



**Public Employees for Environmental Responsibility**

2001 S Street, NW • Suite 570 • Washington, D.C. 20009 • 202-265-PEER(7337) • fax: 202-265-4192  
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*Office of the General Counsel  
Dan Meyer*

DOCKET FILE COPY

June 21, 2001

Ms. Dinah Bear, Acting Chair  
Council on Environmental Quality ("CEQ")  
722 Jackson Place, N.W.  
Washington, D.C. 20503

**Service Copy**

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FCC MAIL ROOM

Ms. Cathryn Buford Slater, Chair  
Advisory Council on Historic Preservation  
1100 Pennsylvania Avenue — Suite 809  
Old Post Office Building  
Washington, D.C. 20004

BY FIRST CLASS MAIL

**Re: *FCC Dkt. No. RM-9913 and Federal policy toward the cultural antiquities of States and Native American Nations***

Dear Chairs Bear and Buford:

Public Employees for Environmental Responsibility ("PEER") serves as the rallying crossroads for a group of desert activists among the ranks of federal, State and municipal employees working for the preservation of the environment (which includes antiquities) in the American Southwest. These employees bring me their concerns because they fear retribution from their employers if they argue in their own workplace for the enforcement of federal laws such as the National Historic Preservation Act of 1966 and the National Environmental Policy Act of 1969. PEER even has a growing number of supporters among the ranks of environmental consultants who are paid by industry to "self-certify" that no environmental impact occurs when they—the consultants—know that an impact is present.

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***Request to CEA/ACHP regarding FCC Practices  
June 21, 2001***

Of particular concern to the public employees is the combative stance the Federal Communications Commission ("FCC") is taking vis à vis its obligation to consult with both State and Native American jurisdictions over the impact of FCC actions on the cultural antiquities protected by Tribal and State jurisdictions. On a good day, the FCC's policies appear to merely reflect the priorities of an agency charged with supporting the communications industry's need to erect cell towers and lay fiber optic cables across the country. The FCC does not even give environmental compliance a second place priority; it just isn't there.

As a matter of environmental justice, PEER asks both of you to convene a small meeting with the Chairman of the FCC, representatives of the Native American Nations, and environmental groups to discuss the following challenge to FCC policy. Over a year ago, PEER filed a *Petition for Rulemaking* with the FCC to address these matters. No action has taken place. We know that it has become routine policy for the FCC to ignore State and Tribal Historic Preservation Officers with respect to the planning which goes into the licensing of the frequencies used by communications towers. See Letter, Elmo Baca, State Historic Preservation Officer, State of New Mexico to Dan Abeyta, Federal Communications Commission (June 123, 2001) [Attached as Exhibit A]. Mr. Baca's letter is but one example of this practice. The FCC has sat on its hands in the Virgin Islands, Maine, Florida, and California (to name a few) over the past year. In truth, the FCC only attempts to meet its obligations under the NEPA when some local group sees a tower going up, and gets active. NEPA is not designed to be complied with in this manner. The FCC is suppose to study the impact of its actions prior to taking them.

You both know how the FCC accomplishes this feat of cultural insensitivity. Indeed, CEQ has even approved of this tack. The FCC declares ALL its activity to be categorically excluded, and then makes a few exceptions for the statutes you hold dearest. Give them Mount Vernon; trash the rest. NEPA seems to call for something entirely different: review all actions, and selectively exclude by category those types of activity which are know to cause little or no environmental impact. In other words, the FCC has created a legal masterwork. It has gutted the NEPA with the NEPA.

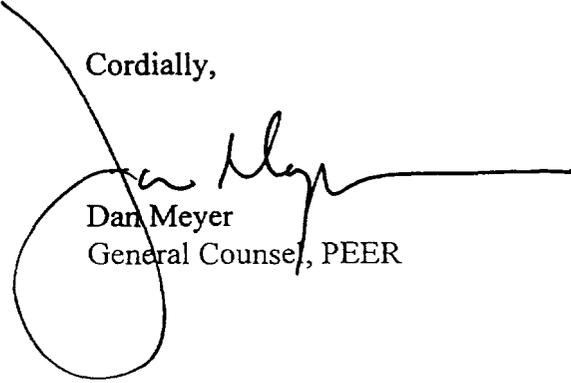
The latest evolution of this marvel of duplicity is the Programmatic Agreement the FCC now wants to force on the Native American Nations. See Memorandum, Geoffrey C. Blackwell, Liaison to Tribal Governments, Attorney Advisor, Consumer Information Bureau, FCC to Honorable Tribal Leaders et. al. (January 11, 2001) [Attached as Exhibit B]. The trashing occurs in the document attached to the memorandum. The FCC seeks to expand its gutting of the NEPA to the Tribal enforcement of the NEPA. In other words, it seeks to declares much of its activity to be categorically excluded, and then make a few exceptions. If the FCC had a record of complying with NEPA, this might be acceptable. But the record is fat with examples of environmental resources being present in locations where communications towers are erected. See e.g., Letter, Dan Meyer, General Counsel, PEER to Chairman William E. Kennard, Federal Communications Commission

**Request to CEA/ACHP regarding FCC Practices**  
**June 21, 2001**

(Nov. 20, 2000) [Attached as Exhibit C]. These sitings are not properly subjected to Environmental Assesment ("EA"), let alone an Environmental Impact Statement ("EIS"). Indeed, one way to view the attached Programmatic Agreement is to understand that the FCC is trying to—in one blanket effort—to sanctify its failure to perform environmental review on any of these sites over the past thirty (30) years:

It is time for the Council on Environmental Quality and the Advisory Council on Historic Preservation to stand clear of this trashing, and state its position on the FCC's policies and its treatment of all American antiquities and environmental resources, Native and non-Native. PEER is available to meet with both of you, the Chair of the FCC, and other environmental groups to reason in this issue. We are adverse, however, to allowing industry to sit in on such discussions. They have had more than enough input on this issue over the past thirty (30) years.

