

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)
LIGHTYEAR COMMUNICATIONS, INC.)
and LIGHTYEAR NETWORK SOLUTIONS,)
LLC)
For Grant of Authority to)
Consummate a Corporate)
Reorganization.)

DOCKET NO. 03-0413

DECISION AND ORDER NO. 20820

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

Filed Feb. 26, 2004

At 10:00 o'clock A.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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DECISION AND ORDER

I.

Introduction

LIGHTYEAR COMMUNICATIONS, INC. ("Lightyear") and LIGHTYEAR NETWORK SOLUTIONS, LLC ("New Lightyear") (collectively "Petitioners"), by a joint petition filed on December 11, 2003, request commission approval or such authority, to the extent necessary, to permit Petitioners to consummate a series of transactions through which Lightyear will emerge from bankruptcy and transfer substantially all of its assets to New Lightyear ("Transfer of Assets").¹ Additionally, Petitioners seek

¹Petitioners represent that after the Transfer of Assets, New Lightyear will operate as a certificated carrier in Hawaii, and will provide telecommunications services to all current Lightyear customers. Accordingly, we will also treat Petitioners' joint petition as a request to transfer Lightyear's certificate of authority ("COA") to New Lightyear.

commission approval to allow New Lightyear to engage in a financial transaction whereby it will secure additional operating capital for future operations concurrent with the proposed transfer of assets ("Financial Transaction"). The joint petition ("Petition") is filed, pursuant to Hawaii Revised Statutes ("HRS") § 269-19 and Hawaii Administrative Rules ("HAR") Chapter 6-61.

Petitioners served copies of the Petition on the DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY ("Consumer Advocate"). The Consumer Advocate, through its position statement filed on February 3, 2004, indicates that it does not object to the approval of the Transfer of Assets and the Financial Transaction, described above, subject to certain qualifications, discussed below.

II.

Background

A.

Overview of Subject Entities

Lightyear is a privately held corporation organized and existing under the laws of Kentucky with principal offices located at Louisville, Kentucky.² Presently, Lightyear is a wholly-owned

²On September 10, 2003, the commission, among other things, granted Lightyear an amended COA to provide intrastate telecommunications services in the State of Hawaii ("Hawaii" or "State") as a facilities-based carrier and as a reseller. Decision and Order No. 20429, filed on September 10, 2003, in Docket No. 03-0208. See also, Decision and Order No. 17400, filed on December 15, 1999, in Docket No. 99-0151 (granting Lightyear a COA to initially operate as a reseller of intrastate telecommunications services in the State).

subsidiary of Lightyear Holdings, Inc., also a privately held corporation.

New Lightyear is a wholly-owned subsidiary of LY Acquisition, LLC ("Acquisition"). Both New Lightyear and Acquisition are Kentucky limited liability companies located at Louisville, Kentucky.

B.

Description of Proposed Transactions

Petitioners propose to complete a series of transactions. Regarding the Transfer of Assets, New Lightyear, through an asset purchase agreement with New Lightyear's parent, Acquisition, will acquire substantially all of the assets of Lightyear, and thus become the provider of telecommunications services to current customers of Lightyear.³ Acquisition agreed to an estimated purchase price of \$33.5 million through a combination of cash payment and debt assumption of the debtors to satisfy the creditors of Lightyear. The proposed Transfer of Assets was approved in Lightyear's bankruptcy proceeding before the United States ("U.S.") Bankruptcy Court for the Western District of Kentucky on October 28, 2003.

Regarding the proposed Financial Transaction, Acquisition intends to enter into a variety of financing arrangements at the time of the consummation of the proposed transfer of assets.

³Petitioners represent that Lightyear currently has 157 long distance customers in Hawaii.

The Financial Transaction may involve Acquisition acquiring a bank loan of approximately \$14 million secured by a guarantee of the assets of New Lightyear (including the proposed transfer of assets from Lightyear).

Petitioners contend that the Transfer of Assets and the Financial Transaction will serve the public interest and that it will not result in the change of Lightyear's current rates, terms and conditions of telecommunications services in Hawaii. Specifically, Petitioners represent the following:

1. "New Lightyear holds the managerial, technical and financial qualifications to acquire the assets of Lightyear;"
2. The proposed transfer of assets and the proposed financial transaction "will benefit competition in the Hawaii telecommunications market by enabling Lightyear to resume its growth as an effective competitor in the State;" and
3. The proposed transfer of assets and the proposed financial transaction "will assure that there is no disruption of service and will be virtually transparent to existing customers of Lightyear."

C.

