

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application of)  
GLOBAL TEL\*LINK CORPORATION )  
For a Certificate of Authority )  
to Operate as a Reseller of )  
Telecommunications Services )  
Within the State of Hawaii. )  
\_\_\_\_\_ )

DOCKET NO. 2007-0117

DECISION AND ORDER NO. 23850

Filed Nov. 23, 2007  
At 11 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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Chief Clerk, Public Utilities  
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K. Higashi

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Docket No.2007-0117  
Decision and Order No. **23850**

DECISION AND ORDER

By this Decision and Order, the commission grants GLOBAL TEL\*LINK CORPORATION ("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 Delaware corporation authorized to transact business within the State as a foreign corporation. Applicant is authorized to provide: (1) domestic interstate and international services in all fifty states and the District of Columbia; and (2) intrastate telecommunications services in forty-four states.

A.

Applicant's Request

On May 9, 2007, Applicant filed an Application seeking a COA to provide intrastate telecommunications services on a resold basis.<sup>1</sup>

Applicant explains that: (1) it intends to provide institutional operator-assisted service for inmates to place collect calls through an automated call processing system; (2) the call processing system prompts the inmate and the called party such that the call is completed without live operator assistance; (3) calls are placed on a collect-only basis to the called party; and (4) a number of special blocking and screening capabilities are available within the institutional operator services provided by Applicant which allow institutions to control inmate access to telecommunications services, thereby minimizing (or eliminating) the fraudulent use of Applicant's services and eliminating harassing telephone calls to persons outside of the institution.<sup>2</sup> Applicant also explains

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<sup>1</sup>Application; Exhibits A - E; Verification; and Certificate of Service, filed on May 9, 2007 (collectively, "Application"). Applicant served a copy of its Application upon the DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY ("Consumer Advocate"), an ex officio party to this proceeding pursuant to Hawaii Revised Statutes ("HRS") § 269-51 and Hawaii Administrative Rules ("HAR") § 6-61-62(a). Applicant and the Consumer Advocate are collectively referred to as the "Parties."

Applicant represents that it is a non-facilities based reseller and will operate as a non-dominant reseller. See Application, at 8-9. Moreover, the Title Page of Applicant's proposed tariff refers to the resale of telecommunications services furnished within the State.

that certain special conditions apply to its institutional operator-assisted service for inmates.<sup>3</sup>

Applicant represents that it is: (1) financially qualified to provide telecommunications services within the State, and has access to the capital needed to fulfill any obligations it may undertake with respect to its provisioning of intrastate telecommunications services; and (2) "fit, willing, and able properly to perform the service proposed and to conform to the terms, conditions, and rules adopted by the Commission."<sup>4</sup> Applicant maintains that granting it a COA will further

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<sup>2</sup>As defined in Applicant's proposed tariff, the term "institution" refers to "prisons, jails, penal facilities or other institutions used for penalty purposes which contract with [Applicant] for the provision of service for use by their inmate population." Applicant's Proposed Tariff, Section 1, at 6.

<sup>3</sup>Specifically:

1. Calls to 900, 976, or other pay-per-call services are blocked by Applicant.
2. At the request of the institution, Applicant may block inmate access to: (A) toll-free numbers and dialing sequences used to access other carriers or operator service providers; (B) 911, 411, or local operators through 0- dialing; and (C) specific telephone numbers.
3. The availability of Applicant's services may be restricted by the institution to certain hours and days of the week.
4. At the request of the institution: (A) no notices or signage concerning Applicant's services will be posted with its instruments, and instead, such information is provided to the administration of each institution where Applicant's services are offered; (B) Applicant may impose time limits on local and long distance calls placed using its services; and (C) equipment may be provided that permits monitoring of inmate calls by legally authorized government officials.

<sup>4</sup>Application, at 9.

the public interest by expanding the availability of competitive intrastate telecommunications services.

