



THLOPTHLOCCO TRIBAL TOWN
Tribal Historic Preservation Office

Terry Clouthier, Tribal Historic Preservation Officer

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January 29, 2018

THPO File Number: 2017-63

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

Re: Ex Parte Communication via Electronic Submission

Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, WT Docket 17-79

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

The following comments are submitted in response to the January 16th, 2018 email invitation for Indian Tribes and Native Hawaiian Organizations (NHO's) to participate in conference calls on January 22nd, 24th and February 5th, 2018 in an effort to "to continue the process of government-to-government consultation on certain issues raised in the NPRM."

Thlopthlocco Tribal Town Tribal Historic Preservation Office (THPO) is curious as to what government to government consultation process is being continued by these phone calls? Certainly not the four information gathering meetings held at different location and dates throughout 2017 as they do not in any way represent government to government consultation meetings which require Tribal leadership and a set agenda which were absent at all four of those meetings. The THPO emphatically states that these phone call conferences with multiple tribes do not represent government to government consultation and should not be used as such in your agencies attempts at compliance with Section 106 of the National Historic Preservation Act (NHPA) or various other requirements as set forth in Executive Orders (E.O.) such as, but not limited to, E.O. 13175.

The Federal Communications Commission (FCC) invited Tribal participation in the teleconferences regarding potential clarifications and modifications to the process for Tribal participation in Section 106 review. Under what authority does the FCC assume they can dictate, modify or clarify Tribal or NHO participation in the Section 106 process? Our role in the Section 106 process is defined by law and is not under the authority to be reviewed, modified or clarified by your agency. This amounts to a gross overstepping of your agency's authority and represents a complete misunderstanding of Tribal/NHO and federal agency roles in the Section 106 process.

The FCC invited discussion on the information necessary for Tribal Nations and NHO's to comment on proposed wireless communications undertakings. Why is this even being discussed? The requirements are set forth in 36CFR800.11 (d) and 36CFR800.11 (e) for all undertakings regardless of federal agency. Is the FCC proposing to modify these requirements?

The FCC invited discussion on the role and expectations of Tribal Nations and NHO's at the stage of initial notification and whether compensation is appropriate. This is not for your agency to decide. On what authority does the FCC assume they can dictate to a Tribe or NHO when compensation is appropriate or not? Once again, the FCC is overstepping their authority.

The FCC invited discussion regarding the roles and expectations of Tribal Nations (and NHO's) with regard to the applicant's selection, retention and compensation of a contractor or consultant when such work is required. Clarification is needed on this point. It is unclear what the FCC is addressing. Is it a contractor to conduct archaeological services? Is the contractor being retained in lieu of Tribal contractors conducting tower construction notification system reviews? The THPO does not care at all about the former as long as they meet the Secretary of Interior Standards, however, the latter will be subject to a lawsuit if it is going to be even remotely considered as once again, the FCC would be extremely over-reaching its authority and trampling all over the sovereign rights of First Nations.

The FCC invited discussion regarding whether the procedures followed when a Tribal Nation or NHO does not timely respond to a notification should be modified. What exactly is being proposed or discussed? There seems to be some issues with the process involving the requirements that each Tribe or NHO have in terms of required materials for review and when the 30 day timer actually begins. Our office has been getting final notices from the FCC even though the required submitted materials have not even been submitted or were just submitted 10 days ago. The notification to TCNS is not the start date for 30 day response time. Per 36CFR800 regulations the 30 day start time does not begin until a determination of effect for a proposed undertaking is issued by the federal agency or applicant in the case of FCC undertakings. This determination requires documentation per 36CFR800.11 (d) and 36CFR800.11 (e). Without this documentation to justify the determination of effect there is

nothing the Tribe can review. It is the recommendation of the THPO that the FCC should be insuring that their applicants, who are fulfilling the FCC role in the Section 106 process, are actually fulfilling the role properly instead of blaming the Tribes for a problem that we do not control which is submittals of proper documentation for determinations of effect and requests for concurrence.

In regards to Twilight Towers public comment period ending on February 9th. This contravenes E.O. 12866 and E.O. 13563 which require a minimum 60 day review period for regulatory actions which would include the public notices to the Federal Register.

Thlopthlocco Tribal Town (Tribe) supports the telecommunication industry efforts to deploy broadband throughout the country and we hope that Indian country will benefit from these efforts as has been stated through numerous responses and requests to the FCC relating to these issues. The Tribe also values preserving and protecting our places of cultural and religious significance and reaffirms the positive history of working with the FCC and industry in supporting both efforts with particular reference to the Tower Construction Notification System (TCNS) in place at the FCC as a positive working partnership between the FCC and the Tribe.

Please feel free to contact the THPO at thpo@tttown.org or (918) 560-6113 if you have any questions or comments.

Please refer to THPO file number 2017-63 in all correspondence for this undertaking.

Sincerely,



Terry Clouthier
Thlopthlocco Tribal Town
Tribal Historic Preservation Officer

cc.

Chairman Pai
Commissioner Clyburn
Commissioner O'Reilly
Commissioner Carr
Commissioner Rosenworcel
Advisory Council on Historic Preservation