

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Accelerating Wireless Broadband Deployment by)	WT Docket No. 17-79
Removing Barriers to Infrastructure Investment)	FCC 17-165

**JOINT COMMENTS OF CTIA AND
THE WIRELESS INFRASTRUCTURE ASSOCIATION**

WIRELESS INFRASTRUCTURE ASSOCIATION

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The Wireless Infrastructure Association¹ (“WIA”) and CTIA² (collectively “the Associations”) jointly submit these comments supporting the Commission’s Draft Program Comment in the above-referenced proceeding.³ The Draft Program Comment will make so-called “Twilight Towers” – towers built between March 16, 2001 and March 7, 2005 – available for collocation at the very time that additional infrastructure platforms are in high demand for FirstNet, network densification, 5G deployments, and other advanced technologies.

The Associations support the dual goals of delivering advanced communications services and technologies nationwide *and* promoting historic preservation. The Draft Program Comment serves both of these important public policy objectives. The Associations, therefore, urge the

¹ The Wireless Infrastructure Association is the principal organization representing the companies that build, design, own and manage telecommunications facilities throughout the world. Its over 230 members include carriers, infrastructure providers, and professional services firms.

² CTIA® (www.ctia.org) represents the U.S. wireless communications industry and the companies throughout the mobile ecosystem that enable Americans to lead a 21st century connected life. The association’s members include wireless carriers, device manufacturers, suppliers as well as apps and content companies. CTIA vigorously advocates at all levels of government for policies that foster continued wireless innovation and investment. The association also coordinates the industry’s voluntary best practices, hosts educational events that promote the wireless industry, and co-produces the industry’s leading wireless tradeshow. CTIA was founded in 1984 and is based in Washington, D.C.

³ *Comment Sought On Draft Program Comment For The Federal Communications Commission’s Review Of Collocations On Certain Towers Constructed Without Documentation Of Section 106 Review*, Public Notice and Draft Public Comment, WT Docket No. 17-79 (rel. Dec. 14, 2017) (respectively, “Public Notice” and “Draft Program Comment”).

Commission to work with the Advisory Council on Historic Preservation (“ACHP”) to adopt and expeditiously implement the Draft Program Comment.

I. INTRODUCTION.

The Commission’s Public Notice and the Draft Program Comment detail the regulatory morass in which Twilight Towers have been caught.⁴ Simply put, Twilight Towers were constructed during a time in which the Commission’s rules implementing Section 106 of the National Historic Preservation Act (“Section 106”)⁵ did not require applicants to consult with State Historic Preservation Officers (“SHPOs”), Tribal Historic Preservation Officers (“THPOs”), or Tribal Nations and Native Hawaiian Organizations (collectively, “Tribes”) when evaluating the potential effects of proposed wireless infrastructure deployments on properties listed or eligible for listing on the National Register of Historic Places. Nor did the rules establish specific standards, procedures, or documentation requirements in connection with Section 106 reviews for wireless infrastructure deployments.⁶ Such requirements were not incorporated into the Commission’s rules until March 7, 2005, when the Commission’s 2004 Nationwide Programmatic Agreement became effective.⁷

As a consequence, there are towers whose construction commenced between March 16, 2001, and March 7, 2005, for which the applicant either did not complete consultation under Section 106, or cannot document the Section 106 review process that occurred. Wireless

⁴ Public Notice at 1; Draft Program Comment at 1-2.

⁵ 54 U.S.C. § 306108.

⁶ As former FCC Chairman Powell described it, the FCC’s Section 106 regulations were a “regulatory muddle.” *Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process*, Notice of Proposed Rulemaking, 18 FCC Rcd 11664 (2003) (Statement of Chairman Michael K. Powell).

⁷ *Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process*, Report and Order, 20 FCC Rcd 1073 (2004); codified at 47 C.F.R. Part 1, App. C (collectively, “2004 NPA”).

providers have since been precluded from collocating on these Twilight Towers, unless they enlisted the Commission's assistance to clear towers post-construction on an *ad hoc*, tower-by-tower basis.

Resolving this quagmire through a program comment as the Commission is proposing to do is consistent with the ACHP's rules and appropriate. The ACHP rules permit agencies to pursue "alternatives" to the Section 106 process, including program comments, to reduce the scope of, or entirely eliminate, the Section 106 review process where an activity has minimal potential to adversely affect historic properties.⁸

The Commission has assembled ample evidence through this proceeding to justify the measures in the Draft Program Comment. Comments filed previously in this proceeding by the Associations and others present evidence that the vast majority of wireless infrastructure projects (including both collocations and new sites) have had no adverse effects on historic properties.⁹ There is no reason to presume any greater likelihood of adverse effects for Twilight Towers than for towers more generally, and no basis to presume adverse effects solely from collocations on those towers. Moreover, even though all Twilight Towers were erected well over a decade ago, the Associations are aware of no formal complaint that has been filed by a SHPO, THPO, or Tribe claiming that a Twilight Tower has had an adverse effect. This lack of formal complaints suggests that Twilight Towers – and in particular, collocations on Twilight Towers – as a category do not present a risk of adversely affecting historic properties.

