**Before the**
**Federal Communications Commission**
**Washington, D.C. 20554**

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| In the Matter of | ) | |
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| Improving Communications Services For Native Nations | ) | CG Docket No. 11-41 |
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**COMMENTS OF**
**PCIA—THE WIRELESS INFRASTRUCTURE ASSOCIATION**

## I. INTRODUCTION

PCIA - The Wireless Infrastructure Association ("PCIA") submits these comments in response to the *Notice of Inquiry* regarding improving communications services to Native Nations.[1] PCIA agrees with the Commission's goal in this proceeding of seeking ways to provide "greater economic, market entry, and adoption opportunities and incentives for Native Nations."[2] As a representative of the companies that make up the wireless telecommunications infrastructure industry,[3] PCIA focuses its comments on ways to improve the effectiveness of FCC processes for involving Native Nations in the Section 106 siting review process.[4] The Commission should improve the Tower Construction Notification System ("TCNS") to make it more useful to applicants and Native Nations; facilitate the adoption of best practices that provide timelines for communications between applicants and Native Nations; and increase

[1] *Improving Communications Services for Native Nations*, CG Docket No. 11-41, *Notice of Inquiry*, 26 FCC Rcd 2672 (2011) ("*Native Nations NOI*"). References herein to "Native Nations" include both Native Nations and Native Hawaiian Organizations.
[2] *Id*. at 2674-75 ¶ 3.
[3] PCIA members include the carriers, infrastructure providers and professional services firms that own and manage more than 125,000 telecommunications facilities throughout the world.
[4] *See Native Nations NOI*, *supra* note 1, at 2694-95 ¶ 52-53.

outreach to Native Nations to better leverage the benefits of existing processes for involving Native Nations in the Section 106 review process. These measures will ensure the continued preservation of Native Nations' interests and resources while allowing needed infrastructure to be built quickly, consistent with the goals of the Broadband Acceleration Initiative to "identify and take steps to reduce regulatory and other barriers to broadband deployment."[5]

## II. BACKGROUND

As the *NOI* recognizes, Native Nations are concerned with the potential effects of communications facility sitings on historic properties of religious and cultural significance.[6] The Commission therefore has adopted rules and procedures that require applicants to notify Native Nations of the proposed construction of certain communications facilities and to invite their participation in the review of those facilities pursuant to Section 106 of the National Historic Preservation Act.[7] To facilitate this process, the Commission created TCNS, which allows Native Nations to specify geographic preferences for notification as well as other informational and procedural preferences.[8] The Commission also entered into a Best Practices agreement with the United South and Eastern Tribes ("USET") that provides additional guidelines for communications between applicants and USET's members.[9] The goal of these procedures is to

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[5] *Acceleration of Broadband Deployment*, WC Docket No. 11-51, *Notice of Inquiry*, 26 FCC Rcd 5384, 5388 ¶ 8 (2011) (citing A NATIONAL STRATEGY: THE FCC'S BROADBAND ACCELERATION INITIATIVE (Feb. 9, 2011)) ("BROADBAND ACCELERATION INITIATIVE"), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-304571A2.doc.

[6] *Native Nations NOI*, *supra* note 1, at 2692 ¶ 46 ("A significant concern of Native Nations is the potential effect of tower sitings on their traditional cultural properties or 'sacred sites.'").

[7] *Native Nations NOI*, *supra* note 1, at 2693 ¶ 47 & n.107 (citing 47 C.F.R. Part 1, App. C, Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process, § IV (2004) ("2004 NPA")).

[8] *Native Nations NOI*, *supra* note 1, at 2693 ¶ 48.

[9] *Native Nations NOI*, *supra* note 1, at 2693 ¶ 49. *See also* F.C.C., "Voluntary Best Practices for Expediting the Process of Communications Tower and Antenna Siting Review pursuant to Section 106 of the National Historic Preservation Act" (adopted Oct. 25, 2004) ("USET Best Practices"), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-253516A2.pdf.

ensure the protection of historic properties of religious and cultural significance to Native Nations.

At the same time, the Commission has recognized that increasing broadband deployment throughout the nation "is one of the great infrastructure challenges of our time," noting that it is important for agencies, Native Nations, the private sector and other stakeholders to work together to "reduce the costs and time required for broadband deployment."[10] Indeed, the Broadband Acceleration Initiative acknowledges that "[w]e can't get to next generation broadband (4G) without new towers or new antennas" and "[w]e can't let unnecessary roadblocks get in the way of deploying the necessary infrastructure."[11] In accordance with the Commission's important goals and given the challenges in accomplishing those goals, PCIA suggests below ideas for improving the effectiveness of the process for involving Native Nations in the Section 106 review process in a manner that will facilitate infrastructure siting critical to broadband deployment while protecting and preserving important Tribal resources.

