



PUBLIC NOTICE

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DA 05-1013
April 07, 2005

WIRELESS TELECOMMUNICATIONS BUREAU AND CONSUMER & GOVERNMENTAL AFFAIRS BUREAU ANNOUNCE ENHANCEMENT AND PROVIDE CLARIFICATIONS REGARDING USE OF TOWER CONSTRUCTION NOTIFICATION SYSTEM

By this Public Notice, the Wireless Telecommunications Bureau (“WTB”) and Consumer & Governmental Affairs Bureau (“CGB”) of the Federal Communications Commission (“Commission”) announce enhancements and provide clarifications relating to the Commission’s Tower Construction Notification System (“TCNS”) and the process of tribal participation in historic preservation reviews. Specifically, we announce the availability of an electronic listing of federally recognized Indian tribes and Alaska Native Villages (collectively “Indian tribes”), and Native Hawaiian Organizations (“NHOs”), who have defined their geographic preferences for receiving notifications through TCNS. We also clarify the procedures that an applicant must follow under the Commission’s rules when an Indian tribe or NHO does not respond within a reasonable time to a TCNS notification. Finally, we clarify the procedures for obtaining an FCC Registration Number (“FRN”) and password for use in submitting notifications through TCNS.

TCNS was introduced by the Commission to Indian tribes and NHOs, State Historic Preservation Officers (“SHPOs”), Tribal Historic Preservation Officers (“THPOs”), and the general public in February 2004.¹ TCNS is an interactive, login and password-protected system by which parties proposing to construct facilities can identify Indian tribes and NHOs that may attach traditional cultural and religious importance to historic properties at the proposed location and can make initial contact with these Indian tribes and NHOs, SHPOs, and THPOs. The system relies on Indian tribes and NHOs, SHPOs, and THPOs to voluntarily enter and update, on a nationwide basis, the geographic areas for which they are interested in receiving notices, as well as the means by which they prefer to receive notice (electronic mail and/or regular mail) and their contact information. Entities proposing to construct towers then voluntarily enter case-by-case information about the sites where they propose to construct facilities and the types of facilities they propose to construct. TCNS automatically forwards these notifications to Indian tribes and NHOs, SHPOs, and THPOs that have expressed an interest in the relevant geographic area.

¹ See FCC Announces Voluntary Tower Construction Notification System to Provide Indian Tribes, Native Hawaiian Organizations, and State Historic Preservation Officers with Early Notification of Proposed Tower Sites, *Public Notice*, DA 04-270, 19 FCC Rcd. 1998 (2004).

On March 7, 2005, a Nationwide Programmatic Agreement (“NPA”)² went into effect³ that streamlines procedures for review of certain Commission undertakings for communications facilities under Section 106 of the National Historic Preservation Act of 1966.⁴ Sections IV.B and IV.C of the NPA require applicants⁵ to make reasonable and good faith efforts to identify, and to ensure contact is made with, Indian tribes and NHOs that may attach religious and cultural significance to historic properties that may be affected by an undertaking. Where an Indian tribe or NHO has voluntarily provided information to TCNS regarding the geographic areas in which historic properties of religious and cultural significance to that Indian tribe or NHO may be located, reference to TCNS constitutes a reasonable and good faith effort at identification with respect to that Indian tribe or NHO. Under Section IV.E of the NPA, if an applicant does not have a pre-existing relationship with an Indian tribe or NHO, initial contact with the Indian tribe or NHO shall be made through the Commission.⁶ Unless the Indian tribe or NHO has indicated otherwise, the Commission may make this initial contact through TCNS.

Any Indian tribe or NHO located outside of Alaska who has not set geographic preferences on TCNS will receive tower notifications for the entire United States until its geographic preferences are set. Following coordination with the Advisory Council on Historic Preservation, Commission staff has programmed TCNS to provide Indian tribes located in Alaska with notifications only of proposed towers throughout the State of Alaska, unless the Indian tribe sets a different geographic preference.

