Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Revising the Historic Preservation Review Process for Small Facility Deployments	)	WT Docket No. 15-180
	)	
Section 106 Scoping Document, Program Alternative for Small Wireless Communications Facility Deployments: Potential Amendments to the Nationwide Programmatic Agreement for the Collocation of Wireless Antennas	)	

COMMENTS OF CROWN CASTLE

Crown Castle[1] hereby submits these comments in response to the Wireless Telecommunications Bureau's *Public Notice* seeking comment on a program alternative to improve and facilitate the review process for deployments of small wireless communications facilities, including Distributed Antenna Systems ("DAS") and small cell facilities, under Section 106 of the National Historic Preservation Act ("NHPA").[2]

INTRODUCTION AND SUMMARY

Founded in 1994, Crown Castle is the country's largest independent owner and operator of shared wireless infrastructure, with more than 40,000 towers, 15,000 DAS and small cell installations, and over 16,000 miles of fiber. As the largest tower and DAS and small cell

[1] Crown Castle is Crown Castle International Corp. (CCI:NYSE) and its subsidiaries.

[2] *Wireless Telecommunications Bureau Seeks Comment on Revising the Historic Preservation Review Process for Small Facility Deployments*, Public Notice, DA 15-865 (rel. July 28, 2015) ("*Public Notice*"), *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 (July 28, 2015).

provider, Crown Castle is uniquely positioned to comment on the challenges faced by the industry in its attempt to coordinate Section 106 review in deploying its network facilities nationwide.

DAS and small cell networks provide an increasingly important role in facilitating the deployment of broadband infrastructure, as network operators seek to target broadband capacity to the locations where their customers use wireless broadband and to improve in-building coverage. Crown Castle agrees with previous statements by the Commission that "there is room for additional improvement to [the] process" for reviewing small cell deployments under Section 106 and encourages the Commission to take steps to amend the Collocation Agreement to incorporate broad additional exclusions.[3] Because of their nature and size, small cell facilities have little, if any, impact on historic properties and thus broader exclusions are appropriate and could serve to assist carriers in reducing deployment costs and time to market.

In these comments, Crown Castle requests the Commission take all necessary steps to amend the Collocation Agreement in such a way that it would exclude DAS and small cell facilities from Section 106 where there is no, or only minimal, impact to historic properties. Crown Castle supports the proposals submitted in this docket by PCIA – The Wireless Infrastructure Association and the HetNet Forum ("PCIA"), and supplements their proposals by offering these comments as additional support for the expanded exclusions.

[3] *Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies*, Report and Order, 29 FCC Rcd 12865, 12906 ¶ 88 (2014) ("*Infrastructure Report and Order*") (noting that comprehensive measures would require additional consideration and consultation through the program alternative process).

I. THE FCC SHOULD CONTINUE TO STREAMLINE THE SECTION 106 REVIEW PROCESS FOR THE DEPLOYMENT OF DAS AND SMALL CELLS IN THE PUBLIC RIGHT-OF-WAY

The Commission's *Infrastructure Report and Order* expansion of the categorical exclusion limited its effectiveness by its failure to (1) include rights-of-way containing only underground utilities; (2) include light pole, lamp posts and traffic control infrastructure; and (3) to address visibility of antennas in and from historic districts.

A. The FCC Should Expand the Categorical Exclusion from Section 106 Review for DAS and Small Cells Deployed in Utility Rights-of-Way Containing Below Ground Utilities

The limited Section 106 exclusions adopted last year have had minimal impact on the deployment process for DAS and small cell facility installations because the vast majority of poles that are older than 45 years have been replaced in order to accommodate the necessary loading for Crown Castle's node and antenna equipment. Thus, a significant number of deployments still require cumbersome review procedures that continue to delay the deployment of minimally impactful facilities. As the Commission has observed, "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 no potential to cause effects on historic properties*."[4] Yet, these same networks undergo considerable review both locally and under the Section 106 review process. Indeed, once a local jurisdiction has approved plans for DAS and small cell deployments in or near historic districts, Crown Castle must then file for review with SHPO and tribal representatives.[5] Crown Castle

[4] *Public Notice* at 2 (emphasis added).

[5] Some projects can be reviewed concurrently by state, tribal and local authorities, but the majority of projects receive significant modifications during consultation with local authorities, necessitating modifications being submitted to SHPO and tribal authorities during their review

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adds approximately 100 days to the pre-construction phase of any project that must undergo Section 106 review. Unfortunately, despite the significant cost associated with Section 106 review,[6] SHPO and tribal review has resulted in little to no benefit because historically neither the SHPOs nor tribes have had material input on Crown Castle's proposed facilities. In fact, Crown Castle has never received any negative commentary from any tribe throughout its history of TCNS filings.

a. Underground Utilities

Numerous jurisdictions throughout the country require utility lines (*e.g.* fiber and power) to be placed underground. Nonetheless, these rights-of-way remain ideal locations for the installation of DAS and small cells because existing light poles, lamp posts and traffic infrastructure or replacements thereof can be effectively utilized. By way of example, Crown Castle's DAS networks constructed in Big Cottonwood and Little Cottonwood Canyons in Colorado were installed using only underground fiber and electrical connections.[7] In each case complete Section 106 review was required because the rights-of-way construction of Crown Castle's network contained underground utilities. Indeed there were no historic districts in proximity to these networks and all trenching was placed in previously-disturbed public rights-of-way.