## III. THE COMMISSION SHOULD IMPROVE TCNS TO MAKE IT MORE USEFUL TO APPLICANTS AND NATIVE NATIONS

As an initial step toward improving the effectiveness of the process for involving Native Nations in the Section 106 review, PCIA suggests two changes that the Commission should implement to "make the TCNS system more useful" to and "facilitate further collaboration" between Native Nations and applicants.[12]

First, the Commission should update TCNS to allow applicants to distinguish between new tower construction and collocations that are required to complete Section 106 review.[13] In

[10] *Acceleration of Broadband Deployment*, *supra* note 5, at 5384 ¶ 1-2.
[11] BROADBAND ACCELERATION INITIATIVE, *supra* note 5, at 2.
[12] *Native Nations NOI*, *supra* note 1, at 2694 ¶ 50.
[13] While many collocations are exempt from Section 106 review and do not require processing through TCNS, certain collocations, including those that involve a substantial increase in size, require Section 106

turn, TCNS should be updated to allow Native Nations to choose whether to receive notification from TCNS for new tower builds, collocations, or both within their geographic area of preference. The current TCNS process portrays all applications as new tower builds. Specificity in the TCNS process will allow Native Nations to make more informed decisions concerning the types of wireless facility deployments they wish to review, while allowing them to exclude those that do not present concerns and would otherwise waste valuable Tribal resources. For example, collocations often do not require new ground disturbance or adversely affect the view shed. Thus, as the *NOI* recognizes, "some Native Nations and [Native Hawaiian Organizations] may be unlikely to have an interest in those collocations that are required to complete Section 106 review."[14] Allowing Native Nations to specify that they do not wish to review such collocations saves both the Native Nations and the applicants the time and expense of consultation concerning facilities that are not of interest to a given Native Nation, even within its geographic preference. These changes can be accomplished by adding a drop down menu to the application portion of the TCNS to allow applicants to select either "new tower" or "collocation," and similarly expanding the Tribal preference selection to include not just geographic areas of interest but also a construction-type preference for facilities they wish to review.

Second, potential applicants should be able to view the geographic preferences set by Native Nations within TCNS. Currently, TCNS allows Native Nations to indicate their geographic preferences by specifying the states or counties about which they wish to be notified about proposed construction. This information is not readily available for viewing by the public or applicants. By allowing applicants to better determine which and how many Native Nations may be interested in reviewing a proposed construction in a given area during the planning and

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Review. *See* 2004 NPA, *supra* note 7, § I.C; 47 C.F.R. Part 1, App. B, Nationwide Programmatic Agreement for the Collocation of Wireless Antennas, §§ III-V (2001).

[14] *Native Nations NOI*, *supra* note 1, at 2694 ¶ 52 n.115.

site selection stages, applicants are better able to plan the build out of networks by seeing the potential life cycle for a given project.

Additionally, applicants could better coordinate with Native Nations in order to establish agreements and best practices for potential projects in certain areas in a coordinated way, rather than the current site-by-site model. For example, if a new entrant is seeking to deploy a number of sites or even an entire network in a given area and knows in advance which Native Nations are interested in projects in that area, it can reach out to those Native Nations prior to utilizing TCNS to address all of the sites in a programmatic manner – thereby easing the burden on Native Nations to engage in site-by-site review and speeding deployment. Otherwise, without knowing all of the Native Nations that may be interested in a project in a given area, negotiating best practices agreements may exclude some Native Nations. It does not benefit the quick deployment of wireless services to establish best practices with only a few of the total number of Native Nations that must ultimately be notified through TCNS.

Finally, PCIA understands Native Nations' desire to keep confidential the locations of sacred and culturally significant sites. However, making the geographic preferences available for public viewing in TCNS would not place at risk the location of any sacred sites. The state or county level at which the TCNS location preference is collected is broad enough to preserve the security of such locations.

## IV. THE COMMISSION SHOULD FACILITATE THE ADOPTION OF BEST PRACTICES THAT PROVIDE TIMELINES FOR COMMUNICATIONS BETWEEN APPLICANTS AND NATIVE NATIONS

The Commission should facilitate the adoption of expanded best practices that provide timelines for communications between applicants and Native Nations based on the successful

model established by the USET Best Practices.[15] The Commission currently prescribes timelines for when a Native Nation does not respond to initial efforts by industry and for the FCC to determine whether it has an interest in participating in the review of a proposed facility.[16] With the notable exception of the USET Best Practices, similar procedures are generally lacking in cases where a Native Nation initially expresses an interest in participating but thereafter does not respond to applicant communications. As a result, many of the wireless siting delays that exist today with Native Nations concern the lack of procedure. To address this situation, the Commission should develop best practices with all Native Nations that prescribe timelines for each step of the application process after initial contact, using the USET Best Practices as a starting point.

The USET Best Practices specify that if a Native Nation does not respond within 30 days to a review package sent in response to an expression of interest, the applicant should again contact the Native Nation; if no response is received within seven days after that follow-up contact, the applicant then refers the matter to the Commission. If the Commission is unable to initiate consultation with the Native Nation within 30 days and after good faith efforts, it may authorize the applicant to proceed without the review of the Native Nation.[17] As the USET Best Practices indicate, it is important that "[a]pplicants have certainty in a timely way regarding Tribal concerns as they construct these networks" and "[s]peed of response is significant in the

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[15] *See Native Nations NOI*, *supra* note 1, at 2694 ¶ 52 (seeking comment on provisions in the USET Best Practices that have been successful and which might be pursued with other Native Nations).

