

**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
)	
Establishing Just and Reasonable Rates for Local Exchange Carriers)	WC Docket No. 07-135
)	
High-Cost Universal Service Support)	WC Docket No. 05-337
)	
Developing an Unified Intercarrier Compensation Regime)	CC Docket No. 01-92
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Lifeline and Link-Up)	WC Docket No. 03-109

COMMENTS OF SMITH BAGLEY, INC.

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SUMMARY

For over twenty years, Smith Bagley, Inc. (“SBI”) has operated a commercial mobile wireless network in the Four Corners area of Arizona, New Mexico, Utah and Colorado. Starting from scratch, the company now serves over 100,000 people, including 56,000 of low-income households, on five Tribal nations in the region. The company has grown to employ over 175 people and it operates over 150 cell sites in remote Tribal lands.

SBI’s network reaches farther into Indian Country than any of its competitors, largely as a result of its investment of high-cost support to construct, maintain, and upgrade facilities in the region. Unquestionably, high-cost support is needed to construct additional cell sites in SBI’s service area. In addition, many existing cell sites would not be viable without federal high-cost support being available to cover a portion of the ongoing operating and maintenance expenses.

SBI has previously put into the record substantial evidence of the extraordinary difficulties that any carrier has in serving these remote lands, including low population density, extreme poverty, and transport facilities that are either non-existent or expensive to lease. At the outset, the Commission should create an exemption for Tribal lands that does not reduce support under the existing mechanism, until such time as a new program is in place and fully funded. Prematurely “phasing down” support to carriers serving high-cost Tribal lands will create uncertainties that will not only harm short run infrastructure investment, but could Tribal ETCs to put off or freeze existing investment plans.

As set forth in more detail *infra*, SBI suggests the following actions for Tribal lands:

1. Cap support on a per-line basis, not a statewide basis. This will prevent line support growth due to ILEC access line loss and will cap support at the number of customers available on Tribal lands.
2. Provide certainty to Tribal carriers by affirming the Commission's "No-Barriers" policy so that existing high-cost support can be invested to build 4G networks immediately.
3. Create a separate Tribal broadband fund using a forward-looking cost model which is administered in a competitively neutral manner. Having a separate fund is the best way to recognize the unique characteristics of, and focus attention on, Tribal lands.

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COMMENTS OF SMITH BAGLEY, INC.

Smith Bagley, Inc. (“SBI”), by counsel, hereby submits these Comments, pursuant to the *Public Notice* issued by the Wireline Competition Bureau in the above-captioned proceeding.¹

The *Public Notice* seeks comment on the America’s Broadband Connectivity Plan (“ABC

¹ *Further Inquiry into Certain Issues in the Universal Service-Intercarrier Compensation Transformation Proceeding*, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 07-135, WC Docket No. 05-337, CC Docket No. 01-92, CC Docket No. 96-45, WC Docket No. 03-109, DA 11-1348 (rel. Aug. 3, 2011), 76 Fed. Reg. 49401 (Aug. 10, 2011) (“*Public Notice*” or “*Notice*”), Erratum (rel. Aug. 8, 2011). The due date for comments in response to the *Public Notice* is August 24, 2011. See *Connect America Fund*, WC Docket No. 10-90, *A National Broadband Plan for Our Future*, GN Docket No. 09-51, *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, *High-Cost Universal Service Support*, WC Docket No. 05-337, *Developing an Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Lifeline and Link-Up*, WC Docket No. 03-109, Order, DA 11-1374 (rel. Aug. 8, 2011) (denying various motions for extension of the deadlines for comments and reply comments).

Plan”),² the RLEC Plan,³ the Joint Letter,⁴ the State Member Plan,⁵ as well as certain other proposals. The ABC Plan, RLEC Plan, and Joint Letter are referred to collectively in these Comments as the “Wireline Industry Proposals”. The Public Notice also seeks comment on an Alaska-specific proposal by GCI (“GCI Proposal”)⁶ and asks whether this or a similar mechanism would be warranted for Tribal or other areas facing particularly challenging conditions. These Comments are limited to discussing the GCI Proposal and the issue of how to address the unique challenges of serving Tribal areas.

I. INTRODUCTION

A. SBI’s Network.

SBI operates a commercial mobile wireless network in the “Four Corners” area of Arizona, New Mexico, Utah and Colorado. SBI has built extensive wireless coverage, providing service to over 100,000 people, including 56,000 low-income households, on the Navajo, Hopi, White Mountain Apache, Zuni and Ramah Navajo Tribal lands.

