



Federal Communications Commission
Washington, D.C. 20554

March 11, 2003

DA-03-615

Mr. William J. Sill
Wilkinson Barker Knauer, LLP
2300 N. Street, NW
Suite 700
Washington, DC 20037-1128

Re: Section 106 Review of an FCC Undertaking

FCC Licensee/Applicant: Syracuse SMSA Limited Partnership (Verizon Wireless)
Location of Project: Woodfield Road site near Cazenovia, New York
FCC Ref. No.: 2000003061

Dear Mr. Sill:

You have asked the Commercial Wireless Division of the Wireless Telecommunications Bureau ("Division") to consider the impact that the proposed construction of a tower by Syracuse SMSA Limited Partners ("SMSA") in Cazenovia, New York, will have upon historic properties pursuant to the National Historic Preservation Act of 1966 ("NHPA").¹ The New York State Office of Parks, Recreation and Historic Preservation, which is the New York State Historic Preservation Officer ("New York SHPO"), has recommended that the tower construction would adversely affect a historic property. Because the record does not support the New York SHPO's recommendation, we conclude that the proposed construction will have no adverse effect on historic properties. We therefore dismiss the license application filed by SMSA on January 30, 2002.²

SMSA proposes to construct an unlit 185-foot grey lattice tower on Woodfield Road, Madison County, Cazenovia, New York.³ In anticipation of constructing the tower, SMSA contacted the New York SHPO, initiating the Section 106 NHPA review for the project.⁴ SMSA and the New York SHPO agreed upon an initial half-mile area of potential effects.⁵ The New York SHPO, however, also requested that SMSA consider potential effects upon the Lorenzo Property, a 19th-century federal style mansion constructed between 1806 and 1809, located across Lake Cazenovia, approximately 1.5 miles from the

¹ See 16 U.S.C. § 470f (2002).

² FCC Form 601, Syracuse SMSA Limited Partnership, FCC File No. 0000747639, filed January 30, 2002 ("Form 601").

³ FCC Environmental Assessment, Syracuse SMSA Limited Partnership, at 1 ("Environmental Assessment") (filed as an attachment to Form 601).

⁴ Environmental Assessment at 2-3. See 36 C.F.R. § 800.3; Memorandum from John Fowler, Advisory Council on Historic Preservation, to Federal Communications Commission, State Historic Preservation Officers and Tribal Historic Preservation Officers, dated September 21, 2000, regarding *Delegation of Authority for the Section 106 Review of Telecommunications Projects*.

⁵ Correspondence from Michael F. Lynch, New York SHPO, to Ava H. Berland, Federal Communications Commission, dated December 18, 1998; Correspondence from Michael F. Lynch, New York SHPO, to Robert Burgdorf, counsel for SMSA, dated April 9, 1999; Environmental Assessment at 3; see 36 C.F.R. § 800.4(a)(1).

proposed tower site.⁶ The Lorenzo Property, owned and operated as a museum by the state of New York, is listed on the National Register of Historic Places (“National Register”).⁷

Based upon reports from cultural resources consultants, SMSA informed the New York SHPO that it believed the tower would have no adverse effect upon historic properties. After correspondence among SMSA, its consultants, and the New York SHPO, the New York SHPO recommended to the Federal Communications Commission (“FCC”) or (“Commission”) that the proposed tower would adversely affect the Lorenzo Property by altering its viewshed.⁸ Explaining the basis for his recommendation, the New York SHPO stated: “Lorenzo was built by John Lincklaen, founder of the Village of Cazenovia and agent for the Holland Land Company, a major developer of upstate territory. Lincklaen was an important man of his time, and as such, his home was placed at the prime location within the Land Company’s holdings, with a view up Cazenovia Lake. *Its scale, design and detail were uncommon for the time, and its setting contributes strongly to its significance as the home of an important nineteenth century citizen and land developer.*”⁹

SMSA and the New York SHPO disagreed over whether, in fact, the proposed tower would adversely affect the Lorenzo Property. On January 30, 2002, SMSA filed an application with an attached Environmental Assessment asserting that the proposed facility would have no adverse effect on the Lorenzo Property.¹⁰ On June 24, 2002, the New York SHPO wrote a letter to the Commission disputing SMSA’s assertion of no adverse effect.¹¹ Thereafter, on July 2, 2002, the National Trust for Historic Preservation filed a comment in support of the New York SHPO’s position.¹² The New York SHPO then filed a petition to deny opposing the SMSA application and Environmental Assessment.¹³

