

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Notice of)
AMERIVISION COMMUNICATIONS, INC.)
For Transfer of Control of)
AmeriVision Communications, Inc.)
To Nonprofit and Affinity)
Marketing, Inc.)
_____)

DOCKET NO. 05-0023

DECISION AND ORDER NO. 21800

Filed May 3, 2005
At 3 o'clock P.M.

Karen Higashi
Chief Clerk of the Commission

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

2005 MAY -5 A 7:59

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

K. Higashi

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Docket No. 05-0023

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DECISION AND ORDER

By this Decision and Order, the commission waives the applicable requirements of Hawaii Revised Statutes ("HRS") § 269-7(a) relating to the transfer of control of AMERIVISION COMMUNICATIONS, INC., dba LIFELINE COMMUNICATIONS ("AmeriVision") to NONPROFIT AND AFFINITY MARKETING, INC. ("NAM") (collectively, "Petitioners") in connection with a reorganization plan confirmed by the United States Bankruptcy Court ("Bankruptcy Court") on December 17, 2004 (Case No. 03-23388-NLJ) ("Transfer of Control"), subject to one condition, noted below.¹

I.

Introduction

Petitioners served a copy of the Notice on the DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY ("Consumer Advocate"). The Consumer Advocate

¹On January 31, 2005, Petitioners filed a "Notice of Change in Ownership" by AmeriVision ("Notice"). As discuss below, because the commission views the Transfer of Control as a transaction subject to HRS § 269-7(a), we will treat the Notice as a Petition for commission approval of such transaction.

filed its Statement of Position on February 17, 2005 ("Statement of Position") recommending that the commission waive its regulatory requirements authority under HRS § 269-7(a).

II.

Background

A.

Overview of Subject Entities

AmeriVision is an Oklahoma corporation with its principal office and place of business located in Oklahoma City, Oklahoma. It presently is a public utility that holds a commission-issued certificate of authority ("COA") to provide intrastate telecommunications services within the State of Hawaii ("State" or "Hawaii") as a reseller.²

NAM is a Delaware corporation, with its principal office and place of business located in Washington, District of Columbia.

B.

Description of Transfer of Control

The Transfer of Control will result in NAM owning one hundred per cent (100%) of AmeriVision upon the completion of the Bankruptcy Court proceedings. As a result, AmeriVision will become a wholly-owned subsidiary of NAM and will continue to be the regulated telecommunications carrier providing intrastate telecommunications services in the State as a reseller.

²Decision and Order No. 17490, filed on January 24, 2000, in Docket No. 99-0204.

Petitioners represent that the Transfer of Control "will be transparent to the [c]ustomers of AmeriVision" and they "will continue to contact AmeriVision in the same manner as they currently are for new services and customer service/billing issues."³

B.

Consumer Advocate's Position

The Consumer Advocate recommends that the commission waive the regulatory requirement under HRS § 269-7(a) because:

1. AmeriVision's customers are not expected to be negatively impacted as a result of the change in ownership since AmeriVision will continue to be the authorized telecommunications service provider in the State;
2. AmeriVision is a reseller of intrastate telecommunications services, which has been deemed fully competitive, and is not a dominant service provider in the State.; and
3. The entry of many telecommunications service providers in the Hawaii market may serve to mitigate any traditional public utility regulatory concerns that may result from the proposed transfer of ownership affecting AmeriVision. Therefore, if there are any adverse consequences from the

³Petition at 2.

proposed transaction, consumers in Hawaii will have the option of selecting another service provider.⁴

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 proposed transactions of the parent entity or the affiliates of a regulated public utility under HRS § 269-7(a).

At the outset, we conclude that the Transfer of Control, described above, should be reviewed under HRS § 269-7(a). Notwithstanding this regulatory requirement, HRS § 269-16.9 also permits the commission to waive regulatory requirements applicable to telecommunications providers if we determine that competition will serve the same purpose as public interest regulation. Specifically, HAR § 6-80-135 permits the commission 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.

⁴Statement of Position at 2-3 (footnotes omitted).

Upon review of the record in this docket⁵, particularly Petitioners' representations, we find the following: (1) the telecommunications services currently provided by AmeriVision are competitive; (2) AmeriVision is a non-dominant carrier in Hawaii; (3) the Transfer of Control is consistent with the public interest; and (4) competition, in this instance, will serve the same purpose as public interest regulation.

Based on the foregoing, the commission, on its own motion, will waive the requirement of HRS § 269-7(a), in this instance, regarding the Transfer of Control.⁶ Nonetheless, the commission expects that under the new ownership, described herein, AmeriVision will request for either commission approval or waivers under the applicable statutory provisions for any future transactions of AmeriVision, its parent entity or its other affiliates that may directly or indirectly affect AmeriVision.

Finally, our review of the record indicates that AmeriVision is delinquent in the filing of its annual financial report due on March 31, 2005 ("2004 AFR") in accordance with HAR § 6-80-91. Accordingly, we conclude that our waiver in this Decision and Order should be subject to the condition that

⁵We also take official notice of all records relating to AmeriVision, pursuant to HAR § 6-61-48.

⁶At 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 § 269-7(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 or petition involving similar transactions or circumstances.

AmeriVision files its 2004 AFR within thirty (30) days of the date of this Decision and Order.

IV.

Orders

THE COMMISSION ORDERS:

1. The regulatory requirement of HRS § 269-7(a), in this instance, is waived with respect to the Transfer of Control, described in this docket.

2. The waiver, noted above and granted in this Decision and Order, is subject to the condition that that AmeriVision files its 2004 AFR within thirty (30) days of the date of this Decision and Order.

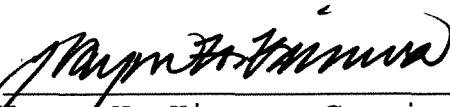
3. AmeriVision shall conform with all of the commission's orders. Failure to adhere to the commission's orders shall constitute cause to void this Decision and Order, and may result in further regulatory actions, as authorized by law.

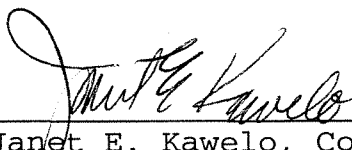
DONE at Honolulu, Hawaii

MAY - 3 2005


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
05-0023.ac

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 21800 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
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1201 Pennsylvania Avenue, NW, Suite 300
Washington, D.C. 20004



Karen Higashi

DATED: MAY - 3 2005