² Nationwide Programmatic Agreement for Review of Effects on Historic Properties for Certain Undertakings Approved by the Federal Communications Commission, 47 C.F.R. Part 1, Appendix B; *see In the Matter of Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process*, WT Docket No. 03-128, *Report and Order*, FCC 04-222 (rel. Oct. 25, 2004), 2004 WL 2248768, 34 Communications Reg. (P&F) 112.

³ *See* Nationwide Programmatic Agreement for Review Under the National Historic Preservation Act, 70 Fed. Reg. 556 (Jan. 4, 2005).

⁴ *See* 16 U.S.C. § 470f.

⁵ An “Applicant” is defined under the Nationwide Programmatic Agreement as a Commission licensee, permittee, or registration holder, or an applicant or prospective applicant for a wireless or broadcast license, authorization or antenna structure registration, and the duly authorized agents, employees, and contractors of any such person or entity.

⁶ An applicant that has a pre-existing relationship with an Indian tribe or NHO shall make initial contact in the manner that is customary to that relationship or in such other manner as may be accepted by the Indian tribe or NHO, and then copy the Commission with any initial written or electronic direct contact information (unless the Indian tribe or NHO has agreed through a best practices agreement or otherwise that such copying is not necessary). Applicants may copy the Commission with their initial contacts with Indian tribes and NHOs by sending an e-mail to TribalTowerExchange@fcc.gov.

Electronic Link to List of Indian Tribes and NHOs:

In response to requests from several applicants, WTB has created a new electronic link that allows the public to view a listing of all Indian tribes and NHOs who have defined their geographic preferences for receiving notifications through TCNS, as well as Indian tribes located in Alaska for which Commission staff has programmed TCNS to provide notification of proposed constructions within Alaska. To view a current listing of these Indian tribes and NHOs, go to WTB's TCNS Homepage (<http://wireless.fcc.gov/outreach/notification>) and then click on "**View Tribe List**." This list is automatically updated as additional Indian tribes and NHOs set their geographic preferences on TCNS.

In order to further facilitate the availability of information regarding which Indian tribes and NHOs have specified geographic preferences in TCNS, WTB has reprogrammed TCNS so that the notifications sent to proposed tower constructors identifying the Indian tribes and NHOs to which a proposed tower notification was forwarded now separately identify those Indian tribes and NHOs that have or have not set such preferences. For proposed tower constructions in Alaska, the list of Indian tribes that have specified their preferences includes those for which the Commission has programmed Alaska as the area of interest. The ready availability of this information will assist applicants in determining what procedure they must follow if an Indian tribe or NHO does not respond within a reasonable time, as discussed below.

In addition, WTB and CGB staff continue to make contact with Indian tribes and NHOs who have not yet set their geographic preferences, including those Alaska Native Villages whose preferences were preset, in an effort to answer any questions and to assist them with setting their preferences.

Required Procedures in Cases of Tribal/NHO Non-Response:

Also in response to several applicant inquiries, we take this opportunity to clarify the procedures that are required when an Indian tribe or NHO does not respond within a reasonable time to a notification provided through TCNS. Under Section IV.F.4 of the NPA, all Indian tribes and NHOs must be afforded a reasonable opportunity to respond to a TCNS notification, unless the proposed construction falls within an exclusion designated by the Indian tribe or NHO. For those Indian tribes and NHOs that have specified an interest in the geographic area of a proposed construction, if the Indian tribe or NHO fails to respond within a reasonable time, the applicant should make a reasonable effort at follow-up contact, unless the Indian tribe or NHO has agreed to different procedures.⁷ In the event such an Indian tribe or NHO does not respond to a follow-up inquiry, or if a substantive or procedural disagreement arises between the applicant and an Indian tribe or NHO, the applicant must seek guidance from the Commission.⁸

⁷ NPA, § IV.F.5.

⁸ *Id.*, § IV.G.

