

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
)
 HAWAIIAN TELCOM)
 SERVICES COMPANY, INC.)
)
 For Approval of Plan to Market)
 myChoicesm Bundled Service Plans)
 Offered Only in Connection with a)
 Qualifying Local Service Package)
 And Shortening of the Time Interval)
 Specified in HAR § 6-80-35(e).)
 _____)

DOCKET NO. 2006-0367

INTERIM ORDER NO. 22889

Filed Sept. 22, 2006
At 1:40 o'clock P .M.

Karen Higashi.
Chief Clerk of the Commission

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

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KAREN HIGASHI
Chief Clerk, Public Utilities
Commission, State of Hawaii.

K. Higashi.

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Docket No. 2006-0367
Interim Order No. 22889

INTERIM ORDER

By this Interim Order, the commission approves HAWAIIAN
TELCOM SERVICES COMPANY, INC.'s ("HTSC") request for approval to
permit HTSC to begin marketing its myChoicesm bundled service
plans, as described below, on an interim basis effective
September 24, 2006, subject to certain conditions set forth
herein.

I.

Background

A.

Application

HTSC was formed upon the merger transaction between
certain subsidiaries of Verizon Communications Inc. and an
entity now known as Hawaiian Telcom Communications, Inc.

("HT Communications").¹ It holds a certificate of authority to provide intrastate telecommunications services in the State of Hawaii ("State") as a reseller; and a certificate of registration to provide wireless telecommunications services on a resold basis in the State.²

On September 8, 2006, HTSC filed an application for commission approval to offer Hawaii residential consumers a service plan called myChoicesm that would give its customers the option of selecting various fully competitive as well as non-local services at discounted rates, including, but not limited to, HTSC's tariffed Call Moresm direct dialed domestic long distance plan,³ when the customers concurrently subscribe to a qualifying tariffed residential local service package offered by HTSC's affiliate, Hawaiian Telcom, Inc. ("HTI")⁴ ("Application").⁵

¹See In re Paradise MergerSub, Inc., et al., Docket No. 04-0140, Decision and Order No. 21696, filed on March 16, 2005 ("Decision and Order No. 21696").

²See Decision and Order No. 21696, at 58; In re Hawaiian Telcom Services Company, Inc., Docket No. 05-0097, Decision and Order No. 21892, filed on June 24, 2005.

³HTSC also requests approval of proposed amendments to its Call Moresm plan, which is the only commission tariffed service, included as part of its myChoicesm plans. Proposed amendments to HTSC's Call Moresm tariff are attached to HTSC's Application as Exhibit A.

In addition to Call Moresm, subscribers of myChoicesm can opt to select HTSC's high speed internet service and HTSC's wireless service plan.

⁴HTSC and HTI are wholly-owned subsidiaries of HT Communications.

⁵The Application was filed pursuant to Hawaii Revised Statutes ("HRS") § 269-16 and Hawaii Administrative Rules ("HAR")

To qualify for myChoicesm, customers must subscribe to HTI's Hawaiian Telcom Go Localsm or Hawaiian Telcom Go Local Plussm plans as set forth in HTI's PUC Tariff No. 20, Section 5.12.19 (collectively, "HTI Qualifying Services"). Subscribers selecting a myChoicesm package plan will pay a Monthly Recurring Charge from \$45.95 to \$83.95 depending on the package they select, which covers HTI's tariff rate and the service provided by HTSC. Any service discount provided to an eligible subscriber under the myChoicesm plan will be borne by HTSC on the fully competitive or non-local exchange services that HTSC will provide and will be recorded on HTSC's separately maintained books and records.

HTSC represents that its proposed myChoicesm package plans will provide customers with telecommunications options that will satisfy the demand for quality services at reduced rates. It further represents, among other things, the following:

1. The proposed myChoicesm bundled offering will not result in improper cross-subsidization since the structure of the proposed offering will not affect HTI's regulated revenues given that subscribers of myChoicesm plans will pay the full tariffed rate for the HTI Qualifying Services selected.
2. The myChoicesm package plans are not discriminatory and will be available to any residential customer who purchases one of the HTI Qualifying Services.

§ 6-80-35(e). HTSC 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 HRS § 269-51 and HAR § 6-61-62.

