

**Before the
Federal Communications Commission
Washington DC 20554**

In the Matter of)	
)	
Wireless Telecommunications Bureau Seeks)	
Comment on Proposed Amended Nationwide)	
Programmatic Agreement for the Collocation of)	WT Docket No. 15-180
Wireless Antennas)	
)	
)	

COMMENTS OF THE UTILITIES TECHNOLOGY COUNCIL

Brett Kilbourne
Vice President and Deputy General Counsel
Utilities Technology Council
1129 20th Street NW
Suite 350
Washington, DC 20036
202-872-0030

Dated: June 13, 2016

Table of Contents

I. Introduction	2
II. Exclusions Relating to the Collocation of Small Wireless Antennas and Associated Equipment on Buildings and Non-Tower Structures Outside of Historic Districts.	4
III. Exclusion Relating to Minimally Visible Deployments of Small Wireless Antennas and Associated Equipment on Structures in Historic Districts or on Historic Properties. ...	6
IV. Exclusion Relating to Visible Small Wireless Antennas and Associated Equipment Deployments on Historic Properties or in Historic Districts.	6
A. The Commission should exclude from routine Section 106 review certain collocations on utility structures, including utility poles and electric transmission towers.	7
B. The Commission should extend the exclusion for utility structures to apply to traffic lights, as well as light poles, lamp posts, and other structures whose primary purpose is to provide lighting; and should not limit the exclusion from applying to collocations that are in historic districts or within 250 feet from the boundary of a historic district.	8
C. The Commission should exclude from routine Section 106 review in-kind replacements of existing structures, as proposed in Stipulation VII.D.	10
CONCLUSION	11

**Before the
Federal Communications Commission
Washington DC 20554**

In the Matter of)	
)	
Wireless Telecommunications Bureau Seeks)	
Comment on Proposed Amended Nationwide)	
Programmatic Agreement for the Collocation of)	WT Docket No. 15-180
Wireless Antennas)	
)	
)	

COMMENTS OF THE UTILITIES TECHNOLOGY COUNCIL

The Utilities Technology Council (“UTC”) hereby files the following comments in response to the Commission’s *Public Notice* in the above-referenced proceeding.¹ UTC supports the Commission’s proposed amendments to the Nationwide Programmatic Agreement for the Collocation of Wireless Antennas (Amended Collocation Agreement) to account for the limited potential of small wireless antennas and associated equipment, including Distributed Antenna Systems (DAS) and small cell facilities, to affect historic properties. Specifically, UTC supports new Stipulation VI, which establishes a general exclusion for small wireless antennas and associated equipment mounted on buildings or non-tower structures or in the interior of buildings that are over 45 years of age, if they are not historic properties and are outside of historic districts. In addition, UTC supports new Stipulation VII.A to provide an exclusion from review for a small wireless antenna and associated equipment mounted on a building or non-tower structure (or in the interior of a building) that is a historic property or inside or within 250 feet of the boundary of a historic district, subject to visibility limits. UTC also supports Stipulations

¹ Wireless Telecommunications Bureau Seeks Comment on Proposed Amended Nationwide Programmatic Agreement for the Collocation of Wireless Antennas, WT Docket No. 15-180, *Public Notice*, DA 16-519 (May 12, 2016).

VII.B and VII.D providing narrow exclusions from the Section 106 process set forth in the NPA for visible small wireless antennas and associated equipment in historic districts under limited circumstances. In that regard, UTC emphasizes its support for new Section VII.B which would provide an exclusion for a small wireless antenna including associated equipment mounted on utility structures (including utility poles or electric transmission towers) that is in active use by a utility company and either is a historic property, is located on a historic property, or is located inside or within 250 feet of the boundary of a historic district. UTC urges the Commission to revise Stipulation VII.C and to extend the exclusion in Stipulation VII.B to apply to traffic lights, as well as light poles, lamp posts, and other structures whose primary purpose is to provide public lighting.

