Federal Communications Commission
DOCKET FILE COPY ORIGINAL Washington, D.C. 20554

June 14, 2007

David L. Sieradzki
Hogan & Hartson
Columbia Square
555 Thirteenth Street, N.W.
Washington, D.C. 20004

Re: Motion to Accept Filing as Timely
Filed in CC Docket No. 96-45
Filed in WC Docket No. 05-337

Dear Mr. Sieradzki:

The Office of the Secretary has received your request for acceptance of the document filed by DialToneServices, L.P. and Alltel Corporation in the above-referenced proceedings as timely filed, due to technical difficulties with the Commission's Electronic Filing System.

In accordance with 47 C.F.R. Section 0.231(i), I have reviewed your request and verified your assertions. After considering the relevant arguments, I have determined that these filings will be accepted as timely filed on June 6, 2007. If we can be of further assistance, please contact the Office of the Secretary.

Sincerely,

Marlene H. Dortch

Marlene H. Dortch
Secretary

MHD/gt

cc: Wireline Competition Bureau

Proceeding: In the Matter of Federal -State Joint Board on Universal Service High-Cost Uni

Applicant Name: DialToneServices L.P.

Proceeding Name: 05-337 Author Name: David L. Sieradzkii 5514674528

Lawfirm Name: Hogan & Hartson LLP

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June 8, 2007

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

Re: Federal-State Joint Board on Universal Service; CC Docket No. 96-45
High Cost Universal Service Support; WC Docket No. 05-337

Dear Ms. Dortch:

On behalf of DialToneServices, L.P., I am transmitting via ECFS Comments on WC Docket No. 05-337 and CC Docket No. 96-45, in response to the Notice of Proposed Rulemaking, FCC 07-88 (released May 14, 2007), issued in these two dockets.

I attempted to file these comments via ECFS on June 6, 2007, but the system was not functioning properly. Instead, on that date I submitted the filing by e-mailing it to you and a number of other staff members in the Office of the Secretary and the Wireline Competition Bureau. I respectfully request that this be treated as timely filed in both of these dockets by the June 6 deadline.

Please contact me with any questions. Thank you very much.

Respectfully submitted,

David L. Sieradzki

Enclosure

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June 8, 2007

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Marlene Dortch, Secretary
Federal Communications Commission
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High Cost Universal Service Support; WC Docket No. 05-337**

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Respectfully submitted,

David L. Sieradzki

Enclosure

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	

DIALTONESERVICES, L.P. COMMENTS

DialToneServices, L.P. ("DTS") submits these comments on the Notice of Proposed Rulemaking ("NPRM"), FCC 07-88 (released May 14, 2007), seeking comment on the Joint Board's Recommended Decision ("RD"), FCC 07J-1 (released May 1, 2007), regarding a cap on high-cost support for competitive providers of universal service.

DTS brings a unique perspective to this proceeding as a facilities-based provider of universal service in the most remote, rural parts of Texas using mobile satellite service ("MSS") technology. These comments begin with information about DTS and the services we provide. Next, we show that, while no cap or funding restriction should be imposed on CETCs at all, any cap that is adopted should not apply to:

(1) the most sparsely-populated areas – *i.e.*, counties, Zip codes, or wire centers with fewer than 10 households per square mile or less than 25 access lines per square mile;

(2) relatively high-cost areas where USF support is currently disbursed at levels of more than [$10] per line; or

(3) "uncertificated" areas that are not served by any ILEC.

We also submit that any cap should apply on a nationwide basis, not state-by-state.

Background

DTS provides facilities-based telecommunications service to consumers in the most remote, rural areas of Texas, using mobile satellite service ("MSS") technology.[1] The Texas Public Utilities Commission ("PUC") has designated DTS as an Eligible Telecommunications Carrier ("ETC") for purposes of the federal high-cost support program, and as an Eligible Telecommunications Provider ("ETP") for purposes of the Texas state high-cost support program, in some of the most sparsely populated exchange areas of 3 large incumbent local exchange carriers ("ILECs") and 8 small, rural ILECs. The PUC also has designated DTS as an ETC and ETP for many "uncertificated" areas – *i.e.*, geographic areas that are not included within <u>any</u> ILEC service territory, and where no service is available at all from an ILEC.[2] (<u>Exhibit 1</u> hereto provides a map of some of the Texas areas that are not included in any certificated ILEC service area.)

The Texas PUC has established a unique state USF support mechanism to promote telecommunications services to these uncertificated areas. The Texas PUC determines the monthly per-line state USF funding for ETPs in unserved areas based on either (1) an average of the per-line support available in adjacent ILEC study areas, or (2) the lowest-cost bid offered by an ETP in response to a competitive request for proposals ("RFP") process, subject to detailed specifications. However, no federal high-cost support is available in these uncertificated areas,

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[1] More detailed information about DTS is available on the company's web site: <u>http://www.dialtonetexas.com</u>.

