

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)
)
DIRECT TELEPHONE COMPANY, INC.)
and HAWAII DIRECT TELEPHONE)
COMPANY STS LLC)
)
For Expedited Approval of)
Transfer of Certificate of)
Authority from Direct Telephone)
Company, Inc. to Hawaii Direct)
Telephone Company STS LLC.)
_____)

DOCKET NO. 2009-0119

DECISION AND ORDER

PUBLIC UTILITIES
COMMISSION

2009 SEP 17 A 10:11

FILED

I.

Background

A.

Petition

On May 27, 2009, Direct Telephone¹ and Hawaii Direct Telephone (collectively, "Petitioners") jointly filed a petition ("Petition")² for approval of the transfer of Direct Telephone's COA to Hawaii Direct Telephone,³ which would allow Hawaii Direct Telephone to provide telecommunications services on a resold basis within the State, intrastate telecommunication services as a facilities-based carrier, and STS to various projects in the

¹Direct Telephone is a Texas corporation, registered to do business in the State as a foreign corporation. In 2002, Direct Telephone received commission authority to operate as a facilities-based carrier and reseller of intrastate telecommunications services and registered its trade name as "Hawaii Direct Telephone Company." See In re Direct Telephone Company, Inc., Docket No. 01-0460, Decision and Order No. 19265, filed on March 25, 2002; In re Direct Telephone Company, Inc., Docket No. 02-0209, Decision and Order No. 19840, filed on December 4, 2002. In 2007, the commission approved the transfer of Summit Communications, Inc.'s ("Summit") assets to Direct Telephone and Direct Telephone was authorized to provide STS on the same terms and conditions and utilize the same "tariff" as once was used by Summit for the provision of STS. See In re Direct Telephone Company, Inc. and Summit Communications, Inc., Docket No. 03-0240, Decision and Order No. 23552, filed on July 20, 2007.

²Petitioners served copies of the Petition on the DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS ("Consumer Advocate"), an ex officio party to this proceeding. See Hawaii Revised Statutes ("HRS") § 269-51; Hawaii Administrative Rules ("HAR") § 6-61-62.

³Hawaii Direct Telephone is a Hawaii limited liability company with its principal place of business located in Honolulu, Hawaii. Hawaii Direct Telephone is "currently in good standing with" the Department of Commerce and Consumer Affairs ("DCCA") and is the registered agent for Direct Telephone. See Petition at 5.

State. Hawaii Direct Telephone also requests a waiver of any customer notification requirements.

Petitioners request approval of the formal transfer of Direct Telephone's COA to Hawaii Direct Telephone "in order to correct an intracompany misunderstanding as to which entity was properly certificated to provide telecommunication services."⁴ According to Petitioners, the similarities between their names as well as the overlap in officers and directors contributed to the confusion. Among other things, Petitioners state that Hawaii Direct Telephone became the registered agent for Direct Telephone and that Jared Gruett, Hawaiian Direct Telephone's current President/Manager, signed and submitted to the DCCA the Annual Report as of July 1, 2005, on behalf of Direct Telephone. Upon this occurrence, Petitioners state that the corporate structure of the two entities began to blur.⁵ Petitioners represent that "PUC Annual Reports" have been submitted under the name "Direct Telephone Company, Inc." from 2005 to the present, while public utility fees have been filed and paid on behalf of "Hawaii Direct Telephone," "Direct Telephone Company, Inc.," and "Hawaii Direct Telephone Company" all of which, in Petitioners' view, were one and the same entity. Nonetheless, Petitioners state that for tax purposes the ultimate ongoing entity is Hawaii Direct Telephone

⁴See Petition at 6.

⁵According to Petitioners, "the same individuals were involved with both companies, they shared the same office and business address, and they made no distinction between the trade name and the LLC in providing telecommunication services[.]" See Petition at 7.

and not Direct Telephone.⁶ Moreover, Petitioners represent that "[f]or all practical purposes, [] Direct Telephone is no longer doing business within the State of Hawaii, except to the extent telecommunication services may [sic] been provided through its trade name."⁷

In addition, Petitioners assert that Hawaii Direct Telephone has the technical, managerial, and financial qualifications to provide the telecommunication services encompassed by Direct Telephone's COA.⁸ In support, Petitioners state that Direct Telephone's annual reports filed with the commission contain Hawaii Direct Telephone's financial information, which Petitioners incorporate by reference in this docket. Moreover, Petitioners contend that approval of their request is in the public interest and that a transfer of the COA will be transparent to Direct Telephone's customers. Petitioners represent that Hawaii Direct Telephone intends to continue Direct Telephone's operations virtually unchanged, such that existing customers will continue to receive service under the same terms and conditions. Petitioners also state that "Hawaii Direct Telephone understands that it is bound to follow all rules and regulations of the Commission and operate within the bounds of

⁶Petitioners assert that they first became aware of the confusion and the need to address this situation when they consulted with counsel regarding certain general excise and public service company tax issues, which they have addressed. See Petition at 7 n.5.

