

APPENDIX D

Programmatic Agreement between the National Telecommunications and Information Administration and the California State Historic Preservation Officer, Regarding the Los Angeles Regional Interoperable Communications System Authority under the Broadband Technologies Opportunity Program

**PROGRAMMATIC AGREEMENT BETWEEN
THE NATIONAL TELECOMMUNICATIONS AND INFORMATION
ADMINISTRATION AND THE CALIFORNIA STATE HISTORIC PRESERVATION
OFFICER,
REGARDING THE LOS ANGELES REGIONAL INTEROPERABLE
COMMUNICATIONS SYSTEM AUTHORITY UNDER THE BROADBAND
TECHNOLOGY OPPORTUNITIES PROGRAM**

This Programmatic Agreement (PA) is entered into by and between the National Telecommunications and Information Administration (NTIA), an operating bureau of the U.S. Department of Commerce, and the California State Historic Preservation Officer (SHPO). The NTIA and SHPO are individually referred to herein as a "Party" and are collectively referred to herein as the "Parties."

RECITALS

WHEREAS, Section 106 of the National Historic Preservation Act (NHPA), 16 U.S.C. § 470f, and its implementing regulations at 36 C.F.R. Part 800, require Federal agencies to take into account the effects of their undertakings on historic properties and provide the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment on those 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 (FCC) establishes rules and procedures for the licensing of non-federal government communications services and the registration of certain antenna structures ("Facilities") in the United States and its Possession and Territories; and

WHEREAS the *Nationwide Programmatic Agreement for Review of Effects on Historic Properties for Certain Undertakings Approved by the Federal Communications Commission* (September 2004) (available at: http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-04-222A3.pdf) ("2004 FCC NPA") is intended to streamline and tailor the Section 106 review process as it applies to Facilities; and

WHEREAS, the NTIA is authorized to provide financial assistance to develop broadband infrastructure under the Broadband Technology Opportunities Program (BTOP) pursuant to the American Recovery and Reinvestment Act (ARRA) (Pub. L. No. 111-5) (February 17, 2009); and

WHEREAS, NTIA issued to the Los Angeles Regional Interoperable Communications System Authority (LA-RICS) a financial assistance award under the BTOP (NTIA Award No. NT10BIX5570158) for the following purpose (collectively referred to hereinafter as the "Undertaking"):

The Proposed Action is construction and operation of a 700 MHz Long Term Evolution (LTE) wireless mobile communications system that will bring 4G broadband capabilities to public safety personnel, allowing for interoperability with local, state, and federal entities. It will provide faster and greater quantities of information on a dedicated basis to critical users.

WHEREAS, NTIA is the lead federal agency for the Undertaking for the purposes of complying with Section 106 of the NHPA and its implementing regulations, and NTIA shall be responsible for identifying historic properties within the Area of Potential Effects (APE) and determining if the Undertaking would cause adverse effects to historic properties so identified; and

WHEREAS, the Area of Potential Effects (APE) coincides with the LTE site boundary for each proposed facility as depicted in the FCC 620/621 Forms required by the FCC and submitted for consultation under Section 106. Pursuant to the 2004 FCC NPA § VI.C.4.a, the APE for visual effects will encompass an area within half-mile radius of the proposed facility site; and

WHEREAS, under the terms of the Nationwide *Programmatic Agreement Among the U.S. Department of Agriculture Rural Utilities Service, National Telecommunications and Information Administration, National Conference of State Historic Preservation Officers, and the Advisory Council on Historic Preservation for the Broadband Technology Opportunities Program and the Broadband Initiatives Program* (“2009 Nationwide PA”) executed on November 25, 2009 (available at: http://www.achp.gov/docs/PA_Nationwide_RUS.pdf), NTIA conducts reviews under 36 C.F.R. §§ 800.3 through 800.7 for BTOP projects post-award and encourages applicants to design their projects to avoid historic properties; and

WHEREAS, under a delegation letter issued on August 11, 2009 by NTIA, BTOP recipients are authorized to gather information to identify and evaluate historic properties and to work with consulting parties to assess effects; and

WHEREAS, Native American Consultation will follow the process laid out in Stipulation IV of the 2004 FCC NPA. Consultation was initiated through the Tribal Consultation Notification System; and

WHEREAS, NTIA is committed to meeting its responsibilities under the NHPA and its implementing regulations within the timeframes required by the ARRA program; and

