**Before the**
**Navajo Nation Telecommunications Regulatory Commission**

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| In the Matter of | ) | |
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| Application for Certificate of Convenience and Necessity | ) | No. NNTRC-11-001 |
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## COMMENTS OF VERIZON

Verizon[1] submits these comments in response to the Report and Order and Further Notice of Proposed Rulemaking ("Report") issued by the Navajo Nation Telecommunications Regulatory Commission ("Commission") on August 27, 2012.

## I. Introduction

The Report summarizes the Commission's findings and conclusions based on input it received in comments from interested parties in response to an earlier Notice of Proposed Rulemaking[2] and during a hearing held earlier this year. The Commission's principal conclusion is that it has the jurisdiction to regulate all operators that are providing telecommunications services on the Navajo Nation. Report at 2. While the Commission states that its goal is to ensure that the public interest is served on the Navajo Nation, it also explains that it will seek to avoid regulation that is "unnecessary" or "unnecessarily duplicative" of regulations already imposed on service providers by other state regulatory agencies. *Id.* at 3-4.

[1] The following Verizon entities provide service in Arizona, New Mexico, and Utah, and serve or potentially could serve customers on the Navajo Nation: Cellco Partnership d/b/a Verizon Wireless; Verizon Wireless (VAW) LLC d/b/a Verizon Wireless; New Mexico RSA 3 Limited Partnership d/b/a Verizon Wireless; Northern New Mexico Limited Partnership d/b/a Verizon Wireless; Alltel Communications Southwest Holdings, Inc. d/b/a Verizon Wireless; WWC License LLC d/b/a Verizon Wireless; MCI Communication Services, Inc., d/b/a Verizon Business Services LLC; Teleconnect Long Distance Services and Systems Company; TTI National, Inc.; Verizon Long Distance LLC; Verizon Enterprise Solutions LLC; Verizon Select Services, Inc.; and MCImetro Access Transmission Services LLC, d/b/a Verizon Access Transmission Services (collectively, "Verizon").

[2] Notice of Proposed Rulemaking, released July 28, 2011 ("Notice").

The Commission has modified the regulatory approach it originally contemplated, and now proposes to create a "tiered" regulatory structure. Rather than require every operator to obtain a Certificate of Convenience and Necessity, the Commission would create four levels of authorization "with concomitant engagement and regulatory requirements." Report at 7. A "Small Operator" and "General Operator" would be subject to only "minor regulation," and would only be required to make an "informational filing" that does not call for any financial information. Report at 5, 7. A "Public Interest Operator" ("PIO"), on the other hand, would be subject to detailed, more burdensome filing requirements; in exchange, a PIO would be entitled to "an established *public rate interest structure* for all … rights of way, joint use and co-location permits, and leases." Report at 9 (emphasis in original).[3]

Verizon has several wireline and wireless affiliates that provide a wide range of local and long distance voice and data services throughout the United States. Some of these companies serve customers in the tri-state area where the Navajo Nation is located. As competitive service providers, none of the Verizon affiliates are subject to significant regulations in Arizona, New Mexico or Utah -- or, for that matter, in any other jurisdiction -- and wireless carriers are not subject to entry regulations in any state

Verizon continues to believe that the Commission lacks jurisdiction, especially with respect to the licensing and regulation of wireless service providers. *See* Comments of Verizon (October 14, 2011) at 2-6, 8.[4] Moreover, as a policy matter, the Commission should refrain

[3] The fourth category, a "Negotiated Agreement Operator," is an entity that would principally operate "middle-mile and backhaul" facilities and make its infrastructure available to other common carriers. Report at 9-10. Verizon's comments do not address the rules related to NAOs.

