

## SUPPORTING STATEMENT

### A. Justification:

1. In September of 2004, the Federal Communications Commission (“the Commission”) adopted the Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process (“Nationwide Agreement”). The Nationwide Agreement and related rules tailored procedures for reviewing certain communications facilities deemed to be “undertakings” under the National Historic Preservation Act of 1966 (“NHPA”), 16 U.S.C. § 470 et seq. The Nationwide Agreement revised a related provision of the Commission’s Rules and initiated the use of two FCC Forms and related filings, for Commission applicants, licensees and tower owners (“applicants”). At the same time the “Nationwide Agreement” advanced and preserved the goal of the NHPA to protect districts, sites, buildings, structures or objects of significance in American history, architecture, archeology, engineering or culture, listed on the National Register of Historic Places (“historic properties”). This includes historic properties to which Tribal Nations and Native Hawaiian organizations attach religious and cultural significance. It should be noted that applicants have an affirmative duty, under Section 1.1307(a)(4) of the Commission’s rules, to ascertain whether a proposed action may affect historic properties.

FCC Form 620 is the **New Tower (NT) Submission Packet** to be completed by or on behalf of Applicants to construct new antenna support structures by or for the use of licensees of the Federal Communications Commission (“FCC”).

FCC Form 621 is the **Collocation (CO) Submission Packet** to be completed by or on behalf of Applicants who wish to collocate an antenna or antennas on an existing communications tower or non-tower structure by or for the use of licensees of the Federal Communications Commission (“FCC”).

The Tower Construction Notification System (TCNS) is used by or on behalf of Applicants proposing to construct new antenna support structures, and some collocations, to ensure that Tribal Nations have the requisite opportunity to participate in review prior to construction. To facilitate this coordination, Tribal Nations have designated areas of geographic preference, and they receive automated notifications based on the site coordinates provided in the filing. While use of TCNS is not mandatory, it is estimated that more than 99% of applicants will use TCNS to communicate with Tribal Nations.

In the Spring of 2013, the FCC received notice from the Nation’s freight and commuter railroads that they will need to construct more than 20,000 wayside poles and associated communications equipment in order to comply with the Rail Safety Improvement Act of 2008 (RSIA). The RSIA requires installation of positive train control (PTC) systems by December 31, 2015. PTC is a rail safety system that will enable a central station to stop or slow trains that exceed speed limits or that are approaching other trains where a collision may result.

The FCC has determined that the construction of PTC transmission facilities and their supporting structures is a Federal undertaking under Section 106 of the National Historic Preservation Act. As such, the railroads are required to ascertain prior to construction the impacts of these facilities on historic properties under the relevant procedures set forth by the Advisory Council on Historic Preservation (ACHP) and the FCC. To accommodate the PTC infrastructure deployment by the statutory deadline, the FCC is requesting approval of minor revisions to our E-106 System and Tower Construction Notification System (TCNS), which collect information on infrastructure projects to be shared with Tribal Nations and State Historic Preservation Officers (SHPOs) for the purposes of Section 106 compliance reviews.

The proposed revisions were determined after extensive consultation, which began in September 2013 with the issuance of a Public Notice to our system users, Tribal Nations, and SHPOs. Following the issuance of the Public Notice, the FCC consulted with the Tribal Nations, SHPOs, and the railroads, including government-to-government consultation with Tribal Nations, to provide our system users a better understanding of the PTC infrastructure and the associated deadlines and to provide the FCC with a better understanding of these parties' needs. In January of 2014, the Commission issued a Public Notice seeking comment on a draft Program Comment developed by the Commission in consultation with the ACHP to tailor the FCC's Section 106 review process for PTC construction projects. On March 5, 2014, the FCC submitted the proposed Program Comment to ACHP for its approval. The parameters outlined in the Program Comment will require the FCC to make changes to the TCNS and E-106 systems that require OMB approval. The railroads must start the Section 106 review process as soon as the Program Comment is approved by ACHP to be able to construct by the statutory deadline.