WHEREAS, LA-RICS is using the process and format for identifying historic properties and determining adverse effects to historic properties detailed in the Program Comment (Attachment A) issued under 36 C.F.R. § 800.14(e) by the ACHP (74 Fed. Reg. 60280). The Program Comment sets forth the manner in which the U.S. Department of Agriculture Rural Utilities Service and NTIA will comply with Section 106 of the NHPA for communications facilities construction or modification that is subject to Section 106 review by the FCC; and

WHEREAS, NTIA is phasing identification and evaluation of historic properties, and application of the criteria of adverse effect in accordance with 36 C.F.R. § 800.4(b)(2) and 36 C.F.R. § 800.5(a)(3), respectively; and

WHEREAS, a phased process for compliance with Section 106 is appropriate because the Undertaking is composed of the construction and placement of more than 200 individual towers and antennae within Los Angeles, San Bernardino and Orange Counties, and under the terms and conditions of the NTIA Award construction of the Undertaking must be completed no later than September 30, 2015 or LA-RICS's funding under the award may be adversely impacted; and

WHEREAS, LA-RICS is in the process of preparing the Submission Packets, as defined in Section II.A.(13) of the 2004 FCC NPA, that document the identification, evaluation and assessment of effects to historic properties pursuant to Section VII of the 2004 FCC NPA; and

WHEREAS, NTIA has identified measures in this Programmatic Agreement (PA) to address the phased identification, evaluation and determinations of effect for individual project sites; and

WHEREAS, in accordance 36 CFR § 800.6(a)(1), on September 19, 2014 NTIA invited the Advisory Council on Historic Preservation (ACHP) to participate in consultation; and

WHEREAS, the ACHP, on September 30, 2014, declined to participate in the consultation; and

NOW, THEREFORE, NTIA and the SHPO agree that the Undertaking shall be implemented in accordance with the following Stipulations in order to comply with Section 106 of the NHPA and take into account the effects of the Undertaking on historic properties.

STIPULATIONS

NTIA in coordination and consultation with the SHPO will ensure that the following measures are implemented:

I. DEFINITIONS

- A. The definitions provided in Section II.A. of the 2004 FCC NPA are applicable throughout this Agreement. All other terms not defined or defined elsewhere in the 2004 FCC NPA shall have the same meaning as set forth in at 36 CFR § 800.16.
- B. For the calculation of time periods under this Agreement, "days" mean "calendar days."

II. PROFESSIONAL QUALIFICATIONS

NTIA shall ensure that all actions carried out pursuant to this Agreement are completed by or under the direct supervision of a person or persons, meeting at a minimum the Secretary of the Interior's Professional Qualifications Standards (48 FR 44738-44739, September 29, 1983) in the appropriate disciplines. Nothing in this Stipulation may be interpreted to preclude any agent or contractor thereof from using the properly supervised services of persons who do not meet the Standards.

III. IDENTIFICATION, EVALUATION, AND ASSESSMENT OF EFFECTS

A. The Area of Potential Effects.

1. The APE will follow the definition pursuant to Section II.A.3 and Section VI.C. of the 2004 FCC NPA;
2. As discussed in the recitals above, the APE coincides with the LTE site boundary for each proposed facility as depicted in the FCC 620/621 Forms required by the FCC and submitted for consultation under Section 106. Pursuant to the 2004 FCC NPA § VI.C.4.a, the APE for visual effects will encompass an area within a one-half-mile radius of each proposed facility site.

B. Native American Consultation

1. NTIA, SHPO, and ACHP recognize the unique knowledge and expertise Indian tribes may possess regarding their ancestral lands and will consider that knowledge in making determinations and findings.
2. Native American Consultation will follow the process laid out in Stipulation IV of the 2004 FCC NPA.
3. NTIA shall retain responsibility for government-to-government consultation with Indian tribes and shall conduct 36 CFR Part 800 consultation in a sensitive manner respectful of tribal sovereignty.
4. In accordance with 36 CFR § 800.2(c)(2)(ii)(E), NTIA and LA-RICS may enter into agreements with Indian tribes that specify how they will carry out their responsibilities with regard to tribal participation in 36 CFR Part 800 review.
5. LA-RICS has the responsibility to ensure that consultation continues with Indian tribes throughout the 36 CFR Part 800 process prescribed by this Agreement whenever such Indian tribes express a concern about an undertaking or about historic properties that may be affected by an undertaking.
6. Nothing shall limit the ability of Indian tribes to consult directly with parties to this Agreement when they have a concern about an undertaking or about historic properties that may be affected by an undertaking, including properties to which they might ascribe religious or cultural significance.

