

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

In the Matter of)	
)	
Navajo Pillars Telecommunications, Inc.)	
)	
Petition for Waiver of the Definition of)	CC Docket No. 96-45
“Study Area” Contained in Part 36,)	
Appendix-Glossary of the FCC’s Rules)	
)	
Petition for Designation as an Eligible)	WC Docket 09-197
Telecommunications Carrier Pursuant to)	
Section 214(e)(6) of the Telecommunications)	
Act of 1996)	
)	
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)	WC Docket No. 07-135
Local Exchange Carriers)	
)	
High-Cost Universal Service Support)	WC Docket No. 05-337
)	
Developing a Unified Intercarrier)	CC Docket No. 01-92
Compensation Regime)	
)	
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”).¹ 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 4th smallest in population density; only Montana (6.5 persons per square mile), Wyoming (5.4) and Alaska (1.2) are less densely populated.² 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%).³

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.

¹ 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.

² Compare 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 (states ranked by population density).

³ 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.”⁴ 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.⁵

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.⁶ 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.

⁴ 21 N.N.C. § 503 (V).

⁵ Codified at 2 N.N.C. §§ 3451 -55; 21 N.N.C. §§ 501-529.

⁶ 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. 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.⁷ 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.⁸

II. THE FCC HAS JURISDICTION TO GRANT THE ETC PETITION

The C-CCN places Pillars squarely under the regulatory jurisdiction of the NNTRC.⁹ 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."¹⁰ 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.¹¹ 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

⁷ *C-CCN Order*, ¶ 4.

⁸ Pillars Petition, p. 2; *C-CCN Order*, ¶ 4.

⁹ *C-CCN Order*, ¶ 5.

¹⁰ *C-CCN Order*, ¶ 6.

¹¹ *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.¹²

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.¹³

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.¹⁴

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");

¹² *C-CCN Order*, ¶ 9.

¹³ Pillars Petition, p. 7.

¹⁴ *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.¹⁵

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.

¹⁵ 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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Dated: December 2, 2013

**Before the
Navajo Nation Telecommunications Regulatory Commission
Window Rock, AZ 86515**

In the Matter of)	
)	
Application for Certificate of Convenience and Necessity (CCN))	No. NNTRC-11-001
)	
Petition for Certificate of Convenience and Necessity of Navajo Pillars Telecommunications, Inc.)	
)	
_____)	

**ORDER GRANTING
Navajo Pillars Telecommunications, Inc.
A Contingent
Certificate of Convenience and Necessity**

I. INTRODUCTION

1. In this Order we act upon the "*Petition of Navajo Pillars Telecommunications, Inc. For Contingent Certificate of Convenience and Necessity*," filed June 21, 2013, which also contained a completed CCN Application, based on the draft CCN Application previously published in this docket. The Navajo Nation Telecommunications Regulatory Commission ("NNTRC") issued a Public Notice seeking comment on the Petition on July 16, 2013. No comments were filed opposing the Petition. Upon review of the Petition and the CCN Application, we hereby issue Navajo Pillars Telecommunications, Inc. ("Pillars") a Certificate of Convenience and Necessity ("CCN") contingent upon the adoption by NNTRC of a final CCN application and associated rules ("Final CCN Rules") and a demonstration of compliance with such Final CCN Rules by Pillars. In the event Pillars decides not to comply with the Final CCN Rules, it may so notify NNTRC, and its CCN shall be automatically revoked.

II. BACKGROUND

2. On July 28, 2011, the NNTRC published a *Notice of Proposed Rulemaking* ("*NPRM*") proposing a procedure whereby the NNTRC would authorize telecommunications carriers to operate on the Navajo Nation, and become subject to the jurisdiction of the NNTRC pursuant to the authority granted

NNTRC under Navajo law.¹ Publication of the proposed CCN application was a monumental moment for the NNTRC, which is directed by the Navajo Nation Telecommunications Regulatory Act to “promulgate and issue specific rules and regulations establishing filing and information requirements for applications for certificates of convenience and necessity.”² Establishing a formal process for obtaining CCNs will help ensure that carriers serving the Navajo Nation are technically and financially qualified to provide telecommunications services. Such qualified carriers will be more likely to deploy and maintain state-of-the-art telecommunications infrastructure and facilities that are long overdue in many parts of the Navajo Nation.

