

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)
HAWAIIAN TELCOM, INC.)
For Approval of Its Pole)
Attachment and Conduit Occupancy)
Licensing Agreement with Extenet)
Systems, Inc.)

DOCKET NO. 2008-0064

DECISION AND ORDER

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DIV. OF CONSUMER SERVICES
PUBLIC UTILITIES COMMISSION
1505 KALANOAUOUE DRIVE
HONOLULU, HI 96813

PUBLIC UTILITIES
COMMISSION

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FILED

competitive local exchange carrier authorized by the commission to provide facilities-based and resold intrastate telecommunications services in the State.¹

A.

The Agreement

On April 7, 2008, HTI filed a petition requesting commission approval of the Agreement entered into between HTI and Extenet.² The Agreement was submitted pursuant to Section 252(e)(1) of the Telecommunications Act of 1996 and HAR § 6-80-54.

The Agreement governs Extenet's non-exclusive revocable license to occupy, place, and maintain its facilities in designated space on HTI's poles and conduits for the purpose of providing "Cable Television and/or Telecommunications Services."³ Subject to certain conditions, the term of the Agreement is for 10 years, after which the Agreement shall continue in effect for

¹See In re Extenet Systems, Inc., Docket No. 2007-0145, Decision and Order No. 23581, filed on August 7, 2007.

²Copies of the same were served on the DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS ("Consumer Advocate"), an ex officio party to this proceeding pursuant to Hawaii Revised Statutes § 269-51 and Hawaii Administrative Rules ("HAR") § 6-61-62. No person moved to intervene or participate in this docket.

³See Agreement at 4.

consecutive one year terms until properly terminated by either party.⁴ The Agreement specifically sets forth the rates, terms, and conditions for the license.

B.

Consumer Advocate's Position

On June 20, 2008, the Consumer Advocate filed its Statement of Position ("CA's SOP") stating that it does not object to commission approval of the Agreement. The Consumer Advocate's position is based on its determination that the Agreement's terms, conditions, and rates are consistent with applicable Federal Communications Commission ("FCC") orders⁵ and the commission's rulings in Docket No. 7702.⁶ The Consumer Advocate believes that HTI and Extenet "negotiated in good faith the terms and rates for pole attachment and conduit occupancy that are reflected in the instant Agreement" in accordance with Order No. 19446.⁷ In that order, the commission refrained from establishing maximum duct rates for 2002 through 2005 and encouraged parties to establish rates through negotiations.

⁴Id. at 5.

⁵The Consumer Advocate cited to the formula revisions adopted by the FCC in FCC No. 00-116, CS Docket No. 97-98, released April 3, 2000 and FCC No. 01-170, CS Docket Nos. 97-98 and 97-151 consolidated, released May 25, 2001.

⁶The Consumer Advocate referred to the following orders of Docket No. 7702: (1) Order No. 18265, filed on December 19, 2000; and (2) Order No. 19446, filed on July 3, 2002 ("Order No. 19446").

⁷See CA's SOP at 3.

According to the Consumer Advocate, the proposed rates in the Agreement are reasonable and it concludes that the proposed rates do not result in any discrimination towards a telecommunications carrier not party to the Agreement. Moreover, the Consumer Advocate states that "[g]ranting Extenet the opportunity to attach and access its equipment to HTI's poles, ducts, and conduits in order to provide telecommunications services is consistent with [the] public interest, convenience and necessity for the continued advancement of competition in the telecommunications industry."⁸

II.

Discussion

HAR § 6-80-78 requires all agreements concerning access to poles, ducts, conduits, and rights-of-way adopted by negotiation or arbitration be submitted to the commission for review and approval.⁹ The Agreement is not an arbitrated agreement but one that was negotiated by HTI and Extenet. Under HAR § 6-80-78(b) the commission may reject a negotiated agreement, or any portion of it, if the commission finds:

⁸Id. at 6.

⁹While HTI submitted the Agreement under HAR § 6-80-54, given that the agreement concerns access to HTI's poles and ducts, the commission deems that proper review of the Agreement is under HAR § 6-80-78 as opposed to HAR § 6-80-54. The commission notes that HAR § 6-80-54 concerns agreements regarding "access, interconnection, unbundling, and network termination" and that the parameters for commission approval of a negotiated agreement under HAR § 6-80-54 is consistent with the standards for approval under HAR § 6-80-78.

- (1) The agreement, or any portion of the agreement, discriminates against a telecommunications carrier not a party to the agreement; or
- (2) The implementation of the agreement, or any portion of the agreement, is not consistent with the public interest, convenience, and necessity.

Upon review, the commission finds that the Agreement does not appear to discriminate against other telecommunications carriers; and that the implementation of the Agreement appears to be consistent with the public interest, convenience, and necessity. The commission concurs with the Consumer Advocate's determination that the Agreement is consistent with the FCC's requirements and the commission's prior orders. In addition, the commission recognizes that approval of the Agreement is in the public interest since it would allow Extenet to attach and have access to HTI's poles and conduits, which furthers competition in the State's telecommunications market.

Based on the foregoing, the commission concludes that the Agreement should be approved.

III.

Orders

THE COMMISSION ORDERS:

1. The Pole Attachment and Conduit Occupancy Licensing Agreement between HTI and Extenet, filed on April 7, 2008, is approved.

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


DONE at Honolulu, Hawaii

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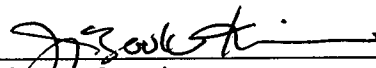
PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By: 
Carlito P. Caliboso, Chairman

By: 
John E. Cole, Commissioner


By: _____
Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:



Ji Sook Kim
Commission Counsel

2008-0064.laa

CERTIFICATE OF SERVICE

The foregoing order was served on the date of filing by mail, postage prepaid, and properly addressed to the following parties:

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