

The map referred to in this document is not attached to your copy of the application. The original map exceeded size requirements. It was returned to the applicant and will be re-filed as soon as it is received in docket control.

NEW APPLICATION



Before the
Arizona Corporation Commission
Phoenix, Arizona

RECEIVED

2001 NOV 26 A 11:45

AZ CORP COMMISSION
DOCUMENT CONTROL

IN RE)
APPLICATION OF SMITH BAGLEY, INC.)
FOR DESIGNATION AS AN ELIGIBLE)
TELECOMMUNICATIONS CARRIER UNDER)
47 U.S.C. §214(e)(2))

Docket No. _____

DOCKET NO. T-02556A-01-0930

Application of Smith Bagley, Inc. for Designation as an
Eligible Telecommunications Carrier

Smith Bagley, Inc. ("SBI"), by its attorneys, hereby submits this Application for Designation as an Eligible Telecommunications Carrier ("ETC") pursuant to Section 214(e)(2) of the Telecommunications Act of 1934, as amended ("Act"), 47 U.S.C. § 214(e)(2), and Section 54.201 of the Federal Communications Commission's ("FCC") rules, 47 C.F.R. §54.201. SBI requests that it be designated as eligible to receive all available support from the federal Universal Service Fund ("USF") including, but not limited to, support for rural, insular and high cost areas and low income customers. In support of this Application, the following is respectfully shown:

I. Recitals

A. SBI, organized under the laws of the District of Columbia, is a telecommunications corporation as defined in A.R.S. § 40-201.

B. SBI is a Commercial Mobile Radio Service ("CMRS") provider pursuant to the definition of "mobile service" provided in 47 U.S.C. §153(27) and the definition of "commercial mobile radio service" provided in A.A.C. §R14-2-1201. SBI provides interstate telecommunications services as defined in 47 U.S.C. §254(d) and 47 C.F.R. §54.703(a).

C. SBI is not a rural telephone company within Arizona as defined by 47 U.S.C. §153(37) and 47 C.F.R. § 51.5.

D. Pursuant to Sections 214(e) and 254 of the Act, the ACC is authorized to designate SBI as an ETC.

E. The ACC has designated SBI as an ETC in Arizona and SBI currently provides Lifeline services to over 9,000 Arizona residents pursuant to that grant of authority in the Arizona-3 Rural Service Area ("RSA").

F. As detailed below, SBI provides Basic Local Exchange Telephone Service ("BLETS") as defined in A.A.C. §R14-2-1201(6).

II. Background and Scope of Application

On December 15, 2000, the Arizona Corporation Commission's ("ACC") released an Order designating SBI as an ETC on several Native American reservations in Navajo and Apache counties.¹ The ACC designated SBI as an ETC in those portions of the following Native American Indian Reservations that lie within SBI's licensed service area: the Navajo Nation, the Hopi Nation, and White Mountain Apache Reservation. Following the ETC Order, SBI petitioned the FCC for a redefinition of the incumbent LEC service areas which corresponded with the designated ETC area, which petition was granted on May 16, 2001.²

¹ *Application of Smith Bagley, Inc., For Designation as an Eligible Telecommunications Carrier Under 47 U.S.C. §214(e)(2) and A.C.C. §R14-2-1203, Order, Docket No. T-02556A-99-0207, Decision No. 63269 (December 15, 2000) ("ETC Order").*

² *See, FCC Public Notice DA-01-409, released February 15, 2001. Pursuant to 47 C.F.R. §54.207(c)(3)(ii), SBI's ETC service area in Arizona became effective on May 16, 2001 without further action from the FCC. The ACC's original designation did not include the service area of Table Top Telephone Company ("Table Top"). The ACC subsequently included in SBI's grant the Native American lands within Table Top's Sanders Exchange,*

SBI launched its universal service program (called "Vision One") in May 2001. Vision One has been very well received by the Native American community in Arizona. In response to SBI's outreach efforts, over 9,000 people have subscribed to Vision One to date.

SBI is confident that many other consumers within its licensed service area in Arizona would benefit from an ETC offering. It is for this reason that SBI seeks to expand its designated ETC area to include rural areas and near reservation lands within the Arizona 3 RSA.

