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Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)
)
Petition of Smith Bagley, Inc. for) CC Docket No. 96-45
Designation as an Eligible)
Telecommunications Carrier) DA No. 99-1331

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REPLY COMMENTS OF SMITH BAGLEY, INC.

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Summary

On June 2, 1999, Smith Bagley, Inc. ("SBI") submitted an application to the Commission to become an Eligible Telecommunications Carrier ("ETC"). The comments filed in this proceeding raise no substantial issues which would prevent the Commission from granting SBI's application to become an ETC from being granted.

Chairman Kennard has urged companies to find innovative ways to make telephone services available to Native Americans. In response to the Chairman's call for action, SBI put together an experimental program for serving Native American reservations. SBI's primary goal is to put telephones in the hands of Native Americans who have never had telephone service. SBI is uniquely positioned to quickly implement its program. The company currently provides usable signal to over 75 percent of the Navajo Nation, yet over 70 percent of the population has no telephone service.

SBI's proposal to rapidly implement a Universal Service program complements the Commission's ongoing rulemaking proceedings. In adopting and shaping Universal Service rules which will be followed throughout the nation, the Commission would be well served by having SBI's program in place to provide important real world data on service to Native Americans.

SBI stands ready to meet any requirements for becoming an ETC and commencing a Universal Service program on Native American lands at the earliest possible date, to respond promptly to all requests for additional information, and to work with the Commission to make this very worthwhile program a reality.

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REPLY COMMENTS OF SMITH BAGLEY, INC.

Smith Bagley, Inc. ("SBI"), by its counsel and pursuant to the Commission's *Public Notice* dated July 6, 1999, hereby files the following Reply Comments in the above-captioned proceeding.

I. SBI's Proposal to Initiate an Experimental Program to Provide Universal Service to Native American Lands Should be Approved.

On June 2, 1999, SBI submitted an application to the Commission to become an Eligible Telecommunications Carrier ("ETC") on Native American lands that it now serves. By and large, the comments filed in this proceeding raise no substantial issues which would prevent SBI's application to become an ETC from being granted. Before addressing specific issues, SBI first discusses the genesis of its proposal and the general rationale supporting its expeditious grant.

At the 1999 CTIA convention and in meetings conducted on Native American lands this past winter, the Chairman has urged companies to find innovative ways to make telephone services available to Native Americans. In providing cellular service to the Arizona 3 RSA, as well as territory within the adjacent New Mexico 1 and New Mexico 3 RSAs, SBI is acutely aware of the problems Native American people face in obtaining basic telephone services. In response to the Chairman's call for action, SBI put together an experimental program for serving Native American

reservations and, as a prerequisite to its implementation, filed an application with the FCC to become an ETC.

SBI's primary goal is to put telephones in the hands of Native Americans who have never had telephone service. By virtue of SBI having an operating network that covers substantially all of five Native American reservations in Arizona and New Mexico, SBI can immediately provide needed services to this long neglected population. In addition, SBI will be able to provide to the Commission meaningful real world data concerning calling patterns and usage, speed of adoption, and other valuable information which the Commission can use in shaping its universal service rules relating to Native American lands.

SBI is uniquely positioned to quickly implement its program. The company currently provides usable signal to over 75 percent of the Navajo Nation, yet over 70 percent of the population has no telephone service. SBI also serves or will serve virtually all of the geographic area of four other tribes in New Mexico and Arizona, yet telephone penetration is only slightly higher. There are few places in the United States, almost all of which are Native American lands, that have such low telephone subscribership rates as the five tribal lands SBI serves. In response to the Chairman's initiative, SBI is happy to contribute the cost of its existing network to enable this program to work, and seeks no reimbursement for the costs it has incurred in building its system.

The problem of telephone penetration is twofold. First, low population density across enormous geographic areas make it difficult for traditional wireline companies to serve these areas. Second, the population at large is by far the poorest in America. The average per capita income of persons living on reservation lands is often below \$5000, which makes acquiring basic telephone services a near financial impossibility for the average household. These two factors make the

traditional “high cost” and “low income” presumptions for the mainstream United States population inapplicable to Native American lands. It is not an understatement to characterize the living conditions of many Native Americans as Third World, right here in the United States.

