

Red Cliff Band of Lake Superior Chippewa Indians

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*Red Cliff Tribal Council*

November 17, 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 Polices, WT Docket No. 16-421

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

Boozhoo (Hello) Chairman Pai:

The Red Cliff Band of Lake Superior Chippewa would like to express the following *ex parte* per the above referenced Federal Communications Commission (FCC) actions. The Red Cliff Tribal Historic Preservation Office has been an active participant in the national conversation concerning accelerating wireless broadband deployment and has been working on this rulemaking with numerous concerned Indian tribes.

**Changing Technology and Collaborative Working Relationships:**

Given the emerging 5G technology that is being deployed by the wireless telecommunication industry, we can see the benefits of modernizing the FCC’s Section 106 processes, including the Tower Construction Notification System (TCNS), to meet all stakeholder need. We concur with the Oct. 6, 2017, National Association of Tribal Historic Preservation Officers (NATHPO) *ex parte* comments, and would like to create opportunities for industry consultants and Indian tribes to come together and discuss issues of concern. We would appreciate the FCC’s active role in supporting and participating in stakeholder meetings.

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

As the FCC considers and finalizes the draft Replacement Utility Poles Report and Order (FCC-CIRC1711-03), we submit the following request, comments, and recommendations to strengthen your goal of expediting deployment of telecommunication facilities to expand and improve service, yet retaining preservation interests to preserve and protect historic properties.

1. **Request for data**

We request that the FCC please share with us any and all available 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: para11) and “…there is no likelihood that such pole replacements could affect historic properties” (ref: para 14). Without such data, we find that the FCC’s assertions are arbitrary. We also request any studies or documents that make and/or support the FCC’s assertion – including the study’s methodology – that resulted in the conclusion that these undertakings have no potential to affect historic properties.

1. **Not all pole replacements are harmless**

Even though language is included in the Report and Order that describes how excluding the replacement of utility poles from Section 106 reviews will not harm any historic properties, it is not as simple as described.

1. **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 in 1966, the 1992 amendments to the NHPA that created the THPO program, and prior to Presidential Executive Orders and other regulations that Indian tribes must be consulted on issues that affect them.

Likewise, previously disturbed ground rarely, if ever, includes 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 descried in prior tribal comments on this topic, we recommend a system that would allow for tribal participation in areas where it cannot be demonstrated that tribal reviews ever occurred.

“Previously disturbed areas” is not defined nor is a clear statement as proposed. Therefore, we recommend that it be given further consideration and definition.

If the exclusions were to be adopeted, we recommend that additional language be 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 and invited to the project site to discuss the appropriate disposition of human remains  or objects.  Any applicant who fails to adhere to this process will be subject to FCC enforcement actions.*

This safeguards process allows for pole replacements to continue, per the process described in the Report and Order. It also will require less paperwork than a pre-review process, and it will not cause construction delays.

1. **Use of existing structures**

We agree that using existing structures is preferred over constructing new towers and poles. However, replacing poles is not the same as using an existing pole, but with the adoption of proper safeguards it can be effective.

1. **10% increase in replaced poles**

We appreciate the inclusion of proposed language that the replacement poles not exceed the original pole in height by more than 10%. In order to be clear and make this proposal acceptable, language needs to be added to the Report and Order to deter rapid replacements for poles with the incremental 10% increases. We recommend that the following language be added:

*A pole may only be replaced once every year and should not exceed 10% of the original pole to avoid unanticipated effects on historic properties.*

Miigwech (Thank You) for your consideration of these comments. We appreciate your interest in creating efficient and streamlined siting policies and want to support this goal. In the spirit of collaboration, we feel that our comments strengthen your effort to preserve and protect our nation’s cultural resources and historic properties.

Sincerely,

**Joseph Montano**

Tribal Historic Preservation Office

Red Cliff Band of Lake Superior Chippewa

cc: Commissioner Carr

Commissioner Clyburn

Commissioner O’Rielly

Commissioner Rosenworcel