

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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

**COMMENTS OF
CTIA – THE WIRELESS ASSOCIATION®**

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COMMENTS OF CTIA – THE WIRELESS ASSOCIATION[®]

I. INTRODUCTION AND SUMMARY.

CTIA – The Wireless Association[®] (“CTIA”) submits these comments in response to the *Public Notice* seeking comment on the Federal Communications Commission (“FCC” or “Commission”)’s proposals to modernize the review processes under Section 106 of the National Historic Preservation Act (“NHPA”) in order to facilitate collocations for Distributed Antenna System (“DAS”) networks and other small cell systems.¹ As discussed below, improving the costly and time-consuming Section 106 review process for small wireless facility deployments is needed to ensure that growing demand for wireless service can be met. Importantly, this goal can be achieved without adversely impacting historic resources.

Today, Americans are using more data on more devices. As of December 2014, there were approximately 355.4 million wireless connections nationwide, an increase of nearly 20 million over the end of 2013 and an increase of nearly 30 million over the end of 2012.² As the number of broadband devices increases, the volume of data crossing mobile networks is also

¹ *Wireless Telecommunications Bureau Seeks Comment on Revising the Historic Preservation Review Process for Small Facility Deployments*, Public Notice, DA 15-865 (July 28, 2015) (“*Public Notice*”).

² *CTIA Annual Survey Report*, CTIA – THE WIRELESS ASSOCIATION[®] (June 2015), available at <http://www.ctia.org/your-wireless-life/how-wireless-works/annual-wireless-industry-survey>.

increasing: Americans use more than 11.1 billion MB of data every day,³ and reported mobile data traffic in 2014 was 30 times the size of the entire global Internet in 2000.⁴

This increasing demand for wireless broadband service “is driving an urgent and growing need for additional infrastructure deployment and new infrastructure technologies,”⁵ and small cell wireless collocations are an essential tool for meeting this challenge. As the Commission has recognized, DAS and small cells are deployed by many wireless providers in order to increase coverage and capacity in both indoor and outdoor environments.⁶ They “can be deployed on a variety of non-traditional structures such as utility poles, as well as on rooftops and inside buildings, to enhance capacity or fill in coverage gaps.”⁷ Moreover, these small wireless facilities “use components that are a fraction of the size of macrocell deployments, and can be installed – with little or no impact – on utility poles, buildings, and other existing structures.”⁸ As a result, DAS and small cells are effective ways to improve capacity and coverage of macro wireless networks: they often can be deployed at lower cost and, because of

³ Thomas Sawanobori and Dr. Robert Roche, *Mobile Data Demand: Growth Forecasts Met: Significant Growth Projects Continue to Drive the Need for More Spectrum*, CTIA – THE WIRELESS ASSOCIATION® (June 22, 2015), <http://www.ctia.org/docs/default-source/default-document-library/062115mobile-data-demands-white-paper.pdf>.

⁴ *Cisco Visual Networking Index: Global Mobile Data Traffic Forecast Update 2014–2019 White Paper*, CISCO (Feb. 3, 2015), available at http://www.cisco.com/c/en/us/solutions/collateral/service-provider/visual-networking-index-vni/white_paper_c11-520862.html.

⁵ *Id.*

⁶ *Public Notice* at 1.

⁷ *Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies*, Report and Order, 29 FCC Rcd 12865, 12876 (2014) (“*Infrastructure Order*”).

⁸ *Id.* at 12867; see also *Public Notice* at 2; Scott Gregory, *Cellular Coverage/Capacity . . . the Small Cell Revolution*, TESSCO TECHNOLOGIES, https://www.tessco.com/yts/knowledge_center/su/cellular-coverage-capacity-the-small-cell-revolution.html (last visited Sept. 22, 2015); Amos J. Loveday, *DAS/Small Cells & Historic Preservation: An Analysis of the Impact of Historic Preservation Rules on Distributed Antenna Systems and Small Cell Deployment*, Atchley Hardin Lane, LLC at 1 (Feb. 27, 2013) (“*Loveday DAS Report*”), <http://apps.fcc.gov/ecfs/document/view?id=7022132596>.

their size, with fewer local concerns. In short, DAS and small cell networks are “vitaly important to the deployment of broadband and other services.”⁹

Although widespread reliance on the small cell wireless collocations to meet ever-increasing consumer demand for mobile broadband connectivity is a relatively new phenomenon, their usage is anticipated to skyrocket. The Commission has recognized that “providers are rapidly increasing their use of these technologies, and the growth is projected to increase exponentially in the coming years.”¹⁰ By one estimate, deployment of these facilities is expected to grow by 300 percent to address this demand.¹¹

Given the numerous advantages of DAS and small cell deployments to the provision of mobile broadband services to American consumers and their anticipated growth in use, CTIA commends the Commission for recognizing that additional steps should be taken to make the historic preservation review process for these networks more efficient.¹² CTIA is well poised to comment on the proposals. It is an international nonprofit membership organization that has represented the wireless communications industry since 1984. Membership in the association includes wireless carriers and their suppliers, as well as providers and manufacturers of wireless data services and products. CTIA and its members have worked closely with the FCC, State Historic Preservation Officers (“SHPOs”), and Tribal Historic Preservation Officers (“THPOs”) over the years to address the impact of wireless deployments on cultural resources, historic properties, and historic districts.

