

Before the
Federal Communications Commission
WASHINGTON, D.C. 20554

In the Matter of
Wireless Properties, LLC Petition for Declaratory
Ruling
Proposed Tower, Missionary Ridge, Chattanooga,
Tennessee

ORDER

Adopted: May 23, 2007

Released: May 24, 2007

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

I. INTRODUCTION

1. The Spectrum and Competition Policy Division ("Division") of the Wireless Telecommunications Bureau has before it a Petition for Expedited Declaratory Ruling ("Petition") filed by Wireless Properties, LLC ("Wireless Properties").1 The Petition seeks a determination that the National Historic Preservation Act ("NHPA") Section 106 review2 for a proposed communications tower in Chattanooga, Tennessee, has been completed. Based upon a thorough review of the record in this proceeding, including comments and correspondence received both before and after the Petition was filed, we conclude that a valid Section 106 review has not been completed for this project. We therefore deny the Petition and reopen this matter for processing in accordance with the Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process ("NPA") and Section 106.

II. BACKGROUND

2. Wireless Properties proposes to construct a 150-foot monopole for the use of wireless licensees in Chattanooga, Tennessee. The tower would be located within 1,000 feet of the boundary of the Bragg Reservation, a unit of the Chickamauga and Chattanooga National Military Park ("National Park"), which is listed on the National Register of Historic Places ("National Register").3 In addition to the National Park, two other National Register-listed properties, the Missionary Ridge Historic District

1 See Wireless Properties, LLC Petition for Expedited Declaratory Ruling, dated April 25, 2007 ("Petition").

2 16 U.S.C. § 470f.

3 Petition at 7; see also letter from James P. Szyjkowski, Acting Superintendent, Chickamauga and Chattanooga National Military Park, to Dan Abeyta, Assistant Chief, Spectrum and Competition Policy Division, Wireless Telecommunications Bureau, dated March 12, 2007 ("NPS Letter") at 1.

("Historic District") and the Founder's Home at the McCallie School ("McCallie School"), are also located, in whole or in part, within one-half mile of the tower site.⁴

3. Under the Commission's rules, entities that propose to construct communications tower facilities must, prior to construction, determine whether the proposed tower construction would affect properties that are listed or eligible for listing in the National Register ("historic properties").⁵ The process for making this determination is governed by the NPA.⁶

4. In March 2006, pursuant to the process required under the NPA,⁷ Wireless Properties filed FCC Form 620 with the Tennessee Historical Commission, which is the Tennessee State Historic Preservation Officer ("Tennessee SHPO"). The Form 620 and the accompanying Submission Packet indicated that a 180-foot monopole at the proposed location would have no adverse effect on historic properties.⁸ In an attachment to the Form 620, Wireless Properties listed the Historic District and the McCallie School as historic properties within the project's half-mile APE, but did not list the Bragg Reservation.⁹ Wireless Properties also attached a letter from a local historic preservation planner which concluded that the proposed tower would not adversely affect historic properties, but which did not list the Bragg Reservation among the historic properties within the APE.¹⁰ On March 29, 2006, the Tennessee SHPO sent Wireless Properties a brief letter concurring with the determination of no adverse effect.¹¹

⁴ Under the NPA, the Area of Potential Effects ("APE") for visual effects for a tower 200 feet or less in height is presumed to be a circle with a half-mile radius unless otherwise established through consultation. NPA, § VI.A.4.a.

⁵ See 47 C.F.R. § 1.1307(a)(4). In the event a proposed facility may have such an effect, the applicant must file an environmental assessment and await Commission processing. 47 C.F.R. § 1.1307(a).

⁶ 47 C.F.R. Part 1, App. C; see 47 C.F.R. § 1.1307(a)(4).

⁷ NPA, § VII.A.1.

