

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of the Petition for)
Rulemaking filed by Public)
Employees for Environmental)
Responsibility ("PEER"))

RM-9913

**SBA Towers Inc.'s Opposition to the Petition for Reconsideration Filed by
Public Employee's for Environmental Responsibility ("PEER")**

SBA Towers, Inc. ("SBA") submits this opposition to the petition for reconsideration (the "Petition") filed on January 3, 2002 in the above-captioned proceeding by Public Employees for Environmental Responsibility ("PEER"). SBA agrees that the Commission properly denied the Petition

In addition, SBA files this opposition to correct the record where PEER has represented questionable or incorrect matters of fact regarding a separate proceeding to which the original PEER petition and the Petition for reconsideration both make reference, involving a wireless telecommunications tower located in Pecos, New Mexico and known as the Glorieta Tower.¹

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¹ See SBA Towers, Inc. and the Glorieta Tower in Pecos, New Mexico, ASRS No. 1210373, FCC Reference Nos. 2001006155 and 2001006537 (the "Glorieta Tower proceeding").

These corrections, offered to prevent the Commission from being misled in its consideration of the Petition, are summarized as follows and discussed below:

1. Contrary to PEER's assertions in the Petition, SBA did not seek, and neither were the Commission nor the New Mexico State Historic Preservation Officer ("SHPO") empowered to provide, "approval" for the Glorieta Tower.

2. PEER's dramatic but misleading insinuation of political pressure and back-room manipulations to thwart environmental compliance at the FCC and National Park Service are without basis and further are called into serious question by facts known to SBA.

3. PEER's allegations about the supposed environmental damage from the Glorieta Tower are untrue and misleading.

Background

SBA is the owner of the Glorieta Tower, a 240 foot tall guyed antenna structure located next to the I-25 Interstate highway near the town of Pecos, in San Miguel County, New Mexico. Prior to construction of the Glorieta Tower, SBA obtained a Determination of No Hazard to Air Navigation² and the tower was

² Granted March 1, 2000. This document was submitted to the Commission in the Glorieta Tower proceeding in "SBA, Towers, Inc.'s Submission of Requested Documentation for the Glorieta Tower," dated July 3, 2001, (the "July 3 Submission") at Tab 7.

registered with the FCC on March 9, 2000.³ On January 27, 2000, the proposed Glorieta tower was the subject of a public hearing before the San Miguel Planning and Zoning Commission on SBA's application for a conditional use permit.⁴ That permit was granted.⁵ SBA obtained a building permit from the New Mexico Construction Industries Division and completed construction of the tower in March 2000.⁶

Several months after the Glorieta Tower was constructed, a small group of landowners in the Pecos/Glorieta area approached the County seeking to have the building permit for the Glorieta Tower revoked, largely on environmental and aesthetic grounds.⁷ Those complaints were the subject of three more public hearings before the Planning and Zoning Department and the County Commission itself. The Commission ultimately agreed to await submission of the environmental issues to the FCC.

By letter dated March 30, 2001, Forest Conservation Council petitioned the Commission to require SBA to perform an EA for the Glorieta Tower. By letter dated May 15, 2001, Duane Alire, the Superintendent of the Pecos National Historical Park,

³ *Id.*

⁴ Kilgore Chronology, Tab 2 of the environmental assessment filed July 26, 2001 ("EA") at 1.

⁵ Tab 6. of the July 3 Submission.

⁶ *Id.*

⁷ Kilgore Chronology, Tab 2 of the EA, at 2.

requested Commission review of SBA's compliance with the Commission's environmental rules in connection with the initial registration of the tower. And by letter dated April 16, 2001, PEER submitted a letter to the Commission asking for review of the Glorieta Tower's environmental compliance.

The Effects of the Glorieta Tower on Historic Properties. On May 25, 2001, SBA offered to provide to the Commission an environmental assessment ("EA") for the Glorieta tower and the same was filed on July 26, 2001. As part of that EA, SBA submitted a Heritage Resources Assessment that concluded that the Glorieta Tower had no effect or no adverse affect on any heritage resources in the tower's area of potential effect, including resources in the Pecos National Historical Park.⁸ On August 9, 2001, Elmo Baca, the New Mexico State Historic Preservation Officer ("SHPO") sent a letter to the Commission in which he disagreed with the conclusions of the Heritage Resources Assessment, stating "it is my opinion that the tower has a direct, adverse visual impact to the setting and feeling of historic properties at Pecos National Historical Park."

