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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of Federal-State Joint Board)
on Universal Service; Promoting)
Deployment and Subscribership)
in Unserved and Underserved Areas,)
Including Tribal and Insular Areas)

CC Docket No. 96-45

SBC COMMUNICATIONS INC.'S APPLICATION FOR STAY OF ORDER

SBC Communications Inc. (SBC), pursuant to 47 U.S.C. §§ 1.43, 1.44(e), 1.45, and 1.106(n), requests that the Commission extend the stay of Order FCC 00-208 (*Order*)¹ -- now limited to the *Order's* application to "near reservations" -- to include "former reservations" in the state of Oklahoma. The *Order* provided for expanded Lifeline and Link Up support for qualifying low-income consumers living on reservations (including "former reservations" in Oklahoma) and "near reservations." As explained below, the designation "former reservations" embraces more than half of the territory of the state of Oklahoma, including metropolitan areas such as Tulsa, Bartlesville, Muskogee and Lawton. It thus includes wide geographic areas that lack the characteristics -- such as geographic isolation, high rates of poverty, and low telephone subscribership -- the Commission relied upon to extend enhanced Lifeline and Link Up support to reservations. The Commission has already recognized that these characteristics may not exist in "near reservations" and, on its own motion, stayed the *Order* insofar as it

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¹ *Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking.*

extends to these areas.² Consistency requires that the *Order* also be stayed insofar as it extends to “former reservations” in Oklahoma.

I. “Former reservations” in Oklahoma

It appears that “former indian reservations in Oklahoma” were clearly defined for the first time in IRS Notice 98-45 (IRB 1998-35, 8/31/98), a copy of which is appended as page 5 of Attachment “A”.³ This attachment is an IRS news release which includes, on page 4, a map of Oklahoma displaying counties fully included in former reservations, counties partially included, and fully excluded counties. Geographically, more than half of the territory in the state consists of “former reservations.” Moreover, these “former reservations” include the cities of Tulsa, Muskogee, Bartlesville, and Lawton. They may include, as well, portions of Oklahoma City (Oklahoma County), Norman (Cleveland County) and Stillwater (Payne County). They embody metropolitan areas with high penetration levels for telephone service. Many of these areas are thriving economically. There is no reason to believe that they are markedly different from metropolitan areas in other states that are neither “reservations”, “former reservations” or “near reservations.”

II. The Commission’s rationale for expanding Lifeline and Link Up support does not apply to these “former reservations”

The *Order*, at paragraphs 24 - 31, explains the basis for extending expanded support to tribal lands: according to the Commission these lands are characterized by low subscribership, low population density, low per capita income, high unemployment, and are generally unattractive to telecommunications providers. The Commission has since

² *Order and Further Notice of Proposed Rulemaking*, FCC 00-332, CC Docket No. 96-45, FCC 00-332, rel. August 31, 2000 (*Stay Order*).

³ During the comment cycle preceding the *Order*, SBC was not aware that “former reservations” in Oklahoma were so extensive. This became clear only recently during

recognized that the definition of tribal lands adopted in the *Order* may be too broad. The Commission in fact stayed the *Order* insofar as it extends to “near reservations”:

Following the adoption of the definition of “tribal lands” in [the *Order*], we became aware that the term “near reservation,” as it is currently defined by the BIA, *may include wide geographic areas that do not possess the characteristics that warranted the targeting of enhanced Lifeline and Link Up support to reservations, such as geographic isolation, high rates of poverty, and low telephone subscribership.* Such an outcome may not further our goal, as described in [the *Order*], of increasing telecommunications deployment and subscribership *in the most historically isolated and underserved regions of our Nation.* Therefore, on our own motion and pending resolution of the issues in the attached Further Notice, we stay the implementation of the above described Lifeline and Link Up assistance rule amendments to the extent they apply to qualifying low-income consumers located “near reservations,” . . .⁴(Emphasis added).

Clearly, “former reservations” in Oklahoma, like “near reservations,” “may include wide geographic areas that do not possess the characteristics that warranted the targeting of enhanced Lifeline and Link Up support to reservations, such as geographic isolation, high rates of poverty, and low telephone subscribership.” In fact, it can be stated with some certainty that “former reservations” in Oklahoma *not only may but actually do include* such geographic areas, e.g., the city of Tulsa. There is no significant difference between Tulsa and any number of similarly sized metropolitan areas throughout the country which are not located on tribal lands and therefore do not qualify for the enhanced support provided by the *Order*. Applying the *Order* to areas on “former reservations” in Oklahoma like Tulsa therefore raises serious issues of discrimination. The Commission should reconsider its inclusion of “former reservations” in Oklahoma in its definition of tribal lands and, consistent with its treatment of “near reservations,” stay the *Order* to the extent it applies to such “former reservations.” Issues pertaining to

preparations to implement the *Order*. Needless to say, the law in this area is tangled and complicated.

