

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application of )  
 )  
SPRINT LONG DISTANCE, INC. )  
 )  
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. 2006-0022

DECISION AND ORDER NO. 22439

Filed May 1, 2006  
At 2 o'clock P.M.

Karen Higashi  
Chief Clerk of the Commission

RECEIVED  
2006 MAY -3 A 8:53  
DIV. OF CONSUMER AGENCY  
DEPT. OF INDUSTRY AND  
COMMERCE AFFAIRS  
STATE OF HAWAII

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

K. Higashi



Federal Communications Commission to offer domestic interstate and international services in all fifty states and the District of Columbia as a non-dominant carrier, and also contends that it is currently authorized to provide intrastate toll service in fifteen states.

On February 1, 2006, 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.<sup>2</sup> Applicant also requests that the commission waive the requirements of HRS § 269-8.2, such that Applicant will be allowed to keep its books and records at its operational headquarters located in Overland Park, Kansas. In addition, Applicant seeks approval of its initial proposed tariff pursuant to HRS § 269-16.

On April 13, 2006, the Consumer Advocate filed its Statement of Position, informing the commission that it does not object to the approval of the Application, subject to certain conditions, discussed further below. As detailed in the Consumer Advocate's Statement of Position and in Applicant's responses to the Consumer Advocate's Information Requests filed on March 31, 2006,<sup>3</sup> Sprint Nextel currently operates as an

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<sup>2</sup>Applicant served a copy of the Application upon the Division of Consumer Advocacy, Department of Commerce and Consumer Affairs ("Consumer Advocate").

<sup>3</sup>The Consumer Advocate filed information requests on March 21, 2006. The primary focus of the discovery was to seek clarification as to whether Applicant is requesting a COA authorizing Applicant to provide the same telecommunications services that Applicant's affiliate, Sprint Communications

Incumbent Local Exchange Carrier ("ILEC") in several states, and offers bundled phone service that may include long distance service to business customers. Sprint Nextel intends to spin off its ILEC affiliates to a new holding company, Embarq. Applicant, upon receiving certification, will also be transferred to Embarq, and will become the long distance service provider for Embarq.<sup>4</sup> Thus, Applicant claims that a COA is necessary to ensure uninterrupted service in Hawaii for Sprint Nextel's long distance customers during the transfer of Sprint Nextel's ILEC operations to Embarq.

In support of its Application, Applicant maintains that it has the technical and managerial qualifications to provide the proposed telecommunications services. Applicant further states that it has ample financial resources to operate as a telecommunications reseller in the State.<sup>5</sup> In addition,

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Company L.P. ("Sprint Communications") is already authorized to provide in the State, and if so, the reasons for the request. Applicant responded that it was seeking authorization to provide the same services as Sprint Communications, and that the request was necessary because Sprint Nextel intends to separate all of its wireline services to a new corporation, Embarq Corporation ("Embarq"), as discussed further above.

<sup>4</sup>Applicant has filed an application seeking commission authorization to transfer control of Applicant from Sprint Nextel to Embarq, which is the subject of Docket No. 2006-0060. See Application of Sprint Long Distance, Inc. for a Waiver, or in the Alternative, for Authorization of a Transfer of Control of Sprint Long Distance, Inc. from Sprint Nextel Corporation to Embarq Corporation, filed on March 10, 2006, in Docket No. 2006-0060.

<sup>5</sup>In support of this claim, Applicant included in its Application the SEC annual report (SEC Form 10-K) of its parent company, Sprint Nextel, for the year ending December 31, 2004. Because this information did not comply with HAR § 6-80-17(c)(1)(E), by letter dated March 13, 2006, the commission requested updated financial information from

Applicant contends that the public interest will be served by approval of the Application because "the proposed services will create and enhance competition in Hawaii and expand customer service options consistent with the legislative goals set forth in the federal Telecommunications Act of 1996."<sup>6</sup>

## 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.<sup>7</sup> 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.

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Applicant. Thereafter, on March 22, 2006, Applicant submitted a more recent SEC Form 10-K for Sprint Nextel for the year ending December 31, 2005, in compliance with HAR § 6-80-17(c)(1)(E).