Consumer Advocate's Position

As stated in its February 3, 2004 position statement, the Consumer Advocate "recognizes the entry of many telecommunications service providers in the Hawaii market." The Consumer Advocate further asserts that "[t]he market place, it is assumed, will then serve to mitigate any traditional public utility regulatory concerns regarding the proposed transactions" described above. As such, the Consumer Advocate states that it does not object to

commission approval of the proposed Transfer of Assets and the proposed Financial Transaction, pursuant to HRS § 269-19, provided the following documents are submitted to the commission and the Consumer Advocate for their records:

1. A copy of the Attachments for directors' and officers' names, balance sheet, and income statement referenced in Lightyear's 2002 PUC Annual Report of Resellers and Various Telecommunications Services;
2. A copy of the U.S. Bankruptcy Court's approval of Lightyear's asset sale;
3. A list and description of all Hawaii assets included in the asset purchase agreement;
4. A revised copy of the customer notification letter that includes information on any changes in customer billing;
5. A copy of Lightyear's revised tariff to reflect the new company name, Lightyear Network Solutions, LLC; and
6. A copy of Acquisition's executed financing arrangements that will encumber New Lightyear's assets, including the newly acquired assets from Lightyear, pursuant to HAR § 6-61-105(c)(2).

III.

Discussion

A.

Proposed Transfer of Assets and Financial Transaction

HRS § 269-19 provides, in relevant part, that no public utility corporation shall sell, lease, assign, mortgage, or otherwise dispose of the whole or any part of its road, line, plant, system, or other property necessary or useful in the performance of its duties to the public, "without first having secured from the public utilities commission an order authorizing it so to do." HRS § 269-17 requires a public utility to obtain the commission's approval before issuing stocks, bonds, notes, and other evidence of indebtedness payable at periods of more than twelve (12) months. Moreover, HRS § 269-7(a) authorizes the commission to examine the condition of each public utility, its financial transactions, and "all matters of every nature affecting the relations and transactions between it and the public or persons or corporations." Thus, the commission has jurisdiction to review proposed financial transactions of the parent entity of a regulated public utility under HRS § 269-7(a). The Transfer of Assets and the Financial Transaction including, without limitation, the transfer of Lightyear's Hawaii assets to New Lightyear and the bank loan issued by Acquisition of approximately \$14 million secured by a guarantee of the assets of New Lightyear, falls under our purview under HRS §§ 269-19, 269-17 and 269-7(a).

Nonetheless, HRS § 269-16.9(e) also permits us to waive regulatory requirements applicable to telecommunications providers

if we determine that competition will serve the same purpose as public interest regulation. Specifically, HAR § 6-80-135 permits us to waive the applicability of any of the provisions of HRS chapter 269 or any rule, upon a determination that a waiver is in the public interest.

Upon review of the record in this docket, particularly Petitioners' representations, we find the following: (1) much of the telecommunications services currently provided by Lightyear is competitive; (2) Lightyear is a non-dominant carrier in Hawaii; (3) the proposed Transfer of Assets and the proposed Financial Transaction are consistent with the public interest; and (4) competition, in this instance, will serve the same purpose as public interest regulation.

Based on the foregoing, the commission, on its own motion, will waive the requirements of HRS §§ 269-19, 269-17 and 269-7(a), to the extent applicable to the proposed Transfer of Assets and the proposed Financial Transaction (except for the transfer of Lightyear's COA to New Lightyear, which will be separately addressed below) described in the Petition, pursuant to HRS § 269-16.9(e) and HAR § 6-80-135.⁴ Similarly, we

⁴At the same time, the commission will continue to examine a utility's application or petition on a case-by-case basis to determine whether the applicable requirements of HRS §§ 269-19, 269-17 and 269-7(a) or any other related provision governing utility transactions, should be waived. The commission's waiver in this decision and order shall not be construed by any utility as a basis for not filing an application involving similar transactions or circumstances.

also find it in the public interest to waive the applicability of HAR §§ 6-61-101 and 6-61-105 to the extent that the Petition in this docket is not in compliance with those rules. Thus, for purposes of considering this Petition, we will not require the information and/or documents normally required upon the filing of such Petition.

We also agree, nonetheless, with the Consumer Advocate that certain information should be provided to the commission and the Consumer Advocate subsequent to the issuance of this decision and order. Therefore, we will adopt the Consumer Advocate's recommended conditions in their entirety and direct Petitioners to submit the following information within thirty (30) days of the date of this decision and order:

1. A copy of the Attachments for directors' and officers' names, balance sheet, and income statement referenced in Lightyear's 2002 PUC Annual Report of Resellers and Various Telecommunications Services;
2. A copy of the U.S. Bankruptcy Court's approval of Lightyear's asset sale;
3. A list and description of all Hawaii assets included in the asset purchase agreement;
4. A revised copy of the customer notification letter that includes information on any changes in customer billing;

5. A copy of Lightyear's revised tariff to reflect the new company name, Lightyear Network Solutions, LLC; and
6. A copy of Acquisition's executed financing arrangements that will encumber New Lightyear's assets, including the newly acquired assets from Lightyear, pursuant to HAR § 6-61-105(c)(2).

B.

Transfer of Lightyear's COA to New Lightyear

HRS § 269-19 also specifically provides, in relevant part, that: "No public utility corporation shall sell, lease, assign, mortgage, or otherwise dispose of . . . any franchise or permit, or any right thereunder . . . without first having secured from the public utilities commission an order authorizing it so to do."

Petitioners contend that New Lightyear is well qualified, managerially, technically and financially, to continue the ongoing operations of Lightyear. Petitioners also assert that "New Lightyear, through the available assets of Acquisition has substantial financial wherewithal and can satisfy the [c]ommission's requirements for certification."

