

FCC Environmental Compliance Workshop

Environmental Rules & Enforcement

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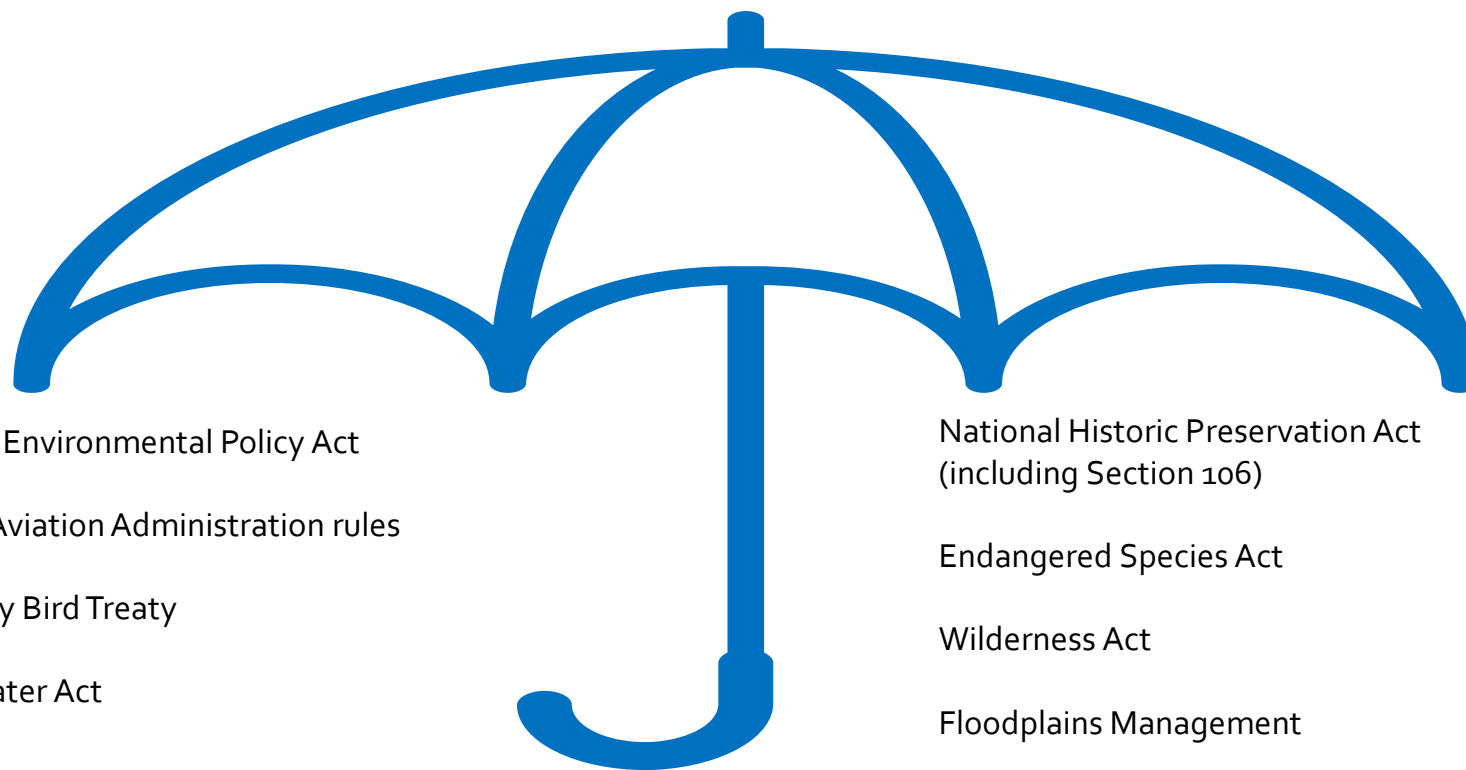
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National Environmental Policy Act

