

**PROGRAMMATIC AGREEMENT AMONG THE
NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION,
WEST VIRGINIA STATE HISTORIC PRESERVATION OFFICE,
AND THE WEST VIRGINIA DEPARTMENT OF COMMERCE,
REGARDING THE
MIDDLE MILE BROADBAND PROJECT IN WEST VIRGINIA**

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

RECITALS

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

WHEREAS, on February 12, 2010, NTIA issued a financial assistance award under the BTOP, NTIA Award No. NT10BIX5570031, to the Executive Office of the State of West Virginia (WV DOC as administrator for the Executive Office) for the following purposes (collectively referred to hereinafter as the "Project"):

1. Improve its core backbone transport network across West Virginia by constructing a minimum of 12 new towers (3 in the counties of Roane - Spencer 911; Brooke - Weirton 911, and Greenbrier – Greenbrier 911 in progress plus any additional towers will be submitted to the SHPO for review as they are identified) and to community anchor institutions (the "Project"), each possessing logical termini and independent utility; and
2. Provide redundancy and interconnectivity between the State Capitol, Malden, Wheeling, PK (Clarksburg) and Flatwoods Centers (Kanawha, Ohio, Harrison, and Braxton Counties) using an undetermined number of miles of new fiber; and
3. Provide interconnectivity between the West Virginia University and National Radio Astronomy Observatory (NRAO-Green Bank) using an undetermined number of miles of new fiber; and

4. Provide support to community anchor institutions, each possessing logical termini and independent utility supported by Frontier (formerly Verizon and other small companies), by installing an unspecified number of miles of new aboveground (poles) and/or underground fiber and, if applicable, any associated new pods/ building/ shelters, etc. throughout WV. The final plans have not been made public at this time; and

WHEREAS, NTIA has determined that the Project is an undertaking subject to review under Section 106 of the National Historic Preservation Act (NHPA), 16 U.S.C. § 470f, and its implementing regulations, "Protection of Historic Properties" (36 C.F. R. part 800); 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 Broadband Initiatives Program*, executed on November 25, 2009 (**Attachment 1**), NTIA conducts reviews under 36 C.F. R. §§ 800.3 through 800.7 for BTOP projects post-award; and

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

WHEREAS, NTIA may use the *Program Comment for Streamlining Section 106 Review for Wireless Communication Facilities Construction and Modification Subject to Review Under the FCC Nationwide Programmatic Agreement* (Federal Register 74/223. Page 60280 dated November 20, 2009 in **Attachment 2**) issued by the Advisory Council on Historic Preservation (ACHP) to comply with Section 106 for communication facilities construction; and

WHEREAS, NTIA elects to use the Program Comment for tower construction components of this project, provided that they are using spectrum licensed by the FCC, and therefore NTIA does not have to consider the effects of these communication facilities construction on historic properties; and

WHEREAS, WV DOC will submit all communication facility construction components of the project using spectrum licensed by the FCC for Section 106 review under the FCC Nationwide Programmatic Agreement before beginning construction on these elements; and

WHEREAS, the FCC requires licensees to complete the Section 106 process before starting any type of construction or earth moving activities; and

WHEREAS, NTIA is considered the lead federal agency for all other aspects of the Project; 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 800.5(a)(3), respectively; and

WHEREAS, a phased process for compliance with Section 106 is appropriate because, under the terms and conditions of the NTIA financial assistance award, construction of the project must be completed no later than three years from the date of the award or WV DOC's funding under the award may be adversely impacted; and

WHEREAS, execution of a Programmatic Agreement (PA) is appropriate under 36 C.F.R. § 800.14(b)(1)(ii) because effects on historic properties cannot be fully determined prior to the start of construction; and