Cordially,



Dan Meyer  
General Counsel, PEER

CC: Attached service list

**National jurisdictions**

The Honorable Ron Wyden (D-OR)  
United States Senate  
SH-516 (Attn: CS&T/Communications Issue)  
Washington, D.C. 20510

The Honorable Barbara A. Mikulski (D-MD)  
United States Senate  
SH-709 (Attn: Appropriations/CJS&T Issue)  
Washington, D.C. 20510

Governor Joe Cajero  
Jemez Pueblo  
P.O. Box 100  
Jemez, New Mexico 87024

The Honorable Pauline Estes, Chairperson  
Timbisha Shoshone Tribal Council  
P.O. Box 206  
Death Valley, CA 92328

**Federal jurisdictions**

Earl E. Devaney, Esquire  
Office of the Inspector General  
Department of the Interior  
1849 C Street, N.W.  
Washington, D.C. 20240

The Honorable Barbara Boxer (D-CA)  
United States Senate  
SH-112 (Attn: CS&T/Communications Issue)  
Washington, D.C. 20510

The Honorable Byron L. Dorgan (D-ND)  
United States Senate  
SH-713 (Attn: Appropriations/Indian Affairs Issue)  
Washington, D.C. 20510

The Honorable Edward J. Markey (D-7th, MA)  
United States House of Representatives  
2108 RHOB (Attn: E&C/Telecommunications Issue)  
Washington, D.C. 20515

Lieutenant Hilario Armijo  
Jemez Pueblo  
P.O. Box 100  
Jemez, New Mexico 87024

Mr. Bill Helmer, Tribal Historic Preservation Officer  
Timbisha Shoshone Tribe  
P.O. Box 206  
Death Valley, CA 92328-02306

The Honorable Gale Norton, Secretary  
Department of the Interior  
1849 C Street, N.W.  
Washington, D.C. 20240

John D. Leshy, Esquire  
Office of the Solicitor  
Department of the Interior  
1849 C Street, N.W.  
Washington, D.C. 20240

Ms. Karen Wade, Director Intermountain Region  
United States Department of Interior, NPS  
12795 W. Alameda Parkway  
P.O. Box 252287  
Denver, CO 80225-0287

Arthur Arguedas, Esquire  
Office of the Solicitor, Field Office SW Region  
United States Department of the Interior  
P.O. Box 1042  
Santa Fe, NM 87504-1042

Mr. Ralph Minhan, Esquire  
Office of the Field Solicitor  
Department of Interior, Pacific West Region Office  
600 Harrison Street  
San Francisco, CA 94107-1372

Mr. Tom Mulhern, Chief  
Division of Park Historic Preservation  
Western Regional Office, NPS  
600 Harrison Street — Suite 600  
San Francisco, CA 94107

Mr. J.T. Reynolds, Superintendent  
Death Valley National Park.  
PO Box 579  
Death Valley, CA 92328

Ms. Dinah Bear, Acting Chair  
Council on Environmental Quality ("CEQ")  
722 Jackson Place, N.W.  
Washington, D.C. 20503

Cathryn Buford Slater, Chair  
Advisory Council on Historic Preservation  
1100 Pennsylvania Avenue - Suite 809  
Old Post Office Building  
Washington, D.C. 20004

Ms. Magalie Roman Salas, Secretary  
Federal Communications Commission (FCC)  
Portals II - Suite TW A325  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

The Honorable Michael K. Powell, Chair  
Federal Communications Commission (FCC)  
Office of the Chair — Eighth Floor  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Thomas J. Sugrue, Bureau Chief  
Federal Communications Commission ("FCC")  
Wireless Telecommunications Bureau ("WTB")  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Mr. Dan Abeyta  
Commercial Wireless Division, WTB  
Federal Communications Bureau ("FCC")  
445 12<sup>th</sup> Street, S.W. - Suite 4A-236  
Washington, D.C. 20554

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Mr. Frank Stillwell  
Federal Communications Commission ("FCC")  
Wireless Telecommunications Bureau - CWD  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

**State jurisdictions**

Mr. Knox Mellon  
California State Historic Preservation Officer  
Office of Historic Preservation  
P.O. Box 942896  
Sacramento, CA 94296

**Private parties**

Mr. Frank Buono  
Member, Board of Directors (PEER)  
P.O. Box 562  
Prineville, OR 97754

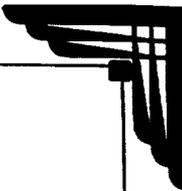
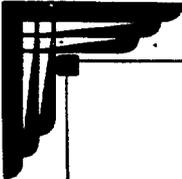
John Talberth, President  
Forest Conservation Council  
c/o Western Regional Office  
P.O. Box 22488  
Santa Fe, NM 87502-2486

TinaMarie Ekker, Policy Director  
Wilderness Watch  
P.O. Box 9175  
Missoula, Montana 59807

John F. Clark  
PERKINS COIE LLP  
607 14th Street NW Suite 800  
Washington, D.C. 20005-2011

Brian J. Benison, Associate Director  
Federal Regulatory  
SBC Telecommunications, Inc.  
1401 I Street, N.W. — Suite 1100  
Washington, D.C. 20005

Ms. Carol Tacker  
SBC Wireless, Inc.  
17330 Preston Road, Suite 100A  
Dallas, TX 75252



**Exhibit A**



STATE OF NEW MEXICO  
**OFFICE OF CULTURAL AFFAIRS**  
**HISTORIC PRESERVATION DIVISION**

LA VILLA RIVERA BUILDING  
228 EAST PALACE AVENUE  
SANTA FE, NEW MEXICO 87501  
(505) 827-6320

GARY E. JOHNSON  
Governor

June 12, 2001

Dan Abeyta  
Federal Communications Commission  
Wireless Telecommunications Bureau  
Commercial Wireless Division  
Washington, DC 81301

Re: SBA Towers, Inc. Constructed Tower in Pecos, NM  
FCC Reference Number 2001006155.

