

EXHIBIT A

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF SMITH BAGLEY, INC.)
FOR DESIGNATION AS AN ELIGIBLE)
TELECOMMUNICATIONS CARRIER)
UNDER 47 U.S.C. 214(e)(2))**

Utility Case No. 3026

FINAL ORDER

THIS MATTER comes before the New Mexico Public Regulation Commission (“Commission” or “NMPRC”) upon the Recommended Decision of the Hearing Examiner and Certification of Stipulation, issued by William J. Herrmann on August 14, 2001. Having considered the Recommended Decision, the Stipulation, the record in this case, the Briefs, Exceptions, and other pleadings submitted, and being fully informed in the premises,

THE COMMISSION FINDS AND CONCLUDES:

1. The Commission accepts and adopts the Hearing Examiner’s Statement of the Case through the time of the issuance of the Recommended Decision.
2. The Commission accepts and adopts the Discussion and the Findings and Conclusions contained in the Recommended Decision as the Discussion and the Findings and Conclusions of the Commission.
3. Timely exceptions to the Recommended Decision were filed by the New Mexico Exchange Carriers Group. The Applicant in this case, Smith Bagley, Inc. (“Applicant”) timely filed a Reply to Exceptions.

4. The Commission has jurisdiction over the parties and the subject matter of this case. The Recommended Decision is well taken and should be adopted.
5. We take note of, and express our agreement with, the Hearing Examiner's recommended Finding and Conclusion, as set forth in the Recommended Decision at Page 21, Paragraph 7, regarding amendment of the Stipulation to retain the provisions relating to service area and omit the mobility restrictions.
6. We understand the concerns raised in the Exceptions filed by NMECG; however, we are not persuaded that NMECG's proposed resolution of those concerns would be in the public interest. We believe that the Hearing Examiner's recommendations are well considered in all respects, and that they should be adopted as modified herein.

IT IS THEREFORE ORDERED:

- A. The Orders recommended by the Hearing Examiner, as set forth in Exhibit 1 attached hereto, with the modifications set forth below, in Paragraphs B and C, are ADOPTED, APPROVED, and ACCEPTED as Orders of the Commission.
- B. The Commission's finding of eligibility is expressly conditioned upon the Commission's continuing jurisdiction over the parties and the subject matter of this case. In particular, this order is conditioned upon the Commission's continuing jurisdiction to regulate wireless

telecommunications carriers and the services they provide to New Mexico consumers.

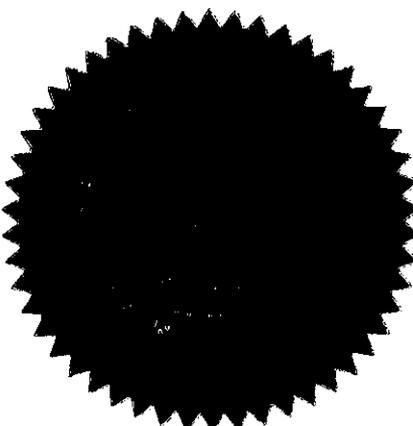
- C. The Commission expressly reserves the right to maintain oversight over the services to be provide by the Applicant in connection with universal service funding, and to require periodic reports to ensure that the Applicant is using such funding for its intended purpose and that the Applicant is otherwise in compliance with applicable Commission rules and regulations. The Hearing Examiner's recommended orders, as set forth in the Recommended Decision at Page 22, Paragraph E, are modified to reflect a due date of September 20, 2002 instead of April 1, 2001 [*sic*] for the first annual compliance report.
- D. In the event of any material change in the applicable law governing this matter (including but not limited to actions of the New Mexico Legislature, the United States Congress, or the Federal Communications Commission), the Commission shall remain free to revisit its designation of Applicant as an Eligible Telecommunications Carrier.
- E. This Order is effective immediately.
- F. This docket is closed.
- G. Copies of this Order shall be sent to all persons on the attached Certificate of Service.

ISSUED under the Seal of the Commission at Santa Fe, New Mexico, this 19th
day of February, 2002.

NEW MEXICO PUBLIC REGULATION COMMISSION

EXCUSED

TONY SCHAEFER, CHAIRMAN


Lynda M. Lovejoy

LYNDA M. LOVEJOY, VICE CHAIRWOMAN

Herb H. Hughes

HERB H. HUGHES, COMMISSIONER

Rory McMin

RORY MCMINN, COMMISSIONER

Jerome D. Block

JEROME D. BLOCK, COMMISSIONER

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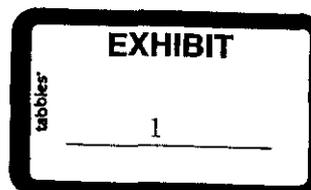
**RECOMMENDED DECISION OF THE HEARING EXAMINER
AND CERTIFICATION OF STIPULATION**

William J. Herrmann, Hearing Examiner in this case, hereby submits this Recommended Decision and Certification of Stipulation to the New Mexico Public Regulation Commission ("Commission" or "NMPRC") pursuant to NMPRC Utility Division Rules. The Stipulation is attached hereto as Exhibit A. The Hearing Examiner recommends that the Commission adopt the following Statement of the Case and Discussion.

STATEMENT OF THE CASE

On April 27, 1999, Smith Bagley, Inc. ("SBI") d/b/a Cellular One filed a Petition for Designation as an Eligible Telecommunications Carrier ("ETC") in order to be eligible to obtain federal Universal Service funding in portions of New Mexico. On August 17, 1999, SBI amended its Petition, narrowing the area of requested ETC designation to Native American lands within its service area.

On June 1, 2000, the Commission designated William J. Herrmann as Hearing Examiner in this case. By Order dated June 23, 2000, a pre-hearing conference was scheduled for July 18, 2000. On July 13, 2000, SBI filed the Direct Testimony of Richard Watkins. SBI participated in the pre-hearing conference on July 18, 2000 via conference call.



On July 18, 2000, the Hearing Examiner issued a Notice of Hearing and Procedural Order in which it was Ordered, (1) that a hearing be held on September 21, 2000, (2) that any interested person wishing to become a party to the proceeding file a motion to intervene by August 25, 2000, (3) that Intervenor and Staff testimony be filed by September 11, 2000, (4) that rebuttal testimony be filed no later than September 18, 2000, and (5) that a pre-hearing conference be held on September 13, 2000. This Order also required that SBI mail a copy of the Order to those parties listed on the telecommunications service list and to the local exchange companies within the requested areas of ETC designation. SBI was also required to publish the Order in a newspaper of general circulation in its service area one time prior to July 28, 2000.