- ▶ NEPA, which was originally enacted in 1970, requires federal agencies to consider and disclose the environmental effects of their actions to improve decision-making and encourage transparency, public participation, and accountability.
- ▶ Requires agencies to integrate environmental considerations into their decisions and establish a process for environmental review.
- ▶ NEPA is a procedural statute intended to ensure Federal agencies consider the environmental impacts of their actions in the decision-making process. NEPA does not mandate particular results or substantive outcomes.
- ▶ All “major Federal actions” significantly affecting the environment trigger environmental review.
- ▶ Establishes three levels of review:
 - ▶ Categorical Exclusions (CatExs)
 - ▶ Environmental Assessments (EAs)
 - ▶ Environmental Impact Statements (EISs)

FCC Environmental Review

- Building new towers, modifying towers, or collocating antennas on existing structures requires compliance with the FCC's rules for environmental review.
- Towers requiring Antenna Structure Registration (ASR) are also subject to environmental notice rules to provide the public an opportunity to identify potentially significant environmental concerns.
- The FCC's environmental review rules ensure that entities constructing facilities to support FCC-licensed services take appropriate measures to consider environmental and historic resources and that the agency meets various statutory obligations.



National Environmental Policy Act

Federal Aviation Administration rules

Migratory Bird Treaty

Clean Water Act

National Historic Preservation Act
(including Section 106)

Endangered Species Act

Wilderness Act

Floodplains Management

FCC's NEPA Implementation

- The FCC meets its NEPA obligations by imposing enforceable duties on licensees and applicants through its environmental rules.
- The rules apply to all licensees, applicants, registrants, and owners of facilities used for FCC-licensed services, such as commercial licensees, utilities, public safety entities, railroads, and mining companies.
 - Tower owners that are neither licensees nor applicants must also follow these rules if they intend to host antennas supporting FCC-licensed services.
- The FCC delegates the initial assessment of potential environmental effects and the determination of whether Categorical Exclusions apply to applicants constructing facilities to support the use of FCC-licensed services.