⁹ *Infrastructure Order* at 12893.

¹⁰ *Id.* at 12880.

¹¹ See Above Ground Level Media Group, *Massive Growth Projected for DAS Deployments*, <http://www.aglmediagroup.com/massive-growth-in-u-s-das-deployments-projected-by-igr-research> (last visited Sept. 22, 2015).

¹² *Infrastructure Order* at 12878.

CTIA recognizes and appreciates the need to account for historic preservation requirements during the wireless infrastructure deployment process. The impact on buildings and structures with historical, religious, and cultural significance can and should be respected during all phases of the deployment process, and this goal can be met while simultaneously fostering a more efficient process for deployment of wireless infrastructure and equipment.

Accordingly, CTIA recommends that the Commission, among other things:

- Exclude from Section 106 review small wireless facility deployments on any building or structure where review is required only because the building or structure is more than 45 years old, provided that the antenna and associated equipment meet specific volume limitations and the deployment involves no new ground disturbance;
- Modify the proposed volumetric limits given the recognition that DAS and small cell deployments have minimal visual impacts;
- Decline to apply a 250-foot buffer from the boundary of a historic district for small deployments that are not on historic properties or in historic districts;
- Adopt a streamlined process for identifying what structures are eligible for listing in the National Register, thereby eliminating confusion and reducing costs associated with hiring expensive consultants to make such a determination;
- Clarify what constitutes “new ground disturbance”;
- Exclude from Section 106 review small wireless facility collocations on historic properties or in historic districts if they meet the volumetric limits as proposed by the Commission and modified herein;
- Exclude from Section 106 review small wireless facility collocations located in pre-existing utility and communications rights of way (“ROWS”);
- Exclude from Section 106 review replacement facilities located in historic districts; and
- Decline to apply the Secretary of the Interior’s Standards for the Treatment of Historic Properties – which were not written with small wireless collocations in mind – to the exclusions adopted in this proceeding.

CTIA commends the Commission for recognizing the important role that infrastructure siting plays in meeting mobile broadband demand and, in particular, for setting forth proposals to

modernize the regulatory approach to small cell facilities. Indeed, this Commission already took several key steps in the 2014 *Infrastructure Order* to streamline siting of wireless facilities.¹³ CTIA has intervened in support of the Commission in the subsequent appeal.¹⁴ CTIA urges the Commission to adopt the proposed exclusions set forth in the *Public Notice*, as modified herein, because they will facilitate the deployment of critical small wireless facilities with minimal or no visual impacts to historic properties and districts. Minor modifications to the proposals are necessary to maximize the usefulness of the exclusions without adversely impacting these historic resources.

II. SMALL WIRELESS FACILITY COLLOCATIONS THAT ARE NOT ON HISTORIC PROPERTIES OR IN HISTORIC DISTRICTS SHOULD BE EXCLUDED FROM SECTION 106 REVIEW.

The installation of DAS networks and small cell facilities is subject to regulations promulgated under NHPA Section 106 by the Advisory Council on Historic Preservation (“ACHP”), as modified by the Collocation Agreement¹⁵ and the 2004 Nationwide Programmatic Agreement, which are designed to mitigate potential adverse effects of infrastructure facilities on historic properties.¹⁶ The Collocation Agreement, which addresses historic preservation review for collocations on existing towers, provides that most antenna collocations on existing structures

¹³ See, *supra*, note 7.

¹⁴ See Joint Brief of Intervenors CTIA – The Wireless Ass’n and Personal Comm’cns Indus. Ass’n, Ltd., d/b/a PCIA – The Wireless Infrastructure Ass’n, Montgomery County, Md. v. United States (4th Cir., June 9, 2015) (No. 15-1240).

¹⁵ See *Nationwide Programmatic Agreement for the Collocation of Wireless Antennas*, Public Notice, 16 FCC Rcd 5574, at Appendix A (WTB 2001), codified 47 C.F.R. Part 1, App. B (“Collocation Agreement”).

¹⁶ See *Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process*, Report and Order, 20 FCC Rcd 1073, 1170 (2004) (“2004 NPA Report and Order”) (stating that “the parties hereto agree that the effects on historic properties of collocations of antennas on towers, buildings and structures are likely to be *minimal and not adverse*”) (emphasis added), rule codified 47 C.F.R. Part 1, App. C (“2004 NPA”).

are excluded from historic preservation review. This is subject to well-defined exceptions.¹⁷

The 2004 NPA, on the other hand, establishes procedures for reviewing the effects of communications towers.¹⁸

CTIA supports the Commission’s proposal, with the modifications described below, to amend the Collocation Agreement in order 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.”¹⁹ Specifically, CTIA supports the proposal, as modified, 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 more than 45 years old, provided that the antenna and associated equipment meet specific volume limitations and the deployment involves no new ground disturbance.²⁰ As the Commission has recognized, new exclusions from Section 106 review for collocations involving DAS networks and other small cell systems are warranted because the exclusions set forth in the Collocation Agreement “do not consider the scale of small wireless facility deployments.”²¹ The modifications proposed below

