

**PROGRAMMATIC AGREEMENT
AMONG
THE RURAL UTILITIES SERVICE,
THE
THE OKLAHOMA STATE HISTORIC PRESERVATION OFFICE,
AND THE
PAWNEE NATION OF OKLAHOMA
REGARDING
THE AMERICAN RECOVERY AND REINVESTMENT ACT
BROADBAND INITIATIVES PROGRAM PROJECT #4347
IN
HUGHS, MCINTOSH, MUSKOGEE, OKFUSKEE, OKMULGEE, AND SEMINOLE
COUNTIES, OKLAHOMA**

WHEREAS, the Rural Utilities Service (RUS) is authorized to provide financial assistance in the development of infrastructure in Rural America under its Broadband Initiatives Program (BIP) authorized by the American Recovery and Reinvestment Act (ARRA) passed by Congress on February 13, 2009; and

WHEREAS, Cross Telephone Company (CTC) applied to BIP seeking financial assistance to construct eighteen (18) telecommunications tower sites, to install equipment on fifteen (15) existing telecommunication towers(co-location); and to construct a forty-seven (47) miles fiber optic cable route within public road rights-of-way (ROW); and

WHEREAS, RUS has determined that BIP Project #4347 is an undertaking subject to review under Section 106 of the National Historic Preservation Act (NHPA), 16 U.S.C. § 470f, and its implementing regulations, "Protection of Historic Properties" (36 CFR Part 800); and

WHEREAS, under the terms of the *Nationwide Programmatic Agreement Among the U.S. Department of Agriculture Rural Utilities Service, the National Telecommunications and Information Administration, the National Conference of State Historic Preservation Officers and the Advisory Council on Historic Preservation for the Broadband Technology Opportunities Program and the Broadband Initiatives Program* executed on November 25, 2009, RUS conducts review under 36 CFR §§ 800.3 through 800.7 for BIP projects post-award; and

WHEREAS, the spectrum to be used on the eighteen (18) new telecommunications tower sites and fifteen (15) co-locations is regulated by the Federal Communications Commission (FCC); and

WHEREAS, because the eighteen (18) new tower sites and the fifteen (15) co-locations will use FCC regulated spectrum, Section 106 review of this undertaking is subject to the program comment titled, *Program Comment for Streamlining Section 106 Review for wireless Communication Facilities Construction and Modification Subject to Review Under the FCC Nationwide Programmatic Agreement and/or the Nationwide Programmatic Agreement for the Collocation of Wireless Antennas*, issued on November 20, 2009; and

WHEREAS, RUS is using a Programmatic Agreement (PA) to enable the phasing of Section 106 review in order to meet construction deadlines for the initiation and completion of BIP Project #4347 construction; and

WHEREAS, in accordance with 36 CFR § 800.14(b)(1)(ii), execution of a PA is appropriate because effects on historic properties cannot be fully determined prior to start of construction for BIP Project #4347; and

WHEREAS, RUS, in consultation with the Oklahoma SHPO, has determined that construction of BIP Project #4347 may have an adverse effect on properties which are listed in or eligible for listing in the National Register of Historic Places (NRHP); and

WHEREAS, on August 27, 2010 RUS notified the following Indian tribes about BIP Project #4347 – Kiowa Indian Tribe of Oklahoma, Wichita and Affiliated Tribes, Absentee-Shawnee Tribe of Indians of Oklahoma, Citizen Potawatomi Nation, Apache Tribe of Oklahoma, Quapaw Tribe of Oklahoma, Choctaw Nation of Oklahoma, Seminole Nation of Oklahoma, Cherokee Nation, Muscogee Nation, Osage Nation, United Keetoowah Band of Cherokee Indians, Peoria Tribe of Indians of Oklahoma, Thlopthlocco Tribal Town, Caddo Nation, Mescalero Apache Tribe; and

WHEREAS, because of their interest, RUS has provided project information to the Caddo Nation, Osage Nation, and Muscogee (Creek) Nation; and

WHEREAS, the Oklahoma Archeological Survey (OAS) has a cooperative agreement with the SHPO wherein OAS provides technical assistance in the Section 106 review process, therefore, OAS has been invited by RUS to sign this PA as an invited signatory; and

