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March 14, 2018

Secretary Marlene Dortch

Federal Communications Commission

445 12th Street SW

Washington, DC 20554

RE: Wampanoag Tribe of Gay Head (Aquinnah ) in Opposition to draft Report and Order

(WT 17-79)

Dear Chairman Pai and Members of the Commission:

The Wampanoag Tribe of Gay Head (Aquinnah) (WTGH(A)) 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 the WTGH(A)’s ability to protect our cultural and historic properties under the National Historic Preservation Act (NHPA), Native American Graves and Repatriation Act (NAGPRA), American Indian Religious Freedom Act (AIRFA),Archeological Resources Protection Act (ARPA) and other applicable federal laws.

The draft Report and Order:

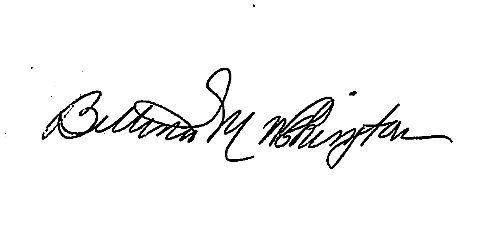
1. Concludes that small wireless facilities do not qualify as “undertakings” or “major federal actions”, thereby circumventing the protections of NHPA and NEPA. The WTGH(A) is concerned with the FCC’s conclusion without prior and proper consultation with the Tribes.
2. Eliminates tribal fees for initial historic preservation assessments by tribal government representatives. The Tribes are providing a service in the scope of the National Historic Preservation Act an important role within our tribe under Section 106 to protect our cultural heritage, a required relationship between the Tribe and the Agency on federal undertakings. In doing so, we deserve to be compensated, not just recognized, for our work. Our vehicles, our electricity to access the TCNS off our computers, our gas to sites and our time are commodities that must be paid for as with other engineers, archeologists or consultants that are hired by the wireless companies.
   1. The above elimination of fees may encourage 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 which is in direct violation of Section 106, 36 CFR Part 800.4(c)(1) (which requires agency to seek the unique expertise of tribal nations with regard to the identification of cultural and historical areas of significance). The Wampanoag Tribe of Gay Head (Aquinnah) cannot stress the importance of the Tribe declaring its own culture and history. We are the knowledgable and responsible party for our culture, history and sacred soaces. For far too long, our history has been taken from us and told by others. The non-tribal person became the expert, not the tribe they from which they received the information. It is still occurring in 2018. It is dishonorable, and borders on discrimination, to pay a non-tribal consultant for information that was received from a Tribe (at one time or another) but deny that same consideration to the Tribe who provided the infomration. In addition, in our Tribe, it is imperative that the person be a tribal representative appointed through the government. If the Tribe does not have a voice through the Section 106, the Tribe will not have a voice in determining the impacts or mitigation to the area that is under review.
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. The WTGH(A) has been present at a number of listening sessions; not government-to-government consultations sessions. For the WTGH(A) government-to-government consultations will have an agenda sent to all parties involved, direct and written outcomes, notes of the meetings and a clear sense of direction. Non-federally recognized tribes are not “tribes with standing” and would not be present in a government-to-government consultation meeting.

Rolling back protections for tribal cultural and historic properties will have grave consequences for Wampanoag Tribe of Gay Head (Aquinnah). It would seem because there are not a lot of “success stories” where a site is saved, the industry thinks the process is not working. There have been instances where the site was visited, and there was enough room to move the tower and that was all that was needed. Another time, there was another site available and it was simply moved. These too are success; albeit quiet. However, the one that will always stand out has ended up changing our cultural landscape in New England and beyond. If Section 106 did not exist, if we did not develop best practices, (and we did end losing quite a bit of the sacred site), if Consultation did not occur, a cultural district would not exist today.

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.

As one of the 26 tribes that signed the Best Practices, we still believe it is in the best interest of all parties to adhere to the principles of that document in order to preserve and protect tribal cultural and historic properties and look forward to further consultation.

In the Spirit of Preservation,



Bettina M. Washington

Tribal Historic Preservation Officer