FCC's NEPA Rules

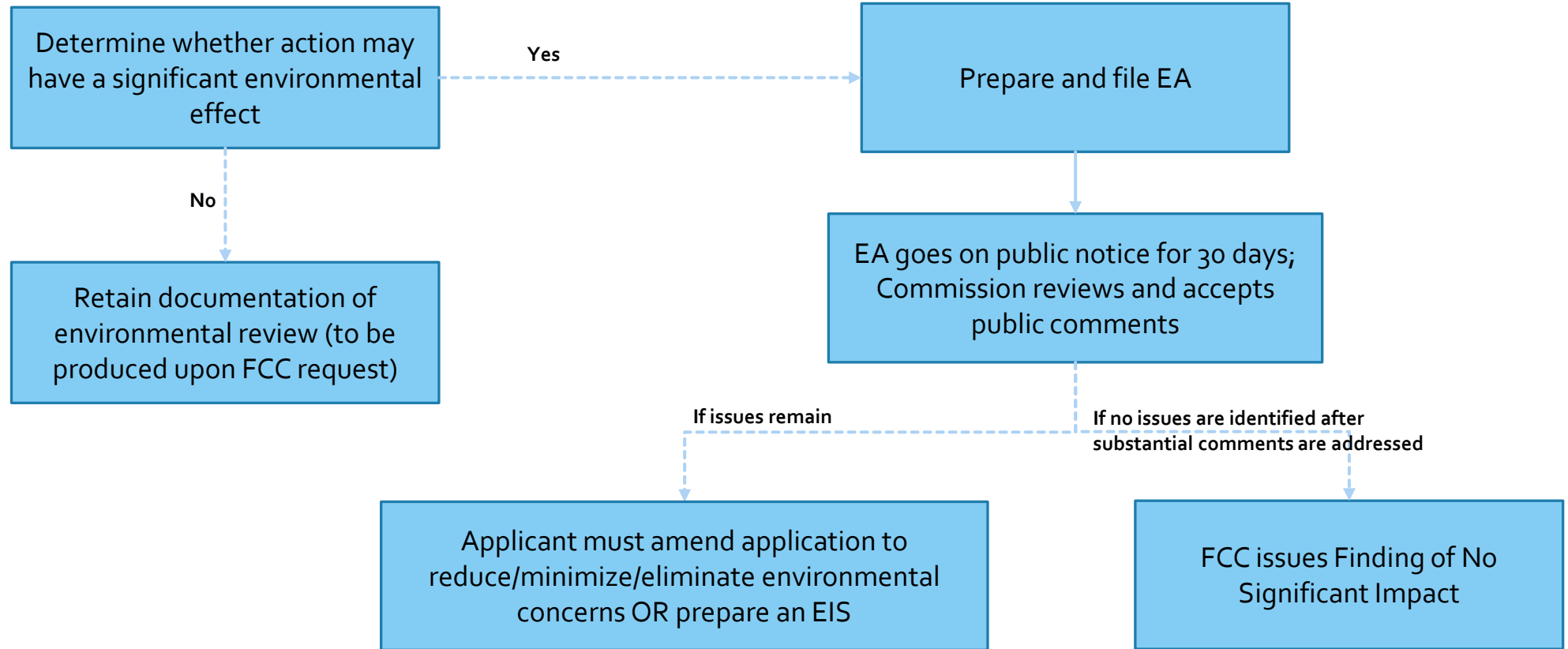
- The FCC's NEPA rules categorically exclude from the preparation of an environmental assessment most Commission actions with respect to new applications, or minor or major modifications of existing or authorized facilities or equipment. However, actions that are not categorically excluded include:
 - Facilities that involve high intensity lighting or that cause human exposure to radiofrequency emissions that exceed the limits in the Commission's rules. 47 CFR § 1.1306.
 - Actions that trigger specific site location considerations are spelled out at section 1.1307. 47 CFR § 1.1307.
- The "NEPA Checklist" tool available on the Commission's Tower and Antenna Siting webpage assists applicants in identifying when an EA is triggered under section 1.1307:
<https://www.fcc.gov/wireless/bureau-divisions/competition-infrastructure-policy-division/tower-and-antenna-siting>.
- In addition, the responsible Bureau may order an EA when an interested person alleges that an otherwise categorically excluded action will have a significant environmental effect. 47 CFR § 1.1307(c).
- The responsible Bureau may also order an EA on its own motion. 47 CFR § 1.1307(d).

Section 1.1307 identifies those circumstances where an EA is required

- Facilities that are to be located in an **officially designated wilderness area**.
- Facilities that are to be located in an **officially designated wildlife preserve**.
- Facilities that: (i) may affect listed **threatened or endangered species or designated critical habitats**; or (ii) are likely to jeopardize the continued existence of **any proposed endangered or threatened species** or likely to result in the destruction or adverse modification of **proposed critical habitats**, as determined by the Secretary of the Interior pursuant to the Endangered Species Act of 1973.
- Facilities that may affect **districts, sites, buildings, structures or objects, significant in American history, architecture, archeology, engineering or culture, that are listed, or are eligible for listing, in the National Register of Historic Places** (see 54 U.S.C. § 300308; 36 CFR §§ 60 and 800), and **that are subject to review pursuant to section 1.1320 and have been determined through that review process to have adverse effects on identified historic properties**.
- Facilities that may affect **Indian religious sites**.
- Facilities to be located in **floodplains**, if the facilities will not be placed at least one foot above the base flood elevation of the floodplain.
- Facilities whose construction will involve **significant change in surface features** (e.g., wetland fill, deforestation or water diversion). (In the case of wetlands on Federal property, see Executive Order 11990.)
- Antenna towers and/or supporting structures that are to be **equipped with high intensity white lights** that are to be located in residential neighborhoods, as defined by the applicable zoning law.
- Facilities that would cause human exposure to **radiofrequency emissions** that exceed the Commission's standards.