⁸ 36 C.F.R. §§ 800.14(a), 800.14(c)(1)(ii), 800.14(e); *see also* Public Notice at 2; Draft Program Comment at 3.

⁹ *See* Joint Comments of CTIA and the Wireless Infrastructure Association, WT Docket No. 17-79, at 6, 29 (filed June 15, 2017); Comments of the Association of American Railroads, WT Docket No. 17-79, at iii, 15 (filed June 15, 2017).

The minimal potential for collocations on Twilight Towers to cause an adverse effect, taken with provisions in the Draft Program Comment for mitigation of adverse effects if discovered, clearly satisfies the Commission’s preservation obligations. The current status, which has existed now for over 13 years, has impeded deployment efforts, increased deployment costs, and resulted in construction of towers to house wireless facilities that could have been collocated on existing Twilight Towers, without significantly increasing the protection of historic properties. As the Chairman has observed, it is unnecessarily “unfair and costly, and ... makes it more difficult for service providers to improve wireless coverage.”¹⁰ Resolution of this issue is thus timely and appropriate.

II. EXPEDITIOUS RESOLUTION OF THE TWILIGHT TOWER ISSUE WILL PROMOTE RAPID BROADBAND DEPLOYMENT AND PROTECT HISTORIC PRESERVATION INTERESTS.

As the Commissioners themselves have noted, Commission action to break the Twilight Tower logjam is long overdue and will immediately make available thousands of Twilight Towers as platforms to collocate wireless infrastructure.¹¹ Because the expeditious deployment of new wireless infrastructure is, and must continue to be, a national priority, the more rapidly the Commission enables the use of existing infrastructure, the sooner consumers everywhere can benefit from improved wireless connectivity.

¹⁰ See Public Notice at 6 (Statement of Chairman Ajit Pai).

¹¹ See *id.* (“Despite efforts by my predecessors over the years to make progress on this issue, the Commission previously had not taken the concrete action necessary to moving forward. ... And today, we break the logjam.”); *Id.* at 8 (Statement of Commissioner Michael O’Rielly) (“[I]t is estimated that these towers could accommodate an additional 6,500 antennas. Consumers have been prevented from the many benefits from fully loaded towers, including increased network coverage.”); *Id.* at 9 (Statement of Commissioner Brendan Carr) (“I am glad that this Commission is moving forward with a concrete solution that can open up these structures for additional wireless deployments. Doing so will help bring advanced wireless offerings to even more Americans.”).

A. Wireless Broadband Services Bring Tremendous Benefits to Americans.

Wireless broadband services are essential to all Americans; they promote jobs, education, and training opportunities; support critical government services; and enable individuals to stay connected with family and friends. They also are a strong engine of economic growth. More than 4.6 million Americans have jobs that depend directly or indirectly on the wireless industry, and employing one person in the wireless industry results in 6.5 more people finding employment.¹² Further, the wireless industry generates more than \$400 billion in total U.S. spending.¹³ And next-generation wireless, 5G, is expected to generate three million new jobs and boost the U.S. GDP by half a trillion dollars.¹⁴

B. Increasing Demand for Wireless Services Drives the Need for More Wireless Infrastructure.

Wireless infrastructure will need to continually expand to accommodate the growing need for broadband services. Americans consume more mobile data monthly per person than subscribers in almost every other country. At the end of 2016, there were close to 400 million wireless subscriber connections in the U.S. and 393 million mobile devices, including 262 million smartphones, in active use.¹⁵ U.S. wireless data traffic reached 13.7 trillion megabytes at

¹² See Roger Entner, *The Wireless Industry: Revisiting Spectrum, the Essential Engine of US Economic Growth*, Recon Analytics, at 18 (Apr. 2016), <http://www.ctia.org/docs/default-source/default-document-library/entner-revisiting-spectrum-final.pdf>; Coleman Bazelon & Giulia McHenry, *Mobile Broadband Spectrum: A Vital Resource for the American Economy*, The Brattle Group, at 2 (May 11, 2015), http://www.ctia.org/docs/default-source/default-document-library/brattle_spectrum_051115.pdf.

¹³ Coleman Bazelon & Giulia McHenry, *Mobile Broadband Spectrum: A Vital Resource for the American Economy*, The Brattle Group, at 2 (May 11, 2015), http://www.ctia.org/docs/default-source/default-document-library/brattle_spectrum_051115.pdf.