On December 16, 2002, after reviewing the voluminous record in its entirety, the Division completed a report proposing that “given the weak evidence that the viewshed in which the tower is to be located should be considered a characteristic that qualifies Lorenzo for inclusion in the National Register and the limited visual effect of the tower, the Commission can find that the undertaking will not have an Adverse Effect on Lorenzo.”¹⁴ Thereafter, on January 7, 2003, the Division submitted the Report to the Advisory Council on Historic Preservation (“ACHP”), pursuant to Section 800.5(c)(2) of the ACHP’s rules.¹⁵ Although ACHP acknowledged by telephone that it had received the Cazenovia Report, neither ACHP nor any other party has commented thereon.

⁶ Correspondence from Richard Lord, New York SHPO, to Robert Burgdorf, counsel for SMSA, dated October 20, 1999 (“October 20, 1999 Correspondence”).

⁷ National Register of Historic Places Listing, Cazenovia, New York.

⁸ October 20, 1999 Correspondence; Correspondence from Rose Crellin, Attorney, Commercial Wireless Division to Don Klima, Advisory Council on Historic Preservation, dated June 23, 2000.

⁹ Correspondence from Richard M. Lord, New York SHPO, to Dan Abeyta, Attorney, Commercial Wireless Division, dated July 5, 2002 (“July 5, 2002 Correspondence”) at 3.

¹⁰ See Public Notice dated January 30, 2002, Report Number 1085 (ULS No. 0000747639).

¹¹ Correspondence from Richard M. Lord, New York SHPO, to Dan Abeyta, Attorney, Commercial Wireless Division, dated June 24, 2002, at 1.

¹² See Correspondence from Marilyn Fenollosa, Regional Attorney, National Trust for Historic Preservation, to Dan Abeyta, Attorney, Commercial Wireless Division, dated July 2, 2002.

¹³ July 5, 2002 Correspondence.

¹⁴ Proposed Finding of No Adverse Effect at the Woodfield Road Site Near Cazenovia, New York dated December 16, 2002 (“The Report”) at 14-15.

¹⁵ Correspondence from Dr. Amos J. Loveday, Federal Communications Commission Historic Preservation Specialist, to Don Klima, Deputy Director, ACHP, dated January 7, 2003, also sent to the New York SHPO and the National Trust. We note that we submitted the Cazenovia Report for the purpose of soliciting the ACHP’s views,

The Report concludes that the evidence does not support the recommendation that the tower would adversely impact the setting of the Lorenzo Property. First, the Report observes that it is doubtful whether the setting of Lorenzo is a characteristic qualifying it for listing on the National Register.¹⁶ For one thing, the 1970 National Register Nomination form for the Lorenzo Property states that the property was nominated for its commercial and architectural characteristics, not for its viewshed ("setting").¹⁷ Noting that qualifying features not identified at the time of nomination or recognized subsequent to nomination must be considered in assessment of effect, the Report next considers whether the historic record supports the New York SHPO's assertion that John Lincklaen considered the viewshed in the proposed area of construction an important feature. Based on a review of available documents, the Report questions assertions that John Lincklaen intended to protect the property's viewshed. The record, for example, contains no direct evidence supporting the assertion that Lincklaen secured passage of a law protecting the Lorenzo Property's view of the lake. Nor does the record suggest that Lincklaen attempted to enforce such a wish. Indeed, other manmade structures, many of which were constructed at the direction of Lincklaen, altered the viewshed during his lifetime, and there is no indication of Lincklaen's opposition.¹⁸ The Report further notes the improbability that Lincklaen, who was a land agent, would have sought preservation of the area across the lake in its original form; rather, a person whose business it was to sell land in the area would likely have encouraged development.¹⁹ Additionally, the Report points out that the proposed tower would be located across the lake, meaning that the immediate view of the lake from the Lorenzo Property would not be affected. Finally, the Report observes that the current owner of the Lorenzo Property, the New York Office of Parks, Recreation, and Historic Preservation, which is also the home agency for the New York SHPO, has stressed that the Lorenzo Property is being restored to its 1900-1916 appearance, thereby casting doubt on the importance that agency places on the 19th century setting.²⁰

