



NATIONAL ASSOCIATION OF TRIBAL HISTORIC PRESERVATION OFFICERS

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January 22, 2018

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC

Ex Parte Communication via Electronic Submission

Re: Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, WT Docket No. 17-79 (includes Notice of Proposed Rulemaking)

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

Public Notice of Draft Program Comment Addressing Collocation on Twilight Towers, WT Docket No. 17-79

Dear Ms. Dortch:

On behalf of the National Association of Tribal Historic Preservation Officers (NATHPO), the following requests for information and comments are submitted in response to the Federal Communications Commission (FCC) January 16, 2018, announcement and invitation to Indian Tribes and Native Hawaiian organizations (NHOs) to participate in conference calls on January 22 and 24 and February 5. The FCC refers to these conference calls as a continuation of "...the process of government-to-government consultation on certain issues raised in the NPRM." For the record, the FCC has not been conducting government-to-government consultation by offering open meetings to tribal representatives, including offering unstructured conference calls on short notice. Sending out an email message to hundreds of tribal representatives for a conference call, the first of which is less than one week away, is not government-to-government consultation.

Questions and Needed Information (in addition to the questions asked below per the Jan. 16 notice):

1. Why is only the January 24th conference call being recorded and transcribed?
2. Who from the FCC staff will be on each call and what are their roles and responsibilities?
3. Who will be chairing or moderating each of the calls?
4. Will each of the three, three-hour conference calls have the same format, which lack an agenda, chair or moderator?
5. How will the FCC handle discussion if a tribal representative wants to discuss an FCC issue unrelated to Section 106 and the items listed in the Jan. 16 notice?
6. What is the FCC's decision making process on the questions listed in the Jan. 16 notice, including how to resolve the Twilight Towers non-compliance issue? For example, is the FCC working towards consensus of the 567 federally-recognized Tribal Nations on specific issues? If not consensus, then what is the threshold for decisions that affect 567 Tribes and how was that threshold arrived at?

Specific Questions Re: the FCC's Jan. 16, 2018, Notice

NATHPO needs clarification on several of the FCC statements in the January 16th notice as follows:

The notice invites discussion on **very complex and controversial concepts** by simply stating that the FCC is inviting participants to discuss “potential clarifications and modifications to the process for Tribal participation in Section 106 review.” NATHPO has placed emphasis on the complexity and controversial nature of these questions that are beyond the scope of one three-hour conference call, even if all three of the three-hour conference calls were devoted to just one of these major topics. These are the six items listed in the FCC's Jan. 16th notice **(in bold)** and NATHPO's requests for information [in brackets]:

(1) “The information necessary for Tribal Nations and NHOs to comment on proposed wireless communications undertakings; [NATHPO: This is unclear and more information is needed. What specifically is the FCC referring to as ‘proposed wireless communications undertakings’? For example, is this antenna collocations? Cell tower siting? Batching?]

(2) The role and expectations of Tribal Nations and NHOs at the state of initial notification and whether compensation is appropriate; [NATHPO: This is unclear and more information is needed. What specifically is the FCC referring to as ‘initial notification and whether compensation is appropriate’? For example, is the FCC referring to when industry/industry consultant enter information into the Tower Construction Notification System or when a Tribe or NHO actually receives that information?]

(3) The role and expectations of Tribal Nations with regard to the applicant's selection, retention, and compensation of a contractor or consultant when such work is required; [NATHPO: This is unclear and more information is needed. Who is the ‘applicant’? Is the applicant the telecommunications provider/carrier, such as Verizon or Sprint or their consultant who is actually installing hardware? Or is the FCC referring to a tribal representative who has been selected to conduct work on the Tribe's behalf? Depending on who the FCC is referring to, for example, if the FCC decides which contractor or consultant to hire, then the FCC will have intentionally ignored the sovereign right of a Tribal Nation to represent themselves, including how and what historic properties a Tribal Nation has decided to preserve and protect and who is designated to conduct the respective Tribe's historic preservation work.

(4) Whether the procedures followed when a Tribal Nation or NHO does not timely respond to a notification should be modified. [NATHPO: This is unclear and more information is needed: Is the FCC referring to a Tribal Nation or NHO that is not responding to an FCC notice? Not responding to an industry consultant's request? What is the current FCC policy and practice and is that information publicly available?]

(5) the FCC's proposed Program Comment addressing collocations on Twilight Towers. [NATHPO: See NATHPO's Dec. 7, 2017, comments on this specific topic.]

(6) Any other Section 106-related issues participants may wish to discuss in the consultation.

Because it is unclear, what will the FCC do with the information and tribal comments that are shared during the January and February conference calls, if such information and comments won't be part of the official record?

Because it is unclear if the three conference calls are to specifically discuss Twilight Towers, NATHPO refers you to our December 7, 2017, written comments specifically addressing the FCC's approach to Twilight Towers and the Notice of Proposed Rulemaking.

NATHPO requests that the FCC conduct government-to-government tribal consultation on the issues raised in the Jan. 16 notice and on other issues that impact and effect Tribal Nations and NHOs. For example, the FCC may include such steps as the following recommendations on initiating tribal consultant (this is not an exhaustive list):

1. Ask each respective Tribal Nation if they would like to initiate government-to-government consultation as a sovereign entity. If a Tribal Nation is interested, then plan and prepare for tribal consultation by requesting the Tribe's government-to-government tribal consultation policies.
2. Work with each Tribal Nation and convene a meeting or series of meetings that includes participation of both the Tribal Nation and FCC representatives in developing the agenda, list of topics to discuss, and possible goals, and how both sides will work towards shared goals.
3. Be open and transparent, share any and all proposals being considered, especially by sharing in advance any and all proposals that radically change current policies and practices.

Thank you for your consideration of these comments. We appreciate your interest in creating efficient and streamlined siting policies and want to support your goals. 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 yours,



D. Bambi Kraus
President

cc: Chair Pai
Commissioner Carr
Commissioner Clyburn
Commissioner O'Reily
Commissioner Rosenworcel