

there were 1,439 cable operators that qualified as small cable companies at the end of 1995.⁹⁵ Since then, some of those companies may have grown to serve more than 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators that may be affected by the rules proposed herein.

The Communications Act also contains a definition of a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate less than 1% of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenue in the aggregate exceeds \$250,000,000."⁹⁶ The Commission has determined that there are 67,700,000 subscribers in the United States.⁹⁷ Therefore, we found that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed \$250 million in the aggregate.⁹⁸ Based on available data, we find that the number of cable operators serving 677,000 subscribers or less totals approximately 1,450.⁹⁹ Since we do not request nor collect information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

Auxiliary, Special Broadcast and Other Program Distribution Services. This service involves a variety of transmitters, generally used to relay broadcast programming to the public (through translator and booster stations) or within the program distribution chain (from a remote news gathering unit back to the station). The Commission has not developed a definition of small entities applicable to broadcast auxiliary licensees. The applicable definitions of small entities are those, noted previously, under the SBA rules applicable to radio broadcasting stations and television broadcasting stations. The SBA defines a television broadcasting station that has no more than \$12.0 million in annual receipts as a small business,¹⁰⁰ and it defines a radio broadcasting station that has no more than \$6 million in annual receipts as a small business.¹⁰¹

The Commission estimates that there are approximately 3,600 translators and boosters. The Commission does not collect financial information on any broadcast facility, and the Department of Commerce does not collect financial information on these auxiliary broadcast facilities. We believe that most, if not all, of these auxiliary facilities could be classified as small businesses by themselves. We also recognize that most commercial translators and boosters are owned by a parent station which, in some cases, would be covered by the revenue definition of small business entity discussed above. These stations would likely have annual revenues that exceed the SBA maximum to be designated as a small business (either \$5 million for a radio station or \$10.5 million for a TV station). Furthermore, they do not meet the Small Business Act's definition of a "small business concern" because they are not independently owned and operated.

⁹⁵ Paul Kagan Associates, Inc., Cable TV Investor, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

⁹⁶ 47 U.S.C. § 543(m)(2).

⁹⁷ FCC Announces New Subscriber Count for the Definition of Small Cable Operator, Public Notice DA 01-158 (January 24, 2001).

⁹⁸ 47 C.F.R. § 76.1403(b).

⁹⁹ Paul Kagan Associates, Inc., Cable TV Investor, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

¹⁰⁰ 13 C.F.R. § 121.201, North American Industry Classification System (NAICS) code 515120.

¹⁰¹ 13 C.F.R. § 121.201, North American Industry Classification System (NAICS) code 515112.

Satellite Services

The Commission has not developed a small business size standard applicable to licensees in the international services. However, the SBA has developed a size standard for a small business within the category of Other Telecommunications. Under that SBA size standard, such a business is small if it has \$12.5 million or less in average annual receipts.¹⁰² According to Census Bureau data for 1997, there were a total of 439 other communications services providers, operating for the entire year.¹⁰³ Of the 439, a total of 430 had annual receipts of less than \$10.0 million. Consequently, the Commission estimates that most Other Telecommunications providers are small entities that may be affected by the rules and policies adopted herein.

International Broadcast Stations. Commission records show that there are approximately 19 international high frequency broadcast station authorizations. We do not request nor collect annual revenue information, and are unable to estimate the number of international high frequency broadcast stations that would constitute a small business under the SBA definition.

Fixed Satellite Transmit/Receive Earth Stations. There are approximately 4,303 earth station authorizations, a portion of which are Fixed Satellite Transmit/Receive Earth Stations. We do not request nor collect annual revenue information, and are unable to estimate the number of the earth stations that would constitute a small business under the SBA definition.

Fixed Satellite Very Small Aperture Terminal (VSAT) Systems. These stations operate on a primary basis, and frequency coordination with terrestrial microwave systems is not required. Thus, a single "blanket" application may be filed for a specified number of small antennas and one or more hub stations. There are 485 current VSAT System authorizations. We do not request nor collect annual revenue information, and are unable to estimate the number of VSAT systems that would constitute a small business under the SBA definition.

Mobile Satellite Stations. There are 21 licensees. On February 10, 2003, the Commission released a *Report and Order and Notice of Proposed Rulemaking* allowing licensees in the Mobile Satellite Services to use their spectrum for Ancillary Terrestrial Communications (ATC).¹⁰⁴ Licensees may construct towers to provide ATC service. We do not request nor collect annual revenue information, and are unable to estimate the number of mobile satellite earth stations that would constitute a small business under the SBA definition.

Radio Determination Satellite Earth Stations. There are four licensees. We do not request nor collect annual revenue information, and are unable to estimate the number of radio determination satellite earth stations that would constitute a small business under the SBA definition.

Digital Audio Radio Services (DARS). Commission records show that there are 2 Digital Audio Radio Services authorizations. We do not request nor collect annual revenue information, and, therefore, we cannot estimate the number of small businesses under the SBA definition.

¹⁰² 13 C.F.R. § 121.201, North American Industry Classification System (NAICS) code 517410.

¹⁰³ *Id.*

¹⁰⁴ In the Matter of Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Bands, *Report and Order and Notice of Proposed Rulemaking*, FCC 03-15 (rel. Feb 10, 2003).

