

**The Navajo Tribal Utility Authority's Comments
to the
Draft Navajo Nation Telecommunications Facilities Siting Regulations**

§ 5. Requirement for Open-Access Open Architecture

B. All newly constructed or existing Traditional Support Structures modified as part of a Major Replacement shall be designed to accommodate at least three (3) additional tenants.

Currently, a majority of NTUA Towers are 180 feet, which is suitable for accommodating 3 tenants. If a Traditional Support Structure is limited to 150 feet (as stated in § 20(A)), attempting to accommodate “3 additional tenants” would compromise the safety and structural integrity of the Traditional Support Structure. In most instances, the Traditional Support Structure needs to be least 180 feet in order to safely accommodate 3 tenants.

In most, if not all instances, a modification to an existing Traditional Support Structure cannot accommodate 3 additional tenants. As stated above, a 180 foot Traditional Support Structure can generally accommodate up to 3 tenants. If any modifications are made to the existing Traditional Support Structure, it will compromise the safety and structural integrity of the Traditional Support Structure if the owner is required to accommodate 3 additional tenants.

In addition, Major Replacements to modify a Traditional Support Structure are assessed on a case by case basis after the structural analysis reaches over 85% load. The tenant requesting to co-locate on the Tower submits the equipment it will place on the Tower and the Tower is modified accordingly. These costs are passed on to the tenant co-locating. If Major Replacements are required to accommodate a tenant, the tenant pays only for its required structural improvements.

Accommodating additional tenants as part of a Major Replacement for one tenant is not economically feasible because neither NTUA nor the tenant requesting the Major Replacement would be able to economically invest more than is necessary. The tenant needing a Major Replacement would not invest in co-locating on a Tower if the company is required to pay for improvements which will benefit at least 2 other tenants, which is required under the current regulations. This is contrary to the purpose in §3(D)(2), “encouraging the placement of Telecommunication Facilities in unserved and underserved areas of the Navajo Nation,” because it will deter tenants from investing on these sites therefore, there will be less expansion of telecommunication coverage.

NTUA is requesting that Major Replacements are assessed on a case by case basis in order to accommodate tenants requesting to co-locate on Towers where a Major Replacement is necessary and to not be required to accommodate additional tenants.

D. Upon petition to the NNTRC, the NNTRC may waive by order of the Commission the requirement that new Traditional Support Structures accommodate the

subleasing of other tenants if construction of a shorter support structure with fewer antennae would be more appropriate based on the location of the facility, if subleasing would cause interference with existing Telecommunications Facilities, as demonstrated by submitted technical evidence, or for other good cause demonstrated.

There is the concern that this will delay projects if not completed in a timely manner. As written, there are no timelines for NNTRC Commission to schedule a hearing and make a ruling on the petition. NTUA is requesting definite timelines addressing turn-around times for obtaining waivers.

§ 6. Telecommunications Leasing, Permitting and Licensing Procedures

B. Modifications

- a. The procedures for authorizing (A) Minor Modifications and Minor Replacements to Telecommunications Facilities, and for obtaining: (B) Major Modification Permits, (C) New Telecommunications Tower Site Leases, (D) Existing Site Telecommunications Tower Site Leases, (E) Telecommunications Tower Site Subleases, (F) Telecommunications Revocable Use Permits, and (G) Co-Location Licenses are set forth in the Telecommunications Leasing Permitting and Licensing Procedures (the "Procedures") attached hereto as Appendices A-G, respectively.*

As stated above, there is the concern that this will delay projects if there is not a specified timeline included. Any delay in processing paperwork will increase costs for NTUA. Delays in the process and procedures will result in lost money because delays will reduce the time tenants can utilize the NTUA telecommunication infrastructure.

NTUA is requesting definite timelines addressing turn-around times for authorizations of Minor Modifications and Minor replacements, obtaining permits, leases, subleases and licenses.

§ 7. Minor Modifications and Minor Replacements

- A. All Minor Modifications and Minor Replacements, as defined herein, require authorization by DNR in accordance with the Procedures. The carrier must also submit the same information to NNTRC.*

This requirement will delay projects and increase costs. This is contrary to the purpose under §3(C) and §3(D)(2) of encouraging the placement of Telecommunication Facilities in unserved and underserved areas of the Navajo Nation, promoting reliable access to telecommunication networks and broadband, promoting the health and welfare of the Navajo citizenry and does not help to “successfully bridge” the “digital divide.”

