



PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION
445 TWELFTH STREET, S.W.
WASHINGTON, D.C. 20554

DA 00-2907

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WIRELESS TELECOMMUNICATIONS BUREAU SEEKS COMMENT ON A DRAFT PROGRAMMATIC AGREEMENT WITH RESPECT TO CO-LOCATING WIRELESS ANTENNAS ON EXISTING STRUCTURES

Comment Due Date: **January 23, 2001**

In this public notice, we request comments on a Nationwide Programmatic Agreement, attached as Appendix A, that would adopt streamlined procedures for review of co-locations of antennas under the National Historic Preservation Act (NHPA), 16 U.S.C. §§ 470 *et seq.* This Nationwide Programmatic Agreement is being considered for potential execution by the Federal Communications Commission, the National Conference of State Historic Preservation Officers, and the Advisory Council on Historic Preservation.

Interested parties may file comments on or before **January 23, 2001**. We are not providing for reply comments due to time constraints. We expect that the Commission will consider action on the Nationwide Programmatic Agreement, as finally negotiated by the parties, on or about January 29, 2001.

All comments should reference **DA 00-2907** and should be filed with the Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, S.W., Room TW B204, Washington, DC 20554. A copy of each filing should be sent to International Transcription Services, Inc. (ITS), 445 Twelfth Street, S.W., Room CY-B402, Washington, DC 20554. In addition, parties should send two copies to Joel Taubenblatt, Federal Communications Commission, Wireless Telecommunications Bureau, Commercial Wireless Division, 445 Twelfth Street, S.W., Room 4A260, Washington, DC 20554.

Copies of comments will be 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 also may be obtained from ITS, 445 Twelfth Street, S.W., Room CY-B402, Washington, DC, (202) 857-3800.

For further information, contact Joel Taubenblatt, Federal Communications Commission, Commercial Wireless Division, at (202) 418-1513.

APPENDIX A

**DRAFT NATIONWIDE PROGRAMMATIC AGREEMENT
among
THE FEDERAL COMMUNICATIONS COMMISSION,
THE NATIONAL CONFERENCE OF STATE HISTORIC PRESERVATION OFFICERS
and
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
for the
CO-LOCATION OF ANTENNAS**

WHEREAS, the Federal Communications Commission (FCC) establishes rules and procedures for licensing wireless communications systems in the United States and its Possessions and Territories; and,

WHEREAS, the FCC has deregulated the review of applications for the construction of individual wireless communications antennas and, under this framework, licensees are required to prepare an environmental assessment (EA) when the licensee determines that the proposed construction falls within one of certain environmental categories, including situations which may affect historical sites listed or eligible for listing in the National Register; and,

WHEREAS, Section 106 of the National Historic Preservation Act requires federal agencies to take into account the effects of their undertakings on historic properties and to give the Advisory Council on Historic Preservation (Council) a reasonable opportunity to comment; and,

WHEREAS, Section 36 CFR Section 800.14(b) of the Council's regulations, "Protection of Historic Properties" (36 CFR Part 800), allows for programmatic agreements to streamline and tailor the Section 106 review process to particular federal programs; and,

WHEREAS, in August 2000, the Council established a Telecommunications Working Group to provide a forum for the FCC, Industry representatives, State Historic Preservation Officers (SHPOs) and Tribal Historic Preservation Organizations (THPOs), and the Council to discuss improved coordination of Section 106 compliance regarding wireless communications projects involving historic properties; and,

WHEREAS, the FCC, the Council and Working Group have developed this Programmatic Agreement in accordance with 36 CFR Section 800.14(b) to address the Section 106 review process as it applies to the co-location of antennas (*i.e.*, the placement of antennas on existing towers and existing buildings and other non-tower structures); and,

WHEREAS, the FCC encourages licensees to consider co-location of antennas where technically and economically feasible, in order to minimize the need for new tower construction; and,

