

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Petition of)  
TELEGLOBE USA LLC and )  
TELEGLOBE AMERICA INC. )  
For Authority to Conduct a *Pro* )  
*Forma* Corporate Change. )  
\_\_\_\_\_ )

DOCKET NO. 03-0239

DECISION AND ORDER NO. 20729

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

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Filed Jan. 5, 2004  
At 1:00 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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DECISION AND ORDER

I.

Introduction

TELEGLOBE USA LLC ("TUSA") and TELEGLOBE AMERICA INC. ("TAI") (collectively "Petitioners"), by a petition filed on August 26, 2003 ("Petition"), request commission approval, *nunc pro tunc*, for a recent *pro forma* corporate change whereby TUSA merged with and into its parent company, TAI, with TAI being the surviving entity ("TUSA/TAI Merger"). Petitioners also seek approval to assign TUSA's Hawaii assets including, without limitation, its certificate of authority ("COA"), to TAI described in the Petition (the "Assignments").

Petitioners served copies of the Petition on the DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY ("Consumer Advocate"). The Consumer Advocate, through its position statement filed on October 17, 2003, indicates that it does not object to the approval of the transactions,

described above, subject to certain qualifications, discussed below.

## II.

### Background

#### A.

##### Overview of Subject Entities

TUSA is a Delaware limited liability company located in Reston, Virginia.<sup>1</sup> Prior to the TUSA/TAI merger, TUSA was a wholly-owned subsidiary of its parent company, TAI.

TAI (fka, TLGB Corporation),<sup>2</sup> a Delaware corporation also located in Reston, Virginia is an indirect, wholly-owned subsidiary of Teleglobe International Holding, Ltd., a Bermuda corporation.<sup>3</sup>

#### B.

##### Description of Transactions

The TUSA/TAI Merger occurred on May 30, 2003 where TAI acquired 100 per cent of the stock of TUSA. Petitioners represent that the TUSA/TAI Merger occurred because TAI's financial and tax advisors determined that it would be more efficient and cost-effective for TUSA to be merged into its parent company, TAI,

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<sup>1</sup>On April 8, 2003, the commission, among other things, waived the requirements of Hawaii Revised Statutes ("HRS") §§ 269-19 and 269-7(a), to the extent applicable, and granted TUSA a COA to provide intrastate telecommunications services in the State of Hawaii ("State") as a reseller. Decision and Order No. 20116, filed on April 8, 2003, in Docket No. 03-0020.

<sup>2</sup>On May 30, 2003, TLGB Corporation changed its name to TAI.

<sup>3</sup>See Decision and Order No. 20116, filed on April 8, 2003, in Docket No. 03-0020.

with TAI surviving. See Exhibit 2 attached hereto. As a result of the TUSA/TAI merger, TAI will obtain TUSA's Hawaii telecommunications assets and authorization.

Petitioners contend that the TUSA/TAI Merger and the Assignments are strictly *pro forma* in nature and will not adversely affect the provision of telecommunications services in Hawaii. Specifically, Petitioners represent the following:

1. There would be "no change in the ultimate ownership or control or in the management or day-to-day operations of the authorized carrier in Hawaii[;]"
2. All of TUSA's employees will become employees of TAI;
3. "Customers will be provided service pursuant to contracts and tariffs that offer all of the services offered by TUSA, as applicable, under the same rates, terms and conditions[;]" and
4. The *pro forma* transactions "will not lead to customer confusion or inconvenience because TAI (formerly TUSA) is just now launching its business plan in Hawaii and no services in Hawaii are currently being provided."

C.

Consumer Advocate's Position

In its October 17, 2003 position statement, the Consumer Advocate states that it "recognizes the entry of many long distance telecommunications service providers in the Hawaii market." The Consumer Advocate further asserts that "[t]he market place, it is assumed, will then serve to mitigate any traditional public utility regulatory concerns regarding the [TUSA/TAI Merger]." As such, the Consumer Advocate states that it does not

object to commission approval, *nunc pro tunc*, of the TUSA/TAI Merger and the Assignments, including the transfer of the COA to TAI provided the following conditions are met:

1. Petitioners list and describe all of TUSA's Hawaii assets assigned to TAI;
2. TUSA surrender its COA that was issued in Decision and Order No. 20116 in Docket No. 03-0020;
3. Petitioners submit their financial statements pursuant to Hawaii Administrative Rules ("HAR") § 6-61-105(c)(1);
4. Petitioners provide a copy of the merger agreement between TUSA and TAI pursuant to HAR § 6-61-105(c)(2);
5. Petitioners revise TUSA's tariff as necessary to reflect TAI as the operating entity; and
6. Petitioners provide to the Consumer Advocate a copy of Teleglobe USA, Inc.'s annual financial reports for the years 2002 and 2003, respectively.