On July 24, 2000, SBI mailed a copy of the Notice of Hearing and Procedural Order to all parties on the telecommunications service list and to the local exchange carriers within its requested area of designation. On July 26, 2000 the Notice of Hearing and Procedural Order was published in the Albuquerque Journal, and a copy of the Affidavit of Publication was filed with the Commission on July 29, 2000.

On August 2, 2000, Qwest Corporation (formerly U.S. West Communications, Inc.) ("Qwest") filed a Motion to Intervene in this case. On August 23, 2000, the New Mexico Exchange Carriers Group ("NMECG") filed a Motion for Leave to Intervene.

On September 13, 2000, a pre-hearing conference was held and was attended by SBI, the NMECG, and Commission staff. The parties agreed to continue the hearing until October 18, 2000. An Order was issued on September 13, 2000, reflecting this new hearing date.

Supplemental Direct Testimony of Richard Watkins was filed on October 16, 2000 on behalf of SBI. The Commission Staff filed Prepared Direct Testimony of Jose R. Martinez, II on September 11, 2000. No other testimony was filed in this proceeding.

The hearing in this case was held before the Hearing Examiner at the Commission's Utility Division offices and commenced on October 18, 2000 and concluded on October 19, 2000.

APPEARANCES

For SBI:

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-and-

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For NMECG:

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For the Commission Staff:

Avelino Gutierrez, Esq.
Staff Counsel
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Other Appearances:

None

No appearance was made on behalf of the other intervenor in this case, Qwest. On motion of Staff Counsel, the Hearing Examiner terminated Qwest's status as an intervenor in this proceeding.

The Hearing Examiner admitted into the record written and oral testimony from SBI witness Richard Watkins and from Staff witness Jose R. Martinez, II. The Hearing Examiner ordered SBI to submit a proposed Recommended Decision on or before November 9, 2000, as well as an accurate map depicting SBI's requested area of ETC designation on or before October 27, 2000. SBI submitted its map October 26, 2000. The Hearing Examiner ordered that briefs to be filed by the NMECG and the Staff by December 1, 2000, with any reply briefs to be submitted by December 8, 2000. The record was closed, pending receipt of SBI's map.

After the submissions of briefs in this proceeding and a Status Conference held on January 18, 2001, the Hearing Examiner, on January 19, 2001, reopened the record to take supplemental testimony on certain issues. These issues included whether the ETC service boundary was appropriate and whether a mobility restriction on the use of a wireless phone was necessary. In addition, the Hearing Examiner found that the record did not adequately consider certain findings required by the Federal-State Joint Board on Universal Service ("Joint Board"), Recommended Decision, 17 FCC Rcd 87 (1996).

On February 21, 2001, SBI submitted Supplemental Testimony of Richard Watkins supporting a decision that imposes no restrictions on mobility. Thereafter, Staff and SBI

drafted a Stipulation that resolved the remaining outstanding issues in the proceeding. NMECG declined to sign the Stipulation. On May 4, 2001, Staff filed a Motion to Adopt Stipulation and Set a Procedural Schedule. At a Pre-Hearing Conference held on May 22, 2001, the Hearing Examiner adopted a procedural schedule for the filing of objections and testimony on the Stipulation, and ordered a hearing on the Stipulation to be held on July 10, 2001. The Hearing Examiner's orders were memorialized in a Third Procedural Order, issued May 23, 2001.

On June 7, 2001, NMECG filed a Preliminary Statement of Objections to Proposed Stipulation. On June 19, 2001, SBI filed Supplemental Direct Testimony of Richard Watkins. On June 22, 2001, Staff filed Prepared Direct Testimony of Gary G. Roybal. On June 29, 2001, SBI filed its Reply to Preliminary Statement of Objections. On July 10, 2001, Staff and SBI finalized and executed the Stipulation.

On July 10, 2001, a hearing was held on the Stipulation. At the stipulation hearing, Staff was represented by Avelino Gutierrez, SBI by David LaFuria, and NMECG by William Templeman. The Hearing Examiner accepted into the record written and oral testimony from SBI witness Richard Watkins and from Staff witness Gary Roybal. NMECG did not submit testimony. The Hearing Examiner accepted the Stipulation into the record, as well as a map of the ETC service area provided by SBI.

DISCUSSION

NMPRC Rule 17 NMAC 13.10.27.1 sets forth the requirements a carrier must satisfy in order to obtain ETC status. A carrier must (1) include a description of the proposed service area for which it seeks designation that is consistent with the federal requirements

relating to service areas set forth in 47 C.F.R. Section 54.207, and (2) demonstrate that it meets the requirements in Section 214(e) of the Communication Act of 1934, as amended (the "Federal Act"), 47 U.S.C. ' 214(e). An applicant meets the requirements of Section 214(e) if it: (A) is a common carrier; (B) will offer the supported services in a universal service offering; (C) will advertise the availability of the supported services; and (D) will make the supported services available throughout a designated service area.

A. Common Carrier.

Mr. Watkins testified that Section 332(a)(1) of the Federal Act, 47 U.S.C. §332(a)(1), states that a Commercial Mobile Radio Service ("CMRS") provider is treated as a common carrier except as otherwise determined by the FCC, and Section 20.9(a)(7) of the FCC's rules specifically provides that cellular service, such as that provided by SBI, is considered a common carrier service. 47 C.F.R. § 20.9(a)(7). (*Id.* at pp.7-8).

B. Offering of Supported Services.

The FCC has identified the following services and functionalities as the core services to be offered by an ETC and supported by federal universal service support mechanisms:

1. voice-grade access to the public switched telephone network;
2. local usage;
3. dual tone multi-frequency signaling or its functional equivalent;
4. single-party service or its functional equivalent;
5. access to emergency services;
6. access to operator services;
7. access to interexchange service;
8. access to directory assistance; and
9. toll limitation for qualifying low-income consumers.

47 C.F.R. § 54.101(a).

Mr. Watkins stated that SBI meets the requirement that it provide each of these services as explained below.

1. Voice-grade access to the public switched telephone network. Mr. Watkins testified that SBI provides voice-grade access to the public switched telephone network within a bandwidth of approximately 2700 Hertz within the 300 to 3000 Hertz frequency range. Federal-State Joint Board on Universal Service 12 FCC Rcd 8776 (1997) ("*Universal Service Order*"), ¶¶63-64. (Watkins Dir. Test. at p.8).

