

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Application of American Tower Corporation)	File No. A0461656
For Tower Registration with Environmental)	
Assessment)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: February 22, 2006

Released: February 22, 2006

By the Deputy Chief, Spectrum and Competition Policy Division:

I. INTRODUCTION

1. In this Order, we grant an Application for Antenna Structure Registration (Application) filed by American Tower Corporation (American Tower), FCC File No. A0461656. Because the proposed construction falls within a category of potential significant environmental impact under Section 1.1307 of the Federal Communications Commission (Commission) rules,¹ American Tower filed an environmental assessment (Environmental Assessment)² with the Application, pursuant to Sections 1.1308 and 1.1311 of the Commission's rules.³ Several local residents petitioned to deny the Application,⁴ contending that the tower should not be constructed as proposed due to several asserted environmental impacts, and that the grant of the Application and construction of the tower would be inconsistent with the Commission's environmental rules⁵ implementing the National Environmental Policy Act of 1969 (NEPA)⁶ and Section 106 of the National Historic Preservation Act of 1966 (NHPA).⁷

¹ 47 C.F.R. § 1.1307.

² See Environmental Assessment, Edisto Island Site, Charleston County, SC, filed as an attachment to Application for Antenna Structure Registration of American Tower Corporation, file number A0461656 (August 17, 2005) (Environmental Assessment).

³ 47 C.F.R. §§ 1.1308, 1.1311.

⁴ See e-mail from Rosalie Crouch, Edisto Island resident, to Catherine W. Seidel, Acting Chief, Wireless Telecommunications Bureau (October 8, 2005) (Crouch Petition); e-mail from Jameely Moore, Edisto Island resident, to Catherine W. Seidel, Acting Chief, Wireless Telecommunications Bureau (October 17, 2005) (Moore Petition); and e-mail from Johnnie and Susan Walker, Edisto Island residents, to Catherine W. Seidel, Acting Chief, Wireless Telecommunications Bureau (October 17, 2005) (Walker Petition).

⁵ 47 C.F.R. §§ 1.1301-1.1319.

⁶ 42 U.S.C. §§ 4321-4395.

⁷ 16 U.S.C. § 470f.

2. For the reasons set forth herein, we dismiss the petitioners' objections as improperly filed. Even considering the issues raised in the improperly filed pleadings, moreover, we find that the record supports a Finding of No Significant Impact to the Environment (FONSI). We therefore grant American Tower's Application.

II. BACKGROUND

3. American Tower proposes to construct a 195-foot communications tower on Peters Point Road in Edisto Island, South Carolina.⁸ American Tower states that the tower is intended to accommodate the facilities of a Commission licensee and that it currently has a commitment from at least one wireless carrier to occupy space on the tower.⁹ Because the tower would be located in a flood plain,¹⁰ on August 17, 2005, American Tower filed with the Spectrum and Competition Policy Division (Division) of the Wireless Telecommunications Bureau (Bureau) an Application for Antenna Structure Registration accompanied by the Environmental Assessment.¹¹ On August 26, 2005, the Application was placed on public notice, affording the general public an opportunity to comment on the content of the Environmental Assessment.¹²

4. On October 8, 2005, after the expiration of the 30-day comment period specified in the Public Notice, Rosalie Crouch filed by e-mail a self-styled petition to deny, contending the tower would be located in a flood plain, and hence should not be constructed.¹³ Other alternative sites are available, she continues, that would not be located in a flood plain.¹⁴ Jameely Moore, in an e-mailed petition dated October 17, 2005, agrees with Ms. Crouch, and also contends the proposed tower would pose a threat to the pristine marsh lands adjacent to the tower site.¹⁵ She adds that the tower would be a "mess" to maintain during a big storm, such as the one that recently struck the island.¹⁶ Also on October 17, 2005, Johnnie and Susan Walker filed by e-mail a petition to deny, agreeing with Ms. Crouch and Ms. Moore that the tower would be located in a flood plain and therefore should not be constructed.¹⁷ The Walkers also argue the tower would adversely impact several historic plantations in the vicinity of the tower,¹⁸ and contend that the tower would adversely impact the marshlands, a pristine estuary, in the vicinity of the tower.¹⁹ They also urge that the tower be constructed at another location.²⁰

⁸ Environmental Assessment at § 1.1.

