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September 13, 2011

VIA ELECTRONIC FILING

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

Re: Smith Bagley, Inc.  
WC Docket No. 10-90, 07-135, 05-337, and 03-109  
GN Docket No. 09-51, CC Docket No. 01-92 and 96-45

Madam Secretary:

In accordance with Section 1.1206 of the Commission's rules, 47 C.F.R. § 1.1206, we hereby provide you with notice of an oral ex parte presentation in connection with the above-captioned proceeding. On September 8, 2011 Kevin Frawley and undersigned counsel, on behalf of Smith Bagley, Inc. ("SBI"), met with Margaret McCarthy, Angela Kronenberg, Margaret Wiener, Joseph Cavender, Martha Stancill, Scott Mackoul and Susan McNeil.

We discussed SBI's experience serving tribal lands, including its use of high-cost and low income support to improve telecommunications services to rural citizens living on Navajo, Hopi, White Mountain Apache, Ramah Navajo and Zuni lands. SBI presented three proposals for high-cost reform on tribal lands, as set forth previously in the record of its comments in the above-captioned proceedings. A copy of SBI's slides and a map presented at the meeting are enclosed.

SBI asked the Commission to cap support on tribal lands on a per-line basis, clarify its ten-year old "no barriers" policy to ensure that mobile wireless carriers can use support to build 4G networks, and implement a separate mobile broadband fund on tribal lands, using a forward-looking cost model.

Marlene H. Dortch, Secretary

September 13, 2010

Page 2

SBI also requested the Commission to exempt tribal lands from interim actions, such as phase-downs of support, which can make it very difficult for carriers serving remote tribal lands to access capital markets, meet their loan covenants, keep promises made to state commissions and tribal authorities, and impede their ability to accelerate construction of critical telecommunications infrastructure on tribal lands.

SBI demonstrated that mobile wireless service quality on tribal lands has improved dramatically as a result of the high-cost program, but that work remains to be done to provide coverage throughout many remote areas. Moreover, capital invested in telecommunications infrastructure forms the foundation to accelerate 3G and 4G overlays on tribal lands nationwide. Accordingly, actions that accelerate cell site construction will likewise accelerate 3G and 4G availability on tribal lands.

If you have any questions or require any additional information, please contact undersigned counsel directly.

Sincerely,



David A. LaFuria  
Counsel for Smith Bagley, Inc.

Enclosures

cc: Margaret McCarthy, Esq.  
Angela Kronenberg, Esq.  
Margaret Wiener, Esq.  
Joseph Cavender, Esq.  
Margaret Wiener, Esq.  
Martha Stancill, Esq.  
Scott Mackoul, Esq.  
Susan McNeil, Esq.

# Smith Bagley, Inc.

## FCC Ex Parte Meetings

September 8, 2011

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## Challenges on Tribal Lands

- Per capita income: 25% of U.S. average
- High unemployment: 40-50% on Navajo (NTTA)
- 40% of population, and 46% of children, below poverty line
- Low population density: tribal lands SBI serves have approximately five people per square mile
- Huge distances from health care, first responders, towns, schools, all make mobile service critical
- Inaccessible landline connectivity – 94% of SBI cell sites use microwave due to high cost or unavailability of landline



## SBI's Success on Tribal Lands

- 2000: Sites along highways; no Lifeline subscribers; 30% household penetration
- 2011: Over 100,000 customers, of which over 56,000 are Lifeline. Household penetration significantly improved, to be validated by 2010 Census. 175 employees, over 150 sites, major upgrades scheduled for 2012.
- 2000: Wireless voice service on Navajo, Hopi, Zuni, White Mountain Apache limited to some interstate highways and major towns.
- 2011: Wireless voice service available throughout most of the areas where tribal residents live, work and travel.
- 2000: 200 minutes of limited access analog service available to Lifeline subscribers.
- 2011: 600 minutes of digital (2.5G) service, and wider local calling area available to Lifeline subscribers, at same price point. Modern phones, including Nokia e75 and Samsung Galaxy S now available.



## CAF Proposals are Completely Unsuited to Tribal Lands

- Recent proposals from wireline companies, would among other things:
  - Leave almost nothing for mobile broadband
  - Provide ROFR to incumbents
  - Virtually ignore the needs of tribal lands
  - Distribute support “inside out” meaning that highest-cost tribal areas will get nothing
- In sum, the ABC/RLEC proposals would be catastrophic for carriers that have invested risk capital in tribal lands



## Three Simple Steps to Reform:

- Cap high-cost support on a per-line basis
- Affirm the Commission's "no barriers" policy
- Create a separate tribal broadband fund using a forward-looking cost model



## Cap Support on a Per-Line Basis

- Capping per-line support will:
  - prevent support growth due to ILEC access line loss, and
  - cap support at the number of customers available on Tribal lands
- Carriers retain the incentive to build new facilities that will capture new customers



## Affirm the “No Barriers” Policy

Modern network infrastructure can provide access not only to voice services, but also to data, graphics, video, and other services. *[A]lthough 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.*



## Affirm the “No Barriers” Policy (cont’d)

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.***

“MAG Order”, 16 FCC Rcd 11,244, 11322-23 (2001).