Second, even if the setting were considered a qualifying characteristic, the Report concludes that the proposed tower would not have an adverse effect upon the Lorenzo Property for any reason enumerated in the ACHP rules.²¹ Due to the tower's physical characteristics, its distance from the Lorenzo Property, the fact that it would be partially shielded from view by trees, and the presence of other modern constructions in its vicinity (including utility lines and a highway), the tower, the Report concludes, would present a minimal presence at the Lorenzo Property. Thus, such presence would not diminish the integrity of the Lorenzo location or setting in such a way as to alter characteristics that qualify the site for inclusion in the National Register of Historic Places.²² Moreover, the Report finds no

and that the Commission need not proceed in accordance with the determination of the ACHP. *See National Mining Association v. Slater*, 167 F.Supp.2d 265, 289 (D.D.C. 2001).

¹⁶ "An adverse effect is found when an undertaking may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the National Register in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association." 36 C.F.R. § 800.5(a) The rule continues, "Consideration shall be given to all qualifying characteristics of a historic property, including those that may have been identified subsequent to the original evaluation of the property's eligibility for the National Register. Adverse effects may include reasonably foreseeable effects caused by the undertaking that may occur later in time, be further removed in distance or be cumulative."

¹⁷ The Report at 9.

¹⁸ *Id.* at 10 and n6.

¹⁹ *Id.* at 10.

²⁰ *Id.* at 11.

²¹ *See* 36 C.F.R. § 800.5

²² The Report at 12-13.

evidence that the tower would have an effect on any other property listed or eligible for listing in the National Register.²³

For the reasons stated in the Report, we adopt the proposed finding that the proposed tower construction will have no adverse effect upon Lorenzo or any other historic property. We therefore need not analyze whether acceptable alternative sites are available, nor need we (nor the Parties) consider mitigation.²⁴ Moreover, because we find no adverse effect on historic properties under the NHPA, and because the Environmental Assessment shows no other potential significant environmental effect, a Finding of No Significant Impact is not required for this construction.²⁵ We therefore dismiss as improvidently filed the application on Form 601 filed January 30, 2002, by SMSA, and we dismiss the responsive petition to deny.²⁶

For the reasons stated above, pursuant to Section 1.1306 of the Commission's rules,²⁷ it is ordered that the application on FCC Form 601 filed on January 30, 2002, by SMSA, and the Petition to Deny filed by the New York SHPO on July 5, 2002, are hereby dismissed.

Sincerely,

Jeffrey S. Steinberg
Deputy Chief,
Commercial Wireless Division
Wireless Telecommunications Bureau

cc: Richard Lord, Historic Sites Restoration Coordinator, New York State Office of Parks,
Recreation, and Historic Preservation
Don Klima, Deputy Director, Advisory Council on Historic Preservation
Marilyn Fenollosa, Regional Attorney, National Trust for Historic Preservation

²³ *Id.* At 6-7.

²⁴ Application of Scana Communications, Inc., 16 FCC Rcd. 9990, 9995 ¶ 11 (2001). *See also* 36 C.F.R. § 800.5 (d)(1) and 36 C.F.R. § 800.5(d)(2) (mitigation required with respect to adverse effect findings only).

²⁵ *See* 47 C.F.R. §§ 1.1306(a) (actions that do not have a potential significant environmental effect under Section 1.1307 are categorically excluded from environmental processing), 1.1307(a) (a licensee or applicant is required to submit an Environmental Assessment when construction "may significantly affect the environment"); *see also* Fact Sheet Regarding the March 16, 2001 Antenna Collocation Programmatic Agreement, 17 FCC Rcd. 508, 519-520 (Mass Media Bur. and Wireless Tel. Bur. 2002) (an Environmental Assessment is not required when a SHPO (or the Commission) concurs with the tower constructor that the project will not adversely affect historic properties).

²⁶ We note that the petition to deny and comments on the Environmental Assessment were untimely filed under the Commission's rules. *See* 47 C.F.R. § 1.939. Nonetheless, we have fully considered these pleadings in our review under the NHPA.

²⁷ 47 C.F.R. § 1.1306.