

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PETITION OF DPI TELECONNECT, LLC FOR)
DESIGNATION AS AN ELIGIBLE) CASE NO.
TELECOMMUNICATIONS CARRIER IN THE) 2008-00234
COMMONWEALTH OF KENTUCKY)

O R D E R

On June 23, 2008, dPi Teleconnect, LLC ("dPi"), a competitive local exchange carrier, filed a petition under 47 U.S.C. § 214(e)(2) seeking designation as an Eligible Telecommunications Carrier ("ETC") to receive federal universal service support for service offered throughout its service area in the state of Kentucky.¹ dPi is seeking only low-income support and is not seeking high-cost support.²

The petition states that: (1) dPi meets all the requirements for designation as an ETC to serve the designated areas in the state of Kentucky;³ (2) dPi requests designation throughout each of the designated areas within its service coverage;⁴ (3) in accordance with 47 U.S.C. § 214(e)(2), dPi is entitled to be designated as an ETC in

¹ dPi requests ETC designation in the service territory of BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky. Petition at 1 and Exhibit 1.

² Id. at 1.

³ Id. at 3.

⁴ Id. at 1.

non-rural wirecenters,⁵ and (4) designation of dPi as an ETC for the designated areas served in Kentucky will serve the public interest.⁶

On July 2, 2008, the Commission set forth a procedural schedule that included opportunity for public comment, discovery, and opportunity to request a hearing. On August 13, 2008, the Commission issued discovery requests to dPi. dPi replied to those requests on August 29, 2008. The procedural schedule is now complete. No request for a public hearing in this matter has been received by the Commission. For these reasons, the Commission finds that this matter is now ripe for a decision.

DISCUSSION

47 U.S.C. § 254(e) provides that "only an eligible telecommunications carrier designated under 47 U.S.C. § 214(e) shall be eligible to receive specific Federal universal service support." Pursuant to 47 U.S.C. § 214(e)(1), a common carrier designated as an ETC must offer and advertise the services supported by the federal universal service mechanisms throughout the designated service area.

47 U.S.C. § 214(e)(2) provides state commissions with the primary responsibility for performing ETC designations. Pursuant to 47 U.S.C. § 214(e)(2), the Commission may, with respect to an area served by a rural telephone company, and shall, in all other cases, designate more than one common carrier as an ETC for a designated service area, consistent with the public interest, convenience, and necessity, so long as the requesting carrier meets the requirements of 47 U.S.C. § 214(e)(1). Also, before

⁵ Id. at 8.

⁶ Id.

designating an additional ETC for an area served by a rural telephone company, the Commission must determine that the designation is in the public interest.

As outlined under 47 C.F.R. § 54.201(d), an ETC petition must contain the following: (1) a certification that the petitioner offers or intends to offer all services designated for support by the Commission pursuant to 47 U.S.C. § 254(c); (2) a certification that the petitioner offers or intends to offer the supported services "either using its own facilities or a combination of its own facilities and resale of another carrier's services"; (3) a description of how the petitioner "advertise[s] the availability of [supported] services and the charges therefore using media of general distribution"; and (4) if the petitioner meets the definition of a "rural telephone company" pursuant to 47 U.S.C. § 153(37), the petitioner must identify its study area, or, if the petitioner is not a rural telephone company, it must include a detailed description of the geographic service area for which it requests an ETC designation from the Commission.

OFFERING THE SERVICES DESIGNATED FOR SUPPORT

dPi has demonstrated through the required certifications and related filings that it now offers, or will offer upon designation as an ETC, the services supported by the federal universal service mechanism. dPi certifies that it now provides or will provide throughout its designated service area the services and functionalities enumerated in 47 C.F.R. § 54.101(a). dPi has also certified that, in compliance with 47 C.F.R § 54.405, it will make available and advertise Lifeline service to qualifying low-income consumers.

ADVERTISING SUPPORTED SERVICES

dPi has demonstrated that it satisfies the requirement of 47 U.S.C. § 214(e)(1)(B) to advertise the availability of the supported services and the charges therefor using

media of general distribution. In its petition, dPi states that it currently advertises the availability of its services, and will do so for each of the supported services on a regular basis in newspapers, magazines, television, and radio, in accordance with 47 C.F.R. § 54.201(d)(2).

NON-RURAL STUDY AREAS

The Federal Communications Commission ("FCC") has previously found designation of additional ETCs in areas served by non-rural telephone companies to be *per se* in the public interest based upon a demonstration that the requesting carrier complies with the statutory eligibility obligations of 47 U.S.C. § 214(e)(1).⁷

OFFERING THE SUPPORTED SERVICES USING A CARRIER'S OWN FACILITIES

dPi's petition contains a unique request in that this carrier states that it is only seeking support for the provision of Lifeline and Link-Up services and, specifically, is not requesting high-cost support. Typically, ETC petitions before this Commission state that a carrier is seeking an ETC designation so it may receive federal universal service support for a combination of both low-income and high-cost support. dPi states that its target market is Lifeline and Link-up customers and it will offer all of the services outlined under 47 U.S.C. § 254(c) through facilities obtained as unbundled network elements ("UNEs"), or the equivalents thereof. dPi does not have its own network infrastructure within the state of Kentucky. It provides services to its customers by reselling service purchased from other carriers and through UNEs, which allow for the

