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|  | 1300 NORTH 17th STREET, 11th FLOOR  ARLINGTON, VIRGINIA 22209  OFFICE: (703) 812-0400  FAX: (703) 812-0486  www.fhhlaw.com  www.commlawblog.com    February 27, 2018 | DONALD J. EVANS  (703) 812-0430  evans@fhhlaw.com |

Ms. Marlene Dortch, Secretary

Federal Communications Commission

445 12th Street, SW

Washington, DC 20054

Re: Ex Parte Comment of PTA-FLA, Inc.

Docket 17-79

Dear Ms. Dortch:

This ex parte submission is intended to supplement the record in this Docket by pointing to recent developments in the area of tribal review of proposed cell site constructions. PTA-FLA alerted the Commission about two years ago both that tribal fees for cell site reviews were increasing exponentially and that more and more tribes were expressing an interest in reviewing site. PTA-FLA predicted at that time that this process would accelerate as more and more tribes saw an opportunity to generate higher and higher fees. The record to date in this Docket has borne out that prediction.

This ex parte provides current confirmation of the severity of the problem and the need for prompt redress. For a recent site that was proposed for construction in Kansas, 26 different tribes expressed interest in the project and demanded a total of $17,600 in “review fees.” In Oklahoma, 19 different tribes demanded a total of $14,500. The fees ranged from a low of $400 to a high of $1,800. The fees across the board have increased anywhere from 100% to 300% since 2015 and there appears to be no end to the increases in sight. As PTA-FLA pointed out in 2016, the laws of economics dictate that a vendor with a captive buyer will increase its prices as much as possible until anti-trust laws or other regulatory mechanisms are invoked to prevent the abuse. In the present situation, there is no limit of any kind on the fees that can be charged, and that must be paid, if a site is to be constructed. This has created a fee crisis which has rippled through the wireless and tower construction industries, adding unnecessary expense and delay to the site construction process at a time when expedition is most needed. The fee crisis reflects this economic reality which has been created or at least perpetuated by the Commission’s inaction to date on this issue.

To be sure, some of the Tribes have acted with a modicum of self-restraint, relating their fees at least theoretically to the costs involved in conducting a review. Other Tribes have engaged in what can only be viewed as price gouging since there is no possible rational connection between the fees being charged and the effort involved. PTA-FLA again urges the Commission to take steps to recognize that (i) tribes are not entitled to mandatory fees in exchange for reviewing proposed site developments unless a developer elects to contract with them for their services, and (ii) construction of tower sites that do not require FAA approval do not constitute federal “undertakings” that necessitate Section 106 review under the National Historic Preservation Act.

Respectfully submitted,

PTA-FLA, Inc.

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Donald J. Evans

Its Counsel

cc: Jill Springer

Jeff Steinberg