

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application of)  
GLOBAL CAPACITY GROUP, INC. )  
For a Certificate of Authority to )  
Provide Competitive )  
Telecommunications Service Pursuant )  
To HAR 6-80-17 )  
\_\_\_\_\_ )

Docket No. 2007-0229

DECISION AND ORDER NO. 24175

Filed May 6, 2008  
At 1 o'clock P.M.

Karen Higashi  
Chief Clerk of the Commission

DIV. OF PUBLIC UTILITIES  
DEPT. OF LAND AND  
NATURAL RESOURCES  
STATE OF HAWAII

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Commission, State of Hawaii

K. Higashi

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Docket No. 2007-0229  
Decision and Order No. **24175**

DECISION AND ORDER

By this Decision and Order, the commission grants GLOBAL CAPACITY GROUP, INC. ("Applicant") a certificate of authority ("COA") to provide competitive resold and facilities-based/UNE local exchange and interexchange telecommunications service within the State of Hawaii ("State"), subject to certain regulatory requirements.

I.

Background

Applicant is a Texas corporation founded on December 12, 2001, which "provides network integration and wholesale network services to both carriers and large enterprise customers. Applicant is currently authorized to provide long distance service in California and Texas, and is authorized to provide local exchange and interexchange service in Pennsylvania. Applicant is in the process of applying for authorization to provide competitive local exchange and interexchange services in approximately 20 additional states. Applicant has not been

denied authority for any of the services for which it seeks authority in this Application. Applicant is currently providing service in California, Texas and Pennsylvania."<sup>1</sup> Applicant has received authorization from the Department of Commerce and Consumer Affairs Business Registration Division to transact business in the State as a foreign corporation, effective June 29, 2007.<sup>2</sup>

Applicant is a wholly-owned subsidiary of Capital Growth Systems, Inc., a "publicly traded Florida corporation which delivers telecom integration services to a global client set consisting of systems integrators, telecommunications companies and enterprise customers."<sup>3</sup>

A.

Application

On August 13, 2007, Applicant filed an Application seeking a COA to provide interexchange service throughout the State and "to provide local exchange service in all regions and areas currently served by incumbent local exchange carriers [("LEC")] and interexchange service statewide."<sup>4</sup> Applicant intends to provide:

Upon initiation of service in Hawaii, [Applicant] proposes to offer resold interexchange and local exchange services, and local services utilizing unbundled network elements purchased from LECs

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<sup>1</sup>Application, at 3.

<sup>2</sup>Application, at Exhibit B.

<sup>3</sup>Application, at 2.

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

(UNE service). Such services will be provided through the facilities incumbent [LECs] and facilities-based interexchange carriers, such as Verizon, Qwest, WorldCom, and Frontier/Global Crossing. [Applicant] intends to provide all forms of intrastate interexchange and local exchange telecommunications services including:

Interexchange (switched and dedicated services):

- A. 1+and 101XXXX outbound dialing;
- B. 800/888 toll-free inbound dialing;
- C. Calling cards;
- D. Directory Assistance; and
- E. Frame Relay, Private Line and Data Services.

Local Exchange:

- A. Local Exchange Services for business and residential customers that will enable customers to originate and terminate local calls in the local calling area served by other LECs, including dial tone and custom calling features.
- B. Switched local exchange services, including basic service, trunks, carrier access, and any other switched local services that currently exist or will exist in the future.
- C. Non-switched local services (e.g., private line) that currently exist or will exist in the future.
- D. Centrex and/or Centrex-like services that currently exist or will exist in the future.
- E. Digital subscriber line, ISDN, and other high capacity services.

Application, at 4. Geographically, Applicant proposes to provide interexchange service throughout the state and local exchange services within the areas served by incumbent LECs.<sup>5</sup>

Applicant represents that it is "fit, willing, and able properly to perform the service proposed and to conform to the terms, conditions, and rules adopted by the [c]ommission."<sup>6</sup> In support of such claims, Applicant has provided its most recent

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<sup>5</sup>Application, at 5.

<sup>6</sup>Application, at 8.

financial statements and biographies of its management team and corporate officers.<sup>7</sup> Applicant contends that the competition it will provide "will benefit the public interest by offering the citizens of Hawaii with further choices from which to obtain their local and long distance services."<sup>8</sup>

In support of its Application, Applicant has submitted a proposed interexchange tariff. It intends to file a local exchange tariff upon completion of "appropriate interconnection/resale agreements and prior to commencing service in accordance with [c]ommission rules."<sup>9</sup>

Applicant makes its request for a COA pursuant to Hawaii Administrative Rule ("HAR") § 6-80-17.<sup>10</sup> Applicant also requests that its books and records be kept in the State of California, subject to Applicant making such information available to the commission upon the commission's request.<sup>11</sup>

B.

Consumer Advocate's Statement of Position

On October 31, 2007, the DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY

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<sup>7</sup>Application, at Exhibits C and D.

<sup>8</sup>Application, at 8.

<sup>9</sup>Application, at 7.

<sup>10</sup>Application, at 1.

<sup>11</sup>Application, at 8.

