

December 7, 2017

**VIA ELECTRONIC FILING**

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street SW  
Washington, DC 20554

**Re: Ex Parte Presentation, Accelerating Wireless Broadband Deployment by  
Removing Barriers to Infrastructure Investment, WT Docket No. 17-79**

Dear Ms. Dortch:

CTIA and the Wireless Infrastructure Association (“WIA” and, collectively, the “Associations”) respectfully submit this *ex parte* in further support of the Commission’s proposal to request that the Advisory Council on Historic Preservation (“ACHP”) adopt the Twilight Towers Draft Program Comment.<sup>1</sup> As indicated in the Associations’ joint filings in this proceeding<sup>2</sup> and in our recently filed *ex parte* letters<sup>3</sup>, the public interest benefits of making Twilight Towers constructed in good faith available for collocation militate in favor of resolution of this issue.

Twilight Towers—*i.e.*, towers built between March 16, 2001 and March 7, 2005 that lack evidence or documentation of a completed Section 106 consultation process—exist as a result of ambiguities in earlier versions of the Commission’s rules and the 2001 *Nationwide Programmatic Agreement for the Collocation of Wireless Antennas* (“Collocation NPA”). As the Associations have explained in detail, the Commission’s rules during the Twilight period did not expressly mandate State Historic Preservation Office (“SHPO”) or Tribal consultation, such that a party

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<sup>1</sup> See *Comment Sought on Draft Program Comment for the Federal Communications Commission’s Review of Collocations on Certain Towers Constructed Without Section 106 Review*, Public Notice, FCC-CIRC1712-03 (draft rel. Nov. 22, 2017) (“Public Notice”); see also *Draft Program Comment for the Federal Communications Commission’s Review of Collocations on Certain Towers Constructed Without Section 106 Review* (“Draft Program Comment”) (attached to Public Notice).

<sup>2</sup> Joint Comments of CTIA and the Wireless Infrastructure Association, WT Docket No. 17-79, at 35-39 (filed June 15, 2017) (“Joint Comments”); Joint Reply Comments of CTIA and the Wireless Infrastructure Association, WT Docket No. 17-79, at 25-27 (filed July 17, 2017) (“Joint Reply Comments”); see also AT&T Comments at 39-41; Crown Castle Comments at 42; Sprint Comments at 33; T-Mobile USA, Inc. Comments at 63-64; Verizon Comments at 62-63; Competitive Carriers Association Comments at 50; American Petroleum Institute Comments at 3; Critical Infrastructure Coalition Comments at 16 (each filed on or about June 15, 2017 in WT Docket No. 17-79).

<sup>3</sup> See, e.g., Letter from Kara Romagnino Graves, CTIA, and D. Zachary Champ, WIA, to Marlene H. Dortch, FCC, WT Docket No. 17-79 (filed Dec. 5, 2017).

could not reasonably be penalized for not going through SHPO or Tribal consultation or not maintaining records of the consultation.<sup>4</sup> In short, the towers were built in compliance with the rules as they existed at that time the towers were constructed.

Moreover, expeditiously opening Twilight Towers to collocation is appropriate in light of the limited likelihood of those facilities having any impact on historic properties.<sup>5</sup> As the Associations have noted, the vast majority of wireless infrastructure projects reviewed through the Tribal consultation process had no adverse effects on historic properties;<sup>6</sup> there is no reason to believe that Twilight Towers are any different in this regard. Indeed, although all Twilight Towers by definition were built well over a decade ago, the Associations are aware of no formal complaint that has been filed by a Tribe or a Tribal Historic Preservation Office claiming that a tower has an adverse effect.<sup>7</sup> Further, opening up Twilight Towers for collocation would in fact reduce the number of new towers, and any associated ground disturbance that would result, from the construction of these new facilities. As has been stated previously, consumer demand is what spurs infrastructure deployment, and there are no signs that this demand is receding. There is thus no basis to support the idea that time and resources must be committed to identify sites that were constructed more than a decade ago under an entirely different legal regime.<sup>8</sup>

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<sup>4</sup> See Joint Comments at 36-39; see *contra* Colorado State Historic Preservation Office, WT Docket No. 17-79 (filed Dec. 5, 2017); Letter from Jessica Bush, Montana State Historic Preservation Office, to Marlene H. Dortch, FCC, WT Docket No. 17-79 (filed Nov. 29, 2017).

