

ORIGINAL

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)
)
Petition of Smith Bagley, Inc.)
to redefine Local Exchange Carrier)
Service Area Definitions of)
Navajo Communications Company,)
Citizens Communications Company)
of the White Mountains and)
Century Tel of the Southwest, Inc.)
Within the State of Arizona)
as Set Forth in Part 36 of the)
Commission's Rules)

CC Docket No. 96-45

To: Chief, Common Carrier Bureau

Reply Comments of Smith Bagley, Inc.

Smith Bagley, Inc. ("SBI") by counsel and pursuant to the FCC's Public Notice, Federal-State Joint Board on Universal Service, CC Docket No. 96-45, DA 01-409 (released February 15, 2001), hereby submits these Reply Comments in the above-captioned proceeding.

I. Introduction

SBI is an original FCC licensee in the cellular radiotelephone service, having served northeast Arizona for over 11 years and northwest New Mexico for nearly 3 years. Two years ago, in response to a public call from former Chairman William Kennard, SBI commenced the process of obtaining eligible telecommunications carrier ("ETC") status from Arizona and New Mexico so as to bring innovative wireless services to the phoneless people living on Native American reservations.

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On December 15, 2000, the Arizona Corporation Commission (“ACC”) granted ETC status to SBI for its service area within Native American lands. The ACC defined SBI’s ETC service area to be:

consistent with that portion of its existing cellular service contour which encompass that portion of the Navajo Indian Reservation located in Navajo and Apache Counties, that portion of the Hopi Indian Reservation located in Navajo County, on the Pueblo of Zuni Reservation located in Apache County and that portion of the White Mountain Apache Reservation located in Navajo, Apache and Gila counties, with the exception of the Sanders exchange of Table Top Telephone Company which shall be subject to an expedited comment or hearing process as agreed to by the parties to determine whether the Sanders exchange should be included in SBI’s ETC service area.

On February 1, 2001, SBI submitted to the FCC a Petition to Redefine Local Exchange Carrier Service Areas (“Petition”). Pursuant to Section 54.207 of the FCC’s Rules, 47 C.F.R. § 54.207, the FCC placed SBI’s Petition on Public Notice for public comment on February 15. The ACC has recommended to the FCC that the service area boundaries be congruent with the Native American territory served by SBI.

Under Section 54.207(c)(3) of the Rules, “If the Commission does not act on the petition within ninety (90) days of the release date of the Public Notice, the definition proposed by the state commission will be deemed approved by the Commission and shall take effect in accordance with state procedures.” SBI strongly supports the ACC’s proposed ETC boundary and urges the FCC to agree.

II. Comments of Table Top Telephone Company.

Table Top Telephone Company (“Table Top”) filed comments expressing concern about the effect of disaggregation on its business. Table Top’s comments are not properly considered in

this proceeding. As stated in the ACC's ETC service area definition quoted above, Table Top's Sanders exchange is not a part of SBI's ETC service area herein. In order to accommodate a last minute request by Table Top, SBI agreed to carve out the Sanders exchange from its ETC service area until Table Top's concerns about transport and termination of SBI-originated traffic could be resolved.

SBI resolved Table Top's concerns and on February 21, 2001, both companies requested the ACC to add the portion of the Sanders exchange on Native American lands to SBI's ETC service area. The ACC approved the addition of the Sanders exchange on Native American lands in its open meeting of March 6 and 7, 2001, and released a written order shortly thereafter. On March 28, 2001, SBI submitted to the FCC an amendment to the above-referenced Petition, requesting that the Native American lands within the Sanders Exchange be included in its ETC service area.

Based on advice from the FCC staff, it is SBI's understanding that the amendment will appear on public notice separately, within 14 days of its submission, pursuant to Section 54.207 of the Rules. Upon release of the FCC's public notice proposing to redefine its service area, Table Top will have an appropriate opportunity to provide comment. Accordingly, its comments are not properly considered here. SBI does note that Table Top had every opportunity to provide its views to the ACC concerning disaggregation and it did not do so.

III. Comments of CenturyTel, Inc.

CenturyTel, Inc. ("CenturyTel") submitted comments recommending disaggregation by wire center and asking the FCC to define the minimum amount of local usage required for support.

A. CenturyTel's Comments Represent its Initial Action.

Two years ago the ACC commenced a proceeding to determine whether SBI should receive ETC status on the Native American reservations in Arizona. The proceeding included multiple opportunities for all interested persons to participate, culminating with the adoption and release of its above-referenced Order in December of 2000. CenturyTel did not enter an appearance or otherwise participate in the ACC proceeding, nor did it appeal the ACC's Order, which has now become final.

