

Manual Referrals of Non-Responsive Tribes (for TCNS matters that cannot be submitted within TCNS)

This process addresses instances in which referral via the TCNS system is not available because a Tribal Nation has responded within the system but becomes non-responsive after receiving the "Submission Packet" required for review, which may consist of the Form 620, Form 621, or the Alternative Submission Packet. This process outlines how to assure that a reasonable opportunity for Tribal comment has been provided and documented for inclusion in the NEPA/Section 106 report.

Application

A Tribal Nation should only be referred manually if it initially responded within TCNS and subsequently ceased responding. When referral through the TCNS system is available, referrals should always be handled within the system.

A Tower Company will NOT manually refer a TCNS application if:

- **The Project is on Tribal Land (land within the exterior boundaries of any Indian Reservation regardless of ownership).**
- **The Tower Company's research indicates that the tower or collocation may have an effect on a property of traditional religious or cultural importance to a Tribal Nation, or the Tribal Nation has identified such a property and indicated the potential for effect.**
- **The Tower Company identifies or learns of an archaeological site within the Area of Potential Effects.**

Process for Manual Referral of a Non-Responsive Tribal Nation

1. The 30-day review period for a Tribal response provided in the Wireless Facilities NPA begins to run on the date that the Tribal Nation or NHO can be shown to have received or may reasonably be expected to have received the Submission Packet. Consistent with the requirements in Section IV of the Wireless Facilities NPA, contact and communications shall be made in accordance with preferences expressed by the Tribal Nation or NHO, and misdirected communications do not begin the period for Tribal response unless and until they are actually received. The Tower Company is responsible for ensuring the accurate calculation of such period when Tribes specify a preference for delivery of review materials outside the TCNS/E-106 system.
2. Consistent with the NPA Section IV.F.5, *Applicants should not assume that failure to respond to a single communication establishes that an Indian tribe or NHO is not interested in participating but should make a reasonable effort to follow up.*
3. Thirty calendar days after the Tribal Nation or NHO can be shown to have received or may reasonably be expected to have received the Submission Packet, the Tower Company can refer the matter to the Commission for follow-up by sending an email to tcnshelp@fcc.gov and copying the Tribal representative. Here is the preferred format:

Good morning,

I am emailing you to refer the _____ Tribe for E106 Filing Number xxxxxxxxxx (TCNS# xxxxx). I was unable to refer the Tribe to the FCC via TCNS due to their reply through the TCNS system. It has been more than 30 days since the Tribe can be shown to have received or may reasonably be expected to have received the Submission Packet. Please see the following table for additional information:

| E106 # | TCNS # | Site Name | Tribe |
|------------|---------|-------------|-------|
| xxxxxxxxxx | xxxxxxx | xxxxxxxxxxx | Tbd |

At this point, the Tower Company must ensure that the following information, all of which is necessary for the FCC to undertake the efforts described below, is readily available to the FCC and to the relevant Tribal Nations via E-106, TCNS and/or other means that the FCC approves: (1) Name of non-responsive Tribal Nation; (2) Information on whether the Tribal Nation requested either a fee or information in excess of that required under the 2nd Wireless Report and Order, and how the Tower Company responded; (3) Date required information was provided and how it was sent; (4) Copies of any correspondence between the Tower Company and the Tribe; and (5) a log of any attempts to contact the Tribal Nation.

4. Upon receiving a referral, the Commission will promptly contact (within five business days) the Tribal Nation's designated cultural resource representative by letter and/or email to request that the Tribal Nation inform the Commission and applicant within 15 calendar days of the date of the letter and/or email of its interest or lack of interest in participating in the Section 106 review. The Commission also will inform the applicant when this letter and/or email has been sent, either by copying it on the correspondence or by other effective means. If the Tribal Nation or NHO does not respond within 15 calendar days, the applicant's pre-construction obligations are discharged with respect to that Tribal Nation or NHO.
5. The Tower Company may continue to attempt to engage the Tribal Nation during the 15-day period to expedite a response. If the Tower Company succeeds in obtaining a clearance or any other response prior to the expiration of the 15-day period, an email notification should immediately be sent to tcnshelp@fcc.gov.
6. If a Tribal Nation has a history of repeatedly failing to respond under the circumstances described above, the FCC will use its best efforts to work with the Tribal Nation to develop procedures that are suited to its needs.
7. If the Tower Company discovers human remains or archeological resources during construction, the Applicant must immediately stop construction and follow the procedures specified in Section IX of the NPA.