3. The NNTRC issued a *Report and Order and Further Notice of Proposed Rulemaking*, on August 28, 2012 in which it proposed a revised CCN application, but it has not as yet issued its Final CCN Rules or final CCN application.

4. Pillars is a telecommunications carrier wholly-owned by a member of the Navajo Nation.³ On September 13, 2013, Pillars submitted a petition to the Federal Communications Commission (“FCC”) requesting an eligible telecommunications carrier (“ETC”) designation for the Smoke Signal and Blue Gap Chapter Houses regions.⁴ The Smoke Signal and Blue Gap regions that Pillars proposes to serve are located entirely within the boundaries of the Navajo Nation. The requested contingent CCN will assist Pillars in obtaining this ETC designation, which, in turn, will enable Pillars to receive financial support from the FCC’s universal service program. The ETC designation will also allow Pillars to seek a loan from the United States Department of Agriculture’s Rural Utilities Service (“RUS”) for the purpose of deploying telecommunications infrastructure and commencing service. Without financial support from the universal service program and the RUS loan, Pillars will not be able to deploy infrastructure necessary for the provision of telecommunications services in this unserved region.⁵ Accordingly, Pillars requests an expedited grant of this Petition. Pillars understands that the NNTRC will not be issuing any final CCNs until the NNTRC adopts a final CCN application and associated rules. Consequently, Pillars hereby requests a contingent CCN while the NNTRC finalizes the CCN application and associated rules.

¹ 21 N.N.C. § 505(A)

² 21 N.N.C. § 510(A)

³ Pillars is a corporation organized under the laws of Arizona and holds a Certificate of Authority from the Navajo Nation Business Regulatory Department to transact business within the Navajo Nation as a foreign corporation. The sole shareholder of the Pillars resides within the borders of the Navajo Nation.

⁴ Presently, there are no telecommunications carriers that serve the residents and business located in areas served by those Chapter Houses.

⁵ *Id.*

III. DISCUSSION

5. The issuance of a contingent CCN to Pillars will assist the carrier in obtaining an ETC designation from the FCC. Specifically, the contingent CCN will demonstrate that the FCC, and not the Arizona Corporation Commission, has jurisdiction to designate Pillars as an ETC. Section 214(e)(6) of the Communications Act of 1934, as amended, directs the FCC to perform ETC designations in those instances where the carrier is not subject to state jurisdiction.⁶ The FCC has determined that carriers seeking designation from the FCC for the provision of service on tribal lands must demonstrate that the state commission lacks jurisdiction over the carrier seeking designation.⁷ A contingent CCN, which securely places Pillars under the regulatory jurisdiction of the NNTRC, will remove any doubt, to the extent any exists, that the Arizona Corporation Commission lacks jurisdiction over Pillars.⁸

6. A contingent CCN will demonstrate that both Pillars and the NNTRC recognize the NNTRC's regulatory authority over and the applicability of the Navajo Nation's laws to the proposed operations of Pillars within the Navajo Nation. With respect to NNTRC's regulatory authority, in filing the instant CCN application, 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.⁹ Regarding the applicability of the Navajo

⁶ 47 U.S.C. § 214(e)(6).

⁷ *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208, ¶ 95 (2000) ("Twelfth Report and Order").

⁸ For the avoidance of doubt, Navajo Pillars believes that it is not subject to state commission jurisdiction even in the absence of a contingent CCN. As the FCC has noted, "[t]he Supreme Court has long held that tribal sovereignty interests are strongest with regard to on- reservation conduct of tribal members. In such cases, state law is generally inapplicable but for 'exceptional circumstances.'" *Western Wireless Corporation for Designation as an Eligible Telecommunications Carrier for the Pine Ridge Reservation in South Dakota*, Memorandum Opinion and Order, 16 FCC Rcd 18145, ¶ 14 (2001) ("*Western Wireless ETC Order*") (citing *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 144 (1980); *California v. Cabazon Band of Mission Indians*, 480 U.S. 202, 215 (1987) (quoting *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324, 331-332 (1983))). Here, Pillars is wholly-owned by a member of the Navajo Nation. Consequently, Arizona law is generally inapplicable to Pillars as it relates to its activities on the Navajo Nation.

