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Federal Communications Commission  
Office of the Secretary

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON D.C. 20554

In the Matter of )  
DTS of CA, Inc. )  
Petition for Waivers of the Commission's )  
Rules to Participate in NECA Pools and Tariffs )  
and to Obtain Accelerated USF Support )  
\_\_\_\_\_ )

WC Docket No. 05-337  
~~CC Docket No. 06-45~~

PETITION FOR WAIVERS OF THE COMMISSION'S  
RULES TO PARTICIPATE IN NECA POOLS AND TARIFFS  
AND TO OBTAIN ACCELERATED USF SUPPORT

I. Introduction

DTS of CA, Inc. ("DTS"), pursuant to section 1.3 of the Commission's rules, 1/ requests waivers of certain of the rules in Parts 36, 54, and 69 of the Commission's rules to allow DTS to become a member of the National Exchange Carrier Association ("NECA") and participate in NECA tariffs and pools, and to begin receiving high-cost Universal Service Fund ("USF") support in a timely manner. DTS plans to begin providing basic voice-grade services (local exchange, exchange access, and interexchange) to consumers in portions of 52 California counties in which no service at all is available at present from an incumbent local exchange carrier ("ILEC") or any other carrier, and has applied to the California Public Utilities Commission ("CPUC") for a Certificate of Public Convenience and Necessity ("CPCN") to serve such areas. 2/

1/ 47 C.F.R. § 1.3.

2/ Appendix A to this petition provides a map of the geographic areas that DTS proposes to serve, to which the requested waivers would apply. Appendix B includes DTS' Application for a Certificate of Public Convenience and Necessity ("CPCN") to serve these areas, without exhibits, filed with the California Public Utilities Commission ("CPUC") on March 24, 2009.

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The waivers requested here are essential to enable DTS to economically serve these extremely remote, unserved areas at reasonable rates. Without these waivers, service to these areas would not be possible. Specifically, DTS requests the following:

- (1) Waivers of the definitions of “incumbent local exchange carrier” and “telephone company” in sections 54.5, 69.2(hh), and 69.601, and of the annual election filing deadline in section 69.3(e)(6), to allow DTS to become a member of NECA and to immediately participate in NECA pools and tariffs for the provision of interstate access service;
- (2) Waivers of sections 36.611 and 36.612 of the Commission’s rules to allow DTS to receive High-Cost Loop (“HCL”) support initially based on its forecasted or estimated costs rather than its historical costs;
- (3) Waivers of the state certification deadlines set forth in section 54.314(d) and the data filing deadlines set forth in sections 54.301(b) and 54.903(a) to enable DTS to begin receiving USF immediately upon commencing service. 3/

## **II. Background**

Thousands of California residents and businesses presently reside and operate in areas with no access to basic telecommunications services. The Communications Act of 1934, the Telecommunications Act of 1996, the American Recovery and Reinvestment Act of 2009, and this Commission’s consistent universal service precedents all affirm the nation’s abiding commitment to bring the benefits of connectivity and modern communications services to Americans throughout the country, especially those in unserved and underserved areas. DTS

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3/ In the event any additional waivers are necessary to expedite DTS’ receipt of USF support and participation in NECA pools and tariffs, DTS requests that such waivers be considered and granted on the Commission’s own motion. If some of the waivers requested herein will require substantially more time for review than others, DTS

proposes to fill gaps in basic service by offering basic local exchange telephone, interexchange and broadband data services to unserved areas of the State. In doing so, DTS' services will improve public safety, increase economic opportunities and generally advance the overall quality of life in these areas for residents, businesses, disaster response and other public safety personnel, and visitors to unserved areas.

DTS plans to provide services via iDirect technology, using satellite communication links between subscriber locations and a DTS central office, which will operate as a central satellite hub. <sup>4/</sup> This technology has been approved for use by rural ILECs and other carriers in the states of California and Texas and deemed eligible for federal funding by the Rural Utilities Service ("RUS"). <sup>5/</sup> It relays two-way voice and data communications between subscriber locations and the central office using a combination of Internet Protocol ("IP") and Radio Frequency ("RF") transmission. Utilizing the iDirect platform, IP traffic on either side of the satellite link will be converted into RF for transport, via Ku-Band satellite, between each end-user's 1.2 meter Very Small Aperture Terminal ("VSAT") antenna and the large 7.3 meter hub antenna at the central satellite hub. Sophisticated upstream routers and protocol processors at the central office will pass traffic to a local switch or Internet access point, with these processors managing a variety of protocols, applying quality of service standards, generating time division multiple access ("TDMA") time plans, and managing power and acquisition control from remote sites. Appropriate transceivers, amplifiers, upconverters, modems, and additional accessory equipment on both sides of the link will serve as the final components in providing robust voice and

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requests that such waiver requests be severed and that those requiring less time be granted promptly while review of such other requests is pending.