Upon reviewing and taking administrative notice of all pertinent documents in the commission's records relating to Lightyear and New Lightyear, we find that New Lightyear has fulfilled the requirements of HAR § 6-80-18(a), to the extent

applicable.⁵ Thus, we will approve the transfer of Lightyear's COA to New Lightyear, pursuant to HRS § 269-19, subject to the condition that New Lightyear shall continue to be accountable for any and all of Lightyear's outstanding annual financial reports that are required to be filed with the commission in accordance with HAR § 6-80-91.

C.

HRS § 269-16.92

HRS § 269-16.92 provides that "[n]o telecommunications carrier shall initiate a change in a subscriber's selection or designation of a long-distance carrier without first receiving (1) a letter of agency or letter of authorization; (2) an electronic authorization by use of a toll-free number; (3) an oral authorization verified by an independent third party; or (4) any other prescribed authorization." Petitioners request that the commission waive the requirements of HRS § 269-16.92.

In support of this request for waiver, Petitioners contend that existing Lightyear customers will realize significant public interest benefits from the proposed transactions, and that these customers "will continue to receive service from New Lightyear without disruption, interruption or customer migration." Furthermore, Petitioners represent that the proposed transactions "will be seamless in nature." In addition to the

⁵Moreover, based on our finding made above that competition, in this instance, will serve the same purpose as public interest regulation, we will also, on our own motion, waive the requirements of HAR § 6-80-17(c) to the extent that the instant Petition did not fully comply with the requirements.

above, as we previously noted, New Lightyear will provide competitive services and is not a dominant telecommunications carrier in the State. Petitioners further represent that they will inform existing Lightyear Hawaii customers of, among other things, the above-referenced transactions (See draft customer notice letter-Exhibit C) and their right to choose another long distance telephone provider.

Based on the above, the commission finds that Petitioners' request for the commission to waive the requirements of HRS § 269-16.92 is reasonable and in the public interest. Thus, the commission concludes that the requested waiver should be granted, subject to the following conditions: (1) Consistent with HAR § 6-80-123, Petitioners will duly notify the affected customers in writing of: (a) the subject transactions and resulting change in carriers; and (b) their ability to select another long distance carrier of their choice; (2) If a customer opts for another long distance carrier, the customer will be reimbursed for any "switching" charge imposed by the carrier; and (3) Petitioners must revise its draft customer notification letter (Exhibit C) to reflect the above information and that Petitioners will comply with all applicable Hawaii laws, rules and regulations under the commission's purview.

IV.

Orders

THE COMMISSION ORDERS:

1. The requirements of HRS §§ 269-19, 269-17 and 269-7(a), to the extent applicable, are waived with respect to the Transfer of Assets and the Financial Transaction described in the Petition (except for the transfer of Lightyear's COA to New Lightyear), subject to the applicable filing conditions described in Ordering Paragraph seven (7) below.

2. HRS § 269-16.92, to the extent applicable, is waived, subject to the following conditions: (A) Consistent with HAR § 6-80-123, Petitioners shall duly notify the affected customers in writing of: (1) the subject transactions and resulting change in carriers; and (2) their ability to select another long distance carrier of their choice; (B) If a customer opts for another long distance carrier, the customer will be reimbursed for any "switching" charge imposed by the carrier; and (C) Petitioners must revise its draft customer notification letter (Exhibit C) to reflect the above information and that Petitioners will comply with all applicable Hawaii laws, rules and regulations under the commission's purview. To the extent that the Petition does not contain all of the information required under either HAR § 6-61-101, HAR § 6-61-105, or 6-80-17(a), the applicability of those sections is waived, subject to the applicable filing conditions described in Ordering Paragraph seven (7) below.

3. New Lightyear is granted a COA to operate as a facilities-based carrier and reseller of intrastate

telecommunications services in the State, subject to the condition that New Lightyear shall continue to be accountable for any and all of Lightyear's outstanding annual financial reports that are required to be filed with the commission in accordance with HAR § 6-80-91.

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

5. Upon receipt of this decision and order, New Lightyear shall promptly file its initial tariff, incorporating the change in name from Lightyear. New Lightyear shall file its tariffs in accordance with HAR §§ 6-80-39 and 6-80-40. Said tariff 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.

6. An original and eight copies of the initial tariff shall be filed with the commission with additional copies served on the Consumer Advocate. New Lightyear shall ensure that the appropriate effective date is reflected in its tariffs.

