

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)

PACIFIC LIGHTNET, INC.)

DOCKET NO. 2008-0016

For Approval of Revision to)
its Tariff No. 1. Transmittal)
No. 08-01.)
_____)

DECISION AND ORDER NO. 24125

Filed April 4, 2008
At 9 o'clock A.M.

Karen Higashi
Chief Clerk of the Commission

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Chief Clerk, Public Utilities
Commission, State of Hawaii

K. Higashi

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DECISION AND ORDER

By this Decision and Order, the commission approves PACIFIC LIGHTNET, INC.'s ("PLNI") request to offer "a promotional offering whereby customers of PLNI's Voice and Data 2-way [primary rate interface ("PRI")] service would receive a discounted price that includes 5000 minutes of interisland and/or domestic long distance usage per month (PRI Bundle)."¹

I.

Background

By Transmittal No. 08-01, PLNI seeks to offer a new promotional offering that bundles Integrated Services Digital Network ("ISDN") Service, a non-competitive service, with inter-island toll service, a competitive service.² PLNI explains that it "will waive or reduce certain nonrecurring charges and offer discounts on monthly recurring charges associated with ISDN

¹PLNI's Supplemental Filing; Exhibit; Verification; and Certificate of Service, filed on March 14, 2008 (collectively, "Supplemental Filing"), at 1-2.

²Transmittal No. 08-01; Exhibit; and Certificate of Service, filed on January 7, 2008 (collectively, "Transmittal No. 08-01").

Primary Rate Interface (PRI) with long distance term contracts for retail business customers who meet eligibility requirements outlined in the tariff."³ PLNI filed its transmittal pursuant to Hawaii Administrative Rules ("HAR") chapter 6-61 and §§ 6-80-39 and 6-80-40, and requested that the promotional period take effect from February 6, 2008 to May 6, 2008.

On January 30, 2008, the commission suspended PLNI's transmittal, and opened an investigation to examine the merits of PLNI's proposal.⁴ The commission: (1) noted that PLNI's transmittal did not cite to or otherwise comply with HAR § 6-80-35(e), governing the offering of certain joint services, i.e., bundling; and (2) instructed PLNI to promptly update its transmittal in compliance with HAR § 6-80-35(e).⁵

Thereafter, on March 14, 2008, PLNI submitted its Supplemental Filing, in compliance with Order No. 23989. Due to the passage of time, PLNI now requests that: (1) the promotional period take effect from April 14, 2008 to October 14, 2008; and (2) the commission issue its decision by April 11, 2008.

³Transmittal No. 08-01, at 1.

⁴Order No. 23989, filed on January 30, 2008.

⁵The Consumer Advocate is an ex officio party to all commission proceedings, pursuant to Hawaii Revised Statutes § 269-51 and HAR § 6-61-62(a). On February 8, 2008, the Consumer Advocate informed "the Commission of its decision to not participate in the Commission's investigation, pursuant to Order No. 23989, issued January 31, 2008, to examine the merits of Transmittal No. 08-01. The Consumer Advocate would, however, appreciate receiving a copy of the documents filed in the proceeding to ensure that the Consumer Advocate's docket file is current." Consumer Advocate's Statement of Position, filed on February 8, 2008, at 2.

In support of its request for commission approval pursuant to HAR § 6-80-35(e), PLNI, based on the Verification of its President, represents:

1. "PLNI has reviewed the promotional pricing proposed in Transmittal No. 08-01 and confirms that the PRI Bundle will not result in improper cross-subsidization."⁶ Specifically:

PLNI has examined its costs of providing service to ensure that the independent costs of the PRI service and the long distance minutes of use are both covered by the PRI Bundle rates in Transmittal 08-01. Put another way, the cost of the partially competitive service (long distance) is included in the PRI Bundle rate, as is, independently, the cost of the non-competitive service (PRI). Since the cost of the PRI service and the cost of the long distance minutes of use together are less than the PRI Bundle rates, no cross-subsidization occurs.

