



CTIA

Building the Wireless Future

Cellular Telecommunications & Internet Association

March 3, 2004

Via Electronic Submission

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Notice of Ex Parte Communication
Nationwide Programmatic Agreement Regarding the
Section 106 National Historic Preservation Act Review
Process – WT Docket No. 03-123

Dear Ms. Dortch:

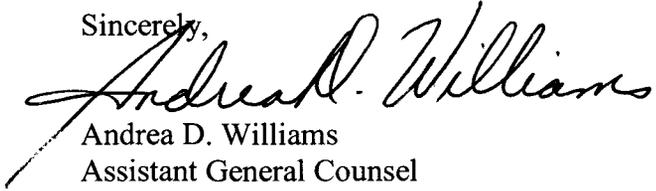
On Tuesday, March 2, 2004, Andrea Williams, Assistant General Counsel of the Cellular Telecommunications & Internet Association (“CTIA”), Brad Stein, Director for External Affairs, U.S. Cellular Corporation, and Peter Connolly of Holland & Knight and counsel to U.S. Cellular, had separate conference calls with Sam Feder, Legal Advisor on Spectrum and International Issues in the Office of Commissioner Martin and Paul Margie, Legal Advisor in the Office of Commissioner Michael Copps in regard to the above-referenced proceeding. Attached is a summary of the discussion.

On the conference call with Mr. Margie, U.S. Cellular representatives asked the Commission to consider the practical impact of the Nationwide Programmatic Agreement, particularly as it relates to mid-size carriers and their quest for ETC status. Citing to FCC’s recent decision granting ETC status to Virginia Cellular, LLC, they noted the importance the Commission placed on the wireless carrier’s ability to construct several new cell sites in sparsely populated areas within its licensed service area over the first year and a half following ETC designation. If granting ETC status under such circumstances is in the public’s interest, Mr. Stein and Mr. Connelly maintained that the Commission must ensure that the historic preservation review process is streamlined to facilitate, not obstruct, a carrier’s ability to construct the facilities necessary to meet its universal service obligations. They expressed grave concerns whether the Nationwide Programmatic Agreement in its current form streamlines the review process in such a way that furthers the public’s interest in the provision of telecommunications services to rural and sparsely populated areas.



Pursuant to Section 1.1206 of the Commission's rules, this letter and the attachment are being electronically filed with your office.

Sincerely,

A handwritten signature in black ink that reads "Andrea D. Williams". The signature is written in a cursive style with a large, sweeping initial 'A'.

Andrea D. Williams
Assistant General Counsel

Attachment

cc: Sam Feder
Paul Margie

Nationwide Programmatic Agreement on Section 106 Review

Summary of Discussion

GOAL: A uniform, unambiguous, streamlined process for reviewing communications towers on or near historic properties.

INDUSTRY CONCERNS:

- Current draft of the NPA will dramatically increase costs and create further delays for an already overly burdensome and lengthy process for all the parties (FCC, SHPO and Applicants).
- Current draft of the NPA is unwieldy making compliance under the Agreement and the Commission's NEPA rules more difficult, complicated and expensive than under the current rules.

FOUR REQUIREMENTS NECESSARY TO STREAMLINE THE SECTION 106 PROCESS IN A TIMELY AND COST EFFECTIVE WAY FOR THE FCC, SHPOS AND THE WIRELESS INDUSTRY:

- 1) **Categorical Exclusions.** FCC adoption of ALL the categorical exclusions whereby certain tower siting activities are exempt from the Section 106 review process. The categorical exclusions set forth in the NPRM generally have little or no significant effect on or near historic properties. ***The most critical exclusions for streamlining the Section 106 process are the industrial/commercial area and highway/railway corridors exclusions.*** The FCC must maintain them if the NPA is to be a viable mechanism for streamlining the Section 106 process. CTIA members never agreed to forego these two critical categorical exclusions in exchange for addressing the eligibility issue in the NPA.
- 2) **Enforcement of the 30-day rule** requiring SHPO's to review applications and make determinations within 30 days of receipt of the application. The SHPO and Applicant must mutually agree upon any extension of the review period. The FCC should grant extensions only under very exigent circumstances. FCC's adoption of clear, uniform and reasonable documentation standards will provide certainty with respect to the type of information that must be submitted with the application, and will trigger the commencement of the 30-day review process
- 3) **Reasonable, Timely & Good Faith Efforts to Identify Historic Properties.** Consistent with the Section 106 Coalition position, the NPA should not require surveys for visual effects. The use of qualified professionals for identification purposes should be optional. The universe of eligible properties for which visual effects should be considered must be limited to those identified by the SHPO. Research required to identify such properties should be limited to reviewing previous determinations of eligibility that are clearly and easily ascertainable to the Applicant and readily available in the SHPO's office.
- 4) **Tribal Interests.** While industry acknowledges and respects the sovereignty of tribal nations and their government-to-government relationship with the FCC, the NPA's provisions regarding tribal consultation must provide a reasonable and balanced approach that promotes and supports the build out of the wireless telecommunications infrastructure and the protection of Indian cultural resources and religious sites. The FCC's Best Practices between industry and tribes regarding the siting of communications towers must remain strictly voluntary. Implementation of the Best Practices should not result in *de facto* rules. The FCC's Best Practices must not supercede or invalidate existing business relationships between certain carriers and tribes.