⁸ See FCC Form 620, dated March 13, 2006 (Exhibit A to the Petition). There is some dispute in the record as to whether Form 620 was actually included in the documentation submitted to the Tennessee SHPO. Compare Petition at 6 (Form 620 packet was submitted to the local historic preservation planner and subsequently to the Tennessee SHPO) with e-mail from Dwayne Smith, Missionary Ridge Neighborhood Association, to Jeffrey Steinberg, Deputy Chief, Spectrum and Competition Policy Division, Wireless Telecommunications Bureau, dated May 16, 2007 (attaching e-mail from Patrick McIntyre, Tennessee Historical Commission, to Dwayne Smith, Missionary Ridge Neighborhood Association, dated May 7, 2007 (stating that Tennessee SHPO did not recall receiving Form 620 with the original documentation)).

⁹ See A Phase I Cultural Resources Assessment of the Proposed I-24 Ridgecut Telecommunications Tower in Chattanooga, Hamilton County, Tennessee ("Cultural Resources Assessment") at 3 (unpaginated).

¹⁰ Letter from Paul Archambault, Historic Preservation Planner, Chattanooga Area Regional Council of Governments, Southeast Tennessee Development District, to Marla Spry, MRS Consultants, LLC, dated Feb. 16, 2006 ("Feb. 16 Archambault Letter") (Exhibit C to the Petition). As a matter of practice, the Tennessee SHPO looks to the local historic preservation planner, who represents the local council of governments, for advice and local knowledge in performing Section 106 review. However, the responsibility for reviewing proposed undertakings remains with the SHPO under Section 106 and the NPA.

¹¹ Letter from Herbert L. Harper, Executive Director and Deputy State Historic Preservation Officer, Tennessee Historical Commission, to Henry Fisher, Environmental Engineers, dated March 29, 2006 (Exhibit G to the Petition).

5. By letter dated March 21, 2006, Wireless Properties informed the National Park Service (“NPS”) of its proposed construction and requested comments within 30 days.¹² NPS did not respond to this letter.¹³

6. On April 18, 2006, Wireless Properties informed the local historic preservation planner that it planned to modify its project to take the form of a 150-foot monopole with standard-mounted antennas, and it requested his concurrence that the project as modified would not have an adverse effect on historic properties.¹⁴ On May 9, 2006, the local historic preservation planner sent a brief letter agreeing that there would be no adverse effect. This letter did not identify specific historic properties within the APE.¹⁵ On May 26, 2006, Wireless Properties forwarded this letter to the Tennessee SHPO,¹⁶ and on June 12, 2006, the Tennessee SHPO again summarily concurred that the tower would have no adverse effect on historic properties.¹⁷

7. On December 11, 2006, during the course of local zoning proceedings on the proposed tower, the local historic preservation planner sent letters to the Tennessee SHPO and to the Special Use and Permit Exceptions Board retracting his earlier “no adverse effect” determination, stating that the tower would adversely affect the Bragg Reservation and the Historic District, and recommending that an alternative site be found.¹⁸ The planner stated that a representative of the Missionary Ridge Neighborhood Association (“Neighborhood Association”) had demonstrated to him the proposed tower’s adverse effects, and he attributed his earlier contrary conclusion to his inexperience as a new resident of

¹² Letter from Henry A. Fisher, Engineer, Environmental Engineers, Inc., to Chickamauga and Chattanooga National Military Park, dated March 21, 2006 (Exhibit F to the Petition). The letter is dated March 21, but was attached to the Form 620 dated March 13. The record does not explain this discrepancy.

¹³ Petition at 7-8.

¹⁴ Letter from Henry A. Fisher, Engineer, Environmental Engineers, Inc., to Paul Archambault, Historic Preservation Planner, Chattanooga Area Regional Council of Governments, Southeast Tennessee Development District, dated April 18, 2006.

¹⁵ Letter from Paul Archambault, Historic Preservation Planner, Chattanooga Area Regional Council of Governments, Southeast Tennessee Development District, to Henry Fisher, Engineer, Environmental Engineers, Inc., dated May 9, 2006 (Exhibit D to the Petition).

¹⁶ Letter from Henry A. Fisher, Engineer, Environmental Engineers, Inc., to Dr. Joseph Garrison, Tennessee Historical Commission, dated May 26, 2006.

