

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Petition of )  
 )  
 Z-TEL COMMUNICATIONS, INC. )  
 )  
 For Authority to Provide Its )  
 Security in Connection with New )  
 Financing. )  
 \_\_\_\_\_ )

DOCKET NO. 04-0059

DECISION AND ORDER NO. 20980

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

2004 MAY 17 A 9:43

RECEIVED

Filed May 14, 2004

At 10:00 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



Transaction, subject to certain qualifications, discussed in further detail below.

II.

Background

A.

Description of Z-Tel

Z-Tel is a Delaware corporation and a wholly-owned direct subsidiary of Z-Tel Technologies, Inc., a publicly held corporation. Z-Tel is presently authorized to provide long distance telecommunications services nationwide, and competitive local exchange services in 48 states including the State of Hawaii ("State").<sup>2</sup>

B.

Proposed Financial Transaction

The Proposed Financial Transaction involves Z-Tel's plan to incur indebtedness in connection with a Revolving Credit and Security Agreement ("Agreement") consisting of up to a \$25 million Revolving Credit Facility ("Credit Facility"). The Credit Facility will be secured by the assets of Z-Tel, Z-Tel Technologies, Inc., and various other subsidiaries of Z-Tel Technologies, Inc. (individually, "Borrower", and

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<sup>2</sup>Z-Tel is authorized to provide intrastate telecommunications services in the State as a reseller and a facilities-based carrier. See Decision and Order No. 19318, filed on April 19, 2002, in Docket No. 01-0428; and Decision and Order No. 16961, filed on April 29, 1999, in Docket No. 99-0047.

collectively, "Borrowers"). The anticipated terms of the Proposed Financial Transaction are as follows:

1. Lender: Textron Financial Corporation ("Lender");
2. Agreement Amount: Up to \$25 million;
3. Maturity: 36 months commencing on the date of the Agreement;
4. Interest: Interest will accrue at the interest rate, which is defined as a variable rate, adjusted monthly, equal to the prime rate plus 2 per cent. The prime rate is defined as for any month the rate of interest per annum announced or quoted by JPMorgan Chase Bank on the last day of the preceding month as its prime rate for commercial loans;
5. Security: To secure the Credit Facility, each Borrower, including Z-Tel, will grant the Lender a security interest in and collaterally assign all of their personal property assets and the proceeds and products thereof, including a pledge of subsidiary corporation shares; and
6. Use of Proceeds: It is intended that the net proceeds of the proposed financing will be used by Z-Tel for legal and proper business purposes.

Z-Tel represents that approval of the petition (1) "will serve the public interest by enhancing the ability of Z-Tel to grow and compete in the highly competitive markets for telecommunications services in Hawaii and nationwide[;]" and (2) "is not expected to directly affect in any way the rates or services of Z-Tel or its affiliates, or result in any change in control of Z-Tel or its affiliates[.]" Z-Tel further states that because it has no customers in Hawaii, it is improbable that the consummation of the Proposed Financial Transaction "could have even minimal adverse effects upon consumers in Hawaii" because it

has no customers for its intrastate telecommunications services in Hawaii.

C.

Consumer Advocate's Position

The Consumer Advocate states that it does not object to Z-Tel's request for commission approval of the Proposed Financial Transaction, described above, subject to certain qualifications. In particular, the Consumer Advocate recommends that the commission require Z-Tel to submit copies of the following documentation to the commission and the Consumer Advocate within thirty (30) days of the date of this decision and order:

1. A copy of Z-Tel's revised tariffs required under Decision and Order No. 19318, filed on April 19, 2002, in Docket No. 01-0428; and
2. A copy of the executed debt financing documents to substantiate the underlying transaction in this docket.

In its SOP, the Consumer Advocate further mentions that it recognizes that "the entry of many telecommunications service providers in the Hawaii market" will "serve to mitigate any traditional public utility regulatory concerns" regarding the Proposed Financial Transaction. Therefore, if there are any adverse consequences from the Proposed Financial Transaction, "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. 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 expending 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.

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).

Upon a review of the record, particularly Z-Tel's representations, we find that the Proposed Financial Transaction falls under the purview of HRS §§ 269-17 and 269-19. However, we find, at this time, that the telecommunications services currently provided by Z-Tel are fully competitive, and that Z-Tel is a non-dominant carrier in Hawaii. We also find that the Proposed Financial Transaction 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>3</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 Z-Tel's petition fails to meet any of these filing requirements.

As to the Consumer Advocate's recommendations concerning the filing of certain documents, we agree with the recommendations, in part. Our records indicate that Z-Tel submitted its revised tariffs to the commission on August 27, 2002, and served the Consumer Advocate two (2) copies of such submission that same day, as required under Decision and Order No. 19318, filed on April 19, 2002, in Docket No. 01-0428. Therefore, since the first condition has been satisfied, we will only adopt the Consumer Advocate's second recommendation concerning the submission of copies of the executed debt financing documents to substantiate the underlying Proposed Financial Transaction in this docket, and will direct Z-Tel to

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<sup>3</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 Z-Tel'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 Z-Tel, as a basis for not filing an application or petition regarding similar transactions that fall within the purview of these statutes.

submit copies of such 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:

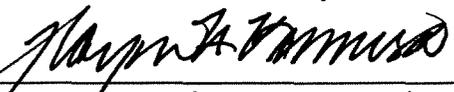
1. The provisions of HRS §§ 269-17 and 269-19, to the extent applicable, are waived with respect to the Proposed Financial Transaction, described in Z-Tel's petition, filed on March 17, 2004, and amended on April 14, 2004.

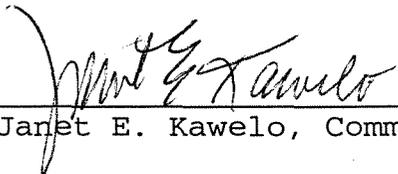
2. HAR §§ 6-61-101 and 6-61-105 filing requirements, to the extent applicable, are waived. Nonetheless, Z-Tel shall submit copies of the executed debt refinancing documents relating to the Proposed Financial Transaction to the commission and the Consumer Advocate within thirty (30) days of the date of 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 14th day of May, 2004.

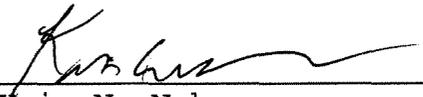
PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By   
Carlito P. Caliboso, Chairman

By   
Wayne H. Kimura, Commissioner

By   
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:

  
Kris N. Nakagawa  
Commission Counsel

04-0059.eh

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 20980 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: May 14, 2004