⁹ Letter from H. Anthony Lehv, Senior Vice President and Associate General Counsel, American Tower, to Frank Stilwell, Attorney, FCC (included in American Tower NEPA Review – Supplemental Information, filed January 11, 2006).

¹⁰ See 47 C.F.R. § 1.1307(a)(6).

¹¹ See Application.

¹² See *Public Notice*, Antenna Structure Registration Service Information, Report No. CWS-05-65 (rel. August 26, 2005).

¹³ Crouch Petition.

¹⁴ *Id.*

¹⁵ Moore Petition.

¹⁶ *Id.*

¹⁷ Walker Petition at 2.

¹⁸ *Id.*

¹⁹ *Id.*

5. On November 18, 2005, American Tower filed an opposition to the petitions of Ms. Crouch, Ms. Moore, and the Walkers.²¹ In its opposition, American Tower asserts that the petitions are untimely, since they were filed more than thirty days following the placement of the Application on public notice.²² In addition, American Tower argues, the petitions should be dismissed because they were not properly served on American Tower and were not filed with the Secretary of the Commission, as required by the Commission's rules.²³ Moreover, American Tower continues, the petitioners did not make a prima facie showing, supported by affidavit, that denying the American Tower application would be in the public interest.²⁴ Finally, American Tower asserts that it mitigated the effects of locating the tower in a flood plain by securing a building permit from the local governing authority, consistent with the Commission's rules.²⁵ Its Environmental Assessment, American Tower concludes, otherwise demonstrates the project would have no significant impact on the environment, and therefore the Application should be granted.²⁶

6. Although advised by the Division staff that they could file replies, neither Ms. Crouch, Ms. Moore, nor the Walkers responded to the American Tower opposition. During the course of reviewing the Environmental Assessment, Division staff requested additional information from American Tower to assist it in determining whether the proposed construction would have a significant environmental effect.²⁷ American Tower, thereafter, supplemented its Environmental Assessment and served copies of the documents on all parties.²⁸

III. DISCUSSION

7. American Tower initially argues that the petitions should not be considered due to procedural deficiencies. Petitions to deny an application, contesting an environmental assessment, must comply with the procedural requirements in Section 1.939 of the Commission's rules.²⁹ Under Section 1.939, the petition to deny must be filed within thirty days following placement of the application on public notice.³⁰ The petition must be filed electronically via the Universal Licensing System (ULS) or manually with the Office of the Secretary, and must be served upon the applicant.³¹ A petitioner must set out specific allegations of fact sufficient to make a prima facie case that grant of the application would not

(Continued from previous page) _____

²⁰ *Id.*

²¹ *See Consolidated Opposition of American Tower Corporation*, filed November 18, 2005 (Opposition).

²² *Id.* at 2-3.

²³ *Id.* at 3-4.

²⁴ *Id.*

²⁵ *Id.* at 6, 8.

²⁶ *Id.* at 5-9.

²⁷ *See* 47 C.F.R. § 1.1308(b).

²⁸ *See* American Tower NEPA Review – Supplemental Information (filed January 11, 2006); Letter from David A. Jermakian, President, Dynamic Environmental Associates, Inc., to Jenna Lamontagne, American Tower filed January 23, 2006).

²⁹ *See* 47 C.F.R. § 1.939.

³⁰ *Id.* § 1.939(a)(2).

