

NEW APPLICATION



0000173698

BEFORE THE ARIZONA CORPORATION COMMISSION

RECEIVED
ARIZONA CORPORATION COMMISSION
DOCKET CONTROL

2016 OCT -4 A 10:58

ORIGINAL

DOUG LITTLE
Chairman
BOB STUMP
Commissioner
BOB BURNS
Commissioner
TOM FORESE
Commissioner
ANDY TOBIN
Commissioner

T-02556A-16-0355

IN THE MATTER OF THE APPLICATION)
OF SMITH BAGLEY, INC., DBA)
CELLULAR ONE OF NORTH EAST)
ARIZONA TO EXPAND ITS ELIGIBLE)
TELECOMMUNICATIONS CARRIER)
SERVICE AREA)

DOCKET NO. T-02556A-16-
Arizona Corporation Commission

DOCKETED

OCT 04 2016

DOCKETED BY *R.A.*

APPLICATION OF SMITH BAGLEY, INC. TO EXPAND ITS ELIGIBLE TELECOMMUNICATIONS CARRIER SERVICE AREA

I. OVERVIEW

Smith Bagley, Inc., d/b/a Cellular One of North East Arizona ("SBI" or the "Company"), under Section 214(e)(2) of the Telecommunications Act of 1996 (the "1996 Act"), 47 U.S.C. §214(e)(2), Federal Communications Commission ("FCC") Universal Service Rules, 47 C.F.R. §§54.101 through 54.207 (the "FCC Rules"), and the rules and regulations of the Arizona Corporation Commission ("Commission"), applies to expand SBI's Eligible Telecommunications Carrier ("ETC") service area in the state of Arizona.

On December 15, 2000, the Commission granted SBI ETC certification in Decision No. 63269. Since certification, SBI has expanded its service area and improved coverage throughout Arizona by constructing additional communication towers, acquiring additional spectrum, and improving its Arizona network. Following a recent purchase of additional spectrum, SBI has

constructed new facilities and is providing services throughout not only Apache and Navajo counties, but also in Yavapai and Coconino counties. SBI also provides service in a portion of Gila County and certain specified areas in southeast Utah. Because of this growth, SBI is now able to provide ETC services throughout the FCC's Basic Economic Area 154 ("BEA 154"), however, in Arizona SBI is not authorized as an ETC in all of BEA 154.

This Application seeks to align SBI's ETC certified area with the geographic area it is able to serve. The attached Exhibit A shows SBI's current ETC area, which is bounded by a red hatched line. The area on Exhibit A with the lime green boundary is the area for which SBI seeks to expand its ETC authority and is the subject of this Application. In this Application, this area is referred as the "Expansion Area." The Expansion Area includes all of Yavapai County and the portion of Coconino County not previously included in SBI's ETC certified area. SBI owns spectrum, licenses and facilities in the Expansion Area over which it will provide facilities-based services. As required by Section 214 of the 1996 Act, SBI will provide the supported services in the Expansion Area using either its own facilities or a combination of its own facilities and resale of other facilities-based providers' services.

Through this Application, SBI seeks to be certified as an ETC in the Expansion Area, thereby aligning its ETC service area more closely with its current service territory. The Expansion Area would be subject to the same service requirements and restrictions set forth Decision 63269, wherein SBI was granted its original ETC designation.

II. SMITH BAGLEY, INC., d/b/a CELLULARONE

SBI, which is organized under the laws of the District of Columbia, is a telecommunications corporation as defined in A.R.S. §40-201 and provides basic local exchange telephone service as

defined in A.A.C. R14-2-1201(6). SBI provides Commercial Mobile Radio Service pursuant to the definition of “mobile service” provide in 47 U.S.C. §153(33) and under the definition of “commercial mobile radio service” in 47 C.F.R. §20.9 and A.A.C. R14-2-1201(8), and provides telecommunications service as defined in 47 U.S.C. §153(53). SBI provides wireless telephone service in the northern Arizona and southeastern Utah under the brand name Cellular One, and maintains its headquarters and local call center in the community of Show Low. In July 2016, SBI reported serving 41,343 Lifeline customers in Arizona, which included 37,602 Tribal customers and 3,741 non-Tribal customers.

