

Decision 11-02-007 February 24, 2011

**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 09-03-028  
(Filed March 24, 2009)

**DECISION GRANTING DTS OF CA, INC., A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO PROVIDE LIMITED FACILITIES-BASED LOCAL EXCHANGE SERVICE AND INTEREXCHANGE SERVICE**

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**DECISION GRANTING DTS OF CA, INC., A CERTIFICATE OF  
PUBLIC CONVENIENCE AND NECESSITY TO PROVIDE  
LIMITED FACILITIES-BASED LOCAL EXCHANGE SERVICE  
AND INTEREXCHANGE SERVICE**

**1. Summary**

DTS of CA, Inc., filed an application for a certificate of public convenience and necessity for authority to provide limited facilities-based local exchange telecommunications services and interexchange telecommunications services as an incumbent local exchange carrier in all the unserved areas of California.

This decision grants DTS of CA, Inc., a certificate of public convenience and necessity to provide limited facilities-based local exchange telecommunications services and interexchange telecommunications services as an incumbent local exchange carrier in all the unserved areas of California on the terms and conditions set forth in the Ordering Paragraphs. This proceeding is closed.

**2. Background**

On March 24, 2009, DTS of CA, Inc., (DTS), a California corporation, filed an application seeking a certificate of public convenience and necessity (CPCN) to construct telecommunications facilities and to provide local exchange and interexchange telecommunications service to all the unserved areas in California as an incumbent local exchange carrier. Notice of Application 09-03-028 appeared in the Commission's Daily Calendar on April 2, 2009.

No protests to the application were filed. Responses to the application were filed by Verizon California Inc. (Verizon) and the small incumbent local exchange carriers, collectively (Small ILECs).

Verizon's response raises several issues such as specificity of service territory and the actual number of unserved households in the state given the

high number of unoccupied, seasonal-, recreational-, or occasional-use homes and National Parks in the unserved territory. Verizon also states that mobile wireless service is widely available and DTS does not explain how the mere absence of an incumbent local exchange carrier deprives residents of the benefits of connection to the voice network. Verizon also points out the proposed service's requirements for power and back-up power sources at customer premises. Finally, Verizon voices concern about the possible non-DTS customer subsidization of DTS service. Verizon recommends that the Commission consider these issues when reviewing the application and suggests the Commission defer action on the application until resolving those issues.

The Small ILECs' response voices support for the concept of bringing communications services to unserved areas, calling it a positive development and one that should be encouraged by the Commission. However, the Small ILECs also urge the Commission to treat all rate regulated incumbent local exchange carriers the same with respect to their obligations as carriers and the rules to which they are required to conform. Those rules include carrier of last resort obligations, service quality, reporting and eligibility for California High Cost Fund-A support, Universal Lifeline Telecommunications Service rules, 911 emergency service, warm line service and advice letter and tariff requirements as well as rates for single party flat rate service.

By Ruling on June 26, 2009, the assigned Administrative Law Judge (ALJ) sought substantial additional financial and operational information from DTS. DTS filed its initial response on July 17, 2009. On December 4, 2009, DTS filed an update to its July 17, 2009, response. On December 8, 2009, a prehearing conference and status hearing were held. As there were no protests to the application, the hearing was a forum for the ALJ and Communications Division

staff to engage in one-on-one communication with DTS staff and gather necessary additional information regarding the proposed service. On December 17, 2009, DTS filed another revised response to the June 26, 2009, ALJ Ruling. In response to the ALJ's request at the hearing, DTS filed supplemental information on January 25, 2010, regarding expected levels of state and federal universal service support.

DTS' application is unique in that it seeks incumbent local exchange carrier authority to provide limited facilities-based satellite telecommunications services to all currently unserved territories in California. In evaluating DTS' application, we apply the standards contained in Decision (D.) 95-12-056<sup>1</sup> for a CPCN and have included additional requirements as outlined in the Attachments and set forth in the Ordering Paragraphs. The assigned Commissioner and ALJ issued a scoping memo on August 16, 2010.

