



Federal Communications Commission
Washington, D.C. 20554

DA 12-1969
December 7, 2012

Mr. Phillip A. Collins
26480 Peden Road
Magnolia, Texas 77355

Operations Department
Skyway Towers, LLC
20525 Amberfield Drive, Suite 102
Land O Lakes, Florida 34638

Re: Request for Environmental Review
Skyway Towers, LLC
Antenna Structure Registration Application
No. A0787386

Dear Sirs:

By this letter, the Spectrum and Competition Policy Division (Division) of the Wireless Telecommunications Bureau (Bureau) denies the Request for Environmental Review (Request) filed by Philip A. Collins on October 13, 2012, with respect to the above-referenced Antenna Structure Registration (ASR) application, filed by Skyway Towers, LLC (Skyway Towers or applicant), for a 250-foot communications tower in Magnolia, Texas. Skyway Towers filed a Response on October 24, 2012, and a Second Response on October 28, 2012. Mr. Collins did not submit a reply. We find that there has not been a showing that the tower may have a significant environmental impact sufficient to require further environmental review, as set forth in Section 1.1307(c) of the Commission's rules, 47 C.F.R. § 1.1307(c), and the Commission's December 2011 *Order on Remand* (26 FCC Rcd 16700). Below we discuss each of the issues raised in the Request.

Discussion

Visual Effects. Mr. Collins alleges that the proposed tower would cause visual pollution and would affect the view from his home, which has already been affected by wildfires and a drought in 2011. These allegations do not meet the standard required for further environmental processing under Section 1.1307 of the Commission's rules and the *Order on Remand*. Mr. Collins does not allege a visual effect on resources protected under Section 106 of the National Historic Preservation Act, 16 U.S.C. § 470f.; the National Scenic Byways Program (28 U.S.C. § 162); Section 6(f) of the Land and Water Conservation Fund Act (16 U.S.C. § 460); or on visual resources in National Parks. Outside of these categories, there are generally no federal statutory or regulatory requirements that protect visual resources or aesthetics. In general, the Commission defers to state, regional, or local authorities to consider visual impacts on other local resources. Nothing in Mr. Collins' Request persuades us to depart from this practice here. Accordingly, we find that further environmental processing is not required to examine the visual effects of the proposed tower.

Migratory Birds. Mr. Collins alleges that this tower would have significant environmental effects on migratory birds. He asserts that Magnolia, Texas, and the area around the tower features an abundance of wildlife areas and a large number of migratory birds, migratory bird habitats, and breeding/hatching areas.

He lists a number of species of birds that have been recorded in the area, although he does not state which birds in the list are migratory.

In response, the applicant attaches its Informal Biological Assessment, provided to the U.S. Fish and Wildlife Service (FWS), which states that there will be “no increased risk to migratory birds based on the specifications of this project.” The applicant notes that “the proposed area for this project is not located in or within 300 feet of a NWI [National Wetlands Inventory] mapped wetland, wildlife refuge, national wilderness area, native grassland or forest area, ridge-line, mountain top, or coastline.” The applicant attaches a letter from FWS noting that the upper Texas coast is located within a major bird migration corridor (i.e., the central flyway of the US) and hosts a diverse community of resident and migratory bird species and recommending that the applicant follow its guidance to reduce the chances of take. The applicant states that it has implemented the FWS guidelines as applicable to towers greater than 199 feet in height.

We find that Mr. Collins’ assertions do not meet the standard in the Commission’s rules to require further environmental processing. In the Final Programmatic Environmental Assessment for the Antenna Structure Registration Program, <http://www.fcc.gov/pea> (PEA), the Bureau noted that Alternative 2B would ensure that potentially significant environmental effects on migratory birds at the local level would be considered and addressed through site-specific Environmental Assessments (EAs) for towers that may contribute significantly to migratory bird deaths. Alternative 2B identified towers located on ridgelines or in coastal zones, bird staging areas, colonial nesting sites, or Western Hemisphere Shorebird Reserve Network (WHSRN) sites as those where there may be a significant effect to migratory birds. Accordingly, Alternative 2B would require an EA where a tower would be in one of these locations and would be more than 450 feet in height, would use a red steady-burning lighting scheme, or would use guy wires. While the Commission has not formally adopted one of the alternatives considered in the Programmatic Environmental Assessment, we apply this analysis informally for purposes of evaluating this case.

While the proposed tower would use red steady burning lights, it would not be located in one of the sensitive areas listed above. In addition, the proposed tower would be under 450 feet tall and the tower would not use guy wires. According to the PEA, “towers with guy wires result in higher levels of avian mortality than towers without guy wires.” (PEA at 7-1). Further, existing studies have not shown significant avian mortality at towers less than 450 feet tall, even for towers with guy wires. (PEA at 5-12 to 5-14).

The applicant also has determined that the tower site is not in or within 300 feet of a NWI-mapped wetland, wildlife refuge, national wilderness area, native grassland or forest area, ridge-line, mountain top, or coastline. The PEA identified many of these types of locations as sensitive areas, where a tower is more likely to have a significant effect on migratory birds. (PEA at 4-18 to 4-20). Indeed, the applicant has satisfactorily addressed all of the areas identified as sensitive in the PEA that could be present at this location.

Accordingly, we find that further environmental processing is not required to examine the impact of the proposed tower on migratory birds.

Endangered Species. Mr. Collins states that Montgomery County is home to 35 endangered species, which have been affected by the 2011 wildfires and drought. He asserts generally that “[a]dditional impact on the Eco System associated with the construction and operation of a high elevation communications tower, only adds to the negative environmental impact of this area that we call home.”

The applicant responds that of the species listed by Mr. Collins, only three are endangered: the Whooping Crane, the Red-cockaded Woodpecker, and the Red Wolf. The applicant has consulted with FWS with respect to this project's effect on protected species. FWS stated that the applicant should use the county-by-county listing of federally listed threatened and endangered species and other species information to determine whether suitable habitat for a listed species is present at the project site. In its Responses, the applicant submitted documentation showing that it reviewed the natural habitats of the Whooping Crane, the Red-cockaded Woodpecker, and the Red Wolf, and determined that the proposed site is unsatisfactory for these species as it does not contain their designated habitats. Mr. Collins has not provided any basis for calling into question the applicant's conclusion. Accordingly, no further environmental processing is required with respect to this allegation.

Based on the record before us, we therefore find that Skyway Towers adequately addressed Mr. Collins' concerns in its pre-construction environmental review. Accordingly, subject to Skyway Towers' certification that the tower will have no other significant environmental impact, no further environmental processing is necessary.

Conclusion

For these reasons, the Division DENIES the Request, and Skyway Towers, LLC may complete its Antenna Structure Registration application.

Sincerely,

Aaron Goldschmidt
Assistant Chief, Spectrum and Competition Policy Division
Wireless Telecommunications Bureau

cc: Mr. Douglas B. Sims, Sims & Associates, LLC