Applicant also attaches to its Application the following exhibits: (1) Exhibit 1, Certificate of Incorporation; (2) Exhibit 2, Certificate of Authority to transact business in the State as a foreign corporation; (3) Exhibit 3, Biographies of Managerial Personnel; and (4) Exhibit 5, its proposed tariff.<sup>5</sup>

Applicant makes its request for a COA pursuant to HAR §§ 6-80-17 and 6-80-18. Applicant also requests that its books and records be kept in the State of Delaware, subject to Applicant making such information available to the commission upon the commission's request.

B.

Consumer Advocate's Statement of Position

On May 25, 2007, the Consumer Advocate filed its Statement of Position informing the commission that it does not object to Applicant's COA request.<sup>6</sup> The Consumer Advocate conditions its position on Applicant: (1) modifying its proposed tariff in accordance with the Consumer Advocate's recommendations set forth in Section II.D of its Statement of Position; and (2) submitting a copy of its most recent financial statements

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<sup>5</sup>Subsequently, on November 2, 2007, Applicant filed its Exhibit 4 under confidential seal. See footnote 7, below.

<sup>6</sup>Consumer Advocate's Statement of Position; and Certificate of Service, filed on May 25, 2007 (collectively, "Statement of Position").

as required under HAR § 6-80-17(c)(1)(E), subsequent to the issuance of a protective order.<sup>7</sup>

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.<sup>8</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

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<sup>7</sup>On October 19, 2007, the Parties submitted their stipulated protective order for the commission's review and consideration. Thereafter: (1) on October 30, 2007, the commission issued Stipulated Protective Order No. 23790; and (2) on November 2, 2007, Applicant filed its financial statements under confidential seal (Exhibit 4).

<sup>8</sup>On 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.

- (3) The proposed telecommunications service is, or will be, in the public interest.

HAR § 6-80-18(a); see also HAR § 6-79-13(b) (any person seeking to offer, initiate, or provide operator service shall apply in writing to the commission, pursuant to HAR chapter 6-80, subchapter 2).

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

1. Applicant possesses sufficient technical, financial, and managerial resources and abilities to provide the proposed services, as evidenced by its authorization to provide telecommunications services on a nationwide basis and its description of the qualifications of Applicant's key managerial personnel, the findings noted by the Consumer Advocate that Applicant has the managerial and technical abilities to provide the proposed telecommunications services within the State, and the confidential financial statements submitted in support of the 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, including its confidential financial statements. 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 increase competition and provide consumers with added options to meet their needs. As noted by the Consumer Advocate, "[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."<sup>9</sup>

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. With respect to Applicant's remaining request to keep its books and records in the State of Delaware, subject to Applicant making such information available to the commission upon the commission's request, no affirmative approval or action by the commission is necessary in this regard. In particular, HAR § 6-80-136(a)(3) already authorizes the out-of-state retention of a non-incumbent telecommunications carrier's books and records, subject to the proviso that the carrier "shall promptly provide copies of its out-of-state records and books to the commission upon the commission's request[.]"

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<sup>9</sup>Consumer Advocate's Statement of Position, at 5.

B.

Tariff Revisions

The commission finds appropriate the tariff revisions proposed by the Consumer Advocate, together with other revisions based on the commission's review of Applicant's proposed tariff. Thus, the commission concludes that Applicant's proposed tariff, Hawaii PUC Tariff No. 1, should be revised as follows:

1. Original Page No. 1, Title Page: Include a statement to clearly indicate that in the event of a conflict between any of Applicant's tariff provisions (including those governing the duty to defend, indemnification, hold harmless, and limitation of liability) and State law, State law shall prevail.
2. Original Page No. 9, Section 2.2.2, Limitations: Replace the symbol ' with \$, so that it now refers to "Hawaii Administrative Rules § 6-80-106, . . . ."
3. Original Page No. 16, Section 2.12.1, Refusal or Discontinuance by Company: Consistent with HAR § 6-80-106, amend Section 2.12.1 to now read as follows (including a new Section 2.12.2):

2.12.1 The Company may deny or discontinue service to a Customer without the Customer's permission and with prior notice only for one or more of the following reasons:

- A. Nonpayment of a past due bill not in dispute;
- B. Failure to make a security deposit or obtain a guarantee when one is required;
- C. Obtaining service by subterfuge;
- D. Unauthorized interference, diversion, or use of the telecommunications service situated or delivered on or about the Customer's premises;

- E. Violation of any rule of the Company filed with the Commission;
- F. Failure to comply with laws and regulations pertaining to telecommunications services; or
- G. Failure of the Customer to permit the Company reasonable access to the Company's facilities or equipment.

