

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Request for Waiver of the Definition of
'Federally Recognized Tribal Land' under
Section 1.2110(f)(3)(i) of the Commission's Rules
to Include Additional Areas within the
Eastern Navajo Agency of the Navajo Nation
Auction of Advanced Wireless Services (AWS-3)
Licenses Scheduled for November 13, 2014
(Auction 97)
AU Docket 14-78

ORDER

Adopted: November 12, 2014

Released: November 12, 2014

By the Chief, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. In this Order, we grant a request to waive the definition of 'federally recognized Tribal land' under Section 1.2110(f)(3)(i) of the Commission's rules to expand the definition to include additional areas within the Eastern Navajo Agency of the Navajo Nation to allow any winning bidder in Auction 97 to seek eligibility for Tribal lands bidding credits (TLBC) in those underserved areas of New Mexico. Granting this relief promotes the purpose of the TLBC, which is to encourage the deployment of wireless services on Tribal lands with wireline subscription rates significantly below the national average. This action will enable any winning bidder in Auction 97 (for the 1695-1710 MHz, 1755-1780 MHz, and 2155-2180 MHz bands (collectively, the AWS-3 bands)) seeking a TLBC in its long-form application for a license covering any of the Eastern Navajo Agency to include the census blocks identified in the Appendix to this Order.

II. BACKGROUND

A. The Tribal Lands Bidding Credit

2. Under the Commission's standard competitive bidding rules found in Part 1, Subpart Q of the Commission's rules, a winning bidder that intends to use its license(s) to deploy facilities and provide services to "qualifying [T]ribal land" is eligible to receive a TLBC as set forth in Sections 1.2107(e) and

1 Smith Bagley, Inc. Petition for Waiver, Expedited Action Requested, AU Docket No. 14-78 (filed Aug. 8, 2014) (Waiver Petition). See also Letter from David LaFuria, Smith Bagley, Inc. to Marlene H. Dortch, Federal Communications Commission, dated Sep. 29, 2014 (submitting a map showing additional census blocks to be included as Tribal lands; a list of the additional census blocks, and geographic information system (GIS) shapefiles).

2 The Appendix to this Order is a list of the census blocks in the Eastern Navajo Agency that are the subject of the relief granted herein. The geographic areas in which these additional census blocks are located are Economic Area (EA) 155, Farmington NM-CO; EA 156, Albuquerque NM-AZ; EA 139, Santa Fe, NM; Cellular Market Area (CMA) 86, Albuquerque, NM; CMA 553, New Mexico 1 - San Juan; and CMA 555, New Mexico 3 - Catron.

1.2110(f).³ Under the TLBC rule, a “qualifying [T]ribal land” is any federally recognized Indian tribe’s reservation, Pueblo, or Colony—including former reservations in Oklahoma, Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), and Indian allotments—that has a wireline telephone subscription rate equal to or less than 85 percent based on the most recently available U.S. Census Data.⁴ In summary, to be eligible for a TLBC in Auction 97, an AWS-3 license must cover an area that: (1) is a federally recognized Tribal land and (2) has a wireline penetration rate of no more than 85 percent.⁵

B. Petition for Waiver

3. In its request for waiver, Smith Bagley, Inc. (SBI) states that the Eastern Navajo Agency is not a qualifying Tribal land under section 1.2110(f)(3)(i) because it does not meet the definition set forth in the rule for a federally recognized Tribal land.⁶ SBI seeks a waiver of this rule to permit any winning bidder of an AWS-3 license in Auction 97 to treat the Eastern Navajo Agency as a federally recognized Tribal land for purposes of the TLBC.⁷ SBI contends that a waiver permitting a winning bidder to seek a TLBC for the Eastern Navajo Agency should increase the amount of capital that a winning bidder would have available to invest in this historically unserved and underserved area.⁸ SBI states that without the availability of a TLBC, carriers may be unwilling to bid on licenses that cover the Eastern Navajo Agency or, if they win, will focus their build-outs after the auction on other, more populated areas, “leaving sparsely populated and demographically challenging areas behind.”⁹

