

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
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)	
NATIONWIDE PROGRAMMATIC)	
AGREEMENT REGARDING THE)	WT Docket No. 03-128
SECTION 106 NATIONAL HISTORIC)	FCC Docket No. 03-125
PRESERVATION ACT REVIEW PROCESS)	
)	
)	
)	

**COMMENTS
IN RESPONSE TO FCC 03-125/WT 03-128
“NATIONWIDE PROGRAMMATIC AGREEMENT”**

Submitted by:

**State of Maryland
Department of Budget and Management
Office of Information Technology
G. Edward Ryan, II, Director, Wireless Communications
301 West Preston Street, Suite 1304
Baltimore, Maryland 21201**

August 8, 2003

I. INTRODUCTION

1. Before the Federal Communications Commission (the “Commission”) for consideration¹ is the NOTICE OF PROPOSED RULE MAKING in the matter of a Nationwide Programmatic Agreement regarding the Section 106 National Historic Preservation Act review process. The Commission is specifically soliciting comments on a Programmatic Agreement intended to streamline the review process for communication facilities under the National Historic Preservation Act.

II. COMMENTS

The State of Maryland (the “State”) welcomes the opportunity to provide comments on a process intended to streamline the review process for compliance with historical preservation requirements. The State has provided both General Comments about the process and Specific Comments on the proposed Programmatic Agreement. The State has included the Specific Comments in the following format:

~~Delete words or sections are identified in “strikethrough text.~~

Add words or sections are identified with bold, double-underlined text.

III. GENERAL COMMENTS

1. The State is dismayed that the Commission and the Council failed to included representative of Public Safety organizations in the drafting of this Programmatic Agreement. As the Commission noted, there are over 127,000² Public Safety licensees in

¹ NOTICE OF PROPOSED RULEMAKING, FCC 03-125, WT 03-128, June 9, 2003.

² Id. Appendix B at page B-9, footnote 60.

the United States. Public Safety agencies are the entities that most need an expedited determination and review process for the installation of vital Public Safety communications infrastructure.

2. The Commission and the Council need to amend 47 CFR §1.1307 and 36 CFR §800 to define the process to be followed once an Environmental Assessment is determined to be required. No “informal establishment of a record” should be permitted. The process should include specific timelines for the Federal agencies to respond to the applicant.

3. The Commission and the Council should establish a checklist similar to the checklist used in the Antenna Structure Registration process to determine if an Environmental Assessment is required. There should be specific criteria established, with appropriate definitions and examples, linked to the questions. The applicant responses to these questions will definitively establish whether the filing of an Environmental Assessment is required. The Commission and the Council should build this application to provide the applicant with an instant “Environmental Assessment required” or “Environmental Assessment not required” response once the questionnaire has been completed.

4. The Commission and the Council have delegated responsibilities to the State Historic Preservation Officer (SHPO). The Commission and the Council should abide by the determination of the SHPO as to whether a proposed site creates an “adverse effect”.

5. Should the Commission and the Council not implement comments 1-4 above, then the Commission and the Council should provide Public Safety agencies with an expedited review and approval process, separate from commercial applicants.

6. Section 106 review should not be the responsibility of the applicant to determine if historic properties or rural historic landscapes exist within the Area of Potential Effect (APE) if such sites are not listed in the National Register or an application for inclusion on the National Register has not been filed with the Secretary of the Interior.

IV. SPECIFIC COMMENTS ON THE DRAFT PROGRAMMATIC AGREEMENT, APPENDIX A

I. A. This Nationwide Agreement applies only to Federal Undertakings as determined by the Commission (“Undertakings”). The Commission has sole authority to determine what activities undertaken by the Commission or its Applicants constitute Undertakings within the meaning of the NHPA. Nothing in this Agreement shall preclude the Commission from revisiting or affect the existing ability of any person to challenge any prior determination of what does or does not constitute an Undertaking. Maintenance and servicing of Towers, Antennas, and associated equipment are not deemed to be Undertakings subject to Section 106 review. **The Commission and the Council MUST agree and define “Undertakings” . The State does not agree that the Commission have carte blanche to determine what constitutes an “Undertaking” .**

F. This Nationwide Agreement ~~does not govern~~ any Section 106 responsibilities that agencies other than the Commission may have with respect to those agencies’ Federal Undertakings.