¹⁴ Accenture Strategy, *How 5G Can Help Municipalities Become Vibrant Smart Cities*, at 1 (2017), <https://www.ctia.org/docs/default-source/default-document-library/how-5g-can-help-municipalities-become-vibrant-smart-cities-accenture.pdf>.

¹⁵ CTIA, *Wireless Snapshot 2017*, at 2 (2017), <https://www.ctia.org/docs/default-source/default-document-library/ctia-wireless-snapshot.pdf>.

the end of 2016,¹⁶ and U.S. mobile data traffic is expected to grow 5-fold from 2016 to 2021, a compound annual growth rate of 35 percent.¹⁷ Further, U.S. mobile data traffic is forecast to reach 6.1 exabytes per month by 2021, up from 1.3 exabytes per month in 2016.¹⁸

A continually expanding inventory of wireless infrastructure is needed to keep pace with consumer demand for wireless services and capacity. At the end of 2016, over 308,000 cell sites were in operation, representing growth of over 57 percent in the last ten years.¹⁹ This number is expected to increase dramatically, including hundreds of thousands of small cells in the next few years.²⁰ It is critical that the Commission facilitate efficient infrastructure deployment, including opening up existing infrastructure to enable more productive use of those assets.

C. Opening Twilight Towers to Collocations Will Promote Wireless Deployment While Protecting Historic Properties and Tribal Trust Responsibilities.

Establishing an efficient and effective means of making Twilight Towers available for collocations will serve the public interest and support wireless broadband deployment. The Draft Program Comment will achieve this goal by excluding collocations on Twilight Towers from Section 106 review in a manner that mirrors the exclusion for collocations on towers constructed before March 16, 2001.²¹

The Draft Program Comment also promotes the goal of protecting historic properties. First, by making these existing towers available for collocation, the Draft Program Comment will

¹⁶ *Id.* at 1.

¹⁷ *Id.*

¹⁸ VNI Mobile Forecast Highlights, 2016-2021, Cisco, http://www.cisco.com/assets/sol/sp/vni/forecast_highlights_mobile/ (last visited Jan. 28, 2018).

¹⁹ CTIA, *Wireless Snapshot 2017*, at 3 (2017), <https://www.ctia.org/docs/default-source/default-document-library/ctia-wireless-snapshot.pdf>.

²⁰ *Id.*

²¹ Draft Program Comment at 4-5.

potentially reduce the need for additional towers. It is estimated that Twilight Towers could accommodate an additional 6,500 antennas.²² It is well established that reducing the need for construction of new towers reduces potential effects on historic properties.²³

Second, the Draft Program Comment carefully tailors the exclusion to require more thorough review in the rare circumstance in which collocation on a Twilight Tower exhibits even a minimal potential to affect a historic property. And the Draft Program Comment establishes procedures that will assist in identifying, reviewing, and remediating (where appropriate) any collocations on Twilight Towers that are identified as having an adverse effect.²⁴ An applicant seeking to collocate on a Twilight Tower must document that none of seven specific conditions exists;²⁵ otherwise, the collocation must undergo Section 106 review pursuant to the 2004 NPA and the 2001 Collocation NPA.²⁶

Third, the Draft Program Comment also complies with the Commission's trust responsibilities to Tribes by confirming specific consultation rights. As with other FCC programmatic agreements and exclusions, the Draft Program Comment will not apply on Tribal lands unless the relevant Tribal Nation has provided the Commission with a written notice requesting that it apply on Tribal lands.²⁷ Moreover, a Tribal Nation may request government-to-government consultation with the Commission any time it finds that a Twilight Tower or any

²² See *supra* note 11.

²³ 2001 Collocation NPA, *preamble*.

²⁴ See Draft Program Comment at 4-5.

²⁵ See *infra* text accompanying note 36.

²⁶ Such Section 106 review will be limited to the effects of the collocation and will not include consideration of the effects of the underlying Twilight Tower itself. Draft Program Comment at 5 ("In the event that a proposed collocation on a Twilight Tower does not meet the conditions specified above for this exclusion, the collocation must undergo historic preservation review as required by the rules of the Advisory Council as revised or supplemented by the Wireless Facilities NPA and the Collocation NPA. ... [S]uch review is limited to effects from the collocation and shall not include consideration of effects on historic properties from the underlying tower.").

²⁷ *Id.*

collocation on a Twilight Tower may affect a historic property of religious or cultural significance to the Tribe.²⁸ Finally, the Draft Program Comment does not impact a Tribe's right to raise an objection under Section 110(k) of the National Historic Preservation Act if it believes the original construction of a Twilight Tower had an adverse effect.²⁹

In short, the Draft Program Comment will serve the public interest by rapidly making Twilight Towers available to support wireless broadband deployment while protecting historic properties and respecting the Commission's trust responsibilities to Tribes.

