

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

COMMENTS OF CTIA

CTIA¹ appreciates the opportunity to comment on the first draft of the Navajo Nation Telecommunications and Broadband Regulations (v. 7.2) (the “Draft Rules”) issued by the Navajo Land Department and Navajo Nation Broadband Office (“Department/NNBBO”) in July 2024.

As CTIA noted in comments before the Navajo Nation Telecommunications Regulatory Commission (“NNTRC”) regarding previous iterations of the telecommunications regulations, streamlining and removing barriers to deployment of network infrastructure is crucial to expand access to broadband on Navajo lands. This need for efficient, timely deployment is made all the greater by the significant federal money currently being allocated towards broadband, including Infrastructure Investment and Jobs Act (“IIJA”) funding.

Wireless providers continue to make massive investments to deploy networks critical to broadband access. To meet ever-increasing demand for wireless broadband, wireless providers invested \$39 billion in their networks in 2022, a record total, and have invested over \$675 billion in capital expenditures since 2001.² The need for accelerated infrastructure deployment to support broadband is why the Federal Communications Commission (“FCC”) and states have taken

¹ CTIA – The Wireless Association® (“CTIA”) (www.ctia.org) represents the U.S. wireless communications industry and the companies throughout the mobile ecosystem that enable Americans to lead a 21st century connected life. The association’s members include wireless providers, device manufacturers, and suppliers as well as apps and content companies. CTIA vigorously advocates at all levels of government for policies that foster continued wireless innovation and investment. The association also coordinates the industry’s voluntary best practices, hosts educational events that promote the wireless industry and co-produces the industry’s leading wireless tradeshow. CTIA was founded in 1984 and is based in Washington, D.C.

² See CTIA, “2023 Annual Survey Highlights” (July 25, 2023), available at <https://api.ctia.org/wp-content/uploads/2023/11/2023-Annual-Survey-Highlights.pdf> (last accessed July 21, 2024).

several steps to modernize siting rules over the past decade. In particular, the FCC has, among other steps, streamlined environmental and historic preservation review,³ established “shot clocks” for deployment of small wireless facilities,⁴ placed reasonable limits on state and local siting fees,⁵ and implemented one-touch make-ready provisions to accelerate pole attachment deployment.⁶ It is critical that the Nation implement similarly reasonable and pro-deployment siting policies to best incentivize investment on Navajo lands.

CTIA commends the Department/NNBBO for their willingness to consider input from stakeholders while building upon the hard work done by the NNTRC in crafting previous iterations of the regulations. The Draft Rules appropriately focus on removing barriers to broadband deployment. While the Draft Rules remain, as noted by the NPRM, a work in progress, CTIA offers its feedback on the first draft herein.

CTIA looks forward to engaging with the Department/NNBBO as it continues to draft and refine the Draft Rules. To help ensure the Department/NNBBO has the most valuable feedback, CTIA encourages the Department/NNBBO to allot ample time for parties to thoroughly review and provide feedback on the next released draft.

I. THE DRAFT RULES REPRESENT SIGNIFICANT WORK FROM THE DEPARTMENT/NNBBO AND NNTRC TOWARDS REMOVING BARRIERS TO BROADBAND DEPLOYMENT

As noted in the NPRM, the Department/NNBBO, NNTRC, and stakeholders have been working towards telecommunications siting regulations for the past five years. The most recent iteration of the Draft Rules incorporates this work and represents significant steps towards

³ See *In the Matter of Accelerating Wireline Broadband Deployment to Infrastructure Investment*, Second Report and Order, 33 FCC Rcd 3102 (adopted Mar. 22, 2018) at para. 36.

⁴ See *In the Matter of Accelerating Wireline Broadband Deployment to Infrastructure Investment et al.*, Declaratory Ruling and Third Report and Order, 33 FCC Rcd 9088 (adopted Sep. 26, 2018) at para. 104.

⁵ See *id.* at para. 43 *et seq.*

⁶ *In the Matter of Accelerating Wireline Broadband Deployment to Infrastructure Investment et al.*, Third Report and Order and Declaratory Ruling, 33 FCC Rcd 7705 (adopted Aug. 2, 2018) at para. 16.

removing barriers to broadband deployment on Navajo. Particularly, CTIA strongly supports that the Draft Rules explicitly recognize existing lease agreements and do nothing to interrupt them. This approach will help ensure that the regulations do not inadvertently cause a reduction in deployment of infrastructure, or disincentivize parties that have already shown a commitment towards expanding broadband access for Navajo consumers. The Draft Rules also help provide clarity and transparency on the jurisdictional structure for telecommunications siting, which encourages new entrants and creates consistency for existing lessees.

