

II.

Background

A.

Overview of Subject Entities and Proposed Transaction

Startec is a Delaware corporation with its principal place of business located in Potomac, Maryland. Startec is a wholly-owned subsidiary of Startec Global Communications Corporation, a Delaware corporation whose principal business is in telecommunications. Presently, Startec is authorized by a commission-issued certificate of authority ("COA") to provide resold intrastate telecommunications services within the State of Hawaii ("State").¹

Teligent is also a Delaware corporation. Its principal place of business is located in Herndon, Virginia. Teligent is a wholly-owned subsidiary of Teligent, Inc., a privately held Delaware corporation whose principal business is also in telecommunications. Similar to Startec, Teligent is authorized by a commission-issued COA to provide resold intrastate telecommunications services within the State.²

¹*In re Startec Global Licensing Company*, Docket No. 99-0193, Decision and Order No. 17371 (November 9, 1999). See also, *In re Startec Global Licensing Company*, Docket No. 00-0207, Decision and Order No. 18362 (February 7, 2001); and *In re Startec Global Communications Corporation et al.*, Docket No. 02-0381, Decision and Order No. 19877 (December 16, 2002).

²*In re Teligent Inc. and Teligent Services, Inc.*, Docket No. 99-0173, Decision and Order No. 17577 (March 2, 2000); and *In re Teligent Inc. and Teligent Services, Inc.*, Docket No. 99-0173, Order No. 17840 (July 18, 2000). See also, *In re Teligent Services, Inc et al.*, Docket No. 04-0078, Decision and Order No. 21053 (June 14, 2004).

In this docket, Petitioners are seeking a waiver of the requirements of HRS § 269-16.92 so that Teligent may transfer its commercial long distance customer accounts in Hawaii to Startec ("Proposed Transaction")³ without securing authorization and verification from each customer, as required by HRS § 269-16.92. Instead, Petitioners represent that its Hawaii customers will be given not less than thirty (30) days prior written notice of the proposed transfer of Teligent's commercial long distance customers to Startec in compliance with the Federal Communications Commission's rules governing carrier-to-carrier customer base transfers.⁴ The written notice will also provide Hawaii customers the option to choose a different long distance carrier if they choose to do so.

B.

Consumer Advocate's Position

In its Statement of Position, the Consumer Advocate recognizes that "the entry of many telecommunications service providers in the Hawaii market", and that the "market, it is assumed, will thus serve to mitigate any traditional public utility regulatory concerns regarding the [Proposed

³The commission will not review and consider the proposed transfer of Teligent's commercial long distance customers to Startec as it has traditionally held that the acquisition of a carrier's customers does not require commission approval. *In re Cable & Wireless USA, Inc. and Primus Telecommunications, Inc.*, Docket No. 02-0349, Decision and Order No. 19779 (November 18, 2002).

⁴See 47 C.F.R. § 64.1200(e).

Transaction].” Accordingly, if there are any adverse consequences from the Proposed Transaction, Hawaii consumers will “have the option of selecting another service provider upon notice that will be sent out no less than 30 days before the execution of the transfer.”

Based on the above, the Consumer Advocate states that it does not object to Petitioners’ request for commission approval of the Proposed Transaction, provided that written notification to Teligent’s customers includes the commission’s business address and telephone number to the affected Hawaii-based customers, consistent with the intent of Hawaii Administrative Rules (“HAR”) § 6-80-107(4).⁵

III.

Discussion

HRS § 269-16.92 provides that “[n]o telecommunications carrier shall initiate a change in a subscriber’s selection or designation of a long-distance carrier without first receiving (1) a letter of agency or letter of authorization; (2) an electronic authorization by use of a toll-free number ; (3) an oral authorization verified by an independent third party; or (4) any other prescribed authorization.” As stated above, Petitioners request that the commission waive the requirements of HRS § 269-16.92.

⁵ See *In re WorldxChange Corp. and RSL Com U.S.A., Inc.*, Docket No. 02-0153, Decision and Order No. 19498 (August 1, 2002).

