



PUBLIC NOTICE

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WIRELESS TELECOMMUNICATIONS BUREAU SEEKS COMMENT ON REVISING THE HISTORIC PRESERVATION REVIEW PROCESS FOR SMALL FACILITY DEPLOYMENTS

WT Docket No. 15-180

Comment Date: September 28, 2015

By this Public Notice, the Wireless Telecommunications Bureau (Bureau) releases a scoping document (the Section 106 Scoping Document) and invites input on a new program alternative to improve and facilitate the review process for deployments of small wireless communications facilities, including Distributed Antenna Systems (DAS) and small cell facilities, under Section 106 of the National Historic Preservation Act (NHPA).¹ In particular, the attached Section 106 Scoping Document describes options and seeks public input on potentially amending the *Nationwide Programmatic Agreement for the Collocation of Wireless Antennas* (Collocation Agreement)² to address the historic preservation review of deployments of small wireless communications facilities under Section 106. Copies of the Section 106 Scoping Document are also being sent to State Historic Preservation Officers (SHPOs), Tribal and Native Hawaiian cultural preservation officials (including Tribal Historic Preservation Officers (THPOs)), and other stakeholders. By this Public Notice, the Bureau also initiates and invites government-to-government consultation with Federally-recognized Tribal Nations.

As described more fully in the Section 106 Scoping Document, new and additional infrastructure deployments are necessary to meet the increasing demand for advanced wireless services and greater wireless bandwidth.³ Many wireless providers are deploying new infrastructure technologies, particularly DAS and small cells, in order to increase coverage and capacity in indoor and outdoor environments.⁴ Because DAS networks and small cell facilities use radio spectrum licensed by the Commission, the installation of these facilities on utility poles, buildings, and other existing structures is acknowledged as a

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

² See 47 C.F.R. Part 1, App. B, Nationwide Programmatic Agreement for the Collocation of Wireless Antennas (Collocation Agreement).

³ See Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies, WT Docket Nos. 13-238, 13-32, WC Docket No. 11-59, *Report and Order*, 29 FCC Rcd 12865, 12869 para. 8 (2014); *Erratum*, 30 FCC Rcd 31 (2015) (*Infrastructure Report and Order*).

⁴ Small cells are low-powered wireless base stations that function like cells in a mobile network but provide significantly smaller coverage area than traditional cell tower deployments, often known as macrocells. DAS networks represent another wireless alternative to macrocells, but differ from small cells in that, whereas each small-cell deployment includes its own transceiver equipment that generally serves one wireless carrier/operator, a DAS network involves the use of transceiver equipment at a central hub site to support multiple antenna locations throughout the desired coverage area and in “neutral-host” deployments can serve multiple wireless carriers/operators.

Commission undertaking under Section 106 of the NHPA.⁵ The Commission's rules require applicants to follow the regulations of the Advisory Council on Historic Preservation (ACHP), as modified by two Nationwide Programmatic Agreements (NPAs) executed by the Commission with the ACHP and the National Conference of State Historic Preservation Officers (NCSHPO),⁶ in order to determine whether undertakings will affect historic properties. Such historic preservation reviews serve important local and national interests, and the NPAs tailor the Commission's processes to maximize efficiency by eliminating unnecessary procedures and establishing exclusions for proposed facilities that do not have the potential to adversely affect historic properties.

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 no potential to cause effects on historic properties.⁷ Accordingly, the *Infrastructure Report and Order* established targeted exceptions from historic preservation review requirements under Section 106 in such cases. The Commission stressed that there is room for additional improvement to our process in this area, but added that any more comprehensive measures would require additional consideration and consultation and are more appropriately addressed and developed through the program alternative process.⁸

The Commission made a commitment to work with ACHP and other stakeholders to develop a program alternative to appropriately promote additional efficiencies in the historic preservation review of DAS and small-cell deployments.⁹ An amendment to the Collocation Agreement would be considered a program alternative that falls under the process outlined in the ACHP regulations.¹⁰

This Public Notice and the accompanying Section 106 Scoping Document formally initiate the process of amending the Collocation Agreement to more comprehensively define and limit Section 106 review for small wireless communications facility deployments that are unlikely to have adverse effects on historic properties. Pursuant to the Commission's commitment in the *Infrastructure Report and Order*, the attached Section 106 Scoping Document seeks specific comment on a number of options for such an amendment that would further tailor the Section 106 process to the specific circumstances posed by the deployment of small wireless communications facilities. We note that any amendment to the Collocation Agreement would affect only the Commission's review process under Section 106 of the NHPA, and would 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 2012.¹¹

The Collocation Agreement provides that most collocations of antennas on existing buildings and structures are excluded from Section 106 review, with a few defined exceptions to address potentially problematic situations. Our goal is to amend the Collocation Agreement by adopting provisions specific to the review of small wireless communications facility deployments that meet specified criteria.¹² The

⁵ See 54 U.S.C. § 306108 (formerly codified at 16 U.S.C. § 470f).