7. Within thirty (30) days from the date of this decision and order, Petitioners, collectively and/or Lightyear or New Lightyear, independently, shall submit the following to the commission and the Consumer Advocate:

a. New Lightyear shall pay a public utility fee of \$60, pursuant to HRS § 269-30. The business check shall be made

payable to the Hawaii Public Utilities Commission, and sent to the commission's office at 465 South King Street #103, Honolulu, HI, 96813.

b. New Lightyear shall also pay a telecommunications relay service ("TRS") contribution of \$37.50, established pursuant to: (A) Act 50, of May 7, 2003 (codified at HRS § 269-16.6); and (B) Order No. 20193, filed on May 23, 2003, in Docket No. 03-0058. (A copy of Order No. 20193 is attached hereto as Exhibit 1.) The business check shall be made payable to "Hawaii TRS", and sent to the Hawaii TRS Administrator, NECA Services, Inc., 80 S. Jefferson Road, Whippany, NJ 07981. Written proof of payment shall be sent to the commission.

c. A copy of the Attachments for directors' and officers' names, balance sheet, and income statement referenced in Lightyear's 2002 PUC Annual Report of Resellers and Various Telecommunications Services;

d. A copy of the U.S. Bankruptcy Court's approval of Lightyear's asset sale;

e. A list and description of all Hawaii assets included in the asset purchase agreement;

f. A revised copy of the customer notification letter that includes information on any changes in customer billing;


g. A copy of Lightyear Communications, Inc.'s revised tariff to reflect the new company name, Lightyear Network Solutions, LLC; and

h. A copy of LY Acquisition, LLC's executed financing arrangements that will encumber Lightyear Network Solutions, LLC's assets, including the newly acquired assets from Lightyear Communications, Inc., pursuant to HAR § 6-61-105(c)(2).

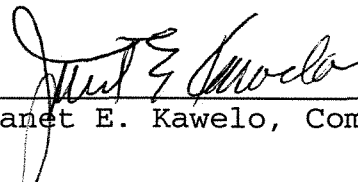
8. Petitioners shall promptly comply with the requirements set forth above. Failure to promptly comply with these requirements may constitute cause to void this decision and order, and may result in further regulatory action, as authorized by law.

DONE at Honolulu, Hawaii this 26th day of February, 2004.


PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By 
Wayne H. Kimura, Commissioner

By 
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:


Kris N. Nakagawa
Commission Counsel
03-0413.en

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

----- In the Matter of -----)
)
PUBLIC UTILITIES COMMISSION)
)
Instituting an Investigation)
Into the Availability of)
Experienced Providers of)
Quality Telecommunications)
Relay Services, Pursuant to)
Section 16.6, Hawaii Revised)
Statutes.)
_____)

DOCKET NO. 03-0058

ORDER NO. 20193

Filed May 23, 2003
At 3:15 o'clock P.M.

Karen Higuchi
Chief Clerk of the Commission

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

----- In the Matter of -----)
)
PUBLIC UTILITIES COMMISSION)
)
Instituting an Investigation)
Into the Availability of)
Experienced Providers of)
Quality Telecommunications)
Relay Services, Pursuant to)
Section 16.6, Hawaii Revised)
Statutes.)
_____)

Docket No. 03-0058

Order No. 20193

ORDER

I.

Hawaii Revised Statutes (HRS) § 269-16.6 requires the commission to investigate the availability of experienced providers of quality telecommunications relay services (TRS) and select the best qualified provider of such service. Thus, by Order No. 20067, filed on March 7, 2003, the commission instituted a proceeding to investigate the availability of quality TRS providers.¹ By that same order, the commission ordered Verizon Hawaii Inc. and the Division of Consumer Advocacy, Department of Commerce and Consumer Affairs (Consumer Advocate) to be parties to the proceeding.

On March 10, 2003, the commission sent letters to Verizon Hawaii Inc., the Consumer Advocate, Sprint Communications

¹On February 24, 2003, the current provider of TRS, Verizon Hawaii Inc., provided its notice to terminate its provision of TRS in Hawaii in July 2003.

Co., LP (Sprint), AT&T, Hamilton Relay Service, MCI Global Relay, CSD, SBC Southwest, and Vista Information Technologies, seeking comments and suggestions on the commission's draft request for services (RFS) by March 27, 2003.

On March 27, 2003, Sprint and Verizon Hawaii Inc. filed their comments on the draft RFS. On March 31, 2003, Hamilton Telecommunications submitted its comments on the draft RFS (e-mailed to the commission on March 27, 2003). On April 1, 2003, the State of Hawaii Disability and Communication Access Board submitted its comments on the draft RFS.

By Order No. 20111, filed on April 4, 2003, the commission: (1) adopted and made part of the order the final RFS dated April 4, 2003; and (2) ordered the Consumer Advocate to designate a representative to be a member of the evaluation committee by April 23, 2003. On April 23, 2003, the Consumer Advocate designated Marcey Chang, Chief Engineer, as the Consumer Advocate's representative on the evaluation committee.

On April 7, 2003, the commission published, state-wide, its public notice for the Invitation of Bids, due on April 23, 2003. That same day, the commission also sent letters and copies of Order No. 20111 and the final RFS soliciting proposals for the provision of TRS in the State of Hawaii to Sprint, AT&T, Hamilton Relay Service, MCI Global Relay, CSD, SBC Southwest, and Vista Information Technologies.

On April 21, 2003, Hamilton Telephone Company, dba Hamilton Telecommunications (Hamilton), filed its proposal.

