

Environmental Compliance:
Section 106
and
NEPA



Federal Communications Commission

Environmental Compliance & FCC Licensees / Applicants



- Environmental Compliance obligations rest on the FCC as a federal agency
- The FCC's rules impose enforceable duties on licensees and applicants in order to ensure that the FCC complies with its legal obligations
- These duties on applicants are part of the FCC's environmental rules, 47 C.F.R. §§ 1.1301-1.1319
- The "Project" is the tower, fence, equipment sheds, access roads, power and fiber connections, and other related aspects of the tower



Reminders for Licensees

- The height or design of the tower is not relevant in determining that a proposed tower is subject to the NEPA and Section 106 process
- The grant of a license is not permission to construct
- Form 601; environmental question answer as “no” does not permit the construction of a tower without NEPA or Section 106 review

Environmental Compliance at the FCC



- Section 106 of the NHPA
- NEPA



- ESA
- Migratory Birds
- Wetlands
- Flood Plains

NHPA



- Created the National Register of Historic Places
- Created the Advisory Council on Historic Preservation (ACHP)
- Required Historic Preservation Programs in each agency and an FPO
- Established State Historic Preservation Officers –SHPOs
- Established Tribal Historic Preservation Officers – THPOs

Section 106



- Section 106 of the NHPA requires federal agencies to consider the effect of federal undertakings on properties included or eligible for inclusion in the National Register
- The NHPA defines an undertaking to include, among other things, projects “requiring a Federal permit, license, or approval”
- The FCC has consistently treated tower construction as an “undertaking” under the NHPA due to its relation to licensing and antenna structure registration



Section 106 Process

- ACHP delegation letter allows applicants/consultants to prepare reports and contact SHPOs, Tribes, and consulting parties during the review process
- FCC Section 106 Process is described in the two programmatic agreements; the collocation agreement and the NPA

ACHP Delegation Memo



- Confirms that licensees, applicants, and their authorized representatives may act on FCC's behalf to initiate process, identify properties, and assess effects
- Does not require Tribes to consult with or provide information to applicants
- If you need assistance with this part of the process, contact the FCC. Please don't wait until the last minute to contact us

FCC Programmatic Agreements



Collocation Agreement

Excludes most antennas placed on existing towers and existing non-tower structures from routine NHPA review

Remains in effect for collocations within its terms

FCC Programmatic Agreements



Nationwide Programmatic Agreement

Additional exclusions from Section 106 review

Clarifies and streamlines processes

Does not require new survey for historic properties

Does require Tribal assistance to identify

Tribal religious and cultural sites

Clarifies roles and obligations of parties

Standardized forms

Rules made binding and enforceable on applicants



Towers on Federal Land and Reservations

- NPA does not apply on Federal land
- Always consult with FCC when a project is on a mix of Federal and private land
- NPA does not apply on Tribal land
- **Always consult with FCC and Tribe when constructing towers on private land within the bounds of a Reservation**



Tribal Religious and Cultural Sites

- The FCC FPO, and our licensees, do not need to know why a site has religious or cultural significance to a Tribe
- The FCC FPO expects that the site identification will involve a recognized Tribal Elder
- For Section 106 purposes, the Tribe should provide a boundary or area for the site so that our licensees can avoid the site
- Tribes, and SHPOs, may request an expanded APE



Tower Owners and Carriers

- The entity constructing facilities (tower or antennas) must comply with the FCC's environmental rules
- Antenna collocations may be excluded from Section 106 review under the Collocation Agreement
- Collocation on a tower constructed after 3/16/01 is not excluded if the tower did not complete Section 106 review
- Collocation on a tower constructed before 3/16/01 is ordinarily excluded unless a complaint is pending or the tower has been found to have an adverse effect. However, the tower itself may still be subject to future complaints

Tower Construction Notification System - TCNS



- Voluntary system to facilitate identification of and contact with potentially affected Tribes
- Tribes and NHOs designate geographic areas of interest
- Basic information supplied by applicant automatically forwarded to interested Tribes
- Tribal response informs applicant whether it is interested in further participation
- Does not substitute for Section 106 process or government-to-government consultation unless Tribe disclaims interest

E-Section 106

Electronic Notifications



- Notification of New Section 106 Filing
- Notification of actions taken by SHPO/THPO
- Notification of FCC initiation of review and any actions taken by FCC
- Notification of ACHP participation and recommendations
- Notification of updates to filings and other actions taken by Applicant/Consultants

FCC Administration



- Ultimately responsible for compliance with Section 106
- Establish and enforce rules binding on licensees and applicants to ensure FCC compliance
- Negotiate policies and processes with ACHP, SHPOs, and Tribes
- Government-to-government consultation where Tribal concerns are not resolved consensually
- Resolve adverse effects and disputed cases
- FCC staff includes communications attorneys, engineers, and the Federal Preservation Officer

Environmental Compliance: Other Laws and Regulations



- National Environmental Policy Act (NEPA)
- Endangered Species Act
- Army Corps of Engineers Wetlands
- FEMA Flood Plains
- Towers on Federal Land require other agency permits with that agency taking the lead on environmental compliance

Adverse Effects and Historic Properties



- When an adverse effect is recommended and the SHPO and/or the THPO concurs, the applicant must notify the FCC and the ACHP
- An adverse effect does not stop a project
- To go forward, the applicant must submit an alternatives analysis and a mitigation plan



Conditional No Adverse Effects

- Permitted under FCC rules and the NPA
- Permits the SHPO to “condition” the recommendation for a no adverse effect by requesting certain steps to reduce or element the adverse effect
- Use of this option does not require an MOA or EA



Useful Web Sites

- http://wireless.fcc.gov/siting/environment_compliance.html
- http://wireless.fcc.gov/siting/historic_preservation.html
- <http://wireless.fcc.gov/siting/environmental-assessment.html>
- http://wireless.fcc.gov/outreach/index.htm?job=tower_notification
- <http://www.fcc.gov/indians/>