Non-Licensee Tower Owners

The Commission's rules require that any entity proposing to construct an antenna structure 200 feet or higher or within the glide slope of an airport must register the antenna structure with the Commission on FCC Form 854.¹⁰⁵ For this and other reasons, non-licensee tower owners may be subject to the requirements proposed in the *Notice* and draft Nationwide Programmatic Agreement. As of April 2003, approximately 92,855 towers were included in the Antenna Structure Registration database. This includes both towers registered to licensees and towers registered to non-licensee tower owners. The Commission does not keep information from which we can easily determine how many of these towers are registered to non-licensees or how many non-licensees have registered towers.¹⁰⁶ Moreover, the SBA has not developed a size standard for small businesses in the category "Tower Owners." Therefore, we are unable to estimate the number of non-licensee tower owners that are small entities. We assume, however, that nearly all non-licensee tower companies are small businesses under the SBA's definition for cellular and other wireless telecommunications services.¹⁰⁷

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements.

The draft Nationwide Agreement includes several compliance requirements, including recordkeeping and reporting requirements, applicable to regulatees. Under the Commission's rules, applicants are required to determine whether their construction of "facilities may affect districts, buildings, structures or objects, significant in American history, architecture, archeology, engineering or culture, that are listed, or eligible for listing, in the National Register of Historic Places," consistent with the rules of the Council.¹⁰⁸ The draft Nationwide Agreement would modify and more clearly specify the means by which applicants should make that determination.

Specific requirements that the draft Nationwide Agreement would impose on Applicants include, first, determining whether an exclusion applies to their proposed construction project, thereby obviating the need to submit Section 106 materials to the SHPO/THPO.¹⁰⁹ Applicants should maintain records to verify the applicability of any exclusion.¹¹⁰ If alternative language proposed by the Navajo Nation is adopted, Applicants will also be required to provide notification of most excluded projects to potentially affected Indian tribes.¹¹¹ If no exclusion applies, the language discussed in the Telecommunications Working Group includes specific steps that Applicants shall follow to identify Indian tribes and Native Hawaiian Organizations (NHOs) that may attach religious and cultural significance to potentially affected historic properties. These steps offer those tribes and NHOs a full opportunity to participate in the process; to refer Indian tribes' requests for government-to-government consultation to the Commission;

¹⁰⁵ 47 C.F.R. § 17.4.

¹⁰⁶ We note, however, that approximately 13,000 towers are registered to 10 cellular carriers with 1,000 or more employees.

¹⁰⁷ 13 C.F.R. § 121.201, North American Industry Classification System (NAICS) code 517212. Under this category, a business is small if it has 1,500 or fewer employees.

¹⁰⁸ See 47 C.F.R. § 1.1307(a)(4) and Note.

¹⁰⁹ Nationwide Agreement, § III.A.

¹¹⁰ *Id.*

¹¹¹ *Id.*, § III.B.

and to maintain confidentiality of private or sensitive information.¹¹² The EBCI-THPO is strongly in agreement that government to government consultation occur and that applicants recognize the concerns of protecting any and all Historical Properties, TCP's, sacred sites and confidentiality matters of THPO and Tribal interest. Recognizing that Tribes have a history to protect is as important as any other history if not more.

The draft Nationwide Agreement also sets forth required procedures for seeking local government and public participation; considering public comments and forwarding them to the SHPO/THPO; and for identifying consulting parties.¹¹³ In addition, the draft Nationwide Agreement sets forth standards for applicants to apply in defining the area of potential effects (APE); in identifying Historic Properties within the APE; in evaluating the historic significance of identified properties; and in assessing the effects of the Undertaking on Historic Properties.¹¹⁴ Once identification, evaluation, and assessment are complete, the draft Nationwide Agreement requires Applicants to provide the SHPO/THPO and consulting parties with a Submission Packet including the appropriate form, which requires specified information about the Applicant, the project, and its review.¹¹⁵ The draft Nationwide Agreement also sets forth procedures for Applicants to follow upon receiving certain responses from the SHPO/THPO. It also sets forth procedures for developing Memoranda of Agreement to mitigate adverse effects.¹¹⁶ Finally, the draft Nationwide Agreement prescribes procedures for Applicants to follow in the event of inadvertent or post-review discoveries,¹¹⁷ and sets forth potential measures that the Commission may require Applicants to take in response to a complaint alleging construction prior to compliance with Section 106.¹¹⁸

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered.

The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in developing its approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.¹¹⁹

In general, the alternative of exempting small entities from the requirements proposed in the Notice and draft Nationwide Agreement was rejected. The NHPA requires that all Federal Undertakings be evaluated for their potential effects on districts, sites, buildings, structures or objects, which are significant in American history, architecture, archeology, engineering or culture, and which are listed, or are eligible for listing, in the National Register of Historic Places. Neither the NHPA nor the Council's rules contemplates any exemption from review depending on the size or resources of the non-federal

¹¹² *Id.*, §§ IV.D.—IV.H., IV.J, Alternative A. Alternative B, proposed by the United South and Eastern Tribes, Inc., encourages Indian tribes and NHOs to agree to protocols for relations between applicants and tribes or NHOs in lieu of direct government consultation, but does not specify such protocols.

¹¹³ *Id.*, Part V.

¹¹⁴ *Id.*, Part VI. To a substantial extent, these standards are taken directly from the Council's rules.

¹¹⁵ *Id.*, § VII.A.1. and Attachments 3 and 4.

¹¹⁶ *Id.*, §§ VII.B.3, VII.C.2, VII.C.3, VII.C.6, and VII.D.

¹¹⁷ *Id.*, Part IX.

