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ORIGINAL

October 1, 2009

VIA HAND DELIVERY

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

Re: Federal-State Joint Board on Universal Service
CC Docket No. 96-45

Dear Secretary Dortch:

On behalf of Smith Bagley, Inc. (SAC 509002) ("SBI"), please find attached a redacted, public version of SBI's Annual ETC Report under Section 54.209 of the FCC's Rules ("ETC Report"). The attached ETC Report has been marked "**REDACTED - FOR PUBLIC INSPECTION.**"

SBI is also submitting, under separate cover, a confidential version of this ETC Report. The confidential version is marked "**CONFIDENTIAL - NOT FOR PUBLIC INSPECTION.**"

An original and four (4) copies of this ETC Report are enclosed. An additional copy has been provided, which you are requested to date-stamp and return in the envelope provided.

FILED/ACCEPTED

OCT - 1 2009

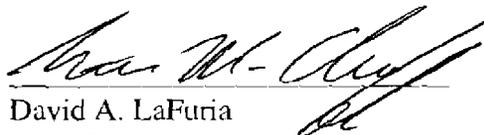
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Please contact the undersigned at 703-584-8678 if any questions arise concerning the above-referenced enclosures or if you require any additional information.

Sincerely,

A handwritten signature in cursive script, appearing to read "David A. LaFuria", written over a horizontal line.

David A. LaFuria
Todd B. Lantor
Steven M. Chernoff

Attorneys for:
Smith Bagley, Inc.

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

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

ANNUAL ETC REPORT OF SMITH BAGLEY, INC.

Smith Bagley, Inc. (“SBI”, the “Company”) an Eligible Telecommunications Carrier (“ETC”) on the Navajo Reservation in the State of Utah, hereby provides the Commission with an annual compliance filing containing information as set forth in the Commission’s *Report and Order* in the above-captioned proceeding (“*ETC Certification Order*”)¹ and in the Commission order designating the Company as an ETC.²

1. Construction Plan Progress and Use of Support.

Pursuant to the *ETC Certification Order*, an ETC must “submit... progress reports on the ETC’s five-year service quality improvement plan, including maps detailing progress towards meeting its plan targets, an explanation of how much universal service support was received and how support was used to improve signal quality, coverage, or capacity; and an explanation regarding any network improvement targets that have not been fulfilled.”³ SBI was first designated as an ETC in Utah on February 8, 2007. SBI

¹ *In the Matter of the Federal-State Joint Board on Universal Service, Report and Order*, 20 FCC Rcd 6371 (2005).

² *See Federal-State Joint Board on Universal Service, Smith Bagley, Inc.*, DA 07-605 (W.C.B. rel. Feb. 8, 2007)

³ *See ETC Certification Order, supra*, 20 FCC Rcd at 6400.

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did not begin receiving support until July 2007. From August 2008 through July 2009, the last twelve-month period for which USAC data is available, the company received a total of [REDACTED] in Universal Service Support.

During the last twelve months (July 1, 2008 – June 30, 2009), SBI invested [REDACTED] in capital improvements and another [REDACTED] in other eligible improvements to infrastructure and services, not counting General and Administrative expenses, for a total of [REDACTED]. Since its designation, SBI has used its high-cost support to improve existing cell site coverage, performance and reliability by upgrading antennas, deploying generators, and installing microwave links.

Since its designation, SBI has used its high-cost support to improve existing cell site coverage, performance and reliability by upgrading antennas, deploying generators, and installing microwave links. During the prior 12 months (July 1, 2008-June 30, 2009), SBI constructed [REDACTED] new cell sites in their designated ETC area on the Navajo Nation in the State of Utah. [REDACTED]

[REDACTED]

As required pursuant to the *ETC Certification Order*, SBI provides as Exhibit A hereto its updated five-year service quality improvement plan for its Utah ETC service area.

2. Outage Reporting.

In the last twelve (12) months (July 1, 2008-June 30, 2009), SBI has not had any outage of at least 30 minutes in duration on the facilities it owns, operates, leases, or

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otherwise utilizes that potentially affect at least ten percent of the end users served in its designated service area in Utah, pursuant to the *ETC Certification Order*.⁴

3. Unfulfilled Service Requests.

A list of service requests for the last twelve (12) months (July 1, 2008-June 30, 2009) are provided as Exhibit B. SBI hereby certifies that it continues to follow the six-step process for provisioning service to requesting customers.

