

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
Revising the Historic Preservation Review) WT Docket No. 15-180
Process for Small Facility Deployments)

COMMENTS OF CTIA

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TABLE OF CONTENTS

I.	INTRODUCTION AND SUMMARY	1
II.	COMMISSION ACTIONS TO SPEED AND STREAMLINE SMALL WIRELESS FACILITY DEPLOYMENTS WILL BE ESSENTIAL TO FACILITATE 5G.....	3
III.	CTIA APPLAUDS THE COMMISSION’S RECENT STREAMLINING INITIATIVES AND AGREES WITH ITS PROPOSED CHANGES, WHICH WILL FACILITATE THE DEPLOYMENT OF 5G TECHNOLOGIES.	7
IV.	THE COMMISSION SHOULD MODIFY ITS PROPOSALS AND ADOPT ADDITIONAL PROVISIONS.	8
	A. Prior Wireless Deployments on Large Structures Should Not Be Included Within the Volumetric Limits Set Forth in Proposed Section VI of the Collocation Agreement.	9
	B. Replacement Structures Should Be Excluded From Section 106 Review.....	10
V.	THE COMMISSION SHOULD CLARIFY SEVERAL COMPONENTS OF ITS PROPOSALS.....	10
	A. The Commission Should Clarify the SHPO Coordination Process.....	11
	B. The Commission Should Clarify That a Visible Equipment Shed Meeting a Specified Volumetric Limit May Be Deployed Under Exemption VII.	12
	C. The Commission Should Clarify the Visibility Restrictions Under Proposed Section VII of the Collocation Agreement.	12
VI.	CONCLUSION.....	13

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I. INTRODUCTION AND SUMMARY.

CTIA¹ welcomes this opportunity to comment on additional proposals to improve the review process under Section 106 of the National Historic Preservation Act (“NHPA”) for small wireless facility deployments.² CTIA supports the proposed amendments to the Nationwide Programmatic Agreement for the Collocation of Wireless Antennas (“Collocation Agreement”) as essential steps toward facilitating broadband deployment and 5G wireless services, and suggests some additional exclusions, modifications, and clarifications for the Commission’s consideration.

The installation of Distributed Antenna System (“DAS”) networks and small cell facilities is subject to regulations promulgated under NHPA Section 106 by the Advisory

¹ CTIA[®] represents the U.S. wireless communications industry. With members from wireless carriers and their suppliers to providers and manufacturers of wireless data services and products, the association brings together a dynamic group of companies that enable consumers to lead a 21st century connected life. CTIA members benefit from its vigorous advocacy at all levels of government for policies that foster the continued innovation, investment and economic impact of America’s competitive and world-leading mobile ecosystem. The association also coordinates the industry’s voluntary best practices and initiatives and convenes the industry’s leading wireless tradeshow. CTIA was founded in 1984 and is based in Washington, D.C.

² *Wireless Telecommunications Bureau Seeks Comment on Proposed Amended Nationwide Programmatic Agreement for the Collocation of Wireless Antennas*, Public Notice, 31 FCC Rcd 4617 (2016) (“Public Notice”); see also *Wireless Telecommunications Bureau Extends Deadline for Comments on Proposed Amended Nationwide Programmatic Agreement for the Collocation of Wireless Antennas*, Public Notice, DA 16-635 (rel. June 8, 2016).

Council on Historic Preservation (“ACHP”), as modified by the Collocation Agreement³ and the 2004 Nationwide Programmatic Agreement.⁴ These documents are designed to mitigate potential adverse effects of infrastructure facilities on historic properties. The Collocation Agreement, which addresses historic preservation review for collocations on existing towers, provides that most antenna collocations on existing structures are excluded from historic preservation review. This is subject to well-defined exceptions.⁵ The 2004 NPA, on the other hand, establishes procedures for reviewing the effects of communications towers.⁶

In the 2014 *Infrastructure Order*, the Commission recognized that small cell and DAS facilities “use components that are a fraction of the size of macrocell deployments, and can be installed – with little or no impact – on utility poles, buildings, and other existing structures.”⁷ It therefore sought comment in the 2015 *Scoping Document* on a number of proposals to amend the Collocation Agreement in order to “better account for the limited potential of small wireless communications facility collocations that meet specified criteria, including DAS and small cell

³ See *Nationwide Programmatic Agreement for the Collocation of Wireless Antennas*, Public Notice, 16 FCC Rcd 5574, at Appendix A (WTB 2001), codified 47 C.F.R. Part 1, App. B (“Collocation Agreement”).

