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PRESENTED TO DISTRICT OF COLUMBIA ZONING COMMISSION

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ZONING COMMISSION
District of Columbia
Case 01-02
ZONING COMMISSION
District of Columbia
Exhibit 77A
CASE NO. 01-02
EXHIBIT NO. 77A1

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MEMORANDUM

TO: Carol Mitten, Chair
D.C. Zoning Commission
441 4th Street, NW
Suite 210 South
Washington, DC 20001

FROM: AT&T Wireless, Cingular Communications, Nextel, Sprint Wireless, T-Mobile, and Verizon Wireless

CC: D.C. Zoning Commission

DATE: October 17, 2002

SUBJECT: Zoning Commission Case No. 01-02/Text Amendment—Regulation of Antennas, Antenna Towers and Monopoles

Background

At the June 6, 2002, meeting of the Zoning Commission, the Office of Planning (“OP”) presented to the D.C. Zoning Commission its Preliminary Report and the Proposed Text Amendments regarding the District’s Municipal Ordinance governing antennas, antenna towers and monopoles. This memorandum sets forth the significant concerns of the wireless industry (AT&T Wireless, Cingular Communications, Nextel, Sprint Wireless, T-Mobile, and Verizon Wireless, collectively the “providers”) stemming from the Office of Planning’s Report and Proposed Text Amendments.

As providers of wireless communications services, the wireless industry must be responsive to the expanding coverage needs of District residents, businesses, emergency personnel, and visitors by providing them with robust and ubiquitous wireless coverage from one end of the District to the other. At the same time, the wireless industry also appreciates the unique aesthetic and historic attributes of the District of Columbia and is mindful of the need to protect the visual integrity of, and minimize the impact of wireless facilities on, the District’s neighborhoods.

In recognition of these concerns, the wireless industry has sought to work cooperatively with the Office of Planning’s Antenna Regulations Review Group by providing input and submitting proposals that allow for industry flexibility in the provision of services while also addressing aesthetic and other concerns. Despite industry’s active participation in the Review Group, the resulting recommendations from the Office of Planning do not reflect the providers’ substantive input on wireless technology and business practices, nor do they contemplate the changing and expanding nature of wireless services.

The OP’s proposals are unnecessarily burdensome, unreasonably restrictive, and could negatively impact the efforts of the wireless providers to expand the coverage and

quality of wireless service to District residents, businesses, visitors and emergency personnel. Specifically, the regulations would needlessly restrict the ability of wireless providers to “co-locate” wireless facilities on existing structures, to utilize “stealth” techniques to minimize the visual impact of facilities, and to adequately deploy and upgrade facilities in response to consumer demand. Moreover, many of the provisions are of questionable enforceability given the provisions of the federal Telecommunications Act of 1996.

Simply put, many of the proposals set forth in the OP’s Report and Proposed Text Amendments are unnecessary and misdirected; the existing regulations governing the siting of wireless facilities (particularly antennas, about which there has been precious little controversy) are functioning extremely well to protect the District’s historic areas, federal property, and community aesthetic considerations.

Wireless Usage in the District is Exploding

Despite its potentially dilatory effect on wireless service in the District, the OP Report to the Zoning Commission specifically states that “the purpose of the regulations is to... accommodate the growing demand for telecommunications facilities and antennas.” Accordingly, in crafting the zoning policy that will govern wireless facility siting in the District for the foreseeable future, the Zoning Commission should consider the changing nature of wireless service and applications.

Currently, over 66% of the District’s residents are wireless subscribers,¹ ranking the District of Columbia as one of the highest wireless penetration rates in the nation. Nationally, over 128 million Americans subscribe to wireless service,² and a new subscriber is added every two seconds.³ By 2007, 80 percent of U.S. households will use wireless phones.⁴ Among current wireless subscribers, the average U.S. household has 1.8 wireless telephones.⁵ The District’s wireless industry is currently struggling to provide the system capacity to keep up with the increasing demand for its services.

Not only are more people subscribing to wireless service, existing users are increasing their wireless minutes of use because the nature of wireless service is evolving, as new service plans and applications allow customers use their phones in new ways. The average monthly minutes of use per subscriber has tripled in the past three years from 128 minutes in 1998 to 385 in 2001.⁶

More people are using their wireless phones at home to save local or long distance costs. The Yankee Group, a market research firm that tracks the wireless communications industry, estimates that 41% of all residential-based phone minutes will be spent on wireless phones by 2005, up from 11% in 2000.⁷ In fact, 5% of Americans have cancelled their home phone service altogether in favor of their wireless phones⁸ and 18% of wireless users regard their wireless phones as their primary phone.⁹

In addition to consumer and business applications, wireless communications play an integral role in reporting accidents, fires, and other emergencies. In 2001, there were over 57 million wireless emergency calls made to 911 operators.¹⁰ 50% of 911 calls are now wireless. If a wireless system is at capacity, the 911 caller may get a busy signal, or

worse, have his call dropped. Wireless antennas are the lifeline of a responsive 911 service, as has recently been demonstrated in response to September 11th and the recent area sniper attacks.¹¹

New services such as third generation wireless (3G) as well as new wireless data applications, such as wireless LAN and broadband wireless Internet access, will only increase the providers' need to expand their networks to keep up with rising consumer demand. Wireless Internet use is growing dramatically, quadrupling from 2.5 to 10 million subscribers in a single year between 2000 and 2001.

In 2000, the wireless industry spent over \$18 billion to upgrade equipment to meet the growing demand for wireless service.¹² The upgrade of wireless systems continues as demand outstrips the capacity of the networks thus requiring additional antennas. While very few wireless antenna towers, if any, will be built in the District over the next five years, carriers will need to expand their antenna sites.

Given these trends in the provision of wireless service, the "Purpose" section of the Office of Planning's proposed text amendment should reflect the dynamics of the changing wireless industry. This section of the amendments explains that the rationale for the District's regulation of antenna towers and monopoles stems from their possible adverse effect on the "health, welfare, or safety of the population." Moreover, the provisions state that such structures have tremendous visual impact which may "detract from the streetscapes, landscape, skyline, scenic beauty or aesthetic interests of" the District as the Nation's capital.

Despite the OP's recognition in its report that one of the stated goals of the regulations is to "accommodate the growing demand for telecommunications facilities and antennas," the proposed regulations are completely silent on the issue of consumer demand. The providers respectfully submit that the language of the text amendment itself should recognize the importance of robust wireless coverage to District wireless consumers who seek expanded coverage (including coverage in their homes) for an increasingly diverse range of wireless services. Accordingly, this section of the text amendments should include additional "purpose" provisions that address the expanding nature of consumer and business demand for wireless service throughout the District.¹³

The regulations will unreasonably restrict co-location of wireless facilities on existing structures and the utilization of "stealth" techniques to minimize the visual impact of facilities.

Due to the topography and development of the District, wireless carriers provide wireless coverage typically by co-locating on buildings and other existing structures rather than erecting new wireless antenna towers or monopoles. These co-location opportunities not only reduce the visual impact of wireless facilities and lessen the need to add additional towers in the District, they also provide a revenue source for private and government structure owners.

Co-location has been embraced by communities nationwide as a way to facilitate wireless coverage with minimal impact on surrounding communities. In fact, most

communities offer an incentive to the applicant to site on such structures through a by-right approval process and expedited zoning reviews. The regulations proposed by the Office of Planning stand in sharp contrast to this national trend by greatly restricting the ability of wireless operators to “co-locate” wireless facilities on existing structures such as ball field light stanchions at schools and parks, utility poles and structures, and buildings.

Location of wireless antennas on existing utility poles provides carriers with additional siting opportunities that take advantage of existing structures. The Office of Planning’s text amendments originally contained a provision allowing carriers to collocate on existing utility poles and structures. Locating microcells on small utility poles (as well as running monopoles up the middle of larger utility distribution structures) may become an increasingly attractive option for carriers with the advent of third generation (“3G”) services. The Zoning Commission should allow collocation on utility structures as a matter of right to encourage providers to take advantage of existing structures.

Stealthing allows the wireless industry increased flexibility to provide District residents with the coverage they desire, while simultaneously addressing aesthetic concerns. Consequently, stealthing should be permitted as a matter of right, so long as the structure complies with certain requirements, including height, width and set-back requirements. Any proposed stealth structure that does not comply with the minimum requirements would be required to seek special exception approval from the Board of Zoning Adjustment.

The OP’s recent proposed limitation on stealth structures is confusing in its application and, by seemingly limiting the number of stealth applications in the District, effectively eviscerates the incentive (matter of right treatment rather than special exception) to providers to employ stealth techniques. Moreover, the definition of stealth structures should include stadium lighting arrays; otherwise, the proposal unnecessarily eliminates an entire category of effective stealthing options for carriers.

Additionally, the “Purpose” section of the proposed text amendments should be amended to include additional subsections that encourage co-location and stealthing to minimize the visual impact of wireless facilities.¹⁴

The regulations will unreasonably restrict wireless providers’ ability to adequately deploy and upgrade facilities in response to consumer demand.

Although not reflected in the proposed text amendments offered by the Office of Planning, the Antenna Committee engaged in numerous discussions on the subject of tower replacement.

The providers assert that the text amendments should encourage carriers to replace existing towers and monopoles by allowing replacement as a matter of right, so long as the structure design and size is not substantially altered or increased. The Office of Planning maintained throughout the Antenna Committee process that, because District citizens will want a public hearing for any new monopole or tower construction—

including replacement towers—such replacement structures should be required to go through the special exception process.

This is a critical issue for the industry since, under the text as currently written, a replacement tower would be treated in all respects as a new tower and its application could be rejected. Tower replacement is also a safety issue for the District—carriers should be able to replace aging or unstable towers absent the specter of denial through the special exception process. By not including a provision that allows carriers to replace towers as a matter of right, the District would be creating a disincentive to replace towers due to safety concerns. Accordingly, replacement of existing towers should be allowed as a matter of right.

The provisions of the proposed text amendments that reference RF emissions are of questionable enforceability given the provisions of the federal Telecommunications Act of 1996.

Despite the Office of Planning’s acknowledgement in its hearing report that “local municipalities cannot set RF standards in excess of those established by the FCC,” many provisions of the proposed text amendment amount to thinly-veiled attempts to regulate antennas, towers and monopoles based on the health effects of RF emissions. In fact, the Office of Planning’s text amendments include a variety of requirements and restrictions stemming from RF emission concerns, including certification of FCC Compliance (Section 2602), antennas on a roof that has outdoor recreation space (Section 2605.1(f)), and antennas directed into adjacent building windows (Section 2606.1(f)).

RF health and safety concerns permeate the Office of Planning’s proposed text amendment, particularly in regard to carrier certification. As a practical matter, inherent incentives exist for carriers to maintain RF emissions below FCC-adopted guidelines because they face disciplinary action by the FCC and can even lose their licenses if they operate at greater power than authorized or if they are found responsible for and fail to correct radio frequency interference. Moreover, much of the RF emissions testing of a site is done through computer modeling rather than actual field testing because field testing would require carriers to fully install antennas prior to submitting the application. A more workable solution would involve allowing carriers to certify compliance with federal RF emissions requirements by filing the FCC compliance form.

The District is preempted from enacting the onerous reporting requirements proposed by the Office of Planning, as currently structured, because they require a greater degree of specificity than that required by the FCC. As a result, the wireless industry proposes more balanced and practical certification requirements that address the Office of Planning’s concerns relating to the filing of RF certification information.

Regarding antennas placed on rooftops with outdoor recreation space, the text amendments should be re-drafted to provide that antenna placement in outdoor recreational spaces should be “safe and consistent with applicable District and federal regulations.” The District is preempted from setting standards based on RF concerns if such emissions are certified to be within federal guidelines.

In regards to the proposed regulation barring the placement of antennas that are “directed into windows” of neighboring buildings, the District is federally preempted from such a requirement by Section 704 of the Telecommunications Act. Moreover, as a practical matter, such a requirement is unnecessary since rooftop antennas are generally arranged to establish line of sight and are therefore not pointed into neighboring windows.

The providers submit that, in direct contravention of the express preemption language of Section 704 of the Telecommunications Act, the above provisions seek to regulate wireless antennas based on RF emissions health concerns and should be rejected by the Zoning Commission.

The proposed text amendments’ prohibition of towers and monopoles in residential and light commercial zones is misdirected and overly broad.

The Office of Planning’s proposed text amendments have, in large part, been developed in response to the controversial Tenleytown *television broadcast* tower on Wisconsin Avenue. By focusing on broadcast towers and by defining “antenna tower” to include both broadcast and wireless towers, the amendments ignore fundamental distinctions between broadcast and wireless facilities. Television broadcast facilities generally require large support structures that can be upwards of 700 feet. Non-broadcast (i.e. cellular/PCS) facilities typically collocate on existing structures at heights between 80 and 130 feet.

These differences warrant different treatment for regulatory review and approval, as recognized in the District’s current zoning ordinance (Sections 211 and 212). This existing distinction should be preserved to recognize the difference in scope, scale, and regulatory treatment between broadcast towers and wireless structures. Accordingly, the “definition” section should be amended so that the definition of “Antenna tower” distinguishes between broadcast and low power “narrowcast” wireless communications facilities.

The Office of Planning’s proposal seeks to prohibit the siting of wireless towers and monopoles in single-family residential and C-1 local commercial zones. Toward the goal of balancing aesthetic and service considerations, the wireless industry repeatedly proposed to the Antenna Committee that the text amendments should not contain an outright prohibition against siting wireless towers and monopoles in residential and light commercial zones. Since wireless usage in the District is evolving, the revised text amendments should allow for, rather than foreclose, a degree of siting flexibility.

The industry explained that such a flexible mechanism—special exception review by the Board of Zoning Adjustment—already exists to approve tower and monopole siting requests. The existing process has worked well. The special exception review process provides a public forum by which the District may address aesthetic, coverage, and other concerns by District citizens and the wireless industry. Consequently, it should be preserved for adjudicating extraordinary siting requests. Throughout the Antenna Committee process, the Office of Planning offered no evidence of how the current special

exception procedure is failing. The providers are forced to wonder: “If it ain’t broken, why must it be fixed?”

An outright prohibition, absent the continuation of the BZA review procedure, could result in many residential areas of the District going without coverage or having to make do with unreliable wireless service. By absolutely banning certain structures that may be necessary to the delivery of wireless services in some areas, the Office of Planning’s proposal might constitute an unlawful prohibition of service in violation of Section 332(c)(7)(B)(II) of Telecommunications Act.

The Zoning Commission should reject the Office of Planning’s proposed text amendment prohibiting the siting of towers and monopoles in residential, mixed-use and light commercial zones in favor of the special exception review process at the BZA for such requests. Allow the carriers the opportunity to make their case in what is, after all, only an effort to provide a service that the public clearly wants.

Regarding tower and monopole siting in other commercial zones, the Office of Planning’s proposed text amendment establishes a special exception process for the location of towers and monopoles in commercial (C-2 through C-4) zones. Under current District regulations, towers and monopoles are allowed in commercial zones by matter of right. The Office of Planning has offered no evidence to justify changing this policy, other than its continuing assertions that towers are “fundamentally incompatible” with the intended use of these commercial zones and thus, towers must go through the special exceptions process. The providers submit that this additional requirement creates unnecessary regulatory burdens for carriers with limited tower and monopole location options, particularly in light of the Office of Planning’s proposed ban on siting in residential and light commercial zones.

The Office of Planning has asserted that carriers seeking to avoid the special exception process should take advantage of the draft text amendments’ incentive to locate towers in industrial zones. However, the District’s limited industrial zone space does not provide adequate coverage opportunities. Moreover, the regulation will increase, rather than decrease, the number of special exception proceedings (in direct contrast to the Zoning Commission’s stated goal to decrease special exception proceedings as a result of this process).

Section 2611.3 of the proposed text amendments should be amended to eliminate special exception requirement for siting in C-2, C-3 and C-4 zones.

Conclusion

As demonstrated above, these proposals inhibiting wireless carriers’ ability to provide adequate coverage and capacity and could have a lasting detrimental impact on the quality of wireless service available to the District’s residents, businesses, visitors, and emergency service personnel.

As stated in the current 11 DCMR §2520.1(c), “The principal types of antennas, antenna towers, and monopoles regulated are those that, because of their shape and relatively large mass, potentially have the greatest visual impact and include, y example,

large satellite earth station antennas, certain microwave terrestrial antennas, monopoles and antenna towers.” The wireless providers remain committed to working with the Office of Planning and the Zoning Commission to adopt and implement reasonable and practical wireless antenna siting regulations consistent with the preceding statement. In this instance, however, the Office of Planning proposes regulations that would regulate virtually any and every antenna installation without regard to its shape, mass or potential for visual impact and essentially ignores the technical and physical differences between wireless telecommunications service and public broadcasting facilities.

The wireless providers urge a less strident and more balanced approach that recognizes the need for a reliable and ubiquitous wireless telephone network equal to what one expects when picking up the receiver for their landline phone. We look forward to appearing before the Commission on this issue.

¹ “Nearly 2/3 of U.S. Adults Now Own a Wireless Phone,” RCR Wireless, March 25, 2002. The article points out that the District is among the top fifteen cities for wireless phone market penetration.

² FCC’s Seventh Annual Report on CMRS Services, July 3, 2002.

³ CTIA Consumer Frequently Asked Questions. <http://www.wow-com.com>

⁴ Id.

⁵ “Wireless Continues to Displace Traditional Telephone Service,” Business Wire, June 10, 2002.

⁶ FCC’s Seventh Annual Report on CMRS Services, July 3, 2002.

⁷ “People Dropping Landline Phones for Wireless,” USA Today, August 14, 2001.

⁸ Id.

⁹ FCC’s Seventh Annual Report on CMRS Services, July 3, 2002.

¹⁰ “Wireless Calls Prompt SOS,” The Philadelphia Inquirer, June 23, 2002, p. E01.

¹¹ “Wireless Communications in the Aftermath of September 11, 2001 Terror Attacks,” Computer Dealer News, October 19, 2001, p.24; “Cell Phones Were a Godsend at Crucial Moments,” Sun-Sentinel, Sept. 14, 2001, p.12A.

¹² “Pressure Grows for Wireless Dead Spot Data,” CNET News, August 21, 2001.

¹³ Consequently, Section 2600 of the proposed regulations should be amended to include the following additional subsection:

The zoning regulations therefore seek to balance the safety and welfare of district residents with the increasing and evolving use of wireless communication services by district citizens seeking ubiquitous and robust wireless coverage throughout the district.

¹⁴ Consequently, Section 2600 of the proposed regulations should be amended to include the following additional subsection recognizing the importance of co-location and stealththing:

The zoning regulations also seek to address the safety and welfare of district residents, while simultaneously reducing administrative burdens on district agencies, by encouraging carriers, through expedited consideration, to co-locate on existing structures and to utilize stealththing technologies.

DC PROPOSED TEXT AMENDMENT INDUSTRY’S CONCERNS AND RECOMMENDATIONS

PURPOSE AND DEFINITION

PROPOSED ORDINANCE	INDUSTRY CONCERN	INDUSTRY RECOMMENDATION	PROPOSED ALTERNATIVE LANGUAGE
2600.1 – “The purpose of the...” (defines purpose of Ordinance)	Despite the OP’s recognition in its report that one of the stated goals of the regulations is to “accommodate the growing demand for telecommunications facilities and antennas,” the proposed regulations are completely silent on the issue of consumer demand.	The “Purpose” section of the Office of Planning’s proposed text amendment should reflect the dynamics and exploding growth of the changing wireless industry. Do not disturb existing commercial wireless antenna regulations that are working for the industry and the District.	The proposed text amendment should include the following purposes: 2600.1 (d)The zoning regulations therefore seek a balance of life, and safety issues with the increasing and evolving demand of wireless communications services by District citizens seeking ubiquitous and robust wireless coverage throughout the District;
2600.1 – “The purpose of the...”	Co-location opportunities not only reduce the visual impact of wireless facilities and lessen the need to add additional towers in the District, they also provide a much needed revenue source for the structure owners. The proposed text amendments are completely silent on the issue of co-location. Stealthing and camouflaging allow the wireless industry increased flexibility to provide District residents with the coverage they desire, while simultaneously addressing aesthetic concerns.	The “Purpose” section of the proposed text amendments should be amended to include additional subsections that encourage co-location and stealthing to minimize the visual impact of wireless facilities.	The proposed text amendment should include the following purposes: (e) The zoning regulations will reduce the administrative burdens on District agencies through expedited siting procedures including collocation on existing buildings and structures as well as the use of effective screening camouflage techniques that minimize the visual impact of wireless infrastructure.
2699 – Definitions-	Antennas and towers used by broadcasters and wireless providers are very different in size, purpose and shape. Because the proposed text amendments have been developed in response to concerns relating to broadcast towers, they do not fully recognize these distinctions.	Separate broadcast, commercial wireless and amateur radio tower and antenna uses, as their impact is significantly different from each other. The proposed text amendment should clarify the distinctions in the classes of antennas and towers.	The existing distinction in Section 199 of the District’s Zoning Ordinance should be preserved to recognize the difference in scope and scale between the types of towers.

