

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
USA MOBILITY, INC.)
For a Certificate of Registration,)
on Behalf of Metrocall, Inc.)
_____)

DOCKET NO. 05-0250

DECISION AND ORDER NO. 22369

Filed April 4, 2006
At 2 o'clock P.M.

Karen Higashi
Chief Clerk of the Commission

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K. Higashi

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OF THE STATE OF HAWAII

In the Matter of the Application of)
USA MOBILITY, INC.) Docket No. 05-0250
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DECISION AND ORDER

By this Decision and Order, the commission grants METROCALL, INC. a certificate of registration ("COR") to provide commercial mobile radio services ("CMRS") (also known as wireless telecommunications services) in the State of Hawaii ("State").

I.

Background

On November 16, 2004, USA Mobility, Inc., a publicly-traded company, was formed by the merger of Metrocall Holdings, Inc. and Arch Wireless, Inc., two (2) paging companies. Specifically, shares of Metrocall Holdings, Inc. stock and Arch Wireless, Inc. stock were exchanged for USA Mobility, Inc. stock.

Following the merger, Metrocall Holdings, Inc. and Arch Wireless, Inc. continued to provide paging services nationwide through their respective operating companies: (1) Metrocall, Inc.; and (2) Arch Wireless Operating Company, Inc., fka MobileMedia License Co. L.L.C. USA Mobility, Inc.,

Arch Wireless, Inc., and Metrocall, Inc. are registered to transact business in the State.¹

Recently, USA Mobility, Inc. completed a series of changes to its corporate structure involving its operating subsidiary, Metrocall, Inc.

As explained by USA Mobility, Inc.:

Effective as of September 30, 2005, USA Mobility completed a series of changes to its corporate structure. As a result of these changes, USA Mobility combined the Metrocall, Inc. and Arch Wireless Operating Company, Inc. operating companies. Arch Wireless Operating Company, Inc. has merged with and into Metrocall, Inc., with Metrocall Inc. being the surviving corporation and the sole operating subsidiary of USA Mobility. Metrocall, Inc. will continue to provide CMRS services throughout the state of Hawaii as a result of the merger.

. . . .

Following the corporate restructuring of USA Mobility, Inc. and the merger of Arch Wireless Operating Company, Inc. with and into Metrocall, Inc., Arch Wireless Operating Company, Inc. no

¹On January 26, 1999, the commission: (1) granted MobileMedia License Co. L.L.C. a COR to operate as a CMRS provider; and (2) approved the merger plan that resulted in Arch Communications, Group, Inc.'s acquisition of MobileMedia License Co. L.L.C. In re MobileComm of the Northeast, Inc., dba Ram Paging Hawaii, Docket No. 98-0382, Decision and Order No. 16802, filed on January 26, 1999. Arch Wireless, Inc. is the present holder of the COR initially issued to MobileMedia License Co. L.L.C. See In re Arch Wireless, Inc., Docket No. 02-0045, Decision and Order No. 19420, filed on June 19, 2002. Arch Wireless, Inc. does not provide any CMRS in the State. See USA Mobility, Inc.'s letter, dated November 30, 2005, filed on December 2, 2005, at 4 - 5.

On April 14, 2005, the commission approved Verizon Hawaii Inc.'s request to license and sublicense certain properties to Metrocall, Inc., successor-in-interest to Weblink Wireless I, L.P., formerly known as Weblink Wireless, Inc. In re Verizon Hawaii Inc., Docket No. 04-0348, Decision and Order No. 21750, filed on April 14, 2005. The commission, in approving Verizon Hawaii, Inc.'s request, required Metrocall, Inc. to apply for a COR. See id. at 8 - 9, 11.

longer exists Arch Wireless, Inc. is [a subsidiary of USA Mobility, Inc. and the present holder of a COR initially issued to MobileMedia License Co., LLC. Arch Wireless, Inc. is not an operating company and does not provide CMRS services in Hawaii.

USA Mobility, Inc.'s letter, dated November 20, 2005, filed on December 2, 2005, at 2 and 5 (emphasis added) (citation and text therein omitted).

In essence, "following a *pro forma* internal corporate reorganization, all paging operations were transferred to Metrocall, Inc., which continues to be a wholly-owned subsidiary of USA Mobility[, Inc.]"²

On October 3, 2005, USA Mobility, Inc. filed its Application seeking a COR to provide CMRS in the State.³ USA Mobility, Inc. subsequently clarified that it is seeking the COR on Metrocall, Inc.'s behalf, consistent with Docket No. 04-0438, Decision and Order No. 21750.⁴ USA Mobility, Inc. utilized the form application developed in In re Public Util. Comm'n, Docket No. 03-0186, Order No. 21324, filed on

²USA Mobility, Inc.'s letter, dated February 6, 2006, at 2.

³USA Mobility, Inc.'s Transmittal Letter, Application for a Certificate of Registration, Verification, and Certificate of Service, filed on October 3, 2005 (collectively, the "Application"). USA Mobility, Inc. served copies of its Application upon the Department of Commerce and Consumer Affairs, Division of Consumer Advocacy ("Consumer Advocate").