The system revisions require adding two new data elements to the electronic systems, which will provide the railroads with a method to indicate that the filing is a PTC submission and a description field to specify the pole locations within a county. This information will be used to notify the appropriate Tribal representatives and the SHPOs of the proposed projects. These revisions will allow for added efficiencies in the submission and review process for Section 106 compliance.

This information collection does not affect individuals or households; thus, there are no impacts under the Privacy Act.

The Commission is requesting emergency approval for revision of this collection by April 9, 2014.

Statutory authority for this information collection is contained in Sections 1, 4(i), 303(q), 303(r), 309(a), 309(j) and 319 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 303(q), 303(r), 309(a), 309(j) and 319, Sections 101(d)(6) and 106 of the National Historic Preservation Act (NHPA) of 1966, 16 U.S.C. § 470a(d)(6) and § 470f, and Section 800.14(b) of the rules of the Advisory Council on Historic Preservation, 36 C.F.R. § 800.14(b).

2. FCC staff, State Historic Preservation Officers (“SHPO”), Tribal Historic Preservation Officers (“THPO”), and the Advisory Council on Historic Preservation (“ACHP”) use the data to take such action as may be necessary to ascertain whether a proposed action may affect historic properties that are listed or eligible for listing in the National Register as directed by Section 106 of the National Historic Preservation Act (NHPA) and the Commission’s rules, including properties of Tribal significance.
3. Electronic Filing of Forms 620 and 621 is available but not mandatory. It is estimated that approximately 1/2 of applicants will use this option for filing the forms 620 and 621. The related TCNS filing is 100% electronic.
4. This agency does not impose a similar information collection on the respondents. There is no similar data available.
5. In conformance with the Paperwork Reduction Act of 1995, the Commission made an effort to minimize the burden on all respondents, regardless of size.
6. This collection is required in order to assist FCC staff in monitoring compliance with Commission regulations pursuant to Section 1.1307(a)(4), thereby ensuring the Commission’s own compliance with the NHPA.
7. This collection of information is consistent with the guidelines in sections 5 CFR 1320.5(d) (2) & 1320.6
8. The Commission published an emergency approval notice in the Federal Register on March 21, 2014, (79 FR 15745), seeking comments from the public for the information collection requirements that are contained in this supporting statement. To date, no comments have been received from the public.
9. Tribal Nations may request fees from applicants as compensation for providing professional services. We estimate that 20% of Tribal respondents will request fees ranging from \$50 to \$1,000 per submission.
10. In general, there is no need for confidentiality for respondents. On a case by case basis, the Commission may be required to withhold from disclosure certain information about the location, character, or ownership of a historic property, including traditional religious sites. See 16 U.S.C. § 470w-3.
11. This collection does not address private matters of a sensitive nature.
12. This collection consists of six components, which correspond to aspects of the Nationwide Agreement Review process when an applicant proposes to construct an antenna structure or co-locate an antenna that is not covered under the Collocation Programmatic Agreement.

The six components are: a) the Initial Assessment by the Applicant to determine whether an exclusion may apply; b) the Consultation Process with the SHPO/THPO, affected Tribal Nations and consulting parties; c) Mitigation of Adverse Effect; d) Dispute

Resolution between the SHPO/THPO and the Applicant; e) the Recordkeeping burden; and f) Third-Party Responses.

We estimate that **13,500 respondents** annually will be subject to these requirements and file **13,500 responses** annually. This estimate is based on an increase to the current number of filings for the railroads to submit PTC filings. While the railroads estimate construction of approximately 20,000 poles, we are proposing to revise the system to allow filers to batch these filings within a county, to minimize the increase in annual responses.

a. Initial Assessment:

In order to meet this requirement, we anticipate that applicants will utilize an in-house staff engineer and a NEPA analyst to determine whether exclusion would obviate the need for further review. This requirement also includes an initial contact with potentially affected Tribal Nations, which we assume will be made through TCNS, even in most cases where an exclusion applies. These hour and cost burdens will be internal burdens absorbed by the company. The burden hours for the record keeping requirement that clerical staff will fulfill will be accounted for under item (e.) below. All 13,500 respondents fall into this category. We estimate that on average these burdens will be greater for the 1,500 batched PTC submissions than for the 12,000 individual tower submissions, due to the greater number of sites in each submission and the need to complete the additional description field.