4. In support, SBI explains that the Navajo Nation consists of five Agencies¹⁰—four that are federally recognized Tribal lands and the Eastern Navajo Agency, which is not a federally recognized Tribal land because some of the land “is held by many different categories of owners, including individual Navajo citizens, the federal government, the state of New Mexico, and private non-tribal landowners. . . .”¹¹ SBI notes that the vast majority of the residents of the Eastern Navajo Agency are Navajo Nation Tribal members with full citizenship rights, including the right to vote in Navajo elections.¹² Furthermore, SBI states that in the Eastern Navajo Agency, the Navajo Tribal government

³ 47 C.F.R. §§ 1.2107(e) and 1.2110(f). The Commission determined that any auction of AWS-3 spectrum would be conducted using the standard competitive bidding rules in Part 1, Subpart Q. *See* Amendment of the Commission’s Rules with Regard to Commercial Operations in the 1695-1710 MHz, 1755-1780 MHz, and 2155-2180 MHz Bands, GN Docket No. 13-185, *Report and Order*, 29 FCC Rcd 4610, 4674 ¶ 176 (2014) (*recon. pending*).

⁴ 47 C.F.R. 1.2110(f)(3)(i). *See* Auction of Advanced Wireless Services (AWS-3) Licenses Scheduled for November 13, 2014, Notice and Filing Requirements, Reserve Prices, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 97, *Public Notice*, 29 FCC Rcd 8386, 8450 ¶ 236 (WTB 2014) *citing* 47 C.F.R. §§ 1.2107 and 1.2110(f) (*Auction 97 Procedures PN*).

⁵ 47 C.F.R. § 1.2110(f)(3)(i).

⁶ Waiver Petition at 2 (a significant portion of the Eastern Navajo Agency lies outside of the border of what qualifies as a federally recognized Indian tribe’s reservation under Section 1.2110(f)(3)(i) of the Commission’s Rules).

⁷ Waiver Petition at 2.

⁸ *Id.* at 2-3.

⁹ *Id.* at 9.

¹⁰ The five Agencies of the Navajo Nation, which are similar to provincial entities and further comprised of Chapters, are the Chinle Agency, the Eastern Navajo Agency, the Fort Defiance Agency, the Shiprock Agency, and the Western Navajo Agency. The five Agencies match the five Bureau of Indian Affairs (BIA) Agencies that compose the Bureau of Indian Affairs Navajo Region. *See* <http://www.bia.gov/WhoWeAre/RegionalOffices/Navajo/WeAre/Agencies/index.htm>.

¹¹ Waiver Petition at 3; *see also* Comments of the Navajo Nation Telecommunications Regulatory Commission (NNRTC) on SBI’s Petition for Waiver at 3 (filed Aug. 21, 2014) (NNRTC Comments).

¹² Waiver Petition at 2, 6; *see also* NNRTC Comments at 3.

administers Tribal government programs and operates in an “identical fashion” to the other four Agencies of the Navajo Nation that are federally recognized Tribal land areas and thus qualified for the Tribal lands bidding credit.¹³

5. The Commission publicly posted SBI’s Waiver Petition online on August 11, 2014,¹⁴ and the Wireless Telecommunications Bureau (WTB) subsequently released a public notice seeking comment on it.¹⁵ The record developed reflects no opposition to the Waiver Petition and support from the Navajo Nation Telecommunications Regulatory Commission (NNTRC).¹⁶ The NNTRC states that it is the agency authorized by the Navajo Nation to act as the intermediary between the Navajo Nation and the Commission, including representing the Navajo Nation in Commission proceedings.¹⁷ The NNTRC reports that the Eastern Navajo Agency portion of the Navajo Nation in New Mexico “has seen very limited service because of its highly rural nature and lack of significant businesses.”¹⁸ According to the NNTRC, the only reason that the Eastern Navajo Nation is not a federally recognized Tribal land is due to the checkerboard nature of the landholdings within the Eastern Navajo Agency, made up of a mix of land owners as discussed above.¹⁹ In supporting the Waiver Petition, NNTRC confirms that notwithstanding this mix of land holdings, 97% of the population of the Eastern Navajo Agency is Navajo—they vote in Navajo elections, receive Federal and Tribal services and engage as part of the Navajo community.²⁰ Moreover, despite not being a federally recognized Tribal land, NNTRC reports that from the perspective of the Navajo people, the Eastern Navajo Agency is Tribal land.²¹

