



**FEDERAL COMMUNICATIONS COMMISSION**  
Wireless Telecommunications Bureau  
Competition and Infrastructure Policy Division  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

June 16, 2016

**VIA FIRST CLASS MAIL AND EMAIL**

Mr. Claude Mongeau  
President and CEO  
Canadian National Railroad  
935 de La Gauchetière Street West  
Montreal, Quebec  
H3B 2M9  
Canada

Attn: FCC License Manager  
Illinois Central Railroad Company  
17641 S Ashland Ave  
Homewood, IL 60430

**Re: VIOLATION OF FCC ENVIRONMENTAL RULES**

Dear Mr. Mongeau:

This letter pertains to our findings that Illinois Central Railroad Company (Illinois Central), a subsidiary of Canadian National Railroad, failed to comply with the Commission's regulations implementing the National Environmental Policy Act of 1969 (NEPA) and other federal environmental statutes,<sup>1</sup> pertaining to the Antenna Structure Registration (ASR) system,<sup>2</sup> and requiring truthful and accurate statements.<sup>3</sup> In particular, the Bureau has determined that Illinois Central violated Sections 1.17, 1.1307, 1.1311, and

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<sup>1</sup> See 47 C.F.R. §§ 1.1301 *et seq.*; *see also* 42 U.S.C. §§ 4321-4335. NEPA requires that federal agencies consider the environmental effects of their major federal actions before taking action, including issuing permits, licenses, or approvals. *See also* the National Historic Preservation Act, 54 U.S.C. § 300101 *et seq.*

<sup>2</sup> See 47 C.F.R. Part 17.

<sup>3</sup> See 47 C.F.R. § 1.17.

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17.4 of the Commission's rules<sup>4</sup> by submitting an application to register a tower in Paducah, Kentucky, and certifying compliance with the Commission's environmental regulations when it had not completed the required environmental review.<sup>5</sup> By this letter, we apprise Illinois Central of the implications of failing to comply with Commission regulations in the future.

### **Regulatory Requirements**

Under the Commission's rules, an applicant must consider, prior to initiating construction or deployment, whether the facility it proposes to build or use may have a significant effect on the environment. If so, the applicant must prepare an EA and submit the EA with its application in accordance with the Commission's rules.<sup>6</sup> Specifically, an applicant must prepare an EA if the proposed facility meets any of several criteria specified in the Commission's rules – including construction that may affect properties listed or eligible for listing in the National Register of Historic Places<sup>7</sup> – and it may not begin construction until the Commission's environmental processing is completed.<sup>8</sup> The Commission's ASR rules also place a separate obligation to submit an EA with an ASR application if an EA is required under the Commission's environmental rules.<sup>9</sup>

Section 1.1307(a)(4) of the rules requires applicants to consider, prior to initiating construction or deployment, whether their proposed facilities would affect properties listed or eligible for listing in the National Register of Historic Places.<sup>10</sup> In considering effects on these properties, Section 1.1307(a)(4) requires applicants to follow the prescribed procedures set forth in the rules of the Advisory Council on Historic Preservation (Advisory Council),<sup>11</sup> as modified by the Nationwide Programmatic Agreement for the Collocation of Wireless Antennas (Collocation Agreement)<sup>12</sup> and the Nationwide Programmatic Agreement

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<sup>4</sup> See 47 C.F.R. §§ 1.17, 1.1307, 1.1311, 17.4.

<sup>5</sup> 47 C.F.R. § 1.17.

<sup>6</sup> 47 C.F.R. §§ 1.1307, 1.1311(a).

<sup>7</sup> See 47 C.F.R. § 1.1307(a) (specifying eight criteria that require preparation of an EA), 1.1307(b) (EA required if human exposure to radio frequency emissions will exceed certain limits), 1.1307(d) Note (processing bureau shall require an EA for new and certain modified antenna structures over 450 feet in height). In addition, the processing bureau shall require an EA if it determines, in response to an interested person's allegation or on its own motion, that an otherwise categorically excluded facility may have a significant environmental impact. 47 C.F.R. § 1.1307(c), (d).

