

In the Matter of the Application of)
)
 SPRINT LONG DISTANCE, INC.)
)
 For a Waiver, or in the Alternative,)
 For Authorization of a Transfer)
 of Control of Sprint Long Distance,)
 Inc. from Sprint Nextel Corporation)
 to Embarq Corporation)
)

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Commission, State of Hawaii.
K. Higashida.

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)	
SPRINT LONG DISTANCE, INC.)	Docket No. 2006-0060
For a Waiver, or in the Alternative,)	Decision and Order No. 22462
For Authorization of a Transfer)	
of Control of Sprint Long Distance,)	
Inc. from Sprint Nextel Corporation)	
to Embarq Corporation)	
_____)	

DECISION AND ORDER

By this Decision and Order, the commission denies SPRINT LONG DISTANCE, INC.'s ("Applicant") request for a waiver of the requirements of Hawaii Revised Statutes ("HRS") § 269-7(a), but nevertheless approves the proposed transfer of control of Applicant from SPRINT NEXTEL CORPORATION fka SPRINT CORPORATION ("Sprint Nextel") to EMBARQ CORPORATION ("Embarq") (the "Proposed Transaction") under HRS §§ 269-7(a) and 269-19, subject to the condition that Applicant is required to notify the commission and the DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS ("Consumer Advocate") in writing of the date when the Proposed Transaction is consummated.

I.

Background

A.

Description of Subject Entities

Applicant is a newly created Delaware corporation, and a wholly-owned subsidiary of Sprint Nextel. Applicant was

recently granted a Certificate of Authority ("COA") to provide intrastate interexchange services on a resold basis within the State of Hawaii ("Hawaii") in Decision and Order No. 22439, filed on May 1, 2006, in Docket No. 2006-0022. As discussed further below, Applicant was created to provide intrastate interexchange services for incumbent local exchange carrier ("ILEC") customers of Embarq that have multi-state offices, including in Hawaii.

Sprint Nextel is a publicly-traded Kansas corporation that provides wireless, long distance, and local communications services. Sprint Nextel has ILEC operations in approximately eighteen states, but does not have ILEC operations in Hawaii. As discussed below, Sprint Nextel intends to spin-off all of its ILEC operating companies to Embarq. Sprint Nextel is the parent company of three Hawaii certificated entities: (1) Sprint Communication Company L.P. ("Sprint Communications"), which is certificated to provide a full range of intrastate services in Hawaii (e.g., interexchange, local exchange, and intrastate toll services), and is presently the exclusive provider of telecommunications relay services ("TRS") in Hawaii;¹ (2) Sprint Payphone Services, Inc. ("Sprint Payphone"), which holds a certificate to provide intrastate pay telephone services in Hawaii;² and (3) ASC Telecom, Inc. ("ASC"), which is certificated to provide interLATA and intraLATA

¹See Decision and Order No. 13262, filed on May 17, 1994, in Docket No. 94-0005; Decision and Order No. 14868, filed on August 9, 1996, in Docket No. 96-0061; Decision and Order No. 20163, filed on April 30, 2003, in Docket No. 03-0058.

²See Decision and Order No. 16108, filed on December 4, 1997, in Docket No. 97-0388.

telecommunications services in Hawaii as a "switchless" reseller.³

Embarq is a Delaware corporation and a newly formed subsidiary of Sprint Nextel. Embarq has been created as an independent holding company to control Sprint Nextel's ILEC entities in other states, as well as Applicant in Hawaii. Upon separation from Sprint Nextel, Embarq will have its own management team, and is expected to be a NYSE-listed company with approximately \$6 billion in annual revenues, rank among the Fortune 500, and serve as the fifth largest local communications company in the United States based on the company's 7.4 million access lines as of September 30, 2005. Embarq will provide communications services consisting of local and long distance voice and data services, and high-speed Internet access.

B.

Application

On March 10, 2006, Applicant filed its Application seeking a waiver of approval, pursuant to HRS § 269-16.9(e), or in the alternative, commission approval, pursuant to HRS § 269-7(a), of the Proposed Transaction, by which control of Applicant will be transferred from Sprint Nextel to Embarq.⁴ Applicant represents that the Proposed Transaction is necessary because Sprint Nextel intends to separate all of its wireline service operations into an independent, stand-alone operation.

