



UNITED STATES GENERAL ACCOUNTING OFFICE

WASHINGTON, D.C. 20548

GENERAL GOVERNMENT  
DIVISION

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The Honorable Richard E. Wiley, Chairman  
Federal Communications Commission

Dear Mr. Wiley:

We have reviewed the procedures adopted by the Federal Communications Commission (FCC) to implement the National Environmental Policy Act of 1969 (42 U.S.C. 4321). We believe that certain provisions of the procedures should be reconsidered by FCC as they potentially could result in FCC approving construction of communications facilities that will have adverse environmental effects.

The National Environmental Policy Act of 1969 went into effect on January 1, 1970. Section 102 of the act requires all Federal agencies to prepare environmental impact statements on proposed major actions significantly affecting the quality of the human environment. In preparing environmental impact statements, the act requires agencies to consider:

- the environmental impact of the proposed action,
- any adverse environmental effects which cannot be avoided should the proposal be implemented,
- alternatives to the proposed action,
- the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and
- any irreversible and irretrievable commitments of resources involved in the proposed action should it be implemented.

Prior to preparing environmental impact statements, Federal agencies are required to consult with, and obtain the comments of, any other Federal agency which has jurisdiction, by law or special expertise,

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over any environmental impact involved. Copies of the environmental impact statements and the comments and views of the appropriate Federal, State, and local agencies that are authorized to develop and enforce environmental standards are to be made available to the President, the Council on Environmental Quality, and the public, and shall accompany the proposals through existing agency review processes.

The Council on Environmental Quality was established by section 202 of the act and is part of the Executive Office of the President. The Council is responsible for providing policy advice and guidance to the President on actions affecting the environment, assisting in the coordination of these actions, and overseeing the implementation of the act by Federal agencies. Pursuant to Executive Order No. 11514, dated March 5, 1970, the Council issued guidelines to Federal agencies for the preparation of environmental impact statements in April 1971 and August 1973.

CRITERIA FOR DETERMINING MAJOR ACTIONS MODIFIED  
WITHOUT REVIEW BY OTHER AGENCIES

The Council's guidelines require Federal agencies to determine which activities under its jurisdiction constitute a major action requiring the preparation of an environmental impact statement, and to develop procedures for implementing section 102 of the act. The guidelines also require that each agency submit its proposed procedures for review by the Council and other appropriate Federal, State, and local agencies.

In February 1974, FCC sent its proposed procedures to the Council, the Environmental Protection Agency (EPA), and to several other Federal agencies. FCC's proposal defined a major action as the construction of the following communications facilities, among other things:

"AM, FM, television, and international broadcast antenna towers or supporting structures.

Other antenna towers or supporting structures which exceed 150 feet in height and are not located in areas devoted to heavy industry or to agriculture. (Underscoring supplied.)

Satellite earth stations."

FCC had developed this definition on the basis of discussions among its various operating bureaus.

The Council did not submit any comments on FCC's proposed procedures. Written comments were submitted by EPA; the Bureau of Sport Fisheries and Wildlife, Department of the Interior; and the Advisory Council on Historic Preservation. None of these agencies, recommended any relaxation in FCC's criteria for determining what constitutes a major action.

In September 1974, FCC revised its proposed criteria to require environmental impact statements only for applications to construct antenna towers and supporting structures that exceed 300 feet in height. The criteria for satellite earth stations was revised to include only those having an antenna of 30 feet or more in diameter. None of the agencies having expertise on environmental matters was asked to comment on the revised criteria. Further, FCC made no studies to determine the environmental effects of antenna towers and structures of less than 300 feet in height. An FCC official told us that FCC revised its criteria simply to reduce the number of environmental impact statements that FCC would be required to prepare. The procedures went into effect on January 20, 1975.

### Conclusions

Whether the revisions FCC made to its criteria for determining a major action under the act will have adverse effects on the environment, we cannot say. However, it is clear that workload, rather than environmental effect, was the controlling factor in making the revision. Under these circumstances the failure of FCC to obtain the comments of interested agencies on the revisions seems especially unfortunate. These agencies would likely have given greater consideration to the environmental effect.

EPA officials indicated as much. They told us that to carry out the spirit of the act, FCC should have allowed the Council and other agencies to review its revised criteria.

### Recommendations to the Chairman, Federal Communications Commission

We recommend that FCC should provide the Council and other interested agencies another opportunity to comment, and, if warranted by the comments received, reconsider its criteria for determining a major action under the act.

POTENTIALLY INSUFFICIENT TIME ALLOWED  
FOR COMMENTS BY OTHER AGENCIES

The act requires that an environmental impact statement on a proposed Federal action, with related comments of Federal, State, and local agencies, be made available to the President, the Council, and the public and "accompany the proposal through the existing agency review processes." The Council's guidelines state that the objective of this requirement is to build into the agency's decision-making process an appropriate and careful consideration of the environmental impacts of proposed actions.

FCC's procedures require applicants seeking authority to construct major communications facilities to prepare and submit with each application a narrative statement discussing the environmental effects of the proposed action. The FCC processing staff reviews the narrative environmental statement and any other available environmental information to determine whether construction of the facilities will have a significant effect on the environment. If the processing staff determines that the facility will or may have a significant environmental effect, the staff may attempt to informally resolve these effects through discussions with the applicant and other interested parties. The staff may also direct that technical studies be made or that expert opinion be obtained concerning, among other things the environmental effects of a proposed action. If these measures fail to eliminate the environmental problem, the processing staff will prepare a draft environmental impact statement.