DC PROPOSED TEXT AMENDMENT INDUSTRY’S CONCERNS AND RECOMMENDATIONS

RF EMISSIONS

PROPOSED ORDINANCE	INDUSTRY CONCERN	INDUSTRY RECOMMENDATION	PROPOSED ALTERNATIVE LANGUAGE
Sec. 2601 – Requires applicant to submit a certification from a licensed engineer certifying compliance with FCC guidelines.	The Congress identified the FCC as occupying the field of Radio Frequency (RF) transmissions. The FCC rules and standards are based on the standards developed by the Institute of Electrical and Electronic Engineers and adopted by the American National Standards Institute, the National Council on Radiation Protection and Measurements, the Environmental Protection Agency, the Food and Drug Administration, the National Institute for Occupational Safety and Health, and the Occupational Safety and Health Administration (OSHA). The FCC’s RF guidelines have been affirmed by the Second Circuit in <i>Cellular Phone Taskforce v. FCC</i>. The FCC allows for computer modeling, rather than actual testing, as the proposed ordinance requires. Additionally, cellular, paging, and PCS antennas are <u>categorically excluded</u> from the requirement of routine evaluation for RF exposure (<i>OET Bulletin 56, Fourth Edition</i>, August 1999). The District is impermissibly treading on the FCC’s exclusive authority over RF emissions. The District’s concerns can be alleviated by submitting FCC documentation to the District.	The proposed section 2601.2 should be struck in its entirety since it creates an unsupportable mandate and is a violation of federal law. Each commercial wireless carrier is required to file an Environmental Assessment with the FCC regarding RF emissions. Carriers could file a copy of that report with the District upon filing with the FCC. Carriers should be able to demonstrate compliance with this section by appending their FCC documentation to the permit application. 47 CFR 1.1306 “...antennas are deemed individually and cumulatively to have no significant effect on the quality of the human environment and are categorically excluded from environmental processing” unless under §1.1307 (b) the facility of transmitter would cause RF emissions in excess of the limits authorized. Applications for a license or modification of an existing facility “must contain a statement confirming compliance with the limits unless the facility, operation, or transmitter is categorically excluded...[T]echnical information showing the basis for this statement must be submitted to the Commission upon request.”	In order to not infringe upon federal jurisdiction, Section 2601.2 should require only the following: “An application for a building permit for a transmitting antenna may not be considered completed unless it is accompanied by a certification evidencing that the proposed transmitting antenna will comply with the radiofrequency (RF) radiation guidelines adopted by the Federal Communications Commission and the health and safety regulations adopted by the Occupational Safety and Health Administration.
2605.1(d)(1) “Building-	Securing the roof top site has already	Flush mounted antennas to the exterior of a	Antennas mounted to a structure located

mounted antennas placed on a roof structure of a building with rooftop outdoor recreation space shall be subject to the following (1) the antenna location shall be secured from unauthorized access for a minimum vertical distance	been addressed. Although rooftop recreation areas are a special concern because the general public more heavily utilizes the roof, the FCC guidelines and OSHA standards apply. Naturally, no antennas are pointed at this area since the purpose is to extend the signal beyond the rooftop. Nonetheless, an admonishment not to point antennas at the recreation area is reasonable.	building should be exempt from screening for unauthorized access. Increased signage for rooftop recreation areas is a reasonable requirement. Where applicable, the site should be secured to protect the general public. Work with building management to clearly identify areas where residents and guests are prohibited.	on a rooftop shall be visibly marked to discourage the public from entering the site area in accordance with OSHA and FCC regulations. Each antenna installation shall be located or screened to minimize its appearance to the extent practicable for the site application considering the cost of the screening and the effect to be achieved.
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DC PROPOSED TEXT AMENDMENT INDUSTRY’S CONCERNS AND RECOMMENDATIONS

ANTENNA SITING AND CO-LOCATION

PROPOSED ORDINANCE	INDUSTRY CONCERN	INDUSTRY RECOMMENDATION	PROPOSED ALTERNATIVE LANGUAGE
An earlier draft of the proposed text amendment included a provisioning allowing co-location on existing utility structures. Inexplicably, this provision does not appear in the final proposal set down by the OP. Earlier draft language that encouraged wireless providers to co-locate on existing structures has also been deleted.	Co-location addresses aesthetic and other concerns stemming from wireless facility location by utilizing existing structures such as utility poles, light stanchions at athletic fields, street overpass signage, water towers and other sites. The advantage of this application is the reduction of the need for towers and the minimal impact on adjacent properties. By containing no express matter of right location opportunities for providers, the draft text amendments could actually discourage co-location.	Co-location has been embraced by communities nationwide as a way to facilitate wireless coverage with minimal impact on surrounding communities. In fact, most communities offer an incentive to the applicant to site on such structures through a by-right approval process and expedited zoning reviews. Carriers should be incented to utilize existing utility poles and structures for collocation.	2607.1 “An addition of an antenna to an existing antenna tower, monopole, utility structure, water tower, or other appropriate structure shall be permitted as a matter of right as long as: (a) The size of the structure, or antenna tower or monopole is not substantially increased by more than 10% in height or 20 feet in width (antenna placement); (b) The appearance of the structure, antenna tower, or monopole is not changed in a manner which causes an adverse impact on adjacent property; and A transmitting antenna may not be placed lower than fifty (50) feet above the base of the structure, antenna tower, or monopole.”
2607.1(b) An addition of an antenna to an existing antenna tower or monopole shall be permitted as a matter of right provided “ the appearance of the antenna tower or monopole is not changed in a manner that causes an adverse impact on the surrounding area.	The terms “adverse impact” and “surrounding area” are not defined and could be utilized to unduly constrain the ability of wireless providers to collocate on existing poles or towers.		“Addition of an antenna(s) to an existing tower shall be permitted as a matter of right and in accordance with FCC rules and regulations in historic districts in all districts except where an antenna creates a substantial increase in the height or width of the tower in which case the applicant shall apply for a Special Exception. “Substantial increase is defined as an increase in the height of the tower by 10% or the width of a tower by 20 feet in any

			direction.”
2612.2 (a) A non-conforming antenna cannot be installed as a matter of right. (d) If the owner or occupant elects to install an immediate replacement antenna, the cost of the temporary replacement shall not be considered by the Board of Zoning Adjustment as a basis for approval of a special exception to install a longer term replacement.	In order to encourage the replacement and maintenance of Existing Antenna The converse of this principal should also be codified in the proposed text amendments. In other words, carriers should be allowed to replace non-conforming or other existing antennas as a matter of right. Although the ordinance allows for replacement of a non-conforming or “dead” antenna, it is silent about the replacement of an existing working antenna. Changes in technology may make it advantageous for a carrier to change out an existing piece of equipment. This change should be considered maintenance unless there is a change in the placement of the antenna on the structure or a significant increase in the size of the antenna.	Carriers should be encouraged to update technology to enhance service to residents. The goal should be an efficient and practicable balance between the coverage and capacity requirements of the carrier and the aesthetic and other concerns of the District. The goal of this provision should be to replace non-conforming antennas with conforming antennas in order to ensure consistency of service.	A wireless provider shall be permitted to replace existing antennas as a matter of right, as long as the replacement antenna meets the requirements of set and visual minimization contained herein. Nothing in this section shall prevent minor repairs and alterations to antennas, antenna towers, and monopoles and no permit shall be required.
2610.3 The Board may require the removal of an on-site non-conforming, non-operable, or unpermitted antenna as a condition of approval.	Requires the removal of any on-site non-conforming, non-operable, or unpermitted antenna before another antenna can be mounted. It is unreasonable to withhold a permit for an applicant that complies with the Zoning Ordinance conditions because another carrier’s antenna is non-compliant. However, if the applicant has a non-compliant antenna then it should remove the antenna as a condition of receiving its new permit.	The duty of the landlord and the carrier must be treated separately. It is up to the landlord to condition his contract with the carrier upon the removal of non-conforming or non-operable antennas. Upon discovery, the District would inform the landlord of the violation. In a case where the carrier is applying for a new antenna on the site, the carrier should be required to remove a non-compliant antenna. With this process, the District has two methods to remove non-compliant antennas.	(a) Any contract between a wireless carrier, or other telecommunications provider, and a building owner or agent for the use of a rooftop, or other external area of the building must contain a provision that the carrier is responsible for removal of any non-conforming or non transmitting antennas within a reasonable time after it becomes aware of such condition. (b) A landlord shall be responsible for assuring compliance with paragraph (a) above.
2608.1(f) “...design and make the tower available on a commercial basis to the extent technically feasible for co-location by any	The word “any” should be deleted. The owner of the tower must be allowed to select its tenants as long as those tenants comply with the provisions of the zoning code. It appears that the District is imposing a use requirement on the	In order to promote co-location, the regulation should provide for expedited review or by-right status for towers that support collocation. Strike “any” and redraft the section to	“Any Antenna Tower or Monopole over 100 feet shall be constructed to support one or more collocated antennas. The number of collocations shall be determined by the height of the tower and its maximum load.

telecommunications service provider.”	tower owner beyond co-location. The language should address collocation, not tenants.	address collocation opportunity, not the collocators. Collapse paragraphs (f) and (h) together; [(g) is missing].	“Any tower that is constructed to support three or more collocates shall be a by right in any zoning district provided that it conforms to the requirements of this Ordinance.”
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DC PROPOSED TEXT AMENDMENT INDUSTRY’S CONCERNS AND RECOMMENDATIONS

STEALTH STRUCTURES

PROPOSED ORDINANCE	INDUSTRY CONCERN	INDUSTRY RECOMMENDATION	PROPOSED ALTERNATIVE LANGUAGE
2606 Stealth Structures “One stealth structure be permitted subject to administrative review, certain placement and area requirements in all zones; more than one stealth structure be permitted only by special exception subject to certain placement and area requirements in all zones; stealth structures be permitted as a matter of right in the General Industry (M) zone district.”	The OP’s recent proposed limitation on stealth structures is confusing in its application and, by seemingly limiting the number of stealth applications in the District, effectively eviscerates the incentive (matter of right treatment rather than special exception) to providers to employ stealth techniques. The current proposed regulations allow a tower to be built in the M zone with an increase of 30 feet over the height of the buildings. The same should be allowed for a stealth structure in other zones. Antenna siting in a stealth or camouflage manner is more costly and difficult for a carrier within a stealth structure and thus poses some limitation on the number of collocators. The additional height increases the number of antennas that can collocate within the structure. Antennas located on towers or buildings that utilize camouflage or stealth technology should be afforded an expedited permitting process.	To encourage the use of applicable stealth structures, the District must offer a regulatory scheme that provides a benefit to the carrier, in addition to the aesthetic benefit to the District. Stealth structures can be accomplished in many ways from painting an antenna to match the color of the building; building a façade to encase an antenna; to building a tower where antennas are incorporated into the design (such as a church steeple). Stealth towers are significantly more time consuming and expensive to build (about twice the cost of a traditional structure). The carrot for the carrier is expedited review and by-right status.	Modify 2606.1 to read as follows: Antennas located on stealth structures may be permitted by right provided the following conditions are met: (1) That the proposed design provides adequate screening of the antennas; (2) That the proposed stealth structure is not out of scale with the subject property taking into account the size, set-back, topography and underlying use of the property; (3) That the primary use of the subject property is not single family residential; (4) The Zoning Administrator may require that the ground equipment of the proposed facility be landscaped, fenced, or otherwise screened. (a) The height of the stealth structure shall be permitted as a matter of right to the prescribed height of the zone in which the structure is proposed or as may otherwise be permitted in this title. (b) The diameter of a stealth flagpole shall not exceed 30 inches. (c) For purposes of this section only, the Zoning Administrator may require that an independent engineer certificate be submitted to demonstrate that the facility is in

			compliance with all applicable building and safety requirements. Any proposed stealth structure which is determined by the zoning administrator not to comply with the standards of (a),(b),or (c) shall be referred to the Board of Zoning Adjustment for review as a Special Exception subject to section 3104.
Section 2699 Definitions- Stealth Structure	In the definition of a stealth structure, the Office of Planning eliminated light standards as a potential stealth structure. This distinction is without merit as many stealth structures across the country are light standards located on park district ball fields or school ball fields. This type of stealth structure provides the community with wireless coverage while providing revenue to the institution. Additionally, the light standard structure is an unobtrusive application of stealth technology.	Strike the exception of light standards from the definition of stealth structure.	N/A
The proposed Section 2606.1 should address the utilization of architectural embellishments as a stealth alternative.	The current Ordinance sections (Sections 530.3, 630.3, 770.3, 840.2, 930.3; and 2606.1) allow for spires, towers, domes, pinnacles, or minarets serving as architectural embellishments, penthouses over elevator shafts, ventilator shafts, antennas, chimneys, smokestacks, or fire sprinkler tanks be erected to a height in excess of what the section allows permitting up to 18'6". The District's Ordinance already provides for a reasonable application of "stealth" technology and recognizes that such technology adds height to a building. Sec. 2606.1(1)(a) takes back the right by restricting the height of a stealth structure to the height of the building unless there is an application for a special exception.	The height requirements for stealth applications should remain as defined in the Zoning Ordinance sections. By doing so, a carrier could not add an additional 18 feet onto a chimney, for instance, but could add an architectural embellishment of the type listed as a by-right application in conformance with the height restrictions for such embellishment within the particular zone (such as church steeples that are also stealth antennas). Sec. 2606.1(a) must reference the already approved exception. Any additional height required by a roof top installation, building mount installation, or a tower installation would be a Special Exception. The current proposed regulations allow a tower to be built in the M zone with an increase of 30 feet over the height of the	Spires, towers, domes, pinnacles, or minarets serving as architectural embellishments or camouflage over antennas, or to support antennas, may be erected to a height over the roof as provided for in sections 530.3, 630.3, 770.3, 840.2, 930.3. The Board of Zoning Adjustment may consider a request for additional height through a request for Special Exception. The height of a stealth structure shall be permitted as a matter of right in all zones, up to the prescribed height of structures within the zone, plus 30 feet. The Board of Zoning Adjustment may consider a request for additional height through a request for a Special Exception.

		buildings. The same should be allowed for a stealth structure in other zones.	
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DC PROPOSED TEXT AMENDMENT INDUSTRY'S CONCERNS AND RECOMMENDATIONS

TOWER SITING

PROPOSED ORDINANCE	INDUSTRY CONCERN	INDUSTRY RECOMMENDATION	PROPOSED ALTERNATIVE LANGUAGE
Sec. 2600.2 - The construction of new towers or monopoles is considered incompatible with §2520.1 and shall be permitted as a matter of right in the M industrial zone and only as a Special Exception in the C-2, C-3, C-4, CR, SP, W and other CM districts and may be approved only when no other mounting is available.	The proposed ordinance allows the siting of towers through by-right in the M zone and by Special Exception in zones C-2, C-3, C-4, SP, W, and CM zones. Such a broad prohibition on tower siting in other zones is a violation of federal law. Telecommunications Act -§253: "In General: No state or local statute or regulation, or other State or local requirement, <i>may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.</i>" This unreasonable restriction on tower siting amounts to a prohibition of service under § 332(c)(7)(B)(II) of the Telecom Act.	The proposed Ordinance is silent on siting towers in the following districts, R, C-1, diplomatic, HR, capital overlay, Langdon overlay, neighborhood commercial overlay, Reed-Cooke overlay, miscellaneous overlay districts, downtown development overlay, UR (urban renewal), and uptown arts-mixed use overlay. The District will want to preserve a certain amount of flexibility for some siting in residential and other areas, particularly as usage patterns change and new services such as 3G come online. No evidence has been presented by the OP regarding how towers are "fundamentally incompatible" with other zones. With the exception of R-1-A through R-2 there is no reason why a tower could not be sited through special exception in the other districts when their character or a particular use would be amenable to a tower siting or by right when stealth technology is utilized. (For example, siting at a church or a public school, which has used successfully the stealth application, should be allowed in R-3.) The special exception process is adequate to address due process, aesthetic, and other concerns.	The language stating that "construction of new towers and monopoles is considered incompatible" should be removed. "Towers and monopoles shall be permitted as a matter of right in the M District, and the C-2,C-3, and C-4 Districts. Towers and monopoles shall be permitted by Special exception in all districts with the exception of R-1-A through R-2 where they shall be prohibited."
The proposed text amendments are silent on the matter of	Carriers and tower owners should be encouraged to replace older towers with more modern structures. Replacement of	The Office of Planning insists that any replacement tower be treated as a new tower. This is a critical issue for the industry.	Any existing tower may be replaced as a matter of right provided that the tower shall not be substantially increased in size.

reporting or replacing existing towers.	an existing tower places no greater impact on the property or adjacent properties than previously existed and therefore should be allowed as a matter of right.	Tower replacement is a safety issue. Not allowing tower owners to replace a tower as a matter of right creates a disincentive to replace towers because of the arduous task of the zoning process.	“Substantially Increased” is defined as an increase in the height of the tower by 10% or the width of the tower by 20 feet (antenna placement). Any additional requested increase in height shall be considered through a Special Exception application.
2608.1(f) “...design and make the tower available on a commercial basis to the extent technically feasible for co-location by any telecommunications service provider.”	The word “any” should be deleted. The owner of the tower must be allowed to select its tenants as long as those tenants comply with the provisions of the zoning code. It appears that the District is imposing a use requirement on the tower owner beyond co-location. The language should address collocation not tenants.	Strike “any” and redraft the section to address collocation opportunity not the collocators. Collapse paragraphs (f) and (h) together. [(g) is missing], Provide for expedited review or by-right status for towers that support collocation.	Any Antenna Tower or Monopole over 100 feet shall be constructed to support one or more collocated antennas. The number of collocations shall be determined by the height of the tower and its maximum load. Any tower that is constructed to support three or more collocates shall be by-right in any zoning district provided that it conforms to the requirements of this Ordinance.
2608.1 “Antenna tower or monopole in conjunction with a studio or in conjunction with the erection, alteration, or use of buildings for transmission or reception equipment shall be permitted in the M Zone industrial districts as a matter of right provided the antenna tower or monopole complies with....”	This section is not clear. It appears to consider (1) a tower or monopole erected in conjunction with a studio (i.e., broadcast towers); or (2) in conjunction with the erection, alteration, or use of a building that is used for transmission or reception equipment which could lead one to believe that this section refers to cable companies or broadcast stations which would have transmitter buildings. The language should be redrafted. 2608.1(a) requires a set back from an adjacent residentially developed or zoned property a distance equal to the height of the tower. This condition does not take into account the particular R zoning or if the lot lines are interior or contiguous (property may be owned by the same party). This provision could effectively negate the ability of carriers to locate towers and monopoles in M zones as a matter of right.	Wireless telecommunications towers impose very minimal impact on its surroundings and in certain instances can be constructed to blend with its surroundings, yet broadcast towers are being held to a lesser standard. §2608 should be redrafted for clarity and to reflect the actual (not perceived) impact of wireless communications towers. Broadcast towers should be treated separately in the Ordinance due to their significant impact. Towers built today are engineered to fall onto themselves. They do not topple over therefore a set back related to safety issues should recognize this fact.	A tower shall be set back 1/6 its height from the lot line on which the tower is located. The proposed height of a tower shall not exceed that which is reasonably necessary to render satisfactory service to all parts of its service area except that any tower that exceeds the maxim height for the zoning district by 30 feet shall apply for a Special Exception. (30 feet is 2608.1(c) of the proposed Ordinance).

