

Before the
Navajo Nation Telecommunications Regulatory Commission

In the Matter of)
)
Application for Certificate of Convenience and) No. NNTRC-11-001
Necessity)

**Petition of Navajo Pillars Telecommunications, Inc. For Contingent Certificate Of
Convenience And Necessity**

Navajo Pillars Telecommunications, Inc. (“Pillars”) respectfully requests the issuance of a certificate of convenience and necessity (“CCN”) contingent upon the adoption by the Navajo Nation Telecommunications Regulatory Commission (“NNTRC”) of a final CCN application and associated rules and a demonstration of compliance with such application and rules by Pillars.

Pillars is a telecommunications carrier wholly-owned by a member of the Navajo Nation.¹ In the near future, Pillars plans to submit a petition to the Federal Communications Commission (“FCC”) requesting an eligible telecommunications carrier (“ETC”) designation for the Smoke Signal and Blue Gap Chapter Houses region.² The Smoke Signal and Blue Gap regions that Pillars proposes to serve are located entirely within the boundaries of the Navajo Nation. The requested contingent CCN will assist Pillars in obtaining this ETC designation, which, in turn, will enable Pillars to receive financial support from the FCC’s universal service program. Without financial support from the universal service program, Pillars will not be able

¹ Pillars is a corporation organized under the laws of Arizona and holds a Certificate of Authority from the Navajo Nation Business Regulatory Department to transact business within the Navajo Nation as a foreign corporation. The sole shareholder of the Pillars resides within the borders of the Navajo Nation.

² Presently, there are no telecommunications carriers that serve the residents and business located in those Chapter Houses.

to deploy infrastructure necessary for the provision of telecommunications services in this unserved region. Accordingly, Pillars requests expedited grant of this Petition.

On July 28, 2011, the NNTRC published a Notice of Proposed Rulemaking (“NPRM”) proposing a CCN application for telecommunications operators to utilize when seeking to provide service on the Navajo Nation. Publication of the proposed CCN application was a monumental moment for the NNTRC, which is directed by the Navajo Nation Telecommunications Regulatory Act to “promulgate and issue specific rules and regulations establishing filing and information requirements for applications for certificates of convenience and necessity.”³ Pillars applauds the NNTRC for taking this historic step towards fulfilling its statutory duties. Establishing a formal process for obtaining CCNs will help ensure that carriers serving the Navajo Nation are technically and financially qualified to provide telecommunications services. Such qualified carriers will be more likely to deploy and maintain state-of-the-art telecommunications infrastructure and facilities that are long overdue in many parts of the Navajo Nation.

Since the publication of the NPRM, the NNTRC has issued a Report and Order and Further Notice of Proposed Rulemaking in which it proposed a revised CCN application, but it has not issued a final CCN application or associated rules. Pillars understands that the NNTRC will not be issuing any final CCNs until the NNTRC adopts a final CCN application and associated rules. Consequently, Pillars hereby requests a contingent CCN while the NNTRC finalizes the CCN application and associated rules.⁴

³ 21 N.N.C. § 510.

⁴ The CCN would be contingent upon the adoption of a final CCN application and associated rules by the NNTRC and a finding by the NNTRC that Pillars demonstrated compliance with such application and rules.

The issuance of a contingent CCN to Pillars will assist the carrier in obtaining an ETC designation from the FCC. Specifically, the contingent CCN will help more clearly demonstrate that the FCC, and not the Arizona Corporation Commission, holds jurisdiction to designate Pillars as an ETC. Section 214(e)(6) of the Communications Act of 1934, as amended, directs the FCC to perform ETC designations in those instances where the carrier is not subject to state jurisdiction.⁵ The FCC has determined that carriers seeking designation from the FCC for the provision of service on tribal lands must demonstrate that the state commission lacks jurisdiction over the carrier seeking designation.⁶ A contingent CCN here will remove any doubt, to the extent any exists, that the Arizona Corporation Commission lacks jurisdiction over Pillars.⁷

A contingent CCN will demonstrate that both Pillars and the NNTRC recognize the NNTRC's regulatory authority over and the applicability of the Navajo Nation's laws to the proposed operations of Pillars within the Navajo Nation. With respect to NNTRC's regulatory authority, Pillars' CCN application recognizes that certification requirements for telecommunications providers are determined by the NNTRC and that no person may engage in

⁵ 47 U.S.C. § 214(e)(6).

