

**U.S. House of Representatives**  
**Committee on Natural Resources**  
**Washington, DC 20515**

March 22, 2018

Mr. Milford Wayne Donaldson  
Chairman  
Advisory Council on Historic Preservation  
401 F Street NW, Suite 308  
Washington, D.C. 20001

Dear Mr. Donaldson:

On December 14, 2017, the Federal Communications Commission (FCC) released its Draft Program Comment for its Review of Collocations on Certain Towers Constructed Without Documentation of Section 106 Review.<sup>1</sup> If adopted, the Draft Program Comment seeks to exempt many collocations of small cell antennas on “Twilight Towers” from duplicative review under Section 106 of the National Historic Preservation Act (Section 106 Review).<sup>2</sup> The adoption of this draft program comment 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.<sup>3</sup>

New infrastructure will be a key facet in the modernization of U.S. wireless networks and is likely to include hundreds of thousands of small cells, along with collocated wireless facilities for microwave backhaul technology.<sup>4</sup> All of these are vital for accommodating increased consumer demand and for supporting 5G and next generation wireless services.<sup>5</sup> A significant number of wireless facilities will need to be collocated on existing cell towers built between 2001 and 2005 during a period of ambiguous regulatory guidance.<sup>6</sup> These “Twilight Towers”

---

<sup>1</sup> See, e.g., *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 Red 10715, 10725 (2017), [https://apps.fcc.gov/edocs\\_public/attachmatch/FCC-17-165A1\\_Rcd.pdf](https://apps.fcc.gov/edocs_public/attachmatch/FCC-17-165A1_Rcd.pdf).

<sup>2</sup> *Id.*

<sup>3</sup> *Joint Reply Comments of CTIA and the Wireless Infrastructure Association*, WT Docket No. 17-79 (Feb. 26, 2018), available at [https://ecfsapi.fcc.gov/file/1022627348764/CTIA%20and%20Wireless%20Infrastructure%20Association%20Joint%20Twilight%20Towers%20Reply%20Comments%20\(2.26.18\).pdf](https://ecfsapi.fcc.gov/file/1022627348764/CTIA%20and%20Wireless%20Infrastructure%20Association%20Joint%20Twilight%20Towers%20Reply%20Comments%20(2.26.18).pdf).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> See *Supra* note 1, See also: Letter from Brian Josef, CTIA—The Wireless Association, and D. Zachary Champ, Wireless Infrastructure Association, to Chad Breckinridge, FCC (June 4, 2015), <https://ecfsapi.fcc.gov/file/103061251223001/lt.%206.04.2015%20PCIA.CTIA.pdf>.

Mr. Milford Wayne Donaldson

March 22, 2018

Page 2

were built at a time where consultation with State Historic Preservation Officers or Tribal Nations was permitted, but not expressly mandated, which created confusion until the 2004 Nationwide Programmatic Agreement went into effect, explicitly requiring such consultation.<sup>7</sup>

For the past 17 years, wireless providers have faced regulatory burdens when collocating infrastructure on Twilight Towers because of this ambiguity. Presently, they are precluded from collocating on these existing towers unless they receive assistance from the FCC to secure approvals for collocation post-construction on an ad hoc, tower-by-tower basis.<sup>8</sup> In recent years the overall cost of completing the Section 106 review process has increased significantly.<sup>9</sup> This complex process for gaining clearance for collocation on Twilight Towers only further increases the costs and burdens to improve wireless coverage.<sup>10</sup>

The December 14, 2017 Draft Program Comment seeks to help relieve these regulatory burdens and address ambiguities while continuing to promote the preservation of historic properties. As noted by the FCC, collocations on Twilight Towers will unlikely have any further impacts on historic properties given that these towers have existed for 12 to 16 years, mostly without reported complaints filed with the FCC.<sup>11</sup> In addition, because Twilight Towers are preexisting, the need for new tower construction will be significantly reduced, minimizing impacts on the environment and historic sites.<sup>12</sup>

Moreover, the Draft Program Comment proposes an opportunity for tower-specific mitigation if a historic property is adversely affected by collocation on a Twilight Tower.<sup>13</sup> The Draft Program Comment maintains the same procedures and standards for Twilight Towers the FCC and Advisory Council on Historic Preservation currently use for collocations on towers constructed prior to March 16, 2001.<sup>14</sup> The Draft Program Comment also confirms the Section 106 consultation rights of Tribal Nations and Native Hawaiian Organizations, preserving their rights to seek government-to-government consultation and provides legal remedies if a Twilight Tower owner intentionally adversely affected a historic property with intent to avoid Section 106 review.<sup>15</sup>

---

<sup>7</sup>*Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process*, Report and Order, 20 FCC Rcd 1073 (2004) (March 7, 2005), available at [https://apps.fcc.gov/edocs\\_public/attachmatch/FCC-04-222A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/FCC-04-222A1.pdf).

<sup>8</sup>*See Supra* note 1.

<sup>9</sup>*See, e.g., Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, Notice of Proposed Rulemaking and Notice of Inquiry, 32 FCC Rcd 3330, 3344 (2017), available at [https://apps.fcc.gov/edocs\\_public/attachmatch/FCC-17-38A1\\_Rcd.pdf](https://apps.fcc.gov/edocs_public/attachmatch/FCC-17-38A1_Rcd.pdf), *See also: Joint Comments of CTIA and the Wireless Infrastructure Association*, WT Docket No. 17-79, at 11 (June 15, 2017), available at <https://ecfsapi.fcc.gov/file/10615613123176/170615%20FINAL%20WIA%20CTIA%20Joint%20Comments%20on%20Tribal%20Issues.pdf>, *See also: ACCENTURE, IMPACT OF FEDERAL REGULATORY REVIEWS ON SMALL CELL DEPLOYMENT, ACCENTURE STRATEGY*, (2018), available at [https://www.ctia.org/docs/default-source/default-document-library/small-cell-deployment-regulatory-review-costs\\_3-12-2018.pdf](https://www.ctia.org/docs/default-source/default-document-library/small-cell-deployment-regulatory-review-costs_3-12-2018.pdf).

<sup>10</sup>*Id.*

<sup>11</sup>*See Supra* note 1 at 10722.

<sup>12</sup>*Id.* at 10727.

<sup>13</sup> *Id.* at 10728-10729, 10724.

<sup>14</sup> *Id.* at 10728-10729

<sup>15</sup> *Id.*

Mr. Milford Wayne Donaldson

March 22, 2018

Page 3

For these reasons, we strongly urge the Advisory Council on Historic Preservation to expeditiously adopt and implement the Draft Program Comment. Improving our nation's infrastructure through the rapid deployment of modernized wireless networks is an important endeavor. We must also ensure that such improvements appropriately uphold protections for the environment and historic properties which are reflected in the Draft Program Comment.

Sincerely,



Rob Bishop  
Chairman  
Committee on Natural Resources



Bruce Westerman  
Chairman  
Subcommittee on Oversight and  
Investigations