

DIVISION C
TELECOMMUNICATIONS
CHAPTER 1. GENERAL PROVISIONS

§ 1.01 Statement of Policy

1. The RBC charges the Commission with the authority to execute its regulatory duties with respect to telecommunication companies and services, to include, but not limited to: (i) supporting universal service; (ii) maintaining just and reasonable rates; (iii) encouraging economically efficient deployment of infrastructure for higher speed telecommunication services and greater capacity for voice, video, and data transmission; (iv) encouraging fair and reasonable competition for local exchange telephone service in a competitively neutral regulatory manner; (v) maintaining or improving quality of service; (vi) promoting customer choice; (vii) encouraging voluntary resolution of issues between and among competing providers and discouraging litigation; (viii) promoting the safe siting, locating, operation and use of telecommunication facilities; and (ix) any other aspect of telecommunication services as determined appropriate by the Commission.

§ 1.02 Definitions

In this Division, except where otherwise specifically provided or the context otherwise requires, the following terms and expressions shall have the following meanings:

1. “Rates” means any rate, toll, rental, charge or classification of any person or entity engaged in providing Telecommunications Services within the Reservation.
2. “Tariff” means the filed and approved rates, rules and regulations of a Telecommunications Service provider that sets forth the services and products offered and the rates charged, and the terms and conditions for the use of those services and products.
3. “Telecommunications” means the transmission and/or reception of audio, video, data, and other information by wire, radio frequency, light, and other electronic or electromagnetic systems.
4. “Telecommunications Company” means any entity which provides Telecommunications Services to or within the Reservation.
5. “Telecommunications Facility” means a structure, facility, wires, ancillary equipment, or location designed, or intended to be used as, or used to support transmission, emission or reception of Telecommunications.
6. “Television Delivery Systems” means any transmission of television programming, via broadcasting, cable, microwave, or other such means of program delivery.
7. “Wireless Telecommunications Facility” means a structure, facility or location designed, or intended to be used as, or used to support antennas or other transmitting or receiving devices. This includes without limit, towers of all types and kinds and structures,

including, but not limited to buildings, church steeples, silos, water towers, signs or other structures that can be used as a support structure for antennas or the functional equivalent of such. It further includes all related facilities and equipment such as cabling, equipment shelters, and other structures associated with the site. It is a structure and facility intended for transmitting and/or receiving radio, television, cellular, SMR, paging, 911, personal communications services (PCS), commercial satellite services, microwave services and any commercial wireless telecommunication service not licensed by the Federal Communications Commission (FCC).

§ 1.03 Information from Telecommunications Companies

1. Within one hundred eighty (180) days of the effective date of this Division, each Telecommunications Company shall provide to the Commission the following information:
 - a. The identity and legal status of the Telecommunications Company.
 - b. The name, address, and telephone number of the officer, agent or employee responsible for the accuracy of the information provided to the Commission.
 - c. A general description of the Telecommunications Company's existing or proposed facilities within the Reservation.
 - d. A description of the Telecommunications Services the Telecommunications Company intends to offer or provide, or is currently offering or providing, to persons, firms, businesses, or institutions within the Reservation.
 - e. Information sufficient to determine the Telecommunications Company has applied for and received any certificates of convenience and necessity, certificate of operating authority, construction permit, operating license or other approvals required by the Minnesota Public Utility Commission and/or the Federal Communications Commission to provide Telecommunications Services within the Reservation.

§ 1.04 Discrimination Prohibited: practices, services, rates

1. No Telecommunications Company shall offer Telecommunications Service within the Reservation upon terms or rates that are unreasonably discriminatory. Every rate made, demanded, or received by any Telecommunications Company shall be just and reasonable, as defined in Division A, Chapter 4 of this Code. No Telecommunications Company shall unreasonably limit its service offerings to particular geographic areas unless facilities necessary for the service are not available and cannot be made available at reasonable costs. The rates of a Telecommunications Company must be the same in all geographic locations of the Reservation unless for good cause the Commission approves different rates. A Telecommunications Company that offers long-distance services shall charge uniform rates and charges on all long-distance routes and in all geographic areas in the Reservation where it offers the services. A Telecommunications Company may offer or provide volume

or term discounts or may offer or provide unique pricing to certain customers or to certain geographic locations for special promotions, and may pass through any state, municipal, or local taxes in the specific geographic areas from which the taxes originate.

§ 1.05 Enforcement of Division C.

1. All Telecommunications Companies engaged in Telecommunications Services shall comply with the provisions of this Division and the Utilities Code, and all decisions or orders, rules and regulations or other official pronouncements issued by the Commission pursuant to this Division and the Utilities Code.
2. If any Telecommunications Company violates or threatens to violate any provision of the Utility Code or this Division or interferes with or threatens to interfere with Telecommunications Services, the Commission, after complaint, notice, and hearing, shall make its order restraining and enjoining such entity from such interference or threatened interference, in accordance with Division I of this Code. In addition to the restraint imposed, the Commission shall prescribe such terms and conditions as it shall deem reasonable and proper.
3. Nothing contained herein shall be construed to prohibit or limit any person or entity whose property or business has been injured by a reason of a violation of this Chapter by any Telecommunications Company, from bringing an action for damages in Tribal Court to recover damages pursuant to Division A, Sec. 4.06 of this Code.