<sup>4/</sup> This technology is described in greater detail at <http://www.idirect.net>, the website of iDirect, Inc. iDirect's rural telephony and broadband solutions are summarized in an iDirect presentation available at [http://www.idirect.net/galleries/flash/APPLICATION%20BRIEF\\_Rural\\_Telephony.pdf](http://www.idirect.net/galleries/flash/APPLICATION%20BRIEF_Rural_Telephony.pdf).

<sup>5/</sup> See DTS Application for CPCN at 6.

broadband offerings to unserved areas, where consumers have no access at the present time even to basic telecommunications services.

Additional information and details regarding DTS' plans for providing services, including an estimate of the number of lines to be served and a projection of expected federal USF support on an annual basis, are set forth in Confidential Appendix C hereto. <sup>6/</sup>

### **III. Good Cause Exists for the Requested Waivers**

Approval of the waivers requested by DTS would clearly advance the public interest. Given that the residents, businesses and other potential DTS subscribers in unserved areas may not presently have access to fixed voice services, DTS requests that the Commission evaluate this petition on an expedited basis. The Commission may waive its rules for good cause, where the particular facts make strict compliance inconsistent with public interest, and where a waiver would enable the Commission's policy goals to be implemented more effectively. <sup>7/</sup> The Commission has granted essentially the same waivers as those requested here in a number of cases where new carriers proposed to initiate or extend service to predominantly unserved geographic areas. <sup>8/</sup> Each of the waivers requested herein satisfies the same standards that justified waivers in those cases.

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<sup>6/</sup> See Appendix C. DTS requests confidential treatment of Appendix C, pursuant to section 0.459 of the Commission's rules, because these estimates and projections constitute competitively sensitive pieces of information. The confidential information has been redacted from the publicly available version of this filing. The unredacted version of the appendix is included only in a confidential submission made simultaneously but separately from the redacted version of the filing.

<sup>7/</sup> See 47 C.F.R. § 1.3; *Northeast Cellular Tel. Co., Inc. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969).

<sup>8/</sup> See, e.g., *Allband Communications Cooperative Petition for Waiver of Sections 69.2 (hh) and 69.601 of the Commission Rules*, 20 FCC Rcd 13566 (WCB 2005) ("*Allband Order*"); *M&L Enterprise, Inc., d/b/a Skyline Telephone Company, Petition for Waiver of Section 36.611, 63.612, and 69.2(hh) of the Commission's Rules*, 19 FCC Rcd 6761 (2004) ("*2004 Skyline Order*"); *M&L Enterprises, Inc., d/b/a Skyline Telephone Company, Petition for Waiver of Sections 36.611, 36.612, and 69.2(hh) of the Commission's Rules*, 20 FCC Rcd 653 (WCB 2005) ("*2005 Skyline Order*"); *Adak Eagle Enterprises, LLC d/b/a Adak Telephone Utility; Petition for Waiver of Section 36.611, 36.612, 54.314(d), 54.903(a)(3), 69(hh) and 69.3(e)(6) of the Commission's Rules*, 20 FCC Rcd

**A. Waiver of Definitions of “Telephone Company” and “ILEC”**

As discussed in the *2004 Skyline Order*, in order to become a member of NECA and to participate in the NECA pools and tariffs, a carrier must be a “telephone company,” as defined in Part 69 of the Commission’s rules. <sup>9/</sup> Section 69.2(hh) of the Commission’s rules defines a “telephone company” as an incumbent local exchange carrier (“ILEC”). Parts 54 and 69 of the Commission’s rules define “incumbent LEC” as that term is defined in section 251(h)(1) of the Act. <sup>10/</sup> In addition, section 36.611 of the Commission’s rules applies only to ILECs <sup>11/</sup> Section 251(h)(1) of the Act defines an “incumbent local exchange carrier” as a provider of telephone exchange service and a member of NECA on the date of enactment of the 1996 Act (or a successor or assign of such a carrier). <sup>12/</sup> As a recently established carrier that is not a successor or assign of an ILEC, DTS does not meet the definition of an ILEC and thus, does not meet the definition of a “telephone company” in section 69.2(hh) of the Commission’s rules.

However, similar to Skyline Telephone in the *2004 Skyline Order*, Adak Telephone in the *Adak Order*, and Allband in the *Allband Order*, DTS’ circumstances warrant a waiver of definition of “telephone company” in section 69.2(hh). The purpose of the ILEC restriction in Parts 36, 54 and 69 is to distinguish competitive LECs from incumbent LECs for purpose of calculating universal service support and access charges. <sup>13/</sup> In 1998, the Bureau granted waivers of sections 69.2(hh) and 69.601 to permit a small new local exchange carrier serving a previously unserved area to become a member of NECA and participate in NECA tariffs and

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20543 (WCB 2005) (“*Adak Order*”); *Mescalero Apache Telecom, Inc., Waiver of Sections 61.41(c)(2), 69.3(e)(11), 36.611, and 36.612 of the Commission’s Rules*, 16 FCC Rcd 3813 (CCB Acc. Pol. Div. 2001) (“*Mescalero Order*”).

