

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)
)
 ACCERIS MANAGEMENT AND)
 ACQUISITION LLC)
)
 For a Certificate of Authority to)
 Provide Intrastate Interexchange)
 Telecommunications Services)
 Within the State of Hawaii and)
 for Approval of its Initial)
 Tariff.)
 _____)

DOCKET NO. 05-0165

DECISION AND ORDER NO. 22314

Filed March 10, 2006
At 1:10 o'clock P.M.

Karen Higashi
Chief Clerk of the Commission

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

2006 MAR 13 A 9:05

RECEIVED

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

K. Higashi

I.

Background

Applicant is a Minnesota limited liability company with its principal place of business in Minneapolis, Minnesota. It is authorized to conduct business in the State as a foreign limited liability company.² Applicant is a newly formed company, and is wholly owned by North Central Equity LLC ("NCE").

On July 5, 2005, Applicant filed its Application seeking a COA to provide telecommunications services in the State pursuant to Hawaii Revised Statutes ("HRS") § 269-7.5 and Hawaii Administrative Rules ("HAR") §§ 6-80-17 and 6-80-18.³ Applicant proposes to offer a full range of "1+" telecommunications services in the State.⁴ In particular, Applicant intends to provide MTS, out-WATS, in-WATS, and calling card services.⁵ Applicant does not intend to own its own

²See Certificate of Authority issued on July 5, 2005 by the State of Hawaii Department of Commerce and Consumer Affairs, Business Registration Division ("Business Registration Division"), filed on December 6, 2005.

³On August 4, 2005, the commission advised Applicant that it could not complete a review of the Application unless Applicant provided: (1) a financial statement dated no more than three (3) months from the date of the Application in accordance with HAR § 6-80-17(c)(1)(E); and (2) a proposed initial tariff disclosing the rates or charges proposed and the regulations that will govern the proposed service in accordance with HAR § 6-80-17(c)(1)(D). On October 4, 2005, Applicant provided redacted confidential financial statements of Applicant's parent, NCE, and a proposed tariff. On October 31, 2005, Applicant's counsel and the Consumer Advocate submitted a stipulated protective order governing the financial statements provided to the commission.

⁴See Application, at 2.

⁵See id.

telecommunications facilities, but plans to provide telecommunications services on a resold basis.

Applicant contends that it has the technical and managerial qualifications to provide the proposed telecommunications services. Applicant further states that it has access to capital to fulfill any obligations it may undertake to provide the proposed services in the State.⁶

The Consumer Advocate filed its Statement of Position on November 15, 2005 ("Statement of Position"), informing the commission that it does not object to the approval of the Application, subject to the Consumer Advocate's tariff revision recommendations and Applicant's submission of evidence that it received authorization from the Business Registration Division to conduct business in the State.⁷

II.

Discussion

HRS § 269-7.5 prohibits a public utility from commencing business in the State without first obtaining a

⁶In support of this claim, Applicant submitted copies of internal consolidated financial statements for its parent, NCE, for the six (6) months ending June 2005.

⁷On December 6, 2005, in response to the Consumer Advocate's Statement of Position, Applicant provided copies of its Certificate of Authority to transact business in the State issued by the Business Registration Division on July 5, 2005. Applicant also provided a revised tariff sheet, which implemented the tariff revisions suggested by the Consumer Advocate.

certificate of public convenience and necessity ("CPCN") from the commission.⁸ HAR § 6-80-18(a) states that:

The commission shall issue a certificate of authority to any qualified applicant, authorizing the whole or any part of the telecommunications service covered by the application, if it finds that:

- (1) The applicant possesses sufficient technical, financial, and managerial resources and abilities to provide the proposed telecommunications service in the State;
- (2) The applicant is fit, willing, and able to properly perform the proposed telecommunications service and to conform to the terms, conditions, and rules prescribed or adopted by the commission; and
- (3) The proposed telecommunications service is, or will be, in the public interest.

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, as evidenced by the resumes of Applicant's corporate officers and the financial statements⁹ submitted in support of the Application.

⁸On June 3, 1996, HAR chapter 6-80 took effect. HAR 6-80, among other things, replaces the CPCN with a COA for telecommunications carriers, and establishes procedures for requesting and issuing a COA.

⁹The Consumer Advocate notes that Applicant did not file audited financial statements as mandated by HAR § 6-80-17(c)(1)(E), but nonetheless does not object in this instance to the commission, on its own motion, waiving the requirement for Applicant to submit an audited financial statement as part of its Application. The commission concurs with the Consumer Advocate's assessment, and pursuant to HAR § 6-80-135(a), waives the requirement set forth in HAR § 6-80-17(c)(1)(E) for Applicant to submit an audited financial statement.

2. Applicant is fit, willing, and able to properly perform the telecommunications services proposed and to conform to the terms, conditions, and rules prescribed or adopted by the commission, as evidenced by Applicant's representations in its Application. Moreover, the commission's grant of a COA to Applicant to provide the proposed services will be conditioned upon Applicant's conformity to the terms, conditions, and rules prescribed or adopted by the commission as discussed below.

3. Applicant's proposed telecommunications services are in the public interest. The commission recognizes that additional service providers in the industry increase competition and provide the consumer with options in Hawaii's telecommunications market. As noted by the Consumer Advocate, Applicant's proposed services are in the public interest as "the introduction of effective competition in the telecommunications industry is desirable to achieve certain benefits that would not be present in a monopolistic environment."¹⁰ Based on the foregoing, the commission concludes that Applicant should be granted a COA to provide resold intrastate services in the State as described in its Application.

