



September 30, 2025

Secretary, Federal Communications Commission
45 L Street NE Washington, DC 20554

RE: Notice of Proposed Rulemaking “Modernizing the Commission’s National Environmental Policy Act Rules” (FCC 25-47)

Dear Federal Communications Commission:

On behalf of their members, the Society for American Archaeology (SAA) and the Society for Historical Archaeology (SHA) appreciate the opportunity to comment on this Notice of Proposed Rulemaking (NPRM), particularly as it relates to the Federal Communication Commission’s responsibilities under Section 106 of the National Historic Preservation Act (NHPA).

Formed in 1967, the Society for Historical Archaeology is the largest scholarly group concerned with the archaeology of the modern world (A.D. 1400-present). The main focus of the Society is the era since the beginning of European exploration. SHA promotes scholarly research and the dissemination of knowledge concerning historical archaeology. The SHA is specifically concerned with the identification, excavation, interpretation, and conservation of sites and materials on land and underwater.

The SAA is an international organization that, since its founding in 1934, has been dedicated to research about and interpretation and protection of the archaeological heritage of the Americas. With more than 6,000 members, the SAA represents professional and avocational archaeologists, archaeology students in colleges and universities, and archaeologists working at tribal agencies, museums, government agencies, and the private sector. The SAA has members throughout the United States, as well as in many nations around the world.

Both the SAA and SHA support and would like to reiterate key comments provided to the Commission on this NPRM by the National Conference of State Historic Preservation Officers (NCSHPO), National Trust for Historic Preservation (Trust), the National Association of Tribal Historic Preservation Officers (NATHPO), and the American Cultural Resources Association (ACRA).

1. As ACRA and the SAA noted in their previous comments to the Commission regarding the CTIA Petition for Rulemaking on the Commission's National Environmental Policy Act Rules (Docket No: RM-12003), the 2004 Nationwide Programmatic Agreement (NPA) (47 CFR Appendix C) is the product of thoughtful and detailed collaboration between the Commission, the Advisory Council on Historic Preservation (ACHP), Tribes, State Historic Preservation Officers (SHPOs), industry, and other stakeholders to strike the right balance between protecting our historic and cultural heritage and building a more effective national and expansive national communications network. The purpose of this NPA is to

streamline Section 106 reviews of Commission actions that fall under the definition of “undertakings” in the Section 106 regulations. As NCSHPO notes in their September 18, 2025 comments, the Commission has continually and effectively employed this agreement over the years in consultation with the NPA signatories. The purpose of this NPA is to streamline Section 106 reviews. Rather than risk invalidating this agreement, NCSHPO suggests the Commission utilize the amendment process found in the agreement to address any shortcomings to the NPA, or to explore any opportunities for greater efficiencies that have so far been missed. Having said all of this, we would like to point out that Section 106 reviews of FCC-related undertakings already demonstrate a great deal of efficiency. For example, since January of 2004, the State of Washington has reviewed 4,449 projects with the FCC. Just 21 were found to have an adverse effect. In all, the average response time from the Washington SHPO was only five days.

2. Although the National Environmental Policy Act (NEPA) often works in tandem with Section 106 of the NHPA, as ACRA notes in their September 18, 2025 comments, these are two distinct statutes that place specific requirements upon federal agencies. For example, the statutory definition of a major federal action under NEPA (42 U.S.C. § 4336e) is distinct from the Section 106 definition of an undertaking. Any changes to the Commission’s NEPA regulations do not release it from its obligations under Section 106 of NHPA and its accompanying regulations. Further, as noted by the Trust, Section 106 undertakings and major federal actions under NEPA are not coterminous. We support the Trusts position, urging the Commission not to adopt this position of coterminous definitions, as it would create a risk of legal challenge and delay and possibly stop communication project delivery.

3. Finally, the SAA and SHA agree and support the comments submitted on September 5 by NATHPO, raising concerns about the Commission’s inadequate tribal consultation during the process of developing the proposed NPRM.

In addition, the FCC needs to acknowledge that Programmatic Agreements (PAs) that require the signature of either a SHPO, NATHPO or the National Conference of State Historic Preservation Officers are binding contracts between the states, tribes and federal agencies. The 2004 NPA falls into this category. The FCC does not have the ability to unilaterally abrogate its contractual responsibilities when it comes to undertakings.

Thank you for considering the SAA’s and SHA’s comments on this NPRM. We strongly recommend the Commission utilize existing Section 106 streamlining tools, such as the 2004 NPA, to address current concerns about how Section 106 reviews might impede the development of our nation’s communication infrastructure. The use of these tools balances the needs of project delivery and the protection of our nation’s irreplaceable archaeological, historical, and cultural heritage.

Sincerely,

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