

BEFORE THE
NAVAJO NATION TELECOMMUNICATIONS REGULATORY COMMISSION
AND
NAVAJO DIVISION OF NATURAL RESOURCES
IN THE MATTER OF
NAVAJO NATION TELECOMMUNICATIONS FACILITIES SITING REGULATIONS

SACRED WIND COMMUNICATION, INC.'S RESPONSE TO THE NAVAJO NATION
TELECOMMUNICATIONS REGULATORY COMMISSION'S PUBLIC NOTICE ON
TELECOMMUNICATIONS FACILITY SITING REGULATIONS

SACRED WIND COMMUNICATIONS, Inc. ("Sacred Wind" or "SWC"), hereby provides its comments on the Public Notice issued by the Navajo Nation Telecommunications Regulatory Commission (NNTRC) on April 8, 2014, regarding the adoption of new rules for Navajo Division of Natural Resources (DNR) Telecommunications Facilities Siting Regulations ("Regulations") pursuant to the Navajo Nation General Leasing Regulations of 2013 (the "General Leasing Regulations"). For its comments, Sacred Wind states the following:

Introduction

SWC commends the NNTRC and DNR for the initial release of these Regulations, and for the opportunity for operators to comment on the Regulations. The publishing of these Regulations are a good step in establishing certainty and expectations for operators wanting to construct telecommunication tower infrastructure on the Navajo Nation.

The opportunity for operators to comment on the Regulations demonstrates that the Navajo Nation is receptive to specific objections and will consider the comments before adopting the

final policy. Sacred Wind is confident that the NNTRC will support specific changes or exemptions where such changes or exemptions will benefit the Navajo People and the Navajo Nation. Sacred Wind believes that the Nation is serious about meeting the “Purpose ... to promote the health and welfare of the Navajo citizenry and to successfully bridge the ‘digital divide’.”¹

The purpose further states that the Regulations are to “encourage the placement of Telecommunications Facilities in unserved and underserved areas of the Navajo Nation”, so SWC hopes the Navajo Nation will incorporate the suggestions of SWC and reinforced by other operators who share SWC’s concerns about further installing telecommunications networks on the Navajo Nation. While the Navajo Nation seeks to have uniformity in the Regulations, SWC must iterate time and time again that SWC, using a multiple of technologies to reach the hardest to reach customers with voice and high speed Broadband, needs to have a full array of alternative technologies considered in any new telecommunications policy established by the Navajo Nation. As an example, SWC has been recognized locally and nationally by the Federal Communications Commission and the United States Department of Agriculture’s Rural Utilities Service bureau (:USDA-RUS”) for developing a model system for Tribal lands across the country, and these proposed Regulations avoid any mention or consideration of the technology that SWC uses.

Sacred Wind’s Services and Territory

Sacred Wind operates as a rural incumbent telecommunications carrier in the State of New Mexico pursuant to certificates of Financial and Technical Competency, Operating Authority and

¹ See Section 3(C)

Public Convenience and Necessity issued to it by the New Mexico Public Regulation Commission on March 21, 2006. Sacred Wind's New Mexico certified service territory encompasses portions of 29 Chapters of the Navajo Nation, including the Tohajiilee (Cañoncito) band over an area of 3,200 square miles. There are approximately 7,700 occupied homes within this service territory.

SWC operates as the only "provider of last resort" certificated by the NMPRC, which *requires* it to provide service in its territory. SWC serves its customer with facilities that include copper landline facilities originally installed by Qwest that have been reconfigured to intersect with SWC's fixed wireless and fiber systems, supported by Broadband Loop Carrier cabinets at critical distribution points. SWC provides services employing two state-of-the-art, hybrid IP/TDM switches located at the Company's central offices in Yatahey and Bloomfield.

SWC's wireless network utilizes a mixture of FCC-licensed and unlicensed radio equipment. Sacred Wind owns and leases communications towers, located on mountain tops and high plateaus. SWC has received the necessary approvals from the Navajo Nation and federal agencies to permit the siting of its towers and infrastructure installations at customer locations.

