

THE NAVAJO NATION  
LEGISLATIVE BRANCH  
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: \_0059-22\_

SPONSOR: Eugenia Charles-Newton

**TITLE: An Action Relating to the Naabik'iyáti' Committee and Navajo Nation Council; Allocating \$38,500,000 of Navajo Nation Fiscal Recovery Funds to Yalti Telecom, LLC; Approving the Navajo Nation Fiscal Recovery Fund Yalti Telecom Expenditure Plan**

*Date posted:* March 29, 2022 at 6:01 PM

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**LEGISLATIVE SUMMARY SHEET**  
**Tracking No. 0059-22**

**DATE:** March 17, 2022

**TITLE OF RESOLUTION:** AN ACTION RELATING TO THE NAABIK'ÍYÁTI' COMMITTEE AND NAVAJO NATION COUNCIL; ALLOCATING \$38,500,000 OF NAVAJO NATION FISCAL RECOVERY FUNDS TO YALTI TELECOM, LLC; APPROVING THE NAVAJO NATION FISCAL RECOVERY FUND YALTI TELECOM EXPENDITURE PLAN

**PURPOSE:** This resolution, if approved, adopt the NNFRF Yalti Telecom Expenditure Plan in the amount of \$38,500,000 to provide broadband and telecommunication services to remote, underserved and unserved communities on the Navajo Nation.

**This written summary does not address recommended amendments as may be provided by the standing committee. The Office of Legislative Counsel requests each committee member to review the proposed resolution in detail.**

5-DAY BILL HOLD PERIOD: Johnson  
Website Posting Time/Date: \_\_\_\_\_  
Posting End Date: 04/03/22  
Eligible for Action: 04/04/22

1 PROPOSED NAVAJO NATION COUNCIL RESOLUTION  
2 24<sup>th</sup> NAVAJO NATION COUNCIL – Fourth Year, 2022

3 INTRODUCED BY

4   
5 \_\_\_\_\_

6 Primary Sponsor

7  
8 TRACKING NO. 0059-22

9  
10 AN ACTION

11 RELATING TO THE NAABIK'ÍYÁTI' COMMITTEE AND NAVAJO NATION  
12 COUNCIL; ALLOCATING \$38,500,000 OF NAVAJO NATION FISCAL  
13 RECOVERY FUNDS TO YALTI TELECOM, LLC; APPROVING THE NAVAJO  
14 NATION FISCAL RECOVERY FUND YALTI TELECOM EXPENDITURE PLAN

15  
16 **BE IT ENACTED:**

17  
18 **SECTION ONE. AUTHORITY**

- 19 A. The Navajo Nation Council is the governing body of the Navajo Nation. 2 N.N.C. §102(A).  
20 B. Navajo Nation Council Resolution No. CJY-41-21, attached as **Exhibit A**, mandates that  
21 Navajo Nation Fiscal Recovery Fund (“NNFRF”) Expenditure Plans be duly adopted by a  
22 two-thirds (2/3) vote of all members of the Navajo Nation Council and approved by the  
23 President of the Navajo Nation pursuant to 2 N.N.C. § 164 (A) and 2 N.N.C. §§ 1005 (C)  
24 (10), (11), and (12).  
25 C. The Naabik'iyáti' Committee is a standing committee of the Navajo Nation Council  
26 with the delegated responsibility to hear proposed resolution(s) that require final action  
27 by the Navajo Nation Council. 2 N.N.C. § 164(A)(9).  
28

29 **SECTION TWO. FINDINGS**

- 30 A. The World Health Organization (“WHO”) declared a Public Health Emergency of

1 International Concern related to the Coronavirus (“COVID-19”), a highly contagious and  
2 sometimes fatal respiratory virus, on January 30, 2020; the U.S. Department of Health and  
3 Human Services declared a Public Health Emergency related to the COVID-19 outbreak  
4 on January 31, 2020; and the WHO declared a global pandemic due to COVID-19 on  
5 March 11, 2020.

