



NATIONAL ASSOCIATION OF TRIBAL HISTORIC PRESERVATION OFFICERS

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February 9, 2018

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC

Re: Accelerating Wireless Broadband Deployment by Removing Barriers to
Infrastructure Investment, WT Docket No. 17-79 (includes Notice of Proposed Rulemaking)

Streamlining Deployment of Small Cell Infrastructure by Improving
Wireless Facilities Siting Policies, WT Docket No. 16-421

Public Notice of Draft Program Comment Addressing Collocation on Twilight Towers,
WT Docket No. 17-79

Dear Ms. Dortch:

On behalf of the National Association of Tribal Historic Preservation Officers (NATHPO), the following comments are submitted in response to the draft Program Comment on Twilight Towers, published in the Federal Register on January 10, 2018, and per the above referenced Federal Communications Commission (FCC) notices and documents.

In addition to NATHPO's comments submitted on Dec. 7, 2017, on this draft Program Comment (copy attached), we raise the following additional comments:

- 1. The proposed Program Comment does not appear to be consistent with the Section 106 regulations because it fails to ensure that the effects of the "Twilight Towers" are taken into account**

The Section 106 regulations applicable to the development of Program Comments explicitly require the federal agency to identify a category of undertakings in lieu of conducting individual reviews, and to "specify the steps the agency official will take to *ensure that the effects are taken into account*," 36 C.F.R. § 800.14(e)(1) (emphasis added). The proposed Program Comment for Twilight Towers does not comply with this requirement. Instead, the draft Program Comment proposes what is essentially an exemption. It fails to provide any mechanism whatsoever to ensure that the effects of the undertakings will be taken into account, but rather, proposes a process that will retroactively exempt by exclusion the towers from review altogether.

Verizon specifically references tower collocations as exclusions, as excerpted here from their Dec. 6, 2017, letter:

“During the meetings, we expressed support for the Commission’s efforts to address existing regulatory barriers that block, delay, or add unnecessary cost to the deployment of wireless infrastructure. Taking action to *exclude* historic preservation reviews for new collocations on towers that have been standing almost 13 years will obviate the need to build new towers. And because these towers have been standing for so long without complaint, and many, if not most, of these towers were reviewed prior to construction – Verizon’s internal procedures during the twilight period required review by the applicable state historic preservation officer and tribes determined to have an interest in the area – adopting the *exclusion* will not adversely affect any historic property.” (emphasis added)

2. Tribal consultation has not been conducted

Although the FCC convened three conference calls for Tribal Nations and Native Hawaiian organizations on a variety of topics on Jan. 22, Jan. 24, and Feb. 5, 2018 – the first on less than one week notice – (see NATHPO letter of Jan. 22, 2018) NATHPO agrees with the Tribal Nations that the calls were not government-to-government tribal consultation and participation by Indian tribes was for informational purposes only.

3. The FCC had existing requirements for Section 106 compliance and rules already existed that provided guidance to industry as to how to comply with those obligations

NATHPO agrees with the Feb. 9, 2018, comments of the Ohio History Connection, Ohio State Historic Preservation Office, that Twilight Towers should not be excluded from the Section 106 process for reasons that include that the FCC had provided a 2002 Fact Sheet on complying with Section 106 of the National Historic Preservation Act, thus negating industry’s statements that “Twilight Towers” – built between March 16, 2001, and March 7, 2005, were a result of not knowing of a FCC process to ensure compliance. NATHPO agrees with other points in the Ohio History Connection letter.

Thank you for your consideration of these comments. We appreciate your interest in creating efficient and streamlined siting policies and want to support your goals. In the spirit of collaboration, we feel that our comments strengthen your effort and preserve and protect our nation’s cultural resources and historic properties.

