

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
)
OPEX COMMUNICATIONS, INC.,)
PREMIERCOM MANAGEMENT COMPANY, and)
TOTAL CALL INTERNATIONAL, INC.)
)
For Approval of a Change in)
Ownership of an Authorized)
Telecommunications Provider)
_____)

DOCKET NO. 2007-0012

DECISION AND ORDER NO. 23302

Filed March 14, 2007
At 10 o'clock A .M.

Karen Higashi
Chief Clerk of the Commission

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

2007 MAR 15 A 8:36

RECEIVED

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

Karen Higashi

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
OPEX COMMUNICATIONS, INC.,)
PREMIERCOM MANAGEMENT COMPANY, and)
TOTAL CALL INTERNATIONAL, INC.)
For Approval of a Change in)
Ownership of an Authorized)
Telecommunications Provider)

Docket No. 2007-0012
Decision and Order No. 23302

DECISION AND ORDER

By this Decision and Order, the commission waives the requirements of Hawaii Revised Statutes ("HRS") §§ 269-7(a) and 269-19 and Hawaii Administrative Rules ("HAR") §§ 6-61-101 and 6-61-105, to the extent applicable, with respect to OPEX COMMUNICATIONS, INC. ("OPEX"), PREMIERCOM MANAGEMENT COMPANY ("Premiercom"), and TOTAL CALL INTERNATIONAL, INC.'s ("Total Call") (collectively, "Applicants") request to approve the transfer of control of OPEX from Premiercom to Total Call ("Proposed Transaction").

I.

Background

A.

Description of Subject Entities

OPEX, an Illinois corporation headquartered in Elk Grove Village, Illinois, is presently authorized to provide intrastate resold long distance telecommunications services in

the State of Hawaii.¹ It is wholly owned by Premiercom, a privately-held Illinois corporation, which is also located in Elk Grove Village, Illinois.

Total Call is a privately-held California corporation with its principal place of business in Los Angeles, California. It is a long distance reseller offering customers traditional long distance service, dial-up, and DSL internet service, VoIP, prepaid calling card and wireless services. It is authorized to provide resold long distance telecommunications services by Decision and Order No. 18688 filed on July 23, 2001, in Docket No. 01-0139.

B.

Application

On January 12, 2007, Applicants filed a joint application ("Application") seeking expedited commission approval of the Proposed Transaction, pursuant to HRS § 269-7.² According to Applicants, pursuant to a Stock Purchase Agreement dated January 10, 2007, between Total Call and Premiercom, Total Call will purchase from Premiercom all issued and outstanding shares of OPEX's capital stock for a note and cash,

¹OPEX received its Certificate of Authority by Decision and Order No. 19085, filed on January 15, 2002, in Docket No. 01-0240.

²Applicants 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.

which will result in OPEX becoming a direct, wholly owned subsidiary of Total Call.

Applicants state that the Proposed Transaction will not involve the transfer of any operating authority, assets or customers, and that OPEX will continue to offer its customers the same services at the same rates, terms, and conditions. According to Applicants, the Proposed Transaction will serve the public interest as Total Call and OPEX will benefit from increased economies of scale that will permit them to operate more efficiently and realize substantial financial synergies that should enable them to increase their operating income and cash flow.

Applicants request approval of the Proposed Transaction no later than April 30, 2007, for business reasons.

C.

Consumer Advocate's Statement of Position

On February 7, 2007, the Consumer Advocate filed its statement of position in which it states that it does not object to commission approval of the Proposed Transaction. In the alternative, the Consumer Advocate recommends that the commission, on its own motion, waive the requirements of HRS §§ 269-7, 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 OPEX and Total Call are non-dominant carriers 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 should be waived, to the extent applicable, with regards to the matters in this docket, pursuant to HRS § 269-16.9 and HAR § 6-80-135.³ 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 Application fails to meet any of these filing requirements.

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) 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 January 12, 2007.

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

DONE at Honolulu, Hawaii MAR 14 2007.

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

2007-0012.eh

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 23302 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

CATHERINE AWAKUNI
EXECUTIVE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
DIVISION OF CONSUMER ADVOCACY
P. O. Box 541
Honolulu, HI 96809

PATRICK CROCKER, ESQ
EARLY, LENNON, CROCKER & BARTOSIEWICZ, PLC
900 Comerica Building
Kalamazoo, MI 49007

Counsel for OPEX COMMUNICATIONS, INC.

JOHN WONAK, CFO
OPEX COMMUNICATIONS, INC.
500 East Higgins Road, Suite 200
Elk Grove Village, IL 60007

MELISSA CONWAY, ESQ.
KELLEY DRYE & WARREN LLP
3050 K Street, Suite 400
Washington, DC 20007-5108

Counsel for TOTAL CALL INTERNATIONAL, INC.

MARK LEAFSTEDT, CEO
TOTAL CALL INTERNATIONAL, INC.
707 Wilshire Boulevard, 12th Floor
Los Angeles, CA 90017



Karen Higashi

DATED: MAR 14 2007