

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

In the Matter of)	
)	
Lifeline and Link Up Reform and Modernization)	WC Docket No. 11-42
)	
Lifeline and Link-Up)	WC Docket No. 03-109
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Advancing Broadband Availability Through Digital Literacy Training)	WC Docket No. 12-23

To: Wireline Competition Bureau

**COMMENTS OF THE NAVAJO NATION TELECOMMUNICATIONS REGULATORY
COMMISSION IN RESPONSE TO SMITH BAGLEY, INC. WAIVER REQUEST**

The Navajo Nation Telecommunications Regulatory Commission (“NNTRC”), through undersigned counsel, and pursuant to Sections 1.415 and 1.419 of the Commission’s rules (47 C.F.R. §§ 1.415 & 1.419), respectfully submits these Comments in the above-referenced proceedings in response to the Petition for Limited Waiver, filed by Smith Bagley, Inc. (“SBI”) on June 26, 2012.¹ In support of these Comments, NNTRC submits:

I. BACKGROUND

As the largest native nation in the United States (in both population and reservation size), the Navajos have been particularly disadvantaged by Federal and state communications policies. The Navajo Nation consists of 17 million acres (26,111 square miles) in portions of three states (Arizona, New Mexico, and Utah). The Navajo Nation is comparable in size to West Virginia.

¹ By Public Notice, DA 12-1308, released August 10, 2012, the Wireline Competition Bureau requested comment on the SBI Petition by September 10, 2012. These Comments, therefore, are timely filed.

Were it a state, the Navajo Nation would rank 4th smallest in population density; only Montana (6.5 persons per square mile), Wyoming (5.4) and Alaska (1.2) are less densely populated.² The “information age” has scarcely reached Tribal Lands; only 70 percent of which are served by Plain Old Telephone Service (“POTS”), as compared with near ubiquitous POTS service elsewhere in America (98%).³

The NNTRC was established pursuant to Navajo Nation Council Resolution ACMA-36-84 in order to regulate all matters related to telecommunications on the Navajo Nation. Telecommunications is defined broadly under the Navajo Nation Code to include broadband and “any transmission, emission or reception (with retransmission or dissemination) of signs, signals, writings, images, and sounds of intelligence of any nature by wire, radio, light, electricity or other electromagnetic spectrum.”⁴ The NNTRC is charged with the protection of the public welfare, regulation and the security of the Navajo Nation and its people with regard to telecommunications. Its purpose is to service, develop regulation and to exercise the Navajo Nation’s inherent governmental authority over its internal affairs as authorized by the Navajo Nation Council pursuant to NNTRC’s Plan of Operation and the Navajo Telecommunications Regulatory Act.⁵

² Compare http://en.wikipedia.org/wiki/List_of_U.S._states_by_area (states ranked by geographic area) with http://en.wikipedia.org/wiki/List_of_U.S._states_by_population_density (states ranked by population density).

³ As recently as 2000, POTS penetration in Navajo households was only 22 percent. See FCC “Fact Sheet Promoting Deployment/Subscribership in Underserved Areas, including Tribal and Insular Areas,” released June 8, 2000. Because of the failure of the Federal government to make a place at the table for Tribes in the past, the Navajos find themselves without effective 911 service, while the state of Arizona in 2009 returned \$8,655,700 of the \$17,460,160 collected (or almost exactly 50 percent) to the state general fund, apparently concluding that all Arizonans had access to 911 service. See *Second Annual Report to Congress on State Collection and Distribution of 911 and Enhanced 911 Fees and Charges*, issued August 13, 2010 (released August 16, 2010), p. 10.

⁴ 21 N.N.C. § 503 (V).

⁵ Codified at 2 N.N.C. §§ 3451 -55; 21 N.N.C. §§ 501-529.

NNTRC is specifically authorized, pursuant to the Navajo Telecommunications Regulatory Act, to act as the intermediary agency between the Navajo Nation and the Federal Communications Commission, including representing the Navajo Nation in proceedings before the Commission, intervening on behalf of the Navajo Nation on matters pending before the Commission, and filing comments in rule making proceedings.

