October 14, 2011

BEFORE THE
NAVAJO NATION TELECOMMUNICATIONS REGULATORY COMMISSION

IN THE MATTER OF)
)
APPLICATION OF CERTIFICATES OF)
CONVENIENCE AND NECESSITY)

No. NNTRC-11-001

COMMENTS OF AT&T

AT&T[1] submit(s) the following Comments in response to the above referenced Notice of Proposed Rulemaking.

The Navajo Nation Telecommunications Regulatory Commission ("NNTRC" or "Commission") issued a Notice of Proposed Rulemaking ("NPRM") on July 28, 2011, requesting comments concerning "the substantive and procedural requirements within the CCN Application, as well as any comments regarding what Telecommunications services the NNTRC should consider excepting from the CCN requirement." NPRM p. 1. The Commission indicates that it "is unable to carry out its regulatory responsibilities as directed by the Navajo Nation Council without operators obtaining a CCN... [or] providing critical information and assurances...regarding their services." *Id.* at 2. AT&T respects the Navajo Nation and its agencies and appreciates the opportunity to offer these Comments.

At the outset it should be noted that no other Indian tribe has sought to require AT&T to submit to its regulatory jurisdiction as a condition for operating

[1] These Comments are submitted by AT&T Communications of the Mountain States, Inc., New Cingular Wireless PCS, LLC, and other affiliated AT&T entities providing long distance and wireless services in Arizona, New Mexico and Utah.

network facilities on a reservation or offering services to tribal members, and AT&T encourages the NNTRC not to break with that tradition of forbearance. First, telecommunications carriers are already subject to comprehensive jurisdiction by federal and state regulatory authorities, and no additional layer of tribal regulation is needed to protect tribal interests. Second, the only telecommunications services that AT&T provides on the Navajo Nation are wireless and long distance services, which the Federal Communications Commission ("FCC") has largely deregulated because it has found that those services are so competitive that regulation would harm consumers more than it could possibly help them. Any tribal rules reflecting a contrary, pro-regulatory judgment would violate not only that controlling federal policy choice, but also the Navajo Nation's own Telecommunications Act, which seeks to avoid conflict with FCC jurisdiction. *See* 21 N.N.C. 510 (1986). Third, in any event, tribes generally lack jurisdiction over non-Indian entities such as AT&T except in narrowly defined circumstances that are not presented here. Any claim of tribal jurisdiction would be particularly attenuated in this case, because the Tribe's 1868 Treaty with the United States expressly permits service providers to place utility-related infrastructure on tribal lands without tribal approval.

AT&T looks forward to a constructive dialogue with the Nation, but AT&T opposes any effort to add a new layer of tribal regulatory authority to the pervasive schemes of federal and state-level jurisdiction to which telecommunications carriers are already subject.

Background

The Navajo Nation is a sovereign nation whose tribal lands were defined by the Treaty between the United States of America and the Navajo Tribe of Indians ("the Treaty") in 1868. The Treaty expressly provides that the Tribe "will not oppose the construction of railroads, wagon roads, mail stations, ***or other works of utility or necessity*** which may be permitted by the laws of the United States..." (emphasis added) Treaty Art. 1X. According to Navajo Nation census data, the Tribe has 173,987 members. Of those 173,987, 61% currently have telephone service from at least one provider. AT&T believes that only a small percentage of those tribal members subscribe to AT&T long distance and wireless services. Media reports indicate that the Navajo Nation is involved in construction of a telecommunications tower in Chinle, Arizona which will be part of the Nation's new 4G network, currently under development and scheduled for completion in 2013. The project is funded, at least in part, by a grant from the federal government.

The AT&T entities filing Comments in this matter are providers of telecommunications and related services, including wireless voice, wireless data, and long distance service throughout the United States. AT&T provides wireless and long distance services to tens of millions of customers throughout the United States, including a relatively small number of Navajo Nation members. AT&T does not provide local exchange services within the Nation.

