

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



FILED

04-19-10
04:59 PM

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

Application 09-03-028
(filed March 24, 2009)

NOTICE OF WRITTEN EX PARTE COMMUNICATION BY DTS OF CA, INC.

Davis Wright Tremaine LLP
J. Joshua Davidson
Suzanne K. Toller
505 Montgomery Street
Suite 800
San Francisco, CA 94111-6533
Telephone: (415) 276-6500
Facsimile: (415) 276-6599
E-mail: joshdavidson@dwt.com

April 19, 2010

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 and to Provide Local Exchange and Interexchange Service to Unserved Territories in California

Application 09-03-028
(filed March 24, 2009)

NOTICE OF WRITTEN EX PARTE COMMUNICATION BY DTS OF CA, INC.

Pursuant to Article 8 of the California Public Utilities Commission's ("Commission") Rules of Practice and Procedure, DTS of CA, Inc. ("DTS") hereby files this notice of written *ex parte* communication with Commissioner Bohn and his advisors, Robert Haga and Amy Yip-Kikugawa ("Notice of Ex Parte Communication").

On April 15, 2010, DTS of CA, Inc. sent a letter via email from its president, William Dorran, to Commissioner Bohn outlining DTS' proposal to provide telephone service in the areas of California where no basic telephone service is available. The letter summarized information that DTS has already provided to the Commission in hearings and various filings, including details on DTS' principals (including their experience in providing service to unserved customers in Texas); DTS' estimated customer base in California; the satellite technology DTS proposes to utilize in providing service; DTS' anticipated financing mechanisms; the status of requests and applications to other government agencies; and DTS' and Staff's collaboration regarding DTS' proposal. To ease any concerns in granting DTS' Application, the letter also proposes that the Commission approve DTS' Application subject to certain conditions specified in the letter.

Pursuant to Rule 8.2(c)(3), DTS served a copy of the *ex parte* communication on the official service list for the proceeding on the same day. Further, pursuant to Rule 8.3(a)(3), a copy of the letter and transmittal email are attached hereto.

Persons requesting a copy of this Notice of Ex Parte Communication should contact Judy Pau at (415) 276-6587 or judypau@dwt.com.

Respectfully submitted,

/s/ J. Joshua Davidson_____

J. Joshua Davidson

Suzanne K. Toller

Davis Wright Tremaine LLP

505 Montgomery Street

Suite 800

San Francisco, CA 94111-6533

Telephone: (415) 276-6500

Facsimile: (415) 276-6599

E-mail: joshdavidson@dwt.com

Attorneys for DTS of CA, Inc.

April 19, 2010

Pau, Judy

From: Pau, Judy
Sent: Thursday, April 15, 2010 5:01 PM
To: 'elaine.duncan@verizon.com'; 'gblack@cwclaw.com'; Toller, Suzanne; 'peter.rasmusson@chrsolutions.com'; 'margo.ormiston@verizon.com'; Davidson, Josh; Pau, Judy; 'bdorran@dtsofca.com'; 'cm3@cpuc.ca.gov'; 'evw@cpuc.ca.gov'; 'jmu@cpuc.ca.gov'; 'Irr@cpuc.ca.gov'; Van Wambeke, Eric
Subject: FW: A.09-03-028 - Application of DTS of CA, Inc.
Attachments: DTS Letter to Commissioner Bohn.pdf

The attached letter was sent to Commissioner Bohn.

Judy

Judy Pau | Davis Wright Tremaine LLP

Paralegal

505 Montgomery Street, Suite 800 | San Francisco, CA 94111

Tel: (415) 276-6587 | Fax: (415) 276-6599

Email: judypau@dwt.com | Website: www.dwt.com

Anchorage | Bellevue | Los Angeles | New York | Portland | **San Francisco** | Seattle | Shanghai | Washington, D.C.

From: Davidson, Josh
Sent: Thursday, April 15, 2010 4:41 PM
To: 'jb2@cpuc.ca.gov'
Cc: 'rwh@cpuc.ca.gov'; 'Van Wambeke, Eric'
Subject: A.09-03-028 - Application of DTS of CA, Inc.

Commissioner Bohn,

Please find attached a letter from DTS of CA, Inc.'s ("DTS") President, Mr. William Dorran, regarding DTS' pending application for a certificate of public convenience and necessity (A.09-03-028). A hard copy is also being delivered to your office.

DTS is serving a copy of this communication on the service list of this proceeding and will file a Notice of Ex Parte Communication within 3 days, per Rule 8.3 of the Commission's Rules of Practice and Procedure.



DTS Letter to
Commissioner Boh...

