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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)
BUSINESS TELECOM, INC.) DOCKET NO. 03-0218
For Approval of a Series of)
Financing Transactions.)

In the Matter of the Petition of)
BUSINESS TELECOM, INC.) DOCKET NO. 03-0241
For Approval of a Series of) (CONSOLIDATED)
Financing Transactions.)

DECISION AND ORDER NO. 20667

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for B. K. Nagaji
Chief Clerk of the Commission

ATTEST: A True Copy
BROOKE K. NAGAJI
Administrative Director
Public Utilities Commission
State of Hawaii

B. Nagaji

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DECISION AND ORDER

I.

Introduction

BUSINESS TELECOM, INC. ("BTI" or "Petitioner"), requests commission approval to: (1) participate in up to \$10 million in debt financing ("proposed 1st financial transaction") (Docket No. 03-0218)¹; and (2) guarantee and secure with its assets, additional debt in an amount up to approximately \$55 million ("proposed 2nd financial transaction") (Docket No. 03-0241)². Petitioner makes its requests pursuant to Hawaii Revised Statutes ("HRS") §§ 269-17 and 269-19.

¹BTI's Petition, filed on August 8, 2003, in Docket No. 03-0218.

²BTI's Petition, filed on August 27, 2003, in Docket No. 03-0241.

Petitioner served a copy of the petitions filed in Docket Nos. 03-0218 and 03-0241 on the Division of Consumer Advocacy, Department of Commerce and Consumer Affairs ("Consumer Advocate"). The Consumer Advocate states that it does not object to BTI's request for commission approval of both proposed financial transactions, provided copies of the following documents are submitted to the commission and the Consumer Advocate for review: (1) executed debt financing agreement, as required by Decision and Order No. 19287, in Docket No. 01-0463; and (2) BTI's 2002 income statement, as required by Hawaii Administrative Rules ("HAR") § 6-80-91.³

II.

Consolidation of Docket Nos. 03-0218 and 03-0241

HAR § 6-61-39 provides that the commission, upon its own initiative, may consolidate two or more proceedings that involve related questions of fact or law if it finds that consolidation will be conducive to the proper dispatch of its business and to the ends of justice and will not unduly delay the proceedings.

Upon review of the record, we find that Docket Nos. 03-0218 and 03-0241 involve related questions of fact and law. We also find that the consolidation of these proceedings will be conducive to the proper dispatch of the

³Consumer Advocate's Statement of Positions, filed on October 15, 2003, in Docket Nos. 03-0218 and 03-0241 (collectively, "SOPs").

commission's business and the ends of justice, and will not unduly delay these proceedings.

Based on the foregoing, we conclude that Docket Nos. 03-0218 and 03-0241 should be consolidated.

III.

Background

A.

Description of Petitioner

BTI is a privately held corporation organized under the laws of North Carolina. It is a wholly-owned subsidiary of BTI Telecom Corp. ("BTI Telecom"), also a privately held company. BTI is presently authorized to provide facilities-based and/or resold telecommunications services in all 50 states and the District of Columbia and local exchange services in over 20 states.⁴

B.

Summary of Proposed Financial Transactions

In Docket No. 03-0218, BTI describes the 1st proposed financial transaction as follows. BTI will issue ten (10) per cent Senior Secured Notes ("Notes") of up to \$10 million

⁴BTI is authorized to provide intrastate telecommunications services in Hawaii on a resold basis, pursuant to Decision and Order No. 16358, filed on June 2, 1998, in Docket No. 98-0143. See also, Decision and Order No. 20389, filed on August 22, 2003, in Docket No. 03-0200.

to WCAS Capital Partners VIII, L.P. ("WCAS VIII"), WCAS Capital Partners III, L.P. ("WCAS III"), and certain affiliates of WCAS VIII and WCAS III (collectively, referred to as "Lenders"). Initially, BTI will issue approximately \$1 million of Notes to Lenders. Subsequently, BTI may issue additional Notes up to the maximum outstanding principal amount of \$10 million to the Lenders. BTI plans to use the funds made available by the issuance of these Notes to fund working capital, capital expenditures and other corporate purposes. The Notes will be guaranteed by BTI, BTI Telecom and BTI's subsidiaries through a fully perfected subordinated priority security interest in all of BTI's existing and after-acquired assets, as well as all of the issued and outstanding capital stock of BTI and its subsidiaries. The Notes will mature on the earlier of July 31, 2007 or the 91st day following repayment of the Senior Indebtedness.

In Docket No. 03-0241, BTI describes the proposed 2nd financial transaction as a separate reallocation of debt between BTI and its affiliates ("Reallocation"). Specifically, the consummation of the Reallocation will result in the following events. BTI will guarantee and secure with its assets debt in an amount up to \$155 million. At the same time, \$100 million of BTI's outstanding subordinated indebtedness will be satisfied, resulting in a total net increase in BTI's indebtedness of approximately \$55 million. The Reallocation will reduce the indebtedness under BTI's outstanding senior credit facility and increase the debt guaranteed by BTI's assets to an affiliate's credit facility. Following the consummation of the Reallocation,

BTI will be guaranteeing and securing with its assets the debt under its current credit facility and its affiliate's current credit facility.

