



United South and Eastern Tribes, Inc.  
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**USET Resolution No. 2009:058**

**CONCERN REGARDING PROPOSED RURAL UTILITY SERVICE/NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION SECTION 106 NATIONWIDE PROGRAMMATIC AGREEMENT**

- WHEREAS,** United South and Eastern Tribes Incorporated (USET) is an intertribal organization comprised of twenty-five (25) federally recognized Tribes; and
- WHEREAS,** the actions taken by the USET Board of Directors officially represent the intentions of each member Tribe, as the Board of Directors comprises delegates from the member Tribes' leadership; and
- WHEREAS,** Section 106 of the National Historic Preservation Act requires that whenever a federal undertaking could affect a property of religious and cultural significance to a federally recognized Tribe or Tribes, the responsible federal agency must engage in an extensive review process, including consultation with all affected federally recognized Indian Tribes; and
- WHEREAS,** the Federal Government's consultation obligation is rooted in two pillars of federal Indian law and policy the federal trust responsibility to Indian Tribes and the government-to-government relationship, including respect for Tribal sovereignty; and
- WHEREAS,** the Rural Utility Service (RUS) of the U.S. Department of Agriculture and the National Telecommunications and Information Administration (NTIA) of the U.S. Department of Commerce, have proposed a draft Nationwide Programmatic Agreement (NPA) to streamline review under Section 106 for the Broadband Technology Opportunities Program (BTOP) and the Broadband Initiative Program (BIP) undertakings assisted through the American Reinvestment and Recovery Act (ARRA); and
- WHEREAS,** Indian Country is probably the most underserved area with regard to broadband deployment and USET supports the BTOP and BIP initiatives, but has concerns about the potential implementation of those initiatives in a manner that erodes respect for Tribal sovereignty, undercuts the fundamental purpose of Section 106, and could lead to the destruction of sites of religious and cultural significance to Indian Tribes; and
- WHEREAS,** it is impossible for USET Tribes to deliberate over the implications of the draft NPA without the benefit of extensive in-person discussions with RUS and NTIA officials within the short time frames that have been proposed; and
- WHEREAS,** USET recognizes the NTIA and RUS have substantially improved upon the draft concept for an NPA received by USET on or about October 1, 2009 by lengthening certain review periods from seven days to 21 days and by agreeing to condition financial assistance awarded under BIP/BTOP upon completion of the Section 106 review; and
- WHEREAS,** the National Council of State Historic Preservation Officers has also expressed its concern over the proposed NPA and has stated that it believes the existing Section 106 process is sufficient; and

- WHEREAS,** USET strongly believes an expeditious Section 106 process is not dependent upon changing paper deadlines, but through the establishment of fundamental relationships of trust between the federal agencies, Tribes and Applicants – relationships which are not in place at this time; and
- WHEREAS,** USET points to the Voluntary Best Practices it entered into with the Federal Communications Commission with regard to Section 106 review as an example of the kind of straightforward but clear process which can be established to expedite Section 106 review when the parties have engaged in a true, government-to-government consultation; and, therefore, be it
- RESOLVED** USET Board of Directors does not support the proposed NPA (dated October 16, 2009) as currently drafted; and, be it further
- RESOLVED** USET Board of Directors strongly believes that the key to an efficient Section 106 review process for American Reinvestment and Recovery Act funded projects is establishing stronger relationships between the federal agencies, Tribes and Applicants, therefore calls upon the Rural Utility Service and National Telecommunications and Information Administration to fund and host meetings between these parties for this purpose; and, be it further
- RESOLVED** the USET Board of Directors directs the USET President to work, in coordination with the USET Culture and Heritage Committee, with Rural Utility Service and National Telecommunications and Information Administration to build strong relationships with the intent of facilitating Section 106 review for American Reinvestment and Recovery Act funded projects on terms that address Tribal concerns and preserve Tribal sovereignty; and, be it further
- RESOLVED** the USET Board of Directors urges its members to support this effort with political, legal and financial resources.

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#### CERTIFICATION

This resolution was duly passed at the USET Annual Meeting, at which a quorum was present, in Hollywood, FL, on Thursday, October 29, 2009.



Brian Patterson, President  
United South and Eastern Tribe, Inc.



Robert McGhee, Secretary  
United South and Eastern Tribes, Inc.

*“Because there is strength in Unity”*