

Congress of the United States

Washington, DC 20515

March 20, 2018

The Honorable Brendan Carr
Commissioner
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Dear Commissioner Carr,

We urge you to reconsider your proposed order that would short-circuit the safeguards for tribal lands set forth in the National Historic Preservation Act (NHPA).¹ While we are enthusiastic supporters of efforts to deploy more wireless broadband, including new 5G technologies, we do not believe the Federal Communications Commission (FCC) should set up this false choice between broadband deployment and respect for tribal sovereignty. Your proposal would undermine the foundations of tribal protection and consultation set forth by Congress in the NHPA,² while doing nothing to secure a single enforceable commitment that broadband providers will actually build more infrastructure.

Congress instituted the consultation requirements in NHPA specifically to protect the heritage of sovereign tribal communities, and these consultations have been successful. For example, the Delaware Tribe uses the NHPA to protect culturally significant areas where the tribe “endured over 300 years of forced removals across 16 states” and where at least 13,000 tribal members were buried, many in unmarked graves.³ But leaders of the Choctaw Nation are afraid that if the FCC moves forward with its plans to curtail these consultations, new infrastructure installations risk “irreparably damaging the human remains, sacred sites, and historic properties” of the tribe’s ancestors.⁴ If these lands are harmed, they can never be replaced.

The proposed order renders the NHPA toothless in its central purpose to protect tribally significant sites because it would carve out all small wireless facilities from the NHPA process. The proposed order claims these small wireless facilities are the size of a pizza box, but the wireless industry notes that hundreds of thousands of these sites will need to be deployed to meet consumer demand for new 5G networks.⁵ If the FCC were to carve out small wireless facilities from NHPA,⁶ the Commission could be subjecting culturally significant sites to death by hundreds of thousands of small-cell cuts.

¹ Federal Communications Commission, *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, Second Report and Order, WT Docket No. 17-79, FCC-CIRC1803-01.

² CRS, *A Section 106 Review Under the National Historic Preservation Act: How It Works*, at 6 (May 16, 2012) (“Consultation is the backbone of the Section 106 process. It is an interactive process in which an agency evaluates an undertaking’s effects on a historic site with input from consulting parties. Consulting parties include . . . affected Indian tribes or Native Hawaiian organizations.”).

³ Delaware Tribe of Indians, Comments, WT Docket No. 17-79 (Mar. 9, 2018).

⁴ Choctaw Nation of Oklahoma, Comments, WT Docket No. 17-79 (Feb. 8, 2018).

⁵ Senate Committee on Commerce, Science, and Transportation, *Hearing on Rebuilding Infrastructure in America: Investing in Next Generation Broadband*, 115th Cong. (Mar. 13, 2018).

⁶ See note 1 at ¶ 35.

To the extent the NHPA remains intact, your proposed order shifts the burdens away from the corporations that benefit from the order and onto often cash-strapped tribes who receive nothing in return. The existing system ensures that these communities can afford to perform an adequate review to protect their sacred land by allowing them to collect a fee from the carriers that benefit from the deployment. Yet, rather than provide the additional resources to tribes to deal with the coming onslaught of new deployments, your proposed order would shorten the tribes' time for responding to consultation requests. Even worse, the proposed order would allow an applicant to cut out the tribes altogether, and then places the burden on the tribe who may have been excluded from the process to prove that the corporations did not make reasonable and good faith efforts to identify historic properties. The end result of this process will inevitably be the destruction of culturally significant tribal lands that never received a sufficient review.

Above all, we are dismayed that this most recent Order more broadly reflects the culture of this Commission's majority to act always at the behest of industry again and again at the expense of consumers, localities, and otherwise marginalized and disenfranchised communities who are in the most need of their government to look out for *them*. From neglecting to provide sufficient local representation on the BDAC, to the hurtful and unnecessary Lifeline proposal currently before the Commission, each month we have witnessed further abdication by the agency of its duty to act in the public interest.

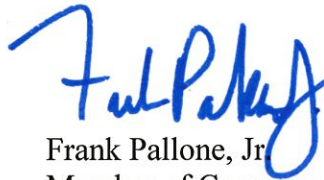
We all agree that it is a priority to have every American connected and ensure that the U.S. remains competitive in 5G and other technologies, but there surely is a way to do so without the unilateral sacrifice of so many other values. We implore you to reconsider your current proposal and instead work to ensure tribes are given more resources to protect their lands.

We look forward to your timely response.

Sincerely,



Anna G. Eshoo
Member of Congress



Frank Pallone, Jr.
Member of Congress



Raul Ruiz
Member of Congress

cc: Members, Federal Communications Commission