BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

In the matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
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	)	

To: The Federal-State Joint Board

<u>COMMENTS OF SMITH BAGLEY, INC.</u>

Respectfully submitted,

SMITH BAGLEY, INC.

By: ______________________

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Summary

Smith Bagley, Inc. ("SBI"), believes strongly that the Commission's decision to permit competitive ETCs to serve Native American lands has proven to be an enormous success. The availability of per-line high-cost support provides important incentives for competitors to extend service into areas in which it would otherwise not be economically feasible to construct and maintain facilities. Enhanced Lifeline and Link-Up benefits, targeted to reservation lands, represent an efficient and valuable use of government resources, made available on a non-discriminatory basis to all carriers that qualify for support. Nowhere is this more evident than in tribal areas of Arizona and New Mexico, where SBI has brought affordable wireless service to severely impoverished communities where traditional telephone service has not taken hold.

Sufficient high-cost support, as well as the continued availability of enhanced Lifeline and Link-Up discounts, are critical to the Commission's continued success in bringing telecommunications service to consumers on Native American lands. Thus, in this proceeding it is essential that tribal lands be considered separate from other rural areas throughout the country. For example, whatever policy changes are taken with respect to rural areas in general, it is crucial that portable, per-line support continue to be made available to competitors serving tribal lands, and that billing addresses continue to be used for determining mobile subscriber locations. Smith Bagley also urges the Joint Board to recommend the continued policy of paying support on all lines, not just "primary" lines, and to consider adopting guidelines to help ensure that states conduct competitively neutral ETC designation proceedings.

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Smith Bagley, Inc. ("SBI"), by counsel and pursuant to the Commission's Public Notice, FCC 03J-1 (released February 7, 2003) hereby provides the following comments in the above-captioned proceeding. SBI's comments focus on how the Commission's commitment to Native Americans over the past several years has had significant positive effects on persons living on reservation lands, and how access to universal service funding by wireless carriers has improved access to telephone service in these areas.

I. INTRODUCTION TO SBI's SERVICE.

Over 13 years ago, SBI acquired a cellular license to operate the Arizona-3 Rural Service Area ("RSA"). Since then it has acquired cellular spectrum in the New Mexico-1 RSA, the New Mexico-3 RSA, and PCS spectrum in the Flagstaff, AZ BTA and the Farmington, NM BTA, which includes lands in Utah and Colorado. There are five Native American reservations within SBI's service area: Navajo Nation, Hopi, White Mountain Apache, Pueblo of Zuni, and the Ramah Navajo.

There are no metropolitan areas within SBI's service area, and there are no towns over 8,000 in population, with but one exception. SBI's service area comprises approximately 21,000 square miles of Native American reservation land; by far the largest in the U.S. SBI is licensed to serve approximately 200,000 people living on reservation lands. The Navajo Nation alone stretches 26,897 square miles across Arizona, New Mexico and southern Utah, with approximately 47,603 households scattered throughout and a total population of approximately 120,000.

In 1999, the Benton Foundation estimated that roughly 27% of the households on Navajo reservation lands had telephone service. On the other reservation lands, penetration rates are similarly dismal. In many areas, the average per capita income is approximately $5,000. Nowhere else in the United States do people suffer such poverty and its obvious effects. The state of telephone infrastructure on reservation lands served by SBI has often been described as Third World. In many areas, landline telephone service is unavailable and in many others it is unreliable and poorly maintained.[1]

Long before it was eligible to apply for ETC status, SBI attempted to reach out to Native American lands by offering a "lifeline access" service offering priced at approximately $10.00 per month. The offering was largely unsuccessful and SBI's unscientific customer research indicated that many people who suffer extreme poverty simply could not afford $10.00 per month, and many others dropped off the landline telephone network (all of which are ETCs) due to excessive toll charges, likely the result of small local calling areas.

