

Federal Communications Commission

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the matter of)
)
Cingular Wireless – Constructed Tower)
Section 106 of the National Historic)
Preservation Act)
Hobcaw Barony, South Carolina)
)
)
)

ERRATUM

Released: November 4, 2005

By the Deputy Chief, Spectrum and Competition Policy Division, Wireless Telecommunications Bureau:

On October 27, 2005 the Wireless Telecommunications Bureau, Spectrum and Competition Policy Division released a *Memorandum Opinion and Order* (“MO&O”), DA 05-2848, in the above-captioned proceeding. This Erratum corrects the MO&O by including the attachment, which is a Division letter to the South Carolina State Historic Preservation Office incorporating a report prepared by the Division’s Cultural Resources Specialist.

FEDERAL COMMUNICATIONS COMMISSION

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

Federal Communications Commission



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON DC 20554

May 31, 2005

Re: Constructed tower - Cingular Wireless, LLC,
Hobcaw Barony, Georgetown, South Carolina

Mary W. Edmonds
Deputy State Historic Preservation Officer
South Carolina State Historic Preservation Office
Archives & History Center
8301 Parklane Road
Columbia, SC 29223

Dear Ms. Edmonds:

The Spectrum and Competition Policy Division (“Division”)¹ of the Wireless Telecommunications Bureau, Federal Communications Commission (“Commission”), provides this proposed Section 106 finding to the South Carolina State Historic Preservation Officer (SCSHPO), regarding the above-referenced tower. Section 106 of the National Historic Preservation Act (“NHPA”)² requires federal agencies (*e.g.*, the Commission) to take into account the effects of their undertakings on historic properties and provide the Advisory Council on Historic Preservation (“Council”) a reasonable opportunity to comment on such undertakings. The Council is statutorily charged with promulgating rules to govern the Section 106 process,³ and the procedures implementing that process are set forth in Subpart B of the Council’s rules.⁴ The Council’s rules provide that, in performing Section 106 reviews, a Federal agency must, among other things, consult with the appropriate State Historic Preservation Officer (“SHPO”) or Tribal Historic Preservation Officer.⁵ These rules authorize applicants to undertake many of the tasks required by the Section 106 process, subject to the federal agency’s ultimate responsibility for all findings and determinations.⁶

¹ On November 24, 2003, responsibility for this matter was transferred from the Commercial Wireless Division (CWD) to the Spectrum and Competition Policy Division (SCPD) as part of a Wireless Telecommunications Bureau reorganization. As used herein, the term “Division” refers interchangeably to CWD before the reorganization or SCPD after the reorganization.

² 16 U.S.C. § 470f.

³ 16 U.S.C. § 470s (“The Council is authorized to promulgate such rules and regulations as it deems necessary to govern the implementation of section 106 of this Act in its entirety.”)

⁴ 36 C.F.R. §§ 800.3-800.13. The Subpart B rules set forth specific procedures for initiating the Section 106 process, identifying historic properties, assessing adverse effects on historic properties, and resolving adverse effects.

⁵ *See, e.g.*, 36 C.F.R. §§ 800.4(a), 800.5(a).

⁶ 36 C.F.R. § 800.2(a)(3); *see also* Memorandum from John Fowler, Advisory Council on Historic Preservation, to Federal Communications Commission, State Historic Preservation Officer and Tribal Historic Preservation Officers, (continued....)

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As discussed below, we propose to find, subject to the SCSHPO's comments, that the Cingular tower has no adverse effect on Hobcaw Barony or any other property listed or eligible for listing in the National Register of Historic Places ("historic properties"). This proposed finding is based on a review of the material submitted by Cingular, public comments, and a site visit by the Division's Cultural Resources Specialist. Consistent with Section 800.5(c) of the Council's rules,⁷ we request review from the SCSHPO within 30 days.

Background: In 1996, BellSouth Mobility, Inc., the predecessor-in-interest of Cingular Wireless, LLC ("Cingular"), constructed the 180-foot monopole at issue near Georgetown, South Carolina. The tower is located on the Hobcaw Barony estate ("Hobcaw Barony"), which is listed in the National Register of Historic Places ("National Register"). The noted 20th century financier, Bernard Baruch, combined several existing plantation properties into Hobcaw Barony and used it as a vacation retreat. The tower site is situated in a heavily wooded area of the estate with 40-60 foot pine trees. The tower is located about 50 feet from U.S. Route 17, a divided highway, which is a major north/south thoroughfare running from Myrtle Beach to Charleston, South Carolina.

