



Federal Communications Commission
Washington, D.C. 20554

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VIA ELECTRONIC MAIL

Mr. Robert Sokota, President, Wireless Division
Ms. Margaux Knee, General Counsel
CityBridge, LLC
10 Hudson Yards, Floor 26
New York, NY 10001

Dear Mr. Sokota and Ms. Knee,

Thank you for meeting on March 2, 2023, with representatives of the Competition and Infrastructure Policy Division (Division) of the Federal Communications Commission's (Commission or FCC) Wireless Telecommunications Bureau. As you know, we scheduled the meeting to discuss whether the network of Link5G tower kiosk facilities being deployed as part of CityBridge's franchise agreement with the City of New York¹ to implement the Link5G program falls within the scope of the Commission's rules for implementation of the National Historic Preservation Act (NHPA) and the National Environmental Policy Act (NEPA).

Consistent with our discussion at the meeting, this letter provides a written summary of the Division's conclusion that the deployment of the 32-foot tall Link5G tower kiosk facilities are subject to the Commission's environmental and historic preservation review and approval requirements because the construction of these facilities constitute an "undertaking" pursuant to the NHPA², and a "major Federal action" under NEPA.³ Prior to construction, CityBridge must complete the Commission procedures

¹ See NYC Department of Information Technology and Telecommunications, Amendment No. 3 to the Franchise Agreement, Between the City of New York and CityBridge, LLC, for the Installation, Operation, and Maintenance of Public Communications Structures in the Boroughs of the Bronx, Brooklyn, Manhattan, Queens, and Staten Island, Contract No. RCT1-858-20158202566, Execution Version, *available at* <https://www.nyc.gov/assets/oti/downloads/pdf/linknyc-franchises/linknyc-public-communications-structure-franchise-agreement-amendment-3.pdf> (last visited Apr. 12, 2023) (NYC-CityBridge Franchise Agreement, Amendment No. 3).

² 54 U.S.C. § 300320(3); *see also* 36 CFR § 800.16(y) (defining undertaking). Section 1.1307(a)(4) of the Commission's rules implementing NHPA requires that prior to initiation of construction of a communications tower facility such as the Link5G tower kiosk facility, it must be determined whether the proposed tower facility would affect properties listed or eligible for listing on the National Register Historic Places. 47 CFR § 1.1307(a)(4).

³ 40 CFR § 1508.1(q). *See also* 40 CFR § 1508.1(q) (A "[m]ajor Federal action or action means an activity or decision subject to Federal control and responsibility . . ."); 40 CFR § 1501.1(a)(4) ("In assessing whether NEPA applies or is otherwise fulfilled, Federal agencies should determine . . . [w]hether the proposed activity or decision is a major Federal action"); *Wildearth Guardians v. Jewell*, 738 F.3d 298, 303 (D.C. Cir. 2013) (NPA "requires[s] only that the agency only take a 'hard look' at the environmental consequences before taking a major action."); *Mr. Dan Dykes*, Letter, 32 FCC Rcd 4085 at n.1 (PSHSB PLD May 22, 2017) ("NEPA requires that federal agencies

implementing the historic preservation review process pursuant to Section 106 of the NHPA as set forth in the *Nationwide Programmatic Agreement for Review of Effects on Historic Properties for Certain Undertakings Approved by the Federal Communications Commission (Wireless Facilities NPA)*,⁴ and the environmental review process pursuant to the Commission's rules implementing NEPA.⁵ Applicants must complete the NHPA and NEPA reviews prior to beginning construction of tower structures, such as the Link5G tower kiosk facilities, to ensure compliance with Commission rules.

Under the Commission's rules, for example, the NHPA review process applies to "the construction and modification of Facilities."⁶ The *Wireless Facilities NPA* defines "facility" as "a Tower or an Antenna."⁷ In turn, it defines "tower" as "[a]ny structure built for the sole or primary purpose of supporting Commission-licensed or authorized Antennas, including the on-site fencing, equipment, switches, wiring, cabling, power sources, shelters, or cabinets associated with that Tower but not installed as part of an Antenna as defined herein."⁸ The Report and Order that adopted the *Wireless Facilities NPA* accords with that understanding, explaining that the Commission's environmental and historic preservation rules impose "approval requirements for facilities constructed in connection with geographic area licenses," among other things.⁹

The Link5G tower kiosk facilities have been designed (and in some instances already constructed) to host communications facilities for the provision of 5G communications that rely upon the use of electromagnetic spectrum licensed by the Commission.¹⁰ Based on LinkNYC website materials, a

consider the environmental effects of their major federal actions before taking action, including issuing permits, licenses, or approvals.").