Sincerely yours,



D. Bambi Kraus
President



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December 7, 2017

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC

Ex Parte Communication via Electronic Submission

Re: Accelerating Wireless Broadband Deployment by Removing Barriers to
Infrastructure Investment, WT Docket No. 17-79 (includes Notice of Proposed Rulemaking)

Streamlining Deployment of Small Cell Infrastructure by Improving
Wireless Facilities Siting Policies, WT Docket No. 16-421

Public Notice of Draft Program Comment Addressing Collocation on Twilight Towers,
WT Docket No. 17-79

Dear Ms. Dortch:

On behalf of the National Association of Tribal Historic Preservation Officers (NATHPO), the following comments are submitted in response to the draft Program Comment on Twilight Towers and per the above referenced Federal Communications Commission (FCC) actions.

For the past several years, NATHPO and Tribal Nations have been asking for the site locations of the Twilight Towers so that we may collaborate on a process that respects the federal, state, and tribal cultural preservation laws, tribal sovereignty, and industry's interests in using already existing towers as an important part of their business plan. Industry has replied that they either don't know where the Twilight Towers are located or are unable to tell us for business proprietary reasons, but mostly because they don't know where the towers are. Asking Tribal Nations to approve or develop a process without adequate information to make informed decisions is not in the spirit of collaboration and in fact harms the long-standing working relationship that Tribal Nations have forged with the FCC and industry via the Tower Construction Notification System (TCNS).

Without some form of notification, in this case, for example, entering the Twilight Towers into TCNS, Tribal Nations do not know where the Twilight Towers are located and thus have not filed complaints. It appears that the FCC is allowing industry to not disclose the towers but then state for the record in the Notice of Proposed Rulemaking (NRPM), "*Moreover, these towers have been standing for 12 years or more and in the vast majority of the cases, no adverse effects have been brought to our attention.*" It was the FCC's responsibility to notify Tribal Nations and other stakeholders that there were proposed ground disturbing activities associated with constructing towers that rise hundreds of feet in the air.

NATHPO and Tribal Nations have also requested the site locations from the FCC, but to no avail. As a solution to allow for antenna collocations, we have proposed that the Twilight Towers be processed through TCNS, but the FCC has not implemented this recommendation.

Until this draft Program Comment was publicly available, Tribal Nations did not have an actual number of how many Twilight Towers there are; this important information has been withheld. Per footnote 8 in the draft Program Comment, the number of Twilight Towers that have been identified via survey by WIA and CTIA is 4,298, with additional towers possible. NATHPO requests the exact number and locations of the Twilight Towers that will be covered by this Program Comment.

On June 15, 2017, NATHPO submitted, in part, the following comments on Twilight Towers in response to the Notice of Proposed Rulemaking:

Tribal Nations have requested the locations of these towers prior to recommending how to move forward with a process to resolve the outstanding nature of their compliance with federal laws. Tribal Nations have made repeated requests for the locations of said towers, but have been rebuffed by industry with the statement that they either do not know where these towers are located or cannot say. The reluctance of industry to work with Tribal Nations and share information on the locations of Twilight Towers and non-compliant towers has been the root of the problem in moving forward.

Tribal Nations should be allowed to review all non-compliant towers, including Twilight, for impacts to historic and cultural properties. The FCC could implement an option in TCNS to allow for Tribal Nations to review Twilight Towers. After thorough historic preservation review, these towers could be considered approved and eligible for collocation.

NATHPO Comments on, “Draft Program Comment for the FCC’s Review of Collocations on Certain Towers Constructed without Section 106 Review,” FCC-CIRC1712-03, released Nov. 22, 2017

As the FCC considers this next step, the following statements are submitted to strengthen the FCC’s goal of expediting deployment of telecommunication facilities to expand and improve service, yet retaining preservation interests to preserve and protect historic properties:

Section I, “Background”

Regarding the reference to four 2017 FCC meetings with Tribal representatives (Rosebud Sioux Reservation on June 8, during the National Conference (sic) of American Indians conference on June 14, Navajo Reservation on Aug. 22, and in Washington, DC on Oct. 4), the Rosebud meeting was announced days before it occurred, and short notice was also provided for the NCAI and Navajo meetings. The majority of the discussion at the Rosebud and Navajo meetings was devoted to discussing broadband deployment for and by Indian tribes, even though the agenda was to discuss the NPRM and WT Docket 17-79. During these meetings, Twilight Towers were not discussed at all, or were barely mentioned. As noted above, industry and the FCC continue to be unwilling to share the locations of the Twilight Towers with the preservation community and Tribal Nations cannot make informed decisions without that basic information. During the referenced tribal meetings, the FCC did not offer any new information to the discussion that would move the deliberations forward.

