

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
)
ITC^DELTACOM COMMUNICATIONS, INC.,)
dba ITC^DELTACOM)
)
For Approval of An Indirect)
Transfer of Control.)
_____)

DOCKET NO. 03-0193

DECISION AND ORDER NO. 20370

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

Filed August 8, 2003
At 12:00 o'clock P.M.

Karen Higashi
Chief Clerk of the Commission

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

K. Higashi

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In the Matter of the Application of)	
ITC^DELTACOM COMMUNICATIONS, INC.,)	Docket No. 03-0193
dba ITC^DELTACOM)	
For Approval of An Indirect)	Decision and Order No. 20370
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DECISION AND ORDER

I.

By an application filed on July 7, 2003, ITC^DELTACOM COMMUNICATIONS, INC., dba ITC^DELTACOM ("DeltaCom" or "Applicant"), requests commission approval for the indirect transfer of control of DeltaCom to WELSH, CARSON, ANDERSON & STOWE VIII, L.P., WCAS CAPITAL PARTNERS III, L.P., AND WCAS INFORMATION PARTNERS (collectively referred to as "Welsh Carson") by virtue of a stock transaction ("proposed financial transaction"). Applicant makes its request pursuant to the applicable Hawaii Revised Statutes ("HRS") and the commission's rules and regulations.

Copies of the application were served on the DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY ("Consumer Advocate"). On July 29, 2003, the Consumer Advocate filed its position statement, indicating that it does not object to the approval of the proposed financial transaction, described above and in more detail below.

I.

A.

DeltaCom is an Alabama corporation and a wholly-owned subsidiary of Interstate FiberNet, Inc. ("IFN"). IFN, a provider of wholesale fiber optic transmission is wholly-owned by ITC^DELTACOM, INC. ("ITC"), DeltaCom's ultimate parent holding company. DeltaCom is presently authorized to provide long distance telecommunications services in all 50 states including the State of Hawaii ("State").¹

Welsh Carson, presently a 49.3 per cent minority shareholder of ITC², is a private equity investment firm that has managerial, technical and financial expertise in numerous areas including telecommunications.³ It specializes in acquiring and developing businesses in the information services, communications, and healthcare industries. In the communications arena, Welsh Carson's investments include businesses that provide

¹By Decision and Order No. 16931, filed on April 6, 1999, in Docket No. 98-0408, DeltaCom was granted a certificate of authority to provide intrastate telecommunications services in the State on a resold basis.

²In addition to Welsh Carson's minority interest in ITC, Welsh Carson also owns a majority interest in BTI Telecom Corp. (collectively, with its subsidiaries, Business Telecom, Inc. and Business Telecom of Virginia, Inc., referred to as "BTI Operating"). BTI Operating is a regional facilities-based competitive local exchange, long distance and international service provider headquartered in North Carolina. By Decision and Order No. 16358, filed on June 2, 1998, in Docket No. 98-0143, the commission granted Business Telecom, Inc. a certificate of authority to provide intrastate telecommunications services within the State on a resold basis. On July 11, 2003, Business Telecom, Inc. also filed an application for the transfer of control of BTI Operating in Docket No. 03-0200.

³See, Exhibit A, attached herein, depicting existing corporate structure.

value-added network services, competitive local exchange carriers, rural cellular and rural wireline operators, integrated communications carriers, and wireless tower operators.

B.

The proposed financial transaction involves a transfer of control of ITC, DeltaCom's ultimate parent holding company, to Welsh Carson through Welsh Carson's acquisition of the majority stock ownership of ITC. Specifically, Welsh Carson intends to exchange or convert its debt and equity interest in BTI Telecom Corp. for shares and warrants of ITC, respectively. Welsh Carson and certain of its affiliates also plan to invest an additional \$35 million in ITC in exchange for preferred stock of ITC. As a result of this proposed transaction, BTI Telecom Corp. will become a subsidiary of ITC similar to IFN, and Welsh Carson will then control approximately 59 per cent of the voting interest in ITC.⁴ Accordingly, the ultimate control of DeltaCom will indirectly transfer to Welsh Carson ("indirect transfer of control"). Applicant represents, among other things, that the indirect transfer of control (1) will not result in a change in the name, rates or service offerings of DeltaCom, as reflected in its tariff, (2) will result in no interruption of services and no changes to DeltaCom's physical assets, property, and personnel, and (3) will be seamless to DeltaCom's consumers in the State.

