Draft Program Comment for the Federal Communications Commission’s Review of Collocations on Certain Towers Constructed without Section 106 Review, WT Docket No. 17-79

Colorado State Historic Preservation Office comments, 5 December 2017

**II. Need for Program Comment**

We note that the problem of “Twilight Towers” stems not only from confusion over policy but also from poor and inconsistent record-keeping. Carriers have expressed frustration upon acquiring an extant tower when they are unable to determine when the tower was built, or whether it was reviewed under the appropriate set of regulations. Each carrier uses its own system of names, codes, and geographical information to track towers, and these are not standardized across the industry.[[1]](#footnote-1) As such, we strongly encourage the Commission to develop and maintain a standardized system of tracking all towers and communication facilities, so that licensees, consulting parties, and indeed the Commission itself can easily and quickly obtain information regarding the history of a particular telecommunication facility. We note that many federal agencies fulfill this role by acting as the Agency of Record for their constituents and users.

We also note that during the “Twilight” period between March 2001 and March 2005, our office received and reviewed 742 proposed telecommunication facilities from a variety of large and small carriers. We ask the Commission to make note of the fact that, in a time when “the FCC’s rules did not require its licensees and applicants to follow the ACHP’s rules or any other specified process when evaluating their proposed facilities,” a number of licensees chose to initiate consultation pursuant to the terms of the 2001 NPA. The fact that applicants were choosing to expend time and energy on review when they presumably did not have to suggests that other factors (such as expedited project timing, local planning regulations, costs, and weather) may have also played a role in the “Twilight Tower” issue. As such, we encourage the Commission to consider factors outside the NHPA review process as a means of making tower construction more efficient and cost-effective.

The Commission notes that very few objections have been filed with regards to adverse effects caused by “Twilight Towers.” We note that there is currently no easy process by which an interested party could (1) be informed that a tower has been constructed; (2) learn that said tower was not evaluated for effects on historic properties, and; (3) know the necessary steps that need to be taken in order to file a complaint with the FCC (or indeed, that such a complaint is even possible). We note that most complaints regarding towers are directed to local city and county governments, not the Commission, and that there is no procedure in place to measure or quantify these complaints. It may not be possible to do so. With that in mind, we do not concur with the Commission’s statement that “such cases are likely few” or that the “vast majority of cases” resulted in no adverse effect on historic properties. In a state like Colorado, where human occupation goes back thousands of years and where less than 10% of the land area has been surveyed for historic/prehistoric resources, we can only guess as to how many historic resources have been affected by the construction of an unknown number of “Twilight Towers.”

Finally, we note that nothing in the existing Agreement or regulations precludes a licensee from making use of *any* existing tower or facility for the purpose of expanding capacity, service, or technology. Placement of these facilities is almost always driven by demand and the limits of technology, so we do not believe that this Program Comment will greatly “reduce the need for new towers,” or reduce adverse effects on historic properties.

**IV. Exclusion for Twilight Towers**

(In general) We note that the Program Comment itself does not provide an exact definition for “Twilight Tower,” other than by date of construction. This is important because the term “tower” is often used to describe a wide variety of telecommunications projects, from extremely tall antenna masts to sled-mounted antennas placed on rooftops. Projects may involve all-new construction, or the applicant may choose to collocate a facility on an existing tall structure (such as a TV antenna or water tower). In the latter case, the existing structure may itself be historic and eligible/listed on the National Register of Historic Places. Given that increasing the size and scope of a collocation on a historic property is much different (and more likely to have an adverse effect on historic properties) than a project involving a free-standing pole built in 2002, we encourage the Commission to further define the term “Twilight Tower” in a manner that meets the twin goals of streamlining review and ensuring the protection of historic properties.

(1) “By the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet” seems confusing. Does this clause mean that the height of the tower can be increased by the height of an array (typically 4 to 8 feet), by a total of 20 feet, or by 20 feet plus the height of the new array? This clause mostly affects towers that are less than 200 feet in height. We note that many urban towers (where visual effects are most felt) are often appx. 50 feet in height, so the additional array (as described in this clause) could add anywhere from 16% to 56% to the height of a smaller extant tower.

(5) Because the Program Comment is aimed specifically at towers that were never reviewed or evaluated for their effects on historic properties, it seems impossible that the FCC would ever be able to determine that a tower resulted in “an adverse effect on one or more historic properties, where such effect has not been avoided or mitigated,” as described in this clause. Presumably few if any of the towers under consideration under this Program Comment were previously determined by the FCC to have had an adverse effect on historic properties, simply because by their very nature, they were never assessed for such effects in the first place.

(7) To facilitate effective public comment, we encourage the Commission to consider developing a formal process for complaints so that those wishing to lodge a complaint know what materials they need to provide in order to meet this clause’s “substantial evidence” test.

1. For example, a tower might be referred to by project name (“Farmstead 1C”), by lat/long coordinates, by a street address, and/or by an internal company tracking system (“6117003676”) [↑](#footnote-ref-1)