

us  
Scar

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application of )  
)  
TIME WARNER TELECOM OF HAWAII, L.P., )  
dba OCEANIC COMMUNICATIONS )  
)  
For Expedited Approval of Financing, )  
Or for Exemption. )  
\_\_\_\_\_ )

DOCKET NO. 04-0036

DECISION AND ORDER NO. 20880

RECEIVED  
2004 APR - 1 A 8:24  
DIV. OF CONSUMER AFFAIRS  
DEPT. OF COMMERCE AND  
INDUSTRY  
STATE OF HAWAII

Filed March 31, 2004  
At 9:00 o'clock A.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 )  
TIME WARNER TELECOM OF HAWAII, L.P., ) Docket No. 04-0036  
dba OCEANIC COMMUNICATIONS )  
For Expedited Approval of Financing, ) Decision and Order No. 20880  
Or for Exemption. )  
\_\_\_\_\_ )

DECISION AND ORDER

I.

Introduction

TIME WARNER TELECOM OF HAWAII, L.P., dba OCEANIC COMMUNICATIONS ("Oceanic"), requests an expedited order approving the issuance by Time Warner Telecom, Inc. ("TWTC") of certain financing transactions ("Proposed Financial Transactions").<sup>1</sup> In the alternative, Oceanic requests that the commission exempt the Proposed Financial Transactions from commission approval requirements, pursuant to Hawaii Revised Statutes ("HRS") § 269-16.9. Moreover, to the extent that Oceanic did not satisfy the applicable application requirements, Oceanic also requests a waiver of such requirements, pursuant to HRS § 269-16.9.

---

<sup>1</sup>Oceanic's application, filed on February 17, 2004. By letter, file on February 20, 2004, Oceanic advised the commission that "Oceanic's affiliates will not be proceeding with the financing approved" by the commission in Decision and Order No. 20747, filed on January 9, 2004, in Docket No. 03-0414.

Oceanic served a copy of the application on the DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS ("Consumer Advocate"). The Consumer Advocate, by its statement of position, filed on March 2, 2004, states that it does not object to the Proposed Financial Transactions.

## II.

### Background

#### A.

##### Description of Oceanic and Related Entities

Oceanic is a limited partnership organized under the laws of Delaware, authorized to do business in the State of Hawaii ("State"). Oceanic is a provider of interstate and intrastate telecommunications services, including dedicated access (private line) and local exchange services.<sup>2</sup>

Oceanic's limited partner is TWTC, a publicly held Delaware corporation, that presently holds a ninety-nine (99) per cent limited partnership interest in Oceanic. Time Warner Telecom Holdings, Inc. ("TWTH"), Oceanic's general partner, is itself wholly owned by TWTC.<sup>3</sup> An organizational diagram illustrating Oceanic's current ownership is attached to this decision and order as Exhibit "A".

---

<sup>2</sup>In Hawaii, Oceanic is authorized to provide intrastate telecommunications services as a reseller and a facilities-based carrier. See Order No. 14842, filed on August 5, 1996, in Docket No. 95-0329.

<sup>3</sup>TWTH owns Time Warner Telecom Holdings II LLC and Time Warner Telecom General Partnership, and maintains a one (1) per cent general partnership interest in Oceanic.

B.

Proposed Financial Transactions

The Proposed Financial Transactions involve TWTC's plans to: (1) issue up to \$400 million in unsecured fixed rate Senior Notes at 9.25 per cent due in 2014 ("Unsecured Notes"); (2) issue up to \$400 million in floating rate Senior Secured Notes due in 2011 ("Secured Notes") with an interest rate on the Secured Notes at the London Interbank Offered Rate, aka LIBOR, plus 400 basis points; and (3) enter into a new five-year \$150 million senior secured revolving credit facility ("New Credit Facility").<sup>4</sup>

Specifically, Oceanic represents that the proceeds from the Proposed Financial Transactions will be used to eliminate an existing secured bank credit facility, paying back approximately \$396 million drawn on that facility. Moreover, a portion of the proceeds may be used to redeem a portion of bonds maturing in 2008, and to fund capital expenditures and working capital needs. The Secured Notes and New Credit Facility will be guaranteed by each state level operating subsidiary, including Oceanic, by way of a guarantee and pledge of stock, interests and assets of each operating subsidiary. The Unsecured Notes will be guaranteed by the cash flows of each state level operating subsidiary, including Oceanic, but the guarantee will not encumber any of their assets. Oceanic further represents that the

---

<sup>4</sup>Although Oceanic requests authority to issue up to \$950 million of long term debt in this docket, the initial financing is anticipated to be approximately \$590 million (approximately \$200 million in Unsecured Notes, \$240 million in Secured Notes, and the \$150 million New Credit Facility).

