

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337

**REPLY COMMENTS OF SMITH BAGLEY, INC.**

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## Summary

Smith Bagley, Inc. (“SBI”) takes this opportunity to emphasize the importance of recognizing the special challenges faced by tribal communities as the Commission develops reforms along the path outlined in the Plan. As Senator Rockefeller pointed out last week in a letter to Chairman Genachowski: “Digital exclusion compounds inequities for historically marginalized groups. People with low incomes, people with disabilities, racial and ethnic minorities, people living on Tribal lands and people living in rural areas are less likely to have broadband at home.”

The sparse population and widespread poverty on tribal lands present unique challenges for the deployment of voice and broadband services. As the Commission considers reforms to the existing system of high-cost subsidies and how best to fund broadband deployment, special care should be taken to avoid harmful effects to people on tribal lands. Because of the critical need for sufficient funding of network investments in tribal areas, several commenters emphasized that any reforms must carve out exceptions for tribal areas in order to avoid unintended negative consequences for people living in those areas.

The Commission should act promptly to resolve several outstanding items that are critical to tribal areas. For example, SBI has proposed to add \$5 to the Tier 4 Lifeline monthly discount to increase the affordability of telephone service in tribal areas. SBI has also requested an extension of the Covered Locations exemption to cover the Eastern Navajo Agency, whose “checkerboard” configuration makes it all but impossible to administer tribal Lifeline discounts unless the entire area is treated as tribal. SBI has also requested that the Commission direct Universal Service Administrative Company (“USAC”) to remove the effect of the nationwide IAS cap on CETC support from the IAS received by carriers serving Covered Locations. All of these proposed changes would help improve the access by residents of tribal areas to voice service and accelerate the deployment of broadband in those areas in the months and years ahead.

More generally, the exploding demand for broadband service will not be met if current policies are continued. If the Commission wants to take truly immediate action to accelerate broadband deployment in rural America, it should take the following steps, which can be accomplished in very short order:

First, the Commission should issue a declaratory ruling, *sua sponte*, clarifying that carriers are required to use high-cost support to deploy facilities that carry both voice and data, including specifically, 3G CDMA and LTE networks. Nothing the FCC can do in the next year will accelerate broadband deployment as much as permitting existing carriers to immediately use federal high-cost support to deploy broadband networks.

Second, the Commission should implement the Verizon Wireless and Sprint merger conditions without further delay and in a way that does not unlawfully restrict funding to other CETCs. Specifically, Cellular South urges the Commission to: (1) Grant the Corr Wireless request for review and instruct USAC to make the phase-down amounts available to other

CETCs under the Interim Cap as required; (2) Implement the phase-down in the areas Verizon Wireless is required to divest up until such time as they are actually divested; (3) Calculate the 20% phase-downs from a fixed amount equal to the capped support Sprint and Verizon Wireless were receiving as of the effective dates of their respective mergers; and (4) Treat Verizon Wireless' relinquishment of ETC status in several states as separate from the phase-down. The phase-down should be implemented on an accelerated basis to enforce the companies' voluntary commitment to a five-year horizon ending December 31, 2012.

Lastly, the Commission should make Lifeline support available for broadband. Though great strides have been made in voice service availability in the tribal areas SBI serves, these areas are sorely lacking in access to broadband services. Therefore, it is critical that Lifeline support be made available so that broadband service can be more affordable. Tier 4 Lifeline Support Program for voice has been instrumental in lowering price of service, while providing carrier incentives to construct facilities and reach out to low-income households. A Lifeline program for broadband will provide similar incentives for carriers while benefitting rural citizens.

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**REPLY COMMENTS OF SMITH BAGLEY, INC.**

Smith Bagley, Inc. (“SBI”), by counsel, is pleased to submit these Reply Comments pursuant to the Commission’s Notice of Inquiry and Notice of Proposed Rulemaking in the above-captioned proceeding.<sup>1</sup>

**I. INTRODUCTION**

SBI is licensed to provide cellular radiotelephone service (“cellular service”) and personal communications service (“PCS”) throughout portions of Arizona, New Mexico, Utah, and Colorado. As such, it has substantial experience in bringing wireless telecommunications services to consumers living on tribal lands. SBI has been designated as an ETC pursuant to Section 214 of the Communications Act of 1934 (“Act”)<sup>2</sup> in Arizona, New Mexico, and Utah, and is engaged in providing telecommunications and advanced information services throughout

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<sup>1</sup> *Connect America Fund, A National Broadband Plan for Our Future, High-Cost Universal Service Support*, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 05-337, Notice of Inquiry and Notice of Proposed Rulemaking, 25 FCC Rcd 6657 (2010) (“*NOI*” and “*NPRM*”). *Connect America Fund, A National Broadband Plan for Our Future, High-Cost Universal Service Support*, 75 Fed. Reg. 26906, May 13, 2010.