12,000 (individual tower respondents) x 2.5 (1.5 hour/per engineer and 1 hour/per NEPA analyst)/project = 30,000 Burden Hours

1,500 (PTC respondents) x 5 (3 hours/per engineer and 2 hours/per NEPA analyst)/project = 7,500 Burden Hours

**Total Burden Hours:** 30,000 hours + 7,500 = **37,500 hours**

**In-House Cost:** It should take an engineer 1.5 hours at \$40.00/hour, and a NEPA analyst 1 hour at \$32.00/hour, to assess the average single tower project.

12,000 respondents x 1.5 hrs (engineer)/project x \$40/hour =	\$720,000
+ 12,000 respondents x 1 hr (analyst)/project x \$32/hour =	\$384,000
	<b>\$1,104,000</b>

It should take an engineer 3 hours at \$40.00/hour, and a NEPA analyst 2 hours at \$32.00/hour, to assess the average PTC batched submission.

$$\begin{array}{r} 1,500 \text{ respondents} \times 3 \text{ hrs (engineer)/project} \times \$40/\text{hour} = \$180,000 \\ + 1,500 \text{ respondents} \times 2 \text{ hrs (analyst)/project} \times \$32/\text{hour} = \$96,000 \\ \hline \mathbf{\$276,000} \end{array}$$

**Total “In-House Cost Burden: \$1,104,000 + \$276,000 = \$1,380,000**

b. Consultation: The respondent will hire an outside consultant to fulfill most of this requirement. See question #13 for the cost to the respondent for the consultant fulfilling the requirement. The applicant will need 1 staff clerical person to compile and maintain files for this requirement. We estimate that this record keeping burden will require 1 clerical person for 1 hour per project at \$16.50/hour. On average, 60% (7,200) of the 12,000 individual tower respondents will fall into this category. All 1,500 of the PTC batched submissions will require consultation due to the requirement to provide advance information to Tribal Nations.

$$8,700 (7,200 + 1,500) \text{ respondents} \times 1 \text{ (in-house clerical)} \times 1 \text{ hr} = 8,700 \text{ hours}$$

**Total Hour Burden Hours: 8,700 hours**

In-House Cost: The clerical staff member is estimated to be paid at \$16.50/hour to fulfill the record keeping requirement.

$$8,700 \text{ respondents} \times 1 \text{ (in-house clerical)} \times 1 \text{ hr} \times \$16.50/\text{hour} = \$143,550$$

**Total “In-house” Cost = \$143,550**

c. Mitigation of Adverse Effect:

The recommendation by a SHPO/THPO of an adverse effect, if accepted, requires the applicant, the Commission, and the SHPO/THPO to negotiate and sign a Memorandum of Agreement (“MOA”) to mitigate the adverse effect. In order to meet this requirement, applicants will need an outside consultant and 1 clerical person. See question #13 for the cost for the consultant to fulfill the requirement on behalf of the respondent. For the clerical person the burden is 1 hour at a cost of \$16.50 per hour. On average, 5% (675) of the 13,500 respondents will endure adverse effects.

$$675 \text{ applicants} \times 1 \text{ hr (clerical)} = 675 \text{ hours}$$

**Total Hour Burden = 675 hours**

$$675 \text{ applicants} \times 1 \text{ hr (clerical person)} \times \$16.50/\text{hr} = \$11,138$$

**Total “In House” Cost = \$11,138**

d. Dispute Resolution Between SHPO/THPO and the Applicant:

Meeting this requirement may require the applicant to hire an attorney to help resolve before the Commission any dispute that may arise between the SHPO/THPO and the applicant. See question #13 for the cost incurred by the respondent for hiring a consulting attorney to fulfill the requirement on behalf of the respondent. Record keeping burden is incurred by all parties. On average, .2% (27) of the 13,500 respondents will fall into this category.

