

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

To: The Commission

The Enterprise Wireless Alliance (“EWA” or “Alliance”), in accordance with Section 1.415(a) of the Federal Communications Commission (“FCC” or “Commission”) rules, respectfully submits its Reply Comments in response to the above-identified Notice of Proposed Rulemaking and Notice of Inquiry.¹ The Commission’s proposals in this proceeding, which is intended to accelerate the deployment of wireless broadband facilities, raise a number of challenging issues. The Alliance has focused on one aspect of this effort – resolution of the long-standing, so-called “Twilight Towers” issue.² As discussed below, EWA strongly supports the option of “grandfathering” these facilities and granting to them the same collocation rights as towers constructed prior to March 16, 2001.³

³ See Nationwide Programmatic Agreement for the Collocation of Wireless Antennas, 47 CFR Part 1, App'x B (Collocation NPA); Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process, 47 CFR Part 1, App'x C (NPA). See also *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).

I INTRODUCTION

EWA represents a broad alliance of business enterprise users, commercial service providers, radio dealers and technology manufacturers. Its membership includes communications tower owners and operators. Other members, whether using wireless systems to meet their internal communications requirements or to provide two-way service to customers, need access to towers on which they can locate their transmitting facilities. These systems, to date, use narrowband or wideband technology as the FCC has not yet authorized a broadband allocation for these types of non-consumer-oriented operations.⁴ Nonetheless, they are essential to the efficient, cost-effective, and safe functioning of many of America's most critical businesses. They are no less vital to this nation than is the ubiquitous availability of wireless broadband for consumer use.

The NPRM explains the dilemma of the Twilight Towers. Parties building communications towers prior to March 16, 2001 were not required to determine whether their construction might affect historic properties.⁵ Those planning to build them after the March 7, 2005 effective date of the NPA were and remain subject to the requirement that they undertake a detailed assessment of the potential impact of the tower on historic properties prior to construction. However, because the text of the FCC's environmental rules did not clearly require parties to perform this evaluation or prescribe a process for doing so with regard to towers built between those dates in 2001 and 2005, a number of towers were constructed that either did not complete the Section 106 review⁶ or for which documentation of having done so is unavailable.

The impact is significant. Under the Collocation NPA, additional tenants are permitted to collocate on towers built prior to March 16, 2001, whether or not the tower has undertaken a

⁴ EWA and pdvWireless, Inc. (previously Pacific DataVision, Inc.) filed a Joint Petition for Rulemaking seeking a realignment of the Part 90 900 MHz band to provide a broadband option for business enterprise, including critical infrastructure industry, entities. *See* Petition for Rulemaking of the Enterprise Wireless Alliance and Pacific DataVision, Inc., filed Nov. 17, 2014. The Commission has allocated both 700 MHz and 4.9 GHz broadband spectrum for use by public safety licensees. *See* 47 C.F.R. §§90.19 and 90.1201 *et seq.*

⁵ Collocation NPA, § III.

⁶ Section 106 of the National Historic Preservation Act (NHPA), 54 U.S.C. § 300101 *et seq.* ("Section 106").

Section 106 review.⁷ Conversely, the Collocation NPA prohibits collocation on post-March 16, 2001 towers unless a Section 106 review, and any associated environmental reviews, have been completed for the underlying tower.⁸ The result is that potential tenants, including major broadband carriers, typically will not locate their facilities on Twilight Towers unless the tower owner is willing to undertake what can be a relatively arduous, lengthy, and costly Section 106 review process. This reduces the collocation options for wireless systems and thereby increases the need to build new towers, incurring the cost and time delays inherent in such undertakings.

The NPRM seeks to resolve this situation, balancing the public's interest in faster and more far-reaching broadband deployment with its interest in protecting the nation's historic properties, as well as the interests of federally recognized Tribal Nations. One approach, the approach favored by EWA, is to afford Twilight Towers the same exclusion from Section 106 historic preservation review as already has been granted to pre-March 16, 2001 towers and the same collocation opportunities. As with the pre-2001 towers, the collocation exemption would not apply if: (1) the new antenna would result in a substantial increase in the size of the tower; (2) the tower had been determined by the FCC to have an adverse effect on any historic properties; (3) the tower was the subject of a pending environmental review or related proceeding before the Commission involving Section 106 compliance; or (4) the tower owner or proposed tenant had received formal notification that a complaint had been submitted to the FCC alleging an adverse effect on one or more historic properties from a member of the public, a Tribal Nation, a State Historic Preservation Office or the Advisory Council on Historic Preservation.⁹ The only alternative identified in the NPRM would be a streamlined review process triggered either by the tower owner on its own motion or by a tenant requesting collocation.

⁷ Collocation NPA, § III.

⁸ *Id.* at § IV.

⁹ *Id.* at § III.

The towers at issue have been in place for between 12 and 16 years without any demonstrable, adverse impact on historic properties, including those of interest to Tribal Nations. This is to be expected since, as stated in the NPRM, “we note that the vast majority of towers that have been reviewed under the NPA have had no adverse effects on historic properties, and we are aware of no reason to believe that Twilight Towers are any different in that regard.”¹⁰ While it is theoretically possible that some very small number of Twilight Towers might require mitigation to satisfy the requirements of Section 106, that would be the case whether additional tenants locate on them or not. Denial of collocation opportunities for these existing facilities will have the perverse effect of promoting the construction of even more towers, without resolving any unidentified adverse impact created by Twilight Towers. That extremely remote possibility should not dictate a review process for all Twilight Towers on which a new tenant proposes to install transmitting facilities. Any party that now or in the future has reason to believe that a communications tower built between 2001 and 2005, in fact, has an adverse effect on an historic property is free to submit a complaint for Commission consideration. Absent such a complaint, the public interest in promoting wireless deployment of broadband and other critical systems would be served by affording Twilight Towers collocation rights identical to those applicable to towers constructed before March 16, 2001.

¹⁰ NPRM at ¶ 82.

EWA asks that the Commission adopt rules governing Twilight Towers consistent with the recommendations herein.

ENTERPRISE WIRELESS ALLIANCE

By: 

Mark E. Crosby
President/CEO
2121 Cooperative Way, Ste. 225
Herndon, VA 20171
(703) 528-5115
mark.crosby@enterprisewireless.org

Counsel:

Elizabeth R. Sachs
Lukas, LaFuria, Gutierrez & Sachs, LLP
8300 Greensboro Drive, Ste. 1200
McLean, VA 22102
(703) 584-8678
lsachs@fcclaw.com

July 17, 2017