

## Comment Summary and Response Document – May 11, 2017

The Navajo Nation Department of Natural Resources, Land Department and Telecommunications Regulatory Commission appreciate the time the four telecommunications companies took to read and respond to the comments within the time requested. The comments were reviewed and considered, and this document compiles all of the comments that were received. Most companies picked up typos in this document. All the typos were noted and changed in the regulations, and will not be listed in this document, unless they were substantive. Because some companies offered duplicative comments, this document goes through the regulations section by section, addressing each section, naming the company that made the suggested change.

Some comments that were repeated by multiple companies, and by multiple times by one company are noted by one overall comment in the beginning and will be referred back to in the document.

### **GENERAL COMMENTS**

**COMMENT 1:** Sacred Wind Communications believes these regulations are a good step toward establishing certainty and expectation of carriers wishing to do business on the Nation. They further suggest that the Nation is open to changing the regulations and may grant exceptions when necessary to effectuate the purpose of the regulations. Additionally, Sacred Wind believes that the lack of regulation has been an impediment and created disincentive to development of telecommunications facilities on tribal land.

*Response:* Thank you for your comment. The Nation is considering the public comments and adjusting the regulations to make the requirements make sense; while at the same time, the Nation cannot please everyone.

**COMMENT 2:** Century Link states that these regulations add further regulation to an already over-regulated industry; this increases business cost and decreases entrepreneurial incentive.

*Response:* The General Leasing Act of 2013 requires the Navajo Nation to establish regulations for all land leases on the Navajo Nation. Since there are no implementing regulations for Telecommunications, and there is a need to put in place leasing regulations, Division of Natural Resources and Telecommunications Regulatory Commission decided to work together to create one document to reduce the burden and confusion on the Nation. There has also been much clamor from other companies within the industry to have regulations so that the companies may know exactly what to expect from the Nation. Without regulations in place, the Nation must rely on a number of different Resolutions passed by Council, which adds to the confusion of telecommunications procedures, processes, and cost. Currently, the Navajo Nation must submit every lease to the Bureau of Indian Affairs (BIA) for approval. Until such time that the Nation passes its own regulations, there is, was, and always has been an extra period of time ranging from months to years before the BIA approves a lease. Putting these regulations in place will shorten the time it will take for a lease to be approved.

**COMMENT 3:** Century Link states that there is some concern regarding the Navajo Nation's ability to regulate telecommunication carriers on their own land.

The following authorities, without further explanation, are cited.

- *Montana v. United States*, 450 U.S. 544 (1981);
- Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier for the Pine Ridge Reservation in South Dakota;
- Federal-State Joint Board on Universal Service, Memorandum Opinion and Order; cc Docket No. 96-45, FCC 01-284 (rel. Oct. 5, 2001); and
- Petition of the People of the State of California, 10 FCC Rcd. 7486, 7550 (1995).

Response: For a full and complete response, please see NNTRC-11-001, which addresses many of the cases cited by Century Link. In the interest of brevity, the Nation disputes these allegations, and submits the following:

*Montana* clearly supports tribal jurisdiction and states the following: "To be sure, Indian tribes retain inherent sovereign power to exercise some forms of civil jurisdiction over non-Indians on their reservations, even on non-Indian fee lands. A tribe may regulate ... the activities of nonmembers who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements." Further, pursuant to 25 U.S.C. 415(e) and the subsequent adoption of the General Leasing Regulations, signed by the Assistant Secretary in May 2014, the Nation does have the authority to lease its own lands to outsiders. The Nation is not a free-for-all where companies can come onto Navajo land at no cost and put up whatever structure they want wherever they want. It would be akin to having a Navajo sheep herder choosing to graze their sheep in the backyards of Century Link's employees without their permission.

Century Link's reliance on *Western Wireless* is misplaced. In this matter, the FCC was faced with the problem of designating a common carrier as an "eligible telecommunication carrier" (ETC). Common carriers that are designated as ETCs qualify to receive certain federal funding particularly the universal service support. In *Western Wireless*, the FCC found that the State Commission has primary authority to designate ETCs pursuant to §214(e)(2). In these regulations, the Nation is not attempting to regulate ETCs.

The FCC reaffirmed the Commission's commitment to promoting a government-to-government relationship between the FCC and federally recognized Indian tribes by adopting the *Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes*, 16 FCC Rcd 4078 (2000) ("Tribal Policy Statement").

The Telecommunications Regulations have morphed into a document that sets out requirements for leasing by the Division of Natural Resources as well as the requirement for what information is required so the NNTRC can keep track of what kind of equipment is deployed on the Nation. The Nation is not attempting to, nor is it in the position of, taking over regulatory matters of the federal government or the states.

**COMMENT 4:** Sacred Wind asserts that while it is important to have uniformity, it is also important for the Nation to understand that since this is a rural area, an array of alternative technologies are needed in order to reach the diverse clients located within the Nation.

*Response:* We agree and understand. The regulations have been drafted, to the maximum extent possible, to be technology neutral.

**COMMENT 5:** NTUA asserts the \$4000 co-location fee should not be generalized for all areas, because some areas operate at a loss. NTUA suggests have a scaled fee based on population. The lower cost in rural areas will encourage development.

*Response:* Co-location is a flat fee. It is \$2,000 from the co-locator.

**COMMENT 6:** AT&T and NTUA would like to see timelines imposed.

*Response:* The accuracy of documents determines the amount of time it takes to process. An error free packet will take less time. The 164-review process is now streamlined by an electronic review system, as is the tower lease application process, if carriers comply. Since all of the reviewers for the initial leasing process will have access to the documents after the initial review for completeness, the process will be streamlined. Since the Land Department, GLDD and NNTRC do not have the ability to force reviewers

**COMMENT 7:** NTUA asks if there will be a need for increased staff and funding to effectively incorporate all of these changes?

*Response:* No, due to the changes with the electronic changes.

**COMMENT 8:** NTUA Wireless (NTUAW), majority owned by NTUA and partnered with Commnet, commented that the structure of the regulations would essentially hamstring further development on the Nation. Because of the varying geography of the Nation, where some areas such as Shiprock are densely populated and have a lot of use, they will have more justification for the higher capital expenditure. The central planning approach telling tower operators the types that can be constructed in any geographic area with a "one-size-fits all approach" will not allow "incentives" for service in remote areas. The tower owner no longer has the ability to decide the type of tower because the regulations require maximum capacity, maximum size tower, or build nothing at all; because typically, the tower operator makes this decision based on what the potential carrier is willing to pay for the location and designs the tower based on likelihood of possible future tenants.

*Response:* The regulations do not require maximum anything. There are many opportunities throughout the regulations that permit different types of technology.

**COMMENT 9:** Frontier and its subsidiary Navajo Communications Company (NCC) begin their comments by making an argument that they are exempt from paying for any type of business on the Navajo Nation, and complains that they are not in good standing with Business Regulatory Department due to the dispute.

*Response:* First of all, Frontier makes an argument about a contract that was entered into over 40 years ago for specific wireline telephone-only assets that barely resembles the 21<sup>st</sup> Century networks being deployed on Navajo today. Frontier's argument ignores federal law regarding

Rights-of-Ways, Navajo Law, and law interpreted by the US Supreme Court. To be brief, the Supreme Court of the United States has made it very clear that Frontier's argument would easily fail in a court, as was pointed out to them in paragraph 23 of the CCN Second Report and Order. The 9th Circuit concluded that the right to regulate the activities of non-Indians can apply even if the non-Indian commenced its activities prior to the Tribe adopting regulations. *Babbitt Ford, Inc. v. Navajo Indian Tribe*, 710 F.2d 587, 592 (9th Cir. 1983), cert denied, 446 U.S. 926 (1984). That statement of the law was settled by the Supreme Court in 1982: "The Court made clear that the mere existence of a 'lawful property right to be on Indian land' does not immunize the non-Indian from the tribe's power 'to place other conditions on the non-Indian's conduct or continued presence on the reservation.' *Merrion v. Jicaila Apache Tribe*, 455 U.S. at 144-45 (1982), Those entering the tribe's jurisdiction remain 'subject to the risk that the tribe will later exercise its sovereign power.'" *Id.* at 145.