⁴ *Stay Order* at pp. 2-3.

“former reservations” can be added to those already noticed for comment in the *Stay Order*.

III. Additional reasons for a stay

As explained, the *Order's* inclusion of “former reservations” in Oklahoma in its definition of tribal lands creates the same difficulties as inclusion of “near reservations.” It makes no sense to stay the *Order* as to “near reservations” and let it go into effect as to these “former reservations.” Moreover, the case for a stay is stronger for the latter areas. It is obvious that significant parts, if not all, of “former reservations” in Oklahoma do not qualify for enhanced support under the Commission’s rationale. Tulsa, for instance, would have to be excluded, as well as other metropolitan areas. Quite apart from the expense and effort involved in implementation, telephone companies should not be required to advertise enhanced Lifeline and Link Up support in “former reservations” in Oklahoma, and make it available on October 1 2000, when such support may have to be withdrawn later. This will only confuse and alienate customers.

CONCLUSION

For the reasons stated above, SBC asks the Commission to immediately extend the stay of its *Order* already applicable to “near reservations” to include “former reservations” in Oklahoma as well.

Respectfully submitted,

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September 5, 2000

Attachment A

News Release



Internal Revenue Service
Arkansas-Oklahoma District
Public Affairs Office - Oklahoma City
Media Contact: (405) 297-4444
Public Contact: 1-800-TAX-1040

August 13, 1998: For Immediate Release

Note: This release also available on the Internet at
<http://www.irs.us/treas.gov/prod/ot/atr/oklahoma.html>

Geographic Boundaries Determined for Tax Incentives Associated with "Former Indian Reservations in Oklahoma"

Oklahoma City -- After extended work by the IRS and the Department of the Interior, the specific Oklahoma geographic boundaries related to special federal tax incentives associated with "former Indian reservations in Oklahoma" have been determined.

Background

The Revenue Reconciliation Act of 1993 provided for substantial tax incentives based on certain business activity within Indian reservations. Those incentives are an employment tax credit for employers of certain enrolled tribal members and their spouses who work within an Indian reservation, and an accelerated depreciation allowance for certain business property used within an Indian reservation.

Since Oklahoma has a large Indian population but does not currently have any Indian reservations, lawmakers wanted to insure those benefits would be available to those involved in business activity in Oklahoma by including in the legal definition of "Indian reservation" the term "former Indian reservations in Oklahoma."

The law, however, did not specifically define where in the state of Oklahoma the geographic boundaries of former Indian reservations lie. While the IRS was working on making such a determination, Congress wrote a 1997 amendment to the original law which defined "former Indian reservations in Oklahoma" as those lands within what is regarded as the then-current "jurisdictional areas" of Oklahoma Indian tribes. Further, the law required these jurisdictional areas be determined by the Secretary of the Interior (the Secretary).

The Determination

The Secretary recently completed the determination. As stated in IRS Notice 98-45 (IRB 1998-35, 8/31/98) (copy attached as page 5), the determination has been made that "former Indian reservations in Oklahoma" are those lands within the boundaries of the last treaties, Executive Orders, federal agreements, federal statutes, and Secretarial Orders with the Oklahoma Indian tribes.

Geographic Descriptions

With that determination, IRS Arkansas-Oklahoma District engineers in Oklahoma City reviewed the treaty boundaries provided by the Secretary and have prepared the map of Oklahoma (attached

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as Page 4) showing the counties which are fully within such boundaries (fully eligible counties), the counties fully outside of such boundaries (fully ineligible counties), and the counties where the treaty boundaries do not necessarily or completely match current county boundaries ("split" counties). Here listed are the 11 split and 13 ineligible counties:

SPLIT COUNTIES

Beckham
Canadian
Cleveland
Ellis
Kay
Kingfisher
Logan
Noble
Oklahoma
Pawnee
Payne

FULLY INELIGIBLE COUNTIES

Alfalfa
Beaver
Cimarron
Garfield
Grant
Greer
Harmon
Harper
Jackson
Major
Texas
Woods
Woodward

All counties other than those listed above are eligible counties (53 in number).

Split County Descriptions

Here are descriptions of the boundaries in the split counties which identify their locations. In some cases, exact boundary line determinations do not follow existing roads or other landmarks. Taxpayers requiring exacting determinations in these situations may wish to obtain assistance from someone skilled in reading legal land descriptions, such as the county assessor of the county in question.

