

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
SK-EARTHLINK LLC, nka HELIO LLC)
For a Certificate of Registration.)

DOCKET NO. 05-0261

DECISION AND ORDER NO. 22315

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DEPARTMENT OF LAND & NATURAL RESOURCES
CONSUMER AFFAIRS
STATE OF HAWAII

Filed March 10, 2006
At 1:15 o'clock P.M.

Karen Higashi
Chief Clerk of the Commission

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)
SK-EARTHLINK LLC, nka HELIO LLC)
For a Certificate of Registration.)

Docket No. 05-0261
Decision and Order No. 22315

DECISION AND ORDER

By this Decision and Order, the commission grants SK-EARTHLINK LLC, now known as HELIO LLC ("Applicant")¹ a certificate of registration ("COR") to provide commercial mobile radio services ("CMRS") (also known as wireless telecommunications services), on a resold basis in the State of Hawaii ("State").

I.

Background

Applicant is a limited liability company ("LLC") organized under the laws of the State of Delaware and authorized to transact business in the State of Hawaii as a foreign LLC. Its principal place of business is in Los Angeles, California.

Applicant is a mobile virtual network operator and a reseller of CMRS.

¹By letter dated January 20, 2006, and filed on January 23, 2006, Applicant informed the commission of its name change from "SK-EarthLink LLC" to "HELIO LLC."

A.

Applicant's Request

On October 17, 2005, Applicant filed its application for a COR to operate as a CMRS provider on a resold basis in the State.² Applicant utilized the form application developed in In re Public Utilities Commission, Docket No. 03-0186, Order No. 21324, filed on August 27, 2004 ("Order No. 21324"), to make its request ("Official COR Form").

B.

Consumer Advocate's Position

On January 17, 2006, the Consumer Advocate filed its Statement of Position informing the commission that it does not object to approval of Applicant's request. The Consumer Advocate noted that Applicant provided the information required in the Official COR Form, but observed that Applicant's telephone number for customer service inquiries may not be a toll-free number, as required under HAR § 6-80-114(6). If Applicant's telephone number for customer service inquiries is not a toll-free number, the Consumer Advocate recommends that Applicant be required to provide a toll-free telephone number to receive calls regarding service or billing matters.

²Applicant served copies of the Application on the DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS ("Consumer Advocate"), an *ex officio* party to this docket pursuant to Hawaii Revised Statutes ("HRS") § 269-51 and Hawaii Administrative Rules ("HAR") § 6-61-62.

II.

Discussion

HRS § 269-7.5 prohibits a public utility from commencing business in the State without first obtaining a certificate of public convenience and necessity ("CPCN") from the commission.³ HAR § 6-80-17(c) and (d) state the following:

(c) Any 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 certificate of authority. The application must:

(1) Include information on the:

- (A) Type of telecommunications service to be offered;
- (B) Geographical scope of the carrier's proposed operation;
- (C) Type of equipment to be employed in the service;
- (D) Rates or charges proposed to be imposed and the regulations that will govern the proposed service; and
- (E) Applicant's financial ability to render the proposed service, including a copy of the most recent audited financial statement and, if more than three months have elapsed since the date of the most recent audited financial statement, a current, unaudited financial statement; and

(2) Comply with all applicable commission orders and rules. The commission may reject any application that fails to meet any of these requirements or is otherwise incomplete.

.....

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

- (d) Where exempted by federal law from entry regulation by the State, a telecommunications carrier seeking to offer, initiate, or provide intrastate telecommunications service shall apply for a certificate of registration with the commission by complying with subsections (c)(1) (A) - (D) and (c)(2) only.

HAR § 6-80-17(c) and (d) (emphasis added).

Recognizing that the federal Omnibus Budget Reconciliation Act of 1993 preempted state and local governments from regulating the entry of or the rates charged by providers of CMRS, while expressly allowing states to regulate the other terms and conditions of commercial mobile services,⁴ the commission initiated Docket No. 03-0186 to investigate and determine whether it is consistent with the public interest to exempt CMRS providers and their services from any provisions of HRS Chapter 269. On April 7, 2004, the commission issued Decision and Order No. 20890 waiving various regulatory requirements of HRS Chapter 269 and HAR Chapter 6-80 for any and all CMRS providers in Hawaii, subject to certain applicable conditions, limitations, and clarifications. On August 27, 2004, the commission issued Order No. 21324 correcting certain clerical errors of Decision and Order No. 20890 and adopting an official application form for requesting a COR for CMRS providers and cellular resellers, i.e., the Official COR Form.

