

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of;)
)
Scoping document for development of a) WT Docket No. 13-240
proposed program comment to govern review)
of positive train control facilities under section)
106 of the national historic preservation act)
)

To: Chief, Wireless Telecommunications Bureau

**COMMENTS OF THE JOINT COUNCIL ON TRANSIT WIRELESS
COMMUNICATIONS**

The Joint Council On Transit Wireless Communications (the “Joint Council”), pursuant to Section 1.415 of the Federal Communication Commission (“FCC” or “Commission”) Rules and Regulations, 47 C.F.R. § 1.415, respectfully submits these comments regarding Public Notice DA 13-1980.¹

1. INTRODUCTION

1.1 The Joint Council has reviewed the request for comment sought on the scoping document included in the public notice for development of a proposed program to govern review of positive train control facilities under Section 106 of the National Historic Preservation Act (NHPA)². This request seeks alternative procedure recommendations on ways to coordinate this review by tribal nations on an estimated

¹ *The Wireless Telecommunications Bureau (Bureau) seeks public comment in connection with the development of a proposed Program Comment to govern review of positive train control (PTC) wayside facilities construction under Section 106 of the National Historic Preservation Act (NHPA), Public Notice, DA 13-980, WT Docket. No. 13- 240 (released September 27, 2013 “Public Notice”).*

² National Historic Preservation Act (NHPA), 16 U.S.C. § 470f

20,000 radio antenna poles between 25 and 80 feet tall and approximately one to 6 miles apart along certain rail lines required by statute for PTC mandated by the Rail Safety Improvement Act of 2008, which requires all of the major freight and passenger railroads to deploy PTC systems along most segments of their track by December 31, 2015.

This issue affects both Freight and passenger railroads as they seek to comply with the FRA regulations regarding implementation of PTC on their lines, and the commission should be aware that in most urban markets where freight lines travel through and where commuter passenger lines operate, it is common for freight and commuter passenger operators to share tracks. Freight lines can run on commuter operator dispatched territory, or commuter operators can run on Freight dispatched territory depending on the area and section of track. It is also common where tracks are shared for freight and commuter lines to also share radio towers on a regional basis along various corridors to reduce the overall quantity of radio infrastructure needed as compared to the scenario if commuter and freight lines each deployed and operated separate towers along common rail corridors.

The Joint Council is aware that construction of these PTC radio antenna support poles is currently being delayed or stopped by the FCC until this matter is resolved, directly affecting the implementation of this critical infrastructure required for the PTC mandate. This constitutes a material delay to all railroads engaged in the planning and construction of PTC radio antenna poles and necessitates that this program consultation and the development of alternative procedures be expedited to the greatest extent possible.

As is well known, commuter rail operators (along with Freight operators) are struggling to meet the mandated schedule to implement PTC systems and in most cases have already advised the FRA that their PTC programs will not be complete by December 31, 2015. As a mitigation strategy to avoid the lengthy Section 106 review process, most commuter rail operators are planning on using existing radio infrastructure to the extent possible to support the placement of PTC antenna; but as-is also the case with freight operations, existing radio infrastructure will not be sufficient in many cases to provide the coverage needed for reliable PTC data radio communications and our operators are in the process of planning, designing or constructing these additional antenna poles to fill in identified coverage gaps. It is vital to everyone's PTC data radio system construction schedule for new antenna poles to know that our Federal government is working together to coordinate these interagency issues as part of the overall PTC program and eliminate impediments to an already compressed and unachievable schedule mandate. To the extent that PTC related antenna poles can be considered categorically differently from other poles than the current Section 106 process allows, this is key to achieving the goals outlined in the program document.

Therefore, as many commuter rail operator's ability to meet the mandated schedule are directly constrained by this Section 106 review process of unprecedented scope, we offer the following comments regarding alternative procedures.

2. THE JOINT COUNCIL ON TRANSIT WIRELESS COMMUNICATIONS

2.1 The Joint Council is an alliance of professionals and transportation organizations created to represent surface land passenger transportation service operators

nationwide within the United States on matters of wireless voice and data communications. The Council membership is drawn from public agencies, private providers and industry serving road, water, and rail transit. The council seeks to educate and inform public and private transportation agencies and providers on issues relating to their use of wireless communications. For additional detail regarding the Joint Council, please refer to our website – www.transitwireless.org

COMMENTS

3. Submission Process

We concur with the suggestion regarding batch processing and would recommend that a flexible batch processing mechanism be adopted that would allow batching by exemption, exclusion zones/rail corridor, by priority and/or by State.

3.1 As suggested in the scope of review comments, if a tower site by its location, height and profile is exempt for the Section 106 review process, than let it be so identified and processed quickly and the exemption confirmed and the review dismissed.

3.2 If exclusion zones can be determined prior to submission, it would allow any site located with that exclusion zone to be identified as such and therefore exempt for further Section 106 review and coded as such on the response from the SHPO so that this issue can be checked off the list as complete for those sites that qualify for the exclusion.

3.3 It is important for a priority mechanism to be adopted that allows railroads to indicate in their application which sites are a higher priority than others so that their implementation schedules can be determined. As PTC systems are typically implemented in rail segments in an organized plan, those segments that are to be implemented first should

be allowed to be given a higher priority than those segments scheduled further out in time. Suggest three levels of priority, 1) High 2) Medium and 3) low, be considered. Treating all sites with equal priority would frustrate scheduled updates and be unnecessarily inflexible.