### **3. California Environmental Quality Act (CEQA)**

Pursuant to CEQA and Rule 2.4 of the Commission's Rules of Practice and Procedure,<sup>2</sup> the Commission examines projects to determine any potential environmental impacts in order to avoid adverse effects and to ensure that environmental quality is restored or enhanced to the fullest extent possible under CEQA.

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<sup>1</sup> D.95-12-056 contains the requirements for Competitive Local Exchange Carriers applying for CPCNs. D.95-12-056 requirements are applied here as an appropriate initial step in the review process.

<sup>2</sup> Unless otherwise specified, all referenced Rules are the Commission's Rules of Practice and Procedure ([http://docs.cpuc.ca.gov/published/RULES\\_PRAC\\_PROC/70731.htm](http://docs.cpuc.ca.gov/published/RULES_PRAC_PROC/70731.htm)).

In its application and Proponent's Environmental Assessment, DTS describes its service as consisting of three significant points of interface:

- (1) A geostationary Ku-Band satellite;
- (2) A Central Office with a "hub" satellite dish; and
- (3) Smaller satellite dishes installed at individual customer premises.

DTS states that the Ku-band satellite has already been launched, an existing structure will house the switch and related network equipment and the 7.3 meter satellite hub will be installed on an existing concrete pad.<sup>3</sup> DTS plans to interconnect with the public switched telephone network at its Central Office and does not anticipate undertaking any construction. The key piece of equipment to be installed on a customer's premises is an approximately 1.2 meter satellite dish which DTS will connect to a power source via electrical conduit and to the Network Interface Device via fiber on the customer's house, garage, deck or similar structure. The network components to be installed at a customer's premises may be powered by connecting to a typical utility-provided household current connection or any number of self-generation sources. DTS states that no ground disturbance will be required to install the dish in this way. However, if one of these options is not available, DTS would install the satellite dish on a new 3-inch metal pole by digging a hole on the customer's premises approximately 1½ feet in diameter and 4 feet deep. The pole would be secured with "quick-set" concrete and extend approximately 5 to 6 feet above the

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<sup>3</sup> DTS is still evaluating options for the location of its Central Office Facilities, but anticipates they will be housed at an existing communications facility like the San Francisco International Gateway in Richmond, CA.

ground. The satellite dish would be mounted to this pole. Other options include installing the dish on an existing utility pole or on a “non-penetrating” mounting rack which would be placed on the customer’s roof or ground next to their residence or business.

DTS also lists several options to connect the dish to the power source and the network interface device depending on the proximity of the dish to the power source and network interface device. On existing structures, DTS would run wire from the dish along the side of the structure. If the dish is not on an existing structure but is nearby, DTS will string wire a very short distance to the customer’s home or business and avoid ground disturbing activity. If the pole is further away from the house, DTS would dig a small trench approximately 4 inches wide and 2 feet deep, and place the electric wiring and fiber in the ground in a 1½ inch conduit.

Based upon the application and discussions with DTS, the Commission’s Energy Division staff responsible for environmental review has determined that the activities described do not require Commission environmental review. However, DTS asks that this decision clarify the applicable CEQA review requirements.

California Code of Regulations, Title 14 §15061 (b) (3), provides that:

(b) A project is exempt from CEQA if:

... (3) The activity is covered by the general rule that CEQA applies only to projects which have the potential for causing significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

DTS’ proposed activities may involve utilizing the existing poles and facilities of other utilities, construction of reasonably short utility extensions and

minor trenching and backfilling. Exemption of these activities is consistent with Commission precedent in applications for full facilities based authority. DTS' proposed activities are similar to those undertaken by other carriers that we have decided are categorically exempt from CEQA.<sup>4</sup> Therefore, we believe with certainty that there is no possibility that DTS' service installation activities may have a significant effect on the environment.

We have reviewed DTS' application and supplemental information regarding its installation activities and find that its proposed limited-facilities-based service installation activities are very limited and in almost all circumstances would very likely be exempt from CEQA. Granting this application is in the public interest as it will benefit the public by making technologically advanced telecommunications services available to residents of previously unserved areas within California.

