SOCIETY FOR AMERICAN ARCHAEOLOGY

April 21, 2025

Ms. Allison Jones
Wireless Communications Bureau
Federal Communications Commission
45 L Street NE
Washington, DC 20554

RE: RM-12003

Dear Ms. Jones,

The Society for American Archaeology (SAA) appreciates this opportunity to provide comments on the petition for rulemaking filed on March 27 by CTIA – The Wireless Association (CTIA) with the Federal Communications Commission (FCC). The SAA strongly opposes CTIA's petition on the grounds that the particular licenses under discussion qualify as undertakings under the National Historic Preservation Act (NHPA).

The SAA is an international organization that, since its founding in 1934, has been dedicated to research about and interpretation and protection of the archaeological heritage of the Americas. With more than 6,000 members, the SAA represents professional and avocational archaeologists, archaeology students in colleges and universities, and archaeologists working at tribal agencies, museums, government agencies, and the private sector. The SAA has members throughout the United States, as well as in many nations around the world.

The goal of the CTIA's petition is for the FCC to structure its regulations in such a way that wireless geographic licenses would not be considered Major Federal Actions under the National Environmental Policy Act (NEPA), and by consequence not a federal undertaking under the NHPA (see CTIA petition page 21). This is in spite of the fact that 54 USC §300320 clearly defines federal licenses as undertakings for the purposes of the NHPA. Regardless of the applicability of NEPA to geographic licenses, if the FCC is made aware of potential adverse effects on historic properties, under the NHPA the license could and should be altered to require the avoidance, minimization, or mitigation of any proposed adverse effects to historic properties. By stating that the FCC could not require a license to have stipulations for historic property protection, CTIA is asking the FCC to unilaterally mute the voice of the state and the tribes under statute.

The granting of the petition would also have the effect of invalidating the long history of the FCC, industry, and state and tribal stakeholders working together to facilitate effective Section 106 reviews that result in efficient deployment of wireless technology. In 2000 the FCC, in consultation with the Federal Advisory Council on Historic Preservation, the National Association of Tribal Historic Preservation Officers, the National Conference of State Historic Preservation Officers, and industry representatives established a telecommunications working group. This consultation among the working group resulted in a signed nationwide programmatic agreement (PA) in 2004 that streamlined the Section 106 process for FCC undertakings. CTIA and other industry representatives were fully part of the negotiations. Antenna co-locations were exempted from any additional 106 review. Other exemptions from review included construction or replacement of existing towers, temporary communication towers, construction within 50 feet of a right of way, et cetera. An electronic notification system was developed to advise SHPOs and THPOs on a regular basis of proposed projects, giving the consulting parties the opportunity to request a survey or notify the FCC of a potential impact to a known site or traditional cultural place. The Area of Potential Effect for visual impacts was also established in the PA.

The existence of the PA is of no small import. According to the Court of Appeals for the District of Columbia, a programmatic agreement is a binding contract. See *Don't Tear It Down, Inc. v. Pennsylvania Avenue Devel. Corp.*, 642 F.2d 527 (DC Cir. 1980). Contracts are sacrosanct documents under the plain language of the United States Constitution (US Const. art. I, sec. 10). In this case, the PA exemplifies the reality that a negotiated deal existed between the FCC and consulting parties, including CTIA. The fact alone that the consultation process continued for four years demonstrates a good faith effort by the cultural resource community, industry, and the FCC to streamline Section 106 reviews by ensuring the process would include avoidance, minimization, or mitigation for adverse effects only when necessary. Not only is the FCC bound by this PA, so too are the consulting parties, CTIA included. CTIA has made no attempt to demonstrate that the PA has been breached or otherwise rendered unenforceable. CTIA simply sees an opportunity to take advantage of a barrage of deregulatory efforts by the federal government to reduce restrictions protecting our national heritage. A disagreement with the effect of a contract does not render it invalid, and CTIA and others must adhere to the existing terms of the cooperatively negotiated PA.

The PA, more than being a contract, has been incorporated into the positive regulatory regime applicable to FCC permits (47 C.F.R. Pt. 1, App. C). By its incorporation into the CFR, the PA was provided an additional layer of permanence. In order to deregulate in the absence of a court ruling finding the regulation unconstitutional (of which none exists here) or a congressional directive to repeal the regulation, the only way to change a regulation is through the Administrative Procedure Act (APA) process. That process has not been undertaken here. In this instance, even if the PA was removed from the CFR, it would still be a binding contract as noted above unless or until struck down as unenforceable or otherwise renegotiated by the contracting parties. Again, because

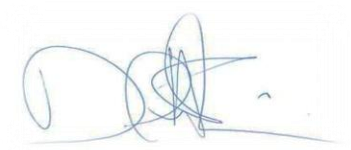
neither of these actions have occurred, the PA is insulated from CTIA's deregulatory efforts.

In light of the foregoing, the FCC is not empowered to simply comply with CTIA's request. The NHPA prevents the Commission from unilaterally declaring its licenses as not being undertakings. Additionally, if the FCC intends to renegotiate the PA, it must first do so through the APA process and then through a renegotiation of the original contract with all of the participants.

In conclusion, these licenses do in fact constitute federal undertakings under the NHPA, and the PA should remain in effect. The SAA strongly urges the FCC to deny the petition.

We thank the FCC for its consideration of this important issue.

Sincerely,



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President