

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
STI PREPAID, LLC AND DIALAROUND)
ENTERPRISES INC.)
For Approval of Transfer of Assets)
and Certificate of Authority to)
Provide Intrastate)
Telecommunications Services and)
Approval of Termination of Service)

DOCKET NO. 2007-0058

DECISION AND ORDER NO. 23832

Filed Nov. 14, 2007
At 12 o'clock P.M.

Karen Higashi.
Chief Clerk of the Commission

RECEIVED

2007 NOV 15 A 8:27

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

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

Karen Higashi.

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
STI PREPAID, LLC AND DIALAROUND)
ENTERPRISES INC.)
For Approval of Transfer of Assets)
and Certificate of Authority to)
Provide Intrastate)
Telecommunications Services and)
Approval of Termination of Service)

Docket No. 2007-0058
Decision and Order No. 23832

DECISION AND ORDER

By this Decision and Order, the commission: (1) grants STI PREPAID, LLC ("STi") a certificate of authority ("COA") to provide resold intrastate telecommunication services in the State of Hawaii ("State") pursuant to Hawaii Revised Statutes ("HRS") § 269-7.5, Hawaii Administrative Rules ("HAR") §§ 6-80-17, and 6-80-18; (2) approves the transfer of assets from DIALAROUND ENTERPRISES INC. ("DEI") to STi and waives, to the extent applicable, the requirements of HRS § 269-19 and HAR § 6-61-105; and (3) instructs DEI to surrender its COA pursuant to HAR § 6-80-123. After DEI has surrendered its COA and assuming that a proper change of name is filed with the Department of Commerce and Consumer Affairs, then STi may request to operate under the name of DEI.

I.

Background

A.

Description of Subject Entities

DEI is a privately held Delaware corporation.¹ It is authorized to resell intrastate telecommunications services in Hawaii pursuant to Decision and Order No. 20297, filed July 3, 2003, in Docket No. 03-0122.

STi is a newly formed Delaware limited liability company with headquarters in Flushing, New York.² It is an indirect wholly owned subsidiary of Leucadia National Corporation ("Leucadia"), a publicly-traded corporation with headquarters in New York, New York.³

B.

Application

On March 5, 2007, STi and DEI (collectively "Applicants") filed an application for commission approval to participate in certain financing arrangements, as described in the application ("Application").⁴ Specifically, the Applicants request that the commission:

¹See Application at 1.

²See Application at 1.

³See Application at 1.

⁴Applicants 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 pursuant to HRS § 269-51

(i) approve the transfer of DEI's [COA] to provide resold interexchange services to STi [] or in the event the Commission requires new certification for STi [], STi [] requests that such certification be issued . . . and (ii) approve the termination of resold long distance service by DEI upon the transfer of the COA. These approvals are sought in connection with an Asset Purchase and Contribution Agreement between the Applicants and their respective individual owners and corporate parents dated January 23, 2007, whereby DEI agreed to transfer all or substantially all of its assets to STi[] (the "[Proposed] Transaction").⁵

STi represents that it will utilize a significant number of the same employees and same assets that DEI currently employs in Hawaii and will therefore have the same quality of service that DEI currently provides.⁶

On August 2, 2007, in response to the commission's directive, STi submitted updated financial statements from Leucadia.

C.

Consumer Advocate's Statement of Position

On April 26, 2007, the Consumer Advocate filed its Statement of Position ("Statement of Position") informing the commission that it does not object to commission approval of the Proposed Transaction, issuance of a COA to STi, with certain

and HAR § 6-61-62. No persons moved to intervene or participate in this docket.

⁵See Application at 1.

⁶See Application at Exhibit 6.

revisions to the proposed tariff, and approval of DEI's discontinuance of its service.⁷

The Consumer Advocate states that STi provided descriptions of the qualifications of its key management personnel and will utilize a significant number of the same employees and assets that DEI currently uses in Hawaii.⁸ It accepts STi's representation that it has the managerial and technical abilities to provide the proposed services in Hawaii.⁹

The Consumer Advocate notes that STi does not have audited or unaudited financial statements and instead provided the financial documents for its ultimate majority parent, Leucadia to demonstrate its financial fitness; and based on the filing, agrees that STi has adequate financial resources to sustain operations for a reasonable future time period.¹⁰

The Consumer Advocate states that the Proposed Transaction will be in the public interest as consumers will continue to have access to a wide range of telecommunications choices; STi will expand DEI's current services; and STi has the combined experiences of DEI and Leucadia resources.¹¹

⁷See Statement of Position at 3-4.

⁸See Statement of Position at 4.

⁹See Statement of Position at 4.

¹⁰See Statement of Position at 3-4.

¹¹See Statement of Position at 5.