⁴ See *Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process*, Report and Order, 20 FCC Rcd 1073, 1170 (2004) (“2004 NPA Report and Order”) (stating that “the parties hereto agree that the effects on historic properties of collocations of antennas on towers, buildings and structures are likely to be *minimal and not adverse*”) (emphasis added), rule codified 47 C.F.R. Part 1, App. C (“2004 NPA”).

⁵ *Infrastructure Order* at 12900. The Collocation Agreement excludes from Section 106 review most collocations on towers that completed Section 106 review or were built before March 16, 2001, as well as collocations on buildings and non-tower structures, unless the proposed collocation is the subject of a pending complaint alleging adverse effects, or the non-tower structure is (1) more than 45 years old; (2) inside a historic district or within 250 feet of the boundary of the historic district and the antenna is visible from the ground within the historic district; or (3) is a designated National Historic Landmark or is listed on or eligible for listing on the National Register. *Id.*

⁶ *Id.* at 12901.

⁷ See *Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies*, Report and Order, 29 FCC Rcd 12865, ¶ 3 (2014) (“*Infrastructure Order*”).

deployments, to affect historic properties.”⁸ The proposals set forth in the present *Public Notice* incorporate many of the modifications to the Collocation Agreement that CTIA suggested in its comments on the *Scoping Document*, including those regarding size and ground disturbance.⁹ CTIA urges the Commission to adopt the proposals without delay.

Streamlining the Section 106 process is an essential step in facilitating the deployment of the small wireless facilities necessary to meet the escalating demand for mobile broadband, which has become integral to our daily lives. CTIA proposes some modifications to the Commission’s proposed amendments to further streamline the Section 106 process without adversely impacting historic interests. Specifically, as discussed below, the Commission should:

- Modify the volumetric calculation for collocations on large structures to exclude existing antennas and equipment; and
- Exclude replacement structures from Section 106 review as proposed in the *Scoping Document*.

The Commission also should clarify several components of the proposed exclusions, including the process for coordinating with State Historic Preservation Officers (“SHPOs”) and certain visibility issues in connection with proposed Section VII to the Collocation Agreement. These modifications and clarifications would further promote the goal of broadband deployment without adversely impacting historic properties and districts.

II. COMMISSION ACTIONS TO SPEED AND STREAMLINE SMALL WIRELESS FACILITY DEPLOYMENTS WILL BE ESSENTIAL TO FACILITATE 5G.

The United States currently leads the world in the deployment and adoption of 4G LTE, with consumers today enjoying unparalleled choice among wireless providers, service plans, and device functionalities. The next generation of wireless services – 5G – holds the promise of

⁸ *Scoping Document* at 1.

⁹ See CTIA Comments, WT Docket No. 15-180 (Sept. 28, 2015) (“CTIA Scoping Comments”).

unlocking the even greater potential of a fully-connected, mobile broadband society. 5G networks will feature super-high speeds, ultra-low latency, and enough bandwidth to support the burgeoning Internet of Things.¹⁰ In particular, 5G will have speeds at least 10x faster than 4G, support 100x more devices, and be 5x more responsive.¹¹ But 5G is more than just high speed and low latency; it is opening the door to connecting everyday components of our lives. From time-critical applications for automobiles and medical services to ultra HD video content and smart cities, 5G is a paradigm-shifting technology that will be a catalyst for continued innovation in the wireless market. Indeed, the race for 5G is already on, and it is driving activity in the wireless market today as incumbents and new start-ups work to standardize, develop, and test novel 5G services.

CTIA and its members appreciate the efforts undertaken by the Commission to allocate additional spectrum to support both current 4G LTE technologies and next-generation wireless services. This spectrum will be a critical piece of the puzzle to accommodate growing demand. By the end of 2015, there were 291 million active Internet-capable wireless devices in the U.S., up from 270 million at the end of 2014.¹² Data use on these devices has continued its inexorable

¹⁰ Thomas K. Sawanobori, *The Next Generation of Wireless: 5G Leadership in the U.S.*, CTIA White Paper at 6 (Feb. 9, 2016) (“CTIA Feb. 2016 5G White Paper”), http://www.ctia.org/docs/default-source/default-document-library/5g_white-paper-web.pdf; see also Thomas K. Sawanobori and Paul V. Anuszkiewicz, *High Band Spectrum: The Key to Unlocking the Next Generation of Wireless*, CTIA White Paper (June 13, 2016), <http://www.ctia.org/docs/default-source/default-document-library/5g-high-band-white-paper.pdf>.

