



September 25, 2020

**VIA ELECTRONIC FILING**

Ms. Jaime Loichinger  
Assistant Director  
Advisory Council on Historic Preservation  
401 F Street, N.W.  
Washington, D.C. 20554

***Re: FCC Request for a Program Comment to Address Twilight Towers***

Dear Ms. Loichinger:

CTIA<sup>1</sup> commends the Advisory Council on Historic Preservation (“ACHP”) for seeking comment pursuant to Section 800.14(e) of its rules on the Program Comment presented by the Federal Communications Commission (“FCC”) that would address the collocation of additional wireless communications equipment on certain towers used to provide wireless communications services.<sup>2</sup>

The ACHP’s action represents another step in the Administration’s overall efforts to facilitate the deployment of infrastructure in order to address the public’s ever-increasing demand for wireless services, while also protecting historic properties. The Program Comment

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<sup>1</sup> CTIA – The Wireless Association® (“CTIA”) ([www.ctia.org](http://www.ctia.org)) represents the U.S. wireless communications industry and the companies throughout the mobile ecosystem that enable Americans to lead a 21st century connected life. The association’s members include wireless carriers, device manufacturers and suppliers, as well as apps and content companies. CTIA vigorously advocates at all levels of government for policies that foster continued wireless innovation and investment. The association also coordinates the industry’s voluntary best practices, hosts educational events that promote the wireless industry and co-produces the industry’s leading wireless tradeshow. CTIA was founded in 1984 and is based in Washington.

<sup>2</sup> Program Comment for the Federal Communications Commission’s Review of Collocations on Certain Towers Constructed Without Documentation of Section 106 Review (“Program Comment”).



is consistent with other recent actions the ACHP and the FCC have taken to speed the deployment of wireless infrastructure, including adoption of emergency approval procedures to enable the rapid deployment of facilities to respond to exploding demand during the COVID-19 pandemic.<sup>3</sup> CTIA supports these actions, and encourages the ACHP to resolve this long outstanding issue as proposed—facilitating deployment to improve the public’s access to wireless services while safeguarding important historic and cultural preservation interests.

***The Program Comment Appropriately Excludes Certain Collocations on Twilight Towers from Section 106 Review.*** Towers constructed between March 17, 2001 and March 6, 2005 (so-called “Twilight Towers”) have been in regulatory limbo for nearly two decades because of uncertainty as to whether collocations on those towers must undergo review under Section 106 of the National Historic Preservation Act (“NHPA”).<sup>4</sup> This uncertainty has effectively precluded the use of these towers to support advanced wireless technologies, including the newest, fifth-generation (“5G”) services, impeding expanded services to the public. This regulatory barrier has become even more serious as the public’s reliance on wireless services continues to increase.

Twilight Towers were constructed during the four-year period when the FCC’s rules implementing Section 106 did not specify that wireless providers and tower companies must consult with State Historic Preservation Officers (“SHPOs”), Tribal Historic Preservation Officers (“THPOs”), or Tribal Nations and Native Hawaiian Organizations (collectively, “Tribes”), when evaluating the potential effect of new structures designed to hold wireless equipment on properties listed or eligible for listing on the National Register of Historic Places. The FCC’s rules also did not establish standards or documentation requirements for Section 106 reviews. FCC rules specifying those procedures did not take effect until March 7, 2005, when the Nationwide Programmatic Agreement (“NPA”) between the FCC and the ACHP took effect.<sup>5</sup>

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<sup>3</sup> See *Section 106 Emergency Authorizations During Covid-19*, Public Notice, DA 20-668 (rel. June 25, 2020), <https://docs.fcc.gov/public/attachments/DA-20-668A1.pdf>.

<sup>4</sup> 16 U.S.C. § 470f.

<sup>5</sup> *Nationwide Programmatic Agreement for Review of Effects on Historic Properties for Certain Undertakings Approved by the Federal Communications Commission* (Sept. 2004), at 47 C.F.R. Part 1 Appendix C.



Given the ambiguity in the FCC’s rules during the 2001-2005 period, towers were built for which the wireless provider or tower company either did not complete Section 106 review or cannot document that review. Those companies have since been precluded from collocating on the Twilight Towers, unless they cleared the towers post-construction on a one-by-one basis. That action requires extensive time and costs, effectively deterring upgrades to these sites. These unique facts support the use of a Program Comment to address this unique category of facilities and provide a solution that enables Twilight Towers to be put to greater use to serve the public.

To address this decades-old obstacle, the FCC issued a draft Program Comment in December 2017 to exclude proposed collocations on Twilight Towers from Section 106 review, but only if those collocations meet specific criteria that are designed to minimize any potential effects on historic properties.<sup>6</sup> The FCC invited and received extensive comment on the draft from wireless providers, SHPOs, THPOs, and Tribes. The Program Comment that the FCC transmitted to the ACHP in August 2020 reflects many of those comments, and the FCC’s separate Summary of Public Outreach sets forth the FCC’s analysis of those comments and decisions made with respect to the requests made in those filings.<sup>7</sup> The Program Comment will exclude qualifying collocations on Twilight Towers from Section 106 review. Collocations on those towers will thus be afforded rights identical to those applicable to collocations on towers constructed before March 16, 2001. The Program Comment correctly finds that the exclusion is warranted, based on ambiguities in earlier versions of the FCC’s rules and the minimal potential for those collocations to impact historic properties.