(footnote continued)
period. In some cases the local authorities' proposed modifications themselves result in a trigger of SHPO and tribal review.

[6] Tribal fees have recently increased significantly. By way of example, 16 tribes have asserted an interest in DAS and small cell deployments constructed in Akron, Ohio. This level of interest results in tribal fees of approximately $6,650 for each node constructed.

[7] *See* http://fox13now.com/2014/03/26/project-boosts-cellular-camera-access-in-big-cottonwood-canyon/; *and see* http://www.ksl.com/index.php?sid=30769968&nid=148&title=crews-look-to-improve-little-cottonwood-canyons-wireless-service (providing an overview of the networks constructed in Big Cottonwood and Little Cottonwood Canyons, Colorado).

If such infrastructure is 45 years old or less, or if a new pole is placed for the sole purpose of the antenna installation, such deployments would fall under the existing exclusions of the *2001 Collocation Agreement*[8] or the *2004 NPA Report and Order* (provided that the right-of-way meets the criteria specified in the *2004 NPA Report and Order*).[9] The Commission's *Infrastructure Report and Order* expanded the existing exclusions to include deployments on structures greater than 45 years old in public rights-of-way, recognizing that deployments of DAS and small cells in above-ground utility and communications rights-of-way "will not individually or cumulatively have a significant effect on the environment."[10] The basis for not including below-ground corridors in the original definition is unclear from the *2004 NPA Report and Order*,[11] however, the *2004 NPA Report and Order* addressed the deployment of macrocells and those concerns are not applicable to DAS and small cell deployments which are either concealed or are, at most, minimally intrusive. If the exclusion is not expanded to include rights-of-way with underground utilities, light poles, lamp posts and other similar infrastructure greater than 45 years old cannot be utilized without undergoing the Section 106 process, even though the FCC has previously recognized that DAS and small cell deployments in the right-of-way "will not individually or cumulatively have a significant effect on the environment."[12]

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

[9] *Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process*, Report and Order, 20 FCC Rcd 1073, 1121 ¶ 132 (2004) ("*2004 NPA Report and Order*"); *see* Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process, § VI.D.2.c.i, codified at 47 C.F.R. Part 1, Appendix C ("*NPA*").

[10] *Infrastructure Report and Order* at ¶ 42.

[11] *2004 NPA Report and Order* at ¶¶ 59-64.

[12] *Infrastructure Report and Order* at ¶ 42.

b. Visibility

It is noteworthy that the *Collocation Agreement* does not apply if the deployment is inside an historic district or within 250 feet of the boundary of a historic district *if the antennas will be visible from within the historic district.*[13] Even though small cell and DAS deployments have minimal, if any, visible impact, the right-of-way exclusion in the *Infrastructure Report and Order* did not include any reference to visibility of the antennas from the historic district. Therefore, regardless of visibility, deployments within the right-of-way will be subject to Section 106 review if the right-of-way is within 250 feet of a historic district, even though a new tower could be constructed in the same right-of-way without Section 106 review provided the antennas would not be visible from within the historic district. Because of this inconsistency between the *Collocation Agreement* and the *Infrastructure Report and Order*, numerous DAS deployments since the issuance of the *Infrastructure Report and Order*, have been subject to unnecessary Section 106 review resulting in substantial cost and delay. For example, Crown Castle has recently expanded 252 DAS nodes in New York City rights-of-way; because of their proximity to historic districts, Crown Castle incurred significant costs for Section 106 review, including approximately $295,000 in tribal fees alone. A recent deployment on the historic Ben Franklin Parkway in Philadelphia, resulted in approximately $99,000 in tribal fees, even though the deployment was in a previously disturbed area and the design involved the installation of stealth infrastructure.[14] Another deployment currently in the planning stage in Atlanta (within 250 feet of a historic district) will require the payment of $169,000 in tribal fees even though the deployment will have little or no visible impact on the historic district and will be contained

[13] *See Collocation Agreement* at Appendix B, § V.A.2 ("*Collocation Agreement*").
[14] *See* Exhibit A (showing a single node installed along Benjamin Franklin Parkway).

within previously disturbed ground in the rights-of-way. It is also important to note that a significant number of these deployments are for collocation at sites that have already been reviewed by SHPO and tribal entities. The costs for research and preparation of the Section 106 filings for these three projects will exceed $200,000. Moreover, the tribal and SHPO reviews conducted for these projects did not result in any findings or modifications. Crown Castle urges the Commission to rectify this unnecessary expenditure of resources by clarifying that Section 106 review is not required for deployments in the right-of-way in or near a historic district if the antennas are not visible from within the district.

