

**BEFORE THE
NAVAJO NATION
TELECOMMUNICATIONS REGULATORY COMMISSION**

In the Matter of)	
)	
Navajo Nation 911 Service and Public)	No. NNTRC-12-001
Safety Answering Point (PSAP))	

**COMMENTS ON
NOTICE OF INQUIRY OF THE
THE NAVAJO TRIBAL UTILITY AUTHORITY**

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In the Matter of)
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Navajo Nation 911 Service and Public) No. NNTRC-12-001
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**COMMENTS ON
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NTUA WIRELESS, LLC**

Pursuant to the Notice of Inquiry in the Matter of Navajo Nation 911 Service and Public Safety Answering Point (PSAP) (“PSAP NOI”), which was adopted by the Navajo Nation Telecommunications Regulatory Commission (“Commission” or “NNTRC”) in this docket on November 9, 2012,¹ the Navajo Tribal Utility Authority (“NTUA”) submits these comments in the Commission’s PSAP NOI proceeding regarding the establishment of one or more PSAPs on the Navajo Nation, development and completion of an E911 or NG911 Service Plan, and implementation of E911 or NG911 services on the Navajo Nation.

I. INTRODUCTION

1. NTUA is a not-for-profit Navajo Nation enterprise, established in 1959 by the Navajo Nation Council. NTUA is charged with providing various utility services, including telecommunications and information services, to residents of the 27,000 square-mile Navajo Nation.² NTUA recognizes that the Navajo Nation and

¹ See Notice of Inquiry, *In the Matter of Navajo Nation 911 Service and Public Service Answering Point (PSAP)*, Docket No. NNTRC-12-001 (posted August 13, 2012), available at <http://nntrc.org/cms/kunde/rt/nntcorg/docs/551483956-08-31-2012-10-58-09.pdf>.

² See, e.g., 21 N.N.C. §5 (2008).

NTUA's service territory spreads across portions of the States of Arizona, New Mexico, and Utah. NTUA has successfully been operating as a utility within this service territory for over fifty-three years and has continued to expand service to the residents of the Navajo Nation during that time. NTUA, having such successful operations during that period, offers a valuable perspective on any consideration of new public services on the Navajo Nation, including 911-related services.

2. Moreover, NTUA also offers its perspective as the owner, builder and future operator of an extensive, high-speed middle-mile broadband network that will be completed in the coming months ("NTUA Middle-Mile Broadband Project"), which will provide high-speed broadband services and wireless access across the majority of the Navajo Nation. Given NTUA's role as a multi-utility provider and as the owner/operator of the NTUA Middle-Mile Broadband Project, NTUA believes that any ultimate deployment of an E911 or NG911 system on the Navajo Nation will likely involve in some form the use of the NTUA Middle-Mile Broadband Project infrastructure. Among other things, NTUA makes clear in these Comments that, in the event that NTUA provides service in any eventual E911 or NG911 solution that is developed for the Navajo Nation, NTUA anticipates being obligated to charge either the Navajo Nation government or customers for such service and maintenance of such service.

3. Finally, NTUA notes that a critical development that will strengthen the ability to provide 911-related services on a cost effective basis is for the Federal Communications Commission ("FCC") to grant the status of Eligible Telecommunications Carrier ("ETC") to NTUA Wireless, LLC ("NTUA Wireless"), which is majority-owned by NTUA. Achieving ETC status from the FCC will qualify

NTUA Wireless for certain federal funding programs through the Universal Services Fund (“USF”) and allow NTUA Wireless to deploy its wireless services throughout the Navajo Nation and contribute to funding the operations of the NTUA Middle-Mile Broadband Project as a customer that pays for using the assets of the NTUA Middle-Mile Broadband Project.

II. THE NTUA MIDDLE MILE BROADBAND PROJECT

4. On March 1, 2010, NTUA was awarded a grant from the U.S. Department of Commerce’s National Telecommunications Information Administration under the Broadband Technologies Opportunities Program. Under this grant award, NTUA has completed construction on most of the NTUA Middle-Mile Broadband Project and is only months from completing construction of this significant telecommunications infrastructure, which includes but is not limited to 550 miles of fiber and 32 new microwave towers across the Navajo Nation. This infrastructure includes a middle-mile backhaul for the purpose of allowing increased connectivity within the Navajo Nation for the benefit of both middle-mile customers and last-mile customers (*e.g.*, residents of the Navajo Nation). NTUA notes that this grant did not provide for any provision of funds to serve either an E911 or NG911 solution.