¹¹⁸ *Id.*, § X.C.

¹¹⁹ 5 U.S.C. § 603 (c).

entity which initiates the undertaking. The impact of the requirements proposed in the draft Nationwide Agreement will be the same on all entities whether large or small. All of these projected reporting, record keeping, and other compliance requirements will be imposed in the same way, on all entities to be affected. Therefore, no special or undue burden will be placed on small entities.

However, because of our concern with minimizing burden on small entities, and as alternative to stricter and potentially more burdensome regulation, several provisions of the draft Nationwide Agreement are expected to reduce economic burdens on small entities. For example, the exclusions from routine Section 106 review listed in Part III of the draft Nationwide Agreement will relieve Applicants, whether large or small, from the burden of performing unnecessary review for projects that are unlikely to affect historic properties. The standards set forth in Part VI will add predictability to the process, and the procedures and the time frames for review in Part VII will reduce costly uncertainty and delay. In addition, the prescribed forms will facilitate preparation of a sufficient submission packet on the first effort, thereby avoiding the need for costly and time-consuming resubmissions, which may be especially burdensome for small entities.

We note that Applicants routinely retain consultants to perform most of the steps associated with Section 106 reviews. We anticipate that the use of consultants to perform these tasks would continue to be prevalent under the Nationwide Agreement. Applicants will typically comply with the standards and procedures set forth in the draft Nationwide Agreement by using consultants to perform specialized tasks due to their relative cost effectiveness and efficiency in completing Section 106 reviews. We believe that the rules proposed for adoption herein will in no way serve to impose any requirements on small entities that would make the use of consultants more burdensome than would normally be the case.

The draft Nationwide Agreement may impose specific burdens on small entities in some instances. However, we believe these burdens are the minimum necessary to accomplish the draft Nationwide Agreement's purpose. Thus, the Commission, after discussion with the members of the Working Group, believes that the forms include the minimum information necessary for appropriate review by a SHPO, THPO, or the Commission. Similarly, the provisions for tribal and public participation (Parts IV and V) are intended to embody the least burdensome procedures on applicants that will afford these parties a complete and legally sufficient opportunity to participate in the process.¹²⁰ The submission and review processes set forth in Part VII have also been developed with the goal of reducing burdens insofar as possible.

The *Notice* seeks comment on the draft Nationwide Agreement generally, including issues related to its potential economic impact on small entities.

F. Federal Rules that may Duplicate, Overlap, or Conflict with the Proposed Rules.

None. The draft Nationwide Agreement would modify and supplement the procedures set forth in the rules of the Council,¹²¹ as expressly contemplated in those rules.¹²²

IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this *Notice*, including the Initial

¹²⁰ We point out that the *Notice* seeks comment on two alternative sets of provisions for tribal participation and consultation that reflect different views of what is required in this regard.

¹²¹ 36 C.F.R. Part 800.

¹²² 36 C.F.R. § 800.14(b).

Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

APPENDIX C

PROPOSED RULES

Subpart I of Part 1 of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:

In §1.1307, revise the Note following paragraph (a)(4) to read as follows:

§1.1307 Actions that may have a significant environmental effect, for which Environmental Assessments (EAs) must be prepared.

(a)***

(4)***:

NOTE: The National Register is updated and re-published in the FEDERAL REGISTER each year in February. To ascertain whether a proposed action may affect properties that are listed or eligible for listing in the National Register of Historic Places, an applicant shall follow the procedures set forth in the rules of the Advisory Council on Historic Preservation, 36 CFR Part 800, as modified and supplemented by the Nationwide Programmatic Agreement for the Collocation of Wireless Antennas, 66 FR 17554, and the Nationwide Programmatic Review of Effects on Historic Properties for Certain Undertakings Approved by the Federal Communications Commission, __FR__.

ATTACHMENT 1

**NATIONWIDE PROGRAMMATIC AGREEMENT
for the
COLLOCATION OF WIRELESS ANTENNAS**

Executed by

**The FEDERAL COMMUNICATIONS COMMISSION,
the NATIONAL CONFERENCE OF STATE HISTORIC PRESERVATION OFFICERS
and
the ADVISORY COUNCIL ON HISTORIC PRESERVATION**

WHEREAS, the Federal Communications Commission (FCC) establishes rules and procedures for the licensing of wireless communications facilities in the United States and its Possessions and Territories; and,

WHEREAS, the FCC has largely deregulated the review of applications for the construction of individual wireless communications facilities and, under this framework, applicants are required to prepare an Environmental Assessment (EA) in cases where the applicant determines that the proposed facility falls within one of certain environmental categories described in the FCC's rules (47 C.F.R. § 1.1307), including situations which may affect historical sites listed or eligible for listing in the National Register of Historic Places ("National Register"); and,

WHEREAS, Section 106 of the National Historic Preservation Act (16 U.S.C. §§ 470 *et seq.*) ("the Act") requires federal agencies to take into account the effects of their undertakings on historic properties and to afford the Advisory Council on Historic Preservation (Council) a reasonable opportunity to comment; and,

WHEREAS, Section 800.14(b) of the Council's regulations, "Protection of Historic Properties" (36 CFR § 800.14(b)), allows for programmatic agreements to streamline and tailor the Section 106 review process to particular federal programs; and,

WHEREAS, in August 2000, the Council established a Telecommunications Working Group to provide a forum for the FCC, Industry representatives, State Historic Preservation Officers (SHPOs) and Tribal Historic Preservation Officers (THPOs), and the Council to discuss improved coordination of Section 106 compliance regarding wireless communications projects affecting historic properties; and,

