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Chairman Nunes, Ranking Member Kildee, and members of the Subcommittee, thank you for the invitation to testify on the National Historic Preservation Act ("NHPA"). Protecting historic and culturally sensitive landmarks benefits our Nation, and the wireless industry is committed to preserving our cultural heritage. CTIA member companies work closely with local communities to balance the dual aims of historic preservation and the siting of wireless towers to keep pace with public demand for wireless communications services. These goals are not mutually exclusive, and I appreciate the opportunity to appear today on behalf of the wireless industry.

Let me preface my remarks by noting the public's ever-growing demand for wireless service. Wireless communications have become an integral part of the daily lives of Americans and the American economy. Today, more than 182 million Americans subscribe to wireless services – in fact, there are more mobile devices in the United States than traditional telephone access lines. Not only are wireless devices now omnipresent, but Americans are increasingly relying on their wireless service – average minutes of use increased to 596 minutes per month in 2004, a 14% increase over 2003. With respect to public demand, CTIA members hear their customers loud and clear: they want reliable service, with an ever expanding service area, and an array of new applications and offerings. And nowhere is this more relevant than in our Nation's rural areas as wireless service promises to be a key platform to bridge the digital divide.

Wireless service, moreover, plays an important role in public safety as wireless callers make more than 200,000 911 calls every day, seeking emergency assistance from police, fire, and emergency medical personnel. In addition, local, state, and federal agencies increasingly rely on wireless services to carry out their emergency public safety and homeland security responsibilities.

Antennas and the towers upon which antennas are hung – commonly referred to as "base stations" or "cell sites" – are absolutely essential to meeting the public demand for commercial wireless services and the needs of our Nation's first responders. Indeed, if spectrum is considered the "lifeblood" of wireless service, then towers and antennas are the critical arteries and capillaries that deliver wireless services across this great land. While the media often highlight exciting new applications such as camera phones or mobile networks' ability to deliver video broadcasts, it is the bricks and mortar of basic construction projects (i.e., antenna siting) that deliver services to American consumers. For example, a wireless carrier must install new facilities each time it wants to extend its coverage to an unserved or underserved area. If a carrier is delayed in building a tower in the new area, customers are deprived of the ability to make and receive calls in that community. Similarly, if a carrier is unable to construct a new cell site or collocate its wireless facilities on an existing tower to relieve congestion, customers will experience dropped or blocked calls (including E911 call attempts).
I am here today to talk about the impact of the National Historic Preservation Act on the wireless industry – and specifically, how Congress can provide much needed certainty to the NHPA review process, commonly referred to as the section 106 process. As you know, the section 106 process requires federal agencies to determine whether their undertakings could adversely affect a historic property included in, or eligible for inclusion in, the National Register of Historic Places. Tower siting is subject to NHPA because the Federal Communications Commission ("FCC") takes the position that the siting of any new tower by a wireless carrier is a "federal" undertaking subject to section 106 review – even though the FCC does not review and approve the siting of wireless towers and in fact for most towers, the FCC does not even know where the tower is located. Subjecting wireless carriers to this cumbersome compliance process is particularly burdensome because of the number of towers needed to meet the public demand for wireless services. CTIA believes that Congress can act here to maintain the integrity of our Nation's historic preservation policies while limiting unnecessary delays and providing finality to the tower siting approval process.

By way of background, although Congress recognized that mobile services are nationwide in nature, it explicitly determined that local governments – not the federal government – should oversee and authorize the placement, construction and modification of wireless towers. Indeed, Congress could not have been more specific in vesting the regulation of

wireless tower siting with local and state government zoning authorities, subject only to the specific limitations included in the 1996 amendments to the Communications Act. Today, in nearly every instance a wireless carrier cannot construct a new radio tower without local zoning board consent, which involves a wide variety of factors including consideration of potential impacts on historic properties. The local zoning process involves public participation, and historic preservation experts can and do participate in review of tower siting proposals.

