

May 19, 2016

M. Teresa Hopkins, Executive Director  
Navajo Nation Telecommunication Regulatory Commission  
PO box 7440  
Window Rock, AZ 86515

Re: Draft Navajo Nation Telecommunications Facilities Siting Regulations

Dear Ms. Hopkins,

Navajo Communications Company, Inc. (NCC), a wholly-owned subsidiary of Frontier Communications Corporation, appreciates the opportunity to submit these informal comments on the Navajo Nation Telecommunications Regulatory Commission's (NNTRC) Draft Navajo Nation Telecommunications Facilities Siting Regulations in accordance with your April 7, 2016 Public Notice.

NCC has been a telecommunications provider on the Navajo Nation in Arizona, Utah and New Mexico since 1970. NCC currently is regulated by the state entities regulating public utilities in Arizona, Utah and New Mexico, and also by the Federal Communications Commission ("FCC") for interstate services provided in the region. As a longstanding telecommunications provider familiar with the region and the industry, NCC is well qualified to provide meaningful comments and suggestions regarding these draft siting regulations.

NCC was authorized by the Bureau of Indian Affairs (BIA) on April 30, 1970 to purchase the Nation's existing telephone system, along with the rights of properties used and useful by it in the operation of the system, free and clear of encumbrances. In the BIA contract agreement, the Navajo Tribe agreed that the purchase of the system included the right to do business on the Reservation and within all rights of way in the system already granted and to be granted in the future. The Navajo Tribe further agreed in the contract that by virtue of the benefits to be derived by the Tribe from the operation of the system by PURCHASER, that no charges shall be made to PURCHASER for the right to do business or operate the system on Navajo Lands. The Contract of Sale expressly recognized that the purchase price included compensation for the right to do business on the Reservation and for rights-of-way.

The aforementioned contract provisions clearly exempt NCC from additional rights-of-way charges, application fees, or other types of charges for doing business on the Navajo Nation. Aside from these facts, NCC offers the following additional comments specific to the draft regulations.

The Telecommunications Facilities Siting Regulations appear to be an attempt on behalf of the NNTRC to secure authority over telecommunications leases and permits for towers and facilities. However, these regulations fall short by not properly addressing NCC's existing contract rights, failing to clarify existing authorities, and failing to streamline the process for site approvals. In addition, the proposed regulations also appear to have hidden and/or duplicate costs and fees.

These regulations attempt to address the delegated leasing authorities of the Navajo Land Department (NLD) and the Division of Natural Resources (DNR) by rescinding these delegated authorities, but do not specifically cite the source of these delegations. The regulations don't take into

account the current leasing authorities cited in Navajo Nation Code/Law for the NLD, the DNR and other departments. For instance, the Navajo Minerals Department is also required to assess any right of ways, leases and permits, thereby subjecting applicants to outrageous and escalated fees. The NNTRC doesn't have the authority to unilaterally assume control over tower leases and permits.

Of major concern is that the regulations do not attempt to streamline the current disjointed process for acquiring leases and permits from the Navajo Nation. Under Navajo Nation law (2 NNC §164) the review process involves at least 9 government agencies/entities that must provide recommendations prior to obtaining any approval. These multiple layers of review, comments and recommendations add time delays and additional costs for applicants. The time and effort it takes to obtain permits and the high cost of permits continue to be two of the biggest impediments to doing business on the Navajo Nation today, and continue to contribute to the digital divide.

These regulations could also jeopardize applicants from obtaining new leases and permits or renewal of existing leases and permits by requiring all applicants to obtain a letter of good standing from the Navajo Nation Business Regulatory Department (NNBRD). In previous attempts to address its tower locations with the NNBRD, NCC was cited as "not in good standing" due to towers not being up to date and outstanding rights-of-way disputes, even when NCC was not subject to such requirements.

