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VIA ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, S.W., Room TW-B204
Washington, D.C. 20554

Re: Universal Service and Intercarrier Compensation Reform
CC Docket Nos. 96-45, 96-98, 99-68, 99-200, 01-92
WC Docket Nos. 03-109, 04-36, 05-337, 06-122

Madame Secretary:

On behalf of Smith Bagley, Inc. (“SBI”),¹ I write to encourage the Commission, at the time it may take final action on the proposals contained in the Further Notice of Proposed Rulemaking released by the Commission in the above-referenced dockets on November 5, 2008,² to modify one of the proposals contained in the *Further Notice* in a manner that will provide necessary and appropriate relief to consumers residing on Indian reservations throughout the United States.

¹ SBI is licensed by the Commission to provide cellular service and personal communications service throughout portions of Arizona, New Mexico, Utah, and Colorado. SBI furnishes service and has been designated as an eligible telecommunications carrier (“ETC”) throughout the Navajo Nation, as well as Hopi, White Mountain Apache, Ramah Navajo, and Zuni tribal lands.

² *High-Cost Universal Service Support, Federal-State Joint Board on Universal Service, Lifeline and Link Up, Universal Service Contribution Methodology, Numbering Resource Optimization, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Developing a Unified Intercarrier Compensation Regime, Intercarrier Compensation for ISP-Bound Traffic, IP-Enabled Services*, CC Docket Nos. 96-45, 96-98, 99-68, 99-200, 01-92, WC Docket Nos. 03-109, 04-36, 05-337, 06-122, Order on Remand and Report and Order and Further Notice of Proposed Rulemaking, FCC 08-262, released Nov. 5, 2008 (“*Further Notice*”).

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Specifically, the FCC would exempt service providers operating in Alaska, Hawaii, or any United States territories or possessions from the high-cost support requirements and rules proposed in the *Alternative Proposal*.³ Instead, the Commission would address appropriate rules for these service providers in a subsequent proceeding.⁴ SBI strongly believes that there are compelling reasons to extend this exemption for the benefit of consumers residing on Indian reservations.

SBI commends the Commission for proposing to exempt providers operating in Alaska, Hawaii, or any United States territories or possessions from its proposed restrictions on universal service funding because of the differing attributes between these areas and the continental states.⁵ Extending this exemption to tribal lands would be consistent with the goals of the Commission's Indian Telecommunications Initiative to increase telephone penetration rates and to increase telecommunications infrastructure deployment on tribal lands.⁶ Below, we highlight the grounds for exempting Indian reservations from the high-cost support requirements and rules proposed in the *Alternative Proposal*.

First, the Commission acknowledged eight years ago that universal support mechanisms simply are not sufficient to provide an acceptable level of telephone subscribership on tribal lands.⁷ (Information regarding subscribership on native lands is discussed in greater detail below.) Although SBI has made great strides in extending basic telecommunications service in the tribal areas it serves, there remains much work to be done. As such, there does not appear to be any basis for concluding that there are reasonable grounds for distinguishing between tribal lands and Alaska, Hawaii, or any United States territories or possessions on the basis of differing le-

³ *Further Notice*, App. C, *Alternative Proposal*, Order on Remand and Report and Order and Further Notice of Proposed Rulemaking ("*Alternative Proposal*"), at para. 13. The proposed high-cost support requirements and rules applicable to competitive ETCs include the following: (1) the Commission proposes to adopt a five-year transition (in practice, it is a four-year transition), during which CETC support will be reduced 20 percent each year. *Id.* at para. 12. In the fifth year, existing high-cost support for competitive ETCs would be eliminated. *Id.* at para. 52. The Commission would seek further comment for an appropriate funding mechanism for advanced wireless mobile services. *Id.* at para. 339.

⁴ *Id.* at para. 13.

⁵ *See id.* & n. 43.

⁶ *See* Consumer and Government Affairs Bureau, FCC, *Expanding Telecommunications Access in Indian Country* (undated), accessed at <http://www.fcc.gov/indians/>.

⁷ *See Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, CC Docket No. 96-45, Twelfth Report and Order, Memorandum Report and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208, 12211-12 (para. 2) (2000) ("*Twelfth Report and Order*") (indicating that "existing universal service support mechanisms are not adequate to sustain telephone subscribership on tribal lands.").

vels of telephone subscribership. In light of the continuing shortcomings of universal service funding mechanisms with respect to meeting the needs of consumers on tribal lands, there would seem to be no reasonable basis for the Commission's proposal in the *Alternative Proposal* to further restrict the ability of competitive ETCs to bring telephone services to tribal lands.

Second, the Commission has consistently concluded that consumers on tribal lands face unique hardships and deprivations that warrant targeted assistance through the universal service support mechanisms. The Commission has recognized that "basic telecommunications services are a fundamental necessity in modern society[.]"⁸ and has also concluded that consumers on tribal lands do not have adequate access to telephone service, "underscor[ing] the need for immediate Commission action to promote the deployment of telecommunications facilities in tribal areas and to provide the support necessary to increase subscribership in these areas."⁹ Nowhere is this more evident than on the tribal lands served by SBI in Arizona, New Mexico and Utah. Failing to exempt tribal lands from the funding restrictions proposed in the *Alternative Proposal* would undercut the Commission's longstanding objective of improving subscribership levels on tribal lands. The phasing out of high-cost support currently provided to competitive ETCs would adversely affect the capability of these carriers to continue to provide and to expand their provision of telephone services on tribal lands.

