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February 5, 2010

RECEIVED

FEB 08 2010

PUBLIC SERVICE COMMISSION

Via FedEx

Mr. Jeff R. Derouen
Executive Director
Kentucky Public Service Commission
211 Sower Blvd.
Frankfort, Kentucky 40602-0615

2010 - 00048

Re: dPi Teleconnect, LLC – Petition for Supplemental Authority

Dear Mr. Derouen:

Please find enclosed for filing an original and ten copies of the Petition of dPi Teleconnect, LLC. for Supplemental Authority in the Commonwealth of Kentucky in regards to its Eligible Telecommunications Carrier status.

Please do not hesitate to call me if you have any questions relating to this matter. Thank you for your usual courtesy and assistance.

Sincerely,

WATKINS LUDLAM WINTER & STENNIS, P.A.

Stanley Q. Smith

SQS/ssb
Enclosure

cc: Thomas G. O'Roark

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FEB 08 2010

PUBLIC SERVICE COMMISSION

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

dPi TELECONNECT, LLC	**IN RE:**	**PETITION OF DPI TELECONNECT, LLC FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER IN THE COMMONWEALTH OF KENTUCKY**
Case No. 2008-00234		

2010-00048

PETITION OF DPI TELECONNECT, LLC FOR SUPPLEMENTAL AUTHORITY

dPi Teleconnect, LLC ("dPi" or "Company") hereby asks the Kentucky Public Service Commission (the "Commission") to amend and clarify the Order issued in this Case on November 14, 2008, designating dPi as an "Eligible Telecommunications Carrier" in the commonwealth of Kentucky. These proposed amendments do not materially affect the Commission's designation decision but will clarify the service offered by dPi and how those services are provided. dPi incorporates herein by reference the information previously filed with the Commission in its original Application in this Case No. 2008-00234.

All correspondence, communications, pleadings, notices, orders and decisions relating to this Application should be addressed to:

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dPi, in addition to providing the supported services in its designated area via wireline modality, would like to begin providing the supported services via a Low Income only wireless telecommunications offering beginning as soon as possible in 2010, upon approval by this Commission.

Under dPi's proposed Low Income wireless offering, each eligible wireless customer will receive a handset at no cost to the subscriber. Because dPi has already been certified as an ETC throughout the non-rural service area of AT&T for purposes of receiving low income universal service support, the new wireless offering will supplement and not detract from the provision of supported services in such area. dPi is not seeking to expand its ETC designation beyond that geographic area for which it has already received certification, and dPi will continue to provide the supported services using a combination of its own facilities and resale of other carriers' services while advertising the availability of those services using media of general distribution. dPi seeks confirmation from the Commission that it does not need further designation to obtain the Low Income support for its wireless customers receiving service in its ETC designated area.

Consistent with the requirements of 47 C.F.R. § 54.201(d)(1), dPi, in its provision of wireless service, will rely on a combination of resold services which the Company will obtain from underlying wireless providers that currently operate owned networks, and Company-owned facilities allowing dPi to meet the FCC's test that require an ETC to provide services, at least in part, through a "combination of its own facilities and resale of another carrier's services".[1]

dPi obtains services through CMRS service providers that allow the Company to supplement the services provided through Company owned facilities. Through these arrangements, dPi 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

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[1] See Section 214(e)(1)(A) of the Telecommunications Act of 1996 ("the Act") 47 USC § 214(e)(1)(A).

designated service area[2], thereby allowing the Company to provide service to its customers throughout the geographic area served by non-rural provider AT&T Kentucky.

The Company's own facilities are co-located with other carriers facilities, and provide dPi the ability to route interexchange services, which is one of the supported services.[3] 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 merely must provide some portion of the supported facilities through the use of the same, which dPi does. Therefore, dPi is able to meet the federal requirement that an ETC must offer the supported services at least in part through the use of its own facilities. Additionally Federal law does not require any particular level of facilities. The FCC stated in the USF Order that:

> 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.[4]

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"[5] (emphasis added). The 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 as features,

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[2] See 47 CFR § 54.101(a).