¹¹ See Letter from Scott Bergmann, Vice President, Regulatory Affairs, CTIA, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 14-177, Attach. at 4 (Apr. 27, 2016); CTIA Feb. 2016 5G White Paper at 4.

¹² See CTIA Comments, WT Docket No. 16-137 at 12 (filed May 31, 2016) (“CTIA 2016 Competition Report Comments”), citing *CTIA Annual Survey Report*, CTIA (May, 23 2016), <http://www.ctia.org/resource-library/press-releases/archive/americans-data-usage-more-than-doubled-in-2015>.

growth, tripling between 2013 and 2015, to reach 749 petabytes per month.¹³ And Americans' high rate of data consumption is expected to continue, with some estimates showing that, by 2020, the average North American subscriber will consume approximately 22 gigabytes of mobile data per month, as compared to an average of 4.4 gigabytes per month today.¹⁴

Nevertheless, the allocation of additional spectrum alone will not allow the U.S. wireless industry to satisfy consumer demand or maintain its worldwide lead in wireless broadband. In order to bring 5G technology to consumers, the wireless industry will also need to deploy additional infrastructure. Specifically, ultra-dense wireless network configurations, particularly in congested urban areas, will be an essential component of 5G. Smaller deployments like DAS and small cells will be the key to creating these ultra-dense networks.¹⁵ As a result, small wireless facilities are critical to 5G deployment and will help address the growing demand for mobile broadband and bring significant benefits to consumers. And all five FCC Commissioners agree. As Chairman Tom Wheeler has noted:

Brilliant engineers have developed new antennas that can aim and amplify signals, coupled with sophisticated processing, allowing a moving device to pick up all of the signals bouncing around and create one coherent connection. To make this work, 5G buildout is going to be very infrastructure intensive, requiring a massive deployment of small cells. But it also opens up unprecedented opportunities for frequency reuse and denser, more localized, networks.¹⁶

¹³ CTIA 2016 Competition Report Comments at 14.

¹⁴ *Id.* at 15 (citing David George et al., *The Mobile Economy 2016*, GSMA INTELLIGENCE, at 15 (Feb. 22, 2016), <https://www.gsmaintelligence.com/research/2016/02/the-mobile-economy-2016/541/>).

¹⁵ *See* CTIA Feb. 2016 5G White Paper at 12.

¹⁶ Prepared Remarks of Chairman Tom Wheeler, "The Future of Wireless: A Vision for U.S. Leadership in a 5G World," National Press Club, at 4 (June 20, 2016), http://transition.fcc.gov/Daily_Releases/Daily_Business/2016/db0620/DOC-339920A1.pdf; *see also* Opening Remarks of Chairman Tom Wheeler, FCC Distributed Antenna Systems and Small Cell Workshop (May 3, 2016), <https://www.fcc.gov/news-events/events/2016/05/distributed-antenna-systems-and-small-cell-workshop> ("There's a lot of focus in this agency and in the industry on spectrum. But the reality is that antenna siting is equal in importance . . . And it's going to be made even more crucial and even more challenging

Each of the Commissioners also has recognized the importance of infrastructure for wireless broadband and 5G:

- Commissioner Mignon Clyburn: “This vision of promise of 5G is clear, but to get there, we need to ensure that commercial wireless companies have . . . the necessary infrastructure . . . to deploy that spectrum.”¹⁷
- Commissioner Jessica Rosenworcel: “[T]he unsung hero of the wireless revolution is infrastructure. Because no amount of spectrum will lead to better wireless service without good infrastructure. So if we want a big and bold future for our airwaves, we need policies that support our efforts on the ground.”¹⁸
- Commissioner Ajit Pai: “As important as spectrum is to making 5G a reality, we cannot lose sight of another key piece of the regulatory framework, which is removing barriers to infrastructure deployment. To support 5G, providers will have to densify their networks. And to help them do that, we need to expedite the siting of wireless infrastructure.”¹⁹
- Commissioner Michael O’Rielly: “Generally, Americans now seek access to communications services everywhere at any time. To meet these demands, small cells will need to be ubiquitous – especially in high density areas – to promote spectrum reuse and meet the demand for these wireless services. . . . Despite the obvious need, the deployment of small cell technology has been somewhat slower than projected. . . . This is why it is so important for the Commission to finish up the process to further exclude small cell and DAS systems from certain regulatory burdens before the upcoming fall.”²⁰