II. DEFINITIONS

A. The following terms are used in this Nationwide Agreement as defined below:

2. Applicant. A Commission licensee, permittee, or registration holder, or an applicant ~~or prospective applicant~~ for a wireless or broadcast license, authorization or antenna structure registration, and the duly authorized agents, employees, and contractors of any such person or entity.

8. Historic Property. Any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register maintained by the Secretary of the Interior. **Eligible for inclusion shall be further defined to mean that an application has been filed by an interested party to include the potentially eligible prehistoric or historic district, site, building, structure, or object in the National Register.** This term includes artifacts, records, and remains that are related to and located within such properties. The term

includes properties of traditional religious and cultural importance to an Indian tribe or NHO that meet the National Register criteria.

III. UNDERTAKINGS EXCLUDED FROM SECTION 106 REVIEW

A. Undertakings that fall within the provisions listed in the following sections III.A.1. through III.A.6 are excluded from Section 106 review by the SHPO/THPO, the Commission, and the Council, and, accordingly, shall not be submitted to the SHPO/THPO for review ~~[unless an Indian tribe indicates pursuant to Section III.B that a Historic Property of traditional religious or cultural importance to that tribe may be adversely affected by the proposed Undertaking]~~. Applicants should retain documentation of their determination that an exclusion applies to an Undertaking. Concerns regarding the application of these exclusions from Section 106 review may be presented to and considered by the Commission pursuant to Section XI.

1. Modification of a tower and any associated excavation that does not involve a collocation and does not substantially increase the size of the existing tower, ~~as defined in the Collocation Agreement.~~
2. Construction of a replacement for an existing communications tower and any associated excavation ~~that does not substantially increase the size of the existing tower under elements 1-3 of the definition as defined in the Collocation Agreement (See Attachment 1 to this Agreement, Stipulation 1.e.1-3) and that does not expand the boundaries of the leased or owned property surrounding the tower by more than 30 feet~~ **1 second of latitude/longitude** in any direction or involve excavation outside these expanded boundaries and any access or utility easement related to the site.

However, an Undertaking shall not be excluded from review under this provision if (1) the existing highway, railway line, or communications structure is included in the National Register and the setting or other visual element is identified as a character-defining feature of eligibility on the National Register nomination; ~~(2) the proposed Facility lies within 200 feet of any other structure that is 45 years or older;~~ or ~~(3)~~ **2** the proposed Facility lies within 3/4 mile of and is visible from a unit of the National Park System that is listed or eligible for listing in the National Register, or a National Historic Landmark.

V. PUBLIC PARTICIPATION AND CONSULTING PARTIES

The State of Maryland does not agree to the following procedures. The State agrees to permit public participation in accordance with the applicable rules, regulations and statutes of the State of Maryland.

A. ~~On or before the date an Applicant submits the appropriate Submission Packet to the SHPO/THPO, as prescribed by Section VII, below, the~~

~~Applicant shall provide the local government that has primary land use jurisdiction over the site of the planned Undertaking with written notification of the planned Undertaking.~~

- ~~B. On or before the date an Applicant submits the appropriate Submission Packet to the SHPO/THPO, as prescribed by Section VII, below, the Applicant shall provide written notice to the public of the planned Undertaking. Such notice may be accomplished (1) through the public notification provisions of the relevant local zoning or local historic preservation process for the proposed Facility; or (2) by publication in a local newspaper of general circulation. In the alternative, an Applicant may use other appropriate means of providing public notice, including seeking the assistance of the local government.~~
- C. ~~The written notice to the local government and to the public shall include: (1) the location of the proposed Facility including its street address; (2) a description of the proposed Facility including its height and type of structure; (3) instruction on how to submit comments regarding potential effects on Historic Properties; and (4) the name, address, and telephone number of a contact person.~~
- D. ~~A SHPO/THPO may make available lists of other groups, including tribes and organizations of tribes, which should be provided notice for Undertakings to be located in particular areas.~~
- E. If the Applicant receives a comment regarding potentially affected Historic Properties, the Applicant shall consider the comment and either include it in the initial submission to the SHPO/THPO, or, if the initial submission has already been made, immediately forward the comment to the SHPO/THPO for review. An Applicant need not submit to the SHPO/THPO any comment that does not substantially relate to potentially affected Historic Properties.
- F. The relevant SHPO/THPO, local government, and Indian tribes and NHOs that attach religious and cultural significance to Historic properties that may be affected are entitled to be consulting parties in the Section 106 review of an Undertaking. The Council may enter the Section 106 process for a given Undertaking, on invitation or on its own decision, according to its rules. The Council must determine participation at the beginning of the project. The Council can not arbitrarily determine when it wishes to enter the process. An Applicant shall consider all written requests of other individuals and organizations to participate as consulting parties and determine which should be consulting parties. The Commission must determine whether the applicant has the authority to identify consulting parties or not. If the Commission wants to be involved in the process of determining the consulting parties, then the Commission must be involved from the beginning. The Commission and the Council need to

