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BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF)
dPi-TELECONNECT, LLC FOR A) **CASE NO. GNR-T-99-7**
CERTIFICATE OF PUBLIC CONVENIENCE)
AND NECESSITY.) **COMMENTS OF THE**
) **COMMISSION STAFF**
)

COMES NOW the Staff of the Idaho Public Utilities Commission, by and through its attorney of record, Donald L. Howell, II, Deputy Attorney General, and in response to the Notice of Application and Notice of Modified Procedure, Order No. 28090 issued on July 6, 1999, submits the following comments.

BACKGROUND

On April 27, 1999, the Commission received an Application from dPi-Teleconnect, LLC (dPi) for a Certificate of Public Convenience and Necessity (CPCN) to provide local exchange telecommunications services within Idaho. dPi's Application stated that it desired to provide prepaid residential service throughout the State through resale of services provided by the incumbent local exchange carrier. dPi indicated in its Application it primarily provides "local dial tone service to individuals who have had their telephone disconnected, often for non-payment of long distance charges". The Application stated it will provide "flat rate residential service, including extended area service, custom calling services, and any other services available on a

resale basis from the underlying incumbent local exchange carriers.” The Company indicated it would utilize a network of local agents to provide a local presence, supported by a customer service center accessed through an 800 telephone number. dPi indicated it had an interconnection agreement with GTE, and was in negotiations with U S WEST. However, no agreements have been submitted to the Commission for approval by GTE or U S WEST.

STAFF FINDINGS

Staff has reviewed the information provided by dPi in its Application and the additional material provided to support that Application and believes it satisfies the requirements of the Commission’s Rule of Procedure 111, IDAPA 31.01.01.111, and Procedural Order No. 26665 issued November 7, 1996, which sets out the necessary information to be included with an application for a certificate.

dPi, headquartered in Dallas, Texas, is a non-facilities based reseller of telecommunications services. It is a privately held limited liability corporation, organized under the laws of the State of Delaware. It is a new company with limited operations. It claimed to be certificated to provide service in 10 states, with applications pending in 15 states. The Application included an unaudited balance sheet for February 1, 1999, which identified a current cash balance in a checking account of over \$200,000. The only other assets claimed by the Company included a single Dell computer, software that appears to have been developed by the principals of the Company, which it valued at \$100,000, and a loan to an employee. A total of nearly \$18,000 in accounts payable were the only liabilities identified, with a net equity of over \$300,000. The statement identifies a total of \$604,950 in operating balance equity, with a minus \$151,069 in retained earnings and a minus \$121,597 in net income.

The Application identified three individuals, two with previous telecommunications company experience, and the third, with experience in the rental business. The two with telecommunications experience both were associated with U S Telco, another provider of prepaid local service that was acquired by a competitor. The Vice President of dPi, David Pikoff, was the founder and President of U S Telco. U S Telco applied for a CPCN from this Commission in 1998, which was withdrawn before any decision on the Application was reached, because U S Telco had been sold.

Staff has been informed of allegations previously filed against U S Telco and/or its successor before the Colorado Commission. U S Telco was accused by the Colorado Office of Consumer Counsel of failing to provide the services it provided at the rates for which those services were authorized. These alleged violations occurred when Mr. Pikoff was President of U S Telco. That case was dismissed when U S Telco was purchased by Reconnex, and the company(ies) promised to cease doing business in Colorado. A subsequent proceeding in Colorado alleges that U S Telco/Reconnex continued to conduct business in Colorado after their authority to do so had been cancelled.

dPi specifically indicated in its Application it will comply with all Commission rules. It has provided an illustrative tariff with its Application that demonstrates an understanding of tariffing requirements and processes.

The Application includes a request for a certificate that includes all of Idaho, and states it intends to provide services in the territories of U S WEST, GTE and “any other relevant incumbent facilities-based LEC’s”. In the map section of the Application, it only identifies the service areas of U S WEST and GTE. In response to a request for clarification from Staff, the Company indicated that while, at the current time, it only intended to operate in the service areas of U S WEST and GTE, it desired the authority to operate statewide, so that it would not need to amend its certificate when the other areas of the state were opened to resale.

Written comments filed by TDS Telecom and Century Telephone Company addressed this issue, and asked the Commission to take the restrictions imposed upon competition in the rural exchanges into account if a certificate is issued to dPi.

STAFF RECOMMENDATION

Title 61, Section 528 of the Idaho Code states:

The commission shall have power, after hearing involving the financial ability and good faith of the applicant and necessity of additional service in the community to issue said certificate as prayed for, or to refuse to issue the same, or to issue it for the construction of any portion only of the contemplated street railroad, line, plant or system or extension thereof, or for the partial exercise only of said right or privilege, and may attach to the exercise of the rights granted by said certificate, such terms and conditions as in its judgment the public convenience and necessity may require.

This company proposes to provide toll restricted basic service at a price that is nearly three times the cost of that service from U S WEST, and even greater for GTE. The Application indicates the Company's target audience is customers who have had their local service terminated, "often for non-payment of long distance charges", a practice that is in violation of the rules of this Commission and the FCC. This raises questions about how well this company understands the rules of either this Commission or the FCC, and also raises questions about their intent to comply with those rules.

The evidence of financial ability provided by the Company in its Application is marginal at best. It is a new company with no real history. The statements provided were unaudited, and are now nearly 6 months old. With the high costs experienced by any company attempting to start up in this field, especially in as many states as indicated by the Company's Application, any financial cushion the Company may have had at the time the Application was filed, could easily have disappeared.

The targeted customers identified by this company have alternatives to the service provided by this company. The Commission's rules regarding payment arrangements and deposits would allow most of those who have been disconnected for non-payment of local service to obtain service at a lower initial cost than those proposed by this company.

When the benefits of competition are enumerated, this is not the type of company envisioned. Staff does not believe it is in the public interest to provide a certificate to such a company. For these reasons, Staff recommends the Application of dPi - Teleconnect for a Certificate of Public Convenience and Necessity to provide local exchange telecommunications services within the service territories of U S WEST and GTE be denied.

Alternatively, Staff recommends that if the Commission decides to grant this company a certificate, it include the following conditions:

1. Financial security, similar to that required of Max-Tel Communications Inc., in Order No. 27122.
 - a. dPi provide a bond or appropriate surety in the initial amount of \$5,000.00 as a condition precedent to receiving its certificate.
 - b. dPi must maintain a bond level at no less than \$50 per customer. The Company will report to the Commission on or before the 10th day of each month identifying the number of customers it had on the first day of that

month, and providing evidence of any increase in bond level, if required. Failure to provide the report in a timely manner shall be grounds for revocation of the certificate or penalties as specified in *Idaho Code* §§ 61-706 and -707.

c. The Company may petition for a review and reconsideration of the foregoing conditions after one full year of operation in the state of Idaho with the submittal of revised financial information including current detailed balance sheets and a detailed income statement reflecting current year and prior year results of operations for the twelve months ended as of the date of the balance sheet.

2. The certificate be provisional, and revocable upon the first violation of any of the Commission's rules.

RESPECTFULLY submitted this day of July 1999.

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Deputy Attorney General

Technical Staff: Wayne Hart

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