<sup>9/</sup> *2004 Skyline Order*, ¶ 24.

<sup>10/</sup> 47 C.F.R. §§ 51.5, 54.5, 69.2(hh).

<sup>11/</sup> *Id.* § 36.611.

<sup>12/</sup> 47 U.S.C. § 251(h)(1).

pools. <sup>14/</sup> The Bureau noted that when the Commission revised section 69.2 to require that telephone companies be ILECs to participate in NECA tariffs and pools, the Commission did not specifically provide for companies that serve previously unserved areas and that do not meet the statutory definition of “incumbent local exchange carrier” because they came into existence after the enactment of the 1996 Act. The Bureau therefore waived the ILEC requirement of Part 69 for Wilderness Valley Telephone Company (a small new LEC serving approximately 40 subscribers in a previously unserved area), so that it could become a member of NECA and participate in NECA tariffs and pools.

Participation in NECA will allow DTS to avoid the costs of filing and maintaining its own company-specific interstate tariff. DTS is a small, newly established company. DTS would incur disproportionately excessive costs to prepare company specific tariffs in order to serve a small number of customers. It is in the public interest to grant the requested waiver to allow DTS and its customers the benefit of cost saving and lower rates available through NECA participation.

In addition to a waiver of the definition of “telephone company” in section 69.2(hh), DTS also requests a waiver of section 69.3(e)(6) of the Commission’s rules to allow DTS to enter NECA’s Tariff No. 5 outside the annual election period. This waiver will help expedite DTS’ participation in NECA.

For all of the foregoing reasons, DTS requests that the Commission waive the definition of “telephone company” in section 69.2(hh) of the Commission’s rules; waive the incumbent LEC requirements of section 36.611, 54.301, and 54.303 of the Commission’s rules; and waive

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<sup>13/</sup> *Allband Order*, ¶ 7 n.21.

<sup>14/</sup> *Wilderness Valley Telephone Company, Inc.*, 13 FCC Rcd 6573 (CCB Acct. & Audits Div. 1998).

section 69.3(e)(6) of the Commission's rules to allow DTS to promptly participate in NECA pools and tariffs and receive universal service support. <sup>15/</sup>

**B. Waiver of Section 36.611 and 36.612**

DTS will be an incumbent "rural telephone company" under section 153(37) <sup>16/</sup> of the Act to serve previously unserved areas of California. Accordingly, DTS will be eligible to receive USF cost recovery assistance. Under the Commission's rules, calculation of high-cost loop support is based on historical cost information. However, as a company proposing to serve an area that has not previously been served by any carrier, DTS does not have historical cost information reflecting the high costs that DTS will soon incur to provide adequate and reliable service in such previously unserved areas.

Under these circumstances, strict application of section 36.611 and 36.612 of the Commission's rules would preclude DTS from receiving high-cost loop support related to DTS' new telephone system and administration and operations until 2010 <sup>17/</sup> (although the quarterly update provision of section 36.612 could reduce this period to some extent). <sup>18/</sup> During this period, DTS would be forced to look to its rural customers for cost recovery of amounts that

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<sup>15/</sup> We note that, based on the Commission's established precedents, DTS does not need to seek a waiver of the definition of "Study Area" in the Appendix-Glossary of Part 36 of the Commission's rules for the purpose of establishing a study area serving a heretofore unserved area. The unserved areas that DTS proposes to serve have never been part of any existing study area, and have never been served by any licensed local exchange carrier or designated ETC. The Commission has concluded on several occasions that a waiver is not necessary if the proposed study area is not within any existing study area. *See, e.g. Allband Order*, ¶ 10; *Adak Order*, ¶ 6; *2004 Skyline Order*, ¶ 13; *Request for Clarification Filed by National Exchange Carrier Association, Inc., and Petitions for Waivers filed by Alaska Telephone Company, Ducor Telephone Company, and Kingsgate Telephone, Inc. Concerning the Definition of "Study Area" in the Part 36 Appendix-Glossary of the Commission's Rules*, 11 FCC Rcd 8156, ¶¶ 7, 9 (CCB 1996).

<sup>16/</sup> 47 U.S.F. § 153(37). To the extent necessary, DTS respectfully requests a waiver so as to qualify for treatment as a "rural telephone company" for USF and access charge purposes.

<sup>17/</sup> The data submission and filing requirements of Part 36 of the Commission's rules operate to postpone the eligibility of a newly established local exchange carrier for receipt of USF support until its third year of operation. *See, e.g., 2004 Skyline Order*, ¶ 19.

<sup>18/</sup> 47 C.F.R. § 36.612.

should otherwise be recovered through the USF in a manner consistent with established Commission policy and practice.

