

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
INTEGRA TELECOM HOLDINGS, INC.)
and ELECTRIC LIGHTWAVE, LLC)
For Approval of a Transfer of)
Control of Electric Lightwave, LLC.)

DOCKET NO. 2006-0065

DECISION AND ORDER NO. 22507

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DIV. OF CONSUMER AGENCY
OFFICE OF PUBLIC UTILITIES AND
CONSUMER AFFAIRS
STATE OF HAWAII

Filed June 1, 2006
At 11 o'clock A.M.

Karen Higashi.
Chief Clerk of the Commission

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

K. Higashi.

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In the Matter of the Application of)
INTEGRA TELECOM HOLDINGS, INC.)
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For Approval of a Transfer of)
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_____)

Docket No. 2006-0065
Decision and Order No. 22507

DECISION AND ORDER

By this Decision and Order, the commission waives the requirements of Hawaii Revised Statutes ("HRS") §§ 269-19, 269-17, and 269-7(a), to the extent applicable, for the: (1) proposed transfer of control of all the membership interests of ELECTRIC LIGHTWAVE, LLC ("Electric Lightwave") to INTEGRA TELECOM HOLDINGS, INC. ("Integra Telecom"); and (2) related financing arrangements to effectuate the proposed transfer of control of Electric Lightwave's membership interests to Integra Telecom.¹

I.

Background

A.

Description of Subject Entities

Integra Telecom is an Oregon corporation that is authorized to provide telecommunications services in eleven (11)

¹Electric Lightwave and Integra Telecom are collectively referred to as "Applicants."

states through its operating subsidiaries. Integra Telecom and its operating subsidiaries are also authorized by the Federal Communications Commission ("FCC") to provide interstate and international telecommunications services.

Electric Lightwave is a Delaware limited liability company whose ultimate parent is Citizens Communications Company. Electric Lightwave is authorized: (1) to provide telecommunications services in every state, including Hawaii;² and (2) by the FCC to provide interstate and international telecommunications services. Presently, Electric Lightwave has no Hawaii-based customers.

B.

Application

On March 17, 2006, Applicants filed a Joint Application requesting commission approval to transfer control of all the membership interests of Electric Lightwave to Integra Telecom.³ Applicants make their request pursuant to HRS §§ 269-19

²See In re Elec. Lightwave, Inc., Docket No. 98-0210, Decision and Order No. 16592, filed on October 6, 1998 (certificate of authority ("COA"), reseller); and In re Elec. Lightwave, Inc., Docket No. 04-0338, Decision and Order No. 21646, filed on February 11, 2005 (transfer of COA to Electric Lightwave).

³Joint Application, Exhibits A - B, and Verifications, filed on March 17, 2006; and Certificate of Service, filed on April 12, 2006 (collectively, "Joint Application"). The Joint Application is supported by the written verifications of the chief executive officers for Integra Telecom and Electric Lightwave, respectively.

Applicants served copies of their Joint Application upon the Department of Commerce and Consumer Affairs, Division of Consumer Advocacy ("Consumer Advocate").

and 269-17, and seek commission action by June 30, 2006, so that they can timely consummate the proposed transaction.

Applicants entered into a Membership Purchase Agreement, dated February 6, 2006, by which Integra Telecom will: (1) purchase all of the membership interests in Electric Lightwave; and (2) become the sole controlling member of Electric Lightwave. Immediately following the completion of the transaction, Electric Lightwave will continue to operate as a separate subsidiary of Integra Telecom. Charts depicting the pre- and post-organizational structures of Electric Lightwave are attached to the Joint Application, and to this Decision and Order as Exhibit 1.

On April 12, 2006, Applicants filed a two (2)-page Supplement to their Joint Application.⁴ In their Supplement, Applicants request the commission's approval for Electric Lightwave to participate in certain financing arrangements with Integra Telecom upon the completion of the proposed transfer of control. As they explain:

. . . . Integra [Telecom] raised a total of \$450 million to finance the acquisition of [Electric Lightwave] and to refinance [Integra Telecom's] current loan obligations and for excess operating cash, transition expenses, and fees.⁵ The \$450 [million] financing package includes two lien facilities that will be secured by the assets of [Integra Telecom's] operating subsidiaries. In

⁴Applicants' Supplement; and Certificate of Service, filed on April 12, 2006 (collectively, "Supplement").

