

NORTHERN CHEYENNE TRIBE
TRIBAL HISTORIC PRESERVATION OFFICE

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June 15, 2017

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

WT Docket No. 17-79

COMMENTS OF THE NORTHERN CHEYENNE TRIBE ON NOTICE OF PROPOSED RULEMAKING FOR
ACCELERATING WIRELESS BROADBAND DEPLOYMENT BY REMOVING BARRIERS TO INFRASTRUCTURE
INVESTMENT

RE: On the question of fees

When a project proponent, or one of their contractors working on their behalf, comes to us in the 106 process, requesting we aid in the identification and evaluation of historic properties that may be affected by the proposed tower project, we should be compensated for the work we do and the work product we produce. Under 36CFR800 and the FCC's Nationwide Programmatic Agreement on Cultural Resources the Federal Government recognizes the unique relationship and trust obligation the federal government has when it comes to Native Americans. The FCC has honored its obligation to do so, "in a manner sensitive to the concerns and needs of the Indian tribe" (36 CFR 800.2iiC). We are being asked to fulfill part of the federal agencies' regulatory requirements. We keep the project proponent in compliance with the law. We are asked to do research, review, and produce a formal finding. There is a direct burden placed on us – it takes peoples' time and equipment to help our partners in the FCC and industry meet their obligations. In essence, we are asked to fulfill the part of a contractor – a contractor with singular knowledge of the cultural resource significant to our tribal nation. We should be compensated for the burden of the direct costs of working on this regulatory activity and the work product we produce.

Of course, under the Moss Bennett Act of 1974 the burden of the cost of compliance with the National Historic Preservation Act falls to the project proponent. The telecommunication industry is a wildly profitable enterprise. In just the first quarter of 2017, Verizon alone turned a profit of \$29.8 billion, rival carrier, AT&T, made a profit \$39.37 billion in the same quarter. It is ridiculous that tribal nations, with some of the poorest communities in the United States, would have to subsidize the telecommunications industry by covering the

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cost of industry compliance work. Aside from it being the legal obligation of the industry, paying for services rendered should also be understood as a moral imperative.

The ACHP and FCC have long stood behind us for the fees we are charging. We have fostered our relationships with these federal agencies for many years. We work closely with them on a weekly – indeed nearly daily basis. They understand the great effort we put into our work and have stood by us as our federal trustee on these types of issues. While some tribes may be charging high fees, we developed a fee schedule based on the cost of the work we do and we feel this is not excessive. If there are tribal nations who are charging excessive fees, we feel that a conversation between those individual tribes and the FCC may be appropriate. Some bad actors charging excessive fees should not cause all the tribes to be punished. This would be similar to shutting down all banks because some banks took up bad loaning practices.

Our Tribal Council passed the fees that we charge for assisting in the 106 process by tribal resolution. Some of the project proponents have said they will pay us – but only pay us a small portion of the fee, because they do not think it is worth it. They are not haggling over buying a rug at a flea market. These fees are not dictated by personal or even our department rules, these are regulations passed by Council Resolution. Individuals cannot change these fees; such a move would require council action. These fees cover the direct costs we incur because of the request made of us.

The Advisory Council on Historic Preservation has weighed in on this:

“When Payment Is Appropriate

When, during the identification phase of the Section 106 process, an agency or applicant seeks to identify historic properties that may be significant to an Indian tribe, it may ask for specific information and documentation regarding the location, nature, and condition of individual sites, or actually request that a survey be conducted by the tribe. In doing so, the agency essentially asks the tribe to fulfill the role of a consultant or contractor. In such cases, the tribe would seem to be justified in requiring payment for its services, just as any other contractor. The agency or applicant is free to refuse, but retains the obligation for obtaining the necessary information for the identification of historic properties, the evaluation of their National Register eligibility, and the assessment of effects on the historic properties.” www.achp.gov/Regis-fees.html

Some project proponents have stated that tribal fees were “unreasonable and excessive.” We have a fee that has been based on the work that we do and the direct costs we endure while doing it. We have done this work for years, and our fees are based on the actual

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cost of the work we are doing. It seems clear that there is a misunderstanding, or people are simply unaware of the process and effort made on our part to ensure the project proponents are in compliance.

We review each project carefully. There is an entire process we have in place to review each project. We have staff members dedicated to the process to ensure we can turn the undertaking's review around in a timely manner, while identifying and evaluating cultural properties, which may be potentially eligible for listing on the National Register of Historic Places. This is a large cost to us – to have the human resources in place to do the actual review. In addition, we have a web-based service we use to organize, catalog, archive, and track all of our projects. We have the information and records at our fingertips.

We are also in the process of developing our Tribal Register. This register is a proactive action on our part to further streamline our section 106 process. It, in many ways, mirrors the National Register of Historic Places; however, our tribal register reflects the singular knowledge and places that are significant to our people. This too is part of the review process – this database is unique and important to us and is becoming intricate to our review process.

We have bookkeepers that work with us to ensure the fees that come in are processed correctly and applied to the proper area. We also make sure that all of our staff has the training needed and equipment to ensure they can do their job. This is part of what the fee goes to pay. In addition, in some cases we bring in elders from the tribe to consult on projects. Our elders are our most valuable resource. They are walking libraries – with information that can be found NO OTHER PLACE. We value their time and sharing. There are cultural protocols we must follow to ensure we are doing our job correctly and ensuring cultural rules are followed. We have to ensure we can fulfill this obligation to our culture and to our elders, but this too takes time and resources.

Our work on cultural resources and the National Historic Preservation Act is our means to protect our places, language, and way of life by engaging with the dominate society and advocating for our people in a very meaningful way – a way that makes us who we are. We are unique among all people – we are the ones who carry on the traditions our ancestors have passed down to us – we are the protectors of the land that our people have been buried in for millennia. It is from this land we have been shaped and it has given us life. We are this land – she is our mother and through this cultural resource process we advocate on her behalf as her

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children who have lived with her since the beginning of the people. We cannot and will not forget the history, culture, and gifts we have been given. The places on this land are not simply sacred, they are US! The biography of our people is told on this land. Consultation ensures we are at the table to tell our very unique history and protect, educate, and promote our culture to the rest of the world.



Teanna Limpy

Tribal Historic Preservation Officer

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