



# PUBLIC NOTICE

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DA 16-519  
Released: May 12, 2016

## WIRELESS TELECOMMUNICATIONS BUREAU SEEKS COMMENT ON PROPOSED AMENDED NATIONWIDE PROGRAMMATIC AGREEMENT FOR THE COLLOCATION OF WIRELESS ANTENNAS

WT Docket No. 15-180

**Comment Date: June 13, 2016**

By this Public Notice, the Wireless Telecommunications Bureau (Bureau) seeks public comment on the attached proposed *Amended Nationwide Programmatic Agreement for the Collocation of Wireless Antennas* (Amended Collocation Agreement) 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> We propose to amend the current *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. We also propose minor amendments intended to clarify pre-existing provisions of the Collocation Agreement without modifying how those provisions will be administered going forward.

We propose these amendments in order to enable swift and responsible deployment of wireless broadband services – including deployments that will support next generation “5G” wireless service offerings – while maintaining the vital role that States and Tribal Nations play in reviewing projects with potentially significant effects. As FCC Chairman Wheeler has observed, the evolution to 5G is a “hinge moment” in technological advancement.<sup>3</sup> The Bureau’s proposal is designed to leverage this moment and facilitate nationwide wireless broadband deployment while ensuring at the same time that the Commission’s rules reflect the NHPA’s values and obligations.

To fulfill its responsibilities under the NHPA, the Commission has 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 in the rules of the Advisory Council for Historic Preservation (ACHP), as modified by two programmatic agreements executed by the

<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. Section VIII of the Collocation Agreement as currently in effect (Section X of the Amended Collocation Agreement) provides the signatories with an opportunity to propose amendments to the agreement, to be executed upon the written concurrence of all signatories. *Id.* The proposed Amended Collocation Agreement is attached to this Public Notice as Appendix A.

<sup>3</sup> Tom Wheeler, Chairman, FCC, Remarks as Prepared for Delivery at the 19th Annual Satellite Leadership Dinner, Washington, D.C. (Mar. 7, 2016).

<sup>4</sup> 47 CFR § 1.1307(a)(4).

Commission with ACHP and the National Conference of State Historic Preservation Officers (NCSHPO),<sup>5</sup> in order to determine whether certain undertakings will affect historic properties.<sup>6</sup> The NPA generally addresses new tower construction, and 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 defined exceptions to address potentially problematic situations.

In the *Infrastructure Report and Order*, the Commission recognized that DAS networks and small cell facilities 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>8</sup> Accordingly, the Commission eliminated some Section 106 reviews of proposed deployments of small wireless communications facilities by adopting two targeted exclusions from Section 106 review for certain small-facility collocations on utility structures and on buildings and other non-tower structures, provided that they meet certain specified criteria.<sup>9</sup> The Commission also stated that there is room for additional improvement in this area, and determined that any more comprehensive measures would require additional consideration and consultation and would be more appropriately addressed and developed through the program alternative process.<sup>10</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>11</sup>

Our proposal to amend the Collocation Agreement modifies an existing program alternative established in accordance with Section 800.14 of ACHP's rules.<sup>12</sup> The Collocation Agreement establishes procedures for its amendment,<sup>13</sup> and ACHP's rules require that we arrange for public participation appropriate to the subject matter and the scope of the category of covered undertakings.<sup>14</sup> Accordingly,

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<sup>5</sup> 47 CFR § 1.1307(a)(4); 47 CFR pt. 1, Apps. B and C. The first of these programmatic agreements is the Collocation Agreement. 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), establishes detailed procedures for the Section 106 review process as applied to construction of communications towers and other Commission undertakings, while at the same time advancing and preserving the goal of the NHPA to protect historic properties. See 47 CFR Part 1, App. C.

<sup>6</sup> See 47 CFR § 1.1307(a)(4).

<sup>7</sup> See Collocation Agreement; *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).

<sup>8</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>9</sup> *Infrastructure Report and Order*, 29 FCC Rcd at 12901-12, paras. 76-103.

<sup>10</sup> *Infrastructure Report and Order*, 29 FCC Rcd at 12906, paras. 88-89.

<sup>11</sup> *Infrastructure Report and Order*, 29 FCC Rcd 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>12</sup> See 36 CFR § 800.14(b).

<sup>13</sup> See *supra* n.2.

