

- The program comment states all adverse effects of twilight towers are known at this time because people would have complained about the towers if they were adverse. However, often citizens are unaware of how to make a complaint about a cell tower or who the appropriate agency is to complain to. Based on this we must assume there are many unknown adverse effects caused by towers constructed without Section 106 review; therefore, an exclusion that does not take into account mitigating these affects is not appropriate. It is common for program comments to state that some of the undertakings, covered in the comment, are likely to have an adverse effect and provide some one time mitigation that helps offset these effects. While the FCC says their directions to licensees during this period were unclear, it is clear that the FCC was aware of the effects of these projects on historic properties as they were in the process of developing a programmatic agreement to address the evaluation of effects for these types of projects. Furthermore, if the FCC did not think they were adequately enforcing Section 106 review at the time they would not have excluded the towers built between March 16, 2001 and the execution of the Programmatic Agreement. Towers constructed in that period had adverse effects to historic properties and it is appropriate that mitigation measures be offered for wholesale forgiveness of these affects. In the public notice, the FCC takes responsibility for these unchecked adverse effects and should take responsibility for mitigating them as well.
- The program comment contains language that implies the SHPO has not been fulfilling their record keeping responsibilities and that it is the SHPO's responsibility to keep the FCC's records in regards to what undertakings have been reviewed by our office; however, all other agencies are responsible for retaining records that demonstrate they are in compliance with Section 106. Why should this be different for the FCC?
- The FCC is reluctant to add any considerations to the Program Comment that were not included in the 2004 Programmatic Agreement (PA) for towers built prior March 16, 2001. The PA and the program comment do not take into account effects on archaeological sites where towers were placed on top of archaeological sites. This is a concern because while these sites may already be partially impacted there may be areas that are still intact within the equipment enclosure. Allowing additional equipment to be included in the enclosure without archaeological investigations may lead to more damage to sites and lost information. Therefore, the program comment should require that an archaeological investigation take place if there is new/additional ground disturbance within the existing enclosure.
- The program comments makes mention of "historic preservation review" in several places this should be replaced with review subsequent to Section 106 of the National Historic Preservation Act.