¹⁷ Letter from Herbert L. Harper, Executive Director and Deputy State Historic Preservation Officer, Tennessee Historical Commission, to Henry A. Fisher, Environmental Engineers, Inc., dated June 12, 2006 (“June 12 SHPO Letter”). Prior to the Tennessee SHPO’s issuing this concurrence, there was an exchange of correspondence pursuant to which Wireless Properties apparently provided the Tennessee SHPO with maps, photographs, and other materials. See letter from Herbert L. Harper, Executive Director and Deputy State Historic Preservation Officer, Tennessee Historical Commission, to Henry A. Fisher, Environmental Engineers, Inc., dated June 2, 2006 (requesting additional materials); June 12 SHPO Letter at 1 (referring to materials received from Wireless Properties on June 9). Although this submission is not in the record, there is no suggestion that it contains any content that was not part of the original Submission Packet.

¹⁸ Letter from Paul Archambault, Historic Preservation Planner, Chattanooga Area Regional Council of Governments, Southeast Tennessee Development District, to Joseph Y. Garrison, Review and Compliance Coordinator, Tennessee Historical Commission, dated Dec. 11, 2006; Letter from Paul Archambault, Historic Preservation Planner, Chattanooga Area Regional Council of Governments, Southeast Tennessee Development District, to Special Use and Permits Exception Board, dated Dec. 11, 2006 (“Dec. 11 Archambault Zoning Letter”) (Exhibit H to the Petition).

the area.¹⁹ On December 14, 2006, the Tennessee SHPO wrote Wireless Properties, advising Wireless Properties that it was now recommending the project would have an adverse effect on historic properties.²⁰ Without conceding the Tennessee SHPO's authority to reverse its recommendation, Wireless Properties agreed to conduct a balloon test attended by the interested parties in order to assess the effect the proposed tower would have on the National Park.²¹ The Tennessee SHPO then requested additional comment until February 8, 2007, regarding the tower's potential impact on historic properties.²² Comments opposing the tower were filed by NPS, the Neighborhood Association, Friends of Chickamauga & Chattanooga National Military Park ("Friends of the Park"), the National Trust for Historic Preservation ("National Trust"), and Cornerstones, Inc.²³

8. In early February 2007, Wireless Properties informally requested by telephone that the Division inform the Tennessee SHPO that it had no authority to reopen its review of this matter. After speaking with representatives of the Tennessee SHPO and NPS, the Division on February 22, 2007, sent Wireless Properties a letter, requesting Wireless Properties provide information regarding its compliance with procedures to assess the visual impact on the National Park.²⁴ While reserving its challenge to the Commission's authority,²⁵ over the next two months Wireless Properties participated in discussions in an unsuccessful effort to resolve the issues surrounding this tower. On March 12, 2007, NPS wrote to explain its position that the tower would have an adverse effect on the Bragg Reservation, and to request the Commission's assistance in ensuring that this asserted adverse effect would be considered.²⁶ During this period, we also received several communications from the Neighborhood Association and the Friends of the Park asserting that the tower would have an adverse effect on the Bragg Reservation and the

¹⁹ Dec. 11 Archambault Zoning Letter at 1-2.

²⁰ Letter from Richard G. Tune, Deputy State Historic Preservation Officer, Tennessee Historical Commission, to James A. Duncan, Terracon, dated Dec. 14, 2006 (Exhibit I to the Petition).

²¹ Petition at 10. During a balloon test, a balloon is floated to the height of the tower at the proposed site and observed from various locations.

²² *Id.*

²³ See letter from Lora Peppers, Acting Superintendent, Chickamauga and Chattanooga National Military Park, to Dr. Joe Garrison, Review and Compliance Coordinator, Tennessee Historical Commission, dated February 1, 2007; letter from Dwayne Smith, Missionary Ridge Neighborhood Association, to Dr. Joe Garrison, Review and Compliance Coordinator, Tennessee Historical Commission, dated January 30, 2006 [*sic*]; letter from John Hillbrandt, President, and Kay Parish, Executive Director, Friends of Chickamauga and Chattanooga National Military Park, to Dr. Joe Garrison, Review and Compliance Coordinator, Tennessee Historical Commission, dated January 25, 2007; letter from Kay Parish, Executive Director, Friends of Chickamauga and Chattanooga National Military Park, to Dr. Joe Garrison, Review and Compliance Coordinator, Tennessee Historical Commission, dated January 29, 2007; letter from John B. Hildreth, Director, Southern Office, National Trust for Historic Preservation, to Dr. Joe Garrison, Review and Compliance Coordinator, Tennessee Historical Commission, dated February 6, 2007; letter from Cornerstones, Inc. to Dr. Joe Garrison, Review and Compliance Coordinator, Tennessee Historical Commission, dated January 30, 2007.