<sup>5</sup> See *contra* Colorado State Historic Preservation Office, WT Docket No. 17-79 (filed Dec. 5, 2017); Letter from Georgia State Historic Preservation Office, WT Docket No. 17-79 (filed Dec. 4, 2017); Letter from Jessica Bush, Montana State Historic Preservation Office, to Marlene H. Dortch, FCC, WT Docket No. 17-79 (filed Nov. 29, 2017).

<sup>6</sup> See Joint Comments at 6 (noting that the Associations' evidence suggests that only 0.33 percent of Tribal reviews of wireless infrastructure projects result in a finding of adverse effect); see also *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, Notice of Proposed Rulemaking and Notice of Inquiry, 32 FCC Rcd 3330 ¶ 82 (2017).

<sup>7</sup> As the Associations and the Commission have recognized, some towers built during the Twilight period may have been reviewed by SHPOs and Tribes despite the rules not requiring such review, yet there may not be documentation demonstrating such. See Letter from Kara Romagnino Graves, CTIA, and D. Zachary Champ, WIA, to Marlene H. Dortch, FCC, WT Docket No. 17-79 (filed Dec. 5, 2017) (citing Draft Program Comment at 2, Section I).

<sup>8</sup> See Joint Reply Comments at 26-27 (citing FCC, *Final Programmatic Environmental Assessment for the Antenna Structure Registration Program*, at 4-22 – 4-23 (Mar. 13, 2012), [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-312921A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-312921A1.pdf) (“While the Bureau acknowledges that information on species-specific effects would be relevant to the analysis presented in this PEA, it would be infeasible and unreasonably costly for the Commission to generate data on species-specific effects from communications towers.”)); see also Joint Comments at 38 (noting that, given the importance of this issue, the Commission has convened the relevant parties to discuss resolution, but that “[p]ast efforts to resolve these issues on a tower-by-tower basis have proven to be inefficient and time-consuming”); *contra* Letter from Georgia State Historic Preservation Office, WT Docket No. 17-79 (filed Dec. 4, 2017); Letter from Lynda Ozan, Oklahoma Historical Society State Historic Preservation Office, to Marlene H. Dortch, FCC, WT Docket No. 17-79 (filed Dec. 4, 2017).

As the regulatory confusion revealed itself, industry early and frequently worked to inform previous Commission administrations of the issue.<sup>9</sup> In 2015, at the invitation of then Chairman Tom Wheeler, industry began direct conversations with Tribal entities, and SHPO representatives, culminating with a two-day conference in Albuquerque, NM. The Commission itself also has held several consultations with Tribal entities. The record is complete, the Commission has fully engaged the parties in the process, and the Commission would be right to continue to move forward in solving an issue that has lingered for over a decade.

Now more than ever, it is in the public interest to make Twilight Towers available for collocation to support the additional infrastructure needed for broadband deployment, including FirstNet and next-generation 5G technologies and services. Doing so will not undermine the protection of historic properties of religious and cultural importance, and in fact will promote preservation goals, as each Twilight Tower that becomes available for collocation could obviate the need for the construction of a new tower. CTIA and WIA therefore urge the Commission to move forward with its proposal for the ACHP to adopt the Draft Program Comment.

Pursuant to Section 1.1206 of the Commission's rules, a copy of this letter is being filed in ECFS. Please do not hesitate to contact the undersigned with any questions.

Sincerely,

/s/ Kara Romagnino Graves

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<sup>9</sup> See Comments of PCIA—The Wireless Infrastructure Association and The DAS Forum (A Membership Section of PCIA) WT-06-99 (Sep. 2009), <https://ecfsapi.fcc.gov/file/7020040111.pdf>. As the Associations have noted, the Commission has previously recognized the regulatory “muddle” that existed during the Twilight period. Statement of Chairman Michael K. Powell in In the Matter of Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process (Jun. 2003).