⁴See, Exhibit B, attached herein, depicting proposed new corporate structure.

III.

HRS § 269-7(a) authorizes the commission to examine the condition of each public utility, its financial transactions, and "all matters of every nature affecting the relations and transactions between it and the public or persons or corporations." Thus, the commission has jurisdiction to review proposed financial transactions of the parent entity of a regulated public utility under HRS § 269-7(a).⁵

HRS § 269-16.9 also permits us to waive regulatory requirements applicable to telecommunications providers if we determine that competition will serve the same purpose as public interest regulation. Specifically, Hawaii Administrative Rules ("HAR") § 6-80-135 permits us to grant an exemption from or waive the applicability of any of the provisions of HRS chapter 269 or any rule, upon a determination that an exemption or waiver is in the public interest.

Upon review of the record in this docket, particularly Applicant's representations in this docket, we find the following: (1) that much of the telecommunications services currently provided by DeltaCom are competitive; (2) that DeltaCom is a non-dominant carrier in Hawaii; (3) that the proposed financial transaction is consistent with the public interest; and (4) that competition, in this instance, will serve the same purpose as public interest regulation.

⁵See, Decision and Order No. 19874, filed on December 13, 2002, in Docket No. 02-0345.

Based on the foregoing, the commission, on its own motion, will waive the requirements of HRS § 269-7(a), to the extent applicable, pursuant to HRS § 269-16.9(e) and HAR § 6-80-135.⁶ Similarly, based on, among other things, Applicant's representations, we also find that it is in the public interest to waive the applicability of HAR §§ 6-61-101 and 6-61-105 in this application. Accordingly, we conclude that the requirements of HAR §§ 6-61-101 and 6-61-105 that are not satisfied by the information provided in Applicant's application should also be waived.⁷

IV.

THE COMMISSION ORDERS:

1. The requirements of HRS § 269-7(a), to the extent applicable, are waived with respect to the proposed financial transaction described in the instant application, filed on July 7, 2003.

2. To the extent that the application does not contain all of the information required under either HAR § 6-61-101 or HAR § 6-61-105, the applicability of those sections is waived.


⁶At 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 § 269-7(a) 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.

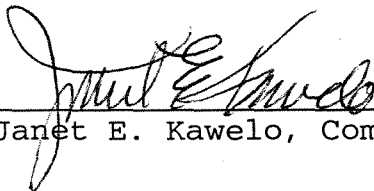
⁷We note that the application failed to comply with the requirements set forth in HAR §§ 6-61-101 and 6-61-105 by not submitting, among other things, a copy of the applicable financial statements and agreements relating to the proposed financial transaction.

DONE at Honolulu, Hawaii this 8th day of August, 2003.


PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By 
Wayne H. Kimura, Commissioner

By 
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:


Kris N. Nakagawa
Commission Counsel

03-0193.eh

EXHIBIT A

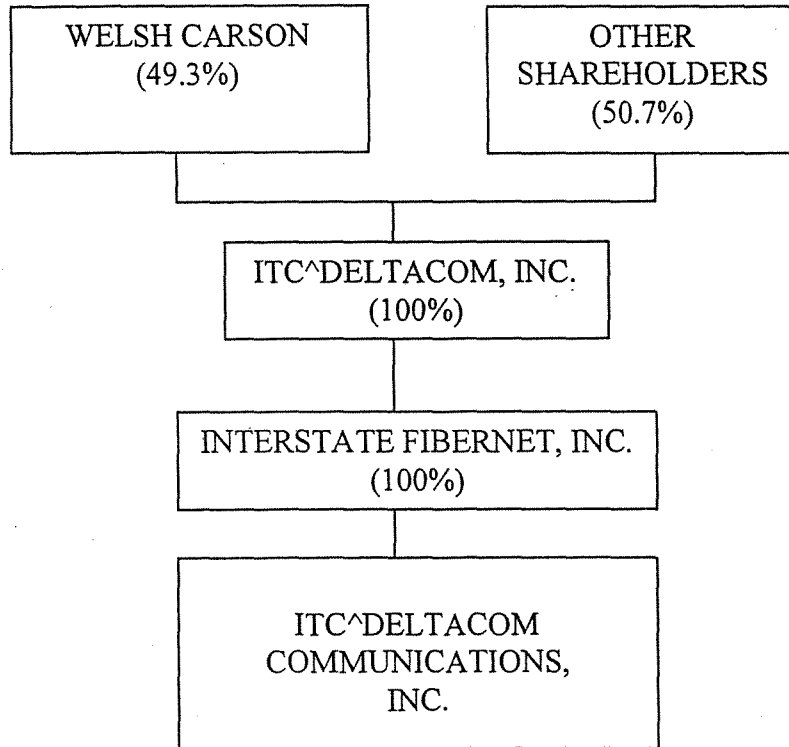
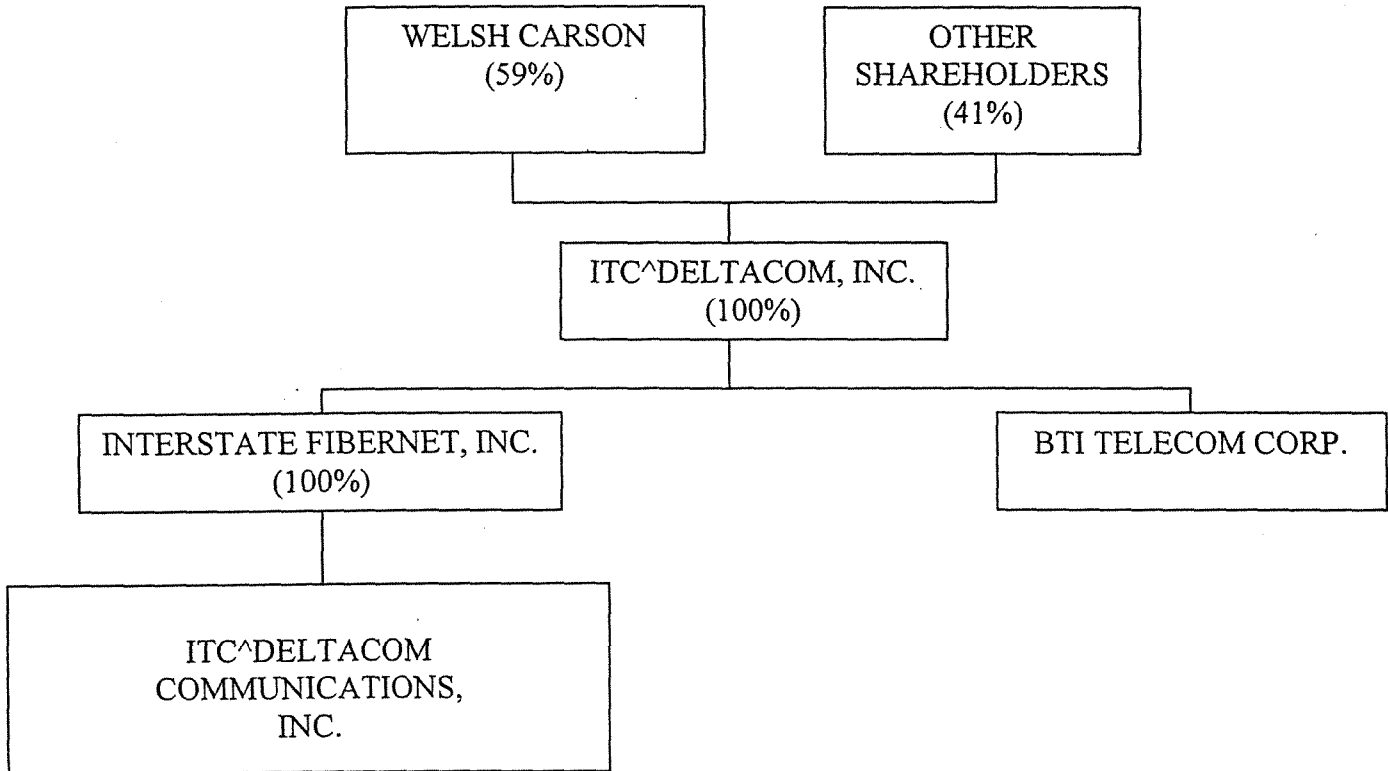


EXHIBIT B



CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 20370 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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Karen Higashi

DATED: August 8, 2003