



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

FCC MAIL ROOM

SEARCHED

June 25, 2001

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

BY FIRST CLASS MAIL

**Re: FCC Dkt. No. RM-9913 and your failure to comply with federal law**

Dear Mr. Abeyta:

In reviewing the attached letter from Park Superintendent Duane L. Alire to your office, dated 20 June 2001, I was reminded of the thought I had when John Clark, the attorney for SBA Towers, Inc., called to obtain my acquiescence for an extension of time: while the Commission routinely forecloses environmental review when the impact is discovered after the notice and comment period for its specific federal action or undertaking, it has no general concern regarding timeliness when its regulated entities are discovered damaging the environment.

PEER was more than willing to give Mr. Clark more time, in part because this conduct of an environmental review for an FCC action or undertaking is such a rare event. As for Park Superintendent Alire's letter, PEER requests the following:

- (1) A copy of all documents referenced in para. 1 of the Alire Letter;
- (2) Inclusion on the service list for the public comment notice you must now issue in response to the SBA Towers, Inc. filing of an Environmental Assessment ("EA").

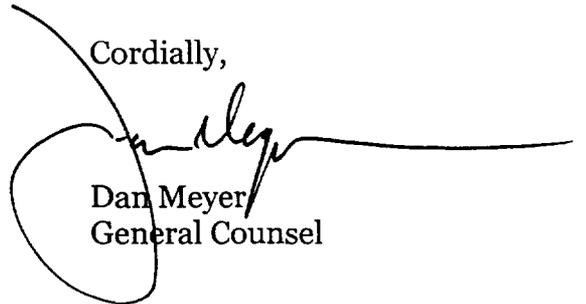
No. of Copies rec'd 0  
List A B C D E



- (3) A copy of the Pecos public notice, identified by the location in which you post it and the dates upon which it was posted;
- (4) A copy of your correspondence to the Department of Interior requesting that it act as consulting agency on this Environmental Assessment ("EA");
- (5) A copy of the guidelines under which your office and the Department of the Interior interact as lead and consulting agency for the Environmental Assessment ("EA");
- (6) A list of all other FCC undertakings or actions within the viewshed of Pecos National Historical Park which may also have failed environmental review;
- (7) Your explanation as to why your office did not move toward this environmental review when it committed the initial action or undertaking, in other words, why is this review taking place after the fact.

PEER intends to comment, and comment aggressively, on this Environmental Assessment ("EA") when it is filed. Please provide the aforementioned information as promptly as possible so we may all work to bring the Federal Communications Commission into compliance with federal law.

Cordially,



Dan Meyer  
General Counsel

Attached: Letter, Duane L. Alire, Park Superintendent to Mr. Dan Abeyta, Commercial Wireless Division (20 June 2001).

cc: Attached service list.

**National jurisdictions**

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

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

**Federal jurisdictions**

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

Earl E. Devaney, Esquire  
Office of the Inspector General  
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

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

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

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

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

**Private parties**

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

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



# United States Department of the Interior

## NATIONAL PARK SERVICE

Pecos National Historical Park

P.O. Box 418

Pecos, New Mexico 87552-0418

IN REPLY REFER TO:

H4217(PECO)

20 June 2001

Mr. Dan Abeyta  
Commercial Wireless Division  
Wireless Telecommunications Bureau  
Federal Communications Commission  
Washington, D.C. 20554

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

Dear Mr. Abeyta:

We received our copy of a letter dated May 15, 2001, from yourself to Mr. Ed Roach of SBA Towers, Inc. Thank you for keeping us informed on this issue. In that letter you requested that SBA Towers, Inc., supply you with all documentation of the company's compliance with environmental rules, including the National Historic Preservation Act pertaining to the subject tower. We request a copy of those documents be forwarded to Pecos National Historical Park.

It has come to our attention through an informal e-mail message from John Clark, Esq., counsel for SBA Towers, Inc. (copy attached), that the company is also embarking on completing an Environmental Assessment (EA), in accordance with the National Environmental Policy Act (NEPA), for the same tower. Under the requirements in NEPA for public review and solicitation of comments especially by affected parties, we also request a copy of this document so that we may have the opportunity to review and comment on the findings of the EA.

We appreciate your efforts to insure that applicable compliance processes are followed and to afford us the opportunity to participate in what we hope will be a satisfactory resolution.

Sincerely,

Duane L. Aire  
Park Superintendent

Enclosure

cc:

Mr. Elmo Baca  
New Mexico State Historic  
Preservation Officer  
Office of Cultural Affairs  
Historic Preservation Division  
La Villa Rivera Building  
228 East Palace Avenue  
Santa Fe, New Mexico 87501

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

Mr. Jesus Lopez  
County Attorney  
San Miguel County  
San Miguel County Courthouse  
Las Vegas, New Mexico 87701

Governor Joe V. Cajero  
Pueblo of Jemez  
PO Box 100  
Jemez Pueblo, New Mexico 87024

Second Lt. Governor Larry Armijo  
Pueblo of Jemez  
PO Box 100  
Jemez Pueblo, New Mexico 87024

Advisory Council on Historic  
Preservation  
Denver Office  
12136 West Bayaud Avenue  
Suite 330  
Lakewood, Colorado 80228

Mr. Ed Roach  
SBA Towers, Inc.  
1 Town Center Road  
Third Floor  
Boca Raton, Florida 33486

Mr. Dan Meyer  
PEER  
2001 S Street, NW  
Suite 570  
Washington, D.C. 20009

Mr. Rob Eaton  
Department of the Interior  
Office of the Field Solicitor  
PO Box 1042  
Santa Fe, New Mexico 87054-1042

