

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application of)

YESTEL USA, INC. )

DOCKET NO. 2008-0110

For a Certificate of Authority to )  
Operate as a Reseller of )  
Competitive Intrastate )  
Interexchange Services Within the )  
State of Hawaii. )  
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DECISION AND ORDER

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

PUBLIC UTILITIES  
COMMISSION

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FILED

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<hr/>	)

DECISION AND ORDER

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

I.

Background

Applicant is a Delaware corporation with its principal place of business located in Arcadia, California. Applicant was incorporated on March 24, 2006, and was certified by the State of Hawaii, Department of Commerce and Consumer Affairs to transact business in the State as a foreign corporation, effective May 1, 2006.

A.

Application

On June 9, 2008, Applicant filed an application seeking a COA to provide resold telecommunications services in the State.<sup>1</sup> In its Application, Applicant states its intent to: (1) operate as a reseller of long distance telecommunications services; (2) not own or operate any equipment or facilities used in the provision of its services; and (3) offer its services to residential and business customers on a statewide basis. Applicant represents that it is willing and able to perform the proposed telecommunications services on a continuous basis, and that it would comply with all applicable provisions of HRS chapter 269, HAR chapters 6-80 and 6-81, and all other applicable State laws and commission rules. Moreover, Applicant contends that approval of its request is in the public interest.

B.

Consumer Advocate's Statement of Position

On June 18, 2008, the Consumer Advocate filed its Statement of Position ("CA's SOP") stating that it does not object to approval of Applicant's request; provided that Applicant modifies its tariff in accordance with the

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<sup>1</sup>Applicant filed its application, verification, and exhibits A-E, on June 9, 2008 (collectively, "Application"). Applicant 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. No persons moved to intervene in this proceeding.

recommendations set forth in Section II.D of the Consumer Advocate's statement. Moreover, the Consumer Advocate recommends that Applicant should also submit current financial statements as required under HAR § 6-80-17(c)(1)(E).<sup>2</sup>

Among other things, the Consumer Advocate states that it "accepts Applicant's representation that it has the managerial and technical abilities to provide the proposed services in Hawaii."<sup>3</sup> Moreover, the Consumer Advocate determined (based on the presumed fitness and ability of Applicant) that Applicant's proposed services would be in the public interest.

## 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>4</sup> HAR § 6-80-18(a) states that:

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<sup>2</sup>However, the Consumer Advocate states that it would not be opposed to granting a waiver of the HAR § 6-80-17(c)(1)(E) requirement, in this instance. See CA's SOP at 7. Nonetheless, by commission letter dated July 1, 2008, Applicant was directed to file its current financial statements in accordance with HAR § 6-80-17(c)(1)(E). On July 9, 2008, Applicant submitted appropriate copies of its current financial statements in response to the July 1, 2008 letter. Given the above, the Consumer Advocate's initial recommendation regarding Applicant's financial statements is now moot.

<sup>3</sup>See CA's SOP at 3.

<sup>4</sup>On June 3, 1996, HAR chapter 6-80 took effect. HAR chapter 6-80, among other things, replaced the CPCN with a

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 record herein, 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 the description of the qualifications of Applicant's management team and the financial statements submitted in support of its Application.

2. Applicant is fit, willing, and able to properly perform the telecommunications services 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 Application. Moreover, the commission's grant of a COA to Applicant to provide the proposed services will be conditioned upon Applicant's conformity to

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COA for telecommunications carriers, and established procedures for requesting and issuing a COA.

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 telecommunications market in the State increases competition, providing consumers with added options to meet their needs. As noted by the Consumer Advocate, Applicant's proposed services will be in the public interest since "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>5</sup>

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

#### B.

##### Tariff Revisions

Upon review of the Consumer Advocate's proposed tariff revisions, the commission finds them to be reasonable and appropriate. In addition, the commission finds certain other tariff revisions to also be appropriate. Thus, the commission

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<sup>5</sup>See CA's SOP at 5.

concludes that Applicant's proposed tariff (i.e., Hawaii P.U.C. Tariff No. 1) should be revised as follows:

1. Original Sheet 1. Applicant should include a statement clearly stating that in the event of a conflict between any of Applicant's tariff provisions (including provisions governing the duty to defend, indemnification, hold harmless, and limitation of liability) and state of Hawaii law, state of Hawaii law shall prevail.
2. Original Sheet 25, Section 2.4.4.1, Inspections. To ensure that customers have adequate notice, the first sentence of this section should be modified to read, "Upon reasonable notification **of at least 24 hours** to the Customer, and at a reasonable time, the Company . . ."
3. Original Sheet 27, Section 2.5.3, Disputed Bills. This section should be reviewed and amended, as applicable, for consistency with HAR § 6-80-102. The follow is an example of language that should be included in this section:

Upon notification of a dispute, the Company will notify the Customer within five (5) working days of its receipt of the dispute notice and shall undertake an investigation of the dispute charges. At the conclusion of the investigation, the Company will notify the Customer of any amount determined by the Company to be correctly charged and Customer shall pay such amount to the Company within fifteen (15) days. The Company may suspend/terminate service if the Customer fails to pay the amount determined by the Company to be properly charged.
4. Original Sheet 28, Section 2.5.3.2(c), Late Payment Charge. For clarity and to ensure proper customer notice, this section should be amended to read that, "In the event that a billing dispute is resolved in favor

of the Company, the Customer shall pay the late payment charge; provided that the Customer has been properly informed in advance regarding this provision."

5. The numbering of the tariff sections should be reviewed and corrected for any inadvertent errors. For example, proposed sections 2.5.6.1; 2.5.6.4; and 2.5.6.5 are numbered as 2.65.6.1; 2.5.6.6; and 2.5.6.7.

### III.

#### Orders

##### THE COMMISSION ORDERS:

1. Applicant is granted a COA to provide resold intrastate telecommunications services in the State, 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 6-80 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 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 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.B of this Decision and Order. An original and



eight (8) copies of the 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 tariffs.

5. Within thirty (30) 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, filed on June 27, 2008, in Docket No. 2008-0089. The business check shall be made payable to "Hawaii TRS", and sent to the Hawaii TRS Administrator, Solix, Inc.,<sup>6</sup> 100 S. Jefferson Road, Whippany, NJ 07981. Written proof of payment shall be sent to the commission.

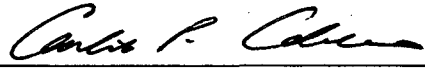
6. Failure to promptly comply with the requirements set forth in paragraphs 3 to 5, above, may constitute cause to void this Decision and Order, and may result in further regulatory action, as authorized by law.

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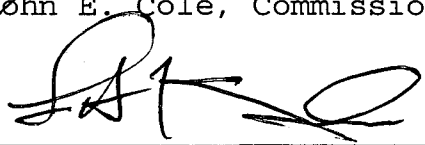
<sup>6</sup>Solix, Inc. was formerly known as NECA Services, Inc.

DONE at Honolulu, Hawaii AUG 13 2008.

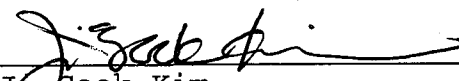
PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By   
Carlito P. Caliboso, Chairman

By   
John E. Cole, Commissioner

By   
Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:

  
Ji Sook Kim  
Commission Counsel

2008-0110. 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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