

LEECH LAKE BAND OF OJIBWE
TITLE 14: UTILITY SERVICE AND RIGHTS OF WAY TRESPASS ORDINANCE

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UTILITY SERVICE AND RIGHTS OF WAY TRESPASS ORDINANCE
OF THE
LEECH LAKE BAND OF OJIBWE

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Chapter 1. General Provisions

This ordinance shall be known as the "Utility Service and Rights of Way Trespass Ordinance of the Leech Lake Band of Ojibwe," and herein referred to as the "Ordinance."

1.01. Ordinance Findings And Purpose

(1) **Findings:** The Leech Lake Reservation Business Council hereby finds the following:

(a) The Chippewa Treaty of February 22, 1855 (10 Stat. 1165), between the United States and the Mississippi Pillager & Winnebigoish Bands of the Chippewa Indians, to which the Leech Lake Band of Ojibwe Indians is a successor in interest, provided in part solemn and continuing trust commitments for economic development, law enforcement, health care and education, all of which require essential Utility Services in a well-regulated society.

(b) Specifically, the Treaty parties agreed as follows:

(i) Under Article 1, the Chippewa Bands agreed to "cede, sell, and convey to the United States all their right, title, and interest in, and to, the lands now owned and claimed by them, in the Territory of Minnesota" in exchange for, among other things, funding commitments and the reservation of certain described lands that would be later surveyed by authority of the President.

(ii) Under Article 2, Reservation lands were to be set aside by the United States for "permanent homes" of the Bands.

(iii) Articles 3 through 7 provided for federal funding for economic development, law enforcement, health care and education for the development of the Bands' permanent homelands.

(iv) As to rights of way, Article 8 provided that:

"All roads and highways authorized by law, the lines of which

shall be laid through any of the reservations provided for in this convention, shall have the right of way through the same; the fair and just value of such right being paid to the Indians therefore; to be assessed and determined according to the laws in force for the appropriation of lands for such purposes.”

- (v) Under Article 9, the Bands agreed “to respect and observe the laws of the United States, so far as the same to them are applicable. And they also stipulate that they will settle down in the peaceful pursuits of life, commence the cultivation of the soil, and appropriate their means to the erection of houses, opening farms, the education of their children, and such other objects of improvement and convenience, as are incident to well-regulated society.”
- (vi) By Executive Order of President Ulysses S. Grant of May 26, 1874 (I Kappler 851), Treaty reserved lands and additional lands that were not already reserved by the 1855 Treaty were formally set aside and established as the Leech Lake Reservation, a permanent homeland.
- (c) Current Utility Services on the Leech Lake Indian Reservation have been established without sufficient regulatory controls to satisfy solemn Treaty commitments and with disregard for the needs of American Indians, the Leech Lake Band of Ojibwe Indians, and the Tribe’s governmental service providers. As a direct result, Utility Services for the Tribe and its members on the Reservation are inadequate.
- (d) The lack of adequate Utility Services on the Reservation has denied Tribal members the ability to obtain:
 - (i) medical, emergency medical, fire and law enforcement services;
 - (ii) educational and economic development opportunities;
 - (iii) governmental services, and,
 - (iv) a voice in the affairs of their Tribal government.
- (e) Utilities have been installed or placed on Tribal and individually-owned trust lands without federal approval and in violation of Article 8 of the Treaty.
- (f) The imposition of the provisions of this Ordinance on trespassing utilities is deemed by the Tribe to be preferable to alternatively instituting trespass actions in Tribal Court as authorized by federal law and this Ordinance.
- (g) The severe deficiencies in providing and installing essential Utility Services on the Reservation violates the Chippewa Treaty and the pledge of the United States to provide these basic services that are incident to a well-regulated society.
- (h) Due to the lack of adequate regulation over Utility Providers on the Reservation to meet Treaty commitments and federal law standards, there has been no effort to address cultural barriers between the providers and the customers, economic conditions and needs of the customers, or the needs of the Tribal government to provide essential Utility Services for education, public health, or public safety.
- (i) The existing telecommunications infrastructure on the Reservation was financed in part with the assistance of federal funds that were intended to

extend service to rural areas, but the principles of universal service as set forth in federal telecommunication laws are not being met within the Leech Lake Reservation.

- (j) Rural Carriers have access to low-interest loans through the Rural Utilities Service (RUS) of the United States Department of Agriculture (USDA), and are required as a condition of such loans to prepare and submit market forecasts to determine service requirements for areas they are to serve, called "Area Coverage Surveys." These requirements are currently found in 7 CFR §§ 1737.30 to 1737.31. However, Carriers failed to account for the Reservation as a distinct community of interest when they applied for their USDA loans, which violates the Treaty commitments of the United States to insure the provision of basic utility services for the Tribe's permanent homeland.
 - (k) As a matter of Tribal law, the Council finds that it is a violation of the Treaty for a Carrier to avoid its obligations to extend services on the Reservation by seeking a rural exemption under federal law, such as found in 47 U.S.C. § 251(f) (1).
 - (l) The Tribe has determined that it must exercise its sovereign powers to establish its own telecommunication priorities for the Tribe and its members, a determination that is shared by policy of the Federal Communications Commission (FCC), such as its "Reaffirmation of Principles of Tribal Sovereignty and the Federal Trust Responsibility," released on June 23, 2000, FCC 00-207, 16 FCC Rcd 4078.
- (2) **Purposes:**
- (a) The general purpose of this Ordinance is to regulate, consistent with the public interest, Utility Services provided to the Tribe and its members within the exterior boundaries of the Leech Lake Reservation, to establish certainty in land titles for rights of way, and to provide for trespass enforcement actions in Tribal Court.
 - (b) This Ordinance is necessary to achieve the Tribe's principles of universal tribal service, similar to those found in the Telecommunications Act of 1996 (47 U.S.C. §254(b)), for telecommunications on the Leech Lake Reservation, as follows:
 - (i) Quality service should be available at just, reasonable, and affordable rates;
 - (ii) Access to advanced telecommunications and information services should be provided in all regions of the Reservation;
 - (iii) Reservation consumers, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas;
 - (iv) All providers of telecommunications services should make an equitable and nondiscriminatory contribution to the preservation and advancement

- of universal service;
- (v) There should be specific, predictable and sufficient federal and Tribal mechanisms to preserve and advance universal service;
- (vi) Elementary and secondary schools and classrooms, health care providers, and libraries should have access to advanced telecommunications services, and,
- (vii) Such other principles as are determined by the Tribe or under federal law to be necessary and appropriate for the protection of the public interest, convenience, and necessity.