PLNI records local network revenues separately from long distance revenues, and will continue to do so. To allocate costs and revenues for the PRI Bundle, PLNI will determine the average, actual long distance minutes of use among its PRI Bundle customers, and in the revenue posting, allocate to long distance revenues, that average times an imputed rate of \$.05 per [minutes of use].

Supplemental Filing, at 3-4 (footnote and text therein omitted).

2. "Considering the Commission's rules and past orders interpreting such rules, it is PLNI's understanding that [HAR] § 6-80-35 does not, *per se*, require a telecommunications carrier to submit a cost study for its bundled service packages."⁷

⁶Supplemental Filing, at 2.

⁷Supplemental Filing, at 3 (footnote and citations therein omitted).

3. "As a non-dominant provider of both PRI and long distance services, PLNI doesn't have sufficient market power to price services below cost and remain profitable."⁸

4. PLNI is offering the PRI Bundle in response to similar bundled service packages offered by two of its competitors, Hawaiian Telcom, Inc., and Oceanic Communications.

II.

Discussion

HAR § 6-80-35(e) provides:

(e) A telecommunications carrier may not offer a noncompetitive telecommunications service jointly with any fully or partially competitive service or with any interstate, international, or other service not within the jurisdiction of the commission, except upon the commission's express approval. The commission's approval is subject to a satisfactory showing by the telecommunications carrier seeking to offer such joint services that the costs of the fully or partially competitive service or the costs of the interstate, international, or other non-jurisdictional service are not subsidized by the noncompetitive service. An application for approval to offer any such joint services must be filed with the commission not less than thirty days before the joint services are marketed, sold, or advertised.

HAR § 6-80-35(e) (emphasis added).

In In re Time Warner Telecom of Hawaii, L.P., dba Oceanic Communications, Docket No. 05-0012 ("Docket No. 05-0012"), the commission approved Oceanic Communications' proposal to offer a bundled service package, reasoning that the carrier's "proposed VersiPak Package [was] similar to other bundled service packages currently offered in the State, and

⁸Supplemental Filing, at 3.

provides business customers with another option for bundled voice and data services."⁹ PLNI, like Oceanic Communications, is a competitive telecommunications carrier that is not subject to rate of return regulation by the commission.

Here, PLNI represents that: (1) the independent costs associated with the PRI Bundle, i.e., the costs for the long distance and PRI services, respectively, will not result in improper cross-subsidization under HAR § 6-80-35(e); (2) it records its local network revenues separately from its long distance revenues, and will continue to do so; and (3) as a non-dominant provider of PRI and long distance services, it lacks sufficient market power to price its services below cost and remain profitable.

Based on PLNI's representations, the commission finds that: (1) PLNI's proposal to offer its PRI Bundle appears consistent with the public interest of offering business customers more calling plan and service options, at a discounted rate and in response to similar competitive bundled service offerings; and (2) PLNI has satisfactorily met its burden under HAR § 6-80-35(e). Accordingly, the commission approves PLNI's request to offer its PRI Bundle to business customers in the State of Hawaii.

⁹Docket No. 05-0012, Decision and Order No. 21676, filed on March 7, 2005, at 5.

III.

Orders

THE COMMISSION ORDERS:

1. PLNI's request to offer its PRI Bundle to business customers in the State of Hawaii is approved.

2. PLNI shall promptly file its tariff sheets for the PLNI Bundle, reflecting the appropriate issued and effective dates (including the effective duration of the PLNI Bundle), with copies served on the Consumer Advocate.

3. Upon the filing of PLNI's tariff sheets, this docket shall be deemed closed, unless ordered otherwise by the commission.

DONE at Honolulu, Hawaii APR - 4 2008.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By Carlito P. Caliboso
Carlito P. Caliboso, Chairman

By John E. Cole
John E. Cole, Commissioner

APPROVED AS TO FORM:

By Leslie H. Kondo
Leslie H. Kondo, Commissioner

Michael Azama
Michael Azama
Commission Counsel

2008-0016.cp

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 24125 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

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Karen Higashi

DATED: APR - 4 2008