

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
HAWAIIAN TELCOM, INC.)
For Approval of Clearwire)
Telecommunications Services,)
LLC's Adoption of the)
Interconnection Agreement Between)
Think 12 Corporation (dba Hello)
Depot) and Hawaiian Telcom, Inc.)
_____)

DOCKET NO. 2007-0057

DECISION AND ORDER NO. 23387

Filed April 26, 2007
At 1:30 o'clock P.M.

Karen Higashi
Chief Clerk of the Commission

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

2007 APR 27 A 8:36

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ATTEST: A True Copy
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 approves CLEARWIRE TELECOMMUNICATIONS SERVICES, LLC's ("Clearwire") adoption of the negotiated interconnection agreement between Hawaiian Telcom, Inc. ("Hawaiian Telcom")¹ and Think 12 Corporation dba Hello Depot ("Hello Depot"), as further described herein.

I.

Background

Hawaiian Telcom is a Hawaii corporation engaged in the provision of varied telecommunications services to its customers and the general public within the State of Hawaii ("State"). Hawaiian Telcom is an incumbent local exchange carrier, as

¹Hawaiian Telcom was formerly known as Verizon Hawaii Inc., which in turn was formerly known as GTE Hawaiian Telephone Company, Incorporated.

contemplated by Section 252 of the federal Telecommunications Act of 1996 (the "Act").²

Clearwire is a Nevada limited liability company, with its principal place of business in Kirkland, Washington. It holds a certificate of authority ("COA") to provide facilities-based telecommunications services in Hawaii.³ The terms of this agreement will apply to services in the State of Hawaii, only.

A.

The Petition

By letter dated and filed on March 2, 2007, Hawaiian Telcom provided the commission with a letter dated February 14, 2007 ("Adoption Letter"), signed by representatives of Hawaiian Telcom and Clearwire (collectively, the "Parties")⁴ evidencing Clearwire's adoption of the negotiated interconnection agreement between Hawaiian Telcom and Hello Depot ("Underlying Agreement") and Amendment No. 1 to the Underlying Agreement

²The Act amended Title 47 of the United States Code ("U.S.C."). Section references in this Decision and Order are, thus, to those in 47 U.S.C., as amended by the Act.

³See Docket No. 2006-0351, Decision and Order No. 23198, filed on January 16, 2007.

⁴A copy of Hawaiian Telcom's Petition, with its various attachments, was served on the DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS ("Consumer Advocate"), an *ex officio* party to this docket pursuant to Hawaii Revised Statutes ("HRS") § 269-51 and Hawaii Administrative Rules ("HAR") § 6-61-62.

("Amendment No. 1"),⁵ (collectively, the "Interconnection Agreement"), pursuant to Section 252(i) of the Act and HAR § 6-80-54 ("Petition"). As set forth in the Petition, Clearwire's adoption of the Interconnection Agreement is subject to the conditions set forth in the Adoption Letter. The commission construes Hawaiian Telcom's Petition as a request for commission approval of Clearwire's adoption of the Interconnection Agreement.⁶

B.

Interconnection Agreement

The Interconnection Agreement was approved by the commission in Decision and Order No. 21126. Specifically, the commission found that the terms and conditions of the Interconnection Agreement do not discriminate against other telecommunications carriers and that the implementation of the Interconnection Agreement is consistent with the public interest, convenience, and necessity.⁷

The Adoption Letter sets forth, among other things, Clearwire's adoption of the terms of the Interconnection Agreement, clarifies Hawaiian Telcom's position on various matters regarding the applicability of the Interconnection

⁵The commission approved both the Underlying Agreement and Amendment No. 1 in Docket No. 04-0121, Decision and Order No. 21126, filed on July 19, 2004 ("Decision and Order No. 21126").

⁶No person moved to intervene or participate in this docket.

⁷See Decision and Order No. 21126 at 4.