WHEREAS, WV DOC has participated in consultation and is a Party to this PA; and

WHEREAS, NTIA identified the following tribes as having religious or cultural affiliation with the Project area: Tuscarora Nation; Cherokee Nation; United Keetoowah Band of Cherokee Indians, Eastern Band of Cherokee Indians; Seneca-Cayuga Tribe of Oklahoma; Eastern Shawnee Tribe of Oklahoma; Catawba Indian Nation, Delaware Nation, Delaware Tribe and Shawnee Tribe; (collectively, the "Tribes") and the Tribes were provided the opportunity to participate in the Section 106 process through the FCC Tower Construction Notification System (FCC TCNS). The Shawnee Tribe responded with a request for more information. NTIA has coordinated this item with the Tribal Historic Preservation Officers (THPOs) via the FCC TCNS process (**Attachment 3**).

WHEREAS, NTIA has determined that the area of potential effects (APE) for this Project includes (1) APEs set forth in 2005 NPA for telecommunication towers and (2) all of the right-of-way (ROW) within which the fiber optic cable will be installed, anchor institutions receiving a fiber termination box and construction of any new pods/ shelters, or utility buildings; and

NOW THEREFORE, the Parties wish to enter into this PA in order to establish the framework for a systematic and phased approach to comply with Section 106 of the NHPA as it pertains to implementation of the Project under the NTIA award.

STIPULATIONS

The Parties will ensure that the following stipulations are satisfied:

I. Professional Qualifications

- A. All work carried out pursuant to this PA shall be conducted by qualified individuals meeting the Secretary of the Interior's "Professional Qualifications" for the appropriate discipline, as set forth in 36 C.F.R. part 61, Appendix A.
- B. All work conducted pursuant to this PA shall be consistent with the Secretary of the Interior's "Standards and Guidelines for Archaeology and Historic Preservation" and SHPO's Guidelines for Phase I, II, and III Archaeological Investigations and Technical Report Preparation (2001).

II. Identification and Evaluation

- A. WV DOC shall provide SHPO with maps delineating the APE for a Phase I Archaeology/Cultural Resources survey to identify historic properties that may be present in the APE, as noted during a file review at the SHPO office. An APE for towers is defined in the 2005 FCC NPA; fiber areas will be limited to the ROW and other ground disturbance areas for direct effects and visible area for indirect effects. The individual APEs can be adjusted in consultation with SHPO.
 - 1. The SHPO will have 15 calendar days from receipt to review and comment on the APE.
 - 2. If WV DOC does not receive written comments within the 15-day review period, they will assume concurrence.
 - 3. Should there be an objection, WV DOC, in consultation with NTIA, will consult with all Parties to resolve the objection. If NTIA determines that consultation will not likely produce agreement, NTIA will request the ACHP's comments in accordance with Stipulation X, Dispute Resolution.
- B. WV DOC shall ensure that a Phase I Archaeology/Architectural Reconnaissance Report to identify historic properties that could be affected by Project activities is carried out by qualified individuals and conducted in accordance with applicable standards as specified in Stipulation I.

The report for telecommunication towers, submitted through the FCC, will include a Phase I archaeology survey of compound area with access road, utility corridor, temporary construction equipment storage areas; review of SHPO files; submission of Form 620; and, where applicable, an assessment of visual effects to any historic buildings or structures within the view shed of the proposed tower.

C. WV DOC shall ensure that a Phase I Archaeology/Architectural Reconnaissance Report to identify historic properties that could be affected by Project activities is carried out by qualified individuals and conducted in accordance with applicable standards as specified in Stipulation I. This report for fiber will include a Phase I archaeology survey of ROW/APE area, utility corridor, temporary construction equipment storage areas; review of SHPO files; and, where applicable; and an assessment of visual effects to any historic buildings or structures within the immediate visual APE of the proposed fiber.

D. At the conclusion of the cultural resources survey, WV DOC shall ensure that a report discussing the findings is prepared. WV DOC shall forward copies of the Archaeology/Cultural Resources report, any required Historic Property Inventory (HPI) forms, and other related records to NTIA and SHPO for review and comment.

