

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
)
TELIGENT SERVICES, INC. and ASPEN)
PARTNERS - SERIES A, A SERIES OF)
ASPEN CAPITAL PARTNERS, L.P.)
)
For Exemption, or in the)
Alternative, for Authorization to)
Consummate Certain Stock Transfers)
Resulting in the Change in Control)
Of the Parent Entity.)
_____)

DOCKET NO. 04-0078

DECISION AND ORDER NO. 21053

RECEIVED
2004 JUN 15 A 8:13
DIV. OF CONSUMER ADVOCACY
DEPT. OF COMMERCE AND
CONSUMER AFFAIRS
STATE OF HAWAII

Filed June 14, 2004

At 1 o'clock P.M.

Michen S.U.M. Kau
for Chief Clerk of the Commission

ATTEST: A True Copy
KAREN HIGASHI
for Chief Clerk, Public Utilities
Commission, State of Hawaii.

Michen S.U.M. Kau

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
TELIGENT SERVICES, INC. and ASPEN)
PARTNERS - SERIES A, A SERIES OF)
ASPEN CAPITAL PARTNERS, L.P.)
For Exemption, or in the)
Alternative, for Authorization to)
Consummate Certain Stock Transfers)
Resulting in the Change in Control)
Of the Parent Entity.)

Docket No. 04-0078

Decision and Order No. 21053

DECISION AND ORDER

I.

Introduction

TELLIGENT SERVICES, INC. ("TSI") and ASPEN PARTNERS -
SERIES A, A SERIES OF ASPEN CAPITAL PARTNERS, L.P. ("Aspen
Series A") (collectively, "Applicants") jointly request the
commission to issue an order waiving any requirement for approval
of the stock transaction resulting in the change in control of
TSI's parent entity ("Proposed Financial Transaction").¹ Applicants
make their request pursuant to Hawaii Revised Statutes ("HRS")
§ 269-16.9(e) and Hawaii Administrative Rules ("HAR") § 6-80-135.
In the alternative, Applicants request that the commission approve
the Proposed Financial Transaction on an expedited basis no later
than May 31, 2004. If the commission is unable to approve the
Proposed Financial Transaction by said date, Applicants further

¹Applicants' application, filed on April 22, 2004.

request for approval of the Proposed Financial Transaction
nunc pro tunc.

Applicants served the DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY ("Consumer Advocate") copies of the application. The Consumer Advocate, by its position statement filed on May 27, 2004, objects to Applicant's request for waiver. However, it does not object to the approval of the Proposed Financial Transaction, under HRS § 269-7(a), subject to one qualification described below in Section II.C.

II.

Background

A.

Description of Applicants and Related Entities

TSI is a Delaware corporation that holds a certificate of authority ("COA") to provide intrastate telecommunications services within the State of Hawaii ("State") as a facilities-based provider and as a reseller. It currently offers resold long distance services in all fifty states and the District of Columbia. It also provides private line and broadband data services using fixed microwave facilities in seventy-four (74) markets in the United States. Teligent Inc. ("Teligent"), TSI's parent entity, is

a privately held Delaware corporation with its principal place of business located in Herndon, Virginia.²

Aspen Series A is a "series" of Aspen Capital Partners, L.P., a Delaware limited partnership. Aspen Series A is a unique entity separate and distinct from Aspen Capital Partners, L.P. with its own taxpayer identification number, rights, powers, profits, losses, assets and liabilities. Aspen Series A currently holds a minority 21.89 per cent ownership interest in Teligent.

B.

Description of Proposed Financial Transaction

On September 12, 2002, Teligent formally emerged from Chapter 11 bankruptcy with its former primary secured creditors and other entities as shareholders. Aspen Series A, a minority shareholder of Teligent, now seeks to become the majority shareholder of Teligent by purchasing the shares of the majority shareholders³ and other current Teligent shareholders ("Proposed Financial Transaction"). Certain current shareholders, including several of the Transferring Creditors, desire to sell

²TSI's Hawaii operating authority originates from the authority granted to Teligent in Decision and Order No. 16190, filed on February 6, 1998, in Docket No. 98-0001. In 2000, the commission authorized the transfer of Teligent's COA to TSI, its newly formed operating subsidiary. Decision and Order No. 17577, filed on March 2, 2000, in Docket No. 99-0173 and Order No. 17840, filed on July 18, 2000, in Docket No. 99-0173.

³Teligent's majority shareholders, the former primary secured creditors, include J.P. Morgan & Chase Co., Bank of America, N.A., TD Bank Financial Group, Barclays Bank PLC, and VanKampen Senior Loan Fund ("Transferring Creditors").

their Teligent shares to recover some of the value related to debts discharged and/or restructured during Teligent's bankruptcy proceedings. Upon completion of the Proposed Financial Transaction, Aspen Series A will hold a 97.19 per cent ownership interest in Teligent. Accordingly, the ultimate control of TSI will indirectly transfer to Aspen Series A ("Indirect Transfer of Control"). Applicants represent, among other things, that the Indirect Transfer of Control (1) will neither affect the structure or operation of TSI nor result in a change in rates, terms, or conditions of its service offerings, and (2) will be transparent to TSI's customers in the State. Applicants, therefore, do not contemplate any interruption or degradation of their service offerings. They contend that the consummation of the Proposed Financial Transaction will provide TSI with greater access to capital which will allow TSI to effectively compete in the Hawaii market.