In the *Adak Order*, the Commission agreed with Adak Telephone that waiver of sections 36.611 and 36.612 is appropriate to allow newly established carriers lacking historical cost data to receive support based on estimated costs that are subject to true-up. <sup>19/</sup> Similarly, the Commission concluded that “delaying the timing of high-cost loop support could have the unintended effect of discouraging new carriers from extending service in unserved remote areas, thereby frustrating the statutory goal of promoting the provision of services at reasonable rates.” <sup>20/</sup> Again, under strict application of the Commission’s historical cost rules, DTS’ customers would have to wait at least two years for the much-needed local service rate relief that DTS otherwise could obtain from high-cost loop support related to its projected equipment and operational costs. DTS therefore seeks this waiver until such time as DTS’ 2008 and 2009 costs become historical costs upon which USF recovery can be calculated under the normal procedures set forth in sections 36.611 and 36.612 of the Commission’s rules.

**C. Waiver of Sections 54.301(b), 54.314(d), and 54.903(a)**

The Commission has waived Sections 54.301(b), 54.314(d) and 54.903(a) either on its own motion or upon request on several occasions. <sup>21/</sup> Pursuant to section 54.314 of the Commission’s rules, a state that desires a rural ILEC within its jurisdiction to receive universal service support must file an annual certification with the Universal Service Administrative Company (“USAC”). The certification must be filed by July 1 for the ILEC to receive support in the last quarter of the calendar year, and by October 1 of the preceding calendar year for the

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<sup>19/</sup> *Adak Order*, ¶ 9.

<sup>20/</sup> *Id.*

<sup>21/</sup> *See, e.g., 2005 Skyline Order; Adak Order*, ¶¶ 11-13; *Allband Order*, ¶ 8.

ILEC to receive support beginning in the first quarter of the subsequent calendar year. 22/ Section 54.301(b) of the Commission's rules requires ILECs to file certain data with USAC by October 1 of each year to receive local switching support ("LSS") and interstate common line support ("ICLS") for the following calendar year. 23/ Section 54.903(a)(3) of the Commission's rules provide that rate-of-return LECs must file certain cost and revenue data on March 31 of each year to receive ICLS support from July 1 through June 30 of the next year. 24/ In addition, section 54.903(a)(1) of the commission's rules requires rate-of-return LECs to file line count data by customer class and disaggregation zone, if any, annually on July 31. 25/

In the *2005 Skyline Order*, the Wireline Competition Bureau, on its own motion, waived state certification and data filing deadlines in sections 54.301(b), 54.314(d), and 54.903(a) of the Commission's rules to allow Skyline Telephone to receive high-cost universal service support beginning in 2004. 26/ For the same reasons, consistent with the Commission's decisions in the *2005 Skyline Order*, *Allband Order*, and *Adak Order*, and as indicated above with regard to waiver of the Commission's rules for high-cost loop support, good cause exists to grant these additional waivers in order to allow DTS to be eligible for high-cost support immediately upon obtaining an Eligible Telecommunications Carrier ("ETC") designation from the CPUC. Waiver of these deadlines will allow DTS to begin receiving high cost loop, local switching, and interstate common line support on the dates that it would otherwise be entitled to receive such support, absent the filing deadlines and other requirements for which DTS seeks a waiver herein.

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22/ 47 C.F.R. § 54.314(d).

23/ *Id.* § 54.301(b).

24/ *Id.* § 54.903(a)(3).

25/ *Id.* § 54.903(a)(1).

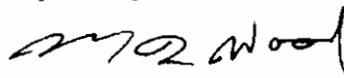
26/ *See 2005 Skyline Order*, ¶ 7.

For these reasons, DTS requests a waiver of the filing deadlines set forth in sections 54.301(b) and 54.903(a) of the Commission's rules and a waiver of the state USF certification deadlines set forth in section 54.314(d), which are necessary to allow DTS to receive HCL, LSS and ICLS support upon obtaining ETC designation from the CPUC.

**IV. Conclusion**

For the reasons set forth above, DTS respectfully requests that the waivers it seeks be granted expeditiously. Granting these waivers will ensure administration of USF in a manner consistent with the Commission's goals of bringing high-quality, affordable communications service to consumers in unserved, high-cost rural areas.

Respectfully submitted,



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April 1, 2009

## VERIFICATION

I, William J. Dorrان, President of DTS of CA, Inc., declare that I have read the foregoing Petition for Waivers of the Commission's Rules, and hereby verify under penalty of perjury that, to the best of my knowledge, information, and belief, the facts set forth in the Petition are true and correct.



