

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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

REPLY COMMENTS OF VERIZON¹

Verizon fully supports the Commission's proposal to make "twilight towers" available for collocation without the need for historic preservation review.² Doing so will speed deployment and reduce the need for unnecessary new towers. And collocation under the conditions proposed by the Commission is extremely unlikely to affect historic or tribal properties. The Commission also correctly decided not to require any punitive payments for twilight towers that were built in compliance with existing rules. Rather than continuing to subject collocations on these long-standing towers to long, slow, and costly processes as some

¹ The Verizon companies participating in this filing are the regulated, wholly owned subsidiaries of Verizon Communications Inc.

² Twilight towers are towers built between March 16, 2001 and March 7, 2005. *See 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, 32 FCC Rcd 10715 (2017) ("*Program Comment Public Notice*") at 1.

commenters advocate, the Commission should expeditiously send its draft “Program Comment” to the Advisory Council on Historic Preservation (“ACHP”) for approval.³

I. THE BENEFITS OF EXCLUDING COLLOCATIONS ON TWILIGHT TOWERS FAR OUTWEIGH THE COSTS.

Excluding collocations on twilight towers from historic preservation reviews will provide many benefits without jeopardizing historic properties. Most important, it will help close the digital divide by freeing towers in rural areas for broadband deployment. It will, for example, make available towers to support the build-out by eventual Mobility Fund II auction winners, who will be bringing 4G LTE to areas that currently lack it.⁴ The proposed exclusion would benefit consumers by bringing substantial improvements in broadband deployment and services,⁵ eliminating both the need to construct new towers and the effects those new towers would have on the environment,⁶ and facilitating deployment of the FirstNet public safety network.⁷

The twilight tower collocation exclusion proposed in the draft Program Comment is extremely unlikely to harm any historic property. This is because the Commission proposes to exclude only certain *collocations* on twilight towers, not the towers themselves. And the eligibility conditions the Commission proposes severely limit the potential for effects to any

³ A Program Comment is a customized alternative historic preservation review process for certain agency activities. *See Program Comment Public Notice* at 3, 36 C.F.R. § 800.14(e).

⁴ *See* Mobile Future Comments at 4; T-Mobile Comments at 3-4; NTCA Comments at 3-4.

⁵ *See* CTIA and Wireless Infrastructure Association Comments (“CTIA and WIA Comments”) at 4-5; Competitive Carriers Association (“CCA”) Comments at 2; T-Mobile Comments at 2-3.

⁶ *See* CTIA and WIA Comments at 6-7; T-Mobile Comments at 3; *Draft Program Comment for the Federal Communications Commission’s Review of Collocations on Certain Towers Constructed without Documentation of Section 106 Review* (“Draft Program Comment”) at 3, attached to *Program Comment Public Notice*.

⁷ *See* T-Mobile Comments at 3, *Draft Program Comment* at 3.

historic property.⁸ Most commenters alleging harm to historic and tribal properties focus on potential harms from the *towers*, which would not be eligible for the proposed exclusion.⁹ Few allege potential effects from *collocations* on twilight towers, and those effects are unlikely.¹⁰ Effects to buried historic properties are minimal because proposed conditions limit digging to the footprint of the existing tower, where the ground is likely to be previously disturbed. The color, style, and shape of equipment mounted on or near towers are not likely to cause effects; conditions placed on collocations do not typically address these elements.¹¹ The exception could be if a tower is camouflaged, but in that case, the stealth design condition is almost certainly the result of a historic or local review process, and the condition will apply to future installations on the tower. For these reasons, the Commission is correct to conclude that requiring individual review of collocations on twilight towers “imposes burdens on all participants that, in the context of the other considerations discussed herein, are not commensurate with its historic preservation benefits.”¹²

⁸ See *Draft Program Comment* at 4-5.

⁹ See, e.g., Ohio State Historic Preservation Office (“Ohio SHPO”) Comments at 2-3; Choctaw Nation of Oklahoma Comments at 2; National Association of Tribal Historic Preservation Officers Comments (Dec. 7, 2017) (“NATHPO December Comments”) at 2; National Conference of State Historic Preservation Officers (“NCSHPO”) Comments at 2-3.

¹⁰ Missouri State Historic Preservation Office Comments at 1 (expressing concern for harm to archaeological properties by new digging within the existing equipment compound); Department of Arkansas Heritage Comments at 1 (arguing that the color, style, and shape of antennas and cabinets added could cause an adverse effect).

¹¹ See *Wireless Telecommunications Bureau Announces Execution of First Amendment to the Nationwide Programmatic Agreement for the Collocation of Wireless Antennas*, Public Notice, 31 FCC Rcd 8824 (WTB 2016), codified at 47 U.S.C. Part 1, Appendix C, § III (“*Collocation Agreement Amendment*”) (adopting an exclusion for collocations on towers built before March 16, 2001 with no conditions placed on antenna or equipment color, style, or shape).

¹² *Draft Program Comment* at 3.

II. COMMISSION RULES DID NOT REQUIRE HISTORIC PRESERVATION REVIEWS OF TOWERS DURING THE TWILIGHT PERIOD.

Contrary to the claims of some commenters, Commission rules did not require historic preservation reviews for new towers constructed in the twilight period. In fact, the lack of specificity in the Commission rules at that time is one of many factors the Commission relied upon in adopting the draft Program Comment.¹³ But some commenters challenge that assertion, claiming the Commission is attempting to “rewrite history,”¹⁴ that a Fact Sheet published by the Commission in 2002¹⁵ provided guidance about how to conduct historic preservation reviews,¹⁶ and that some carriers chose to ignore Commission rules to gain a competitive advantage in the marketplace.¹⁷ These arguments both miss the mark and fail to consider other valid reasons why documentation of reviews may be missing.

