

NCSHPO

National Conference of State Historic Preservation Officers

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March 15, 2018

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC

Re: FCC Second Report and Order, FCC-CIRC18030-01, Excluding Small Wireless Facilities from NHPA Review
WT Docket No. 17-79

Dear Ms. Dortch:

On behalf of the National Conference of State Historic Preservation Officers (NCSHPO), we thank you for the opportunity to provide comments on the Federal Communications Commission's (FCC's) Second Report and Order up for consideration at your next meeting and, specifically, your agency's intention to exclude Small Wireless Facilities from reviews required under the National Historic Preservation Act.

We are in complete agreement as to the importance of the deployment of 5G technology, and the need to develop ways to support efficient deployment. That said, unilaterally deciding to exclude Small Cell Wireless Facilities from review under the National Historic Preservation Act by determining they are not undertakings is not the appropriate approach. We believe the FCC's determination selectively ignores facts, misrepresents the "undertaking," and therefore draws the wrong conclusion.

First we would like to make the point that while the FCC has the authority under 36 CFR 800.3(a) to determine whether certain activities constitute an "undertaking," it has no such authority to define what an "undertaking" is. Undertakings are specifically defined in 36 CFR 800.16(y) as "a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those carried out by or on behalf of a Federal agency; those carried out with Federal financial assistance; and those requiring a Federal permit, license or approval." Since the federal nexus is clear – the issuance, in this case, of a federal permit, the crux of the argument presented before us should be the nature of the federal undertaking – not whether it is an undertaking at all.

Setting aside what we believe is a lack of authority, the Report and Order outlines in great detail the justification the FCC is using to define their involvement, the nature of Small Wireless Facilities, and the benefits associated with review as "de minimis" – and using that as the primary basis to consider it not an undertaking. In making this determination, both in the document and in public statements, the FCC fails to adequately define "Small Wireless Facilities," but instead characterizes them as "diminutive," and continuously downplays their size and impact. Frequent references to the "size of a backpack," or "pizza box" have been made by FCC Commissioners and Wireless Industry members alike. This is a misleading characterization. "Small Wireless Facilities" are not a singular item, rather they are a collection of

equipment. While the focus has been on describing one piece of equipment, there are numerous cabinets (some of which can be up to eleven feet high), battery boxes, cooling fans, antenna, wires and other apparatus installed either adjacent, underground or at street-level. On page 24 the Report and Order the FCC actually refers to this additional equipment as it attempts to qualify what Small Wireless Facilities might be covered by this declaration. To meet the criteria, these facilities are to be those where “...the antenna associated with the deployment, excluding the associated equipment, must fit in an enclosure...that is no more than three cubic feet in volume.” In other words, the volumetric sizing description applies only to the antenna - none of the associated equipment. That associated equipment is not explained and would appear to be without any limit. In our view, it is completely illogical to pick only one piece of an installation to define its overall effect.

As recently as March 7th, when representatives of the wireless industry met with our organization, the National Trust for Historic Preservation, the National Association of Tribal Historic Preservation Officers and the Advisory Council on Historic Preservation, it was explained that Small Wireless Facilities require any number of various pieces of equipment and enclosures that vary greatly depending upon location, carrier, and technology. Subsequent contact by the very consultants hired by industry to complete historic preservation reviews has verified this – as well as noting that carriers do not share equipment. This means that in addition to an unknown and variable assortment of equipment, multiple systems would potentially be required – adding even more devices and equipment to the equation.

Based upon this information, and based upon what could be clear cumulative effects, in our opinion, the idea that there is little chance for impact on historic properties, and subsequently that all Small Wireless Facilities do not constitute an “undertaking,” falls apart. The potential for effects to historic resources clearly exists. Ignoring the full scope of the equipment required for Small Wireless Facilities in order to downplay the impact and dismiss them as undertakings is, quite simply, misleading.

Equally misleading is the cherry-picking of provisions from Collocation Nationwide Programmatic Agreement (Collocation NPA). On page 24 and 25 of the Report and Order, the volumetric definitions proposed as the qualifier to be excluded from review, are given support by referring to the terms of the Collocation NPA by stating: “This size is analogous to that of facilities the Commission excluded from review under the Collocation NPA on the ground that the size of those facilities fully eliminated the possibility of what already was only a remote potential for adverse environmental or historic preservation effects.” What has been left out is that there are other terms in the Collocation NPA that do not exclude from review installations in historic districts, on National Historic Landmarks, or in other circumstances aimed at preventing impacts to historic properties. That is what reduced the potential impact to historic properties – not the volumetric limit itself.

We are not dismissive of the fact that, under certain circumstances, Small Wireless Facilities can have little or no effect. But the appropriate way for us to determine an efficient and effective way to comply with the National Historic Preservation Act should involve full disclosure on the details of the proposed installation. Once those are fully understood and disclosed, we can, much like we have already done in creating processes to exclude from review countless of other installations, tailor a program alternative to Section 106 review that helps with both efficient project delivery and preserves our historic resources.

We all share the same common goal – to find a solution so that 5G technology can be deployed in an expeditious manner. We do have substantial experience working together to find creative and efficient solutions. With this in mind, we would like to take the opportunity to remind the FCC that State Historic

Preservation Officers cannot charge for reviews under the National Historic Preservation Act, and our statistical average review time is 20 days or less – with many being completed within 48 hours.

Thank you for the opportunity to submit these comments. We continue, as always, to stand ready to work with the FCC on a responsible solution.

Sincerely,

A handwritten signature in blue ink, appearing to read "Erik M. Hein", with a stylized flourish at the end.

Erik M. Hein
Executive Director