



YANKTON SIOUX TRIBE

TRIBAL HISTORIC PRESERVATION OFFICE

YST THPO OFFICE ■ PO BOX 1153 ■ Wagner, South Dakota 57380 ■ 605.384.3641

March 14, 2018
Marlene Dortch
Federal Communications Commission
445 12th Street SW
Washington, DC 2055

RE: Yankton Sioux Tribe of South Dakota comments on “Wireless Infrastructure Streamlining Report and Order” from the Federal Communications Commission (FCC)

Dear Ms. Dortch,

It has come to our attention that the Federal Communications Commission released a “Wireless Infrastructure Streamlining Report and Order” on March 1st, 2018 with comments on the 80-page document due by March 15th, 2018. The “2nd Report and Order” (2RO) proposes to change the Infrastructure Investment and deployment of next generation (small cell) wireless facilities as they relate to the requirements of the National Historic Preservation Act of 1966, as amended (NHPA) and the National Environmental Policy Act of 1969 (NEPA) review. Also, in the 2RO it states a few FCC aspects to expedite Tribal involvement as far as compensation and reviews. We are respectfully submitting our comments and concerns on the Report and Order, which will be voted on March 22nd, 2018, on behalf of the Ihanktonwan Nation (Yankton Sioux Tribe) and the Yankton Sioux Tribal Historic Preservation Office (YST THPO).

Our concerns with the proposed changes, in a numbered order, are as follows:

1. First and foremost, the Yankton Sioux Tribe did not have a “consultation” meeting with the FCC about the proposed Report and Order in which does not constitute a government-to-government consultation. The FCC, an independent agency under the United States federal government, is bound to the Yankton Sioux Tribe of South Dakota by virtue of the Treaty of Ft. Laramie/Horse Creek Treaty of 1851, the 1858 Treaty with the Yankton Sioux, as well as the Ft. Laramie Treaty of 1868, which creates a government to government relationship as parties under the Supremacy clause of the United States Constitution and has a standing in jurisprudence. The concern is that the FCC is just going to vote and impose this on Tribal and Local governments without proper consultation. Thus, affecting the “Sovereign” definition of tribes.

2. Compensation, fees, and reviews was also brought up in the 2RO. Stated in the 2RO, page 43, is Section IV 113. Which states, "Some Tribal Nations assert that they are entitled to up-front fees to compensate them for the effort or cost of participating in the Section 106 process." This statement is true to the meaning, we as a sovereign nation have the right to preserve our cultural properties and aboriginal lands. If an applicant of the FCC wants to deploy such Telecommunication structures on lands of which our ancestral people once prayed and buried others, then we should be allowed to charge fees and have a consultant or contractor services rendered in which the applicant should pay. Also the 2RO it indicates by law these applicants do not have to pay anything to tribes for Section 106 process, which may be true to the extent that the law does not say you HAVE to pay fees but it does leave out that they must have a good faith effort to notify tribes for comment and in which if the tribes are unable to fund the staff to complete the Section 106 reviews that will in turn delay the waiting period for the applicant to wait the maximum days for a review. If deployment is an important task to the applicant and FCC, we as a sovereign nation, ask for a "good faith" effort to meet our needs to fulfill our part in the Section 106 process.

Sincerely,



Kip Spotted Eagle, THPO Director
Tribal Historic Preservation Office
Yankton Sioux Tribe of South Dakota