

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
LIGHTYEAR COMMUNICATIONS, INC.)
For An Amended Certificate of)
Authority, or in the Alternative,)
a Separate Certificate of Authority)
to Provide Facilities-Based and)
Resold Local Exchange Services in)
Hawaii.)
_____)

DOCKET NO. 03-0208

DIV. OF CONSUMER ADVOCACY
DEPT. OF COMMERCE AND
CONSUMER AFFAIRS
STATE OF HAWAII

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RECEIVED

DECISION AND ORDER NO. 20429

Filed Sept. 10, 2003
At 2:00 o'clock P.M.

Karen Higashi
Chief Clerk of the Commission

ATTEST: A True Copy
KAREN HIGASHI
Chief Clerk, Public Utilities
Commission, State of Hawaii.

K. Higashi

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Docket No. 03-0208
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DECISION AND ORDER

I.

LIGHTYEAR COMMUNICATIONS, INC. (fka, Unidial Communications, Inc.) (hereinafter referred to as "Applicant") is an authorized reseller of telecommunications services in the State of Hawaii ("State"), pursuant to a commission-issued certificate of authority ("COA").¹ Applicant was issued COA-99-0151 by the commission.

By application filed on July 22, 2003, Applicant seeks the issuance of an amended COA to provide competitive facilities-based and resold local exchange telecommunications services in the State. In the alternative, Applicant requests the issuance of a new and separate COA to allow Applicant to provide competitive facilities-based and resold local exchange telecommunications services in the State.

¹See Decision and Order No. 17400, filed on December 15, 1999, in Docket No. 99-0151.

The commission will treat the instant application as a request to amend its existing COA to provide intrastate facilities-based telecommunications services, consistent with the intent of Hawaii Revised Statutes ("HRS") § 269-7.5(d) and Hawaii Administrative Rules ("HAR") chapter 6-80.²

A copy of the application was sent to the Department of Commerce and Consumer Affairs, Division of Consumer Advocacy ("Consumer Advocate"). By position statement filed on August 14, 2003, the Consumer Advocate does not object to commission approval of the application, subject to certain qualifications.

II.

Applicant, currently a telecommunications reseller, seeks to expand its authority to include the provision of facilities-based services in the State. Specifically, Applicant intends to initially provide intrastate telecommunications services in the State as a facilities-based provider utilizing the unbundled network element platform of the incumbent local exchange carrier.

²HRS § 269-7.5 governs the issuance of certificates of public convenience and necessity ("CPCN") to public utilities. Subsection (d) authorizes the commission to amend a CPCN upon application of the certificate holder. Pursuant to the commission's telecommunications rules, chapter 6-80, HAR, effective June 3, 1996, telecommunications carriers are now issued COAs or certificates of registrations by the commission, in lieu of CPCNs. See HAR §§ 6-80-17 and 6-80-18.

Applicant represents that it will file and maintain tariffs in the same manner and form as required of other competitive local exchange carriers, and will meet the minimum standards required by the commission, including quality of service and billing standards.

III.

A.

Request for Amended COA

Upon review of the application, the commission makes the following findings pursuant to HAR § 6-80-18(a):

1. Applicant possesses sufficient technical, financial, and managerial resources and abilities to provide the proposed services;
2. Applicant is fit, willing, and able to properly perform the telecommunications services and to conform to the terms, conditions, and rules prescribed or adopted by the commission; and
3. Applicant's proposed telecommunications services are in the public interest.

Accordingly, the commission concludes that Applicant should be granted an amended COA to operate as both a facilities-based carrier and reseller of intrastate telecommunications services in the State.

However, based on the commission's review of Applicant's proposed tariff, the commission agrees with the Consumer Advocate that Applicant's proposed tariff requires revisions as follows:

1. Amend Section 2.1.4.C (Original Page 16) to be consistent with the requirements set forth under HAR § 6-80-102(d). Specifically, the tariff should be clarified to indicate that if the overpayment by a customer is \$25 or more, Applicant must offer the customer a choice of a cash refund.
2. Section 2.6.4.B (Original Page 38) should be amended to indicate a toll-free telephone number that can be used by a customer 24 hours a day, 7 days a week, for trouble reports, and during normal business hours, for all other complaints in accordance with HAR § 6-80-107(1). This type of information should also be referenced on the customers' bills.
3. Section 2.6.6.A (Original Page 39) should be amended to be consistent with the requirements set forth under HAR § 6-80-106(e). Specifically, the tariff should be clarified to indicate that basic service to residences may not be discontinued for nonpayment of: (1) Interisland, interstate, or international service; (2) Flexibly priced services; (3) Fully or partially competitive

services; or (4) Any telecommunications service offered by a third party.

