

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF THE)
APPLICATION OF SMITH BAGLEY, INC.)
FOR EXPANDED CONDITIONAL)
DESIGNATION AS AN ELIGIBLE) **Case No. 13-____-UT**
TELECOMMUNICATIONS CARRIER)

**APPLICATION OF SMITH BAGLEY, INC.
FOR EXPANDED CONDITIONAL DESIGNATION
AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER**

Pursuant to Section 214(e)(2) of the Communications Act of 1934, as amended (the “Act”),¹ Smith Bagley, Inc. (“SBI”) hereby requests expanded conditional designation as an eligible telecommunications carrier (“ETC”) to serve the delineated census blocks set forth below, all of which are on tribal lands designated by the Federal Communications Commission (“FCC”) for the upcoming Tribal Mobility Fund Phase I Auction (“Auction 902”). Grant of this Application on or before October 9, 2013 will, among other things, enable SBI to participate in Auction 902. As set forth below, SBI has previously been designated as an ETC by the New Mexico Public Regulation Commission (“NMPRC”).

For the reasons set forth below, and in accordance with the requirements set forth in the Act,² the FCC’s rules,³ the rules of the NMPRC,⁴ the FCC’s *CAF Order*,⁵ and the FCC’s Public

¹ 47 U.S.C. §214(e)(6).

² 47 U.S.C. §214(e).

³ 47 C.F.R. §§ 54.202, 54.1003.

⁴ NMAC 17.11.10.23 – 24.

⁵ *Connect America Fund*, WC Docket No. 10-90, *A National Broadband Plan for Our Future*, GN Docket No. 09-51, *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, *High-Cost Universal Service Support*, WC Docket No. 05-337, *Developing an Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Lifeline and Link-Up*, WC Docket No. 03-109, *Universal Service Reform – Mobility Fund*, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, at ¶ 295 (2011) (“*CAF Order*”), *pets. for review pending sub nom. In re: FCC 11-161*, No. 11-9900 (10th Cir. filed Dec. 18, 2011) (and consolidated cases).

Notice in the Tribal Mobility Fund Phase I docket,⁶ SBI meets the requirements to be designated as an ETC by the NMPRC to be eligible to bid in Auction 902 and future FCC auctions, and SBI's designation as an ETC for this purpose will serve the public interest.

I. BACKGROUND.

SBI is a facilities-based wireless ETC serving over 45,000 customers in New Mexico and 120,000 total customers in its entire service area in New Mexico, Arizona and Utah. SBI provides commercial mobile wireless service to several Native American lands, including the Navajo Nation, Ramah Navajo and Pueblo of Zuni in New Mexico.

SBI has previously been designated to serve Tribal lands in New Mexico. On February 19, 2002, the NMPRC granted SBI designation as an ETC to serve the Zuni and Ramah reservations in New Mexico.⁷ On July 27, 2004, the NMPRC granted SBI an extension of its ETC designation to serve certain Navajo Tribal lands in New Mexico.⁸ On December 7, 2004, the NMPRC granted SBI another extension of its ETC designation to include SBI's licensed area in the Gallup, New Mexico BTA 162 and the Farmington, New Mexico BTA 139.⁹

By this Application, SBI seeks to extend the availability of its mobile voice and data services, and to extend the reach of its mobile broadband capabilities, into certain unserved and underserved Tribal lands in New Mexico identified by the FCC as areas eligible for Auction 902 funding (the "Eligible New Mexico Tribal Lands").¹⁰ Being designated as an ETC and eligible to participate in Auction 902 and future FCC auctions will serve the public interest. If SBI is

⁶ *Tribal Mobility Fund Phase I Auction Rescheduled for December 9, 2013; Notice and Filing Requirements and Other Procedures for Auction 902*, FCC Public Notice in AU 13-35, DA 13-1672 (rel. Aug. 7, 2013) (the "Auction 902 PN").

⁷ *Final Order*, Utility Case No. 3026.

⁸ *Final Order*, Case No. 03-00246-UT.

⁹ *Final Order*, Case No. 04-00289-UT.