⁷ See, e.g., Celco Partnership d/b/a Bell Atlantic Mobile Petition for Designation as an Eligible Telecommunications Carrier, Memorandum Opinion and Order, CC Docket No. 96-45, 16 FCC Rcd 39 (2000).

end-to-end switching and delivery of telephone calls. dPi contends that its use of UNEs, including loops, as defined in 47 U.S.C § 251, or the equivalents, commingled with 47 U.S.C. § 271 elements,⁸ meets the federal regulation definition of “facilities”.⁹

As discussed previously in this Order, 47 C.F.R. § 54.201(d) defines the requirements that a carrier must fulfill in order to be granted ETC status. Under section (d), the carrier must provide the supported services by “either using its own facilities or a combination of its own facilities and resale of another carrier’s services (including the services offered by another eligible telecommunications carrier).” The next section, 47 C.F.R. § 54.201(e), defines the term “facilities” to mean “any physical components of the telecommunications network that are used in the transmission or routing of the service that are designated for support pursuant to subpart B of this part.” 47 C.F.R. § 54.201(f) provides that “the term ‘own facilities’ includes, but is not limited to, facilities obtained as unbundled network elements pursuant to part 51 of this chapter, provided that such facilities meet the definition of the term ‘facilities’ under this subpart.”¹⁰

dPi has requested to become an ETC but is only seeking authorization to receive low-income support and is not requesting high-cost support. The Commission has not found any evidence that FCC, either by statute or regulation, restricts the certification and designation of ETC status to carriers who agree to multiple areas of support. Although dPi’s petition is unique, there is no basis for denying the request for ETC

⁸ This combination of UNEs and loops would be provided pursuant to an agreement between dPi and another carrier. See 47 U.S.C. § 271.

⁹ See footnote 9 of the petition at 4.

¹⁰ See e.g. 47 C.F.R. § 51.307, 47 C.F.R. through 47 C.F.R. § 51.318, which outline the requirements for carrier access to and use of unbundled network elements.

designation simply on the basis that it seeks only one form of support. For the purposes of being designated with ETC status, the FCC explicitly prohibits a carrier from being designated as eligible to receive federal universal service funding if that carrier offers the supported services solely through resale.¹¹ dPi has stated that it provides service to Kentucky telephone customers through resale and through the purchase or lease of UNEs owned by other carriers.¹² As the FCC defines a carrier's purchase or lease of UNEs as a satisfactory method of having its "own facilities" under 47 C.F.R. § 54.201(f), and having considered all other requirements for the petition, the Commission finds that dPi's request for an ETC designation should be granted. However, as dPi has certified the use of universal service funding to one specific area, the Commission will only grant an ETC designation limited to low-income support. Should dPi seek to receive high-cost funds, it will be required to file certification with this Commission under 47 U.S.C. § 254(e) in order to be granted extension of its ETC designation.

The Commission, having reviewed the evidence of record and having been otherwise sufficiently advised, HEREBY ORDERS that:

1. dPi is designated as an ETC for the entire service area of AT&T Kentucky, a non-rural incumbent local exchange carrier.
2. Accordingly, during the current certification period, dPi shall be eligible to receive federal Universal Service Fund support only for low-income support, as provided herein.

¹¹ 47 C.F.R. § 54.201(i).

¹² Petition at 2, 3, 4.

3. dPi shall offer low-income universal support services to consumers in its service area.

4. dPi shall offer these services using its own facilities or a combination of its own facilities and resale of another carrier's services, including the services offered by another ETC.

5. Pursuant to 47 C.F.R. § 54.201(i), dPi shall be precluded from offering universal service support exclusively through the resale of another carrier's services.

6. dPi shall advertise the availability of and charges for these services using media of general distribution.

7. As provided herein, dPi shall file a separate petition for the extension of its ETC designation for other areas of universal service support if it desires such additional support in the future.

8. By September 1, 2009, and by each September 1 thereafter, dPi shall make its annual certification filing in Administrative Case No. 381.¹³

9. A copy of this Order shall be served upon the FCC and the Universal Service Administrative Company.

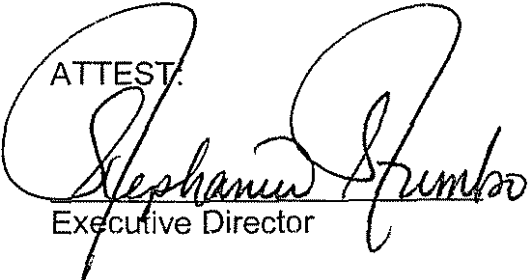
¹³ Administrative Case No. 381, A Certification of the Carriers Receiving Federal Universal Service High-Cost Support.

Done at Frankfort, Kentucky, this 14th day of November, 2008.

By the Commission

Chairman Armstrong Abstains.

ATTEST.


Executive Director

Case No. 2008-00234