DC PROPOSED TEXT AMENDMENT INDUSTRY’S CONCERNS AND RECOMMENDATIONS

OTHER INDUSTRY CONCERNS

PROPOSED ORDINANCE	INDUSTRY CONCERN	INDUSTRY RECOMMENDATION	PROPOSED ALTERNATIVE LANGUAGE
<u>Procedure:</u> 2609.2 “The Director of the Office of Planning and the Zoning Administrator may agree to shorten or lengthen the time period indicated in 2609.1.	There is no objection to shortening the 30 day time period of 2609.1 but there is a concern that lengthening it may be arbitrary. At the minimum there should be notice to the tower owner or carrier applicant; the delay must be reasonable and for sufficient cause; and there must be a limit on the duration of the delay.	The text amendments should place conditions on extending the 30 day review period of §2609.1, including notice to the owner of the tower or the carrier applicant. A tower owner or carrier who believes the Office of Planning or the Zoning Administrator is acting in an arbitrary manner should be allowed to appeal to the Zoning Commission.	“When in the best judgement of the Office of Planning and the Zoning Administrator final action on an application must be delayed beyond the requirement of §2609.1 for good and sufficient cause, the Office of Planning shall notify the applicant in writing of the delay and the reason for the delay. “If the delay is stated to be more than an additional 30 days, the applicant shall have the right to appeal the Office of Planning and Zoning Administrator decision to the Zoning Commission.”
<u>Visual Impact:</u> 2604.1(g) An antenna on any lot adjacent to a navigable waterway shall be placed such that its visibility from the navigable waterway is minimized to the greatest practicable extent.	Redefine the siting of an antenna or tower adjacent to a navigable waterway. Sight lines are greatest when there are no obstacles between the viewer and the object viewed (such as from the water to the shore) therefore guidelines for sites adjacent to waterways need to be realistic as to screening and the achievable effect of that screening or placement.	Define parameters for siting that are dependent on distance from shoreline rather than view from the water.	“Any antenna located on District owned or private property adjacent to a navigable waterway shall be placed such that its visibility as measured back from the shoreline is minimized to the greatest practicable extent considering the cost of the screening and the effect to be achieved.”
2604.1(d) Antenna must be screened from <i>any public park or open space</i>.	The term “any” is overly broad. “Adjacent” defines the area to be considered more precisely. “Open space” and “public park” need to be defined.	The proposed text amendment should clearly define all substantive terms. Where a federal agency regulation controls, the agency regulation should be cited. Any requirement to screen be limited to “colors and materials that blend with the building” and that only designated historic	“(d)(1) Each antenna installation shall be located or screened to minimize the view from an adjacent public park or open space. (d)(2) Antennas on towers or other structures within one-tenth of a mile of a landmarked structure or site identified, or eligible for listing, on the National Historic

		building have camouflaging that replicates or is compatible with the historic elements of the building or the site. Delete 2605.1(b) and (c) and substitute modified language.	Register shall be sited in accordance with the FCC's Nationwide Programmatic Agreement for the Collocation of Wireless Antennas." 2605.1(b) "Each building mounted (flush mounted) antenna shall be installed to blend with the façade of the building so as to minimize its visual impact."
2604.1(h)(2) equipment cabinets and shelters have to be located "to reduce its visibility from public space to the greatest practicable extent."	It is unclear what public space is being "protected." Equipment shelters are a box shaped storage unit that house the base transmitting station. It must be of a sufficient size for maintenance as well as to house the telecommunications equipment. The location of the shelter is dependent on the roof capacity as well as access to electrical and phone systems in the building. If the shelter is included in a fencing requirement 2604.1(f), there is really no way to hide it. Its impact can be minimized through the requirement of (h)(1) –materials and colors that blend with the building or penthouse.		Re-draft (h)(2) to read as follows: "Structures on rooftops shall comply with the conditions of Ordinance section 530.3 –530.4. or add the language below: If housing for antenna related equipment is provided for on the roof of a building or structure, it shall be erected or enlarged as follows: (a) it shall meet the requirements of § 411; (b) it shall be set back from all exterior walls a distance equal to its height, and (c) it shall not exceed ten feet in height above the roof upon which it is located. A cabinet or shelter shall blend in color with the building to the extent possible to minimize its visual effect."

“HOW IT WORKS”

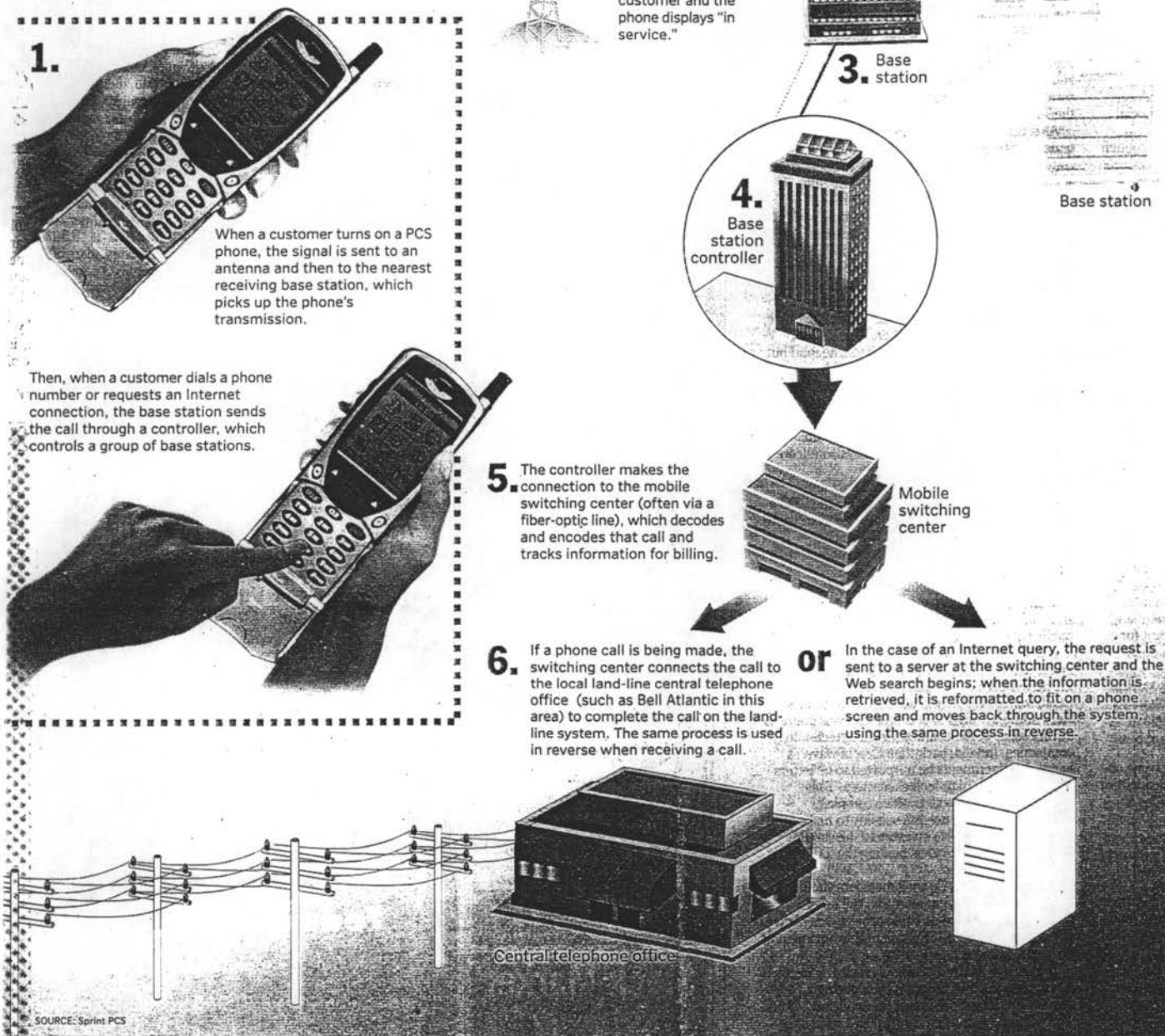
**THE TECHNOLOGY OF WIRELESS
COMMUNICATIONS**

A

HOW IT WORKS

From Cell Phone to Net Connection

Here is the path that a Sprint PCS signal takes as it retrieves information from the Internet, or when a call hooks up with a land-line system:



B

Why Your Cellphone Just Died

Wireless Carriers Are Slashing Spending to Curb Dropped Calls; 1,400 Dead Zones in Los Angeles

By RYAN CHITTUM

AS IF THE HIT TO YOUR investment portfolio weren't enough, the telecom meltdown could also leave you with patchier cellphone coverage.

As cellphone usage has soared in recent years, carriers have built billions of dollars worth of cell towers to help accommodate the new calls. But with many of the companies in financial trouble, they can no longer afford to keep up the investment pace. "Capital is harder to get," says Charles Levine, president of Sprint Corp.'s wireless division, speaking about the industry in general. "That may have an effect on some coverage."

The top six carriers are slashing capital expenses by more than \$3 billion, or about 12%, this year, says John Bensché of Lehman Brothers. One result: Between 70% and 90% fewer towers are being built now compared with just a couple of years ago—even though demand for phone services continues to grow rapidly. That could spark a rise in two things customers loathe: dropped calls and "dead zones," areas where you can't get a signal at all.

Wireless companies have attracted customers over the years with the promise of reliability, pushing the notion that cellphones are so failsafe you don't even need a landline phone anymore. Even now, with the expense cuts in store, they still are touting the breadth of their coverage. Between Dallas and Oklahoma City on I-35, for example, Sprint PCS has billboards proclaiming "Sprint PCS is clear to Dallas," even though some of its customers say the highway has plenty of dead zones. A Sprint spokeswoman says she isn't aware of any coverage holes on that road.

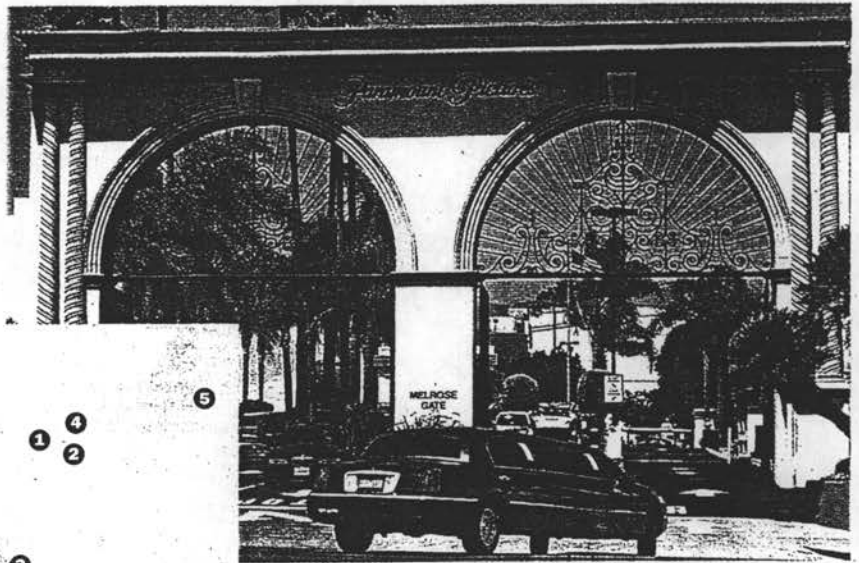
Many customers have a low threshold for coverage problems. On average, about a third of cellphone users switch carriers every year because they're unhappy with the service. About 4% of all cellphone calls are cut off, often because cell towers get overloaded with calls, and in major cities it can be much worse.

Dead zones, another big complaint, typically occur either because there isn't a cell tower in close enough proximity to the caller, or because a tall building is blocking reception. Overburdened cell sites can also be a factor. Most cities are rife with dead zones, and every carrier has them. Sprint PCS customers in Los Angeles say they can't use their

Please Turn to Page D4, Column 3

Where the Dead Zones Are . . .

U.S. cities are rife with "dead zones," populated areas where subscribers can't get a signal. Below are some places where customers have reported trouble. For maps of other cities, see page D4.



. . . In L.A.

- 1 Century Plaza Towers
Nextel
- 2 La Brea Tar Pits
AT&T Wireless
- 3 Loyola Marymount University
Cingular
- 4 Paramount Studios
Sprint PCS
- 5 The Rose Bowl
Verizon Wireless



Source: deadzones.com

*Company is changing its name to T-Mobile USA



. . . In New York

- 6 Bloomingdales
AT&T
- 7 Columbia University
Sprint PCS
- 8 Penn Station
Sprint PCS
- 9 Grand Central Terminal
Verizon
- 10 Chelsea Market
VoiceStream Wireless*



AP Photo/Susan Ragan

Why Your Cellphone Just Died: Spending Cuts

Continued From Page D1

phones at Paramount Studios of all places, while Verizon users have trouble getting a dial tone at the Rose Bowl, according to deadzones.com, a site that tracks complaints. If you're in Dallas, your phone may cut out at such popular spots as the intersection of I-635 and President George Bush Tollway, and the tony Cedar Crest Golf Course. The Big Apple? If AT&T Wireless is your carrier, your phone is near-useless in Penn Station; Columbia University, meanwhile, can be unfriendly to Sprint PCS customers.

"Every time I'm on the phone, when I walk down these steps [into campus], I lose my call," says Chris Zalla, a graduate student in film at Columbia. "I end up having to run or turn around and go back."

Zoning Laws

Sometimes it's more than economics that gets in the way of putting up towers. Sprint PCS says efforts to build one at Columbia, for example, have been sidelined by zoning laws, which analysts say are an obstacle at other sites in the U.S. as well.

Without the frantic cell-tower building of the past few years, though, coverage would be even spottier. A survey by J.D. Power & Associates of customers from all the major providers found significant improvements in coverage in some areas between 1999 and 2001, when tower building was booming. Customer satisfaction was up 12% in New York, for example, and 6% in St. Louis.

Most telecom companies say the spending cuts won't affect coverage. "We feel we can manage the capital crunch in the marketplace without affecting customer service," says Mike Pietropola, a

Avoiding the Dead Zones

Some common places where cellphone subscribers say they can't make calls.



- 1 Navy Pier VoiceStream Wireless*
- 2 Park Forest VoiceStream Wireless
- 3 Brookfield Zoo AT&T
- 4 Museum of Science & Industry Sprint PCS
- 5 NBC Tower Sprint PCS
- 6 Sheridan Park Cingular

Source: Deadzones.com

*Company is changing its name to T-Mobile USA



- 1 North Tollway & LBJ Cingular
- 2 Lavaca Trail & Cheyenne Dr. AT&T
- 3 Cedar Crest Golf Course Sprint PCS
- 4 The Colony Sprint PCS
- 5 I-635 and President George Bush Tollway Verizon
- 6 El Dorado VoiceStream Wireless

vice president at Cingular Wireless. Cingular has slashed spending on capital improvements by \$1 billion this year, the largest reduction of any major carrier. In lieu of new cell towers, it and other companies are putting up smaller cell sites

on traffic lights and buildings, and adding capacity to existing towers.

But others in the industry say coverage already is suffering. David Porte, chief technology officer of American Tower Corp., which builds and rents

space on cell towers to wireless companies, says he has noticed a falloff in coverage with a couple of carriers, both major providers. He declined to name them, or give further details.

One promising sign: Carriers are switching to the next-generation network. Sprint PCS has rolled out a new network nationwide that handles nearly twice the call capacity and sends data at much higher speeds. Nextel and VoiceStream Wireless (which is changing its name to T-Mobile USA) also have next-generation networks up and running. Verizon, AT&T and Cingular are switching over, though more gradually.

Filling the Holes

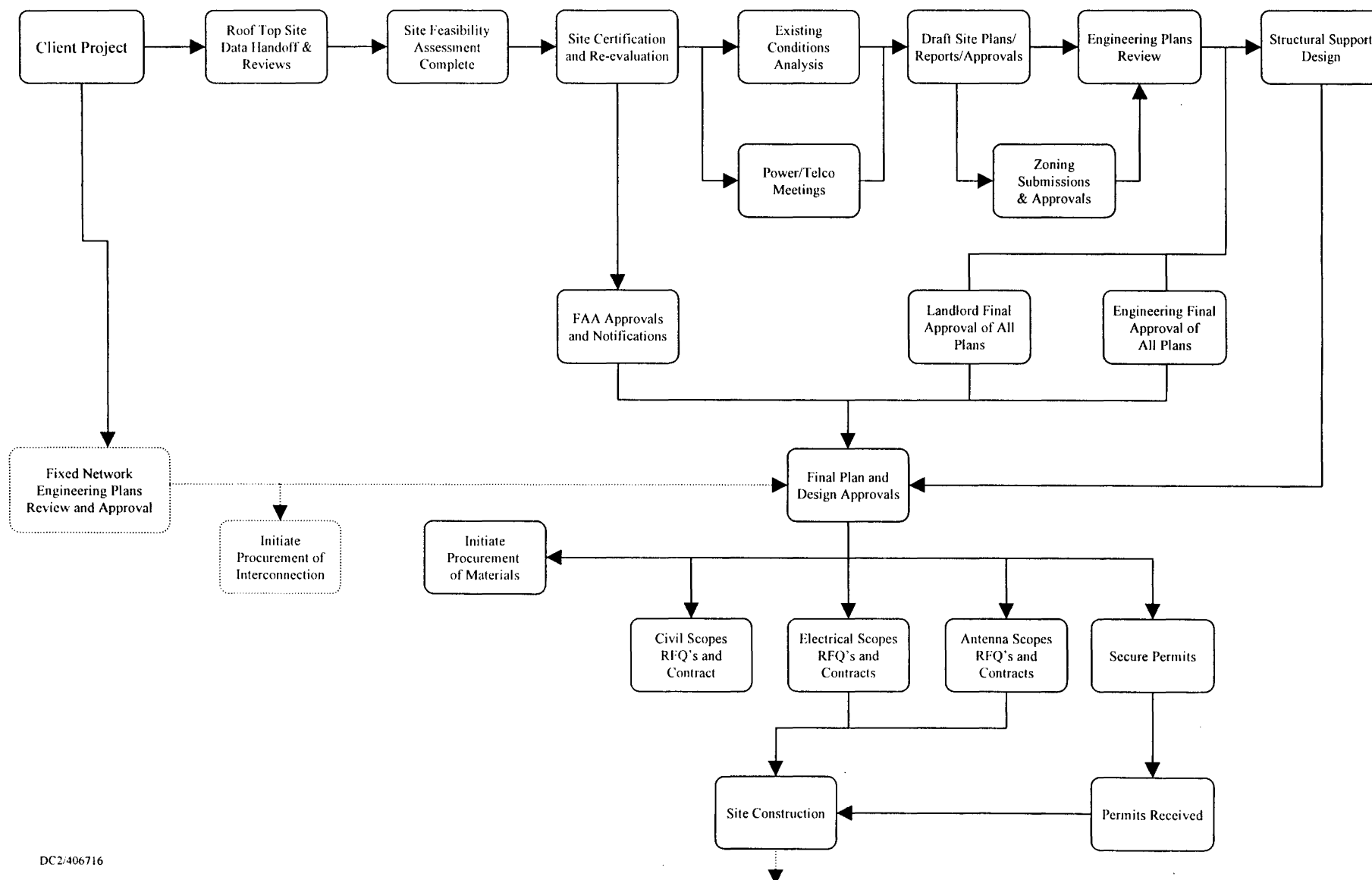
Industry consolidation could have an impact, too. For example, Cingular, which has some coverage gaps in major markets, is in talks to merge with VoiceStream. If the deal is completed, analysts say it could help fill some of those holes.

In the meantime, it's up to consumers to do their homework. Many analysts say Verizon and AT&T have the strongest overall networks, though coverage can differ by region. Users should test wireless service before they're locked into a contract; most carriers offer a short window to do that.