3. The proposed myChoicesm bundled offering is priced in accordance with all federal and State pricing requirements and closely resembles other Verizon Long Distance bundled services adopted by HTI and bundled services offered by its competitors.

HTSC requests approval of its Application by October 20, 2006, and further requests "that pending the issuance of the [c]ommission's final order [] the [c]ommission shorten the thirty (30) day interval specified in HAR [§] 6-80-35(e) and grant HTSC interim authority to begin offering the myChoicesm plan to customers starting on September 24, 2006" ("Interim Approval").⁶

B.

Interim Approval Request

HTSC requests Interim Approval to market its myChoicesm service plans citing "the highly competitive and extremely dynamic nature of the telecommunications market" and the importance of maintaining its competitive position in the market.⁷ It contends that Interim Approval of the offering will allow it to conduct a "soft" launch of the service to allow for its customer representatives to be adequately trained and familiarized with the bundle, and to allow HTSC to make adjustments to internal processes and training to better serve its customers before the "hard" launch of the bundled service

⁶See Application at 2.

⁷Id. at 6.

offering. HTSC states that Interim Approval is "necessary because of the lead times associated with planning and coordinating the placement of advertising to promote the proposed service package."⁸ It contends that results of the "soft" launch could also help with decisions regarding advertising and other activities and could significantly impact the success of the service offering. Moreover, HTSC asserts that in the event that the commission denies its Application, "no end user customers will be harmed as a result of granting HTSC interim authority" to provide the offering since HTSC is committed to "allow[ing] customers [who opt to participate in the interim period] to terminate their participation in the plan without any termination liability."⁹ Thus, those customers who do opt to enroll in the plan during the interim period will still receive the benefit of the discount pricing on HTSC's services during the interim period.

C.

Consumer Advocate's Position

By Statement of Position filed on September 18, 2006, the Consumer Advocate states that it does not object to approval of HTSC's Application, including its request for Interim Approval to begin offering its myChoicesm service plans effective September 24, 2006. According to the Consumer Advocate, the

⁸Id. at 2.

⁹Id. at 7.

costs for the fully or partially competitive services are not subsidized by the noncompetitive service and approval of the plan is in the public interest. However, the Consumer Advocate's recommendation is conditioned on HTSC submitting a list of the various services that can be considered for inclusion in the bundled service offering prior to receiving final commission approval of the plan.¹⁰

Specifically, with respect to HTSC's request for Interim Approval, the Consumer Advocate states that it does not object to Interim Approval given the following:

1. The recognition that there are numerous authorized providers of telecommunications services in the State.
2. The understanding that HTSC will allow customers to terminate their participation in the plan without any termination liability if the commission ultimately denies HTSC's Application.
3. The recognition that customers who do enroll in the plan during the interim will receive the benefit of the discount pricing on HTSC's services during that period.

¹⁰In response to the Consumer Advocate's recommendation, HTSC submitted a letter dated and filed on September 20, 2006, listing the services that are included within the bundled service offering, and noting that it anticipates expanding the list of service options available for inclusion in myChoicesm in the future, and that any modifications to its Call Moresm plan and additional service categories to its myChoicesm bundled service will be submitted for the commission's review and approval.

II.

Discussion

HRS § 269-16(b) states, in pertinent part:

No rate, fare, charge, classification, schedule, rule, or practice, other than one established pursuant to an automatic rate adjustment clause previously approved by the commission, shall be established, abandoned, modified, or departed from by any public utility, except after thirty days' notice as prescribed in section 269-12(b) to the commission and prior approval by the commission for any increases in rates, fares, or charges. The commission may, in its discretion and for good cause shown, allow any rate, fare, charge, classification, schedule, rule, or practice to be established, abandoned, modified, or departed from upon notice less than that provided for in section 269-12(b)

HRS § 269-16(b) (emphasis added).

In addition, HAR § 6-80-35(e) states:

A telecommunications carrier may not offer a noncompetitive telecommunications service jointly with any fully or partially competitive service or with any interstate, international, or other service not within the jurisdiction of the commission, except upon the commission's express approval. The commission's approval is subject to a satisfactory showing by the telecommunications carrier seeking to offer such joint services that the costs of the fully or partially competitive service or the costs of the interstate, international, or other non-jurisdictional service are not subsidized by the noncompetitive service. An application for approval to offer any such joint services must be filed with the commission not less than thirty days before the joint services are marketed, sold, or advertised.