Instead of seeing these problems as intractable, SBI has followed up on the Chairman’s initiative to find ways of providing basic telecommunications services to this segment of the population. SBI fully understands that it must become an ETC before it is eligible to receive support funds, and SBI fully endorses the notion that a carrier must meet all of the checklist requirements before such designation. Having said that, SBI is constrained to note that far too many people living on reservations do not even have access to basic emergency communications services and therefore Commission action on SBI’s ETC application must be expedited.

II. SBI’s Offering Complements the Commission’s Ongoing Universal Service Efforts.

Yesterday’s release of two NPRMs is a milestone in the federal government’s efforts to bring telecommunications services to all Americans.¹ As Chairman Kennard eloquently pointed out, there is no more important mandate for this Commission than to make efficient and affordable telecommunications services available to every American.

SBI’s proposal to rapidly implement a universal service program complements the Commission’s ongoing rulemaking proceedings. In adopting and shaping universal service rules which will be followed throughout the nation, the Commission would be well served by having SBI’s program in place to provide important real world data on service to Native Americans. SBI

¹ *Universal Service in Tribal Lands and Other Insular Areas (Further Notice of Proposed Rulemaking)* CC Docket No. 96-45, adopted August 5, 1999; *Exploring Ways to Extend Terrestrial and Satellite Wireless Services to Individuals Living on Tribal Lands (Notice of Proposed Rulemaking)*, WT Docket No. 99-xx, adopted August 5, 1999 (collectively, the “NPRMs”).

will be in a position to report on many factors such as penetration, network usage, calling patterns, and demand for basic telecommunications services, all of which will assist the Commission in resolving many complex Universal Service issues relating to Native American lands. Moreover, many important issues raised in the Commission's two NPRMs can be advanced in tandem with SBI's initiative.

SBI notes that some issues raised by commenting parties in this proceeding are better dealt with in the NPRMs, as they appear to be more relevant to carriers serving markets with much different demographics and people with much different needs than those that SBI proposes to serve. For example, SBI's initiative to immediately provide basic and essential telecommunications services will have little or no impact if its ETC application becomes bogged down in determining when reservation residents will have high speed Internet connections or 500 channel satellite television service. While these services are important, they should not in any way delay SBI's initiative to provide basic and essential telephone services at the earliest possible date.

III. SBI Has and Will Continue to Seek Support of the Appropriate Tribal Authorities.

A couple of commenters raised concern that SBI have permission to provide wireless services on tribal lands² and that the Commission receive a formal approval from tribal authorities in order for SBI to provide universal service.³

As a licensed cellular carrier for nearly ten years now, SBI has become well acquainted with the need to coordinate all of its operational activities with the appropriate tribal authorities. SBI has

² See, e.g., Comments filed by The Cheyenne River Sioux Tribe Telephone Authority ("Cheyenne") and National Tribal Telecommunications Alliance ("NTTA").

³ See, Comments of NTTA at 2-4.

maintained excellent relations with all five tribal nations which lie within its service area with respect to its service offerings, transmitter locations, and other operational issues. That SBI has successfully installed numerous cell sites, which now cover fully ninety percent of the reservation lands within SBI's authorized service area, is a testament to the level of cooperation SBI has been able to maintain over the years with Native American nations.

SBI also understands that in order to receive FCC designation under Section 214(e)(3), a community leader must request that a carrier provide services. Without a doubt, SBI's service to Native Americans must be initiated by the appropriate tribal authorities. SBI believes that submission of appropriate letters from tribal leaders requesting that SBI provide universal services on Native American lands should serve to satisfy the commenters in this regard. SBI has communicated several times with the affected tribes on the implementation of its universal service program and has long honored Native American sovereignty over the construction and operation of its network on Native American soil.

