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Issued in Washington, DC, on April 14, 2004.

**Reginald C. Matthews,**

*Manager, Airspace and Rules.*

[FR Doc. 04-9555 Filed 4-26-04; 8:45 am]

BILLING CODE 4910-13-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 77

[Docket No. FAA-2004-16982; Notice No. 04-03]

#### Colo Void Clause Coalition; Antenna Systems Co-Location; Voluntary Best Practices

**AGENCY:** Federal Aviation Administration (FAA); DOT.

**ACTION:** Statement of policy and disposition of comments.

**SUMMARY:** The FAA is revising its policy about the co-location of antenna systems on structures previously studied by the FAA. Under certain circumstances, the FAA will not require a person to file notice for an aeronautical study to add frequencies to an existing structure that has a current and valid No Hazard Determination on file with the FAA. On December 23, 2003, the Colo Void Clause Coalition (CVCC) wrote to Marion C. Blakey, FAA Administrator, and forwarded a Voluntary Best Practices Agreement Regarding the Potential for Electromagnetic Interference Upon FAA Facilities. The FAA finds that it can amend its policy to accommodate certain issues raised by the CVCC's Best Practices Agreement.

**DATES:** This policy is effective April 27, 2004.

**FOR FURTHER INFORMATION CONTACT:** René J. Balanga, Office of Spectrum Policy and Management, ASR-100, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591, Telephone (202) 267-3819 or (202) 267-8534.

#### SUPPLEMENTARY INFORMATION:

##### Availability of Documents

You can get an electronic copy of this Notice using the Internet by:

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) Web page (<http://dms.dot.gov/search>); or

(2) Visiting the Office of Rulemaking's Web page at <http://www.faa.gov/avr/arm/index.cfm>; or

(3) Accessing the Government Printing Office's Web page at [http://www.access.gpo.gov/su\\_docs/aces/aces140.html](http://www.access.gpo.gov/su_docs/aces/aces140.html).

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-9680. Make sure to identify the Notice number or docket number of this document.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78) or you may visit <http://dms.dot.gov>.

#### Definitions

##### 1. *Colo(cation) Void Clause Coalition (CVCC)*

The CVCC is a coalition of wireless cellular phone and Personal Communication Services (PCS) service providers, tower companies, and trade associations, including the Personal Communications Industry Association (PCIA) and the Cellular Telecommunications and Internet Association (CTIA). According to the CVCC, its members currently own or manage most of the radio towers throughout the United States. Major wireless service providers and tower companies primarily make up the coalition, but other wireless service providers in the cellular phone and PCS industries, as well as tower companies, are represented by the CVCC through membership with PCIA and CTIA.

##### 2. *"Frequency-Only" Notice Requirements*

When the FAA issues a Determination of No Hazard for proposed construction or alteration of an antenna structure, the Determination includes the following condition: "This determination is based, in part, on the foregoing description which includes specific coordinates, heights, frequency(ies) and power. Any changes in coordinates, heights, frequency(ies) or use of greater power will void this determination. Any future construction or alteration, including the increase in heights, power, or the addition of other transmitters requires separate notice to the FAA." As a result

of this condition, a proponent seeking to only add frequencies to a previously studied structure for which the FAA has issued a Determination of No Hazard must file notice with the FAA. They must file the notice on FAA Form 7460-1, in accordance with the previously discussed condition.

##### 3. *Electromagnetic Interference (EMI)*

Electromagnetic interference (EMI) is defined as any electromagnetic disturbance that interrupts, obstructs, or otherwise degrades or limits the effective performance of electronics/electrical equipment. It can be induced intentionally, as in some forms of electronic warfare, or unintentionally, as a result of spurious emissions and responses, intermodulation products, and the like. EMI is also referred to as radio frequency interference (RFI).

#### Background

Under title 14 of the Code of Federal Regulations (14 CFR) part 77, the FAA requires notice for certain proposed construction and alteration of structures that may affect the safe and efficient use of the navigable airspace. The FAA studies these proposals and determines whether they would cause harmful EMI. If the proposal would cause harmful EMI, it would constitute a hazard to air navigation. Under title 49 of the United States Code (U.S.C.) sections 40103 and 40113, the FAA may also study proposed antenna systems that may result in interference to air navigation, radio communication, or surveillance facilities or equipment. These studies include the frequencies and the mounting locations of Federal Communications Commission (FCC) regulated transmitters for certain wireless services authorized under 47 CFR parts 1 (Practice and Procedure), 22 (Public Mobile Services), 24 (Personal Communications Services), 90 (Private Land Mobile Radio Services), and 101 (Fixed Microwave Services).

If a person seeks to add frequency(ies) that might involve co-locating antenna systems on an existing structure for which the FAA issued a Determination of No Hazard to Air Navigation, the person must file a notice with the FAA (Frequency-only notice requirement).

Recently, the FAA evaluated submissions from the CVCC about the FAA's EMI evaluation process and procedures under 14 CFR part 77 and FAA Order 7400.2, Procedures for Handling Airspace Matters. In particular, the CVCC voiced concerns about the "requirement" to file notice with the FAA to add frequency-only proposals to the original structure. The CVCC proposed that the FAA grant

waivers from the requirement to file notice in specified frequency bands.

