

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
CORAL WIRELESS, LLC, dba MOBI PCS)
To be Designated by the Commission)
as an Eligible Telecommunications)
Carrier ("ETC").)
_____)

DOCKET NO. 05-0300

DECISION AND ORDER NO. 23275

Filed Feb. 23, 2007
At 11:30 o'clock A.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

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In the Matter of the Application of)
CORAL WIRELESS, LLC, dba MOBI PCS)
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Docket No. 05-0300

Decision and Order No. 23275

DECISION AND ORDER

By this Decision and Order, the commission designates CORAL WIRELESS, LLC, dba MOBI PCS ("Coral") as an additional eligible telecommunications carrier ("ETC") in its authorized service area in the State of Hawaii ("State") pursuant to 47 U.S.C. § 214(e)(2) and Hawaii Administrative Rules ("HAR") § 6-81-9(b), provided that Coral adheres to the conditions set forth herein.

I.

Background

Coral is a Delaware limited liability company with its principal place of business in Honolulu, Hawaii. It is authorized to transact business in the State as a foreign limited liability company. In 2005, the commission granted Coral a certificate of registration ("COR") to provide commercial mobile radio services ("CMRS") on the island of Oahu and the surrounding off-shore areas.¹ Recently, the commission approved Coral's

¹See In re Coral Wireless, LLC, Docket No. 05-0018, Decision and Order No. 21744, filed on April 14, 2005.

request to expand its geographic service territory to provide services on a statewide basis and to amend Coral's COR to reflect its expanded service area.²

A.

Coral's Application

On November 28, 2005, Coral filed an application seeking commission designation as an additional ETC for its entire service area (both rural and non-rural), which at that time only included the island of Oahu and the surrounding off-shore areas ("Application").³

1.

Ex-parte Issue

By letter dated September 25, 2006, the commission forwarded to the Parties a September 21, 2006 ex-parte communication submitted by Sandwich Isles Communications, Inc. ("SIC"), pursuant to HAR § 6-61-29(b) ("Ex-parte Statement"). In its Ex-parte Statement, SIC recognizes that Coral is seeking universal service support based on support received by SIC and that SIC's study area includes all six major Hawaiian Islands as opposed to just Oahu. As such, SIC advised the commission that

²See In re Coral Wireless, LLC, Docket No. 2006-0457, Decision and Order No. 23234, filed on January 31, 2007 ("Decision and Order No. 23234").

³Coral 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 HAR § 6-61-62. Coral and the Consumer Advocate are hereafter collectively referred to as the "Parties."

the Federal Communications Commission ("FCC") requires that Coral "request and demonstrate that it is in the public interest to partition the SIC 'study area' and redefine a 'service area' limited just to Oahu, so that Coral may receive universal service support."⁴ Moreover, SIC asserted that "if the [c]ommission orders, in this docket, that it is in the public interest to redefine SIC's service area, the [c]ommission must then submit a petition to the [FCC] . . . seeking its consideration and concurrence of the proposed service area definition for the purpose of Coral becoming eligible to receive federal universal service funds."⁵

On November 20, 2006, Coral requested that its Application in this docket be amended so that Coral's request for ETC designation be applicable to the entire State ("Amendment Notice"). According to Coral, it filed with the commission a separate application to expand its service territory to provide services on a statewide basis and to amend its COR to reflect the expanded service.⁶ As such, in its Amendment Notice, Coral suggests that the issues raised by SIC in its Ex-parte Statement, which it affirmed were valid at the time of the filing, had been addressed through Coral's Amendment Notice and that "[a]s a

⁴See Ex-parte Statement at 2. SIC specifically refers to 47 U.S.C. 214(e)(5) and 47 C.F.R. 54.207. Id. at 1.

⁵Id. at 2 (quotations omitted).

⁶On January 31, 2007, the commission granted Coral's request to expand its geographic service area to provide service on a statewide basis and to amend Coral's COR to reflect its expanded service area. See Decision and Order No. 23234.

consequence of Coral's filings . . . and anticipated favorable actions by the [c]ommission, SIC's issue has been made moot."⁷

2.

