



BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

----- In the Matter of ----- )  
 )  
DIRECT TELEPHONE COMPANY, INC. ) Docket No. 04-0062  
 )  
Notice of Failure to Comply With ) Decision and Order No. 20962  
the Commission's Laws and Rules; )  
Order to Show Cause Why )  
Respondent Should Not be Assessed )  
a Civil Penalty or Have Its )  
Operating Authority Suspended or )  
Revoked. )  
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DECISION AND ORDER

I.

Introduction

The commission ordered DIRECT TELEPHONE COMPANY, INC. ("Respondent") to appear at 465 South King Street, Room B3, Honolulu, Hawaii 96813, at 9:00 a.m., on April 20, 2004 to show cause why it should not be assessed a civil penalty or have its certificate of authority suspended or revoked for failure to provide the commission, the Division of Consumer Advocacy, Department of Commerce and Consumer Affairs ("Consumer Advocate"), and its affected customers with adequate notice of a discontinuance of telecommunications service, in violation of Hawaii Administrative Rules ("HAR") § 6-80-123.<sup>1</sup>

The commission delayed the effective date of Respondent's proposed discontinuance of its telecommunications

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<sup>1</sup>Order No. 20876, filed on March 31, 2004.

services until further notice by the commission, pursuant to HAR § 6-80-123.<sup>2</sup>

The commission held a hearing on the matter on April 20, 2004 at the aforementioned time and place. Jared Grugett, Respondent's Vice President of Shared Tenant Services, Bruce Hollowell, its Secretary, and Owen Matsunaga, its legal counsel, appeared on behalf of Respondent. Chairman Carlito Caliboso presided over the hearing.

Based upon a review of the record and the testimony presented at the hearing, the issue is whether Respondent failed to provide the commission, the Consumer Advocate, and its affected customers with notice of its intent to discontinue its telecommunications service thirty (30) days before the proposed date of discontinuance, in violation of HAR § 6-80-123.

Having considered the testimony and other evidence presented at the contested hearing, and the entire record in this matter, the commission hereby renders the following findings of fact, conclusions of law, and decision and order.

## II.

### Discussion

#### A.

#### Findings of Fact

1. Respondent is the holder of a certificate of authority ("COA"), issued pursuant to Hawaii Revised Statutes ("HRS") § 269-7.5 and HAR § 6-80-18 authorizing it to operate as

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<sup>2</sup>Id.

a reseller and facilities-based provider of intrastate telecommunications services and a provider of shared tenant services in the State of Hawaii ("State").

2. On or about March 4, 2004, Respondent sent a letter ("March 4 letter") to its affected customers informing them that it "will not provide dial tone service in Hawaii effective April 4, 2004."

3. On March 19, 2004, the commission wrote to Respondent to inquire whether it would abandon or discontinue its telecommunications services in the State.

4. On March 23, 2004, Respondent replied to the commission's letter ("March 23 letter"), explaining that it would no longer offer its Unbundled Network Element Platform ("UNEP") product that rides on the Verizon Hawaii Inc. network, and admitting that it "overlooked the provisions of HAR 6-80-123."

5. On April 6, 2004, Respondent submitted a letter ("April 6 letter") informing the commission, the Consumer Advocate, and its affected customers that it would discontinue its UNEP product by June 1, 2004, subject to commission action.

6. Respondent stated in its March 23 letter, April 6 letter, and in testimony that it would work with its affected customers to ensure a smooth transition to alternate providers, and would continue to provide service to its customers until the transition to other providers is completed.

7. The commission classified UNEP services, a resale product, as "fully competitive" by Decision and Order No. 14734, filed on June 12, 1996, in Docket No. 7702.

B.

Conclusions of Law

Based on the foregoing findings of fact, the commission makes the following conclusions of law. Any findings of fact herein designated as a conclusion of law should be deemed or construed as a finding of fact.

1. HAR § 6-80-123 requires a telecommunications carrier intending or seeking to abandon or discontinue offering or providing a fully or partially competitive service to provide a written notice of its intent to abandon or discontinue to the commission, the Consumer Advocate, and its affected customers not later than thirty (30) days before the proposed date of abandonment or discontinuance.

2. HAR § 6-80-123 provides the commission with the discretion to, among other things, delay the effective date of the proposed abandonment or discontinuance of service.

3. HRS § 269-15 and HAR § 6-68-14 authorize the commission to institute proceedings that may take the form of an order to show cause to investigate alleged or suspected violations of any rule, regulation, order, or other requirement of the commission.

4. HRS § 269-28 authorizes the commission, after a hearing on the matter, to assess a civil penalty not to exceed

\$25,000 for each day of violation, neglect, or failure to conform to or comply with chapter 269 or any lawful order of the commission.

5. HRS § 269-7.5(d) and HAR § 6-80-19 authorize the commission, after notice and hearing, to suspend or revoke any COA, in part or in whole, if the commission finds the holder violated any applicable State laws or commission rules.

6. Based on the above-stated findings of fact, the commission concludes that Respondent's March 4 letter failed to comport with HAR § 6-80-123, since it was not sent to the commission and the Consumer Advocate.

7. Based on the above-stated findings of fact, the commission also concludes that Respondent's April 6 letter complied with HAR 6-80-123, since it was sent to the commission, the Consumer Advocate, and its affected customers more than thirty (30) days prior to the proposed discontinuance date of June 1, 2004.

#### C.

##### Decision

Upon review of the record, we conclude Respondent provided sufficient mitigating evidence to support a decision not to suspend or revoke Respondent's COA or impose civil penalties in this matter. In particular, Respondent's April 4 letter provided its customers, the commission, and the Consumer Advocate with adequate notice of its intent to discontinue its UNEP service, enabling the commission and the Consumer Advocate to

ensure that the public interest would be protected. In addition, Respondent represented that it will continue to work with its affected customers to ensure that they will transition to other telecommunications carriers without interruption.

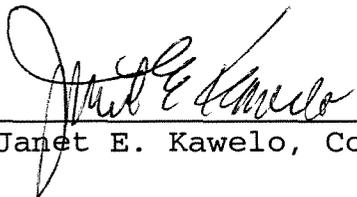
THE COMMISSION ORDERS that Order No. 20876, filed on March 31, 2004, is vacated, and Respondent may discontinue its UNEP services on June 1, 2004, as planned, provided that it provides the commission and the Consumer Advocate with written confirmation by May 25, 2004 that all of its affected customers have been transitioned to other telecommunications carriers without interruption.

DONE at Honolulu, Hawaii this 4th day of May, 2004.

PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By   
Carlito P. Caliboso, Chairman

By (EXCUSED)  
Wayne H. Kimura, Commissioner

By   
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:

  
Catherine P. Awakuni  
Commission Counsel

04-0062.ah

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 20962 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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Houston, TX 77057

DIRECT TELEPHONE COMPANY, INC.  
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OWEN MATSUNAGA, ESQ.  
GERSON & HIENEMAN, LLC  
1001 Bishop Street, Suite 780  
Honolulu, HI 96813

  
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Karen Higashi

DATED: May 4, 2004