In support of this waiver request, Petitioners represent:

1. "Obtaining the authorization and verification from each of the affected Teligent customers would be a burdensome process and therefore impose an undue hardship on Petitioners."
2. "The affected customers will be notified in writing [(See customer notice letter - Exhibit A attached to Joint Petition)] of the transfer of their service to Startec and of their right to choose a different carrier pursuant to the applicable rule of the Federal Communications Commission ('FCC')."
3. "The legal rights of affected customers . . . will not be prejudiced by a waiver of the rule because Petitioners will comply with the FCC's rules governing this type of transaction, which are specifically designed to protect the rights of the customers."
4. Grant of this Joint Petition will be in the public interest by enhancing competitive choices for Hawaii consumers.
5. Hawaii consumers will continue to receive services "which will be consistent with the quality of services currently provided by Teligent and which will be supported by Startec's experienced and well-qualified management team."
6. The transfer of customers "will be virtually transparent to Hawaii [consumers] in terms of rates and terms and conditions of service that these customers currently receive."

As cited by Petitioners, HRS § 269-16.9(e) authorizes the commission 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.

Upon review of the record⁶ in this docket, we find the following: (1) that much of the telecommunications services currently provided by Startec and Teligent are competitive; (2) that Startec and Teligent are non-dominant carriers in Hawaii; (3) that the Proposed Transaction is consistent with the public interest; and (4) that competition, in this instance, will serve the same purpose as public interest regulation

Based on the foregoing, the commission finds that Petitioners request for a waiver of the HRS § 269-16.92 requirements is reasonable and in the public interest. Thus, the commission concludes that the requirements of HRS § 269-16.92, to the extent applicable, should be waived, pursuant to HRS § 269-16.9(e) and HAR § 6-80-135.⁷

Notwithstanding the waiver of the requirements of HRS § 269-16.92, we will adopt the Consumer Advocate's recommendation by requiring Petitioners to submit copies of the written notification to Teligent's customers, which includes additional information as specifically described in Section II.B. of this

⁶ The commission also takes administrative notice of any other commission records relating to Teligent and Startec.

⁷ 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 § 269-16.92 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 or petition involving similar transactions or circumstances.

decision and order, to the commission and the Consumer Advocate within thirty (30) days from the issuance date of this decision and order. The record also indicates that Startec is delinquent in its annual telecommunications relay service ("TRS") contribution for the period July 1, 2004 to June 30, 2005, established pursuant to: (1) Act 50, Session Laws of Hawaii 2003; and (2) Order No. 21049, filed on June 10, 2004, in Docket No. 04-0070. Accordingly, we will also require Startec to pay its annual TRS contribution to the Hawaii TRS Administrator, NECA Services, Inc. within thirty (30) days of the date of this decision and order.

IV.

Orders

THE COMMISSION ORDERS:

1. The requirements of HRS § 269-16.92, to the extent applicable, are waived with respect to the Proposed Transaction, described in the instant Joint Petition.

2. Within thirty (30) days of the date of this decision and order, Petitioners shall submit copies of the written notification to Teligent's customers, which includes additional information as specifically described in Section II.B. of this decision and order, to the commission and the Consumer Advocate.

3. Within thirty (30) days from the date of this decision and order, Startec shall pay its annual TRS contribution for the period July 1, 2004 to June 30, 2005 to the Hawaii

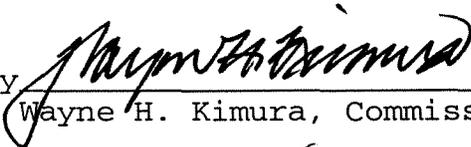
TRS Administrator, NECA Services, Inc. Written proof of payment shall be sent to the commission.

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

DONE at Honolulu, Hawaii DEC 20 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

04-0275.eh

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 21500 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

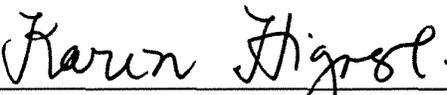
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DATED: DEC 20 2004