



USET

SOVEREIGNTY PROTECTION FUND

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USET SPF Resolution No. 2019 SPF:011

CALL FOR UNITED STRATEGY TO RESTORE THE FCC BEST PRACTICES

- WHEREAS,** United South and Eastern Tribes Sovereignty Protection Fund (USET SPF) is an intertribal organization comprised of twenty-seven (27) federally recognized Tribal Nations; and
- WHEREAS,** the actions taken by the USET SPF Board of Directors officially represent the intentions of each member Tribal Nation, as the Board of Directors comprises delegates from the member Tribal Nations' leadership; and
- WHEREAS,** Section 106 of the National Historic Preservation Act (NHPA) requires that whenever a federal undertaking could affect a property of religious or cultural significance to a federally recognized Tribal Nation or Tribal Nations, the responsible federal agency must engage in an extensive review process, including consultation with all affected federally recognized Tribal Nations; and
- WHEREAS,** Federal Communications Commission (FCC) licensing of communications towers and antennas is a federal undertaking subject to NHPA Section 106 requirements, including appropriate consultation with federally recognized Indian Tribal Nations; and
- WHEREAS** the FCC has a trust responsibility to Tribal governments and cannot delegate its government-to-government relationship with Tribal Nations to private entities, including its consultation obligations under the NHPA, regulations of the Advisory Council on Historic Preservation (36 CFR Part 800), Executive Order 13175, and FCC Regulations (47 CFR Sec. 1.1307); and
- WHEREAS,** recognizing the practical difficulties faced by the FCC and the communications industry in building the nationwide communications network USET negotiated with the FCC over several years to find a practical solution that provides benefits to all parties; and
- WHEREAS,** in a historic signing ceremony at the USET Impact Week meeting in 2004, the FCC adopted a nationwide programmatic agreement (NPA) for Section 106 consultation and a Best Practices document, which provide guidance to the telecommunications industry and Tribal governments to facilitate historic preservation and environmental reviews; and
- WHEREAS,** the FCC also implemented, with recommendations from USET, an electronic database and notification system known as the Tower Construction Notification System (TCNS), which provides notifications to participating Tribal Nations of proposed tower locations in geographic areas of interest to them, as well as notifications to the FCC and FCC applicants of which Tribal Nations have an interest in an area where a tower is proposed for construction; and

- WHEREAS,** in exchange for Tribal Nations declining to invoke full government-to-government consultation directly with the FCC on each tower application, and to provide financial means for Tribal governments to research the thousands of tower applications, the FCC countenanced in the NPA the ability of Tribal Nations to charge fees to applicants; and
- WHEREAS,** USET adopted a model cost recovery schedule (USET Resolution No. 2005:009) for Tribal Nations and applicants to use to estimate the fees associated with a Tribal Nation's ability to recover administrative and other costs associated with the researching of tower applications; and
- WHEREAS,** this agreement, having been in place since 2004, has worked very well in protecting Tribal rights and sacred sites while also providing for the licensing and construction of over one hundred thousand communications towers across the country; and
- WHEREAS,** on May 30, 2018, the FCC approved an order (WT Docket No. 17-79) and made subsequent and significant changes to the TCNS that undermine the NPA by removing the FCC's assent to Tribal administrative fees, and limiting the ability of Tribal Nations to request essential information from applicants about a proposed installation, thereby dismantling the carefully crafted solution to a difficult but critical public policy dilemma; and
- WHEREAS,** in December 2010, the United States recognized the rights of its First Peoples through its support of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), whose provisions and principles support and promote the purposes of this resolution; therefore, be it
- RESOLVED** the USET SPF Board of Directors urges the Federal Communications Commission to reconsider its ill-advised changes to the Tower Construction Notification System and direction to applicants regarding Tribal fees and to honor the original best practices; and be it further
- RESOLVED** the USET SPF Board of Directors urges all Tribal governments to exercise their legal rights under the National Historic Preservation Act and other federal laws to full government-to-government consultation with the Federal Communications Commission on every individual tower application which could have an impact on a place of religious or cultural significance, until such time as the Federal Communications Commission restores the ability of Tribal Nations to work cooperatively with the communications industry.

CERTIFICATION

This resolution was duly passed at the USET SPF Annual Meeting held on the Sovereign Territory of the Seneca Nation of Indians, at which a quorum was present on October 11, 2018.


Chief Kirk E. Francis, Sr., President
United South and Eastern Tribes
Sovereignty Protection Fund


Chief Lynn Malerba, Secretary
United South and Eastern Tribes
Sovereignty Protection Fund

Because there is Strength in Unity