define individuals and organizational characteristics that entitle them to consulting party status. An Applicant is encouraged to grant such status to individuals or organizations with a demonstrated legal or economic interest in the Undertaking, or demonstrated expertise or standing as a representative of local or public interest in historic or cultural resources preservation. Any such individual or organization denied consulting party status may petition the Commission for review of such denial. The Commission must determine the rules for identifying consulting parties prior to denial of the request by the Applicant. Petitions for review of consulting party status unnecessarily delays the entire process. Applicants may seek assistance from the Commission in identifying and involving consulting parties.

- G. Consulting parties are entitled to: (1) receive notices, copies of submission packets, correspondence and other documents provided to the SHPO/THPO in a Section 106 review at the Consulting Party's sole expense; and (2) be provided an opportunity to have their views expressed and taken into account by the Applicant, the SHPO/THPO and, where appropriate, by the Commission.

VI. IDENTIFICATION, EVALUATION, AND ASSESSMENT OF EFFECTS

In preparing the Submission Packet for the SHPO/THPO pursuant to Section VII of this Nationwide Agreement and Attachments 3 and 4, the Applicant must: (1) define the area of potential effects (APE) in accordance with VI.B.2.a below; (2) identify Historic Properties within the APE as listed in the National Register or for which an application for listing has been submitted to the Secretary of the Interior; ~~(3) evaluate the historic significance of identified properties; and (4) assess the effects of the Undertaking on Historic Properties.~~ The standards described below shall be applied by the Applicant in preparing the Submission Packet, by the SHPO/THPO in reviewing the Submission Packet, and where appropriate, by the Commission in making findings.

Identification, evaluation, and assessment are most expeditiously accomplished by individuals with historic preservation and cultural resource management expertise and experience.

- A. Consideration of Direct Effects and Visual Effects

A SHPO/THPO, consistent with relevant State procedures, may specify geographic areas in which no review for direct effects on archeological resources is required or in which no review for visual effects is required.

- B. Definition of the Area of Potential Effects

1 Direct Effects

The APE for direct effects is limited to the area of potential ground disturbance and the portion of any Historic Property that will be destroyed or physically altered by the Undertaking.

2 Visual Effects

- a. Unless otherwise established in consultation with the SHPO/THPO, the presumed APE for visual effects for the construction of new Facilities is the area from which the tower will be visible:
 - 1) Within a half mile of the proposed tower, if the proposed tower is 200 feet or less in overall height;
 - 2) Within 3/4 mile of the proposed tower, if the proposed tower is more than 200 feet but no more than 400 feet in overall height;
 - 3) Within 1 ½ miles of the proposed tower, if the proposed tower is more than 400 feet in overall height. ³
- b. In the event the Applicant determines, or the SHPO/THPO recommends, that an alternative APE for visual effects is necessary, the Applicant and the SHPO/THPO may mutually agree to an alternative APE.
- c. If the parties, after using good faith efforts, can not reach agreement on the use of an alternative APE, then the APE defined in VI.B.2.a above applies. ~~either the Applicant or the SHPO/THPO may submit the issue to the Commission for resolution. The Commission shall make its determination concerning an alternative APE within a reasonable period of time.~~

Identification of Historic Properties

1. ~~The Applicant using research techniques and employing methodology generally acceptable to the preservation profession and considering public comments, shall identify Historic Properties in the APE by researching the National Register and applications for inclusion in the National Register. including Historic Properties to which any Indian tribe or NHO attaches religious or cultural significance.~~
2. ~~The level of effort and the appropriate nature and extent of identification efforts will vary depending on the location of the project, the likely nature and location of Historic Properties within the APE, and the current nature of and thoroughness of previous research, studies, or Section 106 reviews.~~

³ The Conference asks the following be added: “4) For proposed Facilities 1,000 feet or taller, the applicant shall, in consultation with the SHPO, determine the APE for each Facility.” The National Trust concurs with this request.

3. No archeological survey shall be required if the Undertaking is unlikely to cause direct effects to archeological sites. Disagreements regarding the necessity for an archeological survey may be referred to the Commission for resolution. The Commission shall make a determination of the requirement for an archaeological survey within 30 days the date of referral.