As a result of section 106, a separate, federal process exists – involving the Advisory Council on Historic Preservation ("ACHP"), State Historic Protection Officers ("SHPOs"), Tribal Historic Preservation Officers ("THPOs"), Tribes, historic groups, and the public – in a review of the historical and cultural impact of proposed towers. The parties have generally recognized that the scope of this review for wireless tower siting has become unwieldy in recent years. With the FCC's participation, a 2001 Collocation Agreement was enacted to limit NHPA review of the placement of antennas on existing towers and buildings or other non-tower structures in specific circumstances. And in 2004, a Nationwide Programmatic Agreement ("the 2004 NPA") was adopted in an effort to clarify and streamline the section 106 review process. Several significant issues, however, still remain.

As you may know, CTIA has asked the U.S. Court of Appeals for the D.C. Circuit to review whether wireless tower siting constitutes a "federal undertaking" subject to section 106 review. Notably, two FCC Commissioners, including the new Chairman, dissented from the FCC Order adopting the 2004 NPA, concluding that wireless tower siting is not a federal undertaking. However, I am not here today to address the undertaking issue but instead to raise a fundamental aspect of the NHPA section 106 review – what makes a property "eligible" for inclusion in the National Register, i.e., which properties require section 106 investigation and review by wireless carriers seeking to site an antenna.

The NHPA requires review of federal undertakings on properties included or "eligible for inclusion" in the National Register. For years, the definition of eligible properties has strayed from what Congress intended, creating controversy and uncertainty for wireless carriers, tower owners, agencies, historic groups and the public. While there are registries and other resources wireless carriers can consult to identify whether properties have been included or nominated for inclusion in the National Register, the FCC, the ACHP, SHPOs, and historic groups have taken the position that the industry must consider any property that could conceivably meet the National Register criteria – potentially any property over 50 years old (a universe of properties that could run into the millions) – even if no steps had ever been taken to nominate the property for inclusion in the National Register. Under this approach, the meaning and scope of section 106 has been vastly expanded in a way that virtually ignores the National Register itself and renders the nomination process and listing on that exclusive roll irrelevant for purposes of the section 106 review process. In some cases, parties have pursued NHPA review following approval by the local zoning board and even when the owner of the property in question did not favor designation on the National Register and supported construction of the tower.
As a result of this overly broad interpretation, wireless carriers routinely must investigate an uncertain universe of potentially eligible properties in a several mile radius from the proposed site. This causes significant delay, additional costs, and uncertainty in the tower siting process. And delay, added costs, uncertainty, and lack of finality are not merely hypothetical – in the end, certain areas are unserved or without adequate coverage for far too long, to the detriment of American consumers. A few examples follow:

- In rural Georgia, a carrier identified an initial site for a proposed tower but was directed by the SHPO to seek another location because a nearby property was old enough to be considered eligible for the National Register. The SHPO provided guidance with respect to the replacement site. Upon submission to the SHPO, the carrier was informed that the new site was too close to another potentially eligible property. These iterative attempts to avoid potentially "eligible" sites delayed the project by a nearly half a year at a cost of $30,000.00. A site acceptable to the SHPO has still not been located. As a result, the carrier is reassessing whether it will be able to provide service to the area. The delay and cost incurred in serial attempts to find an acceptable site can do more than delay new service, it can cause a carrier to consider abandoning its plans to provide service to the area.
- In upstate New York, the SHPO decided that construction of a new tower would have an adverse effect on an historic property located over a mile away, which resulted in a four year delay in the construction of the tower. To view the tower from the property, one had to look through trees, across a busy highway, through utility lines strung along the highway, and then look more than a mile further. When the FCC examined the case it found that the SHPO's position was unpersuasive and authorized the construction of the tower. However, during the four year dispute, the public was deprived of increased coverage and enhanced service quality. Any adverse finding, regardless of merit, triggers significant delay.
- New Jersey's Garden State Parkway has recently been identified as eligible for listing in the National Register. This 2-to-6 lane restricted access toll highway has gaps in wireless service, and multiple towers are required for comprehensive wireless coverage, including the ability to make emergency 911 calls. Yet, proposed towers – which may be located on a nearby road and only momentarily visible when driving along the Parkway – will trigger a section 106 review process that can add more than six months to complete, requiring negotiation of a Memorandum of Agreement between the carrier, the SHPO, the FCC and potentially the ACHP, preparation and filing of an FCC submission, and expenditure of thousands of dollars. Thus, this process automatically produces delay in siting, resulting

in public demand that goes unmet.