WHEREAS, CTC has participated in consultation and has been invited by RUS to sign this PA as an invited signatory; and

WHEREAS, in accordance 36 CFR § 800.6(a)(1), on May 27, 2011, RUS invited the Advisory Council on Historic Preservation (ACHP) to participate in consultation; and

WHEREAS, the ACHP declined to participate in consultation; and

WHEREAS, the terms used in this PA are defined in 36 CFR § 800.16;

NOW, THEREFORE, RUS and the Oklahoma SHPO agree that this undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on historic properties

STIPULATIONS

RUS shall ensure that the following stipulations are carried out.

I. CONDITIONS

- A. CTC will not initiate construction of any of the eighteen (18) new tower sites, fifteen (15) co-locations, or the 47 miles of buried fiber optic cable until Section 106 review, conducted in accordance with the terms of this PA, has been concluded for that project component and approved by RUS.
- B. If CTC initiates construction of a phase prior to fulfilling the terms of this PA, RUS will review that action in accordance with 36 CFR § 800.9(c) to determine if Section 110(k) of NHPA is applicable.
- C. RUS may advance funding to CTC to complete those engineering and environmental studies required under the terms of this PA.
- D. RUS may advance funding to CTC for the construction of any project component for which Section 106 review has been completed in accordance with the terms of this PA.

II. REVIEW CONDUCTED BY THE FEDERAL COMMUNICATIONS COMMISSION

- A. FCC will conduct Section 106 for the proposed construction of eighteen (18) new tower sites and fifteen (15) co-locations subject to the terms of the November 20, 2009 Program Comment.
- B. CTC and the SHPO agree that the proposed installation of equipment on fifteen (15) existing towers is exempt from Section 106 review under the terms of the November 20, 2009 Program Comment. Following the execution of this PA, RUS may approve and advance funds for these twenty (20) co-locations so that CTC may initiate construction.
- C. CTC will provide written documentation to RUS describing the conclusion of Section 106 review for the eighteen (18) proposed new towers conducted under the terms of the November 20, 2009 Program Comment. RUS will review this documentation, and if it demonstrates that Section 106 has been successfully completed, RUS may approve and advance funds for that tower or co-location so that CTC may initiate construction.
- D. In those instances where under the terms of the November 20, 2009 Program Comment construction of a proposed tower will cause an adverse effect to historic properties, RUS will participate in the

consultation between FCC, CTC, the SHPO and other consulting parties to identify measures to mitigate the adverse effect.

- E. Unanticipated discoveries of historic properties during construction of the proposed towers and co-locations will be resolved by FCC under the terms of the November 2009 Program Comment.

III. BURIED FIBER OPTIC CABLE CONSTRUCTION

- A. Based on the results of a visual survey of approximately one mile of the fiber optic cable route, RUS and SHPO agree that no historic properties will be affected by construction of the approximately forty-seven (47) mile fiber optic cable route.
- B. Following the execution of this PA, RUS may approve and advance funds for the 42 mile fiber route pursuant to Stipulation I.D of this PA.
- C. Changes to the APE: Should further planning or design development necessitate a change to the APE, CTC will provide a description of the changes and revised project maps to RUS and SHPO for review and comment. The SHPO will have thirty days to comment on the APE revisions.
 - i. RUS shall complete Section 106 review of any new or revised fiber routes pursuant to 36 CFR §§ 800.4 through 800.6.

IV. REPORTING REQUIRMENTS

- A. CTC will report to RUS and the SHPO every four (4) months from the date of execution of this PA until all construction for BIP Project #4347 is complete describing the status of Section 106 review for each tower, the status of project construction, including a list of project components where construction has been completed, and any changes to the undertaking that are proposed.
- B. CTC will report electronically to the Oklahoma SHPO archeologist and the RUS Federal Preservation Officer in the Engineering and Environmental Staff of the Water and Environmental Programs using the format described in Appendix A.

