

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
)
INTELLICALL OPERATOR SERVICES, INC.)
)
For a Certificate of Authority to)
Operate as a Reseller of)
Competitive Intrastate)
Interexchange Services Within the)
State of Hawaii.)
_____)

DOCKET NO. 2006-0341

DECISION AND ORDER NO. 23088

Filed NOV. 28, 2006
At 2 o'clock P .M.

Karen Higashi
Chief Clerk of the Commission

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

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K. Higashi

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Docket No. 2006-0341
Decision and Order No. 23088

DECISION AND ORDER

By this Decision and Order, the commission grants INTELLICALL OPERATOR SERVICES, INC. ("Applicant") a certificate of authority ("COA") to provide intrastate telecommunications services within the State of Hawaii ("State") on a resold basis, subject to certain regulatory requirements.

I.

Background

Applicant is a Delaware corporation with its principal place of business in Ponte Vedra Beach, Florida. Applicant is authorized to transact business in the State as a foreign corporation.

A.

Applicant's Request

On August 23, 2006, Applicant filed an application seeking a COA to provide competitive resold interexchange

telecommunications services to residential and business customers throughout the State ("Application").¹ The Application was filed pursuant to HAR § 6-80-17.

Applicant is a non-facilities-based (i.e., switchless) provider of telecommunications services. Applicant plans to operate as a reseller of long distance telecommunications services in the State and offer its services to both residential and business customers on a statewide basis. Applicant represents that it has sufficient capital to support its proposed operations and that it is willing and able to perform the services that it is proposing 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. Applicant asserts that granting it a COA would further the public interest since it will increase competition in the State and that consumers will be offered a variety of service options. It further represents that increased competition will result in lower rates as companies within in the market try to increase their market share.

¹Applicant 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.

B.

Consumer Advocate's Statement of Position

On September 28, 2006, the Consumer Advocate filed its Statement of Position informing the commission that it does not object to Applicant's COA request ("CA's Statement of Position"). The Consumer Advocate conditions its position on Applicant: (1) modifying its tariff in accordance with its recommendations set forth in Section II.E of its statement; (2) providing a copy of its Certificate of Authority and Certificate of Good Standing approved by the Director of Commerce and Consumer Affairs of the State since Applicant received its authority to transact business in the State as a foreign corporation on July 27, 1995, approximately 11 years ago ("DCCA Certificates"); and (3) submitting a copy of its most recent unconsolidated financial statements as required under HAR § 6-80-17(c)(1)(E) ("Financial Statements").²

Moreover, the Consumer Advocate recommends that the commission, on its own motion, grant the following waivers to be consistent with previous decisions and orders (collectively, "Waiver Recommendations"):

1. Waive the requirement that a telecommunications carrier maintains its financial records in conformance with the uniform system of accounts, instead allowing the carrier to maintain financial

²In light of the Consumer Advocate's expressed conditions, the commission, by letter dated October 12, 2006, requested that Applicant file its DCCA Certificates and Financial Statements within thirty (30) days of date of the letter. By letter dated November 10, 2006, and filed on November 13, 2006, Applicant submitted the requested documents, pursuant to the October 12, 2006 commission letter, and served the Consumer Advocate with a copy.

records in accordance with generally accepted accounting principles (HRS § 269-8.5).

2. Waive the requirement that all records and books pertaining to the telecommunications carrier's intrastate operations be located in Hawaii, instead allowing the carrier to promptly provide copies of its out-of-state records and books to upon commission request (HRS § 269-8.2).
3. Waive the requirement subjecting telecommunications carriers to rate of return regulation and public and contested case hearings on proposed rate increases, except that this waiver would not apply to basic service in high cost areas provided by carriers receiving state or federal universal service fund subsidy or to non-competitive services (HRS § 269-16).

The Consumer Advocate contends that granting such waivers would be consistent with HAR § 6-80-136 and further, consistent with the rule, Applicant should be required to: (1) file a separate tariff for each proposed new service; (2) maintain its financial records in accordance with generally accepted accounting principles; (3) timely make its records and books pertaining to its intrastate telecommunications operations in the State available upon the requests of the commission and the Consumer Advocate; and (4) comply with other exception requirements set forth in the subject rule that are not waived.

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.³ 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 Application, 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 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 claims. Moreover, the commission's grant of a COA to Applicant to provide the proposed

³On 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.