On December 16, 2010, the Commission adopted procedures for reviewing proposed construction projects by California telephone companies in order to meet environmental laws. The new General Order 170 implements the Commission's responsibilities under CEQA to review possible environmental impacts of construction projects consisting of any new telephone or telegraph line; or the repair, replacement, modification, alteration, or addition to an existing telephone or telegraph line in the State. The recent decision does not affect our decision here regarding DTS' CEQA compliance, but DTS will be subject to the rules of the newly adopted General Order.

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<sup>4</sup> See D.10-04-038 (SnowCrest Telephone, Inc.) and D.10-01-014 (Pacific Lightwave).

#### **4. Financial Qualifications**

The Commission has not developed specific financial requirements for applicants for a CPCN to provide incumbent local exchange carrier authority. Pursuant to Rule 4.B of D.95-12-056, an applicant for a CPCN to provide competitive local exchange service must demonstrate that it has \$100,000 in cash or cash equivalent to meet the firm's start-up expenses and additional funds to meet all underlying carriers' deposit requirements.

For DTS' application, we use the requirements for applicants for competitive local exchange carrier authority as a starting point. In Attachment I to its application, DTS provided a letter from a financial institution verifying that DTS had \$130,000 in an account with the institution. DTS' estimated construction costs contained in Attachment G to its application total \$36,088,766, far exceeding the D.95-12-056 requirement of \$100,000 and DTS' \$130,000 on deposit.

In Attachment H to DTS' application and in its July 17, 2009 response to the ALJ's request, DTS has identified various sources of funds to meet the required start-up expenses. DTS anticipates procuring loans, grants and funds from state and federal universal support mechanisms, as well as equity investments from its parent company, DialToneServices, L.P., (DialToneServices) and private equity investors. Although Communications Division staff has encouraged DTS to apply to the Rural Telecommunications Infrastructure Grant Program which provides up to \$5 million to applicants proposing to provide service to unserved areas in the state, to date, DTS has no application pending. Operating authority is not required to apply for Rural Telecommunications Infrastructure Grant Program grant monies and we encourage DTS to apply.

In order to receive federal funding, DTS has applied for waivers of certain Federal Communications Commission (FCC) requirements. The FCC applications are in abeyance pending the outcome of this application. Although the majority of the construction funding sources are speculative and there is no guarantee of state and/or federal funds to support on-going service costs, we find that granting the application is in the public interest as it will bring basic residential service to areas that currently have only wireless and other satellite service providers.

DTS must be providing service to at least one customer within 12 months of the effective date of this decision or risk losing its authority. Given DTS' limited verifiable funding sources for start-up costs, if DTS is not providing service to at least one customer in any LATA<sup>5</sup> within 12 months of the effective date of this decision, DTS may seek an extension pursuant to Rule 16.6 of the Commission's Rules of Practice and Procedure. Requesting an extension does not guarantee an extension will be granted.

## **5. Managerial and Technical Qualifications**

To be granted a CPCN for authority to provide local exchange and interexchange telecommunications services, an applicant must make a reasonable showing of managerial and technical expertise in telecommunications or a related business. DTS supplied professional biographical information on its management in Section XVI of its application. DTS' two principles each have over 20 years of experience in the telecommunications industry. The principles

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<sup>5</sup> DTS' proposed service territory is comprised of nine LATAs.

are also the founding partners and current operators of DTS' parent company in Texas, DialToneServices, which began operating in Texas in 2005.

DTS has contracted with a consulting group that has 40 years of experience assisting rural local exchange carriers in upgrading their local and interexchange networks using various public and private financing sources. DTS' consultant currently supports several incumbent local exchange carriers in California.

DTS disclosed that its parent company DialToneServices received a Notice of Apparent Liability for Forfeiture (NAL) in February 2009 for failing to file the newly required annual Customer Proprietary Network Information (CPNI) certificate.<sup>6</sup> DialToneServices appealed the FCC's omnibus NAL on the basis that the required filings were not listed on the Wireline Competition Bureau's checklist of common carrier filing and compliance requirements, which is relied upon by very small companies with little in-house staff to ensure compliance with FCC requirements.

