

FCC Requests for Environmental Review: Six Relevant Points

Telecoms must apply for permission from the FCC to erect any cell phone towers. The FCC has guidelines for these applications. The menu of topics is vertically along the left side of the page:

<https://www.fcc.gov/wireless/support/antenna-structure-registration-asr-resources/antenna-structure-registration-asr>

Telecoms must first publicly announce nationally and locally its intention and application to erect a tower. This announcement must let interested parties, including local residents, know that the FCC “strongly encourages” requests for further environmental review of any “significant impact on the quality of the human environment.”

<https://www.fcc.gov/wireless/support/antenna-structure-registration-asr-resources/environmental-notification-process-1> (bullet point #5)

Thirty days from publication of notice are given for interested parties to file a request for further environmental review. Then the telecom has ten days to file an opposition to those requests. Then the requesters have five days to respond to the telecom’s opposition. Then the FCC will decide whether the requests are warranted, valid. If so, the FCC will require an Environmental Assessment (EA). This entire process takes time, and the FCC may or may not decide to deny the tower application based on the EA. An additional national notice is required if an EA is required.

*The six points below are NOT a thorough listing or analysis of relevant and applicable points.

1. The “Human” Environment
2. Non-classified Reasons for Further Environmental Review
3. Local Evaluation by Residents
4. Permanency of Installation
5. Aesthetics
6. Strategic Approach to Health

1. “Human” Environment

FCC wording does not just refer to ‘environmental impact.’ Its wording refers to potential impact of the tower to the “quality of the human environment.” The word ‘human’ is significant because it allows a wider range of ways that a tower may have impact, than just the words ‘environmental impact,’ which can easily be interpreted only to refer to trees, plants, and wildlife, tribal lands, etc. The word ‘human’ a) highlights and reinforces the validity of potential physiological harm,

and, b) allows for non-physiological reasons for potential harm, such as aesthetic, sociological, etc.

<https://www.fcc.gov/wireless/support/antenna-structure-registration-asr-resources/filing-request-environmental-review>

“Your Request for Environmental Review must state the specific reasons that you believe the proposed construction may have a significant impact on the quality of the human environment, as required under the Commission's rules...”

This wording, combined with the following point, allows the validity of addressing a tower on a wider range of reasons than the FCC’s important checklist of points for reasons for an EA:

<https://www.fcc.gov/wireless/support/antenna-structure-registration-asr-resources/filing-environmental-assessment>

It could be argued that the word “human” only applies to physiological harm from RF radiation, since the phrase ‘human environment’ is usually not used throughout the FCC guidelines, only phrases such as “environmental impact” used, and, the phrase “human environment’ is used on the FCC page on human biological harm:

<https://www.fcc.gov/general/fcc-policy-human-exposure>

But this is not valid, because the phrase “human environment” is used on the FCC’s defining and summarizing Overview of Requests for Environmental Review above (quote in yellow highlight below the relevant URL).

2. Non-classified Reasons for Further Environmental Review (Final FCC Checklist point)

FCC NEPA rules regarding environmental impact are not limited to specific items such as threatened and endangered species and critical habitat, tribal lands, etc. In the FCC’s checklist of NEPA / EA “Filings That Require An Environmental Assessment,” the final Filing point states:

- If the processing Bureau determines in response to a petition or on its own motion that the proposed facilities may have a significant environmental impact.

On the same page as just above:

<https://www.fcc.gov/wireless/support/antenna-structure-registration-asr-resources/filing-environmental-assessment>

This final FCC checklist point makes it clear that even though none of the specific checklist points may apply to a proposed tower site, the tower may still a potentially significant negative environmental impact which the FCC would consider as requiring an Environmental Assessment.

From Scientists For Wired Technology's Action/NEPA page:

<https://scientists4wiredtech.com/action/nepa-strategies/>

Mr. Paul D'Ari, FCC Senior Legal Counsel, stated:

Q-3. Re: "The public can request and the agency can order additional environmental review on issues beyond the checklist. The agency can ask for mitigation to reduce impacts.", **which additional "issues beyond the checklist" may the public use to request environmental review for wireless telecom applications** in our town? To which agency would we make those requests? Instead of to the FCC, would we make the request to our Public Works Dept that approves the permits?

