

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
PRIMUS TELECOMMUNICATIONS, INC.)
For Authority to Incur Debt and)
Encumber Public Utility Property)
_____)

DOCKET NO. 2007-0039

DECISION AND ORDER NO. 23436

Filed May 16, 2007
At 11 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 MAY 17 A 8:33

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

Karen Higashi

In the Matter of the Application of)
PRIMUS TELECOMMUNICATIONS, INC.)
For Authority to Incur Debt and)
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¹Improperly cited as Decision and Order No. 16774 in Applicant's request.

2000, in Docket No. 99-0189.² It is a wholly owned subsidiary of Primus Telecommunications Holding, Inc. ("Holding"), which is in turn a wholly owned subsidiary of Primus Telecommunications Group, Incorporated ("PTGI").³ All three companies maintain their principal places of business in McLean, Virginia.⁴

B.

Application

On February 9, 2007, Applicant filed a request seeking commission approval pursuant to HRS § 269-17 "and any other regulations deemed applicable,"⁵ to participate in certain financing arrangements, as described in the application ("Application"). Applicant seeks to incur debt obligations of up to \$200 million⁶ and to pledge assets in support of its financing arrangement.⁷ Applicant proposes to enter into the financing arrangement in order to refinance existing debt of PTGI, as well as to secure additional new financing.⁸ Thus, Applicant seeks commission approval of the proposed financing transactions, the

²See Application at 2.

³See Application at 1.

⁴See Application at 1-2.

⁵See Application at 1.

⁶Applicant will issue up to \$200 million in 14.25% Second Lien Secured Notes due in 2011 which will initially be offered in a private offering and subsequently exchanged for notes registered under federal securities laws.

⁷See Application at 1 and 3.

⁸Id.

related guarantees and any encumbrance of assets necessary to secure the financing transaction ("Proposed Financial Transaction").

Applicant represents that the Proposed Financial Transaction will improve and expand the terms of credit under which Applicant operates, and as a result, will yield financial benefits which will "ultimately inure to the benefit of Applicant's customers."⁹ Applicant claims that:

[a]pproval of the proposed financial arrangements will serve the public interest in promoting competition among telecommunications carriers by providing Applicant with the opportunity to strengthen its competitive position through access to greater financial resources. Furthermore, by increasing the breadth and scope of telecommunications services made available through the Applicant's ongoing operations, this financing transaction will ultimately benefit Hawaii consumers.¹⁰

C.

Consumer Advocate's Statement of Position

On April 10, 2007, the Consumer Advocate filed its statement of position ("Statement of Position") informing the commission that it recommends waiver of the commission's authority under HRS §§ 269-17 and 269-19 pursuant to HRS § 269-16.9(e) and HAR § 6-80-135.¹¹ The proposed waiver is based on the fact that Applicant is a non-dominant carrier providing

⁹Application at 3.

¹⁰Application at 4.

¹¹See Statement of Position at 1, 4-8, and 12.

telecommunication services in Hawaii¹² and "competition should serve the same purpose as public interest regulation even if the requested financing arrangement is executed and [Applicant] defaults on the loan. The Consumer Advocate notes that [Applicant's] customers will have the ability to obtain the same telecommunications services from other providers should [Applicant] be unable to provide its telecommunications services in the future."¹³ The Consumer Advocate also states that if the commission is inclined to waive the approval authority in HRS §§ 269-17 and 269-19, the waiver should also extend to any filing requirements.¹⁴

In the alternative, the Consumer Advocate recommends that the commission approve the Proposed Financial Transaction and waive the HRS §269-17 restriction regarding the use of proceeds from the Proposed Financial Transaction.¹⁵

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

¹²See Statement of Position at 3.

¹³Statement of Position at 7.

¹⁴See Statement of Position at 8.

¹⁵See Statement of Position at 9-11.

the Proposed Financial Transaction if it is reasonable and consistent with the public interest.¹⁶

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, 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."

¹⁶See Decision and Order No. 19874, filed on December 13, 2002, in Docket No. 02-0345.

Having reviewed the record,¹⁷ the commission finds and concludes that the Proposed Financial Transaction falls 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 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 Applicant are fully competitive, and that Applicant is a non-dominant carrier in Hawaii. The commission also finds that the Proposed Financial 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), 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 § 6-80-135.¹⁸ Similarly, based

¹⁷The commission takes official notice of all commission records relating to Applicant, pursuant to HAR § 6-61-48.

¹⁸See 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.

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 Applicant 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 Financial Transaction described in the Application filed on February 9, 2007.

2. 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.

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

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 Applicant, 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

MAY 16 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 L. K. Xi
Jodi L. K. Xi
Commission Counsel

2007-0039.eh

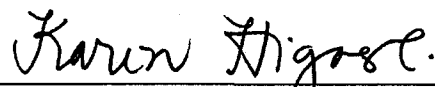
CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 23436 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 96813

CATHERINE WANG
JASBIR K. BAWA
BINGHAM McCUTCHEN LLP
2020 K Street, NW
Washington, DC 20006

THOMAS R. KLOSTER
CHIEF FINANCIAL OFFICER
PRIMUS TELECOMMUNICATIONS
GROUP, INCORPORATED
7901 Jones Branch Drive, Suite 900
McLean, VA 22102



Karen Higashi

DATED: MAY 16 2007