



# CTIA

*Building the Wireless Future™*

Cellular Telecommunications & Internet Association

January 21, 2004

Ms. Marlene Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

**Re:** *Ex Parte* Communication  
WT Docket No. 03-128

Dear Ms. Dortch,

On Tuesday, January 20, 2004, Andrea Williams, Assistant General Counsel of the Cellular Telecommunications & Internet Association (“CTIA”) along with representatives from the National Association of Broadcasters, PCIA – The Wireless Infrastructure Association, and counsel to the Wireless Coalition to Reform Section 106 met with the following Commission staff: Kris Monteith and Geoffrey Blackwell, Consumer and Governmental Affairs Bureau (“CGB”); Jeff Steinberg, Dan Abeyta and Amos Loveday, Wireless Telecommunications Bureau (“WTB”). The purpose of the meeting was to discuss the proposed Nationwide Programmatic Agreement (“NPA”) between the FCC, the Advisory Council on Historic Preservation (“ACHP”) and the National Conference of State Historic Preservation Officers (“NCSHPO”) pending in this proceeding. The WTB and CGB staff also informed the industry representatives that the Commission plans to adopt, in conjunction with the Nationwide Programmatic Agreement, a set of best practices for industry and tribes to use voluntarily with respect to the Section 106 review process for the siting of communications facilities that may affect Indian religious sites. In the meeting, CTIA made the following points:

- The NPA must provide clear guidance on the categorical exclusions. While the FCC is contemplating “minor” modifications such as reducing threshold numbers within some of the categorical exclusions, such modifications must simplify, not complicate, implementation of the NPA, particularly the categorical exclusions. Moreover, such modifications must not reduce the types and scope of the categorical exclusions contemplated and negotiated by the ACHP Communications Tower Working Group;
- In its consideration of the issue regarding the use of qualified experts for the Section 106 review process, the definition of qualified experts should be no more stringent than permitted under the National Historic Preservation Act and the definition currently used by the U.S. Secretary of the Interior;

- The Commission should clearly state that the NPA and its Best Practices for Industry and Tribal Relations for the Communications Tower Siting Process does not supercede, modify or forego any business relationships established between an applicant and tribe as it relates to the siting of communications towers and facilities;
- The Commission should provide clear guidance that the Best Practices are strictly voluntary, and cannot be imposed by a SHPO, tribe or an applicant as a de facto requirement in the Section 106 review process;
- Since the Best Practices was presented for the first time to industry representatives at this meeting, CTIA needs more time to vet discuss this new development with its members and will provide the Commission with a more comprehensive response in the near future; and
- Replacement or modification of telecommunications tower should be categorically excluded from any Section 106 process. Further, the NPA must provide a “grandfathering” provision for replacement of or modification to towers that have not previously undergone Section 106 review, similar to the provisions set forth in the FCC’s Nationwide Collocation Programmatic Agreement.

Respectfully submitted,

/s/  
Marlea Leary  
Paralegal