



# Streamlining Multi-Agency Environmental Reviews for Broadband Projects

FCC Environmental Compliance Workshop

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# Overview

- ▶ Introductions
- ▶ CEQ:
  - ▶ Overview of CEQ and its role in NEPA
  - ▶ *Biden-Harris Permitting Action Plan to Rebuild America's Infrastructure* and the implications for Broadband deployments
- ▶ FirstNet and NTIA:
  - ▶ Overview of FirstNet and NTIA and their roles in broadband deployment
  - ▶ Environmental and historic preservation rules for FirstNet
  - ▶ Environmental and historic preservation compliance for NTIA-funded projects
- ▶ FCC:
  - ▶ Best Practices for Coordinating Multi-Agency Project Requirements
  - ▶ “Tools” promoting review efficiencies
    - ▶ Federal Agency Exception for NEPA
    - ▶ Federal Agency Exception for Environmental Notification
    - ▶ Multi-Agency Program Alternatives for NHPA/Section 106
  - ▶ Environmental Review for FCC Facilities on Tribal Lands
  - ▶ TCNS for NTIA Broadband Grant Projects

# First Responder Network Authority (FirstNet Authority)

- ▶ The Middle Class Tax Relief and Job Creation Act of 2012 (47 U.S.C §§ 1401 et seq.) created the FirstNet Authority
- ▶ The Act directed the Authority to ensure the development, deployment, and ongoing operation of a nationwide public safety broadband network (NPSBN)
- ▶ The NPSBN is the first and only nationwide telecommunications network that is dedicated for the use of public safety and first responders
- ▶ The NPSBN equips public safety with communications services to help save lives and protect communities
- ▶ On November 15, 2012, the Federal Communications Commission (FCC), in accordance with the Act, granted a license to the FirstNet Authority for the use of the 700 MHz D block spectrum
- ▶ As a result, the Authority is both an independent federal authority and an FCC licensee

# FirstNet Environmental Review Authority

- ▶ To comply with NEPA and its implementing regulations, as it applies to the deployment of the FirstNet network, the Authority utilizes its NEPA implementing procedures and categorical exclusions (83 FR 4632)
- ▶ BUT, as both an independent federal authority and a licensee of the FCC, the Authority must satisfy its own NEPA/NHPA requirements as well as comply with FCC-promulgated procedures
- ▶ Recognizing both federal entities have responsibilities under these rules, the Authority's NEPA implementing procedures and categorical exclusions align with FCC procedures to avoid duplicative NEPA reviews
- ▶ Similarly, for NHPA, the Authority may use the Program Comment To Avoid Duplicative Reviews (85 FR 53830) or may comply with NHPA in accordance with the process set forth at 36 CFR 800.3 through 800.7 for certain projects

# FirstNet Environmental Review Process

- ▶ The Authority will receive an “application” that consists of a project description (whether collocation or new build), locational information, responses to environmental questionnaire, and associated environmental backup documentation
- ▶ This information is used to determine whether a CATEX or EA may apply
- ▶ Extraordinary circumstances are reviewed (*i.e.*, ESA species, cultural/tribal resources, waters/wetlands)
- ▶ If a CATEX applies and no extraordinary circumstances are triggered, the project is documented with a NEPA determination
- ▶ If extraordinary circumstances apply or an EA is required from the start, the project will go through the normal EA and NHPA processes
- ▶ NOTE: AT&T is our FirstNet network partner and is the primary “applicant”, but other network reinvestment or special projects may involve an applicant other than AT&T

# Multi-Agency Environmental Reviews

- ▶ The FirstNet Authority takes a very active role in its obligations under NEPA and NHPA
- ▶ Although the Program Comment allows the Authority to have FCC shoulder NHPA reviews, the Authority needs to be involved in the process
- ▶ The Authority reviews ALL CATEXs for consistency and confirmation for the involvement of appropriate federal land managing agencies
- ▶ Typically, these entities will consist of USFS, NPS, BLM, BIA, and Tribes
- ▶ Active and established relationships with these agencies to assure mutual obligations are met
- ▶ The Authority typically defers to the needs of land managing agencies to complete their environmental reviews (whether CATEX or EA) on federal and tribal lands
- ▶ HOWEVER, the Authority confirms that its needs and obligations are met through the collective environmental review process
- ▶ NOTE: Although the FCC NPAs do not apply on federal or tribal lands, the Federal Lands Program Comment allows federal land managing agencies to use the NPAs, if they so choose (82 FR 23818)