III. SBI'S DESIGNATED ETC AREA

On December 15, 2000, the Commission designated SBI as an ETC in Navajo and Apache counties. *See* Decision No. 63269. The Commission defined SBI's initial ETC service territory as that portion of SBI's existing cellular service contour which encompassed portions of the Navajo Indian Reservation located in Navajo and Apache Counties, the portion of the Hopi Indian Reservation located in Navajo County, on the Pueblo of Zuni Reservation located in Apache County, and the portion of the White Mountain Apache Reservation located in Navajo, Apache and Gila Counties. In 2002, the Commission granted SBI's request to extend its ETC service territory to include the remaining portion of the Navajo and Hopi Reservations located in Navajo County and Coconino County that were “within its existing Flagstaff, Arizona BTA PCS service contour.” *See* Decision No. 65054 (July 26, 2002). In 2003, the Commission granted SBI's request to expand its ETC service territory to the City of Page and those portions of Apache and Navajo Counties not previously within SBI's original ETC service territory. *See* Decision No. 66566 (November 18, 2003).

IV. THE EXPANSION AREA

Recently, SBI acquired additional spectrum that will allow SBI to provide commercial wireless services to additional areas in Arizona. SBI therefore requests that its ETC area be expanded to the Expansion Area, which may be described as that portion of BEA 154 in Arizona where SBI is not already certified as an ETC. BEA 154 is one of 176 total Basic Economic Areas used by the FCC to geographically define market areas for purposes of General Wireless Communications Service. Expanding SBI's ETC certification to include all of BEA 154 results in an easily identifiable geographic area for SBI's ETC authority.

The wire centers within the Expansion Area are served by: Arizona Telephone Co.; Citizens Utilities Rural, d/b/a/ Frontier Citizens Utilities Rural Company; Midvale Telephone Company; Qwest Corporation; South Central Utah Telephone Association, Inc.; and Table Top Telephone Company, Inc. (See Exhibit A). SBI's current ETC certified area includes wire centers served by Arizona Telephone Co., Table Top Telephone Company, Inc., Qwest Corporation, and South Central Utah Telephone Association, Inc. SBI already exchanges traffic with these carriers in SBI's current ETC certified area. Similarly, Frontier Communications of the White Mountains, the sister company of Citizens Utilities Rural, provides service in the southern portion of SBI's current ETC area. Midvale Telephone Company does not provide service in SBI's current authorized ETC area and serves only a small portion of the Expansion Area, primarily in the vicinity of Simmons and Chino Valley, Arizona. In summary, SBI is a known provider in the Expansion Area for all of the incumbent and rural carriers, and known to all but one of the carriers (Midvale Telephone Company) as a provider of Lifeline and Linkup services.

The Expansion Area also includes lands governed by the following five Native American Tribes: Kaibab-Kaibab-Paiute Tribe, Havasupai Tribe, Hualapai Tribe, Yavapai-Apache Nation,

and Yavapai-Prescott Tribe. SBI will provide notice of this request to expand its ETC service territory to each of the Tribal communities listed above and will provide each with a copy of this Application. Additionally, SBI employs a full-time Tribal liaison who meets with Tribes in and around the SBI service area and oversees Tribal engagement efforts. This position was added in 2013 and has been held by the same person since that time. The SBI liaison will meet with, and respond to any questions from, Tribal interests as they arise. This commitment to inform affected Tribal communities is a continuation of SBI's a record of significant investment in community outreach aimed at increasing the availability of voice and broadband services on Tribal Lands. SBI was founded in 1989 and started with three employees. Today, SBI employs nearly 200 people, over 35% of whom are Native Americans. To improve service throughout Northern Arizona, SBI has invested in hundreds of tower sites over the past 25 years, many on Tribal Lands, and is transitioning these sites from 3G to 4G/LTE services. As a result, service to Tribal communities is improving. With the expansion of SBI's ETC authorization, these improved services can also be made available to low-income customers.