On April 23, 2003, Sprint filed its proposal. The commission's RFS evaluation committee² for TRS reviewed the proposals and issued its recommendation to the commission on April 29, 2003. By Decision and Order No. 20163, filed on April 30, 2003, the commission selected Sprint to be the exclusive provider of intrastate TRS within the State of Hawaii from July 1, 2003 to June 30, 2006.³

Thus, by this order, we are providing notice to all telecommunications carriers under our jurisdiction of, among other things, our selection of Sprint as the provider of TRS, the establishment of a new TRS fund, and the imposition of various requirements authorized by the recently-adopted Act 50, Session Laws of Hawaii 2003.

²The members of the evaluation committee are Kevin Katsura - Legal Counsel, Steven Iha - Chief Auditor, Lisa Kikuta - Researcher, Richard VanDrunen - Engineer, Janice Masuda - Engineer, and Marcey Chang - Chief Engineer for the Consumer Advocate.

³Decision and Order No. 20163 also: (1) made the contents of Sprint's proposal and the terms of the commission RFS binding on Sprint; (2) required Sprint to file a proposed transition timetable within 14 days of the Decision and Order and to update the commission bi-weekly of its progress in transitioning Hawaii TRS from Verizon Hawaii Inc. to Sprint, until the transition is fully complete; (3) required Sprint to submit to the commission all updates and information needed for the commission's TRS state certification renewal application required by the Federal Communications Commission; and (4) required Sprint to file a proposed tariff for commission review and approval describing the terms and conditions of its TRS.

III.

A.

Establishment of the TRS Fund

Pursuant to the final RFS adopted and made part of Order No. 20111, filed on April 4, 2003, the TRS service provider, Sprint, is required to maintain the TRS fund. The final RFS specifies, in part:

5.3.2 TRS Account or Fund. The service provider shall be required to maintain and account for all TRS revenues and expenditures in a separate account. Such accounting shall include separated interstate and intrastate revenues and expenditures in accordance with jurisdictional separation procedures and standards set forth in the Federal Communications Commission's regulations adopted pursuant to section 410 of the Communications Act of 1934, as amended. The service provider shall receive and deposit all payments from all carriers that are required to pay for TRS. The service provider shall provide the commission, at the end of each month, a statement or report of all deposits and withdrawals from this account, including beginning and ending balances. This report is due 15 days after the close of the previous month. Commission approval is required for any withdrawal from this account, as provided in section 4.5.

5.3.3 Contributions to the Fund. All telecommunications carriers operating or providing telecommunications service within the State shall contribute to the TRS fund. The commission shall annually, by order, set the amount of the contribution required to be made to the TRS fund by each telecommunications carrier, based upon one of two methods: 1) a surcharge upon each telephone subscriber line provided by each telecommunications carrier in Hawaii or 2) a percentage surcharge upon the gross

intrastate revenues of every telecommunications provider in Hawaii.

Each telecommunications carrier shall pay its contribution directly to the service provider at dates and intervals set by the commission. Any interest charges due to late payment shall be between the service provider and the telecommunications carrier. Any interest earned from contributions to the TRS fund shall become part of the fund and be used to support the provision of current and future TRS.

Any amounts remaining in the TRS fund at the end of the contract period shall remain in the fund. If a new provider is selected, this fund transfers fully to the new provider.

B.

Amount of Contribution

Pursuant to Act 50, Hawaii Session Laws 2003, promulgated on May 7, 2003 (Act 50), attached as Exhibit "A", the commission may require every telecommunications carrier providing intrastate telecommunications services in the State of Hawaii to contract with Sprint for the provision of telecommunications relay service. Accordingly, by this Order, we will require every aforesaid carrier to contract with Sprint for the provision of TRS, for the period beginning July 1, 2003 to June 30, 2006.

Act 50 further authorizes the commission to require every carrier providing intrastate telecommunications service to contribute to the TRS fund maintained by Sprint. In this respect, we will require every carrier to contribute to the TRS fund on the basis of gross operating revenues from the retail provision of intrastate telecommunications services during the

preceding calendar year. Contributions shall be made by every carrier providing intrastate telecommunications services including, but not limited to: (1) the incumbent telecommunications carrier; and (2) all carriers certified by or registered with the commission pursuant to HRS § 269-7.5(b) or Hawaii Administrative Rules (HAR) § 6-80-18(a) and (b). The commission, at this juncture, specifically excludes payphone providers from contributing to the TRS fund.⁴

Contributors' contribution to the TRS fund shall be the product of their gross operating revenues from the retail provision of intrastate telecommunications services during the preceding calendar year, which is subject to investigation by the commission, and a contribution factor determined annually by the commission.⁵ Each carrier must contribute at least \$37.50 per year. Carriers whose annual contributions total less than \$1,200 must pay the entire contribution at the beginning of the contribution period. Service providers whose contributions total \$1,200 or more may divide their contributions into equal monthly payments. Carriers shall complete and submit a TRS Reporting Worksheet, attached to this Order as Exhibit "B". The worksheet

⁴In the Fifth Report and Order, CC Docket No. 90-571, FCC 02-269, the Federal Communications Commission (FCC) requires carriers to continue to provide coin-sent paid local calls free to TRS users.