2. Local Usage. Beyond providing access to the public switched network, an ETC must include local usage as part of a universal service offering. To date, the FCC has not quantified a minimum amount of local usage required to be included in a universal service offering. Mr. Watkins testified that SBI will comply with any and all minimum local usage requirements adopted by the FCC and will meet the local usage requirements by including local usage as part of a universal service offering. (*Id.* at p.9).

3. Dual-tone, multi-frequency ("DTMF") signaling, or its functional equivalent. DTMF is a method of signaling that facilitates the transportation of call set-up and call detail information. Consistent with the principles of competitive and technological neutrality, the FCC permits carriers to provide signaling that is functionally equivalent to DTMF in satisfaction of this service requirement. 47 C.F.R. § 54.101(a)(3). Mr. Watkins testified that, SBI currently uses out-of-band digital signaling and in-band multi-frequency ("MF") signaling that is functionally equivalent to DTMF signaling and, therefore, meets the requirement that it provide DTMF signaling or its functional equivalent. (Watkins Dir. Test. at p.10).

4. Single-party service or its functional equivalent. "Single-party service" means that only one party will be served by a subscriber loop or access line in contrast to a multi-party line. *Universal Service Order*, ¶62. The FCC concluded that a wireless provider offers the equivalent of single-party service when it offers a dedicated message path for the length of a user's particular transmission. *Universal Service Order*, ¶62. Mr. Watkins has testified that SBI meets the requirement of single-party service by providing a dedicated message path for the length of all customer calls. (Watkins Dir. Test. at p.10.)

5. Access to emergency services. The ability to reach a public emergency service provider by dialing 911 is a required service in any universal service offering. Enhanced 911 or E911, which includes the capability of providing both automatic numbering information ("ANI") and automatic location information ("ALI"), is only required if a public emergency service provider makes arrangements with the local provider for the delivery of such information. See *Universal Service Order*, ¶¶ 72-73. Mr. Watkins testified that SBI currently provides all of its customers with access to emergency service by dialing 911 in satisfaction of this requirement. (Watkins Dir. Test. at p.11). To date, no public emergency service provider in New Mexico has requested E-911 service from SBI (*Id.*).

6. Access to operator services. Access to operator services is defined as any automatic or live assistance provided to a consumer to arrange for the billing or completion, or both, of a telephone call. *Universal Service Order*, ¶75. Mr. Watkins testified that SBI meets this requirement by providing all of its customers with access to operator services provided by either SBI or other entities (e.g., LECs, IXC's, etc.). (Watkins Dir. Test. at p.11).

7. Access to interexchange service. A universal service provider must offer consumers access to interexchange service to make and receive toll or interexchange calls. Mr. Watkins testified that SBI presently meets this requirement by providing all of its customers with the ability to make and receive interexchange or toll calls through direct interconnection arrangements the Company has with several Interexchange Carriers ("IXCs"). Additionally, customers are able to reach their IXC of choice by dialing the appropriate access code (*Id.*).

8. Access to directory assistance. The ability to place a call to directory assistance is a required service offering. *Universal Service Order*, ¶¶ 80-81. Mr. Watkins testified that SBI meets this requirement by providing all of its customers with access to directory assistance by dialing "411" or "555-1212". (Watkins Dir. Test. at p.12).

9. Toll limitation for qualifying low-income consumers. An ETC must offer "toll blocking" services to qualifying Lifeline customers at no charge. Toll blocking, allows customers to block the completion of outgoing toll calls. *Universal Service Order*, ¶ 82. Mr. Watkins testified that today, SBI provides toll-blocking services for international calls and customer selected toll calls. SBI currently has the technology to provide toll blocking for both incoming and outgoing calls, and will use this technology to provide the service to its Lifeline customers, at no charge, as part of its universal service offering. (Watkins Dir. Test. at pp.12-13).

The Federal Act requires the carrier to offer the supported services upon commencement of its universal service offering. Federal-State Joint Board on Universal Service, Western Wireless Corporation (Petition for Preemption of an Order of the South

Dakota Public Utilities Commission, Declaratory Ruling, FCC 00-248, CC Docket No. 96-45 (Aug. 10, 2000), ¶ 2817. SBI has testified that it provides all of the nine required service offerings. Further, this Commission should require SBI to abide by any further regulatory requirements imposed by the state or federal governments as a condition to maintaining its ETC status. Therefore the Commission should find that SBI meets the requirements contained in 47 C.F.R. § 54.101(a).

C. Advertising of Supported Services.

Mr. Watkins stated that SBI will advertise the availability of the supported services and the corresponding charges in a manner that fully informs the general public within the designated service area of the services and charges and complies with the recently enacted FCC directive. (Watkins Dir. Test. at p.19). According to Mr. Watkins, SBI currently advertises its wireless services through several different media, including newspaper, television, and radio, and SBI will use this same media to advertise its universal service offerings. Mr. Watkins also testified that SBI will also seek innovative ways to reach Native American subscribers, in order to increase telephone penetration on tribal lands. He stated that, for example, company plans to hold town hall meetings (Tr. 49) and use mobile offices to introduce its service to potential new subscribers. (Tr. 51).

D. Proposed Service Area Definition.

Under Section 214(e)(2) of the Federal Act, and Section 54.207(a) of the FCC's rules, this Commission is empowered to designate a service area boundary for an ETC. PRC Rule 17 NMAC 13.10.27.1 requires a service area that is consistent with the federal requirements contained in Section 54.207 of the FCC's rules. Under 47 C.F.R. Section

54.207(b), for areas served by rural LECs, the service area is equal to the LEC study area. In such areas, the FCC permits a state to define a service area that is not contiguous with a LEC study area boundary, provided such definition takes into account recommendations of the Federal-State Joint Board and is presented to the FCC in a petition. See, 47 C.F.R. § 54.207(c).

1. SBI's Proposed Service Area

Century Tel of the Southwest, Inc. ("CenturyTel") is the incumbent LEC within SBI's proposed service area. CenturyTel is a rural telephone company. SBI serves a portion of CenturyTel's study area, which includes areas that are non-contiguous.

Mr. Watkins initially testified that SBI's proposed ETC service area is defined as the boundaries of the Ramah Navajo and Pueblo of Zuni reservations. Mr. Watkins also testified that SBI provides service throughout the reservations at issue. The map submitted by SBI depicting its proposed service area shows a small area in the northeast corner of the Zuni reservation where SBI is not licensed by the FCC to provide Commercial Mobile Radio Services ("CMRS"). Accordingly, despite the fact that SBI may provide "real world" coverage in that corner area, SBI is not licensed by the FCC to serve that area at this time.

