

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Navajo Pillars Telecommunications, Inc.	)	
	)	
Petition for Waiver of the Definition of “Study Area” Contained in Part 36, Appendix-Glossary of the FCC’s Rules	)	CC Docket No. 96-45
	)	
Petition for Designation as an Eligible Telecommunications Carrier Pursuant to Section 214(e)(6) of the Telecommunications Act of 1996	)	WC Docket 09-197
	)	
Related Waivers of Parts 36, 51, 54, and 69 of The Commission’s Rules	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
A National Broadband Plan for our Future	)	GN Docket No. 09-51
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Developing a Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45

**COMMENTS OF THE NAVAJO NATION TELECOMMUNICATIONS  
REGULATORY COMMISSION (NNTRC)**

The Navajo Nation Telecommunications Regulatory Commission (“NNTRC”), through undersigned counsel, and pursuant to Sections 1.415 and 1.419 of the Commission’s rules (47 C.F.R. §§ 1.415 & 1.419), respectfully submits these Comments in the above-referenced proceeding regarding the Petition filed by Navajo Pillars Telecommunications, Inc. (“Pillars”) to

be deemed an Eligible Telecommunications Carrier (ETC) in portions of the Navajo Nation, and seeking waiver of several Commission rules (“Pillars ETC Petition”).<sup>1</sup> In support of these Comments, NNTRC submits:

**I. BACKGROUND**

**A. The NNTRC**

As the largest native nation in the United States (in both population and reservation size), the Navajos have been particularly disadvantaged by Federal and state communications policies. The Navajo Nation consists of 17 million acres (26,111 square miles) in portions of three states (Arizona, New Mexico, and Utah). The Navajo Nation is comparable in size to West Virginia. Were it a state, the Navajo Nation would rank 4<sup>th</sup> smallest in population density; only Montana (6.5 persons per square mile), Wyoming (5.4) and Alaska (1.2) are less densely populated.<sup>2</sup> The “information age” has scarcely reached Tribal Lands; only 70 percent of which are served by Plain Old Telephone Service (“POTS”), as compared with near ubiquitous POTS service elsewhere in America (98%).<sup>3</sup>

The NNTRC was established pursuant to Navajo Nation Council Resolution ACMA-36-84 in order to regulate all matters related to telecommunications on the Navajo Nation.

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<sup>1</sup> By Public Notice, DA 13-2100, dated October 30, 2013, the FCC requested comments on the Pillars ETC Petition be filed by December 2, 2013. These Comments are therefore timely filed.

<sup>2</sup> Compare [http://en.wikipedia.org/wiki/List\\_of\\_U.S.\\_states\\_by\\_area](http://en.wikipedia.org/wiki/List_of_U.S._states_by_area) (states ranked by geographic area) with [http://en.wikipedia.org/wiki/List\\_of\\_U.S.\\_states\\_by\\_population\\_density](http://en.wikipedia.org/wiki/List_of_U.S._states_by_population_density) (states ranked by population density).

<sup>3</sup> As recently as 2000, POTS penetration in Navajo households was only 22 percent. See FCC “Fact Sheet Promoting Deployment/Subscribership in Underserved Areas, including Tribal and Insular Areas,” released June 8, 2000. Because of the failure of the Federal government to make a place at the table for Tribes in the past, the Navajos find themselves without effective 911 service, while the state of Arizona in 2009 returned \$8,655,700 of the \$17,460,160 collected (or almost exactly 50 percent) to the state general fund, apparently concluding that all Arizonans had access to 911 service. See *Second Annual Report to Congress on State Collection and Distribution of 911 and Enhanced 911 Fees and Charges*, issued August 13, 2010 (released August 16, 2010), p. 10.

Telecommunications is defined broadly under the Navajo Nation Code to include broadband and “any transmission, emission or reception (with retransmission or dissemination) of signs, signals, writings, images, and sounds of intelligence of any nature by wire, radio, light, electricity or other electromagnetic spectrum.”<sup>4</sup> The NNTRC is committed to the protection of the public welfare, regulation and the security of the Navajo Nation and its people with regard to telecommunications. Its purpose is to service, develop regulation and to exercise the Navajo Nation’s inherent governmental authority over its internal affairs as authorized by the Navajo Nation Council pursuant to NNTRC’s Plan of Operation and the Navajo Telecommunications Regulatory Act.<sup>5</sup>

NNTRC is specifically authorized, pursuant to the Navajo Telecommunications Regulatory Act, to act as the intermediary agency between the Navajo Nation and the Federal Communications Commission, including representing the Navajo Nation in proceedings before the Commission, intervening on behalf of the Navajo Nation on matters pending before the Commission, and filing comments in rule making proceedings.

Pillars filed a Petition on June 21, 2013, seeking a Conditional Certificate of Convenience and Necessity from the NNTRC.<sup>6</sup> By Order, adopted October 10, 2013, the Conditional CCN was approved (“C-CCN Order”). A copy of the C-CCN Order is appended here as Attachment A, and provides much of the basis for these comments.

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<sup>4</sup> 21 N.N.C. § 503 (V).

<sup>5</sup> Codified at 2 N.N.C. §§ 3451 -55; 21 N.N.C. §§ 501-529.

<sup>6</sup> The NNTRC currently is in the process of adopting formal rules for approving telecommunication carrier operations on the Navajo Nation. See Docket NNTRC-11-001, available at [http://www.nntrc.org/Application\\_and\\_Notice.aspx](http://www.nntrc.org/Application_and_Notice.aspx). Because the NNTRC has not yet adopted final rules, or a final application, it granted Pillars a CCN conditioned on the adoption of those final rules, and required Pillars, if necessary, to file additional information if required by the final rules.

