

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
Federal-State Joint Board on)
Universal Service)
)
Smith Bagley, Inc.)
)
Petition for Designation as an)
Eligible Telecommunications Carrier)
for the Navajo Reservation in Utah)

CC Docket No. 96-45

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MAY 24 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: Common Carrier Bureau

**Petition for Designation as an Eligible Telecommunications Carrier
for the Navajo Reservation in Utah**

Smith Bagley, Inc. ("SBI" or "Company"), by counsel and pursuant to Section 214(e)(6) of the Communications Act of 1934, as amended, 47 U.S.C. § 214(e)(6), hereby petitions the Commission to extend its existing designation as an Eligible Telecommunications Carrier ("ETC") on the Navajo Reservation to tribal members living on that portion of the reservation located in southern Utah.¹ As demonstrated below, SBI meets all the statutory and regulatory prerequisites for ETC designation, and designating SBI as an ETC will serve the public interest. In support thereof, SBI submits the following:

I. Introduction

SBI has brought affordable, high-quality telecommunications services to residents of

¹ SBI is the E Block licensee authorized to provide personal communications service ("PCS") in the Farmington, New Mexico Basic Trading Area ("BTA"), covering territory in Utah, Colorado and New Mexico. Additionally, SBI is authorized to provide cellular and PCS service in Arizona and New Mexico.

rural, unserved and underserved areas in Arizona and New Mexico. Nowhere is this more evident than on Native American tribal lands, where telephone penetration rates remain far below the 94.9% nationwide average.²

SBI has made substantial progress toward its goal of increasing telephone penetration on Native American lands. In December 2000, SBI received designation as an ETC in Arizona for a service area that includes the Navajo Nation, Hopi, Pueblo of Zuni, and White Mountain Apache reservations.³ To carry out its universal service mandate, SBI launched a unique service offering (called "VisionOne™") on tribal lands in Arizona on June 1, 2001. VisionOne™ is a rate plan that permits qualifying subscribers living on reservation lands to pay \$1.00 per month for service, including 200 minutes of air time and a substantial list of toll-free calls to local agencies, hospitals, community centers and emergency numbers.

VisionOne™ has been very well received by the Native American community in Arizona. In response to SBI's outreach efforts, over seventeen thousand (17,000) people have subscribed to VisionOne™ to date. On the heels of the successful initial phase of SBI's universal service offering in Arizona, the New Mexico Public Regulation Commission designated SBI as an ETC

² See *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 and Further Notice of Proposed Rulemaking*, 15 FCC Rcd 12208, 12223 (2000) ("*Twelfth Report and Order*"); News Release, "FCC Releases New Telephone Subscribership Report" (rel. May 21, 2002).

³ Smith Bagley, Inc., Order, Decision No. 63269, Docket No. T-02556A-99-0207 (Arizona, Dec. 15, 2000) ("*Arizona ETC Order*"). SBI's service area designation was finalized on May 15, 2001. See Public Notice, DA 01-409 (C.C.B. rel. Feb. 15, 2001).

for the Zuni and Ramah reservations.⁴ SBI is planning to kick off its VisionOne™ service offering in New Mexico on June 15.

In response to overwhelming demand for its VisionOne™ service in Arizona, SBI acquired the E Block PCS license serving the Farmington BTA in late 2001. The Company has completed the initial construction phase and is in the process of expanding its network on the Navajo reservation in Utah.

SBI has come under increasing pressure to provide service to Navajo residents living in Utah. A significant number are being turned away at SBI's Arizona sales offices. As SBI has stated to the Arizona and New Mexico commissions, SBI does not seek to compete with incumbent carriers, but merely intends to reach unserved and underserved areas on tribal lands. Given the abysmally low penetration rates in these areas, there is simply no reason why a carrier such as SBI should not be given an opportunity to reach out to these communities. In less than one year, SBI's VisionOne™ program has made substantial inroads in telephone penetration rates on Native American lands in Arizona. There is every indication that SBI will achieve comparable success in adjacent areas in Utah. Therefore, SBI seeks authority for an extension of its ETC service area into Utah.

II. The FCC Has Jurisdiction Over SBI's Service Offering to Tribal Residents On the Navajo Reservation

As set forth below, SBI believes the FCC has authority, under *Pine Ridge I*, to assert jurisdiction over tribal residents on Navajo lands, who properly view their reservation as

⁴ Smith Bagley, Inc., Final Order, Util. Case No. 3026 (New Mexico, Feb. 19, 2002), adopting Recommended Decision of the Hearing Examiner and Certification of Stipulation (Aug. 14, 2001). SBI's proposed service area definition is pending before the FCC and is expected to be finalized on June 13, 2002. See Public Notice, DA 02-602 (C.C.B. rel. Mar. 13, 2002).

sovereign territory.