[16] *See Clarification of Procedures for Participation of Federally Recognized Indian Tribes and Native Hawaiian Organizations Under the Nationwide Programmatic Agreement*, *Declaratory Ruling*, 20 FCC Rcd 16092 (2005) ("*Declaratory Ruling*"). Specifically, once an applicant has made two good faith efforts to contact a Native Nation over a 40-day period, the Commission will upon notice send the Native Nation a final notification with a 20-day response period, after which time the Native Nation is "deemed to have no interest" in review of the facility and the applicant's obligations with respect to that Native Nation "are complete." *Id*. at 16092 ¶ 2.

[17] USET Best Practices, *supra* note 9, at 5, 11 (Sections III.C and III.H).

tower siting review process."[18] A similar timeline applied in the context of best practices developed with all Native Nations could help realize these goals more broadly. PCIA suggests that if the Commission is unable to initiate consultation with the Native Nation within 30 days following referral, then the applicant's obligations with respect to that Native Nation should be deemed complete. This is consistent with the process the Commission already has in place in cases where a Native Nation does not respond to an initial TCNS notification,[19] while ensuring that Native Nations "have the ability to participate in the assessment and mitigation of any effects communications facilities construction may have on Tribal properties of cultural and religious significance."[20]

In order for timelines for contact to be effective, best practices must clearly define what constitutes a complete review package submitted to a Native Nation in response to an expression of interest. Currently, the USET Best Practices recognize that "parties should address the Tribal need for adequate information early enough to have input into decision-making and the Applicant's need to move forward in a cost-effective and timely way."[21] PCIA suggests that any best practices look to what is deemed complete for purposes of the parallel review completed by State Historic Preservation Offices ("SHPOs"): the information required by FCC Form 620 (New Tower Submission Packet) or Form 621 (Collocation Submission Packet), as applicable.

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[18] USET Best Practices, *supra* note 9, at 2-3.
[19] *See supra* note 16.
[20] USET Best Practices, *supra* note 9, at 2.
[21] USET Best Practices, *supra* note 9, at 5.

## V. THE COMMISSION SHOULD INCREASE OUTREACH TO BETTER LEVERAGE THE BENEFITS OF ITS PROCESSES FOR INVOLVING TRIBES IN THE SECTION 106 REVIEW

PCIA also urges the Commission to "educate parties to better use [its] existing process."[22] The Commission should reach out to Native Nations to make them aware of the benefits of setting geographic preferences in TCNS that match their areas of interest and are not unnecessarily broad. The Commission should also increase educational outreach to better explain the differences between new tower builds and collocations – particularly if PCIA's suggestion to enhance TCNS to allow Native Nations to specify a construction-type preference is adopted.

As noted above, TCNS allows Native Nations to designate their geographic preferences by specifying the states or counties about which they wish to be notified about proposed construction. While many Native Nations take advantage of this tool, some have chosen wide geographic parameters or failed to specify parameters, resulting in a default nationwide preference. As a result, PCIA's members typically get expressions of interest for a given application in TCNS from more Native Nations than are actually interested in reviewing the particular proposal, which contributes to the problem discussed above, where a Native Nation fails to respond to follow-up communication to their expression of interest. This results in a drawn out process, often requiring FCC involvement and causing significant and unnecessary delays in the deployment of wireless facilities. This problem could be curbed measurably if all Native Nations set preferences in TCNS that were carefully calibrated to their areas of interest.

To help identify Native Nations that may not be taking advantage of the full benefits of TCNS in this regard, the Commission should cross-reference those Native Nations with wide geographic parameters with those that have required FCC government-to-government

[22] *Native Nations NOI*, *supra* note 1, at 2694 ¶ 53.

coordination following referral by an applicant. Then, the Commission should reach out to the Native Nations within that nexus to help them refine their area of interest within TCNS. In doing so, the FCC can better serve the dual goals of ensuring the interests of Native Nations are respected while facilitating the timely build out of wireless facilities and services.

Finally, the Commission should educate Native Nations about the differences between the construction of new towers and the collocation of antennas on existing towers and non-tower structures. There are significant differences between the two in terms of ground disturbance, visual impacts, and other factors. Collocations present lesser concerns with respect to ground disturbance and visual clutter, and for that reason Native Nations may be uninterested in collocations. A better understanding of the difference, coupled with improvements to TCNS that allow Native Nations to set a construction-type preference in TCNS, will help limit the number of facilities that need review – thereby lessening review burdens on Native Nations and speeding wireless deployment.

## VI. CONCLUSION

For the foregoing reasons, the Commission should upgrade TCNS, expand the use of best practices, and engage in educational outreach. Doing so will facilitate needed broadband deployment while continuing to ensure that Tribal interests and resources are protected.

Respectfully submitted,

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