6 B. The Navajo Nation Commission on Emergency Management, with the concurrence of  
7 Navajo Nation President Jonathan Nez, declared a Public Health State of Emergency on  
8 the Navajo Nation on March 11, 2020, due to the COVID-19 outbreak. *See* Resolution No.  
9 CEM 20-03-11, incorporated herein by reference. The Navajo Nation Department of  
10 Health has subsequently issued numerous Public Health Emergency Orders. Public Health  
11 Orders 2020-001 through 2021-020 are incorporated herein by reference. These Public  
12 Health Emergency Orders are available at [www.ndoh.navajo-nsn.gov](http://www.ndoh.navajo-nsn.gov).

13 C. The coronavirus pandemic of 2019 has caused large scale infections and loss of life  
14 throughout the world, the United States, and the Navajo Nation. As of November 19, 2021,  
15 the Navajo Nation Health Command Operations Center has confirmed 38,742 OVID-19  
16 cases and 1,518 COVID-related deaths on the Navajo Nation. COVID-19 variants have  
17 recently emerged that threaten to increase these numbers and continue the pandemic’s  
18 assault on the Navajo People.

19 D. The devastating effects of COVID-19 continue throughout the Navajo Nation and extend  
20 beyond the health and life devastation to wide scale negative financial effects, such as  
21 employment losses, business closures, food and housing insecurity, and other economic  
22 disruptions.

23 E. In response to the pandemic, on March 11, 2021, Unites States President Joseph Biden  
24 signed the American Rescue Plan Act (“ARPA”) into law. Section 9901 of ARPA  
25 amended Title VI of the Social Security Act to add section 602, which established the  
26 Coronavirus State Fiscal Recovery Fund, and section 603, which established the  
27 Coronavirus Local Fiscal Recovery Fund (together the “Fiscal Recovery Funds” or “FRF”) and  
28 provided \$362 billion for state, local, and tribal governments, including \$20 billion  
29 specifically designated for tribal governments.

30 F. As of November 1, 2021, the United States Department of Treasury has allocated two

1 billion seventy-nine million four hundred sixty-one thousand four hundred sixty-four  
2 dollars (\$2,079,461,464) to the Navajo Nation under the Fiscal Recovery Funds provisions  
3 of ARPA. The Fiscal Recovery Funds are designed to build on and expand the relief  
4 provided in the 2020 Coronavirus Aid, Relief, and Economic Security Act (CARES Act),  
5 Public Law 116–136, 134 Stat. 281 (2020), and are intended to mitigate and contain the  
6 spread of COVID-19, as well as to respond to the health, social and economic impacts of  
7 COVID-19 suffered by residents and businesses.

8 G. Pursuant to Section 9901 of ARPA, the Fiscal Recovery Funds are specifically intended  
9 to:

- 10 1. respond to the COVID-19 public health emergency and its negative economic  
11 impacts, including assistance to households, small businesses, and non-profits;  
12 and/or aid to impacted industries such as tourism, travel, and hospitality;
- 13 2. respond to workers performing essential work during the COVID-19 public  
14 health emergency by providing premium pay to eligible workers;
- 15 3. provide government services to the extent of the reduction in Navajo Nation  
16 revenue due to the COVID-19 public health emergency, relative to revenues  
17 collected in the most recent full fiscal year prior to the COVID-19 public health  
18 emergency; and
- 19 4. make necessary investments in water, sewer, and/or broadband infrastructure.

20 H. The U.S. Department of Treasury has issued guidance requiring that the use and  
21 expenditure of Fiscal Recovery Funds must fall under one of the four categories above and  
22 that funding recipients must report each expenditure under one of the sixty-six (66)  
23 “Expenditure Eligibility Categories” set forth in Appendix 1 to the U.S. Department of  
24 Treasury’s Compliance and Reporting Guidance for State and Local Fiscal Recovery  
25 Funds, attached herein as **Exhibit A**.

