

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

**IN THE MATTER OF THE APPLICATION OF)
DPI TELECONNECT, LLC)
FOR DESIGNATION AS AN ELIGIBLE) FILE NO. CO-2010-0054
TELECOMMUNICATIONS CARRIER)**

RESPONSE TO STAFF RECOMMENDATION

Comes now dPi Teleconnect, LLC (“dPi Teleconnect” or “the Company”), by its undersigned counsel, and responds to the Staff Recommendation filed in this proceeding on March 5, 2010, stating as follows:

1. On March 5, 2010, Staff filed its Recommendation in this matter, recommending that the Commission deny dPi Teleconnect’s application for designation as an Eligible Telecommunications Carrier for Universal Service Fund benefits. In support of its Recommendation, Staff filed a memorandum in which it outlined its concerns with dPi Teleconnect’s application. On March 8, 2010, dPi Teleconnect moved for leave to respond to the Staff Recommendation. The Commission granted that motion on March 8, 2010, and allowed dPi Teleconnect until April 7, 2010, to file its response. The pleading filed herewith is that response.

2. In its Recommendation, Staff states the following:

[t]he Staff has reviewed dPi’s *Application*, annual report submissions and data request responses to determine that the Company’s *Application* fails to demonstrate compliance with certain requirements for ETC designation including: the Company’s failure to adequately address the issue of whether it will provide service using at least a portion of its own facilities, and whether the Company will adopt procedures to ensure an applicant meets the eligibility requirements of 4 CSR 240-31.050. The Staff’s *Memorandum* is attached hereto, which includes a status of Company compliance with ETC requirements labeled as Attachment A, and dPi’s responses to Staff’s data requests labeled as Attachment B.

Staff Recommendation, page 2, paragraph 6. Thus, the principle issues which Staff has identified include: (1) dPi Teleconnect’s compliance with the Section 214(e) requirement that an

ETC provider utilize, at least in part, its own facilities to provide service; and (2) dPi Teleconnect’s procedures to ensure that applicants for USF-subsidized service meet the Commission’s eligibility criteria. In this Response, dPi Teleconnect will respond to those concerns, as well as other concerns which Staff has articulated. Attachment A to the Staff Recommendation is a table which lists the criteria which Staff believes an ETC applicant must meet. That table indicates that dPi Teleconnect has met Staff’s test with respect to many elements of the “test” for ETC designation, but has not yet demonstrated compliance to Staff’s satisfaction with all elements. dPi Teleconnect responds herein to the deficiencies which Staff has identified.

3. dPi Teleconnect will respond to the identified deficiencies seriatim. Initially, however, dPi Teleconnect notes that Staff indicates in Attachment A that the Company has complied with the following elements of the analysis for ETC designation, or that the elements do not apply:

4 CSR 240-3.570(3)(D)	not applicable
47 CFR 54.202(a)(1)	in compliance
47 CFR 54.202(a)(2) 4 CSR 240-3.570(a)4	in compliance
4 CSR 240-3.570(2)(A)9	in compliance
47 CFR 54.202(a)(3) 4 CSR 240-3.570(2)(B)	in compliance
47 CFR 54.202(a)(4) 4 CSR 240-3.570(2)(A)10	in compliance
47 CFR 54.202(c) 4 CSR 240-3.570(2)(A)5	in compliance
4 CSR 240-3.570(3)(A)	in compliance
4 CSR 240-3.570(3)(B)	in compliance

4 CSR 240-3.570(3)(E) in compliance
47 CFR 54.405(b) in compliance
4 CSR 240-3.570(2)(A)6
4 CSR 240-3.570(2)(A)8 in compliance
4 CSR 240-3.570(3)(F) in compliance

Responses to Staff-Identified Deficiencies

4. 47 CFR 54.201: “Defines ETC as a carrier providing service using at least a portion of its own facilities.”

Response:

Consistent with the requirements of 47 U.S.C. Section 214(e)(6) and Sections 54.101 through 54.207 of the FCC’s rules in its provision of wireline services, dPi Teleconnect will rely on a combination of Company-owned facilities and resold services which the Company will obtain from an underlying incumbent local exchange carrier (“ILEC”). This will enable dPi Teleconnect to meet the FCC’s test that requires an ETC to provide services, at least in part, through a “combination of its own facilities and resale of another carrier’s services.” 47 U.S.C. § 214(e)(A)(1).

The Company has an approved interconnection agreement with AT&T Missouri (Docket No. IK-2009-0295, Order dated March 20, 2009), pursuant to which dPi Teleconnect is authorized to utilize unbundled network elements or their functional equivalent (“UNEs”) from AT&T Missouri. Although dPi Teleconnect was not provisioning UNEs at the time of the response to data requests in December, 2009, the Company will be provisioning UNE lines in Missouri in the very near future. Due to a change in AT&T’s interconnection procedures, dPi Teleconnect had to notify AT&T of its activation of the interconnection agreement. That notice was supplied to AT&T on April 6, 2010. dPi Teleconnect will not sign up or activate any

Lifeline or Link-Up customers in Missouri until it is actually provisioning switched local exchange telecommunications service through UNEs.

