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June 4, 2013

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, N.W.
Washington, DC 20445

Attn: Wireline Competition Bureau

Re: WC Dockets 11-42 and 03-109

Madam Secretary:

On behalf of Smith Bagley, Inc. ("SBI"), we write in response to correspondence submitted by Nexus Communications, Inc. ("Nexus") on May 10, 2013, in the above-captioned proceedings.[1] Nexus asks the Commission to eliminate the enrollment of Lifeline participants in tents, vehicles or other temporary structures, and asks that such actions be taken immediately. Nexus wrote its letter three days before TracFone filed a petition for rulemaking on the same subject, which petition was placed on public notice on May 16.[2]

The best way to adjust Lifeline program rules is in a rulemaking proceeding, pursuant to which the FCC develops a thorough record and takes informed actions that are effective, while providing regulated entities with appropriate notice. That said, to the extent that the Commission may be contemplating interim action, similar to past practice in the Lifeline program,[3] SBI provides the following information for the Commission's consideration.

SBI operates in Arizona, New Mexico, Utah and Colorado, providing service in both tribal and non-tribal lands. Within its service territory, SBI serves the Navajo, Hopi, White

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[1] *See*, Letter from Danielle Frappier, counsel for Nexus, to Hon. Marlene H. Dortch, filed in WC Docket Nos. 11-42 and 03-109 (May 10, 2013) ("Nexus Letter"), available at http://apps.fcc.gov/ecfs/document/view?id=7022312208.

[2] *See, Wireline Competition Bureau Seeks Comment On Tracfone's Petition To Amend Lifeline Rules To Prohibit In-Person Distribution Of Handsets To Prospective Lifeline Customers*, Public Notice, DA-13-1109 (released May 16, 2013), available at http://apps.fcc.gov/ecfs/document/view?id=7022314473 .

[3] *See, e.g., Lifeline and Link Up Reform and Modernization et al, Report and Order*, 26 FCC Rcd 9022 (2011).

Mountain Apache, Zuni and Ramah Navajo tribal lands. Most of its tribal service territory is very sparsely populated (less than 10 persons per square mile) and the demographics of most of its tribal lands are extraordinary.[4]

Shortly after becoming an ETC in Arizona in 2001, SBI launched its VisionOne® service, providing tribal citizens with Lifeline service at an end user cost of $1.00 per month. SBI quickly realized that the vast size and sparse populations on tribal lands made it impossible to build company stores throughout the areas where people live. Many eligible citizens lacked transportation needed to travel up to several hundred miles to SBI stores. Many areas were beyond the reach of the landline telephone network. It quickly became apparent that the only way to reach these remote populations was to bring the stores out to the people.

SBI created the idea of holding activation events at tribal chapter houses located in remote areas. SBI deployed mobile stores, housed in large recreational vehicles, to visit a chapter house over a weekend, where it set up customer service tables. The company offered full-service to consumers, including activation, service, educational clinics on how to use the phone, and anything else customers needed to begin or continue phone service. In the absence of these outreach efforts, it is unlikely that many remote areas would have received access to any telephone service.

When SBI began its Lifeline outreach, the 2000 U.S. Census reported that only 27% of Navajo households had access to a telephone. By 2010, Navajo household telephone penetration increased to 72.1%.[5] The FCC's policy of creating Tier 4 Lifeline support and encouraging carriers like SBI to reach out to remote areas was largely responsible for this significant increase in telephone penetration.[6]

Today, SBI continues to bring service out to remote areas to provide consumers with critical telephone services, albeit not on the same scale as when the program commenced. In addition, SBI appears at tribal events such as the Navajo Fair, setting up temporary stores, to reach places where tribal citizens travel to. SBI offers a full range of services at these locations.

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[4] *See, e.g.,* SBI Petition for Waiver, WC Dockets No. 11-42 et al. (filed June 26, 2012) at p. 3; SBI ex parte notice, WC Dockets No. 11-42 and 03-109 (filed Dec. 15, 2011); SBI Comments, WC Dockets No. 11-42 and 03-109 and CC Docket No. 96-45 (filed April 21, 2011).

[5] Sources: Selected Economic Characteristics, 2010 American Community Survey 1-year Estimates; Poverty Status in the Past 12 Months, 2010 American Community Survey 1-year Estimates; Selected Population Profile in the United States, 2010 American Community Survey 1-year Estimates.

[6] *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas,* CC Dkt. No. 96-45, *Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking,* 15 FCC Rcd 12208 (2000).

Moreover, temporary stores at such events have been critical in SBI's efforts to recertify its customers for Lifeline eligibility.

SBI has followed carefully the Commission's docket and congressional oversight of the Lifeline program. The company is aware that some fly-by-night Lifeline providers have been selling lifeline service out of vehicles or tents, and the Commission's public notices concerning program waste certainly indicate that there are problems in the system. That said, overbroad solutions, such as those proposed by Nexus, are not the answer. Prohibiting SBI from reaching out to remote populations, confining its business to its storefront locations, would be harmful to tribal citizens, for whom traveling dozens or hundreds of miles to conduct business is an extraordinary hardship.

In addition, while Nexus claims that temporary structures "tend to be staffed by third party agents who are paid per sale commissions with little on site supervision",[7] this is not the case with SBI. SBI's mobile stores have always been manned by company employees and SBI does not use third-party agents to sell its services from mobile or temporary facilities.

Separately, TracFone's Petition for Rulemaking seeks to limit in-person handset distribution. Together these proposals would greatly limit many tribal citizens' ability to receive phone service. SBI would not be able to use its mobile stores to go out to remote areas. Any citizen living in such an area who could make the trip to an SBI store would find out that they could sign up, but not receive a phone. Presumably, SBI would have to mail the phone separately at a later date. Many remote tribal areas do not have regular delivery service from the U.S. Postal Service, which means citizens will need to travel again, perhaps many miles, to pick up phones at the nearest post office.

SBI is supportive of measures that are effectively targeted at improving the administration of the Lifeline program and ensuring that only eligible consumers will benefit. However, one-size-fits-all approaches such as those from Nexus and TracFone fail to account for the very difficult circumstances existing today on many tribal lands. To the extent that the Commission seriously considers any of these approaches as a way to minimize program waste, they must be calibrated. Tribal residents, who depend on carriers such as SBI to provide critical telecommunications services, must not be prejudiced by regulatory reforms designed to resolve problems elsewhere in the program.

Accordingly, SBI respectfully requests the FCC to reject the Nexus proposal to prohibit Lifeline carriers from providing customer services from temporary or mobile facilities, to the extent that such a prohibition would extend to remote tribal lands where people lack access to

[7] Nexus Letter at p. 1.

traditional telecommunications facilities and providers. SBI will submit comments separately on TracFone's petition for a rulemaking to prohibit in-person handset distribution.

Respectfully submitted,

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