The Program Comment is a balanced solution that clears the way to expanded use of these towers—enabling the public’s access to expanded wireless services—and also fully safeguards the historic preservation interests that the NHPA protects. As the Chairmen of the House of Representatives committee and subcommittee that oversee the ACHP stated in a 2018

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<sup>6</sup> *Comment Sought on Draft Program Comment for the Federal Communications Commission’s Review of Collocations on Certain Towers Constructed Without Documentation of Section 106 Review*, Public Notice, 32 FCC Rcd 10715 (2017).

<sup>77</sup> Federal Communications Commission Draft Program Comment for Twilight Towers Summary of Public Outreach, Tribal Consultation, and Comments (Aug. 24, 2020) (“Summary of Public Outreach”).



letter supporting the draft Program Comment, this solution “is critical for ensuring the ability to modernize wireless networks and deploy next generation wireless services, such as 5G, in an expeditious manner for all consumers and communities across the United States,” while “continuing to promote the preservation of historic properties.”<sup>8</sup> And, it is fully consistent with the ACHP’s statutory authority and its rules governing the adoption of Program Comments.

***The Program Comment Serves the Public Interest.*** Adoption of the Program Comment will benefit the public and protect historic preservation interests in multiple ways. First, it will enable existing infrastructure to be put to greater use by rapidly making available existing towers to support wireless broadband deployment. This will enable providers to increase coverage and build more densified networks, including networks supporting 5G, which will directly benefit consumers and the national economy. The Program Comment will also strengthen the extent and reliability of public safety services by giving access to Twilight Towers by the National Public Safety Broadband Network and other public safety entities.<sup>9</sup> These public interest benefits are particularly significant during the COVID-19 pandemic, when the nation is relying on wireless communications to stay connected to family, friends, and colleagues.<sup>10</sup>

Second, by allowing more intensive use of existing towers, the Program Comment will also reduce the need for new tower construction, and conserve the resources of Tribes and

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<sup>8</sup> Letter from Rep. Rob Bishop, Chairman, House Committee on Natural Resources, and Rep. Bruce Westerman, Chairman, Subcommittee on Oversight and Investigations, to Mr. Milford Wayne Donaldson, Chairman, ACHP, at 1-2 (Mar. 22, 2018).

<sup>9</sup> See Program Comment at 5.

<sup>10</sup> As the FCC found, “This national emergency has highlighted the need to provide broadband connections to people across the country to ensure access to telehealth, education, and economic opportunity, as well as an ongoing need to support public safety and critical infrastructure initiatives. The Twilight Towers Program Comment will help address these problems by facilitating the deployment of communications facilities across the country on these towers, without imposing the costs, delays and potential impact of new tower construction.” Summary of Public Outreach at 4.



SHPOs that otherwise would be expended in reviewing those new towers. The Program Comment would not apply to the construction of any new towers.<sup>11</sup>

Third, the Program Comment protects historic properties against adverse effects. The exclusion from Section 106 review requires that the proposed collocation satisfy multiple criteria, such as limits on increases to the height of the tower and on how far equipment or appurtenances may protrude from the tower, and restrictions on the number of additional equipment cabinets and shelters that can be installed on the tower or on the ground nearby the tower.<sup>12</sup> These criteria are identical to those in the Nationwide Programmatic Agreement for the Collocation of Wireless Antennas (“Collocation Agreement”).<sup>13</sup>

In addition, the Program Comment adopts a detailed complaint process, including the opportunity for public comment, to allow parties to bring potential adverse effects to the FCC’s attention, and states that the FCC “will consider public comments and will consult with the tower owner, the SHPO/THPO, potentially affected Tribal Nations or NHOs, and/or the Advisory Council, as appropriate, and will take any appropriate actions, including actions to resolve adverse effects.”<sup>14</sup> This process is modeled on the complaint procedures in the NPA, which were developed based on extensive stakeholder input.

The Program Comment also contains a “safety valve” that allows it to be revised based on experience gained as a result of its application. It states that “[t]hroughout the duration of this Program Comment, the Advisory Council and the Commission shall meet annually” and “will discuss the effectiveness of this Program Comment, including any issues related to improper implementation, and will discuss any potential amendments that would improve its

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<sup>11</sup> The Program Comment concludes that “[f]acilitating collocations on existing towers will reduce the need for new towers, thereby avoiding the impact of new tower construction on the environment and on locations with historical and cultural significance.” Program Comment § IV.A. at 5.

<sup>12</sup> *Id.* § IV.C. at 6-7.

<sup>13</sup> *Nationwide Programmatic Agreement for the Collocation of Wireless Antennas*, at 47 C.F.R. Part 1 Appendix B. The Collocation Agreement was most recently amended in May 2020.