Coral's ETC Designation Request

In its Application, Coral claims that telecommunications customers in the State, at present, do not have the benefit of universal service funds supporting competitive CMRS since the commission, to date, granted ETC status to only one CMRS provider.⁸ It contends that competing wireless carriers is the optimal solution to advance wireless carriers' technological cost advantages to rural and isolated geographic locations, and to introduce innovative pricing, marketing, and service packages to low-income customers.

Coral represents that designating it as an additional ETC is in the public interest since such action "will accelerate the introduction of advanced telecommunications services to the . . . rural and high cost service areas and, importantly, will advance the introduction of cell phone service to the underserved segments of . . . the telecommunications market."⁹ According to Coral, thousands of potential subscribers fail to become actual cell phone subscribers due to preliminary credit

⁷See Amendment Notice at 2-3.

⁸Coral refers to NPCR, Inc., dba Nextel Partners ("Nextel Partners") as the commission designated ETC of CMRS. Coral recognizes that the commission also granted ETC designations to two wire-line carriers, GTE Hawaiian Telephone Company, Inc., nka Hawaiian Telcom, Inc. ("Hawaiian Telcom") and SIC.

⁹See Application at 5-6.

checks, customers' disdain for long-term contracts, and higher than necessary monthly billings due to various added usage charges. Coral asserts that it has developed a business plan to focus on the underserved segments of the telecommunications market, which it defines as "persons who confront various economic, financial and geographic barriers when trying to obtain basic cellular telephone service."¹⁰

Coral contends that it offers a true alternative and that it seeks customers as opposed to annual subscribers. Specifically, under Coral, wireless customers would purchase handsets reflective of cost and service on a monthly pre-paid basis for a package of pre-defined voice services (all with unlimited usage for a one month period). After the initial 30-day period, Coral's customers would voluntarily renew monthly service on a pre-paid basis. Service is disconnected if not renewed. Coral states that there will be no: (1) credit checks; (2) long-term contracts; and (3) surprises regarding customers' bills given the flat rate and unlimited use feature of Coral's service. Coral claims that its service terms constitute a barrier-free offering of wireless phone service to a large class of potential users "heretofore not qualified to be annual subscribers."¹¹ Moreover, Coral represents that it will be the first wireless provider to offer wireless customers unlimited local and long distance services at a set monthly rate.

¹⁰Id. at 6.

¹¹Id. at 7.

Further, Coral recognizes that to receive universal fund support it must provide services in accordance with Section 254 of the federal Telecommunications Act of 1996 (the "Act") and commit funds to better serve the designated hard-to-service areas. According to Coral, it will provide communications services in compliance with FCC regulations. Coral states that service, as specified by the FCC, will be provided through its network infrastructure, which includes antennas, cell-sites, towers, trunking, mobile switching, and interconnection facilities and through interconnection agreements with Hawaiian Telcom and other local exchange carriers. With regard to the requirement to advertise, Coral represents that its services will be advertised through several different media, and that it will utilize media of general distribution to advertise its universal service offering throughout its designated service area. Additionally, Coral intends to implement a special advertising campaign for the geographically hard-to-serve areas consistent with Coral's assessment that "most isolated or rural areas receiving less than superior service are also areas that have a disproportionately high percentage of low income persons who are not subscribers to cellular service."¹²

Coral represents that it will provide the nine distinct services or functionalities supported by the federal universal support mechanism ("Supported Services"), as summarized:

1. Voice grade access to the public switch network. Coral's service will enable telecommunications customers to transmit and receive voice

¹²Id. at 12.

communications through use of bandwidth of 300 to 3,000 Hertz, at minimum.