SBI's proposed ETC service area is not contiguous with wire center boundaries and SBI argued that there is no FCC or Commission requirement that ETC service areas be defined along wire center boundaries. Mr. Watkins testified that if SBI is required to serve CenturyTel's entire study area, SBI will be precluded from providing universal services, simply because it does not have an FCC license to provide service throughout CenturyTel's study area. Mr. Watkins testified that disaggregation would be in the public interest since it

would promote competition and facilitate expeditious service to Native American communities. (Watkins Dir. Test. At pp.21-23) As will be explained, SBI and Staff agreed, in their Stipulation, to a different ETC service area.

2. FCC Petition to Approve SBI's Service Area Designation

After this Commission approves a definition of a competitive ETC service area, either the Commission or the ETC applicant may petition the FCC for the redefinition of the LEC service area.¹ The petition must include the proposed service area definition and the state commission's ruling or other official statement including the reasons for adopting the proposed definition. In areas served by rural telephone companies, this Commission and the FCC must agree on a proposed service area for purposes of designating the area where the ETC will receive universal service support. See, 47 C.F.R. Section 54.207(c).²

Once a petition is submitted to the FCC, the FCC has 14 days within which to issue a public notice. The FCC may then choose to initiate a proceeding to consider the petition. If the FCC has not acted within 90 days after 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.

In order to recommend to the FCC pursuant to Section 54.207(c) that SBI's proposed service area be designated as proposed, this Commission is required to consider the *Joint Board's Recommended Decision*. Specifically, the Commission must consider

¹See 47 C.F.R. ' 54.207(c)(1).

²There was discussion at the hearing concerning the "disaggregation" of LEC "study areas". In fact, the Section 54.207(c) proceeding at the FCC does not contemplate disaggregation of LEC study areas, but instead speaks of redefining or disaggregating a rural telephone company's "service area".

whether SBI is attempting to "cream skim" the rural LEC's service area. Mr. Watkins testified that SBI based its requested service area definition solely on its intent to provide service to Native American communities. (Watkins Sup. Test. at 5). Mr. Watkins also testified that SBI has thus far spent approximately \$600,000 to construct facilities which provide coverage within its proposed ETC service area (Tr. 173).

The second consideration is whether the rural LEC's special status under the Telecommunications Act of 1996 will be duly recognized in this proceeding. Mr. Watkins testified that in considering the public interest factors in granting ETC status, the Commission would be duly recognizing the special status of CenturyTel as a rural telephone company (Watkins Sup. Test. at 6). In addition, Mr. Watkins stated that the LEC's status as it pertains to interconnection, unbundling, and resale requirements would in no way be altered by redefining its service area (*Id.*).

Finally, the Commission must consider whether a redefinition of service area would impose an additional administrative burden for CenturyTel. Redefining CenturyTel's service area in order to permit SBI to serve less than CenturyTel's entire study area will not impose an additional administrative burden on CenturyTel.

The Stipulation and testimony in support of the Stipulation supplements the findings the Commission needs to consider pursuant to the Joint Board. The Stipulation, resolves several issues, as follows:

A. ETC Service Area Boundary

SBI's original ETC application proposed an ETC service area boundary that is contiguous with the Zuni and Ramah Native American reservations. Staff expressed

concerns that the service area boundary should more closely follow that of CenturyTel, the incumbent LEC serving the region. SBI is not able to provide facilities-based services to the entire service area of CenturyTel because it is not licensed by the FCC along LEC service area boundaries.

Accordingly, it was agreed by Staff and SBI that SBI's ETC service area should be defined to include additional areas outside of SBI's licensed service area. The Stipulation defines SBI's service area "to include the Zuni, Ramah, and Fence Lake wire centers. In addition, SBI's ETC service area shall be defined consistent with that portion of its existing service contour within the Pine Hill, Vanderwagon, Gallup and Grants wire centers." See, Stipulation, at p.1. SBI also committed to use commercially reasonable efforts to attempt to arrange for the provision of wireless communications service in those portions of the Vanderwagon and Pine Hill wire centers which are outside of SBI's service area through the A-Side cellular telephone carrier licensed to serve those areas. Id.

The Stipulation recommends that the PRC disaggregate the incumbent LEC service area of CenturyTel to encompass the Pecos exchange as one service area and the remaining CenturyTel exchanges as a second service area. See, Stipulation at p.2, ¶3; Reopened Staff Exhibit 2 at p.5. Disaggregation is intended to cause SBI's ETC service area to closely follow the CenturyTel service area boundaries.

Mr. Watkins testified that SBI's agreement to expand SBI's proposed ETC service area is intended to alleviate Staff and NMECG's concerns about cream skimming and administrative burden. *Reopened SBI Exhibit 2*, at p.3.

Mr. Roybal testified that disaggregating the study area into two service areas would "eliminate any cost distortion that may result from averaging line costs across the study area. This will reduce any shortfalls or windfalls to CenturyTel or SBI because federal high cost support will be calculated on the average cost per line with the 'disaggregated' service area." *Reopened Staff Exhibit 2* at p.5. Mr. Roybal also testified that based on his evaluation of SBI's coverage and CenturyTel's service area, "Staff concludes that there is no attempt by SBI to target specific wire centers for service that would result in 'cream skimming'". *Reopened Staff Exhibit 2* at p.8. Finally, Mr. Roybal testified that SBI's agreement to expand its BUS throughout its service contour in the Western Exchanges will significantly mitigate any administrative burden on CenturyTel because CenturyTel maintains its cost data on a wire center basis." *Reopened Staff Exhibit 2* at p.9.

B. Mobility

SBI proposed in its application to permit a subscriber taking SBI's Basic Universal Service ("BUS") offering to be able to use its phone throughout SBI's entire network, which encompasses a service area in New Mexico and Arizona. Mr. Watkins testified that SBI intends to afford all of its customers the flexibility to communicate throughout SBI's service area. He also testified that limiting mobility would diminish the advantages that wireless communications provides. *Reopened SBI Exhibit 1* at p.3.

In response to concerns raised by NMECG, Mr. Watkins testified that the mobility problem to be solved is a subscriber who uses a subsidized phone *primarily* outside of its ETC service area, *Reopened SBI Exhibit 2* at p.4, and that casual calling by a subscriber traveling outside of the reservation boundaries, but on SBI's network does not in any way

diminish the goals of the universal service program. *Reopened SBI Exhibit 1* at p.5. Mr. Watkins also testified that there is nothing in either the Communications Act, the FCC's rules, or the New Mexico PRC rules which restrict calls to the ETC service area. *Id.* Mr. Watkins testified that SBI could monitor customer usage through its billing software and switch and prevent a customer from using a subsidized phone primarily outside of the ETC service area. *Reopened SBI Exhibit 1* at p.7. At the June 10 hearing, Mr. Watkins estimated that new switching software to limit customer usage to a single cell site could cost up to \$175,000 now, and even more when SBI moves to a digital platform. *July 10 Tr.* at 25. Finally, Mr. Watkins testified that it is required by law to obtain verifying information from a customer and that there is no valid reason to impose perspective restrictions on mobility.