### III.

#### Discussion

##### A.

#### TUSA/TAI Merger and the Assignments

HRS § 269-19 provides, in relevant part, that "no public utility corporation shall sell, lease, assign, mortgage, or otherwise dispose of 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 . . . 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." Moreover, 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). The TUSA/TAI Merger and the Assignments fall under our purview under HRS §§ 269-19 and 269-7(a).

Nonetheless, 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, HAR § 6-80-135 permits us to waive the applicability of any of the provisions of HRS chapter 269 or any rule, upon a determination that a waiver is in the public interest.

Upon review of the record in this docket, particularly Petitioners' representations in this docket, we find the following: (1) much of the telecommunications services currently provided by TUSA is competitive; (2) TUSA is a non-dominant carrier in Hawaii; (3) the TUSA/TAI Merger and the Assignments are 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 §§ 269-19 and 269-7(a), to the extent applicable to the TUSA/TAI Merger and the Assignments (except for the assignment of TUSA's COA to TAI, which will be

separately addressed in Section III.B. below) described in the instant Petition, pursuant to HRS § 269-16.9(e) and HAR § 6-80-135.<sup>4</sup>

Similarly, we also find it in the public interest to waive the applicability of HAR § 6-61-105 in this docket to the extent that the Petition is not in compliance with that rule. Thus, for purposes of considering this Petition, we will not require the information and/or documents normally required under HAR § 6-61-105. We, nonetheless, agree with the Consumer Advocate that certain information and/or documents should be provided to the commission and the Consumer Advocate. Therefore, we will adopt the Consumer Advocate's recommended conditions, in part,<sup>5</sup> and direct Petitioners to submit the following information and/or documents within thirty (30) days of the date of this decision and order:

1. A list describing all of TUSA's Hawaii assets assigned to TAI as a result of the TUSA/TAI Merger:
2. A copy of TUSA's and TAI's financial statements, pursuant to HAR § 6-61-105(c); and
3. A copy of the merger agreement between TUSA and TAI, pursuant to HAR § 6-61-105(c)(2).

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<sup>4</sup>At the same time, the commission will continue to examine a utility's application or petition on a case-by-case basis to determine whether the applicable requirements of HRS §§ 269-19 and 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.

<sup>5</sup>In light of our decision in Section III.B., TUSA will not need to surrender its COA. Moreover, in lieu of requiring Petitioners to provide certain information and/or documents prior to our approval in this docket, we will allow Petitioners thirty (30) days from the date of this decision and order to file such information and/or documents.

Moreover, we will also require Petitioners to provide the Consumer Advocate a copy of Teleglobe USA, Inc.'s annual financial reports for the years 2002 and 2003 within thirty (30) days of the date of this decision and order.<sup>6</sup> We must admonish Petitioners and remind them that, in the future, in addition to submitting these reports to the commission, carriers must also serve a copy of these reports to the Consumer Advocate, pursuant to HAR § 6-80-91(d).

B.

Assignment of TUSA's COA to TAI

HRS § 269-19 also specifically provides, in relevant part, that: "No public utility corporation shall sell, lease, assign, mortgage, or otherwise dispose of . . . any franchise or permit, or any right thereunder . . . without first having secured from the public utilities commission an order authorizing it so to do."

In this Petition, Petitioners request approval to assign TUSA's COA to TAI. Petitioners contend that TAI remains financially qualified to continue the ongoing operations of TUSA. TAI, in particular, represents that it "is aware of its regulatory obligations and will seek [c]ommission approval and otherwise comply with the [c]ommission's requirements in the future."

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<sup>6</sup>Prior to TUSA, Teleglobe USA, Inc. held a commission issued COA to operate as a reseller of intrastate telecommunications services. See Decision and Order No. 16792, filed on January 14, 1999, in Docket No. 99-0001.



Upon review of the record in this docket,<sup>7</sup> we find that TAI has fulfilled the requirements of HAR § 6-80-18(a), to the extent applicable.<sup>8</sup> Thus, we will approve the assignment of TUSA's COA to TAI, pursuant to HRS § 269-19, subject to the following conditions:

1. Within thirty (30) days of the date of this decision and order, TAI shall file its initial tariff, incorporating the change in name from TUSA; and
2. TAI shall continue to be accountable for any and all of TUSA's unpaid public utility fees due to the commission, pursuant to HRS § 269-30, and any and all of TUSA's outstanding annual financial reports that are required to be filed with the commission in accordance with HAR § 6-80-91.

#### IV.

##### Orders

###### THE COMMISSION ORDERS:

1. The requirements of HRS §§ 269-19 and 269-7(a), to the extent applicable, are waived with respect to the TUSA/TAI Merger and the Assignments (except for the assignment of TUSA's COA to TAI), subject to the applicable conditions described in Ordering Paragraph 7 below.