⁵The commission will adjust its contribution factor annually which will include, without limitations, future growth rates, revenue base, and uncollectible factor; although the commission intends to evaluate and set the contribution factor annually, the commission reserves the right to change the contribution factor at its discretion.

shall be certified to by an officer of the contributor and subject to verification by the commission at the discretion of the commission. This process is a self-reporting process. Each carrier is responsible for reporting and paying its contribution at the dates designated by the commission.

C.

Contribution Factor

The contribution factor for the period July 1, 2003 to June 30, 2004 is .00375. The .00375 represents, among other things, the estimated cost of the TRS service for the period July 1, 2003 to June 30, 2004 - including the projected growth in TRS minutes of use, an uncollectible allowance, and a reserve margin for the start up of the fund.

D.

Payment Remittance

Sprint has contracted with NECA Services, Inc. to administer the TRS fund. Contributions to the TRS fund shall be payable to "Hawaii TRS" and remitted to the Hawaii TRS Administrator at the following address:

Attn: Hawaii TRS Administrator
NECA Services, Inc.
80 S. Jefferson Road
Whippany, NJ 07981
Phone (973) 884-8011
Fax: (973) 599-6504

Telecommunications Carriers may contact NECA Services, Inc. to identify their preferred method of payment and for further information.

Annual contributions are due July 26th; carriers who owe contributions of \$1,200 or more may pay in twelve equal monthly installments, due on the 26th of each month.

E.

Surcharge to Customers

A telecommunications carrier contributing to the TRS fund may impose a surcharge on its customers, both residential and business, to recover the amount of its contribution. The carrier shall separately and clearly identify and explain on its customers' bills the surcharge assessed for the TRS fund. The surcharge shall not be imposed until at least thirty-days' written notice is provided to the commission.⁶ The notice must specify the amount of the proposed surcharge and the form in which the surcharge will be designated on customers' bills. The commission, as appropriate, may order modification in the amount of the surcharge or in the form of the designation on the customers' bills.

On its own motion, the commission also finds good cause to waive the 30-day tariff filing requirements of HRS

⁶The commission will waive the notice requirement for those carriers imposing surcharges on their July 2003 bills; however notice shall be provided at least simultaneously with the imposition of any surcharge.

§ 269-16(b)⁷ and HAR § 6-80-40 (b)⁸, for those carriers implementing a surcharge to its customers in the month of July 2003.⁹ The commission also recognizes that various telecommunications carriers, who elect to immediately incorporate the surcharges in their July 2003 billing cycles, may not be able to meet the 30-day filing requirements. Accordingly, any tariff filing relating to TRS, implemented in the month of July 2003, shall become effective upon its filing with the commission. However, the commission, as appropriate, may order modification in the amount of the surcharge.

⁷HRS § 269-16 (b) provides, in relevant part: "[n]o rate, fare, charge, classification, schedule, rule, or practice, shall be established, abandoned, modified, or departed from by any public utility, except after thirty days' notice as prescribed in section 269-12(b) to the commission and prior approval by the commission for any increases in rates, fares, or charges."

⁸HAR § 6-80-40(b) provides, in relevant part: "[a] telecommunications carrier shall file its tariff for any partially competitive service or noncompetitive service at least thirty days before the effective date of the proposed service."

⁹HRS § 269-16 provides, "The commission may, in its discretion and for good cause shown, allow any rate, fare, charge, classification, schedule, rule, or practice to be established, abandoned, modified, or departed from upon notice less than that provided for in section 269-12(b). HAR § 6-80-40(d) provides, "The commission may, in its discretion and for good cause shown, allow any tariff for a partially competitive or noncompetitive service to become effective before the expiration of the thirty-day period provided in subsection (b).

IV.

THE COMMISSION ORDERS:

1. Every telecommunications carrier providing intrastate telecommunications service in the State of Hawaii shall contract with Sprint for the provision of telecommunications relay service, for the period beginning July 1, 2003 to June 30, 2006.

2. Every carrier providing intrastate telecommunications service in Hawaii shall contribute to the TRS fund on the basis of gross operating revenues from the retail provision of intrastate telecommunications services during the preceding calendar year, consistent with the terms of this order; the commission, at this juncture, specifically excludes payphone providers from contributing to the TRS fund.

3. Contributors' contribution to the TRS fund shall be the product of their gross operating revenues from the retail provision of intrastate telecommunications services during the preceding calendar year, which is subject to investigation by the commission, and a contribution factor determined annually by the commission, consistent with the terms of this order.¹⁰

4. The contribution factor for the period July 1, 2003 to June 30, 2004 is .00375.

5. The annual TRS funding period commences July 1 and ends June 30 of each year.

¹⁰Although the commission intends to evaluate and set the contribution factor annually, the commission reserves the right to change the contribution factor at its discretion.

6. Annual contributions are due July 26th; carriers who owe contributions of \$1,200 or more may pay in twelve equal monthly installments, due on the 26th of each month.

7. Contribution payments shall be made payable to "Hawaii TRS" and sent to the Hawaii TRS Administrator, consistent with the terms of this order.