Mr. Mike Snyder  
Deputy Regional Director  
National Park Service  
Intermountain Region  
PO Box 25287  
Denver, Colorado 80225-0287

**Freeny, Charnene-WDC**

**From:** Freeny, Charnene-WDC  
**Sent:** Friday, May 25, 2001 4:09 PM  
**To:** 'Dan Abeyta'  
**Cc:** 'John Talbert'; 'Ed Roach'; 'Daniel Meyer'; Clark, John F. - WDC -  
**Subject:** Glorietta Tower--Certificate of Service

*Received*

**JUN 01 2001**

**Importance:** High

PECOS NATIONAL HISTORICAL PARK

I, Charnene Freeny, hereby certify that on this 25th day of May, 2001, I caused a copy of the below email transmission to be delivered to:

Via US Mail:

Superintendent Duane L. Alire  
Pecos National Historical Park  
PO Box 418  
Pecos, New Mexico 87552

*Dial  
4/11/01*

and

Via Facsimile (505-827-6338):

Mr. Elmo Baca  
New Mexico State Historic Preservation Officer

*Charnene Freeny*

(202) 654-1765  
freec@perkinscoie.com  
Legal Secretary to John F. Clark, Esq.

SUPT.  
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-----Original Message-----

**From:** Clark, John F. - WDC  
**Sent:** Friday, May 25, 2001 3:10 PM  
**To:** 'Dan Abeyta'  
**Cc:** John Talberth (E-mail); Ed Roach (E-mail); Daniel P. Meyer (E-mail)  
**Subject:** Glorietta Tower  
**Importance:** High

Mr. Dan Abeyta  
Wireless Telecommunications Bureau  
Federal Communications Commission

Re: Glorietta Tower in Pecos, New Mexico  
Owned by SBA Towers, Inc. ("SBA")

FCC Reference No. 2001006155  
Antenna Structure Registration Application No. A0116576

Dear Mr. Abeyta,

By letter dated April 30, 2001, Forest Conservation Council petitioned the Commission to require SBA to perform an Environmental Assessment ("EA") at the site of the above-referenced telecommunications tower (the "Glorietta Tower"). On April 14, 2001, I sent an e-mail request that SBA be given until Friday, May 25, 2001 to respond to that petition. On April 14, 2001, you granted that request. (Those messages are reproduced below).

Along with a letter dated May 15, 2001, you transmitted to SBA a copy of a letter dated March 15, 2001 from the Superintendent of the Pecos National Park requesting Commission review of SBA's compliance with the Commission's environmental rules in connection with the Glorieta Tower project. With the same letter, you also transmitted to SBA a copy of an informal complaint filed by Public Employees for Environmental Responsibility ("PEER") seeking Commission review of the Glorieta Tower's compliance with NEPA and the Commission's environmental rules.

In the May 15 letter, you directed SBA to supply you with all documentation of SBA's compliance with the Commission's environmental rules within 30 days of the date of the letter.

I write on behalf of SBA to respond to the Forest Conservation Council petition and your letter of May 15, 2001. SBA agrees to provide all of the requested documentation to the Commission by the date requested, June 14, 2001. Further, SBA agrees to conduct and submit to the Commission a full EA for the Glorieta Tower site on or before June 14, 2001.

I trust that this response and the promised EA will constitute a fully adequate and timely response to Forest Conservation Council's petition. SBA will provide the EA while reserving all rights it may have to object to the Forest Conservation Council petition on procedural grounds.

Respectfully submitted,

*John Clark*  
PERKINS COIE LLP  
Counsel for Respondent, SBA Towers, Inc.

607 14th Street NW Suite 800  
Washington, D.C. 20005-2011  
clarq@perkinscoie.com  
Voice - 202.434.1637  
Fax - 202.434.1690

cc: Superintendent Duane L. Alire  
Pecos National Historical Park  
PO Box 418  
Pecos, New Mexico  
(via U.S. Mail)

Mr. Elmo Baca  
New Mexico State Historic Preservation Officer  
Fax 505.827.6338  
(Via telefax)

-----Original Message-----

From: Dan Abeyta [mailto:DABEYTA@fcc.gov]  
Sent: Tuesday, May 15, 2001 9:51 AM  
To: Clark, John F. - WDC  
Subject: Re: Response Time for Petition for Environmental Assessment

Permission granted.

>>> "Clark, John F. - WDC" <CLARQ@PerkinsCoie.com> 05/14/01 03:36PM >>>  
Dan Abeyta  
FCC  
Wireless Telecommunications Bureau

Dear Dan,

Recently SBA Towers, Inc. received in the mail a document entitled "Petition to Require an Environmental Assessment for File #A0116576." The transmittal

letter delivered with the petition stated that the petition was filed with the Commission on April 30, 2001.

File No. A0116576 refers to an Application for Antenna Structure Registration filed by SBA Towers, Inc. ("SBA") for a communications tower located in Pecos, New Mexico, known as the Glorieta Tower.

On behalf of SBA, I request permission to have until Friday, May 25, 2001 to file a response to this petition. I have been in touch with John Talberth, counsel for petitioner Forest Conservation Counsel, who has agreed to this schedule for responding.

Please contact me if there is any problem with granting this request.

Thanks very much,

John Clark  
PERKINS COIE LLP  
607 14th Street NW Suite 800  
Washington, D.C. 20005-2011  
clarq@perkinscoie.com  
Voice - 202.434.1637  
Fax - 202.434.1690

NOTICE: This communication may contain privileged or other confidential information. If you have received it in error, please advise the sender by reply email and immediately delete the message and any attachments without copying or disclosing the contents. Thank you.