SHPO shall have 30 calendar days from receipt to review the report and the National Register of Historic Places (NRHP) eligibility of the historic properties that were identified, and to provide written comments to WV DOC and to the other Parties

E. WV DOC shall ensure that comments received on the report within 30 calendar days after distribution of the report are considered in the development of a revised final report, if necessary.

If WV DOC does not receive written comments within the 30-day review period, WV DOC will assume concurrence with the results of the survey and the recommendations of NRHP eligibility.

F. If agreement on a property's NRHP eligibility is reached, the property will be treated accordingly.

1. If any Party to this PA disagrees with a property's recommendation of eligibility, NTIA will consult with such Party or Parties to resolve any objections received within the 30-day review period.
2. If NTIA cannot resolve the objection, NTIA will refer the property in question to the Keeper of the NRHP pursuant to 36 C.F.R. § 800.4 (2), whose decision will be final.

G. If WV DOC makes modification to the planned construction of the project, WV DOC will provide NTIA the proposed plans via email or overnight mail, and SHPO with the proposed plans via hand delivery.

1. The reviewing Parties will have 15 calendar days from receipt to provide any written comments on whether the APE should be expanded.

2. If the reviewing Parties determine that additional work is necessary to identify and evaluate historic properties, WV DOC shall consult with NTIA and SHPO in accordance with Stipulations II. A-D.

H. A final technical report, if necessary, describing the results of the culture resources survey shall be prepared in accordance with SHPO's Guidelines for Phase I, II, and III Archaeological Investigations and Technical Report Preparation within 1 month of completion of the survey. WV DOC shall forward copies of the final report to NTIA and SHPO for review and comment.

1. SHPO shall have 30 calendar days from receipt to review the report and to provide written comments to WV DOC and to the other Parties.
2. If WV DOC does not receive written comments within the 30-day review period, WV DOC will assume concurrence with the final report.

III. Assessment of Effects

A. Following determination of eligibility, WV DOC, in consultation with NTIA and SHPO shall assess the effects of the Project on historic properties eligible for listing or listed in the National Register of Historic Places and distribute determinations of effect to all Parties.

1. The Parties will have 30 calendar days from receipt of such determinations to provide written comments.
2. WV DOC shall consider all comments received within that period.

B. If written objections regarding determination of effect are provided to WV DOC within the 30-day review period, NTIA will consult with the Parties to resolve such objections.

1. If NTIA cannot resolve the objection(s), NTIA will follow procedures in Stipulation X, Dispute Resolution.

C. If WV DOC makes a determination of No Historic Properties Affected or No Adverse Effect and the Parties concur with the WV DOC assessment of effect, or no objections are received within the 30-day review period, WV DOC may proceed.

D. If WV DOC, through consultation with SHPO, determines that an effect will be adverse, WV DOC will evaluate alternatives to avoid or minimize the adverse effect in consultation with NTIA and SHPO.

E. If WV DOC, in consultation with NTIA and SHPO, determines that the adverse effect cannot be avoided, NTIA shall follow the procedures described in Stipulation IV, Resolution of Adverse Effects.

IV. Resolution of Adverse Effects

- A. The preferred treatment for all historic properties is avoidance of effects by the Project. WV DOC, in consultation with NTIA and SHPO, shall, to the extent practicable, avoid effects to historic properties either through Project design changes, use of temporary fences or barricades during construction, or other measures that will protect historic properties.

- B. When WV DOC determines that complete avoidance of effects to historic properties is not practicable, WV DOC, in consultation with NTIA and SHPO shall explore ways to reduce the extent of the adverse effects including preservation in place of historic properties through partial avoidance of the property or the protection of historic properties against impacts by Project-related activities in close proximity to the property. WV DOC will consider decreasing the height of any proposed tower when possible to alleviate adverse visual effect.