²⁴ See letter from Dan Abeyta, Assistant Chief, Spectrum and Competition Policy Division, Wireless Telecommunications Bureau, to Fred R. Wagner, Beveridge & Diamond, P.C., dated Feb. 22, 2007.

²⁵ See letter from Fred R. Wagner, Beveridge & Diamond, P.C., to Dan Abeyta, Assistant Chief, Spectrum and Competition Policy Division, Wireless Telecommunications Bureau, dated Feb. 23, 2007.

²⁶ NPS Letter.

Historic District, questioning aspects of the Section 106 review, and requesting that the Commission not permit the tower to be constructed as proposed.²⁷

9. On April 24, 2007, the Advisory Council on Historic Preservation (“Advisory Council”) advised the Commission that “unresolved procedural issues” had been brought to its attention regarding the Section 106 review in this matter. The Advisory Council specifically referenced, among other things, concerns about the content of the Form 620 that had been submitted to the Tennessee SHPO. The Advisory Council further opined that the tower would adversely affect the Bragg Reservation, and it reserved a determination whether it would formally participate in consultation pending further developments.²⁸

10. On April 25, 2007, Wireless Properties filed the instant petition seeking a declaratory ruling that the NHPA Section 106 review for this project is complete as a matter of law and cannot be reopened. Wireless Properties argues that it filed a complete Form 620 and followed all of the processes required under the NPA, and that therefore the Tennessee SHPO’s determination of no adverse effect is final under the NPA and under fundamental principles of fairness and due process.²⁹ Wireless Properties further argues that even if the process could be reopened, the tower would have no adverse effect on historic properties because it would only place an additional structure in a vista that already features several modern intrusions.³⁰ On the same day, Wireless Properties also filed a response to the Advisory Council Letter, arguing that the concerns it cited were misguided and were founded on misrepresentations by local opponents of the tower.³¹

11. Also on April 25, the Neighborhood Association and Friends of the Park filed a letter asking the Commission to overturn the Tennessee SHPO’s determination of no adverse effect due to a “significant procedural defect.”³² In particular, these groups argue that the Section 106 review did not satisfy the NPA because Wireless Properties’ Submission Packet did not identify the Bragg Reservation as a historic resource.³³ They also argue that Wireless Properties did not provide appropriate notice of the

²⁷ See, e.g., letter from Dwayne Smith, Missionary Ridge Neighborhood Association, to Dan Abeyta, Assistant Chief, Spectrum and Competition Policy Division, Wireless Telecommunications Bureau, dated March 8, 2007 (“March 8 Neighborhood Association Letter”); e-mail from Dwayne Smith, Missionary Ridge Neighborhood Association, to Stephen DelSordo, Cultural Resources Specialist, Spectrum and Competition Policy Division, Wireless Telecommunications Bureau, dated April 18, 2007.

²⁸ Letter from Charlene Dwin Vaughn, Assistant Director, Federal Permitting, Licensing, and Assistance Section, Office of Federal Agency Programs, Advisory Council on Historic Preservation, to Jeffrey Steinberg, Deputy Chief, Spectrum and Competition Policy Division, Wireless Telecommunications Bureau, dated April 24, 2007 (“Advisory Council Letter”). The Advisory Council asserted authority under 36 C.F.R. § 800.2(b)(1), which provides that the Advisory Council, among other things, consults with and comments to agency officials on individual undertakings.

²⁹ Petition at 11-19.

³⁰ *Id.* at 19-22.

