

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
LEVEL 3 COMMUNICATIONS, LLC,)
BROADWING COMMUNICATIONS, LLC, and)
WILTEL COMMUNICATIONS, LLC)
For Approval to Participate in)
Certain Financing Arrangements)

DOCKET NO. 2007-0046

DECISION AND ORDER NO. 23386

Filed April 26, 2007

At 1:30 o'clock P.M.

Karen Higashi
Chief Clerk of the Commission

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

2007 APR 27 A 8:36

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KAREN HIGASHI
Chief Clerk, Public Utilities
Commission, State of Hawaii.

K. Higashi

OF THE STATE OF HAWAII

Docket No. 2007-0046

Decision and Order No. 23386

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 the request by Level 3 Communications, LLC ("Level 3"), Broadwing Communications, LLC ("Broadwing"), WilTel-Communications, LLC ("WilTel"), collectively, ("Applicants") to participate in certain financing arrangements.

I.

Background

A.

Description of Subject Entities

Level 3 is a Delaware limited liability company, presently authorized to provide facilities-based and resold

telecommunications services in the State of Hawaii ("Hawaii").¹ It is a wholly owned subsidiary of Level 3 Financing, Inc. ("Level 3 Financing"), which in turn is a wholly owned subsidiary of Level 3 Communications, Inc.²

Broadwing is authorized to provide interexchange telecommunication services in Hawaii.³ It is a subsidiary of Level 3.

WilTel has authority to provide intrastate resold interexchange telecommunications services in Hawaii.⁴ It is a wholly owned subsidiary of Level 3 and the corporate parent of WilTel-Comm.⁵

B.

Application

On February 14, 2007, Applicants filed an application seeking commission approval pursuant to HRS §§ 269-17, 269-19, the Rules of the commission, and "and any other regulations

¹Level 3 received its Certificate of Authority by Decision and Order No. 17053, filed on June 29, 1999, in Docket No. 99-0049.

²See Application at 2.

³Broadwing received its Certificate of Authority by Decision and Order No. 20756, filed on January 13, 2004 in Docket No. 03-0359.

⁴WilTel received its Certificate of Authority by Decision and Order 17092, filed on July 22, 1999 in Docket No. 99-0052 (Williams Communications, Inc.).

⁵See Application at 3.

deemed applicable,"⁶ to participate in certain financing arrangements, as described in the application ("Application") and Supplement to Application ("Supplement"). In the first of two transactions, Level 3 Financing will issue up to \$1.4 billion⁷ in notes to qualified institutional buyers in offerings that are exempt from U.S. Federal securities laws to refinance existing indebtedness.⁸ Applicants will act as guarantor with respect to the note issuance.⁹ The notes will be exchanged for substantially identical notes registered under federal securities laws.¹⁰ "The notes consist of both 8.75% fixed rate interest notes with a maturity date of 2017 and variable rate interest notes that have maturity dates of 2015."¹¹

In a second transaction, Level 3 Financing will enter into a credit agreement up to \$1.4 billion that will mature in 2014.¹² A portion of the proceeds from the credit agreement will be advanced to Applicants for an intercompany demand note.¹³

On March 9, 2007, Applicants supplemented their application further describing the proposed financing arrangements ("Supplement"). Since the Application's filing, the

⁶See Application at 1.

⁷See Application at 4 and Supplement at 1.

⁸See Application at 1 & 4.

⁹Id.

¹⁰Id.

¹¹See Application at 1 & 4.

¹²See Application at 4 and Supplement at 1.

¹³See Application at 4.

arrangement amount was increased to a total of \$1.4 billion; therefore, Applicants submitted a request to amend the Application to cover the full \$1.4 billion of the expanded credit agreement.¹⁴

Thus, Applicants seek in their Application and Supplement, commission approval of the proposed financing transactions, the related guarantee and pledge of assets ("Proposed Financial Transactions").

Applicants represent that the Proposed Financial Transactions "will not result in a change in Applicants' management" or in their day-to-day operations in Hawaii;¹⁵ nor will it "adversely affect Applicants' current or proposed operations in Hawaii"¹⁶ and "the financing arrangement will enable Applicants to bring services to new markets and allow more consumers to benefit from its competitive services more quickly and efficiently."¹⁷ Moreover, "the financing arrangement will allow [Level 3] Financing and Applicants to borrow funds under favorable extended maturity terms and reduced interest expenses."¹⁸

¹⁴See Supplement at 1.

¹⁵See Supplement at 2.

¹⁶Id.

¹⁷See Supplement at 2.

¹⁸Id.

C.

Consumer Advocate's Statement of Position

On March 21, 2007, the Consumer Advocate filed its Statement of Position ("Statement of Position") informing the commission that it does not object to the commission's approval of the Application.

