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February 26, 2018

Mr. Ajit Pai, Chairman
Federal Communications Commission
445 12th Street, S. W.
Washington, DC 20554

Re: Santa Clara Pueblo Opposes Program Comment Addressing Collocation of Twilight Towers
WT Docket No. 17-79

Dear Chairman Pai,

On behalf of the Santa Clara Pueblo, we submit these comments opposing the draft Program Comment addressing Collocation on Twilight Towers (WT Docket No. 17-79).¹ Thank you for accepting these comments. We very much appreciate that Deputy General Counsel Suzanne Tetreault recently reported at a meeting with tribes in Albuquerque, New Mexico that the FCC would be more than happy to accept comments on the Twilight Towers draft Program Comment past the reply comment due date. We welcome the FCC's efforts to ensure consideration of tribal comments on this important issue.

The proposed regulatory changes would allow collocations on Twilight Towers, which have been constructed without documentation that they complied with Section 106 of the National Historic Preservation Act (NHPA). The FCC states in its comments there is a "limited likelihood that Section 106 review could identify adverse effects from these towers that are not yet known after 12 years or more." We disagree. Without historic preservation review, there is no evidence that the towers have had no adverse effect or that the FCC has fulfilled its statutory obligation under Section 106 to consult with tribes.² The draft Program Comment would be an unacceptable abdication of the federal government's trust responsibility to Indian tribes. Neither

¹ Santa Clara Pueblo previously submitted comments specifically objecting to any expansion of the categories of federal undertakings that the FCC considers to be excluded from Section 106, including Twilight Towers. Comments of Santa Clara Pueblo, WT Docket Nos. 17-79 and 15-180, at page 4.

² As the Montana History Society offered in their comments submitted on November 29, 2017, they would be willing to review the Towers in Montana to see if there are any that potentially have had an adverse effects. Without review they protest, "there is no way we, or anyone else, can know if there have been adverse effects, no matter how many years have passed."

the FCC nor the Advisory Council on Historic Preservation (ACHP) is permitted to ignore the requirements of the NHPA simply because compliance is inconvenient. The FCC must continue to consult with tribes regarding these new undertakings on historic properties.

Twilight Towers were erected between 2001 and 2005, during a period of time when the FCC failed to provide guidelines for adherence to historic preservation laws and failed to provide proper notification to tribal entities as required by NHPA Section 106. Wireless companies now complain that they cannot “collocate” new antennas on these towers without expensive and time-consuming historic preservation review for the underlying tower. Industry exaggerates the time and cost involved in conducting historic preservation review and minimizes the invaluable sacred and cultural interests at stake. The draft Program Comment would open up potentially thousands of existing towers, which cannot demonstrate compliance with federal law, for collocations without the need for either the collocation or the underlying tower to complete an individual historic preservation review. The FCC’s previous failure to provide adequate regulatory guidance regarding Section 106 review does not relieve the agency of its duty of NHPA compliance, including its duty to ensure that tribal consultation has occurred.

It is inconceivable that thousands of Twilight Towers would have no impact on historic properties and no impact on tribal cultural and historic properties, including burial sites. Other comments from tribes and tribal organizations such as the National Congress of American Indians have emphasized that the very existence of Twilight Towers is a failure of the FCC to uphold its trust responsibility to tribes and is in violation of federal law. The FCC now adds further injury by using the agency’s own long years of neglecting sacred and cultural sites as a reason to exclude Twilight Towers from historic preservation review. This betrays Congress’ intent in passing the NHPA and diminishes the government-to-government relationship between the FCC and tribes.

Federal law requires that tribal sacred and cultural interests be considered through Section 106 review of collocations on Twilight Towers, as well as review of the underlying Tower. The FCC has a unique obligation to tribes to protect our rights to consultation in order to preserve our sacred and cultural heritage. Merely stating that tribes will have the ability to ask for consultation on specific Twilight Towers on aboriginal lands does not comply with federal law, particularly given that the FCC will not provide tribes with a list of Twilight Towers. Tribes are still seeking data on the location of Twilight Towers. Without data, the right to object or seek additional consultation has no meaning.

The Tower Construction Notification System (TCNS) was implemented to protect Tribal cultural resources.³ The FCC could, and should, implement an option in TCNS to allow for tribes to review Twilight Towers. After historic preservation review, these towers would then be approved, and eligible for collocations. The new proposal turns the process upside down, approving first the collocation that expands the use of a tower that may violate the NHPA and causes further harm to the location. Significantly, the fact that a site has already been harmed by

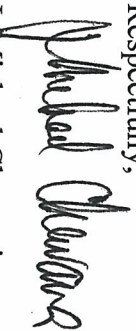
³ The Tower Construction Notification System (TCNS) was not established until September 2008, some fifteen (15) years after the NHPA was first amended to include Tribal Historic Preservation Offices within the Section 106 consultation process and some eleven (11) years after the Advisory Council on Historic Preservation (ACHP) developed their first draft that included the requirements relating tribal consultation.

the construction of the underlying Twilight Tower does not necessarily mean that adding additional wireless infrastructure will not have further, extremely severe consequences. In some instances, this will compound the initial, ongoing harm of the first installation.

We feel the FCC's draft Program Comment provides no protection for tribal sacred and cultural sites and violates the intention of the NHPA. The draft Program Comment also deceives the public by pretending that time alone, not review, reveals if a Twilight Tower causes harm to a location. The change in process that would be initiated by the draft Program Comment fails to protect tribal consultation rights, valuing our interests in our sacred and cultural sites less than the profit that is to be gained by circumventing federal law. Santa Clara Pueblo strongly opposes the draft Program Comment and insists that the FCC consult with tribes regarding potential collocations.

We urge the FCC to identify all Twilight Towers and antennas that were erected and constructed in violation of federal law from 2001 to 2005. This will allow tribes to review and protect our cultural heritage at Twilight Tower locations and will uphold the government-to-government relationship that was and is the policy of the federal government.

Respectfully,



J. Michael Chavarria
Governor Santa Clara Pueblo
New Mexico

Cc via e-mail only:
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