

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application of)  
WILTEL COMMUNICATIONS, LLC )  
For Approval of Incurring Debt and )  
Financing Obligations. )  
\_\_\_\_\_ )

DOCKET NO. 2006-0056

DECISION AND ORDER NO. 22592

Filed June 30, 2006  
At 12 o'clock P.M.

Karen Higashi  
Chief Clerk of the Commission

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

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

Eleanor P. Linares

OF THE STATE OF HAWAII

WILTEL COMMUNICATIONS, LLC

For Approval of Incurring Debt and )  
Financing Obligations. )

Decision and Order No. 22592

### DECISION AND ORDER

March 8, 2006 ("Petition").

I.

## Introduction

§§ 269-17 and 269-19.

CONSUMER AFFAIRS ("Consumer Advocate"). The Consumer Advocate

states, in its Statement of Position, filed on April 5, 2006 ("Statement of Position") that it does not object to the commission waiving the requirements of HRS §§ 269-7(a), 269-17 and 269-19 with respect to the Proposed Financing Arrangements. In the alternative, the Consumer Advocate recommends commission approval of the Proposed Financing Arrangements.

## II.

### Background

#### A.

##### Description of Subject Entities

Petitioner is a Delaware limited liability company that is presently authorized to provide resold intrastate interexchange telecommunications services in the State of Hawaii ("State") pursuant to a certificate of authority ("COA") granted by the commission in Decision and Order No. 17092, filed on July 22, 1999, in Docket No. 99-0052. Petitioner is a wholly owned subsidiary of WilTel Communications Group, LLC ("WilTel"). In a corporate acquisition approved by the commission in Order No. 22204, filed on December 29, 2005, in Docket No. 05-0275, WilTel became a wholly owned subsidiary of Level 3 Communications, LLC ("Level 3-Comm"). Level 3-Comm is, in turn, a wholly owned subsidiary of Level 3 Communications, Inc. ("Level 3"), a publicly traded Delaware corporation.

B.

Proposed Financing Arrangements

The Proposed Financing Arrangements involve Parent entering into financial agreements affecting Petitioner. In particular, in 2004, Parent entered into a Credit Agreement in the aggregate principal amount of up to \$850 million. As part of the Credit Agreement, Parent and Level 3-Comm agreed to enter into an arrangement with lenders whereby Level 3-Comm and certain after-acquired entities would pledge their assets located in the State and guarantee the Credit Agreement after obtaining required regulatory approval. Petitioner represents that a portion of the proceeds from the Credit Agreement have already been used to reduce existing indebtedness, as well as effectively extend the maturity of certain indebtedness.<sup>1</sup> As a result of the acquisition of WilTel by Level 3-Comm, Petitioner requests commission approval to participate in the Credit Agreement, which requires the pledge of Petitioner's assets and guarantee arrangements.<sup>2</sup>

Petitioner represents that the above-described transactions (1) "were and will be entirely transparent to consumers" and "will not cause a change in the officers or directors of Petitioner"; (2) "will not alter the rates, terms and conditions under which [Petitioner] provides service in

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<sup>1</sup>Petition at 3-4.

<sup>2</sup>The commission allowed Level 3-Comm to participate in the same financial arrangement associated with the said Credit Agreement in Decision and Order No. 21661, filed on February 28, 2005, in Docket No. 04-0356. In Decision and Order No. 21661, the commission concluded that the requirements of HRS §§ 269-7(a), 269-17 and 269-19 should be waived pursuant to HRS § 269-16.9 and HAR 6-80-135.

Hawaii;" and (3) "will not impair the ability of Petitioner to perform [its] services."<sup>3</sup> Petitioner also asserts that the Proposed Financing Arrangements will serve the public interest in promoting competition among telecommunications carriers by providing Petitioner and Parent with the opportunity to strengthen their financial position.<sup>4</sup>

C.

Consumer Advocate's Position

As stated above, the Consumer Advocate recommends that the commission waive the approval requirements of Petitioner's Petition.<sup>5</sup> In support of this recommendation, the Consumer Advocate asserts:

Salient facts of the [Petition] are similar to those found in Docket No. 04-0356. [Petitioner] currently has no Hawaii facilities and in the 2002 to 2004 annual financial statements filed with the Commission and the Consumer Advocate, Petitioner reported intrastate revenues for providing inter-island long distance service of less than \$150,000. Further, [Petitioner] is reselling a telecommunication service that has been deemed fully competitive by the Commission and it is clear from the annual financial statement information that Petitioner is a non-dominant telecommunications carrier in [the State]. [Petitioner] also asserts that the [Proposed Financing Arrangements] will serve the public

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<sup>3</sup>Petition at 4-5.

