Tsosie v. N.T.U.A. Wireless, LLC, 2023 WL 4205127 (D. Ariz., June 27, 2023).

- **Holding**: Wireless internet company formed to serve Navajo Reservation, partially owned by the Nation's Utility Authority, and partially owned and managed by a private company, was not an arm of the Nation and not entitled to tribal sovereign immunity.
- **Summary**: Tsosie, an employee of NTUA Wireless, brought an action alleging that the general manager of NTUA Wireless made unwelcome suggestive comments to her and initiated unwanted physical contact. NTUA Wireless was a Delaware limited liability company, 51% of which was owned by the Navajo Tribal Utility Authority (NUTA), and 49% of which was owned by Commnet Newco, a Delaware limited liability company. Commnet Newco was also the managing member of NTUA Wireless.

  NTUA Wireless moved to dismiss Tsosie's complaint on sovereign immunity grounds, claiming it was an arm of the Navajo Nation. Because it was a facial attack on jurisdiction, the court assumed the truth of all allegations in the complaint, and applied the five-factor test outlined by the Ninth Circuit in *White v. Univ. of California*, 765 F.3d 1010 (9th Cir. 2014) and concluded: (1) the method of creation did not support a claim of sovereign immunity, given that NTUA Wireless was organized under the laws of Delaware, and was only partly owned by the NTUA; (2) the purpose of NTUA Wireless. to supply the Navajo Nation with modern utilities, and to support tribal self-sufficiency, weighed in favor of sovereign immunity; (3) the structure of NTUA Wireless, with NTUA and Commnet each appointing two directors, and Commnet serving as the managing member, weighed slightly against immunity; (4) whether the Nation intended to share its sovereign immunity with NTUA Wireless was not clear, given that the Navajo Nation Council allowed NTUA to waive NTUA's sovereign immunity for enforcement of the NTUA Wireless operating agreement; and (5) under the operating agreement, losses were to be allocated between NTUA and Commnet, suggesting that a judgment against NTUA Wireless would not reach the Navajo Nation. Applying the five factors, the court concluded that NTUA Wireless had failed to show, by a preponderance of the evidence, that it was an arm of the Navajo Nation.
- **Relevant (2023) Deskbook Section**: 7:20