AT&T has no direct contact with the Nation itself. AT&T utilizes a cell tower acquired from Alltel located on Navajo Nation land in New Mexico[2] and subleases space from Frontier Telecommunication one of its cell towers in Utah. AT&T has deployed facilities at both cell sites to provide seamless mobile coverage as part of its integrated, nationwide wireless network. AT&T uses those two cell sites to serve not only individuals residing within the Nation's boundaries, but also many other individuals who are merely traveling through the Reservation, often on state or federal highways. The vast majority of the people who rely on these cell sites for their wireless service are non-members of the Nation.

AT&T's wireless services are subject to FCC jurisdiction. Under federal law, the FCC has exclusive jurisdiction over wireless rates and entry, and the relevant state commissions have concurrent jurisdiction with the FCC for other terms and conditions of service.[3] AT&T's long distance services, which are primarily interstate in nature, are also subject to the jurisdiction of the FCC (as to interstate services) and the state commissions (as to intrastate services). AT&T has no long distance network facilities on Navajo Nation lands.

I. Federal and tribal law would preclude the imposition of CCN requirements on AT&T.

Tribal nations hold a special status under the laws of the United States. They have been described as "unique aggregations possessing attributes of sovereignty

[2] The Nation has not permitted AT&T to assume the Alltel lease; the parties are in negotiations for a new lease.

[3] Section 47 U.S.C. 332 provides that "no State or local government shall have any authority to regulate entry of or the rates charged by any commercial mobile service...except that this paragraph shall not prohibit a State from regulating the other terms and conditions of commercial mobile services." The statute does not expressly refer to Indian Nations, but the rationale underlying preemption of State and local regulation applies equally. *See* p. 5 *infra*.

over both their members and their territory." *United States v. Wheeler*, 435 U.S. 313, 98 S.Ct. 1079, 55 L.Ed.2d 303, at 323 (1978). But through incorporation into the United States, as well as treaties and statutes, some attributes of sovereignty have been diminished, particularly with regard to relations between tribes and nonmembers. The United States Supreme Court has explained that, "absent express authorization by federal statute or treaty, tribal jurisdiction over the conduct of nonmembers exists only in limited circumstances." *Strate v. A-1 Contractors*, 520 U.S. 438, 117 S.Ct. 1404, 1409 (1997); *see also, Oliphant v. Suquamish Tribe*, 435 U.S. 191, 98 S.Ct. 1011, 55 L.Ed. 209 (1978).

"'[T]he inherent sovereign powers of an Indian tribe do not extend to the activities of nonmembers of the tribe.' Where nonmembers are concerned, the 'exercise of tribal power beyond what is necessary to protect tribal self-government or to control internal relations is inconsistent with the dependent status of tribes, and so cannot survive without express congressional delegation.'" *Nevada v. Hicks*, 533 U.S. 353, 359 (2001) (quoting *Montana v. United States*, 450 U.S. 544 (1981); emphasis omitted). In *Nevada v. Hicks*, the Supreme Court confirmed that "the general rule of *Montana* applies to both Indian and non-Indian land" within reservation boundaries, and "the existence of tribal ownership is not alone enough to support regulatory jurisdiction over nonmembers." *Id.* at 360. The Supreme Court recognizes two narrowly defined exceptions to *Montana's* general rule against tribal jurisdiction over non-members: (1) where a "nonmember has consented, either expressly or by his actions," to tribal jurisdiction, or (2) where an exercise of tribal power is "necessary to avert catastrophic consequences" for "tribal self-

government." *Plains Commerce Bank v. Long Family Land and Cattle Company, Inc.*, 554 U.S. 316, 337, 341 (2008) (internal quotation marks omitted).