The Stipulation sets forth a detailed list of commitments SBI is to undertake if the Stipulation is approved. To summarize, BUS customers must use at least 75% of the minutes included in SBI's BUS plan within SBI's ETC service area. When a BUS customer uses more than 25% of its included minutes outside of SBI's ETC service area in any month, SBI must notify the customer with a voice prompt, a telephone call and a letter. A second violation within the first year will cause three more notifications as provided above, along with a disconnect notice which provides the customer with information concerning its options in the event of a disconnect. A third violation in the first year will cause the customer's service to be suspended for the remainder of the first year of the contract. In addition, SBI will provide the customer with several options to enable the phone to continue to be used for emergency and prepaid calls. SBI may restore Lifeline support at the

conclusion of the first year, and during the second year of the contract the same procedures will apply. A customer suspended a second time will not be eligible for reinstatement for twelve months. *Stipulation*, at pp 3-4.

CONCLUSIONS

The public interest will be served by adopting the Stipulation's definition of an ETC service area boundary for SBI. Expanding the ETC service area to encompass the majority of people living within the corresponding CenturyTel service area will bring a competitive BUS offering to a greater number of people than originally proposed by SBI. The PRC is empowered to designate SBI's ETC service area boundary consistent with the public interest and that there is no rule requiring such boundary to match exactly that of the incumbent LEC. Based upon the map submitted in this proceeding, SBI will cover most of the territory and people within the affected LEC service area. Moreover, SBI has committed to use commercially reasonable efforts to provide service to those persons living in the areas designated in SBI's map, who live outside of its authorized FCC service area, through resale of the A-side cellular carrier in those areas.

Disaggregation of the incumbent LEC service area as recommended by the Staff is in the public interest. Designating CenturyTel's Pecos exchange, which is not contiguous with the remaining exchanges as one service area and its remaining exchanges (the "Western Exchanges") as a second service area will result in more accurate targeting of universal service support, by minimizing shortfalls or windfalls resulting from averaging costs across a geographically and economically diverse study area.

SBI has not attempted to cream skim CenturyTel's service area and its commitment to cover the great majority of CenturyTel's Western Exchanges satisfies any such concern. SBI is proposing to bring ETC service to as much of CenturyTel's Western Exchanges as possible and it is not targeting only the lowest cost exchanges within CenturyTel's service area.

In addition, CenturyTel will not suffer any adverse administrative burden as a result of the disaggregation proceeding. CenturyTel calculates its costs on a wire center basis, and the disaggregation proposed herein will only require CenturyTel to average its costs among the wire centers which encompass its Western Exchanges. NMECG has presented no evidence to demonstrate any adverse administrative burden as a result of the disaggregation plan.

Finally, CenturyTel's status as a rural carrier will not be compromised by disaggregation. Pursuant to the FCC's Fourteenth Report and Order, CenturyTel may propose to this Commission a different disaggregation plan at a later date, more accurately targeting high cost funding. In sum, nothing in this proceeding compromises CenturyTel's status as a rural carrier.

If the Commission agrees that some restriction on mobility is necessary, then the plan to restrict mobility contained in the Stipulation is reasonable. The problem to be addressed is primary usage of a subsidized phone outside of the ETC service area. SBI has demonstrated its ability to curtail such usage through its switch and billing software. Moreover, an absolute prohibition on usage outside of the ETC service area does not serve the public interest, as SBI's expanded footprint and local calling areas are important

competitive features which should not be precluded. Finally, the plan to provide BUS customers with multiple forms of notice and opportunity to continue to make emergency calls and prepaid calls enables customers who do not comply with the mobility requirement to maintain emergency calling capability which is essential in remote areas.

The Hearing Examiner finds, however, that the plan to limit mobility as detailed in the Stipulation may not serve the public interest. This issue is presently before the Commission in NMPRC Case No. 2921. In that case, a Recommended Decision found that restrictions on mobility were not in the public interest and stated

The Hearing Examiner does not find any evidence in the record that would support the contention that there is a substantial risk of improper distribution of USF funds. The mere possibility that a customer might use Western Wireless' service in an inappropriate or potentially unlawful manner does not outweigh the potential anti-competitive effects that placing limits on the service could have. The Hearing Examiner finds that New Mexico consumers should be able to fully utilize Western Wireless' service and the benefits of competition and emerging technology. Therefore, the Hearing Examiner declines to accept conditions which would limit Western Wireless' universal service offering.

For the reasons stated in that decision and by SBI in this proceeding, the Commission may, as a matter of policy, find that restrictions on mobility should not be imposed. SBI recently received ETC designation in Arizona that does not have any restrictions on mobility. In fact, the Commission is not aware of any other state that has imposed such restrictions. Finally, SBI and Staff agreed at the hearing not to object to the removal of the restrictions on mobility, should the Commission disagree with the Stipulation and find that there should be no restrictions on mobility.

The record in this proceeding indicates that telephone service penetration on the Zuni and Ramah reservations is among the lowest in the state. A wireless alternative, which expands the options for persons living in these areas, will serve the public interest. This state and the FCC have stated in their strong desire to find innovative ways to increase service penetration levels on Native American lands.³ SBI's proposed service offering will reach some customers who have never had a phone. In addition, it provides other customers a choice of service providers for the first time. The public interest in expediting SBI's proposed service offering to these areas outweighs any general concern about a perceived need to match SBI's ETC boundary strictly to CenturyTel's entire service area. There should be no competitive harm which will be caused as a result of SBI's proposed ETC service area definition.

In sum, it is recommended that SBI's proposed ETC service area, as described above, be adopted, and CenturyTel's service area be disaggregated as described herein for the purpose of federal ETC determination.

The Hearing Examiner recommends that the Commission **FIND** and **CONCLUDE** that:

1. The Statement of the Case, Discussion, and all findings and conclusions contained therein are hereby incorporated by reference as a finding and conclusion.
2. The Commission has jurisdiction over the parties and subject matter of this case.

