

**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)	
)	
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)	

To: The Wireless Telecommunications Bureau

**COMMENTS OF PCIA – THE WIRELESS INFRASTRUCTURE ASSOCIATION
AND THE HETNET FORUM**

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EXECUTIVE SUMMARY

PCIA strongly supports the adoption of additional exclusions from Section 106 review for DAS and other small cell deployments. These deployments are increasingly important to the build out of wireless services, including mobile broadband, while their small size and use of existing infrastructure makes them extremely environmentally friendly. 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.”

Given the minimal, if any, effects small facility deployments have on historic resources, the *Collocation Agreement* should be promptly amended to add several new exclusions from Section 106 review for small facility deployments that meet specified criteria. These new exclusions would augment the existing exclusions in the *Infrastructure Report and Order* and the *Collocation Agreement*. Because these exclusions would apply to deployments that will have at most minimal potential to affect historic resources, PCIA agrees with the Commission that these would be complete exclusions from Section 106 processing.

First, the *Collocation Agreement* should be amended to exclude from Section 106 review small facility deployments on any building or non-tower structure that is more than 45 years of age where the antenna and associated equipment:

- Meet the following volumetric limits for visible antennas and equipment (concealed antennas and equipment should not count toward these limits): 3 cubic feet for each antenna enclosure; 6 cubic feet for all antennas on the structure; 17 cubic feet for all other wireless equipment associated with utility/pole structures, excluding battery back-up power supplies; and 25 cubic feet for all other wireless equipment associated with non-utility/pole structures, applied on a non-cumulative basis;
- Involve no new ground disturbance, meaning construction depths do not exceed the depth of any previous ground disturbance, excluding lightning ground rods in rights-of-way;
- Are not in a historic district or on properties listed in the National Register, formally determined eligible by the keeper of the National Register, or certified by the SHPO/THPO in an electronically searchable record to be in the process of being nominated to the Federal Register; and
- Are not subject to complaints filed with the FCC.

Second, the *Collocation Agreement* should be amended to exclude from Section 106 review small, minimally visible facility deployments located on historic properties or in a historic district, subject to volumetric limits and other appropriately-tailored safeguards. This exclusion should:

- Employ the same volumetric limits applicable to the exclusion for small facility installations not located on a historic property or in a historic district, which ensure that qualifying small facility deployments will be minimally visible and render additional visibility restrictions unnecessary;

- Apply the same “no new ground disturbance” definition used for the exclusion for small facility installations not located on a historic property or in a historic district;
- Omit a requirement to comply with conditions applicable to “any” pre-existing antennas “in the vicinity of” the new collocation, which would be difficult or impossible to ascertain; and
- Treat the Secretary of the Interior’s Standards as, at most, non-binding guidance, consistent with the standards themselves.

Third, The Collocation Agreement should be amended to adopt several additional exclusions from Section 106 review based on the location or type of structure at issue. Specifically:

- Small facility deployments should be excluded if located in a historic district and in or within 50 feet of a right-of-way, defined as any corridor designated for communications towers, above- or below-ground utility transmission or distribution lines, or any associated structures and equipment (including light standards); the deployment should cause no new ground disturbance and either fit within the volumetric limits described above, or be of a “like kind” to utility and communications infrastructure already located in the right-of-way, whichever is greater;
- Small facility deployments should be excluded if located on a non-historic structure or non-contributing element located inside a historic district (such as utility poles, light posts, street lamps, traffic lights and other traffic infrastructure); the deployment should cause no new ground disturbance and either fit within the volumetric limits described above, or be of a “like kind” to utility and communications infrastructure already located in the right-of-way, whichever is greater; and
- Replacements of existing facilities located on historic properties or in historic districts should be excluded, provided they do not constitute a substantial increase in size as defined in the *Infrastructure Report and Order* (§ 100) and Section 1.1307(a)(4)(ii)(B)(2)(i)(D)-(E) of the Commission’s rules.

Consistent with the Commission’s commitment to conclude a program alternative for Section 106 review for DAS and small cell facilities between 18 and 24 months after the October 2014 release of the *Infrastructure Report and Order*, the Commission should ensure these additional exclusions are in place by April 2016 (and no later than October 2016). By taking these steps to further tailor the Section 106 review process for DAS and other small facilities, the Commission will foster more efficient deployment of needed wireless infrastructure and equipment while continuing to protect historic resources. PCIA and its members stand ready to partner with the Commission and other interested stakeholders to achieve these goals.