An FCC official told us that as of January 1975, FCC had not prepared any environmental impact statements. However, the FCC official also told us that the draft environmental impact statement will be prepared from information submitted by the applicant in the narrative statement and information submitted by those opposed to the proposed action. Further, the FCC official stated that if the processing staff is unable to prepare a draft environmental impact statement from the narrative statement and the information submitted with oppositions to the proposal, FCC would undertake its own investigation of the environmental effects of the proposal.

To comply with the requirements of the act to carefully consider the environmental impacts of proposed actions in decisionmaking, the Council's guidelines provide that, to the maximum extent practicable, no administrative action on projects that require preparation of an environmental impact statement should be taken sooner than 90 days after a draft environmental impact statement has been prepared and

circulated for comment, furnished to the Council, and made available to the public. Further, no such administrative action should be taken sooner than 30 days after a final environmental impact statement, incorporating comments made on the draft impact statement, is prepared and has been made available to the Council, to other appropriate agencies, and to the public.

In its proposed procedures sent to Federal agencies for comment, FCC stated that it would not abide by the delay periods recommended by the Council because FCC failed "to perceive the purpose of this automatic delay." Instead, FCC's procedures state that no decision will be made on an application until 45 days after notice has been published in the FEDERAL REGISTER of the availability of the draft environmental impact statement for comment. FCC's procedures further provide that copies of the draft environmental impact statement will be sent to Federal, State, and local agencies for comment before notice of the draft impact statement is published. However, FCC's procedures fail to specify how far in advance of the public notice that copies of the draft environmental impact statement would be distributed for comment.

FCC allows 21 days after the time for filing comments of the draft environmental impact statement has expired, for the applicant to file reply comments. However, FCC's rules do not provide for any delay in taking administrative actions after the final environmental impact statement is prepared. In other words, the Council's guidelines provide that administrative actions on Federal proposals should be delayed for a minimum of 120 days to allow for comments on the environmental impact statement and notice of its availability. FCC decided not to abide by the Council's guidelines and delays administrative actions for about 66 days, approximately one-half of the time recommended by the Council.

In commenting on FCC's proposed procedures, EPA encouraged FCC to conform with the recommended delay periods. EPA said that it needed this time to fulfill its responsibility for reviewing environmental impact statements under section 309 of the Clean Air Act, as amended (42 U.S.C. 1857). An FCC official told us that FCC decided not to abide by the delay periods that EPA requested because FCC believes this would significantly delay the processing of applications to construct communications facilities.

We discussed this matter with Council and EPA officials. These officials told us that FCC's decision not to delay administrative actions for the period recommended by the Council might not allow agencies sufficient time to comment on proposals.

## Conclusions

In our view, FCC's decision not to abide by the delay periods for taking administrative actions on proposals as recommended by the Council might result in serious environmental consequences. FCC will rely primarily on environmental information submitted by the applicant in determining the need for an environmental impact statement, and its main source of information when preparing environmental impact statements will be parties with vested interests in the proposals -- either applicants or those opposed to the proposed actions.

To counterbalance the environmental evaluations made by the applicant and those opposed to the proposal, we believe that the comments of appropriate Federal, State, and local agencies are necessary and should be available to FCC when deciding on proposed actions. FCC's decision not to abide by the Council's recommended periods might not allow agencies sufficient time to make their comments available to FCC at the time decisions are made and, as a consequence, necessary objective evaluations of the environmental consequences of proposals might not be available to FCC.

## Recommendation to the Chairman, Federal Communications Commission

We recommend that FCC reevaluate its procedures after FCC has gained experience in the preparation and review of environmental impact statements, specifically to determine whether the procedures allow other agencies sufficient time to comment on the environmental effects of proposed actions.

## OMISSION OF NEGATIVE DECLARATIONS WHEN DECIDING NOT TO PREPARE ENVIRONMENTAL IMPACT STATEMENTS

The Council's guidelines provide that if an agency decides not to prepare an environmental impact statement for a proposed major Federal action normally requiring the preparation of a statement, the agency shall prepare a publicly available record setting forth the agency's decision and the reasons for its determination. This public record is commonly referred to as a negative declaration.

FCC's procedures provide that if FCC determines that an action will, or may, have a significant environmental effect, it may discuss matters of environmental concern with the applicant and others in an effort to identify measures which could be taken to minimize adverse effect and alternatives which are less objectionable. FCC stated that it will rely on existing staff personnel to make environmental judgments. If these

measures fail to eliminate the environmental problems, FCC will then prepare a draft environmental impact statement. However, FCC's procedures do not provide for issuing negative declarations when FCC uses these procedures for resolving environmental problems and selecting alternatives.

We discussed this matter with Council and EPA officials. These officials told us that when FCC decides to resolve significant environmental problems without preparing an environmental impact statement, the Council's guidelines require FCC to inform the public of the proposed action through the issuance of a negative declaration.

#### Conclusions

In our view public notification is necessary since without the negative declaration, only FCC and the applicant will be involved in the resolution of environmental problems. We believe that this process has the potential for overlooking serious environmental consequences of proposed actions.

#### Recommendation to the Chairman, Federal Communications Commission

We recommend that FCC should incorporate into its procedures a provision requiring the preparation of a publicly available record detailing FCC's reasons for not preparing an environmental impact statement on proposed actions normally requiring preparation of such a statement.

We would appreciate being advised of any actions taken on the matters discussed in this report. Copies of this report are being furnished to the Chairman, Council on Environmental Quality and the Administrator, Environmental Protection Agency.

Sincerely yours,



Robert A. Peterson  
Assistant Director