

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
GCI Petition for Clarification of Annual	)	WC Docket No. 11-42
Lifeline Recertification Rule	)	WC Docket No. 03-109
	)	CC Docket No. 96-45
	)	WC Docket No. 12-23

**REPLY COMMENTS OF SMITH BAGLEY, INC.**

Smith Bagley, Inc, pursuant to Section 1.3 of the Commission’s Rules, 47 U.S.C. § 1.3, hereby files these Reply Comments in support of General Communication, Inc.’s (“GCI”) Petition for Clarification of Annual Recertification Rule filed October 1, 2012 (“Petition”).<sup>1</sup>

**I. Introduction and Summary.**

GCI’s petition for clarification presents an important opportunity to look at the severe burdens represented by the application of the Commission’s annual recertification requirement on Tribal lands. As SBI has explained in its petition for limited waiver of the requirement,<sup>2</sup> there are unique factors on Tribal lands that make it extremely burdensome to contact each subscriber and obtain the required information points and affirmations under penalty of perjury. It would be far more reasonable, and sufficient to fulfill the Commission’s goals of preventing waste of program funds, to require that each customer in Tribal areas recertify each time they renew their contract.

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<sup>1</sup> Public Notice, DA 12-1699, rel. Oct. 23, 2012.

<sup>2</sup> Petition for Limited Waiver, WC Docket No. 11-42 et al., CC Docket No. 96-45 (filed June 26, 2012) (“SBI Petition”). SBI’s Petition was denied, but SBI was granted a 90-day extension. *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, Order, DA 12-1927 (Wireline Comp. Bur. Ch., rel. Nov. 30, 2012).

Should the Commission be unwilling to allow recertification for customers during contract renewal for Tribal areas, SBI urges the Commission to avoid an interpretation of its rule that would make the situation in Tribal areas even worse. SBI therefore supports GCI's request for a clarification that the Commission's Lifeline rules require recertification of each customer once per calendar year, not within 12 months of a particular customer's last certification. The comments filed in response reflect a consensus that a once-per-twelve-months requirement would impose excessive burdens on Lifeline providers with little or no benefit to program integrity.

**II. Whether Once Per Twelve Months or Once Per Calendar Year, An Annual Recertification Requirement Is Excessively Burdensome for Carriers and Their Customers on Tribal Lands.**

As SBI has explained in its petition for waiver and related filings, the burdens of the annual recertification requirement are particularly severe on Tribal lands, such as the Navajo reservation, where customers live beyond the reach of the U.S. Postal service.<sup>3</sup> They are often very far from towns and lack adequate transportation, which complicates any effort to invite customers to re-certify in person. Cultural factors make it exceedingly problematic to reach out to via telephone or text message. SBI's experience is that many customers refuse the recertification process out of fear that SBI is the government, and the request is an intrusive investigation.

As explained in a letter previously submitted for the record in this docket by the Navajo Nation, the Navajo reservation lacks a traditional system of addressing.<sup>4</sup> As a result, the vast majority of customers in those areas use addresses that are descriptive in nature. Of SBI's

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<sup>3</sup> See generally SBI Petition; SBI Reply Comments (filed Sept. 24, 2012).

<sup>4</sup> See Exhibit A attached hereto.

approximately 58,000 Lifeline customers on Tribal lands, only approximately 800, or 1.4%, have a valid and recognized residential address that receives delivery from the U.S. Postal Service.

The remaining 57,200 households must pick up their mail at a box located in the nearest town.

The following are examples of descriptive addresses used by SBI customers in Arizona; a larger list is attached hereto as Exhibit B for the Commission's reference:

23 Mi S of Page, Bitter Springs, AZ 86036  
1 1/2 Mi N of Black Mesa Shopping Center, Black Mesa, AZ 86033  
1 1/2 Mi S of Holiday Inn, Kayenta, AZ 86033  
6 Mi N on Rte 22 Off Hwy 264, Hotevilla, AZ 86030  
1 1/2 Mi NE of Smoke Signal Mission, Blue Gap, AZ 86520  
2 M W of Cove Day Sch, Red Valley, AZ 86544  
3 1/4 Mi W of Shipaulovi Village, Second Mesa, AZ 86043  
3 1/2 Mi W of Gray Mountain, Cameron, AZ 86020  
1/4 Mi N of Old Valley Store, Many Farms, AZ 86538  
S of Hwy 98 MP 321, Kaibito, AZ 86053