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**COMMENTS OF PCIA – THE WIRELESS INFRASTRUCTURE ASSOCIATION
AND THE HETNET FORUM**

PCIA – The Wireless Infrastructure Association (“PCIA”)¹ hereby submit these comments in response to the Wireless Telecommunications Bureau’s 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 PCIA strongly supports the adoption of additional exclusions from Section 106 review for DAS and other small cell deployments (collectively, “small facility deployments” or “small facility installations”). These deployments are increasingly important to the build out of wireless

¹ PCIA is the principal organization representing the companies that build, design, own and manage telecommunications facilities throughout the world. Its over 220 members include carriers, infrastructure providers, and professional services firms.

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) (“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).

services, including mobile broadband, while their small size and use of existing infrastructure makes them extremely environmentally friendly. They are ideal candidates for further exclusion from Section 106 review.

INTRODUCTION

The increasing importance of DAS and small cells to broadband deployment makes the need to eliminate unnecessary Section 106 reviews for these installations more critical than ever. Given their ability to increase overall network efficiency by providing targeted capacity where it is needed most, DAS and small cell solutions are perfectly positioned to meet the insatiable consumer demand for more and faster data in high-traffic, high-cell-use locations.

Not surprisingly, DAS deployments are projected to grow *more than 300%* by 2017.³ Indeed, more than 37 million small cells are estimated to be deployed by 2017, and 16 million DAS nodes are expected to be installed by 2018.⁴ There is no question that, as the Commission has recognized, these deployments “are necessary to meet the increasing demand for advanced wireless services and greater wireless bandwidth.”⁵

PCIA commends the Commission for taking important initial steps last year to establish targeted Section 106 exclusions for certain small facility deployments on utility poles and other

³ See AGL 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. 28, 2015) (citing IGR RESEARCH, U.S. DAS MARKET FORECAST, 2012 TO 2017 INSTALLATIONS, TENANCY, OPEX AND CAPEX).

⁴ *Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies*, Report and Order, 29 FCC Rcd 12865, 12880-81 ¶ 34 (2014) (“*Infrastructure Report and Order*”) (citing MOBILE EXPERTS, COST COMPARISON: CARRIER WI-FI, SMALL CELLS, DAS, REPEATERS 2 (Apr. 2013), http://www.richardsonrfd.com/resources/RelDocuments/SYS_29/Joe_Madden_April2013.pdf); ANTENNA SYSTEMS & TECHNOLOGY, 16 MILLION DAS NODES TO BE DEPLOYED THROUGH 2018 (Sept. 2013), <http://www.antennasonline.com/main/news/16-million-das-nodes-to-be-deployed-through-2018/>).

⁵ Notice at 1.

non-tower structures.⁶ While these exclusions have helped to streamline the deployment process for some small facility installations, others remain needlessly subject to cumbersome review procedures even though they are recognized as having little or no impact on historic resources. 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.*”⁷

Given the minimal, if any, effects small facility deployments have on historic resources, the 2001 *Collocation Agreement* should be promptly amended to incorporate the additional exclusions described in these comments.⁸ Consistent with the Commission’s commitment to conclude a program alternative for Section 106 review for DAS and small cell facilities “between 18 and 24 months after the [October 2014] release of [the *Infrastructure Report and Order*],”⁹ the Commission should ensure these additional exclusions are in place by April 2016 (and no later than October 2016). By taking these steps to remove unnecessary infrastructure deployment obstacles, the Commission will “reduce burdens on all parties to the Section 106 process” while continuing to protect historic resources.¹⁰

⁶ See *Infrastructure Report and Order*, 29 FCC Rcd at 12873 ¶ 19 (adopting 47 C.F.R. § 1.1307(a)(4)(ii)).

⁷ Notice at 2 (emphasis added).

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

⁹ 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 Notice at 2 & nn.9-12 (citing 36 C.F.R. § 800.14(b)).

¹⁰ Notice at 7.

DISCUSSION

The Commission should take immediate steps to amend the *Collocation Agreement* to better account for the limited potential of small facility deployments to affect historic properties. In particular, the agreement should be amended to add several new exclusions from Section 106 review for small facility deployments that meet specified criteria, as described below. These new exclusions would augment the existing exclusions in the *Infrastructure Report and Order* and the *Collocation Agreement*. Because these exclusions would apply to deployments that will have at most minimal potential for adverse effects on historic resources,¹¹ PCIA agrees with the Commission that “these would be complete exclusions from routine Section 106 processing, including any notification to SHPOs, Tribal Nations, and NHOs.”¹²

I. THE COLLOCATION AGREEMENT SHOULD BE AMENDED TO EXCLUDE SMALL FACILITY DEPLOYMENTS NOT ON HISTORIC PROPERTIES OR IN HISTORIC DISTRICTS.