Agreement to the Parties, and indicates Clearwire's acceptance of Hawaiian Telcom's various enumerated positions. Moreover, the Adoption Letter: (1) sets forth the terms that only apply to the Parties, including Hawaiian Telcom's standard pricing schedule for interconnection agreements in the State, attached as Hawaii Appendix A; and (2) makes clear that the adoption of the Interconnection Agreement is only for services in Hawaii.

C.

Consumer Advocate's Position

On March 28, 2007, the Consumer Advocate filed its Statement of Position informing the commission that it does not object to approval of Clearwire's adoption of the Interconnection Agreement ("CA Statement of Position"). The Consumer Advocate states that the terms, conditions and rates of the subject agreement are similar to other existing agreements previously approved.⁸

The Consumer Advocate notes that although Hawaiian Telcom contends that it does not provide the instant terms to Clearwire as either a voluntary or negotiated agreement, either Party may utilize the dispute resolution process described in Section 14 of the agreement in the event of a dispute.⁹

⁸See CA Statement of Position at 3.

⁹See CA Statement of Position at 3.

The Consumer Advocate contends that approving the request to adopt the agreement is in the public interest since it will promote competition in the telecommunications industry.¹⁰

The Consumer Advocate submits that the agreement is "necessary for Clearwire to provide the facilities-based telecommunications services that is currently authorized under its COA."¹¹

II.

Discussion

Clearwire's adoption of Hello Depot's Interconnection Agreement with Hawaiian Telcom is permitted under Section 252(i) of the Act, which states that:

A local exchange carrier shall make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement.

HAR § 6-80-54 requires all agreements regarding access, interconnection, unbundling, and network termination adopted by negotiation or arbitration be submitted to the commission for review and approval. The Interconnection Agreement is not an arbitrated agreement, but one that was negotiated and consummated by Hello Depot and Hawaiian Telcom. The Adoption Letter, signed by the Parties, is a negotiated contract between Clearwire and

¹⁰See CA Statement of Position at 4.

¹¹CA Statement of Position at 4.

Hawaiian Telcom. Accordingly, the commission considers the Interconnection Agreement a negotiated interconnection agreement between the Parties and conducts its review of the Interconnection Agreement under HAR § 6-80-54(b).

HAR § 6-80-54 states:

- (b) The commission shall approve or reject the agreement, with written findings as to any deficiencies. The commission may only reject:
 - (1) An agreement, or any portion of the agreement, adopted by negotiation if it finds that:
 - (A) The agreement, or any portion of the agreement, discriminates against a telecommunications carrier not a party to the agreement; or
 - (B) The implementation of the agreement, or any portion of the agreement, is not consistent with the public interest, convenience, and necessity;

Here, consistent with the commission's conclusions in Docket No. 04-0121, the commission finds that the Interconnection Agreement does not discriminate against other telecommunications carriers and that implementation of the Interconnection Agreement is consistent with the public interest, convenience, and necessity. Additionally, the commission finds that approval of Clearwire's adoption of the Interconnection Agreement is consistent with federal requirements. The commission, moreover, recognizes that approval of the adoption of Hello Depot's Interconnection Agreement allows Clearwire to provide telecommunications services in the State as authorized under its COA; thus, increasing competition in the State's telecommunications market.

Based on the foregoing, the commission concludes that Hawaiian Telcom's Petition for commission approval of Clearwire's adoption of the Interconnection Agreement, subject to the conditions set forth in the Adoption Letter, should be granted.

III.

Orders

THE COMMISSION ORDERS:

1. Clearwire's adoption of the Interconnection Agreement between Hello Depot and Hawaiian Telcom, subject to the conditions set forth in the Adoption Letter, is approved under HAR § 6-80-54(b).

2. This docket is closed unless otherwise ordered by the commission.

DONE at Honolulu, Hawaii APR 26 2007.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By Carlito P. Caliboso
Carlito P. Caliboso, Chairman

By John E. Cole
John E. Cole, Commissioner

APPROVED AS TO FORM:

Jodi K. Yi
Jodi K. Yi
Commission Counsel

2007-0057.eh

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 23387 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: APR 26 2007