These descriptions identify eligible areas of the specific counties.

BECKHAM COUNTY: Everything north of the North Fork of the Red River.

CANADIAN COUNTY: Everything west of the 98th Parallel. (The 98th Parallel is an imaginary north-south line which, in central and south Canadian County, is located between Air Port Road and Reformatory Road. It is located just west of the western edge of El Reno Lake.

CLEVELAND COUNTY: Everything from the eastern county line to a north-south line which runs from the northern county line to the Canadian River, and is located 1/2 mile west of 132nd Avenue SE, which is also known as Indian Meridian Road. (U.S. Geological Survey maps show this line as the "Old Indian Treaty Boundary," which is halfway between 132nd Avenue SE and 120th Avenue SE, which is also known as Choctaw Road.)

ELLIS COUNTY: Everything south of the original boundary of the Cherokee Outlet. (This is about two miles north of Arnett. It is the line shown on the newest Oklahoma Department of Transportation County Road Map as "Old Indian Treaty Boundary." This line runs even with the southern edge of Woodward County and extends across Ellis County straight west to the Texas border.)

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Geographic Boundaries Determined...**Page 3 of 5****August 13, 1998**

KAY COUNTY: (1) Everything east of the Arkansas River and Kaw Lake, and (2) Everything south of a line which begins at the western county boundary (156th Street) and Coleman Road and runs east along Coleman Road to Indian Meridian "P" Street, then south along Indian Meridian "P" Street to North Avenue, then east along North Avenue to the Arkansas River. (This area (area (2)) is also described as everything within 6 miles of the south county line (south of North Avenue, T25N R2W, T25N R1W, T25N R1E, T25NR2E), and everything in a 6 x 12 mile block from the west edge of the county to Tonkawa (bounded by Coleman Avenue, Indian Meridian "P" Street, and North Avenue, T26N R2W, T26N R1W)).

KINGFISHER COUNTY: Everything south of the Cimarron River which is also west of the 98th Parallel. (The 98th Parallel is an imaginary north-south line which, in Kingfisher County, is located a little over one mile west of where U.S. Highway 81 passes through Okarche.)

LOGAN COUNTY: Everything east of the Indian Meridian, also known as Indian Meridian Road. (Indian Meridian Road is the section line road between Langston and Coyle.)

NOBLE COUNTY: Everything bounded by the county lines on the north and east, by the Indian Meridian on the west, and, on the south, by the east-west road about 3-1/2 miles south of where the Cimarron Turnpike crosses U.S. Highway 177. (Everything in T22&23N-R1&2E, T24N-R1 thru 4E, T25N-R3&4E) (The Indian Meridian in Noble County is a north-south line in alignment with the section line road two miles east of U.S. Highway 77.)

OKLAHOMA COUNTY: (1) Everything east of Indian Meridian Road, and (2) The 1/2 mile-wide strip of land bounded on the north by the North Canadian River just north of where it crosses 63rd Street in R1W, on the south by the southern county line, on the west by a north-south line in alignment with McDonald Road in Choctaw, and on the east by Indian Meridian Road.

PAWNEE COUNTY: Everything west of the eastern edge of R6E. The eastern edge of R6E in Pawnee County runs north-south from the Arkansas River to the southern county line. In northeastern Pawnee County, the eastern edge of R6E is in alignment with an unnamed north-south paved section road on the west side of the town of Blackburn. This road runs from the Arkansas River south to its junction with U.S. Highway 64, which is two miles west of Oklahoma Highway 99's junction with U.S. Highway 64. This unnamed road is unofficially known as "the Blackburn road."