On September 2, 2003, after reviewing the opening briefs in litigation regarding the Cingular tower,⁸ the Division initiated a review of BellSouth Mobility's determination and the SCSHPO's concurrence in 1996 that the tower has no effect on historic properties.⁹ In this letter, the Division directed Cingular to invite public comment regarding the tower's effect and to provide the Division a copy of its original submission to the SCSHPO, together with any supplementary material.¹⁰ On October 31, 2003, Cingular filed a study prepared by the historian who had prepared the original National Register nomination form for Hobcaw Barony, concluding that the tower has no adverse effect on historic properties.¹¹ Cingular published notice of the Section 106 review in the *Georgetown Times*. Several comments were received from members of the public.¹² On February 18, 2004, Cingular replied to the

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dated August 21, 2000, regarding *Delegation of Authority for the Section 106 Review of Telecommunications Projects*. In general, the Commission requires its applicants to undertake the steps necessary to determine whether an undertaking will have an adverse effect on historic properties. See 47 C.F.R. §§ 1.1307(a)(4), 1.1312. Due to the unique circumstances of this case, the Division is directly requesting the SCSHPO's views.

⁷ 36 C.F.R. § 800.5(c).

⁸ Petition for Writ of Mandamus, *In re: Tennant*, No. 02-1060 (D.C. Cir.).

⁹ See Letter from SCSHPO to R.S. Webb Associates (consultant for BellSouth Mobility, Inc.), dated September 10, 1996.

¹⁰ See Letter from Jeffrey Steinberg, Esq., Deputy Chief, Commercial Wireless Division to James Bugel, Cingular Interactive, and Anthony Lehy, Esq., American Tower Corporation, dated September 2, 2003.

¹¹ See Letter from Craig Gilmore, Esq. (counsel for Cingular), to Jeffrey Steinberg, Esq., dated October 31, 2003 ("October 31 Letter"). The letter contains Attachment C, Report by Historic Preservation Consultants ("HPC") prepared by John Laurens ("Laurens Report"); see also HPC Evaluation of Effect Report, attached to the Letter from Craig Gilmore, Esq., to Jeffrey Steinberg, Esq., dated February 18, 2004 ("February 18 Letter"). Copies of these documents are attached.

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public comments.¹³ Finally, the Division's Cultural Resources Specialist visited the site on July 19, 2004, and consulted records in the SCSHPO's office on July 21, 2004 ("site visit").

This proposed finding is based on the Cultural Resources Specialist's (1) review of the Section 106 documentation submitted by Cingular to the Division (including photographs, site descriptions, and maps); (2) review of the public comments; (3) visual survey of the area; (4) discussion with the SCSHPO; (5) review of the files located in the SCSHPO office and South Carolina State Archives relating to the Hobcaw Barony estate; and (6) assessment of whether any unidentified historic properties would be adversely affected by the tower.

Discussion: We analyze the effect of this tower on historic properties under the Council's rules.¹⁴ First, we propose to find that the tower has no direct effect on any historic property. The tower is located in a utility right-of-way from which the surrounding trees were previously cleared and where the ground was previously disturbed. There is no evidence in the record or from the site visit of any direct effect, and no party contends that the tower has any direct effect.

Second, we assess whether the tower has an adverse visual effect on any historic property. As an initial matter, given the height of the trees (40-60 feet) and the heavily wooded nature of the area, the tower is not readily visible from most vantage points other than U.S. Route 17. Moreover, we only consider visual effect on historic properties, not general aesthetic impact from the tower. Unless the view of a tower has an effect on a historic property, any aesthetic detriment is immaterial under Section 106.



This view of the tower site is taken from about a mile away. Note the forest cover. This is typical throughout the APE.

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¹² Public commen

ers, dated December 3, 2003; James

Tennant, dated November 18, 2003; Alberta Quattrebaum, dated December 13, 2003; Dick Richards, dated December 18, 2003; Martha Allison, dated January 22, 2004; and the DeBordieu Colony Community Association, Inc., dated January 30, 2004. Copies of the comments are attached.

¹³ See February 18 Letter.

