Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
Wireless Telecommunications Bureau Seeks	)	WT Docket No. 15-180
Comment on Revising the Historic Preservation	)	
Review Process for Small Facility Deployments	)	

COMMENTS OF THE ASSOCIATION OF AMERICAN RAILROADS

I. INTRODUCTION

The Association of American Railroads ("AAR")[1] respectfully submits these comments in response to the Public Notice ("Public Notice") released by the Federal Communications Commission ("FCC" or "Commission") in the above-captioned proceeding.[2] In the Public Notice, the FCC seeks comment on a Scoping Document[3] that would amend the *Nationwide Programmatic Agreement for the Collocation of Wireless Antennas* to address the historic preservation review of deployments of small collocated wireless communications facilities under Section 106.[4]

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[1] The Association of American Railroads ("AAR") is a voluntary non-profit membership organization whose freight railroad members operate 82 percent of the line-haul mileage, employ 95 percent of the workers, and account for 97 percent of the freight revenues of all railroads in the United States. More information on the AAR is available at our website, https://www.aar.org/Pages/Home.aspx.

[2] *Wireless Telecommunications Bureau Seeks Comment on Revising the Historic Preservation Review Process for Small Facility Deployments*, WT Docket No. 15-180, Public Notice, DA 15-865 (WTB July 28, 2015) ("*Public Notice*").

[3] *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) ("*Scoping Document*"), *attached to Public Notice*.

[4] *Public Notice* at 1; *see also* 47 C.F.R. Part 1, App. B, Nationwide Programmatic Agreement for the Collocation of Wireless Antennas.

AAR supports the Commission's efforts to adopt exclusions that will expedite the deployment of small wireless facilities. Because collocated Distributed Antenna Systems, small cells, and comparably sized infrastructure lack the potential to adversely affect historic properties under the circumstances proposed, AAR recommends that the Commission adopt the proposed exclusions in the Scoping Document (with the minor clarification to add properties deemed eligible by the Keeper of the National Register). Adopting the proposed exclusions would reduce the burden on State and Tribal historic preservation officers of reviewing wireless infrastructure that will pose no adverse effect on historic properties while expediting the collocation of small wireless facilities for all stakeholders. In addition or as an alternative to the proposed exclusions, adopting exclusions for small wireless facility collocations located on structures in or within 50 feet of a railroad right-of-way and on buildings or structures in rail yards would further simplify the historic preservation review process without negatively affecting historic properties.

Although the present program alternative proceeding will be helpful, its utility will be limited to areas where there are already pre-existing buildings or structures suitable for collocations. To address the growing need for wireless infrastructure, especially in rural and remote areas, AAR recommends that in a future undertaking the Commission adopt a broad exclusion from historic preservation review for freestanding wireless facilities that are deployed on transportation corridors, including railroad rights-of-way and rail yards.

II. ADOPTING THE PROPOSED EXCLUSIONS WOULD BENEFIT ALL STAKEHOLDERS

In the Scoping Document, the Commission proposes adopting three exclusions for small wireless facilities:

- Collocations on buildings or structures over 45 years old that are not historic properties or in or near a historic district;

- Collocations on historic buildings or in or near historic districts but with limited visual impact, subject to safeguards on the method of installation; and
- Collocations in or near historic districts on street furniture, rights-of-way, or as replacement facilities regardless of visual impact.[5]

Adopting these well-reasoned exclusions will pose little risk to historic properties and will help wireless licensees, including railroads, avoid the deployment delays that can arise from the Section 106 review process.

To further promote efficiencies in the Section 106 process AAR recommends that the Commission refine the eligibility determination for historic properties by making the following underlined modification to the first proposed exclusion:

> 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 <u>or formally determined eligible by the Keeper of the National Register</u>; (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."[6]

The amended language would provide stakeholders with additional clarity regarding their obligations to undergo a Section 106 assessment for small wireless facilities collocations, allowing them to consult existing databases rather than having to make individual determinations regarding the potential eligibility of each site for the National Register.

III. COLLOCATIONS ON RAILROAD RIGHTS-OF-WAY AND IN RAIL YARDS POSE NO RISK OF ADVERSE EFFECTS ON HISTORIC PROPERTIES

In addition to—or in lieu of—the proposed collocation exclusions, AAR also recommends that the Commission specifically exclude from Section 106 review small wireless

[5] *Scoping Document* at § IV.

[6] *Id.* at 7.

facilities collocated on a building or structure in or within 50 feet of a railroad right-of-way and collocations within the outer boundaries of rail yards.

