

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Petition for Rulemaking to Define)	RM No. 10522
“Captured” and “New” Subscriber Lines)	
for Purposes of Receiving Universal)	
Service Support Pursuant to 47 C.F.R. §)	
54.307 et seq.)	

REPLY COMMENTS OF SMITH BAGLEY, INC.

Smith Bagley, Inc. (“SBI”), by counsel, hereby files these reply comments in the above-captioned proceeding.

I. Introduction

Federal high-cost support has made it possible for SBI to make substantial infrastructure investments in extremely high-cost areas of Arizona and New Mexico that would otherwise never have been made. In over one-third of its FCC-licensed area, SBI remains the only carrier actually providing wireless services to customers, despite there being at least five other licensees. The remote desert regions of Northeast Arizona, Northwest New Mexico and southern Utah will not support wireline or wireless telecommunications service in the absence of high-cost support.

Yet, there is no shortage of demand for telephone service. SBI now serves over 22,500 Native Americans living on reservation lands, most of whom have never had a telephone. It hopes in the near future to extend its service to those areas near the reservations, where sparsely populated topography and very poor demographics leave citizens in virtually the same predicament as those living on reservation lands. Low-income and remote locations combine not only to limit economic opportunity, but in many cases present serious health and safety

disadvantages unknown in most parts of this country.

At this stage, SBI has invested significantly more than it has received from the high-cost program, and it intends to continue this trend into the foreseeable future. If NTCA's proposal is adopted, SBI's ability to meet the commitment it has made to the FCC and to Native Americans it serves will be extinguished. Without high-cost funding, SBI cannot extend service to people who need it most. The construction program it has initiated will come to a halt and the substantial sales, marketing, training, and technical staff that it has hired to support the VisionOne™ program will be cut back. The addition of channel capacity so that SBI may increase the number of minutes on its VisionOne™ program will be frozen.

Over the past several years, the Commission has made a significant bipartisan effort to reach out to Native American communities. Only last month, Chairman Powell visited Native American reservations which have benefitted from initiatives such as SBI's. He has spoken on a number of occasions of the need to improve inter-governmental relations with Native American tribes and provide opportunities for Native Americans to obtain improved telecommunications services. Accordingly, SBI believes that if the FCC seriously considers NTCA's proposal (which it should not) there should be no change in the way that high-cost support is paid to carriers serving Native American lands or near-reservation lands, as that term is now defined, or may be defined in the future.

II. ILECs Who Have Failed to Obstruct the Process of Obtaining ETC Status Have Now Turned Their Sights on the FCC

Over the past several years, ILECs have attempted with great vigor to prevent competitive carriers from obtaining ETC status. The New Mexico Exchange Carriers Group ("NMECG") used all of its power to prevent SBI from serving the Zuni and Ramah reservations in New

Mexico, despite the fact that only about half of the households on those reservations had telephone service.

Predictably, NMECG failed to present a witness at SBI's hearing. The prospect of having to describe the company's efforts and expenditures to improve service on Native American lands was not inviting. Yet, by working the process, NMECG successfully delayed the onset of competitive service to Zuni and Ramah for several years. Despite the fact that its members had a roughly 18-month head start in using the enhanced Lifeline benefits to increase telephone penetration on these lands, SBI is not aware of NMECG's members having made any effort to reach out to these communities. As far as SBI can tell, it is alone in educating Zuni and Ramah people as to the availability of Lifeline and Linkup service.

Having lost in case after case across the country, ILECs have now decided to take their case to the FCC, and even to Congress. The first step in this strategy is portraying the FCC as improperly paying high-cost support to competitive ETCs. NTCA and its members have no desire to see competitors compete on a level playing field for support dollars, which will force them to become more efficient and improve service quality to their customers. The NTCA petition is the first shot in an effort to go back to the days when only a monopoly service provider received support.

The Commission should resist NTCA's political strategy and affirm that it is indeed doing exactly what Congress asked it to do in the 1996 Act. Opening up high-cost support to competitors will have far-reaching beneficial effects on rural America. The Commission should also ignore threats from ILECs that rural customers will lose landline telephone service. On Native American reservations that SBI serves, it is not clear that the ILEC discontinuing service would be a bad thing — given the current situation. In some areas wireline plant is so antiquated

that service is interrupted when telephone wires get wet. Fortunately, it is a desert and it does not rain regularly.

III. The Rule is Clear and its Application Has Been Consistently and Correctly Applied

NTCA has taken the position that wireless carriers have avoided addressing the definition of “captured” or “new” lines. Far from it. Several wireless commenters, including SBI, have stated clearly that the law contains no ambiguity. The FCC has stated clearly that “a [CETC] shall receive universal service support to the extent that it captures subscribers formerly served by carriers receiving support . . . or adds new customers in the ILEC’s study area.”¹ NTCA’s absurd position on this can be answered up with a question: When a person “subscribes” to a CETC’s service, takes a phone number, and pays for service, at what point is that person not a new “subscriber”? Some of NTCA’s own members do not agree with NTCA’s position on this issue.²

NTCA has also claimed that the FCC is perfectly clear that a rural ILEC should be the only carrier to receive support for a customer, even when a CETC provides a second line to the same customer, describing such support as “duplicative.” Of course, if an ILEC sells the customer a second, third or fourth line, each receives the same “duplicative” support under the current rule. The “clarity” that NTCA seeks from the Commission will provide certainty that no other carrier will ever offer facilities-based competition in rural areas on a level playing field.

¹ *Federal-State Joint Board on Universal Service, Report and Order*, 12 FCC Rcd 8776, 8944 (1997) (“*First Report and Order*”).

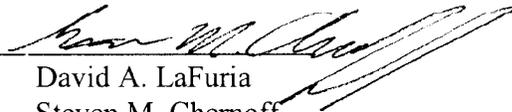
² *See, e.g.*, CenturyTel Comments at pp. 5-6 (filed Sept. 23, 2002); Rural Telecommunications Group (“RTG”) Comments at pp. 2-3 (filed Sept. 23, 2002).

IV. Conclusion

The Commission should reject NTCA's patently anticompetitive petition and resist its efforts to bring Congressional pressure to bear. Adoption of NTCA's strained reading of an abundantly clear rule will harm Native American subscribers that SBI has only begun to serve over the past year. The high-cost program has helped extend telephone service to thousands of Native Americans, and no adjustment to the program should shortchange those most in need of basic universal service.

Respectfully submitted,

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October 7, 2002

CERTIFICATE OF SERVICE

I, Jennifer Colman, a secretary in the law office of Lukas, Nace, Gutierrez & Sachs, hereby certify that I have, on this 7th day of October, 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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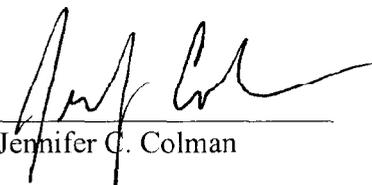
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