Proposed Financial Transactions will have no material adverse impact on its operations, its customers, or the public interest.

C.

Consumer Advocate's Position

The Consumer Advocate asserts that "[b]ased on past [c]ommission rulings<sup>5</sup> and the [c]ommission's responsibility to protect the public interest pursuant to HRS § 269-7(a)," it does not believe Oceanic should be granted an exemption or waiver from regulatory requirements. Nonetheless, the Consumer Advocate does not object to Oceanic's request for commission approval of the Proposed Financial Transactions.

III.

Discussion

A.

HRS § 269-19

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. The purpose of this provision "is to safeguard the public interest." *In re Honolulu Rapid Transit Co.*, 54 Haw. 402, 409, 507 P.2d 755, 759 (1973).

---

<sup>5</sup>See, *In re AT&T Wireless Services of Hawaii, Inc. et al.*, Docket No. 00-0116, Decision and Order No. 17795 (June 15, 2000); and *In re Honolulu Cellular Telephone Company et al.*, Docket No. 99-0363, Decision and Order No. 17476 (January 14, 2000).

In its application, Oceanic represents that the Proposed Financial Transactions will result in the encumbrance of its assets. Specifically, Oceanic will be granting "the Lenders under the Secured Notes and the New Credit Facility a security interest in all of [Oceanic's] tangible and intangible property. A security interest in [Oceanic's] stock will also be granted to these Lenders." Thus, the Proposed Financial Transactions, as it pertains to the Secured Notes and the New Credit Facility, trigger the requirements under HRS § 269-19.

Upon review and based on Oceanic's representations describing the Proposed Financial Transactions, we find the following: (1) these transactions will strengthen Oceanic's ability to compete in the local exchange service market by providing access to greater financial resources; (2) access to these financial resources will allow Oceanic to respond to competitive pressures in the evolving telecommunications market and to continue to provide customers with full facilities-based competitive choice; and (3) these transactions are consistent with the public interest. Accordingly, we conclude the Proposed Financial Transactions that result in the encumbrance of Oceanic's assets should be approved, pursuant to HRS § 269-19.

B.

HRS § 269-17

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 twelve (12) months. This section permits the proceeds of such debt to be used only for the acquisition of property or for the construction, completion, extension, or improvement of or addition to the utility's facilities or service, or for the discharge or refunding of its obligations or reimbursement of funds expended for the foregoing described purposes. We may approve the issuance of debt obligations if we find that such an issuance will not have a material adverse effect on the public utility's operations.

As previously stated, Oceanic will be executing guarantees of both the Secured Notes and the New Credit Facility, all of which are payable at periods of more than twelve (12) months from the issuance and that the guarantees are considered to be "other evidence of indebtedness," therefore, approvals of these transactions are required under HRS § 269-17.

HRS § 269-16.9(e) 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 waive the applicability of any of the provisions of HRS chapter 269 or any rule, upon a determination that such a waiver is in the public interest.

Upon review of the record in this docket, particularly Oceanic's representations in this docket, we find the following: (1) that many of the telecommunications services currently provided by Oceanic are competitive; (2) that although the proceeds from the Proposed Financial Transactions, described

above, may be used for purposes not permitted by statute (i.e., working capital), the Proposed Financial Transactions will have little, if any, effect on Oceanic's customers in Hawaii; (3) that the Proposed Financial Transactions, described above, will not have a material adverse effect on Oceanic's public utility operations; (4) that the Proposed Financial Transactions are consistent with the public interest; and (5) that competition, in this instance, will serve the same purpose as public interest regulation.

Based on the foregoing, we conclude that Oceanic's request to approve the Proposed Financial Transactions, described above, should be granted, pursuant to HRS § 269-17. Further, to the extent that the proceeds from the Proposed Financial Transactions are used for purposes other than those permitted by HRS § 269-17, we conclude that the applicability of that section should be waived on the condition that such proceeds will be used for public utility purposes.

C.

HRS § 269-7

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 all proposed financial transactions of the parent entity or related subsidiaries of a regulated public utility under HRS



§ 269-7(a).<sup>6</sup> See, *In re WilTel Communications, LLC*, Docket No. 03-0367, Decision and Order No. 20677 (November 25, 2003). Thus, the Proposed Financial Transactions as they relate to transactions of Oceanic's parent entity or related subsidiaries (i.e., issuance of the Unsecured Notes by TWTH) fall under the purview of HRS § 269-7(a).