2.12.2 The Company may deny or discontinue service to a Customer without the Customer's permission and without prior notice only for any one or more of the following reasons:

- A. If a condition immediately dangerous or hazardous to life, physical safety, or property exists;
- B. Upon an order of any court, the Commission, or any other duly authorized public authority; or
- C. If service was obtained fraudulently or without the authorization of the Company.

4. Original Page No. 17, Section 2.13, Inspection, Testing and Adjustment: Amend Section 2.13 to include at least twenty-four hours advance notification, whenever possible, such that Section 2.13 will now read as follows:

Upon reasonable notice of at least twenty-four (24) hours whenever possible, the facilities provided by the Company shall be made available for maintenance. No interruption allowance will be granted for the time, normally less than two days, during which such tests and adjustments are made.

5. Original Page No. 18, Section 2.18, Other Rules: Consistent with HAR § 6-80-106(b)(6), amend Section 2.18 to include the phrase "with prior notice," such that Section 2.18 will now read as follows:

The Company may temporarily suspend service without the Customer's permission and with prior notice to the Customer, by blocking traffic to certain cities of NXX exchanges, or by blocking calls using certain Personal Identification Numbers when the Company deems it necessary to take such action to prevent unlawful use of its service. The Company will restore service as soon as service can be provided without undue risk.

6. Original Page No. 18, Section 2.19, Customer Complaints and/or Billing Disputes: Consistent with HAR §§ 6-80-102 and 6-80-107(4), add a new paragraph to Section 2.19 to read as follows:

All billing disputes are subject to Hawaii Administrative Rules § 6-80-102. All Customer complaints and inquiries regarding service or billing are subject to the jurisdiction of the Commission.

Any objection to the billed charges should be reported promptly to the Company. Adjustments to Customer's bills shall be made to the extent that records are available and/or circumstances exist which reasonably indicate that such charges are not in accordance with approved rates or that an adjustment may otherwise be appropriate. Where over billing occurs, due either to Company or subscriber error, no liability exists which will require the Company to pay any interest or other compensation on the amount over billed.

### III.

#### 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 the holder of a COA, Applicant shall be subject to all applicable provisions of HRS chapter 269; HAR chapters 6-79, 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 chapters 6-79 and 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 chapters 6-79 and 6-80 by, among other things, incorporating the tariff revisions set forth in Section II.C of this Decision and Order, as applicable. An original and eight copies of Applicant's revised initial tariff shall be filed with the commission, and two 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 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 days from the date of this Decision and Order, Applicant shall also pay a telecommunications relay service ("TRS") contribution of \$8.00, established pursuant to: (A) HRS § 269-16.6; and (B) Decision and Order No. 23481, filed on June 7, 2007, in Docket No. 2007-0113.

The business check shall be made payable to "Hawaii TRS", and sent to the Hawaii TRS Administrator, Solix, Inc.,<sup>10</sup> 100 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.

DONE at Honolulu, Hawaii NOV 23 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

By Leslie H. Kondo  
Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:

Michael Azama

Michael Azama  
Commission Counsel

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<sup>10</sup>Solix, Inc. was formerly known as NECA Services, Inc.

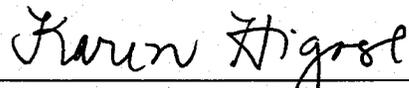
CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 23850 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  
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Karen Higashi

DATED: **NOV 23 2007**