Josh Davidson | Davis Wright Tremaine LLP

505 Montgomery Street, Suite 800 | San Francisco, CA 94111

Tel: (415) 276-6501 | Fax: (415) 276-6599

Email: joshdavidson@dwt.com | Website: www.dwt.com

Anchorage | Bellevue | Los Angeles | New York | Portland | **San Francisco** | Seattle | Shanghai | Washington, D.C.

April 15, 2010

Commissioner John Bohn
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

Re: 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 (A.09-03-028)

Dear Commissioner Bohn,

Through its Application filed late last March, DTS of CA, Inc. (“DTS”) seeks the Commission’s authority to be certificated as an RLEC to provide telephone service in the areas of California where no basic telephone service is available. The Commission most recently estimated that some 61,000 California residents and businesses are without access to basic telephone service.¹ Using proven advanced satellite technologies, DTS proposes to offer access to basic local exchange and interexchange telephone and broadband data services to these areas, and in doing so stands to increase the economic opportunities available to residents and businesses, expand educational possibilities, improve public safety, and overall enhance the quality of life of residents who are presently without access to communications services. I am writing you this letter today to memorialize certain commitments we have previously made with respect to our service and to seek your assistance in obtaining our requested certification.

Background

The Applicant

DTS’ principals have substantial experience using satellite networks to provide telephone service to residents and businesses in rural, remote areas.² Five years ago, along with DTS’ co-founder J. Lee Watkins, I co-founded DTS’ Texas-based parent company, DialToneServices, L.P. (“DialToneServices”), which provides telephone service to unserved residents and

¹ See Housing Density in Unfiled Territories: http://www.cpuc.ca.gov/NR/rdonlyres/DEE06F8F-F704-47C4-9752-ED403C9C9D36/0/HousingDensitybyCensusBlockinUnfiledTerritories_detail_denseCBsselected.pdf. In 2007, the Commission estimated that as many as 100,000 households had no access to telephone service. See California Public Utilities Commission Report to the California Legislature on Universal Telephone Service to Residential Customers (Aug. 2007) at 6.

² See 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 (hereinafter, “DTS Application”), Application No. 09-03-028, § XVI. “Managerial and Technical Competence,” at 13.



businesses in the most rural areas of Texas using advanced satellite networks. As part of our operations in Texas, DialToneServices provides telephone service to customers in areas that no current incumbent telephone company serves (just as DTS proposes to do in California). DialToneServices currently serves approximately 1,400 customers with 3,000 lines in Texas.³ I am extensively involved in the day-to-day management and operation of DialToneServices and am committed to doing the same with DTS in California.

DTS has retained consulting and engineering support from the leaders in support to the rural telephone and satellite industries.⁴ DTS has retained CHR Solutions, Inc. (formally Martin Group) to provide telephony network engineering, financial and cost study modeling and Rural Utilities Service (“RUS”) application assistance. DTS has also retained X2nSat, Inc. to provide extensive satellite and network engineering, including support in integrating satellite technologies into traditional telephony platforms. Notably, X2nSat, Inc. has provided engineering and implementation services to a rural local exchange carrier in Texas using the same satellite technology that DTS proposes to use.

The Market for Service

DTS proposes to establish telephone services in all of the unfiled territories that are not served by another ILEC or a private telecommunications network.⁵ The Commission has estimated that there are approximately 61,000 residents and businesses in these areas.⁶ DTS has analyzed the Commission’s data and conducted its own field surveys of unserved territories and conservatively estimates that at least 4,000 homes desire service.⁷

The Technology

The satellite technology DTS proposes to utilize offers excellent voice quality and fast data speeds.⁸ Scalable and efficient, the satellite technology is particularly well-suited for providing service in rural and remote areas, as it avoids the “stranded” plant and exorbitant costs associated with extending traditional landline service to rural areas.⁹ Unlike landline service—where wire has to be strung over long distances (and past other non-subscribing homes and businesses) to get service to remote customers—the use of satellite technology permits DTS to install the necessary equipment solely on the premises of the customers who desire service.¹⁰ As

³ DTS Application at 15.

⁴ *Id.*

⁵ DTS Application at 2.

⁶ *See* Note 1, *supra*.

⁷ Transcript of December 8, 2009 Evidentiary Hearing, Application No. 09-03-028 (hereinafter, “Tr.”) at 5. *See also* Attachment G to Revised Response of DTS of CA, Inc. to Assigned Administrative Law Judge Ruling Requesting Additional Information (A.09-03-028) (filed Dec. 17, 2009) (hereinafter “DTS Response”).