as a result of 5G.”); *see also Infrastructure Order* at Statement of Chairman Tom Wheeler (“High-speed mobile broadband also requires high-speed broadband buildout”); Statement of Chairman Wheeler Before the Senate Committee on Commerce, Science, and Transportation Hearing on “Oversight of the Federal Communications Commission,” at 3 (Mar. 2, 2016), https://apps.fcc.gov/edocs_public/attachmatch/DOC-338056A1.pdf (commending Congress for taking action “to facilitate investment in 5G technology by removing barriers to infrastructure deployment – a goal we share at the Commission”).

¹⁷ Mignon L. Clyburn, Commissioner, FCC, Testimony Before the House Subcommittee on Communications & Technology, “Oversight of the Federal Communications Commission” at 2 (Mar. 22, 2016), https://apps.fcc.gov/edocs_public/attachmatch/DOC-338509A1.pdf.

¹⁸ Jessica Rosenworcel, Commissioner, FCC, Remarks at the Leadership Forum on 5G: The Next Generation of Wireless, *Five Ideas for the Road to 5G*, at 3 (Feb. 9, 2016), https://apps.fcc.gov/edocs_public/attachmatch/DOC-337655A1.pdf.

¹⁹ Ajit Pai, Commissioner, FCC, Remarks at 4G Americas’ Technology Symposium: *The Future of Mobile Broadband in the Americas LTE to 5G Network Innovation*, at 3 (Nov. 5, 2015), https://apps.fcc.gov/edocs_public/attachmatch/DOC-336219A1.pdf.

²⁰ Michael O’Rielly, Commissioner, FCC, Remarks at the Distributed Antenna Systems (DAS) and Small Cell Solutions Workshop, at 1 (May 3, 2016), https://apps.fcc.gov/edocs_public/attachmatch/DOC-

Simply put, sound infrastructure policy is essential to the success of 5G. In order to maintain the country's status as the leader in wireless innovation and deployment, the Commission must allocate additional spectrum *and* ensure necessary infrastructure can be expeditiously and efficiently deployed. The instant proceeding is a critical step in achieving that goal.

III. CTIA APPLAUDS THE COMMISSION'S RECENT STREAMLINING INITIATIVES AND AGREES WITH ITS PROPOSED CHANGES, WHICH WILL FACILITATE THE DEPLOYMENT OF 5G TECHNOLOGIES.

CTIA commends the Commission for several recent actions the agency has taken that have made it easier for carriers to leverage existing infrastructure through collocation, as well as to deploy DAS and small cells, thereby avoiding the need to build new towers. For example, in August 2014, the FCC streamlined its antenna structure construction, marking, and lighting rules in ways that will further assist wireless providers with their efforts to keep pace with consumer demand and continue the economic growth made possible through the expanding mobile ecosystem.²¹ Shortly thereafter, it adopted new wireless infrastructure rules streamlining the environmental and historic preservation review process for collocations and DAS/small cell infrastructure, while preserving the ability of states, local jurisdictions, and Tribal Nations to protect their land-use priorities and safety interests.²² The following year, the FCC modified its

[339166A1.pdf](#); accord Michael O'Rielly, Commissioner, FCC, Statement Before the Senate Committee on Commerce, Science, and Transportation, "Oversight of the Federal Communications Commission," at 2 (Mar. 2, 2016), https://apps.fcc.gov/edocs_public/attachmatch/DOC-338047A1.pdf; see also Michael O'Rielly, Commissioner, FCC, *The 5G Triangle*, at 2 (May 25, 2016), http://transition.fcc.gov/Daily_Releases/Daily_Business/2016/db0525/DOC-339558A1.pdf ("There is little dispute that 5G wireless networks will require expansive buildout efforts by providers.").

²¹ *2004 and 2006 Biennial Regulatory Reviews—Streamlining and Other Revisions of Parts 1 and 17 of the Commission's Rules Governing Construction, Marking and Lighting of Antenna Structure*, Report and Order, 29 FCC Rcd 9787 (2014).

