

**MEMORANDUM OF AGREEMENT
AMONG
THE FEDERAL COMMUNICATIONS COMMISSION (FCC),
THE OKLAHOMA STATE HISTORIC PRESERVATION OFFICER (SHPO), and
CIM TEL CABLE, L.L.C.
REGARDING
THE PAWNEE BROWN MONOPOLE, PAWNEE COUNTY, PAWNEE, OKLAHOMA
TCNS # 193204**

WHEREAS, Cim Tel Cable, L.L.C. (CTC) proposes to construct a 120-foot monopole at Kansas Street & 5th Street, Pawnee, Pawnee County, Oklahoma (36-20-24.4N; 096-48-10.7W) to support communications facilities for its FCC-licensed service and for use by other FCC licensees (Project); and

WHEREAS, CTC is a licensee of the FCC that intends to use antennas on the tower in connection with the provision of licensed service and to provide voice and data services and high-speed broadband services; and

WHEREAS, the FCC has determined that the Project is a federal undertaking subject to review under the NHPA, as amended by Pub. L. No. 96-515 (54 U.S.C. § 306108); and

WHEREAS, CTC, pursuant to delegation from the FCC, initiated review of the Project pursuant to 36 CFR Part 800, the regulations implementing Section 106 of the NHPA (54 U.S.C. § 306108), as required by the FCC rules at 47 CFR §§ 1.1307(a)(4), 1.1320; and

WHEREAS, CTC has consulted with the SHPO pursuant to 36 CFR Part 800, as well as pursuant to the *Nationwide Programmatic Agreement for Review of Effects on Historic Properties for Certain Undertakings Approved by the Federal Communications Commission* (NPA), 47 CFR Part 1, App. C, and is a signatory to this MOA; and

WHEREAS, the FCC, in consultation with the SHPO, established the Area of Potential Effects (APE), consistent with Stipulation VI of the NPA, to include the area of potential ground disturbance and any property that will be physically altered or destroyed by the project, as well as the geographic area in which the project introduces new visual elements; and

WHEREAS, the FCC and the SHPO have determined that the proposed Project may have an adverse effect on the Arkansas Valley National Bank and the Pawnee County Courthouse, both of which are listed on the National Register of Historic Places (NRHP); and

WHEREAS, CTC, consistent with the FCC's requirements for environmental review, has considered and evaluated a number of alternatives for the project and concluded that these options are either unavailable to CTC or do not meet the technical requirements necessary to satisfy the coverage needs of the telecommunications systems to be supported by the antennas of CTC; and

WHEREAS, members of the public were afforded a 30-day period to participate in and comment on this proceeding pursuant to a notice published in the *Pawnee Chief* on January 8, 2020, and no objections pertaining to effects on historic properties were received; and

WHEREAS, local government officials were notified and afforded an opportunity to participate in and provide comments on this proceeding pursuant to Section V. of the NPA; and

WHEREAS, CTC has made a reasonable and good faith effort to identify and notify Federally-recognized Tribal Nations that might attach religious and cultural significance to Historic Properties within the APE, including: Spirit Lake Nation, Ponca Tribe of Nebraska, Santee Sioux Nation, Pawnee Nation of Oklahoma, Kiowa Indian Tribe, Wichita and Affiliated Tribes, Cheyenne-Arapaho Tribes of Oklahoma, Otoe-Missouria Tribe of Indians, Ponca Tribe of Indians of Oklahoma, Apache Tribe of Oklahoma, Northern Arapaho, Seminole Nation of Oklahoma, Cherokee Nation, Osage Nation, United Keetoowah Band of Cherokee Indians in Oklahoma, Wyandotte Nation, and Northern Cheyenne Tribe, and none of the notified Tribes have objected to this Project; and

WHEREAS, in accordance with Stipulation VII.D.2 of the NPA, CTC has notified the Advisory Council on Historic Preservation (ACHP) of its adverse effect determination with the specified and required documentation and the ACHP has declined to participate in the consultation pursuant to 36 CFR § 800.6(a)(1)(iii);

WHEREAS, upon transfer of any ownership interest in the aforementioned project, any and all assignees shall be subject to all terms and conditions of this agreement.

NOW, THEREFORE, the FCC, the SHPO, and CTC agree that the Project shall be implemented in accordance with the following stipulations in order to take into account the effects of the undertaking on historic properties; and agree that the following measures shall constitute full, complete and adequate mitigation under the NHPA, as amended, the implementing regulations of the ACHP, and the FCC's rules.

STIPULATIONS

The FCC, through coordination with CTC and its assignees, shall ensure that the following measures are carried out following execution of this MOA:

I. MITIGATION OF ADVERSE EFFECT

CTC shall complete a comprehensive history of the Pawnee County Courthouse that includes a narrative; photographs; and reproductions of existing drawings. Measures involving historical or archeological expertise should generally be completed by a professional meeting the applicable Secretary of the Interior's Professional Qualifications Standards.