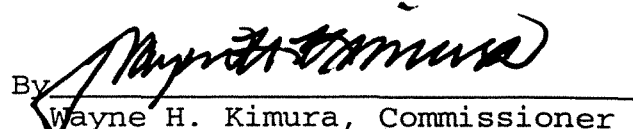
8. The commission waives the 30-day notice requirement of HRS § 269-16(b) and HAR § 6-80-40(b) for any TRS surcharge implemented in the month July 2003; however notice must still be provided at the time the surcharge is assessed, consistent with the terms of this order.

9. Any tariff filing relating to TRS, implemented in the month of July 2003, shall become effective upon its filing with the commission, consistent with the terms of this order.

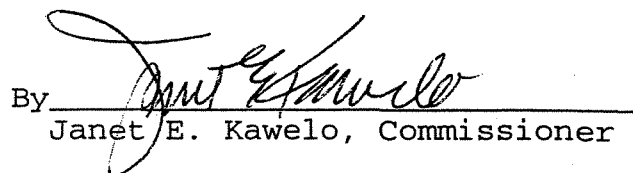
DONE at Honolulu, Hawaii this 23rd day of May, 2003.


PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By 
Wayne H. Kimura, Commissioner

APPROVED AS TO FORM:

By 
Janet E. Kawelo, Commissioner


Kevin M. Katsura
Commission Counsel

03-0058.eh

A BILL FOR AN ACT

RELATING TO TELECOMMUNICATIONS RELAY SERVICES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that telecommunications
2 relay services (TRS) provide individuals with hearing and speech
3 disabilities telephone transmission services that enable these
4 individuals to communicate by wire or radio with other
5 individuals in a manner that is functionally equivalent to
6 individuals without such disabilities.

7 The legislature further finds that the means to collect
8 moneys that are assessed to pay for TRS is important to the
9 provision and quality of TRS.

10 The purpose of this Act is to provide the state public
11 utilities commission with greater flexibility in administering
12 and providing intrastate telecommunications relay services in
13 the State.

14 SECTION 2. Section 269-16.6, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "§269-16.6 [Relay] Telecommunications relay services for
17 the deaf, [~~hearing-impaired, and speech-impaired.~~] persons with
18 hearing disabilities, and persons with speech disabilities.

SB1306 HD1 HMS 2003-5040



EXHIBIT A

1306
H.D. 1

(a) The public utilities commission shall implement ~~a program to achieve~~ intrastate telecommunications relay services for the deaf ~~[and hearing impaired not later than July 1, 1989, and the speech impaired not later than July 1, 1992.]~~, persons with hearing disabilities, and persons with speech disabilities.

~~[(b) "Relay services for the deaf, hearing impaired, and speech impaired" means a twenty four hour operator assisted telephone relay service staffed by persons who are able to receive and transmit phone calls between deaf, hearing impaired, and speech impaired and hearing persons using a telecommunication device for the deaf in conjunction with a telephone.~~

(e)] (b) The commission shall investigate the availability of experienced providers of quality telecommunications relay services for the deaf, [~~hearing impaired, and speech impaired.~~ ~~Contracts for the~~] persons with hearing disabilities, and persons with speech disabilities. The provision of these telecommunications relay services to be rendered on or after July 1, 1992, shall be awarded by the commission to the provider or providers [which] the commission determines to be best qualified to provide these services. In reviewing the qualifications of the provider or providers, the commission



1 shall consider the factors of cost, quality of services, and
2 experience, and such other factors as the commission deems
3 appropriate.

4 [~~(d)~~] (c) If the commission determines that the
5 telecommunications relay service can be provided in a cost-
6 effective manner by a service provider~~[7]~~ or service providers,
7 the commission may require every ~~[telephone public utility,~~
8 ~~including]~~ intrastate telecommunications ~~[carriers,~~ carrier to
9 contract with ~~[that]~~ such provider or providers for the
10 provision of the telecommunications relay service under the
11 terms established by the commission.

~~[(e) Notwithstanding subsections (c) and (d), relay services for the period beginning July 1, 1989, and ending June 30, 1992, shall be provided by every telephone public utility providing local service, provided that the commission and the provider or providers can agree on the terms and conditions for the provision of those relay services.]~~

18 (d) The commission may establish a surcharge to collect
19 customer contributions for telecommunications relay services
20 required under this section.

1 (e) The commission may adopt rules to establish a
2 mechanism to recover the costs of administering and providing
3 telecommunications relay services required under this section.

(f) The commission shall require every ~~telephone public utility, including~~ intrastate telecommunications ~~carriers, providing local telephone service~~ carrier to file a schedule of rates and charges and every provider of telecommunications relay service to maintain a separate accounting for the costs of providing ~~for~~ telecommunications relay services for the deaf, ~~[hearing impaired, and speech impaired.]~~ persons with hearing disabilities, and persons with speech disabilities.

12 (g) Nothing in this section shall preclude the commission
13 from changing any rate established pursuant to this section
14 either specifically or pursuant to any general restructuring of
15 all telephone rates, charges, and classifications.