WHEREAS, the FCC, the Council and the Working Group have developed this Collocation Programmatic Agreement in accordance with 36 CFR Section 800.14(b) to address the Section 106 review process as it applies to the collocation of antennas (collocation being defined in Stipulation I.A below); and,

WHEREAS, the FCC encourages collocation of antennas where technically and economically feasible, in order to reduce the need for new tower construction; and,

WHEREAS, the parties hereto agree that the effects on historic properties of collocations of antennas on towers, buildings and structures are likely to be minimal and not adverse, and that in the cases where an adverse effect might occur, the procedures provided and referred to herein are proper and sufficient, consistent with Section 106, to assure that the FCC will take such effects into account; and

WHEREAS, the execution of this Nationwide Collocation Programmatic Agreement will streamline the Section 106 review of collocation proposals and thereby reduce the need for the construction of new towers, thereby reducing potential effects on historic properties that would otherwise result from the construction of those unnecessary new towers; and,

WHEREAS, the FCC and the Council have agreed that these measures should be incorporated into a Nationwide Programmatic Agreement to better manage the Section 106 consultation process and streamline reviews for collocation of antennas; and,

WHEREAS, since collocations reduce both the need for new tower construction and the potential for adverse effects on historic properties, the parties hereto agree that the terms of this Agreement should be interpreted and implemented wherever possible in ways that encourage collocation; and

WHEREAS, the parties hereto agree that the procedures described in this Agreement are, with regard to collocations as defined herein, a proper substitute for the FCC's compliance with the Council's rules, in accordance and consistent with Section 106 of the National Historic Preservation Act and its implementing regulations found at 36 CFR Part 800; and

WHEREAS, the FCC has consulted with the National Conference of State Historic Preservation Officers (NCSHPO) and requested the President of NCSHPO to sign this Nationwide Collocation Programmatic Agreement in accordance with 36 CFR Section 800.14(b)(2)(iii); and,

WHEREAS, the FCC sought comment from Indian tribes and Native Hawaiian Organizations regarding the terms of this Nationwide Programmatic Agreement by letters of January 11, 2001 and February 8, 2001; and,

WHEREAS, the terms of this Programmatic Agreement do not apply on "tribal lands" as defined under Section 800.16(x) of the Council's regulations, 36 CFR § 800.16(x) ("Tribal lands means all lands within the exterior boundaries of any Indian reservation and all dependent Indian communities."); and,

WHEREAS, the terms of this Programmatic Agreement do not preclude Indian tribes or Native Hawaiian Organizations from consulting directly with the FCC or its licensees, tower companies and applicants for antenna licenses when collocation activities off tribal lands may affect historic properties of religious and cultural significance to Indian tribes or Native Hawaiian organizations; and,

WHEREAS, the execution and implementation of this Nationwide Collocation Programmatic Agreement will not preclude members of the public from filing complaints with the FCC or the Council regarding adverse effects on historic properties from any existing tower or any activity covered under the terms of this Programmatic Agreement.

NOW THEREFORE, the FCC, the Council, and NCSHPO agree that the FCC will meet its Section 106 compliance responsibilities for the collocation of antennas as follows.

STIPULATIONS

The FCC, in coordination with licensees, tower companies and applicants for antenna licenses, will ensure that the following measures are carried out.

I. DEFINITIONS

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

- A. "Collocation" means the mounting or installation of an antenna on an existing tower, building or structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.
- B. "Tower" is any structure built for the sole or primary purpose of supporting FCC-licensed antennas and their associated facilities.
- 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

- A. This Nationwide Collocation Programmatic Agreement applies only to the collocation of antennas as defined in Stipulation I.A, above.
- 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
2. The tower has been determined by the FCC to have an effect on one or more historic properties, unless such effect has been found to be not adverse through a no adverse effect finding, or if found to be adverse or potentially adverse, has been resolved, such as through a conditional no adverse effect determination, a Memorandum of Agreement, a programmatic agreement, or otherwise in compliance with Section 106 and Subpart B of 36 CFR Part 800; or
3. The tower is the subject of a pending environmental review or related proceeding before the FCC involving compliance with Section 106 of the National Historic Preservation Act; or
4. The collocation licensee or the owner of the tower has received written or electronic notification that the FCC is in receipt of a complaint from a member of the public, a SHPO or the Council, that the collocation has an adverse effect on one or more historic properties. Any such complaint must be in writing and supported by substantial evidence describing how the effect from the collocation is adverse to the attributes that qualify any affected historic property for eligibility or potential eligibility for the National Register.

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:

1. The Section 106 review process for the tower set forth in 36 CFR Part 800 and any associated environmental reviews required by the FCC have not been completed; or
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
3. The tower as built or proposed has been determined by the FCC to have an effect on one or more historic properties, unless such effect has been found to be not adverse through a no adverse effect finding, or if found to be adverse or potentially adverse, has been resolved, such as through a conditional no adverse effect determination, a Memorandum of Agreement, a programmatic agreement, or otherwise in compliance with Section 106 and Subpart B of 36 CFR Part 800; or

4. The collocation licensee or the owner of the tower has received written or electronic notification that the FCC is in receipt of a complaint from a member of the public, a SHPO or the Council, that the collocation has an adverse effect on one or more historic properties. Any such complaint must be in writing and supported by substantial evidence describing how the effect from the collocation is adverse to the attributes that qualify any affected historic property for eligibility or potential eligibility for the National Register.