2. Local usage. Coral, as a designated ETC, will comply with all no charge minimum usage requirements adopted by the FCC.
3. Dual tone multi-frequency ("DTMF") signaling or its functional equivalent. Coral will utilize out-of-band signaling (SS7), which it represents is functionally equivalent to DTMF, to facilitate transport of calls through the network. According to Coral, SS7 is a faster, more robust call signaling and delivery mechanism, which provides the fastest call set up intervals currently available commercially.
4. Single-party service or its functional equivalent. Coral states that it meets this requirement by providing a "dedicated message path from the subscriber's terminal unit through the network to its intended destination."¹³
5. Access to emergency services. Coral's customers will all be provided direct access to emergency services via standard 911 call routing and Coral intends to implement enhanced-911 service in accordance with FCC and commission requirements.
6. Access to operator services. Coral will provide its customers access to operator-assisted services through third party telecommunications companies that specialize in operator assistance.
7. Access to interexchange service. Coral will provide access to the networks of interexchange carriers by enabling its customers to reach their interexchange carrier of choice by dialing each carrier's appropriate access code.
8. Access to directory assistance. Coral's customers will be able to access directory assistance by dialing "411" or "555-1212."
9. Toll limitation for qualifying low-income consumers. Coral's system is capable of limiting toll services to any customer.

¹³Id. at 10.

B.

Consumer Advocate's Position

On September 20, 2006, the Consumer Advocate filed its Statement of Position ("CA's Statement of Position") informing the commission that while it has concerns regarding Coral's ETC designation request, the Consumer Advocate does not object to approval of Coral's Application; provided that the commission impose certain specified conditions.¹⁴ The Consumer Advocate's evaluation of Coral's Application is set forth in four distinct parts (public interest analysis, federal universal service mechanism supported services, advertisement requirement, and additional requirements) as summarized below.

1.

Public Interest Analysis

In its review of Coral's Application, the Consumer Advocate first considered whether Coral's ETC designation is in the public interest since, in its view, a finding that it is not in the public interest would negate further review of Coral's ETC qualifications. For its public interest evaluation, the Consumer Advocate conducted a cost-benefit analysis and considered the impact of Coral's ETC

¹⁴On January 9, 2006, the Consumer Advocate filed its Preliminary Statement of Position indicting that it had certain concerns and questions regarding Coral's Application and that it would be participating in this docket. To facilitate its review, the Consumer Advocate issued information requests ("IRs") to Coral on January 31, 2006, for which Coral filed responses on February 28, 2006. On April 13, 2006, the Consumer Advocate issued supplemental IRs ("SIRs") to Coral, for which Coral filed responses on June 23, 2006.

designation on the universal service fund and the potential for creamskimming.¹⁵ The Consumer Advocate determined that Coral satisfied the public interest requirement; however, the Consumer Advocate raised certain concerns, particularly in its cost-benefit analysis. Among other things, the Consumer Advocate stated that to determine whether Coral's offering has a "consumer benefit," "a finding must be made that the service plans currently available from other carriers are not meeting the needs of the 'underserved' segment of the market in Hawaii."¹⁶ However, according to the Consumer Advocate, it was not able to assess the reasonableness of Coral's assertion that it plans to meet the needs of the "underserved" market based on the information provided to date. The Consumer Advocate alleges that Coral has not provided qualitative evidence to support its claim regarding the size of the "underserved" market¹⁷ and there is insufficient information to definitively conclude that Coral's service offering will benefit the "underserved" as Coral claims.

¹⁵The Consumer Advocate's public interest review reflects the factors that the FCC set forth in In re Federal-State Joint Board on Universal Service, Report and Order FCC 05-46 in CC Docket No. 96-45, released on March 17, 2005 ("FCC 05-46"). See CA's Statement of Position at 6. The Consumer Advocate defines "creamskimming" as the practice by telecommunications carriers to target only the customers that are least expensive to serve, thereby undercutting the incumbent local exchange carrier's ("ILEC") ability to provide service throughout the area. Id. at 6 n.8 (citing FCC Memorandum Opinion and Order in CC Docket No. 96-45 released January 22, 2004, n.102).

¹⁶Id. at 10.

¹⁷The Consumer Advocate notes that while Coral estimates that the underserved market is 15-30% of potential customers, Coral's estimate is not Hawaii specific nor does Coral provide adequate documentation to support its claim. See CA's Statement of Position at 9.

