



# PUBLIC NOTICE

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DA 16-900  
Released: August 8, 2016

## WIRELESS TELECOMMUNICATIONS BUREAU ANNOUNCES EXECUTION OF FIRST AMENDMENT TO THE NATIONWIDE PROGRAMMATIC AGREEMENT FOR THE COLLOCATION OF WIRELESS ANTENNAS

### WT Docket No. 15-180

By this Public Notice, the Wireless Telecommunications Bureau (Bureau) announces that on August 3, 2016, the Federal Communications Commission (FCC or Commission), the Advisory Council on Historic Preservation (Council or ACHP), and the National Conference of State Historic Preservation Officers (NCSHPO) executed the attached *First Amendment to Nationwide Programmatic Agreement for the Collocation of Wireless Antennas* to address the review of deployments of small wireless antennas and associated equipment under Section 106 of the National Historic Preservation Act (NHPA).<sup>1</sup> The FCC, the Council, and NCSHPO agreed to amend the *Nationwide Programmatic Agreement for the Collocation of Wireless Antennas* (Collocation Agreement)<sup>2</sup> to account for the limited potential of small wireless antennas and associated equipment, including Distributed Antenna Systems (DAS) and small cell facilities, to affect historic properties.

This amendment establishes new exclusions from the Section 106 review process for physically small deployments like DAS and small cells, fulfilling a directive in the October 2014 *Infrastructure Report and Order* to further streamline review of these installations.<sup>3</sup> These new exclusions will reduce the cost, time, and burden associated with deploying small facilities in many settings, and provide opportunities to increase densification at low cost and with very little impact on historic properties. Facilitating these deployments thus directly advances efforts to roll out 5G service in communities across the country.

### **Background**

To fulfill its responsibilities under the NHPA, the Commission incorporated the requirements of Section 106 of the NHPA into its environmental rules.<sup>4</sup> Section 1.1307(a)(4) of the Commission's rules directs licensees and applicants to follow the procedures set forth in the ACHP's rules, as modified by

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<sup>1</sup> 54 U.S.C. § 306108 (formerly codified at 16 U.S.C. § 470f).

<sup>2</sup> 47 CFR pt. 1, App. B; *see also* *Wireless Telecommunications Bureau Announces Execution of Programmatic Agreement with Respect to Collocating Wireless Antennas on Existing Structures*, Public Notice, 16 FCC Rcd 5574 (WTB 2001) (Collocation Agreement).

<sup>3</sup> *Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies*, Report and Order, 29 FCC Rcd 12865, 12867, para. 3 (2014); Erratum, 30 FCC Rcd 31 (2015) (*Infrastructure Report and Order*), *aff'd* *Montgomery County v. FCC*, 811 F.3d 121 (4th Cir. 2015).

<sup>4</sup> 47 CFR § 1.1307(a)(4).

two programmatic agreements executed by the Commission with ACHP and NCSHPO,<sup>5</sup> in order to determine whether certain undertakings will affect historic properties.<sup>6</sup> The Collocation Agreement addresses historic preservation review for collocations on existing towers, buildings, and other non-tower structures.<sup>7</sup> Under the Collocation Agreement, most antenna collocations on existing structures are excluded from Section 106 historic preservation review, with a few exceptions defined to address potentially problematic situations. The other programmatic agreement, the *Nationwide Programmatic Agreement for Review of Effects on Historic Properties for Certain Undertakings Approved by the Federal Communications Commission* (NPA),<sup>8</sup> establishes detailed procedures for the Section 106 review process as applied to the construction of communications facilities regulated by the Commission, consistent with the goal of the NHPA to protect historic properties.

In the *Infrastructure Report and Order*, the Commission recognized that small deployments like DAS and small cells use components that are a fraction of the size of traditional cell tower deployments and can often be installed on utility poles, buildings, and other existing structures with limited or no potential to cause adverse effects on historic properties.<sup>9</sup> Accordingly, the Commission eliminated some routine Section 106 reviews by adopting two targeted exclusions for certain small-facility collocations on utility structures and on buildings and other non-tower structures, provided that they meet certain specified criteria.<sup>10</sup> The Commission also stated that there is room for additional improvement in this area, determined that any more comprehensive measures would require additional consideration, and found that such measures would be more appropriately addressed and developed through the program alternative process.<sup>11</sup> The Commission committed to work with ACHP and other interested parties to develop a program alternative to promote additional appropriate efficiencies in the historic preservation review of DAS and small-cell deployments.<sup>12</sup>