⁶ See 47 C.F.R. § 1.1307(a)(4); 47 C.F.R. Pt. 1, Apps. B and C.

⁷ See *Infrastructure Report and Order*, 29 FCC Rcd at 12867 para. 3.

⁸ *Id.* at 12906 para. 88.

⁹ *Id.* at 12871 para. 13; see generally 36 C.F.R. § 800.14 (identifying different types of program alternatives that may govern implementation of Section 106 for a program or category of undertakings).

¹⁰ See 36 C.F.R. § 800.14(b).

¹¹ 47 U.S.C. § 332(c)(7); 47 U.S.C. § 1455(a).

¹² See 36 C.F.R. § 800.14(b) (programmatic agreements as one program alternative).

exclusions and other provisions adopted pursuant to an amendment to the Collocation Agreement would supplement the two targeted exclusions from Section 106 review 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. In developing an amendment to the Collocation Agreement, we are required to arrange for public participation appropriate to the subject matter and the scope of the category of covered undertakings in accordance with the standards set forth in the ACHP's rules.¹³ This Public Notice and the accompanying Section 106 Scoping Document fulfill this requirement.

This Public Notice will be published in the Federal Register. Comments are due on or before September 28, 2015. We are not requesting Reply Comments.

This proceeding will be treated as exempt under the Commission's *ex parte* rules.¹⁴ We find that treating this proceeding as exempt is in the public interest because: (1) the ACHP's program alternative procedures require the Commission to gather facts, views, and information from multiple parties through consultation, including government-to-government consultation with Tribal Nations; (2) requiring *ex parte* filings for each conversation in the development of the program alternative would be cumbersome, would potentially inhibit the consultation process, and would likely delay its development; and (3) once developed, the Commission will submit the proposed amendment to the Collocation Agreement to the ACHP and will publish notice of the availability of the proposed program alternative in the Federal Register as required by ACHP regulations, thus giving all stakeholders an opportunity to comment on the record at the decisional stage.¹⁵

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.

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 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries

¹³ 36 C.F.R. § 800.14(b)(2).

¹⁴ 47 C.F.R. § 1.1204; *see* 47 C.F.R. § 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."); *see also* *Comment Sought on Scoping Document for Development of a Proposed Program Comment to Govern Review of Positive Train Control Facilities Under Section 106 of the National Historic Preservation Act*, Public Notice, 28 FCC Rcd 13852, 13853 (WTB rel. Sept. 27, 2013) (proceeding exempt under Commission's *ex parte* rules).

¹⁵ 36 C.F.R. § 800.14(a)(1); *see also* 36 C.F.R. § 800.14(e)(5)(i) (requiring that if the ACHP comments, the agency shall publish notice in the Federal Register of the ACHP's comments).

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 12th 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 12th 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 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.

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PROGRAM ALTERNATIVE FOR SMALL WIRELESS COMMUNICATIONS FACILITY
DEPLOYMENTS:

Potential Amendments to the
Nationwide Programmatic Agreement for the Collocation of Wireless Antennas

SECTION 106 SCOPING DOCUMENT

July 28, 2015

The Wireless Telecommunications Bureau (Bureau) of the Federal Communications Commission (FCC or Commission) invites the participation of State Historic Preservation Officers (SHPOs), Federally-recognized Tribal Nations, the historic preservation community, and other stakeholders in developing a proposed program alternative pursuant to Section 800.14(b) of the rules of the Advisory Council on Historic Preservation (ACHP), 36 C.F.R. Part 800, to improve and facilitate the review process under Section 106 of the National Historic Preservation Act (NHPA)¹ for deployments of Distributed Antenna System (DAS) networks and small cell facilities that constitute FCC undertakings. Our process for developing this program alternative includes government-to-government consultation with Federally-recognized Tribal Nations in accordance with Section 800.14(b)(2) and (f) of the ACHP rules and in accordance with the trust relationship we share with sovereign Tribal Nations as outlined in the FCC's *Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes*.²

To develop this program alternative, we propose to negotiate an amendment to the 2001 Nationwide Programmatic Agreement for the Collocation of Wireless Antennas (Collocation Agreement).³ The Collocation Agreement provides that most collocations of antennas on existing structures are excluded from historic preservation review, with a few defined exceptions to address potentially problematic situations. We propose to amend the Collocation Agreement to better account for the limited potential of small wireless communications facility collocations that meet specified criteria, including DAS and small cell deployments, to affect historic properties.⁴ In particular, we are considering revisions that would augment the two targeted exclusions from Section 106 review that the Commission adopted in the *Infrastructure Report and Order*,⁵ as well as the exclusions set forth in the Collocation Agreement.