4. Section 2.7.2.H (Original Page 45) should be deleted.
5. Because there is no "Tariff No. 2" attached to the instant application, the words or phrase "Tariff No. 2" in Section 5.9 (Original Page 65) and Section 7.4 (Original Page 81) should be clarified and corrected, if necessary.
6. "Hawaii Public Utilities Board" stated in Section 6.1 (Original Page 66) should be corrected to state "Hawaii Public Utilities Commission."
7. Section 6.2.1.B and 6.2.2.B (Original Pages 67 and 68) should be amended to define or delineate "Zone 1," "Zone 2," and "Zone 3."

B.

Request for Waivers

In its application, Applicant also requests waivers of certain provisions of our telecommunications laws, rules and regulations. Applicant contends that HAR § 6-80-135 "allows for the waiver of applicable provisions of § 269-34, HRS including" the following:

1. The requirement that "a separate, formal application for certification be filed with the commission for each new telecommunications service the telecommunications carrier propose to offer;"

2. The requirement that a "telecommunications carrier maintain its financial records in conformance with the uniform system of accounts, allowing the carrier to maintain financial records in accordance with generally accepted accounting principles;"
3. The requirement that "all records and books pertaining to the telecommunications carrier's intrastate operations be located in Hawaii, allowing instead the carrier to promptly provide copies of its out-of-state records and books to the commission upon the commission's request;" and
4. The requirement that subjects "telecommunications carriers to rate of return regulation and to public and contested case hearing on proposed rate increases, except that waiver of this requirement does not apply to basic service in high cost areas provided by carriers receiving state or federal universal service fund subsidy or to noncompetitive services[.]"

Applicant mistakenly relies upon HAR § 6-80-135, which provides, in relevant part, the following: "[T]he commission may not exempt or waive a telecommunications carrier or telecommunications service from: (1) Any provisions of § 269-34, HRS; or (2) Any provisions of this chapter that implement § 269-34, HRS." HAR § 6-80-135(a) (emphasis added). The four requirements specifically set forth above are already waived

under HAR § 6-80-136, and, thus, express commission approval of Applicant's waiver request is not necessary.

C.

Local Exchange Directories

Applicant further requests that it not be required to publish local exchange directories. Commission approval of this request is again not necessary as it is consistent with HAR § 6-80-63.

IV.

THE COMMISSION ORDERS:

1. Applicant's COA is amended to allow it to operate as a facilities-based carrier and reseller of intrastate telecommunications services in the State.

2. As the holder of a COA, Applicant shall be subject to all applicable provisions of HRS chapter 269, HAR chapters 6-80 and 6-81, other applicable State laws and commission rules, and any orders that the commission may issue from time to time.

3. Applicant shall file its tariffs in accordance with HAR §§ 6-80-39 and 6-80-40. Applicant's tariffs shall comply with the provisions of HAR chapter 6-80. In the event of a conflict between any tariff provision and State law, State law shall prevail.

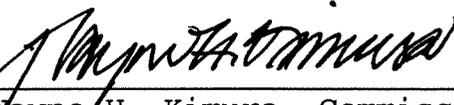
4. Applicant shall conform its new or amended tariff to the applicable provisions of HAR chapter 6-80 by, among other things, incorporating the required tariff revisions set forth in section III of this decision and order. An original and eight copies of the new or amended tariff, with the noted revisions, shall be filed with the commission, and two additional copies shall be served on the Consumer Advocate. Applicant shall ensure that the appropriate issued and effective dates are reflected in its tariffs.

5. Applicant shall surrender its existing COA, COA-99-0151 to the commission, and an amended COA reflecting its expanded operating authority, granted by this decision and order, shall be issued.

DONE at Honolulu, Hawaii this 10th day of September, 2003.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By 
Wayne H. Kimura, Commissioner

APPROVED AS TO FORM:


Kris N. Nakagawa
Commission Counsel

By 
Janet E. Kawelo, Commissioner

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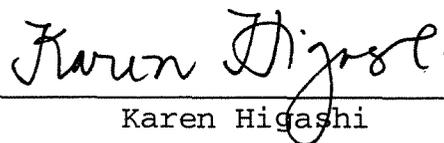
CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 20429 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
DIVISION OF CONSUMER ADVOCACY
P. O. Box 541
Honolulu, HI 96809

LIGHTYEAR COMMUNICATIONS, INC.
ATTN: LINDA HUNT, MANAGER OF REGULATORY AFFAIRS
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Louisville, KY 40223

ROBIN NORTON, CONSULTANT
TECHNOLOGIES MANAGEMENT, INC.
P. O. Box 200
Winter Park, FL 32789



Karen Higashi

DATED: September 10, 2003