II. THE COMMISSION SHOULD AMEND THE COLLOCATION AGREEMENT TO EXCLUDE SECTION 106 REVIEW FOR STEALTH DEPLOYMENTS WITHIN HISTORIC DISTRICTS WHERE LOCAL APPROVAL HAS BEEN GRANTED

Crown Castle has deployed numerous stealth DAS and small cell networks in historic districts throughout the country, including the French Quarter in New Orleans, Central Park in New York City, and historic districts in Santa Barbara, California and Pittsburgh, Pennsylvania.[15] In planning these networks Crown Castle worked closely with the local authorities (*e.g.* local planning, historic and other local commissions) to develop network infrastructure that met the individual municipal needs and concerns. Indeed the designs for replacement structures and plans for concealing placement on existing structures are developed in concert with local authorities. Given these circumstances, requiring a second level of review by the SHPO is unnecessary. As discussed above, where the antennas are not visible from within the historic district and the structure on which the antennas are placed has been designed to

[15] *See* Exhibit B (showing photographs of nodes placed in each respective jurisdiction).

match or complement the existing historic structures and approved by the local planning authority, additional Section 106 review is not warranted.

III. THE COMMISSION SHOULD AMEND THE COLLOCATION AGREEMENT TO EXCLUDE SECTION 106 REVIEW FOR LIKE KIND DEPLOYMENTS WITHIN THE RIGHT-OF-WAY

Although many towns have designated historic districts, a majority of these districts maintain existing wooden utility poles that support local utility services (*e.g.* electric, telephone and cable services). In these instances, small cell networks are typically also constructed on wooden utility poles in the same manner as the existing utility infrastructure (*i.e.* there is no stealthing requirement). Crown Castle encourages the Commission to exclude such "like-kind" utility infrastructure deployments so long as the deployments meet the volumetric limitations previously approved in the *Infrastructure Report and Order*[16] and are otherwise approved by local authorities.

Crown Castle supports an additional exclusion for DAS and small cell deployments within historic districts on utility infrastructure in the public right-of-way that is of "like kind" to existing utility infrastructure currently located within a historic district. "Like kind" utility infrastructure is infrastructure of the same type, quality and appearance as existing right-of-way utility infrastructure. To qualify as "like kind" infrastructure, it should appear to be made of the same materials, have similar quality and serve a similar purpose.

Attached at Exhibit C is an example of DAS deployment made in or near a historic district in Atlanta, Georgia. This deployment is placed on a wooden utility pole that is

[16] *Infrastructure Report and Order* at ¶ 92 ("Specifically, we provide that the deployment may include covered antenna enclosures no more than three cubic feet in volume per enclosure, or exposed antennas that fit within an imaginary enclosure of no more than three cubic feet in volume per imaginary enclosure, up to an aggregate maximum of six cubic feet.").

substantially similar to other utility infrastructure located within the same historic district. The specifications of this deployment underwent considerable local review to ensure that the deployment conformed to various local zoning and aesthetic requirements. There is little – if any – benefit to submitting such small cell deployments for further Section 106 review when the deployment otherwise conforms to local review and zoning requirements. Such "like kind" deployments should be excluded from Section 106 review.

IV. THE COMMISSION SHOULD REVISE ITS CHARACTERIZATION OF "NEW GROUND DISTURBANCE" TO EXCLUDE ALL EXCAVATION IN THE RIGHT-OF-WAY THAT DOES NOT EXCEED THE DEPTH OF EXISTING DISTURBED GROUND

"No new ground disturbance" in the public rights-of-way should be defined as construction depths that do not exceed the depth of any previous ground disturbance. Road construction by its very nature results in significant ground disturbance. The process includes excavation, material removal, filling, compaction and construction.[17] The two-foot buffer proposed in the *Public Notice* was originally adopted as part of the 2004 *NPA*[18] however, the FCC recognized that "many facilities are placed in locations where the likelihood of affecting archeological resources is remote; for example, on paved ground in a highly developed downtown area. Requiring onsite archeological work in these instances simply adds substantial delay and cost to facilities deployment to no appreciable benefit."[19] DAS and small cell deployments in the right-of-way may require the placement of new poles or the installation of underground fiber. These installations may exceed the two foot buffer but not the depth of actual

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[17] *See, e.g.,* MDOT From Plans to Pavement: How a Road is Built, http://www.michigan.gov/mdot/0,1607,7-151-9615-129011--,00.html

[18] *2004 NPA Report and Order* at ¶ 7.

[19] *Id* at ¶ 130.

ground disturbance. Given the extensive earthwork necessary to construct a road, the likelihood of affecting archeological resources is remote and should be excluded from Section 106 review so long as the excavation is limited to excavation in previously-disturbed rights-of-way.

CONCLUSION

By implementing these recommendations to further tailor the Section 106 review process for DAS and other small facilities, the Commission will support a more efficient deployment of broadband services while continuing to protect historic resources.

Respectfully submitted,

/s/

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Exhibit A
Benjamin Franklin Parkway
Philadelphia, PA

Exhibit B
New Orleans, LA

Exhibit B
Santa Barbara, CA

Exhibit B
New York, NY

Exhibit B
Pittsburgh, PA

Exhibit C
Atlanta, GA