I. Introduction

Created in 1948, UTC is the global trade association for the telecommunications and information technology interests of electric, gas and water utilities and other critical infrastructure industries (“CII”), such as pipeline companies.² Its members include large investor-owned utilities that serve millions of customers, often across multi-state service territories; and its members include smaller cooperative or municipal utilities that may serve only a few thousand customers in rural areas or isolated communities. All of these members own, manage or control extensive private internal communications networks that they use to support the safe, reliable and efficient delivery of essential services to the public at large. These communications networks are used both for voice and data communications for routine dispatch as well as emergency response during service restoration in the aftermath of hurricanes, storms and other natural disasters, which can affect large areas for extended periods.

Utilities have extensive underlying infrastructure, including electric transmission towers,

² See www.utc.org.

poles, ducts, conduit and building structures, such as water towers, which they use to support their communications networks, as well as to support the communications networks of third party providers, including wireless communications providers. Like others, utilities are subject to the review process for communications network deployment under Section 106 of the National Historic Preservation Act (NHPA).³ The proposed amendments to the Collocation Agreement would benefit utilities as well as third party providers, who collocate equipment on utility infrastructure, as well as other buildings and non-tower structures either outside of historic districts or in historic districts or on historic properties. Moreover, the public interest would be served because the proposed amendments would accelerate the deployment of wireless broadband.

UTC supports the proposed Amended Collocation Agreement as a whole, but particularly the proposed exclusions for small antennas and associated equipment on certain structures, including utility poles and electric transmission towers. In that regard, UTC urges the Commission to extend the exclusion for utility poles and electric transmission towers to apply to traffic control structures, as well as light poles, lamp posts and other structures whose primary purpose is to provide public lighting. Utilities often need to install small antenna facilities on utility poles, street lights, or in utility rights-of-way (e.g. inside electric utility substations) for various applications, such as equipment for “smart grid”, security monitoring or automated street lighting control. These facilities that operate on FCC-licensed radio frequencies would be considered federal undertakings and hence subject to Section 106 review. UTC agrees with the Commission that the proposed exclusions for collocations on utility infrastructure would have no potential adverse effect on historic properties. Therefore, the Commission should adopt the exclusion for collocations on utility structures and extend that exclusion to apply generally to

³ 54 U.S.C. §306108 (formerly codified at 16 U.S.C. §470f).

traffic control structures, as well as street lights and light posts, as well as other structures whose primary purpose is provide public lighting.

II. Exclusions Relating to the Collocation of Small Wireless Antennas and Associated Equipment on Buildings and Non-Tower Structures Outside of Historic Districts.

UTC supports Stipulation VI, which establishes an exclusion for small wireless antennas and associated equipment mounted on buildings or non-tower structures or in the interior of buildings that are over 45 years of age, if they are not historic properties and are outside historic districts. This exclusion is consistent with the Commission's decision in the *Infrastructure Order*⁴ to exclude collocations on buildings and non-tower structures from categorical Section 106 review, subject to conditions including restrictions on visibility, compliance with zoning, and limits on ground disturbance.

Under the terms of the proposed exclusion in Section VI of the Amended Collocation Agreement, a small wireless antenna may be mounted on an existing building or non-tower structure or in the interior of a building regardless of the building's or structure's age without review under the Section 106 process set forth in the NPA unless: (1) the building or structure is inside the boundary of a historic district, or if the antenna is visible from the ground level of a historic district, the building or structure is within 250 feet of the boundary of the historic district; (2) the building or structure is either a designated National Historic Landmark, or listed in or eligible for listing in the National Register of Historic Places; or (3) the licensee or owner of the building or structure has received notification that the Commission has received a complaint from a member of the public, a Tribal Nation, a SHPO, or ACHP that the collocation has an adverse effect on one or more historic properties. The proposed exclusion also establishes

⁴ Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies, *Report and Order* in WT Docket Nos. 13-238 and 13-2, and WC Docket No. 11-59, 29 FCC Rcd 12865 at ¶¶96-104 (2014)(*Infrastructure Order*).

volumetric limits for antennas and other wireless equipment associated with the structure that are eligible for the exclusion, and restrictions on ground disturbance with an exception for up to four lightning ground rods not exceeding a specified size per project. UTC supports these volumetric limits and restrictions on ground disturbances, as well.