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;¹ or
2. The building or structure is inside the boundary of a historic district, or if the antenna is visible from the ground level of the historic district, the building or structure is within 250 feet of the boundary of the historic district; or
3. The building or non-tower structure is a designated National Historic Landmark, or listed in or eligible for listing in the National Register of Historic Places based upon the review of the licensee, tower company or applicant for an antenna license; or
4. The collocation licensee or the owner of the tower has received written or electronic notification that the FCC is in receipt of a complaint from a member of the public, a SHPO or the Council, that the collocation has an adverse effect on one or more historic properties. Any such complaint must be in writing and supported by substantial evidence describing how the effect from the collocation is adverse to the attributes that qualify any affected historic property for eligibility or potential eligibility for the National Register.

B. Subsequent to the collocation of an antenna, should the SHPO/THPO or Council determine that the collocation of the antenna or its associated equipment installed under the terms of Stipulation V has resulted in an adverse effect on historic properties, the SHPO/THPO or Council may notify the FCC accordingly. The FCC shall comply with the requirements of Section 106 and 36 CFR Part 800 for this particular collocation.

VI. RESERVATION OF RIGHTS

Neither execution of this Agreement, nor implementation of or compliance with any term herein shall operate in any way as a waiver by any party hereto, or by any person or entity complying herewith or affected hereby, of a right to assert in any court of law any claim, argument or defense regarding the validity or interpretation of any provision of the National Historic Preservation Act (16 U.S.C. §§ 470 *et seq.*) or its implementing regulations contained in 36 CFR

¹ Suitable methods for determining the age of a building include, but are not limited to: (1) obtaining the opinion of a consultant who meets the Secretary of Interior's Professional Qualifications Standards (36 CFR Part 61) or (2) consulting public records.

Part 800.

VII. MONITORING

A. FCC licensees shall retain records of the placement of all licensed antennas, including collocations subject to this Nationwide Programmatic Agreement, consistent with FCC rules and procedures.

B. The Council will forward to the FCC and the relevant SHPO any written objections it receives from members of the public regarding a collocation activity or general compliance with the provisions of this Nationwide Programmatic Agreement within thirty (30) days following receipt of the written objection. The FCC will forward a copy of the written objection to the appropriate licensee or tower owner.

VIII. AMENDMENTS

If any signatory to this Nationwide Collocation Programmatic Agreement believes that this Agreement should be amended, that signatory may at any time propose amendments, whereupon the signatories will consult to consider the amendments. This agreement may be amended only upon the written concurrence of the signatories.

IX. TERMINATION

A. If the FCC determines that it cannot implement the terms of this Nationwide Collocation Programmatic Agreement, or if the FCC, NCSHPO or the Council determines that the Programmatic Agreement is not being properly implemented by the parties to this Programmatic Agreement, the FCC, NCSHPO or the Council may propose to the other signatories that the Programmatic Agreement be terminated.

B. The party proposing to terminate the Programmatic Agreement shall notify the other signatories in writing, explaining the reasons for the proposed termination and the particulars of the asserted improper implementation. Such party also shall afford the other signatories a reasonable period of time of no less than thirty (30) days to consult and remedy the problems resulting in improper implementation. Upon receipt of such notice, the parties shall consult with each other and notify and consult with other entities that are either involved in such implementation or that would be substantially affected by termination of this Agreement, and seek alternatives to termination. Should the consultation fail to produce within the original remedy period or any extension, a reasonable alternative to termination, a resolution of the stated problems, or convincing evidence of substantial implementation of this Agreement in accordance with its terms, this Programmatic Agreement shall be terminated thirty days after notice of termination is served on all parties and published in the Federal Register.

C. In the event that the Programmatic Agreement is terminated, the FCC shall advise its licensees and tower construction companies of the termination and of the need to comply with any applicable Section 106 requirements on a case-by-case basis for collocation activities.

X. ANNUAL MEETING OF THE SIGNATORIES

The signatories to this Nationwide Collocation Programmatic Agreement will meet on or about September 10, 2001, and on or about September 10 in each subsequent year, to discuss the effectiveness of this Agreement, including any issues related to improper implementation, and to discuss any potential amendments that would improve the effectiveness of this Agreement.

XI. DURATION OF THE PROGRAMMATIC AGREEMENT

This Programmatic Agreement for collocation shall remain in force unless the Programmatic Agreement is terminated or superseded by a comprehensive Programmatic Agreement for wireless communications antennas.

Execution of this Nationwide Programmatic Agreement by the FCC, NCSHPO and the Council, and implementation of its terms, evidence that the FCC has afforded the Council an opportunity to comment on the collocation as described herein of antennas covered under the FCC's rules, and that the FCC has taken into account the effects of these collocations on historic properties in accordance with Section 106 of the National Historic Preservation Act and its implementing regulations, 36 CFR Part 800.

FEDERAL COMMUNICATIONS COMMISSION

_____ Date: _____

ADVISORY COUNCIL ON HISTORIC PRESERVATION

_____ Date: _____

NATIONAL CONFERENCE OF STATE HISTORIC PRESERVATION OFFICERS

_____ Date: _____

The EBCI/THPO would like the FCC to notice that no Tribes or Native representatives signed this agreement. This co-location agreement has no effectiveness or validity for the EBCI/THPO. To have had Bambi Kraus President NATHPO signature included would have had great barring on this section of co-locations, but the THPO's and Tribes were left out of the 2001 Co-location agreement. The EBCI/THPO requests that FCC make note to this absence. We also would like FCC to recognize that archeological surveys are still warranted with co-locations because of historical data and discoveries that may occur with ground disturbance. Due to the lack of

concern by FCC, ACHP, NCSHPO, all THPO's and Tribes comments were left out of this co-location agreement process and should not hold any preferential decisions on these PA until THPO's and Tribes have been included.

