

United States Senate 199

March 21, 2018

The Honorable Ajit Pai
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

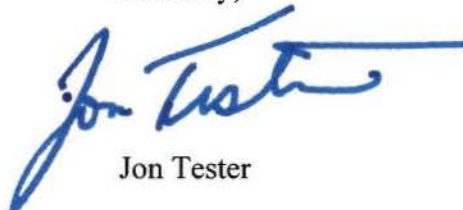
Dear Chairman Pai:

I write today regarding the Federal Communications Commission's (FCC) Wireless Infrastructure Streamlining Report and Order. I appreciate the Commission's determination to expedite the deployment of wireless services across America. To compete in the 21st Century global economy, we must lead the world in wireless infrastructure deployment. I am concerned, however, that the Commission did not sufficiently consult with Tribal entities on proposed changes to Section 106 historic preservation review before scheduling the item for a vote. As such, I urge you to delay the vote and seek additional consultation with Tribes.

Several Montana Tribes have contacted my office to express concern that consultations up to this point have been practically non-existent. This is unacceptable as the proposed rule changes will have great impact on their Tribal Historic Preservation Offices and communities. Consultation is not optional and an essential part of the government-to-government relationship that is grounded in treaties and the federal trust responsibility. As the nation continues its expansion of infrastructure that could impact tribal lands or areas of cultural significance, it is critical we do not cut Tribes out of the process.

As such, I urge you to engage in meaningful dialogue and consultation with Tribes on this issue and delay the scheduled vote on the 17-79 docket. Innovative wireless technologies will improve communities across the country and I am confident we can find workable solutions that respects Tribal sovereignty and the Commission's efforts to continue deploying broadband.

Sincerely,



Jon Tester



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

June 28, 2018

The Honorable Jon Tester
United States Senate
311 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Tester:

Thank you for your letter regarding the Federal Communications Commission's efforts to modernize our wireless infrastructure regulations. These rules are a poor fit for the 5G networks of the future. Reforming them is critical to bringing next-generation wireless services to the American people; all our work to unleash spectrum for consumer use will be pointless if carriers can't deploy the physical infrastructure needed to carry ever-increasing amounts of wireless traffic.

In developing our new rules, the Commission engaged extensively with Tribal Nations, inter-Tribal organizations, and state and local historic preservation officers. Although none of the changes we made apply on Tribal lands, because some of the actions implicated Tribal interests, the Commission last year directed the Office of Native Affairs and Policy, in coordination with the Wireless Telecommunications Bureau, to conduct government-to-government consultations. Accordingly, Commission staff aimed to be responsive to a potentially large number of consultation requests from various levels of Tribal governments; to assist Tribal Nations, inter-Tribal organizations, and other Tribally-related entities in getting salient comments and reply comments into the record; and to fully integrate and coordinate the efforts of staff in supporting Commissioners and their advisors' direct participation in government-to-government meetings.

As discussed in more detail in the order, Commissioners and FCC staff visited at least nine different states, including Arizona, California, Connecticut, New Mexico, North Carolina, Oregon, South Dakota, Virginia, and Wisconsin. For example, I personally participated in a consultation in South Dakota hosted by the Rosebud Sioux and attended by 29 Tribal representatives from the Lower Brule Sioux Tribe, Chippewa Cree Tribe, Fort Belknap Indian Community, Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, Eastern Shawnee Tribe of Oklahoma, Kaw Nation, Cheyenne River Sioux Tribe, and Rosebud Sioux Tribe, as well as a participant representing several Oklahoma Tribes.

At the National Congress of American Indians Mid-Year Conference, I delivered plenary remarks and consulted with representatives of NCAI, the National Association of Historic Preservation Officers, and the United South and Eastern Tribes. I also participated in one-on-one consultations with the Gila River Indian Community, the Jamestown S'Klallam Tribe, multiple Oklahoma Tribal representatives, including the Cherokee and Choctaw Nations, the Organized

Village of Kake, the Chippewa Cree Tribe, the Pueblo of Isleta, the Sault Ste Marie Tribe of Chippewa Indians, the Delaware Nation, the Ohkay Owingeh Pueblo, and the Tanana Chiefs.

I also traveled to the Navajo Reservation to consult with representatives from an estimated 18 Tribal Nations, including the Ak-Chin Indian Community, Blue Lake Rancheria, Delaware Tribe of Indians, Gila River Indian Community (Gila River Telecommunications, Inc.), Havasupai Indian Tribe, Hopi Nation (Hopi Telecommunications, Inc.), Jena Band of Choctaw Indians, Kaw Nation, Mescalero Apache Tribe (Mescalero Apache Telecom, Inc.), Navajo Nation, Nez Perce Tribe, Pascua Yaqui Tribe, Pueblo of Acoma, Pueblo of Jemez, Pueblo of Zia, San Carlos Apache Tribe (San Carlos Apache Telecommunications Utility, Inc.), Tohono O'odham Nation (Tohono O'odham Utility Authority), and Yavapai-Apache Nation and from organizations including the Alaska Native Health Board, Bristol Bay Area Health Corporation, Native Public Media, National Tribal Telecommunications Association, and Tuba City Regional Health Care.

These consultations were in addition to consultations at FCC headquarters and numerous, widely-attended conference calls. One of the in-person consultations was attended by over 70 representatives of more than 50 Tribal Nations and organizations.

These consultations improved our work product. For example, Tribes complained that wireless companies sometimes give them insufficient information about proposed tower deployments that could potentially affect historic properties. Our new rules therefore require infrastructure siting applicants to give potentially affected Tribal Nations and Native Hawaiian Organizations a standardized set of information for undertakings going forward. Providing this information at the initial notification stage will enable Tribes to more efficiently determine whether projects may affect historic properties of religious or cultural significance.

But we also heard from numerous parties seeking to deploy infrastructure about abuse of the review process, including some Tribal Nations charging upfront fees even before responding. For instance, one company recently paid over \$12,000 to install one small cell outside a steel factory in Indiana, even though all ultimately agreed there was no effect on historic property. Another company paid over \$15,000 to install a single small cell in downtown Milwaukee. Yet another company stated that 26% of small-cell deployment costs, including for equipment, came from historic preservation and environmental review alone. Extrapolating that out to the thousands of small cells needed for next-generation services, it becomes clear: You can stick with the regulatory status quo or you can have 5G. You cannot have both.

To address that issue, the FCC went back to following the law. Aside from deterring deployment, upfront fees contradict Advisory Council on Historic Preservation guidance. Because these fees are inconsistent with both law and consumer welfare, the Commission decided not to coerce private entities into paying them going forward.

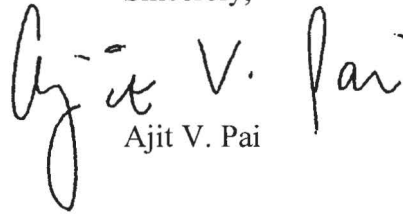
Ultimately, these rule changes reflect a balanced approach that promotes the public interest. On one hand, they respect the government-to-government relationship we have with Tribes. On the other, they help the United States lead the world in 5G, enable carriers to deliver better, faster, and cheaper mobile broadband for American consumers, and extend digital

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opportunity to more of our citizens, including the many Tribal members that live outside of Tribal lands.

I appreciate your interest in this matter. Please let me know if I can be of any further assistance.

Sincerely,

A handwritten signature in cursive script that reads "Ajit V. Pai". The signature is fluid and stylized, with the first name "Ajit" being the most prominent part of the script.

Ajit V. Pai