

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
)
TELECONNECT LONG DISTANCE SERVICES)
& SYSTEMS COMPANY, dba TELECOMM*USA)
)
For Approval for a Certificate of)
Authority to Provide Resold)
Intrastate Telecommunications)
Services in Hawaii.)
_____)

DOCKET NO. 04-0157

DECISION AND ORDER NO. 21347

Filed Sept. 14, 2004
At 10 o'clock A.M.

Karen Higashi.
Chief Clerk of the Commission

RECEIVED
2004 SEP 16 A 8:39
DIV. OF CONSUMER ADVOCACY
DEPT. OF COMMERCE AND
CONSUMER AFFAIRS
STATE OF HAWAII

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

K. Higashi.

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
TELECONNECT LONG DISTANCE SERVICES)
& SYSTEMS COMPANY, dba TELECOMM*USA)
For Approval for a Certificate of)
Authority to Provide Resold)
Intrastate Telecommunications)
Services in Hawaii.)
_____)

Docket No. 04-0157

Decision and Order No. 21347

DECISION AND ORDER

I.

Introduction

TELECONNECT LONG DISTANCE SERVICES & SYSTEMS COMPANY, dba TELECOMM*USA ("Applicant") requests a certificate of authority ("COA") to provide intrastate telecommunications services within the State of Hawaii (the "State") as a reseller.¹ Applicant makes its request pursuant to Hawaii Revised Statutes ("HRS") §§ 269-7.5 and 269-16.9 and Hawaii Administrative Rules ("HAR") §§ 6-80-17, 6-80-18, and 6-80-135.

Applicant served a copy of its application on the DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY ("Consumer Advocate"). On July 15, 2004, the Consumer Advocate filed its statement of position ("SOP")

¹Applicant's application, filed on June 30, 2004.

informing the commission that it does not object to approval of the application, subject to certain qualifications.²

II.

Description of Applicant and its Proposed Services

Applicant is an Iowa corporation authorized to do business in the State as a foreign corporation. It is a wholly-owned subsidiary of MCI Inc. (formerly known as, WorldCom, Inc.)³ and its principal place of business is in Ashburn, Virginia.

Applicant intends to provide intrastate telecommunications services within the State as a reseller. Specifically, it intends to provide a full range of "1+" intrastate services including MTS, WATS, calling card and 800 services.

III.

A.

Operating without Authority

HAR § 6-80-17(c) provides, in relevant part, that "[a]ny person, other than the incumbent telecommunications carrier, seeking to offer, initiate, or provide intrastate telecommunications service must apply in writing to the commission for a [COA]." See also, HRS § 269-7.5. HRS § 269-28(c) further provides, in relevant part:

²The Consumer Advocate raises various concerns and recommendations in its SOP relating to Applicant's proposed tariff, which is discussed in more detail in Section III., below.

³See, *In re WorldCom, Inc.*, Docket No. 03-0262, Decision and Order No. 20627 (November 7, 2003).

[A]ny person acting in the capacity of or engaging in the business of a public utility in the State without having a certificate of public convenience and necessity or other authority previously obtained under and in compliance with this chapter and the rules promulgated thereunder may be subject to a civil penalty not to exceed \$5,000 for each such offense, and in the case of a continuing violation, \$5,000 for each day that uncertified activity continues.

In Informal Complaint No. IC-04-015, Applicant acknowledged that it acted in the capacity of and engaged in providing intrastate telecommunications services within Hawaii without a COA granted by the commission in violation of HAR § 6-80-17(c).⁴ However, Applicant represented, among other things, that (1) its provisioning of intrastate telecommunications services without a COA was an inadvertent oversight, and (2) when it first learned of the situation, it stopped billing for the services and assured the commission that it would file an application for COA no later than June 30, 2004. As stated above, Applicant filed its application for COA on June 30, 2004.⁵

In light of the above, the commission concludes that Applicant provided sufficient mitigating evidence to support a decision not to institute proceedings to, among other things, assess civil penalties under HRS § 269-28(c). *Cf. In re Direct Telephone Company, Inc.*, Docket No. 04-0062, Decision and Order No. 20962 (May 4, 2004). Upon being notified by the commission that it was operating without a COA, Applicant

⁴The commission takes administrative notice of all documents filed in Informal Complaint No. IC-04-015.

⁵Applicant's letters dated May 3, 2004 and June 10, 2004 filed in Informal Complaint No. IC-04-015.

undertook immediate steps to rectify the situation. *Contra In re All-Tech Telecom, Inc. et al.*, Docket Nos. 7070 and 7109 (consolidated), Decision and Order No. 11772 (September 3, 1992) (holding that the public utility's actions after the commission's notification were in willful disregard of the commission's notice.).

B.

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;⁶ and
3. Applicant's proposed telecommunications services are in the public interest.

