

**MEMORANDUM OF AGREEMENT
AMONG
THE FEDERAL COMMUNICATIONS COMMISSION (FCC),
THE OKLAHOMA STATE HISTORIC PRESERVATION OFFICER (SHPO), and
PANHANDLE TELECOMMUNICATION SYSTEMS, INC. (PTSI) REGARDING
THE TURPIN REPLACEMENT TOWER AT TURPIN, OKLAHOMA**

WHEREAS, PTSI proposes to construct a 230-foot lattice replacement tower ("Turpin Tower" or "project") at 106 Main Street, Turpin, Beaver County, Oklahoma (36-52-02.1 N; 100-52-40.6 W) to support communications facilities for its FCC-licensed service and for use by other FCC licensees, including FirstNet; and

WHEREAS, PTSI is a licensee of the FCC that intends to use antennas on the Turpin Tower in connection with the provision of its licensed service and FirstNet will utilize the tower to provide critical public safety services; and

WHEREAS, the proposed Turpin Tower requires antenna structure registration with the FCC pursuant to 47 CFR 17.4(a); and

WHEREAS, in 2014, PTSI discovered that the tower currently existing at this location, a 125-foot monopole, did not go through the Section 106 review prior to its construction in 2002; and

WHEREAS, PTSI contacted the FCC in March of 2014, and conducted an after-the-fact National Environmental Policy Act (NEPA) screening and National Historic Preservation Act (NHPA) Section 106 review. The SHPO declined to comment on the tower, and the FCC accepted PTSI's finding that the 125-foot monopole had No Adverse Effect on historic properties; and

WHEREAS, PTSI now proposes to remove the existing 125-foot monopole and replace it with a 230-foot lattice tower in the same location; and

WHEREAS, the FCC has determined that the Turpin Tower 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, PTSI, 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, PTSI 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 Turpin Tower may have an adverse effect on the Turpin Grain Elevator, which is listed in the National Register of Historic Places (NRHP); and

WHEREAS, PTSI, 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 PTSI or do not meet the technical requirements necessary to satisfy the coverage needs of the telecommunications systems to be supported by the antennas of PTSI and FirstNet; 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 Oklahoma Beaver Herald-Democrat on April 26, 2018, 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, PTSI 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 the Apache Tribe of Oklahoma, Cherokee Nation, Cheyenne-Arapaho Tribes of Oklahoma, Kiowa Indian Tribe, Mescalero Apache Tribe, Northern Arapaho, Northern Cheyenne Tribe, Osage Nation, Ponca Tribe of Indians of Oklahoma, Santee Sioux Nation, Seminole Nation of Oklahoma, Comanche Nation, Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, Spirit Lake Nation, Wichita and Affiliated Tribes, and the Wyandotte Nation, and none of the notified Tribal Nations have objected to this project; and

WHEREAS, in accordance with Stipulation VII.D.2 of the NPA, PTSI 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);

NOW, THEREFORE, the FCC, the SHPO, and PTSI 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 PTSI and its assignees, will ensure that the following measures are carried out following the effective date of this MOA pursuant to Stipulation IX:

I. MITIGATION OF ADVERSE EFFECT

PTSI shall contract a qualified architectural historian or historian that meets the Secretary of the Interior's Standards (48 Fed. Reg. 44738-9) to review and update the nomination of the Turpin Grain Elevator to the NRHP in accordance with the National Park Service's requirements for an NRHP nomination.

1. A draft of the updated nomination shall be submitted to the SHPO for a 30-day review.
2. PTSI's contractor shall address any comments and make any required edits within 30-days of receipt.
3. A final draft of the updated nomination shall be submitted to the SHPO in hard copy form with accompanying electronic files.
4. Mitigation shall be considered complete upon SHPO acceptance of the final draft.

II. REPORTING

Following the execution of this MOA and until it expires or is terminated, PTSI shall provide all parties to this MOA an annual summary report and a final report when PTSI completes the mitigation, detailing work undertaken pursuant to its terms. Such report 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 PTSI abandons the facilities at this site, PTSI 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 an Applicant discovers a previously unidentified site within the APE that may be a Historic Property that would be affected by the project, PTSI shall promptly stop work and notify the FCC, the SHPO/THPO and any potentially affected Indian tribe.

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

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

If PTSI discovers any human or burial remains during implementation of the project, the Applicant shall cease work immediately, notify the SHPO/THPO 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. OTHER REQUIREMENTS

PTSI will file with the FCC an application and Environmental Assessment (EA) within thirty (30) days of the date this MOA is executed.

IX. 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. The applicability of this MOA is contingent upon the filing of an EA by PTSI and, following review of the EA, a Finding of No Significant Impact (FONSI) by the FCC. If the FCC issues a FONSI, this MOA will be effective on the date it is issued by the FCC, and the parties to this agreement will be notified within 15 days of its release.

SIGNATORIES:

Federal Communications Commission

Paul D'Ari

12-10-18

Paul D'Ari,

Date

Senior Legal Counsel, Competition and Infrastructure Policy Division

Wireless Telecommunications Bureau

State Historic Preservation Officer



Dr. Bob Blackburn
State Historic Preservation Officer
Oklahoma Historical Society



Date

Panhandle Telecommunication Systems, Inc.

Shawn Hanson

12/5/2018

Shawn Hanson

Date

Chief Executive Officer

Panhandle Telecommunication Systems, Inc.