Frontier's ability to conduct business on the Navajo Nation will continue to be jeopardy so long as it refuses to comply with the basic requirements to do business on the Navajo Nation as set forth by the Navajo Nation Business Regulatory Department, including paying the required fees to be a business in good standing.

**COMMENT 10:** Frontier states that NNTRC is attempting to take over leasing authority and asserts that the drafters of the regulations are not addressing all of Navajo law, by stating that Minerals Department has authorities that are not addressed in these regulations. Frontier further indicates that NNTRC is acting unilaterally.

*Response:* Frontier has a fundamental misunderstanding of the interplay between federal and Navajo law. Laws have been cited in the Regulations, such as the General Leasing Regulations which were passed and approved in 2014 by the Assistant Secretary of the Department of the Interior, as well as the corresponding federal laws, such as 25 U.S.C. 415(e). Because the Navajo Nation Code has not been updated in print form since 2009, one can access the entire Navajo Nation Code and its updates on the Navajo Nation Council website. CO-53-13, which includes the General Leasing Regulations to be included in Title 16, which state in the first line: "Except for Mineral Leases, the Navajo Nation Trust Land Leasing Act of 2000, 25 U.S.C. §415(e) . . . authorizes the Navajo Nation to issue leases without the approval of the Secretary of the Interior." The Minerals Department was not included in the Telecommunications Regulations simply because they do not have anything to do with the leasing of telecommunications towers on the Navajo Nation. Further, as to the assumption that NNTRC is acting unilaterally to lease land on the Nation, it is very clear in the original regulations and the updated regulations that NNTRC is responsible for that which it has jurisdiction over, and Land Department and GLDD do the administrative procedure for the leasing process with final sign off authority resting with DNR, whereas previously, Resources and Development Committee of the Navajo Nation Council had final approval authority previously.

Although NCC is not the only company that fails to follow federal and Navajo Nation law, and is putting itself in jeopardy of being excluded from the Nation, the point of these regulations is to ensure the telecommunications carriers have a clear picture of what they need to do to comply with the rules on the Navajo Nation on a going-forward basis.

**COMMENT 11:** Frontier indicates that the 164 Review process is burdensome because of the 9 different government offices that need to review.

*Response:* Neither DNR nor NNTRC have authority to alter the 164 Review process. DNR and NNTRC are only dealing with the offices in which they have control over. If one office sees the lease document twice, the second time the lease is at an office for review is not for content, but to ensure that the required document or approval was done the first time the office reviewed.

**COMMENT 12:** Frontier states the fee structure is confusing and duplicative, and sites to Project Review fees as well as application fees imposed by “NNTRC.”

*Response:* As stated above, NNTRC is not the only agency promulgating these regulations. Although we are using NNTRC to distribute these comments, Division of Natural Resources and its Departments of General Land Development Department (GLDD) and the Land Department were instrumental in crafting these regulations, and a close reading of the regulations reveals that Land, GLDD, and DNR all have varying levels of review, administrative process, and approval authority separate and apart from NNTRC. NNTRC cannot approve these regulations because it deals with authorities of the Division of Natural Resources, so the Resources and Development Committee of the Navajo Nation Council, the oversight committee for both NNTRC and DNR, will be reviewing and approving these regulations. Further, when GLDD was established, it essentially took over the function of Project Review. See RDCO-80-16.

**COMMENT 13:** Frontier indicates that it is not fair to permit NTUA to have a “free ride” while the remaining competitors have to pay lease rates and application fees and wishes for a neutral landscape.

*Response:* This is an internal issue that is being addressed. It is the hope of the regulatory agencies for a neutral landscape, but questions why Frontier, with its continued non-payment, is raising this issue.

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## COMMENTS TO SPECIFIC SECTIONS

### §2. Authority and Delegation

**All previous delegations for telecommunications leasing authority to the Navajo Land Department, Navajo Nation Division of Natural Resources, are hereby rescinded.**

**COMMENT 14:** Verizon is wondering if this creates a conflict with the current lease agreements, which were negotiated in 2014 and 2015.

*Response:* This does not create a conflict. Going forward, these regulations apply to all new leases and any renewals. The leases that were recently negotiated under the prior resolutions, if they have been signed by the Navajo Nation, do not have to be redone. Leases or documents entered into prior to January 1, 2014 are now invalid and must be redone at §7(A). Those leases entered after that date will comply with these regulations. After the renewal period expires, the new lease will have

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### §3. Purpose

**(D)(3) Categorical exclusions may include subleases, co-location licenses, COWs or ballasted structures on already disturbed land for which an environmental review has been conducted at the discretion of the environmental reviewers.**

**COMMENT 15:** Verizon suggests that COWs be deleted, and states that the majority of the time, with a COW, there is no ground disturbance, so environmental due diligence is not warranted.

*Response:* This language has been modified. If a COW is placed on already disturbed or impacted land, there is no need for an environmental compliance. Further, pursuant to the Navajo Nation General Leasing Regulations, the only documents that are needed are Cultural Resources Compliance Form and Biological Resources Compliance Form from Navajo Nation Division of Natural Resources. No traditional Environmental Impact Statement or Environmental Assessment is needed because there is no federal action.

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#### **§4. Scope and Applicability**

**(B) Antennae used by a Single Residence solely for broadcast radio and television reception;**

**COMMENT 16:** Smith Bagley, Inc. (SBI) suggests to simplify to remove specific exclusions. Suggested language is: Antennae used by a single residence solely for personal communications.

*Response:* Thank you for your comment. See the response to Comment 12 below.

**COMMENT 17:** Sacred Wind states that fixed wireless equipment for a single residence is excluded, but necessary.

*Response:* The Nation will utilize the change suggested by SBI, and will not list the specific communications devices.

**COMMENT 18:** Sacred Wind indicates that Section 106 of the National Historic Preservation Act (16 U.S.C. 470) permits COWs to be utilized for 24 months while archaeological surveys are being conducted.

*Response:* This section of the regulations addresses emergency situations; regular COW use is addressed later in the regulations. We will not exempt COWs for purposes other than emergency situations.

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#### **§5. Requirement for Open-Access Architecture**

*This is now §6*

**(A) To ensure that the placement, construction, and modification of Telecommunications Facilities and Traditional Support Structures are consistent with the Navajo Nation’s land use policies . . .**

**COMMENT 19:** SBI suggests §5(A) read: “To ensure that the placement, construction, and modification of Telecommunications Facilities and Traditional Support Structures are consistent with the Navajo Nation’s land use policies, zoning, planning, and design standards, protective of the health, safety, welfare, aesthetic character, and traditional cultural values of the Navajo Nation, and supportive of the expansion of telecommunications services to bridge the “digital divide” on the Navajo Nation, all Traditional Support Structures shall be non-discriminatively made available for

subleasing to at least three other tenants/telecommunications providers at commercially reasonable rates where such Traditional Support structures are physically capable of supporting such co-location. Notwithstanding the foregoing, Traditional Support Structure owners are permitted to require that any current or future tenants comply with industry standard interference requirements and standards, and under certain circumstances, may deny a potential tenant access to its Tower if the potential tenant cannot install equipment that will not unreasonably interfere with the Traditional Support Structure owner's, or other current tenant's, wireless telecommunications equipment. The NNTRC will hear any complaints that owners of Traditional Support Structures are denying access to or demanding unreasonable rates for subleasing and will take appropriate actions as authorized under the Telecommunications Act.”