1.02. Authority and Repeal of Inconsistent Legislation

- (1) Authority for this Ordinance is found in Article VI, Sections 1(b), (c) and (d) of the Revised Constitution and Bylaws Minnesota Chippewa Tribe, Minnesota. The Leech Lake Band of Ojibwe Indians is a federally recognized Indian tribe that possesses sovereign powers of government within the geographical boundaries of the Leech Lake Reservation and ceded territory, as established by the Treaty of 1855 and Executive Order of 1874, and to such other lands as may be added to the Reservation. The Leech Lake Tribal Council is authorized to make and enforce this law pursuant to the authorities described above and its status as governing body of a sovereign Indian tribe.
- (2) Any prior Tribal regulations, resolutions, orders, motions, legislation, Ordinances or other Tribal laws which are inconsistent with the purposes and procedures established by this Ordinance are hereby repealed to the extent of any such inconsistency.

1.03. Jurisdiction and Enforcement

- (1) This Ordinance shall be applicable to all Utility Services provided to and through the Leech Lake Band of Ojibwe Indians, its members and any of its entities or businesses, and by Utility Providers who otherwise submit to the Tribe's jurisdiction, on the Reservation.
- (2) Enforcement of this Ordinance shall be as described herein, and thereafter as ordered by the Tribal Court.
- (3) Chapter 8 regarding Right of Way Property Rights shall be applicable to any person or entity holding or wishing to hold a Right of Way interest on or across the Reservation, whether or not such person or entity is under the jurisdiction of Chapters 1 to 7 of this Ordinance.

1.04. Definitions

- (1) American Indian: "American Indian" shall be an Indian person over whom the Tribe has jurisdiction pursuant to the Indian Civil Rights Act as amended, 25 U.S.C. 1301(2).
- (2) Carrier: "Carrier" shall mean any and all telecommunications carriers subject to the Tribe's jurisdiction, which is any provider of telecommunications services on the

Leech Lake Reservation, except that such term does not include aggregators of telecommunications services.

- (3) Ceded Territory of 1855: (See MAP in back)
- (4) Certificate of Public Convenience and Necessity (CPCN): A "CPCN" means an initial authorization or renewal thereof, issued by the Commission which authorizes the construction or operation of telecommunication systems under the jurisdiction of this Ordinance within the Reservation, and is similar to the approval of a service territory.
- (5) Emergency: "Emergency" means a situation in which property or human life is in jeopardy and the prompt summoning of aid is essential.
- (6) Majority Vote: Majority vote is half of voting members present, plus one, in a valid meeting with a quorum.
- (7) Order: An "Order" is a written decision of the Tribal Council, as recommended by the Utilities Commission, regarding a CPCN, a rate, enforcement of an Order or ordinance, or another decision of the Tribal Council under this Ordinance.
- (8) Personal property: "Personal property" includes all property that is not land, and includes fixtures to land, but does not include property subject to a real property agreement approved by the United States.
- (9) Quorum: Half of the voting board members plus one voting member.
- (10) Real property: "Real property" means land, not including fixtures to land.
- (11) Regular Meeting: Regular meetings are required by this ordinance or other bylaw often described as quarterly or meeting scheduled for same day every month.
- (12) Reservation: "Reservation" means the Leech Lake Reservation and any other reservations created by the 1855 Treaty where R/W still exists.
- (13) Special Meeting: Special Meetings are called by notice and other than Regular meeting.
- (14) Telecommunication Service(s): "Telecommunication Service(s)" means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.
- (15) T.E.R.O: Tribal Employment Rights Ordinance, which is a separate ordinance often associated with federally funded projects and assessing a TERO fee when projects occur within the exterior reservation boundaries.

- (16) Treaty: "Treaty" means the Chippewa Treaty of February 22, 1855 (10 Stat. 1165), between the United States and the Mississippi Pillager & Winnebigoish Bands of the Chippewa Indians, to which the Leech Lake Band of Ojibwe Indians is a successor in interest. Also Treaty with the Chippewa, Mississippi, and Pillager and Winnebigoish Bands, 1964 (13 Stat. 693).
- (17) Tribal Council: "Tribal Council" means the Reservation Business Committee as established pursuant to Article III of the Minnesota Chippewa Constitution, as the governing body of the Tribe.
- (18) Tribal Utilities Commission or Commission: "Tribal Utilities Commission" or "Commission" means the Tribal Commission that is established under this Ordinance.
- (19) Tribe or Tribal: "Tribe or Tribal" refers to the Leech Lake Band of Ojibwe Indians.
- (20) Utility Provider: "Utility Provider" means every publicly or privately owned entity or Carrier engaged in supplying Utility Services to residential, commercial or governmental consumers on the Reservation.
- (21) Utility Services: "Utility Services" means electricity, natural gas, cable television, water, sewer or Telecommunication Services distributed to, or collected from, residential, commercial or governmental utility consumers by a Utility Provider.

1.05. Period of Effect

This Ordinance shall take effect upon final approval under the Minnesota Chippewa Constitution, as amended, and shall remain in effect until revoked or rescinded by action of the Leech Lake Reservation Business Committee (LLRBC) a/k/a Tribal Council.

1.06. Saving Provision

If any section, or any part thereof, of this Ordinance or the application thereof to any party, person, or entity in any circumstances shall be held invalid for any reason whatsoever by a court of competent jurisdiction or by federal legislative enactment, the remainder of the relevant section or part of this Ordinance shall not be affected thereby and shall remain in full force and effect as though no section or part thereof has been declared to be invalid.

Chapter 2. Prohibition on Taxes

2.01. State Taxes Prohibited

All entities providing Utility Services under the jurisdiction of this Ordinance are hereby prohibited from assessing, or including within invoices or bills sent to the Tribe, or any Tribal member or Tribal entity within the Reservation, for service provided to the Tribe, Tribal entity or Tribal member within the Reservation, any tax, tariff, or collection

established or imposed by the State of Minnesota or any of its political subdivisions and not explicitly approved or ratified by the Tribal Council.

2.02. Federal Taxes Prohibited

All entities providing Telecommunication Services under the jurisdiction of this Ordinance are hereby prohibited from assessing, or including within invoices or bills sent to the Tribe or any Tribal entity within the Reservation that is performing essential governmental functions, for service provided within the Reservation, any communications excise tax.

Chapter 3. Tribal Utility Commission

3.01. Creation of Tribal Utility Commission

A Tribal Utility Commission, comprised of three members appointed by the Tribal Council, as further set forth in this Ordinance, is hereby authorized and shall have the purposes, powers, and authorities described in this Ordinance.

3.02. Purposes of Tribal Utility Commission

- (1) The purpose for which the Commission is organized is to provide an entity to hold hearings and make recommendations to the Tribal Council for the regulation of the actions of Utility Providers providing Utility Services on the Reservation.
- (2) The Commission shall have the authority to propose to the Tribal Council the issuance of Orders, regulations and rate schedules pursuant to this Ordinance.