Following Congress's decision to amend the Communications Act in 1996 to provide for competitive ETCs, SBI applied for ETC status in Arizona and New Mexico. Following lengthy proceedings, SBI received ETC status on Native American lands in Arizona in May 2001 and New Mexico in February 2002. In July 2002, the Arizona Corporations Commission ("ACC") extended SBI's ETC status on Navajo lands westward into the Flagstaff BTA. In April 2003, the

[1] In many areas, landline plant is so antiquated that telephone service fails when the wires get wet.

ACC extended SBI's ETC status to non-reservation lands located adjacent to the Navajo, Hopi, and White Mountain Apache reservations. Currently, SBI has an application pending with the New Mexico Public Regulatory Commission to extend its ETC status on Navajo lands eastward. In addition, SBI has an application pending with the FCC to be an ETC on Navajo lands in southern Utah, which has been pending for over 10 months.[2]

II. THE COMMISSION'S ENHANCED LIFELINE AND LINK-UP PROGRAMS FOR NATIVE AMERICANS HAVE BEEN AN UNQUALIFIED SUCCESS IN ARIZONA AND NEW MEXICO.

In 2000, the Commission enhanced the benefits available under its Lifeline and Link-Up programs.[3] Specifically, the Commission made available a new "Tier 4" Lifeline subsidy of up to $25.00, and an additional $70.00 of Link-Up support for qualifying persons residing on Native American lands. All ETCs are eligible to offer these benefits to persons living on reservation lands. In adopting those changes, the Commission recognized that its commitment to extend telephone service to all Americans could only be met if it employed tools which would provide private companies with an incentive to construct facilities and reach out to those areas and people most in need.[4]

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2 *See* Smith Bagley, Inc. Petition for Designation as an Eligible Telecommunications Carrier for the Navajo Reservation in Utah (filed May 24, 2002); Public Notice, DA 02-1466 (WCB rel. June 21, 2002).

3 *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, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking,* 15 FCC Rcd 12208, 12230 (2000) ("*Tribal Order*").

4 *See id.* at 12235-36 ("We note that, unlike in urban areas where there may be a greater concentration of both residential and business customers, carriers may need additional incentives to serve tribal lands that, due to their extreme geographic remoteness, are sparsely populated and have few businesses. In addition, given that the financial resources available to many tribal communities may be insufficient to support the development of telecommunications infrastructure, we anticipate that the enhanced Lifeline and expanded Link Up support will encourage such development by carriers. In particular, the additional support may enhance the ability of eligible telecommunications carriers to attract financing to support facilities construction in unserved tribal areas.") (footnote omitted).

In response to the Commission's *Tribal Order*, SBI decided to offer a new Lifeline service, branded VisionOne™, to persons residing on Native American lands, for $1.00 per month. The offering includes a local calling area throughout SBI's entire network, with 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. SBI also determined that because Native American lands in its service area are extremely rural (fewer than 5 persons per square mile), traditional marketing methods typically employed by telephone companies would be ineffective. Many potential subscribers have little access to transportation, speak little English, and would likely never travel to visit a storefront operation to purchase telephone service. Thus, SBI initiated an outreach effort to bring the store to the people.

SBI operates a mobile sales office that moves throughout reservation lands, visiting many small towns, often a hundred or more miles from the nearest sales office. SBI uses radio, newspaper, and local media to advertise activation events, which are held over a one or two-day period at a local chapter house, community center or school. The company sets up a complete storefront operation so that customers can learn about telephone service, including how to use a wireless phone, and sign up for telephone service. SBI employs persons fluent in the native language to assist customers who do not speak English.

Since June 2001, when SBI first rolled out VisionOne™, over 28,000 persons have signed up. SBI estimates, based on customer data, that roughly 76%, or 21,000, did not have telephone service of any kind at the time they signed up for VisionOne™.[5] SBI does not know how many new Lifeline subscribers its wireline competitors have signed up since Tier 4 benefits

[5] Of those new SBI subscribers who reported having prior access to telephone service, roughly 74% did not have a telephone in their home and only had access to a "message telephone" — a number of a friend, relative or employer with whom a caller may leave a message for the called party.

went into effect in October 2000. However, there is absolutely no doubt but that demand for telephone service on reservation lands is robust and that SBI's service offering has been well received.

