



December 7, 2017

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

Re: WT Docket No. 17-79
Draft Program Comment for the FCC's Review of Collocations on Certain Towers
Constructed Without Section 106 Review

Dear Ms. Dortch:

These comments are filed by the National Trust for Historic Preservation, in response to the Federal Communications Commission ("FCC") Public Notice of Draft Program Comment Addressing Collocation on Twilight Towers, issued on November 22, 2017.

Interests of the National Trust for Historic Preservation

The National Trust for Historic Preservation in the United States is a private nonprofit organization chartered by Congress in 1949 to facilitate public participation in the preservation of our nation's heritage, and to further the historic preservation policy of the United States. *See* 54 U.S.C. § 312102(a). With more than one million members and supporters around the country, the National Trust works to protect significant historic sites and to advocate historic preservation as a fundamental value in programs and policies at all levels of government. In addition, the National Trust has been designated by Congress as a member of the Advisory Council on Historic Preservation, which is responsible for working with federal agencies to implement compliance with Section 106 of the National Historic Preservation Act. *Id.* §§ 304101(8), 304108(a).

The National Trust was an active member of the Telecommunications Working Group that consulted with the FCC for years to develop both the 2001 Programmatic Agreement for the Collocation of Wireless Antennas ("Collocation PA"), and the 2004/2005 Nationwide Programmatic Agreement for Review of Effects on Historic Properties for Certain Undertakings Reviewed by the FCC ("Nationwide PA"). More recently, the National Trust filed formal comments with the FCC on June 15, 2017 in response to the agency's Notice of Proposed Rulemaking on Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, 82 Fed. Reg. 21, 761 (May 10, 2017) ("Wireless Infrastructure NPRM").

Despite the National Trust's active role as a member of the Telecommunications Working Group, the FCC has not consulted with the National Trust in the process of developing its proposed program comment on the subject of Twilight Towers. We would welcome the

opportunity to be more directly involved as the proposed program comment is developed further, and we believe the National Trust could provide a constructive voice that would help to design a better approach to resolving this long-standing issue.

General Comments on Twilight Towers

The National Trust supports the development of a mechanism that could bring Twilight Towers into compliance with Section 106 retroactively, so that they can be used in the future for collocation, and thus reduce the need to build new towers. However, that mechanism should not be based on a broad retroactive exemption for these structures from Section 106 compliance, as the FCC proposes. While certain alternatives may be foreclosed in the context of retroactive review, there may nonetheless be ways to minimize or mitigate the adverse effects of Twilight Towers, if any. Therefore, the preferred approach would be a special, streamlined Section 106 review for the Twilight Towers themselves, with an emphasis on minimizing and mitigating any adverse effects, which would then leave the towers certified for eligibility under the Collocation PA. There is nothing that currently prevents tower owners from seeking retroactive Section 106 review, and indeed, many towers have gone through such a process.

The Presumption That Twilight Towers Have No Adverse Effects on Historic Properties is False.

We strongly disagree with the FCC's assumption in the draft program comment that these Twilight Towers will be deemed to have no adverse effects on historic properties because "any effects on historic properties that may have occurred during construction may be difficult to demonstrate so many years after the fact." On the contrary, we believe the adverse effects will be *more* demonstrable in these cases, in contrast to the typical Section 106 review, which requires artificial simulations, projections, estimates, and speculations regarding a not-yet-built tower. We agree that the *majority* of these Twilight Towers are likely to have no adverse effects. After all, national Section 106 review data for telecommunication towers over the past dozen years shows that only a minority of these undertakings have been determined to adversely affect historic properties. Nonetheless, that provides no basis whatsoever for unilaterally pronouncing that *none* of the Twilight Towers will have adverse effects. Instead, it supports the need to provide an efficient process for identifying *which* of the Twilight Towers have adverse effects and developing a process to resolve those adverse effects retroactively through Section 106 consultation, so that all of the towers – both with and without adverse effects – can be certified as eligible for collocation and placed into service.

The "Twilight" Period Should Not Include the Six-Month Period After the FCC Formally Adopted the Nationwide Programmatic Agreement.

The FCC proposes that the "Twilight" period extend until March 7, 2005, because that is the effective date of the Nationwide PA. The FCC cites "uncertainty" and "lack of specificity" about the process required for Section 106 review during the Twilight period as part of the rationale for choosing this closing date, based on the assumption that the Nationwide PA resolved that uncertainty and lack of specificity. However, the Nationwide PA was formally

approved by the FCC six months before its effective date – adopted on September 9, 2004, and released on October 5, 2004 – after years of consultation and comments. Thus, as of September or October 2004, at the very least, there was no excuse for “uncertainty” about the required compliance process. The process was crystal clear. Indeed, the FCC itself points out in its Public Notice (Nov. 22, 2017) that a 2002 Fact Sheet about the Collocation PA clearly stated, “this evaluation process includes consultation with the relevant [SHPO] and/or [THPO], as well as compliance with other procedures set out in the ACHP rules, 36 C.F.R. Part 800,” *Antenna Collocation Programmatic Agreement*, 17 FCC Rcd 508, 511. Thus, the “uncertainty” argument is not persuasive.

Thank you for considering the comments of the National Trust. We look forward to the opportunity for further comment and consultation as the proposed program comment is refined and modified.

Sincerely,

A handwritten signature in black ink that reads "Elizabeth Merritt". The signature is written in a cursive, flowing style.

Elizabeth S. Merritt
Deputy General Counsel

cc: Charlene Vaughn and Reid Nelson, Advisory Council on Historic Preservation
Jill Springer, Acting Federal Preservation Officer, FCC
Erik Hein, National Conference of State Historic Preservation Officers
Bambi Kraus, National Association of Tribal Historic Preservation Officers