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**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

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**In the Matter of the Petition of E Fiber San Juan,  
LLC for Designation as an Eligible  
Telecommunications Carrier in the State of  
Utah for the Purpose of Receiving Rural Digital  
Opportunity Fund and Lifeline Support**

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**Docket No. 21-2619-01**

**COMMENTS OF UTE MOUNTAIN COMMUNICATIONS ENTERPRISE  
IN OPPOSITION TO  
PETITION OF E FIBER SAN JUAN, LLC FOR DESIGNATION AS AN  
ELIGIBLE TELECOMMUNICATIONS CARRIER IN THE STATE OF  
UTAH FOR THE PURPOSE OF RECEIVING RURAL DIGITAL  
OPPORTUNITY FUND AND LIFELINE SUPPORT**

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**I. INTRODUCTION**

Ute Mountain Communications Enterprise (“UMCE”) hereby submits these comments in opposition to the Petition of E Fiber San Juan, LLC (“Petitioner”) for Designation as an Eligible Telecommunications Carrier (“ETC”) in the State of Utah for the Purpose of Receiving Rural Digital Opportunity Fund (“RDOF”) and Lifeline Support (“Petition”).<sup>1</sup> UMCE is an enterprise established and owned by the Ute Mountain Ute Tribe (the “Tribe”) to deploy high-speed broadband to residences, businesses, and government facilities on Tribal lands and in adjacent communities. The Tribe occupies the approximately 600,000-acre Ute Mountain Ute Reservation (“Reservation”), which includes Tribal lands in White Mesa, Utah for which Petitioner seeks ETC designation.

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<sup>1</sup> Petition of E Fiber San Juan, LLC for Designation as an Eligible Telecommunications Carrier in the State of Utah for the Purpose of Receiving Rural Digital Opportunity Fund and Lifeline Support, Docket No. 21-2619-01 (filed May 28, 2021) (“Petition”); Notice of Filing and Comment Period, Docket No. 21-2619-01 (issued June 3, 2021).

UMCE opposes the Petition with respect to the Tribal lands in White Mesa for several reasons. As a threshold matter, UMCE contests the Commission’s jurisdiction to designate Petitioner as an ETC in White Mesa. But even if the Commission asserts jurisdiction, the Petition should be denied in White Mesa because the Petitioner cannot meet the key statutory requirement for ETC designation and granting the Petition would be counter to the public interest.

Neither Petitioner nor the Federal Communications Commission (“FCC”) adequately consulted with the Tribe in advance of the RDOF award or the filing of this Petition. And, as the Petition acknowledges, the Tribe has not granted consent to the Petitioner to provide service on Tribal land in White Mesa. Absent Tribal consent, Petitioner cannot deploy its proposed network on Reservation land and, thus, cannot meet the statutory requirement that it must offer the RDOF services throughout the service area for which it seeks ETC designation. Moreover, the ETC designation and RDOF award to Petitioner will hinder the Tribe’s ability to access the government funding it needs to address—on its own terms—the longstanding lack of affordable, high-quality broadband on the Reservation in White Mesa. Denying the Petition would promote the public interest by upholding the Tribe’s sovereign rights over its own land and communications policies, and ensuring prompt access to adequate, equitable broadband services in White Mesa.

## **II. BACKGROUND**

### **A. Ute Mountain Ute Tribe and UMCE**

The Ute Mountain Ute Tribe is a federally-recognized Indian Tribe of the United States organized under the Indian Reorganization Act of 1934.<sup>2</sup> A seven-member Tribal Council