³¹ *Id.* § 1.939(b), (c).

be in the public interest.³² Such allegations must be supported by affidavit of a person with personal knowledge of the facts alleged.³³

8. Ms. Crouch, Ms. Moore, and the Walkers have failed to meet these requirements. First, the petitions were filed between 43 and 52 days after the Application was placed on public notice. Second, the petitions were initially filed by e-mail to a Commission staff member and were not served on American Tower.³⁴ Third, although the facts alleged by the petitioners do raise potentially significant matters regarding the American Tower Environmental Assessment, the allegations are not supported by affidavits. It is important for the orderly processing of applications and petitions that parties adhere to the Commission's pleading practices outlined in Part 1 of the Commission's rules.³⁵ Therefore, we dismiss Ms. Crouch's, Ms. Moore's, and the Walkers' petitions to deny as improperly filed in accordance with the Commission's rules.³⁶

9. Our determination that the petitions were improperly filed does not, however, end our consideration of American Tower's Application and Environmental Assessment. Under the Commission's rules, an applicant to construct facilities must, in consultation with relevant expert agencies, determine whether the facility falls within any of the eight categories specified in the Commission's rules that may significantly affect the environment.³⁷ Section 1.1308 of the Commission's rules requires applicants to prepare an environmental assessment for actions that may have a significant environmental impact under any of these categories.³⁸ The Bureau or Commission conducts an independent review of the environmental assessment to determine whether the proposed construction would have a significant impact on the human environment.³⁹ In performing this independent review, we consider the entire record, including all petitions and objections filed against the environmental assessment.

10. In this case, we find the proposed construction will have no significant environmental impact. American Tower filed an environmental assessment because it determined that the construction would be located in a flood plain. In its Environmental Assessment, American Tower addressed this

³² *Id.* § 1.939(d).

³³ *Id.*

³⁴ We note that these defects were later corrected after petitioners were contacted by Division staff. *See* Opposition at 2-3.

³⁵ *See In the Matter of County of Albemarle Informal Objections Against Application for Wireless Radio Station Authorization (FCC Form 601) with Environmental Assessment*, File No. 0000986878, Memorandum Opinion and Order, 18 FCC Rcd 10,647, 10,649 ¶ 8 (2003).

³⁶ Because we would grant American Tower's application even considering the petitioners' objections, see paras 11-13, *infra*, we need not consider whether, or under what circumstances, these pleadings could have been properly filed as informal objections. *See* 47 C.F.R. § 1.1313(b). We note the pleadings were characterized by the petitioners as petitions to deny, and that in substance they constitute arguments for denying American Tower's application.

³⁷ *See* 47 C.F.R. § 1.1307(a).

³⁸ *Id.* § 1.1308. In addition, the Bureau may require an environmental assessment, either on its own motion or in response to a petition, where it determines that an action not within one of the specified categories may have a significant environmental impact. *See id.* § 1.1307(c), (d).

³⁹ *Id.* If a Commission action will have a significant environmental impact, an Environmental Impact Statement must be prepared. *Id.* § 1.1305.

potentially significant impact on the environment by including a building permit from the local government authority.⁴⁰ Moreover, as American Tower notes in its opposition, the Federal Emergency Management Agency – which oversees compliance with flood plain regulation – indicated that it would not object to the project if supported by the local government.⁴¹ This evidence is sufficient to show that the construction will not have a significant impact on the flood plain. We further find, based on independent review of the Environmental Assessment, that the project will have no other significant environmental impact.

11. Although, as noted, we dismiss the petitions to deny as improperly filed, nothing in these pleadings changes our conclusions. With respect to the flood plain, petitioners argue that locating the tower at an alternate site would better mitigate the environmental impact of construction. American Tower is not required to consider alternative locations, however, because the site that it has proposed would not have a significant impact on the flood plain. Moreover, as American Tower notes, the other site identified by petitioners would also be located in a flood plain.⁴²

12. Petitioners also argue that the tower would have an adverse impact on historic properties⁴³ and that it would pose a threat to nearby marshlands.⁴⁴ American Tower contacted the South Carolina Department of Archives & History, which is the South Carolina State Historic Preservation Officer (the South Carolina SHPO), and the South Carolina SHPO recommended the project would not affect historic properties.⁴⁵ We agree with this recommendation, and conclude American Tower has satisfied this element of its environmental review, consistent with the Commission's rules. American Tower has also documented the tower will not be located in a wetlands, wilderness area, or wildlife preserve.⁴⁶ We therefore conclude that the proposed project will not significantly impact the adjacent marshlands as argued by petitioners.