Although there is no mail service, these addresses are useful for local citizens. For example, if you live in Blue Gap, Arizona, you know where the Smoke Signal Mission is located, and you can follow the only road to the northeast for 1.5 miles and find a home.<sup>5</sup>

In remote Tribal areas where a lack of standard addressing is the norm, the recertification process is significantly more burdensome than in other areas. In SBI's experience communicating with its customer base, many Tribal customers do not respond to a call or text message because for them, a telephone is, literally, a lifeline. It is not a device used regularly. This is especially true in households where there is no electricity. In such situations, phones are occasionally charged through an automobile charger and the phone turned off until it is needed. Many such citizens are of advanced age, are disabled, or lack adequate means of transportation. Often, they live in areas so remote that they cannot come to an SBI store to recertify. Others

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<sup>5</sup> See Exhibit C attached hereto.

have language difficulty or cultural differences that make obtaining these nine certifications, under penalty of perjury, an extraordinarily difficult task over the phone.

Because many Tribal customers reside in such remote locations, often without direct mail delivery, SBI's Lifeline program is designed to eliminate the cost of mailing a monthly invoice. Customers pay the monthly access fees at sign up and SBI refunds any unused amounts if the customer terminates service before the contract expires. Accordingly, mailing recertification information and forms to customers will be a fruitless exercise.

Sending employees to appear at a home, unannounced, to ask for certifications under penalty of perjury can be an extraordinary cultural intrusion, although SBI has kept that option under consideration out of concern that recertification is going to cut off from Lifeline service those most vulnerable on Navajo lands. The issue is that company employees will likely be perceived as being an inspector appearing on behalf of the federal government. It is well known that Tribal populations are undercounted by the U.S. Census due to "deep-rooted skepticism of the federal government."<sup>6</sup> Many elderly Lifeline subscribers do not speak English and rely on the younger family members for translation. There is a strong likelihood that an unannounced visit to a home on a reservation by a non-native-speaking company representative will not result in recertification because of the language barrier. In addition, sending teams of people out to remote areas presents otherwise unnecessary occupational safety risks, similar to that encountered by government employees such U.S. Census workers who canvass throughout the nation.

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<sup>6</sup> See, e.g., Census Bureau Releases Estimates of Undercount and Overcount in the 2010 Census, News Release, May 22, 2012 (estimating a 4.9% undercount of "American Indians and Alaska Natives living on reservations") at [http://www.census.gov/newsroom/releases/archives/2010\\_census/cb12-95.html](http://www.census.gov/newsroom/releases/archives/2010_census/cb12-95.html); and Census Bureau Tackles Undercount of Native Americans, Seattle Times, May 26, 2010, at [http://seattletimes.nwsourc.com/html/localnews/2011962971\\_nativecensus27m.html](http://seattletimes.nwsourc.com/html/localnews/2011962971_nativecensus27m.html).

Descriptive addressing also makes it impractical to accomplish recertification through an automated IVR process. When prompted to indicate their address, customers are uncertain how to provide it. Most often, they dial through to reach an operator and the process becomes lengthy.

In light of the difficulty of performing recertification on Tribal lands, the Commission's requirement to annually recertify 100% of the subscriber base represents an extraordinary burden for SBI.<sup>7</sup> Moreover, because the consequence of a late response or non-response is de-enrollment – and because it is onerous for de-enrolled customer to re-apply for service, this requirement puts some of the most vulnerable low-income populations at risk of losing essential telecommunications services.<sup>8</sup>

