





Delaware corporation. DSLnet is authorized to provide intrastate telecommunications services in forty-seven states and the District of Columbia, including Hawaii.<sup>1</sup>

MDSAI is a privately held Delaware corporation with its principal offices in Costa Mesa, California. It is a wholly owned subsidiary of MegaPath Inc. ("MegaPath"), which was formed for the purpose of acquiring Parent and its subsidiaries. MSDAI is a provider of a variety of managed Internet Protocol ("IP") services, including cable and satellite system broadband Internet access.

B.

Application

On September 15, 2006, Applicants filed a joint petition ("Application") seeking an expedited commission decision waiving the requirements of HRS §§ 269-7(a) and 269-19, or, in the alternative, approval of the Proposed Transaction.<sup>2</sup> According to Applicants, pursuant to a purchase agreement dated August 22, 2006, between Parent, MDSAI and Megapath, MDSAI purchased certain convertible promissory notes of Parent, which will allow MDSAI to acquire control of DSLnet through the conversion of the convertible notes into common stock of the Parent. Following the

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<sup>1</sup>DSLnet holds a certificate of authority to operate as a reseller and facilities-based provider of intrastate telecommunications services in the State of Hawaii. See Decision and Order No. 17095, filed on July 26, 1999, in Docket No. 99-0112.

<sup>2</sup>Applicants served copies of the Application on the DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS ("Consumer Advocate"), an ex officio party to this proceeding.

conversions, MegaPath intends to merge Parent with MDSAI, with MDSAI being the surviving entity.

Applicants state that the Proposed Transaction will not involve a change in the name under which DSLnet currently operates nor a change in the manner in which DSLnet currently offers services in Hawaii. In addition, Applicants state that DSLnet will continue to offer the services it currently offers with no change in the rates or terms and conditions of service.

C.

Consumer Advocate's Statement of Position

On October 16, 2006, the Consumer Advocate filed its statement of position in which it states that it "does not object to the requested waiver or, in the alternative, approval of the instant petition" on the condition that DSLnet file its 2005 Annual Financial Report ("AFR"), pursuant to HAR § 6-80-91.<sup>3</sup>

II.

Discussion

HRS § 269-16.9 allows the commission to waive regulatory requirements applicable to telecommunications providers if it determines that competition will serve the

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<sup>3</sup>A review of commission records indicates that DSLnet filed its 2005 AFR, but likely did not serve a copy of the 2005 AFR on the Consumer Advocate. Accordingly, on October 23, 2006, commission counsel contacted counsel for DSLnet and advised DSLnet to provide a copy of its 2005 AFR to the Consumer Advocate, as required by HAR § 6-80-91(d).

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 ch. 269 or any rule, upon a determination that a waiver is in the public interest.

In this docket, we find, at this time, that DSLnet is a non-dominant carrier in the State. We also find 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 requirements of HRS § 269-7(a) and 269-19<sup>4</sup> should be waived, to the extent applicable, with regards to the matters in this docket, pursuant to HRS § 269-16.9 and HAR § 6-80-135.<sup>5</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 the Application fails to meet any of these filing requirements.

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<sup>4</sup>The Consumer Advocate argued in its Statement of Position that HRS § 269-19 was not applicable to the Proposed Transaction. As the commission has found that a waiver is appropriate, it need not determine the applicability of HRS § 269-19.

<sup>5</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 or 269-19 should be waived. Thus, our waiver in this instance should not be construed by any public utility, including Applicants, as a basis for not filing an application or petition regarding similar transactions that fall within the purview of these statutes.

III.

Orders


THE COMMISSION ORDERS:

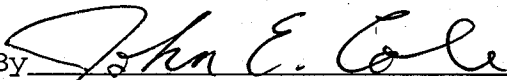
1. The requirements of HRS §§ 269-7(a) and 269-19, to the extent applicable, are waived with respect to the Proposed Transaction, described in the Application filed on September 15, 2006.

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


DONE at Honolulu, Hawaii NOV - 2 2006.

PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By   
Carlito P. Caliboso, Chairman

By   
John E. Cole, Commissioner

APPROVED AS TO FORM:

  
Stacey Kawasaki Djou  
Commission Counsel

2006-0377.sl

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 23010 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: NOV - 2 2006