

**STATEMENT OF
COMMISSIONER MICHAEL O'RIELLY**

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

I wholeheartedly support the item before the Commission, and I commend the Chairman and Commissioner Carr for bringing it forward. In essence, it addresses two main barriers to wireless tower and antenna siting — unnecessary delays and outrageous fees. I have talked about and sought needed reforms in this area for years. In reality, we are finally completing an issue initiated by former Chairman Wheeler in a bipartisan fashion during the previous Commission. In doing so, our efforts will help facilitate the deployment of wireless broadband throughout our nation, including 5G wireless services, which is critical to preserving America's preeminent leadership position and something that I am committed to making sure happens. We are also setting the stage for future actions, hopefully later this summer, against similar state and local governmental barriers.

While the first part of this item approaches the barriers problem differently than I may have done, it gets to the same, welcome outcome. The item declares that wireless small cells do not generate a "federal undertaking" for purposes of NHPA or a "major federal action" under NEPA. This decision is meticulously explained and justified in the text that should more than satisfy judicial review.

In sum, we are interpreting, as is our right and obligation, certain Commission functions to be below a threshold necessary for the statutory requirements of either law to come into play. To find otherwise, as some have tried to do in this record, is to interpret those two statutes in a way that would treat the agency's geographic licensing as a trigger for unnecessary action and review, far exceeding Congress' original intent. As the item states, the Commission's issuance of a geographic license does not involve the Commission in any decisions regarding the deployment of any actual facilities. Such extreme readings of the law would effectively make any Commission action a federal undertaking under NHPA and eliminate the "major" before "federal action" in NEPA. This would improperly allow environmental and historic preservation concerns to be placed above any other consideration, which is illogical, and would effectively grant a de facto veto over any activity to those that pose as "defenders" of these laws.

The second portion of the item is no less important, as it makes abundantly clear that no communications provider is required to pay the outrageous fees or hire hand-picked individuals demanded by select Tribes as part of Section 106 reviews. The current procedures, which I have repeatedly criticized, have turned into a perverse game whereby some Tribes have sought money and consulting roles for areas that their ancestors never travelled, as a means to raise revenues and address Tribal unemployment, a jobs program if you will. And the problem is only getting worse, as such practices are turning tower and antenna siting into the latest cash cow.

I have cited many data points to highlight the issue of extraordinarily high fees in previous speeches, but the examples just keep coming. The record contains accounts of AT&T paying a total of \$13,525 in fees to 36 Tribes for the collocation of one antenna on a Minnesota hotel.¹ Another provider paid \$19,550 in Tribal review costs to cover fees from 38 Tribes for a tower in Wyoming.² The same applicant built a similar tower in the same town a year earlier and the fees were over \$6,000 cheaper. Sprint paid \$12,200 in total fees to 25 Tribes for a small cell outside a steel factory in Indiana, which was

¹ AT&T Ex Parte, WT Docket No. 17-79, Feb. 23, 2018, at 2 ("AT&T Ex Parte").

² CCA Ex Parte, WT Docket No. 17-79, Feb. 26, 2018, at 2.

determined to have no effect on Tribal historic properties.³ Further, some Tribes are receiving the payments, but then never respond as to whether there is actual concern, causing endless delays.

More generally, AT&T reports that Tribal fees have increased by 1,400 percent in the Northeast and 2,500 percent in the Southeast in the last seven years.⁴ And, Sprint paid \$23 million in review fees in the past two years, which could have paid for 657 additional sites that would increase coverage and capacity for consumers.⁵ This is not sustainable if we want to actually get broadband to all Americans, including those on Tribal lands.

In fairness, I would have gone further than just clarifying that providers don't need to pay the fees or contract for consultative functions with Tribes. As currently structured, the language states that providers don't have to do these things, but we all know that some Tribes will still try to force this permissive activity on providers anyway. This is a little too loosey-goosey for me. Instead, I would have preferred that such practices be prohibited. Additionally, the item should have made clear that applicants are not required to provide additional information or hire a professional contractor without a showing – even if provided confidentially – that there is a historic property of religious and cultural significance in the project's area. While there is a complaint process after the fact, requiring proof up front may decrease the chance that more information and professional contractors could be requested for every potential siting project and reduce Commission workload and application delays.

On that note, I do have to raise a couple of other small issues with the item. Specifically, I want to be on record restating my longstanding views that section 1 of the Communications Act and section 706 of the Telecommunications Act do not provide the Commission with authority to do anything. The item cites these two provisions in a paragraph with questionable value. I thank Commissioner Carr for clarifying the language that these sections do not confer any authority.

I also wish that we could have done some more work to provide relief for macro towers in the first portion of the item. Instead, it states that the issue remains pending and may be the subject of future items. But, I am concerned that there is only so much appetite to engage on the issue of wireless siting. Fatigue generally starts to set in, especially as the work gets more contentious and the opposition much louder. I intend to make sure that won't be the case here and that we consider further historic preservation and other relief for macro towers as soon as possible.

For too long, we have allowed a small subset of Tribes acting in bad faith to unnecessarily slow communications network buildout. This brings a bad name to the rest of the American Tribes that really do try to work in good faith with wireless providers on behalf of consumers. However, the need to address barriers to the placement of wireless towers and antennas for expanded coverage and the initiation of new services is not new. It has been a longstanding problem. And, every time an action is proposed we get calls for more collaboration and cooperation by the very same parties that have been dragging their heels. The private sector has tried collaboration and cooperation until they've turned blue in the face. The Commission has also tried collaboration and cooperation with similar results. The consultations and meetings have occurred, as detailed in the order and the record. It's time to move past the talking stage. I am pleased that we are doing just that today.

³ Sprint Ex Parte, WT Docket No. 17-79, Feb. 21, 2018, at 1 (“Sprint Ex Parte”).

⁴ AT&T Ex Parte at 2.

⁵ Sprint Ex Parte at 2.