The Department/NNBBO should ensure that these improvements remain in future iterations of the Draft Rules while continuing to look for ways to streamline and incentivize broadband deployment. In particular:

- The final version of the Draft Rules should aim to implement “shot clocks” for review timelines that help to ensure deployment can take place in a timely manner. As previously noted, the FCC’s timelines have proven extremely useful in accelerating broadband deployment.
 - o Similarly, the Department/NNBBO should also include a provision in the Draft Rules that disposition of requests to deploy wireless telecommunications facilities will comply with 47 C.F.R. §§ 1.6001-1.6100, which covers FCC rulings on infrastructure siting.
- The Department/NNBBO should revise the draft rules to apply different rules to small cells than to cell towers (or “macro sites.”) This too would be consistent with the FCC’s approach, which streamlines siting for small cells due to their minimal size and increased speed to deployment. Certain of the Draft Rules would not make sense as applied to small cells; for example, the site security requirements in Section 11.2.11, as small cells may be collocated on publicly accessible utility poles. Additionally, technical standards like setbacks should be applied differently to tower installations than to small cells.
- The Department/NNBBO should consider a longer duration for permits and licenses. The Draft Rules would limit the term length of permits and licenses to five (5) years, with an option to renew for an additional 5 years. Such an unreasonably short period would deter the necessary investment to deploy new infrastructure.
- The Department/NNBBO should also reconsider some of the proposed permitting requirements. In particular, the Draft Rules unnecessarily require a permitting process for collocations and equipment upgrades. Both of these requirements would

disincentivize expanding and improving wireless coverage on towers in situations where the size/shape of a tower is unlikely to be impacted.

- Additionally, the Department/NNBBO should remove section 9.1.6.4 from the Draft rules regarding Emergency and Temporary Wireless Facilities requiring permits for emergency facilities including COWs, COLTs, or ballasted structures. Such permitting requirements for temporary emergency infrastructure structures would hinder the ability of providers to keep customers connected following disasters and other emergencies, potentially jeopardizing the ability of customers to communicate with public safety. Similarly, such rules might make it impossible to deploy emergency facilities to assist first responders.
 - o At a minimum, the Department/NNBBO should revise Section 9.1.6.1 to allow for deployments up to thirty (30) days (as opposed to the currently proposed 10 days) and allow for renewals where appropriate.

II. THE DEPARTMENT/NNBBO SHOULD ENSURE THE FEE STRUCTURE FOR PERMITTING AND LEASING INCENTIVIZES INVESTMENT IN BROADBAND INFRASTRUCTURE

The current Draft Rules have a placeholder for the section on leasing fees. The NPRM states that the Draft Rules “do not propose adjusting the current lease fees until an independent market and economic study is completed to guide further legislative action,” but the notes section in the Draft Rules suggests that future drafts will “provide[] for market based lease and permit fee rates.”

CTIA remains concerned that market-based rates for permitting and leasing represent a significant deterrent to deployment on the Nation. The FCC’s 2009 Small Cell Order laid out a strong policy rationale against excessive fees for siting, explaining that such fees both diverted funds that could be used for deployment in other jurisdictions and discouraged investment in the jurisdiction where they were imposed.⁷ In that Order, the FCC placed conditions on siting fees above a certain level to avoid preemption: Fees must be: “(1) a reasonable approximation of the state or local government’s costs, (2) [with] only objectively reasonable costs ... factored into

⁷ See 33 FCC Rcd. 9088 at paras. 53, 61-64.

those fees, and (3) ... no higher than the fees charged to similarly-situated competitors in similar situations.”⁸ In a subsequent 9th Circuit case, the court upheld the FCC’s determination that excessive fees were serving as an effective prohibition to deployment in contravention of federal law, noting that the FCC had compiled a fulsome record showing the impact of those fees.⁹

While the Small Cell Order does not apply to towers, the economic rationale is equally applicable in that context. Governments best promote deployment and investment by imposing cost-based rates and fees for siting. CTIA therefore recommends the Department/NNBBO adjust the approach to the Draft Rules to focus on cost-based, rather than market-based, fees for siting.

III. THE DEPARTMENT/NNBBO SHOULD ENSURE THAT THE PROCESS INCLUDES AMPLE TIME FOR STAKEHOLDER FEEDBACK ONCE THE RULES ARE NEARING A FINAL DRAFT

CTIA greatly appreciates the Department/NNBBO’s efforts to gather feedback from all stakeholders working towards increasing access to broadband on Navajo land. The willingness of the Department/NNBBO to circulate the Draft Rules at this point promotes a collaborative and transparent process. CTIA also appreciates the Department/NNBBO establishing a clear timeline for review in the NPRM.

As stated in the notes in the Draft Rules, one of the goals is for the regulations to be comprehensive and cover both fiber and wireless broadband services. Because the Draft Rules are rebuilding the regulations from scratch, this means that the eventual final regulations are going to have to contain significant detail and many “moving parts.”

Accordingly, the Department/NNBBO should ensure that once a complete, or interim, version of the Draft Rules has been crafted, stakeholders have the necessary time (ideally, thirty days) to conduct a fulsome review of the draft and give written feedback to help identify any

⁸ *Id.* at para. 50.

⁹ See *City of Portland v. United States*, 969 F.3d 1020 (9th Cir 2020).

potential issues.

IV. CONCLUSION

This iteration of the Draft Rules is a positive step towards minimizing barriers to broadband deployment and helping drive investment towards the Nation's wireless consumers. CTIA looks forward to continued engagement with the Nation as it works to complete and refine the Draft Rules.

Respectfully submitted,

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