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FILED/ACCEPTED

SEP 29 2011

Federal Communications Commission
Office of the Secretary
September 29, 2011

VIA HAND DELIVERY

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

With a copy to:

Karen Majcher
Vice President, High Cost & Low Income Division
Universal Service Administrative Company
2000 L Street, N.W., Suite 200
Washington, DC 20036

PUBLIC REFERENCE COPY

ORIGINAL

Re: Federal-State Joint Board on Universal Service
WC Docket No. 09-197

Dear Secretary Dortch:

On behalf of Smith Bagley, Inc. (SAC 509002) ("SBI"), please find attached a redacted, public version of SBI's Annual ETC Report under Section 54.209 of the FCC's Rules ("ETC Report"). The attached ETC Report has been marked "**REDACTED – FOR PUBLIC INSPECTION**".

SBI is also submitting, under separate cover, a confidential version of this ETC Report. The confidential version is marked "**CONFIDENTIAL – NOT FOR PUBLIC INSPECTION**".

No. of Copies rec'd 0+4
List ABCDE

An original and four (4) copies of this ETC Report are enclosed. An additional copy has been provided, which you are requested to date-stamp and return in the envelope provided.

Sincerely,

A handwritten signature in blue ink, appearing to be "David A. LaFuria", written over a horizontal line.

David A. LaFuria
Todd Slamowitz
Steven M. Chernoff

Attorneys for:
Smith Bagley, Inc.

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

In the Matter of)
Federal-State Joint Board on) WC Docket No. 09-197
Universal Service)
_____)

ANNUAL CERTIFICATION OF SMITH BAGLEY, INC.

Smith Bagley, Inc. (“SBI”, the “Company”) an Eligible Telecommunications Carrier (“ETC”) on the Navajo Reservation in the State of Utah, hereby provides the Commission with an annual compliance filing containing information as set forth in the Commission’s *Report and Order* in the above-captioned proceeding (“*ETC Certification Order*”)¹ and in the Commission order designating the Company as an ETC.²

1. Construction Plan Progress and Use of Support.

Pursuant to the *ETC Certification Order*, an ETC must “submit... progress reports on the ETC’s five-year service quality improvement plan, including maps detailing progress towards meeting its plan targets, an explanation of how much universal service support was received and how support was used to improve signal quality, coverage, or capacity; and an explanation regarding any network improvement targets that have not been fulfilled.”³ SBI was first designated as an ETC in Utah on February 8, 2007. SBI

¹ *In the Matter of the Federal-State Joint Board on Universal Service, Report and Order*, 20 FCC Rcd 6371 (2005).

² *See Federal-State Joint Board on Universal Service, Smith Bagley, Inc.*, DA 07-605 (W.C.B. rel. Feb. 8, 2007)

³ *See ETC Certification Order, supra*, 20 FCC Rcd at 6400.

REDACTED – FOR PUBLIC INSPECTION

did not begin receiving support until July 2007. From August 2010 through July 2011, the last twelve-month period for which USAC data is available, the company received a total of \$ [REDACTED] in Universal Service Support. Information provided below is as of June 30, 2011 which is the company's most recent quarterly period for which accounting data is available.

During the twelve month period from July 1, 2010 through June 30, 2011, SBI invested \$ [REDACTED] in capital improvements and another \$ [REDACTED] in other eligible improvements to infrastructure and services, not counting General and Administrative expenses, for a total of \$ [REDACTED].

Since its designation, SBI has used its high-cost support to improve existing cell site coverage, performance and reliability by upgrading antennas, deploying generators, and installing microwave links. During the twelve month period from July 1, 2010 through June 30, 2011, SBI has maintained the existing sites, and made upgrades to the radios at two of the existing sites located at [REDACTED] and [REDACTED]. SBI has also utilized high cost support by adding [REDACTED] additional cell sites to serve the Utah area. [REDACTED]

[REDACTED]

[REDACTED]

As required pursuant to the *ETC Certification Order*, SBI provides as Exhibit A hereto its updated five-year service quality improvement plan for its Utah ETC service area. Exhibit A also includes the existing coverage map for its designated service area in Utah.

2. Outage Reporting.

In the last twelve months (October 1, 2010-September 30, 2011), SBI has had [REDACTED] outages of at least 30 minutes in duration on the facilities it owns, operates, leases, or otherwise utilizes that potentially affect at least ten percent of the end users served in its designated service area in Utah, pursuant to the *ETC Certification Order*.⁴ A summary of the network outages are set forth in Exhibit B.

3. Unfulfilled Service Requests.

There were several service requests for the last twelve (12) months (October 1, 2010-September 30, 2011); all of which were resolved to the customer's satisfaction. A description of the service requests are provided as Exhibit C. SBI hereby certifies that it continues to follow the six-step process for provisioning service to requesting customers.

Specifically, in response to such requests for service at a residence or business, SBI will take the following steps:

1. If a request comes from a customer within its existing network, SBI will provide service immediately using its standard customer equipment.
2. If a request comes from a customer residing in any area where SBI does not provide service, SBI will take a series of steps to provide service.

