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*OMB Control Number:* 3060-XXXX.

*Title:* Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process.

*Form:* FCC Forms 620 and 621.

*Type of Review:* New collection.

*Respondents:* Business or other for-profit, Individuals or household, Not-for-profit institutions, and State, Local or Tribal Government.

*Number of Respondents:* 12,000.

*Frequency of Response:*

Recordkeeping, On occasion reporting required, Third party disclosure.

*Total Annual Burden:* 73,800 hours.

*Needs and Uses:* This data is used by FCC staff, State Historic Preservation Officers ("SHPO"), Tribal Historic Preservation Officers ("THPO"), and the Advisory Council of Historic Preservation ("ACHP") 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 NHPA and the Commission's Rules.

## I. Background

1. In this *Notice of Proposed Rulemaking* ("NPRM"), we seek comment on a draft Nationwide Programmatic Agreement ("Nationwide Agreement") among the Federal Communications Commission ("Commission"), the Advisory Council on Historic Preservation ("Council"), and the National Conference of State Historic Preservation Officers ("Conference") that would tailor and streamline procedures for review of certain Undertakings for communications facilities under the National Historic Preservation Act of 1966 ("NHPA"), as well as a related revision of the Commission's rules. *See* 16 U.S.C. 470 *et seq.* An "Undertaking" subject to review under the NHPA is defined as "a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including (A) those carried out by or on behalf of the agency; (B) those carried out with Federal financial assistance; (C) those requiring a Federal permit, license, or approval; and (D) those subject to State or local regulation administered pursuant to a delegation or approval by a Federal agency." 16 U.S.C. 470w(7). The proposed Nationwide Agreement would incorporate an existing Programmatic Agreement that excludes most collocations of antennas on existing structures from routine historic preservation review. *See* 16 FCC Rcd

5574 (Wireless Tel. Bur. 2001). In November 2001, representatives of the Commission, Council and Conference, American Indian tribes, the communications industry, and historic preservation consultants, as part of a working group sponsored by the Council, began drafting a proposed Nationwide Agreement. Consistent with § 800.14(b) of the Council's rules, 36 CFR 800.14(b), and § 1.1307(a)(4) of the Commission's rules, 47 CFR 1.1307(a)(4), the draft Nationwide Agreement is intended to tailor the section 106 review, 16 U.S.C. 470f, in the communications context so as to improve compliance and streamline the review process for construction of towers and other Commission Undertakings. The Commission's environmental rules currently treat construction of licensed communications facilities as "Undertakings." An illustrative list of Commission activities in relation to which Undertakings covered by the draft Nationwide Agreement may occur is attached. *See* Attachment 2 to Attachment A. At the same time, the parties intend to advance and preserve the goal of the NHPA to protect historic properties, including historic properties to which Indian tribes and Native Hawaiian organizations ("NHOs") attach religious and cultural significance.

## II. Discussion

2. We request comment on the draft Nationwide Agreement. *See* Attachment A to this NPRM. In particular, we seek comment on several issues that members of the Working Group have specifically raised during the course of negotiating the current draft Nationwide Agreement. For example, members of the Working Group have proposed certain modifications to the language in the draft Nationwide Agreement regarding exclusion of certain Undertakings from routine section 106 review. *See* Draft Nationwide Agreement section III. These and other issues on which the members of the Working Group did not reach full consensus are indicated in footnotes throughout the draft Nationwide Agreement. We seek comment on these and any other issues related to the draft Nationwide Agreement, including issues related to the potential economic impact of the draft Nationwide Agreement on small entities.

3. We also request comment regarding how the draft Nationwide Agreement should be crafted consistent with the Commission's government-to-government relationship with and trust responsibility to federally recognized

Indian tribes (including Alaska Native Villages). *See* In the Matter of Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes, Policy Statement, 16 FCC Rcd 4078, 4080 (2000), and statutory and regulatory provisions governing the Commission's relationship with such Indian tribes and NHOs. *See* 16 U.S.C. 470a(d); 36 CFR 800.2(c)(2); 47 CFR 1.1308(b) Note (when an action interferes with or adversely affects an American Indian tribe's religious site, the Commission shall solicit the views of that American Indian tribe). Several issues in this regard have been brought to our attention both through tribal participation in the Working Group and through Commission staff consultation with the United South and Eastern Tribes, Inc. For instance, do the NHPA, the Council's rules or other governing principles require notification or more, prior to construction, to Indian tribes and NHOs with historic associations to the area in which an Undertaking is to occur, even though the parties to a Nationwide Agreement identify certain classes of Undertakings as unlikely to have an effect on historic properties and therefore excluded from routine review? *See* Draft Nationwide Agreement at section III.B Similarly, should the Nationwide Agreement prescribe procedures for licensees and applicants to invite the participation of Indian tribes and NHOs in the section 106 process, or should it recommend that, as an alternative to direct Commission consultation on each site, the parties implement alternative processes pursuant to guidance to be provided separately by the Commission after consultation with Indian tribes and NHOs? *Id.* section IV, Alternatives A and B. We seek comment on these issues.

4. In addition, we request comment regarding the treatment of section 106 reviews that are in process at the time a Nationwide Agreement becomes effective. For example, to what extent should the timelines, processes and standards in a Nationwide Agreement replace the Council's rules (36 CFR part 800) for section 106 reviews that are pending before a SHPO/THPO, or at other stages in the process, on the date that a Nationwide Agreement goes into effect? We seek comment on this and other transitional issues.

5. Finally, in conjunction with the proposed execution of the Nationwide Agreement, we propose to revise § 1.1307(a)(4) of our rules.<sup>1</sup> Under § 1.1307(a)(4), applicants are required to evaluate whether their proposed

<sup>1</sup> 47 CFR 1.1307(a)(4).