*Response:* The Tower owner has control over who can and cannot co-locate on their towers. However, the Nation encourages and supports co-locations.

**(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. The compound area surrounding the support structure must be capable of being expanded to sufficient size to accommodate Accessory Equipment for at least three additional tenants.**

**COMMENT 20:** Verizon states that it is difficult to achieve four carriers on one tower that is limited to 150 feet, and asks if it is possible to reduce three additional co-locations to two. Verizon also suggests that it may be best for the co-locators lease their own space and not have the building carrier determine the future needs of the co-locator.

*Response:* The regulations have been changed and it is the tower owner’s responsibility to determine the best height needed.

**COMMENT 21:** Sacred Wind’s tower sites are not high in demand for co-locations, so imposing the design requirements to support 3 additional co-locations require a right-of-way and are going beyond their current engineering needs. This would add cost and delay service.

*Response:* The tower owner can choose what type of structure and how many co-locations they have on their towers.

**COMMENT 22:** SBI states that Traditional Support Structures are not all always built to accommodate three additional tenants. The suggested modification in language is as follows:

“All newly constructed or existing Traditional Support Structures modified as part of a Major Replacement shall be designed to accommodate the maximum number of additional tenants as follows:

- (a) 100-150 foot towers: minimum of two (2) additional tenants.
- (b) 150-200 foot towers: minimum of three (3) additional tenants.
- (c) Upon request of the Applicant, the NNTRC may waive the requirement that newly constructed or existing Traditional Support Structures modified as part of a Major Replacement to accommodate the collocation of other service providers if it finds that collocation at the site is not feasible under the particular circumstances, or is essential to the public interest, or that

the construction of a shorter structure with fewer antennas will promote community compatibility.

*Response:* We have changed the regulations.

**COMMENT 23:** Frontier states that new equipment should not be built or modified to be required to have additional use unless the other users pay toward construction.

*Response:* The regulations have changed regarding this requirement.

**COMMENT 24:** NTUA: Most of the NTUA towers are 180 feet tall, which could accommodate 3 additional tenants. If a Traditional Support Structure is limited to 150 feet (as §20(A) requires), this would compromise the safety and structural integrity of the structure. Doing a Major Replacement on a Traditional Support structure is done by NTUA on a case-by-case basis when it reaches 85% load. Tenants to the tower pay the cost required to co-locate. If a Major Replacement needs to be done to accommodate one additional tenant, it would not be economically feasible for the new tenant or the tower owner. Major replacements to accommodate additional tenants should be assessed on a case-by-case basis as opposed to forcing tower owners to be required to accommodate additional tenants. Further, having to obtain a variance will be time consuming and delay projects. There are no set guidelines for obtaining a height variance.

*Response:* The regulations have been changed.

**COMMENT 25:** NTUAW states that this section will delay service to remote areas and is contrary to the residents of these areas, and is also contrary to the stated purpose in §3(D)(2). NTUAW believes that this section is to extend service to remote areas; however, areas not already having much service have much less revenue potential. This would be difficult to bring more service to more remote areas because of a cost-benefit analysis that must be conducted. Rent is a major operating expense; as well as the construction of a larger tower without any assurance of having multiple tenants immediately. If they do have tenants, more rent will need to be charged to cover the capital cost. NTUA is typically the lessor for NTUAW, and it is going to be more expensive for NTUA to build and NTUAW to become a co-tenant. There is generally limited demand for service in rural areas, and there will be a lot of risk and no upside from being the first to construct in an area. Higher operating costs gives the tower operator no assurance of sufficient revenue to cover the costs, and no potential upside if demand is greater than anticipated. Because of this, a carrier will decide not to extend its service in the newer area in the first place, whereas they may have if these regulations as written were not in place.

*Response:* The regulations have changed.

**(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.**

**COMMENT 26:** NTUA believes that this will delay projects because there is no timeline for NNTRC to hold a hearing. NTUA requests definite timelines.

*Response:* The regulations have changed.

**COMMENT 27:** SBI suggests the following addition to §5(D): The NNTRC must issue a written decision granting or denying the waiver request within ninety (90) days of the submission of the initial waiver application unless:

(a) NNTRC notified applicant that its application was incomplete within thirty (30) days of filing. If so, the remaining time from the ninety (90) day total review time is suspended until the Applicant provides the missing information; or

(b) Extension of time is agreed to by the Applicant.

(c) The NNTRC notifies the applicant that it needs an additional ninety (90) days to render a decision. An application still pending after the second ninety (90) day period is deemed approved.

*Response:* The regulations have changed.

**COMMENT 28:** NTUAW states that this section will not remedy the problem, because there are no rules as to how the Commission would process a waiver request, or how long it would take. However, it would need to go through the notice and comment period, to include drafting a written decision. NTUAW expects that this process will take many months. Further, other carriers would know about the proposal, since this would be a public process, which causes a problem for NTUAW because they do not pre-announce the specifics of their upcoming capital projects to their competitors. The carrier taking the risk wants to have a head start that is permitted by not putting out their project publicly prior to construction. This could have adverse economic effects.

*Response:* The regulations have changed.

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**§6. Telecommunication Leasing, Permitting and Licensing Procedures**  
*This is now §7 and is Telecommunication Leasing and Permitting Procedures*

**(A) Transfer to Leases**

**All current Rights-of-Way, Permits, and any other instrument (other than leases) used for Traditional Support Structures must be transferred to leases upon their expiration, unless otherwise provided by law or pre-existing agreement to which the Nation was a party.**

**COMMENT 29:** Verizon suggests to rephrase this section so it reads: “and any (other instrument other than leases).”

*Response:* Thank you for your suggestion.

**COMMENT 30:** Verizon states that this section is inconsistent with Section 2, because it said these leases are not valid.

*Response:* Section 2 states that the previous delegations to Land Department or President are invalid. There is a new section in the Regulations that permit leases entered into before the Regulations took effect to be valid.

**COMMENT 31:** Frontier suggests that NCC would be burdened financially to change the existing documentation to leases from whatever instruments they already have.

*Response:* The regulations are being drafted in order to harmonize the legal documents and proper legal basis for building and operating on Navajo lands that has not been consistent in the past. Attempts have been made to minimize the disruption and cost of making these changes.

## **(B) Modifications**

**COMMENT 32:** NTUA is concerned this could delay projects if there is no timeline in place.

*Response:* The accuracy of documents determines the amount of time it takes to process. An error free packet will take less time. The 164 review process is currently being streamlined. Offices besides the Land Office and Telecommunication Regulatory Commission are involved in that process and cannot be affected by these regulations.

**COMMENT 33:** Sacred Wind discusses the price of the tower.

*Response:* This comment is misplaced in this section and will be addressed later in this document.

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### **§7. Minor Modifications and Minor Replacements**

*This is now § 11 and is consolidated into “Modifications and 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.**

**COMMENT 34:** NTUA believes this requirement will delay projects and increase costs and is contrary to the purpose of the Regulations to promote more reliable access. If this requirement is in place, NTUA wishes to have a timeline to process these documents.

*Response:* The regulations have changed.

**(B) Subleases on Traditional Support Structures approved under these Regulations are not considered Minor Modifications or Minor Replacements subject to separate authorization by DNR under this Section.**

**COMMENT 35:** SBI suggests clarification by adding language to read:

Subleases on Traditional Support Structures approved under these Regulations are not considered Minor Modifications or Minor Replacements and do not require DNR authorization.

*Response:* The regulations have changed.

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### **§8. Major Modifications and Major Replacements**

*This is now § 11 and is consolidated into “Modifications and Replacements”*

**COMMENT 36:** NTUA suggests that a structural analysis needs to be done to determine the required modifications and replacements needed. There is also no indication that this is part of the approval process. There are different standards for maximum load of the tower foundation, and there should be a set of uniform standards. Certifications need to be specified. Safety standards need to be implemented. Approval of these standards

imposes liability on the Nation.