- A. CTC shall complete a comprehensive narrative history of the Pawnee County Courthouse according to the Historic American Buildings Survey (HABS) Level II standards.
 1. Work will include the following and the final draft will be printed on archival paper using archivally-stable ink:

- a. Summary Information – Location, Owner/Occupant, and Statement of Significance;
 - b. Historical Information – General Statement, Physical History, and Historical Context;
 - c. Architectural Information – General Statement, Description of Exterior, Description of Interior, and Description of Site;
 - d. Sources of Information; and
 - e. Project Information.
2. Photography of the NRHP-eligible historic property will meet the highest standard of quality and durability according to the HABS Level II standards.
- a. Deliverables will meet the following specifications:
 - i. Prints – 4x6 prints on standard photo paper;
 - ii. Label Prints – labeled on back in pencil; and
 - iii. Digital Negatives – CD or DVD.
 - b. The following photography requirements will be met in creating the digital negatives:
 - i. Use of a 6-Megapixel or Higher Digital Camera;
 - ii. Photos Taken on Highest Quality Setting – TIFF or RAW Format;
 - iii. Sufficient views of the buildings, structures, and major site features for good, complete documentation of each resource..
3. Reproductions of existing drawings of the NRHP-listed historic property, associated outbuildings, and landscape features will help illustrate for future reference the historic resources and how they relate to their surroundings. Existing drawings of the resources will be reproduced per HABS Level II standards. At a minimum, the drawings will include four elevations and floor plans for the main building.

B. Review and Submittal of the HABS II Survey

- 1. Review
 - a. A draft of the comprehensive and narrative history of the Pawnee County Courthouse shall be submitted to the SHPO for a 30-day review. If the SHPO does not respond within the 30-day review period, CTC may assume SHPO concurrence.
 - b. CTC’s contractor shall address any comments and make any required edits within 30-days of receipt.
- 2. Submittal
 - a. One final narrative shall be submitted to the SHPO in hard copy form with accompanying photographs, and drawings. The final draft will be printed on archival paper using archivally-stable ink

II. REPORTING

Following the execution of this MOA and until it expires or is terminated, CTC shall provide all parties to this MOA an annual summary report and a final report when CTC completes the mitigation, detailing work undertaken pursuant to its terms. These reports shall be provided to the SHPO in hard copy format via U.S. mail and include any scheduling changes proposed, any problems encountered, and any disputes and/or objections received in carrying out the terms of this MOA.

III. DISPUTE RESOLUTION

Should any signatory to this MOA object at any time to any actions proposed or the manner in which the terms of this MOA are implemented, the FCC shall consult with such party to resolve the objection. If the FCC determines that such objection cannot be resolved, the FCC will:

- A. Forward all documentation relevant to the dispute, including the FCC's proposed resolution, to the ACHP. The ACHP's policy is to provide the FCC with its advice on the resolution of any objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, the FCC shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, signatories and concurring parties, and provide them with a copy of this written response. The FCC will then proceed according to its final decision.
- B. If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time-period, the FCC may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the FCC shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories and concurring parties to the MOA and provide them and the ACHP with a copy of such written response.
- C. The FCC's responsibility to carry out all other actions subject to the terms of this MOA that are not the subject of the dispute remain unchanged.

IV. REMOVAL

In the event that CTC abandons the facilities at the Project site, CTC will remove all of its antennas and equipment and restore the project area to the same condition as existed prior to commencement of the Project and notify the SHPO within 30 days of removal.

V. DURATION

This MOA will be null and void if the Stipulations are not carried out within a period of two years from the date of its execution. Prior to termination of the MOA, the FCC may consult with the other signatories to reconsider the terms of the MOA and amend it in accordance with Stipulation VII below.

VI. POST-REVIEW DISCOVERIES

In the event that CTC discovers a previously unidentified site within the APE that may be a Historic Property that would be affected by the project, CTC shall promptly stop work and notify the FCC, the SHPO and any potentially affected Indian tribe.

If CTC and the SHPO concur that the discovered resource is eligible for listing in the National Register, CTC will consult with the SHPO and Indian tribes as appropriate, to evaluate measures that will avoid, minimize, or mitigate adverse effects. Upon agreement regarding such measures, CTC shall implement them and notify the FCC of its action.

If CTC and the SHPO cannot reach agreement regarding the eligibility of a post-review discovery, the matter will be referred to the FCC for review. If CTC and the SHPO cannot reach agreement on measures to avoid, minimize, or mitigate adverse effects, the matter shall be referred to the FCC for appropriate action.

If CTC discovers any human or burial remains during implementation of the Project, CTC shall cease work immediately, notify the SHPO and FCC, and adhere to applicable State and Federal laws regarding the treatment of human or burial remains.

VII. AMENDMENTS

This MOA may be amended prior to its expiration when such an amendment is agreed to in writing by all signatories. The amendment will be effective on the date a copy signed by all of the signatories is filed with the ACHP.

VIII. TERMINATION

If any signatory to this MOA determines that its terms will not or cannot be carried out, that party shall immediately consult with the other parties to attempt to develop an amendment per Stipulation VII above. If within thirty (30) days (or another time period agreed to by all signatories) an amendment cannot be reached, any signatory may terminate the MOA upon written notification to the other signatories.

Once the MOA is terminated, and prior to work continuing on the project, the FCC must either (a) execute an MOA pursuant to 36 CFR Section 800.6 or (b) request, take into account, and respond to the comments of the ACHP under 36 CFR Section 800.7. The FCC shall notify the signatories as to the course of action it will pursue.

Execution of this MOA and implementation of its terms evidence that the FCC has taken into account the effects of this project on historic properties and afforded the ACHP an opportunity to comment.

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**SIGNATORY:
Federal Communications Commission**

Paul D'Ari

August 3, 2021

Paul D'Ari

Date

Senior Legal Counsel, Competition and Infrastructure Policy Division
Wireless Telecommunications Bureau

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**SIGNATORY:
State Historic Preservation Office**

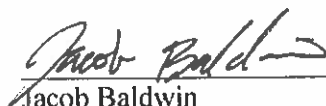


Trait Thompson
State Historic Preservation Officer
Oklahoma Historical Society

7/30/21
Date

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Jacob Baldwin
General Counsel



Date