These *Montana* principles apply in the absence of specific treaty provisions to the contrary. Here, however, the Nation's Treaty reinforces the *Montana* principles as they apply to non-Indian telecommunications providers and, indeed, carries them one step further. As discussed, the Treaty affirmatively precludes the Nation from "oppos[ing] the construction of railroads, wagon roads, mail stations, or other works of utility or necessity" on tribal lands without tribal approval. That Treaty provision sharply distinguishes this case from *Water Wheel Camp Recreational Area, Inc. v. Larance*, 642 F.3d 802 (9th Cir. 2011). In *Water Wheel*, the Ninth Circuit held that, despite *Nevada v. Hicks, supra*, a tribe need not always satisfy the *Montana* exceptions in order to exercise regulatory jurisdiction over non-Indians on tribal lands if the tribe could exercise the greater power to exclude the non-Indians from those lands. Here, however, the Nation, in its Treaty, relinquished any otherwise applicable power to exclude AT&T from extending its facilities onto tribal lands—and thus any lesser-included power to regulate AT&T. *See also, Strate*, 520 U.S. at 456 (tribe cannot assert regulatory jurisdiction predicated on land status where, by federal action, it has lost "a landowner's right to occupy and exclude").

The Treaty provision also forecloses any claim that *Montana's* first exception is met, particularly with respect to AT&T's two cell sites and the wireless services AT&T provides to the broader public by means of them. AT&T placed those towers within reservation boundaries not because it "consented" to tribal jurisdiction, but because it was exercising its rights under the Treaty to include the reservation—and

the highways running through it—within the coverage of its integrated nationwide wireless network. *See generally, Reservation Tel. Coop. v. Henry*, 278 F. Supp. 2d 1015, 1023-24 (D.N.D. 2003).

The second *Montana* exception is similarly inapplicable. To trigger that exception, the non-Indian conduct in question "must do more than injure the tribe, it must 'imperil the subsistence' of the tribal community"; in other words, the exercise of tribal power "must be necessary to avert catastrophic consequences." 554 U.S. 316, 128 S.Ct. 2709, 171 L.Ed.2d 457 (2008) (citations omitted). Here, to the contrary, the provision of telecommunications services on tribal lands without a CCN, as providers have done for at least the last 25 years, does not in any way threaten the political integrity, economic security or health and welfare of the Tribe. Although requiring CCNs, and related filing fees from telecommunications providers, could produce some revenue for the Navajo Nation, mere loss of revenue or potential revenue is not the type of impact contemplated by the Court. *Atkinson Trading Company v. Shirley*, 532 U.S. 645, 657, 121 S.Ct. 1825, 149 L.Ed. 889 (2001).

II. Federal law preempts tribal jurisdiction over the types of services offered by AT&T on the Reservation.

Even if the Nation had some inherent jurisdiction to regulate AT&T's activities, federal law would preempt any exercise of such jurisdiction—both (1) because Congress and the FCC have preempted the relevant regulatory fields, and (2) because any decision to impose new regulation on AT&T's wireless and long

distance services would conflict with the FCC's policy decisions to subject those services to minimal regulation.

First, Congress determined that the FCC should have exclusive control over the terms and conditions governing entry of commercial mobile radio services providers into the marketplace. *See* § 47 U.S.C. 332(c)(3)(A). Congress was concerned that a patchwork of state and federal regulation would balkanize the wireless market and prevent innovation and development. *See* H.R. No. 103-213, at 480-481 (1993).[4] And although Congress did not expressly address tribal jurisdiction in that statute, ordinary preemption principles bar such jurisdiction nonetheless. In that respect this case is very similar to *El Paso Natural Gas v. Neztsosie*, 526 U.S. 473 (1999). In *Neztsosie*, the Supreme Court addressed whether, in the Price-Anderson Act, Congress intended to preclude tribal court jurisdiction in a category of tort cases for which Congress expressly preempted state court jurisdiction in order to ensure national consistency.[5] The Court found that, even though Congress did not address tribal jurisdiction, it had expressed a clear desire for all such tort cases to be handled exclusively by federal courts. And the Court thus barred any exercise of tribal jurisdiction over such cases on the ground that allowing tribal courts to have jurisdiction "would invite precisely the mischief of 'duplicative determinations' and consequent 'inefficiencies' that the Act sought to avoid...." *Id.* at 526 U.S. 486.

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[4] "State regulation can be a barrier to the development of competition in the [wireless] market, [and thus that] uniform national policy is necessary and in the public interest. H.R. No. 103-213, at 480-481 (1993).