§ 1.06 Certificate of Convenience and Necessity

1. No Telecommunications Company shall engage in providing telecommunications services within the Reservation, nor shall a Telecommunications Company exercise any right or privilege under any franchise or permit, without first having obtained from the Commission a Certificate of Convenience and Necessity, unless otherwise authorized in this Division. The Commission shall promulgate and issue specific rules and regulations establishing filing and informational requirements for applications for a Certificate of Convenience and Necessity.
2. Exemption of certain activities. The Commission may by rule or regulation exempt certain Telecommunications Services from the requirement of a Certificate of Convenience and Necessity.
3. Construction. No Telecommunications Company engaged, or intending to engage, in providing Telecommunications Services within the Reservation shall begin construction of any line, service or system, or any extension beyond the defined boundaries of any existing franchise or Certificate of Convenience and Necessity without first having obtained from the Commission a Certificate of Convenience and Necessity for the territory in which such construction or extension will occur, unless otherwise authorized in this Division.

4. Application. Every applicant for a Certificate of Convenience and Necessity shall file with the Commission an application disclosing such information required by the Commission's rules and regulations and accompanied by appropriate filing fees. Each applicant shall provide evidence of compliance with the applicable laws of the Tribe, in accordance with the rules and regulations of the Commission.

§ 1.07 Tariffs

1. Rates; publication. Rates established by a Telecommunications Company engaged in providing Telecommunication Services shall first be approved by the Commission for reasonableness and justness before such rates are implemented, in accordance with the Commission's rules and regulations. Every Telecommunications Company engaged in providing Telecommunications Services shall make available for public inspection its rates, charges, and terms of service by print or electronic means which include schedules showing the rates and terms of service for the services rendered to the public.
2. Unlawful rates; refunds. The Commission will have authority to prescribe rates where it finds the rates in effect to be unlawful. The Commission is authorized to compel the return of any rates unlawfully collected by a direct refund or a general credit against future billings.
3. Rules and regulations. All rules and regulations affecting or pertaining to its charges or services to the public adopted by a Telecommunications Company engaged in providing Telecommunications Services shall be approved by the Commission for reasonableness or justness. Every rule and regulation not found to be reasonable or just by the Commission is prohibited and unlawful.
4. Rate and tariff changes; application; notice; filing.
 - a. Changes or adjustments to any existing, filed and approved tariff including, without limitation, any change in rates, territory served, rules, regulations or contracts, shall be provided to the Commission by any Telecommunications Company engaged in providing Telecommunications Services, in accordance with the Commission's rules and regulations. A notice plainly stating the change or changes shall be made available for public inspection and will be given to all subscribers.
 - b. The Commission may for good cause shown, or upon agreement with the Telecommunications Company requesting changes, modify, deny, or suspend any proposed rate, rule, or regulation changes.
 - c. Nothing within this section shall prohibit any Telecommunications Company providing Telecommunications Service from offering discounts or promotions or establishing rates at a level below that established by the Commission on a non-discriminatory basis, provided notice of such discount or promotion will be filed with the Commission in accordance with its rules and regulations.

§ 1.08 Leases, Easements, Licenses, Permits, Rights of Way

1. Any person or entity engaged in Telecommunications Services, seeking to install, construct, operate, or maintain any telecommunications station, translator station, facility, tower, microwave equipment, or apparatus, prior to such installation, construction, operation, or maintenance shall file with the Commission evidence of compliance with applicable laws of the Tribe and the federal government, governing leases, easements, licenses, permits, or rights-of-way.

§ 1.09 Fees and Assessments

The Commission is authorized to assess any fees or assessment on Telecommunication Companies or Telecommunication Services as determined by the Commission to be reasonable and non-discriminatory; provided that such fees or assessments may not be charged or recovered from subscribers or ratepayers located within the Reservation.

CHAPTER 2. TELEPHONIC AND BROADBAND SERVICES

§ 2.01 Certificate of Convenience and Necessity

1. For the purposes of this Section, the Commission is vested with authority to grant a Certificate of Convenience and Necessity for the provision of telephonic or broadband internet access services as provided for in §1.06. All telephone service providers shall comply with all applicable laws, rules and regulations, decisions and orders governing leases, easements, licenses, certificates, permits or rights-of-way, and tariffs.
2. The Commission shall have authority to adopt rules and regulations, decisions and orders governing quality of service which may govern not only service transmission quality standards, but also the service itself. The Commission shall also have the power to issue rules and regulations, decisions and orders governing the establishment of service, temporary service, line connection, provision of service, billing and collection, resolution of customer disputes, termination of service and notice, and Telecommunication Service for the disabled, handicapped, and the elderly, and like matters.
3. Applications for new or amendments to existing Certificates of Convenience and Necessity shall be addressed in accordance with rules and regulations of the Commission.
4. The Commission in considering tariff rate approvals and adjustments of telephonic or broadband internet access services may, pursuant to its authority under §1.07, employ state statutes pertaining to rate regulation in accordance with intergovernmental agreements citing the necessity for deferring Commission authority and jurisdiction to the state in matters of rate regulation.