³¹ Letter from Fred Wagner, Beveridge & Diamond PC, to Dan Abeyta, Assistant Chief, Spectrum and Competition Policy Division, Wireless Telecommunications Bureau, dated April 25, 2007 (“April 25 Wireless Properties Letter”).

³² Letter from Sam D. Elliott, Gearhiser, Peters, Lockaby, Cavett & Elliott, PLLC, to Kevin J. Martin, Chairman, Federal Communications Commission, dated April 25, 2007 (“April 25 Local Organizations Letter”) at 1.

³³ *Id.* at 1-2.

project to the Neighborhood Association.³⁴ On May 15, 2007, the National Trust asked the Commission to reopen the review due to the discovery of an unanticipated effect on a historic property, consistent with Section XI of the NPA and Section 800.13(b) of the Advisory Council's rules.³⁵

III. DISCUSSION

12. For the reasons discussed below, we conclude that the Section 106 review for Wireless Properties' proposed tower has not been completed in accordance with the requirements of the NPA. Accordingly, we deny the Petition and direct that the review process be resumed consistent with the NPA's provisions. In doing so, we also address the concerns that have been separately raised by other interested parties.

13. Under the procedures set forth in the NPA, a SHPO's concurrence with an applicant's determination of no adverse effect is conclusive and completes the Section 106 process.³⁶ Similarly, the NPA is clear that the SHPO's period to review a Submission Packet is generally limited to 30 days from receipt,³⁷ and that during this period the SHPO may request additional information if it determines that the Submission Packet is inadequate.³⁸ Accordingly, a completed Section 106 review is not subject to reopening because the SHPO changes its view of the evidence or decides that based on the original Submission Packet it should have requested more information. Indeed, as Wireless Properties argues correctly in its Petition, the NPA is designed to achieve finality in the determination of an undertaking's effect within identified and specific time frames. Wireless Properties is incorrect, however, in arguing that the objective of achieving certainty and finality precludes reopening the Section 106 process – in its view – seemingly under any circumstances.³⁹

14. While it is true that the NPA, through provisions such as Section VII.C.1, demands that the SHPO's verdict be authoritative and identifies steps and time frames to afford certainty and finality, that finality is predicated upon the applicant having complied with the foundational steps of the review process. In this regard, Section VI.A. specifies that “[i]n preparing the Submission Packet for the SHPO/THPO. . .the Applicant shall: (2) identify Historic Properties within the APE. . . .The standards and procedures described below shall be used by the Applicant in preparing the Submission Packet.”⁴⁰

³⁴ *Id.* at 2-3.

³⁵ Letter from Elizabeth S. Merritt, Deputy General Counsel, National Trust for Historic Preservation, to Jeffrey Steinberg, Deputy Chief, Spectrum and Competition Policy Division, Wireless Telecommunications Bureau, dated May 15, 2007; *see* 36 C.F.R. § 800.13(b)(1) (if unanticipated effects on historic properties are found after the Section 106 process is completed and before construction has commenced, agency shall consult to resolve the adverse effects).

³⁶ *See* NPA, § VII.C.1 (“If the SHPO/THPO concurs in writing with the Applicant’s determination of no adverse effect, the Facility is deemed to have no adverse effect on Historic Properties. The Section 106 process is then complete and the Applicant may proceed with the project, unless further processing for reasons other than Section 106 is required.”).

³⁷ *Id.*, § VII.A.2. This period may be extended by up to five days when comments are received during the final five days of the review period. *Id.*, § VII.A.3.

³⁸ *Id.*, § VII.A.4.

³⁹ Petition at 15-17.

⁴⁰ NPA, § VI.A.

Section VI.D.1.a, governing the Identification and Evaluation of Historic Properties within the APE for Visual Effects, specifies that the applicant shall review properties listed in the National Register in identifying historic properties within the APE for visual effects.⁴¹ Thus, the NPA affords finality only for those who have complied with its prerequisites.