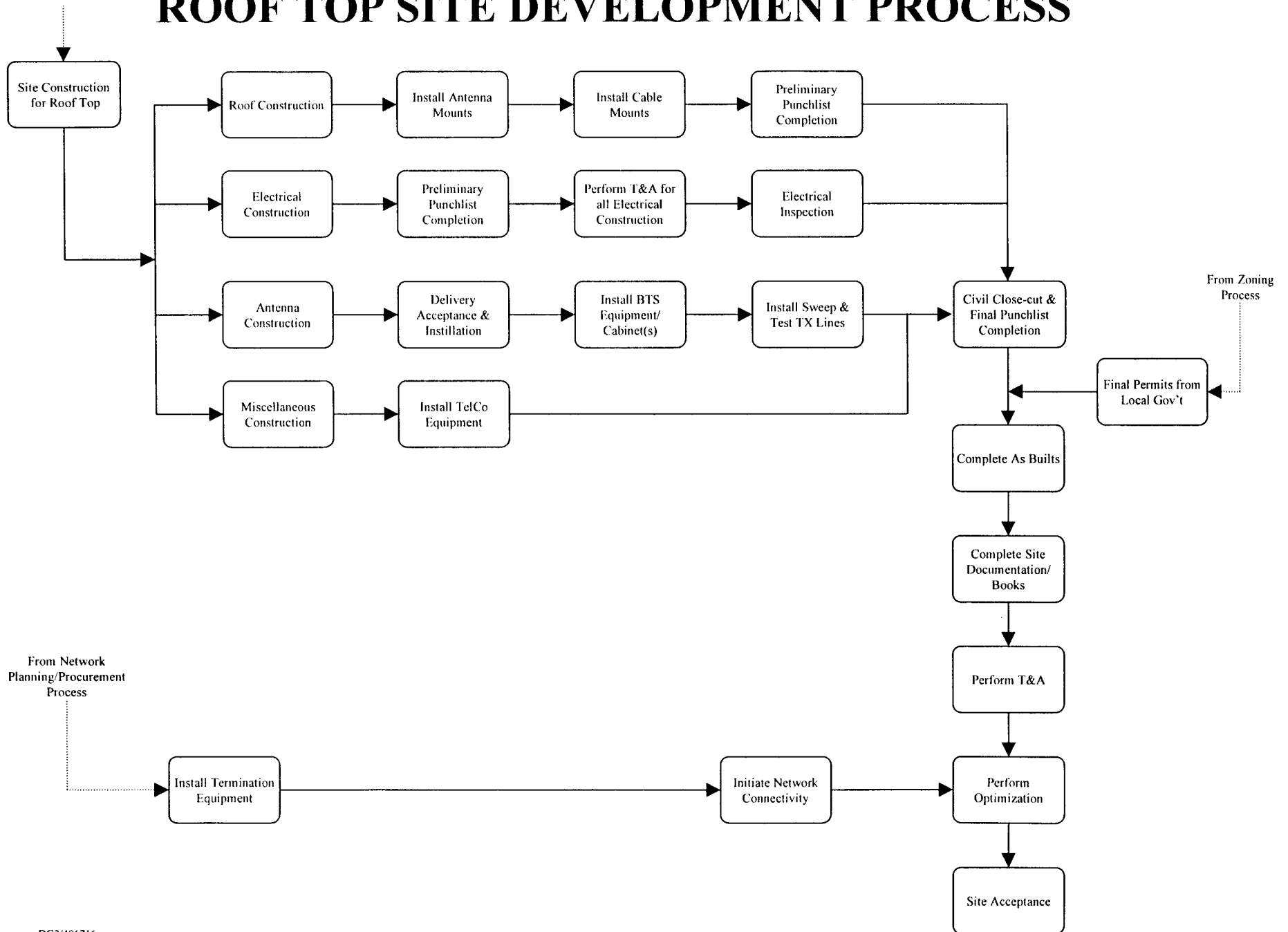
As for dead zones, they change frequently. The wireless companies won't say exactly where theirs are, though they admit they exist. Deadzones.com provides a running list. Perturbed cellphone users send in the coordinates of dead zones in 39 major cities. In Los Angeles alone, they've posted almost 1,400. Carriers can participate, too. When they eliminate dead zones they can notify the Webmaster, who then erases that address from the site.

