



**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

Before the Federal Communications Commission Washington, D.C. 20554

In the Matter of

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Revising the Historic Preservation Review Process)
for Wireless Facility Deployments)

WT Docket No. 17-79

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NOTICE OF PROPOSED RULEMAKING AND NOTICE OF INQUIRY

Ex Parte COMMENTS OF: Kaw Nation
on FCC 2nd Report & Order (2RO) as of March 8th, 2018

The Kaw Nation disputes the FCC's claim to have conducted government to government consultation.

Throughout the past year of on record in meetings and during conference calls, the Kaw Nation, along with several other tribes, has repeatedly stated that it does not consider these town hall type meetings to be consultation. In addition, the FCC staff has, on more than one occasion, been sure to state that these are not considered consultations. An example of this was the meeting convened in Albuquerque, NM on February 22. The presiding FCC staffer called the meeting an 'informal discussion' to help the FCC identify tribal needs for TCNS submissions and address the issues of twilight towers and fee structures.

On several occasions, Kaw representatives have travelled to participate in these discussions, at considerable cost to themselves and the tribe. These meetings are often convened at the last minute and lack clear direction or even an agenda. No official records of these meetings are made public and often terms are left vague, so as to make meaningful progress on an issue impossible.

In one instance, the Kaw attempted to conduct a government-to-government consultation with the Kaw Chairwoman, Jacque Hensley, travelling to Washington, D.C. for a scheduled meeting with FCC Chairman, Ajit Pai, on July 6, 2017. While Chairwoman Hensley made a good-faith effort and travelled great distance for the meeting, Chairman failed to appear during the scheduled time in his office.

Industry is neither the victim, nor is it blameless, in regard to the issues highlighted in this draft Report and Order (2RO).

Many of the issues highlighted through this draft 2RO can be boiled down to poor standards setting by the FCC and a lack of communication between the appropriate parties, in this case, between the tribes, carriers, and the carriers' third-party consultants.

Throughout the NPRM comment process, the Kaw representatives have provided multiple positive examples of the TCNS program's value to tribal nations and to the protection of priceless cultural and historic resources. Through the TCNS process, the Kaw Nation's TCNS Administrator has been able to identify and flag a construction project that would adversely affect the Nation's sacred ceremonial grounds in Council Grove, KS. Working together with the tower construction company, the Kaw are providing alternative locations in the vicinity for the build-out.

The Kaw representatives also provided background on issues experienced with carrier hired consultants and the need for clear communication channels with industry and tower construction companies. The Kaw representatives cited continued issues of inconsistent and incomplete information provided in the TCNS tower siting package submissions. These omissions can lead to approval delays due to lack of proper or complete site locations, design specifications, and current contact information. On average, the Kaw review 200 submissions a month. Over 10% of those submissions provide incomplete packages.

In addition, the Kaw representatives cited multiple instances of overpayment and payments received that are addressed to other tribes.

In order to resolve these problems, the Kaw Nation, has on more than one occasion, made the following suggestions:

The Kaw suggested several process improvements that could reduce the overall time, cost, and frustration for all parties using the TCNS program.

- Creating well-defined standards for a complete submission package with design specification for the build out, specific coordinates for tower and/ or pole construction, and contact information for the carrier or tower construction company responsible for the build, not just the consultant processing the permitting paperwork. This last, in particular, is critical, as many of the third-party consultants have been the cause of major deployment delays due to insufficient oversight and accountability to their carrier clients.
- Provide a best practices sheet to industry and all involved parties.
- Require points of contact from each of the stakeholders to be included in the package. This will help ensure that, should issues arise, a timely solution can be found.

Regarding the elimination of fees

The draft Report and Order's elimination of initial fees essentially will have the effect of assuring that the Kaw Nation, who receives hundreds of requests every month, will simply not be able to respond. The FCC charges fees for its services; similarly, the Kaw Nation, and all tribal nations, should be able to recoup the reasonable costs associated with these reviews. Tribal Nations are providing invaluable and indeed unique expertise that provides an assurance that a site will not be disturbed or that the appropriate mitigation has occurred. Only the Kaw Nation can provide a definitive statement on the meaning of its cultural property. No one with such a level of expertise in any other quarter of our society would be expected to provide that expertise for free. This action does not uphold the trust responsibility and does not respect tribal sovereignty.

This Report and Order takes a myopic view of small cell impact while purposely ill-defining the scope and design of these small cells so that their environmental and historic impacts cannot accurately be assessed.

Over the past year, the Kaw Nation, along with several other tribal nations, has requested a definition of what constitutes a small cell and how that deployment would be achieved. The FCC provides no support or analysis its assessment of small cell impact on the environment or historic preservation, nor does it acknowledge that there is not a one-to-one correlation roll-out of small cell to macro site deployment. 100 'small-cells' deployed may have a greater impact to environmental and historic preservation than a single macro-tower.

2RO is a blatant disregard of tribal sovereignty.

The 2RO does not respect the sovereignty of tribes. The Kaw Nation is not a business that the FCC has jurisdiction to oversee and provide edicts to. As a tribal government, we are not subject to market demands as an industry carrier may be. The Kaw Nation is a sovereign power that has must be afforded the same rights as other local governments.

Repeated attempts to resolve issues through direct interactions between tribes and industry.

The Kaw Nation, along with several other tribes, has repeated stated a willingness to meet with industry directly to find reasonable resolutions to the issues highlighted in 2RO and requested FCC assistance in facilitating the introductions necessary for those conversations to take place.

This stance has been recorded in the Kaw's extensive comments, as submitted through the ECFS portal, as well as in the town hall discussions with FCC. It is simply bad government to ignore potential solutions that lead to compromise and resolution without the interference of Federal regulation, and that would be of benefit for all parties.

The Kaw cite a recent meeting between the Kaw TCNS Administrator and Mobilite staff as a best-case scenario for quick and effective resolution to deployment issues. During this meeting, Mobilite discovered that one of their consultants was receiving tribal approval within two weeks of submission and sitting on those approvals due to a lack of staff capacity. This consultant then told Mobilite staff that the tribes were holding up the process. It was also discovered that the consultant was over charging Mobilite for tribal fees that the tribe never received. With proper channels and oversight established, the issue has been remedied without the need for the FCC to intervene.

Conclusion

The FCC has a responsibility to uphold the Federal trust for tribal nations.

The Kaw Nation is motivated in this proceeding by two things: the protection of our cultural and religious heritage and the preservation of tribal sovereignty. NEPA and NHPA are meaningless, not only to the Kaw and other Tribal Nations, but also to local and state governments, if broad exemptions are created. In addition, the FCC's determination on tribal fees leaves the Kaw Nation with resources are so limited that they cannot assert their rights. Expansion of the Nation's wireless infrastructure is valuable and necessary. However, industry, and not tribes, should bear the cost of this dramatic expansion of the telecommunications infrastructure.

In sum, the Kaw Nation is very disappointed by the draft Report and Order. If this item moves forward, cultural and historic resources will inevitably be damaged by wireless infrastructure. The Kaw Nation urges all Commissioners to vote against this item.

JSH
Chair

Chairman Ajit Pai

Commissioner Mignon Clyburn
Commissioner Michael O'Reilly
Commissioner Brendan Carr
Commissioner Jessica Rosenworcel
Matthew Duchesne, Chief, ONAP
Jeffrey Steinberg, Dep. Chief CIPD, WTB
Jill Springer, Acting FPO
Mark Udall, U.S. Senator, Ranking Member on the Senate Indian Affairs Committee