FCC's NEPA Process

Decision Tree



Regardless of an applicant's determination, the FCC may order environmental review of a facility pursuant to a request by an interested person or a Bureau's own motion.

Endangered Species Act & Migratory Birds

- Endangered Species: Applicants must consider the impact of proposed facilities on sensitive species and their habitats, including communicating with the U.S. Fish and Wildlife Service (USFWS).
- Migratory Birds: Applicants must prepare an EA that considers the effects on migratory birds when a proposed antenna structure will be over 450 feet above ground level.

National Historic Preservation Act

- The FCC's NEPA rules also ensure that the agency meets its statutory obligations under the National Historic Preservation Act (NHPA).
- Section 106 of the NHPA requires federal agencies to consider the effects of federal undertakings on historic properties.
- The FCC is a party to two Nationwide Programmatic Agreements (NPAs) that establish Section 106 review rules tailored to new tower construction and collocation projects.
- Applicants are delegated the responsibility for initiating the Section 106 review process for proposed facilities.
- The Commission maintains two databases, the E-106 system and the Tower Construction Notification System (TCNS), to facilitate communications with relevant parties.
- The NHPA and the FCC's NPAs require consultation with any federally-recognized Tribal Nation that attaches religious and cultural significance to historic properties that may be affected by an undertaking.
- Applicants notify Tribes of proposed projects using TCNS.

Antenna Structure Registration (ASR)

- Towers that meet certain criteria require notice to the Federal Aviation Administration and the FCC's ASR system. 47 CFR §§ 17.4(a); 17.7. This includes:
 - Towers more than 200 feet above ground level.
 - Towers that are located near an airport or otherwise create a potential obstruction to air safety.
- The FCC's ASR rules require a tower owner to notify the FAA and receive a final determination of "no hazard" prior to registration. 47 CFR § 17.4(b).
- ASR applicants must complete an environmental notification process, unless an exception applies or a waiver is granted. 47 CFR § 17.4(c).
- Interested persons may submit a request for further environmental review of a proposed facility in ASR. 47 CFR § 17.4(c)(5). All such submissions are publicly accessible.

Applicants may not begin construction until the ASR process is completed and any environmental concerns are resolved.

Small Wireless Facilities

- The Commission has streamlined the NEPA and NHPA review processes for small wireless facilities.
- Small wireless facilities generally qualify for NEPA's categorical exclusion for collocations found at 47 CFR §1.1306, Note 1, subject to certain exceptions.
- The 2001 NPA for the Collocation of Wireless Antennas, most recently amended in 2020, excludes from Section 106 review most small wireless facilities that are not on or near historic properties or historic districts, subject to certain exceptions.
- The Commission has also excluded from Section 106 review the replacement of a utility pole where the pole was not originally constructed for the sole or primary purpose of supporting an antenna for an FCC-licensed service, subject to certain exceptions.



Resources:

- The FCC's Tower and Antenna Siting Webpage:
<https://www.fcc.gov/wireless/bureau-divisions/competition-infrastructure-policy-division/tower-and-antenna-siting>

Environmental Compliance Workshop

Environmental Rule Overview & Enforcement

Federal Communications Commission
Wireless Telecommunications Bureau

November 2, 2023



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Examples of NEPA/NHPA Compliance Violations