³See, *Mescalero Apache Telecom, Inc.*, Utility Case No. 3364 (released August 15, 2000), 2000 WL 1448525 at p.1 and n. 2; *Policy Statement*, FCC 00-207 (released June 23, 2000).

3. Due and proper notice of this case has been provided.

4. Based on the evidence and circumstances in this case, SBI has (1) included a description of the proposed service area for which it seeks designation that, if approved by the FCC under 47 C.F.R. Section 54.207(c), is consistent with the federal requirements relating to service areas, and (2) adequately demonstrated that it meets the requirements in Section 214(e) of the Federal Act and Section 54.101(a) of the FCC's rules.

5. SBI is willing and able to meet all other requirements and standards set forth under applicable New Mexico law pertaining to eligibility for ETC status, and the NMPRC has the authority to require SBI to continue to meet such standards established for ETC's in New Mexico.

6. SBI has satisfied the criteria for eligibility for ETC status in the State of New Mexico, and shall be designated as an ETC in New Mexico for the service area as set forth herein, pending confirmation by the FCC in a proceeding under Section 54.207(c) of the FCC's rules, which will be initiated following issuance of this Commission's Order.

7. The Stipulation attached hereto as Exhibit A should be adopted as amended herein in that the provisions regarding restrictions on mobility are not accepted.

The Hearing Examiner recommends that the Commission **ORDER:**

A. A Grant of Eligible Telecommunications Carrier status, enabling SBI to receive federal and state universal service funding shall be and hereby is issued to SBI. This Order shall constitute such Grant.

B. SBI's Eligible Telecommunications Carrier status is conditional upon confirmation of its service area designation by the FCC, to be obtained following the close of this proceeding.

C. The Stipulation is adopted as amended herein.

D. SBI's obligation to use commercially reasonable efforts to provide service to those areas outside of its FCC-licensed service area designated in SBI Reopened Exhibit 3 (the "Extension Areas") through an agreement with the A-band cellular carrier shall commence upon Final Order of the Commission in this case.

E. Beginning on April 1, 2001, SBI shall be required to submit to the Staff an annual compliance report containing, (i) the number of potential subscribers in the Extension Areas who have requested SBI's BUS offering; (ii) the number of subscribers that SBI is serving with its BUS offering in the Extension Areas; and if the Stipulated restrictions on mobility are retained, (iii) the number of subscribers that SBI has notified of noncompliance with the mobility restriction contained in the Stipulation; and (iv) and the number of subscribers who have had service suspended as a result of noncompliance. The first annual report shall also describe SBI's efforts to provide service in the Extension Areas. The annual reporting requirement is subject to and shall be modified by any subsequent changes adopted in the course of a rulemaking proceeding.

F. CenturyTel's service area shall be disaggregated into two parts, for the purpose of calculating universal service support. The Pecos exchange shall be one service area. The second service area shall be comprised of the following exchanges: Pine Hill, Vanderwagon, Zuni, Ramah and Fence Lake.

G. The Stipulation is part of the Final Order of the Commission in this proceeding, however, the Stipulation only binds the signatories thereto and does not bind any other party who did not enter into the Stipulation.

H. This Docket is closed.

I. This Order is effective immediately.

J. Copies of this Order shall be mailed to all persons on the attached Certificate of Service.

I S S U E D at Santa Fe, New Mexico this 14th day of August, 2001.

NEW MEXICO PUBLIC REGULATION COMMISSION



WILLIAM J. HERRMANN
HEARING EXAMINER

"EXHIBIT A"

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

APPLICATION OF SMITH BAGLEY, INC.)
FOR DESIGNATION AS AN ELIGIBLE)
TELECOMMUNICATIONS CARRIER)
UNDER 47 U.S.C. § 214(e)(2))
_____)

Utility Case No. 3026

STIPULATION

Smith Bagley, Inc. ("SBI") by its counsel, and the Staff of the New Mexico Public Regulation Commission ("Staff") hereby enter into the following Stipulation in order to resolve certain outstanding issues in the above-captioned proceeding. The parties submit this Stipulation for approval by the Public Regulation Commission ("PRC") pursuant to 1.2.23 of the Commission's Rules, 17 NMAC 1.2.23. In support of this Stipulation, the following is respectfully shown:

I. ETC Service Area Boundary.

1. In its above-captioned application, SBI proposed that its Eligible Telecommunications Carrier ("ETC") service area be defined as the boundaries of the Zuni and Ramah reservations. Following discussion among the parties, SBI has agreed to modify its ETC service area boundary, and make commercially reasonable efforts to serve complete wire centers as follows:

A. SBI's ETC service area shall be defined to include the Zuni, Ramah, and Fence Lake wire centers. In addition, SBI's ETC service area shall be defined consistent with that portion of its existing service contour within the Pine Hill, Vanderwagn, Gallup and Grants wire centers. A map depicting SBI's ETC service area is attached hereto as Exhibit A.

B. For potential subscribers residing in the Northern portion of the Vanderwagn wire center and Southeast portion of the Pine Hill wire center, outside SBI's operating service area, SBI agrees to use commercially reasonable efforts to attempt to arrange for the



provision of wireless communications service through the A-Side cellular telephone carrier licensed to service that area.

2. The parties agree that amending SBI's ETC service area and encouraging SBI to attempt to provide service throughout the Vanderwagn and Pine Hill wire center will alleviate concerns about cream skimming and administrative burden. Specifically, the designation of ETC status throughout the Zuni, Ramah, and Fence Lake wire centers, and in approximately 89% of the remaining wire centers¹ will ensure that SBI's Basic Universal Service ("BUS") offering will be made available throughout the widest possible area. This alleviates the concern that SBI's service is targeted to only lower cost portions of affected wire centers.

3. The parties recommend that the PRC disaggregate the incumbent LEC service area along wire center boundaries. Since SBI's service will closely follow wire center boundaries, there is no concern that the incumbent LEC would accrue any additional administrative burden with respect to calculating appropriate high cost loop support.

II. Mobility

4. In its application, SBI proposed to permit a subscriber taking SBI's basic universal service ("BUS") offering to be able to use its phone throughout SBI's entire network. The parties discussed two concerns. First, the possibility that universal service subscribers who reside outside of the ETC service area will fraudulently take SBI's BUS offering, which is limited to residents within the ETC service area. Second, the possibility that BUS subscribers will use their phones excessively outside the authorized ETC service area. In order to alleviate these concerns,

¹ SBI estimates that its ETC service area will encompass 89.1% of the geographic area and 96.9% of the population of the Pine Hill wire center as well as 88.5% of the geographic area and 90.9% of the population of the Vanderwagn wire center.

