



NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians Resolution #DEN-18-005

TITLE: Opposing Efforts by the Federal Communications Commission Pursuant to FCC 17-79, to Restrict Tribal Government Historic Preservation Review of Wireless Infrastructure Development

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WHEREAS, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States and the United Nations Declaration on the Rights of Indigenous Peoples, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

WHEREAS, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

WHEREAS, throughout its history the United States has sought to acquire title and control over aboriginal American Indian lands and has utilized the concept of trusteeship to acquire title and control over remaining tribal lands occupied by Indian people; and

WHEREAS, on March 22, 2018, the Federal Communications Commission (FCC) issued an Order (No. 17-79, *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*) that removes tribal governments from their rightful role under federal law of reviewing the siting of 5G and other communications facilities for impacts to historic and cultural properties (see the Order at <https://docs.fcc.gov/public/attachments/FCC-18-30A1.pdf>); and

WHEREAS, federal historic preservation law, pursuant to Section 106 of the National Historic Preservation Act and its regulations (Section 106), requires adequate tribal government review of proposed communications development infrastructures; and

WHEREAS, the FCC has duties and a long-standing policy (FCC 00-207) to consult with tribal nations before implementing any regulation or policy that will significantly or uniquely affect tribal governments, their land, or their resources; and

WHEREAS, the FCC purports to have consulted with tribal governments, but it did no significant outreach or engagement in substantive discussions and received no support for the Order from any tribal government; and

WHEREAS, the FCC, under guidance of the federal Advisory Council on Historic Preservation, has allowed review fees to be charged by Indian tribes for nearly 15 years without objection and the elimination of review fees under the Order creates a substantial burden on tribal governments to fulfill their lawful responsibilities; and

WHEREAS, the FCC's actions will have a significant negative impact on the abilities of tribal governments to preserve and protect cultural resources; and

WHEREAS, NCAI has established its support for compensation to tribes for Section 106 Consultation in Resolution SD-02-019; and

WHEREAS, NCAI has passed resolution MOH-17-027, urging the FCC to actively and meaningfully consult with tribal governments on matters involving the FCC's Section 106 obligations to protect historic and cultural properties.

NOW THEREFORE BE IT RESOLVED, that the National Congress of American Indians (NCAI) does hereby oppose the Federal Communications Commission's efforts under Order FCC 17-79 that removes tribal governments from their rightful role under federal law of reviewing the siting of communications facilities for impacts to historic and cultural properties; and

BE IT FURTHER RESOLVED, that NCAI demands the FCC to engage in meaningful consultation on these important matters of preserving and protecting tribal sites of religious and cultural significance with any interested tribal government, and to take any and all measures to ensure that tribal sovereignty to protect historic lands and cultural sites is restored; and

BE IT FURTHER RESOLVED, that the Congress of the United States of America is requested to take appropriate action to ensure FCC compliance with federal historic preservation law to ensure proper respect for tribal authority to protect historic lands and sites of religious and cultural significance; and

BE IT FINALLY RESOLVED, that this resolution shall be the policy of NCAI until it is withdrawn or modified by subsequent resolution.

CERTIFICATION

The foregoing resolution was adopted by the General Assembly at the 2018 Annual Session of the National Congress of American Indians, held at the Hyatt Regency in Denver, Colorado October 21-26, 2018, with a quorum present.


Jefferson Keel, President

ATTEST:


Juana Majel Dixon, Recording Secretary