

Summary of AT&T'S Public Hearing Comments in Case No. NNTRC-11-001

AT&T presented a number of serious legal and practical concerns with the proposed certification rule in Comments filed in October. AT&T stands by those Comments; today AT&T will focus, from a practical perspective, on how AT&T believes the Nation may best achieve the goals identified in the NPRM. AT&T would like to work with the Commission in achieving that goal and will explain today how we believe that objective can best be realized.

In the NPRM published last July, this Commission made it clear that the NNTRC's overall objective is to improve the availability of telecommunications services for the Navajo people. That goal is imminently appropriate and achievable, but the issue at this hearing today is how that goal can best be accomplished. AT&T would submit that more dialogue and a focus on a positive business environment, rather than more regulation, is the best approach.

The NPRM identifies six goals. While many of those goals are ones that AT&T supports, the proposed rule would not advance those objectives by imposing an additional layer of regulation on telecommunications providers now more than 25-years after the passage of the Navajo Telecommunications Act, which first authorized Commission action.

As AT&T sees it, the key to each goal is the ability to attract willing, able, facilities-based providers to the Navajo Nation. But short of the obligations undertaken by designated ETCs or other carriers with provider of last resort obligations, a provider cannot be forced to serve any particular customer or geographic area. Thus, the key to meeting the goals of this Commission is to *incent*, rather than seek to force, providers to invest in the Nation and its people. Taking the opposite tact - attempting to bring about high quality service and better service options through onerous regulation - is likely to backfire.

Excessive regulation has proven to be a huge disincentive in the telecommunications industry. One of the best examples is the FCC's 2008 Upper 700 MHz D-block auction.

Onerous build out requirements caused the D-block auction to fail; the FCC received only one bid for the D-block, which was below the minimum bid amount. To this day, the D-block spectrum lies fallow and public safety does not have a nationwide broadband network.

Creating and/or maintaining a good environment for investing in telecommunications and infrastructure is particularly important as this Nation and other sovereign Nations, the FCC, the states and the industry all begin to work together to fulfill the FCC's vision of full broadband connectivity across the United States, particularly in underserved areas. The way that the FCC has laid out its plan, providers will bid for the privilege of being a broadband ETC serving Tribal lands and the FCC will award support only to the most competitive bidders. This Commission should expect that many broadband providers will decline to bid for federal high-cost support in geographic areas where the regulatory climate is unfavorable.

The Navajo Nations Telecommunications Act was enacted in 1986 before local competition and the advent of nearly ubiquitous wireless and VoIP service offerings. Accordingly, the regulatory regime it envisions is an outdated mode of regulation which does not fit the current competitive environment. To the extent this Commission believes regulation of non-Indian providers is lawful and necessary, any such regulation should be narrowly targeted to less competitive services and very conscious of existing federal and state regulatory schemes.

AT&T urges this Commission to 1) recognize limitations in Navajo Nation jurisdiction over non-Indian entities, like AT&T, 2) avoid any conflict with federal law by continuing to allow the marketplace to "regulate" competitive providers, 3) to the extent the Commission believes jurisdiction exists, that it will forebear from regulation as a means of maintaining a positive environment for business, and 4) before moving forward with any certification requirements, publish a set of proposed rules and regulations and allow providers to comment on the specific proposals.