[3] *See* 47 CFR § 54.101(a)(7).

[4] USF Order FCC 97-157 at para. 169 (emphasis added).

[5] *See* 47 CFR § 54.101; 47 CFR § 54.201(e).

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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."[6] All facilities-based carriers – not just incumbent LECs – have and use network elements.[7]

DESIGNATION OF dPi AS A WIRELESS ETC IN THE COMMONWEALTH OF KENTUCKY WOULD SERVE THE PUBLIC INTEREST.

"Upon request and consistent with the public interest, convenience and necessity"[8] the Commission shall "designate more than one common carrier as an eligible telecommunications carrier for a service area designated"[9] by the Commission. In doing so, the Commission "shall find that the designation is in the public interest".[10] FCC Rules require that an ETC application demonstrate that designation would be consistent with the public interest, convenience and necessity and that prior to designating an ETC pursuant to section 214(e)(6), the Commission "shall consider the benefits of increased consumer choice, and the unique advantages...of the applicant's service offering".[11] Pursuant with this requirement, dPi provides the following information that clearly demonstrates that dPi's inclusion of the Company's wireless service in its designation as an ETC is consistent with the public interest, convenience and necessity providing consumers with increased competitive choice through the offering of a unique service.

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[6] *See* 47 USC § 153(29).

[7] Only ILEC network elements can be designated as "unbundled" under § 251(c)(3) using the criteria in § 251(d)(2), but all facility-based carriers, including nondominant wireline and wireless carriers also have "network elements."

[8] 47 C.F.R. § 54.201(c).

[9] *Id.*

[10] *Id.*

[11] 47 C.F.R. § 54.202(c).

The FCC has determined that while "[d]esignation of competitive ETCs promotes and benefits consumers…by increasing customer choice"[12], designation must include "an affirmative determination that such designation is in the public interest regardless of whether the applicant seeks designation in an area served by a rural or non-rural carrier."[13]

Although dPi is seeking ETC designation in areas that are typically served by wireline carriers, inclusion of its wireless service will provide a valuable alternative to the existing telecommunications services currently available in these areas and will promote competition and facilitate the provision of advanced communications services to low-income residents of Kentucky.

The public interest benefits of inclusion of the Company's wireless service include larger local calling areas (as compared to traditional wireline carriers), the convenience and security afforded by mobile telephone service, the opportunity for customers to control cost by receiving a preset amount of monthly airtime at no charge, the ability to purchase additional usage in the event that included usage has been exhausted, 9-1-1 service and, where available, E9-1-1 service in accordance with current FCC requirements.

The inclusion of toll calling as a part of dPi's wireless offering, along with the fact that service is provided without a monthly recurring charge, will allow consumers to avoid the risk of becoming burdened with large and unexpected charges for toll calling and unexpected overage charges.

Inclusion of the Company's wireless service will also provide the incumbent LECs, serving the same area, an incentive to improve their existing networks and service offerings in order to remain competitive, which will result in improved consumer services and will also

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[12] 47 U.S.C. § 214(e)(2)

[13] See Federal-State Joint Board on Universal Service. 20 FCC Rcd 6371, ¶ 42 (2005)

benefit consumers by allowing dPi to offer the services designated for support at rates that are "just, reasonable, and affordable."[14]

The Benefits of Increased Competitive Choice

The FCC has also identified factors that are to be considered in determining whether designation of additional ETCs will serve the public interest such as whether the benefits of an additional ETC would outweigh potential harms. These factors include: 1) the benefits of increased competitive choice; and 2) the unique advantages and disadvantages of the applicant company's service offerings.[15] dPi affirms that its ETC designation meets these criteria as described below.

As provided by the Telecommunications Act of 1934, the availability of basic telecommunications services to low-income consumers is critical to the provision of public health, safety, and other services. In addition, the FCC has long acknowledged the benefits to consumers of being able to choose from a variety of telecommunications providers and the resulting variety of telecommunications services they provide.[16] This is of particular interest in cases where wireless providers, such as dPi, seek to provide service as an alternative to those of the traditional ILEC. In the *Highland Cellular*[17] case, the FCC recognized and affirmed that some households may not have access to the public switched network as provided by the incumbent local exchange carrier. The availability of a wireless competitor benefits consumers, who routinely drive long distances to attend work or school or to accomplish everyday tasks such

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[14] See 47 U.S.C. § 254(b)(1).