III. Designated ETC Area

By this application, SBI requests that it be designated as an ETC in the central portion of its service area in Navajo and Apache counties - specifically that area north/northeast of the Fort Apache Indian Reservation and south of the Navajo Indian Reservation - as depicted on the map attached hereto as Exhibit A.

The central portion of Navajo and Apache counties is rural and contains natural features - including a National Forest and a National Park - which have impeded the delivery of competitive telephone service. The service area requested herein is rural, underdeveloped and includes several thousand Native Americans who reside on "near reservation lands" as designated by the Bureau of Indian Affairs ("BIA"). These near reservation lands have significant Native American populations and include Winslow, Holbrook, Snowflake, St. Johns, Show Low, Pine Top, Lakeside, Taylor, Heber, Eagar, Overgaard, Alpine, Nutrioso, and Springerville.³

effective as of July 1, 2001. *See*, FCC Public Notice DA 01-814, released April 2, 2001.

³ *See*, Federal Register, Vol. 44, No. 9, January 12, 1979, Department of the Interior Bureau of Indian Affairs, Near Reservation Designations, 4310-02-M; Federal Register, Vol. 60, No. 165, August 25, 1995, Department of the Interior, Bureau of Indian Affairs, Near Reservation Designations, 44394.

The FCC has recognized that near reservation lands include many Native American citizens who deserve the same benefits made available to those person residing on reservation lands. In its Twelfth Report and Order and Order and Further Notice of Proposed Rulemaking, the Commission stated its intention to make enhanced federal lifeline support available in near reservation lands.⁴ The FCC's proceeding is not yet complete, however it is anticipated that persons living in near reservation lands will soon be able to obtain such support and SBI will be able to extend its current program to these communities.

Section 214(e)(2) of the Act requires state commissions to designate as an ETC, throughout the service area for which ETC status is sought, any common carrier that (i) offers services that are supported by federal universal service support mechanisms, and (ii) advertises the availability of such services. In its First Report and Order, the FCC designated the specific features a carrier must provide or agree to provide to be designated as an ETC.⁵ The FCC also recognized that wireless telecommunications providers are eligible to be designated as ETCs.⁶

Section 214(e) of the Act provides that ETC designations shall be made for a geographic "service area" designated by the state commission. In areas served by a rural telephone company, the FCC's rules define "service area" to mean the LEC study area unless and until the

⁴ *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas, Twelfth Report and Order*, 15 FCC Rcd 12208 (2000); *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas, Order and Further Notive of Proposed Rulemaking*, 15 FCC Rcd 17112 (2000).

⁵ *Federal-State Joint Board on Universal Service, First Report and Order*, 12 FCC Rcd 8776, 8809-25 (1997) ("*First Report and Order*").

⁶ *Id.* at 8858-59.

Commission and the states, after taking into account recommendations of a Federal-State Joint Board instituted under Section 410(c) of the Act, establish a different definition of service area for such company. *See*, 47 C.F.R. §54.207(b).

There are three LECs providing service to the service area in Apache and Navajo counties where SBI is seeking designation. They are Qwest Communications Inc. ("Qwest"), Citizens Telecommunications of the White Mountains d/b/a Citizens-Arizona ("Citizens"), and Table Top Telephone Company ("Table Top"). Qwest is a non-rural carrier. Citizens and Table Top are rural carriers.

In non-rural areas, a state commission must designate a competitive ETC for the service area sought upon finding that the applicant does or will provide the nine point checklist of supported services.⁷ Accordingly, the ACC may designate SBI as an ETC in Qwest's exchanges immediately.

The remainder of the area within SBI's requested ETC area is served by Citizens and Table Top. In its ETC Order, the ACC designated SBI as an ETC on reservation lands within Citizens' study area.⁸ The ACC's Order also redefined Citizens' service area to separate the reservation lands from the non-reservation lands. By the instant Petition, SBI now requests designation in the non-reservation lands served by Citizens. If the ACC grants this request, SBI will be designated as an ETC in throughout the entire study area of Citizens. As a result, no disaggregation of Citizens service area is necessary, and none is requested herein. SBI commits to provide service throughout Citizens' study area.

⁷ *See*, 47 U.S.C. §214(e)(2), 47 C.F.R. §54.101.

⁸ *ETC Order*, at page 10-11.