UTC believes that the proposed exclusion in Section VI of the Amended Collocation Agreement is appropriate because collocations of small wireless antennas and associated equipment on buildings and non-tower structures outside of historic districts would have no potential adverse effect on historic properties. In addition, UTC agrees that the proposed exclusion should apply regardless of the building's or structure's age. What matters is whether the building or structure is located near a historic district or is visible from the ground level of a historic district; whether the building or structure is either a designated National Historic Landmark or listed in or eligible for listing in the National Register of Historic Places; and whether the licensee or owner of the building has received notification that the Commission has received a complaint that the collocation has an adverse effect on one or more historic properties. Hence the exclusion is subject to these exceptions.

That said, these exceptions to the proposed exclusion should be narrowly tailored. In that regard, UTC supports the comments on the record and a recently filed petition, which report unnecessary costs and delays and seeks declaratory relief regarding the process of tribal review through the tower construction notification system (TCNS).⁵ These comments and the recently

⁵ Petition for Declaratory Ruling of PTA-FLA in WT Docket No. 15-180 (filed May 3, 2016); Comments of Crown Castle in WT Docket No. 15-180 at 6 (filed Sept. 28, 2016)(urging the FCC to clarify that Section 106 review is not required for certain minimally visible deployments in the right-of-way and explaining that Crown Castle incurred significant costs for Section 106 review to deploy 252 DAS nodes in New York City rights-of-way – including approximately \$295,000 in tribal fees alone; it incurred \$99,000 in tribal fees for a deployment on the Ben Franklin Parkway in Philadelphia – even though the deployment was in a previously disturbed area and the design involved stealth infrastructure; and it must pay \$169,000 in tribal fees for another deployment in Atlanta – even though the deployment will have little or no visible impact on the historic district and will be contained within previously disturbed ground in the rights-of-way.) Comments of Verizon in WT Docket No. 15-180 at 4-5 (filed Sept. 28,

filed petition are consistent with the comments that UTC has filed on the record, which reported similar problems and sought similar relief.⁶

III. Exclusion Relating to Minimally Visible Deployments of Small Wireless Antennas and Associated Equipment on Structures in Historic Districts or on Historic Properties.

UTC supports Stipulation VII.A to provide an exclusion from review for a small wireless antenna and associated equipment mounted on a building or non-tower structure (or in the interior of a building) that is a historic property or inside or within 250 feet of the boundary of a historic district subject to visibility limits. Under these limits, the antenna must be the only equipment that is visible from the ground level or from public spaces within the building (if the antenna is mounted in the interior of a building), that the antenna or enclosure must not exceed 3 cubic feet in volume, and the antenna must be installed using stealth techniques that match or complement the structure on which or within which in is deployed. UTC supports these visibility limits.

IV. Exclusion Relating to Visible Small Wireless Antennas and Associated Equipment Deployments on Historic Properties or in Historic Districts.

As more fully described below, UTC supports new Stipulation VII.B, and it recommends that the Commission modify Stipulation VII.C to also exclude collocations of small wireless antennas including associated equipment on traffic lights, as well as light poles, lamp posts, and other structures whose primary purpose is to provide lighting – regardless of whether the collocation is in or near a historic district. UTC also supports Stipulation VII.D to provide an exclusion for in-kind replacements of equipment on or in a historic building or non-utility

2015) (stating that there is no time limit on tribal reviews and that while historic preservation reviews on average take about four months to complete, many extend longer, often due to the tribal review process).

⁶ Comments of the Utilities Telecom Council in WT Docket No. 13-238 (filed Feb. 3, 2014)(reporting that “some tribes are routinely making claims for new deployments where there is no legitimate concern.”). *See also* Letter from Brett Kilbourne, UTC to Donald Johnson, FCC regarding the Nationwide Programmatic Agreement (filed Jan. 20, 2015).

structures, where the equipment does not exceed the greater of the size of the existing antenna/antenna enclosure and associated equipment, or volumetric limits specified in the amendment.

