



# PUBLIC NOTICE

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

News Media Information 202 / 418-0500  
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**DA 01-409**

**SMITH BAGLEY, INC. PETITIONS FOR AGREEMENT TO REDEFINE THE SERVICE AREAS OF NAVAJO COMMUNICATIONS COMPANY, CITIZENS COMMUNICATIONS COMPANY OF THE WHITE MOUNTAINS, AND CENTURY TEL OF THE SOUTHWEST, INC. ON TRIBAL LANDS WITHIN THE STATE OF ARIZONA**

**CC Docket No. 96-45**

**Release Date: February 15, 2001**

**Comment Date: March 16, 2001**

**Reply Comment Date: March 30, 2001**

The Common Carrier Bureau provides notice that Smith Bagley, Inc. (Smith Bagley) has filed a petition, pursuant to section 54.207 of the Commission's rules,<sup>1</sup> requesting the Commission's consent to the Arizona Corporation Commission's (Arizona Commission) proposed "service area"<sup>2</sup> definition for areas served by rural telephone companies on tribal lands within Arizona.<sup>3</sup> The Arizona Commission proposes to define Smith Bagley's service area as an area different from the study areas<sup>4</sup> of three rural telephone companies for the purpose of

<sup>1</sup> 47 C.F.R. § 54.207.

<sup>2</sup> Section 214(e)(5) defines the term "service area" as a "geographic area established by a State commission for the purpose of determining universal service obligations and support mechanisms." For areas served by a rural telephone company, section 214(e)(5) provides that the company's service area will be its study area "unless and until the Commission and the States, after taking into account the 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." 47 U.S.C. § 214(e)(5).

<sup>3</sup> *Petition of Smith Bagley, Inc. to Redefine Local Exchange Carrier Service Area Definitions of Navajo Communications Company, Citizens Communications Company of the White Mountains and Century Tel of the Southwest, Inc. Within the State of Arizona as Set Forth in Part 36 of the Commission's Rules* in CC Docket No. 96-45, filed by Smith Bagley on February 1, 2001 (Smith Bagley Petition). The rural carriers that provide service within Smith Bagley's proposed service area are Navajo Communications Company (Navajo), Citizens Utilities Company (Citizens), CenturyTel of the Southwest, Inc. (CenturyTel), and Table Top Telephone Company (Table Top). See also Smith Bagley Petition at 6, Exh. C (containing a list of the wire centers composing Smith Bagley's proposed service area).

determining federal universal service obligations and support mechanisms.<sup>5</sup> Specifically, the Arizona Commission proposes to define Smith Bagley's service area consistent with that portion of Smith Bagley's existing cellular service contour that encompasses tribal lands in Arizona.<sup>6</sup>

If the Commission does not act on the petition within 90 days of the release of this Public Notice, the definition proposed by the Arizona Commission will be deemed approved by the Commission and shall take effect in accordance with state procedures.<sup>7</sup>

The Petition: On December 15, 2000, the Arizona Commission issued an order designating Smith Bagley as an eligible telecommunications carrier (ETC), under section 214(e) of the Communications Act of 1934, as amended (the Act), to receive federal universal service support for service provided on tribal lands.<sup>8</sup> In so doing, the Arizona Commission concluded that it was in the public interest to designate Smith Bagley as an ETC in the service areas of several rural telephone companies.<sup>9</sup>

In that proceeding, Smith Bagley requested ETC designation for "those areas within its existing service contour which encompass Native American lands."<sup>10</sup> These areas are served by four rural telephone carriers: Navajo, CenturyTel, Citizens, and Table Top.<sup>11</sup> The Arizona Commission noted that Smith Bagley is not licensed to provide service throughout the rural

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<sup>4</sup> Generally, a study area corresponds to an incumbent local exchange carrier's entire service territory within a state. *See* 47 C.F.R. § 54.207(b).

<sup>5</sup> *Application of Smith Bagley, Inc., for Designation as an Eligible Telecommunications Carrier Under 47 U.S.C. 214(e)(2) and A.C.C. R-14-2-1203*, Docket No. T-02556A-99-0207, Decision No. 63269, Order (Ariz. Com. Dec. 15, 2000) (Arizona Commission Order). The Arizona Commission has indicated that it will conduct an expedited process to determine whether that portion of Table Top's study area located on tribal lands should be included in Smith Bagley's designated service area. Arizona Commission Order at 10. Smith Bagley Petition at n.9. Therefore, Table Top's service area definition is not subject to this Public Notice.

<sup>6</sup> These tribal lands include portions of the Navajo Reservation, the Hopi Reservation, the Pueblo of Zuni Reservation, and the White Mountain Apache Reservation located in Arizona. Arizona Commission Order at 8-9, 16. *See also* Smith Bagley Petition at 5-6.

<sup>7</sup> *See* 47 C.F.R. § 54.207(c)(3)(ii).

<sup>8</sup> *See generally* Arizona Commission Order. A copy of the Arizona Commission's Order is attached to Smith Bagley's petition as Exhibit A.