⁷See Petition at 8.

⁸Id.

Direct Telephone's COA."⁹ In addition, Petitioners assert that "Hawaii Direct Telephone shall continue to be accountable for any and all public utility fees due to the Commission and any and all annual financial reports that are required to be filed with the Commission."¹⁰

Moreover, Petitioners state that "much of the telecommunication services encompassed by Direct Telephone's COA are competitive, and Hawaii Direct Telephone is a non-dominant carrier in Hawaii."¹¹ Thus, Petitioners assert that, in this instance, competition will serve the same purposes as public interest regulation.

B.

Consumer Advocate's Statement of Position

On June 4, 2009, the Consumer Advocate submitted its Statement of Position informing the commission that it will not be participating in this proceeding.¹²

⁹Id. at 10.

¹⁰Id.

¹¹Id. at 9.

¹²The Consumer Advocate notes in its statement that its lack of participation in this docket should not be construed as either accepting, supporting, or adopting any of the positions proposed, justifications offered, or requested relief articulated in the petition.

II.

Discussion

A.

Proposed Transfer

HRS § 269-19 specifically provides, in relevant part, that: "[n]o public utility corporation shall sell, lease, assign, mortgage, or otherwise dispose of . . . any franchise or permit, or any right thereunder . . . without first having secured from the public utilities commission an order authorizing it so to do." In addition, Hawaii Direct Telephone must independently meet the COA requirements under HAR § 6-80-18(a), which 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, including official notice taken of all pertinent documents in the commission's records relating to Direct Telephone and Hawaii Direct Telephone,

pursuant to HAR § 6-61-48, the commission makes the following findings pursuant to HAR § 6-80-18(a):

1. Hawaii Direct Telephone possesses sufficient technical, financial, and managerial resources and abilities to provide the proposed services, as evidenced by the description of Hawaii Direct Telephone's key management personnel set forth in the Petition and the financial statements filed with the commission, as incorporated by reference by Petitioners.

2. Hawaii Direct Telephone 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 Petitioners' representations and the documents incorporated by reference in support of their claims. Moreover, the commission's grant of a transfer of Direct Telephone's COA to Hawaii Direct Telephone will be conditioned upon Hawaii Direct Telephone's conformity to the terms, conditions, and rules prescribed or adopted by the commission, as discussed below.

3. The transfer of Direct Telephone's COA to Hawaii Direct Telephone is in the public interest. As asserted by Petitioners, approval of the transfer "will preserve the continued provision of telecommunication services at the same rates, terms and conditions currently enjoyed by Direct Telephone's customers" in the State.¹³

¹³See Petition at 9.

Based on the foregoing, the commission approves the transfer of Direct Telephone's COA to Hawaii Direct Telephone, pursuant to HRS § 269-19, subject to the following conditions:

1. Within thirty days of the date of this Decision and Order, Hawaii Direct Telephone shall file its initial tariff, incorporating the change in name from Direct Telephone to Hawaii Direct Telephone; and
2. Hawaii Direct Telephone shall continue to be accountable for any and all of Direct Telephone's unpaid public utility fees due to the commission, pursuant to HRS § 269-30, and any and all of Direct Telephone's annual financial reports ("AFRs") that are required to be filed with the commission in accordance with HAR § 6-80-91.

B.

HRS § 269-16.92 Requirements

HRS § 269-16.9 allows the commission to waive regulatory requirements applicable to telecommunications providers if it determines that competition will serve the same purpose as public interest regulation. Specifically, HAR § 6-80-135 permits the commission to waive the applicability of

any of the provisions of HRS chapter 269 or any rule, upon a determination that a waiver is in the public interest.