¹⁰ The Census Blocks comprising the Eligible New Mexico Tribal Lands are set forth in Exhibit 1. A map showing these Census Blocks is set forth in Exhibit 2.

successful in upcoming FCC auctions, it will be able to use federal high-cost support to assist it in extending and improving its mobile voice and broadband coverage in New Mexico.¹¹

II. EXPEDITED PROCESSING IS REQUESTED

SBI respectfully requests that the NMPRC expeditiously process and grant this Application on or before October 9, 2013. The FCC has announced that Auction 902 will commence on December 19, 2013.¹² To be eligible to participate in Auction 902, and ultimately to receive Tribal Mobility Fund Phase I support for any area, SBI must be designated as an ETC in that area on or before the October 9, 2013 deadline for filing short-form auction applications.¹³

In connection with its request for expedited processing, SBI urges the NMPRC to immediately place this Application on Public Notice, to implement a rapid processing cycle and take all necessary steps to move this item to the Commissioners for consideration at an open meeting in advance of October 9. As noted above, the NMPRC has found on three different occasions that SBI is qualified to serve as an ETC in New Mexico, and that designating SBI as an ETC serves the public interest. Further, in its present Application, SBI seeks only conditional ETC designation to participate in Auction 902 and future auctions – conditional on SBI being a winning bidder at one or more upcoming FCC auctions.

¹¹ See *CAF Order* at ¶ 322.

¹² *Auction 902 PN* at ¶ 1.

¹³ *Id.* at ¶ 43; 47 C.F.R. §54.1003(a) (applicant must be an ETC to receive Mobility Fund Phase I support).

III. SBI's PETITION SATISFIES ALL REQUIREMENTS FOR DESIGNATION AS AN ETC.

A. SATISFACTION OF THE REQUIREMENTS OF SECTION 54.202(A) OF THE FCC'S RULES.

SBI hereby certifies that it will comply with the service requirements applicable to the support that it receives.¹⁴ SBI will use auction support to expand and improve its network in the Eligible New Mexico Tribal Lands, in compliance with the construction requirements established by the FCC. SBI has attached a Service Improvement Plan ("SIP") describing the expansion and/or improvements that it plans to make in the Eligible New Mexico Tribal Lands if it wins Auction 902 funding.¹⁵ SBI will amend this SIP to reflect whatever census blocks it may win at the upcoming auction.

SBI is today mailing a copy of the Application to the Navajo Nation Tribal government and to the Navajo Nation Telecommunications Regulatory Commission ("NNTRC").¹⁶ SBI will submit the requisite annual reports on its progress of deployment in supported areas to the NMPRC, the Navajo Nation, and NNTRC.

SBI has the ability to remain functional in emergency situations, including an amount of back-up power to ensure functionality without any external power source for a reasonable period of time, the ability to reroute traffic around damaged facilities, and the ability to manage traffic spikes resulting from emergency situations.¹⁷ In particular, the following capabilities enable SBI to remain functional in emergency situations:

- Fixed and portable back-up power generators at various network locations throughout SBI's network that can be deployed in emergency situations;

¹⁴ 47 C.F.R. §54.202(a)(1)(i).

¹⁵ 47 C.F.R. §54.202(a)(1)(ii). The SIP is set forth in Exhibit 3. SBI will submit additional SIPs, if required, prior to participating in future FCC auctions.

¹⁶ 47 C.F.R. §54.202(c).

¹⁷ 47 C.F.R. §54.202(a)(2).

- Battery back-up systems installed at the majority of sites not equipped with fixed generators, to maintain service in the event of a widespread power outage;
- Redundant facilities and capability for dynamic rerouting of traffic over alternate facilities, which can be employed as needed to enable SBI to reroute traffic around damaged or out-of-service facilities; and
- A network control center that monitors network traffic, anticipates traffic spikes, and can deploy network facilities to accommodate capacity needs.

SBI hereby certifies that it will satisfy applicable consumer protection and service quality standards.¹⁸ SBI will abide by the CTIA – The Wireless Association’s Consumer Code for Wireless Service (“Consumer Code”).

B. SATISFACTION OF THE REQUIREMENTS OF SECTION 54.1003 OF THE FCC’S RULES AND SECTION 214 OF THE COMMUNICATIONS ACT.

SBI hereby certifies that it is a telecommunications carrier, as required by the Act.¹⁹ SBI hereby certifies that it is financially and technically qualified to provide, and intends to offer, all of the services designated by the FCC for support through Tribal Mobility Fund Phase I, as well as future FCC auctions, including voice telephony services meeting the FCC’s requirements.