• In rural Mississippi a carrier has been advised by the SHPO that it could not locate a proposed tower because it was too close to several potentially eligible properties. Not only did the property owner and residents of the area disagree, but a tower had been approved by the SHPO and was constructed only 1000 feet from the proposed site. This site would have provided service to a town of barely 1,000 people.

• A farmstead owner and the SHPO in New York believe that a tower constructed in 1987 adversely affects the farmstead by changing the historic setting, even though the farmstead owner has constructed modern silos and other modern farm buildings on the property. The battle over the tower, which has been ongoing since 2000, has cost the carrier hundreds of thousands of dollars. This is just one example of where post-construction claims are entertained and can linger for years, upending finality and certainty in the siting tower siting process.

• NHPA proceedings and delay are not just inconvenient and costly, they can create serious threats to public safety. In rural western Maryland, a NHPA challenge to a tower proposed for both public safety and commercial wireless services resulted in a three year delay in construction. During the protracted proceedings, emergency services communications in the area became so degraded that Medivac helicopter pilots transporting patients to nearby hospitals could no longer communicate with EMS crews on the ground or hospitals. Concerned that the ability of its emergency teams to save lives was endangered, the State of Maryland requested expedited consideration, the FCC issued an order finding the tower posed no adverse effect to historic properties, and the tower was constructed.

As noted above, the expansive definition of properties eligible for inclusion increases the universe of properties that carriers must investigate and that can trigger reviews, causing delay and uncertainty. In 2003, Chairman Pombo and then-Subcommittee Chairman Radanovich recognized this problem in a letter to the ACHP, noting that the number of properties that meet the National Register criteria is unknowable – probably in the many tens of millions – and urging that the section 106 process return to the carefully defined scope originally intended by Congress.

The 2004 Nationwide Programmatic Agreement purported to provide more certainty to the eligible properties issue by directing the wireless industry to consult five specific sources of information to determine what properties nearby the site are “eligible for inclusion.” At first glance, this may appear to be an improvement over the existing application of section 106. This modification, however, is illusory as it does not change the sweeping definition of properties eligible for inclusion. As a result, consultation with the five sources provides no safe harbor and no certainty for wireless carriers.

In addition, the 2004 NPA fails to provide finality once a wireless carrier completes its review of these sources. At any time, including while the tower is under construction or after it has been built, a party can interject a claim that an eligible property was overlooked – even if it does not appear in any of the five sources carriers are required to consult by the 2004 NPA. Further, the 2004 NPA creates a new petition process at the FCC that permits a party to allege an eligible property has been overlooked and allows the FCC to order construction halted, fine the wireless carrier or tower owner, and if the tower has been constructed, the FCC can order that it be demolished.

In essence, even following the 2004 Nationwide Programmatic Agreement, the NHPA section 106 review process remains completely open-ended, causing delays in the siting process and providing challengers an unending “second bite” opportunity to oppose sites that already have been approved by local zoning authorities. The result is a process that forces the wireless industry to make siting determinations that are forever subject to review and reversal. CTIA believes it would be more rational – and more consistent with Congress intent – to provide a concrete definition of eligibility that offers a clear path for wireless carriers to satisfy their NHPA obligations in a way that is sensitive to historic preservation concerns while providing certainty for wireless service deployment. Restoring significance to inclusion in the National Register and the nomination process for inclusion would eliminate hundreds of thousands of unnecessary identification and evaluation reviews of potentially eligible properties. Further, it would ensure that historic properties are properly reviewed within the section 106 process while eliminating an avoidable drain on resources.

Preserving historic sites and siting communications facilities to provide reliable wireless service are not mutually exclusive goals. CTIA urges Congress to restore clarity to the section 106 process and thereby remove the unnecessary delay, costs, and uncertainty from the tower siting process.

Mr. Chairman, thank you for the opportunity to testify this morning. I look forward to answering any questions you or the members may have.