When a carrier applies for ETC status on reservation lands, the FCC must make a threshold determination regarding jurisdiction.⁵ Under the jurisdictional test articulated in the FCC's *Pine Ridge I* order, the tribe's sovereignty interests are weighed against the interest of the state in regulating the service offering. If the service offering is such that tribal interests are sufficiently compelling, then state jurisdiction does not lie.⁶ As SBI demonstrates below, the need for SBI's service offering to residents of the Navajo Reservation is sufficiently compelling that this application is properly brought before the FCC.

SBI's proposed service offering to tribal residents of the Navajo Reservation in Utah directly serves the tribe's sovereignty interests. Over the past ten years, SBI has developed an excellent relationship with the Navajo Nation. SBI's general manager, Richard Watkins, has served on the Resources Committee of the Navajo Nation Tribal Council, which oversees SBI's antenna site acquisition process on tribal lands. In consideration of the tribe's sovereign interest in Utah, SBI has agreed to submit any customer complaints from Utah subscribers to the Tribal Council for resolution.⁷

Although incumbent LECs have long been authorized to serve the Navajo Reservation, most of the reservation remains unserved or underserved. According to the most recently

⁵ See *Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier for the Pine Ridge Reservation in South Dakota, Memorandum Opinion and Order*, 16 FCC Rcd 18145, 18146 (2001) ("*Pine Ridge I*"). 18146.

⁶ See *Pine Ridge I*, 16 FCC Rcd at 18150.

⁷ See letter from Elmer L. Milford, Navajo Nation Council Delegate, attached hereto as Exhibit A.

available census data, only 45.84% of households on the Navajo Reservation in Utah had a telephone.⁸ The extremely low level of telephone subscribership can only be viewed in the context of the dire economic circumstances in which those living on the reservation find themselves. As of 1990, the unemployment rate on the Navajo Reservation in Utah was 37.8%, and fully 54.6% of the population lived below the federal poverty level.⁹

As discussed in Section V, *infra*, SBI's proposed service offering on the Navajo Reservation will accelerate the deployment of critical telecommunications services to communities that need them the most. Given the historical lack of basic telephone service that would allow tribal residents to contact emergency services, government agencies, businesses and potential employers, the tribal government of the Navajo Nation undeniably has a strong interest in taking steps to improve basic telecommunications service, and thus improve the lives of its people.

Recently, the United States Senate held a hearing on increasing telephone penetration to Native American lands.¹⁰ Although no new legislation has been adopted, it is clear that the Committee on Indian Affairs is interested in expediting ETC grants, especially on reservation lands that suffer from low telephone penetration levels. The growing recognition on Capitol Hill

⁸ 1990 Census of Population and Housing, Housing Characteristics for Navajo Reservation – Utah, available online at www.census.gov (the specific page can be found by typing in the following URL: <http://govinfo.kerr.orst.edu/cgi-bin/aian-buildit?3h-010488>).

⁹ 1990 Census of Population and Housing, Income and Poverty Data for Navajo Reservation – Utah, available online at www.census.gov (the specific page can be found by typing in the following URL: <http://govinfo.kerr.orst.edu/cgi-bin/aian-buildit?3i-010488>).

¹⁰ *Tribal Telecommunications Issues — Joint Hearing of Committee on Commerce, Science and Transportation and Committee on Indian Affairs*, 107th Cong. (May 14, 2002).

of the need to expedite service to reservation lands militates in favor of prompt action at the federal agency level.

Following the March 5, 2002 release of the Utah Supreme Court's decision in *WWC Holding Co., Inc.* ("*WWC*"),¹¹ a case that took four years to complete, it became apparent to SBI that requesting authority from the state for all residents would be a protracted process. The cost of a multi-year delay in receiving service would be extreme. Accordingly, SBI withdrew its application on April 30. There is no reason why SBI's application, which merely seeks an extension of its existing ETC authority to serve tribal members in Utah, should be tied up in a protracted proceeding to determine whether Federal high-cost support should be provided.

In sum, SBI's proposed service offering to tribal residents is directly related to tribal sovereignty interests and to the Navajo Nation's compelling need to expand basic telephone service to its people. Accordingly, the FCC should follow its Pine Ridge I decision and assert jurisdiction over the instant request for ETC designation pursuant to Section 214(e)(6) of the Act.

