

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
Smith Bagley, Inc.)	
)	
Petition for Designation as an)	
Eligible Telecommunications Carrier)	
for the Navajo Reservation in Utah)	

To: Wireline Competition Bureau

Reply Comments of Smith Bagley, Inc.

Smith Bagley, Inc. ("SBI" or "Company"), by counsel, hereby submits the following Reply Comments pursuant to the Commission's Notice in the captioned proceeding.¹ Comments were submitted by the Independent Telephone and Telecommunications Alliance ("ITTA"). As demonstrated below, none of the arguments made by ITTA presents an issue that should prevent or delay the grant of SBI's petition. SBI meets all the statutory and regulatory prerequisites for ETC designation, and designating SBI as an ETC will serve the public interest. Accordingly, SBI urges the Commission to grant SBI's petition expeditiously.

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¹ "Wireline Competition Bureau Seeks Comment on Smith Bagley, Inc. Petition for Designation as an Eligible Telecommunications Carrier for the Navajo Reservation in Utah," Notice, DA 02-1466, 67 FR 140 (July 22, 2002) ("Notice").

I. ITTA'S REQUEST FOR AN UNLIMITED LOCAL USAGE AND SERVICE QUALITY REQUIREMENT SHOULD BE REJECTED

As SBI noted in its Petition, the Commission has not established a minimum amount of local usage an applicant must commit to offer in order to receive ETC status.² SBI has committed to provide substantial local usage on all of its rate plans and to satisfy any minimum local usage requirement the FCC may adopt in the future.³ Notwithstanding this commitment, the ITTA asks the FCC to require SBI to provide unlimited local minutes without any legal or practical basis for doing so.

The local usage requirement requested by ITTA is both unnecessary and inappropriate. First, SBI has already made a specific commitment to provide local usage that satisfies the FCC's definition. This commitment is part of SBI's effort to extend into Utah the success it has had elsewhere in aggressively deploying services in areas that are severely lacking in telecommunications service. According to a report issued by the Benton Foundation in 1999, 81% of individuals residing on the Navajo Reservation and Trust lands in Utah, Arizona, and New Mexico do not have a telephone in their home.⁴ In Arizona, SBI's outreach efforts have begun to address these abysmal penetration levels, signing up over 21,000 new VisionOne™ subscribers since the service was inaugurated in June 2001. Thus, to claim that the VisionOne™ plan is insufficient because it includes "only" 200 minutes ignores the fact that SBI's service

² See Petition at p. 8.

³ See *id.*

⁴ See *Native Networking: Telecommunications and Information Technology in Indian Country*, Benton Foundation, Table 4, p. 11 (1999), available on the worldwide web at <http://www.benton.org/Library/Native/>.

offering represents the first time that *any local calling at all* will be so widely available to tribal residents. The 200 included minutes are, of course, over and above the “free call” list — a long list of numbers, including those of hospitals, police and fire departments, and other important community services, that subscribers may call without incurring airtime or toll charges.

Second, it is disingenuous to assert that an unlimited local calling requirement is necessary to prevent SBI from “tak[ing] advantage of support payments by luring low-income customers with low monthly access rates while actually offering service that is too expensive for customers to ultimately use.”⁵ Incumbent LECs, who comprise the majority of ITTA’s membership, are well-known for limiting their customers to small local calling areas, burdening them with toll charges for all calls beyond those restrictive boundaries. Indeed, the FCC has recognized that sub-par subscribership levels on tribal lands are due in part to “the cost of intrastate toll service (limited local calling areas)”.⁶ SBI’s VisionOne™ plan will offer subscribers the capability to make local phone calls throughout SBI’s service area, which currently includes all Navajo lands in Utah and Arizona, and most Navajo lands in New Mexico. This and other features of VisionOne™ have proved attractive enough to draw new subscribers by the tens of thousands, as evidenced by the plan’s successes in Arizona and New Mexico.

Finally, the Commission should reject ITTA’s suggestion that imposing unlimited local

⁵ ITTA Comments at p. 5.

⁶ *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking*, 15 FCC Rcd 12208, 12220 (2000).

minutes and service quality requirements would somehow serve “competitive neutrality.”⁷ SBI’s local calling plan has been very well received. Imposing an unlimited local minutes requirement would only force SBI to offer less to customers in other areas to compensate for the additional funds that would be required to be spent to provide a feature that may not be what the consumer wants. From SBI’s perspective, competitive neutrality might require incumbent LECs to expand local calling areas.

With respect to service quality standards, SBI notes that only a handful of complaints have been received since the inception of its VisionOne™ program in June 2001, and none have required the assistance of the Arizona Corporation Commission to resolve. SBI has ample incentive to provide its customers with excellent service, especially those on Native American lands. This is because incumbent LECs receive sufficient Lifeline support to offer a \$1.00 per month plan to subscribers. Therefore, price differentiation must give way to customer service and overall value. It is the customer who benefits from this healthy competition and SBI’s entry will only cause affected LECs to improve services as well.