Third, when the Commission acted earlier this year to impose a stringent and unilateral cap on high-cost funds received by competitive ETCs, it took care to exempt tribal lands from this onerous cap "[b]ecause many tribal lands have low penetration rates for basic telephone service, [and] we do not believe that competitive ETCs are merely providing complementary services in most tribal lands"¹⁰ In light of this finding made seven months ago, Smith Bagley believes it would also be appropriate, and would serve the Commission's universal service policies, to include tribal lands in the exemption proposed in the *Alternative Proposal* to be given to providers operating in Alaska, Hawaii, or any United States territories or possessions.

Fourth, the Commission should not lose sight of the fact that its high-cost funding policies have heretofore been geared to benefit consumers on tribal lands because these consumers, in addition to having low rates of telephone subscribership, must also contend with high rates of

⁸ *Twelfth Report and Order*, 15 FCC Rcd at 12212, para. 3 (footnote omitted).

⁹ *Id.*, 15 FCC Rcd at 12213, para. 5. See *Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes*, FCC 00-207, Policy Statement, 16 FCC Rcd 4078, 4081 (2000) (concluding that the Commission's stated policy is to ensure "that Indian Tribes have adequate access to communications services.").

¹⁰ *High-Cost Universal Service, Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Order, 23 FCC Rcd 8834, 8848 (para. 32) (2008), *appeal docketed*, No. 08-1284 (D.C. Cir. Aug. 29, 2008).

poverty, geographic isolation, and other hardships¹¹ that would be exacerbated if the Commission does not strive to ensure that they are not deprived of what the Commission has determined to be “a fundamental necessity in modern society.” A brief survey of conditions that exist on many tribal lands illustrates this point:

■ *Telephone Subscribership.*—Based on 2000 U.S. census data, the telephone subscribership rate for Native American households on tribal lands in the 48 contiguous states is substantially below the national level of approximately 98 percent. Specifically, about 69 percent of Native American households on tribal lands in the lower 48 states have telephone service.¹² A Commission publication has observed that “American Indian and Alaska Native communities, on average, have the lowest reported telephone subscribership levels in the country”¹³

■ *Poverty Levels.*—Poverty is rampant among people living on federal tribal lands.¹⁴ Native Americans living on federal tribal lands are “among the most economically distressed groups in the United States,” with about 37 percent living below the federal poverty level, compared to the national poverty level of 12.4 percent.¹⁵ To take one example, SBI has es-

¹¹ The Commission has found that certain characteristics warrant targeted universal service support, such as geographic isolation, high rates of poverty, and low telephone subscribership. See *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, CC Docket No. 96-45, Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 17112, 17113 (para. 3) (2000).

¹² U.S. Government Accountability Office, *Challenges to Assessing and Improving Telecommunications for Native Americans on Tribal Lands* (Jan. 2006) (“GAO Tribal Lands Study”) at 3. The Study found that about 87 percent of households in Alaska Native villages have telephone service. *Id.* GAO indicated that “changes [in telephone subscribership on tribal lands] since 2000 are not known. The U.S. Census Bureau is implementing a new survey that will provide annual telephone subscribership rates, though the results for all tribal lands will not be available until 2010.” *Id.* at 3-4. See also Industry Analysis & Tech. Div., Wireline Competition Bur., FCC, *Telephone Subscribership on American Indian Reservations and Off-Reservation Trust Lands* (May 2003).

¹³ FCC Consumer Fact Sheets, *Get Connected: Promoting Telephone Subscribership in Indian Country*, accessed at <http://www.fcc.gov/cgb/consumerfacts/tribalfactsheet.html>. For example, the telephone subscribership rate for Native American households on Navajo Nation reservation and off-reservation trust lands is 38 percent. *GAO Tribal Land Study* at 14, Fig. 3.

¹⁴ See *High-Cost Universal Service Support, Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, SBI Reply Comments, Aug. 20, 2007 (“SBI Reply Comments”), at 15 (footnote omitted).

¹⁵ *GAO Tribal Lands Study* at 1 & n. 1.

estimated, based upon 2000 U.S. Census data, that the individual per capita income for persons residing in the Eastern Navajo Agency (an area served by SBI) is approximately \$6,890.¹⁶

■ *Geographic Isolation.*—“Tribal lands are mostly rural and characterized by large land areas, rugged terrain such as mountains and canyons, low population density, and geographic isolation from metropolitan areas.”¹⁷ These conditions, which are very similar to the conditions that prompted the Commission to propose in the *Alternative Proposal* an exemption from the proposed high-cost requirements and rules for providers operating in Alaska, Hawaii, or any United States territories or possessions,¹⁸ “make the cost of building and maintaining the infrastructure needed to provide [telephone] service higher than they would be in urban settings.”¹⁹ GAO has found, for example, that:

Geographic isolation has increased the cost of providing service on Navajo lands and limited the number of companies interested in providing telecommunications services. . . . The installation of wireless infrastructure is . . . expensive due to the vast network of towers and power access needed to relay signals around the rugged landscape. Service providers have told us the cost of deploying telecommunications infrastructure on Navajo lands impedes the provision of services.²⁰

■ *Other Hardships.*—SBI, using the Eastern Navajo Agency as an example,²¹ has documented in previous filings other hardships faced by people living on tribal lands. For example, 38 percent of households in the Eastern Navajo Agency lack plumbing,²² the unemployment rate is 31 percent, and approximately 52 percent of households rely on wood for heating

¹⁶ Letter from David A. LaFuria to Marlene H. Dortch, FCC, CC Docket No. 96-45 (Jan. 28, 2005) at 2. Under the 2008 federal poverty guidelines established by the Department of Health and Human Services, the individual poverty level in the 48 contiguous states and the District of Columbia is \$10,400. See Department of Health and Human Services, *The 2008 HHS Poverty Guidelines*, accessed at <http://aspe.hhs.gov/poverty/08Poverty.shtml>.

¹⁷ *GAO Tribal Lands Study* at 33.

¹⁸ See *Alternative Proposal* at para. 13 & n. 43.

¹⁹ *GAO Tribal Lands Study* at 34; see SBI Reply Comments at 15.

²⁰ *GAO Tribal Lands Study* at 78.

²¹ Based on 2000 U.S. Census data, 37,400 persons live within the boundaries of the Eastern Navajo Agency.

²² According to the 2000 U.S. Census, 0.6 percent of the overall U.S. population lacks plumbing.

their homes.²³ Only 6.9 percent of Navajo people have obtained a bachelor's degree or greater.²⁴ In addition, 14.2 percent of the American Indian and Alaska Native ("AIAN") population lacks any access to electricity for their homes (compared to 1.4 percent of the total U.S. population), 11 percent of the AIAN population lacks kitchen facilities (compared to 1 percent of the total U.S. population), 14.7 percent of the AIAN population lives in overcrowded homes (compared to 5.7 percent of the total U.S. population),²⁵ and 38.8 percent of the AIAN population lacks any health insurance coverage (compared to 17.2 percent of the total population).²⁶ This lack of health insurance is a particularly serious hardship for the Native American population, given the serious medical problems faced by Native Americans. For example, there was a 54 percent increase in the prevalence of diagnosed diabetes among Native American children and young adults from 1996 to 2004.²⁷ In 2002, the tuberculosis incidence rate among Native Americans was twice the rate for the overall U.S. population.²⁸ Moreover, native Americans are at a higher risk for mental health disorders than any other racial or ethnic groups in the United States.²⁹ As of 2004, the suicide rate for Native Americans was continuing to increase, and stood at 190 percent of the rate for the general population.³⁰

SBI believes that the statistics and other information summarized in the preceding paragraphs provide ample support for its argument that competitive ETCs providing services on tribal lands should be treated in the same manner as providers operating in Alaska, Hawaii, or any United States territories or possessions. Moreover, SBI is absolutely certain that investment in modern telecommunications infrastructure should *increase*, not decrease, in the coming years, so

²³ Letter from David A. LaFuria to Marlene H. Dortch, FCC, CC Docket No. 96-45 (Nov. 15, 2004) at 2 (data drawn from the 2000 U.S. Census).

²⁴ See Census 2000 Special Reports, "We the People: American Indians and Alaska Natives in the United States" U.S. Census Bureau (Feb. 2006) at p. 8.

²⁵ National Congress of American Indians, Policy Research Center, *Demographic Profile of Indian Country* (Jan. 10, 2007), accessed at <http://www.ncaiprc.org/ncai-fact-sheets-and-analysis-census-indian-country>.

²⁶ Centers for Disease Control and Prevention, National Center for Health Statistics, U.S. Dept. of Health and Human Services, *Summary Health Statistics for the U.S. Population: National Health Interview Survey, 2006* (Jan. 2008) at Table 19.

²⁷ U.S. Commission on Civil Rights, *Broken Promises: Evaluating the Native American Health Care System* (Sept. 2004) at 10.

²⁸ *Id.* at 11.

²⁹ *Id.*

³⁰ *Id.* at 13.

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that Native American people can share the health, safety and economic development benefits that the remainder of the country now takes for granted.

In this regard, SBI is encouraged by the Joint Statement of Commissioners Copps, Adelstein, Tate, and McDowell that accompanied the *Further Notice*, in which the Commissioners observed that there is a growing measure of consensus for the need for special consideration for tribal lands.³¹

SBI urges the Commission to extend the exemption proposed in the *Alternative Proposal* so that it covers tribal lands in the Continental United States.

Should you have any questions or require any further information, please contact undersigned counsel directly.

Respectfully submitted,



David A. LaFuria
Counsel for Smith Bagley, Inc.

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

³¹ *Further Notice*, Joint Statement of Commissioners Michael J. Copps, Jonathan S. Adelstein, Deborah Taylor Tate, and Robert M. McDowell.