On June 28, 2010, the FCC adopted a consent decree terminating and cancelling the NAL. Under the consent decree DialToneServices agreed, among other more procedural requirements, to voluntarily make a \$5,200 contribution and train its personnel regarding use of CPNI. DTS asserts that there are no other reportable incidents.

Except as noted above, DTS states that no one associated with or employed by DTS as an affiliate, officer, director, partner, or owner of more than 10% of DTS was previously associated with a telecommunications carrier that filed for bankruptcy; was sanctioned by the FCC or any state regulatory agency for

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<sup>6</sup> FCC Order No. DA 09-426.

failure to comply with any regulatory statute, rule, or order, or had been found either civilly or criminally liable by a court of appropriate jurisdiction for a violation of §17000, et seq. of the California Business and Professions Code or for any action which involved misrepresentations to consumers, nor is currently under investigation for similar violations.

For the above reasons, we find that DTS is in compliance with the managerial and technical requirements of D.95-12-056.

## **6. Tariffs**

Commission staff reviewed DTS' draft tariffs for compliance with Commission rules and regulations. The deficiencies are noted in Attachment A to this decision. Applicant shall correct these deficiencies in its tariff compliance filing as a condition of our approval of its tariffs.

## **7. Map of Service Territory**

To be granted a CPCN for authority to provide local exchange service, an applicant must provide a map of the service territories it proposes to serve.<sup>7</sup> In compliance with this requirement, DTS provided a map of its proposed service territory in Exhibit A to the application. The map used by DTS is the map depicting housing units in unfiled territory recently developed by the Commission. Prior to offering service, DTS must update its service territory description with tariff maps by LATA.

In its application, DTS states that it does not propose to include within its service territory any area currently served by an incumbent local exchange carrier, any area served by an extension or planned extension, or areas served by

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<sup>7</sup> D.95-12-056 at Appendix C, Rule 4.E.

private communications networks. The area DTS proposes to serve may be adjacent to or surrounded by the service territory of another incumbent local exchange carrier. To ensure DTS' service territory will exclude areas served by other incumbent local exchange carriers, DTS should serve copies of its updated service territory description and map, by LATA, on all incumbent local exchange carriers whose territory is adjacent to DTS'. DTS should file its updated service territory description and map and the proof of service on all incumbent local exchange carriers as a Tier 1 Advice Letter with the Director of the Communications Division.

#### **8. General Order 104-A Statement**

Rule 3.1(i) sets forth the requirement that a utility filing an application under Pub. Util. Code §1001, provide a statement regarding General Order 104-A. In Section XIV of its application, DTS states that it has no reportable matters pursuant to General Order 104-A, Section 2. However, on a going forward basis, DTS must file all reports required of a public utility under Commission jurisdiction.

#### **9. Expected Customer Base**

All CPCN applicants are required to provide customer base estimates for their first and fifth years of operation. DTS' application estimates 2,000 to 3,000 customers in its first year of operation and 4,200 customers by the fifth year of operation.<sup>8</sup> Therefore, DTS has complied with this requirement. However, in order for the Commission to track DTS' customer base, we require DTS to file

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<sup>8</sup> In its application, DTS originally estimated 8,000 to 10,000 customers by year 5. In its Revised and Redacted Attachment G, DTS revised its year 5 estimate downward to 4,200 customers. DTS estimates the number of year 5 subscriber lines at 4,620.

Tier 1 Advice Letters with the Director of the Communications Division updating the Commission on the number and location of its customers on the following timeline:

- 1) Within 30 days of providing service to its first customer;
- 2) Twelve months after the effective date of this decision;
- 3) Twenty-four months after the effective date of this decision; and
- 4) Sixty months after the effective date of this decision.