Accordingly, SBI urges the Commission to adopt a more reasonable recertification schedule for carriers who serve remote Tribal lands who can demonstrate circumstances similar to those encountered by SBI. Such customers should not be required to recertify every calendar year, or every 12 months, because each of those alternatives represents an excessive burden and an unacceptable risk of losing service. Instead, such customers should be permitted to recertify every time they renew their contract. This approach recognizes the unique difficulties faced by people living in Tribal areas, who live far from stores and pay in advance for more than a year of service to avoid those burdens. It also ensures that customers cannot renew service at the end of their contract term unless they provide the required information and make the required

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<sup>7</sup> In its request for OMB approval, the Commission estimated that it would take carriers 0.75 hours to contact each subscriber and obtain a response. Based on the Commission's estimate – which is a nationwide estimate that apparently does not take special circumstances of Tribal lands into account – it would take 43,500 hours to recertify all 58,000 SBI customers on Tribal lands. *See* Supporting Statement, OMB Control No. 3060-0819 (revised Oct. 24, 2012) at p. 11. This represents approximately 5,400 eight-hour work days, or almost *fifteen years* of work, to be undertaken *each year* by a small company with fewer than 200 total employees.

<sup>8</sup> *See* SBI Petition at pp. 9-10.

statements. While it is possible some ineligible customers could receive service for some quantity of time, SBI's experience is that such customers represent a very small fraction of the customer base.<sup>9</sup> Accordingly, SBI's proposed approach appropriately balances stewardship of program funds with the need to avoid excessive burdens and risks that eligible consumers will be de-enrolled.

### **III. A Requirement to Recertify Every Twelve Months Would Impose Excessive Costs and Impede an Orderly, Efficient Recertification Process.**

SBI agrees with GCI and initial commenters that a requirement to recertify within 12 months of the last certification would be costly for carriers to comply with. As GCI and initial commenters pointed out, a once-per-twelve-months requirement would force carriers to track each customer's recertification date individually, in many cases separate from the date that the customer renewed their contract or initiated service. In effect, Lifeline providers would have to establish, each year, a separate deadline for each customer, and then develop a process for adhering to each deadline.

By making it necessary to track a separate deadline for each customer, a once-per-twelve-months requirement would in many cases preclude an orderly recertification process conducted on a rolling basis as envisioned in the *Lifeline Reform Order*. As GCI notes, Lifeline providers would find it necessary to time each recertification well in advance of the previous year's recertification to avoid running over the 12-month period.<sup>10</sup> This is because each customer's recertification deadline would be arbitrarily tied to the date on which he or she happened to submit a completed recertification form, requiring a separate tracking system.

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<sup>9</sup> See Letter from David A. LaFuria, counsel for Smith Bagley, Inc., to Marlene H. Dortch, Secretary, FCC, in WC Docket No. 11-42 et al., CC Docket No. 96-45 (filed September 20, 2012).

<sup>10</sup> GCI Petition at p. 2.

For example, if a Lifeline provider sent out a batch of de-enrollment notices on August 1, and customers A, B and C recertified on August 10, 15, and 20, respectively, then the Lifeline provider would not be able to send out a similar batch the following year. Rather, recertification efforts would have to be timed so that the 30-day de-enrollment letters are sent no later than July 10 for customer A, July 15 for customer B, and July 20 for customer C. If it maintains the monthly rolling monthly format, the provider would have to move all of the customers from the August 1 batch to the July 1 batch the following year. In either case, the provider would have to recertify each customer based on a shifting schedule that is less than 12 months and occurs earlier and earlier each year.

These additional burdens are not necessary to address the Commission's concerns about the possibility of Lifeline being provided to ineligible consumers. Recertifying once per calendar year permits Lifeline providers to conduct recertification in an orderly fashion, whether on a monthly rolling basis, or in stages throughout the year. Lifeline providers with significant base are more likely to establish a rolling or phased schedule according to which customers will be recertified at approximately the same point in each year without tracking the date exactly. Requiring precise recertification is impractical for both the carrier and the Commission. For example, if a carrier successfully recertifies a customer two weeks past the annual deadline, it makes no sense for the Commission to deny discounts to that customer.

**IV. Conclusion.**

For all of the reasons set forth above, SBI supports the requested clarification that Lifeline recertifications must be accomplished once per calendar year, not once every 12 months.

Respectfully submitted,

Smith Bagley, Inc.



