



Federal
Communications
Commission

Implementing the Positive Train Control Program Comment

Jeffrey Steinberg

**Deputy Chief, Spectrum
and Competition Policy
Division**

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Background

- Alternative method for complying with section 106 of the NHPA
- Supersedes ACHP rules and FCC Programmatic Agreements
- Issued by ACHP May 16, 2014
- Effective May 19, 2014

Outline

- Scope
- Exemption for other Federal Agencies
- Exclusions
- Alternative Agreements
- Review Process

Scope

- Covers PTC wayside poles and associated infrastructure
 - No more than 75 feet tall
 - In existing railroad rights-of-way
- Not on Tribal land without Tribal Nation's consent

Exemption for other Federal Agencies

- Other Federal Agencies with section 106 obligations are not required to consider the effects of PTC components that are within the scope of the Program Comment
 - Includes landholding and funding agencies
 - Includes excluded poles as well as those subject to review
- Agencies retain obligations with respect to infrastructure outside the scope of the Program Comment

Excluded From Review

- Facilities within 500 feet of railroad signal equipment, catenary bridge or mast, or above-ground utility transmission or distribution lines
 - Nearby structure must be at least 25' tall
 - Utility lines must be within 100' of ROW center line
 - Facility must not be within boundaries of listed determined eligible historic property

Excluded from Review (2)

- Collocations on existing railroad infrastructure
 - Antenna height 10' or less
 - Structure not listed or determined eligible
- Facilities within track yard system of greater than 100,000 square feet
 - Not within 500' of listed or determined eligible historic property

Additional Exclusions

- Need not consider effect on rails or track bed themselves
 - Does not exclude consideration of archeological resources in soil or ballast
- SHPOs and Tribal Nations may create own exclusions

Process for Excluded Infrastructure

- Program Comment requires submission of excluded poles
- Must be submitted to SHPO and Tribal nations through E106 and TCNS
 - Need only include location information and basis for exclusion

Excluded Infrastructure (2)

- SHPO or Tribal Nation may identify as ineligible for exclusion
 - For example, may identify pole within 500' of railroad infrastructure as being within boundaries of historic property
- SHPOs/Tribal Nations encouraged to resolve any concerns directly with railroad
- If not resolved, SHPO/Tribal Nation must raise concern directly with FCC within 30-day period.

Alternative Agreements

- Railroad may agree with SHPOs and Tribal Nations on alternatives to Program Comment Process
 - Must be in writing and filed with the FCC
 - One agreement may include multiples parties
 - May include submission method other than TCNS/106
- If agreement does not include all SHPOs and Tribal Nations with interest in a geographic area, must still follow Program Comment with non-parties

Submissions to SHPOs and Tribal Nations

- Submit proposed sites through TCNS and E106
- If Tribal Nation or SHPO does not accept TCNS/E106 submission, also provide information through its preferred means
- Each filing may include multiple sites

Submission Contents

- Complete all TCNS and E106 fields
 - Enter information for a representative site if field requires site-specific information
- Check box indicating a PTC Program Comment submission
- Provide general information in description field
 - Number of poles in submission
 - Subject to review, excluded, or combination

Submission Contents (2)

- Map at scale of at least 1:24,000 (or expandable by user)
 - Google Earth and USGS topographic are common formats
 - Interactive format preferred
- Locations of poles
 - On map and by latitude/longitude
 - Numbered consecutively N-S or E-W
- Relevant topographic information and other background

Submission Contents (3)

- Height, type, and installation technique for each pole
 - Include photographs of all pole types
- Listed or determined eligible historic properties within $\frac{1}{4}$ mile
 - “determined eligible” includes by Keeper of National Register, SHPO, or Tribal Nation as identified through reasonable search of records
 - Include boundaries of historic properties on map

Submission Contents (4)

- Alternative locations, minimizing, and mitigating strategies considered
- Basis for exclusions
- Locations of nearby base stations
- Source of fill material

Batching and Timing

- Each filing limited to a single county
- Group poles into filings on the same basis in TCNS and E106
- Single map may be used for multiple filings
 - Identify in description field which poles are covered by each filing
 - Numbering in each filing need not begin with 1

Batching and Timing (2)

- Maximum number of poles per railroad in all filings within 2-week period
 - 100 poles subject to review
 - 200 poles total

Converting Beta Submissions to Program Comment

- Submit requests to <https://esupport.fcc.gov/request.htm> with Beta Conversion Request as Subject and TCNS number in description field
- Supplement as necessary to satisfy content requirements of Program Comment or indicate no supplementation is needed
- Identify any excluded poles and basis for exclusion

