CTIA
Building the Wireless Future.
Cellular Telecommunications & Internet Association

March 4, 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 Thursday, March 4, 2004, Andrea Williams, Assistant General Counsel of the Cellular Telecommunications & Internet Association ("CTIA"), sent the following e-mail with its attachments to Sheryl Wilkerson, Legal Advisor to FCC Chairman Michael Powell in regard to the above-referenced proceeding.

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

Sincerely,

Andrea D. Williams

Andrea D. Williams
Assistant General Counsel

Attachment

Andrea Williams

From: Andrea Williams
Sent: Thursday, March 04, 2004 12:43 PM
To: 'sheryl.wilkerson@fcc.gov'
Cc: Diane Cornell
Subject: Follow up on Nationwide Programmatic Agreement
Importance: High

March 4, 2004

Ms. Sheryl Wilkerson
Legal Advisor
Office of the Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Dear Sheryl:

I wanted to follow up on the voice mail message I left concerning the Nationwide Programmatic Agreement ("NPA"), and to see whether you had any questions or needed additional information.

As I indicated in my message, the goal of this three-year negotiation process among the stakeholders was to develop a uniform, clear, streamlined process for reviewing communications towers on or near historic properties. It appears that the NPA has strayed significantly from that goal. CTIA members are very concerned that what initially was an effort to simplify and streamline the Section 106 process has become a convoluted bureaucratic process that will dramatically increase siting costs and create further delays in the siting of wireless facilities.

In my recent discussions with other 8th Floor Legal Advisors, there appears to be a misperception with respect to the importance of the industrial/commercial area and rights of way categorical exclusions to CTIA members. While CTIA supported the Section 106 Coalition's efforts with respect to the eligibility issue, ***CTIA members never agreed to forego these two critical categorical exclusions.*** The Advisory Council on Historic Preservation ("ACHP") never opposed the concept of exempting certain industrial/commercial areas and rights-of-way from Section 106 review. They did oppose how those two provisions were written, *i.e.*, very difficult to understand and implement in the field. ACHP Staff specifically noted at the January meeting of the ACHP Tower Working Group that the language was so complicated that it would take a qualified expert to determine whether a carrier could even take advantage of the exclusion. Such a result was contrary to the ACHP's goal of simplification. Unfortunately, the ACHP voted at its January 2004 meeting to eliminate the two provisions rather than trying to redraft the language again.

Sprint PCS recently approached both the ACHP and NCSHPO with proposed language that is clear and embodies what the ACHP Tower Working Group intended with respect to the rights of way categorical exclusion. I learned yesterday that both ACHP and NCSHPO support Sprint PCS's proposed language. CTIA also supports Sprint's proposal and strongly urges the Commission to adopt it in the NPA. CTIA has also drafted proposed language with respect to the industrial/commercial area exclusion for the ACHP, NCSHPO and the FCC's consideration. CTIA strongly encourages the Commission to adopt the proposed language and retain these two very critical exclusions for streamlining the Section 106 process. Attached are Sprint's and CTIA's proposed language.

I am also attaching a summary of CTIA's discussion on the NPA with other 8th Floor Legal Advisors. If you have any questions or need additional information, please do not hesitate to contact me or Diane Cornell.

Sincerely,

Andrea Williams
Andrea D. Williams
Assistant General Counsel
Cellular Telecommunications & Internet Association
(202) 736-3215 (voice) (202) 785-8203 (facsimile)
awilliams@ctia.org

Attachments (3)

CTIA

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"), Andy Lechance, Regulatory Counsel for Verizon Wireless, and Peter Connolly of Holland & Knight representing U.S. Cellular Corporation, met with Jennifer Manner, Senior Counsel in the Office of Commissioner Kathleen Abernathy in regard to the above-referenced proceeding. Attached is a summary of the discussion.

Similar to the discussion with Mr. Margie, Mr. Connolly also noted the practical implications of the Nationwide Programmatic Agreement, particularly as it relates to mid-size carriers and their quest for ETC status. He also expressed concerns whether the Nationwide Programmatic Agreement adopted as a final rule meets the procedural due process requirements under the Administrative Procedures Act.

1400 Sixteenth St, NW Suite 600 Washington, DC 20036 202 785 0081 phone 202 785 0721 fax www.ctia.org

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

Sincerely,

Andrea D. Williams

Andrea D. Williams
Assistant General Counsel

Attachment

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.

CTIA

March 3, 2004

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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.

1400 Wilbanks St., NW Suite 600 Washington, DC 20036 202.785.0081 phone 202.785.0721 fax www.wowcom.com

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

Sincerely,

Andrea D. Williams

Andrea D. Williams
Assistant General Counsel

Attachment
cc: Sam Feder
Paul Margie

Nationwide Programmatic Agreement on Section 106 Review

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Andrea Williams

From: Postmaster
Sent: Thursday, March 04, 2004 12:44 PM
To: Andrea Williams
Subject: Delivery Status Notification (Relay)

ATT42383.tx Follow up on
t ionwide Progr

This is an automatically generated Delivery Status Notification.

Your message has been successfully relayed to the following recipients, but the requested delivery status notifications may not be generated by the destination.

sheryl.wilkerson@fcc.gov

Andrea Williams

From: Sheryl Wilkerson [Sheryl.Wilkerson@fcc.gov]
To: Andrea Williams
Sent: Thursday, March 04, 2004 12:45 PM
Subject: Read: Follow up on Nationwide Programmatic Agreement

Your message

To: Sheryl.Wilkerson@fcc.gov
Subject:

was read on 3/4/2004 12:45 PM.