



NATHPO

NATIONAL ASSOCIATION OF TRIBAL HISTORIC PRESERVATION OFFICERS

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of

Streamlining Deployment of Small Cell)	WT Docket No. 16-421
Infrastructure by Improving Wireless)	
Facilities Siting Policies;)	
Mobilitie, LLC Petition for)	
Declaratory Ruling)	

COMMENTS OF THE

NATIONAL ASSOCIATION OF TRIBAL HISTORIC PRESERVATION OFFICERS (NATHPO)

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April 7, 2017

The National Association of Tribal Historic Preservation Officers (NATHPO) is a national organization of Tribal government officials who implement federal and tribal preservation laws. Membership is limited to federally recognized Tribal government officials who are committed to preserving, rejuvenating, and supporting American Indian, Alaska Native, and Native Hawaiian cultures, heritage, and practices. NATHPO member tribes work with a variety of federal agencies on small and large infrastructure projects in the compliance of federal laws, including but not limited to the National Historic Preservation Act (NHPA) and the Native American Graves Protection and Repatriation Act (NAGPRA).

While we understand the need and recent call for increased deployment of telecommunications infrastructure projects, we stress the importance of protecting irreplaceable Native American sites and locations that are of religious and cultural significance to tribal cultures today by continuing the successful collaborative processes that have been established with federal agencies, Indian tribes, and project developers.

The Federal Communications Commission's Tower Construction Notification System (TCNS) Program has proven to be a very useful tool to address, track, monitor, and expedite the placement of cellular technology infrastructure. Over the past 12 years, hundreds of Indian tribes have developed quality relationships with the many consultants installing telecommunication infrastructure facilities, including cell tower siting, through the TCNS Program, and have provided prompt response to cell tower notifications. If and when any situations arise using the TCNS Program, tribes have been able to promptly contact industry consultants and FCC staff to expedite resolutions.

With the emerging 5G technology by the wireless telecommunications industry we can see the benefits of modernizing the existing TCNS system to meet the needs of all users. Though technically not a local government for the purposes of this rulemaking, Indian tribes face many of the same challenges that local governments and municipalities and have many of the same questions described in the Public Notice.

Question: What is a reasonable period of time to review projects using the TCNS system?

Reply: The FCC has procedures in place that outline a process to follow. The issue of making the time frame more definitive depended, to a great deal, on the adequacy of information being provided in the initial submissions. For example, according to our survey of Indian tribes, 85% of tribes do not receive adequate information in the initial submission to understand if the proposed development would harm a cultural property. What asked what information was lacking, tribes reported the following (percentage of missing information):

- All cultural sites, including known tribal sites that have not been evaluated (86%)
- Map (46%)
- Coordinates (20%)
- Other (43%), includes archaeology reports, defined Area of Potential Effect (APE); full address, records search, mapping of previously conducted studies within APE, and land use history

Known tribal sites ("unevaluated tribal sites") are those sites not yet evaluated in respect to their potential for listing on the National Register of Historic Places. Tribes are involved in **identifying and evaluating** cultural sites and how undertakings (like the cell projects) may affect them. Tribes are uniquely situated to **identify** sites and they are also often singularly qualified to **evaluate** sites for their potential to be listed. Under the FCC nationwide Programmatic Agreement the project proponent does not need to include **previously identified but unevaluated tribal sites** in their reporting to tribes if they are not already listed or eligible to be listed in the National Register of Historic Places. Sites are

Reasonable period of time, con't

identified as part of the initial phase of an undertaking. Many times, project proponents will simply redesign their project to avoid affecting an identified site before it is evaluated. These sites are still listed in cultural resource reports and are usually included in the State Historic Preservation Officer (SHPO) or tribal database of known sites. The vast majority of Native sites fall into this category. For example, if company "A" is looking to put in an oil well and conducts a cultural resource inventory, the company consultant might go into the field and if any historic properties were found (for example, stone circles and cairns within the project's APE), company "a" could move the project 100 meters to the west and leave the site alone. The project would be redesigned and the site avoided without ever being formally **evaluated** for listing on the National Register. Two years later there may be a cell tower going up close to the site originally identified in the company "A" project area. But that site was never evaluated and would not be included in the list that was sent to the tribes with that cell tower. Including unevaluated tribal sites would be an important efficiency, especially as the information is already available.