C. Identification, evaluation and assessment of effects.

1. Submission Packets, as defined in Section II.A.(13) of the 2004 FCC NPA, that document the identification, evaluation and assessment of effects to historic properties pursuant to Section VII of the 2004 FCC NPA, will be submitted for each individual facility site.
2. Submission Packets will be submitted in batches and the SHPO staff shall review each individual site and provide either concurrence or comments for each individual site that comprises the larger Undertaking.
3. Upon receipt of each Submission Packet, the SHPO has 30 days to conclude its review by either concurring or commenting on each individual site per 36 C.F.R. Part 800. If the SHPO fails to concur or comment on the individual site findings within 30

days, pursuant to 36 CFR §800.3(c)(4), NTIA may proceed with the next step in the process upon written notice to the SHPO.

4. Individual sites that receive comments from the SHPO, rather than concurrence with the FCC Form 620/621 findings, will continue through the Section 106 process to conclusion as specified in 36 CFR Part 800.
5. The SHPO will transmit all concurrence findings to NTIA via email within 48 hours of concluding the SHPO review.
6. Each individual site that receives concurrence from the SHPO will be considered approved for construction upon transmittal of concurrence from the SHPO to NTIA.
7. NTIA may issue a “*Notice to Construct*” for individual sites, upon SHPO concurrence on each individual site, to facilitate project implementation within the time limitations of the grant funding for the Undertaking.
8. SHPO comments on individual sites will not halt, delay or otherwise impact NTIA’s ability to approve construction on other sites that receive SHPO concurrence.
9. NTIA shall not approve construction on a site(s) that have not received concurrence from the SHPO until the SHPO’s comments have been addressed.
10. Once LA-RICS submits a response to a SHPO administrative comment(s), the SHPO will have fifteen (15) days to respond to LA-RICS and NTIA with a determination via email that the comment was either addressed or that the response was inadequate. NTIA will work with the SHPO directly if the SHPO determines that a response is inadequate.
11. Pursuant to Stipulation VII.D.1 of the 2004 FCC NPA, if LA-RICS determines at any stage in the process that an Undertaking would have an adverse effect on Historic Properties within the APE(s), LA-RICS shall submit to the SHPO a plan designed to avoid, minimize, or mitigate the adverse effect. LA-RICS will inform NTIA of any adverse effects determinations by the SHPO.
12. If adverse effects cannot be resolved, individual sites with an adverse effect finding will either be dropped, or a substitute site identified by LA-RICS will be presented to the SHPO. Any substitute sites will undergo the same survey and documentation required for the original sites. Such documentation will be submitted to the SHPO, and the SHPO will have 30 days to review each substitute submission.
13. Where there is a disagreement regarding the identification or eligibility of a property, and after attempting in good faith to resolve the issue LA-RICS and the SHPO continue to disagree LA-RICS or the SHPO may submit the issue to the Secretary of Interior. The Secretary shall handle such submissions in accordance with 36 C.F.R. § 800.4(c)(2).

IV. INADVERTENT OR POST REVIEW DISCOVERIES

The process for dealing with inadvertent discoveries, shall comply with Stipulation IX of the 2004 FCC NPA, and includes the following:

- 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 the Undertaking, the Applicant shall promptly notify NTIA, the SHPO, relevant Tribal Historic Preservation Officer (THPO)

and any potentially affected Native American tribe or NHO, and within a reasonable time shall submit to the Native American Heritage Commission (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 NTIA 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 of its action.
- C. If NTIA and SHPO/THPO cannot reach agreement regarding the eligibility of a property, the matter will be referred to ACHP for review in accordance with Section VI.D.3. If NTIA and the SHPO/THPO cannot reach agreement on measures to avoid, minimize, or mitigate adverse effects, the matter shall be referred to ACHP 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 NTIA, SHPO/THPO and the Commission, and adhere to applicable State and Federal laws regarding the treatment of human or burial remains.

