

**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		

REPLY COMMENTS OF SMITH BAGLEY, INC.

Smith Bagley, Inc. (“SBI”), by counsel and pursuant to the Commission’s Public Notice, DA 12-1308 (Aug. 10, 2012), hereby files these reply comments in the above-captioned proceeding. Four parties filed comments addressing SBI’s request for a limited waiver of the Commission’s rules, with only one commercial competitor opposing.

I. Summary of SBI’s Progress.

As required by the new rules implemented earlier this year, SBI has been diligently recertifying its Lifeline customer base. Last week, SBI visited the Commission to provide a progress report, as summarized in its ex parte notice available on ECFS.¹ To date, SBI has recertified over 23,000 of its Lifeline customer base, with approximately 47,000 remaining to be completed. It has made over 100,000 outreach attempts, reaching its entire Lifeline customer

¹ See, <http://apps.fcc.gov/ecfs/document/view?id=7022018039>

base at least once. It has invested over \$340,000 in the effort, revealing 49 ineligible Lifeline subscribers. The Company has used multiple outreach channels and has nearly tripled the size of its call center with full-time employees dedicated to nothing but the recertification effort. The company is appearing at Navajo, Hopi, Zuni and other Tribal events with a full campaign designed to raise awareness, including a *888 short code to make it easy for customers to recertify. In addition, SBI has auto-diverted thousands of subscribers' calls each month in order to reach customers making outbound calls.

As detailed in SBI's waiver request and its recent ex parte, the tribal lands that it serves are extremely difficult to serve, and the challenges faced by tribal Lifeline customers are extraordinary. Many households lack electricity, causing residents to turn the phone on only to make a call. Many lack an automobile or access to public transportation. Many citizens are elderly. Many live far from established towns where SBI has retail stores or agent facilities. In sum, these challenges make reaching 72,000 citizens an extraordinary task that simply cannot be completed by December 31.

SBI estimates that outreach program costs could rise to as much as \$2 million. This is not a one-time cost, as the Commission's rules envision carriers going through this process every year.² At last week's ex parte meeting, SBI demonstrated that the difficulties it faces and the costs it is incurring warrant further relief, and asked the Commission to allow SBI to recertify its customers when they renew their contracts. Customers are prepared to invest substantial time into the renewal process, and it is much easier for customer care representatives to refresh eight points of subscriber information and obtain the nine required certifications from them at that time.

² These burdens will be reduced in cases where an ETC has access to an eligibility database, but it is unclear whether adequate databases for the purpose of confirming eligibility in remote Tribal areas where descriptive addresses are common will be developed in the near term.

II. RESPONSES TO COMMENTING PARTIES.

Most of the commenting parties supported SBI's request. The Navajo Nation Telecommunications Regulatory Council ("NNTRC") does not support any policy that will result in "fully qualified individuals...losing their Lifeline service, simply because a carrier is unable to contact them to get them recertified."³ SBI agrees that strict enforcement of the December 31 deadline for SBI will amount to "attrition forced on carriers"⁴ to save program costs. Tribal lands with roughly 70% telephone penetration and extraordinary poverty levels are not the place for the FCC to search for minimal program savings.

As SBI demonstrated in its ex parte, its efforts to date have cost over \$340,000 and saved the program only an estimated \$21,000 per year. Strict enforcement of the recertification rule may save three times that amount, or even more; however, in the scope of the \$8 billion dollar universal service fund these minimal savings will have a very human cost as those most vulnerable, living in the most difficult places to reach, will see their Lifeline benefits denied. Furthermore, these customers will have difficulty restoring service in the middle of winter when the required de-enrollments must occur.

It is sometimes noted that a subscriber who loses Lifeline service will still have a phone capable of dialing 911. Many Native Americans living in remote areas do not use 911 service for cultural reasons. In SBI's experience, oftentimes the first call is placed to a family member. If service has been terminated, this call will not go through, delaying an emergency response, or in some cases causing it to fail altogether.⁵

³ NNTRC Comments at 3.

⁴ Id.

⁵ We also note here that the practice of automatic call diverting to recertify Lifeline subscribers presents significant health and safety risks because Tribal residents often dial a family member first, rather than 911. An automatic call divert delays these important communications.

The NNTRC proposed five advertising conditions on SBI receiving relief from the December 31 deadline.⁶ SBI has already undertaken three of the five conditions and has no problem meeting the other two. SBI believes it would be best for the FCC to encourage compliance with the conditions, but to not go so far as to step into areas that are traditionally left to tribal authorities. In so doing, the FCC may end up with literally dozens of different conditions for carriers on many tribal lands, which will take up significant Commission resources to ensure compliance. To be clear, SBI has committed to the NNTRC and its leadership a willingness to do whatever it can to assist the Chapter Houses and the Divisions of Social Services and Health in educating the public about the importance of recertification.

