



KARYN ABLIN  
KEENAN ADAMCHAK  
ROBERT J. BUTLER  
HARRY F. COLE  
ANNE GOODWIN CRUMP  
MARK C. DESANTIS  
DONALD J. EVANS  
PAUL J. FELDMAN  
KEVIN M. GOLDBERG  
DAVID M. JANET  
FRANK R. JAZZO  
M. SCOTT JOHNSON  
DANIEL A. KIRKPATRICK  
TONY S. LEE  
CHENG-YI LIU  
STEPHEN T. LOVELADY  
SUSAN A. MARSHALL  
MICHELLE A. McCLURE  
MATTHEW H. McCORMICK  
FRANCISCO R. MONTERO  
DAVINA SASHKIN  
LAURA A. STEFANI  
JAMES U. TROUP  
KATHLEEN VICTORY

\* NOT ADMITTED IN VIRGINIA

1300 NORTH 17th STREET, 11th FLOOR  
ARLINGTON, VIRGINIA 22209

OFFICE: (703) 812-0400  
FAX: (703) 812-0486  
www.fhhlaw.com  
www.commlawblog.com

RETIRED MEMBERS  
VINCENT J. CURTIS, JR.  
RICHARD HILDRETH  
HARRY C. MARTIN  
GEORGE PETRUTSAS  
JAMES P. RILEY

OF COUNSEL  
THOMAS J. DOUGHERTY, JR.  
ROBERT M. GURSS\*  
KATHRYN A. KLEIMAN  
MITCHELL LAZARUS  
PETER TANNENWALD  
ROBERT M. WINTERINGHAM

DONALD J. EVANS  
(703) 812-0430  
EVANS@FHHLAW.COM

September 20, 2017

Ms. Marlene Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street SW  
Washington, DC 20054

Re: Ex Parte Comment of NTCH, Inc.  
Docket 17-79

Dear Ms. Dortch:

This ex parte submission is intended to supplement the record in this Docket by pointing to a siting situation that requires remediation by Commission action. Recently NTCH was tasked with constructing a communications tower on land which is comprised entirely of landfill debris. The site was a landfill facility which was eventually covered over with soil and made available in some parts for softball fields and the like but which also has space available for communications towers such as the one at issue. We believe the landfill material extends to a depth of as much as 50 ft. (possibly more) below the current surface level of the plot. There cannot possibly be any objects of historical or tribal significance either in the municipal garbage of which the site is composed or anywhere close to the level of the proposed construction activity. The presence of any such objects well below the surface, if they exist at all, would obviously already be deep below the existing layer of garbage and would not be further affected in any way by the proposed construction.

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One would suppose that such a site would automatically qualify for an exemption from the Section 106 process under the Nationwide Programmatic Agreement and the Commission's rules, but this is not the case. The NPA categorically exempts from Section 106 review construction on sites where the ground has been previously disturbed to a depth at least 2 feet below the proposed construction (see NPA at Sections III.C and VI.D.2.c.i), but this exemption only applies to *temporary* constructions. There is no reasoned basis for exempting temporary facilities from review of such sites while requiring full historic review of a permanent facility on the same type of location. No conceivable direct adverse effect on historic properties could be caused by such a construction. While it is conceivable that there could be a visual effect from the new tower, the fact that the site was an active landfill dump for many years would indicate that any visual historic effects either do not exist or occurred a long time ago.

While the landfill site is the best example of well-meaning regulations imposing totally unnecessary burdens, NTCH regularly confronts other similar situations where the likelihood of uncovering historic or tribal artifacts is zero. For example, quite often towers are constructed in corners of parking lots where the ground has long ago been paved over. Other common sites are construction zones where the earth has been thoroughly dug up and moved around in connection with other construction on the site. To the extent that there was any likelihood of historic artifacts ever having been present in these locations in the first place, they would now, regrettably, have been permanently and irremediably disturbed or destroyed through processes wholly unrelated to the tower construction activity. The rules should acknowledge and accommodate this reality of non-Federal development activity.

The real world effect of requiring a historical review in these circumstances is that the constructor must go through a time-consuming and prohibitively expensive review by the pertinent SHPO and numerous Indian tribes. This review is never going to uncover any items of historic or tribal concern. In fact, the likely response would be, "Are you kidding me? That's a garbage dump." The present Commission has rightfully set its sights on eliminating regulatory burdens that serve no useful societal purpose. The current rule not only serves no purpose but actually delays, and makes more expensive, the construction of much needed wireless infrastructure for the 21<sup>st</sup> century.

As part of its much needed comprehensive review of the need for historic review of particular categories of sites, NTCH submits that the Commission should adopt a categorical exemption for sites built on landfills or similar previously radically disturbed sites whose current surface is a man-made creation where no articles of historic or tribal significance will ever be found.

Respectfully submitted,  
NTCH, Inc.

By: 

Donald J. Evans  
Its Counsel

cc: Jill Springer  
Jeff Steinberg