Nonetheless, the Consumer Advocate concedes that a finding cannot be made that such a market does not exist and that Coral will be unable to satisfy the needs of that market.¹⁸

The Consumer Advocate summarizes that there are potential benefits to Coral's ETC designation and that such a designation will not "harm" the universal service fund. The Consumer Advocate notes that the annual reporting requirements set forth in Decision and Order No. 22228 should assist in resolving some of the uncertainties regarding whether Coral's ETC designation is in the public interest. However, at this time, it recommends that the commission require Coral to demonstrate during its annual certification that Coral is serving the "underserved" market by: (a) identifying the extent of the "underserved" market (such an identification can be made through surveys at the time a customer purchases a phone); and (2) identifying that the universal service funds received are and will be expended in the areas to meet the "underserved" market in Coral's two-year network improvement plan ("Market Reporting Requirement"). The Consumer Advocate contends that the commission should consider rescinding Coral's ETC designation should Coral not be able to demonstrate, at the time of its annual certification, that it is meeting the needs of the "underserved" market.

¹⁸The Consumer Advocate notes that ETC designations were granted in past proceedings where the carrier asserted or committed to provide service in the public interest upon ETC designation.

2.

Federal Universal Service Mechanism Supported Services

The Consumer Advocate recognizes that Coral will be providing the FCC's Supported Services, which it states can be confirmed through the information provided in the docket. However, the Consumer Advocate is concerned that Coral's lowest cost calling plan, in which access to an interexchange carrier is blocked, does not provide free long distance calling. The Consumer Advocate contends that Coral's offering "appears to be inconsistent with the definition of toll limitation as it does not allow the consumer a choice to sign up for toll blocking."¹⁹ The Consumer Advocate alleges that Coral is not meeting the FCC requirement as "toll blocking" for Coral's lowest cost calling plan is a function of the plan (toll calls are simply blocked) and not an option. The Consumer Advocate notes that competitive carriers are not required to offer the Supported Services prior to receiving ETC designation; however, upon designation, the Supported Services must be provided. Accordingly, the Consumer Advocate recommends that as a condition of approval, Coral demonstrates during its annual certification that it is offering toll blocking as an option to its qualifying low-income customers.

3.

Advertisement Requirement

With regards to Coral's planned advertisement of its services and associated charges, the Consumer Advocate states

¹⁹See CA's Statement of Position at 16.

that Coral failed to provide specific information regarding its advertising plans.²⁰ As an example, the Consumer Advocate explains that it is unclear what information will be provided regarding Coral's availability of Lifeline and Linkup services. Thus, it recommends that Coral file the contents of its planned advertisements, and the targeted consumers by December 31, 2006, to enable the commission and the Consumer Advocate to determine whether Coral is advertising the availability of the Supported Services and advertising in the areas where it will be able to meet its asserted benefits of serving the "underserved" market.²¹

4.

Additional Requirements

Recognizing that the commission in its proceeding regarding the FCC's annual certification and reporting requirements in Docket No. 05-0243, adopted additional FCC eligibility requirements,²² with some modifications, the Consumer Advocate notes the following:

²⁰The Consumer Advocate recognizes that neither the FCC nor the commission has adopted, to date, any specific advertisement guidelines for ETCs.

²¹The Consumer Advocate notes that this recommendation is similar to the condition imposed by the commission for Nextel Partner's ETC designation in Docket No. 03-0104.

²²The Consumer Advocate refers to the additional FCC ETC eligibility requirements set forth in FCC 05-46, which are:

1. Commitment and ability to provide the supported services.
2. Ability to remain functional in emergency situations.
3. Satisfy consumer protection and service quality standards.
4. Offer local usage comparable to that offered by the incumbent local exchange carrier.

1. Coral provides minimum information regarding its two-year network improvement plan in which Coral expects to expend \$1.77 million in 2006 and \$2.59 million in 2007 to expand its capacity, add BTS/cell sites and install platform/network components.
2. Coral asserts that it is constructing its network to remain functional during emergency situations and that its network includes: (a) stand-by electric generators; (b) construction and use of a fiber ring connecting all cell sites; (c) a 24/7 monitoring system from a remote and secure facility; and (d) battery backup on all electronically driven network infrastructure facilities and equipment.
3. Coral declares that it will comply with the Cellular Telecommunications and Internet Association's ("CTIA") Consumer Code for Wireless Service as well as any other State requirements concerning consumer protection.
4. Coral's calling plans include unlimited local calling.
5. Coral acknowledges that it may be required to provide equal access if all other ETCs in the designated service area relinquish their designations.

