

**BEFORE THE  
NAVAJO NATION TELECOMMUNICATIONS REGULATORY COMMISSION**

**In the Matter of Application for  
Certificate of Convenience and  
Necessity (CCN)**

**Docket No. NNTRC-11-001**

**COMMENTS OF NAVAJO COMMUNICATIONS COMPANY, INC. (NCC) ON  
REPORT AND ORDER AND FURTHER NOTICE OF PROPOSED RULEMAKING IN  
THE MATTER OF APPLICATION FOR CERTIFICATE OF CONVENIENCE AND  
NECESSITY**

R. Kirk Lee  
Manager – Govt. & External Affairs  
1800 41<sup>st</sup> Street  
Everett, WA 98201  
Telephone: 425-261-5855  
Fax: 425-258-9597  
kirk.lee@ftr.com

September 28, 2012

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Navajo Communications Company, Inc. (“NCC”) provides these comments in response to above-captioned Report and Order and Further Notice of Proposed Rulemaking in the matter of Application for Certificate of Convenience and Necessity (“Notice”) released August 29, 2012 by the Navajo Nation Telecommunications Regulatory Commission (“NNTRC”).

**NCC is an Authorized Telecommunications Provider**

NCC does not address the issue regarding the authority and/or jurisdiction of the NNTRC in the proposed rulemaking in these comments. However, NCC has already received all necessary approvals it needs to operate as a telecommunications provider on the Navajo Nation lands. As noted in NCC’s initial comments filed October 14, 2011, NCC has a longstanding presence in the Navajo region and has been a telecommunications provider on the Navajo Nation since 1970 in Arizona, Utah and New Mexico. NCC was authorized by the Bureau of Indian Affairs (BIA) on July 31, 1970 to purchase the telephone system, rights of properties used and useful by it in the operation of the systems, free and clear of encumbrances<sup>1</sup>. In the BIA contract

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<sup>1</sup> Contract of Sale Between Bureau of Indian Affairs and Navajo Comm. Co. Inc., executed 4/30/70, Page 2(2).

agreement, the Navajo Tribe agreed that the purchase for the system included the right to do business on the Reservation and all rights of way already granted and to be granted in the future.

NCC has also received authority and certificates of convenience and necessity (CC&N) in 1970 from the Public Service Commission of Utah (PSC), the New Mexico Public Regulation Commission (NMPRC) and the Arizona Corporation Commission (ACC), the state entities that regulate public utility service in each jurisdiction. In the interstate jurisdiction, NCC operates under the authority of the Federal Communications Commission (FCC) pursuant to Section 214 of the Telecommunications Act.

With the contractual agreement with the BIA and prior authorization by the Navajo Nation at the time NCC began operations on the Navajo tribal lands, NCC has a pre-established right to do business on the Navajo tribal lands, and that existing right takes precedence over any subsequent rulings by the NNTRC requiring additional levels of authorization.

### **Existing Regulatory Oversight of NCC is More Than Sufficient**

The additional layer of regulatory authority now being asserted by the NNTRC is not necessary to protect the interests of the Navajo Nation and its people. NCC is already heavily and successfully regulated by the three state commissions mentioned above for its intrastate rates, services and earnings and, in addition, is subject to the rules and regulations of the FCC for its interstate services. Additional and potentially conflicting regulation is not necessary to assure quality of service, affordable and reasonable rates and available services. Indeed, another layer of regulation could substantially increase the costs of doing business, and eventually raise rates for customers.

The Tiered Regulatory approach proposed by the NNTRC creates duplicative regulatory requirements for a company in the Public Interest Operator (PIO) category. Much of the additional reporting required for a PIO with the NNTRC is already required at the state and federal level. A PIO would be subject to the additional cost of producing these new reporting requirements. Companies electing to be only minimally regulated as a General Operator (GO) would also be subject to additional costs because they would not have access to the preferred rate structure for rights-of-way and other permits available only to PIOs.

NCC is a wholly-owned subsidiary of Frontier Communications Corporation (Frontier). In Arizona alone, Frontier operates in the tribal lands of six different tribes. If all six tribes in Arizona were to implement a regulatory plan similar to the NNTRC's proposed rule, in addition to the high costs, there could be significant confusion and potential conflicts for all parties concerned. When NCC and the other Frontier operating companies in Arizona are already heavily regulated by the ACC and the FCC, there is no need for this additional regulation. When you start examining some of the other states Frontier operates in, the process could become daunting and expensive. For instance, Frontier operates in the tribal lands of seven tribes in Nevada, nine tribes in Washington, and sixteen tribes in California.

NCC takes pride in its role of providing telecommunications services to the Navajo Nation for over 40 years, and plans to continue being culturally-sensitive and to maintain a positive relationship with the Navajo Nation going forward. Customers on the Navajo tribal lands have benefitted from NCC's existing regulatory oversight, rules and regulations, and NCC will continue to work with the NNTRC to assure continuity of good service to customers in the Navajo Nation.

## **The FCC is Addressing Tribal Engagement**

The NNTRC's proposed rule would allow a company classified as a PIO to presumptively satisfy the tribal engagement requirements of the FCC's USF/ICC Transformational Order (the CAF Order) for the first year in order to be certified as an Eligible Telecommunications Carrier (ETC). The price for this is again, a costly new regulatory framework that requires a PIO to file an annual service plan and report that includes detail on revenues, revenues by infrastructure type, identification of unserved/underserved areas, goals for penetration/serving of such areas, and feasibility and sustainability planning. A PIO is also required to demonstrate it is maximizing efficient use of all available infrastructure, including encouraging co-location of other providers.

All of these requirements would add unnecessary costs to the business at a time when the FCC is already addressing obligations for meeting the tribal engagement requirements. On July 19, 2012, the FCC released a Public Notice providing further guidance on the tribal government engagement obligations of the CAF Order. The guidance is intended to facilitate the dialogue between ETCs and tribal governments that will lead to common understandings and, ultimately, improvement of communications services on tribal lands. As NCC's parent company, Frontier has taken the FCC's guidance very seriously and has begun implementing a uniform nationwide plan to engage the tribes in all of its service territories in 27 states. At this time there is no need for the NNTRC to implement a separate and different plan for engagement.

## **Conclusion**

NCC appreciates the opportunity to file comments with the NNTRC and will continue to work with the NNTRC in this proceeding, and any related proceedings or meetings to provide information and input. As stated above, NCC, as an existing, long-standing, authorized provider

with valid CC&Ns, already has the necessary authorization to provide service on the Navajo tribal lands. Further, NCC has a plan in place to begin the tribal engagement process under the guidelines provided by the FCC and expects to begin dialogue with the tribe soon. Finally, implementation of the NNTRC's proposed rule could be costly to telecommunications providers, and ultimately customers, in a number of ways. Higher costs are associated with new and duplicate regulatory reporting requirements as a PIO, and higher rights-of-way and permit fees as a GO. In addition, if other tribes follow the NTTRC's lead and implement separate sets of rules, the cost and confusion could be exponential, resulting in the diversion of investment and resources into managing regulatory obligations instead of providing services to customers.

Dated September 28, 2012

Respectfully submitted,

**NAVAJO COMMUNICATIONS COMPANY, INC.**

A handwritten signature in cursive script, reading "R. Kirk Lee", is positioned above a solid horizontal line.

R. Kirk Lee  
Manager - Govt. & External Affairs  
Frontier Communications  
1800 41st St., Everett, WA 98201  
Telephone: 425-261-5855  
[kirk.lee@ftr.com](mailto:kirk.lee@ftr.com)