The public meeting. On October 2, 2001, SBA sponsored a public meeting in Pecos, New Mexico to discuss the Glorieta Tower. The purpose of the meeting was to provide an opportunity for members of the public and interested parties to express publicly their views on the tower to representatives from the Commission and SBA.

Approximately 40 people attended the meeting, including the New Mexico SHPO and some of his staff, the Acting Superintendent of the Pecos National Historical Park and members of his staff, a representative of the Office of the Governor of the Jemez Pueblo, the Mayor of Pecos, representatives from the County of San Miguel, and residents of the La Joya and Pecos area.

The Memorandum Of Agreement. Since October 2001, SBA has been consulting with the Commission and the New Mexico SHPO to resolve that matter. Those consultations have been productive. On January 3, 2002, SBA submitted to the Commission a proposed Memorandum of Agreement ("MOA") outlining the terms by which the New Mexico SHPO and the FCC might conclude this matter. On February 8, 2002, Elmo Baca, New Mexico SHPO submitted a letter to the Commission suggesting two additional terms that he would like added to the proposed MOA.

The Allegations of the Petition relating to the Glorieta Tower

The facts recited above demonstrate that SBA and the FCC have gone to great lengths to consider the complaint of the SHPO and assess and consider the alleged effects of the Glorieta Tower on historic properties. The record in the Glorieta Tower matter stands in sharp contrast to the many assertions of bureaucratic neglect in both the original PEER petition and the reconsideration Petition. In fact, the lengthy record in the Glorieta Tower matter clearly contradicts the PEER portrait of a Commission staff unconcerned with industry compliance with federal environmental and historic

⁸ *Id.*

preservation law. The Commission staff in the Glorieta Tower matter has been fully engaged in assuring full compliance with the Commission's rules in connection with the Glorieta Tower, and the matter seems headed to a just and equitable resolution.

In addition, PEER has made questionable assertions about the Glorieta Tower in order to bolster its claims and add melodramatic flavor to its Petition. The facts of the Glorieta Tower matter do not support PEER's Petition, and several of PEER's assertions underlying its arguments are simply incorrect.

SBA submits the following corrections to assertions in the Petition for reconsideration:

1. Contrary to PEER's assertion,⁹ SBA did not seek and the FCC did not provide "approval" of the Glorieta Tower. Nor did SBA seek the approval of the New Mexico SHPO. The FCC merely registered the tower in the ASRS database after FAA clearance was received. And neither the FCC nor SBA sought "approval" for the Tower from the New Mexico SHPO. The SHPO's role in the historic preservation review process is as a consultant only.¹⁰ The SHPO appropriately provided its opinion of the impacts from the Glorieta Tower on historic properties. The Commission has taken this opinion into account and a resolution of the matter is pending.

⁹ Petition for reconsideration at 8.

¹⁰ See 36 C.F.R. § 800.2(c)(1).

2. PEER's dramatic but misleading insinuations of political pressure and back room manipulations at the FCC and National Park Service¹¹ are made without evidence or basis. Moreover, other facts known to SBA raise serious doubt about the accuracy of their assertions. Although SBA is not aware of the circumstances surrounding the transfer of Duane Aire from his assignment as Superintendent at the Pecos National Park, SBA is aware of no evidence, and of course, PEER provides none, that such action was related to the Glorieta Tower matter. In addition, after Mr. Aire left, Acting Superintendent Rick Nolan played an active role in the Glorieta Tower matter, and Mr. Nolan actively and vigorously represented the interests National Park Service and the Pecos National Historical Park in numerous consultations and meetings with SBA and the Commission staff and at the public meeting on October 2, 2002. This involvement is inconsistent with PEER's implication that the Park Service sought to discourage active staff involvement in that matter.

