Osage Nation Historic Preservation Office

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April 29, 2025

Joel Taubenblatt
Acting Bureau Chief, Wireless
Federal Communications Commission
45 L Street NE
Washington, DC 20554

RE: FCC CTIA Petition for Rulemaking on NEPA Reforms

Dear Bureau Chief Taubenblatt,

The Osage Nation emphatically opposes The Wireless Association's (CTIA) request that the Federal Communications Commission (FCC) revise its National Environmental Policy Act (NEPA) rules to declare most wireless facility deployments outside the scope of "major federal actions." CTIA's proposal would eliminate the FCC's long-standing environmental and historic preservation review and directly contradict the D.C. Circuit's 2019 decision in United Keetoowah Band of Cherokee Indians v. FCC (933 F.3d 728). Acting on the CTIA's request would not only defy binding court precedent but also exceed the FCC's statutory authority and place Osage and other Tribal Nations' cultural resources at serious risk.

The Osage Nation Historic Preservation Office is charged with safeguarding Osage ancestral remains, traditional cultural properties, sacred landscapes, and associated objects throughout Osage ancestral territory. Wireless tower constructions—especially the dense, small-site build-outs contemplated by CTIA—frequently occur in rural areas and on landforms that contain unrecorded mound sites, burial grounds, and other places of profound cultural importance to the Osage people. Without meaningful government-to-government consultation prior to tower implementation (as described in Executive Order 13175), such constructions risk inadvertent discoveries, disturbance, or irreversible loss of significant cultural resources.

CTIA's argument that geographic area deployments are not major federal actions is unsubstantiated. The FCC retains substantial federal control and responsibility over deployments through its licensing, permitting, technical, interference, and enforcement powers (47 U.S.C. § 303(n)). That authority satisfies the definition of a "major federal action" in the Fiscal Responsibility Act of 2023 (42 U.S.C. § 4336e(10)(A)). While the Council on Environmental Quality's Memorandum directs agencies to revise their NEPA procedures to "expedite permitting approvals," they are also required to honor the amended NEPA statute and existing obligations, including mandated consultation processes.

Entertaining the reclassification of certain wireless facility towers as no longer meeting the requirements of major federal actions would not only impact NEPA but also regulations under the National Historic

Preservation Act (54 U.S.C. § 300101 et seq., 36 CRF Part 800.9). In their petition, the CTIA explicitly state, "The Commission additionally should propose to find that geographic area deployments are not undertakings under the NHPA, and amend Section 1.1312 accordingly." For the same reasons that geographic area deployments are major federal actions, they must also qualify as undertakings. The NHPA clearly defines an undertaking as "a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a federal agency." This includes actions requiring a federal permit, license, or approval. In United Keetoowah Band of Cherokee Indians v. FCC, the D.C. Circuit upheld that infrastructure identical to that described in the petition triggers both NEPA and NHPA review. Eliminating review now would directly conflict with that decision.

To bypass the NHPA review process, the FCC would need to either exempt an entire category of undertakings from review or redefine what constitutes an undertaking. Federal agencies do not possess unilateral authority to do either. Congress created the Advisory Council on Historic Preservation (ACHP) to oversee the implementation of the NHPA, and they alone issue binding regulations for the NHPA. Any attempt to sidestep that framework would invite legal challenge and undermine the uniform national baseline Congress established to protect cultural resources.

Removing NEPA and NHPA review would slash transparency and accountability precisely where they are most needed. When followed in good faith and supported with proper funding, NEPA and NHPA are not obstacles to progress but rather vital mechanisms for identifying and protecting culturally significant sites while allowing infrastructure to proceed responsibly. Strengthening agency understanding of these duties will yield the most efficient and equitable outcomes.

While The Osage Nation respects the national priority to deliver broadband to all Americans, such progress cannot come at the expense of culturally and religiously significant properties. Bypassing NEPA and NHPA consultation processes sets a troubling precedent—one that risks endangering irreplaceable cultural resources, violating established legal protections, and disregarding Indigenous sovereignty. Nevertheless, The Osage Nation remains willing to collaborate with the FCC to address inefficiencies in NEPA and NHPA reviews in a way that ensures the protection of historic properties and places of cultural and religious importance. We can only do so effectively, however, if the FCC takes full responsibility for the implications of CTIA's request and comprehensively addresses Tribal concerns.

Sincerely,

Andrea A. Hunter, Ph.D.
Director, Tribal Historic Preservation Officer
The Osage Nation

cc: Chief Geoffrey Standing Bear, Principal Chief, The Osage Nation
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