

Boyd I. Gourneau  
Chairman



Tribal Administration  
187 Oyate Circle  
Lower Brule, SD 57548  
Phone: (605) 473-5561  
Fax: (605) 473-5554

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**TO WHOM IT MAY CONCERN – FCC**

**RE: WT Docket No. 17-79 -- March 1, 2018 FCC FACT SHEET Wireless Infrastructure Streamlining Report and Order**

**FROM: BOYD GOURNEAU, CHAIRMAN**

**LOWER BRULE SIOUX TRIBE RESPONSE AND COMMENTS**

The Lower Brule Sioux Tribe notes that the FCC acted on its own initiative (in cooperation with the Advisory Council on Historic Preservation (ACHP) and representative Tribes) in August 2000 by creating the Telecommunications Working Group, which brought Tribes into the process of consulting on celltowers. Tribes in good faith joined in the TCNS agreement and process in order to protect the lands in their traditional territories from undue disturbance and the potential harm to cultural resources and traditional cultural properties of tribal significance. In order to do so, the Tribes did have to task individual people with cultural resources expertise to respond appropriately.

**Meeting the Demands of TCNS Consultation - Workload Effects and Job Creation**

Lower Brule was able to participate in the TCNS process for 12 years - from its inception in 2004 until March, 2017 - without requesting a fee for the specialized research efforts required to comply with the information requests that come through the TCNS program. By 2017, however, the sheer volume of applicant requests - importantly, with no expansion of the Tribe's geographical region of interest - became burdensome and required additional professional capacity to review.

The FCC asserts strongly in several places in this document that applicants are not obligated to pay Tribes for consultation or even go beyond "good faith" efforts to produce the information necessary for appropriate Tribal consultation – even though the ACHP guidelines are vague about the difference between paying to review documents and paying to provide information from Tribal resources. At the same time, the FCC asserts that the celltower industry has created thousands of jobs nationwide.

The FCC should also be aware that the TCNS process of ensuring that tower locations do not impact areas of cultural concern has - as the sheer numbers of locations grew rapidly -- created jobs within tribal communities that are (at least in the upper northwest) economically disadvantaged. Even though

they may be few in number, the loss of these jobs will definitely create economic hardship for many Tribes. To simply discard this positive benefit, places renewed burdens on disadvantaged communities that have few employment options. Lower Brule therefore rejects this stance, as it clearly does not serve the “public good”.

### **Differences in the FCC Approach to Tribal Fees as Compared to other Federal Agencies**

The application of a fee structure is consistent with similar practices that take place between other government agencies and Tribes when consultation is necessary regarding projects on lands of historic and cultural significance. Tribal specialists are paid to attend consultation meetings, go on field trips to project locations, and to conduct surveys for evidence associated with Traditional Cultural Properties (TCPs). These projects differ from FCC projects, because the Federal Agency and the consulting tribes are usually working together for a year or more. The fact remains that these are Federal actions - the costs of consulting paid for by the project proponent. To state that other Federal agencies do not pay fees to Tribal entities is incorrect.

It is important to note, here, that there are two critical differences between the FCC requirements for consultation and those of other federal agencies: 1) the very short time allowed for decision-making relative to an undertaking; and 2) the FCC's assumption that Tribes have information ready at hand for such decisions.

With respect to the time allotment, when Tribes receive first notices and then sufficient information from applicants to make an informed decision on a proposal, they are asked to complete all requirements within 30 days. This time period may be sufficient for Tribal specialists to review archaeological reports and other information supplied by outside applicants, but it is insufficient with respect to TCPs, as this knowledge is held as oral tradition by knowledge keepers and, therefore, requires additional consultation. In comparison, project consultations with other Agencies frequently extend over months, and Tribes are brought into the process appropriately, with recognition of not only their sovereign status, but also the particular requirements of each Tribe with respect to consultation, as they may vary significantly.

Regarding the second difference with other agency consultation, the Lower Brule Sioux Tribe takes strong issue with the FCC assumption that Tribes should have the necessary information for decision-making ready at hand, as indicated in this extract from Paragraph 13 in the March 1 FCC Fact Sheet:

Para. 13: “In assessing the applicant's submission during the initial consultation stage, we believe it reasonable to expect a Tribal Nation or NHO to rely on information already in its possession. If a Tribal Nation conducts research to obtain this information, however, the ACHP's guidance does not assign responsibility to applicants to fund such research.

The Lower Brule Sioux Tribe objects to this characterization on two grounds:

- 1) almost all traditional Tribal knowledge is not written down and therefore must be gained through direct consultation with tribal members; and

2) most lands traditionally occupied by the Tribe are no longer in the Tribe's possession, distant from the current Reservation (due to the massive relocations by the Federal government), most often in extremely rural areas, and, therefore, require cultural resources (TCP) surveys to identify features of cultural significance.

Both these necessary tasks have identifiable, reasonable costs that FCC and its applicants should recognize.

### **Recommendations**

The Lower Brule Sioux Tribe concurs with the FCC that the TCNS process needs to be streamlined. The Lower Brule Sioux Tribe also supports a re-evaluation of the Section 106 process as it relates to urban towers, the co-location of towers and the replacement of towers. However, the Tribe supports the Section 106 process and the necessity for tribal consultation as it is applied to tower locations proposed in the vast rural areas of the west and southwest (of which there are many). Fee schedules for a modified Section 106 process need to be equitable and consistent with market value.

In conclusion, the Lower Brule Sioux Tribe recommends that the issues outlined above be resolved within the FCC's Native Nations Communications Task Force.