<sup>2</sup> 47 U.S.C. § 214.

the Navajo Nation and also on the Tribal lands of the Hopi Nation, and of the White Mountain Apache, Ramah Navajo, and Pueblo of Zuni tribes.

SBI has been using federal high-cost support to build cell sites in these remote regions to extend service to unserved and underserved areas. It is no exaggeration to state that many areas where SBI has built cell sites 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. The company has been very successful in increasing telephone penetration on tribal lands that it serves. As of the third quarter of 2009, SBI serves over 60,000 consumers on tribal lands, many of whom did not have telephone service before SBI constructed its network. 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. This is a significant victory for the FCC's Tier 4 Lifeline initiative, and it has been furthered by the Commission's establishment of an exemption from the Interim CETC Cap for tribal areas.

Much work remains to be done, both in providing voice service to underserved tribal areas, and in making broadband services available. SBI has been aggressively proposing new initiatives in the High Cost and Low Income programs to ensure sufficient support to continue and accelerate the rollout of wireless voice and data services on tribal lands. For example, SBI has proposed to add \$5 to the Tier 4 Lifeline monthly discount to increase the affordability of telephone service in tribal areas. SBI has also requested an extension of the Covered Locations exemption to cover the Eastern Navajo Agency, whose "checkerboard" configuration makes it all but impossible to administer tribal Lifeline discounts unless the entire area is treated as tribal. SBI has also requested that the Commission direct Universal Service Administrative Company

(“USAC”) to remove the effect of the nationwide IAS cap on CETC support from the IAS received by carriers serving Covered Locations. All of these proposed changes would help improve access by residents of tribal areas to voice service and accelerate the deployment of broadband in those areas in the months and years ahead.

## **II. THE UNIQUE CHALLENGES OF TRIBAL AREAS MUST BE RECOGNIZED**

SBI takes this opportunity to emphasize the importance of recognizing the special challenges faced by tribal communities as the Commission develops reforms along the path outlined in the Plan. Recently, Senator Rockefeller wrote to Chairman Genachowski to urge prompt action to reform universal service mechanisms to benefit consumers in rural and high-cost areas. He stated, in pertinent part:

I believe the residents of these rural communities need to know that they have the same access to quality communications as those in urban areas. This is not just my opinion. As you know, it’s the law.

\* \* \* \*

Inequities in basic infrastructure, like the ones exposed by the mining disaster in West Virginia, are profoundly unacceptable. In order to honor the spirit of universal service and the legal requirements of Section 254, the FCC must act to remedy this situation. *Everyone in this country, no matter who they are or where they live, deserves access to modern communications services, including broadband and wireless services.*<sup>3</sup>

The National Broadband Plan<sup>4</sup> eloquently set out the problem to be addressed:

Digital exclusion compounds inequities for historically marginalized groups. People with low incomes, people with disabilities, racial and ethnic minorities,

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<sup>3</sup> Correspondence from Senate Commerce Committee Chairman John D. Rockefeller, IV to Chairman Julius Genachowski, August 2, 2010 (emphasis added).

<sup>4</sup> Omnibus Broadband Initiative, FCC, CONNECTING AMERICA: THE NATIONAL BROADBAND PLAN (Mar. 16, 2010) (“NBP” or “Plan”).

people living on Tribal lands and people living in rural areas are less likely to have broadband at home. ... Like the costs of poverty, it is difficult to quantify the costs of digital inequality. It is certain, however, that people will not experience the promised benefits of broadband—increased earning potential, enhanced connections with friends and family, improved health and a superior education—without a connection.<sup>5</sup>