¹⁷ *Infrastructure Order* at 12900. The Collocation Agreement excludes from Section 106 review most collocations on towers that completed Section 106 review or were built before March 16, 2001, as well as collocations on buildings and non-tower structures, unless the proposed collocation is the subject of a pending complaint alleging adverse effects, or the non-tower structure is (1) more than 45 years old; (2) inside a historic district or within 250 feet of the boundary of the historic district and the antenna is visible from the ground within the historic district; or (3) is a designated National Historic Landmark or is listed on or eligible for listing on the National Register. *Id.*

¹⁸ *Id.* at 12901.

¹⁹ 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*, at 1 (July 28, 2015) (“*Scoping Document*”), attached to *Public Notice*.

²⁰ *Id.* at 11.

²¹ *Infrastructure Order* at 12876.

will increase the effectiveness of the Commission’s proposed exclusions, while preserving the objectives of Section 106.

A. The Proposed Volumetric Limits Should be Revised.

For small deployments not on historic properties or in or near historic districts, the Commission proposes to adopt the same volumetric limits as adopted in the *Infrastructure Order* – *i.e.*, three cubic feet for each antenna; six cubic feet total for antennas; 17 cubic feet for associated equipment.²² The proposed volumetric limits for small wireless facility deployments should instead be modified since DAS and small cell deployments have minimal visual impacts.²³ Although the intent of the 17-cubic-foot limit was to capture most small cell deployments,²⁴ it has become apparent as more wireless carriers have begun exploring small cell deployments that small wireless facility deployments may exceed the 17-cubic-foot limit on associated equipment. Based on the experience of CTIA’s members, increasing the threshold to 25 cubic feet would capture most small cell deployments.

Increasing the volumetric limit from 17 to 25 cubic feet for the purpose of defining small wireless facility deployments excluded from Section 106 review will not adversely impact historic buildings or districts, as the proposed increase is a mere eight cubic feet. In comparison to a building or structure, such an increase is *de minimis* and should have at most a minimal visual impact on historic buildings or districts. An agency need not find that there will be

²² *Scoping Document* at 8; *Infrastructure Order* at 12907-08.

²³ *See 2004 NPA Report and Order* at 1170 (stating that “the parties hereto agree that the effects on historic properties of collocations of antennas on towers, buildings and structures are likely to be *minimal and not adverse*”) (emphasis added). At a minimum, the volumetric limits should be increased for small wireless facility deployments on non-historic structures and outside historic districts.

²⁴ *See* Letter from D. Zachary Champ, Gov’t Affairs Counsel, PCIA–The Wireless Infrastructure Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-59, GN Docket No. 12-354 (filed July 22, 2013) (“PCIA July 2013 Letter”).

absolutely no effects to warrant a categorical exclusion from Section 106 review.²⁵ Instead, an agency is permitted to categorically exclude undertakings that, as here, have only “*de minimis*” effects.²⁶

In the 2004 NPA, the Commission found that “the likelihood of an incremental adverse impact on historic properties [from antennas on utility-type poles] is minimal.”²⁷ Therefore, “[b]ecause DAS and small cell antennas are smaller and the mounting poles lower than those the Commission was referring to in these findings, it follows that DAS and small cell effects are even more *de minimis* and even more unlikely to affect historic sites.”²⁸

Based on the foregoing, a small wireless facility collocation utilizing an equipment cabinet of 25 cubic feet or less should be deemed *de minimis* for purposes of Section 106 review.

B. The Volumetric Limit for Antennas Should Not Be a Cumulative Standard.

The volumetric limit associated with the proposed exemptions for small wireless facility collocations on buildings or non-utility structures should be applied on an individual basis, rather than cumulatively across all licenses/antenna owners, on non-utility structures. Under this approach, each collocator would be allowed three cubic feet for each antenna, up to six cubic feet total, and 25 feet for associated equipment. This approach will further encourage the deployment of small wireless facilities in lieu of new macrocells.

In the *Infrastructure Order*, the Commission determined that a similar volumetric limit should be cumulative in nature *for utility structures* such as poles and electric transmission

²⁵ *Save Our Heritage, Inc. v. FAA*, 269 F.3d 49, 58, 62-63 (1st Cir. 2001).

²⁶ *Id.*

²⁷ 2004 NPA Report and Order at 1098.

²⁸ Loveday DAS Report at 7.

towers.²⁹ While a cumulative approach may be warranted for such structures given their relatively small footprints, such an approach is not necessary for non-utility structures such as large office buildings. Multiple collocations of antennas three cubic feet or less on non-historic buildings and other non-utility structures could be designed to have no adverse visual impact. Any visual impact would, at most, be *de minimis*.