SBI will provide:

- Voice-grade access to the public switched telephone network, through SBI’s interconnected mobile voice telecommunications service;
- Minutes of free local usage for end-users in each universal service rate plan;
- Access to emergency services, including access to 911 and E911 services to the extent that the local government has implemented such services;
- Toll limitation at no charge for qualifying low-income customers;²⁰
- Stand-alone voice service; and²¹

¹⁸ 47 C.F.R. §54.202(a)(3).

¹⁹ 47 U.S.C. §214(e)(1). The NMPRC has previously found SBI to be a “common carrier” in its order designating SBI as an ETC, and in its two subsequent orders expanding SBI’s ETC designation.

²⁰ 47 C.F.R. §§54.101.

²¹ *Auction 902 PN* at ¶ 15.

- Lifeline service.

In addition, SBI certifies that it is financially and technically qualified to provide, and intends to offer, broadband services meeting the FCC's requirements, either 3G service in the supported areas within two years or 4G service within three years of the date it is authorized to receive support.²² As noted above, SBI is a facilities-based provider of wireless voice, messaging, and data services and currently provides mobile wireless services to over 120,000 customers. SBI has deployed an advanced telecommunications network that, with the additional Tribal Mobility Fund Phase I support, will be capable of delivering the supported services throughout the service areas for which support is won.

If successful at auction, SBI intends to offer the designated supported services throughout the service areas for which it wins support using its own facilities, in accordance with the Act.²³ SBI certifies that it owns spectrum in the Eligible New Mexico Tribal Lands within which it intends to seek support, and that it will retain such ownership for at least five years after the date on which it is authorized to receive Tribal Mobility Fund Phase I support.²⁴

SBI will advertise the availability of, and charges for, the supported services using media of general distribution.²⁵ SBI certifies that it will continue to use the appropriate means to advertise the supported services, and the charges associated with them, in a manner consistent with applicable requirements. SBI is willing to be the sole ETC in the designated service territory, if so ordered.²⁶ SBI will comply with all reporting requirements set forth in the NMPRC's Rules.

²² 47 C.F.R. §§54.101, 54.1003(c), 54.1006. *See generally* 47 U.S.C. §254(c).

²³ 47 U.S.C. §214(e)(1)(A).

²⁴ 47 C.F.R. §54.1003(b).

²⁵ 47 U.S.C. §214(e)(1)(B).

²⁶ *See* 47 C.F.R. § 54.203.

III. EXPEDITIOUS GRANT OF SBI'S APPLICATION WILL SERVE THE PUBLIC INTEREST.

Expeditious grant of SBI's Application will serve the public interest by enabling SBI to participate in Auction 902 and future auctions. If SBI is successful at auction, it will extend and improve its mobile voice and broadband coverage in the areas in which it bids – all of which the FCC has found to be unserved or underserved – and residents of these areas will enjoy the benefits of mobile broadband and more choice among facilities-based providers.

IV. CONCLUSION.

For the reasons stated herein, and based on the certifications made and qualifications demonstrated in the Application, SBI satisfies the requirements of the Communications Act, the rules of the NMPRC, and the FCC's rules, orders, and policies for ETC designation. Grant of the requested ETC designations will serve the public interest. Accordingly, SBI respectfully requests that the NMPRC expeditiously grant the Application for conditional ETC designation.