The primary reason for uncertainty during the twilight period was that the Commission rule in effect at the time, which required applicants to file environmental assessments for projects that “may affect [properties] that are listed, or are eligible for listing, in the National Register of Historic Places,”¹⁸ did not require state historic preservation officer (“SHPO”) or tribal consultations. Rather, the note accompanying that section stated, “The National Register is

¹³ *Id.* at 2.

¹⁴ NCSHPO Comments at 1-2

¹⁵ *Fact Sheet Regarding Implementation of the Nationwide Programmatic Agreement with Respect to Collocating Wireless and Broadcast Facilities on Existing Towers and Structures*, 67 Fed. Reg. 5282 (2002) (“2002 Fact Sheet”).

¹⁶ NCSHPO Comments at 1-2, Ohio SHPO Comments at 1-2; NATHPO Comment (Feb. 9, 2018) (“NATHPO February Comments”) at 2.

¹⁷ Ohio SHPO Comments at 1.

¹⁸ 47 C.F.R. § 1.1307(a)(4) (2003).

updated and re-published in the Federal Register each year in February. To ascertain whether a proposal affects a historical property of national significance, inquiries also *may* be made to the appropriate State Historic Preservation Officer.”¹⁹ Because neither SHPO nor tribal consultation was required under the applicable rule, it was reasonable for some carriers to conclude that historic preservation review was optional and choose not to have new towers reviewed.

While many carriers, like Verizon, conducted reviews during the twilight period,²⁰ there are valid reasons why documentation of such reviews may not exist. First, until the Nationwide Programmatic Agreement was adopted, there was no established process for conducting historic preservation reviews and no system for tribal consultations. So carriers that conducted reviews may never have had the documentation of those reviews required under today’s rules.²¹ Second, station records during the period were mostly paper records, which may not have been retained beyond company document retention schedules. And third, given the number of times tower ownership has changed, any documentation that existed may not have followed the towers to the current owner.²² For these reasons, documentation may not exist even though towers were reviewed.

¹⁹ *Id.*, accompanying Note. (emphasis added)

²⁰ See Verizon Comments at 4-5.

²¹ While the 2002 *Fact Sheet* provided non-exclusive guidance on how to document SHPO reviews, rules for documenting reviews did not exist, nor was there any guidance on tribal consultations.

²² See AT&T Comments at 3-4.

III. FINANCIAL PENALTIES ARE NOT APPROPRIATE FOR TWILIGHT TOWERS.

The Commission appropriately did not propose to require carriers or other entities that constructed towers during the twilight period to make any settlement or other “voluntary payment” to historic preservation interests for twilight towers. Some commenters ask the Commission to require payment for twilight towers,²³ similar to a voluntary \$10 million payment agreed to by certain railroad interests to compensate for constructing positive train control wayside poles without complying with Commission historic preservation review rules.²⁴ Others call more generally for some form of “mitigation” in exchange for forgiveness of adverse effects caused.²⁵ But financial penalties are not appropriate for constructing twilight towers because, unlike positive control wayside poles, twilight towers complied with existing Commission rules.

Because the Commission did not find any lack of compliance in constructing twilight towers, a voluntary payment like that paid by the railroads is not appropriate. The voluntary payment by railroads for constructing positive train control waypoints was agreed to as a settlement for “wayside poles and infrastructure that were installed without prior compliance with the requirements of Section 106.”²⁶ But, as discussed above, Commission rules during the

²³ See Cheyenne River Sioux Tribe Comments at 2; Ohio SHPO Comments at 2.

²⁴ See *FCC Announces Two Actions to Facilitate Positive Train Control Implementation: FCC enters into agreement with freight rail industry to resolve previously-constructed facilities; ACHP approves Program Comment for facilities to be constructed*, News Release (May 19, 2014), attaching *Memorandum of Understanding Between the Federal Communications Commission and BNSF Railway Company (“PTC MOU”)*, and *Program Comment to Tailor the Federal Communications Commission’s Section 106 Review for Undertakings Involving the Construction of Positive Train Control Wayside Poles and Infrastructure (“PTC Program Comment”)*.

²⁵ See Missouri SHPO Comments at 1.

²⁶ *PTC Program Comment* at 11.

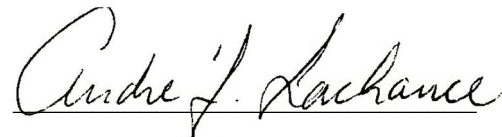
twilight period did not require SHPO or tribal consultation or any particular process or documentation of historic preservation reviews. So the Commission appropriately found that enforcement action is not warranted for the good faith construction or deployment of twilight towers.²⁷ Because twilight towers complied with existing Commission rules, no form of payment for noncompliance is warranted.

IV. CONCLUSION

The Commission should request ACHP approval of the draft Program Comment for twilight towers without material changes. The draft Program Comment proposes to exclude certain collocations on twilight towers because the benefits of exclusion far outweigh the costs of requiring reviews, and historic properties will not be harmed by the exclusion. The Commission also should reject claims that twilight towers did not comply with existing rules or that any payment for noncompliance is warranted.

Respectfully submitted,

VERIZON

A handwritten signature in cursive script, reading "Andre J. Lachance", written over a horizontal line.

Tamara L. Preiss
Andre J. Lachance
1300 I Street, N.W.
Suite 500-East
Washington, D.C. 20005
(202) 515-2540

William H. Johnson
Of Counsel

February 26, 2018

²⁷ *Program Comment Public Notice* at 4.