164. We revise and adopt Form NT and Form CO for submissions to SHPOs and THPOs.[409] In an effort to simplify the forms and make them more user-friendly, we make a number of formal changes in response to the comments. We also include among the required attachments one or more USGS quadrant maps, and we expressly require information regarding the individuals performing the work. In response to the Georgia SHPO's comment, we add language clarifying that failure to complete the Section 106 review process prior to construction may violate Section 110(k) of the NHPA and the Commission's rules, and referring the applicant to Section X of the Nationwide Agreement.[410] We decline, however, to require a balloon test as part of the submission materials. Although a balloon test may be helpful in assessing a proposed undertaking's effect in some cases, it is often unnecessary and is not routinely required in most states. In specific cases where the applicant has not performed a balloon test and the SHPO/THPO determines that such a test is necessary to assess effects, it may return the submission to the applicant for this additional information.[411] Finally, in order to achieve the benefits of uniformity and simplicity for SHPOs/THPOs as well as applicants, we make use of the forms mandatory for all undertakings that are not excluded from Section 106 review. We conclude that the negotiating process as well as the notice and comment in this rulemaking proceeding have provided interested parties with ample opportunities to influence their content and form.

D. Transition Period

165. In the *Notice*, we requested comment on how the Nationwide Agreement should apply to Section 106 reviews that are pending at the time it becomes effective.[412] Specifically, should cases then undergoing review be completed according to the rules of Part 800, or should the Nationwide Agreement apply?

166. Several commenters recommend only a prospective application. The California and New Hampshire SHPOs, for example, argue that all pending reviews should continue under the traditional Section 106 process.[413] Fordham University argues that application of the Nationwide Agreement to pending cases should be determined on a case-by-case basis, and that the Nationwide Agreement should apply only where it simplifies the process.[414] PCIA and the New York Botanical Garden agree, noting that retroactive application would be problematic.[415] ACRA, however, suggests retroactive application unless the applicant and SHPO/THPO otherwise agree.[416]

167. We agree with most commenters that the Nationwide Agreement should apply prospectively. The Nationwide Agreement includes not only timelines and procedures, but also standards and forms that help ensure that the timelines and procedures will be reasonable for SHPOs/THPOs and

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[409] The Office of Management and Budget has designated proposed Forms NT and CO as FCC Forms 620 and 621, respectively.

[410] In addition, where construction has commenced or been completed, the revised forms ask for the commencement and completion dates.

[411] *See* Appendix B at B-22, *infra* (Nationwide Agreement, § VII.A.4).

[412] *Notice*, 18 FCC Rcd at 11666.

[413] California SHPO Comments at 4; New Hampshire SHPO Comments at 4.

[414] Fordham University Comments at 31-32.

[415] PCIA Comments at 44-45; New York Botanical Garden Reply Comments at 7-8.

[416] ACRA Comments at 1.

will not compromise historic preservation. Because pending applications may not meet the Nationwide Agreement's standards, and in all likelihood will not use the prescribed forms,[417] to apply it automatically to all pending cases would cause confusion and potentially impose unreasonable burdens on SHPOs/THPOs. We note, however, that should a party wish to take advantage of the provisions in the Nationwide Agreement, it may withdraw its filing and resubmit under the Nationwide Agreement.

E. Amendment of Commission Rules

168. In the Notice, we proposed amending Section 1.1307(a)(4) of the Commission's rules, which directs that proposed undertakings be evaluated for their effects on historic properties, expressly to require that applicants follow the procedures set forth in the Council's rules, as modified and supplemented by the Nationwide Agreement and the Collocation Agreement.[418] Few commenters addressed this proposal. PCIA and ACRA support the proposed rule change, arguing that it will bring certainty to the process and otherwise facilitate NHPA reviews.[419]

169. We adopt the change to Section 1.1307(a)(4) as proposed. The rule will bring administrative certainty by making it clear that the provisions of the Nationwide Agreement are mandatory and binding upon applicants, and that non-compliance with its procedures will subject a party to potential enforcement action.

F. Other Matters

170. Finally, several commenters raise issues other than the adoption and drafting of the Nationwide Agreement. Several of these comments involve the Collocation Agreement. For example, USET *et al.* argue that the Collocation Agreement is invalid because the Commission did not fulfill its obligation to engage in government-to-government consultation with federally recognized tribes.[420] EBCI contends that the Collocation Agreement does not sufficiently acknowledge soil disturbance, and thus may permit damage to sites significant to tribes.[421] NATE proposes amending the definition of "substantial increase in size" in order to encourage construction outside the lease area.[422] The Collocation Agreement has been binding on the Commission, Council, and Conference since its execution on March 16, 2001, and potential revision of its terms is not within the scope of the *Notice*. Any possible revisions to the Collocation Agreement will be pursued through the process set forth in that document.[423]

171. Other commenters seek revision or clarification of the Commission's rules governing aspects of environmental review other than the Section 106 process. For example, Cingular requests that we establish a safe harbor for licensees purchasing existing towers, such that any liability for towers that did not go through the Section 106 process would attach solely to the original tower owner, and not to the

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[417] We note that use of the forms will not be effective until they are approved by the Office of Management and Budget.

[418] *Notice*, 18 FCC Rcd at 11666; *Errata*, 18 FCC Rcd at 12854-12855.

[419] ACRA Comments at 1; PCIA Comments at 45.

[420] USET *et al.* Comments at 12.

[421] EBCI Comments at 2.

[422] NATE Reply Comments at 1.

[423] *See Collocation Agreement*, 16 FCC Rcd at 5579-5580 (Amendments), 5580 (Annual Meeting of the Signatories).

purchaser.[424] Mr. Tennant, on the other hand, opposes safe harbors for any towers that did not go through the Section 106 process.[425] The State of Maryland requests guidance on when Environmental Assessments should be filed, including procedures and timelines.[426] American Tower requests clarification that it need not file environmental assessments for conditional no adverse effect or no effect recommendations from SHPOs/THPOs.[427] These issues are outside the scope of the *Notice*, and we decline to address them here. Hence, these matters will continue to be governed by the existing rules and Commission or staff guidance.[428] The relevant Bureaus will offer guidance on process issues as needed to resolve uncertainty.

172. The Ohio SHPO suggests that the Commission should offer training sessions and other guidance on the implementation of the Nationwide Agreement.[429] We direct the operating Bureaus to develop such programs and materials, using live, web-based, and/or written media, as needed and consistent with the availability of resources.

IV. PROCEDURAL MATTERS

A. Final Regulatory Flexibility Analysis

173. Pursuant to the Regulatory Flexibility Act,[430] the Final Regulatory Flexibility Analysis (FRFA) for the *Report and Order* is set forth in Appendix C. The Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, will send a copy of the *Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the Regulatory Flexibility Act.

B. Paperwork Reduction Act of 1995 Analysis

174. This document contains modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. It will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collection requirements contained in this proceeding. Public and agency comments are due [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Comments should address the following: (a) whether the proposed collection of information is necessary for the proper performance

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[424] Cingular Comments at 2-3; *see also* American Tower Comments at 15-16 (requesting clarification of responsibilities of tower owners and licensees).

[425] Tennant Comments at 2.

[426] State of Maryland Comments at 2.

[427] American Tower Comments at 14-15; AWS Comments at 17.

[428] *See Collocation Agreement Fact Sheet* at 10 ("applicants should not file an EA with the Commission under Section 1.1307(a)(4) if a SHPO has concurred in a proposed finding of 'no effect' or 'no adverse effect'. . . ."). *See Tower and Antenna Siting Issues*, Wireless Telecommunications Bureau, <http://wireless.fcc.gov/siting/environment.html#collocation>.

[429] Ohio SHPO Comments at 1.

[430] 5 U.S.C. § 603.

of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A copy of any comments on the information collections contained herein should be submitted to Judith B. Herman, Federal Communications Commission, 445 12th St., S.W., Room 1-C804, Washington, D.C. 20554, or via the Internet to Judith-B.Herman@fcc.gov, and to Edward C. Springer, OMB Desk Officer, 10236 New Executive Office Building, 724 17th St., N.W., Washington, D.C. 20503, or via the Internet to Edward.Springer@omb.eop.gov.

175. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4), we previously sought comment on how the Commission might "further reduce the information collection burden for small business concerns with fewer than 25 employees." In Appendix C to this *Report and Order*, we have assessed the effects of certain policy changes brought about by the Nationwide Agreement that might impose information collection burdens.[431] More specifically, we believe that businesses with fewer than 25 employees will be affected by the Nationwide Agreement in a manner similar to other small entities. Burdens and benefits may be felt more acutely by small businesses due to their reduced ability to spread regulatory costs across a larger number of projects. The Nationwide Agreement does impose reporting, recordkeeping, and other compliance requirements as described in Appendix C, Section D.[432] However, Part III of the Nationwide Agreement, which allows for the construction of certain telecommunications facilities without the need to submit Section 106 materials to the SHPO/THPO, will probably provide the greatest regulatory relief for small businesses, including those with fewer than 25 employees.[433] We believe that the Part III exclusions will be especially helpful for smaller entities including those with fewer than 25 employees who rely more heavily on the prompt, predictable completion of each project to maintain a satisfactory cash flow. Businesses that avail themselves of an exclusion will have some costs. For example, they will have to determine whether a specific project satisfies the criteria for that exclusion and maintain documentation of that determination in their files.

C. Congressional Review Act Analysis

176. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

D. Contact Information

177. For further information, contact Frank Stilwell at (202) 418-1892.

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[431] *See* Appendix C ("Final Regulatory Flexibility Analysis"), Section D ("Description of Reporting, Recordkeeping, and Other Compliance Requirements") at C-20 to C-21.

[432] *Id.*

[433] Appendix B at B-8 to B-10, *infra* (Nationwide Agreement, § III).

E. Accessibility Information

178. Accessible formats of this *Report and Order* (computer diskettes, large print, audio recording and Braille) are available to persons with disabilities by contacting Brian Millin, of the Consumer & Governmental Affairs Bureau, at (202) 418-7426, TTY (202) 418-7365, or at bmillin@fcc.gov.

V. ORDERING CLAUSES

179. Pursuant to Sections 1, 4(i), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 303(r), 309(j), IT IS ORDERED that this *Report and Order* and the policies set forth herein are ADOPTED and that Part 1 of the Commission's rules, 47 C.F.R. Part 1 is AMENDED, effective sixty days after publication in the Federal Register. The information collections contained in the applicable rules (FCC Forms 620 and 621) will become effective following OMB approval. The Commission will publish a document at a later date establishing the effective date of those rules.

180. IT IS ORDERED that the Commission's Consumer Information Bureau, Reference Information Center, SHALL SEND a copy of the *Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

181. IT IS FURTHER ORDERED that the Commission SHALL SEND a copy of this Report and Order to Congress and the General Accounting Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch

Marlene H. Dortch
Secretary

Appendix A

Commenters

1 Alabama Historical Commission (Alabama SHPO)
2 American Cultural Resources Association (ACRA)
3 American Tower Corporation (American Tower)
4 Ameritech Mobile Services, Inc. (Ameritech)
5 Appalachian Trail Conference (Appalachian Trail)
6 AT&T Wireless Services, Inc. (AWS)
7 Blooston, Mordkofsky, Dickens, Duffy & Prendergast (Blooston)
8 California State Historic Preservation Officer (California SHPO)
9 Cellular Telecommunications & Internet Association (CTIA)
10 Central Station Alarm Association (Central Alarm)
11 Cheyenne River Sioux Tribe Telephone Authority (Cheyenne River Sioux Tribe)
12 Cingular Wireless LLC (Cingular)
13 Civil War Preservation Trust
14 Confederated Tribes of the Umatilla Indian Reservation
15 Crown Castle USA, Inc. (Crown)
16 Delaware State Historic Preservation Officer (Deleware SHPO)
17 Eastern Band of Cherokee Indians (EBCI)
18 Eastern Shoshone Tribe
19 Fordham University
20 Historic Preservation Division, Georgia Department of Natural Resources (Georgia SHPO)
21 Hualapai Nation
22 Idaho State Historic Preservation Office (Idaho SHPO)
23 Leech Lake Band of Ojibwe
24 Maine Historic Preservation Commission (Maine SHPO)
25 Maryland State Historic Preservation Officer (Maryland SHPO)
26 Massachusetts Historical Commission (Massachusetts SHPO)
27 Mississippi Band of Choctaw Indians
28 National Association of Broadcasters (NAB)
29 National Association of Tribal Historic Preservation Officers (NATHPO)
30 National Conference of State Historic Preservation Officers (Conference)
31 National Trust for Historic Preservation (National Trust)
32 Navajo Nation Historic Preservation Department (Navajo Nation)
33 New Hampshire Division of Historical Resources (New Hampshire SHPO)
34 Nextel Communications, Inc. (Nextel)
35 O'ahu Council of Hawaiian Civic Clubs Committee (O'ahu)
36 Ohio Historic Preservation Office (Ohio SHPO)
37 Oneida Indian Nation
38 Oregon State Historic Preservation Office (Oregon SHPO)

39	PCIA - The Wireless Infrastructure Association (PCIA)
40	Rotenstein, Dr. David S. (Rotenstein)
41	SBC Communications Inc. (SBC)
42	Seneca Nation of Indians
43	South Carolina State Historic Preservation Office (South Carolina SHPO)
44	Sprint Corporation (Sprint)
45	State of Maryland, Department of Budget and Management (State of Maryland)
46	Tuolumne Me-Wuk Tribal Council
47	United South and Eastern Tribes, Inc. and its Member Tribes (USET *et al*)
48	Verizon Wireless (Verizon)
49	Vermont Division for Historic Preservation (Vermont SHPO)
50	West Virginia Division of Culture and History (West Virginia SHPO)
51	Western Wireless Corporation and T-Mobile USA, Inc. (Western/T-Mobile)
52	Wireless Communications Association International, Inc. (WCA)
53	White Mountain Apache Tribe
54	Wisconsin Historical Society, Division of Historic Preservation (Wisconsin SHPO)
55	Wyoming Department of State Parks and Cultural Resources (Wyoming SHPO)

Reply Commenters

1	AT&T Wireless Services, Inc., T-Mobile USA, Inc. and Western Wireless Corp (AWS *et al*)
2	Cellular Telecommunications & Internet Association (CTIA)
3	Cheyenne River Sioux Tribe Telephone Authority (Cheyenne River Sioux Tribe)
4	Fordham University
5	National Association of Tower Erectors (NATE)
6	New York Botanical Garden
7	Nextel Communications, Inc. (Nextel)
8	PCIA – The Wireless Infrastructure Association (PCIA)
9	Rotenstein, Dr. David S. (Rotenstein)
10	SBC Communications Inc. (SBC)
11	Sprint Corporation (Sprint)
12	Tennant, James M.
13	Tunica-Biloxi Indian Tribe
14	United South and Eastern Tribes, Inc. and its Member Tribes (USET *et al*)
15	United States Cellular Corporation (US Cellular)

APPENDIX B

NATIONWIDE PROGRAMMATIC AGREEMENT FOR REVIEW OF EFFECTS ON HISTORIC PROPERTIES FOR CERTAIN UNDERTAKINGS APPROVED BY THE FEDERAL COMMUNICATIONS COMMISSION

September 2004

INTRODUCTION

WHEREAS, Section 106 of the National Historic Preservation Act of 1966, as amended ("NHPA") (codified at 16 U.S.C. § 470f), requires federal agencies to take into account the effects of certain of their Undertakings on Historic Properties (see Section II, below), included in or eligible for inclusion in the National Register of Historic Places ("National Register"), and to afford the Advisory Council on Historic Preservation ("Council") a reasonable opportunity to comment with regard to such Undertakings; and

WHEREAS, under the authority granted by Congress in the Communications Act of 1934, as amended (47 U.S.C. § 151 *et seq.*), the Federal Communications Commission ("Commission") establishes rules and procedures for the licensing of non-federal government communications services, and the registration of certain antenna structures in the United States and its Possessions and Territories; and

WHEREAS, Congress and the Commission have deregulated or streamlined the application process regarding the construction of individual Facilities in many of the Commission's licensed services; and

WHEREAS, under the framework established in the Commission's environmental rules, 47 C.F.R. §§ 1.1301-1.1319, Commission licensees and applicants for authorizations and antenna structure registrations are required to prepare, and the Commission is required to independently review and approve, a pre-construction Environmental Assessment ("EA") in cases where a proposed tower or antenna may significantly affect the environment, including situations where a proposed tower or antenna may affect Historic Properties that are either listed in or eligible for listing in the National Register, including properties of religious and cultural importance to an Indian tribe or Native Hawaiian organization ("NHO") that meet the National Register criteria; and

WHEREAS, the Council has adopted rules implementing Section 106 of the NHPA (codified at 36 C.F.R. Part 800) and setting forth the process, called the "Section 106 process," for complying with the NHPA; and

WHEREAS, pursuant to the Commission's rules and the terms of this Nationwide Programmatic Agreement for Review of Effects on Historic Properties for Certain Undertakings Approved by the Federal Communications Commission ("Nationwide