C. Certain Equipment Should Be Excluded from the Volumetric Limits.

Consistent with the volumetric limits adopted in the *Infrastructure Order*, the volumetric limits for small wireless facility collocations should exclude 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/or comparable equipment from pre-existing deployments on the structure.³⁰ The existing volumetric limits were crafted to exclude such equipment.³¹ As a result, if these components counted toward the volumetric limits, it would dramatically undercut the effectiveness of the proposed exclusion. Interpreted this way, the exclusion would have little value because the volume associated with these components will cause most small wireless facility collocations to exceed the volumetric limits.

D. Volumetric Limits Should Only Apply to Visible Portions of Facilities.

The purpose of volumetric limits is to ensure that the visibility of collocations do not adversely affect historic buildings and districts. When these limits were originally proposed, the limits would have excluded “[a]ny equipment that is concealed from public view in or behind an

²⁹ *Infrastructure Order* at 12908.

³⁰ *Id.*; see also *Scoping Document* at 8.

³¹ See Letter from Jonathan M. Campbell, PCIA-The Wireless Infrastructure Association, to Marlene H. Dortch, Secretary, FCC, WT Docket Nos. 13-238, 13-32; WC Docket No. 11-59 (dated Oct. 10, 2014); accord Letter from Brian M. Josef, CTIA, to Marlene H. Dortch, Secretary, FCC, WT Docket Nos. 13-238, 13-32; WC Docket No. 11-59 (dated Oct. 10, 2014).

otherwise approved structure or concealment.”³² However, because the volumetric limits initially were adopted in the context of utility structures where any collocation would be visible,³³ the proposed visibility component was omitted.

Now that the Commission is proposing to extend the volumetric limits beyond small wireless facility deployments on utility structures, the visibility requirement set forth in the original proposal should be included. Under this approach, the volumetric limits would only apply to the portion of small wireless facilities visible from adjacent streets or surrounding public places.

This visibility component is fully consistent with the goals of Section 106. The Commission has long recognized that the visibility of the antenna is a key component in determining whether Section 106 review is required.³⁴ The purpose of the proposed volumetric limits is to minimize the potential impact a collocation may have on the view of a historic building or district. If the facility is not visible, there can be no visual impact.

In addition, the Commission should clarify that any wireless facilities deployed using stealth techniques that are approved by a locality are not “visible” for purposes of this exclusion. Such an approach will encourage collocators to work cooperatively with localities to conceal future deployments. If a locality agrees that certain stealth techniques are sufficient to conceal a wireless facility, it is appropriate to conclude that such facilities will not have an adverse visual impact on historic buildings or districts.

³² See PCIA July 2013 Letter at 3.

³³ Any collocation on a utility pole or electric transmission tower will be visible from adjacent streets or surrounding public places.

³⁴ See, e.g., Collocation Agreement § I.C. (adopting a substantial increase in size condition to address visibility concerns); *id.* § V (tying application of exclusion to visibility); 2004 NPA § VI.C.3 (discussing indirect visual impacts on historic properties); *Infrastructure Order* at 12877, 12906.

E. The Exclusion Should Apply to Small Wireless Facilities Located Within 250 Feet of a Historic District.

As the Commission notes, the exclusions adopted in the *Infrastructure Order* do not apply if, among other things, the deployment is within 250 feet of the boundary of a historic district.³⁵ A similar limitation appears in the Collocation Agreement.³⁶ Here, the Commission asks whether to mirror the 250-foot buffer from the boundary of a historic district for DAS and small cell deployments that are not on historic properties or in or near historic districts. CTIA believes that it is unnecessary to create a 250-foot buffer zone outside historic districts within which the exclusion would not apply. Instead, the proposed exclusion should be available to all small wireless facilities located outside historic districts on non-historic structures.

Although a buffer zone was established in the Collocation Agreement, the exclusion in that agreement applied to much larger collocations. Among other things, the Collocation Agreement permitted collocations that did not increase the height of a tower by 10 percent or 20 feet, whichever is less.³⁷ Moreover, no explanation was ever provided why a 250-foot buffer zone was appropriate.

The 250-foot buffer zone is unnecessary with regard to the proposed exclusion here. First, unlike the Collocation Agreement, the proposed exclusion would not permit antenna collocations that increase structure heights by 20 feet. The proposed exclusion only applies to antennas that are three cubic feet or less (or six cubic feet cumulatively).

Second, the 250-foot buffer zone set forth in the Collocation Agreement only applies to collocated antennas that are visible from the ground level within historic districts.³⁸ It certainly

³⁵ *Scoping Document* at 8.

³⁶ *See id.* at 5-6.

³⁷ *See* Collocation Agreement §§ I.C, V.A.2.

³⁸ *Id.* § V.A.2.

is plausible that collocations that increase a structure height by 20 feet could be visible 250 feet away and, therefore, a buffer zone may be justified. Here, however, the proposed exclusion contains a three cubic foot volumetric limit for antennas. It is unlikely that such small antennas can be viewed from ground level 250 feet away and, even if visible, the antennas would be so small that any potential visual impact would be *de minimis*. Accordingly, there is no reason to incorporate a 250-foot buffer zone into this proposed exclusion.

