Before the
**Federal Communications Commission**
Washington, DC 20554

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| In the Matter of | ) | |
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| Accelerating Wireless Broadband Deployment by | ) | WT Docket No. 17-79 |
| Removing Barriers to Infrastructure Investment | ) | |
| | ) | |
| Revising the Historic Preservation Review Process | ) | WT Docket No. 15-180 |
| For Wireless Facility Deployments | ) | |

**COMMENTS OF THE AMERICAN CULTURAL RESOURCES ASSOCIATION, THE SOCIETY FOR AMERICAN ARCHAEOLOGY, THE SOCIETY FOR HISTORICAL ARCHAEOLOGY, AND THE AMERICAN ANTHROPOLOGICAL ASSOCIATION**

These comments are filed by the American Cultural Resources Association, the Society for American Archaeology, the Society for Historical Archaeology, and the American Anthropological Association, collectively as the Coalition for American Heritage, in response to the proposed rule published May 10, 2017 in the Federal Register.

## INTRODUCTION

The Coalition for American Heritage is an advocacy coalition that protects and advances our nation's commitment to heritage preservation. The Coalition is supported by the American Cultural Resources Association, the Society for American Archaeology, the Society for Historical Archaeology, and the American Anthropological Association, collectively representing 30,000 cultural resource management professionals, archaeologists, and anthropologists with an interest in the implementation of the National Historic Preservation Act (NHPA). Many of our members serve as consultants to FCC project applicants and facilitate compliance with Section 106 of the NHPA and the National Environmental Policy Act (NEPA).

## GENERAL COMMENTS

The Coalition agrees with the FCC that promoting rapid deployment of advanced wireless broadband service to all Americans is in the public interest and represents a critical aspect of economic advancement in our country. We are confident that this goal can be accomplished while also honoring our commitment to the preservation of our national heritage, which is also in the public interest. The application of Section 106 of the NHPA is critical to balancing appropriately our shared community values in infrastructure development and in historic preservation. To date, the FCC has done a laudable job of

taking advantage of the inherent flexibility of the Section 106 process through the two existing Programmatic Agreements (PAs). If further customization of the Section 106 process is needed, ample opportunity is already provided for in the ACHP's regulation at 36 CFR 800.14. Regulatory changes to solve the problems outlined in the notice of proposed rule-making (NPRM) are not needed. The program alternative process is faster and less expensive than rule-making.

Our overall impression of the NPRM is that the FCC is seeking to respond to industry concerns that current implementation of the regulatory review process results in outcomes that are expensive, time-consuming, unpredictable, and in many cases, duplicative. We share these concerns in many respects. We fully support efforts that will yield more predictable, consistent, and efficient outcomes of the Section 106 process and that deliver greater public value for the effort invested by all stakeholders. While we share many industry concerns, we believe that the FCC's overall approach to resolving them, as laid out in the NPRM, will not achieve the desired results.

## I. DELAYS AND FEES

Many of the FCC's proposed strategies for accelerating review schedules overlook the underlying causes of delays and expense. For example, prompt reviews from State Historic Preservation Offices (SHPOs) and Tribal Historic Preservation Offices (THPOs) require available staff to conduct them. For many years, inadequate funding of the Historic Preservation Fund (HPF) has required SHPOs and THPOs to do more and more with less money. Congress has authorized $150 million for the HPF but has never appropriated this full amount.

As the FCC plans for rapid wireless broadband deployment and a corresponding increase in permit reviews, it should consider how to fund SHPOs and THPOs so that they may hire the required expertise to respond to applications in a timely manner. In some states, for instance, agency funding provided to the SHPO (e.g., by the Department of Transportation) has already been earmarked for hiring liaison staff dedicated to that agency's submittals for SHPO compliance reviews. Perhaps the FCC could likewise provide funding to hire SHPO and THPO staff whose tasks are solely dedicated to FCC projects. Sustained, reliable funding for THPO offices could also resolve some of industry's concerns about fees charged by tribes for reviews and could help improve responsiveness during tribal consultation. When federal funding can support more of THPOs' basic staffing needs, such fee-based funding schemes will be less critical to daily operations.

In addition to hiring appropriate personnel to respond to applications in a timely manner, investments in SHPO and THPO cultural resource data systems would help expedite such reviews. Currently, many SHPO and THPO offices do not have fully digitized data about where known historic properties exist. This lack of quick access to data can slow down the review process. We recommend that the Commission prioritize funding for improving such data systems. We also recommend that the Commission revisit its Form 620 and 621 submission package to ensure that project applicants are providing all information needed

for proper review the first time, which will cut down on the need for additional information requests and additional time to review projects.

