



UNITED SOUTH AND EASTERN TRIBES, INC.

USET Resolution No. 2003:041

FCC CONSULTATION WITH TRIBES ON CELL TOWER SITING

- WHEREAS** United South and Eastern Tribes Incorporated (USET) is an intertribal organization comprised of twenty-four (24) 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, the responsible federal agency must engage in an extensive review process, including government-to-government consultation with all affected federally recognized tribes; and
- WHEREAS** the licensing of communication tower transmitters by the Federal Communications Commission (FCC) is a federal undertaking subject to Section 106 review; and
- WHEREAS** communication tower companies and related entities have directly solicited information from the tribes, often asserting that they are carrying out the FCC's Section 106 consultation obligation; and
- WHEREAS** the FCC has a trust responsibility to tribal governments and cannot delegate its government-to-government relationship with tribes to private entities, including its consultation obligation under the National Historic Preservation Act, Advisory Council on Historic Preservation regulations (36 CFR Part 800), Executive Order 13175, and FCC Regulations (47 C.F.R. Section 1.1307); and
- WHEREAS** USET recognizes the practical difficulties faced by the FCC and the communications industry in building a nationwide communications network, and believes that there is a benefit for all parties for a formal procedure to be developed for FCC-Tribal consultations; and
- WHEREAS** USET representatives met with the Chairman of the FCC and other FCC officials on September 10, 2002 and requested (1) that the FCC Chairman appoint a high-level official as a contact for Tribes on this issue and (2) that the FCC work with the tribes to develop a procedure in accordance with a proper government-to-government relationship for FCC-Tribal consultation; and
- WHEREAS** the FCC has not responded to either request; therefore, be it
- RESOLVED** that the USET Board of Directors urges its members to forward the letters received from private industry seeking input on cell tower siting to the FCC Chairman, along with a formal request for government-to-government consultation, until such time as the FCC is willing to work with USET on the development of a consultation process; and be it further
- RESOLVED** that the USET Board of Directors authorizes the USET Culture and Heritage Committee to provide appropriate sample letters and other guidance to USET member tribes to be used with the FCC; and be it further

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RESOLVED that the USET Executive Director is authorized to review the status of FCC consultation with regard to communications tower siting within the USET region, as well as with regard to the development of any programmatic agreements, for compliance with Federal law and regulation in anticipation of possible litigation.

CERTIFICATION

This resolution was duly passed at the USET Annual Board Meeting and EXPO, at which a quorum was present, in Uncasville, CT, Thursday, October 31, 2002.



Keller George, President
United South and Eastern Tribes, Inc.



Beverly M. Wright, Secretary
United South and Eastern Tribes, Inc.

The Honorable Michael K. Powell
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Dear Chairman Powell:

On behalf of the _____ Tribe, and pursuant to Section 106 of the National Historic Preservation Act, I am hereby requesting that the Federal Communications Commission begin consultation directly with our tribe on a government-to-government basis concerning the impact and potential for adverse effects of a proposed FCC-licensed communications tower on religious and cultural properties of importance to this tribe. Enclosed please find a copy of a letter from a private company regarding this tower.

Please contact _____ at _____ to begin consultation as soon as possible.

The statutory obligation to consult with the Tribe rests with the FCC and not with private industry. It is our expectation that no construction or licensing will go forward on this site until the government-to-government consultation between the FCC and our tribe has been satisfactorily completed.

Thank you for your attention to this matter.

Sincerely,

[Please have head of Tribal government
sign this letter]