<sup>14</sup> 36 CFR § 800.14(b)(2)(ii).

on July 28, 2015, the Bureau formally commenced this proceeding by releasing the Public Notice and Section 106 Scoping Document, inviting comment on amending the Collocation Agreement to facilitate the review process for deployments of small wireless communications facilities under Section 106 of the NHPA.<sup>15</sup>

We developed our specific proposal for amending the Collocation Agreement, in Appendix A of this Public Notice, after considering the comments filed in response to the Section 106 Scoping Document and additional information provided at meetings with industry representatives and other interested parties. In particular, our proposal has been informed by engagement with ACHP, State Historic Preservation Officers (SHPOs), Tribal Historic Preservation Officers (THPOs), and Tribal Nations. In accordance with ACHP's requirements, this Public Notice seeks comment on the proposed Amended Collocation Agreement; we will also publish notice of the proposed Amended Collocation Agreement in the Federal Register, giving all interested parties an opportunity to comment on the record at the decisional stage.<sup>16</sup>

After considering the comments received in response to this Public Notice, we expect to submit a proposed Amended Collocation Agreement to the other original signatories: ACHP and NCSHPO.

The proposed Amended Collocation Agreement in Appendix A of this Public Notice would supplement the two targeted exclusions from Section 106 review and the NPA that the Commission adopted in the *Infrastructure Report and Order* for DAS and small cell deployments, as well as the exclusions set forth in the Collocation Agreement, as adopted in 2001. As summarized below, the proposed Amended Collocation Agreement would tailor the Section 106 process for DAS and small cell deployments by excluding deployments that have minimal potential for adverse effects on historic properties. Illustrative examples of small facility designs are attached as Appendix B. In addition, illustrative examples of small facility deployments may be viewed at <https://www.fcc.gov/file/3813/download>.

*Exclusion Relating to the Collocation of Small Wireless Antennas and Associated Equipment on Buildings and Non-Tower Structures Outside of Historic Districts.* The current Collocation Agreement provides an exclusion for collocations, outside of historic districts, on buildings and non-tower structures that are not over 45 years of age. The proposed amendment to the Collocation Agreement would add new Stipulation VI, which establishes an exclusion for small wireless antennas and associated equipment mounted on buildings or non-tower structures or in the interior of buildings that are over 45 years of age if they are not historic properties and are outside of historic districts. Under the terms of the proposed exclusion, a small wireless antenna may be mounted on an existing building or non-tower structure or in the interior of a building 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 structure is either a designated National Historic Landmark, or listed in or eligible for listing in the National Register of Historic Places;

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<sup>15</sup> *Wireless Telecommunications Bureau Seeks Comment on Revising the Historic Preservation Review Process for Small Facility Deployments*, 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.

<sup>16</sup> 36 CFR § 800.14(a)(1).

or (3) the licensee or owner of the building or structure has received notification that the Commission has received a complaint from a member of the public, an Tribal Nation, a SHPO, or ACHP that the collocation has an adverse effect on one or more historic properties. In addition, this amendment establishes volumetric limits for antennas and other wireless equipment associated with the structure that are eligible for the exclusion, and restrictions on ground disturbance, with an exemption for up to four lightning grounding rods not exceeding a specified size per project. The volume of any deployed equipment that is not visible from public spaces at the ground level from 250 feet or less may be omitted from the calculation of volumetric limits cited in this Stipulation.

*Exclusion Relating to Minimally Visible Deployments of Small Wireless Antennas and Associated Equipment on Structures in Historic Districts or on Historic Properties.* The proposed Amended Collocation Agreement would also add a new Stipulation VII.A to provide an exclusion from review for a small wireless antenna and associated equipment mounted on a building or non-tower structure (or in the interior of a building) that is a historic property or inside or within 250 feet of the boundary of a historic district, subject to visibility limits. Under these limits, that antenna or antenna enclosure must be the only equipment that is visible from the ground level or from public spaces within the building (if the antenna is mounted in the interior of a building), that antenna or enclosure must not exceed 3 cubic feet in volume, and the antenna must be installed using stealth techniques that match or complement the structure on which or within which it is deployed. Under this exclusion, no other antenna on the building or non-tower structure may be visible from the ground level or from public spaces within the building (for an antenna mounted in the interior of a building). In addition, the amendment includes provisions restricting the visibility of an antenna's associated equipment, and requires that the facilities be installed in a way that does not damage historic materials and that permits the removal of such facilities without damaging historic materials. 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.