Several commenters noted the unique characteristics of tribal lands and the need for special consideration as reforms are developed. For example, the Navajo Nation Telecommunications Regulatory Commission (“NNTRC”) highlighted the extremely rural nature of the Navajo Nation in relation to the rest of the country. Specifically, while West Virginia, which is considered a rural state, with a population density of 75 persons per square mile, the Navajo Nation has only 7 persons per square mile.<sup>6</sup> NNTRC also drew the Commission’s attention to the often extreme poverty found in tribal areas, noting that unemployment on the Navajo Nation consistently hovers around 40 percent, and that over 50 percent of the population is below the poverty line, with per capita incomes of just over \$7,000 per year.<sup>7</sup> NTTA starkly described the lack of communications service on tribal lands:

Native communities are the worst-served in the United States, with an average service rate twenty to thirty-five percent below non-tribal communities. What this means is twenty to thirty-five percent of Native Americans, including nearly 50 percent of Navajos, lack the ability to call 911 for help.<sup>8</sup>

The sparse population and widespread poverty on tribal lands create unique challenges, and care must be taken to provide sufficient support under both the High Cost and Low Income programs. As the Cheyenne River Sioux Tribal Telephone Authority (“CRSTTA”) pointed out,

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<sup>5</sup> *Id.* at 129.

<sup>6</sup> NNTRC Comments at 1.

<sup>7</sup> *Id.* at 2.

<sup>8</sup> National Tribal Telecommunications Association (“NNTA”) Comments at 9.

the very low population density of tribal areas make universal support a critical factor in providing telecommunications service:

By definition, Indian reservations do not have sufficient numbers of customers in order to achieve economies of scale that would justify the expenditure of funds for infrastructure build-out. USF and high-cost support, therefore, have been critically important to the provision of telecommunications services in Indian country. Any changes to those funds will have an impact on Indian country telecommunications services.<sup>9</sup>

Because of the critical need for sufficient funding of network investments in tribal areas, several commenters emphasized that any reforms must carve out exceptions for tribal areas in order to avoid unintended negative consequences for people living in those areas. In their joint comments, Native Public Media and the National Congress of American Indians (“NPM-NCAI”) stated:

In its efforts to reform USF to support broadband, the FCC must not inadvertently “cut the only wire” going into Indian Country as it looks to transition the USF program to support broadband as well as Plain Old Telephone Service (POTS). Simply eliminating current telephone programs to provide funding for broadband could widen the communications gap and the Digital Divide in Indian Country.<sup>10</sup>

The NNTRC pointed out that a disruption in funding of communications networks would negatively impact the ability of Navajos to preserve their distinctive culture and way of life:

The absence of USF funding or the capping of USF on the Navajo Reservation will undermine build out of telecommunications infrastructure into very remote and economically impoverished areas. These areas are the last bastions for traditional Navajo lifestyles and are revered for cultural significance. Providing basic communication services to these areas is essential for safety and quality of life if the Navajos are to retain the Navajo’s cultural distinctiveness.<sup>11</sup>

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<sup>9</sup> CRSTTA Comments at 4.

<sup>10</sup> NPM-NCAI Comments at 2.

<sup>11</sup> NNTRC Comments at 4.

In sum, because of the special challenges faced by carriers serving tribal areas, it is essential that the Commission avoid disruptions of high-cost support that is critical to the economic development and public safety of tribal communities.

### **III. THE COMMISSION SHOULD RESOLVE OUTSTANDING ITEMS THAT WOULD BENEFIT RESIDENTS OF TRIBAL AREAS**

In the two years since the *Interim Cap Order* was adopted, SBI has brought some important items to the Commission's attention that are of great relevance to tribal areas. These requests are currently pending, and they should be resolved as soon as possible to accelerate deployment of advanced telecommunications infrastructure on tribal lands.

#### **A. The Commission Should Grant SBI's Petition for Waiver of the Interim Cap on Eastern Navajo Agency.**

In December 2009, SBI petitioned the Commission to waive the Interim CETC Cap to enable competitive ETCs providing service in the Eastern Navajo Agency to receive uncapped high-cost support disbursements.<sup>12</sup> Because of the unique and extraordinary circumstances facing consumers residing in the Eastern Navajo Agency, the requested waiver is needed to enable SBI to expand and to continue providing services that are urgently needed by subscribers residing there, and to provide other competitive carriers with an incentive to provide services to consumers in the Agency.

