

In the Matter of the Application of)  
QWEST COMMUNICATIONS CORPORATION )  
To Amend Its Certificate of )  
Authority To Provide Facilities- )  
Based Intrastate Telecommunications) )  
Services in the State of Hawaii. )

Karen Higdon.

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application of)  
QWEST COMMUNICATIONS CORPORATION )  
To Amend Its Certificate of )  
Authority To Provide Facilities- )  
Based Intrastate Telecommunications )  
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Docket No. 2007-0021

Decision and Order No. 23345

DECISION AND ORDER

By this Decision and Order, the commission approves Qwest Communications Corporation's ("Applicant") request to expand its certificate of authority ("COA") to allow it to provide facilities-based intrastate local and interexchange telecommunication services in the State of Hawaii ("Application").

I.

Background

Applicant is a Delaware corporation with its principal offices located in Denver, Colorado.<sup>1</sup> Applicant is a wholly-owned subsidiary of Qwest Services Corporation ("QSC"), which in turn is a wholly-owned subsidiary of Qwest Communications International Inc. ("QCI").<sup>2</sup> Applicant is registered to conduct business in the State of Hawaii ("State") as a foreign

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<sup>1</sup>See Application, Section 1 and Exhibits 2A through 2E.

<sup>2</sup>See Application, Section 1 and Exhibit 1.

corporation.<sup>3</sup> None of Applicant's affiliated companies currently operate in Hawaii.<sup>4</sup>

Applicant received its certificate to provide local and interexchange services on a resold basis in the State in Decision and Order No. 18975, filed on October 25, 2001, in Docket No. 01-0130.

A.

Application

On January 19, 2007, Applicant filed its Application seeking commission authority to expand its existing COA to authorize it to provide facilities-based intrastate local and interexchange telecommunication services in the State.<sup>5</sup>

Applicant makes its request pursuant to Hawaii Revised Statutes ("HRS") § 269-7.5 and Hawaii Administrative Rules ("HAR") §§ 6-80-17, and 6-80-18.

Applicant represents that it possesses the requisite technical, managerial, and financial abilities to render the

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<sup>3</sup>See Application, Section 1 and Exhibits 3A through 3C.

<sup>4</sup>See Application, Section 1. Qwest Interprise America, Inc. ("QIA") an affiliate of Applicant, holds a COA issued by the commission in Decision and Order No. 15754, filed on August 12, 1997, in Docket No. 97-0159. However, on October 23, 2006, QIA petitioned the commission to accept voluntary surrender of its COA; this request is currently pending before the commission.

<sup>5</sup>Applicant served copies of its Application upon 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 § 269-51 and Hawaii Administrative Rules § 6-61-62.

proposed services.<sup>6</sup> Applicant states, "[Applicant] and its affiliates collectively provide local, long distance and operator services nationwide and have done so for decades. By way of illustration, the Qwest family of companies employs approximately 40,000 persons, operates a fiber optic network with more than 138,000 route miles and has approximately 14 million access lines, 780,000 wireless customers and 2 million high-speed Internet customers."<sup>7</sup>

Regarding managerial expertise, Applicant provides brief resumes of its executive officers.<sup>8</sup>

In support of its claim of fiscal fitness, Applicant presents its "Terms, Conditions, Rates and Charges Applying to the provision of Local Exchange Services" and references its annual financial report filings.<sup>9</sup>

Moreover, Applicant requests that the commission waive the requirements set forth in HAR § 6-61-75 which are not included in the Application.<sup>10</sup> It submits that said waiver "will serve the public interest and, as [Applicant] will create a more competitive marketplace, competition will serve the same purpose as public interest regulations."<sup>11</sup>

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<sup>6</sup>See Application, Section 1.

<sup>7</sup>Application, Section 1.

<sup>8</sup>Application, Section 1 and Exhibit 4.

<sup>9</sup>Application, Section 1 and Exhibit 5.

<sup>10</sup>See Application, Section 1 and Exhibit 5.

<sup>11</sup>Application, Section 1.