A. The Commission should exclude from routine Section 106 review certain collocations on utility structures, including utility poles and electric transmission towers.

UTC agrees with the Commission that small wireless antennas and associated equipment mounted on existing utility structures have no potential for effects on historic properties.⁷ As the Commission has acknowledged, “[u]tility structures are by their nature, designed to hold a variety of electrical, communications, or other equipment, and they already hold such equipment.”⁸ Moreover, “[t]heir inherent characteristics thus incorporate the support of attachments, and their uses have continued to evolve with changes in technology since they were first used in the mid-19th century for distribution of telegraph services.”⁹ Therefore, UTC supports the Commission’s proposed exclusion for collocations on utility structures, such as utility poles and electric transmission towers.

In this regard, UTC also urges the Commission to clarify the scope of the exclusion, so that it applies to all utility structures, as suggested by comments on the record.¹⁰ As comments on the record observe, the definition of “a utility company” in proposed Section VII.B is based

⁷ Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies, *Report and Order* in WT Docket Nos. 13-238 and 13-2, and WC Docket No. 11-59, 29 FCC Rcd 12865 at ¶90 (2014).

⁸ *Id.* at 12907, ¶91.

⁹ *Id.*

¹⁰ See Comments of Xcel Energy Services, Inc. in WT Docket No 15-180 at 9 (filed Sept. 28, 2015)(noting that the existing definition of a utility structure in Section 1.1307(a)(4)(ii)B) of the Commission’s rules incorporates by reference the definition of a “utility” under Section 224 – which excludes certain utilities, such as any utility that is cooperatively organized or owned by the Federal Government or any State). UTC agrees with Xcel Energy that a collocation on a utility pole that is owned by a municipal or cooperative utility should be entitled to the same exclusion from the historic review process that exists for collocations on a utility pole that is owned by an investor-owned utility.

on the definition of a “utility” in Section 224 of the Communications Act – which excludes municipal and cooperatively-organized utilities, as well as utilities owned by the Federal Government or any State. The Commission should clarify that the exclusion applies to utility infrastructure by municipal and cooperatively-organized utilities, as well as utilities owned by the Federal Government or any State.

B. The Commission should extend the exclusion for utility structures to apply to traffic lights, as well as light poles, lamp posts, and other structures whose primary purpose is to provide lighting; and should not limit the exclusion from applying to collocations that are in historic districts or within 250 feet from the boundary of a historic district.

UTC urges the Commission to modify Stipulation VII.C so that the exclusion for utility structures in Stipulation VII.B would apply to traffic lights, as well as light poles, lamp posts and other structures whose primary purpose is to provide lighting. Extending this exclusion to traffic lights, as well as street lights, light poles, lamp posts and other structures whose primary purpose is to provide lighting will accelerate the deployment of wireless access. Moreover, the small wireless antennas on these structures do not have the potential for an adverse effect on historic properties. As such, the Commission should extend the exclusion for collocations on utility structures so that it applies to traffic lights, as well as street lights, light poles, lamp posts and other structures whose primary purpose is to provide lighting.

In addition, the Commission should not limit this exclusion from applying in a historic district or within 250 feet of the boundary of a historic district. As a practical matter, “applying this [250 foot] proximity restriction is a blanket prohibition and fails to consider the potential effect of the facility on historic resources.”¹¹ Conversely, “it promotes historic preservation to

