

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
)
GLOBAL CROSSING TELECOMMUNICATIONS,)
INC., GLOBAL CROSSING NORTH)
AMERICAN NETWORKS, INC.)
)
For Approval to Provide Their)
Security in Connection with)
Financing.)
_____)

DOCKET NO. 2006-0138

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

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DECISION AND ORDER NO. 22849

Filed September 13, 2006
At 11 o'clock A.M.

Bruce K. Kane
for Chief Clerk of the Commission

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

Bruce K. Kane

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Docket No. 2006-0138

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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), 269-17 and 269-19 and Hawaii Administrative Rules ("HAR") §§ 6-61-101 and 6-61-105, to the extent applicable, with respect to GLOBAL CROSSING TELECOMMUNICATIONS, INC. ("GCT") and GLOBAL CROSSING NORTH AMERICAN NETWORKS, INC.'s ("GCNAN") (collectively, "Petitioners") request to guarantee, serve as borrowers or co-borrowers, or otherwise provide security in connection with financings of up to \$200 million being arranged by their parent company, Global Crossing North America, Inc. ("Parent").

I.

Background

A.

Description of Subject Entities

GCT, a Michigan corporation, and GCNAN, a New York corporation, are wholly owned subsidiaries of Parent, a Delaware

corporation, which in turn is a wholly owned subsidiary of Global Crossing Limited, an exempt company with limited liability organized under the laws of Bermuda. Petitioners and Parent are headquartered in Pittsford, New York.

Petitioners are authorized to provide intrastate telecommunications services in the State of Hawaii ("State").

B.

Application

On May 24, 2006, Petitioners filed a Petition seeking commission approval to provide their guarantee, serve as borrowers or co-borrowers, or otherwise provide security in connection with financings of up to \$200 million being arranged by Parent ("Proposed Financing Arrangements").¹ According to Petitioners, "[a]pproving this Petition will serve the public interest by enhancing the ability of the Companies to grow and compete in the highly competitive markets for telecommunications services in Hawaii and nationwide"; and "is not expected directly to affect in any way the rates or services of the Companies or their affiliates, or result in any change in control of the Companies or their affiliates."²

¹Petitioners served copies of the Petition on the DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS ("Consumer Advocate"), an ex officio party to this proceeding.

²Petition at 5.

C.

Consumer Advocate's Statement of Position

On June 22, 2006, the Consumer Advocate filed its statement of position in which it recommends that the commission, on its motion, waive the requirement of HRS § 269-17 regarding the use of financing proceeds, and approve the request to allow Petitioners to participate in the Proposed Financing Arrangements. In the alternative, the Consumer Advocate recommends that the commission, on its own motion, waive the approval requirements of HRS §§ 269-17 and 269-19, and the filing requirements of HAR §§ 6-61-101(b)(2) and 6-61-105(c), with respect to the Proposed Financing Arrangements.

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." 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 Financing Arrangements if they are reasonable and consistent with the public interest.

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 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), 269-17 and 269-19. However, HRS § 269-16.9 also permits us 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, Petitioners are non-dominant carriers 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 should be waived with regards to the matters in this docket, pursuant to HRS § 269-16.9 and HAR § 6-80-135.³ 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 the Petition fails to meet any of these filing requirements.

III.

Orders

THE COMMISSION ORDERS:

1. The requirements of HRS §§ 269-7(a), 269-17 and 269-19 are waived with respect to the Proposed Financing

³The 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 Petitioners' 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 Petitioners, as a basis for not filing an application or petition regarding similar transactions that fall within the purview of these statutes.

Arrangements, described in Petitioners' Petition, filed on May 24, 2006.

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

DONE at Honolulu, Hawaii SEP 13 2006.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By Carlito P. Caliboso
Carlito P. Caliboso, Chairman

By John E. Cole
John E. Cole, Commissioner

APPROVED AS TO FORM:

Stacey Kawasaki Djou
Stacey Kawasaki Djou
Commission Counsel

2006-0138.cs

CERTIFICATE OF SERVICE


I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 22849 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: SEP 13 2006