PCIA agrees that the *Collocation Agreement* should be amended to exclude from Section 106 review small facility deployments on any building or non-tower structure that is more than 45 years of age where the antenna and associated equipment (1) meet specified volumetric limits, (2) involve no new ground disturbance, (3) are not in a historic district or on listed or “determined eligible” historic properties, and (4) are not subject to complaints filed with the FCC.¹³ The criteria that should apply under this exclusion are discussed further below.

1. Volumetric Limits

The new exclusion should build off of the volumetric limits adopted in the *Infrastructure Report and Order* for collocations on existing utility structures, but with certain adjustments that

¹¹ See *id.* at 6-7, 10.

¹² *Id.* at 10.

¹³ See *id.* at 11.

will better account for application on non-utility/pole structures, the need for battery back-up power, and concealed deployments, while still ensuring any visual impacts will be, at most, minimal.

a. Cubic Foot Calculations

The existing utility structure-based volumetric limits – which restrict each antenna enclosure to 3 cubic feet, all antennas on the structure to 6 cubic feet, and all other wireless equipment associated with the structure to 17 cubic feet¹⁴ – should be adjusted as follows for purposes of this new exclusion. First, the 17 cubic foot limit applicable to all other wireless equipment associated with the structure should be increased to 25 cubic feet for small facility installations on non-utility/pole structures, such as bridges and water towers. Second, the increased 25 cubic foot limit for installations on non-utility/pole structures should not apply cumulatively, *i.e.*, it should apply only to the wireless equipment associated with the proposed antenna installation. Third, while the 17 cubic foot limit would remain for installations on utility/pole structures, it should exclude battery back-up power systems.

These adjustments are appropriate in this specific context for several reasons. As a threshold matter, the new exclusion is intended to apply to the installation of covered facilities on structures larger than just those covered by the existing utility structure exclusion. Thus, whereas the existing volumetric limits apply narrowly in the context of deployments on existing utility structures that are typically small,¹⁵ the proposed exclusion is intended to apply to deployments “on any building or structure (such as bridges, water towers, silos, etc.) where review is required

¹⁴ 47 C.F.R. § 1.1307(a)(4)(ii)(A)(1)-(2).

¹⁵ 47 C.F.R. § 1.1307(a)(4)(ii)(A); *see Infrastructure Report and Order*, 29 FCC Rcd at 12947-48 ¶ 195 (noting that “utility structures are typically much smaller than traditional towers”).

only because the building or structure is over 45 years old.”¹⁶ The larger scale of these underlying support structures allows for an expanded 25 foot cubic volume limit, applied non-cumulatively, for wireless equipment associated with installations on such non-utility/pole structures. These adjustments will afford providers further flexibility to deploy DAS and small cell solutions while still ensuring that any new installation will cause at most a minimal visual effect.¹⁷

In addition, the 17 cubic foot limit for utility/pole installations should be clarified to exclude battery back-up power systems. When PCIA originally proposed the 17 cubic foot limit for associated equipment now codified in the utility structure exclusion, it recommended that battery back-up power equipment be excluded from the calculation of equipment volume.¹⁸ While the FCC excluded “vertical cable runs for the connection of power and other services,” indicating that it was doing so “[c]onsistent with a proposal by PCIA,” it without explanation failed to exclude the battery back-up power equipment itself. The inadvertent failure to exclude such back-up power devices from the equipment volume has the potential to place providers in the untenable position of having to choose between relying on the Section 106 exclusion to speed deployment of service to the public, but without needed back-up power, or forgoing use of the exclusion in order to install back-up power supplies that the Commission has recognized are

¹⁶ Notice at 11 (emphasis added).

¹⁷ Cf. PCIA – The Wireless Infrastructure Association, “Small Wireless Communications Facilities: Deployment Realities,” at 13 (Sept. 2015) (“Attachment”).

¹⁸ See *Infrastructure Report and Order*, 29 FCC Rcd at 12907-08 n.251; Letter from D. Zachary Champ, PCIA – The Wireless Infrastructure Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-59, GN Docket No. 12-354, at 2-3 (July 22, 2013).

“necessary to ensure network resiliency.”¹⁹ This outcome does not serve the public interest, and the Commission should take steps to correct this oversight in the programmatic agreement.

