

**STATEMENT OF
COMMISSIONER MICHAEL J. COPPS**

RE: Forest Conservation Council and Friends of the Earth (Application for Review).

Adherence to Commission precedent on matters of standing results in my approving this item. I write separately to note that the Commission today does not find that the Forest Conservation Council and Friends of the Earth (FC/FoE) Petition has substantive flaws. We find instead that FC/FoE: (1) did not make the showings we need to determine that they are interested parties; and (2) that they have not alleged injury with enough specificity.

This does not mean that an environmental group will always lack standing in these cases. A petitioner will be deemed to have standing so long as a sufficient showing of both injury and causation is made. While the concept of injury is fairly broad, in the instant case FC/FoE's claims do not provide a sufficiently specific claim of injury. A future petitioner, for example a bird watcher who lives or visits the area of a proposed tower, could assert harm if birds were killed. This person could begin to meet our requirements by filing a complaint alleging that there would be bird kills at the proposed site if the proposed tower was built. The injury prong of our test might also be met if, for example, the petitioner claims that his bird watching would therefore be detrimentally affected in the area where the proposed tower would be built. In addition, the petitioner would have to provide some evidence of causation. The petitioner would have to show, for example, a direct link between the individual antenna structures and bird kills. This could be done if the petitioner demonstrates that bird kills resulted when similar existing towers were built in other areas similar to the proposed site. The petitioner would not, of course, have to show that bird kills occurred in the exact spot proposed for the new tower, as the new tower would not yet be built. But the need for specific allegations is particularly great in this context, because, as explained in the recent *Notice of Inquiry*, the Commission will consider the general scientific evidence on causation to be uncertain until additional evidence is gathered in the *NOI* process.

An environmental association, in addition to the individual citizen described above, could have standing in a future case, as well. The association similarly would have to assert harm caused by the proposed tower. For example, the association could assert harm in the form of loss of the aesthetic benefits of watching birds if birds were killed. The association would have to demonstrate that some of its members live near or visit the area near the tower (with affidavits), and allege that specific features of the tower, such as proximity to migratory bird paths, height, and lighting, would contribute to bird deaths.

I hope that the Commission's ongoing NOI on this issue will relieve some of the burden currently placed on individual citizens in providing us with detailed scientific information in these matters. These are serious matters which merit close Commission attention.