

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

IN THE MATTER OF THE APPLICATION OF )  
dPi-TELECONNECT, LLC FOR A CERTIFI- ) CASE NO. GNR-T-99-7  
CATE OF PUBLIC CONVENIENCE AND )  
NECESSITY. ) ORDER NO. 28185  
)

On April 22, 1999, dPi-Teleconnect, LLC filed an Application for a Certificate of Public Convenience and Necessity to provide resold local exchange services within Idaho. The Company proposed to furnish prepaid local exchange service to individuals who have had their telephone service terminated. On July 6, 1999, the Commission issued a Notice of Application and Notice of Modified Procedure soliciting comments regarding dPi's Application. Timely comments were filed by the Commission Staff and TDS Telecom/Century Telephone Company. On September 7, 1999, dPi filed a response to the Staff comments. Having reviewed dPi's Application and the written comments, we grant the Application as conditioned below.

## dPi's APPLICATION

dPi-Teleconnect is a Delaware corporation owned by dPi Holdings, Inc. (a Texas corporation) and Koch Ventures, Inc. (a Delaware corporation). In its Application, the Company stated its desire to “provide local exchange service in those areas currently served by U S WEST Communications and GTE Northwest and any other relevant incumbent-facilities-based LECs.” Application at 4. The Company seeks to provide, on a resell basis, prepaid monthly recurring, flat-rate residential local exchange service including extended area service, customer calling services, and other services available on a resell basis from the underlying incumbent LEC. dPi indicated that it has an interconnection agreement with GTE and is currently in the process of negotiating an interconnection agreement with U S WEST. It indicated that it is certified to offer such services in 10 states and has Applications pending in 15 other states. The Company stated that it currently does not own any of its own telecommunications facilities. The Company also maintained that it will comply with all applicable customer service rules of the Commission but

does not accept deposits for service given the prepaid nature of its intended local exchange service.

### THE COMMENTS

In response to the Notice of Modified Procedure, comments were filed by TDS Telecom/Century Telephone and the Commission Staff. These comments are set out below.

1. TDS Telecom and Century Telephone noted that they are incumbent LECs providing services in rural exchanges in Idaho. They insisted the federal Telecommunications Act of 1996 and *Idaho Code* § 62-615 restricts competitors desiring to operate within their certificated service areas. Consequently, they requested that the Commission “take those restrictions into account if a certificate is issued to dPi-Teleconnect in relation to its request to serve areas in ‘other relevant incumbent facilities-based LECs.’” TDS/Century Comments at 2.

2. The Commission Staff questioned how well dPi understands the rules of the Commission when the Company stated that its target audience is customers who have had their local service terminated “often for non-payment of long-distance charges.” Staff Comments at 4. Staff asserted that LECs in Idaho may not terminate local service for non-payment of long-distance charges. The Staff noted that dPi indicated that it will comply with all Commission rules and that the Company provided an illustrative tariff demonstrating an understanding of Idaho tariffing requirements. *Id.* at 3.

The Staff also expressed concern regarding the Company’s financial ability. The Staff was concerned that dPi’s financial statements were unaudited and the Company may not have the necessary financial cushion to operate in Idaho. Although the Company indicated it had an interconnection agreement with GTE, the Staff stated there was no evidence of any such interconnection agreement submitted by GTE or dPi.

The Staff also noted that the Application identifies three principal individuals as operating the business. Two of the individuals have prior telecommunications experience and both were associated with US Telco, another provider of prepaid local service that was previously acquired by a competitor. The vice president of dPi, Dave Pikoff, was the founder and president of US Telco. Although US Telco applied for a Certificate of Public Convenience and Necessity from this Commission, it was withdrawn because the Company was sold to a competitor.

Given the relationship between dPi principals and the former US Telco, the Staff also disclosed allegations previously filed against US Telco and/or its successor before the Colorado Commission. US Telco was accused by the Colorado Office of Consumer Counsel of failing to provide services at authorized rates. The case before the Colorado Commission was dismissed when US Telco was purchased by Reconnex, and US Telco promised to cease doing business in Colorado. A subsequent proceeding in Colorado alleged that US Telco/Reconnex continued to conduct business in Colorado after their authority had been cancelled. *Id.* at 3.

Based upon these concerns, Staff recommended that the Commission deny dPi-Teleconnect a Certificate of Public Convenience and Necessity. In the alternative, Staff recommended that if a Certificate is granted, that two conditions be imposed similar to the conditions imposed upon Max-Tel Communications, Inc. in Order No. 27122.

The first condition is that dPi provide a bond or appropriate surety in the initial amount of \$5,000 as a condition precedent to receiving its Certificate. Staff recommended dPi maintain the bond or surety in an amount no less than \$5,000 and at least equal to \$50 per customer. Second, the Company should report to the Commission on the 10<sup>th</sup> day of each month identifying the number of customers that it has on the first day of the month and provide evidence of the appropriate bonding or surety amount. Failure to provide the report in a timely manner would be grounds for revocation of the Certificate or other penalty as provided by *Idaho Code* §§ 61-706 and -707.

The Staff recommended that the Company be allowed to petition the Commission for a review of these conditions after one full year of operation and after submitting revised financial information including current detailed balance sheets and a detailed income statement reflecting results of operations for the 12 months ending as of the date of the balance sheet.

