PROGRAMMATIC AGREEMENT
AMONG
THE RURAL UTILITIES SERVICE,
THE ILLINOIS STATE HISTORIC PRESERVATION OFFICE
AND
THE INDIANA STATE HISTORIC PRESERVATION OFFICE
REGARDING
THE AMERICAN RECOVERY AND REINVESTMENT ACT
BROADBAND INITIATIVES PROGRAM PROJECT #7340
IN
COOK, KANKAKEE, AND WILL COUNTIES IN ILLINOIS
AND
LAKE, NEWTON, AND PORTER COUNTIES IN INDIANA

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, Convergence Technologies, Inc. (CTI) applied to BIP seeking financial assistance to construct a wireless network that will include wireless equipment at fifty (50) sites; construction will include both the collocation of equipment on existing towers and/or structures as well as the construction of new towers, the specifics to be determined upon further design development; and

WHEREAS, RUS has determined that BIP Project #7340 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 fifty (50) wireless sites is regulated by the Federal Communications Commission (FCC); and

WHEREAS, because the fifty (50) wireless sites 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 project funding in order to meet the 180-day deadline for the initiation of BIP Project #7340 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 #7340; and

WHEREAS, RUS, in consultation with the Illinois State Historic Preservation Office (SHPO) and the Indiana SHPO, has determined that construction of BIP Project #7340 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 September 10, 2010 RUS notified the following Indian tribes about BIP Project #7340 – Winnebago Tribe of Nebraska, Kickapoo Tribe in Kansas, Prairie Band of Potawatomi Nation, Sac and Fox Nation of Missouri, Absentee-Shawnee Tribe of Indians of Oklahoma, Citizen Potawatomi Nation, Kickapoo Tribe of Oklahoma, Sac and Fox Nation of Oklahoma, Sac & Fox Tribe of the Mississippi in Iowa, Keweenaw Bay Indian Community, Pokagon Band of Potawatomi Indians, Eastern Shawnee Tribe of Oklahoma, Miami Tribe of Oklahoma, Ottawa Tribe of Oklahoma, Wyandotte Nation, Peoria Tribes of Indians of Oklahoma, Shawnee Tribe, Menominee Indian Tribe of Wisconsin; and

WHEREAS, because of their interest, on December 6, 2010, RUS notified the Wyandotte Nation, Miami Tribe of Oklahoma, Shawnee Tribe, Kickapoo tribe in Kansas, Keweenaw Bay Indian Community, Lac Vieux Desert Band of Lake Superior Chippewa Indians, Ottawa Tribe of Oklahoma, Menominee Indian Tribe of Wisconsin, Sac & Fox Nation of Oklahoma, Sac & Fox Nation of Missouri, Kickapoo Tribe of Oklahoma, and Sac & Fox Tribe of Mississippi in Iowa that FCC will conduct Section 106 review for all components of BIP Project #7340; and

WHEREAS, CTI 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 December 6, 2010 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, the Illinois SHPO and the Indiana 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. CTI will not initiate construction of any of the proposed fifty (50) wireless sites until Section 106 review for that site has been concluded in accordance with the terms of this PA, and approved by RUS.

B. If CTI initiates any construction prior to fulfilling the terms of this PA for that component of BIP Project #7340, 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 CTI for performance of the engineering, purchase of non-construction related services and equipment, and environmental studies that must be completed prior to the initiation of construction of a proposed new tower.

D. RUS may advance funding to CTI for the construction of any proposed co-locations or tower(s) 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 fifty (50) wireless sites subject to the terms of the November 20, 2009 Program Comment.

B. CTI will provide written documentation to RUS describing the conclusion of Section 106 review for each project component 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 pursuant to Stipulation I.D.

C. In those instances where under the terms of the November 20, 2009 Program Comment construction of a proposed new tower will result in an adverse effect to historic properties, CTI will immediately inform RUS of the Adverse Effect and RUS will participate in consultation conducted by FCC with CTI and other participating consulting parties to identify measures to resolve the adverse effect.

D. Unanticipated Discoveries: The unanticipated discovery 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. REPORTING REQUIRMENTS

A. CTI will report to RUS and the SHPO (using the format in Appendix A) every four (4) months from the date of execution of this PA until all construction for BIP Project #7340 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.

IV. 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.

V. **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.

VI. **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 #7340, 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 ACHP under 36 CFR § 800.7. RUS shall notify the other signatories as to the course of action it will pursue.

VII. **TERM OF AGREEMENT**

A. The term of this PA will be five (5) 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 #7340, 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.

EXECUTION of this PA by RUS, the Illinois SHPO and the Indiana SHPO, and implementation of its terms evidence that RUS has taken into account the effects of this undertaking on historic properties and afforded ACHP a reasonable opportunity to comment.

Signatories:

Rural Utilities Service

By: Mark S. Plank Date: 7/21/11

Mark S. Plank, Director
Engineering and Environmental Staff
Water and Environmental Programs

Illinois State Historic Preservation Office

By: Anne Haaker Date: 7/26/11

Anne Haaker
Deputy State Historic Preservation Officer

Indiana State Historic Preservation Office

By: _____ Date: _____

Robert E. Carter
Indiana State Historic Preservation Officer

Invited Signatory

Convergence Technologies, Inc.

By: _____ Date: _____

Charles Wu, Chief Executive Officer

APPENDIX A

#7340 Convergence Technologies, Inc.
Reporting Sheet

Date:

Report on the progress of your tower and collocation Section 106 review and construction to RUS every four (4) months. The FCC Review Status should either be 'Exempt,' '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 must be submitted to RUS for construction approval.

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

Site Name	Proposed Construction (tower or collocation)	FCC File Number	FCC Review Status	FCC Finding of Effect	Construction Status

Project Construction

Has the scope of the project changes since the last reporting period? If so, please explain:

Contacts:

Forward this report to the following:

RUS (electronically)
Laura Dean
RUS Federal Preservation Officer
202-720-9634
Laura.Dean@wdc.usda.gov