Also, if this is to become applicable, NTUA is requesting a definite turn-around time in processing these modifications and replacements.

§ 8. Major Modifications and Major Replacements

A. Every Person proposing a Major Modification or Major Replacement of a Traditional Support Structure is required to obtain a Major Modification Permit from NLD, and must submit a packet of information to NNTRC under the Procedures.

This requirement will delay projects and increase costs. This is contrary to the purpose under §3(C) and §3(D)(2) of encouraging the placement of Telecommunication Facilities in unserved and underserved areas of the Navajo Nation, promoting reliable access to telecommunication networks and broadband, promoting the health and welfare of the Navajo citizenry and does not help to “successfully bridge” the “digital divide.”

Also, if this is to become applicable, NTUA is requesting a definite turn-around time in processing these modifications and replacements.

§ 9. New Telecommunications Tower Site Lease

A. Every Person proposing new construction of a Traditional Support Structure on unencumbered Navajo Nation Land, or seeking to authorize an existing Traditional Support Structure for which a lease, permit or right-of-way was never issued, is required to obtain a New Telecommunications Tower Site Lease ("NTSL") issued by the DNR in accordance with the Procedures.

Will the most recent Telecommunications Tower Site Lease approved by DOJ/DNR on 4/09/2015 for NTUA have substantial changes or renamed as a NTSL?

This lease took approx. 6 months to negotiate and complete. If the lease needs to be revised how will this impact the Regulations if they are placed into effect before the NTSL is completed?

§ 10. Existing Site Telecommunications Tower Site Lease

A. Every Person seeking renewal of a lease, permit or right-of-way for an existing Traditional Support Structure on Navajo Nation Land, or seeking to expand the acreage of their existing lease, permit or right-of-way for an existing Traditional Support Structure on Navajo Nation Land, is required to obtain an Existing Site Telecommunications Tower Site Lease ("ETSL") issued by the DNR in accordance with the Procedures.

How will this lease differ from a NTSL?

§ 11. Renewals of New and Existing Site Telecommunication Tower Site Leases

B. The lease is renewable for one twenty-year term. The annual rental shall be adjusted every five years on the anniversary of the Effective Date using the increase in the Consumer Price Index (CPI), U.S. City Average for All Urban Consumers, noting that the U.S. Consumer Price Index used 1982-1984 as a base of 100, as published by the U.S. Bureau of Labor Statistics. All adjustments shall be done in accordance with the following formula: Current CPI X Base Rent/Old CPI.

D. If Lessee wishes to maintain the site after all four renewals expired, a new Telecommunications Site Lease must be obtained pursuant to these regulations or any additional applicable laws.

This language is ambiguous. There needs to be clarification that renewals are permitted every 5 years up to the one twenty-year term.

Is using the CPI for U.S. City Average for All Urban Consumers really the most accurate method of determining the annual rental? Is there a CPI for rural areas that should be more applicable?

Also, why use the CPI used from 1982-1984?

Is the 5 year annual rental fee a fixed fee for the 5 year period? Please provide clarification.

NTUA is requesting to clarify that the annual rental is only applicable to the Lessor (NN) and the Lessee and not applicable to any other 3rd party rental fee.

§ 13. Telecommunications Revocable Use Permit

A. Every Person seeking to temporarily place a COW or a Ballasted Support Structure on Navajo Nation Land is required to obtain a Telecommunications Revocable Use Permit ("TRUP") issued by the DNR in accordance with the Procedures.

Requesting to also include "Tower" or "Traditional Support Structure" per the defined terms. There are Monopoles built or proposed to be built that are outside the scope of the definition of a Ballasted Support Structure.

Ballasted Support Structures are often not tall enough to properly serve a location while working to place a telecommunication Tower nearby.

Also, a CDMI's Lite-Site will not likely fit inside a powerline right-of-way (example used in reference to a ballasted support structure).