The Consumer Advocate states that customer impact in Hawaii will be minimal or non-existent.¹⁹ Significantly, "Applicants are non-dominant telecommunications carriers with a minimal amount, if any, of customers in Hawaii, and with the number of carriers that are authorized to provide the same telecommunications services as Applicant[s], the Consumer Advocate finds that competition should continue to serve the same purpose as public interest regulation should the financing request be approved."²⁰

If the commission approves the Proposed Financial Transactions, the Consumer Advocate recommends that the commission waive the requirements of HRS § 269-17 and that Applicants be required to file copies of the executed pledge agreements with the commission and Consumer Advocate to complete the record.²¹ In the alternative, the commission may waive the requirements of HRS §§ 269-17 and 269-19 altogether, pursuant to

¹⁹See Statement of Position at 6.

²⁰Statement of Position at 6-7.

²¹See Statement of Position at 7.

HRS § 269-16.9 and HAR § 6-80-135.²² Specifically, the Statement of Position states:

. . . the Consumer Advocate does not object to a [c]ommission waiver of the HRS §§ 269-17 and 269-19 approvals to the extent required. As an aside, if the [c]ommission, on its own motion, waives in its entirety the approval requirements of HRS §§ 269-17 and 269-19, the Consumer Advocate recommends that the [c]ommission also waive all of the applicable filing requirements.²³

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." Under this section, the commission will approve the Proposed Financial Transaction if it is reasonable and consistent with the public interest.²⁴

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

²²See Statement of Position at 8.

²³Id.

²⁴See Decision and Order No. 19874, filed on December 13, 2002, in Docket No. 02-0345.

facilities or service, or for the discharge or refunding of its obligations or reimbursement of funds expended for the foregoing described purposes. Furthermore, pursuant to HRS § 269-17, "[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 the commission's consent prior to, among other things, mortgaging, encumbering, or otherwise disposing of its property. Similar to HRS § 269-17, HRS § 269-19 also states: "Every such sale, lease, assignment, mortgage, disposition, encumbrance, merger, or consolidation, made other than in accordance with the order of the commission shall be void."

Having reviewed the record,²⁵ the commission finds and concludes that the Proposed Financial Transactions fall under the purview of HRS §§ 269-7(a), 269-17 and 269-19. Notwithstanding these regulatory requirements, HRS § 269-16.9 also permits 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 (except provisions of HRS § 269-34 or provisions of HAR

²⁵The commission takes official notice of all commission records relating to Applicants, pursuant to HAR § 6-61-48.

chapter 6-80 that implement HRS § 269-34), upon a determination that a waiver is in the public interest.

The commission finds that the telecommunications services currently provided by Applicants are fully competitive, and that Applicants are non-dominant carriers in Hawaii. The commission also finds that the Proposed Financial 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 269-19, to the extent applicable, should be waived with regards to the matters in this docket, pursuant to HRS § 269-16.9 and HAR § 6-80-135.²⁶ Similarly, based on the findings and conclusions stated above, the commission should also waive the provisions of HAR §§ 6-61-101 and 6-61-105, to the extent that Applicants fail to meet any of these filing requirements.

²⁶See Decision and Order No. 18454, filed on March 28, 2001, in Docket No. 00-0443. 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 the instant Application only. Thus, the commission's 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 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), 269-17 and 269-19, to the extent applicable, are waived with respect to the Proposed Financial Transactions described in the Application filed on February 14, 2007, as supplemented on March 9, 2007.

2. The Consumer Advocate's recommendation to provide copies of the executed pledge agreements requirements is also waived.

3. To the extent that the Application does not fully comply with the filing requirements of HAR chapter 6-61, those requirements, including HAR §§ 6-61-101 and 6-61-105, are waived.

4. This docket is closed unless otherwise ordered by the commission.

DONE at Honolulu, Hawaii APR 26 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:

Jodi K. Yi
Jodi K. Yi
Commission Counsel

2007-0046.eh

CERTIFICATE OF SERVICE

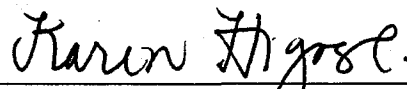
I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 23386 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

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

JUDY TANAKA
PAUL JOHNSON PARK & NILES
Suite 1300, ASB Tower
1001 Bishop Street
Post Office Box 4438
Honolulu, HI 96812

CATHERINE WANG
DANIELLE C. BURT
BINGHAM McCUTCHEN LLP
2020 K Street, NW
Washington, DC 20006

WILLIAM P. HUNT, III
LEVEL 3 COMMUNICATIONS, LLC
1025 Eldorado Boulevard
Broomfield, CO 80021



Karen Higashi

DATED: APR 26 2007