[15] See 47 U.S.C. § 54.202(c).

[16] See e.g., Specialized Common Carrier Services, 29 FCC 2d 870 (1971).

[17] See Federal-State Joint Bd. on Universal Serv., Highland Cellular, Inc., *Memorandum Opinion and Order*, 19 F.C.C.R. 6422 (2004).

as shopping or attending community and social events. The wireless service, offered by dPi, will provide these consumers with a convenient and affordable alternative to traditional telecommunications service that can be used while at home and away from home.

The Lifeline and Link Up service offered by dPi also provides important benefits that are especially needed by low-income Kentucky residents in this time of economic downturn. As the Commission is aware, the Dow Jones Average, a primary indicator of the health of the economy, has been at a low ebb for a considerable period of time. Thus, the savings accounts, upon which many depend on for emergencies and retirement, have significantly eroded. Since the recession began, approximately 8 million jobs have been lost nationally.[18] By January of 2010, the number of unemployed persons increased by 14.8 million, and the unemployment rate rose to 9.7 percent.[19] As of January, 2010 Kentucky's unemployment rate was reported to be 9.4 percent[20], which has a significant impact on many residents of the state. The availability of a mobile telephone will be critical to the efforts of the unemployed as they search for other employment opportunities. Without a regular paycheck, wireless telephone service would become a luxury beyond the means of many of those persons.

dPi's Lifeline and Link Up programs will enable thousands of residents to obtain wireless service which would otherwise be unavailable to them. The dire economic circumstances indicate that low-income individuals, now more than ever, can greatly benefit from the advantages offered by dPi's Lifeline and Link Up service, allowing those, adversely impacted by the failing economy or job loss, to have access to a free wireless service to assist in emergency situations, facilitate job search efforts, and to maintain contact with family members.

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[18] *Source* United States Department of Labor Bureau of Labor Statistics.

[19] *Id.*

[20] *Id.*

It is also a commonly accepted fact that in today's market, qualified Lifeline and Link Up customers view the portability and convenience of wireless service not as a luxury, but as a necessity. Mobile service allows children to reach their parents, wherever they may be, allows a person seeking employment the ability to be contacted by potential employers, and provides end users with the ability to contact emergency service providers, regardless of location.

Added together, dPi expects these additional competitive advantages to create an atmosphere that will cause many qualified consumers to select the Company's wireless Lifeline and Link Up service in lieu of the more traditional wireline or wireless services.

The Unique Advantages of dPi's Service Offerings

dPi will offer a unique, easy to use, competitive and highly affordable wireless telecommunications service, which it will make available to qualified consumers who either have no other service alternatives or who choose a wireless prepaid solution in lieu of a more traditional wireline or wireless services.

Qualified consumers will have the ability to acquire a wireless service that includes a free handset, local and long distance calling, and several features, all without the requisite credit check, deposit, and contract requirements of the more traditional wireline and wireless service providers. Through the Link Up program, dPi will be able to provide consumers with a reduction in the cost of the fees associated with the connection of service. Because dPi's service is provided with no credit check, deposit requirement, minimum service periods, or early termination fees the service will be an attractive and affordable alternative to qualified low-income consumers without regard to age, residency, or credit worthiness. In short, dPi's Lifeline Service Plan offers qualified Lifeline customers a combination of wireless access and quality service at rates that are just, reasonable, and affordable.

dPi Wireless Lifeline Plan

Lifeline is a component of one of four separate federal universal service fund mechanisms[21] know as the "low-income support mechanism".[22] and is defined in 47 C.F.R. § 54.401 as "a retail local service offering" "available only to qualified low-income consumers" "for which qualifying low-income consumers pay reduced charges as a result of application of the Lifeline support amount" "that includes the services or functionalities enumerated in § 54.401(a)(1) through (a)(9)", which the Company will use to "[m]ake available Lifeline service...to qualifying low-income consumers".[23] Under the Company's Wireless Lifeline plan, dPi will provide qualified Lifeline customers who reside in the Commonwealth of Kentucky with sixty-eight (68) minutes of free anytime local and long distance minutes each month and will use all low-income universal service support to allow the Company to provide the service with no monthly recurring charge ensuring that the consumer receives 100% of all universal service support funding for which the Company will seek reimbursement of USF Lifeline support necessary to provide the free minutes of airtime above.