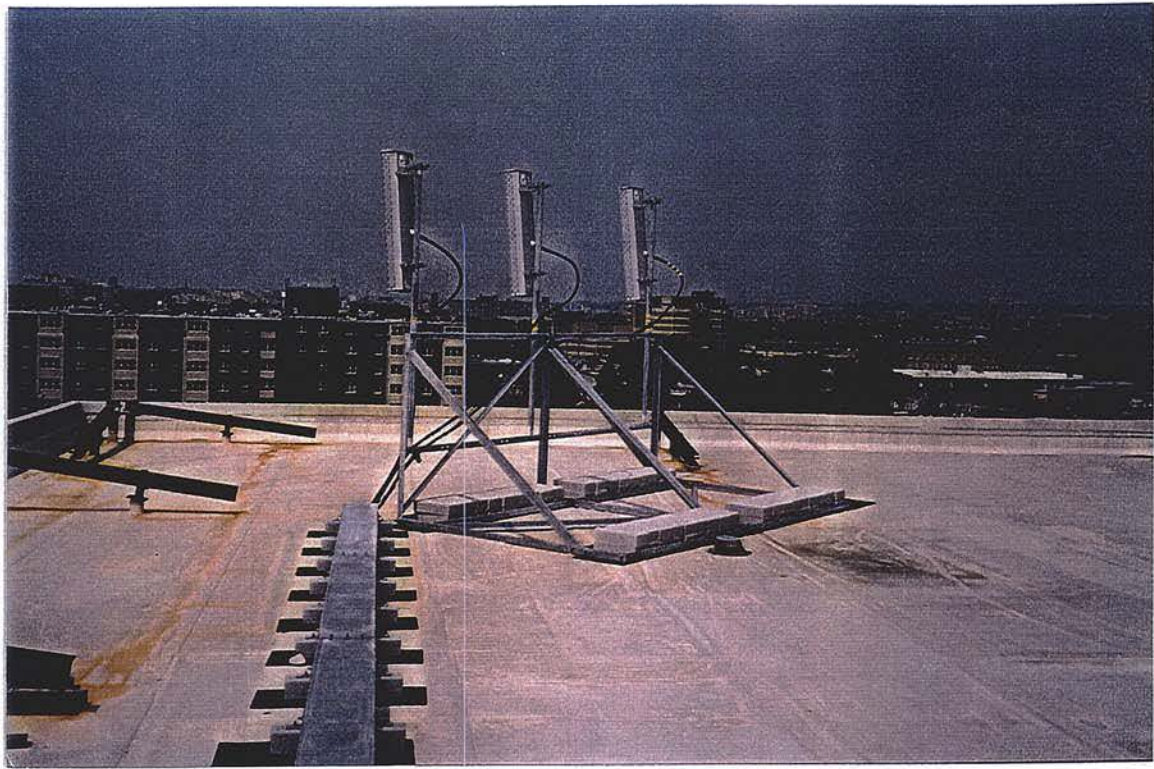
WIRELESS SITE DEVELOPMENT PROCESS

ROOF TOP SITE DEVELOPMENT PROCESS



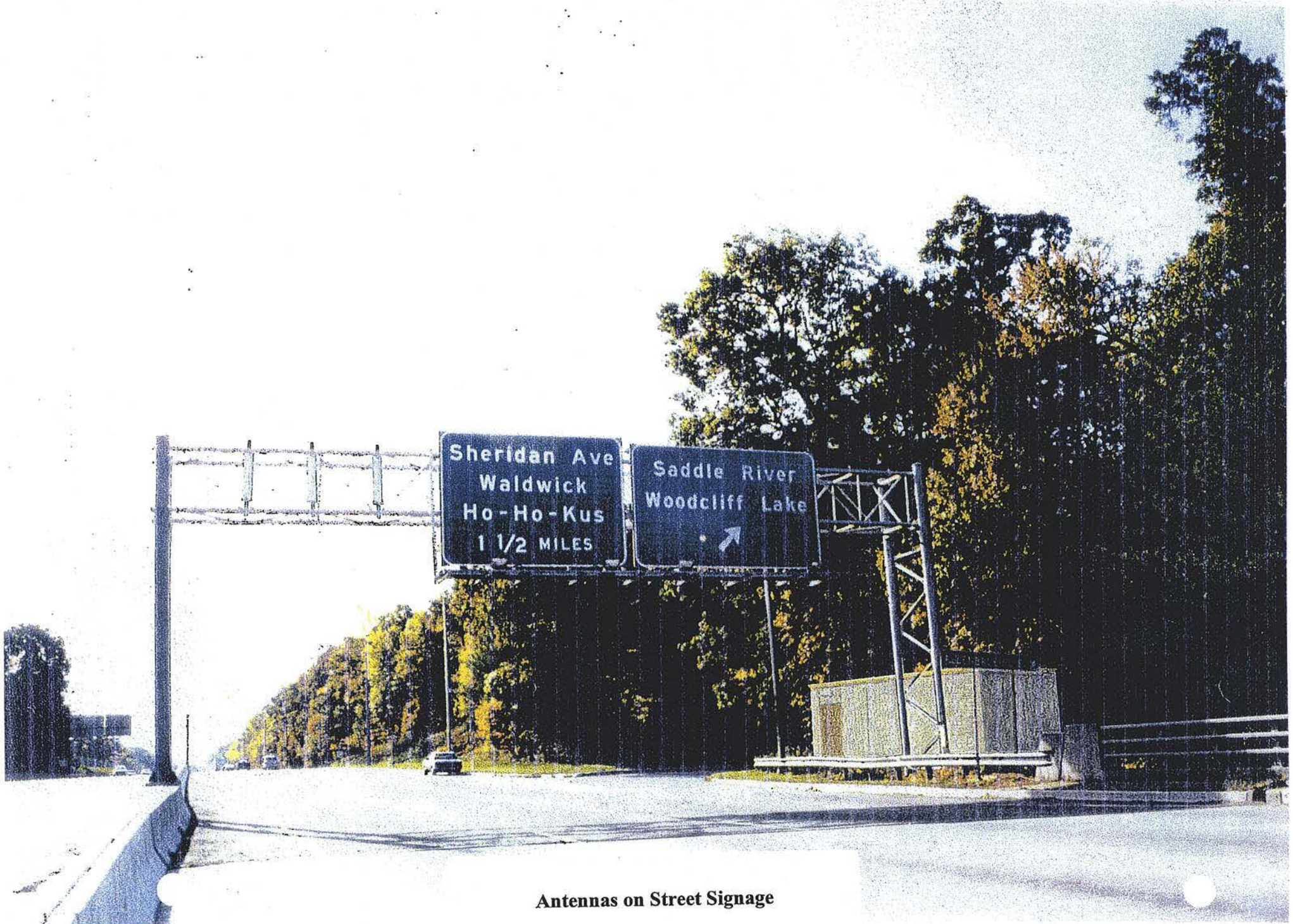
ROOF TOP SITE DEVELOPMENT PROCESS



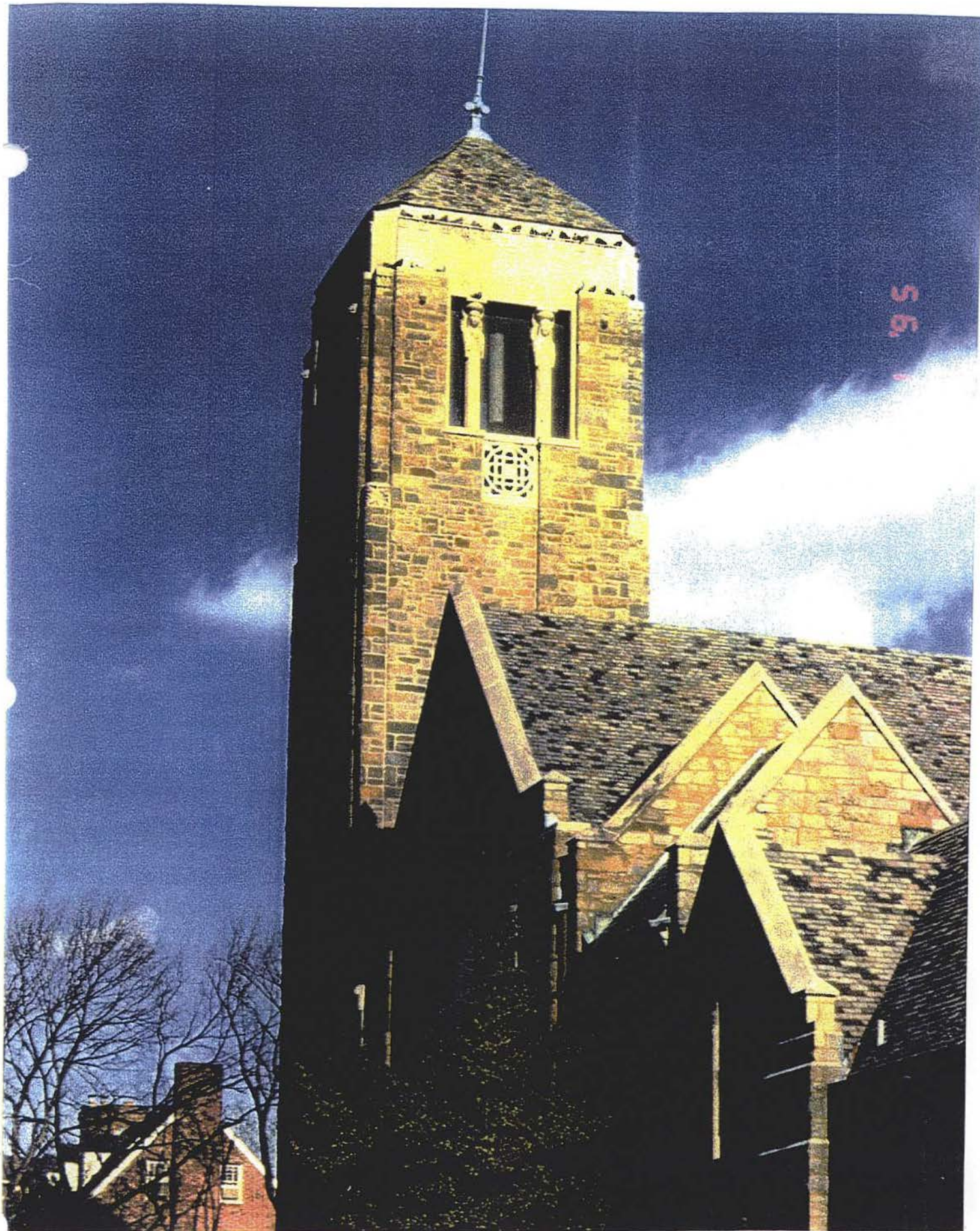




CO-LOCATION ON EXISTING STRUCTURES



Antennas on Street Signage



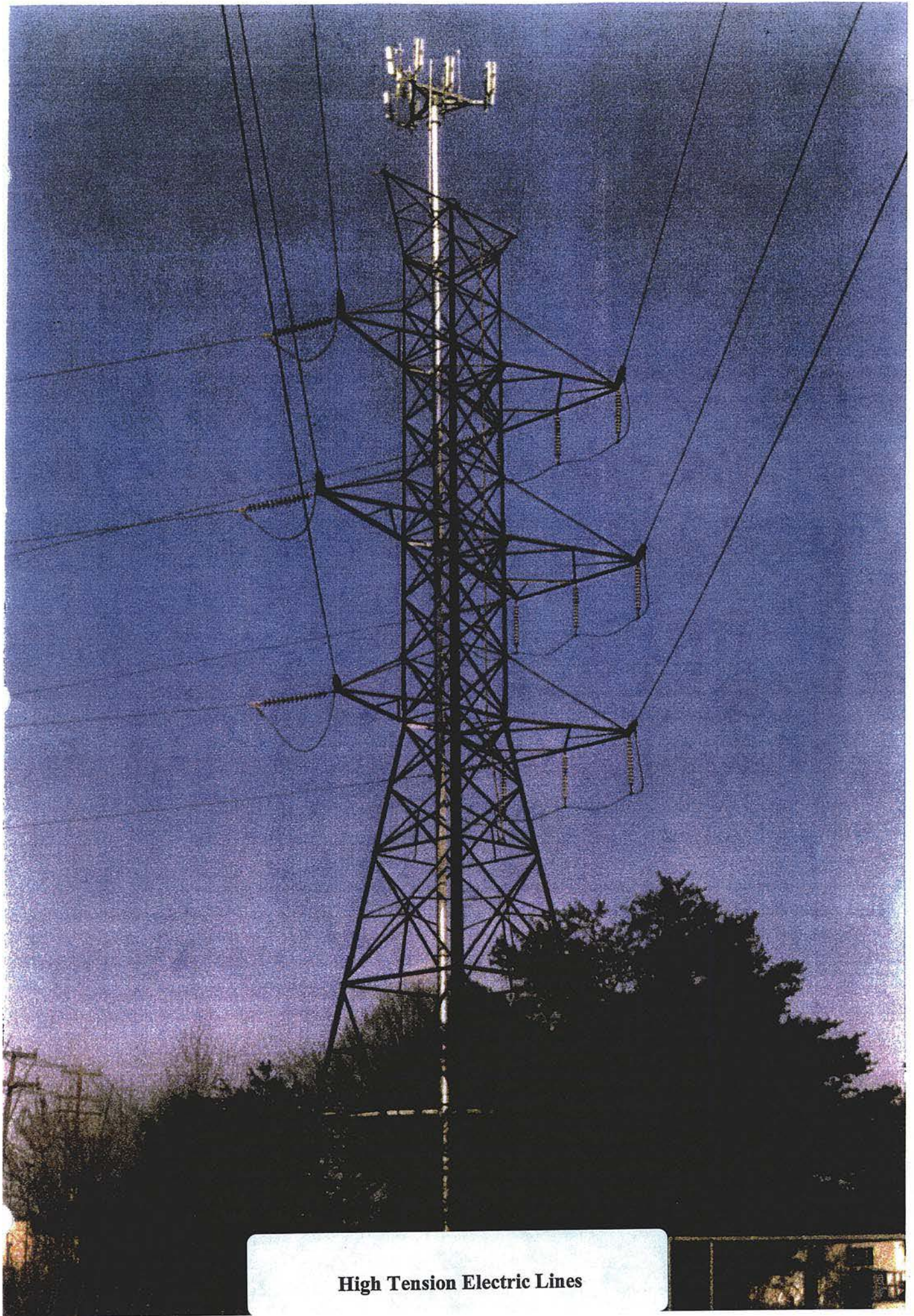
Antenna Mounted in Church Steeple



Light Pole



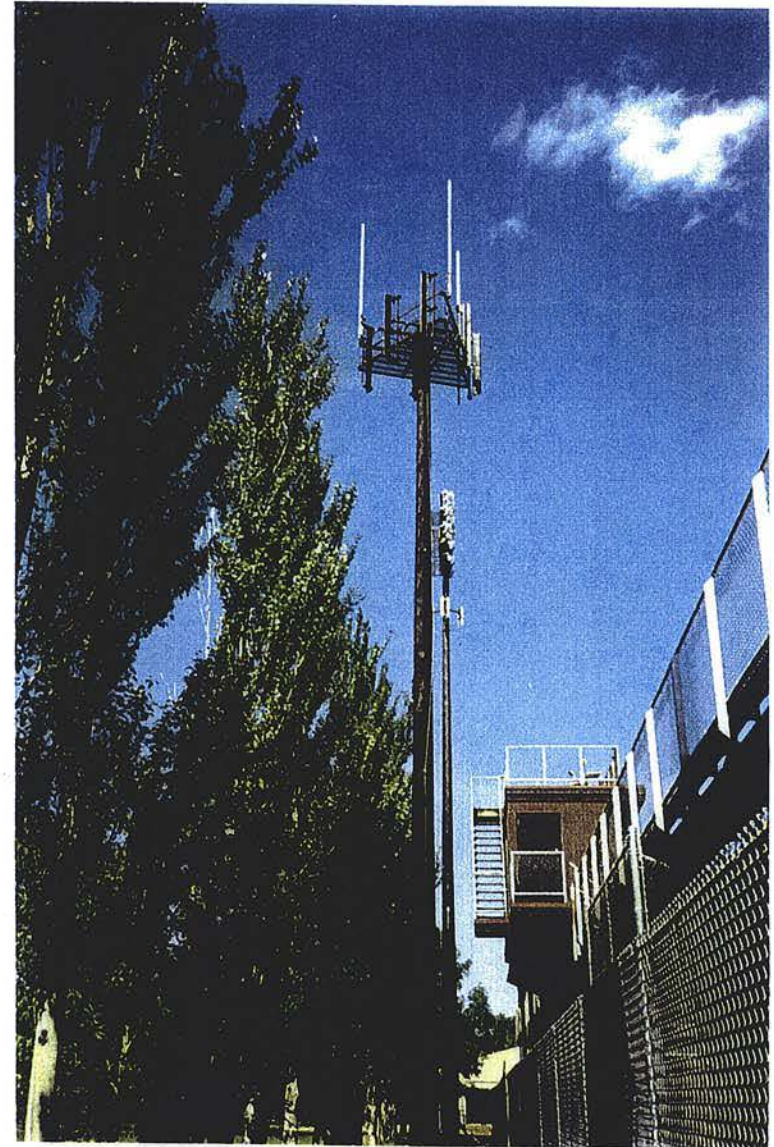
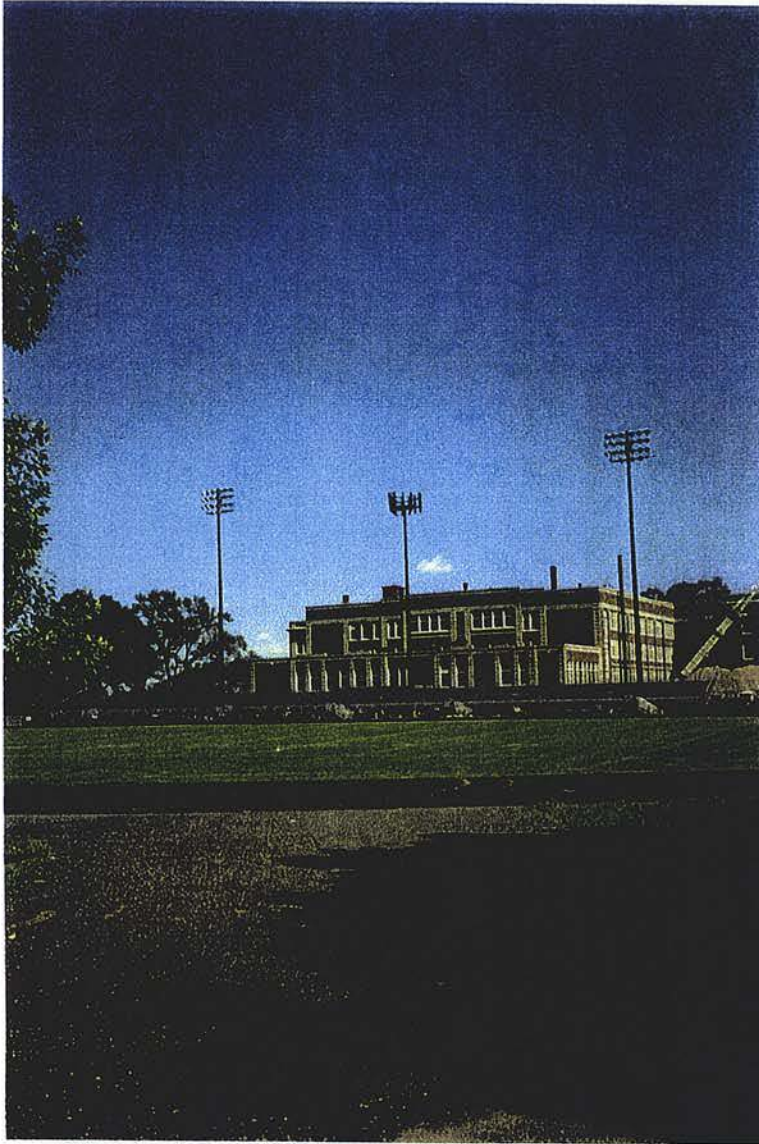
Light Towers



High Tension Electric Lines

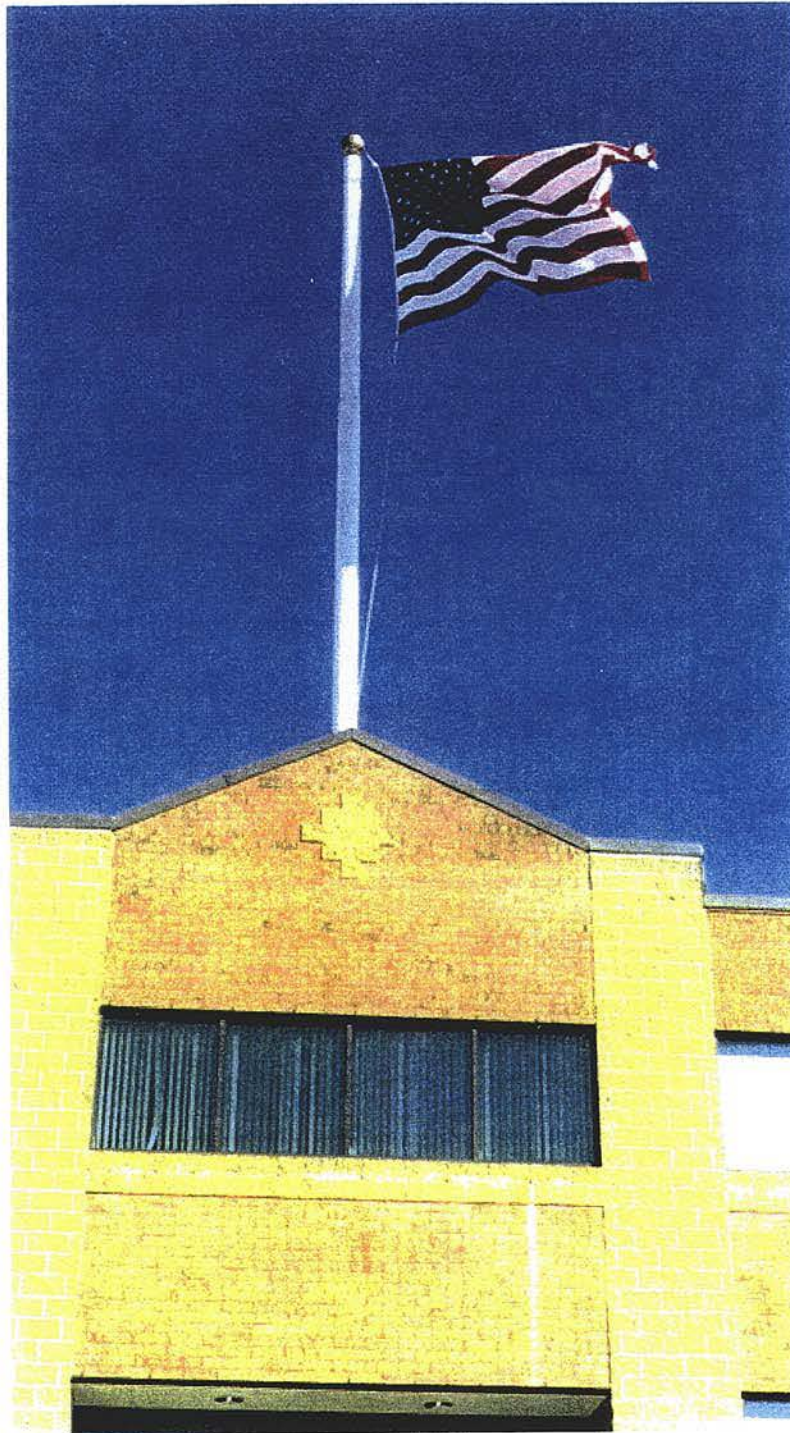


School Stadium Lighting



School Stadium Lighting

9.5 INCH DIAMETER FLAGPOLE

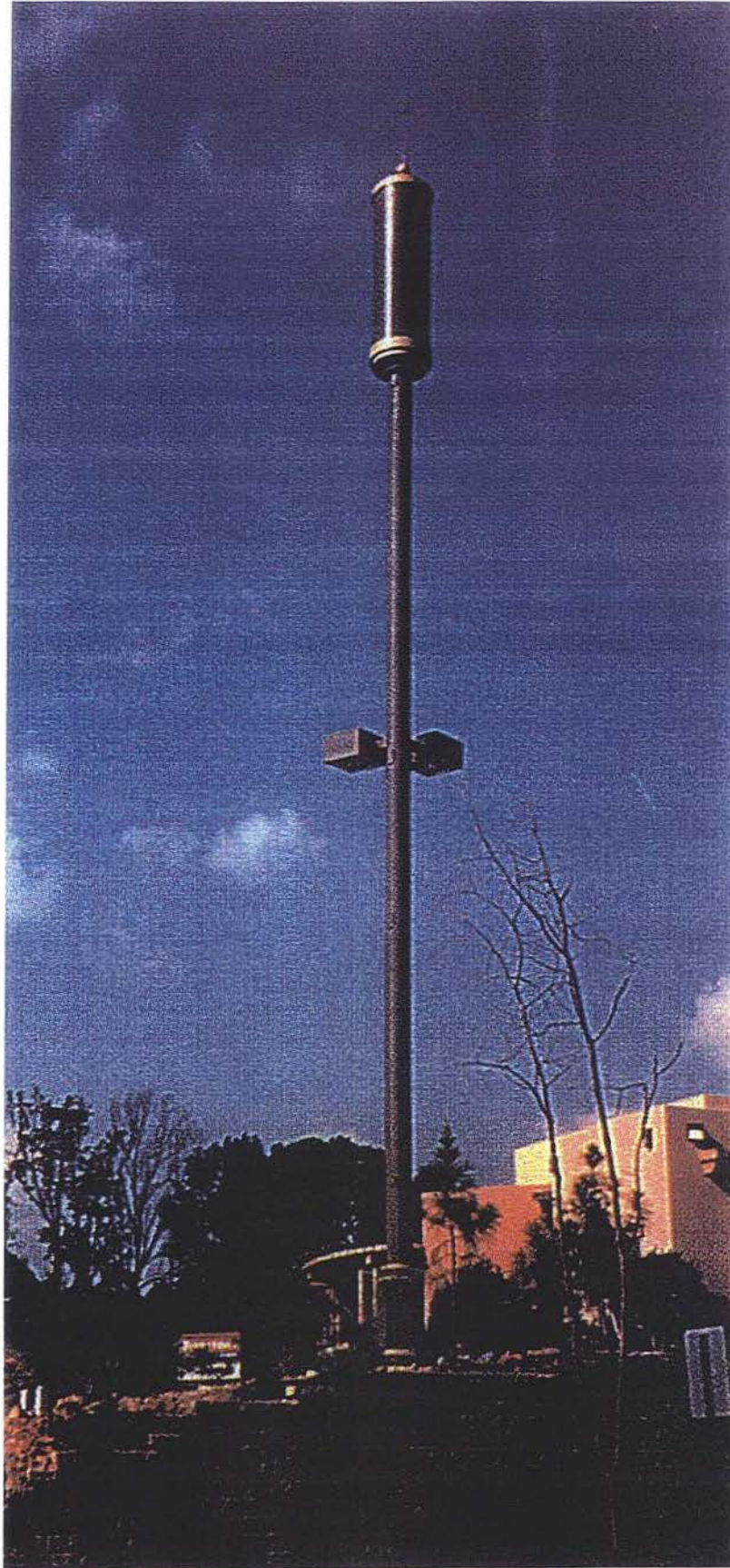


- ◆ StealthSkin V™ RF transparent concealment section. Can house two sets of Huber+ Suhner PCS antennas. Model # SPA 1900/85 series 62" or less (height).
- ◆ 9.5 diameter flagpole can be rooftop mounted or unioned to a custom free standing monopole to create an overall height up to 100'.
- ◆ Custom concealment section configurations available upon request.
- ◆ Flag, ball/truck assembly, all flag accessories, antenna mounts and hardware are included.
- ◆ P.E. certified foundation design included based on customer-provided soil report.
- ◆ Photo simulations available upon request.
- ◆ Call your Stealth Representative or Regional Sales Manager for specific information on sizes and pricing.

Patent Pending
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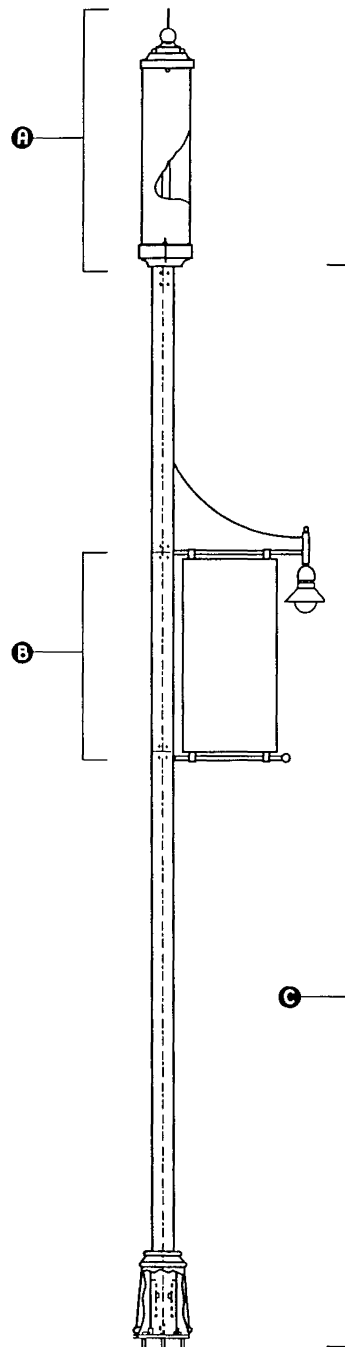


Roof Top



Antenna at Top of Light Pole

CAMOUFLAGE DESIGN



A Antenna Module

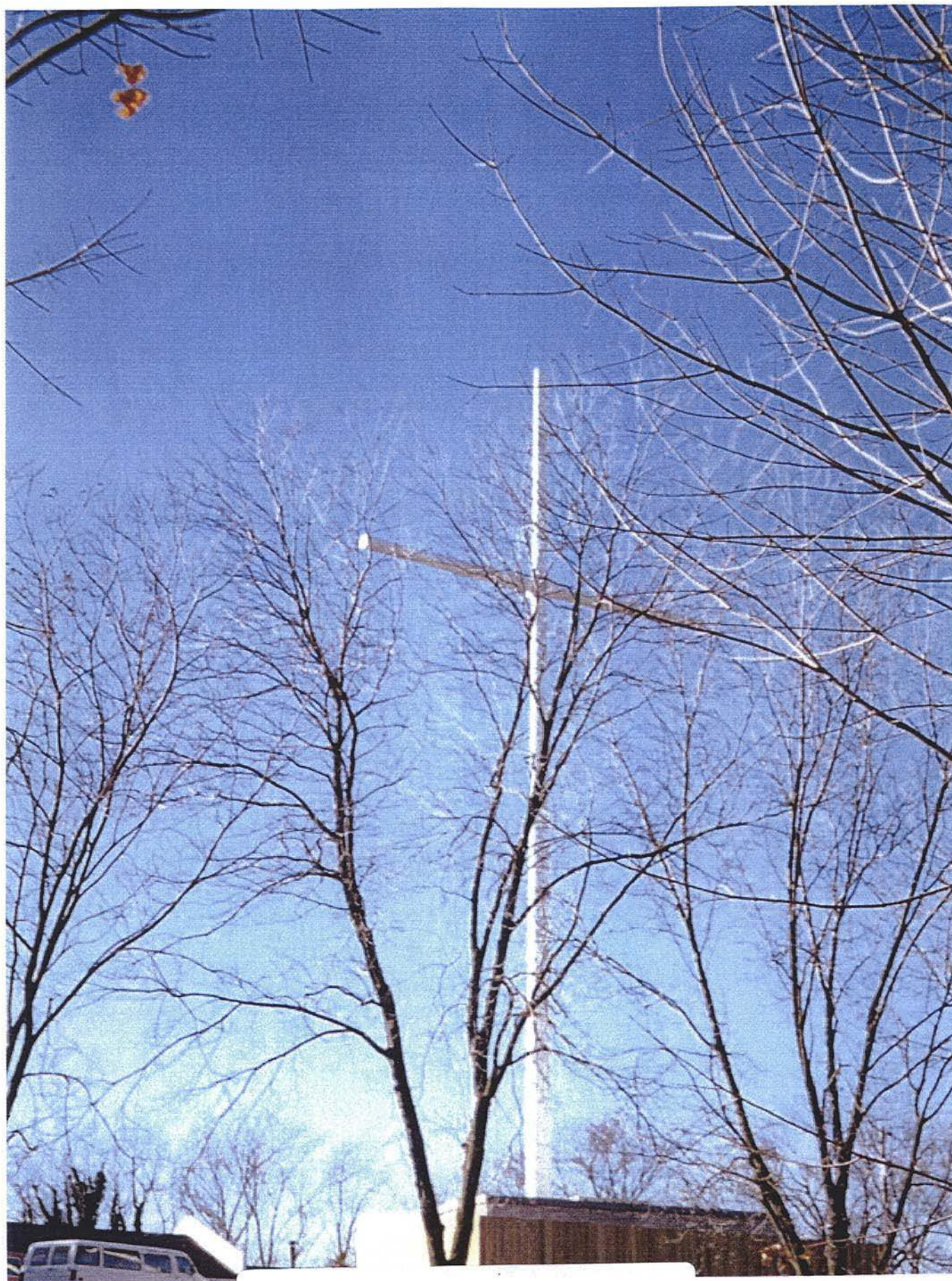
The antenna module houses various antennas (aerials) within a specially constructed, RF-friendly glass-reinforced plastic or polycarbonate enclosure. A balanced lowering and raising mechanism facilitates antenna adjustments and maintenance. Designed for **multiple-operator** application, the module is sized to accommodate various antenna configurations.

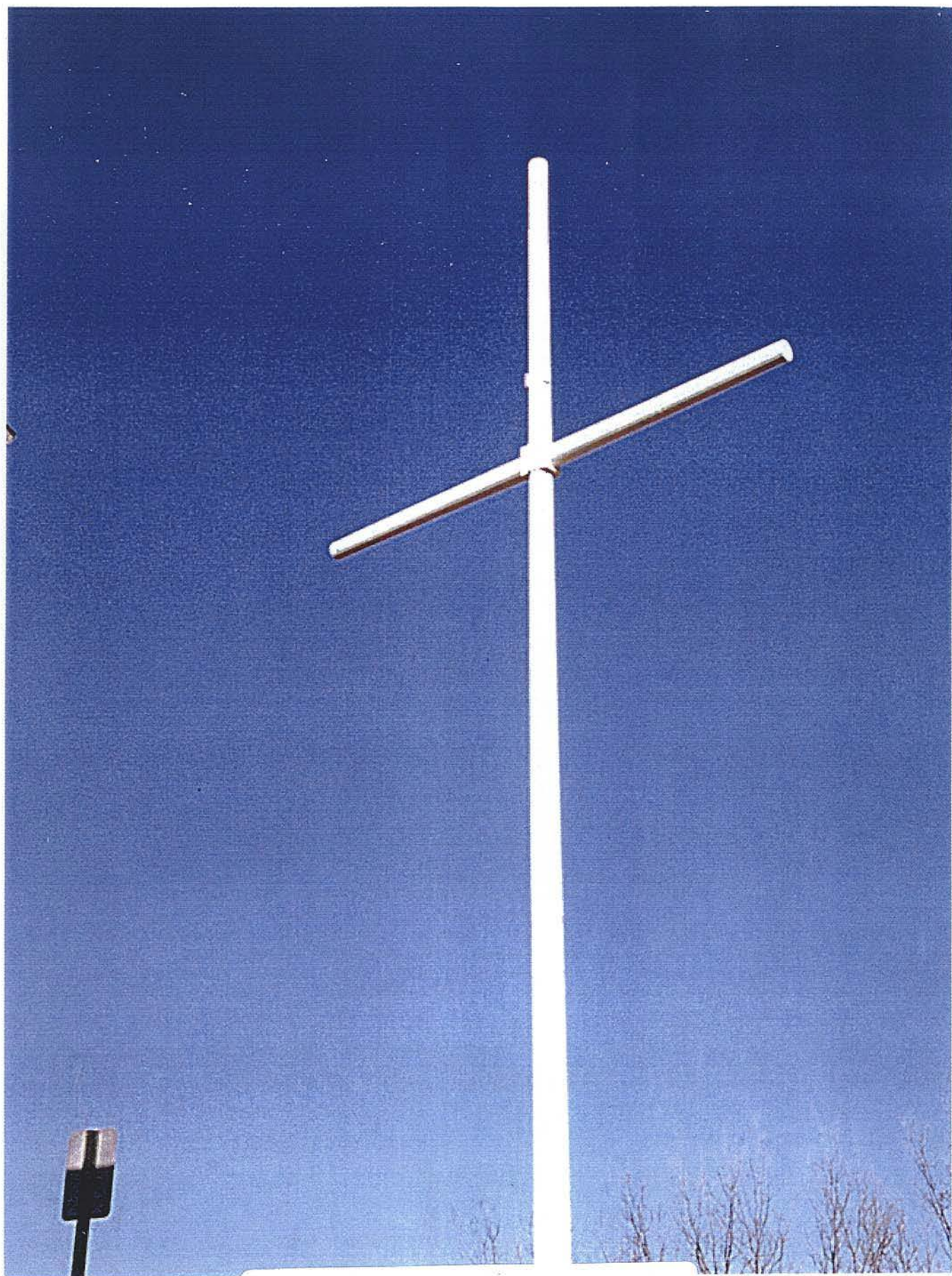
B Added Accessories

The exterior of the support pole is pre-engineered to accept a myriad of design choices without the burden of additional design or engineering cost. Interior raceways provide ready access for power to energize light or video features.

