

# Environmental Compliance: The Section 106 Process



Federal Communications Commission

# Section 106

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## FCC Licensees / Applicants



- Section 106 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

# 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

# FCC Programmatic Agreements



## **ACHP Program Comment**

The ACHP recognized that the FCC is the expert agency on the siting of communications towers. The Program Comment permits RUS, NTIA, and FEMA to allow their grantees to comply with Section 106 by using the FCC's Section 106 process. This enables those applicants to use TCNS and the FCC NPA. Each agency requires that their grantees use the FCC E106 system to transmit documents among the agencies.

# 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 and our licensees do not need to know why a site has religious or cultural significance to a Tribe
- The FCC 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
- Especially useful when Tribes have been removed from their ancestral homelands or intermediate lands
- 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 concurs, the applicant must notify the FCC
- An adverse effect does not stop a project
- To go forward, the applicant must submit an alternatives analysis and a mitigation plan



# Mitigation





# Mitigation Suggestions

- Lower the tower
- Reduce the size of the communications gear
- Paint the tower and gear
- Install a stealth tower
- Plantings
- Provide a benefit to the affected historic property

# Providing a Benefit to an Historic Property



- Prepare or update a National Register nomination
- Commission HABS or HAER documentation
- Install signs
- Prepare a brochure
- Develop a cell phone tour
- Work with the SHPO and local community to identify historic preservation needs



# Useful Web Sites

- [http://wireless.fcc.gov/siting/environment\\_compliance.html](http://wireless.fcc.gov/siting/environment_compliance.html)
- [http://wireless.fcc.gov/siting/historic\\_preservation.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://wireless.fcc.gov/outreach/index.htm?job=tower_notification)
- <http://www.fcc.gov/indians/>

# For More Information Contact:

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