[5] The Price-Anderson Act "transform[s] into a federal action 'any public liability action arising out of or resulting from a nuclear incident'" 42 U.S.C. §2014(n)(2). It gives federal district courts original jurisdiction over such suits and provides for the right of removal.

The same rationale applies here. In Section 332, Congress has clearly expressed a strong desire for the FCC to exercise unitary national jurisdiction over the rates and entry of wireless carriers in order to prevent patchwork regulation that would hold the industry back. As the FCC has explained,

> While we recognize that states have a legitimate interest in protecting the interests of telecommunications users in their jurisdiction, we also believe that competition is a strong protector of these interests and that state regulation in this context could inadvertently become a burden to the development of competition.

Second CMRS Order, 9 FCC Rcd 1411, at 1421; fn 5, *infra*. Moreover, the FCC has turned back state requests to exert authority to require certification of wireless entities. In discussing what authority was left to the states, the FCC explained:

> We remind the CPUC that the certification process is precluded by the provision in amended Section 332 that categorically preempts state and local entry regulations and that the statute makes no provision for continuance or extension of this authority by this Commission. As of the effective date of the amendment, therefore, California's certification jurisdiction over commercial mobile radio service was terminated. (internal citations omitted.)

Petition of the People of the State of California and the Public Utilities Commission of the State of California to Retain Regulatory Authority over Intrastate Cellular Service Rates, Report and Order, PR docket No. 94-105, FCC 95-195 (rel. May 19, 1995), fn 307.

Allowing tribes, but not states, to intrude in these same areas would be fundamentally inconsistent with Congressional policy. The better reading of Section 332 of the Telecommunication Act is that the FCC, and only the FCC, can assert

jurisdiction over terms of entry into the wireless markets, including certificate of convenience and necessity requirements, as that is the only reading consistent with Congressional intent.[6]

Similarly, jurisdiction over long distance services is primarily within the purview of the FCC. AT&T provides some long distance services on the Navajo Nation, and the majority of those services are interstate in nature. The FCC has exclusive jurisdiction over interstate services and as with the issue of entry for CMRS providers, Congress' intent would be thwarted by a patchwork scheme of federal and tribal regulation of long distance services.[7] The terms and conditions of long distance services provided to Navajo Nation customers today are governed by intrastate tariffs and interstate customer agreements and service guides which are posted on AT&T's website. Competing terms and conditions for Navajos on the reservation versus those residing off the reservation, and as compared to non-Indians living on the reservation, would inevitably lead to customer confusion and greater operating expenses. An additional layer of regulation of services already under the jurisdiction of the FCC and state commissions may cause providers of competitive services to reevaluate whether or not continued service on the reservation is a sound business proposition.

Finally, any exercise of tribal jurisdiction to impose substantive regulation on AT&T would conflict with, and thus be preempted by, the FCC's longstanding

[6] The Western District of South Dakota faced a similar issue last year when the Oglala Sioux Tribe attempted to assert jurisdiction over spectrum, another matter exclusively within FCC control. In its Order Dismissing Counterclaim the Court found that the tribe did not own the spectrum and that laws of general applicability, such as the FCA, 47 U.S.C. §151, apply equally to Indian Nations. *Alltel vs. Oglala Sioux Tribe*, Civ-10-5011JLV (2011 Western District South Dakota); *see also, Federal Power Commission vs. Tuscarora Indian Nation*, 362 U.S. 99, 116 (1960).

[7] It is worth noting that even "intra- reservation" calls are often interstate in nature because the tribal lands span three states.

policies of freeing wireless and interstate long distance services from most traditional forms of economic regulation. *See, e.g.*, Second Report and Order, *Policy and Rules Concerning the Interstate, Interexchange Marketplace,* 11 FCC Rcd 20730, 20738, ¶ 13 (1996) (exercising authority to "eliminate unnecessary regulation" of interstate long distance services and "carry out [the FCC's] pro-competitive deregulatory objectives" for those services); Second Report and Order, *Implementation of Sections 3(n) and 332 of the Communications Act; Regulatory Treatment of Mobile Services*, 9 FCC Rcd 1411, ¶¶ 124-219 (1994) (similar determination for wireless services); *see generally Orloff v. FCC*, 352 F.3d 415 (D.C. Cir. 2003) (discussing FCC's regulatory policy for wireless marketplace); *Fidelity Fed. Sav. & Loan v. de la Cuesta*, 458 U.S. 141, 153-154 (1982) ("federal regulations have no less pre-emptive effect than federal statutes").