The Bureau formally commenced this proceeding on July 28, 2015, by releasing a Public Notice and Section 106 Scoping Document inviting comment on a proposal to amend the Collocation Agreement to facilitate the review process for deployments of small wireless communications facilities under Section 106 of the NHPA.<sup>13</sup> After considering the comments filed in response to the Section 106 Scoping Document and additional information provided in meetings with State Historic Preservation Officers (SHPOs), Tribal historic preservation officers (THPOs), Tribal Nations, industry representatives and other

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<sup>5</sup> *Id.*; 47 CFR pt. 1, Apps. B and C.

<sup>6</sup> 47 CFR § 1.1307(a)(4).

<sup>7</sup> 47 CFR pt. 1, App. B.

<sup>8</sup> 47 CFR Part 1, App. C.

<sup>9</sup> *Infrastructure Report and Order*, 29 FCC Rcd at 12867, para. 3.

<sup>10</sup> *Id.* at 12901-12, paras. 76-103.

<sup>11</sup> *Id.* at 12906, paras. 88-89.

<sup>12</sup> *Id.* at 12871, para. 13; *see generally* 36 CFR § 800.14 (identifying different types of program alternatives that may govern implementation of Section 106 for a program or category of undertakings).

<sup>13</sup> *Wireless Telecommunications Bureau Seeks Comment on Revising the Historic Preservation Review Process for Small Facility Deployments*, WT Docket No. 15-180, Public Notice, 30 FCC Rcd 8160 (WTB 2015) (Scoping Document Public Notice). The Section 106 Scoping Document, which is attached to the Scoping Document Public Notice, describes options and seeks public input on potentially amending the Collocation Agreement. *See id.*, 30 FCC Rcd at 8164-73, *Program Alternative for Small Wireless Communications Facility Deployments: Potential Amendment to the Nationwide Programmatic Agreement for the Collocation of Wireless Antennas, Section 106 Scoping Document* (Section 106 Scoping Document). Comments filed in response to the Scoping Document Public Notice and Section 106 Scoping Document may be found in the Commission's Electronic Comment Filing System.

interested parties, the Bureau worked with ACHP and NCSHPO to develop a specific proposal. It released and sought public comment on this proposed amendment to the Collocation Agreement by Public Notice released on May 12, 2016.<sup>14</sup>

### **Amendment to Collocation Agreement**

Following their review of the comments filed in response to the Public Notice released on May 12, 2016, as well as other information provided by interested parties, the Bureau, ACHP, and NCSHPO finalized and executed this amendment to the Collocation Agreement. As summarized below, the amendment tailors the Section 106 process for small wireless deployments by excluding deployments that have minimal potential for adverse effects on historic properties.

*Exclusion for Collocation of Small Wireless Antennas and Associated Equipment on Buildings and Non-Tower Structures that are Outside of Historic Districts and are not Historic Properties.* The original Collocation Agreement provides an exclusion for collocations that are outside of historic districts on buildings and non-tower structures that are not more than 45 years of age. The amendment adds new Stipulation VI, which establishes an exclusion for collocations on buildings or non-tower structures that are over 45 years of age if they are not historic properties and are outside of historic districts. In particular, this new exclusion, provides that a small wireless antenna may be mounted on an existing building or non-tower structure, regardless of the building's or structure's age, without review under the Section 106 process set forth in the NPA unless: (1) the building or structure is inside the boundary of a historic district or, if the antenna is visible from the ground level of a historic district, the building or structure is within 250 feet of the boundary of the historic district; (2) the building or non-tower structure is a designated National Historic Landmark; or (3) the building or non-tower structure is listed in or eligible for listing in the National Register of Historic Places. In addition, this exclusion establishes volumetric limits for antennas and its associated equipment, as well as restrictions on ground disturbance.