As discussed in more detail below, we specifically seek comment on the following potential additional exclusions for small wireless communications facility collocations:

- An exclusion for small facility deployments on structures more than 45 years of age where the deployments meet specified volume limits, involve no new ground disturbance, and are not on historic properties or in or near a historic district.

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

² Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes, *Policy Statement*, 16 FCC Rcd 4078, 4081 (2000).

³ See 47 C.F.R. Part 1, App. B, *Nationwide Programmatic Agreement for the Collocation of Wireless Antennas* (Collocation Agreement).

⁴ See 36 C.F.R. § 800.14(b) (programmatic agreements as one program alternative). We will follow the ACHP rules in developing this amendment to the Collocation Agreement. See 36 C.F.R. § 800.14(b)(2).

⁵ See Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies, WT Docket Nos. 13-238, 13-32, WC Docket No. 11-59, *Report and Order*, 29 FCC Rcd 12865, 12906-12 paras. 90-103 (2014); *Erratum*, 30 FCC Rcd 31 (2015) (*Infrastructure Report and Order*).

- An exclusion for small facility deployments located on historic properties or in or near a historic district if they: meet specified size or volume limits; cause no new ground disturbance; meet visibility restrictions; comply in their installation with the Secretary of the Interior’s standards and guidelines for historic preservation;⁶ and comply with all conditions on any existing deployment, located within the same vicinity on the same property, that were imposed pursuant to any regulatory or Section 106 review in order to directly mitigate or prevent the facility’s effects.
- Additional exclusions for small facility deployments on historic properties or in or near a historic district, regardless of visibility limitations, in certain limited circumstances such as: deployments of small facilities on utility poles, light posts, and traffic lights; deployments of small facilities in certain locations, such as utility or communications rights-of-way; and replacements or modifications of existing small facilities where the replacements meet specified volume/size limits.

We also invite ideas regarding any other potential measures to improve our Section 106 process for small wireless communications facilities.

The purpose of this Section 106 Scoping Document is to inform and engage all stakeholders in this important process, and also to initiate formal consultation on the development of the proposed program alternative with Federally-recognized Tribal Nations. This document provides a statement of purpose, an overview of DAS and small cell infrastructure, an explanation of compliance with Section 106 for DAS and small cell infrastructure, a discussion of ideas for the proposed program alternative, and a description of next steps.

I. Purpose

The Commission seeks to develop alternative review processes under Section 106 of the NHPA that are appropriate for new wireless technologies that use smaller antennas and compact radio equipment. These facilities, including those used in DAS and small cell systems, are a fraction of the size of traditional cell tower deployments and can be installed on utility poles, buildings, and other existing structures.⁷ Further tailoring the Section 106 review process for small wireless communications facilities would foster efficient deployment of infrastructure and equipment that could deliver greater spectrum capacity in more locations and fill in coverage gaps, while also taking into account historic preservation requirements and respecting the vital roles of State, local and Tribal governments.

The Commission’s environmental rules, including its historic preservation rules, generally addressed the deployment of traditional “macrocells” on towers, buildings and non-tower structures. For decades, the Commission’s rules have excluded most collocations of antennas from regulatory review, recognizing the benefits to the environment and historic properties that accrue from using existing support structures rather than building new structures. The current trend towards small wireless facility deployments has compelled us to update and expand these exclusions to address and account for the smaller infrastructure

⁶ *Secretary of the Interior’s Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring and Restructuring Historic Buildings*, available at <http://www.nps.gov/tps/standards/four-treatments/standguide/index.htm> (Secretary of the Interior’s Standards).

⁷ Small cells are low-powered wireless base stations that function like cells in a mobile network but provide significantly smaller coverage area than traditional cell tower deployments, often known as macrocells. DAS networks represent another wireless alternative to macrocells, but differ from small cells in that, whereas each small-cell deployment includes its own transceiver equipment that generally serves one wireless carrier/operator, a DAS network involves the use of transceiver equipment at a central hub site to support multiple antenna locations throughout the desired coverage area and in “neutral-host” deployments can serve multiple wireless carriers/operators.

associated with new technology. Among other things, eliminating the review of deployments with minimal potential to affect historic properties will allow the valuable and scarce administrative resources supporting Section 106 reviews to be focused on more problematic undertakings, thereby serving the preservation values our review processes were intended to protect.

In the *Infrastructure Report and Order*, the Commission eliminated unnecessary 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.⁸ The *Infrastructure Report and Order* also noted that Commission staff was working with the ACHP and other stakeholders to develop a program alternative to promote additional efficiencies in the Section 106 review of DAS and small-cell deployments.⁹ The Commission stated that it expected that the process for developing a program alternative “will conclude between 18 and 24 months after the release of this Report and Order.”¹⁰

In accordance with the commitment made in the *Infrastructure Report and Order* to develop a program alternative for small facilities, this Section 106 Scoping Document seeks comment on potential options to further update the Commission’s historic preservation process under Section 106 by amending the Collocation Agreement to account for the specific characteristics of DAS and small cell facilities. The Commission has observed that in most cases, the deployment of small wireless communications facilities such as DAS and small cells has minimal effects, if any, on historic properties and can deliver more broadband service to more communities, while reducing the need for new construction that is potentially more intrusive.¹¹ The goal of this Scoping Document is to identify additional exclusions and/or alternative processes that would facilitate greater efficiencies and therefore expedite Section 106 reviews and reduce burdens on all parties to the Section 106 process, while ensuring that deployments with significant potential to affect historic properties will continue to receive appropriate scrutiny.