By: \_\_\_\_\_

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Its Attorneys

December 10, 2012

## **EXHIBIT A**



**BEN SHELLY**  
PRESIDENT

**REX LEE JIM**  
VICE PRESIDENT

**THE NAVAJO NATION**  
**DIVISION OF COMMUNITY DEVELOPMENT**

POST OFFICE BOX 1904 WINDOW ROCK, AZ 86515  
TEL: (928) 871-6810/6442 FAX: (928) 871-7090 WEBSITE: WWW.NNDCD.ORG

**ARBIN MITCHELL**  
DIVISION DIRECTOR

**STANLEY YAZZIE**  
DEPUTY DIRECTOR

March 17, 2011

Mr. Geoffrey Blackwell  
Consumers and Governmental Affairs Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S. W.  
Washington, D.C. 20554

**RE: NAVAJO NATION RURAL ADDRESSING**

Dear Sir:

The Navajo Nation is a Native American-governed territory covering 26,000 square miles of mostly rural and remote parts of northeastern Arizona, southeastern Utah, and northwestern New Mexico. This represents the largest land area assigned primarily to a Native American jurisdiction within the United States. The most recent available census date (2004) reported 173,987 Navajo citizens (58% of all Navajos) living on the Navajo Nation's territory, reflecting a density of about 7 persons per square mile.

I am writing to provide you with some general background on the Navajo Nation's ongoing efforts to establish a jurisdiction-wide uniform system of rural addressing for our citizens. Today, the Navajo Nation contains substantial areas where the United States Postal Services addressing system is not in place. That is, many Navajos live in areas with no formal address. They receive no services from the Postal Services in these areas. Mail is picked up at a post office box located at the nearest town with a post office. Often that town is many miles from home. The lack of formal addressing is made worse each year as the Navajo population continues to grow. Difficulties implementing the nation's 911 and E-911 systems pose a serious health and safety problem for Navajo citizens living in areas without formal addresses.

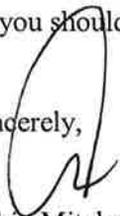
In 2008, to help address this problem and to support implementation of an effective E-911 system, the NNAA was established. The NNAA was intended to be a permanent organization that would institutionalize the processes needed to create a universal rural addressing system and to maintain and integrate the required databases to support E-911 deployment (Geographic Information System ("GIS") Master Street Addressing Guide ("MSAG"), for E-911).

In April 2009, the Navajo Nation formally adopted a plan to complete rural addressing over a three-year period. As part of this plan, NNAA has established relationships with all Navajo Nation Chapters. Each Chapter is responsible for identifying livable dwellings, labeling the type of dwelling, (Hogan, Trailer, Frame Built, etc.), and providing this information to the NNAA who, for every dwelling, is then responsible for mapping out and assigning an address and providing address signage.

The NNAA must also create street names for any road (dirt or other) with 4 or more dwellings on the road. While significant progress has been made toward completing this effort, the process is currently under-funded and so far only 10 out of 110 Chapters have provided NNAA the information it needs to complete the addressing plan. Nevertheless our efforts are continuing as we look forward to the benefits of better emergency response and improved services generally that will flow to our residents and communities when the plan is finally completed.

If you should have questions about NNAA's effort, I would be more than happy to talk with you further.

Sincerely,

A handwritten signature in black ink, appearing to be 'Arbin Mitchell', written over the word 'Sincerely,'.

Arbin Mitchell, Division Director  
Division of Community Development  
P. O Box 1905  
Window Rock, Arizona 86515