#### **10. E911 Capabilities**

In its Response to the ALJ ruling DTS described its E911 architecture as very similar to that of a traditional local exchange carrier. However, traditional landline carriers are required to have an agreement or interconnection agreement with the State's two 911 network providers to provision the dedicated trunks to deliver 911 calls to each of the Pacific Bell Telephone d/b/a AT&T California (AT&T) 35 selective routers or Verizon's 11 selective routers serving the proposed territory. The agreements specify the provisioning of subscriber records to the 911 database and timeliness and process for subscriber record changes, etc. In addition, the 911 Office has statewide requirements/standards regarding the content and format of the 911 caller's information and service provider's class of service (technology), default trunking and 24/7 carrier support information. DTS' proposal to provide satellite service is an important detail that public safety answering points would use to evaluate the call and required response. This information would have to be shown in DTS' subscriber records.

Communication's Division staff contacted the 911 Office and there is no record of contact with representatives of DTS. The 911 Office has a policy memo that details the issues and procedures for delivering 911 calls and information.

Therefore, prior to offering service to customers, DTS will need to File a Tier 1 Advice Letter with the Director of the Communications Division and provide:

1. A description of any third parties utilized to deliver 911 calls;
2. A description of the FCC's 911 requirements for satellite service providers and whether it is exempt or simply purchasing services and capacity from the satellite service provider; and
3. A letter from the 911 Office with approval of DTS' proposed delivery of 911 calls.
4. A letter from DTS attesting to its provisioning of 911 service to all of its customers.

In addition to providing intra- and interstate service, as an incumbent local exchange carrier DTS will also be obligated to provide international calling capability to its customers. Therefore, prior to offering service to customers DTS will file a Tier 1 Advice Letter with the Director of the Communications Division with copies of the pertinent approval and/or license certifying that it has obtained FCC approval for international Section 214 authority and a VSAT (very small aperture terminal) operator's license pursuant to C.F.R. Section 25.134.

#### **11. General Rate Case Filing**

Applicant has asked to be treated as a Small ILEC for regulatory purposes and proposes to initially establish rates and charges for its local service based on 150% of AT&T's basic rate as of December 31, 2010. This rate is comparable to the rate required for the Small ILECs to draw from the California High Cost Fund-A. Once DTS has completed construction of its facilities, has a minimum of one calendar-year operating experience and the required recorded operating data, it would file a general rate case with the Commission. Applicant shall not change its tariffed rates and charges until authorized by a Commission decision or resolution.

We note that under these circumstances, DTS will not be eligible for funding from the California High Cost Fund-A until after the Commission has completed review of a general rate case filed by DTS in compliance with D.91-09-042 and in accordance with the implementing guidelines established in the Appendix of that decision.

## **12. State and Federal High Cost Support**

On December 17, 2009, DTS provided an analysis of its expected support from the California High Cost Fund-A in year three, when it is eligible. DTS' anticipated support from the California High Cost Fund-A is \$574 per line for its first year of eligibility. DTS' anticipated Federal High Cost Fund support is \$2,750 per line for the first year of operation. DTS' estimated Federal High Cost Fund support drops by approximately 61% to \$1,056 per line per year by its fifth year of operation.

We remind DTS that there is no guarantee that the amount of California or Federal High Cost Fund support sought will be granted.

## **13. Carrier of Last Resort (COLR)**

The Commission treats all rate regulated incumbent local exchange carriers the same with respect to their obligations as carriers and the rules to which they are required to conform. Incumbent local exchange carriers are required to provide reliable service on non-discriminatory terms at reasonable rates set by the Commission. Incumbent local exchange carriers also have COLR obligations.<sup>9</sup> This means that DTS, as an incumbent local exchange carrier, would have to obtain Commission approval before discontinuing service.

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<sup>9</sup> D.95-12-056 at Appendix C, Rule 5.

Additionally, to ensure continued service for its customers, DTS would be required to implement a migration of its existing customers to a suitable substitute service provider. The COLR provisions are intended to protect customers from suddenly being left without telecommunications services.

The area DTS is seeking to serve is all the currently unserved area in the state. We have some concerns about DTS' ability to fulfill the COLR obligations that come with incumbent carrier status. Specifically, we are uncertain about the likelihood of DTS finding a suitable substitute carrier if at some future time it is necessary for DTS to exit the market. This territory has never previously been the subject of an application to provide service. However, denying DTS' application ensures these areas remain unserved for the foreseeable future.

