



## SAC AND FOX NATION

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March 14, 2018

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

RE: ***Ex Parte Filing, Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment***, WT Docket No. 17-79

Dear Ms. Dortch:

We write to oppose the draft Second Report and Order in the above referenced proceeding 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 (TCNS) 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 Second Report and Order does not reflect this trust responsibility and diminishes Sac and Fox Nation's ability to protect our cultural and historic properties.

The draft Second 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 research 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 access the unique expertise of tribal nations with regard to impacts on their own cultural areas.

The Sac and Fox Nation currently have staff who only respond to TCNS notifications. The Sac and Fox Nation's TCNS Program has been working with the FCC since September 2015. The research fees have allowed us to obtain the technology and increase the capacity we need to gather and safe keep our tribal cultural knowledge.

- (3) Mischaracterizes the extent of formal consultation carried out prior to the release of the draft Second Report and Order by including listening sessions, briefings and other meetings that are not true consultations. Representatives of the Sac and Fox Nation have been participating in many of the face-to-face meetings as well as the conference calls convened by the FCC. We attended the meetings held in Pala, California (August 10 – 11, 2017) and Albuquerque, New Mexico (February 21, 2018) as well as participated on the conference calls held on May 25, 2017, January 22, 2018 and January 24, 2018. In addition, we have had an individual meeting with representatives of the FCC.

The listing of tribes and meetings in paragraph 17 through 32 of the Second Report and Order inaccurately characterizes the meetings. Tribal representatives have repeatedly asked the FCC representatives if they were considering the meetings consultations. In Pala, California, Tribal representatives specifically asked FCC representatives if they considered the meeting true consultation in accordance with 36 CFR Part 800. They stated the meeting was not being considered a consultation.

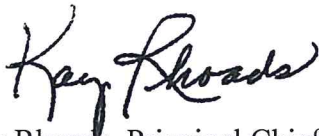
Official agendas have not always been provided, and when they have, specifically at the Albuquerque meeting, they have been ambiguous. Notifications of meetings have been inadequate. For example, for the three conference calls discussed in paragraph 28 and 29, announcement of the calls were sent out via email only a week before the first call which did not provide enough time for elected leaders to participate. Also, at no time during any of these meetings did the FCC let Tribal Representatives know that they planned on changing tribal participation in the Section 106 process.

Subsequently, rolling back protections for tribal cultural and historic properties will have grave consequences for Sac and Fox Nation. The Sac and Fox Nation currently is located in Central Oklahoma. Due to removal, the Sac and Fox have traversed across 15 states. Along this long trail, we have many cultural and historic properties. The current protections have allowed us the ability to continue to monitor the building of infrastructure in our original homelands and protect any of the properties that building could have an adverse effect upon.

Once tribal cultural and historic properties are damaged, it is 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 Second Report and Order.

Thank you for your time and consideration of these comments. The Sac and Fox Nation understands the benefits of reforming the FCC's Section 106 processes especially with the emerging 5G technology. However, we oppose any efforts that will limit Tribal involvement in the Section 106 process, and we want to make sure that tribal sovereignty and historic preservation are respected.

Sincerely yours,

A handwritten signature in black ink that reads "Kay Rhoads". The signature is written in a cursive, flowing style.

Kay Rhoads, Principal Chief  
Sac and Fox Nation  
920883 S. Hwy 99 Bldg. A  
Stroud, OK 74079

cc (via email): Senator Tom Udall  
Senator John Hoeven