The fee structure in the regulations is confusing and could add costs to an already expensive and time consuming process. The NNTRC proposes a filing fee of \$700.00 while the Navajo Nation Project Review Section (PRS) has a processing/application fee of \$300.00 and a surface clearance fee of \$200.00. It is not clear whether the PRS fees will be eliminated or if they will treat this as a procedural process and continue to charge the fees. Additional fees are imposed for a Navajo Nation Certificate of Convenience and Necessity (CCN) ranging from \$750.00 to \$2,500.00. The regulations also require the applicant to make a one-time \$1,000.00 payment to grazing permittees, which could range from one to as many as 30 or more individuals. The amount and number of fees being imposed is not clear and will add unnecessary costs to the process.

An expressly stated goal of the proposed regulations in Section 3(C) is to ensure that residents, businesses, government institutions, health facilities and public safety facilities located on the Navajo Nation have reliable access to telecommunications networks and broadband to promote the health and welfare of the Navajo citizenry and to successfully bridge the "digital divide". However, the proposed tower leasing fees of \$12,000.00 per year significantly exceed market-based rates and will continue to hamper the ability of telecommunications companies like NCC to help the Navajo Nation meet this goal.

NCC owns towers that serve several areas with very few customers, and with lease rates at this level, a business case cannot be made to continue to provide service in these areas, or to deploy advanced services to new areas. The revenues simply do not cover the costs. Overall, the Company owns approximately 70 towers on the Navajo Nation in 3 states. Under the proposed regulations, annual tower lease costs would exceed \$840,000, including application and other fees. These additional costs of doing business would have to be passed on to customers and would make access to telecommunications networks and broadband even more difficult.

For comparison purposes, the U.S. Forest Service (USFS) offers the following 2016 annual tower lease rates for areas with less than 25,000 in population:

Television	\$1,866.94
AM/FM Radio	\$1,400.18
Cable Television	\$ 933.44

Broadcast Translator	\$ 155.56
CMRS/Facility Mgr	\$ 933.44
Cellular/PCS	\$3,889.42
Private Mobile Radio Svc	\$ 544.52
Microwave/Wireless ISP	\$2,333.65
Local Exchange Networks	\$ 116.68
Other	\$ 116.68

Market-based lease rates set at the reasonable levels charged by the USFS serve to encourage telecommunications companies to do business with them and help achieve the goals sought by the NNTRC in Section 3(C) of its proposed regulations. The regulations as they stand will do the opposite. It is interesting to note that the Local Exchange Network rate of \$116.68/year shown above is applicable to all population zones in the USFS Southwest Region. By keeping these rates low, the USFS recognizes the importance of bringing telecommunications services to as many people as possible.

Regarding the Requirement for Open-Access Open Architecture (section 5), a company should not be required to build new or modify existing tower sites to allow for access by others unless they pay a contribution towards construction to make the facility and compound ready for other tenants. In the industry, the tower owner designs and constructs the tower for their own current and future needs. If the owner receives a colocation request, it is the financial responsibility of the requester to modify and/or replace the tower. There are many questions that need to be answered to determine the wind load and antenna footage area required for an additional tenant on the structure, and those can't be determined until an actual colocation request has been received.

NCC estimates that the cost to build a new 150' self-supporting tower including equipment at approximately \$87,500. Adding capacity for 3 unknown tenants and their equipment would bring the cost to an estimated \$109,500, an increase of 25%. It is unreasonable to impose that type of cost on a tower owner and its customers when there is no guarantee that they will actually receive a colocation request. In addition, NCC has been constructing 30 foot monopoles in some locations, and shorter structures such as these will not accommodate wireless carriers due to the height constraint. It would be unfeasible to engineer a 30 foot monopole for three tenants.

Similarly, if NCC needs to extend the tower height of one of our existing towers for our radio network, it is unreasonable to require us to also design and implement modifications to include 3 additional tenants. As mentioned above, the wind load and antenna footage area that defines an additional tenant is unknown. NCC could not determine how to construct the additional capacity without having input from the 3 colocation parties. And again, it is industry practice that the cost to modify the tower for additional space (tower height) or capacity is borne by the colocation requester, not the tower owner. The NNTRC's proposed regulations should not impose unnecessary and costly requirements for colocation that the industry already routinely handles without issues.

