

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

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

2003 SEP 12 P 3:16

RECEIVED

ORDER NO. 20427

Filed Sept. 10, 2003
At 2:00 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

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
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ITC^DELTA COM COMMUNICATIONS, INC.,) Docket No. 03-0193
 dba ITC^DELTA COM)
) Order No. 20427
For Approval of An Indirect)
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_____)

ORDER AMENDING DECISION AND ORDER NO. 20370

I.

By Decision and Order No. 20370, filed on August 8, 2003, the commission, among other things, waived the requirements of Hawaii Revised Statutes ("HRS") § 269-7(a), to the extent applicable, with respect to a proposed financial transaction resulting in the indirect transfer of control of ITC^DELTA COM COMMUNICATIONS, INC., dba ITC^DELTA COM ("DeltaCom" or "Applicant") to WELSH, CARSON, ANDERSON & STOWE VIII, L.P., WCAS CAPITAL PARTNERS III, L.P., AND WCAS INFORMATION PARTNERS.

By letter filed on August 22, 2003, Applicant now seeks to supplement its original application in this docket with additional information. Since the additional information sought to be included in this docket was proffered subsequent to the issuance of Decision and Order No. 20370, we will treat the August 22, 2003 letter as a request to amend Decision and Order No. 20370.

II.

In their August 22, 2003 letter, DeltaCom and ITC^DELTACOM, INC. ("ITC"), DeltaCom's ultimate parent holding company, now state that after the consummation of the proposed financial transaction, described in the original application of this docket, the existing indebtedness of Interstate Fibernet, Inc. ("IFN"), presently a first-tier subsidiary of ITC (as primary obligor), DeltaCom (as guarantor), and BTI Telecom Corp. and its subsidiaries (as guarantors and aka, "BTI Operating") will be reallocated between and among IFN, DeltaCom and BTI Operating. This additional, proposed financial transaction (hereinafter, "Proposed Reallocation") will be accomplished through modifications of each of IFN's, DeltaCom's and BTI Operating's existing credit facilities, as set forth in detail in applicable filings with the Securities Exchange Commission. DeltaCom and ITC further represent that the Proposed Reallocation will not result in any increase in the overall and existing indebtedness of IFN, DeltaCom and BTI Operating.

By letter filed on September 4, 2003, the Division of Consumer Advocacy of the Department of Commerce and Consumer Affairs states that it does not object to the Proposed Reallocation.

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).

HRS § 269-16.9(e) 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 supplemental information and representations, we again find that: (1) much of the telecommunications services currently provided by DeltaCom are competitive; (2) DeltaCom is a non-dominant carrier in Hawaii; (3) the Proposed Reallocation is consistent with the public interest; and (4) competition, in this instance, will serve the same purpose as public interest regulation.

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 with respect to the Proposed Reallocation.¹

IV.

THE COMMISSION ORDERS:


1. The requirements of HRS § 269-7(a), to the extent applicable, are waived with respect to the Proposed Reallocation described in the August 22, 2003 letter.

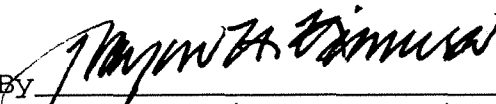
2. Applicant's request to amend Decision and Order No. 20370 is granted. Decision and Order No. 20370 is amended consistent with the terms and conditions of this order. In all other respects, Decision and Order No. 20370 remains unchanged.

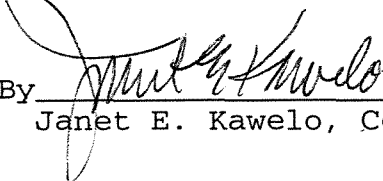
¹At the same time, the commission will continue to examine a utility's application on a case-by-case basis to determine whether the applicable requirements of HRS § 269-7(a) or any other related provision governing utility transactions, should be waived. The commission's waiver in this order shall not be construed by any utility as a basis for not filing an application involving similar transactions or circumstances.

DONE at Honolulu, Hawaii this 10th day of September,
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.ac

CERTIFICATE OF SERVICE

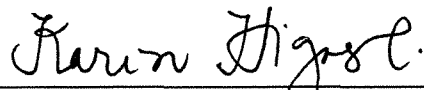
I hereby certify that I have this date served a copy of the foregoing Order No. 20427 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

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Karen Higashi

DATED: September 10, 2003