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April 25, 2000

By Hand Delivery

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APR 25 2000
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Magalie Roman Salas, Secretary
Office of Managing Director
Federal Communications Commission
445 12th Street, S.W.
Room TW-B204
Washington, DC 20554

Re: Written Ex Parte Presentation
CC Docket No. 96-45
WT Docket No. 99-266

Dear Madam Secretary:

In accordance with Section 1.1206 of the Commission's rules, 47 C.F.R. Section 1.1206, we hereby provide you with notice of a written *ex parte* presentation in connection with the above-captioned proceeding. The written presentation provided suggestions on how the FCC can increase telephone penetration and subscribership on Native American lands.

In accordance with the Commission's rules, two copies of this letter and the materials sent to the Commission's staff are enclosed for inclusion in each of the Commission's docket files in the above referenced proceedings.

No. of Copies rec'd 0+1
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If you have any questions or require any additional information, please contact undersigned counsel directly.

Sincerely,

David A. LaFuria
Counsel for Smith Bagley, Inc.

Enclosures

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WRITER'S DIRECT DIAL

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April 25, 2000

By Hand Delivery

Mark Nadel, Esq.
Federal Communications Commission
445 12th Street, S.W.
Room 5-B551
Washington, DC 20554

Re: CC Docket No. 96-45
WT Docket No. 99-266

Dear Mr. Nadel:

On behalf of Smith Bagley, Inc. ("SBI"), we write to follow up on our recent meetings to provide you with suggestions as to how the FCC can increase telephone penetration and subscribership on Native American lands through modifications to the agency's means testing requirements. SBI's wireless service area includes the largest Native American land area in the nation, and covers over 100,000 people living on five reservations. The company has researched the practical aspects of increasing Native American subscribership and provides the information below in the hope that it will prove beneficial to the agency in the above-referenced rulemaking proceedings.

Impediments to Increased Penetration

SBI is convinced that the Commission must substantially increase the available federal support offered on Native American lands through its Lifeline and Linkup programs. For SBI, the biggest hurdle to increasing telephone penetration is the extremely low income levels in its tribal service areas. The average per capita income of many tribal families is as low as $5000. Collectively, these people are the lowest earning population in the country. A significant

percentage participate in no government support programs, and have no opportunity to obtain telephone service without financial assistance.

Federal Lifeline support for Native Americans should be increased to as much as $25.00. At that level, combined with high cost loop fund, SBI could offer Native Americans a universal service package that is comparable its present rate plans. In addition, SBI could offer local calling throughout its authorized CGSA, which would all but eliminate toll charges for most Native American households.

In addition, funds for Linkup should be increased to help defray the substantial cost of connecting a subscriber. The current cap of $30.00 is insufficient. Subscriber activation includes many costs, often amounting to several hundred dollars per subscriber. SBI understands that it will be expected to absorb a portion of these costs, in addition to the subscriber equipment costs, which are not borne by the Linkup program. Accordingly, SBI respectfully requests the Commission to increase the cap on Linkup to $100.

Means Testing

Under the Commission's rules, a universal service participant must certify that it participates in at least one of five federal programs available to low income Americans.[1] If a state has adopted a list of programs, that list supercedes what is known as the federal default list. Arizona has not adopted a list of programs for wireless carriers, and therefore the federal default list applies. New Mexico has adopted a list of programs, however the state list does not include programs sponsored by Native Americans.

A significant portion of low income citizens living on reservation lands do not participate in any tribal, state, or federal program for low income Americans. These people are not non-participants in these programs because they live in remote areas and lack education and understanding necessary to participate in these programs. In short, these are the people who are most in need of universal services, and it is their poverty and lack of access to basics such as telephone services which keeps them from taking advantage of various low income programs. Programs sponsored by the tribes or the states which do attract these citizens are not made part of the federal default list, and are not made part of either Arizona or New Mexico's lists.

SBI firmly believes that this problem is susceptible to a solution which will fulfill the intent of the law and can be implemented cost effectively. For those persons who are not on any low income program, SBI proposes to require Native Americans to prove residency on the

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[1] 47 CFR Section 54.409(b).

reservation and certify that their household income is below the poverty level established by the Health and Human Services ("HHS") Federal Poverty Guidelines. Native Americans living on reservations carry picture identification cards which enable SBI to confirm residency, as well as proof that the person signing the customer contract has achieved the age of majority under Native American law.

SBI will require a person seeking a telephone service under its universal service plan to produce their picture identification card and sign a certification, similar to that required under the Commission's rules. A certification, along the following lines, in both English and in Native American language, will be used:

> I certify that I have attained the age of majority, and that I reside on a Native American reservation. I also certify that,
>
> (1) under the federal poverty guidelines, which have been provided to me, the total income for my household for the previous year is less than the HHS Federal poverty threshold, or
>
> (2) I participate in one of the following low income programs sponsored by either the federal government, the state of Arizona, or the ____[Insert Name of Tribe Here]____.
>
> [List Programs Here]
>
> I will notify the carrier if my total household income increases above the poverty threshold or if I cease to participate in one of the programs listed above. I understand that my household may no longer be eligible for universal service benefits.

SBI will post the HHS guidelines for the poverty threshold at each sign up area and be certain that each applicant is provided with a copy, in a form substantially as follows:

Size of Family Unit	Income Limit
1	$ 8,240
2	11,060
3	13,880
4	16,700
5	19,520
6	22,340

7	25,160
8	27,980
For each additional person, add:	2,820

SBI is developing a comprehensive list of low income programs available through the State of Arizona and the various tribes in its service area. If the FCC so chooses, it may require a carrier to submit such a list to the agency for approval. By expanding the available list of programs, the agency will go a long way toward expanding telephone penetration in these areas.

Pursuant to Section 1.1206 of the Commission's rules regarding *ex parte* presentations in permit but disclose proceedings, 47 CFR Section 1.1206, we are forwarding two copies of this letter to the Secretary's Office for inclusion in the Commission's docket files.

We trust that you will find these thoughts to be useful. Should you have any questions or require any additional information, please contact undersigned counsel directly.

Sincerely,

David A. LaFuria
Counsel for Smith Bagley, Inc.

cc: Mr. Lawrence Strickling
Ms. Ellen Blackler
Ms. Lisa Boehely
Ms. Katherine Schroder
Mr. Gene Fullano
Mr. Robert Loube