("Consumer Advocate")<sup>12</sup> filed its Statement of Position informing the commission that it does not object to Applicant's COA request.<sup>13</sup> The Consumer Advocate "accepts [Applicant's] representation that its key personnel possess the necessary technical and managerial abilities to provide the telecommunications services described in the Application."<sup>14</sup> Also, the Consumer Advocate states, "[a]s noted on the December 31, 2006 financial statements, [Applicant] had total assets of \$1,619,548, total liabilities of \$1,697,943, and negative equity of [ ] \$78,395. The net income reported for the year was \$234,179. As of March 31, 2007, [Applicant] had total assets of \$6,324,945, total liabilities of \$1,310,942 and total equity of \$5,014,003. Applicant reported a net loss of \$239,536 for the three-month period. Based on the above, it appears that [Applicant] is financially fit to provide the telecommunications services in the State."<sup>15</sup>

Moreover, the Consumer Advocate states that it "believes that, based on the presumed fitness and ability of Applicant, [Applicant's] proposed services will be in the public interest. Applicant states that it will provide competition in the telecommunications market, which currently includes Verizon,

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<sup>12</sup>The Consumer Advocate is an ex officio party to this proceeding, pursuant to HRS § 269-51 and HAR § 6-61-62(a). No persons moved to intervene or participate in this docket.

<sup>13</sup>Consumer Advocate's Statement of Position; and Certificate of Service, filed on October 31, 2007 (collectively, "Statement of Position").

<sup>14</sup>Statement of Position, at 4.

<sup>15</sup>Statement of Position, at 4 (footnote omitted).

Qwest, WorldCom, and Frontier/Global Crossing, giving consumers another choice for telecommunications service, as well as increasing efficiency among competitors."<sup>16</sup>

Finally, with regard to Applicant's tariff, the Consumer Advocate states that "the terms and regulations are reasonable and in compliance with HAR § 6-80-32. However, the Consumer Advocate suggests that to better conform to the standard format for telecommunications tariffs filed in the State, the Consumer Advocate recommends that Applicant insert the tariff sheet designation "Original Sheet \_\_\_\_" (or "Revised Sheet \_\_\_\_" if the sheet has been revised) in the upper right-side header directly below the label "HAWAII PUC TARIFF NO. 1."<sup>17</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>18</sup> HAR § 6-80-18(a) states that:

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<sup>16</sup>Statement of Position, at 5 (footnote omitted).

<sup>17</sup>Statement of Position, at 5.

<sup>18</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.

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.

HAR § 6-80-18(a).

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 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 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, "the 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 will further the goal of having effective competition in [ ] Hawaii's telecommunications market."<sup>19</sup>

Based on the foregoing, the commission concludes that Applicant should be granted a COA to provide competitive resold and facilities-based/UNE local exchange and interexchange telecommunications service within the State as described in its Application. With respect to Applicant's request to keep its books and records in the State of California, 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

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<sup>19</sup>Statement of Position, at 5.

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[.]"

B.

Tariff Revisions

Upon review of Applicant's proposed initial tariff, attached as Exhibit E to the Application, the commission finds appropriate the tariff revisions proposed by the Consumer Advocate. Accordingly, the commission concludes that Applicant's proposed tariff, Hawaii PUC Tariff No. 1, should be revised as follows:

1. The header of Applicant's tariff should be amended by inserting the tariff sheet designation "Original Sheet \_\_\_\_" (or "Revised Sheet \_\_\_\_" if the sheet has been revised) in the upper right-side header directly below the label "HAWAII PUC TARIFF NO. 1." For consistency with the standard format for telecommunications tariffs filed in the State.

In addition, Applicant shall file a copy of its local exchange tariff upon completion of appropriate interconnection/resale agreements and prior to commencing service in accordance with commission rules.

### III.

#### Orders

##### THE COMMISSION ORDERS:

1. Applicant is granted a COA to provide competitive resold and facilities-based/UNE local exchange and interexchange telecommunications service within 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 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>20</sup> 100 S. Jefferson Road, Whippany, NJ 07981. Written proof of payment shall be sent to the commission.

6. Pursuant to HRS § 269E-6, if Applicant will own, operate, or maintain any subsurface installation, it shall: (1) pay to the commission a one-time registration fee of \$350 for the administration and operation of the Hawaii One Call Center, pursuant to Decision and Order No. 23086, filed on November 28, 2006, in Docket No. 05-0195, within thirty (30) days from the date of this Decision and Order; and (2) register as an operator, as defined by HRS § 269E-2, with the Hawaii One Call Center by calling (877) 668-4001.

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

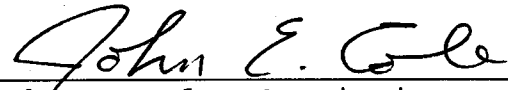
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<sup>20</sup>Solix, Inc. was formerly known as NECA Services, Inc.  
2007-0229

DONE at Honolulu, Hawaii MAY - 6 2008.

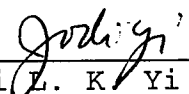
PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By   
Carlito P. Caliboso, Chairman

By   
John E. Cole, Commissioner

By   
Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:

  
Jodi L. K. Yi  
Commission Counsel

2007-0229.laa

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 24175 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: MAY - 6 2008