<sup>9</sup> Arizona Commission Order at 12. Specifically, the Arizona Commission found that Smith Bagley will be "extending service into many currently unserved or underserved high cost areas which traditional wireline carriers may never serve. Additionally, SBI has established to the Staff's satisfaction that the rural carriers' special status under the 1996 Act will not be adversely affected. Finally, there should be no administrative burden imposed upon the rural LECs since disaggregating the service area at the wire center level will not impact the rural LECs current calculation of costs on a study area basis." *Id.* at 9-10.

<sup>10</sup> Arizona Commission Order at 8.

<sup>11</sup> Arizona Commission Order at 8-9.

telephone companies' study areas, and is therefore unable to provide service to the entire study areas of Navajo, CenturyTel, and Citizens.<sup>12</sup> The Arizona Commission therefore proposed to redefine the service areas of Navajo, CenturyTel, and Citizens so that Smith Bagley's defined service area would be consistent with that portion of its existing cellular service contour which encompass portions of the Navajo Reservation, Hopi Reservation, Pueblo of Zuni Reservation, and White Mountain Apache Reservation.<sup>13</sup> With regard to Table Top, the Arizona Commission has indicated that it will conduct an expedited process to determine whether the portion of Table Top's study area located on tribal lands should also be included in Smith Bagley's designated service area.<sup>14</sup> The Bureau will issue a separate Public Notice relating to any proposed modified service area definition for Table Top at that time. In compliance with the request of the Arizona Commission, Smith Bagley has filed a petition with the Commission seeking approval of the proposed modified service area definition for the Navajo, CenturyTel, and Citizen telephone companies.<sup>15</sup>

Commission Rules: For areas served by a rural telephone company, section 214(e)(5) provides that the company's service area will be its study area "unless and until the Commission and the States, after taking into account the 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."<sup>16</sup> Section 54.207 of the Commission's rules<sup>17</sup> and the *Universal Service Order*<sup>18</sup> set forth the procedures for consideration of petitions seeking to designate service areas for rural telephone companies that are different from such companies' study areas. Specifically, section 54.207(c)(1) provides that such a petition shall contain: (i) the definition proposed by the state commission; and (ii) the state commission's ruling or other official statement presenting the state commission's reason for adopting its proposed definition, including an analysis that takes into account the recommendations of any Federal-State Joint Board convened to provide recommendations with respect to the definition of a service area served by a rural telephone company.<sup>19</sup>

Section 54.207(c)(3) of the Commission's rules provides that the Commission may

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<sup>12</sup> Arizona Commission Order at 9.

<sup>13</sup> Arizona Commission Order at 10.

<sup>14</sup> Arizona Commission Order at 10.

<sup>15</sup> Arizona Commission Order at 16-17. *See also* Letter from David A. LaFuria, Counsel for Smith Bagley, to Magalie Roman Salas, FCC, dated February 1, 2001.

<sup>16</sup> *See* 47 U.S.C. § 214(e)(5).

<sup>17</sup> 47 C.F.R. § 54.207.

<sup>18</sup> *Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45, 12 FCC Rcd 8776, 8881, para. 188 (1997) (*Universal Service Order*) (subseq. history omitted).

<sup>19</sup> 47 C.F.R. § 54.207(c)(1)(i), (ii).

initiate a proceeding to consider a petition to redefine the service area of a rural telephone company within ninety days of the release date of a Public Notice.<sup>20</sup> If the Commission initiates a proceeding to consider the petition, the proposed definition shall not take effect until both the state commission and the Commission agree upon the definition of a rural service area, in accordance with section 214(e)(5).<sup>21</sup> If the Commission does not act on the petition within 90 days of the release date of the Public Notice, the definition proposed by the state commission will be deemed approved by the Commission and shall take effect in accordance with state procedures.<sup>22</sup> Under section 54.207(e) of the Commission's rules, the Commission delegates its authority under section 54.207(c) to the Chief of the Common Carrier Bureau.<sup>23</sup>

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 **March 16, 2001**, and reply comments on or before **March 30, 2001**. 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. 24,121 (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. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit electronic comments by Internet e-mail. To receive filing instructions for e-mail comments, commenters should send an e-mail to [ecfs@fcc.gov](mailto: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. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554.

Parties also must send three paper copies of their filing to Sheryl Todd, Accounting Policy Division, Common Carrier Bureau, Federal Communications Commission, 445 Twelfth Street S.W., Room 5-A422, Washington, D.C. 20554. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, D.C. 20037.

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.

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<sup>20</sup> 47 C.F.R. § 54.207(c)(3). The rules require the Commission to issue a Public Notice of any petition to define a service area served by a rural telephone company to be other than such company's study area. 47 C.F.R. § 54.207(c)(2).

<sup>21</sup> *See* 47 C.F.R. § 54.207(c)(3)(i).

<sup>22</sup> *See* 47 C.F.R. § 54.207(c)(3)(ii).

<sup>23</sup> 47 C.F.R. § 54.207(e).

For further information, contact Richard D. Smith or Anita Cheng, Accounting Policy Division, Common Carrier Bureau at (202) 418-7400, TTY (202) 418-0484.