

AGUA CALIENTE BAND OF CAHUILLA INDIANS

TRIBAL HISTORIC PRESERVATION



March 13, 2018

01-009-2017-015

[VIA ELECTRONIC
COMMENT FILING SYSTEM

<https://www.fcc.gov/ecfs/>]

Federal Communications
Commission
445 12th Street SW
Washington, DC 20554

Re: Comments on the Federal Communications Commission Wireless Infrastructure Streaming Report and Order, WT No 17-79

Dear Commissioners,

On behalf of the Agua Caliente Band of Cahuilla Indians (“ACBCI”) Tribal Historic Preservation Office (“THPO”) the following comments are submitted in response to the Federal Communications Commission (“FCC”) March 1, 2018, Wireless Infrastructure Streamlining Report and Order, WT Docket No 17-79. The order focuses on types of deployments that are subject to the National Historic Preservation Act (“NHPA”) and National Environmental Policy Act (“NEPA”) review, and reexamines and revises Commission rules and procedures for such deployment.

Although the FCC Order is meant to 1) amend Commission rule on small wireless projects as not meeting the definition of a “federal undertaking” under NHPA and a “major federal action” under NEPA; 2) amend Tribal participation in Section 106; 3) remove certain requirements of EAs; 4) establish timelines for Commission to act on certain EAs; the ACBCI THPO has the following comments regarding the Order:

Amending Commission rule on small wireless projects

The ACBCI THPO does not agree with the amendment to exclude small wireless facilities from NHPA and NEPA review. Tribal Nations are responsible stewards of their cultural heritage and have expertise unique to Tribes and their members. The NHPA and NEPA were created to consider proposed projects impacts to the environment and a process to potentially avoid or mitigate the impacts. In my 12 years with Agua alienate many small projects have been planned on culturally significant areas. Without proper application of NEPA and Section 106 projects may have an irreversible impact to the environment and historic properties. Without NHPA and NEPA review impacts to the environment and historic properties will go known and unmitigated. Under NHPA



Federal agency undertakings are required to undergo review for their effects to historic properties per 36 CFR Part 800.

FCC's Record of Consultation

The ACBCI THPO disagrees with FCC's record of consultation. ACBCI asserts the FCC has not conducted meaningful, formal government-to-government consultation directly with ACBCI at any time. The FCC has stated numerous times in the Order that consultation commenced when in fact there was no government-to-government consultation with ACBCI. ACBCI only engaged in open meetings which were informal and informational in content. These meetings and conference calls were not true meaningful consultation as required in Section 106 of the NHPA. Nonetheless, the ACBCI THPO continued to participate in meetings and conference calls to gather information when possible. Most of the meetings and conference calls have been with multiple Tribes, have been unstructured, lacked a formal agenda, and were often announced upon short notice.

- Paragraph 17 states consultation with ACBCI on May 25, 2017. This was a conference call that ACBCI THPO listened in on, however, there was no government-to-government consultation.
- Paragraph 23 states consultation took place between ACBCI and FCC on August 10-11, 2017 at the NATHPO conference. The ACBCI THPO was present and listened to the FCC provide information and answer questions from attending Tribes. During the meeting the FCC was asked by one of the Tribes if the meeting was being considered government-to-government consultation and the FCC replied no the meeting was not considered consultation. ACBCI was not directly consulted.
- Paragraph 28 states a record of consultation with ACBCI. At the onset of the call the ACBCI THPO made the following statement "the ACBCI THPO does not consider this phone call formal government-to-government consultation under Section 106 of the National Historic Preservation Act 36 CFR Part 800". Other THPOs on the call made similar statements at the beginning of the call.
- Paragraph 29 states the ACBCI THPO consulted with the FCC via conference call with 25 other tribal representatives on January 25, 2018 and with 38 tribal representative on February 5, 2018. These calls were informational only and not formal government-to-government consultation.

Tribal Participation in Section 106 and Tribal Fees

The ACBCI disagrees with the proposal to amend Tribal Participation. The timeline for review is stated in 36 CFR Part 800 as 30 days regardless of type of project. A shortened timeline



would be a burden to the ACBCI THPO. Below is information regarding our review process and the amount of work and time required to conduct a simple review. The ACBCI does not charge for project review. The ACBCI THPO works diligently to review all projects that have the potential to impact historic properties and cultural resources under existing historic preservation law. Our office has created a project management database for tracking, managing and responding to requests for consultation for projects, programmatic agreements and rule changes ("project"). A THPO staff member processes each project or undertaking. The project is assigned a unique number and a project profile is created in the THPO database. The project area is then mapped in our GIS database and entered into the project file. All documents are scanned and archived to the project file. All correspondence is tracked and responded to within the THPO database. Often the project proponent fails to provide adequate documentation- if there is insufficient information the THPO will request additional information or documentation to complete the project file and prepare for review. The THPO or another staff member reviews all available documentations and reviews the Agua Caliente Archives and library for any information that may indicate cultural sensitivity in or adjacent to the project area. The THPO generates a set of comments and/or recommendations to mitigate impacts to historic properties which cannot be avoided and submits them to the lead agency for inclusion of the record. A small cell site with 0 to 3 resources, with low sensitivity takes an estimated 2 hours and 30 minutes to process from start to finish (a single communication review process). More complex project reviews may take additional time, multiple back and forth correspondence, additional THPO research, and may require the THPO to consult with the Historic Preservation Advisory Board and/or with Tribal Council. Currently the ACBCI THPO does not bill for project reviews, however, the THPO has calculated a cost of \$287.50 at a billing rate of \$125 per hour for a simple 2 hour 30 minute cell review.

Formal Government-to-Government Consultation

At this time the ACBCI THPO requests formal government-to-government consultation for the Wireless Infrastructure Streaming Report and Order, WT No 17-79, under Section 106 of the NHPA.

The Agua Caliente appreciates your time to review our comments. If you have questions or require additional information, please call me at (760)699-6907. You may also email me at acbc-thpo@aguacaliente.net.

Cordially,

Patricia Garcia-Plotkin
Tribal Historic Preservation Office

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