

BAD RIVER BAND OF LAKE SUPERIOR TRIBE OF CHIPPEWA INDIANS

CHIEF BLACKBIRD CENTER

P.O. Box 39 • Odanah, Wisconsin 54861

June 15, 2017

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

**Re: Accelerating Wireless Broadband Deployment by Removing Barriers to
Infrastructure Investment (WT Docket No. 17-79)**

Dear Secretary Dortch,

The Bad River Band of the Lake Superior Tribe of Chippewa Indians is providing comments to the Federal Communications Commission (FCC) on its 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) published May 10, 2017.

Bad River is concerned about effects the proposed rulemaking may have on Section 106 of the National Historic Preservation Act (NHPA), 36 CFR Part 800, and its protection for Native American Sacred Sites, and Native American burials, as well as, the physical, psychological and emotional well-being of Native American people.

In response therefore, it is astounding that to open this extensive of a rulemaking that only one broadband assessment is referred to in the introduction. Perhaps because there are so few datasets to research the economic impacts of broadband. From another assessment, referenced below, we do not contradict that billions of new investments are being made to institute broadband and that broadband has created millions of new jobs. It is the manifestation of the 1990's Trickle-down economics at work, and the Bad River Tribal Government, Bad River Tribal Historic Preservation Office, Bad River Tribal youth and Bad River Tribal elders have realized the benefits of such economic impacts through a variety of means directly attributable to the private broadband industry – and not from U.S. federal government subsidies, to our Tribe.

We have found that approximately 5.16% of the population connects to broadband each yearⁱ bringing nearly 88% of households currently in the United States connected to broadband. This approximation is only an approximation because there are so few data sets available to research the economic impacts of broadband, but with this estimation, it provides that the broadband industry produces billions in revenues all around, and significantly contributes to the U.S. Gross

Domestic Product. And that's not even counting the contribution from the Enterprise penetration of the broadband economic impact.

Considering the economic ramifications of broadband, it is curious, as to why the NHPA and NEPA are being targeted in this rulemaking, except, perhaps, for the fact that if changes are implemented that it would have a direct negative impact upon Tribal Nations, which is contradictory to the ITU/UNESCO Broadband Commission for Digital Development. It does, however, exemplify that Tribal Nations in the United States continue to be considered expendable components of a government that was, ironically, initially based upon Tribal governance because Tribal governance is so transparent, and the U.S. Constitutional framers were evidently tired of the hierarchal methodologies of tyrannical leadership.

In addition, the Bad River Band has the following specific comments on the Federal Communication Commission's proposed rulemaking:

1. Timing of Tribal Review -- "Deemed Granted" Remedy is not necessary

Bad River does not believe a "deemed granted" remedy is necessary. We have always performed our cultural assessments in a timely manner and have never intentionally held up a project. While we can usually get our assessments completed within 60 days, there should be an avenue, if the parties are engaged and working together, to complete the project after that time, if the parties agree.

An important part of this is wireless providers giving tribes the complete package of necessary information as early as possible. Adequate time needs to be given to complete any necessary surveys or reviews, deeming a government's authority to lapse is unnecessary. Again, getting the complete package is essential and the ability to complete the assessment, even if it takes time, is necessary and reasonable.

2. NHPA and NEPA Review

a. Tribal Fees

This section misrepresents the reason that Bad River is involved in these reviews. Bad River is involved because these structures are being built through tribal lands and across tribal sacred sites. Tribes should be paid fees for the work its staff performs on reviews and cultural assessments. The FCC should focus on ensuring that tribes are in a position to authorize or not authorize a particular project, rather than on whether costs are consistent.

b. Other NHPA Process Issues

i. Self-Certification

Bad River strongly opposes any effort to allow applicants to self-certify their compliance with Section 106. The FCC staff notes within the proposed rulemaking that "on numerous occasions that applicants have failed to perform their Tribal notifications as our processes require." Because of this issue, we believe that the FCC needs to have oversight over the Section 106 process for applicants.

ii. NHPA Exclusions for Small Facilities -- Rights-of-Way.

Bad River does not agree that expansion of a right-of-way should be excluded from the NHPA process, if the right-of-way is expanded in any way. The proposed rulemaking uses the phrase "the current right of way exclusion applies only if (1) the construction does not involve a substantial increase in size over nearby structures..." This phrase is too general. Neither "substantial" or "nearby" seem to have a definition. Ignoring the historic property aspects of the area would be ignoring the government-to-government obligation of the federal government to consult with tribes on such projects.

iii. NHPA Exclusions for Small Facilities -- Collocations

Many of the sites chosen for construction are located on the highest geographical landmark in a particular area. These landmarks are significant to Bad River within its territory. When additional equipment is being attached to these towers, Bad River should be notified and have adequate time to comment on this action. These assessments seem to be the target of the proposed rulemaking. Therefore, we strongly urge the FCC to consult with tribes individually before adopting any new rules that would limit their role.

Please contact Edith Leoso, Historic Preservation Officer for the Bad River Band of the Lake Superior Tribe of Chippewa Indians if you have any questions, and in particular to schedule consultation. Ms. Leoso can be reached at (715) 682-7123 or THPO@badriver-nsn.gov.

Sincerely,



Robert Blanchard
Chairman

cc: Edith Leoso

¹ ITU: Impact of Broadband on the Economy, Katz; April 2012