III. SBI Satisfies All the Statutory and Regulatory Prerequisites for Designation as an ETC

As a CMRS carrier, SBI is entitled to seek designation as an ETC.¹² Section 254(e) of Act, 47 U.S.C. §254(e), provides that "only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific Federal universal service support." 47 U.S.C. § 214(e). SBI's existing ETC offering amply demonstrates each of the elements required

¹¹ See *WWC Holding Co., Inc. v. Public Service Comm'n of Utah*, 44 P.3d 714 (Utah 2002).

¹² See *Federal-State Joint Board on Universal Service, CC Docket No. 96-45, First Report and Order*, 12 FCC Rcd 8776, 8858-59 (1997) ("*First Report and Order*").

for ETC designation by the FCC. SBI sets forth below its qualifications:

A. SBI Offers All of the Services Supported By the Federal High-Cost Universal Service Program

In order to be designated as an ETC, a carrier must be a common carrier and must offer and advertise the supported services throughout the designated service area. 47 U.S.C. § 214(e)(1). 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).

As shown below and in the Declaration attached as Exhibit C hereto, SBI now provides or will provide, upon designation, the required services.

1. Voice-grade access to the public switched telephone network. The FCC concluded that voice-grade access means the ability to make and receive phone calls, within a bandwidth of

approximately 2700 hertz within the 300 to 3000 hertz frequency range.¹³ SBI meets this requirement by providing voice-grade access to the public switched telephone network. Through its existing interconnection arrangements with local exchange carriers (“LECs”), all customers of SBI will be able to make and receive calls on the public switched telephone network within the specified bandwidth.

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, but has initiated a separate proceeding to address this issue.¹⁴ As it relates to local usage, the *NPRM* sought comments on a definition of the public service package that must be offered by all ETCs. Specifically, the FCC sought comments on how much, if any, local usage should be required to be provided to customers as part of a universal service offering.¹⁵ In the *First Report and Order*, the FCC deferred a determination on the amount of local usage that a carrier would be required to provide.¹⁶ Any minimum local usage requirement established by the FCC as a result of the *October 1998 NPRM* will be applicable to all designated ETCs, and SBI

¹³ *First Report and Order, supra*, 12 FCC Rcd at 8810-11.

¹⁴ *See Guam Cellular and Paging, Inc.*, DA 02-174, at para. 11 (rel. Jan. 25, 2002) (“*Guamcell*”); *Federal-State Joint Board on Universal Service, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, 13 FCC Rcd 21252 (1998) (“*October 1998 NPRM*”).

¹⁵ *October 1998 NPRM*, 13 FCC Rcd at 21277-21281.

¹⁶ *First Report and Order*, 12 FCC Rcd at 8813. *See also Western Wireless Corporation*, 16 FCC Rcd 48, 52-53 (2000) (“*Wyoming Order*”), *aff’d*, FCC 01-311 (rel. Oct. 19, 2001); *Cellco Partnership*, 16 FCC Rcd 39, 42 (2000).

will comply with any and all minimum local usage requirements adopted by the FCC. SBI's VisionOne™ plan includes local usage and SBI offers to its customers a variety of local usage plans.

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). SBI currently uses out-of-band digital signaling and in-band multi-frequency (“MF”) signaling that is functionally equivalent to DTMF signaling. SBI therefore meets the requirement to provide DTMF signaling or its functional equivalent.

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.¹⁷ 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.¹⁸ SBI meets the requirement of single-party service by providing a dedicated message path for the length of all customer calls.

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. Phase I E911, which includes the capability of providing both automatic numbering information (“ANI”) and

¹⁷ *First Report and Order*, 12 FCC Rcd at 8810.

¹⁸ *Id.*

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.¹⁹ SBI currently provides all of its customers with access to emergency service by dialing 911 in satisfaction of this requirement.

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.²⁰ SBI meets this requirement by providing all of its customers with access to operator services provided by either the Company or other entities (e.g., LECs, IXC, etc.)

7. Access to interexchange service. A universal service provider must offer consumers access to interexchange service to make and receive toll or interexchange calls. Equal access, however, is not required: “The FCC do[es] not include equal access to interexchange service among the services supported by universal service mechanisms.”²¹ SBI currently 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 IXCs. Additionally, customers are able to reach their IXC of choice by dialing the appropriate access code.

8. Access to directory assistance. The ability to place a call to directory assistance is

¹⁹ See *id.* at 8815-17.

²⁰ *Id.* at 8817-18.