V. SBI MEETS APPLICABLE COMMISSION REQUIREMENTS

Common carriers that are designated under 47 U.S.C. §214 are eligible to receive subsidies from the federal Universal Service Fund. The Commission is responsible for designating common carriers as ETCs and has generally used the funding requirements in determining whether a carrier should be designated as an ETC. To receive federal Universal Service Fund support, an ETC must:

- (A) offer the services that are supported by Federal universal support mechanisms under section 254(c) of this title, either using its own facilities or a combination of its own facilities and resale of another carriers' services (including the services offered by another eligible telecommunication carrier); and

- (B) advertise the availability of such services and the charges therefor using media of general distribution.

47 U.S.C. §54.214(e)(1)

SBI has met these requirements to the satisfaction of the ACC, as evidenced by findings made by the Commission in Decision 63269 and reaffirmed in Decision Nos. 65054 and 66566. Specifically, SBI has demonstrated its ability to offer the following core services required under the federal universal service program: (1) voice grade access to the public switched telephone network or its functional equivalent, (2) minutes of use for local service at no additional charge, (3) access to emergency services to the extent the local government has implemented such systems, and (4) toll limitation for qualifying low-income consumers. *See* 47 C.F.R. §54.101(a). Further, SBI has demonstrated that it will advertise the availability of each of the supported services detailed above, throughout its ETC service area by media of general distribution as required by 47 C.F.R. §54.201(d)(2). Since receiving ETC certification from the Commission, SBI has complied with the conditions of its ETC designation and will continue to do so.

VI. SBI SATISFIES THE REQUIREMENTS FOR DESIGNATION AS AN ETC TO SERVE THE DESIGNATED SERVICE AREA.

SBI is a common carrier pursuant to 47 U.S.C. §153(11). SBI will offer all of the supported services set forth in 47 C.F.R. §54.101(a) using either its own facilities or a combination of its own facilities and another carrier's facilities. A State commission "may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier, so long as each additional requesting carrier meets the requirements of [47 C.F.R. §54.201(d)]." As discussed above, SBI meets those requirements.

The FCC has determined that while “[d]esignation of competitive ETCs promotes and benefits consumers...by increasing customer choice,” designation must include “an affirmative determination that such designation is in the public interest regardless of whether the applicant seeks designation in an area served by a rural or non-rural carrier.”¹ SBI submits that certifying it as an ETC in the Expansion Area is in the public interest. The Expansion Area includes Tribal lands, urban areas, rural lands, and near reservation lands. Most of the Expansion Area covers high-cost, remote, rural areas with few consumer options for telecommunications services. Some areas within the Expansion Area lack telephone service entirely. By designating SBI as an ETC in the Expansion Area, the Commission will allow SBI to provide service to previously unserved residents. In areas where a carrier is already providing ETC service, granting SBI’s ETC expansion request will foster competition and will provide a meaningful choice of service providers to Arizona residents.

The Commission has a strong record of supporting prior expansions of SBI’s authorized ETC area. In 2000 (Decision No. 63269), 2002 (Decision No. 65054) and 2003 (Decision No. 66566), the Commission concluded that it was in the public interest to grant SBI’s request to provide ETC service in rural areas in Apache, Navajo, and Coconino counties, three of the most rural counties in Arizona. These areas included the portions of the Navajo and Hopi Reservations located in Apache County, Navajo County and Coconino County. Within its current ETC area, SBI is eligible to receive all available support from the Arizona Universal Service Fund (“AUSF”) and federal Universal Service Fund including, but not limited to, support for rural, insular and high-cost areas and low-income customers. As the Commission found in 2000, in response to SBI’s initial ETC application, SBI is extending service to many currently unserved or underserved high-cost

¹ See Federal-State Joint Board on Universal Service, 20 FCC Rcd 6371, ¶ 42 (2005).

areas that traditional wireline carriers may never serve. Further extending SBI's ETC service area will provide these benefits to a greater number of people within Arizona.

