



Lac du Flambeau Band of Lake Superior Chippewa Indians
Tribal Historic Preservation Office

November 13, 2017

Via Electronic Submission

Chairman Ajit Pai
Federal Communications Commission
445 12th Street SW
Washington, DC

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

Streamlining Deployment of Small Cell Infrastructure by Improving Wireless Facilities Siting Policies, WT Docket No. 16-421

Replacement Utility Poles Report and Order, WT Docket No. 17-79 (FCC-CIRC1711-03)

Dear Chairman Pai:

The Lac du Flambeau Band of Lake Superior Chippewa Indians is located in northern Wisconsin, about 4.5 hours north/northwest of Milwaukee, WI. We have established a Tribal Historic Preservation Office in 1996, pursuant to 101(d)(2) of the National Historic Preservation Act, and conduct all reviews for projects on and off reservation that have the potential to impact areas significant to our tribe. This would include FCC/TCNS reviews.

Request for Tribal Consultation:

This past year our tribe has been actively involved in the discussions and proposals to modify the Federal Communications Commission (FCC) systems in place for your agency to comply with the National Historic Preservation Act (NHPA) by reading and responding to FCC documents being released without tribal consultation occurring beforehand. Notwithstanding that important omission, our tribe has sent a representative to the meeting in Washington, DC held on October 4, 2017. We find these meetings to be educational and informational but they are not tribal consultation.

We request official government-to-government consultation on issues related to expanded broadband deployment and modifying existing FCC systems in place that have been issued by your office without tribal consultation occurring prior to the proposed changes. For our tribe, official Tribal consultation requires a written request directly to **President Joseph Wildcat, Sr. at P.O. Box 67, Lac du Flambeau, WI 54538**. Our goals are to preserve and protect our tribal historic properties and to also work collaboratively with the broadband industry and the FCC within the framework of existing Presidential Executive Orders and federal and tribal laws and regulations.

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Lac du Flambeau, WI 54538

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Changing Technology and Collaborative Working Relationships:

Over the past 12+ years, we have worked with and developed many working relationships with the many consultants installing telecommunication infrastructure facilities and with several FCC staff on related issues. With the emerging 5G technology by the wireless telecommunications industry we can see the benefits of modernizing the Tower Construction Notification System (TCNS) to meet all stakeholder needs.

As stated in the National Association of Tribal Historic Preservation Officers (NATHPO) Oct. 6, 2017, ex parte comments, we are seeking to meet with industry consultants who are tasked with installing telecommunication facilities throughout the country. The FCC's active role in this stakeholder meeting would be greatly appreciated. As suggested by NATHPO, a smaller statewide or regional meeting with a limited agenda would be a good start.

Replacement Utility Poles Report and Order (FCC-CIRC1711-03)

Regarding the final draft of the Replacement Utility Poles Report and Order (FCC-CIRC1711-03), we have the following request, as well as comments, and recommendations that will strengthen your goal of expediting telecommunications facilities deployment, yet won't sacrifice tribal participation in the process.

1. Request for Data

We request that the FCC please share with us any and all data that supports your assertion that "the construction of a replacement for a preexisting utility pole will have no potential to affect historic properties..." (ref: para 11). Without such data any and all FCC assertions are arbitrary. We also request any studies that make and/or support this assertion and the study's methodology to arrive at the conclusion that there is no potential to effect historic properties.

2. Not all pole replacements are harmless

Even though language is included describing how excluding replacing utility poles will not harm any historic properties, it is not as simple as described.

Vehicles and equipment used to remove/replace poles can also have an impact. Consideration must be made for all activity associated with the removal and replacement of poles, including the removal and/or replacement of guyed wires.

Also, replacing a pole in the same hole is not harmless because the replacement hole will always be deeper and wider for a pole that can be up to 10% taller and will have additional weight (antennas and cabin).

3. Rights of way and previously disturbed ground

Rights of way (ROW) for whatever purpose (utility, transportation, communications) and on whatever land (tribal, state, federal) have rarely, if ever, been surveyed for tribal historic properties. Most ROWs were created prior to the NHPA on 1966 and certainly created prior to Presidential orders that Indian tribes must be consulted on issues that affect them.

Likewise, previously disturbed ground rarely, if ever, included tribal input on the activity that "disturbed" the land. Thus, assertions that such land has no potential to affect tribal historic properties cannot be made with any certainty.

As has been described in prior tribal comments on this topic, we recommend a system that would allow for tribal participation in areas that cannot demonstrate tribal review.

No new ground disturbance outside previously disturbed areas is not a clear statement as proposed and needs further consideration prior to acceptance as an exclusion.

In light of wanting to work with the FCC and industry, however, we offer that any exclusion may go forward provided that language is added to the report and order stating that:

A safeguards process will be created that will require post-work documentation that a pole replacement meets these standards: (1) the replacement pole is not 10% taller than the original; (2) the replacement pole is of the same quality and appearance as the original; and (3) any tribal historic properties that are discovered will require immediate work stoppage and affected Indian tribes will be contacted as to the disposition of any human remains or objects. Any deviations from this process will result in an enforcement action to be taken by the FCC.

This safeguards process allows for pole replacements to continue, per the process described in the report and order and will be less paperwork than a pre-work process and will not hold up any construction.

4. Use of existing structures

We agree that using existing structures is preferred over newly constructed towers and poles. Replacing poles is not the same as using an existing pole but with proper safeguards we can see the efficiency in this exemption.

5. 10% Increase in Replaced Poles

We can appreciate the specific, proposed language on the replacement poles not exceeding the original pole in height by more than 10%. In order to be clear, though, language needs to be added to the report and order to deter rapid replacements with the incremental 10% increases. We recommend that language be added on this issue:

A pole may only be replaced once every __ year at the not to exceed 10% of the original pole.

Thank you for consideration of these comments. We appreciate your interest in creating efficient and streamlined siting policies. In the spirit of collaboration, we feel that our comments strengthen your effort and preserve and protect our nation's cultural resources.

Please feel free to contact the THPO at LDFTHPO@LDFTRIBE.COM or (715) 588-2139 if you have any questions or comments.

Respectfully,



Melinda J. Young
Tribal Historic Preservation Officer

cc: Commissioner Carr
Commissioner Clyburn
Commissioner O'Rielly
Commissioner Rosenworcel
NATHPO