- C. When WV DOC, in consultation with NTIA and SHPO, determines that project activities will have an adverse effect on an historic property and that avoidance or in place preservation is not feasible, NTIA shall ensure that WV DOC prepares a treatment plan that will address the effects of the Project on historic properties.
 - 1. The treatment plan will identify the nature of the effects to historic properties and describe the strategies to avoid, minimize, or mitigate those effects.
 - 2. The treatment plan will be consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties, the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation, the Advisory Council on Historic Preservation's Treatment of Archeological Properties: A Handbook; 36 C.F.R. § 800.13, Post-Review Discoveries; and SHPO's Guidelines for Phase I, II, and III Archaeological Investigations and Technical Report Preparation, and in so doing will incorporate provisions for monitoring and discoveries.

- D. WV DOC will provide the treatment plan to NTIA and SHPO for review and request comments on the adequacy of the proposed measures.
 - 1. SHPO will have 30 calendar days from receipt to review and to provide written comments with respect to the treatment plan.
 - 2. If WV DOC does not receive written comments within the 30-day review period, then WV DOC will assume concurrence with the treatment plan.

- E. If WV DOC receives written comments on the proposed treatment plan, NTIA shall ensure that WV DOC revises the treatment plan to address comments or recommendations to the extent that it is feasible.
 - 1. If NTIA does not agree with the comments or if another Party or Parties do not agree with the proposed treatment plan, NTIA will request the ACHP's comments in accordance with Stipulation X, Dispute Resolution.
- F. The treatment plan will be implemented by way of a Memorandum of Agreement entered into by NTIA, WV DOC, and SHPO pursuant to 36 C.F.R. § 800.6(b) prior to the commencement of construction activities that may affect the historic property addressed in the plan.

V. Authorization of Construction

Upon the acceptance of the preliminary cultural resources survey report by SHPO described in Stipulation II, the NTIA may, at its discretion, and pending compliance with all other applicable laws and regulations, authorize WV DOC to begin construction where there are no historic properties eligible for inclusion or listed in the NRHP, or where all effects to properties eligible for inclusion in the NRHP will be avoided. NTIA's authorization to begin construction activities shall be provided to WV DOC in writing, with a copy to the SHPO. Such authorization shall not preclude consideration of alternatives for treating historic properties in other segments of the Project.

VI. Monitoring

WV DOC will plan for monitoring activities as an integral element of the process of identification and assessment of effects when WV DOC determines that the construction of hand holes for access points to facilities for splice enclosures and service drops will need to be placed in previously undisturbed land outside of the ROW. Monitoring will be conducted in conformance with Part 36 C.F.R. part 800, to assure NRHP-eligible historic buildings are avoided by at least 50 feet.

VII. Curation

- A. All materials resulting from work carried out pursuant to this PA shall be curated in accordance with 36 C.F.R. part 79 and SHPO's Guidelines for Phase I, II, and III Archaeological Investigations and Technical Report Preparation.
- B. For collections from private lands, WV DOC will encourage the private landowner to donate collections to an approved curation facility (Grave Creek Mound Archaeology

Complex). If the private landowner requests the return of collections resulting from archaeological investigations, WV DOC shall provide the collections, excluding from the collection any human remains and/or associated funerary objects, to the landowner.

VIII. Post-Review Discoveries

- A. If previously undocumented historic properties are discovered during construction, all surface-disturbing activities within 100 feet of the discovery shall immediately cease and measures shall be taken to protect the property.
1. WV DOC shall notify NTIA and SHPO of the discovery within 24 hours.
 2. If in consultation, the Parties determine that the property is eligible for inclusion in the NRHP, the terms of this PA shall apply and the procedures described in Stipulations II and III shall be followed.
- B. If human remains and/or funerary objects are discovered on state or private land, all surface-disturbing activities within 100 feet of this discovery shall immediately cease and measures shall be taken to protect the remains. Local law enforcement and the Office of the Medical Investigator shall be notified and the process set forth in 43 C.F.R. part 10 and WVAC § 29-1-8a shall be followed.