Dated: September 12, 2013

Respectfully submitted,

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EXHIBIT 1

CENSUS BLOCKS FOR WHICH ETC DESIGNATION IS SOUGHT

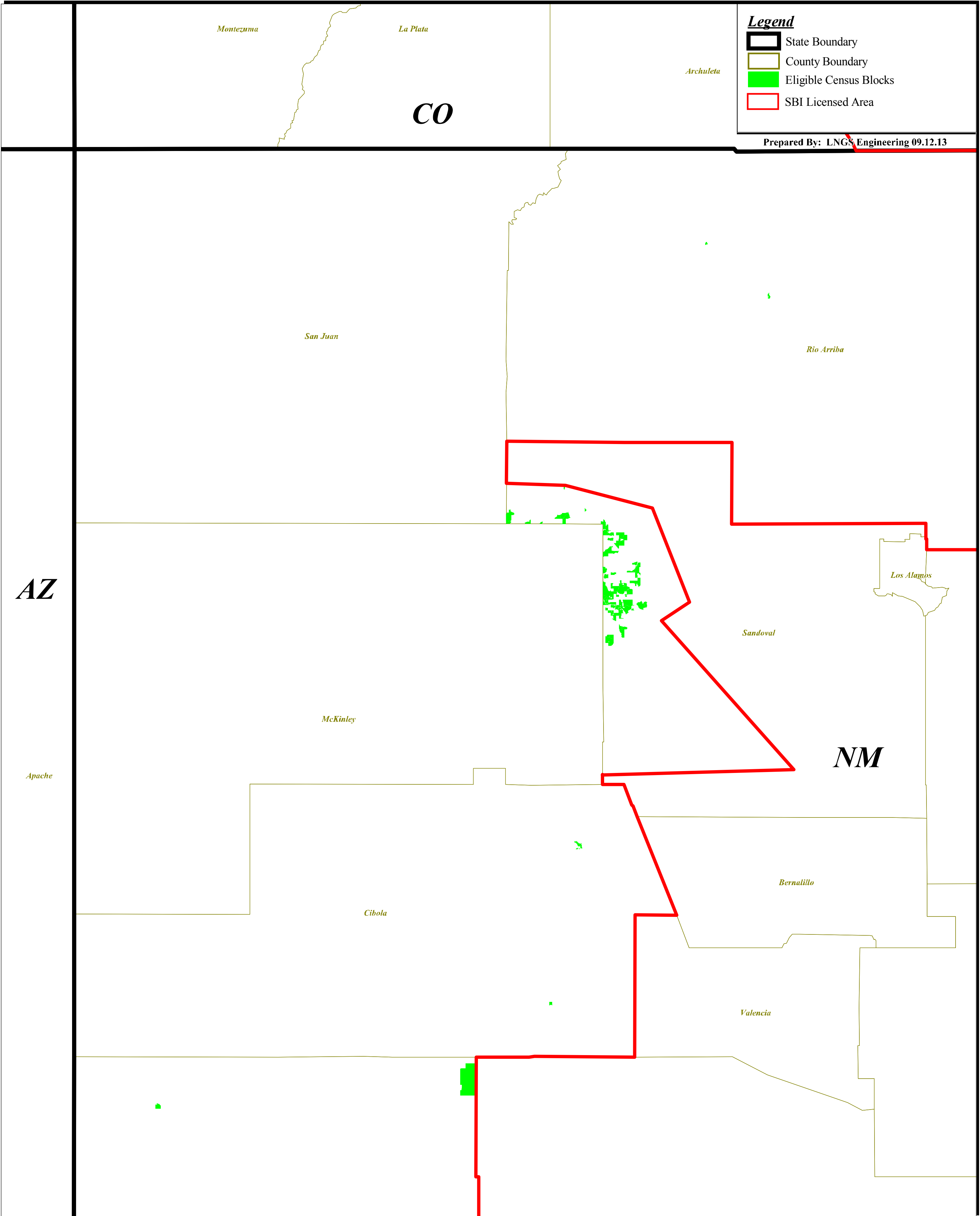
Block	State	State_County	County_Name	TRACT	Block_Group	Pop10	Within ETC
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350039764001112	NM	35003	Catron	35003976400	350039764001	4	N
350069415001290	NM	35006	Cibola	35006941500	350069415001	1	N
350069461001050	NM	35006	Cibola	35006946100	350069461001	5	N
350069461001058	NM	35006	Cibola	35006946100	350069461001	24	N
350069461001059	NM	35006	Cibola	35006946100	350069461001	17	N
350069461001060	NM	35006	Cibola	35006946100	350069461001	12	N
350069461001061	NM	35006	Cibola	35006946100	350069461001	32	N
350069461001062	NM	35006	Cibola	35006946100	350069461001	1	N
350069461001063	NM	35006	Cibola	35006946100	350069461001	68	N
350069461001066	NM	35006	Cibola	35006946100	350069461001	12	N
350069461001070	NM	35006	Cibola	35006946100	350069461001	2	N
350069461001073	NM	35006	Cibola	35006946100	350069461001	18	N
350069461001074	NM	35006	Cibola	35006946100	350069461001	24	N
350069461003026	NM	35006	Cibola	35006946100	350069461003	6	N
350399410002105	NM	35039	Rio Arriba	35039941000	350399410002	2	N
350399410002360	NM	35039	Rio Arriba	35039941000	350399410002	2	N
350439409001547	NM	35043	Sandoval	35043940900	350439409001	7	N
350439409001668	NM	35043	Sandoval	35043940900	350439409001	16	N
350439409001689	NM	35043	Sandoval	35043940900	350439409001	4	N
350439409001704	NM	35043	Sandoval	35043940900	350439409001	23	N
350439409001723	NM	35043	Sandoval	35043940900	350439409001	7	N
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350439409001819	NM	35043	Sandoval	35043940900	350439409001	8	N
350439409001820	NM	35043	Sandoval	35043940900	350439409001	7	N
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350439409001828	NM	35043	Sandoval	35043940900	350439409001	10	N
350439409001832	NM	35043	Sandoval	35043940900	350439409001	4	N
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350439409002037	NM	35043	Sandoval	35043940900	350439409002	8	N
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350439409002067	NM	35043	Sandoval	35043940900	350439409002	5	N
350439409002083	NM	35043	Sandoval	35043940900	350439409002	5	N
350439409002164	NM	35043	Sandoval	35043940900	350439409002	1	N
350439409002167	NM	35043	Sandoval	35043940900	350439409002	3	N
350439409002170	NM	35043	Sandoval	35043940900	350439409002	23	N
350439409002171	NM	35043	Sandoval	35043940900	350439409002	28	N
350439409002176	NM	35043	Sandoval	35043940900	350439409002	2	N
350439409002188	NM	35043	Sandoval	35043940900	350439409002	8	N
350439409002189	NM	35043	Sandoval	35043940900	350439409002	26	N