At a minimum, if a buffer zone is incorporated into the proposed exclusion, the Commission should clarify that this carve-out has two components, both of which must be met to trigger Section 106 review:³⁹ (i) the facility must be located within 250 feet of a historic district; and (ii) *the antenna must be visible* from ground level within the historic district. This clarification would be consistent with the Collocation Agreement and permit collocations within a historic district buffer zone if they are not visible from ground level within the district. Thus, for example, a collocation could occur on the side of a building facing away from the historic district without triggering any Section 106 review requirements.

F. The Commission Should Clarify What Constitutes “Eligible for Listing” in the National Register of Historic Places.

The Commission also seeks comment on whether to limit the proposed exclusion such that it would not apply if the proposed deployment is located on a building or structure that is eligible for listing on the National Register of Historic Places.⁴⁰ If adopted, CTIA believes that certain clarifications are necessary for this approach given that the current process, under which applicants must actively search for properties previously unidentified as eligible for listing in the National Register, is unworkably burdensome. There is no ready way to identify properties

³⁹ The *Public Notice* appears to inadvertently omit the visibility component from its discussion of the buffer zone. *Scoping Document* at 10-11.

⁴⁰ *Id.* at 8.

potentially eligible for listing and the process places the burden on the prospective collocator alone to determine what properties are eligible. As a result, a potential collocator could hire a consultant to research whether the proposal would adversely impact any such structures and seek FCC approval based on information from the consultant, only to learn during the FCC process that a SHPO believes that an “unlisted” site is eligible for listing.

Given the volumetric limitations associated with the proposed exclusion, and in order to eliminate the confusion and reduce the costs associated with hiring consultants to determine what is “eligible for listing,” the Commission should adopt a streamlined record review process for identifying structures eligible for listing in the National Register. First, consistent with the *2004 NPA*, review should be limited to *written records* discussing such eligibility.⁴¹ As the Commission’s rules recognize, potential collocators are not required to undertake a Field Survey or other measures (other than reviewing written records) to identify properties that are potentially eligible for listing in the National Register.

Second, the Commission should limit the categories of documents that must be reviewed for determining potential eligibility to the following: (1) properties listed in the National Register; (2) properties formally determined eligible for listing by the Keeper of the National Register; and (3) properties that the SHPO/THPO certifies are in the process of being nominated to the National Register. Although this list includes fewer resources than are set forth in the *2004 NPA*,⁴² an abbreviated list is justified given the volumetric limits associated with the proposed exclusion. The size limits make it highly unlikely that facilities covered by the exclusion would have any adverse impact.

⁴¹ *2004 NPA* § VI.D.1.a.i.

⁴² *Id.* § VI.D.1.a.

At a minimum, if the Commission requires parties to review each category of documents identified in the 2004 NPA, this review should be limited to a review of records available electronically. CTIA recognizes that many of the existing records regarding historic properties have not yet been digitized. Therefore, the Commission should adopt a transition period to provide sufficient time for this process to be completed. In this broadband era, there is no reason to retain indefinitely an antiquated review process that requires a manual search of paper records. Indeed, the Commission itself has recognized the benefit of digitized records and has taken positive steps toward enabling and encouraging electronic filings, including mandatory electronic filing of certain applications, notifications, and consumer complaints.⁴³

G. The Commission Should Clarify What Constitutes “New Ground Disturbance.”

The exclusion for collocations on utility structures adopted in the *Infrastructure Order* requires that a deployment not cause new ground disturbance – *i.e.*, that the depth and width of the previous disturbance exceeds the depth and width of the proposed construction by at least two feet.⁴⁴ In other words, there must be a buffer of at least two feet between the previous and proposed ground disturbances. The Commission now seeks comment on whether the measure of ground disturbance described in the *Infrastructure Order* should apply to the proposed new exclusion for small deployments on buildings or structures not on historic properties or in or near historic districts. It should not.

⁴³ See, e.g., *Enforcement Bureau Announces Effective Date for Mandatory Electronic Filing in Section 208 and Section 224 Complaint Proceedings*, Public Notice, 30 FCC Rcd 151 (2015); *Wireline Competition Bureau Announces Effective Date for Mandatory Electronic Filing of Domestic Section 214 Applications and Notices of Network Changes*, Public Notice, 30 FCC Rcd 1217 (2015); see also Kris Monteith, Gigi B. Sohn & Diane Cornell, *New Consumer Help Center is Designed to Empower Consumers, Streamline Complaint System*, FCC Blog (Jan 5, 2015), <https://www.fcc.gov/blog/new-consumer-help-center-designed-empower-consumers-streamline-complaint-system>.

⁴⁴ *Scoping Document* at 8 (citing 47 C.F.R. § 1.1307(a)(4)(ii); *Infrastructure Order* at 12909).

Instead, outside of ROWs, the Commission should define “new ground disturbance” as construction depths (excluding footings and other anchoring mechanisms) that exceed the depth of previous ground disturbance. Given the nature of the small wireless facility collocations that would be covered by this proposed exclusion, only minimal, small-scale ground disturbance is likely to occur. There is therefore no reason to adopt a buffer between prior ground disturbance and any new ground disturbance necessary for the covered collocation.⁴⁵ Adoption of the definition proposed here would not create any new potential for effects on historic properties since the new ground disturbance would not exceed the parameters of a disturbance that had previously occurred.

