



December 5, 2017

VIA ELECTRONIC FILING

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

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

Dear Ms. Dortch:

On December 1, 4, and 5, 2017, representatives from CTIA and the Wireless Infrastructure Association ("WIA" and collectively, the "Associations") met with representatives from the Office of Chairman Ajit Pai; the Offices of Commissioners Michael O'Rielly, Brendan Carr, Mignon Clyburn, and Jessica Rosenworcel; and the Wireless Telecommunications Bureau, to discuss the above-captioned proceeding. A full list of meeting attendees is attached to this filing.

During the meetings, and consistent with the attached presentation and their jointly filed comments¹, the Associations discussed the importance of the Commission's dual goals of protecting historic sites of religious and cultural significance to Tribes while enabling the efficient delivery of advanced communications services and technologies nationwide. The Associations urged the Commission to update the Section 106 Tribal consultation process and procedures to reflect these goals.

The Associations also encouraged the Commission to move forward with its proposal to resolve the long-outstanding Twilight Tower issue by excluding collocations on Twilight Towers from routine historic preservation review and declining to initiate enforcement actions against underlying towers that were constructed in good faith.² The Associations support this item, which recognizes the unique regulatory conditions that fostered the creation of Twilight Towers, the lack

¹ See Joint Comments of CTIA and the Wireless Infrastructure Association, WT Docket No. 17-79 (filed Jun. 15, 2017); Joint Reply Comments of CTIA and the Wireless Infrastructure Association, WT Docket No. 17-79 (filed Jul. 17, 2017).

² See *Comment Sought on Draft Program Comment for the Federal Communications Commission's Review of Collocations on Certain Towers Constructed Without Section 106 Review*, Public Notice, FCC-CIRC1712-03 (draft rel. Nov. 22, 2017) ("Public Notice"); see also *Draft Program Comment for the Federal Communications Commission's Review of Collocations on Certain Towers Constructed Without Section 106 Review* ("Draft Program Comment") (attached to Public Notice).

of evidence of adverse effects from Twilight Towers, and the public interest benefits of making these facilities available for collocation to support expanded 4G LTE coverage, next-generation 5G networks, and FirstNet.

Consistent with its goals in this proceeding, the Associations requested three minor clarifications to the Draft Program Comment. *First*, for consistency with the Commission’s recognition that Twilight Towers may be those that “either did not complete Section 106 review or cannot be documented to have completed such review”³ and that the lack of documentation is “exacerbated by the limitations of State Historic Preservation Officers’ (SHPOs’) record-keeping as well as subsequent changes in tower ownership,”⁴ the Associations asked that the Commission clarify the title of the Draft Program Comment to say that it permits collocations on towers “. . . Without *Evidence of Section 106 Review*.”⁵ *Second*, the Commission uses the term “Objection to Collocation” in Section V of the Draft Program Comment, but that term is undefined in the 2001 Collocation Agreement—which the Draft Program Comment is intended to mirror⁶—and the Draft Program Comment. For consistency and to reduce confusion in practice, the Associations urged the Commission to clarify Section V to state that requests for government-to-government consultation will be considered “complaints” against the collocation, which would in turn trigger the requirements of Section IV.7.⁷ *Finally*, the Associations asked the Commission to clarify that, in instances where a collocation on a Twilight Tower must undergo the Section 106 process because it does not meet the stated exclusions,⁸ such review would be for the collocation and not the underlying tower itself. For purposes of this clarification, the Commission should consider adding, before the list of exclusion criteria, the same language used in the 2004 Nationwide Programmatic Agreement: “For collocations not excluded from review by the Collocation Agreement or this Agreement, the assessment of effects will consider only effects from the newly added or modified Facilities and not effects from the existing Tower or Antenna.”⁹

CTIA and WIA applaud the Commission for taking yet another step toward modernizing its wireless infrastructure siting policies by resolving the longstanding Twilight Tower issue and considering additional reforms to the Tribal consultation process. In so doing, the Commission will facilitate broadband deployment while reaffirming its commitment to protecting historic sites of religious and cultural significance to the preservation community.

³ Public Notice at 2.

⁴ Draft Program Comment at 2, Section I.

⁵ The Draft Program Comment currently indicates that its scope is collocations on towers “. . . Without Section 106 Review,” which does not reflect those towers that may have undergone review but do not have documentation to that effect. *Id.* at 1.