26 I. Pursuant to ARPA:

- 27 1. Fiscal Recovery Fund costs must be incurred by December 31, 2024, meaning  
28 that the Navajo Nation must obligate FRF funds by that date. Treasury’s  
29 Interim Final Rule provides that “incurred” shall have the same meaning given  
30 to “financial obligation” under the Uniform Guidance at 2 CFR 200.1:

1           “*Financial obligations*, when referencing a recipient's or sub-recipient's use  
2           of funds under a Federal award, means orders placed for property and  
3           services, contracts and sub-awards made, and similar transactions that  
4           require payment.”; and

- 5           2. The Fiscal Recovery Fund period of performance runs from March 3, 2021  
6           until December 31, 2026, meaning that all FRF-funded projects must be  
7           completed and funds must be fully expended by December 31, 2026.
- 8           3. Costs incurred by the Navajo Nation prior to March 3, 2021 are not eligible.
- 9           4. Any funds not obligated or expended for eligible uses by the dates above in  
10           sections I (1) and (2) must be returned to Treasury, including any unobligated  
11           or unexpended funds that have been provided to sub-recipients and contractors  
12           as part of the award closeout process.

13 J. While its acceptance of Fiscal Recovery Funds obligates the Navajo Nation to comply with  
14 ARPA and other federal laws and regulations, the Navajo Nation can and will fulfill these  
15 obligations while retaining and exercising its sovereignty in allocating and disbursing  
16 Fiscal Recovery Funds.

17 K. On July 23, 2021, the Navajo Nation Council adopted Resolution No. CJY-41-21, attached  
18 as **Exhibit B**, establishing the Navajo Nation Fiscal Recovery Fund (“NNFRF”) into which  
19 the Navajo Nation’s allocation of \$2,079,461,464 has been deposited. CJY-41-21 also  
20 adopted an expenditure authorization and approval process for the allocation of funds from  
21 the NNFRF.

22 L. In Section Four of CJY-41-21, the Navajo Nation Council mandated the Budget and  
23 Finance Committee to adopt application and review procedures, as well as an expenditure  
24 plan template, to be used by entities requesting Navajo Nation Fiscal Recovery Funds. The  
25 Budget and Finance Committee approved Resolution No. BFS-31-21 which established  
26 mandatory Navajo Nation Fiscal Recovery Fund application procedures, forms, and an  
27 expenditure plan template. BFS-31-21 is incorporated herein by reference.

28 M. To ensure the Navajo Nation’s compliance with ARPA, Section Four of CJY-41-21 also  
29 directed the Navajo Nation Department of Justice (“DOJ”) to perform “an initial  
30 determination of whether a NNFRF funding request satisfies the legal requirements of the

1 Fiscal Recovery Funds provisions of ARPA and applicable Navajo Nation laws,  
2 regulations, and policies and procedures.” Resolution No. BFS-31-21 incorporated DOJ’s  
3 initial determination into the mandatory NNFRF application procedures, forms, and an  
4 expenditure plan template, which requires, among other things, identification of the entity  
5 with administrative oversight over the Funding Recipient. Administrative oversight means  
6 having the authority to monitor the implementation of an approved FRF Expenditure Plan  
7 and the expenditure of awarded funds. The duties of the entity with administrative  
8 oversight are set forth in Section Seven of the FRF Procedures in exhibits 1 through 5 of  
9 BFS-31-21.

10 N. The Office of the President and Vice-President, in coordination with the Division of  
11 Community Development (“DCD”), presented ARPA and Fiscal Recovery Fund  
12 information at each of the five (5) Agency Council Meetings to hear from the Navajo  
13 People concerning their needs and priorities for projects and/or services funded through  
14 the NNFRF. In addition, DCD has met with Navajo Nation Chapters, individually and  
15 collectively, on more than fifty (50) occasions to discuss NNFRF matters.

16 O. The Navajo Nation Council hosted twenty-six (26) Naabik’iyáti’ Committee Work  
17 Sessions, all open to the public, to hear from the Navajo People concerning their needs  
18 and priorities for projects and/or services funded through the Navajo Nation Fiscal  
19 Recovery Fund. In addition, Standing Committees of the Navajo Nation Council held  
20 more than twenty (20) committee meetings, all open to the public, that have included  
21 NNFRF reports and infrastructure specific discussions.

22 P. The Navajo Nation Council and Office of the President and Vice-President concurred,  
23 based on their respective public consultation efforts, that it was in the best interest of the  
24 Navajo people to first enact a Navajo Nation Fiscal Recovery Fund Hardship Assistance  
25 Expenditure Plan. To that end, the Navajo Nation Council adopted Resolution No. CD-  
26 62-21 providing \$557,000,000 in Hardship Assistance for Navajo members to mitigate  
27 the financial devastation caused by the COVID-19 pandemic. The President agreed  
28 with the Council and signed CD-62-21 into law on January 4, 2022.