WHEREAS, the execution of this Nationwide Programmatic Agreement will streamline the Section 106 review of co-location proposals and thereby minimize the need for the construction of new towers, thus limiting potential effects on historic properties resulting from the construction of new towers; and,

WHEREAS, the FCC and the Council have agreed that measures should be incorporated into a Nationwide Programmatic Agreement to better manage the Section 106 consultation process and streamline reviews for co-location of antennas; and,

WHEREAS, the FCC has consulted with the National Conference of State Historic Preservation Officers (NCSHPO) and requested its signature on this Nationwide Programmatic Agreement in accordance with 36 CFR Section 800.14(b)(2)(iii); and,

WHEREAS, the FCC has consulted with Indian Tribes regarding the terms of this Nationwide Programmatic Agreement and clarified that the terms of this Programmatic Agreement do not apply on tribal lands, nor does it preclude Indian tribes or Native Hawaiian Organizations from requesting consultation with the FCC regarding co-location activities; and,

WHEREAS, the execution and implementation of this Nationwide Programmatic Agreement will not preclude members of the public from filing complaints regarding Section 106 with the FCC or the Council regarding the construction of any existing tower or any activity covered under the terms of this Programmatic Agreement.

NOW THEREFORE, the FCC, the Council, and NCSHPO agree that the FCC will meet its Section 106 compliance responsibilities for the co-location of antennas involving historic properties as follows.

STIPULATIONS

The FCC, in coordination with licensees or tower construction companies, will ensure that the following measures are carried out. For the purpose of this Programmatic Agreement, “towers” are defined as structures built for the primary purpose of siting equipment used for radio communications services.

I. CO-LOCATION OF ANTENNAS ON EXISTING TOWERS CONSTRUCTED ON OR BEFORE DECEMBER 31, 2000

A. A licensee or tower construction company may place new antennas on existing towers constructed on or before December 31, 2000 without such undertakings having to be reviewed under the consultation process set forth under Subpart B of 36 CFR Part 800, unless:

1. the mounting of the antenna will result in a substantial increase in the size of the tower as defined in Attachment A; or
2. the construction of the tower has been determined to have an effect on historic properties by the FCC, unless such effect has been avoided, minimized or mitigated through an existing conditional No Adverse Effect determination or Memorandum of Agreement; 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 licensee or tower construction company or its authorized representative has received written or electronic notice from any source, which notice can be provided at any time, that the FCC is in receipt of a pending complaint or allegation from a member of the public, a SHPO/THPO or the Council that the co-location has an adverse effect on historic properties.

II. CO-LOCATION OF ANTENNAS ON NEW TOWERS CONSTRUCTED AFTER DECEMBER 31, 2000

A. A licensee or tower construction company may mount antennas on towers constructed after December 31, 2000 without such undertakings having to be reviewed under the consultation process set forth under Subpart B of 36 CFR Part 800, unless:

1. the Section 106 review process for the tower set forth in 36 CFR Part 800 and any associated environmental reviews required by the FCC have not been completed; or
2. the mounting of the new antenna will result in a substantial increase in the size of the tower as defined in Attachment A; or
3. the construction of the tower has been determined to have an effect on historic properties by the FCC, unless such effect has been avoided, minimized or mitigated through a conditional No Adverse Effect determination or execution of a Memorandum of Agreement; or
4. the licensee or tower construction company or its authorized representative has received written or electronic notice from any source, which notice can be provided at any time, that the FCC is in receipt of a pending complaint or allegation from an interested person, a SHPO/THPO or the Council that the co-location has an adverse effect on historic properties.