By providing Tier 4 support, the Commission has closed the affordability gap for many people living at a subsistence level and has had dramatic effects on reservation lands. Already, there have been several published reports of people using SBI's service to immediately call for 911 assistance. Without telephone service, these people often had to walk a mile or more to reach the nearest telephone. SBI has also instituted a list of community service, health, educational, and safety organizations which can be called toll and airtime free. SBI's internal reports indicate that calls to these organizations have been substantial and consistently rising.

Enhanced Lifeline and Link-Up benefits have already resulted in significant telephone subscribership gains in its service area. By expanding these important benefits, the Commission has substantially improved the quality of life in many remote areas on reservation lands. The continued availability of these enhanced programs will be critical to the achievement of further progress in this area.

III. SUFFICIENCY OF HIGH-COST SUPPORT TO COMPETITIVE ETCs IS CRITICAL TO THE COMMISSION'S CONTINUED SUCCESS ON NATIVE AMERICAN LANDS.

SBI's ability to extend service to remote areas and meet the demand created by the Commission's enhanced Lifeline and Link-Up benefits is predicated upon the receipt of sufficient high-cost support. Without high-cost support, SBI would be completely unable to construct the facilities needed to meet customer demand created by the enhanced benefits.

For example, in 2001, SBI's network was 100% analog and its coverage and channel capabilities were sufficient to maintain its existing customer base. In less than two years, SBI's customer base and minutes of use ("MOU") have increased dramatically. In addition, SBI's customers are now spread across a much larger area, as its outreach efforts have touched people living in previously unserved or underserved areas. Without high-cost support, there would be no means for SBI to extend service to these people.

In just 22 months, SBI has responded to the dramatic increase in customer demand with network construction designed to meet its customers' needs for basic telephone service, and to lay the foundation for the future. To meet customer demand, SBI has taken steps to substantially increase its channel capacity. SBI added 168 channels with new cell sites completed in 2002, and approximately 500 channels will be added upon the completion of new cell sites that are currently in the construction or planning stages. Moreover, SBI has added well over 150 channels by sectorizing (*i.e.*, changing from Omni to tri-sector configuration) several of its existing cell sites.

As infrastructure improves, SBI will be able to offer, within the next few months, an increased level of local usage included in its VisionOne™ rate plan. Thus, subscribers will continue to have the ability to avoid onerous intraLATA toll charges, and they will receive additional local usage for the same price. Without high-cost support, SBI would have never been able to construct sufficient network facilities to provide high-quality service in most of these remote areas. With support, SBI's network is rapidly expanding to meet customer needs and provide them with the kinds of choices envisioned by Congress when it enacted the universal service provisions of the 1996 Telecommunications Act.[6]

Because its PCS licenses are digital-only, SBI has ordered and installed a new switch that is capable of handling both analog and digital traffic on its cellular and PCS networks. This new

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[6] As SBI's infrastructure and product offerings improve, incumbent LECs will for the first time be required to improve customer service, service quality, and consider expanding their local calling areas.

switch can provide customers with advanced features and in the future will be capable of handling high-speed data. This is extremely important for two reasons. First, SBI very much wants to provide reservation lands with the benefits of digital service, including the longer battery life that it affords. Many of SBI's customers rely on its service as their *primary* telephone. Thus battery life, call quality, and advanced services are all important features that SBI will be able to deliver.