<sup>6</sup>See Application, at 4.

<sup>7</sup>On 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.

HAR § 6-80-18(a).

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 statements<sup>8</sup> submitted in support of the Application.

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

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<sup>8</sup>The Consumer Advocate notes that Applicant did not file audited financial statements for itself (as opposed to its parent, Sprint Nextel) as mandated by HAR § 6-80-17(c)(1)(E). The Consumer Advocate nonetheless does not object in this instance to the commission, on its own motion, waiving the requirement for Applicant to submit its own 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), and finds that Applicant's submission of Sprint Nextel's SEC Form 10-K for the year ending December 31, 2005 is sufficient to comply with the requirements of HAR § 6-80-17(c)(1)(E) in this instance.

telecommunications market. As noted by the Consumer Advocate, Applicant's proposed services are in the public interest as "[t]he introduction of effective competition in the telecommunications industry is desirable to achieve the benefits that would not be present in a monopolistic environment."<sup>9</sup> 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. Moreover, the commission finds certain other tariff revisions to also be appropriate. Thus, in addition to the Consumer Advocate's tariff revision recommendations, the commission concludes that Applicant's proposed tariff should be revised as follows:

1. Original Page 8, Section 4.8.1 states, "[a] deposit is not to exceed the estimated charges for two (2) months' service plus installation." Section 4.8.1 is inconsistent with HAR § 6-80-105, Customer deposits, which states:

A telecommunications carrier may require a customer to make a cash deposit to guarantee payment of bills for service until credit is established. The deposit may not exceed two times the average monthly bill for the same class of service provided by the carrier to the same class of customers in the given exchange. An estimate of monthly billings may be used for the purpose of determining a deposit if it can be shown that the customer's usage may be substantially different from the average usage for the same class of service.

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<sup>9</sup>Statement of Position, at 6.

HAR § 6-80-105(a) (emphasis added). Section 4.8.1 should accordingly be revised to conform with HAR § 6-80-105(a).

2. Original Page 9, Section 4.10 states: "The Company, by written notice to subscriber or applicant, may immediately cancel the application for and/or discontinue service ~~to~~ 5 days after written notice is sent, without incurring any liability for any of the following reasons[.]" This section should be expanded to include language that indicates that if the written notification is mailed to the customer, then the customer will be allowed an additional two days to respond. See HAR § 6-80-106(c).

As to Applicant's request for a waiver from HRS § 269-8.2 to allow Applicant to keep its books and records at its operational headquarters, HAR § 6-80-136(a)(3) expressly waives the "[r]equirement that all records and books pertaining to the telecommunications carrier's intrastate operations be located in the State, as mandated by HRS § 269-8.2. Instead, the carrier shall promptly provide copies of its out-of-state records and books to the commission upon the commission's request[.]" Accordingly, pursuant to HAR § 6-80-136(a)(3), the commission waives the requirement of HRS § 269-8.2, provided Applicant promptly provides its books and records to the commission upon the commission's request.

### 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. Pursuant to HAR § 6-80-136(a)(3), the commission waives the requirement of HRS § 269-8.2, provided Applicant promptly provides its books and records to the commission upon the commission's request.

4. 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.

5. 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.

6. 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.

7. 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. The business check shall be made payable to "Hawaii TRS", and sent to the Hawaii TRS Administrator, Solix, Inc.,<sup>10</sup> 80 S. Jefferson Road, Whippany, NJ 07981. Written proof of payment shall be sent to the commission.

8. As to the proposed transfer of customers from Sprint Communications to Applicant, in compliance with HAR § 6-80-123, Applicant shall provide notice to affected customers of the transfer at least thirty (30) days prior to the transfer, and shall file a copy of the customer notification with the commission and the Consumer Advocate.

9. Failure to promptly comply with the requirements set forth in paragraphs 4 to 8, above, may constitute cause to void this Decision and Order, and may result in further regulatory action, as authorized by law.

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<sup>10</sup>Solix, Inc. was formerly known as NECA Services, Inc.

DONE at Honolulu, Hawaii MAY - 1 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

2006-0022.ah

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 22439 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

JOHN E. COLE  
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Karen Higashi

DATED: MAY - 1 2006