IX. Administrative

All submissions to SHPO will be identified as a "Stimulus Broadband Project (Grantee (#2762))" to alert SHPO staff of its priority status.

X. Dispute Resolution

- A. Should any Party provide written objections to any plans, documents, or reports required under the terms of this PA within 30 calendar days after receipt, WV DOC, in consultation with NTIA, shall consult with the objecting Party to resolve the objection.
1. If NTIA determines that the objection cannot be resolved, NTIA shall forward all documentation relevant to the dispute to the ACHP.
 2. After receipt of all pertinent documentation, ACHP will furnish NTIA with its comments and recommendations within the time periods provided for under 36 C.F.R. part 800, which WV DOC will take into account in reaching a final decision regarding the dispute, within:
 - a. 30 calendar days for disputes raised under Stipulations II A and F, pursuant to 36 C.F.R. § 800.4(d)(1)(iv).
 - b. 15 calendar days for disputes raised under Stipulation III C, pursuant to 36 C.F.R. § 800.5(c)(3)(i). The ACHP may extend this period by an

additional 15 calendar days at its discretion, in which case it will notify NTIA.

c. 45 calendar days for disputes raised under Stipulation IV E, pursuant to 36 C.F.R. § 800.7(c)(2).

- B. Any recommendation or comment provided by the ACHP will be understood to pertain only to the subject of the dispute. The responsibility of WV DOC to carry out all actions under this Agreement that are not the subject of the dispute will remain unchanged and in full force and effect.

XI. Amendments and Additional Federal Parties

- A. This Agreement may be amended when such amendment is agreed to in writing by all the Parties. The amendment will be effective as of the date that it is executed by all of the Parties.
- B. Any other federal agency that becomes involved in this project through funding, permit, license, or other activity requiring a Section 106 review pursuant to 36 C.F.R. part 800 may partially satisfy the requirements of Section 106 by becoming a Party to this Agreement. In such a case, the federal agency may become a Party to this Agreement after such agency notifies the ACHP and the SHPO of their intent to become a Party.

XII. Effective Date, Term of Agreement and Withdrawal of a Party

- A. This Agreement shall become effective upon the signatures of all the Parties' authorized representatives and shall continue in effect until the earlier of: (i) completion of the Project and closeout of the NIST award; or (ii) three (3) years, unless otherwise extended by written agreement of the Parties' authorized representatives.
- B. A Party may withdraw from this Agreement upon thirty (30) calendar days written notice to the other Parties, provided that the Parties will consult during the period prior to withdrawal to seek agreement on any amendments or other actions that would avoid the withdrawal.
- C. This Agreement may be terminated prior to the completion of Project construction upon the written agreement of all the Parties' authorized representatives. In the event of the withdrawal of NTIA, WV DOC, or SHPO, or in the event of the termination of the Agreement, NTIA and WV DOC will comply with 36 C.F.R. part 800, including but not limited to §§ 800.3 through 800.6, with regard to any and all individual undertakings covered by this PA.

XIII. 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 Agreement, NTIA shall consult with the Parties in accordance with the amendment and termination procedures found in Stipulations XI and XII of this PA.

XIV. Primary Points of Contact

A list of the names and contact information for each Party's primary POC is provided below:

NTIA

Jill A. Dowling (NTIA, US DOC)
Federal Preservation Officer
U.S. Department of Commerce
H.C. Hoover Bldg. Room 1036
1401 Constitution Avenue, NW
Washington, DC 20230
202-482-4456 (O)
202-501-8009 (F)
JDowling@doc.gov

Kelley M Goes, Cabinet Secretary – Administrator for Governor Manchin
WV Dept. of Commerce (WV DOC)
Joan Knight, Asst.
1900 Kanawha Blvd., E
Bldg. 6, Room 525
Charleston, WV 25305
304-558-2234 (O)
304-558-1189 (F)
Kelley.M.Goes@wv.gov or Joan.E.Knight@wv.gov