3.4 We also suggest (as discussed in our exclusion comments below) that applications be batch processed by state. This would allow each SHPO to process their applications as a group within each state and allow this to be managed at the state level directly, allowing a large group of sites to be considered together and further parsed into sub categories by exclusion zone, priority and other criteria.

4. Exclusion Areas (or Zones)

We agree with the suggestion that establishing a more systematic approach to determining which sites are excluded from Section 106 review would greatly expedite and provide certainty as to which sites construction can begin, and which are delayed subject to this review. Establishing a definitive construction schedule for these antenna support poles is critical to determining the impact of this review as a component of the implementation of PTC and allows the schedule updates provided to the FRA to be more certain.

Specifically we recommend establishing objective criteria not subject to interpretation, arbitrary preference or personal opinion to the extent possible. In the Section 106 scoping document the following criteria are offered and have the following comments on each.

4.1 Geographic Exclusion: The observation made by SHPOs that most rail corridors are industrial corridors is correct and we would further add that the majority of rail corridors and their boundaries have been established for many decades; and in many cases for 50, 75 or more years. Within these boundaries we agree with the observation that railroads routinely disturb the soil for track maintenance, adding or moving tracks, signals or other operational improvements or changes over time. Since the concern is the potential impact to existing sites of historical significance, the first obvious step would be to have each SHPO identify geographic rail corridor boundaries that within any soil disturbance would be of no significance and can therefore be categorically exempted from the Section 106 process.

4.2 Depth of soil disturbance: we find that the depth of soil disturbance to not be an applicable criteria for determining an exclusion eligibility and do not recommend it be used for this purpose. The depth of soil disturbance proposed in not relevant as the definition of a site of historical significance can range from a few inches to many feet below the surface (assuming in this example there is nothing visible above the soil), but the more important factors are:

a) The distance horizontally between the site of soil disturbance and the historic site and if at the spacing proposed whether there is a likely or unlikely potential that the existing historic site would in any way be compromised by the proposed activity. The site disturbance proposed for these radio support poles (as stated in the scoping document) is in the 5 to 10 foot range for pole foundations and in some cases these foundations could be more than 10 feet depending on the

antenna configuration needed, but that should have no bearing on the exclusion determination.

b) If there has been any soil disturbance regardless of the depth previously documented by prior survey or other exhibits as recommend in Section 4.5, these areas should be eligible for exclusion and included within the defined geographic exclusion area.

4.3 Nature of Human presence prior to the rail road: Making a determination of historic certainty with regard to what human presence pre-dates the railroad and if that presence is of historical significance is the expertise of Archeologists and can be definitive or it can be speculative depending on what artifacts are found and how far back in history is considered in the review. For this reason we find this to be a subjective criterion where professionals and experts can legitimately disagree. In order to minimize these sort of disputes we suggest that this criterion be included in the geographic exclusion determination proposed earlier and not isolated as an separate item so that this factor can be definitively rule in or out within the exclusion areas/zones.

4.4 Proximity of sensitive historic sites: we recommend that this criterion be given more weight as it is empirical, objective and can be documented on a map or other exhibit. Of particular interest would be to include in any geographic exclusion, how close to an existing site is possible without it being considered an impact to an existing site. In many cases the type of foundations proposed by the railroads is a screw auger type that is installed typically with a rail borne drill machine. This type does not require any excavation or over excavation for example if it were a poured concrete spread

footing. This type of foundation can be installed very close to an historic site without any disturbance of adjacent soil. We recommend that this be evaluated and considered as an option to mitigate the impact.

4.5 Previous Archeological survey: While not mentioned in the scoping document, a common practice in projects that involve Section 106 generally is to allow prior surveys performed by an Archeologist or other professional to be submitted that were performed within the last 10 years for example. If not already on file with the state Historic Preservation Officer, these surveys can provide important data that within these rail corridors that there are or are not any areas of historic significance already established in the corridor. These prior surveys should be allowed to be considered and evaluated, rather than requiring new surveys to be performed.

If for example survey data indicates areas of prior soil disturbance, those areas should be eligible for exclusion for Section 106 review. This would allow the geographic exclusion area approach discussed in Section 4.1 to be determined by prior Archeological surveys provided by the applicant in addition to data on file with the State. This would leverage prior work performed and expedite the review and allow those sites deemed to be within the exclusion areas to proceed with construction.

4.6 Categorical exclusion by State: While not specifically mentioned in the scoping document, our recommendation is that categorical exclusion be done at the state level rather than at the city or county level so that the existing state historic preservation office mechanisms that already exists can be used to the greatest extent possible and allows each State to provide their consultation and consent.

5. Scope of Review

We offer no detailed comments of this item but do concur with the suggestion in the scoping document that the National Programmatic Agreements could be used to limit or exempt the section 106 review for poles that fit within or outside an agreed Area of Potential Effects. To the extent that the scope can be narrowed to exempt certain sites categorically, that would allow rail operators to schedule site construction and commissioning with more certainty.

6. Review Process

What would be helpful would be the establishment of a clearinghouse approach where all PTC related tower applications are treated separately from other applications and given expedited treatment such as shortening the response time and limiting the number of reviews and appeals.

7. Avoidance and Mitigation

We have no detailed comments on this topic but agree that there needs to be a procedure to identify which proposed locations will have an adverse effect early in the review process, so it can be flagged for avoidance and mitigation review and not hold up the rest of the sites.

The Joint Council is pleased to have the opportunity to present its comments to the Commission's Public Notice and welcomes further discussion on these issues to the benefit of our industry directly affected by this issue.

Joint Council Comments
DA 13-364

Respectfully submitted,

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