Additionally, in the context of small wireless facility collocations in communications or utility ROWs, electrical grounding requirements should not be included in the definition of a ground disturbance. Many non-communications poles located in ROWs are not grounded and must have a grounding rod added to accommodate communications facilities and ensure public safety. The grounding process requires minimal trenching for the grounding wire and driving a rod less than one inch in diameter, eight to ten feet into the ground.

For purposes of determining the applicability of this exclusion to collocations in ROWs, grounding work should be excluded from the ground disturbance definition provided the work meets the following criteria:

- The grounding rod not does exceed one inch in diameter; and
- The grounding rod is not driven more than 10 feet into the ground.

If grounding work uncovers resources of potential cultural or historic significance, all work should be suspended and the proper cultural and historic organizations notified of the

⁴⁵ If the FCC believes a buffer is necessary due to uncertainty about the level of previous ground disturbance, it should be a matter of inches, not feet.

discovery.⁴⁶ The limited nature of the permitted ground disturbance, when coupled with the suspension process, should ensure that historic and cultural resources are not adversely impacted.

This approach is similar to the approach taken for railroad ROWs in the Program Comment for Positive Train Control (“PTC”) Facilities. There, the Commission adopted an exclusion for certain facilities within railroad ROWs under the theory that they are “functionally equivalent to communications or utility rights-of-way” and therefore the construction of facilities and structures similar to those already in the ROW could be conditionally excluded from Section 106 review.⁴⁷ The Commission determined that PTC facilities would be eligible for the Section 106 exemption if, among other things, they did not create a foundation hole in excess of 15 inches in diameter and require a foundation deeper than 15 feet.⁴⁸ The proposed grounding exemption would be more limited than these PTC conditions. Facilities meeting these criteria, therefore, should be exempt from Section 106 review.

Excluding electrical grounding work from the definition of a new ground disturbance also would be less impactful on historic and cultural resources than the existing exclusion from Section 106 review applicable to replacement towers. There, the Commission permitted new ground disturbances within 30 feet of the existing tower site and concluded:

“Balancing the small risk of new archeological disturbance against the benefits of encouraging replacement rather than the construction of new towers, and taking into account the requirement to cease work and provide notice in case of unanticipated discoveries, we conclude that an exclusion for replacement towers, limited to within 30 feet of the existing leased or owned boundary, is reasonable and appropriate.”⁴⁹

⁴⁶ See 2004 NPA § IX.

⁴⁷ Comment Sought on Draft Program Comment to Govern Review of Positive Train Control Facilities Under Section 106 of the National Historic Preservation Act, Public Notice, 29 FCC Rcd 694, 700 (2014).

⁴⁸ *Id.* at 700, 709.

⁴⁹ 2004 NPA Report and Order at 1090.

This same analysis justifies excluding grounding work from the definition of a new ground disturbance under the proposed exclusion for small wireless facility collocations in existing ROWs on non-historic structures outside of historic districts. Grounding work is much smaller in scale than replacement facility construction and, to the extent it occurs in existing ROWs, is likely to occur on previously disturbed soil. Therefore, there is a minimal risk of an archeological disturbance.

III. MINIMALLY VISIBLE SMALL WIRELESS FACILITY COLLOCATIONS ON HISTORIC PROPERTIES OR IN OR NEAR HISTORIC DISTRICTS SHOULD BE EXCLUDED FROM SECTION 106 REVIEW.

The Commission should also adopt its proposal, with certain modifications, to exclude from Section 106 review small wireless communications facility deployments on historic properties or in historic districts if the deployment meets certain volumetric limits designed to ensure that the antennas and associated equipment are minimally visible. In particular, deployments that satisfy the volumetric limits discussed in Section II, *supra*, should be deemed minimally visible and thus exempt from Section 106 review.

For the same reasons discussed in Section II, *supra*, the Commission should increase the volumetric limits applicable to equipment cabinets under this exclusion from 17 to 25 cubic feet and apply the volumetric limits on a per collocater basis, rather than cumulatively. Moreover, the volumetric limits should only apply to the visible portion of small wireless facilities located within historic districts that is visible from adjacent streets or surrounding public places *within the district*. The purpose of the volumetric limits is to minimize the potential impact a collocation may have on the view of a historic building or district. If the antenna is not visible, there can be no impact.

However, because this proposed exclusion involves collocations on historic structures or in or near historic districts, unlike the proposed exclusion discussed in Section II, slightly different approaches may be warranted to account for the differing historical significance of the structures on which the small cell facility might be deployed. As the National Park Service has stated, “[n]ot every building within a historic district contributes to the significance of the district.”⁵⁰ There is thus a delineation between so-called “contributing” and “non-contributing” structures within a historic district.

On the one hand, contributing structures are structures that have been denominated as adding to the “historic significance” of a property or district.⁵¹ Collocations should be permitted on such structures if volumetric limits are not exceeded by visible portions of the equipment. Collocations satisfying these limits would be minimally visible and therefore would not have an adverse effect of the structure.