The Consumer Advocate recommends the following amendments to the proposed tariff in Exhibit 3 to the Application:

1. Tariff No. 1, Header and Footer Labeling.

To better conform to the standard format of telecommunications tariffs filed in Hawaii, the Consumer Advocate would recommend the following:

- Modify the tariff's upper right-side header label from "Tariff No. 1" to read "Hawaii P.U.C. Tariff No. 1" on all tariff pages to clearly identify the tariff as being filed with and under the regulation of the Hawaii Public Utilities Commission.
- Insert "d/b/a Dialaround enterprises Inc." below STi Prepaid, LLC in upper left-side header label for all tariff pages should STi Prepaid operate under the fictitious name of DEI
- Add "Issue Date:" and "Issued By:" to the lower left-side footer labeling on all tariff pages.

2. Hawaii P.U.C. Tariff No. 1, Original Page 1.

The Consumer Advocate recommends that STi Prepaid 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.

3. Hawaii P.U.C. Tariff No. 1, Original Page 26, Section 2.7.2(A)(.2), Direct Billing By Company or Authorized Billing Agent.

The Consumer Advocate recommends modifying the sentence of this section to read: "If the bill is not paid within thirty

(30) days . . . the Company may impose a late charge of 1% per month on the delinquent amount not in dispute." to be consistent with HAR § 6-80-102(a).

4. Hawaii P.U.C. Tariff No. 1, Original Page 27, Sections 2.7.4, Right to Back-Bill for Improper Use of Company's Service.

The Consumer Advocate recommends modifying the last sentence of this section to read: "In addition, Company shall . . . a late payment fee of 1 percent per month on the amounts not in dispute for the period(s) for which such charges would have been payable." The recommendation is intended to be consistent with HAR § 6-80-102(a).

5. Hawaii P.U.C. Tariff No. 1, Original Page 28, Sections 2.8.2, Billing Inquiries

The Consumer Advocate recommends inserting the following to replace the second sentence in this section:

All billing disputes are subject to Hawaii Administrative Rules Section 6-80-102. Any objection to the billed charges should be reported promptly to the Company. Adjustments to Customer's bills shall be made to the extent that records are available and/or circumstances exist which reasonably indicate that such charges are not in accordance with approved rates or that an adjustment may otherwise be appropriate. Where over billing occurs, due either to Company or subscriber error, no liability exists which will require the Company to pay any interest or other compensation on the amount over billed.

If a Customer is not satisfied with the Company's resolution of a billing dispute, the Customer may contact the Commission. All Customer complaints and inquiries regarding service or billing are subject to the jurisdiction of the Commission, which may be contacted at the following address and telephone number:

Hawaii Public Utilities Commission
465 South King Street, Room 103
Honolulu, Hawaii 96813
(808) 586-2020¹²

II.

Discussion

A.

STi's Certificate of Authority

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.¹³ 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.

¹²Statement of Position at 6-8.

¹³On June 3, 1996, HAR chapter 6-80 took effect. HAR chapter 6-80, among other things, replaced the CPCN with a COA for telecommunications carriers, and established procedures for requesting and issuing a COA.

Upon review of the record herein, the commission makes the following findings pursuant to HAR § 6-80-18(a):

1. STi possesses sufficient technical, financial, and managerial resources and abilities to provide the proposed services, as evidenced by the description of the qualifications of STi's key management personnel and the financial statements submitted in support of the Application.¹⁴

2. STi is fit, willing, and able to properly perform the telecommunications services as evidenced by STi's representations and the documents submitted in support of its claims. Moreover, the commission's grant of a COA to STi to provide the proposed services will be conditioned upon its conformity to the terms, conditions, and rules prescribed or adopted by the commission, as discussed below.

3. STi'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, customers will have access to an expanded range of telecommunications choices and services; and STi will benefit from the combined experiences of DEI and Leucadia resources.

Based on the foregoing, the commission concludes that STi should be granted a COA to provide resold intrastate

¹⁴As addressed above, STi provided financial statements of its parent company, Leucadia National Corporation to demonstrate its financial fitness and the Consumer Advocate agrees that STi has sufficient financial resources.

telecommunication services in Hawaii, as described in the Application.

B.

Transfer of Assets from DEI to STi

HRS § 269-16.9 allows the commission to waive regulatory requirements applicable to telecommunications providers if it determines that competition will serve the same purpose as public interest regulation. Specifically, HAR § 6-80-135 permits the commission to waive the applicability of any of the provisions of HRS chapter 269 or any rule, upon a determination that a waiver is in the public interest.

In this docket, the commission finds that the Applicants are non-dominant carriers in the State, the Proposed Transaction is consistent with the public interest, and that competition, in this instance, will serve the same purpose as public interest regulation. Thus, the commission concludes that the requirements of HRS § 269-19, to the extent applicable, should be waived with regard to the transfer of assets and services from DEI to STi, pursuant to HRS § 269-16.9 and HAR § 6-80-135.¹⁵ Similarly, based on the findings and

¹⁵See Decision and Order No. 18454, filed on March 28, 2001, in Docket No. 00-0443. The commission will continue to examine each application or petition and make determinations on a case-by-case basis as to whether the applicable requirements of HRS § 269-19 should be waived. The commission's determination, in the instant case, of the applicability of HRS § 269-19 is based on our review of the instant Application only. Thus, the commission's waiver in this instance of the applicability of HRS § 269-19 should not be construed by any public utility, including Applicants, as a basis for not filing an application or petition

conclusions stated above, we will also waive the provisions of HAR § 6-61-105 to the extent that the Application fails to meet any of these filing requirements.

