



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

June 16, 2016

VIA FIRST CLASS MAIL AND EMAIL

Kenneth R. Meyers
President and Chief Executive Officer
United States Cellular Corporation
8410 West Bryn Mawr Avenue, Suite 700
Chicago, IL 60631-3486

Re: VIOLATION OF FCC ENVIRONMENTAL RULES

Dear Mr. Meyers:

This letter pertains to self-reported admissions that United States Cellular Corporation (USCC) failed to comply with the Commission's regulations implementing the National Environmental Policy Act of 1969 (NEPA) and other federal environmental statutes,¹ related licensing and antenna structure registration (ASR) regulations,² and its regulation requiring truthful and accurate statements.³ The Wireless Telecommunications Bureau has determined that USCC violated Sections 1.17, 1.923, 1.929, 1.947, 1.1307, 1.1311, 1.1312, 17.4, and 24.2 of the Commission's rules⁴ by (1) constructing two towers for Personal Communications Service (PCS) operations, and then engaging in licensed PCS operations from them, without first filing requisite environmental assessments (EAs) and license applications and awaiting the Commission's ruling on such submissions; (2) improperly certifying on its applications for registration that these facilities would have no significant

¹ 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.

² See 47 C.F.R. §§ 1.901 *et seq.*, 17.1 *et seq.* See also 47 C.F.R. § 24.2(b) (requiring licensees in the Personal Communications Services to comply with the environmental requirements in Part 1 prior to construction).

³ 47 C.F.R. § 1.17.

⁴ See 47 C.F.R. §§ 1.17, 1.923, 1.929, 1.947, 1.1307, 1.1311, 1.1312, 17.4, 24.2.

effect on the environment, when one was to be sited in a wetland and one was to be sited in a floodplain; and (3) failing to submit EAs for the Commission to process before registering the towers. By this letter, we apprise USCC 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 in accordance with the Commission's rules.⁵ Specifically, an applicant must prepare an EA if the proposed facility meets any of several criteria specified in the Commission's rules – including construction in a floodplain or wetland⁶ – and it may not begin construction until the Commission's environmental processing is completed.⁷ Furthermore, if a facility that may have a significant environmental impact is to be constructed to provide service pursuant to a license in the wireless radio services, its construction is considered a major modification of the license, which must be approved by the Commission prior to construction and operation.⁸ 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.⁹

USCC's Conduct

USCC has failed to comply with the Commission's environmental, licensing, and

⁵ 47 C.F.R. §§ 1.1307, 1.1311(a).

⁶ *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).

⁷ 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), 17.4(c) (providing that the Commission will address environmental concerns raised in an EA before completing antenna structure registration). Subsequent to the registration of these towers, Section 17.4(c) was amended to add an environmental notification process. *See* National Environmental Policy Act Compliance for Proposed Tower Registrations, WT Docket No. 08-61, *Order on Remand*, 26 FCC Rcd. 16700 (2011).

⁸ *See* 47 C.F.R. §§ 1.929(a)(4) (classifying applications and amendments requesting authorization for facilities that may have a significant effect on the environment as major), 1.947(a) (requiring Commission approval for major modifications). *See also* 47 C.F.R. §§ 1.923(e) (requiring completion of environmental review prior to construction for any application in the wireless radio services proposing facilities that may have a significant environmental effect), 24.2(b) (requiring licensees in the Personal Communications Services to comply with the environmental requirements in Part 1 prior to construction).

⁹ *See* 47 C.F.R. § 17.4(c) (2007) ("If an Environmental Assessment is required under § 1.1307 of this chapter, the Bureau will address the environmental concerns prior to processing the registration."). While this rule has changed substantially since 2007, this requirement still exists. *See* § 17.4(c)(7).

ASR regulations.¹⁰ Specifically, by its own admission, USCC constructed towers in Harvey, Illinois, and New Buffalo, Michigan, in 2007 and 2008 without filing EAs for Commission processing, even though both towers had potentially significant effects on the environment. EAs were required because the tower in Harvey, Illinois,¹¹ was to be located in a floodplain and the tower in New Buffalo, Michigan,¹² was to be located in a wetland.¹³ In addition, because USCC held a license for PCS transmissions from these towers,¹⁴ their construction and operation constituted a major modification of its license.¹⁵ Therefore, USCC's construction of and operation from these facilities without Commission approval constituted a violation of the licensing rules.¹⁶

Furthermore, USCC violated the ASR rules when the company registered these towers without filing EAs.¹⁷ In addition, the company's certification on the ASR applications that the towers would have no significant environmental impacts, notwithstanding its knowledge that one tower was to be located in a floodplain and the other in a wetland, constituted a material misstatement of fact without a reasonable basis for believing that the statement was correct and not misleading.¹⁸ Although USCC states that it prepared EAs for both towers prior to construction and has provided documentation to that effect,¹⁹ it did not file any EAs or license applications at that time, and it did not inform the Commission staff of the premature construction until December 2012.

Based on the information USCC provided, we find that USCC violated the Commission's environmental, licensing, 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, USCC's conduct at issue in this letter may provide grounds for an upward adjustment in the amount of a penalty.

¹⁰ See 47 C.F.R. §§ 1.1301 *et seq.*, 1.901 *et seq.*, 17.1 *et seq.*

¹¹ Registration No. 1260148, granted October 19, 2007. On February 2, 2015, the Commission was notified that ownership of the tower had been transferred to Vertical Bridge, LLC.

¹² Registration No. 1265070, granted September 9, 2008. On November 13, 2015, the Commission was notified that ownership of the tower had been transferred to Vertical Bridge, LLC, and the tower had been dismantled. We note that pursuant to Section 17.57 of the rules, the antenna structure owner must notify the Commission within five days of a change in ownership information as well as of dismantlement. 47 C.F.R. § 17.57.

¹³ See 47 C.F.R. § 1.1307(a)(6), (7).

¹⁴ WQRJ905-L0000011445 (cancelled November 1, 2014).

¹⁵ 47 C.F.R. § 1.929(a)(4).

¹⁶ 47 C.F.R. § 1.947(a); *see also* 47 C.F.R. §§ 1.923(e), 24.2(b).

¹⁷ 47 C.F.R. § 17.4(c).

¹⁸ See 47 C.F.R. § 1.17(a)(2).

¹⁹ Specifically, USCC has produced EAs for the Harvey tower dated September 26, 2007, and for the New Buffalo tower dated September 5, 2008.

Kenneth R. Myers

June 16, 2016

Page 4 of 4

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

Sincerely,

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