NNTRC also asked for SBI to provide a depersonalized list of its subscriber base, broken down by Chapter House, which would allow Chapter House leaders to assist in reaching out to remote communities. SBI is in the process of reworking its customer intake forms and believes it can obtain Chapter House data for its subscriber base. This may take some time, but SBI does not object to gathering and providing the requested data. Again, SBI believes the best thing is for the NNTRC to impose these requirements consistent with its authority, and not burden the FCC with an additional compliance obligation to monitor.

SBI has no objection to submitting public FCC reports to the NNTRC.

The National Congress of American Indians (“NCAI”) also supports SBI’s request, encouraging additional dialogue between ETCs and tribal authorities, to increase Lifeline participation on tribal lands nationwide. SBI agrees with these statements because in its experience, its ability to serve tribal populations has always been enhanced by consulting tribal leaders at local levels to assist in many issues, including where service is needed, what services are valued, and how best to reach out to remote populations.

⁶ Id. at pp. 5-6.

NCAI also suggests that SBI might be reimbursed for its recertification costs from the CAF. Of course, SBI supports that idea; however, the Commission must consider the cost/benefit of reimbursing to SBI more than seven figures each year, to save \$100,000, or perhaps less.

Only HTI/Frontier expressed any opposition to SBI's request for relief. It was, perhaps, predictable that companies who would benefit from customers being dropped from a competitor's network would suddenly assert the public interest in strict enforcement of the Commission's new rule, despite its obvious threat to public safety on the Navajo and Hopi reservations.

HTI/Frontier's insistence on "disconnecting non-responders" in SBI's service territory is somewhat callous, especially considering that Frontier has had a multi-decades head start on SBI in providing telephone service to tribal lands. When SBI first qualified for high-cost support on tribal lands, household telephone penetration on Navajo was roughly 27% and there were significant numbers of held orders at the state public utility commissions in Frontier's service area.

In short order, SBI built cell sites, opened stores, commissioned mobile RVs to visit chapter houses, and signed up tens of thousands of customers, many of which had never used a telephone in their lives. The 2010 Census reveals that household telephone penetration on Navajo is now above 70%, which on its face reveals two things. First, there is much more work to be done. Second, wireless is the answer for these areas. In SBI's experience, most Tribal residents who have been provided the benefits of mobile wireless service would not seriously consider subscribing to a wired phone connected to a wall. High-quality mobile service is

critical to their public safety and economic well being, vastly improving their quality of life, similar to that which our nation's urban residents take for granted.

Below, SBI responds specifically to the various objections lodged by HTI/Frontier.

HTI/Frontier first notes that SBI's contracts for its VisionOne® service are 40 months long.⁷ To be clear, customers are not required to sign such contracts. SBI offers additional choices; however, those living in poverty often prefer that rate plan. What SBI has learned over the years is that those living in remote areas without easy access to transportation, or seniors who do not wish to travel to a store, or those who do not value the prospect of obtaining a new phone every year, find this rate plan compelling. SBI has lengthened its contracts for VisionOne® in response to customer feedback indicating the hardships in returning to brick-and-mortar stores, or finding SBI's mobile outreach centers, augur in favor of a longer contract term.

HTI/Frontier point out that many other governmental programs require recertification on a shorter schedule than SBI's contract term.⁸ While true, two things differentiate this situation. First, governmental agencies that recertify state citizens often have more substantial staff resources and set procedures that make the recertification process very simple.

Second, in its reply comments in the FNPRM in this proceeding, SBI suggested that IVR could be appropriate *for some or all* of the recertification process. With respect to at least some of the customer information required to be provided at 54.410(d)(2)(i-viii), IVR can be useful. However, as SBI has learned in actually performing recertifications, obtaining some of the eight points of information set forth in subsection (d)(2) and the nine certifications set forth in 54.410(d)(3)(i-ix) is a significant undertaking. When SBI mapped out IVR paths for these seventeen information points, a number of obstacles became apparent. For example, since there

⁷ HTI/Frontier Comments at p. 2.

⁸ Id. at p. 3.

is no standard addressing format in many Tribal areas, it was difficult to get a concise descriptive address. Moreover, oftentimes there are multiple dwellings located at the same descriptive address (e.g., ¼ mile SW of the Super Gas Station, Tuba City, AZ, 86045). Also, consumers want certifications explained, so when an IVR asks a customer to press 1 if they agree and 2 if they need to speak to an agent, most press 2. Put simply, in SBI's experience with live calls, the certifications take time to explain. Finally, SBI's experience with IVR on Tribal lands has revealed that Tribal customers (like everyone else) prefer talking to live people as opposed to an IVR.