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<sup>2</sup> Indian Reorganization Act of 1934, 25 U.S.C. § 5101, *et seq.* See also Indian Entities Recognized by and Eligible to Receive Services from the United States Bureau of Indian

governs the Tribe and regulates activities on the Ute Mountain Ute Reservation pursuant to the Tribe's *Constitution and By-Laws* ("*Constitution*") (Exhibit A), as amended, which was approved by the Assistant Commissioner of Indian Affairs on May 23, 1940. Most of those living on the Reservation are members of the Tribe or other Native Americans. The *Constitution* authorizes the Tribal Council to, inter alia, "negotiate with Federal, State, and local governments," "[t]o prevent the ... encumbrance of tribal lands, interests in lands, or other tribal assets, without the consent of the Tribe," to provide for "the removal or exclusion from the reservation of any non-members whose presence may be injurious to the members of the Tribe," "to protect the public peace, safety, morals and welfare of the reservation," and "[t]o regulate by ordinance ... non-members doing business on the reservation."<sup>3</sup>

Non-Tribal carriers have historically failed to provide adequate, affordable communications service to the Reservation. Strikingly, as of 2019, only 11% of White Mesa households had a broadband internet subscription.<sup>4</sup> To address the longstanding lack of access to high-quality, affordable broadband service on the Reservation, in 2018, the Tribe established UMCE, a Tribally-owned enterprise with plans to provision high-speed broadband to all homes, businesses, and government facilities on Tribal lands and in adjacent communities. Already, UMCE is leveraging its recently obtained FCC 2.5 GHz spectrum Tribal license over the Reservation to provide LTE and fixed wireless broadband services.<sup>5</sup> Additional plans include fiber-to-the-home deployment and offering community wireless, as well as cell phone and data

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Affairs, 86 Fed. Reg. 7554 (Jan. 29, 2021).

<sup>3</sup> See *Constitution and By-Laws of the Ute Mountain Ute Tribe of the Ute Mountain Reservation Colorado, New Mexico, Utah June 6, 1940*, art. V, § 1(a), (b), (k), (n), & (p) ("*Constitution*").

<sup>4</sup> U.S. Census Bureau, *American Community Survey: Selected Social Characteristics* (2019).

<sup>5</sup> See Call Sign WRJS928, Ute Mountain Ute Tribe, <https://bit.ly/3wz2rh2>.

services, to residents. UMCE cannot achieve its ambitious deployment plans, however, without a robust infrastructure network supported by access to state and federal funding programs.

**B. E Fiber San Juan, LLC**

On December 7, 2020, Emery Telephone d/b/a Emery Telecom (“Emery”) was selected by the FCC as a winning bidder in the RDOF auction and assigned \$9,822,853.00 in support to provide broadband and voice service to 1602 locations in Utah.<sup>6</sup> Emery assigned the winning bids to its wholly-owned subsidiaries E Fiber Moab, LLC and E Fiber San Juan, LLC (“Petitioner”). Petitioner is seeking ETC designation to receive RDOF support.

According to the map provided by Petitioner in Exhibit B to the Petition, the Petitioner is applying for ETC designation over portions of the Reservation in the community of White Mesa, including lands held in trust by the United States for the benefit of the Tribe. The Tribe has not provided consent for such an ETC designation. Nor does Petitioner currently hold a Certificate of Public Convenience and Necessity (“CPCN”) authorizing its provision of service to White Mesa. As the Petition acknowledges, “E Fiber San Juan’s Application for CPCN did not include the community of White Mesa because E Fiber San Juan *did not have approval from the Ute Mountain Ute Tribe to provide service in White Mesa.*”<sup>7</sup> The Petitioner still lacks the Tribe’s consent. Neither Emery nor its subsidiary conferred with the Tribe in a meaningful way before the RDOF auction or filing the Petition.

**III. THE COMMISSION LACKS JURISDICTION TO GRANT PETITIONER’S ETC DESIGNATION FOR THE WHITE MESA TRIBAL LANDS.**

As a threshold matter, UMCE contests the Public Service Commission’s jurisdiction to

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<sup>6</sup> *Rural Digital Opportunity Fund Phase I Auction (Auction 904) Closes; Winning Bidders Announced*, Public Notice, 35 FCC Rcd. 13,888, attach. A at 13,914 (2020).

