



FEDERAL COMMUNICATIONS COMMISSION
Wireless Telecommunications Bureau
Competition and Infrastructure Policy Division
445 12th Street, SW
Washington, DC 20554

June 16, 2016

VIA FIRST CLASS MAIL AND EMAIL

Mr. Tim Romanski
Sierra Tower Partners, LLC
15739 Churchill
Southgate, MI 48195

Re: VIOLATION OF FCC ENVIRONMENTAL RULES

Dear Mr. Romanski:

This letter pertains to our findings that Sierra Tower Partners, LLC (Sierra) failed to comply with the Commission's regulations implementing the National Environmental Policy Act of 1969 (NEPA) and other federal environmental statutes,¹ related regulations pertaining to the Antenna Structure Registration (ASR) system,² and its regulation requiring truthful and accurate statements.³ The Wireless Telecommunications Bureau has determined that Sierra violated Sections 1.17, 1.1307, 1.1311, and 17.4 of the Commission's rules by submitting an application to register a tower in Greenwell Springs, Louisiana, and certifying compliance with the Commission's environmental regulations when it had not completed the required environmental review.⁴ By this letter, we apprise Sierra Towers of the implications of failing to comply with Commission regulations in the future.

¹ See 47 C.F.R. §§ 1.1301 *et seq.*; see also 42 U.S.C. §§ 4321-4335. NEPA requires that federal agencies consider the environmental effects of their major federal actions before taking action, including issuing permits, licenses, or approvals. See also the National Historic Preservation Act, 54 U.S.C. §§ 300101 *et seq.*

² See 47 C.F.R. Part 17.

³ 47 C.F.R. § 1.17.

⁴ See 47 C.F.R. §§ 1.17, 1.1307, 1.1311, 17.4.

Regulatory Requirements

Under the Commission's rules, an applicant must consider, prior to initiating construction or deployment, whether the facility it proposes to build or use may have a significant effect on the environment. If so, the applicant must prepare an EA in accordance with the Commission's rules.⁵ Specifically, an applicant must prepare an EA and submit the EA with its application if the proposed facility meets any of several criteria specified in the Commission's rules – including construction in a floodplain⁶ – and it may not begin construction until the Commission's environmental processing is completed.⁷ The Commission's ASR rules also place a separate obligation to submit an EA with the ASR application if an EA is required under the Commission's environmental rules.⁸

Section 1.1307(a)(4) of the rules requires applicants to consider, prior to initiating construction or deployment, whether their proposed facilities would affect properties listed or eligible for listing in the National Register of Historic Places.⁹ In considering effects on these properties, Section 1.1307(a)(4) requires applicants to follow the prescribed procedures set forth in the rules of the Advisory Council on Historic Preservation (Advisory Council),¹⁰ as modified by the Nationwide Programmatic Agreement for the Collocation of Wireless Antennas (Collocation Agreement)¹¹ and the Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process (NPA).¹² These agreements tailor and streamline the review and consultation procedures routinely

⁵ 47 C.F.R. §§ 1.1307, 1.1311(a).

⁶ See 47 C.F.R. § 1.1307(a) (specifying eight criteria that require preparation of an EA), 1.1307(b) (EA required if human exposure to radio frequency emissions will exceed certain limits), 1.1307(d) Note (processing bureau shall require an EA for new and certain modified antenna structures over 450 feet in height). In addition, the processing bureau shall require an EA if it determines, in response to an interested person's allegation or on its own motion, that an otherwise categorically excluded facility may have a significant environmental impact. 47 C.F.R. § 1.1307(c), (d).

⁷ 47 C.F.R. § 1.1312(b). The contents of an EA are described in 47 C.F.R. § 1.1311. See also 47 C.F.R. § 1.1308 (discussing the Commission's process for reviewing EAs).

⁸ See 47 C.F.R. § 17.4(c)(7) (if an EA is required under Section 1.1307, the ASR applicant shall attach the EA to its environmental submission), 17.4(c)(8) (the processing Bureau shall resolve all environmental issues in accordance with the environmental regulations before the tower owner may complete the ASR application).

⁹ 47 C.F.R. § 1.1307(a)(4).

¹⁰ 36 C.F.R. Part 800.