IV. SBI's FCC Application is Focused on Native American Lands.

SBI has requested the FCC to designate it as an ETC on all Native American lands within its authorized service area. Specifically, SBI currently serves Native American lands within the Arizona 3 RSA, which encompasses Navajo and Apache counties. SBI also has authorized contour on Native American lands in the Arizona counties of Coconino, Graham, and Gila, as well as the New Mexico counties of McKinley and Cibola. SBI's entire service area was clearly delineated on color maps supplied to the Commission with its application. To the extent that SBI's FCC

application requires clarification, SBI proposes to serve only residents of established tribal reservations and to obtain federal ETC status on those tribal lands within its service area.⁴

V. The Commission Has Plenary Authority to Act.

Two commenters have focused on the Section 214(e)(6) aspects of SBI's proposal in opposing its grant. As the commenters surely understand, it was not SBI's intent to cast itself as a tribal company, but rather to simply point out that other carriers offering universal services to Native American lands have been designated as ETCs.⁵ What the commenters ignore is that nothing in 214(e)(6) precludes the Commission from designating a carrier as an ETC on Native American lands.

No commenter has argued with SBI's central contention that the Commission has full authority under Section 254 to grant SBI's Application. The Commission has preeminent authority over the nation's universal service program, and the grant of authority under Section 254 empowers it to act decisively to coordinate and establish a universal service program on Native American lands. As mentioned in SBI's application, "there is no doubt that the Commission - - with the help of the states - - is to establish in the first instance what services should be supported and what are the necessary mechanisms to do so."⁶ Congress vested the Commission, not the states, with authority

⁴ One commenter expressed apparent confusion over SBI's ETC application to the state of Arizona and the area that SBI seeks to serve. To remedy any confusion and expedite the process, SBI intends to amend its Arizona and New Mexico ETC applications to specify only Native American lands within its authorized service contour. In any event, SBI's state applications are beyond the scope of this proceeding.

⁵ See, SBI's Application at para. 2.

⁶ *Federal-State Joint Board on Universal Service (Report and Order)*, 12 FCC Rcd 8776, 9193 (1997).

to establish and implement new universal service programs. By virtue of its duty to carry out the special trust relationship that the federal government has with Native American tribal nations, the FCC is empowered to establish a universal service program on Native American lands. The Commission has done so in adopting the NPRMs and it is well within FCC authority to grant SBI's application.

VI. SBI Intends to Offer Basic Telecommunications Services.

US West Communications, Inc. ("US West") raises several concerns which are not applicable to SBI's proposed offering, or simply miss the mark. For example, US West expresses concern that SBI's service offering will enable the company to cream skim by not offering an "unadorned" universal service package.⁷ From SBI's perspective, US West's comments may be entirely valid in the rest of the United States, but cream skimming is the least of the telecommunications problems facing the Navajo Nation. For example, on portions of the Navajo Nation SBI is the only carrier, wireline or wireless, currently providing service. US West's concern about cream skimming is best addressed in rural America, not on reservation lands, because the possibility of it happening in such an environment is remote.

US West is also concerned that SBI provide all nine universal services in a single offering. SBI understands that it is required to do so, and its basic universal service offering will include all such services.

⁷ See, US West Comments at p.11.

US West's statements concerning SBI's offering of 'expanded calling area' are misleading. US West mischaracterizes SBI's expanded calling area as "mandatory".⁸ SBI does not offer an expanded calling area. All SBI subscribers pay "home" rates when making calls within SBI's CGSA, which area is exactly what the FCC authorized it to serve. Surely US West is not suggesting that SBI should provide its Native American subscribers a smaller local calling area than the rest of its customers. Moreover, SBI's efforts to bring toll relief to these people should not be criticized, especially in view of the fact that SBI's local calling area is not artificially expanded through internal subsidies. SBI notes that many LEC's operating on Native American lands restrict local calling areas so as to reap in-region long distance charges on many calls outside the community. In sum, SBI's proposed offering does not contain enhanced features and the company sees no reason to provide Native American subscribers with less than SBI's other subscribers.

Concerned that SBI's service will have gaps, US West apparently believes that it is better to leave thousands of people stranded indefinitely than to immediately provide usable service to ninety percent of them. Undoubtedly, SBI's service area will have some coverage gaps. Wireless systems, even in the most urban areas, do not provide completely seamless coverage, however this is no reason to deny SBI's application. SBI will do everything within its power to provide service to every potential subscriber on Native American lands.