In addition, SBA is aware of facts that question the assertion that the FCC became interested in the Glorieta Tower matter only because of the interest of former Commissioner Gloria Tristani, a former and current New Mexico resident.¹² Once again, PEER provides no evidence to substantiate its assertion, but SBA can confirm

¹¹ Petition for reconsideration at 9.

¹² *Id.*

that the Wireless Telecommunications Bureau became active in the matter long before Commissioner Tristani's request for a briefing and status report of which SBA was made aware.

3. PEER's allegations about the supposed environmental damage from the Glorieta Tower are also untrue and misleading. First, PEER reports ominously that the Glorieta Tower was "erected in proximity to Native American remains."¹³ In fact, the tower is located almost two miles from the Pecos National Historical Park ruins and even farther from the famous re-interred remains of the 2000 ancestors of the Jemez Pueblo.¹⁴

In addition, SBA has consulted with official representatives of the Governor of the Jemez Pueblo and has confirmed with those representatives that the tribe does not feel that the Glorieta Tower generates any significant or adverse effect on spiritual or other sites of religious and cultural importance to the Jemez Pueblo, many of which are located in and around the Pecos National Historical Park.

Second, the Glorieta Tower is certainly not "planted in the middle of the most important Civil War battlefield in the Western theater of that war."¹⁵ In fact, the Glorieta Tower is several miles from the Glorieta Pass and the Glorieta Battlefield

¹³ *Id.*

¹⁴ The exact location of the re-interred remains is not public.

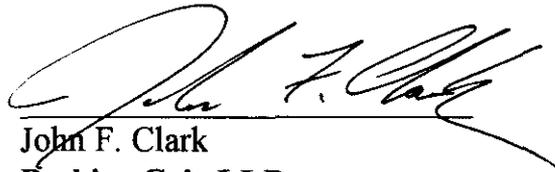
¹⁵ Petition for reconsideration at 9.

unit of the Pecos Park. The Glorieta Battlefield is indeed an important site and is designated as a National Historic Landmark. The tower, however, is some distance away, shielded from the battlefield by a hill, and is not visible from any part of the battlefield.

Conclusion

SBA believes that the PEER order was correct in its analysis and conclusion. The current Petition provides no basis for overturning that decision on reconsideration. Just as importantly, however, SBA urges the Commission not to be misled in its consideration of the Petition by bare, unsupported and incorrect assertions of fact in the Petition relating to the Glorieta Tower matter.

Respectfully Submitted,



John F. Clark
Perkins Coie LLP
Counsel for SBA Towers, Inc.
607 Fourteenth Street, NW
Suite 800
Washington, D.C. 20005-2011
Voice - 202.628.6600
Fax - 202.654.9116

CERTIFICATE OF SERVICE

I, Charnene Freeny, hereby certify that I have on this 22nd day of February 2002, sent via U.S. First Class Mail, postage prepaid, a copy of the foregoing SBA, Inc.'s Opposition to the Petition for Reconsideration filed by Public Employee's for Environmental Responsibility ("PEER") to the following:

Daniel P. Meyer
Public Employees for Environmental
Responsibility
2001 S Street, NW – Suite 570
Washington, D.C. 20009

Troy F. Tanner
Swidler Berlin Shereff Friedman, LLP
The Washington Harbour
3000 K Street – Suite 300
Washington, DC 20007-5116

Scott Blake Harris
Harris, Wiltshire & Grannis, LLP
1200 18th Street, N.W. – Suite 1200
Washington, DC 20036-2560

Martin L. Stern
Preston Gates Ellis & Rouvelas
Meeds LLP
1735 New York Ave., N.W., Suite 500
Washington, DC 20006

Bruce E. Beard
SBC Wireless, Inc.
2000 W. Ameritech Center Drive
Hoffman Estates, IL 60195-5000

Gary J. Smith
Beveridge & Diamond, P.C.
1350 I Street, N.W. – Suite 700
Washington, DC 20005

Andre J. Lachance
Verizon Wireless
1850 M Street, N.W.
Washington, D.C. 20036

Elizabeth Yockus
WorldCom
Federal Law and Public Policy
1801 Pennsylvania Avenue, N.W.
Washington, D.C. 20006


Charnene Freeny