

The SHOSHONE-BANNOCK TRIBES

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June 15, 2017

Secretary Marlene Dortch
Federal Communications Commission
455 12th Street SW
Washington, DC 20554

Submitted electronically at: <http://apps.fcc.gov/ecfs/>

RE: The Shoshone-Bannock Tribes' Comments to the FCC in the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment (WT Docket No. 17-79; FCC 17-38)

Dear Secretary Dortch:

The Shoshone-Bannock Tribes (Tribes) are providing the attached comments to the Federal Communications Commission (FCC) in the matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment (WT Docket No. 17-79), Notice of Proposed Rulemaking (NPR) and Notice of Inquiry (NOI).

As a government agency, the FCC has a trust responsibility to protect and promote Tribal rights and sovereignty, which includes tribal economic self-sufficiency and self-determination. However, language in FCC 17-38 has sharp overtones against Tribal rights and sovereignty and in favor of corporate interests. Respectfully, we urge the FCC to uphold its trust responsibility to tribes in all of its proposed rulemaking, regulations, and operations. As a sovereign nation, the Tribes have our own definition of federal government consultation, and expect federal agencies to notify the Tribes early and often in the promulgation of federal laws and regulations.

The deployment of next-generation wireless broadband may benefit Tribal enterprises. But deployment of infrastructure must not come at the expense of evading the National Environmental Protection Act (NEPA) and National Historic Preservation Act (NHPA) reviews.

The value of requiring environmental and cultural resource reviews are too great to shortcut or fast track, because the nature of our cultural history is not based on mainstream, easily defined or delineated properties. NEPA and NHPA are two major statutory requirements that are integral to protection of the environment—past, present and future resources. Careful research and consideration by our Tribal staff is necessary to avoid inadvertent destruction or damage to unknown or un-researched historic and archeological sites. The valuable links to past human use are often destroyed when the physical materials or remains are inadvertently damaged or destroyed. Combined with the historic diaspora of Indian removal, the Tribes are focused on protecting the fragile physical ties to our off-reservation traditional use areas that are significant and meaningful to our history and future. The Tribes do not support the removal or the creation of abbreviated regulatory review processes that may result in the lack of good-faith efforts to manage the cultural resources that are under the purview of the FCC.

In addition, the Tribes have off-reservation reserved treaty rights that are dependent on healthy and whole natural ecosystems. Often, the installation and operation of infrastructure creates physical boundaries that impact wildlife, which thus results in impacts such as reduced or constrained wildlife habitats or population. The value of NEPA review is that it catches a broad variety of natural resource issues, and consultation issues. Project-by-project consultation is absolutely necessary to prevent projects that would lead to gradual fragmentation and cumulative impacts to treaty-reserved resources.

The (Tribes) request timely notice from the FCC for consultation meetings with Tribal nations on this NPR and other regulatory actions. There was a tele-conference call on May 25, 2017, which we do not consider as Government-to-Government consultation. The FCC then proposed to set up a consultation meeting for tribal nations on the Rosebud Sioux Indian Reservation in South Dakota (June 8 2017). Unfortunately, FCC provided very short notice for that meeting, and our Tribal leadership and staff had prior obligations and could not attend. We take very seriously the to Government-to-Government consultation and expect federal agencies to do the same.

The Tribes are aware that the President wishes to reduce regulatory requirements, and wishes to accommodate the economic goals of wireless companies and their goal to expedite the review process. The Tribes disagree with the FCC proposals to streamline or diminish regulatory processes to reduce “burdens” to Industry. These industry-driven rule changes are effectively diminishing the consideration of Tribal use and significance of our inherent lands. New wireless infrastructure without Tribal input may cause adverse effects to the landscape and compromise tribal cultural properties used for religious and spiritual practices.

The Tribes emphasize the trust responsibility of the FCC to protect and preserve cultural resources from any actions under their responsibility. If the FCC proceeds with the proposed rule changes, it would be acting as an agent for corporate industry, as if the FCC represents the economic benefits to industry, versus the protection of cultural and historic properties. These non-renewable resources will be permanently destroyed or altered.

In conducting these rule making changes, the Tribes point out the failure of FCC to fully consider the economic impacts to the Tribes, both in costs to consultation travel and review time for project proposals. Since the FCC has increased the notification to tribes, as per the 2001 National Programmatic Agreement, tribal costs have increased substantially. The Tribal

Telecommunications Notification System (TCNS) has allowed tribes to respond more quickly and actually. However, delays have occurred as companies have failed to provide the necessary project information, and the tribes have had to request additional information to respond. The problem is not the tribes creating a burden, it is that the companies are not sharing the necessary project information. If the FCC would require the baseline data from the companies in the first place, it would likely reduce the time for tribal consultation and review.

FCC asks about the length of time and the costs for Tribes to complete the Section 106 review process. The answer: it depends. Obviously, how long the Section 106 consultation takes depends on the historical/cultural properties at issue. If there is no property at issue, then the consultation may be minimal. If there is a property, then the process must proceed to the next major steps: identify property and evaluate significance, assess adverse effects, and resolve adverse effects. There have been times in the initial stages of Section 106 when federal agencies and project applicants have neither been immediately and fully forthcoming with all relevant information nor shared applicable cultural resources survey information with the Tribes. This has slowed Section 106 substantially. To speed this phase of any project, the Tribes should be involved early in the process.