*Response:* The Regulations have changed.

**(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.**

**COMMENT 37:** NTUA believes this will delay projects and increase costs and is contrary to the purpose of the Regulations. NTUA again wishes to have a timeline in which these documents will be processed.

*Response:* The regulations have changed.

**(B) Subleases on Traditional Support Structures approved under these Regulations are not considered Minor Modifications or Minor Replacements subject to a Major Modification Permit.**

**COMMENT 38:** Verizon pointed out the typo in this section. Both instances where “minor” is stated in this paragraph should be replaced with “major.”

*Response:* The regulations have changed.

**COMMENT 39:** SBI suggests clarification by adding language so it reads: Subleases on Traditional Support Structures approved under these Regulations are not considered Minor Modifications or Minor Replacements and do not require DNR authorization.

*Response:* The regulations have changed.

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**§ 9. New Telecommunications Tower Site Lease**  
*This is now §8 and is “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.**

**COMMENT 40:** NTUA highlights the words “is required to obtain a NTSL” and asks if the most recent Telecommunications Tower Site Lease approved by DOJ and DNR in April of 2015 will have substantial changes or if it will be renamed as an NTSL?

*Response:* To clarify, any leases that have been negotiated and signed between 2014 to 2016 will not require obtaining a new lease.

**(B) The term of a NTSL shall be 20 years and shall be renewable pursuant to §11 of these regulations.**

**COMMENT 41:** SBI suggests the lease language be modified to show shorter, renewable terms so as to reduce the long-term liability on a company’s balance sheet. The following language is suggested:

The Initial Term of a Lease shall be for Five (5) years, and shall commence on the Commencement Date, which shall begin the sooner of:

(1) ninety (90) days following mutual execution of a NTSL, or

(2) when Lessee begins occupancy at a Leased Site. Occupancy shall occur when Lessee begins to place any of its equipment at a Leased Site. Lessee is granted the option to extend the Initial Term of a Lease for Three (3) additional periods of Five (5) years each ("Extended Term") provided Lessee has materially abided by the terms and conditions of the Lease and is not in default. If Lessee should decide to exercise Lessee's option to extend, Lessee shall give written notice to Lessor of its intention to extend during the last three (3) months of the Initial Term or any extension thereof, as the case may be, but in no event shall such notice be less than thirty (30) days prior to the expiration of any such term.

*Response:* The regulations have been changed for a five year lease with unlimited renewals every five years.

**(C) The DNR does not have jurisdiction to enter into leases on allotments; however a permit must be obtained by NNTRC.**

**COMMENT 42:** SBI indicates that this is an ambiguous provision; it does not address NNTRC permit. Suggested language is as follows:

The DNR does not have jurisdiction to enter into leases on allotments. The NNTRC shall issue permits under this Section 9 for all tower sites located on allotments. The Initial Term of a permit shall be five (5) years with two automatic five (5) year extension options. If Lessee decides not to extend the permit beyond the Initial Term it shall provide ninety (90) days written notice to the NNTRC of its intent not to renew.

*Response:* The regulations have been changed to require notification only.

**(D) The NTSL shall include the right to ingress and egress. If the ingress and egress is off of a public road, no additional right-of-way is needed. If ingress and egress needs to be developed by the company, the right-of-way needs to be incorporated into the NTSL.**

**COMMENT 43:** SBI indicates that there should be more clarity regarding whether power lines are included should be added:

The NTSL shall include the right to ingress and egress and power line extensions. If the ingress and egress, and power line extension is off a public road, no additional right-of-way is needed. If ingress and egress, and power line extensions needs to be developed by the company, the right-of-way needs to be incorporated into the NTSL.

*Response:* If the ingress and egress is over an already existing road, the right of ingress and egress is included. However, the BIA currently administers Rights of Way. All Rights of Way, to include power line extensions that do not fall under Service Line Agreements, would need to go through the ROW process and approved by the BIA. A lease must be entered into before requesting an SLA from NTUA.

## **§10. Existing Site Telecommunications Tower Site Lease**

*This section has been removed but please refer to §8. “Telecommunication 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.**

**COMMENT 44:** NTUA asks how this lease will differ from NTSL.

*Response:* The Regulations have changed to eliminate this provision.

**COMMENT 45:** Verizon would like confirmation that the leases that have already been entered into are not affected by these regulations.

*Response:* After January 1, 2014, the leases will not be affected. All instruments entered prior to that date will have to be redone.

**(B) The term of an ETSL shall be twenty years and shall be renewable.**

**COMMENT 46:** Verizon suggests adding in language at the end to make the sentence read: The term of an ETSL shall be twenty years and shall be renewable pursuant to § 11 of these Regulations.

*Response:* The Regulations have changed.

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

*This is now §10 and is termed “Lease Renewals”*

**(A) After the initial term of a new or existing site telecommunications tower site lease, Lessee has the option to renew the lease.**

**COMMENT 47:** Verizon suggests that it is not clear how this section and Section 10 go together. Is this intended to amend all existing lease to provide a 20-year option? What if an existing lease is in the 2nd of 4 terms, does the 20-year term kick in after the 4th renewal, or does this section not apply? Or, is this section intended to apply to site leases later entered into, and all currently existing leases remain as they are?

*Response:* The Regulations have changed.

**(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.**

**COMMENT 48:** Verizon suggests changing the second sentence to read: “During the renewal term, the annual rental shall be adjusted every five years....”

*Response:* The Regulations have changed.

**COMMENT 49:** Verizon suggests that to simplify things, instead of utilizing the CPI adjustment, we instead set a standard percentage. The suggestion is to increase the rental fee 10% every five-year period.

*Response:* The Regulations have changed.

**COMMENT 50:** NTUA indicates that the language is ambiguous and clarification is needed regarding the five-year periods up to the one twenty-year term.

*Response:* The Regulations have changed.

**COMMENT 51:** NTUA also asked whether there was a more appropriate measurement to calculate price increases, and questioned if there was a rural index. Further, why the base years being used are 1982-1984.

*Response:* The Regulations have changed.

**COMMENT 52:** NTUA requests clarification regarding the annual rental is only applicable to agreements between the Lessor and Lessee and not a Co-Location.

*Response:* The Regulations have changed.

**(C) If Lessee decides to exercise the additional rental terms, Lessee shall provide written notice to Navajo Nation Land Department of its intention during the last three months of the primary term or any additional term thereof, but in no event shall such notice be less than thirty days prior to the expiration of any such term.**

**COMMENT 53:** Verizon suggests that we permit the lessee to notify the Land Department six months ahead of the lease renewal.

*Response:* This has been adopted.

**(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.**

**COMMENT 54:** Verizon caught another typo, pointing out the statement of the four renewals.

*Response:* The Regulations have changed.

**COMMENT 55:** SBI states that this section infers a renewal, but does not have specifics for a renewal. The comments go on to point out that the renewal is noted in subsection B shows that a renewal is for one additional twenty-year term. However, in subsection D, the language states that there is the possibility of four renewal terms, so it is unclear the amount of twenty-year terms that the lessee is permitted.

*Response:* The Regulations have changed.

*This is now called “Telecommunications Collocation Permit.”*

**COMMENT 56:** Regarding this section overall, SBI suggests a procedure for subleases and the need for a certain date by which DNR must act to avoid project delays and abandonment. SBI suggests the following language:

- The DNR must issue a written decision granting or denying the sublease request within ninety (90) days of the submission of the sublease application unless:
  - (a) DNR notified applicant that its application was incomplete within thirty (30) days of filing. If so, the remaining time from the ninety (90) day total review time is suspended until the Applicant provides the missing information; or
  - (b) Extension of time is agreed to by the Applicant.
  - (c) The DNR notifies the applicant that it needs an additional ninety (90) days to render a decision. An application still pending after the second ninety (90) day period is deemed approved.