* First, it will determine whether the customer's equipment can be modified or replaced to provide acceptable service.

* Second, it will determine whether a roof-mounted antenna or other network equipment can be deployed at the premises to provide service.

* Third, it will determine whether adjustments at the nearest cell site can be

⁴ See 47 C.F.R. § 54.209(a)(2).

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made to provide service.

* Fourth, it will determine whether there are any other adjustments to network or customer facilities which can be made to provide service.

* Fifth, it will explore the possibility of offering the resold service of carriers that have facilities available to that location.

* Sixth, SBI will determine whether an additional cell site, a cell-extender, or repeater can be employed or can be constructed to provide service, and evaluate the costs and benefits of using scarce high-cost support to serve the number of customers requesting service. If there is no possibility of providing service short of these measures, SBI will notify the customer and notify the FCC of how many requests for service could not be filled in its next annual certification report. The FCC will retain authority to resolve any customer complaints that SBI has refused to respond to a reasonable request for service.

4. Consumer Complaints.

In the last twelve (12) months (October 1, 2010-September 30, 2011), SBI did not receive and is not aware of any consumer complaints having been filed with either the FCC or with tribal authorities in the designated ETC service area.

5. Commitment to CTIA’s Consumer Code for Wireless Services.

In the *ETC Certification Order*, the FCC reiterated that carriers must certify that they comply with applicable service quality and consumer protection standards, e.g., the CTIA Consumer Code for Wireless Services (“CTIA Code”).⁵ SBI hereby certifies that it

⁵ 47 C.F.R. §§ 54.209(a)(5); 54.202(a)(3). Under the CTIA Consumer Code, wireless carriers agree to: (1) disclose rates and terms of service to customers; (2) make available maps showing where service is generally available; (3) provide contract terms to customers and confirm changes in service; (4) allow a trial period for new service; (5) provide specific disclosures in advertising; (6) separately identify carrier

abides by the CTIA Code, as it may be amended from time to time, for all of its operations in Utah. The Company is a signatory to the CTIA Code and is listed with the CTIA as having fully implemented the CTIA Code's provisions. Additionally, SBI has received CTIA formal certification approval as a wireless carrier that has adopted those specific principles and practices for the calendar years 2009 and 2010, and has applied for this certification for the calendar year 2011.

6. Ability to Remain Functional in Emergencies.

The FCC's rules require an ETC applicant to:

demonstrate its ability to remain functional in emergency situations, including a demonstration that it has a reasonable amount of back-up power to ensure functionality without an external power source, is able to reroute traffic around damaged facilities, and is capable of managing traffic spikes resulting from emergency situations.⁶

SBI is mindful of the importance of ensuring uninterrupted service so that law enforcement and public safety officials, as well as the general public, can make important calls in the event of an emergency. SBI hereby certifies that the company is capable to function in emergency situations as defined in the above-referenced *ETC Certification Order* via the company's generators and via temporary microwaves.

7. Local Usage.

In the *ETC Certification Order*, the Commission concluded that each ETC must annually certify that it offers at least one local usage plan comparable to the one offered

charges from taxes on billing statements; (7) provide customers the right to terminate service for changes to contract terms; (8) provide ready access to customer service; (9) promptly respond to consumer inquiries and complaints received from government agencies; and (10) abide by policies for protection of consumer privacy. The CTIA Code can be viewed on the Web at <http://files.ctia.org/pdf/ConsumerCode.pdf>.

⁶ *ETC Certification Order, supra*, at para. 25.

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by the incumbent LEC in the service areas for which the applicant seeks designation.⁷ In the *ETC Certification Order* on which that requirement was based, the FCC declined to adopt a specific local usage threshold or require that an applicant match the incumbent's offering. Rather, the FCC concluded that the comparability of rate plans should be evaluated on a case-by-case basis, in consideration of the number of included minutes, the size of the "local" calling area, monthly price, and other factors. As examples, the FCC mentioned that an applicant may offer "a local calling plan that has a different calling area than the local exchange area provided by the LECs in the same region, or . . . a specified number of free minutes of service within the local service area."⁸ The FCC also envisioned cases where an applicant may offer an unlimited calling plan that bundles local minutes with long distance minutes.⁹

SBI satisfies the FCC's local usage requirement. Customers may choose from a variety of plans with different combinations of local calling areas, included minutes, and monthly rates, to suit individual consumer needs. For example, SBI's Home Area 400 Plan offers 400 minutes of calling within a local calling area comprising SBI's licensed service area. The plan is available for a monthly price of \$31.95. See Attached Exhibit D. SBI also offers a number of usage plans that allow customers to make calls or travel beyond the local calling area without incurring toll or roaming charges. The Nationwide 650 Plan, for example, offers unlimited local calling and unlimited nationwide long

⁷ See *id.* at para. 32.

⁸ *Id.* at para. 33.

⁹ *Id.*

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distance plus 650 minutes of nationwide roaming without per-minute charges, at a monthly rate of \$51.95. See attached Exhibit E.