3.03. Powers and Authority of Tribal Utility Commission

The Tribal Utility Commission is authorized to do the following:

- (1) To schedule the proceedings leading up to the issuance of proposed Orders to submit to the Tribal Council, to request, receive and analyze information, to hold meetings or hearings, to advise the Council on matters relating to rights of way, and to deliberate as necessary to fulfill its function as described in this Ordinance.
- (2) To propose Orders for issuance by the Tribal Council, which orders shall be binding on Utility Providers acting on the Reservation pursuant to this Ordinance.
- (3) To propose for promulgation by the Tribal Council rules and regulations for the performance of any service or the provision of products under its jurisdiction and by including such final rules in CPCN documents.
- (4) To examine books, papers or documents of any Carrier under its jurisdiction, with due regard for the need to protect confidentiality, and to examine under oath or otherwise any officer, director, agent or employee of any such Carrier, and to subpoena the presence of such persons, or production of such information.

- (5) To advise the Tribe to employ or appoint employees, agents, attorneys or contractors and to define their duties and fix their compensation in accordance with personnel policies and procedures of the Tribe.
- (6) To propose for issuance by the Tribal Council orders for improvements to the services or facilities of the Utility Providers.
- (7) To ascertain the value of the property of every Carrier consistent with federal law.
- (8) To propose for establishment and implementation by the Tribal Council rate schedules for CPCNs under their jurisdiction to help offset the reasonable costs of the Commission's operation.
- (9) To assist in the application for and administration of grants consistent with the purposes of this Ordinance.
- (10) At the direction of the Tribal Council, to make joint investigations, hold joint hearings within or outside the Reservation with any official, board, committee, commission, or agency of any Tribe or State of the United States or federal entity.
- (11) As is approved by the Tribal Council, to participate on appropriate boards or bodies or with policy formation or to participate on national Tribal boards or bodies.
- (12) To make recommendations to the Tribal Council on various matters relating to this Ordinance, including the amendment of, or addition to, existing laws or regulations.

3.04. Limitations on Powers of Tribal Utility Commission

The Tribal Utility Commission shall have no power:

- (1) To expressly or by implication enter into any agreement of any kind on behalf of the Tribe.
- (2) To pledge the credit or assets of the Tribe.
- (3) To dispose of, pledge, or otherwise encumber real or personal property of the Tribe.
- (4) To issue Orders or promulgate rules or regulations without express authority of the Tribal Council.
- (5) To waive any right, privilege, or immunity of the Tribe or to release any obligation owed to or by the Tribe.

3.05. Tribal Utility Commission Operations

- (1) The Commission members shall in all cases act as a board, regularly convened, by a majority vote, and they may propose for adoption by the Tribal Council such rules and regulations for the conduct of their proceedings as they may deem proper, not

inconsistent with this Ordinance, or applicable Tribal or federal law.

- (2) A majority of the Commission shall be members of the Tribe. A Commission member's duties shall be performed in good faith, in a manner the member believes to be in or not opposed to the best interests of the Tribe and the residents of the Reservation, and with such care as an ordinarily prudent person would use under similar circumstances in a like position.
- (3) The initial Commission shall begin implementing this Ordinance when directed to do so by the Tribal Council and shall consist of three members of the Tribal Council, or others designated by the Tribal Council. The Council shall appoint three regular Commissioners to serve on the Commission no later than 90 days after the date this Ordinance is implemented by the Council.
- (4) A Chairperson and a Vice Chairperson shall be chosen by the Commission. The Chairperson shall be responsible for presiding over meetings of the Commission. The Vice Chairperson shall assume the duties of the Chairperson in the absence of the Chairperson. A quorum of Commission members shall consist of half of the Commission members plus one. In the event a quorum is not present, the meeting shall be adjourned for a period not exceeding ten days.
- (5) Regular or special meetings of the Commission may be called upon the request of the Chairperson, any Commission Members or by the Tribal Council. Notice of meetings, other than the regular meetings, shall be given by service upon each Commission Member in person orally at a preceding meeting, or by telephone or mailing to the last known post office address of the member, at least three days before the date therein designated for such meeting, including the day of mailing. Such notice shall specify the time and place of such meeting, and the business to be brought before the meeting. No business other than that specified in such notice shall be transacted at any special meeting.
- (6) Each Commission Member shall have one vote.
- (7) The Commission shall hold an annual meeting with the Tribal Council beginning with the year after this Ordinance is adopted. The meeting shall be for the purpose of reporting on the annual activities and business that may come before the Commission. Notice of the meeting shall be posted at customary and appropriate public notice locations at least 30 days in advance of the meeting.
- (8) The meetings of the Commission shall be publicly noticed and open to the public, unless deliberation of the Commission over issues before it requires that the Commission declare an executive session. To the extent practical, executive sessions shall be declared as such in the public notices. On important matters affecting the residents of the Reservation, the Commission shall publish in the Tribal or Regional newspaper the nature of the matter and Commission meeting times. The Commission may, in its discretion, hold formal public meetings to

better understand the views of Reservation customers and Utility Providers, and to better determine the best interests of the Tribe and the residents of the Reservation.

3.06. Orders of the Tribal Council

- (1) The Commission may propose to regulate Utility Providers under its jurisdiction by proposing to the Tribal Council the issuance of one of the following types of Orders:
 - (a) Orders Approving CPCNs or Disapproving a CPCN under Chapter 4 of this Ordinance. An Order Disapproving a CPCN may contain a listing of requirements to be met for reconsideration of the CPCN application.
 - (b) Orders Approving Rates or Tariffs or Disapproving Rates or Tariffs for Carriers under Chapter 5 of this Ordinance. An Order Disapproving such Rate or Tariff may contain a listing of requirements to be met for reconsideration.
 - (c) Orders listing information to be provided to the Commission.
 - (d) Orders enforcing conditions of CPCNs or Rates or Tariffs under Chapter 7 of this Ordinance or enforcing information requests.
 - (e) Orders to revoke a CPCN Agreement when conditions of the CPNC are not met.
 - (f) Other Orders necessary to enforce the provisions of this Ordinance.
- (2) The Commission may propose to the Tribal Council the creation of a process consistent with the provisions of this Ordinance leading up to the issuance of each of the above types of Orders. When the process is initiated by the Tribal Council by the issuance of a Notice of CPCN pursuant to Chapter 4 of this Ordinance, or by issuance of a Notice of Ratemaking pursuant to Chapter 5 of this Ordinance, or by issuance of a Notice of Enforcement pursuant to Chapter 6 of this Ordinance, such Notice shall be accompanied by a tentative schedule for completion of the process and ultimate issuance of the Order.
- (3) All proposed Orders must be approved by and signed by at least a majority of the members of the Commission.
- (4) All final Orders of the Tribal Council must be made by Resolution of the Tribal Council.
- (5) The Commission shall build and maintain a record upon which all decisions are made.

3.07. Compensation for Tribal Utility Commission

- (1) The Commission members shall receive such compensation for their services as may be determined by the Tribal Council.

- (2) Commission members shall be entitled to compensation for their expenses, including travel expenses, incurred in the discharge of their duties. All requests for reimbursement must be made in accordance with Tribal policy and must be approved by the Commission Chairperson.
- (3) Stipends may be established from time to time by the Tribal Council in lieu of compensation or expense reimbursements for attendance at regular meetings.

