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October 23, 2003

**VIA ELECTRONIC FILING**

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

**Re: Smith Bagley, Inc.  
Near Reservation Lands  
CC Docket No. 96-45**

Dear Madam Secretary:

In accordance with Section 1.1206 of the Commission's rules, 47 C.F.R. Section 1.1206, we hereby provide you with notice of an oral *ex parte* presentation in connection with the above-captioned proceeding. On October 20, 2003, Richard Watkins, Brian Gilbert, M. Teresa Hopkins, and undersigned counsel met with Commissioner Copps and Jessica Rosenworcel.

SBI urged the Commission to move forward on its pending rulemaking in the above-captioned proceeding to extend Tier 4 Lifeline benefits to near reservation lands. The company discussed its "50-50-50" proposal for determining eligibility. The company also requested that the Eastern Agency of the Navajo Reservation be specifically recognized as eligible for Tier 4 benefits at the earliest possible date because that Agency is legally a part of the Navajo Reservation. To SBI's knowledge, all federal and tribal benefits are available to people living in the Eastern Agency, except for Tier 4 Lifeline and Link-up assistance.

In our presentation and notes, we incorrectly stated that the BIA has recognized the Eastern Agency as reservation lands. In fact, the Navajo Nation has recognized the Eastern Agency as tribal land and the area is within the definition of "Indian Country" as that term is defined in 18 U.S.C. Section 1511. For the record, we have enclosed copies of materials provided at the meeting, as well as a corrected set of those materials.

Finally, the company urged prompt action on SBI's pending petition for ETC status in Utah so as to bring improved wireless service to people living on the Navajo Reservation in Utah at the earliest possible date.

Smith Bagley, Inc.

Near Reservation Lands  
CC Docket No. 96-45

Presentation to FCC

October 20-21, 2003

## Introduction to Company

1. Cellular licensee in AZ since 1989 and in NM since 1997.
2. PCS licensee in AZ, NM, UT, and CO. Acquired PCS spectrum in areas surrounding existing cellular markets to extend coverage on Native American reservations.
3. Service to Navajo, Hopi, White Mountain Apache and Zuni lands.
4. Since receiving ETC status in May, 2001, over 33,000 Native American subscribers have signed up for SBI's Lifeline offering – most of whom did not have telephone service when they signed up.
5. Demand for telephone service exists on reservation lands, but existing telephone companies have made very little effort to reach out to Native American communities.
6. SBI markets its Lifeline product under the brand name VisionOne. The company holds activation events in small towns throughout its service area, because most customers cannot come to the company's store front operations. In effect, SBI brings the stores to the people.
7. Over the past 12 years, SBI has developed an excellent relationship with Native American governing bodies throughout its service area, which has been a key to its success.

## Identification of Problem to be Solved

1. In rural areas in proximity to Native American reservations, especially those in the Southwest, general population suffers from same disadvantages as those on reservation lands.
2. FCC's original plan to extend Tier 4 Lifeline support to near reservation lands is sound, however appropriate definition of eligible territory must be developed to target support to areas with persons in need.
3. Today, many otherwise eligible people in near reservation areas are denied full benefits of SBI's Lifeline service solely because of residential service address.
4. Provision of Tier 4 support to areas in proximity to reservation lands essential to bring same telephone discounts that are available to reservation lands.

## Proposal for Action on Pending Rulemaking

### **1. Recognize the Eastern Agency of the Navajo Nation as tribal land that is eligible for Tier 4 Lifeline support.**

- BIA has recognized Eastern Agency as reservation land.
- No question but that demographics and poor living conditions are present there.
- People living in Eastern Agency are unfairly denied benefits of enhanced Lifeline support that are available to consumers on the rest of Navajo Nation.
- FCC should rule that if BIA formally recognizes an area as a reservation land, then it should automatically be qualified for Tier 4 Lifeline support.
- No new mapping need be done.
- A carrier seeking Tier 4 Lifeline support in a newly designated area must certify to the Commission that it is a recognized reservation under the BIA's definition.
- Alternatively, make special provision for citizens living in Eastern Agency to obtain Tier 4 support based on special circumstances of low income and low telephone penetration.

## 2. Adopt SBI's 50-50-50 Proposal

- 50-50-50 targets support to appropriate areas.
  - Within 50 miles of reservation boundary ensures *proximity*.
  - Limit on counties with population density of no more than 50 persons ensures *rural*.
  - Persons living within a city or census designated place ("CDP") of *greater than 50,000 excluded*.
  - In AZ, Flagstaff excluded; In OR, Bend, Gresham, Hillsboro, Beaverton, Salem, Springfield and Eugene excluded; In WA, Tacoma and Lakewood excluded.
- Burden of producing maps and data to support eligibility under 50-50-50 plan should be placed on carriers. Mapping tools today permit maps to be developed to support a showing. FCC would only have to review showings, not map the country.
- Plenty of evidence that people living in near reservation areas suffer from the same demographic and income-based challenges as those on reservation lands.
- SBI estimates 20,000 households eligible under 50-50-50 plan in its area will take Tier 4 Lifeline.
- Demographically, this area is greatest in need. No other area will approach the number of Tier 4 eligibles if 50-50-50 limitation in place.

CORRECTED VERSION

Smith Bagley, Inc.

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CC Docket No. 96-45

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October 20-21, 2003

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## Identification of Problem to be Solved

1. In rural areas in proximity to Native American reservations, especially those in the Southwest, general population suffers from same disadvantages as those on reservation lands.
2. FCC's original plan to extend Tier 4 Lifeline support to near reservation lands is sound, however appropriate definition of eligible territory must be developed to target support to areas with persons in need.
3. Today, many otherwise eligible people in near reservation areas are denied full benefits of SBI's Lifeline service solely because of residential service address.
4. Provision of Tier 4 support to areas in proximity to reservation lands essential to bring same telephone discounts that are available to reservation lands.

## Proposal for Action on Pending Rulemaking

### **1. Recognize the Eastern Agency of the Navajo Nation as tribal land that is eligible for Tier 4 Lifeline support.**

- Navajo Code recognizes Eastern Agency as tribal land over which Navajo have jurisdiction.
- All federal/tribal benefits (e.g. T.A.N.F.) are available in Eastern Agency. Tier 4 Lifeline may be only program not currently available to residents in this area.
- People living in Eastern Agency are unfairly denied benefits of enhanced Lifeline support that are available to consumers on the rest of Navajo Nation.
- No new mapping need be done.
- FCC may wish to require a carrier seeking Tier 4 Lifeline support to certify to the Commission that it either is a recognized reservation under the BIA's definition or demonstrate that the area should qualify for Tier 4 support based on individual circumstances.
- Alternatively, make special provision for citizens living in Eastern Agency to obtain Tier 4 support based on specific circumstances of low income and low telephone penetration.

## 2. Adopt SBI's 50-50-50 Proposal

- 50-50-50 targets support to appropriate areas.
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- Burden of producing maps and data to support eligibility under 50-50-50 plan should be placed on carriers. Mapping tools today permit maps to be developed to support a showing. FCC would only have to review showings, not map the country.
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- Demographically, this area is greatest in need. No other area will approach the number of Tier 4 eligibles if 50-50-50 limitation in place.