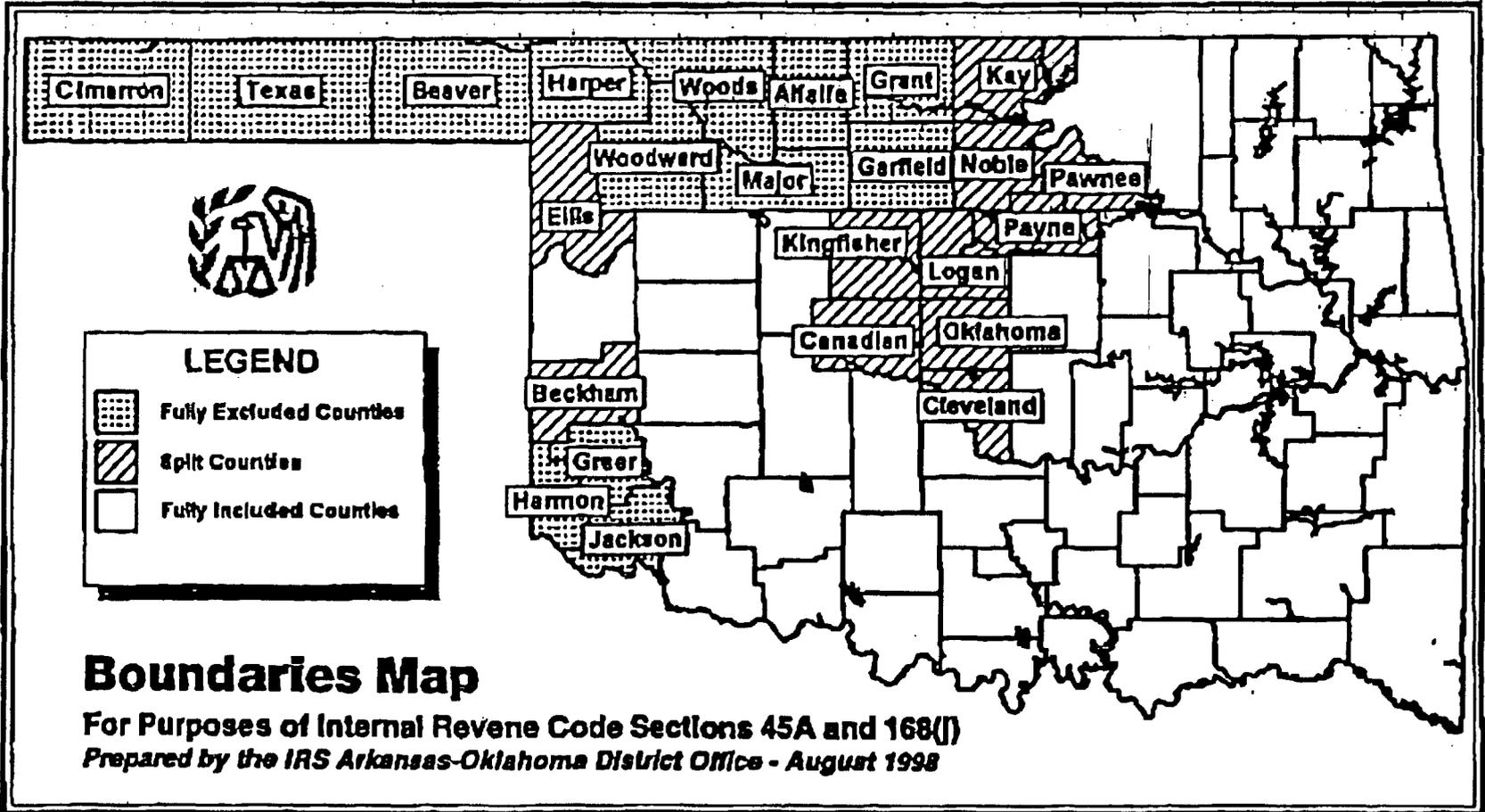
PAYNE COUNTY: (1) Everything south of the Cimarron River, and (2) In the area north of the Cimarron River, everything east of a section line road located three miles west of the junction of Oklahoma Highway 18 with Oklahoma Highway 51 (five miles east of the junction of Oklahoma Highway 108 with Oklahoma Highway 51).

Expeditious Claims Review

Pleased to have a resolution of the boundaries question, IRS Arkansas-Oklahoma District Director Richard R. Auby says, "We're now in the process of expeditiously handling the fifteen-hundred-plus taxpayer claims regarding this issue we've been holding in suspense pending this determination."

Auby says each taxpayer's claim will be reviewed. Taxpayers may be asked to provide the IRS with additional information and/or documentation for consideration. While some claims may be allowed or disallowed solely as a result of the newly-defined boundaries, allowance of other claims may hinge upon other issues, such as the verification of tribal enrollment and/or proper computation of the deductions and credits.

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Geographic Boundaries Determined...**Page 5 of 5****August 13, 1998****Part III - Administrative, Procedural, and Miscellaneous****Former Indian Reservations in Oklahoma****Notice 88-45**

This notice defines "former Indian reservations in Oklahoma" for purposes of Section 168(j)(6) of the Internal Revenue Code, as amended by the Taxpayer Relief Act of 1997 (the Act), Pub. L. No. 105-34, 111 Stat. 788.