Therefore, we find it in the public interest to grant DTS' application and allow DTS to bring basic telecommunications service to historically unserved areas of the state although we understand that if DTS fails to provide service, or discontinues service at some time, these areas will again be unserved.<sup>10</sup> DTS will be responsible for the COLR requirements in their entirety, including but not limited to notifying the Commission and its customers before discontinuing service and seeking a suitable substitute carrier for its customers.

#### **14. Service Territory**

DTS' application seeks to provide service to all unserved areas within the state. As noted above, we are concerned about DTS' ability to effectively serve all unserved customers in the state, particularly given DTS' limited verifiable funding sources for its start-up costs, and that as a result, many unserved

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<sup>10</sup> DTS also intends to offer Broadband service to its customers.

customers may remain in its service territory. Also, granting DTS unconditional authority to provide service to all the unserved territory effectively eliminates our Rural Telecommunications Infrastructure Grant Program as no other carrier would be able to apply for funds to provide service to unserved areas.

To remedy this situation, we grant DTS exclusive authority to provide service to all the currently unserved territory for twelve months from the effective date of this decision. After that time, if another carrier applies to provide service to any LATA where DTS is not currently providing service to at least one customer and DTS has not obtained a waiver of the 12-month requirement discussed in Section 4 above, DTS would surrender the involved LATA without protest. DTS would retain exclusive rights to serve all remaining territory. In addition, notwithstanding this grant of authority, Rural Telecommunications Infrastructure Grant Program applicants may continue to apply for and receive funding to provide service within DTS' service territory.

## **15. Conclusion**

We conclude that the application conforms to the rules contained in D.95-12-056 and D.91-09-042 and the additional requirements imposed here are sufficient for certification as an incumbent local exchange carrier. Accordingly, we grant DTS a CPCN to provide limited facilities-based local exchange telecommunications service and interexchange telecommunications service as an incumbent local exchange carrier in the unserved areas of California, subject to compliance with the terms and conditions set forth in the Ordering Paragraphs.

## **16. Categorization and Need for Hearing**

By Resolution ALJ 176-3232, dated April 16, 2009, the Commission preliminarily categorized this application as Ratesetting, and preliminarily determined that no evidentiary hearings were necessary. No protests have been

received. There is no apparent reason why the application should not be granted. Given these developments, a public hearing is not necessary, and it is not necessary to disturb the preliminary determinations.

#### **17. Comments on Proposed Decision**

Although the 30-day public review and comment period required by Section 311 of the Pub. Util. Code is waived in this matter because the decision grants the relief requested in an uncontested matter, a reduced comment period was provided. Opening comments on the proposed decision were due on January 3, 2011 and reply comments were due on January 7, 2011.

Communications Division staff identified several areas of concern in the proposed decision and therefore substantive changes have been made to Section 9 and a new Section 14 has been added.

#### **18. Assignment of Proceeding**

Michael R. Peevey is the assigned Commissioner and Linda A. Rochester is the assigned Administrative Law Judge in this proceeding.

#### **Findings of Fact**

1. Notice of the application appeared on the Daily Calendar on April 2, 2009. No protests were filed.

2. The Commission is the Lead Agency for this project under CEQA.

3. DTS' service installation activities would generally involve placement of a satellite dish on customer premises with power provided by household current. However, if that option is not available, it may be necessary to install the dish on a pole which would require a digging a hole and connecting to a power source via a conduit which would require minor trenching and backfilling. These installation activities do not have a significant adverse effect upon the environment.

4. DTS' service installation activities are identified as projects that meet the CEQA exception requirements established in D.10-12-056.

5. DTS has cash on deposit with a financial institution and has identified additional sources of funds to cover its start-up construction expenses.

6. DTS' management possesses sufficient experience, knowledge, and technical expertise to provide local exchange services to the public.

7. DTS' parent company DialToneServices received an NAL in February 2009 for failing to file the newly required annual CPNI certificate. On June 28, 2010, the FCC adopted a consent decree terminating and cancelling the NAL.