[4] The Commission relies on *AB Fillins*, 12 FCC Rcd 11775 (1997), as support for its authority, but in that case, the FCC held that "when Congress passes a law which is applicable nationwide, the law applies with equal force to Native Americans on reservations," and the limited exceptions to that principle do not apply to "radio frequency management, and more particularly, the [FCC's] cellular licensing scheme." The Report also cites paragraph 637 of the FCC's *Connect America Fund* order, 26 FCC Rcd 17663

completely from regulating wireless and interexchange service providers because there is no need to impose economic regulation on services and markets that are intensely competitive and meeting customer needs. *See id*. at 3, 7-8. This would be consistent with the Commission's acknowledgment in its initial Notice that the manner of regulation should be commensurate with the level of competition. Notice at ¶3H. The Commission can achieve this result by "exempting" wireless and interexchange services from any requirement to obtain a CCN, and from the four newly proposed categories, as permitted by § 515 of the Navajo Telecommunications Regulatory Act. *See* Notice at ¶3C.

If, however, the Commission proceeds to assert jurisdiction over telecommunications service providers, it should exercise that purported authority judiciously and with restraint. It should adopt regulations only to the extent they are necessary to achieve important, carefully designed policy goals. Rules and regulations that do not serve those specific purposes will impose unnecessary costs on service providers, resources that could be better dedicated to investing in facilities, services, capabilities and programs that meet actual customer needs. Moreover, any rules that overlap or are inconsistent with existing regulatory requirements in Arizona, New Mexico and Utah will create confusion and unnecessary compliance issues.

The Commission's stated objectives for new CCN procedures is to "facilitate the efficient development and deployment of a telecommunications infrastructure" and "promote the development of effective competition as a means of providing customers with the widest possible choice of services." Notice at ¶3H. Verizon does not believe that the proposed

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(Nov. 2011), but that passage is taken out of context. That paragraph requires Eligible Telecommunications Carriers to engage in and report on their discussions with Tribal governments *as a condition for obtaining ongoing financial support* from the federal Connect America Fund ("CAF"). The FCC's discussion cannot properly be read more broadly to apply to matters beyond the scope of the FCC's universal service program.

licensing procedures are necessary to meet these goals. If the Commission, nevertheless, decides to adopt new procedures, it should at least avoid undermining its stated goals. As explained below, the proposed application filing requirements for Public Interest Operators should be rejected as unduly complex and burdensome, and would interject substantial delay into the regulatory approval process.

Verizon addresses below the specific eligibility criteria and filing requirements for the different types of operators.

## II. Eligibility for Small Operators and General Operators

The Report states that an operator that desires to be lightly regulated "can elect to remain a General Operator or a Small Operator." Report at 5. Verizon supports the Commission's intention to minimize regulatory burdens on those companies that have only a limited presence on the Navajo Nation or that choose this approach. However, eligibility for these categories is tightly restricted, which would make the option of becoming a Small Operator unavailable for some companies, even if they have only a small number of customers.

The Commission proposes to define a Small Operator as a firm that serves less than 50 customers on the Navajo Nation and has maximum gross revenues that do not exceed $100,000.[5] A carrier that serves more than 50 customers on the Navajo Nation or has gross revenues greater than $100,000 would be eligible to become a General Operator.

The eligibility standards for these categories are overly restrictive, and are unlikely to accomplish the declared goal of imposing only minimal regulations on small carriers. For example, under these standards, a carrier that has 20 customers each in New Mexico, Arizona

[5] The Report is not specific, but Verizon assumes that the "gross revenues" referred to are revenues obtained from Navajo customers, excluding revenues from interstate services. The Commission does not have any jurisdiction with respect to interstate services.

and Utah would not qualify as a Small Operator. Similarly, a carrier that has only 50 customers, but are all concentrated in a single geographic location, could not apply to become a Small Operator. The eligibility standard for Small Operator is much too restrictive, and would force carriers with only a very minimal presence on the Navajo Nation to more regulated tiers that are not appropriate given their limited size and scope of operations. Accordingly, Verizon recommends that the Commission establish broader eligibility criteria. A service provider should be eligible to be a Small Operator if it serves fewer than 250 customers on the Navajo Nation or has gross revenues no greater than $500,000. There is little point in expending either the carriers' or the Commission's resources on entities of this size, either at the initial application filing stage or on an on-going basis.