Based on the above, the Consumer Advocate states that "it appears that Coral is meeting the additional [FCC] requirements, at this time."²³ Nonetheless, the Consumer Advocate expressed concern that information Coral provided regarding its two-year network improvement plans is minimal, at best. According to the Consumer Advocate, under FCC 05-46, a carrier

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5. Understanding that the carrier may be required to provide equal access if other ETCs in the designated service area relinquish their designations.

See CA's Statement of Position at 4-5; 18-19. See also 47 C.F.R. 54.202. The requirements listed above will hereafter be referred to as the "Additional Requirements."

²³See CA's Statement of Position at 20.

"must demonstrate" in detail how high-cost support will be utilized to improve service that would not occur absent the support. The Consumer Advocate, thus, recommends that Coral's two-year network improvement plan be more detailed and include how Coral's capital expenditures are being utilized to meet the needs of the underserved market, at the time of Coral's annual certification.²⁴

C.

Coral's Response

On October 11, 2006, Coral filed its response to the CA's Statement of Position ("Response"). Coral, in its response asserts that it "will abide by all of [the] Consumer Advocate's recommended reporting requirements."²⁵ However, Coral notes a few "minor" concerns and makes the following recommendations. First, Coral contends that the recommendation to rescind Coral's ETC designation if it is unable to demonstrate in its annual recertification that it is meeting the needs of the underserved market is "unduly harsh." Coral takes exception to the severity of the recommendation and asserts that "[t]he [c]ommission should reject the Consumer Advocate's recommendation as being unnecessarily punitive, especially in light of the current absence of definitions, guidelines or qualifications as to what precisely constitutes the underserved market."²⁶ With regard to

²⁴For clarity, this recommendation is encompassed within the second prong of the Market Reporting Requirement.

²⁵See Response at 2.

²⁶Id. (quotations omitted).

the Consumer Advocate's recommendation that Coral file the contents of its planned advertisements, and its targeted consumers by December 31, 2006, Coral argues that this is an inadequate period of time to file the requested information. Coral suggests that it be given at least six months (preferably one year) after the issuance of the commission's decision and order to comply with this requirement.

II.

Discussion

A.

Standard of Review

Under federal law, a carrier must be designated as an ETC under 47 U.S.C. § 214(e) to be eligible to receive federal universal service support.²⁷ Consistent with the federal requirements, HAR § 6-81-9 states as follows:

- (a) Pursuant to 47 U.S.C. § 214, the commission will, upon the written petition of a common carrier or the commission's own motion, designate telecommunications carriers as eligible to receive federal universal service support. Carriers designated as eligible telecommunications carriers shall, throughout the service area for which the designation is received:
 - (1) Offer the services supported by federal universal service support mechanisms using either its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier); and
 - (2) Advertise the availability of such services and the charges thereof using media or general distribution.
- (b) Upon request and consistent with the public interest, convenience, and necessity, the commission may, in the case of a high cost area,

²⁷See 47 U.S.C. § 254 (e).

and shall, in the case of all other service areas (as defined by the commission), designate more than one carrier as an eligible telecommunications carrier. Before designating an additional telecommunications carrier for a high cost area, the commission must find that the designation is in the public interest.

HAR § 6-81-9; see also 47 U.S.C. 214(e)(1) and (2).

By regulation, the FCC identified and defined the services supported by the universal support mechanism (i.e., the Supported Services), which each carrier must offer to be eligible to receive federal universal service support as a designated ETC.

The Supported Services are:

1. Voice grade access to the public switch network.
2. Local usage.
3. Dual tone multi-frequency signaling or its functional equivalent.
4. Single-party service or its functional equivalent.
5. Access to emergency services.
6. Access to operator services.
7. Access to interexchange service.
8. Access to directory assistance.
9. Toll limitation for qualifying low-income consumers.

47 C.F.R. § 54.101(a).

The FCC in FCC 05-46 adopted certain Additional Requirements for eligibility for ETC designation.²⁸ Aside from these requirements, the commission notes that the FCC adopted annual reporting requirements for ETCs subject to its jurisdiction to "ensure that ETCs continue to comply with the conditions of the ETC designation and that universal service funds are used for their intended purposes."²⁹

²⁸See supra footnote 22.

