

Hon. Aimee K. Jorjani
Chairman

Rick Gonzalez, AIA
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Executive Director



October 7, 2020

Honorable Brendan Carr
Commissioner
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Ref: Request for a Program Comment to Address Collocations on Twilight Towers

Dear Commissioner Carr:

On August 24, 2020, the Federal Communications Commission (FCC) requested that the Advisory Council on Historic Preservation (ACHP) issue a program comment pursuant to 36 CFR § 800.14(e) to address collocations of wireless equipment on “twilight towers.” These are towers that were constructed between March 16, 2001, and March 7, 2005, and that cannot be documented to have undergone review under Section 106 of the National Historic Preservation Act (Section 106).

Section 106 requires federal agencies to take into account the effects of projects they carry out, license, or financially assist on historic properties, and provide the ACHP a reasonable opportunity to comment. Federal agencies discharge these duties through either the individual project review process at 36 CFR § 800.3 through § 800.7 or through an alternate process that is developed in consultation with and approved by the ACHP. One such alternate process is called a “program comment.”

Through a program comment, a federal agency can request that the ACHP comment on a category of projects (undertakings) in lieu of the agency carrying out individual Section 106 reviews on a case-by-case basis. The ACHP must either issue a program comment or decline to do so within 45 days of the request (assuming the requesting agency does not provide an extension or the ACHP requests further information). 36 C.F.R. § 800.14(e)(5). This action is taken by vote of the full membership of the ACHP. When the ACHP declines to comment, the requesting agency continues its Section 106 compliance as it had before the request. A new request, either by the agency or by the ACHP on its own initiative, would restart the mentioned 45-day clock.

The ACHP members gave careful consideration to the FCC’s August 24th request and decided by a near-unanimous vote on October 5, 2020 to decline to comment. In reaching this decision, ACHP members agreed that achieving resolution on the use of twilight towers is more important

than ever, given the increasing reliance on broadband access for telehealth, remote learning and public safety. The ACHP has worked to advance the nation's broadband goals as a member of the Broadband Workgroup, and has worked specifically with FCC to advance its own goals. Recently the ACHP worked collaboratively with FCC staff, leading to the FCC's "Section 106 Emergency Authorizations During Covid-19," Public Notice, DA 20-668, Rel. June 25, 2020. Similarly, the ACHP is committed to assisting the FCC in developing an appropriate solution to enable collocation of additional antennas on these existing structures. Given that 46,000 towers were approved and constructed in 2019 (according to CTIA), I believe it an entirely reasonable and achievable goal to develop a simple process now, in collaboration with FCC, that would enable collocations on 4,000 – 5,000 in a timely manner.

However, the ACHP membership believed that the program comment as submitted was substantively deficient, as was the process the FCC pursued leading to its submission to the ACHP. In declining to comment, the members did not believe the ACHP had the time needed to work with FCC and consulting parties to revise the proposal in way that would provide a more appropriate resolution of the issues.

A fundamental concern among states and Indian tribes, as well as many of our members, was the lack of sufficient measures to consider past and ongoing effects to historic properties that may have occurred as a result of the original construction of these towers, and the lack of clear measures to resolve such effects when or if they are identified. The need for such measures were underscored by the indications we received in consultation with states and Indian tribes that numerous twilight towers which may be having lasting effects to historic properties are known, and efforts to resolve such effects have been unsuccessful. The members cited several other reasons for these conclusions, including the long-standing controversial nature of the issue and appropriateness of utilizing a Program Comment for such issues; the lack of information on the tower numbers, locations, and potential for past or existing adverse effects to historic properties; questions on how the FCC would know when to apply said program comment lacking such information; the need for further detail on how complaints about the underlying twilight towers would be processed and resolved in a timely fashion; and the limited coordination with the ACHP since the FCC published a public notice on this matter in December 2017 and met with its members in March 2018.

At the same time, the ACHP members expressed their commitment to working closely with the FCC and stakeholders to develop a revised program comment within a reasonable timeframe. Should the FCC accept the ACHP's offer to collaborate, I would urge the FCC to consider a revised program comment that contains a streamlined process for reviewing the underlying twilight towers when they are being proposed for collocation, along with a detailed process for State and Tribal Historic Preservation Officers, Indian tribes, Native Hawaiian organizations, and the general public to file complaints about specific twilight towers and have such complaints resolved in a timely fashion. The membership proposed 90 days to work on this effort, to start from the FCC's acceptance of our offer, with a vote on a revised program comment to follow shortly afterward.

Should the FCC determine it appropriate to engage us under such a plan, the ACHP requests that the FCC provide additional information on the following:

- how would it would determine when to apply a program comment to collocations on twilight towers when it lacks information on the numbers and locations of such twilight towers; and
- specific details on how the FCC would process and, in a timely fashion, resolve complaints about twilight towers, and how it would ensure such a process is well-known and understood by State and Tribal Historic Preservation Officers, Indian tribes, Native Hawaiian organizations, and the general public.

As Chairman, I am prepared to appoint a subgroup of ACHP members to participate in the consultation process if the FCC accepts this offer. I believe this would expedite the development of an acceptable program comment and ensure effective communication as we move forward.

The membership and I am very supportive of the FCC's broadband goals. We take infrastructure needs seriously and cannot ignore the potential of these 4,000 - 5,000 towers for meeting today's expanded demand. The ACHP is committed to assisting the FCC in creating a solution that reflects the need for broadband access while including reasonable consideration of preservation issues. We look forward to receiving a positive response from you regarding a path forward.

Sincerely,



Aimee K. Jorjani
Chairman