[2] *Application of DialToneServices, L.P. (DTS) for Designation as an Eligible Telecommunications Carrier (ETC) Pursuant to PUC Subst. R. 26.418*, PUC Docket No. 30765 (Aug. 2, 2005); *App. of DTS for Designation as an Eligible Telecommunications Provider (ETP) Pursuant to PUC Subst. R. 26.417*, PUC Docket No. 30812 (Aug. 2, 2005); *App. of DTS to Amend Its Designation as an ETC and an ETP to Include Certain Exchanges Served by Valor Telecomms. of Texas, L.P. and Sprint/United Tel. Co. of Texas*, PUC Docket No. 31399 (Sept. 2, 2005); *App. of DTS for Designation as an ETC and an ETP in Certain Uncertificated Areas*, PUC Docket No. 31401 (Sept. 2, 2005); *App. of DTS to Amend Its Designation as an ETC and an ETP to Include Certain Study Areas Served by Rural Telephone Companies*, PUC Docket No. 32024 (June 22, 2006), *reh'g denied.* Each of these decisions and the records in these proceedings are available online: navigate to <u>http://interchange.puc.state.tx.us</u>, click "login," and enter the PUC docket number. Note that the Texas PUC applies more rigorous and detailed criteria for ETP designation than those that apply to federal ETC designation.

because there is no existing ILEC "study area" upon which to base high-cost support amounts. There are vast uncertificated areas in other western states that are not served by any ILEC. (For example, Exhibit 2 demonstrates the extensive areas within the state of Idaho where no ILEC exists.) But outside Texas, there is no support mechanism to enable an ETC that is not a traditional ILEC to provide service.

In addition to these completely unserved areas, DTS also provides telecommunications service to ranches, farms, and homesteads that are included in ILEC exchange areas, but are so remote that, as a practical matter, ILEC service is unavailable or unaffordable. Consumers in these remote locations often cannot afford the "line extension" fees that ILECs typically charge – often running into the tens of thousands of dollars. Customers also cannot afford to comply with the ILECs' burdensome requirements, in some cases, that customers must install and maintain their own lines from their premises to a distant meet-point in the ILEC network.[3] These customers also may be "underserved" by the ILECs due to poor service quality: call quality may be degraded because the ILEC uses extremely long copper loops, obsolete technologies such as Basic Exchange Telephone Radio Service ("BETRS"), or microwave repeaters that are unable to cover remote locations.

DTS fills the gap and provides a competitive, high-quality service to these unserved or underserved homes, businesses, and public entities (*e.g.*, volunteer fire departments, county sheriff offices, rural ambulance and rescue districts, and school districts). (Exhibit 3 includes satellite photographs of some of the very remote locations that DTS serves, as well as information from DTS customers about the lack of adequate or affordable services from ILECs.)

[3] In some cases, the ILECs have loosened these requirements and/or reduced their line extension fees in response to DTS's competitive entry – demonstrating that competition benefits consumers even in the most rural areas.

DTS is able to serve our rural consumers at reasonable rates – even though the costs we incur are much higher than the rates we charge – only due to the availability of federal and/or state high-cost USF support.

Issues Raised in the Notice of Proposed Rulemaking and the Joint Board's Recommended Decision

1. Restrictions on Restricted High-Cost Support Should Not Be Targeted to CETCs.

A cap on competitive ETC funding would disserve the public interest. CETCs such as DTS are using high-cost funding effectively to deploy telecommunications services to consumers in very rural, unserved and underserved areas where service has not been available or affordable in the past. The amount of support to carriers like DTS is growing rapidly, but only because we are providing service to consumers who had no opportunities (or limited opportunities) to access telecommunications in the past – and the percentage rate of growth, when starting with zero, will always appear high.

The RD's and NPRM's proposal to roll back support to 2006 levels, and to take every dollar of one CETC's growth out of another CETC's pocket, would dramatically reduce the availability of federal high-cost funds that enable new carriers like DTS to serve customers. In a state where a CETC already operates, the carrier and its customers could suffer dramatic, harmful, and unpredictable impacts upon the designation of a new ETC or rapid organic line growth by an existing ETC. And in a state where a CETC rule has not yet entered markets, capping support at 2006 levels would make it difficult or impossible to do so. This is particularly problematic in states where CETCs received zero support in 2006 (such as Idaho), or states where only very small amounts of CETC support were available in 2006 (such as Nevada). DTS had seriously considered entering both of these states, both of which include many consumers who have no service or inadequate service from ILECs. (See Exhibit 2.)

Moreover, the RD's and NPRM's proposal unfairly would dramatically reduce per-line CETC support while maintaining ILEC per-line at current or increased levels. A CETC fund cap inevitably would reduce CETCs' per-line support, because even without designation of new carriers, most existing CETCs are gaining market share and their line counts are growing. At the same time, the cap would enable ILECs to increase their per-line support, because ILEC line counts are shrinking while support amounts remain constant, and the existing cap on HCL funding is indexed to reflect inflation, and does not apply to the ICLS fund or other rural ILEC funding mechanisms. Thus, the proposed rule would enshrine the ILECs' insurmountable competitive advantages even in rural and remote areas where ILECs' services are inferior to those offered by CETCs. Ultimately, the effect would be to preclude competition and return to the pre-1996 Act monopoly status quo.

