

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies)	WT Docket No. 13-238
)	
Acceleration of Broadband Deployment: Expanding the Reach and Reducing the Cost of Broadband Deployment by Improving Policies Regarding Public Rights of Way and Wireless Facilities Siting)	WC Docket No. 11-59
)	
Amendment of Parts 1 and 17 of the Commission’s Rules Regarding Public Notice Procedures for Processing Antenna Structure Registration Applications for Certain Temporary Towers)	RM-11688 (terminated)
)	
2012 Biennial Review of Telecommunications Regulations)	WT Docket No. 13-32
)	

To: The Commission

**REPLY COMMENTS OF
THE AMERICAN PETROLEUM INSTITUTE**

The Telecommunications Subcommittee of the American Petroleum Institute (“API”), by its undersigned counsel, hereby submits these Reply Comments regarding one aspect of certain comments submitted in response to the Commission’s wireless siting Notice of Proposed Rulemaking.¹ API is concerned that proposals for an exclusion from Section 106 review for replacement non-tower structures imply the *replacement* of such structures could be subject to Section 106 review under certain circumstances, even though the *original installation* of such non-tower structures was not subject to the Commission’s Section 106 review process. This misunderstanding, if applied, could significantly delay replacement of non-tower structures.

¹ Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies, Notice of Proposed Rulemaking, 28 FCC Rcd 14238 (2013).

I. Preliminary Statement

API is a national trade association representing more than 500 companies involved in all phases of the petroleum and natural gas industries, including exploration, production, refining, marketing and transportation of petroleum, petroleum products and natural gas. Among its many activities, API acts on behalf of its members before federal and state regulatory agencies. The API Telecommunications Subcommittee evaluates and develops responses to state and federal proposals affecting telecommunications facilities used in the oil and gas industries. API is supported and sustained by companies that make use of a wide variety of wireline, wireless and satellite communications services on both a private and commercial basis.

The oil and gas industry sites antennas on a wide variety of structures. Although many antennas are located on communications towers, a large number are collocated on non-tower structures such as buildings, pipelines, utility poles, exploration and production field wellheads, water towers, liquid storage tanks, etc. These facilities further the Commission's policy that such collocations on non-tower structures constitute an environmentally desirable alternative to the construction of new tower facilities.

II. The Proposed Exclusion for Replacement of Non-Tower Structures is Misplaced.

The Nationwide Programmatic Agreement (“NPA”) defines “Tower” as “[a]ny structure built for the sole or primary purpose of supporting Commission-licensed or authorized Antennas, including the on-site fencing, equipment, switches, wiring, cabling, power sources, shelters, or cabinets associated with that Tower but not installed as part of an Antenna as defined herein.”²

Under the Nationwide Programmatic Agreement for the Collocation of Wireless Antennas (“Collocation NPA”) a non-tower structure is any structure not “built for the sole or primary

² See Nationwide Programmatic Agreement for Review of Effects on Historic Properties for Certain Undertakings Approved by the Federal Communications Commission, FCC 04-222 at 7 (2004).

purpose of supporting FCC-licensed antennas and their associated facilities.”³ The NPRM notes that while an exclusion from Section 106 review is provided for tower structures, the NPA “does not [...] address replacements of utility poles or other non-tower structures.”⁴

The NPRM asks whether to exclude from Section 106 review replacement of non-tower structures and whether such exclusion should be limited to replacements that do not constitute a substantial increase in size from the original installed facility.⁵

Several parties filed Comments stating that the NPA should be amended to include an exclusion for replacements of non-tower structures. For example, the Association of American Railroads (“AAR”) argues an exclusion should be adopted for replacement of non-tower structures “where the replacement structure does not constitute a substantial increase in size from the original installed facility and is located in close proximity to the site of the existing non-tower facility.”⁶ PCIA similarly states that the Commission “should adopt a new NHPA categorical exclusion covering the replacement of an existing utility pole or other non-tower structure [...] [p]rovided that the same criteria applicable to replacement towers in Section III.B of the 2004 NPA are satisfied.”⁷

API supports the effort to further accommodate siting antennas on non-tower structures but believes an exclusion focused on the replacement of a non-tower structure itself is unnecessary and misplaced.

³ See Nationwide Programmatic Agreement for the Collocation of Wireless Antennas at 3.

⁴ NPRM at para. 63.

⁵ *Id.*

⁶ AAR Comments at 17.

⁷ PCIA Comments at 23.

Currently, an entity may construct a non-tower structure without undergoing the Commission's Section 106 review process. As examples, the Commission's Section 106 review process does not apply to the installation of a new production field wellhead, a storage tank, or other construction not "built for the sole or primary purpose of supporting FCC-licensed antennas and their associated facilities."⁸

Antennas may be mounted on any non-tower structure "without such collocation being reviewed" under Section 106 unless one of the four factors in Stipulation V of the Collocation NPA is present. Most antenna collocations on non-tower structures likely qualify for streamlined treatment under Stipulation V and are not subject to Section 106 review.

Even though no Commission Section 106 review of the *original* non-tower structure is required, the proposals to adopt an additional exclusion suggest *replacement* of non-tower structures could be subject to Section 106 review if the replacement non-tower structure is substantially larger than the original structure or not located in close proximity to the previous site. This would create an illogical result whereby a non-tower structure can be built without Section 106 review, an antenna can be collocated on the non-tower structure without Section 106 review, but the structure itself cannot be replaced without first completing the Commission's Section 106 review process. Just as irrational, an identical non-tower structure could be built at the same location without undergoing Section 106 review if it is considered "new" and not "replacement."

API requests the Commission confirm that it is not necessary to exclude replacement of non-tower structures from the Section 106 review process because the process does not apply to

⁸ The installation of such structures may be subject to Section 106 review under the requirements of another Federal agency.

such structures. If for some reason the Commission believes an exclusion is warranted, it should apply to replacement of all non-tower structures, without limitation as to size or location.

III. CONCLUSION

API believes an exclusion for non-tower structures is unnecessary and urges the Commission to adopt an Order consistent with these Reply Comments.

Respectfully submitted,

**AMERICAN PETROLEUM
INSTITUTE**

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