

January 17, 2018

BY ELECTRONIC FILING

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: NOTICE OF EX PARTE

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

WT Docket No. 15-180: *Revising the Historic Preservation Review Process for Wireless Facility Deployment;*

WC Docket No. 17-84: *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*

Dear Ms. Dortch:

On January 12, 2018, Courtney Neville and I of Competitive Carriers Association (“CCA”)¹, and Patrick Caron of Union Wireless, met with Matthew Duchesne of the Federal Communications Commission’s (“FCC” or “Commission”) Office of Native Affairs and Policy (“ONAP”), to discuss the above-referenced proceedings. CCA appreciates the opportunity to substantively address barriers to advanced broadband services deployment, and applauds the FCC’s work thus far to advance this mutual goal. Longstanding issues regarding delay and cost throughout federal and local siting procedures are growing exponentially as the industry moves away from chiefly constructing large towers, and toward deploying dense small cell networks and fiber. CCA therefore encourages the Commission to heed its recommendations on ways to streamline broadband deployment, particularly through ongoing coordination with Tribal Nations.

CCA’s members continue to have a keen interest in reducing escalating fees and administrative delays presented by the Section 106 review process, per the National Historic Preservation Act (“NHPA”). Specifically, Tribal fees and administrative burdens attached to the historic review process have escalated sharply in recent years,² and these costs and permitting delays will continue to rise as CCA members deploy new network hardware to meet consumers’ increasing data demands. The Commission should therefore declare that Tribal fees are not required, limit the scope of information applicants must submit to Tribes, and establish Tribal response shot clocks throughout the historic review process. The FCC also should continue conversations with Tribal Nations to articulate a process that explicitly states that paying Tribal fees, either for review or for subsequent consultation activities, is not required under the NHPA or the National Programmatic

¹ CCA is the nation’s leading association for competitive wireless providers and stakeholders across the United States. CCA’s membership includes nearly 100 competitive wireless providers ranging from small, rural carriers serving fewer than 5,000 customers to regional and national providers serving millions of customers. CCA also represents associate members including vendors and suppliers that provide products and services throughout the mobile communications supply chain.

² See Comments of Competitive Carriers Association, WT Docket No. 17-79, WC Docket No. 17-84, at 18, 25-35 (filed June 15, 2017) (“CCA Comments”); *Clearing the Path for America’s Wireless Future*, Competitive Carriers Association (filed June 8, 2017) (“CCA White Paper”).

Agreement (“NPA”).³ FCC practices requiring siting applicants to pay Tribal fees and secure Tribal consultations therefore have no basis in the NHPA nor the NPA, and were never adopted as an actual rule through notice and comment. To further collaboration, CCA reiterated its suggestion to create a third-party database of interests and fees reported by Tribes. Streamlining the process for Tribal fees, and collecting uniform information of all culturally significant areas will expedite the siting process and assuage confusion surrounding siting applications.

Likewise, the FCC should streamline the National Environmental Protection Act (“NEPA”) environmental review process by clarifying that deployments of small wireless facilities such as distributed antenna systems (“DAS”) and small cells are categorically excluded from NEPA review. The Commission has already excluded certain wireless deployments from NHPA and NEPA review, and can make a similar finding for small cells and DAS deployments.⁴ Due to the unobtrusive nature of small cells and DAS deployments, the Commission should extend this categorical exclusion to these smaller wireless facilities. Relatedly, CCA noted that it plans to participate in the US Department of Agriculture’s (“USDA”) Forest Service’s recent request for comment regarding ways to revise its NEPA procedures with the goal of increasing efficiency of environmental analysis for deployment on national forest land.⁵ Together, implementing these reforms will further communication between Tribes and industry stakeholders, and spur broadband deployment for the benefit of all consumers.

