

**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)	
)	
Revising the Historic Preservation Review Process)	WT Docket No. 15-180
For Wireless Facility Deployment)	

COMMENTS OF COMPETITIVE CARRIERS ASSOCIATION

Competitive Carriers Association (“CCA”)¹ files these comments in response to the Federal Communications Commission’s (“FCC” or “Commission”) December 14, 2017 Public Notice proposing a path forward for collocations on “Twilight Towers” (“Public Notice”).² The Public Notice seeks comment on a draft Program Comment (the “Program Comment”) concerning Twilight Tower collocations for review and adoption by the Advisory Council on Historic Preservation. The Program Comment would permit most collocations on Twilight Towers to move forward without Section 106 review, subject to exceptions similar to those that apply under the 2001 Collocation National Programmatic Agreement. The Commission also commits in the Public Notice not to take enforcement action on Twilight Towers construction,

¹ CCA is the nation’s leading association for competitive wireless providers and stakeholders across the United States. CCA’s membership includes nearly 100 competitive wireless providers ranging from small, rural carriers serving fewer than 5,000 customers to regional and national providers serving millions of customers. CCA also represents vendors and suppliers that provide products and services throughout the mobile communications supply chain.

² *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, WT Docket No. 17-79, FCC 17-165 (rel. Dec. 14, 2017) (“Public Notice”).

recognizing that its own rules “did not at that time require parties” to follow any process for evaluating historic property impacts.³

CCA strongly supports the Commission’s proposal and appreciates the Commission’s attention to this issue, which affects a large number of towers on which collocated facilities would further wireless infrastructure deployment and bring substantial improvements in broadband deployment and services. CCA is especially thankful for the Commission’s clarification that enforcement action will not be taken for failure to follow procedures that at the time did not exist, which will provide much needed certainty to carriers that have been in limbo for over a decade.

CCA emphasizes, however, that the ultimate success of the Commission’s Twilight Towers solution will depend on critical implementation details. With a handful of clarifications and practical improvements to enhance the complaint process and accelerate applications that do not meet the conditions in the Program Comment, the Commission can advance its goal of expanding wireless access in a responsible manner, without penalizing carriers for inconsistent regulatory policymaking.

I. The Commission Should Ensure That the Complaint Process Does Not Undermine the General Section 106 Exclusion for Twilight Towers.

The Program Comment, if adopted, would create an exclusion from Section 106 review for collocations on Twilight Towers subject to certain exceptions. Among those exceptions are collocations on towers for which the licensee or tower owner “has received a written or electronic notification that the FCC is in receipt of a complaint from a member of the public, a Tribal Nation or NHO, a [State Historic Preservation Office] (“SHPO”), or the Advisory

³ *Id.* at 2.

Council” concerning the potential of an adverse effect on historic properties.⁴ As currently drafted, however, the exception for towers that are subject to pending FCC complaints could very well swallow the rule. The Commission should adopt common-sense revisions to the Program Comment to avoid this unintended outcome.

First, the Commission should provide additional guidance on the evidentiary standard that will apply to complaints deemed sufficient to eliminate a proposed collocation from the general Section 106 exclusion. As drafted, the Program Comment would require that “[a]ny such complaint [be] . . . supported by substantial evidence describing how the effect from the collocation is adverse to the attributes that qualify any affected historic property for eligibility or potential eligibility for the National Register.”⁵ While the inclusion of a strong evidentiary standard is critical, the Commission does not provide guidance on how the “substantial evidence” standard will apply. Without further clarification, insufficiently supported complaints could create an enormous loophole around the Section 106 exclusion, and undermine efforts to promote broadband access through collocations. Thus, the Commission should use this opportunity to clarify in the text of the Program Comment that the evidentiary standard applicable to such complaints poses a very high bar, and requires specific, articulated facts about the claimed impact on historic properties that are supported by meaningful documentary evidence, such as photographs and maps.⁶

Second, the Commission should modify the draft Program Comment to include a short window within which any such complaints can be filed. Complaints filed outside the window

⁴ Public Notice at 5.

⁵ *Id.*

⁶ The FCC should use the language provided in the revised draft Program Comment attached to this filing.

should not have the effect of eliminating Twilight Tower collocations from the Section 106 exclusion. As the Commission noted, “Twilight Towers have been in place for 12 to 16 years,” and “no adverse effects from these towers have been brought to the FCC’s attention” in the “vast majority of cases.”⁷ As a result, there is no good reason for the threat of a complaint to loom over the heads of carriers any longer than necessary.

Third, the Commission should provide clear, abbreviated timelines in the Program Comment by which any pending FCC complaint must be resolved. Complaints left unresolved after a prompt fixed deadline should have no impact on whether a Twilight Tower collocation is excluded from the Section 106 process.

II. Twilight Towers That Do Not Benefit from a Section 106 Exclusion Should Be Processed Expeditiously.

Pursuant to the Program Comment, Twilight Tower collocations that do not qualify for the Section 106 exclusion would have to “undergo historic preservation review” as would any other collocation.⁸ To accelerate the use of Twilight Towers for broadband deployment, the Commission should take additional steps to ensure that Section 106 reviews for these collocations are completed promptly.

First, the Program Comment should contain accelerated deadlines for consultations under the Section 106 process for Twilight Towers that do not qualify for the exclusion. This accelerated deadline will help to provide carriers with the certainty needed to deploy wireless broadband networks. At a minimum, any potential effects of a Twilight Tower collocation

⁷ Public Notice at 3. *See also Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, Notice of Proposed Rulemaking and Notice of Inquiry, 32 FCC Rcd. 3330 ¶ 82 (2017).

⁸ Public Notice at 5. As CCA has argued previously, additional categories of collocations should be excluded from the Section 106 review process. *See* Comments of CCA at 40-43, WT Docket No. 17-79, *et al.* (filed June 15, 2017).

should be easier to identify and evaluate given that the facilities would be placed on a longstanding existing structure. This will promote broadband deployment across the country, and bring the unfortunate chapter concerning Twilight Towers to a faster close.

* * *

CCA appreciates the steps the Commission has taken to accelerate the deployment of infrastructure for wireless services. With the minor modifications proposed herein, the draft Program Comment can increase broadband deployment at an even greater speed.

Respectfully submitted,

/s/ Rebecca Murphy Thompson

Rebecca Murphy Thompson

Courtney Neville

COMPETITIVE CARRIERS ASSOCIATION

805 15th Street NW, Suite 401

Washington, DC 20005

(202) 449-9866

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Attachment