²⁹See FCC 05-46, ¶ 68.

B.

Ex-parte Issue

At the outset, the commission agrees with Coral that the issue raised by SIC in its Ex-parte Statement is now moot. SIC's concern was based on Coral's service territory, which at the time only included the island of Oahu and the surrounding offshore areas. However, while this proceeding was pending, Coral, in Docket No. 2006-0457, requested and received commission authority to expand its geographic service area to provide service on a statewide basis and to amend its COR to reflect the expanded service area.³⁰ Accordingly, the commission finds Coral's request to amend its Application in this docket to reflect its expanded service territory to be reasonable, under the circumstances, and thus concludes that Coral's amendment request should be granted.

C.

ETC Designation

With respect to the issue of ETC designation, it appears that Coral has satisfied the federal and State requirements for designation as an additional ETC for its geographic service area in the State, provided that Coral adheres to various conditions discussed below.

First, Coral's service offering appears to be in the public interest. Coral's service is mobile with plans that offer unlimited local calling, among other features, and require no long-term contracts or credit checks to initiate service.

³⁰See Decision and Order No. 23234.

These aspects of Coral's service appear to be designed to provide telecommunications customers in the State with added alternatives in wireless service and specific advantages. Coral's service should appeal to those who may not be financially qualified for mobile service offered by other carriers while still providing basic services (i.e., unlimited local calling). Coral's intent to focus on the "underserved" segment of the State's telecommunications market by providing its subscribers with "barrier-free" wireless service is in the public interest since, among other things, it would provide customers with competitive choice in wireless services especially within the rural areas of the State. Additionally, the commission agrees with the Consumer Advocate that Coral's ETC designation should not significantly impact the federal universal service fund ("USF") since Coral's projected disbursements would constitute only a fraction of one percent of the USF estimates.³¹ Moreover, "creamskimming," which arises if the carrier seeks ETC designation in a disproportionate share of the higher-density wire centers of an ILEC's service area, is not a concern here since Coral is seeking ETC designation throughout its service area, which encompasses both the rural and non-rural areas of the entire State.

Second, Coral will be providing the required FCC-designated Supported Services throughout its designated service area, either through its own facilities or a combination of its facilities and resale of another carrier's services.

³¹See CA's Statement of Position at 13.

In addition, Coral has committed to advertising its services and respective charges utilizing various forms of media of general circulation. Thus, it satisfies the general provisions of ETC designation set forth in 47 U.S.C. § 214(e)(1) and HAR § 6-81-9(a).

Finally, Coral appears to satisfy the Additional Requirements for ETC designation established in FCC 05-46. Among other things, Coral represents that it will strive to comply with the CTIA's Consumer Code for Wireless Service and various requirements established by all levels of government regarding consumer protection.³² Coral also provided details on how its network will be constructed to remain operational during emergency situations³³ and specifically acknowledges that it may be required to provide equal access if other designated ETCs in the service relinquish their ETC designations.³⁴

D.

Conditions of ETC Designation

Despite the fact that Coral appears to have satisfied the requirements for ETC designation, the commission acknowledges that the Consumer Advocate has certain concerns over aspects of Coral's proposed service, which appear to have merit. Coral, moreover, has stated that it will adhere to all of the

³²See Coral's response to CA-SIR-11.

³³See Coral's response to CA-IR-8(b)(1).

³⁴See Coral response to CA-IR-10.

Consumer Advocate's recommended reporting requirements, which were proposed to address the Consumer Advocate's concerns.³⁵

First, the Consumer Advocate asserts that Coral has not yet provided sufficient qualitative evidence to definitively conclude that its service offering will benefit the "underserved" market, and suggests that the commission adopt a Market Reporting Requirement, which would require Coral to demonstrate that it is meeting its asserted benefits of serving the "underserved market" in the State during its annual certification. In its Response, Coral agrees to comply with the Consumer Advocate's Market Reporting Requirement, but argues that the recommendation to rescind Coral's ETC designation if Coral is unable to show during its annual certification that it is meeting the needs of the "underserved" market is unnecessarily punitive, and proposes that the commission reject this aspect of the condition.