SBI has also been designated as an ETC in the portion of Table Top's Sanders exchange that falls within the Navajo reservation boundary. Table Top operates a total of five exchanges within Arizona. However, SBI's licensed service area in the Arizona 3 RSA only provides coverage to Table Top's Sanders exchange. Currently SBI is designated as an ETC for the portion of the Sanders exchange located on Native American lands. By the instant Petition, SBI requests designation throughout the complete Sanders exchange of Table Top.

IV. Services Provided by Petitioner

The services which are currently supported by the federal USF are: (1) voice grade access to the public switched network, (2) access to local usage, (3) dual tone multi-frequency signaling or its functional equivalent, (4) single-party service or its functional equivalent, (5) access to emergency services, (6) access to operator services, (7) access to interexchange service, (8) access to directory assistance, and (9) toll limitation for qualifying low-income consumers. 47 C.F.R. §54.101(a). SBI is a full service wireless carrier which offers all of these services throughout its licensed service area utilizing its own facilities - including its own antennas, towers, and mobile switching offices. SBI has already demonstrated its qualifications to be an ETC, as evidenced by the findings made in the ETC Order.⁹ Moreover, since attaining ETC status, SBI has demonstrated its capability to provide a universal service offering in Arizona.

As required by 47 C.F.R. Section 54.201, SBI plans to advertise the availability of each of the supported services detailed above, throughout its licensed service area, by media of general distribution. The methods of advertising utilized shall include television, newspaper, magazine,

⁹ *ETC Order*, at page 7-8.

radio, direct mailings, public exhibits and displays, bill inserts, and telephone directory advertising. SBI's advertising and community outreach efforts have been instrumental in the success of its existing program on Native American lands.

In sum, SBI currently offers the above-referenced services and advertises their availability in compliance with all FCC and ACC requirements. Accordingly, SBI requests the ACC to find that SBI is a qualified ETC based on the existing record, without the need for further proceedings.

V. Public Interest Factors for Areas Served by a Rural Telephone Company.

For those portions of the state served by rural carriers such as Citizens and Table Top, the ACC must make the findings set forth above, and must also find that SBI's designation as an ETC would serve the public interest.¹⁰

As SBI has amply demonstrated in Native American lands in Arizona, its provision of a universal service offering will promote competition and facilitate the provision of advanced communications services to the residents of rural Arizona. Residents in rural areas have long trailed urban areas in receiving advanced telecommunications services. Throughout the proposed ETC service area, no meaningful choice of local exchange carriers exists.

Historically the Native American community has been deprived of advanced telecommunications options.¹¹ As the ACC is well aware, over 75% of the population of Apache County and nearly 50% of the population of Navajo County is Native American.¹² By this application, SBI will be able to reach rural near reservation communities, many of which have

¹⁰ *Id.*

¹¹ *Twelfth Report and Order*, 15 FCC Rcd 12208, ¶ 24-28 (2000).

¹² *See, e.g.*, www.census.org.

faced obstacles to obtaining telephone service in the past. In its ETC Order, the ACC found such designation to be in the public interest, reasoning:

Staff has reviewed SBI's Application and believes that it will provide additional consumer choice, promote telephone subscribership for qualifying low-income Native Americans, and may reduce health and safety risks associated with geographic isolation and further promotes access to basic telephone service.¹³

This application presents the ACC with an opportunity to extend the benefits described above to substantial additional areas within the Arizona 3 RSA.

Based on the high demand for its service in its existing ETC service area, SBI is confident that there is a need for its service in the proposed areas. SBI estimates that there are 30,000 Native Americans living in the proposed area. Additionally, the demographic characteristics of the non-Native American population are poor. For example, according to recent census data, 39.7% of people in Apache County and 28.4% of people in Navajo County live below the poverty level. These figures include all individuals living in these counties - not just Native Americans. By comparison, the percentage of people living below the poverty level in the United States as a whole is just 13.3%.¹⁴

The FCC has recognized the advantages wireless carriers can bring to the universal service program. In particular, the FCC has found that "imposing additional burdens on wireless entrants would be particularly harmful to competition in rural areas, where wireless carriers could

¹³ ETC Order, at page 12.