<sup>4</sup>Petition at 4.

<sup>5</sup>The Consumer Advocate states it is unclear whether HRS § 269-17 is applicable because there is an uncertainty as to whether the demand notes that may be issued through the Credit Agreement will be due and payable after twelve (12) months. See Statement of Position at 5.

interest by enabling it to continue to bring competitive services to consumers in [the State]. Since there are many telecommunications providers authorized to provide resale intrastate interexchange service in [the State], it is assumed that competition will serve the same purpose as public interest regulation for the proposed financing affecting [Petitioner].<sup>6</sup>

The Consumer Advocate also contends that the commission's waiver in this matter should extend to the applicable filing requirements (i.e., copies of the financing documents) since "the need to review and maintain copies of the financing documents for record keeping purposes is eliminated if the need to review the financing transaction is waived."<sup>7</sup>

### 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 the proposed financial transactions of the parent entity of a regulated public utility under HRS § 269-7(a). Under this section, the commission will approve the proposed financial transaction if it is reasonable and consistent with the public interest.

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<sup>6</sup>Statement of Position at 4 (footnote omitted).

<sup>7</sup>Statement of Position at 5-6.

HRS § 269-17 requires a public utility to obtain the commission's approval before issuing stocks and stock certificates, bonds, notes, and other evidences of indebtedness payable at periods of more than twelve (12) months. This section permits the proceeds of such debt to be used only for the acquisition of property or for the construction, completion, extension, or improvement of or addition to the utility's facilities or service, or for the discharge or refunding of its obligations or reimbursement of funds expended for the foregoing described purposes. Furthermore, HRS § 269-17 states that "[a]ll 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."

HRS § 269-19 requires a public utility corporation to obtain our consent prior to, among other things, mortgaging, encumbering, or otherwise disposing of its property. Similar to HRS § 269-17, HRS § 269-19 also states that "[e]very such sale, lease, assignment, mortgage, disposition, encumbrance, merger, or consolidation, made other than in accordance with the order of the commission shall be void."

Upon a review of the record, we find and conclude that the Proposed Financing Arrangements fall under the purview of HRS §§ 269-7(a) and 269-19.<sup>8</sup> However, HRS § 269-16.9 also permits us

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<sup>8</sup>We agree with the Consumer Advocate that the record is unclear as to whether HRS § 269-17 is applicable in this matter. However, we do not find it necessary to make such determination

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 us to waive the applicability of any of the provisions of HRS ch. 269 or any rule, upon a determination that a waiver is in the public interest.

In this docket, we find, at this time, Petitioner is a non-dominant carrier in the State. We also find that the Proposed Financing Arrangements are 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 requirements of HRS §§ 269-7(a), 269-17 and 269-19, to the extent applicable, should be waived with regards to the matters in this docket, pursuant to HRS § 269-16.9 and HAR § 6-80-135.<sup>9</sup> Similarly, based on these findings and conclusions stated above, we will also waive the provisions of HAR §§ 6-61-101 and 6-61-105, to the extent that Petitioner's Petition fails to meet any of these filing requirements.

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in this instance in light of our ruling, discussed below, in this Decision and Order.

<sup>9</sup>The 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), 269-17 and 269-19 should be waived. The commission's determination, in the instant case, of the applicability of HRS §§ 269-7(a), 269-17 and 269-19 is based on our review of Petitioner's instant petition only. Thus, our waiver in this instance of the applicability of HRS §§ 269-7(a), 269-17 and 269-19 should not be construed by any public utility, including Petitioner, as a basis for not filing an application or petition regarding similar transactions that fall within the purview of these statutes.



IV.

Orders

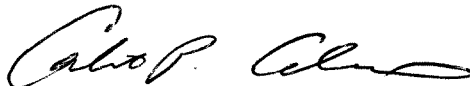
THE COMMISSION ORDERS:

1. The requirements of HRS §§ 269-7(a), 269-17 and 269-19, to the extent applicable, are waived with respect to the Proposed Financing Arrangements, described in Petitioner's Petition, filed on March 8, 2006.


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

DONE at Honolulu, Hawaii JUN 30 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:

  
Nichole K. Shimamoto  
Commission Counsel

2006-0056.eh

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 22592 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: JUN 30 2006