Starting from scratch over twenty years ago, SBI has grown to employ over 175 people, almost all of them drawn from local communities in Arizona and New Mexico. Fifty are Native

² Letter from Robert W. Quinn, Jr., AT&T, Steve Davis, CenturyLink, Michael T. Skrivan, FairPoint, Kathleen Q. Abernathy, Frontier, Kathleen Grillo, Verizon, and Michael D. Rhoda, Windstream (“Price Cap Carriers”), to Marlene H. Dortch, FCC, WC Docket No. 10-90 *et al.* (filed July 29, 2011).

³ Comments of National Exchange Carrier Association, Inc., National Telecommunications Cooperative Association (“NTCA”), Organization for the Promotion and Advancement of Small Telecommunications Companies (“OPASTCO”), and Western Telecommunications Alliance (“WTA”) (the “Joint Rural Associations”), WC Docket No. 10-90 *et al.* (filed Apr. 18, 2011) (“RLEC Plan”).

⁴ Letter from Walter B. McCormick, Jr., United States Telecom Association, Robert W. Quinn, Jr., AT&T, Melissa Newman, CenturyLink, Michael T. Skrivan, FairPoint, Kathleen Q. Abernathy, Frontier, Kathleen Grillo, Verizon, Michael D. Rhoda, Windstream, Shirley Bloomfield, NTCA, John Rose, OPASTCO, and Kelly Worthington, WTA, to Chairman Julius Genachowski, Commissioner Michael J. Copps, Commissioner Robert M. McDowell, Commissioner Mignon Clyburn, FCC, WC Docket No. 10-90 *et al.* (filed July 29, 2011) (“Joint Letter”).

⁵ Comments by the State Members of the Federal-State Joint Board on Universal Service (“State Members”), WC Docket No. 10-90 *et al.* (filed May 2, 2011) (“State Member Plan”).

⁶ See Letter from Christopher Nierman, GCI, to Marlene H. Dortch, FCC, WC Docket No. 10-90 *et al.* (filed Aug. 1, 2011).

Americans. With the help of federal high-cost support, SBI has constructed over 150 cell sites throughout its network.⁷

Tribal country in the Four Corners region is extraordinarily high-cost to serve. Most of SBI's cell sites on rural Tribal lands would not have been built without federal high-cost support. Many could not remain operational but for the provision of ongoing federal high-cost support to cover high operating and maintenance costs.

With the help of high-cost support, this year SBI has turned on ten new cell sites and it will continue to aggressively expand and upgrade its network indefinitely with continued support. Over the next 12-24 months, SBI plans to significantly expand its coverage to deliver improved service to some of the most remote areas within the Tribal lands that it is licensed to serve. Within the next several months, SBI will inaugurate the first Blackberry[®] service offering throughout its network, reaching many areas that have never had access to this important data tool that can enhance business productivity and contribute to public safety.

B. Geographic and Demographic Challenges.

The Four Corners area where SBI provides services includes some of the most remote and high-cost areas of the country. The population density of SBI's entire service area, including substantial non-Tribal land, is below ten persons per square mile. Transport facilities can be difficult to access or extraordinarily expensive. As a result, SBI has built its own microwave network which reaches 94% of its cell sites.

The vast majority of the Tribal communities SBI now serves had no wireless service before it constructed facilities. Many had no telephone service of any kind. On portions of the Hopi Nation, SBI has in the past been called upon to be the *de facto* Public Safety Answering

⁷ SBI has also used funding from the Rural Utilities Service to build a wireless broadband connection to a Navajo chapter house near Aneth, Utah, where six personal computers connect this remote community to the world.

Point, as it was the only telephone service provider capable of delivering emergency telephone calls to the appropriate recipient. Difficult demographics in the area present additional challenges to increasing telephone penetration.

Extreme poverty contributes significant challenges to building infrastructure. SBI has previously quoted information from the National Tribal Telecommunications Association (“NTTA”), 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 income of just over \$7,000 per year.⁸

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, 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.⁹

Without access to federal universal service program funding, SBI would not have been able to construct facilities beyond the population centers and highways in the Four Corners region. It is important to note that the Commission’s decision to create Tier 4 Lifeline has enabled thousands of low-income households to access telephone service. This, together with

⁸ See, SBI’s Reply Comments in WC Docket No. 10-90, GN Docket No. 09-51 and WC Docket No. 05-337 (“SBI Reply Comments”).