Specifically, in response to such requests for service at a residence or business, SBI will take the following steps:

1. If a request comes from a customer within its existing network, SBI will provide service immediately using its standard customer equipment.

2. If a request comes from a customer residing in any area where SBI does not provide service, SBI will take a series of steps to provide service.

* First, it will determine whether the customer's equipment can be modified or replaced to provide acceptable service.

* Second, it will determine whether a roof-mounted antenna or other network equipment can be deployed at the premises to provide service.

* Third, it will determine whether adjustments at the nearest cell site can be made to provide service.

* Fourth, it will determine whether there are any other adjustments to network or customer facilities which can be made to provide service.

* Fifth, it will explore the possibility of offering the resold service of carriers that have facilities available to that location.

* Sixth, SBI will determine whether an additional cell site, a cell-extender,

⁴ See 47 C.F.R. § 54.209(a)(2).

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or repeater can be employed or can be constructed to provide service, and evaluate the costs and benefits of using scarce high-cost support to serve the number of customers requesting service. If there is no possibility of providing service short of these measures, SBI will notify the customer and notify the FCC of how many requests for service could not be filled in its next annual certification report. The FCC will retain authority to resolve any customer complaints that SBI has refused to respond to a reasonable request for service.

4. Consumer Complaints.

In the last twelve (12) months, SBI did not receive and is not aware of any consumer complaints having been filed with either the FCC or with tribal authorities in the designated ETC service area.

5. Commitment to CTIA’s Consumer Code for Wireless Services.

In the *ETC Certification Order*, the FCC reiterated that carriers must certify that they comply with applicable service quality and consumer protection standards, e.g., the CTIA Consumer Code for Wireless Services (“CTIA Code”).⁵ SBI hereby certifies that it abides by the CTIA Code, as it may be amended from time to time, for all of its operations in Utah. The Company is a signatory to the CTIA Code and is listed with the CTIA as having fully implemented the CTIA Code’s provisions. Additionally, SBI has received CTIA formal certification approval as a wireless carrier that has adopted those

⁵ 47 C.F.R. §§ 54.209(a)(5); 54.202(a)(3). Under the CTIA Consumer Code, wireless carriers agree to: (1) disclose rates and terms of service to customers; (2) make available maps showing where service is generally available; (3) provide contract terms to customers and confirm changes in service; (4) allow a trial period for new service; (5) provide specific disclosures in advertising; (6) separately identify carrier charges from taxes on billing statements; (7) provide customers the right to terminate service for changes to contract terms; (8) provide ready access to customer service; (9) promptly respond to consumer inquiries and complaints received from government agencies; and (10) abide by policies for protection of consumer privacy. The CTIA Code can be viewed on the Web at <http://files.ctia.org/pdf/ConsumerCode.pdf>.

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specific principles and practices for the calendar year 2008 and has applied for this certification for the calendar year 2009.

6. Ability to Remain Functional in Emergencies.

The FCC's rules require an ETC applicant to:

demonstrate its ability to remain functional in emergency situations, including a demonstration that it has a reasonable amount of back-up power to ensure functionality without an external power source, is able to reroute traffic around damaged facilities, and is capable of managing traffic spikes resulting from emergency situations.⁶

SBI is mindful of the importance of ensuring uninterrupted service so that law enforcement and public safety officials, as well as the general public, can make important calls in the event of an emergency. SBI hereby certifies that the company is capable to function in emergency situations as defined in the above-referenced *ETC Certification Order* via the company's generators and via temporary microwaves.

7. Local Usage.

In the *ETC Certification Order*, the Commission concluded that each ETC must annually certify that it offers at least one local usage plan comparable to the one offered by the incumbent LEC in the service areas for which the applicant seeks designation.⁷ In the *ETC Certification Order* on which that requirement was based, the FCC declined to adopt a specific local usage threshold or require that an applicant match the incumbent's offering. Rather, the FCC concluded that the comparability of rate plans should be evaluated on a case-by-case basis, in consideration of the number of included minutes, the size of the "local" calling area, monthly price, and other factors. As examples, the

⁶ *ETC Certification Order, supra*, at para. 25.

⁷ *See id.* at para. 32.