BTI represents that the 1st and 2nd proposed financial transactions will not result in a change in BTI's management or its day-to-day Hawaii operations. Moreover, BTI confirms that these transactions will be completely transparent to BTI's customers. Finally, BTI contends that the consummation of these transactions will "enable BTI to better utilize its available funds to bring its services to new markets and allow more consumers to benefit from its competitive services more quickly and efficiently."

C.

Consumer Advocate's Position

In its Statement of Positions, the Consumer Advocate states that it does not object to Petitioner's request for commission approval of the 1st and 2nd proposed financial transactions, described in Docket Nos. 03-0218 and 03-0241, respectively, subject to the qualifications noted previously in Section I. It recognizes "the entry of many telecommunications service providers in the Hawaii market", and that the market place will "serve to mitigate any traditional utility regulatory concerns" regarding the proposed financial transactions. Therefore, if there are any adverse consequences from the proposed financial transactions, "consumers in Hawaii will have the option of selecting another service provider."

IV.

Discussion

HRS § 269-17 requires a public utility to obtain the commission's approval before issuing stocks and stock certificates, bonds, notes, and other evidences of indebtedness payable at periods of more than 12 months. The statute limits the purpose for which stocks and other evidences of indebtedness may be issued to, among other things, the acquisition of property, building or construction, or improving the utility's capital facilities or services. HRS § 269-19 requires a public utility corporation to obtain our consent prior to, among other things, mortgaging, encumbering, or otherwise disposing of its property.

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

Upon a review of the record, we find that the 1st and 2nd proposed financial transactions, described in both petitions, fall under the purview of HRS §§ 269-17 and 269-19. However, we find, at this time, that the telecommunications services currently provided by Petitioner are fully competitive, and that

Petitioner is a non-dominant carrier in Hawaii.⁵ We also find that the 1st and 2nd proposed financial transactions are consistent with the public interest, and that competition, in this instance, will serve the same purpose as public interest regulation. Thus, the commission concludes that the applicable requirements of HRS §§ 269-17 and 269-19 should be waived with regards to the matters in both dockets.⁶ Similarly, based on the same findings stated above, we will also waive the filing requirements of HAR §§ 6-61-101 and 6-61-105, to the extent that Petitioner's petitions fail to meet all of the filing requirements.

We note that the Consumer Advocate's qualifications, relating to the submission of certain documents and as stated above in Section I, are identical to its qualifications stated in Docket No. 03-0200. In Docket No. 03-0200, we ordered Petitioner to file within 15 days after the date of the issuance date of the applicable Stipulated Protective Orders, the documents requested by the Consumer Advocate. See Decision and Order No. 20839, filed on August 22, 2003, in Docket No. 03-0200.

⁵BTI represents, by its letter filed on September 9, 2003, that it currently has three customers in Hawaii.

⁶The commission will continue to examine each application or petition and make determinations on a case-by-case basis as to whether the applicable requirements of HRS §§ 269-17 and 269-19 should be waived. The commission's determination, in the instant case, of the applicability of HRS §§ 269-17 and 269-19 is based on our review of Petitioner's instant petition only. Thus, our waiver in this instance of the applicability of HRS §§ 269-17 and 269-19 should not be construed by any public utility, including Petitioner, as a basis for not filing an application or petition regarding similar transactions that fall within the purview of these statutes.

Consequently, we find the Consumer Advocate's qualifications in Docket Nos. 03-0218 and 03-0241 to be moot. We, nonetheless, expect BTI to timely adhere to the filing requirements, as set forth in Decision and Order No. 20839.

To date, our records indicate the following: (1) an executed debt financing agreement filed on October 21, 2003, and subject to Stipulated Protective Order No. 20440 issued on September 15, 2003 in Docket No. 01-0463; and (2) the submission of a proposed Stipulated Protective Order for commission review and approval concerning BTI's 2002 income statement.

V.

Orders

THE COMMISSION ORDERS:

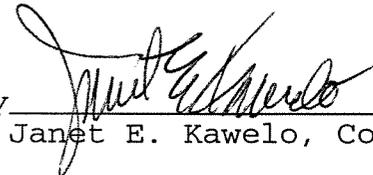
1. Docket Nos. 03-0218 and 03-0241 are consolidated.
2. The requirement of HRS §§ 269-17 and 269-19, to the extent applicable, are waived with respect to the 1st and 2nd proposed financial transactions, described in Petitioner's petitions, filed in Docket Nos. 03-0218 and 03-0241.
3. HAR §§ 6-61-101 and 6-61-105 filing requirements, to the extent applicable, are waived.

DONE at Honolulu, Hawaii this 24th day of November,
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

03-0218/03-0241.eh

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 20667 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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DIVISION OF CONSUMER ADVOCACY
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Karen Higashi

DATED: November 24, 2003