5. NTUA has a subrecipient under the grant, NTUA Wireless, which is a joint venture between NTUA and Commnet Wireless LLC (“Commnet”). NTUA Wireless is majority owned by NTUA and is jointly managed by Commnet and NTUA. As a subrecipient, NTUA Wireless’ role under the grant is to implement last mile connectivity services for the residents of the Navajo Nation. NTUA Wireless is accomplishing this by installing LTE equipment, providing netbooks for schools and

creating a retail wireless and broadband business for the benefit of the residents of the Navajo Nation. As described more fully below, NTUA must operate the Middle-Mile Broadband Project, which is being funded in large part by the federal grant, in a non-discriminatory fashion that charges customers for services.

III. FUNDING AND ESTABLISHING A PUBLIC SAFETY ANSWERING POINT AND E911 OR NG911 SERVICE ON THE NAVAJO NATION

A. Funding the PSAP and 911 Services is the Fundamental Challenge

6. As noted in the PSAP NOI, perhaps the most fundamental question related to establishing a PSAP and related E911 or NG911 services is how such services will be funded. *See* PSAP NOI at p. 20. The NNTRC and the Navajo Nation generally should pursue multiple areas of state and federal funding that can provide funding to cover as many costs as possible related to establishing a PSAP and E911 or NG911 service.

7. For example, one source of potential funding would come from the states. As the PSAP NOI notes, “[i]n order to ... receive state funding from Arizona and New Mexico for such services, the Navajo Nation must develop a Service Plan which meets those states’ requirements.” PSAP NOI at p. 11. Because state funding is made conditional on meeting certain Service Plan requirements, the NNTRC should make every effort to understand the Service Plan requirements and craft a Navajo Nation Service Plan that conforms to such requirements, to the extent possible, in order to qualify for and access state sources of emergency response funding.

8. NTUA also notes in this context the importance of the FCC's approval of NTUA Wireless' pending ETC application.³ Although the federal funding that will become available to NTUA Wireless as a consequence of receiving ETC status will not directly fund 911-related services, approval of NTUA Wireless' ETC application will undoubtedly lead to more efficient and effective emergency response outcomes on the Navajo Nation. For one, USF funding will allow NTUA Wireless to deploy its wireless services more quickly and extensively to the residents of the Navajo Nation, increasing the availability of mobile phones to the residents of the Navajo Nation. This, in turn, will increase the ability of Navajo residents to report emergencies. Moreover, funding made available to NTUA Wireless through the USF fund will allow NTUA Wireless to be a significant customer of the NTUA Middle-Mile Broadband Project, helping fund continued investment in the infrastructure, which will benefit all customers of the NTUA Middle-Mile Broadband Project including any emergency services applications. Because of the importance in gaining ETC status, NTUA encourages swift action by the FCC to grant NTUA Wireless ETC status.

9. Notwithstanding the potential sources of state and federal assistance to provide E911 or NG911 services, the NNTRC must establish a secure source to fund such public safety services, which presumably requires the ability to assess a mandatory surcharge or tax to customers. *See* PSAP NOI at pp. 20-22. Such a model to allow telecommunications providers to collect a tax on customers to cover the costs of

³ *See Petition of NTUA WIRELESS, LLC for Designation as an Eligible Telecommunications Carrier Pursuant to Section 214(e)(6) of the Communications Act of 1934, as Amended on the Navajo Nation*, WC Docket No. 09-197 (filed March 3, 2011; Correction to Petition filed Aug. 18, 2011; Amendment to Petition filed on Sept. 4, 2012).

providing such emergency services is common in other states.⁴ If other sources of funding are sufficient to cover the costs of paying for a PSAP and providing E911 or NG911 services, collecting a surcharge from customers would be unnecessary. However, the NNTRC must consider implementing a customer surcharge or tax that can ensure funding for the costs of providing E911 or NG911 services.

