

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Application of dPi)	
Teleconnect, LLC, for Certification as an)	
Eligible Telecommunications Carrier)	Case No. TA-2008-0247

STAFF RECOMMENDATION

COMES NOW the Staff of the Missouri Public Service Commission and states:

1. On January 28, 2008, dPi Teleconnect, LLC, filed an application seeking a designation as an eligible telecommunications carrier for the purpose of receiving federal universal service support under Section 214 of the Telecommunications Act of 1996.
2. The Commission has promulgated detailed rules regarding designation as an ETC found at 4 CSR 240-3.570. It is Staff's opinion that dPi's application does not meet the criteria set forth in the rule and therefore, Staff cannot support dPi's application. The attached memorandum is incorporated herein.
3. Counsel and Staff have contacted dPi with their concerns and counsel for dPi has suggested that he will seek to file an amended application in compliance with Commission rules. However, counsel for dPi advised last week that he has been unable to file the amended application due to illness. Staff suggests that the Commission not act on dPi's application until April 17, 2008, in order to allow dPi to make such filings as dPi finds necessary to amend its application and attempt to comply with the Commission's ETC rules.
4. Once dPi files an amended application, Staff requests 30 days to respond to same. If an amended application is not filed by April 17, 2008, or dPi fails to obtain an extension of that deadline, the Staff recommends the Commission deny dPi's application.

WHEREFORE, Staff recommends that the Commission allow dPi until April 17, 2008, to file an amended application or take action it deems necessary. Thereafter, if dPi has not acted, the Staff recommends that dPi's application be denied.

Respectfully submitted,

/s/ Steven C. Reed #40616

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 3rd day of April, 2008.

/s/ Steven C. Reed

MEMORANDUM

To: Missouri Public Service Commission Official Case File
Case No. TA-2008-0247
Company Name: dPi Teleconnect, LLC

From: Adam McKinnie and Walt Cecil
Telecommunications Department

/s/ John VanEschen / 4-3-2008

/s/ Adam McKinnie / 4-3-2008

Utility Operations Division/Date

/s / Steven C. Reed / 4-3-2008

General Counsel's Office/Date

Subject: Staff Recommendation Regarding dPi Teleconnect, LLC Application for ETC Status

Date: April 3, 2008

Executive Summary

The applicant's application for eligible telecommunications carrier (ETC) status is deficient. The application specifically does not comply with certain requirements of Commission rule 4 CSR 240-3.570 which outlines ETC application criteria. The application also does not address how service will be provided to potential subscribers who are not on the underlying incumbent local exchange carrier's (ILEC's) network. This type of issue was previously raised by the Missouri Commission in a recent application of VCI Company in Case No. CO-2006-0464, *In the Matter of the Petition of VCI Company for Designation as an Eligible Telecommunications Carrier*. In Staff's opinion these concerns need to be adequately addressed. Company officials claim they will eventually amend their application to address these concerns; however to date no action has been taken by the company. Staff recommends the Commission either grant dPi two weeks or some reasonable time period to amend or resubmit its application. If the company fails to amend its application within a reasonable time, then the Staff recommends the Commission simply reject the application for reasons cited below.

Introduction

On January 28, 2008 dPi Teleconnect LLC (dPi), a competitive local exchange carrier (CLEC) certificated in Case No. TA-2000-44, filed an application with the Missouri Public Service Commission seeking designation as an Eligible Telecommunications Carrier (ETC) for the purpose of receiving federal universal service fund support for low income customers exclusively. On January 31, 2008, the Commission entered its *Order Directing Notice and Establishing Intervention Date for Intervention* which established an intervention date of February 20, 2008. No party intervened. On March 6, 2008, the Commission ordered the Telecommunications Department Staff (Staff) to file its recommendation in the instant case no later than April 3, 2008.

Staff originally contacted dPi's attorney on February 15, 2008. Staff relayed concerns regarding the portions of the ETC Rule addressed in this recommendation both through e mail and via telephone

calls. The attorney for dPi has mentioned a willingness to amend the application to address Staff's concerns. However, as of the date of this recommendation, no amendment has been received.

Recently, dPi's attorney has asked for an extension of the procedural schedule in order to file an amended application due to a medical condition. Staff supports a short delay in the process in order to continue to work with dPi's representative.

In lieu of a short delay in the process, Staff presents its recommendation of the instant application as filed.