²¹ *Id.* at 8819.

a required service offering.²² SBI meets this requirement by providing all of its customers with access to directory assistance by dialing “411” or “555-1212.”

9. Toll limitation for qualifying low-income consumers. An ETC must offer either “toll control” or “toll blocking” services to qualifying Lifeline customers at no charge. The FCC no longer requires an ETC to provide both services as part of the toll limitation service required under 47 C.F.R. § 54.101(a)(9).²³ In particular, all ETCs must provide toll blocking, which allows customers to block the completion of outgoing toll calls.²⁴ SBI currently has no Lifeline customers because only carriers designated as an ETC can participate in Lifeline. *See* 47 C.F.R. §§ 54.400-415. Once designated as an ETC, SBI will participate in Lifeline as required, and will provide toll blocking capability in satisfaction of the FCC’s requirement. Today, the Company provides toll blocking services for international calls and customer selected toll calls. Accordingly, SBI currently has the technology to provide toll blocking and will use this technology to provide the service to its Lifeline customers, at no charge, as part of its universal service offerings.

B. SBI Will Offer Supported Services Through its Own Facilities

A carrier requesting designation must certify that it offers the supported services “either using its own facilities or a combination of its own facilities and resale of another carrier’s

²² *Id.* at 8821.

²³ *See Universal Service Fourth Order on Reconsideration in CC Docket No. 96-45, Report and Order in CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72, 13 FCC Rcd 5318 (1997).*

²⁴ *First Report and Order, supra*, 12 FCC Rcd at 8821-22.

services.”²⁵ SBI will provide the supported services using its existing network infrastructure, which includes the same antenna, cell-site, tower, trunking, mobile switching, and interconnection facilities used by the company to serve its existing customers. *See also* Exhibit B hereto.

C. SBI Will Advertise its Universal Service Offering

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.²⁶ SBI currently advertises its wireless services through several different media. SBI will use media of general distribution that it currently employs to advertise its universal service offerings throughout the service area designated by the FCC. SBI will comply with all form and content requirements, if any, promulgated by the FCC in the future and required of all designated ETCs.

IV. The FCC Should Designate SBI as an ETC for the Geographic Area Consisting of the Navajo Reservation in Utah

SBI is not a “rural telephone company” as that term is defined by 47 U.S.C. § 153(37). Accordingly, SBI is required to describe the geographic area in which it requests designation.²⁷ SBI requests ETC designation for the Navajo Reservation in Utah. A map of SBI’s proposed ETC service area is attached hereto as Exhibit B.

²⁵ 47 C.F.R. § 54.201(d)(1).

²⁶ 47 C.F.R. § 54.201(d)(2).

²⁷ *See* 47 U.S.C. § 214(e)(5); 47 C.F.R. § 54.207(a).

The Navajo Reservation in Utah is served by the Navajo Communications Company (“Navajo Communications”), a rural telephone company as defined by 47 U.S.C. § 153(37). In an area served by a rural telephone company, the FCC’s rules define “service area” to mean the LEC study area unless a different definition of service area is established for such company.²⁸ SBI’s proposed ETC service area covers the study area of Navajo Communications in its entirety. Accordingly, there is no need to redefine the requested ETC service area.²⁹

V. A Grant of This Application Will Serve the Public Interest.

Because SBI is seeking designation in areas served by a rural telephone company, the FCC must consider public-interest factors prior to designating SBI as an ETC. 47 U.S.C. § 214(e)(6). Designating SBI as an ETC for the Navajo Reservation would further the public interest by bringing the benefits of competition to a marketplace that is severely lacking in telecommunications service.

The FCC has recognized the advantages wireless carriers can bring to the universal service program. In particular, the FCC has found that “imposing additional burdens on wireless entrants would be particularly harmful to competition in rural areas, where wireless carriers could

²⁸ See 47 C.F.R. § 54.207(b); See also *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Fourteenth Report and Order, Twenty Second Order on Reconsideration, and Further Notice of Proposed Rulemaking*, 16 FCC Rcd 11294, 11299-309 (2001) (“*Fourteenth Report and Order*”).

²⁹ In any event, where a requested ETC service area consists of a Native American reservation for which the FCC has jurisdiction over ETC matters, the FCC has held that the ETC service area should be defined along the reservation boundaries. See *Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier for the Pine Ridge Reservation in South Dakota, Memorandum Opinion and Order*, 16 FCC Rcd 18133, 18139 (2001) (“*Pine Ridge II*”).

potentially offer service at much lower costs than traditional wireline service.”³⁰ One of the principal goals of the Telecommunications Act of 1996 was to “promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies.”³¹ Competition drives down prices and promotes the development of advanced communications as carriers vie for a consumer’s business.