III. CO-LOCATION OF ANTENNAS ON BUILDINGS AND NON-TOWER STRUCTURES OUTSIDE OF HISTORIC DISTRICTS

A. A licensee may mount antennas on buildings or non-tower structures without such undertakings having to be reviewed under the consultation process set forth under Subpart B of 36 CFR Part 800, unless:

1. the building or structure is over 45 years old; or
2. the building or structure is inside the boundary of a historic district or, if visible from the ground level of the historic district, is within 250 feet of the boundary of the historic district; or
3. the building or non-tower structure is a designated National Historic Landmark, designated as an historic property by the local jurisdiction, listed in the State register of historic properties, or listed in or eligible for listing in the National Register of Historic Places based upon the review of the licensee or tower construction company; or
4. the mounting of the antenna on the non-tower structure or building 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
5. the licensee or tower construction company or its authorized representative has received written or electronic notice from any source, which notice can be provided at any time, that the FCC is in receipt of a pending complaint or allegation from an interested person, a SHPO/THPO or the Council that the mounting of the antenna on the building or other non-tower structure has an adverse effect on historic properties.

B. Should the SHPO/THPO or Council determine that the co-location of an antenna or its associated equipment installed under the terms of Stipulation III has resulted in an adverse effect on historic properties, the SHPO/THPO or Council shall notify the FCC accordingly. The FCC shall comply with the requirements of Section 106 and 36 CFR Part 800 for this particular undertaking.

IV. MONITORING

A. Licensees and tower construction companies shall retain records of the placement of all their antennas, including co-locations subject to this Nationwide Programmatic Agreement, consistent with FCC rules and procedures.

B. The Council will forward to the FCC any written objections it receives from members of the public regarding a co-location activity or general compliance with the provisions of this Nationwide Programmatic Agreement within thirty (30) days following receipt of the written objection. The FCC will forward a copy of the written objection to the appropriate licensee or tower company.

V. TERMINATION

A. If the FCC determines that it cannot implement the terms of this Nationwide Programmatic Agreement, or if the NCSHPO or Council determines that the Programmatic Agreement is not being properly implemented, the FCC, NCSHPO or Council may propose to other signatories that the Programmatic Agreement be terminated.

B. The party proposing to terminate the Programmatic Agreement shall so notify all signatories in writing, explaining the reasons for the proposed termination and affording them at least thirty (30) days to consult and seek alternatives to termination. Should the consultation fail, the Programmatic Agreement will be terminated.

C. In the event that the Programmatic Agreement is terminated, the FCC shall advise its licensees and tower construction companies of the termination and of the need to comply with Section 106 on a case-by-case basis for co-location activities.

VI. DURATION OF THE PROGRAMMATIC AGREEMENT

A. This Programmatic Agreement for co-location shall remain in force unless the Programmatic Agreement is terminated or superseded by a comprehensive Programmatic Agreement for wireless communications antennas.

Execution of this Nationwide Programmatic Agreement by the FCC, NCSHPO and the Council, and implementation of its terms, evidence that the FCC has afforded the Council an opportunity to comment on the co-location of antennas covered under the FCC's rules, and that the FCC has taken into account the effects of these undertakings on historic properties in accordance with Section 106 of the National Historic Preservation Act and its implementing regulations, 36 CFR Part 800.

FEDERAL COMMUNICATIONS COMMISSION

_____ **Date:** _____

ADVISORY COUNCIL ON HISTORIC PRESERVATION

_____ **Date:** _____

NATIONAL CONFERENCE OF STATE HISTORIC PRESERVATION OFFICERS

_____ **Date:** _____

Attachment A

Definition of "Substantial Increase in the Size of the Tower"

For purposes of this document, the term “substantial increase in the size of the tower” means:

- 1) The mounting of the proposed antenna on the tower would increase the existing height of the tower by more than 10%, or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater; or
- 2) The mounting of the proposed antenna would involve the installation of more than the standard number of new equipment cabinets for the technology involved, not to exceed four, or more than one new equipment shelter; or
- 3) The mounting of the proposed antenna would involve adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than twenty feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater; or
- 4) The mounting of the proposed antenna would involve excavation outside the current tower site, defined as the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site.