



PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

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TTY: 1-888-835-5322

DA 04-846

**SMITH BAGLEY, INC., REQUESTS A WAIVER OF “NEAR RESERVATION”
DEFINITION AS CODIFIED IN SECTION 54.400(e) OF THE COMMISSION’S RULES
FOR EASTERN NAVAJO AGENCY OF THE NAVAJO NATION IN THE STATE OF
NEW MEXICO**

PLEADING CYCLE ESTABLISHED

CC Docket No. 96-45

Release Date: March 26, 2004

Comment Date: April 29, 2004

Reply Comment Date: May 13, 2004

On March 19, 2004, Smith Bagley, Inc. (SBI) filed a petition for a waiver of the definition of “near reservation” area for the Lifeline program as codified in section 54.400(e) of the Commission’s rules.¹ The requested waiver would extend the “near reservation” definition to include the Eastern Navajo Agency of the Navajo Nation (Eastern Navajo Agency) in New Mexico. In 2000, the Commission, in the *Twelfth Report and Order, inter alia*, stayed implementation of the near reservation definition.² This waiver also requests that the stay be lifted specifically for residents of the Eastern Navajo Agency so that eligible residents may receive Tier 4 Lifeline/Link-Up benefits.

SBI is an eligible telecommunications carrier (ETC) licensed to provide cellular radio telephone service on the Zuni and Ramah reservations in New Mexico and has a pending petition for ETC status in portions of San Juan, McKinley and Sandoval counties within the Eastern

¹ See Smith Bagley, Inc. Petition for Expedited Waiver, filed March 19, 2004 (Petition).

² *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, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, CC Docket No. 96-45, 15 FCC Rcd 12208 (2000), stayed in part, *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 Docket No. 96-45, 15 FCC Rcd 17112 (2000) (collectively *Twelfth Report and Order*).

Navajo Agency.³ According to SBI, the Eastern Navajo Agency is not federally recognized reservation land, nor is it a "near reservation" area. SBI states that it is a "checkerboard" area of land holdings owned by individual Navajos, the federal government, the state of New Mexico, and private landowners, in an area occupied almost exclusively by Navajo people from the Civil War to the present time. SBI asserts that this has created jurisdictional problems, as well as obstacles for economic development opportunities. SBI claims that absent a waiver, residents of the Eastern Navajo Agency would not be eligible for Tier 4 benefits. Moreover, SBI argues that granting a waiver is in the public interest due to the low telephone penetration rate prevalent on the Eastern Navajo Agency. The Wireline Competition Bureau seeks comment on the Petition.

Pursuant to Sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments on or before **April 29, 2004**, and reply comments on or before **May 13, 2004**. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (1998).

Comments filed through the ECFS can be sent as an electronic file via the Internet to <<http://www.fcc.gov/e-file/ecfs.html>>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistrionx, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

³ Case No. 03-00246-UT. SBI states that a hearing has been held and briefs have been filed in the case; the Administrative Law Judge is expected to issue a recommended decision shortly.

Parties also must send three paper copies of their filing to Sheryl Todd, Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 Twelfth Street S.W., Room 5-B540, Washington, D.C. 20554. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, Portals II, 445 Twelve Street, S.W., Room CY-B402, Washington, D.C. 20054.

Pursuant to section 1.1206 of the Commission's rules, 47 C.F.R. § 1.1206, this proceeding will be conducted as a permit-but-disclose proceeding in which *ex parte* communications are permitted subject to disclosure.

For further information, contact Shannon Lipp, Telecommunications Access Policy Division, Wireline Competition Bureau at (202) 418-7400, TTY (202) 418-0484.