The plan will also include a free handset and the following Custom Calling features:

(1) Caller ID;
(2) Call Waiting;
(3) Call Forwarding;
(4) 3-Way Calling;
(5) Voicemail.

Unused minutes will roll over from month-to-month and "fresh" minutes will be automatically loaded to the currently available minutes of the account of each customer on a monthly basis month. In the event that all airtime has been used, Lifeline customers will have the capability of purchasing additional airtime replenishment cards in $20.00, $30.00, and $60.00

[21] 47 C.F.R. § 54.8(a)(1); *See* "Definitions" at second sentence.

[22] 47 C.F.R. § 54.8(a)(1); *See* "Definitions" at first sentence.

[23] 47 C.F.R. §§ 54.401(a), 54.401(a)(1), 54 401 (a)(2), 54.401(a)(3), 54.405(a).

denominations. Airtime replenishment cards will be made available at retail outlets frequented by low income customers throughout the Designated Service Area.

Wireless handsets will be delivered at no charge to qualifying customers, service will be activated, and the requisite number of minutes will be added upon certification of the customer for Lifeline and Link-Up.

dPi Link Up Plan

Like Lifeline, Link Up is also a component of one of four separate federal universal service fund mechanisms[24] known as the "low-income support mechanism",[25] and is defined in 47 C.F.R. § 54.411 as an "assistance program for qualifying low-income consumers, *which an eligible telecommunications carrier shall offer as part of its obligations set forth in §§ 54.101(a)(9) and 54.101(b)*"[26] [27](emphasis added). Assistance is in the form of a "reduction in the carrier's customary charge for commencing telecommunications service for a single telecommunications connection" and "shall be half of the customary charge or $30.00, whichever is less".[28] Consistent with FCC requirements, dPi will use Link Up support to reduce the company's "customary charge for commencing service" by "half of the customary charge..."[29], which will result in a reduction of the Company's activation charge by $30.00.

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[24] 47 C.F.R. § 54.8(a)(1); *See* "Definitions" at second sentence.

[25] 47 C.F.R. § 54.8(a)(1); *See* "Definitions" at first sentence.

[26] 47 C.F.R. § 54.411(a). The plain reading of this definition is that an ETC is obligated to provide this discount to qualifying low-income consumers. In addition, § 54.413(a) stipulates that carriers, that provide Link Up discounts, "may receive universal service support reimbursement for the revenue they forgo in reducing their customary charge for commencing telecommunications service..."

[27] § 54.101(a)(9) is the specific obligation to offer Toll Limitation for qualifying low-income consumers while § 54.101(b) is the requirement that an "eligible telecommunications carrier must offer each of the" services designated for support "in order to receive federal universal service support". As a part of its application, dPi has demonstrated that it has the capability to and will offer all of the supported services specified in § 54(a)(1) – (9).

[28] 47 C.F.R. § 54.411(a)(1).

[29] 47 C.F.R. § 54.411(a)(1).

Qualifying subscribers will have the option of deferring the reduced activation charge over a twelve month period with no interest, thus allowing subscribers to obtain service without being required to pay any up front fees to activate service with dPi.

Designation of dPi as an ETC Will Benefit Low Income Consumers in the Commonwealth of Kentucky.

Inclusion of the Company's wireless service in its ETC designation will make Lifeline and Link Up discounts available to many more Kentucky residents. This is particularly true in the wireless field, where, to DPi's knowledge, there are a limited number of wireless providers offering USF-subsidized service and even fewer offering the same with absolutely no monthly recurring charge to the end user. As such, the service for which dPi seeks ETC status is unique.