The SBI network has been operational for nearly twenty-five (25) years. SBI has worked with four Native American Tribes to secure additional cell sites on Native American lands and thereby bring service to previously unserved areas. Within its ETC service territory, SBI offers VisionOne to on-reservation customers. VisionOne is a Lifeline product which provides unlimited local and nationwide talk and text messaging, along with a minimum of 500 Mb of data per month for a flat monthly fee. Off-reservation, SBI offers FreedomFone, a product which includes 300 any network minutes and one thousand text messages for a flat monthly fee. All SBI plans will comply with the FCC's Lifeline Modernization Order² well in advance of the FCC's December 1, 2016 deadline. Additionally, CellularOne will continue to update rate plans to meet all applicable FCC requirements.

SBI currently advertises the availability of its services throughout the areas where it is designated, using media of general availability, such as newspapers and radio. Additionally, SBI targets advertising to specific communities through direct interaction with local government representatives, Tribal chapter houses, and places where low-income customers are likely to find SBI's communications.

SBI seeks designation as an ETC in areas served by both rural and non-rural ILECs in Arizona. Flagstaff and Prescott are located within the Expansion Area and are served primarily by Qwest Corporation dba CenturyLink QC. SBI's expanded designation will provide a valuable alternative to the existing telecommunications service providers offering service in non-rural areas. Public interest benefits of expanding SBI's ETC designation area will include: 1) broader

² *In re Lifeline and Link Up Reform and Modernization et al.*, WC Docket No. 11-42 *et al.*, (FCC Rel., Apr. 27, 2016).

availability of 911 and, where available, enhanced 911 service in accordance with current FCC requirements; 2) commercial mobile wireless service for low-income customers in previously underserved, or unserved areas; 3) expanded coverage for low-income customers 4) increasing the ability of low-income consumers to send and receive “SMS” or text messages; 5) increasing low-income consumers’ access to the Internet in previously underserved or unserved areas; and 6) cost control options for customers through flat-rate monthly billing. For all of these reasons, providing SBI with the authority necessary to offer discounted Lifeline and Link Up services to eligible residents in additional areas of Arizona is in the public interest.

VII RECENT FCC DEVELOPMENTS AND PUBLIC INTEREST SHOWING.

In 2011, the FCC comprehensively reformed its high-cost universal service mechanism, affecting all aspects of the ETC designation process.³ In the Transformation Order, the FCC froze so-called “legacy” high-cost support to wireless carriers such as SBI, and phased such high-cost support out over time. The phase out of legacy support will be completed after a new Mobility Fund Phase II (“MFII”) is implemented, which is expected to happen in the 2016-2017 timeframe. Accordingly, through this application, SBI is not eligible to draw from the FCC’s legacy high-cost support fund. That is, SBI cannot access any additional high-cost funds from the federal Universal Service program. Accordingly, traditional concerns the Commission might have had about high-cost funds being provided to a wireless carrier having a deleterious effect on existing wireline carriers is now non-existent.

Several years ago, SBI successfully bid for support in the FCC’s Mobility Fund Phase I (“MFI”) auction, and it has used such support to construct approximately \$3 million of new

³ *Connect America Fund, et al.*, WC Docket No. 10-90, *et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17675 (2011), *aff’d sub nom. In re FCC 11-161*, 703 F.3d 1015 (10th Cir. 2014).

facilities in rural New Mexico, serving the Navajo Nation. When the FCC announces the availability of MFII support, SBI plans to participate in that auction, in order to obtain federal support to construct new facilities on rural and Tribal Lands in Arizona, specifically including the areas requested to be designated as Expansion Areas in BEA 154. Accordingly, by granting this application, the Commission will make SBI eligible to bid at a future FCC auction for MFII support, hopefully with the objective of increasing the number of cell sites and improving both fixed and mobile broadband options for Arizona's rural and Tribal citizens.