15. In this instance, however, Wireless Properties failed to comply with these basic requirements because it did not identify all historic properties within the APE when it prepared the Submission Packet for the Tennessee SHPO. Specifically, in listing historic properties within the APE, Wireless Properties failed to include the Bragg Reservation.⁴² It is uncontested that the Bragg Reservation, as a unit of the National Park, is listed in the National Register.⁴³ The NPA requires that, in identifying historic properties within the APE for visual effects, an applicant include listed or eligible properties that can be found in several specific sources, including the National Register.⁴⁴ In addition, the instructions for Form 620 require that Attachment 8 to the Submission Packet include, among other things, the name and address of each property in the APE for visual effects that is listed in the National Register.⁴⁵ There was nothing on the face of the Submission Packet that would have alerted the Tennessee SHPO to the existence of the undisclosed property. Thus, in reviewing the Submission Packet, it was reasonable for the Tennessee SHPO to assume that the applicant had followed the requirements of Form 620 and to rely on Attachment 8 as a complete roster of listed or eligible properties that are identifiable from the specified sources. A submission, such as the one at issue, that omits listed or eligible properties in a manner that is not facially obvious is fundamentally incomplete and does not support a valid SHPO review.

16. The NPA does not contemplate that a SHPO's concurrence in an applicant's determination would automatically be effective in the face of such a material omission. To the contrary, Section XI of the NPA permits members of the public to notify the Commission of concerns regarding the NPA's application "to the review of individual undertakings," and provides that the Commission will "take appropriate actions" in response to such comments. Thus, Section XI grants the Commission discretion to take appropriate action where an applicant's submission was inconsistent with the requirements of the NPA in a manner that precluded the SHPO's effective review.⁴⁶ In exercising this discretion, we also note that Section 800.13(b) of the Advisory Council's rules generally directs a federal agency to make reasonable efforts to avoid, minimize, or mitigate adverse effects when unanticipated effects on historic properties are found after review, and specifically to resume consultation if

⁴¹ *Id.*, § VI.D.1.a.

⁴² Cultural Resources Assessment at 3; *see* April 25 Local Organizations Letter at 1-2.

⁴³ Petition at 13, 20; April 25 Local Organizations Letter at 2; *see* <http://www.nr.nps.gov/Red%20Books/66000274.red.pdf>, visited May 22, 2007; *see also* http://www.nr.nps.gov/iwisapi/explorer.dll?IWS_SCHEMA=NRIS1&IWS_LOGIN=1&IWS_REPORT=10000058 Enter four letter park code CHCH, visited May 22, 2007.

⁴⁴ NPA, § VI.D.1.a.i. (to identify historic properties within the APE for visual effects, applicants are required to review properties listed in the National Register).

⁴⁵ FCC Form 620, Instructions, Attachment 8.a.

⁴⁶ We note that in this case several parties have notified us of concerns regarding the Section 106 review, including the omission of the Bragg Reservation from the information provided to the Tennessee SHPO and the local historic preservation planner. *See, e.g.*, March 8 Neighborhood Association Letter; NPS Letter; April 25 Local Organizations Letter; National Trust Letter (expressly invoking Section XI); *see also* Advisory Council Letter.

construction has not yet commenced.⁴⁷ The protective principle embodied in this rule informs our determination of appropriate action where a SHPO effectively has been precluded from evaluating effects on a historic property because the applicant failed to identify the property as required.

17. Wireless Properties argues that it did identify the Bragg Reservation as a historic property because it is shown on a map that was attached to the Form 620 and provided to the local preservation planner.⁴⁸ The map in question is a U.S. Geological Survey topographical map that shows a “Monument” at the location of the Bragg Reservation. On top of this printed material, Wireless Properties added graphics locating the tower site and several historic properties, but not the Bragg Reservation.⁴⁹ Not only was the Bragg Reservation absent from the Attachment 8 list and excluded from the text discussion, but it was not even identified by name or as a historic property on the map Wireless Properties relies on to support its position. In no way did this map meaningfully indicate that the Bragg Reservation existed within the APE, much less that it may be impacted by this tower.

