

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of )  
 )  
Revising the Historic Preservation ) WT Docket No. 15-180  
Review Process for Small Facility )  
Deployments )

**COMMENTS OF THE WIRELESS INFRASTRUCTURE ASSOCIATION**

D. Zachary Champ  
Director, Government Affairs

D. Van Fleet Bloys  
Senior Government Affairs Counsel

Şadé Oshinubi  
Government Affairs Counsel

**Wireless Infrastructure Association**  
500 Montgomery Street, Suite 500  
Alexandria, VA 22314

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The Wireless Infrastructure Association (“WIA”)<sup>1</sup> hereby submits these comments in response to the Wireless Telecommunications Bureau’s notice on proposed amendments to the Nationwide Programmatic Agreement for the Collocation of Wireless Antennas (“Amended Collocation Agreement”).<sup>2</sup> We commend the Federal Communications Commission’s (“FCC” or “Commission”) ongoing effort to improve the review process for deployments of small wireless antennas and associated equipment, including Distributed Antenna Systems (“DAS”) and small cell facilities, under Section 106 of the National Historic Preservation Act (“NHPA”).<sup>3</sup> WIA supports the adoption of the proposed exclusions from Section 106 review for DAS and other small cell deployments (collectively, “small facility deployments”). Small facility deployments are increasingly important to the buildout of wireless services, adding new layers of coverage and capacity to the existing macrocellular network. As with traditional macrocell towers, small facility deployments must always be sited and managed with care and consideration to

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<sup>1</sup> WIA, formerly PCIA, is the principal organization representing the companies that build, design, own and manage telecommunications facilities throughout the world. Its over 230 members include carriers, infrastructure providers, and professional services firms.

<sup>2</sup> *Wireless Telecommunications Bureau Seeks Comment on Proposed Amended Nationwide Programmatic Agreement for the Collocation of Wireless Antennas*, Public Notice, 31 FCC Rcd 4617 (rel. May 12, 2016) (“*Public Notice*”).

<sup>3</sup> *Id.*

environmental and historic preservation requirements. As the Commission recognizes, these small facility deployments are necessarily small; as such, in many scenarios the use of existing infrastructure limits or eliminates many of the potential negative effects to historic properties and historic districts.<sup>4</sup>

## INTRODUCTION

The increased importance of small cell and DAS networks to broadband deployment requires clarifications to, and in some instances the elimination of, certain Section 106 reviews.<sup>5</sup> While macrocell facilities remain the foundation of our wireless networks, DAS and small cell solutions can increase overall network efficiency with targeted capacity and will play a critical part in the transition to next-generation 5G networks.<sup>6</sup>

The Commission rightly recognizes 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 effects on historic properties.*”<sup>7</sup> Given the minimal, if any, effects small facility deployments have on historic resources, the 2001 Nationwide Programmatic Agreement for Collocation of Wireless Antennas (“*Collocation Agreement*”) should be amended to incorporate

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<sup>4</sup> *Id.*

<sup>5</sup> *Id.* Chairman Tom Wheeler has noted that “5G buildout is going to be very infrastructure intensive, requiring a massive deployment of small cells.” Prepared Remarks of Chairman Tom Wheeler, “The Future of Wireless: A Vision for U.S. Leadership in a 5G World,” National Press Club, at 4 (Jun. 20, 2016), [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2016/db0620/DOC-339920A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2016/db0620/DOC-339920A1.pdf) (“Chairman Wheeler 5G Remarks”).

<sup>6</sup> *Public Notice* at 1; Chairman Tom Wheeler has noted “[b]rilliant engineers have developed new antennas that can aim and amplify signals, coupled with sophisticated processing, allowing a moving device to pick up all of the signals bouncing around and create one coherent connection.” Chairman Wheeler 5G Remarks at 4.

<sup>7</sup> *Public Notice* at 2 (emphasis added).

the additional revisions to the FCC's proposed Amended Collocation Agreement described in these comments.<sup>8</sup>

WIA and its member companies understand the importance of historic preservation requirements when deploying the wireless broadband infrastructure that underpins our wireless networks. At every stage of the process, the potential for impact on structures with historical, religious, and cultural significance must be respected. However, the two goals are not mutually exclusive. Wireless broadband infrastructure can be deployed with attention to, and special consideration of, cultural and historic resources.