¹⁴ See, e.g., www.census.org. Data derived from 1997 model-based estimate. Based on 1997 poverty thresholds.

potentially offer service at much lower costs than traditional wireline service.”¹⁵ One of the principal goals of the Telecommunications Act of 1996 was to “promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies.”¹⁶ Competition drives down prices and promotes the development of advanced communications as carriers vie for a consumer’s business. In a competitive market, rural consumers will be able to choose services from a carrier that best meets their communications needs. As the FCC recently remarked in its order designating Western Wireless as an ETC on the Pine Ridge Reservation in South Dakota:

Designation of qualified ETCs promotes competition and benefits consumers by increasing customer choice, innovative services, and new technologies.¹⁷

Similarly, in an earlier proceeding designating Western Wireless as an ETC in Wyoming, the FCC found that consumers “will benefit from the provision of competitive service and new technologies in high-cost and rural areas.”¹⁸ By designating a wireless carrier as an ETC, the ACC will foster competition and provide a meaningful choice of service providers to Arizona residents.

¹⁵ *First Report and Order*, 12 FCC Rcd. 8776, 8881-8882.

¹⁶ *See, Telecommunications Act of 1996, Public Law, 104-104, 100 Stat. 56 (1996).*

¹⁷ *Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier for the Pine Ridge Reservation in South Dakota, Memorandum Opinion and Order*, CC Docket No. 96-45 (October 5, 2001), ¶12.

¹⁸ *Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier in the State of Wyoming*, 16 FCC Rcd 48, at 57 (December 26, 2000).

The public interest standard under Section 214(e)(2) for designating ETCs in territories served by rural telephone companies emphasizes competition and consumer benefit, not incumbent protection. In considering the impact that Western Wireless' ETC designation in Wyoming would have on rural telephone companies the Commission said:

We do not believe that it is self-evident that rural telephone companies cannot survive competition from wireless providers. Specifically, we find no merit to the contention that designation of an additional ETC in areas served by rural telephone companies will necessarily create incentives to reduce investment in infrastructure, raise rates, or reduce service quality to consumers in rural areas. To the contrary, we believe that competition may provide incentives to the incumbent to implement new operating efficiencies, lower prices, and offer better service to its customers.¹⁹

Further, Congress has mandated that universal service provisions be "competitively neutral" and "necessary to preserve and advance universal service." See, 47 U.S.C. §253(b). The failure to designate SBI as an ETC would deprive rural consumers of the benefits of competition, including increased choices, higher quality service, and lower rates. Without a choice of service providers, the consumer is unable to select a provider based on service features, service availability, and rates. Moreover, the monopoly incumbent provider has little or no incentive to introduce new, innovative, or advanced service offerings.

High cost loop support in rural areas will enable a competitor to build, maintain and expand facilities necessary to provide customers with meaningful choices in telecommunications service providers. Wireless companies have constructed facilities in rural areas which permit useful communications, however the public generally does not yet see wireless as a replacement

¹⁹ Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier in the State of Wyoming, 16 FCC Rcd 48, 57 (2000).

for wireline facilities, especially in rural areas. The reason is simple. No business plan exists which supports constructing a system that achieves the signal levels, robust call quality and service reliability necessary to provide a competitive service in areas of low population density.

Most wireline telephone companies will readily confirm that their existing facilities in rural areas could never have been built without government subsidies. If meaningful competition is to emerge in these areas, both state and federal governments must level the playing field to enable competing carriers to have a fair opportunity to construct the types of facilities necessary to provide customers with meaningful choice. Designating a competing carrier such as SBI as eligible to receive high cost support will drive infrastructure investment into areas which now lag far behind metropolitan cities. Moreover, low income subscribers will for the first time have meaningful choice of telecommunications service. Finally, the FCC's ongoing efforts to transform the disaggregation process will lead to more accurate targeting of high cost support throughout rural America.²⁰

WHEREFORE, pursuant to Section 214(e)(2) of the Act, SBI requests that the ACC enter an Order designating SBI as an ETC in the area shown on Attachment A and that the Commission enter its Order at the earliest possible date.

²⁰ See, *Federal-State Joint Board on Universal Service, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Fourteenth Report and Order*, 16 F.C.C.R. 11,244 (2001); see also, *Multi-Association Group*, 2001 WL 1381097 (F.C.C. Nov 08, 2001).

Respectfully submitted,

SMITH BAGLEY, INC.

By: 

David A. LaFuria
Allison M. Jones
Its Attorneys

Lukas Nace Gutierrez & Sachs, Chartered
1111 Nineteenth Street, N.W.
Suite 1200
Washington, D.C. 20036

November __, 2001