Converting Beta Submissions (2)

- Notify Tribal Nations within 5 business days
 - Inform Tribal Nation if it previously completed review
- Review periods restart from date TCNS notifies Tribal Nations of converted submission
- Converted submissions count toward limits on poles submitted in 2-week period
- Filing consisting entirely of excluded poles can't be converted, but must be abandoned and resubmitted

Other Stakeholder Participation

- Inform other stakeholders of opportunity to provide views to railroad during 30-day review period
 - Local governments
 - Other federal agencies
 - General public

30-day Review Period

- SHPOs/Tribal Nations have 30 days from submission to request additional information, identify additional historic properties or areas likely to contain historic properties, and provide recommendations or comments
 - For Tribal Nations, 30 days measured from TCNS weekly notice
 - Request for information does not suspend 30-day period
- Railroads encouraged to schedule meetings or calls within 30-day period

Requests for Information

- Must explain basis for request
- Automated requests for information or compensation through TCNS not honored
 - Should honor other automated requests if not inconsistent with Program Comment
- Parties encouraged to bring disputes to FCC within 30-day period
- If SHPO/Tribal Nation does not substantively respond within 30-day period, referral to FCC must include any information request and related correspondence

Requests for Compensation

- Agency or applicant not required to pay a Tribal Nation for providing its views during consultation, but Tribal Nation may expect reasonable compensation for its services in providing information and documentation
- Compensation should be commensurate with the work performed
- Disputes over compensation handled in the same manner as information request disputes
- Expected ordinarily to remit compensation within 10 business days

Requests for Monitoring/Field Survey

- Includes walking field survey before construction or monitoring during construction
- Must explain basis for request
 - Avoid or minimize disturbance of potential unknown historic properties
 - Record presence of such properties

Requests for Monitoring/Field Survey (2)

- Monitors must be qualified professionals
- Must comply with safety regulations and protocols
- Reasonable compensation expected, including reimbursement of reasonable expenses
- Railroad will negotiate scope of work, including compensation, with SHPOs/Tribal nations

Failure to Respond

- If no response within 30 days, refer to FCC
- Unless FCC otherwise directs within 10 business days, railroad need not further engage that SHPO/Tribal Nation and can proceed with construction if no other issues
- If Tribal Nation has automated response in TCNS that lack of response within 30 days indicates no interest, need not refer

Addressing Adverse Effects

- If parties agree on addressing adverse effects, sign an Adverse Effect Agreement and send copy to FCC
- Possible measures may include:
 - Advance field survey or monitoring
 - Modified installation method
 - Post-installation field survey within designated area
 - Grants for historic preservation-related purposes outside of Cultural Resource Fund

Addressing Adverse Effects (2)

- If no agreement in 30 days, notify FCC within 2 business days
- If no agreement within 10 additional business days, any party may refer to FCC
 - Copy ACHP
- FCC will reach a decision on existence of adverse effect and appropriate measures within 10 business days
 - May extend period under exceptional circumstances such as sensitive historic properties or confidentiality concerns

Discoveries

- Stop work immediately
- Notify FCC
- Comply with federal and state laws
- Attempt to reach agreement with relevant SHPO/Tribal Nations
- If agreement cannot be reached, refer to FCC with copy to ACHP
- Consult Program Comment and ACHP rules for additional details

Other Provisions

- MOUs address previously constructed infrastructure
- Tribal right to request FCC involvement
- Right to request FCC resolution of confidentiality concerns
- Use of qualified professionals
 - Meets Secretary of Interior's standards or recognized by Tribal Nation
- Periodic review

Recommendations for Implementation

- Ensure submissions are accurate and complete
- Use appropriate qualified professionals
- Contact SHPOs and Tribal Nations early
 - Scope of buildout plans
 - Timing
 - Office-specific procedures
- Be responsive to reasonable needs
- Contact FCC with questions or misunderstandings

Additional Information/Questions

- <http://www.fcc.gov/encyclopedia/positive-train-control-ptc>
- PTCQuestions@fcc.gov
- Steve DelSordo, Stephen.delsordo@fcc.gov, (202) 418-1986
- Aaron Goldschmidt, Aaron.goldschmidt@fcc.gov, (202) 418-7146
- Anne Marie Wypijewski, Annemarie.wypijewski@fcc.gov, (717) 338-2508
- Jeffrey Steinberg, Jeffrey.steinberg@fcc.gov, (202) 418-0896