



# THE MOHEGAN TRIBAL GOVERNMENT

The Mohegan Tribe of Indians of Connecticut  
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Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

## **I. Introduction**

The Mohegan Tribe of Indians of Connecticut (Tribe) submits the following comments in response to the Notice of Rulemaking and Notice of Inquiry (NPRM/NOI) for *In the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, WT Docket No. 17-19. The Tribe understands the need for and supports the deployment of broadband infrastructure throughout the nation. Reliable wireless networks are the backbone of our Tribe's economy and the welfare of our citizens.

As the Tribe understands, the NPRM/NOI is a response to a Petition for Declaratory Ruling filed by PTA-FLA, Inc. The Tribe believes the NPRM/NOI will cause damage to the government to government relationship between the Tribe and the United States while also raising the risk of damages to historic properties of importance to the Tribe.

The Tribe takes issue with the characterization of tribal consultation as a "barrier" to infrastructure investment. Tribal consultation is the cornerstone of the federal trust responsibility. The Tribe believes that if the NPRM moves forward the FCC must conduct government to government consultation with all 567 federally recognized tribes. The FCC has an obligation to consult with tribes on any major proposed changes to federal policies that may significantly affect or alter the trust relationship.

The Tribe strongly encourages the Federal Communications Commission (FCC) to continue to support the use of the Tower Construction Notification System (TCNS) as is currently implemented. TCNS has proven to work effectively in fulfilling the agency's requirements to consult with federally recognized Native American tribes under Section 106 of the National Historic Preservation Act while also ensuring that Tribes have an effective conduit for providing reviews for proposed projects. Tribes and the Federal Government worked together to develop the TCNS. Through TCNS, the Tribe has been able to identify historic properties of importance to the Tribe. The TCNS has also facilitated a cooperative path forward for the agency, proponents and the Tribes to work together in mitigating impacts to cultural resources identified through the process.

## **II. Wireless Facility Construction is an Undertaking**

The construction of wireless facilities is without question a federal undertaking. The NHPA defines an undertaking as any project, activity or program “carried out by or on behalf of the Federal agency.” Construction of wireless facilities is subject to Federal approval. Therefore, such activity constitutes an undertaking and requires the agency to take into account the effect of its actions on historic properties.

## **III. Fees**

In October of 2004, the FCC acknowledged the appropriateness of tribal fees for reviews in *Voluntary Best Practices for Expediting the Process of Communications Tower and Antenna Siting Review Pursuant to Section 106 of the National Historic Preservation Act*. To paraphrase, the FCC stated that payment of tribal fees is appropriate when the agency or applicant asks a tribe to identify historic properties that may be significant to the Tribe.

For Mohegan, tower reviews through the TCNS are conducted in house by a staff member whose main responsibility is those tower reviews. Our turn-around times average well within the 30 day response period. Considering we are a staff of only five, the fees assessed by our office offset the time and energy spent on having one staff member solely dedicated to TCNS. Those funds are used for educational outreach, capacity building, and other tribal needs and concerns as they relate to historic preservation.

Recognizing that each tribe has their own process for reviews, a standard flat fee imposed on all tribes is unacceptable. Each federally recognized tribe is a sovereign nation that possesses the inherent right to self-governance. Therefore, each tribe should retain the right to set fee structures independently.

We believe the issue raised by industry regarding the expansion of areas of interest (AOIs) is misguided. The Tribe believes that as tribes generate more revenue from reviews, they are able to build more capacity and engage in more reviews throughout their ancestral homelands.

The Tribe believes that the issue with bad actors regarding fees assessed for reviews should be addressed directly with those individual tribes and not through new, sweeping rulemaking that has the potential to undermine the trust relationship between the FCC and the Tribe. Tribal fees are appropriate for the work being done by tribes for their reviews of proposed towers.

## **IV. Area of Interest**

The tone of comments in the NPRM regarding AOIs is offensive with regard to the inherent sovereignty of the federal recognized tribes. Each tribe knows best how to identify their respective AOIs. To suggest that tribes be limited in their ability to set their own AOIs undermines the government to government relationship. Tribes possess unique knowledge of their histories and should not be required to provide certification of AOIs unless in those rare instances where a Tribe is clearly abusing the system. However, no concrete examples of abuse

have been offered by the FCC. The Tribe encourages the FCC to deal directly with bad actors on an individual basis rather than impose sweeping changes on a system that works efficiently and effectively.

## **V. Exclusions**

The Tribe does not support expanding exclusions for existing utility rights of way or transportation rights of way. Historically, those ROWs were created without tribal consultation. The ability to assess projects in such ROWs is a critical tool for protecting tribal historic properties.

Collocations on the so called "Twilight Towers" should not be excluded from review. The FCC has not taken steps to assess the impacts that those towers have had on historic properties. Therefore, excluding such towers falls short of meeting the requirements of Section 106 of the NHPA.

## **VI. Conclusion**

The Mohegan Tribe of Indians of Connecticut appreciates the opportunity to comment on the NPRM/NOI. The Tribe strongly encourages the FCC to consult directly with all 567 federally recognized tribes on any proposed rule changes that carry the potential to alter the tribal consultation process. It is our hope that the FCC will facilitate consultation with tribes that respects the inherent sovereignty of each tribe. The Tribe looks forward to engaging directly with the FCC on addressing concerns raised in the NPRM/NOI.

Respectfully,



James Quinn

Mohegan Tribe of Connecticut