CHAPTER 3. TELECOMMUNICATIONS FACILITIES

§ 3.01 Purpose

1. The intent of this Chapter is to set forth the requirements relating to the construction, operation, maintenance and modification of Telecommunications Facilities and the application for a special use permit; to minimize the impact of such facilities; establish a fair and efficient process for the review, approval, or denial of applications; assure an integrated, comprehensive review of environmental and cultural impacts of such facilities, and protect the health, safety and welfare of the Reservation and its community.

§ 3.02 Policy and Goals

1. In order to ensure that the placement, construction, and modification of Telecommunications Facilities protects the Tribes' health, safety, public welfare, environmental features, the natural and cultural resources and character of the community and neighborhood and other aspects of the quality of life specifically listed elsewhere in the Utility Code, the Tribe hereby adopts an overall policy with respect to a special use permit for telecommunications facilities for the express purpose of achieving the following goals:
 - a. Requiring a special use permit for any new, co-location or modification of any telecommunications facility.
 - b. Implementing an application process for persons seeking a special use permit for siting and locating telecommunications facilities.
 - c. Establishing a policy for examining an application for and issuing a special use permit for telecommunications facilities that is both fair and consistent.
 - d. Promoting and encouraging, wherever possible, the sharing and/or co-location of telecommunications facilities among service providers on trust property in association with facilities owned and maintained by the Tribe.
 - e. Promoting and encouraging, wherever possible, the placement, height and quantity of telecommunications facilities in such a manner, including but not limited to the use of stealth technology, to minimize adverse aesthetic and visual impacts on the land, property, buildings, and other facilities adjacent to, surrounding, and in generally the same area as the requested location of such telecommunications facilities, which shall mean using the least visually and physically intrusive facility that is not technologically or commercially impracticable under the facts and circumstances.
 - f. That in granting a special use permit, the Tribe has found that the telecommunications facility shall be the most appropriate site with regard to being the least visually intrusive among those available on the Reservation.

§ 3.03 Definitions

1. “Accessory facility or structure” means an accessory facility or structure serving or being used in conjunction with telecommunications facilities and located on the same property or lot as the telecommunications facilities, including but not limited to, utility or transmission equipment storage sheds or cabinets.
2. “Applicant” means any Telecommunications Company applying for a special use permit for telecommunications facilities.
3. “Application” means all necessary and appropriate documentation that an applicant submits to receive a special use permit for telecommunications facilities.
4. “Antenna” means a system of electrical conductors that transmit or receive electromagnetic waves or radio frequency or other wireless signals.
5. “Co-location” means the use of an existing tower or structure to support antennae for the provision of wireless services. A replacement tower that is constructed on the same site as an existing tower will be considered a co-location if the new tower is no taller than the old tower and that the old tower is removed in a reasonably short time frame after the new tower is constructed.
6. “Co-use” means joint use, as authorized by the Commission, of Telecommunications Facilities, poles, ducts, and conduits located within the Reservation, owned or controlled by a Telecommunications or Electric Utility Company.
7. “Commercial impracticability” or “commercially impracticable” means the inability to perform an act on terms that are reasonable in commerce; the cause or occurrence of which could not have been reasonably anticipated or foreseen and that jeopardizes the financial efficacy of the project. The inability to achieve a satisfactory financial return on investment or profit, standing alone, shall not deem a situation to be “commercially impracticable” and shall not render an act or the terms of an agreement “commercially impracticable.”
8. “Completed application” means an application that contains all information and/or data necessary to enable an informed decision to be made with respect to an application.
9. “FAA” means the Federal Aviation Administration, or its duly designated and authorized successor agency, of the United States.
10. “FCC” means the Federal Communications Commission, or its duly designated and authorized successor agency, of the United States.
11. “Fee property” means property that is not held in trust for an Indian or the Tribe, or not otherwise subject to a restriction against alienation imposed by the United States.
12. “Height” means, when referring to a tower or structure, the distance measured from the pre-existing grade level to the highest point on the tower or structure, even if said highest point is an antenna or lightening protection device.

