

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
MIRACLE COMMUNICATIONS, 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. 2007-0019

DECISION AND ORDER NO. 23367

Filed April 13, 2007
At 11 o'clock A .M.

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

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DECISION AND ORDER

By this Decision and Order, the commission grants MIRACLE COMMUNICATIONS, INC. ("Applicant") a certificate of authority ("COA") to provide intrastate telecommunications services within the State of Hawaii ("State") on a resold basis, subject to certain regulatory requirements.

I.

Background

Applicant is a Florida corporation with its principal place of business in Westlake Village, California. It is authorized to transact business in the State as a foreign corporation. Applicant is a reseller of telecommunications services and has been in the telecommunications business since 1999.

A.

Applicant's Request

On January 19, 2007, Applicant filed an application seeking a COA to provide competitive resold intrastate telecommunications services in the State and requested that its proposed tariff be approved ("Application").¹ The Application was filed pursuant to HRS §§ 269-7.5 and 269-16 and HAR §§ 6-80-17 and 6-80-18.²

In the State, upon receiving its COA, Applicant plans to offer resold intrastate telecommunications services, including 1+ and 101XXXX outbound dialing, inbound "800"/"888" toll-free, travel card services, and prepaid calling card services. In sum, Applicant represents that it is fit, willing, and able to properly perform the services it proposes to provide and to conform to the terms, conditions, and rules adopted by the commission. Specifically, Applicant represents that it is financially qualified to provide its proposed services and that as a non-facilities based reseller, it has adequate access to the capital necessary to fulfill its obligations in the State. Applicant also asserts that granting it a COA would further the

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 all proceedings before the commission. See Hawaii Revised Statutes ("HRS") § 269-51; Hawaii Administrative Rules ("HAR") § 6-61-62.

²Additionally, Applicant requests that the commission allow it to keep its books and records in California, while representing that it would make its books and records available to the commission, upon request.

public interest since it will expand the availability of competitive telecommunications services in the State. Among other things, Applicant contends that "the public will benefit both directly, through the use of the competitive services to be offered by Applicant, and indirectly, because the presence of Applicant in this market will increase the incentives for other telecommunications providers to operate more efficiently, offer more innovative services, reduce their prices, and improve their quality of service."³

B.

Consumer Advocate's Statement of Position

On February 12, 2007, the Consumer Advocate filed its Statement of Position informing the commission that it does not object to Applicant's COA request ("CA's Statement of Position"). The Consumer Advocate conditions its position on Applicant: (1) modifying its tariff in accordance with the Consumer Advocate's recommendations set forth in Section II.E of its statement⁴; and (2) submitting a copy of its most recent financial statements as required under HAR § 6-80-17(c)(1)(E), subsequent to the issuance of a protective order.⁵

³See Application at 4.

⁴In response to the Consumer Advocate's recommendations to modify Applicant's proposed tariff, Applicant filed replacement pages to its proposed tariff on March 12, 2007, which appear to fully incorporate the Consumer Advocate's tariff recommendations set forth on section II.E of the CA's Statement of Position.

⁵On February 12, 2007, Applicant and the Consumer Advocate filed their proposed "Stipulation for Protective Order" to govern the filing of certain documents and materials in this

Moreover, the Consumer Advocate recommends that the commission, on its own motion, grant the following waivers to be consistent with waivers granted in previous decisions and orders (collectively, "Waiver Recommendations"):

1. Waive the requirement that a telecommunications carrier maintains its financial records in conformance with the uniform system of accounts, instead allowing the carrier to maintain financial records in accordance with generally accepted accounting principles (HRS § 269-8.5);
2. Waive the requirement that all records and books pertaining to the telecommunications carrier's intrastate operations be located in Hawaii, instead allowing the carrier to promptly provide copies of its out-of-state records and books to the commission and/or Consumer Advocate upon request (HRS § 269-8.2); and
3. Waive the requirement subjecting telecommunications carriers to rate of return regulation and public and contested case hearings on proposed rate increases, except that this waiver would not apply to basic service in high cost areas provided by carriers receiving state or federal universal service fund subsidy or to non-competitive services (HRS § 269-16).