# National Telecommunications and Information Administration (NTIA)

- ▶ NTIA was created by Reorganization Plan Number 1 (1977) and implemented with Executive Order 12046 (1978)
- ▶ This reorganization transferred and combined various functions of the former White House's Office of Telecommunications Policy (OTP) and the former Commerce Department's Office of Telecommunications (OT)
- ▶ NTIA is principally responsible for advising the President on telecommunications and information policy issues and, in this role, frequently works with other Executive Branch agencies to develop and present an Administration's position on these issues
- ▶ NTIA also administers grant programs that further the deployment and use of broadband and other technologies in America

# NTIA Grant Programs

## ▶ Past grant programs:

- ▶ **Public Safety Interoperable Communications (PSIC) Grant Program** - Deficit Reduction Act of 2005
- ▶ **Broadband Technology Opportunities Program (BTOP)** - American Recovery and Reinvestment Act of 2009

## ▶ Current grant programs:

- ▶ **Consolidated Appropriations Act of 2021**
  - ▶ **Broadband Infrastructure Program (BIP)**
  - ▶ **Tribal Broadband Connectivity Program (TBCP)**
  - ▶ **Connecting Minority Communities (CMC) Pilot Program**
- ▶ **Infrastructure Investment and Jobs Act of 2021**
  - ▶ **Broadband Equity, Access, and Deployment (BEAD) Program**
  - ▶ **Enabling Middle Mile Broadband Infrastructure Program (Middle Mile)**
  - ▶ **Additional funding for TBCP**
  - ▶ **Digital Equity Act Programs**



# NTIA Environmental Review Authority

- ▶ NTIA determined that administration of grants and distribution of funds through its programs would constitute a major federal action under the National Environmental Policy Act; an undertaking under the National Historic Preservation Act; economic activity under the Endangered Species Act; and be subject to various other applicable environmental laws, regulations, and executive orders (environmental laws)
- ▶ Thus, NTIA acts as the lead agency for the purposes of these environmental laws under its grant programs
- ▶ NTIA currently operates under the Department of Commerce's Departmental Administrative Orders (DAO 216-6; 216-17) and its categorical exclusions (CATEX) (74 FR 33204)
- ▶ NTIA is working with the Council on Environmental Quality (CEQ) to establish its own NEPA implementing procedures and CATEXs

# NTIA Environmental Review Process

- ▶ NTIA requires the applicant to provide a detailed NEPA/NHPA project description along with a mapset that shows project location(s) and construction methods
- ▶ This information is used by NTIA to preliminarily determine whether a CATEX or EA will be pursued
- ▶ If it appears that a CATEX may apply, information/documentation is provided by the applicant to address any extraordinary circumstances (*i.e.*, ESA species/migratory birds, cultural/tribal resources, waters/wetlands, EJ communities) and any necessary agency/tribal consultations occur
- ▶ If a CATEX applies and no extraordinary circumstances are triggered, the project is documented with a NEPA determination
- ▶ If extraordinary circumstances apply or an EA is required from the start, the project will go through the normal EA and NHPA processes
- ▶ NOTE: Although an EIS is possible, we would typically work with an applicant to rescope their project given the timing and funding constraints of the various grant programs

# Multi-Agency Environmental Reviews

- ▶ NTIA works early, closely, and cooperatively with Federal agencies and Tribes when projects are proposed for siting on Federally managed lands and Tribal Nations (*i.e.*, USFS, NPS, BLM, BIA, and Tribes)
- ▶ NTIA requests for consulting or cooperating agencies status and/or aligns its approvals consistent with the authorities of the Federal land managing agency, who has the expertise and local area knowledge of the resources and communities potentially affected by the proposed project(s)
- ▶ NTIA has executed a memorandum of understanding (MOU) that defines the relationship between NTIA and BIA and their individual and collective roles and responsibilities in complying with environmental, historic preservation, and cultural resources requirements related to grant projects
- ▶ NTIA follows well-established and successful practices for early and meaningful outreach and communication with Indian Tribes, States, territories, and local communities
- ▶ NTIA has contracted with the FCC to use its Tower Construction Notification System (TCNS) as a means to initially engage Indian Tribes as part of its required NHPA tribal consultation process
- ▶ For NHPA, NTIA may use the Program Comment To Avoid Duplicative Reviews (85 FR 53830) for telecommunication projects