When asked, Tribes reported that once they have received all requested information they were able to complete their identification and evaluation work within 30 days or less. Additional responses indicated that complicating factors include whether or not a site was found and the seasonal nature of this work dependent upon weather. Thus, 30 days – based upon receipt of all appropriate documentation necessary to perform an adequate review of each project.

Question: What activities would improve (reduce) the amount of time needed?

Reply: Tribes and industry have reported some issues with the current information sharing process and the need to improve it. Earlier it was noted that once a tribe receives the necessary information for an informed decision they are able to quickly conduct their work. One way to reduce the amount of time needed to complete work would be to standardize the initial submission of information. This could be accomplished by using the 620/621 Forms as the standard for required information with the addition of unevaluated tribal sites. Because 85% of the time tribes have had to request more information once the TCNS process has been initiated and the most requested information is already listed in the "620/621" forms, then use these forms as the standard for necessary information with the addition of unevaluated tribal sites.

Question: What is a small cell?

Reply: Although the concept of small cells has been explained and we have seen a few examples of co-location deployment, the full variety and range of small cell facilities has not been adequately described or shared with all stakeholders. We have read that a small cell deployment may be an attachment to an existing structure, but that it also may be a new, ground disturbing 120-foot pole. Related concerns to small cell deployment includes attachments to aging infrastructure poles and/or structures and how the system will absorb so many additions without weakening the entire structure. Prior to describing what a small cell is, NATHPO is requesting educational sessions and demonstrations on the range of systems of this new technology. The differences between urban and rural small cell deployment also needs to be described and demonstrated.

Questions: Do you use batching now? If so, how is it working? Do you charge the same for a batch as for a tower? Are your fees based on actual costs or some other form? Do you demand payment upfront and why?

Reply: We will use the NATHPO survey results to help assist in answering this question.

- a. 46% of tribes would support charging a lower rate for a batch of small cells rather than charging the tower review for each small cell dependent upon where the batches are deployed, how many, how big, and how far apart.
- b. 64% of tribes are interested in exploring other options for fees and small cell batches
- c. 41% of tribes require payment upfront for a variety of reasons, including industry has not previously paid in a timely manner or paid at all for services
- d. 69% of tribes are interested in exploring other options for industry's use of "non-compliant" and "twilight" towers
- e. 46% of tribes would support a maximum dollar amount for siting a tower, dependent upon such factors as whether or not that action is considered mitigation, site visits and monitoring would be additional costs, and regional differences in cost of living/business. There is a similar response for the same question regarding small cell batches.

One additional question in the NATHPO survey was to gauge interest in working collaboratively with industry for better communication and efficiency development.

- a. **95% of tribes reported that they would like to meet with industry and the FCC at least twice a year, either in-person or via technology**

When asked what topics and issues they would like to discuss in these meetings, the following were reported:

- i. want to learn about any upcoming FCC notices or regulatory changes (87%)
- ii. want to learn about any projects of mutual interest, including technology deployment in Indian country (e.g., new or better service) (87%)
- iii. would like to share tribal changes, including updating point-of-contact (77%)
- iv. Other issues reported included learning more about industry's long term plans for growth and placement (bring in the tribes earlier in the process), for industry to learn more about unique tribal governments and cultures and for tribes to learn more about industry differences

NATHPO would like to promote and participate in regular meetings of industry and FCC representatives and other stakeholders to discuss and resolve some of the emerging issues related to a maturing TCNS process and changing infrastructure deployment facilities.

Thank you for your consideration of these comments.



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