The UNEs through which dPi Teleconnect will provide service constitute facilities of dPi Teleconnect used in the provision of its wireline offering. dPi Teleconnect is able to offer all of the services and functionalities supported by the universal service program, as detailed in Section 54.101(a) of the FCC Rules, throughout its Service Area. 47 CFR 54.101(a).

The Company's facilities through which it provides wireline services are also co-located with other carriers' facilities, and provide dPi Teleconnect the ability to route interexchange services, which is one of the supported services. 47 CFR 54.101(a)(7). Currently, there is no State or federal definition or requirement as to the number of, or the amount of, the supported services that an ETC must offer via its "own facilities." The ETC must provide some portion of the supported facilities through the use of the same, which the Company will upon initiation of UNE-supported service. As the FCC has noted on this point:

We adopt the Joint Board's analysis and conclusion that a carrier need not offer universal service wholly over its own facilities in order to be designated as eligible because the statute allows an eligible carrier to offer the supported services through a combination of its own facilities and resale. Although the Joint Board did not reach this issue, we find that the statute does not dictate that a carrier use a specific level of its 'own facilities' in providing the services designated for universal service support given that the statute provides only that a carrier may use a 'combination of its own facilities and resale' and does not qualify the term 'own facilities' with respect to the amount of facilities a carrier must use. For the same reasons, we find that the statute does not require a carrier to use its own facilities to provide each of the designated services but, instead, permits a carrier to use its own facilities to provide at least one of the supported services.

USF Order FCC 97-57 at para. 169 (emphasis added). Therefore, dPi Teleconnect will meet the federal requirement that an ETC must offer the supported services at least in part through the use of its own facilities.

In affirming its own decisions, the FCC chose to continue to define the term “own facilities” as “*any physical components* of the telecommunications network that are used in the transmission of the services that are designated for support.” 47 CFR § 54.101; 47 CFR § 54.201(e) (emphasis added). The Communications Act’s definition of “network element” matches that of the FCC and defines a “network element” as “a facility or equipment used in the provision of a telecommunications service. Such term also includes features, functions, and capabilities that are provided by means of such facility or equipment, including subscriber numbers, databases, signaling systems, and information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service.” 47 USC § 153(29). All facilities-based carriers – not just ILECs – have and use network elements.¹

5. 47 CFR 54.101 and 4 CSR 240-3.570(3)(C)1: “Ensures certain service features are provided (touchtone, single-party, access to 911, IX service, relay (711), DA, operators, toll limitation).”

Response:

Staff’s comment on compliance status notes that Paragraph No. 8 of the Application responds to this issue, but the requirement is not sufficiently addressed. In addition, the Company’s response to Staff Data Request No. 7 did not resolve the issue of whether the Company will meet this requirement.

dPi Teleconnect will provide the following nine services to its Lifeline and Link-Up customers, as listed in proposed Section 4.1 of the Company’s tariff. These services are provided to each customer and meet the FCC requirements. These services are provided through

¹ Only ILEC network elements can be designated as “unbundled” under Section 251(c)(3) using the criteria in Section 251(d)(2), but all facilities-based carriers, including nondominant wireline carriers, also have “network elements.”

a combination of in-house services, product offerings, or service contracts that dPi Teleconnect has with LECs and vendors.

- Voice grade access to the public switched network
- Local usage
- Dual tone multi-frequency signaling or its functional equivalent
- Single-party service or its functional equivalent
- Access to emergency services
- Access to operator services
- Access to interexchange service
- Access to directory assistance
- Toll limitation for qualifying low-income consumers

6. 47 CFR 54.202(a)(1)(B): “Commit to provide service in a timely manner.”

Response:

dPi Teleconnect commits to provide its Lifeline and Link-Up customers with service in a timely manner. The Company provides customers with local dial tone service utilizing approved contracts with the servicing area Incumbent Local Carrier. Service Purchase Orders are submitted to the LEC using web portals or direct connection to the LEC data systems. Service connection dates are returned to the Company through the same ordering service method and are then provided to our customers. dPi Teleconnect provides timely service based on service standards followed by the providing area LEC. New service is typically activated in 5–7 days. Our statistics currently indicate that new orders in the AT&T areas are being activated in 3.91 days.

7. 47 CFR 54.401(c): “Not collect a deposit from a Lifeline subscriber if consumer voluntarily elects toll limitation service.”

Response:

dPi Teleconnect does not require a customer to pay a deposit if the customer elects toll limitation service.

8. 47 CFR 54.401(e): “Not charge a Lifeline subscriber a monthly number portability charge.”

Response:

dPi Teleconnect will comply with all State and federal tax regulations, and it does not charge its customers a number portability charge.

9. 47 CFR 54.403 and 4 CSR 240-3.570(2)(A)7: “Discounts consistent with federal plan.”