*Response:* The Regulations have changed. Timelines are not addressed in these regulations but will be expedited with the new electronic approval systems.

**(B) The term of a Tower Sublease shall be the term of the Tower Site Lease for the Support Structure, as renewed pursuant to these Regulations.**

**COMMENT 57:** Verizon suggests the language be changed to the following: The term of a Tower Sublease shall be no greater than the remaining term of the Tower Site Lease for the Support Structure, as renewed pursuant to these Regulations, but shall otherwise be determined by Tower Site Lessee and Proposed Sublessee.

*Response:* The regulations have changed and incorporate this idea.

**COMMENT 58:** SBI believes that this subsection could interfere with negotiations between a tower owner and a co-locator, and a sub-lease could be for far less time than the lease. The following language is suggested:

- The term of a Tower Sublease shall be determined by the Lessee and the Third-Party Collocator but in no event shall a Tower Sublease exceed the term of the Tower Site Lease for the Support Structure, as renewed pursuant to these Regulations.

*Response:* The Regulations have changed and incorporate this idea.

**COMMENT 59:** Frontier is uncertain whether this applies to towers or collocations.

*Response:* This applies to collocations, and the terminology has changed in the new regulations.

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**§ 13. Telecommunications Revocable Use Permit**

*This section is now called “Temporary Telecommunications Permit.”*

**(A) Every Person seeking to temporarily place a COW, COLT, 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.**

**COMMENT 60:** NTUA requests that this section also include “Tower” or “Traditional Support Structure” because Monopoles are outside the scope of the definition of a Ballasted Support Structure. Ballasted Support structures are not tall enough to serve a location while working to place a tower nearby. A CDMI Lite-Site will not fit inside a power line right-of-way. NTUA utilizes sturdier monopoles, and these will often not satisfy the height requirement or fit inside an existing right-of-way. Also, in some instances, it is more feasible for NTUA to keep these structures in place as opposed to going through the cost and expense of building a Traditional Support Structure.

*Response:* If you have a permanent structure, whether that be a Traditional Support Structure, a Ballasted Support Structure, Monopole, or other structure, you will need to obtain a Lease. Temporary Permits are only for *temporary* sites of 90 days, with the possibility of renewing for 24 months.

**COMMENT 61:** NTUA also requests a waiver for COWs.

*Response:* There will be no waivers under these regulations.

**COMMENT 62:** NTUA also suggests that the procedure for COWs is lengthy and is going to inhibit the usage of COWs.

*Response:* The TTP is not the same document as the lease, does not take the same effort as putting together a lease, and will not take the same amount of time on either party’s end to process. There are emergency provisions if the Navajo Nation declares an emergency.

**COMMENT 63:** SBI suggests that Telecommunications Revocable Use Permit include the possibility of exemption for emergency repair or when a facility is inoperable and temporary coverage must be restored, especially for purposes of 911. SBI also suggests temporary COW placement for up to 24 months to comply with §106 regarding archaeology surveys. For these urgent situations, SBI suggests the fees be waived because they are responding to an urgent situation. The placement of the COW is a goodwill response to a serious situation where charging fees would be unfair to carriers trying to serve the public in a difficult situation.

*Response:* If there is a true emergency repair situation, the company will be permitted to obtain temporary approval with an email. Within 30 days of the emergency placement, the company will submit a packet for a TTP to GLDD and will include the initial email approval. If this is not an emergency situation, fees and a penalty will be assessed. If this is an emergency situation, the exemption will be allowed.

**COMMENT 64:** AT&T wants to have COWs exempt from regulation for use in events.

*Response:* COWs will not be exempted from regulation for use in events. Please see the updated regulations, as there have been changes.

**(B) TRUPs will only be issued for placement on land that is: (1) encumbered or withdrawn (e.g., under a duly authorized and currently valid surface lease or right-of-way, or on land withdrawn for any purpose pursuant to Land Withdrawal Regulations adopted pursuant to RDCJN-33-15 or any subsequent regulations pertaining to land withdrawals); and (2) already disturbed or authorized to be disturbed pursuant to a valid surface lease or right-of-way, or authorized to be disturbed within a government land withdrawal area because**

**the site has gone through a federal or Navajo Nation environmental review and archaeological clearance. Placement of a COW on Navajo Nation Land where these two conditions are not met shall require a New Telecommunications Tower Site Lease issued in accordance with these Regulations.**

**COMMENT 65:** Verizon points out that encumbered and withdrawn land is defined parenthetically. It may be clearer to provide a more formal definition of “unencumbered” and “encumbered” land.

*Response:* The wording has been modified.

**(E) The maximum term of a TRUP shall be 90 days. . . .**

**COMMENT 66:** Verizon suggests that this term be doubled to 180 days. NTUA also suggests that the Appendix F states the term is 180 days.

*Response:* We are keeping it at 90 days but extending the maximum time.

**COMMENT 67:** NTUA suggests to have a renewable term of up to 3 to 5 years to allow for standard construction, which typically takes 2 to 4 years. Extra time on top of construction time is requested for right-of-way process, field consents, chapter resolutions, permission to survey, biological surveys, archaeological surveys, environmental assessments, FONSI, 164 review, and BIA consent. The height of the facility could determine the rental payment. NTUA would like to apply for a NTSL if the temporary lease term is approaching expiration.

*Response:* Prior planning can prevent delays. The term is renewable for up to 24 months. Further, there is no FONSI, no environmental assessment, and no BIA consent pursuant to the General Leasing Regulations of 2013. The Right-of-Way process would be dependant upon the site location.

**(F) A TRUP may be revoked at any time and for any reason by the DNR upon fifteen (15) days’ notice to the permit holder, after which the owner of the COW or Ballasted Support Structure shall have fifteen (15) days to remove the Structure and restore the land to its original condition. A TRUP shall be revoked by the DNR upon a written request by the authorized occupant of the encumbered or withdrawn land. In the event of a cancellation of the TRUP through no fault of the permit holder, the permit holder shall be entitled to reimbursement from the Nation for any additional term paid by permit holder after cancellation. In no event shall the Nation be responsible for reimbursement of any payments made to the authorized occupant by the permit holder.**

**COMMENT 68:** Verizon would like to change the time period from 15 days to 30 days.

*Response:* This will remain at 15 days.

**COMMENT 69:** Verizon is interested in knowing if there is an appeal process.

*Response:* No.

**COMMENT 70:** Verizon requests clarification as to who the authorized occupant of the land shall be.

*Response:* An authorized occupant is anyone who holds a valid lease on Navajo Nation land. This could be a homesite lessee, a business site lessee, a utility, etc.

*This is now §12 and is called “Telecommunications Collocation Permit.”*

**COMMENT 71:** NTUA states that the same protections afforded the “authorized occupant” in section §13(C) should be present in this section as well. This is important to NTUA because they do not want the Nation allowing someone else to put co-location equipment on their other structures without their authorization.

*Response:* The “authorized occupant” is now in this section and is in the definitions.

**(B) A Co-Location License may only be used for placement of Telecommunication Facilities on Non-Tower Structures that are situated on a valid surface lease or right-of-way or on land withdrawn for Navajo Nation or federal governmental purposes, and where such placement will not cause any additional land disturbance.**

**COMMENT 72:** SBI asserts this section is ambiguous because it is not clear what will cause additional land disturbance. A suggested definition is provided for additional land disturbance:

Additional Land Disturbance: Any action by a collocator that would result in exceeding the current property boundaries of a valid surface lease, right-of-way or withdrawn land.

*Response:* This definition is adopted with the exception of right-of-way.