SWC's main purpose in acquiring its predecessor's (Qwest Corporation) legacy network on Navajo Lands in New Mexico was to deliver to Navajo Lands a level of investment in new infrastructure that was not made previously and to work with the Navajo Nation to deliver affordable and advanced telecommunications services. It is Sacred Wind's contention that the lack of regulations regarding tower leases and right-of-way have been impediments and create disincentives for carriers to develop their telecommunications systems on tribal lands.

The Regulations Must Contain Further Exemptions

§ 4 Scope and Applicability

§ 4 *Scope and Applicability* outlines a list of “communications facilities and infrastructure [that] are not subject to these Regulations.” The listing is comprised of types of telecommunications and entertainment equipment “used solely for a Single Residence,” including mobile wireless extenders and Satellite antenna, but omit mention of Fixed Wireless equipment for a single residence that has proven to be of major benefit to SWC’s Navajo customers who either prefer a “fixed” voice or broadband connection to the home or cannot receive any other type of signal or service by way of landline or mobile equipment. Such service is especially beneficial to the most remote Navajo households. The Fixed Wireless antenna category is meant to include SWC’s, or any other provider’s, wireless delivery method for voice and data service which has reached hundreds of Navajo customer thus far. SWC’s technology involves a single resident customer antenna smaller than a TV dish or antenna that must be mounted at a specific height and direction. Therefore, this equipment requires, by FCC regulations, to be installed at the customer location by a certified technician. This new category recommended as an exemption from these Regulations would simply read: “Fixed Wireless reception antennae used solely for a Single Residence.”

Additionally, SWC brings to the NNTRC’s attention the need to amend its Cellular Tower on Wheels (“COW”) exemption. [§ 4(E) “COWs placed for a period of not more than one hundred twenty (120) days after a declaration of an emergency or a disaster by the President of the Navajo Nation; provided, written notice is promptly given to the NNTRC.”] Current 106 federal

rules allow a temporary COW to be placed for a period of 24 months while archaeology surveys are being conducted if the structure meets certain criteria.²

SWC feels there are circumstances which occur that warrant the deployment of a COW, but do not fall under the Navajo Nation President's declaration of an emergency. The circumstances could include a catastrophic equipment repair or replacement situation that renders a facility inoperable, thus requiring a temporary solution to restore a portion or all services while repairs are being made; or, the temporary installation of equipment to meet the communications needs of Navajo people – particularly Elderly or those with a health condition – pending completion of more permanent facilities. The emergency, in those circumstances, would be Navajo family emergency need of 911 and other basic communications services. Removing the requirement of a “declaration of an emergency or a disaster” is recommended, allowing the NNTRC to have the authority and discretion to grant such temporary permits.

§ 5. Requirement for Open-Access Open Architecture

§ 5(B) All newly constructed or existing Traditional Support Structures modified as part of a Major Replacement shall be designed to accommodate at least three (3) additional tenants. The compound area surrounding the support structure must be capable of being expanded to sufficient size to accommodate Accessory Equipment for at least three (3) additional tenants.

This requirement does impose other non-written policies from the Navajo Nation in the area of utilities for the site. This mandated configuration requirement require a right of way for the

² III (3)(C)(2) NATIONWIDE PROGRAMMATIC AGREEMENT FOR REVIEW OF EFFECTS ON HISTORIC PROPERTIES FOR CERTAIN UNDERTAKINGS APPROVED BY THE FEDERAL COMMUNICATIONS COMMISSION

electrical utility rather than a traditional Service Line Agreement for a single tenant on a Site Lease.

In general SWC does not disagree with the regulation's intention to maximize land use for multiple carriers, but SWC's tower locations are not in high demand for co-locations. Imposing a design standard which requires a right of way and is beyond our engineering needs adds additional costs which are not recoverable from support mechanism and would delay construction and/or add to the customer costs.

SWC recommends a policy for utilities be added to this section. The most favorable policy is that for a single site only a traditional *Service Line Agreement* be required for utility access and not a right of way..

§ 6. Consideration for Tower Leasing

The Regulations published list the pricing for towers as \$12,000/year adjusted every 5 years, but during the work session in Phoenix, AZ there was a statement made by the Director of the Navajo Land Department that the correct amount should be \$24,000/year.

