

NAVAJO NATION CODE
TITLE 21. PUBLIC UTILITIES AND COMMUNICATIONS
CHAPTER 5. TELECOMMUNICATIONS
SUBCHAPTER 1. NAVAJO TELECOMMUNICATIONS REGULATORY ACT

§ 501. Short Title

This Act shall be known and be cited as the Navajo Telecommunications Regulatory Act and codified at Chapter 5 Title 21 of the Navajo Nation Code.

§ 502. Purpose and Intent

- A. The purpose of this Act are to make available within the Navajo Nation efficient, reasonably priced and rapid communications, to promote and expand communications within the Navajo Nation, and ensure that communication activity within the Navajo Nation is consistent with the traditions, customs and desires of the Navajo People.

- B. It is the intention of the Navajo Nation Council that the provisions of this Act be construed and applied in each instance, so as to accomplish its purposes. Furthermore, the Navajo Nation by virtue of its inherent sovereign powers has the authority to assert jurisdiction over telecommunications not preempted by applicable law and regulation of the federal government of the United States. Areas which may be preempted include matters relating to frequency allocation, licensing, permissible use of specific band and interstate commerce. Federal laws now in force regulating telecommunications activity which do not preempt the Navajo Nation's jurisdiction to regulate telecommunications shall have the same force and effect and be binding and obligatory upon the Navajo Nation to the extent that said laws benefit and protect the traditions, customs and desires of the Navajo People are not otherwise inconsistent with provisions of this Act.

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§ 503. Definitions

For the purpose of this Act, the following definitions shall apply:

- A. “Broadcasting” means the dissemination of any radio or television communications intended to be received by the public directly or by the intermediary of relay stations.
- B. “Cable System” means a system of antennas, cables, amplifiers, towers, microwaves, waveguides, laser devices, satellite and/or other conductors, converters, equipment and facilities designed and constructed for the purpose of producing, transmitting, receiving, amplifying, storing, processing, and distributing audio, video, digital, or other forms of electronic or electrical signals capable of being transmitted by wire and cable to subscribing members of the public who pay for such services.
- C. “Certificate of Convenience and Necessity” means the certificate issued by the Commission to a person(s) doing business in telecommunications within defined service areas of the Navajo Nation. A Certificate of Convenience and Necessity may include or require to be filed with terms, conditions, or tariffs, and may contain terms, conditions, or tariffs found within franchise agreements.
- D. “Act” means the Navajo Nation Telecommunications Regulatory Act.
- E. “Commission” means the Navajo Telecommunications Regulatory Commission or any successor agency authorized by the Navajo Nation to regulate telecommunications.
- F. “Common Carrier” means a person(s) providing, or holding itself out as providing telecommunications service or services to the public for hire within the Navajo Nation.
- G. “Communications” means transmission, emission, or reception of information by any means of telecommunications.
- H. “Electromagnetic Spectrum” or “Radio Frequency Environment” means the entire range of wavelengths of frequencies of electromagnetic radiation from the longest radio waves to the shortest gamma rays.
- I. “Federal Communications Commission” or “FCC” means that agency as presently authorized by the U.S. Congress or any successor agency authorized by the Congress to regulate cable television, telephone systems, and other communications matters or facilities.
- J. “Franchise” means the contractual agreement between a telecommunications provider, who is required to have a franchise, and the Commission which defines the rights and responsibilities of each regarding the installation, construction, operation, terms and conditions of services and maintenance of a communications system within the Navajo Nation. A franchise agreement may include the terms, conditions, and tariffs contained within or required by a Certificate of Convenience and Necessity.
- K. “Franchises” means the approved holder of a franchise.
- L. “Licensee” means the holder of a valid license granted.
- M. “Navajo Nation” has the same meaning as Navajo Indian Country as defined in 7 N.N.C § 254, as amended.