In its decision to designate Western Wireless as an ETC in the State of Wyoming, the FCC observed: “Designation of competitive ETCs promotes competition and benefits consumers in rural and high-cost areas by increasing customer choice, innovative services, and new technologies.”³² Similarly, in designating SBI as an ETC in Arizona, the state commission found competitive entry to provide additional consumer choice and a potential solution to “health and safety risks associated with geographic isolation.”³³ More recently, the FCC found that the designation of Guam Cellular and Paging, Inc. (“Guamcell”) as an ETC in the territory of Guam, would promote “competition and the provision of new technologies to consumers in high-cost and rural areas.”³⁴

Ordinarily, SBI would argue that designating SBI as an ETC will bring to consumers the benefits of increased choices, high-quality service, and lower rates. In this case, the situation is

³⁰ *First Report and Order, supra*, 12 FCC Rcd. at 8881-8882.

³¹ Telecommunications Act of 1996, Public Law, 104-104, 100 Stat. 56 (1996).

³² *See Wyoming Order, supra*, 16 FCC Rcd at 55.

³³ *See Arizona ETC Order, supra*, at p. 12.

³⁴ *See Guamcell, supra*, at para. 15.

stark. More than half of the households in the proposed service area do not have a telephone. In this country, there is no more pressing need for high cost support to a second ETC that is committed to increase telephone penetration. This case is not about providing a choice of service providers. It is about providing basic telephone functions, including 911, to 1,112 households that have no telephone service today.

The public-interest standard under Section 214(e)(2) for designating ETCs in territories served by rural telephone companies emphasizes competition and consumer benefit, not incumbent protection. In considering the impact that Western Wireless's ETC designation would have on rural telephone companies, the Commission said: "[W]e believe that competition may provide incentives to the incumbent to implement new operating efficiencies, lower prices, and offer better service to its customers."³⁵ Further, Congress has mandated that universal service provisions be "competitively neutral" and "necessary to preserve and advance universal service." *See* 47 U.S.C. § 253(b).

SBI will implement a variety of service offerings and rate plans that will be competitive with incumbent service offerings and affordable to tribal residents on the Navajo Reservation. Its VisionOne™ plan will provide low income subscribers with service for \$1.00 per month. SBI commits that its local calling area will be larger than the incumbent LEC, which will reduce intra-LATA and inter-LATA toll charges typically associated with wireline service. SBI will implement number portability and E-911 services in compliance with all state and federal requirements, which will improve service to tribal residents.

Increasing telephone subscribership on Native American lands will bring tremendous

³⁵ *See Wyoming Order, supra*, 16 FCC Rcd at 57.

benefits to the Native American community. As the FCC has recognized, “by enhancing tribal communities’ access to telecommunications, including access to interexchange services, advanced telecommunications, and information services, we increase their access to education, commerce, government, and public services.”³⁶ In addition, substantial health and safety concerns may be remedied by increasing subscribership on Native American lands. In the FCC’s words: “The inability to contact police, fire departments, and medical service providers in an emergency situation may have, and in some areas routinely does have, life-threatening consequences.”³⁷ In December of 2000, the Arizona PUC designated SBI as an ETC on Native American lands in Arizona, finding such designation to be in the public interest because it provided a potential solution to “health and safety risks associated with geographic isolation.”³⁸

SBI commits to use available federal high-cost support for its intended purposes — the construction, maintenance and upgrading of facilities serving the rural areas for which support is intended. In fact, it is those areas which need it the most. Without high-cost universal service support, SBI can conceive of no business plan for these remote rural areas which supports deploying the type of robust wireless network required to provide consumers with high-quality telecommunications service. Wireless telephone service is today a convenience, but in most rural areas it cannot be counted on as a potential replacement for wireline service unless high-cost loop support is made available to drive infrastructure investment. Indeed, without the high-cost loop program, it is doubtful that many rural areas would have wireline telephone service even today.

³⁶ *Twelfth Report and Order*, 15 FCC Rcd at 12214.

³⁷ *Id.* at 12212.

³⁸ Arizona ETC Order, *supra*, at p. 12.

Provision of high-cost support to SBI will provide thousands of Navajo people with their first telephone.