Agreement"), Applicants (*see* Section II.A.2) have been authorized, consistent with the terms of the memorandum from the Council to the Commission, titled "Delegation of Authority for the Section 106 Review of Telecommunications Projects," dated September 21, 2000, to initiate, coordinate, and assist the Commission with compliance with many aspects of the Section 106 review process for their Facilities; and

WHEREAS, in August 2000, the Council established a Telecommunications Working Group (the "Working Group") to provide a forum for the Commission, the Council, the National Conference of State Historic Preservation Officers ("Conference"), individual State Historic Preservation Officers ("SHPOs"), Tribal Historic Preservation Officers ("THPOs"), other tribal representatives, communications industry representatives, and other interested members of the public to discuss improved Section 106 compliance and to develop methods of streamlining the Section 106 review process; and

WHEREAS, Section 214 of the NHPA (16 U.S.C. § 470v) authorizes the Council to promulgate regulations implementing exclusions from Section 106 review, and Section 800.14(b) of the Council's regulations (36 C.F.R § 800.14(b)) allows for programmatic agreements to streamline and tailor the Section 106 review process to particular federal programs, if they are consistent with the Council's regulations; and

WHEREAS, the Commission, the Council, and the Conference executed on March 16, 2001, the Nationwide Programmatic Agreement for the Collocation of Wireless Antennas (the "Collocation Agreement"), in order to streamline review for the collocation of antennas on existing towers and other structures and thereby reduce the need for the construction of new towers (Attachment 1 to this Nationwide Agreement); and

WHEREAS, the Council, the Conference, and the Commission now agree it is desirable to further streamline and tailor the Section 106 review process for Facilities that are not excluded from Section 106 review under the Collocation Agreement while protecting Historic Properties that are either listed in or eligible for listing in the National Register; and

WHEREAS, the Working Group agrees that a nationwide programmatic agreement is a desirable and effective way to further streamline and tailor the Section 106 review process as it applies to Facilities; and

WHEREAS, this Nationwide Agreement will, upon its execution by the Council, the Conference, and the Commission, constitute a substitute for the Council's rules with respect to certain Commission Undertakings; and

WHEREAS, the Commission sought public comment on a draft of this Nationwide Agreement through a *Notice of Proposed Rulemaking* released on June 9, 2003;

WHEREAS, the Commission has actively sought and received participation and comment from Indian tribes and NHOs regarding this Nationwide Agreement; and

WHEREAS, the Commission has consulted with federally recognized Indian tribes regarding this Nationwide Agreement (*see Report and Order*, FCC 04-222, at ¶ 31); and

WHEREAS, this Nationwide Agreement provides for appropriate public notification and participation in connection with the Section 106 process; and

WHEREAS, Section 101(d)(6) of the NHPA provides that federal agencies "shall consult with any Indian tribe or Native Hawaiian organization" that attaches religious and cultural significance to properties of traditional religious and cultural importance that may be determined to be eligible for inclusion in the National Register and that might be affected by a federal undertaking (16 U.S.C. § 470a(d)(6)); and

WHEREAS, the Commission has adopted a "Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes" dated June 23, 2000, pursuant to which the Commission: recognizes the unique legal relationship that exists between the federal government and Indian tribal governments, as reflected in the Constitution of the United States, treaties, federal statutes, Executive orders, and numerous court decisions; affirms the federal trust relationship with Indian tribes, and recognizes that this historic trust relationship requires the federal government to adhere to certain fiduciary standards in its dealings with Indian tribes; commits to working with Indian tribes on a government-to-government basis consistent with the principles of tribal self-governance; commits, in accordance with the federal government's trust responsibility, and to the extent practicable, to consult with tribal governments prior to implementing any regulatory action or policy that will significantly or uniquely affect tribal governments, their land and resources; strives to develop working relationships with tribal governments, and will endeavor to identify innovative mechanisms to facilitate tribal consultations in the Commission's regulatory processes; and endeavors to streamline its administrative process and procedures to remove undue burdens that its decisions and actions place on Indian tribes; and

WHEREAS, the Commission does not delegate under this Programmatic Agreement any portion of its responsibilities to Indian tribes and NHOs, including its obligation to consult under Section 101(d)(6) of the NHPA; and

WHEREAS, the terms of this Nationwide Agreement are consistent with and do not attempt to abrogate the rights of Indian tribes or NHOs to consult directly with the Commission regarding the construction of Facilities; and

WHEREAS, the execution and implementation of this Nationwide Agreement will not preclude Indian tribes or NHOs, SHPO/THPOs, local governments, or members of the public from filing complaints with the Commission or the Council regarding effects on Historic Properties from any Facility or any activity covered under the terms of the Nationwide Agreement; and

WHEREAS, Indian tribes and NHOs may request Council involvement in Section 106 cases that present issues of concern to Indian tribes or NHOs (see 36 C.F.R. Part 800, Appendix A, Section (c)(4)); and

WHEREAS, the Commission, after consulting with federally recognized Indian tribes, has developed an electronic Tower Construction Notification System through which Indian tribes and NHOs may voluntarily identify the geographic areas in which Historic Properties to which they attach religious and cultural significance may be located, Applicants may ascertain which participating Indian tribes and NHOs have identified such an interest in the geographic area in which they propose to construct Facilities, and Applicants may voluntarily provide electronic notification of proposed Facilities construction for the Commission to forward to participating Indian tribes, NHOs, and SHPOs/THPOs; and

WHEREAS, the Council, the Conference and the Commission recognize that Applicants' use of qualified professionals experienced with the NHPA and Section 106 can streamline the review process and minimize potential delays; and

WHEREAS, the Commission has created a position and hired a cultural resources professional to assist with the Section 106 process; and

WHEREAS, upon execution of this Nationwide Agreement, the Council may still provide advisory comments to the Commission regarding the coordination of Section 106 reviews; notify the Commission of concerns raised by consulting parties and the public regarding an Undertaking; and participate in the resolution of adverse effects for complex, controversial, or other non-routine projects;

NOW THEREFORE, in consideration of the above provisions and of the covenants and agreements contained herein, the Council, the Conference and the Commission (the "Parties") agree as follows:

I. APPLICABILITY AND SCOPE OF THIS NATIONWIDE AGREEMENT

A. This Nationwide Agreement (1) excludes from Section 106 review certain Undertakings involving the construction and modification of Facilities, and (2) streamlines and tailors the Section 106 review process for other Undertakings involving the construction and modification of Facilities. An illustrative list of Commission activities in relation to which Undertakings covered by this Agreement may occur is provided as Attachment 2 to this Agreement.

B. 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.

C. This Agreement does not apply to Antenna Collocations that are exempt from Section 106 review under the Collocation Agreement (see Attachment 1). Pursuant to the terms of the Collocation Agreement, such Collocations shall not be subject to the Section 106 review process and shall not be submitted to the SHPO/THPO for review. This Agreement does apply to collocations that are not exempt from Section 106 review under the Collocation Agreement.

D. This Agreement does not apply on "tribal lands" as defined under Section 800.16(x) of the Council's regulations, 36 C.F.R. § 800.16(x) ("Tribal lands means all lands within the exterior boundaries of any Indian reservation and all dependent Indian communities."). This Nationwide Agreement, however, will apply on tribal lands should a tribe, pursuant to appropriate tribal procedures and upon reasonable notice to the Council, Commission, and appropriate SHPO/THPO, elect to adopt the provisions of this Nationwide Agreement. Where a tribe that has assumed SHPO functions pursuant to Section 101(d)(2) of the NHPA (16 U.S.C. § 470(d)(2)) has agreed to application of this Nationwide Agreement on tribal lands, the term SHPO/THPO denotes the Tribal Historic Preservation Officer with respect to review of proposed Undertakings on those tribal lands. Where a tribe that has not assumed SHPO functions has agreed to application of this Nationwide Agreement on tribal lands, the tribe may notify the Commission of the tribe's intention to perform the duties of a SHPO/THPO, as defined in this Nationwide Agreement, for proposed Undertakings on its tribal lands, and in such instances the term SHPO/THPO denotes both the State Historic Preservation Officer and the tribe's authorized representative. In all other instances, the term SHPO/THPO denotes the State Historic Preservation Officer.

E. This Nationwide Agreement governs only review of Undertakings under Section 106 of the NHPA. Applicants completing the Section 106 review process under the terms of this Nationwide Agreement may not initiate construction without completing any environmental review that is otherwise required for effects other than historic preservation under the Commission's rules (*See* 47 C.F.R. §§ 1.1301-1.1319). Completion of the Section 106 review process under this Nationwide Agreement satisfies an Applicant's obligations under the Commission's rules with respect to Historic Properties, except for Undertakings that have been determined to have an adverse effect on Historic Properties and that therefore require preparation and filing of an Environmental Assessment (*See* 47 C.F.R. § 1.1307(a)(4)).

