

The Chippewa Cree Tribe of the Rocky Boy's Reservation

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31 Agency Square
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December 8, 2017

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W., Room TW-A325
Washington, D.C., 20554
Via: ECFS

RE: Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, WT Docket No. 17-79 (includes Notice of Proposed Rulemaking)

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

Public Notice of Draft Program Comment Addressing Collocation on Twilight Towers, WT Docket No. 17-79

Dear Ms. Dortch,

In response to WT Docket 17-79, 16-421, the Chippewa Cree Tribe of the Rocky Boy's Indian Reservation has reviewed and considered the implications of and potential Commission actions and disagrees with the assessment that the Federal Communications Commission (FCC) has acted in good faith in engaging and consulting with the Tribal Nations on the matter of collocations on the "Twilight Towers" that have not been the subject of a Section 106 review as required by the National Historic Preservation Act (NHPA). We point out that the NHPA was passed by Congress and signed by the President in 1966. Shortly thereafter, the Advisory Council on Historic Preservation (ACHP) published guidance for Federal agencies on the way that the agencies can comply with the requirements of the Section 106 process. The Section 106 process was well known and used by Federal agencies throughout the 1970s, 1980s, and the 1990s.

In 2001, the FCC signed a programmatic agreement with the ACHP and with the National Conference of State Historic Preservation Officers (NCSHPO). This document agreed that the construction of a communications tower was a Federal undertaking as defined by the ACHP. As such every tower that was constructed and that was to be the subject of a collocation of communications equipment should have been subject to the Section 106 process. We find it bizarre that the telecommunications industry would try to convenience the FCC that the Section 106 process at the FCC was not clear. While the FCC might have not been as mature and well developed as it is at the present time, the fallback has always been the ACHP rules. Even at the present time, when the FCC's Section 106 agreements are silent on a particular aspect, the FCC staff has looked back to the underlying rules created by the ACHP.

We acknowledge that the telecommunications industry and the FCC licensee would like the current Chairman and Commissioners to resolve this issue through some type of executive or ministerial action. And we acknowledge that you wish the ACHP members to validate the efforts of the telecommunications industry to escape the requirements of the Section 106 process and to not enable the Tribal Nations and State Historic Preservation Offices (SHPOs) to have a voice, as required by ACHP rules, in the build out of communications across the country and on the ancestral lands of the Tribal Nations.

We would remind you that the ACHP has never been in favor of this type of mass approval of the construction of ground-disturbing communications towers and their visual intrusion onto Tribal landscapes. It has only been within the past few years and brought about by the creation of First Net and its nationwide public safety system that the ACHP staff has been willing to even discuss the topic of "Twilight Towers."

COMMENTS

For the past several years, the Chippewa Cree Tribe has been asking the telecommunication industry and FCC for the site locations of the Twilight Towers so that we may collaborate on a process that respects the federal, state, and tribal cultural preservation laws. Industry and the FCC have replied that they don't know where the Twilight Towers are located. This is an inadequate response and asking the Chippewa Cree Tribe to approve or develop a process without adequate information to make informed decisions is not in the spirit of collaboration and in fact harms the long-standing working relationship that Tribes have forged with the FCC and industry.

Without some form of notification, in this case, the TCNS process, the Chippewa Cree Tribe does not know where the Twilight Towers are located and thus have not filed complaints. It appears that the FCC is allowing industry to not disclose the towers and then state for the record in the Notice of Proposed Rulemaking (NRPM), "Moreover, these towers have been standing for 12 years or more and in the vast majority of the cases, no adverse effects have been brought to our attention," does not summarize the process correctly: It was the FCC's responsibility to notify Indian tribes and other stakeholders that there was proposed ground disturbing activity associated with constructing towers that rise 100s of feet in the air.

Indian Tribes have also requested the site locations from the FCC, but to no avail. As a solution to allow for antenna collocations, we have asked that the Twilight Towers go through the TCNS process, but the FCC refuses to ask industry to do this most basic compliance with federal law.

Tribes have made repeated requests for the locations of said towers, but have been rebuffed by industry with the statement that they either do not know where these towers are located or cannot say. The reluctance of industry to work with Tribes and share information on the locations of Twilight Towers and non-compliant towers has been the root of the problem in moving forward.

Tribes should be allowed to review all non-compliant towers, including Twilight Towers, for impacts to historic and cultural properties. The FCC could implement an option in TCNS to allow for Tribes to review Twilight Towers. After thorough historic preservation review, these towers could be considered approved and eligible for collocation.

During these purported meetings between Tribes and the FCC, Twilight Towers were not discussed at all, or were barely mentioned. As noted above, there is no conversation when one side holds all the information and refuses to share so that all parties may make educated decisions, in this case, the location of the Twilight Towers. During the referenced tribal meetings, the FCC did not offer any new information to the discussion and seemingly continues to rely on their flawed logic stated in the NPRM.

When the FCC met with Tribes, NATHPO for two days during the annual conference August 10-11, 2017, in Pala, California, more than 80 tribal representatives discussed Twilight Towers with the FCC representatives but without adequate information, the conversation cannot move forward other than making the same requests to the FCC and industry to reveal the locations of the Twilight Towers.

In the proposed Draft Program Comment, the FCC tries to make the case that it has held a variety of meetings with the Tribal Nations both separately and with the telecommunications industry. While that is a true statement, the telecommunications industry has refused to provide any information as to the locations of the "Twilight Towers" to either the FCC or to the Tribal Nations and SHPOs. Also, the FCC has failed to force the tower owners to provide any type of useful information as to the location of the "Twilight Towers." We wish to remind you that most all of the Tribal Nations were removed from their ancestral lands by the Federal Government. As such, the Tribal Nations have had to struggle to protect their ancestral religious and cultural properties that are many states away from their Federally-assigned Reservations.

Asserting that Indian tribes could not identify adverse effects from 12-year old towers is not the fault of Indian tribes. It is the FCC's failure to notify the tribes where the towers are located. Otherwise, we are unaware of any entity in the country that travels throughout the millions of acres of land in United States looking for towers, who then obtains a tower number, who then sends that tower number to the FCC and asks whether that tower has gone through environmental and cultural clearance processes or if it is a Twilight Tower, and if it is a Twilight Tower, then they submit a complaint to the FCC.

SUMMARY

The Chippewa Cree Tribe, along with many of our brothers and sisters at the other Federally-recognized Tribes remain willing to continue to engage the FCC and the telecommunications industry to properly complete the Section 106 process for this class of federal undertakings. We remain hopeful that through your leadership, the Tribal Nations, the FCC and the telecommunications industry can more appropriately resolve this issue.

Sincerely,

A handwritten signature in blue ink, appearing to read 'H. Baker', with a long horizontal flourish extending to the right.

Harlan Baker
Chairman, Chippewa Cree Tribe

CC: Bambi Kraus, President, National Association of Tribal Historic Preservation Officers;
Jonathan Windy Boy, Tribal Historic Preservation Officer, Chippewa Cree Cultural
Resources Preservation Department;
FCC Chairman Ajit Pai;
FCC Commissioner Mignon Clyburn;
FCC Commissioner Michael O'Reilly;
FCC Commissioner Jessica Rosenworcel;
FCC Commissioner Brendan Carr;
Jeffrey Steinberg Deputy Chief Competition and Infrastructure Policy Division FCC; Jill
Springer Acting Federal Preservation Officer Competition and Infrastructure Policy
Division Wireless Telecommunications Bureau;
Matthew Duchesne, Chief, Office of Native Affairs and Policy.