



NEWS

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This is an unofficial announcement of Commission action. Release of the full text of a Commission order constitutes official action.
See MCI v. FCC, 515 F 2d 385 (D.C. Circ 1974).

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FCC CLARIFIES PROVISIONS OF NATIONWIDE PROGRAMMATIC AGREEMENT THAT APPLY TO INDIAN TRIBES AND NATIVE HAWAIIAN ORGANIZATIONS

Washington, D.C. – Today, the Federal Communications Commission (FCC) released a Declaratory Ruling clarifying portions of the Nationwide Programmatic Agreement (NPA) that apply to the participation by federally recognized Indian tribes (Indian tribes) and Native Hawaiian organizations (NHOs) in the review of proposed communications towers or antennas on properties to which they attach religious or cultural significance. The NPA was adopted by the FCC in September 2004 to streamline and tailor the review process for communications towers and other FCC-licensed facilities under the National Historic Preservation Act (NHPA). Today's action specifically addresses situations where Indian tribes or NHOs do not respond to efforts by members of the industry or the FCC to determine whether the Indian tribe or NHO has an interest in participating in the review of the proposed construction of a communications tower or antenna.

In today's ruling, the FCC clarified that once a wireless provider or other tower applicant (applicant) has made two good faith efforts over 40 days to obtain a response from an Indian tribe or NHO about a proposed communications tower or antenna, as specified in the NPA, the FCC will, upon notice from an applicant, send a letter and/or e-mail to the Indian tribe's or NHO's designated cultural resources representative seeking an indication of whether the Indian tribe or NHO has an interest in participating in the review of the proposed facility. If the Indian tribe or NHO does not respond within 20 days of the FCC's letter and/or e-mail, which will be followed up by an attempted FCC telephone contact during the same 20-day period, it will be deemed to have no interest in the review of the proposed facility. At that point, the applicant will have fulfilled its obligations under the NPA to notify an Indian tribe or NHO of its intentions to construct a communications tower or antenna. This process is effective immediately.

In addition to clarifying this process, the FCC also declared that applicants' obligations under the NPA have been fulfilled in tower notifications referred to the FCC by applicants before September 10, 2005 for lack of response from an Indian tribe or NHO. In virtually all of those cases, the FCC has already sent a communication to the Indian tribe's or NHO's designated representative. Furthermore, in many instances, the FCC has made multiple attempts over the past several weeks to contact the Indian tribes or NHOs via telephone, e-mail, and/or letter. This action will permit tower and antenna construction to proceed in these cases before the close of the construction season in many parts of the country as winter approaches. Today's action will

also facilitate the provision of new and better quality communications services to consumers in the near future.

Action by the Commission on October 5, 2005 by Declaratory Ruling (FCC 05-176). Commissioners Copps and Adelstein, with Chairman Martin and Commissioner Abernathy concurring. Joint statement issued by Chairman Martin and Commissioner Abernathy, and separate statements issued by Commissioners Copps and Adelstein.

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