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:

1. Antenna. An apparatus designed for the purpose of emitting radio frequency ("RF") radiation, to be operated or operating from a fixed location pursuant to Commission authorization, for the transmission of writing, signs, signals, data, images, pictures, and sounds of all kinds, including the transmitting device and any on-site equipment, switches, wiring, cabling, power sources, shelters or cabinets associated with that antenna and added to a Tower, structure, or building as part of the original installation of the antenna. For most services, an Antenna will be mounted on or in, and is distinct from, a supporting structure such as a Tower, structure or building. However, in the case of AM broadcast stations, the entire Tower or group of Towers constitutes the Antenna for that station. For purposes of this Nationwide Agreement, the term Antenna does not include unintentional radiators, mobile stations, or devices authorized under Part 15 of the Commission's rules.

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.

3. Area of Potential Effects ("APE"). The geographic area or areas within which an Undertaking may directly or indirectly cause alterations in the character or use of Historic Properties, if any such properties exist.

4. Collocation. The mounting or installation of an Antenna on an existing Tower, building, or structure for the purpose of transmitting radio frequency signals for telecommunications or broadcast purposes.

5. Effect. An alteration to the characteristics of a Historic Property qualifying it for inclusion in or eligibility for the National Register.

6. Experimental Authorization. An authorization issued to conduct experimentation utilizing radio waves for gathering scientific or technical operation data directed toward the improvement or extension of an established service and not intended for reception and use by the general public. "Experimental Authorization" does not include an "Experimental Broadcast Station" authorized under Part 74 of the Commission's rules.

7. Facility. A Tower or an Antenna. The term Facility may also refer to a Tower and its associated Antenna(s).

8. Field Survey. A research strategy that utilizes one or more visits to the area where construction is proposed as a means of identifying Historic Properties.

9. 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. 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.

10. National Register. The National Register of Historic Places, maintained by the Secretary of the Interior's office of the Keeper of the National Register.

11. SHPO/THPO Inventory. A set of records of previously gathered information, authorized by state or tribal law, on the absence, presence and significance of historic and archeological resources within the state or tribal land.

12. Special Temporary Authorization. Authorization granted to a permittee or licensee to allow the operation of a station for a limited period at a specified variance from the terms of the station's permanent authorization or requirements of the Commission's rules applicable to the particular class or type of station.

13. Submission Packet. The document to be submitted initially to the SHPO/THPO to facilitate review of the Applicant's findings and any determinations with regard to the potential impact of the proposed Undertaking on Historic Properties in the APE. There are two Submission Packets: (a) The New Tower Submission Packet (FCC Form 620) (See Attachment 3) and (b) The Collocation Submission Packet (FCC Form 621) (See Attachment 4). Any documents required to be submitted along with a Form are part of the Submission Packet.

14. Tower. Any structure built for the sole or primary purpose of supporting Commission-licensed or authorized Antennas, including the on-site fencing, equipment, switches, wiring, cabling, power sources, shelters, or cabinets associated with that Tower but not installed as part of an Antenna as defined herein.

B. All other terms not defined above or elsewhere in this Nationwide Agreement shall have the same meaning as set forth in the Council's rules section on Definitions (36 C.F.R. § 800.16) or the Commission's rules (47 C.F.R. Chapter I).

C. For the calculation of time periods under this Agreement, "days" mean "calendar days." Any time period specified in the Agreement that ends on a weekend or a Federal or State holiday is extended until the close of the following business day.

D. Written communications include communications by e-mail or facsimile.

III. UNDERTAKINGS EXCLUDED FROM SECTION 106 REVIEW

Undertakings that fall within the provisions listed in the following sections III.A. through III.F. 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. The determination that an exclusion applies to an Undertaking should be made by an authorized individual within the Applicant's organization, and Applicants should retain documentation of their determination that an exclusion applies. Concerns regarding the application of these exclusions from Section 106 review may be presented to and considered by the Commission pursuant to Section XI.

A. Enhancement 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. For towers constructed after March 16, 2001, this exclusion applies only if the tower has completed the Section 106 review process and any associated environmental reviews required by the Commission.

B. 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.c.1-3) and that does not expand the boundaries of the leased or owned property surrounding the tower by more than 30 feet in any direction or involve excavation outside these expanded boundaries or outside any existing access or utility easement related to the site. For towers constructed after March 16, 2001, this exclusion applies only if the tower has completed the Section 106 review process and any associated environmental reviews required by the Commission's rules.

C. Construction of any temporary communications Tower, Antenna structure, or related Facility that involves no excavation or where all areas to be excavated will be located in areas described in Section VI.D.2.c.i below, including but not limited to the following:

1. A Tower or Antenna authorized by the Commission for a temporary period, such as any Facility authorized by a Commission grant of Special Temporary Authority ("STA") or emergency authorization;

2. A cell on wheels (COW) transmission Facility;

3. A broadcast auxiliary services truck, TV pickup station, remote pickup broadcast station (e.g., electronic newsgathering vehicle) authorized under Part 74 or temporary fixed or transportable earth station in the fixed satellite service (e.g., satellite newsgathering vehicle) authorized under Part 25;

4. A temporary ballast mount Tower;

5. Any Facility authorized by a Commission grant of an experimental authorization.

For purposes of this Section III.C, the term "temporary" means "for no more than twenty-four months duration except in the case of those Facilities associated with national security."

D. Construction of a Facility less than 200 feet in overall height above ground level in an existing industrial park,[1] commercial strip mall,[2] or shopping center[3] that occupies a total land area of 100,000 square feet or more, provided that the industrial park, strip mall, or shopping center is not located within the boundaries of or within 500 feet of a Historic Property, as identified by the Applicant after a preliminary search of relevant records. Proposed Facilities within this exclusion must complete the process of participation of Indian tribes and NHOs pursuant to Section IV of this Agreement. If as a result of this process the Applicant or the Commission identifies a Historic Property that may be affected, the Applicant must complete the Section 106 review process pursuant to this Agreement notwithstanding the exclusion.

E. Construction of a Facility in or within 50 feet of the outer boundary of a right-of-way designated by a Federal, State, local, or Tribal government for the location of communications Towers or above-ground utility transmission or

[1] A tract of land that is planned, developed, and operated as an integrated facility for a number of individual industrial uses, with consideration to transportation facilities, circulation, parking, utility needs, aesthetics and compatibility.

[2] A structure or grouping of structures, housing retail business, set back far enough from the street to permit parking spaces to be placed between the building entrances and the public right of way.

[3] A group of commercial establishments planned, constructed, and managed as a total entity, with customer and employee parking provided on-site, provision for goods delivery separated from customer access, aesthetic considerations and protection from the elements, and landscaping and signage in accordance with an approved plan.

distribution lines and associated structures and equipment and in active use for such purposes, provided:

1. The proposed Facility would not constitute a substantial increase in size, under elements 1-3 of the definition in the Collocation Agreement, over existing structures located in the right-of-way within the vicinity of the proposed Facility, and;

2. The proposed Facility would not be located within the boundaries of a Historic Property, as identified by the Applicant after a preliminary search of relevant records.

Proposed Facilities within this exclusion must complete the process of participation of Indian tribes and NHOs pursuant to Section IV of this Agreement. If as a result of this process the Applicant or the Commission identifies a Historic Property that may be affected, the Applicant must complete the Section 106 review process pursuant to this Agreement notwithstanding the exclusion.

F. Construction of a Facility in any area previously designated by the SHPO/THPO at its discretion, following consultation with appropriate Indian tribes and NHOs, as having limited potential to affect Historic Properties. Such designation shall be documented by the SHPO/THPO and made available for public review.

IV. PARTICIPATION OF INDIAN TRIBES AND NATIVE HAWAIIAN ORGANIZATIONS IN UNDERTAKINGS OFF TRIBAL LANDS

A. The Commission recognizes its responsibility to carry out consultation with any Indian tribe or NHO that attaches religious and cultural significance to a Historic Property if the property may be affected by a Commission undertaking. This responsibility is founded in Sections 101(d)(6)(a-b) and 106 of the NHPA (16 U.S.C. §§ 470a(d)(6)(a-b) and 470f), the regulations of the Council (36 C.F.R. Part 800), the Commission's environmental regulations (47 C.F.R. §§ 1.1301-1.1319), and the unique legal relationship that exists between the federal government and Indian Tribal governments, as reflected in the Constitution of the United States, treaties, federal statutes, Executive orders, and numerous court decisions. This historic trust relationship requires the federal government to adhere to certain fiduciary standards in its dealings with Indian Tribes. (*Commission Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes*).