As to US West's concern about affordability, SBI's proposal requires no capital outlay from subscribers qualifying for SBI's universal service plan. Because most potential subscribers have no checking accounts or other means of making monthly payments, SBI proposes no up front out of

⁸ See, US West Comments at p.6.

pocket costs for the customer. This will reduce SBI's cost of collections, which can be enormous when the cost of traveling to each small community within the reservation to collect cash is factored in. SBI believes that customers should contribute to the use of additional services through the purchase of additional prepaid minutes, which can be purchased through many convenient outlets SBI has set up in its service area.

US West also obliquely claims that SBI has a responsibility to foster Congress' aim of providing access to advanced services. As stated previously, SBI's service offering is designed to provide a uniquely situated group of people with access to their first telephone. SBI believes that access to cable television and high speed Internet service is beyond the scope of its particular offering, and beyond its current technological reach. SBI satisfies its Section 254(b)(2) obligation by offering basic telephone service to so many people who have been long ignored by traditional local exchange carriers.

VII. SBI Supports Competitive Universal Service Offerings.

While US West worries about SBI being able to shoulder its obligation as the lone provider of universal service, Arizona Telephone Company is concerned that SBI will be a second provider and somehow take away its universal service subscribers. For the record, SBI does not provide wireless service in the Supai exchange at the bottom of Havasu Canyon in Coconino County, Arizona, and therefore Arizona Telephone Company's comments on this point appear moot. Nevertheless, SBI points out that it generally supports competitive universal service offerings. Using the Navajo Nation as an example, if a competitor to SBI is capable of making a more attractive universal service offering to Navajo subscribers, SBI supports that effort. Competition will lead to subscribers receiving the most advanced service offerings at the lowest possible prices.

SBI recognizes that some circumstances, such as the case of Arizona Telephone Company stringing a wire down to 100 subscribers at the bottom of a canyon, warrant exceptions to a policy of competition. Such circumstances should be dealt with on a case by case basis, however, because wherever feasible, persons receiving universal service deserve a choice of telecommunications providers and competitive offerings will improve the quality of services available to everyone.

VIII. SBI's Proposal Would Serve the Public Interest.

Some commenters criticized SBI for not demonstrating that its proposal would serve the public interest. As a general matter, it seems self-evident that a proposal to place telephones in the hands of people who have no service would serve the public interest. In those areas on reservation lands where a rural telephone company is already designated as an ETC, subscribership remains below fifty percent, and on the Navajo reservation it is below thirty percent. Accordingly, SBI can imagine no reason why the public interest would not be served in pursuing any proposal which has the potential to raise subscribership significantly and bring much needed basic services to a population that has been ignored for so long. While a thorough evaluation is certainly warranted, SBI has been unable to formulate an analysis which could conclude that having a second designated carrier on reservation lands would not serve the public interest.

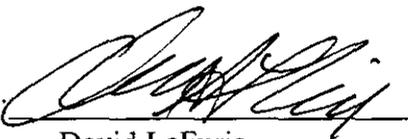
IX. Conclusion

In reaching out to a segment of the population that is most in need, SBI fully supports Commissioner Tristani's statement that "history, notions of equality, and the principles on which this Nation was founded tell us that it is unconscionable that Indians, the first Americans, remain

the last Americans to enjoy the wonders and benefits of the Information Age.”⁹ The real issue is not whether SBI should provide this service, it is how long the process of obtaining ETC status will take. As shown in its ETC application, SBI’s proposal is unique and the company has moved quickly to respond to the Chairman’s call for action. SBI stands ready to meet any requirements for becoming an ETC and commencing a universal service program on Native American lands at the earliest possible date, to respond promptly to all requests for additional information, and to work with the Commission to make this very worthwhile program a reality.

Respectfully submitted,

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⁹ See, *NPRMs, supra.*, (Separate Statement of Commissioner Gloria Tristani).

CERTIFICATE OF SERVICE

I, Kimberly Verven hereby certify that I have, on this 6th day of August, 1999, placed in the United States mail, first-class postage pre-paid, a copy of the foregoing COMMENTS filed today to the following:

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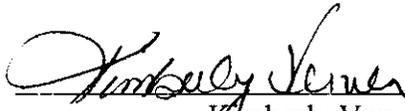
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