<sup>7</sup> Petition at 4 n.1 (emphasis added).

designate Petitioner as an ETC for the Tribal lands in White Mesa. The Tribe has sovereignty over its Tribal lands, including the authority to either authorize or refuse access by Petitioner to lands within the Reservation.<sup>8</sup> The Petition concedes that the Tribe has not approved Petitioner's provision of service to White Mesa.<sup>9</sup> Absent Tribal consent, this Commission does not have jurisdiction to grant ETC status over Tribal lands and should dismiss the Petition on that basis. Should Petitioner nevertheless wish to pursue ETC status for these Tribal lands, it may seek such designation from the FCC pursuant to 47 U.S.C. § 214(e)(6).<sup>10</sup>

The determination of jurisdiction over a carrier serving Tribal lands extends beyond questions of state law and must be informed by principles of Tribal sovereignty, federal law, and treaties. In its *Twelfth Report and Order*, the FCC adopted a streamlined framework to resolve ETC designation decisions for carriers providing service on Tribal lands.<sup>11</sup> The FCC designed this framework to respect Tribal sovereignty while providing carriers an expedited mechanism to settle “the fact-intensive and legally complex” jurisdictional questions that may otherwise hinder service deployment and availability through “confusion, duplication of efforts, and needless

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<sup>8</sup> Constitution art. V, § 1(b) & (k).

<sup>9</sup> Petition at 4 n.1.

<sup>10</sup> See 47 U.S.C. § 214(e)(6) (directing the FCC to perform the ETC designation in instances where the state commission lacks jurisdiction); 47 C.F.R. § 54.202(c); *Federal-State Joint Board on Universal Service*, Twelfth Report & Order, Memorandum Opinion & Order, & Further Notice of Proposed Rulemaking, 15 FCC Rcd. 12,208, ¶¶ 92, 95-96, 116-17 (2000) (“*Twelfth Report and Order*”); *W. Wireless Corp. Petition for Designation as an Eligible Telecommunications Carrier for the Pine Ridge Reservation in South Dakota*, Memorandum Opinion & Order, 16 FCC Rcd. 18,145, ¶¶ 1, 4-5, 18-19 (2001) (“*Western Wireless Order*”) (concluding after jurisdictional analysis that the FCC should make the ETC determination for the carrier's provision of service to members of the Oglala Sioux Tribe on the Reservation).

<sup>11</sup> *Twelfth Report and Order* ¶¶ 8, 95-96.

controversy.”<sup>12</sup> Under this framework, the FCC undertakes a two-step analysis.<sup>13</sup> First, it determines whether the FCC or state commission should make the eligibility designation. Where, as here, the state’s jurisdiction is contested, the FCC has made the ETC determination for Tribal lands.<sup>14</sup> Second, if the carrier is not subject to the jurisdiction of a state commission, the FCC considers the merits of the carrier’s ETC designation request.<sup>15</sup> Both questions should be resolved in light of Tribal sovereignty and self-government,<sup>16</sup> with a duty to consult with the Tribe prior to implementing any regulatory action that will significantly affect Tribal lands.<sup>17</sup> The Tribe has authority to deny access to broadband providers<sup>18</sup> and “should play an integral role in the process for designating carriers who may receive [universal service] support to serve Tribal lands.”<sup>19</sup>

Through its Petition for ETC designation here, Petitioner seeks to access land held in

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<sup>12</sup> *Id.* ¶¶ 103, 115, 118.

<sup>13</sup> *Id.* ¶ 95.

<sup>14</sup> *Western Wireless Order* ¶ 10.

<sup>15</sup> *Twelfth Report and Order* ¶ 95; *Western Wireless Order* ¶ 5.

<sup>16</sup> *Twelfth Report and Order* ¶ 102.

<sup>17</sup> *See Statement of Pol’y on Establishing a Gov’t-to-Gov’t Relationship with Indian Tribes*, Policy Statement, 16 FCC Rcd. 4078, 4081 (2000) (“The Commission, in accordance with the federal government’s trust responsibility, and to the extent practicable, will consult with Tribal governments prior to implementing any regulatory action or policy that will significantly or uniquely affect Tribal governments, their land and resources.”) (“*Tribal Policy Statement*”).

