



**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.<sup>1</sup> 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).<sup>2</sup>

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

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<sup>1</sup> *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.

<sup>2</sup> 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](mailto: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](http://www.fcc.gov/mmb/mmb_siting.html)> or by contacting the MMB by e-mail at [mmb\\_siting@fcc.gov](mailto: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.<sup>3</sup> 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.<sup>4</sup>

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.<sup>5</sup> 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

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<sup>3</sup> *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).

<sup>4</sup> 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*.

<sup>5</sup> *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.<sup>6</sup> 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.

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<sup>6</sup> 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,<sup>7</sup> the completion date will be the date reported to the Commission on FCC Form 854 as the date of completion of construction.<sup>8</sup>

#### **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.<sup>9</sup> 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

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<sup>7</sup> *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.

<sup>8</sup> *See* 47 C.F.R. § 17.57.

<sup>9</sup> 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.<sup>10</sup>

**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;<sup>11</sup> 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;<sup>12</sup> or,

<sup>10</sup> 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.

<sup>11</sup> 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.

<sup>12</sup> 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.”).<sup>13</sup> Thus, any collocation on tribal lands must be reviewed and approved by the appropriate tribal authorities, which may include a THPO.<sup>14</sup> The FCC recognizes that Indian Tribes, as domestic dependent nations, “exercise inherent sovereign powers over their members and territory.”<sup>15</sup>

Although the Agreement exempts most collocations outside tribal lands from Section 106 review, an Indian Tribe<sup>16</sup> or Native Hawaiian organization<sup>17</sup> may initiate consultation directly with

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<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>.

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

<sup>14</sup> 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>.

<sup>15</sup> 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*).

<sup>16</sup> 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).

<sup>17</sup> 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.<sup>18</sup>

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.<sup>19</sup> 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.<sup>20</sup>

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.”<sup>21</sup> 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.

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<sup>18</sup> See 36 C.F.R. § 800.2(c)(2)(ii).

<sup>19</sup> 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).

<sup>20</sup> 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).

<sup>21</sup> *FCC Tribal Policy Statement*, 16 FCC Rcd. at 4080.

## 8) Federal Property

The terms of the Agreement do not alter any Section 106 responsibilities that federal agencies other than the FCC may have with regard to the collocation of antennas. Thus, licensees and applicants that wish to collocate an antenna on property owned or managed by a federal agency must continue to follow the procedures set forth by that agency for ensuring compliance with Section 106.<sup>22</sup>

## 9) Need for Applicants to File Environmental Assessments

Section 1.1307 of the Commission's rules sets forth nine categories of facilities that may significantly affect the environment and thus require the preparation of an EA prior to construction.<sup>23</sup> Subsection (4) of Section 1.1307(a) sets forth the category related to historic preservation: "Facilities that may affect districts, sites, buildings, structures or objects, significant in American history, architecture, archeology, engineering or culture, that are listed, or eligible for listing, in the National Register of Historic Places [citation omitted]."<sup>24</sup>

Section 1.1307(a)(4) is intended to implement the NHPA. Therefore, applicants should not file an EA with the Commission under Section 1.1307(a)(4) if a SHPO has concurred in a proposed finding of "no effect" or "no adverse effect" on a property listed or eligible for listing in the National Register. In addition, if a collocation is exempted by the Agreement from Section 106 review, then Section 1.1307(a)(4) of the Commission's rules does not apply to the collocation. Therefore, applicants should only file an EA for a collocation under Section 1.1307(a)(4) when the collocation falls within one of the Agreement's exceptions (*e.g.*, "substantial increase in size") and the collocation will adversely affect a historic property. Failure to file an EA when required to do so is a violation of the Commission's rules and may subject the licensee, applicant, or tower company/owner to a forfeiture or fine assessed pursuant to Sections 501 to 503 of the Communications Act, or other sanctions.<sup>25</sup>

Note 1 to Section 1.1306 of the Commission's NEPA rules categorically excludes the mounting of antennas on an existing building or antenna tower from the requirement to file an EA unless: (1) the collocation may affect historic properties under Section 1.1307(a)(4); or (2) the collocation would result in human exposure to RF emissions in excess of the Commission's RF limits set forth in Section 1.1307(b).<sup>26</sup> Note 1 also states that the use of existing buildings or

<sup>22</sup> See 47 C.F.R. § 1.1311(e) (providing that an EA need not be submitted to the Commission if another federal agency has assumed responsibility for environmental review).

<sup>23</sup> See 47 C.F.R. §§ 1.1307(a), 1.1307(b).

<sup>24</sup> See 47 C.F.R. § 1.1307(a)(4). Other categories are wilderness areas, wildlife preserves, endangered species, Indian religious sites, floodplains, surface features, high intensity lights in residential neighborhoods, and excessive radiofrequency exposure.

<sup>25</sup> See 47 U.S.C. §§ 501, 502, 503; 47 C.F.R. § 1.80; and, The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines, *Report and Order*, 12 FCC Rcd 17087 (1997), *recon. denied* 15 FCC Rcd 303 (1999).

<sup>26</sup> Note 1 to Section 1.1306 of the Commission's NEPA rules, 47 C.F.R. § 1.1306, states in part that: "[t]he provisions of §1.1307(a) of this part requiring the preparation of EAs do not encompass the mounting of antenna(s) on an existing building or antenna tower unless §1.1307(a)(4) of this part is applicable. Such antennas

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.<sup>27</sup> 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

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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."

<sup>27</sup> 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 12<sup>th</sup> 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 12<sup>th</sup> 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](mailto:wtb_towersiting@fcc.gov) or [mmb\\_siting@fcc.gov](mailto: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](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](mailto:wtb_towersiting@fcc.gov) or [mmb\\_siting@fcc.gov](mailto:mmb_siting@fcc.gov), as appropriate.