

**ETS Telephone Company**  
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December 21, 2007

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

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

Dear Ms. Dortch:

On June 6, 2007, and on July 17, 2007, ETS Telephone Company, Inc. ("ETS") submitted comments and an *ex parte* letter in these proceedings urging that any proposed cap on federal high-cost universal service support should not be imposed on a CETC that relies on its own cost study rather than on the "identical support" rule. In these documents, ETS identified itself as a competitive local exchange carrier and therefore as a CETC, which Section 54.5 of the Commission's rules defines as any ETC that is not an incumbent LEC.

The purpose of this letter is to clarify for the record that ETS is an incumbent local exchange carrier under Section 251(h)(1) of the Telecommunications Act of 1996, and is therefore an ETC rather than a CETC under Section 54.5. The reason for the confusion on this matter is that under Texas law, according to the Texas Public Utilities Regulatory Act, "'Incumbent local exchange company' means a local exchange company that has a certificate of convenience and necessity on September 1, 1995."<sup>1</sup> ETS received its initial facilities-based Certificate of Operating Authority to provide local exchange service from the Texas PUC on December 8, 1995,<sup>2</sup> and initiated operations to provide local exchange service prior to February 8, 1996. ETS therefore has the unusual distinction of being an ILEC under federal law but not under Texas law, even though it was the first carrier to provide service in its markets.<sup>3</sup>

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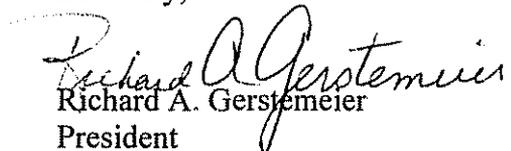
<sup>1</sup> Texas Public Utilities Regulatory Act (PURA), § 51.002(3). This date was chosen because it was the date on which the Texas legislature adopted the Public Utilities Regulatory Act of 1995, five months before Congress adopted its own different definition of ILEC in the Telecommunications Act of 1996.

<sup>2</sup> At the time, ETS operated under the name Kingsgate Telephone.

<sup>3</sup> Because ETS is not classified as an ILEC under state law, and because the Joint Board proposed to apply the cap on a state-by-state basis, ETS had been concerned that some parties might believe that the cap would apply to ETS.

Although ETS would not be directly affected by the proposed cap, it continues to agree that the public interest would not be served by the unnecessary imposition of a temporary cap on a wireline CETC that receives support based on its own costs, rather than through the identical support rule.

Sincerely,

  
Richard A. Gerstemeier  
President  
ETS Telephone Company, Inc.