Moreover, the programmatic agreement process affords the Commission increased flexibility to adopt these additional reforms. The existing limits (including the 17 cubic foot limit for other wireless equipment) were adopted via rulemaking, where the Commission felt constrained to make certain that the volumetric limits would ensure “no potential to affect historic properties” consistent with the ACHP’s rules.²⁰ By contrast, those concerns do not exist here where the Commission is proposing a program alternative to the ACHP’s rules.²¹ As the Notice indicates, the standard for exclusion in this context is whether small facility deployments will have “minimal effects, if any, on historic properties” (as opposed to the “no potential to affect historic properties” standard applied in the rulemaking), while ensuring that deployments “with significant potential to affect historic properties” continue to receive appropriate scrutiny.²² As discussed, the proposed volumetric adjustments fit comfortably within this standard, ensuring that any qualifying installations will have minimal effects, if any, on historic properties.

¹⁹ *Infrastructure Report and Order*, 29 FCC Rcd at 12932 ¶ 159.

²⁰ *See id.* at 12906 ¶ 88 (citing 36 C.F.R. § 800.3(a)(1)); *see also id.* at 12907 ¶ 92. Nonetheless, the FCC has ample authority under both CEQ and ACHP rules to adopt a categorical exclusion via Commission rulemaking for facilities that have either no or at most “*de minimis*” effects. *See Save Our Heritage, Inc. v. FAA*, 269 F.3d 49, 58, 62-63 (1st Cir. 2001).

²¹ *See Infrastructure Report and Order*, 29 FCC Rcd at 12878 ¶ 28 (“We find ... that broader reform of our process is more appropriately undertaken through the development of a ‘program alternative’ as defined under ACHP’s rules, which provides greater opportunity and flexibility to tailor our process than our limited authority under ACHP’s rules to adopt exclusions.”).

²² *See Notice* at 7, 10.

b. Concealed Elements

The volumetric limits should apply *only* to those antennas and other wireless equipment (or portions thereof) that are visible from adjacent streets or surrounding public spaces.²³ Because volumetric limits are concerned with appearance and aesthetics,²⁴ any equipment that is concealed from public view in or behind an otherwise approved structure or concealment (including stealthed antennas) should not be included in the volume calculations. For example, in some cases fiber may need to extend a significant length from the node/antennas to an equipment cabinet (*e.g.*, where equipment is placed on a water tower or bridge). If the fiber is hidden within the infrastructure, it should not be included in the aesthetic volume-based size limitation. By excluding concealed elements from the volumetric limits, the Commission will afford providers appropriate flexibility while continuing to protect against the introduction of visually incompatible elements.²⁵

2. No New Ground Disturbance

“No new ground disturbance” should be defined as construction depths that do not exceed the depth of any previous ground disturbance. The two-foot buffer proposed in the Notice was originally adopted as part of the 2004 *NPA* to address ostensible concerns that different soils have different compaction characteristics.²⁶ But the FCC at the time failed to provide an

²³ *Cf.* 47 C.F.R. § 1.1307(a)(4)(ii)(B)(2) (measuring visibility from “adjacent streets or surrounding public spaces”).

²⁴ *See Infrastructure Report and Order*, 29 FCC Rcd at 12907-08 ¶ 92.

²⁵ *Cf. id.* at 12911 ¶ 100 (adopting exception where “no additional incompatible visual element is being added”); *id.* at 12912 ¶ 101 (permitting exception that “does not include any new visible associated equipment”).

²⁶ *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*

(continued on next page)

evidentiary basis to support the blanket two-foot buffer, and an ACHP letter cited in support provides no justification.²⁷ This thin record used to support a two-foot buffer in 2004, adopted in the context of larger macrocells like towers, cannot today justify the same buffer for today's DAS and small cell deployments. If a buffer is deemed necessary due to any uncertainty about the level of previous ground disturbance, it should be at most a matter of a few inches and not two feet.

In addition, DAS and small cell applicants should be permitted to utilize a ground rod, installed as part of the lightning protection system, without being deemed a "new ground disturbance," as long as the installation occurs in a right-of-way. While ground rods can extend 8-10 feet into the ground, they are only 1/2 to 5/8 of an inch thick. If installed in a right-of-way, any impacts to historic resources would be minimal, if any, given the fact that the earth has been previously disturbed and the rod itself is extremely thin.