# Overview

- ▶ FCC:
  - ▶ Best Practices for Coordinating Multi-Agency Project Requirements
  - ▶ “Tools” promoting review efficiencies
    - ▶ Federal Agency Exception for NEPA
    - ▶ Federal Agency Exception for Environmental Notification
    - ▶ Multi-Agency Program Alternatives for NHPA/Section 106
      - ▶ Broadband Program Comment
      - ▶ Broadband on Federal Lands Program Comment
  - ▶ Environmental Review for FCC Facilities on Tribal Lands
  - ▶ TCNS for NTIA Broadband Grant Projects

# BEST PRACTICES FOR COORDINATING MULTI-AGENCY PROJECT REQUIREMENTS

## ❑ IDENTIFY ALL FEDERAL AGENCY INVOLVEMENT EARLY

- ▶ Towers that are proposed on Federal lands
- ▶ Towers that are directly funded by another agency (e.g., FEMA)
- ▶ Towers that are part of a larger project funded by another agency (e.g., NTIA)
- ▶ Towers that are part of a larger project administered or reviewed by another agency (e.g., Office of Surface Mining Reclamation and Enforcement)
- ▶ Towers on Tribal lands

## ❑ RESEARCH REQUIREMENTS AND POTENTIAL EFFICIENCIES

## ❑ DEVELOP A PLAN

## ❑ COMMUNICATE WITH APPROPRIATE AGENCY OFFICIALS AND GAIN CONSENSUS ON HOW TO MEET ENVIRONMENTAL REVIEW OBLIGATIONS

# FCC Federal Agency Exception for NEPA

- ▶ 47 CFR § 1.1311 - Environmental information to be included in the environmental assessment (EA)
  - ▶ (e) An EA need not be submitted to the Commission if another agency of the Federal Government has assumed responsibility for determining whether of the facilities in question will have a significant effect on the quality of the human environment and, if it will, for invoking the environmental impact statement process.

# FCC Federal Agency Exception for Environmental Notification

- ▶ 47 CFR § 17.4 - Antenna structure registration
  - ▶ (c) Each prospective applicant must complete the environmental notification process described in this paragraph, except as specified in paragraph (c)(1) of this section.
  - ▶ (1) *Exceptions from the environmental notification process.* Completion of the environmental notification process is not required when FCC Form 854 is submitted solely for the following purposes:
    - ▶ (vi) For construction, modification, or replacement of an antenna structure on Federal land where another Federal agency has assumed responsibility for evaluating the potentially significant environmental effect of the proposed antenna structure on the quality of the human environment and for invoking any required environmental impact statement process, or for any other structure where another Federal agency has assumed such responsibilities pursuant to a written agreement with the Commission (*see* § 1.1311(e) of this chapter)

# Multi-Agency Program Alternatives for NHPA/Section 106

- ▶ *Program Comment To Avoid Duplicative Reviews for Wireless Communications Facilities Construction and Modification* (Broadband Program Comment)
  - ▶ Initially issued in 2009; amended in 2015 and 2020.
  - ▶ Removes Section 106 review responsibilities for certain named agencies that fund or permit facilities when the “construction or modification . . . has either undergone or will undergo Section 106 review, or is exempt from Section 106 review, by the FCC under the FCC Nationwide PA and/or the FCC Collocation PA.”
  - ▶ Named agencies include the USDA Rural Utility Service (RUS), NTIA, Department of Homeland Security (including FEMA), Federal Rail Administration, Federal Transit Administration, FirstNet, and the Office of Surface Mining Reclamation and Enforcement.
  - ▶ The Advisory Council on Historic Preservation (ACHP) may amend the program comment to include additional agencies upon their request.
  - ▶ Program comment expires on September 30, 2025 unless extended.