⁶ *Id.* at 4, Section IV.

⁷ *Id.* at 5, Section IV.7 (stating that a complaint “must be in writing and supported by substantial evidence describing how the effect from the collocation is adverse to the attributes that qualify any affected historic property for eligibility or potential eligibility for the National Register”). The Associations request that the Commission provide similar language in Section V to clarify the complaint process.

⁸ *See id.* at 4-5, Section IV.

⁹ Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process, codified as 47 C.F.R. Part 1, App. C, Section VI.E.4.

Pursuant to Section 1.1206 of the Commission's rules, a copy of this letter is being filed in ECFS and provided to the Commission participants. Please do not hesitate to contact the undersigned with any questions.

Sincerely,

/s/ Kara Romagnino Graves

Kara Romagnino Graves
Director, Regulatory Affairs

CTIA

1400 16th Street NW, Suite 600
Washington, DC 20036

/s/ D. Zachary Champ

D. Zachary Champ
Director, Government Affairs

Wireless Infrastructure Association

500 Montgomery Street, Suite 500
Alexandria, VA 22314

Attachments

cc: Meeting Participants

ATTACHMENT

December 1, 2017 Meeting Participants

Meeting with Office of Chairman Ajit Pai

Chairman's Office
Rachael Bender

Industry Representatives
Scott Bergmann, CTIA
D. Zachary Champ, WIA
Kara Romagnino Graves, CTIA
Sade Oshinubi, WIA

Meeting with Wireless Telecommunications Bureau

Wireless Telecommunications Bureau
Suzanne Tetreault
Jill Springer (by phone)
Garnet Hanly
Aaron Goldschmidt
Leon Jackler (by phone)
Daniel Margolis
Jeffrey Steinberg

Industry Representatives
Scott Bergmann, CTIA
D. Zachary Champ, WIA
Kara Romagnino Graves, CTIA
Sade Oshinubi, WIA

December 4, 2017 Meeting Participants

Meeting with Office of Commissioner Mignon Clyburn

Commissioner's Office
Louis Peraertz

Industry Representatives
D. Zachary Champ, WIA
Kara Romagnino Graves, CTIA
Jennifer Oberhausen, CTIA
Sade Oshinubi, WIA

Meeting with Office of Commissioner Brendan Carr

Commissioner's Office
Kevin Holmes
Jeffrey Westling

Industry Representatives
D. Zachary Champ, WIA
Kara Romagnino Graves, CTIA
Jennifer Oberhausen, CTIA
Sade Oshinubi, WIA

Meeting with Office of Commissioner Jessica Rosenworcel

Commissioner's Office
Umair Javed

Industry Representatives
D. Zachary Champ, WIA
Kara Romagnino Graves, CTIA
Jennifer Oberhausen, CTIA
Sade Oshinubi, WIA

December 5, 2017 Meeting Participants

Meeting with Office of Commissioner Michael O'Rielly

Commissioner's Office
Erin McGrath

Industry Representatives
D. Zachary Champ, WIA
Kara Romagnino Graves, CTIA
Jennifer Oberhausen, CTIA
Sade Oshinubi, WIA



Expeditious Wireless Infrastructure Reform Key to America's 5G Leadership

The Wireless Industry Powers Our Economy

Creating New American Jobs and Opportunities

4.6
million

American jobs rely directly or indirectly on the wireless industry

6.5
jobs created

every time the wireless industry employs **one** person, with a 44% higher than average pay

\$400
billion

added to our economy annually from the wireless industry

5G Opportunity

Accenture Forecasts Jobs and Growth



\$275B

New Wireless
Investment



3 million

New Jobs



\$500B

Contribution to GDP

5G Global Race

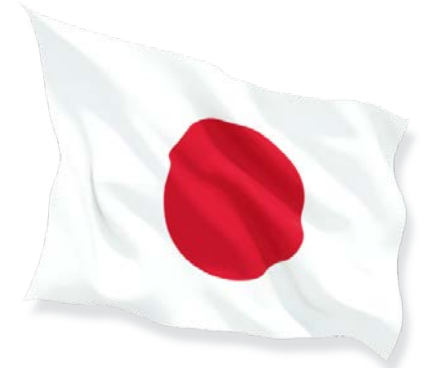
Keys for Continued U.S. Telecomm Leadership