Response:

In the Application dPi Teleconnect has made, the Company is seeking ETC designation for wireline service. The Company will follow all State and federal guidelines relating to the amount of credit given to customers who qualify for Lifeline subsidies. Customers will be eligible to receive up to \$13.50 a month in states where such subsidies are available. The total amount of monthly subsidy depends on the available funds for Tier1, Tier2, State/Company Funding and Tier 3 federal Match. The Tier 1 credit will be limited to the charge received from the servicing LEC for the subscriber line charge. In Missouri the current subsidies which will be credited are as follows:

Tier One:	\$5.30 (waive subscriber line charge)
Tier Two:	\$1.75 (federal discount)
Tier Three:	\$1.75 (one-half of a State’s or carrier’s contribution; \$3.50 Missouri State USF)
Missouri:	Total Credit Given = \$12.30

10. 47 CFR 54.409 and .410 and 4 CSR 240-31.050: “FCC rules state ETC must comply with state verification procedures in states that mandate state Lifeline support.”

Response:

The Company will comply with the individual eligibility provisions of 4 CSR 240-31.050(3). In signing up customers for Lifeline and Link-Up service, the Company will utilize the form approved and issued by the Missouri Universal Service Board and found at the website of the Missouri Universal Service Fund.

Consistent with federal requirements, the Company requires Lifeline and Link-Up customers to certify at the time of service activation and annually thereafter that they: 1) are the head of household; 2) participate in one of the State-approved means tested programs; 3) will be receiving Lifeline-supported services only from dPi Teleconnect; 4) do not currently receive Lifeline support; and 5) will notify dPi Teleconnect in the event that they no longer participate in the qualifying program. The customer will also provide appropriate documentation to verify participation in the relevant program. After reviewing the documentation provided by the customer, the Company's representative will sign the acknowledgement in the MoUSF Form that he/she has personally verified the documentation provided by the customer. The Company will then either return the documentation to the customer or securely dispose of the documentation. In addition, during the service provision process dPi Teleconnect's system compares all previous addresses at which the Company has ever obtained Link-Up benefits and refuses to accept any Link-Up order if the address of the prospective customer is found, even overriding the customer's self-certification of eligibility. This database is updated automatically as new orders are obtained. It includes both wireline and wireless addresses, limiting Link-Up benefits to one time per address. For wireline addresses, the system does not submit any order to USAC unless and until the line in question shows up on an ILEC invoice as an access line without any Link-Up or Lifeline credit from the ILEC.

Should the Company believe that a customer has ceased to become eligible for USF benefits, it will follow the procedures outlined in 4 CSR 240-31.050(6). That is, the Company will send a letter to the customer, separate from the monthly bill, informing the customer that the Company believes that his eligibility for the USF benefits has ended and giving the customer sixty (60) days to provide proof that he continues to be eligible. During that sixty-day period the customer will continue to receive the discounted service.

Discrepancies in Annual Reports

11. On page 3 of the memorandum provided in support of Staff's Recommendation, concerns are expressed about inconsistencies in certain information provided in the Company's 2007 and 2008 Annual Reports. Specifically, Staff notes a discrepancy between line counts stated in the Annual Reports and line counts in the Relay Missouri funding reports.

The amended 2007 and 2008 Annual Reports were examined and discussed at a meeting between Staff and Company representatives. As discussed in that meeting, the Company's amended 2008 Annual Report incorrectly indicates that the number of lines in service was 2607, which is the sum of the line counts at the end of each month during 2008. The correct number of lines for Annual Report purposes is the number as of December 31, 2008, which was 277. In fact, the line counts reported for Relay Missouri purposes were accurate, noting discrete line counts for each month, rather than a cumulative total for the entire year.

The Company is in the process of amending its Annual Reports to reflect the correct measure of line counts, and is reviewing its Relay Missouri filings. Preliminary results of the Relay Missouri investigation indicate that the Company has paid assessments below the threshold amount, and thus may have in fact overpaid its obligation to Relay Missouri. The Company will complete its review of those records and report the results of that review to Staff. However, as the reports shared with Staff indicate, the amounts paid to Relay Missouri were less

than \$500 per year, so any miscalculation in payments would have had no appreciable impact on the Fund.

Wherefore, having fully responded to Staff's Recommendation, dPi Teleconnect requests that the Commission consider this Response in determining that the Company meets all necessary and appropriate requirements for designation as an Eligible Telecommunications Carrier in Missouri, and grant the Company's Application for that designation.

Respectfully submitted,

/s/ Mark P. Johnson
Mark P. Johnson Missouri Bar # 30740
Sonnenschein Nath & Rosenthal LLP
4520 Main, Suite 1100
Kansas City, Missouri 64111
(816) 460-2424
(816) 531-7545 (Fax)
mjohnson@sonnenschein.com

Attorneys for dPi Teleconnect, LLC

CERTIFICATE OF SERVICE

I hereby certify that I have on this 7th day of April, 2010, served a true copy of the foregoing upon the following parties, listed below, in accordance with Commission rules.

Office of the Public Counsel
PO Box 7800
Jefferson City, MO 65102

Jennifer Hernandez
Office of the General Counsel
Missouri Public Service Commission
PO Box 360
Jefferson City, MO 65102

/Mark P. Johnson/