Under Verizon's proposed approach, a service provider with more than 250 customers on the Navajo Nation and more than $500,000 in gross revenues could qualify as a General Operator. Because a General Operator "would be required to comply with E-911 requirements" (Report at 9), the Commission should acknowledge that this requirement does not and cannot apply to interexchange carriers because IXCs, unlike local exchange carriers, do not provide E-911 services.[6]

[6] With respect to the proposed application form for General Operator ("GO"), items A-1 through A-15 generally appear reasonable, as they solicit basic information about the service provider, such as the company's taxpayer identification number, status of regulatory authorizations and contact information. However, the Commission should delete the proposed requirement (item A-16) that a General Operator submit a map and information about the location of existing towers, backhaul and general network infrastructure. This would be burdensome to produce. In addition, such information is highly proprietary and confidential and should not be subject to public disclosure for Homeland Security and other reasons. Moreover, because a GO "would not be certified as serving the public interest" and will be subject to "minimal" regulation (Report at 8), detailed information about its network infrastructure is not necessary to determine whether the company should be granted GO status.

## III. Public Interest Operator

Verizon has two principal concerns with respect to the Commission's discussion of PIOs. First, the description of this category and the "benefits" that a PIO would obtain are not described in sufficient detail to provide a clear understanding of how such a provider might operate and what the benefits are of applying for PIO status. Second, the application filing requirements that a PIO would have to meet are burdensome and oppressive, and would deter service providers from becoming PIOs.

The Report states that a PIO could "take advantage of certain benefits" that the Commission can provide. The only description of such benefits is that the PIO "would be entitled to an established *public interest rate structure* for all telecommunications rights-of-way, joint use and co-location permits and leases." Report at 9 (emphasis in original). However, the Report does not provide any details about the "public interest rate structure," nor is it certain when information about the rates and rate structure will be made available. Nor does the Report explain precisely how and in what ways a PIO would benefit if a service provider were to choose to become a PIO. More specificity is needed to enable a service provider to determine whether becoming a PIO is in its business interest and would enable it to operate its business and serve customers in the manner it desires.

The Commission should explain what effects there might be on carriers that have existing, multi-year permits to operate on Tribal lands. For example, if the "public interest rate structure" offered more advantageous terms, would those supersede the provisions of existing permits? If not, what "benefits" would the carrier obtain by becoming authorized as a PIO prior to the time its permits are up for renewal? On the other hand, if a carrier that currently operates on Tribal lands chooses to become a General Operator (instead of a PIO), will the Commission

continue to deal with that firm on a reasonable, commercially practical basis? Looking at these issues from the perspective of a General Operator, will such firms be treated on different terms than a PIO if they were to seek rights-of-way, co-location permits or leases? If so, how is such a policy of different treatment rationally related to the asserted desire to establish a "licensing" system for entities that intend to serve customers on Tribal lands?

Because of these uncertainties, and the fact that some of these questions may not be finally resolved for some time, the Commission should state that if a service provider initially chooses to apply to become a GO, it may subsequently change its status (for example, apply to become a PIO) once the conditions and expected benefits of being a PIO are clarified.

Carriers need a better understanding of these matters before deciding to pursue PIO status, particularly given the additional burdensome filing requirements that the Commission proposes to impose on PIOs. In fact, many of the proposed filing requirements are not needed to meet any legitimate regulatory interest, and would be extremely intrusive into a service provider's business operations. In fact, the Verizon companies are not required to submit the type and volume of information proposed for PIOs in any other jurisdiction in which they operate.

There is no apparent need for the level of detailed information requested in the proposed application form, and no such justification is provided in the Report. In fact, the proposed filing requirements are unprecedented and would provide a significant disincentive to carriers that might otherwise want to build facilities and bring new telecommunications services to the Navajo Nation. The Commission should be seeking to create opportunities and finding ways to facilitate competitive entry, rather than creating entry barriers that deter service providers from entering Navajo lands and trying to satisfy customer needs.

The submission of basic information about the service provider is reasonable. Thus, the company's taxpayer identification number, status of regulatory authorizations and contact information (Application form, items A-1 through A-15, A-17) is all useful for the regulatory agency to obtain. Commissions in other states have requested this type of information, and the Verizon companies have willingly provided it.

