

Before the  
Federal Communications Commission  
Washington, DC  
20554

In the Matter of )  
 )  
Nationwide Programmatic )  
Agreement Regarding ) WT Docket No. 03-128  
The Section 106 )  
National Historic Preservation Act )  
Review Process )

REPLY COMMENTS OF UNITED STATES CELLULAR CORPORATION

United States Cellular Corporation ("USCC") hereby files its reply comments concerning the Notice of Proposed Rulemaking in the above-captioned proceeding.<sup>1</sup> USCC wishes to associate itself with the comments filed by other wireless carriers. However, we wish to emphasize one point, which we believe to be the most important one now before the FCC in its consideration of the draft Nationwide Programmatic Agreement ("NPA"), namely the urgent need to adopt an NPA which promotes, rather than hinders, tower construction.<sup>2</sup>

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<sup>1</sup> Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Process, Notice of Proposed Rulemaking, WT Docket No. 03-128 FCC 03-125 (rel. June 9, 2003) ("NPRM").

<sup>2</sup> USCC provides wireless service in 44 MSA, 100 RSA, 1 MTA, numerous BTA markets nationwide. It owns over 2,300 antenna towers and thus has a vital stake in the FCC's tower licensing process.

I. If the Programmatic Agreement Does Not Facilitate The Siting of Wireless Towers, It Is Not Worth Adopting

A review of the comments filed in this proceeding reveals a deep gulf between wireless carriers and other FCC licensees on one side and state historic preservation officers and Native American organizations on the other, concerning almost all the issues involved in the evaluation of proposed towers under the National Historic Preservation Act ("NHPA").

USCC supports the legal positions taken by wireless carriers on such issues as the need for "excluding" the categories of "undertakings" identified in Section III.A of the draft NPA. We agree with the "clarifications" to those exclusions proposed by various wireless carriers to ensure that the "exclusions" actually do exclude at least some towers from the NHPA process.<sup>3</sup> USCC believes that the definition of a "visual" effect of a proposed "undertaking" should be appropriately limited to the immediate vicinity of a proposed tower and that NHPA review should be confined to properties already listed in or determined by the Secretary of the Interior to be eligible for listing in the National Register of Historic Places.<sup>4</sup> Nothing can be more unfair than the current process, which requires licensees to guess whether a given building or district might someday be deemed eligible for the National Register.

USCC agrees with CTIA that the NHPA does not require "consultation" for every "undertaking" and that consultation provisions of Section IV are (more than)

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<sup>3</sup> See, e.g. Comments of AT&T Wireless Services, Inc. pp. 4-6.

sufficient under the NHPA.<sup>5</sup> We also strongly agree that a firm 30 day period should apply to all reviews of proposed undertakings by state and tribal historic preservation officers.<sup>6</sup>

USCC also supports the specific and detailed recommendations to improve the NPA proposed by Cingular in its painstaking comments and concur in PCIA's suggestions on how to improve the proposed "Submission Packets."<sup>7</sup>

Conversely, USCC opposes all attempts to diminish or eliminate the exclusions in the NPA and otherwise make the process of tower siting and construction more complex, time consuming, and expensive than it already is.<sup>8</sup>

USCC, however, wishes to emphasize a separate and more general, but related point. We believe that the FCC should consciously seek, through the NPA mechanism, to facilitate the construction of a national wireless network, which is vital to the nation for all the economic and national security reasons cited by commenters.<sup>9</sup> What this should mean in practice is that uncertain legal and policy issues should be resolved in such a way as will assist, rather than hamper or have the foreseeable effect of preventing, the construction of necessary towers.

The draft NPA contains various "alternate" features which reflect a basic uncertainty on the part of the FCC as to the direction in which it wishes to go. The draft NPA, for example contains a "bracketed" proposed Section III.B, which would

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<sup>4</sup> See Comments of PCIA, pp. 34-44.

<sup>5</sup> See Comments of CTIA, pp. 10-30.

<sup>6</sup> See Comments of Western Wireless Corporation and T-Mobile USA, Inc.

<sup>7</sup> See Comments of Cingular Wireless, LLC pp. 8-17; PCIA Comments, Attachments A-C.

<sup>8</sup> See, e.g., Comments of United South and Eastern Tribes, Inc.; Comments of The Navajo Nation.

provide extensive consultation rights and arguably a veto power to Indian tribes and Native Hawaiian organizations over undertakings on lands with which they have "aboriginal and/or historic associations" but on which they do not now reside. Section IV of NPA is itself proposed in the form of "alternatives," one of which (Alternative B), would require "government to government" consultation on all "undertakings." To adopt such onerous provisions in this document would drastically complicate the entire FCC licensing process, not just the approval process for individual towers.

A footnote (Footnote 5) to Section III of the NPA proposes that State Historic Preservation Officers ("SHPOs") be allowed to "opt out" of the "exclusions" altogether on a statewide basis. This would essentially destroy all value in the NPA for wireless carriers and other FCC licenses in any state taking that course. If either Section III.B, Alternative B, or Footnote 5 were adopted, the draft NPA would cease to serve the public interest.

The FCC must now decide what kind of NPA it is prepared to sign and incorporate into its own rules. USCC would submit that the FCC's chief responsibility is to promote, in the time-honored words of its governing statute, "a rapid, efficient, Nation-wide .... radio communications service with adequate facilities at reasonable charges."<sup>10</sup> The FCC should not conceive its role to be that of

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<sup>9</sup> See *e.g.*, AT&T Wireless Comments, p. 2.

<sup>10</sup> 47 U.S.C. Section 151.

a political arbiter between its licensees and all who feel aggrieved for one reason or another about the construction of antenna towers.

The draft NPA, with its many "alternatives" and contradictory footnotes, bespeaks a desire to keep all parties happy. This cannot be done. Whatever version of the NPA is adopted, those who oppose it will appeal and the courts will ultimately have to resolve the rights and responsibilities of all parties under the relevant statutes.

We recommend that the Commission adopt the original NPA, as strengthened by the modifications proposed by wireless carriers referred to above. That will be the course which will best serve the interest of all Americans in an improved wireless telecommunications network to strengthen our economy and help meet future emergencies.

If the courts later determine that the FCC's actions fail in any respect to comply with the NHPA or any other statute (and we strongly believe they will not), the Commission may modify its rulings accordingly. But to alter the NPA now, for political reasons, on the basis of the dubious recommendations of parties with no interest in necessary tower construction, would be a grave mistake, for which Commission licensees and the public at large would pay into the indefinite future.

The FCC should not voluntarily transform a document originally designed to free at least some towers from the NHPA's regulatory maze into a document which will add yet more blind alleys to that maze. Such an outcome would be profoundly undesirable and contrary to the public interest.



Conclusion

For the foregoing reasons, USCC requests that the FCC adopt the National Programmatic Agreement with the modifications proposed by wireless carriers.

Respectfully submitted,

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