ITTA’s argument also ignores the substantial regulatory disparity that a competitive carrier must surmount to even begin to compete with an incumbent. By law, incumbent ETCs are guaranteed a sufficient subsidy no matter how many customers they have and no matter what level of service they provide. Quality of service requirements for incumbent LECs were not enacted as a condition of an incumbent LEC obtaining ETC status; rather, they were enacted to ensure that a monopoly service provider meets certain standards with respect to customers who have no choice of service provider. It is the high-cost support that enabled them to extend their

⁷ See ITTA Comments at p. 5.

networks into high-cost areas. Likewise, upon being designated as an ETC for the Navajo Reservation in Utah, SBI will spend the funds it receives on the construction, maintenance and upgrading of facilities serving the areas for which support is intended. If true competition arrives for LEC customers, then the appropriate response is to reevaluate the level of regulation of the incumbents, not to preemptively increase the regulatory burden for efficient competitors.

II. ITTA’S REQUEST FOR MOBILITY RESTRICTIONS IS WITHOUT JUSTIFICATION

In its comments, ITTA expresses concern about the identification of the service area for a mobile customer for purposes of determining the applicable rate of USF and that mobile telephone usage may result in “possible receipt of high-cost funds for services provided in non-high-cost areas.”⁸ Put simply, these issues do not create any real issue for this proceeding that has not already been squarely addressed by the FCC. As acknowledged by ITTA, the FCC’s universal service rules provide that “carriers providing mobile wireless service in an incumbent LEC’s service territory shall use the customer’s billing address for purposes of identifying the service location of a mobile wireless customer in a service area.”⁹ Moreover, the Rural Task Force and the FCC have specifically addressed the very concerns raised by ITTA in holding that “a mobile wireless customer’s billing address is a reasonable surrogate for the customer’s location.”¹⁰ Despite this clear guidance on the billing location issue, ITTA would have the FCC

⁸ *Id.* at p. 6.

⁹ 47 C.F.R. § 54.307(b).

¹⁰ *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*

(continued...)

reverse its established ETC designation policy and make that analysis part of the criteria for designation of a competitive ETC.

The alleged negative effects of using mobile customer billing address as the situs for determining applicable USF rates are simply not grounded in fact. Subscribers, not the USF, pay for all usage outside of SBI's proposed ETC service area. VisionOne™ subscribers who roam into other areas will pay roaming charges to the carrier that provides the service, not to SBI. Such usage is not subsidized. Indeed, despite the incumbent LECs' cautionary pleas, SBI is aware of no state that has placed mobility restrictions on a CMRS carrier applying for ETC status.¹¹ Moreover, the FCC has specifically approved several CMRS carriers' applications for ETC status who offered mobile service, without adopting such restrictions.¹²

Finally, even assuming the validity of ITTA's concerns, the FCC has already adopted rules to protect against the use of federal universal service support in a manner inconsistent with 47 U.S.C. § 254(e). Specifically, SBI will be required to certify with the FCC that federal universal service

¹⁰(...continued)

Rulemaking, 16 FCC Rcd 11294, 11314-16 (2001) (“*Fourteenth Report and Order*”).

¹¹ ITTA is mistaken in its veiled assertion that the New Mexico Public Regulatory Commission (“PRC”) acted improperly by removing mobility restrictions from SBI's ETC grant “without explanation.” ITTA Comments at p. 7 n.16. On the contrary, the PRC expressly adopted the Hearing Examiner's finding that such restrictions are not in the public interest. *See* Smith Bagley, Inc., Utility Case No. 3026, Final Order at para. 5 (N.M. P.R.C. rel. Feb. 19, 2002).

¹² *See, e.g., Pine Belt Cellular, Inc. and Pine Belt PCS, Inc.*, CC Docket No. 96-45, DA 02-1252 (rel. May 24, 2002); *Guam Cellular and Paging, Inc.*, CC Docket No. 96-45, DA 02-174 (rel. Jan. 25, 2002); *Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier in the State of Wyoming*, 16 FCC Rcd 48 (2000), *aff'd*, 24 CR 1216 (rel. Oct. 19, 2001).

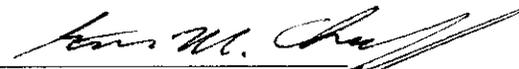
support is used “only for the provision, maintenance and upgrading of facilities and services for which the support is intended.”¹³ The FCC has held that carriers failing to file such certifications will not receive federal universal service support,¹⁴ and those who misuse funds may be subject to enforcement action under Section 208 of the Act. 47 U.S.C. § 208.¹⁵ Thus, there is simply no need to impose the additional layer of regulation urged by ITTA.

III. CONCLUSION

For all of the foregoing reasons, SBI requests that the FCC expeditiously grant its Petition for designation as an ETC for the Navajo Reservation in Utah.

Respectfully submitted,

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¹³ See 47 U.S.C. § 254(e).

¹⁴ See *Fourteenth Report and Order, supra*, 16 FCC Rcd at 11317-18.

¹⁵ See *id.* at 11319.

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION

CERTIFICATE OF SERVICE

I, Joyce M. Almond, hereby certify that I have, on this 5th day of September, 2002, placed in the United States mail, first-class postage pre-paid, a copy of the foregoing REPLY COMMENTS OF SMITH BAGLEY, INC. filed today to the following:

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