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July 27, 2007

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: WCB/Pricing No. 07-10
Notice of *Ex Parte* Presentation

Dear Ms. Dortch:

On July 26, 2007, Jeff L. Jung of TDS Telecom and Steve Meltzer, John Kuykendall and Scott Duncan of John Staurulakis, Inc. ("JSI") met with Albert Lewis, Pamela Arluk, Jay Atkinson, Douglas L. Slotten and Lynne Engledow of the Wireline Competition Bureau ("Bureau"). In the meeting, the participants discussed the decision by the Bureau to suspend for one day and set for investigation the switched access rates contained in the 2007 annual access tariffs listed in Appendices B and C of the decision.[1] Eight companies that were part of the JSI Tariff F.C.C. No. 1 2007 annual access tariff filing (Transmittal No. 130) were among those listed in Appendix B of the Order.[2] A copy of the presentation is attached.[3]

During the meeting, Mr. Jung and the JSI representatives (the "Presenters") demonstrated that there is no evidence that any of the JSI Carriers are engaged in traffic pumping and that they

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[1] *See July 1, 2007 Annual Access Charge Tariff Filings*, WCB/Pricing No. 07-10, DA 07-2862 (rel. June 28, 2007) ("Order"). The Bureau took this action to address petitions filed by AT&T Corporation, Qwest Communications Corporation, Sprint Nextel Corporation and Verizon (collectively "Petitioners") to suspend and investigate the tariffs of carriers leaving the NECA traffic-sensitive pool due to alleged access stimulation (otherwise known as "traffic pumping"). *Id.* at 2-3.

[2] Four of these companies are TDS Telecom companies and are section 61.38 filers: Camden Telephone & Telegraph Company, Inc., Mt. Vernon Telephone Company, Oklahoma Communications Systems, Inc. and Tennessee Telephone Company. The other four companies are section 61.39 filers: Chesnee Telephone Company, Gearheart Communications Company, Inc. d/b/a Coalfields Telephone Company, Skyline Telephone Membership Corporation, and Yadkin Valley Telephone Membership Corporation (all eight companies are hereinafter referred to as "JSI Carriers").

[3] A copy of JSI's Reply to Petitions to Suspend and Investigate Tariff Filings which was filed on June 26, 2007 in this proceeding was also provided to the Bureau at the meeting.

have exited the NECA traffic sensitive pool for legitimate reasons. The Presenters then urged the Bureau to reconsider its decision to suspend and investigate the tariff filings of the eight companies and that if the Bureau determines to proceed, it should do so in an expedited manner.

Please contact the undersigned with any questions.

Respectfully submitted,

/s/ John Kuykendall
John Kuykendall
Director – Regulatory Affairs

cc: Albert Lewis
Pamela Arluk
Jay Atkinson
Douglas L. Slotten
Lynne Engledow

July 1, 2007 Annual Access Charge Tariff Filings
WCB/Pricing No. 07-10

John Staurulakis, Inc.

Ex Parte Presentation

July 26, 2007

JSI Tariff F.C.C. No. 1

- Came into existence Sept. 1, 1993 as a vehicle for local exchange carriers (LECs) to file company-specific Traffic Sensitive (TS) rates and, to a lesser extent, End User Common Line (EUCL) and, until eliminated by the MAG Order, Carrier Common Line (CCL) on either a section 61.38 prospective basis or a section 61.39 historic basis.
- Includes comprehensive regulations parallel to those of NECA Tariff F.C.C. No. 5 in lieu of referencing the regulations of NECA Tariff F.C.C. No. 5.
- Additionally, there are regulations and rate structures unique to JSI Tariff F.C.C. No. 1 designed to meet the needs of issuing carriers and their access customers not available in NECA Tariff F.C.C. No. 5.
- The JSI Tariff has allowed rate-of-return LECs to have economic means of having company-specific rates lower than NECA rates in order to address potential bypass and competition in rural areas with more dense concentrations of customers than is typical for NECA issuing carriers.