III. Regulation of AT&T services by the Navajo Nation would be counterproductive.

Even if the Navajo Nation had jurisdiction over AT&T's wireless or long distance services, and even if federal telecommunications law did not preempt the exercise of such jurisdiction, it would still be counterproductive as a policy matter for the Commission to impose a new layer of regulation on those services. Instead, forbearing from regulation or regulating with a very light touch would be most likely to further the goals identified in the NPRM.[8]

8 Although under Title II, the FCC has the power to regulate rates and other terms and conditions of interstate long distance services, the FCC has elected to forebear.

As discussed in detail above, telecommunications providers are already subject to the regulatory jurisdiction of the FCC and state commissions,[9] and adding a third layer of tribal jurisdiction to the mix would be as complex in application as it would be unnecessary to protect consumer interests. The FCC addressed those concerns in a 1999 NPRM relating to, among other things, universal service gaps on reservations. *See In the Matter of Federal-State Joint Board On Universal Service: Promoting Deployment and Subscribership in Unserved Areas, Including Tribal and insular Areas*, 14 FCC Recd. 21177 (August 5, 1999) (hereinafter "FCC NPRM"). The FCC noted that,

> We recognize that principles of Indian law, including the trust relationship between the federal government and Indian tribes, tribal sovereignty, and tribal self-determination, must apply with equal force in the area of telecommunications...the parameters of federal, state and tribal authority, however are not always clear.

Id. at 21187 This Tribe, in Comments filed in the FCC NPRM by NTTA (on behalf of a number of Indian Nations), acknowledged the need for close coordination among the competing/coordinating jurisdictions as a precursor to implementing new telecommunications policy on tribal lands:

> a formal policy statement that clearly defines relationships among, and responsibilities of, the FCC, tribes, the service providers and, where appropriate, the States, with respect to telecommunications services on tribal lands...is critical to the FCC's efforts [to improve service to tribal and insular lands] and must be developed in advance of any specific action in Indian Country.

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9 Depending upon any authority that has been expressly reserved to a Tribe by Treaty and what authority has been reserved to states under federal law, states, at a minimum, have jurisdiction over services provided to nonmembers on tribal lands. *See Devils Lake Sioux Indian Tribe vs. North Dakota Public Service Commission*, 896 F. Supp. 955, at 962.

Joint Comments of the Salt River River Pima-Maricopa Indian Community and the National Tribal Telecommunications Alliance, (December 17, 1999) at p. 4. Accordingly AT&T urges the NNTRC to continue to look to the FCC for national policy guidance. In the absence of such guidance, any exercise of new tribal regulatory authority could simply disserve the Commission's goals of encouraging development, coordination and competition.

This Nation has previously recognized the role of the FCC and the need for a coordinated approach to the provision of services on the reservation. In one FCC proceeding, National Tribal Telecommunications Alliance acknowledged the wide latitude of the FCC over telecommunications matters, even on tribal lands,

> Moreover, the courts have also held that in the regulation of such laws [of general applicability], federal agencies retain jurisdiction over tribes and tribal enterprises. Thus the Commission arguably has wide latitude to establish definitions for circumscribing Indian Country for telecommunications purposes. (emphasis added)

Joint Comments of the Salt River Pima-Maricopa Indian Community and the National Tribal Telecommunications Alliance, (December 17, 1999) at pp. 9-10. In light of the need for national policy and the highly competitive, indivisible nature of the interstate long distance and wireless markets, the Commission should recognize and defer to FCC jurisdiction. To the extent the Navajo Nation has jurisdiction over some providers it should exempt wireless providers and competitive long distance providers from CCN requirements.