18. Wireless Properties also argues that the local historic preservation planner and the Tennessee SHPO were in fact aware during their initial reviews that the Bragg Reservation fell within the APE, citing the local planner’s December 11, 2006 letter and a teleconference to which the Tennessee SHPO was a party.⁵⁰ The local historic preservation planner’s letter at the time of his initial review, however, does not list the Bragg Reservation among the historic properties in the APE.⁵¹ As a whole, the record is not clear with respect to when the local historic preservation planner or the SHPO were made aware of the presence of the Bragg Reservation in the APE or if any such information, when provided, allowed for a proper review. This uncertainty demonstrates why it is imperative that applicants file complete and accurate information in, and along with, the Form 620.

19. Because the Submission Packet that Wireless Properties previously provided to the Tennessee SHPO materially failed to comply with the NPA, there has been no valid Section 106 review of this proposed tower. Accordingly, in order to complete the required review, Wireless Properties should now submit to the Tennessee SHPO a Form 620 and Submission Packet that properly assesses the effects of the proposed tower on the Bragg Reservation and other historic properties in compliance with the NPA.⁵² The Submission Packet should discuss the historic context, development, and relevant design elements of each of the historic properties within the APE, and should specifically assess the effect of the proposed tower on the characteristics that qualify each of these properties for listing in the National Register. The Tennessee SHPO should then review the Submission Packet in accordance with the NPA, including providing a short and concise explanation of its reasons for any disagreement with Wireless

⁴⁷ 36 C.F.R. § 800.13(b).

⁴⁸ Petition at 6, 12; April 25 Wireless Properties Letter at 2.

⁴⁹ See Cultural Resources Assessment, Figure 2; Petition, Exhibit B.

⁵⁰ Petition at 3, 7, 13; April 25 Wireless Properties Letter at 2. See December 11 Archambault Zoning Letter at 1 (indicating that potentially affected properties considered in his February 2006 review included the National Park).

⁵¹ See February 16 Archambault Letter.

⁵² We note that in addition to the content of the Submission Packet, parties have raised concerns about various aspects of the process that Wireless Properties followed. See, e.g., Advisory Council Letter at 1 (noting that concerns have been raised about, among other things, the involvement of federally recognized Indian tribes, consulting parties, and the public); April 25 Local Organizations Letter at 2-3 (asserting that the Neighborhood Association was not given adequate notice and opportunity to participate). The current record does not support a finding of shortcomings in these respects.

Properties' determination.⁵³ In the event any dispute regarding effects remains after this review, we will address it upon request in accordance with the NPA.⁵⁴

20. Wireless Properties argues that its proposed tower would not have an adverse effect on the Bragg Reservation because, given the many intrusions already present in the viewshed, the tower would not compromise visitors' ability to understand the events that occurred on Missionary Ridge during the Civil War.⁵⁵ Wireless Properties further argues that many of the objections to the tower are based on aesthetic concerns that are not properly part of the historic preservation review process.⁵⁶ We expect that the Tennessee SHPO will address these arguments during the course of its review.

IV. CONCLUSION

21. The proper functioning of the Section 106 historic preservation review process for communications facilities requires that all parties, including the applicant, the SHPO, and other consulting parties, exercise reasonable diligence in performing the roles set forth for them in the NPA. Accordingly, where a properly constituted Submission Packet is provided to the SHPO and the required procedures have been followed, we will not lightly invalidate the review due to minor errors or omissions. In this instance, however, Wireless Properties' failure to identify in the Submission Packet a significant historic property within the APE, in violation of the NPA and contrary to the Form 620 instructions, effectively precluded the Tennessee SHPO from performing a proper review. We therefore deny the Petition.

V. ORDERING CLAUSES

22. IT IS THEREFORE ORDERED, pursuant to Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), Section 106 of the National Historic Preservation Act of 1966, as amended, 16 U.S.C. § 470f, and Sections 1.2 and 1.1307(a)(4) of the Commission's rules, 47 C.F.R. §§ 1.2, 1.1307(a)(4), that the Petition for Expedited Declaratory Ruling filed by Wireless Properties, LLC, is DENIED.

23. IT IS FURTHER ORDERED that the Section 106 review shall proceed as described herein.

⁵³ See NPA, § VII.C.3.

⁵⁴ See *id.*, § VII.C.4.

⁵⁵ Petition at 20-22.

⁵⁶ *Id.* at 22.

24. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

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