## **EXHIBIT B**

Phy Address1	Phy Address2	Phy City	Phy St	Phy Zip
Yucca Village NHA 30		Ramah	NM	87321
WHITERIDGE RD 1285		Crownpoint	NM	87313
WETHERILL HEIGHTS RD SPC 29 ON R	ACROSS FROM CHURCH	Kayenta	AZ	86033
WEST MESA HOUSE 19		Many Farms	AZ	86538
W RT 19 HWY 491 S		Newcomb	NM	87455
W 4 MI FROM BLACKHAT	On left Blue top Grey Bottom	Gallup	NM	87305
US HIGHWAY 191 L AT MP 380 1 MI	L SIDE HSE WHITE	Chambers	AZ	86502
UNIT 16 CEDAR HILLS DRIVE		Ganado	AZ	86505
TWIN LAKES 1 MI NE JCT 491 RT 9		Twin Lakes	NM	87301
TSAILE MOUNTIAN VIEW HOUSING APT MH20		Tsaile	AZ	86556
TRIBAL HILL HOUSE #06		Window Rock	AZ	86515
THOMAS TRAILOR PARK		Kykotsmovi	AZ	86039
TEEH IN DEEH ESTATES #207		Kayenta	AZ	86033
T47 GENERAL PERSHING DR		Fort Wingate	NM	87316
SW COMMUNITY HEIGHTS	MAROON HSE BROWN ROOF	Shiprock	NM	87420
SUNNYSIDE NHA 21		Chinle	AZ	86503
SUNNY SIDE APT 62		Chinle	AZ	86503
STEAMBOAT NHA #10		Chambers	AZ	86502
ST BONVENTURE MOBILE HOMES	RSVP 14	Thoreau	NM	87323
SOUTH HWY 491 MILE POST 93 SE BITAI LOT	RED HOUSE WHITE ROOF	Shiprock	NM	87420
SIX AND HALF MI SE OF CRPT HSE 1982		Crownpoint	NM	87313
Shiprock-Non Profit Housing #K9	White House-Brown Roof	Shiprock	NM	87420
SAWMILL RD		WHITERIVER	AZ	859412423
SAND STONE HSG 142 BEIGE HSE GREEN ROOF		Kayenta	AZ	86033
S SANDY SPRING RD	next to pizza place.	Zuni	NM	87327
S NONPROFIT HOUSING 17		Shiprock	NM	87420
S HWY 491 NON PROFIT HSING		Shiprock	NM	87420
S 5TH AVE		Whiteriver	AZ	85941
RTE 12 CR 365 RD TOWARD MOUNTAIN	BEIGE TRLR ON R	Fort Defiance	AZ	86504
RT 7 1 MI E OF THUNDERBIRD LODGE	HSE ON L GREY	Chinle	AZ	86503
RT 4 GO 3 1/2 MI E OF SMOKE SIGNAL MISS	BROWN HSE ON L SIDE OF RD	Blue Gap	AZ	86520
RT 21 3 1/2 MI NW GENERAL STORE	TURN W BLUE HSE	Tonalea	AZ	86044

RT 13 1/4 MI E OF TOHTSO	gREY HSE ON R	Lukachukai	AZ	86507
RT 12 HOUSE 3097A		Fort Defiance	AZ	86504
ROUTE 55 EAST FORK ROAD		WHITERIVER	AZ	85941
ROUND VALLEY HSG HSE 17		Pinon	AZ	86510
ROADSIDE HSG 38	BROWN HSE	Pinon	AZ	86510
RIO PUERCO HOUSING 226	DOWN FROM THATSA BURGER ON L	Fort Defiance	AZ	86504
rgt on CR 7145 frm Hwy 550	Unit 79 yellow hse on rgt	Bloomfield	NM	87413
REDRIDGE HSE#16		Many Farms	AZ	86538
Red Lake Hsg 17		Fort Defiance	AZ	86504
RC HORSESHOE RD APACHE AVE 99		Sanders	AZ	86512
RA 3771 HWY 112		Navajo	NM	87328
QUINTERO SPRING RD HSE R SIDE	BRN HSE	Whiteriver	AZ	85941
QTR MI SW OF YATAHEY OFF HWY 264 HSE G97		Gallup	NM	87301
PLAZA CIRCLE 5		Zuni	NM	87327
PIGEON SPRINGS HOUSING HSE 27		Fort Defiance	AZ	86504
ONE THIRD OF A MI BEHIND IHS		Chinle	AZ	86503
OMH 39 PESHAKAI AVE		Tuba City	AZ	86045
OLD PEABODY TRAILER COURT		Kayenta	AZ	86033
OLD GAP RD AND CHEE WILLIE RD	WHITE HSE ON R	Tuba City	AZ	86045
OJO AMARILLO HSE 83		Fruitland	NM	87416
OFF HWY 191 3 1/2 MI E OF CONOCO	STORE BEIGE HSE L SIDE	Many Farms	AZ	86538
NW SUBDIVISION	# 53	Shiprock	NM	87420
NR 9060 1 MI N OF TEESTO CHPTR HSE	RIGHT OFF OF NR60 ONTO NR9062	Dilkon	AZ	86047
North Valley House #19		Crownpoint	NM	87313
NORTH EAST HEIGHTS 36		Shiprock	NM	87420
NM 135-15 HSE 23		Tohajiilee	NM	87026
NHA TOWN HSE APT 62		Window Rock	AZ	86515
NHA REDRIDGE HOUSE 3		Many Farms	AZ	86538
NHA HSING#45		Kayenta	AZ	860331665
NHA HSE SUNNYSIDE 77		Chinle	AZ	86503
NHA HS# 8 CINNAMON DR		TUBA CITY	AZ	86045
NHA Housing 2	Beige House Gray Roof	Kayenta	AZ	86033
NHA HOUSING # 4		Shonto	AZ	86054
NHA HOUSE 11		Nazlini	AZ	86540