HAR § 6-80-35(e) (emphasis added).

Here, given HTSC's representations, it appears that HTSC's request for Interim Approval of its myChoicesm bundled service offering is reasonable and in the public interest. In particular, it does not appear that the costs of the fully or partially competitive service are subsidized by the noncompetitive service. It also appears that Interim Approval of a soft launch is reasonable and in the public interest. The commission's decision herein, however, is not binding on the commission for purposes of the final decision and order in this docket, and is specifically conditioned on: (1) HTSC allowing customers who opt to participate in myChoicesm during the interim period to terminate their participation in the plan without any termination liability, if the commission ultimately denies HTSC's Application; (2) HTSC filing revised tariff sheets, within five (5) days of the date of this Interim Order, with appropriate issued and effective dates reflecting the commission's interim decision herein; and (3) HTSC's compliance with all applicable laws, rules, and regulations related to its proposed service offering and any other terms, conditions, and requirements subsequent to the commission's review of the full merits of HTSC's Application.¹¹

Notwithstanding the commission's findings, HRS § 269-16(b) and HAR § 6-80-35(e) still contain thirty (30) days notice requirements. HRS § 269-16.9, however, permits the commission to waive regulatory requirements applicable to

¹¹As of the filing date of the Interim Order, the twenty (20) day intervention period set forth in HAR § 6-61-57 has not lapsed.

telecommunications providers if it determines that competition will serve the same purpose as public interest regulation. Specifically, HAR § 6-80-135 permits the commission to waive the applicability of any of the provisions of HRS chapter 269 or any rule (except provisions of HRS § 269-34 or provisions of HAR chapter 6-80 that implement HRS § 269-34), upon a determination that a waiver is in the public interest. In this particular instance, the commission finds that waiver of the thirty (30) day notice provisions in HRS § 269-16(b) and HAR § 6-80-35(e) are appropriate, as competition will serve the same purpose as public interest regulation.

Based on the above, the commission concludes that HTSC's request for Interim Approval of its myChoicesm bundled service plans, effective September 24, 2006, should be approved and, thus, HTSC's request for approval of its proposed amendments to its Call Moresm tariff, which HTSC attached as Exhibit A to the Application, should also be approved. However, the commission makes clear that the Interim Approval herein of HTSC's myChoicesm bundled service plans and the proposed amendments to its Call Moresm tariff, effective September 24, 2006, is subject to HTSC's adherence to the regulatory conditions set forth above.

III.

Orders

THE COMMISSION ORDERS:

1. The thirty (30) day notice requirements in HRS § 269-16(b) and HAR § 6-80-35(e) are waived.

2. HTSC's request for Interim Approval of its myChoicesm bundled service plans and the proposed amendments to its Call Moresm tariff, effective September 24, 2006, are approved.

3. The commission's Interim Approval is conditioned on: (a) HTSC allowing customers who opt to participate in myChoicesm during the interim period to terminate their participation in the plan without any termination liability, if the commission ultimately denies HTSC's Application; (b) HTSC filing revised tariff sheets, within five (5) days of the date of this Interim Order, with appropriate issued and effective dates reflecting the commission's interim decision herein; and (c) HTSC's compliance with all applicable laws, rules, and regulations related to its proposed service offering and any other terms, conditions, and requirements subsequent to the commission's review of the full merits of HTSC's Application.

4. HTSC shall timely comply with the regulatory conditions set forth in ordering paragraph no. three, above. Failure to timely comply with the regulatory conditions may constitute cause for the commission to void this Interim Order, and may result in further regulatory actions, as authorized by State laws and commission rules and regulations.

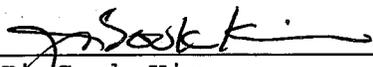
DONE at Honolulu, Hawaii SEP 22 2006.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By 
John E. Cole, Commissioner

APPROVED AS TO FORM:


Ji Sook Kim
Commission Counsel

2006-0367.cs

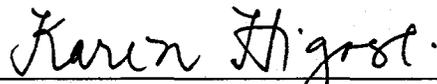
CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Interim Order No. 22889 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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Karen Higashi

DATED: SEP 22 2006