

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: _0048-25_

SPONSOR: George H. Tolth

TITLE: An Action Relating to Resources and Development Committee; Approving the Grant of Right-of-Way to Windstream Communications, LLC for the Purposes of Constructing, Operating, and Maintaining Fiber Optic Cable for Windstream Communications, Lybrook School Located on Navajo Nation Trust Lands in Counselor Chapter, Navajo Nation (Sandoval County, New Mexico)

Date posted: April 10, 2025 at 5:41PM

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LEGISLATIVE SUMMARY SHEET

Tracking No. 0048-25

DATE: April 2, 2025

TITLE OF RESOLUTION: AN ACTION RELATING TO RESOURCES AND DEVELOPMENT COMMITTEE; APPROVING THE GRANT OF RIGHT-OF-WAY TO WINDSTREAM COMMUNICATIONS, LLC FOR THE PURPOSES OF CONSTRUCTING, OPERATING, AND MAINTAINING FIBER OPTIC CABLE FOR WINDSTREAM COMMUNICATIONS, LYBROOK SCHOOL LOCATED ON NAVAJO NATION TRUST LANDS IN COUNSELOR CHAPTER, NAVAJO NATION (SANDOVAL COUNTY, NEW MEXICO)

PURPOSE: This resolution, if approved, will approve the grant of right-of-way to Windstream Communications to construct, operate, and maintain fiber optic cable for Lybrook School located on Navajo Nation Trust Lands. The Windstream Communications is also requesting a waiver of consideration for the right of way.

Final Authority: Resources and Development

Vote Required: Simple Majority

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

- 1 A. Windstream Communications has submitted a right-of-way application. The purpose
2 is for construction, operation, maintenance of fiber optic cable for Lybrook School
3 located on Navajo Nation Trust Lands in Counselor Chapter, Navajo Nation
4 (Sandoval County, New Mexico).
- 5 B. The Terms and Conditions is attached as **Exhibit A**.
- 6 C. The proposed right-of-way map is attached as **Exhibit B**.
- 7 D. The Eastern Land Board Member approved the use of the land for the proposed fiber
8 optic cable. The Eastern Land Board Member memorandum is attached as **Exhibit**
9 **C**.
- 10 E. The Navajo Nation Department of Fish and Wildlife Biological Resources
11 Compliance Form is attached as **Exhibit D**.
- 12 F. The Navajo Nation Department of Fish and Wildlife/Navajo Natural Heritage
13 Program in a memorandum dated August 13, 2024 explained its conditional approval
14 of the project. The August 13, 2024 memorandum is attached as **Exhibit E**.
- 15 G. The Cultural Compliance Form is attached as **Exhibit F**.
- 16 H. The Biological Evaluation for the Lybrook School Fiber Build Project near Lybrook,
17 Sandoval and Rio Arriba Counties, New Mexico dated June 2024 prepared by
18 Parametrix is attached as **Exhibit G**.
- 19 I. The Bureau of Indian Affairs Title Status Report provided in memorandum dated
20 June 18, 2024 is attached as **Exhibit H**.
- 21 J. The State of New Mexico Cultural Resources Survey; the New Mexico Fish and
22 Game report; and, the New Mexico State Endangered Plant report are attached as
23 **Exhibit I**.
- 24 K. The U.S. Fish and Wildlife Service National Wetlands Inventory; the U.S.D.A.,
25 Natural Resources Conservation Service Custom Soil Resource Report; and, the BIA
26 Navajo Region Noxious Weed Information are attached as **Exhibit J**.
- 27 L. The Jemez Mountains Electric pole attachment policies and procedures are attached
28 as **Exhibit K**.
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1 M. The January 21, 2025 memorandum from the Navajo Nation Minerals states the right
2 of way consideration for 20 years as \$384,225.78. The January 21, 2025
3 memorandum is attached as **Exhibit L**.

4 N. Counselor Chapter Resolution No. #COUN-2024-09-006 “approves and adopts the
5 supporting resolution for Windstream communications for Fiber Build to Lybrook
6 Elementary School.” Counselor Chapter Resolution No. #COUN-2024-09-006 is
7 attached as **Exhibit M**.

8 O. Windstream Communications requests a waiver of “assessed value”.

9 P. 25 CFR § 169.110 addresses how much monetary compensation must be paid for a
10 right-of-way over or across tribal land. It states:

11 *(a) A right-of-way over or across tribal land may allow for any payment amount*
12 *negotiated by the tribe, and we will defer to the tribe and not require a valuation if*
13 *the tribe submits a tribal authorization expressly stating that it:*

14 *(1) Has agreed upon compensation satisfactory to the tribe;*

15 *(2) Waives valuation; and*

16 *(3) Has determined that accepting such agreed-upon compensation and waiving*
17 *valuation is in its best interest.*

18 *(b) The tribe may request, in writing, that we determine fair market value, in which*
19 *case we will use a valuation in accordance with § 169.114. After providing the tribe*
20 *with the fair market value, we will defer to a tribe's decision to allow for any*
21 *compensation negotiated by the tribe.*

22 *(c) If the conditions in paragraph (a) or (b) of this section are not met, we will require*
23 *that the grantee pay fair market value based on a valuation in accordance with §*
24 *169.114.*

25 Q. Executive Official Review Document Number 023713 with the General Land
26 Development Department Environmental Compliance Determination are attached as
27 **Exhibit N**.

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29 **Section Three. Approval**
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- A. The Resources and Development Committee of the Navajo Nation Council hereby approves the grant of right-of-way to Windstream Communications subject to, but not limited to, the terms and conditions attached as **Exhibit A**, to construct, operate, and maintain fiber optic cable for Lybrook School located on Navajo Nation Trust Lands as described in maps attached as **Exhibit B**.
- B. The Resources and Development Committee of the Navajo Nation Council hereby waives valuation and consideration of \$384,225.78 for the right-of-way. It has determined that accepting the agreed-upon compensation and waiving valuation is in its best interest of the Navajo Nation, pursuant to Title 25 CFR § 169.110.
- C. The Resources and Development Committee of the Navajo Nation Council hereby authorizes the President of the Navajo Nation to execute any and all documents to affect the intent and purpose of this resolution.