8. Except as noted in Finding of Fact 7, no one associated with or employed by DTS as an affiliate, officer, director, partner, or owner of more than 10% of DTS was previously associated with any telecommunications carrier that filed for bankruptcy, or has been found either civilly or criminally liable by a court of appropriate jurisdiction for a violation of § 1700, et seq. of the California Business and Professions Code, or for any actions which involved misrepresentations to consumers, nor is currently under investigation for similar violations.

9. Except for the deficiencies identified in Attachment A to this decision, DTS' draft tariffs comply with the Commission's requirements.

10. DTS provided a map of its service territory, created by the Commission depicting the number of housing units in unserved territories of the state. The unserved territories are DTS' proposed service territory.

11. DTS has no information to report under Rule 3.1(i), which requires that a utility filing an application under Pub. Util. Code §1001, provide a statement regarding compliance with General Order 104-A.

12. DTS' application provided an estimate of its first and fifth year customer base.

13. DTS' application described its E911 architecture as similar to that of traditional local exchange carriers, but there is no description of third parties utilized to deliver 911 calls or of the FCC's 911 requirements and whether DTS is exempt or purchasing services and capacity from the satellite provider. Additionally, DTS did not have approval from the 911 office approving its proposed plan for delivery of 911 calls.

14. DTS proposes to file a general rate case once it has a minimum of one calendar year operating experience.

15. DTS is not eligible to receive California High Cost Fund-A funds until the Commission has completed a review of DTS' first general rate case.

16. DTS' anticipated request from the California High Cost Fund-A is \$574 per line for its first year of eligibility.

17. The Commission does not guarantee that the amount of California High Cost Fund-A support sought by DTS will be granted.

18. As an incumbent local exchange carrier, DTS would have COLR obligations to notify its customers and the Commission if it intends to discontinue service and find a suitable substitute carrier to provide service to its customers.

19. DTS' ability to effectively serve all unserved customers in the state is of concern given DTS' limited verifiable funding sources for its start-up costs. As a result, many unserved customers may remain in its proposed service territory.

20. Granting DTS unconditional authority to provide service to all unserved territory effectively eliminates the Rural Telecommunications Infrastructure Grant Program as no other carrier would be able to apply for funds to provide service to unserved areas.

### **Conclusions of Law**

1. DTS application for a CPCN to provide limited facilities-based local exchange telecommunications service and interexchange service in the unserved territories of California is in the public interest and should be granted.
2. DTS, once granted a CPCN should be subject to the applicable commission rules, decisions, General Orders, and statutes that pertain to California public utilities.
3. DTS' initial tariff filing should correct the tariff deficiencies shown in Attachment A to this decision.
4. Prior to offering service DTS should update its service territory description and map, by LATA, as described in Section 7. of this decision and serve it on all incumbent local exchange carriers whose service territory is adjacent to DTS'. DTS should file its updated service territory description and map and the proof of service on all incumbent local exchange carriers as a Tier 1 Advice Letter with the Director of the Communications Division
5. In order for the Commission to track the number and location of DTS' customers, DTS should update the Commission on its customer base within 30 days of providing service to its first customer, 12 months after the effective date of this decision, 24 months after the effective date of this decision, and 60 months after the effective date of this decision.
6. Prior to offering service, DTS should provide the Commission with a description of third party providers of 911 services, a description of the FCC 911 requirements and whether DTS is exempt or purchasing services and capacity, and provide a letter from the 911 Office approving DTS' proposed delivery of 911 calls.

7. DTS should file a general rate case once it has a minimum of one year of operating experience.

8. DTS should be granted exclusive authority to provide service to all currently unserved territory for twelve months from the effective date of this decision. After that time, if any carrier applies to provide service to any LATA where DTS is not currently providing service to at least one customer, DTS should surrender that LATA without protest.

## **O R D E R**

### **IT IS ORDERED** that:

1. DTS of CA, Inc. is granted a certificate of public convenience and necessity to operate as an incumbent local exchange carrier providing limited facilities-based local and interexchange telecommunications services in the unserved areas of the State, subject to the terms and conditions set forth below.

2. DTS of CA, Inc. may not offer local exchange services until tariffs are filed with and authorized by this Commission, in accordance with General Order 96-B and as corrected for deficiencies set forth in Exhibit A.

