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DEPARTMENT OF PARKS AND RECREATION**

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June 15, 2017

Mr. Jeffrey S. Steinberg
Deputy Chief
Competition and Infrastructure Policy Division
Federal Communication Commission (FCC)
445 12th St. SW, Room TW-A325
Washington, DC 20554

RE: Notice of Proposed Rulemaking and Notice of Inquiry In the Matter of Accelerating
Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment
WT Docket No. 17-79 AND Revising the Historic Preservation Review Process for
Wireless Facility Deployments Docket No. 15-180

Dear Mr. Steinberg:

The Federal Communications Commission (Commission) has requested comments to their review of the legal framework for infrastructure deployment reviews, to identify regulatory barriers and to examine, how the Commission could act to remove or to reduce these barriers under both Docket No. 17-19 and Docket No. 15-180.

Upon review of Dockets No. 17-79 and Docket No.15-180, the California State Office of Historic Preservation (CA-OHP) does not support the proposed rule changes that could affect the Section 106 review of the FCC undertakings.

The CA-OHP submits the following comments for your consideration:

Notice of Proposed Rulemaking (NRPM)

On Sections 30-38:

- CA-SHPO does not charge carriers or applicants for Section 106 reviews under the NHPA; there are no costs.
- Under the NHPA, reviews of Federal agency undertakings and their effects on historic properties are mandated under 36 CFR Part 800.
- Local governments and Certified Local Governments (CLGs) conduct reviews that are subject to local laws; reviews to local laws, ordinances are separate processes to the NHPA.
- The role of CLGs in the Section 106 process: CLGs are not authorized to become federal agencies. Section 106 of the NHPA requires federal agencies to take into account the effects of their undertaking on historic properties. Some federal agencies "delegate" to others the preparation of Section 106 documentation, but the federal agency remains the lead agency
- There is no law, or rule, or other reason, why local and federal reviews cannot run concurrently. The decision is up to the applicants/carriers, whether to conduct reviews concurrently or separately, and then to issue an addendum. Issuance of addenda is common industry practice.

- Making changes to an undertaking that has the potential to cause an adverse effect to a historic property is good preservation; and, it results in a public benefit. CA-OHP does not track the number of project changes resulting from the avoidance of an adverse effect (adverse effect to no adverse effect). Based on our reviews over the past 4 years, no MOAs was negotiated because adequate front-end investigations into effects on historic properties pursuant to the NHPA reduced the need to negotiate MOAs for adverse effects.

On Sections 56-60:

- The timeline for reviews is set in 36 CFR Part 800 to 30-days. Any shortened time lines for project reviews would be a burden to the office and result in increased comment respond times. Most Section 106 reviews at the CA-SHPO have been conducted in less than 30 days.
- Project review times are not different for different project categories such as new towers, DAS and small cells, collocations, and compressed reviews may not be able to be accommodated at the existing staffing needs.
- The CA-OHP has accepted batched FCC submissions that were geographically limited (for instance: in a city as an undertaking and geographically further defined by streets, street corners or ROWs). Such batching has been successful and served to streamline reviews without challenging the Section 106 process. However, batching does not aid Section 106 reviews; whether a project has (one) 1 pole or 30, the review time and its process and the issuance of written comments remain the same from a workload perspective.
- The CA-OHP office as many other SHPO offices in the US still receive hard copy paper submissions and issue written comments; batched submissions will not decrease review times.

On Sections 63-64:

- Pole replacements should not be excluded. By doing so, poles that are being replaced by other poles for the purpose of adding antennas (always more than one) under the existing definition of sizes/dimension is not considering the width of the antenna increases. It does not consider the setting that might be historic or that might contribute to historic significance or the potential effect to historic resources.
- The identification of historic properties in direct APEs is still required; Tribal consultation is also required as due diligence for pole replacements.

On Sections 65-67:

- Plow installations are substantial earth moving actions; so is auguring and directional drilling. At the beginning and the endpoints of drilling and auguring the earth disturbance is substantial and thus has the potential to have effects on historic properties adjacent to historic properties, structures, districts, or in areas that have not been surveyed. Therefore, Section 106 reviews and tribal consultations should be followed to provide for the adequate protection of historic properties.
- Utility and or communications ROWs in a historic property are different then utility and communications ROWs already lined with utility poles not in a historic property. Section 106 requires a cumulative effects analysis to arrive at a solid determination of effects.
- As was pointed out during the call, ROWs in the western United States contain many undisturbed areas. Section 106 reviews to determine whether historic properties are present in order to determine the effect of the undertaking is required.