III. THE DRAFT PROGRAM COMMENT IS A LAWFUL AND APPROPRIATE MECHANISM FOR RESOLVING THE TWILIGHT TOWER LOGJAM.

As the Commission correctly observes, the Draft Program Comment is a lawful and appropriate mechanism for achieving the dual policy goals of opening Twilight Towers to collocations and protecting historic properties.³⁰ Section 800.14(b) of the ACHP's rules provides that, where a defined federal activity has minimal potential to affect or adversely affect historic properties, agencies may establish "program alternatives" to reduce the scope of, or entirely eliminate, the Section 106 review process.³¹ The Draft Program Comment addresses one such minimal impact activity in Twilight Tower collocations.³²

At the outset, it is important to note that Section 800.14 does not require the Commission or ACHP to confirm or ensure that each of the Twilight Towers that is subject to the Program Comment will have absolutely no effect on historic properties. As the Commission explained when it adopted the 2004 NPA:

²⁸ *Id.* at 2, 5 (requests made in writing and supported by substantial evidence, will be treated as a complaint against the collocation).

²⁹ Public Notice at n.16 (citing 54 U.S.C. § 306113); *see also* 2004 NPA, 47 C.F.R. Part 1 Appendix C, § X.

³⁰ Draft Program Comment at 1.

³¹ 36 C.F.R. § 800.14(b).

³² *Id.* § 800.14(e).

[The FCC and ACHP] need not ensure that every possible effect on a historic property is individually considered in all circumstances, but . . . should take into account the likelihood and potential magnitude of effects in categories of situations. Indeed, doing so should advance historic preservation in the long run, consistent with the intent of the NHPA, by enabling all parties to focus their limited resources on the cases where significant damage to historic properties is most likely.³³

Moreover, the Draft Program Comment governs *collocations* on Twilight Towers, not the towers themselves. This is a category with an extremely low likelihood of impacting historic properties. Because the towers have been in existence for 13 or more years without raising complaints of an adverse effect, there is little likelihood that collocating an additional antenna on these towers would cause an adverse effect. Requiring reviews of collocations on towers that were constructed more than a decade ago under an entirely different legal regime would constitute exactly the misuse of limited resources the NPA was meant to avoid,³⁴ and would undermine the purpose and use of program alternatives under the ACHP's rules.

Importantly, the Draft Program Comment wisely focuses review and mitigation on instances when closer examination of a collocation on a Twilight Tower is warranted.³⁵ Specifically, the Draft Program Comment will exclude collocations on Twilight Towers from Section 106 review, *unless*:

- (1) The proposed antenna will increase the existing height of the tower by more than 10 percent, or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater; *or*

³³ 2004 NPA, 20 FCC Rcd at 1082, 1087 ¶¶ 21-22, 35.

³⁴ See FCC, *Final Programmatic Environmental Assessment for the Antenna Structure Registration Program*, at 4-22-4-23 (Mar. 13, 2012), https://apps.fcc.gov/edocs_public/attachmatch/DOC-312921A1.pdf (“While the Bureau acknowledges that information on species-specific effects would be relevant to the analysis presented in this PEA, it would be infeasible and unreasonably costly for the Commission to generate data on species-specific effects from communications towers.”); see also Draft Program Comment at 8 (Statement of Commissioner Michael O’Rielly) (“[I]t would take millions of dollars and years to create a list of all the twilight towers and have them individually reviewed; and in the meantime, these towers would continue to be underutilized, to the detriment of consumers.”).

³⁵ Draft Program Comment at 5.

- (2) The proposed antenna will involve the installation of more than four new equipment cabinets or more than one new equipment shelter; *or*
- (3) The proposed antenna will involve adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than twenty feet or more than the width of the tower structure at the level of the appurtenance, whichever is greater; *or*
- (4) The proposed antenna will involve excavation outside the current tower site; *or*
- (5) The tower has been determined by the FCC to have an adverse effect on one or more historic properties, where such effect has not been avoided or formally mitigated; *or*
- (6) The tower is the subject of a pending proceeding before the FCC involving compliance with Section 106; *or*
- (7) The collocation licensee or the owner of the tower has received written or electronic notification that the FCC is in receipt of a complaint that the collocation has an adverse effect on one or more historic properties.³⁶

All of these elements of the Draft Program Comment demonstrate that it is consistent with the letter and spirit of the National Historic Preservation Act and the ACHP's rules and should be adopted expeditiously.

IV. CONCLUSION.

For the foregoing reasons, the Associations support the Commission's proposed Draft Program Comment and urge the Commission to work with the ACHP to expeditiously adopt and implement it.

³⁶ *Id.*

Respectfully submitted,

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