



May 16, 2017

Via Electronic Submission

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th St., SW, Room TW-A325
Washington, DC 20554

**Re: Ex Parte Communication
Streamlining Deployment of Small Cell Infrastructure by Improving
Wireless Facilities Siting Policies, WT Docket No. 16-421**

Dear Ms. Dortch:

In filings with the FCC, and more recently in press reports, questions have been raised regarding costs associated with the deployment of small cells around NRG Stadium in Houston, Texas, in advance of the Super Bowl that were referenced by Chairman Pai at the FCC's April Open Meeting.¹ In Sprint's Comments in Docket No. 16-421, Sprint noted that it incurred costs of \$173,305 for 23 cell sites deployed around the stadium resulting from compliance with Section 106 of the National Historic Preservation Act.

The filings by the City of Houston and the Texas Historical Commission suggest that the fees were imposed on carriers by the City or the Texas Historical Commission. But as noted in Sprint's comments, and as outlined more fully below, the costs referenced were associated with tribal historic review fees imposed by federal law under Section 106, not state or local historic reviews. Sprint was not attempting to disparage the City of Houston or suggest that the City of Houston had imposed improper fees. To the contrary, Sprint's concern was, and continues to be, that the tribal historic review process under the National Historic Preservation Act imposes excessive costs and delays on wireless deployment with few corresponding benefits.

To enhance coverage for the Super Bowl earlier this year, Sprint constructed 23 small cells in the vicinity of NRG Stadium in Houston. A photograph of one of the sites is shown below:

¹ See Letter dated May 10, 2017, to the Commissioners from Houston Mayor Sylvester Turner and the e-mail to Stephen DelSordo dated April 24, 2017, from Justin Kockritz of the Texas Historical Commission; TR Daily May 15, 2017, "Houston Mayor Criticizes Pai's Super Bowl Comments" (collectively, "Filings" or "filings").



The historic review fees for those locations were not paid to the State of Texas or the City of Houston, nor did Sprint suggest that they had been. Instead, as described in Sprint’s Comments,² Sprint paid the fees (through its contractors) to a dozen Indian Tribal Nations pursuant to the Commission’s rules and procedures implementing Section 106 of the National Historic Preservation Act. Sprint has no complaints about the City of Houston’s process for reviewing and approving applications for small cells. In fact, the City of Houston reviewed Sprint’s applications in a timely manner and, as the Mayor pointed out, imposed reasonable fees for reviewing those applications.

Under the Commission’s implementation of NHPA, the construction of an antenna that uses licensed spectrum is considered a federal undertaking, subjecting the wireless license holder to fees and procedures enacted to protect sites listed or eligible for listing on the National Register of Historic Places. This process requires consultation with any Tribal Nation that expresses interest in projects in a particular county or state, even when the construction of the wireless support structure and antenna will occur on private property or property owned by the government, and not on tribal lands.³ Even though the Commission’s rules in the Nationwide Programmatic Agreement (“NPA”) exempt projects below a size threshold in or near public rights of way from review by the state historic preservation officer, those locations continue to be subject to tribal review.⁴ Accordingly, Sprint was required to go through this portion of the historic review process, even though consultation with state SHPO was not required.

² Comments of Sprint Corporation, WT Docket No. 16-421, at 45-46 (March 8, 2017).

³ See generally Notice of Proposed Rulemaking and Notice of Inquiry, *In the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, WT Docket No. 17-79, FCC 17-38 (Released April 21, 2017), ¶¶ 27-31 (“Accelerating Wireless Broadband NPRM”).

⁴ NPA § III.E.

Pursuant to the FCC’s rules embodied in the NPA, Sprint’s contractors submitted notification of the proposed construction plans through the Tower Construction Notification System (“TCNS”) on November 1, 2016. Under that system, automatic notifications went out on November 4, 2016, to all tribes that had previously designated Harris County or, in some cases, the entire state of Texas as areas of interest for their historic review. TCNS also sent electronic notifications to the Texas Historical Commission, as well as the historic preservation offices for the states of Arkansas and Oklahoma. An example report from one of the 23 sites is attached to this letter as Exhibit A. This process is separate and apart from the need to obtain local zoning and permitting approval and permission from the property owner.

In response to the notifications, Sprint received historic review fee demands and subsequently received concurrence that no historical sites would be affected from the following tribes for each of the 23 sites:

Tribe	Tribe Fee	Concurrence Date
Northern Cheyenne Tribe	\$400.00	12/15/2016
Wichita and Affiliated Tribes	\$750.00	01/02/2017
Mescalero Apache Tribe	\$300.00	12/30/2016
Coushatta Indian Tribe	\$500.00	01/10/2017
Cherokee Nation	\$500.00	12/16/2016
Alabama Coushatta Tribe of Texas	\$500.00	01/13/2017
Tonkawa Tribe	\$200.00	12/29/2016
Comanche Nation	\$500.00	12/30/2016
Apache Tribe of Oklahoma	\$500.00	01/12/2017
Alabama Quassarte Tribal Town	\$800.00	01/10/2017
Eastern Shoshone Tribe	\$400.00	12/27/2016
Kiowa Indian Tribe of Oklahoma	\$1,500.00	01/11/2017

The TCNS report showing the fee demands for eight of the tribes are documented in the example report attached as Exhibit A. The fees for the remaining four tribes were established through correspondence with each individual tribal representative.

The total Tribal demands were \$6,850 per site, and when the cost of paying the fees charged by contractors to coordinate the review with the tribes and to process the fee demands are added, the total expense of complying with the Section 106 tribal review process amounted to \$7,535 per site, or a total of \$173,305 for the 23 sites. Sprint began construction, which was

completed for 19 of the 23 sites in late January. (Four sites were completed after February 1, 2017, as a result of delays unrelated to the tribal historic review process.)

Sprint outlined the tribal historic review fee demands near NRG Stadium in its comments in Docket No. 16-421 as an example of the increasing economic burden imposed by this process. Sprint noted that since the advent of the current tribal historic review process in 2004 and thousands of reviews since then, at no time has a single tribe requested consultation with Sprint or its contractors on the grounds that a proposed antenna location would have an adverse impact on a Historic Property. Sprint has paid millions of dollars in fees in the last 13 years and could be required to pay tens of millions more in the coming years unless the Commission reforms the process as small cell deployments increase. Tribal Nations are continuing to demand higher fees and designate larger and larger areas of interest. At the present, there are no constraints on the amount of fees a Tribal Nation may require or the geographic areas for which it can require payment for review. And as the example described above shows, the tribal historic review process remains in place even in situations—such as utility rights of way—where the Commission has exempted state historic review.

Recognizing the impact on broadband infrastructure investment and deployment, the FCC asks questions and is seeking comments on fees and other issues related to tribal consultation under Section 106 in the Accelerating Wireless Broadband NPRM.⁵ Sprint supports the Commission's efforts to reform wireless infrastructure siting requirements.

Sincerely,

/s/ Keith C. Buell

Keith C. Buell
Senior Counsel

Attachment