3.08. Terms of Service for Members of Tribal Utility Commission

- (1) Commission members shall be appointed for staggered terms: one position for an initial period of 1 year, one position for an initial period of 2 years, and one position for an initial period of 3 years. Thereafter, all terms shall be for 3 years.
- (2) Commission members may resign by submitting written notice of their resignation, and such resignation shall be accepted by the Tribal Council at the next Tribal Council meeting.
- (3) Any Commission member may be removed for cause by a majority vote of the Tribal Council at a duly called meeting after the Tribal Council has had the opportunity to fully review the matters constituting cause for removal and after allowing any affected Commission member to appear before the Tribal Council and respond to the allegations which constitute cause for removal. Cause for removal shall be limited to the following:
 - (a) Such Commission member has failed to attend any four meetings of the Commission out of any eight consecutive meetings, unless any of such absences is excused; or
 - (b) Such Commission member has, during his or her term on the Board, been convicted of any crime reflecting upon such member's honesty or ability to fulfill the fiduciary obligations imposed by law upon such member; or
 - (c) The Commission has found, in a meeting where the topic was scheduled for discussion, that the Commission member has committed malfeasance or breached a fiduciary duty or other duty imposed by the Tribe's applicable Code of Ethics.
- (4) No Commission member shall participate in any matter in which such Commission member has any direct personal pecuniary interest, or feels that he/she cannot perform the duties of a Commission member in an unbiased manner.
- (5) A Commission member shall vacate his office if during the term of the office he or she shall be a party to a contract for profit with an entity doing business under the jurisdiction of the Commission, and/or that presents a conflict of interest with the duties of the Commission Member.
- (6) A vacancy shall exist from the date of any Commission meeting after which a

member is removed or whose resignation is accepted as provided herein.

- (7) The Tribal Council will name new appointments to fill any vacancies in the Commission within thirty days after such vacancy occurs. Any vacancy created by the expiration of a Commission member's term may be filled with the exiting Commission member.

3.09. Eligibility to Serve on Tribal Utility Commission

To be eligible for appointment to the Commission an individual must be at least 25 years of age, and have a minimum of three years of experience or a college degree in one or more of the following fields:

- (1) Financial management,
- (2) Land management,
- (3) Business Administration,
- (4) Utility management,
- (5) Tribal Government,
- (6) Law,
- (7) Telecommunications,
- (8) Engineering, or
- (9) Economic development.

3.10. General Provisions Applicable to Tribal Utility Commission

Nothing in this Ordinance shall be interpreted to provide a waiver of the sovereign immunity of the Tribe or any of its governmental officers, employees and/or agents.

Chapter 4. Certificates of Public Convenience and Necessity

4.01. CPCN Requirements

All eligible Carriers providing telecommunication services to customers on the Reservation must obtain a Certificate of Public Convenience and Necessity (CPCN) and adhere to the Tribe's principles of universal tribal service.

4.02. Procedures for Certification

- (1) All CPCNs shall be issued or denied by Order of the Tribal Council, upon recommendation of the Tribal Utility Commission, after consideration of all relevant facts submitted to the Commission, after consideration of the public interest, and as is consistent with the comprehensive plan for the Reservation.
- (2) All Carriers shall demonstrate sufficient technical, financial, and managerial capabilities to provide the local exchange services for which they have applied. In granting a CPNC to provide local exchange service, the Commission may propose to the Tribal Council the imposition of terms and conditions, on a competitively neutral basis, that it finds consistent with preserving and advancing universal tribal

service, protecting the public safety and welfare, ensuring the continued quality of service, and safeguarding the rights of consumers.

(3) Process for CPCN:

- (a) Within 120 days after formation of the Tribal Utility Commission, the Commission may issue a Notice of CPCN to Carriers that are under their jurisdiction and are currently providing service to customers under the jurisdiction of this Ordinance.
- (b) The Commission shall publish a public notice that CPCNs are being considered by the Commission.
- (c) Each Notice of CPCN shall include the following:
 - (i) A copy of this Ordinance.
 - (ii) A requirement that the Carrier providing service submit an Application for a CPCN letter by a date certain requesting a CPCN if it wishes to continue providing services within the Reservation.
- (d) Such Application for CPCN shall contain, in the manner prescribed by the Commission:
 - (i) Information showing how the entity meets or will meet the Obligations of a Carrier as set forth herein.
 - (ii) Information regarding the rates and tariffs charged for each type of service provided.
 - (iii) Maps in a digital format that is mutually agreed upon between the Commission and the service provider sufficient for input into a database indicating detailed information of the area served or to be served by the CPCN.
 - (iv) If the applicant for a CPCN is a corporation, a certified copy of its articles of incorporation and bylaws.
 - (v) Information regarding the methods by which services are provided.
 - (vi) Any filing fee which is required to be submitted with the letter requesting a CPCN.
- (e) The Commission shall consider all requests for CPCNs and shall propose that the Tribal Council grant those that are determined to be in the public interest.
- (f) Any new Carrier wishing to provide services under the jurisdiction of the Commission on the Reservation shall submit an Application for CPCN and subject itself to the certification process prior to beginning services.

- (4) **Term of CPCN:** Each CPCN shall have a starting and ending date. No CPCN shall be for a term longer than 10 years, unless a previous agreement provides otherwise.

4.03. Obligations of Carrier

- (1) As a condition for conducting new commercial transactions on Tribal lands and as a condition for the operation and maintenance of new facilities on Tribal lands to conduct those commercial transactions, all Carriers shall be bound by the obligations set forth herein.
- (2) A particular CPCN may contain exemptions from one or more of these obligations. No exemption will be effective unless it explicitly references this Section and the exempted subsection number in the Tribal Council's Order granting the CPCN. A particular CPCN may contain additional obligations specific to the service provided.
- (3) The following obligations attach to CPCNs:
 - (a) **Federal Regulations:** Carriers shall have all obligations described in federal regulations, including but not limited to those promulgated pursuant to the Communications Act of 1934 and Telecommunications Act of 1996, as amended.
 - (b) **Secure Eligible Telecommunications Carrier Status:** The Federal Communications Commission (FCC) is to designate a common carrier as an eligible telecommunications carrier for a service area designated by the FCC consistent with 47 U.S.C. § 214(e) on the Reservation. The FCC may permit an eligible telecommunications carrier to relinquish its designation as such a Carrier in any area served by more than one eligible telecommunications carrier consistent with 47 U.S.C. § 214(e) (4). The FCC may designate a common Carrier or Carriers to provide service to unserved areas that request such service consistent with 47 U.S.C. § 214(e) (3). The FCC will not in an area served by a rural telephone company designate more than one eligible telecommunications carrier absent a finding that the additional designation would be in the public interest. Carriers that request eligible telecommunications carrier status from the FCC under 47 U.S.C. § 214(e)(6) shall first file such request with the Tribal Utilities Commission, and the Tribal Utilities Commission shall recommend that the Tribal Council provide comments on such request to the FCC on behalf of the Tribe.
 - (c) **Obligation to Serve:** All Carriers are obligated to continue providing such services listed within their CPCN or their Application for CPCN at rates that are just and reasonable and under service conditions consistent with CPNC standards.