⁸ Tr. at 11.

⁹ Tr. at 10.

¹⁰ *See* DTS Application at 6-7 and Attachment D, “Description of DTS Facilities and Network.” *See also* DTS Response at 5-7 (filed December 17, 2009).

a result, the technology allows DTS to cost-efficiently serve geographically distant and scattered customers.

DialToneServices—DTS’ Texas-based affiliate—has utilized a similar satellite platform in providing service to previously unserved customers in Texas, and Big Bend Telephone Company, Inc. (“Big Bend”) (another rural local exchange carrier in Texas) has successfully used the exact same technology to serve certain of its rural customers. Importantly, the same satellite technology that DTS proposes to use in California 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.¹¹

Funding Resources

In rolling out and operating its network, DTS anticipates relying on a diversified range of funding resources.¹² First, DTS anticipates procuring traditional telephone construction loans from the Rural Development Telecommunications Program, which is administered by RUS.¹³ Additionally, DTS anticipates receiving equity investments from DTS’ parent company and other private equity investors,¹⁴ as well as funds from credit facilities as needed. DTS will also garner revenues from customer payments, state and federal Universal Service Fund support, and other National Exchange Carrier Association (“NECA”) support mechanisms.¹⁵ DTS is also actively preparing an application to obtain funding for start-up costs from the California Rural Telecommunications Infrastructure Grant Program.¹⁶

Other Approvals Needed

In addition to certification by this Commission, DTS also requires approval of other government agencies before it can begin operations. As noted above, DTS must receive RUS approval of its loan from the Rural Development Telecommunications Program. DTS will also require and is presently in the process of applying to the Federal Communications Commission (“FCC”) for international Section 214 authority and a VSAT operator license pursuant to 47 C.F.R. Section 25.134.¹⁷

Additionally, to obtain universal service funding support, DTS plans to become a member of NECA and participate in NECA tariffs and pools. To participate in NECA, DTS must procure waivers from certain FCC rules. DTS filed a petition seeking such waivers from

¹¹ 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.

¹² DTS Response at 7-10.

¹³ DTS Response at 9-10.

¹⁴ *Id.*

¹⁵ *Id.* at 8-9.

¹⁶ Tr. at 20-21 and DTS Response at 9.

¹⁷ DTS Application at 11.

the FCC on April 16, 2009.¹⁸ In addition, to expedite the receipt of universal service funding, DTS requested that certain filing deadlines be waived so that DTS is eligible to receive high cost funding in Year 1 of operations (as opposed to Year 3).¹⁹

Significantly, most of these other governmental agencies' approvals all hinge on this Commission certifying DTS as an ILEC. For example, the FCC has advised that it will not process the petition until DTS receives ILEC certification from this Commission,²⁰ and RUS regulations prohibit granting DTS a loan until DTS receives its certification from this Commission.²¹

Collaboration with the Commission

DTS appreciates that certification of a new RLEC is a request that the Commission has not faced in many years and one that raises novel issues. For this reason, before filing its Application, DTS met with Commission Staff on several occasions and conferred with the RLECs and ILECs in California to describe DTS' proposal and attempt to address any concerns. I believe it is largely due to these proactive efforts that no party protested DTS' Application.²²

After filing its Application, DTS worked extensively with Commission Staff²³ to address various questions regarding its Application, submitting very detailed business plans and supporting worksheets at Staff's request.²⁴ On several occasions, DTS made adjustments to its business plans to address Staff concerns, most notably reducing the amount of and delaying its anticipated receipt of CHCF-A funding. Staff has informed DTS that it supports the granting of DTS' Application as currently represented and subject to certain conditions discussed below.

Over the year that DTS' Application has been pending before the Commission, DTS has also responded to requests for supplemental information from the Assigned Administrative Law Judge and participated in a short hearing to answer questions from the Assigned Administrative Law Judge and submit certain information into the record. After the hearing, per the request of the Assigned Administrative Law Judge, DTS filed updated financial information and a chart

¹⁸ See Exhibit E to DTS Response.

¹⁹ *Id.*

²⁰ Tr. at 19.

²¹ Tr. at 19-20.

²² Verizon California, Inc. and the Small LECs filed responses to DTS' Application, requesting that the Commission specifically address certain aspects of DTS' Application. Indeed, the Small LECs specifically urged that "bringing telephone service to areas of California that heretofore have not been served is a positive development and is to be encouraged by the Commission." Response of Small LECS at 1.

²³ Eric Van Wambeke served as DTS' principal Staff consult.