¹¹ Comments of AT&T in WT Docket No. 15-180 at 12 (Sept. 28, 2015)(adding that “[s]mall cell facilities deployed near a historic district would in most, if not all, cases be minimally visible and either obscured or overshadowed by structures and visible artifacts, both inside and outside of the historic district, that have no historical significance,

encourage construction of such minimally intrusive facilities rather than larger, potentially more damaging structures.”¹² Even the Texas Historical Commission has commented that it does not have particular concerns relative to utility poles and traffic lights.”¹³ Finally, it is not always obvious for parties to determine whether a collocation is in or near a historic district and it can require significant due diligence to ensure that a site is not in or near a historic district. The time and expense to make this determination increases the time and expense of a project and the administrative burden to conduct a review. The record reflects that Section 106 review of every traffic control structure or street light in a historic area would impose an unnecessary burden on the proponent as well as individuals and agencies responsible for historic preservation, with little likelihood of a corresponding benefit.¹⁴ Therefore, consistent with comments on the record, UTC urges the Commission to extend the exclusion for utility structure collocations to apply more broadly to small wireless antenna and associated equipment on traffic control structures, as well as street lights (and other lighting structures) that meet certain volumetric and ground disturbance limitations -- regardless of whether the collocation is within or near a historic

such as light and utility poles, traffic lights, utility boxes, billboards, and raised highways.”) *See also* Comments of CTIA-The Wireless Association in WT Docket No. 15-180 at 11 (filed Sept. 28, 2015)(stating that the 250-foot buffer zone is unnecessary with regard to the exclusion for small wireless facilities that are not on historic properties or in or near historic districts because any increase in antenna height is restricted and installations must be visible from ground level in order for the exclusion to apply).

¹² *See* Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process, *Report and Order*, WT Docket No. 03-128, 20 FCC Rcd. 1073, 1098, ¶63 (2005).

¹³ Comments of the Texas Historical Commission in WT Docket No. 15-180 at 1 (filed Sept. 28, 2015).

¹⁴ *See* Comments of Southern Company Services, Inc. in WT Docket No. 15-180 at 4 (filed Sept. 28, 2015)(adding that “street lighting is also typically subject to control or oversight by the local government, which could provide further assurance that lighting control systems, using very small facilities, would not adversely impact the character of a historic district). *See also* Comments of AT&T in WT Docket No. 15-180 at 7 (filed Sept. 28, 2015) (supporting exclusion of collocations on all types of structures, including poles used for lights, signs and traffic lights; and explaining that “many support structures in excess of 45 years of age that are not used for utilities have no historic character. They are just old.”)

district.¹⁵

C. The Commission should exclude from routine Section 106 review in-kind replacements of existing structures, as proposed in Stipulation VII.D.

Finally, UTC supports Stipulation VII.D which excludes from routine Section 106 review a small wireless communications facility located on a building or non-tower structure or in the interior of a building that is a historic property or is inside or within 250 feet of the boundary of an existing facility – regardless of visibility – provided that the facility is an in-kind replacement for an existing facility, and it does not exceed the greater of the size of the existing antenna/antenna enclosure and associated equipment, or volumetric limits specified in the amendment. It stands to reason that the in-kind replacement of an existing facility would pose no potential for effects on historic properties, particularly given the size and volumetric limitations that supplement the proposed exclusion. Therefore, UTC urges the Commission to adopt Stipulation VII.D.

UTC also supports comments on the record that recommend that the Commission extend this exclusion to apply in the event of a new ground disturbance in an existing right of way, such as pole replacements and new facilities associated with the collocation. Verizon requests that the Commission should exclude replacement and new poles in historic districts,¹⁶ and Fibertech

¹⁵ Comments of Southern Company Services, Inc. in WT Docket No. 15-180 at 4 (filed Sept. 28, 2015). *See also* Comments of Xcel Energy Services, Inc. in WT Docket No. 15-180 at 4 and 7 (filed Sept. 28, 2015) (recommending that the Commission exclude from Section 106 review small communications facility deployments on any structure that is a historic property or is in or near a historic district, provided the collocation meets certain criteria that would minimize the potential for adverse effects on historic properties).

¹⁶ Comments of Verizon in WT Docket No. 15-180 at 13 (filed Sept. 28, 2015)(stating that the Commission should adopt an exclusion for certain replacement and new poles in historic districts, and that it should specifically exclude replacement poles if they do not constitute a substantial increase in size, as defined in the Collocation Agreement, over the pole being replaced.”)