Consistent with the Commission's commitment to conclude a program alternative for Section 106 review for DAS and small cell facilities this year,<sup>9</sup> the Commission should ensure these additional exclusions are in place no later than October 2016. In so doing, the Commission will remove unnecessary impediments to infrastructure deployment, and "reduce burdens on all parties to the Section 106 process" while continuing to protect historic resources.<sup>10</sup>

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<sup>8</sup> See Nationwide Programmatic Agreement for Collocation of Wireless Antennas, codified at 47 C.F.R. Part 1, Appendix B ("*Collocation Agreement*").

<sup>9</sup> The FCC's required the completion of the program alternative between 18 and 24 months after the October 2014 release of the *Infrastructure Report and Order*. See *Infrastructure Report and Order*, 29 FCC Rcd at 12871 ¶ 13, 12905-06 ¶¶ 86, 89. A programmatic agreement like the *Collocation Agreement* is one form of program alternative under the Advisory Council for Historic Preservation's ("ACHP") rules. See *Wireless Telecommunications Bureau Seeks Comment on Revising the Historic Preservation Review Process for Small Facility Deployments*, Public Notice, DA 15-865, 2 & nn.9-12 (rel. July 28, 2015), *appending* 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 (Jul. 28, 2015) (citing 36 C.F.R. § 800.14(b)) ("*Scoping Document*").

<sup>10</sup> *Scoping Document* at 7.

## DISCUSSION

The Commission should take immediate steps to finalize and adopt modifications to the *Collocation Agreement*. Because the proposed exclusions would apply to deployments that will have, at most, minimal potential for adverse effects on historic resources,<sup>11</sup> the FCC should maintain its position that “these would be complete exclusions from routine Section 106 processing, including any notification to SHPOs, Tribal Nations, and NHOs.”<sup>12</sup>

In pursuing these amendments, the FCC should further clarify the relationship between the new exclusions from Section 106 review and any existing rules and exclusions. The rules under the NHPA and the *Infrastructure Report and Order*, for example, may be confused or conflated with new provisions to be adopted in the Amended Collocation Agreement. We encourage the FCC to provide guidance on the interplay of all relevant siting rules through informative educational tools such as fact sheets, webinars, and other opportunities to widely disseminate changes.

### **I. THE FCC SHOULD ELIMINATE “PROXIMITY” LIMITATIONS WHEN CONSIDERING DEPLOYMENTS NEAR HISTORIC DISTRICTS.**

The FCC’s proposal to refrain from applying exclusions if the deployment is within 250 feet of a historic district<sup>13</sup> is unnecessarily restrictive. The proposed proximity carve-out is derived from language found in the *Collocation Agreement*, which excludes certain collocations on non-tower structures from Section 106 review unless, among other things, the “antenna” is within 250 feet of a historic district and “is visible from the ground level of” the historic

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<sup>11</sup> *See id.* at 6-7, 10.

<sup>12</sup> *Id.* at 10.

<sup>13</sup> *Public Notice*, App. A at § VI.A.1 & § VII.A (“Draft Amended Collocation Agreement”).

district.”<sup>14</sup> That language, however, was created to address the use of larger antennas.<sup>15</sup> As the Commission has recognized, policies drafted for macrocell deployments are not appropriate for small facility installations “that are far less obtrusive.”<sup>16</sup>

Thus, while proximity restrictions may have been appropriate when adopted in 2001 for larger and more easily visible deployments, they are inapplicable today in the context of small facility deployments that fall within the required volumetric limits.<sup>17</sup> By definition, the volumetric limits ensure that small facility deployments will be minimally intrusive. The Commission has recognized that DAS deployments do not “creat[e] the visual and physical impacts” of macrocells,<sup>18</sup> and that small cells “are smaller and less visible than macrocells,” which allows them to “blend with the structures on which they are installed.”<sup>19</sup>

For these reasons, the Commission should eliminate proximity restrictions for purposes of all exclusions in Stipulations VI and VII, which should be available (assuming satisfaction of

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<sup>14</sup> *Collocation Agreement* § V.A.2. See Comments of PCIA – The Wireless Infrastructure Association, WT Docket No. 15-180, 9-11 (Sept. 28, 2015) (“PCIA Comments”).

<sup>15</sup> *Infrastructure Report and Order*, 29 FCC Rcd at 12866 ¶ 3; see also *id.* at 12876 ¶ 24 (noting that “[o]ur environmental and historic preservation rules have traditionally been directed toward the deployment of macrocells on towers and other tall structures”).

<sup>16</sup> See *id.* at 12866-67 ¶ 3; see also *id.* at 12870 ¶ 11 (explaining that “physically small facilities like those used in DAS networks and small-cell systems” are “a fraction of the size” of the “large-scale antennas and structures that our review processes were designed to address”).