⁴See USA Mobility, Inc.'s response to CA-IR-1. USA Mobility, Inc.'s action of seeking a COR on behalf of Metrocall, Inc. is also consistent with the commission's Notice to Interested Persons, published in five (5) local newspapers on November 1, 2005, which stated in relevant part that USA Mobility, Inc. was applying for a COR on behalf of Metrocall, Inc. to provide CMRS in the State. See also USA Mobility, Inc.'s Application, Sections I, XI, and XII.

August 27, 2002 ("Order No. 21324"), to make its request, ostensibly on Metrocall, Inc.'s behalf.

On December 2, 2005, USA Mobility, Inc. filed its responses to the commission's information requests. In addition, by letters dated February 6 and 9, 2006, USA Mobility, Inc. responded to the Consumer Advocate's information requests.⁵ USA Mobility, Inc.'s responses amend, update, and clarify the information set forth in the Application.

USA Mobility, Inc., by letter dated February 22, 2006, formally amended its Application by clarifying that it is seeking the COR on behalf of its subsidiary, Metrocall, Inc.⁶ Metrocall, Inc. "provides CMRS service (one-way and two-way paging services) throughout the State of Hawaii using facilities licensed by the Federal Communications Commission ('FCC') to Metrocall USA, Inc. and Arch Wireless Co., LLC."⁷

On March 14, 2006, the Consumer Advocate filed its Statement of Position, informing the commission that it does not object to granting a COR to Metrocall, Inc. The Consumer Advocate noted that the Application and responses to the information requests contain the information required on the

⁵See also USA Mobility, Inc.'s letter, dated November 30, 2005. USA Mobility, Inc.'s letter, dated February 6, 2006, appears to inadvertently include without explanation a five (5)-page unsigned document entitled "Mutual Confidentiality Agreement." The commission disregards this document as irrelevant in this case.

⁶See commission's letter, dated February 10, 2006; and USA Mobility, Inc.'s letter, dated February 22, 2006.

⁷USA Mobility, Inc.'s letter, dated November 30, 2005, filed on December 2, 2005, at 4.

Official COR Form, but observed that Metrocall, Inc.'s telephone number for customer service inquiries may not be a toll-free number, as required under Hawaii Administrative Rules ("HAR") § 6-80-114(6). If Metrocall, Inc.'s telephone number for customer service inquiries is not a toll-free number, the Consumer Advocate recommends that Metrocall, Inc. be required to provide a toll-free telephone number to receive calls regarding service or billing matters.

II.

Discussion

Hawaii Revised Statutes ("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.⁸ 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

⁸On 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.

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.

(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 radio services,⁹ 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

⁹See In re Public Util. Comm'n, 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).

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.

USA Mobility, Inc. requests a COR on Metrocall, Inc.'s behalf, in compliance with Docket No. 04-0348, Decision and Order No. 21750. Upon review, the commission finds that Metrocall, Inc. 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 Metrocall, Inc. should review the telephone number provided for customer service inquiries, and if it is determined that the telephone number is not a toll-free number, Metrocall, Inc. should provide a toll-free number to receive calls regarding service or billing matters, as required by HAR § 6-80-114(6).¹⁰

Based on the foregoing, the commission concludes that Metrocall, Inc. should be granted a COR to provide CMRS

¹⁰The commission notes that the requirements of HAR § 6-80-114 were not waived by Decision and Order No. 20890.

in the State.¹¹ In addition, the commission concludes that Metrocall, Inc. should supplement its Application, as amended, 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).¹²

III.

Orders

THE COMMISSION ORDERS:

1. Metrocall, Inc. is granted a COR to provide CMRS in the State.

2. As a holder of a COR, Metrocall, Inc. 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. Consistent with Decision and Order No. 20890, Metrocall, Inc. is not required to file any tariffs in accordance with HAR §§ 6-80-39 and 6-80-40; provided that Metrocall, Inc. maintains and promptly provides updated information regarding its service plans (with terms and conditions) and the appropriate contact information (i.e., designated carrier representative)

¹¹The commission issues the COR to Metrocall, Inc., the operating entity, and not to USA Mobility, Inc., the parent and holding company.

¹²The telephone number to receive customer service inquiries on Metrocall, Inc.'s website, if any, should also be amended within a reasonable time period, to reflect the toll-free number, if necessary.

upon the commission's, Consumer Advocate's, or customer's request. Such updated information shall also be placed within a reasonable time on Metrocall, Inc.'s website, if any.

4. Within thirty (30) days from the date of this Decision and Order, Metrocall, Inc. 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 to receive customer service questions is not a toll-free number, in compliance with HAR § 6-80-114(6). Consistent with ordering paragraph no. 3, above, Metrocall, Inc. shall also update its number to receive customer inquiries on its website, if any, within a reasonable period of time.

5. Within thirty (30) days from the date of this Decision and Order, Metrocall, Inc. 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, Metrocall, Inc. shall also pay a telecommunications relay service ("TRS") contribution of \$10, 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. 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 APR - 4 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:



Michael Azama
Commission Counsel

05-0250.eh

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 22369 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

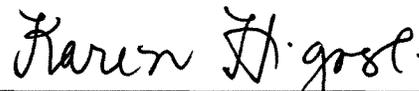
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DATED: APR - 4 2006