VI. High-Cost Certification

Under Sections 54.313 and 54.314 of the FCC's rules, carriers wishing to obtain high-cost support must either be certified by the appropriate state commission or, where the state commission does not exercise jurisdiction, must self-certify with the FCC and the Universal Service Administrative Company ("USAC") as to their compliance with Section 254(e) of the Federal Telecommunications Act of 1996. 47 C.F.R. §§ 54.313, 54.314. As explained above, the state of Utah does not have jurisdiction over SBI's request for designation as an ETC for the Navajo Reservation. Therefore, in accordance with Section 54.313(b) and 54.314(b), SBI has submitted its high-cost certification with the FCC and USAC. A copy of this certification is attached hereto as Exhibit D. SBI respectfully requests that the Commission issue a finding that SBI has met the high-cost certification requirement and that SBI is, therefore, entitled to begin receiving high-cost support as of the date it receives a grant of ETC status in order that funding will not be delayed.³⁹

VII. Anti-drug Abuse Certification

SBI certifies that no party to this petition is subject to a denial of federal benefits, including FCC benefits, pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 862. *See* Exhibit E hereto.

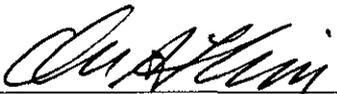
VIII. Conclusion

³⁹ *See* Guam Cellular and Paging, Inc. Petition for Waiver of FCC Rule Section 54.314, filed Feb. 6, 2002.

SBI respectfully requests the Commission to designate it as an ETC on an expedited basis.

Respectfully submitted,

Smith Bagley, Inc.

By 

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May 24, 2002

Exhibit A

Letter from Navajo Nation Council Delegate Elmer L. Milford

The Legislative Branch
The Navajo Nation



Edward T. Begay
Speaker of the Navajo Nation Council

Mr. Richard Watkins
Smith Bagley, Inc.
1500 South White Mountain Rd.
Show Low, Arizona 85901

Dear Mr. Watkins:

I write concerning the application of Smith Bagley, Inc. (SBI) application for designation as an eligible telecommunications carrier (ETC) on the Navajo Nation located in Utah. I represent the Navajo Nation as a Tribal Council Delegate, having served as a member, Vice-Chairperson, and Chairperson of the Resources Committee. The Resources Committee of the Navajo Nation Council approves all applications for wireless telecommunications services on the Navajo Nation.

Today, less than half of the households on the Navajo Reservation in Utah have telephones. The situation has not appreciably improved in decades. Without introduction of a new service, this problem is unlikely to improve, and large numbers of residents will continue to lack access to critical health, safety, and public services available only through the provision of basic telephone service. Therefore, we are persuaded that there is a compelling need for the services SBI can provide.

The Navajo people are greatly appreciative of SBI's efforts to date. Since its inception in May 2001, SBI's VisionOne service plan has been very successful, reflecting the severity of the unmet need for telecommunications service on the Navajo Nation. In less than one year, over seventeen thousand new subscribers have signed up, most gaining access to telephone service for the first time. The company's execution of its outreach efforts to our people has been exceptional. We have no doubt but that SBI's VisionOne service will bring similar benefits to the Navajo community in Utah.

I wish to confirm that SBI's VisionOne service to the Navajo Nation in Utah will establish a commercial relationship with the Navajo Nation and thus will not be subject to state jurisdiction. Specifically, SBI agrees that federal law will govern the VisionOne offering in Utah, and that customer complaints will be resolved through the Resources Committee of the Navajo Nation Council, enforceable in the tribal courts.

I realize that SBI's ability to bring this critical service to the Utah portion of the Navajo Nation will depend on the company's designation as an ETC. Because of the special relationship between SBI and the Navajo Nation, we understand that SBI's ETC application will be addressed not to the state, but to the FCC. I strongly support SBI's application and look forward to working with your company toward the continued improvement of communications service to tribal residents.

Sincerely yours,

Elmer L. Milford
Council Delegate
Resources Committee
The Navajo Nation Council

Exhibit B

MAP OF PROPOSED SERVICE AREA FOR ETC DESIGNATION

Exhibit C

DECLARATION REGARDING SUPPORTED SERVICES

DECLARATION UNDER PENALTY OF PERJURY

I, Richard Watkins, do hereby declare under penalty of perjury as follows:

1. I am the authorized representative of Smith Bagley, Inc. (“SBI” or “Company”) in charge of SBI’s Petition for Designation as an Eligible Telecommunications Carrier (“ETC”) for the Navajo Reservation in Utah.
2. This Affidavit is submitted in support of SBI’s Petition for Designation as an Eligible Telecommunications Carrier (“ETC”) for the Navajo Reservation in Utah.
3. SBI is the E Block licensee authorized to provide personal communications service (“PCS”) in the Farmington, New Mexico Basic Trading Area (“BTA”). SBI is authorized to provide service in the requested ETC area described in its Petition.
4. As a carrier not subject to state commission jurisdiction with respect to the Navajo Reservation, SBI is seeking designation as an ETC under Section 214(e)(6).
5. SBI meets the criteria for ETC designation as explained herein.
6. SBI is a “common carrier” for purposes of obtaining ETC designation pursuant to 47 U.S.C. § 214(e)(1). A “common carrier” is generally defined in 47 U.S.C. § 153(10) as a person engaged as a common carrier on a for-hire bases in interstate communications by wire or radio. Section 20.9(a)7 of the Commission’s Rules provide that cellular service is a common carrier service. *See* 47 C.F.R. § 20.9(a)(7).
7. SBI currently offers and is able to provide, within its designated service areas, the services and functionalities identified in 47 C.F.R. § 54.101(a). Each of these services and functionalities is discussed more fully below.

a. Voice-grade access to the public switched telephone network. The FCC concluded that voice-grade access means the ability to make and receive phone calls, within a bandwidth of approximately 2700 hertz within the 300 to 3000 hertz frequency range. *See Federal-State Joint Board on Universal Service, CC Docket No. 96-45, First Report and Order, 12 FCC Rcd 8776, 8810-11 (1997) ("Universal Service Order").* SBI meets this requirement by providing voice-grade access to the public switched telephone network. Through interconnection arrangements with local exchange carriers ("LECs"), all customers of SBI will be able to make and receive calls on the public switched telephone network within the specified bandwidth.

b. 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 established a minimum amount of local usage required to be included in a universal service offering, but has initiated a separate proceeding to address this issue. *See Federal-State Joint Board on Universal Service, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 13 FCC Rcd 21252 (1998) ("October 1998 NPRM").* As it relates to local usage, the *October 1998 NPRM* sought comments on a definition of the public service package that must be offered by all ETCs. Specifically, the FCC sought comments on how much, *if any*, local usage should be required to be provided to customers as part of a universal service offering. *October 1998 NPRM, 13 FCC Rcd at 21277-21281.* In the *Universal Service Order*, the FCC deferred a determination on the amount of local usage that a carrier would be required to provide. *Universal Service Order, 12 FCC Rcd at 8813.* Any minimum local usage requirement established by the FCC as a result of the *October 1998 NPRM* will be applicable to all designated ETCs, not simply wireless service providers. SBI will comply with any and all minimum local usage requirements adopted by the FCC. SBI will meet the local usage requirements by including local usage as part

of a universal service offering.

c. 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). SBI currently uses out-of-band digital signaling and in-band multi-frequency (“MF”) signaling that is functionally equivalent to DTMF signaling. SBI therefore meets the requirement to provide DTMF signaling or its functional equivalent.

d. 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*, 12 FCC Rcd at 8810. 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*, 12 FCC Rcd at 8810. SBI meets the requirement of single-party service by providing a dedicated message path for the length of all customer calls.

e. 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*, 12 FCC Rcd at 8815-17. SBI currently provides all of its customers with access to emergency service by dialing 911 in satisfaction of this requirement.

f. 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*, 12 FCC Rcd at 8817-18. SBI meets this requirement by providing all of its customers with access to operator services provided by either the Company or other entities (e.g., LECs, IXC, etc.)

g. Access to interexchange service. A universal service provider must offer consumers access to interexchange service to make and receive toll or interexchange calls. Equal access, however, is not required. “The FCC do[es] not include equal access to interexchange service among the services supported by universal service mechanisms.” *Universal Service Order*, 12 FCC Rcd at 8819. 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 IXCs. Additionally, customers are able to reach their IXC of choice by dialing the appropriate access code.

h. Access to directory assistance. The ability to place a call to directory assistance is a required service offering. *Universal Service Order*, 12 FCC Rcd at 8821. SBI meets this requirement by providing all of its customers with access to directory assistance by dialing “411” or “555-1212.”

i. Toll limitation for qualifying low-income consumers. An ETC must offer either “toll control” or “toll blocking” services to qualifying Lifeline customers at no charge. The FCC no longer requires an ETC to provide both services as part of the toll limitation service required under 47 C.F.R. § 54.101(a)(9). See *Universal Service Fourth Order on Reconsideration*, 13 FCC Rcd 5318 (1997). In particular, all ETCs must provide toll blocking, which allows customers to block the completion of outgoing toll calls. *Universal Service Order*, 12 FCC Rcd at 8821-22. SBI currently has no Lifeline customers because only carriers designated as an ETC can

participate in Lifeline. *See* 47 C.F.R. § 54.400-415. Once designated as an ETC, SBI will participate in Lifeline as required, and will provide toll blocking capability in satisfaction of the FCC's requirement. Today, the Company provides toll-blocking services for international calls and customer selected toll calls. Accordingly, SBI currently has the technology to provide toll blocking and will use this technology to provide the service to its Lifeline customers, at no charge, as part of its universal service offerings.