If limited to a Ballasted Support Structure, the purpose of these Regulations will not be fulfilled, it will only impede the development of telecommunication infrastructure to unserved

and underserved areas of the Navajo Nation and will not help to “successfully bridge” the “digital divide,” as stated in §3(C) and §3(D)(2).

Requesting for a waiver of the \$700 dollar fee for COW when accommodating special events such as fairs, governmental inaugurations, conventions, sports, cultural events, etc. These events are important for the Navajo people and additional costs to serve the events will not encourage the placement of COW’s and only impedes the purpose of promoting reliable access to telecommunication networks and broadband, promoting the health and welfare of the Navajo citizenry. The expanded coverage at heavily populated events increases reception for emergency personnel and citizens.

The procedures for obtaining a COW needs to be separate from Monopoles. In order to serve large events the lengthy procedures only inhibit the usage of these COW’s to serve the people.

E. The maximum term of a TRUP shall be 90 days and may be renewable for not longer than one year upon petition to Navajo Land Department. Such additional term shall not entitle the permit holder to any possessory interests or leasehold rights in the property.

In Appendix F(6) there is an “original term of 180 days” not the 90 days as specified here.

Requesting that the term be renewable for up to 3-5 years. The standard construction time from the time of planning to final construction varies from 24-48 months as follows: 6 months for the service quality assessment, and at least 18 months for the right-of-way process for field consent, chapter resolution, permission to survey, biological survey, archeological survey, environmental assessment, FONSI, 164 Process, BIA consent of lease. In some cases field consent is the lengthiest process that delays projects longer than 18 months there are at times delays in obtaining permission to survey.

If permitted to renew longer than one-year, payment could be assessed on the basis of height of Telecommunication Facility.

If the 3-5 year allotted time is approaching expiration NTUA is requesting to have the option of converting to a NTSL. In some instances after the data is compiled, it is more cost efficient and suitable to keep certain Telecommunication Facilities in place rather than to build a larger Tower nearby.

§ 14. Telecommunications Co-Location License

This section does not include a section protecting the rights of the authorized occupant of the encumbered or withdrawn Navajo Nation Land. Requesting to insert similar language addressing this as was in the § 13(C).

“Issuance of a Co-Location License is subject to the express written permission of the authorized occupant of the encumbered or withdrawn Navajo Nation Land.”

This is important because it protects NTUA’s existing Non-Tower Structures on withdrawn right-of-ways. NTUA should have the right to decide who and what equipment is placed on its Non-Tower Structures.

§ 20. Design Requirements

Unless a variance is approved with concurrence by the NNTRC, the following design requirements shall apply to new Telecommunications Facilities:

A. The maximum height for Traditional Support Structures shall be one hundred fifty (150) feet, excluding lightning arrestor.

A majority of Towers built are 180 feet. If limited to 150 ft. there will be an increase in the number of Tower sites in order to maintain coverage, which is contrary to the purpose of protecting the aesthetic character of the Navajo Nation by minimizing the number of new Monopoles or Towers that would otherwise be constructed under §3(D)(1). The loss of coverage, if limited to 150 feet is estimated at a minimum of a 20% loss. This is contrary to the purpose of, “minimizing the number of new Monopoles or Towers that would otherwise need to be constructed” under §3(D)(1) and encouraging the placement of Telecommunications Facilities in unserved and underserved areas of the Navajo Nation under §3(D)(2).

There will be a limitation in the number of tenants able to co-locate – typically 3 on a 180’ and with a 150’ it will be 2, which result in more Towers needing to be built. In addition, with the height limitations on the Traditional Support Structures, it will be less economically feasible for communication companies to invest in projects in unserved and underserved areas if their investment will yield no profit or operate at a loss, which is contrary to the purpose stated under §3(D)(2)

The return on initial investment over the long term is not feasible due to limitations in coverage and less tenants being able to co-locate on Towers. Less coverage equals less customers served per site. The average rate of return for NTUA’s Tower investment is after 10 years of service per site. If limited to 150 feet it would not be economically feasible to build Towers in remote areas where only a few customers would be served. Tenants would also not co-locate on these Towers due to loss in coverage which limits their ability to reach customers.

Requesting that Traditional Support Structures be built based on the necessary height in order to be the most efficient per location without having to go through the process of obtaining a variance.

