

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
MOBILEPRO CORP. and)
AMERICAN FIBER NETWORK, INC.)
For Authority to Transfer Control.)

Docket No. 05-0172

Decision and Order No. 22074

DECISION AND ORDER

The commission waives the requirements of Hawaii Revised Statutes ("HRS") §§ 269-19 and 269-7(a), to the extent applicable, for the proposed transfer of control of AMERICAN FIBER NETWORK, INC. ("AFN") to MOBILEPRO CORP. ("Mobile") (collectively, "Applicants").

I.

Background

Applicants request the commission's approval to transfer control of AFN to Mobile.¹ In essence, Applicants propose to complete a transaction upon which AFN will become a wholly-owned subsidiary of Mobile. Applicants make their request pursuant to HRS § 269-19.

Applicants served copies of the Joint Application upon the Department of Commerce and Consumer Affairs, Division of

¹Joint Application and Exhibits A - C, filed on July 11, 2005 (collectively, the "Joint Application").

Consumer Advocacy ("Consumer Advocate").² The Consumer Advocate does not object to Applicants' request to transfer control of AFN to Mobile.³

II.

Transfer of Control

Mobile is a Delaware, publicly-held corporation that offers and provides telecommunications services in numerous states through three (3) wholly-owned subsidiaries: CloseCall America, Inc., Affinity Telecom, Inc., and Davel Communications, Inc.⁴ Mobile itself does not offer any telecommunications services.

AFN is a Delaware corporation wholly-owned by Douglas Bethell. AFN is authorized to provide telecommunications services in at least thirty-five (35) states, including the State of Hawaii ("Hawaii" or "State"), plus the District of Columbia.⁵ In Hawaii, AFN is authorized to operate as a facilities-based carrier and reseller of intrastate telecommunications services.⁶

²See Applicants' Certificate of Service and written Verifications, filed on August 29, 2005, in response to the commission's directive.

³Consumer Advocate's Statement of Position, filed on October 4, 2005.

⁴Joint Application, Exhibit A.

⁵Id.

⁶See Docket No. 99-0344, Decision and Order No. 17387, filed on November 24, 1999; and Order No. 17456, filed on January 7, 2000.

Applicants have entered into an Agreement, dated June 30, 2005, by which AFN will merge into AFN Acquisition Corporation, a newly created, wholly-owned subsidiary of Mobile. AFN Acquisition Corporation will then change its name to AFN, which will survive the merger as a wholly-owned subsidiary of Mobile. Mr. Bethell, the current owner of AFN, will receive a combination of cash and Mobile stock as part of the transaction. Mr. Bethell will continue to run the day-to-day operations of AFN.

Charts depicting the pre- and post-organizational structures of AFN are attached to the Joint Application, and are attached to this Decision and Order as Exhibit 1.

HRS § 269-19 provides that no public utility shall sell, lease, assign, mortgage, or otherwise dispose of or encumber the whole or any part of its road, line, plant, system, or other property necessary or useful in the performance of its duties to the public, nor by any means, directly or indirectly, merge or consolidate with any other public utility, without first having secured from the commission "an order authorizing it so to do." Moreover, 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."

HRS § 269-16.9(e) authorizes the commission to waive regulatory requirements applicable to telecommunications providers if the commission determines that competition will

serve the same purpose as public interest regulation. Similarly, Hawaii Administrative Rules ("HAR") § 6-80-135 authorizes the commission to exempt or waive a telecommunications carrier or services from the provisions of HRS chapter 269 or any other telecommunications rule, upon a determination that the exemption or waiver is in the public interest.

Applicants represent that the transaction is consistent with the public interest:

1. AFN's customers will continue to receive telecommunications services under the same rates, terms, and conditions.

2. The transaction will be virtually transparent and not cause any service interruptions or impact AFN's daily operations in the State.

3. The transaction will combine the financial, operational, and managerial strengths of Mobile and AFN, enabling the new AFN to more effectively compete against competitive telecommunications carriers.