Second, digital service is capable of delivering higher data throughputs, and SBI expects to deliver broadband data service through its next generation of equipment. The demand for Internet access is significant on reservation lands, and in many areas it does not appear that high-speed access will be available through the landline networks for the foreseeable future. Meeting demand for basic telephone service in areas with less than 40% telephone penetration is a large task. Nevertheless, it is SBI's intent to roll out wireless broadband data access over the same facilities used to provide voice services at the earliest possible date. There is no question but that such an undertaking on Native American lands will only be possible with high-cost support.[7]

In sum, on reservation lands served by SBI, telecommunications infrastructure is blossoming and more tribal residents are signing up for its service every month. Telephone subscribership is increasing and telephone usage among people with service is increasing as well. The benefits of improved access to 911 service and important health, education and employment

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[7] Some ILECs have complained in state ETC designation proceedings that provision of broadband data is not an appropriate use of high-cost support funds, yet ILECs routinely provide Digital Subscriber Line service over the same facilities used to provide voice services. SBI seeks to do exactly the same thing. *See* 47 U.S.C. § 254(b)(3) ("Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services *and advanced telecommunications and information services*, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.") (emphasis added).

services have been dramatic.[8] In short, one can imagine few government programs that have had a more direct and positive effect on people and areas that are most in need.

IV. THE COMMISSION MUST CONSIDER TRIBAL LANDS SEPARATE FROM OTHER RURAL AREAS THROUGHOUT THE COUNTRY.

The data above leads to an obvious conclusion: Native American lands are different than typical rural areas in this country in several critical aspects:

- Many, if not most, reservation lands have substandard telecommunications facilities compared to rural areas of similar population and density characteristics.
- Demographically, Native Americans living on reservations lands are at the bottom; and
- Government programs have generally failed to break the cycle of poverty and provide developmental opportunities for residents of tribal lands.

Three years ago, the FCC redoubled its efforts to reach out to tribal lands and provide incentives for companies to invest on tribal lands.[9] As shown above, the Commission's provision of high-cost support to SBI has resulted in nearly 30,000 people living on reservation lands in Arizona and New Mexico obtaining telephone service, most of which have never had a telephone. By combining ETC status with Tier 4 Lifeline support, the FCC has substantially improved the lives of thousands of people and significantly advanced universal service on tribal lands. Soon, advanced features will be capable of "piggy backing" onto voice network, further advancing telecommunications facilities on reservation lands.

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8 Lost in the debate about wireless E-911 is the fact that 911 must come first. In remote areas such as those served by SBI, having basic facilities needed to ensure that 911 calls are answered by the appropriate PSAP is of paramount concern to citizens who have no service.

9 *See Tribal Order, supra; Extending Wireless Telecommunications Services to Tribal Lands, WT Docket No. 99-266, Report and Order and Further Notice of Proposed Rulemaking,* 15 FCC Rcd 11794 (2000)

These dramatic advances, and the promise of future advances, are only possible as a result of the FCC's commitment to drive infrastructure development and provide adequate benefits to Americans most in need. Not long ago, there was skepticism that the Commission's efforts would produce results – others questioned whether there was a need. Those questions have been answered and the public in SBI's ETC service area is far better off as a result of the Commission's decisions.

In reviewing the Commission's Public Notice, it is clear that dozens of important issues are on the table. SBI agrees generally with positions taken by wireless commenters on many, if not most, of the issues. Some of the more important ones are addressed below.

As an overarching matter, SBI believes it to be of critical public interest importance to consider the needs of Native Americans living on reservation lands separate from the rest of rural America. Any decision to change the current system must be analyzed separately for its effect on Native Americans. No decision should diminish or compromise the commitments made by the FCC over the past four years.

V. THE COMMISSION'S CURRENT METHODOLOGY FOR SUPPORTING COMPETITIVE ETCS PROVIDES THE CORRECT INCENTIVES.

In response to the Joint Board's query regarding the methodology for support to competitive ETCs,[10] SBI believes that portable high-cost support promotes efficient competitive entry on Native American lands. The Commission's current high-cost support mechanism provides exactly the right incentive for SBI to extend service into areas that would otherwise not be economically feasible to construct and maintain. SBI believes that its high-cost support is properly based on the costs of the affected ILECs because the latter represents a reasonable substitute for requiring onerous cost demonstrations by competitors that should be incented to

[10] *See* Public Notice at ¶ 15.

invest in rural infrastructure through less regulation. Giving competitors access to the same level of high-cost support that enabled ILECs to build their networks is the best guarantor efficient competitive entry on Native American lands. SBI receives high-cost support only when it gets a subscriber and loses support when a subscriber terminates service. Thus, SBI has every incentive to maintain high customer satisfaction levels, which require appropriate call transmission quality and customer service.