For those Indian tribes and NHOs that have not designated their geographic areas of interest through TCNS, the applicant is required to use reasonable and good faith efforts to determine if the Indian tribe or NHO may attach religious and cultural significance to historic properties that may be affected by its proposed undertaking. Such efforts may include, but are not limited to, seeking information from the relevant SHPO or THPO, Indian tribes, state agencies, the U.S. Bureau of Indian Affairs, or, where applicable, any federal agency with land holdings within the state.⁹ If, after such reasonable and good faith efforts, the applicant determines that an Indian tribe or NHO may attach religious and cultural significance to historic properties in the area and the Indian tribe or NHO does not respond to TCNS notification within a reasonable time, the applicant should make a reasonable effort to follow up, and must seek guidance from the Commission in the event of continued non-response or a procedural or substantive disagreement. If the applicant determines that the Indian tribe or NHO is unlikely to attach religious and cultural significance to historic properties within the area, the applicant does not need to take further action unless the Indian tribe or NHO indicates an interest in the proposed construction or other evidence of potential interest comes to the applicant's attention.

In the case of proposed construction within the State of Alaska, applicants should contact Commission staff for guidance with respect to Indian tribes that do not respond to a TCNS notification within a reasonable time.

How to Obtain an FCC Registration Number (FRN) and Password for Use on TCNS:

In order to provide notifications to Indian tribes, NHOs, SHPOs, and THPOs using TCNS,¹⁰ a tower constructor must have an FRN¹¹ and password. The FRN is used to uniquely identify the tower notifier in all transactions with the FCC. Some tower constructors choose to obtain a separate FRN for use on TCNS distinct from the FRN(s) they use for other transactions. Additionally, some tower constructors submit their notifications through consultants, and the consultant is eligible to receive a unique FRN and password for use on TCNS.

To obtain an FRN and Password, tower notifiers or consultants must register with the Commission. This registration is accomplished through the **CO**mmission **RE**gistration System ("CORES") system. Tower notifiers or consultants may access CORES by clicking on the "Register with the FCC" link on the TCNS Login screen, or they may go directly to CORES. For direct access to the CORES system, go to: www.fcc.gov and then click on FCC Registration Number (FRN) - Commission Registration System (CORES) on the left side of the screen. Click on the "Register" button to proceed to register and receive an FRN and password.

⁹ *Id.*, § IV.B.

¹⁰ Notifications may be submitted by going to the TCNS Homepage (<http://wireless.fcc.gov/outreach/notification>), and then clicking on the "Notify" button.

¹¹ On August 24, 2001, the Commission adopted a rule requiring an FRN for all parties who file applications with the Universal Licensing System (ULS) or register towers via Antenna Structure Registration (ASR). *See* Adoption of a Mandatory FCC Registration Number, MD Docket No. 00-205, Report and Order, 16 FCC Rcd. 16138 (2001).

An FRN and password are issued after the applicant provides a contact name, address, social security number (individuals), employer identification number or taxpayer identification number (business entities), and a contact telephone number. Once this information is submitted, an FRN and password will be generated immediately for use on TCNS.

When an FRN is exclusively used on TCNS, it is not used by the Commission to capture information to maintain required accounts receivable, or to collect fines and debts due the Commission.

Indian tribes, NHOs, SHPOs, and THPOs have been provided with specially enabled FRNs and passwords that permit them, and only them, to view and revise their contact information and geographic preferences. An Indian tribe, NHO, SHPO, or THPO that has misplaced its FRN and password or wishes to change its password should contact Anne Marie Wypijewski or Diane Leer at the telephone number or e-mail address specified below.

For further information, please contact any of the following:

Anne Marie Wypijewski:	(717) 338-2508, annemarie.wypijewski@fcc.gov
Diane Leer:	(717) 338-2568, diane.leer@fcc.gov
Geoffrey Blackwell:	(202) 418-8192, geoffrey.blackwell@fcc.gov

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