Petitioners seek a waiver of the HRS § 269-16.92 customer notification requirements.¹⁴ In doing so, Petitioners explain that:

1. Direct Telephone's customers are already being provided telecommunications services under the "Hawaii Direct Telephone" moniker, which is a shortened version of both Direct Telephone's trade name and Hawaii Direct Telephone's name and that customer billing, customer care contacts, and company mailing address will remain unchanged from those currently in effect.¹⁵
2. Providing notice to these customers, as required under HRS § 269-16.92, "may serve only to unduly confuse customers."¹⁶

The commission finds, at this time, that Direct Telephone is a non-dominant carrier in the State. The commission also finds that the proposed transfer is consistent with the public interest, and that competition, in this instance, will serve the same purpose as public interest regulation.

Thus, based on Petitioners' representations and the commission's findings, the commission concludes that the notification requirements of HRS § 269-16.92 should be waived, as requested, under to HRS § 269-16.9 and HAR § 6-80-135.

¹⁴HRS § 269-16.92 provides that a telecommunications carrier shall not initiate a change in a subscriber's selection or designation of a long distance carrier without first obtaining authorization from the affected subscriber.

¹⁵See Petition at 9.

¹⁶Id. n.7.

Similarly, based on the findings and conclusions stated above, the commission will also waive the provisions of HAR §§ 6-61-101, 6-61-105, and 6-80-17(c), to the extent that the Petition fails to meet any of these filing requirements.

C.

Tariff Revisions

Direct Telephone's tariff must be revised to reflect the necessary changes. Rather than filing a new or separate tariff, Hawaii Direct Telephone proposes to take over Direct Telephone's operations by a wholesale adoption of Direct Telephone's rates, terms, and conditions as reflected in Direct Telephone's tariff. According to Petitioners, the tariffs currently on file with the commission will remain unchanged, other than required cosmetic changes.

Accordingly, an original and eight copies of Hawaii Direct Telephone's revised initial tariff shall be filed with the commission, and two additional copies shall be served on the Consumer Advocate. In addition, Hawaii Direct Telephone shall ensure that the appropriate issued and effective dates are reflected in its tariff.

III.

Orders

THE COMMISSION ORDERS:

1. The commission approves the transfer of Direct Hawaii's COA to provide resold telecommunications services

throughout the State, intrastate telecommunication services as a facilities-based carrier, and STS to various projects in the State to Hawaii Direct Telephone subject to the following conditions:

- a. Within thirty days of the date of this Decision and Order, Hawaii Direct Telephone shall file its initial tariff, incorporating the change in name, from Direct Telephone to Hawaii Direct Telephone; and
- b. Hawaii Direct Telephone shall continue to be accountable for any and all of Direct Telephone's unpaid public utility fees due to the commission, pursuant to HRS § 269-30, and any and all of Direct Telephone's AFRs that are required to be filed with the commission in accordance with HAR § 6-80-91.

2. The customer notification requirements of HRS § 269-16.92, and the filing requirements of HAR §§ 6-61-101, 6-61-105, and 6-80-17(c), to the extent applicable, are waived.

3. As the holder of a COA, Hawaii Direct Telephone 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.

4. Hawaii Direct Telephone shall file its tariffs in accordance with HAR §§ 6-80-39 and 6-80-40. Said tariffs shall incorporate the revisions discussed in Section II.C of this Decision and Order and comply with the provisions of HAR chapter 6-80. In the event of a conflict between any tariff provisions and State law, State law shall prevail.

5. An original and eight copies of the initial tariff, with the noted revisions, shall be filed with the commission consistent with paragraph no. 1.a, above, and two additional copies shall be served on the Consumer Advocate. Hawaii Direct Telephone shall ensure that the appropriate issued and effective dates are reflected in its tariffs.

6. If Hawaii Direct Telephone will own, operate, or maintain any subsurface installation as defined by HRS § 269E-2, it shall register as an operator with the Hawaii One Call Center and pay to the commission a one-time registration fee of \$350 for the administration and operation of the Hawaii One Call Center,¹⁷ pursuant to Decision and Order No. 23086, filed on November 28, 2006, in Docket No. 05-0195.

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

¹⁷The Hawaii One Call Center may be contacted by telephone at (877) 668-4001.

DONE at Honolulu, Hawaii SEP 17 2009.

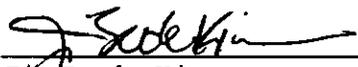
PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By: 
Carlito P. Caliboso, Chairman

By: 
John E. Cole, Commissioner

By: 
Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:


Ji Sook Kim
Commission Counsel

2009-0119.sl

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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