Some ILECs have complained that it is unfair for a CETC to be paid "on the incumbent's costs," claiming that a CETC's costs are lower and therefore uneconomic support is being provided under the current system. SBI believes this to be a logically flawed analysis which should be carefully and thoroughly considered before changes are recommended.

In SBI's case – and indeed on most reservation lands, the CETC is not nearly as far along as an ILEC in constructing its network to provide high quality service. Thus, the initial outlays needed to fund network construction are much greater, meaning that CETCs may not be obtaining sufficient support to enable them to cover those costs when they begin to carry out their ETC obligations. Indeed, SBI has to date spent significantly more than it has received in high-cost funds to accelerate construction of its network to meet customer demand. Moreover, it is not by any means certain that the costs of providing wireless infrastructure in all areas is less than that of wireline, if the standard is have high-quality service throughout a particular area.

SBI believes that it would be a mistake to underestimate the wisdom of the FCC's current "per line" methodology for high cost support. To cite a hypothetical example, if one wireless carrier has 10 cell sites that are deployed over a wide area that encompasses densely and sparely populated areas, and a second only has three, focused in densely populated areas, most would argue that the company with 10 cell sites that include sparse areas is more deserving of high-cost support. Under the current system, that is exactly what happens. If both companies are ETCs, the one with 10 cell sites would garner much more support because presumably the 10-cell site system serves more customers and reaches into higher-cost areas that garner more support. If support were properly disaggregated, the three-cell site system would receive little or no support because its sites are most likely located in the most profitable low-cost areas. If the company with three cell sites believes it makes economic sense to expand its system into remote areas to capture customers and high-cost support in competition with the CETC and the ILEC, it must first build and then attract customers in order to gain support.

One must presume that no rational businessman is going to construct cell sites in an area that will not provide a return on investment. Accordingly, if a remote area will only support two competitors, it is unlikely that a company is going to build "duplicate networks" to chase after a few customers in competition with established ETCs. This is especially true on Native American lands, where costs are very high, the population is often spread out, and the potential return on investment is many years out.

Now let us examine what is likely to occur if CETCs are paid on their own costs. Under this scenario, any method for paying high-cost support based on the wireless carrier's network costs would ensure that the competitor could earn a sufficient return on investment in any locale, irrespective of whether a business case can be made for competitive entry. Thus, it is possible, if not likely, that inefficient investments would be made based on the ability to obtain high-cost support, and not on prudent, customer-driven network development strategy.. In SBI's view, this is exactly the wrong result.

If wireless carriers receive support based on a wireless cost model, the relative youth of wireless networks may lead to false incentives, as carriers sweep into rural areas on the promise of high-cost funding sustaining bad business decisions.[11] On the other hand, if support is portable and is dependent upon having a customer, then all carriers become customer-centric in terms of network construction and services, which is exactly the appropriate incentive to place upon service providers. Carriers will build as many facilities as a market will bear and no more. Truly portable support serves the public by enabling competitors to drive innovation and quality of service, rather than having it imposed by regulators.

Developing a separate cost model for wireless CETCs would introduce enormous friction into the system for a carrier such as SBI, who is currently using all of its high-cost support on network improvements. Any significant funds needed to implement a cost model will be funds that are not spent on network improvements, and consumers will lose out. As shown above, the current system provides appropriate incentives and SBI believes there to be ample reason to retain that methodology, at least for Native American lands. SBI believes that if the goal is reducing the size of the fund, while at the same time retaining sufficient levels of support to preserve and advance universal service, the answer is to examine how ILECs receive support and strongly consider migration to a forward-looking cost methodology, which will yield significant savings.