Instead, the Commission and the Joint Board should focus on comprehensive reform to promote universal service to the highest-cost areas on a geographically disaggregated basis, while reducing or ending support in areas that receive funds today, but where costs are relatively low.[4] If any cap is applied, it should apply even-handedly to both ILECs and CETCs.[5]

2. Application of the Cap: Exception for the Highest-Cost Areas.

If a cap is implemented, it should not apply to ETCs operating in the highest-cost, most sparsely populated areas. ETCs such as DTS provide an extremely valuable service to consumers in remote areas that are unserved and/or underserved due to the high cost of providing telecommunications in those locations. Consumers in these very remote areas truly need the services provided by CETCs as well as ILEC; and capping such support targeted to these areas would not achieve the desired effect, because high-cost support funds disbursed in these areas

[4] *See* DTS Comments on Long-Term USF Reform (filed May 31, 2007).
[5] Cite CTIA, Alltel, Billy Jack Gregg proposals.

are not increasing rapidly, and are not the primary cause of the rapid growth of the high-cost fund.

The great majority of the recent growth in support levels (by DTS's calculations) is due to the increase in line counts submitted by ETCs for areas with relatively small per line support amounts – *i.e.*, the lower cost study areas where high-cost support is currently available. The Commission could achieve its objective of limiting the growth of high-cost support, without harming consumers in the most rural areas, by adopting one or more of the following alternative cap proposals:

- The cap could apply only to lines in areas where CETCs and ILECs received **$10 or less per line of monthly high cost support** in 2006. (The dollar figure could be adjusted up or down so as to achieve the desired goals in terms of the overall limitation on support growth.) This could be implemented, for example, by capping the number of lines qualifying for support in such areas at the levels reported in 2006.
- In the alternative, the funding cap as proposed by the RD and the NPRM could be modified so as to "carve out" the most rural, remote areas – *i.e.*, those counties, Zip codes, or study areas with **fewer than 10 households per square mile** or **less than 25 access lines per square mile**, where high-cost support is most needed.[6] This could be implemented by exempting CETC lines reported in such areas from the application of the "state reduction factor" described in ¶ 10 of the RD.

[6] The FCC and/or USAC could readily obtain the data to determine which specific areas would qualify for this sparse population exemption, either through Census data and/or data reported by carriers in Form 477.

- In all events, no form of funding cap should apply to CETCs serving **"uncertificated" areas** – *i.e.*, areas where no ILEC provides telecommunications service today.

These alternative cap proposals offer a number of benefits. First, they would be non-discriminatory among technologies and categories of service provider, and would be less vulnerable to litigation. Second, they would more effectively target the geographic areas accounting for most of the unsustainable growth in the USF fund size. Third, they would encourage all parties to participate in an effective manner in long term reform.[7] Fourth, they are flexible, allowing the FCC to adjust support levels up or down by changing the benchmarks (either based on per-line support or based on population density) so as to achieve the desired total dollar amount of USF growth. Finally, and most importantly, they would avoid harming consumers or creating disincentives to introduction of new services in those sparsely populated areas where new investment is most important.

3. Structure and Operations of a Cap.

Any cap that is implemented should apply on a nationwide basis, not state-by-state. This would minimize rate shock for consumers served by carriers operating in only a single state (such as DTS, which currently operates only in Texas). It also would preserve the possibility of ETC entry in unserved or underserved areas in states where no support or very little support is disbursed to CETCs today (such as Idaho and Utah). By contrast, a state-by-state cap, based on past state level allocations, would provide an unfair advantage to those states that have acquired large sums from the USF in the past and would place undue restraint on rural states that have a population growing at a higher rate with a greater need for USF funds.

[7] *See* Commissioner Copps' Dissenting Statement to the RD.

Respectfully submitted,

DIALTONESERVICES, L.P.

William J. Dorran
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2087 Union St., Suite 1
San Francisco, CA 94147
(415) 292-0955

June 6, 2007

From: Big Canyon Television [bigcanyon@hughes.net]

Sent: Wednesday, May 23, 2007 12:39 PM

To: Belen

Subject: Fw:

----- Original Message -----
From: Iris Korus
To: bigcanyon@hughes.net
Sent: Wednesday, May 23, 2007 11:18 AM

Hi, Belen,

I want to thank you so much for all your help with the phones. As you well know in this westmost part of Jeff Davis county, Texas, I do not have regular phone service even though I do have electricity and am only 5 miles off a paved highway. When I investigated acquiring a phone with the regular phone companies, I was told I would personally have to pay for the entire construction of the phone line to my house which was estimated at @ $25,000.00.

Obviously this is not a viable choice for most people, including myself, and it basically meant there was no way I could get a phone for emergencies and convenience.

The satellite phone has been a lifeline for our safety as well as a convenience that we don't take for granted. It is also very affordable for anyone. The reliability continues to improve and the latest phone is wonderful!!

Thank you, Iris V. Korus DDS
