

Congress of the United States  
Washington, DC 20510

198

March 21, 2018

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

The Honorable Mignon Clyburn  
Commissioner  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

The Honorable Michael O’Rielly  
Commissioner  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

The Honorable Brendan Carr  
Commissioner  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

The Honorable Jessica Rosenworcel  
Commissioner  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

Dear Chairman Pai and Commissioners:

We write today with concern about the Federal Communications Commission’s recent draft report and order on “Wireless Infrastructure Streamlining”<sup>1</sup> and ask the FCC to delay finalizing the rule until a truly meaningful consultation with Indian Tribes occurs. We have heard from tribal stakeholders that this draft order confuses streamlining with steamrolling, potentially limiting the resources available to Tribes and their Tribal Historic Preservation Offices at an important juncture when the telecommunications industry continues its expansion of infrastructure into tribal areas of religious, historical, and cultural importance. Given these potentially sweeping changes to the agency’s tribal consultation process within the National Historic Preservation Act (NHPA), we ask the FCC to delay its vote on this measure while it conducts another round of tribal consultation.

Because tribes possess a special expertise regarding impacts to places that have religious and cultural significance, which are not always located on reservation lands, tribal consultation lies at

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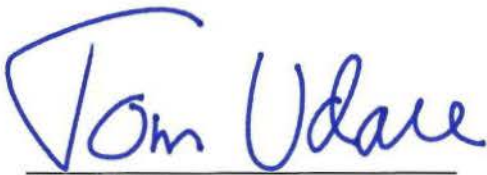
<sup>1</sup> Wireless Infrastructure Streamlining Report and Order (WT Docket No. 17-79) (Mar. 1, 2018) [https://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2018/db0301/DOC-349528A1.pdf](https://transition.fcc.gov/Daily_Releases/Daily_Business/2018/db0301/DOC-349528A1.pdf)

the heart of the procedural requirements of the NHPA, a "stop, look, and listen" statute. As such, we encourage the FCC to finalize a rule that gives Tribes their due consideration in the planning process, possessing as they do a unique perspective rooted in a deep and rich history in the areas in which industry now expands. Bureaucratic inertia and a desire to finalize a rule, any rule, is no reason to override the federal government's moral and legal obligations to Indian tribes.

We certainly appreciate FCC's efforts to engage with tribes. Nevertheless, we have heard from a number of tribes and national tribal organizations that the FCC's consultation fell far short of anything that could be described as meaningful. We have emphasized this time and again in our Committees: Tribal consultation is not a "check the box" exercise. Grounded in treaties, executive orders, and a variety of federal laws, the trust responsibility and the legal and moral obligations that go with it require a government-to-government relationship, one that the FCC must conduct in good faith and with a goal of meaningful dialogue.

Closing the digital divide in Indian Country is not mutually exclusive with the goal of robust tribal consultation. We believe the FCC can expand broadband into underserved communities in Indian Country without sacrificing the federal government's trust obligation to tribes.

Sincerely,



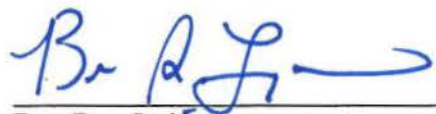
Tom Udall  
United States Senator



Maria Cantwell  
United States Senator



Tina Smith  
United States Senator



Ben Ray Lujan  
United States Representative





FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

OFFICE OF  
THE CHAIRMAN

August 3, 2018

The Honorable Ben Ray Luján  
U.S. House of Representatives  
2231 Rayburn House Office Building  
Washington, D.C. 20515

Dear Congressman Luján:

Thank you for your letter regarding Commission efforts to modernize our wireless infrastructure regulations. Our wireless infrastructure rules have been a poor fit for the 5G networks of the future, and our efforts to unleash spectrum for consumer use will be moot if carriers can't deploy the physical infrastructure needed to bring next-generation services to the American people.

The Commission's recent action on this front is a giant leap forward in updating our wireless infrastructure rules. The item clarifies that small cells are materially different from large towers, so they shouldn't face identical regulatory review under the National Historic Preservation Act and National Environmental Policy Act. The Commission also streamlined the process for Tribal review notifications through the Tower Construction Notification System.

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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.

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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.

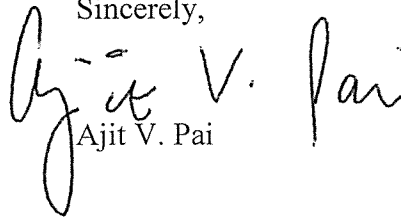
To address that issue, the FCC went back to following the law. Aside from deterring deployment, upfront fees contradict Advisory Council on Historic Preservation guidance.

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 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,

Ajit V. Pai



FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

OFFICE OF  
THE CHAIRMAN

August 3, 2018

The Honorable Maria Cantwell  
United States Senate  
511 Hart Senate Office Building  
Washington, D.C. 20510

Dear Senator Cantwell:

Thank you for your letter regarding Commission efforts to modernize our wireless infrastructure regulations. Our wireless infrastructure rules have been a poor fit for the 5G networks of the future, and our efforts to unleash spectrum for consumer use will be moot if carriers can't deploy the physical infrastructure needed to bring next-generation services to the American people.

The Commission's recent action on this front is a giant leap forward in updating our wireless infrastructure rules. The item clarifies that small cells are materially different from large towers, so they shouldn't face identical regulatory review under the National Historic Preservation Act and National Environmental Policy Act. The Commission also streamlined the process for Tribal review notifications through the Tower Construction Notification System.

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.

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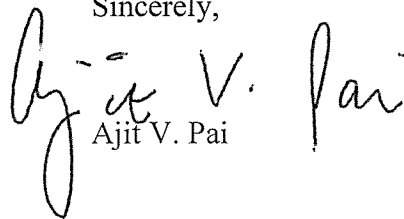


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I appreciate your interest in this matter. Please let me know if I can be of any further assistance.

Sincerely,

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Ajit V. Pai





FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

OFFICE OF  
THE CHAIRMAN

August 3, 2018

The Honorable Tina Smith  
United States Senate  
309 Hart Senate Office Building  
Washington, D.C. 20510

Dear Senator Smith:

Thank you for your letter regarding Commission efforts to modernize our wireless infrastructure regulations. Our wireless infrastructure rules have been a poor fit for the 5G networks of the future, and our efforts to unleash spectrum for consumer use will be moot if carriers can't deploy the physical infrastructure needed to bring next-generation services to the American people.

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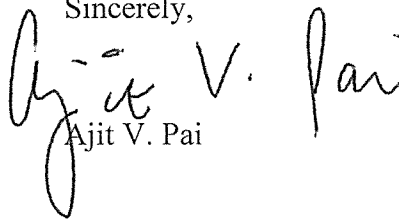
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I appreciate your interest in this matter. Please let me know if I can be of any further assistance.

Sincerely,

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Ajit V. Pai



FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

OFFICE OF  
THE CHAIRMAN

August 3, 2018

The Honorable Tom Udall  
United States Senate  
531 Hart Senate Office Building  
Washington, D.C. 20510

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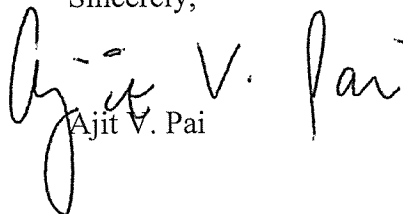
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