



Preserving America's Heritage

May 11, 2010

Mr. Thomas S. Alexander
WTP-Tactical Communications-Branch Chief
U.S. Customs and Border Protection
7501 Boston Blvd.
Springfield, VA 20598

RE: U.S. Customs and Border Protection Tactical Communications (TACCOM) Modernization Program Nationwide

Dear Mr. Alexander:

The Advisory Council on Historic Preservation (ACHP) recently received your letter requesting clarification and guidance concerning U.S. Customs and Border Protection's (CBP) compliance with the requirements of Section 106 of the National Historic Preservation Act (NHPA) and its implementing regulations, "Protection of Historic Properties" (36 CFR Part 800), for undertakings in the referenced program.

We would like to respond to CBP's request regarding the agency's use of the *Nationwide Programmatic Agreement for the Collocation of Wireless Antennas* (Collocation NPA), executed by the Federal Communications Commission (FCC), National Conference of State Historic Preservation Officers (NCSHPO), and the ACHP in 2001, and to clarify our recommendations concerning CBP's collocation undertakings. Our understanding is that CBP will not be required to obtain an FCC license in order to locate an antenna for the TACCOM modernization program on a commercially-owned telecommunications facility. Since Stipulation II.B. of the Collocation NPA disallows the use of its procedures for federal agencies other than the FCC, it is inappropriate for CBP to use the provisions of the Collocation NPA to satisfy its Section 106 responsibilities.

However, as we discussed during our meeting with CBP and FCC staff and NCSHPO on March 22, 2010, we agree it is desirable that CBP collocations on commercially-owned towers on private property maintain consistency in Section 106 reviews of telecommunications undertakings similar in nature to FCC-licensed collocations, particularly since many collocations have little or no potential to affect historic properties. To that end, since collocations on commercially-owned towers on private land meeting all of the following criteria do not have the potential to cause effects to historic properties, CBP would not need to conduct Section 106 reviews for them [36 CFR §800.3(a)(1)]:

- The Section 106 review for the tower has been completed by the FCC.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

1100 Pennsylvania Avenue NW, Suite 803 • Washington, DC 20004
Phone: 202-606-8503 • Fax: 202-606-8647 • achp@achp.gov • www.achp.gov

- The mounting of the antenna will not increase the height of the tower by more than 10% or by the height of one additional antenna with separation from the nearest antenna not to exceed twenty feet, whichever is greater.
- The mounting of the proposed antenna would not involve the installation of more than four equipment cabinets or more than one equipment shelter.
- The mounting of the antenna would not involve adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than twenty feet or more than the width of the tower at the level of the appurtenance, whichever is greater.
- The mounting of the antenna would not involve excavation or ground disturbance.
- The antenna will not be mounted on a building or any structure other than a telecommunications tower.

Should a proposed collocation fail to meet all of these criteria, CBP should review the action in accordance with the procedures set forth in 36 CFR §800.3 through §800.7. Per our discussion, CBP installation of antennae on communications tower facilities owned by CBP, located on other federally-owned facilities, or built on federal lands would be reviewed as discrete Section 106 undertakings by CBP and/or the applicable federal agency.

Thank you for the opportunity to discuss Section 106 compliance for the TACCOM program with CBP. If you have any questions or require the further assistance of the ACHP, please contact Blythe Semmer at (202) 606-8552 or via email at bsemmer@achp.gov.

Sincerely,



Charlene Dwin Vaughn, AICP
Assistant Director
Office of Federal Agency Programs
Federal Permitting, Licensing, and Assistance