The Consumer Advocate contends that granting such waivers would be consistent with HAR § 6-80-136 and, consistent with the rule, Applicant should be required to: (1) file a separate tariff for each proposed new service; (2) maintain its financial records in accordance with generally accepted accounting principles; (3) timely make information from its records and books pertaining to its intrastate telecommunications operations in the State available to the commission and the Consumer Advocate upon

proceeding. On February, 22, 2007, the commission issued Protective Order No. 23273. On March 12, 2007, Applicant filed its financial statements in accordance with commission rules and under Protective Order No. 23273.

request; and (4) comply with the other requirement set forth in the subject rule that is not waived.

II.

Discussion

A.

COA

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.⁶ 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.

Upon review of the Application, the commission makes the following findings pursuant to HAR § 6-80-18(a):

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

1. Applicant possesses sufficient technical, financial, and managerial resources and abilities to provide the proposed services, as evidenced by the description of the qualifications of Applicant's key management personnel and the financial statements submitted in support of its 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 and the documents submitted in support of its claims. 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 State's telecommunications market increases competition and provides consumers with additional options to meet their telecommunications requirements. As the Consumer Advocate notes, "[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 effective competition in Hawaii's telecommunications market."⁷

⁷See CA's Statement of Position at 5.

Based on the foregoing, the commission concludes that Applicant should be granted a COA to provide resold intrastate telecommunications services in the State as described in its Application.

B.

Consumer Advocate's Recommendations

The commission finds the Consumer Advocate's Waiver Recommendations to be unnecessary. As the Consumer Advocate states, its Waiver Recommendations are consistent with the provisions of HAR § 6-80-136,⁸ and, as such, the commission notes that the rule already waives, for Applicant, the provisions that the Consumer Advocate recommends that the commission waive in this docket. Specifically, HAR § 6-80-136 states the following, in relevant part:

Unless ordered otherwise by the commission, the following regulatory requirements of chapter 269, HRS, for the provision of intrastate telecommunications services by telecommunications carriers other than the incumbent carrier are waived:

HAR § 6-80-136 (emphasis added).

Applicant is a telecommunications carrier offering to provide resold telecommunications services on a competitive basis in the State, and Applicant is a non-dominant competitive local exchange carrier and not an incumbent carrier. Waiver of the requirements articulated by the Consumer Advocate are consistent with and contemplated fully under HAR § 6-80-136. As set forth

⁸Id. at 6.

in the rule, specific authorization or waiver of these requirements is not necessary.⁹ Moreover, the grant of a COA to Applicant to provide the proposed services will be conditioned upon Applicant's conformity with the terms, conditions, and rules prescribed or adopted by the commission, which include all provisions of HAR § 6-80-136.

Related to its Waiver Recommendations, the Consumer Advocate also recommends that the commission require Applicant to: (1) file a separate tariff for each proposed new service; (2) maintain its financial records in accordance with generally accepted accounting principles; (3) timely make information from its records and books pertaining to its intrastate telecommunications operations in the State available to the commission and the Consumer Advocate upon request; and (4) comply with the other requirement set forth in the subject rule that is not waived. The commission finds these recommendations to also be unnecessary.¹⁰

⁹This position is consistent with past commission decisions. See In re NECC Telecom, Inc., Docket No. 05-0248, Decision and Order No. 22461, filed on May 10, 2006. See also In re Intellicall Operator Services, Inc., Docket No. 2006-0341, Decision and Order No. 23088, filed on November 28, 2006. Thus, the commission finds Applicant's request to keep its books and records in California to also be unnecessary.