Whether \$12,000 or \$24,000 per year, for SWC these rates are well beyond the realm of reasonableness when the small number of Navajo customers served from many of these towers are taken into consideration. The Navajo Nation should make a distinction between communications towers that primarily provide mobile communications services to well trafficked highways or state roads and communications towers primarily serving Navajo neighborhoods and families. The former tower might provide services to thousands of nontribal mobile customers over a week's period while the latter tower might be used to reach 100-200 Navajo households in any year. Even more critical, SWC installs smaller aggregation or relay

towers to reach neighborhoods with no more than 10-50 Navajo homes. Those towers are often actual wooden or steel poles no more than 90 feet tall that are placed in the hardest to serve areas. They are used to relay a wireless signal from a more distant larger tower in order to extend the line of sight of that radio signal to Navajo homes. Such smaller towers, especially, cannot be priced the same as the larger communications towers that serve thousands of people. There is no way that SWC or any other company could make a business case of a \$12,000 per year lease payment to serve so few households.

SWC has received state of New Mexico financial support to develop ten (10) such relay sites over the next five years and currently has two (2) projects already identified for 2016 – both east of Gallup, reaching no more than 50 and 25 households respectively. Using our current subscription rate of 65% (that is, an average of 65% of households in a given area subscribe to our service), we actually expect 32 new subscribers at one location and 16 at the other.

The average installation of a small tower costs \$75,000; to complete the NEPA process is estimated to be about \$30,000; and the Customer Premise Equipment (CPE, or subscriber antenna) is a about \$450 per subscriber. An estimated total for the first project with a 65% subscription rate of 32 new subscribers would be \$119,400. This comes to \$3,731 per subscriber for just the infrastructure construction and installation. Then, \$12,000 for an annual lease fee, just over 10 years, would cost SWC an additional \$120,000, or \$3,750 cost additional per subscriber.

According to a new FCC Order³, all rural incumbent providers' per subscriber operating costs, including for SWC, will be capped at \$200/month (\$2,400/year) per subscriber. Any

³ FCC CAF Funding Order, Docket WC 10-90, released March 28, 2016.

telecommunications carrier's operating costs on the Navajo Nation are very high due to the distance to reach customers, the low housing density, and the costs to obtain easement or rights of way on tribal or federally managed lands. Given that SWC's per Navajo subscriber operating costs are already pushing the Company to the FCC cap, the proposed \$12,000/year for a relay tower would equal another \$375/year per subscriber in our first relay project and twice that in the other.

SWC currently has nine (9) such aggregation or relay poles in place today, and those on tribal lands have been authorized through the Navajo Land Department's land use permitting process. If these Regulations were to be approved as they are written today, SWC could not replace those poles in the future if they needed replacement and could no longer expand its services using these smaller, more affordable relay poles. The only people harmed in this situation are the Navajo people.

Therefore, SWC recommends to the NNTRC that the lease fee for smaller relay or aggregation poles serving no more than 50 tribal households, be set at \$1,000 per year. Anything more than that would threaten a carrier's ability to comply with the operating expense limits imposed by the FCC and would shatter the business case for serving those customers.

The Navajo Nation should also consider the growing phenomenon of "small cell" technology as it is deployed around the country. As the mobile wireless industry expands its 3rd Generation ("3G") services to 4th Generation ("4G"), and perhaps within the next two years to 5th Generation ("5G"), the number of smaller tower cells will increase dramatically in order to carry the amount of bandwidth needed for 4G and 5G. These additional smaller towers are not intended to add more customers, but to add more bandwidth for the customers using 3G and 4G today. In other

words, a \$12,000 annual lease fee for small cell towers could easily stop 4G and 5G mobile development at the birder of the Navajo Nation.

SWC understands and sympathizes with the Navajo Nation for the need to maximize revenues in regards to use of Tribal lands. Nevertheless, SWC urges the Navajo Nation to consider the other main purpose of these Regulations, which is to incent telecommunications companies to develop services and systems on Navajo Lands to benefit the Navajo People. SWC urges the Navajo Nation to offer providers who demonstrate the commitment to provide voice and Broadband services to the underserved and unserved People of the Navajo Nation an alternative rate schedule for small towers or poles such as ones described above.

Respectfully Submitted,

/s/

Brian Tagaban, Director Governmental Policy
Sacred Wind Communications, Inc.