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- N. “Person” means a natural person, either a Navajo or non-Navajo individual, sole proprietorship, partnership, corporation, joint venture, trust, estate, unincorporated association, government (other than the government of the Navajo Nation and any whole owned subdivision or enterprise of that government), public or private organization, and any part, division or agency of any of the foregoing or any other entity.
- O. “Pole Attachment” means an attachment of a wire or cable by a telephone system, or a cable television system to a pole; the term also includes ducts or conduits and other underground apparatus requiring the use of public right-of-way, owned or controlled by a public utility.
- P. “Public Utility” means those applicants who have obtained a Certificate of Convenience and Necessity from the Commission to provide telecommunications service to subscribers or the general public within the Navajo Nation.
- Q. “Radio Communication” means the transmission by radio of writing, signs, signals, pictures, and sounds of all kinds, including all instrumentalities, facilities, apparatuses, and services (among other things, the receipt, forwarding, and delivery of communications) incidental to such transmission.
- R. “Radio Station” means a station equipped to engage in radio communications or radio transmission of energy.
- S. “Rates” means any rate, toll, rental, charge or classification of any person engaged in providing telecommunications services.
- T. “Subscriber” means the person or entity in whose name service is rendered, as evidenced by the signature on the application or contract for that service, or by the receipt and/or payment of statements, invoices or bills regularly issued in such name regardless of the identity of the actual user of the service.
- U. “Tariff” means the filed and approved rates, rules and regulations of a telecommunications service-provider that sets forth the services and products offered and the rates charged, and the terms and conditions for the use of those services and products.
- V. “Telecommunications” or “telecommunication” means any transmission, emission or reception (with retransmission or dissemination) of signs, signals, writings, images, and sounds of intelligence of any nature by wire, radio, light, electricity or other electromagnetic spectrum system, including but not limited to the telecommunications activity set forth §505(A)(2) of the Code.
- W. “Telecommunication Service” means the providing of voice or other communication service by telecommunications including without limitation, non-voice communication services, or data communication services which may interconnect with other telecommunication networks and/or involve operation of transmission/reception devices for binary information representation.
- X. “Telephone System” means all property and facilities used in connection with telephone communication, including with limitation, the providing of telephone service, with or without the use of transmission wires.

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- Y. "Television Delivery Systems" means any transmission of television programming, via broadcasting, cable, microwave, other such means of program delivery.

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§ 504. Establishment; Composition; Staff

The Commission shall carry out the duties of regulating telecommunications activities with the Navajo Nation. The establishment and composition of the Commission shall be governed by a plan of operation adopted by the Commission and approved by the Government Services Committee of the Navajo Nation Council. The administrative staff to carry out the duties and responsibilities of the Commission shall be as provided for in the Commission's plan of operation or in the Commission's rules and regulations.

§ 505. Powers and Duties

- A. In accordance with the Commission's plan of operation, the Commission shall have the power to perform any and all acts necessary and convenient to supervise, monitor, and regulate telecommunication and those persons providing telecommunications service within the Navajo Nation as specifically designated in the Chapter or in any rule, regulation, decision, order or other office pronouncement adopted hereunder, in the exercise of such power and jurisdiction.
- B. The Commission shall have the following specific powers:
 - 1. To promulgate such rules and regulations as appropriate for the accomplishment of its purpose and authority, duties and responsibilities pursuant to this Act, and to enforce such rules and regulations;
 - 2. To act upon and regulate any and all telecommunications activity with the Navajo Nation, including but not limited to telephone, television, telegraph, radio, cable television, satellite dishes, two-way radio, and other telecommunication services employing wire, radiowave, lightwave, electricity or any other electromagnetic system;
 - 3. To establish methods, procedures, conditions and fees for obtaining permits and approved tariff schedules for telecommunications services within the Navajo Nation;
 - 4. To establish procedures and requirements for hearings and investigations pertinent to the functions and powers of the Commission; to receive, consider and hear complaints concerning the noncompliance by any person, of any provision of this Act and/or the Commission's rules and regulations, decisions, orders or other official pronouncements; to issue and compel by power of subpoena the presence of any person or the production of any document, or any type of evidence deemed relevant to a matter properly before the Commission; to issue decisions and orders, opinions or other official pronouncements, on any matter properly raised before the Commission, and as many be necessary in the enforcement and implementation of its functions;
 - 5. To establish and impose fines and/or other civil sanction(s) deemed appropriate by the Commission, for violations of any provision of this Act and/or its rules and regulations, decisions, orders or other official pronouncement and;
 - 6. To establish and collect franchise, filing and other fees from persons at amounts which are appropriate for the matter for which such collection is being made.
 - 7. Consistent with powers and authorities granted herein and by 2 N.N.C §3454, to establish, implement and manage an effective 911 emergency response system within the Navajo Nation

