

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

June 16, 2008

IN RE:)
)
APPLICATION OF DPI TELECONNECT, LLC) **DOCKET NO.**
FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND) **08-0025**
NECESSITY TO PROVIDE COMPETING FACILITIES-)
BASED LOCAL EXCHANGE TELECOMMUNICATIONS)
SERVICES)

**INITIAL ORDER GRANTING CERTIFICATE OF
PUBLIC CONVENIENCE AND NECESSITY**

This matter came before the Hearing Officer of the Tennessee Regulatory Authority (the “Authority” or “TRA”) at a Hearing held on May 22, 2008, to consider the *Application for Certificate to Provide Competing Local Exchange Services* (the “*Application*”) filed by dPi Teleconnect, LLC (“dPi” or “Applicant”) on February 11, 2008. In its *Application*, dPi seeks a Certificate of Public Convenience and Necessity (“CCN”) for authority to provide competing local telecommunications services, including facilities-based and resold local exchange, exchange access and interexchange telecommunications services within the State of Tennessee. dPi was previously issued a CCN to provide operator services and/or resell local and interexchange telecommunications services in Tennessee in Docket No. 98-00621.¹

¹ See *In re: Application of dPi Teleconnect, LLC for Certificate of Convenience and Necessity to Provide Operator Services and/or Resell Telecommunications Services in Tennessee*, Docket No. 98-00621, *Final Order* (March 2, 1999).

Legal Standard for Granting Certificate of Public Convenience and Necessity

dPi's *Application* was made pursuant to and considered in light of the criteria for granting a CCN as set forth in Tenn. Code Ann. § 65-4-201 (Supp. 2006), which provides, in pertinent part:

(a) No public utility shall establish or begin the construction of, or operate any line, plant, or system, or route in or into a municipality or other territory already receiving a like service from another public utility, or establish service therein, without first having obtained from the authority, after written application and hearing, a certificate that the present or future public convenience and necessity require or will require such construction, establishment, and operation, and no person or corporation not at the time a public utility shall commence the construction of any plant, line, system or route to be operated as a public utility, or the operation of which would constitute the same, or the owner or operator thereof, a public utility as defined by law, without having first obtained, in like manner, a similar certificate . . .

* * *

(c) After notice to the incumbent local exchange telephone company and other interested parties and following a hearing, the authority shall grant a certificate of convenience and necessity to a competing telecommunications service provider if after examining the evidence presented, the authority finds:

(1) The applicant has demonstrated that it will adhere to all applicable commission policies, rules and orders; and

(2) The applicant possesses sufficient managerial, financial, and technical abilities to provide the applied for services.

* * *

Furthermore, pursuant to Tenn. Code Ann. § 65-5-112 (2004), a competing telecommunications provider is required to file with the Authority (1) a plan containing the provider's plan for purchasing goods and services from small and minority-owned telecommunications businesses; and (2) information on programs that might provide technical assistance to such businesses.

The May 22, 2008 Hearing

On May 5, 2008, dPi filed a *Motion to Appear and Participate Telephonically in Hearing* requesting to participate in the Hearing by telephone. On May 7, 2008 the Hearing Officer granted dPi's request in an *Order Granting Motion to Appear and Participate Telephonically at Hearing*.

Pursuant to Tenn. Code Ann. § 65-4-204 (2004), public notice of the Hearing in this matter was issued by the Hearing Officer on May 7, 2008. No persons sought intervention prior to or during the Hearing. At the Hearing held on May 22, 2008, Mr. Brian Bolinger, Vice President of Legal Affairs for dPi, participated in the Hearing, adopted the pre-filed testimony of Mr. David Dorwart, the President and Chief Executive Officer of dPi, and was subject to examination by the Hearing Officer. In accordance with the *Order Granting Motion to Appear and Participate Telephonically at Hearing*, Ms. Rolande Jones, a licensed Notary Public in good standing in the state of Texas, administered the testimonial oath to Mr. Bolinger and remained physically present with him throughout his examination and testimony. A properly executed *Witness Certification and Affidavit* was received by the Authority on February 26, 2008.

Mr. Bolinger stated that dPi currently offers local exchange services to residential customers in Tennessee, but would like to expand its offerings to include switch local exchange services such as basic service trunks, carrier access, non-switched local services such as private lines and Centrex or like services, and high-capacity services such as Integrated Services Digital Network ("ISDNs"). Mr. Bolinger stated that dPi will comply with all of Tennessee's public interest obligations and responsibilities as mandated in TRA Rule 1220-4-8-.04(3)(b) and (c). Upon conclusion of the presentation of dPi's proof, the Hearing Officer granted dPi's *Application* based upon the following findings of fact and conclusions of law:

I. *dPi's Qualifications*

1. dPi is a corporation organized under the laws of the state of Delaware and was licensed to transact business in Tennessee by the Secretary of State on March 18, 1999.

2. The complete street address of the registered agent for dPi, TCS Corporate Services Inc., is 1900 Church Street, Suite 400, Nashville TN 37203. The telephone number is (972) 488-5500.

3. The *Application* and supporting documentary information existing in the record indicate that dPi has the requisite technical and managerial ability to provide competitive access and transport telecommunications services within the State of Tennessee. Specifically, dPi's senior management team possesses extensive business, technical, operational and regulatory telecommunications experience.

4. dPi has the necessary capital and financial ability to provide the services it proposes to offer.

5. dPi has represented that it will adhere to all applicable statutes, policies, rules and orders of the Authority.

II. *Proposed Services*

dPi is currently offering prepaid local exchange service on a resold basis through agreements with AT&T/BellSouth and Embarq and intends to provide facilities-based local exchange service to residential customers located in non-rural service areas of Tennessee, specifically targeting Nashville, Knoxville, Memphis and Chattanooga. dPi provided documentation which reflects that it served notice of its application to provide competing local telecommunications services to all eighteen Incumbent Local Exchange Carriers in Tennessee.

III. *Permitting Competition to Serve the Public Convenience and Necessity*

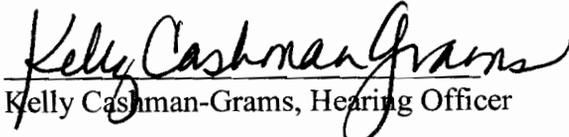
Upon a review of the *Application* and the record in this matter, the Hearing Officer finds that approval of dPi's *Application* would inure to the benefit of the present and future public convenience by permitting competition in the telecommunications services markets in the State and fostering the development of an efficient, technologically advanced statewide system of telecommunications services.

IV. *Small and Minority-Owned Telecommunications Business Participation Plan and Business Assistance Program*

dPi has filed a satisfactory small and minority-owned telecommunications business participation plan, pursuant to Tenn. Code Ann. § 65-5-112 (2004) and the Authority's Rules.

IT IS THEREFORE ORDERED THAT:

1. The *Application for Certificate to Provide Competing Local Exchange Services* filed by dPi Teleconnect, LLC is approved.
2. Any party aggrieved by the Hearing Officer's decision in this matter may file a petition for reconsideration within fifteen days from the date of this Order.
3. This Initial Order shall become a Final Order of the Tennessee Regulatory Authority, if no petition for reconsideration or appeal of this Order is filed prior to the expiration of the fifteen day appeal period.


Kelly Cashman-Grams, Hearing Officer