⁹ *Id.*

high cost funding, has helped SBI justify construction of new cell sites in remote unserved and underserved Tribal areas.

In sum, the challenges to improving telephone penetration on Tribal lands are significant and ongoing. Yet, concerted efforts by the Commission have yielded substantial positive and measurable benefits on Tribal lands. Accordingly, SBI offers the following comments on the *Public Notice*, focusing on proposals specific to Tribal lands.

II. DISCUSSION

As the Commission considers reforms to the Universal Service Fund and the establishment of new mechanisms for broadband deployment, one critical mission will be to ensure that service will not be disrupted in Tribal areas and other areas where costs are extremely high and poverty is widespread. As Senator Rockefeller stated so eloquently in his letter last year to Chairman Genachowski:

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.***¹⁰

¹⁰ Correspondence from Senate Commerce Committee Chairman John D. Rockefeller, IV to Chairman Julius Genachowski, August 2, 2010 (emphasis added).

A. Tribal Lands Present Unique Challenges.

Tribal areas are among the economically disadvantaged areas in the country. According to the National Congress of American Indians (“NCAI”), “the reality is that Indian reservations have . . . the highest poverty rate of any ethnic grouping in America. . . . [T]he vast majority of tribes continue to be mired in a severe economic depression caused by decades of marginalization.”¹¹ Moreover, according to estimates for 2005-2007, “approximately 39 percent of the people in Navajo Nation lived below the poverty level. Approximately 46 percent of children were below the poverty line. Among those aged 65 and older, 43 percent lived below the poverty line.”¹² As the Economic Policy Institute recently reported, the unemployment rate among Native Americans has risen at a rate 1.6 times the rate of increase for white Americans.¹³

Telephone penetration is far lower in Tribal areas than in the country as a whole. According to 2000 Census figures, even the more populous Indian reservations had telephone subscribership levels significantly below the national average. Based on the 2000 census:

Nine of [the] 25 [most populous] Tribal lands, representing about 44 percent of Native American households on Tribal lands in the lower 48 states, had telephone subscribership rates at a level below 78 percent—which is about what the national rate was *over 40*

¹¹ NCAI, Economic Development, accessed at http://www.ncai.org/Economic_Development.45.0.html , cited in SBI, Petition for Rulemaking Regarding the Expansion of Support Available Pursuant to the Fourth Tier of the Universal Service Lifeline Program, RM-11529, filed Mar. 27, 2009 (“SBI Petition”). President Obama recently described Native Americans as a “marginalized community” and has called upon every cabinet agency to produce a plan to improve the relationship between the federal government and Tribal communities. Ben Feller, “Obama: US Must Reverse Course with Indians,” Associated Press, Nov. 5, 2009, accessed at

<http://www.google.com/hostednews/ap/article/ALeqM5hr0j0YL8Xrnq47TgF24NEX3dRliQD9BPL4V00>. President Obama has committed “to make sure that the first Americans get the best possible chances in life in a way that’s consistent with [their] extraordinary traditions and culture and values.” President Barack Obama, Remarks at the Closing of the Tribal Nations Conference (Nov. 5, 2009), accessed at <http://www.whitehouse.gov/the-press-office/remarks-president-closing-Tribal-nations-conference> .

¹² U.S. Census, 2005-2007 American Community Survey 3-Year Estimates, Table S1703, “Selected Characteristics of People at Specified Levels of Poverty in the Past 12 Months.”

¹³ See “Different Race, Different Recession: American Indian Unemployment in 2010” at p. 3 (Economic Policy Institute, Nov. 18, 2010), available at <http://www.epi.org/page/-/pdf/ib289.pdf?nocdn=1>.

years ago when the 1960 decennial census was taken. *The subscribership rate for the most populous Tribal land—the Navajo—was only 38 percent.*¹⁴

Low population density is a large factor making telephone service expensive to build. In addition, poverty on reservation lands is an enormous challenge. The per capita income on Navajo as of the 2000 Census was \$7,200.¹⁵ In 2000, the U.S. per capita income was over \$30,000.¹⁶

