

Before the
Navajo Nation Telecommunications Regulatory Commission

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

ORDER ON RECONSIDERATION

Adopted: March 16, 2015

Released: March 17, 2015

I. INTRODUCTION

1. On December 11, 2014, the NNTRC issued its *Second Report and Order and Further Notice of Proposed Rulemaking* in this proceeding. The *Second Report and Order* was issued by NNTRC pursuant to its statutory authority to “act upon and regulate any and all matters of the telecommunications industry on the Navajo Nation,”¹ with the Navajo Nation itself a sovereignty entity pursuant to the Treaty of 1868. The *Second Report and Order* was released January 7, 2015, and become effective as of March 7, 2015.² Carriers are required to file applications to become a Small Operator (SO) or General Operator (GO), by April 7, 2015.³

2. On February 5, 2015, NTUA Wireless, LLC (“NTUA-W”), filed a “Petition for Clarification and/or Partial Reconsideration” (“the NTUA-W Petition”) of the *Second Report and Order*. By this *Reconsideration Order*, we hereby address the issues raised in the NTUA-W Petition, clarifying the issues raised by NTUA-W, and denying the Petition in its entirety. No other petitions for reconsideration or clarification have been received by the NNTRC.

II. DISCUSSION

A. Collection of FEIN Information

3. The NTUA-W Petition seeks reconsideration of the requirement, as part of the CCN Application, for a carrier to provide its federal tax identification number (FEIN).⁴ NTUA-W argues that there is no reason for carriers to provide their FEIN to NNTRC, and that the FCC

¹ 21 N.N.C. § 502(A).

² See *Second Report & Order*, ¶ 61.

³ *Id.* at ¶ 58.

⁴ NTUA-W Petition, p. 2.

only demands carriers to provide it because the FCC is required to withhold benefits for a certain class of applicants based on tax deficiencies.⁵ NTUA-W argues that there is no corresponding need for NNTRC to have this information, and that a company's FEIN is highly private data, and the disclosure of such data could be used in identity theft and fraud.⁶ NTUA-W requests that NNTRC instead require carriers only to provide it with their FCC-issued FRNs, which the CCN Application already requires.⁷

4. On reconsideration, we disagree with NTUA-W that collecting FEINs from carriers poses a greater risk to carriers than the usefulness of that data for the NNTRC and the Navajo Nation. Part of NNTRC's regulatory responsibility is to ensure that activities of carriers on the Navajo Nation are in compliance with the Nation's laws.⁸ The Office of the Navajo Tax Commission ("ONTC") utilizes a federal tax identification number (either a FEIN or a Social Security number) to identify Navajo Nation taxpayers. Submittal of the FEIN to the NNTRC allows the NNTRC to ensure carrier compliance with Navajo Nation tax obligations. Carriers are already required to submit this information to the ONTC, and submittal of this number to the NNTRC poses no greater risk than submittal of this number to the ONTC. Therefore, the CCN application will continue to require two pieces of identification: a) a carrier's FRN; and b) a carrier's FEIN. Since the FRN is public data, NNTRC will not treat it as confidential. The FEIN shall be treated as *per se* confidential and a protected record under Navajo law and shall not be released to the public.⁹

B. Collection of Infrastructure Information

5. NTUA-W next questions whether the NNTRC needs the infrastructure data required in the CCN Application.¹⁰ NTUA-W further states that all infrastructure data should be treated automatically as confidential, because carriers treat such information as proprietary and confidential.¹¹

6. As indicated in the *Second Report & Order*, NNTRC needs infrastructure data in order to help combat the "Digital Divide" that exists on the Navajo Nation, where telephone service and broadband have lagged far behind national averages. The FCC has indicated that it does not have good statistics as to the availability of services in Indian Country or subscriber rates.¹² It is therefore vitally important that the NNTRC, which is delegated under Navajo law to

⁵ *Id.*, pp. 2-3.

⁶ *Id.*, p. 4.

⁷ *Id.* See also, CCN Application, Question A-5.

⁸ The NNTRC is charged with "act[ing] upon and regulat[ing] any and all matters of the telecommunications industry on the Navajo Nation," 2 N.N.C. §3452 and "ensur[ing] that communication activity within the Navajo Nation is consistent with the traditions, customs and desires of the Navajo People," 21 N.N.C. § 502(A).

