

Coming Soon: New Tower Notification Requirements to Protect Migratory Birds

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Broadcasters proposing new towers or lighting changes soon will have additional environmental hoops to jump through, designed to protect migratory birds. The new rules implement a court order handed down in 2008 in the case of *American Bird Conservancy v. FCC*.

Under the new rules, which are expected to become effective later this year, anyone proposing a new tower requiring an Antenna Structure Registration (ASR)—generally any tower over 200 feet tall—or proposing lighting changes that could be detrimental to migratory birds will be required to give local public notice of the proposed construction or lighting change as a preliminary step in getting a tower registration.

In addition, if the tower is over 450 feet tall, the broadcaster will be *required* to submit to the Federal Communications Commission (FCC) an Environmental Assessment (EA) addressing the impact of the proposed tower on the eight existing areas of environmental concern—wilderness areas, wildlife preserves, wetlands, floodplains, endangered species, historic buildings, Indian cultural resources and high-intensity white lighting—as well as migratory birds.

The public notice must be given in a local newspaper or by other appropriate means, such as through the public notification provisions of the relevant local zoning process. The next step involves filing a new, abbreviated FCC form, similar to the current tower registration form, giving details about the tower and the proposed lighting. The FCC will post the filing on the ASR website, and the public will have 30 days to file requests for further environmental review. The Office of Management and Budget (OMB) is expected to approve the new form by mid-May.

The FCC will decide whether the tower or lighting change requires further environmental review. Once it issues a Finding of No Significant Impact (FONSI), the applicant can complete the tower registration process and any related construction permit application.

The effective date of the notification requirements will be established in a Public Notice to be issued by the Wireless Telecommunications Bureau following OMB approval of the new ASR pre-filing form. Applications that are pending when the new rules take effect will not be required to complete the notification process, unless an amendment is filed that changes the tower or the lighting in ways that could affect the environment or

migratory birds.