V. DISPUTE RESOLUTION

- A. Should any signatory to this PA object in writing to NTIA at any time to any actions proposed or the manner in which the terms of this PA are implemented, NTIA, within the limits of its authority, shall consult with the objecting party to resolve the objection for a maximum of thirty (30) days. All parties to the PA will be notified of the objection within 48 hours and may comment within the thirty day period. Comments provided will be taken into account.
- B. If the objection is resolved during the thirty day consultation period, NTIA may proceed with the disputed action in accordance with the terms of the resolution.
- C. If NTIA determines that the objection cannot be resolved, NTIA will:
 - 1. Forward all documentation relevant to the dispute, including the resolution proposed by NTIA, to the ACHP. The ACHP shall provide the NTIA with its advice, pursuant to 36 C.F.R. § 800.2(b)(2), on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, NTIA shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP or signatories, and provide them with a copy of this written response. NTIA will then proceed according to its final decision.
 - 2. If an unresolved dispute involves a failure to resolve adverse effects, the ACHP will notify NTIA that it will comment pursuant to 36 C.F.R. § 800.7(c), and proceed to comment. Any ACHP comment provided in response to such a request will be taken into account by NTIA in accordance with 36 C.F.R. § 800.7(c)(4).
 - 3. If the ACHP does not provide comments regarding the dispute within thirty (30) days, NTIA may make a final decision on the dispute and proceed accordingly. Prior to

reaching such a final decision, NTIA shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories to the PA, and provide them and the ACHP with a copy of such written response.

- D. Any recommendation or comment provided by the ACHP will be understood to pertain only to the subject of the dispute. The responsibility of NTIA to carry out all other actions pursuant to the terms of this PA that are not the subject of the dispute remains unchanged.

VI. AMENDMENT

- A. This PA may be amended at any time when such an Amendment is agreed to in writing by all Parties consistent with 36 C.F.R. § 800.6(c)(7). The amendment will be effective on the date it is executed by all of the signatories and filed with ACHP.
- B. Each attachment to this Agreement may be individually revised or updated through consultation and agreement in writing of the signatories without requiring amendment of the Agreement unless the signatories through such consultation decide otherwise. Upon revising any attachment or appendix, NTIA shall append any revised document to the Agreement and share the final revised document to the other Parties to this Agreement.

VII. TERMINATION

- A. If any signatory to this PA determines that its terms will not, or cannot be carried out, that party shall immediately consult with the other parties to attempt to develop an amendment in accordance with Stipulation VI of this PA to resolve the issue. If within thirty (30) calendar days an amendment cannot be reached, any signatory may terminate the PA upon written notification to the other signatories.
- B. Once the PA is terminated, and prior to work continuing on the Undertaking, NTIA must either: (i) execute another agreement pursuant to 36 C.F.R. § 800.6 and 800.14(b), or (ii) request, take into account, and respond to the comments of ACHP under 36 C.F.R. § 800.7. NTIA shall notify the other signatories as to the course of action to be pursued.
- C. This PA may be terminated without further consultation by execution of a subsequent agreement that explicitly terminates or supersedes this PA.

VIII. DURATION

Unless amended or terminated in accordance with Stipulation VII of this PA, this PA will remain in effect through December 31, 2015. NTIA will notify the consulting parties by e-mail when it determines that this PA has been fulfilled.

IX. Anti-Deficiency Act

NTIA's obligations under this PA are subject to the availability of appropriated funds, and the stipulations of this PA are subject to the provisions of the Anti-Deficiency Act. NTIA will make reasonable and good faith efforts to secure the necessary funds to implement this PA in its entirety. If compliance with the Anti-Deficiency Act alters or impairs NTIA's ability to implement the stipulations of this PA, NTIA shall consult in accordance with the amendment and termination procedures found at Stipulations VI and VII of this PA.

X. PRIMARY POINTS OF CONTACT

A list of the names and contact information for each Parties' primary point of contact is attached as Appendix B to this PA. Appendix B may be updated to reflect changes in personnel without affecting agreements under this PA or requiring amendment of the PA.

XI. ADMINISTRATIVE PROVISIONS

For purposes of this PA, facsimile and electronic signatures of authorized representatives of the Parties, including such signatures in counterparts, are acceptable. Electronic signatures must be followed with a copy of the original document with signatures sent to the parties via the U.S. Postal Service.

XII. EFFECTIVE DATE AND IMPLEMENTATION OF PA

This PA shall become effective immediately upon signature by all Parties. NTIA shall provide each Party and ACHP with a complete copy of the PA including all executed signature pages.