Discussion

In evaluating the instant application, Staff utilized 4 CSR 240-3.570, *Requirements for Carrier Designation as Eligible Telecommunications Carriers* (ETC Rule) and the Commission's decision in Case No. CO-2006-0464, *In the Matter of the Petition of VCI Company for Designation as an Eligible Telecommunications Carrier* (VCI ETC Case). The following are Staff's concerns with the instant application.

dPi's commitment to consumer privacy protection standards (4 CSR 240-3.570 (2)(A)(8)), referenced in its application paragraph 10 does not reference requirements in 47 CFR 64 Subpart U (47 CFR 64.2001 – 47 CFR 64.2011, Consumer Proprietary Network Information) as indicated in the above referenced rule.

dPi does not indicate it will develop a bill design that can be easily interpreted by its customers or (4 CSR 240-3.570 (3)(A)) nor does it indicate will commit to or provide customer contact information (as required by 4 CSR 240-3.570 (3)(B)).

Apart from the ETC rule, Staff is mindful of the Commission's decision in Case No. CO-2006-0464 in which VCI Company sought ETC designation exclusively for low income support and indicated it would provide service to its subscribers using the same means as that proposed by dPi.

dPi indicates it plans to provide service over resold lines, unbundled network elements and or a combination of resold lines and unbundled network elements which is allowed under federal regulations. However, as dPi will depend entirely on the underlying ILEC's network to provide service to its subscribers it implicitly apparently seeks a waiver of those rules dealing with high cost issues and Commission's rules requiring plans to indicate how it will extend its facilities to qualifying requesting customers and how it will recover the costs of unusual construction or installation charges (4 CSR 240-3.570 (2)(C)). Staff notes in Case No. CO-2006-0464, the Commission indicated on pages 46 and 47 of its *Report and Order* (footnotes omitted),

While the Commission has already concluded that VCI could seek ETC designation for low income support and thus 4 CSR 240-3.570(2)(A)(2) could be deemed inapplicable at the Commission's discretion, AT&T's position regarding 47 U.S.C. Section 214(e)(1) is well taken. This section of the Act expressly mandates that to receive ETC designation a carrier must provide the supported services throughout the service area for which the designation is received. The Commission has the authority to waive 4 CSR 240-3.570(2)(C) and 4 CSR 240-3.570(3)(C)(3); however, the Commission

notes that once again VCI is trying to reside on the outside fringes of what this Commission requires for ETC designation. The purpose of these limited “build-out” requirements directly relates to the carrier’s commitment to provide the supported services in the designated service area.

VCI is making the most minimal commitment to satisfy the “own facilities” requirement for the provision of services. The Commission’s rules offer a cost recovery mechanism for build-out to reach customers making a reasonable request for service, and even offer a mechanism for accounting for the fact that there may be instances where there is no possibility of providing service to given customers. Curiously, at hearing VCI asserted that it believes that AT&T has already extended its network to all customers physically able to receive service in its services area, which negates its reasons or any need for seeking these waivers – assuming, of course, that it intends to follow through on its commitment to provide service to any customer in AT&T’s service area making a reasonable request for service. Because VCI is attempting to dodge all high-cost requirements for constructing any type of network, and dodge the build-out requirements to extend service to other low-income users within the same service area for which it seeks its designation, the Commission concludes that VCI fails to demonstrate an adequate commitment to provide the supported services to the low-income population in Missouri for which it seeks ETC designation.

In fairness to dPi, Staff notes dPi explicitly commits to providing service throughout its ETC designated service area to all customers making a reasonable request for service. However dPi does not indicate how it will fulfill requests for service to potential subscribers who are not on the underlying ILEC’s network. Finally, Staff notes that unlike VCI, as of the filing of its 2006 annual report dPi was actually providing service to subscribers by means of resale and UNEs in Missouri.

Recommendation

Staff recommends the Commission either grant dPi two weeks or some reasonable time period to amend or resubmit its application. If the company takes such action then Staff anticipates filing a subsequent recommendation within 30 days. If the company fails to amend its application within a reasonable time, then the Staff recommends the Commission simply reject the application.

- ☒ The Company is not delinquent in filing an annual report and paying the PSC assessment.
☐ The Company is delinquent: (☐ No annual report ☐ Unpaid PSC assessment. Amount owed:)