Based on Applicants' representations (see Paragraphs No. 1 to No. 3, above), the Consumer Advocate finds that: (1) the proposed transfer of control is not expected to negatively impact AFN's intrastate customers; (2) Mobile appears to possess the requisite technical, financial, and managerial abilities to provide the telecommunications services related to the transfer of control; and (3) the transfer of control is consistent with the public interest. Thus, the Consumer Advocate does not object

to the commission's approval of the transfer of control to Mobile.

Alternatively, if the commission is inclined to waive the requirements of HRS §§ 269-19 and 269-7(a), the Consumer Advocate supports such waiver in this instance, with the understanding that the commission also waive any applicable filing requirements for consistency purposes.

AFN is a non-dominant telecommunications carrier in the State, and the transfer of control will be seamless and transparent to AFN's customers, with no adverse impact. The commission finds that the transfer of control is consistent with the public interest, and that competition, in this instance, will serve the same purpose as public interest regulation.

Accordingly, the commission, on its own motion, will: (1) waive the requirements of HRS §§ 269-19 and 269-7(a), to the extent applicable, pursuant to HRS § 269-16.9(e) and HAR § 6-80-135; and (2) waive any filing requirements related to the transfer of control, to the extent applicable under HAR chapter 6-61.⁷

⁷At 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 §§ 269-19 and 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.

III.

Orders

THE COMMISSION ORDERS:

1. HRS §§ 269-19 and 269-7(a), to the extent applicable, are waived with respect to the transfer of control, described in the Joint Application, filed on July 11, 2005.

2. Any filing requirements related to the transfer of control, to the extent applicable under HAR chapter 6-61, are waived.

3. This docket is closed, unless ordered otherwise by the commission.

DONE at Honolulu, Hawaii OCT 14 2005.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By Carlito P. Caliboso
Carlito P. Caliboso, Chairman

By (EXCUSED)
Wayne H. Kimura, Commissioner

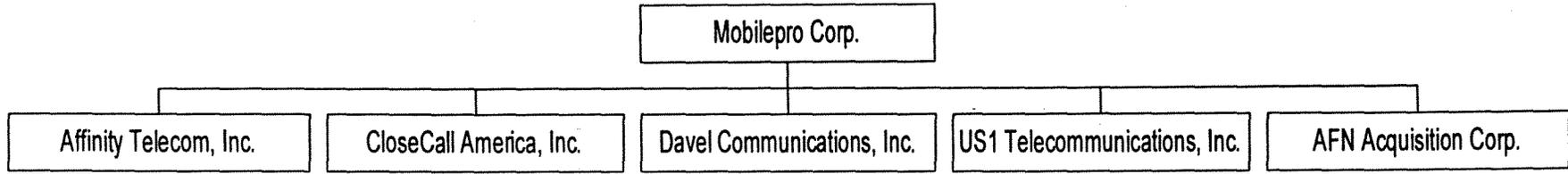
APPROVED AS TO FORM:

Michael Azama
Michael Azama
Commission Counsel

By Janet E. Kawelo
Janet E. Kawelo, Commissioner

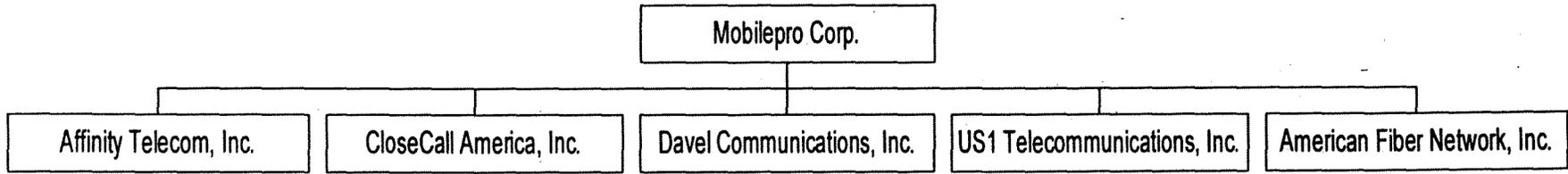
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Pre-Merger Organizational Structure



American Fiber Network, Inc.

Post-Merger Organizational Structure



CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 22074 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: OCT 14 2005