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§ 506. Compliance and Enforcement

- A. All persons engaging in telecommunications activities shall comply with the provision of this Act and all decisions or orders, rules, and regulations or the official pronouncements issued pursuant to the Act. Enforcement of this Act shall be by the Commission or through the Navajo Nation courts. The exhaustion of administrative remedies doctrine will apply to any third party seeking enforcement of the Act. The Commission is authorized to seek judicial enforcement of the Act without first acting administratively if circumstances so require. Members of the public shall have standing to make complaints or inquires to the Commission about any telecommunications activities on the Navajo Nation.
- B. Any Indian who violates any of the provision of this Chapter shall be guilty of an offense and, upon conviction, shall be sentenced to a term of imprisonment of not more than 180 days, or ordered to pay a fine not exceeding five hundred dollars (\$500.00), or both, in accordance with the provisions of Title 17, Navajo Nation Code.
- C. Any nonmember of the Navajo Nation who violates any of the provisions of this Chapter may be excluded from land subject to the Navajo Nation in accordance with the procedures set forth in 17 N.N.C. §§ 1901-1906, as amended.

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§ 507. Jurisdiction

The provisions of this Act shall apply within the Navajo Nation, as that term is defines in § 503(M) of this Act.

§ 508. Cooperation with other Jurisdictions

- A. Intergovernmental Agreements. Where the extent of telecommunications regulatory jurisdiction of the Navajo Nation and the states, and their subdivisions and agencies are not clearly defined or involve potential jurisdictional conflict, including, without limitation, potential jurisdictional conflict arising from the Commission's transition to a fully operational telecommunications regulatory body for the Navajo Nation, the Commission is authorized as the designated representative of the Navajo Nation to negotiate and develop for approval by the Intergovernmental Relations Committee of the Navajo Nation Council appropriate intergovernmental agreements or joint power agreements as are necessary to resolve such jurisdictional issues, and is further authorized to represent or intervene on behalf of the Navajo Nation in proceeding before the states and their subdivisions and agencies.
- B. Federal Communications Commission (FCC) Coordination. The Commission is vested with the authority of acting as the intermediary agency between the Navajo Nation and the FCC and in furtherance thereof to pool information and receive complaints. The Commission may, subject to applicable law, act as the intermediary for applications or complaints, filings, registrations, rulings, approvals and similar acts or matters before the FCC in those areas of telecommunications not specifically addressed in this Act or in the Commission's rules and regulations, provided nothing in this Act will prevent or interfere with the representing the Navajo Nation in proceedings before the FCC, including without limitation, intervening on behalf of the Navajo Nation on matters before the FCC.

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§ 509. General Provisions

- A. Unlawful Use of Service. It shall be unlawful to obtain, with the intent to defraud, or with the intent to evade lawful charge, telecommunication services without proper payment thereof or the authorization of the subscriber of such services.
- B. Unlawful Discrimination. No telecommunications service provider shall, as to rates or service, make or grant any unreasonable preference or advantage to any person, or subject any person to any unreasonable prejudice or disadvantage based upon race, creed, national origin, sex, age, religion.
- C. Emergency. The Commission, upon its determination that an emergency exists, is authorized to take any and all actions necessary to address the emergency notwithstanding and other provision in this Act.

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§ 510. Certificate of Convenience and Necessity

- A. Restriction. No person shall engage in providing telecommunications services within the Navajo Nation, nor shall exercise any right or privilege under any franchise or permit, without first having obtained from the Commission a certificate of convenience and necessity, unless otherwise authorized in this Act. The Commission shall promulgate and issue specific rules and regulations establishing filing and informational requirements for applications for Certificates of Convenience and Necessity.
- B. Exemption of certain activities. The Commission may by rule or regulation exempt certain telecommunications services for the requirement of a Certificate of Convenience and Necessity.
- C. Construction. No person engaged, or intending to engage, in providing telecommunications services within the Navajo Nation shall begin construction of any line, service or system, or any extension beyond the defined boundaries of any existing Franchise or Certificate of Convenience and Necessity without first having obtained from the Commission a Certificate of Convenience and Necessity for the territory in which such construction or extension will occur, unless otherwise authorized in this Act.
- D. Application. Every applicant for a Certificate of Convenience and Necessity shall file with the Commission an application disclosing such information required by the Commission's rules and regulations, and accompanied by appropriate filing fees. Each applicant shall provide evidence of compliance with the applicable laws of the Navajo Nation, in accordance with the rules and regulations of the Commission.