13. "Modification" or "modify" means, the addition, removal or change of any of the physical and visually discernable components or aspects of a Telecommunications Facility, such as poles, wires, antennas, cabling, equipment shelters, landscaping, fencing, utility feeds, changing the color or materials of any visually discernable components, vehicular access, parking and/or an upgrade or changeout of equipment for better or more modern equipment. Adding a new carrier or service provider to a telecommunications tower or telecommunications site as a co-location or co-use is a modification. A modification shall not include the replacement of any components of a telecommunication facility where the replacement is identical to the component being replaced or for any matters that involve the normal repair and maintenance of a telecommunications facility without adding, removing, or changing anything.
14. "NIER" means Non-Ionizing Electromagnetic Radiation.
15. "Person" means any individual, corporation, estate, trust, partnership, joint stock company, association of two (2) or more persons having a joint common interest, or any other entity.
16. "Personal wireless facility" See definition for wireless telecommunications Facilities.
17. "Personal wireless services" or "PWS" or "personal telecommunications service" or "PCS" shall have the same meaning as defined and used in the United States 1996 Telecommunications Act.
18. "Repairs and maintenance" means the replacement of any components of a telecommunications facility where the replacement is identical to the component being replaced or for any matters that involve the normal repair and maintenance of a telecommunications facility without the addition, removal or change of any of the physical or visually discernable components or aspects of a telecommunications facility that will add to the visible appearance of the facility as originally permitted.
19. "Special use permit" means the official document or permit by which an applicant is allowed to file for a building permit to construct and use telecommunications facilities as granted or issued by the Tribe.
20. "Stealth" or "stealth technology" means to minimize adverse aesthetic and visual impacts on the land, property, buildings, and other facilities adjacent to, surrounding, and in generally the same area as the requested location of such telecommunications facilities, which shall mean using the least visually and physically intrusive facility that is not technologically or commercially impracticable under the facts and circumstances,
21. "Telecommunication site" means a structure, facility or location designed, or intended to be used as, or used to support antennas or other transmitting or receiving devices.
22. "Telecommunications structure" means a structure used in the provision of services described in the definition of telecommunications facilities.
23. "Temporary" means, temporary in relation to all aspects and components of this Chapter, something intended to, or that does not exist for more than ninety (90) days.

24. “Tower” means any structure designed primarily to support an antenna for receiving and/or transmitting a wireless signal.
25. “Trust property” means property held in trust status by the United States under its trust responsibility for the tribe or individual tribal members.

§ 3.04 Special Use Permit

1. Special Use Permit for Telecommunications Facilities.
 - a. Except as otherwise provided by this Chapter no person shall be permitted to site, place, build, construct, modify or prepare any site for the placement or use of, telecommunications facilities without having first obtained a special use permit for telecommunications facilities.
 - b. Any repair and maintenance of a telecommunications facility does not require an application for a special use permit but does require thirty (30) days prior notice be provided to the Commission.
2. Application Fee.
 - a. At the time that a person submits an application for a special use permit for a new tower or to increase the height or profile of an existing structure being attached to, such person shall pay a non-refundable application fee to the Commission, in accordance with the Commission’s current fee schedule.
 - b. At the time that a person submits an application for a special use permit to co-locate on an existing tower or other structure without increasing the height or profile of the structure being attached to such person shall pay a non-refundable application fee to the Commission, in accordance with the Commission’s current fee schedule.
3. Exemptions. The following shall be exempt from the application fee and may be exempt from the consultant costs under this Chapter:
 - a. The Tribes’ fire, police, schools, or other public service facilities owned and operated by the Tribe;
 - b. Facilities exclusively for private, noncommercial radio and television reception and private citizen’s bands, licensed amateur radio, and other similar noncommercial telecommunications.
4. Special Use Permit Application and Other Requirements.
 - a. All applicants for a special use permit for telecommunications facilities or any modification of such facility shall comply with the requirements set forth in this Chapter and applicable requirements of White Earth Nation Legal Codes. Applicants must submit applications to the Commission. The Commission has the authority to review, analyze, evaluate and make recommendations to the RBC with respect to the granting, denying, or revoking special use permits for

telecommunications facilities. After performing its review and making its recommendations on a special use permit, the Commission will forward the application to the administrator of the appropriate Tribal Department. At that point, the application will be processed following the applicable requirements for special use permits in White Earth Nation Legal Codes.

- b. The Commission may reject applications not meeting the requirements stated herein or which are otherwise incomplete.
- c. No telecommunications facilities shall be installed, constructed, or modified until the application is reviewed and approved by the RBC, the special use permit has been issued, and any other necessary permits or approvals are obtained.
- d. Any and all representations made by the applicant to the Commission on the record during the application process, whether written or verbal, shall be deemed a part of the application and may be relied upon in good faith by the Commission.
- e. An application for a special use permit for telecommunications facilities shall be signed on behalf of the applicant by the person preparing the same and with knowledge of the contents and representations made therein and attesting to the truth and completeness of the information.
- f. The applicant must provide documentation to verify it has the right to proceed as proposed on the site. This would require an executed copy of the lease with the landowner or landlord or a signed letter acknowledging authorization. If the applicant owns the site, a copy of the ownership record is required.
- g. The applicant shall include a statement in writing:
 - i. That the applicant's proposed telecommunications facilities shall be maintained in a safe manner, and in compliance with all conditions of the special use permit, without exception, unless specifically granted relief by the Commission in writing, as well as all applicable codes, rules, and regulations;
 - ii. That the construction of the telecommunications facilities is legally permissible, including, but not limited to the fact that the applicant is authorized to do business on the Reservation.
- h. Where a certification is called for in this Chapter, such certification shall bear the signature and seal of an appropriately registered licensed professional, whether engineer, surveyor, architect, or other.
- i. In addition to all other required information as stated in this Chapter, all applications for the construction or installation of new telecommunications facilities or modification of an existing facility shall contain the following information:

- i. A descriptive statement of the objectives for the new facility or modification including and expanding on a need such as coverage and/or capacity requirements;
- ii. Documentation that demonstrates and proves the need for the telecommunications facility to provide service primarily and essentially within the Reservation. Such documentation shall include propagation studies of the proposed site and all adjoining planned, proposed, in-service or existing sites that demonstrate a significant gap in coverage and/or if a capacity need, including an analysis of current and projected usage;
- iii. The name, address and phone number of the person preparing the report;
- iv. The name, address, and phone number of the property owner and applicant, and to include the legal name of the applicant. If the site is a tower and the owner is different than the applicant, provide name and address of the tower owner;
- v. The parcel number;
- vi. The zoning district or designation in which the property is situated, in accordance with the zoning designations of the Tribe;
- vii. Size of the property stated both in square feet and lot line dimensions, and a survey showing the location of all lot lines;
- viii. The location of nearest residential structure if within one quarter (1/4) mile of the proposed facility;
- ix. The location, size and height of all existing and proposed structures on the property which is the subject of the application;
- x. The type, locations and dimensions of all proposed and existing landscaping, and fencing;
- xi. The azimuth, size and center-line height location of all proposed and existing antennae on the supporting structure;
- xii. The number, type and model of the antenna(s) proposed with a copy of the specification sheet;
- xiii. The make, model, type and manufacturer of the tower and design plan stating the tower's capacity to accommodate multiple users;
- xiv. A site plan describing the proposed tower and antenna(s) and all related fixtures, structures, appurtenances and apparatus, including height above preexisting grade, materials, color and lighting;
- xv. The frequency, modulation and class of service of radio or other transmitting equipment;

- xvi. The actual intended transmission power stated as the maximum effective radiated power (ERP) in watts;
 - xvii. Signed documentation such as the “Checklist to Determine Whether a Facility is Categorically Excluded” to verify that the telecommunication facility with the proposed installation will be in full compliance with the current FCC RF Emissions guidelines (NIER). If not categorically excluded, a complete RF Emissions study is required to provide verification;
 - xviii. A signed statement that the proposed installation will not cause physical or RF interference with other telecommunications devices;
 - xix. A copy of the FCC license applicable for the intended use of the telecommunications facilities;
 - xx. A copy of the geotechnical sub-surface soils investigation, evaluation report and foundation recommendation for a proposed or existing tower site and if an existing tower or water tank site, a copy of the installed foundation design.
- j. The applicant will provide a written copy of an analysis, completed by a qualified individual or organization, to determine if the proposed new tower or existing structure intended to support telecommunication facilities is in compliance with Federal Aviation Administration Regulation Part 77 and if it requires lighting. This requirement shall also apply to any existing structure or building where the application increases the height of the structure or building. If this analysis determines that an FAA determination is required, then all filings with the FAA, all responses from the FAA, and any related correspondence shall be provided with the application.
- k. Application for New Tower.
- i. In order to better inform the public, in the case of a new telecommunication tower, the applicant shall, prior to the public hearing on the application, hold a “balloon test.” The applicant shall arrange to fly, or raise upon a temporary mast, a brightly colored balloon, that is representative in size of the initial antenna array including all standoffs, at the maximum height of the proposed tower. The dates, (including a second date, in case of poor visibility on the initial date) times and location of this balloon test shall be advertised by the applicant seven (7) and fourteen (14) days in advance of the first test date in a newspaper with general circulation on the Reservation. The applicant shall inform the Commission, in writing, of the dates and times of the test, at least fourteen (14) days in advance. The balloon shall be flown for at least four consecutive hours sometime between 7:00 am and 4:00 pm on the dates chosen. The primary date shall be on a weekend, but

in case of poor weather on the initial date, the secondary date may be on a weekday. A report summarizing the undertaking and results of the test, with pictures from various locations of the balloon shall be provided with the application.