3. Location In/On Historic Resources

This exclusion should apply unless the deployment is located inside a historic district, or located on a building or structure that is a National Historic Landmark or listed or "determined eligible" for listing on the National Register, as described further below:

a. Proximity to a Historic District

Proximity to a historic district should be irrelevant for purposes of this exclusion. While the Notice proposes not to apply the exclusion if the deployment is "within 250 feet of a historic

(footnote continued)

Section 106 National Historic Preservation Act Review Process, § VI.D.2.c.i, codified at 47 C.F.R. Part 1, Appendix C ("NPA").

²⁷ See *2004 NPA Report and Order*, 20 FCC Rcd at 1121 ¶ 132 (citing Letter from John Fowler, ACHP, to Jeffrey Steinberg, FCC, WT Dkt. No. 03-128, Att. at 6 (Feb. 19, 2004)).

district,”²⁸ this proposal is unnecessarily restrictive. The proposed proximity carve-out is derived from language found in the 2001 *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 district.”²⁹ That language, however, was “drafted at a time when antennas were huge and bolted to the top of enormous towers.”³⁰ As the Commission has recognized, policies drafted for “that kind of macrocell deployment” are not appropriate for small facility installations that are “that are far less obtrusive.”³¹

Thus, while proximity restrictions might have made sense in 2001 for larger and far more visible macrocell deployments, they make no sense today in the context of small facility deployments that fall within the volumetric limits recommended above. By definition, the volume limits ensure that DAS and small cell deployments will be minimally intrusive, unlike some of their macrocell counterparts. Indeed, the Commission has recognized that DAS deployments do not “creat[e] the visual and physical impacts” of macrocells,³² and that small cells “are smaller and less visible than macrocells,” which allows them to “blend with the structures on which they are installed.”³³ For all these reasons, the Commission should decline to

²⁸ Notice at 11.

²⁹ *Collocation Agreement* § V.A.2.

³⁰ *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”).

³¹ *See id.* at 12866-67 ¶ 3; *see also id.* 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”).

³² *Id.* at 12879 ¶ 31.

³³ *Id.* at 12880 ¶ 33; *see also* Notice at 8.

impose proximity restrictions for purposes of this new DAS and small cell exclusion, which should be available (assuming satisfaction of the other criteria discussed herein) as long as the deployment is not located inside a historic district or on a historic property.

b. Determined Eligible

In the context of the at most minimally intrusive small facility installations proposed here, the determination of what is “listed on or eligible for listing on the National Register”³⁴ should involve applicant review of the following records: (1) properties listed in the National Register; (2) properties formally determined eligible by the keeper of the National Register; and (3) properties that the SHPO/THPO certifies in an electronically searchable record are in the process of being nominated to the Federal Register. Given the expected 37 million small cells estimated to be deployed by 2017, and 16 million DAS nodes expected to be installed by 2018, requiring any further level of record review – including case-by-case physical visits to SHPO offices for each DAS node or small cell – is simply impractical without undermining the streamlining goals of the exclusion.³⁵

The Commission has ample flexibility to adopt this approach. As background, the Commission has long recognized that applicant determinations of eligibility should be limited to documented records. The *NPA*, for example, specifies that even when full Section 106 review is required because of the potential for adverse effects (not the case with small cells), applicants are required to review records “only to the extent they are available at the offices of the

³⁴ Notice at 11.

³⁵ See Notice at 7 (“The goal of this Scoping Document is to identify additional exclusions and/or alternative processes that would facilitate greater efficiencies and therefore expedite Section 106 reviews and reduce burdens on all parties to the Section 106 process”).

SHPO/THPO or can be found in publicly available sources identified by the SHPO/THPO.”³⁶

And the FCC recognized in the order adopting the *NPA* that a lesser level of review is appropriate for facilities excluded from Section 106 review (those in an industrial park, commercial strip mall, or shopping center), explaining that only a “preliminary search of relevant records” is necessary to identify eligible properties “given the relatively low potential for significant harm to historic properties.”³⁷

Both of those statements, of course, related to policies put in place to deal with larger macrocells. Here, an even more targeted record review is appropriate for small facility deployments that “are a fraction of the size of traditional cell tower deployments” and can be installed on existing structures “with no potential to cause effects on historic properties.”³⁸ In other words, because any potential harm is minimal to nonexistent, the review of relevant records to determine eligibility should be streamlined commensurate with the low risk to historic resources. Limiting the review of relevant records to those that are listed, formally determined eligible, or certified as such in an electronically searchable SHPO/THPO record achieves this goal.³⁹

This approach is also consistent with the ACHP’s rules, which allow the FCC to implement “reasonable and good faith” methods to identify eligible resources, taking into

³⁶ *NPA* §VI.D.1.a.