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 increases competition and provides consumers with added options to meet their needs. As noted by the Consumer Advocate, "[t]he 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 should further the goal of effective competition in Hawaii's telecommunications market."⁴

Based on the foregoing, the commission concludes that Applicant should be granted a COA to provide resold intrastate telecommunications services in the State as described in its Application.

B.

Consumer Advocate's Recommendations

The commission finds the Consumer Advocate's recommendations to waive specific requirements of HRS chapter 269 (i.e., Waiver Recommendations) to be unnecessary. As the Consumer Advocate noted, its Waiver Recommendations are

⁴See CA's Statement of Position at 5.

consistent with the provisions of HAR § 6-80-136,⁵ and, as such, the commission notes that the rule already waives, for Applicant, the requirements that the Consumer Advocate recommends that the commission waive. Specifically, HAR § 6-80-136 states the following, in relevant part:

Unless ordered otherwise by the commission, the following regulatory requirements of chapter 269, HRS, for the provision of intrastate telecommunications services by telecommunications carriers other than the incumbent carrier are waived:

HAR § 6-80-136 (emphasis added).

Applicant is a carrier offering to provide resold telecommunications services on a competitive basis in the State, and Applicant is a competitive local exchange carrier and not an incumbent carrier. Waiver of the requirements articulated by the Consumer Advocate are consistent with and contemplated fully under HAR § 6-80-136. As set forth in the rule, specific authorization or waiver of these requirements is not necessary. Moreover, the grant of a COA to Applicant to provide the proposed services will be conditioned upon Applicant's conformity with the terms, conditions, and rules prescribed or adopted by the commission, which include all provisions of HAR § 6-80-136.⁶

Related to its Waiver Recommendations, the Consumer Advocate also recommends that the commission require

⁵Id. at 6.

⁶This position is consistent with past similar matters before the commission. See In re NECC Telecom, Inc., Docket No. 05-0248, Decision and Order No. 22461, filed on May 10, 2006, at 6-7.

Applicant to: (1) file a separate tariff for each proposed new service; (2) maintain its financial records in accordance with generally accepted accounting principles; (3) make information from its records and books pertaining to intrastate telecommunications operations in the State available to the commission and the Consumer Advocate upon request on a timely basis; and (4) comply with the other exception requirements set forth in the subject rule that are not waived. The commission finds these recommendations to also be unnecessary.⁷

C.

Tariff Revisions

In contrast, upon review of the Consumer Advocate's tariff revision recommendations, the commission finds them to be reasonable. Moreover, the commission finds certain other tariff revisions to also be appropriate. Thus, the commission concludes

⁷The first two recommendations are already incorporated in HAR § 6-80-136. The third recommendation basically modifies the current language of HAR § 6-80-136(3) to require Applicant to provide copies of its records and books upon the Consumer Advocate's request, in addition to the commission's request. The commission determines that because the Consumer Advocate has several discovery mechanisms available to it, an order specifically allowing the Consumer Advocate to request copies of Applicant's records and books in conjunction with the waiver provisions of HAR § 6-80-136 is not warranted at this time. With respect to the Consumer Advocate's fourth recommendation, because this requirement would exist regardless of a commission order containing such an instruction, the commission determines that a commission order on this issue is unnecessary.

the Applicant's proposed tariff (Hawaii P.U.C. Tariff No. 1) should be revised as follows:

1. Original Sheet 1 -- This section should include language clearly stating that in the event of a conflict between any of Applicant's 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 4 -- Applicant should include the following two (2) symbols: (a) C - Changed Regulation; and (b) S - Reissued Matter.
3. Original Sheet 17, Section 1.2 -- Applicant should define the following acronyms that are used in various sections of its tariff: (a) "IEC"; (b) "ILD"; (c) "FCC"; (d) "COPT"; and (e) "DTMF".
4. Original Sheet 20, Section 2.5 -- This section should be revised to conform with the provisions of HAR § 6-80-103(b) which states that "[i]f service is interrupted by a natural or other disaster beyond the control of the telecommunications carrier, the carrier shall make adjustments and refunds to its effected customers if service is not restored within forty-eight hours."
5. Original Sheet 21, Section 2.6.2 -- To ensure that customers are provided reasonable notice of any

testing conducted by Applicant, the first sentence of this section should be amended to read: "Upon reasonable notice of at least 24 hours to the Customer, and at a reasonable time, any equipment provided by Carrier"