<sup>8</sup> 47 C.F.R. § 1.1312(b). The contents of an EA are described in 47 C.F.R. § 1.1311. See also 47 C.F.R. § 1.1308 (discussing the Commission's process for reviewing EAs).

<sup>9</sup> See 47 C.F.R. § 17.4(c)(7) (if an EA is required under Section 1.1307, the ASR applicant shall attach the EA to its environmental submission), 17.4(c)(8) (the processing Bureau shall resolve all environmental issues in accordance with the environmental regulations before the tower owner may complete the ASR application).

<sup>10</sup> 47 C.F.R. § 1.1307(a)(4).

<sup>11</sup> 36 C.F.R. Part 800.

<sup>12</sup> 47 C.F.R. Pt. 1, App. B; see *Wireless Telecommunications Bureau Announces Execution of Programmatic Agreement with respect to Collocating Wireless Antennas on Existing Structures*, Public Notice, 16 FCC Rcd 5574 (WTB 2001), *recon. denied*, 20 FCC Rcd 4084 (WTB 2005).

Regarding the Section 106 National Historic Preservation Act Review Process (NPA).<sup>13</sup> These agreements tailor and streamline the review and consultation procedures routinely required by the National Historic Preservation Act of 1966 (NHPA)<sup>14</sup> and the implementing regulations issued by the Advisory Council.

### **Illinois Central's Conduct**

Illinois Central has failed to comply with the Commission's environmental and ASR regulations.<sup>15</sup> On January 29, 2015, Illinois Central submitted an ASR application on FCC Form 854 for a proposed site in Paducah, Kentucky (FCC File No. A0933815).<sup>16</sup> On January 30, 2015, the Kentucky Heritage Council, which is the State Historic Preservation Officer (SHPO) for Kentucky, notified Illinois Central that the proposed tower with the parameters submitted on the ASR application would have an adverse effect on historic properties.<sup>17</sup> Nonetheless, in connection with that application, on March 25, 2015, Illinois Central incorrectly certified in violation of the Commission's rules that it had completed an environmental review, that the tower did not require an EA under Section 1.1307, and that

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<sup>13</sup> 47 C.F.R. Pt. 1, App. C; *see Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process*, Report and Order, 20 FCC Rcd 1073 (2004), *clarified*, 20 FCC Rcd 17995 (2005), *aff'd*, *CTIA-The Wireless Ass'n. v. FCC*, 466 F.3d 105 (D.C. Cir. 2006) (*NPA Report and Order*). Under the NHPA and the Advisory Council's implementing regulations, the Advisory Council may approve program alternatives that tailor a federal agency's historic preservation review and consultation procedures to the particular circumstances of the agency's program or that exempt from historic preservation review actions that are unlikely to affect historic properties. *See* 54 U.S.C. § 304108 *et seq.*; 36 C.F.R. § 800.14(b), (c).

<sup>14</sup> 54 U.S.C. § 300101 *et seq.* The NHPA requires that a federal agency consider the effects of its federal undertakings, including actions that it authorizes or approves, on historic properties prior to issuing federal licenses, permits or approvals. *See* 54 U.S.C. §§ 306108, 300320. This review is commonly referred to as "Section 106 Review" because the provision requiring the review was originally enacted as Section 106 of the NHPA. In considering such effects, the NHPA further requires the federal agency to consider the views of expert agencies. Specifically, the NHPA requires the federal agency to consider the views of the Advisory Council, which is the federal agency responsible for implementing the NHPA; the appropriate State Historic Preservation Officer; and, if historic properties of religious or cultural significance to federally recognized Tribal Nations or Native Hawaiian Organizations may be affected, their representatives. *See* 54 U.S.C. §§ 302104, 302706, 306108, 304101. As authorized by the Advisory Council, the Commission's environmental rules delegate to its licensees, permittees, and applicants initial responsibility for identifying historic properties and evaluating the effects that their proposed facilities may have on such properties, but the Commission remains ultimately responsible for ensuring that the Section 106 process occurs in accordance with applicable statutory and regulatory provisions, as well as for government-to-government consultation with federally recognized Tribal Nations. *See* 47 C.F.R. § 1.1307(a)(4); *see also* 36 C.F.R. § 800.2(a)(3); *NPA Report and Order*, 20 FCC Rcd at 1076-77 ¶ 5.