B. As an initial step to enable the Commission to fulfill its duty of consultation, Applicants shall use reasonable and good faith efforts to identify any Indian tribe or NHO that may attach religious and cultural significance to Historic

Properties that may be affected by an Undertaking. Applicants should be aware that frequently, Historic Properties of religious and cultural significance to Indian tribes and NHOs are located on ancestral, aboriginal, or ceded lands of such tribes and organizations and Applicants should take this into account when complying with their responsibilities. Where an Indian tribe or NHO has voluntarily provided information to the Commission's Tower Construction Notification System regarding the geographic areas in which Historic Properties of religious and cultural significance to that Indian tribe or NHO may be located, reference to the Tower Construction Notification System shall constitute a reasonable and good faith effort at identification with respect to that Indian tribe or NHO. In addition, such reasonable and good faith efforts may include, but are not limited to, seeking relevant information from the relevant SHPO/THPO, Indian tribes, state agencies, the U.S. Bureau of Indian Affairs ("BIA"), or, where applicable, any federal agency with land holdings within the state (e.g., the U.S. Bureau of Land Management). Although these agencies can provide useful information in identifying potentially affected Indian tribes, contacting BIA, the SHPO or other federal and state agencies is not a substitute for seeking information directly from Indian tribes that may attach religious and cultural significance to a potentially affected Historic Property, as described below.

C. After the Applicant has identified Indian tribes and NHOs that may attach religious and cultural significance to potentially affected Historic Properties, the Commission has the responsibility, and the Commission imposes on the Applicant the obligation, to ensure that contact is made at an early stage in the planning process with such Indian tribes and NHOs in order to begin the process of ascertaining whether such Historic Properties may be affected. This initial contact shall be made by the Commission or the Applicant, in accordance with the wishes of the Indian tribe or NHO. This contact shall constitute only an initial effort to contact the Indian tribe or NHO, and does not in itself fully satisfy the Applicant's obligations or substitute for government-to-government consultation unless the Indian tribe or NHO affirmatively disclaims further interest or the Indian tribe or NHO has otherwise agreed that such contact is sufficient. Depending on the preference of the Indian tribe or NHO, the means of initial contact may include, without limitation:

1. Electronic notification through the Commission's Tower Construction Notification System;

2. Written communication from the Commission at the request of the Applicant;

3. Written, e-mail, or telephonic notification directly from the Applicant to the Indian tribe or NHO;

4. Any other means that the Indian Tribe or NHO has informed the Commission are acceptable, including through the adoption of best practices pursuant to Section IV.J, below; or

5. Any other means to which an Indian tribe or NHO and an Applicant have agreed pursuant to Section IV.K, below.

D. The Commission will use its best efforts to ascertain the preferences of each Indian tribe and NHO for initial contact, and to make these preferences available to Applicants in a readily accessible format. In addition, the Commission will use its best efforts to ascertain, and to make available to Applicants, any locations or types of construction projects, within the broad geographic areas in which Historic Properties of religious and cultural significance to an Indian tribe or NHO may be located, for which the Indian tribe or NHO does not expect notification. To the extent they are comfortable doing so, the Commission encourages Indian tribes and NHOs to accept the Tower Construction Notification System as an efficient and thorough means of making initial contact.

E. In the absence of any contrary indication of an Indian tribe's or NHO's preference, where an Applicant does not have a pre-existing relationship with an Indian tribe or NHO, initial contact with the Indian tribe or NHO shall be made through the Commission. Unless the Indian tribe or NHO has indicated otherwise, the Commission may make this initial contact through the Tower Construction Notification System. An Applicant that has a pre-existing relationship with an Indian tribe or NHO shall make initial contact in the manner that is customary to that relationship or in such other manner as may be accepted by the Indian tribe or NHO. An Applicant shall copy the Commission on any initial written or electronic direct contact with an Indian tribe or NHO, unless the Indian tribe or NHO has agreed through a best practices agreement or otherwise that such copying is not necessary.

F. Applicants' direct contacts with Indian tribes and NHOs, where accepted by the Indian tribe or NHO, shall be made in a sensitive manner that is consistent with the reasonable wishes of the Indian tribe or NHO, where such wishes are known or can be reasonably ascertained. In general, unless an Indian tribe or NHO has provided guidance to the contrary, Applicants shall follow the following guidelines:

1. All communications with Indian tribes shall be respectful of tribal sovereignty;

2. Communications shall be directed to the appropriate representative designated or identified by the tribal government or other governing body;

3. Applicants shall provide all information reasonably necessary for the Indian tribe or NHO to evaluate whether Historic Properties of religious and cultural significance may be affected. The parties recognize that it may be neither feasible nor desirable to provide complete information about the project at the time of initial contact, particularly when initial contact is made early in the process. Unless the Indian tribe or NHO affirmatively disclaims interest, however, it shall be provided with complete information within the earliest reasonable time frame;

4. The Applicant must ensure that Indian tribes and NHOs have a reasonable opportunity to respond to all communications. Ordinarily, 30 days from the time the relevant tribal or NHO representative may reasonably be expected to have received an inquiry shall be considered a reasonable time. Should a tribe or NHO request additional time to respond, the Applicant shall afford additional time as reasonable under the circumstances. However, where initial contact is made automatically through the Tower Construction Notification System, and where an Indian tribe or NHO has stated that it is not interested in reviewing proposed construction of certain types or in certain locations, the Applicant need not await a response to contact regarding proposed construction meeting that description;

5. Applicants should not assume that failure to respond to a single communication establishes that an Indian tribe or NHO is not interested in participating, but should make a reasonable effort to follow up.

G. The purposes of communications between the Applicant and Indian tribes or NHOs are: (1) to ascertain whether Historic Properties of religious and cultural significance to the Indian tribe or NHO may be affected by the undertaking and consultation is therefore necessary, and (2) where possible, with the concurrence of the Indian tribe or NHO, to reach an agreement on the presence or absence of effects that may obviate the need for consultation. Accordingly, the Applicant shall promptly refer to the Commission any request from a federally recognized Indian tribe for government-to-government consultation. The Commission will then carry out government-to-government consultation with the Indian tribe. Applicants shall also seek guidance from the Commission in the event of any substantive or procedural disagreement with an Indian tribe or NHO, or if the Indian tribe or NHO does not respond to the Applicant's inquiries. Applicants are strongly advised to seek guidance from the Commission in cases of doubt.

H. If an Indian tribe or NHO indicates that a Historic Property of religious and cultural significance to it may be affected, the Applicant shall invite the

commenting tribe or organization to become a consulting party. If the Indian tribe or NHO agrees to become a consulting party, it shall be afforded that status and shall be provided with all of the information, copies of submissions, and other prerogatives of a consulting party as provided for in 36 C.F.R. § 800.2.

I. Information regarding Historic Properties to which Indian tribes or NHOs attach religious and cultural significance may be highly confidential, private, and sensitive. If an Indian tribe or NHO requests confidentiality from the Applicant, the Applicant shall honor this request and shall, in turn, request confidential treatment of such materials or information in accordance with the Commission's rules and Section 304 of the NHPA (16 U.S.C. § 470w-3(a)) in the event they are submitted to the Commission. The Commission shall provide such confidential treatment consistent with its rules and applicable federal laws. Although the Commission will strive to protect the privacy interests of all parties, the Commission cannot guarantee its own ability or the ability of Applicants to protect confidential, private, and sensitive information from disclosure under all circumstances.

J. In order to promote efficiency, minimize misunderstandings, and ensure that communications among the parties are made in accordance with each Indian tribe or NHO's reasonable preferences, the Commission will use its best efforts to arrive at agreements regarding best practices with Indian tribes and NHOs and their representatives. Such best practices may include means of making initial contacts with Indian tribes and NHOs as well as guidelines for subsequent discussions between Applicants and Indian tribes or NHOs in fulfillment of the requirements of the Section 106 process. To the extent possible, the Commission will strive to achieve consistency among best practice agreements with Indian tribes and NHOs. Where best practices exist, the Commission encourages Applicants to follow those best practices.

K. Nothing in this Section shall be construed to prohibit or limit Applicants and Indian tribes or NHOs from entering into or continuing pre-existing arrangements or agreements governing their contacts, provided such arrangements or agreements are otherwise consistent with federal law and no modification is made in the roles of other parties to the process under this Nationwide Agreement without their consent. Documentation of such alternative arrangements or agreements should be filed with the Commission.

V. PUBLIC PARTICIPATION AND CONSULTING PARTIES

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 Indian tribes, NHOs and organizations of Indian tribes or NHOs, 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, Indian tribes and NHOs that attach religious and cultural significance to Historic Properties that may be affected, and the local government 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 Commission invitation or on its own decision, in accordance with 36 C.F.R. Part 800, Appendix A. An Applicant shall consider all written requests of other individuals and organizations to participate as consulting parties and determine which should be consulting parties. 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. Applicants may seek assistance from the Commission in identifying

and involving consulting parties. All entities granted consulting party status shall be identified to the SHPO/THPO as part of the Submission Packet.