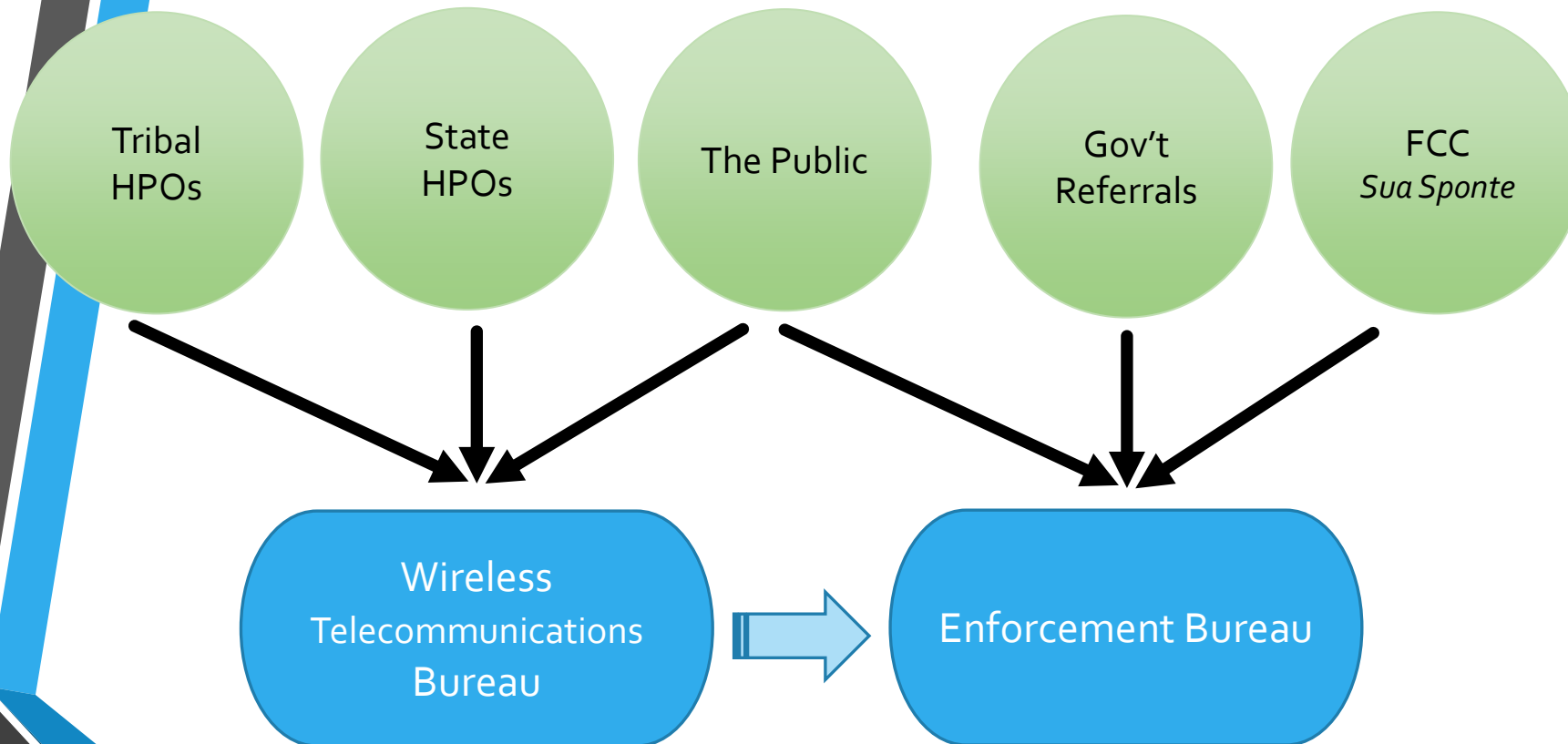
- Commencing construction/any ground disturbance prior to completing environmental review requirements or, if applicable, FCC issuance of a Finding of No Significant Impact (FONSI)
 - e.g. NEPA/NHPA checklist, Clean Water Act/wetlands, NHPA (including Section 106), Tribal review, Endangered Species Act
- Failure to register a tower prior to construction in FCC Antenna Structure Registration (ASR) system
- Failure to complete archaeological monitoring
- Failure to submit Environmental Assessment (EA) when triggered by the environmental checklist
- Failure to complete required mitigation
- Tower builders and owners are responsible for violations caused by subcontractors and consultants

Enforcement Bureau Investigations



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Sources of NEPA/NHPA Complaints



Gov't Referrals – Congress, State or Federal agencies may reach out directly to EB or FCC Commissioners.

