

Decision 00-05-031 May 15, 2000

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of dPi-Teleconnect, L.L.C.'s  
Application for Approval of an Indirect Change  
in Control from DPI Holdings, Inc. to Rent-Way,  
Inc.

Application 00-02-028  
(Filed February 14, 2000)

**OPINION**

**1. Summary**

This application seeks approval under § 854 of the Pub. Util. Code of a transfer of control of dPi-Teleconnect, L.L.C. (dPi or Applicant), a reseller of telecommunications services. The application is unopposed. The application is granted.

**2. Description of Applicant and Purchaser**

dPi, a Delaware limited liability corporation, was authorized to provide resold interexchange (toll) and local exchange telecommunications services in California pursuant to Decision (D.) 99-12-048,<sup>1</sup> issued on December 16, 1999. Its California Public Utilities Commission identification number is U-6276-C. dPi

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<sup>1</sup> 1999 Cal. PUC Lexis 760, at \*29. In that decision, the Commission gave authorization to a number of carriers as a group. The permission granted was limited, and prohibited dPi (and others) from engaging in any construction of buildings, towers, conduits, poles, or trenches. For those carriers seeking authorization for more extensive facilities-based authority involving actual construction, the Commission deferred such authorization pending resolution of further California Environmental Quality Act review. The Commission required carriers not seeking full facilities-based authority requiring a negative declaration to file a new application at a later date when or if the carrier seeks expanded facilities-based authority. All of these conditions will continue to apply after the transaction we approve here.

submitted its financial statements to the Commission with its resale application approved in D.99-12-048.

According to a Form 10-K Rent-Way filed with the U.S. Securities and Exchange Commission for the fiscal year ended September 30, 1999, Rent-Way is the second largest operator in the rental purchase industry with 1,114 stores in 41 states. Rent-Way is a publicly traded Pennsylvania corporation.

### **3. Nature of Application**

dPi seeks approval of a change in corporate ownership whereby Rent-Way will purchase the entire minority interest of 40% held in dPi by Koch Ventures, Inc. (Koch), and 20% of dPi from the remaining dPi shareholder, dPi Holdings Inc. dPi Holdings will retain a 40% interest in dPi, with Rent-Way assuming a 60% interest after the proposed transaction. In a letter dated May 3, 2000,<sup>2</sup> dPi clarified that dPi Holdings has given Rent-Way an option to purchase an additional 10% interest. dPi alleges that Rent-Way is not a public utility subject to regulation by this Commission.

dPi alleges that its management and operations will remain unchanged by the transaction. Because dPi only recently received Commission approval to operate in California, it has no customers; thus, dPi alleges, the transaction will not adversely affect customers.

dPi did not attach the Rent-Way/dPi stock purchase agreement to its application. However, it alleges its intent that the transaction be consummated as soon as possible. We take official notice of an article that appeared on the Reuters news service on April 10, 2000 and is attached to this decision as Appendix B. That article discusses an agreement between "Rent-Way/dPi

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<sup>2</sup> The letter is attached hereto as Appendix A.

Teleconnect" with Western Union. Because the article contained language suggesting that the proposed Rent-Way/dPi transaction had already been consummated, the assigned Administrative Law Judge asked dPi for clarification. In its May 3, 2000 letter (Appendix A hereto), dPi clarified that while it has a pre-existing relationship with Rent-Way, that relationship is one of agency only. The transaction for which dPi seeks approval in this application is being held in escrow until all regulatory approvals are secured. No changes in management, staff headquarters or board of directors will occur until after such approval. Thus, we are satisfied that the transaction at issue has not been consummated without our approval.

#### **4. Public Interest**

dPi states that the proposed purchase will benefit dPi and its projected California customers because it will increase the capital available for dPi's resale operations, enhance its proposed operations, service and product offerings. Accordingly, dPi alleges that the change in ownership is in the public interest.

#### **5. Discussion**

##### **Requirements of Pub. Util. Code § 854**

Pub. Util. Code § 854 requires Commission authorization before a company may "merge, acquire, or control . . . any public utility organized and doing business in this state. . . ." The purpose of this and related sections is to enable the Commission, before any transfer of public utility property is consummated, to review the situation and to take such action, as a condition of the transfer, as the public interest may require. *San Jose Water Co.*, 10 CRC 56 (1916).

The reorganization here will transfer a majority interest in dPi to a large, publicly traded company. California customers will see no adverse effect of the

transaction as dPi has not yet begun service in California. Although the proposed transaction results in a change in the ultimate ownership of dPi, it does not involve a change in the name under which the company operates, or a change in the manner in which it provides service in California.

There have been no protests to this application.

### **Category and Need for Hearings**

In Resolution ALJ 176-3034, dated March 2, 2000, the Commission preliminarily categorized this proceeding as ratesetting, and preliminarily determined that hearings were not necessary. We uphold these preliminary determinations.

The application is granted, subject to the terms and conditions set forth below.