³See Decision and Order No. 14831, filed on August 1, 1996, in Docket No. 96-0090.

⁴See Application, Exhibit 1, Verification, and Certificate of Service, filed on March 10, 2006 ("Application"). Applicant served a copy of the Application on the Consumer Advocate.

Embarq has been created to assume control of the Sprint Nextel operating companies serving local customers -- essentially, Sprint Nextel's ILEC operations. Thus, the transfer of control of Applicant to Embarq is associated with the primary transfer of control of the Sprint Nextel ILECs in other states to Embarq.

Applicant represents that, although Sprint Nextel does not have ILEC operations in Hawaii, in some cases, Sprint Nextel ILECs in other states serve business customers that have offices and operations in various states, some of which are located in Hawaii. These customers require long distance services between or among offices, and currently receive their service through bundled service offerings by Sprint Nextel ILECs. While Sprint Communications currently provides this long distance service in Hawaii, Sprint Communications will not be impacted by the Proposed Transaction, and will remain a wholly-owned subsidiary of Sprint Nextel. Thus, upon consummation of the Proposed Transaction, Sprint Communications will continue to offer the same facilities-based local exchange and interexchange services in Hawaii as it currently does under Sprint Nextel, and Applicant will become the long distance carrier for the Embarq ILEC operations.⁵

Applicant states that the Proposed Transaction is reasonable and in the public interest. In this regard, Applicant maintains that the Proposed Transaction will result only in a change in the ultimate ownership of Applicant, but will not

⁵Subsequent to the separation of Embarq from Sprint Nextel, Applicant states that it will choose a new corporate name that is more in line with "Embarq" and not "Sprint," so as to avoid customer confusion following the separation.

affect the operations of Applicant. Applicant will retain its authorization to provide telecommunications services in Hawaii and the transfer of control will have no effect on any customers in Hawaii. There will be no changes to the rates, terms and conditions of Applicant's service as a result of the transfer of control. Accordingly, Applicant contends that the transfer of control will be transparent to customers.

Furthermore, Applicant asserts that it will benefit from being aligned with Embarq and the local exchange services it offers in other states (rather than being a part of the larger wireless operations of Sprint Nextel) because Embarq's single focus will be on its wireline markets. As such, Applicant asserts that its customers will benefit from the increased focus on their needs.

Applicant requests that the commission expedite its examination of the Proposed Transaction so that it can consummate the Proposed Transaction in "early May, 2006."⁶

C.

Consumer Advocate's Statement of Position

On April 13, 2006, the Consumer Advocate filed its Statement of Position ("Statement of Position"), stating that it does not support Applicant's request for a waiver of HRS § 269-7(a), but that it does not object to the commission

⁶See Application, at 11.

approving the Proposed Transaction.⁷ In support of its position against a waiver, the Consumer Advocate cited the commission's findings in Decision and Order No. 21715, filed on April 4, 2005, in Docket No. 05-0045 ("Decision and Order No. 21715"), discussed further below. The Consumer Advocate nevertheless stated that it does not object to commission approval of the Proposed Transaction based upon its analysis of several factors, including the impact of the Proposed Transaction on Applicant's customers, Embarq's technical, financial and managerial abilities, and whether the Proposed Transaction is reasonable and in the public interest.

II.

Discussion

A.

Request for a Waiver

HRS § 269-16.9(e) permits 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. Specifically, Hawaii Administrative Rules ("HAR") § 6-80-135 permits the commission to grant an exemption from or 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

⁷The Consumer Advocate's position was conditioned upon the commission granting Applicant's application for a COA, which was still pending at the time the Consumer Advocate filed its Statement of Position. As stated above, the commission has since granted Applicant a COA by Decision and Order No. 22439, filed on May 1, 2006, in Docket No. 2006-0022.

chapter 6-80 that implement HRS § 269-34), upon a determination that an exemption or waiver is in the public interest.