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§ 511. Tariffs

- A. Rates; publication. Rates established by a person engaged in providing telecommunication services shall first be approved by the Commission for reasonableness and justness before such rates are implemented, in accordance with the Commission's rules and regulations. Every person engaged in providing telecommunications services shall print, and make available for public inspection its approved tariffs which include schedules showing the rates and terms of condition of service for the services rendered to the public.
- B. Unlawful rates; refunds. The Commission will have authority to prescribe rates where it finds in effect to be unlawful. The Commission is authorized to compel the return of any rates unlawfully collected by a direct refund or a general credit against future billings.
- C. Rules and regulations. All rules and regulations affecting or pertaining to its charges or services to the public adopted by a person engaged in providing telecommunications services shall be approved by the Commission for reasonableness or justness before such rule or regulation is implemented. Every rule and regulation not found to be reasonable or just by the Commission is prohibited and unlawful.
- D. Rate and Tariff Changes; application; notice; filing.
 - 1. No changes or adjustments to any existing, filed and approved tariff including, without limitation, and change in rates, territory served, rules, regulations or contracts, shall be made by any person engaged in providing telecommunications services except before, and a finding by the Commission, that a change or adjustment is reasonable and justified. Application for changes to the filed and approved tariff shall be made in writing to the Commission along with a filing fee, in accordance with the Commission's rules and regulations. A notice plainly stating the proposed change or changes and the existence of such application for a new proposed tariff shall be made available for public inspection and will be given to all subscribers.
 - 2. Requests for change in rates shall be heard and acted upon by the Commission pursuant to § 516 of this Act and the Commission's rules and regulations. The Commission will render a final decision on a request for a change in rates within 180 days from the date of filing, or the rate that is filed will thereafter become effective at the beginning of the next billing period following, the expiration of the 180-day period and will remain in effect until the Commission makes its decision on the request rate change. The 180-day period specified in this §511(D)(2) will not begin to run for any pending request for a until the effective date of this Code.
 - 3. The Commission may for good cause shown, or upon agreement with the person requesting tariff changes, modify, deny, suspend, or delay the implementation of any proposed tariff changes.
 - 4. Nothing within this Section shall prohibit any person providing telecommunications service from offering discounts or promotions or establishing rates at a level below that established by the Commission on a non-discriminatory basis, provided at least 15 days prior to offering such discounts or promotions such discount or promotion will be filed with the Commission in accordance with it rules and regulations.

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§ 512. Requirements for Accounting, Annual Statement, and Audits

- A. Accounting System. The Commission may adopt rules and regulations establishing an accounting system to be kept by any person(s) engaged in providing telecommunications services, and prescribe the manner in which accounts shall be kept. It may prescribe the forms of accounts, records, and memoranda to be kept, including records covering receipts and expenditures of money and other records necessary to carry out the provisions of this Act. Special rules may be established for different classes of those providing telecommunications services, such as those persons additionally engaged in providing interstate communications services.
- B. Certified Annual Financial Statement. Every person engaged in providing telecommunications services shall file a current annual financial statement to the Commission by a certified public accountant and in accordance with the rules and regulations of the Commission, every year on or before the first day of May or as may otherwise be approved by the Commission.
- C. Audits. If any person engaged in providing telecommunications services fails to comply with any provision of this Section or upon the discretion of the Commission if there is good cause, the Commission or its designated representative is authorized to conduct or cause to be conducted an audit of the financial records and management of such person. Expenses incurred for such an audit shall be borne by the person.