<sup>18</sup> *See* 25 U.S.C. § 324 (requiring permission from Tribal officials to access rights-of-way on Tribal lands); *Petition for a Declaratory Ruling Preempting the Authority of the Tohono O’odham Legislative Council to Regulate the Entry of Commercial Mobile Radio Service to the Sells Reservation Within the Tucson MSA, Market No. 77*, Memorandum Opinion & Order, 12 FCC Rcd. 11,755 (1997) (“*AB Fillins Order*”) (recognizing Tribal authority over the occupation and use of Tribal lands to prevent location of cell sites).

<sup>19</sup> FCC, *Connecting America: The National Broadband Plan* at 146 (2010) (“*National Broadband Plan*”).

trust for the Tribe and to provide service to Reservation residents that are Tribe members or other Native Americans.<sup>20</sup> The Tribe has not consented to this and, as a result, contests the Commission's jurisdiction to grant this Petition. Accordingly, and in light of the jurisdictional and Tribal sovereignty questions at issue, the Commission should dismiss this Petition with respect to the Tribal lands in White Mesa for lack of jurisdiction. If Petitioners wish to pursue ETC designation for these Tribal lands, they may file a petition with the FCC pursuant to 47 U.S.C. § 214(e)(6).

#### **IV. THE PETITIONER CANNOT MEET ITS STATUTORY ETC REQUIREMENTS AND GRANTING THE PETITION WOULD BE COUNTER TO THE PUBLIC INTEREST.**

If the Commission nevertheless decides to move forward, the Petition should not be granted with respect to White Mesa. For these Tribal lands, Petitioner cannot meet the core statutory requirement for ETC designation and granting the Petition is contrary to the public interest. Denying the Petition for these areas would better serve the public interest by promoting the efficient use of federal and state support, ensuring long-unserved Tribal areas gain broadband access in a timely manner, and aligning with commitments to Tribal sovereignty.

As discussed above, the Tribe has a legally protected interest in regulating its own land and resources, including setting its own communications priorities and goals for the welfare of members.<sup>21</sup> Yet neither Petitioner nor the FCC consulted the Tribe for its input and consent before Petitioner was awarded RDOF support covering census blocks on the Reservation and before the filing of this Petition. As the Petition itself acknowledges, Petitioner does “not have

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<sup>20</sup> See *Western Wireless Order* ¶¶ 1, 13.

<sup>21</sup> See 25 U.S.C. § 324; *Tribal Policy Statement* at 4081 (“recogniz[ing] the rights of Indian Tribal governments to set their own communications priorities and goals for the welfare of their membership”); *National Broadband Plan* at 146; *AB Fillins Order* at 11,755.

approval from the Ute Mountain Ute Tribe to provide service in White Mesa.”<sup>22</sup> Absent Tribal consent, Petitioner cannot demonstrate that it will be in a position to deploy its proposed network on Tribal lands in White Mesa and, thus, cannot meet the statutory ETC requirement to offer the RDOF-supported services “throughout the service area” for which it seeks ETC designation.<sup>23</sup> Because Petitioner cannot meet this statutory requirement, the Commission cannot grant the Petitioner’s ETC designation in White Mesa.<sup>24</sup>

Moreover, designating Petitioner as an ETC for the purpose of receiving RDOF funds would impair the Tribe’s ability to access other federal and state funds critical to the Tribe’s self-provisioned broadband network.<sup>25</sup> For example, the U.S. Department of Agriculture already informed the Tribe that it would be unable to access funds from the Rural Utility Service’s ReConnect program where a provider’s RDOF award covered its Tribal lands. More generally, the Tribe and UMCE may be foreclosed from other government funding opportunities to the extent they exclude areas for which another provider has already been awarded government support.

Precluding the Tribe from such funding sources undermines its rights as a sovereign nation to control its own communications policies and broadband future. As discussed above, the Tribe is actively working to deploy a high-quality, affordable broadband network and has already devoted substantial time and resources to meet its deployment goals. It also possesses the requisite knowledge, cultural sensitivity, and commitment to best address the needs of its

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<sup>22</sup> Petition at 4 n.1.