Dear Mr. Abeyta:

We have reviewed the copy of your letter to SBA Towers, Inc. (SBA) requesting documentation regarding their tower in Pecos, NM, as well as a copy of a letter to me from the Public Employees For Environmental Responsibility (PEER) asking that we "initiate Section 106 consultations over this site."

We first learned of the tower in a newspaper article that discussed permitting the tower through San Miguel County. At approximately the same time the County Manager requested that we review our files to determine whether any reviews were conducted, as part of the processes under Section 106 of the National Historic Preservation Act. We reviewed all of our files for proposed Federal Communications Commission (FCC) undertakings and found no application, report, or consultation for the above-mentioned tower in our files (copy enclosed).

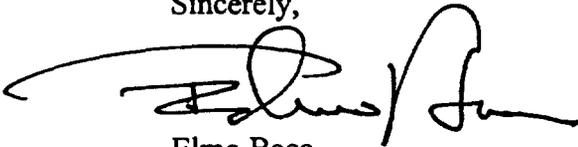
The usual procedure is for a project proponent to write our office requesting comments and information on important cultural resources and any potential Native American concerns. A file check of our Archaeological Resources Management Section (ARMS) would have shown numerous cultural properties in the vicinity of the project, and the need for Native American consultations with the Jicarilla Apache tribe, Hopi and Jemez Pueblos. We have received dozens of proposed cell tower undertakings to review each year for many years, numbering approximately 78 in 2000.

Enclosed please find a copy of our current "Guidelines for Evaluating Proposed Telecommunications Facilities under Section 106 of the National Historic Preservation Act."

We therefore feel we were precluded from the Section 106 consultation process under the National Historic Preservation Act. We are also concerned that Native American tribes, particularly the Pueblo of Jemez (that has well known and documented cultural affiliation with the Pecos area) may have not been consulted.

If you have any questions concerning these comments, please contact Jan Biella at (505) 827-4045 or [jbiella@oca.state.nm.us](mailto:jbiella@oca.state.nm.us).

Sincerely,



Elmo Baca  
State Historic Preservation Officer

Log #62401//62402

Copies to:

Les Montoya  
County Manager  
San Miguel County  
San Miguel County Courthouse  
Las Vegas, NM 87701

Jesus Lopez  
County Attorney  
San Miguel County  
San Miguel County Courthouse  
Las Vegas, NM 87701

Ed Roach  
SBA Towers Inc.  
1 Town Center Rd.  
Third Floor  
Boca Raton, FL 33486

Gov. Joe V. Cajero  
Pueblo of Jemez  
P.O. Box 100  
Jemez Pueblo, NM 87024

Advisory Council on Historic Preservation  
Denver Office  
12136 West Bayaud Ave., Ste. 330  
Lakewood, CO 80228

Karen Wade  
Regional Director  
National Park Service  
Intermountain Region  
P.O. Box 25287  
Denver, CO 80225-0287

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Duane Alire  
Superintendent  
Pecos National Historical Park  
P.O. Box 418  
Pecos, NM 87552-0418

Dan Meyer  
PEER  
2001 S. Street, NW, Suite 570  
Washington, DC 20009



GARY E. JOHNSON  
Governor

STATE OF NEW MEXICO  
**OFFICE OF CULTURAL AFFAIRS**  
**HISTORIC PRESERVATION DIVISION**

LA VILLA RIVERA BUILDING  
228 EAST PALACE AVENUE  
SANTA FE, NEW MEXICO 87501  
(505) 827-6320

March 13, 2001

Mr. Les W. J. Montoya  
County Manager  
San Miguel County  
San Miguel County Courthouse  
Las Vegas, New Mexico 87701

Dear Mr. Montoya,

At your request our office has reviewed our records regarding compliance review for a cellular communications tower installed in Pecos, New Mexico in March, 2000 by SBA Towers, Inc as required by the National Historic Preservation Act of 1966.