⁶Notwithstanding Applicant's violation of HAR § 6-80-17(c), as discussed in Section III.A above, the commission finds that upon review of the entire record, 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. See, *In re Latitudes & Adatudes Adventure Tours, LLC*, Docket No. 99-0081, Decision and Order No. 18665, (July 2, 2001) (holding that past violations, if any, do not necessarily preclude the commission from finding that an applicant for a certificate of public convenience and necessity is fit, willing, and able to conform to the motor carrier statutes and the commission's rules and regulations).

Accordingly, the commission concludes that Applicant should be granted a COA to provide intrastate telecommunications services as a reseller.

C.

Proposed Tariff

In its SOP, the Consumer Advocate provides five (5) recommended revisions to Applicant's proposed tariff. Based on the commission's review of the Consumer Advocate's recommended revisions, we find its recommended revisions nos. 1 through 5 to the proposed tariff to be reasonable and necessary.⁷

Thus, we conclude that Applicant's proposed tariff should be revised as follows:

1. "Hawaii Public Service Commission" referred to in Section A. (Original Sheet 6) should be corrected to "Hawaii Public Utilities Commission." Moreover, the Company's identification in Section A should be consistent with the Company's name in the application -- "Teleconnect Long Distance Services & Systems, Company, dba Telecomm*USA."
2. Consistent with HAR §§ 6-80-102 and 6-80-107, Section 10 (Original Sheet 14) should be amended by inserting the following new section "10.c":

⁷Contrary to the Consumer Advocate's recommended revision no. 3, however, we find it reasonable to allow the Customer twenty (20) working days rather than five (5) working days to pay the amount determined by the Company to be properly charged.

"The Customer has the right to refer billing disputes and any other complaints to the Company. If the Customer is unable to resolve the dispute with the Company, the Customer may contact the Hawaii Public Utilities Commission at the following address and telephone numbers:

Hawaii Public Utilities Commission

465 South King Street, Room 103

Honolulu, Hawaii 96813

Telephone: (808)586-2020

Facsimile: (808)586-2066

3. Consistent with HAR §§ 6-80-102 and 6-80-107, Section 10 (Original Sheet 14) should be amended by inserting the following new section "10.d":

"Upon notification of a dispute, the Company will notify the customer within five (5) working days of its receipt of the written dispute notice and shall undertake an investigation of the disputed charges. At the conclusion of the investigation, the Company will notify the Customer of any amount determined by the Company to be correctly charged and Customer shall pay such amount to the Company within twenty (20) working days. The Company may suspend/terminate service if the Customer fails to pay the amount determined by the Company to be properly charged. Amounts determined by the Company to be correctly charged also will be

subject to the late payment charge specified in Section 11 of this tariff."

4. Section B.12. (Original Sheet 15) should be amended to be consistent with HAR § 6-80-106.

IV.

Orders

THE COMMISSION ORDERS:

1. Applicant is granted a COA to provide intrastate telecommunications services in the State as a reseller.

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; 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 initial tariff to the applicable provisions of HAR chapter 6-80 by, among other things, incorporating the tariff revisions set forth in Section III. of this decision and order. An original and eight (8) copies of the initial 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. Within thirty (30) days from the date of this decision and order, Applicant 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 S. King Street #103, Honolulu, HI, 96813.


6. Within thirty (30) days from the date of this decision and order, Applicant shall also pay a telecommunications relay service ("TRS") contribution of \$10.00, established pursuant to: (A) Act 50, adopted on May 7, 2003 (codified at HRS § 269-16.6); and (B) Order No. 21049, filed on June 10, 2004, in Docket No. 04-0070. (A copy of Order No. 21049 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.


7. Failure to promptly comply with the requirements set forth in paragraphs 3 to 6 may constitute cause to void this decision and order, and may result in further regulatory action, as authorized by law.

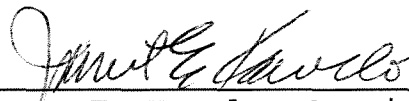
DONE at Honolulu, Hawaii

SEP 14 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

04-0157.eh

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

----- In the Matter of -----)
)
PUBLIC UTILITIES COMMISSION)
)
Instituting an Investigation)
into the Carrier Contribution)
Factor and Telecommunications)
Relay Services Fund Size for)
the period of July 1, 2004)
through June 30, 2005.)
_____)

DOCKET NO. 04-0070

ORDER NO. 21049

Filed June 10, 2004

At 2:01 o'clock P.M.

Bronlee Kane
for Chief Clerk of the Commission

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

----- In the Matter of -----)	
PUBLIC UTILITIES COMMISSION)	Docket No. 04-0070
Instituting an Investigation)	Decision and Order No.21049
into the Carrier Contribution)	
Factor and Telecommunications)	
Relay Services Fund Size for)	
the period of July 1, 2004)	
through June 30, 2005.)	
_____)	

DECISION AND ORDER

I.

