

March 15, 2018

Federal Communications Commission
445 12th Street SW
Washington, DC. 20554

RE: Docket No. 17-79 2nd Report and Order (2nd Report and Order)

The Northern Cheyenne Tribal Historic Preservation Office, on behalf of the sovereign Northern Cheyenne Nation in Montana, are responding to a forthcoming vote regarding proposed changes to tribal involvement in 5G technology and the Section 106 review process for Tower Construction Notification System. As a sovereign tribal government working alongside our federal government, we strive to continue to improve our business relationships with consulting parties utilizing FCC related communications, of whom our office works closely with on a daily basis. The mission of our office is to ensure that sites of traditional religious and cultural significance to our tribe are properly identified, protected and/or mitigated. The changes proposed in the upcoming docket vote on March 22, 18, if voted for approval, will undermine our right to review as a sovereign entity and our legal obligation as a regulatory office ensuring compliance is being done under Section 106 and 110 of the National Historic Preservation Act on behalf of the Northern Cheyenne Nation.

Our office strives to maintain positive working relationships with our consulting groups, and continue to be responsive in ensuring TCNS reviews are completed within 30 days. We also continue to be cooperative with our consulting groups. Majority of TCNS projects have been completed in good faith between our department and our consultants. Merriam Webster Dictionary defines “*good faith*” as: honesty or lawfulness of purpose. In the spirit of good faith, we understand that proposed docket changes to the FCC Section 106 review process has resulted in tribes not being properly “consulted”, but rather having a document justifying a streamline process that has resulted from consulting groups complaints that tribes are hindering the process, holding up projects, and are charging outrageous fees that they no longer wish to pay and/or feel the need to pay because it is a simple review that often results in a ‘no effect’ determination. While some instances may be true for some consulting agencies with various tribes, it is unfair to assume that all consultation with tribes regarding TCNS will have the same outcome when it comes to TCNS review processes and timelines.

The FCC Fact Sheet does not accurately represent our TCNS review process, in that we have not raised our prices in review fees in the four years our department has been reviewing projects through TCNS, we have a good standing with consulting groups because we usually respond in 30-days or less, and we are also flexible with batching projects when requested. For

example, Ramaker and Associates, sent our office review documents regarding 346 small cell network deployments that we agreed to review under one single fee, rather than charge for each subsequent node after the initial review fee. Therefore, this instance shows that we are working with our consulting groups despite pushback from industry claims that state we are inhibiting projects and are not working to make fees less cost-effective but rather increasing fees at a continuous exponentially high rate.

A request for tribes to justify fees charged continues to be an on-going issue with consulting agencies, due to the fact that many are paying thousands of dollars to receive letters of determination from tribes utilizing the online system. A single staff member works full-time on TCNS reviews, and is solely committed to ensuring that compliance is being met. Trained monitors, or Traditional Cultural Specialists, are readily available and are required to attend training each year to become well educated on what features are important to us, such as: cairns, tipi rings, sacred stone circles, effigies, burials types, etc. Additionally, revenues generated from TCNS reviews have allowed us to expand our capacity in conducting efficient and thorough reviews, in that we were able to hire supporting staff to research digital and written literatures within single project areas to gain a sound understanding of our history, and we also pay our elders a stipend for oral histories and stories of our people when we lived in such areas. The time spent reviewing each TCNS project, researching written records, online research, support staff, and elder support has allowed us to readily review and send out letters of determination prior to and/or within the standard 30-day review period.

Our office can provide documentation regarding the number of times we have requested additional information that was not provided when entered into our online TCNS system. Each consulting group is required to submit certain documentation when they enter project information into the system, which is clearly outlined in our application section. Because we are not involved in initial pedestrian surveys, usually completed by non-native archaeological firms, we are not always certain whether the initial information provided to us is efficient enough to make a determination of whether sites of traditional religious and cultural significance to our tribe will be impacted. Therefore, we request ethnographic reports, Class I file searches, and Class III reports to gain a greater understanding of the different time periods, the topography, the view shed, and the environment from a holistic perspective.

Furthermore, there are documented instances when the wrong information was provided, when a TCNS number was filed wrong, and when legal descriptions were not provided. Our office is the required to request such additional information due to these instances, which can also further delay project clearance times for which we are not at fault. Letters of determination are also sent to the e-mail provided to us when entered into the system, and often times we are contacted up to as many as sixty days requesting a letter of determination. We received e-mails with FCC included and/or receive e-mails from FCC stating that were are not being compliant with the 30-day review period, when in fact e-mails were sent. There is an average of ten to twenty TCNS review requests received in our office every day, and we usually complete them in the order they were received, but often complete reviews within 20 days when consulting groups contact our office requesting an expedited review.

Cheyenne people have a historical footprint that extends to thirteen states, and there is factual written historical documentation supporting this statement. Our people have lived on and

utilized the land for various purposes for countless generations, and this is indicated by the physical properties(sites) our ancestors made that only our tribe can properly assess, identify, and recommend for mitigation and/or protection. There are resources utilized at home to assist us in determining what is of traditional religious and cultural significance to our people. This report and order will undermine our ability to exercise our sovereign right to govern what is done with resources that are ours, in essence sites that are irreplaceable when not identified and evaluated correctly by our tribal experts. Also, tribes have an innate human nature that allows us to recognize and distinguish traditional cultural properties despite whether it belongs to their tribe or not. Most notably, tribes across the northern plains have created networks that have allowed for greater protections of sacred sites because of our ability to effectively communicate and work together when seeking additional information regarding our often intertwined tribal histories.

TCNS allows tribes to ensure that sites are being considered when undertakings are being proposed, in that we are able to review information that will allow for us to gain a greater understanding of traditional cultural properties(sites) located on our ancestral homelands, cultural resources that we have not been able to visit recently because of the creation of reservations and the inability to re-connect with them. Our tribe has maintained a strong traditional knowledge base of our cultural resources to explain why sites are important to us when necessary. However, we are not required to disclose any sensitive information that we feel does not need to be shared outside our tribe, and that is our right as sovereign nations. We are simply protecting what belong to us, the defining features of our cultural identity. We understand that most site information shared from tribes is perceived by consulting agencies as “anecdotal”, but we continue to be hesitant with sharing detailed information because of the continued rampant lootings and destruction of burials and sacred sites that is still prevalent today.

Finally, we request that continued consultation occurs with tribes regarding the right to continue to complete Section 106 reviews through the TCNS system as we have been. We understand that there is a demand from industry for FCC to create legislation that would streamline the various hindrances consulting agencies have had with tribes in regards to compliance and review fees, for example. As previously mentioned, 5G technology will improve communications and improve infrastructure, which will also benefit tribes as well. However, we request that the FCC meet with our tribal governments on a government-to-government basis to continue this discussion, and believe that there can be a positive outcome and all parties will gain a greater understanding and mutual respect from this good faith effort.