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§ 513. Quality of Service; Complaint

- A. Rules and Regulations for Quality Service. The Commission may adopt, promulgate, and enforce rules and regulations to insure that the quality of telecommunication services are adequate, efficient, just and reasonable. All persons providing telecommunications services within the Navajo Nation shall take all reasonable actions to ensure that the quality of service provided is equivalent or superior to similar service available in areas outside of the Navajo Nation. The scope of this provision may include but shall not be limited to, continuity of service, service availability, the extent of service, service interruptions, billing and collection procedures, quality of equipment, termination of service, deposits, and resolution of complaints.
- B. Telecommunications connections; joint rates. When the Commission finds that a physical connection can reasonably be made between the lines of two or more telecommunications service providers to form a continuous line of communication, and that public convenience and necessity will be served thereby, or that two or more telecommunications service providers have failed to establish joint rates, tolls, charges, for service by or over their lines, and that is reasonable and just that a connection be established, the Commission may require that a connection and joint rates be made in accordance with § 524, provided this § 513(B) will not apply where the purpose of the connection is primarily to secure transmission of local messages or conversations between points within the same town or community.
- C. Non-compliance; violations. Complaints alleging non-compliance or violations, rules, regulations, decisions, orders or other official pronouncements adopted by the Commission concerning the quality of telecommunications shall be filed with the Commission in accordance with the rules and regulations of the Commission and shall be heard by the Commission within 45 days of filing.

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§ 514. Health and Safety

- A. Compliance with health and safety codes. The Commission may adopt, promulgate, and enforce rules and regulations requiring every person engaged in telecommunications to construct, maintain, and operate it line, system, facilities, equipment, apparatuses, and premises in such manner as to promote and safeguard the health, safety and welfare of its employees, customers, and the public; to this end, the Commission may prescribe, among other things, the installation, use, maintenance and operation of appropriate safety or other devices, and to require the performance of any other acts which the health, safety, or welfare of it employees, customers or the public may demand.

- B. Non-compliance; Violations. Complaint alleging non-compliance or violations of the rules and regulations, decisions, orders or other official pronouncements adopted by the Commission concerning the health and safety as described herein may be filed with the Commission by any aggrieved party in accordance with the Commission's rules and regulations.

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§ 515. Rulemaking Process; Adoption of Rules and Regulations

- A. Establishment of Rules and Regulations. The Commission may promulgate rules and regulations in accordance with this Act, for the purpose of enforcement of this Act. Prior to the adoption by the Commission of any rules and regulations being promulgated in accordance with this Act, notice shall be given to the public of such proposed rules or regulations, by a method deemed proper by the Commission. Such notice shall include: the nature of the proposed rule or regulation; the meeting date of the Commission where it will be reviewed and public comment solicited; the deadline date for submitting written comments; the proposed effective date of proposed rule or regulation implementation, and the location where the proposed rule or regulation will be available for public inspection. The Commission shall take no action on any proposed rules or regulations for at least 45 days from the date of the last publication of the Commission's Notice; the restrictions of § 515(A) will not apply to rules or regulations adopted pursuant to § 509(C).

- B. Promulgation of other official pronouncements. The Commission may promulgate other official pronouncements governing matters not requiring a formal rule or regulation from time to time.

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§ 516. Tariff Adjustments; Complaints; Notice of Hearings; Hearing; Evidence; Decisions; Appeal