⁵The \$450 million financing package includes two facilities. On the first lien facility, CIBC World Markets Corp. will act as Sole Lead Arranger and Co-Bookrunner with Goldman Sachs Specialty Lending Group, LC acting as Co-Bookrunner and Administrative Agent. Goldman Sachs Specialty Lending Group, LP will co-underwrite the second lien facility with various investors.

addition, all of [Integra Telecom's] operating subsidiaries will act as guarantors for the transaction. Upon closing of the proposed transfer of control described in the [Joint] Application, [Electric Lightwave] will be a subsidiary of Integra [Telecom] and, therefore, will be required to pledge its assets as security and act as a guarantor.

As the financing arrangements - and [Electric Lightwave's] participation in such financing arrangements - are necessary to complete the proposed transfer of control, [Electric Lightwave's] participation in the financing arrangements will serve the public interest for the same reasons described in the [Joint] Application

Applicants' Supplement, at 1 - 2 (footnote and text therein retained) (emphasis added). Applicants make their supplemental request pursuant to HRS §§ 269-19 and 269-17.

In support of their Joint Application, Applicants represent that the proposed transfer of control and related financing arrangements are consistent with the public interest:

1. Integra Telecom "serves over 300,000 access line equivalents across its operating area . . . [and] differentiates itself by staffing locally based customer care, technical, and account management professionals whose goal is to provide high-level, personalized client service and satisfaction and by investing substantial capital in building and operating a facilities based, proprietary operating network."⁶

2. Integra Telecom's management team has extensive experience in the telecommunications industry, as evidenced by the biographies of its chief executive officer and other senior

⁶Joint Application, at 2 - 3.

managers (Joint Application, Exhibit A, Integra Telecom Management Biographies).

3. In 2003, Integra Telecom became one of the first competitive local exchange carriers "to achieve free cash flow positive status."⁷

4. Integra Telecom is financially qualified to acquire Electric Lightwave.

5. Electric Lightwave will continue to offer telecommunications services in Hawaii at the same rates, terms, and conditions.

6. The proposed transfer of control will be seamless and virtually transparent in Hawaii, as it will not involve the transfer of any certificates, assets, or customers, and Electric Lightwave will retain its COA to provide intrastate telecommunications services.

7. The proposed transfer of control will provide Applicants with "access to each other's advanced network capabilities, technical and financial strengths and complementary services, which together are expected to strengthen [Applicants' abilities] to expand their offerings and provide more advanced telecommunications services."⁸

8. Electric Lightwave's participation in the related financing arrangements will effectuate the proposed transfer of control of all of its membership interests to Integra Telecom, consistent with the public interest.

⁷Joint Application, at 3.

⁸Joint Application, at 6 - 7.

C.

Consumer Advocate's Position

On April 12, 2006, the Consumer Advocate filed its Statement of Position, informing the commission that it does not object to the commission's approval of the proposed transfer of control, or an exemption from such approval.⁹

On May 19, 2006, the Consumer Advocate filed its Supplemental Statement of Position,¹⁰ in response to the commission's directive,¹¹ informing the commission that it does not object to the commission's approval of Electric Lightwave's "proposed guarantee and pledge of assets as security for [Integra Telecom's] financing."¹²

In support of its position, the Consumer Advocate states:

1. Integra Telecom has sufficient technical, financial, and managerial resources to support the provisioning of telecommunications services in Hawaii.

2. The proposed transfer of control will be transparent to Hawaii-based customers, since Electric Lightwave will retain its COA and continue to operate under the same rates, terms, and conditions of service. Furthermore, since Electric

⁹Consumer Advocate's Statement of Position; and Certificate of Service, filed on April 12, 2006 (collectively, "Statement of Position").

¹⁰Consumer Advocate's Supplemental Statement of Position; and Certificate of Service, filed on May 19, 2006 (collectively, "Supplemental Statement of Position").

¹¹See Commission letter, dated April 13, 2006.

¹²Consumer Advocate's Supplemental Statement of Position, at 2.

Lightwave currently does not provide telecommunications services in Hawaii, no Hawaii-based customers will be affected by the proposed transfer of control.