This is an uncontested matter in which the decision grants the relief requested. The application requests expedited approval of the application. The Executive Director may grant noncontroversial applications by nondominant telecommunications carriers to transfer assets or control under Pub. Util. Code §§ 851-854. (D.87-10-035; D.86-08-057.)

### **Findings of Fact**

1. Notice of this application appeared in the Commission's Daily Calendar of February 25, 2000.
2. Applicant seeks approval pursuant to Pub. Util. Code § 854 of a corporate reorganization that results in a change in the ultimate ownership of dPi such that Rent-Way may own up to 70% of dPi.
3. dPi is authorized to provide resale interexchange (toll) and local exchange telecommunications services in California under the identification number U-6276-C.

4. There will be no change in name, current services or rates provided by dPi as a result of the transfer of control.

### **Conclusions of Law**

1. The proposed transfer of control is not adverse to the public interest.
2. This proceeding is designated a ratesetting proceeding; no protests have been received; no hearing is necessary.
3. The application should be approved, effective immediately.
4. The new dPi should be authorized to operate under the certificate of public convenience and necessity, U-6276-C.

## **O R D E R**

### **IT IS ORDERED that:**

1. dPi-Teleconnect, L.L.C. (dPi) and Rent-Way, Inc. (Rent-Way) are authorized pursuant to § 854 of the Pub. Util. Code to enter into the transaction, as more fully described in the application and its exhibits, by which Rent-Way will acquire a controlling interest in dPi.
2. dPi shall notify the Director of the Commission's Telecommunications Division in writing of the transfer of authority, as authorized herein, within 10 days of the date of this order. A true copy of the instruments of transfer shall be attached to the notification.
3. dPi shall file new tariffs incorporating any changes in name, rates, services and management authorized in the transfer transaction.
4. dPi and Rent-Way shall make all books and records available for review and inspection upon Commission staff request.
5. We take official notice of the Reuters article attached hereto as Appendix B for the purpose of establishing that dPi has a pre-existing agency relationship

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with Rent-Way. That relationship is separate and distinct from the transfer of control dPi seeks in this application, which transaction will not be consummated until dPi secures all necessary regulatory approvals.

6. The authority granted herein is effective immediately.

7. The certificate of public convenience and necessity granted to dPi in Decision (D.) 99-12-048 is transferred to the newly restructured dPi entity, which is authorized to continue use of the utility identification number U-6276-C.

8. The new dPi shall be bound by all conditions imposed in D.99-12-048.

9. Application 00-02-028 is closed.

This order is effective today.

Dated May 15, 2000, at San Francisco, California.

/s/ WESLEY M. FRANKLIN

WESLEY M. FRANKLIN  
Executive Director

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## APPENDIX A

**MAXWELL, BAKER & McFATRIDGE, P.C.**

ATTORNEYS AT LAW  
2525 SOUTH SHORE BLVD., SUITE 410  
LEAGUE CITY, TEXAS 77573

KYLE L. DICKSON  
Shareholder  
kdickson@maxwellbakerc.com

TELEPHONE (281) 521-2000  
FACSIMILE (281) 521-2010

GALVESTON OFFICE (409) 765-7446  
FACSIMILE (409) 762-8519

May 3, 2000

Via Facsimile (415) 703-1723

The Honorable Sarah Thomas  
Administrative Law Judge  
Public Utilities Commission  
505 Van Ness Avenue, Room 5012  
San Francisco, CA 94102

Re: Application of dPi-Teleconnect, L.L.C. for Approval of Indirect Transfer of Control  
A. 00-02-028

Dear Judge Thomas:

The purpose of this letter is to supplement my previous letter of April 27, 2000 and to correct an error in my e-mail to you. The above referenced application accurately reflects the percentage ownership of the parties involved in this transaction. Rent-Way, Inc. ("Rent-Way") is acquiring Koch's forty percent (40%) interest in dPi-Teleconnect, L.L.C. ("dPi") and twenty percent (20%) of DPI Holdings, Inc.'s interest. In addition, DPI Holdings has given Rent-Way an option to purchase an additional ten percent (10%) at the time of closing which they have indicated they would exercise. All of the agreements have been signed by the parties but no assignments or L.L.C. interest certificates have been redeemed and/or reissued.

We, as dPi-Teleconnect, L.L.C.'s attorneys have not accepted any certificates of L.L.C. interest for redemption nor have we issued any new certificates of L.L.C. interest reflecting a change in ownership. "Escrowed" is a term that merely reflects the parties' agreement which they intend to fulfill at the time all of the regulatory approvals have been obtained. As of today, all required state regulatory consents have been obtained with the exception of California.