However, detailed information about the legal entity (*e.g.,* identification and information about officers, directors, and major stockholders of a public corporation; resumes and responsibilities of each officer; a description of the company's "managerial capability;" the company's articles of incorporation and bylaws; organization charts; and details about the company's operations in every other jurisdiction) that a PIO applicant would be required to submit (Application, items A-19 through A-24 and E-1 through E-3) is not necessary to meet any reasonable regulatory need and would be burdensome to produce. For public corporations, the Commission should simply permit a service provider to provide links to its most recent SEC filings (*e.g.,* 10-K reports) and annual shareholder reports. Other states permit this practice, which obviates the need to create special reports and documents to describe the applicant's organization. The Commission requests this information (SEC filings or annual reports) in order to establish the applicant's "financial capability" under Section C of the Application; these same documents are also sufficient to describe the company's corporate organization in enough detail for purposes of the Commission's review. Thus, the Commission should not require a company to produce the additional levels of detail about its organizational structure that are not necessary and not likely to serve any useful purpose

Similarly, there is no need for PIO applicants to submit tax returns. No other state public utilities commission requires competitors to submit tax filings and there is no legitimate reason

for the Navajo Nation to impose this requirement. Tax documents do not contain information that is useful for determining an organization's "financial capability" to successfully run its business and have no rational bearing on whether a firm should be granted PIO status. In Section C of the application, the Commission requests two years of financial statements, annual reports or SEC filings, but only the most recent documents are appropriate. If the Commission has questions about a particular applicant, it can request additional documentation, but there is no need to burden all applicants by requiring the submission of unnecessary paperwork that is not pertinent to the applicant's current financial situation.

The proposed Application form also asks for the company's "general business plan," detailed information about its capital and construction plans and budgets, the technology it will deploy, any facilities it leases or will procure from other service providers, the status of negotiations relating to such use, and other information about its "technical ability or fitness." Application, items D-1 through D-5. The application form also seeks detailed information about the applicant's "customer service plan," including security deposit requirements, complaint handling procedures, customer termination procedures, and the location of customer service centers, as well as information on sales practices, the training of sales representatives, and billing practices (some of which are subject to federal regulations). Application, items F-1 through F-7.

Verizon cannot over-emphasize how intrusive and unprecedented all of these lines of inquiry are, particularly for established operators that have been authorized to provide service in one or more states and/or by the FCC. No other jurisdiction requires any of the Verizon affiliates (or, to Verizon's knowledge, anyone else) to file this type or magnitude of information. Much of the information is highly confidential and proprietary, and is not shared with anyone outside of the company. The Commission states that it will issue a protective order to protect an

applicant's confidential information (Application at page 2 of 10), which is critically important; however, the Commission must first determine whether the information is absolutely essential to a reasonable licensing process and whether there is a compelling need to require carriers to submit this type of detailed information. Upon proper reflection, Verizon is confident that the answer will be "no." Additionally, the application form calls for information that an applicant might not have at the time it is contemplating entering the service area (such as business plans, projections of customer counts over a three-year period, construction plans and budgets, and service area maps, *etc*.).

Producing an application to become a PIO would be an extremely daunting task. Compiling and preparing all of the detailed information and documents required would be time-consuming and costly. The development and submission of numerous exhibits, followed by the Commission's review of the voluminous documents will also needlessly prolong the application filing and approval process, thereby undermining the Commission's desire to facilitate rapid and efficient deployment of new infrastructure and services.

Nothing in the Commission's Report indicates why such extensive and voluminous information is necessary to accomplish any legitimate regulatory objectives or is otherwise in the public interest. On the contrary, most jurisdictions have found that it is in the public interest to *eliminate* entry barriers, reduce filing obligations and limit regulation in order to facilitate competition and the more rapid deployment of advanced telecommunications services. The proposed application requirements here run contrary to that sound policy approach and would, instead, discourage and hinder the ability of service providers to become PIOs and fulfill the Commission's intentions for such operators.

By way of comparison, the following section of the New Mexico Administrative Code sets forth the complete list of information that a provider of intrastate interexchange (long distance) services providers must submit with its application for certification in New Mexico.