Upon review of the Consumer Advocate's tariff revision recommendations, the commission finds them to be reasonable and proper.¹¹ Moreover, the commission finds certain other tariff revisions to also be appropriate. Thus, the commission concludes that Applicant's proposed tariff should be revised as follows:

¹⁰Statement of Position, at 5.

¹¹Applicant revised its proposed tariff to address the Consumer Advocate's concerns on December 6, 2005.

1. Original Pages 35 through 43 - These sections should be revised to define "PIC-C."

2. Original Pages 37 through 52 - These sections should be revised to define "MRC."

3. The proposed tariff should include a definition of "HAR."

III.

Orders

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

2. As a holder of a COA, Applicant shall be subject to all applicable provisions of HRS chapter 269; HAR chapters 6-79, 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 chapters 6-79 and 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 chapters 6-79 and 6-80 by, among other things, incorporating the tariff revisions set forth in Section II 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, Room #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) HRS § 269-16.6; and (B) Decision and Order No. 21847, filed on May 31, 2005, in Docket No. 05-0088. (A copy of Order No. 21847 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, above, may constitute cause to void this Decision and Order, and may result in further regulatory action, as authorized by law.

DONE at Honolulu, Hawaii MAR 10 2006.

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:


Kaiulani E.S. Kidani
Commission Counsel

05-0165.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, 2005)
 through June 30, 2006.)
 _____)

DOCKET NO. 05-0088

DECISION AND ORDER NO. 21847

Filed May 31, 2005

At 10 o'clock A .M.

Karon Higuel
Chief Clerk of the Commission

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

----- In the Matter of -----)
)
 PUBLIC UTILITIES COMMISSION)
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 Instituting an Investigation)
 into the Carrier Contribution)
 Factor and Telecommunications)
 Relay Services Fund Size for)
 the period of July 1, 2005)
 through June 30, 2006.)
 _____)

Docket No. 05-0088
Decision and Order No. 21847

DECISION AND ORDER

By this Order, the commission: establishes the Telecommunications Relay Services ("TRS") carrier contribution factor for the period July 1, 2005 to June 30, 2006 (the "Period"), at 0.0010, and establishes the projected TRS fund size for the Period, at approximately \$680,000.

I.

Background

By Order No. 21730, filed on April 12, 2005, ("Order No. 21370") the commission initiated the instant proceeding to examine whether to modify the TRS carrier contribution factor and fund size for the Period, established in accordance with Order No. 20193, filed on May 23, 2003, in

Docket No. 03-0058 ("Order No. 20193").¹ Specifically, in Order No. 21370, the commission proposed to continue the existing carrier contribution factor of .0010, established by Order No. 21049, filed on April 15, 2004, in Docket No. 04-0070. The commission also proposed to keep the projected TRS fund size, for the Period, at approximately \$680,000.

The commission served copies of Order No. 21730 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. 21730 to all chartered, certificated and registered telecommunications carriers, except payphone providers, at their mailing addresses on file with the commission to solicit written comments. Written comments to the proposals were accepted until May 6, 2005. As of the date of this Order, no written comments were filed with the commission on any of the commission's proposals.

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

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.

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 Order No. 20193²; (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

The Commission received no comments or objections to the proposals in Order No. 21730. Upon review, the commission finds the proposals in Order No. 21730 to be reasonable and in the public interest. Accordingly, the carrier contribution factor for the Period shall be 0.0010 and the projected TRS fund size, for the Period shall be established at approximately \$680,000.

²The commission specifically excluded payphone providers from contributing to the TRS fund.

III.

Orders

THE COMMISSION ORDERS:

1. The contribution factor for the Period (July 1, 2005 to June 30, 2006) shall be 0.0010. The projected TRS fund size, for the Period, shall be approximately \$680,000.

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

3. 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.

4. Carriers reporting \$10,000 or less in gross intrastate retail revenues shall contribute at least \$10.00 for the period July 1, 2005 to June 30, 2006.

5. 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. 03-0186.

6. 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.

**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 (Based on Prior Calendar Year) <small>(e.g., Current year is 20X2; Report revenues from 20X1) (Amount should match gross revenues reported for Hawaii PUC Fee purposes, HRS § 269-30)</small>		
2.	Less: Revenue Adjustments (describe, see Section E)	<	>
3.	Gross Intrastate Retail Revenues		
4.	Hawaii TRS Contribution Factor		.001
5.	Gross Hawaii TRS Assessment (line 3 x line 4)		
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

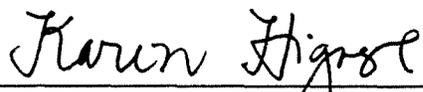
<p>Questions??? Hawaii TRS Administrator NECA Services, Inc. 80 S. Jefferson Road Whippany, NJ 07981 Phone (973) 884-8011 Fax (973) 599-6504</p>	<p>Make checks payable to "Hawaii TRS" and send with worksheet to: Attn: Hawaii TRS Administrator NECA Services, Inc. 80 S. Jefferson Road Whippany, NJ 07981</p>
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CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 21847 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



Karen Higashi

DATED: MAY 31 2005

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 22314 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

JOHN E. COLE
EXECUTIVE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
DIVISION OF CONSUMER ADVOCACY
P. O. Box 541
Honolulu, HI 96809

PATRICK D. CROCKER, ESQ.
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900 Comerica Building
Kalamazoo, MI 49007-4752

Attorney for Acceris Management and Acquisition LLC



Karen Higashi

DATED: MAR 10 2006