EXECUTION AND IMPLEMENTATION of this PA and implementation of its terms evidence that NTIA has taken into account the effects of the Undertaking on historic properties, afforded the ACHP a reasonable opportunity to comment, and has satisfied its responsibilities under Section 106 of the NHPA and applicable implementing regulations.

NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION



Douglas Kinkoph / Associate Administrator, Office of
Telecommunications and Information Applications (Acting) 10/3/14

Date

CALIFORNIA OFFICE OF HISTORIC PRESERVATION



for Carol Roland-Nawi / California State Historic Preservation Officer 10/2/14

Date

APPENDIX A:
Advisory Council on Historic Preservation
Federal Register; Volume 74, No. 223
November 20, 2009



Cancer Control, National Institutes of Health, HHS)

Dated: November 16, 2009.

Jennifer Spaeth,
Director, Office of Federal Advisory
Committee Policy.

[FR Doc. E9-27949 Filed 11-19-09; 8:45 am]

BILLING CODE 4140-01-P

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Notice of Program Comment for the Rural Utilities Service, the National Telecommunications and Information Administration, and the Federal Emergency Management Agency To Avoid Duplicative Section 106 Reviews for Wireless Communication Facilities Construction and Modification

AGENCY: Advisory Council on Historic Preservation.

ACTION: The Advisory Council on Historic Preservation has issued a Program Comment for the Rural Utilities Service, the National Telecommunications and Information Administration, and the Federal Emergency Management Agency to avoid duplicative Section 106 reviews for wireless communication facilities construction and modification.

SUMMARY: The Advisory Council on Historic Preservation has issued a Program Comment for the Rural Utilities Service, the National Telecommunications and Information Administration, and the Federal Emergency Management Agency to relieve them of the need to conduct duplicate reviews under Section 106 of the National Historic Preservation Act when these agencies assist a telecommunications project that is exempt from, or subject to, Section 106 review by the Federal Communications Commission under existing nationwide programmatic Agreements.

DATES: The Program Comment went into effect on October 23, 2009.

ADDRESSES: Address all questions concerning the Program Comment to Blythe Semmer, Office of Federal Agency Programs, Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue, NW., Suite 803, Washington, DC 20004. Fax (202) 606-8647. You may submit electronic questions to: bsemmer@achp.gov.

FOR FURTHER INFORMATION CONTACT: Blythe Semmer, (202) 606 8552, bsemmer@achp.gov.

SUPPLEMENTARY INFORMATION: Section 106 of the National Historic Preservation Act requires Federal

agencies to consider the effects of their undertakings on historic properties and to provide the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment with regard to such undertakings. The ACHP has issued the regulations that set forth the process through which Federal agencies comply with these duties.

Those regulations are codified under 36 CFR part 800 (Section 106 regulations)

Under Section 800.14(e) of those regulations, agencies can request the ACHP to provide a "Program Comment" on a particular category of undertakings in lieu of conducting individual reviews of each individual undertaking under such category, as set forth in 36 CFR 800.3 through 800.7. An agency can meet its Section 106 responsibilities with regard to the effects of particular aspects of those undertakings by taking into account ACHP's Program Comment and following the steps set forth in that comment.

I. Background

The ACHP has issued a Program Comment to the U.S. Department of Agriculture Rural Utilities Service (RUS), the U.S. Department of Commerce National Telecommunications and Information Administration (NTIA), and the Federal Emergency Management Agency (FEMA) to relieve them from conducting duplicate reviews under Section 106 of the National Historic Preservation Act when these agencies assist a telecommunications project subject to Section 106 review by the Federal Communications Commission (FCC). The ACHP membership voted in favor of issuing the Program Comment via an unassembled vote on October 23, 2009.

The American Recovery and Reinvestment Act (ARRA) provides NTIA and RUS with \$7.2 billion to expand access to broadband services in the United States. NTIA will implement the Broadband Technology Opportunities Program (BTOP), which will award grants to expand public computer capacity, encourage sustainable adoption of broadband of broadband service, and deploy broadband infrastructure to unserved and underserved areas. RUS, through its Broadband Initiatives Program (BIP), will use loan and grant combinations to support broadband deployment in rural areas.