The Commission previously considered adopting an exclusion from historic preservation review for deployments on rail corridors during the negotiation of the Nationwide Programmatic Agreement ("NPA"). During that proceeding the Commission correctly observed that "highways and passenger railways are among the areas where customer demand for wireless service is highest, and thus where the need for new facilities is greatest."[7] At that time, the Commission suggested that the procedures outlined in the NPA would address the increasing cost and time required to complete the Section 106 process, and so declined to adopt a transportation corridor exclusion. Since then, the Commission has further understood the critical need for wireless infrastructure to allow for the safe operation of railroads, including the implementation of Positive Train Control.

The procedures the Commission adopted in the NPA—and the Positive Train Control Program Comment—have been helpful.[8] As the Commission is aware, however, Section 106 review of infrastructure on railroad rights-of-way continues to add considerable delay to the wireless infrastructure deployment process. Given the significant rise in the number of small wireless facilities that must be deployed on railroad rights-of-way since the NPA was adopted and the minimal risk of adverse effects arising from small collocated deployments on these

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[7] *Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process*, Report and Order, 20 FCC Rcd 1073 ¶ 62 (2004).

[8] *See* Program Comment to Tailor the Federal Communications Commission's Section 106 Review for Undertakings Involving the Construction of Positive Train Control Wayside Poles and Infrastructure, *attached to Wireless Telecommunications Bureau Announces Adoption of Program Comment to Govern Review of Positive Train Control Wayside Facilities*, Public Notice, 29 FCC Rcd 5340, 5348 (WTB May 19, 2014).

largely industrial corridors, AAR believes the Commission should adopt a targeted exclusion for collocations on buildings or structures in or within 50 feet of a railroad right-of-way.

In addition, adopting an exclusion for small wireless facilities collocated on buildings and non-tower structures within the boundary of a rail yard would encourage the concentration of deployments of small wireless facilities on these industrial rights of ways. A rail yard exclusion would provide added protection from potential adverse effects on historic properties located in nearby areas that could otherwise be subject to such development. Like railroad rights-of-way, rail yards may contain structures that are over 45 years old but are unlikely to contain any buildings or structures that are listed or eligible for listing on the National Register. In addition, the buildings and structures in rail yards have been subject to prolonged and sustained construction and modification, lessening the likelihood that collocation of small wireless facilities would give rise to any adverse effects. For this reason, in the PTC Program Comment the Commission excluded from Section 106 review PTC wayside poles and infrastructure located within the outer boundaries of a system of yard track, including all locations within the yard limits.[9]

IV. CONCLUSION

AAR appreciates the Commission's sustained efforts to improve and streamline the historic review process for all stakeholders and endorses the proposed exclusions with the minor eligibility clarification noted herein. To the extent that the Commission declines to adopt any of the proposed, broader exclusions for collocations of small wireless facilities, or as a complement to these exclusions, AAR recommends that the Commission build on the precedent of the PTC Program Comment and adopt a blanket exclusion for all small wireless facilities deployments

[9] *Id.* at § V. AAR is not aware of any complaints that the Commission has received regarding deployments of PTC wayside poles or other PTC infrastructure located in rail yards.

collocated on any building or structure located within 50 yards of a railroad right-of-way or within the outer boundaries of a system of yard track.

Ultimately, AAR hopes the Commission will adopt an exclusion for all wireless facility deployments on railroad rights-of-way and in rail yards.[10] Updating the FCC's facilities siting policies would reflect the reality of wireless infrastructure deployments by railroads, which are considerably smaller and have less risk of adverse effects on historic properties than traditional communications towers. A targeted exclusion for deployments on railroad rights-of-way and in rail yards would free stakeholder resources for the review of larger undertakings located outside industrial corridors that might have the potential for adverse effects on historic properties.

Respectfully submitted,

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September 28, 2015

[10] *See, e.g.*, Comments of the Association of American Railroads, *Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies; Acceleration of Broadband Deployment: Expanding the Reach and Reducing the Cost of Broadband Deployment by Improving Policies Regarding Public Rights of Way and Wireless Facility Siting; Amendment of Parts 1 and 17 of the Commission's Rules Regarding Public Notice Procedures for Processing Antenna Structure Registration Applications for Certain Temporary Towers; 2012 Biennial Review of Telecommunications Regulations*, WT Docket Nos. 13-238 and 12-32; WC Docket No. 11-59, RM-11688 at 5-17 (Feb. 3, 2014); Reply Comments of the Association of American Railroads, *Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies et al.*, WT Docket No. 13-238 *et al.* at 4-9 (Mar. 5, 2014).