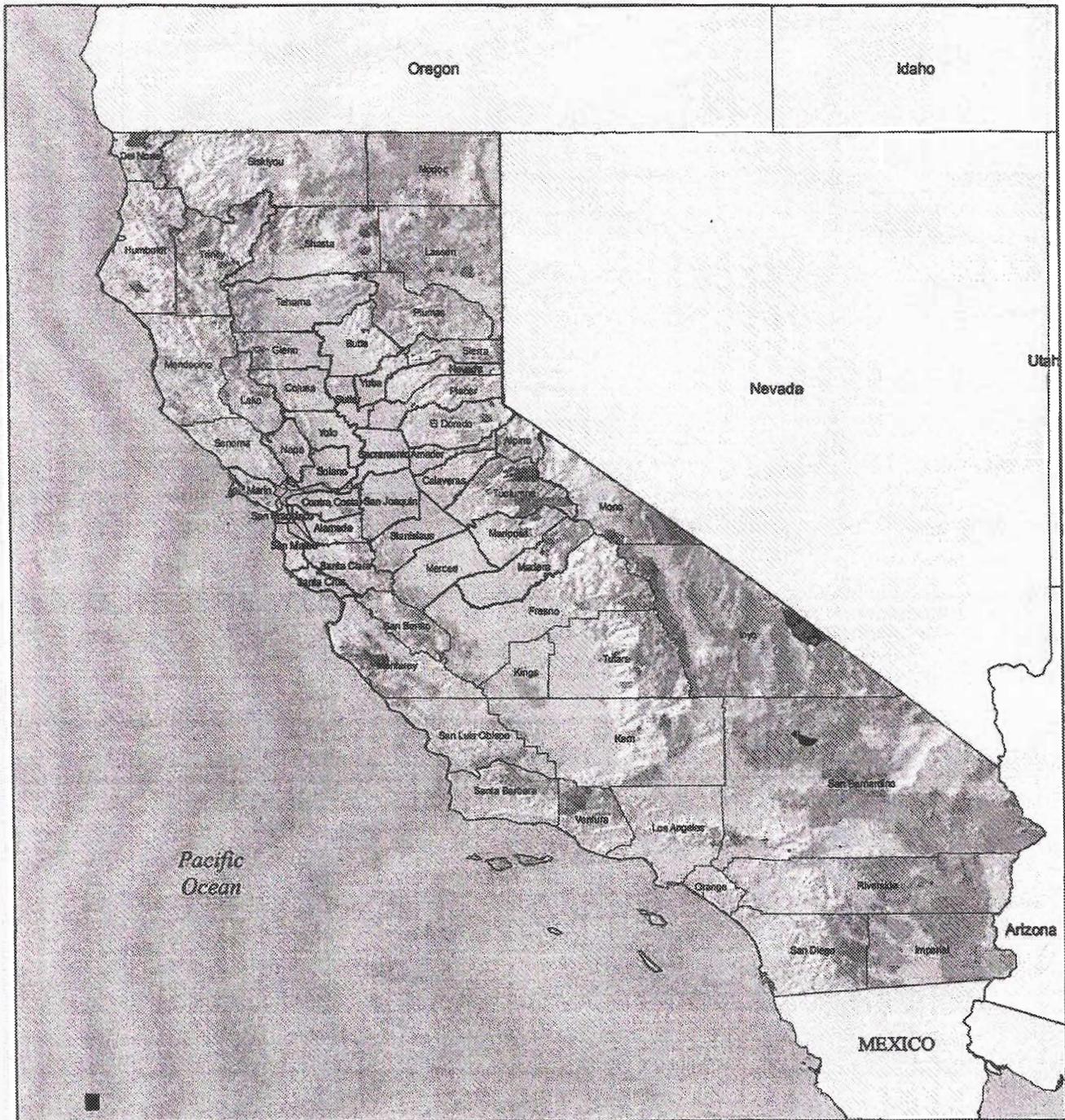
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March 31, 2009

**APPENDIX A**

**Map of Proposed Service Territory**

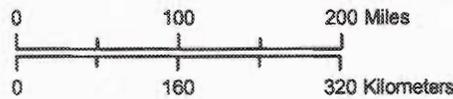
# HOUSING UNITS IN UNFILED SERVICE TERRITORY



## Housing Units per Census Block

- 0 - 10
- 11 - 40
- 41 - 100
- 101 - 300
- Over 300

Approximately  
81,000 housing  
units in unfiled  
territory in California



Sources: 1) California Department of Forestry and Fire Protection, Census 2000 Block data, 2000 (<http://rap.cdf.ca.gov/data/fraggie/data/elect.asp>)  
 2) California Public Utilities Commission, Incumbent Local Exchange Carrier (ILEC) Service Territories, (1:5,000,000), 2006  
 Geographic Coordinate System - North American Datum 1983  
 Prepared by the California Public Utilities Commission, Communications Division

**APPENDIX B**

**DTS of CA, Inc. Application for a Certificate of Public Convenience and Necessity,  
filed with the California Public Utilities Commission, March 24, 2009**

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

Application of DTS of CA, Inc. for a Certificate of  
Public Convenience and Necessity to Construct  
Telecommunications Facilities and to Provide Local  
Exchange and Interexchange Service to Unserved  
Territories in California

Application No. 09-03-\_\_\_\_

**APPLICATION OF DTS OF CA, INC. FOR A CERTIFICATE OF  
PUBLIC CONVENIENCE AND NECESSITY TO CONSTRUCT  
TELECOMMUNICATIONS FACILITIES AND TO PROVIDE  
LOCAL EXCHANGE AND INTEREXCHANGE SERVICE TO  
UNSERVED TERRITORIES IN CALIFORNIA**

**[PUBLIC VERSION]**

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Date: March 24, 2009

Attorneys for DTS of CA, Inc.