Block	State	State_County	County_Name	TRACT	Block_Group	Pop10	Within ETC
350439409002197	NM	35043	Sandoval	35043940900	350439409002	20	N
350439409002199	NM	35043	Sandoval	35043940900	350439409002	36	N
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350439409002213	NM	35043	Sandoval	35043940900	350439409002	9	N
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350439409002215	NM	35043	Sandoval	35043940900	350439409002	6	N
350439409002218	NM	35043	Sandoval	35043940900	350439409002	35	N
350439409002221	NM	35043	Sandoval	35043940900	350439409002	9	N
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350439409002463	NM	35043	Sandoval	35043940900	350439409002	13	N
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EXHIBIT 2

**MAP OF CENSUS BLOCKS
FOR WHICH ETC DESIGNATION IS SOUGHT**

*Tribal Mobility Fund Phase I
Eligible CBs in SBI Licensed Areas*



Legend

-  State Boundary
-  County Boundary
-  Eligible Census Blocks
-  SBI Licensed Area

Prepared By: LNGS Engineering 09.12.13

Montezuma

La Plata

Archuleta

CO

San Juan

Rio Arriba

AZ

Los Alamos

Sandoval

McKinley

NM

Apache

Bernalillo

Cibola

Valencia

EXHIBIT 3

SERVICE IMPROVEMENT PLAN (As of September 12, 2013)

Smith Bagley, Inc. Plan for Network Improvements Upon the Receipt of Tribal Mobility Fund Universal Service Support For Eligible New Mexico Tribal Lands

Contingent on being granted eligible telecommunications carrier ("ETC") status for the Eligible New Mexico Tribal Lands (as defined in the Application), and on being the winning bidder for the census blocks within these lands for which it will seek support in FCC Auction 902, Smith Bagley, Inc. ("SBI") will use the Tribal Mobility Fund Phase I universal service support it receives to provide 3G or better mobile voice and broadband service to these unserved and/or underserved areas in the State of New Mexico.