## Affirm the “No Barriers” Policy (cont’d)

- Crystal clear that FCC wishes to encourage carriers to invest in modern plant, capable of providing advanced services, including broadband -- not yesterday’s technology
- 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 much needed regulatory certainty
- Controversies over FCC’s authority to fund broadband will not slow deployment of integrated 4G networks



## Create a Separate Tribal High-Cost Fund

- A separate fund recognizes the unique characteristics of Tribal lands and focuses needed attention to improving service to Tribal lands.
- Tribal interests at the recent White House Native American Business Leaders Roundtable recommended a separate tribal fund.
- A forward-looking cost model should provide sufficient support for tribal lands to receive high-quality voice *and* broadband services.
- Simple accountability measures to ensure support is being used to build networks will be most effective.



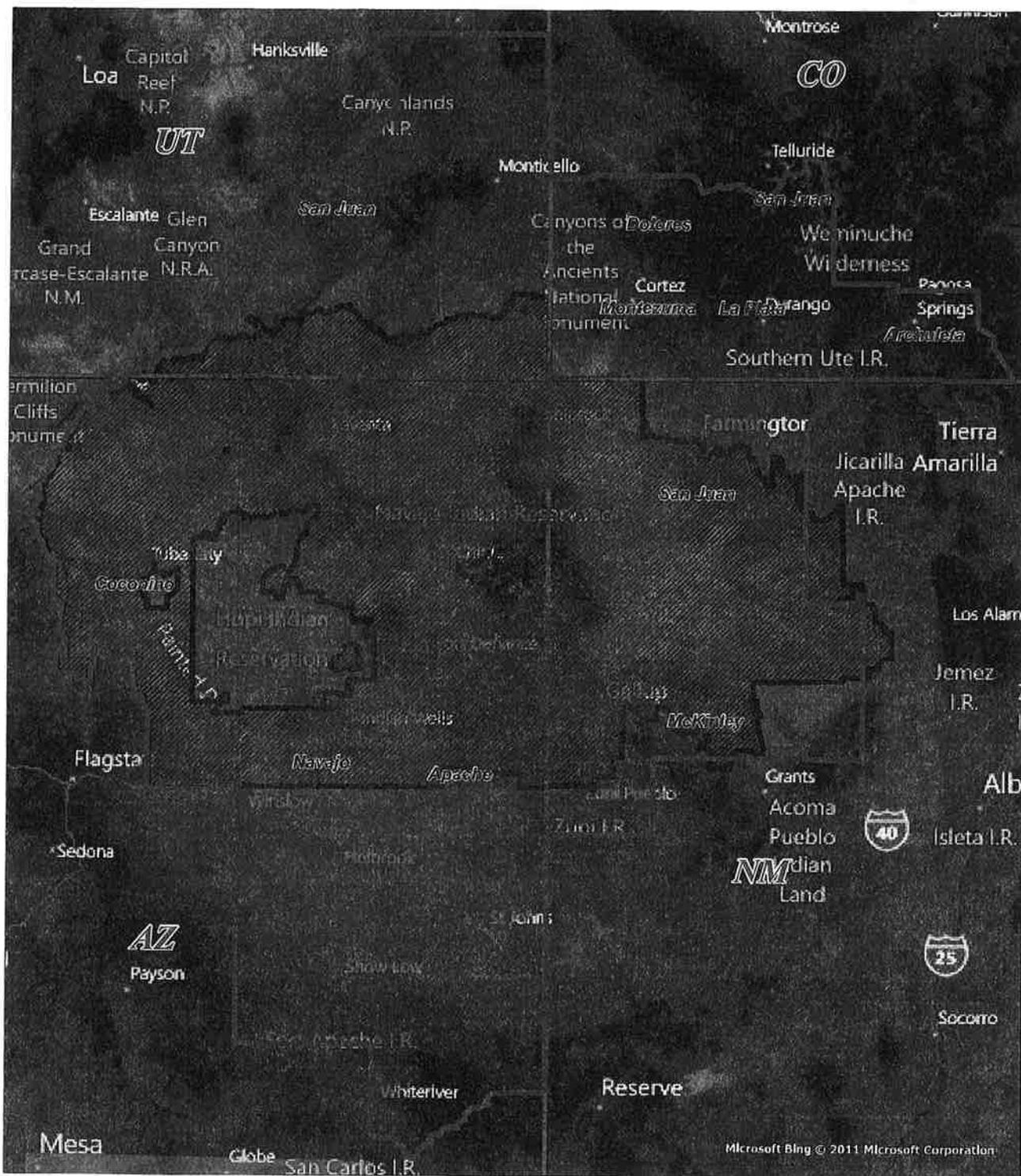
## Exempt Tribal Areas from Interim Actions

- Near-term and medium-term access to capital markets depend on regulatory certainty
- Interim actions that would “phase down” support will reduce capital available to build out network in underserved areas and overlay 3G and 4G equipment
- Transitions to new mechanisms on tribal lands must be done carefully and with sufficient lead time
- Covered Locations carriers should be exempt from interim reform actions until a final plan is implemented



Questions

# SBI Licensed And Coverage Areas



**LEGEND**

- Coverage Area
- Licensed Area