³⁷ *2004 NPA Report and Order*, 20 FCC Rcd at 1905 ¶ 56.

³⁸ Notice at 2.

³⁹ Indeed, the FCC’s Fact Sheet discussing implementation of the 2001 *Collocation Agreement* dealing with macrocells references review of electronically available resources, with no requirements to visit SHPO offices. See FCC, “Antenna Collocation Programmatic Agreement,” Fact Sheet, at 7-8 n.12 (Jan. 10, 2002). At a minimum, if any further records are identified for examination to determine eligibility, they must be available for review in electronically searchable databases.

account “the magnitude and nature of the undertaking.”⁴⁰ The at most minimal impacts of the small facility undertakings at issue here make the proposed level of review a “reasonable and good faith” approach. The program alternative process also affords the Commission flexibility to adopt a more tailored, streamlined approach under these circumstances.⁴¹

4. No Complaints

PCIA agrees that the exclusion should not apply if the small facility proponent or structure owner has received written or electronic notification that the FCC is in receipt of a complaint against the deployment alleging a potential for adverse effects on historic properties.⁴² Consistent with the existing building or non-tower structure exclusion in the *Collocation Agreement*, any such complaint must be in writing and supported by substantial evidence describing how the effect from the deployment is adverse to the attributes that qualify an affected historic property for eligibility on the National Register.⁴³

⁴⁰ 36 C.F.R. § 800.4(b)(1); *see also* Letter from Javier Marques, ACHP, to Jeffrey Steinberg, FCC, WT Dkt. 03-128, at 2 (Mar. 5, 2004) (noting that the NHPA does not provide a specified procedure for identifying eligible properties, and the ACHP’s rules require only that agencies “make a ‘reasonable and good faith effort’ to identify such properties *considering the circumstances of the project*”) (emphasis added).

⁴¹ *See Infrastructure Report and Order*, 29 FCC Rcd at 12878 ¶ 28 & n.38.

⁴² *See* Notice at 11.

⁴³ *Collocation Agreement* § V.A.4.

II. THE COLLOCATION AGREEMENT SHOULD BE AMENDED TO EXCLUDE MINIMALLY VISIBLE SMALL FACILITY DEPLOYMENTS ON HISTORIC PROPERTIES OR IN HISTORIC DISTRICTS.

The *Collocation Agreement* should be amended to exclude from Section 106 review small, minimally visible facility deployments located on historic properties or in a historic district, subject to volumetric limits and other appropriately-tailored safeguards.⁴⁴

1. Volumetric Limits

PCIA agrees that this exclusion should employ the same volumetric limits applicable to the exclusion for small facility installations not located on a historic property or in a historic district.⁴⁵ Those limits should conform to the parameters recommended above, for the reasons stated.

2. Visibility Restrictions

Additional visibility restrictions are not necessary and should not be adopted. The volumetric limits discussed above already ensure that qualifying small facility deployments will be minimally visible. To the extent additional minimal visibility restrictions are considered, they should apply (1) only to installations physically located *on* historic structures or landmarks, and (2) only when the installation may impact the characteristics that made the structure or landmark eligible for listing in the National Register. For example, for some buildings, the front façade makes the structure eligible for listing. If other faces of the building do not contribute to building's eligibility (*i.e.*, if they are non-contributing characteristics), then visible antennas and

⁴⁴ For the same reasons discussed above, there is no need for this exclusion to cover deployments located “near” historic districts, regardless of how proximity is measured. Deployments located near historic districts would be covered by the first proposed exclusion, which ensures that covered small facilities not located on historic a historic property or in a historic district will have no or at most minimal effects on historic resources. *See* discussion *supra* Section I.3.a.

⁴⁵ *See* Notice at 12.

equipment should be permitted on those faces pursuant to the exclusion as long as those facilities meet the volumetric limits and other criteria described below.

3. No New Ground Disturbance

PCIA agrees that this exclusion should employ the same “no new ground disturbance” definition used for the exclusion for small facility installations not on a historic property or in a historic district.⁴⁶ That definition should conform to the parameters recommended above, for the reasons stated.

4. Existing Conditions

While the Notice proposes not to apply the exclusion unless the deployment complies with “any conditions applicable to *any* pre-existing antennas *in the vicinity of* the new collocation that were imposed to directly mitigate or prevent the [pre-existing] antenna’s effects,”⁴⁷ such a criterion is not workable and should not be adopted. It would be difficult or impossible to ascertain what conditions may apply to another carrier’s facilities anywhere “in the vicinity” of the new deployment. And even if some of those conditions could be ascertained, they most likely would apply to conventional macrocell antennas; the conditions applicable to larger conventional antenna installations, however, should not apply to smaller, minimally visible DAS and small cell deployments.