SBI agrees to the following conditions and further agrees to implement certain measures as set forth below:

- A. BUS customers must use at least 75% of the minutes included in SBI's BUS plan within SBI's ETC service area.
- B. When a BUS customer uses more than 25% of its included minutes outside of SBI's ETC service area in any month, SBI will promptly notify the customer as follows:
 - i. A voice prompt generated by SBI's prepaid system will inform the customer before completing a call in the following month;
 - ii. A telephone call from an SBI customer service representative explaining that the customer has exceeded the plan limits; and
 - iii. SBI will mail an explanatory letter to the customer.

This first notification shall explain the program requirements and inform the customer that failure to comply three times within twelve months will result in discontinuance of universal service subsidies.

- C. When a BUS customer uses more than 25% of its included minutes outside of SBI's ETC service area a second time within the first year of the contract, SBI will promptly notify the customer in the same manner as provided above. This second notification shall serve as a disconnect notice to the subscriber. The notice shall state clearly that if the subscriber fails to comply a third time within twelve months that Lifeline subsidies will be discontinued. The notice shall also state that in the event Lifeline subsidies are discontinued, the customer may, (i) disconnect service, (ii) pay full price for the service and move to a post-paid payment plan (if creditworthy), or (iii) continue as a prepaid subscriber, receive zero included minutes in future months, use the phone for emergency (911) calls, and retain the ability to purchase prepaid minutes for use.
- D. When a BUS customer uses more than 25% of its included minutes outside of SBI's ETC service area a third time within the first year of the contract, SBI will promptly notify the customer in the same manner as provided above. This third notification shall state that Lifeline service has been suspended for the remainder of the first year of the contract. SBI shall provide the customer with one of the three options set forth above. If the subscriber fails to choose an option, SBI shall keep the subscribers phone active, but remove the 200 included minutes during the suspension period. This will permit the subscriber to use the phone for

emergencies and to purchase prepaid minutes. If the subscriber moves to a retail rate plan, SBI shall credit any prepaid access charges against the first month's service charges. If the subscriber discontinues service or continues service with zero included minutes, SBI shall refund any prepaid access charges.

- E. SBI shall not include the loops of suspended BUS customers in its periodic loop count reports to USAC.
- F. If a BUS customer's service is suspended, SBI may restore Lifeline support at the conclusion of the first year of the contract. During the second year of the contract, the same procedures set forth above shall apply. If a BUS customer is suspended a second time, it shall not be eligible for reinstatement to the Lifeline program for twelve months.

III. General Terms

5. This Stipulation represents a settlement and compromise of claims and accordingly this Stipulation is made for settlement purposes only. No party concedes the validity or correctness of any regulatory principle or methodology directly or indirectly incorporated in this Stipulation. No precedential effect or other significance, except as may be necessary to enforce this Stipulation or a PRC order concerning this Stipulation, shall be attached to any principle or methodology contained in this Stipulation.

6. All witnesses of the parties will support all aspects of the Stipulation embodied in this document in any hearing conducted to determine whether the PRC should approve this Stipulation. Each party also agrees that, except as expressly provided in this Stipulation, it will take no action in any administrative or judicial proceeding, which would have the effect, directly or indirectly, of contravening the provisions of this Stipulation. Without prejudice to the foregoing, the parties expressly reserve the right to advocate positions different from those stated in this Agreement in any proceeding other than one necessary to obtain approval of, or enforce this Stipulation or a PRC order approving this Stipulation. Nothing in this Stipulation shall

constitute a waiver by any party with respect to any matter not specifically addressed in this Stipulation.

7. This Stipulation shall not become effective until the PRC issues a final order approving the Stipulation, which order does not contain any modification of the terms and conditions of this Stipulation that is unacceptable to any of the parties to the Stipulation. In the event the PRC modifies this Stipulation in a manner unacceptable to any party hereto, that party may withdraw from the Stipulation and shall so notify the PRC and the other parties to the Stipulation in writing within ten (10) days of the date of the PRC order. In the event a party exercises its right to withdraw from the Stipulation, this Stipulation shall be null and void and of no effect in this or any other proceedings.

8. In the event this Agreement becomes null and void or in the event the PRC does not approve this Stipulation, this Stipulation, as well as the negotiation undertaken in conjunction with the Stipulation, shall not be admissible into evidence in these or any other proceedings.

9. Should the FCC adopt any service requirements which conflict with this Stipulation, the FCC's rules shall control. SBI reserves the right to apply to the PRC to amend these terms if they prove to be administratively burdensome or fail to accomplish their intended purposes.

10. The parties state that they have reached this Stipulation by means of a negotiated process that is in the public interest, and that the results reflected in this Stipulation are just, reasonable and in the public interest. Approval by the PRC of this Stipulation shall constitute a determination that the Stipulation represents a just, equitable, and reasonable resolution of the issues addressed herein.

11. This Stipulation is an integrated agreement that may not be altered by the unilateral determination of any party.

12. This Stipulation may be executed in separate counterparts, including facsimile. The counterparts taken together shall constitute the Stipulation. The parties represent that the signatories to the Stipulation have full authority to bind their respective parties to the terms of the Stipulation.

WHEREFORE, the parties respectfully submit this Stipulation for approval by the PRC and request that the PRC grant such approval.

SMITH BAGLEY, INC.

By: _____
Richard Watkins
Its Authorized Representative

STAFF OF THE NEW MEXICO
PUBLIC REGULATION COMMISSION

By: _____

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

APPLICATION OF SMITH BAGLEY, INC.)
FOR DESIGNATION AS AN ELIGIBLE)
TELECOMMUNICATIONS CARRIER) Utility Case No. 3026
UNDER 47 U.S.C. § 214(e)(2))
_____)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing
Recommended Decision of the Hearing Examiner and Certification of
Stipulation, issued August 14, 2001, was mailed First Class, postage prepaid, to
the following persons:

David A. LaFuria, Esq.
Samule F. Cullari, Esq.
Lukas, Nace, Gutierrez & Sachs,
Chartered
1111 Nineteenth Street, N.W.
Suite 1200
Washington, D.C. 20036

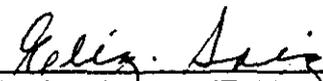
William P. Templeman, Esq.
Comeau, Maldegen, Templeman
& Indall, LLP
Post Office Box 669
Santa Fe, NM 87504-0669

and hand-delivered to:

Avelino Gutierrez, Esq.
Legal Division Director
NM Public Regulation Commission
Post Office Box 1269
Santa Fe, NM 87501

DATED this 14th day of August, 2001.