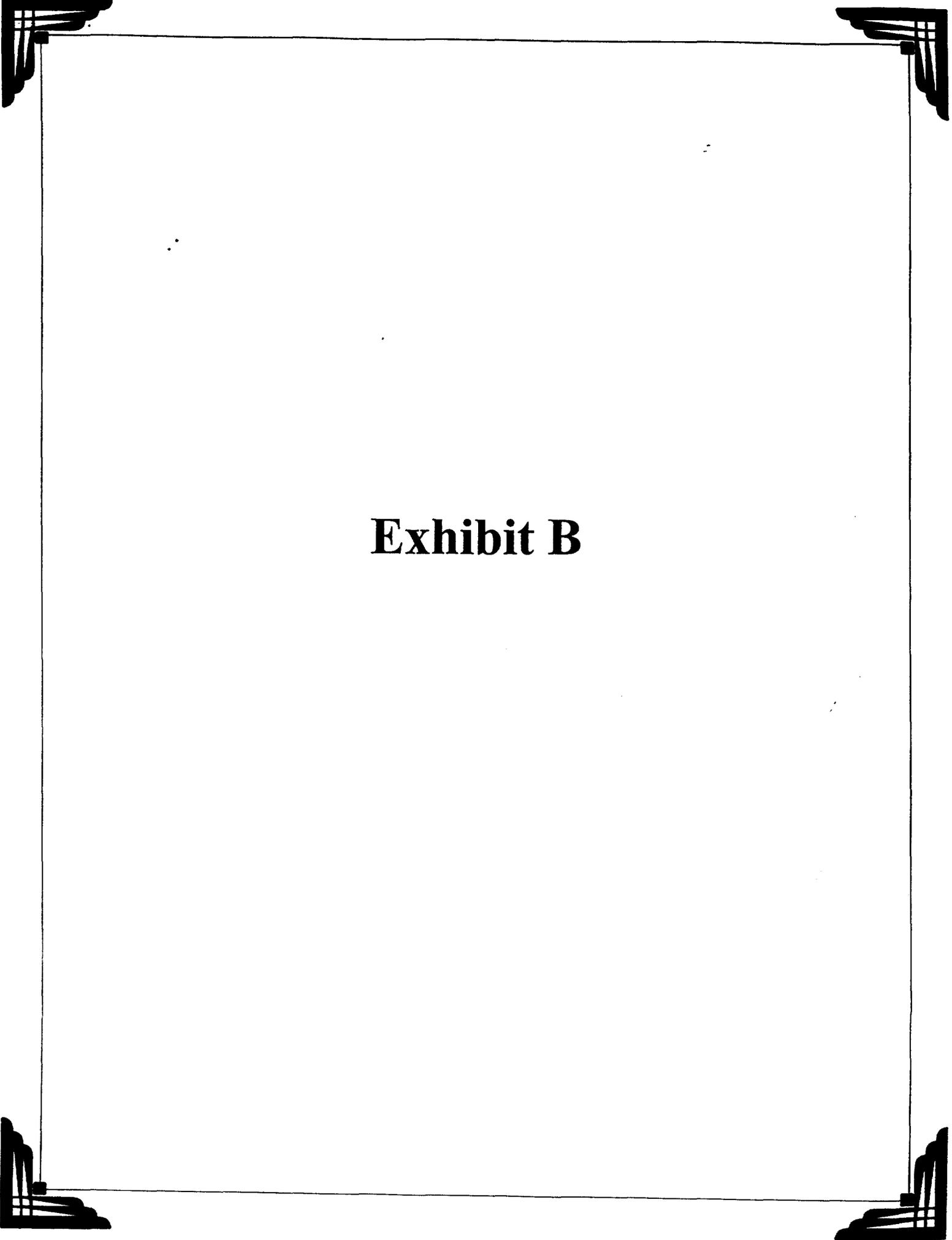
We have found no application for the above-mentioned tower in our files. Therefore, the State Historic Preservation Division was not afforded the opportunity to comment on the potential effects of the tower on historic and cultural resources in Pecos and San Miguel County.

Our Division routinely reviews FCC projects to assess effects on historic properties, archaeological sites and traditional cultural properties to ensure that these communications facilities can be sited in areas that minimize harm to important resources.

Please feel free to contact me if you have any further questions or concerns regarding the federal undertaking (FCC) discussed here within. We appreciate your concern and interest.

Sincerely,

Elmo Baca  
State Historic Preservation Officer

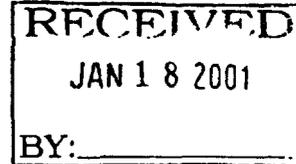


**Exhibit B**



Federal Communications Commission  
Washington, D.C. 20554

**READ AND  
ROUTE**



DATE: January 11, 2001

TO: : Honorable Tribal Leaders  
Respected Tribal Historic Preservation Officers  
Respected Tribal Representatives

FROM: *Geoffrey C. Blackwell*  
Geoffrey C. Blackwell, Liaison to Tribal Governments, Attorney-Advisor,  
Consumer Information Bureau, FCC  
*Joel D. Taubenblatt*  
Joel D. Taubenblatt, Attorney-Advisor, Wireless Telecommunications Bureau, FCC

SUBJECT: Proposed Guidelines for the Review of Antenna Co-locations under the National Historic Preservation Act

The Federal Communications Commission (FCC) recently has been working with the Advisory Council on Historic Preservation (ACHP), State Historic Preservation Officers, Tribal Historic Preservation Officers, and the wireless telecommunications industry to increase the efficiency of the review process for antennas under the National Historic Preservation Act (NHPA). One initiative that has resulted from this effort is the development of a nationwide programmatic agreement to govern the review process under the NHPA as it applies to antennas placed on existing towers and existing non-tower structures ("co-located antennas"). Please note that the agreement, if implemented, would not apply to the co-location of antennas on structures located within tribal lands, but would apply to the co-location of antennas on structures located within former historical land bases.

Under this proposed agreement, which is attached below, co-located antennas would not be subject to the review process under the NHPA unless they fall within a set of exceptions designed to encompass potential problematic situations. The principle underlying the agreement is that the addition of a small antenna to a tower or other structure ordinarily should have no adverse effect on historic properties (including properties of religious and cultural significance to tribes that are not located on tribal lands) when the tower or other structure itself: (a) is not a historic property; and (b) has not been determined to have an adverse effect on historic properties. Please note that this proposed agreement does not preclude Indian tribes from consulting directly with the FCC regarding co-location activities.

If you have questions regarding the proposed agreement, please contact Geoffrey Blackwell at 202-418-8192 or Joel Taubenblatt at 202-418-1513. You may also submit written comments to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, S.W., TW-A325, Washington, D.C. 20554. Please provide a copy of any written comments to Mr. Blackwell at 445 Twelfth Street, S.W., 5-C864, Washington, D.C. 20554 and to Mr. Taubenblatt at 445 Twelfth Street, S.W., 4-A260, Washington, D.C. 20554. Written comments submitted after the January 23 deadline will be considered to the maximum extent possible; however, please note that the Commission expects to consider action on the proposed agreement on or about January 29, 2001. For additional information about FCC Indian initiatives, you may visit the Commission's web site at <http://www.fcc.gov/indians/>.



# PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION  
445 TWELFTH STREET, S.W.  
WASHINGTON, D.C. 20554

DA 00-2907

News media information 202-418-0500 Fax-On-Demand 202-418-2830 Internet: <http://www.fcc.gov> <ftp://fcc.gov>

Released: December 26, 2000

## WIRELESS TELECOMMUNICATIONS BUREAU SEEKS COMMENT ON A DRAFT PROGRAMMATIC AGREEMENT WITH RESPECT TO CO-LOCATING WIRELESS ANTENNAS ON EXISTING STRUCTURES

Comment Due Date: **January 23, 2001**

In this public notice, we request comments on a Nationwide Programmatic Agreement, attached as Appendix A, that would adopt streamlined procedures for review of co-locations of antennas under the National Historic Preservation Act (NHPA), 16 U.S.C. §§ 470 *et seq.* This Nationwide Programmatic Agreement is being considered for potential execution by the Federal Communications Commission, the National Conference of State Historic Preservation Officers, and the Advisory Council on Historic Preservation.

Interested parties may file comments on or before **January 23, 2001**. We are not providing for reply comments due to time constraints. We expect that the Commission will consider action on the Nationwide Programmatic Agreement, as finally negotiated by the parties, on or about January 29, 2001.

All comments should reference DA 00-2907 and should be filed with the Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, S.W., Room TW B204, Washington, DC 20554. A copy of each filing should be sent to International Transcription Services, Inc. (ITS), 445 Twelfth Street, S.W., Room CY-B402, Washington, DC 20554. In addition, parties should send two copies to Joel Taubenblatt, Federal Communications Commission, Wireless Telecommunications Bureau, Commercial Wireless Division, 445 Twelfth Street, S.W., Room 4A260, Washington, DC 20554.

Copies of comments will be available for inspection and duplication during regular business hours in the Reference Information Center, 445 Twelfth Street, S.W., Courtyard Level, Washington, DC 20554. Copies also may be obtained from ITS, 445 Twelfth Street, S.W., Room CY-B402, Washington, DC, (202) 857-3800.

For further information, contact Joel Taubenblatt, Federal Communications Commission, Commercial Wireless Division, at (202) 418-1513.

APPENDIX A

**DRAFT NATIONWIDE PROGRAMMATIC AGREEMENT**  
**among**  
**THE FEDERAL COMMUNICATIONS COMMISSION,**  
**THE NATIONAL CONFERENCE OF STATE HISTORIC PRESERVATION OFFICERS**  
**and**  
**THE ADVISORY COUNCIL ON HISTORIC PRESERVATION**  
**for the**  
**CO-LOCATION OF ANTENNAS**

WHEREAS, the Federal Communications Commission (FCC) establishes rules and procedures for licensing wireless communications systems in the United States and its Possessions and Territories; and,

WHEREAS, the FCC has deregulated the review of applications for the construction of individual wireless communications antennas and, under this framework, licensees are required to prepare an environmental assessment (EA) when the licensee determines that the proposed construction falls within one of certain environmental categories, including situations which may affect historical sites listed or eligible for listing in the National Register; and,

WHEREAS, Section 106 of the National Historic Preservation Act requires federal agencies to take into account the effects of their undertakings on historic properties and to give the Advisory Council on Historic Preservation (Council) a reasonable opportunity to comment; and,

WHEREAS, Section 36 CFR Section 800.14(b) of the Council's regulations, "Protection of Historic Properties" (36 CFR Part 800), allows for programmatic agreements to streamline and tailor the Section 106 review process to particular federal programs; and,

WHEREAS, in August 2000, the Council established a Telecommunications Working Group to provide a forum for the FCC, Industry representatives, State Historic Preservation Officers (SHPOs) and Tribal Historic Preservation Organizations (THPOs), and the Council to discuss improved coordination of Section 106 compliance regarding wireless communications projects involving historic properties; and,

WHEREAS, the FCC, the Council and Working Group have developed this Programmatic Agreement in accordance with 36 CFR Section 800.14(b) to address the Section 106 review process as it applies to the co-location of antennas (*i.e.*, the placement of antennas on existing towers and existing buildings and other non-tower structures); and,

WHEREAS, the FCC encourages licensees to consider co-location of antennas where technically and economically feasible, in order to minimize the need for new tower construction; and,

WHEREAS, the execution of this Nationwide Programmatic Agreement will streamline the Section 106 review of co-location proposals and thereby minimize the need for the construction of new towers, thus limiting potential effects on historic properties resulting from the construction of new towers; and,

WHEREAS, the FCC and the Council have agreed that measures should be incorporated into a Nationwide Programmatic Agreement to better manage the Section 106 consultation process and streamline reviews for co-location of antennas; and,

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WHEREAS, the FCC has consulted with the National Conference of State Historic Preservation Officers (NCSHPO) and requested its signature on this Nationwide Programmatic Agreement in accordance with 36 CFR Section 800.14(b)(2)(iii); and.

WHEREAS, the FCC has consulted with Indian Tribes regarding the terms of this Nationwide Programmatic Agreement and clarified that the terms of this Programmatic Agreement do not apply on tribal lands, nor does it preclude Indian tribes or Native Hawaiian Organizations from requesting consultation with the FCC regarding co-location activities; and.

WHEREAS, the execution and implementation of this Nationwide Programmatic Agreement will not preclude members of the public from filing complaints regarding Section 106 with the FCC or the Council regarding the construction of any existing tower or any activity covered under the terms of this Programmatic Agreement.

