



# PUBLIC NOTICE

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**DA 14-680**  
**WT Docket 13-240**  
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## **WIRELESS TELECOMMUNICATIONS BUREAU ANNOUNCES ADOPTION OF PROGRAM COMMENT TO GOVERN REVIEW OF POSITIVE TRAIN CONTROL WAYSIDE FACILITIES**

### **Bureau Invites Questions to Inform Further Guidance**

#### **Program Comment Effective Immediately** **Questions Requested by May 28, 2014**

By this Public Notice, the Wireless Telecommunications Bureau (Bureau) announces that on May 16, 2014, the Advisory Council on Historic Preservation (ACHP) adopted the attached Program Comment to govern review of Positive Train Control (PTC) wayside poles and infrastructure under Section 106 of the National Historic Preservation Act (NHPA).<sup>1</sup> The Program Comment is effective immediately. By tailoring and expediting the historic preservation review process under Section 106 for PTC wayside poles and infrastructure in the railroad right-of way, the Program Comment will facilitate timely completion of the important PTC railway safety initiative, as mandated by Congress,<sup>2</sup> while ensuring that the effects of wayside poles and infrastructure on historic properties are appropriately considered in compliance with the NHPA.

#### **Summary of the Program Comment**

The following paragraphs summarize key provisions of the Program Comment. Railroads and other parties participating in Section 106 review are advised to refer to the full text of the Program Comment, and not to rely on this summary.

*Scope of the Program Comment.* The Program Comment covers PTC wayside poles that are no taller than 75 feet and associated infrastructure located within existing railroad rights-of-way. It does not apply on Tribal lands unless the relevant federally recognized Tribal Nation (Tribal Nation) provides to the Commission a written notice agreeing to such application on Tribal lands.

*Exclusions.* The Program Comment generally does not require the Commission to consider the effects on historic properties of: (1) most wayside poles and infrastructure within 500 feet of certain existing structures; (2) most collocations of wayside antennas on existing railroad infrastructure; and (3) most wayside poles and infrastructure within freight yards. In addition, the Commission is not required to consider the effects of wayside poles and infrastructure on the rails or track bed, and a State Historic

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<sup>1</sup> 16 U.S.C. § 470f.

<sup>2</sup> See Rail Safety Improvement Act of 2008, P.L. 110-432.

Preservation Officer (SHPO) or Tribal Nation may exempt construction within a defined geographic area from its own review.

*Alternative Agreements.* Railroads may enter into agreements with SHPOs and/or Tribal Nations on alternative procedures to govern those SHPOs' and Tribal Nations' review of wayside poles and infrastructure in lieu of the procedures set forth in the Program Comment. Such alternative agreements shall be in writing, signed, and filed with the Commission's Federal Preservation Officer.

*Submission Process.* Unless another method of submission is specified in an alternative agreement, railroads shall use the Commission's Tower Construction Notification System (TCNS) and E106 System to submit required information to Tribal Nations and SHPOs, respectively. If a Tribal Nation or SHPO does not accept submissions through TCNS or E106, the railroads will also provide information to that Tribal Nation or SHPO by the means the Tribal Nation or SHPO prefers. The railroad shall submit a map showing the proposed location of wayside poles and infrastructure to be installed within a select geographic area (including those covered by exclusions). Further, the railroad shall include: (1) an overlay showing the boundaries of documented historic properties within ¼ mile of the proposed wayside poles and infrastructure; (2) the pole coordinates, topographic information, and other pertinent background; (3) any alternative locations considered to avoid or minimize adverse effects to historic properties, or other proposed strategies to address such adverse effects; (4) the type and proposed installation technique of each wayside pole and infrastructure; and (5) the basis for any exclusions. The railroads are also required to use their regular external communications protocol to inform and invite views from relevant local governments, federal agencies, and the public.

*Review Period.* SHPOs and Tribal Nations are afforded 30 days from the date they are sent a TCNS or E106 notification to review the submission, inform the railroad of additional documented historic properties or areas likely to contain unidentified historic properties, and request additional information or monitoring. They are required to explain the basis of any request for information or monitoring. Railroads are encouraged to schedule meetings or telephone calls with SHPOs and Tribal Nations within this 30-day period. If a SHPO or Tribal Nation does not respond within the 30-day period, the railroad may refer the matter to the Commission. The SHPO or Tribal Nation will then have no further opportunity to participate in the review unless the Commission determines otherwise within 10 business days.

*Resolution of Adverse Effects.* If the railroad and the relevant SHPO and Tribal Nations reach an agreement on how to address any adverse effects, the railroad shall provide a copy of the agreement to the Commission's Federal Preservation Officer. The Section 106 process is then complete. The Bureau will prepare a template and guidance on standard measures to assist in drafting and negotiating such agreements.