On the other hand, non-contributing structures are structures that were not identified as adding to the historic significance of a property or district. They either do not add to the historic district’s “sense of time and place, and historical development,” or “the location, design, setting, materials, workmanship, feeling, and association have been so altered or have so deteriorated that the overall integrity of the building has been irretrievably lost.”⁵² In the case of non-contributing structures, small wireless facilities located thereon would be subject to the

⁵⁰ National Park Service, U.S. Dept. of the Interior, Title X: Tax Incentives, <http://www.nps.gov/nr/publications/bulletins/strevman/strevman10.htm> (last visited Sept. 24, 2015).

⁵¹ *Id.* (“A building contributing to the historic significance of a district is one which by location, design, setting, materials, workmanship, feeling, and association adds to the district’s sense of time and place, and historical development.”); *see also* National Park Service, U.S. Dept. of the Interior, Appendix IV: Glossary of National Register Terms, http://www.nps.gov/nr/publications/bulletins/nrb16a/nrb16a_appendix_IV.htm (last visited Sept. 24, 2015).

⁵² National Park Service, U.S. Dept. of the Interior, Title X: Tax Incentives, <http://www.nps.gov/nr/publications/bulletins/strevman/strevman10.htm> (last visited Sept. 24, 2015).

volumetric limits, such that the portion of the facilities that are *visible from a contributing or historic structure* must not exceed the volumetric limit.

The *Scoping Document* asks whether the Section 106 exclusion should “depend[] on the visibility” of the facility. As stated above, to the extent a proposed small wireless facility collocation would *not* be visible from a contributing or historic structure (*i.e.*, it is mounted on the side of a non-contributing structure furthest from a historic/contributing structure), the collocation should be permitted without regard to the volumetric limits. Because the collocation would not be visible, there would be no indirect, adverse effect on structures contributing to the historic district. To the extent a proposed small wireless facility collocation *would* be visible, the volumetric limits are designed to address such visibility concerns. A minimally visible small wireless facility should be defined as one that does not exceed the relevant volumetric limits. The volumetric limits alone ensure that a collocation permitted under this exclusion would not have an adverse visual effect.

IV. CERTAIN VISIBLE SMALL WIRELESS FACILITY COLLOCATIONS ON HISTORIC PROPERTIES SHOULD BE EXCLUDED FROM SECTION 106 REVIEW.

CTIA also supports additional exclusions from the Section 106 review process that would permit additional small wireless facility collocations, while still preserving the goals of Section 106. As discussed below, two of the proposed exclusions – those dealing with deployments in ROWs and replacement facilities in historic districts – would be particularly beneficial to such deployments and would not adversely impact historic resources.⁵³

⁵³ If the Commission pursues a single volumetric approach, as discussed above, there is no need to adopt a separate exclusion for utility poles and other similar structures located in historic districts. As long as the proposed small facility collocation fits within the volumetric limit, it would be permitted under the prior exclusion discussed in Section III.

A. Small Wireless Facility Collocations Located In Utility or Communications Right-of-Ways Should Be Excluded From Section 106 Review.

If the proposed exclusion discussed in Section III is not adopted, small wireless facility collocations located in pre-existing utility and communications ROWs should be excluded from the Section 106 review process.⁵⁴ Such collocations will have no adverse impact on historic districts. Similar infrastructure already exists within these ROWs and the addition of small collocations meeting volumetric limits designed to ensure minimal visibility will not adversely impact historic resources. Given the volumetric limits, any potential visual impact will be *de minimis* in nature.⁵⁵

In defining the scope of this ROW exclusion, the Section 1.1306(c) ROW definition should be used. Under this approach, a ROW subject to the exclusion is one “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” and currently “in active use for such designated purposes.”⁵⁶

Additionally, consistent with the *2004 NPA*, the proposed exclusion should apply to facilities located slightly beyond the ROW, provided they are within 50 feet of the outer ROW

⁵⁴ If that proposal is adopted, it would apply equally to facilities within ROWs and moot the need for a separate exclusion.

⁵⁵ On a related point, the Commission asks whether to prohibit any anchoring of antennas or associated equipment on the historic materials of the property or their replacements-in-kind. *Scoping Document* at 9. Small wireless facility collocations that satisfy the volumetric limits are, by definition, small and therefore are unlikely to require any substantial anchoring mechanisms that would have a meaningful direct impact to a historic resource. Nevertheless, while DAS and small cell facilities are unlikely to require substantial anchoring mechanisms, CTIA opposes the suggestion made in the *Scoping Document* that any anchoring of antennas or associated equipment on the historic materials of the property or their replacements-in-kind be prohibited. Accordingly, the proposed exclusions should apply to small wireless facilities whether or not anchoring is required.

⁵⁶ See 47 C.F.R. § 1.1306(c)(1).

boundary.⁵⁷ The *2004 NPA* approach was premised on deployments that would not constitute a “substantial” change in size.⁵⁸ The volumetric limits that would govern the exclusions proposed in the *Scoping Document* for small wireless facility deployments should not constitute a substantial change in size as defined in the *2004 NPA*. Accordingly, these deployments should be permitted 50 feet beyond a ROW as contemplated by the *2004 NPA*.