C System Support Pole

The vertical support pole cleverly contains the radio transmission cables, electrical power cabling, telephone wiring for elevated equipment, grounding/earthing, and lightning protection devices. Corrosion protection and advanced coatings ensure years of attractive presence in the community.



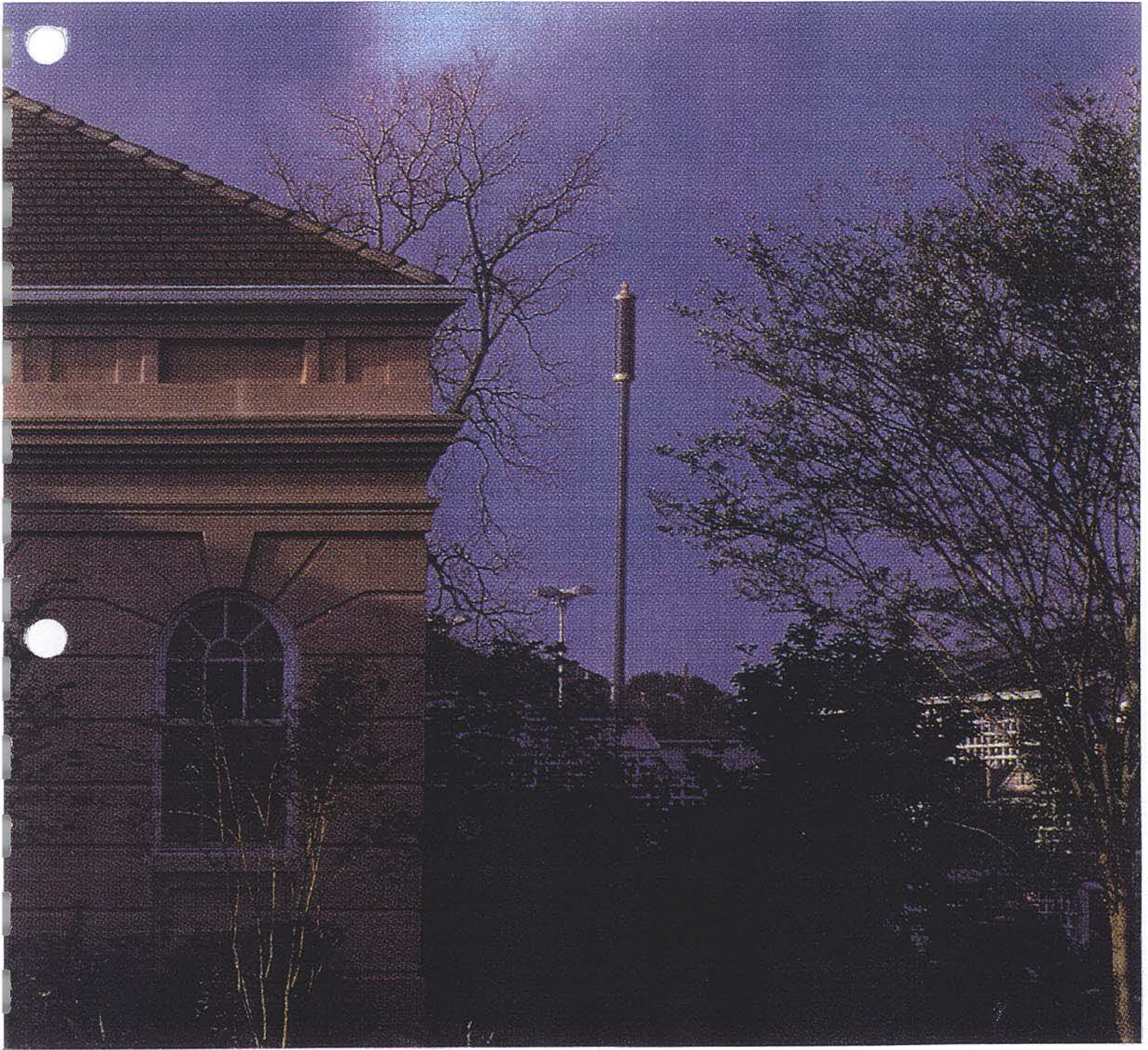




THE TREE*
Alternative Antenna Support Structure
*Patent Pending

Tree Monopole

ARCNET
670 North Beers Street - Bldg. 2
Holmdel, NJ 07733
908-739-3200



Monopole

CRANKSHAFT FLAGPOLE



- ♦ Standard heights available up to 150'. Custom heights available.
- ♦ Cylinders can easily be raised to gain access to the antennas for maintenance.
- ♦ Will meet or exceed any municipality wind load requirement.
- ♦ Includes 10x15 United States Flag and custom truck assembly.
- ♦ Variety of finishes available.
- ♦ Maximum antenna dimensions will vary depending on antenna width and depth. Call for details.
- ♦ RF interference services available. Call for quotes.
- ♦ Photo simulations available upon request.
- ♦ Please call your Stealth Representative or Regional Sales Manager for specific information on sizes and prices.

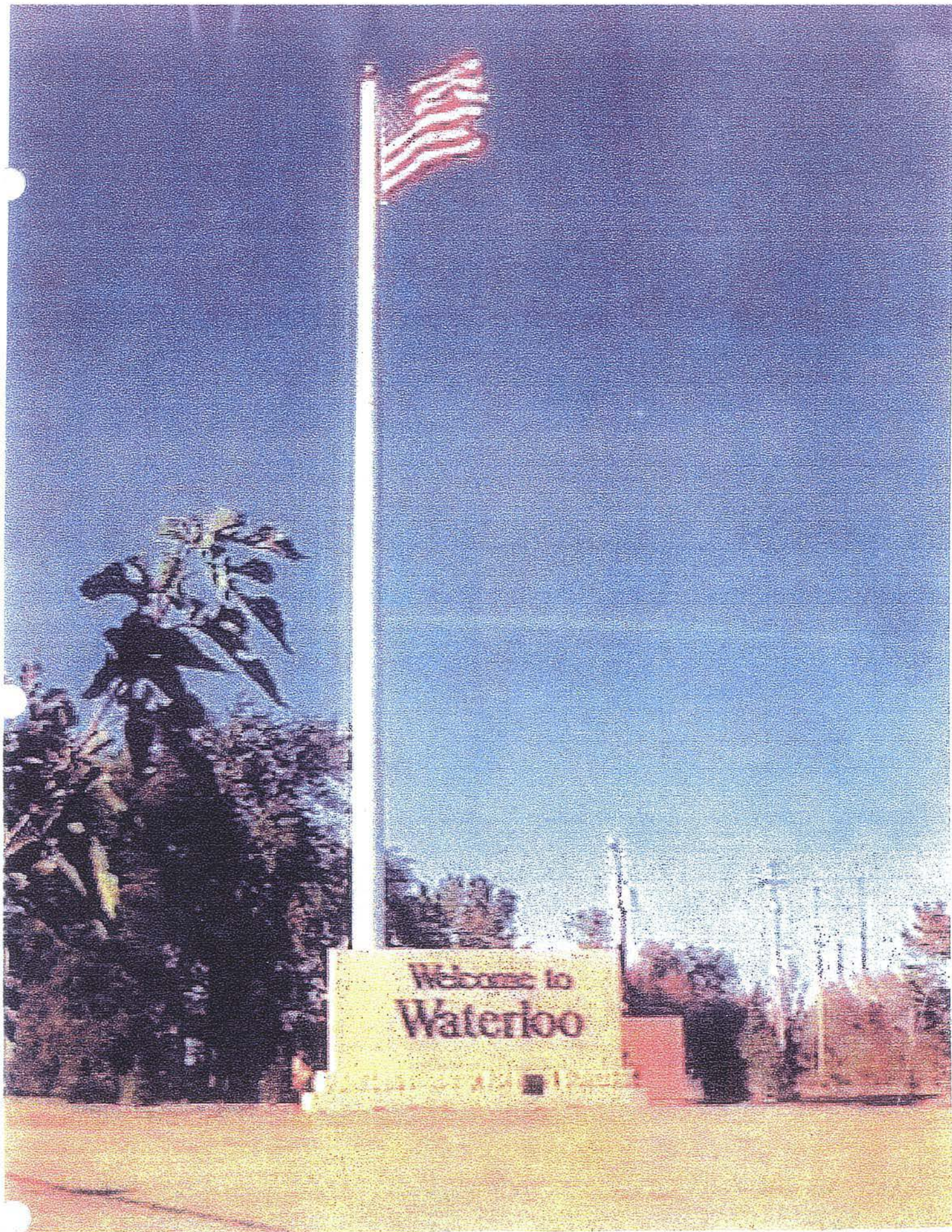
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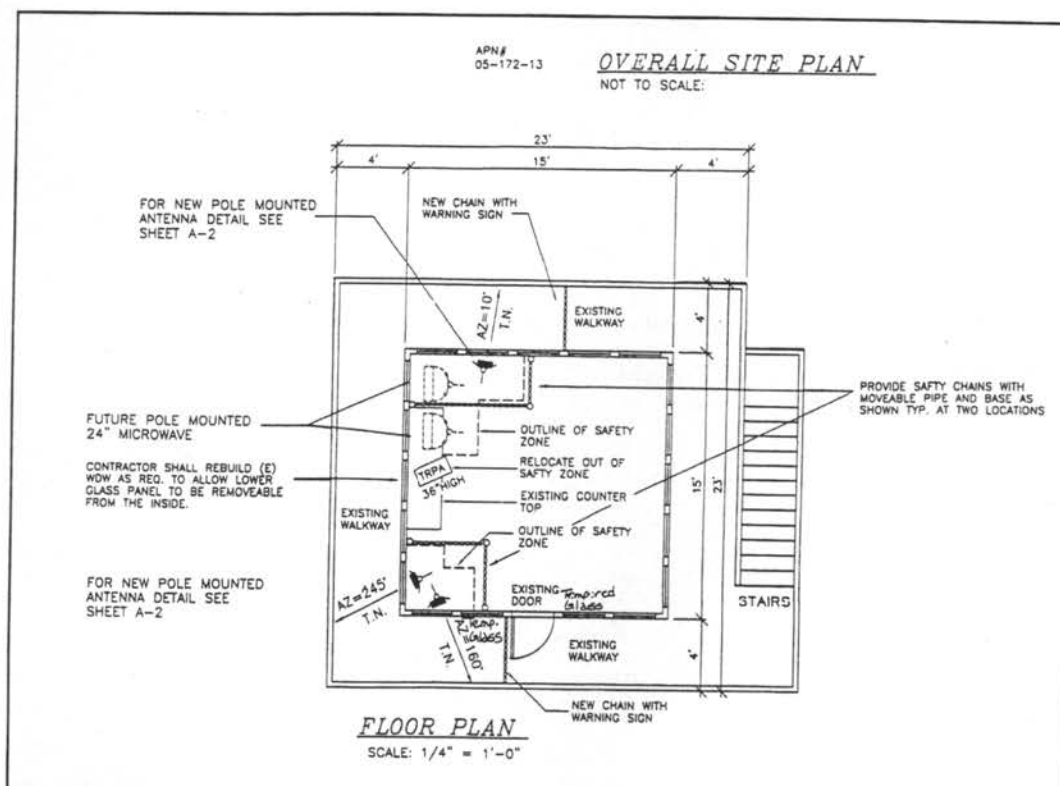
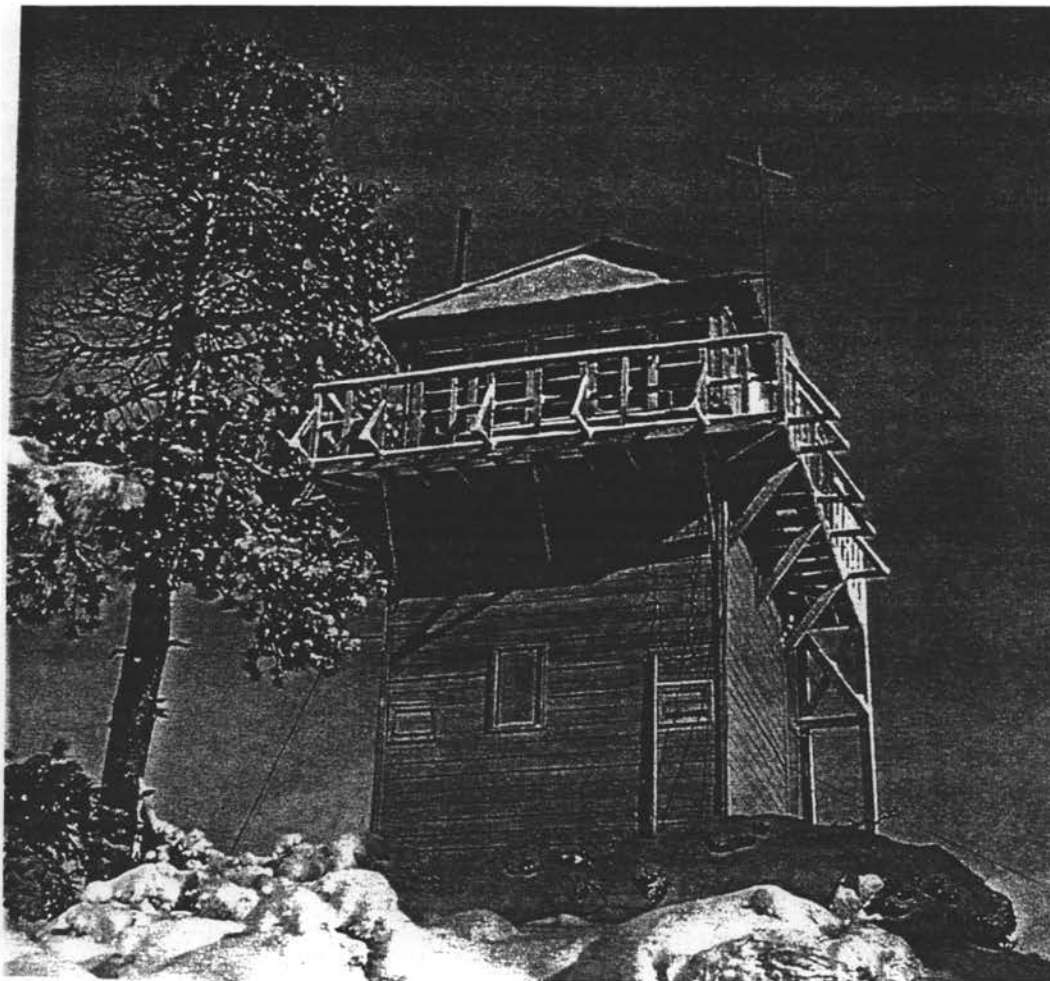
Flag Pole and Base Station



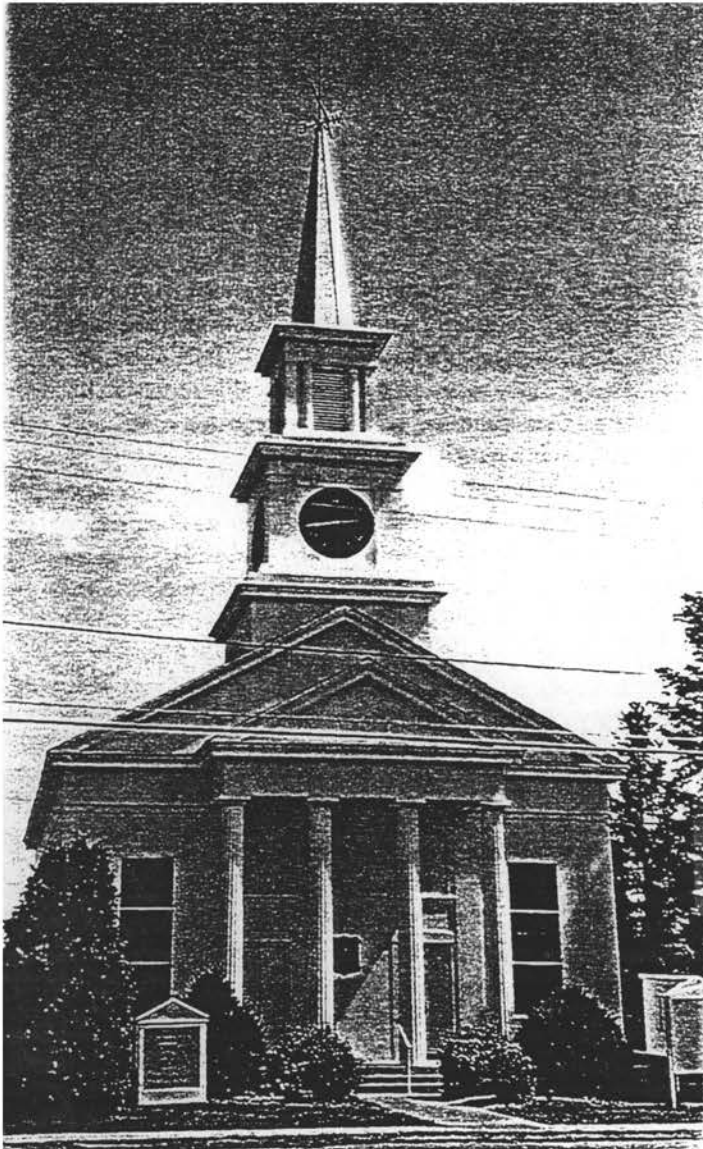
Flag pole / Monopole

HISTORICAL SITING

“Locating Telecommunications Towers in Historic Buildings”
A National Trust Publication, 2000

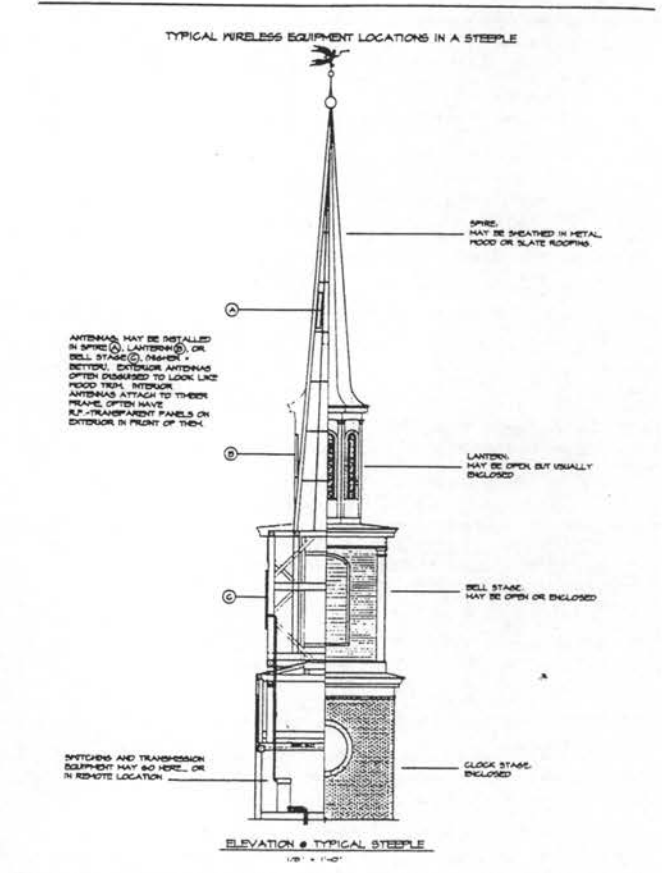


**Zephyr Cove Lookout Tower 1932
(Lake Tahoe)**

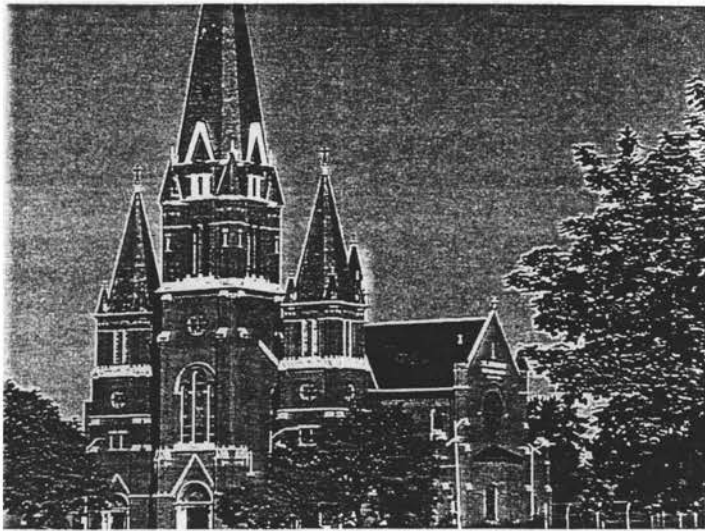


Antennas for cellular phone service are located in the steeple of the First Congregational Church in Newbury, Vermont.