SBI's Service Improvement Plan ("SIP") will allow it to extend the availability of its mobile voice and broadband services to areas of the state that currently do not have access to 3G or better capability. Specifically:

- Service improvement projects would be designed using industry standard computer modeling techniques to provide 3G or better mobile voice and broadband services at the required minimum throughputs of 200 kbps downlink and 50 kbps uplink, to 75% or more of the population of the awarded eligible census blocks. These service improvement criteria are consistent with the *CAF Order* at ¶¶ 361 - 365 and the *Auction 902 PN* at ¶¶ 37 - 38.
- SBI expects all service improvement projects to conclude within 2 years of the start date.
- Based on the list of eligible census blocks (*see Auction 902 PN*, Attachment A-2, Bidding Areas), SBI has identified the following projects that it plans to pursue using Tribal Mobility Fund universal service support, contingent on being a winning bidder at auction:

SBI would provide coverage of the Eligible New Mexico Tribal Lands using a combination of additional cell sites and existing towers where possible. Due to the extremely remote nature of this location, new towers would be constructed as needed.

Backhaul connection of these new cell sites/towers to the existing network would be achieved using a series of point to point microwave links or landline facilities, if feasible. In remote locations such as these, SBI uses microwave links to connect cell sites back to key locations where fiber optic cable is available.

Initial surveys have been conducted to identify potentially viable locations that would provide cellular coverage for the required percentage of residents, as well as allow microwave connectivity. For reliability purposes, SBI cell sites are outfitted with

either back-up generators or battery cabinets where generators are not allowed or feasible. This standard would also apply to the new locations added to cover the Eligible New Mexico Tribal Lands.

The benefits of universal service funding will be significant for affected consumers including, but not limited to:

- the construction of new cell sites and other network enhancements to expand coverage and network reliability in Tribal areas;
- the marketing and offering of SBI's Lifeline service in areas that previously were unserved; and
- the availability of new services and features, including access to 3G or better mobile broadband speeds.

As these universal service initiatives indicate, consumers in areas where SBI wins Tribal Mobility Fund Phase I support will significantly benefit from its receipt of such support. The planned new cell sites will benefit consumers who live, work and travel through the currently unserved and underserved areas where SBI will deploy such service.

CERTIFICATION

State of Arizona)
Navajo County)

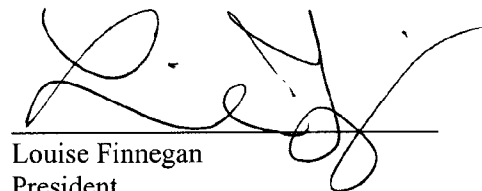
I, Louise Finnegan, President of Smith Bagley, Inc. ("SBI"), being duly sworn, state that SBI filed with the New Mexico Public Regulation Commission ("NMPRC") an Application for Expanded Conditional Designation as an Eligible Telecommunications Carrier so that SBI would be eligible to participate in the Tribal Mobility Fund Phase I (Auction 902) and future FCC auctions.

I am qualified and authorized to verify such Application and I have carefully examined all the statements and matters contained in the Application. All such statements made and matters set forth therein are true and correct to the best of my knowledge, information, and belief.

I further state that SBI offers or will be able to offer, all of the services required by the NMPRC and the FCC to be eligible to receive high-cost support and that the Application is made in good faith, with the intention of presenting evidence in support thereof in every particular.

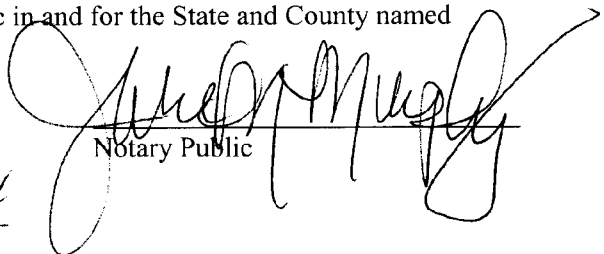
I further certify that if SBI is designated an Eligible Telecommunications Carrier for the Eligible New Mexico Tribal Lands (as defined in the Application), SBI will use any Universal Service Fund support received only for the purposes for which the support is intended and that I am authorized to make this certification on behalf of SBI.

Executed on September 12, 2013



Louise Finnegan
President
Smith Bagley, Inc.

Subscribed and sworn to before me, a Notary Public in and for the State and County named above, this 12th day of September, 2013



Notary Public

My Commission Expires: Oct 5, 2014

