

# KEWEENAW BAY INDIAN COMMUNITY

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March 14, 2018

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

RE: The Keweenaw Bay Indian Community (KBIC) Opposition to draft Report and Order (WT 17-79)

Dear Chairman Pai and Members of the Commission:

We write to oppose the draft Report and Order released on March 1, 2018 that purports to narrow the obligations of the Federal Communications Commission (FCC) under the National Historic Preservation Act (NHPA) and National Environmental Policy Act (NEPA) and restricts tribal rights secured by those laws. The draft order's approach will be detrimental to tribal governments, tribal cultural and historic resources and do very little to encourage deployment of wireless service to areas, like ours, that need it most.

Fifteen years ago, the FCC stated that it was impractical for it to consult on thousands of existing, new and proposed cell sites, despite its obligation to do so. In response, Indian Country endorsed the Tower Construction Notification System as an elegant solution that facilitated the telecommunications industry working directly with tribal nations to address issues of concern so that it would be unnecessary in nearly all cases for the FCC to engage in consultation. The alternative, which will be the outcome if the current order is approved, is that tribal nations will demand direct consultations with the FCC on potentially hundreds of larger tower sites, a far slower process than the tribal-industry process.

The Commission has a trust responsibility to tribal nations, not to the wireless industry. The draft Report and Order does not reflect this trust responsibility and diminishes KBIC's ability to protect our cultural and historic properties.

The draft Report and Order:

- (1) Concludes that small wireless facilities do not qualify as "undertakings" or "major federal actions", thereby circumventing the protections of NHPA and NEPA;
- (2) Eliminates tribal fees for initial historic preservation assessments (which often number in the hundreds per month) by tribal governments, encouraging industry to exclusively rely on its own consultants whose understanding of Native culture is limited, rather than

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access the unique expertise of tribal nations with regard to impacts on their own cultural areas; and

- (3) Mischaracterizes the extent of formal consultation carried out prior to the release of the draft Report and Order by including listening sessions, briefings and other meetings that are not true consultations.
- (4) Creates a false narrative that the wireless communication companies are losing money with the “burden” of paying tribes for consulting fees, when in fact, every wireless company has seen exponential growth in revenue since the implementation of the **Section 106** process by Tribal Historic Preservation Offices THPOs.

Rolling back protections for tribal cultural and historic properties will have grave consequences for the KBIC.

The KBIC views historic preservation as one of its top priorities. Much like all other cultures, we fight to protect our history, culture, language, ancestral remains and our places of worship. Our ability to determine what is historically and culturally relevant to our people is one of the many facets to our sovereignty and is a cornerstone to the National Historic Preservation Act of 1966.

Once tribal cultural and historic properties are damaged, it is often irreversible. Therefore, like other tribes throughout the country, we will have no recourse if the deployment of wireless technology results in the destruction of our tribal cultural and historic properties. Accordingly, we ask that all Commissioners vote against adopting this draft Report and Order.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Gary F. Loonsfoot, Jr.', with a stylized flourish at the end.

Gary F. Loonsfoot, Jr.  
KBIC Director of Cultural Resources  
NAGPRA Representative