

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

----- In the Matter of -----)
)
CABLE & WIRELESS USA, INC. and)
PRIMUS TELECOMMUNICATIONS, INC.)
)
Transfer of Long Distance)
Customers.)
_____)

DOCKET NO. 02-0349

DECISION AND ORDER NO. 19779

Filed Nov. 18, 2002
At 11:30 o'clock A .M.

Karen Higashi
Chief Clerk of the Commission

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

2002 NOV 18 P 3:23

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

K. Higashi

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DECISION AND ORDER

I.

By letter dated September 18, 2002, and filed on September 19, 2002, CABLE & WIRELESS USA, INC. (C&W) and PRIMUS TELECOMMUNICATIONS, INC. (Primus) (collectively, parties) informed the commission that Primus is acquiring the long distance customers of C&W (transfer of customers) pursuant to their Customer Transfer Agreement executed on September 13, 2002 (Agreement). The parties note that they were informed that commission approval is not required with regards to the transfer of customers, however, in the event that commission action is required, they request commission authority to effectuate the transaction. The parties also request that the commission waive the applicability of Hawaii Revised Statutes (HRS) § 269-16.92.

By letter dated October 28, 2002, and filed on October 29, 2002, C&W informed the commission that no Hawaii customers will be affected by the Agreement and withdrew the request for a waiver of HRS § 269-16.92 since no Hawaii customers will be transferred without consent (waiver withdrawal request).

The parties forwarded a copy of the letters to the DIVISION OF CONSUMER ADVOCACY OF THE DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS.

II.

Both C&W and Primus are foreign corporations authorized to transact business in the State of Hawaii (State). The commission authorized C&W to operate as a reseller of intrastate telecommunications services in the State in Decision and Order No. 15162, filed on November 13, 1996, in Docket No. 96-0380. By Decision and Order No. 17664, filed on April 11, 2000, in Docket No. 99-0189, the commission, among other things, granted Primus a certificate of authority to operate as a reseller of intrastate telecommunications services in the State.

The parties represent that aside from C&W's long distance customers, no assets are being transferred through the Agreement.

III.

Based on the parties' representations, the commission finds good cause to grant the waiver withdrawal request, filed on

October 29, 2002. HRS § 269-16.92¹ is not applicable with regards to the transfer of long distance customers from C&W to Primus since no customers in Hawaii will be affected by the Agreement.

Additionally, we find that commission approval is unnecessary with regards to the parties' Agreement. The commission has traditionally held that the acquisition of an entity's customers does not require commission approval.² Our review of the specific circumstances of the transfer of customers in this docket does not necessitate the commission to deviate from prior commission rulings. Thus, this matter does not require further commission consideration.

¹HRS § 269-16.92 states, in pertinent part:

No telecommunications carrier shall initiate a change in a subscriber's selection or designation of a long-distance carrier without first receiving:

- (1) A letter of agency or letter of authorization;
- (2) An electronic authorization by use of a toll-free number;
- (3) An oral authorization verified by an independent third party; or
- (4) Any other prescribed authorization; provided that the letter or authorization shall be in accordance with verification procedures that are prescribed by the Federal Communications Commission or the public utilities commission.

²See In re Maxxis Communications, Inc., Decision and Order No. 17063, filed on July 8, 1999, in Docket No. 99-0099; In re OneStar Long Distance, Inc., Decision and Order No. 17131, filed on August 27, 1999, in Docket No. 99-0211; In re OneStar Long Distance, Inc. and AS Telecommunications, Inc., dba AllStar Telecom, Decision and Order No. 18939, filed on October 11, 2001, in Docket No. 01-0399; and In re WorldxChange Corp. and RSL Com U.S.A., Inc., Decision and Order No. 19498, filed on August 1, 2002, in Docket No. 02-0153.

Based on the above, the commission concludes that the waiver withdrawal request, filed on October 29, 2002, should be granted. Additionally, finding no other matters to be addressed, the commission concludes that this docket should be closed.

IV.

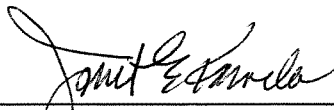
THE COMMISSION ORDERS:

1. The waiver withdrawal request, filed on October 29, 2002, is granted.
2. This docket is closed.

DONE at Honolulu, Hawaii this 18th day of November, 2002.

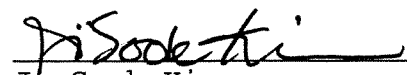
PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Wayne H. Kimura, Chairman

By 
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:

By (RECUSED)
Gregg J. Kinkley, Commissioner


Ji Sook Kim
Commission Counsel

02-0349.eh

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 19779 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
DIVISION OF CONSUMER ADVOCACY
P. O. Box 541
Honolulu, HI 96809

LARENE FLACK
CABLE & WIRELESS USA, INC.
8219 Leesburg Pike
Vienna, VA 22182

KATHLEEN KERR LAWRENCE
ASSISTANT GENERAL COUNSEL
PRIMUS TELECOMMUNICATIONS GROUP, INC.
1700 Old Meadow Road, Suite 300
McLean, VA 22102

CATHERINE WANG
HARRY MALONE
SWIDLER BERLIN SHEREFF FRIEDMAN, L.L.P.
3000 K Street, N. W.
Washington, D.C. 20007

JOEL S. WINNIK
HOGAN & HARTSON, L.L.P.
555 Thirteenth Street, N.W.
Washington, D.C. 20004



Karen Higashi

DATED: November 18, 2002