Background

By Order No. 20904, filed on April 15, 2004, the commission initiated the instant proceeding to examine whether to modify the Telecommunications Relay Services ("TRS") carrier contribution factor and fund size for the period July 1, 2004 to June 30, 2005, established in accordance with Order No. 20193, filed on May 23, 2003, in Docket No. 03-0058 ("Order No. 20193").¹ Specifically, the commission proposes to modify the carrier contribution factor from 0.00375 to 0.0010 effective on July 1, 2004 ("Proposed Carrier Contribution Factor"). The proposed carrier contribution factor of 0.0010 is expected to remain in effect through June 30, 2005.

¹In Docket No. 03-0058, the commission selected SPRINT COMMUNICATIONS CO., LP. ("Sprint") as the exclusive provider of intrastate TRS within the State of Hawaii ("State of Hawaii") from July 1, 2003 to June 30, 2006. See Decision and Order No. 20163, filed on April 30 2003. Order No. 20193, filed on May 23, 2003, in Docket No. 03-0058.

The commission also proposes to keep the projected TRS fund size, as of July 1, 2004, at \$680,000 ("Proposed TRS Fund Size").

The commission served copies of Order No. 20904 on The Division of Consumer Advocacy, Department of Commerce and Consumer Affairs ("Consumer Advocate") and Sprint, the parties to this proceeding, and mailed copies of Order No. 20904 to all chartered, certificated and registered telecommunications carriers, except payphone providers, at their mailing addresses on file with the commission. Written comments to the proposals were accepted until May 14, 2004. As of the date of this order, only the Consumer Advocate filed written comments on the commission's proposals.²

II.

Background

On May 23, 2003, the commission issued Order No. 20193, in Docket No. 03-0058 which, among other things, ordered: (1) every telecommunications carrier providing intrastate telecommunications service in the State of Hawaii to 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,

²Consumer Advocate's Statement of Position, filed on May 7, 2004.

consistent with the terms of Order No. 20193³; (3) contributors' contribution to the TRS fund shall be the product of their gross operating revenue 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 Order No. 20193; and (4) the annual TRS funding period commences July 1 and ends June 30 of each year.

III.

Discussion

A.

Consumer Advocate's Statement of Position

The Consumer Advocate states that it has no objections to the Commission's proposed carrier contribution factor and the fund size. However, in order to monitor the sufficiency of the fund size and protect against degradation of service, the Consumer Advocate recommends that Sprint should be required to provide TRS reports on a quarterly basis so that the commission may be better and more quickly able to determine whether changes to the contribution factor are warranted. Specifically, the Consumer Advocate recommends that the reports contain: (1) actual number of TRS calls offered by month; (2) actual number of abandoned calls by month; (3) average speed of answer

³The commission specifically excluded payphone providers from contributing to the TRS fund.

in seconds of TRS calls by month; (4) average work time in seconds by month; (5) number of TRS complaints filed either verbally or in writing by month; and (6) detailed data on actual revenues, expenses and investments for TRS services in Hawaii.

B.

Reporting Requirements

Upon review, the commission declines to adopt the Consumer Advocate's recommendation relating to additional reporting requirements primarily because we find these requirements are unnecessary and redundant.

Pursuant to the terms and conditions of the Request for Service ("RFS") in Docket No. 03-0058, which governs the commission's arrangement with Sprint for the provisioning of TRS, Sprint is required to submit the following reports:

- a. Section 4.5 (Payment): "No more than fifteen days after the close of each month, the service provider will submit a report [i.e., billing statement] to the Commission detailing the previous month's work. Then, the Commission, within thirty (30) days of receipt of said report, will authorize or determine a date the provider is authorized to withdraw payment from the TRS account or fund. Total reimbursement shall not exceed the total fixed bid per minute price."
- b. Section 4.13 (Reports): "[A] monthly report with the monthly billing statement which will enable the Commission to monitor whether the Relay service is meeting each of the FCC and State performance standards. The report shall also include summary information on complaints, when appropriate. When applicable, the monthly report should include information on any hardware procedural or service enhancements made to the Relay service. After receiving authorization from the Commission, the selected service provider may request designation of certain written reports as proprietary, consistent with the Commission's practice and procedures."

In compliance with Section 4.5 of the RFS, NECA Services, Inc. ("NECA") files on a monthly basis: (1) a Statement of Fund Performance; and (2) a Delinquent Report. The information includes total fund revenues collected from telecommunications carriers, disbursements to Sprint as authorized by the commission, fund balance as of the end of the previous month, and delinquent carriers that have not paid their TRS fund contributions.

