



March 25, 2014

Mr. M. Wayne Donaldson
Chairman
Advisory Council on Historic Preservation
1100 Pennsylvania Avenue NW, Suite 803
Old Post Office Building
Washington, DC 20004

ATTN: Charlene Dwin Vaughn
FCCcomments@achp.gov

Dear Chairman Donaldson,

The Society for American Archaeology (SAA) appreciates this opportunity to comment on the Federal Communication Commission's (FCC) proposed Program Comment (PC) for Positive Train Control (PTC) equipment installation, within the FCC's existing Nationwide Programmatic Agreement (NPA). We respectfully request that the Council reject the draft PC and work with concerned parties, including the FCC, SHPOs, tribes, and outside stakeholders, to formulate a Programmatic Agreement specifically concerning PTC.

SAA is an international organization that, since its founding in 1934, has been dedicated to the research about and interpretation and protection of the archaeological heritage of the Americas. With more than 7,000 members, SAA represents professional archaeologists in colleges and universities, museums, government agencies, and the private sector. SAA has members in all 50 states as well as many other nations around the world.

Based on our review, the rationale for a PC consists entirely of an urgency generated by the congressionally-mandated deadline for the installation of PTC infrastructure. Though we are sympathetic to the problems caused by the sometimes-conflicting dictates of Congress, the draft PC appears to take this congressional mandate as an excuse to avoid compliance with Section 106 of the National Historic Preservation Act (NHPA), as opposed to a serious attempt to meet the requirements of that statute. For example, Section IV Exclusion 1 seeks to designate railroad rights-of-way as "functionally equivalent" to the types of communications rights-of-way listed in the existing FCC NPA, thereby ensuring that the installation of PTC wayside equipment enjoys a conditional exclusion from Section 106 reviews. As justification, the draft PC cites the "exigent circumstances" imposed by statutorily-mandated PTC deployment timetables, but nowhere does the draft PC adequately demonstrate that such extreme measures are needed to meet its Section 106 obligations. Importantly, there is no limit to the conditional exclusion of future construction after the mandated compliance deadline has passed. So, if an extension is granted or if future wayside PTC structures need to be constructed, there will be no Section 106 reviews. Section IV Exclusion 2, dealing with PTC construction in rail yards, is written in a similar vein. Both exclusions are untenable and unjustifiable.

Ultimately, under our reading of the draft PC, these and other proposed exclusions are so broad that it remains unclear whether any intra-Area of Proposed Effect field studies would be required, absent direct State or Tribal Historic Preservation Officer intervention. This approach turns Section 106 on its head by effectively vesting the responsibility for historic properties identification and assessment with the SHPOs and THPOs, and not the federal agency. Such a policy will fail to protect cultural resources because, by their very design, SHPOs and THPOs do not have the resources or the expertise to perform surveys or evaluations. For almost 50 years, identification and assessment have been the responsibility of the federal agency and we see no reason for that to change for the PTC project. In short, the FCC has not met its legal responsibility to undertake a reasonable and good faith effort to comply with Section 106 of the NHPA.

Beyond its failure to adequately address the FCC's responsibility under Section 106, the draft PC contains a substantial number of confusing, vague, or conflicting provisions. Section III paragraph 1, for example, states that equipment eligible for the procedures set forth in the draft PC "must not be taller than 75 feet..." An earlier portion of the document, however, said that "nearly all of the wayside poles are between 25 and 65 feet in height". For what reason is the allowed maximum a full ten feet higher than the tallest poles? The draft PC does not say. In light of the substantial effects of these antennae on viewscapes, the maximum height eligible for review exclusions needs to be very clear. Those structures exceeding the maximum should be subject to Section 106 review. Furthermore, the PC states that an additional 20,000 -30,000 poles need to be placed. This level of ambiguity as to the exact number and placement locations of poles is unacceptable and speaks to the cavalier nature in which these ground-disturbing activities are being treated by the FCC.

In summary, to adopt the draft PC would amount to the shunting of an illegitimate and unworkable amount of affirmative FCC Section 106 responsibilities onto over-burdened SHPOs and THPOs. The authors of the draft PC seem to be thoroughly unaware of the potential for PTC to have dramatic and substantial effects on historic and cultural landscapes, both known and unknown, and railroad-centered as well as pre-industrial. They also do not appear to understand or value one of the primary purposes of Section 106: the identification and protection of previously unknown cultural resources. The spirit of Section 106 is violated if, as presented by the FCC, only a relative handful of known properties are subject to protection. Moreover, we remain unconvinced that the case has been made for developing a PC within the existing FCC NPA at all. In our opinion, protecting the historic and cultural resources impacted by PTC construction will be far more effectively achieved through the development of a PA specifically for PTC.

Thank you for your time and attention to this important matter.

Sincerely,

A handwritten signature in blue ink that reads "Jeffrey H. Altschul". The signature is fluid and cursive, with a large, sweeping flourish at the end.

Jeffrey H. Altschul, Ph.D., RPA
President