**(D) The term of a Co-Location License shall be five (5) years, and shall be renewable.**

**COMMENT 73:** Verizon suggests the language be changed to: The term of a Co-Location License shall be five (5) years, and shall be renewable for four (4) additional five (5) year terms.

*Response:* The regulations have changed to allow for indefinite renewals, but will require compliance with new laws and regulations at each 5-year renewal term.

**COMMENT 74:** SBI is confused as to why subsection D limits co-location licenses to five years. SBI states that licenses are for five-year terms with three or four additional five-year renewal terms. SBI offers the following language:

- The term of a Colocation License shall be for five (5) years with three (3) automatic five (5) year Extended Terms provided the Colocation Licensee is not in default. The Colocation Licensee shall provide the NNTRC notice of its intent not to exercise its option of an Extended Term not less than ninety (90) days prior to end of the Initial Term or any Extended Term.

*Response:* Please see Comment 63.

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**§ 15. Lease, Permit and License Rentals and Fees.**  
*This is now §14.*

**COMMENT 75:** Verizon suggests that the market analysis should be conducted by a MAI General Certified appraiser.

**COMMENT 76:** Verizon suggests again that the CPI increase be changed to 10% every five-year term.

*Response:* Regarding comment 65 and comment 66, we will not be adding either suggestion.

**COMMENT 77:** Frontier feels that the price is too high and provides the Forest Service’s pricing chart. SBI is concerned that the price doubled in a day. SBI believes that there is a wide disparity between the industry standard and what DNR wishes to charge. SBI believes that Council set these rates and does not want to “subsidize the General Fund” when Council informed the industry that outside industry will have to pay more to do business on the Nation because the Nation must make up for shortfalls in its General Fund. SBI believes that construction will come to an abrupt stop with the new pricing; and informs the Nation that SBI is engaged in a multi-million dollar upgrade to LTE technology, which will not increase the customer base, but will instead provide contemporary technology to the Nation.

*Response:* The Nation is in the process of obtaining a market analysis.

**COMMENT 78:** SBI also suggests that industry does not pay the same amount for all structures, and by making a monopole cost the same as a traditional support structure will act as a disincentive to industry. It costs significantly more for a lattice support structure to be installed than a monopole, but when the rent is the same, there is no incentive to pay the higher priced installation. Additionally, traditional tower sites are not needed due to small cell technology. This increased cost to the carriers will make the technology gap larger for the Nation.

*Response:* The Nation is in the process of obtaining a market analysis.

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**§16. Citing Towers on Navajo Nation Fee Land**

*This is now §15.*

**COMMENT 79:** Verizon and SBI suggest the typo in the title. It should be spelled “Siting” instead of “citing.”

*Response:* This was changed.

**COMMENT 80:** Verizon suggests that a definition be listed for “Navajo Nation fee land” if it differs from “Navajo Nation Land” as defined in §22(S).

*Response:* Lands held in fee are included in the definition section at §22(S) and also has its own definition.

**COMMENT 81:** Subsection C needs to be less stringent when an amendment to the lease is not necessary. SBI suggests the following language:

“In cases where the original lease does not contain language that allows for additional use, then the original lease must be amended to allow for the additional use.”

*Response:* Unless the original land lease allows telecommunications towers to locate on the land, the lease needs to be amended. However, this process will not affect the telecommunication tower owner, but the tower owner cannot enter into a lease with the Nation until the already encumbered land is clear.

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**§17. DNR Enforcement of Terms and Conditions of Leases, Subleases**

and These Regulations.

Failure to comply with these Regulations as to telecommunications leases, subleases and permits is a civil trespass as defined under the Navajo Nation Civil Trespass Act, 16 N.N.C. § 2201 et seq., and may subject a Person to a civil trespass assessment as authorized under such Act, and may also subject a Person to a criminal or civil sanction, as applicable, under 17 N.N.C. § 101 et seq.

**COMMENT 82:** Verizon suggests that in the last sentence, delete the word “criminal.”

*Response:* Amended. Please note that the Nation has the authority to exclude individuals and companies that violate Navajo Nation law.

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**§ 19. Categorical Exclusions for Telecommunications Facilities Siting.**

*This Section has been deleted in its entirety and only minor pieces are relevant and incorporated in other sections.*

**B. Approval of a Co-Location License for Distributed Antenna Systems (DAS) And Small Cell Technologies on and in Non-Tower Support Structures; provided, Applicant has certified by affidavit its compliance with § 18(B) and (C) of these Regulations (including compliance with the FCC’s maximum permissible exposure limits for exposure to radio frequency energy);**

**COMMENT 83:** In §19(B), Verizon questioned a citation to §18(B) and (C).

**COMMENT 84:** Verizon stated that in §19(C)(2), 17 feet is not practical and suggested that 50 feet would be more realistic.

**COMMENT 85:** SBI wants to know where the limit came from.

*Response:* This section is deleted.

**(C)(3) The sum of the volume of all Co-Located antennae, including pre-existing antennae that remain after the Co-Location, is no greater than six cubic feet.**

**COMMENT 86:** Verizon suggests that in §19(C)(3), a single antenna can easily be 6 feet and suggests that this requirement be increased.

**COMMENT 87:** SBI wants to know where the limits come from.

*Response:* This section is deleted.

**(D) Approval of a new or a renewal of a Telecommunications Tower Site Lease for a site that has undergone an environmental review within the prior 20 years pursuant to the General Leasing Regulations, the Nation’s Business Site Leasing Regulations, or the National Environmental Policy Act of 1969, 42 U.S.C. § 4321 et seq., and such review included archaeological survey and clearances.**

**COMMENT 88:** In §19(D), Verizon suggests that the lessee can’t be held to a new standard if the regulations change during the term of a lease, and before a lease renewal.

*Response:* This section is deleted, but note that all companies are on notice that going forward, if rules and regulations change between the first lease and the renewal lease, the new renewal will comply with new terms of the regulations since there is an unlimited amount of renewal terms.

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## § 20. Design Requirements

*This is now §18.*

### **(A) The maximum height for Traditional Support Structures shall be 150 feet, excluding lightning arrestor.**

**COMMENT 89:** SBI feels that having these design limitations will deter development on the Nation, and suggests that traditional support structures not be limited to 150 feet; industry standard is 200 feet. Anything higher than 200 feet should require a waiver from NNTRC; although neither the FCC or the FAA have a height limit. SBI suggests the following language:

The maximum height for Traditional Support Structures shall be two hundred (200) feet, excluding lightning arrestor. Any proposed Traditional Support Structure shall be designed to be the minimum height needed to meet the service objectives of the applicant.

*Response:* This section now only requires compliance with FCC or FAA requirements; *i.e.:* if a tower is above 200 feet, lights need to be included on the tower.

**COMMENT 90:** Verizon asks if there is an ability to obtain a waiver for a variance in the height requirements.

*Response:* There is no height requirement no.

**COMMENT 91:** NTUA states that most of the towers are 180 feet; if the tower height is shortened, there will be an increase in the number of tower sites to maintain coverage, because 150-foot towers will equate to a 20% loss. There will also be a limit to the number of co-locations on the towers, and will be less economically feasible; it will likely result in operations at a loss. If a height variance is needed, a time period is requested. Adding additional towers to make up for the loss of use will not be economically feasible in remote locations. The height limitations will not be able to accommodate as many co-locations and will not be economically feasible for these sub tenants. Further, NTUA would need to build two towers in place of what one taller tower is capable of providing for.

*Response:* This section is deleted.

### **(C) Antennae: . . . Mounting locations for multiple antennae on a Traditional Support Structure should be coordinated in design, and spaced and balanced to give a planned and uncluttered appearance.**

**COMMENT 92:** Frontier states that the antenna are strategically placed, and not aesthetically placed, and that having this requirement is misplaced and counterproductive.