D. Evaluation of Historic Significance

1. The Applicant ~~shall apply the National Register criteria (36 C.F.R. Part 63) to properties identified within the APE and request SHPO/THPO concurrence as part of the review of the Submission Packet.~~ shall not be responsible for determining Historic Significance.
2. Where there is a disagreement regarding the eligibility of a resource for listing in the National Register and, after attempting in good faith to resolve the issue the Applicant and the SHPO/THPO continue to disagree regarding eligibility, the Applicant may submit the issue to the Commission. The Commission shall handle such submissions in accordance with 36 C.F.R. § 800.4(c)(2). The Commission shall make a determination of eligibility within 30 days of receipt of the submission.

E. Evaluation of Effects

1. Applicants shall ~~evaluate effects of the Undertaking on Historic Properties using the Criteria of Adverse Effect (36 C.F.R. § 800.5(a)(1)).~~ not be responsible for evaluating effects of the Undertaking on historic properties.
- ~~2.~~ ~~In determining whether Historic Properties in the APE may be adversely affected by the Undertaking, the Applicant should consider factors such as the topography, vegetation, known presence of Historic Properties (including locally designated historic districts and traditional cultural properties), and existing land use.~~
- ~~3.~~ ~~An Undertaking will have a visual adverse effect on a Historic Property if the visual effect from the Facility will noticeably diminish the integrity of one or more of the characteristics qualifying the property for inclusion in or eligibility for the National Register. Construction of a Facility will not cause a visual adverse effect except where visual setting or visual elements are character defining features of eligibility. Examples include: (1) a designed landscape which includes scenic vistas, (2) a publicly interpreted Historic Property where the setting or views are part of the interpretation, (3) a traditional cultural property~~

~~which includes qualifying natural landscape elements, or (4) a rural historic landscape.~~

4. ~~For collocations not excluded from review by the Collocation Agreement or this Agreement, the assessment of effects will consider only effects from the newly added or modified Facilities and not effects from the existing Tower or Antenna.~~

VII. PROCEDURES

A. Use of the Submission Packet

1. For each Undertaking within the scope of this Nationwide Agreement, the Applicant shall initially determine whether there is no Historic Properties affected, ~~no adverse effect on Historic Properties, or an adverse effect on Historic Properties.~~ The Applicant shall prepare a Submission Packet and submit it, together with the required documentation, to the SHPO/THPO and to all consulting parties, including any Indian tribe or NHO that is participating as a consulting party.
2. The SHPO/THPO shall have 30 days from receipt of the requisite documentation to review the Submission Packet.
3. If the Applicant forwards to the SHPO/THPO a comment or objection, in accordance with Section V.F, more than 25 but less than 31 days following its initial submission, the SHPO/THPO shall have 5 calendar days to consider such comment or objection before the Section 106 process is complete or the matter may be submitted to the Commission.
4. If the SHPO/THPO determines the Applicant's Submission Packet is inadequate, the SHPO/THPO will immediately return it to the Applicant with a description of any deficiencies. The Applicant may resubmit an amended Submission Packet to the SHPO/THPO any time within 60 days following its receipt of the returned Submission Packet.

B. Determinations of No Historic Properties Affected

1. If the SHPO/THPO ~~concurs~~ **determines** in writing ~~with the Applicant's determination of~~ **that** no Historic Properties **are** affected, it is deemed that no Historic Properties exist within the APE or the Undertaking will have no effect on any Historic Properties located within the APE. The Section 106 process is then complete, and the Applicant may proceed with the project, unless further processing for reasons other than Section 106 is required.
2. If the SHPO/THPO does not provide written notice to the Applicant ~~that it agrees or disagrees with the Applicant's determination of no Historic Properties affected~~ **that Historic Properties are adversely affected**

within 30 days following receipt of a complete Submission Packet, it is deemed that no Historic Properties exist within the APE and the Undertaking will have no effect on Historic Properties. The Section 106 process is then complete and the Applicant may proceed with the project, unless further processing for reasons other than Section 106 is required.