B. Replacement Facilities Located in Historic Districts Should Be Exempt from Section 106 Review.

CTIA also supports the Commission’s proposal to exempt replacement facilities from Section 106 review.⁵⁹ Replacement facilities are becoming more common as facilities age. The replacement of an aging facility can reduce the potential for structural failures and therefore improve public safety. Replacement facilities also can be used to increase the load bearing capabilities of a structure to promote collocations and reduce the need for new towers. If replacement facilities are subject to costly and time consuming Section 106 review, however, parties will be discouraged from deploying these facilities. Such a result will trigger the need for new construction, which may have greater impacts on historic districts than collocations.

There are two types of replacement facilities that should be subject to this exemption: replacement towers and replacement antennas. Tower replacement facilities should be defined

⁵⁷ *2004 NPA Report and Order* at 1098; *2004 NPA* § III.E.

⁵⁸ Under the *2004 NPA*, a substantial increase in size is defined as “1)[t]he mounting of the proposed antenna on the tower would increase the existing height of the tower by more than 10%, or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater, except that the mounting of the proposed antenna may exceed the size limits set forth in this paragraph if necessary to avoid interference with existing antennas; or 2) [t]he mounting of the proposed antenna would involve the installation of more than the standard number of new equipment cabinets for the technology involved, not to exceed four, or more than one new equipment shelter; or 3) [t]he mounting of the proposed antenna would involve adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than twenty feet.” *See 2004 NPA* § III.E.1 (referring to three of the factors used by the Collocation Agreement § I.C.).

⁵⁹ *Scoping Document* at 10.

as those that do not substantially increase the size of the tower, as defined in the *2004 NPA*. That definition was adopted specifically to address tower replacements.⁶⁰

Antenna replacement facilities should be defined differently, however, as new facilities that do not constitute a substantial increase in size as defined in the *Infrastructure Order*.⁶¹ There, the Commission specifically evaluated how replacement antennas should be defined and determined that a replacement antenna may be deployed without triggering Section 106 review if it (i) is not more than three feet larger in height or width (including all extensions) than the existing facility and (ii) does not involve any new equipment cabinets that are visible from the street or adjacent public spaces.⁶² In adopting this standard, the Commission noted that the *2004 NPA* definition of a replacement tower would be overbroad with respect to antennas because it would permit much larger deployments.⁶³

Moreover, the *Infrastructure Order* test for antenna replacements was adopted based on a voluminous record and more accurately addresses the concerns of all interested stakeholders than the tower replacement test set forth in the *2004 NPA*. Because the new exclusion proposed herein is limited to antenna replacements, the *Infrastructure Order* standard should apply.

V. THE SECRETARY OF THE INTERIOR'S STANDARDS FOR THE TREATMENT OF HISTORIC PROPERTIES SHOULD NOT BE APPLIED.

Finally, the Commission asks whether to apply the Secretary of the Interior's Standards for the Treatment of Historic Properties to the proposed exclusions. CTIA believes it should not. These Standards provide "guidelines" for preserving, rehabilitating, restoring, and reconstructing historic buildings. They are designed to inform "historic building owners and building

⁶⁰ *2004 NPA Report and Order* at 1089-90; *2004 NPA* § III.B.

⁶¹ *Infrastructure Order* at 12911-12.

⁶² *Id.* at 12911.

⁶³ *Id.* at 12911-12.

managers, preservation consultants, architects, contractors, and project reviewers” of responsible preservation practices prior to the preservation or restoration of a historic structure. In sum, the Standards only apply to very “particular” situations,⁶⁴ none of which involve wireless collocations.

Nothing in the Standards indicates that they were intended to apply to small wireless facility collocations and, to date, the Standards have not been incorporated into any of the rules governing wireless facilities and the historic review process. Neither the Collocation Agreement nor the *2004 NPA* incorporated the Standards, and just last year, when the Commission addressed Section 106 issues, these Standards were again not referenced. There is no reason now to incorporate the Standards into the new exclusions being proposed.

Moreover, given that the Standards clearly were not written with small wireless facility collocations in mind, it is unclear how they could apply to such collocations. The guidelines are limited in scope to preservation-related activities and, if extended to cover telecommunications facilities, would require either the FCC or the ACHP to make myriad case-by-case rulings. This would strain limited FCC and ACHP resources and delay the build-out of these facilities. To the extent that the build-out timeline becomes attenuated, the viability of small wireless facility deployments will decrease and the ability for these technologies to reach their potential will be artificially squelched.

⁶⁴ See ACHP User Guide; *Section 106 Regulations: Section-by-Section Questions and Answers* (Section 800.1: Purposes), <http://www.achp.gov/106q&a.html> (last visited Sept. 22, 2015).

VI. CONCLUSION.

For the reasons set forth above, the Commission should adopt additional exclusions from costly and time-consuming Section 106 review for small wireless facility collocations. Such relief is needed to ensure that demand for wireless service can be met. The proposed exclusions, as modified herein, are narrowly tailored to ensure that covered collocations will not have an adverse visual impact on historic buildings or districts.

Respectfully submitted,

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