

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
U.S. TELECOM LONG DISTANCE, INC.)
For a Certificate of Authority.)

DOCKET NO. 2008-0288

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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In the Matter of the Application of)
U.S. TELECOM LONG DISTANCE, INC.) Docket No. 2008-0288
For a Certificate of Authority.)

DECISION AND ORDER

By this Decision and Order, the commission grants U.S. TELECOM LONG DISTANCE, INC. ("Applicant") a certificate of authority ("COA") to provide resold intrastate interexchange telecommunications services throughout the State of Hawaii ("State"), subject to certain regulatory requirements.

I.

Background

Applicant is a Nevada corporation with its principal place of business located in Las Vegas, Nevada. Applicant was incorporated on August 13, 1997, 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 October 22, 1997.

A.

Application

On November 17, 2008, Applicant filed an application seeking a COA to provide non-facilities-based switched access outbound "1 Plus" interexchange telecommunications services for the direct transmission and reception of voice and data between locations throughout the State.¹ Applicant represents that it is willing and able to perform the proposed telecommunications services on a continuous basis, and that it will 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 December 4, 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 recommendations set forth in Section II.D of the CA's SOP, and if

¹Applicant filed its application, verification, and exhibits 1-6, on November 17, 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.

not already provided, submits a copy of its financial statements, as required under HAR § 6-80-17(c)(1)(E).² The Consumer Advocate states that it did not receive a copy of Applicant's financial statements and therefore chose not to make a recommendation on Applicant's financial fitness.

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."³ Moreover, the Consumer Advocate determined (based on the presumed fitness and ability of Applicant) that Applicant's proposed services will 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

²In Applicant's November 17, 2008 filing, Applicant submitted financial statements to the commission, as required under HAR § 6-80-17(c)(1)(E) and requested that the commission treat its financial statements as confidential, without an approved protective order. Also, on November 17, 2008, Applicant and the Consumer Advocate submitted a proposed Stipulation for Protective Order for commission review and approval. On May 26, 2009, the commission rejected the proposed stipulation and issued its own Protective Order to govern the classification, acquisition, and use of confidential information in this docket.

³See CA's SOP at 4.

certificate of public convenience and necessity ("CPCN") from the commission.⁴ 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 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 senior management 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

⁴On 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.

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, "entry of many telecommunications service providers in the Hawaii market serves to mitigate many traditional public utility regulatory concerns regarding the proposed grant of the requested COA. Therefore, if there are any adverse consequences from the proposed transaction, Hawaii's consumers of Applicant's telecommunication services will have the option of selecting another service provider."⁵

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.

In addition, given the Consumer Advocate's representation that it did not receive a copy of Applicant's financial statements, the commission finds it reasonable to require Applicant to provide the Consumer Advocate with a copy of its financial statements.

⁵See CA's SOP at 6.

B.

Tariff Revisions

Upon review of the Consumer Advocate's proposed tariff revisions, the commission finds them to be reasonable and appropriate. Thus, the commission concludes that Applicant's proposed tariff (i.e. Hawaii P.U.C. Tariff No. 1) should be revised as follows:

1. Original Sheet No. 5, Application of Tariff. Applicant should include a statement that clearly indicates that in the event of a conflict between any of the subject 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 No. 14. Section 2.8.4., Payments and Billing. For consistency with HAR § 6-80-102, the second sentence of this section should be modified to read:

Bills not paid within thirty-one (31) days after the date of posting are subject to a 1.5 % late payment charge for the unpaid balance not in dispute.

3. Original Sheet No. 14. Section 2.9.1., Billing Disputes. For clarification purposes, the first sentence of this section should be modified to read:

Billing disputes should be addressed to Company's customer service organization as soon as possible via telephone to 1-888-299-6618 or in writing to the Company at U.S. Telecom Long Distance, Inc., 3960 Howard Hughes Parkway, 5th Floor, #5001F, Las Vegas, Nevada 89109.

4. Original Sheet No. 15. Section 2.9.2.1., Billing Disputes. This section should be reviewed and amended, as applicable, for consistency with HAR § 6-80-102. The following 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.

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 copies of the initial tariff shall be filed with the commission, and two 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. Applicant shall provide the Consumer Advocate with a copy of its financial statements.

6. Within thirty days from the date of this Decision and Order, Applicant shall also pay a telecommunications relay service ("TRS") contribution of \$12.00, established pursuant to: (A) HRS § 269-16.6; and (B) Decision and Order, filed on June 9, 2009, in Docket No. 2009-0095. The business check shall be made payable to "Hawaii TRS", and sent to the Hawaii TRS Administrator, Solix, Inc.,⁶ 100 S. Jefferson Road, Whippany, NJ 07981. Written proof of payment shall be sent to the commission.

⁶Solix, Inc. was formerly known as NECA Services, Inc.

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.

DONE at Honolulu, Hawaii JUL - 2 2009.

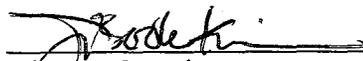
PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By 
John E. Cole, Commissioner

By 
Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:


Ji Sook Kim
Commission Counsel

2008-0288.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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