- (d) Tribal Employment: All Carriers are required to adhere to Tribal employment laws for recruiting, employment, reduction in force, promotion, training, and related employment actions of Tribal members in the delivery of CPCN services. Such efforts should be described in CPCN documents.
- (e) Board Elections: Carriers shall provide at least 60 days written notice to the Commission with regard to any elections of utility boards or other positions for which utility customers or members of the public have a right to vote. Carriers shall schedule customer meetings at which elections shall take place in such a manner as to encourage Tribal participation and representation on boards.
- (f) Low Income Programs: Carriers shall maintain programs for subsidizing low income persons within the Reservation as set forth herein.
- (g) Billing: Bills shall be in a format which provides information to customers in a manner that is easy to understand and which promotes conservation of resources.
- (h) Disconnection or Discontinuation, New Connection or Reconnection of Service Policies: Carriers shall maintain reasonable public policies for disconnection or reconnection of customers and for new connection or discontinuation of service to customers. Such policies shall provide for reasonable notice prior to disconnection, except in the case of emergencies.
- (i) Provision of Data: Carriers shall furnish to the Commission, in such form and such detail as the Commission shall prescribe, all tabulations, computations, and all other information required by it to carry into effect any of the provisions of this Ordinance and shall make answers to the best of their knowledge, to all questions submitted by the Commission.
- (j) Inventory of Physical Properties: Carriers shall file with the Commission an inventory of all its physical properties on the Reservation, designating the location of its property as is requested by the Commission. Such inventory shall show the original cost together with the depreciation charges incident thereto since construction, or may show the replacement cost of such properties, if in the opinion of the Commission the original cost and depreciation charges cannot be obtained. In the event any Carrier refuses or neglects to file such inventory, or the inventory so filed is inaccurate, the Commission may send its agents upon the ground and make an inventory as desired by the Commission. The entire cost of making such inventory by the agents of the Commission shall be paid by the Carrier.
- (k) Inventory of Real Property Rights: Carriers shall file with the Commission an inventory of all its real property rights on the Reservation, including a copy of the documents transferring the real property interests.

- (l) Improvements: Carriers shall make improvements to their existing plant, equipment, apparatus, facilities or other physical property, or erect new structures in a manner and within the time specified by the Commission upon a finding of the Commission, after the opportunity to be heard by the Carrier, that such improvement, addition, extension, repair or change promotes the security or convenience of its employees, customers, or the public. Carriers shall plan for appropriate improvements in their facilities and shall provide 60 days notice to the Commission prior to any major or significant improvement. The Commission may approve such improvements that are in the best interests of the Tribe and the residents of the Reservation.
- (m) Safety: Carriers shall act in a manner as to promote and safeguard the health and safety of their employees, customers, and the public, and to this end to prescribe the installation, use, maintenance, and operation of appropriate safety or other devices and appliances, and to establish appropriate standards of equipment, and to require the performance of any other act necessary for the health or safety of their employees, customers, or the public.
- (n) Authority to Enter Premises: Carriers shall allow Members of the Commission and their agents to enter upon any premises occupied by any Carrier for the purpose of making inspections and exercising any of the other powers provided for in this Ordinance. Such inspections, or the lack thereof, shall not operate to relieve the Carrier of any responsibility, obligation or liability assumed under this Ordinance. The agents or employees of such Carrier shall have the right to be present at the making of such inspection.
- (o) Energy Conservation: Carriers shall promote energy conservation.
- (p) Environmental, Cultural and Employment Rights Obligations: Carriers shall protect the environment and Tribal culture, and adhere to the Tribal Employment Rights Ordinance, as is set forth herein and in Federal and Tribal laws.
- (q) Maintenance: Carriers shall have the maintenance obligations as set forth herein.
- (r) Customer Service: Qualified personnel shall be available during regular business hours to receive and, if possible, to resolve all customer inquiries, requests, complaints and to respond to Commission staff.

4.04. Universal Service Funds and Low Income Programs

- (1) Eligible Telecommunication Carriers shall make available programs for qualified low income consumers, including but not limited to, Lifeline service and Link Up

assistance as set forth in Federal Regulations promulgated by the Federal Communications Commission, and shall publicize the availability of such programs in a manner reasonably designed to reach those likely to qualify for assistance under the programs.

- (2) Consumers eligible to receive Lifeline service or Link Up assistance must meet the requirements defined in Federal Regulations applicable to consumers on or near Indian reservations, currently found at 47 CFR Section 54.409(c).
- (3) Carriers shall respond to applications for low income assistance without delay and shall institute services or functionalities enumerated in Federal Regulations in order to receive federal universal service support.
- (4) Eligible Telecommunication Carriers shall take advantage of High Cost Area Support through the Universal Service Fund programs.

4.05. Environmental, Cultural and Employment Rights Obligations

Carriers shall be bound by Federal and Tribal environmental, cultural Tribal Employment Rights laws regarding all facilities on the Reservation. Carriers have a duty to protect plants, animals, water, air, land, graves, cultural resources and cultural practices within the Reservation while doing business on the Reservation and shall adjust their practices when environmental harm can be avoided. Carriers shall work with the Tribal Environmental, Cultural Resources and Employment Rights offices when issues arise regarding their actions within the Reservation.

4.06. Special Carrier Responsibilities

In exercising its functions within the boundaries of the Reservation, the Carrier shall adhere to the following principles:

- (1) No Carrier shall, as to rates, charges, service, facilities or in any other respect, make or grant any preference or advantage to any corporation or person or subject any corporation or person to any prejudice or disadvantage. No Carrier shall establish or maintain any unreasonable difference as to rates, charges, service, facilities or in any other respect, either as between localities or as between classes of service.
- (2) Except in emergency situations, the Carrier shall use reasonable efforts to include the customers within the boundaries of the Reservation in the decision making processes which it undertakes for decisions directly affecting service within the Reservation.
- (3) All powers of the Carrier shall be exercised in good faith and in a manner believed to be in the best interests of the Tribe and residents of the Reservation.

4.07. Maintenance Obligations

- (1) All Carriers shall give notice to the Commission prior to entering the Reservation for non-routine maintenance purposes. Such notice shall include a description of

the maintenance to be performed and the time line for the procedures. In the case of an emergency, best efforts shall be made to provide such notice. CPCN documents shall provide the point of contact for notice.

- (2) Carriers shall allow Tribal Environmental and Cultural Resource representatives to accompany them during maintenance, and shall notify the Tribal Employment Rights Office for all non-routine maintenance projects. Such Tribal representatives shall have the authority to establish reasonable procedures for protection of employment rights, cultural plants, cultural places, and the environment.
- (3) Carriers must provide adequate maintenance to ensure that all telecommunication facilities are in safe and serviceable condition.
- (4) Carriers must immediately correct hazardous conditions endangering persons, property, or the continuity of service when found, reported, or known to exist.
- (5) Carriers must promptly repair or replace broken, damaged, or deteriorated equipment, when found to be no longer capable of providing adequate service.
- (6) Carriers must promptly correct transmission problems on any channel when located or identified, including noise induction, cross-talk, or other poor transmission characteristics.
- (7) Carriers must install and maintain test apparatus at appropriate locations to determine the operating characteristics of network systems.