Broadband deployment can include the construction and placement of communication towers and antennas. Some of those towers and antennas are also regulated by the FCC, and therefore undergo, or are exempted from, Section 106 review under the Nationwide

Programmatic Agreement for Review of Effect on Historic Properties for Certain Undertakings Approved by the FCC and the Nationwide Programmatic Agreement for the Collocation of Wireless Antennas (FCC NPAs). RUS, NTIA, or FEMA will be relieved by the Program Comment of the need to conduct a separate Section 106 review for undertakings subject to review under the FCC NPAs.

The ACHP took steps to inform the public and stakeholders about the proposed Program Comment, including an e-mail distribution, posting on the agency Web site, and a notice published in the Federal Register. ACHP also sent a letter to the Indian tribal leaders requesting their comments on the Program Comment. Public comments resulting from the September 17, 2009 public notice in the Federal Register (74 FR 47807-47809) were received by the ACHP by October 8, 2009.

Various substantive comments from the public were received and considered by the ACHP, as noted below.

FEMA requested inclusion in the provisions of the Program Comment given that its grant programs provide funding for emergency communications facilities that are also subject to review by FCC under the FCC NPAs. FEMA's request would not expand the types of undertakings covered by the Program Comment, so FEMA has been added to the Program Comment.

Two comments objected to how tribal consultation appeared to have been coordinated for the Program Comment, but the characterization of early coordination with intertribal organizations by RUS and NTIA prior to the agencies' formal request to the ACHP did not constitute ACHP's tribal consultation on this program alternative.

Two comments expressed concern about how State and Tribal Historic Preservation Officers (SHPOs and THPOs) and Indian tribes will be notified when the Program Comment is applied. SHPOs and THPOs and Indian tribes will be notified according to the regular FCC NPAs review processes. There is no change to the FCC NPAs procedures.

Two comments expressed objections or concerns about the FCC NPAs and two comments expressed positive views on the functioning of the FCC NPAs. Nothing in the Program Comment will alter the FCC NPAs, but these comments will be referred to FCC for their consideration on the operation of their NPAs. One comment expressed concerns about towers that may have been constructed before undergoing a Section 106 review. The Program

Comment deals with the construction of towers and collocation on existing towers. It does not address or affect pre-existing Section 106 issues. Those issues should be referred to the FCC.

Four comments expressed support for the efficiencies the Program Comment will offer in Section 106 reviews.

Two comments offered views on a concept plan for a nationwide programmatic agreement circulated separately by RUS and NTIA. Those comments will be considered in the context of that program initiative.

The Colorado Historical Society requested clarification about the 6-year term of the Program Comment. This time period recognizes that ARRA-assisted communications facilities construction may be ongoing for several years. The ACHP and others will be able to reevaluate the Program Comment, and whether to extend its duration prior to the conclusion of those 6 years.

The Texas Historical Commission questioned what would happen should an FCC NPA Section 106 review yield a finding of adverse effect within a larger RUS or NTIA undertaking of multiple components. As explicitly stated in the Program Comment, RUS, NTIA, or FEMA will be conducting its own Section 106 review for the larger undertaking, but will not have to consider the effects of the FCC-regulated component of that larger undertaking. RUS, NTIA, or FEMA will make effect determinations based on the non-tower components of the undertaking. Since it is possible that the larger undertaking may not be able to proceed until the FCC review of the tower component has concluded, it is expected that RUS, NTIA, FEMA, and the FCC will coordinate their review efforts accordingly and keep consulting parties appraised.

II. Final Text of the Program Comment

The text of the issued Program Comment is included below:

Program Comment for Streamlining Section 106 Review for Wireless Communication Facilities Construction and Modification Subject to Review Under the FCC Nationwide Programmatic Agreement and/or the Nationwide Programmatic Agreement for the Collocation of Wireless Antennas.

I. Background

The Rural Utilities Service (RUS), the National Telecommunications and Information Administration (NTIA), and the Federal Emergency Management Agency (FEMA) provide financial assistance to applicants for various undertakings, including broadband deployment, which can involve the construction and placement of communications towers and antennas. RUS,