⁴ 47 CFR Part 1, Appx. C—Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process (*Wireless Facilities NPA*). See also *Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process*, WT Docket No. 03-128, Report and Order, 20 FCC Rcd 1073 (2004); 47 CFR §§ 1.307(a)(4), 1.1320.

⁵ See 47 CFR § 1.1312; see also *Amendment of Environmental Rules*, GN Docket No. 88-387, First Report and Order, 5 FCC Rcd 2942 (1990) (requiring that in situations where construction of a Commission-regulated radio communications facility is permitted without prior Commission authorization, the licensee or applicant must determine prior to construction whether the facility may have a significant environmental effect).

⁶ *Wireless Facilities NPA* at § I.A.2.

⁷ *Id.* at § II.A.7.

⁸ *Id.* at § II.A.14.

⁹ *Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process*, Report and Order, 20 FCC Rcd at 1083-84, para. 26.

¹⁰ See, e.g., NYC Department of Information Technology & Telecommunications, CityBridge, and ZenFi Networks, *LinkNYC: Link5G Design Proposal*, at 18 and 21, <https://www.nyc.gov/assets/designcommission/downloads/pdf/10-18-2021-pres-DoITT-p-Link-5G.pdf> (last visited Apr. 12, 2023) (*Link5G Design Proposal*) (stating, *inter alia*, that the goals for Link5G project are to "provide complete connectivity" by designing the Link5G tower kiosk facilities to allow for "Wi-Fi, millimeter wave 5G, sub-6 GHz 5G and 4G LTE" callings these "all crucial building blocks in providing different layers of coverage." This intention is expressed in the deliberate design of the Link5G tower kiosk facilities through the provision of "bays," which are compartments at the top of the 32-foot tall structure intended to house communications equipment to facilitate 5G and other mobile communications that rely on FCC-licensed spectrum. Compartments lower in height from the top of the 32-foot tall structures are meant to be conducive to different mobile communications capacities that do not require placement in the highest compartment. The highest two bays (identified as TB1 and TB2) are designated "Millimeter Wave Bay[s]" for Operators 1 and 2 of "Ultra-Fast 5G Service." Descending down the pole, "Bays 3 and 4 are intended to be used as either a Millimeter Wave Bay or Sub 6 GHz Shared Bay for 4G LTE + 5G for additional coverage and capacity for CBRS and/or IOT to support neutral host providers and technologies.").

document authored by CityBridge, ZenFi Networks and the New York City Department of Information Technology & Telecommunications,¹¹ and Amendment No. 3 to the Franchise Agreement between CityBridge and the City of New York,¹² CityBridge has intentionally designed and is constructing the Link5G tower kiosk facilities with space on the poles for the primary purpose of hosting 5G communications facilities that rely on FCC-licensed spectrum.¹³ On this basis, we conclude that the Link5G tower kiosk facilities are “facilities” subject to the *Wireless Facilities NPA*, adopted pursuant to Section 106 of the NHPA and the Commission’s rules implementing NEPA.

Under the terms of the Commission’s rules, whether any of the Link5G tower kiosk facilities ultimately host facilities used for FCC licensed services is not a condition precedent for the application of the Commission’s NHPA and NEPA rules. The Commission’s rules implementing NHPA and NEPA review are applicable prior to deployment of towers designed to host communications equipment that would rely on the use of FCC-licensed spectrum; not after construction or after there is a contract with a communications provider to house equipment on the towers.¹⁴ What matters for purposes of triggering pre-construction review requirements is that the features of the tower structure are intentionally designed with the capability to host mobile communications facilities that rely on spectrum licensed by the Commission.

For the reasons stated above, the Division finds that the Link5G communications infrastructure program comes within the ambit of the Commission’s rules regarding both the Section 106 NHPA and NEPA review processes. Accordingly, we expect that CityBridge will comply with these rules before constructing additional Link5G tower kiosk facilities designed to support communications that rely on FCC-licensed spectrum.¹⁵ Any future collocations of new antennas on these structures will be subject to the requirements of the *Nationwide Programmatic Agreement for the Collocation of Wireless Antennas*,

¹¹ See, e.g., *Link5G Design Proposal* at 18, 21-23, 25, 30-31.

