BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)

HAWAIIAN TELCOM, INC. )

) DOCKET NO. 2008-0064

For Approval of Its Pole )
Attachment and Conduit Occupancy) Licensing Agreement with Extenet) Systems, Inc. )

DECISION AND ORDER
BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of
HAWAIIAN TELCOM, INC.
Docket No. 2008-0064
For Approval of Its Pole
Attachment and Conduit Occupancy
Licensing Agreement with Extenet
Systems, Inc.

DECISION AND ORDER

By this Order, the commission approves the Pole Attachment and Conduit Occupancy Licensing Agreement (the "Agreement") between HAWAIIAN TELCOM, INC. ("HTI") and Extenet Systems, Inc. ("Extenet"), filed on April 7, 2008.

I.

Background

HTI is a Hawaii corporation with its principal place of business in Honolulu, Hawaii. As the incumbent local exchange carrier for the State of Hawaii ("State"), HTI provides a "comprehensive slate" of local and intrалАТА telecommunications services on a statewide basis.

Extenet is a Delaware corporation with its principal place of business in Oakbrook Terrace, Illinois. It is a
competitive local exchange carrier authorized by the commission to provide facilities-based and resold intrastate telecommunications services in the State.¹

A. The Agreement

On April 7, 2008, HTI filed a petition requesting commission approval of the Agreement entered into between HTI and Extenet.² The Agreement was submitted pursuant to Section 252(e)(1) of the Telecommunications Act of 1996 and HAR § 6-80-54.

The Agreement governs Extenet’s non-exclusive revocable license to occupy, place, and maintain its facilities in designated space on HTI’s poles and conduits for the purpose of providing “Cable Television and/or Telecommunications Services.”³ Subject to certain conditions, the term of the Agreement is for 10 years, after which the Agreement shall continue in effect for

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²Copies of the same were served on the DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS (“Consumer Advocate”), an ex officio party to this proceeding pursuant to Hawaii Revised Statutes § 269-51 and Hawaii Administrative Rules (“HAR”) § 6-61-62. No person moved to intervene or participate in this docket.

³See Agreement at 4.
consecutive one year terms until properly terminated by either party. The Agreement specifically sets forth the rates, terms, and conditions for the license.

B. Consumer Advocate's Position

On June 20, 2008, the Consumer Advocate filed its Statement of Position ("CA's SOP") stating that it does not object to commission approval of the Agreement. The Consumer Advocate's position is based on its determination that the Agreement's terms, conditions, and rates are consistent with applicable Federal Communications Commission ("FCC") orders and the commission's rulings in Docket No. 7702. The Consumer Advocate believes that HTI and Extenet "negotiated in good faith the terms and rates for pole attachment and conduit occupancy that are reflected in the instant Agreement" in accordance with Order No. 19446. In that order, the commission refrained from establishing maximum duct rates for 2002 through 2005 and encouraged parties to establish rates through negotiations.

\textsuperscript{4}Id. at 5.


\textsuperscript{6}The Consumer Advocate referred to the following orders of Docket No. 7702: (1) Order No. 18265, filed on December 19, 2000; and (2) Order No. 19446, filed on July 3, 2002 ("Order No. 19446").

\textsuperscript{7}See CA's SOP at 3.
According to the Consumer Advocate, the proposed rates in the Agreement are reasonable and it concludes that the proposed rates do not result in any discrimination towards a telecommunications carrier not party to the Agreement. Moreover, the Consumer Advocate states that "[g]ranting Extenet the opportunity to attach and access its equipment to HTI's poles, ducts, and conduits in order to provide telecommunications services is consistent with [the] public interest, convenience and necessity for the continued advancement of competition in the telecommunications industry."  

II. Discussion

HAR § 6-80-78 requires all agreements concerning access to poles, ducts, conduits, and rights-of-way adopted by negotiation or arbitration be submitted to the commission for review and approval. The Agreement is not an arbitrated agreement but one that was negotiated by HTI and Extenet. Under HAR § 6-80-78(b) the commission may reject a negotiated agreement, or any portion of it, if the commission finds:

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"Id. at 6.

While HTI submitted the Agreement under HAR § 6-80-54, given that the agreement concerns access to HTI's poles and ducts, the commission deems that proper review of the Agreement is under HAR § 6-80-78 as opposed to HAR § 6-80-54. The commission notes that HAR § 6-80-54 concerns agreements regarding "access, interconnection, unbundling, and network termination" and that the parameters for commission approval of a negotiated agreement under HAR § 6-80-54 is consistent with the standards for approval under HAR § 6-80-78."
The agreement, or any portion of the agreement, discriminates against a telecommunications carrier not a party to the agreement; or

The implementation of the agreement, or any portion of the agreement, is not consistent with the public interest, convenience, and necessity.

Upon review, the commission finds that the Agreement does not appear to discriminate against other telecommunications carriers; and that the implementation of the Agreement appears to be consistent with the public interest, convenience, and necessity. The commission concurs with the Consumer Advocate's determination that the Agreement is consistent with the FCC's requirements and the commission's prior orders. In addition, the commission recognizes that approval of the Agreement is in the public interest since it would allow Extenet to attach and have access to HTI's poles and conduits, which furthers competition in the State's telecommunications market.

Based on the foregoing, the commission concludes that the Agreement should be approved.

III.

Orders

THE COMMISSION ORDERS:

1. The Pole Attachment and Conduit Occupancy Licensing Agreement between HTI and Extenet, filed on April 7, 2008, is approved.

2. This docket is closed unless otherwise ordered by the commission.
DONE at Honolulu, Hawaii JUL - 3 2008

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By: Carlito P. Caliboso, Chairman

By: John E. Cole, Commissioner

By: Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:

Ji Book Kim
Commission Counsel

2008-0064.laa
CERTIFICATE OF SERVICE

The foregoing order was served on the date of filing by mail, postage prepaid, and properly addressed to the following parties:

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