3. The corporate identification number assigned to DTS of CA, Inc., U1027C, must be included in the caption of all original filings with this Commission and in the titles of other pleadings filed in existing cases.

4. In addition to all requirements applicable to local exchange carriers and interexchange carriers included in Attachments B, C, and D to this decision, DTS of CA, Inc. is subject to the Consumer Protection Rules contained in General Order 168, and all applicable Commission rules, decisions, General Orders, and statutes that pertain to California public utilities.

5. DTS of CA, Inc. must file, in this docket, a written acceptance of the certificate granted in this proceeding within 30 days of the effective date of this order.

6. DTS of CA, Inc. must pay the user fee and public purpose surcharges specified in Attachment B. Per the instructions in Exhibit E to Decision 00-10-028, the Combined California Public Utilities Commission Telephone Surcharge Transmittal Form must be submitted even if the amount due is \$0. Under Public Utilities Code Section 405, carriers that are in default of reporting and submitting user fees for a period of 30 days or more will be subject to penalties including suspension or revocation of their authority to operate in California.

7. Prior to initiating service, DTS of CA, Inc. must provide the Commission's Consumer Affairs Branch with the name and address of its designated contact person(s) for purposes of resolving consumer complaints. This information must be updated if the name or telephone number changes, or at least annually.

8. DTS of CA, Inc. must notify the Director of the Communications Division in writing of the date that local exchange service is first rendered to the public, no later than five days after service first begins.

9. DTS of CA, Inc. must file an affiliate transaction report with the Director of the Communications Division, in compliance with Decision 93-02-019, on a calendar year basis using the form contained in Attachment D.

10. DTS of CA, Inc. must file an annual report with the Director of the Communications Division, in compliance with General Order 104-A, on a calendar-year basis with the information contained in Attachment C to this decision.

11. DTS of CA, Inc. (DTS) must provide service to at least one customer in its service territory within 12 months of the effective date of this order, or its certificate will be cancelled. DTS may seek an extension of the 12-month deadline pursuant to Rule 16.6 of the Commission's Rules of Practice and Procedure.

12. DTS of CA, Inc. (DTS) must update its service territory description and map, by local access and transport area, and serve it on all incumbent local exchange carriers whose service territory is adjacent to DTS. DTS should file its updated service territory description and map and the proof of service on all incumbent local exchange carriers as a Tier 1 Advice Letter with the Director of the Communications Division.

13. DTS of CA, Inc. must file Tier 1 Advice Letters with the Director of the Communications Division updating the Commission on the number and location of customers served within 30 days of providing service to its first customer, 12 months after the effective date of this decision, 24 months after the effective date of this decision, and 60 months after the effective date of the decision.

14. Prior to providing service, DTS of CA, Inc. (DTS) must file a Tier 1 Advice Letter with the Director of the Communications Division and provide:

- a. A description of any third parties utilized to deliver 911 calls;
- b. A description of the Federal Communications Commission's 911 requirements for satellite service and providers and whether DTS is exempt or simply purchasing services and capacity from the satellite service provider;
- c. A letter from the 911 Office approving DTS' process for delivery of 911 calls; and
- d. A letter from DTS attesting to its provisioning of 911 service to all of its customers.

15. DTS of CA, Inc. (DTS) must complete at least one year of operations before filing a general rate case and the Commission must have completed a review of its general rate case prior to DTS receiving California High Cost Fund-A support.

16. DTS of CA, Inc. (DTS) has exclusive authority to provide service to all currently unserved territory for twelve months from the effective date of this decision. After that time, if another carrier applies to provide service to any local access and transport area where DTS is not currently providing service to at least one customer, DTS must surrender that local access and transport area without protest.

17. This proceeding is closed.

This order is effective today.

Dated February 24, 2011, at San Francisco, California.

MICHAEL R. PEEVEY  
President  
TIMOTHY ALAN SIMON  
MICHEL PETER FLORIO  
Commissioners

Commissioner Catherine J.K. Sandoval, being necessarily absent, did not participate.