Answer from Paul D'Ari, Senior Legal Counsel for FCC:

"If a person has information that a proposed communications facility will have a significant environmental effect that is not included on the checklist, that person should submit his/her comment in the applicable manner discussed in my answer to Question 1, above."

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Date: December 11, 2019 at 7:27 AM

Mr. D'Ari's answer to Question #1, to which he referred, follows. Please note again his last point below, the third instance of FCC consideration of environmental reasons outside the EA Checklist, which I placed in both **bold** and **yellow highlight**:

Q-1. How does the telecom company applicant know that an EA is required for a particular application? Does the City need to let them know it is required? Can residents require it?

Answer from Paul D'Ari, Senior Legal Counsel for FCC:

Under the Commission's procedures implementing NEPA, if an action may significantly affect the environment, applicants must conduct an environmental assessment (EA) to help the Commission determine whether "the proposal will have a significant environmental impact upon the quality of the human environment." The FCC has delegated aspects of its NEPA review to licensees and applicants; NEPA and EAs are a federal requirement, although local or state permitting may require its own environmental review process.

*To determine whether an EA is required, the **FCC licensee or applicant must complete an initial environmental and historic preservation review ("the EA checklist")**. This review includes an analysis of whether its proposed facilities fall into any of the categories that trigger an EA. As part of this review, licensees and applicants must follow distinct procedures to determine whether the proposed facilities will, for example, have an adverse effect on historic properties under NHPA will affect listed species under the Endangered Species Act, or will affect wetland resources.*

While neither the city nor a member of the general public can make a determination that an EA is necessary, **the Commission can review concerns raised by interested parties and decide whether to require an EA.**

If your **concern** is about a proposed antenna structure or physical modification of an existing antenna structure that **you allege may have a significant impact on the quality of the human environment**, or about the Commission's environmental notification process (see 47 CFR § 17.4(c)) in regard to an existing or proposed antenna structure, check if there is a related Antenna Structure Registration (ASR) application currently on environmental notice on the Commission's website: <https://wireless2.fcc.gov/ASRManager/service/nationalNoticeReport.faces>. If there is a current application, you must submit your Request for Further Environmental Review by selecting "ASR Environmental Notice" at this link: <https://wireless2.fcc.gov/UlsEntry/pleadings/pleadingsType.jsp>.

If you cannot find an ASR application currently on environmental notification for the antenna structure that you allege may have a significant impact on the quality of the human environment, then you should e-mail your comment to towercomments@fcc.gov and provide the following information:

- Your name, email address, and phone number
- Detailed tower/facility location (street address; coordinates; and/or nearest intersection, city, county and state)
- Construction status (constructed, under construction, or planned)
- Detailed description:
- Describe the facility type (e.g., tower, antenna, collocation on a structure), and include as much additional information as possible (e.g., height and volume).
- How does the tower/facility adversely affect a historic property (if applicable)?
- What is the name/address of the historic property?
- How does the tower/facility adversely affect a Native American religious or culturally significant site (if applicable)?
- What is the nature of the adverse effects on the environment (if applicable). For example:
- Wetlands/Floodplains/Change in surface features
- Migratory birds
- High intensity lights located in residential areas
- Endangered species/Critical habitat for plants or animals

- *Other environmental resources*

Therefore, claims by requesters that do not meet the FCC's more specific checklist points, such as, for example, about trees, wildlife, and plants, referencing only threatened and endangered species, critical habitat, tribal lands, etc., have the potential to be judged as valid. And oppositions to these claims by telecoms (that requests for further environmental review are not based on the other more specific checklist points) have the potential to be judged as incomplete. Any reasonable request for environmental review can be fairly considered by the FCC, even if it does not specifically match with one of the checklist points preceding the last more general checklist point.

3. Local Evaluation by Residents

Those who live in an area and have used a proposed tower site area for years or decades are in the best, most appropriate, position to evaluate and decide what are significant impacts to the human environment, and what are not. Telecom executives

- a) hundreds of miles away,
- b) who have never been to the proposed site area,
- c) working only with google maps
- d) who cannot care as much about the quality of the human environment than its residents,

are in a very poor position to evaluate potential impact of a tower on the human environment.

