

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
CLEARWIRE TELECOMMUNICATIONS)
SERVICES, LLC)
For a Certificate of Authority.)
_____)

DOCKET NO. 2006-0351

DECISION AND ORDER NO. 23198

Filed Jan. 16, 2007
At 12 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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KAREN HIGASHI
Chief Clerk, Public Utilities
Commission, State of Hawaii.

K. Higashi.

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DECISION AND ORDER

By this Decision and Order, the commission grants CLEARWIRE TELECOMMUNICATIONS SERVICES, LLC ("Applicant") a certificate of authority ("COA") to provide facilities-based telecommunications services within the State of Hawaii ("State") subject to certain conditions, as described herein.

I.

Background

A.

Application

On August 28, 2006, Applicant, a Nevada limited liability company authorized to transact business in the State as a foreign limited liability company, filed an application seeking a COA to provide facilities-based wholesale services, more specifically high capacity dedicated transport and "last mile" connectivity to other providers of telecommunications services in

the State of Hawaii ("Application").¹ Applicant's service offering will be comprised of private line and special access services at DS1, DS3, or higher levels, interconnection services, and connections to 911 infrastructure. Applicant does not intend to provide switched local exchange or interexchange voice services to end user customers.

According to Applicant, its entry into the market will enhance the telecommunications infrastructure in Hawaii and will facilitate economic development. In particular, according to Applicant, the public will benefit directly through the use of the competitive services to be offered by Clearwire, and indirectly because the presence of Clearwire in Hawaii will increase the incentives for other telecommunications providers to operate more efficiently, offer more innovative services, reduce their prices, and improve their quality of service.

B.

Consumer Advocate's Statement of Position

On September 25, 2006, the Consumer Advocate filed its Statement of Position informing the commission that it does not object to commission approval of Applicant's request for a COA provided that Applicant modifies its tariff in accordance with the Consumer Advocate's recommendations ("CA's Statement of

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.

Position"). According to the Consumer Advocate, Applicant appears to possess the necessary technical and managerial abilities to provide the telecommunications services and is willing to provide the proposed services. In addition, according to the Consumer Advocate, Applicant's services will provide increased competitive choices, and effective competition will mitigate many of the traditional public utility regulatory concerns present in a monopolistic environment.

The Consumer Advocate, however, recommends that the commission, on its own motion, grant the following waivers to be consistent with previous decisions and orders:

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 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 upon 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. In addition, consistent with HAR § 6-80-136, 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.

C.

Supplemental Filings

On November 6, 2006, Applicant filed an updated tariff in which it incorporates the changes recommended by the Consumer Advocate in its Statement of Position.

On December 28, 2006, Applicant filed updated financial statements, in accordance with HAR § 6-80-17(c)(1)(E).

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.² 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:

²On 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.

- (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 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. 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."³

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

B.

Consumer Advocate's Recommendations

The Consumer Advocate recommends that the commission, on its motion, waive certain statutory requirements. However, as noted by the Consumer Advocate, HAR § 6-80-136 already authorizes the waivers requested by the Consumer Advocate pursuant to HAR § 6-80-135. Specifically, HAR § 6-80-136 states, in relevant part:

³See CA's Statement of Position at 5.

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).

In the present docket, Applicant seeks to provide facilities-based telecommunications services in the State, and is not the incumbent carrier. Because the waivers recommended by the Consumer Advocate pursuant to HAR § 6-80-135 are fully contemplated by HAR § 6-80-136, specific authorization or waiver of these requirements is not necessary.

Related to its waiver recommendations, the Consumer Advocate also recommends that the commission require 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 first two recommendations are incorporated in HAR § 6-80-136, and therefore, commission consideration of these recommendations is unnecessary. The third recommendation essentially modifies the otherwise applicable 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 that allows 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 necessary or 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 not necessary.

C.

Tariff Revision

As noted above, Applicant has already filed a revised tariff incorporating the modifications recommended by the Consumer Advocate in its Statement of Position. However, one of the modifications made by Applicant in Section 4.11.1 contains a typographical error and should be revised to read as follows:

4.11.1 Jurisdiction of Complaints

All customer complaints are subject to Hawaii Administrative Rules § 6-80-107. Customer inquiries or complaints regarding service or accounting may be made in writing or by telephone to the Company at:

.

III.

Orders

1. Applicant is granted a COA to provide facilities-based telecommunications services in the State, 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 revision 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.,⁴ 80 S. Jefferson Road, Whippany, NJ 07981. Written proof of payment shall be sent to the commission.

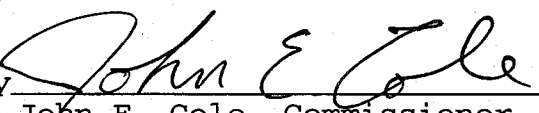
7. Failure to promptly comply with the requirements set forth in paragraphs 3 to 6, above, may constitute cause to void this Decision and Order, and may result in further regulatory action, as authorized by law.

⁴Solix, Inc. was formerly known as NECA Services, Inc.

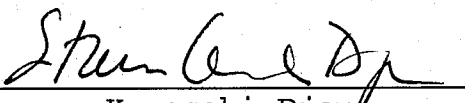
DONE at Honolulu, Hawaii JAN 16 2007.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By 
John E. Cole, Commissioner

APPROVED AS TO FORM:


Stacey Kawasaki Djou
Commission Counsel

2006-0351.eh

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 23198 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

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

TERRI B. NATOLI
VICE PRESIDENT - REGULATORY AFFAIRS AND PUBLIC POLICY
CLEARWIRE TELECOMMUNICATIONS SERVICES, LLC
815 Connecticut Ave. NW, Suite 610
Washington, DC 20006



Karen Higashi

DATED: JAN 16 2007