*Exclusion Relating to Visible Small Wireless Antennas and Associated Equipment Deployments on Historic Properties or in Historic Districts.* In addition, the proposed amendments to the Collocation Agreement would add new Stipulations VII.B, VII.C, and VII.D, providing narrow exclusions from the Section 106 process set forth in the NPA for visible small wireless antennas and associated equipment in historic districts under limited circumstances. New Section VII.B would provide an exclusion for a small wireless antenna including associated equipment mounted on a utility structure (including utility poles or electric transmission towers, but not including traffic lights, light poles, lamp posts, and other structures whose primary purpose is to provide public lighting) that is in active use by a utility company and either is a historic property, is located on a historic property, or is located inside or within 250 feet of the boundary of a historic district. Further, this proposed amendment provides that: (1) the antenna, excluding the associated equipment, must fit in an enclosure (or if the antenna is exposed, within an imaginary enclosure, i.e., one that would be the correct size to contain the equipment) that is no more than three cubic feet in volume, with a cumulative limit of 6 cubic feet for more than one antenna/antenna enclosure; (2) the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, but excluding cable runs for the connection of power and other services, may be no more than 21 cubic feet in volume; and (3) the extent of ground disturbance associated with the deployment, and the number and size of lightning grounding rods that may be installed, is limited.

Proposed Stipulation VII.C specifies that the foregoing proposed exclusion for utility poles in historic districts would not apply to collocations on a traffic control structure (i.e., traffic light) or on a light pole, lamp post, or other structure whose primary purpose is to provide public lighting, where the structure is located inside or within 250 feet of the boundary of a historic district. However, this section also provides that such proposed collocations may be excluded from such review on a case-by-case basis, if: (1) the collocation meets specified volumetric and ground disturbance limits; and (2) the structure is not historic (not a designated National Historic Landmark or a property listed in or eligible for listing in the National Register of Historic Places) or considered a contributing element to the historic district. The amendment sets forth a process under which such collocations may qualify for the exclusion, which

includes providing the SHPO with an opportunity to concur with the applicant's determination that the structure is not a contributing element.

The newly proposed Stipulation VII.D excludes from routine Section 106 review a small wireless communications facility located on a building or non-tower structure or in the interior of a building that is a historic property or is inside or within 250 feet of the boundary of a historic district, regardless of visibility, provided that the facility is an in-kind replacement for an existing facility, and it does not exceed the greater of the size of the existing antenna/antenna enclosure and associated equipment, or volumetric limits specified in the amendment. The replacement of the facilities (including antenna(s) and associated equipment as defined in the Amended Collocation Agreement) must not damage historic materials and must permit removal of such facilities without damaging historic materials. In addition, the extent of ground disturbance associated with the deployment, and the number and size of lightning grounding rods that may be installed, is limited.

Newly proposed Stipulation VII.E provides that a small antenna mounted inside a building or non-tower structure and subject to the provisions of Stipulation VII must be installed in a way that does not damage historic materials and permits removal of such facilities without damaging historic materials

In addition, there are a number of other proposed minor amendments to the Collocation Agreement. These include revisions to the preamble that: (1) define our policy goals in amending the Collocation Agreement; (2) define "Antenna"; (3) update the Agreement to refer to the NPA; and (4) clarify the definition of "Collocation." Other proposed amendments are intended to clarify and simplify the Collocation Agreement, without changing the way the exclusions have worked in practice. Thus, the amended Agreement: (1) updates the cite to the NHPA; (2) clarifies the terms of the exclusions under Stipulations III and IV by simplifying the criteria that make towers ineligible for the exclusions and making clear that complaints from Tribal Nations (as well as SHPOs, ACHP, and the public) may make a tower ineligible; and (3) provides a process for the public to notify the FCC regarding any concerns with the application of the Collocation Agreement to specific undertakings (similar to the existing process under the NPA). These amendments are reflected in Appendix A.

This proceeding continues to be treated as exempt under the Commission's *ex parte* rules.<sup>17</sup> Accordingly, parties do not need to submit *ex parte* filings for communications concerning the development of the amendments to the Collocation Agreement.

Filing instructions: Interested parties may file comments on or before the date indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System ("ECFS").

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.
- Paper Filers: Parties who choose to file by paper should file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers should submit two additional copies for each additional docket or rulemaking number.

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<sup>17</sup> See *Scoping Document Public Notice*, 30 FCC Rcd at 8162 (proceeding exempt under the Commission's *ex parte* rules). 47 CFR § 1.1204; see 47 CFR § 1.1200(a) ("Where the public interest so requires in a particular proceeding, the Commission and its staff retain the discretion to modify the applicable *ex parte* rules by order, letter, or public notice.").



Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12<sup>th</sup> St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12<sup>th</sup> Street, SW, Washington DC 20554.

Availability of Documents: Comments 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. These documents 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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