¹⁴ See 36 C.F.R. Part 800.

The first step in identifying historic properties that may be affected by an undertaking is to determine the Area of Potential Effects (APE).¹⁵ On our site visit, we examined whether there were potential visual effects on historic properties within a radius of approximately one mile from the tower. This one-mile APE is consistent with the SCSHPO's general recommendations,¹⁶ and we believe it is conservative taking into account the size and design of the tower, the surrounding topography and vegetation, and the known presence of historic properties.¹⁷ We note that Cingular's consultant prepared its report using a two-mile APE, and found no adverse effect on any historic property within this larger area.

Within this APE, the only historic property that might potentially be affected by the tower is Hobcaw Barony. Mr. Tennant suggests that the tower has adverse impacts from several other vantage points, including Arcadia plantation, the Waccamaw River, the Waccamaw River bridge, and various historic markers.¹⁸ We have reviewed Mr. Tennant's assertions. Arcadia is a property listed on the National Register, which is outside the one-mile APE. According to the Laurens report, the Arcadia plantation is a 90-acre property approximately 1¼ miles from the tower site.¹⁹ Mature pines surround the property to U.S. Route 17. The Report concludes that the tower is not visible from the Arcadia plantation,²⁰ and based on the evidence in the Laurens Report and our site visit, we concur. As for the other locations that Mr. Tennant references, there is no showing that these properties are listed or eligible for listing in the National Register, nor any showing of adverse effect beyond generalized assertions that the tower is out of place with the surroundings.

¹⁵ See 36 C.F.R. § 800.4(a)(1).

¹⁶ See SCSHPO, Guidance for Cell Tower Review at 1 (Attachment C, February 18 Letter).

¹⁷ Under the Nationwide Programmatic Agreement for Review of Effects on Historic Properties for Certain Undertakings Approved by the Federal Communications Commission, 47 C.F.R. Part 1, Appendix B ("Nationwide Programmatic Agreement or NPA"), the presumptive APE for visual effects for a tower that is 200 feet or less in height is one-half mile, subject to use of an alternative APE if warranted by the facts. Nationwide Programmatic Agreement, § VI.C.4.a. The Nationwide Programmatic Agreement is not binding on review of the Cingular tower, which was submitted for review to the SCSHPO and constructed prior to the NPA's effective date. See Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process, WT Docket No. 03-128, *Report and Order*, FCC 04-222 at 61-62, ¶¶ 165-167 (rel. Oct. 5, 2004) (Nationwide Programmatic Agreement applies prospectively); Nationwide Programmatic Agreement, § X.A (provisions governing facilities constructed prior to compliance with Section 106 apply to construction after the effective date of the Agreement). Nonetheless, its provisions are instructive as representing principles to which the Commission, the Advisory Council, and the National Conference of State Historic Preservation Officers have agreed. We express no opinion as to whether the circumstances of this case would support use of an APE greater than one-half mile under the Nationwide Programmatic Agreement.

¹⁸ See Comments from James Tennant, dated November 18, 2003.

¹⁹ See Laurens Report at 6.

²⁰ See Laurens Report at 6; see also February 18 Letter, Attachment C, Laurens Report at 2.

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Hobcaw Barony is a National Register listed property. Substantial portions of the property lie within the one-mile APE. Hence, we consider whether the Cingular tower alters any of the characteristics of the property that qualify the property for inclusion in the National Register in a manner that diminishes the integrity of the property's location, design, setting, materials, workmanship, feeling or association.²¹ We note that the Trustees of the Hobcaw Barony estate, who have responsibility for preserving the estate, approved the construction of the tower.²² Nonetheless, consistent with the Council's rules, we conduct a full *de novo* review.

The National Register nomination for Hobcaw Barony states that it is eligible under Criteria A, B, and C.²³ In general, adverse visual effects are most likely to features of eligibility under Criterion C, "that embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction."²⁴ We therefore first evaluate the tower's effects on features that render Hobcaw Barony eligible for the National Register under Criterion C.

²¹ See 36 C.F.R. § 800.5(a)(1); *cf.* Nationwide Programmatic Agreement, § VI.E.3. ("An undertaking will have a visual adverse effect on a Historic Property if the visual effect from the Facility will noticeably diminish the integrity of one or more of the characteristics qualifying the property for inclusion in or eligibility for the National Register.").