13. Finally, petitioners raise other alleged environmental impacts from the proposed tower, including concerns about potential damage should a big storm strike the island. Under the Commission's rules, the Bureau responsible for processing an application shall require an environmental assessment to address a potentially significant environmental impact if it finds, upon petition, that said significant environmental impact may occur.⁴⁷ Having reviewed in detail the other assertions raised by the petitioners, we deem them insubstantial. Accordingly, we find that the proposed construction will have no significant environmental impact.

⁴⁰ Opposition at 6, 8; Environmental Assessment at § 3.6, Appendix IV.

⁴¹ Opposition at 6; Environmental Assessment at § 3.6.

⁴² Opposition at 7- 8.

⁴³ See 47 C.F.R. § 1.1307(a)(4).

⁴⁴ *Id.* § 1.1307(a)(7).

⁴⁵ See letter from Marta Matthews, Review and Compliance Coordinator, State Historic Preservation Office, to David Jermakian, President, Dynamic Environmental Associates, Inc. (August 6, 2004); Letter from Richard Sidebottom, Review and Compliance Coordinator, State Historic Preservation Office, to David Jermakian, President, Dynamic Environmental Associates, Inc. (January 28, 2005) (contained in American Tower NEPA Review – Supplemental Information).

⁴⁶ Environmental Assessment at §§ 3.7, 3.1 and 3.2.

⁴⁷ 47 C.F.R. § 1.1307(c); see also 47 C.F.R. § 1.1307(d) (authority of Bureau to require environmental assessment on its own motion).

IV. CONCLUSION

14. We dismiss Ms. Crouch's, Ms. Moore's, and the Walkers' objections as improperly filed. Nonetheless, we have considered the issues raised in these pleadings in evaluating the Environmental Assessment. Upon an independent review of the Environmental Assessment, and based on the entire administrative record, we conclude that the construction of the facility proposed by American Tower discussed herein will have no significant impact on the human environment⁴⁸ within the meaning of NEPA and Section 1.1307 of the Commission's Rules. Accordingly, we grant American Tower's application.

V. ORDERING CLAUSES

15. Accordingly, IT IS ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Sections 1.939(h) and 1.1313(a) of the Commission's rules, 47 C.F.R. §§ 1.939(h) and 1.1313(a), the Petitions to deny filed by Rosalie Crouch, Jameely Moore and Johnnie and Susan Walker ARE DISMISSED.

16. IT IS FURTHER ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), the regulations of the Council on Environmental Quality, 40 C.F.R. Sections 1501.3, 1508.9 and 1508.13, Section 106 of the National Historic Preservation Act, 16 U.S.C. § 470f, and Sections 1.1308 and 1.1312 of the Commission's rules, 47 C.F.R. §§ 1.1308 and 1.1312, that the Division finds grant of the Application will have no significant impact on the environment.

17. IT IS FURTHER ORDERED, pursuant to Sections 1501.4(i) and 1506.6 of the regulations of the Council on Environmental Quality, 40 C.F.R. §§ 1501.4(i) and 1506.6, and Section 1.1308 of the Commission's rules, 47 C.F.R. § 1.1308, that applicant American Tower Corporation is to provide to the community to be served by this facility notice of the finding herein of no significant impact.

18. IT IS FURTHER ORDERED, pursuant to Sections 4(i) and 303(q) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 303(q), and Section 17.4 of the Commissions rules, 47 C.F.R. § 17.4, that the Application for Antenna Structure Registration, filed by American Tower Corporation, IS GRANTED.

19. This action is taken pursuant to delegated authority under Section 0.331 of the Commission's rules, 47 C.F.R. § 0.331.

FEDERAL COMMUNICATIONS COMMISSION

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⁴⁸ *Id.* at § 1.1308(d).