

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
DEVINE COMMUNICATIONS, INCORPORATED)
For a Certificate of Authority)
to Provide Intrastate)
Telecommunication Services Within)
the State of Hawaii.)

DOCKET NO. 2008-0160

DECISION AND ORDER

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

PUBLIC UTILITIES
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Docket No. 2008-0160

DECISION AND ORDER

By this Decision and Order, the commission: (1) on its own motion, reopens this proceeding; and (2) grants DEVINE COMMUNICATIONS, INCORPORATED ("Applicant") a certificate of authority ("COA") to provide resold intrastate telecommunications services within the State of Hawaii ("State"), subject to certain regulatory requirements.

I.

Background

Applicant is a California corporation that was incorporated on May 6, 1998, and is certified by the State Department of Commerce and Consumer Affairs to transact business in the State as a foreign corporation, effective November 3, 2006. Applicant is authorized by the Federal Communications Commission to offer domestic interstate and international telecommunications services in all fifty states and the District of Columbia as a non-dominant carrier. Applicant is

also currently authorized to provide intrastate telecommunications services in five states.

A.

Application and Dismissal Without Prejudice

On August 11, 2008, Applicant filed an application seeking a COA to provide resold telecommunications services within the State.¹ Applicant intends to offer resold telecommunications services, specifically pre-paid calling card services, utilizing AT&T as its underlying facilities-based carrier.² Applicant further states that: (1) as a non-facilities based reseller, it has access to the necessary capital to fulfill any obligations it may undertake with respect to providing telecommunications services within the State; (2) it is financially qualified to provide telecommunications services within the State; (3) it is fit, willing, and able to properly perform the proposed services and conform to the terms, conditions, and rules adopted by the commission; and (4) its proposed telecommunications services are consistent with the public interest.

¹Application; Exhibits A - E; Verification; and Certificate of Service, filed on August 11, 2008, including its financial statement filed under confidential seal on January 2, 2009 (collectively, "Application"). Applicant served a copy of its Application upon the DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY ("Consumer Advocate"), an ex officio party to this proceeding, pursuant to Hawaii Revised Statutes ("HRS") § 269-51 and Hawaii Administrative Rules ("HAR") § 6-61-62(a).

²See Applicant's response to CA-IR-1.

On October 1, 2008, the Consumer Advocate filed its Statement of Position.³ On November 21, 2008, the commission issued its Notice of Intent to Dismiss Application, informing Applicant that its Application would be dismissed by the commission without prejudice unless Applicant, by December 22, 2008, submitted its financial statement for the purpose of demonstrating its financial fitness to provide telecommunications services within the State, in compliance with HAR § 6-80-17(c)(1)(E). Thereafter, on December 26, 2008, the commission noted that despite numerous notifications, Applicant did not submit its financial statement; thus, the commission dismissed the Application, without prejudice, and closed this proceeding, "unless ordered otherwise by the commission."⁴ On January 2, 2009, Applicant belatedly submitted its financial statement under confidential seal.⁵

B.

Consumer Advocate's Position

The Consumer Advocate, in its Statement of Position filed on October 1, 2008, states that it does not object to the commission's issuance of a COA to Applicant, provided that: (1) Applicant modifies its proposed tariff in accordance with the recommendation set forth in Section II.D of the

³Statement of Position; and Certificate of Service, filed on October 1, 2008 (collectively, "Statement of Position").

⁴Order Dismissing Application Without Prejudice, filed on December 26, 2008, at 2.

⁵Applicant's letter, dated December 31, 2008, filed on January 2, 2009, with confidential attachment.

Consumer Advocate's Statement of Position; and (2) Applicant submits a copy of its financial statement, as required under HAR § 6-80-17(c)(1)(E), for the purpose of establishing its burden of proof under the financial fitness criteria. In support of its recommendation, the Consumer Advocate: (1) accepts Applicant's representation that it has the managerial and technical abilities to provide the proposed intrastate telecommunications services; (2) notes that by submitting its Application, Applicant is showing its willingness to proposed the proposed intrastate telecommunications services; and (3) states that Applicant's proposed services are in the public interest.

II.

Discussion

A.

Reopening of this Proceeding

On December 26, 2008, the commission dismissed the Application without prejudice based on Applicant's failure to file its financial statement. On January 2, 2009, Applicant belatedly filed its financial statement.