- The Nationwide-PA has an Inadvertent or Post Review Discovery clause but that cannot become the norm to apply, when through a set of exclusions, adverse effects are being created that otherwise could have been avoided through the due diligence review and re-design of undertakings set forth under Section 106 process.

On Sections 68-71:

- The FCC recently adopted the 2016 First Amendment Collocation PA, which established new exemptions. This recently adopted Collocation PA has not had enough time to establish how well it is working or not. The FCC should allow this to occur before considering further exclusions/exemptions at the expense of determining effects to historic properties.
- Under the NHPA, a cumulative analysis of project effects is required. The proposed process of excluding collocations from historic districts to a revised distance of 50 feet from 250 does not provide for an effect determination or a cumulative effects determination. Clear definitions of small wireless installations must be provided, if, as proposed hundreds of small cells are to be deployed, their geographic placements matters, and the cumulative effects of such deployments is required.
- Collocations that have received local approvals, such as through a CLG, or a local Certificate of Appropriateness should not be excluded from Section 106 reviews as local laws are separate laws; see comments above under Sections 30-38, and CLGs are not federal agencies.
- The deployment of small cells is not a one-law fits-all approach, or a one geographic area approach; therefore, general exclusions do not work, will not work. The Section 106 review process is designed to identify historic properties and to avoid adverse effects and should be employed when deploying small cell antenna undertakings.

On Sections 74-82:

- The current Antenna Collocation PA provides for a process for the review of towers that have not been reviewed under Section 106 before new collocations on these non-compliant/twilight towers can be permitted. This process should be adhered to arriving at compliance with the Section 106 process. Excluding these towers from all Section 106 review would be setting a precedent in as much that Section 106 non-compliance is resulting in no consequences, affecting the very foundations of the Section 106 process.
- The CA-SHPO office has gone through several post-reviews processes. In one instance, a potentially adverse effect was identified but extensive archaeological consultation, including testing, resulted in a no adverse effect finding concluding the consultation without a MOA. Based on this experience, a full Section 106 review with tribal consultation made the non-compliant tower compliant, and it was ready to be used for collocation. Based on this, a full Section 106 review is necessary to make a non-compliant tower compliant and time-limited reviews or streamlining the review of twilight towers as the FCC is proposing will not accomplish this and result in an increased burden to CA-OHP work-loads because the effects to potential historic resources can only be identified through effective consultation.
- The development of mitigation measures for an adverse effect of a post-review tower in a MOA will always be case specific.
- Tower owners and applicants should provide evidence whether Section 106 was completed for a tower they own or want to collocate on. The burden is on the new tower owners not on the CA-OHP or SHPOs to provide this information and to maintain these records.

- CA-OHP recommends that the FCC consider upgrading its record keeping system to track the compliance status of towers. This system would be searchable by new tower owners, if the previous tower owners have not maintained the environmental review compliance documentation demonstrating Section 106 compliance that pursuant to section I.E of the National PA satisfies an Applicants' obligations under the Commission rules with respect to Historic Properties.
- To compare "reviewed" towers that have been determined not to have an adverse effect with ones that have been standing for a long period of time (12 years or more) without Section 106 review appears to be inconsistent. Because the Commission presumes, since no adverse effect has been brought to the Commission's attention, twilight towers would be no different in this regard. The FCC's proposition to permit collocations on these towers, excluding them from a post-Section 106 review, has the potential to set a precedent that Section 106 non-compliance results in no consequences; thus affecting the foundation of the Section 106 process.

Should you have any questions or concerns, I can be reached at (916) 445-7050 or by e-mail Julianne.Polanco@parks.ca.gov.

Sincerely,

A handwritten signature in blue ink, appearing to be 'J. Polanco', with a long horizontal line extending to the right.

Julianne Polanco
State Historic Preservation Officer

CC: Erik M. Hein, Executive Director, National Conference of State Historic
Preservation Officers