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; 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

A. In preparing the Submission Packet for the SHPO/THPO and consulting parties pursuant to Section VII of this Nationwide Agreement and Attachments 3 and 4, the Applicant shall: (1) define the area of potential effects (APE); (2) identify Historic Properties within the APE; (3) evaluate the historic significance of identified properties as appropriate; and (4) assess the effects of the Undertaking on Historic Properties. The standards and procedures 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.

B. Exclusion of Specific Geographic Areas from Review.

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

C. Area of Potential Effects.

1. The term "Area of Potential Effects" is defined in Section II.A.3 of this Nationwide Agreement. For purposes of this Nationwide Agreement, the APE for direct effects and the APE for visual effects are further defined and are to be established as described below.

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

3. The APE for visual effects is the geographic area in which the Undertaking has the potential to introduce visual elements that diminish or alter the setting, including the landscape, where the setting is a character-defining feature of a Historic Property that makes it eligible for listing on the National Register.

4. Unless otherwise established through consultation with the SHPO/THPO, the presumed APE for visual effects for construction of new Facilities is the area from which the Tower will be visible:

   a. Within a half mile from the tower site if the proposed Tower is 200 feet or less in overall height;

   b. Within ¾ of a mile from the tower site if the proposed Tower is more than 200 but no more than 400 feet in overall height; or

   c. Wthin 1 ½ miles from the proposed tower site if the proposed Tower is more than 400 feet in overall height.

5. 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.

6. If the Applicant and the SHPO/THPO, after using good faith efforts, cannot reach an agreement on the use of an alternative APE, 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 time.

D. Identification and Evaluation of Historic Properties.

1. Identification and Evaluation of Historic Properties Within the APE for Visual Effects.

   a. Except to identify Historic Properties of religious and cultural significance to Indian tribes and NHOs, Applicants shall identify Historic Properties within the APE for visual effects by reviewing the following records. Applicants are required to review such records only to the extent they are available at the offices of the SHPO/THPO or can be found in publicly available sources identified by the SHPO/THPO. With respect to these properties, Applicants are not required to undertake a Field Survey or other measures other than reviewing these records in order to identify Historic Properties:

      i. Properties listed in the National Register;

      ii. Properties formally determined eligible for listing by the Keeper of the National Register;

iii. Properties that the SHPO/THPO certifies are in the process of being nominated to the National Register;

iv. Properties previously determined eligible as part of a consensus determination of eligibility between the SHPO/THPO and a Federal Agency or local government representing the Department of Housing and Urban Development (HUD); and

v. Properties listed in the SHPO/THPO Inventory that the SHPO/THPO has previously evaluated and found to meet the National Register criteria, and that are identified accordingly in the SHPO/THPO Inventory.

b. At an early stage in the planning process and in accordance with Section IV of this Nationwide Agreement, the Commission or the Applicant, as appropriate, shall gather information from Indian tribes or NHOs identified pursuant to Section IV.B to assist in identifying Historic Properties of religious and cultural significance to them within the APE for visual effects. Such information gathering may include a Field Survey where appropriate.

c. Based on the sources listed above and public comment received pursuant to Section V of this Nationwide Agreement, the Applicant shall include in its Submission Packet a list of properties it has identified as apparent Historic Properties within the APE for visual effects.

i. During the review period described in Section VII.A, the SHPO/THPO may identify additional properties included in the SHPO/THPO Inventory and located within the APE that the SHPO/THPO considers eligible for listing on the National Register, and notify the Applicant pursuant to Section VII.A.4.

ii. The SHPO/THPO may also advise the Applicant that previously identified properties on the list no longer qualify for inclusion in the National Register.

d. Applicants are encouraged at their discretion to use the services of professionals who meet the Secretary of the Interior's Professional Qualification Standards when identifying Historic Properties within the APE for visual effects.

e. Applicants are not required to evaluate the historic significance of properties identified pursuant to Section VI.D.1.a., but may rely on the previous evaluation of these properties. Applicants may, at their discretion, evaluate whether such properties are no longer eligible for inclusion in the National Register and recommend to the SHPO/THPO their removal from consideration. Any such evaluation shall be performed by a professional who meets the Secretary of the Interior's Professional Qualification Standards.

2. Identification and Evaluation of Historic Properties Within the APE for Direct Effects.

a. In addition to the properties identified pursuant to Section VI.D.1, Applicants shall make a reasonable good faith effort to identify other above ground and archeological Historic Properties, including buildings, structures, and historic districts, that lie within the APE for direct effects. Such reasonable and good faith efforts may include a Field Survey where appropriate.

b. Identification and evaluation of Historic Properties within the APE for direct effects, including any finding that an archeological Field Survey is not required, shall be undertaken by a professional who meets the Secretary of the Interior's Professional Qualification Standards. Identification and evaluation relating to archeological resources shall be performed by a professional who meets the Secretary of the Interior's Professional Qualification Standards in archeology.

c. Except as provided below, the Applicant need not undertake a Field Survey for archeological resources where:

i. the depth of previous disturbance exceeds the proposed construction depth (excluding footings and other anchoring mechanisms) by at least 2 feet as documented in the Applicant's siting analysis; or

ii. geomorphological evidence indicates that cultural resource-bearing soils do not occur within the project area or may occur but at depths that exceed 2 feet below the proposed construction depth.

d. At an early stage in the planning process and in accordance with Section IV of this Nationwide Agreement, the

Commission or the Applicant, as appropriate, shall gather information from Indian tribes or NHOs identified pursuant to Section IV.B to assist in identifying archeological Historic Properties of religious and cultural significance to them within the APE for direct effects. If an Indian tribe or NHO provides evidence that supports a high probability of the presence of intact archeological Historic Properties within the APE for direct effects, the Applicant shall conduct an archeological Field Survey notwithstanding Section VI.D.2.c.

e. Where the Applicant pursuant to Sections VI.D.2.c and VI.D.2.d finds that no archeological Field Survey is necessary, it shall include in its Submission Packet a report substantiating this finding. During the review period described in Section VII.A, the SHPO/THPO may, based on evidence that supports a high probability of the presence of intact archeological Historic Properties within the APE for direct effects, notify the Applicant that the Submission Packet is inadequate without an archeological Field Survey pursuant to Section VII.A.4.

f. The Applicant shall conduct an archeological Field Survey within the APE for direct effects if neither of the conditions in Section VI.D.2.c applies, or if required pursuant to Section VI.D.2.d or e. The Field Survey shall be conducted in consultation with the SHPO/THPO and consulting Indian tribes or NHOs.

g. The Applicant, in consultation with the SHPO/THPO and appropriate Indian tribes or NHOs, shall apply the National Register criteria (36 C.F.R. Part 63) to properties identified within the APE for direct effects that have not previously been evaluated for National Register eligibility, with the exception of those identified pursuant to Section VI.D.1.a.

3. Dispute Resolution

Where there is a disagreement regarding the identification or eligibility of a property, and after attempting in good faith to resolve the issue the Applicant and the SHPO/THPO continue to disagree, the Applicant or the SHPO/THPO may submit the issue to the Commission. The Commission shall handle such submissions in accordance with 36 C.F.R. § 800.4(c)(2).

E. Assessment of Effects

1. Applicants shall assess effects of the Undertaking on Historic Properties using the Criteria of Adverse Effect (36 C.F.R. § 800.5(a)(1)).

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, 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 of a Historic Property located within the APE.

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.

5. Assessment pursuant to this Agreement shall be performed by professionals who meet the Secretary of the Interior's Professional Qualification Standards.

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 are 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 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 SHPO/THPO receives a comment or objection, in accordance with Section V.E, more than 25 but less than 31 days following its receipt of the initial submission, the SHPO/THPO shall have five 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, or if the SHPO/THPO identifies additional Historic Properties within the APE, the SHPO/THPO will immediately notify the Applicant and describe any deficiencies. The SHPO/THPO may close its file without prejudice if the Applicant does not resubmit an amended Submission Packet within 60 days following the Applicant's receipt of the returned Submission Packet. Resubmission of the Submission Packet to the SHPO/THPO commences a new 30 day period for review.

B. Determinations of No Historic Properties Affected.

1. If the SHPO/THPO concurs in writing with the Applicant's determination of no Historic Properties 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 within 30 days following receipt of a complete Submission Packet, it is deemed that no Historic Properties exist within the APE or 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.

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.

C. Determinations of No Adverse Effect.

1. If the SHPO/THPO concurs in writing with the Applicant's determination 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 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. 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 15 days after the Commission receives the Submission Packet and accompanying material electronically or 25 days after the Commission receives this material by other means.