It may go without saying that every step involves costs: staff and expert time, travel, meetings, etc. Although the fees do not apply to the Tribes, it is important that FCC recognize the value of the time it takes for the Tribal department to review these proposed projects and have the chance to offer their expertise regarding interpretations of the sites located on our ancestral lands. We are the subject matter experts on our cultural and religious sites. Another major factor is that most pre-contact archaeological sites are often just labeled “unknown” or “unevaluated” or “isolate”. They are labeled this way in part because consultants and archaeologists do not themselves know their significance. That significance can often be best derived from the Tribes. Each time policy is proposed it seems to weaken the strength of the original intent of Section 106.

Delays in the process is that Tribes are not involved early in the process. Whether or not NEPA and Section 106 can be conducted concurrently, the need for collaboration early involves all parties to be involved early. Section 106 should run concurrently with NEPA. Tribes should be involved in cultural resources inventories, which include the Tribes identifying historic properties and places of traditional and religious importance. It is up to us to reveal any cultural information to the FCC. The Shoshone-Bannock Tribes have been and still remain opposed to the idea of divulging all of our cultural properties, sacred sites, and other areas of historic significance. If they plan on constructing a tower in a specific area and there are adverse impacts to our properties, we may recommend to mitigation and relocate to a different site. Avoidance is the desired strategy to mitigate.

Other Federal agencies are facilitating and improving the Section 106 process. For example, in the Final EIS for the Nevada Groundwater Development Project, the BLM agreed to provide funding for Tribes to work on identifying and evaluating Traditional Cultural Properties, a type of historic property potentially eligible for listing under the National Register of Historic Places. The BLM has also been willing to provide the Tribes with funding to participate in consultation meetings. Furthermore, in preparation for the above-referenced Groundwater

Development Project EIS, the project applicant paid Tribal participants time and expenses for participation in the Section 106 process, inclusive to travel to areas of traditional and religious importance.

FCC suggests tribes specify their areas of interest by county. The Tribes view this as inadvisable and we do not agree that tribes should be required to certify their areas of interest. The benefit it would have for our Tribe could be interpreted in ways that harm the Tribes in the future.

The federal government has a special trust relationship with Tribes. That is a supportive relationship, not a degrading one. So we urge, again, the FCC to act as the Tribal trustee in support of tribes establishing fees for carrying out Section 106 reviews and consultations. Do not issue rulings/guidance that chip away at Tribal Nations' Section 106 consultation process that is so essential for most tribes in the US.

The Tribes cultural resource staff responds to federally funded proposed telecommunications projects located on the Shoshone-Bannock inherent lands through the Federal Communication Commissions' (FCC) Tower Construction Notification System (TCNS). The applicants who propose (federally funded) new towers on their private property, which involve ground disturbance, are mandated through the National Historic Preservation Act (NHPA) in a pre-construction review to consult with the federally recognized Tribes who may attach religious and cultural significance to a historic property that may be affected by an undertaking. The procedures are in the Nationwide Programmatic Agreement (NPA-Sections IV.B and IV.C). The Tribes are usually given 30 days to respond. If a Tribe does not respond within 40 days of the initial contact, and the applicant has attempted follow-up contact, the FCC will send a Final Request for Indication of Interest and provide another 20 days, but the Tribe will have to contact both the FCC and the applicant. The notifications come out weekly and vary in the numbers of proposed projects. Depending on the Tribes cultural resource staff workloads (which consist of conducting archaeological surveys, workshops, training/travel, and responding to other proposed projects), they sometimes may not get answered. So the time frame is very important. Currently we have one staff member addressing TCNS.

The FCC proposes change and perhaps a one-size-fits-all solution. The Tribes assert a one-size-fits all solution will not work for all tribes as fees are not associated with our Tribe. The time frame should stay the same. The notion that permit applicants might "self-certify their compliance with Section 106 process" is simply a first step in trying to circumvent federal law. We urge the FCC not to consider that notion, as it would infringe upon the agency's trust responsibility to Tribes, Federal Indian policy, and federal law.

During the FCC's June 7, 2017, Annual Environmental Compliance and Historic Preservation Review Educational Workshop, FCC staff mentioned that towers have injured or destroyed endangered species habitat and historic properties. So while industry may be petitioning the FCC to determine how they might speed up the deployment of wireless facilities by sidestepping NEPA and NHPA, the Tribes wonder why there isn't a more concerted effort to prevent damages to endangered species and historic properties. The focus should be on

minimizing risk, danger and damage to the environment and historic properties, not on how fast industry can build and whether they can avoid following federal laws and regulations.

Going forward, we urge the FCC to promote balance and opportunity between these interests rather than purport the Tribes and tribal nations as burdens to corporate interests. We aim to work cooperatively and in good faith with FCC.

If you have any questions or would like further information, please feel free to contact: Romelia Martinez, Cultural Resources Technician, at romartinez@sbtribes.com or at 208-236-1084.

Sincerely,

A handwritten signature in black ink that reads "Nathan Small". The signature is written in a cursive, flowing style.

Nathan Small, Chairman
Shoshone-Bannock Tribes

cc: Fort Hall Business Council (7)
A. Gonzales, SBT, Executive Director
T. Martin, Director, Tribal Department of Energy
L. Bill, Cultural Resources Specialist
R. Martinez, Cultural Resource Technician
M. Sanford, Environmental Consultant
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