⁶ *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208, ¶ 95 (2000) ("Twelfth Report and Order").

⁷ For the avoidance of doubt, Navajo Pillars believes that it is not subject to state commission jurisdiction even in the absence of a contingent CCN. As the FCC has noted, "[t]he Supreme Court has long held that tribal sovereignty interests are strongest with regard to on-reservation conduct of tribal members. In such cases, state law is generally inapplicable but for 'exceptional circumstances.'" *Western Wireless Corporation for Designation as an Eligible Telecommunications Carrier for the Pine Ridge Reservation in South Dakota*, Memorandum Opinion and Order, 16 FCC Rcd 18145, ¶ 14 (2001) ("*Western Wireless ETC Order*") (citing *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 144 (1980); *California v. Cabazon Band of Mission Indians*, 480 U.S. 202, 215 (1987) (*quoting New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324, 331-332 (1983))). Here, Pillars is wholly-owned by a member of the Navajo Nation. Consequently, Arizona law is generally inapplicable to Pillars.

providing telecommunications services within the Navajo Nation without first having obtained a CCN from the NNTRC.⁸ Regarding the applicability of the Navajo Nation’s laws, the application acknowledges that Pillars “is subject to Navajo Nation laws of general application for businesses operating on the Navajo Nation.”⁹

The FCC has found previously that a carrier’s “consensual relationship” with a tribe, whereby the carrier and tribe agreed to the tribe’s regulatory authority and application of tribal law over the carrier’s operations within the tribal boundaries, was an important factor in determining that a state lacked jurisdiction over the carrier.¹⁰ Here, Pillars believes that a contingent CCN will demonstrate a similar consensual relationship between Pillars and the NNTRC and lead the FCC to reach a similar conclusion. Moreover, a contingent CCN may expedite the grant of an ETC designation to Pillars, which has been a lengthy process for some carriers who have sought ETC designation to provide service to the Navajo Nation.¹¹

Finally, a grant of a contingent CCN is in the public interest. Pillars plans to deploy a telecommunications network in an area of the Navajo Nation where service has never been made

⁸ See, e.g., Exhibit, Application of Navajo Pillars for Navajo Nation Certification of Public Convenience and Necessity at 2 (“GOVERNING LAW: Filing, authorization, and/or certification requirements for telecommunications providers are determined by the NNTRC pursuant to 21 N.N.C. § 510 of the Navajo Nation Code. No person may engage in provision telecommunications services within the Navajo Nation as a Public Interest Providers or Negotiated Agreement Provider without first having obtained a CCN from the NNTRC. Pursuant to rule of the NNTRC, no other operator may provide telecommunications services without first filing an informational filing with the NNTRC and being authorized as a Small or General Providers. Telecommunication providers should be familiar with the Navajo Telecommunications Regulatory Act, 21 N.N.C. §§ 501 *et seq.*, and other applicable Navajo Nation law and federal law.”).

⁹ *Id.* at 4 (“Applicant hereby acknowledges that it is subject to Navajo Nation laws of general application for businesses operating on the Navajo Nation.”).

¹⁰ *Western Wireless ETC Order* at ¶ 15.

¹¹ See, e.g., ETC Application by NTUA Wireless, LLC for the Navajo Nation, WC Docket No. 09-197 (filed Mar. 3, 2011) (pending).

available. In order to make this project financially viable, Pillars will require an ETC designation, which will enable Pillars to receive financial support from the federal universal service program. The issuance of the contingent CCN will enable Pillars to seek such an ETC designation at the FCC while the NNTRC finalizes its CCN application and rules. In essence, the contingent CCN will help Pillars expedite the timeframe upon which it will provide telecommunications services to the residents and business of the Smoke Signal and Blue Gap Chapter Houses.

Accordingly, Pillars requests that the NNTRC grant this Petition and issue Pillars a contingent CCN on an expedited basis.

RESPECTFULLY SUBMITTED,

NAVAJO PILLARS TELECOMMUNICATIONS, INC.

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