



NATIONAL ASSOCIATION OF TRIBAL HISTORIC PRESERVATION OFFICERS

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March 15, 2018

Marlene H. Dortch, Secretary
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 (includes Notice of Proposed Rulemaking)

Draft Second Report and Order released for public comment on March 1, 2018

Dear Ms. Dortch:

On behalf of the National Association of Tribal Historic Preservation Officers (NATHPO), the following comments are submitted in response to the draft Second Report and Order (Order), released on March 1, 2018, and per the above referenced Federal Communications Commission (FCC) notices and documents.

1. The tribal consultation process was inadequate

Prior to the release of the Order on March 1st NATHPO was unaware of the major changes that were to be proposed by the FCC, including changing the definition of an undertaking and the process of working with Tribal Nations and Native Hawaiian organizations. This is insufficient notice for NATHPO and Indian tribes to consider and in turn propose other options or resolutions to the FCC's identified issues, as well as for tribes to raise issues of their own to the FCC. Not once during the informational conference calls did the FCC share that they were about to propose changing the definition of an undertaking for small cells (see number two below for call dates).

2. Tribal consultation has not been conducted

Although the FCC convened three conference calls for Tribal Nations and Native Hawaiian organizations on a variety of topics on Jan. 22, Jan. 24, and Feb. 5, 2018 – the first on less than one week notice – (see NATHPO letter of Jan. 22, 2018) NATHPO agrees with the Tribal Nations that the calls were not government-to-government tribal consultation and participation by Indian tribes was for informational purposes only.

3. Justification for the changes is inadequate

The FCC's Order mentions FCC staff research, but the Order does not provide any basis or sources for that FCC research and thus it should not rely on that as part of its decision. The Order relies on the reports and statistics of the wireless industry, without any outside, independent or tribal review of that information on the impact and cost of historic preservation reviews.

4. Statistical sample is too small

Industry cites statistics from a very small number of installations and the cost of tribal involvement. It appears that the tribal examples are being extrapolated in a way to make them appear bad, but because of the small sample and example size, it is unknown if industry is exaggerating or inflating tribal costs, as many Tribes have counterclaimed.

5. Indian tribes are not a subsection of states or local governments

As sovereign nations, Indian tribes are not subsections of states or a local government. The government-to-government relationship is between Indian tribes and the federal government. Only an Indian tribe has the authority to appoint an individual to represent their respective cultural resource interests and concerns. The wireless industry does not have this same authority. Tribal representation includes who is authorized to speak on behalf of the tribe for purposes of determining cultural significance that may include receipt of payment for their time and expertise.

6. It is unclear how the new clearance process will work

With all the attention and language put into the Order justifying why the FCC needs to change their process of complying with the NHPA, very little is put into describing how the new process will work, including how the Tower Construction Notification System will be affected and the role of Indian tribes in the process. How will tribes be notified, what process will they have to follow to be considered authorized to speak about their own cultural resources, and how will complaints arising from the new processes be handled and within what time frame? A more collaborative and respectful process should be developed prior to outright announcement of change.

7. The FCC's commitment is to federally-recognized Indian tribes

It is embarrassing that the FCC does not know who their fiduciary responsibility is with, namely federally recognized Indian tribes. The Haliwa-Saponi is included in the list of "tribes" the FCC consulted with, but the Haliwa-Saponi are only recognized by the State of North Carolina, not by the federal government, and thus they should not be included as a tribe that was consulted.

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