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

Application of DTS of CA, Inc. for a Certificate of Public Convenience and Necessity to Construct Telecommunications Facilities and to Provide Local Exchange and Interexchange Service to Unserved Territories in California

Application No. 09-03-\_\_\_\_

**APPLICATION OF DTS OF CA, INC. FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO CONSTRUCT TELECOMMUNICATIONS FACILITIES AND TO PROVIDE LOCAL EXCHANGE AND INTEREXCHANGE SERVICE TO UNSERVED TERRITORIES IN CALIFORNIA**

Pursuant to the California Public Utilities Commission’s (“Commission”) Rules of Practice and Procedure and pertinent Commission decisions, DTS of CA, Inc. (“DTS” or “Applicant”) submits this Application requesting a certificate of public convenience and necessity (“CPCN”) for authority to provide limited facilities-based local exchange service as an incumbent local exchange carrier (“ILEC”) and interexchange service as a nondominant interexchange carrier (“NDIEC”) to and within unfiled and unserved territories in California and to construct facilities necessary to provide such services (“Application”).

**Introduction**

Thousands of California residents and businesses presently reside and operate in areas with no access to basic telecommunications services. The Legislature and the Commission have both frequently highlighted as a priority the provision of communications services to under or unserved areas. For example, Pub. Util. Code Section 709(d) provides that it is the State’s policy to “assist in bridging the ‘digital divide’ by encouraging expanded access to state-of-the-art

technologies for rural, inner-city, low-income, and disabled Californians.” DTS proposes to fill gaps in basic service by offering basic local exchange telephone, interexchange and broadband data services to unserved areas of the State.<sup>1</sup> In doing so, DTS’ services will improve public safety, increase economic opportunities and generally advance the overall quality of life in these areas for residents, businesses, disaster response and other public safety personnel, and visitors to unserved areas.

DTS proposes to provide these services to unfiled and unserved areas via iDirect technology using satellite communication links between subscriber locations and a DTS central office, which will operate as a central satellite hub.<sup>2</sup>

DTS’ expects that most of its satellite communications equipment will be housed in and/or mounted on existing buildings or structures, which the Commission has already held as

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<sup>1</sup> A map recently prepared by the Commission depicting the number of housing units in unfiled territories in California is attached as Attachment A. DTS proposes to establish telephone services in all of the unfiled territories that are served by another ILEC or a private telecommunications network. Specifically, DTS does NOT propose to include within its service territory: (i) any area in which another ILEC has been certificated or has applied to serve; (ii) any area served by a line extension or in which a line extension is planned in the near term; (iii) any area currently provided with communications services via existing private communications networks (such as military bases); and (iv) the unserved areas of Shasta County and Channel Islands for which the commission recently issued Certificates of Public Convenience and Necessity in Decisions Nos. D.08-12-052 and D.08-05-007.

<sup>2</sup> The Commission has already approved the use of iDirect technology for providing facilities-based fixed Internet protocol-based wireless telephone service in a rural area of Shasta County that lacks telecommunications service. *See* D.08-12-052 at 2-3 and A.07-08-014, Amendment to Application of Channel Islands Telephone Company at 1-2 (Approved by D.08-05-007).

categorically exempt under the California Environmental Quality Act (“CEQA”).<sup>3</sup> In some cases, minor additional construction activities may be needed. For these sites, DTS proposes to utilize the procedure adopted by Decision 06-04-030 for addressing the construction of distributed antenna system networks.

Approval of DTS’ Application is clearly in the public interest. Given that the residents, businesses and other potential DTS subscribers in unfiled and unserved areas may not presently have access to fixed voice services, DTS requests that the Commission evaluate DTS’ Application for a CPCN on an expedited basis.<sup>4</sup> In this case, time is especially of the essence, since DTS is planning to apply for National Telecommunications and Information Administration (“NTIA”) and Rural Utilities Service (“RUS”) stimulus funds that are being made available in the very near term through the American Recovery and Reinvestment Act of 2009 (“Recovery Act”). Indeed, as of the date of filing this Application, the NTIA and RUS have concluded a series of roundtable discussions on issues surrounding allocation of the stimulus funds, and comments regarding new grants, loans, and loan guarantees funded by the Recovery Act are due April 13, 2009.<sup>5</sup> Separately, the Federal Communications Commission (“FCC”) has requested comments by March 25 to initiate its plan for a comprehensive rural

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<sup>3</sup> Public Resources Code 21000 et seq. *See also* D.03-01-061 at Conclusion of Law 4 (Because Applicant “will not be constructing any facilities, other than equipment to be installed in existing buildings or structures, it can be seen with certainty that there will be no significant effect on the environment.”).

<sup>4</sup> *See* Motion by DTS of CA, Inc. for a Ruling Shortening Time for Filing Protests filed concurrently herewith.