10. NTUA does not take a position at this time with regard to the basis that the potential surcharge or tax is applied and how often it is updated. *See id.* at p. 21. With regard to the question of which aspects of PSAPs and 911 services that should be fundable under the 911 surcharge or tax, NTUA believes that any and all costs or services provided that are attributable to establishing and administering the PSAPs and 911 services should qualify. *See id.* at p. 22.

B. NTUA Encourages the Establishment of a PSAP and other 911 Services

11. NTUA concurs with the NNTRC's description and findings in the PSAP NOI of the critical need for E911 or NG911 services on the Navajo Nation, and NTUA anticipates playing a role in helping solve these needs. The NNTRC summarizes the current state of emergency response services on the Navajo Nation by explaining that "[t]he Navajo Nation does not have even Basic 911 Emergency Service, let alone E911, and also does not have any operational PSAPs within the territorial jurisdiction of the Navajo Nation." PSAP NOI at p. 7. The PSAP NOI also notes that "[o]ver the past decades, the Nation has made at least two concerted yet so far unsuccessful efforts to implement 911 services on the Navajo Nation." *Id.* at p. 10.

⁴ *See, e.g.*, Utah Code § 69-2-5.

12. As a result of a directive from the Navajo Nation Council Law and Order Committee, the NNTRC now seeks comment in this NOI “in order to facilitate the effective implementation of oversight, funding, construction, development and administration of one or more PSAPS on the Navajo Nation, and their associated Service Plans.” *Id.* at p. 15. NTUA supports the NNTRC’s effort to establish one or more PSAPs and develop 911-related services on the Navajo Nation.

C. To the Extent that NTUA Provides Emergency Response Services, It Must Be Compensated for Such Service

13. Although the NTUA Middle-Mile Broadband Project infrastructure is able to provide flexible, robust services, which may potentially play a role in the future E911 or NG911 services developed by NNTRC for the Navajo Nation, NTUA reminds NNTRC that the cost of using the NTUA Middle-Mile Broadband Project should be included in developing the cost model for such E911 or NG911 services. The NTUA Middle-Mile Broadband Project was funded in part through a federal grant, as well as through millions of dollars in matching funds committed by NTUA in order to construct and operate the broadband network infrastructure. As such, NTUA is obligated both by the terms of the federal grant, as well as by internal policy, to recover the costs of the NTUA Middle-Mile Broadband Project, and consequently NTUA has set rates and charges for the provision of services.

14. As a condition to the Broadband Technologies Opportunities Program grant to construct and operate the NTUA Middle-Mile Broadband Project, NTUA and NTUA Wireless must act in a non-discriminatory fashion with regard to the provision of services, including colocation and other services under the middle-mile infrastructure. Charges for using the NTUA Middle-Mile Broadband Project apply to all,

and as part of this non-discrimination principle, NTUA applies the charges to those receiving service even-handedly.

IV. ADMINISTRATION OF THE PSAPS AND 911 SYSTEM

15. The NNTRC poses several other questions in the PSAP NOI related to the administration of the PSAPs and 911 system on the Navajo Nation. *See* PSAP NOI at pp. 17-19, 23-31. NTUA notes that the NNTRC is considering outsourcing certain operations or portions of operations related to PSAPs and with regard to management of the Master Street Addressing Guide. *See id.* at p. 23. NTUA takes no position on these questions at this time, but notes that the determination of these questions could implicate the interests of NTUA. In response to another question, and as is apparent from the Comments expressed herein, NTUA is undoubtedly a stakeholder in this process and any eventual Service Plan resulting from it. *See id.* at p. 25.

16. With regard to managing confidential information, the PSAP NOI questions what information from stakeholders should be shared and what information should be maintained as confidential. In the commercial context, the NNTRC should deem as business sensitive and maintain as confidential any information that could result in competitive disadvantage to the business and economic harm if that information were disclosed or otherwise made available to others. The NNTRC should provide a process by which the entity submitting confidential information may mark or designate the information as confidential, and the Commission should not release information that is marked as confidential without first consulting with the submitter, and without first affording the submitter the opportunity to seek relief in the Tribal courts.

V. CONCLUSION

NTUA appreciates this opportunity to comment on the Commission's recent PSAP NOI, and NTUA supports the efforts of the Commission to establish one or more PSAPs on the Navajo Nation, develop an E911 or NG911 Service Plan, and implement E911 or NG911 services on the Navajo Nation, as explained herein.

Respectfully submitted,

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