C.

Consumer Advocate's Position

In its May 27, 2004 Statement of Position ("SOP"), the Consumer Advocate contends that Applicants' request for a waiver should be denied, and that the commission should assert authority over the Proposed Financial Transaction for the purpose of protecting the public interest.

Notwithstanding its objection to Applicants' request for a waiver, the Consumer Advocate does not object to commission approval of the Proposed Financial Transaction, pursuant to HRS

§ 269-7(a), provided copies of the stock purchase agreement are submitted to the commission and the Consumer Advocate within thirty (30) days of the date of this decision and order.

III.

Discussion

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 the proposed financial transactions of the parent entity of a regulated public utility under HRS § 269-7(a). Under this section, the commission will approve the proposed financial transaction if it is reasonable and consistent with the public interest.⁴

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. Similarly, HAR § 6-80-135 permits us to waive the applicability of any of the provisions of HRS chapter 269 or any rule (except provisions of HRS § 269-34 or provisions of HAR chapter 6-80 that implement HRS § 269-34), upon a determination that a waiver is in the public interest.

⁴See, Decision and Order No. 19874, filed on December 13, 2002, in Docket No. 02-0345.

Upon review of the record⁵ in this docket, we find the following: (1) that much of the telecommunications services currently provided by TSI are competitive; (2) that TSI is a non-dominant carrier in Hawaii; (3) that the Proposed Financial Transaction is consistent with the public interest; and (4) that competition, in this instance, will serve the same purpose as public interest regulation. In its May 27, 2004 SOP, the Consumer Advocate also "recognizes the entry of many telecommunications service providers in the Hawaii market" [and that the] market place, it is assumed, will then serve to mitigate any traditional public utility regulatory concerns regarding the proposed change in control of the parent entity. Therefore, if there are any adverse consequences from the [P]roposed [Financial] [T]ransaction, consumers in Hawaii will have the option of selecting another service provider."

Based on the foregoing, the commission finds and concludes that the requirements of HRS § 269-7(a) should be waived, to the extent applicable, pursuant to HRS § 269-16.9(e) and HAR § 6-80-135.⁶ We will not adopt the Consumer Advocate's recommendation to deny Applicant's request for waiver, particularly because the Consumer Advocate did not sufficiently state the

⁵The commission also takes administrative notice of any other commission records relating to TSI and/or Teligent.

⁶At the same time, the commission will continue to examine a utility's application on a case-by-case basis to determine whether the applicable requirements of HRS § 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.

reasons for denying such waiver. Nonetheless, we will adopt the Consumer Advocate's recommendations, in part, by requiring Applicant to submit copies of the stock purchase agreement to the commission and the Consumer Advocate within thirty (30) days of the date of this decision and order. If necessary and in accordance with HAR § 6-61-50, any party in this docket may file a stipulation for protective order for commission review and approval to protect the confidentiality of information that is protected from disclosure under HRS chapter 92F, or any other law.

IV.

Orders

THE COMMISSION ORDERS:


1. The requirements of HRS § 269-7(a), to the extent applicable, are waived with respect to the Proposed Financial Transaction described in the instant application, filed on April 22, 2004.

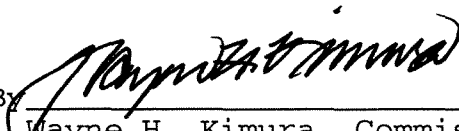
2. Within 30 days of the date of this decision and order, Applicant shall submit to the commission and the Consumer Advocate copies of the stock purchase agreement. If necessary and in accordance with HAR § 6-61-50, any party in this docket may file a stipulation for protective order for commission review and approval to protect the confidentiality of information that is protected from disclosure under HRS chapter 92F, or any other law.

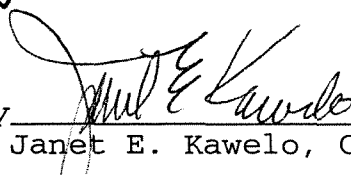
3. Applicants shall conform to all of the commission's order(s) set forth above. Failure to adhere to the commission's order(s) shall constitute cause to void this decision and order, and may result in further regulatory actions, as authorized by law.

DONE at Honolulu, Hawaii this 14th day of June, 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

04-0078.eh

CERTIFICATE OF SERVICE

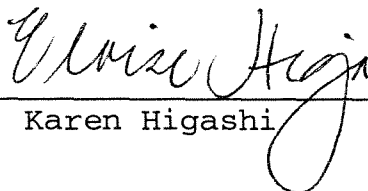
I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 21053 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
DIVISION OF CONSUMER ADVOCACY
P. O. Box 541
Honolulu, HI 96809

RAUL R. RODRIGUEZ, ESQ.
DAVID S. KEIR, ESQ.
LEVANTHAL SENTER & LERMAN PLLC
2000 K Street, NW, Suite 600
Washington, DC 20006

MARC E. ROUSSEAU, ESQ.
CADES SCHUTTE LLP
1000 Bishop Street, Suite 1200
Honolulu, HI 96813

TOM W. DAVIDSON, ESQ.
AKIN GUMP STRAUSS HAUER & FELD LLP
1333 New Hampshire Ave. N.W.
Washington, DC 20036



For Karen Higashi

DATED: June 14, 2004