¹² NYC-CityBridge Franchise Agreement, Amendment No. 3.

¹³ See, e.g., *Link5G Design Proposal* at 18, 21-23, 25, 30-31; NYC-CityBridge Franchise Agreement, Amendment No. 3 at II. Amendment to Ancillary Services (discussing “equipment installed by a Mobile Telecommunications Franchisee within an approved Structure [sic] for the provision of mobile telecommunications service, as defined in Section 153 of Title 47 of the United States Code, and other voice and/or data communications or information service employing electromagnetic waves propagated through space to serve portable sending and/or receiving equipment.”). We note that the LinkNYC website states that “Link5G enables the equitable deployment of both 5G cellular coverage and Wi-Fi connectivity across the five boroughs . . . Link5G kiosks will bring better cellular service, increased opportunities to connect to free Wi-Fi, and improved options for in-home broadband internet access . . . Link5G’s 32 foot height ensures that a 5G signal is effectively broadcast from optimal height for all carriers to reach New Yorkers’ mobile devices.” LinkNYC, *Link5G*, <https://www.link.nyc/link5g.html> (last visited Apr. 12, 2023).

¹⁴ See, e.g., 47 CFR § 1.1312(b) (“If a facility covered by paragraph (a) of this section may have a significant environmental impact, the information required by § 1.1311 shall be submitted electronically by the licensee or applicant and ruled on by the Commission, and environmental processing (if invoked) shall be completed, see § 1.1308, prior to the initiation of construction of the facility.” (emphasis added)); *Wireless Facilities NPA* at § X.E (discussing the Commission’s ability to “continu[e] or institute[e] enforcement proceedings under the Communications Act and its rules against an Applicant that has constructed a Facility prior to completing required review under this Agreement.”).

¹⁵ See Federal Communications Commission, Tower and Antenna Siting, <https://www.fcc.gov/wireless/bureau-divisions/competition-infrastructure-policy-division/tower-and-antenna-siting>.

which includes applicable collocation exclusions.¹⁶ Regarding the Link5G tower kiosk facilities that have already been constructed, we expect CityBridge to take steps to bring these tower structures into compliance by conducting a post-construction review pursuant to the Section 106 procedures set forth in the *Wireless Facilities NPA*,¹⁷ which includes consulting with the New York State Historic Preservation Office (SHPO) and with Tribal Nations who have indicated in the Tower Construction Notification System that these sites are within their geographic area of interest. The SHPO and/or the Tribal Nations may decline to conduct post-construction Section 106 reviews. In such cases, pursuant to Section III of the Collocation NPA, future collocations of additional antennas on Link5G tower kiosk facilities that did not undergo Section 106 review prior to construction are not eligible for any exclusions. That is, a complete Section 106 review is required prior to the installation of each additional antenna.¹⁸

We support the efforts behind this project to close the digital divide and encourage you to reach out with any questions on the steps required to ensure these towers are compliant with the NHPA, NEPA, and Commission rules.

Sincerely,

/s/ Garnet Hanley

Garnet Hanly
Division Chief
Competition & Infrastructure Policy Division
Wireless Telecommunications Bureau
Federal Communications Commission

cc: Olivia Brazee, New York State Parks, Recreation & Historic Preservation
Jaime Loichinger, Advisory Council on Historic Preservation
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¹⁶ 47 CFR pt. 1, Appx. B—National Programmatic Agreement for the Collocation of Wireless Antennas (Collocation NPA).

¹⁷ *Wireless Facilities NPA*.

¹⁸ The Collocation NPA factsheet states that “[i]f a tower constructed after March 16, 2001 did not go through Section 106 review prior to construction, an applicant cannot collocate on that tower unless the tower owner . . . obtains written concurrence with a finding of ‘no effect’ or ‘no adverse effect’ on historic properties from either the relevant SHPO, the ACHP, or the FCC” *The Wireless Telecommunications Bureau and Mass Media Bureau Announce the Release of a Fact Sheet Regarding the March 16, 2001 Antenna Collocation Programmatic Agreement*, Public Notice, DA 02-28, 17 FCC Rcd 508, 516 (2002).