



NATIONAL ASSOCIATION OF TRIBAL HISTORIC PRESERVATION OFFICERS

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November 9, 2017

Via Electronic Submission

Chairman Ajit Pai
Federal Communications Commission
445 12th Street SW
Washington, DC

Re: Accelerating Wireless Broadband Deployment by Removing Barriers to
Infrastructure Investment, WT Docket No. 17-79

Streamlining Deployment of Small Cell Infrastructure by Improving
Wireless Facilities Siting Policies, WT Docket No. 16-421

Replacement Utility Poles Report and Order, WT Docket No. 17-79 (FCC-CIRC1711-03)

Dear Chairman Pai:

On behalf of the National Association of Tribal Historic Preservation Officers (NATHPO), we express the following *ex parte* comments per the above referenced Federal Communications Commission (FCC) actions. NATHPO has been an active participant in the national conversation concerning accelerating wireless broadband deployment and we have been working on this rulemaking with numerous concerned Indian tribes, whether or not they are members of our nonprofit membership association.

Changing Technology and Collaborative Working Relationships:

Given the emerging 5G technology that is being deployed by the wireless telecommunications industry, we can see the benefits of modernizing the FCC's Section 106 processes, including the Tower Construction Notification System (TCNS), to meet all stakeholder needs. As stated in our Oct. 6, 2017, *ex parte* comments, we are seeking to create opportunities for industry consultants and Indian tribes to come together and discuss issues of concerns. We would appreciate the FCC's active role in supporting and participating in stakeholder meetings. As we suggested, a smaller statewide or regional meeting with a limited agenda would be a good start.

Replacement Utility Poles Report and Order (FCC-CIRC1711-03)

As the FCC considers and finalizes the draft Replacement Utility Poles Report and Order (FCC-CIRC1711-03), we submit the following request, comments, and recommendations to strengthen your goal of expediting deployment of telecommunication facilities to expand and improve service, yet retaining preservation interests to preserve and protect historic properties.

1. Request for data

We request that the FCC please share with us any and all available data that supports your assertion that "...the construction of a replacement for a preexisting utility pole will have no potential to affect historic properties..." (ref: para 11) and "...there is no likelihood that such pole replacements could affect historic properties" (ref: para 14). Without such data, we find that FCC's assertions are arbitrary. We also request any studies or documents that make and/or support FCC's assertion – including the study's methodology – that resulted in the conclusion that these undertakings have no potential to affect historic properties.

2. Not all pole replacements are harmless

Even though language is included in the Report and Order that describes how excluding the replacement of utility poles from Section 106 reviews will not harm any historic properties, it is not as simple as described.

Also, replacing a pole in the same hole is not harmless because the hole will always be deeper and wider for a replacement pole and can be up to 10% taller, thereby allowing it to carry additional weight (antennas and cabin, for example).

3. Rights of way and previously disturbed ground

Rights of way (ROW) for whatever purpose (utility, transportation, communications) and on whatever land (tribal, state, federal) have rarely, if ever, been surveyed for tribal historic properties. Most ROWs were created prior to the NHPA in 1966, the 1992 amendments to the NHPA that created the THPO program, and prior to Presidential Executive Orders and other regulations that Indian tribes must be consulted on issues that affect them.

Likewise, previously disturbed ground rarely, if ever, includes tribal input on the activity that "disturbed" the land. Thus, assertions that such land has no potential to affect tribal historic properties cannot be made with any certainty.

As has been described in prior tribal comments on this topic, we recommend a system that would allow for tribal participation in areas where it cannot be demonstrated that tribal reviews ever occurred.

"Previously disturbed areas" is not defined nor is a clear statement as proposed. Therefore, we recommend that it be given further consideration and definition.

If the exclusions were to be adopted, we recommend that additional language be added to the Report and Order stating that:

A safeguards process will be created that will require post-work documentation that a pole replacement meets these standards: (1) the replacement pole is not 10% taller than the original; (2) the replacement pole is of the same quality and appearance as the original; and (3) any tribal historic properties that are discovered will require immediate work stoppage and affected Indian tribes will be contacted and invited to the project site to discuss the appropriate disposition of human remains or objects. Any applicant who fails to adhere to this process will be subject to FCC enforcement actions.

This safeguards process allows for pole replacements to continue, per the process described in the Report and Order. It also will require less paperwork than a pre-review process, and it will not cause construction delays.

4. Use of existing structures

We agree that using existing structures is preferred over constructing new towers and poles. However, replacing poles is not the same as using an existing pole, but with the adoption of proper safeguards it can be an efficiency.

5. 10% Increase in replaced poles

We appreciate the inclusion of proposed language that the replacement poles not exceed the original pole in height by more than 10%. In order to be clear and make this proposal acceptable, language needs to be added to the Report and Order to deter rapid replacements for poles with the incremental 10% increases. We recommend that the following language be added:

A pole may only be replaced once every year and should not exceed 10% of the original pole to avoid unanticipated effects on historic properties.

Thank you for your consideration of these comments. We appreciate your interest in creating efficient and streamlined siting policies and want to support this goal. In the spirit of collaboration, we feel that our comments strengthen your effort and preserve and protect our nation's cultural resources and historic properties.

Sincerely,



D. Bambi Kraus
President

cc: Commissioner Carr
Commissioner Clyburn
Commissioner O'Rielly
Commissioner Rosenworcel