Finally, given that tribal jurisdiction over non-Indians is highly dependent upon specific facts, it is essential for commenting entities to have information on the manner and extent of regulation the Commission may seek to implement so that

jurisdictional issues can be addressed up front. A fact-specific analysis will also assist the Commission in determining what entities should be exempt from CCN requirements. In that regard AT&T encourages the Commission to provide an opportunity for all interested providers to submit additional comments on any potential CCN requirements and exemptions once draft rules have been released.

IV. In order to meet the Commission's goals, certification rules should consider existing regulations applicable to providers and the highly competitive nature of the industry, as well as the role of the Navajo Nation as a competing provider.

The NPRM identifies six goals of regulation: 1) ensure universal service, 2) promote competition, 3) employ regulation commensurate with competition, 4) facilitate efficient development and deployment of infrastructure, 5) encourage shared use of existing facilities, and 6) ensure high quality services. NPRM at p. 3. While most of these goals are laudable, the NNTRC would not advance them by imposing new regulation on telecommunications carriers for the first time in the 25-year history of the Navajo Telecommunications Act (1986). The intent of the NNTRC is hard to discern from the NPRM. Although it cites that Act, the Act gives the NNTRC the authority to impose a very highly structured regulatory scheme suitable for an historic environment with little to no competition. AT&T suggests that such an approach would conflict with the Commission's stated goals and should not be pursued.

The telecommunications industry has seen on many occasions that a lessening of regulation in competitive markets will produce better and less expensive

service options for customers. Deregulation of the long distance market in the 1980s spurred innovations and more attractively priced long distance rates and plans across the country. Since then, with the explosion of broadband deployment and wireless-based technologies, and the services and applications that ride over such platforms, the communications landscape is almost unrecognizable compared to the 1980s. Residents of the Navajo Reservation already have a number of choices--more than 10 different providers were served with the NPRM and the service list did not appear to include all providers currently serving reservation residents Regulation did not bring about this level of competition; history suggests onerous regulation often impedes competition, innovation, and consumer choice.

To the extent that the Navajo Nation and this Commission have jurisdiction over the various telecommunications providers serving customers on the reservation today, regulating all providers in the same manner would thwart the Commission's and the FCC's pro-competitive goals. As the NPRM clearly recognizes when it seeks comments on what types of providers should be exempt from CCN requirements, the degree of regulation should vary according to the type of service and the type of provider. Incumbent Local Exchange Carriers (ILECs) are the most regulated telecommunications providers. But the FCC has pursued a longstanding and highly successful policy of freeing wireless and long distance providers from legacy economic regulation. In particular, the FCC has "detariffed" all such services and allows market forces to set prices. The states have largely followed suit and, under Section 332, could not lawfully require wireless carriers to tariff their services in the first place. *See* p. 6, *supra*. AT&T's long distance operations are likewise free

of the traditional rate-of-return regulation apparently contemplated by the Navajo Nation 25 years ago. 21 NNC § 510. Revisions to the Navajo Telecommunications Act prior to issuing CCN requirements, to bring the law more in line with the goals identified by the Commission in this 2011 NPRM, could facilitate the Commission's efforts.

The Commission should also take into account the development of its own wireless network and how its role as a competitor would affect the manner in which it seeks to assert jurisdiction over other providers. Although AT&T recognizes that government-owned networks may serve an important role in under-served markets, the Commission must address the risks inherent in a competitor acting as a regulator as it determines what rules to enact. If the Navajo Nation plans to deploy its new 4G network in competition with existing providers, appropriate safeguards should be put in place to protect taxpayers and competing commercial service providers:

- Commercial service providers should be given a right of first refusal in order to limit the need for government resources.
- To the extent the Navajo Nation regulates competing commercial providers regulations must be applied to commercial and tribal-owned networks on a non-discriminatory basis.
- The Navajo-owned network should be subject to the same laws and rules that govern commercial competitors.

- The Navajo-owned network should not receive preferential tax treatment. As an alternative, tax incentives/exemptions could be provided to service providers in order to increase the availability of the desired services.
- The Navajo-owned Network should not be given preferential access to the rights-of-way.
- The Navajo-owned networks should not be allowed to make exclusive arrangements that prohibit commercial competitors from offering services.