The commission notes that having Applicant file a new application will require the commission to expend funds to publish a new statewide Notice to Interested Persons pursuant to HAR § 6-61-57, and commit resources to process and review such an application anew. Thus, in this instance, the commission finds that the reopening of this proceeding for the purpose of adjudicating the existing Application filed by Applicant is

consistent with the public interest of securing the just, speedy, and inexpensive determination of this proceeding, Docket No. 2008-0160.

B.

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.⁶ HAR § 6-80-18(a) states:

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 services 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.

HAR § 6-80-18(a).

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

⁶On 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.

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 management team and the financial statements submitted in support of the Application.

2. Applicant is fit, willing, and able to properly perform the telecommunications services 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 Application. 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 telecommunications market in the State increases competition, providing consumers with added options to meet their needs. As noted by the Consumer Advocate, Applicant's proposed telecommunications services "will promote the public interest because [its] services will provide Hawaii customers with access to new technologies and service choices, and permit customers to achieve increased efficiencies and cost savings."⁷

Based on the foregoing findings, the commission concludes that Applicant should be granted a COA to provide

⁷Consumer Advocate's Statement of Position, at 6.

intrastate telecommunications services on a resold basis, as described in the Application.

C.

Tariff Revisions

Upon review of the Consumer Advocate's proposed tariff revision, the commission finds that its proposal appears reasonable and appropriate. Thus, the commission concludes that Applicant's proposed tariff should be revised as follows:

For Original Sheet 22, Section 3.2, Customer Complaints and/or Billing Disputes: Consistent with the Consumer Advocate's recommendation, incorporate the following example in Section 3.2, for clarity purposes:⁸

Upon notification of a dispute, the Company will notify the Customer within five (5) working days of its receipt of the dispute notice and shall undertake an investigation of the dispute charges. At the conclusion of the investigation, the Company will notify the customer of any amount determined by the Company to be correctly charged and the Customer shall pay such amount to the Company within fifteen (15) days. The Company may suspend/terminate service if the Customer fails to pay the amount determined by the Company to be properly charged.

III.

Orders

THE COMMISSION ORDERS:

1. The commission, on its own motion, reopens this proceeding for the purpose of adjudicating the Application filed

⁸See, e.g., In re Yestel USA, Inc., Docket No. 2008-0110, Decision and Order, filed on August 13, 2008, Section II.B., Item No. 3, at 6.

by Applicant on August 22, 2008, as supplemented on January 2, 2009.

2. Applicant is granted a COA to provide resold intrastate telecommunications services within the State, as described in the Application, as supplemented.

3. As the 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.

4. Applicant shall file its tariffs in accordance with HAR §§ 6-80-39 and 6-80-40. Applicant'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.

5. Applicant shall conform its tariff to all applicable provisions of HAR chapter 6-80 by, among other things, incorporating the tariff revision set forth in Section II.B of this Decision and Order. An original and eight copies of the initial tariff shall be filed with the commission, and two additional copies shall be served upon the Consumer Advocate. Applicant shall ensure that the appropriate issued and effective dates are reflected in its tariffs.

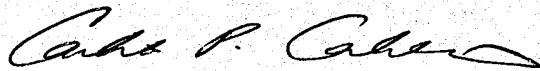
6. Within thirty days from the date of this Decision and Order, Applicant shall also pay a telecommunications relay service ("TRS") contribution of \$8.00, established pursuant to: (A) HRS § 269-16.6; and (B) the Decision and Order, filed on

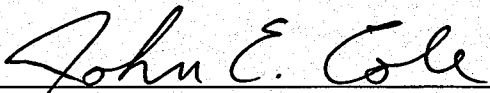
June 27, 2008, in Docket No. 2008-0089. The business check shall be made payable to "Hawaii TRS", and sent to the Hawaii TRS Administrator, Solix, Inc., 100 S. Jefferson Road, Whippany, NJ 07981. Written proof of payment shall be sent to the commission.

7. The failure to comply with any of the requirements set forth in paragraphs 4 to 6, above, may constitute cause to void this Decision and Order, and may result in further regulatory action, as authorized by law.

DONE at Honolulu, Hawaii JAN - 8 2009.


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:


Michael Azama
Commission Counsel

2008-0160.cp

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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DIVISION OF CONSUMER ADVOCACY
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