II. DAS and Small Cell Infrastructure

Small cells are low-powered wireless base stations that function like cells in a mobile wireless network. They typically cover targeted indoor or localized outdoor areas ranging in size from homes and offices to stadiums, shopping malls, hospitals, and metropolitan outdoor spaces.¹² Wireless service providers often use small cells to provide connectivity to their subscribers in areas that present capacity and coverage challenges to traditional wide-area macrocell networks, such as coverage gaps created by buildings, tower siting difficulties, and challenging terrain.¹³ These cells cover significantly less area than traditional macrocells, so networks that incorporate small-cell technology can make greater reuse of scarce wireless frequencies. This greatly increases spectral efficiency and data capacity within the network footprint.¹⁴

⁸ See *Infrastructure Report and Order*, 29 FCC Rcd at 12901-12 paras. 76-103. These exclusions are described in Section III, below.

⁹ *Id.* at 12871 para. 13.

¹⁰ *Id.*

¹¹ *Id.* at 12876-77 paras. 23-27.

¹² See *id.* at 12878-79 para. 30.

¹³ See *id.* at 12878-79 para. 30; Amendment of the Commission’s Rules with Regard to Commercial Operations in the 3550-3650 MHz Band, GN Docket No. 12-354, *Notice of Proposed Rulemaking and Order*, 27 FCC Rcd 15594, 15596 para. 4, 15605 para. 30 (2012) (*3.5 GHz Service Rules NPRM*).

¹⁴ See *Infrastructure Report and Order*, 29 FCC Rcd at 12879 para. 30; *3.5 GHz Service Rules NPRM*, 27 FCC Rcd at 15596 para. 4.

DAS networks distribute RF signals from transceivers at a central hub to a specific service area where the signals are needed because of poor coverage or inadequate capacity.¹⁵ The network typically consists of a number of remote communications nodes deployed throughout the desired coverage area (each with at least one antenna for transmission and reception), a high capacity signal transport medium that connects each node to a central communications hub site, and radio transceivers at the hub site to process or control the communications signals transmitted and received through the antennas.¹⁶ DAS deployments offer robust and broad coverage without the visual and physical impacts of multiple macrocells. In contrast to small cells, which usually are operator-managed and support only a single wireless service provider, DAS networks often can accommodate multiple providers using different frequencies and/or wireless air interfaces.¹⁷

Small wireless technologies have a number of advantages over traditional macrocells. The facilities deployed at each node are much smaller than macrocell antennas and associated equipment and do not require the same elevation, so they can be placed on light stanchions, utility poles, building walls, rooftops and other small structures either privately owned or in the public rights-of-way.¹⁸ As a result, providers can deploy these technologies in areas where traditional towers are not feasible or in areas where wireless traffic demands would require an unrealistic number of macrocells. DAS and small cells can also be deployed in indoor environments to improve interior wireless services. The facilities are smaller and less visible than macrocells, so providers can more easily deploy them with stealth measures such as concealment enclosures. One of the challenges of these technologies, though, is that providers must often deploy a substantial number of nodes to achieve the seamless coverage of a single macrocell.¹⁹

DAS and small-cell deployments are a comparatively cost-effective way of addressing ever increasing demand for wireless broadband services, and, accordingly, providers are rapidly increasing their use of these technologies. There are estimates that more than 37 million small cells will be deployed by 2017 and that 16 million DAS nodes will be deployed by 2018.²⁰ One study projects that aggregate small-cell capacity will overtake macrocell capacity by 2016-2017.²¹

¹⁵ See *Infrastructure Report and Order*, 29 FCC Rcd at 12879 para. 31; “HetNet Forum: Distributed Antenna Systems (DAS) And Small Cell Technologies Distinguished,” available at http://c.ymcdn.com/sites/portal.pcia.com/resource/resmgr/Research_Documents/DAS_and_Small_Cell_Technolog.pdf at 3.

¹⁶ See *Infrastructure Report and Order*, 29 FCC Rcd at 12879 para. 31; “HetNet Forum: Distributed Antenna Systems (DAS) And Small Cell Technologies Distinguished,” available at http://c.ymcdn.com/sites/portal.pcia.com/resource/resmgr/Research_Documents/DAS_and_Small_Cell_Technolog.pdf at 3.