When the FCC met with NATHPO for two days during our annual conference August 10-11, 2017, in Pala, California, more than 80 tribal representatives discussed Twilight Towers with the FCC representatives but without adequate information, specifically, the Twilight Tower locations, the conversation didn't move forward other than making the same requests to the FCC and industry to reveal the locations of the Twilight Towers.

Section II, "Need for Program Comment to Address Twilight Towers"

We request that the FCC please share with Tribal Nations any and all available data that supports your assertion that an exclusion is warranted because "*...(3) the limited likelihood that Section 106 review could identify adverse effects from these towers that are not yet known after 12 years or more...(page 2)*" and "*In the vast majority of cases, no adverse effects from these towers have been brought to the FCC's attention. (page 3)*"

Asserting that Tribal Nations could not identify adverse effects from 12-year old towers is not the fault of Tribal Nations. It is the FCC's failure to notify the tribes where the towers are located. Numerous Tribal Nations were forcibly removed and relocated to other parts of the country, but still have historic interests and rights in their homelands and lands ceded through treaties. Most of this historic land and places are far away from the present-day tribal governments and Tribal Nations have relied on the FCC to notify them via TCNS of any proposed towers. However, the Twilight Towers have not been entered into TCNS and thus the notification process has not been initiated.

Section IV, Exclusion for Twilight Towers

The 2000 Telecommunications Working Group provided a forum for the FCC, industry representatives, and SHPOs and a few other preservation stakeholders. It did not include THPOs and other tribal representatives. As the sole tribal representative and at a time when there were only 22 Tribal Historic Preservation Officers (THPOs) in the entire program (compared to 176 today), I can say firsthand that the discussion centered on the States. Outside of the working group there were a few committed FCC staff who help create the TCNS process, which the FCC, Tribal Nations, and industry have relied on and successfully collaborated on for more than 12 years, until this year.

Section V, Additional Provisions Relating to Tribal Nations

We request clarification on how a Tribal Nation would "*...request direct government-to-government consultation with the FCC at any time with respect to a Twilight Tower or any collocation thereon (page 5)*". Unless the FCC notifies a Tribal Nation that a Twilight Tower has been activated/brought into commission, or is ready for collocation, or already has an antenna collocated on it, then a Tribal Nation would not know the circumstances for that particular tower and which could possibly lead to an official complaint and enforcement action.

The entire second paragraph of this section is unclear, lacks timelines, and needs clarification, posted here in its entirety:

"A Tribal Nation may request direct government-to-government consultation with the FCC at any time with respect to a Twilight Tower or any collocation thereon. The FCC will respond to any such request in a manner consistent with its responsibility toward Tribal Nations. When indicated by the circumstances, the FCC shall treat a request for consultation as an Objection to Collocation and shall notify the tower owner accordingly."

The FCC may already have a process or be developing a process for activating Twilight Tower for use. NATHPO requests that this notification process include Tribal Nations in its development and in its use and include important information, such as where the Twilight Towers are, what stage of activation they are in, and future considerations.

Section VI, Administrative Provisions

B.1. Duration: We recommend that the Advisory Council on Historic Preservation shall consult with Tribal Nations, in addition to NATHPO, of any changes or concerns.

B.2. Duration: The same recommendation as above, that the FCC shall consult with Tribal Nations, in addition to NATHPO.

NATHPO agrees with the Oklahoma Historical Society, State Historic Preservation Office, that Twilight Towers should not be excluded from the Section 106 process.

Thank you for your consideration of these comments. We appreciate your interest in creating efficient and streamlined siting policies and want to support your goals. In the spirit of collaboration, we feel that our comments strengthen your effort and preserve and protect our nation's cultural resources and historic properties.

Sincerely yours,

A handwritten signature in black ink that reads "DBKraus". The letters are cursive and somewhat stylized.

D. Bambi Kraus
President