Finally, we encourage the Commission to uphold its trust responsibility and duty to respect the sovereignty of Tribal Nations. We note that the Commission's Tribal Nation Contact System is recognized as a best practice in Section 106 consultation and highly regarded by many tribes. In fact, the Advisory Council on Historic Preservation recommended in its just-released report on *Improving Tribal Consultation in Infrastructure Projects* that, "To enhance federal agency consultation and applicant communication with Indian tribes, the White House Council on Native American Affairs (WHCNAA) should have a member agency develop a government-wide contact system similar to that used by FCC."[1] The FCC has been a leader on these issues, and we encourage the Commission to continue to implement the Section 106 process in ways that are respectful and inclusive of Tribal Nations.

## II. REDUCING THE NUMBER AND TYPE OF REVIEWS

Rather than considering how to build the capacity of reviewers to handle the increased workload, the NPRM seeks to carve out exemptions and narrow the FCC's obligations under the NHPA to reduce the number of reviews moving through the system. We strongly disagree with this approach, as it deprives tribes and local community stakeholders of the opportunity to consult on federally-permitted projects that could adversely affect historic places that are significant to their community identity and quality of life. Should the FCC move aggressively to limit its compliance with the NHPA, it would invite challenges in court that would create needless confusion for industry, state agencies, tribes, and the general public. The FCC's scope of responsibilities with regard to the NHPA is well established in law, regulations, case law, and existing programmatic agreements for completing the Section 106 process. The FCC, industry applicants, and the American public would be better served by investing in the capacity of agencies involved in reviews to expedite their completion than in developing questionable legal theories to reduce the number of undertakings requiring consideration of effects on historic places.

## III. REVIEW OF PAs AS RECOMMENDED APPROACH

We believe that a detailed review of the existing programmatic agreements[2] (PAs) or developing new PAs is warranted, and we recommend it as the most timely and effective approach. This administrative approach does not require a change of FCC regulations or Congressional action, and yet can directly address industry concerns and achieve the stated

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[1] *Improving Tribal Consultation in Energy Projects*, May 24, 2017. Available at http://www.achp.gov/docs/achp-infrastructure-report.pdf.

[2] *Nationwide Programmatic Agreement for the Collocation of Wireless Antennas,* March 16, 2001. Available at http://www.achp.gov/docs/PA_FCC_Nationwide.pdf. Also, see *Nationwide Programmatic Agreement for Review of Effects on Historic Properties for Certain Undertakings Approved by the Federal Communications Commission*, October 4, 2004. Available at: http://www.achp.gov/docs/PA_FCC_0804.pdf.

goals of faster reviews and service delivery. We would be pleased to suggest common-sense ways to streamline existing practice without sacrificing satisfactory outcomes. Our experience implementing the PAs during expansive technological change and the need for broader coverage and faster delivery of these services has also resulted in a desire to improve the review process.

We raise particular concerns about the section of the NPRM stating that "providers cannot commence construction of their facilities until after completion of the historic preservation review process, which they state typically takes several months." Earlier in the document, however, the point is made that if a SHPO fails to respond within 30 days of being notified about the undertaking, the project is allowed to go ahead without further delay for SHPO comment. The simple fact is that SHPOs do not control how long the entire Section 106 process takes. They only control their own comment times, which are established for them in the PAs. Instead, the FCC controls how long the entire historic preservation process takes; if applicants are finding that it takes unreasonably long, they will need to resolve this with the FCC. This is not, in fact, a SHPO issue.

## IV. USE OF PROGRAM ALTERNATIVES

If local government reviews and SHPO reviews tend to be sequential rather than concurrent, and reviews by both SHPO and a CLG (certified local governments) are duplicative, these are matters that can – and should – be addressed through program alternatives. CLG reviews, especially, could be addressed in the nationwide PAs. The projects in non-CLG local government jurisdictions mostly need SHPO reviews because those local governments generally do not have the needed expertise. Almost certainly, however, the FCC, NCSHPO, and ACHP could draft a programmatic approach to creating more concurrent and fewer sequential reviews by SHPOs and non-CLG local governments. Regulatory changes are *not* needed.

## CONCLUSION

In conclusion, it is imperative that the FCC understands that compliance with the NHPA is not optional. While it is certainly true that expanding broadband and speeding up wireless deployment is critical for economic expansion, it is also true that heritage tourism is a multi-billion-dollar industry in the United States. Historic preservation is a major quality of life issue across the country, and maintaining our connection to the physical places and landscapes of our history is an important part of what binds us together as Americans. The application of Section 106 of the NHPA is critical to balancing appropriately our shared community values in infrastructure development and in historic preservation.

Respectfully Submitted,

Coalition for American Heritage

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