¹¹ 47 C.F.R. Pt. 1, App. B; see *Wireless Telecommunications Bureau Announces Execution of Programmatic Agreement with respect to Collocating Wireless Antennas on Existing Structures*, Public Notice, 16 FCC Rcd 5574 (WTB 2001), *recon. denied*, 20 FCC Rcd 4084 (WTB 2005).

¹² 47 C.F.R. Pt. 1, App. C; see *Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process*, Report and Order, 20 FCC Rcd 1073 (2004), *clarified*, 20 FCC Rcd 17995 (2005), *aff'd*, *CTIA-The Wireless Ass'n. v. FCC*, 466 F.3d 105 (D.C. Cir. 2006) (*NPA Report and Order*). Under the NHPA and the Advisory Council's implementing regulations, the Advisory Council may approve program alternatives that tailor a federal agency's historic preservation review and consultation procedures to the particular circumstances of the agency's program or that exempt from historic preservation review actions that are unlikely to affect historic properties. See 54 U.S.C. § 304108 *et seq.*; 36 C.F.R. § 800.14(b), (c).

required by the National Historic Preservation Act of 1966 (NHPA)¹³ and the implementing regulations issued by the Advisory Council.

Sierra's Conduct

Sierra has failed to comply with the Commission's environmental and ASR regulations.¹⁴ Specifically, Sierra incorrectly certified on its completed ASR application that the Greenwell Springs tower would not have a significant environmental impact, even though (1) the tower would be built in a floodplain and Sierra had not submitted an EA for the Commission's review and processing, and (2) Sierra had not completed other aspects of the required environmental and historic preservation review.

On January 31, 2014, Sierra submitted an ASR application via FCC Form 854 for a proposed site in Greenwell Springs, Louisiana. In connection with that application, Sierra certified that it had completed an environmental review, that the tower did not require an EA under Section 1.1307, and that the project would not have a significant environmental impact. On March 21, 2014, based on Sierra's certification, the Wireless Telecommunications Bureau (Bureau) granted its application and issued a registration.¹⁵

On July 3, 2014, Sierra submitted, with no explanation and without any reference to the earlier application that had already been granted, another application for registration for the same tower.¹⁶ With this application, Sierra submitted an EA showing that the tower would be located in a floodplain. In addition, documentation attached to the EA demonstrates that Sierra had not completed other aspects of the environmental and historic preservation review prior to certifying in its initial application that the tower would not have a significant environmental impact. After initially issuing a Finding of No Significant Impact

¹³ 54 U.S.C. § 300101 *et seq.* The NHPA requires that a federal agency consider the effects of its federal undertakings, including actions that it authorizes or approves, on historic properties prior to issuing federal licenses, permits or approvals. *See* 54 U.S.C. §§ 306108, 300320. This review is commonly referred to as "Section 106 Review" because the provision requiring the review was originally enacted as Section 106 of the NHPA. In considering such effects, the NHPA further requires the federal agency to consider the views of expert agencies. Specifically, the NHPA requires the federal agency to consider the views of the Advisory Council, which is the federal agency responsible for implementing the NHPA; the appropriate State Historic Preservation Officer; and, if historic properties of religious or cultural significance to federally recognized Tribal Nations or Native Hawaiian organizations may be affected, their representatives. *See* 54 U.S.C. §§ 302104, 302706, 306108, 304101. As authorized by the Advisory Council, the Commission's environmental rules delegate to its licensees, permittees, and applicants initial responsibility for identifying historic properties and evaluating the effects that their proposed facilities may have on such properties, but the Commission remains ultimately responsible for ensuring that the Section 106 process occurs in accordance with applicable statutory and regulatory provisions, as well as for government-to-government consultation with federally recognized Tribal Nations. *See* 47 C.F.R. § 1.1307(a)(4); *see also* 36 C.F.R. § 800.2(a)(3); *NPA Report and Order*, 20 FCC Rcd at 1076-77 ¶ 5.

¹⁴ *See* 47 C.F.R. §§ 1.1301 *et seq.*, 17.1 *et seq.*

¹⁵ *See* ASR Registration No.1290968.
<http://wireless2.fcc.gov/UlsApp/AsrSearch/asrRegistration.jsp?regKey=2690485>.

