





commission approval of the Proposed Refinancing subject to one qualification, discussed below in Section II.C.

## II.

### Background

#### A.

##### Description of Applicants<sup>2</sup>

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., DeltaCom's ultimate parent holding company.<sup>3</sup> DeltaCom is presently authorized to provide telecommunications in all fifty (50) states including the State of Hawaii ("State").<sup>4</sup>

BTI is a North Carolina corporation and a wholly-owned subsidiary of BTI Telecom Corp. ("BTI Telecom"), a privately held North Carolina holding company. BTI is presently authorized to provide facilities-based and/or resold telecommunications

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<sup>2</sup>Both DeltaCom and BTI are indirectly controlled by Welsh, Carson, Anderson, & Stone VIII, L.P., WCAS Capitol Partners III, L.P. and WCAS Information Partners. Decision and Order No. 20389, filed on August 22, 2003, in Docket No. 03-0200.

<sup>3</sup>See also, Decision and Order No. 20370, filed on August 3, 2003, in Docket No. 03-0193.

<sup>4</sup>DeltaCom is authorized to provide intrastate telecommunications services in the State on a resold basis. Decision and Order No. 16931, filed on April 6, 1999, in Docket No. 98-0408.

services in all fifty (50) states and the District of Columbia and competitive local exchange services in over 20 states.<sup>5</sup>

B.

Summary of Proposed Refinancing

Applicants' Proposed Refinancing involves a proposal to refinance existing debt obligations with the net result that additional funding will be made available of up to \$60 million, which includes an anticipated unfunded \$50 million revolver. Applicants state that the payment of the existing debt including any additional amounts drawn from a revolving credit facility will be due and payable in up to eight (8) years. Moreover, in order to refinance such existing debt, Applicants represent that they will assume liability as guarantors for additional debt.

Applicants assert, among other things, that allowing them to "take advantage of better terms and conditions related to existing financing enables [them] to achieve better cash flow and capitalization which in turn enhances their ability to provide quality services which is in the public interest." Applicants further represent that "there will be no change to the rates, terms and conditions currently offered by Applicants to existing customers in Hawaii." Finally, Applicants contend that the consummation of these transactions will "enable [them] to compete in the market for telecommunications services by giving them

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<sup>5</sup>BTI is authorized to provide intrastate telecommunications services in the State on a resold basis. 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.

access to the financial resources they may need to draw in order to introduce new products and services and to respond to the competitive telecommunications environment."

C.

Consumer Advocate's Position

The Consumer Advocate states that it does not object to Applicants' request for commission approval of the Proposed Refinancing, described above, provided copies of the proposed debt refinancing documents are submitted to the commission and the Consumer Advocate for their records within thirty (30) days of the date of this decision and order. It recognizes that "the entry of many telecommunications service providers in the Hawaii market" will "serve to mitigate any traditional utility regulatory concerns" regarding the Proposed Financial Transaction. Therefore, if there are any adverse consequences from the Proposed Refinancing, "consumers in Hawaii will have the option of selecting another service provider."

III.

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 us to waive regulatory requirements applicable to telecommunications providers if we determine that competition will serve the same purpose as public interest regulation. Moreover, 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 a review of the record, we find that the Proposed Refinancing, described above, falls under the purview of HRS §§ 269-17 and 269-19. However, we find, at this time, that the telecommunications services currently provided by Applicants are fully competitive, and that Applicants are non-dominant carriers in Hawaii. We also find that the Proposed Refinancing is 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 this docket.<sup>6</sup> Similarly, based on the same findings and conclusions stated above, we will also waive the provisions of HAR §§ 6-61-101 and 6-61-105, to the extent that Applicants' application does not meet all of the filing requirements. Nonetheless, we agree with the Consumer Advocate that certain information and/or documents should be provided to the commission and the Consumer Advocate for their records. Therefore, we will adopt the Consumer Advocate's recommendation, and direct Applicants to submit copies of the proposed debt refinancing documents to the commission and the Consumer Advocate within thirty (30) days of the date of this decision and order.

#### IV.

##### Orders

###### THE COMMISSION ORDERS:

1. The provisions of HRS §§ 269-17 and 269-19, to the extent applicable, are waived with respect to the Proposed Refinancing, described in Applicants' application, filed on February 6, 2004.

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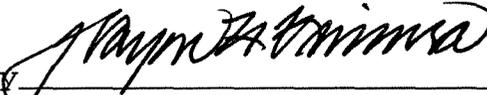
<sup>6</sup>The commission will continue to examine each application or petition and make determinations on a case-by-case basis as to whether the applicable requirements of HRS §§ 269-17 and 269-19 should be waived. The commission's determination, in the instant case, of the applicability of HRS §§ 269-17 and 269-19 is based on our review of Applicants' application. 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 Applicants, as a basis for not filing an application or petition regarding similar transactions that fall within the purview of these statutes.

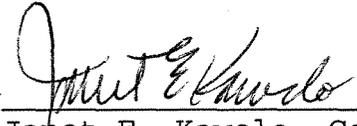
2. HAR §§ 6-61-101 and 6-61-105 filing requirements, to the extent applicable, are waived. Nonetheless, Applicants shall submit copies of the proposed debt refinancing documents to the commission and the Consumer Advocate within thirty (30) days of the date of this decision and order. Failure to promptly comply with this filing requirement 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 22nd day of March, 2004.

PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By   
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Carlito P. Caliboso, Chairman

By   
\_\_\_\_\_  
Wayne H. Kimura, Commissioner

By   
\_\_\_\_\_  
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Kris N. Nakagawa  
Commission Counsel

04-0032.eh

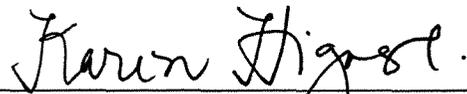
CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 20859 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: March 22, 2004