<sup>15</sup> *See* 47 C.F.R. §§ 1.1301 *et seq.*, 17.1 *et seq.*

<sup>16</sup> The FCC placed that application on thirty-day national notice on February 6, 2015. Illinois Central completed local notice on February 3, 2015. *See* 47 C.F.R. § 17.4(c)(3), (4).

<sup>17</sup> Illinois Central had received a no adverse effects letter from the SHPO on January 21, 2015 with respect to a proposed tower that was shorter in height. The ASR application submitted on January 29, 2015 represented an increase in height.

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the project would not have a significant environmental impact.<sup>18</sup> In addition, Illinois Central's certification on the ASR application that the tower would have no significant environmental impact, notwithstanding its knowledge that the tower would have an adverse effect on historic properties, constituted a material misstatement of fact without a reasonable basis for believing that the statement was correct and not misleading.<sup>19</sup>

On March 25, 2015, based on Illinois Central's certification, the Wireless Telecommunications Bureau (Bureau) granted its application and issued a registration.<sup>20</sup> Subsequently, Illinois Central, the SHPO, and the FCC completed a Memorandum of Agreement to mitigate the adverse effect. On June 23, 2015, GTC Spectrum Corporation, an affiliate of Illinois Central, submitted an EA for the proposed Paducah structure to the FCC on a Form 601 application (ULS No. 0006851324), even though the Commission's regulations require that an EA for a tower that requires registration be attached to an ASR application and comply with the ASR notification requirements.<sup>21</sup> Ultimately, the Bureau issued a Finding of No Significant Impact, granted GTC Spectrum Corporation's license application, cancelled the erroneous registration at Illinois Central's request, and granted antenna structure registration in response to a corrected application.<sup>22</sup>

Based on the information Illinois Central provided, we find that Illinois Central violated the Commission's environmental and ASR regulations, as well as the regulation requiring truthful and accurate statements. Future violations may result in additional action, including the imposition of monetary penalties, pursuant to the Wireless Telecommunications Bureau's authority under 47 C.F.R. § 0.111(a)(11) or via referral to the Commission's Enforcement Bureau. Furthermore, Illinois Central's conduct at issue in this letter may provide grounds for an upward adjustment in the amount of a penalty.

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<sup>18</sup> 47 C.F.R. §§ 1.1307(a)(4), 1.1311(a), 17.4(c)(8). *See also* Wireless Telecommunications Bureau Reminds Antenna Structure Owners of Registration Obligations, *Public Notice*, DA 15-704 (June 17, 2015).

<sup>19</sup> 47 C.F.R. § 1.17(a)(2).

<sup>20</sup> *See* ASR Registration No. 1295357.

<http://wireless2.fcc.gov/UlsApp/AsrSearch/asrRegistration.jsp?callingSystem=AS&regKey=2694876>

<sup>21</sup> *See* 47 C.F.R. § 17.4(c)(7); National Environmental Policy Act Compliance for Proposed Tower Registrations, In the Matter Effects of Communications Towers on Migratory Birds, WT Docket Nos. 08-61, 03-187, *Order on Remand*, 26 FCC Rcd 16700, 16729 at para. 72 (2011).

<sup>22</sup> Registration No. 129682. The Bureau waived the national notice requirement for this application, *see* 47 C.F.R. § 17.4(c)(4), since the EA had already been placed on public notice in connection with the license application. *See*

<http://wireless2.fcc.gov/UlsApp/AsrSearch/asrRegistration.jsp?callingSystem=AS&regKey=2696346>.

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Please direct any questions regarding this letter to Erica Rosenberg  
([erica.rosenberg@fcc.gov](mailto:erica.rosenberg@fcc.gov), (202) 418-1343).

Sincerely,

Jeffrey S. Steinberg  
Deputy Chief  
Competition and Infrastructure  
Policy Division  
Wireless Telecommunications Bureau

cc: Theodore K. Kalick, Senior U.S. Regulatory Counsel  
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