SBI demonstrated how allowing competitive ETCs to receive uncapped support will accelerate infrastructure investment in the Eastern Agency. SBI described its plans to construct

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<sup>12</sup> Smith Bagley, Inc., Petition for Waiver, CC Docket No. 96-45, WC Docket No. 05-337 (filed Dec. 14, 2009); *Comment Sought on the Petition of Smith Bagley, Inc. for a Limited Waiver of the Interim Cap on Universal Service High-Cost Support for Competitive Eligible Telecommunications Carriers*, Public Notice, WC Docket No. 05-337, DA 10-48 (rel. Jan. 12, 2010).

new cell sites in many areas, including at least four sites in the near term that will serve areas in the Eastern Navajo Agency, if uncapped support is provided.

SBI's Petition for Waiver discussed how the special circumstances present in the Eastern Navajo Agency demonstrate that the provision of uncapped support will serve the public interest. SBI demonstrated how uncapped high-cost support for lines served in the Eastern Agency (and extending uncapped support to any competitive ETCs choosing to deploy facilities and provide service to subscribers in the Eastern Agency) will contribute to increasing the level of telephone penetration because it will assist carriers in extending service to areas in the Agency that currently are unserved, improving and enhancing service in currently underserved areas. SBI described how this deployment of facilities will also increase access to broadband services for people living in the Eastern Agency.

A grant of the requested waiver will immediately make additional high-cost funding available for investment in SBI's wireless network in unserved and underserved areas in the Eastern Agency. This will promote the goal of preserving and advancing universal service while enabling SBI to accelerate the deployment of broadband-capable infrastructure in areas that are severely lagging in availability and adoption.

**B. The Commission Should Grant SBI's Request for Review of USAC's Decision to Cap IAS to Competitors Serving Covered Locations.**

The plain language of the *Interim Cap Order* entitles CETCs to receive uncapped high-cost support for lines qualifying for the Covered Locations exception to the Interim Cap. Yet CETCs serving Covered Locations have continued to receive capped support for their lines qualifying for the exception. Rather than provide uncapped support as directed in the Interim Cap Order, USAC has continued to apply the nationwide cap on Interstate Access Support to

CETCs. In neither the *Interim Cap Order* nor the *Covered Location Waiver Order* did the FCC ever state that a CETC serving Covered Locations would be entitled to uncapped high-cost loop, local switching, and interstate common line support, yet have its IAS capped. Therefore, SBI requested Commission review of USAC's to cap a portion of CETCs' support even if they serve lines qualifying for the Covered Locations exception.<sup>13</sup>

The Interim Cap has cost rural consumers millions of dollars in advanced infrastructure investment already. SBI estimates that its support on tribal lands is being reduced by approximately \$900,000 per year – roughly 26% of its total support in tribal areas – by operation of the nationwide IAS cap, which has caused it to delay construction of at least three new cell sites in remote areas that need coverage. Accordingly, a grant of SBI's Request for Review will benefit tribal lands immediately.

**C. The Commission Should Grant SBI's Request to Increase the Tier 4 Enhanced Lifeline Discounts Available to Residents of Tribal Lands.**

In March 2009, SBI requested that the Commission initiate a rulemaking proceeding for the purpose of expanding the fourth tier of the Universal Service Fund Lifeline program, by increasing the level of monthly support available to qualifying low-income telephone subscribers by \$5.00, thus raising the overall amount of monthly support available under the Tier 4 program to \$30.00.<sup>14</sup>

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<sup>13</sup> Smith Bagley, Inc. Request for Review of Decision of Universal Service Administrator and Request for Declaratory Ruling, WC Docket No. 05-337, CC Docket No. 96-45 (filed July 6, 2010); *Comment Sought on the Smith Bagley, Inc. Request for Review of a Decision of the Universal Service Administrative Company and a Request for Declaratory Ruling*, Public notice, WC Docket Nos. 08-71 and 05-337, DA 10-1350 (rel. July 22, 2010).

<sup>14</sup> Smith Bagley, Inc., Petition for Rulemaking Regarding the Expansion of Support Available Pursuant to the Fourth Tier of the Universal Service Lifeline Program, RM 11529; *Comment Sought on Smith Bagley, Inc.'s Petition to Increase Support Provided by Tier Four of the Universal Service Low-Income Program*, Public Notice, DA 09-1011 (rel. May 4, 2009).

