

**Before the
Navajo Land Department
and
Navajo Nation Broadband Office**

FURTHER COMMENTS OF CTIA

CTIA appreciates the opportunity to comment on the second draft of the Navajo Nation Telecommunications and Broadband Regulations (v. 8.2) (the “Draft Rules”) issued by the Navajo Land Department (“NLD”) and Navajo Nation Broadband Office (together, the “Agencies”) in September 2024.

CTIA thanks the Agencies for their significant efforts to gather stakeholder feedback and allow for collaborative improvement to the Draft Rules. Both the multiple workshops held in this proceeding as well as the advance circulation of the Draft Rules for comment have allowed stakeholders to consider the Draft Rules thoughtfully and identify potential issues and areas where the Agencies can further streamline the siting process and eliminate obstacles to broadband deployment.

Accordingly, CTIA offers the following suggested improvements to the Draft Rules.

I. THE AGENCIES SHOULD ENSURE THE DRAFT RULES ARE CONSISTENT WITH THE FCC’S TREATMENT OF SMALL WIRELESS FACILITIES

The Draft Rules mention both small cells and small cell towers throughout the document, but no formal definition of either is provided. For clarity and consistency, CTIA recommends that the Draft Rules incorporate a definition of “small wireless facilities” consistent with that used by the FCC:

- i. Small wireless facilities are facilities that meet each of the following conditions:
 1. The facilities –
 - a. Are mounted on structures 50 feet or less in height including their antennas; or
 - b. Are mounted on structures no more than 10 percent taller than other adjacent structures; or

- c. Do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater;
2. Each antenna associated with the deployment, excluding associated antenna equipment, is no more than three cubic feet in volume; and
3. All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume.¹

CTIA also recommends, consistent with the FCC's 2018 Small Cell Order, that the Draft Rules provide for batched applications for small wireless facilities.² Because of the smaller nature of these deployments, multiple small wireless facilities are typically deployed to cover an area. Thus, allowing for batching applications is likely to decrease the administrative burden on the NLD by allowing a single project involving the deployment of multiple small wireless facilities to be submitted in one application.

The smaller nature of these deployments also suggests that the Draft Rules' current schedule for application fees should be amended in the case of small wireless facilities. The Draft Rules currently charge a \$500 application fee for new tower developments and tower modifications, and a \$250 application fee for collocations.³ CTIA recommends that the fee structure be altered so that the application fee for a batch up to five new small wireless facilities is no more than the \$500 application fee for a new tower development, and the application fee for a batch of up to five small wireless facility modifications does not exceed the \$250 fee for collocation of "macro" antennas on existing towers. CTIA suggests that additional small wireless facilities included in the same application (beyond the initial five) should cost an additional \$100 each (for new towers) or \$50 each (for collocation).

¹ See 47 CFR §1.6002 (l).

² *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment; Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Declaratory Ruling, Report and Order (Sep. 27, 2018) ("2018 Small Cell Order"), 33 FCC Rcd 9088 at para. 113 *et seq.*

³ Draft Rules, Section 12.

II. THE AGENCIES SHOULD ALLOW FOR MORE FLEXIBILITY IN REVIEWING THE PREFERENCE FOR COLLOCATION

Section 3.1 Draft Rules includes new language with regard to collocation that reads as follows:

An existing Tower shall be presumed to be acceptable for Collocation and an application for a new Tower shall be denied unless the applicant can demonstrate that there are no tower site candidates available within its RF design search ring to fulfill its intended coverage objectives, whether due to a lack of tower capacity and/or failure of any candidate tower owners to accept the collocation application.⁴

CTIA understands the Agencies' preference for collocation. Land on the Nation is limited and it is preferable to minimize tower deployment where possible. In general, wireless companies also attempt to collocate facilities whenever feasible for a variety of reasons. However, there are a number of reasons why collocation may *not* be feasible for a given antenna, and not all of them are captured by the exceptions to the "presumed acceptable" language. In particular, there are no exceptions for situations in which a tower owner is charging unreasonably high rent for collocation or enforcing other onerous terms or conditions in order to collocate. This could give tower owners an unreasonable amount of leverage in negotiation, especially for areas in which they have a monopoly on available sites.

CTIA therefore recommends that the Agencies remove the new "presumed acceptable" language highlighted in the Draft Rules. This would still allow for the NLD to review applications and work with applicants to encourage collocation when feasible, but allow greater flexibility in siting that will allow wireless providers to provide better network quality more efficiently on the Nation.

⁴ Draft Rules, Section 3.1.

III. THE AGENCIES SHOULD ENSURE THE FEE STRUCTURE FOR PERMITTING AND LEASING INCENTIVIZES BROADBAND DEPLOYMENT

Although leasing fees were not included in the most recent version of the Draft Rules, the issue was discussed at the workshops. CTIA and other industry parties noted that because the Agencies have a mandate to balance revenue generation with broadband deployment, they should be careful to ensure that recurring leasing fees do not discourage investment in the Navajo Nation and serve as a barrier to broadband deployment.

As the Agencies continue to consider leasing fees, CTIA urges them to consider cost-based rates for the reasons it outlined both at the workshops and in its July 2024 comments on the previous draft of the Draft Rules. To the extent that the Agencies incorporate the distinction between wireless facilities and small wireless facilities, as suggested herein, CTIA asks that leasing fees for small wireless facilities be set at or under \$270 per facility per year, inclusive of any access and attachment fees. This figure is the one set as presumptively fair and reasonable for small wireless facilities by the FCC in its 2018 Small Cell Order.⁵ Market-based fees are particularly inappropriate for small wireless facilities. Due to their small footprint, greater numbers of such facilities are often needed to provide coverage. Rates above those deemed presumptively reasonable by the FCC risk discouraging broadband deployment, which is contrary to the Agencies' mission.

⁵ See 2018 Small Cell Order at para. 78.

IV. CONCLUSION

CTIA appreciates the Agencies' hard work and collaborative approach to developing siting rules that help incentivize broadband deployment on the Nation and looks forward to continued engagement as the Agencies refine the Draft Rules into their final form.

Respectfully submitted,

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