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November 8, 2007

Kevin J. Martin, Chairman  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Eighth Floor  
Washington, DC 20554

Re: Federal-State Joint Board on Universal Service  
Docket 05-337

Dear Chairman Martin:

On behalf of Smith Bagley, Inc. (“SBI”) we write to discuss possible universal service reform as it relates to federally-designated tribal lands. Specifically, we understand that the Commission is considering an interim cap on federal high-cost support to competitive eligible telecommunications carriers (“CETCs”). SBI opposes such a cap for a number of reasons that have been explained in the record of this proceeding by wireless carriers and their associations.

Should the Commission determine that a cap must be imposed, SBI respectfully requests that federally recognized tribal lands which are eligible for Tier 4 Lifeline support be exempted from any such cap. The reasons for such an exemption are compelling.

- Native American lands remain the least developed of all areas within the country in terms of modern technology, including telecommunications. Carriers serving such lands, including SBI, are using high-cost support to rapidly expand service to unserved and underserved areas.
- Support to carriers serving tribal lands should not be reduced by the entrance of a new CETC that operates within the same state, including those that may not operate on tribal lands.

- While increased support to existing CETCs serving tribal lands would be significant to those carriers' ability to expand service, the potential impact on the federal high-cost fund nationwide would be minimal, even using optimistic projections concerning growth of subscribership on tribal lands.

Capping Support to Tribal Lands Will Cause Extreme Prejudice to Areas That Need New Investment the Most.

In Arizona and New Mexico, SBI currently serves the Navajo Nation, the Pueblo of Zuni, the White Mountain Apache Nation, the Hopi Nation, and the Ramah Navajo. SBI has previously submitted into the record of CC Docket 96-45 a detailed description of the demographic conditions prevailing on these tribal lands. For example, portions of the Navajo Nation experience conditions unlike anywhere else in the United States. Roughly 45% of the households subsist at or below the federal poverty level, with median household income at \$18,737.<sup>1</sup> 38% of households lack plumbing.<sup>2</sup> Unemployment stands at 31%. Roughly 52% of households rely on wood for heat.<sup>3</sup>

In its petition for a waiver of the Commission's rules to permit low-income consumers to qualify for Tier 4 Lifeline support on the Eastern Agency of the Navajo Nation, SBI noted that, as of 2004, **67% of occupied housing units did not have telephone service.**<sup>4</sup> Moreover, there were significant areas within the Eastern Navajo Agency where no telephone service is available.<sup>5</sup>

Over the past several years, SBI has been designated as an ETC throughout the tribal areas set forth above. The company has been using federal high-cost support to build cell sites in these remote regions to extend service to areas that had previously never had telephone service. In some areas, SBI serves as the *de facto* PSAP, since there is no other telephone facility in existence to deliver emergency 911 calls to the relevant authorities.

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<sup>1</sup> Source: U.S. Census 2000.

<sup>2</sup> Source: U.S. Census 2000.

<sup>3</sup> Source: U.S. Census 2000.

<sup>4</sup> Source: U.S. Census 2000; See, SBI's Petition for Waiver, filed March 19, 2004 in CC Docket 96-45.

<sup>5</sup> *Id.*

SBI has been very successful in increasing telephone penetration on tribal lands that it serves. As of the fourth quarter of 2007, SBI serves over 50,000 lifeline-eligible consumers on tribal lands, most of whom did not have telephone service before SBI constructed its network. This is a significant victory for the FCC's Tier 4 Lifeline initiative.

In addition to providing new coverage to tribal areas, SBI is rapidly rolling out improved data service on its GSM network that can provide tribal lands with much needed e-mail and Internet communications capabilities, both fixed and mobile.

A cap on high-cost support to tribal areas in which telecommunications investments are critical to health, safety and economic development would be contrary to the public interest.

The Proposed State-by-State Cap Will Prejudice CETCs That Are Constructing Critical Network Facilities.

As we understand the cap proposed by the Joint Board, a state-by-state cap would freeze support in each state so that combined support to all CETCs cannot exceed a certain level. Whenever a new CETC is designated, the existing CETCs would be forced to split support within the state.

The proposed cap reduces support to tribal lands in favor of non-tribal lands. Most of the areas where other CETC applications are pending in Arizona and New Mexico are in non-tribal lands. Thus, a cap will cause funds to be diverted from tribal lands to non-tribal lands in these states.

If support is capped and the pending ETC applications of other carriers are granted, consumers on tribal lands will lose significant investment. That is unfair to Native American people living on reservation lands, who do not have access to facilities and services that are reasonably comparable to nearby rural areas, much less urban areas. Any significant reduction of support to tribal lands impedes the development of critical network facilities needed to close this gap.

Today, SBI's network on tribal lands requires significant new network investment to provide service throughout the designated ETC service area and meet the demands of tribal residents. For example, many Navajo migrate with the seasons to follow crops and livestock. A landline telephone is of no use to them, nor is a mobile network that is incapable of providing service where they need it.

