

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
)
 TWIN CITY CAPITAL, LLC,)
 dba SMALL BUSINESS AMERICA)
)
 For a Certificate of Authority to)
 Operate as a Reseller of Intrastate)
 Telecommunications Services Within)
 the State of Hawaii.)
 _____)

DOCKET NO. 02-0409

DIV. OF CONSUMER ADVOCACY
DEPT. OF COMMERCE AND
CONSUMER AFFAIRS
STATE OF HAWAII

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2003 FEB 13 A 8:55

DECISION AND ORDER NO. 20012

Filed Feb. 11, 2003
At 8:00 o'clock A .M.

Karen Higashi
Chief Clerk of the Commission

ATTEST: A True Copy
KAREN HIGASHI
Chief Clerk, Public Utilities
Commission, State of Hawaii.

K. Higashi

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DECISION AND ORDER

I.

By application filed on November 25, 2002, TWIN CITY CAPITAL, LLC, dba SMALL BUSINESS AMERICA (Applicant), requests a certificate of authority (COA) to provide intrastate telecommunications services within the State of Hawaii (State) on a resold basis. Applicant makes its request pursuant to Hawaii Administrative Rules (HAR) §§ 6-80-17 and 6-80-18.

A copy of the application was served on the Department of Commerce and Consumer Affairs, Division of Consumer Advocacy (Consumer Advocate).

On January 15, 2003, Applicant submitted its updated financial statements, in response to the commission's directive. By position statement filed on February 5, 2003, the Consumer Advocate does not object to the issuance of a COA, subject to certain revisions to Applicant's proposed tariff.

II.

Applicant is a privately held, limited liability company organized in the State of Minnesota. It is authorized to conduct business in the State as a foreign limited liability company. Applicant intends to provide intrastate telecommunications services as a reseller, utilizing the network facilities of other certificated telecommunications carriers.

III.

Upon review of the application, the commission makes the following findings pursuant to HAR § 6-80-18:

1. Applicant possesses sufficient technical, financial, and managerial resources and abilities to provide the proposed services;
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; and
3. Applicant's proposed telecommunications services are in the public interest.

Accordingly, the commission concludes that Applicant should be granted a COA to operate as a reseller of intrastate telecommunications services.

Based on the commission's review of the proposed tariff and the Consumer Advocate's comments, Applicant should revise its tariff as follows:

1. Amend page 12, section 2.2.3(H), by incorporating the prior notice provision, consistent with HAR § 6-80-106(b)(3) and (c).

2. Amend page 19, section 2.3.12, and page 25, section 2.5.3, by incorporating the adjustment and refund provisions set forth in HAR § 6-80-103(b).
3. Amend section 2.5, governing a customer's obligations to indemnify, defend, hold Applicant harmless, and to reimburse Applicant for attorney's fees and other related costs, by including the proviso that, in the event of a conflict with State law, State law shall prevail.¹
4. Amend page 29, section 2.7.2, governing financial credit checks of its customers, to include a provision stating that Applicant will comply with the federal Fair Credit Reporting Act, as applicable.
5. Amend page 30, section 2.8.3, governing interest on deposits, by making it consistent with HAR § 6-80-105(b).
6. Amend the language set forth at page 33, section 2.9.2(A).5 and .6, and page 53, section 4.5.1, so that Applicant applies these charges "on a consistent basis with all customers[,]" as requested by the Consumer Advocate.

In addition:

1. Page 12, section 2.2.3(E), provides that a customer's use of the designated, underlying carrier's network is a condition under which service may be terminated, without notice.

Applicant should either delete this provision, or explain, with specificity, why a customer's use of the network is a condition for termination.
2. At page 25, section 2.5.5, identify and define the acronym TFS.
3. At page 35, section 2.10, Applicant should include its toll-free telephone number for customer service and billing inquiries, consistent with HAR § 6-80-107(1).

¹The commission notes that section 2.3 of Applicant's proposed tariff, governing its limitation of liability provisions, already states that "in the event any provisions relating to limitations of liability is in conflict with State law, State law shall prevail." See tariff page 20, section 2.3.17.

Applicant requests the commission's approval to keep its books and records at its principal places of business in Roseville, Minnesota. This request is consistent with HAR § 6-80-136(a)(3), and the commission's approval is not necessary.

IV.

THE COMMISSION ORDERS:

1. Applicant is granted a COA to operate as a reseller of intrastate telecommunications services in the State.

2. As the holder of a COA, Applicant shall be subject to all applicable provisions of Hawaii Revised Statutes (HRS) chapter 269, HAR chapters 6-80 and 6-81 and other applicable State law 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 the applicable provisions of HAR chapter 6-80 by, among other things, incorporating the tariff revisions set forth in section III of this decision and order. An original and eight copies of the initial tariff, with the noted revisions, shall be filed with the commission, and two additional copies shall be served on the Consumer Advocate. Applicant shall ensure that the appropriate effective date is reflected in its tariffs.

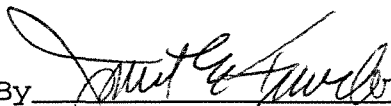
5. Within 30 days from the date of this decision and order, Applicant shall pay a public utility fee of \$60, pursuant to HRS § 269-30. The business check shall be made payable to the Hawaii Public Utilities Commission, and sent to the commission's office at 465 S. King Street #103, Honolulu, HI, 96813.


6. In accordance with HAR § 6-80-39, Applicant will not offer, initiate, or provide any telecommunications services within the State, at wholesale or retail, until it complies with the requirements set forth in paragraphs 3 to 5, above.

DONE at Honolulu, Hawaii this 11th day of February, 2003.


PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Wayne H. Kimura, Chairman

By 
Janet E. Kawelo, Commissioner

By 
Gregg Kinkley, Commissioner

APPROVED AS TO FORM:


Michael Azama
Commission Counsel

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 20012 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

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

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Consultant for TWIN CITY CAPITAL,
dba SMALL BUSINESS AMERICA



Karen Higashi

DATED: February 11, 2003