⁹ See also 2 N.N.C. § 86(A)(5), (14), (19) and (20) (protected records under the Navajo Nation Privacy Act).

¹⁰ *Id.*, p. 5.

¹¹ *Id.*

¹² See *Notice of Inquiry* in CG Docket 11-41, released March 4, 2011, ¶ 17.

designed to remedy this hole in NNTRC's knowledge concerning which carriers provide service to which areas of the Navajo Nation. Moving forward, the FCC will continue to rely on the National Broadband map. In order to serve the Navajo people, the NNTRC needs to better understand the areas actually served by carriers on the Navajo Nation, so we can fight for the right to include as eligible areas, those areas where actual service is not provided.

9. Further, as stated in the *Second Report and Order*, much of the data we request carriers already provide the FCC as part of their Form 477 data. NTUA-W argues that while that may be true for wireline carriers, wireless carriers do not have to provide that information. Wireless carriers do provide significant infrastructure information to the FCC when they register their tower locations.¹⁸ Thus, NNTRC concludes that requesting that similar information be provided to NNTRC will not constitute a burden.

C. Confidential Treatment of Infrastructure Information

10. NTUA-W also argues that it believes that all infrastructure information should be treated as *per se* confidential and that NNTRC should not require carriers to seek confidential treatment of such information.¹⁹ For the reasons below, we reject this approach.

11. As indicated above, much of this information, such as tower locations, is already public, and available to anyone from the FCC. Having the NNTRC deem all of this information as *per se* confidential would convert publicly available information into confidential information, reducing the ability of the Navajo people to gain access to information that is *per se* public. The aim of NNTRC is to provide as much information to the Navajo people as possible, acknowledging that certain information may indeed be confidential and proprietary.

12. The NNTRC will therefore continue to collect information in the CCN application as public data unless a carrier requests treatment of the data as confidential. The NNTRC cautions carriers not to seek blanket confidential treatment of all infrastructure data, if it knows that such data is publically available elsewhere. "Hard to find" public data should not be confused with confidential and proprietary data, and the NNTRC reserves the right to deny confidential treatment requests if it is clear that a carrier is seeking confidential treatment of infrastructure data that is available from other public sources. Carriers should therefore certify in any request for confidential treatment that the data it is submitting is not publicly available elsewhere.

13. NTUA-W also seeks a promise from NNTRC that it will not publicly disclose any aggregated data concerning wireless carrier service to the Navajo Nation because NTUA-W claims that there are only two such carriers serving the Navajo Nation.²⁰ As demonstrated

data we seek in the CCN application, NNTRC would be in a position to assist the FCC in reaching decisions on eligible areas in future proceedings.

¹⁸ See <http://wireless2.fcc.gov/UlsApp/AsrSearch/asrRegistrationSearch.jsp>, the FCC Antenna Structure Registration webpage. From this page, any user can find all registered towers within a desired search area.

¹⁹ NTUA-W Petition, p. 5.

²⁰ See NTUA-W Petition, p. 6, n. 5.

interface with the FCC,¹³ collect such data. Given that new federal funding under the Connect America Fund is available only to those areas that are without service, determining what areas are actually served by carriers is vital.

7. This issue came into prime focus during the Tribal Mobility Fund, when large portions of the Navajo Eastern Agency in New Mexico were deemed ineligible to receive Tribal Mobility Fund support because, according to the National Broadband Map, those areas were being served. NNTRC filed comments with the FCC challenging certain areas as served,¹⁴ and Smith Bagley, Inc. (SBI, doing business as Cellular One), submitted drive tests showing a lack of service. Ultimately the FCC partially granted the request and included some, but certainly not all, of the disputed areas in Eastern Agency as eligible for Tribal Mobility Fund support.¹⁵ The FCC specifically found:

We grant SBI's petition as to certain census blocks in which SBI conducted drive tests that show no 3G or 4G service. We are not, however, persuaded by SBI's argument that nearby census blocks untested by SBI should be presumed to have a similar lack of 3G or better service. Such an assumption is not sufficient to rebut the Mosaik data indicating that 3G or better service is available in those areas. We also will not add census blocks where AT&T or Commnet show that they provide 3G or better mobile voice and broadband service. SBI admits that it did not conduct testing of Commnet's network. Thus SBI fails to rebut Commnet's showing regarding its service coverage, which includes maps, an explanation of methodologies for determining coverage, and certifications as to the veracity of the material provided. In addition, SBI's earlier uncertified statement that it tested AT&T's 850 MHz frequencies is insufficient to rebut the evidence submitted by AT&T regarding its service coverage, which includes a map, an explanation of methodologies for determining coverage, and certifications as to the veracity of the material provided.¹⁶

8. Carriers were willing to provide infrastructure information to the FCC when it suited their interests. NNTRC was unable to assist the FCC in providing similar or additional information for the Navajo Nation, because it lacked such infrastructure data.¹⁷ The CCN is

Communities on Tribal lands historically have experienced far less access to telecommunications services than any other segment of the population, and this situation has been particularly acute in the broadband context. The telephone penetration rate on Tribal lands is 67.9 percent, while the broadband availability rate is less than 10 percent. The exact rate of broadband adoption or subscribership, however, is unknown, in part because there has not been a comprehensive federal survey to date that has focused on collecting subscribership information on Tribal lands.

¹³ 21 N.N.C. § 503 (V).

¹⁴ See *Comments of NNTRC*, filed in AU Docket 13-53 on May 10, 2013.

¹⁵ See *FCC Public Notice*, DA 13-1986 in AU Docket 13-53, released September 27, 2013.

¹⁶ *Id.* at ¶ 8 (footnotes omitted).

¹⁷ The Navajo Nation has many unique topographical areas that significantly impact actual signal propagation as opposed to theoretical calculations of service areas. Armed with the type of infrastructure

above, however, AT&T claims to serve the Navajo Nation, and Verizon is licensed to serve the Navajo Nation. The extent to which either carrier actually offers service to the Navajo people can only be determined if all carriers provide infrastructure information to the NNTRC. While cognizant that it might be theoretically possible for one carrier to parse any aggregated data released by the NNTRC, the NNTRC is not willing to commit to never releasing aggregated data if it deems such information to be vital to the Navajo people. The NNTRC will take into account this possibility, however, and will attempt to protect that aggregated data to the extent it is consistent with the public interest.

III. ORDER.

It is hereby ordered that:

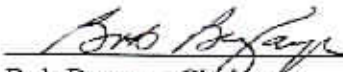
14. The NTUA-W Petition is hereby DENIED. Carriers are required to provide their FEIN so that NNTRC can meet its regulatory obligations to ensure that carriers on the Navajo Nation operate in compliance with their tax obligations under Navajo law. With respect to the request for *per se* confidential treatment of infrastructure data, carriers wishing to claim any such information as proprietary and confidential should follow the NNTRC's instructions, shall certify that such information is proprietary and confidential, and shall not claim data is proprietary if it knows that such data is available from another public source, even if that source might not be easy to find for an individual not expert in the field of telecommunications.

15. It is further ORDERED that any further petitions for reconsideration must be filed within 30 days of the release of this *Order on Reconsideration*.²¹

16. It is further ORDERED that the effective date and the date for filing CCN applications shall remain in effect from the *Second Report & Order*.

17. Accordingly, It is ORDERED that pursuant to the Statutory Authority of the NNTRC under 2 N.N.C. §§ 3451-55 and 21 N.N.C. §§ 501-529, as amended, this *Order on Reconsideration* is HEREBY ADOPTED.

The Navajo Nation Telecommunications Regulatory Commission.

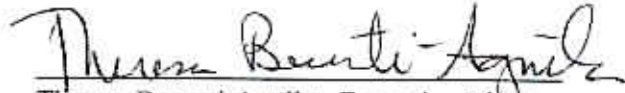


Bob Begaye, Chairman
Navajo Nation Telecommunications Regulatory Commission

²¹ Parties are reminded of the requirements of 21 N.N.C. § 516(f) concerning reconsiderations and appeals of NNTRC orders.

DATED this 17th day of March, 2015.

Navajo Nation Telecommunications Regulatory Commission



Theresa Becenti-Aguilar, Executive Director

P.O. Box 7440

Window Rock, AZ 86515

(928)871-7854

(928)871-7855 (fax)

E-mail: tbecenti@nntrc.org