In Docket No. 05-0045, Sprint Communications, Sprint Payphone, and ASC requested a declaratory order, a waiver, or in the alternative, approval of a merger between their parent corporation, formerly known as Sprint Corporation, with Nextel Communications, Inc.⁸ The commission approved the merger, but denied the applicants' request for a waiver under HRS § 269-16.9(e). In so ruling, the commission found that the applicants, particularly Sprint Communications, "have played an integral role in participating in the development of the intrastate wireline telecommunications industry in Hawaii."⁹ The commission noted Sprint Communications' participation as a party in Docket No. 7702, a proceeding investigating the communications infrastructure in Hawaii. In addition, the commission cited its decision in Docket No. 03-0058 to select Sprint Communications as the exclusive provider of intrastate TRS within Hawaii.¹⁰ The commission was accordingly unable to find that competition would serve the same purpose as public interest regulation under HRS § 269-16.9(e), and that a waiver of the requirements of HRS § 269-7(a) would be in the public interest under HAR § 6-80-135.

⁸See Application, Exhibit A, and Verification, filed on February 16, 2005, in Docket No. 05-0045.

⁹See Decision and Order No. 21715, at 10.

¹⁰The commission recently decided to extend the TRS contract with Sprint Communications for an additional two years, from July 1, 2006 until June 30, 2008. See Decision and Order No. 22438, filed on May 1, 2006, in Docket No. 03-0058.

Upon review of the record,¹¹ for the same reasons cited in Decision and Order No. 21715, the commission finds that the standards in HRS § 269-16.9(e) and HAR § 6-80-135, which allow the commission to waive certain provisions in HRS chapter 269, are not met in this case. Therefore, the commission concludes that Applicant's request for a waiver of the requirements of HRS § 269-7(a) should be denied.

B.

Request for Approval

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." Under HRS § 269-7(a), the commission will approve a proposed financial transaction if it is reasonable and consistent with the public interest.¹² A transaction is reasonable and consistent with the public interest if it will not adversely affect the carrier's fitness, willingness, and ability to provide intrastate telecommunications services in Hawaii, as authorized by the commission.¹³

In addition, HRS § 269-19 provides that no public utility corporation shall "directly or indirectly, merge or consolidate with any other public utility corporation without

¹¹The commission takes official notice, pursuant to HAR § 6-61-48, of all records relating to Applicant, Sprint Nextel, Embarq, Sprint Communications, Sprint Payphone, and ASC.

¹²See Decision and Order No. 21715, at 11, and cases cited therein.

¹³See id. at 11-12.

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."

The record reflects that Applicant has assured the commission that it will continue to have the same technical, financial, and managerial ability to provide its current services subsequent to the transfer, and that there will be no resulting changes to the rates, terms and conditions of services provided to customers due to the Proposed Transaction. Based on the foregoing, the commission finds that the Proposed Transaction is reasonable and in the public interest. Accordingly, the commission concludes that the Proposed Transaction should be approved, pursuant to HRS §§ 269-7(a) and 269-19, subject to the condition that Applicant shall be required to provide the commission and the Consumer Advocate with written notice of the date when the Proposed Transaction is consummated.

III.

Orders

THE COMMISSION ORDERS:

1. Applicant's request for a waiver under HRS § 269-16.9(e) is denied.

2. The Proposed Transaction, as described in the Application, is approved, pursuant to HRS §§ 269-7(a) and 269-19, subject to the condition that Applicant notifies the commission

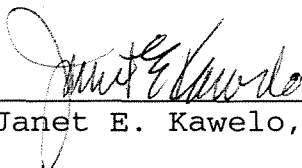
and the Consumer Advocate in writing of the date when the Proposed Transaction is consummated. Applicant shall promptly comply with the foregoing condition; failure to promptly comply may constitute cause to void this decision and order, and may result in further regulatory action, as authorized by law.

DONE at Honolulu, Hawaii MAY 11 2006.


PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By (EXCUSED)
Wayne H. Kimura, Commissioner

By 
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:


Kaiulani E.S. Kidani
Commission Counsel

2006-0060.eh

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 22462 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: MAY 11 2006