



February 9, 2018

Marlene Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street SW
Room TW-A325
Washington DC 20554

Re: Draft Program Comment Addressing Collocation on Twilight Towers, WT Docket No. 17-79

Dear Secretary Dortch:

The Ohio State Historic Preservation Office (Ohio SHPO) appreciates the opportunity to present our comments to the Federal Communications Commission (FCC) regarding proposals to address the issue of towers ("Twilight Towers") built out of compliance with 36 CFR Part 800 between March 16, 2001 and March 7, 2005.

The current proposal under WT Docket No. 17-79, proposes to treat Twilight Towers in a way that is similar to those that predated the 2001 *Nationwide Programmatic Agreement for the Collocation of Wireless Antennas* (Collocation NPA). Comments of the Ohio SHPO reflect our involvement in the Working Group which developed the alternate procedures that were ultimately integrated into the 2001 Collocation NPA and informed the development of the subsequent *Nationwide Programmatic Agreement for Review of Effects on Historic Properties for Certain Undertakings Approved by the FCC*.

At the time that the 2001 Collocation NPA was under development, it was recognized by all the members of the Working Group (which included the FCC, ACHP, NCSHPO, SHPO, and industry representatives) that telecommunication facilities built out of compliance with the existing regulatory requirements presented a challenge that the Working Group were attempting to address through the development of an alternative, streamlined processes. However, that effort did not mean that industry was excused from following the standard Section 106 process and previous FCC rules until such time as an alternate process might be developed.

The current Public Notice is framing the gap between the two Nationwide Agreements as a time when no clear guidance was available to industry regarding Section 106 compliance, which we find disingenuous. In fact, rules did exist and there was ample opportunity for those seeking to construct such facilities to complete the appropriate consultation with SHPOs - they simply chose not to do so, reaping advantages over their competitors in compliance costs and operational advantages within their markets. The current Public Notice proposes to ignore such actions without any mitigation that could address adverse effects on historic properties or other factors related to pro-competitive advantages addressed elsewhere in FCC rules.

When the Collocation NPA was executed, FCC also issued a *Fact Sheet* dated January 10, 2002 which was intended to provide all parties with guidance on its implementation. Page 2 of the Fact Sheet

clearly states that *"the purpose of the Agreement is meant to streamline the procedures associated with Section 106 and the Commission's rules in order to facilitate access to advanced telecommunications services by all Americans in a manner that is consistent with NHPA's goal of preserving the nation's historic properties and with the pro-competitive and deregulatory goals of the Communications Act of 1934, as amended."*

We note the reference both to the existing FCC requirements for compliance with Section 106 of the National Historic Preservation Act and that rules already existed which provided guidance to industry as to how to comply with those obligations. And we again remind the FCC that those rules were already being used in good faith by the industry to successfully complete Section 106 review with SHPOs. A lack of streamlining in the interim between the implementation of the Collocation NPA and the 2005 NPA should have presented no barriers to industry members who were already complying with federal rules originating either from FCC or ACHP. By dragging forward the date of required compliance with existing federal rules, it is our opinion that FCC is not considering the effects of those undertakings on historic properties.

We also remind the FCC that in the three-year period immediately preceding the Collocation NPA, over 3000 telecommunication reviews were conducted by the Ohio SHPO in close consultation with industry representatives who made every effort to follow the existing federal regulations which governed undertakings under 36 CFR Part 800. Those reviews and the work that went into their evaluation by SHPO staff and industry representatives effectively formed the basis for the terms that were developed for both Nationwide Programmatic Agreements to streamline future reviews. SHPO staff have been maintaining records regarding FCC related reviews for more than a decade in an effort to provide such documentation to industry, even without any indication expressed by FCC as such records are necessary to demonstrate proof of compliance with FCC and ACHP rules. The current Public Notice also does not recognize that SHPOs are tacitly expected to maintain such administrative records, which is a considerable burden associated with the operation of both Nationwide Agreements which has not been taken into account by FCC or industry.

In addition, we are disappointed that little effort has been made in the current proposal to meaningfully address the concerns that have been expressed by the Ohio SHPO and other state offices regarding longstanding issues with non-compliance by speculative site developers. Despite repeated requests for detailed guidance and process steps that would clarify FCC's role in resolving problems with individual tower sites and collocations, no effort has been made in the current proposal to consider effects from long operating facilities that did not comply with 36 CFR Part 800 or with any alternate process established by FCC.

Finally, we are discouraged that the FCC has not taken any affirmative steps to collectively consider possible impacts from this group of projects, as it did when FCC and ACHP put forward the alternative process for Positive Train Control in the form of a Program Comment issued on May 16, 2014. At that time, a substantive effort was made to collectively address the cumulative impacts of previously constructed facilities and to streamline compliance for future undertakings. This Program Comment did recognize that it was likely that impacts had already occurred from multiple non-compliant undertakings and took those into account through the creation of a mitigation fund which had clear preservation benefits for SHPOs and THPOs. **Therefore, we strongly recommend that FCC and ACHP consider this same approach for taking into account the effects of "Twilight Towers" instead of simply exempting such towers from any meaningful consideration of adverse effects on historic properties.**

However, if the above mentioned preferred approach is not feasible, another alternative could be for

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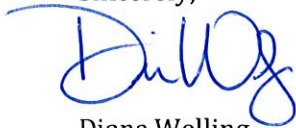
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SHPOs to complete Section 106 similar to Stipulations under VII.C of the First Amendment to the NPA for proposals to collocate to a Twilight Tower. In addition, these proposed collocations could be excluded from such review on a case-by-case basis if the Twilight Tower is determined to not have an adverse effect on historic properties under the following procedures:

1. The applicant must request in writing that the SHPO concur with the applicant's determination that the Twilight Tower is not having, and will not have, an adverse effect on historic properties (i.e., desktop review – are any historic properties located in the appropriate APE for tower height? No historic properties in APE, No Effect to historic properties in APE, No Adverse Effect to historic properties in APE, or Adverse Effect finding is submitted, similar to project information sent in on FCC Forms 620 and 621).
2. The applicant's written request must specify the Twilight Tower on which the applicant proposes to collocate (i.e., latitude/longitude, and other site information) and explain why the tower is not having, and will not have, an adverse effect on historic properties.
3. The depth and width of any proposed ground disturbance associated with the collocation does not extend beyond the existing lease area/compound.
4. The SHPO has 30 days from its receipt of such written notice to inform the applicant whether it disagrees with the applicant's determination that the Twilight Tower is not having, and will not have, an adverse effect on historic properties.
5. If within the 30 day period, the SHPO informs the applicant that the Twilight Tower is having, or will have, an adverse effect on historic properties, or that the applicant has not provided sufficient information for a determination, the applicant may not deploy its facilities on that Twilight Tower without completing the Section 106 review process.
6. If, within the 30 period, the SHPO either informs the applicant that the Twilight Tower is not having, and will not have, an adverse effect on historic properties, or the SHPO fails to respond to the applicant within the 30 day period, the applicant has no further Section 106 review obligations, provided that the collocation meets the following requirements:

We again thank you for your consideration and the opportunity to provide comments and recommendations.

Sincerely,



Diana Welling
Deputy State Historic Preservation Officer
for Resource Protection and Review
Ohio State Historic Preservation Office