

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
PUBLIC WIRELESS, INC.)
For a Certificate of Authority.)

DOCKET NO. 2009-0112

DECISION AND ORDER

FILED

2009 SEP 30 P 12:13

PUBLIC UTILITIES
COMMISSION

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
PUBLIC WIRELESS, INC.) Docket No. 2009-0112
For a Certificate of Authority.)

DECISION AND ORDER

By this Decision and Order, the commission grants PUBLIC WIRELESS, INC. ("Applicant") a certificate of authority ("COA") to provide facilities-based and resold local exchange and access services to business customers throughout the State of Hawaii ("State"), subject to certain regulatory requirements.

I.

Background

Applicant is a Delaware corporation with its principal place of business in Milpitas, California. Applicant was incorporated on September 22, 2003,¹ 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 February 10, 2009.

¹Applicant was incorporated under the name Amber Telecommunications, Inc. On June 27, 2005, Applicant filed a certificate of amendment to change its name to Amber Networks, Inc. On January 24, 2008, Applicant's name was amended to Public Wireless, Inc.

A.

Application

On May 18, 2009, Applicant filed an application seeking a COA to provide facilities-based and resold local exchange and access services to business customers throughout the State.² The Application was filed pursuant to HAR §§ 6-80-17 and 6-80-18.

Applicant states that it intends to provide competitive local transport, access, and nondominant interexchange telecommunication services statewide. Specifically, Applicant intends to: (1) provide transport service for wireless providers; (2) design and build alternative wireless siting solutions; and (3) install and operate equipment to support backhaul services for wireless voice service providers.

In support of its request, Applicant filed copies of its Certificate of Authority for Foreign Corporation and its Delaware Articles of Incorporation (Exhibit A), Proposed Tariff (Exhibit B), Biographies of Key Technical Personnel and Management Team (Exhibit C), and Financial Statements Filed as Confidential and Proprietary - Under Seal³ (Exhibit D).

According to Applicant, it is "fit, willing and able to properly perform the proposed telecommunications services, and

²Application, Verification, Exhibits A-D, and Certificate of Service, filed on May 18, 2009 ("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.

³Applicant's financial information was filed on May 18, 2009, subject to Protective Order, issued on May 22, 2009.

agrees to abide by the terms, conditions and rules adopted by" the commission.⁴ In addition, Applicant asserts that approval of Applicant's request for a COA is in the public interest. In particular, Applicant states:

Grant of Public Wireless' Application for a Certificate of Authority to provide the service described within this Application is in the public interest and will serve the public convenience and necessity by expanding the availability of competitive telecommunications services and enhanced telecommunications infrastructure in the State of Hawaii, thereby facilitating competition and enhancing economic development.⁵

B.

Consumer Advocate's Statement of Position

On May 26, 2009, the Consumer Advocate submitted its Statement of Position informing the commission that it will not be participating in this proceeding.⁶

⁴See Application at 7.

⁵Id. at 8.

⁶The 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.

COA

HRS § 269-7.5 prohibits a public utility from commencing business in the State without first obtaining a CPCN, now known as a COA, from the commission. 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 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 claims. 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 State's telecommunications market increase competition and provide consumers with added options to meet their needs.

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 the proposed tariff, the commission finds certain tariff revisions to be appropriate. Thus, the commission concludes that Applicant's proposed tariff (i.e. Schedule Hawaii P.U.C. No. 1-T) should be revised as follows:

1. Original Hawaii P.U.C. Sheet 5, Preliminary Statement. 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 Hawaii P.U.C. Sheet 23, SECTION 3.9.1, Company Investigation. Applicant should include Applicant's toll-free phone number in this section.
3. Original Hawaii P.U.C. Sheet 23, SECTION 3.9.2, Undisputed Portion of Bill. This section should be revised for consistency with HAR § 6-80-102(e), which states that "[a] carrier may not consider a customer's bill past due unless it remains unpaid for twenty calendar days after the billing date stated on the bill."
4. Original Hawaii P.U.C. Sheet 25, SECTION 3.9.5, Commission Inquiries or Complaints. Applicant should include the commission's phone number, "(808) 586-2020" and updated website address <http://puc.hawaii.gov/> in this section.

III.

Orders

THE COMMISSION ORDERS:

1. Applicant is granted a COA to provide facilities-based and resold local exchange and access 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 initial 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. 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.,⁷ 100 S. Jefferson Road, Whippany, NJ 07981. Written proof of payment shall be sent to the commission.

6. If Applicant 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

⁷Solix, Inc. was formerly known as NECA Services, Inc.

administration and operation of the Hawaii One Call Center,⁸ pursuant to Decision and Order No. 23086, filed on November 28, 2006, in Docket No. 05-0195.

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 SEP 30 2009.

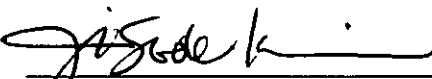
PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By 
John E. Cole, Commissioner

By 
Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:


Ji Sook Kim
Commission Counsel

2009-0112.cp

⁸The Hawaii One Call Center may be contacted by telephone at (877) 668-4001.

CERTIFICATE OF SERVICE

The foregoing order was served on the date of filing by mail, postage prepaid, and properly addressed to the following parties:

CATHERINE P. AWAKUNI
EXECUTIVE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
DIVISION OF CONSUMER ADVOCACY
P. O. Box 541
Honolulu, HI 96809

ROB REAGAN
PUBLIC WIRELESS, INC.
1325 McCandless Drive, Building A
Milpitas, CA 95035

SCOTT THOMPSON, ESQ.
DAVIS WRIGHT TREMAINE LLP
1919 Pennsylvania Avenue NW, Suite 200
Washington, D.C. 20006

Counsel for PUBLIC WIRELESS, INC.