ATTACHMENT 2

**LIST OF FCC ACTIVITIES COVERED BY THE
NATIONWIDE PROGRAMMATIC AGREEMENT**

This list, including the description of activities and services, is illustrative and is not exclusive. The Federal Communications Commission may determine in the future that additional communications facilities/activities are Undertakings for purposes of Section 106 or that certain covered facilities on this list no longer constitute Undertakings for purposes of Section 106.

- Registration of Towers 200 feet or higher or within glide slope of airport
- New or Modified Construction Permit, AM, FM, TV (Broadcast Radio and Television)
- New or Modified Construction Permit, International or Experimental Broadcast Station¹
- New or Modified Construction Permit, low power FM Station ("Microbroadcasters" with power of 10 to 100 watts)
- New or Modified Construction Permit, Non-Commercial and Educational Station (Educational and Public Radio and Television)
- New or Modified Construction Permit, Low Power TV or TV translator (Low Power Broadcast Television or Television translator (repeater stations)²
- New or Modified Construction Permit, Low Power FM or FM translator (FM Translator/Booster Stations)³
- New or Modified Construction Permit, Multichannel Multipoint Distribution Service, MMDS (Wireless Cable/Wireless Internet)
- New or Modified Construction Permit, Instructional Television Fixed Services; ITFS (educational television transmitted to one or more fixed receiving locations)
- New or Modified Construction Permit, Broadcast Auxiliary Station (Broadcast Auxiliary Microwave stations are used for relaying broadcast television or radio signals. They can be used to relay signals from the studio to the transmitter, or between two points, such as a main studio and an auxiliary studio.)
- Application for New or Modified Cable Access Relay Station (microwave) (CARS) (used to transmit and distribute signal in cable network)

¹ International stations are what are commonly known as "short-wave" radio stations designed to be received in other countries; "experimental stations" are stations whose operation is restricted to non-profit operation only - will test new technologies or otherwise contribute to scientific or engineering knowledge.

² Translator Stations do not originate programming but simply retransmit the signal of the primary station into areas where its signal may be blocked by terrain or other obstructions.

³ Booster Stations serve purposes similar to translator stations.

- Satellite Earth Station (3-9 meter antennas licensed to transmit/receive programming or data to satellites)
- Terrestrial Repeaters for Satellite Digital Audio Radio System (DARS) (ground-based repeater systems associated with audio subscription service delivered by satellite; service rules proposed but not yet finalized)
- New or Modified Authorization for Commercial Mobile Radio Service, *e.g.*, cellular. (Licensed on a geographic area basis or modified site-by-site basis. Consistent with environmental rules, local zoning restrictions, and other applicable laws and regulations, licensees and tower companies may build towers anywhere within the licensed geographic area or established interference contour.) The types of services are:
 - Broadband Personal Communication Service, PCS (Digital Wireless Telephone)
 - Specialized Mobile Radio Service, SMR (Digital or Analog Wireless Telephone or Dispatch)
 - Cellular Radio Service (Digital or Analog Wireless Telephone)
 - Public Coast Radio Service (Marine Wireless Telephone)
 - Narrowband PCS (wireless messaging services)
 - Commercial Paging (wireless messaging services)
 - Wireless Communications Service (radiocommunications that may provide fixed, mobile, radiolocation or satellite communication services)
 - 220 MHz Service (wireless dispatch radio or data transmission)
 - 218-219 Service (wireless interactive video or data transmission)
 - 700 MHz (Digital Wireless or Wireless Internet - no licensees yet until future auction)
 - 700 MHz Guardband (Mobile Wireless Services for commercial use or for business internal use)
 - 4.9 GHz (Digital Wireless or Wireless Internet - no licensees yet until future auction)
 - Location Monitoring Service, LMS (mobile wireless services to monitor traffic patterns)
- New or Modified Authorization for Fixed Wireless Services (Licensed on a geographic area basis. Consistent with environmental rules, local zoning restrictions, and other applicable laws and regulations, licensees and tower companies may build towers anywhere within the licensed geographic area). The types of services are:
 - 39 GHz (Point-to-point or point-to-multipoint fixed wireless services)
 - 24 GHz (Point-to-point or point-to-multipoint fixed wireless services)
 - Local Multipoint Distribution Service, LMDS (Point-to-point or point-to-multipoint fixed wireless services)
 - Multiple Address System, MAS (point-to-point fixed wireless data services)
- New or Modified Authorization for Site-Specific Mobile Radio (mobile voice or data transmission from towers or antennas at Commission-specified coordinates). The types of services are:
 - Public Safety (*e.g.*, police and fire) (mobile analog services using towers and antennas)

Business Radio (*e.g.*, utilities) (mobile analog wireless services used to transmit/receive voice and data for internal business use)

Paging (wireless messaging services)

Dispatch Radio (*e.g.*, taxicab) (mobile analog wireless services used to transmit/receive voice on a dispatch radio system)

Air-Ground Radio (wireless systems where airphones use ground-based towers or antennas)