Upon review of the record in this docket, particularly Oceanic's representations,<sup>7</sup> we find that the Proposed Financial Transactions will not adversely affect Oceanic's fitness, willingness, and ability to provide intrastate telecommunications services in the State, as authorized by the commission. The Proposed Financial Transactions are therefore reasonable and in the public interest. Accordingly, we conclude that the Proposed Financial Transactions should be approved, pursuant to HRS § 269-7(a).

---

<sup>6</sup>Under HRS § 269-7(a), the commission will approve the proposed financial transactions if it is reasonable and consistent with the public interest. *In re ITC^DeltaCom Communications, Inc. et al.*, Docket No. 02-0345, Decision and Order No. 19874 (December 13, 2002); *In re Time Warner Telecom of Hawaii, L.P., dba Oceanic Communications et al.*, Docket No. 00-0354, Decision and Order No. 18220 (November 30, 2000); and *In re Time Warner Telecom of Hawaii, L.P., dba Oceanic Communications*, Docket No. 00-0047, Decision and Order No. 17662 (April 10, 2000). The transactions are reasonable and consistent with the public interest if they will not adversely affect the carrier's fitness, willingness, and ability to provide intrastate telecommunications services in the State, as authorized by the commission. See, *In re Ionex Telecommunications, Inc., et al.*, Docket No. 99-0223, Decision and Order No. 17369 (November 8, 1999).

<sup>7</sup>Oceanic represents that the proceeds arising out of the Proposed Financial Transactions will "strengthen [Oceanic's] competitive position by providing financial flexibility" and they "would have a minimal negative impact, if at all, on [Oceanic's] Hawaii customers."

D.

Waiver of Other Requirements

In an effort to meet Oceanic's expedited request and recognizing that time is of the essence to consummate the above-referenced Proposed Financial Transactions, we find that the waiver of HAR §§ 6-61-101 and 6-61-105 will serve the same purpose as public interest regulation, particularly in light of our finding above that the Proposed Financial Transactions are reasonable and consistent with the public interest. *In re Teligent Services, Inc. and TAC License Corp.*, Docket No. 01-0392, Decision and Order No. 19100 (December 10, 2001). Thus, the commission concludes that the applicable filing requirements of HAR §§ 6-61-101 and 6-61-105, to the extent that Oceanic's application does not meet all of the filing requirements should be waived, pursuant to HRS § 269-16.9(e), provided that Oceanic notify the commission and the Consumer Advocate in writing the date(s) the Proposed Financial Transactions have been consummated.

IV.

Orders

THE COMMISSION ORDERS:

1. The Proposed Financial Transactions, described in the application, to the extent that they result in the encumbrance of Oceanic's assets, are approved, pursuant to HRS § 269-19.

2. The Proposed Financial Transactions, described in the application, to the extent that they result in Oceanic issuing other evidence of indebtedness, are approved, pursuant to HRS § 269-17. To the extent that the proceeds from these transactions are used for purposes other than those permitted under HRS § 269-17, the applicability of that section is waived on the condition that such proceeds will be used for public utility purposes.

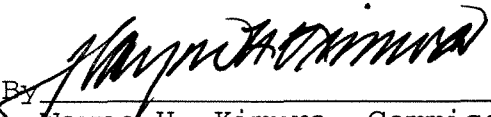
3. The Proposed Financial Transactions, described in the application, as they relate to transactions of Oceanic's parent entity or related subsidiaries, are approved, pursuant to HRS § 269-7(a).

4. To the extent that the application does not contain all of the information required under either HAR §§ 6-61-101 or 6-61-105 filing requirements, the applicability of those provisions is waived, pursuant to HRS § 269-16.9(e), provided that Oceanic notify the commission and the Consumer Advocate in writing the date(s) the Proposed Financial Transactions have been consummated.

DONE at Honolulu, Hawaii this 31st day of March, 2004.