- A. Tariff Adjustment. Any person providing telecommunications services may apply to the Commission for a rate/service adjustment by filing an application in accordance with the Commission's then effective rules and regulations.
- B. Complaint. A written complaint may be filed by any person with the Commission by any person or by the Commission itself, in accordance with the Commission's rules and regulations. A complaint will detail the alleged act or omission of the person engaged in telecommunications which is asserted to be in violation of the Act or any decision, order, rule or regulation, or other official pronouncements of the Commission and will further contain the remedy or relief sought. A complaint may also be file by any person regarding the justness or reasonableness of any rates. The Commission is also authorized to initiate the filing of a complaint.
- C. Notice of Hearing. Upon the filing of a complaint, if it is determined by the Commission to establish probable cause, the Commission shall serve notice within ten days, upon the person complained of, an order to show cause why the person should not be ordered to cease operations. The notice shall specify the charge, time, date and place of hearing.
- D. Procedures for Hearing. The Commission shall conduct a full hearing on all matters properly brought before it. All such hearings will be held in accordance with the requirements of the rules and regulations adopted by the Commission.
- E. Decision and Order. After the conclusion of the hearing, the Commission shall make and enter its findings of facts, based upon the evidence presented at the hearing and supported by substantial evidence on the record as a whole. The Commission will further issue an order of its determination and decision based upon such findings and make know the effective date of such decision and order. Every order shall be in writing and signed by least a majority of the Commission membership, and should bear the seal of the Commission affixed thereto. A certified copy of such order shall be served upon each party to the proceeding or their legal counsel by certified mail.
- F. Reconsideration; Appeals. After an order or decision has been made by the Commission, any party to the proceeding may apply for reconsideration of any matter determined in said proceeding, in accordance with the Commission's rule and regulations. Any party adversely affected by the final decision or order of the Commission is entitled to seek judicial review by filing a notice of appeal with the Navajo Nation Supreme Court within 30 days following entry of the order and entered following reconsideration. No judicial review shall be allowed unless an application for reconsideration has been filed with and ruled upon by the Commission. Review of Commission actions in the Supreme Court will be on record made in the Commission and not de novo and will be limited to the determination of whether the decision and order of the Commission is supported by substantial evidence, is arbitrary, capricious or an abuse of discretion, is beyond the Commission's authority or otherwise contrary applicable Navajo Nation or Federal Law. The Supreme Court is empowered, to affirm, reverse or modify a decision and order of the Commission, or to remand the matter to the Commission for further action and it may stay the effect of the decision and order pending the appeal. The Commission will

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determine by its rules and regulations whether the right of appeal will exist with respect to its adoption of any proposed rule or regulation.

G. Jurisdiction of courts. The courts of the Navajo Nation are vested with jurisdiction:

1. Over any and all persons subject to this Chapter;
2. To hear and determine any challenges to the validity of this Chapter, either generally or as applied to any person, provided that the provisions of this § 516 and § 506 and the regulations which may be adopted pursuant thereto are complied with.

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§ 517. Violations and Civil Penalties

- A. Criminal Penalties. Any person engage in telecommunications who intentionally violates or fails to comply with the provisions of the Act or decision or order, rule or regulation, or other official pronouncement issued pursuant to the Act is guilty of an offense punishable as provided in § 506.
- B. Civil Penalties. Any person engage in telecommunications who violates any provision of the Act or decision, order, rule or regulation, or other official pronouncement of the Commission issued pursuant to that Act may be subject to a civil fine imposed by the Commission of not less than five hundred dollars (\$500.00) nor more than ten thousand dollars (\$10,000.00) for each violation provided the Commission will have the discretion to suspend, or impose probationary conditions for avoiding, the fine.
- C. Agency. In determining the existence of any offense under § 517(A) or grounds for imposing any civil penalty under § 517(B), the act or omission of any officer, agent or employee of a person engaged in telecommunications, within the scope of his or her authority, duties or employment, shall be deemed to be the act or omission of the person engaged in telecommunications.

§ 518. Injunctions; Show Cause Orders; Contempt

The Commission may apply through the Office of the Attorney General of the Navajo Nation to any court of competent jurisdiction for injunctions to prevent continuing violations of any provision of the Act or of any rule, regulation, decision, order or other official pronouncement of the Commission issued pursuant to that Act, and for show cause orders to enforce any duly issued subpoena of the Commission, and such courts shall have power to grant such injunctions and show cause orders, and to enforce such injunctions and show cause orders by contempt procedure.

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§ 519. Telephone and Telegraph

- A. Certificate of Convenience and Necessity. For the purpose of this Section, the Commission is vested with authority to grant a Certificate of Convenience and Necessity for the provision of telephone services as provided for § 510. Tariffs shall be established and amended in accordance with §§ 511 and 516. All telephone service providers shall comply with applicable laws, rules and regulations, decisions and orders governing leases, easements, licenses, certificates, permits or rights-of-way, and tariffs.
- B. Regulations of quality of service. The Commission may adopt rules and regulations, decisions and orders governing quality of service which may govern not only service transmission quality standards, but also the service itself. The Commission shall have the power to issue rules and regulations, decisions and orders governing the establishment of service, temporary service line connection, provision of service, billing and collection, resolution of customer disputes, termination of service and notice, and telecommunication service for the disabled, handicapped and the elderly, and like matters.
- C. Additions and/or extensions of service. Applications for additions and/or extensions to existing Certificates of Convenience and Necessity shall be addressed in accordance with rules and regulations of the Commission.
- D. Application of state/tribal intergovernmental agreement or state statutes. The Commission in considering tariff rate approvals and adjustments of telephone services may, pursuant to its authority under § 511, employ state statutes pertaining to rate regulations in accordance with intergovernmental agreements citing the necessity for deferring Commission authority and jurisdiction to the state in matters of rate regulation.

