Circular AC 70/7460-1K, FAA policies and local zoning requirements.

5. Public Notice

- (a) The manner in which Public Notice is to be provided is a matter for the FCC to decide.

## II. ASR Interim Categories

A. ASRs shall be divided into the following three interim categories for purposes of processing:

1. Category #1 ASRs.

- (a) Category #1 ASRs always require inclusion of an Environmental Assessment (“EA”) upon filing.
- (b) Category #1 ASRs will always be placed on Public Notice by the FCC.

2. Category #2 ASRs.

- (a) Category #2 ASRs do not initially require an EA based on avian concerns.
- (b) Category #2 ASRs will always be placed on Public Notice by the FCC.
- (c) The FCC will determine whether an EA is necessary for Category #2 ASRs after reviewing the ASR application and any filings made in response to the Public Notice.

3. Category #3 ASRs.

- (a) Category #3 ASRs do not require an EA upon filing based on avian concerns.
- (b) The parties do not agree on whether Public Notice is required for Category #3 ASRs; *see* Section III.B, below for a discussion of this point.

B. Classification of ASRs by Category.

1. New Towers taller than 450 feet above ground level (“AGL”) shall be in Category #1.

2. New Towers of a height of 351 to 450 feet AGL shall be in Category #2.
3. New Towers of a height no greater than 350 feet AGL, Replacement Towers, and Minor ASRs shall be in Category #3.

### **III. Unresolved Issue**

- A. The Parties were unable to reach an agreement as to whether Category #3 ASRs will be placed on Public Notice by the FCC.
- B. The Coalition believes that Category #3 ASRs, need not – and should not – be subject to a Public Notice requirement.
- C. The Groups believe that the National Environmental Policy Act (“NEPA”) and the court order in *American Bird Conservancy v. Federal Communications Commission*, 516 F.3d 1027 (D.C. Cir. 2008) require the FCC to implement a Public Notice procedure that is far more inclusive. Therefore, the Groups believe that Category #3 ASRs (except Minor ASRs and Replacement Towers) should be subject to Public Notice requirements.
- D. In the spirit of compromise, each Party commits that it will not withdraw from this MOU based on what the FCC decides regarding public notice for Category #3 ASRs.

### **IV. Related and Future Actions**

- A. The Parties acknowledge that these suggested interim standards are part of a larger set of related actions to be taken by the FCC regarding the ASR Program. With respect to these related actions, the Parties recommend that the FCC take the following actions as expeditiously as possible:
  1. Obtain the services of an expert with avian expertise to assist the FCC, as appropriate with the FCC’s ASR program;
  2. Undertake a programmatic environmental review of the ASR program; and
  3. Begin working on other implementation issues, regarding which the Parties filed separate petitions for expedited rulemaking.
- B. The Parties urge the FCC to use its best efforts to complete the programmatic environmental review of the ASR program expeditiously and to use its best efforts to expeditiously conclude the rulemaking initiated in dockets 08-61 and 03-187.

**V. Other**


- A. This MOU may be signed in counterpart by authorized representatives of the Parties.
- B. This MOU may only be amended or revised in writing, and with the written consent of all the parties.
- C. This MOU shall be governed by the law of the District of Columbia.

**INFRASTRUCTURE COALITION**

CTIA–The Wireless Association®

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

The National Association of Broadcasters

By:   
Title: President and CEO  
Date: 22 April 2010

PCIA–The Wireless Infrastructure Association

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

The National Association of Tower Erectors

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**CONSERVATION GROUPS**

The American Bird Conservancy, Inc.

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Defenders of Wildlife

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

The National Audubon Society

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**INFRASTRUCTURE COALITION**

CTIA–The Wireless Association®

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

The National Association of Broadcasters

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

PCIA–The Wireless Infrastructure Association

By: Michael F. Hill  
Title: President & CEO  
Date: 4/16/2010

The National Association of Tower Erectors

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**CONSERVATION GROUPS**

The American Bird Conservancy, Inc.

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Defenders of Wildlife

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

The National Audubon Society

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Title: \_\_\_\_\_  
Date: \_\_\_\_\_

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CTIA–The Wireless Association®

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Title: \_\_\_\_\_  
Date: \_\_\_\_\_

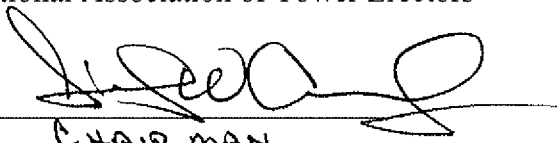
The National Association of Broadcasters

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

PCIA–The Wireless Infrastructure Association

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

The National Association of Tower Erectors

By:   
Title: CHAIRMAN  
Date: 4-19-10

**CONSERVATION GROUPS**

The American Bird Conservancy, Inc.

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Defenders of Wildlife

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
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The National Audubon Society

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Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**INFRASTRUCTURE COALITION**

CTIA–The Wireless Association®

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The National Association of Broadcasters

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Date: \_\_\_\_\_

The National Association of Tower Erectors

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**CONSERVATION GROUPS**

The American Bird Conservancy, Inc.

By:



Title: President  
Date: 4/22/2010

Defenders of Wildlife

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

The National Audubon Society

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**INFRASTRUCTURE COALITION**

CTIA–The Wireless Association®

By: *Steve Largent*  
Title: President and CEO  
Date: 4/20/2010

**CONSERVATION GROUPS**

The American Bird Conservancy, Inc.

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

The National Association of Broadcasters

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
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The National Association of Tower Erectors

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**CONSERVATION GROUPS**

The American Bird Conservancy, Inc.

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Defenders of Wildlife

By: *[Signature]*  
Title: President & CEO  
Date: 4/23/10

The National Audubon Society

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**INFRASTRUCTURE COALITION**

CTIA–The Wireless Association®

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The National Association of Broadcasters

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The National Association of Tower Erectors

By: \_\_\_\_\_  
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Date: \_\_\_\_\_

**CONSERVATION GROUPS**

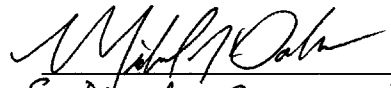
The American Bird Conservancy, Inc.

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Defenders of Wildlife

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

The National Audubon Society

By:   
Title: Sr. Director, Government Relations  
Date: 4/20/10

**CONSERVATION GROUPS' RANKING OF LIGHTING SYSTEMS**

The Conservation Groups rank FAA Lighting Styles in the following order, with the most preferred lighting system listed first and the least preferred light system listed last:

FAA Style B (L-856)  
FAA Style D (L-865)  
FAA Style E (L864/L-865/L-810s)  
FAA Style C (L-856/L-865)  
FAA Style F (White Strobe Day/Red Beacon Night and L-810s)  
FAA Style A (L-864/L-810)

A complete description of each FAA Lighting Style and the manner in which it is to be deployed is found at FAA, U.S. Dept. of Transportation, *Advisory Circular: Obstruction Marking and Lighting*, AC 70/7460-1K, (Feb. 1, 2007) and app. 1.