¹⁷ See *Infrastructure Report and Order*, 29 FCC Rcd at 12879 para. 31 (citing “Small Cell Forum: What is a small cell?”, available at <http://www.smallcellforum.org/aboutsmallcells-small-cells-what-is-a-small-cell/>); “HetNet Forum: Distributed Antenna Systems (DAS) And Small Cell Technologies Distinguished,” available at http://c.ymcdn.com/sites/portal.pcia.com/resource/resmgr/Research_Documents/DAS_and_Small_Cell_Technolog.pdf, at 4).

¹⁸ See *Infrastructure Report and Order*, 29 FCC Rcd at 12880 para. 32.

¹⁹ See *id.* at 12881 para. 34; “HetNet Forum: Distributed Antenna Systems (DAS) And Small Cell Technologies Distinguished,” available at http://c.ymcdn.com/sites/portal.pcia.com/resource/resmgr/Research_Documents/DAS_and_Small_Cell_Technolog.pdf, at 3, 4; AT&T, “DAS a Winner, How AT&T’s Distributed Antenna System Keeps Fans Connected,” available at http://www.att.co/Common/about_us/files/pdf/das_football.pdf (indicating DAS deployment in a stadium typically includes hundreds of antennas).

²⁰ See *Infrastructure Report and Order*, 29 FCC Rcd at 12880-81 para. 34 (citing Joe Madden, “Cost Comparison: Carrier Wi-Fi, Small Cells, DAS, Repeaters,” April 2013, available at http://www.richardsonrfd.com/resources/RellDocuments/SYS_29/Joe_Madden_April2013.pdf, at 2 and Antenna

III. Compliance with Section 106 for DAS and Small Cell Infrastructure

The FCC is committed to protecting historic properties under the NHPA, including properties that have religious and cultural significance to Tribal Nations and Native Hawaiian Organizations (NHOs). The FCC's rules require that applicants follow the ACHP's Section 106 regulations, as modified by two Nationwide Programmatic Agreements executed by the Commission with the ACHP and the National Conference of State Historic Preservation Officers (NCSHPO), to ascertain whether proposed facilities may affect historic properties.²² Among other things, the FCC maintains an electronic system, the Tower Construction Notification System (TCNS), to ensure that Federally-recognized Tribal Nations and NHOs receive timely notice of projects proposed in their geographic areas of concern and to ensure their opportunity to participate in the review. The FCC also maintains a companion system, E106, which may be used to transmit the required documentation to the SHPOs and other interested parties.

The Collocation Agreement excludes from Section 106 review most collocations on towers that either have completed Section 106 review or were built before March 16, 2001, as well as on buildings and other non-tower structures, unless: (1) the non-tower structure is over 45 years old; (2) the non-tower structure is inside the boundary of a historic district or is within 250 feet of the boundary of a historic district and the antenna is visible from ground level within the historic district; (3) the non-tower structure is a designated National Historic Landmark or is listed on or eligible for listing on the National Register; or (4) the proposed collocation is the subject of a pending complaint alleging an adverse effect on historic properties.

The *Infrastructure Report and Order* adopted revisions to the Section 106 review process for DAS and other small facilities. These revisions include two new targeted exclusions from Section 106 review when small facilities are being deployed -- one for collocations on utility structures and another for collocations on other non-tower structures. These exclusions apply to collocations that were not previously excluded from review under the Collocation Agreement because the underlying structures are more than 45 years old.

- Utility Structures. Small facilities on utility structures over 45 years old are excluded from Section 106 review where they meet both of the following conditions:
 - Size Limitation. Covered antenna enclosures may be no more than three cubic feet in volume per enclosure, or exposed antennas must fit within imaginary enclosures of no more than three cubic feet in volume per imaginary enclosure, up to an aggregate maximum of six cubic feet; and all other equipment enclosures (or imaginary enclosures) associated with the collocation on any single structure must be limited cumulatively to seventeen cubic feet in volume (certain enumerated equipment does not count towards this limit).
 - No New Ground Disturbance. Deployment may not involve new ground disturbance.
- Buildings and Non-Tower Structures. Small facilities on buildings or other non-tower structures over 45 years old are excluded from Section 106 review provided that:
 - Pre-existing Antenna. There is an existing antenna on the building or structure.

Systems & Technology, "16 Million DAS Nodes to be Deployed Through 2018," available at <http://www.antennasonline.com/main/news/16-million-das-nodes-to-be-deployed-through-2018/>.

²¹ See *Infrastructure Report and Order*, 29 FCC Rcd at 12881 para. 34 (citing Tessler, "Cellular Coverage/Capacity...the Small Cell Revolution," available at https://www.tessco.com/yts/knowledge_center/su/cellular-coverage-capacity-the-small-cell-revolution.html).

²² See 47 C.F.R. § 1.1307(a)(4); 47 C.F.R. Pt. 1, Apps. B and C.