At this time, Applicant anticipates providing service only to business and government customers in Hawaii.<sup>12</sup> The geographical scope of its operations shall be statewide.<sup>13</sup>

Applicant's tariff on file with the Commission is Hawaii PUC Tariff No. 1. On January 16, 2007, a proposed revision was filed. The Application includes a proposed local exchange tariff, Hawaii PUC Tariff No. 2.<sup>14</sup>

Applicant represents that the public interest will be served "as the proposed services will create and enhance competition among intrastate telecommunications carriers in Hawaii while expanding the availability of reliable and high quality telecommunications services in Hawaii."<sup>15</sup>

B.

Consumer Advocate's Position

On March 2, 2007, the Consumer Advocate filed its Statement of Position ("SOP") informing the commission that it does not object to approval of the COA expansion.

The Consumer Advocate agrees that Applicant has the technical and managerial abilities to perform the proposed services.<sup>16</sup>

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<sup>12</sup>See Application, Section 2.

<sup>13</sup>Id.

<sup>14</sup>See Application, Section 3 and Exhibit 6.

<sup>15</sup>Application, Section 3.

<sup>16</sup>See SOP at 3-4.

Regarding financial fitness, the Consumer Advocate states, "the [c]ommission has great discretion over what is considered to be financial fitness. The Consumer Advocate, therefore, chooses to not make a recommendation on Applicant's financial fitness at this time. The Consumer Advocate, however, is not opposed to [Applicant's] requested [c]ommission waiver of the requirements set forth in HAR § 6-61-75 which are not included in Exhibit 5 and its annual financial reports, provided Applicant's 2006 annual report is timely filed."<sup>17</sup>

The Consumer Advocate notes that Applicant exhibits its willingness to provide expanded services by its Application request.<sup>18</sup>

The Consumer Advocate states that "based on the presumed fitness and ability of Applicant, that [Applicant's] provision of the proposed services will be in the public interest."<sup>19</sup>

The Consumer Advocate, however, recommends several changes to Hawaii PUC Tariff No. 2, submitted as Exhibit 6 to the Application:

1. Sheet 1, Section 1.1: Applicant must clarify where copies of the tariff may be inspected and provisions regarding application of the tariff in the event of conflict with state law.<sup>20</sup>

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<sup>17</sup>SOP at 4-5.

<sup>18</sup>See SOP at 5.

<sup>19</sup>SOP at 5-6.

<sup>20</sup>See SOP at 6 and n. 7.

2. Sheet 16, Section 2.3.7.B: must be amended to be consistent with HAR § 6-80-106(b)(5) and (6) regarding warnings of disconnecting services without notice.<sup>21</sup> Item 7 should be moved to Section 2.3.7.A.<sup>22</sup>

3. Sheet 19, Section 2.4.2.C: Applicant must modify the section regarding late payment charges to note that the charges are only applicable to amounts that are not in dispute.<sup>23</sup>

4. Sheet 20, Section 2.4.2.D: Applicant must clarify this section regarding notification of intention to discontinue service in accordance with HAR §6-80-106(c).<sup>24</sup>

5. Sheet 21, Section 2.4.3.A.1: Applicant must modify this section to comply with HAR § 6-80-105(a) and (b).<sup>25</sup>

6. Sheet 21, Section 2.4.4: Applicant must revise this section to comply with HAR § 6-80-107(1) which requires publication in its tariff and on its bills, a toll-free telephone number which can be used by a customer 24 hours a day, 7 days a week, for complaints.<sup>26</sup> Also, Applicant must include the contact information for the commission.<sup>27</sup>

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<sup>21</sup>See SOP at 7.

<sup>22</sup>Id.

<sup>23</sup>See SOP at 7-8.

<sup>24</sup>See SOP at 8.

<sup>25</sup>Id.

<sup>26</sup>Id.

<sup>27</sup>See SOP at 9.

The commission finds that the Consumer Advocate's tariff revision recommendations are reasonable, and should be incorporated into Applicant's tariff.

## 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>28</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.

HAR § 6-80-18(a).

