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Public Employees for Environmental Responsibility

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**Office of the General Counsel
Dan Meyer**

July 18, 2001

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

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JUL 23 2001
FCC MAIL ROOM

BY FIRST CLASS MAIL

Re: FCC Dkt. No. RM-9913 and your continued failure to comply with federal law at Pecos N.H.P.

Dear Mr. Abeyta:

In a letter dated May 15, 2001 you directed SBA Towers, Inc. to supply the Federal Communications Commission ("FCC") within thirty (30) days, documents related to SBA's compliance with environmental regulations for the Glorieta Tower in New Mexico.

In an electronic message dated May 25, 2001, Mr. John Clark, counsel for SBA Towers, Inc. notified the FCC that SBA would provide the requested documentation by June 14, 2001. Additionally, Mr. Clark committed SBA to submit to the FCC "...a full EA for the Glorieta Tower site on or before June 14, 2001." This has not been done.

Public Employees for Environmental Responsibility ("PEER") received a volume entitled "SBA's Submission of Requested Documentation" sent by SBA to the FCC on July 3, 2001. PEER assumes that the volume we received responds only to your May 15, 2001 directive that SBA provide documentation of past compliance and does not fulfill SBA's commitment to prepare a full EA. Please inform us if we misunderstand the nature of SBA's July 3, 2001 filing.

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LIST ABOVE



PEER asserts that the July 3rd submission does not constitute an environmental assessment (EA) in the meaning of the National Environmental Policy Act (42 U.S.C. 4321, et seq.) and demonstrates conclusively that the applicant and the FCC have thus far failed to comply with NEPA, with Section 106 of the National Historic Preservation Act (NHPA) (16 U.S.C. 470f), and with the Commission's own environmental rules enabling the same.

PEER requests that the FCC coordinate its compliance with NEPA and NHPA immediately. The Pueblos and Tribes, in addition to the Department of Interior and the State of New Mexico, are being ill served by the FCC's management of federal spectrum and the antennae which employ it. The FCC must refrain from approving the registration of the Glorieta Tower until all Federal laws are complied with.

Background

SBA Towers, Inc. of Boca Raton, Florida proposed to erect a 248' tower on private lands in Glorieta, New Mexico. SBA submitted an Application for Antenna Structure Registration to the FCC on March 9, 2000(Registration Number 1210373). The 248' tower was completed on March 31, 2000.

Violation of Federal Law

Neither the FCC, nor SBA on behalf of the FCC, analyzed the environmental effects of the proposed action as required by NEPA and FCC regulations. The FCC is in the typical position it finds itself these days, having desecrated religious sites and having insufficient information to understand why and when it did as much. By not proceeding with rulemaking to remedy its failures over the past few years, the FCC finds itself once again in violation of Federal law. This is the Virgin Islands, Maine, and Florida all over again. This is Mormon Peak, as well. The Commission remains buffeted by the ill winds it has generated, itself.

FCC regulations require that applicants for registration comply with FCC NEPA regulations at 47 CFR 17.4(c). The FCC NEPA regulations require that the applicant prepare NEPA compliance documents (either an EA and Finding of No Significant Impact (FONSI) or an Environmental Impact Statement (EIS)) if the facility is one of eight (8) types listed in 47 CFR 1.1307(a). Among the eight (8) types are facilities that may affect properties that are listed on the National Register of Historic Places or that may affect Indian religious sites (47 CFR 1.1307(a)(4) and 1.307(a)(5)).

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The Glorieta Tower affects both types of sites but SBA did not prepare an EA. On March 2, 2000, Geo-Test, the contractor for SBA, submitted a five-page NEPA compliance review to SBA that concluded "no further assessment activities are indicated at this time." SBA and its contractor Geo-Test wrongly concluded that the Glorieta Tower did not affect any such sites and thus failed to meet NEPA compliance required by the FCC regulations.

The Tower's Effects

The Glorieta Tower is located less than .7 miles from the western boundary of the main unit of Pecos National Historical Park. The National Park Service administers the park as an area of the national park system. The 6,600-acre park, in its entirety, is listed on the National Register of Historic Places. The Tower is 1.2 miles from the central feature of the park - the ruins of the Pecos Mission Church, dating from the 17th century. The Tower is located the same distance from the ruins of an even more ancient Indian pueblo that is sacred to members of several Indian Tribes and Pueblos, in particular to the Jemez Pueblo. The tower is visible day and night from these sites and many other points within the park. At night, the tower is made visible by the lights required by the Federal Aviation Administration to reduce aircraft hazard caused by a tower of this height.

It is unforgivable that the FCC, as guardian of the public's interest, would manage its affairs in such a slipshod fashion and allow one of its regulated industries to proceed this far through the approval process without conducting the appropriate compliance review. It is bad enough that the Commission's environmental rules provide no protection for tower siting, in general. But now the Commission desecrates religious sites and National Parks.

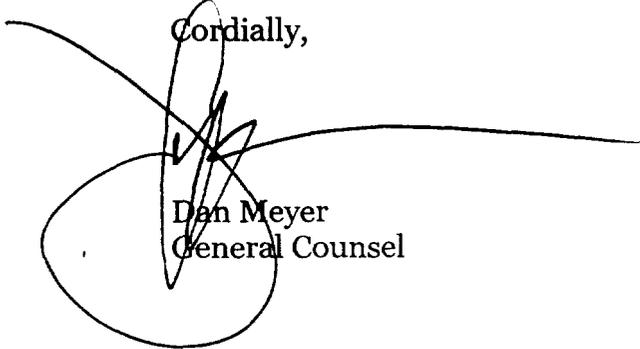
Notwithstanding Geo-Test's determination that the Glorieta Tower does not affect National Register properties, the effect is clear. SBA and the FCC failed to consult on the effect with the State Historic Preservation Officer of the State of New Mexico. Moreover, PEER believes that the Glorieta Tower constitutes an adverse effect to Pecos National Historical Park. The Glorieta Tower also affects Indian religious sites. SBA and the FCC failed to comply with FCC rules.

*Letter regarding FCC lawbreaking Pecos National Historical Park
July 18, 2001*

Conclusion

PEER is waiting for the full EA that SBA promised to the FCC on May 25, 2001. Please inform PEER when SBA submits the EA and evidence of compliance with section 106 of the NHPA. We will review the SBA documents and provide our comments to you when appropriate. Also, PEER asks that Geo-Test's actions be reviewed for violation of the False Statements Act of 1933. If they have falsified a filing with the FCC, PEER requests a punishment be administered accordingly.

Cordially,



Dan Meyer
General Counsel

cc: Attached service list.

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