NOW THEREFORE, the FCC, the Council, and NCSHPO agree that the FCC will meet its Section 106 compliance responsibilities for the co-location of antennas involving historic properties as follows.

### STIPULATIONS

The FCC, in coordination with licensees or tower construction companies, will ensure that the following measures are carried out. For the purpose of this Programmatic Agreement, "towers" are defined as structures built for the primary purpose of siting equipment used for radio communications services.

#### 1. CO-LOCATION OF ANTENNAS ON EXISTING TOWERS CONSTRUCTED ON OR BEFORE DECEMBER 31, 2000

A. A licensee or tower construction company may place new antennas on existing towers constructed on or before December 31, 2000 without such undertakings having to be reviewed under the consultation process set forth under Subpart B of 36 CFR Part 800, unless:

1. the mounting of the antenna will result in a substantial increase in the size of the tower as defined in Attachment A; or
2. the construction of the tower has been determined to have an effect on historic properties by the FCC, unless such effect has been avoided, minimized or mitigated through an existing conditional No Adverse Effect determination or Memorandum of Agreement; or
3. the tower is the subject of a pending environmental review or related proceeding before the FCC involving compliance with Section 106 of the National Historic Preservation Act; or
4. the licensee or tower construction company or its authorized representative has received written or electronic notice from any source, which notice can be provided at any time, that the FCC is in receipt of a pending complaint or allegation from a member of the public, a SHPO/THPO or the Council that the co-location has an adverse effect on historic properties.

**II. CO-LOCATION OF ANTENNAS ON NEW TOWERS CONSTRUCTED AFTER DECEMBER 31, 2000**

A. A licensee or tower construction company may mount antennas on towers constructed after December 31, 2000 without such undertakings having to be reviewed under the consultation process set forth under Subpart B of 36 CFR Part 800, unless:

1. the Section 106 review process for the tower set forth in 36 CFR Part 800 and any associated environmental reviews required by the FCC have not been completed; or
2. the mounting of the new antenna will result in a substantial increase in the size of the tower as defined in Attachment A; or
3. the construction of the tower has been determined to have an effect on historic properties by the FCC, unless such effect has been avoided, minimized or mitigated through a conditional No Adverse Effect determination or execution of a Memorandum of Agreement; or
4. the licensee or tower construction company or its authorized representative has received written or electronic notice from any source, which notice can be provided at any time, that the FCC is in receipt of a pending complaint or allegation from an interested person, a SHPO/THPO or the Council that the co-location has an adverse effect on historic properties.

**III. CO-LOCATION OF ANTENNAS ON BUILDINGS AND NON-TOWER STRUCTURES OUTSIDE OF HISTORIC DISTRICTS**

A. A licensee may mount antennas on buildings or non-tower structures without such undertakings having to be reviewed under the consultation process set forth under Subpart B of 36 CFR Part 800, unless:

1. the building or structure is over 45 years old; or
2. the building or structure is inside the boundary of a historic district or, if visible from the ground level of the historic district, is within 250 feet of the boundary of the historic district; or
3. the building or non-tower structure is a designated National Historic Landmark, designated as an historic property by the local jurisdiction, listed in the State register of historic properties, or listed in or eligible for listing in the National Register of Historic Places based upon the review of the licensee or tower construction company; or
4. the mounting of the antenna on the non-tower structure or building is the subject of a pending environmental review or related proceeding before the FCC involving compliance with Section 106 of the National Historic Preservation Act; or
5. the licensee or tower construction company or its authorized representative has received written or electronic notice from any source, which notice can be provided at any time, that the FCC is in receipt of a pending complaint or allegation from an interested person, a SHPO/THPO or the Council that the mounting of the antenna on the building or other non-tower structure has an adverse effect on historic properties.

B. Should the SHPO/THPO or Council determine that the co-location of an antenna or its associated equipment installed under the terms of Stipulation III has resulted in an adverse effect on historic properties, the SHPO/THPO or Council shall notify the FCC accordingly. The FCC shall comply with the requirements of Section 106 and 36 CFR Part 800 for this particular undertaking.

IV. MONITORING

A. Licensees and tower construction companies shall retain records of the placement of all their antennas, including co-locations subject to this Nationwide Programmatic Agreement, consistent with FCC rules and procedures.

B. The Council will forward to the FCC any written objections it receives from members of the public regarding a co-location activity or general compliance with the provisions of this Nationwide Programmatic Agreement within thirty (30) days following receipt of the written objection. The FCC will forward a copy of the written objection to the appropriate licensee or tower company.

V. TERMINATION

A. If the FCC determines that it cannot implement the terms of this Nationwide Programmatic Agreement, or if the NCSHPO or Council determines that the Programmatic Agreement is not being properly implemented, the FCC, NCSHPO or Council may propose to other signatories that the Programmatic Agreement be terminated.

B. The party proposing to terminate the Programmatic Agreement shall so notify all signatories in writing, explaining the reasons for the proposed termination and affording them at least thirty (30) days to consult and seek alternatives to termination. Should the consultation fail, the Programmatic Agreement will be terminated.

C. In the event that the Programmatic Agreement is terminated, the FCC shall advise its licensees and tower construction companies of the termination and of the need to comply with Section 106 on a case-by-case basis for co-location activities.

VI. DURATION OF THE PROGRAMMATIC AGREEMENT

A. This Programmatic Agreement for co-location shall remain in force unless the Programmatic Agreement is terminated or superseded by a comprehensive Programmatic Agreement for wireless communications antennas.

Execution of this Nationwide Programmatic Agreement by the FCC, NCSHPO and the Council, and implementation of its terms, evidence that the FCC has afforded the Council an opportunity to comment on the co-location of antennas covered under the FCC's rules, and that the FCC has taken into account the effects of these undertakings on historic properties in accordance with Section 106 of the National Historic Preservation Act and its implementing regulations, 36 CFR Part 800.