NEW MEXICO PUBLIC REGULATION COMMISSION



ELIZABETH SAIZ, Law Clerk

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

APPLICATION OF SMITH BAGLEY, INC.)
FOR DESIGNATION AS AN ELIGIBLE)
TELECOMMUNICATIONS CARRIER) Utility Case No. 3026
UNDER 47 U.S.C. § 214(e)(2))
_____)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order , issued February 19, 2002, was mailed First Class, postage prepaid, to the following:

David A. LaFuria, Esq.
Samule F. Cullari, Esq.
Lukas, Nace, Gutierrez & Sachs,
Chartered
1111 Nineteenth Street, N.W.
Suite 1200
Washington, D.C. 20036

William P. Templeman, Esq.
Comeau, Maldegen, Templeman
& Indall, LLP
Post Office Box 669
Santa Fe, NM 87504-0669

and hand-delivered to:

Avelino Gutierrez, Esq.
Legal Division Director
NM Public Regulation Commission
Post Office Box 1269
Santa Fe, NM 87501

DATED this 19th day of February, 2002.

NEW MEXICO PUBLIC REGULATION COMMISSION

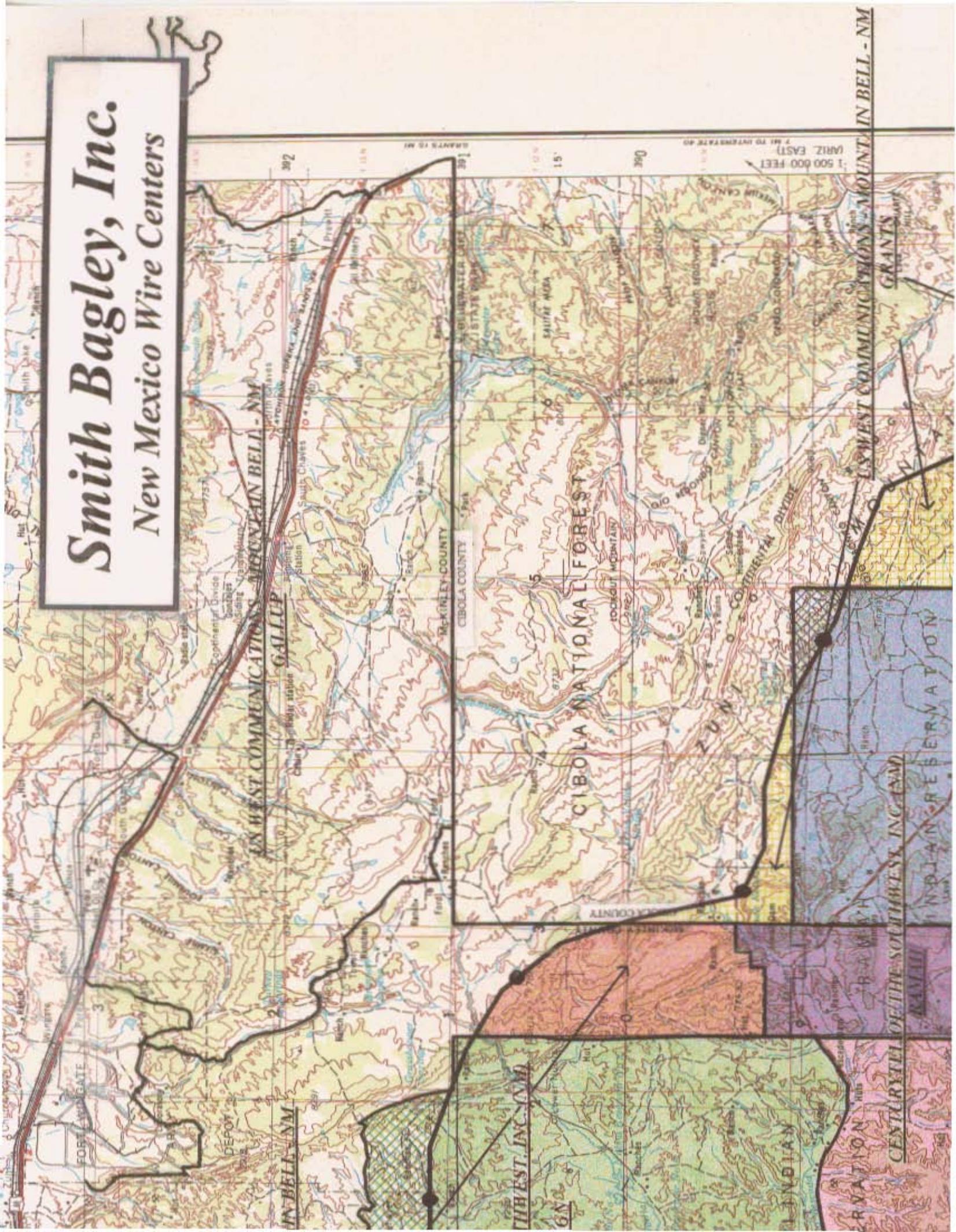


Mona Varela, Administrator

EXHIBIT B

Smith Bagley, Inc.

New Mexico Wire Centers



US WEST COMMUNICATIONS - MOUNTAIN BELL - NM

GALLUP

CIBOLA NATIONAL FOREST

US WEST COMMUNICATIONS - MOUNTAIN BELL - NM

INDIAN RESERVATION

CENTURY OF THE SOUTHWEST, INC. (NM)

RAM III

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION

CERTIFICATE OF SERVICE

I, Loren Costantino, hereby certify that I have, on this 1st day of March, 2002, placed in the United States mail, first-class postage pre-paid, a copy of the foregoing PETITION filed today to the following:

*Katherine Schroder
Chief, Accounting Policy Division
Federal Communications Commission
445 12th Street, S.W.
Room 5-A423
Washington, DC 20554

Century Telephone of the Southwest, Inc.
c/o Blooston, Mordkofsky, Jackson &
Dickens
2120 L Street, N.W.
Washington, D.C. 20037

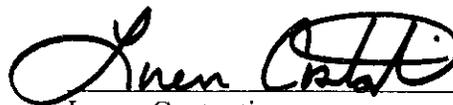
*Richard Smith
Accounting Policy Division
Federal Communications Commission
445 12th Street, S.W.
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Washington, DC 20554

William P. Templeman, Esq.
Comeau, Maldegen, Templeman, &
& Indall, LLP
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Gary Royball, Esq.
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Santa Fe, New Mexico 87504-1269



Loren Costantino

* Via Hand Delivery