

# BAD RIVER BAND OF LAKE SUPERIOR TRIBE OF CHIPPEWA INDIANS

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CHIEF BLACKBIRD CENTER

P.O. Box 39, Odanah, Wisconsin 54861

March 15, 2018

Federal Communication Commission  
445 12th St. SW,  
Room TW-A325  
Washington, DC 20554

Re: Bad River Band of Lake Superior Tribe of Chippewa Indians' Opposition to the draft Report and Order  
(WT 17-79)

Dear Chairman Pai and Members of the Commission,

As a sovereign nation with inherent authority over the Bad River Indian Reservation and off-reservation area within the Tribe's treaty territory, and pursuant to treaties we signed with the United States, we submit our comments of opposition to the Federal Communications Commission's draft Second Report and Order released on March 1, 2018. These comments are based upon the review of WT Docket No. 17-79.

## The Costs Associated with the Section 106 Review are Appropriate

The draft Second Report and Order cites an increase of fees associated with current historic preservation and environmental review obligations as a burden to the industry in the deployment of wireless facilities. The Tribe assesses a \$650 fee. The fee reflects the time spent in conducting a review that includes intake staff, tribal monitors, a policy analyst, and anticipated costs of contacting elders. The fee allows the Tribe to best identify and protect cultural resources that archeologists cannot because of the breadth of cultural historic knowledge. Through the Tribe's process, sites have been preserved, including previously disturbed sites. The fee schedule implemented by the Tribe is not an arbitrary fee but is necessary to protect the cultural heritage in light of past deployments of wireless facilities and the proposed mass deployments by industry.

## The FCC Did Not Engage in Government-to-Government Consultation

Despite the Tribe being listed as in attendance, it was not clear that the meetings were presented as "consultations" nor are the meetings sufficient to be considered government-to-government consultation. The Tribe was not provided proper notice of meetings and content to be discussed at the meetings identified in an agenda, if an agenda was provided at all. The Tribe's mere attendance at a conference is not the same as, nor sufficient to be considered as, government-to-government consultation as required under the Tribe's THPO consultation policy or the FCC's own Tribal Policy Statement. At the least, government-to-government consultation requires the FCC to meet with the Tribe.

The FCC should focus on ensuring Tribal Nations are in a position to authorize, or not authorize, a project rather than on the associated costs to industry. Industry claims that it will cost millions and provide an undue burden on them to properly survey and engage in Section 106 of the NHPA. Ironically this is after industry has already made a significant profit from its relationship with Tribal Nations. To provide industry with an exemption

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in this instance is not commensurate with the historic preservation benefits of requiring Section 106 review. With the FCC's action, for the first time since the NHPA was amended in 1992 a federal agency has unilaterally decided to not treat Tribal Nations as sovereign entities with the rights and responsibilities to speak for themselves and to protect their cultural heritage. The draft Second Report Order ignores tribal sovereignty and proposes to treat Tribal Nations as businesses that must conform to market demands, without any say in the process. The Tribe is not resistant to development, but expects that development be respectful.

In summary, the Tribe requests in fulfillment of the Commission's trust relationship with the Tribe, for the Commission to engage in consultation on this matter. Please contact me at the number listed below to arrange for a time that the Commission can engage in consultation on this matter, or if I can provide any additional information.

Weweni sa,



Edith Leoso

Historic Preservation Officer

cc: Bad River Tribal Council