South Korea has announced 5G trials at the 2018 Winter Olympics

Japan plans to have 5G at the 2020 Summer Olympics in Tokyo

China starting buildout in major cities in 2018; full commercial deployment by 2020

The European Union has committed 700M Euros to 5G R&D



Many Levels to Infrastructure Reform

- Federal
- State
- Local
- NEPA
- **NHPA/Section 106**



01

Improving the Section 106 Tribal Consultation Process



Committed to Achieving the FCC's Twin Infrastructure Goals



**Promoting the rapid
deployment of wireless
service**



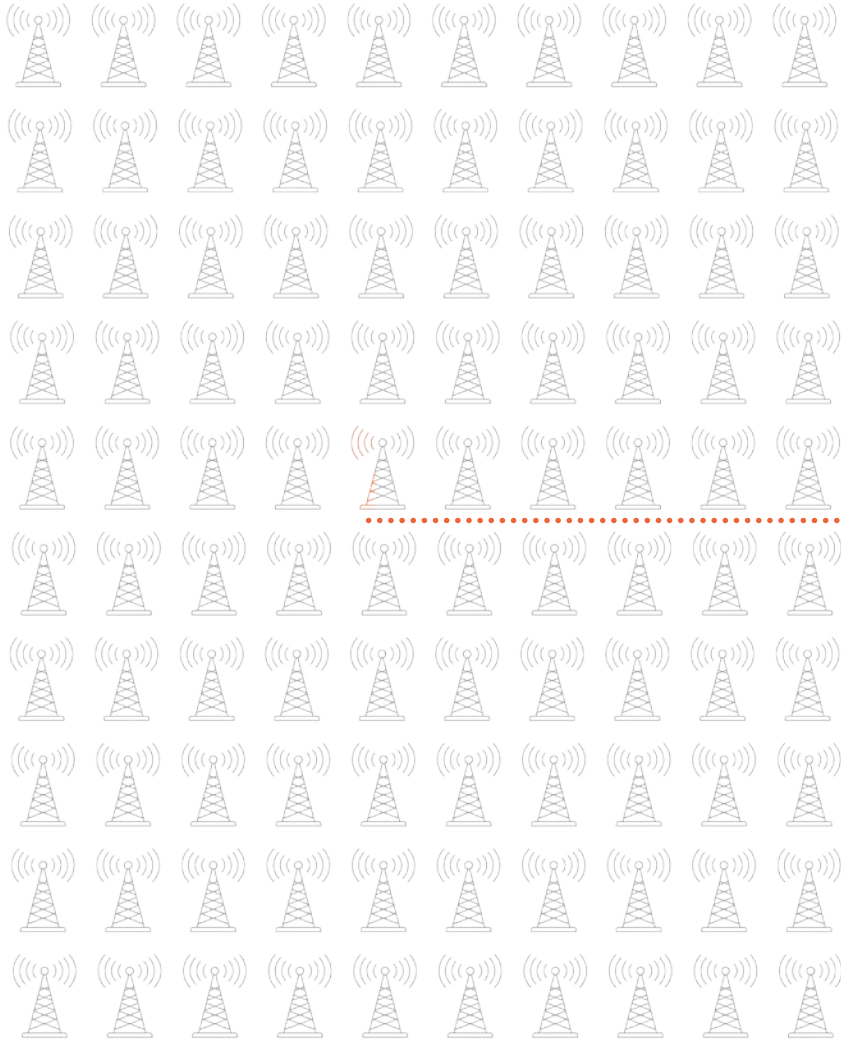
**Preserving historic
sites of Tribal religious
and cultural
significance**

Drawbacks of Current Section 106 Process

Data shows that the current system for Tribal consultation on non-Tribal lands does not encourage meaningful preservation input from the Tribes. Instead, the current system has led to:

- Lengthy, unpredictable timelines
- Ever increasing fees
- Inconsistent/inefficient processes that generate unreliable data
- Overbroad review requests

Minimal Impact of Section 106 Process



Only

**one third of
one percent**

of Tribal reviews of wireless
infrastructure projects result in a
finding of adverse effect

It is Time to Modernize the Section 106 Process

Updating and streamlining the Section 106 process will:

- Make the process more timely, efficient, and predictable
- Help fulfill the Congressional directive to rapidly deploy wireless service
- Continue to preserve sites of religious and cultural significance to Tribes
- Address Tribal fees, which research shows are connected to expanding areas of interest and participation without meaningful review