The conditions faced by people residing on tribal lands, which prompted the Commission's decision to establish the Tier 4 support program, continue to pose serious obstacles to the deployment of high-quality telecommunications services as well as to efforts to raise the level of telephone subscribership in tribal communities. These conditions—including severe poverty, low income levels, high levels of unemployment, the geographic isolation and remoteness of many tribal lands, the numerous health issues faced by tribal populations, and the lack of access to adequate medical care and services on many tribal lands—underscore the unique problems that continue to undermine the standard of livability in tribal communities. These substantial and ongoing problems warrant further Commission intervention, so that affordable and sufficient telecommunications services can be made more readily available on tribal lands.

Expansion of the Tier 4 program, as proposed by SBI, would reinvigorate a support mechanism that has shown a capacity for improving the availability and quality of telecommunications services on tribal lands. Expanded Tier 4 support would enable SBI and other eligible telecommunications carriers to increase the quantity of service available to residents of tribal lands by increasing included minutes on Lifeline rate plans and by increasing investment in infrastructure and telecommunications networks serving tribal communities. Increasing the level of Tier 4 support would also encourage competitive entry, making it more economically feasible for competitive ETCs offering alternative technologies to invest in infrastructure to serve tribal communities.

Market entry and increased levels of investment, made possible by expansion of the Tier 4 program, would directly improve access to telecommunications services and would also help to raise subscribership levels on tribal lands, bringing them closer to subscribership levels

throughout the country. Additional benefits include enhancing the availability of medical and emergency services, and helping to stimulate economic development. All these advantages flowing from an enhanced Tier 4 program would serve the ultimate goal of improving the standard of living in tribal communities. Accordingly, the Commission should grant SBI's request and increase the amount of Tier 4 support available to residents of tribal lands.

#### **IV. THE COMMISSION SHOULD TAKE IMMEDIATE STEPS TO IMPROVE ACCESS TO BROADBAND AND SUPPORT GROWING DEMAND FOR SUCH SERVICES**

On July 20, 2010, the Commission released its *2010 Sixth Broadband Deployment Report*.<sup>15</sup> For the first time, the Commission concluded that broadband services are not being deployed to all Americans in a reasonable and timely fashion.<sup>16</sup> Not surprisingly, the Commission found that low-income citizens and those living in rural areas are disproportionately impacted.<sup>17</sup> When a finding is made that broadband is not being deployed in a timely fashion, the Act requires the Commission to “take immediate action to accelerate deployment of [advanced telecommunications] capability by removing barriers to infrastructure investment and by promoting competition in the telecommunications market.”<sup>18</sup>

On August 6, 2010, the Commission released its Seventh Broadband Deployment Notice of Inquiry.<sup>19</sup> This Notice of Inquiry kicks off another round of proceedings to analyze broadband

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<sup>15</sup> *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, Amended by the Broadband Data Improvement Act*, GN Docket Nos. 09-137, 09-51, Report, FCC 10-129 (rel. July 20, 2010) (“*2010 Sixth Broadband Deployment Report*”).

<sup>16</sup> *Id.* at para. 28.

<sup>17</sup> *Id.*

<sup>18</sup> 47 U.S.C. § 1302(b).

<sup>19</sup> *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the*

deployment throughout the country. What it does not do is fulfill the Congressional directive to take immediate action.

Given the lack of access to broadband among large swaths of the country, the exploding demand for broadband service will not be met if current policies are continued. If the Commission wants to take truly immediate action to accelerate broadband deployment in rural America, it should take the following steps, which can be accomplished in very short order:

**A. Issue a clarification of a prior Commission ruling that permits all ETCs to use support to invest in dual-purpose networks.**

The Commission should issue a declaratory ruling, *sua sponte*, clarifying that carriers are required to use high-cost support to deploy facilities that carry both voice and data, including specifically, 3G and 4G networks. Nothing the FCC can do in the next year will accelerate broadband deployment as much as permitting existing carriers to immediately use federal high-cost support to deploy broadband networks.