FCC – A news article or other source may lead the Commission to investigate, even without a complaint.

Enforcement Bureau Investigation

- EB's Spectrum Enforcement Division will review and investigate a complaint or referral to determine whether it alleges a potential NEPA/NHPA violation under the Communications Act or the Commission's rules.
- An EB investigation is separate from any WTB proceeding.
- If a violation is found, EB may:
 - Enter into a consent decree with the target of the investigation,
 - Issue NAL/FO with monetary fine, or
 - In rare instances, resolve with non-monetary action.

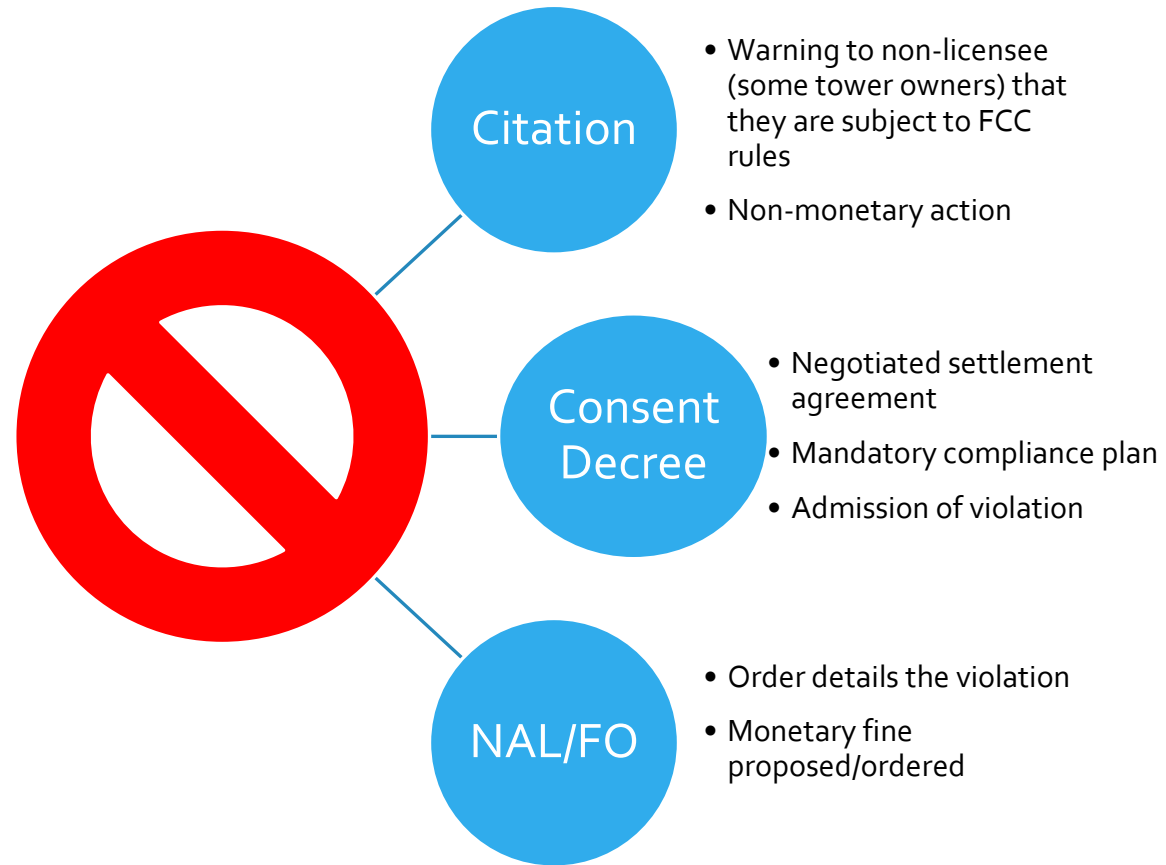
Enforcement Bureau Investigation: Letter of Inquiry (LOI)

A letter of inquiry is a Commission order. Respond timely, truthfully, and completely.