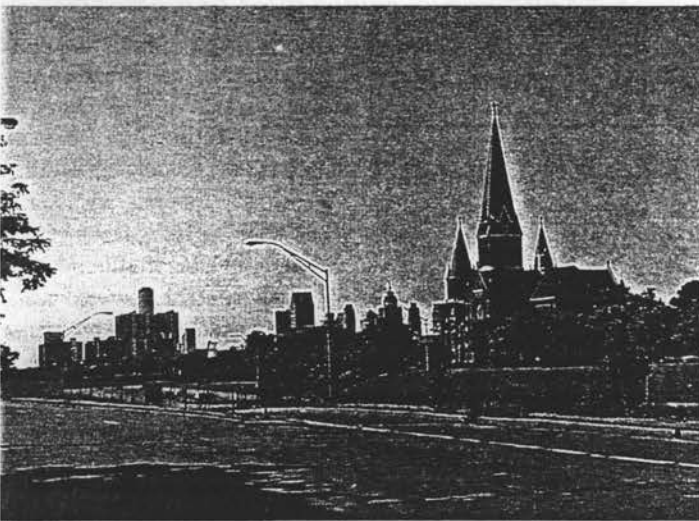
— Photo by Thomas Keefe



**First Congregational Church
in Newbury, VT**

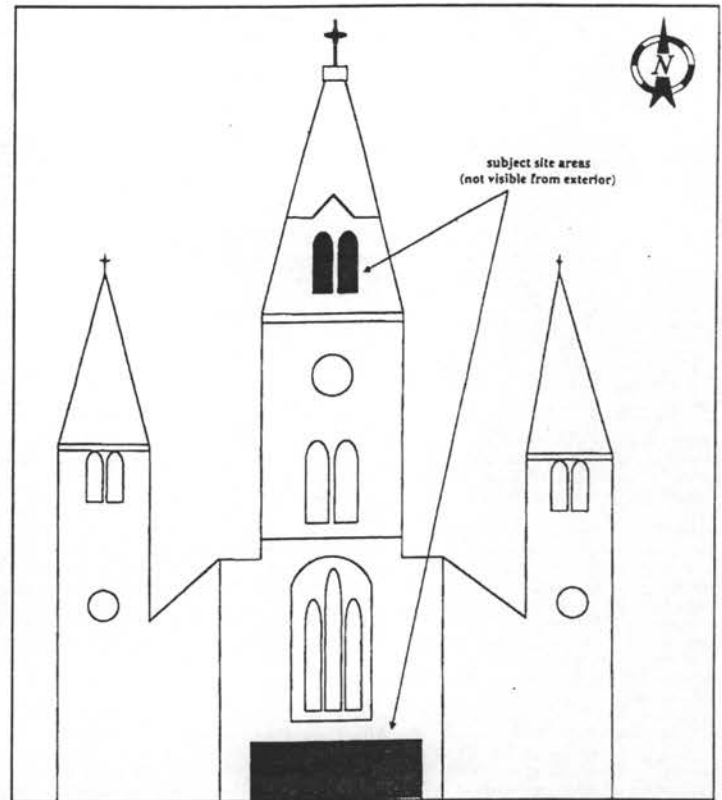


The facade of St. Josephat's Church in Detroit after Nextel's antennas were installed in the belfry.



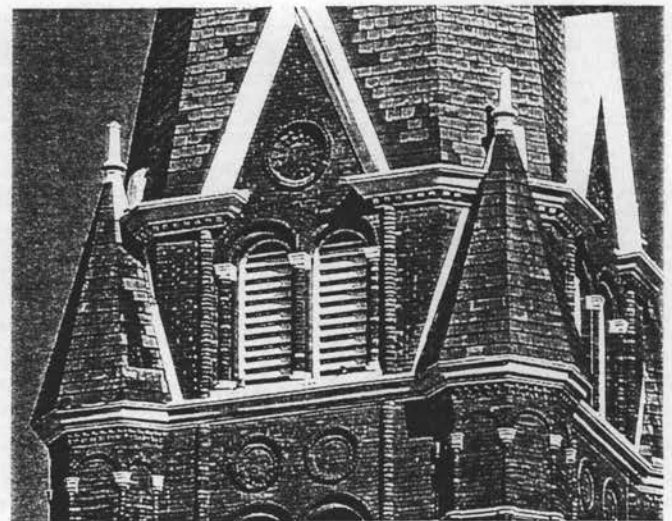
St. Josephat's seen from the highway, with the Detroit skyline on the left. Although the church itself is highly visible from I-75, the antennas concealed in the tower are invisible to motorists.

— Photos by Christopher Wzacny



Drawing showing the location of the antennas in the belfry and the operating equipment in a storage room above the entry.

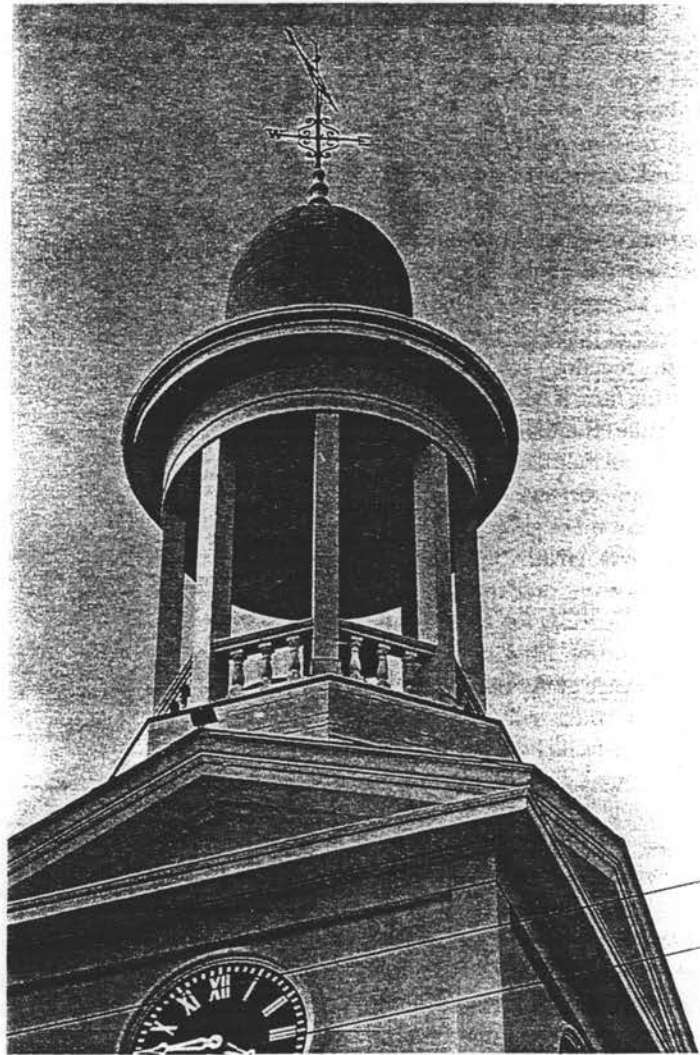
— Photo courtesy of Nextel Communications



On the central tower of St. Josephat's, three antennas hide behind the white louvers, which are made of fiberglass to be radio frequency (RF) transparent. They replicate the former wooden louvers.

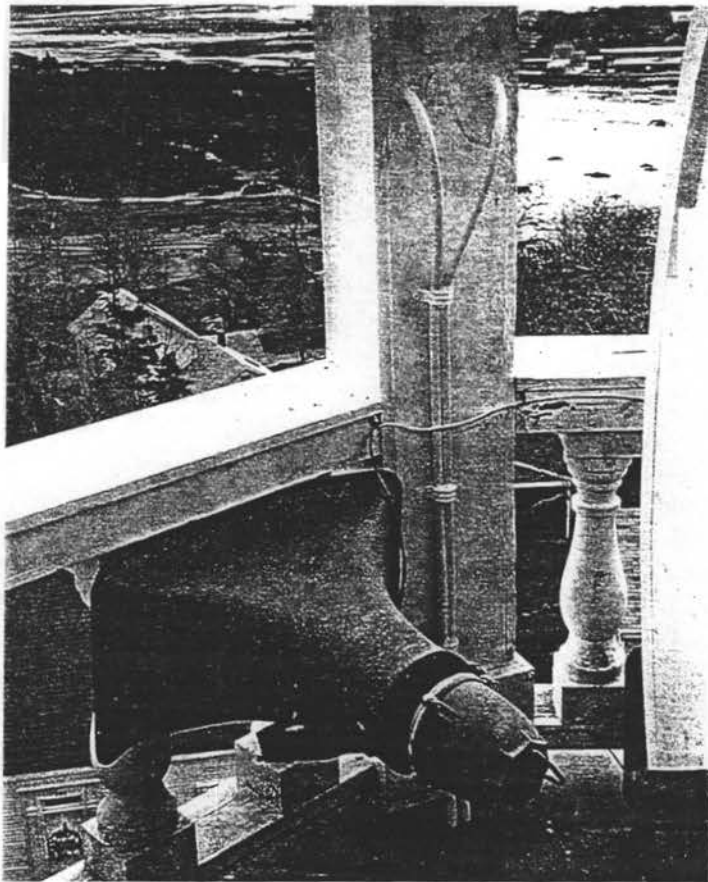
— Photo by Christopher Wzacny

St. Josephat Church in Detroit, MI



The tower of the First Congregational Church of Wellfleet on Cape Cod in Massachusetts houses telecommunications equipment. Two nearly imperceptible antennas covered in fiberglass fit onto two of the eight columns of the belfry. The operating equipment is located in the clockworks room below.

— Photo by Thomas Keefe



Two cables, painted white, run down the back of a column, which supports one antenna. The intrusion is minor and only visible from inside the belfry. The flared piece of equipment at the left is the electronic bell system.

— Photo by Thomas Keefe

**Tower – First Congregational Church
of Wellfleet on Cape Cod, MA**

A



**FEDERAL COMMUNICATIONS COMMISSION
WIRELESS TELECOMMUNICATIONS BUREAU
AND MASS MEDIA BUREAU
445 Twelfth Street, S.W., Washington, DC 20554**

**FACT SHEET
January 10, 2002**

ANTENNA COLLOCATION PROGRAMMATIC AGREEMENT

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The Federal Communications Commission (FCC or Commission), the Advisory Council on Historic Preservation (ACHP or Council), and the National Conference of State Historic Preservation Officers (NCSHPO) entered into a Nationwide Programmatic Agreement for the Collocation of Wireless Antennas (the "Agreement") on March 16, 2001.¹ The Agreement applies to wireless and broadcast facilities and is intended to streamline procedures for review of collocations of wireless and broadcast antennas and associated equipment (herein "antennas") on existing towers and other structures under the National Historic Preservation Act (NHPA).²

This Fact Sheet provides guidance regarding the implementation of the Agreement for Commission broadcast and wireless service licensees, applicants, tower companies, and tower owners (collectively, "applicants"). This Fact Sheet also provides guidance to State Historic Preservation Officers (SHPOs), Tribal Historic Preservation Officers (THPOs), and other interested parties. The guidance set forth in this Fact Sheet does not amend or act as a substitute for the text of the Agreement or the Commission's rules. The guidance also does not amend or act as a substitute for the ACHP's rules (except to the extent the Agreement itself substitutes for the ACHP's rules). The complete text of the Agreement is available on the Wireless

¹ *Public Notice*, Wireless Telecommunications Bureau Announces Execution of Programmatic Agreement with Respect to Collocating Wireless Antennas on Existing Structures, DA 01-691, rel. March 16, 2001.

² 16 U.S.C. §§ 470 *et seq.*

Telecommunications Bureau (“WTB”) web site at <<http://wireless.fcc.gov/siting/>> or by contacting the WTB by e-mail at wtb_towersiting@fcc.gov or by phoning Ivy Harris at (202) 418-0621 for wireless-related inquiries; or on the Mass Media Bureau (“MMB”) web site at <http://www.fcc.gov/mmb/mmb_siting.html> or by contacting the MMB by e-mail at mmb_siting@fcc.gov or by phoning Marva Dyson at (202) 418-2870 for broadcast-related inquiries.

1) Background, Purpose, and Scope of the Agreement

Under Section 106 of the NHPA (16 U.S.C. § 470f), federal agencies are required to take into account the effects of federal undertakings on historic properties. The Commission’s environmental rules require licensees and applicants to evaluate whether proposed facilities may affect historic properties that are listed or eligible for listing in the National Register of Historic Places (“National Register”). See 47 C.F.R. § 1.1307(a)(4). Consistent with Section 106, this evaluation process includes consultation with the relevant State Historic Preservation Officer (SHPO) and/or Tribal Historic Preservation Officer (THPO), as well as compliance with other procedures set out in the ACHP rules, 36 C.F.R. Part 800, Subpart B. The Commission becomes directly involved in the consultation process when an applicant determines that a proposed facility will have an adverse effect or when there is a dispute between the applicant and the SHPO/THPO regarding whether a proposed facility will have an adverse effect.³ Where a facility may have an adverse effect on a historic property, the Commission’s rules require submission of an Environmental Assessment (EA) prior to construction.⁴

The purpose of the Agreement is to streamline the procedures associated with Section 106 review and the Commission’s rules in order to facilitate access to advanced telecommunications services by all Americans in a manner that is consistent with the NHPA’s goal of preserving the nation’s historic properties and with the pro-competitive and deregulatory goals of the Communications Act of 1934, as amended. According to one industry source, the number of wireless cell sites in the United States increased from a total of 913 in 1985 to 104,288 in 2000.⁵ This explosive growth in the number of wireless communications facilities has imposed strains on all parties to the historic preservation review process and led to delays in deployment. Additionally, Congress has mandated that all television stations convert to digital transmission by the end of 2006. While television broadcasters will likely attempt to collocate their digital facilities in the interest of economy and expedition, the transition may necessitate the construction of some new towers to support the digital antennas. However, not all facilities construction is alike in its potential to affect adversely historic properties. In particular, the addition of an antenna to a pre-existing tower or other structure that is not itself a historic property (*i.e.*, collocation) ordinarily should not have an adverse effect on historic properties. The Agreement therefore exempts collocated antennas from the review process under the NHPA unless they fall

³ See also Memorandum from John M. Fowler, Executive Director, Advisory Council on Historic Preservation, to Federal Communications Commission, State Historic Preservation Officers, and Tribal Historic Preservation Officers, dated September 21, 2000 (confirming authority to delegate)(ACHP Delegation Memo).

⁴ 47 C.F.R. § 1.1307(a)(4). No EA is required for a finding of “no effect” or “no adverse effect.” See Section 9, *infra*.

⁵ *Cellular Telecommunications Industry Association Semi-Annual Wireless Survey*, Table (“Cell Sites”), December 31, 2000.

within a set of exceptions designed to encompass potential problematic situations. The Agreement is intended to encourage the collocation of future antennas on existing structures, create an incentive for parties to comply with Section 106 on a going-forward basis, and, where reasonably possible from a network and coverage perspective, to encourage applicants to locate their facilities away from historic properties.

The Agreement governs only the review of collocations under the NHPA for effects on historic properties listed, or eligible for listing, in the National Register. New tower construction and the replacement of existing towers are not exempted from review under the Agreement. The Agreement does not affect the review of collocations to determine compliance with other aspects of the FCC's environmental rules or other federal, state, or local laws.

2) General Operation of the Agreement

Stipulations III, IV, and V form the core of the Agreement's provisions for collocations. The general effect of these provisions is to exempt all collocations of antennas from the Section 106 review process, unless an exception stated in Stipulation III, IV, or V applies. **Thus, unless an exception is applicable, collocations shall not be submitted to the SHPO for review.** A more detailed discussion of these three stipulations is included in the fourth, fifth, and sixth sections of this Fact Sheet.

We note that the Agreement governs only Section 106 review of the collocation itself. Nothing in the Agreement affects the rights, if any, of the FCC, ACHP, SHPOs, THPOs, tribal governments, or members of the public to challenge any underlying tower that has an adverse effect on a historic property, independent of the collocation process.

- A. Pre-Existing Towers. Stipulation III governs collocation on all towers constructed on or before the date of the Agreement, March 16, 2001. Stipulation III allows for collocation on those towers without the collocation having to undergo consultation and review under Section 106 of the NHPA, whether or not the underlying tower has previously undergone Section 106 review, unless the collocation is subject to one of the exceptions listed in Stipulation III (*see* Section 4, below, "Collocation on Towers Constructed on or before March 16, 2001").
- B. Newly Constructed Towers. Stipulation IV covers collocations on towers built after March 16, 2001. Stipulation IV allows for collocation on those towers without the collocation having to undergo Section 106 consultation and review, unless the collocation is subject to one of the exceptions listed in Stipulation IV (*see* Section 5, below, "Collocation on Towers Constructed after March 16, 2001"). For towers built after March 16, 2001, one of these exceptions occurs when the underlying tower has not completed Section 106 review. If the underlying tower has not gone through Section 106 review, an applicant cannot collocate on that tower without a written concurrence with a finding of "no effect" or "no adverse effect" on historic properties from the relevant SHPO, the ACHP, or the FCC, or an agreement on mitigation of adverse effects and subsequent approval under the FCC's rules.

- C. Buildings and Non-Tower Structures outside Historic Districts. Stipulation V governs collocations of antennas on buildings and non-tower structures outside historic districts. Stipulation V allows for collocations on buildings and non-tower structures without the collocation having to undergo Section 106 review, unless the collocation is subject to one of the exceptions listed in Stipulation V (see Section 6, below, “Collocation on Buildings and Non-Tower Structures outside Historic Districts”).

3) Definitions

Collocation: “Collocation” means the mounting or installation of an antenna on an existing tower, building or structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes. Under the Agreement, the term “collocation” includes excavation and the placement of equipment necessarily or reasonably associated with the mounting or installation of an antenna.

Tower: “Tower” is any structure built for the sole or primary purpose of supporting antennas and their associated facilities used to provide FCC-licensed services.⁶ A water tower, utility tower, or other structure built primarily for a purpose other than supporting FCC-licensed services is not a “tower” for purposes of the Agreement, but is a non-tower structure.

Substantial increase in the size of the tower: Although Stipulations III and IV permit collocation on towers without the collocation having to undergo Section 106 consultation and review, this authorization is limited by, among other things, the size and scope of the collocation. Thus, if the collocation will result in a “substantial increase in the size of the tower,” the collocation must go through Section 106 consultation and review. A “substantial increase in the size of the tower” occurs under one or more of the following circumstances:

- (1) The height of the tower will be increased by more than the greater of: (a) 10% of the height of the tower; or (b) the height extension needed to accommodate one additional antenna array with a separation of 20 feet from the nearest existing antenna. Thus, a 150-foot tower may be increased in height by up to 15 feet without constituting a substantial increase in size. If there is already an antenna at the top of the tower, the tower height may be increased by up to 20 feet plus the height of a new antenna to be located at the new top of the tower.
- (2) More than four new equipment cabinets or more than one new equipment shelter will be added.
- (3) The width of the tower will be increased by more than the greater of: (a) 20 feet in any direction from the edge of the tower; or (b) the width of the tower structure at the level of the appurtenance. For example, if the width of the tower structure at the level of the appurtenance is 40 feet, the appurtenance can protrude up to 40 feet from the edge of the tower at that point without constituting a substantial increase in the size of the tower.
- (4) Excavation will occur outside the current tower site, defined as the area within the boundaries of the leased or owned property surrounding the tower at the time of the proposed collocation, and including any access or utility easements related to the site.

