

Term Sheet – Section 106 Review Process for Twilight Towers

1. Purpose.

Make Twilight Towers available for collocations in a manner that:

 - A. Advances the strong public interest in making these towers available for FirstNet and broadband deployment;
 - B. Efficiently identifies and addresses, to the extent possible, those towers that have adverse effects on historic properties or Tribal cultural and religious sites.
2. Scope.
 - A. Applies only to Twilight Towers – those built from 3/16/01 to 3/7/05.
 - B. Approach for other non-compliant towers is TBD, depending on experience with Twilight Towers.
3. Identification.
 - A. *State-by-State Totals:* Industry trade associations will provide a good faith count of Twilight Towers on a state-by-state basis no later than a specific date [TBD, likely this fall].
 - B. *Tower Specific:* In advance of collocating, a tower owner must identify the applicable tower for review.
 1. Tower owner identifies towers via TCNS and E106, with some signifier to identify it as a Twilight Tower.
 2. The tower owner must provide all of the information that is required for a proposed new tower under Form 620 and the NPA.
 3. Reviewing Tribal Nations/NHOs and SHPOs may request additional information pursuant to the NPA.
4. Limits on Review.
 - A. Each owner may submit for review only a limited number of towers per month.
 - B. Time periods for SHPO/Tribal Nation/NHO review will be extended if the number of towers they receive for review exceeds predetermined thresholds.
5. Deadlines for Completion.
 - A. The FCC will set a deadline for owners to submit Twilight Towers for review.
 - B. Six months before that deadline, the FCC will assess whether to extend it and/or how to consider post-deadline submissions.
6. Review Fees.
 - A. Tribal Nations/NHOs may charge their customary review fees, pursuant to ACHP fee guidance. (SHPOs may also charge a fee if authorized under ACHP guidance and state law).
 - B. If a tower owner disputes a requested fee, the FCC will determine whether proceeding without paying the fee constitutes a reasonable and good faith effort to obtain the Tribal Nation's or NHO's input and participation. In so doing, the FCC will consider all of the circumstances surrounding the fee request, and it will consult with the Tribal Nation/NHO as appropriate.
 - C. Tribal Nations and NHOs may, to the extent reasonable, adjust their customary fees to reflect (1) the time constraints identified in this term sheet and (2) the logistical challenge in conducting post-construction review.

7. Review.

- A. SHPOs/Tribal Nations/NHOs have 60 days from receiving notice regarding a tower to object based on adverse effects on historic properties or Tribal cultural and religious sites. (This period will be extended if the total number of towers an entity receives for review in any calendar month exceeds prescribed thresholds.)
- B. The tower owner shall provide local government and public notice consistent with the provisions of the NPA. Members of the public may participate in the review and request consulting party status in accordance with the NPA.
- C. If a reviewing entity informs the tower owner that it failed to provide information required by the NPA, the review clock stops until the tower owner provides it. Requests for additional information beyond that required under the NPA do not extend the timeline for response unless directed by the FCC.
- D. Objections must be accompanied by support for the assertion that the deployment has an adverse effect on historic properties. (A confidential statement from a Tribal elder or other recognized Tribal authority noting that the site would have an adverse effect is sufficient.)

8. Resolution -- Towers **WITHOUT** Objections.

- A. Towers without objections are cleared automatically at the end of the review period.

9. Resolution -- Towers **WITH** Objections.

- A. Towers with appropriately supported objections are subject to further review and negotiation between the owner, the objecting SHPO/Tribal Nation(s)/NHO(s), and other consulting parties, with the FCC resolving disputes.
- B. The tower owner and objector are required to try to negotiate a resolution for 30 days after expiration of the initial review period.
- C. After that negotiation period, they can either keep negotiating or either party can submit the matter to the FCC for resolution. The ACHP and any consulting parties would be notified of the submission to the FCC and would have an opportunity to comment.
 - 1. One possible approach would be baseball arbitration (*i.e.*, each side makes an offer and the arbitrator chooses one or the other with no changes).
 - 2. This encourages parties to resolve disputes without FCC involvement, and it also discourages parties from submitting extreme proposals to the FCC.
- D. The FCC would reach a decision within 60 days.