Senator Udall, of New Mexico, has expressed concerns in a letter to Chairman Genachowski regarding telephone subscribership levels on Tribal lands, pointing out that statistics reflecting low levels of subscribership are troubling, and that these statistics:

still do not adequately convey the hardships created by this lack of telephone service. In addition to the daily inconveniences, not having a landline or cell phone reception can mean the difference between life and death. Imagine not being able to call an ambulance when you or your loved one is in medical danger. Or consider the heartbreak of a man outside Gallup, New Mexico, who missed two opportunities for a life-saving kidney transplant because he lacked telephone service at home and could not be contacted in time.¹⁷

Likewise, the Navajo Nation Telecommunications Regulatory Commission has 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

¹⁴ GAO, Report to Congressional Requesters, “Challenges to Assessing and Improving Telecommunications for Native Americans on Tribal Lands,” GAO-06-189, rel. Jan. 2006 at 13 (emphasis added), *cited in* SBI Petition at 9-10. While SBI expressed the belief that subscribership on Navajo lands has substantially increased since the 2000 Census (in part because of SBI’s efforts to enroll Lifeline-eligible subscribers), it noted that Navajo subscribership likely remains well below the national average of 94.6 percent reflected in the most recent American Community Survey figures.

¹⁵ Source: <http://www.navajobusinessdevelopment.com/information/navajo-nation-demographics.html>.

¹⁶ Source: <http://bber.unm.edu/econ/us-pci.htm>.

¹⁷ Letter from Senator Tom Udall, to Julius Genachowski, Chairman, FCC, October 30, 2009, at 1.

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.¹⁸

Federal high-cost support has enabled SBI to extend and maintain essential voice services on Tribal lands. Support has been used to build towers, microwave backbone facilities, switching equipment, hardware and software needed to operate a modern telecommunications network. Put simply, there is no business plan that supports a stand-alone wireless network throughout the majority of Tribal land area that SBI serves. There are no towns larger than about 8,000 people on the Navajo reservation. Income levels do not permit the purchase of substantial amounts of vertical services to help support a network.

Without high-cost support, SBI would not be able to build facilities on Tribal lands, and without low-income support, many Tribal citizens would not be able to afford telephone service. The best evidence of this is the rapid rise of low-income households receiving support. Today, SBI serves over 56,000 low-income households with Lifeline service, many of which never had a telephone before SBI began offering Lifeline in 2001.

B. Universal Service Mechanisms Must Ensure that Tribal Lands Have Access to Basic Telecommunications Services.

There is ample support in the record of this proceeding to justify a special exemption to ensure Tribal areas are not left behind as universal service reform moves forward.¹⁹ While it is

¹⁸ Comments of the Navajo Nation Telecommunications Regulatory Commission, WC Docket No. 10-90 *et al.* (filed July 12, 2010).

¹⁹ *See, e.g.*, Native Telecom Coalition for Broadband comments at p. 2 (April 18, 2011) (citing “circumstances justifying not just an exception from the cap, but demanding a more complete resolution of universal service funding for Native Americans.”); National Congress of American Indians, Resolution # MKE-11-016 (resolving that “NCAI does hereby support and urge the creation of a separate Tribal Mobility Fund, and strongly urges the [FCC] to set aside a minimum of 30% of the Mobility Fund for use

essential to accelerate broadband deployment on Tribal lands, the utility of basic wireless voice service is critical to health and safety, especially where citizens live many miles from the grocery store, post office, hospital, school, and place of employment. On substantial portions of Tribal lands, SBI provides the only reliable mobile telephone service, with a network that reaches where most Tribal residents live, work and travel.

Accordingly, SBI requests the Commission to confer special status on Tribal lands, and the citizens therein who have been traditionally unserved and underserved for generations, to ensure that they receive high-quality advanced services from the service provider that they choose, consistent with Section 254(b)(3) of the Act. SBI urges the Commission to take no action that would reduce existing levels of support on Tribal lands, or otherwise threaten the ability of carriers operating on Tribal lands to continue to provide basic voice services.

C. The GCI Proposal Will Not Assure Sufficient Support on Tribal Lands.

Under the GCI Proposal, high-cost support would be capped both for ILECs and CETCs in Alaska. As a condition of receiving this capped support, all ETCs would be required to commit to offer minimum broadband speeds where terrestrial middle-mile facilities are available to at least two-thirds of residences within five years. Under certain circumstances, support could be reduced.