16 (h) As used in this section:

17 "Telecommunications relay services" means telephone
18 transmission services that provide an individual who has a
19 hearing or speech disability the ability to engage in
20 communication by wire or radio with a hearing individual in a
21 manner that is functionally equivalent to the ability of an
22 individual who does not have a hearing or speech disability to

1 communicate using wire or radio voice communication services.
2 "Telecommunications relay services" includes services that
3 enable two-way communication using text telephones or other
4 nonvoice terminal devices, speech-to-speech services, video
5 relay services, and non-English relay services."

6 SECTION 3. Section 269-16.7, Hawaii Revised Statutes, is
7 repealed.

8 [~~"§269-16.7 Telecommunications; expedition of ratemaking~~
9 ~~procedures. Whenever a public utility providing local exchange~~
10 ~~telecommunications services applies for approval of rates,~~
11 ~~charges, or fees in tariffs for specialized services for the~~
12 ~~deaf, hearing impaired or speech impaired, the commission shall~~
13 ~~expedite to the greatest extent possible any necessary~~
14 ~~ratemaking procedures. Further, the commission shall be~~
15 ~~authorized to approve interim surcharges imposed on all~~
16 ~~subscriber lines, in order to permit the recovery of those actual~~
17 ~~costs incurred from the time of commencement of the specialized~~
18 ~~services for the deaf, hearing impaired and speech impaired to~~
19 ~~the time of the next general rate increase."]~~

20 SECTION 4. Statutory material to be repealed is bracketed
21 and stricken. New statutory material is underscored.

22 SECTION 5. This Act shall take effect upon its approval.

APPROVED BY THE
GOVERNOR ON

MAY 07 2005

State of Hawaii
Public Utilities Commission
Telecommunications Relay Services
Carrier Remittance Worksheet
For the Period July 1, 20__ - June 30, 20__

CARRIER IDENTIFICATION	
Date:	
Company Name:	
Mailing Address:	
Email Address:	

REMITTANCE CALCULATION	
1. Gross Revenues (Prior Calendar Year) <small>(e.g., Current year is 2003; Report revenues from 2002) (Amount should match gross revenues reported for Hawaii PUC Fee purposes, HRS § 269-30)</small>	
2. Less: Revenue Adjustments (describe, see back of form)	< >
3. Gross Intrastate Retail Revenues	
4. Hawaii TRS Contribution Factor	.00375
5. Gross Hawaii TRS Assessment (line 3 x line 4)	
6. Greater of line 5 or \$37.50 (minimum due)	
<p>If Line 6 is less than \$1,200, this is your annual contribution to the TRS Fund for the period beginning July 1st of the current year to June 30th of the following year. Please pay the amount on line 6, in full, by July 26th of the current year. Send your remittance with a copy of this worksheet to the address listed below.</p> <p>If Line 6 is \$1,200 or more, continue to line 7 below.</p>	

MONTHLY CONTRIBUTION	
7. Divide line 6 by 12	
<p>Line 7 is your first monthly contribution to the TRS Fund, for the period beginning July 1st of the current year to June 30th of the following year. Send your 1st monthly remittance with a copy of this worksheet to the address listed below. Please pay the amount on line 7 by July 26th. NECA Services, Inc. will then send you a bill for the remaining eleven monthly payments.</p>	

CERTIFICATION			
<p>Under penalties as provided by law, I certify that I am duly authorized to verify the foregoing information contained herein and that the information is true and correct to the best of my knowledge and belief.</p>			
_____	_____	_____	_____
Date	Officer Name	Officer Signature	Officer Title
_____	_____	_____	_____
Date	Contact Name	Contact Phone	Contact Title

<p style="text-align: center;">Questions???</p> <p>Hawaii TRS Administrator NECA Services, Inc. 80 S. Jefferson Road Whippany, NJ 07981 Phone (973) 884-8011 Fax (973) 599-6504</p>	<p style="text-align: center;">Make checks payable to "Hawaii TRS" and send with worksheet to: Attn: Hawaii TRS Administrator NECA Services, Inc. 80 S. Jefferson Road Whippany, NJ 07981</p>
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DETAILS CONCERNING REVENUE ADJUSTMENT(S)

If revenue adjustment(s) are not explained here, amounts deducted will be disallowed and proposed assessments may be prepared against you.

Describe amounts deducted from Gross Revenues to obtain Gross Intrastate Retail Revenues (list):	Amount
1.	
2.	
3.	
4.	
5.	
6.	
7.	
8.	
9.	
10.	
TOTAL	

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 20193 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

JOEL K. MATSUNAGA
VICE PRESIDENT-EXTERNAL AFFAIRS
VERIZON HAWAII INC.
P. O. Box 2200, A-17
Honolulu, HI 96841

MAGGIE SCHOOLAR
GOVERNMENT ACCOUNT EXECUTIVE
SPRINT COMMUNICATIONS
1321 Rutherford Lane, Suite 120
Austin, TX 78753



Karen Higashi

DATED: May 23, 2003

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 20820 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
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Honolulu, HI 96809

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201 East Main Street, Suite 1000
Lexington, KY 40502



Karen Higashi

DATED: February 26, 2004