<sup>5</sup> *See* Joint Request for Information and Notice of Public Meetings, 74 Fed. Reg. 10716 (March 12, 2009).

broadband strategy as required by the 2008 Farm Bill. The FCC must issue a report to Congress by May 22, 2009.

**I. Applicant Name and Principal Place of Business [Rule 2.1(a)]**

The exact legal name of Applicant is DTS of CA, Inc. Applicant is a California corporation with its principal place of business in San Francisco, California.

**II. Description of Services to be Provided [Rule 3.1(e)]**

DTS seeks authority to provide basic local telephone exchange and interexchange services to unserved areas of California.<sup>6</sup> DTS proposes to provide these services through a network of satellite dish installations sited at customer locations, along with a “satellite hub” located at a centrally located DTS office.

Consistent with the Commission’s requirements for providers of local exchange residential service, DTS shall provide all of the elements of basic local service as defined in Decision No. 96-10-066, including:

- Access to single party local exchange service;
- Access to all interexchange carriers offering service in a local exchange;
- Ability to place calls;
- Ability to receive free unlimited incoming calls;
- Free touch tone dialing;
- Free and unlimited access to 911/E911;
- Access to local directory assistance, and access to foreign NPAs;
- Lifeline rates and charges for eligible customers;
- Customer choice of flat or measured rate service (smaller LECs exempt);
- Free provision of one directory listing per year;
- Free white pages telephone directory;

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<sup>6</sup> DTS also plans to provide broadband service to its customers.

- Access to operator services;
- Voice grade connection to public switched telephone network
- Free access to 800 or 800-like toll free services;
- One-time free blocking for information services and one-time billing adjustments for charges incurred inadvertently, mistakenly, or that were unauthorized;
- Access to telephone relay service as provided for in Pub. Util. Code § 2881; and
- Free access to customer service for information about ULTS, service activation, service termination, service repair and bill inquiries.

DTS is also prepared to act as the Carrier of Last Resort (“COLR”) in its certificated areas and to serve all customers upon request, including Lifeline customers. Once DTS is certificated, it also plans to file an advice letter with the Commission to obtain its Eligible Telecommunications Carrier designations for its service territory.

### **III. Correspondence and Communications [Rule 2.1(b)]**

All communications, filings and related submissions in this proceeding, including but not limited to, correspondence, notices, inquiries and orders, should be served upon the following designated contacts for DSA of CA, Inc.:

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**IV. Articles of Incorporation [Rule 2.2]**

Attached as Attachment B to this application is a copy of Applicant's Articles of Incorporation filed with the Office of the Secretary of the State of California.

**V. Description of Proposed Construction [Rule 3.1(a)]**

Applicant will provide service using an existing Ku-band satellite with iDirect satellite technology. This is a proven technology that has been used by RLEC Big Bend Telephone Company ("Big Bend") to successfully provide service to approximately 500 residences in unserved areas of Texas for approximately two years. In addition, this Commission has approved the use of iDirect technology in past applications to provide service in unserved areas of Shasta County and certain of the Channel Islands.<sup>7</sup> Moreover, the technology has been deemed loan-eligible by the federal RUS program, as evidenced by Big Bend's receipt of a traditional telephony loan for the same technology.<sup>8</sup>

Each of DTS' subscriber site installations will consist of a 1.2 meter satellite dish and an enclosure containing electronics, an external power supply, and conduits to DTS' network

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<sup>7</sup> See D.08-12-052 at 3 and A.07-08-014, Amendment to Application of Channel Islands Telephone Company at 1-2 (Approved by D.08-05-007).

<sup>8</sup> See Application of Big Bend Telephone Company, Inc. for an Extension of Waiver from Requirements in P.U.C. SUBST. R. 25.54(b)(3) and P.U.C. SUBST. R. 26.54(b)(4)(C), Docket No. 32094 (2005) at 7-8.

interface device.<sup>9</sup> In addition, a central “hub” will serve to relay voice and broadband data from individual subscriber sites to a local switch. DTS anticipates that this hub will be housed in an existing commercial or industrial structure and will also serve as the foundation for a 7.3 meter satellite hub antenna designed to transmit and receive subscriber traffic.

## **VI. CEQA Compliance [Rule 2.4]**

Pursuant to CEQA and Rule 2.4 of the Commission’s Rules of Practice and Procedure, the Commission examines projects to determine any potential environmental impacts in order that adverse effects are avoided and environmental quality is restored or enhanced to the fullest extent possible under CEQA. The Secretary for Resources has exempted certain classes of projects from CEQA. In cases where such exemptions apply, the Commission is not required to issue an Environmental Impact Report or Negative Declaration.