SBI understands that the current methodology for supporting competitive carriers is likely to drive down prices and costs in rural areas, and if forward-looking and fully portable

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[11] This concern has been raised by Commissioner Martin in separate statements to orders in the Universal Service docket. *See, e.g., Western Wireless Corporation, Order on Reconsideration,* CC Docket No. 96-45, FCC 01-311 (rel. Oct. 19, 2001), Statement of Commissioner Kevin J. Martin, Approving in Part and Concurring in Part ("... I have concerns with the Commission's policy of using universal service support as a means of creating 'competition in high cost areas.") While ILECs habitually use Commissioner Martin's statement as support for the argument that rural ILECs are "natural monopolies", SBI believes that the concerns raised in that statement are much more narrowly focused, and are fully resolved by the incentives provided under the Commission's current per-line methodology.

support is implemented, the end result may be that some rural ILECs relinquish their ETC status. This would only happen as a result of consumer choices favoring a different technology. The law was never intended to shield incumbents from competition. Moreover, many rural ILECs already own wireless licenses that were either set aside for them 15 years ago by the FCC or purchased at auction. Others seeking to compete with wireless can easily get spectrum at prices that have never been lower. SBI fully expects rural ILECs to use wireless licenses to advance both universal service and competition. Thus, the idea that rural carriers are at some kind of disadvantage, especially on reservation lands where they not only have a monopoly, but apparently are not able to increase telephone penetration above 30%, is simply not credible.

VI. THE BILLING ADDRESS REQUIREMENT IS THE BEST SOLUTION FOR NATIVE AMERICAN LANDS.

In response to the Public Notice,[12] SBI believes that on reservation lands, use of the billing address as the consumer's location should be retained. The use of billing addresses is at least as accurate as alternative methodologies, and it ensures that available high-cost funds go to services and facilities – not to program administration. As discussed above, most Lifeline-eligible customers on reservation lands have little income and do not have checking or savings accounts, credit cards, or other commercial relationships that people across the country take for granted. Thus, when a Lifeline-eligible Native American customer signs up, SBI determines where the customer lives, and uses that address as the billing address for purposes of calculating high-cost support. When the subscription term ends, SBI again verifies both Lifeline eligibility and the residence address, so that high-cost support forms can be accurately completed. For postpaid subscribers, who have a listed residence and maintain typical commercial banking relationships, SBI uses the billing address.

SBI does not believe that changing to a residence address or other requirement will improve the ability to target subscribers within a particular ILEC cost zone. Currently, SBI uses software that permits a competitive ETC to "geocode" subscribers within a particular area with upwards of 98% accuracy. The remaining two percent of customer locations can be processed manually, effective bringing the level of accuracy to 100%..

The Joint Board is justified in asking whether competitors have sufficient information about the geographic scope of incumbent disaggregation zones.[13] SBI believes they do not. What will improve the ability to target subscribers in higher-cost areas is an FCC requirement that ILECs who disaggregate support submit accurate and legible cost zone maps, in a consistent electronic format, so that competitive ETCs are able to easily determine the appropriate cost zones for their customers.

SBI sees little opportunity for abuse or arbitrage, for the simple reason that high-cost support must be used to construct facilities in high-cost areas.[14] Moreover, consumers on SBI's network who roam outside of the service area or place long distance calls must pay extra for those services therefore, out-of-area usage is not subsidized by the high-cost system. The potential for abuse is minimized by the fact that carrier line counts are publicly available and subject to USAC audits. Since carriers are responsible for reporting, accountability is not left with individual subscribers. Perhaps most important, consumers have no incentive to provide an inaccurate address for purposes of determining high-cost support. In SBI's case, consumers are completely unaware of high-cost support mechanisms and carriers generally have far too much at stake to risk expulsion from the program or license revocation.

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12 *See* Public Notice at ¶ 25.

13 *Id.* at ¶ 35.

14 47 U.S.C. § 254(e) of the Act requires all carriers receiving high-cost support to "use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended."