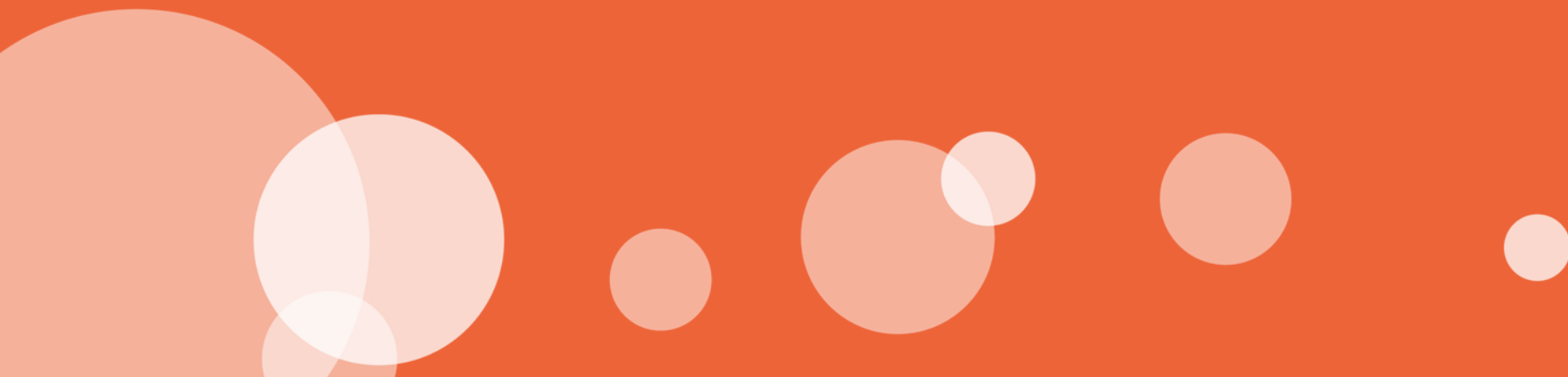
CTIA/WIA Three-Step Plan to Solve Section 106 Challenges

The FCC should provide clarity and certainty by:

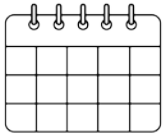
1. Setting finite timelines for Tribal consultations;
2. Clarifying that projects on non-Tribal lands may progress without paying Tribes to act as consulting parties; and
3. Establishing uniform processes to reduce consultation burdens and inefficiencies

02

Section 106 Challenges and Solutions: Timelines



Section 106 Timeline Challenges



110 days

the average time for
completing Section 106
consultation with Tribes



30%

of all Tribal reviews take
more than 120 days to
complete

Establish Clear Guidelines to Speed Tribal Reviews

FCC can reduce delays in Tribal reviews of wireless infrastructure projects on non-Tribal lands by clarifying that:

- 30 days is a reasonable period for Tribal review and response
- There is a rebuttable presumption that the Preliminary Form 620/621 Submission Packet is sufficient for review
- Batch processing of applications, subject to reasonable limitations, is permitted

03

Section 106 Challenges and Solutions: Fees



Section 106 Fee Challenges

The per-project fees for Section 106 Tribal consultations have increased dramatically just over the past year



30%

increase in the average
cost per Tribe that
assess fees between
2015 and 2016



50%

increase in the average
collocation fees between
2015 and 2016

Section 106 Fee Challenges

Review fees are about to exponentially increase:

- More Tribes are requesting fees
- Multiple Tribes routinely request review fees on the same project (as many as 35 Tribes have requested reviews of a single project)
- 5G will require Tribal consultation for hundreds of thousands of small cells not exempted by current regulations over the next few years

Guidelines for Addressing Escalating Fees

FCC should clarify that, for projects located on non-Tribal lands, Tribes serve as consulting parties under Section 106, and payment of fees is not required for a project to move forward.

Such action is consistent with practices of other federal agencies as well as longstanding ACHP guidance.



ACHP Section 106 Fee Guidance:

Throughout the Section 106 process, the regulations impose on Federal agencies (and applicants who assume an agency's duties) an obligation to consult with Tribal Historic Preservation Officers and Indian tribes. These occasions range from the initial scoping of Section 800.3, through the identification, evaluation and effect assessment of Sections 800.4 and 800.5, to the resolution of adverse effects in Section 800.6.

