

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
LEVEL 3 COMMUNICATIONS, INC.,)
BROADWING CORPORATION, and)
BROADWING COMMUNICATIONS, LLC)
For Approval for the Transfer of)
Control of Broadwing Communications)
LLC and Related Transactions)
Including the Participation of)
Broadwing Communications, LLC in)
Certain Existing Financing)
Arrangements of Level 3 Financing,)
Inc.)

DOCKET NO. 2006-0417

DECISION AND ORDER NO. 23103

Filed Dec. 4, 2006
At 12 o'clock P.M.

Karen Higashi
Chief Clerk of the Commission

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

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

K. Higashi

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Docket No. 2006-0417
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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 LEVEL 3 COMMUNICATIONS, INC. ("Level 3"), BROADWING CORPORATION ("Broadwing Parent"), and BROADWING COMMUNICATIONS, LLC's ("Broadwing") (collectively, "Applicants") request to approve certain transactions that would 1) allow Level 3 to acquire indirect control of Broadwing, a provider of telecommunications services in the State of Hawaii; and 2) allow Broadwing to participate in certain financing transactions of Level 3 Financing, Inc. ("Level 3 Financing") (collectively, "Proposed Transactions").

I.

Background

A.

Description of Subject Entities

Broadwing is a Delaware limited liability company ("Broadwing") and is presently authorized to provide resold telecommunications services in the State of Hawaii.¹ It is an indirect subsidiary of Broadwing Parent, a Delaware corporation, with its principal place of business in Austin, Texas.

Level 3 is publicly traded Delaware corporation with its principal offices in Broomfield, Colorado. Through its wholly owned subsidiaries,² Level 3 provides high quality voice and data services to carriers, ISPs, and other business customers over its IP-based network.

B.

Application

On October 19, 2006, Applicants filed a joint petition ("Application") seeking expedited commission approval of the Proposed Transactions, pursuant to HRS §§ 269-17 and 269-19.³

¹Broadwing received its Certificate of Authority by Decision and Order No. 20756, filed on January 13, 2004, in Docket No. 03-0359.

²Among Level 3's indirect subsidiaries are Level 3 Communications, LLC, which is authorized to provide facilities-based and resold intrastate telecommunications services in Hawaii, and WilTel Communications, LLC, which is authorized to provide intrastate resold interexchange telecommunications services in the State of Hawaii.

³Applicants served copies of the Application on the DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND

According to Applicants, pursuant to an Agreement and Plan of Merger dated October 16, 2006, between Broadwing Parent, Level 3 and Level 3's wholly owned subsidiary, Level 3 Services, LLC ("Level 3 Services"), Broadwing Parent will merge with and into Level 3 Services, which will result in control of Broadwing being transferred to Level 3, as further described in the Application. In addition, at closing, Broadwing will be required to provide a guaranty for existing indebtedness of Level 3 Financing and will also pledge its assets as security for the guaranty, as further described in the Application.

Applicants state that the Proposed Transactions will provide Broadwing with access to Level 3's substantial technical and management expertise, financial resources and complementary suite of services, which will strengthen Broadwing's ability to expand its offerings and provide more advanced telecommunications services to a broader customer base in Hawaii. According to Applicants, the Proposed Transactions will be transparent to Broadwing's customers and will not result in a change of carrier or an immediate change in rates, terms or conditions of service.

Applicants request approval of the Proposed Transactions no later than December 15, 2006, for business, tax and financial reasons.

CONSUMER AFFAIRS ("Consumer Advocate"), an ex officio party to this proceeding.

C.

Consumer Advocate's Statement of Position

On November 16, 2006, the Consumer Advocate filed its statement of position in which it states that it does not object to commission approval of the Proposed Transactions. In the alternative, the Consumer Advocate recommends that the commission, on its motion, waive the approval requirements of HRS § 269-19, pursuant to HRS § 269-16.9 and HAR § 6-80-135.

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

In this docket, we find, at this time, that Broadwing is a non-dominant carrier in the State. We also find that the Proposed Transactions 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

269-19⁴ should be waived, to the extent applicable, with regards to the matters in this docket, pursuant to HRS § 269-16.9 and HAR § 6-80-135.⁵ 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.

III.

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 Transactions, described in the Application filed on October 19, 2006.

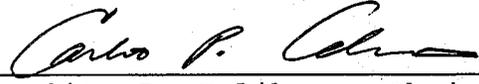
2. The filing requirements of HAR §§ 6-61-101 and 6-61-105, to the extent applicable, are also waived.

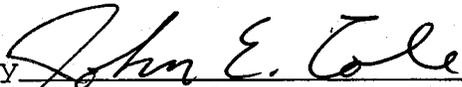
⁴The Consumer Advocate argued in its Statement of Position that HRS § 269-17 was not applicable to the Proposed Transactions. As the commission has found that a waiver is appropriate, it need not determine the applicability of HRS § 269-17.

⁵The 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.

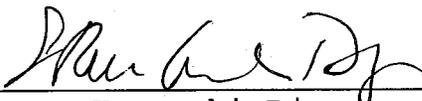
DONE at Honolulu, Hawaii DEC - 4 2006.

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

2006-0417.eh

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 23103 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: DEC - 4 2006