- When an investigation is warranted, EB may issue one or more LOIs to the target. The LOI will advise of the apparent rule violation(s) at issue and seek information and documents regarding the event, the extent of any harm, and the target's actions.
- Before filing a response to the LOI, the recipient must preserve relevant records, conduct any needed internal review, and, if necessary, contact EB with any questions regarding the LOI or filing requirements.
- When necessary, EB may also issue an LOI to a third party with knowledge of the matter, depose a witness in person, conduct field inspections, or refer criminal matters to the DOJ.

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Enforcement Pathways: Citation, Consent Decree, NAL, FO

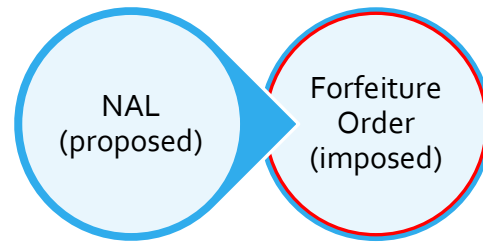


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Enforcement Bureau Action: Notice of Apparent Liability for Forfeiture

- NAL – Charging document that gives notice of the violations.
 - If an investigation reveals a violation of the Communications Act, Commission order, rule, or terms of an authorization, the Commission may propose a fine by issuing an NAL.
 - NAL provides the target with notice of the alleged violations, the maximum penalty that could be imposed, and provides the target with an opportunity to respond or contest the allegations.
 - Within 30 days, the target must either: 1) pay the NAL or 2) contest the facts/law or explain why it believes the amount should be reduced.

Enforcement Bureau Action: Forfeiture Order



- Forfeiture Order - Fine becomes debt due to US Treasury
 - EB will review any NAL response filed by the target.
 - In the absence of settlement via consent decree, the FCC will generally issue an FO that imposes the full amount of the NAL or imposes a lesser amount, or, in rare cases, the FCC will, instead, dismiss the NAL.
 - Forfeiture Orders may be appealed.
 - If the target does not pay the fine, the matter is referred to the Department of Justice for collection in federal court.

Enforcement Bureau Action: Consent Decree

A CD is typically resolved faster with less expense than an NAL.

- Consent Decree – Settlement of a violation
 - Negotiated agreement between the FCC and target.
 - Once executed, terminates the investigation or forfeiture proceeding.
 - Generally, not available until party has come into full compliance.
 - Requires admission of liability/violation.
 - Typically requires a multi-year compliance plan designed to prevent a recurrence of the type of violation, as well as payment of a civil penalty (usually less than would be proposed in a NAL).

Best Practices

- Implement proactive measures to prevent violations and ensure compliance.
 - Regularly review and update policies, trainings, and NEPA checklist.
 - Document, authorize, and review each element of the project.
 - Carefully review subsequent modifications.
 - Ensure all employees and subcontractors adhere to NEPA/NHPA procedures that specify the federal requirements and timelines.
- Never start construction (including any excavation or brush clearing) prior to completing the required environmental review and THPO/SHPO notifications.
- Engage the affected THPO and SHPOs throughout the process. Do more than the minimum to follow up on any E-106 notifications or respond to inquiries.
- Quickly notify both WTB and EB if you suspect a potential violation.
 - EB may consider reducing the amount of a fine, for voluntary disclosure, but only if the matter is disclosed directly to EB before EB begins an investigation.
- Respond fully to any EB LOI and provide all supporting documentation.
 - Even if there is no substantive violation, the failure to respond completely can itself result in significant monetary penalties.

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Best Way to Avoid Enforcement = Compliance

Enforcement Bureau Contact Information

EB-SED-RESPONSE@fcc.gov

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Questions:

Any questions should be emailed to:

FCCenvironmentalworkshop@fcc.gov