On December 23, 2003, the CVCC wrote to Marion C. Blakey, FAA Administrator, and forwarded a Voluntary Best Practices Agreement Regarding the Potential for Electromagnetic Interference Upon FAA Facilities (Best Practices Agreement (BPA)). The BPA outlined a proposed solution to the frequency-only notice requirement. Under the BPA, the CVCC proposed that its members not be required to provide notification to the FAA when only adding certain specific frequencies to a structure located beyond one nautical-mile radius from any existing FAA facility. Also, the BPA stated that the CVCC would work closely with the FAA in mitigating any EMI resulting from these frequencies that could compromise safe flight.

Research from prior FAA case studies of co-located antenna systems and engineering evaluations showed minimal EMI effects on FAA facilities from wireless services propagating on several frequency bands. The few cases where EMI existed and was determined to be hazardous to flight safety were during extensive equipment failures from the wireless service provider, and not from the equipment when operating within normal specifications.

#### Comments

On February 3, 2004, the FAA published a Notice of availability and request for comments on the CVCC letter dated December 23, 2003, and the accompanying Best Practices Agreement (69 FR 5101). The FAA did not receive any comments or additional information within the comment period.

#### Policy Change

The FAA recognizes the telecommunications industry's need and commitment to provide wireless services to the public. Also, the FAA recognizes that it is essential for these companies to speed up their time frame for build-out and deployment of their networks. However, the FAA's first commitment is to aviation safety. Thus, the FAA finds that it can amend its policy to accommodate certain issues raised by the CVCC's Best Practices Agreement. Notwithstanding this new policy, the requirements under 14 CFR part 77 about notice to the FAA of proposed construction or alteration of man-made structures under existing FAA policy and regulations are not altered or modified. If the addition of frequencies, under this policy, to a previously studied structure increases the height of that structure, notice must be filed with the FAA under 14 CFR

77.13. Physical structures located on or near public use landing facilities raise concerns about possible obstruction to aircraft, and the FAA will handle these issues pursuant to current regulations and procedures.

Under the new policy, a proponent will not be required to file notice with the FAA for an aeronautical study to add frequencies to an existing structure that has a current No Hazard Determination on file with the FAA. If an additional antenna system must be used to add frequencies, the antenna system must not be located on Federal or Public Use Landing Facilities property. Also, the antenna system must not be co-located or mounted on an FAA antenna structure without prior coordination with the FAA's Office of Spectrum Policy and Management.

This policy only applies to antenna systems operating on the following frequencies and service types, as dictated by various parts of 47 CFR,

- 806—821 MHz and 851—866 MHz (Industrial/Business/Specialized Mobile Radio Pool—Part 90)
- 821—824 MHz and 866—869 MHz (Public Safety Mobile Radio Pool “Part 90)
- 816—820 MHz and 861—865 MHz (Basic Exchange Telephone Radio—Parts 1 and 22)
- 824—849 MHz and 869—894 MHz (Cellular Radiotelephone—Parts 1 and 22)
- 849—851 MHz and 894—896 MHz (Air-Ground Radiotelephone—Parts 1 and 22)
- 896—901 MHz and 935—940 MHz (900 MHz SMR—Part 90)
- 901—902 MHz and 930—931 MHz (Narrowband PCS—Part 24)
- 929—930 MHz, 931—932 MHz, and 940—941 MHz (Paging—Parts 1, 22, and 90)
- 1850—1990 MHz (Broadband PCS—Part 24, Point-to-Point Microwave—Part 101)
- 2305—2320 MHz and 2345—2360 MHz (Wireless Communications Service (WCS—Part 27);

In addition, the following conditions also apply: (1) The proponent must provide the FAA Regional Spectrum Offices with an electronic copy of its antenna system location databases quarterly or as specified in a Letter of Agreement with the FAA Regional Spectrum Offices. (2) If an antenna system, operating in the designated frequency bands, causes EMI to one or more FAA facilities, the FAA will contact the proponent. The proponent must mitigate the EMI in a timely manner, as recommended by the FAA in each particular case. Depending on the severity of the interference, the

proponent must eliminate harmful EMI either by adjusting operating parameters (for example, employing extra filtering or reducing effective radiated power), or by ceasing transmissions, as may be required by the FCC and the FAA. Failure to provide successful EMI mitigation techniques will result in referral to the FCC's Enforcement Bureau for possible enforcement action. (3) This policy only applies to current technologies and modulation techniques (analog, TDMA, GSM, etc.) existing in the wireless radiotelephone environment on the date of issuance of this policy. Any future technologies placed into commercial service by wireless service providers, although operating on the frequencies mentioned above, must either coordinate the new technology with the FAA's Office of Spectrum Policy and Management or must provide notification to the FAA under 14 CFR part 77 procedures.

The FAA will revise the conditional language in future cases involving Determinations of No Hazard to reflect this policy. Furthermore, this policy applies retroactively to any structure for which the FAA has issued a Determination of No Hazard.

Issued in Washington, DC, on April 21, 2004.

**Marion C. Blakey,**  
Administrator.

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 117

[CGD08-04-016]

RIN 1625-AA09

#### Drawbridge Operating Regulation; Illinois Waterway, Joliet, IL

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

**SUMMARY:** The Commander, Eighth Coast Guard District has issued a temporary deviation from the regulation governing the operation of the Jefferson Street Bridge, mile 287.9, and Cass Street Bridge, mile 288.1, across the Illinois Waterway at Joliet, Illinois. This deviation allows the drawbridges to remain closed to navigation for three hours from 8:30 a.m. to 11:30 a.m. on May 15, 2004 Central Standard Time. The deviation is necessary to facilitate maintenance work on the bridges that is