<sup>23</sup> 47 U.S.C. § 214(e)(1).

<sup>24</sup> *Id.* § 214(e)(2).

<sup>25</sup> *See, e.g.*, 7 C.F.R. § 1740.11(c)(2); Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, div. N, tit. IX, § 905(c)(2), 134 Stat. 1182, 2138 (2020). Future funding opportunities may similarly preclude RDOF awarded areas from eligibility.



Members residing in White Mesa. This Commission would best serve the public interest by denying the Petition with respect to the Tribal lands in White Mesa and clearing the way for the Tribe to access funding opportunities to deploy its own network and provision high-quality, affordable broadband service to the Reservation.

## **V. CONCLUSION**

For the reasons set forth herein, UMCE respectfully requests that the Commission dismiss this Petition with respect to Tribal lands in White Mesa for lack of jurisdiction. In the alternative, if the Commission moves forward with this proceeding, it should promptly deny E Fiber San Juan's petition for an ETC designation in White Mesa. Petitioner has not met the ETC requirements and denial would promote the public interest by upholding the Ute Mountain Ute Tribe's Tribal sovereignty to control its communications policies and ensure adequate, equitable broadband services for its Tribal lands and residents.

Dated this 28<sup>th</sup> day of June, 2021.



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*Counsel to  
Ute Mountain Communications Enterprise*

## CERTIFICATE OF SERVICE

I hereby certify that on the 28<sup>th</sup> day of June, 2021, I served a true and correct copy of the Comments of Ute Mountain Communications Enterprise in Opposition to Petition of E Fiber San Juan, LLC for Designation as an Eligible Telecommunications Carrier in the State of Utah for the Purpose of Receiving Rural Digital Opportunity Fund and Lifeline Support via e-mail transmission to following persons at the e-mail addresses listed below:

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Stephanie Weiner

**EXHIBIT A**

***Constitution and By-Laws  
of the Ute Mountain Ute Tribe***

**CONSTITUTION AND BY-LAWS**

**OF THE**

**UTE MOUNTAIN UTE TRIBE OF THE**  
**UTE MOUNTAIN RESERVATION**  
**COLORADO, NEW MEXICO, UTAH**

**APPROVED JUNE 6, 1940**  
**PRINTED SEPTEMBER 15, 2000**  
**AS AMENDED**  
**(AMENDMENTS I TO VII)**

## **CONSTITUTION**

### **PREAMBLE**

We, the people of the Ute Mountain Tribe of the Ute Mountain Reservation, in Colorado, New Mexico, and Utah, under the jurisdiction of the Ute Mountain Agency, Towaoc, Colorado, in order to exercise the rights of self-government, to administer our tribal affairs, to preserve, develop and increase our tribal resources, do ordain and establish this Constitution. (As amended August 26, 1983, Amendment No. IV.)

### **ARTICLE 1 – JURISDICTION**

The jurisdiction of the Ute Mountain Ute Tribe of the Ute Mountain Reservation through the General Council, the Ute Mountain Tribal Council, and its Court, shall extend to the lands now included within the Ute Mountain Reservation and to such other land as may be added thereto.

### **ARTICLE II – MEMBERSHIP.**

SECTION 1. The membership of the Ute Mountain Tribe of the Ute Mountain Reservation shall consist of the following:

(a) All persons of Ute Indian blood duly enrolled on the 1939 census of the Ute Mountain Reservation: Provided, That within two years from the adoption and approval of this Constitution and By-Laws additions and changes may be made by the Council, subject to approval of the Secretary of the Interior.

(b) And all children born to any member if such children shall be of one-half or more degree of Ute Indian blood.

SECTION 2. The Council shall have the power to pass ordinances, subject to the approval of the Secretary of the Interior, covering future membership.

### **ARTICLE III – GOVERNING BODY**

SECTION 1. The governing body of the Ute Mountain Tribe of the Ute Mountain Reservation, which includes White Mesa, shall be known as the "Ute Mountain Tribal Council." (As amended August 26, 1983, Amendment No. V.)

