

COVINGTON & BURLING

1201 PENNSYLVANIA AVENUE NW
WASHINGTON, DC 20004-2401
TEL 202.662.6000
FAX 202.662.6291
WWW.COV.COM

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June 12, 2006

BY ELECTRONIC DELIVERY

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: *In the Matter of Federal-State Joint Board on Universal Service, et. al.*,
96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, 02-33, 95-20, and 98-10.

Dear Ms. Dortch:

In its *DSL Order* establishing a new regulatory framework for broadband Internet access services offered by wireline facilities-based providers, the Commission made clear its goal “to create a broadband regulatory regime that is technology and competitively neutral.”¹ Consistent with that goal, as the Commission considers new contribution methodologies for the universal service support mechanism, it should treat *all* wireline broadband providers the same and not impose universal service payments on revenue attributable to any wireline providers’ broadband Internet access services. Accordingly, TDS Telecommunications Corp. (“TDS Telecom”) respectfully requests that the Commission declare that it will forbear from applying the requirements of Section 254 of the Act to the Title II broadband offerings of rate-of-return carriers.

In the *DSL Order*, the Commission held that “facilities-based providers of wireline broadband Internet access services must continue to contribute to existing universal service support mechanisms” until the earlier of 270 days from the effective date of the *DSL Order* or the establishment of a new policy on universal service contributions.² Although the *DSL Order* separately provided rate-of-return carriers the option of offering broadband Internet access as a Title II service, it did not suggest that such carriers should continue to be subject to universal service payments based on revenue attributable to such services.

¹ See *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853, 14857 ¶ 4 (2005) (“*DSL Order*”).

² *Id.* at 14915-916 ¶ 113.

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By treating rate-of-return carriers the same as other wireline broadband providers in the context of universal service payments, the requested action will uphold the *DSL Order*'s goal of, in Chairman Martin's words, "end[ing] the regulatory inequities that currently exist between cable and telephone companies in their provision of broadband Internet services."³ To subject rate-of-return carriers to universal service payments that will not be levied on other incumbent carriers (including the Bell operating companies), competitive local exchange carriers and cable system operators would surely undermine the Commission's objectives for a competitively neutral environment.

In addition, the requested action will promote the *DSL Order*'s goal of "encourag[ing] the ubiquitous availability of broadband to all Americans."⁴ As the *DSL Order* notes, nearly all rate-of-return carriers provide broadband Internet access as a Title II service.⁵ Given that most rate-of-return carriers serve rural areas, it is essential that such carriers not be at a competitive disadvantage to other wireline carriers and cable providers, which will not be subject to universal service payments. Indeed, in some cases, the inequitable imposition of universal service fees on rate-of-return carriers could discourage broadband deployment to underserved areas.⁶

To achieve this competitive parity and public interest benefit, the Commission should forbear from applying the requirements of Section 254 of the Act and any associated regulations to rate-of-return carriers' broadband offerings, pursuant to the Commission's forbearance authority under Section 10(a) of the Act.⁷ All three elements of the forbearance test established by Section 10(a) are satisfied here.⁸

³ *Id.* at 14975, Statement of Chairman Kevin J. Martin.

⁴ *Id.* at 14855 ¶ 1.

⁵ *Id.* at 14927 ¶ 138 ("all rate-of-return carriers that have participated in this proceeding have stated that they wish to continue offering broadband transmission as a Title II common carrier service.").

⁶ *See generally* FCC Strategic Plan 2006-2011 at 5, available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-261434A1.doc (last visited June 7, 2006) ("The Commission shall continue to encourage and promote broadband development, deployment, and availability, particularly to those in rural, low-income, or underserved areas ...").

⁷ *See* 47 U.S.C. § 160(a). The Commission has authority to grant the instant request regardless of whether it is raised *sua sponte* or by petition. *See Redesignation of the 17.7-19.7 GHz Frequency Band, Blanket Licensing of Satellite Earth Stations in the 17.7-20.2 GHz and 27.5-30.0 GHz Frequency Bands*, First Order on Reconsideration, 16 FCC Rcd 19808, 19818 ¶ 19 (2001), citing *Central Florida Enterprises v. FCC*, 598 F.2d 37, 48 n. 51 (D.C. Cir. 1978), cert. dismissed, 441 U.S. 957 (1979) ("[I]t is well established that the Commission has authority in a rulemaking proceeding to address an issue *sua sponte*, regardless of whether any pending petition raises the issue.").

⁸ Specifically, Section 10(a) of the Act requires the Commission to forbear from applying any regulation or provision if it finds that: (1) enforcement of such regulation or provision is not necessary to ensure that the charges, (continued...)

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First, as noted above, forbearance will promote the public interest by ensuring a level playing field between rate-of-return and other carriers' broadband offerings, which in turn will promote deployment of broadband services to rural areas that are principally served by rate-of-return carriers.⁹ Second, universal service contributions based on rate-of-return carriers' broadband offerings are not necessary to protect customers; indeed, because of the effect that such fees could have on broadband deployment in underserved areas, forbearance is necessary to *protect* consumers. Third, universal service contributions based on rate-of-return carriers' broadband offerings are not necessary to assure just and reasonable practices. In fact, it would be unjust and unreasonable to subject the broadband customers of rate-of-return carriers to higher regulatory fees than are imposed on other carriers' broadband customers.

Accordingly, TDS Telecom respectfully requests that when it adopts new methodologies for the universal service support mechanism, the Commission announce that it will forbear from applying the requirements of Section 254 to the Title II broadband offerings of rate-of-return carriers.

Sincerely,



Gerard J. Waldron
Matthew S. DelNero

Counsel for TDS Telecommunications Corp.

practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory; (2) enforcement of such regulation or provision is not necessary for the protection of consumers; and (3) forbearance from applying such provision or regulation is consistent with the public interest. *See* 47 U.S.C. § 160(a).

⁹ Elaborating on subsection (a)(3)'s "public interest" requirement, Section 10(b) states, "If the Commission determines that such forbearance will promote competition among providers of telecommunications services, that determination may be the basis for a Commission finding that forbearance is in the public interest." 47 U.S.C. § 160(b).