4.08. New Construction of Wires And Facilities

- (1) When Carriers install any new wires or facilities on the Reservation in order to extend service to new subscribers, the calculation of construction costs of those wires and facilities that are passed on to the new subscribers must be adjusted to account for the Carrier's anticipated revenues to be generated from that subscriber.
- (2) No new wires or facilities shall be placed on trust lands without a right of way that has federal and landowner approval.

4.09. Sale of Property to be Approved by Commission

- (1) No Carrier owning, controlling or operating any property located within the Reservation which is used in the conduct of its business on the Reservation or any portion thereof shall merge, sell, lease, assign or transfer, directly or indirectly, in any manner whatsoever, any such property or interest therein, or the operation, management or control thereof, or any CPCN covering the same, except when authorized to do so by Order of the Tribal Council as recommended by the Commission.
- (2) Such Carrier shall file a verified application setting forth such facts as the Commission shall prescribe or require. The Commission shall review the

application.

- (3) Before the Commission recommends that the Tribal Council issue an Order of authorization for the transaction, the Carrier shall have the burden of showing that the following have been satisfied:
 - (a) That the transaction is consistent with the best interests of the Tribe and the residents of the Reservation.
 - (b) That the cost of and rates for supplying service will not be increased by reason of such transaction.
 - (c) That the Carrier for such acquisition or transfer has the bona fide intent and financial ability to operate and maintain the property.
- (4) The Tribal Council shall have power to issue said authorization and Order as requested, or to refuse to issue the same, or to issue such authorization and Order with respect only to a part of the property involved. The Commission shall include in any recommendation for authorization or Order the terms and conditions as in its judgment the public convenience and necessity may require.

Chapter 5. Rates

5.01. Rate Obligations

- (1) All charges for any product or commodity furnished or any service rendered or to be rendered by a Carrier shall be just and reasonable and approved by Order of the Tribal Council, and as recommended by the Commission.
- (2) All rates for any product or commodity furnished or any service rendered or to be rendered by a Carrier shall be publicly available to customers.
- (3) No Carrier, except as described in this Ordinance, shall charge, demand, collect or receive a greater or less or different compensation for the CPCN services than the rates specified in the schedules filed and in effect at the time, nor shall any such Carrier refund or remit in any manner or by any device any portion of the rates so specified except on Order of the Tribal Council.
- (4) All rules and regulations made by a Carrier affecting or pertaining to its charges or service to the public shall be just and reasonable.

5.02. Procedures for Rate Approval

- (1) Rates for services provided by a Carrier on the Reservation shall be approved by Order of the Tribal Council after consideration of all relevant facts determined and submitted by the Commission, and after consideration of the best interests of the Tribe and the residents of the Reservation. The Commission shall, to the extent practicable and consistent with this Ordinance, recommend the approval of rates

that are just and reasonable. The burden of proof to show that any rate filed is consistent with these rules shall be upon the Carrier filing the Rate.

(2) Carriers with Existing Rates for Services Provided on the Reservation:

- (a) Within 60 days after receiving a CPCN, Carriers with existing rates for services approved by another regulatory body shall file with the Commission and shall print and keep open to public inspection schedules showing all rates, tolls, rentals, charges and classifications collected or enforced, or to be collected or enforced, together with all rules, regulations, contracts, privileges and facilities which in any manner affect or relate to such rates, tolls, rentals classifications or service. The schedules shall be accompanied by a description of each category of the charges and a description of the calculation of the rates.
- (b) The Commission may recommend Tribal Council approval of the rates, or may make inquiry regarding the rates.
- (c) After all inquiries of the Commission are satisfied, the Commission shall recommend approval of the rates by Tribal Council Order or suggest changes to the rates consistent with this Ordinance.

(3) Carriers without Existing Rates for Services Provided on the Reservation:

- (a) Concurrent with their Application for CPCN, Carriers without existing rates for services approved by another regulatory body shall file proposed schedules of rates or tariffs with the Tribal Utility Commission along with a description of each category of the charges and a description of the calculation of the rates.
 - (b) The Commission may recommend Tribal Council approval of the rates, or may make inquiry regarding the rates and suggest changes to the rates consistent with this Ordinance.
 - (c) After all inquiries of the Commission are satisfied and a CPNC is granted by the Tribal Council, the Commission shall recommend Tribal Council approval of the rates by Order.
- (4) The Commission may, in its sole discretion, recommend that the Tribal Council issue an Order and approval of special rates for one or more large users of a particular telecommunication service, however, such negotiated rates shall be demonstrated to be fair to all other customers and in the best interest of the Tribe and residents of the Reservation.

5.03. Changes in Rates and Service

- (1) Unless the Tribal Council otherwise Orders, no change, including a discontinuance

of service, shall be made by any Carrier in any rate, fare, toll, rental, charge or classification, or in any rule, regulation or contract relating to or affecting any rate fare, toll, rental charge, classification or service, or in any privilege or facility except after thirty days' notice to the Commission.

- (2) Such notice shall be given by filing with the Commission and keeping open for public inspection new schedules stating plainly the change or changes to be made in the schedule or schedules then in force, and the time when the change or changes will go into effect.
- (3) The Commission shall review the proposed changes and recommend that the Tribal Council approve them with an Order, or request information, and after all inquiries of the Commission are satisfied, the Commission shall recommend approval or disapproval of the rates or service change by Tribal Council Order. The Commission shall, to the extent practicable and consistent with this Ordinance, recommend Tribal Council approval of rates that are consistent with the rates charged to other non-Reservation customers of the similar Carriers. In the event of a discontinuance of service, not inconsistent with the Obligation to serve set forth herein, no Tribal Council Order is necessary.

Chapter 6. Complaint Procedures

6.01 Informal Complaints to Utility Providers

- (1) An Informal Complaint is any letter or other writing, or verbal message delivered by telephone or in person which notifies the Utility Provider of service problems, concerns with the Utility Provider's policies, rates, procedures or actions, and which is received from a customer, potential customer, or other Utility Provider.
- (2) Upon receipt of an informal complaint, the Utility Provider shall note the substance of the complaint, the identifying complainant, the service address, the date of complaint, and any other useful information. The action taken, resolution, or final disposition of the complaint shall be noted.
- (3) Utility Providers shall keep a record of all such complaints for a minimum period of five years.
- (4) All written complaints made to Utility Providers shall be acknowledged and responded to in writing.
- (5) If a complaint cannot be promptly resolved, the Utility Provider shall contact the customer within three business days and at least once within the next seven calendar days to advise the customer regarding the status of the Utility Provider's investigation until:
 - (a) the complaint is mutually resolved; or
 - (b) the Utility Provider advises the customer of the results of its investigation

- and final disposition of the matter; or
- (c) the customer files an Informal or Formal complaint with the Commission.