- ii. The applicant shall examine the feasibility of designing the proposed tower to accommodate future demand for at least four (4) additional commercial applications, for example, future co-locations. The tower shall be structurally designed to accommodate at least four (4) additional antenna arrays equal to those of the applicant and located as close to the applicant's antenna as possible without causing interference. This requirement may be waived, provided that the applicant, in writing, demonstrates that the provisions of future shared usage of the tower is not technologically feasible, is commercially impracticable or creates an unnecessary and unreasonable burden, based upon:
 - 1. The kind of telecommunications facilities site and structure proposed;
 - 2. The number of existing and potential licenses without telecommunications facilities spaces/sites;
 - 3. Available space on existing and approved towers or other appropriate structures.
- iii. The owner of a proposed tower, and his/her successors in interest, shall negotiate in good faith for the shared use of the proposed tower by other wireless service providers in the future, and shall:
 - 1. Respond within sixty (60) days to a request for information from a potential shared-use applicant;
 - 2. Negotiate in good faith concerning future requests for shared use of the proposed tower by other telecommunications providers;
 - 3. Allow shared use of the tower if another telecommunications provider agrees in writing to pay reasonable charges. The charges may include, but are not limited to, a pro rata share of the cost of site selection, planning, project administration, land costs, site design, construction and maintenance financing, return on equity, less depreciation, and all of the costs of adapting the tower or equipment to accommodate a shared user without causing electromagnetic interference.
 - 4. Failure to abide by the conditions outlined above may be grounds for revocation of the special use permit.

- l. The applicant shall provide certification with documentation (structural analysis) including calculations that the telecommunication facility tower and foundation and attachments, rooftop support structure, water tank structure, and any other supporting structure as proposed to be utilized are designed and will be constructed to meet all applicable tribal and federal structural requirements for loads, including wind and ice loads.
- m. If the proposal is for a co-location or modification on an existing tower, the applicant is to provide signed documentation of the tower condition, such as an ANSI report as per Annex E, Tower Maintenance and Inspection Procedures, ANSI/TIA/EIA-222F or most recent version, or other documentation then required by the Commission. The inspection report must be performed every three (3) years for a guyed tower and five (5) years for monopoles and self-supporting towers and any remediation reports necessitated by the findings of the inspection.
- n. All proposed telecommunications facilities shall contain a demonstration that the facility will be sited so as to minimize visual intrusion as much as possible, given the facts and circumstances involved, and will thereby have the least adverse visual effect on the environment and its character and on the residences in the area of the telecommunications facility.
- o. If a new tower, proposal for a new antenna attachment to an existing structure, or modification adding to a visual impact, the applicant shall furnish a visual impact assessment, which shall include:
 - i. If a new tower or increasing the height of an existing structure is proposed, a computer generated "Zone of Visibility Map" at a minimum of one-mile radius from the proposed structure, with and without foliage shall be provided to illustrate locations from which the proposed installation may be seen.
 - ii. Pictorial representations of "before and after" (photo simulations) views from key viewpoints both inside and outside of the Reservation as may be appropriate. Guidance will be provided, concerning the appropriate key sites by the Commission. Applicant shall provide a map showing the locations of where the pictures were taken and distance from the proposed structure.
 - iii. A written description of the visual impact of the proposed facility including; and as applicable the tower base, guy wires, fencing and accessory buildings from abutting and adjacent properties and streets as relates to the need or appropriateness of screening.
- p. The applicant shall demonstrate and provide in writing and/or by drawing how it shall effectively screen from view the base and all related equipment and structures of the proposed telecommunications facility.

- q. The telecommunications facility and any and all accessory or associated facilities shall maximize the use of building materials, colors and textures designed to blend with the structure to which it may be affixed and/or to harmonize with the natural surroundings, this shall include the utilization of stealth or concealment techniques as may be required by the Commission.
- r. At a telecommunications site, an access road, turn-around space and parking shall be provided to assure adequate emergency and service access. Maximum use of existing roads, whether public or private, shall be made to the extent practicable. Road construction shall at all times minimize ground disturbance and the cutting of vegetation. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion.
- s. All telecommunications facilities shall be constructed, operated, maintained, repaired, provided for removal of, modified or restored in strict compliance with all applicable technical, safety and safety-related codes adopted by the Tribe, and if applicable, the State of Minnesota or United States, including but not limited to the most recent editions of the American National Standards Institute Code, National Electrical Safety Code and the National Electrical Code, as well as accepted and responsible workmanlike industry practices and recommended practices of the National Association of Tower Erectors. The codes referred to are codes that include, but are not limited to, construction, building, electrical, fire, safety, health, and land use codes. In the event of a conflict between or among any of the preceding the more stringent shall apply.
- t. A holder of a special use permit for a telecommunications facility shall obtain, at its own expense, all permits and licenses required by applicable, rule, regulation or code, and must maintain the same, in full force and effect, for as long as required by the Commission or other governmental entity or agency having jurisdiction over the applicant.
- u. There shall be a pre-application meeting. The purpose of the pre-application meeting will be to address issues that will help to expedite the review and permitting process. A pre-application meeting shall also include a site visit if there has not been a prior site visit for the requested site.
- v. An applicant shall submit to the Commission the number of completed applications determined to be needed at the pre-application meeting. Written notification of the application shall be provided to the legislative body of all adjacent municipalities as applicable and/or requested.
- w. The holder of a special use permit shall notify the Commission of any intended modification of a telecommunication facility and shall apply to the Commission, pursuant to the Chapter, to modify, relocate or rebuild a telecommunications facility.