III. DISCUSSION

6. Pursuant to Section 1.3 of the Commission’s Rules, a party may be granted a waiver if good cause for the waiver is demonstrated.²² Under Section 1.925 of the Commission’s Rules, to receive a waiver, a party must demonstrate that: (a) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that grant of the requested waiver would be in

¹³ Waiver Petition at 2; *see also* NNTRC Comments at 3.

¹⁴ *See* <http://apps.fcc.gov/ecfs/>, proceeding number 14-78.

¹⁵ *See* Wireless Telecommunications Bureau Seeks Comment on Petition for Waiver Concerning the Availability of Tribal Lands Bidding Credits for Licenses Covering the Eastern Navajo Agency That May Be Won in Auction 97, *Public Notice*, DA 14-1340 (rel. Sep. 16, 2014) (*Eastern Agency TLBC Waiver Comment PN*).

¹⁶ NNTRC Comments at 3. As indicated in note 13, *supra*, NNTRC filed comments supporting SBI’s Waiver Petition prior to release of the *Eastern Agency TLBC Waiver Comment PN*. On September 30, 2014, NNTRC filed Further Comments in response to the *Eastern Agency TLBC Waiver Comment PN* (NNTRC Further Comments) confirming its continued support for the Waiver Petition.

¹⁷ NNTRC Comments at 2.

¹⁸ *Id.*.

¹⁹ *See supra* text accompanying note 11.

²⁰ NNTRC Comments at 3 citing <http://www.nndcd.org/content.asp?CustComKey=292717&CategoryKey=508697&pn=Newsletter&DomName=nndcd.org>, (Navajo Nation Division of Community Development link to 2010 census figures by Chapters in the Eastern Agency).

²¹ NNTRC Comments at 3. NNTRC notes that it has separately requested that the Commission permanently revise its definition of Tribal Lands pursuant to Section 1.2110(f)(3)(i) of the rules to include areas like the Eastern Navajo Agency. *See* Improving Communications Services to Native Nations by Promoting Great Utilization Over Tribal Lands, WT Docket 11-40, NNTRC Comments (filed June 20, 2011). Our action today granting the Waiver Petition based on the record before us is without prejudice to any action that the Commission may take on NNTRC’s separate request.

²² 47 C.F.R. § 1.3.

the public interest; or (b) in light of unique or unusual circumstances, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative to seeking a waiver of the rule.²³

7. Unlike other bidding credits that are requested prior to the auction, a winning bidder applies for a TLBC after the auction when it files its long-form application (FCC Form 601).²⁴ As such, requests for waiver of TLBC rules ordinarily would be procedurally infirm unless associated with a winning bidder's long-form application. In this case however, we find it appropriate to address the unopposed Waiver Petition prior to the start of Auction 97. Doing so provides certainty to all bidders for the relevant licenses because the relief requested is not specific to SBI—it will apply to any bidder in Auction 97 that wins a license covering any of the Eastern Navajo Agency census blocks identified in the Appendix to this Order.²⁵

8. The Commission adopted the TLBC to “encourage the growth of wireless services in federally recognized [T]ribal lands”²⁶ by “provid[ing] a significant incentive to deploy wireless services to [T]ribal lands.”²⁷ In deciding to adopt a *Tribal* lands bidding credit rather than a credit for all areas with penetration rates below the national average, the Commission determined that the unique nature of Tribal lands resulted in a “substantial need for specific incentives targeted to the deployment of service on [T]ribal lands.”²⁸ The Commission found that, historically, Tribal lands have some of the lowest penetration rates for telecommunications services in the United States²⁹ due to a variety of reasons, including geographic remoteness, sparse population clusters and high unemployment rates.³⁰ The Commission also recognized that, due to these issues, the provision of telecommunications services to Tribal lands can be economically risky.³¹ For these reasons, the Commission determined “that properly targeted bidding credits will encourage participation in auctions by carriers who are in a position to provide service to [T]ribal lands, and will help to mitigate the economic risk associated with this type of service.”³²