6. Original Sheet 22, Section 2.6.3 -- This section should be expanded to include the minimum requirements of HAR § 6-80-105.
7. Original Sheet 23, Section 2.6.5.E -- For clarity and consistency, the exact percentage that Applicant will charge as penalty on past due amounts should be clearly specified; and this section should be amended to read as follows: "Customers will be charged a late payment penalty of X.X percent per month on past-due amounts that have remained unpaid and are not in dispute."
8. Original Sheet 23, Section 2.6.5.F -- For clarity and consistency, the specific fee amount that Applicant will charge for return checks should clearly be specified.
9. Original Sheet 24, Section 2.6.8 -- This section should be modified to reflect the provisions of HAR § 6-80-102 which provides the terms and conditions by which a customer and a telecommunications carrier may proceed to resolve billing disputes. For an example, see CA's Statement of Position at 9.

10. Original Sheet 24, Section 2.6.8 -- The first and fourth paragraphs of the section, which both begin with "In the event", are duplicative; one of these paragraphs should be deleted.
11. Original Sheet 25, Section 2.7.2 -- For consistency with HAR § 6-80-106(c), this section should be amended to include language recognizing that if the written notification is mailed to the customer, the customer will be allowed an additional two (2) days to respond to the notice.
12. Original Sheet 25, Section 2.7.2.1 -- For consistency with HAR § 6-80-106(b)(1), this section should be amended to read, "Non-payment of any sum due to Carrier that is not is dispute for service for more than twenty days beyond the date of retention of the bill for such service".
13. Original Sheet 25-26, Section 2.7.2.5 -- This section should be reviewed and revised, as necessary, to conform with the provisions of HAR § 6-80-106; and for clarity and consistency the first sentence of the section should be modified to read, "The Company, upon notice as described in Section 2.7.2.6 below, may discontinue or temporarily suspend service under the following circumstances:".
14. Original Sheet 26, Section 2.7.2.6 -- The first sentence of this section should be reviewed and

revised as necessary for clarity since it currently appears to be incomplete; and the second sentence of this section should be modified, for consistency with HAR § 6-80-106(c), to include language recognizing that if the written notification is mailed to the customer, the customer will be allowed an additional two (2) days to respond to the notice.

III.

Orders

1. Applicant is granted a COA to provide intrastate telecommunications services in the State on a resold basis, as described in its Application.

2. As a 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 proposed 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 set forth in Section II.C of

this Decision and Order, as applicable. An original and eight (8) copies of Applicant's revised 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 tariff.

5. Within thirty (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, Room #103, Honolulu, HI, 96813.

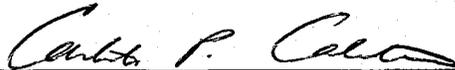
6. Within thirty (30) days from the date of this Decision and Order, Applicant shall also pay a telecommunications relay service ("TRS") contribution of \$10.00, established pursuant to: (A) Act 50, adopted on May 7, 2003 (codified as HRS § 269-16.6); and (B) Decision and Order No. 22536, filed on June 16, 2006, in Docket No. 2006-0126. The business check shall be made payable to "Hawaii TRS", and sent to the Hawaii TRS Administrator, Solix, Inc.,⁸ 80 S. Jefferson Road, Whippany, NJ 07981. Written proof of payment shall be sent to the commission.

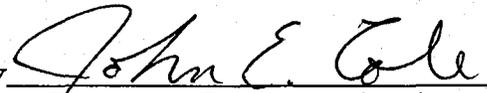
7. Failure to promptly comply with the requirements set forth in paragraphs 3 to 6, above, may constitute cause to void this Decision and Order, and may result in further regulatory action, as authorized by law.

⁸Solix, Inc. was formerly known as NECA Services, Inc.

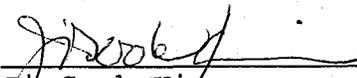
DONE at Honolulu, Hawaii NOV 28 2006.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By 
John E. Cole, Commissioner

APPROVED AS TO FORM:


Ji Sook Kim
Commission Counsel

2006-0341.eh

CERTIFICATE OF SERVICE

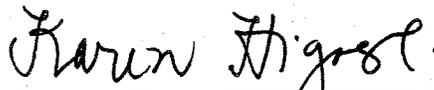
I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 23088 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

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Karen Higashi

DATED: NOV 28 2006