- New or Modified Authorization, Fixed Microwave (voice or data transmission from towers or antennas at fixed locations at Commission-specified coordinates).
- New or Modified Authorization, Amateur Services (Ham Radio)

ATTACHMENT 3

New Tower Submission Form (Form NT, Cover Sheet, and Instructions)**Instructions for New Tower Submission Form (Form NT)**

The Telecommunications Working Group of the Advisory Council on Historic Preservation¹ has developed this Submission Packet to assist carriers, broadcast companies, tower companies, cultural resource professionals and others involved with communications tower and antenna projects with preparation of the documentation required by the Section 106 historic preservation review process. Applicants may compare this New Tower Submission Packet (Form NT) with the Collocation Submission Packet (Form CO) (Attachment 4 to the Nationwide Agreement) to understand the similarities and differences.

As explained in the Nationwide Programmatic Agreement for Review of Effects on Historic Properties for Undertakings Approved by the Federal Communications Commission ("Nationwide Agreement"), the Applicant should submit the New Tower Submission Packet (Form NT) only:

1. Where the Undertaking is not exempt from Section 106 review under the Nationwide Programmatic Agreement for the Collocation of Wireless Antennas ("Collocation Agreement") or the Nationwide Agreement; and
2. Where the Applicant proposes to construct a new Tower² rather than collocate its antenna(s) on an existing Tower or non-Tower structure.

Form NT should be completed by or on behalf of the Applicant and submitted to the State Historic Preservation Office ("SHPO") and/or Tribal Historic Preservation Office ("THPO") prior to the construction of a new Tower that requires SHPO/THPO review under Section 106 of the National Historic Preservation Act ("NHPA"), the regulations of the Advisory Council on Historic Preservation ("Council"), the Collocation Agreement, this Nationwide Agreement or any other programmatic agreement that may be applicable. Submission of a complete and accurate Form NT (with the supporting documentation requested in the Form) should be sufficient to enable the SHPO/THPO to complete its review of the Applicant's findings and determinations pursuant to Section VII of the Nationwide Agreement.

¹ The Telecommunications Working Group (TWG), which includes representatives from industry, government, historic preservation, tribal, and other groups, was formed in 2000 by the Advisory Council on Historic Preservation to support and streamline the Section 106 process in its application to Undertakings.

² A "Tower" is any structure built for the sole or primary purpose of supporting Commission-licensed antennas and their associated facilities.

Although these Instructions and the attached Form NT are intended to provide guidance on the Section 106 process, they are not authoritative and, in the event of any inconsistency, or other conflict, the sources referenced above shall apply.

Exclusions

Neither the Form NT nor the Form CO need be submitted for any collocation where Section 106 review is not required under the Collocation Agreement, the Nationwide Agreement, or any future programmatic agreement that excludes undertakings from such review.

I. Exclusions Under Nationwide Agreement Applicable to New Towers

A. Section III of the Nationwide Agreement identifies a number of situations where review of a proposed undertaking under Section 106 is not necessary.

B. In situations covered by Section III, Applicants should not provide a Submission Packet to the SHPO/THPO.

C. Where an undertaking is to be completed but no submission is made to the local SHPO/THPO because of the availability of one or more exclusions, the Applicant should retain in its files documentation of the basis for each exclusion should a question arise as to the Applicant's compliance with Section 106.

Upon provision to the SHPO/THPO of a Submission Packet (Form NT), the Applicant is deemed to have made a request for review of a finding(s), determination(s), or both for purposes of Sections VI and VII of this Nationwide Agreement and the review period specified in Section VII of this Nationwide Agreement will begin.

Cover Sheet for New Tower Submission Form (Form NT) [separate page]

1. Key findings and determinations:
 - a. No Historic Properties in APE
 - b. "No effect" on Historic Properties in APE
 - c. "No adverse effect" on Historic Properties in APE
 - d. "Adverse effect" on Historic Properties in APE
2. Full name of Applicant with name, address, e-mail address, and telephone number of Applicant's contact person(s) on this project.
3. Full name of Consultant or other representative acting on behalf of Applicant with name, address, e-mail address, and telephone number of contact person(s) on this project. Attach summary of Consultant's qualifications.

4. *Project name and any project number(s) assigned by Applicant, Consultant, or others.*
5. Project Status:
- a. Construction planned but not yet commenced;
- b. Construction commenced on [date] but not yet completed;
- c. Other _____.
6. Provide exact location of project. To the extent reasonably available, the location information should include the street address, longitude and latitude, and a legal description of the location.

Elements of Collocation Submission Packet (Form NT) [separate page]

1. Contact Information

Date: _____

Name of Applicant/ Company: _____

Address of Applicant: _____

Phone: _____ Fax: _____

Applicant's Representative/Consultant: _____

Title: _____

Address: _____

Phone: _____ Fax: _____

Email Address: _____

Applicant will be:

New Tower Owner Carrier using New Tower Other (explain)³

For additional information, SHPO/THPO should contact:

Applicant Applicant's Representative Other (explain)

Correspondence should be addressed to:

Applicant Applicant's Representative Other (explain)

³ PCIA suggests deleting the box for "Carrier using New Tower."

