

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
NEXTEL BOOST WEST, LLC)
For a Certificate of Registration.)
_____)

DOCKET NO. 2006-0150

DECISION AND ORDER NO. 22918

Filed October 4, 2006
At 1 o'clock P.M.

for Bruce K. Kane
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.

for Bruce K. Kane

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In the Matter of the Application of)
NEXTEL BOOST WEST, LLC)
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Docket No. 2006-0150
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DECISION AND ORDER

By this Decision and Order, the commission grants NEXTEL BOOST WEST, LLC ("Applicant") 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 Delaware limited liability company with its principal place of business in Overland Park, Kansas. Applicant is authorized to transact business in the State of Hawaii as a foreign limited liability company.

A.

Applicant's Request

On June 5, 2006, Applicant filed its application for a COR to operate as a reseller of Nextel Partners' CMRS services in

the State ("Application").¹ Applicant utilized an application that contained most of the information required by 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") ("Official COR Form").

B.

Consumer Advocate's Position

On July 5, 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 conditioned its approval on Applicant's submission of the following: (1) a copy of the approved Certificate of Authority that authorizes Applicant to transact business in the State of Hawaii, and (2) the geographical scope of its proposed operation.²

The Consumer Advocate also recommended that Applicant be required to maintain and promptly provide updated information regarding its service plans (with terms and conditions) and the appropriate contact confirmation (i.e., designated carrier representative) upon the commission's, the Consumer Advocate's, or a consumer's request.³ In addition, the Consumer Advocate

¹Applicant 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.

²See Statement of Position at 3.

³See Statement of Position at 4.

recommended that such updated information should be placed on Applicant's website, if one exists, within a reasonable time period.⁴

C.

Applicant's Response

On July 11, 2006, Applicant filed its Response to Division of Consumer Advocacy's Statement of Position ("Applicant's Response").⁵ Pursuant to the Consumer Advocate's recommendation, Applicant submitted a copy of the Certificate of Authority and a coverage map showing the approximate geographical scope of the proposed operation.⁶ In addition, Applicant stated that it "has no objection to the recommendation by the Consumer Advocate that Applicant be required to maintain and promptly provide updated information regarding its service plans and the appropriate contact confirmation upon the [c]ommission's, Consumer Advocate's or consumer's request, and to place such updated information on its website within a reasonable period of time."⁷

⁴See Statement of Position at 4.

⁵On the same day, Applicant served a copy of its Response on the Consumer Advocate.

⁶See Applicant's Response at 1 and Exhs. A and B.

⁷See Applicant's Response at 2.

II.

Discussion

Section 269-7.5, Hawaii Revised Statutes ("HRS") 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 Sections 6-80-17(c) and (d), Hawaii Administrative Rules ("HAR"), also state, in relevant part:

(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

⁸On June 3, 1996, HAR ch. 6-80 took effect. HAR ch. 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.

meet any of these requirements or is otherwise incomplete.

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- (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 and the rates charged by providers of CMRS, while expressly allowing states to regulate the other terms and conditions of commercial mobile 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 ch. 269. On April 7, 2004, the commission issued Decision and Order No. 20890 waiving various regulatory requirements of HRS ch. 269 and HAR ch. 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

⁹See 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)).

CMRS providers and cellular resellers, i.e., the Official COR Form.

Upon review, the commission finds that Applicant has sufficiently satisfied the requirements of HAR § 6-80-17, 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.

The commission also finds and concludes that Applicant should be required to maintain and promptly provide 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 a consumer's request. In addition, the commission finds and concludes that Applicant should be required to place such updated information on Applicant's website, if any, within a reasonable time period.

Based on the foregoing, the commission concludes that Applicant should be granted a COR to resell CMRS services in the State, subject to the above-discussed conditions.

III.

Orders

1. Applicant is granted a COR to resell CMRS services in the State.

2. As a holder of a COR, Applicant shall be subject to all applicable provisions of HRS ch. 269; HAR chs. 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 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 a consumer's request. Such updated information shall also be placed on Applicant's website, if any, within a reasonable time period.

4. 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.

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

6. Failure to promptly comply with the requirements set forth in paragraphs 2 to 5, 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 OCT - 4 2006.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By Carlito P. Caliboso
Carlito P. Caliboso, Chairman

By John E. Cole
John E. Cole, Commissioner

APPROVED AS TO FORM:

Nichole K. Shimamoto
Nichole K. Shimamoto
Commission Counsel

2006-0150.eh

¹⁰Solix, Inc. was formerly known as NECA Services, Inc.

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 22918 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
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Attorney for NEXTEL BOOST WEST, LLC



for Karen Higashi

DATED: OCT - 4 2006