SECTION 2. The Council shall be composed of a Chairman, five members from Towaoc and one member from White Mesa. Each member shall serve for three (3) years. The Council, when it meets after each election, shall choose a Treasurer and such other officers and committees as may be deemed necessary. The Chairman shall choose a Vice-Chairman. All voters shall vote for a Chairman. Towaoc voters shall vote on Towaoc councilmen and White Mesa voters shall vote on the White Mesa councilman. (As amended August 26, 1983, Amendment No. V.)

SECTION 3. The Council shall have the power to district the reservation and to apportion representation, subject to a referendum of the people, whenever such action is deemed advisable by the Council.

SECTION 4. Members of the Council shall be at least twenty-five years of age, and permanent residents of the reservation. No person who has been convicted of a felony shall be eligible for membership on the Council.

SECTION 5. Any councilman who may resign, die, or be removed from his office, shall be replaced only at a regular election or at a special election called by the Council. Any councilman convicted of a felony or misdemeanor involving dishonesty in a Federal, State or Indian Court may be removed from office by a two-thirds vote of the Council. (Former Section 7, after repeal of former Section 5, as amended August 26, 1983, Amendment No. V.)

SECTION 6. Members of the Council shall take office on the first Friday of the first month after their election. (Former Section 8, after repeal of former Section 6, as amended August 26, 1983, Amendment No. V.)

#### **ARTICLE IV – NOMINATIONS AND ELECTIONS**

SECTION 1. Any member, male or female, 18 years of age or over, and otherwise qualified, shall be entitled to vote in any election. (As amended August 26, 1983, Amendment No. VI.)

SECTION 2. The annual election shall be held on the second Friday in October. All elections shall be conducted by an Election Board appointed by the Tribal Council. The elections will be conducted in accordance with the Election Ordinance to be adopted by the Tribal Council. (As amended August 26, 1983, Amendment No. VI.)

SECTION 3. Notice of special elections shall be given in the same manner as that for general or regular elections. (As amended August 26, 1983, former Section 3 repealed and former Section 4 renumbered as Section 3, Amendment No. VI.)

#### **ARTICLE V – POWERS OF THE COUNCIL**

SECTION 1. The Council of the Ute Mountain Tribe shall exercise the following powers:

- (a) To negotiate with Federal, State and local governments.
- (b) To prevent the sale, disposition, lease or encumbrance of tribal lands, interests in lands, or other tribal assets, without the consent of the Tribe. Leases shall be made by the Council, subject to the approval of the Secretary of the Interior, in accordance with the existing law, but no lease shall be made to a non-member of the Tribe unless it has been approved by and authorized by the Council.
- (c) To advise the Secretary of the Interior with regard to all appropriation estimates or Federal projects for the benefit of the Ute Mountain Tribe of the Ute Mountain Reservation prior to the submission of such estimates to the Bureau of the Budget and to Congress.
- (d) To select subordinate boards, tribal officials, and employees of the Council not otherwise provided for in this Constitution and prescribe their tenure and duties.
- (e) To promulgate ordinances regulating the domestic relations of members of the Tribe.
- (f) To make rules and regulations governing its own procedure.
- (g) To approve or veto expenditures from tribal funds which may be proposed by the Secretary of the Interior.

(h) To manage the tribal herds, particularly with regard to the selling of steers, lambs, wools, the purchasing of fresh stock, the distribution of the increase to the members as individual cattle and sheep owners and the protection of the herds and the range against encroachments.

(i) To employ legal counsel for the protection and advancement of the Ute Mountain Tribe of the Ute Mountain Reservation, the choice of counsel and the fixing of fees to be subject to the approval of the Secretary of the Interior.

(j) To pass ordinances, subject to review by the Secretary of the Interior, covering the activities of voluntary associations consisting of members of the Tribe organized for the purpose of cooperation or for other purposes, and to enforce the observance of such ordinances.