CCA also explained that clarifying application processes and establishing reasonable shot clocks on siting applications will mitigate right-of-way (“ROW”) negotiation and approval process delays. Specifically, the FCC should clarify that any ROW-related fees should be based on authorities’ actual costs, and address inequitable ROW management charges.⁶ The Commission also should adopt a broader ROW historic review exclusion paralleling the current framework for communications and utility ROWs, that covers construction or collocation of communications infrastructure in any public or utility rights of way.⁷ Together, these efforts will clarify the application review and deployment process in ROWs for all stakeholders, and foster further industry

³ See CCA Comments at 24-25 (explaining that “[n]either the NHPA’s or ACHP implementing rules require payment of Tribal fees, or indicate paying Tribal fees is required to comply with the NHPA; both regulations are silent on that account. As the Commission points out, the ACHP issued guidance regarding fees, first in a memorandum in 2001; this advice was reiterated in ACHP handbooks ever since, most recently in 2012. The ACHP 2001 Fee Guidance explains that “[w]hen the Federal agency or applicant is seeking the views of an Indian tribe to fulfill the agency’s legal obligation to consult with a tribe under a specific provision of ACHP’s regulations, the agency or applicant is not required to pay the tribe for providing its views,” and that “[i]f the agency or applicant has made a reasonable and good faith effort to consult with an Indian tribe and the tribe refuses to respond without receiving payment, the agency has met its obligation to consult and is free to move to the next step in the Section 106 process.” Most importantly, the guidance provides that “[No] portion of the NHPA or the ACHP’s regulations require[s] an agency or an applicant to pay for any form of tribal involvement.”).

⁴ See Reply Comments of Competitive Carriers Association, WT Docket No. 17-79, WC Docket No. 17-84, 25, fn. 104 (filed July 17, 2017), *citing* Comments of PTA-FLA, WT Docket No. 17-79, at 3-5 (filed June 15), *citing* *CTIA-The Wireless Association v. FCC*, 466 F.3d 105, 113-114 (D.C. Cir. 2006); *see also* Comments of Sprint Corporation, WT Docket No. 17-79, WC Docket No. 17-84, at 32, fn. 39 (filed June 15, 2017); Comments of the Critical Infrastructure Coalition, WT Docket No. 17-79, at 15 (filed June 15, 2017) (The Commission should exclude from its review all structures that do not require an Antenna Structure Registration).

⁵ See US Department of Agriculture Forest Service, Request for Comment, 83 FR 302 (rel. Jan. 3, 2018).

⁶ See CCA Comments at 18.

⁷ See *id.* at 18, 20. See *also*, Notice of Issuance of Program Comment for Communications Projects on Federal Lands and Property,” 82 FR 23818, May 24, 2017.

collaboration with Tribal Nations. For example, CCA's member, Union Wireless, has worked with the Eastern Shoshone and Northern Arapaho Nations of the Wind River Reservation in central Wyoming for years, developing sites on Tribal trust lands to provide critical wireless services to Tribal members in extremely remote locations. Union Wireless and the Tribes also continue to explore other opportunities to jointly work on the development of fiber optic networks to benefit both Tribes and Union Wireless. Clarifying and streamlining application review and the deployment process in ROWs will aid companies like Union Wireless in promoting meaningful business opportunities with Tribes and increasing access to broadband on Tribal lands, which are perhaps the most historically unserved areas.

Finally, the FCC must ensure deployment avoids harming historic property within a fair, equitable, and predictable legal framework. Specifically, CCA understands that certain Tribes also often feel the strain of reduced network deployment especially since Tribal lands, where most Tribes operate, are among the most underserved areas of the country. CCA encourages the Commission to explore policy opportunities outside of its infrastructure proceedings to ameliorate barriers to deployment including through the Lifeline Fourth Report & Order, Notice of Proposed Rulemaking, and Notice of Inquiry,⁸ and the Rural Health Care Notice of Proposed Rulemaking.⁹

CCA looks forward to continued work with Tribal Nations and industry stakeholders to streamline and update historic review compliance processes to reflect changes in technology. This *ex parte* notification is being filed electronically with your office pursuant to Section 1.1206 of the Commission's rules. Please do not hesitate to contact me with any questions or concerns.

Respectfully submitted,

/s/ Rebecca Murphy Thompson

Rebecca Murphy Thompson
EVP & General Counsel
Competitive Carriers Association

cc (via email): Matthew Duchesne

⁸ Lifeline and Link Up Reform and Modernization, *Fourth Report and Order, Order on Reconsideration, Memorandum Opinion and Order, Notice of Proposed Rulemaking, and Notice of Inquiry*, WC Docket NO. 11-42 et al. (rel. Dec. 1, 2017).

⁹ Promoting Telehealth in Rural America, *Notice of Proposed Rulemaking*, WC Docket No. 17-310 (rel. Dec. 18, 2017).