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## **40+ Years And Counting** ***“Antenna Farm” still undefined***

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Do you know what constitutes an antenna farm?

Nobody else does, either. Except maybe the FCC. But, for reasons that aren't exactly clear, they're not telling.

The question came up recently when a CP applicant mistakenly thought it knew, but it didn't, and but for a legal technicality (let's hear it for statutes of limitations!) it would have been socked with a fine from the FCC's Audio Division.

The recent case was described, in a different context, in last month's *Memo to Clients*. It involved the folks who had failed to jump through the various pre-application environmental hoops established in the Commission's National Programmatic Agreement. One reason they relied on for not doing so: their proposed tower was to be built in an “antenna farm”, and the Commission's rules specifically state that a proposal for a new tower in an established antenna farm is categorically excluded from environmental processing. Since the proposed site already included two existing towers reasonably close together, it seemed reasonable to conclude that that site could be deemed an “antenna farm”, thus relieving them of the environmental homework.

Wrong. The Division concluded that their site was neither an officially designated antenna farm nor a *de facto* antenna farm.

Let's take a step back here. For openers, what exactly is an antenna farm? More than 40 years ago, the Commission added Section 17.9, entitled “Designated Antenna Farm Areas”, to its rules. That section currently reads, *in its entirety* (including the bracketed language quoted below, which is exactly as it appears in the rule), as follows:

The areas described in the following paragraphs of this section are established as antenna farm areas [appropriate paragraphs will be added as necessary].

As it turns out, the Commission has *never* actually designated any site as an official

antenna farm. Nor, for that matter, has the Commission ever bothered to articulate exactly what factors it would consider if it ever got around to gracing any site with that designation. So the site that was recently touted, by the applicant, as an “antenna farm” had not been officially so designated, at least not by the FCC.

No problem. The categorical exclusion from environmental processing includes, in addition to officially designated antenna farms, “*de facto*” antenna farms. The environmental rule refers to antenna farms as areas “in which similar antenna towers are clustered, whether or not such area has been officially designated as an antenna farm.” Certainly a site featuring two existing towers would satisfy *that* definition.

Uh, no, not really, according to the Division.

The Audio Division acknowledged that no threshold requirements have been specified in determining what a *de facto* antenna farm is, but the Division was nevertheless able to determine that the site in question was not a *de facto* antenna farm.

The site consisted of two towers, both located within about 1,000 feet of the proposed third tower. The applicant reasonably argued that the close proximity of two existing towers qualified the site as a *de facto* antenna farm. But the Division thought this analysis was overly simple, even though the applicant had made considerable efforts to research every situation in which the Commission had addressed, directly or otherwise, sites that might be deemed “*de facto* antenna farms”.

The Division duly considered each of the cases cited by the applicant, noting the factors (over and above the number of towers and their relative proximity) that might be relevant to a site’s status as a *de facto* antenna farm. Among those factors, according to the Bureau:

- 1 the size and purpose of the towers (although this seems to contradict the designated antenna farm implementation order where the FCC, way back in 1967, specifically addressed the inclusion of all communications towers and not merely broadcast towers; this factor came into play here because the two other, existing, towers are not used by broadcast stations);
- 1 any agreement, by communities and licensees, to utilize one site for antenna siting (such as the Empire State building in New York or Mount Wilson in Los Angeles);
- 1 whether there are a number of tall (over 1,000 feet) towers on the site;

- 1 whether the FAA has approved additional tall towers in a given site;
- 1 whether the proposed tower is similar to other existing towers at the proposed site.

Despite its lengthy discussion of these other situations, the Bureau stopped short of providing any useful guidance concerning what, exactly, a site has to have to be deemed an antenna farm. Instead, the Bureau told the applicant that, whatever an antenna farm might be, the applicant's site didn't fit the bill – not an especially helpful approach, either for the applicant or for anybody else who might find himself or herself in a similar situation in the future.

Exactly why the Commission has declined, for more than four decades, to provide some useful definition for a term which the Commission itself chose to stick in its own rules is a complete mystery. But it certainly seems clear from the Bureau's recent decision that that failure is a conscious choice and not some mere inadvertent oversight.

In light of the Bureau's decision, though, applicants would be wise *not* to assert that their proposals are exempt from environmental processing under the antenna farm exemption unless they have very conclusive evidence that their sites do, indeed, constitute antenna farms. But based on the Bureau's obvious reluctance to give any sites that designation, formally or otherwise, we suspect that such conclusive evidence will be extremely hard to find.