

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application of)  
CONSUMER TELCOM, INC. )  
For a Certificate of Authority )  
\_\_\_\_\_ )

DOCKET NO. 2008-0129

DECISION AND ORDER

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

PUBLIC UTILITIES  
COMMISSION

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FILED

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In the Matter of the Application of)  
CONSUMER TELCOM, INC. )  
For a Certificate of Authority )  
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Docket No. 2008-0129

DECISION AND ORDER

By this Decision and Order, the commission grants CONSUMER TELCOM, INC. ("Applicant") a certificate of authority ("COA") to provide non-facilities based, resold intrastate interexchange telecommunications services within the State of Hawaii ("State"), subject to certain regulatory requirements.

I.

Background

Applicant is a California corporation with its principal place of business located in Henderson, Nevada. Applicant was incorporated on September 23, 1998, and was certified by the State of Hawaii, Department of Commerce and Consumer Affairs to transact business in the State as a foreign corporation, effective April 23, 2008.

A.

Application

On June 24, 2008, Applicant filed an application seeking a COA to provide non-facilities based, resold intrastate

interexchange telecommunications services in the State.<sup>1</sup> Specifically, Applicant intends to offer non-facilities based switched access outbound "1 Plus" interexchange telecommunications services for the direct transmission and reception of voice and data between locations throughout the State.

In support of its request, Applicant filed copies of its Articles of Incorporation and Certificate of Status Domestic Corporation for California (Exhibit 1), Certificate of Authority to do Business in Hawaii (Exhibit 2), proposed tariff (Exhibit 3), financial statements (Exhibit 4),<sup>2</sup> senior management profile (Exhibit 5), and a Statement of Fitness and Willingness to Serve (Exhibit 6).

Applicant asserts that it has the technical, financial and managerial ability to provide the proposed service and that it is fit, willing, and able to provide the proposed service. In addition, Applicant maintains that approval of Applicant's request for a COA is in the public interest:

Approval of the Application of Applicant will serve the public interest by offering consumers throughout the State of Hawaii a meaningful quality service option. Approval of this Application will also benefit

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<sup>1</sup>Applicant filed its application, verification, and exhibits 1-6, on June 24, 2008 ("Application"). Applicant 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. No persons moved to intervene in this proceeding.

<sup>2</sup>On September 9, 2008, in response to a request by commission staff, Applicant filed updated financial statements.

consumers by creating greater competition in the interexchange marketplace. Competition in the telecommunications marketplace inspires innovation and development of services that meet customer needs cost effectively.<sup>3</sup>

B.

Consumer Advocate's Statement of Position

On July 15, 2008, the Consumer Advocate filed its Statement of Position ("CA's SOP"), stating that it does not object to approval of Applicant's request; provided that Applicant: (1) modifies its tariff in accordance with the recommendations discussed in Section II.D of the CA's SOP; and (2) if not already provided, submits a copy of the requisite financial statements as required under HAR § 6-80-17(c)(1)(E).<sup>4</sup>

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.<sup>5</sup> HAR § 6-80-18(a) states that:

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<sup>3</sup>Application at 6.

<sup>4</sup>Applicant filed financial statements attached to its Application, and later filed updated financial statements with the commission.

<sup>5</sup>On June 3, 1996, HAR chapter 6-80 took effect. HAR chapter 6-80, among other things, replaced the CPCN with a

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.

Upon review of the record herein, 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 management team and the financial statements submitted in support of its 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

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COA for telecommunications carriers, and established procedures for requesting and issuing a COA.

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.

