

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
BCN TELECOM, INC.)
For Approval of an Indirect)
Change of Control of Telecom)
Acquisition Company, LLC)
_____)

DOCKET NO. 2006-0010

DECISION AND ORDER NO. 22296

Filed Feb. 23, 2006
At 10:30 o'clock A.M.

Karen Higashi.
Chief Clerk of the Commission

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

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KAREN HIGASHI
Chief Clerk, Public Utilities
Commission, State of Hawaii.

K. Higashi.

BEFORE THE PUBLIC UTILITIES COMMISSION
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In the Matter of the Application of))	
BCN TELECOM, INC.)	Docket No. 2006-0010
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For Approval of an Indirect)	Decision and Order No. 22296
Change of Control of Telecom)	
Acquisition Company, LLC)	
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DECISION AND ORDER

By this Decision and Order, the commission waives the requirements of Hawaii Revised Statutes ("HRS") §§ 269-7(a) and 269-19 and Hawaii Administrative Rules ("HAR") §§ 6-61-101 and 6-61-105, to the extent applicable.

I.

Background

A.

Description of Subject Entities

BCN Telecom, Inc. ("BCN"), a New Jersey corporation, is presently authorized to provide resold telecommunications services in the State of Hawaii.¹ BCN is a non-dominant carrier that is authorized as a reseller of intrastate interexchange telecommunications services throughout the United States, and has

¹BCN was formerly known as NUI Telecom, Inc., which was granted a certificate of authority to provide intrastate telecommunications services in the State of Hawaii on a resold basis in Decision and Order No. 19838, filed on December 2, 2002, in Docket No. 02-0195.

resold and/or facilities-based local exchange authority in twenty-two (22) states.

BCN is solely owned by Telecom Acquisition Company, LLC ("TACO"), a New Jersey limited liability company.

Advance Capital Partners, LLC, JADM Partners, LP, Salvatore Tiano, and ELD Partners, LP (collectively, "Sellers") currently hold equity membership interests in TACO.

Richard Boudria is the President and CEO of BCN. He currently owns a 13% equity membership interest in TACO.

B.

Application

On January 19, 2006, BCN filed its Application seeking approval to consummate a transaction whereby TACO will acquire all of the membership interest of the Sellers ("Proposed Transaction").² Specifically, TACO will purchase and redeem 100% of the equity membership interests of the Sellers. BCN will continue to be solely owned by TACO before and after the Proposed Transaction. Upon consummation of the Proposed Transaction, Mr. Boudria will be the majority equity membership owner of TACO. Mr. Boudria will remain the President and CEO of BCN.

²BCN served a copy of the Application on the Division of Consumer Advocacy, Department of Commerce and Consumer Affairs ("Consumer Advocate"), an *ex officio* party to this docket pursuant to HRS § 269-51 and HAR § 6-61-62.

BCN states that the indirect transfer of control of the company is in the public interest. After the indirect transfer of control, BCN will continue to operate as it has in the past, using the same tariff, operating authority, and the same name. BCN intends to retain all key company personnel, including senior management personnel. According to BCN, "the transfer of ownership or control will be transparent to, and have no adverse impact upon the Company's customers. The benefit from increased economies of scale will permit the Company to operate more efficiently and thus to compete more effectively."³

In support of the Application, BCN attaches a copy of TACO's financial statements as of November 30, 2005.

BCN requests that the commission expedite its examination of the Proposed Transaction so that it can timely consummate the Proposed Transaction by March 1, 2006.

C.

Consumer Advocate's Statement of Position

On January 27, 2006, the Consumer Advocate filed its Statement of Position ("Statement of Position") stating that it does not object to either: (a) the commission approving the Proposed Transaction; or (b) the commission waiving its approval of the Proposed Transaction. If the commission approves the Proposed Transaction, the Consumer Advocate recommends that pursuant to HAR § 6-61-105(c)(2), to complete the record in this

³Application of BCN Telecom, Inc. For Approval of Indirect Change of Control of Telecom Acquisition Company, LLC, filed January 19, 2006 ("Application"), at 3.

proceeding, a copy of the final sales agreement executed between the Sellers and TACO be filed with the commission and the Consumer Advocate within thirty (30) days after the commission issues its Decision and Order. On the other hand, if the commission waives approval of the Proposed Transaction, then the Consumer Advocate recommends that the commission also waive the requirement to file a copy of the final sales agreement.

II.

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."

HRS § 269-19 provides that no public utility corporation shall "directly or indirectly, merge or consolidate with any other public utility corporation without first having secured from the . . . commission an order authorizing it so to do." (Emphasis added.) HRS § 269-19 also states: "Every such sale, lease, assignment, mortgage, disposition, encumbrance, merger, or consolidation, made other than in accordance with the order of the commission shall be void."

Having reviewed the record,⁴ the commission finds and concludes that the Proposed Transaction falls under the purview

⁴The commission takes official notice of all commission records relating to BCN, NUI Telecom, Inc., and TACO, pursuant to HAR § 6-61-48.

of HRS §§ 269-7(a) and 269-19. Notwithstanding these regulatory requirements, HRS § 269-16.9 also permits the commission to waive regulatory requirements applicable to telecommunications providers if it determines 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.

The commission finds that the telecommunications services currently provided by BCN are fully competitive, and BCN is a non-dominant carrier in Hawaii. The commission also finds that the Proposed 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 §§ 269-7(a) and 269-19 should be waived with regards to the matters in this docket, pursuant to HRS § 269-16.9 and HAR § 6-80-135.⁵ Similarly, based on the findings and conclusions stated above, the commission will also waive the provisions of HAR §§ 6-61-101

⁵The 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 §§ 269-7(a) and 269-19 should be waived. The commission's determination, in the instant case, of the applicability of HRS §§ 269-7(a) and 269-19 is based on the commission's review of the present Application. Thus, the commission's waiver in this instance of the applicability of HRS §§ 269-7(a) and 269-19 should not be construed by any public utility, including BCN and TACO, as a basis for not filing an application or petition regarding similar transactions that fall within the purview of these statutes.

and 6-61-105, to the extent that the Application fails to meet any of the filing requirements set forth therein.

III.

Orders

THE COMMISSION ORDERS:

1. The requirements of HRS §§ 269-7(a) and 269-19, to the extent applicable, are waived with respect to the Proposed Transaction.

2. The filing requirements of HAR §§ 6-61-101 and 6-61-105, to the extent applicable, are waived.

DONE at Honolulu, Hawaii FEB 23 2006.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By (EXCUSED)
Wayne H. Kimura, Commissioner

APPROVED AS TO FORM:

By 
Janet E. Kawelo, Commissioner


Kaiulani E.S. Kidani
Commission Counsel

2006-0010.eh

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 22296 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

PATRICK D. CROCKER, ESQ.
EARLY, LENNON, CROCKER & BARTOSIEWICZ, P.L.C.
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Kalamazoo, MI 49007



Karen Higashi

DATED: FEB 23 2006