

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.**

In the Matter of)	
)	
Accelerating Wireless Broadband Deployment by)	
Removing Barriers to Infrastructure Investment)	WT Docket. No. 17-79
)	
Draft Program Comment for the Federal)	
Commission’s Review of Collocations on)	
Certain Towers Constructed Without)	
Documentation of Section 106 Review)	

COMMENTS OF AT&T

AT&T Services, Inc. (“AT&T”), on behalf of its wireless affiliates, provides these comments in response to the Public Notice¹ released by the Federal Communications Commission (“Commission”) proposing a Program Comment for towers constructed between March 16, 2001 and March 7, 2005 that are missing documentation confirming review under Section 106 of the National Historic Preservation Act (“NHPA”).

I. INTRODUCTION AND SUMMARY

AT&T agrees with Commissioner Carr that resolving the longstanding issue of towers constructed between March 16, 2001 and March 7, 2005 that are missing NHPA documentation (i.e. “Twilight Towers”) “is a significant step in [the Commission’s] ongoing effort to streamline and accelerate the deployment of wireless infrastructure.”² AT&T supports and applauds that effort and, more specifically, the Program Comment proposed by the Commission. AT&T encourages

¹Draft Program Comment for the Federal Commission’s Review of Collocations on Certain Towers Constructed Without Documentation of Section 106 Review, WT Docket. No. 17-79, *Public Notice*, 32 FCC Rcd 10715 (2017) (“*Public Notice*”).

² *Public Notice*, Concurring Statement of Commissioner Brendan Carr, 32 FCC Rcd at 10723.

the Commission to work diligently and swiftly with the Advisory Council on Historic Preservation (“ACHP”) to adopt this Program Comment in the form of the draft attached to the *Public Notice*. This resolution of the “Twilight Tower” issue is in the public interest because it will rapidly make available thousands of existing towers to support wireless broadband deployment without causing adverse impacts to historic properties, reduce the need for new towers, and remove the specter of enforcement action from current innocent owners of Twilight Towers.

II. DISCUSSION

The draft Program Comment would exclude collocations on Twilight Towers from NHPA review in the same manner as the collocations on pre-March 16, 2001 towers. The Commission should work with the ACHP to expeditiously resolve the status of Twilight Towers by adopting the Program Comment as drafted. Currently, every collocation on a Twilight Tower requires NHPA review, even though the tower is relatively the same as a tower constructed before 2001. This review imposes unnecessary costs on providers and delays the placement of wireless facilities on existing structures, with minimal benefits to historic preservation. Adopting the proposed Program Comment would resolve this problem and rapidly free up thousands of towers for broadband facilities under the same streamlined process available to towers constructed before March 16, 2001.

The Program Comment would not undermine the protection of historic properties. Twilight Towers have been in place between nearly 13 and 17 years. If no adverse impact has emerged during this period, there is little probability that one has occurred or would emerge in the future. It would be illogical to derail efforts to expedite broadband deployment because of a potential impact that has not yet been and may never be discovered. Moreover, a program

comment adopted under ACHP rule section 800.14³ need not individually consider every potential impact, regardless of how remote.⁴ As the Commission has observed, the process “contemplates a balancing of the likelihood of *significant* harm against the burden of reviewing individual undertakings.”⁵ The Program Comment appropriately balances those factors and correctly concludes that the public interest would be served by excluding collocations on Twilight Towers from NHPA review under most conditions. And, the Program Comment would continue to protect Tribal properties by allowing Tribal Nations, at any time, to raise individualized concerns with respect to a Twilight Tower or any collocation thereon through a request for direct government-to-government consultation.⁶

AT&T also agrees with Commissioner O’Reilly that adoption of the Program Comment would remove owners of Twilight Towers from “regulatory purgatory.”⁷ These owners “have been stuck, unable to accept collocating partners while policymakers wrestle with the fact that the requisite historic preservation reviews were not documented” and [c]onsumers have been prevented from the many benefits from fully loaded towers, including increased network coverage.”⁸ Many tower owners acquired Twilight Towers after 2005 and received no

³ 36 C.F.R. §800.14.

⁴ Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process, WT Docket No. 03-128, Report and Order, 20 FCC Rcd 1073, 1087 (2004) (“[T]he NHPA does not require perfection in evaluating the potential effects of an undertaking in every instance.”).

⁵ *Id.* at 1082, 1087 (emphasis added).

⁶ *Public Notice*, 32 FCC Rcd at 10729.

⁷ *Id.* at 10722.

⁸ *Id.*

documentation confirming the preconstruction completion of NHPA review. This is not surprising, as potential tower owners had no comprehensive process for performing NHPA review until implementation of the Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process in 2005. As a result, many tower owners did not complete NHPA review in accordance with current processes or did not retain documentation of the reviews they conducted.

This ambiguity as to the regulatory status of Twilight Towers has had a chilling effect on their use by discouraging owners from making their Twilight Towers available for collocation and requiring multiple NHPA reviews on collocations on the same structure. Adoption of the Program Comment and clarification that the Commission will take no enforcement action against Twilight Towers constructed in good faith would remove the cloud over those towers and incent their owners to immediately free up Twilight Towers for collocation.

Lastly, AT&T appreciates the simplicity of the solution proposed in the Program Comment, which relies on the existing exclusion for collocations on towers constructed before March 16, 2001. As a result, the exclusion will be easy to explain and implement. A Program Comment that would have included identification of Twilight Towers, submission for review by the Commission or Tribal Nations, or other regulatory processes would only have injected more complexity and regulatory uncertainty and would not have achieved the broad and straightforward goals of the proposed Program Comment. AT&T wholeheartedly supports those goals and looks forward to the adoption of the Program Comment.

Dated: February 9, 2018

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robert Vitanza", with a long horizontal flourish extending to the right.

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