



FEDERAL COMMUNICATIONS COMMISSION
Public Safety and Homeland Security Bureau
Policy and Licensing Division
445 12th Street, SW
Washington, DC 20554

May 22, 2017

VIA FIRST CLASS MAIL AND EMAIL

Ms. Jacqueline Weinreich, CPM
Director, Radio and Technology Division
Pinellas County Safety and Emergency Services
10750 Ulmerton Road
Building 1, Suite 343
Largo, FL 33778

Re: VIOLATION OF FCC ENVIRONMENTAL RULES

Dear Ms. Weinreich:

This letter pertains to our findings that Pinellas County failed to comply with the Commission's regulations implementing the National Environmental Policy Act of 1969 (NEPA) and other federal environmental statutes,¹ as well as related licensing and antenna structure registration (ASR) rules and the rule requiring truthful and accurate statements.² The Public Safety and Homeland Security Bureau has determined that Pinellas County violated Sections 1.17, 1.923(e), 1.929(a)(4), 1.947(a), 1.1307(a)(4), 1.1307(a)(6), 1.1308(a), 1.1311(a), 17.4, 90.5, and 47 CFR Pt.1, App. C of the Commission's rules by constructing and operating from five public safety radio towers in Pinellas County, Florida, including two in flood plains, before completing the required environmental and historic preservation review.³ By this letter, we apprise Pinellas County of the implications of failing to comply with Commission regulations in the future.

¹ See 47 CFR §§ 1.1301 *et seq.*; see also 42 USC §§ 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 USC § 300101 *et seq.*

² See 47 CFR §§ 1.17; 1.901 *et seq.*; 17.1 *et seq.*; see also 47 CFR § 90.5(b) (requiring licensees in the Private Land Mobile Radio Services to comply with the environmental requirements in Part I prior to construction). For facilities that require registration in the Antenna Structure Registration System, Section 1.923(e)(1) requires environmental processing pursuant to the process set forth in Section 17.4(c). Section 1.947(a) requires Commission approval for all major modifications, as defined in Section 1.929. Section 1.929(a)(4) defines a major modification to include actions related to authorizations for facilities that may have a significant effect on the environment.

³ See 47 CFR §§ 1.17, 1.923, 1.929, 1.947, 1.1307, 1.1308, 1.1311, 17.4, 90.5; 47 CFR Pt.1, App. C.

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.⁴ 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 and construction in a floodplain,⁵ and it may not begin construction until the Commission's environmental processing is completed.⁶ 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.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. The application for this modification must be approved by the Commission prior to construction and operation.⁸

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.⁹ In considering potential 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),¹⁰ as modified by the Nationwide Programmatic Agreement for the Collocation of

⁴ 47 CFR §§ 1.1307, 1.1311(a).

⁵ See 47 CFR § 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 CFR § 1.1307(c), (d).

⁶ 47 CFR § 1.1312(b). The contents of an EA are described in 47 CFR § 1.1311. See also 47 CFR § 1.1308 (discussing the Commission's process for reviewing EAs).

⁷ See 47 CFR § 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).

⁸ See 47 CFR §§ 1.929(a)(4) (classifying applications and amendments requesting authorization for a facility that may have a significant effect on the environment as major), 1.947(a) (requiring Commission approval for major modifications). See also 47 CFR § 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), 90.5(b) (requiring licensees in the Private Land Mobile Radio Services to comply with the environmental requirements in Part 1 prior to construction).

⁹ 47 CFR § 1.1307(a)(4).

¹⁰ 36 CFR Part 800.

Wireless Antennas (Collocation Agreement)¹¹ and the Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process (NPA).¹² These agreements tailor and streamline the review and consultation procedures routinely required by the National Historic Preservation Act of 1966 (NHPA)¹³ and the implementing regulations issued by the Advisory Council.

Pinellas County's Conduct

By its own admission, Pinellas County has failed to comply with the Commission's environmental, ASR, and licensing regulations.¹⁴ Specifically, in 2015-16, it submitted applications to register five public safety radio towers in Pinellas County, Florida, in which it certified that the towers would not have a significant environmental impact.¹⁵ However,

¹¹ 47 CFR 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).

¹² 47 CFR 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 USC § 304108 *et seq.*; 36 CFR § 800.14(b), (c).

¹³ 54 USC § 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 USC §§ 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 USC §§ 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 CFR § 1.1307(a)(4); see also 36 CFR § 800.2(a)(3); *NPA Report and Order*, 20 FCC Rcd at 1076-77 ¶ 5.

¹⁴ See 47 CFR §§ 1.1301 *et seq.*; 1.901 *et seq.*; 17.1 *et seq.*; 90.5; 47 CFR Pt.1, App. C.