²⁴ Indeed, Staff has commented that the data provided by DTS is similar to that which would be required in a general rate case proceeding.

comparing DTS' expected state and federal universal service support with that of the other California RLECs.²⁵

Application Status and Proposed Path Forward

That said, a Proposed Decision on DTS' Application has not yet been issued, and DTS is concerned that some lingering concerns may be preventing the Commission from fully endorsing DTS' Application. In hopes of allaying those concerns, DTS proposes the following set of conditions be assigned to its certificate. DTS has previously expressed its willingness to accept such conditions but is hopeful that their presentation in writing and in a consolidated fashion will help move the process forward.

Specifically, DTS proposes that the following be made conditions of the grant of the effectiveness of its DTS' certification as an RLEC:

- (1) DTS must secure an RUS loan for the construction of DTS' facilities and network according to the projected business plan provided to the Commission in support of its application for certification. The RUS loan will require equity investment participation and revenue source eligibility for the repayment of the RUS loan. The RUS may provide some of the anticipated loan funds in the form of grants.
- (2) DTS must obtain FCC approval for international Section 214 authority and a VSAT operator license pursuant to 47 C.F.R. Section 25.134. DTS must also obtain waivers from the FCC that will confirm DTS' RLEC status and ability to participate in the NECA funding mechanisms.
- (3) DTS must be designated as an Eligible Telecommunications Carrier (ETC) by the California Public Utilities Commission.
- (4) Grant of the Application does not serve as a guarantee that DTS will receive CHCF-A funding, and DTS is not eligible to apply for CHCF-A funding until it has recorded at least seven months²⁶ of operating data. DTS should not rely on or expect to receive

²⁵ Supplemental Response of DTS of CA, Inc. to Administrative Law Judge Ruling Requesting Additional Information (Jan. 25, 2010).

²⁶ Decision 91-09-042, 1991 Cal. PUC LEXIS 559, at 4 modifying Decision 91-05-016, Concl. of Law 3, at 11 ("The CHCF rules should be modified to limit CHCF support to amounts which would provide no more than the utility's authorized intrastate rate of return or to the current funding level for the year for which CHCF is being requested, whichever is lower, using a 'means test' as proposed by DRA. The means test should be based on forecasted intrastate rate of return using at least seven months of recorded data annualized for the year in which the CHCF advice letter is filed and adjusted for known Commission regulatory decisions for determining appropriate funding level for the utility.").

CHCF-A funding for approximately 27 months²⁷ from the time it begins operations.

- (5) DTS service territory will include only those areas that are not served by another ILEC or a private telecommunications network. DTS will not 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.
- (6) Grant of DTS' Application requires that DTS provide service to any customer so requesting within its designated service area.
- (7) DTS must charge, at a minimum, rates for basic service equivalent to AT&T's.

DTS would like to the opportunity to discuss this proposal, along with any other issues and questions that the Commission deems relevant to evaluating DTS' Application. Toward that end, DTS proposes a meeting between its senior leadership and counsel, yourself and any advisors that you would prefer to attend. Thank you for your consideration.

Best regards,



William J. Dorran
President of DTS of CA, Inc.

Cc: Robert Haga, Senior Policy Advisor, California Public Utilities Commission
Eric Van Wambeke, Communications Division, California Public Utilities Commission

²⁷ Staff has advised DTS that it should not expect to receive CHCF-A funding before 27 months have elapsed since beginning operations. This estimate is based in part on the facts that (1) DTS must have seven full months of recorded operations data before filing a general rate case; and (2) a general rate case will likely take approximately one year to resolve.

CERTIFICATE OF SERVICE

I, Judy Pau, certify:

I am employed in the City and County of San Francisco, California, am over eighteen years of age and am not a party to the within entitled cause. My business address is Davis Wright Tremaine, LLP, 505 Montgomery Street, Suite 800, San Francisco, California 94111-3834.

On April 19, 2010, I caused the following to be served:

NOTICE OF WRITTEN EX PARTE COMMUNICATION

via electronic mail to all parties on the service list A.09-03-028 who have provided the Commission with an electronic mail address and by First class mail on the parties listed as “Parties” and “State Service” on the attached service list who have not provided an electronic mail address.