Finally, SBI does not believe there to be an efficient alternative. There is no possibility of determining with precision the ongoing location of those few people who live in such abject poverty that they do not have a stable residence or billing address. Any attempt to continually monitor their movements will undoubtedly cost far more than any small inaccuracies resulting from use of a billing address.

VII. OTHER QUESTIONS RAISED BY THE JOINT BOARD.

A. Promotion of Competitive Entry.

SBI believes there is a high correlation between availability of high-cost support and competitive entry on reservation lands. In its particular case, SBI tried for nearly a decade to break into the reservation market without success, despite offering rate plans at or below $10.00. It has only been with high-cost support and the availability of Tier 4 Lifeline and enhanced Link-Up benefits that SBI has succeeded in constructing high quality facilities and delivering service at price points that eligible customers will take.

Other than SBI, SBI is unaware of any other competitive local exchange service for the vast majority of consumers living on reservation lands in Arizona and New Mexico. Other wireless companies have focused construction almost exclusively on highways and towns, leaving rural areas unserved. Consumers who have been ignored for decades are now seeing the benefits of competitive entry and the advancement of universal service as a result of SBI's ability to improve its network with high-cost support.

The reservation lands served by SBI have among the lowest telephone penetration levels in the United States. As a result, the number of consumers who did not have telephone service at the time they signed up for service with SBI has been abnormally high. Based on consumer intake surveys, SBI believes that upwards of 75% of those on the company's VisionOne™

Lifeline plan did not have telephone service at the time of sign-up. SBI believes the vast majority of those customers use their wireless phone as their primary telephone service and do not have wireline service in their homes. Thus, on underserved reservation lands, the Commission's high-cost mechanism and Tier 4 support are clearly having the intended effect.

B. Growth of the High-Cost Component of the USF.

SBI agrees with the Joint Board that growth in the high-cost fund must be examined.[15] It is clear, however, that any funds being expended on reservation lands represent commitments the government properly made, and must keep, in order to accomplish the goals of providing every American with basic telephone service. The high-cost fund should expand to the extent necessary to ensure basic telephone service is available to all. In addition, the fund should be used to drive competitive infrastructure into every corner of the country because even in remote, unserved, and underserved reservation lands, which are sparsely populated and have poor demographics, there are compelling reasons to provide consumers with choices in communications services. This is especially true in desert lands, often miles from the nearest town or landline communication point, where mobility is so vital to public health and safety. Growth in the high-cost fund that results from fulfilling the government's commitments to Native American lands is minimal and entirely appropriate.

C. Support to "Primary" Line.

SBI believes all lines must be supported in order to ensure that sufficient support is available to consumers. A new requirement to only support one primary line would have to take into account all network costs incurred by a carrier – which presumably would increase the per-line support amounts and not have the intended effect of lowering overall support levels. Similarly, in the wireless world, if five separate consumers at a residence have a wireless phone, they each consume and thus require network facilities that provide appropriate call completion levels and quality service. Thus, the costs generated by each line are appropriately supported. As stated above, fully portable support is likely to be a key to managing growth in the high-cost fund, because if a carrier does not lose any support when customers leave, it has no incentive to become more efficient and competitive.

Most importantly, based on SBI's experience, any proposal that would require customers to choose their primary line for purposes of high-cost support is completely unworkable in high-cost reservation lands. Consumers generally have no knowledge of the nature and purpose of the federal high-cost support mechanism, much less why they should select a "primary" carrier for support they do not receive. Moreover, any rule requiring customers to select their "primary" line would be administratively unworkable on the reservation lands SBI serves, because there is no way to send notices to many consumers, no way to get existing customers to come to an office to sign a form, and no way to double check on the certifications, as most they live many miles (sometimes hundreds of miles) from the nearest store.