SBI's service offering described above allow consumers to select a plan that provides them with equal or greater value than a wireline rate plan. SBI's licensed area – its smallest 'local' calling area – is much larger than rural ILEC local calling areas, which typically allow a consumer to reach only a few hundred or a few thousand people within an area made up of a handful of exchanges. If they travel more or make many calls to relatives or business associates beyond that area, they may benefit from one of the nationwide plans. Providing deeper geographic reach delivers a significant benefit to the consumer, and the FCC has cited studies concluding that "wireless service is cheaper than wireline, particularly if one is making a long distance call or when traveling."¹⁰

In sum, SBI certifies that it offers at least one plan that is comparable to ILEC rate plans under the applicable FCC test.

¹⁰ *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report & Analysis of Competitive Market Conditions with Respect to Commercial Mobile Servs., Ninth Report*, 19 FCC Rcd. 20597, 20684, para. 214 (2004) ("*Ninth CMRS Competition Report*").

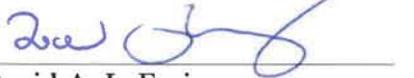
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8. Equal Access.

As required of applicants before the FCC under the *ETC Certification Order*,¹¹ SBI acknowledges that the FCC may require it to provide equal access to interexchange carriers in the event no other ETC is providing equal access in the designated ETC service area.

We trust that you will find this to be responsive to the compliance materials requested in the *ETC Certification Order* and in the order designating SBI as an ETC in Utah.

Respectfully submitted,



David A. LaFuria
Todd Slamowitz
Steven M. Chernoff
Lukas, Nace, Gutierrez & Sachs
1650 Tysons Blvd., Suite 1500
McLean, VA 22102
(703)584-8668

Attorneys for:
Smith Bagley, Inc

Dated: September 29, 2011

¹¹ See *ETC Certification Order*, *supra* at para. 35.

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EXHIBIT A

UPDATED FIVE-YEAR SERVICE QUALITY IMPROVEMENT PLAN

**THIS EXHIBIT IS WITHELD AS THE FILER
HAS REQUESTED CONFIDENTIAL TREATMENT**

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EXHIBIT B

NETWORK OUTAGES

**THIS EXHIBIT IS WITHELD AS THE FILER
HAS REQUESTED CONFIDENTIAL TREATMENT**

REDACTED – FOR PUBLIC INSPECTION

EXHIBIT C

**THIS EXHIBIT IS WITHELD AS THE FILER
HAS REQUESTED CONFIDENTIAL TREATMENT**

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EXHIBIT D

Local Plans

INCLUDES:

- **UNLIMITED** in network mobile-to-mobile
- **UNLIMITED** nights starting at 7 PM
- **UNLIMITED** weekends

400 MINUTES/MONTH **\$31⁹⁵**

Overage: \$.35 • Long Distance: \$.10 • Roaming: \$.45

300 MINUTES/MONTH **\$27⁹⁵**

(NO Free Mobile-to-Mobile, Nights, or Weekends)

Overage: \$.05 • Long Distance: \$.05 • Roaming: \$.25

600 MINUTES/MONTH **\$39⁹⁵**

(NO Free Mobile-to-Mobile, Nights, or Weekends)

Overage: \$.05 • Long Distance: \$.05 • Roaming: \$.25

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& SAVE**

LIMITED TIME ONLY. OAC. Postpaid service agreement(s) required. Activation fee up to \$40 must be paid on first line of service. Early termination fee up to \$240 per line. Taxes are additional. Mobile to mobile minutes are included but only in the Home Coverage Area, see store associate for Home Coverage Area map. See plan details above for overage and roaming. For 400 minute plan: Free nights & weekends: Only in Home Coverage Area area. Nights start at 7:00pm and end at 6:59 am. Weekends start at 7:00 pm Friday and end at 6:59 am Monday. C1009 7/09

www.CellularOneOnline.com
800-730-2351

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EXHIBIT E

Smith Bagley, Inc.

DECLARATION UNDER PENALTY OF PERJURY

I, Gayle L. Gouker, do hereby declare under penalty of perjury as follows:

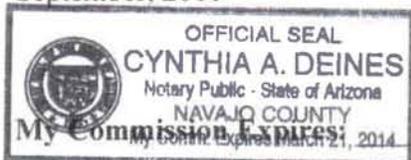
1. I am the Chief Financial Officer of Smith Bagley, Inc. ("SBI")
2. This Affidavit is submitted in support of SBI's Annual Compliance Filing and Request for Recertification, pursuant to *Report and Order In the Matter of the Federal-State Joint Board on Universal Service*, FCC 05-46 (rel. March 17, 2005) and Sections 54.202 and 54.209 of the FCC's Rules.
3. I declare under penalty of perjury that the statements contained in the foregoing Annual Compliance Filing are true and correct to the best of my knowledge.

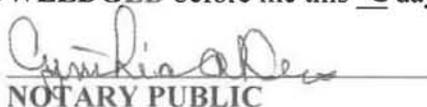
Executed on September 23, 2011



Gayle Gouker
Chief Financial Officer
Smith Bagley, Inc.

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me this 23 day of
September, 2011




NOTARY PUBLIC

3-21-2014