*Exclusion for Collocation of Small or Minimally Visible Wireless Antennas and Associated Equipment on Structures in Historic Districts or on Historic Properties.* Stipulation VII.A provides an exclusion from review for a collocation mounted on a building or non-tower structure that is a historic property or inside or within 250 feet of the boundary of a historic district, subject to visibility limits, and provided that the property on which the equipment will be deployed is not a designated National Historic Landmark. Under this exclusion, the antenna or antenna enclosure must be the only equipment that is visible from the ground level, and the antenna or enclosure must not exceed 3 cubic feet in volume, and must be installed using concealment techniques that match or complement the structure on which or within which it is deployed. No other antenna on the building or non-tower structure may be visible from the ground level. In addition, the amendment includes provisions restricting the visibility of an antenna's associated equipment. The amendment also includes limits on the extent of ground disturbance associated with the collocation, and on the number and size of lightning grounding rods that may be installed.

Stipulation VII.B generally provides an exclusion for a small wireless deployment on a utility poles or electric transmission tower located inside or near a historic district, provided that the utility pole or electric transmission tower is in active use by a utility company and the deployment does not exceed specific volume limits. The amendment also contains restrictions on the extent of ground disturbance associated with the deployment.

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<sup>14</sup> *Wireless Telecommunications Bureau Seeks Comment on Proposed Amended Nationwide Programmatic Agreement for the Collocation of Wireless Antennas*, WT Docket No. 15-180, Public Notice, DA 16-519 (WTB May 12, 2016). The comment period was later extended. *Wireless Telecommunications Bureau Extends Deadline for Comments on Proposed Amended Nationwide Programmatic Agreement for the Collocation of Wireless Antennas*, WT Docket No. 15-180, Public Notice, DA 16-635 (WTB June 8, 2016).

Stipulation VII.C provides an exclusion in certain cases for a collocation on a traffic light, light pole, lamp post, or other structures whose primary purpose is to provide public lighting where the structure is located inside or near a historic district. This exclusion is generally available only on a case-by-case basis, on the condition that the applicant or licensee finds that the structure is not a contributing or compatible element within the historic district and the SHPO concurs with this determination. The collocation also must meet specified volumetric and comply with restrictions on ground disturbance.

*Replacements of Small Wireless Antennas and Associated Equipment.* Stipulation VIII generally excludes replacements from routine Section 106 review when the support structure is (1) a historic property, (2) inside or near a historic district, or (3) over 45 years of age. The replacement is excluded from review, regardless of visibility, provided that (1) the antenna deployment being replaced has undergone Section 106 review (unless such review was not required at the time that the antenna being replaced was installed); (2) the facility is an in-kind replacement for an existing facility, and (3) the new deployment does not exceed specified size limits.

*Collocations in the Interior of a Building.* The amendment also excludes from historic preservation review collocations in the interior of a building. Stipulation V.B provides that an antenna and its associated equipment installed in the interior of a building is generally excluded from review, regardless of the building's age or its location in a historic district and regardless of the antenna's size, provided that the building is not a National Historic Landmark, or listed in or eligible for listing in the National Register. A collocation in the interior of a building that is listed in or eligible for listing in the National Register is excluded from routine historic preservation review, but it is subject to strict visibility limits, the property in which the equipment will be deployed may not be a designated National Historic Landmark, and it may not be located in or near a historic district.

*Installations in or on Historic Buildings or Structures.* Stipulations VI, and VII provide that the antennas and associated equipment deployed on buildings and other structures or in the interior of buildings must be installed in ways that do not damage historic materials and permit removal of such facilities without damaging historic materials.

*Pending Complaints.* A proposed collocation is not eligible for an exclusion under this agreement if the licensee or the owner of the building or non-tower structure has received written or electronic notification that the FCC is in receipt of a complaint from a member of the public, a Tribal Nation, a SHPO or the Council, that the collocation has an adverse effect on one or more historic properties.

Finally, we note that this agreement affects only the FCC's review process under Section 106 of the NHPA, and will not limit State and local governments' authority to enforce their own historic preservation requirements consistent with Section 332(c)(7) of the Communications Act and Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012. In addition, the terms of this amendment to the Collocation Agreement do not apply on "tribal lands" as defined under Section 800.16(x) of the Council's regulations, 36 CFR § 800.16(x), and the terms do not preclude federally recognized Tribal Nations or Native Hawaiian Organizations (NHOs) from consulting directly with the FCC or its licensees.

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 [www.fcc.gov/ecfs](http://www.fcc.gov/ecfs). 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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