3. The proposed transfer of control is consistent with the public interest, based on Applicants' representations that "the proposed transaction will improve their operating efficiencies and effectiveness with access to each other's advanced network capabilities, technical and financial strengths and complementary services, which, as a result, is expected to enhance [Applicants'] ability to expand their offerings and provide more advanced telecommunications services."¹³

4. Competition in the telecommunications market will serve the same purpose as public regulation "should the request to guarantee [Integra Telecom's] financing and pledge of assets as security for the financing be approved. Thus, the marketplace, it is assumed, will then serve to mitigate any traditional public utility regulatory concerns regarding the proposed debt financing affecting [Electric Lightwave]."¹⁴

"In the alternative, the Consumer Advocate recommends that the Commission waive such approval under HRS § 269-16.9."¹⁵ Thus, the Consumer Advocate does not object to the commission's approval of the proposed transfer of control and related

¹³Consumer Advocate's Statement of Position, at 4 (citing Applicants' Joint Application, Section IV, at 7).

¹⁴Consumer Advocate's Supplemental Statement of Position, at 4.

¹⁵Consumer Advocate's Supplemental Statement of Position, at 2.

financing arrangements, or to exempting the proposed transaction from the commission's review.

II.

Discussion

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. Every such sale, lease, assignment . . . [or] disposition . . . made other than in accordance with the order of the commission shall be void." The purpose of HRS § 269-19 is to safeguard the public interest. In re Honolulu Rapid Transit Co., Ltd., 54 Haw. 402, 409, 507 P.2d 755, 759 (1973). The pledging of Electric Lightwave's assets as security for Integra Telecom's \$450 million financing package requires the commission's approval under HRS § 269-19, unless otherwise waived by the commission.

HRS § 269-17 provides that, upon the commission's prior approval, a public utility corporation may issue stocks and stock certificates, bonds, notes, and other evidences of indebtedness, payable at periods of more than twelve (12) months after the date thereof, for the following purposes, and no other:

for the acquisition of property or for the construction, completion, extension, or improvement of or addition to its facilities or service, or for the discharge or lawful refunding

of its obligations or for the reimbursement of moneys actually expended from income or from any other moneys in its treasury not secured by or obtained from the issue of its stocks or stock certificates, or bonds, notes, or other evidences of indebtedness, for any of the aforesaid purposes except maintenance of service, replacements, and substitutions not constituting capital expenditure in cases where the corporation has kept its accounts for such expenditures in such manner as to enable the commission to ascertain the amount of moneys so expended and the purposes for which the expenditures were made, and the sources of the funds in its treasury applied to the expenditures.

HRS § 269-17.

Conversely, "[a] public utility corporation may not issue securities to acquire property or to construct, complete, extend or improve or add to its facilities or service if the commission determines that the proposed purpose will have a material adverse effect on its public utility operations." HRS § 269-17. "All stock and every stock certificate, and every bond, note, or other evidence of indebtedness of a public utility corporation not payable within twelve months, issued without an order of the commission authorizing the same, then in effect, shall be void." Id. Electric Lightwave's action as a guarantor of Integra Telecom's \$450 million financing package requires the commission's approval under HRS § 269-17, unless otherwise waived by the commission.

In addition, 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."

Having reviewed the record, the commission finds and concludes that the proposed transfer of control and related financing arrangements falls under the purview of HRS §§ 269-19, 269-17, and 269-7(a). Notwithstanding these regulatory requirements, 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 a telecommunications service 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.

Electric Lightwave is a non-dominant telecommunications carrier in Hawaii, and the transfer of control will be seamless and virtually transparent, with no expected adverse impacts.¹⁶ The commission finds that the transfer of control and related financing arrangements are 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, 269-17, 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

¹⁶In this regard, Electric Lightwave reiterates that it presently has no Hawaii-based customers.

to the transfer of control and financing arrangements, to the extent applicable under HAR chapter 6-61.¹⁷

III.

Orders

THE COMMISSION ORDERS:

1. HRS §§ 269-19, 269-17, and 269-7(a), to the extent applicable, are waived with respect to the transfer of control and related financing arrangements, described in the Joint Application, filed on March 17, 2006, as supplemented on April 12, 2006.
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.

¹⁷At 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, 269-17, 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.