The purpose of this role is to give the Indian tribe an opportunity to get its interests and concerns before the agency. In these situations, the Federal agency obligation is to seek and consider the views of participating Indian tribes. This means it must make an effort to solicit a tribe's opinions and factor them into the decisions that the agency must make on the project.

The consultation requirement thus gives an Indian tribe the ability to advocate the outcome it would like to see the agency ultimately take in the final project decision.

When the Federal agency or applicant is seeking the views of an Indian tribe to fulfill the agency's legal obligation to consult with a tribe under a specific provision of ACHP's regulations, the agency or applicant is not required to pay the tribe for providing its views.

If the agency or applicant has made a reasonable and good faith effort to consult with an Indian tribe and the tribe refuses to respond without receiving payment, the agency has met its obligation to consult and is free to move to the next step in the Section 106 process.

04

Section 106 Challenges and Solutions: Inconsistent Processes Result in Inefficient Reviews which Yield Questionable Data and Findings

Section 106 Process Challenges

Section 106 Tribal consultation is increasingly inefficient, costly, and burdensome, particularly because:

- TCNS does not function as an effective planning tool
- There are no meaningful checks on expanding areas of interest
- Tribes are increasingly requiring the use of Tribal monitors

Section 106 Process Challenges

More Tribes are claiming ever-expanding areas of interest



Little Traverse Bay Band of Odawa
Indians expanded Tribe's areas of
geographic interest in 2015 by

400%

Section 106 Process Challenges

Some Tribes are reviewing more projects than they have resources to credibly perform.

12.4*

Average number of Section 106 reviews per day in 2014 reported by Keweenaw Bay Indian Community THPO (all finding “no effect”) from a staff of 3 who also had other duties

Less than 3**

Average number of Section 106 reviews per day reported by SHPO dedicated full-time staff

Reforming TCNS Can Lead to More Efficient and Credible Reviews

- Information sharing from TCNS can reduce burdens for Tribes and applicants
- Improving transparency can ensure appropriate Tribal areas of interest
- Setting guideposts for Tribal monitoring will avoid excesses

05

FCC Authority to Reform Section 106 Process

FCC Section 106 Jurisdiction

FCC has authority over Section 106 requirements and compliance on non-Tribal lands.

- Tribes are consulting parties on non-Tribal lands
- NHPA and ACHP Guidance provide that each Agency should fashion its Tribal consultation process as appropriate to the Agency's mission
- FCC operates under a “general Tribal trust duty” for Section 106
- Other federal agencies do not cede control under Section 106



Department of Veteran Affairs Tribal Consultation Policy defines limits of Tribal consultation, as follows:

- a. This policy will not diminish any administrative or legal rights and remedies otherwise available by law to VA or American Indian or Alaska Native Tribes.
- b. The Policy does not prevent VA or the Tribes from entering into Memoranda of Understanding, Intergovernmental Agreements, Joint Powers Agreements, professional service contracts, or other established administrative procedures and practices mandated by Federal law or Tribal laws or regulations.
- c. VA retains final decision making authority with respect to actions undertaken by VA and within Federal jurisdiction. In no way should this Policy impede VA's ability to manage its operations.
- d. This Policy is not intended to create any right, benefit, or trust responsibility, substantive or procedural, enforceable law by a party against the United States, VA, or any person.

Formal, Universal, and Enforceable Tribal Review Process Needed

FCC should create standard process for all Tribal reviews.

- Negotiated best practices are not an adequate substitute
- Modernized, uniform process will reduce delays and fulfill the FCC's mandate to rapidly deploy wireless while also protecting historic and cultural sites
- Applicants must be allowed to proceed after a reasonable time when Tribes (1) do not respond; or (2) demand fees when functioning as consulting parties; or (3) request non-standard information as a pre-requisite to Section 106 review

06

Removing Twilight Towers from Regulatory Limbo



Resolution of Twilight Towers Issue is Long Overdue

FCC should exclude collocations on Twilight Towers (*i.e.*, towers built between March 16, 2001 and March 7, 2005) from historic preservation reviews.

Rationales

- No clear FCC regulatory requirement for consultation with SHPOs or THPOs prior to 2005
- Consistent with approach taken in 2001 Collocation NPA
- Extremely low likelihood of impact
- Facilitates broadband deployment and fulfills FCC's mission to promote rapid deployment of broadband services

“

“It defies explanation that we have not resolved an issue that we have known about for twelve years.”

- Commissioner O’Rielly