

Jean L. Kiddoo
Tamar E. Finn
Joshua M. Bobeck
Phone: (202) 373-6000
Direct Fax: (202) 373-6001
jean.kiddoo@bingham.com
tamar.finn@bingham.com
josh.bobek@bingham.com

August 16, 2007

VIA ELECTRONIC FILING

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

Re: Docket No. 07-156 and Comp. Pol. File No. 812

Dear Ms. Dortch:

On behalf of Pac-West Telecomm, Inc. ("Pac-West") and pursuant to Section 1.1206 of the Commission's Rules, 47 C.F.R. § 1.1206, this letter provides notice of an *ex parte* telephone conference held today in connection with the above-referenced proceedings between the undersigned counsel for Pac-West and Rodney McDonald of the Competition Policy Division of the Wireline Competition Bureau and also responds to the *ex parte* letter from Mr. Peter Rohrbach and Mr. Yaron Dori to Ms. Marlene Dortch ("*DP Ex Parte*") filed earlier today by Dollar Phone Corp. ("Dollar Phone"). Although Pac-West's earlier submissions in this docket adequately refute all of the claims set out in the latest Dollar Phone effort, we nevertheless believe that some of those claims should be briefly addressed, and summarily dismissed.

Today's *DP Ex Parte* greatly exaggerates the inconveniences that may impact its customers and inaccurately paints a picture of Pac-West acting solely in its self-interest while ignoring the plight of consumers:

- Dollar Phone suggests that the need for discontinuance on August 26 is merely about Dollar Phone's request costing Pac-West "and its creditors some money." (*DP Ex Parte* at 2.) As Pac-West explained, keeping its network up to serve Dollar Phone in twelve states and the District of Columbia would cost Pac-West over \$500,000 per month – well above the threshold which the Commission has determined is unreasonable financial hardship for a carrier in bankruptcy.
- Dollar Phone's attempt to discount the impact on Pac-West, its creditors, and the vast majority of its customers and their end users relies on selected

Boston
Hartford
Hong Kong
London
Los Angeles
New York
Orange County
San Francisco
Santa Monica
Silicon Valley
Tokyo
Walnut Creek
Washington

Bingham McCutchen LLP
2020 K Street NW
Washington, DC
20006-1806

T 202.373.6000
F 202.373.6001
bingham.com

excerpts from the record. For example, statements of the DIP Lender's Counsel omitted from the excerpt cited in the *DP Ex Parte* clearly indicate that the shutdown of the Eastern Region is a "predicate to the plan of reorganization that was recently filed and Pac West [Funding's] commitment to fund the plan is essentially predicated on turning what has been a cash losing business into a business that in the foreseeable future, could turn cash positive." (Pac-West Reply, filed August 13, 2007 ("*Reply*"), O'Donnell Decl. at Ex. 5, p. 25:3-11; *see also id.* at p. 25:15-17.)

- The bankruptcy process is intended to ensure that no one stakeholder receives preferential treatment and that the Debtor is able to reorganize and emerge. As noted by counsel for the Creditor's Committee, Dollar Phone is simply attempting to put its interests before the interests of all other stakeholders. (*Reply* at 24.)
- Similarly, the purpose of the Commission's balancing test is to ensure that customers *as a whole* will not suffer an unreasonable hardship versus the hardship that the applicant would suffer if required to continue providing service. Pac-West's inability to reorganize would have a far more harmful impact on customers as a whole than the planned Eastern Region shutdown.

Contrary to Dollar Phone's claims, shutdown of Pac-West's east coast network on August 31, 2007 would place no unreasonable burden on Dollar Phone's customers:

- Dollar Phone should have at least two-thirds of its numbers ported from Pac-West before scheduled shutdown of the Eastern Region network.
- Dollar Phone's prepaid card customers will be able to use their cards by dialing the toll free numbers that are on Dollar Phone's cards or have other reasonable (even if not perfect) alternatives to place calls during any temporary inability to make prepaid card calls (in the unlikely event such inability arises);
- Dollar Phone predicts that its customers will not, as a practical matter, be able to find the 1-800 toll free access number on their prepaid cards or request and receive a refund. The fact that some customers may have low incomes probably ought to lead to just the opposite conclusion – that they will not just give up their cards without trying every number they can – including the toll free numbers – or at least without contacting the toll free customer service numbers also printed on the cards.
- Upon receipt of notice of the Eastern Region shutdown, Dollar Phone could also have educated its consumers about the need to use toll free access numbers by inserting a message to all consumers who dial into Dollar Phone's platform on one of the Pac-West numbers.

Ms. Marlene H. Dortch
August 16, 2007
Page 3

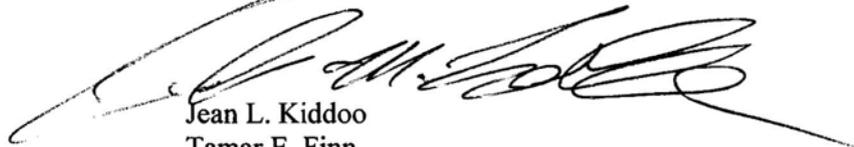
- Dollar Phone continues to draw attention away from the fact that its customers must use some telephone equipment to place a call; either a payphone, a landline POTS phone or even a cell phone. These are all reasonable alternatives, in addition to other prepaid calling cards, that can be used temporarily (if needed) to replace the cards until Pac-West's numbers are fully transitioned.

Finally, Dollar Phone claims that if Pac-West shuts down its east coast network, Dollar Phone may not be able to port the remaining numbers to an alternative service provider:

- Pac-West intends to keep in service any NXX codes for which Pac-West is the A-block holder long enough to ensure that customers' telephone numbers can be ported even after the east coast network is shut down.
- Pac-West is already working cooperatively with NeuStar on this process and would be pleased to discuss these efforts with the Commission or Dollar Phone upon request.

Should any additional information be required with respect to this *ex parte* notice, please do not hesitate to contact us.

Very truly yours,



Jean L. Kiddoo
Tamar E. Finn
Joshua M. Bobeck

cc (by email): Jeremy Miller (FCC-WCB)
Rodney MacDonald (FCC-WCB)
John Adams (FCC-WCB)
Stanley Scheiner (FCC-OGC)
Carmell Weathers (FCC-WCB)
Peter Rohrbach (Dollar Phone)
Yaron Dori (Dollar Phone)