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 the Historic Properties it believes to be affected and 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 compliance with 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 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 fifteen 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 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.

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.

E. Retention of Information.

The SHPO/THPO shall, subject to applicable state or tribal laws and regulations, and in accordance with its rules and procedures governing historic property records, retain the information in the Submission Packet pertaining to the location and National Register eligibility of Historic Properties and make such information available to Federal agencies and Applicants in other Section 106 reviews, where disclosure is not prevented by the confidentiality standards in 36 C.F.R. § 800.11(c).

F. Removal of Obsolete Towers.

Applicants that construct new Towers under the terms of this Nationwide Agreement adjacent to or within the boundaries of a Historic Property are encouraged to disassemble such Towers should they become obsolete or remain vacant for a year or more.

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 the Collocation Agreement or 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 Indian tribes or NHOs 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.3. If the Applicant and the SHPO/THPO cannot reach agreement on measures 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.

X. CONSTRUCTION PRIOR TO COMPLIANCE WITH SECTION 106

A. The terms of Section 110(k) of the National Historic Preservation Act (16 U.S.C. § 470h-2(k)) ("Section 110(k)") apply to Undertakings covered by this Agreement. Any SHPO/THPO, potentially affected Indian tribe or NHO, the Council, or a member of the public may submit a complaint to the Commission alleging that a facility has been constructed or partially

constructed after the effective date of this Agreement in violation of Section 110(k). Any such complaint must be in writing and supported by substantial evidence specifically describing how Section 110(k) has been violated. Upon receipt of such complaint the Commission will assume responsibility for investigating the applicability of Section 110(k) in accordance with the provisions herein.

B. If upon its initial review, the Commission concludes that a complaint on its face demonstrates a probable violation of Section 110(k), the Commission will immediately notify and provide the relevant Applicant with copies of the Complaint and order that all construction of a new tower or installation of any new collocations immediately cease and remain suspended pending the Commission's resolution of the complaint.

C. Within 15 days of receipt, the Commission will review the complaint and take appropriate action, which the Commission may determine, and which may include the following:

1. Dismiss the complaint without further action if the complaint does not establish a probable violation of Section 110(k) even if the allegations are taken as true;

2. Provide the Applicant with a copy of the complaint and request a written response within a reasonable time;

3. Request from the Applicant a background report which documents the history and chronology of the planning and construction of the Facility;

4. Request from the Applicant a summary of the steps taken to comply with the requirements of Section 106 as set forth in this Nationwide Agreement, particularly the application of the Criteria of Adverse Effect;

5. Request from the Applicant copies of any documents regarding the planning or construction of the Facility, including correspondence, memoranda, and agreements;

6. If the Facility was constructed prior to full compliance with the requirements of Section 106, request from the Applicant an explanation for such failure, and possible measures that can be taken to mitigate any resulting adverse effects on Historic Properties.

D. If the Commission concludes that there is a probable violation of Section 110(k) (i.e., that "with intent to avoid the requirements of Section 106, [an Applicant] has intentionally significantly adversely affected a Historic Property"), the Commission shall notify the Applicant and forward a copy of the documentation set forth in Section X.C. to the Council and, as appropriate,

the SHPO/THPO and other consulting parties, along with the Commission's opinion regarding the probable violation of Section 110(k). The Commission will consider the views of the consulting parties in determining a resolution, which may include negotiating a Memorandum of Agreement (MOA) that will resolve any adverse effects. The Commission, SHPO/THPO, Council, and Applicant shall sign the MOA to evidence acceptance of the mitigation plan and conclusion of the Section 106 review process.

E. Nothing in Section X or any other provision of this Agreement shall preclude the Commission from continuing or instituting enforcement proceedings under the Communications Act and its rules against an Applicant that has constructed a Facility prior to completing required review under this Agreement. Sanctions for violations of the Commission's rules may include any sanctions allowed under the Communications Act and the Commission's rules.

F. The Commission shall provide copies of all concluding reports or orders for all Section 110(k) investigations conducted by the Commission to the original complainant, the Applicant, the relevant local government, and other consulting parties.

G. Facilities that are excluded from Section 106 review pursuant to the Collocation Agreement or Section III of this Agreement are not subject to review under this provision. Any parties who allege that such Facilities have violated Section 110(k) should notify the Commission in accordance with the provisions of Section XI, Public Comments and Objections.

XI. PUBLIC COMMENTS AND OBJECTIONS

Any member of the public may notify the Commission of concerns it has regarding the application of this Nationwide Agreement within a State or with regard to the review of individual Undertakings covered or excluded under the terms of this Agreement. Comments related to telecommunications activities shall be directed to the Wireless Telecommunications Bureau and those related to broadcast facilities to the Media Bureau. The Commission will consider public comments and following consultation with the SHPO/THPO, potentially affected Indian tribes and NHOs, or Council, where appropriate, take appropriate actions. The Commission shall notify the objector of the outcome of its actions.

XII. AMENDMENTS

The signatories may propose modifications or other amendments to this Nationwide Agreement. Any amendment to this Agreement shall be subject to appropriate public notice and comment and shall be signed by the Commission, the Council, and the Conference.

XIII. TERMINATION

A. Any signatory to this Nationwide Agreement may request termination by written notice to the other parties. Within sixty (60) days following receipt of a written request for termination from a signatory, all other signatories shall discuss the basis for the termination request and seek agreement on amendments or other actions that would avoid termination.

B. In the event that this Agreement is terminated, the Commission and all Applicants shall comply with the requirements of 36 C.F.R. Part 800.

XIV. ANNUAL REVIEW

The signatories to this Nationwide Agreement will meet annually on or about the anniversary of the effective date of the Agreement 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.

XV. 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 NHPA or its implementing regulations contained in 36 C.F.R. Part 800.

XVI. SEVERABILITY

If any section, subsection, paragraph, sentence, clause or phrase in this Agreement is, for any reason, held to be unconstitutional or invalid or ineffective, such decision shall not affect the validity or effectiveness of the remaining portions of this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective authorized officers as of the day and year first written above.

FEDERAL COMMUNICATIONS COMMISSION

Chairman Date 10/4/04

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Chairman Date 9-30-04

NATIONAL CONFERENCE OF STATE HISTORIC PRESERVATION OFFICERS

President Date 9/28/2004

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:** _____

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 Station[1]
- 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 and Multipoint Distribution Service MDS (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)

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[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-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), including, but not limited to, the 700 MHz and 4.9 GHz band (mobile analog or digital services using towers and antennas)

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

The copy of the FCC FORM 620 which follows this page has not been approved for use by the Office of Management and Budget ("OMB"). Text in the headers and footers of the form has been marked with the strikethrough feature to indicate that the form has not yet been approved.

When OMB has granted approval for the public to use FCC Form 620, the Commission will issue a public notice stating that such approval has been granted and attaching the approved version of the FCC Form 620. (An approved copy of the FCC Form 621 will also be attached to the public notice and released at that time.)

~~Approved by OMB~~
~~3060-1039~~
Estimated Time Per Response:
.5 to 10 hours

ATTACHMENT 3

New Tower ("NT") Submission Packet

FCC FORM 620

Introduction

The **NT Submission Packet** is to be completed by or on behalf of Applicants to construct new antenna support structures by or for the use of licensees of the Federal Communications Commission ("FCC"). **The Packet (including Form 620 and attachments) is to be submitted to the State Historic Preservation Office ("SHPO") or to the Tribal Historic Preservation Office ("THPO"), as appropriate, before any construction or other installation activities on the site begin. Failure to provide the Submission Packet and complete the review process under Section 106 of the National Historic Preservation Act ("NHPA")[1] prior to beginning construction may violate Section 110(k) of the NHPA and the Commission's rules.**

The instructions below should be read in conjunction with, and not as a substitute for, the "Nationwide Programmatic Agreement for Review of Effects on Historic Properties for Certain Undertakings Approved by the Federal Communications Commission," dated September 2004, ("Nationwide Agreement") and the relevant rules of the FCC (47 C.F.R. §§ 1.1301-1.1319) and the Advisory Council on Historic Preservation ("ACHP") (36 C.F.R. Part 800).[2]

Exclusions and Scope of Use

The NT Submission Packet should not be submitted for undertakings that are excluded from Section 106 Review. The categories of new tower construction that are excluded from historic preservation review under Section 106 of the NHPA are described in Section III of the Nationwide Agreement.

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[1] 16 U.S.C. § 470f.

[2] Section II.A.9. of the Nationwide Agreement defines a "historic property" as: "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. 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 Native Hawaiian Organization that meet the National Register criteria."

~~Applicant's Name:~~ _____
~~Project Name:~~ _____
~~Project Number:~~ _____

~~Approved by OMB~~
~~3060-1039~~
Estimated Time Per Response:
.5 to 10 hours

Where an undertaking is to be completed but no submission will be made to a SHPO or THPO due to the applicability 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.