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

#### B.

##### Tariff Revisions

Upon review of the Consumer Advocate's proposed tariff revisions, the commission finds them to be reasonable and appropriate. In addition, the commission finds certain other tariff revisions to also be appropriate. Thus, the commission concludes that Applicant's proposed tariff (i.e., Hawaii P.U.C. Tariff No. 1) should be revised as follows:

1. Hawaii P.U.C. Tariff No. 1, Original Title Sheet or Sheet No. 5, Application of Tariff. Applicant 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.
2. Hawaii P.U.C. Tariff No. 1, Original Sheet No. 14, Section 2.8.4., Payments and Billing. Applicant should modify the second sentence to read, "Bills or portion of bills not in dispute and not paid

within thirty-one (31) days. . . . " in accordance with HAR § 6-80-102(a) to exclude any portions of bills in dispute from being held as past due.

3. Hawaii P.U.C. Tariff No. 1, Original Sheet No. 14, Section 2.9.1., Billing Disputes. Applicant is required to publish in its tariff and on its bills a toll-free telephone number that can be used by customers twenty-four hours a day, seven days a week, for complaints in accordance with HAR § 6-80-107(1). The following is an example of language that should be included in this section:

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

Consumer Telcom, Inc.  
701 N. Green Valley Parkway, Suite 200  
Henderson, NV 89014  
(800) 872-3811

4. Hawaii P.U.C. Tariff No. 1, Original Sheet No. 15, Section 2.9.2.1., Billing Disputes. Because this section lacks clarifying language related to the provisions of HAR § 6-80-102, which provides for the process by which a telecommunications carrier may proceed to resolve billing disputes, the following sample language should be included in this section:

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 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.

5. Hawaii P.U.C. Tariff No. 1, Original Sheet No. 7, Section 1, Technical Terms and Abbreviations. For

the definition of "Presubscribe or Presubscription," the term "PIC" should be defined.

6. Hawaii P.U.C. Tariff No. 1, Original Sheet No. 8, Section 2.2.2., Limitations. This section, as currently worded, is inconsistent with HAR § 6-80-106(b) in that there are some instances where prior notice must be given to customers prior to termination of service. This section should be revised to accord with HAR § 6-80-106(b).
7. Hawaii P.U.C. Tariff No. 1, Original Sheet No. 12, Section 2.4.6., Liabilities of the Company. Applicant should define the term "TRA" in this section.
8. Hawaii P.U.C. Tariff No. 1, Original Sheet No. 17, Section 2.11.2.B., Cancellation by Company. In this section, the word "proper" should be changed to "undisputed."

### III.

#### Orders

##### THE COMMISSION ORDERS:

1. Applicant is granted a COA to provide non-facilities based, resold intrastate interexchange telecommunications services in the State, as described in its Application.

2. 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.

3. Applicant shall file its 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 tariff to all applicable provisions of HAR chapter 6-80 by, among other things, incorporating the tariff revisions referred to or 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 on the Consumer Advocate. Applicant shall ensure that the appropriate issued and effective dates are reflected in its tariffs.

5. 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) 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.,<sup>6</sup> 100 S. Jefferson Road, Whippany, NJ 07981. Written proof of payment shall be sent to the commission.

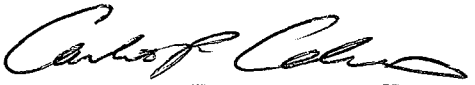
6. Failure to promptly comply with the requirements set forth in paragraphs 3 to 5, above, may constitute cause to void this Decision and Order, and may result in further regulatory action, as authorized by law.

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<sup>6</sup>Solix, Inc. was formerly known as NECA Services, Inc.

DONE at Honolulu, Hawaii APR 28 2009.

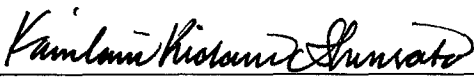
PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By   
Carlito P. Caliboso, Chairman

By   
John E. Cole, Commissioner

By   
Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:

  
Kaiulani Kidani Shinsato  
Commission Counsel

2008-0129.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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EXECUTIVE DIRECTOR  
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DIVISION OF CONSUMER ADVOCACY  
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ANDREW ISAR, PRESIDENT (REGULATORY CONSULTANT)  
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Gig Harbor, WA 98335