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January 17, 2014

FILED VIA ECFS

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W., Room TW-B204
Washington, D.C. 20554

**Re: *Ex Parte* Notification
Lifeline Reform: Independent Audit Requirement
WCB Docket No. 11-42**

Dear Ms. Dortch:

On behalf of Smith Bagley, Inc. (“SBI”), Robert S. Koppel and Steven M. Chernoff met on January 15, 2014 with Garnet Hanly, Vickie Robinson and Radhika Karmarkar (by telephone) of the Wireline Competition Bureau and Gina Spade (by telephone) of the Office of Managing Director. At the meeting, we discussed the scope of the biennial independent audit requirement (“Independent Audit”) for eligible telecommunications carriers (“ETCs”) that receive \$5 million or more annually in support from the federal Low Income program.

The discussion focused on the enclosed talking points.

As a threshold matter, SBI emphasized that requiring and comparing a carrier’s entire customer list, and the absolute numbers on FCC Forms 555 and 497, would: (1) exceed the scope of the Commission’s mandate in the *Lifeline Reform Order*;¹ (2) be an exercise in futility; (3) create a huge and unnecessary burden for carriers; and (4) result in unintended consequences.

SBI explained how a high-level review of internal company procedures and controls, tested with a random sample, would comply with the mandates of the Commission’s *Lifeline Reform Order* and ensure an effective review of a carrier’s compliance with the “aspects of the Lifeline program that present the greatest risk to the program.”

¹ *In the Matter of Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, Report and Order and Further Notice of Proposed Rulemaking, FCC 12-11 (rel. Feb. 6, 2012), 77 FR 12952 (“*Lifeline Reform Order*”).

Specifically, SBI made the following points:

- The auditors should use NLAD data, and obtain such data from USAC, instead of requiring carriers to compile a “National Subscriber List” which will largely duplicate the NLAD data.
- The auditors should use random samples of subscribers, taken from the NLAD database, to review the “real world” efficacy of the ETC’s processes and procedures. For the reasons set forth above, the auditors should not review and compare: (1) an ETC’s entire customer list; or (2) the absolute numbers on an ETC’s Forms 555 and 497.
- Sample subscribers should be selected from no more than two SACs, instead of requiring data from each and every SAC; if discrepancies are found, the inquiry may be broadened to include additional SACs. In the *Lifeline Reform Order*, the Commission stated that:

The new biennial audit requirement that we adopt today is focused on the corporate-wide compliance program, rather than carrier activity in a particular study area.²

Read in context, SBI submits that the Commission was not, in any manner, requiring that the Independent Audit review activity in *every* study area of the ETC. Rather, the Commission was asserting that the audit should focus on high-level processes and procedures – which are implemented at a corporate-wide level.

[Continued on next page]

² *Id.* at ¶ 295.

- The results of the draft audit must be treated confidentially. Section 54.420(a)(4) of the Rules provides that:

Within 60 days after completion of the audit work, but prior to finalization of the report, the third party auditor shall submit a *draft* of the audit report to the Commission and the Administrator *Finalized audit reports* must be provided to the Commission, the Administrator, and relevant states and Tribal governments within 30 days of the issuance of the *final audit report*. *The reports* will not be considered or deemed confidential.³

SBI explained that the reference to “[t]he reports” in the final sentence clearly refers back to the “*finalized audit report*”, not the *draft* of the audit report.

Please contact the undersigned if you have any questions.

Respectfully submitted,



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Robert S. Koppel
Steven M. Chernoff

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Cc (via e-mail): Kimberly Scardino
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Radhika Karmarkar
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³ 47 U.S.C. § 54.420(a)(4)(emphasis added). See Reply Comments of the Joint Commenters, filed Dec. 30, 2013, at 7 – 8.