CenturyTel's lack of participation up to this point does not preclude it from filing, however if it were truly concerned about the issues raised in its Comments, surely it would have participated in the ACC's proceeding over the past two years. As the day draws closer when SBI brings the first facilities-based competition Native American lands, CenturyTel has ample motive to delay the inevitable. SBI will address the substance of CenturyTel's Comments below, however CenturyTel's eleventh hour submission, which raises no issues warranting FCC action, should be given very little weight.

B. The ETC Service Area Proposed by the ACC Will Ensure Sufficient High Cost Loop Support in High Cost Areas Served by SBI and CenturyTel.

CenturyTel provides cogent argument in favor of disaggregation generally, stating, *inter alia*, that disaggregation will further the universal service goals of appropriately allocating support to those areas for which support was intended.¹ Indeed, SBI placed substantial information into the record in the Arizona proceeding demonstrating that the areas SBI seeks to

¹ CenturyTel Comments at 3-6.

serve in northeast Arizona are among the most remote, high cost areas in the nation. In its

December 15 Order, the ACC confirmed that:

the Company is not attempting to ‘cream skim’ by proposing to serve the lowest cost exchanges. The information provided supports just the opposite conclusion that the Company will in actuality be extending service into many currently unserved or underserved high cost areas which traditional wireline carriers may never serve.²

SBI agrees with CenturyTel’s general theory as to why disaggregation is important. In particular, the high cost loop mechanism must evolve to more accurately target support into higher cost areas. This is especially critical in rural study areas, which often contain small cities, towns, and suburban areas, which are low cost areas, as well as other high cost areas, some of which are noncontiguous.

Although CenturyTel appears to support disaggregation, it seeks service areas which are identical to wire center boundaries. In this region of the country, such a limitation is unnecessary for several reasons. Most important, SBI is targeting the Native American population residing on reservation lands who are most in need of basic telephone service. Telephone penetration levels on all of the reservations served by SBI are abysmally low. On the Hopi Reservation, which is served by CenturyTel, telephone penetration is below 40% to this day, despite the fact that CenturyTel has been receiving universal service support for many years.

The high cost of providing service, combined with poverty which is among the worst in this nation form a barrier to telephone penetration which to date has been insurmountable for incumbent wireline companies. Accordingly, the fact that SBI’s service area is not congruent

² ACC Order at p. 10.

with Century Tel's is irrelevant because there will be no distortion in support levels. Put another way, under the ACC's proposed ETC boundary, SBI will receive no greater or lesser support than it would if disaggregation along other boundaries were specified.

In its Twelfth Report and Order³, the Commission made available additional federal low income support funds to ETC's providing universal service to Native American lands.

CenturyTel is eligible to use those funds to drive telephone penetration in these areas.⁴ SBI believes that wireless carriers have a compelling opportunity, as well as a duty, to bring basic telephone service to these remote areas where the need is greatest. Accordingly, it requested an ETC service area which encompasses Native American lands. Wireline carriers have freely admitted publicly that the vast areas and low population density may mean that they will never find it economically feasible to string wire out to many of these areas. SBI is uniquely positioned to meet these challenges.

There is no rule which requires disaggregation along wire center, exchange area, or any other particular boundary. Provided that disaggregation is in the public interest, the ACC and FCC can agree on boundaries which do not exactly match wire center boundaries. For several

³ *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas, Twelfth Report and Order, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, 15 FCC Rcd 12208 (rel. Jun. 30, 2000).

⁴ Indeed, as noted recently by Commissioner Tristani, Navajo Communications reports that it has signed up 1650 new Native American subscribers since additional low income support became available. See, Press Statement of Commissioner Gloria Tristani, March 16, 2001.

reasons, the public interest will be well served by adopting the boundaries recommended by the ACC.

First, SBI has not chosen to enter the lowest cost areas of incumbent LEC exchanges. Quite to the contrary, SBI has chosen the highest cost exchanges. CenturyTel vaguely speculates that it could suffer some adverse effect from SBI's ETC service area not exactly matching CenturyTel's service areas.

As SBI understands it, CenturyTel will not be harmed in any way by a slight mismatch in service areas. Until the FCC adopts an order in response to the Rural Task Force's Recommended Decision,⁵ CenturyTel will continue to average its costs across its entire study area. If the FCC's upcoming order changes nothing for CenturyTel, it is SBI who may be harmed, because it will not receive appropriate levels of high cost loop support in the very high cost areas it serves. On the other hand, if CenturyTel is given one or more options to disaggregate its service area, CenturyTel will be free to designate smaller service areas in order to target support to the highest cost exchanges. Again, any small mismatch in service areas will not, either from a legal or from a practical perspective, harm CenturyTel in any way. SBI will continue to receive high cost loop support per loop in an amount equal to whatever CenturyTel receives for a loop in its disaggregated service areas.