9. As noted above, to be eligible for a TLBC, a licensee must provide service to an area that: (1) is a federally recognized Tribal land and (2) has a wireline penetration rate of no more than 85 percent. The record before us reflects that the telephone penetration rates for the Navajo Nation in New Mexico (which includes the Eastern Navajo Agency) is 74.1%³³ – substantially less than the 85% required

²³ 47 C.F.R. § 1.925(b)(3)(i)-(ii). See also *WAIT Radio v FCC*, 418 F. 2d 1153, 1159 (D.C. Cir. 1969).

²⁴ See 47 C.F.R. § 1.2107(e). See also *Auction 97 Procedures PN* at ¶ 237.

²⁵ See *infra* ¶ 14. See also Waiver Petition at 2.

²⁶ See, e.g., *Auction 97 Procedures PN* at ¶ 94.

²⁷ *Tribal Lands Order* at 11800 ¶ 16.

²⁸ See Extending Wireless Telecommunications Service to Tribal Lands, WT Docket 99-266, *Report and Order and Further Notice of Proposed Rulemaking*, 15 FCC Rcd 11794, 11798 ¶ 8 (2000) (*Tribal Lands Order*). See also, The Connect America Fund, WC Docket 10-90, *Report and Order and Further Notice of Proposed Rulemaking*, 26 FCC Rcd 17663, 17818-17819 ¶ 479 (2011), Improving Communications Services to Native Nations, CG Docket No. 11-41, *Notice of Inquiry*, 26 FCC Rcd 2672, 2673 ¶ 1 (2011) (*Native Nations NOI*); Improving Communications Services for Native Nations by Promoting Greater Utilization of Spectrum Over Tribal Lands, WT Docket No. 11-40, *Notice of Proposed Rulemaking*, 26 FCC Rcd 2623, 2624-25 ¶¶ 3-4 (2011).

²⁹ *Tribal Lands Order* at 11800 ¶ 16; *Native Nations NOI* at 2674 ¶ 2.

³⁰ *Tribal Lands Order* at 11798 ¶ 10.

³¹ *Id.* at 11799 ¶¶ 11-13.

³² *Id.* at 11800 ¶ 16.

³³ Waiver Petition at 6 citing U.S. Census Bureau, 2010-2012 American Community Survey 3-Year Estimates (S0201, Navajo Nation Tribal grouping/New Mexico). In addition, the per capita income level for the Navajo

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to meet the second prong of the qualifying Tribal lands definition. But some of the Eastern Navajo Agency does not meet the first prong of the definition because currently it is not federally recognized Tribal land.³⁴

10. In evaluating the instant Waiver Petition, we consider that the TLBC rules explicitly contemplate and rely on the participation of the relevant Tribal government.³⁵ We note in this regard that the Navajo Nation, located in parts of Arizona, New Mexico and Utah, is a federally recognized Tribe³⁶ and that the NNTRC represents the Navajo Nation in proceedings before the Commission.³⁷ Accordingly, for purposes of administering the TLBC within the Navajo Nation, we give considerable weight to the NNTRC's comments supporting the Waiver Petition. In this regard, the record developed in response to the instant Waiver Petition reflects that:

[t]he Eastern Navajo Agency is as much part of the Navajo Nation as any of the other four Navajo agencies. Internally to the Navajo government it is treated no differently than any of the other agencies. Each agency resides within the established external boundaries of the federally recognized Navajo Nation (excepting the "island" areas of Alamo, Ramah, Jeddito, and Tohajiilee that are disconnected from the rest of the Navajo Nation). The only difference with the Eastern Agency is that it contains a "checkerboard" mix of trust, fee, New Mexico owned, and non-native owned land. Nonetheless, the population of the Eastern Agency is 97 percent Navajo. All of it constitutes the aboriginal homeland of the Navajo people. Those people vote in Navajo elections, receive both Federal and Tribal services, and engage in the community through the Eastern Agency Chapter Houses. As far as the Navajo government, Navajo people, and the NNTRC are concerned, the Eastern Agency *is* Tribal lands³⁸

11. In light of these unique circumstances, we find that application of the rule would be inequitable, unduly burdensome, or contrary to the public interest. Although not federally recognized Tribal land in its entirety, the record reflects that the Eastern Navajo Agency and its Chapters are political units within and considered a part of the Navajo Nation. Additionally, we observe that the NNTRC's statements are consistent with the Bureau of Indian Affairs (BIA)³⁹ inclusion of the Eastern Navajo Agency in its Navajo Region.⁴⁰

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Nation in New Mexico (which includes the Eastern Navajo Agency) is \$10, 978, substantially less than the income level for other Tribal lands.

³⁴ Some of the census blocks within the Eastern Navajo Agency are identified as part of the Navajo Nation Reservation and Off-Reservation Trust Land.

³⁵ See, e.g., 47 C.F.R. § 1.2110(f)(3)(ii) (requires a winning bidder seeking a TLBC to file a certification from the Tribal government stating, among other things, that the Tribal government authorizes the winning bidder to site facilities and provide service on its Tribal land and that the Tribal area to be served by the winning bidder constitutes qualifying Tribal land).

³⁶ See Department of the Interior, Bureau of Indian Affairs, *Indian Entities Recognized and Eligible to Receive Services From the United States Bureau of Indian Affairs*, 79 Fed. Reg. 4748, 4750 (Jan. 29, 2014) (*BIA List of Federally Recognized Tribes*).

³⁷ The NNTRC states that it was established pursuant to Navajo Nation Council Resolution ACMA 36-84 to regulate all matters related to telecommunications on the Navajo Nation and specifically authorized, pursuant to the Navajo Telecommunications Regulatory Act, to serve as the intermediary agency between the Navajo Nation—including the Eastern Navajo Agency—and the Commission, including representing the Navajo Nation in proceedings before the Commission. See NNTRC Comments at 2.

³⁸ NNTRC Comments at 3.

³⁹ A bureau of the United States Department of the Interior, the BIA provides services to approximately 1.9 million American Indians and Alaska Natives, intended to "... enhance the quality of life, to promote economic opportunity, (continued....)

12. The record before us also establishes that the underlying purpose of the rule would not be served by the rule's strict application to the Eastern Navajo Agency.⁴¹ Although not federally recognized Tribal land in its entirety, the record reflects that the Eastern Navajo Agency is subject to the same conditions as the other four agencies of the Navajo Nation that are federally recognized Tribal lands, and is treated no differently than the other four agencies by the Navajo government.⁴² The record developed in response to the Waiver Petition reflects that, as part of the Navajo Nation, most residents of the Eastern Navajo Agency are members of the Navajo Nation and experience a low telephone penetration rate and other issues that make the Eastern Navajo Agency exactly the type of area that the Commission envisioned when it adopted the TLBC.⁴³ Indeed, in 2000, when it adopted a TLBC instead of a general bidding credit for all areas with below-average penetration rates, the Commission specifically referred to New Mexico as the state with the lowest telephone penetration rate, and to McKinley County, New Mexico, where over half of the Eastern Navajo Agency is located (and which the Commission noted is mostly comprised of Tribal lands), as having the lowest penetration rate in the state.⁴⁴ Under these unique circumstances, we find that waiving the rule to treat all of the Eastern Navajo Agency as if it is federally recognized Tribal land best serves the underlying purpose of the rule and the public interest.

