

**Before the  
Navajo Nation Telecommunications Regulatory Commission**

In the Matter of )  
 )  
Application for Certificate of Convenience and ) No. NNTRC-11-001  
Necessity (CCN) )  
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**NOTICE OF PROPOSED RULEMAKING**

1. The Navajo Nation Telecommunications Regulatory Commission (“NNTRC”) is authorized to promulgate such rules and regulations as are appropriate for the accomplishment of its purpose, authority, duties and responsibilities pursuant to the Navajo Nation Telecommunications Regulatory Act (“Act”), 21 N.N.C. §§ 501 *et seq.*, and to enforce such rules and regulations. NNTRC is hereby publishing a Notice of Proposed Rulemaking for a Proposed Application for Certificate of Convenience and Necessity (“CCN”), for telecommunications operators (“operators”) to utilize in their application for a CCN, required in order to provide telecommunications services on the Navajo Nation pursuant to the Act. The Proposed Application for a CCN is attached hereto as Exhibit 1.

2. The NNTRC requests comments on 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. The NNTRC will be accepting written comments for 45 days from the last date of publication in the Navajo Times, and will be hearing public comments at a public hearing, the date and time which is yet to be announced.

3. As its basis for the Proposed Rulemaking, the NNTRC makes the following findings and conclusions:

**Findings**

A. Pursuant to the Act, “No person shall engage in providing telecommunications services within the Navajo Nation, nor shall exercise any right or privilege under any franchise or permit, without first having obtained from the commission a Certificate of Convenience and Necessity, unless otherwise authorized in this Act. The commission shall promulgate and issue

specific rules and regulations establishing filing and informational requirements for applications for certificates of convenience and necessity.” 21 N.N.C. § 510.

B. For purposes of a CCN, "telecommunications" or "telecommunication" “means any transmission, emission or reception (with retransmission or dissemination) of signs, signals, writings, images, and sounds of intelligence of any nature by wire, radio, light, electricity or other electromagnetic spectrum system, including but not limited to the telecommunications activity set forth in [the Act].” Id. at § 503(V). "Telecommunication Service" is defined as “the providing of voice or other communication services by telecommunications including, without limitation, non-voice communication services, or data communication services which may interconnect with other telecommunication networks and/or involve operation of transmission/reception devices for binary information representation.” Id. at § 503(W). Telecommunications services for purposes of a CCN includes wireless phone and data services, satellite services, and internet.

C. The Act further provides that “[t]he commission may by rule or regulation exempt certain telecommunications services from the requirement of a certificate of convenience and necessity.” Id. at § 510.

D. The Act further provides that “[t]he commission may promulgate rules and regulations in accordance with this Act, for the purpose of enforcement of this Act. Prior to the adoption by the commission of any rules and regulations being promulgated in accordance with this Act, notice shall be given to the public of such proposed rules or regulations, by a method deemed proper by the commission. Such notice shall include: the nature of the proposed rule or regulation; the meeting date of the commission where it will be reviewed and public comment solicited; the deadline date for submitting written comments; the proposed effective date of proposed rule or regulation implementation, and the location where the proposed rule or regulation will be available for public inspection. The commission shall take no action on any proposed rules or regulations for at least 45 days from the date of the last publication of the commission's notice.” Id. at § 515.

E. The NNTRC has never promulgated rules and regulations establishing filing and informational requirements for applications for CCNs and therefore the NNTRC has never issued a CCN.

F. As a matter of public policy, certain services and/or operators may be appropriately excepted from the requirement for a CCN, and the NNTRC has never considered or promulgated a rule excepting such telecommunications services and/or operators from the requirement of a CCN.

G. Operators are providing telecommunications services on the Navajo Nation without a CCN, without filing critical information with the NNTRC, and without making adequate assurances to the Navajo Nation regarding their services.

### **Conclusions**

H. The NNTRC is unable to carry out its regulatory responsibilities as directed by the Navajo Nation Council without operators obtaining a CCN, and without operators providing critical information and assurances to the NNTRC and the Nation regarding their services. Specifically, without the foregoing, the NNTRC is unable to: (1) ensure the universal availability and accessibility of high quality affordable telecommunications services to all residents and businesses in the operator's service area on the Navajo Nation; (2) promote the development of effective competition as a means of providing customers with the widest possible choice of services; (3) utilize forms of regulation commensurate with the level of competition in the relevant telecommunications service market; (4) facilitate the efficient development and deployment of a telecommunications infrastructure, including open networks with maximum interoperability and interconnectivity; (5) encourage shared use of existing facilities and cooperative development of new facilities where legally possible, and technically and economically feasible; and (6) ensure that providers of telecommunications services on the Navajo Nation provide high quality customer service and high quality technical service.

I. It is therefore in the best interest of the Navajo Nation, the Navajo People, and operators, for the NNTRC to develop such rules and regulations for requiring a CCN for certain telecommunications services and/or operators as are necessary to ensure that the public interest is met in the provision of telecommunications services on the Navajo Nation, and to except such services and/or operators as are appropriate from the CCN requirement.

**Released: July 28, 2011**

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**Stephen J. Nez**  
**Chairman**  
**Telecommunications Regulatory Commission**  
**The Navajo Nation**