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FCC mentioned that an applicant may offer “a local calling plan that has a different calling area than the local exchange area provided by the LECs in the same region, or . . . a specified number of free minutes of service within the local service area.”⁸ The FCC also envisioned cases where an applicant may offer an unlimited calling plan that bundles local minutes with long distance minutes.⁹

SBI satisfies the FCC’s local usage requirement. Customers may choose from a variety of plans with different combinations of local calling areas, included minutes, and monthly rates, to suit individual consumer needs. For example, SBI’s Home Area 500 Plan offers 500 minutes of calling within a local calling area comprising SBI’s licensed service area. The plan is available for a monthly price of \$39.95. SBI also offers a number of usage plans that allow customers to make calls or travel beyond the local calling area without incurring toll or roaming charges. The Nationwide 650 Plan, for example, offers unlimited local calling and unlimited nationwide long distance plus 650 minutes of nationwide roaming without per-minute charges, at a monthly rate of \$51.95.

SBI’s service offering described above allow consumers to select a plan that provides them with equal or greater value than a wireline rate plan. SBI’s licensed area – its smallest ‘local’ calling area – is much larger than rural ILEC local calling areas, which typically allow a consumer to reach only a few hundred or a few thousand people within an area made up of a handful of exchanges. If they travel more or make many calls to relatives or business associates beyond that area, they may benefit from one of the nationwide plans. Providing deeper geographic reach delivers a significant benefit to the

⁸ *Id.* at para. 33.

⁹ *Id.*

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consumer, and the FCC has cited studies concluding that “wireless service is cheaper than wireline, particularly if one is making a long distance call or when traveling.”¹⁰

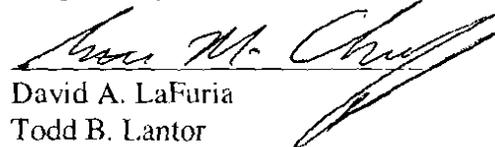
In sum, SBI certifies that it offers at least one plan that is comparable to ILEC rate plans under the applicable FCC test.

8. Equal Access.

As required of applicants before the FCC under the *ETC Certification Order*,¹¹ SBI acknowledges that the FCC may require it to provide equal access to interexchange carriers in the event no other ETC is providing equal access in the designated ETC service area.

We trust that you will find this to be responsive to the compliance materials requested in the *ETC Certification Order* and in the order designating SBI as an ETC in Utah.

Respectfully submitted,



David A. LaFuria
Todd B. Lantor
Steven M. Chernoff
Lukas, Nace, Gutierrez & Sachs
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McLean, VA 22102
(703)584-8668

Attorneys for:
Smith Bagley, Inc

Dated: October 1, 2009

¹⁰ *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report & Analysis of Competitive Market Conditions with Respect to Commercial Mobile Servs., Ninth Report, 19 FCC Rcd. 20597, 20684, para. 214 (2004) (“Ninth CMRS Competition Report”).*

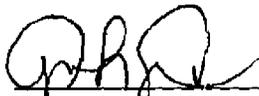
¹¹ *See ETC Certification Order, supra* at para. 35.

DECLARATION UNDER PENALTY OF PERJURY

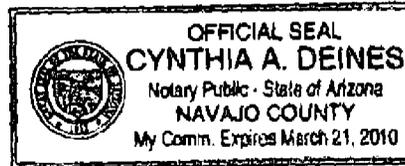
I, Gayle L. Gouker, do hereby declare under penalty of perjury as follows:

1. I am the Chief Financial Officer of Smith Bagley, Inc. ("SBI")
2. This Affidavit is submitted in support of SBI's Annual Compliance Filing and Request for Recertification, pursuant to *Report and Order In the Matter of the Federal-State Joint Board on Universal Service*, FCC 05-46 (rel. March 17, 2005) and Sections 54.202 and 54.209 of the FCC's Rules.
3. I declare under penalty of perjury that the statements contained in the foregoing Annual Compliance Filing are true and correct to the best of my knowledge.

Executed on September 25, 2009



Gayle L. Gouker
Chief Financial Officer
Smith Bagley, Inc.



SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me this 25 day of September, 2009.


NOTARY PUBLIC

My Commission Expires: 3-21-2010

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EXHIBIT A

UPDATED FIVE-YEAR SERVICE QUALITY IMPROVEMENT PLAN

**THIS EXHIBIT IS WITHHELD AS THE FILER
HAS REQUESTED CONFIDENTIAL TREATMENT**

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EXHIBIT B

UNFULFILLED SERVICE REQUESTS

**THIS EXHIBIT IS WITHELD AS THE FILER
HAS REQUESTED CONFIDENTIAL TREATMENT**