6.02. Informal Complaints to Commission

- (1) Within 30 days after a customer or potential customer has filed a complaint with the Utility Provider, and such customer, potential customer or other Utility Provider is aggrieved by the Utility Provider's response or lack thereof, the complainant may make Informal Complaint with the Commission.
- (2) An Informal Complaint is any letter or other writing, or verbal message delivered by telephone or in person which notifies the Commission of service problems, concerns with the Utility Provider's policies, rates, procedures or actions.
- (3) The Commission shall make note of the complaint, setting forth the substance of the complaint, and identifying the customer, the service address, the relevant dates, the previous actions to resolve the complaint with the Utility Provider and the identity of the Utility Provider.
- (4) The Commission may, in its discretion, take any of the following actions:
 - (a) Notify the complainant that the actions of the Utility Provider appear reasonable and/or not in violation of their obligations, or that the matter is not within the jurisdiction of the Commission.
 - (b) Notify the Utility Provider in writing of the complaint requesting that the Utility Provider reconsider its action(s) or responses to the complaint. The Utility Provider shall respond to the Commission and the complainant in writing within five business days regarding the status or disposition of the complaint.
 - (c) Suggest that the Complainant(s) file a Formal Complaint with the Commission.
 - (d) In the event that the Commission receives numerous similar complaints under their jurisdiction, or repeated complaints that are of significant importance, the Commission may refer the matter to the appropriate tribal offices with a suggestion that the Tribe institute a Formal Complaint on behalf of the complainants.
 - (e) Take other actions to assist the parties to resolve the complaint by agreement when doing so is lawful and consistent with the public interest.
- (5) Filing an Informal Complaint does not prevent any party from filing a Formal Complaint under 6.03. An Informal Complaint is not a prerequisite to a Formal Complaint.

6.03. Formal Complaints to Commission

- (1) A formal complaint must include the following information:
 - (a) name and address of the complainant;
 - (b) name and address of complainant's representative, if any;
 - (c) name and address of Utility Provider;
 - (d) statute, rule, tariff, or Commission order alleged to have been violated;
 - (e) facts constituting the alleged violation;
 - (f) the relief sought by the complainant.
- (2) Formal Complaints must be filed with the Commission and mailed to the Utility Provider by U.S. Mail. Formal Complaints may be filed by the complainant, or by the Tribe or other entity on behalf of multiple complainants. In the event of multiple complainants, at least two such complainants must also sign the complaint.
- (3) The Commission shall review the Formal Complaint as soon as practicable to determine whether the Commission has jurisdiction over the matter and to determine whether there are reasonable grounds to recommend an Order of the Tribal Council. On concluding that it lacks jurisdiction or that there is no reasonable basis to hold a hearing, the Commission shall dismiss the complaint.
- (4) On concluding that it has jurisdiction over the matter and that there is a reasonable basis upon which to pursue an Order, the Commission shall establish a procedural schedule designed to allow all parties to state their case and obtain information needed to pursue their case, and designed to lead to an Order of the Tribal Council. Such schedule may provide that third parties be allowed to file comments to be considered by the Commission, if such comments may be helpful to the Commission.
- (5) Upon consideration of all information submitted, the Commission may recommend to the Tribal Council that it issue an Order directing Utility Providers under its jurisdiction to take appropriate actions, or may recommend the issuance of an Order indicating that the Formal Complaint be dismissed and the reasons therefore.

Chapter 7. Enforcement of Conditions of Certificates of Public Convenience and Necessity and Rates

7.01. Enforcement, Petitions and Appeals

- (1) The Commission shall have authority to enforce this Ordinance by Tribal Council Orders designed to prevent additional violations. Such Orders shall be enforceable

by the Commission.

- (2) A person who is not a party but is aggrieved by an Order of the Tribal Council may, within 30 days following the date of the Order, petition the Commission for a hearing before the Council. The hearing must be held at a time and place convenient for the Council and the petitioner.
- (3) Within 10 days after receipt of a Tribal Council Order, an aggrieved party may file with the Commission a petition to have the Tribal Council review its Order, with specific reasons set forth in the petition as to why the Council should reconsider its decision or Order. The Tribal Council, in its discretion, may deny the petition or direct other proceedings. The Tribal Council may then affirm, reverse, or modify its earlier Order. Notice of the Tribal Council's decision on the petition to review must be served by mail on the petitioner.
- (4) Final Orders of the Council may be appealed to the Tribal Court pursuant to the Judicial Ordinance of the Tribe. Review shall be based on the record and the decision of the Council shall be upheld unless the appellant demonstrates that the decision was arbitrary, capricious or not supported by law. The decision of the Tribal Court shall be final, and a party who is aggrieved by any final order or judgment of the Tribal Court shall have no further right of appeal.

Chapter 8. Right of Way Property Rights

8.01. Interpretation of Real Property Documents

All easements, rights of ways or other documents transferring an interest in real property to a third party across land owned in fee by, or held in trust or restricted status for, the Leech Lake Band of Ojibwe Indians or an individual Indian or Indians on the Reservation, shall be strictly construed to the benefit of the Tribe, consistent with Article 8 of the Treaty. All easements, rights of way or other documents not specifically assignable will be construed to expire upon their attempted transfer.

8.02. Ownership of Wires And Facilities

- (1) Unless an easement or right-of-way document signed by the Tribe and approved by the United States Department of Interior, Bureau of Indian Affairs, exists with regard to facilities owned by Third Parties to provide service within, on or across the Reservation, no Third Party may claim that Real Property rights have been transferred due to the existence of such facilities on the Reservation. All facilities without such documentation are deemed to be personal property and are under the jurisdiction of the Tribe.
- (2) Any facilities which are considered personal property and subject to the jurisdiction of the Tribe pursuant to this Section that are used by third parties to deliver their product or service shall be operated and maintained by the third party in a manner consistent with the operation and maintenance of their own facilities.