⁴See In re Public Utilities Commission, Docket No. 03-0186, Decision and Order No. 20890, filed on April 7, 2004 ("Decision and Order No. 20890"), at 1-2, citing Pub. L. No. 103-66, Title VI, § 6002, 107 Stat. 312, 392 (1993) (codified in principal part at 47 U.S.C. § 332).

Upon review, the commission finds that Applicant has sufficiently satisfied the requirements of HAR § 6-80-17(d), to the extent such requirements were not waived in accordance with Decision and Order No. 20890, as amended by Order No. 21324. Consistent with Decision and Order No. 20890, the commission also finds, at this time, that providing appropriate regulatory flexibility to entities providing CMRS including wireless resellers promotes increased competition and investment in the State's wireless telecommunications market.

With regard to the Consumer Advocate's recommendation regarding compliance with HAR § 6-80-114(6), the commission finds that Applicant should review the telephone number provided for customer service inquiries and provide a toll-free number to receive calls regarding service or billing matters, as required by HAR § 6-80-114(6), if it determines that the number initially provided is not a toll-free number. The commission notes that the requirements of HAR § 6-80-114 were not waived by Decision and Order No. 20890.

Based on the foregoing, the commission concludes that Applicant should be granted a COR to provide CMRS on a resold basis in the State. Additionally, the commission concludes that Applicant should supplement its Application through a letter to the commission, with a copy to the Consumer Advocate, if it determines that the number it initially provided to receive

customer service questions is not a toll-free number, in accordance with HAR § 6-80-114(6).⁵

III.

Orders

1. Applicant is granted a COR to provide CMRS on a resold basis in the State.

2. As a holder of a COR, Applicant shall be subject to all applicable provisions of HRS Chapter 269; HAR Chapters 6-80, 6-81, and 6-82; any other applicable State laws and commission rules; and any orders that the commission may issue from time to time.

3. Consistent with Decision and Order No. 20890, Applicant is not required to file tariffs in accordance with HAR §§ 6-80-39 and 6-80-40; provided that Applicant maintains and promptly provides updated information regarding its service plans (with terms and conditions) and the appropriate contact information (i.e., designated carrier representative) upon the commission's, the Consumer Advocate's, or customer's request. Such updated information shall also be placed within a reasonable time period on Applicant's website, if any.

4. Within thirty (30) days from the date of this Decision and Order, Applicant shall supplement its Application through a letter to the commission, with a copy to the Consumer Advocate, if it determines that the number it initially provided

⁵The telephone number to receive customer service inquiries on Applicant's website, if any, should also be amended within a reasonable time period, to reflect the toll-free number, if necessary.

to receive customer service questions is not a toll-free number, in compliance with HAR § 6-80-114(6), and consistent with ordering paragraph no. 3 above, Applicant shall also update its number to receive customer inquiries on its website, if any, within in a reasonable period of time.

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) Act 50, adopted on May 7, 2003 (codified as 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.

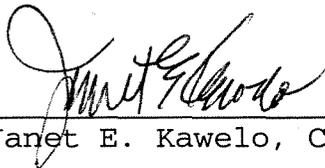
7. Failure to promptly comply with the requirements set forth in paragraphs 2 to 6, above, as applicable, may constitute cause to void this Decision and Order, and may result in further regulatory action, as authorized by law.

DONE at Honolulu, Hawaii MAR 10 2006

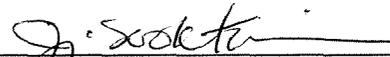
PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By (EXCUSED)
Wayne H. Kimura, Commissioner

By 
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:


Ji Sook Kim
Commission Counsel
05-0261.ac

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)
)
 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.

DONE at Honolulu, Hawaii MAY 31 2005.

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

05-0088.en

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 <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 style="text-align: center;">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)

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	

Exhibit "A"

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. 22315 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

MARC S. MARTIN
KIRKPATRICK & LOCKHART NICHOLSON GRAHAM LLP
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Washington, DC 20036

Attorney for HELIO LLC

NEIL J. YOUNG
HELIO LLC
10960 Wilshire Blvd., Suite 600
Los Angeles, CA 90024



Karen Higashi

DATED: March 15, 2006