*Response:* Response: We understand that from a technical perspective, antennas need to be placed in certain places and orientations. The regulations are not asking the company to make the spacing perfect, and “to the extent practicable” has been added.

**(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.**

COMMENT 93: Verizon suggests the second sentence state: Other than on lattice towers, where cable is required to be located on the exterior of tower for Co-Location of additional antennae. . . .

Response: This is included in the language.

COMMENT 94: NTUA is requesting that the cable not be made the same color as the Tower because it is not feasible or cost effective. Paint can corrode the cable and the paint may not adhere to the cable. Trying to match the cable to the Tower color may result in increased costs.

Response: The requirement to paint the cable is removed.

**(E) . . . all Traditional Support Structures shall be painted to be compatible with the surrounding development and landscape.**

COMMENT 95: Verizon suggests that the language be changed to state: “all Traditional Support Structures shall be painted or have a finish to be compatible. . . .”

COMMENT 96: SBI opposes the color restrictions because it will cost them to maintain a painted structure, if that is necessary. SBI feels that subsection (E) protects the land occupier as well as section (5)(c) referring to concealed telecommunication facilities offers further protections to the land occupier.

COMMENT 97: NTUA also opposes the color requirement due to the cost per tower. If the color requirement is maintained, NTUA requests that this be limited only to heavily populated areas, where there is a tangible visible impact.

Response: This provision is removed.

**(F) Landscaping: Chapters and the Kayenta Township Commission may impose reasonable landscaping requirements on Traditional Support Structures.**

COMMENT 98: Verizon suggests that this be changed because in some instances, there is no water to support landscaping. The language could be changed to read: Landscaping: Chapters and the Kayenta Township Commission may impose reasonable landscaping requirements on Traditional Support Structures consistent with the existing environment.

Response: The landscaping requirement will be removed entirely.

**(H) Security and Fencing: Ground mounted Accessory Equipment for Traditional Support Structures and outside equipment for Co-Locations on Non-Tower Support**

**Structures shall be secured and enclosed with fencing not less than six (6) feet in height. Fencing shall be compatible with surrounding development or landscape.**

**COMMENT 99:** Verizon suggests that the language be changed to read: Fencing shall be compatible with surrounding development or landscape, and may include 3 strands of barbed wire/razor wire at the top.

*Response:* Thank you for the suggestion.

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

**COMMENT 100:** NTUA states that FAA and FCC ID numbers should be showing on the towers, as well as identification of tower owner, location, and emergency number available 24/7.

*Response:* FAA and FCC requires this information.

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### **§ 21. General Requirements**

*This has been changed to sections corresponding to the topic; i.e.: Abandonment is §21, Assignment is §22.*

**(A)(1) Abandonment: Any Telecommunications Facility or Support Structure that is not operated for a period of 180 consecutive days shall be considered abandoned. The lease is no longer valid and cannot be transferred or assigned.**

**COMMENT 101:** Verizon suggests the language change to read the following:

(A)(1) Abandonment: Any Telecommunications Facility or Support Structure that is not operated for a period of one hundred eighty (180) consecutive days shall be considered abandoned if operation does not resume within ninety (90) days of notice to the Lessee. Thereafter, the lease is no longer valid and cannot be transferred or assigned.

*Response:* This section has been modified.

**COMMENT 102:** Frontier has concerns regarding the abandonment provisions, because the company may have a reason for not operating; also does not believe that the Nation should be allowed to exercise its right of first refusal.

*Response:* The Nation is again a sovereign Nation and can establish the rules it deems necessary, consistent with federal law. Because abandoned towers can be a significant safety threat, the Navajo Nation needs regulations to allow it to take over abandoned towers. So long as the company has a current lease, is making current payments, and has communicated its intentions to the Nation, abandonment should not be an issue.

**(B) All assignments of leases, as well as sales of individual tower sites, must obtain prior written approval from the Navajo Nation before the assignment or sale are finalized.**

**COMMENT 103:** Verizon suggests to add the following language to paragraph (B) at the end of the current paragraph: However, leases may be sold, assigned or transferred by the lessee to the lessee's principal, affiliates, subsidiaries of its principal or to any entity which acquires all or substantially all of the lessee's assets by reason of a merger, acquisition or other business reorganization. The lessee shall provide the Navajo Nation a copy of the assignment within thirty (30) days after it is executed.

*Response:* The Navajo Nation has the right to exclude any company or person that is a bad actor on the Nation, and as a sovereign Nation, shall retain the right to exclude companies from the Nation.

**COMMENT 104:** SBI feels subsections (B) and (C) are vague and overreaching and will deter construction. SBI suggests the following language:

B. Assignment and Sale of Telecommunication Tower Site: A Lessee may sell, assign or transfer Telecommunication Tower Sites without any approval or consent of the Lessor if such sale, assignment or transfer is to the Lessee's principal, affiliates, subsidiaries of its principal, or to any entity which acquires all or substantially all of Lessee's ownership interests or assets in the market defined by the Federal Communications Commission in which the Property is located by reason of a merger, acquisition or other business reorganization. As to other parties, a Lessee may not sell, assign or transfer without the written consent of the Lessor, which such consent will not be unreasonably withheld, delayed or conditioned. Lessor must issue a written decision granting or denying the request within ninety (90) days of the submission of the unless:

(1) The Lessee is notified in writing that its request was incomplete within thirty (30) days of filing. If so, the remaining time from the ninety (90) day total review time is suspended until the Lessee provides the missing information; or

(2) Extension of time is agreed to by the Lessee.

(3) The Lessee is notified that an additional ninety (90) days is required to render a decision. A request still pending after the second ninety (90) day period is deemed approved.

No change of stock ownership, partnership interest or control of LESSEE or transfer upon partnership or corporate dissolution of LESSEE shall constitute an assignment hereunder.

*Response:* With the implementation of the Navajo Nation System, the approval period should go much quicker if the application packet is complete. Incomplete applications will not be forwarded to reviewers until deficiency is corrected.

**C. Sale of the telecommunication company: When a lessee company is considering selling or transferring the entire company's assets to another entity, the Navajo Nation must be notified prior to the completion of the transfer. If the new owners of the tower site are unauthorized to do business with the Nation, the former company must give the Nation first right of refusal. If the Nation chooses not to act, the former company must make arrangements to transfer the towers to an entity authorized to do business on the Nation.**

**COMMENT 105:** Verizon suggests that Section (C) will not work for the telecommunication companies. These transactions are typically confidential and include

assets outside of the Navajo Nation. As such, prior notice cannot be provided. Providing a right of first refusal cannot be administered, and is not possible given the global scale of these sales.

*Response:* Because of the Navajo Nation System and its capabilities, the notification can be sent securely to only the Director of the Land Department so as to protect confidentiality. Further, pursuant to the General Leasing Regulations, the nation has the first right of refusal over all sales that affect the Nation.

**COMMENT 106:** SBI asserts that subsection (C) is unclear, wondering if the intent is to ensure a new owner is authorized to do business on the Nation or provide the Nation with the first right of refusal, and as it is written is a strong deterrent. SBI suggests the following language:

C. Sale of the telecommunication company: When a lessee company is considering selling or transferring the entire company's assets to another entity, the Navajo Nation must be notified prior to the completion of the sale or transfer. The purchasing company must be authorized to do business with the Navajo Nation prior to the completion of the sale or transfer. Authorized to do business with the Navajo Nation shall mean the company has filed the required documents with the Navajo Nation Business Regulatory Department and has been approved by same.

*Response:* There is a provision that addresses this issue. A sale or transfer will require a new lease.

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## §22. DEFINITIONS

*This is now §27.*

**COMMENT 107:** NTUA requests that a specific product not be listed in §22(D), and change the concept to non-penetrating structures with a base or foundation above-ground.

*Response:* This is removed.