29 Q. The Navajo Nation Council has determined, based on their public consultation efforts,  
30 that it is in the best interest of the Navajo people and Navajo communities to next fund



1 the Navajo Nation Yalti Telecom Expenditure Plan in the total amount of thirty-eight  
2 million five hundred thousand dollars (\$38,500,000) to provide broadband and  
3 telecommunication services to remote, underserved, and unserved communities on the  
4 Navajo Nation.

5 R. Yalti Telecom LLC is a Navajo registered single-member limited liability company  
6 incorporated on July 6, 2021 and is fully Navajo owned and operated.

7 S. The NNFRF Yalti Telecom Expenditure Plan, attached as **Exhibit C**, has fully  
8 complied with and satisfied CJY-41-21 and BFS-31-21 requirements. The Navajo  
9 Department of Justice has initially determined the Yalti Telecom Expenditure Plan to  
10 be FRF eligible, if prospective conditions are complied with. *See Exhibit C* (DOJ  
11 Initial Eligibility Determination dated 1/27/2022).

12  
13 **SECTION THREE. APPROVAL OF THE YALTI TELECOM EXPENDITURE**  
14 **PLAN**

15 A. The Navajo Nation hereby approves and adopts the Navajo Nation Fiscal Recovery  
16 (“NNFRF”) Yalti Telecom Expenditure Plan set forth in **Exhibit C**.

17 B. The Navajo Nation hereby approves total funding for the NNFRF Yalti Telecom  
18 Expenditure Plan from the Navajo Nation Fiscal Recovery Fund to Yalti Telecom,  
19 LLC in the total amount of thirty-eight million five hundred thousand dollars  
20 (\$38,500,000) as follows: FY2022-\$19,250,00; FY2023-\$9,625,000; and FY2024-  
21 \$9,625,000.

22  
23 **SECTION FOUR. ADMINISTRATION OF NAVAJO NATION FISCAL RECOVERY**  
24 **FUND EXPENDITURE PLANS**

25 A. All entities receiving Navajo Nation Fiscal Recovery Funds, whether through an  
26 immediate allocation under CJY-41-21 or subsequently approved NNFRF Expenditure  
27 Plan, shall comply with all Navajo Nation laws, policies, regulations, rules, and  
28 procedures, specifically including, but not limited to, those governing the NNFRF and  
29 the expenditure of such funds, and any additional terms set forth in a grant, sub-  
30 recipient, or similar agreement.



- 1 B. Fiscal Recovery Fund costs must be incurred by December 31, 2024, meaning that the  
2 Navajo Nation must obligate FRF funds by that date. For internal Navajo Nation purposes,  
3 the term “obligated” is defined in BFS-31-21, Section Three on page 3 of Exhibits 1  
4 through 5. Any NNFRF funds not obligated by the end of the third quarter of Fiscal Year  
5 2024 shall be reported to the Naabik’íyáti’ Committee and are subject to reversion to the  
6 NNFRF, by a resolution of the Naabik’íyáti’ Committee, and will then be available for  
7 reallocation to other NNFRF Expenditure Plans pursuant to resolution(s) of the Navajo  
8 Nation Council enacted pursuant to 2 N.N.C. § 164 (A)(17) and 2 N.N.C. §§ 1005 (C) (10),  
9 (11), and (12).
- 10 C. Projects and/or services funded with Navajo Nation Fiscal Recovery Funds must be  
11 completed and all NNFRF funds fully spent by December 31, 2026.
- 12 D. The Office of the Controller shall release Navajo Nation Fiscal Recovery Fund  
13 Expenditure Plan funds to a funding recipient that is external to the Navajo Nation central  
14 government, including Local Government Act certified chapters, Navajo Nation owned  
15 entities, and other external entities, pursuant to the fund distribution schedule  
16 recommended by the Navajo Nation government entity with administrative oversight and  
17 approved by the Office of the Controller and included in a fully executed grant, sub-  
18 recipient, or similar agreement deemed legally sufficient by the Navajo Nation Department  
19 of Justice.
- 20 E. Awarded Navajo Nation Fiscal Recovery Funds shall only be obligated and expended on  
21 projects and/or services, including need-based projects and services, that were included as  
22 an immediate allocation under CJY-41-21 or are included in a NNFRF Expenditure Plan  
23 approved and adopted by a Navajo Nation Council resolution enacted pursuant to 2 N.N.C.  
24 § 164 (A)(17) and 2 N.N.C. §§ 1005 (C) (10), (11), and (12).
- 25 F. All proposed modifications to an approved FRF Expenditure Plan or an approved FRF  
26 Expenditure Plan budget shall comply with section 8 of exhibits 1 through 5 of BFS-31-  
27 21. Any increase in funding for an approved FRF Expenditure Plan shall require approval  
28 by a Navajo Nation Council resolution enacted pursuant to 2 N.N.C. § 164 (A)(17) and 2  
29 N.N.C. §§ 1005 (C) (10), (11), and (12). Proposed modifications of Expenditure Plans  
30 shall be submitted to the Navajo Nation Department of Justice (“DOJ”) for an eligibility

