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Via Electronic Filing Only

October 21, 2022

Ms. Carmen Diaz,
Acting Board Secretary
New Jersey Board of Public Utilities
44 South Clinton Avenue, 9th Floor
P.O. Box 350
Trenton, New Jersey 08625-0350
Carmen.Diaz@bpu.nj.gov

Re: I/M/O the Verified Petition of DSCI, LLC for Approval to Participate in Financing Arrangements **BPU Docket No. TF22060372**

Dear Ms. Diaz:

The New Jersey Division of Rate Counsel (“Rate Counsel”) submits comments in the above referenced Petition filed by DSCI, LLC (“DSCI” or “Petitioner”), with the New Jersey Board of Public Utilities (“Board”) on June 3, 2022, requesting Board approval to participate in Financing Arrangements up to an aggregate principal amount of \$708 million, entered into by its Parent, U.S. TelePacific Corp., dba TPx Communications (“TPx”), a wholly owned subsidiary of U.S. TelePacific Holdings Corp., (“TPx Holdings”) and a wholly owned subsidiary of Tango Private Holdings II, LLC (“Tango”), an affiliate of Siris Capital Group, LLC, which is a leading investment firm focused in technology telecommunications.¹ Rate Counsel requests acknowledgment of this electronic filing for its record.² Rate Counsel has no objection should the Board after its review grant approval.

¹ Petition, p. 1. Petitioner further notes that further TPx Holdings ownership information may be reviewed in Board Docket No. TM19091153. Id., *fn* 1.

² Pursuant to e-filing procedures approved by the Board under Docket No. Docket No. EO20030254, dated March 19, 2020.

Petitioner and Transaction

DSCI, LLC is authorized to provide by Board Order dated December 17, 2014, under Docket TE14091038, facilities-based and resold business communications and managed hosting services to small and medium customers throughout the U.S. including resold local exchange and long distance in New Jersey.³

Petitioner notes Board approval of the new financing requested totals approximately up to \$708 million and would increase the aggregate amount of debt above the up to \$680 million previously approved by the Board in 2017 under docket TF17050556.⁴ The requested new financial arrangements totaling \$708 million in increased aggregate funding encompasses “a term loan credit facility, a revolving credit facility, and an incremental term loan that total an aggregate principal amount of up to approximately \$700 million (“New Financing Arrangements”), and includes continued payments in existing financing arrangements with a reduced aggregate principal amount of approximately \$8 million (“Existing Financing Arrangements”).⁵ The New Financing “will extend TPx’s debt maturity profile, lowering interest expenses, and adding cash to the balance sheet for working capital.”⁶ DSCI seeks authorization to provide a guaranty and grant a security interest in its assets to secure the full amount of the Financing Arrangements.⁷ The filing further indicates that TPx and its current and future subsidiaries will also provide a guaranty of the obligations owing under the Financing

³ Petition, p. 1. *See also* filing under Board dockets TE14091038 and TF17050556.

⁴ *Id.*, p. 3.

⁵ *Id.*, pp. 2-3.

⁶ *Id.*, p. 3.

⁷ *Id.*, p. 4.

Arrangements.⁸ Petitioner states the financing will be used to extend TPx’s debt maturity profile, lowering interest expenses, and adding cash to the balance sheet for working capital, and is necessary to respond to market conditions, and future acquisitions, financing and other business opportunities.⁹

Petitioner asserts, the financing will not impair DSCI’s ability to provide its services, will be transparent to DSCI’s customers as service will not be disrupted, or cause customer confusion or inconvenience.¹⁰ Additionally, the filing confirms Petitioner does not have an employee pension plan, but the financing is not expected to disturb employees’ existing rights in any other retirement benefits provided by Petitioner, as required under N.J.S.A. 48:3-7.¹¹ Lastly, Petitioner notes the new financing provides greater financial resources allowing TPx and DSCI to become more effective competitors in the communications industry and promotes the public interest.¹²

Under New Jersey law prior Board approval of any encumbrance or mortgage of a telecommunications service provider is required otherwise, the transaction is void.¹³ As the Petitioner’s assets will secure the debt, in part, the Board’s approval must be based on its satisfaction that the debt is made according to law and that the debt serves a beneficial purpose

⁸ Petition, p. 4.

⁹ Id., pp. 3-4.

¹⁰ Id., p. 5.

¹¹ Id., p. 4.

¹² Id..

¹³ *N.J.S.A. 48:3-9, et seq.* If the Board finds that after investigation there is doubtful benefit to the petitioner, the Board may withhold approval. *See, Interstate Telephone & Telegraph Co. v. Board of Public Utility Commissioners*, 84 *N.J.L.* 184 (Sup. Ct. 1913), wherein the court interpreted the ‘approval of the purpose’ provision to empower the Board with the authority to withhold approval if in its judgment the purpose of the debt incurred will have doubtful benefit to the applicant.

and is in the public interest.¹⁴ *N.J.S.A. 48:3-9, N.J.S.A. 48:3-10 and N.J.A.C. 14:1-5.9.* Petitioner asserts that the financing contemplated is not contrary to the public interest, and will allow it to become a more effective competitor in the communications industry.¹⁵ Further, Petitioner has provided additional information in response to Board Staff’s data requests in connection with the Board’s review of the new financing.¹⁶

Rate Counsel relies on Petitioners’ assertions that the extended new financing will promote increased competition in New Jersey’s telecommunications market and yield the benefits of enhanced quality service offerings for residential and business customers in our State. Accordingly, Rate Counsel has no objection should the Board determine after its financial review of the additional information provided that approval is prudent and warranted.

Thank you for your attention to this matter.

Very truly yours,

BRIAN O. LIPMAN, ESQ.,
DIRECTOR
NJ DIVISION OF RATE COUNSEL

/s/ Maria T. Novas-Ruiz
Maria T. Novas-Ruiz,
Assistant Deputy Rate Counsel

MNR/td
c: Service List

¹⁴ Petition, pp. 4-5.

¹⁵ *Id.*, p. 4.

¹⁶ On September 20, 2022, Petitioners provided responses to Board Staff’s data requests, with copy to Rate Counsel.