

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
DYNALINK COMMUNICATIONS, INC.)
For a Certificate of Authority.)
_____)

DOCKET NO. 2007-0370

DECISION AND ORDER NO. 23991

Filed Jan. 30, 2008
At 11 o'clock A.M.

Karen Higashi.
Chief Clerk of the Commission

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

2008 JAN 31 A 9 08

RECEIVED

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

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
DYNALINK COMMUNICATIONS, INC.)
For a Certificate of Authority.)
_____)

Docket No. 2007-0370
Decision and Order No. 23991

DECISION AND ORDER

By this Decision and Order, the commission grants DYNALINK COMMUNICATIONS, 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 New York corporation with its principal place of business in New York, New York. Applicant was initially incorporated in August 2005 under the name Voice Data Technologies of USA, Inc., and subsequently changed its name to Dynalink Communications, Inc. Applicant was certified by the State of Hawaii Department of Commerce and Consumer Affairs to transact business in the State as a foreign corporation, effective August 9, 2007.

A.

Application

On November 2, 2007, Applicant filed an application seeking a COA to provide resold telecommunications in the State.¹ Applicant utilized the commission's standard COA form application to make its request.

Specifically, Applicant intends to provide local and long distance telecommunications services to both commercial and residential customers in the State. Applicant represents that it is fit, willing, and able to render the proposed services and conform to the terms, conditions, and rules of the commission. In support, Applicant asserts that it already provides service to customers in 23 other states including New York in compliance with all applicable rules and regulations.

Moreover, Applicant contends that approval of its request for a COA is in the public interest. In particular, Applicant represents that its proposed service will provide consumers in Hawaii with the opportunity for better or possibly "excellent" customer service.

¹Application, Verification, and Exhibits 1-5, filed on November 2, 2007 ("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.

Pursuant to the Consumer Advocate's letters dated November 9 and 21, 2007, Applicant forwarded copies of its exhibits which were inadvertently "left out" of the copies of the Application served on the Consumer Advocate. Applicant filed its previous submissions to the Consumer Advocate with the commission on December 10, 2007.

B.

Consumer Advocate's Statement of Position

On December 12, 2007, the Consumer Advocate filed its Statement of Position recommending that the commission approve Applicant's COA request ("CA's SOP"). Among other things, the Consumer Advocate states that it "accepts Applicant's representation that its key personnel possess the necessary technical and managerial abilities to provide the telecommunications services described in the Application."² Moreover, upon review of Applicant's financial statements, the Consumer Advocate asserts that Applicant appears to be financially fit to provide the proposed services.

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.³ 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

²See CA's SOP at 3.

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

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 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 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 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 certain benefits that would not be present in a monopolistic environment."⁴

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 Applicant's proposed initial tariff, attached as Exhibit 4 to the Application, the commission finds the enumerated tariff revisions set forth below to be appropriate. Accordingly, the commission concludes that Applicant's tariff should be revised as follows:

1. The header of Applicant's tariff should be amended by inserting the tariff designation "Original Sheet ____" (or "Revised Sheet ____" if the sheet has been revised) in the upper right-side of the header directly below the label

⁴See CA's SOP at 4.

"Hawaii PUC Tariff No. 1" for consistency with the standard format for telecommunications tariffs filed in the State.

2. Original Page No. 15, Section 2.5.1, Cancellation or Interruption of Services. For consistency with HAR § 6-80-106(c), this section should be revised to include the provision that "If the notification is mailed to the customer, the customer shall be allowed an additional two days to respond."
3. Original Page No. 16, Section 2.5.2, Cancellation or Interruption of Services. For consistency with HAR § 6-80-95(b), this section should include the provision that Applicant "shall promptly notify its affected customers and, as appropriate fire and law enforcement agencies, before the interruption occurs. Repair and maintenance work shall be performed at a time that will cause the least inconvenience to its customers."
4. Original Page No. 19, Section 2.10.1, Payment and Billing. For consistency with HAR § 6-80-102(a), the last sentence of this section should be amended to read: "A late fee will be assessed upon unpaid amounts, not in dispute, 30 days after rendition of bills."
5. Original Page No. 20, Section 2.13, Late Charge. For consistency with HAR § 6-80-102(a), this section should be amended to read: "A late fee of 1.0% monthly or the amount otherwise authorized by law, whichever is lower, will be charged on any past due balances, not in dispute."

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 provisions 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 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 #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 \$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.,⁵ 100 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.


⁵Solix, Inc. was formerly known as NECA Services, Inc.

DONE at Honolulu, Hawaii JAN 30 2008.

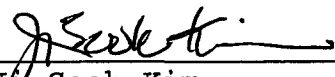
PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By 
John E. Cole, Commissioner

By 
Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:


J. Sook Kim
Commission Counsel
2007-0370.laa

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 23991 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

DYNALINK COMMUNICATIONS, INC.
221 West 17th Street, 6th Floor
New York, NY 10011

MOSHE K.
LEGAL ASSISTANT
DYNALINK COMMUNICATIONS, INC.
1850 48th Street
Brooklyn, NY 11204



Karen Higashi

DATED: JAN 30 2008