/s/ Judy Pau _____
Judy Pau

VIA EMAIL AND U.S. MAIL

Commissioner John A. Bohn
Administrative Law Judge Linda Rochester

VIA EMAIL

elaine.duncan@verizon.com; gblack@cwclaw.com; suzannetoller@dwt.com;
peter.rasmusson@chrsolutions.com; margo.ormiston@verizon.com; joshdavidson@dwt.com;
judypau@dwt.com; bdorran@dtsofca.com; cm3@cpuc.ca.gov; evw@cpuc.ca.gov;
jmu@cpuc.ca.gov; lrr@cpuc.ca.gov; jb2@cpuc.ca.gov



California Public
Utilities Commission

CPUC Home

CALIFORNIA PUBLIC UTILITIES COMMISSION

Service Lists

PROCEEDING: A0903028 - DTS OF CA, INC. - F
FILER: DTS OF CA, INC.
LIST NAME: LIST
LAST CHANGED: JANUARY 21, 2010

[DOWNLOAD THE COMMA-DELIMITED FILE](#)
[ABOUT COMMA-DELIMITED FILES](#)

[Back to Service Lists Index](#)

Parties

ELAINE M. DUNCAN
VERIZON CALIFORNIA, INC.
711 VAN NESS AVENUE, SUITE 300
SAN FRANCISCO, CA 94102
FOR: VERIZON CALIFORNI, INC.

E. GARTH BLACK
ATTORNEY AT LAW
COOPER, WHITE & COOPER, LLP
201 CALIFORNIA STREET, 17TH FLOOR
SAN FRANCISCO, CA 94111
FOR: SMALL LECS

SUZANNE TOLLER
ATTORNEY AT LAW
DAVIS WRIGHT TREMAINE, LLP
505 MONTGOMERY STREET, SUITE 800
SAN FRANCISCO, CA 94111-6533
FOR: DTS OF CA, INC.

Information Only

PETER RASMUSSEN
CHR SOLUTIONS, INC.
1515 N SANBORN
MITCHELL, SD 57301

MARGO ORMISTON
MGR., REGULATORY AFFAIRS
VERIZON CALIFORNIA INC.
711 VAN NESS AVE., STE 300
SAN FRANCISCO, CA 94102

J. JOSHUA DAVIDSON
ATTORNEY AT LAW

JUDY PAU
DAVIS WRIGHT TREMAINE LLP

DAVIS WRIGHT TREMAINE, LLP
505 MONTGOMERY STREET, SUITE 800
SAN FRANCISCO, CA 94111
FOR: DTS OF CA, INC.

505 MONTGOMERY STREET, SUITE 800
SAN FRANCISCO, CA 94111-6533

WILLIAM J. DORRAN
PRESIDENT
DTS OF CA, INC.
2087 UNION STREET, SUITE 1
SAN FRANCISCO, CA 94123
FOR: DTS OF CA, INC.

State Service

CHARLOTTE D. MISTER
CALIF PUBLIC UTILITIES COMMISSION
CARRIER OVERSIGHT AND PROGRAMS BRANCH
AREA 3-E
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

ERIC VAN WAMBEKE
CALIF PUBLIC UTILITIES COMMISSION
CARRIER OVERSIGHT AND PROGRAMS BRANCH
AREA 3-E
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

JENSEN UCHIDA
CALIF PUBLIC UTILITIES COMMISSION
ENERGY DIVISION
AREA 4-A
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

LINDA ROCHESTER
CALIF PUBLIC UTILITIES COMMISSION
DIVISION OF ADMINISTRATIVE LAW JUDGES
ROOM 5024
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

[TOP OF PAGE](#)
[BACK TO INDEX OF SERVICE LISTS](#)

CERTIFICATE OF SERVICE

I, Judy Pau, certify:

I am employed in the City and County of San Francisco, California, am over eighteen years of age and am not a party to the within entitled cause. My business address is Davis Wright Tremaine, LLP, 505 Montgomery Street, Suite 800, San Francisco, California 94111-3834.

On April 19, 2010, I caused the following to be served:

NOTICE OF WRITTEN EX PARTE COMMUNICATION BY DTS OF CA, INC.

via electronic mail to all parties on the service list A.09-03-028 who have provided the Commission with an electronic mail address and by First class mail on the parties listed as “Parties” and “State Service” on the attached service list who have not provided an electronic mail address.

/s/ Judy Pau _____
Judy Pau

VIA EMAIL AND U.S. MAIL

Commissioner John A. Bohn
Administrative Law Judge Linda Rochester

VIA EMAIL

elaine.duncan@verizon.com; gblack@cwclaw.com; suzannetoller@dwt.com;
peter.rasmusson@chrsolutions.com; margo.ormiston@verizon.com; joshdavidson@dwt.com;
judypau@dwt.com; bdorran@dtsofca.com; cm3@cpuc.ca.gov; evw@cpuc.ca.gov;
jmu@cpuc.ca.gov; lrr@cpuc.ca.gov; jb2@cpuc.ca.gov