SBI is using all available high-cost support to reach out to serve these unique consumers. For example, in 2008, SBI plans over \$18 million in new construction and upgrade projects on Native American lands with federal support, in addition to related construction projects the company anticipates undertaking in high-cost areas beyond reservation lands.

For these reasons, an exemption from the proposed cap that permits high-cost support to flow to tribal lands without interruption is critical to maintaining the government's promise to ensure that Native Americans are not left behind when it comes to advanced telecommunications services.

The Potential Growth in the Federal High-Cost Fund Would Be Negligible, Yet It Would Provide Significant Benefits to Rural Consumers on Tribal Lands.

The U.S. Census Bureau statistics reveal that roughly 1.5 million Native Americans in the U.S. live on reservation lands.<sup>6</sup> This is less than one-half of one percent of the nation's population. If over the next two years, the federal high-cost program to tribal lands provided uncapped support to 250,000 new consumers, at an average of \$10 per line per month, the total additional program outlay would be \$30,000,000 per year.

We believe that estimate is likely to be high for several reasons. First, many reservation lands have already achieved significant wireless penetration. Second, the 1.5 million figure includes many persons who would not use a phone (e.g., infants). Third, a significant increase in penetration in areas not currently served by a CETC will require a new designation, which cannot be accomplished in less than several months, and often takes a year or more. Once a designation is made, it will take many more months to construct facilities that would generate any meaningful support.

In sum, we estimate that the relief requested would represent a total increase of less than one percent in the federal high-cost fund (\$4.3 billion).

However, \$30,000,000 in investment on tribal lands is not insignificant to consumers who are demanding that wireless carriers provide high-quality service. In SBI's case, the company has plans to deploy dozens of new cell sites to improve coverage on tribal lands.

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<sup>6</sup> Source: We the People: American Indians and Alaska Natives in the United States, Census 2000 Special Reports. <http://www.census.gov/prod/2006pubs/censr-28.pdf>

Deployment of wireless voice networks with support will also accelerate the company's ability to deliver fixed and mobile data services to areas that have never before had such facilities.

Exempting Tribal Lands from the Cap Will Keep the Federal Government's Promise to Deliver High-Quality Basic and Advanced Services to Native Americans.

Capping support to wireless carriers attempting to build and improve networks in some of our nation's poorest communities contravenes Congress's mandate to improve service to Native American lands. We note Senator McCain's statement dated May 14, 2002:

Unfortunately, many Native American communities across the United States have been left behind during the information age and do not have access to advanced telecommunications services, or even basic phone service. According to 1990 U.S. Census data, which is the most recent data available on telephone penetration on tribal lands, only 47% of tribal households had telephone service. In Arizona, these statistics are even more staggering. For example, the 1990 Census found the telephone penetration rate on the Gila River Indian Community to be 22%. According to the Navajo Nation, they have a penetration rate of 24%.

These are sad - and frankly unacceptable - statistics, especially at a time when the world is in the midst of a telecommunications revolution. As the information age progresses, no segment of the American community should be left behind.

In 1997, Chairman Inouye and I worked together to include an amendment in the 1996 Telecommunications Act to prevent a further degradation of service to tribal communities. That amendment ensured that tribal telephone companies would continue to receive universal service support for the provision of local telephone service, which is something that the Telecom Act had not ensured.

Even with universal service support, however, wireline telephone service is not likely to become the mainstay of tribal telecommunications. Instead, wireless technologies represent the future, just as they do in many developing countries throughout the world. This is good, because wireless technologies are technically more versatile than many wireline telephone systems and cheaper and quicker to construct.<sup>7</sup>

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<sup>7</sup> [http://mccain.senate.gov/press\\_office/view\\_article.cfm?id=517](http://mccain.senate.gov/press_office/view_article.cfm?id=517)

Likewise, former Chairman William Kennard has expressed the Commission's commitment to improve service on Native American lands:

We can and must do better to serve the Native American communities. We recognize that solutions to these problems are complex and require commitment from a broad range of service providers and regulatory stakeholders, and we must stand ready to take the lead.... The barriers to providing basic telephone service on Indian lands are difficult and complex. But we can't let these challenges discourage us. We owe this community affordable and equitable access to basic phone service. We should do no less than accept and honor that responsibility.<sup>8</sup>

In order for the Commission to honor its responsibility to Native Americans, it must ensure that adequate high-cost support is available to CETCs so that networks can be constructed, improved and maintained on tribal lands.

For all of the above reasons, SBI respectfully requests the Commission to reject a cap on high-cost support, or exempt recognized tribal lands that are eligible for Tier 4 Lifeline support from any such cap.

Respectfully submitted,

Smith Bagley, Inc.



By: \_\_\_\_\_

David A. LaFuria  
Its Attorney

cc: Hon. Michael J. Copps  
Hon. Jonathan S. Adelstein  
Hon. Deborah Taylor Tate  
Hon. Robert M. McDowell

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<sup>8</sup> FCC Chairman William E. Kennard Press Statement on Tribal Land Decisions, June 8, 2000.