

reasonable method to minimize impacts, and are there alternate technologies available that would permit fewer and/or shorter towers to be built, yet still permit communications needs to be met? On the other hand, would the use of alternate siting be constrained by existing technology, the need for communications carriers to provide coverage for their services, build-out requirements under the Commission's rules, or any other requirements? In addition, do certain parts of towers, *e.g.*, top, middle, or lower sections, pose more or less of a potential for collisions with migratory birds and, if so, are there specific construction techniques, deterrent actions, or other methods that would be useful to minimize impacts?

30. The FWS Tower Siting Guidelines encourage certain measures that FWS says will "provide significant protection for migratory birds pending completion" of the CTWG's recommendations. The voluntary guidelines, which FWS recommends for use by all companies, license applicants, or licensees proposing new tower sitings, include to the extent feasible: collocation of antennas on existing towers or other structures rather than new tower construction; where collocation is not feasible, construction of new towers that are no taller than 199 feet above ground level without guy wires or lighting; siting new towers within existing tower farms; and use of the minimum acceptable amount of pilot warning and obstruction avoidance lighting recommended by the FAA for towers that require lights for aviation safety. As described, FWS intended the guidelines for interim use, and they were established in anticipation of further action by the CTWG. Further, FWS states that the guidelines would be "updated as new information becomes available." Thus, these guidelines were not adopted as final measures, but were developed with the understanding that determining the appropriate methods to minimize the impact of communications towers on migratory birds would be an ongoing process.

31. We request comment on the scientific basis for these guidelines, the general use of the guidelines and the use of each of the specific guidelines, and any other potential measures to minimize impacts on migratory birds within the scope of our current rules. For example, comments could consider whether an MOU or other agreement between the Commission and other agencies, such as the FWS, could be used to specify the process to review potential impacts of antenna support structures on migratory birds, or to help facilitate any necessary research on the

matters addressed in this inquiry. Comments also should address whether the current state of scientific knowledge on causes of bird collisions with communications towers supports the use of any or all of the FWS Tower Siting Guidelines. Further, does current scientific evidence support a finding that particular towers do not significantly pose a threat to migratory birds? For example, does such evidence exist relating to towers of a particular height, *e.g.*, unlit towers that are less than 200 feet in height, or towers that use particular lighting, *e.g.*, towers with primarily white strobe lighting? Commenters in particular should address the relationship of any measures they support or oppose with the current state of scientific knowledge. Comments also should consider how best to implement any of these matters within the current structure of our rules.

32. Particular guidelines intended to minimize impacts on migratory birds may, depending on their application, have an impact on Commission licensees, applicants, or other parties with respect to tower design and engineering, the ability to provide necessary communications services, liability, and costs. We seek comment on what effects, if any, the recommended FWS guidelines or other efforts to minimize impacts have had in these areas. Specifically, comments should address whether current or potential increased application of any of the guidelines would contribute to delay in tower construction, the provision of Commission-licensed services, or the transition to digital television. Comments should address advantages and disadvantages associated with different means of implementing the FWS guidelines, possible revisions to those guidelines, or other measures.

33. The Commission licenses and regulates the use of radio transmitters by state and local governments in public safety activities. We seek comment on the impact that restrictions or guidelines regarding tower siting and construction to protect migratory birds may have on the use of radio transmission for public safety. What would be the effect on the coverage provided by towers used to provide public safety service if those towers were, for example, subject to restrictions on height or other features in order to protect migratory bird populations? We also seek comment on what impact tower construction restrictions may have on homeland security objectives. In addition, are there other potential conflicts between potential measures to minimize impacts of communications towers on migratory birds and the availability of

communications towers to address security concerns?

34. The Commission is committed to serving all parties interested in the impact that communications towers may have on migratory birds as well as resources allow. To this end comment is sought on ways that the Commission can do so better. What can the Commission do to meet its responsibilities under relevant statutes and rules better? Should the Commission develop additional staff expertise on avian mortality issues? Would the expertise of an ecologist or environmental biologist be helpful? What staff backgrounds are most important? What additional training should be made available for existing staff? Are there Commission procedures or rules that impede industry's or environmental groups' efforts to address issues related to avian mortality? For example, are there aspects of our EA requirements that could be improved with respect to migratory bird issues? Is there data that the Commission collects that could be of assistance to researchers in this field?

IV. Procedural Issues

A. *Ex Parte* Presentations

35. This is an exempt proceeding in which *ex parte* presentations are permitted (except during the Sunshine Agenda period) and need not be disclosed.

B. *Filing of Comments and Reply Comments*

36. We invite comment on the issues and questions set forth. Pursuant to applicable procedures set forth in sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before November 12, 2003, and reply comments on or before December 11, 2003.

37. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. Given recent changes in the Commission's mail delivery system, parties are strongly urged to use the ECFS to file their pleadings. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, electronic filers should include their full name, Postal Service mailing address, and the applicable docket number. Parties may also submit an electronic comment by Internet e-mail. To receive filing instructions for e-mail