A grant of this application will also have significant immediate benefits to low-income rural and Tribal citizens in Arizona. SBI is the leading Tribal Lifeline provider in the nation. It has built its entire business plan around delivering excellent service quality and customer service to rural and Tribal Lands in Arizona, New Mexico and Utah, specifically to low-income households. On information and belief, its coverage in remote areas where it serves is superior, and its commitment to low-income Americans is evidenced by the high-performance of its customer service representatives, its rapid response to consumer issues, and the deep substantial increases in phone service penetration it has achieved on Tribal Lands.

By granting this application, the Commission will permit SBI to immediately extend its Lifeline service offerings throughout the newly designated ETC Expansion Area. SBI believes its offerings are superior to other Lifeline providers in the state, especially those offering service solely through resale of other carriers' service. Most wireless resellers resell the services of one or more of the nation's four largest carriers. The large national carriers have generally chosen, for business reasons, to not construct facilities on Tribal Lands. No wireless reseller resells services on SBI's network. Accordingly, in remote and Tribal Lands where SBI serves, resellers cannot deliver service levels comparable to SBI. Conversely, SBI's roaming customers can access either the

AT&T or T-Mobile network when they are in urban and suburban areas, both inside and outside of SBI's ETC service area. SBI believes that its construction of facilities in remote very rural areas confers a significant advantage over Lifeline resellers and therefore grant of this application will serve the public interest. Importantly, if a consumer prefers a competing network for any reason, SBI will receive no Lifeline support from that customer it has lost.

Additionally, unlike most wireless resellers, SBI is headquartered locally and provides local brick and mortar outlets and local customer service. Customers who visit SBI do not have to worry about whether they can find the company after signing up for service. SBI is connected to the communities it serves and hires the majority of its employees from the local population. Because SBI is not a reseller, it can deliver a high level of service, including more minutes and more Megabytes of data to its customers for the same price.

Accordingly, SBI submits that a grant of this application will deliver new choices and significant benefit for low-income consumers who rely on the FCC's Lifeline program to access voice and data services.

VIII CONCLUSION

Since its initial designation, SBI has greatly improved the reach and quality of its network in Arizona and is serving more customers in a significantly larger geographic area than when it began. SBI requests that the Expansion Area be added to its ETC territory, thereby making it eligible to receive all available support from the Arizona Universal Fund as well as the federal Universal Service Fund in the areas it is able to serve. With this ETC designation, SBI shall make available Lifeline and Link Up services to qualifying low-income individuals throughout the Arizona portion of BEA 154. SBI respectfully requests that the Commission promptly grant this

Application, and expand SBI's ETC service area to include all parts of BEA 154 in Arizona (the Expansion Area), as detailed on Exhibit A.

Respectfully submitted this 4th day of October, 2016.

**Smith Bagley, Inc., dba
Cellular One of North East Arizona**

By: Timothy B. Shaffery
Timothy B. Shaffery, Esq.
Director of Legal Affairs
Smith Bagley, Inc., dba Cellular One of North East Arizona
1500 S. White Mountain Road
Show Low, Arizona 85901
Phone: (928) 537-0690
Email: tshaffery@cellularoneaz.com

and

By: Joan S. Burke
Joan S. Burke, Esq.
Law Office of Joan S. Burke
1650 N. First Avenue
Phoenix, Arizona 85003
Phone: (602) 535-0396

Email: joan@jsburkelaw.com

ORIGINAL and copies
of the foregoing filed
this 4th day of October 2016 with:

The Arizona Corporation Commission
Docket Control
1200 W. Washington Street
Phoenix, Arizona 85007