BACKGROUND

Sections 13321 and 13322 of the Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, 1993-3 C.B. 1, 146-151, amended the Internal Revenue Code by adding two provisions to the Code to establish two Indian reservation-based federal tax incentives. Section 45A generally provides an Indian employment credit for certain wages and health insurance costs paid or incurred by an employer whose employees are enrolled members of an Indian tribe or the spouses of enrolled members of an Indian tribe who perform substantially all their services for the taxpayer within an Indian reservation and have a principal place of abode on or near such reservation. Section 168(j) generally provides more favorable depreciation for qualified Indian reservation property (that is, certain depreciable property used predominantly in the active conduct of a trade or business within an Indian reservation and not regularly used or located outside the reservation). Section 45A applies to wages and health insurance costs paid or incurred after December 31, 1993, in a taxable year that begins on or before December 31, 2003. Section 168(j) applies to property placed in service after December 31, 1993, and on or before December 31, 2003.

Section 45A(c)(7) states that the term "Indian reservation" has the meaning given the term by Section 168(j)(6). Section 168(j)(6) (prior to its amendment by the Act) provided that, for purposes of Section 168(j), the term "Indian reservation" means a reservation, as defined in either section 3(d) of the Indian Financing Act of 1974, 25 U.S.C. Section 1452(d), or section 4(10) of the Indian Child Welfare Act of 1978, 25 U.S.C. Section 1903(10). Section 3(d) of the Indian Financing Act of 1974 defines reservation to include "former Indian reservations in Oklahoma."

Section 1604(c) of the Act (generally effective as of January 1, 1994) amended the definition of "Indian reservation" under section 168(j)(6). Under the amendment, only lands within the jurisdictional area of an Oklahoma Indian tribe (as determined by the Secretary of the Interior) that are recognized by such Secretary as an area eligible for trust land status under 25 CFR Part 151 as in effect on August 5, 1997 (the date of enactment), are "former Indian reservations in Oklahoma."

DETERMINATION OF SECRETARY OF THE INTERIOR AS TO THE MEANING OF FORMER INDIAN RESERVATIONS

The Secretary of the Interior has determined that, for purposes of section 168(j)(6), lands that are within the jurisdictional area of an Oklahoma Indian tribe are those lands within the boundaries of the last treaties, Executive Orders, federal agreements, federal statutes, and Secretarial Orders with Oklahoma tribes. The Secretary of the Interior also has determined that any lands within the boundaries of the last treaties, Executive Orders, federal agreements, federal statutes, and Secretarial Orders with the Oklahoma tribes are lands eligible for trust land status under 25 CFR Part 151.

The areas of Oklahoma located outside the boundaries of the last treaties, Executive Orders, federal agreements, federal statutes, and Secretarial Orders with the Oklahoma tribes are (1) the Cherokee Outlet, (2) No Man's Land (also known as the Panhandle), (3) the historic Greer County, and (4) those former Seminole and Creek domain lands in central Indian Territory that were deemed to be "unassigned lands." The location of those areas in Oklahoma that are outside the boundaries of the last treaties, Executive Orders, federal agreements, federal statutes, and Secretarial Orders with the Oklahoma Indian tribes can best be described in terms of entire present-day counties that are ineligible (Alfalfa, Beaver, Cimarron, Garfield, Grant, Greer, Harmon, Harper, Jackson, Major, Texas, Woods, and Woodward) and present-day counties that are split by the boundaries, that is, part of the county is eligible and part of the county is not eligible (Beckham, Canadian, Cleveland, Ellis, Kay, Kingfisher, Logan, Noble, Oklahoma, Pawnee, and Payne).

ADDITIONAL INFORMATION

The Arkansas-Oklahoma District of the Internal Revenue Service will make available a plain language description of the boundary for each split county. Written requests should include the name of the applicable split county and be sent to the following address: Internal Revenue Service, 55 North Robinson Street, Mail Stop 4030-OKC, Attention: RSC, Oklahoma City, OK 73102. The plain language description is also available on the Internet at <http://www.irs.ustreas.gov/prod/ho/ain/oklahoma.html>.

DRAFTING INFORMATION CONTACT

The principal author of this notice is Winston H. Douglas of the Office of the Assistant Chief Counsel (Passthroughs and Special Industries). For further information regarding this notice, contact Mr. Douglas on (202) 822-3110 (not a toll-free call). For information concerning the boundaries, contact the Arkansas-Oklahoma District office on (405) 297-4890 (not a toll-free call).

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CERTIFICATE OF SERVICE

I, Regina Ragucci, do hereby certify that on this 5th day of September 2000, SBC Communications Inc. Application for Stay of Order, CC Docket No. 96-45 was served first class mail - pre-paid postage to the parties attached.



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