4. Permanency of Installation

It is vital to note that negative impact on the human environment is not of a temporary nature. It can only be evaluated and must be evaluated over the time of the entire existence of the tower. This can hardly be even imagined, but at least a century for a large tower. This would involve multiple generations - literally millions of people - even in communities of lesser populations.

5. Aesthetics

Neither telecoms nor residents can claim authority or higher validity of what is aesthetically pleasing or not. Beauty is in the eye of the beholder, and so is ugliness. One person's ugly metal skeleton may be another person's grand impressive monument to modern technological achievement. Philosophers of aesthetics have been debating for millennia if there are objective criteria for beauty, and so far have not found them. Fractal science appears to have made progress, but it is difficult, if not impossible, debatable, if human subjectivity can

be completely removed from fractal science (or science or life for that matter, per quantum theory of observation).

Therefore, a) telecom arguments that towers may be attractive to some or many people, or not unattractive, are not valid. But, by the same token, in principle, any given argument that a tower will not be attractive are not strong arguments unless:

- a) There be concrete evidence (not assumptions) of a sufficiently large number of residents who feel a given proposed tower/s will be unattractive.
- b) Property devaluation figures show reduced property values, since property value is to a great extent a function of aesthetics.

Aesthetics and property devaluation are intimately related, as aesthetics considerations have been shown in published peer-reviewed research provided to directly result in property devaluation. 5-30% reduction in property devaluation (Andrew Campanelli law firm, in phone conversation) is extraordinary, as a measure of negative impact on the human environment aesthetically.

6.Strategic Approach to Health

Even though the chance of the FCC agreeing there is harm to health from non-ionizing radiation is approximately below zero these days, at least without a fundamental transformation in our entire country and culture, there is a duty to continue putting it forward. There is a way to discuss health harm that may make it less likely that the FCC will deny a permit, and a way to discuss health harm that may make it more likely that the FCC will deny a permit.

FCC RF guidelines are invalidly tolerant. This should be addressed vigorously through legislatures and the judiciary, and by electing different higher executive branch officials.

Andrew Campanelli law firm states they use and win on *aesthetics and property devaluation*. So in proceedings with the FCC that involve a third party, increase the chances of an FCC denial of permit on aesthetics and property devaluation by not aggravating and alienating the FCC by a) disagreeing with them about their own guidelines, and b) fighting by meeting their points on health point by point. Health harm is just as emotional to the FCC as it is to those who know their guidelines are too tolerant, but in the opposite direction. They do not like hearing their own guidelines called invalid.

Proceedings with the FCC that involve a third party are not the place to tell the FCC that their guidelines are invalid. Fighting directly with the FCC over their own guidelines when we are trying to get a permit denied will only put them off, sour

their attitude, make them dig in their heels, get more emotional, and make them less likely to deny a permit.

So don't bring up the invalidity of their guidelines in attempts to persuade the FCC to deny a permit. Save that for third party proceedings. And initiate those proceedings.

Secondly, sophisticated and successful debaters and litigators know that the most successful approach in debates and litigation is to carefully note each of the specific points the other side makes, and systematically address those specific points, one after the other.

To avoid the sense of 'fighting' the FCC too hard on health, for the reason above, don't fight the telecom too hard in filings with the FCC. Don't address the telecom specific points one by one. Just professionally, accurately, and systematically lay out the evidence for health harm.

Exceptions:

- a) If pre-existing towers may combine with the proposed tower to create radiation levels higher than current FCC guidelines
- b) If radiation quite near the tower may exceed current FCC guidelines

Let the FCC save face. Let them 'be right' on their guidelines *when a third party is involved*. Avoid making them feel so uncomfortable with us so they will not deny a permit. Let them feel comfortable enough with us that they feel comfortable to 'win' on health, and deny a permit on the basis of aesthetic and/or property devaluation.

Then relentlessly go after their overly tolerant guidelines with gusto by going to third parties (all three branches of government), and directly with the FCC.