⁶ This may include a tower on which no antennas have been located prior to the collocation at issue, if the principal purpose for constructing the tower was to support FCC-licensed antennas.

A collocation may exceed the size limits in the first category without requiring Section 106 review if the additional height is necessary to avoid radio interference with or from existing antennas. A collocation may exceed the size limits in the third category without requiring Section 106 review if the additional width is necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via cable. If a complaint is filed regarding a specific collocation that exceeds the size limits set out in the Agreement, the Commission may require the applicant to explain why one of these exceptions is applicable to the collocation.

4) Collocation on Towers Constructed on or before March 16, 2001 (Stipulation III)

For towers constructed on or before March 16, 2001, the Agreement generally allows collocation without consultation or review under Section 106 and Subpart B of 36 CFR Part 800. There are four situations involving the mounting of antennas on such towers, however, that still require review:

- (1) the mounting of the antenna will result in a substantial increase in the size of the tower (*see* Section 3, Definitions, above); or,
- (2) prior to the collocation, the tower has been determined by the FCC to have an effect on one or more historic properties, unless such effect has been found to be not adverse through a “no adverse effect” finding, or if found to be adverse or potentially adverse, has been resolved, such as through a conditional “no adverse effect” determination, a Memorandum of Agreement, a programmatic agreement, or otherwise in compliance with Section 106 and Subpart B of 36 CFR Part 800; or,
- (3) the tower is the subject of a pending environmental review or related proceeding before the FCC involving compliance with Section 106 of the National Historic Preservation Act; or,
- (4) the collocation licensee or the owner of the tower has received written or electronic notification that the FCC is in receipt of a complaint from a member of the public, a SHPO or the Council supported by substantial evidence that the collocation has an adverse effect on one or more historic properties.

For purposes of the third exception, a “review or related proceeding” commences with respect to wireless facilities or tower registration when the FCC’s WTB assigns it a file number and contacts the tower owner, tower manager, or the owner's authorized agent (herein collectively the “tower owner”) in response to a SHPO adverse effect letter, a complaint from a member of the public, or otherwise. Similarly, a “review or related proceeding” commences with respect to broadcast facilities when (1) due to the proximity of historic properties, an applicant cannot certify compliance with the FCC’s environmental rules and submits an Environmental Assessment with its application to the MMB; or (2) the FCC receives a SHPO adverse effect letter or a complaint from a member of the public. A review is “pending” from the time it commences until the FCC dismisses, closes, or otherwise resolves the matter. Simple receipt by the Commission of a letter from a SHPO alleging that its ability to consult about a tower or collocation prior to construction may have been foreclosed does not in itself establish that a review is pending.

To determine whether a review is pending on a particular tower, an interested party should contact the tower owner. In addition, the FCC will soon make available a database listing

pending Section 106 reviews and related proceedings for both wireless and broadcast services. Potential collocators are encouraged to consult the FCC database in addition to contacting the tower owner; however, parties should not rely solely on the database. Any party that follows these steps in good faith to determine the pendency of a proceeding will be considered to have complied with the intent of the Agreement.

A tower is considered to be constructed on or before March 16, 2001 if the structure reached its initial intended height above ground, or was available for the mounting of collocations, by March 16, 2001. For towers that must be registered with the FCC under Part 17 of the Commission's rules,⁷ the completion date will be the date reported to the Commission on FCC Form 854 as the date of completion of construction.⁸

5) Collocation on Towers Constructed after March 16, 2001 (Stipulation IV)

The Agreement generally allows collocation on towers constructed after March 16, 2001, without consultation or review of the collocation under Section 106 and Subpart B of 36 CFR Part 800. There are four situations involving the mounting of antennas on such towers, however, that still require review:

- (1) the Section 106 review process for the tower and any associated environmental reviews have not been completed; or,
- (2) the collocation will result in a substantial increase in the size of the tower (*see* Section 3, Definitions, above); or,
- (3) prior to the collocation, the tower has been determined by the FCC to have an effect on one or more historic properties, unless such effect has been found to be not adverse through a "no adverse effect" finding, or if found to be adverse or potentially adverse, has been resolved, such as through a conditional "no adverse effect" determination, a Memorandum of Agreement, a programmatic agreement, or otherwise in compliance with Section 106 and Subpart B of 36 CFR Part 800; or,
- (4) the collocation licensee or the owner of the tower has received written or electronic notification that the FCC is in receipt of a complaint from a member of the public, a SHPO, or the Council supported by substantial evidence that the collocation has an adverse effect on one or more historic properties.

We emphasize that pursuant to Subsection (1) of Stipulation IV, above, a tower built after March 16, 2001, may benefit from the collocation provisions of the Agreement only if that tower has completed the Section 106 review and related historic preservation review under the FCC's NEPA rules.⁹ Typical evidence of a completed Section 106 review would include a SHPO's written concurrence with a finding of "no effect" or "no adverse effect" or an executed Memorandum of Agreement. Where a SHPO has an express policy of allowing applicants to

⁷ See 47 C.F.R. §§ 17.1 *et seq.* These rules require that antenna structures located close to airports or that are greater than 200 feet in height comply with painting and lighting specifications designed to ensure aircraft navigation safety. The FCC requires certain antenna structure owners to register structures with the Commission.

⁸ See 47 C.F.R. § 17.57.

⁹ 47 C.F.R. § 1.1307(a)(4).

presume concurrence if no objection is received within 30 days of receipt of the applicant's finding, a tower owner may document completion of the Section 106 review by retaining an appropriate memorandum, together with a copy of the submission to the SHPO and proof of the date of submission, in the company file.

If a tower constructed after March 16, 2001 did not go through Section 106 review prior to construction, an applicant cannot collocate on that tower unless the tower owner first either: (1) obtains written concurrence with a finding of "no effect" or "no adverse effect" on historic properties from either the relevant SHPO, the ACHP, or the FCC, or (2) executes a Memorandum of Agreement on mitigation of adverse effects and thereafter submits an EA and completes the approval process under the FCC's rules.¹⁰

6) Collocation on Buildings and Non-Tower Structures outside Historic Districts (Stipulation V)

For buildings and non-tower structures, the Agreement allows collocation without consultation or review under Section 106 in some circumstances. Collocation without Section 106 review is more limited in these cases to account for the fact that the building or non-tower structure itself could be a historic property. There are four situations involving the mounting of antennas on buildings and non-tower structures that require review:

- (1) the building or structure is over 45 years old;¹¹ or,
- (2) the building or structure is (a) inside the boundary of a historic district, or (b) outside (but within 250 feet of) the boundary of a historic district and the antenna is visible from ground level anywhere within the historic district; or
- (3) the building or structure is either (a) a designated National Historic Landmark or (b) listed in or eligible for listing in the National Register of Historic Places;¹² or,

¹⁰ Where there has been an adverse effect finding, a Memorandum of Agreement ("MOA") is typically signed by the applicant, the relevant SHPO (and/or the ACHP), and the FCC. See 36 C.F.R. § 800.6(b)(1),(2). The MOA is then submitted to the Commission with an Environmental Assessment ("EA"), which upon approval by the Commission results in the issuance of a Finding of No Significant Impact ("FONSI"). See 47 C.F.R. §1.1308.

¹¹ Suitable methods for determining the age of a building include, but are not limited to: (1) obtaining the opinion of a consultant who meets the Secretary of Interior's Professional Qualifications Standards (36 CFR Part 61); or (2) consulting public records.

¹² The National Register is the Nation's official list of cultural resources officially deemed worthy of preservation. See the National Park Service's cultural resources page on the National Register: <http://www.cr.nps.gov/nr/about.htm>. Authorized under the NHPA, the National Register is part of a national program to coordinate and support public and private efforts to identify, evaluate, and protect our historic and archeological resources. Properties listed in the Register include districts, sites, buildings, structures, and objects that are significant in American history, architecture, archeology, engineering, and culture. The National Register is administered by the National Park Service, which is part of the U.S. Department of the Interior. Included among the nearly 73,000 listings that make up the National Register are: 1) all historic areas in the National Park System (<http://www.nps.gov/>); 2) over 2,300 National Historic Landmarks (<http://www.cr.nps.gov/nhl>), which have been designated by the Secretary of the Interior because of their importance to all Americans; and, 3) properties across the country that have been nominated by governments, organizations, and individuals because they are significant to the nation, to a state, or to a community. Interested parties may begin their research by using the following National Register web site: <http://www.cr.nps.gov/nr/research/>. Other useful resources include the ACHP web site at <http://www.achp.gov>; the various State Historic Preservation Offices, accessible through the ACHP web site at

- (4) the collocation licensee or the owner of the building or structure has received written or electronic notification that the FCC is in receipt of a complaint from a member of the public, a SHPO or the Council supported by substantial evidence that the collocation has an adverse effect on one or more historic properties.

For collocations on buildings and non-tower structures after March 16, 2001, the ACHP or the relevant SHPO or THPO may notify the FCC that it has determined that the collocation of the antenna or its associated equipment has resulted in an adverse effect on historic properties listed or eligible for listing in the National Register. The FCC will then act accordingly.

Subsection A.2. of Stipulation V applies where the building or other non-tower structure on which the antenna is to be mounted is located outside, but within 250 feet of the boundary of, a historic district, and the antenna to be collocated will be clearly visible when viewed from an eye level of five to six feet above the ground from any point within the boundary of the historic district.

7) **Tribal Lands and Tribal Consultations**

The terms of the Agreement do not apply on “tribal lands” as defined under Section 800.16(x) of the Council’s regulations, 36 CFR § 800.16(x) (“Tribal lands means all lands within the exterior boundaries of any Indian reservation and all dependent Indian communities.”).¹³ Thus, any collocation on tribal lands must be reviewed and approved by the appropriate tribal authorities, which may include a THPO.¹⁴ The FCC recognizes that Indian Tribes, as domestic dependent nations, “exercise inherent sovereign powers over their members and territory.”¹⁵

Although the Agreement exempts most collocations outside tribal lands from Section 106 review, an Indian Tribe¹⁶ or Native Hawaiian organization¹⁷ may initiate consultation directly with

<http://www.achp.gov/shpo.html>; the various Tribal Historic Preservation Offices, accessible through: <http://www.achp.gov/thpo.html>; and the Bureau of Indian Affairs web site at <http://www.doi.gov/bia/areas/agency.html>.

¹³ For a discussion of the definition of “dependent Indian communities,” see *Alaska v. Native Village of Venetie Tribal Government*, 522 U.S. 520 (1998).

¹⁴ For an online map of Indian lands in the United States, visit the Bureau of Indian Affairs’ web site, “US Indian Lands,” located at: <http://www.gdsc.bia.gov/products/indland.htm>.

¹⁵ In the Matter of Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes, *Policy Statement*, 16 FCC Rcd. 4078, 4080 (2000) (*FCC Tribal Policy Statement*).

¹⁶ Section 301(4) of the NHPA defines “Indian tribe” or “tribe” as “an Indian tribe, band, nation, or other organized group or community, including a Native village, Regional Corporation or Village Corporation, as those terms are defined in section 3 of the Alaska Native Claims Settlement Act [43 U.S.C. 1602], which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.” 16 U.S.C. § 470w(4).

¹⁷ Section 301(18) of the NHPA defines “Native Hawaiian organization” as “any organization which — (A) serves and represents the interests of Native Hawaiians; (B) has as a primary and stated purpose the provision of services to Native Hawaiians; and (C) has demonstrated expertise in aspects of historic preservation that are culturally significant to Native Hawaiians. The term includes, but is not limited to, the Office of Hawaiian Affairs of the State of Hawaii and Hui Malama I Na Kupuna O Hawai’i Nei, an organization incorporated under the laws of the State of Hawaii.” 16 U.S.C. § 470w(18).

the FCC or with its licensees, tower companies and applicants when a collocation outside tribal lands may affect historic properties that are of religious or cultural significance to that Indian tribe or Native Hawaiian organization. Where a collocation is not exempt from Section 106 review under the Agreement, the applicant must make a good faith effort to identify Indian tribes and Native Hawaiian organizations whose historic properties may be affected and involve those entities in the Section 106 process as provided in the ACHP rules.¹⁸

The excavation of Indian or Native Hawaiian artifacts, burial mounds, or other religious sites has the potential to cause a significant environmental effect and thus requires the preparation of an EA.¹⁹ If an existing tower site is known to contain any Indian or Native Hawaiian archeological, religious, or cultural property that may be significantly affected by excavation or other work undertaken in connection with a collocation otherwise categorically excluded from environmental processing, an EA must be submitted prior to any new excavation or other work within that site. Similarly, if Indian or Native Hawaiian remains or other artifacts are discovered during excavation, the party must immediately cease construction and prepare an EA.²⁰

We emphasize that when licensees, tower companies, and other applicants consult with tribal authorities they are acting as delegates of the FCC, which has a government-to-government relationship with tribes. The FCC recognizes “the unique legal relationship that exists between the federal government and Indian Tribal governments, as reflected in the Constitution of the United States, treaties, federal statutes, Executive orders, and numerous court decisions.”²¹ Thus, tribal authorities may request FCC participation in consultation on any matter at any time. Consistent with the FCC’s trust relationship with federally recognized Indian tribes, applicants in undertaking all construction activities should be sensitive to the religious and cultural traditions of Indian peoples, and should endeavor to avoid actions that would adversely affect the preservation of those traditions. In particular, applicants are reminded that any information regarding historic properties or sacred sites to which Indian tribes attach significance may be highly confidential, private, and sensitive, and shall be treated accordingly in conformance with tribal wishes.

¹⁸ See 36 C.F.R. § 800.2(c)(2)(ii).

¹⁹ See 47 C.F.R. § 1.1307(a)(5) (an EA is required where an undertaking “may affect Indian religious sites”); see also *Public Notice*, “Wireless Telecommunications Bureau Announces that Sprint Spectrum L.P., D/B/A SPRINT PCS Has Voluntarily Relocated a Wireless Telecommunications Tower Constructed on an Indian Burial Mound,” DA 01-1600 (rel. July 6, 2001).

²⁰ See 47 C.F.R. § 1.1312(d) (“If, following the initiation of construction..., [a] licensee or applicant discovers that the proposed facility may have a significant environmental effect, it shall immediately cease construction....”); see also 36 C.F.R. § 800.13 (procedures for post-review discoveries).

²¹ *FCC Tribal Policy Statement*, 16 FCC Rcd. at 4080.

towers is an environmentally desirable alternative to the construction of new facilities. Accordingly, no proposed or constructed wireless facility, including antennas and their supporting towers or other structures, that has completed processing under Section 106 or the Commission's environmental rules shall be required to be processed again for a collocation, except: (1) for Section 106 review, where the addition of a collocated antenna and its related facilities cause a substantial increase in the size of the tower as defined in the Agreement; or (2) for review under the Commission's environmental rules, where modification of the facility is not categorically excluded from the Commission's NEPA rules.

10) Filing Instructions / ULS

The instructions for FCC Form 601 (Schedule D & Schedule I (Microwave only)) and FCC Form 854 will be updated to reflect the Agreement's impact on the requirement to file an EA. Likewise, the instructions and worksheets for the FCC Forms used for broadcast construction permits and licenses will be amended to reflect the provisions of the Agreement.²⁷ Until those changes have been put in effect and approved by the United States Office of Management & Budget, parties that are required to file Forms 601 and 854 or any of the relevant broadcast forms should complete the current versions. Where a collocation is exempt from review under the terms of the Agreement, filers should answer "No" to the question whether the action may significantly affect the environment and thus require an EA, unless an EA is required under a provision other than Section 1.1307(a)(4). During this interim period, we encourage filers to assist the FCC's WTB and MMB licensing staff by indicating, in a brief statement, that the antenna falls within the terms of the March 16, 2001 Collocation Agreement. Additionally, the MMB anticipates releasing a *Public Notice* advising permittees, licensees, and prospective applicants of their rights and responsibilities under the terms of the Collocation Agreement until the forms and instructions can be amended. Applicants should no longer file Form 601 or 854 solely in order to file an EA under Section 1.1307(a)(4) for a facility that is exempted from Section 106 review under the Agreement.

11) Disposition of Pending Matters

The Commission has before it certain pending reviews of collocations that, if undertaken after March 16, 2001, would have fallen within the terms of the Agreement. Consistent with the principles underlying the Agreement, these collocations ordinarily will not have an adverse effect on properties listed or eligible for listing in the National Register. Accordingly, licensees, applicants, and tower companies/owners are invited to inform the Commission of pending reviews of collocations that would be covered by the Agreement, where none of the exceptions in Stipulation III or V applies. If Commission staff agrees that the exceptions in Stipulation III or V

are subject to §1.1307(b) of this part and require EAs if their construction would result in human exposure to radiofrequency radiation in excess of the applicable health and safety guidelines cited in §1.1307(b) of this part."

²⁷ FCC Forms 301 (Full-service Commercial Broadcast Construction Permit), 302-AM/-FM/-CA/-TV (Full-service Commercial Broadcast License), 318 (Low Power FM Construction Permit), 319 (Low Power FM License), 340 (Noncommercial Educational Broadcast Construction Permit), 346 (Low Power TV, TV Translator, or TV Booster Construction Permit); 345 (Low Power TV, TV Translator, or TV Booster License), 349 (FM Translator or FM Booster Construction Permit) and 350 (FM Translator or FM Booster License).

do not apply, the licensee, applicant, or tower company/owner will be notified that further processing under the NHPA and Section 1.1307(a)(4) is not required.

12) Complaints

The Agreement notes that persons may file a complaint with the FCC stating that a particular collocation “has an adverse effect on one or more historic properties.” The Agreement states that any such complaint must be: 1) in writing; and 2) supported by substantial evidence describing how the effect from the particular collocation is adverse to the attributes that qualify any affected historic property for eligibility or potential eligibility for the National Register. The Commission will promptly review all complaints so labeled, and will promptly open a case and notify the collocating licensee or tower owner if it determines that the complaint has presented substantial evidence that a proposed collocation at a specifically identified site will have an adverse effect on a specifically identified historic property.

The person(s) filing the complaint should provide contact information including name, address, phone number, and an email address (optional but helpful to the staff). All complaints regarding tower registration or wireless services should be mailed to Federal Communications Commission, Wireless Telecommunications Bureau, Commercial Wireless Division, 445 12th Street, S.W., Washington, DC 20554. The complaints should be marked: “ATTENTION: NHPA COLLOCATION COMPLAINT.” All complaints regarding broadcast facilities should be mailed to Federal Communications Commission, Mass Media Bureau, Chief, Audio Services Division (for radio antennas)/ Chief, Video Services Division (for television antennas), 445 12th Street, S.W., Washington, DC 20554. These complaints also should be marked: “ATTENTION: NHPA COLLOCATION COMPLAINT.” If a person is filing a complaint electronically, please e-mail the complaint to wtb_towersiting@fcc.gov or mmb_siting@fcc.gov, as appropriate.

Copies of the Programmatic Agreement and this Fact Sheet are available for inspection and duplication during regular business hours in the Reference Information Center, 445 Twelfth Street, S.W., Courtyard Level, Washington, DC 20554. Copies may also be obtained from Qualex International, 445 Twelfth Street, S.W., Room CY-B402, Washington, DC 20554; phone number: (202) 863-2893. Copies are also posted on the Commission’s web site at <http://wireless.fcc.gov/siting> and http://www.fcc.gov/mmb/mmb_siting.html. For further information, contact Ivy Harris at (202) 418-0621 for inquiries regarding wireless services, or Marva Dyson at (202) 418-2870 for inquiries regarding broadcast services. Send e-mail questions concerning implementation of the Agreement to: wtb_towersiting@fcc.gov or mmb_siting@fcc.gov, as appropriate.