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§ 520. Protection of Customer Privacy

- A. Unlisted Number. It shall be the duty of phone companies providing services within the Navajo Nation not to disclose the number or address of a subscriber holding an unlisted number, except upon permission of said subscriber, or except by request by law enforcement and emergency authorities.

- B. Unlawful Use of Telephone.
 - 1. Preventing use of a telephone in an emergency; false emergency request for Telephone. It shall be unlawful for any person willfully to refuse to yield or surrender immediately the use of a party line or of a public telephone to another person for the purpose of permitting such person to report a fire, or summon police, or medical aid, or to communicate any other bona fide emergency. It is unlawful for any person to ask for or request the use of a party line or public telephone on the false pretext that such an emergency exists.

 - 2. Obscene or harassing telephone calls. It shall be unlawful for any person, with intent to annoy, abuse, threaten, or harass any person at the called number to: make any comment request, suggestion or proposal which is obscene, lewd, lascivious, filthy, or indecent; make a telephone call, whether or not conversations ensues, without disclosing upon the request of the person called the identity of the caller; make or cause the telephone of another repeatedly or continuously to ring; make repeated telephone calls, during which no conversation ensues; knowingly permit any telephone under his or her control to be used for any purpose prohibited by this Section.

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§ 521. Cable Television

A. Franchise

1. Authority. For the purpose of this Section the Commission is vested with authority to grant franchises in defined boundaries for provision of cable television services, including pay cable services, premium and basic service within the Navajo Nation for a maximum period of 15 years. No person shall provide cable television services with the Navajo Nation without having been granted a franchise by the Commission. No exclusive franchises shall be granted for the whole part of the Navajo Nation. The Commission is authorized to issue and promulgate rules and regulations for franchise requirements, applications, franchise and other fees, tariff schedules, hearings, granting and denial procedures. The Commission is further authorized, subject to restrictions of applicable law, to regulate the rates for provision of cable television services, and other communication service provided over a cable system to cable subscribers, in accordance with §§ 511 and 516 of this Act.
2. No Certificate of Convenience and Necessity. A person holding a validly issued franchise from the Navajo Nation to provide cable television services is not required also to hold a Certificate of Convenience and Necessity from the Navajo Nation.

B. Revocation of Franchise. Non-compliance with provision of this Act or any duly adopted rule, regulation, decision, order, or official pronouncement of the Commission, or for good cause found to exist after a full and fair hearing of the Commission shall cause for revocation or termination of the franchise. Notice of such claim or complaint against the franchisee shall be given at least ten days before hearing with an opportunity for the franchisee to show why the franchise should not be revoked or terminated.

C. Obtaining cable television services fraudulently; penalty. No person shall tamper with, or make connection with, the equipment providing cable television by mechanical, electrical, acoustical, or other means with intent to avoid payment of the lawful charges for cable television service. In addition to other sanctions provided in the Act, any person violating the provisions of this Section shall be liable to the cable television operator for reasonable damages plus reasonable attorneys' fees and costs.

D. Satellite Dish. Any person, using a satellite dish for retransmission of cable television for hire, monetary consideration or reimbursement shall be subject to the provisions of this Act except for those systems expressly preempted by applicable federal law as non-regulated.

E. Obscenity – indecency; penalties. It is unlawful for any person providing cable television services within the Navajo Nation to broadcast in any way produce, transmit, process or distribute by video programming, obscene or indecent material. This Section of § 521(E) will not become effective until the Commission has issued and promulgated rules and regulations defining “obscene” and “indecent”.

