

Smith Bagley, Inc.

Ex Parte Presentation

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## Tier 4 Support on Tribal Lands Should be Increased

- ▶ Smith Bagley, Inc. (“SBI”) filed its petition on March 27, 2009 (DA 09–1011).
- ▶ Current Tier 4 level established in 2000. Yet, Tier 4 has not been adjusted to account for inflation, cost of living, or any other factors.
- ▶ Telephone subscribership has dramatically increased on tribal lands as a result of Tier 4 support, but is still not on par with the rest of the nation.

## Tier 4 Support on Tribal Lands Should be Increased (cont'd)

- ▶ Increasing Tier 4 support will:
  - ▶ Enable carriers to increase the quantity of service provided.
  - ▶ Encourage increased competition and infrastructure investment on tribal lands.
  - ▶ Have negligible effect on overall fund size.

## The FCC Should Grant SBI's Request for a Limited Waiver of the Interim Cap on CETC High-Cost Support (WC 05-337)

- ▶ The *Interim Cap Order* includes an exception permitting CETCs to receive uncapped support on “Covered Locations” (generally defined as federally recognized tribal lands).
- ▶ This exception was intended to enable competitive ETCs to use uncapped high-cost funding to “help remedy the low penetration rates and poor telecommunications services in these areas.”

## The FCC Should Grant SBI's Request for a Limited Waiver of the Interim Cap on CETC High-Cost Support (cont'd)

- ▶ The Eastern Navajo Agency of the Navajo Nation is located in western New Mexico and includes privately held parcels as well as state and federal lands.
- ▶ Because of its “checkerboard” makeup, the Eastern Navajo agency does not fit squarely within the “Covered Location” exception.
- ▶ A limited waiver of the cap would permit SBI and other CETCs to use uncapped support to provide service in the Eastern Agency.
- ▶ The FCC previously granted relief to allow Tier 4 support on Eastern Agency, citing many of the circumstances here present.

## The FCC Should Grant SBI's Request for a Limited Waiver of the Interim Cap on CETC High-Cost Support (cont'd)

- ▶ Treating the Eastern Agency the same as other Navajo agencies would serve the public interest.
- ▶ The Eastern Navajo Agency has the same demographics and other characteristics as agencies in the Navajo Nation that are eligible for uncapped support under the “Covered Location” exception.
  - ▶ Low per capita income and high levels of poverty.
  - ▶ Poor housing conditions.
  - ▶ Very low levels of telephone subscriber penetration.

## The FCC Should Grant SBI's Request for a Limited Waiver of the Interim Cap on CETC High-Cost Support (cont'd)

- ▶ A limited waiver would advance the competitive goals of the FCC and the Telecommunications Act of 1996.
  - ▶ Waiving the cap, and disbursing support on a competitively neutral basis, would promote competitive entry and investment in the Eastern Agency.
  - ▶ If the cap is waived, SBI would not merely provide services that are complementary to incumbent carriers' services in the Eastern Agency.
  - ▶ SBI would compete head-to-head with incumbents, giving more customers the option to “cut the cord” and select mobile wireless services.

## The FCC Should Grant SBI's Request for a Limited Waiver of the Interim Cap on CETC High-Cost Support (cont'd)

- ▶ SBI would use uncapped support to accelerate infrastructure investment and increase subscribership penetration levels in the Eastern Agency.
  - ▶ SBI currently plans to use capped support to construct at least four new cell sites that will serve areas in the Eastern Agency.
  - ▶ Uncapped high-cost support would enable SBI to construct additional cell sites, and to accelerate the deployment of all its cell sites.
  - ▶ This will help increase levels of subscribership in the Eastern Agency, consistent with the FCC's policies.

## The FCC Should Grant SBI's Request for a Limited Waiver of the Interim Cap on CETC High-Cost Support (cont'd)

- ▶ Grant of the waiver would not threaten to overburden universal service funding mechanisms.
  - ▶ The FCC decided in the *Interim Cap Order* that making uncapped support available in tribal lands will not impede its efforts to curb excessive high-cost funding.
  - ▶ Uncapped support received by SBI for the Eastern Agency would not be in excess of its costs for infrastructure deployment and the provision of service.
  - ▶ SBI is required by the state commission to account for all high-cost funding it receives and how it is invested in the deployment of telecommunications infrastructure.