(k) To provide by ordinance, subject to review by the Secretary of the Interior, for the removal or exclusion from the reservation of any non-members whose presence may be injurious to members of the Tribe.

(l) To provide by ordinance, subject to review by the Secretary of the Interior, for the appointment of guardians for minors and mental incompetents.

(m) To prescribe rules for the inheritance of property other than allotted lands.

(n) To regulate the conduct of members of the Tribe and to protect the public peace, safety, morals and welfare of the reservation through the promulgation and enforcement of ordinances, subject to review by the Secretary of the Interior, to effectuate these purposes.

(o) To appropriate available funds of the tribe for salaries and expenses of tribal officers and for public purposes, including relief of members of the tribe, contributions to charity, and per capita payments to recognized members of the tribe: *Provided*, That the amount distributed per capita in any one year shall not exceed one-half of the unreserved accumulated net operating profits from tribal enterprises without prior approval of the Secretary of the Interior. (As amended October 27, 1976, Amendment No. I.)

(p) To regulate by ordinance, subject to review by the Secretary of the Interior, non-members doing business on the reservation.

SECTION 2. The Council may exercise such further powers as may be delegated to the Ute Mountain Tribe by the Secretary of the Interior or any other qualified official or agency of government, and may exercise any rights and powers heretofore vested in the Ute Mountain Tribe of the Ute Mountain Reservation but not expressly referred to in this Constitution.

SECTION 3. Manner of Review -- Any resolution or ordinance which by the terms of this Constitution is subject to review by the Secretary of the Interior, shall be presented to the Superintendent of the reservation, who shall, within two weeks thereafter, approve or disapprove the same. If he approves an ordinance or resolution, it shall thereupon become effective, but the Superintendent shall transmit a copy of the same, bearing his endorsement to the Secretary of the Interior, who may, within 90 days from the date of enactment, rescind the said ordinance or resolution for any cause by notifying the Tribal Council of his action. If the Superintendent refuses to approve any ordinance or resolution submitted to him within two weeks after enactment, he shall advise the Tribal Council of his reasons. The Tribal Council may by a majority vote refer the ordinance or resolution to the Secretary of the Interior who may within 90 days from its enactment, approve the same in writing, whereupon the said ordinance or resolution shall become effective.

## **ARTICLE VI – GENERAL COUNCIL**

The General Council, consisting of all the voters of the Ute Mountain Tribe of the Ute Mountain Reservation, shall assemble at such times as the Council shall call them together for the discussion of matters relating to the public welfare. A General Council meeting may be called upon a petition signed by a majority of the qualified voters of the reservation.

#### **ARTICLE VII – LAND**

The reservation land now unallotted shall remain tribal property and shall not be allotted to individuals in severalty, but assignment of land for private use may be made by the Tribal Council in conformity with ordinances which may be adopted on this subject and approved by the Secretary of the Interior.

#### **ARTICLE VIII – REFERENDUM**

By a majority vote of the Council, or upon a petition signed by at least 25 percent of the voters of the Ute Mountain Reservation, any proposed or enacted ordinance or resolution of the Tribal Council shall be submitted to an election of the Tribe. A majority of those voting shall determine the validity of such ordinance or resolution. No ordinance or resolution submitted to referendum shall be in effect until approved in the referendum.

#### **ARTICLE IX – AMENDMENTS**

Amendments to this Constitution may be proposed by a majority vote of the Tribal Council, and may be ratified and approved in the same manner as this Constitution and By-Laws.



**BYLAWS OF THE UTE MOUNTAIN TRIBE  
OF THE UTE MOUNTAIN RESERVATION –  
COLORADO, NEW MEXICO, UTAH**

**ARTICLE I – MEETINGS OF THE TRIBAL COUNCIL**

SECTION 1. At the first meeting of the Council after a regular election, the Council shall see that its members have a correct and clear understanding of the Constitution and Bylaws, and of the general management of the tribal and reservation affairs as well as of the rules for the conduct of its own business.

SECTION 2. The regular meetings of the Council shall be held on a date decided on at a previous meeting of the Council, but meetings shall be held once a month at the Ute Mountain Sub-Agency, or other designated place.