SBI is aware that reclassification presents difficulties. We therefore urge the Commission to simply build upon the language of its *RTF Order*, which declared that investments can be made for dual-purpose networks:

[U]se of support to invest in infrastructure capable of providing access to advanced services does not violate section 254(e), which mandates that support be used "only for the provision, maintenance, and upgrading of facilities and services for which the support is intended." The public switched telephone network is not a single-use network. ***Modern network infrastructure can provide access not only to voice services, but also to data, graphics, video, and other services.*** High-cost loop support is available to rural carriers "to maintain existing facilities and make prudent facility upgrades[.]" ***Thus, although the high-cost loop support mechanism does not support the provision of advanced services,***

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*Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, GN Docket No. 10-159, Seventh Broadband Deployment Notice of Inquiry, FCC 10-148 (rel. Aug. 6, 2010).

*our policies do not impede the deployment of modern plant capable of providing access to advanced services.* Rural carriers may consider both their present and future needs in determining what plant to deploy, knowing that prudent investment will be eligible for support. The measures that we adopt in this Order will increase incentives for carriers to modernize their plant by increasing the total amount of high-cost loop support available under the cap.<sup>20</sup>

Current 3G networks allow consumers the capability of accessing the nine supported services through Voice over IP (VoIP) platforms, such as for example, Vonage or Skype. As long as ETCs deliver to consumers access to all nine supported services, it is in the public interest to encourage deployment of dual-purpose networks that permit access to both voice and data networks.

Likewise, soon-to-be-deployed LTE networks will allow both voice and data applications to flow through the same equipment. That is, all of the supported services will be carried as IP traffic on LTE networks. Allowing companies such as SBI to *immediately* use support flowing from the existing mechanism to invest in dual-purpose broadband technologies is the best way to demonstrate to Congress that the Commission is taking *immediate and concrete* steps to accelerate broadband deployment in rural America.

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<sup>20</sup> *Federal-State Joint Board on Universal Service, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Fourteenth Report and Order, twenty-second Order on Reconsideration, and Further Notice of Proposed Rulemaking*, 16 FCC Rcd 11244, 11322 (2001) (“*RTF Order*”) (emphasis added).

**B. Implement the Verizon Wireless and Sprint Merger Conditions Without Further Delay and in a Way that Does Not Unlawfully Restrict Funding to Other CETCs.**

Both Verizon Wireless and Sprint, as conditions for approval of their respective mergers, committed to have their support phased down to zero in equal 20% increments each year starting on December 31, 2008. Twenty months later, the phase-down has not even started.<sup>21</sup>

The Corr Wireless Request for Review,<sup>22</sup> filed nearly 18 months ago, is ripe for action.<sup>23</sup> Put simply, Corr's petition asks the Commission to confirm that the cap on high-cost support to CETCs, adopted pursuant to a notice-and-comment rulemaking, cannot be modified by the Verizon Wireless and Sprint merger orders. SBI, via its rural carrier association, has advocated several steps the Commission should take to ensure the lawful implementation of the merger conditions:<sup>24</sup>

- Grant the Corr Wireless request for review and instruct USAC to make the phase-down amounts available to other CETCs under the Interim Cap as required. ARC estimates that at least half of the phase-down amounts will be available for other purposes and will not be redistributed to other CETCs;
- Implement the phase-down in the areas Verizon Wireless is required to divest up until such time as they are actually divested;

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<sup>21</sup> See NASUCA NPRM Comments at 15 ("NASUCA responds that, given that these commitments were made in 2008, why should it take a Commission order to make the commitments real? Have these reductions not already occurred?") (footnote omitted).

<sup>22</sup> See Request for Review by Corr Wireless Communications, LLC of Decision of Universal Service Administrator, CC Docket No. 96-45, WC Docket No. 05-337 (filed Mar. 11, 2009); "Comment Sought on Corr Wireless, LLC Request for Review of a Competitive Eligible Telecommunications Carrier High-Cost Support Decision of the Universal Service Administrative Company," *FCC Public Notice*, DA 09-805 (rel. Apr. 9, 2009).

<sup>23</sup> 47 C.F.R. § 54.724(a) ("The Wireline Competition Bureau shall, within ninety (90) days, take action in response to a request for review of an Administrator decision that is properly before it.")

<sup>24</sup> A more detailed discussion can be found in the letters filed on behalf of SBI and other members of the Alliance of Rural CMRS Carriers in WT Docket No. 08-94 and 08-95, CC Docket No. 96-45, and WC Docket No. 05-337 on May 7, 2010, and July 26, 2010.