27 applicants x 1 hr (SHPO/THPO clerical) = 27 hours  
27 applicants x 1 hr (clerical) = 27 hours  
**Total Hour Burden = 54 hours**

27 applicants x 1 hr (SHPO/THPO clerical) x \$16.50/hr = \$446.00  
27 applicants x 1 hr (clerical) x \$16.50/hr = \$446.00  
**Total "In-House" Cost = \$892.00**

e. Recordkeeping Burden:

In order to meet this requirement, applicants will need one clerical person for 1 hour to compile and maintain the files for each project at \$16.50/hour. The hour and cost burden will be internal burdens absorbed by the company.

**Total Burden Hours:** 13,500 applicants (keeping records) x 1 hr (clerical) = **13,500 hours**

**Total In-house Cost:** 13,500 applicants (keeping records) x 1 hr (clerical) x \$16.50 = **\$222,750**

f. Third Party Responses:

It is estimated that the SHPOs respond to about 50% of the filings for which they receive notification. In addition, we estimate each notification may receive responses from an average of 2 Tribal Nations. For the 12,000 single site notifications, we estimate 6,000 SHPO responses and 24,000<sup>1</sup> Tribal responses for a total of 30,000 responses. Each response would take one analyst 1 hour to respond at \$32/per response. For the 750 PTC batch filings, we estimate 750 SHPO responses and 3,000 Tribal responses for a total of 3,750 responses. We estimate each response will take one analyst 2 hours per response. The hour and cost burden will be internal burdens to the tribe and SHPO.

Total Burden Hours: 30,000 responses X 1 hr (analyst) = 30,000

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<sup>1</sup> The Commission arrived at 24,000 Tribal responses based on the following calculation: 12,000 individual site notifications x 2 Tribal responses per site = 24,000 Tribal responses.

$$3,750 \text{ responses} \times 2 \text{ hrs (analyst)} = \underline{7,500}$$

$$\textbf{Total Burden Hours} = \textbf{37,500}$$

$$\text{Total In-house Cost: } 30,000 \text{ responses} \times 1 \text{ hr (analyst)} \times \$32 = \$960,000$$

$$3,750 \text{ responses} \times 2 \text{ hrs (analyst)} \times \$32 = \underline{\$240,000}$$

$$\textbf{Total In-house Cost:} = \textbf{\$1,200,000}$$

**TOTAL CUMULATIVE ANNUAL BURDEN HOURS:** a) 37,500 + b) 8,700 + c) 675 + d) 54 + e) 13,500 + f) 37,500 = **97,929 hours**

**TOTAL CUMULATIVE ANNUAL "IN-HOUSE" COSTS:** a) \$1,380,000 + b) \$143,550 + c) \$11,138 + d) \$892 + e) \$222,750 + f) \$1,200,000 = **\$2,958,330**

13. The operational and maintenance costs associated with this collection are as follows:

a. Initial Assessment: **Zero (0)**

b. Consultation: Meeting this requirement will require one outside consultant for each tower or batched submission. The consultant identifies all historic properties, including traditional cultural properties, which may be affected. The consultant is also responsible for sending correspondence to the appropriate Tribal Nations and other consulting parties. Further, the consultant publishes public notices to notify the public of each project and mails those notices to all Tribal Nations and consulting parties. Publication cost per notice is \$100.00. On average, 60% (7,200) of the 12,000 individual tower respondents will fall into this category.