<sup>17</sup> The Amended Collocation Agreement proposes the following volumetric limits: 28 cubic feet for collocations on all non-pole structures that can support fewer than 3 providers; 21 cubic feet for collocations on all pole structures that can support fewer than 3 providers; 35 cubic feet for non-pole collocations that can support at least 3 providers; and, 28 cubic feet for pole collocations that can support at least 3 providers. Draft Amended Collocation Agreement § VII.A.4.b.

<sup>18</sup> *Infrastructure Report and Order* at 12879 ¶ 31.

<sup>19</sup> *Id.* at 12880 ¶ 33; see also *Scoping Document* at 8.

the other criteria proposed) as long as the deployment is not located inside a historic district or on a historic property.<sup>20</sup>

**II. THE FCC SHOULD NOT IMPOSE CUMULATIVE VOLUME LIMITS FOR WIRELESS EQUIPMENT ASSOCIATED WITH A BUILDING OR OTHER LARGE STRUCTURE.**

The FCC should not impose cumulative volume limits for wireless equipment attached to a building or other large structure to qualify for a Section 106 exclusion. As drafted, the proposed amendment to the *Collocation Agreement* could prevent the exclusion from applying to a new small facility on a building or water tank outside of a historic district that already has visible rooftop antennas and associated equipment if the new small deployment, existing antennas, and equipment cumulatively exceed the outlined volumetric limit. This stipulation unnecessarily restricts the use of small facility deployments where their attachment on buildings and other large structures would not harm the environment or increase the potentiality of any adverse effect on historic properties and districts.

Under proposed Stipulation V, macro antennas and associated equipment placed on structures less than 45 years of age outside of historic districts would qualify for a Section 106 exclusion regardless of their individual or cumulative size. Therefore, there is no justification for requiring cumulative size limitations for small facility deployments on these same buildings or other large structures.

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<sup>20</sup> Should the FCC decide that it must institute a buffer from the boundary of a historic district, the buffer should be no more than 50 feet from the boundary of the historic district. As the small facility moves beyond 50 feet from an historic district, the impact the deployment has on the historic nature of the district minimizes.

### **III. THE FCC SHOULD ELIMINATE THE MEASUREMENT REQUIREMENT FOR GROUNDING RODS.**

WIA supports the FCC's proposed amendment to the *Collocation Agreement* eliminating the two-foot buffer on ground disturbance for a deployment. "No new ground disturbance" should be defined as construction depths that do not exceed the depth of any previous ground disturbance.<sup>21</sup> Due to the fact that grounding for small facility deployments have a minimal impact on historic resources, the FCC should also eliminate from Stipulations VI and VII the measurement requirement for grounding rods.<sup>22</sup> Grounding rods are typically very thin, and when installed in the right-of-way, have no additional impact to historical resources as the earth has been previously disturbed. Should the FCC require that grounding rods have a measurement requirement, it should account for future changes in the National Electric Safety Code<sup>23</sup> as adopted by states and local jurisdictions.

### **IV. THE FCC SHOULD NOT REQUIRE SECTION 106 REVIEW FOR IN-BUILDING DEPLOYMENTS THAT HAVE NO ADVERSE EFFECT ON HISTORIC PROPERTIES OR DISTRICTS.**

The FCC should not require Section 106 review for a deployment within a building regardless of whether or not the building is historic or in a historic district. The proposed Amended Collocation Agreement stipulates that small wireless antennas mounted in the interior of a building, "regardless of the building's or structure's age,"<sup>24</sup> will not be excluded from Section 106 review if "the building or structure is inside the boundary of a historic district, or if

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<sup>21</sup> PCIA Comments at 8.

<sup>22</sup> Draft Amended Collocation Agreement § VI.A.5 & § VII.A.4.

<sup>23</sup> See NATIONAL ELECTRIC SAFETY CODE (NESC), 2012 EDITION (Institute of Electrical and Electronics Engineers 2011). A new version is expected to be released in August 2016. *The NESC*, IEEE STANDARDS ASSOCIATION, <http://standards.ieee.org/about/nesc> (last visited Jun. 27, 2016).

<sup>24</sup> Draft Amended Collocation Agreement § VI.A.

the antenna 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.”<sup>25</sup> Imposing this stipulation on deployments in the interior of buildings in this manner goes beyond the intent to preserve the historic nature of a district. The same is true of the FCC’s proposed Stipulation VII.A., which imposes visibility requirements for deployments in the interior of a building that is inside or within 250 feet of the boundary of a historic district.<sup>26</sup> A deployment within the interior of a building, on its face, does not affect the historical nature of the area surrounding the building.