- Calculate the 20% phase-downs from a fixed amount equal to the capped support Sprint and Verizon Wireless were receiving as of the effective dates of their respective mergers; and
- Treat Verizon Wireless' relinquishment of ETC status in several states as separate from the phase-down, so that the phase-down is calculated independently of the support forgone through relinquishment.

In addition, SBI agrees with Windstream that phase-downs should be implemented immediately in accordance with the companies' voluntary commitments.<sup>25</sup> The Commission should act promptly to recover all of the excess support paid to Verizon Wireless and Sprint and ensure that their support reaches zero by 2012, the fifth year of the phase-down. This implementation timetable will make approximately \$1 billion available for broadband deployment sooner rather than later.<sup>26</sup>

On the other hand, if the Commission follows the recommendation of Verizon Wireless,<sup>27</sup> millions of dollars in support that could be used by wireless carriers to invest in advanced broadband networks will be forgone. Given that the new funding mechanisms have not yet been formally proposed, it is fair to conclude that actual use of support to deploy broadband would be delayed by years.

Any delay in taking action that would improve broadband deployment does not serve the public interest, does not comply with the Communications Act's directive to take immediate

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<sup>25</sup> See Windstream Comments at 32 ("Regardless of whether the Commission has yet begun to execute these phase-outs, both companies have been on notice since November 2008 that they would lose all CETC high-cost funding by the end of 2012. The companies made commitments in support of this timeline and already have over-recovered.")

<sup>26</sup> See Letter from David A. LaFuria, counsel for Alliance of Rural CMRS Carriers, to FCC Secretary Marlene H. Dortch in WT Docket No. 08-94 and 08-95, CC Docket No. 96-45, and WC Docket No. 05-337 (May 7, 2010) at 7-8.

<sup>27</sup> Among other things, Verizon Wireless suggests that its support should be allowed to float above the levels it received in December 31, 2008, before being phased down. Such a measure would directly contradict the *Merger Order* language and would allow Verizon Wireless to escape entirely its voluntary commitment to have its support reduced to zero at the end of the five-year period.

action when broadband is not being timely deployed, and certainly does not respond to Senator Rockefeller's letter urging that the Commission move with dispatch. There are ample mechanisms in place to ensure that funds are being used to build out new cell sites and deploy dual-purpose networks for the benefit of rural citizens, and SBI fully supports such accountability measures.

**C. The Commission Should Make Lifeline Support Available for Broadband.**

Since it was first designated as an ETC, SBI has been a leader in providing affordable, high-quality telecommunications services on tribal lands. In 2000, the company had zero Lifeline subscribers and the household telephone penetration on tribal lands was roughly 27%. In 2010, the company has over 60,000 Lifeline subscribers, and penetration (to be confirmed by 2010 Census data) is estimated to be roughly 80%. In 2000, wireless voice service on Navajo, Hopi, Zuni, White Mountain Apache was limited to some interstate highways and major towns. Now, it is available throughout most of the areas where tribal residents live, work and travel. In 2000, SBI offered 200 minutes of analog service to Lifeline subscribers; now, SBI offers 600 minutes of digital (2.5G) service and a wider local calling area, at same price point.

Though great strides have been made in voice service availability in the tribal areas SBI serves, these areas are sorely lacking in access to broadband services. Therefore, it is critical that Lifeline support be made available so that broadband service can be more affordable. Tier 4 Lifeline Support Program for voice has been instrumental in lowering price of service, while providing carrier incentives to construct facilities and reach out to low-income households. A Lifeline program for broadband will provide similar incentives for carriers while benefitting rural citizens.

Discounts must be competitively and technologically neutral, to empower consumers to choose the service that best suits their needs, and they should be separate from Lifeline for voice services, which on tribal lands will go mostly to funding mobile services that operate throughout the area where people live, work and travel. The eligibility requirements, and outreach guidelines for the existing Lifeline program can simply be extended to a broadband Lifeline program.

A broadband Lifeline program along the lines described above would help SBI and other ETCs accelerate their rollout of broadband services in tribal areas and in other areas with significant low-income populations.

**V. CONCLUSION**

SBI requests that the Commission undertake reforms that serve the dual goals of broadband deployment and universal service and recognize the unique challenges of deploying infrastructure in tribal areas, consistent with the comments set forth above.

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