HTI/Frontier suggests that the nine required certifications can be easily obtained through a dozen or more truncated text messages, directed at people who may be elderly, may be unfamiliar with texting, may have no idea how to text on a twelve-key feature phone, may be visually impaired, or may have difficulty reading English. HTI's experience serving the Hopi people should have informed its comments. Indeed, four Village chiefs of the Hopi Tribe, who are not affiliated with the Hopi commercial wireline telephone operation, wrote to the FCC last week, expressing "serious concerns that such an indiscriminate directive may result in harm to the very people Lifeline is intended to protect."⁹

SBI has a call center staff that diligently works through each certification with its customers so that they understand what they are certifying to. When confronted with the magnitude of this exercise as the process began, SBI tripled its call center staff, hiring 40 new full time call center employees, outfitting them with computers and telephone connections, and leasing additional real estate needed for them to complete their work. For a company with less

⁹ See, letter from Hopi Villages, Hopi Indian Reservation, dated September 12, 2012, to Federal Communications Commission, included with SBI's ex parte notice filed September 12, 2012, supra at n. 1.

than 200 total employees, this is an extraordinary burden that HTI/Frontier obviously do not appreciate.¹⁰

HTI/Frontier casually state that a third party, such as Solix, could do recertifications for sixty cents per customer.¹¹ Had HTI/Frontier gotten past generalized advertising and drilled down into this process, they would not have made such an uninformed statement. SBI engaged in discussions with Solix and was proposed a contract pursuant to which Solix would perform all of the required recertifications for SBI. SBI cannot provide here a copy of the Solix contract because it was executed pursuant to a nondisclosure agreement. What it can say publicly is that Solix looked carefully at SBI's particular situation and made a determination that their price would be much different than sixty cents per customer. They came to appreciate how much time each recertification would consume, and priced their service accordingly.

In the end, SBI decided to take this effort in-house for two reasons. First, the cost of using a third party would result in no significant savings. Second, SBI values the relationships that its customer service personnel have built up with the company's customer base over the many years, and the potential cost of alienating them with third-party calls, no matter how skillfully executed, was far greater than the out-of-pocket costs that it will incur in this process, estimated to be upwards of \$2 million if relief is not provided.

In sum, it borders on the absurd for HTI/Frontier to suggest that obtaining eighteen data points from each of 72,000 customers can be done quickly, or by a third-party at a cost of sixty cents per customer. HTI/Frontier's uninformed view can be ignored.

¹⁰ Given the outcry by the landline industry generally to the FCC's CAF Order (which, ironically enough, virtually guarantees landline profitability for at least five years) it is not difficult to picture what HTI/Frontier's response would be if they had enough customers to generate the level of burden encountered here by SBI.

¹¹ HTI/Frontier Comments at p. 4.

HTI/Frontier's suggestion that SBI is exaggerating the burden that this process imposes is flat-out wrong, as evidenced by the fact that SBI has expended over \$340,000 to recertify over 23,000 customers, using a wide variety of outreach efforts.¹² If a carrier is serious about certifying to the FCC that it has diligently gone through this process in remote tribal areas such as those where SBI serves, it is certain they will have to invest the kind of resources that SBI has here.

In fact, the burden on SBI's business has to date been understated. As of this month, SBI's entire business is grinding to a halt. Every company resource is being spent on recertification, to the detriment of virtually every other company function that could be used to provide better products and services to SBI customers. It is not an exaggeration to state that this extraordinary burden is crippling the company's ability to function. For example, outreach efforts at tribal events and fairs are no longer focused on learning about customer preferences and solving problems – they are devoted to recertification.

The cost-benefit equation of recertifying this customer base within the last six months of this year, and every year thereafter, is grossly out of shape. To date, SBI's \$340,000 effort has turned up 49 ineligible subscribers, saving the program roughly \$21,000 per year. To put significant numbers of tribal citizens at risk for a program savings of this magnitude makes no sense. An alternative and tailored solution that ensures program compliance is called for.

III. CONCLUSION

SBI's original request for relief asked the FCC to tailor a solution to SBI's unique circumstances. Specifically, SBI proposed to recertify its Lifeline customers as follows: SBI shall (a) reach out to all of its customers telephonically, making at least two attempts to contact

¹² See, SBI's ex parte of September 20, 2012, referenced at n. 1 above.

them, (b) recertify all customers visiting a company store for products or services, taking steps to ensure that each such customer is recertified at least once per year; or (c) recertify customers whenever they renew their service contract. This methodology ensures that most SBI customers will go through the recertification process each year. The rest, those located in the most remote areas and who may not contact the company for many months, must recertify when their contracts are renewed.¹³

While SBI can live with the above formulation, its experience to date clearly shows that customers who renew contracts are mentally prepared to devote 30-60 minutes to the process. In such a setting, where phones and rate plans and accessories are being considered, it is much easier for SBI to obtain a recertification as a part of the contract renewal process. Accordingly, while the above formulation will work, SBI asks the Commission to consider requiring recertification only when customers renew contracts.

Respectfully submitted,

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September 24, 2012

¹³ See SBI Waiver request at p. 11.