Also requesting a definite timeline be included and the criteria needed for granting a variance if a variance is required for all aspects of Sec. 20.

D. Cable/Conduit: All cable runs should be through Tower portals and within the Tower itself. Where cable is required to be located on the exterior of Tower for Co-Location of additional antennae, the cable shall be painted to match the Tower or covered by a material to match the Tower.

Requesting to not make the color of the cable be consistent with the color of the Tower.

Painting the cable to match the Tower or covered by a material to match the Tower is not feasible nor cost effective. Painting the cable will corrode the cable and it will not effectively adhere to the cable. Having to purchase different colored cable is more expensive and will result in increased costs and delays which is contrary to the purpose of these Regulations.

Even if the Tower is not required to be painted, having a matching cable color is a tedious requirement and will only add additional costs and time into building Towers to serve the Navajo Nation.

Requesting to not make the color of the cable be consistent with the color of the Tower.

E. Color: Unless otherwise required by the FCC, the Federal Aviation Administration ("FAA"), or otherwise excepted by Chapter Resolution upon recommendation of the Chapter Land Use Committee, or by Resolution of the Kayenta Township Commission, all Traditional Support Structures shall be painted to be compatible with the surrounding development and landscape.

This is not economically feasible and may deter from development. It is estimated that it will cost approx. \$8,000 dollars per Tower to paint. Maintaining the paint will also add additional costs.

Again, this is contrary to the intent of "Encouraging the placement of Telecommunication Facilities in unserved and underserved areas of the NN."

Requesting to not make Tower color a requirement. Also, if made a requirement, requesting to amend to only be applicable to heavier populated areas where there is a visual impact.

I. Signage: No advertising or display is permitted on any telecommunication facility or related equipment, unless required by the FCC or FAA.

For safety purposes, recommending that all sites be properly marked showing the FAA and FCC ID numbers (even though is not required by FCC or FAA, it is a standard practice now).

In addition, requesting that Tower owner properly identify the location and provide an emergency number that is reachable 24x7.

§ 22. Definitions

D. Ballasted Support Structure: Ballasted base frame supporting a Monopole without placement of foundations or footings in the ground. CDMI's Lite-Site ® is an example of a Ballasted Support Structure.

Requesting that an explicit product not be mentioned and the concept changed to non-penetrating structures with a base or foundation above ground. As mentioned earlier, the CDMI's Lite-Site is not likely to fit inside a powerline right-of-way.

Telecommunications Leasing, Permitting and Licensing Procedures:

APPENDIX C: Procedures for Obtaining a *New Telecommunications Tower Site Lease*

A(11). Field Clearance Document issued by the local Grazing Official demonstrating grazing permittee's consent to the Project; as well as a one-time payment of \$1,000 made payable directly to the grazing permittee. Acceptance of such payment shall also be proof of consent, and proof of payment to the permittee must be submitted with this packet;

NTUA attempts to not compensate for consent and is successful in most instances. Larger companies are coming in setting up Towers and compensating for consent at a high dollar. In return, this is causing other grazing permittee's to ask for compensation from NTUA and they are requesting extraordinary amounts and/or services which result in NTUA having to find alternate locations.

This one-time payment of \$1000 dollars is not a cap on the amount grazing permittees can ask for, but rather the floor of the amount. There is no definite method of obtaining consent absent adopting regulations that bypass field clearance consent for the purposes of allowing NTUA to develop telecommunication infrastructure to serve public safety interests, promote the health and welfare of the Navajo citizenry and to successfully bridge the "digital divide," which is consistent with the purpose of the Regulations under §3(C)(D).

If this regulation stays in place, even if a grazing permittee consents to the one-time payment at \$1000 dollars, there are instances where there are multiple grazing permittee's who have a grazing interest on the proposed land and this payment made to all interested permittees is not cost effective and will be contrary to the intent of encouraging development under §3(D)(2) because of the increased costs per site.

