

Congress of the United States
Washington, DC 20510

198

March 21, 2018

The Honorable Ajit Pai
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

The Honorable Mignon Clyburn
Commissioner
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

The Honorable Michael O’Rielly
Commissioner
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

The Honorable Brendan Carr
Commissioner
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

The Honorable Jessica Rosenworcel
Commissioner
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Dear Chairman Pai and Commissioners:

We write today with concern about the Federal Communications Commission’s recent draft report and order on “Wireless Infrastructure Streamlining”¹ and ask the FCC to delay finalizing the rule until a truly meaningful consultation with Indian Tribes occurs. We have heard from tribal stakeholders that this draft order confuses streamlining with steamrolling, potentially limiting the resources available to Tribes and their Tribal Historic Preservation Offices at an important juncture when the telecommunications industry continues its expansion of infrastructure into tribal areas of religious, historical, and cultural importance. Given these potentially sweeping changes to the agency’s tribal consultation process within the National Historic Preservation Act (NHPA), we ask the FCC to delay its vote on this measure while it conducts another round of tribal consultation.

Because tribes possess a special expertise regarding impacts to places that have religious and cultural significance, which are not always located on reservation lands, tribal consultation lies at

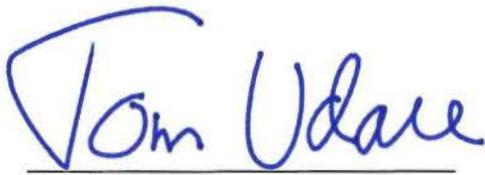
¹ Wireless Infrastructure Streamlining Report and Order (WT Docket No. 17-79) (Mar. 1, 2018) https://transition.fcc.gov/Daily_Releases/Daily_Business/2018/db0301/DOC-349528A1.pdf

the heart of the procedural requirements of the NHPA, a “stop, look, and listen” statute. As such, we encourage the FCC to finalize a rule that gives Tribes their due consideration in the planning process, possessing as they do a unique perspective rooted in a deep and rich history in the areas in which industry now expands. Bureaucratic inertia and a desire to finalize a rule, any rule, is no reason to override the federal government’s moral and legal obligations to Indian tribes.

We certainly appreciate FCC’s efforts to engage with tribes. Nevertheless, we have heard from a number of tribes and national tribal organizations that the FCC’s consultation fell far short of anything that could be described as meaningful. We have emphasized this time and again in our Committees: Tribal consultation is not a “check the box” exercise. Grounded in treaties, executive orders, and a variety of federal laws, the trust responsibility and the legal and moral obligations that go with it require a government-to-government relationship, one that the FCC must conduct in good faith and with a goal of meaningful dialogue.

Closing the digital divide in Indian Country is not mutually exclusive with the goal of robust tribal consultation. We believe the FCC can expand broadband into underserved communities in Indian Country without sacrificing the federal government’s trust obligation to tribes.

Sincerely,



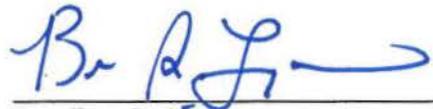
Tom Udall
United States Senator



Maria Cantwell
United States Senator



Tina Smith
United States Senator



Ben Ray Lujan
United States Representative