13. We also note Commission-level precedent that strongly supports our grant of the instant Waiver Petition. In 2005, the Commission granted a request for waiver of its universal service Lifeline and Link Up eligibility rules to permit residents of the Eastern Navajo Agency to receive enhanced Lifeline and Link-Up support that was otherwise limited to a "low-income consumer living on or near a reservation."⁴⁵ The relevant Part 54 rule similarly restricted eligibility to "any federally recognized Indian [T]ribe's reservation, pueblo or colony, including former reservations in Oklahoma, Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act, and Indian allotments."⁴⁶ Even though the Eastern Navajo Agency was excluded from eligibility based on the definition of Tribal lands, the Commission determined based on a very similar record that it was in the public interest to waive that rule to treat all of the Eastern Navajo Agency land as Tribal lands so that its residents would be eligible

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and to carry out the responsibility to protect and improve the trust assets of American Indians, Indian tribes, and Alaska Natives." See <http://www.bia.gov/WhoWeAre/index.htm>.

⁴⁰ See <http://www.bia.gov/WhoWeAre/RegionalOffices/Navajo/WeAre/Agencies/index.htm>. See also Bureau of Indian Affairs Tribal Leaders Directory 2014 Fall/Winter Edition (*BIA Tribal Directory*), available at <http://www.bia.gov/WhoWeAre/BIA/OIS/TribalGovernmentServices/TribalDirectory/index.htm>. The *BIA Tribal Directory* is not an official listing of federally recognized Tribes, but the BIA states that it should be used in conjunction with the current BIA List of Federally Recognized Tribes. *Id.*, *BIA Tribal Directory* at 1. For the BIA's Navajo Region, the five BIA Agencies, including the Eastern Navajo Agency, are identified as BIA Servicing Offices and the President of the Navajo Nation is identified as the Tribal leader for all five of the BIA Agencies within the Navajo Region. *Id.* at Section 2, 50-51. See generally *supra* note 10.

⁴¹ See, e.g., Waiver Petition at 3, NNTRC Comments at 3.

⁴² See *supra* ¶¶ 3-5.

⁴³ SBI states that there remain areas of the Eastern Navajo Agency where no telephone service is available and that census data shows that nearly 36 percent of the Navajo Nation residents in New Mexico subsist at or below the federal poverty level, compared to nearly 30 percent of American Indian residents nationally. Waiver Petition at 6 citing U.S. Census Bureau, 2010-2012 American Community Survey 3-Year Estimates (S0201, American Indian and Alaska Native alone); U.S. Census Bureau, 2010-2012 American Community Survey 3-Year Estimates (S0201, Navajo Nation Tribal grouping/New Mexico). "There are few if any, areas of the country where American Indian residents suffer from the types of condition in New Mexico and in Eastern Navajo Agency." *Id.*, Waiver Petition.

⁴⁴ *Tribal Lands Order* at 11802 ¶ 22, n.44. The Commission noted that penetration rates in many non-Tribal areas of New Mexico were below, but much closer to, the national average. *Id.*

⁴⁵ 47 C.F.R. § 54.400(e) (2005).

⁴⁶ *Id.*

for the additional Lifeline and Link Up support. In particular, the Commission found that the facts surrounding the Eastern Navajo Agency had led to the “same impediments to subscribership and infrastructure development as those existing on Tribal lands.”⁴⁷ The Commission determined that the “availability of enhanced federal support in the Eastern Navajo Agency would also make this area more attractive for carrier investment and deployment of telecommunications infrastructure.”⁴⁸ We recognize that the 2005 waiver involved a different rule (Lifeline and Link-Up versus the Part 1 Tribal Land Bidding Credit), but both programs serve similar purposes including incentivizing carriers to provide service to historically unserved and underserved Tribal lands. Accordingly, our waiver of Section 1.2110(f)(3)(i) of the Commission’s Rules is fully consistent with and supported by Commission-level precedent.

