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April 4, 2005

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW, Room TW-204B
Washington, DC 20554

RE: NATHPO Comments on WT Docket No. 03-128

Dear Secretary Dortch:

The National Association of Tribal Historic Preservation Officers (NATHPO) is the only national organization of tribal government officials who are responsible for operating programs expressly created to implement tribal historic preservation laws on Indian lands. The Tribal Historic Preservation Officers (THPOs) are also responsible for protecting historic properties that are of importance to their tribal members whether or not they are located on tribal lands. NATHPO also has members who support our mission and goals even though they may not have a THPO program.

It is from the perspective of our members, who are technical experts in tribal historic preservation, that NATHPO opposes the "Petition to Reconsider" as put forth by the Tower Siting Policy Alliance. As noted in their petition, the Alliance is comprised of four companies that either rely upon or build cell towers around the United States.

General Statement:

Over the past five years, NATHPO has had limited participation in the meetings and discussions that led to the NPA that was signed in 2004 by the Federal Communications Commission (FCC), the Advisory Council on Historic Preservation (ACHP), and the National Conference of State Historic Preservation Officers (NCSHPO) on the Section 106 NHPA review process. NATHPO supports the FCC's commitment to meeting with a variety of tribal governments in a variety of settings on policy issues that affect Indian country.

Since the first meeting of what turned out to be a lengthy, five year process which led to the NPA and related actions, NATHPO has called for a national effort -- led by the Federal Government and to include interested parties such as the Alliance -- to work with and learn more about historic preservation in Indian country. If industry had participated in such an exercise of tribal sovereignty, many of the false and misleading comments and attributes could have been avoided. And, concomitantly, Indian country would have had the benefit of learning more about the industry of cell tower construction and operation and the possible contributions that each side could have provided to the other in a collaborative working environment.

The Alliance attributed the following negative issues stated in their Conclusion to be mostly, if not all, caused by Tribal involvement in the process:

> "The NPA is the product of intensive negotiations involving many agencies and groups over three years. Although many of the provisions of the NPA are consistent with the stated streamlining and historic preservation goals of the agreement, others are not. The provisions discussed in this petition will unnecessarily and substantially increase the burdens of cost, complexity, uncertainly and delay for Section 106 compliance. Neither this industry, nor the state and federal agencies that will be charged with managing the Section 106 process under the NPA, nor the public that depends on the rapid buildout of the networks that serve them, can afford the obvious and predictable consequences of expense and delay that are sure to come if the provisions outlined in this petition are not ameliorated."

Per the NHPA and federal Indian law (expressed at length in comments filed by the United South and Eastern Tribes and the National Tribal Telecommunications Association), the conclusions reached by the Alliance seemingly ignore the rights and responsibilities of the Federal Government with American Indians, Alaska Natives and Native Hawaiian Organizations. Their stance omits the legal role of Native people to manage over 40 million acres in the lower 48 states and about 50 million acres in Alaska, in addition to tribal historic properties located off these tribal lands. Rather, the Alliance brings forward a discussion of cost and consequence. NATHPO would like to expand on this point of cost and consequence to demonstrate the positive accomplishments that may be accomplished with a collaborative perspective.

For brevity's sake, NATHPO will outline our dissent with the Alliance's petition for reconsideration by addressing the concerns raised in their concluding sentence, *"Neither this industry, nor the state and federal agencies that will be charged with managing the Section 106 process under the NPA, nor the public that depends on the rapid buildout of the networks that serve them, can afford the obvious and predictable consequences of expense and delay that are sure to come if the provisions outlined in this petition are not ameliorated."*

As ominous as this sounds, it would be of great benefit to better understand with actual facts how the Alliance has arrived at this conclusion of why tribal provisions will negatively affect their work. Rather, industry only gives the impression of a system that is off-track, yet provides no factual information as to what their work actually entails and why tribal participation is bad. It would be of great benefit, and good business sense, if the Alliance was to provide such information as:

"Fault Analysis" Are delays and related costs due to a barrier or because of poor planning? Hence, NATHPO's call for early consultation on all matters that affect tribal historic properties and thus our shared interest in retaining tribal involvement at each step. Without early, sufficient, and sincere notification to tribal governments about possible cell tower construction and possible related affects, the Alliance's stance to avoid working with tribal governments would seem to go against the best interests of all parties. It could even appear that industry is creating their own delay and blaming it on Indian country.

"Business Analysis" Related to cell tower placement, construction, and costs – does the Alliance conduct and provide adequate business analyses to maximize everyone's participation and to keep costs to a minimum? For example, do Alliance

members perform a cost-benefit analysis that identifies the requirements that are needed to serve a certain amount of customers if a tower is placed at a certain location? And if yes, what happens if that tower is not placed there – how many customers will not get service? Would a smaller and shorter tower satisfy the same customer base? Is an affected tribe(s) notified and included early in the process so that remedies may be achieved in a mutually respectful and low economic manner?

In addition to sentiments expressed in the conclusion, the Alliance stated that *"If evidence were submitted supporting a finding that historic properties of significance to Indian tribes are missing from SHPO records in higher proportion than other types of historic properties, such a finding might justify requiring contact with Indian tribes to identify tribal properties..."* (page 17) NATHPO offers to work with the Alliance and other NPA signatories on more fully understanding the underlying reasons for this statement. We would be interested in hearing of the specific cases that posit that the tribal government(s) was the barrier, rather than what can only be seen as an effort to reach a negative conclusion based on anecdotal information. But could this situation, in fact, be due to poor planning?

NATHPO continues to encourage industry to learn more about historic preservation in Indian country -- something that Native people have been practicing for thousands of years. We hope to work with you in resolving issues as they arise to the mutual satisfaction of all concerned parties..

Sincerely,

D. Bambi Kraus, President