# Multi-Agency Program Alternatives for NHPA/Section 106

- ▶ *Program Comment for Communications Projects on Federal Lands and Property*
  - ▶ Issued in 2017 to allow Federal land and property managing agencies alternative Section 106 procedures for communications activities on public lands and property.
  - ▶ May eliminate Section 106 review in previously surveyed or previously disturbed areas. (Section IV.A.3).
  - ▶ Incorporates provisions of the Commission's Wireless Facilities Nationwide Programmatic Agreement and Amended Collocation Agreement.
  - ▶ "Where FCC has Section 106 responsibility over a proposed communication deployment undertaking that also requires a license, permit, approval, or assistance from a Federal LMA/PMA, the Federal LMA/ PMA shall be responsible for the Section 106 compliance for that undertaking and may utilize the terms of this Program Comment, including any applicable exemptions. FCC shall have no further Section 106 responsibilities for that undertaking." (Section IV.D)
  - ▶ Program comment expires on December 31, 2027 unless extended by ACHP.

# Environmental Review for FCC Facilities on Tribal Lands

## ► Bureau of Indian Affairs (BIA)

- Certain Tribal lands are held in Trust by the BIA.
  - The FCC treats deployments on Trust lands that are administered by the BIA similarly to other lands managed by federal agencies (e.g., NPS, USFS) and may defer to the BIA's environmental requirements. See 47 CFR § 1.1311(e).
- BIA: lead agency for NEPA where 47 CFR § 1.1311(e) applies.
  - An EA need not be submitted to the Commission if another agency of the Federal Government has assumed responsibility for determining whether the facilities in question will have a significant effect on the quality of the human environment and, if it will, for invoking the environmental impact statement process. The applicant should follow BIA's NEPA and NHPA rules.
- BIA is also lead agency for NHPA in these cases.

# Environmental Review for FCC Facilities on Tribal Lands

- ▶ If Antenna Structure Registration (ASR) is required for projects on Trust lands administered by the BIA:
  - ▶ The applicant should indicate in its ASR application that another Federal Agency is taking responsibility for environmental review.
  - ▶ The applicant should confirm that the environmental notification process exemption applies (47 CFR § 17.4(c)(1)(vi)).
- ▶ NOTE: The FCC's environmental rules apply if the BIA does not assume responsibility for environmental review on Trust lands, including on Tribal lands where the Hearsh Act applies.

# Environmental Review for FCC Facilities on Tribal Lands

- ▶ FCC is lead agency for projects proposed on private lands within reservation boundaries.
  - NEPA: Applicants should complete the FCC's NEPA checklist before certifying that there will be no significant environmental impacts or determining the need to submit an EA. Towers requiring ASR generally require environmental notification.
  - NHPA: Tribe determines whether to follow the Nationwide Programmatic Agreements.
    - The NHPA allows Tribes to assume SHPO responsibilities on Tribal lands when approved to do so by the Secretary of the Interior through acceptance in the National Park Service's Tribal Historic Preservation Program. NPS-affiliated THPOs act "in lieu of the SHPO" for Section 106 review of projects on Tribal lands.

# TCNS for NTIA Broadband Grant Projects

- ▶ Tower Construction Notification System (TCNS) is a notification system proprietary to FCC, developed to facilitate identification of and contact with 574 Federally recognized Tribes.
- ▶ In 2009, the FCC extended the use of TCNS to NTIA and RUS to support the Tribal outreach required for the Section 106 review of American Recovery and Reinvestment Act (ARRA) broadband grant projects.
- ▶ In 2021, the FCC agreed to again provide TCNS support to facilitate NTIA's Section 106 review requirements for the Tribal Broadband Connectivity and Broadband Infrastructure Programs across the country.
  - ▶ Ensures that Tribes receive initial project notification from the Federal agency, not the applicant.
  - ▶ Ensures that all Tribes expressing interest in specific geographic areas receive information about the proposed project and the opportunity to comment.
  - ▶ Facilitates communication between Tribes, NTIA, and grant recipients.

QUESTIONS?

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