

Dear Ms. Sorgen,

In response to your request of November 18, 2019, we respond below to your questions regarding the FCC's environmental review process. Please let us know if you have any additional questions

Thank you,

Paul D'Ari

Senior Legal Counsel
Competition and Infrastructure Policy Division
Wireless Telecommunications Bureau

Excerpts of email communication between Phoebe Sorgen, representative of Wireless Radiation Education and Defense, and Paul D'Ari, Senior Legal Counsel, Wireless Telecommunications Bureau, FCC

Sorgen: Is it true that, despite the FCC Order last year, environmental review is still required in many cases before telecom equipment permits can be approved in our town, Berkeley, CA? We believe that to be the case due to the Aug 9 appellate court decision in the lawsuit UNITED KEETOOWAH BAND OF CHEROKEE INDIANS IN OKLAHOMA, INDIVIDUALLY AND ON BEHALF OF ALL OTHER NATIVE AMERICAN INDIAN TRIBES AND TRIBAL ORGANIZATIONS, ET AL., PETITIONERS v. FCC and the USA.

D'Ari: The D.C. Circuit decision in *United Keetoowah Band of Cherokee Indians v. FCC* vacated those portions of the Commission's order that exempted certain small wireless facilities from federal environmental and historic preservation review. *See Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, Second Report & Order*, FCC 18-30, (released Mar. 30, 2018). In vacating portions of the Second Report and Order, the court determined that small wireless facilities are not exempt and must therefore be reviewed under the National Environmental Policy Act and National Historic Preservation Act.

Sorgen: From the FCC's NEPA fact sheet, we gather that NEPA review is required for wireless telecom applications in our town. How does the telecom company applicant know that a NEPA Environmental Assessment (EA) is required for a particular application? Does the City need to let them know it is required? Can residents require it?

D'Ari: To determine whether an EA is required, the FCC licensee or applicant must complete an initial environmental and historic preservation review ("the EA checklist"). This review includes an analysis of whether its proposed facilities fall into any of the categories that trigger an EA. As part of this review, licensees and

applicants must follow distinct procedures to determine whether the proposed facilities will, for example, have an adverse effect on historic properties under NHPA will affect listed species under the Endangered Species Act, or will affect wetland resources.

While neither the city nor a member of the general public can make a determination that an EA is necessary, the Commission can review concerns raised by interested parties and decide whether to require an EA.