14. With respect to the Instant Waiver Petition, on September 29, 2014, SBI submitted a map, a list, and corresponding GIS shapefiles of the additional census blocks in the Eastern Navajo Agency that SBI is requesting be treated as federally recognized Tribal land for Auction 97.⁴⁹ On September 30, 2014, NNTRC provided a list of the census blocks in the Eastern Navajo Agency and GIS shapefiles of the Eastern Navajo Agency.⁵⁰ The census blocks identified by SBI and NNTRC and not already federally recognized were not identical. On October 22, 2014, SBI clarified that it accepts and supports NNTRC’s list for purposes of any action that the Commission may take on the Waiver Petition.⁵¹ Based on the record before us and our review of the census blocks that NNTRC identified, the census blocks identified in the Appendix to this Order are those identified in NNTRC’s list that were not already identified as Tribal land for our purposes.⁵²

15. *Implementation Matter.* As noted above, winning bidders indicate that they are seeking a TLBC, for each market and channel block, in their long-form applications,⁵³ which are filed electronically in the Commission’s Universal Licensing System (ULS).⁵⁴ ULS is programmed to automate part of the

⁴⁷ See Federal-State Joint Board on Universal Service; Smith Bagley, Inc. Petition for Waiver of Section 54.400(e) of the Commission’s Rules, *Memorandum Opinion and Order*, WC Docket No. 03-109, 20 FCC Rcd 7701, 7704 ¶ 10 (2005) (granting a waiver of the Commission’s Lifeline and Link Up eligibility rules to enable eligible residents of the Navajo Eastern Agency to receive enhanced Lifeline and Link Up support) (*2005 MO&O*). The 2005 version of the rule also provided eligibility for “near reservation” areas but the Commission did not grant this waiver on the basis of defining “near reservation.” *Id.*, 20 FCC Rcd at 7707¶ 16. Implementation of the “near reservation” definition was stayed in 2000, when the Commission became aware that its definition potentially encompassed wide areas in which communities do not face the economic and geographic barriers faced by communities on reservations. See *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, Order and Further Notice of Proposed Rulemaking, CC Dkt. No. 96-45, 15 FCC Rcd 17112, 17113-15, ¶¶ 2-6 (2000) (*Near Reservation Stay Order*). In 2012, the Commission established a process for Tribal governments to seek designation of off-reservation lands as Tribal lands for the purpose of receiving enhanced Lifeline support and removed the term and definition of “near reservation” from section 54.400(e) of the rules. See *Lifeline and Link Up Reform and Modernization et al.*, WC Docket. No. 11-42 et al., Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656, 6722-25, ¶¶ 149, 156-63 (2012) (*Lifeline Reform Order*).

⁴⁸ *Id.* at ¶ 15.

⁴⁹ See Letter from David LaFuria, Esq., Counsel for Smith Bagley, Inc. to Marlene H. Dortch, Federal Communications Commission, dated September 29, 2014.

⁵⁰ NNTRC Further Comments at 1-2.

⁵¹ See also Letter from David LaFuria, Esq., Counsel for Smith Bagley, Inc. to Marlene H. Dortch, Federal Communications Commission, dated October 22, 2014.

⁵² It is our understanding that the census blocks identified by NNTRC and included in the Appendix are within the Eastern Navajo Agency and within the NNTRC’s authority. See *supra* ¶ 10.

⁵³ See *supra* note 24 and accompanying text.

⁵⁴ 47 C.F.R. § 1.2107(c).

TLBC request by providing a list of all federally recognized Tribal lands and the number of square kilometers of the land within each applicable license market.⁵⁵ To the extent that ULS programming is not updated to reflect the relief granted herein (treating all of the Eastern Navajo Agency as if it is a federally recognized Tribal land), a winning bidder in Auction 97 seeking a TLBC for a license covering any of the Eastern Navajo Agency census blocks identified in the Appendix to this Order shall provide the required data in an exhibit(s) to its long-form application.⁵⁶

IV. ORDERING CLAUSE

16. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 4(i), 4(j), 5(c), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 155(c), 303(r), and Sections 1.3 and 1.925 of the Commission's rules, 47 C.F.R. §§ 1.3 and 1.925, we waive application of 47 C.F.R. § 1.2110(f)(3)(i) to the extent described herein to treat the Eastern Navajo Agency in New Mexico (as defined herein by the census blocks listed in the Appendix to this Order) as a federally recognized Tribal land for purposes of the Tribal lands bidding credits that will be available to winning bidders in Auction 97.

