

DECISION MEMORANDUM

TO: COMMISSIONER HANSEN
COMMISSIONER SMITH
COMMISSIONER KJELLANDER
MYRNA WALTERS
STEPHANIE MILLER
TONYA CLARK
RON LAW
JOE CUSICK
WAYNE HART
BEV BARKER
LYNN ANDERSON
WORKING FILE

FROM: DON HOWELL

DATE: October 4, 1999

RE: APPLICATION OF dPi-TELECONNECT FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY; CASE NO. GNR-T-99-7

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. dPi is a Delaware corporation owned by dPi Holding, Inc. (a Texas corporation) and Koch Ventures, Inc. (a Delaware corporation). The Company proposed to furnish prepaid local exchange service to individuals who have had their telephone service disconnected. On July 6, 1999, the Commission issued a Notice of Application and Notice of Modified Procedure to process 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 comments of the Commission Staff.

dPi's APPLICATION

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 wants 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 US 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 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 Commission's 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 it 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. As the Commission is aware, LECs in Idaho may not terminate local service for non-payment of long-distance charges. In its comments, the Staff specifically noted that dPi indicated in its Application that it will comply with all Commission rules. The Company has provided an illustrative tariff with its Application that demonstrates an understanding of tariffing requirements and processes. Staff Comments 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 financial cushion necessary to operate in Idaho. Although the Company indicated it had

an interconnection agreement with GTE, the Staff could find no interconnection agreement submitted by GTE or dPi.

The Staff 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 its concerns, Staff recommended that the Commission deny dPi-Teleconnect a Certificate of Public Convenience and Necessity to provide local exchange telecommunications services within the service territories of U S WEST and GTE. In the alternative, Staff recommended that if a Certificate is granted, that three 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. Second, Staff recommended dPi maintain a bond in the amount no less than \$50 per customer. The Company will report to the Commission on the 10th 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 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.

Third, 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 submit revised financial information including current detailed balance sheets and a detailed income statement

reflecting current year and prior year results of operations for the 12 months ending as of the date of the balance sheet.

dPi REPLY

In its reply, 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. dPi Reply 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 DECISION

1. Should dPi-Teleconnect's Application for a Certificate of Public Convenience and Necessity be denied?
2. If the Commission decides to grant dPi a Certificate, does it wish to impose any condition? Does the Commission desire to impose a Bond? If so, should the Bond be set at a fixed amount of \$5,000, or should the amount of the Bond be maintained at a minimum of \$5,000, or \$50 per customer, whichever is higher? If the Commission desires to adopt a floating bond amount, should dPi report monthly and provide evidence of its increasing bonding amount?
3. Does the Commission desire for dPi to submit revised financial information and current balance sheets after one year of operation?
4. If the Commission decides to award a Certificate, does it wish to restrict it to the GTE, U S WEST and Citizens service areas?
5. Anything else?

Don Howell

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