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September 29, 2023

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Ariel Lynch  
Adirondack Park Agency  
1133 NYS Route 86  
PO Box 99  
Ray Brook NY 12977

Re: Public comments on Draft Adirondack Park Agency (APA) General Permit/Order, 2023G-1, for Certain Modifications of Existing Towers or Base Stations, known as Eligible Facilities Requests (EFR)

Dear Ms. Lynch:

Protect the Adirondacks has reviewed the draft Adirondack Park Agency (APA) General Permit/Order, 2023G-1, for Certain Modifications of Existing Towers or Base Stations, known as Eligible Facilities Requests (EFRs). We appreciate the opportunity to review and comment on APA's draft General Permit for EFRs.

We are concerned that the proposed General Permit has the potential to undermine thoughtful planning and permitting that protect the Adirondack Park's important scenic resources from the adverse impacts of visible cell towers and other communications structures. We understand that APA is constrained by the federal rules implemented by the Federal Communications Commission, but believe that there are some revisions that could strengthen APA's review process to protect the prior work that has been done around the Adirondack Park to prevent telecommunications towers from becoming eyesores.

APA's proposed General Permit for EFRs would allow for replacement and new equipment on an existing, previously approved tower or base, so long as the equipment does not "substantially change" the physical dimensions of the tower or base.<sup>1</sup> The term "substantially change" would allow for an

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<sup>1</sup> Notably, APA already uses a General Permit (2005G-3R) for replacement and new telecommunications equipment on existing towers and structures (e.g., water tanks, buildings). There are 10-business day timeframes in the General Permit for APA to issue a decision.

increase in both width and height of the existing tower, up to 10% of the height of an existing tower or 20 feet above the next highest antenna.

Replacement or new equipment would “substantially change” the physical dimensions of the tower, and would not be allowed through the EFRs process, if it would defeat a “concealment element”. 47 C.F.R. § 1.6100(b)(7)(v). A “concealment element” did not have to be “explicitly articulated . . . as a condition or requirement of a prior approval”, so long as APA or the local municipality “considered in its approval that a stealth design for a telecommunications facility would look like something else, such as a pine tree, flag pole or chimney”. May 19, 2020 FCC Fact Sheet p. 17<sup>2</sup>. APA should revise the EFR Definitions and Requirements Section III(E) to give examples of when a tower has been approved to look like something else, such as a pine tree or barn silo, or has been approved with a certain color of paint to camouflage the tower. This revision will give clearer direction to applicants and APA staff about what is considered a “concealment element” in the Adirondack Park.

Additionally, replacement or new equipment would “substantially change” the physical dimensions of the tower, and would not be allowed through the EFR process, if it would “not comply with conditions associated with the siting approval of the construction or modification of the” approved tower. 47 C.F.R. § 1.6100(b)(7)(vi). As noted in the draft General Permit, the proposed modifications to an existing tower must be “consistent with the Agency’s Policy on Agency Review of Proposals for New Telecommunications Towers and Other Tall Structures in the Adirondack Park (Towers Policy)”. Accordingly, an EFR application for a modification that does not comply with the “substantially invisible” standard in APA’s Towers Policy must be rejected because it would not be in compliance with the General Permit for EFRs.

Further, the Towers Policy, which was adopted in 2002, requires that towers in the Adirondack Park are “substantially invisible” as set forth in that policy at pages 3 to 4. Therefore, any tower approved pursuant to that policy incorporates conditions that ensure that the towers are “substantially invisible”. The EFR Definitions and Requirements Section III(F)(12) should be modified to reflect that the “conditions associated with siting approval” in the context of the Adirondack Park include the siting and placement decisions that are inherent in approving new towers pursuant to APA’s Towers Policy. Additionally, the draft Application for the General Permit (pages 6-7) should be revised to ask about compliance with APA’s Towers Policy for both the existing facility and the proposed modification.

Finally, the process for the issuance of a certificate approving the EFR should incorporate notice to the public that the EFR application has been submitted to APA. Such notice should be placed in the Environmental Notice Bulletin allowing for public comment upon the receipt of, and before APA makes a determination on, an EFR application.

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<sup>2</sup> Available at <https://docs.fcc.gov/public/attachments/DOC-364459A1.pdf>.

On behalf of the Board of Directors of Protect the Adirondacks, please accept our gratitude for the opportunity to share our comments on the draft General Permit for EFRs.

Sincerely,

*Claudia K. Braymer*

Deputy Director