3. dPi Reply. In its reply comments, dPi urged the Commission to grant dPi a Certificate without the Staff's suggested conditions. dPi asserted that its proposed service is in the public interest. The Company maintained that its proposed services and the manner in which these services are delivered are unique. "Customers are sold a single 'flat-rate' service that relieves them from concern over incurring any usage sensitive charges." dPi Reply at 1. The Company also noted that it enters into relationships with local businesses to provide a means for its customers to pay for service within a few miles of their residence. These local businesses or

agents give dPi a local presence not only for the delivery of service but also from the customer service standpoint.

dPi also disputed the Staff's allegation that it is not adequately financed. The Company noted that its management has extensive experience in the telecommunications industry. It also attached updated financial information indicating the strength of the Company. dPi stated that it initially received an equity investment of \$1.5 million and it currently serves over 5,000 customers. *Id.* at 2. Consequently, dPi argued that its financial strength "does not warrant the posting of a bond. If the Commission believes that a bond is appropriate, dPi believes that the bond should be capped at \$5,000.00 as opposed to \$50.00 per customer. dPi is committed to providing services pursuant to the rules and regulations of the state of Idaho as well as that of the FCC." *Id.*

dPi insisted that granting it a Certificate of Public Convenience and Necessity to provide its prepaid flat-rate service will offer consumers a choice. The Company maintained that although ILECs could offer identical services as dPi intends to offer, ILECs choose not to market such services. "Furthermore, dPi's provisioning of service advances the goals of universal service, makes more efficient use of the existing ILEC network and to the extent that any of its customers are off the existing public switched network for toll fraud, dPi places them in a position where they can get basic service without perpetrating additional fraud on the telecommunications industry." *Id.*

### COMMISSION FINDINGS

Having fully reviewed dPi's Application, the written comments and dPi's Reply, we find it is appropriate to grant the Company a Certificate of Public Convenience and Necessity to provide resold local exchange service within Idaho as conditioned below. dPi-Teleconnect's Certificate will be granted for the entire state of Idaho. As TDS and Century Telephone urged us to do, we have considered the interconnection restrictions contained in *Idaho Code* § 62-615(2) and the federal Telecommunications Act of 1996 before issuing a statewide certificate. The state statute and the federal Act excuse rural carriers like TDS and Century from adherence to certain interconnect obligations. For example, rural LECs that are members of the Idaho Telephone Association were granted suspensions of their obligations under Section 251(c) of the federal Act until January 1, 2001. See Order No. 27255. However, a rural carrier's Section 251(b)

obligation not to prohibit the resale of its telecommunications services is left to this Commission's sound discretion. *Idaho Code* § 62-615(2); 47 U.S.C. §§ 251(b)(1) and 251(f)(1)(A) and (2). The Commission has yet to receive a petition requesting suspension of a LEC's Section 251(b)(1) duty not to prohibit the resale of its telecommunications services.

We find it appropriate and reasonable to adopt the Staff's two recommended conditions. First, dPi shall post a bond or provide appropriate surety in an amount no less than \$5,000. This amount represents the minimum amount of a bond or surety. When dPi acquires more than 100 Idaho customers, then it shall increase the amount of the bond or surety in an amount equal to no less than \$50 per customer. Second, once the Company begins operations, it will file a report with the Commission Secretary on the 10<sup>th</sup> day of each month identifying the number of customers that it had on the first day of the month and provide evidence that it has obtained the appropriate bond or surety amount. The Company may petition the Commission to remove these two conditions after one full year of operation by submitting revised financial information including a current detailed balance sheet and a detailed income statement showing the last 12 months of operation. We find that these conditions appropriately balance the needs of the Company while protecting customers.

### **ORDER**

IT IS HEREBY ORDERED that the Application of dPi-Teleconnect, LLC for a Certificate of Public Convenience and Necessity to resell prepaid local exchange service throughout Idaho is granted as conditioned in the body of this Order.

IT IS FURTHER ORDERED that dPi maintain a minimum bonding or surety level in the amount no less than \$5,000. At such time as the Company has more than 100 Idaho customers, it will increase the minimum amount of the bond or surety equal to no less than \$50 per customer.

IT IS FURTHER ORDERED that the Company report the number of customers and provide evidence of its bonding or surety amount on the 10<sup>th</sup> day of each month following the commencement of its operations in Idaho as outlined in the body of this Order.

THIS IS A FINAL ORDER. Any person interested in this Order (or in issues finally decided by this Order) or in interlocutory Orders previously issued in this Case No. GNR-T-99-7 may petition for reconsideration within twenty-one (21) days of the service date of this Order

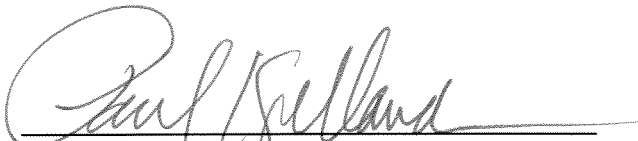
with regard to any matter decided in this order or in interlocutory Orders previously issued in this Case No. GNR-T-99-7. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. See *Idaho Code* § 61-626.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this *22nd* day of October 1999.


  
DENNIS S. HANSEN, PRESIDENT

Commissioner Smith dissents  
without opinion.

MARSHA H. SMITH, COMMISSIONER

  
PAUL KJELLANDER, COMMISSIONER

ATTEST:

  
Myrna J. Walters  
Commission Secretary

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