We estimate that the consulting process for these towers will be a 10 hour process at a cost of \$125.00 per hour.

$$7,200 \text{ applicants} \times \$125.00/\text{hr (consultant)} \times 10 \text{ hrs} = \$9,000,000$$

$$\textbf{FEES:} \quad 7,200 \text{ responses} \times \$100.00 \text{ (publication fee)} = \underline{\$ 720,000}$$

$$\textbf{\$9,720,000}$$

We estimate that 60% (900) of the 1,500 PTC batched submissions will require a full consultation process. We estimate that consultation for these submissions will be a 20 hour process at a cost of \$125.00 per hour. Publication cost per notice is \$100.00.

$$900 \text{ applicants} \times \$125.00/\text{hr (consultant)} \times 20 \text{ hrs} = \$2,250,000$$

$$\textbf{FEES:} \quad 900 \text{ responses} \times \$100.00 \text{ (publication fee)} = \underline{\$ 90,000}$$

$$\textbf{\$2,340,000}$$

We estimate that the remaining 40% (600) of the batched submissions, which are excluded from non-Tribal review, will require partial consultation consisting mainly of sending

advance information to Tribal Nations. We estimate that consultation for these submissions will be a 10 hour process at a cost of \$125.00 per hour.

$$600 \text{ applicants} \times \$125.00/\text{hr (consultant)} \times 10 \text{ hrs} = \quad \mathbf{\$750,000}$$

**Total Cost Burden: \$9,720,000 + \$2,340,000 + \$750,000 = \$12,810,000**

c. Mitigation of Adverse Effect:

In order to meet this requirement, applicants will need an outside consultant. We estimate that the process will take approximately 3 hours of consultant time at \$125.00/hour. On average, 5% (675) of the 13,500 respondents will endure adverse effects.

$$675 \text{ applicants} \times \$125/\text{hr (consultant)} \times 3 \text{ hrs} = \quad \mathbf{\$253,125}$$

d. Dispute Resolution Between SHPO/THPO and the Applicant:

Meeting this requirement may require the applicant to hire an attorney to help resolve before the Commission any dispute that may arise between the SHPO/THPO and the applicant at a cost of \$300 per hour.

$$27 \text{ applicants} \times \$300/\text{hr (attorney)} \times 3 \text{ hrs} = \mathbf{\$24,300}$$

e. Recordkeeping Burden: **Zero (0).**

f. Third Party Responses: **Zero (0).**

**TOTAL ANNUAL COST BURDEN IS:** a) Zero + b) \$12,810,000 + c) \$253,125 + d) \$24,300 + e) Zero + f) Zero = **\$13,087,425 total annual cost**

14. The cost to the Commission (Federal Government) is calculated as follows: the cultural resources specialist is estimated to have an hourly wage equal to a GS 14 step 5 (\$57.70/hr), the attorney's hourly wage is estimated at a GS 14 step 5 (\$57.70/hr), and the clerical staff member is estimated to have an hourly wage of a GS 5 step 5 (\$18.69/hr). The FCC will utilize an attorney and a cultural resources specialist to arbitrate the dispute and to decide the case if a settlement cannot be reached by the parties. Further, one clerical person will be needed to compile and maintain records.

27 applicants x 3 hrs (commission Atty) x \$57.70./hr =	\$4,674
27 applicants x 3 hrs (commission cultural spec.) x \$57.70./hr =	\$4,674
27 applicants x 1 hr (commission clerical) x \$18.69/hr =	<u>\$ 505</u>
<b>TOTAL COST TO THE FEDERAL GOV'T:</b>	<b>\$9,853</b>

15. There is a program change increase to allow for an estimated additional 1,500 PTC related filings. The additional respondents and the increased time results in 10,581 hour increase. The estimated cost increase is \$3,048,825. The 37,500 burden hours associated with the third party disclosure responses are an adjustment in burden hours that were inadvertently removed from the previous filing.

16. The data will not be published for statistical use.

17. The Commission is requesting a waiver from displaying the OMB expiration date on the FCC Form 620, FCC Form 621 and the TCNS electronic filing screen. The Commission will use an edition date in lieu of an OMB expiration date. Additionally, the Commission publishes all OMB-approved information collections (including the OMB expiration date) in 47 CFR 0.408.

18. The estimated time per response is 1 – 20 hours instead of 5 – 20 hours as stated in the 15-day emergency notice on March 21, 2014, (79 FR 15745). There are no other exceptions to the certification statement.

**B. Collections of Information Employing Statistical Methods:**

No statistical methods are employed.