⁴⁶ See Notice at 12.

⁴⁷ Notice at 12 (emphasis added).

5. Reasonable Installation Safeguards

The exclusion should not include a requirement that the installation complies with the Secretary of the Interior's ("SOI") Standards,⁴⁸ much of which are simply inapplicable to small facility installations. The standards were adopted well before the advent of DAS and small cells,⁴⁹ and therefore may be ill-fitting, depending on the installation. As a result, a formal requirement to apply the standards in all cases – and to situations for which they were not designed – is inadvisable, as it will likely lead to further delay and confusion, contrary to the goals of this proceeding.⁵⁰ At most, the standards should be used as non-binding guidance, consistent with the standards themselves.⁵¹ Such guidance should not include a blanket prohibition against the anchoring of antennas or associated equipment on the historic materials of the property or their "replacements-in-kind,"⁵² as long as the historic character of the property is retained and preserved.⁵³

⁴⁸ See NATIONAL PARK SERVICE, THE SECRETARY OF THE INTERIOR'S STANDARDS FOR THE TREATMENT OF HISTORIC PROPERTIES, <http://www.nps.gov/tps/standards/four-treatments/standguide/index.htm> (last visited Sept. 28, 2015) ("SOI Standards").

⁴⁹ See http://www.nps.gov/history/local-law/arch_stnds_8_2.htm (last visited Sept. 28, 2015).

⁵⁰ See Notice at 7 ("The goal of this Scoping Document is to identify additional exclusions and/or alternative processes that would facilitate greater efficiencies and therefore expedite Section 106 reviews and reduce burdens on all parties to the Section 106 process").

⁵¹ See SOI Standards (providing "guidelines" for preserving, rehabilitating, restoring and reconstructing historic buildings). Likewise, the Notice "suggest[s]" application of the standards to installations on historic properties. See Notice at 12.

⁵² "Replacement in kind" is a term of art in the SOI Standards referring to the replacement of damaged or missing features of historic structures with "like" material that matches the old both physically and visually, *i.e.*, wood with wood, etc. See http://www.nps.gov/tps/standards/four-treatments/standguide/preserve/preserve_approach.htm (last visited Sept. 28, 2015).

⁵³ See http://www.nps.gov/tps/standards/four-treatments/standguide/preserve/preserve_standards.htm (last visited Sept. 28, 2015).

III. THE COLLOCATION AGREEMENT SHOULD BE AMENDED TO PERMIT ADDITIONAL DEPLOYMENTS ON HISTORIC PROPERTIES OR IN HISTORIC DISTRICTS WITHOUT SECTION 106 REVIEW.

The *Collocation Agreement* should be amended to adopt several additional exclusions that take into account the fact that not all historic properties and districts, and not all small facility installations on or in those properties and districts, have the same physical characteristics. As a result, additional exclusions are appropriate based on the location or type of structure at issue.

1. Deployments in Certain Locations.

Some locations within historic districts are already touched by modern intrusions, like rights-of-way. As a result, small facility deployments located within or near such rights-of-way should be excluded from Section 106 review.⁵⁴ For purposes of this exclusion:

a. Rights-of-Way

Rights-of-way should be defined as any corridor designated by a Federal, State, Local or Tribal government for communications towers, above- or below-ground utility transmission or distribution lines, or any associated structures and equipment. This is consistent with the definition the 2004 *NPA* right-of-way exclusion adopted for macrocells, but with the additional inclusion of corridors designated for below-ground (in addition to above-ground) utility lines.⁵⁵ While the basis for not including below-ground corridors in the original definition is unclear in the 2004 *NPA Report and Order*,⁵⁶ presumably the FCC was concerned that underground corridors may lack visible lines that would obscure larger macrocells. This is not a concern,

⁵⁴ See Notice at 13.

⁵⁵ See *NPA* § III.E; see also 47 C.F.R. § 1.1306(c)(1)(i) (applying a similar definition to the NEPA utility corridor exclusion adopted in 2014).

⁵⁶ See 20 FCC Rcd at 1096-98 ¶¶ 59-64.

however, with small facilities meeting the size limits discussed below, which ensure that the installation of DAS and small cells installed in right-of-way for below ground-ground utilities will be at most minimally intrusive.