- Proximity, Visibility, Size. The new antenna meets requirements of proximity to existing antenna(s), depending on the visibility and size of the new deployment.
- No New Ground Disturbance. Deployment may not involve new ground disturbance.
- Zoning and Historic Preservation Conditions. The new deployment complies with all zoning conditions and historic preservation conditions applicable to existing antennas in the same vicinity on the structure that would directly mitigate or prevent effects, such as camouflage, concealment, or painting requirements.
- Both Categories – Utility Structures and other Non-tower Structures. With respect to both of these categories -- utility structures and other non-tower structures -- the exclusion extends only to small facility deployments that are not: (1) inside the boundary of a historic district or within 250 feet of the boundary of a historic district; (2) located on a structure that is a designated National Historic Landmark or is listed on or eligible for listing on the National Register of Historic Places (National Register); or (3) the subject of a pending complaint alleging an adverse effect on historic properties.

Section VIII of the Collocation Agreement provides the signatories with an opportunity to propose amendments to the agreement, to be executed upon the written concurrence of all parties. In the *Infrastructure Report and Order*, the Commission emphasized that there is room for additional improvement of the Section 106 review process and that “additional, broader exclusions for DAS networks and other small facilities may well be appropriate” in light of their minimal potential to cause effects on historic properties.²³ Consequently, we find it appropriate to consider excluding additional categories of DAS and small cell deployments from Section 106 review within the framework of an amendment to the Collocation Agreement. The amendment would require the concurrence of the original signatories to the Collocation Agreement, including ACHP, NCSHPO, and the FCC, and it would fall within the FCC’s general obligation to consult with Federally-recognized Tribal Nations under the Section 106 process.

IV. Potential Amendments to the Collocation Agreement

The FCC has identified several areas in which an amendment to the Collocation Agreement might further tailor the Section 106 process for DAS and small cell deployments by excluding deployments that meet criteria designed to ensure that there is minimal potential for adverse effects on historic properties. Any new exclusions from the Section 106 process for small wireless communications facilities adopted pursuant to an amendment to the Collocation Agreement would be in addition to the two exclusions that the Commission adopted in the *Infrastructure Report and Order*, as well as the exclusions that are included in the Collocation Agreement. Like the existing exclusions in the Collocation Agreement as well as those adopted in the *Infrastructure Report and Order*, we anticipate that these would be complete exclusions from routine Section 106 processing, including any notification to SHPOs, Tribal Nations, and NHOs. We note that any amendment to the Collocation Agreement would affect only the Commission’s review process under Section 106 of the NHPA, and would 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 2012.²⁴

Three approaches are set forth below for the potential expansion of exclusions from the Section 106 process for small facility collocations. These approaches, which are not mutually exclusive, are offered to facilitate a productive dialogue with stakeholders on issues and options at a pre-decisional point.

²³ *Infrastructure Report and Order*, 29 FCC Rcd at 12871 para. 13.

²⁴ 47 U.S.C. § 332(c)(7); 47 U.S.C. § 1455(a).

Accordingly, we invite stakeholders' views on these and any other possible alternatives to improve the Section 106 process for small facility deployments.

Small Deployments Not on Historic Properties or in or near Historic Districts. The first option would be to amend the Collocation Agreement to exclude from Section 106 review small wireless communications facility deployments on any building or structure (such as bridges, water towers, silos, etc.) where review is required only because the building or structure is over 45 years old, provided that the antenna and associated equipment meet specified volume limitations and the deployment involves no new ground disturbance. This exclusion would not be available for deployments on historic properties or in or near historic districts. Accordingly, the exclusion would *not* apply if the deployment is (1) on a structure designated as a National Historic Landmark or listed on or eligible for listing on the National Register; (2) located in a historic district or within 250 feet of a historic district; or (3) subject to a complaint filed against the deployment alleging a potential for adverse effects on historic properties. The Commission considered this proposal in the *Infrastructure Report and Order* but declined to adopt it, stating that it would be addressed in the program alternative process.²⁵

We seek input on the criteria that should apply under this option. The collocation exclusion for small wireless facilities on utility structures adopted in the *Infrastructure Report and Order* includes a volumetric limit of no more than three cubic feet for each antenna enclosure and six cubic feet for all antennas on the structure, as well as a requirement that all other wireless equipment associated with the structure not exceed 17 cubic feet.²⁶ We propose the same volumetric limits for this proposed exclusion, and we seek input on this proposal. We also seek input on what equipment should be subject to the volumetric limits. The collocation exclusion for small wireless facilities on utility structures adopted in the *Infrastructure Report and Order* provides that the 17-cubic-foot limit applies to "all other wireless equipment associated with the structure" but does not apply to vertical cable runs for the connection of power and other services, ancillary equipment installed by other entities that is outside of the applicant's ownership or control, and comparable equipment from pre-existing deployments on the structure.²⁷ Should the exclusion contemplated under this option include a similar provision? The collocation exclusions adopted in the *Infrastructure Report and Order* provide that a deployment causes no new ground disturbance when the depth and width of previous disturbance exceeds the proposed construction depth and width by at least two feet.²⁸ We seek input on whether the same measure of ground disturbance should be used if this proposed exclusion is adopted.