The NT Submission Packet is to be used only for the construction of new antenna support structures. Antenna collocations that are subject to Section 106 review should be submitted using the Collocation ("CO") Submission Packet (FCC Form 621).

General Instructions: NT Submission Packet

Fill out the answers to Questions 1-5 on Form 620 and provide the requested attachments. Attachments should be numbered and provided in the order described below.

For ease of processing, provide the Applicant's Name, Applicant's Project Name, and Applicant's Project Number in the lower right hand corner of each page of Form 620 and attachments.[3]

1. Applicant Information

Full Legal Name of Applicant: _____

Name and Title of Contact Person: _____

Address of Contact Person (including Zip Code):

_____

Phone: _____ Fax: _____

E-mail address: _____

[3] Some attachments may contain photos or maps on which this information can not be provided.

~~Approved by OMB~~
~~3060-1039~~
Estimated Time Per Response:
.5 to 10 hours

2. Applicant's Consultant Information

Full Legal Name of Applicant's Section 106 Consulting Firm:

_____

Name of Principal Investigator: _____

Title of Principal Investigator: _____

Investigator's Address: _____

City: _____ State _____ Zip Code _____

Phone: _____ Fax: _____

E-mail Address: _____

Does the Principal Investigator satisfy the Secretary of the Interior's Professional Qualification Standards?[4] YES / NO.

Areas in which the Principal Investigator meets the Secretary of the Interior's Professional Qualification Standards: _____

Other "Secretary of the Interior qualified" staff who worked on the Submission Packet (provide name(s) as well as well as the area(s) in which they are qualified):

_____

_____

_____

[4] The Professional Qualification Standards are available on the cultural resources webpage of the National Park Service, Department of the Interior: <http://www.cr.nps.gov/local-law/arch_stnds_9.htm>. The Nationwide Agreement requires use of Secretary-qualified professionals for identification and evaluation of historic properties within the APE for direct effects, and for assessment of effects. The Nationwide Agreement encourages, but does not require, use of Secretary-qualified professionals to identify historic properties within the APE for indirect effects. *See* Nationwide Agreement, §§ VI.D.1.d, VI.D.1.e, VI.D.2.b, VI.E.5.

~~Approved by OMB~~
~~3060-1039~~
Estimated Time Per Response:
.5 to 10 hours

3. Site Information

a. Street Address of Site: _____

City or Township: _____

County / Parish: _____ State: ____ Zip Code: _____

b. Nearest Cross Roads: _____ / _____

c. NAD 83 Latitude/Longitude coordinates (to tenth of a second):

N ___° ___' ___._"; W ___° ___' ___._"

d. Proposed tower height above ground level:[5] _____ feet; _____ meters

e. Tower type:

☐ guyed lattice tower ☐ self-supporting lattice ☐ monopole

☐ other (briefly describe tower) _____

4. Project Status:[6]

a. [ ] Construction not yet commenced;
b. [ ] Construction commenced on [date] _____; or,
c. [ ] Construction commenced on [date] _____ and was completed on [date] _____.

[5] Include top-mounted attachments such as lightning rods.

[6] Failure to provide the Submission Packet and complete the review process under Section 106 of the NHPA prior to beginning construction may violate Section 110(k) of the NHPA and the Commission's rules. *See* Section X of the Nationwide Agreement.

~~Applicant's Name:~~ _____
~~Project Name:~~ _____
~~Project Number:~~ _____

~~Approved by OMB~~
~~3060-1039~~
Estimated Time Per Response:
.5 to 10 hours

5. Applicant's Determination of Effect:

a. Direct Effects (check one):

i. [ ] No Historic Properties in Area of Potential Effects ("APE") for direct effects;
ii. [ ] "No effect" on Historic Properties in APE for direct effects;
iii. [ ] "No adverse effect" on Historic Properties in APE for direct effects;
iv. [ ] "Adverse effect" on one or more Historic Properties in APE for direct effects.

b. Visual Effects (check one):

i. [ ] No Historic Properties in Area of Potential Effects ("APE") for visual effects;
ii. [ ] "No effect" on Historic Properties in APE for visual effects;
iii. [ ] "No adverse effect" on Historic Properties in APE for visual effects;
iv. [ ] "Adverse effect" on one or more Historic Properties in APE for visual effects.

Certification and Signature

I certify that all representations on this FCC Form 620 and the accompanying attachments are true, correct, and complete.

_____	_____
Signature	Date
_____	_____
Printed Name	Title

WILLFUL FALSE STATEMENTS MADE ON THIS FORM OR ANY ATTACHMENTS ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT (U.S. Code, Title 18, Section 1001) AND/OR REVOCATION OF ANY STATION LICENSE OR CONSTRUCTION PERMIT (U.S. Code, Title 47, Section 312(a)(1) AND/ OR FORFEITURE (U.S. Code, Title 47, Section 503).

~~Applicant's Name:~~ _____
~~Project Name:~~ _____
~~Project Number:~~ _____

~~Approved by OMB~~
~~3060-1039~~
Estimated Time Per Response:
.5 to 10 hours

Attachments

Provide the following attachments in this order and numbered as follows:

Attachment 1. Résumés / Vitae.

Provide a current copy of the résumé or curriculum vitae for the Principal Investigator and any researcher or other person who contributed to, reviewed, or provided significant input into the research, analysis, writing or conclusions presented in the Submission Packet for this proposed facility.

Attachment 2. Additional Site Information

Describe any additional structures, access roads, utility lines, fences, easements, or other construction planned for the site in conjunction with the proposed facility.

Attachment 3. Tribal and NHO Involvement

At an early stage in the planning process, the Nationwide Agreement requires the Applicant to gather information from appropriate Indian Tribes or Native Hawaiian Organizations ("NHOs") to assist in the identification of historic properties of religious and cultural significance to them. Describe measures taken to identify Indian tribes and NHOs that may attach religious and cultural significance to historic properties that may be affected by the undertaking within the Areas of Potential Effects ("APE") **for direct and visual effects**. If such Indian tribes or NHOs were identified, list them and provide a summary of contacts by either the FCC, the Applicant, or the Applicant's representative. Provide copies of relevant documents, including correspondence. If no such Indian tribes or NHOs were identified, please explain.

Attachment 4. Local Government

a. Has any local government agency been contacted and invited to become a consulting party pursuant to Section V.A. of the Nationwide Agreement? If so, list the local government agencies contacted. Provide a summary of contacts and copies of any relevant documents (*e.g.*, correspondence or notices).

b. If a local government agency will be contacted but has not been to date, explain why and when such contact will take place.

~~Approved by OMB~~
~~3060-1039~~
Estimated Time Per Response:
.5 to 10 hours

Attachment 5. Public Involvement

Describe measures taken to obtain public involvement in this project (*e.g.*, notices, letters, or public meetings). Provide copies of relevant documentation.

Attachment 6. Additional Consulting Parties

List additional consulting parties that were invited to participate by the Applicant, or independently requested to participate. Provide any relevant correspondence or other documents.

Attachment 7. Areas of Potential Effects

a. Describe the APE for direct effects and explain how this APE was determined.

b. Describe the APE for visual effects and explain how this APE was determined.

Attachment 8. Historic Properties Identified in the APE for Visual Effects

a. Provide the name and address (including U.S. Postal Service ZIP Code) of each property in the APE for visual effects that is listed in the National Register, has been formally determined eligible for listing by the Keeper of the National Register, or is identified as considered eligible for listing in the records of the SHPO/THPO, pursuant to Section VI.D.1.a. of the Nationwide Agreement.[7]

b. Provide the name and address (including U.S. Postal Service ZIP Code) of each Historic Property in the APE for visual effects, not listed in Attachment 8a, identified through the comments of Indian Tribes, NHOs, local governments, or members of the public. Identify each individual or group whose comments led to the inclusion of a Historic Property in this attachment. For each such property, describe how it satisfies the criteria of eligibility (36 C.F.R. Part 63).

[7] Section VI.D.1.a. of the Nationwide Agreement requires the Applicant to review publicly available records to identify within the APE for visual effects: i) properties listed in the National Register; ii) properties formally determined eligible for listing by the Keeper of the National Register; iii) properties that the SHPO/THPO certifies are in the process of being nominated to the National Register; iv) properties previously determined eligible as part of a consensus determination of eligibility between the SHPO/THPO and a Federal Agency or local government representing the Department of Housing and Urban Development (HUD); and, v) properties listed in the SHPO/THPO Inventory that the SHPO/THPO has previously evaluated and found to meet the National Register criteria, and that are identified accordingly in the SHPO/THPO Inventory.