**COMMENT 108:** Verizon submits the following amendments to the definitions:

A. Accessory Equipment:

- Verizon suggests the second sentence read: This equipment includes, but is not limited to, utility or transmission equipment, radios, converters, power supplies, generators, fuel tanks. . . .

I. Co-Location: The act of siting multiple Telecommunications Facilities on an existing Non-Tower Structure.

- Verizon suggests that co-location is possible on both tower and non-tower and is previously referred to in both scenarios.

J. Concealed Telecommunications Facility

- Verizon states that “existing structure” is not defined.

K. Distributed Antenna Systems (“DAS”)

- Verizon suggests that small cells can act as a neutral host as well, when referring

to the sentence: Further, whereas small cells are usually operator-managed and support only a single wireless service provider. . .

N. Major Modification:

- Verizon suggests that the definition should mirror the FCC definition.

P. Minor Modification:

- Verizon suggests that the definition should mirror the FCC definition.

AA. Telecommunication Facility:

- Verizon suggests adding data in the definition to read: including, but not limited to, cellular service, personal communications service (PCS), and data and paging service.

DD. Utility Structures: Utility poles or electric transmission towers in active use by a utility company, including NTUA, but not including light poles, lamp posts, and other structures whose primary purpose is to provide public lighting.

- Verizon suggests deleting the language after NTUA, so the paragraph would instead read: Utility poles or electric transmission towers in active use by a utility company, including NTUA.

Response: Some of these will be added.

**COMMENT 109**: SBI offers the following changes and additional definitions:

M. Finding in the Navajo Public Interest: SBI suggests using monopoles and ballasted support structures.

R. Monopole: A single, freestanding pole-type structure supporting one or more Antenna. For purposes of these Regulations, a Monopole is not a Tower.

BB. Tower: A lattice-type structure, guyed or freestanding, that supports one or more Antennae.

New suggested definitions:

- Antenna Mounting Structure: Equipment used to mount antennae to an Existing Structure.
- Co-location: The act of siting Telecommunications Facilities on an Existing Structure without the need to construct a new support structure and without a Substantial Increase in the size of an Existing Structure.
- Existing Structure: Previously erected Support Structure or any other structure, including but not limited to, buildings and water tanks, to which Telecommunications Facilities can be attached.

Response: Some of these will be incorporated.

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**Appendix A: Procedures for Authorizing Minor Modifications and Minor Replacements**

*This Appendix has been consolidated and is now Appendix D: Procedures for Authorizing Modifications and Replacements.*

**(B) Applicant may proceed after NLD issues a Notice to Proceed.**

**COMMENT 110**: Verizon suggests adding the language to the end of this sentence: Applicant may proceed after NLD issues a Notice to Proceed, which shall be issued or

denied for reasonable reasons, within ten (10) days of submittal.

*Response:* We cannot put a time limit of ten days on this. The reasonable issuance or denial would more appropriately be noted in the regulations themselves, and not the procedures.

**COMMENT 111:** Verizon asks if submitting the documentation is not necessary to NNTRC, because it is not mentioned here.

*Response:* It should be mentioned here, because it is in the regulations and was an oversight. Thank you for pointing this out.

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**APPENDIX B: Procedures for Permitting Major Modifications and Major Replacements**

*This Appendix has been consolidated and is now Appendix D: Procedures for Authorizing Modifications and Replacements.*

**Generally:**

**COMMENT 112:** AT&T requests that the procedures include less pre-application requirements.

*Response:* The Nation has modified the procedures, however, the information the Nation needs is requested for a specific reason depending on the document requested. If any company wishes to dispute a specific document requested in the next round of comments, please be specific.

**(A)(7) Environmental Review Documentation.**

**COMMENT 113:** Verizon questions the need to have these documents included in the packet, since this is for a Major Modification and not a lease.

*Response:* These documents are for the original lease, to make sure that the environmental review was done, in case the lease was a much older documents.

**(A)(8) Business Regulatory clearance. This appears in Appendix B and Appendix F and will not be repeated.**

**COMMENT 114:** Verizon questions the need to include the last phrase in the section, saying that they need a clearance from Business Regulatory Commission, if they are a business

*Response:* it does seem redundant.

**(A) Every Person proposing a Major Modification or Major Replacement shall submit the following documents to the NLD Project Review Office for a Major Modification Permit:**

**COMMENT 115:** Verizon asks if there is the need to submit these documents to NNTRC pursuant to §8 of the Regulations.

*Response:* This was an oversight on our part; it will be amended to include the submission to NNTRC.

**(B) Major Modification Permit requirements**

**COMMENT 116:** Verizon suggests the following language be added: Upon a determination that a Major Modification Permit Application is complete, the NLD Project Review Office shall forward the Application package to the NLD Manager within ten (10) days thereafter for final approval, and for issuance of a Major Modification Permit to the Applicant, which shall be issued or denied for reasonable reasons, within ten (10) days thereafter.

*Response:* Ten days is too short of a timeline for the NLD to turn around these documents.

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**APPENDIX C: Procedures for Obtaining a New Telecommunications Tower Site Lease  
This is now Appendix A and is "Procedures for Obtaining a Telecommunications Tower Site Lease."**

**(A)(8). Detailed Project Description:**

**COMMENT 117:** Verizon wants to know why the number and type of proposed antennae are required because it has no bearing on the permits. Line-of-sight diagram is also known as photo sims.

*Response:* The reason the Nation requests this information is to keep up to date with the latest technology and to ensure consistencies and compliance with the Regulations. If the application states four antennae, for example, but upon inspection there are eight antennae, the Nation will know to inquire further with the company.

**(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;**

**COMMENT 118:** Verizon suggests adding "provided land is currently encumbered with a valid grazing lease."

*Response:* thank you for your comment.

**COMMENT 119:** NTUA is usually successful in not compensating the grazing permittees; but larger companies are coming in asking for compensation above and beyond what NTUA can pay, causing NTUA to look for other locations. NTUA believes this \$1,000 is not a cap, but a floor amount, and people will negotiate higher amounts. NTUA believes there is no definite way of obtaining consent without enacting regulations that bypass field clearance for the purpose of serving public safety interests, promote health and welfare. If this payment is made to one permittee, NTUA believes there are multiple permittees who have grazing interests on the land and the payment would need to be made to all permittees, so this is not cost effective. This will also set a precedent for NTUA's other utilities, requiring NTUA to pay for power lines, gas lines, water lines, wastewater, fiber, other withdrawals and other rights-of way. NTUA

requests that grazing permittees not unreasonably withhold consent without substantial justification; and NTUA requests a payment waiver.

*Response:* If the Nation requires that payment be withheld to permittees, this could bring forth the argument that the Nation is taking their land by government regulation, and reasonable market value will require compensation. As NTUAs arguments are understandable, the phrasing of this language will be changed.

**(B) Upon receipt of a complete Application, the NLD Project Review Office and Applicant shall initiate the Executive Review process. . . . (this is also mentioned in Appendix F, and will not be repeated)**

**COMMENT 120:** Verizon would like to know if this can be limited to 30 days.

*Response:* Unfortunately, the Executive Review process will take as long as it takes. The 164 Review procedures permits reviewers 7 days to review the packet. The number of reviewers will determine the time limit. Currently, these procedures are under review and may change to speed up the process.

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#### **Appendix F**

***This is now found within Appendix B: Procedures for Obtaining a Temporary Telecommunications Permit.***

**(4) Proof of an existing environmental clearance if the COW or Ballasted Support Structure will be placed on disturbed land.**

**COMMENT 121:** Verizon says no environmental clearance is needed.

*Response:* our intent was to have the *existing* environmental clearance—meaning the one that was utilized to approve the lease.

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#### **Matrix**

The Matrix is currently undergoing revisions to ensure compliance with the Regulations. In the final round of the Regulations, the matrix will match the changes made in the Regulations.