5. Performance Security.

- a. The applicant and the owner of record of any proposed telecommunications facilities property site shall, at its cost and expense, be jointly required to execute and file with the Commission a bond, or other form of security acceptable to the Commission, in accordance with the Commission's current fee schedule, as to type of security and the form and manner of execution, for a tower facility and a co-location on an existing tower or other structure and with such sureties as are deemed sufficient by the Commission to assure the faithful performance of the terms and conditions of this Chapter and conditions of any special use permit issued pursuant to this Chapter. The full amount of the bond or security shall remain in full force and effect throughout the term of the special use permit and/or until any necessary site restoration is completed to restore the site to a condition comparable to that, which existed prior to the issuance of the permit.

6. Relief, Waiver, Exemption.

- a. Any applicant desiring relief, waiver or exemption from any aspect or requirement of this Chapter may request such, pursuant to and in compliance with the applicable provision of this Code, provided that the relief or exemption is contained in the submitted application for either a special use permit, or in the case of an existing or previously granted special use permit a request for modification of its tower and/or facilities. Such relief may be temporary or permanent, partial or complete. No such relief or exemption shall be approved unless the applicant demonstrates by clear and convincing evidence that, if granted the relief, waiver or exemption will have no significant effect on the health, safety and welfare of the Tribe, its residents and other service providers.

7. Shared Use of Telecommunications Facilities and Other Structures.

- a. As opposed to the construction of a new tower, the Tribe shall prefer locating on existing towers or others structures without increasing the height. The applicant shall submit a comprehensive report inventorying existing towers and other suitable structures within two (2) miles of the location of any proposed new tower, unless the applicant can show that some other distance is more reasonable and demonstrate conclusively why an existing tower or other suitable structure cannot be used.
- b. An applicant intending to locate on an existing tower or other suitable structure shall be required to document the intent of the existing owner to permit its use by the applicant.
- c. Such shared use shall consist only of the minimum antenna array technologically required to provide service primarily and essentially within the Reservation, to the extent practicable, unless good cause is shown.
- d. In order to provide efficient and quality telephone services, the Commission may authorize, through regulations, joint use of Telecommunications Facilities located

within the Reservation, owned or controlled by a Utility Company. All joint use agreements including the compensation provisions thereof for wire or cable attachments to a pole, duct, or conduit must be approved by the Commission. Upon the approval of the joint use agreement for pole attachments, all persons to such agreement shall have the right to use or share in and enjoy the use of the right-of-way easement granted to the pole owner.

- e. Disputes. Disputes concerning terms and conditions, including rental rates, of the joint use agreement for attachments shall be resolved by the Commission at a full and fair hearing conducted for that purpose pursuant to Division I of this Code, and in accordance with the Commission's rules and regulations.

8. Height of Telecommunications Towers.

- a. The applicant shall submit documentation justifying the total height of any tower, facility and/or antenna requested. Documentation in the form of propagation studies must include all backup data used to perform at requested height and a minimum of ten (10') feet lower height to allow verification of this height need. Such documentation will be analyzed in the context of the justification of the height needed to provide service primarily and essentially within the Reservation, unless good cause is shown.
- b. No tower constructed after the effective date of this Chapter, including allowing for all attachments, shall exceed that height which shall permit operation without required artificial lighting of any kind in accordance with tribal or FAA regulations.

9. Visibility of Telecommunications Facilities.

- a. Telecommunications facilities shall not be artificially lighted or marked, except as required by applicable law.
- b. Towers shall be galvanized and/or painted with rust-preventive paint of an appropriate color to harmonize with the surroundings, as determined on a case by case basis, and shall be maintained in accordance with the requirements of this Chapter.
- c. If lighting is required, applicant shall provide a plan for sufficient lighting of as unobtrusive and inoffensive an effect as is permissible under tribal and federal regulations.

10. Security of Telecommunications Facilities.

- a. All telecommunications facilities and antennas and the entire leasehold area shall be located, fenced or otherwise secured in a manner that prevents unauthorized access. Specifically:
 - i. All antennas, towers and other supporting structures, including guy anchor points and wires, shall be made inaccessible to individuals and constructed

or shielded in such a manner that they cannot be climbed or collided with;
and

- ii. Transmitters and telecommunications control points shall be installed in such a manner that they are readily accessible only to persons authorized to operate or service them.

11. Signage.

- a. Telecommunications facilities shall contain a sign no larger than four (4) square feet in order to provide adequate notification to persons in the immediate area of the presence of RF radiation or to control exposure to RF radiation within a given area. A sign of the same size is also to be installed to contain the name(s) of the owner(s) and operator(s) of the antenna(s) as well as emergency phone number(s). The sign shall be on the equipment shelter or cabinet of the telecommunications facility and be visible from the access point of the site and must identify the equipment owner of the shelter or cabinet. On tower sites, an FCC registration site as applicable is also to be present. The signs shall not be lighted, unless applicable law, rule or regulation requires lighting. No other signage, including advertising, shall be permitted.