Susan M. Pierce – Deputy State Historic Preservation Officer
WV Division of Culture and History (SHPO)
The Culture Center
1900 Kanawha Blvd. East
Charleston, WV 25305-0300
304-558-0240 (O)

susan.m.pierce@wv.gov

Michael L. Todorovich – Administrator for Secretary Goes
COOP Planner
Deputy J3-Continuity
304-561-6675 (O)
304-549-3024 (Cell)
michael.todorovich@ng.army.mil

Teresa A. Schuller, LRS – Consultant
RPM Engineers, Inc.
400 Tracy Way, Suite 200, Charleston, WV 25311
304-345-6712 (O)
304- 345-6714 (F)
304- 415-9184 (cell)
tschuller@rpmengineers.com

XV. Administrative Provisions

For purposes of this Agreement, facsimile and electronic signatures of authorized representatives of the Parties, including such signatures in counterparts, are acceptable.

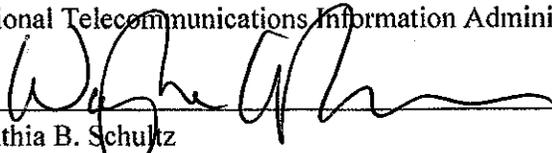
XVI. Satisfaction of Section 106 Responsibilities

Execution and full implementation of this Agreement evidences that NTIA has satisfied its Section 106 responsibilities for all individual actions of this Project.

IN WITNESS WHEREOF, the Parties' authorized representatives have executed this Agreement as of the date indicated below.

SIGNATORY PARTIES

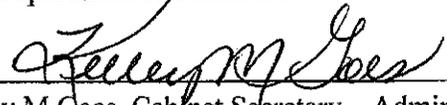
National Telecommunications Information Administration



Cynthia B. Schultz
Director of Compliance and Audits
Broadband Technology Opportunities Program

Date: 9/24/10

WV Department of Commerce



Kelley M Goes, Cabinet Secretary – Administrator for Governor Manchin

Date: 9/23/10

WV State Historic Preservation Office



Susan Pierce, Deputy State Historic Preservation Officer

Date: 9/23/10

Attachment 1
Nationwide Programmatic Agreement
dated 25 November 2009

**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
BROADBAND INITIATIVES PROGRAM**

WHEREAS, the American Recovery and Reinvestment Act (ARRA) appropriated \$7.2 billion in loans and grants for the Department of Agriculture's Rural Utilities Service (RUS) and the Department of Commerce's National Telecommunications and Information Administration (NTIA) to bring broadband service to un-served and underserved communities across America; and

WHEREAS, NTIA, in implementing the Broadband Technology Opportunities Program (BTOP), will award \$4.7 billion in grants to expand public computer capacity, encourage sustainable adoption of broadband service and deploy broadband infrastructure to unserved and underserved areas; and

WHEREAS, RUS, in implementing the Broadband Initiatives Program (BIP), will award \$2.7 billion in loan and loan-grant combinations to support broadband deployment in rural communities; and

WHEREAS, RUS and NTIA have determined that projects receiving financial assistance under BIP or BTOP (BIP/BTOP undertakings) are undertakings subject to review under Section 106 of the National Historic Preservation Act, 16 U.S.C. 470f, and its implementing regulations under 36 CFR part 800 (Section 106); and

WHEREAS, given the schedule for obligation, RUS and NTIA will make awards prior to the conclusion of Section 106 review; and

WHEREAS, as a consequence, the BIP/BTOP undertakings submitted to State Historic Preservation Officers (SHPOs), Indian tribes, and other consulting parties for Section 106 review will be limited to those that have been awarded BIP/BTOP funding, rather than more speculative undertakings;

WHEREAS, the timing of awards and completion of Section 106 review is a departure from the normal Section 106 process as set forth in 36 CFR §§ 800.3 through 800.7; and

WHEREAS, RUS and NTIA have delegated authority to their applicants to initiate consultation in accordance with 36 CFR § 800.2(c)(4); and