3. If the SHPO/THPO provides written notice within 30 days following receipt of the Submission Packet that it disagrees with the Applicant's determination of no Historic Properties affected, ~~it should provide a short and concise explanation of exactly how the criteria of eligibility and or criteria of Adverse Effect would apply. The Applicant and the SHPO/THPO should engage in further discussions and make a reasonable and good faith effort to resolve their disagreement.~~ then the SHPO shall apply the Criteria of Adverse Effect to determine the effect of the Undertaking on the Historic Property.
4. If the SHPO/THPO and Applicant do not resolve their disagreement, the Applicant may at any time choose to submit the matter, together with all relevant documents, to the Commission, advising the SHPO/THPO accordingly. The Commission shall apply the Criteria of Adverse Effect to determine the effect of the Undertaking on the Historic Property and return a determination to the Applicant and the SHPO within 30 days of the submission.

C. Determinations of No Adverse Effect

1. If the SHPO/THPO ~~concurs in writing with the Applicant's determination~~ returns a finding of no adverse effect, the Facility is deemed to have no adverse effect on Historic Properties. The Section 106 process is then complete and the Applicant may proceed with the project, unless further processing for reasons other than Section 106 is required.
2. If the SHPO/THPO does not ~~provide written notice to the Applicant that it agrees or disagrees with the Applicant's~~ make a determination of no adverse effect within thirty days following its receipt of a complete Submission Packet, ~~the SHPO/THPO is presumed to have concurred with the Applicant's determination~~ then the Undertaking is determined to have no adverse effect on the Historic Properties. The Applicant shall, pursuant to procedures to be promulgated by the Commission, forward a copy of its Submission Packet to the Commission, together with all correspondence with the SHPO/THPO and any comments or objections received from the public, and advise the SHPO/THPO accordingly. The Section 106 process shall then be complete, ~~unless the Commission notifies~~

~~the Applicant otherwise within a period of time to be specified by the Commission.~~

- ~~3. If the SHPO/THPO provides written notice within 30 days following receipt of the Submission Packet that it disagrees with the Applicant's determination of no adverse effect, it should provide a short and concise explanation of exactly how the criteria of Adverse Effect would apply. The Applicant and the SHPO/THPO should engage in further discussions and make a reasonable and good faith effort to resolve their disagreement.~~
4. If the SHPO/THPO and Applicant do not resolve their dispute, the Applicant may at any time choose to submit the matter, together with all relevant documents, to the Commission, advising the SHPO/THPO accordingly.
5. Whenever the Applicant or the Commission concludes, or a SHPO/THPO advises, that a proposed project will have an adverse effect on a Historic Property, after applying the criteria of Adverse Effect, the Applicant and the SHPO/THPO are encouraged to investigate measures that would avoid the adverse effect and permit a conditional "No Adverse Effect" determination.
6. If the Applicant and SHPO/THPO mutually agree upon conditions that will result in no adverse effect, the Applicant shall advise the SHPO/THPO in writing that it will comply with the conditions. ~~The Applicant can then make a determination of no adverse effect subject to its implementation of the conditions.~~ The Undertaking is then deemed conditionally to have no adverse effect on Historic Properties, and the Applicant may proceed with the project subject to those conditions. Where the Commission has previously been involved in the matter, the Applicant shall notify the Commission of this resolution.

D. Determinations of Adverse Effect

1. If the Applicant SHPO/THPO determines at any stage in the process that an Undertaking would have an adverse effect on Historic Properties within the APE(s), ~~or if the Commission so finds,~~ the Applicant shall submit to the SHPO/THPO a plan designed to avoid, minimize, or mitigate the adverse effect.
2. The Applicant shall forward a copy of its submission with its mitigation plan and the entire record to the Council and the Commission. Within 15 days following receipt of the Applicant's submission, the Council shall indicate whether it ~~intends to participate in the negotiation of a Memorandum of Agreement~~ concurs with or disagrees with the mitigation plan by notifying both the Applicant and the Commission.
3. Where the Undertaking would have an adverse effect on a National Historic Landmark, the Commission shall request the Council to

participate in consultation and shall invite participation by the Secretary of the Interior.

4. The Applicant, SHPO/THPO, and consulting parties shall negotiate a Memorandum of Agreement that shall be sent to the Commission for review and execution. The Commission shall complete its review and execution of the Memorandum of Agreement within 15 days of receipt.
5. If the parties are unable to agree upon mitigation measures, they shall submit the matter to the Commission, which shall coordinate additional actions in accordance with the Council's rules, including 36 C.F.R. §§ 800.6(b)(1)(v) and 800.7. arbitrate the disputed mitigation measures. The Commission and the parties shall complete the arbitration within 30 days of submission of the disputed mitigation measures to the Commission. The Commission shall then have 15 days to review and execute the revised Memorandum of Agreement.