¹⁵ ASR Registration Nos. 1296913, 1297319, 1298380, 1298753, 1300706, <http://wireless2.fcc.gov/UlsApp/AsrSearch/asrRegistrationSearch.jsp>; see Email from Jacqueline Weinreich, Director, Radio and Technology Division, Pinellas County Safety and Emergency Services, to Erica Rosenberg, Assistant Chief, Competition and Infrastructure Policy Division (Nov. 18, 2016) (Weinreich Email). The FCC first learned of these towers from a third party in March 2016. Subsequent communications between the FCC and Ms. Weinreich precipitated the County's audit of its towers during the summer of 2016, which developed the information cited herein.

Pinellas County made these certifications, constructed the towers, and began operations prior to completion of required environmental and historic preservation reviews.¹⁶ Furthermore, the two towers located in St. Petersburg (ASR Nos. 1296913 and 1300706) were constructed in floodplains without first conducting Environmental Assessments and receiving the requisite Finding of No Significant Impact (FONSI) in violation of the Commission's rules.¹⁷ In addition, because Pinellas County uses the towers for radio transmissions subject to licensing pursuant to the Commission's rules governing Private Land Mobile Radio operations, its construction of and operation from these towers constitute a major modification of its license.¹⁸ Therefore, Pinellas County's construction of and operation from these facilities without Commission approval constituted a violation of the conditions of its license and the licensing rules.¹⁹

In addition, Pinellas County incorrectly certified in its ASR applications on FCC Form 854 that the St. Petersburg towers did not require EAs and would not cause a significant environmental impact. In submitting all five applications, Pinellas County further certified that all statements therein were true, complete, correct, and made in good faith.²⁰ Because it had not yet completed the required environmental and historic preservation review process at that time, Pinellas County could not have stated in good faith that the constructions would have no significant environmental impact. Hence, its statements and certifications constitute material misstatements of fact without a reasonable basis for believing that the statements were correct and not misleading.²¹

¹⁶ See 47 CFR §§ 1.923, 1.1307(a), 90.5; 47 CFR Pt. 1, App. C. Although these towers were constructed to replace existing towers, according to Pinellas County's environmental consultant, one of the towers (in Clearwater) qualified for the replacement tower exclusion from historic preservation review under the NPA. Email from Ligita Kravchuk, Environmental Consultant, Amec Foster Wheeler, to Erica Rosenberg, Assistant Chief, Competition and Infrastructure Policy Division (Jan. 24, 2017) (Kravchuk Email); see NPA, § III.B. However, the NPA exclusion has no bearing on the applicability of other environmental review requirements under Section 1.1307(a) and (b). See Kravchuk Email (indicating she erroneously believed that environmental compliance review other than for flood plain issues was not required where NPA exclusion applied); see also 47 CFR § 17.4(c)(1)(iv) (exempting replacement towers from ASR environmental notification process but only if, *inter alia*, no EA is required under Section 1.1307(a)-(d)).

¹⁷ See 47 CFR §§ 1.1307(a)(6), 1.1308(a), 1.1311(a), 17.4. An Environmental Assessment for ASR No. 1296913 was submitted post-construction in September 2016 and is still pending. A post-construction Environmental Assessment was submitted for ASR No. 1300706 in September 2016 which did not indicate that the tower had already been built, and the Wireless Telecommunications Bureau granted a Finding of No Significant Impact on October 26, 2016.

¹⁸ See 47 CFR § 1.929(a)(4).

¹⁹ See 47 CFR § 1.947(a); see also 47 CFR § 1.923(e). No EA or environmental compliance report was submitted for a tower completed on June 18, 2015 and registered in March 2016. (ASR No. 1298753). Pinellas County stated that this tower is located on County land and houses no commercial collocators, and suggested that environmental review is therefore not required. See Weinreich Email. We clarify that this tower is nonetheless subject to the environmental rules and we expect Pinellas County to perform post-construction review.

²⁰ See FCC Form 854, Certification Statement No. 1.

²¹ See 47 CFR § 1.17(a)(2).

Based on the information we have received, we find that Pinellas County violated the Commission's regulations implementing NEPA and other environmental statutes, including the NHPA, as well as related licensing and ASR requirements and the rule requiring truthful statements. Future violations may result in additional action, including the imposition of monetary penalties, pursuant to the Public Safety and Homeland Security Bureau's authority under 47 CFR § 0.111(a)(11) or via referral to the Commission's Enforcement Bureau. Furthermore, Pinellas County's conduct at issue in this letter may provide grounds for an upward adjustment in the amount of a penalty.

Please direct any questions regarding this letter to John Adams (john.adams@fcc.gov, (202) 418-0394).

Sincerely,

A handwritten signature in blue ink, appearing to read "Michael Wilhelm". The signature is stylized and cursive.

Michael Wilhelm
Acting Chief, Policy and Licensing Division
Public Safety and Homeland Security Bureau

cc:

Ligita Kravchuk
Americas – Environment & Infrastructure, Amec Foster Wheeler
1075 Big Shanty Road, Suite 100
Kennesaw, Georgia 30144