



PUBLIC NOTICE

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WIRELESS TELECOMMUNICATIONS BUREAU CLARIFIES THAT THE DELAWARE TRIBE OF INDIANS IS NOT A FEDERALLY RECOGNIZED TRIBE UNDER THE NATIONWIDE PROGRAMMATIC AGREEMENT

By this Public Notice, we clarify that the Delaware Tribe of Indians (“Delaware Tribe”)¹ is no longer federally recognized and therefore no longer benefits from the provisions in Section IV of the Nationwide Programmatic Agreement (NPA).² The United States Court of Appeals, Tenth Circuit (Court of Appeals) ruled on February 16, 2005, that the Delaware Tribe abandoned its sovereignty and incorporated itself into the Cherokee Nation of Oklahoma (Cherokee Nation) in the year 1867, by written Agreement with the Cherokee Nation.³ As a result of the Court of Appeals decision, the Bureau of Indian Affairs (BIA) of the Department of Interior has removed the Delaware Tribe from BIA’s listing of tribal entities recognized and eligible for funding and services from BIA (federally recognized tribes). BIA published its most recent listing of federally recognized tribes in the Federal Register on November 25, 2005.⁴

Because the Delaware Tribe is no longer federally recognized, it no longer has the status of a federally recognized Indian tribe under the NPA. Applicants proposing to construct communications facilities no longer need to contact the Delaware Tribe under Section IV of the NPA, and need not refer matters to the Commission in cases of a disagreement or failure to respond to a notification.⁵ The Commission has programmed its Tower Construction Notification System (TCNS) so that the Delaware Tribe will no longer receive proposed tower notifications through that system.⁶ Where the Delaware

¹ We note that the “Delaware Tribe of Indians” and the “Delaware Nation” are two separate Indian tribes. The Delaware Nation maintains its seat of tribal government in Anadarko, Oklahoma, and continues to receive federal recognition. The Delaware Tribe of Indians maintains its seat of tribal government in Bartlesville, Oklahoma, and is no longer federally recognized.

² See Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process, *Report and Order*, 20 FCC Rcd 1073 (2004).

³ See *Cherokee Nation of Oklahoma v. Norton, et al*, 389 F. 3d 1074 (10th Cir. 2005).

⁴ See 70 FR 71194 (Nov. 25, 2005).

⁵ We note that applicants may be required to contact the Cherokee Nation.

⁶ The TCNS is a voluntary system to facilitate licensees’, applicants’ and private tower constructors’ identification of and early communication with federally recognized Indian tribes and Native Hawaiian Organizations (NHOs). The TCNS is an interactive, login and password-protected system, which allows tower constructors to notify Tribes and NHOs of proposed construction, and allows the Tribes and NHOs to reply to tower constructors by using the system. For further information relating to TCNS, please consult the Commission’s TCNS web page

Tribe has been previously notified of a proposed construction through the TCNS, and has not timely responded, the applicant is not required follow up or seek assistance from the Commission.⁷

Although the Delaware Tribe is no longer a federally recognized tribe, it retains the status of a member of the public under Section V of the NPA. To the extent the Delaware Tribe has raised or may raise a specific concern about the effect of an undertaking on historic properties, the Applicant shall handle it in accordance with Section V.E. of the NPA. The Delaware Tribe may become a consulting party if it demonstrates a legal or economic interest or expertise under Section V.F. of the NPA.

If you have any questions relating to this matter, you may contact Dan Abeyta, Assistant Division Chief, Spectrum & Competition Policy Division (SCPD), Wireless Telecommunications Bureau (WTB) at (202) 418-1538 or e-mail at Dan.Abeyta@fcc.gov; Anne Marie Wypijewski, Senior Attorney, SCPD, WTB at (717) 338-2508 or e-mail annemarie.wypijewski@fcc.gov; or Frank Stilwell, Senior Attorney, SCPD, WTB at (202) 418-1892 or e-mail frank.stilwell@fcc.gov.

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(<http://wireless.fcc.gov/outreach/notification/index.html>), also accessible through the Commission's Tribal homepage (<http://www.fcc.gov/indians>).

⁷ See Clarification of Procedures for Participation of Federally Recognized Indian Tribes and Native Hawaiian Organizations Under the Nationwide Programmatic Agreement, *Declaratory Ruling*, FCC 05-176 (rel. Oct. 6, 2005).