⁹ See, e.g., Exhibit, Application of Navajo Pillars for Navajo Nation Certification of Public Convenience and Necessity at 2 ("GOVERNING LAW: Filing, authorization, and/or certification requirements for telecommunications providers are determined by the NNTRC pursuant to 21 N.N.C. § 510 of the Navajo Nation Code. No person may engage in provision telecommunications services within the Navajo Nation as a Public Interest Providers or Negotiated Agreement Provider without first having obtained a CCN from the NNTRC. Pursuant to rule of the NNTRC, no other operator may provide telecommunications services without first filing an informational filing with the NNTRC and being authorized as a Small or General Providers. Telecommunication providers should be familiar with the *Navajo Telecommunications Regulatory Act*, 21 N.N.C. §§ 501 *et seq.*, and other applicable Navajo Nation law and federal law.").

Nation's laws, the application acknowledges that Pillars "is subject to Navajo Nation laws of general application for businesses operating on the Navajo Nation."¹⁰

7. The FCC has found previously that a carrier's "consensual relationship" with a tribe, whereby the carrier and tribe agreed to the tribe's regulatory authority and application of tribal law over the carrier's operations within the tribal boundaries, was an important factor in determining that a state lacked jurisdiction over the carrier.¹¹ Here, Pillars believes that a contingent CCN will demonstrate a similar consensual relationship between Pillars and the NNTRC and lead the FCC to reach a similar conclusion. Moreover, a contingent CCN may expedite the grant of an ETC designation to Pillars, which has been a lengthy process for some carriers who have sought ETC designation to provide service to the Navajo Nation.¹²

8. Finally, a grant of a contingent CCN is in the public interest. Pillars plans to deploy a telecommunications network in an area of the Navajo Nation where service has never been made available. It is the goal of the NNTRC to expedite, where possible, the provisioning of telecommunications services, including high speed broadband, to areas of the Navajo Nation previously unserved or underserved. In essence, the contingent CCN will help Pillars expedite the timeframe upon which it will provide telecommunications services to the residents and business of the Smoke Signal and Blue Gap Chapter Houses.

9. We have also reviewed the CCN Application filed by Pillars as part of its Petition, including material submitted subject to a Confidentiality Agreement and Protective Order adopted July 11, 2013 . We find that the CCN Application is complete and contains sufficient information related to corporate structure (including Navajo ownership), service area, services 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.

10. We note that the CCN application was filed as a "*Public Interest Operator*" ("*PIO*"), as that entity is contemplated in the current rulemaking proceeding. Because Final CCN Rules have not been adopted, the NNTRC will not at this time designate Pillars as a *PIO*. In the event that the Final CCN Rules include provisions for grant as a *PIO*, NNTRC will review the Pillars CCN Application, and if the

¹⁰ *Id.* at 4 ("Applicant hereby acknowledges that it is subject to Navajo Nation laws of general application for businesses operating on the Navajo Nation.").

¹¹ *Western Wireless ETC Order* at ¶ 15.

¹² *See, e.g.*, ETC Application by NTUA Wireless, LLC for the Navajo Nation, WC Docket No. 09-197 (filed Mar. 3, 2011) (pending).

application so qualifies Pillars as a *PIO*, upon the request of Pillars, NNTRC shall amend the contingent CCN granted herein to identify Pillars as a *PIO*.

11. Therefore, having fully reviewed the Petition and CCN Application, and noting that after placing the Petition on Public Notice for comment, that no opposing comments have been filed, and that Navajo Nation Council Delegate Dwight Witherspoon submitted a letter in support of Pillars, the NNTRC takes the following action:

IV. ORDERING CLAUSES

12. IT IS ORDERED, that the Petition of Pillars for a Contingent CCN is hereby **GRANTED** as being in the Public Interest of the Navajo people;

13. IT IS FURTHER ORDERED, that the Grant is contingent in nature, in that it is **SUBJECT TO** the Final CCN Rules adopted in this proceeding;

14. IT IS FURTHER ORDERED, that in the event the Final CCN Rules and CCN Application differ from those previously proposed by the NNTRC, Pillars shall be required to **SUBMIT A CONFORMING CCN APPLICATION**;

15. IT IS FURTHER ORDERED, that in the event that the Final CCN Rules and CCN Application differ from those proposed in this docket, and Pillars does not submit a conforming CCN Application within 30 days of the adoption of the Final CCN Rules, this contingent CCN **SHALL BE REVOKED AUTOMATICALLY WITHOUT FURTHER ORDER FROM THE NNTRC**.

Adopted: October 10, 2013



Bobby Begaye
Chairman
Telecommunications Regulatory Commission
The Navajo Nation