

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application of )  
 )  
ACN COMMUNICATION SERVICES, INC. )  
 )  
For an Amended Certificate of )  
Authority or in the Alternative, a )  
Separate Certificate of Authority )  
To Provide Facilities-Based Local )  
Exchange Service Services in Hawaii.)  
\_\_\_\_\_)

DOCKET NO. 04-0056

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

DECISION AND ORDER NO. 20961

Filed May 4, 2004  
At 1:00 o'clock P .M.

Karen Higot.  
Chief Clerk of the Commission

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application of )  
ACN COMMUNICATION SERVICES, INC. ) Docket No. 04-0056  
For an Amended Certificate of ) Decision and Order No. 20961  
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To Provide Facilities-Based Local )  
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DECISION AND ORDER

I.

Introduction

ACN COMMUNICATION SERVICES, INC. ("Applicant") is an authorized reseller of intrastate telecommunications services in the State of Hawaii (the "State"), pursuant to a commission-issued certificate of authority ("COA").<sup>1</sup>

Applicant requests that its existing COA be amended to authorize it to also provide intrastate telecommunications services in the State as a facilities-based carrier in an application filed on March 15, 2004. In the alternative, Applicant requests a separate COA to provide competitive facilities-based local exchange telecommunications services in the State. Applicant makes its request pursuant to Hawaii Administrative Rules ("HAR") Chapters 6-80 and Section 23 of the federal Telecommunications Act of 1996. As indicated above,

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<sup>1</sup>See, Decision and Order No. 17736, filed on May 16, 2000, in Docket No. 00-0028.

since Applicant already holds a COA to provide intrastate telecommunications services in the State on a resold basis, we will treat the instant application as Applicant's request to amend its COA to also include authority to provide facilities-based telecommunications services in the State.

The DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY ("Consumer Advocate") was served two (2) copies of the application. The Consumer Advocate does not object to the approval of the application, subject to certain qualifications.<sup>2</sup>

## II.

### Description of Applicant

Applicant is a Michigan corporation authorized to do business in the State as a foreign corporation. Applicant is a wholly owned subsidiary of American Communications Networks, Inc. and its principal place of business is in Farmington Hills, Michigan.

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<sup>2</sup>Consumer Advocate's Statement of Position ("SOP"), filed on April 5, 2004. In its SOP, the Consumer Advocate raises various concerns and recommendations relating to Applicant's application. First, the Consumer Advocate recommends that Applicant should be required to file updated financial statements (dated no more than three (3) months from the date of application in accordance with HAR § 6-80-17(c)(1)(E)) with the commission before an amended or separate COA is granted. On April 22, 2004, Applicant filed updated financial statements in accordance with HAR § 6-80-17(c)(1)(E). Second, the Consumer Advocate recommends revisions to Applicant's proposed tariff, which is discussed in more detail in Section III. below.

Currently, Applicant seeks to expand its authority to include the provision of facilities-based services in the State. Specifically, in addition to providing local exchange service in Hawaii as a reseller, it intends to initially provide facilities-based services through an unbundled network element platform (aka, UNE-P).

### III.

#### COA and Tariff Matters

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 (aka, HI P.U.C. Tariff No. 2), the commission agrees with the Consumer Advocate's concerns and recommended revisions. The commission also has its own concerns and recommended revisions. Accordingly, we conclude that Applicant's proposed tariff should be revised as follows:

1. Section 2.5.1. (Original Page 20) should be amended to correct "Arkansas Revised Code" with "Hawaii Revised Statutes."
2. Section 2.5.3. (Original Page 22) should be amended to include Applicant's address and toll-free telephone number for customer inquiries or complaints consistent with HAR § 6-80-107. Such information should also be placed in the customer's bills.
3. Section 2.6.2. (Original Page 31) should be amended to be consistent with the adjustment and refund requirements set forth in HAR § 6-80-103.
4. In Section 5.4.1.A. (Original page 3), the phrase "and HAR § 6-80-106(e)" should be added after the phrase "Section 2.5.6.A".
5. Section 6.1.2. (Original Page 5) should be amended to reflect the appropriate dollar or cents for each monthly recurring charge.
6. Section 8.1. (Original Page 1) refers to Applicant's "Hawaii Tariff No. 3". If this is a typographic error, such section should be

appropriately corrected. If it is not a typographic error, Applicant should file a copy of "Hawaii Tariff No. 3" with the commission and the Consumer Advocate.

#### IV.

##### Orders

###### 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 Hawaii Revised Statutes (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.

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 tariff to the applicable provisions of HAR Chapter 6-80. An original and eight (8) copies of the new tariff shall be filed with the commission, and two (2) additional copies shall be served on the Consumer Advocate. Applicant shall ensure that the appropriate issued and effective dates are reflected in its tariffs.

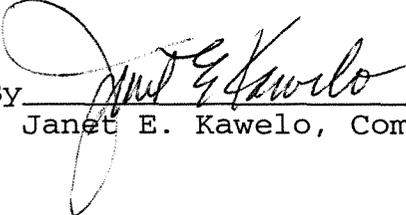
5. Applicant shall promptly comply with the requirements set forth above. Failure to promptly comply with these requirements may constitute cause to void this decision and order, and may result in further regulatory action, as authorized by law.

DONE at Honolulu, Hawaii this 4th day of May, 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

04-0056.eh

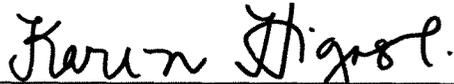
CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 20961 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

MONIQUE BYRNES  
TECHNOLOGIES MANAGEMENT, INC.  
P.O. Box 200  
Winter Park, FL 32789

Consultant to ACN COMMUNICATIONS SERVICES, INC.

  
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Karen Higashi

DATED: May 4, 2004