

February 26, 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:

Competitive Carriers Association (“CCA”)¹ writes to supplement the record in the above-referenced proceedings. CCA applauds the Federal Communications Commission’s (“FCC” or “Commission”) work to substantively address barriers to broadband deployment. CCA continues to underscore² the need for the Commission to find that small cells and Distributed Antenna System (“DAS”) deployments are outside the scope of a “federal undertaking” under the National Historic Preservation Act (“NHPA”).³ Because small cells and DAS are materially different than their tower and macrocell predecessors, regarding both size and visual or actual impact, the Commission should adopt a definition of “small cell” that takes into account the current and future nature of small cells.⁴ Providers need flexibility as equipment and technology standards evolve toward next-generation services and 5G, and the FCC must ensure that its policy reforms appropriately reflect this reality.

For sites not outside the scope of a federal undertaking, the Commission should streamline review under the NHPA and the National Environmental Policy Act (“NEPA”). Specifically, the FCC should continue Tribal Nation consultations to clarify that paying Tribal fees, either for review or for subsequent consultation activities, is not required under the NHPA nor the National Programmatic Agreement (“NPA”),⁵ unless that fee

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, Letter from Rebecca Murphy Thompson, EVP & GC, Competitive Carriers Association, WT Docket No. 17-79, WC Docket No. 17-84, WC Docket No. 17-84 (filed Feb. 5, 2018). See also, 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”).

³ See *id.* at 47. A federal “undertaking” under NHPA includes projects, activities, or programs that “requir[e] a Federal permit, license, or approval[.]” See also, 54 U.S.C. § 300320(3); see also 40 CFR § 1508.18(b).

⁴ See, 47 CFR § 1.1320.

⁵ 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

is tied directly to quantifiable and reasonable costs for services requested by the carrier. As CCA and others have detailed on record,⁶ Tribal fees and administrative burdens attached to the historic review process have escalated sharply in recent years,⁷ and these costs and permitting delays will continue to rise as CCA members deploy to meet consumers' increasing data demands. Without Commission action, Tribal fees will become an increasingly exorbitant cost barrier to ubiquitous broadband deployment. For example, one CCA member operating in portions of Kansas, Colorado, and Nebraska paid over \$107,000 to 36 Tribes for the deployment of just seven towers, in a seven-month period. This is an average of over \$15,000 per tower, solely for Tribal review fees. This is not a sustainable arrangement, especially considering future networks will require denser deployment scenarios.

Other CCA members report similar experiences with escalating fees among an increasing number of Tribal interest claimants. From January 2017 until now, the average CCA member deploying in the western United States reports that Tribal interest requests have escalated to an additional three-to-four per site, as compared to one year earlier. What's more, in just a three-to-six-month timeframe, a Wyoming carrier spends nearly \$20,000 solely in NHPA/NEPA fees for *each* wireless tower deployment. In 2017, this same carrier faced a staggering \$19,550 in Tribal review costs for a new tower in Wyoming, which included Tribal fees from 38 Tribes ranging from \$200 to \$1,500 per Tribe. In 2016, the same applicant built a similar tower in the same Wyoming town costing \$13,075 in Tribal fees; the jump in Tribal fees from \$13,075 to \$19,550 over one year in the same general deployment area has never been explained.⁸

Additionally, under the current siting framework, applicants and consulting parties are typically forced into standoffs regarding increasingly-exorbitant fees before parties ever determine whether or not a Historic Property is present. For example, per a Tribe's request, one CCA member in Montana received a Stop Work Order ("SWO") from the FCC in November 2016, which prohibited the company from constructing communications towers in areas where Tribal authorities had demanded payment for persons deployed to monitor tower construction in the event there was an "unanticipated discovery" of artifacts. As of February 2018, the SWO remains in effect and has stalled deployment of broadband networks in this area of Montana for over 15 months. What's more, to date, three more Tribes have expressed interest in sending monitors for this single deployment site. The carrier was asked to pay \$500/day per person, and this fee continues to

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.").

⁶ See, Letter from Keith C. Buell, Senior Counsel, Sprint, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 (filed Feb. 21, 2018); Letter from Henry G. Hultquist, Vice President – Federal Regulatory, AT&T Services, Inc., to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 (filed Feb. 23, 2018); Letter from Tamara Preiss, Vice President – Federal Regulatory and Legal Affairs, Verizon, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 (filed Feb. 23, 2018).

⁷ See, CCA Comments at 18, 25-35; Competitive Carriers Association, Clearing the Path for America's Wireless Future - Addressing Hurdles to Meet the Pressing Need for Our Nation's Wireless Infrastructure (rel. June 8, 2016) ("CCA White Paper"), available at <https://ccamobile.org/wp-content/uploads/2017/06/Clearing-the-Path-for-Americas-Wireless-Future-June-2017.pdf>.

⁸ CCA Comments at 27.

escalate, resulting in about \$250,000 in lost revenue since November 2016 solely for expenses related to site monitors. In addition to financial loss, there are important public safety and consumer costs as a result of delayed deployment. In this instance, the carrier is the only provider in this area in Montana; however, as a result of this 15-month delay, the company has been unable to expand service to even smaller towns that lack broadband coverage and therefore lack the most advanced public safety communications, despite investing significant upfront capital. This is a financial loss, and an affront to public safety and consumer benefit in this area of Montana.

Adding additional color to escalating fees and delays, last June, CCA submitted a white paper narrating two fictional competitive carriers deploying small cells and replacement poles.⁹ In it, CCA highlights costs associated with Tribal fees. For example, “a review of fee demands from members as of February 2017 shows that at least one Tribe has raised its review fees to \$1,650 per project, another Tribe charges \$1,500, another Tribe is at \$1,200, and six additional Tribes have fees of \$1,000.”¹⁰ From just a few years ago, these figures are up from an average fee per site of \$381.67 and an average fee demand per Tribe of \$250. What’s more, recent trends show that fees are continuing to rise, with an average of more than \$6,300 having been reported for projects in late 2016 to early 2017.¹¹

While the above examples in CCA’s white paper are “fictional,” they represent real-world experiences by carriers and tower companies alike. For example, one CCA associate member was assessed nearly \$3 million in Tribal fees to deploy just under 3,000 nodes across the United States in a one-year period, from 2017-2018. Specifically, the vendor paid \$67,000 in Tribal costs to deploy just 17 nodes in the western United States; about \$200,000 for nearly 2,000 nodes in the central United States; nearly \$600,000 for just over 250 nodes in the southeast region; and close to \$2,000,000 to deploy just over 1,000 nodes in the northeast.

Streamlining the process for Tribal fees, and collecting a uniform account of all culturally significant areas will expedite the siting process and assuage concerns, and confusion, surrounding siting applications. Together, these initiatives will facilitate deployment of mobile broadband service to all consumers, and ensure the United States is a leader in next-generation technologies and 5G service.

⁹ See, CCA White Paper.

¹⁰ See *id.*

¹¹ *Id.* at 14-15. In 2012, for one competitive carrier, the average site received payment requests from just under two Tribes, while in 2016, the number of Tribes reviewing each site was more than 10. And, the average charge per Tribe more than doubled over that time period, from \$254.44 in 2011 to \$513.01 in 2016.

CCA looks forward to continued work with the Commission and industry to streamline and update infrastructure siting policies 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): Rachael Bender
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