²² See February 18 Letter, Attachment C, Laurens Report at 2.

²³ See National Register of Historic Places Nomination Form for Hobcaw Barony, dated November 2, 1994, sections 5 and 8.

²⁴ See <http://www.cr.nps.gov/nr/listing.htm>.



In considering effects on Criterion C features of eligibility, we afford particular attention to those portions of the historic property that are specifically identified on the National Register nomination as features that contribute to its eligibility. In this instance, the nearest contributing historic structure to the tower is the “Gate Cottage” with its associated features (*i.e.*, parking lot, fence and landscape). While the tower and Cottage are in close proximity, approximately 200 yards from each other, the density and height of the surrounding pine forest, as shown in the accompanying photographs, effectively screens the view of the tower from ground level during all seasons. Since the tower has no visible presence in the vicinity of the Cottage, there is no adverse visual effect on this element of the Hobcaw Barony property. We also examined other areas within the one-mile APE, and similarly determined that the tower has minimal, if any, visible presence from each of these locations.



Typical view of forest at ground level near tower.

View of tower showing surrounding trees

In addition to asserted effects on specific features of the property, Mr. Tennant suggests that the tower adversely affects the entire site at Hobcaw Barony.²⁵ He quotes from the nomination form that the plantation’s features form “a system that continues to undergo organic change,” and that the “relationships of its spaces” convey “a sense of time and place – of an entirely managed area – with relatively few buildings.”²⁶ However, the nomination also makes clear that the landscape consists of a variety of types of features from different eras.²⁷ The area has evolved from a plantation in the 18th and 19th centuries to forest preserve in the 20th century, altering most of the landscape associated with the plantation period. To the extent 18th and 19th century features such as rice fields survive, the tower is not visible or minimally visible from these features. Twentieth century management did make efforts to conserve certain older features as part of the whole property. However, the landscape in the vicinity of the tower is of no special historic importance, and the highway, power lines, and other modern intrusions are already present in the area. Visibility of a communications tower where these other modern features are already present does not further diminish any historical importance of the landscape. Therefore, the tower does not diminish characteristics of the property that make it eligible under Criterion C, and it has no adverse effect on the general design of the plantation.

We also evaluate the tower’s effects on features of eligibility for Hobcaw Barony under Criteria A and B. Under Criterion A, association with events that have made a “significant contribution to the broad patterns of our history,”²⁸ the Nomination identified a number of places within the boundaries of the site associated with slavery, military, transportation, and agricultural history. The tower is either not visible or its presence is minimal at these places. Therefore, even assuming that a plainly visible tower would diminish the association of these locations with these historical events, there is no adverse effect on features of eligibility under Criterion A.

²⁵ See Comments from James Tennant.

²⁶ *Id.* at. 7-8.

²⁷ See Nomination Form, attached to the Laurens Report (“Nomination Form”).

²⁸ *Id.*

The National Register nomination also indicates that the property is eligible under Criterion B because it is “associated with the lives of persons significant in our past,”²⁹ namely Bernard Baruch. In particular, Mr. Tennant argues in this regard that the tower is inconsistent with, and detracts from the property’s ability to convey, Baruch’s commitment to conservation.³⁰ Our review indicates that the tower either is not visible or its presence is minimal from the main house and grounds used by Baruch and his guests. There is no evidence that the tower interferes with the features of these specific sites that allow them to communicate their association with the events and patterns of our history. With regard to conservation, as discussed above, the tower is in an area that was previously disturbed as a utility right-of-way. To the extent the tower is visible from certain points on the property, the tower does not materially detract from the property’s ability to convey Baruch’s commitment to conservation. Hence, the tower does not diminish the property’s integrity with respect to features of eligibility under Criterion B.

Conclusion: For the reasons stated above, after review of the entire record, the Division proposes to find that the Cingular tower has no adverse effect on the Hobcaw Barony estate or any other historic property.

We look forward to your comments. If you have any questions, please call Don Johnson at 202-418-7444.

Sincerely,

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

cc: John Fowler, ACHP
Craig Gilmore, Esq. (Counsel for Cingular)
Mr. James Tennant
Monica Gambino, Esq., Crown Castle Communications

²⁹ *Id.*

³⁰ *See* Comments of James Tennant at 10.