Inclusion of dPi wireless service will serve the public interest by increasing participation of qualified consumers in the Lifeline and Link Up programs thereby contributing to an overall increase in the number of Kentucky residents receiving Lifeline and Link Up and an increase to the amount of federal USF dollars benefiting Kentucky residents.

Finally, inclusion of dPi wireless service will serve the public interest by furthering the extensive role that dPi believes it will play in the provision of communications service to low-income consumers, transient users, and other consumers who, due to the restrictive credit criteria, deposit requirements, and long-term commitments of wireline and traditional wireless service providers, are off network and, without any viable alternative, are likely to remain so.

Inclusion of dPi Wireless Service Will Impose a Negligible Burden on the FUSF

dPi reiterates that it is applying for ETC designation solely for the purpose to provide Lifeline and Link Up discounts to qualified low-income consumers and to seek reimbursement for the same and will not seek or accept high cost support. As with its wireline service, inclusion of dPi's wireless service will not pose any adverse effect in the growth in the high cost portions of the USF, nor will it create or contribute to an erosion of high cost funding from any rural or non-rural telephone company.

The FCC reaffirmed this position when it recently stated that "the potential growth of the fund associated with high-cost support distributed to competitive ETCs" is not relevant to carriers seeking support associated with the low-income program.[30] Accordingly, total low-income support, for 2005, accounted for only 12.4 percent of the total distribution of the universal service fund, with high-cost accounting for over 58 percent of the total.[31]

The FCC also recognized that the total effect of additional low-income only ETC designations would have a minimal impact on the fund when it stated that "any increase in the size of the fund would be minimal and would be outweighed by the benefit of increasing eligible participation in the Lifeline and Link Up programs, furthering the statutory goal of providing access to low-income consumers."[32]

It is also vital to recognize that in the case of Lifeline and Link Up support, an ETC receives USF support *only* for the customers it obtains. In the scenario where a competitive ETC obtains a Lifeline customer from another ETC, only the "capturing" ETC provides Lifeline discounts and as a result, only the "capturing" ETC receives support reimbursement.

In addition, all providers are required to contribute a portion of the interstate revenue received from its customer to the Universal Service Fund. In accordance with current federal regulations, dPi will make contributions based on that portion of its revenue that is determined to be interstate. As such, approving dPi as an ETC will actually create contributions to the USF that were previously non-existent.

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[30] Petition of TracFone Wireless, Inc. for Forbearance from 47 U.C.S. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i), CC Docket No. 96-45, Order, 20 FCC Rcd 15095 (2005) (TracFone Forbearance Order) at ¶ 17.

[31] 2007 Wireline Competition Bureau, FCC, Trends in Telephone Service, Table 19.1 and Chart 19.1.

[32] TracFone Forbearance Order, at ¶ 17.

dPi Has Internal Controls in Place to Prevent Subscribers from Receiving More Than One Lifeline Discount

Consistent with Federal requirements, dPi requires customers to self-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; 4) do not currently receive Lifeline support; and 5) will notify dPi in the event that they no longer participate in the qualifying program. Verification of continued eligibility is accomplished by contacting a statistically valid sample of the Company's Lifeline customers.

dPi also adopts by reference the Order's Exhibit A which consists of wire centers that comprise the non-rural service area of AT&T.

dPi therefore asks that this Application be granted and that the Commission grant dPi Communications, Inc., a supplemental ETC designation for purposes of providing low income support for its wireless service.

dPi TELECONNECT, LLC

By: ______________________
Stanley Q. Smith
Attorney

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CERTIFICATE OF SERVICE

I, STANLEY Q. SMITH, do hereby certify that as required by Rule 1.04 (d) of the Commonwealth of Kentucky's Public Service Commission's Policy and Procedures, I have this day caused to be filed with the Commission by United States Mail the original and ten (10) copies of the foregoing Petition to the following:

Ms. Stephanie L. Stumbo
Executive Director
Public Service Commission
Commonwealth of Kentucky
P. O. Box 615
Frankfort, KY 40602

This the 5th day of February, 2010.

Stanley Q. Smith

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