

# NOTICE OF PROPOSED RULEMAKING

## Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment

WT Docket No. 17-79

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# Overview

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The FCC is examining the regulatory processes associated with wireless network infrastructure deployment to determine how we may improve the efficiency of these processes, consistent with the law and the public interest, in order to promote investment in and the rapid deployment of advanced wireless broadband service to all Americans.

The examination includes:

- The Commission's environmental and historic preservation review processes.
- State and local government reviews of wireless facilities.

# Why Update NHPA/NEPA Approach?

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- Environmental review, like any regulatory process, increases the costs of deployment and may impose lengthy delays
- Impact of costs and delays may be intensified by the transition to small cell technology
- At the same time, benefit of review for small facilities is in many instances less apparent
- Providers assert that the Tribal component of the Section 106 review process is particularly cumbersome and costly

# Section 106 Issues: Costs and Benefits

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- What are the costs of the FCC's Section 106 process and its Tribal component?
  - Time
  - Money
  - Impact on deployment of services
- What are the benefits in terms of preventing damage to historic and culturally significant properties?
- Specific data and examples are encouraged

# Section 106 Issues: Process and Exclusions

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- How can and should the existing Section 106 process be clarified and improved?
  - Tribal fees
  - Other Tribal process issues
  - General process
- Should additional categories of undertakings be excluded from review, particularly for small facilities?
  - Pole replacements
  - Deployments in rights-of-way
  - Collocations

# Section 106 Issues: Twilight Towers and Scope

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- What steps should the Commission take toward a definite solution for Twilight Towers?
  - Exclusion from review for collocations?
  - Tower-by-tower review?
  - Similar measures for non-compliant towers built after March 7, 2005?
- Should the Commission revisit when wireless facilities construction constitutes its federal action or undertaking?

# NPRM Consultation

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- The Commission's review of its rules and procedures implementing NEPA and the NHPA may uniquely affect Tribal governments
- NPRM directs ONAP and WTB to consult with Tribal Nations
- Chairman and his personal staff are participating in consultation meetings

# NPRM Consultation (2)

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- Outreach to date includes conference calls; meetings in South Dakota, Connecticut (NCAI), Oregon and Oklahoma.
- Meeting with Chairman Pai scheduled for August 22 near Flagstaff, Arizona
- Additional meeting to be scheduled in Washington, DC
- Beyond conference calls and regional meetings, Tribal Nations may request direct consultation via email to [tribalinrastructure@fcc.gov](mailto:tribalinrastructure@fcc.gov). These meetings are ongoing.

# Proposed Agenda

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- FCC to review key Tribal process issues from the NPRM
- We invite your perspective
  - On the questions asked in the NPRM
  - On issues and problems that the NPRM fails to identify
  - On solutions
- Following dialogue, opportunity to caucus and reconvene to continue the conversation

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**QUESTIONS?**

# Tribal Fees: Framework (¶¶ 45-46)

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- Under ACHP guidance, agency/applicant is not required to pay Tribe for providing its views
- Payment is appropriate when Tribe fulfills role of consultant or contractor when asked for “specific information and documentation.”
- Applicant must provide Tribes with all information reasonably necessary and an opportunity to respond.
- Applicant may refuse payment but retains the duty of obtaining information to fulfill Section 106 obligations.

# Tribal Fees: Practices (¶ 42)

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- Current Tribal and industry practices
- Impact on timely deployment of broadband services to all Americans

# Tribal Fees: When Appropriate (¶¶ 45-47)

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- If an applicant does not request specific information but a Tribe independently conducts research, site visits, etc., is payment required? If so, under what circumstances?
- Are compensable services less likely for certain types of construction (*e.g.*, poles in ROW or collocations)?
- Is a flat fee for all applications to recover TCNS costs consistent with ACHP guidance?
- Would the Commission's clarifying when a Tribe is engaged in its statutory role versus a contractor alleviate concerns about timely payment?

# Tribal Fees: When Appropriate (¶ 48)

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- Should the Commission issue guidance distinguishing requests for Tribal views from requests to perform consulting services?
  - What Bright Line test, if any, could be used?
- How does the requirement to use “reasonable and good faith” efforts to identify properties affect the analysis?
- How can the Commission resolve fee disputes?

# Tribal Fees: Amounts (¶¶ 50-52)

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- What is a “reasonable” fee?
- Are there extant fee rates or schedules that could be helpful in avoiding or resolving disputes?
- Should the Commission, and can it legally, establish a fee schedule?
- How would a fee schedule be applied?
- How do Tribal sovereignty and Government treaty obligations factor into potential development and adoption of a fee schedule?

# Tribal Process: Areas of Interest (¶ 53)

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- Can the Commission limit the burden on applicants when a large number of Tribes have interest in a proposed site?
- Should the Commission require Tribes to delineate their areas of interest by county rather than by full states?
- Should the Commission require certification of areas of interest?
  - If implemented, what would happen if a Tribe failed to provide this?

# Tribal Process: Other Issues (¶¶ 54-55)

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- What TCNS changes would improve the Tribal review process?
- Should TCNS retain geographic information on cleared areas?
- Should an applicant have to pay multiple responding Tribes and accommodate multiple monitors?
  - Can one Tribe provide services and share its work product?
  - Can an independent monitor function on behalf of multiple Tribes?
  - Should monitors be required to meet established standards and provide applicants with reports?

## Tribal Process: Other Issues (¶¶ 56-59)

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- When should the Commission allow a project to proceed without Tribal response?
- Is G2G consultation required to resolve fee disputes?
- Should the Commission continue to facilitate the meetings among Tribal and industry representatives that began last year?
  - Should we continue to pursue consensus principles?
  - Should we pursue best practices agreements with Tribal Nations?

# NHPA Process: Timeframes (¶ 60)

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- How can SHPO and Tribal reviews be sped up?
- Should different time limits apply to categories of construction (e.g. macrocell towers vs small cell)?
- Effect of Internet communications:
  - Different expectations for timeliness?
  - Different threshold for reasonable follow up?

# NHPA Process: Self-certification (¶ 61)

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- Should the Commission permit applicants to self-certify their Section 106 compliance and proceed without further involvement once Tribal notifications have been provided?
- How could we ensure that such certifications are truthful and well-founded?

# NHPA Process: Batching (¶¶ 62-63)

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- Should we adopt a batched submission process?
  - Voluntary or mandatory?
  - Limits on number, geographic proximity, size, etc?
  - Different time frames or fees?
  - Changes to TCNS or other processes?
  - Other considerations?

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# DIALOGUE