Rent-Way, Inc. is a publicly traded company, and is the nation's second largest retail rent-to-own furniture chain. Prior to entering into an agreement to acquire an interest in dPi, Rent-Way and dPi commenced an agency relationship in which Rent-Way acts as dPi-Teleconnect's agent for accepting orders for new telephone services and points of presence for payment. Under that agreement, Rent-Way, as dPi's agent, would accept order forms and payments for new service



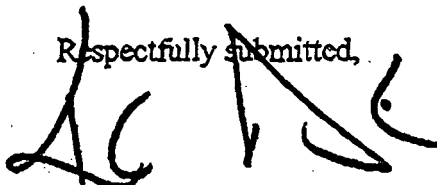
The Honorable Sarah Thomas  
Administrative Law Judge  
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and would remit those to dPi for provisioning and would also accept subsequent payments for service. Thus, in the Reuters news article which you sent me, Mr. Morgenstern refers to the "dPi team and their pre-paid telephone service . . ." on the one hand, and to Rent-Way agent locations on the other hand - - "We have nearly 800 agent locations . . ." In that regard, Mr. Morgenstern further states: "Our goal of building a national agent network for our prepaid local phone service product . . ." is accurate because Rent-Way is building that agent network for the dPi phone product which Rent-Way will control once it takes over dPi. Meanwhile, you should remain aware that regardless of the noted agency arrangement, dPi's phone service customer is also a Rent-Way furniture rental customer.

As indicated, the agency relationship between dPi and Rent-Way existed prior to an agreement to acquire any interest in dPi and would continue in the absence of effectuating that agreement. Be assured that the entities are not acting as one. dPi maintains its headquarters in Dallas, Texas and has its own staff, management, executives and board of directors. The companies share no common employees, office space and/or any other facilities. Rent-Way's headquarters are located in Pennsylvania.

I hope that this clarifies any confusion created by the Reuters' article. The parties are eager to close the transaction and request expeditious Commission action. If you have any questions regarding this matter, please call me at (281) 521-2000.

Respectfully submitted,



Kyle L. Dickson

cc: Peter Casciato

Via Facsimile (415) 291-8165

(END OF APPENDIX A)

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## **APPENDIX B**

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What you should have paid:

\$10

GO

Symbols or Names:

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### 04/10 10:51 RentWay /dPi Teleconnect Agreement in Principal with Western Union <RWY.N>

RentWay /dPi Teleconnect Agreement in Principal with Western Union

Access to 30,000 Western Union Agent Outlets for dPi, Teleconnect

ERIE, Pa., April 10 /PRNewswire/ -- Rent-Way, Inc. (NYSE: RWY)/dPi Teleconnect, LLC announced that dPi Teleconnect has agreed in principal to terms with Western Union which will provide access to all 30,000 Western Union locations for payments from dPi Teleconnect customers for pre-paid local phone service. "This alliance will expand our agent base to a national presence overnight," said Dave Dorwart, President and CEO of dPi Teleconnect.

"Our goal of building a national agent network for our pre-paid local phone service product has been significantly furthered by this alliance," said William E. Morgenstern, Chairman and CEO of RentWay, Inc. "We are in the process of reviewing our marketing plans to determine where the best demographics exist to begin building our customer base. Our first efforts will be in markets where Western Union complements our existing agent base."

dPi Teleconnect offers pre-paid local phone service without regards to prior credit history or payment history with a local phone company. The service is paid for in advance and

requires no long-term obligation on the part of the customer.

RentWay, Inc. acquired a 49% interest and an option to acquire an additional 21% interest in dPi Teleconnect, in January of this year. The company anticipates it will close on the 21% option sometime before the end of June 2000.

Sales for dPi Teleconnect in 1999 were approximately \$2.5 million. For the month of March, reported sales hit a monthly record of nearly \$1.4 million. "We are pleased with the growth rate we are experiencing at dPi," said Morgenstern. "The dPi team has kept up with a very rapid roll out pace of their pre-paid telephone service this quarter. We have nearly 800 agent locations activated and have grown to in excess of 25,000 customers in an extremely short period of time."

Rent-Way is the second-largest operator of rental-purchase stores in the USA. Rent-Way rents quality, brand name merchandise such as home entertainment equipment, furniture and major appliances through 1088 stores operating in 41 states.

This news release contains certain forward looking statements within the meaning of Section 27(A)(i) of the Securities Act of 1933 and Section 21E(i)(1) of the Securities Exchange Act of 1934 that involve known and unknown risks, uncertainties and other factors that may cause actual results to be materially different from any future results, performance or achievements expressed or implied by such statements. Such factors include dPi's ability to manage its growth and to continue to grow at a fast rate and dPi's ability to enter into a definitive agreement with Western Union on the terms described above. Additional factors are set forth in Rent-Way's Annual Report on Form 10-K for the year ended September 30, 1999 and Quarterly Report on Form 10-Q for the quarter ended December 31, 1999.  
SOURCE Rent-Way Inc.

-0- 04/10/2000

/CONTACT: William E. Morgenstern, CEO of Rent-Way Inc.,  
800-736-8929/

/Web site: <http://www.rentway.com> / -- CGM032 -- 2317  
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