17. These actions are taken pursuant to the authority delegated by Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Roger C. Sherman
Chief, Wireless Telecommunications Bureau

⁵⁵ See Wireless Telecommunications Bureau Announces Enhancements to the Universal Licensing System to Help Winning Bidders of FCC Auctions File for Tribal Land Bidding Credits, *Public Notice*, 16 FCC Rcd 5355 (WTB 2001).

⁵⁶ See FCC Form 601, Schedule B, Items 1-7 and, completed only when attaching the required certification(s) from the Tribal governments(s), Items 8-14. See also *Auction 97 Procedures PN* at ¶ 237.

APPENDIX

Additional U.S. Census Blocks within the Eastern Navajo Agency
To Be Treated as Tribal Lands for Auction No. 97

Census Block	Census Block	Census Block	Census Block	Census Block
350019406001245	350069747001045	350069747001110	350069747001402	350319435001038
350019406001246	350069747001060	350069747001111	350069747001405	350319435001045
350019406001247	350069747001061	350069747001112	350069747001407	350319435001050
350019406001248	350069747001062	350069747001113	350069747001408	350319435001051
350019406001249	350069747001063	350069747001114	350069747001409	350319435001052
350019406001250	350069747001064	350069747001115	350069747001410	350319435001059
350019406001251	350069747001065	350069747001116	350069747001411	350319435001060
350019406002001	350069747001066	350069747001117	350069747001412	350319435001062
350019406002002	350069747001067	350069747001118	350069747001413	350319435001064
350069458001003	350069747001068	350069747001119	350069747001414	350319435001066
350069458001093	350069747001069	350069747001121	350069747001415	350319435001067
350069458001137	350069747001070	350069747001122	350069747001416	350319435001070
350069458001160	350069747001071	350069747001123	350069747001417	350319435001073
350069458001176	350069747001072	350069747001124	350069747001418	350319435001075
350069458001205	350069747001073	350069747001125	350069747001421	350319435001079
350069458001290	350069747001074	350069747001126	350069747001422	350319435001080
350069458001291	350069747001075	350069747001127	350069747001423	350319435001083
350069458001294	350069747001076	350069747001128	350069747001424	350319435001084
350069458001295	350069747001077	350069747001129	350069747001425	350319435001088
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350069458002209	350069747001082	350069747001134	350069747003087	350319435001098
350069458002214	350069747001085	350069747001135	350069747003089	350319435001099
350069458002219	350069747001086	350069747001136	350069747003090	350319435001104
350069458002220	350069747001087	350069747001137	350069747003269	350319435001107
350069458002239	350069747001089	350069747001138	350069747004138	350319435001108
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350069458002337	350069747001091	350069747001140	350319435001004	350319435001113
350069458002341	350069747001092	350069747001141	350319435001005	350319435001114
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350069747001035	350069747001103	350069747001187	350319435001022	350319435001172
350069747001036	350069747001104	350069747001189	350319435001028	350319435001176
350069747001037	350069747001105	350069747001190	350319435001029	350319435001177
350069747001038	350069747001106	350069747001191	350319435001030	350319435001178
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Census Block	Census Block	Census Block	Census Block	Census Block
350459432015098	350459432015116	350459432015148	350459432015252	350459432015279
350459432015099	350459432015117	350459432015152	350459432015253	350459432015280
350459432015100	350459432015118	350459432015153	350459432015256	350459432015281
350459432015101	350459432015119	350459432015154	350459432015263	350459432015282
350459432015102	350459432015120	350459432015155	350459432015264	350459432015283
350459432015103	350459432015121	350459432015156	350459432015265	350459432015284
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350459432015109	350459432015132	350459432015172	350459432015270	350539400001127
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