1 determination review to ensure the proposed modification will be an eligible use of FRF.  
2 Modifications that change the purpose and intent of the Expenditure Plan or projects and  
3 services within the approved Expenditure Plan or that substantially change the scope of  
4 work of the Expenditure Plan shall require approval by the Navajo Nation Council. As set  
5 forth in BFS-31-21, DOJ shall make the determination whether Navajo Nation Council  
6 approval of the modification is required. After DOJ has reviewed the request for a  
7 modification of an approved Expenditure Plan and determined that legislative approval is  
8 not needed, or after the modification is approved by a Navajo Nation Council resolution  
9 enacted pursuant to 2 N.N.C. § 164 (A)(17) and 2 N.N.C. §§ 1005 (C) (10), (11), and (12),  
10 the Administrative Oversight entity acting on behalf of the Funding Recipient shall submit  
11 a budget revision request to OMB, if needed. The Budget Instruction Manual provisions  
12 regarding budget revision requests shall apply.

13 G. Awarded Navajo Nation Fiscal Recovery Funds, including cost savings, may be  
14 administratively moved between projects and/or services included within the same  
15 Expenditure Plan, as long as such projects and/or services share the same Expenditure  
16 Eligibility Category. DOJ shall verify that the projects and/or services share the same  
17 Expenditure Eligibility Category before any NNFRF funding is moved between projects  
18 and/or services.

19 H. Awarded Navajo Nation Fiscal Recovery Funds, including cost savings, cannot be moved  
20 between Expenditure Plans without approval by a Navajo Nation Council resolution  
21 enacted pursuant to 2 N.N.C. § 164 (A)(17) and 2 N.N.C. §§ 1005 (C) (10), (11), and (12).

22 I. Approved Expenditure Plans for need-based projects and services, such as Bathroom  
23 Addition or Home Electricity Connection projects, may be administratively modified  
24 without Navajo Nation Council action as long as the total funding awarded for the  
25 Expenditure Plan is not increased and the new project or service is within the same  
26 Expenditure Eligibility Category.

27 J. To add projects or services to an approved Expenditure Plan when such projects and/or  
28 services are not need-based projects or services, shall require a DOJ initial eligibility  
29 determination pursuant to BFS-31-21 and the addition must be approved through  
30 resolution by the Standing Committee(s) having oversight over the Expenditure Plan and

1 the Budget and Finance Committee. If the new project and/or service increases the total  
2 funding awarded for the Expenditure Plan or does not share the same Expenditure  
3 Eligibility Category as the Expenditure Plan, BFS-31-21 must be fully complied with and  
4 the addition can only be added through Navajo Nation Council resolution enacted pursuant  
5 to 2 N.N.C. § 164 (A)(17) and 2 N.N.C. §§ 1005 (C) (10), (11), and (12) is required.

6 K. The Emergency Procurement provisions set forth in CJY-41-21, Section Ten, shall apply  
7 to all NNFRF Expenditure Plans enacted herein, as well as to all American Rescue Plan  
8 Act and Fiscal Recovery Fund procurements by the Navajo Nation and its entities.

