



August 25, 2004

Via Electronic Submission

Chairman Michael K. Powell
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: Nationwide Programmatic Agreement Regarding the Section 106
National Historic Preservation Act Review Process
WT Docket No. 03-128

Dear Chairman Powell:

As you may know, the National Trust for Historic Preservation has been actively involved during the past four years in working with Commission staff, industry representatives, state and federal historic preservation agencies, and other stakeholders, in the Telecommunications Working Group convened by the Advisory Council on Historic Preservation, to address ways to streamline the process for taking into account the effects of telecommunications facilities on historic properties in accordance with Section 106 of the National Historic Preservation Act (NHPA), 16 U.S.C. § 470f. The efforts of the Working Group led to the proposed Programmatic Agreement (PA) that the Commission published for comment on June 9, 2003.

Throughout this process, the National Trust has sought to ensure that the PA will be effective in protecting historic properties potentially affected by telecommunications facilities, while at the same time, supporting the goal of streamlining the Commission's procedures for reviewing actions under Section 106. We believe these two goals are not mutually exclusive.

Our previous comment letters, filed on August 8, 2003 and May 25, 2004, discussed our concerns about a number of provisions in the proposed PA, especially the exclusions. Two exclusions in particular have troubled us – the “industrial/commercial” exclusion, and the “right-of-way” exclusion. Although we are not privy to any revisions in the draft PA since June 2003, we explained in detail in our May 25, 2004 comments the reasons why we believe the original language of these exclusions, as published last year, would not sufficiently protect historic

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properties from adverse effects, or even ensure that historic properties are fully considered in the review process. In particular, we expressed our concern that the “industrial/commercial” exclusion could serve as a major loophole, whose scope would be far too broad in exempting facilities from review, even where those facilities could have severe adverse effects on historic properties.

At the same time, we are troubled by the stalemate that appears to have developed at the Commission regarding the PA. In an effort to move forward on resolving some of the disputed issues, the National Trust has taken the initiative to develop a specific proposal for revising the language of the two most controversial exclusions. As a follow-up to our May 25, 2004 letter, and in an effort to be as constructive as possible in our comments, we have revised our earlier proposals in the hopes of encouraging a compromise.

Although we understand that you have already voted in support of the PA as currently drafted, we hope you will consider our proposal as a potential approach for reaching a broader consensus on the PA in order to move forward toward its ultimate adoption by the Commission. While the Cellular Telecommunications and Internet Association (CTIA) has advised us that they remain opposed to a compromise, we believe that other industry constituents would support consideration of a compromise in order to facilitate the Commission’s adoption of the PA.

We have reached out to a variety of industry representatives in the process of developing this proposal, as well as officials of the National Conference of State Historic Preservation Officers (NCSHPO) and staff to the Advisory Council on Historic Preservation (ACHP). Our goal has been to promote a spirit of dialogue and compromise in an effort to resolve our differences. While this compromise proposal would not be ideal from our perspective, it would certainly be considered an improvement over the public draft by the historic preservation community, and we believe it would be acceptable to some industry representatives as well (though we recognize that CTIA would not likely be among them), if it could serve as a basis for securing the final adoption of the PA.

The Trust’s proposed revision to Exclusion 4 is as follows:

III. Undertakings Excluded from Section 106 Review

* * * *

- 4. Construction of a Facility 125 feet or less in height above ground level, on property used for industrial or commercial purposes and containing one or more significant structures totaling at least 80,000 square feet in size, such as a shopping mall, office building, office park, factory, storage facility, or similar structure, where all excavation will be on previously disturbed ground as that term is defined in Section VI.C.4., below, and provided that the Facility is not located in, on, or within 500 feet of, a historic property or district.**

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This proposal represents a compromise from the approach advocated by the National Trust in our May 25, 2004 letter, which urged the Commission to consider limiting this exemption to 100-foot-high towers and 100,000-square-foot industrial or commercial structures. Part of the reason why we have revised the proposal to include towers up to 125 feet high is to enhance the potential for collocation, so that this exemption could ideally serve as an incentive for shorter towers, without unduly limiting collocation.

In addition, the National Trust supports the following proposed language for the right-of-way exclusion. This language is based on a proposal originally developed by industry representatives, which we understand has already gained wide acceptance among both industry and historic preservation stakeholders:

* * * *

5. SHPO consultation is not required for Facilities that are constructed within 50 feet of a right-of-way designated by a government for the location of communications towers or above-ground utility transmission lines and associated structures and equipment, and in active use for such purpose; provided:

(a) The proposed Facility is not substantially larger than already existing structures in the right-of-way (as defined by “substantial increase” in the Collocation Agreement); and

(b) The proposed Facility does not rest on a portion of the right-of-way that is within or immediately adjacent to a historic property or district.

Tribal consultation would still be required for Facilities constructed within 50 feet of a right-of-way.

We urge you to consider whether these proposals could provide a potential basis for reaching agreement with other Commissioners. We appreciate your consideration of the National Trust’s comments, and we would welcome the opportunity to meet with you to discuss our proposals in more detail.

Respectfully submitted,



Elizabeth S. Merritt

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Deputy General Counsel

cc: Commissioner Michael Copps
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