II. THE NNTRC SUPPORTS A BETTER TAILORED APPROACH TO RECERTIFYING LIFELINE CUSTOMERS ON THE NAVAJO NATION.

A. The Tantamount Goal Must Be To Provide Lifeline Service to Those Who Qualify.

In the *Lifeline and Link Up Reform* proceeding,⁶ the NNTRC noted that because of the large size of the Navajo Nation, the unique family residences on the Navajo Nation (where many generations may live in the same homestead), and the existence of widespread poverty, the limitation of “one per residence” would have a significant negative impact on the Navajo people.⁷ SBI now comes before the Commission and raises another way in which “modernizing” the Lifeline/Link Up program could negatively impact the Navajo people, such that Navajos who fully qualify for Lifeline service might be disqualified because SBI is not able to get them recertified by the December 31, 2012 deadline set forth in the *Lifeline Modernization Order*.⁸

At the outset, therefore, NNTRC wishes to make clear that it will not, and cannot, support a “modernization” effort that results in fully qualified individuals (even under the overly restrictive “one per residence” rule) losing their Lifeline service, simply because a carrier is unable to contact them to get them recertified. Such a rule is not “modernization,” it is a cost savings measure resulting solely from attrition forced on carriers via regulatory convenience.

⁶ See *Lifeline and Link Up Reform and Modernization, Notice of Proposed Rulemaking* (FCC 11-32), released March 4, 2011 (“*Lifeline Modernization NPRM*”).

⁷ See *Comments of NNTRC* in WC Docket No. 11-42, filed January 20, 2012.

⁸ *Report and Order and Further Notice of Proposed Rulemaking (“Lifeline Modernization Order”)*, FCC 12-11 (Feb. 6, 2012).

The NNTRC requests that the Wireline Competition Bureau take a focused look at the hardship, and even potential loss of life that its recertification policy may cause. SBI points to instances where Lifeline customers use their phones only sporadically, and mainly for emergency calls.⁹ What happens in January, 2013, when a snowstorm results in a subscriber driving her truck into a ditch in a remote part of the Navajo Nation where she lives? She pulls out her Lifeline phone to call for help . . . and nothing. In this time of crisis for this subscriber, how is she even to know that she's been removed from the roles of the Lifeline program, and why? Are the program goals really served if she dies on the side of the road, because SBI (or another carrier) wasn't able to locate and recertify her during the previous months? Are the few dollars saved in this multi-billion dollar program worth the potential loss of life?

B. NNTRC Supports the SBI Petition, As Qualified Below.

Because subscriber safety cannot be sacrificed to save a few dollars, NNTRC supports the Petition of SBI. The demographic statistics and compliance costs set forth by SBI fairly categorize the daunting task faced by Lifeline carriers providing service to the Navajo Nation. SBI is also correct that there are cultural issues at play among the Navajo, who are hesitant to provide personal information to outsiders, especially when such information must be attested to under penalty of perjury subject to prosecution by the United States government. A further complicating factor is the language issue, where there may be a complete English language barrier for some qualifying customers, particularly the elderly. Carriers providing Lifeline service to Navajo are also not affiliated with any of the federal Indian programs with which Navajo are familiar, and to whom the average Navajo is at least somewhat comfortable providing

⁹ See *SBI Petition*, pp. 2 & 7. It is important to note that because of the unreliability of 911 service and lack of addressing on much of the Navajo Nation, such "emergency" calls are not necessarily to 911, but rather to the nearest police station directly, or family or friends who can either come and help, or are in areas where 911 service can be reached.

personal information. SBI is also correct that mailing out recertification forms likely will not reach many subscribers because of the lack of direct mail delivery to most of the Navajo Nation.

In the face of these daunting problems, NNTRC supports the SBI Petition as outlined in the next section. NNTRC does not seek, nor support, a complete waiver of the recertification efforts, but rather, seeks to tailor a solution that provides carriers serving the Navajo Nation with some relief, but also meets the goals of the *Lifeline Modernization Order*, and places the NNTRC at its proper place between the FCC and its licenses, as the interface between the FCC and the Navajo Nation.