WHEREAS, RUS and NTIA have consulted to execute this Programmatic Agreement (PA) pursuant to 36 CFR § 800.14(b); and

WHEREAS, RUS and NTIA initiated government-to-government consultation with Indian tribes for BIP and BTOP undertakings by letter dated September 23, 2009; and

NOW, THEREFORE, RUS, NTIA, the National Conference of State Historic Preservation Officers (NCSHPO), and the Advisory Council on Historic Preservation (ACHP) agree that RUS and NTIA will comply with the provisions of this PA in order to take into account the effects of these undertakings on historic properties and afford the ACHP an opportunity to comment.

STIPULATIONS

RUS and NTIA will ensure that the following stipulations are carried out:

I. AWARD CONDITIONS

RUS and NTIA may make awards for BIP/BTOP undertakings prior to completion of Section 106 review so long as RUS and NTIA:

- A. Condition financial assistance awarded under BIP/BTOP on completion of the Section 106 review in accordance with 36 CFR Part 800. RUS and NTIA will attach special award conditions to such awards to ensure that federal funds are not released, and ground disturbing activities are not commenced, for BIP/BTOP undertakings prior to the completion of Section 106 review by RUS and NTIA in accordance with 36 CFR §§ 800.3 through 800.7, or 36 CFR § 800.8(c), or an applicable alternative under 36 CFR § 800.14;
- B. Retain the ability to withdraw BIP/BTOP awards for an undertaking until completion of its Section 106 review;
- C. Require applicants to initiate Section 106 consultation no later than ninety (90) calendar days after the announcement of their awards;
- D. Encourage the applicants to design their projects to avoid historic properties;
- E. As part of the condition to not commence ground disturbing activities until completion of Section 106 review, advise the applicants in writing about the applicability of Section 110(k) of the National Historic Preservation Act. For purposes of this PA, "ground disturbing activities" are defined as project-related site preparation or construction actions that affect the surface and/or subsurface, including, but not limited to, tree stump grinding or stump pulling, grading, excavation, filling, soil or rock removal, or blasting; and
- F. Within ninety (90) calendar days of the execution of this PA, provide applicants with guidance on Section 106 compliance and the name and contact information to people at their respective agencies who will be responsible for answering their questions on Section 106 compliance.

II. ACHP INVOLVEMENT IN REGULAR SECTION 106 REVIEWS

If RUS/NTIA decide to comply with Section 106 for a BIP/BTOP undertaking by using the regular process under 36 CFR §§ 800.3 through 800.7, RUS/NTIA will not need

to notify the ACHP about adverse effects findings under 36 CFR § 800.6(a)(1). The ACHP will still retain the ability to join consultation under 36 CFR § 800.6 at its own initiative, including in response to a request for ACHP participation by SHPO/Tribal Historic Preservation Office (THPO), Indian tribe, Native Hawaiian organizations, NTIA or RUS.

III. BIP/BTOP UNDERTAKINGS NOT SUBJECT TO SECTION 106 REVIEW

RUS and NTIA do not need to take into account the effects of the following components of BIP/BTOP undertakings on historic properties:

- A. Broadband over existing power lines¹; and
- B. Sustainable broadband adoption² projects such as educational efforts, awareness, training, equipment purchase, or support.

If a BIP/BTOP undertaking is made up solely of these components, then the entire undertaking will be exempt from Section 106 review.

IV. AMENDMENT

This PA may be amended when such an amendment is agreed to in writing by all signatories. The amendment will be effective on the date it is executed by all of the signatories.

V. TERMINATION

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 signatories to attempt to develop an amendment in accordance with Stipulation IV. If within thirty (30) calendar days an amendment has not been executed, any signatory may terminate this PA upon written notification to the other signatories.

Once the PA is terminated, RUS and NTIA must either (a) execute another PA pursuant to 36 CFR § 800.14(b) or (b) proceed in accordance with 36 CFR §§ 800.3 through 800.7, or an applicable alternate process under 36 CFR § 800.14. The RUS and NTIA shall notify the signatories as to the course of action they will pursue.