SECTION 3. Special meetings of the Tribal Council may be called by the Chairman or by request of two or more members of the Council. Notice of such special meetings shall be given to every member of the Council and to the Superintendent or person in charge of the Sub-Agency as promptly as possible.

SECTION 4. Matters of business before the Council shall be decided by a majority vote of the quorum present. Five members of the Tribal Council must be present at any regular or special meeting in order to transact tribal business. In the absence of the chairman, the remaining members of the Council may elect a temporary chairman.

**ARTICLE II – DUTIES OF OFFICERS**

SECTION 1. The Chairman of the Council shall preside over all meetings of the Council, shall perform all the duties of a chairman and exercise any authority given to him by the Council or by a General Council of the Tribe. He shall vote only in case of a tie.

SECTION 2. At the request of the Chairman or in the event of his absence or disability, the Vice Chairman shall perform all duties of the Chairman and when so acting, shall have all the powers of, and be subject to all the restrictions upon the Chairman. The Chairman may limit the powers of his office to be exercised by the Vice Chairman in the absence of the Chairman. The Vice Chairman shall perform such other powers as from time to time may be assigned to him/her by the Tribal Council Chairman. (As amended August 26, 1983, Amendment No. VII.)

SECTION 3. The Council Treasurer shall be the custodian of all monies which may come under the jurisdiction or into the control of the Council. He shall pay out the money in accordance with the orders and resolutions of the Council. He shall keep account of all receipts and disbursements and shall report the same to the Council at each regular meeting. He shall be bonded in such amount as the Council may by resolution, approved by the Commissioner of Indian Affairs, provide. The books of the Council treasurer shall be subject to audit or inspection at the direction of the Council or the Commissioner of Indian Affairs. Until the Treasurer is bonded, the Council may make such provision for the custody and disbursement of funds as shall guarantee their safety and proper disbursement and use.

**ARTICLE III – ADOPTION OF CONSTITUTION AND BYLAWS**

This Constitution and Bylaws, when adopted by a majority vote of the qualified voters of the Ute Mountain Tribe of the Ute Mountain Reservation, voting at a special election called by the Secretary of the Interior, in which at least thirty percent of those entitled to vote shall vote, shall be submitted to the Secretary of the Interior for his approval and shall be in force from the date of such approval.

### **CERTIFICATION OF ADOPTION**

Pursuant to an order, approved April 9, 1940, by the Assistant Secretary of the Interior, the attached Constitution and Bylaws was submitted for ratification to the members of the Ute Mountain Ute Tribe of the Ute Mountain Reservation and was on May 8, 1940, duly adopted by a vote of 91 for, and 12 against, in an election in which more than 30 percent of those entitled to vote cast their ballots in accordance with section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), as amended by the Act of June 15, 1935, (49 Stat. 378).

EMMA SOUTH BEECHER  
Chairman, Election Board  
LEWIS E. WING  
Secretary, Election Board  
JACK HIGHT, Judge  
S.F. STACHER  
Superintendent, Consolidated Ute Agency

I, Oscar L. Chapman, the Assistant Secretary of the Interior of the United States of America, by virtue of the authority granted me by the Act of June 18, 1934 (48 Stat. 984), as amended, do hereby approve the attached Constitution and Bylaws of the Ute Mountain Tribe of the Ute Mountain Reservation.

All rules and regulations heretofore promulgated by the Interior Department or by the Office of Indian Affairs, so far as they may be incompatible with any of the provisions of the said constitution and bylaws are hereby declared inapplicable to the members of the Ute Mountain Tribe of the Ute Mountain Reservation.

All officers and employees of the Interior Department are ordered to abide by the provisions of said constitution and bylaws.

Approval recommended May 23, 1940.

WILLIAM ZIMMERMAN, JR.  
Assistant Commissioner of Indian Affairs

OSCAR L. CHAPMAN  
Assistant Secretary  
[SEAL]

Washington, D.C., June 6, 1940.