AT&T respects the Navajo Nation's desire for its members to enjoy high quality, affordable telecommunications services. Owning and operating its own network may be one manner of meeting that goal should the Tribe's network meet with success.[10] But, the Commission must consider the dual role of the Nation when it determines how, if at all, to regulate competitors and ensure that it treats its competitors in a nondiscriminatory manner. AT&T respectfully urges the Commission to hold off on regulating existing providers until it knows more about the role it will play as a telecommunications provider.

V. CCN requirements should be tailored to the information required to achieve Commission goals.

The NPRM also seeks comments on the type of information the Commission should require of entities subject to CCN regulation. The information required

[10] Government Computer News, a website that serves government IT professionals reported on December 8, 2010 that "Municipal broadband efforts have had their share of success, but in a highly competitive environment, even the most well-intentioned plans can go wrong. Ten years after launching a project to build a citywide telecommunications network, Burlington Telecom, a public-owned provider for Vermont's largest city, is facing $50 million in debts and state and federal investigations .... Burlington's effort isn't the only municipal project to have gone off the tracks. In 2005, Philadelphia launched an ambitious plan to provide free Wi-Fi access throughout the city.... But the project, run by the nonprofit Wireless Philadelphia, ran into roadblocks — including opposition from commercial providers .... Earlier this year, the city bought up Wireless Philadelphia's assets and announced plans to make the network available only to government."

should directly correspond to the level of regulation the Commission intends to employ. At this early information gathering stage, it is premature to analyze the draft application form and its very detailed questionnaire without more information about the entities that will be subject to CCN requirements and what level of regulation will be applied. Accordingly, AT&T reiterates its request that the Commission allow an additional opportunity for commenting entities to provide input on the application/information requirements once a draft rule has been issued. Should the Commission proceed with requiring a CCN, the application should be limited to information necessary to fulfill necessary regulatory functions.[11] The information required of each applicant should be tailored to the type of provider. Depending upon the level of regulation to be imposed, the Commission might require more information from a basic local provider than it would from a competitive long distance or wireless provider, like AT&T.

Without waiving the right to file additional comments at a later date when more information is available, AT&T is concerned that some portions of the proposed application require excessive or irrelevant data. For example, Section C seeks highly sensitive financial data, AT&T does not believe that the information required by C-2, C-3, C4 would be relevant to fitness to serve, particularly for competitive providers. Additionally, Section D which seeks technical capability information should be tailored to the type of provider. For example, the Commission might need detailed information on the network capabilities of a provider whose facilities are dedicated to the reservation, but would need less information from a

[11] Applications of certified or registered providers are available in state commission files and may provide much of the information the NNTRC believes it needs.

provider who relies on a regional or nation-wide network to provide its services. AT&T is also concerned about the Managerial Capability section which seeks extensive details on organizational structure and officer data from companies with nation-wide and even international operations. The information required should be limited to the business unit responsible for services on the Nation. Finally, AT&T is very concerned about G-2 in the Public Policy Section; it is unreasonable to require a non-Indian provider to submit to full Navajo Nation jurisdiction in order to continue to provide services on the reservation; subject matter jurisdiction is fact and incident-specific and should remain that way. Requiring more information and more commitments from a provider than is strictly necessary to do business on the reservation make will only decrease willingness to serve and the options available to Navajo Nation customers.

VI. Conclusion

For the reasons stated herein, AT&T respectfully urges the Commission to limit CCN requirements, if any, to Indian entities over which it has jurisdiction. In the alternative, should a determination be made that the Navajo Nation has jurisdiction over AT&T, AT&T respectfully requests the Commission to exempt AT&T from any such CCN requirements in light of a) the FCC's pervasive regulation and expertise in the area, b) the need for a seamless national approach to wireless and long distance service, and c) the highly competitive nature of such services. AT&T believes, and history bears it out, that innovation, customer choice and more attractive rate options are produced by competition, rather than regulation.

October 14, 2011

Respectfully submitted,

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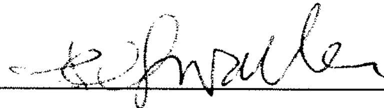

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