Further, the proposed amendments to the *Collocation Agreement* do not provide additional relief, without also applying unnecessarily restrictive volumetric limits, for collocations on the interior of buildings where the only reason these deployments may require Section 106 review is because they are older than 45 years. For example, indoor malls and shopping centers are both extremely large and usually older than 45 years old;<sup>27</sup> it is difficult to locate a new antenna within the currently required ten feet of any existing antenna.<sup>28</sup> Completing Section 106 review for these collocations in buildings that already contain a myriad of equipment creates an onerous process without any corresponding benefit.

Applying the same requirements for exterior deployments to interior deployments will become overly burdensome for both providers and government agencies involved in review

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<sup>25</sup> *Id.* at § VI.A.1.

<sup>26</sup> *Id.* at § VII.A.

<sup>27</sup> Malcolm Gladwell, *The Terrazzo Jungle*, THE NEW YORKER, Mar. 15, 2004, [www.newyorker.com/magazine/2004/03/15/the-terrazzo-jungle](http://www.newyorker.com/magazine/2004/03/15/the-terrazzo-jungle) (providing a brief history of the American Mall and its inventor, Victor Gruen).

<sup>28</sup> *Infrastructure Report and Order* at ¶ 98.

processes.<sup>29</sup> For the reasons above, the FCC should not require Section 106 reviews on those deployments that are within the interior of a building because they have no adverse effect on historic properties or districts.

**V. THE FCC SHOULD REVISE VISIBILITY RESTRICTIONS FOR BETTER CONSISTENCY WITH DEPLOYMENT REALITIES.**

To qualify for an exclusion from Section 106 review, Stipulation VII requires that “the antennas or antenna enclosure (including existing antennas)” are the “only equipment that is visible from ground level or from public spaces within the building (if the antenna is mounted in the interior of a building).”<sup>30</sup> First, the FCC should clarify what it means by the condition that antennas or antenna enclosure (including existing antennas) be the “only equipment” that is visible. Will this exclusion be inapplicable if other non-antenna or antenna enclosure equipment such as remote radio heads, uninterruptible power supplies, or any other type of associated equipment that may be found on a building or other structure are visible? Secondly, the FCC should clarify whether the cumulative volume review requirement in Stipulation VII eliminates this exemption for existing visible antennas. This exclusion and the cumulative volume limit should not take into consideration existing visible antennas and associated equipment. If, for instance, one or more macro antenna arrays or other non-antenna equipment exist on the structure, a small cell antenna would have no additional, material impact on the historic nature of the property.

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<sup>29</sup> It will be challenging to define such things as visibility and public spaces within the interior of buildings, for example.

<sup>30</sup> Draft Amended Collocation Agreement § VII.A.1.

Additionally, Stipulation VII adds as a condition that “[n]o other antennas on the building or non-tower structure are visible . . . .”<sup>31</sup> Visibility restrictions should not apply to antennas that have been previously approved or are excluded from Section 106 review, as such approval or exclusion designates the deployments as not having an adverse effect on the historic nature of the property or district. Also, visibility restrictions should be limited to antennas visible at the ground level from streets and public gathering places immediately adjacent to the structure on which the antenna is located. Antennas that are visible from alleys and behind buildings, for example, have no adverse effect on the character of a historic district or historic property.

Stipulation VII also requires that the antenna “fit within an enclosure. . . that is no more than three cubic feet in volume” even if the antenna is installed using camouflage techniques or is otherwise not visible” to qualify for this exclusion.<sup>32</sup> If the antenna is not visible or camouflaged, no volumetric limits should apply. Camouflaging eliminates or significantly reduces the visibility and impact of a deployment. Therefore, non-visible or camouflaged deployments under Stipulations VII.A and B should not be subject to the same volumetric limitation applied to visible and non-camouflaged deployments excluded through Stipulation VI.<sup>33</sup>

Furthermore, the FCC should revise its proposed condition for the visibility of the antenna’s associated equipment.<sup>34</sup> To qualify for the Section 106 exclusion under Stipulation VII, an antenna’s associated equipment cannot be visible from “ground level anywhere in a historic district (if the antenna is located inside or within 250 feet of the boundary of a historic

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<sup>31</sup> Draft Amended Collocation Agreement § VII.A.1.a.

<sup>32</sup> *Id.* at § VII.A.1.b-c & § VII.B.1.