Furthermore, in compliance with Section 4.13 of the RFS, Sprint provides comprehensive, detailed information on minutes of use; traffic reporting statistics, including number of calls offered and abandoned, average speed of answer, and average work time; speech-to-speech statistics; and CapTel results. The billing statement also includes summary reporting of customer complaints and outreach efforts.

The commission notes that the Consumer Advocate has not been copied on any of these reports previously filed with the commission and we hereinafter will require Sprint to copy the Consumer Advocate on these reports going forward. Sprint's existing reports contain much of the information the Consumer Advocate appears to be seeking. The only type of information not included in Sprint's reports is specific investment information, however, we do not believe that that information needs to be included in the compliance reports.⁴

⁴As Sprint has already been doing, it should continue to keep the commission informed, and seek our approval as appropriate, on new investments it plans to make to its network or operations that are expected to impact TRS in Hawaii. Sprint should also keep the Consumer Advocate informed of these new investments.

C.

Carrier Contribution Factor and Fund Size

Upon further review, the commission finds it reasonable to adopt the commission's proposals to modify the existing carrier contribution factor and fund size in their entirety as stated in Order No. 20904. In particular, the carrier contribution factor for the period July 1, 2004 to June 30, 2005 is 0.0010 and the projected TRS fund size as of July 1, 2004 will be established at \$680,000.

III.

Orders

THE COMMISSION ORDERS:

1. The commission's proposed modifications to the existing contribution factors and fund size, as stated in Order No. 20904, is adopted in their entirety.

2. The contribution factor for the period July 1, 2004 to June 30, 2005 is 0.0010. The projected TRS fund size as of July 1, 2004 is \$680,000.

3. Each carrier shall complete and submit a TRS Reporting Worksheet, attached to this Order as Exhibit "A".

4. Annual contributions are due July 26th; carriers who owe contributions \$1,200 or more may pay in twelve equal monthly installments, due on the 26th of each month, provided that they submit their TRS Reporting Worksheet by July 26th.

5. For carriers reporting \$10,000 or less in gross intrastate retail revenues, they shall contribute at least \$10.00 for the period July 1, 2004 to June 30, 2005.


6. Every carrier, except Commercial Mobile Radio Service ("CMRS") providers, shall comply with the 30-day notice requirement of HRS § 269-16(b) and HAR § 6-80-40(b) for any TRS surcharge imposed on its customers, both residential and business, to recover the amount of its contribution. CMRS providers shall place information on their TRS surcharges on their websites, consistent with Decision and Order No. 20890, filed on April 7, 2004, in Docket No. 02-0186.

7. Sprint shall copy the Consumer Advocate on the following reports to the commission: (1) Statement of Fund Performance; (2) Delinquent Report; and (3) TRS Performance Information and Statistics.


8. Order No. 20193, filed on May 23, 2003, in Docket No. 03-0058, is amended consistent with the terms and conditions of this decision and order. In all other respects, Order No. 20193 remains unchanged.

DONE at Honolulu, Hawaii this 10th day of June, 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:


Kevin M. Katsura
Commission Counsel

04-0070.eh

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

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

SECTION B		REMITTANCE CALCULATION
1. Gross Revenues (Prior Calendar Year) <small>(e.g., Current year is 2004; Report revenues from 2003) (Amount should match gross revenues reported for Hawaii PUC Fee purposes, HRS § 269-30)</small>		
2. Less: Revenue Adjustments <small>(describe, see Section E)</small>	< >	
3. Gross Intrastate Retail Revenues		
4. Hawaii TRS Contribution Factor	.001	
5. Gross Hawaii TRS Assessment <small>(line 3 x line 4)</small>		
6. Greater of line 5 or \$10.00 (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>		

SECTION C		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>		

SECTION D				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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SECTION E DETAILS CONCERNING REVENUE ADJUSTMENT(S)

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

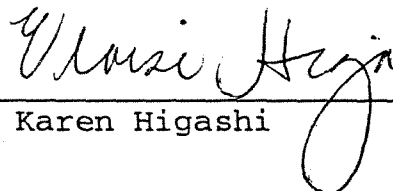
Describe amounts deducted from Gross Revenues to obtain Gross Intrastate Retail Revenues (list):	Amount
1.	
2.	
3.	
4.	
5.	
6.	
7.	
8.	
9.	
10.	
TOTAL	

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 21049 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

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



for Karen Higashi

DATED: June 10, 2004

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 21347 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

ROBERT MUNOZ
REGULATORY MANAGER
MCI, INC.
201 Spear Street, 9th Floor
San Francisco, CA 94105

JUDY A. TANAKA, ESQ.
COLIN A. YOST, ESQ.
PAUL JOHNSON PARK & NILES
1300 ASB Tower
1001 Bishop Street
Honolulu, HI 96813



Karen Higashi

DATED: SEP 14 2004