

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
)
TON SERVICES, INC. D/B/A)
FLYING J COMMUNICATIONS)
)
For a Certificate of Registration.)

DOCKET NO. 2006-0067

DECISION AND ORDER NO. 23679

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2007 SEP 26 A 8:21

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

Filed Sept. 25, 2007

At 11 o'clock A .M.

Karen Higashi.

Chief Clerk of the Commission

ATTEST: A True Copy
KAREN HIGASHI
Chief Clerk, Public Utilities
Commission, State of Hawaii.

Karen Higashi.

A.

Applicant's Request

On March 17, 2006, Applicant filed its application for a COR to operate as a reseller of CMRS services in the State.² Applicant utilized an application that contains 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 May 31, 2006, the Consumer Advocate filed its Statement of Position ("SOP") informing the commission that it does not object to approval of Applicant's request.

The Consumer Advocate conditions its approval on Applicant's provision of a toll-free telephone number to receive calls regarding service or billing matters, as required by HAR § 6-80-114(6).³

The Consumer Advocate also recommends 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

²Applicant 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.

³See Consumer Advocate SOP at 3.

representative) upon the commission's, the Consumer Advocate's, or a consumer's request.⁴ In addition, the Consumer Advocate recommends that such updated information should be placed on Applicant's website within a reasonable time period.⁵

C.

Applicant's Response

On June 7, 2006, pursuant to the Consumer Advocate's recommendation, Applicant furnished its toll free number.

II.

Discussion

Section 269-7.5, 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.⁶ Sections 6-80-17(c) and (d), 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:

⁴See Consumer Advocate SOP at 3.

⁵See Consumer Advocate SOP at 3.

⁶On 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.

(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 meet any of these requirements or is otherwise incomplete.

(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.⁷

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,⁸ the

⁷HAR §§ 6-80-17(c) and (d) (emphasis added).

⁸See 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)).

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 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.,⁹ 80 S. Jefferson Road, Whippany, NJ 07981. Written proof of payment shall be sent to the commission.

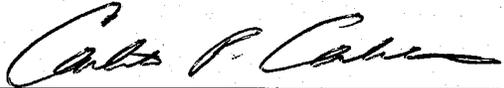
6. Failure to promptly comply with the requirements set forth in paragraphs 2 through 5, above, as applicable, may constitute cause to void this Decision and Order, and may result in further regulatory action, as authorized by law.

⁹Solix, Inc. was formerly known as NECA Services, Inc.

DONE at Honolulu, Hawaii

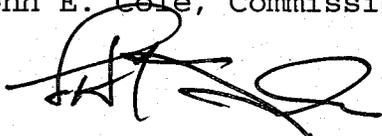
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PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

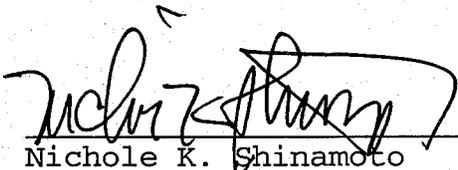
By 
Carlito P. Caliboso, Chairman

(EXCUSED)

By _____
John E. Cole, Commissioner


By _____
Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:


Nichole K. Shinamoto
Commission Counsel

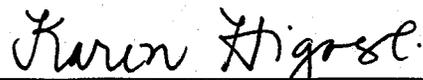
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CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 23679 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
P. O. Box 541
Honolulu, HI 96809

ROBIN NORTON
CONSULTANT TO TON SERVICES INC.
210 North Park Avenue
Winter Park, FL 32789



Karen Higashi

DATED: SEP 25 2007