> **17.11.21.11 CONTENTS OF APPLICATION:** An application for a certificate of registration to provide intrastate long distance telecommunications services must contain:
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> **A.** the name, address, and telephone number of the applicant;
>
> **B.** the name, address and telephone number of the person responsible for regulatory contacts and customer dispute resolution on behalf of the applicant;
>
> **C.** a description of the applicant's existing operations and general service and operating areas in any other jurisdictions;
>
> **D.** a list of the applicant's parent, subsidiary, and affiliated companies, together with the principal addresses and telephone numbers of each;
>
> **E.** a general description of the facilities and equipment that will be used to provide services, including whether the service will be offered on a facilities basis, a resale basis, or a combination of both;
>
> **F.** a statement that the applicant is aware of and will comply with the Commission's rules, particularly 17.11.8 NMAC, Slamming and Cramming Protection;
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> **G.** disclosure of any formal actions against it by any court or state or federal regulatory agency that resulted in any type of penalty or sanctions within the five (5) years prior to the date of filing application. If such action has occurred, the applicant shall file a report regarding such action and any remedial actions taken;
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> **H.** if the applicant is a corporation, evidence that the applicant is authorized by the corporations bureau of the Commission to do business in New Mexico and that it is in good corporate standing in New Mexico;
>
> **I.** if the applicant is other than a corporation, a description of the form of ownership, the names and addresses of all principal owners and managers, the applicant's agent for service of process in New Mexico, and the date the business entity was created;
>
> **J.** initial tariffs or price lists for regulated telecommunications services, including a narrative description of the services to be offered and the geographic area and markets to be served. Initial tariffs shall not contain misleading, potentially misleading, deceptive, or fraudulent names, rates, terms or conditions; and
>
> **K.** if the applicant is a regulated carrier, any other information the Commission may reasonably require to accomplish the purposes of this rule.

These rules have served the New Mexico Commission, the public and the industry well for more than a decade. The rules also provided for an "expedited" approval process. In particular, the New Mexico Commission Staff is required to review an application within thirty calendar days after filing to determine whether it is complete. If it is, the Commission's Utility Division is required to issue a certificate of registration if it finds that the applicant is fit to provide service and that issuance of the certificate of registration is in the public interest. 17.11.21.12 NMAC. This type of streamlined process is more efficient and less costly than the procedures contemplated in the Commission's Report. The additional layers of filing requirements proposed by the Commission are simply unnecessary to fulfill any legitimate regulatory purposes.

As Verizon explained previously, the successful and rapid growth of wireless services in this country has occurred in part because the wireless industry has not been burdened by the kind of detailed regulatory and reporting requirements the Commission proposes to establish here. Comments of Verizon (Oct. 14, 2011) at 4. Imposing a new set of regulations on wireless providers would be contrary to the way in which these carriers are treated for regulatory purposes across the country, a hands-off approach that has been critical to the rapid growth and expansion of wireless services for the benefit of consumers everywhere. In fact, the development of a robust market for wireless services is one of the key benefits of Congress' decision to preclude entry and rate regulation of wireless carriers by state and local governments. *See* 47 U.S.C. §332(c)(3). In addition, the imposition of new onerous entry requirements on Public Interest Operators would undermine the FCC's intention to promote the rapid deployment of new wireless services on Tribal lands.

Verizon urges the Commission to eliminate most of the proposed application filing requirements (other than those in Section A) because they are unnecessary, onerous, and burdensome, and will impose barriers to entry for those companies that would otherwise desire to become a PIO. In fact, the proposed application filing requirements are contrary to the Commission's original goals for this proceeding, when it expressed hope that new CCN procedures would "facilitate the efficient development and deployment of a telecommunications infrastructure," and "promote the development of effective competition as a means of providing customers with the widest possible choice of services." Notice at ¶3H.

For the reasons explained above, Verizon urges the Commission not to assert authority over, and impose burdensome and unnecessary regulations on, competitive telecommunications service providers. If it nevertheless decides to establish licensing procedures, the Commission should expand the eligibility criteria for Small Operators and adopt, at most, only streamlined filing requirements for Public Interest Operators.

Respectfully submitted,

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Dated: September 28, 2012