The total amount of high-cost support being provided on Tribal lands nationwide is not a significant component of the entire high-cost program. Accordingly, it is appropriate for the Commission to permit an increase in the fund for Tribal lands to accelerate infrastructure development and to increase Lifeline support in areas that are most in need.

in the Tribal Mobility Fund”); National Tribal Telecommunications Association comments at p. 14 (April 18, 2011) (“Imposing a cap on the high-cost fund for carriers operating in underserved or unserved areas where costs are the highest, imposes a ceiling on universal service support for areas with the greatest infrastructure need. This suggests an inherent lack of understanding about and lack of commitment to solving a fundamental economic barrier for Tribal communities.”)

Rather than focusing on capping or reducing support to Tribal lands, the Commission should raise its expectations for program participants by focusing on ensuring that funds currently devoted to the program are being used consistent with the statute and Commission rules. For wireless carriers, as discussed below, the Commission must also provide much needed certainty that high-cost support can be used to construct 4G networks.

III. Modified Proposal for Tribal Lands Outside of Alaska.

The Commission's proposed reverse auction mechanism would likely result in little or no high-cost support reaching Tribal areas elsewhere in the country because of the extraordinarily high costs of serving those areas. Moreover, any system providing for only one supported network and a right of first refusal for the incumbent carrier would merely perpetuate the abysmal levels of telephone penetration that persists in many Tribal areas today and prevent the rapid proliferation of wireless technology so desperately needed in remote high-cost Tribal areas. A Tribal exemption is needed, therefore, to preserve existing levels of service and allow the further deployment of infrastructure to increase telecommunications and broadband subscribership on Tribal lands.

Rather than constraining fund growth in the aggregate, SBI suggests a different approach that reflects an appropriate urgency in deploying both basic telephone service and broadband services to Tribal lands.

A. Cap High-Cost Support on a Per-Line Basis, not a Statewide Basis.

Carriers serving Tribal lands require near-term certainty so that they can meet existing build-out commitments to states, the FCC, and Tribal governments. Accordingly, on Tribal lands, the Commission should cap support on a *per-line* basis, so that participating carriers do

not receive increased support solely as a result of ILEC access line loss.²⁰ A per-line cap requires no complicated cap reduction calculations and provides an appropriate incentive and the necessary certainty for carriers serving Tribal lands to continue to expand their service offerings.

Moreover, the amount of support on Tribal lands is capped by the number of customers using service. So, if a carrier can build service to serve new Tribal customers, it should be rewarded for connecting them, but a carrier cannot increase support unless it gets and keeps a customer. This is superior to capping support statewide, which provides a reduced incentive to construct new facilities or reach out to new customers.

B. Provide Certainty by Affirming the “No-Barriers” Policy.

Many components of a telecommunications network can be used to transmit both voice and broadband services. For example, a fiber network transmits both voice and broadband data. Similarly, a cell tower holds equipment that carries both voice and broadband. In a 4G world, networks will be “all-IP,” meaning that both voice and data will traverse the network as data. 4G network equipment will seamlessly integrate voice and data components. These advances provide the Commission with an opportunity to advance broadband deployments in the near-term, separate from any controversies concerning Commission authority to allow carriers to use high-cost support for broadband deployments.

In 2001, the FCC discussed this matter in a rulemaking proceeding:

Contrary to the arguments of some commenters, use 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

²⁰ *In the Matter of High-Cost Universal Service Support, Federal-State Joint Board on Universal Service, Order*, 23 FCC Rcd 9232 (May 1, 2008) (“Because competitive ETCs receive the same per-line support as the incumbent LEC, any increase in the incumbent LEC's cost per loop, whether due to inefficiencies or line loss, could contribute to competitive ETC support growth rates. For example, if the underlying incumbent LEC per-line (but not total) support increases year over year (due to line loss, for example), the competitive ETC will receive both more per-line support and more total support, even in a service area where a competitive ETC's lines remain constant year over year.”).

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, 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.

* * * * *

As we move forward in the future, we will consider ways to ensure that we do not create regulatory barriers to the deployment of advanced services. ***The principal thrust of the "no barriers" proposal appears to be that the Commission should require carriers to deploy plant capable of providing access to advanced services, and encourage them to replace plant that cannot provide such access.*** Moreover, we believe any specific policies we adopt in this area should apply uniformly to all local exchange carriers, rather than as part of a transitional high-cost support mechanism for rural carriers. Therefore, we believe that the "no barriers" policy as specifically proposed by the Rural Task Force should be considered further in connection with our comprehensive review of the high-cost loop support mechanisms for rural and non-rural carriers. ***In accordance with our mandate under section 706, we will continue to examine whether deployment of advanced telecommunications capability to all Americans is progressing in a reasonable and timely manner, and to consider means by which we can stimulate the further deployment of access to advanced services.***²¹

²¹ Federal-State Joint Board on Universal Service, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order in CC Docket No. 00-256 Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, 16 FCC Rcd 11,244, 11322-23 (2001) ("MAG Order") (emphasis added).