¹⁰The first two recommendations are already incorporated in HAR § 6-80-136. The third recommendation appears to modify the current language of HAR § 6-80-136(3) to require Applicant to provide copies of its records and books upon the Consumer Advocate's request, in addition to the commission's request. The commission determines that because the Consumer Advocate has several discovery mechanisms available to it, an order specifically allowing the Consumer Advocate to

C.

Tariff Revisions

In contrast, upon review of the Consumer Advocate's proposed tariff revisions set forth on section II.E of its Statement of Position, the commission finds them to be reasonable; and, thus, fully adoptions them. Accordingly, the commission finds the tariff replacement pages submitted by Applicant on March 12, 2007, reflecting the Consumer Advocate's proposed tariff revisions, to be appropriate.

Furthermore, the commission finds certain other tariff revisions to also be appropriate. Thus, the commission concludes that Applicant's proposed tariff, Hawaii PUC Tariff No. 1, should also be revised as follows:

1. Original Sheet 16, Section 2.5.1.E, Cancellation or Interruption of Services. To fully reflect the commission's rule, this section should be amended to read: "Pursuant to HAR Section 6-80-114(14), a customer's basic residential service may not be disconnected due to the non-payment of interisland, interstate, or international service, flexibly priced services, or any telecommunications service offered by a third party."¹¹
2. Original Sheet 16, Section 2.5.2, Cancellation or Interruption of Services. For consistency with HAR § 6-80-95(b), a second sentence should be inserted to read: "The Company shall promptly notify its affected customers before the interruption occurs."

request copies of Applicant's records and books in conjunction with the waiver provisions of HAR § 6-80-136 is not warranted at this time. With respect to the Consumer Advocate's fourth recommendation, because this requirement would exist regardless of a commission order containing such an instruction, the commission determines that a commission order on this issue is unnecessary.

¹¹New language is underlined.

III.

Orders

THE COMMISSION ORDERS:

1. Applicant is granted a COA to provide intrastate telecommunications services in the State on a resold basis, 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 6-80 and 6-81; any other applicable State laws and commission rules; and any orders that the commission may issue from time to time.

3. Applicant shall file its proposed tariffs in accordance with HAR §§ 6-80-39 and 6-80-40. Applicant'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.

4. Applicant shall conform its initial tariff to all applicable provisions of HAR chapter 6-80 by, among other things, incorporating the tariff revisions referred to or set forth in Section II.C of this Decision and Order. An original and eight (8) copies of Applicant's revised 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 tariff.

5. 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.

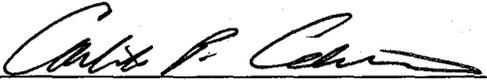
6. Within thirty (30) days from the date of this Decision and Order, Applicant shall also pay a telecommunications relay service ("TRS") contribution of \$10.00, established pursuant to: (A) Act 50, adopted on May 7, 2003 (codified as HRS § 269-16.6); and (B) Decision and Order No. 22536, filed on June 16, 2006, in Docket No. 2006-0126. The business check shall be made payable to "Hawaii TRS", and sent to the Hawaii TRS Administrator, Solix, Inc.,¹² 80 S. Jefferson Road, Whippany, NJ 07981. Written proof of payment shall be sent to the commission.

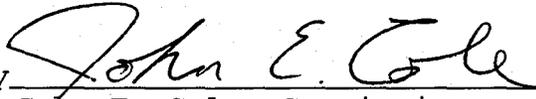
7. Failure to promptly comply with the requirements set forth in paragraphs 3 to 6, above, may constitute cause to void this Decision and Order, and may result in further regulatory action, as authorized by law.

¹²Solix, Inc. was formerly known as NECA Services, Inc.

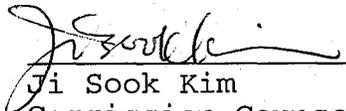
DONE at Honolulu, Hawaii APR 13 2007.

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

2007-0019.eh

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 23367 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

CATHERINE P. AWAKUNI
EXECUTIVE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
DIVISION OF CONSUMER ADVOCACY
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for Karen Higashi

DATED: APR 13 2007