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<sup>7</sup>In addition, we also take administrative notice of all other pertinent documents filed with the commission relating to TUSA and TAI.

<sup>8</sup>Moreover, based on our finding made above that competition, in this instance, will serve the same purpose as public interest regulation, we will also, on our own motion, waive the requirements of HAR § 6-80-17(c) to the extent that the instant Petition did not fully comply with these requirements. See HRS § 269-16.9(d).

2. To the extent that the Petition does not contain all of the information required under either HAR §§ 6-61-105 or 6-80-17(a), the applicability of those sections is waived, subject to the applicable conditions described in Ordering Paragraph 7 below.

3. The assignment of TUSA's COA to operate as a reseller of telecommunications services in the State is approved, subject to the following conditions:

- a. Within thirty (30) days of the date of this decision and order, TAI shall file its initial tariff, incorporating the change in name from TUSA; and
- b. TAI shall continue to be accountable for any and all of TUSA's unpaid public utility fees due to the commission, pursuant to HRS § 269-30, and any and all of TUSA's outstanding annual financial reports that are required to be filed with the commission in accordance with HAR § 6-80-91.

4. As the holder of a COA, TAI shall be subject to all applicable provisions of HRS chapter 269, HAR chapters 6-80 and 6-81, any other applicable State laws and commission rules, and any orders that the commission may issue from time to time.

5. TAI shall file its tariffs in accordance with HAR §§ 6-80-39 and 6-80-40. Said tariff shall comply with the provisions of HAR chapter 6-80. In the event of a conflict between any tariff provision and State law, State law shall prevail.

6. An original and eight (8) copies of the initial tariff shall be filed with the commission with additional copies served on the Consumer Advocate. TAI shall ensure that the appropriate issued and effective dates are reflected in its tariffs.

7. Within thirty (30) days from the date of this decision and order:

- a. TAI shall pay a public utility fee of \$60, pursuant to HRS § 269-30. The business check shall be made payable to the Hawaii Public Utilities Commission, and sent to the commission's office at 465 South King Street #103, Honolulu, HI, 96813.
- b. TAI shall also pay a telecommunications relay service ("TRS") contribution of \$37.50, established pursuant to: (A) Act 50, of May 7, 2003 (codified at HRS § 269-16.6); and (B) Order No. 20193, filed on May 23, 2003, in Docket No. 03-0058. (A copy of Order No. 20193 is attached hereto as Exhibit 1.) The business check shall be made payable to "Hawaii TRS", and sent to the Hawaii TRS Administrator, NECA Services, Inc., 80 S. Jefferson Road, Whippany, NJ 07981. Written proof of payment shall be sent to the commission.


- c. Petitioners shall file a list with the commission and the Consumer Advocate describing all of TUSA's Hawaii assets assigned to TAI.
- d. Petitioners shall file their financial statements pursuant to HAR § 6-61-105(c)(1) with the commission and the Consumer Advocate; and
- e. Petitioners shall file a copy of the merger agreement between TUSA and TAI pursuant to HAR § 6-61-105(c)(2) with the commission and the Consumer Advocate.

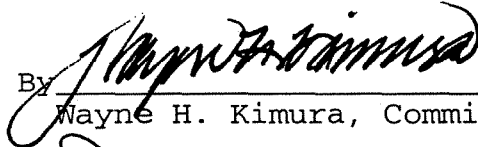
8. Within thirty (30) days of the date of this decision and order, Petitioners shall also provide to the Consumer Advocate a copy of Teleglobe USA, Inc.'s annual financial reports for the years 2002 and 2003.

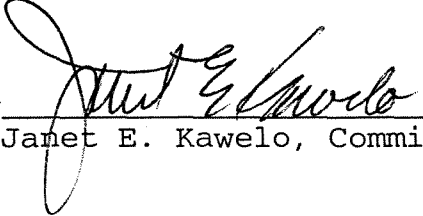
9. Petitioners shall promptly comply with the requirements set forth above. Failure to promptly comply with these requirements may constitute cause to void this decision and order, and may result in further regulatory action, as authorized by law.

DONE at Honolulu, Hawaii this 5th day of January, 2004.

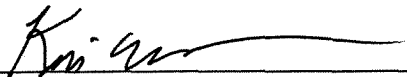
PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By   
Carlito P. Caliboso, Chairman

By   
Wayne H. Kimura, Commissioner

By   
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:

  
Kris N. Nakagawa  
Commission Counsel

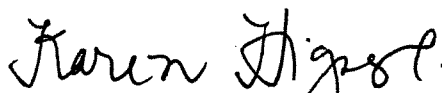
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CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 20729 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

ROGENA HARRIS  
TELEGLOBE AMERICA, INC.  
1 Discovery Square  
12010 Sunset Hills Road  
Reston, VA 20190

  
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Karen Higashi

DATED: January 5, 2004