VIII. EMERGENCY SITUATIONS

Unless the Commission deems it necessary to issue an emergency authorization in accordance with its rules, or the Undertaking is otherwise excluded from Section 106 review pursuant to Section III of this Agreement, the procedures in this Agreement shall apply.

IX. INADVERTENT OR POST-REVIEW DISCOVERIES

- ~~A. In the event that an Applicant discovers a previously unidentified site within the APE that may be a Historic Property that would be affected by an Undertaking, the Applicant shall promptly notify the Commission, the SHPO/THPO and any potentially affected Indian tribe or NHO, and within a reasonable time shall submit to the Commission, the SHPO/THPO and any potentially affected Indian tribe or NHO, a written report evaluating the property's eligibility for inclusion in the National Register. The Applicant shall seek the input of any potentially affected Indian tribe or NHO in preparing this report. If found during construction, construction must cease until evaluation has been completed.~~
- ~~B. If the Applicant and SHPO/THPO concur that the discovered resource is eligible for listing in the National Register, the Applicant will consult with the SHPO/THPO, and tribes as appropriate, to evaluate measures that will avoid, minimize, or mitigate adverse effects. Upon agreement regarding such measures, the Applicant shall implement them and notify the Commission of its action.~~
- ~~C. If the Applicant and SHPO/THPO cannot reach agreement regarding the eligibility of a property, the matter will be referred to the Commission for review in accordance with Section VI.D.2. If the Applicant and the~~

~~SHPO/THPO cannot reach agreement on answers to avoid, minimize, or mitigate adverse effects, the matter shall be referred to the Commission for appropriate action.~~

- D. If the Applicant discovers any human or burial remains during implementation of an Undertaking, the Applicant shall cease work immediately, notify the SHPO/THPO and Commission, and adhere to applicable State and Federal laws regarding the treatment of human or burial remains.

V. SPECIFIC COMMENTS ON THE NATIONWIDE PROGRAMMATIC AGREEMENT for the COLLOCATION OF WIRELESS ANTENNAS, ATTACHMENT 1

I. DEFINITIONS

For purposes of this Nationwide Programmatic Agreement, the following definitions apply.

~~C. “Substantial increase in the size of the tower” means:~~

- ~~1) The 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) The 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) The 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, or more than the width of the tower structure at the level of the appurtenance, whichever is greater, except that the mounting of the proposed antenna may exceed the size limits set forth in this paragraph if necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via cable; or~~

- ~~4) The mounting of the proposed antenna would involve excavation outside the current tower site, defined as the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site.~~

II. APPLICABILITY

- B. This Nationwide Collocation Programmatic Agreement ~~does not cover~~ any Section 106 responsibilities that federal agencies other than the FCC may have with regard to the collocation of antennas.

III. COLLOCATION OF ANTENNAS ON TOWERS CONSTRUCTED ON OR BEFORE MARCH 16, 2001

- A. An antenna may be mounted on an existing tower constructed on or before March 16, 2001 without such collocation being reviewed under the consultation process set forth under Subpart B of 36 CFR Part 800, unless:

- ~~1. The mounting of the antenna will result in a substantial increase in the size of the tower as defined in Stipulation I.C, above; or~~

IV. COLLOCATION OF ANTENNAS ON TOWERS CONSTRUCTED AFTER MARCH 16, 2001

- A. An antenna may be mounted on an existing tower constructed after March 16, 2001 without such collocation being reviewed under the consultation process set forth under Subpart B of 36 CFR Part 800, unless:

- ~~2. The mounting of the new antenna will result in a substantial increase in the size of the tower as defined in Stipulation I.C, above; or~~

V. COLLOCATION OF ANTENNAS ON BUILDINGS AND NON-TOWER STRUCTURES OUTSIDE OF HISTORIC DISTRICTS

- A. An antenna may be mounted on a building or non-tower structure without such collocation being reviewed under the consultation process set forth under Subpart B of 36 CFR Part 800, unless:

- ~~1. The building or structure is over 45 years old; or~~

VI. CONCLUSION

The State of Maryland appreciates opportunity to comment on the Commission's efforts to streamline the historic preservation process. Commission acceptance of the Maryland Comments is appreciated by the State of Maryland and is in the public interest.

Respectfully submitted,

/s/ G. Edward Ryan, II

**G. Edward Ryan, II
Director, Wireless Communications
State of Maryland
Department of Budget and Management
Office of Information Technology**