

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

In the Matter of)	
)	
High-Cost Universal Service Support)	WC Docket No. 05-337
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	

SUPPLEMENT TO PETITION FOR WAIVER

Expedited Action Requested (Public Version)

Smith Bagley, Inc. (“SBI”), by counsel, hereby supplements the Petition for Waiver, filed December 14, 2009,¹ in the above-captioned proceeding, in response to information requests from Commission staff. The Petition seeks a limited waiver of the interim cap on universal service high-cost support for competitive eligible telecommunications carriers (“ETCs”).

Commission staff requested information on SBI’s estimate of how much universal service support a grant of the requested waiver would require, and what SBI would do with the support if its Petition were granted.

SBI estimates that if its waiver request is not granted, it will draw approximately \$1.5 million per year in support. If its waiver is granted, it will draw approximately \$3.5 million per year in federal high-cost support, an increase of \$2 million per year. To arrive at these estimates, SBI apportioned line counts in the Eastern Navajo Agency of the Navajo Nation among the wireline carrier support zones, then added up the per-line amounts, to arrive at a total amount of support per month, and then annualized that amount.

¹ SBI, *High-Cost Universal Service Support, Federal-State Joint Board on Universal Service*, Petition for Waiver, WC Docket No. 05-337 (filed Dec. 14, 2009) (“Petition”).

SBI understands fully that any amount of support that increases the whole of the universal service fund also increases the amount that consumers across the country pay into the fund. That said, the additional amount at issue here, approximately \$2 million per year, is a truly nominal amount. The amount in real dollars is less than three-tenths of one percent (0.3%) of the total fund. This amount does not move the needle when it comes to calculating what consumers are required to contribute on their monthly telephone bills.

Moreover, the Commission is in the process of recapturing funds from the high-cost support mechanism as a result of large carriers voluntarily relinquishing support. The amount of recapture is estimated to be as much as \$3.9 billion over a decade.² The stated purpose of recapturing these funds is to make them available for a combination of activities described in the National Broadband Plan.³ Improving access to advanced telecommunications and information services to rural, unserved and underserved tribal areas is a priority set forth in the National Broadband Plan. A grant of SBI's Petition will accelerate the deployment of network facilities to tribal lands in New Mexico that are in desperate need of improved service.

Having estimated how much incremental funding would be available if its Petition is granted, SBI has developed a preliminary business plan to invest \$11 million within the first three years after a grant of the Petition, which represents the projected support to be distributed during the first three years following a grant. Since the amount of additional support that would eventually be distributed may vary significantly, SBI commits to invest whatever the incremental amount may be into its network. SBI would be pleased to provide the Commission with updated construction plans, and progress reports, consistent with the Commission's rules, documenting the use of whatever support amounts are ultimately provided in the Eastern Agency.

² See Omnibus Broadband Initiative, FCC, CONNECTING AMERICA: THE NATIONAL BROADBAND PLAN (Mar. 16, 2010) ("National Broadband Plan") at Recommendation 8.6.

³ *Id.*

REDACTED PUBLIC VERSION

SBI has attached to this Supplement, a map depicting [REDACTED] new cell sites that would be constructed if the Petition be granted. These sites are located in some of the most remote areas of the Eastern Navajo Agency, and would provide critical mobile wireless telecommunications and advanced information services to tribal communities located in those areas. In addition, SBI's VisionOne® Lifeline service will be made available to all low-income consumers living in this area, including Tier 4 Lifeline support. In addition to the new cell sites, SBI will construct backhaul, battery backup, switch and network capacity upgrades, and related infrastructure, to deliver the highest quality service available in fulfillment of the goal set forth in Section 254(b)(3) of the Communications Act of 1934 that rural consumers have access to service that is reasonably comparable to that which is available in urban areas.

Some of SBI's construction plans involve placing cell sites along rural roads between communities where mobile service is needed. In addition, SBI's construction plans include new cell sites that would provide new or improved mobile services to the following communities:

Community Name	Population to be Covered	Community Name	Population to be Covered
[REDACTED]	1159	[REDACTED]	823
[REDACTED]	422	[REDACTED]	439
[REDACTED]	575	[REDACTED]	297
[REDACTED]	897	[REDACTED]	272
[REDACTED]	477	[REDACTED]	685
[REDACTED]	157	[REDACTED]	778
[REDACTED]	378	[REDACTED]	17
[REDACTED]	1144	[REDACTED]	258

SBI's request is consistent with the Chairman's latest thinking on accelerating investment in rural areas, including possible adjustments to the interim cap. Just two days ago, Chairman Genachowski released responses to questions from the Senate Commerce Committee, reaffirming the agency's commitment to improving telecommunications and information

services on tribal lands. In response to a question from Alaska Senator Mark Begich, expressing similar concerns about tribal lands that lack basic telephone service, the Chairman stated:

As we move forward with universal service reform, *including possible changes to the interim cap on competitive eligible telecommunications carrier support*, the Commission intends to consider unique circumstances present on tribal lands, including Alaska Native regions.⁴

In response to a question from New Mexico Senator Tom Udall, expressing concern about the fact that many tribal lands have not achieved basic connectivity, the Chairman stated:

Throughout the Commission's activities implementing the National Broadband Plan, I intend to keep a watchful eye on how our actions benefit the most remote and unserved regions. I look forward to expanded and enhanced coordination with tribal governments, and full participation from tribal representatives and stakeholders in this major effort, *so we can be assured of addressing the disparity in communications services that has existed on many tribal lands.*⁵

SBI's petition represents precisely the kind of action the Commission should be taking to accelerate investment on rural tribal lands, and a grant would be consistent with the sentiments expressed in the Chairman's responses.

We are constrained to note in passing the submissions of Sacred Wind Communications, Inc., in this proceeding,⁶ which reflect that company's continuing efforts to pursue anti-competitive objectives. Sacred Wind, a fixed service provider, is incapable of providing mobile services, and it has an aspirational goal to reach 95% of households within its proposed ETC service area by 2012. Had the FCC granted SBI's petition soon after it was filed, SBI would

⁴ See, Letter from Chairman Julius Genachowski to Hon. John D. Rockefeller, June 15, 2010 (released July 6, 2010) at p. 54 (emphasis added).

⁵ *Id.* at p. 41 (emphasis added).

⁶ See Letter from Martin L. Stern, Counsel for Sacred Wind Communications, Inc., to Marlene H. Dortch, Secretary, FCC, Ex Parte Presentation in WC Docket No. 05-337, filed Apr. 15, 2010; Comments of Sacred Wind Communications, Inc., in Opposition to Petition for Waiver, filed Feb. 11, 2010.

likely have matched or exceeded that figure in about the same time, *and* brought mobile wireless coverage to extensive areas where the Navajo people live, work and travel.

Sacred Wind, a venture led by former Qwest executives, has developed facility deployment plans that fail to consider the fact that many Navajo continue to adhere to a nomadic lifestyle that is deeply rooted in the Navajo culture. Some tribal members move within the large expanse of the reservation with the seasons. As a practical matter, a fixed telecommunications service, such as that contemplated by Sacred Wind, is of little use to them. Moreover, a fixed service to a household provides little benefit to a person with a broken down car on a remote desert road.

By virtue of the cap's exception,⁷ a grant of SBI's proposal would not take a single dollar out of Sacred Wind's pocket. Yet their management is apparently fearful that the Navajo people would prefer mobile wireless voice services. Delaying or denying SBI's petition is simply a means to deny Navajo consumers access to basic telecommunications services, which is anathema to the Telecommunications Act and the FCC's universal service mechanism.

Based on the commitments made above, Sacred Wind cannot credibly maintain that any additional support received by SBI as a result of a grant of the Petition would not be used exclusively and directly for the benefit of tribal communities in the Eastern Agency, or that tribal consumers would not reap substantial benefits.

Sacred Wind's conjecture that SBI's service would be complementary and is not a replacement for Sacred Wind's service cuts in favor of granting SBI's petition. If Sacred Wind is correct, that Navajo consumers need both fixed and wireless telecommunications services, and if a grant would not deprive Sacred Wind of support, then there is no need to oppose SBI's

⁷ Competitive ETCs serving tribal lands or Alaska Native regions may continue to receive uncapped high-cost support. *High-Cost Universal Service Support; 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), *aff'd*, *Rural Cellular Ass'n v. FCC*, 588 F.3d 1095 (D.C. Cir. 2009).

application. On the other hand, if SBI poses the level of threat that Sacred Wind's pleadings seem to imply, then Sacred Wind should just come out and admit that its business would not survive a high-quality mobile wireless deployment throughout the Eastern Agency.

Sacred Wind has the benefit of a favorable regulatory system that provides "cost plus" support for any investment it makes, no matter how many customers it serves (or loses). Yet, SBI has not opposed Sacred Wind's entrance into rural New Mexico. In fact, SBI welcomes the Sacred Wind investment because if its business succeeds in the market, that's good for the Navajo people, and it should be applauded.

That said, Sacred Wind's motives must not be mistaken. Sacred Wind wants to dominate the area, keep out competition, prevent rural citizens from accessing a high-quality mobile wireless network, and make a profit. There's nothing wrong with those private business goals, provided the Commission does not facilitate them at the expense of the pro-competitive goals set forth in the governing statute.

In sum, SBI reiterates its request for expedited action on its petition, so that it can commence construction of high-quality mobile wireless networks at the earliest possible date.

Respectfully submitted,

SMITH BAGLEY, INC.



David A. LaFuria
Its Counsel

LUKAS, NACE, GUTIERREZ & SACHS, LLP
8300 Greensboro Drive, Suite 1200
McLean, Virginia 22102
(703) 584-8678
dlafuria@fcclaw.com

July 8, 2010