12. Lot Size and Setbacks.

- a. All proposed towers and any other proposed telecommunications facility structures shall be set back from abutting parcels, recorded rights-of-way and road and street lines by the greater of the following distances: a distance equal to the height of the proposed tower or telecommunications facility structure plus ten percent (10%) of the height of the tower or structure, or the existing setback requirement of the Tribe, whichever is greater. Any accessory structure shall be located to comply with the applicable minimum setback requirements for the property on which it is situated.

§ 3.05 Hearing and Determination on Application

1. Public Hearing and Notification Requirements.

- a. If the Commission recommends approving the special use permit for a telecommunications facility, it will forward the application to the White Earth Nation Land Office or other appropriate Tribal Department, which will then process the application following applicable provisions of White Earth Tribal Codes, including presentation to the Reservation Business Council. In order that the Land Office is aware of nearby residents, the application shall contain the names and address of all residents whose residences are located within one-half mile of the proposed telecommunications facility.
- b. There shall be no public hearing required for an application to co-locate on an existing tower or other structure or a modification at an existing site, as long as

there is no proposed increase in the height of the tower or structure, including attachments thereto.

- c. The Commission shall schedule a public hearing regarding the application once it finds the application is complete. The Commission, at any stage prior to issuing a special use permit, may require such additional information as it deems necessary to analyze and make a final determination on the application.

2. Action on an Application for a Special Use Permit for Telecommunications Facilities.

- a. The Commission will undertake a review of an application pursuant to this Chapter in a timely fashion, consistent with its responsibilities, and shall act within a reasonable period of time given the relative complexity of the application and the circumstances, with due regard for the public's interest and need to be involved, and the applicant's desire for a timely resolution.
- b. If the RBC approves the special use permit for telecommunications facilities, then the applicant shall be notified of such approval in writing within ten (10) calendar days of the RBC's action, and the special use permit shall be issued within thirty (30) days after such approval.
- c. If the Council denies the special use permit for telecommunications facilities, then the applicant shall be notified of such denial in writing within ten (10) calendar days of the RBC's action.

§3.06 Permit Holder Miscellaneous Provisions

1. Extent and Parameters of Special Use Permit for Telecommunications Facilities.

- a. The extent and parameters of a special use permit for telecommunications facilities shall be as follows:
 - i. Such special use permit shall not be assigned, transferred or conveyed without the express prior written notification to the Commission and RBC.
 - ii. Pursuant to applicable provisions of this Chapter, a special use permit may be terminated for a violation of the conditions and provisions of the special use permit, or for a material violation of this Chapter.

2. Reservation of Authority to Inspect Telecommunications Facilities.

- a. In order to verify that the holder of a special use permit for telecommunications facilities and any and all lessees, renters, and/or licensees of telecommunications facilities, place and construct such facilities, including towers and antennas, in accordance with all applicable technical, safety, fire, building, and zoning codes, laws, and regulations and other applicable requirements, the Commission may inspect all facets of said permit holder's, renter's, lessee's or licensee's placement, construction, modification and maintenance of such facilities, including, but not

limited to, towers, antennas and buildings or other structures constructed or located on the permitted site.

3. Liability Insurance.

- a. A holder of a special use permit for telecommunications facilities shall secure and at all times maintain public liability insurance for personal injuries, death and property damage, and umbrella insurance coverage, for the duration of the special use permit in amounts and coverages satisfactory to the Commission and RBC.

4. Indemnification.

- a. Any application for telecommunication facilities, pursuant to this Chapter, shall contain a provision with respect to indemnification. Such provision shall require the applicant, to the extent permitted by law, to at all times defend, indemnify, protect, save, hold harmless, and exempt the Tribe, and its officers, councils, employees, committee members, attorneys, agents, and consultants from any and all penalties, damages, costs, or charges arising out of any and all claims, suits, demands, causes of action, or award of damages, whether compensatory or punitive, or expenses arising therefrom, either at law or in equity, which might arise out of, or are caused by, the placement, construction, erection, modification, location, products performance, use, operation, maintenance, repair, installation, replacement, removal, or restoration of said facility, excepting, however, any portion of such claims, suits, demands, causes of action or award of damages as may be attributable to the negligent or intentional acts or omissions of the Tribe, or its servants or agents. With respect to the penalties, damages or charges referenced herein, reasonable attorneys' fees, consultants' fees, and expert witness fees are included in those costs that are recoverable by the Tribe.
- b. Notwithstanding the requirements noted in subsection (a) of this section, an indemnification provision will not be required in those instances where the Tribe itself applies for and secures a special use permit for telecommunications facilities.