<sup>33</sup> *Id.* at § VI.A.4.a.

<sup>34</sup> *Id.* at § VII.A.2.

district); or, [i]mmediately adjacent streets or public spaces at ground level (if the antenna is on a historic property that is not in a historic district) . . . .”<sup>35</sup> It is overly restrictive to require that associated equipment be invisible from anywhere within a historic district.

First, associated equipment presents no significant effect if it is only visible in locations that are not public spaces, including on streets. Historic properties and historic districts contain various types of utility infrastructure of different sizes required to support the properties and districts. Associated equipment such as cabling, small radios, and power sources can be located in non-public areas, such as in alleys or behind buildings or partitions where they are expected to be located so as to not deter from the historic nature of the property or district.

Second, camouflaging techniques can allow associated equipment to conform to the design of its supporting structure or surrounding environment. If the equipment is hidden in the base of a pole or in a shroud, for example, it will be so minimally intrusive it will not have a negative impact on the historic district.

**VI. INSTALLATIONS NOT VISIBLE AT GROUND LEVEL FROM STREETS AND IMMEDIATELY ADJACENT PUBLIC GATHERING PLACES SHOULD BE EXEMPT FROM VOLUMETRIC LIMIT CALCULATIONS.**

The volume of non-visible equipment should be omitted from the calculation of volumetric limits; however, the FCC’s visibility standard requiring the deployed equipment to “not [be] visible from public spaces at the ground level from 250 feet or less” to qualify for this relief is overly restrictive. An outdoor antenna should only be considered visible if it is visible at the ground level from streets (but not alleys) and public gathering places (such as parks) immediately adjacent to the structure on which the antenna is located. As proposed, this provision would sweep into the volumetric calculations prescribed in Stipulation VI.A.4

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<sup>35</sup> *Id.* at § VII.A.2.a-b.

equipment that has minimal effect on historic properties. Therefore, the FCC should revise Stipulation VI.B. to omit from the volumetric limit calculation the volume of any equipment that is not visible at ground level from streets and public gathering places immediately adjacent to the structure on which the equipment is located.

**VII. THE FCC SHOULD FURTHER STREAMLINE THE PROCESS TO DEPLOY SMALL FACILITIES ON TRAFFIC CONTROL STRUCTURES OR PUBLIC LIGHTING STRUCTURES.**

The FCC should replace a cumbersome proposal for SHPO review of whether a traffic light or light pole is a contributing element to a historic district in favor of allowing environmental consultants to make this determination. The FCC's proposed Amended Collocation Agreement would establish a 30-day case-by-case process for a SHPO to determine whether a traffic light or light pole is a contributing element to the historic district before a small facility deployment on that structure qualifies for a Section 106 exclusion.<sup>36</sup> The long, complicated process the FCC proposes provides very little relief from the current process and will likely discourage the use of this exclusion. With the overall goal of streamlining deployment for small facilities, WIA encourages the FCC to replace this SHPO review process with one in which environmental consultants determine whether the traffic light or light pole is a contributing element to the historic district. Requiring SHPO approval and allowing 30 days for that determination obviates the benefits of the exclusion. Should the FCC determine that SHPO review is necessary, the FCC should require that SHPOs enter a determination within 15 days of application. If the SHPO fails to make a determination within 15 days, the application should be deemed granted.

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<sup>36</sup> *Id.* at § VII.C.

## CONCLUSION

The Commission can foster more efficient deployment of needed wireless infrastructure and equipment while continuing to protect historic resources by implementing these recommendations to further tailor the Section 106 review process for small facility deployments. At the same time, the Commission can take another critical step toward meeting “one of the great infrastructure challenges of our time”—increasing broadband deployment throughout the nation.<sup>37</sup> WIA and its members stand ready to partner with the Commission and other interested stakeholders to achieve these goals.

Respectfully submitted,

/s/ D. Zachary Champ  
D. Zachary Champ  
Director, Government Affairs

D. Van Fleet Bloys  
Senior Government Affairs Counsel

Şadé Oshinubi  
Government Affairs Counsel

**Wireless Infrastructure Association**  
500 Montgomery Street, Suite 500  
Alexandria, VA 22314  
(703) 739-0300

June 27, 2016

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<sup>37</sup> *Acceleration of Broadband Deployment: Expanding the Reach and Reducing the Cost of Broadband Deployment by Improving Policies Regarding Public Rights of Way and Wireless Facilities Siting*, Notice of Inquiry, 26 FCC Rcd 5384 (2011).