2. Site Information

a. Site name and Identification Number: _____

Identification Number above is:

temporary reference number used by consultant, or

permanent reference number used to identify the tower

other (explain): _____

b. Street Address of Site: _____

City: _____ State: _____ Zip: _____

County: _____ Township: _____

c. Nearest Cross Roads: _____ / _____

d. Site Universal Transverse Mercator (UTM) Coordinates or Latitude/Longitude (if available).

e. Proposed tower height: _____

f. Tower type:

guyed tower monopole self-supporting other

g. Type of tower lighting, if any _____

h. Describe surrounding land use of leased or owned property and any access roads, utility lines, or other easements related to the site.

i. Describe construction methods/plans for project

3. Initiating Section 106 Consultation

a. **State and/or Tribal Historic Preservation** – List SHPO/THPO with jurisdiction over this project.

- i. Could this project potentially affect Historic Properties located on tribal lands? If so, identify tribes contacted. If not, explain how this determination was made.

- ii. Could this project potentially affect Historic Properties located off tribal lands to which an Indian tribe or Native Hawaiian organization attaches religious and cultural significance? If so, identify tribes contacted. If not, explain how this determination was made.
- b. **Public Involvement** – Because applicable rules require notice to the public of undertakings and an opportunity to comment that reflects the nature and complexity of the undertaking, describe measures taken to obtain public involvement in this project.
 - c. **Local Government** – Has local government been contacted as a consulting party pursuant to Section V.A. of the Nationwide Agreement? If so, list local government agencies contacted. If not, explain why this has not occurred.
 - d. **Additional Consulting Parties** – List any additional consulting parties (individuals or organizations with demonstrated interest in the project) that have been identified and any that have been contacted.

4. Identification of Historic Properties

Attach continuation sheets as necessary; include key locations of all Historic Properties to maps and key descriptions of Historic Properties to photos.

- a. **Area of Potential Effects (APE)** – Describe the APE for the proposed project and how this APE was determined, see VI.B of the Nationwide Agreement.
- b. **Previously Identified Historic Properties**
 - i. Are there any National Historic Landmarks located within the APE? If so, list the name and address of each property.
 - ii. Are there any properties or historic districts located within the APE that are listed in the National Register of Historic Places? If so, list the name and address of each property and the source of survey information.
 - iii. Are there any properties or historic districts located within the APE that have been determined eligible for listing in the National Register of Historic Places? If so, list the name and address of each property and the source of survey information.

The EBCI/THPO recommends that iii (above) and iv (below) should recognize any properties of cultural or religious significance to Tribes (TCP's, Sacred Sites)?

- iv. If Applicant surveyed any previously evaluated historical sites due to the passage of time, changing perceptions of significance, or incomplete prior evaluations, identify and describe these properties. List the name and

address/vicinity of each property, the site inventory number, and the source of survey information. Contact SHPO/THPO regarding previously surveyed archeological sites.

c. Field Survey Results

- i. Evaluate the eligibility of any potentially eligible historic districts, sites, buildings, structures, or objects that have not previously been identified that are located within the APE for the National Register of Historic Places and provide your eligibility assessment. For each property assessed, please reference Photos and Site Location Map. For identified properties, list the name and address of each property, the site inventory number, and the name of the consultant who performed the evaluation. The EBCI/THPO recommends to include TCP's and Sacred Sites
- ii. Are there any newly identified archaeological sites located within the APE? If so, evaluate their potential eligibility for the National Register of Historic Places and provide Applicant's assessment of whether additional survey work is necessary. If Applicant has already completed an archaeological survey, please include the survey report with this checklist. For each site assessed, please reference Photos and Site Location Map. For identified properties, list the name and address of each property, the site inventory number, and the name of the consultant who performed the evaluation. The EBCI/THPO recommends to include TCP's and Sacred Sites
- iii.
- iv. Describe surrounding topography including modern intrusions, existing buffering, and vegetation. Describe any previous ground disturbance.

d. Determination

- Historic Properties Exist Within the APE.** Applicant should continue to Section 5, Determination of Effect.
- No Historic Properties Exist Within the APE.** Applicant need not complete Section 5.

5. Determination of Effect

Use the Criteria of Adverse Effect and the guidelines found at Sections VI. A and VI. B. of the Nationwide Agreement as the basis for Applicant's assessment. **Check one box below and attach narrative** that explains the basis for your determination. The documentation compiled through the use of this checklist should be sufficient for reviewing parties to clearly understand the basis for determinations made about potential project effects on Historic Properties.

- ii. Could this project potentially affect Historic Properties located off tribal lands to which an Indian tribe or Native Hawaiian organization attaches religious and cultural significance? If so, identify tribes contacted. If not, explain how this determination was made.
- b. **Public Involvement** – Because applicable rules require notice to the public of undertakings and an opportunity to comment that reflects the nature and complexity of the undertaking, describe measures taken to obtain public involvement in this project.
 - c. **Local Government** – Has local government been contacted as a consulting party pursuant to Section V.A. of the Nationwide Agreement? If so, list local government agencies contacted. If not, explain why this has not occurred.
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 - ii. Are there any properties or historic districts located within the APE that are listed in the National Register of Historic Places? If so, list the name and address of each property and the source of survey information.
 - iii. Are there any properties or historic districts located within the APE that have been determined eligible for listing in the National Register of Historic Places? If so, list the name and address of each property and the source of survey information.

The EBCI/THPO recommends that iii (above) and iv (below) should recognize any properties of cultural or religious significance to Tribes (TCP's, Sacred Sites)?

- iv. If Applicant surveyed any previously evaluated historical sites due to the passage of time, changing perceptions of significance, or incomplete prior evaluations, identify and describe these properties. List the name and