NHA APT 003 OFF OF ROUTE 27		Nazlini	AZ	86540
NHA 461		Fruitland	NM	87416
NHA 32		Shiprock	NM	87420
NHA 233		Shiprock	NM	874202771
NHA 15		Sanostee	NM	87461
NHA 15		PINEHILL	NM	87321
NHA 1256-08 HSE 8		Leupp	AZ	86035
NHA #9		Kayenta	AZ	86033
NHA #151		Kayenta	AZ	86033
NHA A15		Blue Gap	AZ	86520
NEW DILKON NHA HOUSING 2		Dilkon	AZ	86047
NE HEIGHT # 25	BROWN HSE DARK MAROON ROOF	Shiprock	NM	87420
NAVAJO RT 36 COUNTY RD 361	3 MI N BLUE AND WHITE TRLR	Fruitland	NM	87416
NAVAJO BLVD CURLY RD	S SUBDIVISION	Tuba City	AZ	86045
N36 UPPERFRUITLAND #22		Kirtland	NM	87417
N36 MILE POST 8.5 HOGBACK		Waterflow	NM	87421
N13 1 mi S of TP	wht hse silver roof	Red Valley	AZ	86544
N VALLEY HSE 19		Crownpoint	NM	87313
N SIDE OF RODEO GROUNDS HWY 98	MP 33 S 1 MI HSE ON L GRAY	Kaibito	AZ	86053
N OF SHIPROCK HOSPITAL NTUA HSE #	202	SHIPROCK	NM	87421
N MUTUAL HSE 68		Shiprock	NM	87420
N HWY 491 MM 23 2 HALF MI W OF RT 31 #10		Tohatchi	NM	87325
N HOPI HUD HSE 42		Tuba City	AZ	86045
N CROMWELL RD 3		Cibecue	AZ	859111304
N 36 POWER PLANT RD MP 7 L SIDE	BEIGE HSE	Fruitland	NM	87416
N 36 1.5 EAST OF NHA COMPLEX		FRUITLAND	NM	87401
N CHIEF RD 1ST		Whiteriver	AZ	85941
MTN VIEW N 12 HSE 20		Tsaile	AZ	86556
MP 6 NAVAJO RT 29 JCT 6	WHITE HSE BROWN RF ON L	Blue Gap	AZ	86520
MP 387 HWY 264 1 MI N OF 2ND MESA	WINDMILL BEIGE DBL WIDE TRLR	Second Mesa	AZ	86043
MP 347 HWY RT 98 WHITE TRLR N SIDE		Page	AZ	86040
MP 22 1/10 N Hwy 491	BROWN HOUSE	Tohatchi	NM	87325
MM 27 HWY 491		Tohatchi	NM	87325
MESA VIEW HSNQ 277 B	R SIDE	Shiprock	NM	87420

## **EXHIBIT C**