The commission, however, disagrees with Coral's assessment. The FCC clearly states that the "burden of proof" is on the ETC applicant.³⁶ In addition, Coral should be able to demonstrate to the satisfaction of the commission that it is meeting the needs of the very market that Coral professes that it will be serving and for which Coral would be receiving federal universal service support. Failing to do so could reasonably justify, absent mitigating circumstances, a rescission of Coral's

³⁵See Response at 2.

³⁶See FCC 05-46, ¶ 44.

ETC designation.³⁷ As such, the commission finds it reasonable to adopt the Consumer Advocate's Market Reporting Requirement.

Second, the Consumer Advocate contends that Coral's lowest-cost calling plan does not provide free long distance calling, which, according to the Consumer Advocate, may be inconsistent with the FCC's requirement of allowing customers the option of limiting toll service. According to the Consumer Advocate, Coral's lowest-cost plan blocks toll service as opposed to allowing customers the option of limiting toll service, as the FCC requires. Thus, the Consumer Advocate recommends that Coral make a showing that it is offering toll blocking as an option to its qualifying low-income customers, during Coral's annual certification. Coral, while stating that it has the "ability to satisfy the option aspect to its lowest-priced service,"³⁸ and agreeing to comply with the recommendation,³⁹ comments that customers in selecting Coral's lowest-priced plan are exercising their option to have no toll service. The commission understands the Consumer Advocate's concern and, to be consistent with FCC requirements, will adopt the Consumer Advocate's recommendation regarding toll limitation.

Finally, with regard to Coral's advertisement plans, the Consumer Advocate states that Coral did not provide detailed

³⁷The FCC authorizes the commission to require the submission of any other information to ensure that ETCs are operating consistent with applicable federal and state requirements, and provides the commission with explicit authority to rescind an ETC designation for failure of an ETC to comply with section 241(e) of the Act or any other commission imposed conditions. See FCC 05-46 at ¶ 71-72.

³⁸See Response at 4 n.1.

³⁹Id. at 2-3.

information with regard to how it will advertise is plans to serve its target market. The Consumer Advocate recommends that the commission require Coral to file by the end of 2006 the contents of Coral's planned advertisements and its targeted consumers. In its Response, Coral, while stating that it will comply with this requirement, requests additional time of six months (preferably a year) after the issuance of the commission's decision, to comply with this requirement. At this time, the deadline recommended by the Consumer Advocate of December 31, 2006, is no longer applicable. Hence, the commission will require Coral to file detailed information regarding its planned advertisement by June 30, 2007. Although, a little less than the six-month period suggested by Coral, Coral had notice that this requirement could be adopted by the commission since the filing of the CA's Statement of Position and its own Response on September 20 and October 11, 2006, respectively. Moreover, June 30 is a reasonable date since all ETCs are required under Decision and Order No. 22228 to file information for annual certification on that date, as discussed below.

In sum, the commission adopts the reporting conditions recommended by the Consumer Advocate, as set forth below:

1. At the time of its annual certification under Decision and Order No. 22228, Coral shall demonstrate that:
 - (A) Coral is meeting its asserted benefits of serving the "underserved" market by:
 - (1) identifying the extent of the market (which can be made through surveys at the time a customer purchases a phone); and
 - (2) identifying that the universal service funds received are and will be expended in the areas to

meet the "underserved" market in Coral's two-year network improvement plan; and (B) Coral is offering toll blocking as an option to its qualifying low-income customers.

2. By June 30, 2007, Coral shall file its detailed advertising plan for the provision of the FCC-designated Supported Services, including the content and manner of its planned advertisement and the customers being targeted.

Moreover, the commission, as the Consumer Advocate recommends, will consider rescinding Coral's ETC designation if it is unable to demonstrate, to the commission's satisfaction, that it is meeting the needs of the "underserved" market at the time of Coral's annual certification.

E.