This one-time payment will set the precedent for obtaining a grazing permittees consent in NTUA's other utilities. Consent is required for powerline lines, water lines, gas lines, wastewater, fiber, land withdrawals and other applicable right-of-ways. This is of great concern because these utilities are placed in order to serve and benefit the citizens of the Navajo Nation. When grazing permittees know that they can get *at least* \$1000 dollars for a small 50' x 50' or 100' x 100' tract they will then start withholding other applicable field consents and request for payment from NTUA, this will halt projects which promote the health and welfare of citizens of the Navajo Nation and limited progress will be made.

NTUA is requesting that grazing permittees not unreasonably withhold consent absent substantial justification and to waive any payment in order to obtain grazing permittee's consent. This will greatly speed up the process of building telecommunication infrastructure and is consistent with the purpose of the proposed Regulations.

Additional Comments/Clarification

1. The \$4000 co-location fee should not be generalized for all areas. There are areas where the location of telecommunication infrastructure operates at a loss, those areas should either be exempt or have a low fee. Populated areas with higher densities can afford the larger fee. The idea will be to have a larger fee in heavier populated areas and lesser amounts in the more rural areas to encourage development. This would serve the Regulations purpose of "encouraging the placement of Telecommunication Facilities in unserved and underserved areas of the NN."
2. As noted earlier, the NLD, NNTRC and DNR should provide a timeline for authorizations of Minor/Major Modifications and Minor/Major Replacements, obtaining permits, leases, subleases, licenses and variances. Fees and other details are clearly explained but there is no mention of the time it takes for the processing. Having no set timeline will likely delay projects and be contrary to the intent of encouraging the placement of Telecommunication Facilities in unserved and underserved areas and successfully bridge the "digital divide."
3. The Major Modifications and Replacements need a structural analysis to determine the required modifications/replacements needed to accommodate an additional tenant's co-location equipment. There is no indication that this is part of the approval process. There are different standards for maximum load of the Tower foundation. There needs to be a set of uniform standards.

In addition, what certifications will be necessary/required in order for the NLD and NNTRC to accept a structural analysis?

What safety standards will be implemented in order to determine that the modifications/replacements are within industry standards?

If NNTRC and DNR are approving these modifications and replacements, this poses the issue of liability. If NNTRC and DNR are approving modifications and replacements without a clear understanding of the required specifications in order to safely make these modifications and replacements then the approval of potentially unsafe modifications and replacements are likely to lead to liability issues because approval was given per the Regulations.

4. There will be a need for increased staff and funding to accommodate all of these requirements efficiently, how is the NLD and NNTRC preparing to adequately process the Regulations?
5. Having to obtain a variance for Towers over 150' will be time consuming and will delay projects. There are also no set guidelines of what factors are to be considered when applying for a height variance. If limited to this height it will directly affect the major purposes of these Regulations. Those being, "encouraging the placement of Telecommunication Facilities in unserved and underserved areas of the NN," successfully bridging the "digital divide", and "...to minimize the number of new Monopoles or Towers that would otherwise need to be constructed."
 - a. To reiterate, it will not be economically feasible to place Towers in remote locations due to the limitation in coverage. Less coverage equals less customers served per site and it would not be economically feasible for tenants to co-locate on Towers where it is not economically feasible for their rate of return. In addition, this height limitation will reduce the number of tenants able to co-locate and therefore reduce the rate of return for NTUA's investments.
 - b. The number of Towers would be increased due to the limitation in coverage. There would need to be at least 2 Towers built to reach the coverage of what one taller Tower is capable of. This impacts the more remote areas the most and this requirement in addition with no set standards of how to approve of these variances is of great concern.
6. NTUA places Monopoles within its right-of-ways in order to temporarily serve the area while finding and building a permanent Tower nearby. Sturdier Monopoles are required given the specifics of the area and a "Ballasted Support Structure" similar to CDMI's Lite-Site will often not satisfy the height requirement needed and will also not likely fit within the right-of-way. There needs to be the accommodation of either a "Tower" or "Traditional Support Structure" per the defined terms in the §13 Telecommunications Revocable Use Permit, in order to be consistent with the intent of the Regulations and not impede the development of telecommunication infrastructure to serve unserved and underserved areas and to bridge the "digital divide."

- a. In addition, in some instances after the data is compiled, it is more cost efficient and suitable to keep these certain Telecommunication Facilities in place rather than to build a larger Tower nearby so there needs to be an option to convert the TRUP into a NTSL.