

LUKAS, NACE, GUTIERREZ & SACHS, LLP

8300 GREENSBORO DRIVE, SUITE 1200
MCLEAN, VIRGINIA 22102
703 584 8678 • 703 584 8696 FAX

WWW.FCCLAW.COM

RUSSELL D. LUKAS
DAVID L. NACE
THOMAS GUTIERREZ*
ELIZABETH R. SACHS*
DAVID A. LAFURIA
PAMELA L. GIST
TODD SLAMOWITZ*
BROOKS E. HARLOW*
TODD B. LANTOR*
STEVEN M. CHERNOFF*
KATHERINE PATSAS NEVITT*

CONSULTING ENGINEERS
ALI KUZEHKANANI
LEILA REZANAVAZ
—
OF COUNSEL
GEORGE L. LYON, JR.
LEONARD S. KOLSKY*
JOHN CIMKO*
J. K. HAGE III*
JOHN J. MCAVOY*
HON. GERALD S. MCGOWAN*
TAMARA DAVIS BROWN*
JEFFREY A. MITCHELL
ROBERT S. KOPPEL*

*NOT ADMITTED IN VA

October 19, 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 October 17, 2011 undersigned counsel, on behalf of Smith Bagley, Inc. ("SBI"), met with Geoffrey Blackwell and Irene Flannery to discuss universal service support on tribal lands.

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. Copies of the materials presented at the meeting are enclosed.

SBI asked the Commission to cap support on tribal lands on a per-line basis, to retain incentives for carriers to continue to build cell sites and expand service on remote tribal lands. SBI also asked the Commission to clarify its ten-year old "no barriers" policy to ensure that mobile wireless carriers can use support to build 4G networks. SBI also advocated for a separate mobile broadband fund on tribal lands, using a forward-looking cost model that provides service to the carrier that gets the customer.

Marlene H. Dortch, Secretary

October 19, 2011

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 noted that 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.

Finally, SBI listed several outstanding proceedings affecting tribal lands that remain pending before the agency. At the request of Commission staff, we have enclosed a short summary of each proceeding for reference.

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: Geoffrey Blackwell, Esq.
Irene Flannery, Esq.



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.

Smith Bagley, Inc.

Current FCC Advocacy Items

I. Tier 4 Support on Tribal Lands Should be Increased

Smith Bagley, Inc. (“SBI”) filed its petition on March 27, 2009 (DA 09-1011) seeking to raise the levels of Tier 4 Lifeline support by \$5.00, to a total of \$30.00 per month in Tier 4 discounts.

- Current Tier 4 level established in 2000. Yet, Tier 4 has not been adjusted to account for inflation, cost of living, or any other factors.
- Telephone subscribership has dramatically increased on tribal lands as a result of Tier 4 support, but is still not on par with the rest of the nation.
- Increasing Tier 4 support will:
 - Enable carriers to increase the quantity of service provided.
 - Encourage increased competition and infrastructure investment on tribal lands.
 - Have negligible effect on overall fund size.

II. A Limited Waiver of the Interim Cap on CETC High-Cost Support Will Accelerate Infrastructure investment on Navajo Lands (WC 05-337)

SBI filed a petition on December 14, 2009 (DA 10-48), seeking a limited waiver of the Interim cap on CETC high-cost support for customers located in the Eastern Navajo Agency of the Navajo Nation.

- The *Interim Cap Order* includes an exception permitting CETCs to receive uncapped support on “Covered Locations” (generally defined as federally recognized tribal lands).
- This exception was intended to enable competitive ETCs to use uncapped high-cost funding to “help remedy the low penetration rates and poor telecommunications services in these areas.”
- The Eastern Navajo Agency of the Navajo Nation is located in western New Mexico and includes privately held parcels as well as state and federal lands.
- Because of its “checkerboard” makeup, the Eastern Navajo agency does not fit squarely within the “Covered Location” exception.
- A limited waiver of the cap would permit SBI and other CETCs to use uncapped support to provide service in the Eastern Agency.
- The FCC previously granted relief to allow Tier 4 support on Eastern Agency, citing many of the circumstances here present.
 - Low per capita income and high levels of poverty.
 - Poor housing conditions.
 - Very low levels of telephone subscriber penetration.
- A limited waiver would advance the competitive goals of the FCC and the Telecommunications Act of 1996.

- Waiving the cap, and disbursing support on a competitively neutral basis, would promote competitive entry and investment in the Eastern Agency.
- If the cap is waived, SBI would not merely provide services that are complementary to incumbent carriers' services in the Eastern Agency.
- SBI would compete head-to-head with incumbents, giving more customers the option to "cut the cord" and select mobile wireless services.
- SBI would use uncapped support to accelerate infrastructure investment and increase subscribership penetration levels in the Eastern Agency.
 - SBI currently plans to use capped support to construct at least four new cell sites that will serve areas in the Eastern Agency.
 - Uncapped high-cost support would enable SBI to construct additional cell sites, and to accelerate the deployment of all its cell sites.
 - This will help increase levels of subscribership in the Eastern Agency, consistent with the FCC's policies.
- Grant of the waiver would not threaten to overburden universal service funding mechanisms.
 - The FCC decided in the *Interim Cap Order* that making uncapped support available in tribal lands will not impede its efforts to curb excessive high-cost funding.
 - Uncapped support received by SBI for the Eastern Agency would not be in excess of its costs for infrastructure deployment and the provision of service.
 - SBI is required by the state commission to account for all high-cost funding it receives and how it is invested in the deployment of telecommunications infrastructure.

SBI filed a supplement to its petition on July 8, 2010, informing the Commission that a grant of the requested waiver would result in SBI receiving approximately \$2 million in additional high-cost support, or less than three-tenths of a percent (0.3%) of the total fund. SBI committed to use such funds to build new towers on the Eastern Agency.

III. All Support, Including IAS, Must Be Uncapped In Covered Locations

On July 6, 2010, SBI sought review of USAC's denial of SBI's request to fully implement the "Covered Locations" exemption to the Interim Cap.

- Under the exemption, all qualifying lines must receive uncapped support. Nonetheless, Interstate Access Support continues to be capped in Covered Locations.
- Carriers serving Covered Locations are to receive support pursuant to Section 54.307 of the Commission's rules, which states that such carriers "***will receive the full amount of universal service support that the incumbent LEC would have received for that customer.***"

Notwithstanding this requirement, USAC first “uncaps” support in Covered Locations, then “recaps” Interstate Access Support.

- As a result of this practice, SBI receives significantly less than the “amount the incumbent LEC would have received” for those customers.
- 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
- The requested relief is very limited in scope. Based on USAC data, SBI will be the only CETC to receive significant additional IAS.
- The Commission should therefore direct USAC to provide uncapped support to carriers for lines they report in Covered Locations without delay.