NTIA, and FEMA must therefore comply with Section 106 of the National Historic Preservation Act, 16 U.S.C. 470f, and its implementing regulations at 36 CFR part 800 (Section 106) for these undertakings. Some of those communications towers and antennas are also regulated by the Federal Communications Commission (FCC), and therefore undergo, or are exempted from, Section 106 review under the Nationwide Programmatic Agreement for Review of Effects on Historic Properties for Certain Undertakings Approved by the FCC (FCC Nationwide PA) and the Nationwide Programmatic Agreement for the Collocation of Wireless Antennas (FCC Collocation PA). The FCC Nationwide PA was executed by the FCC, the Advisory Council on Historic Preservation (ACHP), and the National Conference of State Historic Preservation Officers (NCSHPO) on October 4, 2004. The FCC Collocation PA was executed by the FCC, ACHP, and NCSHPO on March 16, 2001. The undertakings addressed by the FCC Nationwide PA primarily include the construction and modification of communication towers. The undertakings addressed by the FCC Collocation PA include the collocation of communications equipment on existing structures and towers.

This Program Comment is intended to streamline Section 106 review of the construction and modification of communication towers and antennas for which FCC and RUS, NTIA, or FEMA share Section 106 responsibility.

Nothing in this Program Comment alters or modifies the FCC Nationwide PA or the FCC Collocation PA, or imposes Section 106 responsibilities on the FCC for elements of a RUS, NTIA, or FEMA undertaking that are unrelated to a communications facility within the FCC's jurisdiction or are beyond the scope of the FCC Nationwide PA.

II. Establishment and Authority

This Program Comment was issued by the ACHP on October 23, 2009 pursuant to 36 CFR 800.14(e).

III. Date of Effect

This Program Comment went into effect on October 23, 2009.

IV. Use of This Program Comment To Comply With Section 106 for the Effects of Facilities Construction or Modification Reviewed Under the FCC Nationwide PA and/or the FCC Collocation PA

RUS, NTIA and FEMA will not need to comply with Section 106 with regard to the effects of communication facilities construction or modification that has either undergone or will undergo Section 106 review, or is exempt from Section 106 review, by the FCC under the FCC Nationwide PA and/or the FCC Collocation PA. For purposes of this program comment, review under the FCC Nationwide PA means the historic preservation review that is necessary to complete the FCC's Section 106 responsibility for an undertaking that is subject to the FCC Nationwide PA.

When an RUS, NTIA, or FEMA undertaking includes both communications facilities construction or modification covered by the FCC Nationwide PA or

Collocation PA and components in addition to such communication facilities construction or modification, RUS, NTIA, or FEMA, as applicable, will comply with Section 106 in accordance with the process set forth at 36 CFR 800.3 through 800.7, or 36 CFR 800.8(c), or another applicable alternate procedure under 36 CFR 800.14, but will not have to consider the effects of the communication facilities construction or modification component of the undertaking on historic properties. Whenever RUS, NTIA, or FEMA uses this Program Comment for such undertakings, RUS, NTIA or FEMA will apprise the relevant State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Officer (THPO) of the use of this Program Comment for the relevant communication facilities construction or modification component.

V. Amendment

The ACHP may amend this Program Comment after consulting with FCC, RUS, NTIA, FEMA, and other parties as appropriate, and publishing notice in the Federal Register to that effect.

VI. Sunset Clause

This Program Comment will terminate on September 30, 2015, unless it is amended to extend the period in which it is in effect.

VII. Termination

The ACHP may terminate this Program Comment by publication of a notice in the Federal Register thirty (30) days before the termination takes effect.

Authority: 36 CFR 800.14(e).

Dated: November 10, 2009.

Reid Nelson,

Acting Executive Director.

[FR Doc. E9-27798 Filed 11-19-09; 8:45 am]

BILLING CODE 4310-K6-M

DEPARTMENT OF HOMELAND SECURITY

Customs and Border Protection

Agency Information Collection Activities: Visa Waiver Program Carrier Agreement (Form I-775)

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day notice and request for comments; Revision of an existing information collection: 1651-0110.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on the Visa Waiver Program Carrier Agreement (Form I-775). This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104-13; 44 U.S.C. 3505(c)(2)).

**APPENDIX B
PRIMARY POINTS OF CONTACT**

NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION

Frank J. Monteferrante, Ph.D.
NEPA Compliance Specialist
202.482.4208
fmonteferrante@ntia.doc.gov

Andrew Spurgeon
BTOP EHP Team Lead
303-586-1417
aspurgeon@ntia.doc.gov

CALIFORNIA OFFICE OF HISTORIC PRESERVATION

Kim Tanksley
Associate State Archaeologist
916 445-7035
Kim.Tanksley@parks.ca.gov