**FEDERAL COMMUNICATIONS COMMISSION**

\_\_\_\_\_ **Date:** \_\_\_\_\_

**ADVISORY COUNCIL ON HISTORIC PRESERVATION**

\_\_\_\_\_ **Date:** \_\_\_\_\_

**NATIONAL CONFERENCE OF STATE HISTORIC PRESERVATION OFFICERS**

\_\_\_\_\_ **Date:** \_\_\_\_\_

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## Attachment A

### Definition of "Substantial Increase in the Size of the Tower"

For purposes of this document, the term "substantial increase in the size of the tower" means:

- 1) The mounting of the proposed antenna on the tower would increase the existing height of the tower by more than 10%, or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater; or
- 2) The mounting of the proposed antenna would involve the installation of more than the standard number of new equipment cabinets for the technology involved, not to exceed four, or more than one new equipment shelter; or
- 3) The mounting of the proposed antenna would involve adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than twenty feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater; or
- 4) The mounting of the proposed antenna would involve excavation outside the current tower site, defined as the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site.

**Timbisha Shoshone Tribe**  
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(760) 786-2374  
(760) 786-2376

# facsimile transmittal

To: Dan Meyer Fax: 202-265-4192

From: Bill Helmer Date: \_\_\_\_\_

Re: F.C.C. Programmatic Agreement Pages Including Cover Sheet: ~~8~~ 9

cc: \_\_\_\_\_

- Urgent
- For Review
- Please Comment
- Please Reply
- Please Recycle

\_\_\_\_\_

# Exhibit C

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**Public Employees for Environmental Responsibility**

2001 S Street, NW • Suite 570 • Washington, D.C. 20009 • 202-265-PEER(7337) • fax: 202-265-4192  
e-mail: info@peer.org • website: http://www.peer.org

November 9, 2000

The Honorable William E. Kennard  
Chairman, Federal Communications Commission  
and Mr. Thomas J. Sugrue, Bureau Chief  
Wireless Telecommunications Bureau (WTB)  
445 12<sup>th</sup> Street, S.W. — Eighth Floor  
Washington, D.C. 20554

**BY FIRST CLASS POST**

Re: *Environmentally-sensitive resources endangered atop Mormon Peak, CA*  
*(36 01 32 N.; 117 02 38 W.)*

Dear Chairman Kennard and Bureau Chief Sugrue:

Public Employees for Environmental Responsibility (“PEER”) recently received information from PEER members trekking in the vicinity of Mormon Peak last month. These members have noted the existence of environmentally-sensitive resources at SBC Wireless, Inc.’s (“SBC”) communications tower facility on that mountain.

As the Commission investigates SBC’s violation of the law regarding facilities siting, PEER requests not only that SBC be held accountable for constructing/maintaining an unlawful tower, but that the Commission review the record to ascertain why it—the Federal Communications Commission—is now in violation of the National Environmental Policy Act of 1969. If the environmentally-sensitive resources have been present on the site all along, why has their presence not been documented as is required, by law? 47 C.F.R. §§ 1.1305, 1.1307(a)(1),(4),(5)(1999). Cf. 47 C.F.R. §§ 1.1307(3)(1999).

PEER reminds the Chairman and Bureau Chief that such after-the-fact “discoveries” of undocumented environmentally-sensitive resources will ultimately undermine public faith in the Commission’s willingness to abide by federal law. One may delegate some taskings to private industry; one may not delegate one’s own responsibility to act in a lawful manner.

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**Specific concerns.** Environmentally-sensitive resources atop Mormon Peak include:

○ Archaic Period Site(s): Native American *house rings*, including evidence of ancient habitation, such as *obsidian flakes*. The presence of house rings may indicate archaeological resources predating proto-historic cultures such as the Washoe (who traded in obsidian) and the Nevada Northern Paiute cultures. Such artifacts may even be evidence of the broader Early Archaic obsidian trade documented at Hidden Cave, Nevada (ending ca. 11,000 BP). The required Environmental Impact Statement ("EIS") should establish the site's relevance to either of California's two Archaic patterns: the San Dieguito and the Encinitas Traditions. It may also be important to document the site's relationship to the Llano complex (ca 11,000 BP). The obsidian flakes could also be evidence of the Western Hemisphere's first indigenous technologies. If the "reverse migration" theory of North American settlement is valid, then the area around Mormon Peak may hold evidence of the first peopling activity from South America.

The presence of *obsidian flakes* is especially telling. When the area within the California Desert Conservation Act ("CDCA"), Pub. L. No. 103-433, 108 Stat. 4471 (1994) (codified as amended at 43 U.S.C. 1781 (1994)), received more annual rainfall, acorns were an important resource among the indigenous peoples of southern California. For instance, the acorn-derivative trade of the Western Mono was a source of empowerment to the tribe's female members. From late September through October, acorns from the Black Oak groves were processed and stored for use by the tribe. Black Oak was the preferred acorn source, as it had a sweeter flavor and a high oil and gluten content.

The processing of the acorn harvest was a fairly complex evolution. Acorns were gathered, dried and shelled. Green acorns were also peeled and used immediately, in part to tap their superior medicinal value. *Obsidian flakes* were used to remove the acorn skin. Acorns were then pulverized using bedrock mortars and pestles. This was a two stage process, using pestles of lessening depth to refine the cruder mash into a finer flour. The refined flour was then processed to remove the tannic acid. It was then placed in a shallow leaching basin and washed with either hot or cold water. Hot water was used when flour was needed quickly; cold water was used to keep the oil within the flour for later extraction. Whole dried acorns were cooked in soups. The flour was made into gruel, mush and breads for year-round consumption. Both the flour and the oils were portable, and used for barter throughout an extensive trading system in the Southwest. See Gero, JOAN M. AND MARGARET W. CONKEY, *ENGENDERING ARCHAEOLOGY: WOMEN AND PREHISTORY* (Blackwell, Oxford)(1991).