9 L. All entities receiving Navajo Nation Fiscal Recovery Funds shall follow and apply  
10 Generally Accepted Accounting Principles (GAAP), as established by the Governmental  
11 Accounting Standards Board (GASB) for governmental entities and by the  
12 Financial Accounting Standards Board (FASB) for public and private companies and non-  
13 profits, in reporting, recording, and accounting for such Funds.

14 M. All non-governmental entities, including Local Governance Act certified chapters, who  
15 receive more than five hundred thousand dollars (\$500,000) of Fiscal Recovery Funds in  
16 anyone year shall obtain an annual audit in accordance with the Single Audit Act  
17 Amendments of 1996), OMB Circular A-133, the and the OMB Circular Compliance  
18 Supplement and Government Auditing Standards.

19 N. Fraud, misuse of funds, violation of applicable Navajo Nation or federal laws and  
20 regulations, non-compliance with FRF agreements governing grants or sub-awards, and  
21 false statements or claims by any individual or entity receiving or administering Navajo  
22 Nation Fiscal Recovery Funds may result in administrative, civil, or criminal sanctions and  
23 penalties, debarment and suspension, ineligibility for future Navajo Nation awards or  
24 business opportunities, and the Navajo Nation may pursue any other legal action or remedy  
25 available by law.

## 26 27 **SECTION FIVE. REPORTING**

28 A. All entities receiving Navajo Nation Fiscal Recovery Funds shall keep and maintain  
29 accurate and complete financial data and records sufficient to demonstrate that the  
30 Fiscal Recovery Funds appropriated by the U.S. Congress to the Navajo Nation have

1           been used by the reporting entity in accordance with the provisions of ARPA and timely  
2           relay such reports and records to the administrative oversight, Office of Controller,  
3           Office of Management and Budget, FRF Office, and legislative oversight as directed  
4           in the grant or sub-recipient agreements if any, and when requested. Such reports and  
5           records shall be maintained for at least seven (7) years after the project and/or service  
6           has been completed. The Office of the Controller shall be responsible for compiling  
7           and providing any and all records and financial reports required by the U.S. Treasury.

8           B. All entities receiving Navajo Nation Fiscal Recovery Funds through an approved  
9           Expenditure Plan shall report the status of their NNFRF allocations to their respective  
10          oversight committees at the end of each Fiscal Year quarter. The entity with  
11          administrative oversight over the Expenditure Plan shall review the quarterly report  
12          prior to its presentation and shall participate in the presentation to the oversight  
13          committee(s).

14          C. The Executive Director of the NNFRF Office, with the assistance of the Office of the  
15          Controller and Office of Management and Budget, shall report the status of all allocated  
16          Navajo Nation Fiscal Recovery Funds and NNFRF Expenditure Plans to the Budget  
17          and Finance and Naabik'iyáti' Committees at the end of each Fiscal Year quarter.

18  
19           **SECTION SIX. EFFECTIVE DATE**

20           This legislation shall be effective upon its approval pursuant to 2 N.N.C. § 164 (A)(17) and 2  
21           N.N.C. §§ 1005 (C) (10), (11), and (12).

22  
23           **SECTION SEVEN. AMENDMENTS**

24           Amendments to this legislation shall only be adopted by a two-thirds (2/3) vote of all  
25           members of the Navajo Nation Council and approval of the President of the Navajo Nation  
26           pursuant to 2 N.N.C. § 164 (A)(17) and 2 N.N.C. §§ 1005 (C) (10), (11), and (12).

27  
28           **SECTION EIGHT. SAVING CLAUSE**

29           If any provision of this legislation is determined invalid by the Navajo Nation Supreme Court,  
30           or by a Navajo Nation District Court without appeal to the Navajo Nation Supreme Court,

1 those provisions of this legislation not determined invalid shall remain the law of the Navajo  
2 Nation.

3  
4 **SECTION NINE. DIRECTIVES**

5 All Navajo Nation government programs, offices, and divisions, as well as Navajo Nation  
6 owned entities, specifically including those programs, offices, divisions, and Navajo Nation  
7 owned entities receiving Navajo Nation Fiscal Recovery Funds, shall prioritize the  
8 implementation and completion of NNFRF projects and/or services.