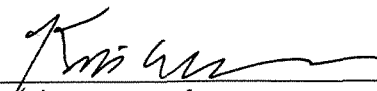
PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By   
Carlito P. Caliboso, Chairman

By   
Wayne H. Kimura, Commissioner

By   
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:

  
Kris N. Nakagawa  
Commission Counsel

04-0036.eh

## Time Warner Telecom Inc. Subsidiary Structure

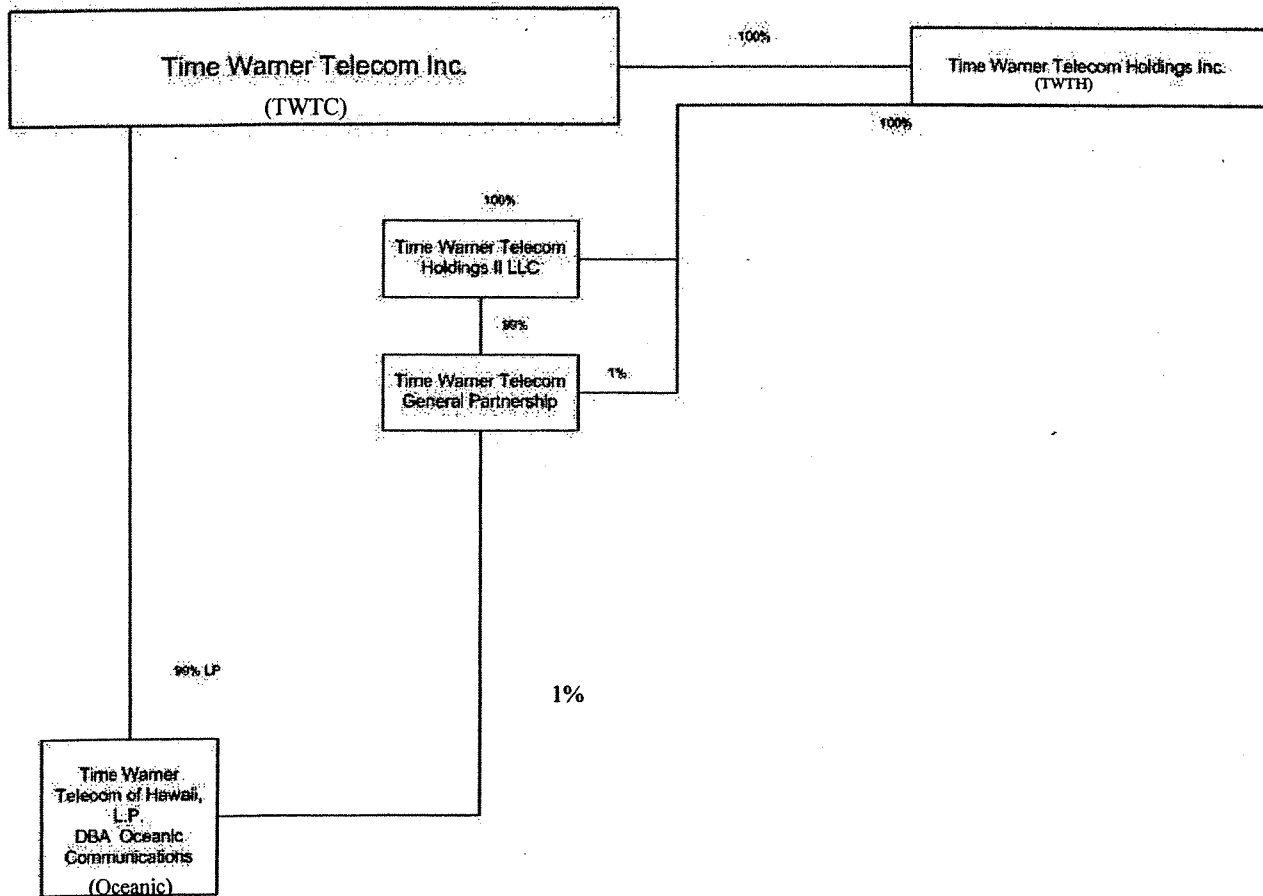


EXHIBIT "A"

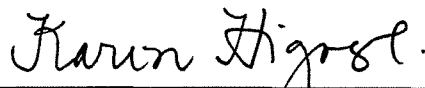
CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 20880 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

ROCHELLE D. JONES  
VICE PRESIDENT - REGULATORY  
TIME WARNER TELECOM  
14 Wall Street  
New York, NY 10005

J. DOUGLAS ING, ESQ.  
PAMELA J. LARSON, ESQ.  
WATANABE ING KAWASHIMA & KOMEIJI LLP  
999 Bishop Street, 23<sup>rd</sup> Floor  
Honolulu, HI 96813

  
\_\_\_\_\_  
Karen Higashi

DATED: March 31, 2004