¹⁶ *See* A0908561, ASR Application #2.

(FONSI) and granting the second application,¹⁷ Bureau staff discovered the duplication and rescinded the FONSI, and returned the second application to pending status for investigation.¹⁸ Ultimately, the Bureau canceled the initial registration, reinstated the FONSI, and granted the second application.¹⁹

These facts demonstrate that in submitting its initial ASR application and certifying to no significant environmental impact, Sierra violated several of the Commission's rules. First, Sierra failed to submit an EA and certified that no EA was needed even though the tower was to be located in a floodplain, which necessitates an EA under Section 1.1307(c)(6).²⁰ In addition, at the time of this certification, Sierra had not completed the required review for several other potential significant environmental impacts, and therefore it could not have known whether an EA was required for these reasons.²¹ For example, although Sierra certified to no significant environmental impact on March 23, 2014, the Louisiana State Historic Preservation Officer did not find that the tower would not have an adverse effect on historic properties until March 25, 2014, and Tribal Nations did not complete their review until May 14, 2014.²² Similarly, the U.S. Fish and Wildlife Service did not provide its evaluation of impact on endangered species until after Sierra's certification.²³ Under these facts, Sierra's certification that the tower would have no significant environmental impacts constituted a material misstatement of fact without a reasonable basis for believing that the statement was correct and not misleading.²⁴

Based on the information Sierra provided, we find that Sierra violated the Commission's environmental and ASR regulations, as well as the regulation requiring truthful and accurate statements. Future violations may result in additional action, including the imposition of monetary penalties, pursuant to the Wireless Telecommunications Bureau's

¹⁷ *Id.*

¹⁸ *Id.*; see also Email from Competition and Infrastructure Policy Division to Tim Romanski, Sierra Partners, LLC (Sept. 17, 2014) (directing Sierra to cease any construction work related to the tower).

¹⁹ See ASR Registration Service Information, Public Notice, CWS 15-02 (Nov. 15, 2014) (memorializing cancellation of initial registration on October 9, 2014); ASR Registration No. 1293473. <http://wireless2.fcc.gov/UlsApp/AsrSearch/asrRegistration.jsp?regKey=269299> (showing issuance of FONSI on October 15, 2014, and grant of registration on October 16, 2014). Sierra completed construction on November 17, 2014.

²⁰ 47 C.F.R. § 1.1307(a)(6); see 47 C.F.R. §§ 1.1311(a), 17.4 (c)(7).

²¹ See 47 C.F.R. §§ 1.1307(a), 17.4(c)(8).

²² See 47 C.F.R. § 1.1307(a)(4) and Pt. 1, App. C; Letter from Pam Breaux, Louisiana State Historic Preservation Officer, to Thaddeus Nicholls, Field Scientist, Martin Environmental Solutions (March 25, 2014) (on file in the Division); Email from Kimberly S. Waldon, Cultural Director of the Chitimacha Tribe of Louisiana, to Lisa Heise, NEPA Specialist at Martin Environmental Solutions, Inc. (April 23, 2014) (on file in the Division); Letter from Dana Masters, Jena Band of Choctaw Indians, to Lisa Heise, Martin Environmental (May 14, 2014) (on file in the Division).

²³ See 47 C.F.R. § 1.1307(a)(3); Louisiana Ecological Services, Office of the United States Fish and Wildlife Service, ESA Technical Assistance Form (March 27, 2014).

²⁴ See 47 C.F.R. § 1.17(a)(2).

Mr. Tim Romanski

June 16, 2016

Page 5 of 5

authority under 47 C.F.R. § 0.111(a)(11) or via referral to the Commission's Enforcement Bureau. Furthermore, Sierra's conduct at issue in this letter may provide grounds for an upward adjustment in the amount of a penalty.

Please direct any questions regarding this letter to Erica Rosenberg (erica.rosenberg@fcc.gov, (202) 418-1343).

Sincerely,

Jeffrey S. Steinberg
Deputy Chief
Competition and Infrastructure Policy Division
Wireless Telecommunications Bureau

cc: Marjorie Spivak, Esq.
Bennet & Bennet
6124 MacArthur Boulevard
Bethesda, MD 20816