*Dispute Resolution.* If the railroad, SHPO, and relevant Tribal Nations are unable to reach agreement regarding the resolution of adverse effects within the 30-day review period, the railroad shall notify the Commission. If no agreement is reached within an additional 10 business days, any party may refer the matter to the Commission with a copy to the ACHP. The Commission will reach a decision within 10 business days, after consulting as appropriate with SHPOs and as necessary to fulfill its trust responsibility to Tribal Nations, unless it extends this period due to extraordinary circumstances.

*Monitoring.* The Program Comment contains provisions governing arrangements for SHPOs and/or Tribal Nations to monitor construction where useful to avoid or minimize disturbance of previously unknown historic properties and to record their presence.

*Government-to-Government Relationship.* Consistent with the government-to-government relationship, a Tribal Nation may request the Commission to become involved at any point in the process.

### **Availability of Program Comment Procedures**

The railroads may submit proposed wayside poles and infrastructure to TCNS and E106 for review under the Program Comment beginning May 20, 2014. Pending further guidance, each submission is limited to wayside poles and infrastructure within a single county. As stated in the Program Comment and discussed further below, the Bureau will provide additional guidance regarding the quantity of poles and extent of geographic area to be included in any submission by June 6, 2014, following coordination with the Federal Railroad Administration and the railroads.

To promote consistent review and facilitate communications, the railroads are requested to number each wayside pole and associated infrastructure within a given TCNS or E106 submission consecutively along the track, beginning with 1. For submissions where the track runs generally in a north-south direction, the poles should be numbered from north to south. For submissions where the track runs generally in an east-west direction, the poles should be numbered from east to west.

The railroads may also invoke the Program Comment procedures for wayside poles and infrastructure that were previously submitted in TCNS and/or E106 but not cleared under the Beta submission process established in January 2014. Provided the Beta submission included a map and associated information that meets the requirements of the Program Comment, the railroad does not need to file a new TCNS or E106 submission. Railroads should send an e-mail containing the TCNS and/or E106 file numbers of the submissions that they wish to convert to the Program Comment process, along with a list of Tribal Nations that have already cleared the submission, to [PTCQuestions@fcc.gov](mailto:PTCQuestions@fcc.gov).

Additional guidance on preparing and submitting notifications through TCNS and E106 under the Program Comment will be posted at <http://www.fcc.gov/encyclopedia/positive-train-control-ptc>.

### **Future Guidance and Invitation to Submit Questions**

As stated in the Program Comment, the Bureau will provide additional guidance by June 6, 2014, on the quantity of poles and geographic areas to be included in a single TCNS or E106 submission or at any one time. The Bureau will also use this opportunity to provide guidance on other matters that may be necessary to facilitate implementation of the Program Comment. For example, we expect to provide guidance on where to address communications to the Commission that the Program Comment requires or contemplates.

To assist the Bureau in providing complete and useful guidance, we invite questions from interested parties on implementation of the Program Comment. Questions are requested by May 28, 2014, and should be sent to [PTCQuestions@fcc.gov](mailto:PTCQuestions@fcc.gov). Parties should identify with specificity in their questions what provisions of the Program Comment require further clarification or procedural detail.

Guidance materials relating to the Program Comment, as well as other aspects of the environmental review process for PTC facilities, will be posted regularly at <http://www.fcc.gov/encyclopedia/positive-train-control-ptc>. In addition, the Bureau will discuss the

environmental compliance process for PTC facilities at a live and webcast workshop on June 25, 2014.<sup>3</sup>

Availability of Documents: This Public Notice will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12<sup>th</sup> Street, S.W., CY-A257, Washington, D.C., 20554. This Public Notice will also be available via ECFS. <http://fjallfoss.fcc.gov/ecfs2/> Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

Accessibility information: To request information in accessible formats (computer diskettes large print, audio recording, and Braille), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418-0530(voice), (202) 418-0432(TTY). This document can also be downloaded in Word and Portable Document Format (PDF) at [www.fcc.gov](http://www.fcc.gov).

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<sup>3</sup> For further information on the workshop and registration instructions, *see Public Notice*, Wireless Telecommunications Bureau Announces Workshops: Environmental Compliance and Historic Preservation Review Training for the Constructions of Communications Towers and the Collocation of Communications Gear and for Positive Train Control Infrastructure, DA 14-382 (WTB Mar. 20, 2014) and *Public Notice*, Wireless Telecommunications Bureau Changes Dates for Workshops on Environmental Compliance and Historic Preservation Review Training, DA 14-504 (WTB Apr. 16, 2014).