Two practical considerations are important here. First, from the Commission's language it is crystal clear that it wishes to encourage carriers to invest in modern plant, capable of providing advanced services, including broadband -- not yesterday's technology. Second, the language is now ten years old and it does not appear in the Commission's rules. Accordingly, this reform order is a perfect opportunity to affirm the long-standing policy to provide program participants with welcome certainty for near-term investments.

From a policy perspective, the FCC's rules require that all universal service rules be technologically and competitively neutral, both on their face and in application.²² Thus, the Commission's "no-barriers" approach stated above must be applied to all universal service recipients on a competitively neutral basis. By affirming the no-barriers policy for all current program participants, carriers such as SBI will be able to accelerate the substantial investments in advanced 4G networks based on the much needed regulatory certainty.

The combination of an exemption and a pronouncement on the no-barriers policy will drive immediate and substantial investment in 4G network infrastructure in Tribal lands across the country.

C. Create a Tribal Broadband Fund, Using a Forward-Looking Cost Model, Which is Administered in a Competitively Neutral Manner.

SBI supports the creation of a specific Tribal Broadband Fund, which would ensure that sufficient support is available to construct and operate broadband networks and facilities on unserved and underserved Tribal lands. Having a separate fund is the best way to recognize the

²² *In the Matter of Federal-State Joint Board on Universal Service, Western Wireless Corp. Petition for Preemption of an Order of the South Dakota Public Utilities Commission, Declaratory Ruling*, 15 FCC Rcd 15168, 15177 (2000) (concluding that "the proper inquiry is whether the effect of the legal requirement, rather than the method imposed, is competitively neutral."); *In the Matter of the Petition of the State of Minnesota for a Declaratory Ruling Regarding the Effect of Section 253 on an Agreement to Install Fiber Optic Wholesale Transport Capacity in State Freeway Rights-of-Way, Memorandum Opinion and Order*, 14 FCC Rcd 21697 (1999) ("We do not believe that Congress intended to protect the imposition of requirements that are not competitively neutral in their effect on the theory that the non-neutral requirement was somehow imposed in a neutral manner.").

unique characteristics of Tribal lands and focus needed attention to improving service to Tribal lands. This is consistent with recommendations set forth by Tribal interests at the recent White House Native American Business Leaders Roundtable.²³

Tribal lands are far from homogeneous, with some having access to natural resources, or other sources of revenue, while others may be located in urban areas with sufficient access to broadband, resulting in populations that are not unserved or underserved. Accordingly, the Commission may consider focusing a Tribal broadband fund toward lands where demographic characteristics show economic challenges, based on the most recent U.S. Census or other available data, which is below the national average for rural areas.

If the Commission adopts a forward-looking cost model for mobile broadband services, it may apply that model to Tribal lands to determine an appropriate level of support to construct broadband facilities. Support must be distributed on a competitively neutral basis, so that carriers which can deliver services efficiently are not disadvantaged with respect to those which cannot.

SBI opposes a proposed right of first refusal (“ROFR”) for incumbent wireline carriers serving Tribal lands.²⁴ A ROFR violates the Commission’s own core principle of competitive neutrality, and locks out alternative carriers for many years. Moreover, carriers such as SBI, who have successfully built facilities in rural areas, should not be locked out by a ROFR. While SBI does not seek preferential treatment, it likewise opposes any rule that would prevent existing carriers from expanding facilities or would otherwise establish a barrier in favor of incumbent wireline or other fixed wireless providers.

²³ See, e.g., page 43 of briefing materials available at: <https://prodnet.www.neca.org/publicationsdocs/wwpdf/81211fcc.pdf>

²⁴ In fact, if the Commission were to grant a right of first refusal on Tribal lands, SBI would argue that it should receive the right on the Navajo Reservation, where it serves more customers than the ILEC licensed to serve the reservation.

IV. CONCLUSION

The Commission should take the actions set forth above to accelerate broadband deployments on Tribal lands and provide much needed certainty for carriers who are today making substantial investments in these areas.

Respectfully submitted,

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