D. State ETC Designations.

SBI believes that any guidance given to states must be pro-competitive, simply because ILECs have been stretching the public interest test to its breaking point. It is today far more difficult to obtain ETC status than it is to obtain CLEC status – indeed, it may be easier to lift the rural exemption than to obtain ETC status. Moreover, ILEC opposition is only bound to intensify. As of this date ILECs only have a tertiary interest in that they lose no support when a competitive carrier is designated. If support is to become truly portable – such that an ILEC loses the support associated with a customer who switches to a competitive ETC's service – then ILECs will surely raise the specter of "going out of business" and the need for "rate

[15] *See* Public Notice at ¶¶ 10-11.

rebalancing", which are thinly veiled threats to seek rate increases in rural areas so as to place blame on regulators. Thus, the Commission should continue to encourage competitive ETCs to enter markets. For example, because the Commission is responsible for managing fund growth at the federal level, a sensible set of guidelines might provide that states exclude the issue of "impacts on the federal fund" from their public interest analysis.

SBI does not generally oppose the imposition of reasonable service quality standards on wireless carriers.[16] However, such standards must not be imposed as a condition of obtaining ETC status. The simple fact is that, while service quality standards have great utility in a monopoly environment, in a competitive environment only a few basic standards, such as call completion rates, need be applied. Today, SBI is largely in compliance with applicable wireline service quality standards simply because the discipline imposed by a competitive market requires such performance. Competitive carriers will deliver high-quality service to consumers in order to get customers and, with them, high-cost support. Allowing the market to operate in this manner is the best way to ensure high-quality service and to prevent competitors from making uneconomic investments in rural areas.

E. Disaggregation of Support.

SBI believes that disaggregation of support has not occurred to the extent intended in the *Fourteenth Report and Order*.[17] Indeed, appropriate disaggregation is a key to minimizing growth in the fund and ensuring that support is only paid in truly high-cost areas. If disaggregation is done properly, it should not matter where a competitor enters, because it will be unlikely that support will be distributed in an uneconomic manner. If a carrier only enters

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16 *See* Public Notice at ¶ 34.

17 See *See Federal-State Joint Board on Universal Service, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange*

low-cost areas, it will receive little or no support. Likewise, if a carrier only enters a high-cost area, it will receive support in that area. Thus, SBI believes the Commission should require disaggregation of support to the wire-center level by default when a competitor is designated as an ETC. If the ILEC wishes to propose a plan of disaggregation below the wire-center level, it should be permitted to do so. What should *not* happen is the filing of Path 1 disaggregation filings by ILECs as a device to forestall competition.

F. Removal of Other Barriers to Entry.

Finally, if ILECs are to credibly argue that there will be duplicative network construction and potentially stranded investment, then they must agree to drop the rural exemption contained in Section 251(c) of the Act. Accessing rural ILEC networks without lifting the exemption is prohibitively expensive. In particular, their tariffed rates for T-1 facilities and transport and termination of traffic are incredibly high, and many refuse to load numbers on their switches unless a competitive carrier agrees to such terms. In order to jump start competition, their networks must be opened, one way or another.

V. CONCLUSION.

The Commission's decision to permit competitive ETCs to serve Native American lands where traditional telephone service has failed to take hold has proven to be an enormous success. Enhanced Lifeline and Link-Up benefits, targeted to reservation lands, represent an efficient and valuable use of government resources, made available on a non-discriminatory basis to all carriers that qualify for support. Incentives to extend services and infrastructure have caused SBI to promote telephone subscribership in many areas that would not otherwise support telephone service. Enhanced Lifeline and Link-Up benefits have for the first time enabled many people

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Carriers, Fourteenth Report and Order, twenty-second Order on Reconsideration, and Further Notice of Proposed Rulemaking, 16 FCC Rcd 11244 (2001) ("*Fourteenth Report and Order*").

living in these areas who cannot afford telephone service to get connected. The Commission should continue monitoring the beneficial impact that competitive ETCs are having on reservation lands, especially those which suffer from low levels of telephone penetration.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Janelle Wood, a secretary in the law office of Lukas, Nace, Gutierrez & Sachs, hereby certify that I have, on this 5th day of May, 2003, placed in the United States mail, first-class postage pre-paid, a copy of the foregoing Comments of Smith Bagley, Inc., filed today to the following:

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