C.

STi's Tariff Revisions

With respect to STi's tariff, the commission finds that the Consumer Advocate's proposed tariff revisions set forth in section II.D. of its Statement of Position are appropriate. STi should amend its tariff to conform with the Consumer Advocate's recommendations.

An original and eight (8) copies of STi's revised initial tariff shall be filed with the commission, and two (2) additional copies shall be served on the Consumer Advocate. Applicants shall ensure that the appropriate issue and effective dates are reflected in its tariff.

D.

DEI's Surrender of Its COA

In the Application, DEI states that following approval of the transfer of its COA and assets, it seeks to discontinue its prepaid calling card and dial-around services in Hawaii. As DEI will not be providing the services authorized by its COA, DEI should surrender its COA.¹⁶ Pursuant to HAR § 6-80-123, DEI

regarding similar transfers that fall within the purview of these statutes.

¹⁶Applicants submit that DEI's services can be used by any person at any time by dialing a specified access code prior to

shall file a letter requesting surrender of its COA, file its 2007 annual financial report and pay the applicable public utility fee for December 2008 (\$30).

III.

Orders

THE COMMISSION ORDERS:

1. STi is granted a COA to provide resold intrastate telecommunications services, as described in the Application.

2. As the holder of a COA, STi 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. STi shall file its proposed tariff in accordance with HAR §§ 6-80-39 and 6-80-40. STi's tariff 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. STi 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 Sections I.C and II.D of this Decision and Order. An original and eight (8) copies of the initial tariff, with the noted revisions, shall be filed with the commission, and two (2) additional copies shall be served on the Consumer Advocate. STi shall ensure that the

making a telephone call and DEI has no knowledge of the identity of the persons who utilize its services, thus customer notification is not necessary and almost impossible. See Application at 2.

appropriate issued and effective dates are reflected in its tariffs.

5. Within thirty (30) days from the date of this Decision and Order, STi 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. Within thirty (30) days from the date of this Decision and Order, STi shall also pay its full telecommunications relay service ("TRS") contribution of \$8.00, pursuant to: (A) Act 50, adopted on May 7, 2003 (codified as HRS § 269-16.6); (B) Decision and Order No. 23481, filed on June 7, 2007, in Docket No. 2007-0113. The business check shall be made payable to "Hawaii TRS", and sent to the Hawaii TRS Administrator, Solix, Inc.,¹⁷ 100 S. Jefferson Road, Whippany, NJ 07981. Written proof of payment shall be sent to the commission.

7. With respect to the proposed transfer of assets from DEI to STi, as described in the Application, the requirements of HRS § 269-19, to the extent applicable, are waived. The filing requirements of HAR § 6-61-105, to the extent applicable, are also waived.

8. Within thirty (30) days from the date of this Decision and Order, DEI shall file a letter surrendering its COA, file its 2007 annual financial report and pay the applicable

¹⁷Solix, Inc. was formerly known as NECA Services, Inc.

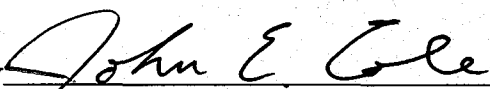
public utility fee for December 2008 (\$30), and comply with HAR § 6-80-123.

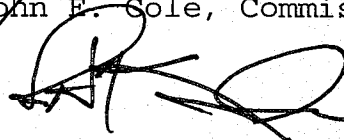
9. Applicants shall promptly comply with the requirements set forth above. Failure to promptly comply with these requirements may constitute cause to void this decision and order, and may result in further regulatory action, as authorized by law.

DONE at Honolulu, Hawaii NOV 14 2007.

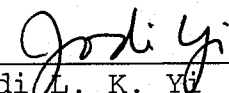
PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By 
John E. Cole, Commissioner

By 
Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:


Jodi L. K. Yu
Commission Counsel

2007-0058.eh

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 23832 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
335 Merchant Street, Room 326
Honolulu, HI 96813

JENNI PARTRIDGE
REGULATORY AFFAIRS SPECIALIST
STi Prepaid, LLC
30-50 Whitestone Expressway
Flushing, NY 11354

CHERIE R. KISER
Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.
701 Pennsylvania Avenue, NW, Suite 900
Washington, DC 20009

Counsel for STi Prepaid, LLC

SAMER TAWFIK
CHIEF EXECUTIVE OFFICER
30-50 Whitestone Expressway 4th Floor
Flushing, NY 11354



Karen Higashi

DATED: NOV 14 2007