<sup>14</sup> Program Comment § IV.D. at 7.



effectiveness.” And if ACHP requests, the FCC is required to invite Tribal and SHPO representative to these annual meetings.<sup>15</sup>

Finally, the Program Comment provides that if “the Advisory Council determines that the consideration of historic properties is not being carried out in a manner consistent with Section 106, the Advisory Council may withdraw this Program Comment” after consulting with the FCC, SHPOs, and Tribal representatives.<sup>16</sup>

***The Program Comment Correctly Assesses and Addresses the Minimal Likelihood of Adverse Effects.*** The Program Comment’s streamlined approach for Twilight Towers is soundly based on a record that demonstrated Twilight Towers have had minimal if any adverse effects on historic properties despite their being in place for at least 15 years. After reviewing that record, the FCC correctly concluded that “collocating new equipment on these towers after the passage of 15 to 19 years, subject to the conditions set forth in this Program Comment, is unlikely to cause new adverse effects.”<sup>17</sup> Conversely, it correctly determined, again based on the record, that the burdens that are currently imposed by subjecting each collocation on a Twilight Tower to a Section 106 review would frustrate the use of these structures for “critical telecommunications infrastructure.”<sup>18</sup>

***A Program Comment is a Lawful and Appropriate Mechanism for Achieving the Dual Policy Goals of Opening Up Twilight Towers to Collocation and Protecting Historic Properties.*** Section 800.14(e) of the ACHP’s rules provides that where a defined federal activity has minimal potential to affect or adversely affect historic properties, agencies may request that the ACHP approve a Program Comment on a category of undertakings. The Program Comment enables the agency to apply the Program Comment’s procedures to those qualifying undertakings, rather than conduct an individual review pursuant to Section 106 of the NHPA for each separate undertaking. If ACHP approves the Program Comment, the agency meets its obligation under

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<sup>15</sup> *Id.* § IV.F.3. at 8-9.

<sup>16</sup> *Id.* § IV.F.2 at 8.

<sup>17</sup> *Id.* § IV.A. at 5.

<sup>18</sup> *Id.* § I at 2.



ACHP rules by following the procedures set forth in that Program Comment. The ACHP has entered into several such agreements with other federal agencies governing the construction of communications facilities on federal lands.<sup>19</sup>

The Program Comment governing Twilight Towers meets the requirements of the ACHP's rules. It is thus a lawful and appropriate vehicle for allowing collocations on those towers that will in turn help to accelerate broadband deployment and benefit the public.

The FCC also fully satisfied its obligation under ACHP rules to arrange for public participation and input. The Program Comment details the FCC's extensive outreach to and communications with SHPOs, THPOs, Tribes and others, both before and after issuing the draft Program Comment. Beginning as far back as 2014, the FCC engaged with each of these groups to develop solutions to the Twilight Towers issue, holding numerous face-to-face meetings, sponsoring webinars and workshops, and participating in conferences over the course of the next three years. These outreach efforts included numerous consultations with Tribal representatives in locations across the nation, including on Tribal reservations. And, after releasing the draft Program Comment in December 2017 and seeking comment from stakeholders, the FCC continued its wide-ranging outreach. Over the next two and a half years it held additional meetings with representatives of Tribes and national organizations representing historic preservation interests.<sup>20</sup>

In short, the FCC took multiple steps to ensure that Tribal interests were fully informed throughout its development of the Program Comment for ACHP consideration. Tribes had ample opportunities to engage with the FCC, and the Program Comment the FCC has presented to the ACHP demonstrates that the FCC took Tribal interests into account. For example, the expanded complaint process and the annual review of the Program Comment's effectiveness

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<sup>19</sup> See, e.g., Program Comment for Streamlining Section 106 Review for Wireless Communications Facilities Construction and Modification Subject to Review Under the FCC Nationwide Programmatic Agreement and/or the Nationwide Programmatic Agreement for the Collocation of Wireless Antennas (2009). This Program Comment was recently amended to include an additional federal agency. 85 Fed. Reg. 53830 (Aug. 31, 2020).

<sup>20</sup> Program Comment § II at 2-3; Summary of Public Outreach at 1-3.



each demonstrate the FCC's commitment to protect the interest of Tribes in preserving historic properties of religious and cultural significance to them.

The time is ripe for the ACHP to act. The Program Comment is the culmination of more than six years of effort by the FCC to work cooperatively with interests representing SHPOs, THPOs, Tribes, and wireless providers to find a reasonable and balanced solution that will lead to more effective use of Twilight Towers to benefit the public by improving the nation's wireless communications networks. Over those many years, all stakeholders have had ample opportunity to propose solutions to a lingering regulatory obstacle that has frustrated improved use of this infrastructure. The Program Comment resolves a barrier to broadband deployment that has existed for more than 15 years, and in a way that fully protects historic preservation interests.

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For the above reasons, CTIA urges the ACHP to approve the Program Comment as drafted.

Respectfully submitted.

/s/ Kara Graves

Kara Graves

Assistant Vice President, Regulatory Affairs