

**Nationwide Programmatic Agreement Regarding the
Section 106 National Historic Preservation Act Review Process**

WT Docket No. 03-128

FCC Jurisdictional Authority - Federal Undertaking Issue

- The Commission plans to address the fundamental legal issue: Whether the Commission has legal authority under the NHPA to adopt rules governing the siting of wireless telecommunications facilities. Specifically, whether the siting of wireless telecommunications facilities is by law a federal or federally assisted undertaking.
- CTIA noted that this fundamental legal issue has been pending far too long, and needs to be resolved in this proceeding so that the industry can move forward.
- Many parties squarely raised and comprehensively addressed this issue in the record of the Nationwide Programmatic Agreement rulemaking proceeding. Commission decision on this issue has been pending for over three years and industry is concerned that the pending Order will again evade this threshold jurisdictional issue. Mr. Rogovin assured us that the Commission plans to address the federal undertaking issue in this proceeding.
- CTIA emphasized that its May 14th letter was not an attempt to delay Commission action on the pending Nationwide Programmatic Agreement. Rather, the industry eagerly awaits and wants the Commission to act soon on the pending NPA.
- Tower siting decisions are purely private actions, with no federal funding, and minimal oversight, control, or participation by the FCC. For most towers, the Commission merely requires registration and certification of compliance with regulations promulgated by the Federal Aviation Administration (“FAA”).
- Wireless carriers generally do not need approval from the FCC to construct tower facilities necessary to provide wireless service to a licensed geographic area. The Commission has specifically stated that its wireless rules do not provide for the licensing of individual tower or antenna facilities. Moreover, Section 319 of the Communications Act of 1934, as amended, provides that a permit for construction of mobile stations shall not be required. *See* 47 U.S.C. §319 (2001).
- CTIA, Sprint PCS and Verizon Wireless referenced the *Ex Parte* letter filed by the National Historic Trust in late May 2004, and the minutes of the NCSHPO March 10, 2004, meeting. Specifically, they noted the remarks of NCSHPO’s President regarding the original intent of the National Historic Preservation Act.