

or order of the commission. HAR §§ 6-61-159 & 6-61-160. The commission must act on the petition within 45 days after its submission. HAR § 6-61-162. Hence, the 45th day governing timely commission action is on or about June 21, 2002.

II.

A.

One Call, an Indiana corporation, holds a commission-issued certificate of public convenience and necessity to provide intrastate operator services.¹ In Hawaii, One Call provides long distance toll and operator handling services through its own operators, over facilities leased from other telecommunications carriers. It is not a facilities-based carrier.

One Call's primary shareholder is Larry E. Dunigan. Its other shareholder is Derek L. Dunigan.

OCCMC, an Indiana corporation, is duly authorized to transact business in Hawaii as a foreign corporation. OCCMC is owned by One Call's existing management team and certain other investors, "none of which is a Hawaii public utility." The existing management team formed OCCMC for the purpose of "effect[ing] a friendly management 'buyout' of One Call's interstate and intrastate telecommunications operator services[.]"

Accordingly, pursuant to an asset purchase agreement, dated January 31, 2002, OCCMC will purchase One Call's business assets, including its operations as an operator services

¹See Docket No. 94-0144, Decision and Order No. 14425, filed on December 22, 1995. See also Docket No. 00-0225, Decision and Order No. 18478, filed on April 10, 2001, and Order No. 18007, filed on September 1, 2000.

provider, in exchange for cash. The proposed transaction will not include One Call's Internet operations.

Applicants represent that the transaction is a reorganization of the ownership structure of the business, which will enable One Call to attract additional capital.

B.

Applicants contend that commission approval under HRS § 269-19 is not required. They state that: (1) the transaction is merely a restructuring and internal reorganization; and (2) OCMC is not a "public utility" under HRS § 269-19.

HRS § 269-19 states in pertinent part:

No public utility corporation shall sell, lease, assign, mortgage, or otherwise dispose of or encumber the whole or any part of its road, line, plant, system, or other property necessary or useful in the performance of its duties to the public, or any franchise or permit, or any right thereunder, nor by any means, directly or indirectly, merge or consolidate with any other public utility corporation without first having secured from the public utilities commission an order authorizing it so to do. . . .

Upon review, the commission notes that the subject transaction involves the proposed sale of a public utility's business assets and operations, including its telecommunications equipment and leasehold interests in real property. Under the circumstances, therefore, the commission finds and declares that the proposed transaction is within the purview of HRS § 269-19.

C.

Applicants, in the alternative, seek an exemption or waiver of the subject transaction from commission approval.

HRS § 269-16.9(e) authorizes the commission to waive regulatory requirements applicable to telecommunications providers if the commission determines that competition will serve the same purpose as public interest regulation. Similarly, HAR § 6-80-135 authorizes the commission to exempt or waive a telecommunications carrier or service from the provisions of HRS chapter 269 or any other telecommunications rules, upon a determination that the exemption or waiver is in the public interest.

One Call is presently an authorized provider of intrastate operator services. It is not a dominant telecommunications carrier in Hawaii.

Applicants represent that, following the closing of the transaction: (1) One Call's provision of service will continue, without change, utilizing the same name, tariffs, rates, leased facilities, management team, and employees; and (2) the change in ownership will be transparent to One Call's Hawaii-based customers. In addition, Applicants state that the transaction will not reduce competition in Hawaii. Instead, it will further encourage the development of a "healthy competitive operator services market" in Hawaii, by increasing One Call's financial strength.

Upon review, the commission finds that the proposed transaction is consistent with the public interest, and that competition, in this instance, will serve the same purpose as public interest regulation. Accordingly, the commission will

waive the requirements of HRS § 269-19, to the extent applicable.²

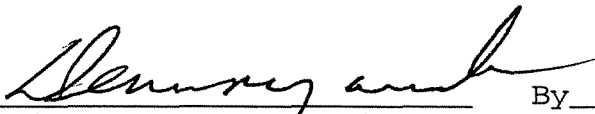
III.

THE COMMISSION ORDERS:

1. With respect to the financial transaction described in the joint petition, filed on May 8, 2002, HRS § 269-19 applies, but to the extent applicable, is waived.
2. This docket is closed.

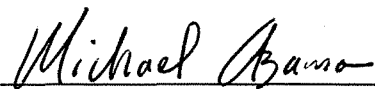
DONE at Honolulu, Hawaii this 14th day of June, 2002.

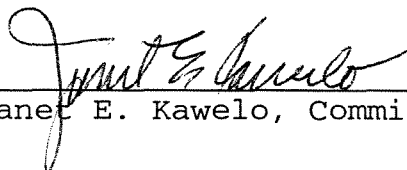
PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Dennis R. Yamada, Chairman

By (EXCUSED)
Wayne H. Kimura, Commissioner

APPROVED AS TO FORM:


Michael Azama
Commission Counsel

By 
Janet E. Kawelo, Commissioner

02-0119.sl

²At the same time, the commission will continue to examine a utility's application on a case-by-case basis to determine whether the applicable requirements of HRS § 269-19, or any other related provision governing utility transactions, should be waived. The commission's waiver in this decision and order shall not be construed by any utility as a basis for not filing an application involving similar transactions or circumstances.

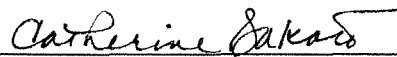
CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 19414 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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Catherine Sakato

DATED: June 14, 2002