Joan S. Burke

SBI's Proposed ETC Area in Arizona

Exhibit A

LEGEND

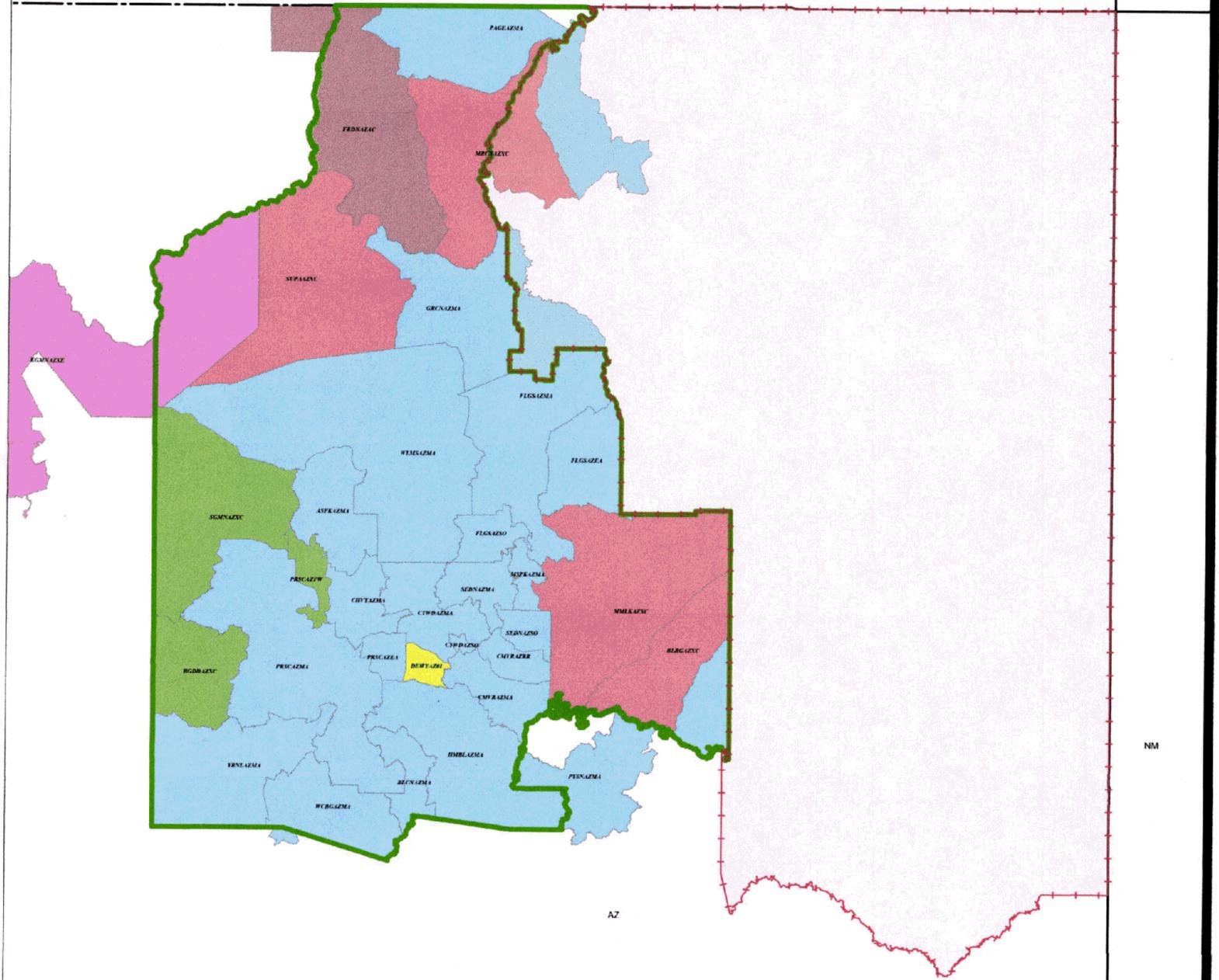
-  State Boundary
-  SBI's Authorized ETC Area in Arizona
-  SBI Proposed ETC Area in Arizona

Wirecenters within the new ETC Area

-  ARIZONA TELEPHONE CO.
-  CITIZENS UTILITIES RURAL COMPANY
-  MIDVALE TELEPHONE COMPANY
-  QWEST CORPORATION
-  SOUTH CENTRAL UTAH TELEPHONE ASSOCIATION, INC.
-  TABLE TOP TELEPHONE CO., INC.

Prepared By: LNGS Engineering 08.25.16

UT



NM

AZ