Conversely, there are no corresponding public interest benefits to be gained by requiring SBI to provide service outside of its authorized CGSA, as suggested by CenturyTel.⁶ SBI is not

⁵ *Federal-State Joint Board on Universal Service, Recommended Decision*, CC Docket No. 96-45, FCC OOI-4, (released Dec. 22, 2000).

⁶ *See*, CenturyTel Comments, at n. 9.

in a position to provide service outside of its licensed area. Resale of either wireless or wireline services is not viable for several reasons. Most important, SBI would have no control over investment in those areas, and could not guarantee that high cost loop support funds collected for customers in those areas would go into construction, operation and maintenance of the network on which SBI would resell. Moreover, SBI would have no control over network quality nor could it modify facilities to accommodate customer demand for its service.

Even assuming that a resale arrangement could be entered into with incumbent LECs, SBI could not control the level of service offered, nor could it properly deploy high cost support funds in the area within which it was reselling, since SBI would own no facilities there. Finally, reselling wireline service would only offer customers what they are already getting from the incumbent, and would not increase telephone penetration or advance any other policy goals.

SBI is hiring an entire staff to successfully manage the roll out and implementation of its universal service offering to ensure that it goes smoothly. The company has already invested substantial sums in engineering analysis to forecast additional channel requirements, as well as new cell sites which will be required to meet anticipated demand. Marketing, distribution, customer care, technical and engineering, maintenance, operations, and new construction, will pose substantial challenges for a small carrier such as SBI. The Commission should not place any unnecessary burdens on SBI which will have no public interest benefits, will not affect the competitive landscape, and ultimately will prove distracting to SBI's mission to bring new service to these remote areas.

C. CenturyTel is Incorrect in its Analysis of SBI's Service Offering.

CenturyTel incorrectly implies that SBI will offer thirty minutes of local usage per month to universal service subscribers. Similar to most other cellular carriers, SBI offers a number of rate plans to its subscribers, to accommodate their widely differing needs. As stated by the ACC in its December Order, SBI "will offer a universal service subscriber rate plan...which will include at least 200 minutes of local air time, and a substantial list of toll free calls to local agencies, hospitals, community centers and emergency numbers."⁷

From the outset, it has been SBI's intent to offer the maximum possible number of local calling minutes that its system will allow and a local calling area that includes all of Navajo and Apache counties in Arizona, as well as parts of western New Mexico, a total of over 21,000 square miles. In this particular region, it is impossible to accurately forecast demand, considering the fact that a majority of the potential customers SBI seeks to serve have never had telephone service. SBI has no intention of rolling out a service the demand for which overwhelms its system and causes widespread customer dissatisfaction. SBI will adjust its included minutes and local calling areas to meet both customer demand and competitive challenge.

Suffice it to say that if CenturyTel, or any other wireline carrier, wishes to compete by expanding its local calling area, or by advertising unlimited minutes as an alternative to SBI's service, it is free to do so. Competitive markets bring out a provider's best offerings, to the customer's advantage. SBI will use its high cost loop support to build a competitive network

⁷ ACC Order at p. 7, para. 28. SBI notes that calls to the listed agencies, hospitals, community centers and emergency numbers are both toll and airtime free.

which will be capable of meeting competitive challenges. Accordingly, CenturyTel's comments concerning minimum usage appear to be completely misplaced in this proceeding.⁸

CONCLUSION

In response to this Commission's directive of over two years ago, SBI is prepared to bring wireless service to Native Americans living on reservations as a means of rapidly increasing telephone subscribership. No party has raised any substantial issues with respect to the ETC service area recommended by the ACC. SBI urges the FCC to agree with the ACC's recommended ETC service area and exercise its prerogative under Section 54.207(c)(3) of the Rules and not initiate a proceeding.

Respectfully submitted,

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⁸ It is unclear why CenturyTel wishes to discuss broader policy issues in the context of this disaggregation proceeding. There have been, and continue to be, many other more appropriate fora within which CenturyTel may advance its position on these issues.

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION

CERTIFICATE OF SERVICE

I, Janelle Wood, hereby certify that I have, on this 30th day of March, 2001, placed in the United States mail, first-class postage pre-paid, a copy of the foregoing REPLY COMMENTS filed today to the following:

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