

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

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

REPLY COMMENTS OF TRIANGLE COMMUNICATION SYSTEM, INC.

**Triangle Communication System, Inc.
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Triangle Communication System, Inc. (“Triangle”), by its attorney, and pursuant to 47 C.F.R. § 1.415 and § 1.419, and pursuant to the April 21, 2017 *Notice of Proposed Rulemaking and Notice of Inquiry* (“NPRM”) (FCC 17-38) which established initial and reply comment filing deadlines, and pursuant to the May 26, 2017 *Order* (DA 17-525) which extended those filing deadlines to June 15, 2017 and July 17, 2017 respectively, hereby submits its reply comments in the captioned proceeding. In support whereof, the following is respectfully submitted:

Triangle is responding to the general view expressed in some of the comments that the coming wave of 5G related tower building will somehow result in a cumulative historic and environmental impact which needs to be assessed on a broader basis beyond the single tower proposal of a tower builder. Triangle discussed in its initial comments that

the Commission determined that given the “very small area” used by tower anchoring mechanisms, it is not necessary to perform a field survey prior to tower construction because installation of the tower anchoring mechanisms could cause only a “minimal amount of damage to archeological resources.” 20 FCC Rcd. at 1121. Moreover, the Commission has determined that site preparation for tower installation, including site clearing, anchor and tower base installation, and on site building construction have no intrinsic radio communication use and are not part of radio station construction. *In the Matter of MCI Telecommunications Corporation*, 3 FCC Rcd. 509 (1988); *see also In re Application of Virginia RSA 6 Cellular Limited Partnership For a facility in the Domestic Public Cellular Telecommunications Radio Service on Frequency Block B, in Market 686, Virginia 6 (Highland)*, 6 FCC Rcd. 405, 406 (1991); *In re Applications of Georgia M. Brush and Jerald A. Brush D.b.a. Brush Broadcasting Co., Wauchula, Fla.*, 45 F.C.C. 961, 963 (Rev. Bd. 1963).

Triangle Comments at 8-9 (footnotes omitted).

The Commission has already determined that the ground disturbance associated with tower building is not a Federal undertaking and, in any event, the Commission has also determined that tower construction poses negligible environmental or archeological risk. So the question raised by other commenters appears to be: whether the cumulative effect of insignificant projects could result in a potential significant historic or environmental impact.

The answer is clearly “no.” First, the fact that the ground disturbance activity associated with tower building is not communications-related is not changed by the fact that there is more than one tower project: a non-Federal project is not changed into a Federal project merely because more than one tower is planned.¹ Second, absent overlapping disturbance areas (NEPA) or overlapping Areas of Potential Effects (NHPA), multiple insignificant tower projects are wholly unrelated to each other and there can be no cumulative impact created by those multiple projects. For instance, an insignificant tower project proposed on Day #1 in Maine does not become more significant merely because another insignificant tower project is proposed in Alaska on Day #2.

Triangle also takes issue with some comments which argue that tower building is a “Federal undertaking” under 54 U.S.C. §§ 300320, 306105 & 306108 merely because radio antennas might eventually be placed on tower structures, which tower structures might be placed upon the support systems, which support systems might be placed in areas where the ground is minimally disturbed. Those statutory provisions are not standalone laws, they have to be read against, and harmonized with, the expressly stated purpose of the statute: to administer Federal property and to “encourage private” participation in historic preservation. 54 U.S.C. § 300101. The Federal government has very little authority to control activity on private property given the absence of a general land use regulatory power in the Constitution, a circumstance which the NHPA text explicitly recognizes by explicitly not regulating private property. Triangle Comments at 2-6, 12-16.² The only conceivable

¹ Accord Comments of The Critical Infrastructure Coalition at 15 (odd result when the use of a tower structure determines the scope of required regulatory compliance because the historic/environmental impact is the same).

² As discussed in Triangle’s Comments at 2 & n. 4, “Federal property” includes ““federally owned, administered, or controlled historic property”” and including “Qualifying Tribal Land,” without reference to telephone penetration, citing 54 U.S.C. § 300101 and 47 C.F.R. § 1.2110(f)(3)(i).

circumstance under which the NHPA might allow Federal regulation of private property is if some Federally regulated activity on private land might pose “a potential substantial effect upon Federal property,” Triangle Comments at 3, within the APE of the tower project, which Federal property is also eligible for listing in the National Register of Historic Places. Triangle Comments at 3-4.

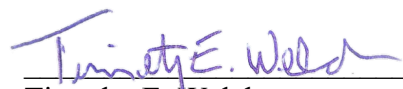
Moreover, while placing a licensed radio antenna upon a tower might be determined to be a “Federal undertaking,” constructing the supporting structure is not part of a Federal undertaking because antenna mounting structures can have uses unrelated to radio communication such as constructing structures where people live like apartment buildings, erecting gas and water tanks, and erecting actual tower structures which can be used as fire control look out towers, weather stations, lighting, etc. Triangle Comments at 8-10. The nature of the holes in the ground required by these structures is not changed based upon the use to which the hole is put, and it makes no sense for the Federal government to find that the use to which a hole is put controls whether the hole has a cognizable historic impact.

WHEREFORE, in view of the information presented herein, it is respectfully submitted that the public interest would be served by clarifying the Section 106 Review Process as discussed herein and in Triangle’s Comments.

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Respectfully submitted,
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