## **B. Navajo Pillars**

Pillars is an Arizona corporation, owned by a member of the Navajo Nation, and is registered to do business on the Navajo Nation.<sup>7</sup> The areas Pillars seeks to serve (the Smoke Signal and Blue Gap Chapter House regions), are all wholly contained within the exterior borders of the Navajo Nation.<sup>8</sup>

## **II. THE FCC HAS JURISDICTION TO GRANT THE ETC PETITION**

The C-CCN places Pillars squarely under the regulatory jurisdiction of the NNTRC.<sup>9</sup> By accepting a contingent CCN, Pillars has agreed to the certification requirements by which a carrier must agree that no person may engage in providing telecommunications services within the Navajo Nation without first having obtained a CCN from the NNTRC, and that any such entity "is subject to Navajo Nation laws of general application for businesses operating on the Navajo Nation."<sup>10</sup> On this basis, the NNTRC believes that the State of Arizona lacks jurisdiction to regulate Pillars, and therefore the FCC has jurisdiction to grant the subject ETC Petition.

## **III. FCC GRANT OF THE ETC PETITION IS IN THE PUBLIC INTEREST**

In granting Pillars a C-CCN, the NNTRC determined that the proposed service offerings of Pillars are in the Public Interest of the Navajo people.<sup>11</sup> After reviewing the contingent CCN application, the NNTRC stated:

We find that the CCN Application is complete and contains sufficient information related to corporate structure (including Navajo ownership), service area, services

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<sup>7</sup> *C-CCN Order*, ¶ 4.

<sup>8</sup> Pillars Petition, p. 2; *C-CCN Order*, ¶ 4.

<sup>9</sup> *C-CCN Order*, ¶ 5.

<sup>10</sup> *C-CCN Order*, ¶ 6.

<sup>11</sup> *C-CCN Order*, ¶ 8. The C-CCN Order also noted that the Pillars Petition for the C-CCN was placed on Public Notice, and no opposing comments were filed. *Id.*, ¶ 11. Supporting statements were filed by the Smoke Signal and Blue Gap Chapter Houses, either as part of the C-CCN Petition, or in separate comments.

to be provided, proposed rate structure, technical qualifications, construction budget and build-out plan, for NNTRC to determine that grant of the application is in the public interest.<sup>12</sup>

The NNTRC supports the Pillars ETC Petition at the FCC on the same bases. The areas proposed to be served currently have no, or very limited, wireline telephone and broadband service. To NNTRC's knowledge, the current provider, Navajo Communications Company, Inc., a subsidiary of Frontier, has no current intention to provide service to the approximately 239 square miles and 2,282 people proposed to be served by Pillars.<sup>13</sup>

Further, in reviewing both the Pillars ETC Petition, as well as its CCN Application to NNTRC, the NNTRC believes that Pillars satisfies all of the criteria to be an ETC on the Navajo Nation.<sup>14</sup>

#### **IV. THE NNTRC SUPPORTS THE WAIVERS REQUESTED BY PILLARS**

The NNTRC further supports the various waivers sought by Pillars. Specifically, Pillars requests the following waivers of FCC rules:

- 1) "Study Area" waiver of the Appendix-Glossary of Part 36 to remove the subject territory from Frontier's study area to permit Pillars to establish a new cost-based study area corresponding to the subject territory;
- 2) Designation of Pillars as an ETC for the new cost-based study area;
- 3) A finding that Section 54.305 does not apply to Pillars;
- 4) Waiver of Sections 36.611 and 36.612 (historical cost rules) to allow Pillars immediate access to high-cost loop support ("HCLS");

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<sup>12</sup> *C-CCN Order*, ¶ 9.

<sup>13</sup> Pillars Petition, p. 7.

<sup>14</sup> *See* Pillars Petition, pp. 24-33.

- 5) Waiver of Section 54.903(a)(3) to make Pillars eligible to receive interstate common line support (“ICLS”) immediately;
- 6) Waiver of Section 69.2 to allow Pillars to become a member of NECA and participate in NECA pools and tariffs;
- 7) A five-year waiver of the cap on interstate originating and terminating rates and intrastate terminating rates as set forth in Section 51.909; and
- 8) A five-year waiver of the rule limiting reimbursable capital and operating expenses for HCLS.<sup>15</sup>

As established in Pillar’s ETC Petition, each of these waivers is justified, and required if there is ever any hope of providing wireline telephone and broadband services to these highly remote areas located completely on Tribal lands. The NNTRC has reviewed the waiver requests made by Pillars, and supports the grant of each, for the reasons cited by Pillars, as well as those cited in the C-CCN Order.

## **V. CONCLUSION**

The NNTRC supports the ETC Petition filed by Navajo Pillars. The area Pillars seeks to serve is currently unserved by either wireline or wireless carriers. It is highly remote, and without USF support, the approximately 2,000 people living in that area will most likely never have access to telephone or broadband service. Moreover, only by waiving certain other rules can Pillars hope to accomplish the buildout in a timely fashion, given the high cost imposed by the remoteness of the area and extremely low population density.

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<sup>15</sup> Pillars Petition, pp. 6-7.

Therefore, the NNTRC requests that the FCC grant the instant ETC Application and the waivers sought by Navajo Pillars.

Respectfully submitted,

**NAVAJO NATION TELECOMMUNICATIONS  
REGULATORY COMMISSION**

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