Both of the collocation exclusions adopted in the *Infrastructure Report and Order* do not apply if the deployment is inside a historic district or within 250 feet of the boundary of a historic district; located on a building or structure that is a National Historic Landmark or listed on or eligible for listing on the National Register; or the subject of a pending complaint alleging adverse effect on historic properties.²⁹ We seek input on whether to limit this exclusion in the same manner.

²⁵ See *Infrastructure Report and Order*, 29 FCC Rcd at 12878 para. 28 (citing Letter from Tamara Preiss, Verizon, to Marlene H. Dortch, Secretary, FCC, WT Docket 13-238, filed Oct. 8, 2014).

²⁶ See 47 C.F.R. § 1.1307(a)(4)(ii)(A)(1) & (2).

²⁷ See 47 C.F.R. § 1.1307(a)(4)(ii)(A)(2) (i)-(iii).

²⁸ See 47 C.F.R. § 1.1307(a)(4)(ii), Note to paragraph (a)(4)(ii). The depth and width of the proposed construction must include the depth and width of any proposed footings or other anchoring mechanisms. See *Infrastructure Report and Order*, 29 FCC Rcd at 12909 para. 94.

²⁹ The Commission noted that with these limitations, the collocation exclusions apply only to deployments that would have required historic preservation review solely because the structure is more than 45 years old. See *Infrastructure Report and Order*, 29 FCC Rcd at 12877 para. 27, 12906 para. 88.

Minimally Visible Small Deployments on Historic Properties and in or near Historic Districts. We seek input as to whether the Collocation Agreement should be amended to exclude from Section 106 review small wireless communications facility collocations on historic properties or in or near historic districts, subject to visibility limits and reasonable safeguards on the method of installation. The FCC expects that such an exclusion, if adopted, would include restrictions to minimize the potential for adverse effects on historic properties, including size or volume limits on antennas and associated equipment, a requirement that there be no new ground disturbance, and restrictions on the visibility of collocations from public streets or spaces. We solicit input on whether such an exclusion should also include a requirement that the installation of facilities complies with the Secretary of the Interior's Standards, as well as a requirement that these facilities comply with any conditions applicable to any pre-existing antennas in the vicinity of the new collocation that were imposed to directly mitigate or prevent the facility's effects.

As noted above, the exclusion for collocation of small wireless facilities on utility structures adopted in the *Infrastructure Report and Order* includes a volumetric limit of no more than three cubic feet for each antenna enclosure and six cubic feet for all antennas on the structure, as well as a requirement that all other wireless equipment associated with the structure not exceed 17 cubic feet.³⁰ We believe the same volumetric limits may be appropriate for any exclusion applicable on historic properties or in or near historic districts, and we invite input on these limits. We similarly seek input on whether the wireless equipment to be included for purposes of meeting the 17-cubic-foot limit should be consistent with the list of equipment specified in the *Infrastructure Report and Order* for utility structures.³¹

We solicit input on the visibility restrictions that should be adopted for any exclusion for small facility deployments on historic properties or in or near historic districts. In addition, we believe that any exclusion for deployments on historic properties or in or near historic districts should apply only if the deployment involves no new ground disturbance as defined in the collocation exclusions adopted in the *Infrastructure Report and Order*.³² As stated above, we suggest that the Secretary of the Interior's Standards apply to any installation of facilities on historic properties under this exclusion. We solicit input on whether there are any other guidelines that should apply. Should this exclusion include a requirement that any installation of equipment on historic properties not harm original historic materials or their replacements-in-kind? Should it prohibit any anchoring of antennas or associated equipment on the historic materials of the property or their replacements-in-kind? We solicit input as to whether we should consider any other provisions to minimize the potential for adverse effects on historic properties for the purpose of this proposed exclusion.

Additional Deployments on Historic Properties or in or near Historic Districts. We solicit input on whether to amend the Collocation Agreement to exclude from Section 106 review the deployment of small facilities even where they are visible and on historic properties or in or near historic districts, in limited circumstances and subject to specified criteria. To minimize the potential for adverse effects on historic properties, we anticipate that any such exclusion would be limited to deployments on certain structures (such as utility poles, non-historic light posts, and traffic lights), deployments in certain locations (such as utility or communications rights-of-way), or replacement facilities that meet size limits.

We seek input on whether small facilities collocated on certain structures, including utility poles, light posts, street lamps, and traffic lights, located in or near historic districts should be excluded from Section 106 review. Should such exclusion be limited to utility poles as defined in the *Infrastructure Report and Order*? That order defines utility pole as a pole that is in active use by a "utility" as defined in Section

³⁰ See 47 C.F.R. § 1.1307(a)(4)(ii)(A)(1) & (2).