In addition, to avoid any ambiguity and the resulting uncertainty, the FCC should clarify that this definition includes aerial and underground corridors used for electric, telephone, cable, fiber, light standards (including light poles) and other municipal infrastructure.

Finally, the exclusion should apply to facilities located in or within 50 feet of any such right-of-way, consistent with Section III.E of the *NPA*.⁵⁷

b. No New Ground Disturbance

The deployment should meet the “no new ground disturbance” criterion, as described above.

c. Size Limits/Appearance

The deployment should either (1) fit within the volumetric limits described above, or (2) be of a “like kind” to utility and communications infrastructure already located in the right-of-way (as defined below), whichever is greater. For purposes of this exclusion, a “like kind” deployment should be defined as a deployment that is of the same type and appearance as existing utility and communications infrastructure already located in the right-of-way. To qualify as “like kind,” the deployment must appear to be made of the same materials and serve a similar purpose as the existing infrastructure.

While the volumetric limits provide a clear metric against which to measure a proposed deployment, they lack the flexibility to take into account the fact that some facilities exceeding

⁵⁷ See Notice at 13.

the limits may nonetheless still be only minimally intrusive if of a “like kind” to structures and facilities already in the right-of-way. For example:

- If the historic district has above-ground utilities in the right-of-way, the addition of similar “like kind” small cell/DAS equipment should not require Section 106 review.
- If the small cell/DAS equipment will be concealed within existing structures or like replacements, then no Section 106 review should be required.
- If new stealth structures will be installed, no Section 106 review should be required if the local jurisdiction or local historic review commission has approved the proposed installation.
- If existing wooden utility poles supporting aerial utility lines currently exist within the right-of-way, there should be no restriction on the installation of new small facilities of a “like kind.”

Any minimal visibility restrictions should apply (1) only to installations physically located *on* historic structures or landmarks, and (2) only when the installation may impact the characteristics that make the structure or landmark eligible for listing in the National Register.⁵⁸

2. Deployments on Certain Structures

Likewise, certain structures within historic districts are themselves modern intrusions, like utility poles, light posts, street lamps, traffic lights and other traffic infrastructure (like signage). Other structures within historic districts are non-contributing elements (structures that do not have historic significance). As a result, small facility deployments on these or any other non-historic structure or non-contributing element located inside a historic district than should be excluded from Section 106 review.⁵⁹ For purposes of this exclusion:

⁵⁸ *See supra* Section II.2.

⁵⁹ *See* Notice at 12-13. This exclusion should not apply to installations on structures specifically built to resemble period elements (*e.g.*, street lights disguised as gas lamps in a historic district), which should be treated like historic structures or contributing elements.

a. No New Ground Disturbance

The deployment should meet the “no new ground disturbance” criterion, as described above.

b. Size Limits/Appearance

The deployment should either (1) fit within the volumetric limits described above, or (2) be of a “like kind” to utility and communications infrastructure already located within the historic district, whichever is greater. For purposes of this exclusion, a “like kind” deployment should be defined as a deployment that is of the same type, quality and appearance as existing utility and communications infrastructure already located in the historic district. To qualify as “like kind,” the deployment must appear to be made of the same materials, have a similar quality, and serve a similar purpose as the existing infrastructure.

3. Replacement Facilities.

Replacements of existing facilities located on historic properties or in historic districts should be excluded from Section 106 review, provided such replacement facilities do not constitute a “substantial increase” in size.⁶⁰ “Substantial” increase in size” should be defined as that term is used for purposes of ¶ 100 of the *Infrastructure Report and Order* and new Section 1.1307(a)(4)(ii)(B)(2)(ii), which addresses the mounting of antennas and associated equipment on buildings and other non-tower structures.⁶¹

⁶⁰ See Notice at 13.

⁶¹ See *Infrastructure Report and Order*, 29 FCC Rcd at 12911 ¶ 100 (defining “substantial increase” as a facility that is “more than three feet larger in height or width (including all protuberances) than the existing facility,” or a facility that “involves any new equipment cabinets that are visible from the street or adjacent public spaces”); 47 C.F.R. § 1.1307(a)(4)(ii)(B)(2)(ii)(D)-(E) (same).

CONCLUSION

By implementing these recommendations to further tailor the Section 106 review process for DAS and other small facilities, the Commission can foster more efficient deployment of needed wireless infrastructure and equipment while continuing to protect historic resources. 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.⁶² PCIA and its members stand ready to partner with the Commission and other interested stakeholders to achieve these goals.

Respectfully submitted,

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⁶² *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).