²² See *Infrastructure Order*.

pole attachment rules to encourage infrastructure deployment by “keeping pole attachment rates unified and low.”²³

The instant *Public Notice* is the most recent example of Commission efforts to facilitate wireless deployment. The proposed amendments to the Collocation Agreement incorporate various suggestions provided by CTIA in response to the initial *Scoping Document*, such as excluding cable runs from volumetric calculations, increasing the volumetric limits for equipment sheds, revising the definition of a ground disturbance, and including a visibility threshold in evaluating historic impacts.²⁴ The Commission should adopt each of the proposed exclusions with certain modifications and clarifications discussed below because they will facilitate the deployment of small wireless facilities with minimal impacts to historic properties and districts.

CTIA applauds the FCC for moving quickly on this matter. In the *Infrastructure Order*, the Commission committed to develop additional efficiencies in the historic review process for DAS and small cells within 18-24 months.²⁵ The *Public Notice* was released approximately 17 months after release of the *Infrastructure Order*. CTIA urges the Commission to move expeditiously to adopt the streamlining recommendations proposed in CTIA’s comments.

IV. THE COMMISSION SHOULD MODIFY ITS PROPOSALS AND ADOPT ADDITIONAL PROVISIONS.

CTIA recognizes and appreciates the need to account for historic preservation requirements during the wireless infrastructure deployment process. The impact on buildings and structures with historical, religious, and cultural significance can, and should, be respected

²³ *Implementation of Section 224 of the Act; A National Broadband Plan for Our Future*, Order on Reconsideration, 30 FCC Rcd 13731 (2015).

²⁴ See CTIA Scoping Comments at 9-10, 14-17.

²⁵ *Infrastructure Order*, 29 FCC Rcd at 12906.

during all phases of the deployment process. This goal can be met while simultaneously fostering a more efficient process for the deployment of wireless infrastructure and equipment. The *Public Notice* proposes a number of exclusions from the Section 106 process that further these objectives. A few of the proposed exclusions could be modified, however, to maximize the benefits for infrastructure deployment without undermining historic interests. Specifically, as discussed in more detail below, CTIA recommends that the Commission (1) eliminate the requirement that prior collocations be factored into volumetric calculations; and (2) exclude replacement structures from Section 106 review.

A. Prior Wireless Deployments on Large Structures Should Not Be Included Within the Volumetric Limits Set Forth in Proposed Section VI of the Collocation Agreement.

The Bureau generally proposes volumetric limits that must be satisfied in order for the small wireless facility exclusions in proposed Section VI to apply. These limits are calculated on a cumulative basis – factoring in the size of all existing antennas at a site in addition to the proposed small wireless facility deployment. This cumulative approach to calculating volumetric limits should be eliminated for large structures, such as buildings and water towers, but retained for utility poles and similar, smaller structures.

As written, the proposed exclusion would not apply to small wireless facilities that would be deployed on large structures containing numerous antennas if the existing antennas already exceed the volumetric limits. As a result of that limitation, small wireless deployments likely will be moved to different locations to take advantage of the exclusion. The cumulative approach thus would promote a proliferation of antennas on various structures throughout an area (or the deployment of macrocells), rather than promote collocations on structures that already have numerous antennas. The public interest would be better served by permitting

collocations on structures that already have numerous antennas. Thus, the volumetric limits for collocations on large structures should only include the new small wireless facility deployment.

B. Replacement Structures Should Be Excluded From Section 106 Review.

The Bureau sought comment in the *Scoping Document* on a potential exclusion from the Section 106 review process for replacement structures that would not constitute a substantial increase in size under the Collocation Agreement.²⁶ A number of commenters, including CTIA and the California Office of Historic Preservation, supported this proposed exclusion.²⁷ CTIA noted that replacement structures can reduce the potential for structural failures and promote collocation by increasing load-bearing capabilities.²⁸ If replacement facilities are subject to costly and time-consuming Section 106 review, however, parties will be discouraged from deploying these facilities. Such a result likely will trigger the need for new construction, which will have greater impacts on historic districts than replacements.

Despite widespread support for this proposal, it does not appear in the exclusions currently under review. CTIA urges the Commission to incorporate the exclusion for replacement facilities into the Collocation Agreement as originally proposed.