DTS anticipates that most subscriber installations will be minor in scope and involve the placement of communications equipment on existing buildings or structures. The Commission has consistently held that the installation of communications facilities in or on existing buildings and structures does not have a significant effect on the environment for CEQA purposes.<sup>10</sup>

In other instances, DTS may need to perform minimal construction at subscriber locations. This construction may consist of installation of new poles, minor trenching and backfilling and will occur exclusively on subscriber property. DTS fully expects that these

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<sup>9</sup> A diagram of DTS’ network is attached as Attachment C, and a narrative description of DTS’ network facilities and an explanation of how DTS’ network will communicate voice traffic is attached as Attachment D. While DTS anticipates that most satellite antennas will be mounted to existing structures, a 9 foot pole may need to be installed in instances where an existing structure will not accommodate DTS’ equipment necessary to provide service.

<sup>10</sup> See, e.g., D.99-10-025 and D.03-01-061.

activities will be exempt from CEQA pursuant to one or more of the categorical exemptions established by the CEQA Guidelines. Nevertheless, the specific locations at which this minimal construction may need to be performed depend on DTS' initial subscriber base, which has not yet been determined. For this reason, DTS is not able to fully assess, at the time of filing this Application, the complete environmental impacts of such construction. Accordingly, DTS proposes to utilize the procedure adopted by Decision 06-04-030 for addressing the construction of distributed antenna system networks.<sup>11</sup> A summary of this procedure, along with DTS' PEA, is attached as Attachment E to this Application.

The Commission has recently approved this procedure for carriers seeking to establish service in a number of areas in the State including unserved portions of Shasta County and the Channel Islands.<sup>12</sup> Like DTS, the applicants in those cases were also unsure of the exact locations at which their facilities would be sited. As a result, the Commission deferred environmental review, awarded the applicants limited facilities-based CPCNs, and adopted the above-referenced modified CEQA review procedure to allow for future streamlined review of applicants' proposed construction activities. DTS requests the same treatment.

Utilizing the procedure adopted in Decision 06-04-030 and confirmed in Decisions 08-05-007 and 08-12-052, once DTS has identified the specific siting for any subscriber locations that will require ground disturbing construction, DTS will submit detailed documentation to the Commission's Energy Division to enable it to determine whether the project is exempt from CEQA review, as DTS expects it will be. The Energy Division will accordingly either issue a

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<sup>11</sup> This modified CEQA review process is described in Exhibit E to D.06-04-030 and Attachment E to this Application.

<sup>12</sup> See D.06-04-030, D.08-05-007 and D.08-12-052.

Notice to Proceed and file a Notice of Exemption with the State Clearinghouse, or issue a letter of denial, in which event the project will become subject to a more detailed application and environmental review process under CEQA.<sup>13</sup>

Such a process would streamline CEQA review and would be appropriate for the type of construction outlined here, which will be categorically exempt. By establishing this streamlined review process, the Commission will be able to review the information on a specific project to confirm that it is categorically exempt from CEQA or explain why further environmental review is required. At the same time, the proposed CEQA review process will enable DTS to undertake installation of its projects in an efficient manner without suffering delays caused by an unnecessarily protracted CEQA review.

#### **VII. Facts Showing Public Convenience and Necessity [Rule 3.1(e)]**

Granting of this Application by DTS will expand the availability of both basic and technologically advanced telecommunications services within California. As noted above, DTS proposes to establish these communications services in unserved areas in California. By providing residents, businesses, emergency service providers, government offices and visitors with access to advanced telecommunications services, DTS' network stands to increase the economic opportunities available to residents and businesses, expand educational possibilities, improve public safety, and enhance the overall quality of life of residents who are presently without access to communications services.

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<sup>13</sup> D.08-12-052 at 5 and Ordering Paragraph 8.

### **VIII. Names of Competitors and Names of Counties [Rule 3.1(b)]**

DTS proposes to provide service exclusively in unserved and unfiled territories. As a result, DTS does not anticipate having any competitors as of the time of filing of its Application. Because some portion of the unfiled and unserved areas of the state touch almost every county in the State, out of an abundance of caution DTS is serving notice of its Application on all counties.<sup>14</sup>

### **IX. Areas of Service [Rule 3.1(c)]**

A map recently prepared by the Commission depicting the number of housing units in unfiled territories in California is attached as Attachment A. DTS proposes to establish telephone services in all of the unfiled territories that are not served by another ILEC or a private telecommunications network. Specifically, DTS does not propose to include within its service territory: (i) any area in which another ILEC has been certificated or has applied to serve; (ii) any area served by a line extension or in which a line extension is planned in the near term; (iii) any area currently provided with communications services via existing private communications networks (such as military bases); and (iv) the unserved areas of Shasta County and Channel Islands for which the Commission recently issued CPCNs in Decisions 08-12-052 and 08-05-007.

### **X. Identification of Franchises and Health and Safety Permits [Rule 3.1(d)]**

DTS will obtain any local franchises or health and safety permits legally required for the activities it undertakes.

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<sup>14</sup> To the best of DTS' knowledge, there are no incorporated cities within unserved areas that DTS proposes to serve. A list of counties to which DTS is providing service and a copy of the Notice of Availability of DTS' application are attached as Attachment F.