DONE at Honolulu, Hawaii JUN - 1 2006.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By (EXCUSED)
Wayne H. Kimura, Commissioner

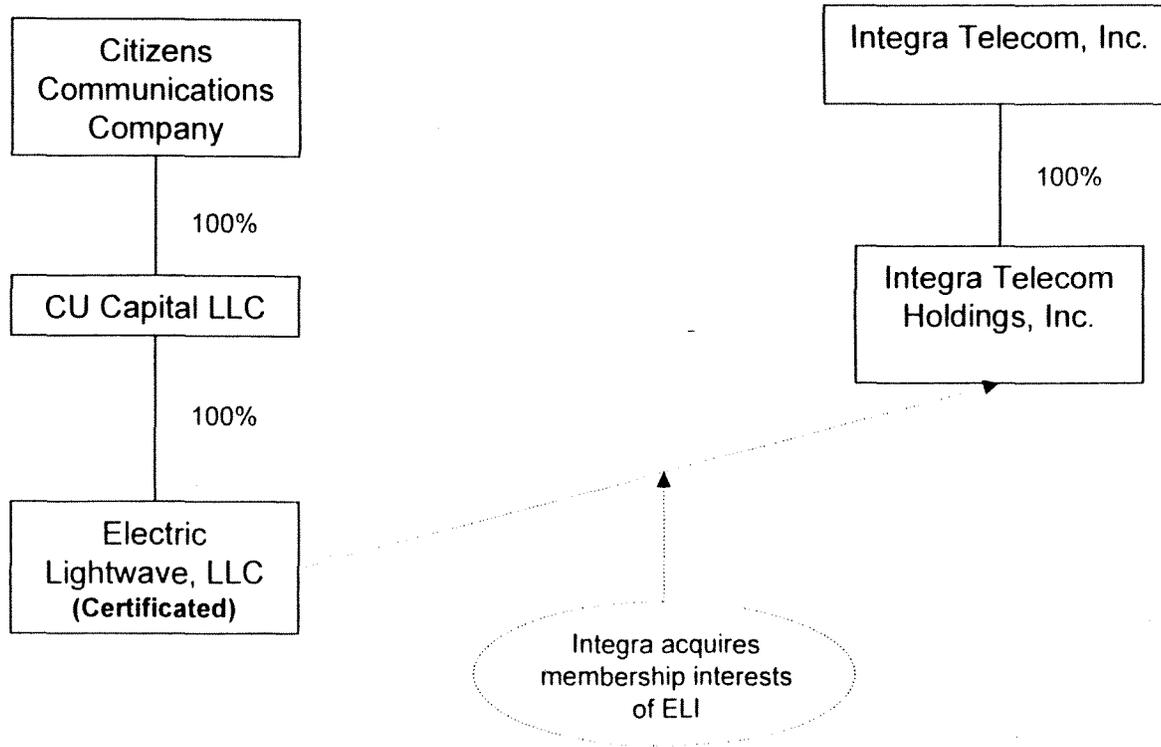
By 
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:


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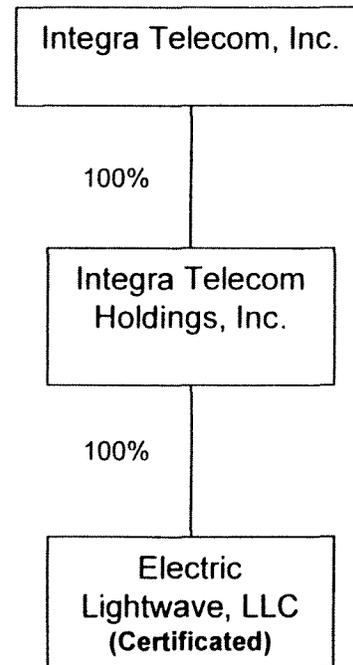
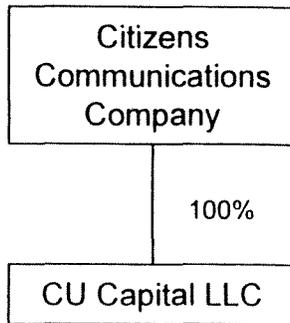
Illustrative Chart

Pre-Transaction



Illustrative Chart

Post-Transaction



CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 22507 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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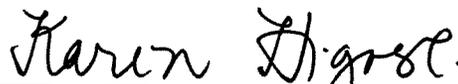
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DATED: JUN - 1 2006