V. THE COMMISSION SHOULD CLARIFY SEVERAL COMPONENTS OF ITS PROPOSALS.

The proposed amendments to the Collocation Agreement are a good step toward streamlining the Section 106 review process, but CTIA proposes certain clarifications below to

²⁶ *Scoping Document*, 30 FCC Rcd at 8169.

²⁷ CTIA Scoping Comments at 21-22; California Office of Historic Preservation Comments, WT Docket No. 15-180, at 3 (Sept. 29, 2015); Association of American Railroads Comments, WT Docket No. 15-180 at 2-3 (Sept. 28, 2015); AT&T Comments, WT Docket No. 15-180, at 5 (Sept. 29, 2015); PCIA Comments, WT Docket No. 15-180, at 20 (Sept. 29, 2015); Sprint Comments, WT Docket No. 15-180, at 9-10 (Sept. 29, 2015); Verizon Comments, WT Docket No. 15-180, at 12-13 (Sept. 29, 2015).

²⁸ CTIA Scoping Comments at 21-22.

maximize the benefits of the proposals with respect to 5G deployment without adversely impacting historic interests.

A. The Commission Should Clarify the SHPO Coordination Process.

CTIA applauds the Commission, the National Conference of State Historic Preservation Officers (“NCSHPO”), and the Advisory Council on Historic Preservation (“ACHP”) for developing an exclusion from Section 106 review for certain small wireless facilities located on traffic control and lighting structures in (or within 250 feet of) historic districts.²⁹ CTIA recognizes and supports the need to coordinate with the relevant SHPO regarding whether these structures constitute contributing elements to historic districts, and therefore would be ineligible for the exclusion from Section 106 review. To provide clarity for the parties, however, the Commission should require that any SHPO response be provided *in writing*. Requiring written responses will provide clarity and transparency, along with documentation if disputes arise.

Additionally, CTIA suggests that applicants should be permitted to use qualified consultants to determine whether a traffic control or lighting structure is a contributing element to a historic district. Applicants should then file those determinations with the appropriate SHPOs, who would then have 15 days to object to the applicant’s determination. If the SHPO does not object within that 15 day period, it would be deemed to have concurred with the applicant’s determination. This shorter 15-day objection period is appropriate because the determination of whether or not a structure is a contributing element to a historic district should be simple and straightforward. The 15-day period for review would expedite the deployment process while still providing ample time for SHPOs to complete their analyses.

²⁹ See *Public Notice*, App. A at 9-10.

B. The Commission Should Clarify That a Visible Equipment Shed Meeting a Specified Volumetric Limit May Be Deployed Under Exemption VII.

Proposed Section VII to the Collocation Agreement permits the deployment of minimally visible antennas meeting certain volumetric limits without the need for Section 106 review.³⁰ Unlike the other Section 106 exemptions, however, there is no corresponding provision permitting the use of an equipment shed meeting volumetric limits designed to minimize the visual impact of the structure on a historic district or property. CTIA urges the Commission to clarify that visible equipment cabinets and sheds may be deployed pursuant to this exemption if they are less than 21 cubic feet. Such facilities should be deemed minimally visible, consistent with the standards set forth in proposed Section VII.

C. The Commission Should Clarify the Visibility Restrictions Under Proposed Section VII of the Collocation Agreement.

CTIA urges the Commission to clarify that the visibility restrictions in Section VII.A are limited to visibility from public places, and to put some parameters around what will, or will not, constitute a “public place.”³¹ Small antennas and equipment sheds that are visible only from non-public places still should qualify for the Section VII exclusions. For the purpose of the Section VII.A analysis, non-public places should be defined as areas with limited public access (*e.g.*, those areas not intended to serve as public gathering places, service roads, alleys), and other areas that do not contribute to the historic character of the district. Under this approach, antennas and equipment visible only from a narrow alley between buildings, for example, would remain excluded from the Section 106 review process. Equipment visible from non-public spaces should only be required to not have a significant adverse visual impact on historic properties or districts.

³⁰ See *id.*, App. A at 8-11.

³¹ See *id.*, App. A at 8 (Proposed Section VII.A.2).

VI. CONCLUSION.

For the reasons set forth above, the Commission should adopt (1) its proposed exclusions with certain modifications and clarifications and (2) additional exclusions that will expedite 5G deployments, as described in these comments. The proposals herein are narrowly tailored to ensure that covered collocations will not have an adverse visual impact on historic buildings or districts.

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