8.03. Procedure for Acquisition of Real Property Rights

- (1) As a condition of the consent procedure required by federal or Tribal law, all entities seeking a right of way, easement, or similar real property interest within the Reservation, whether on land held in restricted status or trust by the United States for the benefit of the Tribe or one or more individual Indians, or on Tribal fee owned land, shall use the following procedure:
 - (a) A duplicate Application for right of way as prescribed by federal regulation shall be filed with the Commission. Such Application shall be accompanied by all necessary cultural resource and environmental clearances.
 - (b) The Commission shall review the Application, and amount and nature of proposed consideration, and shall either make a request to the Applicant that any additional information reasonably necessary for its review of the Application be submitted within a designated time period, or shall inform the Applicant that the Application is adequate for the Commission's initial recommendation to the Tribal Council.
 - (c) Upon receipt of all requested information, the Commission shall review the Application and in the case of a right of way across Tribal lands shall make a recommendation to the Tribal Council with regard to the terms, conditions and consideration for the proposed right of way.
 - (d) The Tribal Council shall then determine whether to accept the Application, and provide its consent to the Department of Interior pursuant to Federal Regulations, or negotiate directly with the Applicant.
 - (e) In the case of a right of way across lands belonging to allottees, the Commission shall make a similar recommendation to the allottees. Allottees may then either provide their consent to the Department of Interior pursuant to Federal Regulations, or may take any other action deemed necessary. The Commission is authorized, but not required, to provide additional assistance at the request of one or more allottees.
- (2) For acquisition of personal property permits for service line agreements, which may include the right to place poles, wires, pipes, or other conduits for service of Reservation residents, application may be made to the Commission for a simplified procedure, which shall be described by the Commission, as approved by the Tribal Council.
- (3) In making its report to the Council, the Commission shall address the following principles for the Council to consider when asked to consent to new rights of way for Utilities:
 - (a) Whether the applicant has a history of rendering satisfactory service in the best interest of the public.

- (b) Whether any improvement or extension of service should be demanded of the applicant in view of the privileges granted them, or to be granted to them.
- (c) Whether any change in location of lines, poles, etc., should be required as a condition precedent to the approval of the right of way.
- (d) Whether there should be some agreement required of the Applicant as to the service it proposes to give in return for the privilege being enjoyed or to be enjoyed, including the Applicant's agreement to comply with the terms of this Ordinance.

8.04. Valuation of Real Property Rights of Way

- (1) In recognition of the unique permanent homeland status of the Reservation as reserved by the Treaty with the United States, and in recognition of the special purposes for which this land was reserved from the public domain or other uses by the United States, the granting of real property rights across the Reservation shall only be done with due deliberation and with adequate financial or other consideration as required by Article 8 of the Treaty.
- (2) Consistent with Article 8 of the Treaty and applicable Federal Regulations, unless expressly waived, such consideration should be greater than the "fair market value" of off-reservation land rights due to the unique character of Reservation lands and due to the lack of similar or comparable real property transactions for property of this type.
- (3) The Commission shall recommend appropriate consideration for rights of ways with consideration of the following:
 - (a) The cost to the Applicant of not utilizing Reservation lands.
 - (b) The Applicant's likely earnings, or historical similar earnings from those facilities crossing Reservation lands, in proportion to the whole facility.
 - (c) Previous recent consideration for similar right of way consents.
 - (d) The terms and conditions and provisions of the right of way document.
 - (e) The obligations and requirements of this Ordinance.
 - (f) The historical and cultural significance of the lands affected by the facilities.
 - (g) Any other special circumstances deemed important by the Commission, including the applicant's history of trespass, if any.

8.05. Terms of Rights of Way and Permits

All rights of way and permits granted under this Ordinance shall be limited in tenure to no more than twenty-five (25) years from the effective date of issuance, unless expressly required otherwise by federal law.

8.06. Trespass Enforcement

- (1) The Tribe hereby adopts and incorporates by this reference the trespass enforcement regulations for agricultural lands under the American Indian Agricultural Resource Management Act, currently found at 25 CFR Part 166, Subpart I. Utility Providers in trespass on agricultural lands shall be subject to concurrent Tribal enforcement actions brought by the Tribe in Tribal Court, and by this Ordinance the Tribe declares its intention to bring primary enforcement actions into Tribal Court under 25 CFR § 166.802.
- (2) The Tribe hereby adopts and incorporates by this reference the trespass enforcement regulations for forest lands pursuant to 25 U.S.C. § 3106, and 25 CFR § 163.29, as amended or replaced. Utility Providers in trespass on forest lands shall be subject to concurrent Tribal enforcement actions brought by the Tribe in Tribal Court, and by this Ordinance the Tribe declares its intention to bring primary enforcement actions into Tribal Court under 25 CFR § 163.29(j)(2).
- (3) For purposes of trespass enforcement actions brought into Tribal Court, the due process and equal protection provisions of the Indian Civil Rights Act, 25 U.S.C. §1302(8), shall apply.

8.07. Tribally Retained Rights

The Tribe shall retain all rights not specifically granted to holders of rights of way, including but not limited to:

- (1) The right to tax property or activities within the right of way.
- (2) The right to regulate and pass laws regarding property or activities within the right of way.
- (3) The right to control access to the land within the right of way, except as is superseded by the grant of right of way.
- (4) Exclusive regulatory jurisdiction over persons and activities within the right of way.

8.08. Obligations of Holders of Rights of Way

- (1) Notice of Entrance: Whenever practicable, all holders of rights of ways on the Reservation shall give notice to the Tribe prior to entering the Reservation for significant maintenance or repair purposes. Significant maintenance or repair includes non-emergency projects that have the potential to disrupt services or residents' peaceful enjoyment of their property, or damage to the environment. Such notice shall include a description of the maintenance to be performed and the

time line for the procedures. In the case of an emergency, best efforts shall be made to provide such notice.

- (2) The Tribe has assumed the functions of a Tribal Historic Preservation Office under the National Historic Preservation Act, as amended, and shall have the authority to establish reasonable procedures for protection of cultural resources. Activities affecting the environment must comply with the National Environmental Protection Act, as amended, and applicable federal environmental protection laws.
- (3) All holders of rights of ways on the Reservation shall keep the trimming of trees and other vegetation to a minimum. Third parties shall consult with Tribal representatives prior to trimming trees or clearing rights of ways. Such Tribal representatives shall have the authority to establish reasonable procedures for trimming of trees and clearing of rights of ways, after consideration of safety and reliability issues and other issues described by the right of way document.
- (4) Restoration: A right-of-way user, after an excavation of a right-of-way, shall provide for restoration of the right-of-way and surrounding areas, in the same condition that existed before the excavation. Restoration of the right-of-way must be completed within the dates specified in the right-of-way permit, unless the permittee obtains a waiver or a new or amended right-of-way permit.
- (5) Natural Resources Protection: All holders of rights of ways on the Reservation shall be bound by Federal and Tribal environmental laws regarding all facilities on the Reservation. All holders of rights of ways on the Reservation have a duty to protect cultural resources, plants, animals, water, air, and land within the Reservation while doing business on the Reservation and shall adjust their practices when environmental harm can be avoided. All holders of right of ways have a duty to restore such right of ways to their pre-construction condition.
- (6) Notice of Off-reservation Environmental Issues: All holders of rights of ways on the Reservation shall provide written notice to the Tribe of all new activities or proposals of the right of way holder that may have a significant impact on the regional environment. Such notice is required of, but not limited to:
 - (a) Proposed construction of new facilities likely to cost over \$50,000.
 - (b) Proposed changes in company policy significantly affecting the environment.
 - (c) Applications for licenses or extension of licenses to Federal entities.
 - (d) Transfer of significant ownership of assets of the company.
 - (e) Major Federal or State initiatives.

INDIAN LAND CESSIONS and RESERVATIONS to 1858