8. SBI will provide the supported services using its existing network infrastructure, which includes the same antenna, cell-site, tower, trunking, mobile switching, and interconnection facilities used by the company to serve its existing customers.

9. I declare under penalty of perjury that the foregoing is true and correct. Executed on May 20, 2002.

Smith Bagley, Inc.

By  _____
Its Authorized Representative

Exhibit D

HIGH-COST CERTIFICATION

Smith Bagley, Inc.

May 20, 2002

VIA HAND DELIVERY

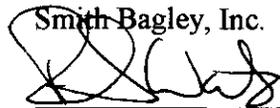
Ms. Marlene H. Dortch, Secretary
Office of Managing Director
Federal Communications Commission
445 12th Street, S.W.
Room TW-B204
Washington, DC 20554

Ms. Irene Flannery
USAC
2120 L Street, N.W.
Suite 600
Washington, D.C. 20037

Re: Smith Bagley, Inc., Certification for High Cost Loop Support

Dear Ms. Dortch and Ms. Flannery:

This certification is submitted on behalf of Smith Bagley, Inc. ("SBI" or "Company") in accordance with Sections 54.313 and 54.314 of the FCC's rules. On behalf of SBI, I hereby certify under penalty of perjury that all high-cost support provided to the Company will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended, pursuant to Section 254(e) of the Telecommunications Act of 1996.

Smith Bagley, Inc.


Authorized Representative

Date 5/20/02

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me this 20th day of May, 2002.


NOTARY PUBLIC

My Commission Expires: April 7, 2006

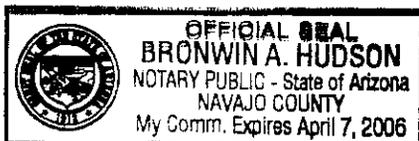


Exhibit E

ANTI-DRUG ABUSE ACT CERTIFICATION

Smith Bagley, Inc.

DECLARATION UNDER PENALTY OF PERJURY

I, Richard Watkins, do hereby declare under penalty of perjury as follows:

1. I am the Chief Operations Officer for Smith Bagley, Inc. ("SBI" or "Company").
2. I have reviewed the foregoing Petition and the facts stated therein, of which I have personal knowledge, are true and correct to the best of my knowledge.
3. To the best of my knowledge, the Company referred to in the foregoing Petition, including all officers, directors, or persons holding 5% or more of the outstanding stock or shares (voting and/or non voting) of the applicant as specified in Section 1.2002(b) of the Commission's rules are not subject to a denial of federal benefits, including FCC benefits, pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 862.
4. I declare under penalty of perjury that the foregoing is true and correct. Executed on May 20, 2002.

Smith Bagley, Inc.

By 

Its Authorized Representative

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION

CERTIFICATE OF SERVICE

I, Danielle Gibbs, hereby certify that I have, on this 24th day of May, 2002, placed in the United States mail, first-class postage pre-paid, a copy of the foregoing PETITION FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER FOR THE NAVAJO RESERVATION IN UTAH filed today to the following:

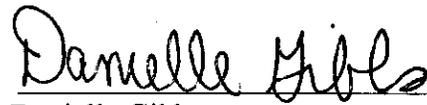
*Katherine Schroder
Chief, Telecommunications Access Policy
Federal Communications Commission
445 12th Street, S.W.
Room 5-A423
Washington, DC 20554

Julie P. Orchard, Commission Secretary
Public Service Commission of Utah
Heber M. Wells Building
Fourth Floor
160 East 300 South
Salt Lake City, UT 84111

*Richard Smith
Telecommunications Access Policy Div.
Federal Communications Commission
445 12th Street, S.W.
Room 5-A660
Washington, DC 20554

Navajo Communications Company, Inc.
4 Triad Center, Ste. 200
Salt Lake City, UT 84180

*Anita Cheng
Wireline Competition
Telecommunications Access Policy Div.
Federal Communications Commission
445 12th Street, S.W.
Room 5-A445
Washington, DC 20554



Danielle Gibbs

* Via Hand Delivery and E-mail

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Large Map