The commission may waive regulatory requirements applicable to telecommunications providers "when it determines that competition will serve the same purpose as public interest regulation." HRS § 269-16.9(e). Similarly, HAR § 6-80-135

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<sup>28</sup>On June 3, 1996, HAR Chapter 6-80 took effect. HAR Chapter 6-80, among other things, replaced the CPCN with a COA for telecommunications carriers, and established procedures for requesting and issuing a COA.

allows the commission to grant an exemption from or waive the applicability of any of the provisions of HRS chapter 269 or any rule (except provisions related to HRS § 269-34), upon a determination that an exemption or waiver is in the public interest.

Having reviewed the record, the commission makes the following findings:

1. Applicant possesses sufficient technical, financial, and managerial resources and abilities, as evidenced by its initial COA, financial statements submitted in support of its Application, and the description of the qualifications of its key management personnel.

2. Applicant is fit, willing, and able to properly perform the expanded telecommunications services, as proposed, and to conform to the terms, conditions, and rules prescribed or adopted by the commission. Moreover, the commission's grant of an expanded 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 expansion of telecommunications services is in the public interest. The commission recognizes that allowing additional facilities-based service providers to enter the market increases competition in Hawaii, providing customers with added telecommunications options at competitive terms and rates. 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. As such, the entry of additional service providers should further the goal of achieving effective competition in Hawaii's telecommunications market."<sup>29</sup>

Based on the foregoing, the commission grants Applicant's request to expand its COA to provide facilities-based intrastate local and interexchange telecommunication services in the State of Hawaii as described in its Application.

Accordingly, to the extent that the Application is inconsistent with any of the filing requirements of HAR Chapter 6-80, including HAR § 6-80-17 and 6-80-18, a waiver of those filing requirements is reasonable and in the public interest.

Based on the foregoing, the commission concludes that the expansion of Applicant's COA should be approved under HRS § 269-7.5.

### III.

#### Orders

##### THE COMMISSION ORDERS:

1. The request to expand Applicant's COA, as described in Qwest Communications Corporation's Application, filed on January 19, 2007, is approved, pursuant to HRS § 269-7.5.

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<sup>29</sup>SOP at 5.

2. To the extent that the Application is inconsistent with any of the filing requirements of HAR Chapter 6-80, the applicability of those requirements, including HAR §§ 6-80-17 and 6-80-18, are waived.

3. Qwest Communications Corporation's COA is expanded to allow it to provide facilities-based intrastate local and interexchange telecommunication services in the State of Hawaii.

(a) Under its expanded COA, Qwest Communications Corporation shall continue to 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.

(b) Qwest Communications Corporation shall continue to file its tariffs in accordance with HAR §§ 6-80-39 and 6-80-40. Qwest Communications Corporation's tariffs shall comply with the provisions of HAR Chapter 6-80. In the event of a conflict between any tariff provision and State law, State law shall prevail.

(c) Qwest Communications Corporation shall conform its tariff to reflect its expanded service and comply with the provisions of HAR Chapter 6-80, by, among other things, incorporating the tariff revisions set forth in Section I.B. of this Decision and Order. An original and eight (8) copies of Qwest Communications Corporation's revised tariff

shall be filed with the commission, and two (2) additional copies shall be served on the Consumer Advocate, as applicable. Qwest Communications Corporation shall ensure that the appropriate issue and effective dates are reflected in its tariffs.

4. Pursuant to HRS § 269E-6, if Qwest Communications Corporation will own, operate, or maintain any subsurface installation, it shall: (1) pay to the commission a one-time registration fee of \$350 for the administration and operation of the Hawaii One Call Center, pursuant to Decision and Order No. 23086, filed on November 28, 2006, in Docket No. 05-0195, within thirty (30) days from the date of this Decision and Order; and (2) register as an operator, as defined by HRS § 269E-2, with the Hawaii One Call Center by calling (877) 668-4001.
5. Failure to comply with the requirements set forth above, 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 - 5 2007.

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:

Jodi L. K. Yi  
Jodi L. K. Yi  
Commission Counsel

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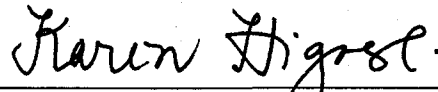
CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 23345 upon the following Petitioners, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

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DATED: APR - 5 2007