Given the environmentally-sensitive nature of the Mormon Peak's undocumented indigenous sites, Section 106 Review under the Historic Preservation Act of 1966 must be completed by the State Historic Preservation Officer ("SHPO") prior to any further major Federal actions on the site. 47 C.F.R. §§ 1.1307(a)(4)(1999).

o Sensitive Flora. Due the State's size, varied topography, soil and climate, California flora is the largest in the nation. The flora consists of about 7,000 taxa, including 6000 native species, subspecies and varieties, and about 1000 foreign and invasive species (chiefly weeds). Of the 6,000 native species, thirty-six percent (36%)—or 2100—are endemic. They occur nowhere else on earth. At the subspecies level and below, sixty-three percent (63%)—or 3600—are endemic. About thirty percent (30%)—or 1750—of California flora is considered rare, threatened or uncommon. See [<http://www.cnps.org/rareplants/program.htm>].

The California Native Plant Society's Rare Plant Program currently recognizes 857 plant taxa (species, subspecies, and varieties) as rare or endangered in California. Another thirty-four (34) native plants are presumed to have gone extinct over the past century due to land conversion to agriculture and urban development. The State of California lists 216 plants as "Endangered", "Threatened", or "Rare". The U.S. Government has listed 183 plants as "Endangered" or "Threatened" under the Endangered Species Act ("ESA").

On the SBC Wireless, Inc. site, the following species and others may be present:

Panamint Mountains Buckwheat (Species: *Eriogonum microthecum*). "Buckwheat" is a common name for some members of the *Polygonaceae* family. These herbs and shrubs are found in northern, temperate areas and have a characteristically pungent juice containing oxalic acid. This species has been classified as "1B" in California, which means it is one category away from extinction.

Desert Bird's Beak (Species: *Cordylanthus eremicus* ssp. *Eremicus*). "Bird's Beak" is classified as "4" in California, which means it is a plant of limited distribution. In all *Cordylanthus* species, the *corolla* (the set of petals) is club-shaped and is divided lengthwise into two *lips* (groups of fused petals that differ in appearance). The upper lip is hooked like a bird's beak and the lower lip is inflated like a pouch. The flowers are nearly hidden by bracts, which are leaf-like structures. *Cordylanthus* species are *hemiparasitic*, meaning that they manufacture their own food but obtain water and nutrients from the roots of other (host) plants.

Only *Eriogonum microthecum* is listed as "BLM SS". Nonetheless, its presence on the SBC Wireless Inc.'s site requires inter-agency consultation between the FCC and the Bureau of Land Management ("BLM") prior to any further major Federal action on the site. While that consultation takes place, some consideration should be made of the Class "4" status of the *Cordylanthus eremicus* ssp. *Eremicus*.

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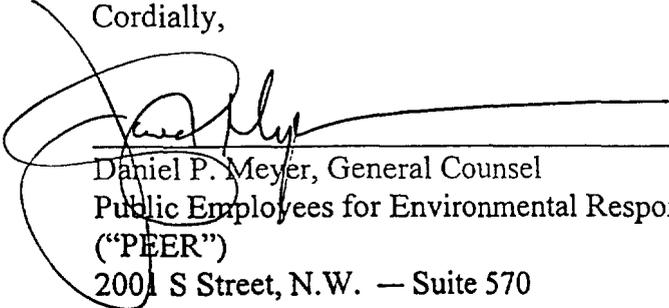
JUN 22 2001  
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FCC MAIL ROOM

**Conclusion.** The importance of the Mormon Peak site is undetermined. It is unfortunate that the FCC did not follow the law prior to authorizing a major Federal action. California holds a special place among American antiquities. While Europeans first contacted what they would call "the New World" a distant 500 years ago and then violently interrupted Central American culture a distant 460 years ago, California suffered no rape of its indigenous culture until 1769, a mere 225 years ago. Many areas of the State showed no signs of violation until the 1850s. SBC's must be prevented from conducting further contamination of California's cultural and floral record. No further construction and/or maintenance should occur on Mormon Peak until an EIS is prepared in accordance with the Commission's Rules. 47 C.F.R. § 1.1314(a)(1999). SBC should be administratively enjoined from conducting any maintenance until this matter has been resolved. Any transportation to/from the site should be conducted according to the National Park Service rules regarding rotary aircraft.

Having committed itself to ensuring that emerging technologies are developed in a manner inclusive of all America's diversity, it is ironic that the FCC has chosen to ignore its legal responsibility with respect to a site which may document the deepest roots of cultural diversity in the Southwest. PEER invites both of you to clarify the FCC's environmental compliance policy and correct any malfeasance connected with the Mormon Peak CF/Common Carrier Fixed Point-to-Point Microwave communications tower and associated transmitters.

Cordially,



Daniel P. Meyer, General Counsel  
Public Employees for Environmental Responsibility  
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District of Columbia Bar No. 455369

CC: The Honorable Bruce Babbitt, Secretary  
Department of the Interior

John D. Leshy, Esq.  
Office of the Solicitor (OS/DoI).

⋮  
Earl E. Devaney  
Office of the Inspector General (OS/DoI)

George T. Frampton, Chair  
Council on Environmental Quality

Magalie Roman Salas, Secretary (FCC)  
(for filing in FCC Dkt. RM-9913).

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Commercial Wireless Division, Wireless Telecommunications Bureau  
Federal Communications Commission

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