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§ 522. Other Television Delivery Systems

- A. Purpose. Pursuant to regulatory guidance of the FCC, the Commission may issue, promulgate and enforce rules and regulations governing multi-point distribution systems, multi-channel-multi-point distribution systems, satellite main antenna systems, direct broadcast systems, two-way television systems, and any other television programming delivery systems involving the use of microwave, fiber optic, and other video technology, video storage devices, and electromagnetic spectrum frequencies, and those technologies evolve into commercial or private use on the Navajo Nation.
- B. Commercial delivery systems. Any person providing television programming delivery services for the purpose of generating revenues for subscribers must adhere to the rules and regulations, decisions, orders, or other official pronouncements of the Commission.
- C. Non-profit delivery systems. Any person providing television programming delivery services in a non-profit capacity, or as a public service, must also adhere to the rules and regulations, decisions, orders, or other official pronouncements of the Commission.

§ 523. Regulation of Telemarketing and/or Television Marketing

The Commission may issue, promulgate and enforce rules and regulations governing telemarketing and/or television marketing within the Navajo Nation.

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§ 524. Attachments to Poles, Ducts and Conduits

- A. The Commission is authorized to issue and promulgate rules and regulations governing the use of public utility facilities.
1. Joint/Pole Use. In order to provide efficient and quality telephone and cable services, the Commission may authorize joint use of public utility poles, ducts, and conduits located within the Navajo Nation, owned or controlled by a public utility company. All joint use agreements including the compensation provisions thereof for wire or cable attachment to a pole, duct, or conduit must be approved by the Commission. Upon the approval of the joint use agreement for pole attachments, all persons to such agreement shall have the right to use or share in and enjoy the use of the right-of-way easement granted to the pole owner.
 2. Disputes. Disputes concerning terms and conditions, including rental rates, of the joint use agreement for attachments shall be resolved by the Commission at a full and fair hearing conducted for that purpose pursuant § 516 of this Act, and in accordance with the Commission's rules and regulations.

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§ 525. Radio and Television

- A. The purpose of this Section is to further the development of television reception to areas of the Navajo Nation not presently receiving this service.
- B. The Radio Frequency Environment. Subject to applicable federal law, the radio frequency environment as defined by § 503(H) is recognized by the Navajo Nation as a Navajo Nation resource. The Commission shall have the authority to review, develop, and issue policy to ensure that this resource is utilized to the fullest extent possible for the future benefit of the Navajo Nation and its residents subject to applicable federal law.
- C. Leases, easements, licenses, permits, rights-of-way. Any person engaged in broadcasting, seeking to install, construct, operate, or maintain any radio or television station, translator station, facility, tower, microwave equipment, or apparatus, prior to such installation, construction, operation, or maintenance shall file with the Commission evidence of compliance with applicable laws of the Navajo Nation and the federal government, governing leases, easements, licensing, permits, or rights-of-way.
- D. Application of FCC Doctrines. Any person engaged in broadcasting shall be subject to the FCC doctrines and rules, including, but not limited to, “the fairness doctrine”, “equal access time”, “personal attack” and “political editorializing” as such doctrine may be further defined and clarified by the rules and regulations of the Commission.

§ 526. Radio Communications Systems

- A. Authorization; Rules and Regulations. For purposes of this § 526, the establishment and operation of maintenance facilities for the Navajo Nation radio systems are authorized. The Commission is vested with the authority to issue, promulgate, and enforce rules and regulations for the provision of two-way radio service on the Navajo Nation. Any holder of any class of FCC radio license will adhere to the rules and regulations of the Commission pertaining to the Certificate of Convenience and Necessity when two-way radio services are provided by a person to a customer with the intent to generate revenue or profit.
- B. Filing of certified copy of license. Any holder of any class of FCC radio license, excluding citizens band radio, shall maintain on file with the Commission, a certified copy of that license.
- C. Protection of Public. It shall be unlawful to use two-way radio communications to transmit messages which abuse or further the fraudulent use of such apparatuses of facilities.

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§ 527. Severability

If any provision of this Act or the application of such provision shall be held invalid the remainder of the Act and application of such provision other than those held invalid shall not be affected thereby.

§ 528. Prior Inconsistent Law Superseded

Upon the effective date of this Navajo Telecommunications Regulatory Act, all prior inconsistent enactments, laws and rules, policies, ordinances and regulations of the Navajo Nation and all branches, divisions, departments, offices and political subdivisions thereof, are superseded hereby and/or amended to comply herewith.

§ 529. Effective Date

The effective date of all provisions of this Navajo Telecommunications Regulatory Act shall be December 10, 1986.