

March 3, 2014

VIA ELECTRONIC DELIVERY

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Room TW-A325
Washington, DC 20554

Re: *Comment Sought on Draft Program Comment to Govern Review of Positive Train Control Facilities under Section 106 of the National Historic Preservation Act, WT Docket 13-240*

The Association of American Railroads (“AAR”) submits this brief filing to recommend to the Federal Communications Commission (“FCC”) that both augered and “pre-cast” foundations be covered by the Positive Train Control (“PTC”) Program Comment. Such an approach would avoid effectively excluding at least two of the Class I railroads from the Program Comment and would recognize that pre-cast foundations are no more likely than augered foundations to significantly impact historic properties.

In previous filings in this docket, the AAR has explained the mechanics by which its member railroads plan to install small PTC wayside poles on the railroad rights of way. Some railroads plan to use augered foundations where they can, which generally require drilling up to 10 feet into the ground on or near the ballasted area on the right of way and installing the pole in the resultant hole, while a number of railroads plan to mount their PTC poles on pre-cast foundations. To install the pre-cast foundations, the railroads will use a backhoe, which will be brought in either from a truck riding on the rail bed itself, or by driving equipment on an existing access road that runs on the right of way. The excavations used for the pre-cast foundations will be wider than those used for the augered foundations, but will be significantly more shallow, within a depth range of approximately 4 to 5 feet deep. It is thus less likely that such installations will impact soil that has not been previously disturbed by railroad activity.

The AAR feels strongly that the FCC should cover both augered and pre-cast foundations in the Program Comment. At Tribal consultative meetings held in the fall of 2013 in Rapid City, South Dakota and Tulsa, Oklahoma, the railroads engaged in conversations with Tribal Nations and FCC staff on the various ways the individual roads planned to deploy PTC wayside poles. The details provided here elaborate on presentations made by Canadian Pacific (“CP”) and Norfolk Southern (“NS”) Railways, two railroads planning to use pre-cast foundations for PTC deployment. Although the excavation required for pre-cast foundations will require a wider

superficial ground disturbance than the augered foundations, at these previous consultative meetings many Tribal Nations expressed a preference for the pre-cast method because the broader, shallow holes allow visual confirmation that no remains or relics have been disturbed. Comments in this docket provided by at least three Tribes suggest that one of their primary concerns with PTC wayside pole deployment was with the depth of penetration of previously undisturbed soil, strongly suggesting a preference for a shallower, broader foundation excavation.¹

In addition, at many sites the railroads will need to bring in fill rock or dirt to build up the area immediately adjacent to the track bed for the installation of the PTC wayside poles on the right of way. For many railroads, this fill dirt or rock is usually brought in by truck on existing access roads from a site outside the right of way, while other railroads use fill dirt taken from the excavated hole. For the pre-cast foundations used by CP and NS in these areas, the excavation will minimize the impact to undisturbed soil. While the excavation for the pre-cast foundations may displace a modest amount more soil than the augered foundations, this soil will constitute either fill dirt or rock at very shallow depths (that has been subject to previous and continuous disruption). In some cases, sufficient fill would be utilized so that the excavation for the pre-cast foundation will penetrate less than two feet below ground level; in other cases, where the build-up of fill dirt is not an option, the railroads may be able to use a pre-cast foundation that is wider, but uses an even more shallow excavation and so can avoid digging more than two feet into undisturbed soil.

While the pre-cast foundations will be installed using backhoes, such equipment is routinely used by the railroads to deploy non-wireless infrastructure (such as signaling equipment and other items needed for positive train control or other purposes) on the railroad rights of way on an ongoing basis. This equipment is rarely taken outside the railroad rights of way, and generally is confined to the existing surface roads that were previously established in the rights of way to avoid disturbing any additional ground. As backhoes are used so frequently for other railroad purposes on the rights of way, their use for the digging of shallow foundations for PTC wayside poles will give rise to no new environmental or historic preservation review concerns within the Area of Potential Effects (“APE”).

¹ See, e.g., Comments of the Hopi Tribe, WT Docket No. 13-240 at 1 (filed Dec. 17, 2013); Comments of the United Keetoowah Band of Cherokee Indians in Oklahoma, WT Docket No. 13-240 at 1 (filed Dec. 17, 2013); Comments of Caddo Nation of Oklahoma, WT Docket No. 13-240 at 2 (filed Jan. 14, 2014).

The foundation methods used by the railroads to install PTC wayside poles on the railroad rights of way represent the varying approaches taken by members of the railroad industry to most quickly adapt existing processes for installing infrastructure to fulfill an unfunded Congressional public safety mandate. In requiring that PTC be fully deployed nationally by December 31, 2015, Congress did not specify the means by which the railroads should satisfy these requirements. In light of the comparable degree of ground disturbance that will arise from the installation of augered and pre-cast foundations, the AAR asks the FCC to draft the final Program Comment to cover both methodologies.

Please contact me if you have any additional questions.

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