III. THE NNTRC SUGGESTS A WAIVER WITH CAREFULLY CRAFTED CONDITIONS.

The NNTRC supports a limited waiver of the recertification requirements for SBI under the following conditions:

- 1) **Advertising**: SBI should be required to undertake a significant advertising campaign to spur Navajos to contact them to recertify Lifeline eligibility. This should include:
 - a. Navajo Events Outreach. SBI should participate as much as possible with local Navajo events, and in such participation, dedicate substantial effort to advertise the recertification requirements, and where possible engage in the recertification process;¹⁰
 - b. Dedicated radio time toward Lifeline recertification. This would include advertisements run on radio stations that cover the Navajo Nation such as KTNN (AM 660kHz), Window Rock, AZ; KWIM (104.9 FM), Window

¹⁰ NNTRC would note that Brian Tagaban, Executive Director of the NNTRC, and a signatory to these Comments, attended the Navajo Nation Fair (<http://www.navajonationfair.com/>), on September 7, 2012, and visited the SBI tent exhibit. There he noted that between 20 and 25 percent of the space in the SBI tent was dedicated to recertification. He observed at least six to eight elderly Navajos sitting with SBI representatives and apparently filling out forms for recertification. NNTRC applauds these efforts and encourages SBI to engage in as many similar local events as possible in its recertification efforts.

Rock, ZA; KGHR (91.3 FM), Tuba City, AZ; KFXR (107.3 FM), Chinle, AZ;
KVNA (AM 600 kHz), Flagstaff, AZ; KNMI (and K231BB) (88.9 FM),
Farmington/Shiprock, NM;

- c. Requiring that a portion of all print advertising done by SBI be dedicated to reminding readers of the need for Lifeline recertification;
- d. Individual materials tailored to each of the 110 Navajo Chapter Houses, and development of an educational program for Chapter officials highlighting the importance of recertification, and the recertification process; and
- e. Education of key Navajo Division of Social Services and Navajo Division of Health personnel to the guidelines of the program (similar to the educational program set forth above for Chapter officials).

- 2) **Database Sharing**: SBI should work with NNTRC to create a depersonalized list of subscribers broken down by Chapter Houses so that the NNTRC can reach out to those Chapter Houses with the largest non-recertified populations to assist in reaching out to those subscribers to get them recertified. The 110 Chapter Houses are the political/educational/cultural/government service hubs of Navajo life. Each Navajo is a member of a single Chapter House. In many areas of Navajo, the Chapter Houses themselves are the only physical buildings for miles around where Navajo congregate. Focusing attention at the Chapter House level, and especially targeting those Chapters where the largest percentages of non-recertified subscribers reside, could go a long way toward relieving the burden on SBI.
- 3) **Reports**. Whatever reports the FCC requires of SBI also should be sent to NNTRC. NNTRC suggests that SBI update the Commission and it at least once a month,

providing the number of subscribers recertified, the number who will be dropped from the roles because they were contacted and no longer qualify, and an account of the activities taken during the past month.

- 4) **Duration.** NNTRC supports a one year waiver for SBI, assuming SBI complies with the conditions suggested above.
- 5) **Blanket Waiver.** If during the next year SBI is able to reach a certain threshold of recertification (NNTRC suggests 67%), and in the process determines that a certain threshold of Navajos contacted remain eligible for Lifeline service (NNTRC suggests 75%), then the FCC should grant a blanket waiver for the remaining subscribers who reside on the Navajo Nation. If experience reveals that the vast majority still qualify, then requiring SBI to locate each and every remaining uncontacted subscriber (who by that time would be the toughest of the tough to reach) would represent a needless expenditure of resources. The amount spent to locate those last subscribers would far exceed the savings to the program which would result in the few who would not qualify going forward.

For the reasons set forth herein, the NNTRC supports the Petition of SBI, with the suggested conditions above.

Respectfully submitted,

**NAVAJO NATION TELECOMMUNICATIONS
REGULATORY COMMISSION**

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