³¹ See 47 C.F.R. § 1.1307(a)(4)(ii)(A)(1) & (2).

³² See 47 C.F.R. § 1.1307(a)(4)(ii), Note to paragraph (a)(4)(ii).

224 of the Communications Act, but not including light poles, lamp posts, and other structures whose primary purpose is to provide public lighting. We seek input as to whether light posts and street lamps located in historic districts should also be excluded from Section 106 review under certain conditions. We recognize that an exclusion for light posts and street lamps in historic districts may be of concern in cases where they are integral to the character of the historic district or are themselves considered historic properties or eligible to be historic properties. Are there conditions under which deployments on light posts or street lamps might appropriately be excluded even when located in or near historic districts? If so, can these be clearly enough defined so that project proponents can objectively and accurately determine their applicability? What about traffic lights? What considerations affect the potential to exclude collocations on traffic lights in or near historic districts?

In addition or as an alternative, we solicit input as to whether historic districts contain certain locations within which small facility deployments should always be excluded, such as utility or communications rights-of-way. We seek input as to how rights-of-way should be defined. Should we incorporate the NPA requirements that: (1) the right-of-way must be designated by a federal, State, local, or Tribal government for communications towers, above-ground utility transmission or distribution lines, or any associated structures and equipment; (2) the right-of-way is in active use for such designated purposes; and (3) the facility will not constitute a substantial increase in size over existing support structures that are located in the right-of-way within the vicinity of the proposed construction?³³ Should we require that the collocation be within the boundaries of the right-of-way, or should we include collocations that are within a stated distance of a right-of-way? For example, Section III.E of the NPA provides an exclusion from Section 106 review for construction of a facility in or within 50 feet of a communications or utility right-of-way.

Finally, we solicit input as to whether replacements of facilities in historic districts should be excluded from Section 106 review, and if so, how we should define replacement facilities. Would this be limited to replacement “in kind” or would it be sufficient to require that such replacement facilities not constitute a substantial increase in size, as set forth in the Collocation Agreement?³⁴ Under these criteria, a deployment would result in a substantial increase in size if it would: (1) exceed the height of existing support structures that are located in the right-of-way within the vicinity of the proposed construction by more than 10% or twenty feet, whichever is greater; (2) involve the installation of more than four new equipment cabinets or more than one new equipment shelter; (3) add an appurtenance to the body of the structure that would protrude from the edge of the structure more than twenty feet, or more than the width of the structure at the level of the appurtenance, whichever is greater (except that the deployment may exceed this size limit if necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via cable); or (4) involve excavation outside the current site, defined as the area that is within the boundaries of the leased or owned property surrounding the deployment or that is in proximity to the structure and within the boundaries of the utility easement on which the facility is to be deployed, whichever is more restrictive. We invite input on whether these criteria (or some of them) should apply to the potential exclusion of replacement facilities for small deployments. We also seek input on any other criteria that should apply to this exclusion.

V. Next Steps and Contact Information

The FCC staff will follow-up with information regarding meetings, webinars, or other structured opportunities for dialogue on the proposed Program Alternative. Following the public comment period and consideration of the comments, as well as other input in the coming months, we will release the text of a proposed amendment to the Collocation Agreement and seek comment on the proposal. In addition,

³³ NPA § III.E.

³⁴ See Collocation Agreement § I.C.

throughout this process, the Commission staff will engage in ongoing consultation with Federally-recognized Tribal Nations under the Section 106 process. The final step in the process of adopting an amendment will be the concurrence of the original signatories to the Collocation Agreement – ACHP, NCSHPO, and the FCC staff. In the meantime, we welcome ideas from all interested parties and are happy to meet or talk with you. Please contact the following FCC officials:

- Jeffrey Steinberg, Deputy Chief of the Competition and Infrastructure Policy Division, at Jeffrey.Steinberg@fcc.gov or 202-418-0896;
- Paul D’Ari, Special Counsel, Competition and Infrastructure Policy Division, at Paul.Dari@fcc.gov or 202-418-1550;
- Steve DelSordo, Federal Preservation Officer, at Stephen.Delsordo@fcc.gov or 202-418-1986;
- Mania Baghdadi, Competition and Infrastructure Policy Division, at Mania.Baghdadi@fcc.gov or 202-418-2133;
- Brenda Boykin, Competition and Infrastructure Policy Division, at Brenda.Boykin@fcc.gov or 202-418-2062;
- Geoffrey Blackwell, Chief of the FCC’s Office of Native Affairs and Policy, at Geoffrey.Blackwell@fcc.gov or 202-418-3629;
- Irene Flannery, Deputy Chief of the FCC’s Office of Native Affairs and Policy, at Irene.Flannery@fcc.gov or 202-418-1307.