VI. DURATION

This PA will be considered in full force and effect until September 30, 2013.

¹ Please see the FCC's information available regarding Broadband Over Powerlines (BPL):

<http://wireless.fcc.gov/outreach/index.htm?job=bpl>

² Sustainable Broadband Adoption (SBA) is a component of the BTOP grant program, please see references at:

http://www.ntia.doc.gov/notifications/2009/FR_BENOFA_090709.pdf, page 33114, and

<http://www.broadbandusa.gov/presentations/SustainableAdoption0721.pdf> for further information. Exemptions would not extend to any projects that would engage in construction or any ground-disturbing activities.

Execution of this PA and implementation of its terms evidence that RUS and NTIA have taken into account the effects of BIP/BTOP undertakings on historic properties and afforded the ACHP an opportunity to comment on them.

**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
BROADBAND INITIATIVES PROGRAM**

SIGNATURES

U.S. Department of Agriculture, Rural Utilities Service

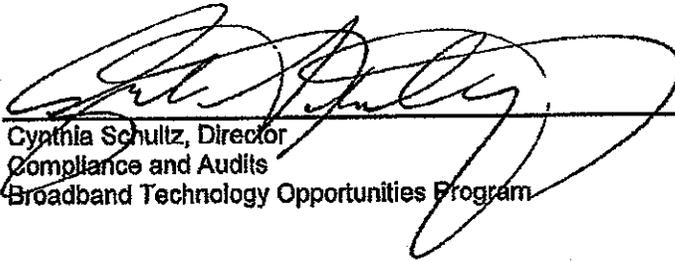


11/25/09

Mark S. Plank, Director
Engineering and Environmental Staff
Water and Environmental Programs

Date

**U.S. Department of Commerce, National Telecommunications and Information
Administration**



11/25/09

Cynthia Schultz, Director
Compliance and Audits
Broadband Technology Opportunities Program

Date

**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
BROADBAND INITIATIVES PROGRAM**

National Conference of State Historic Preservation Officers

Ruth Pierpont
Ruth Pierpont, President

11/25/09
Date

**PROGRAMMATIC AGREEMENT AMONG
THE U.S. DEPARTMENT OF AGRICULTURE RURAL UTILITIES SERVICE,
NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION,
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THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
FOR THE BROADBAND TECHNOLOGY OPPORTUNITIES PROGRAM AND
BROADBAND INITIATIVES PROGRAM**

Advisory Council on Historic Preservation



John M. Fowler, Executive Director

11/25/09
Date

Attachment 2
Program Comment (Fed. Reg. 74/223,
page 60280 dated 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) 608-8647. You may submit electronic questions to: bsemmer@achp.gov.

FOR FURTHER INFORMATION CONTACT: Blythe Semmer, (202) 608 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 apprised.

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)).

Attachment 3
THPO process through TCNS Website

NTIA is using the FCC automated Tower Construction Notification System to notify tribes of projects that have received BTOP grant awards. A description of this process is as follows:

The FCC's Tower Construction Notification System (TCNS) is a voluntary automated system developed by the FCC to facilitate licensees, applicants and private tower constructors' identification of and early communication with all federally-recognized Indian Tribes, including Alaska Native Villages, Native Hawaiian Organizations, and State Historic Preservation Officers. NTIA and RUS have arranged to participate in the TCNS in order to facilitate and expedite outreach to the 565 federally recognized Indian tribes and other Native American groups.

Tribes identify their geographic area of interest and therefore receive only those notices of projects that fall with that specified area. For NTIA BTOP projects, the project descriptions are entered by NTIA into the automated TCNS system. When a tribe is interested in receiving more information on a specific project, they respond via e-mail through the TCNS to NTIA. At that time, NTIA through established government to government protocol puts the grantee in touch with the tribe that requested more information in order to complete the consultation process.