VI. DISPUTE RESOLUTION

- A. Should any signatory to this PA object in writing at any time to any actions proposed or the manner in which the terms of this PA are implemented, RUS, within the limits of its authority, will consult with such party to resolve the objection. If RUS determines that the objection cannot be resolved, that agency will:
 - 1. Forward all documentation relevant to the dispute, including the resolution proposed by the agency to the ACHP. The ACHP will provide RUS with its advice, pursuant to 36 CFR § 800.2(b)(2), on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, RUS will 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. RUS will then proceed according to its final decision.

2. The ACHP will notify RUS that it will comment pursuant to 36 CFR § 800.7(c), and proceed to comment. Any ACHP comment provided in response to such a request will be taken into account by RUS in accordance with 36 CFR § 800.7(c)(4).
3. If the ACHP does not provide its advice regarding the dispute within thirty (30) days, RUS may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, RUS shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories and concurring parties to the PA, and provide them and the ACHP with a copy of such written response.

- B. The responsibility of RUS to carry out all other actions subject to the terms of this PA that are not the subject of the dispute remain unchanged.

VII. TERM OF AGREEMENT

- A. The term of this PA will be four (4) years from the date of execution by the signatories unless the signatories agree to extend its term. If its stipulations have not been carried out, and prior to work continuing on BIP Project #4347, RUS will either (a) execute another agreement pursuant to 36 CFR § 800.6, or request, take into account and respond to the comments of the ACHP pursuant to 36 CFR § 800.7.
- B. Six (6) months prior to expiration, RUS will notify the other signatories of the impending expiration. RUS will consult with the other signatories to reconsider the terms of the PA and amend it in accordance with Stipulation V. RUS will notify the signatories as to the course to be pursued.

VIII. AMENDMENT: This PA may be amended when such an amendment is agreed to in writing by all signatories. The amendment will be effective on the date it is executed by all of the signatories and filed with ACHP.

IX. TERMINATION

- A. If any signatory to this PA 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 in accordance with Stipulation V. If within thirty (30) days an amendment cannot be reached, any signatory may terminate the PA upon written notification to the other signatories.
- B. Once the PA is terminated, and prior to work continuing on BIP Project #4347, RUS must either (a) execute an agreement pursuant to 36 CFR § 800.6, or (b) request, take into account, and respond to the comments of

Signatories:

Rural Utilities Service

By: Mark S. Plank Date: 6/30/11
Mark S. Plank, Director
Engineering and Environmental Staff
Water and Environmental Programs

Oklahoma State Historic Preservation Office

By: Bob Blackburn Date: July 11, 2011
Dr. Bob Blackburn
State Historic Preservation Officer
Oklahoma Historical Society

Pawnee Nation of Oklahoma

By: Gordon F. Adams Date: June 10, 2011
Gordon Adams
Tribal Historic Preservation Officer
Pawnee Nation of Oklahoma

Invited Signatory

Cimmarron Telephone Company

By: _____ Date: _____
[insert name and title]

Oklahoma Archeological Survey

By: _____ Date: _____
Dr. Robert Brooks
Director, Oklahoma Archeological Survey

APPENDIX A

**#4347 CTC Broadband, LLC
Reporting Sheet**

Date:

Update the table for each reporting period. The FCC Review Status should either be 'In Process,' or left blank if not yet begun. The FCC Finding of Effect should either be a finding of 'No Historic Properties Affected,' 'No Adverse Effect,' or 'Adverse Effect.' Documentation of this finding should have been submitted to RUS per Stipulation II.C.

If construction has commenced, indicate whether the status is 'In Progress' or 'Complete.'

Site Name	Proposed Construction	FCC File Number	FCC Review Status	FCC Finding of Effect	Construction Status

Project Construction

Have any site locations changed since the previous reporting period? If so, explain and attach maps of the new location:

Contacts:

Forward this report to the following:

RUS

Laura Dean
Federal Preservation Officer
Laura.Dean@wdc.usda.gov

Oklahoma State Historic Preservation Office

Tim Baugh
Section 106 Coordinator
State Historic Preservation Office
Oklahoma Historical Society
Oklahoma History Center
800 Nazih Zuhdi Drive
Oklahoma City, OK 73105