Further, a tower owner should retain the right to reject colocation requests that will interfere with its existing operations, its planned radio operations, or create an unsafe RF environment due to limited tower height and high RF levels. NCC is a regulated telecommunications provider carrying traffic over the public switched telephone network and, as a result, should not be required to petition for the right to reject a colocation request due to existing and planned radio transmissions or due to unsafe RF conditions. Tying the company's hands in this way would interfere with its carrier-of-last-resort obligations as well as with its ability to bring new and improved services to its customers on the Navajo Nation in a timely manner.

A company also needs to retain the right to review and charge what the NNTRC regulations consider a “commercially reasonable rate” for subleasing, especially considering the exorbitant lease fees it would incur under the proposed rate structure. A company would need to pass the cost of these fees on to both colocators and customers in order to stay in business.

Regarding Telecommunications Leasing, Permitting and Licensing Procedures (section 6), the provision to transfer existing agreements to leases is unfair and a potential huge financial hit for companies like NCC. Considering all of the additional costs imposed by these regulations, there will be less incentive for NCC to invest in telecommunications infrastructure that supports the welfare of the Navajo citizenry going forward.

Regarding Telecommunications Tower Site Subleases (section 12), it is unclear if this section pertains to the tower owners or just colocators. If this were to apply to NCC as a tower owner, then this would delay our ability to shorten installation timelines for increasing capacity in an area. Under the current process for leases and permits the turnaround time is very slow and burdensome, and we may also risk losing an FCC approval for proposed licensed microwave radios due to the delay. The FCC requires construction to take place within 18 months of granting the frequencies.

Regarding Design Requirements (section 20), NCC aims the antennae on its towers in the direction needed to provide the service. They may need to face in multiple directions. One might need to be attached 50 feet up the tower and another might need to be located at 81 feet to have a clear line of sight. Terrain and the Fresnel zone dictates where dishes need to be mounted for a clear microwave radio path. As a result, it is not always possible to adhere to “spaced and balanced to give a planned and uncluttered appearance.” The regulations should not interfere with a company’s ability to provide the best service possible by placing a misguided emphasis on physical appearance.

In the General Requirements (section 21), NCC has concerns regarding the regulations surrounding abandoned towers. A company should not lose its right to use its property for a future use as long as it is continuing to meet the obligations of its lease or other contractual agreement. Regulations requiring removal or assumed ownership by the Navajo Nation are unnecessary and can interfere with planned investments in the network.

Finally, the proposed regulations do not even attempt to address competitive neutrality. Unreasonable lease costs and burdensome processes would be imposed upon telecommunications providers like NCC while our largest competitor, the Navajo Tribal Utility Authority (NTUA), gets a free pass. It is no secret there are significant cost-benefit obstacles to overcome in order for a full build-out of infrastructure to occur in the more sparsely populated areas of the Navajo Nation. However, there are steps toward that goal that could be accomplished in a more efficient and expeditious manner if all telecommunications providers could take advantage of an improved and streamlined permitting process and favorable rate structure, without being saddled by new and burdensome regulatory requirements.

If the NNTRC truly wants to induce build out of broadband and telecommunications infrastructure on the Navajo Nation and enhance the health and welfare of its citizenry, first it must fix the existing problems with the permitting processes and costs. When these issues are corrected and applied to all providers on a competitively neutral basis, then those providers will be properly incented to expand and enhance their networks, and to compete for customers.

NCC takes pride in the good relationships it has established with the Navajo Nation and its customers. A competitively neutral landscape, where one provider does not get preferential treatment

over another, will allow NCC the best opportunity to expand and enhance its network, and continue to provide quality telecommunications and broadband services going forward.

NCC urges the NNTRC to reconsider the proposed regulations to ensure that they are revised to provide a competitively neutral process that is streamlined, clear, predictable and fair to all competitors. The additional burden in paperwork, processing, and fees will hinder rather than help efforts to reduce the digital divide. The additional costs incurred in trying to serve the most remote areas will result in additional fees being charged to end users or services not being deployed to those areas. Predictability and affordability will encourage investment, while increased regulation and cost will discourage service deployment, enhancement and innovation. The Navajo Nation should look at the experiences of other rural communities across the country and observe how they've helped to promote broadband and advanced telecommunications services for their constituents by fostering a more business-friendly environment.

Thank you again for the opportunity to provide these informal comments.

Sincerely,



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