JSI Carriers Impacted by Order

- JSI Section 61.38 Carriers
  - Camden Telephone & Telegraph Company, Inc.
  - Mt. Vernon Telephone Company
  - Oklahoma Communications Systems, Inc.
  - Tennessee Telephone Company
- JSI Section 61.39 Carriers
  - Chesnee Telephone Company
  - Gearheart Communications Company, Inc. d/b/a Coalfields Telephone Company
  - Skyline Telephone Membership Corporation
  - Yadkin Valley Telephone Membership Corporation

JSI Section 61.38 Carriers are Not Engaged in Traffic Pumping

- No petitioners have raised any allegations that the JSI Section 61.38 Carriers have engaged in traffic pumping or are not in compliance with FCC tariff filing requirements.
- No evidence exists that these carriers are engaged in traffic pumping.
  - The FCC's Order notes that a review of access minutes of use (MOU) data for section 61.38 carriers reentering the NECA pool "indicates a likelihood that some of those carriers have participated in access stimulation activities."
  - This does not apply to the JSI Section 61.38 Carriers since none are reentering the NECA pool. These carriers have historically been in the NECA TS Pool. This is the first time these carriers have exited the pool since NECA's inception.

JSI Section 61.39 Carriers are Not Engaged in Traffic Pumping

- No petitioners raised any allegations that the JSI Section 61.39 Carriers are not in compliance with the mechanics of tariff filing by average schedule companies under section 61.39.
- No evidence exists that the JSI Section 61.39 Carriers are engaged in traffic pumping or are not in compliance with tariff filing requirements.
  - None of the JSI Section 61.39 Carriers were specifically named or cited by any carrier in conjunction with the traffic pumping concerns but instead were included only in lists showing all carriers filing tariffs pursuant to section 61.39 that are exiting the NECA TS pool.

Legitimate Reasons Exist For Carriers to Exit the NECA TS Pool

- As has historically been the case, a carrier may choose to exit one or more NECA pools and file its own company-specific tariff to gain more control over its revenue streams than is afforded to it as a pool member.
- Several recent developments in the NECA pooling process have created the desire for carriers to make this election at this time, including:
  – the failure of NECA to reach its authorized return in 2006;
  – the prospects for the across-the-board rate increases shown in the most recent NECA tariff filing; and
  – the fact that effective July 1, 2007, TS average schedule settlements will decrease, on average, by 10.33%.

JSI Tariff F.C.C. No. 1 is not a Vehicle for Traffic Pumping

- JSI Tariff F.C.C. No. 1 has been used exclusively for the legitimate purposes of filing company-specific TS rates, EUCL or CCL rates by carriers who have previously exited one or more of the NECA pools.
- JSI believes that its tariff has never been a vehicle for the execution of any schemes including traffic pumping schemes
  - Issuing carriers for JSI Tariff F.C.C. No. 1 currently include (prior to the 2007 Annual Filing) seven section 61.39 filers, none of which have ever taken advantage of the historic filing method to “traffic-pump.”
  - The average tenure by issuing carriers for JSI Tariff F.C.C. No. 1 is nine years.

Petitioners' Allegations are Based on Flawed Data and Mere Conjecture

- As demonstrated in JSI's Reply to Petitioners:
  - With respect to the impact of the rates proposed by the JSI Section 61.39 Carriers in their annual filings in JSI Tariff F.C.C. No. 1, on an overall basis access customers will be paying <u>less</u> in access charges than they would have had the JSI Carriers not exited the NECA TS Pool.
  - The JSI Section 61.39 Carries expect <u>decreased</u> levels of access MOU for the tariff period, not the increases suggested by the unfounded conjectures of the petitioners.
  - None of the petitioners effectively addressed why the Commission should universally ignore the incentive nature of the rules under which the JSI Section 61.39 Carriers have filed their tariffs nor did they offer evidence that the requirements of section 1.773(a)(iii) have been met which includes evidence of high probability that the tariffs would be found unlawful and that irreparable injury would result.

Concerns

- Adoption of any of the measures for monitoring proposed by the petitioners might unduly burden the JSI Carriers.
- Requirement to insert language into the JSI Tariff F.C.C. No. 1 to address traffic pumping might penalize carriers that legitimately have an increase in access MOU.
- Establishes a bad precedent for future carriers seeking to exit NECA TS pool.

Request

- JSI urges the Bureau to reconsider its decision to suspend and investigate the tariff filings of the JSI Carriers.
- If the Bureau determines to proceed, JSI urges the Bureau to do so in an expedited manner.
  - What can we do to assist in moving the process along?

Contacts

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