Annual Certification

In response to FCC 05-46, the commission initiated Docket No. 05-0243 to establish annual certification procedures and requirements for ETC designated entities. By Decision and Order No. 22228, filed on January 17, 2006, in Docket No. 05-0243, the commission approved specific annual certification procedures and requirements for ETC designated entities (attached as Exhibit 1 to the decision and order) and also ordered that "ETCs shall (A) comply with any and all laws, decisions, or orders applicable to the federal universal service fund and support programs; and (B) fully cooperate and respond to any requests for information or data from the commission or [the]

Consumer Advocate."⁴⁰ Moreover, the commission clarified that it "reserves the right to revoke a telecommunications carrier's ETC status: (A) should any of the information or data provided by the ETC be proven inaccurate or incorrect; (B) if the carrier's receipt or use of federal universal services support monies is inconsistent with applicable federal law, including any FCC regulations, decisions, and orders, or applicable State law, including any conditions or requirements imposed by the commission; or (C) if a carrier does not satisfy any of the applicable conditions or requirements imposed by the commission."⁴¹ The abovementioned procedures, requirements, and directives are hereafter referred to as the "Annual Certification Requirements."

III.

Orders

THE COMMISSION ORDERS:

1. Coral's request to amend its Application so that its request for ETC designation is applicable to the entire State (both rural and non-rural), which is its current authorized service area, is approved.

2. Coral's request for designation as an additional eligible telecommunications carrier under 47 U.S.C. § 214(e) and HAR § 6-81-9 is approved, as of the date of this Decision and Order. Coral's ETC designation is applicable to its entire

⁴⁰See Decision and Order No. 22228 at 21-22.

⁴¹Id. at 22.

geographic service area (both rural and non-rural) as determined in Decision and Order No. 23234.

3. Coral's use of federal universal service support monies shall be consistent with applicable federal law, including any FCC regulations, decisions, and orders. In this respect, the commission emphasizes that 47 U.S.C. § 254(e) explicitly states that "[a] carrier that receives such support shall use the support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended." 47 U.S.C. § 254(e).

4. Coral, as a commission designated ETC shall comply with all State laws, regulations, and orders regarding ETCs and the universal service fund including the Annual Certification Requirements, set forth in Decision and Order No. 22228, and HAR chapter 6-81.

5. At the time of its annual certification under Decision and Order No. 22228, Coral shall demonstrate that: (A) Coral is meeting its asserted benefits of serving the "underserved" market, by: (1) identifying the extent of the market (which can be made through surveys at the time a customer purchases a phone); and (2) identifying that the universal service funds received are and will be expended in the areas to meet the "underserved" market in Coral's two-year network improvement plan; and (B) Coral is offering toll blocking as an option to its qualifying low-income customers.

6. By June 30, 2007, Coral shall file its detailed advertising plan for the provision of the FCC-designated

Supported Services, including the content and manner of its planned advertisement and the customers being targeted.

7. Coral shall adhere to all applicable standards governing CMRS providers in the State, including standards set forth in HAR chapter 6-80, to the extent modified or not waived by Docket No. 03-0189.

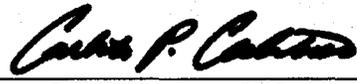
8. Consistent with the commission's general and investigative powers and in accordance with Decision and Order No. 22228, Coral shall fully cooperate and respond to any commission requests for information or data. Similarly, Coral shall fully cooperate with any similar requests from the Consumer Advocate.

9. Coral shall comply with any and all applicable current and future federal and State laws, decisions, and orders established or issued regarding the federal universal service fund and support programs.

10. The commission reserves the right to revoke Coral's ETC status: (A) should any of the information or data provided by Coral in this proceeding be proven inaccurate or incorrect; (B) if Coral's receipt or use of federal universal service support monies is inconsistent with applicable federal law, including any FCC regulations, decisions, and orders or applicable State law, including any of the conditions imposed by the commission herein; or (C) if Coral fails to satisfy any of the conditions or requirements imposed by the commission in this Decision and Order including the additional reporting requirements set forth in paragraph nos. 5 and 6, above.

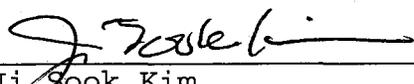
DONE at Honolulu, Hawaii FEB 23 2007.

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

05-0300.eh

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 23275 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

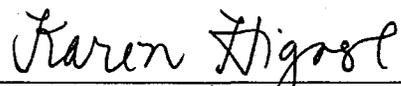
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Karen Higashi

DATED: FEB 23 2007