

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
)
TIME WARNER CABLE INFORMATION)
SERVICES (HAWAII), LLC)
)
For Approval of Reorganization or)
Waiver.)
_____)

DOCKET NO. 2007-0083

DECISION AND ORDER NO. 23444

Filed May 17, 2007
At 1 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 MAY 18 A 9:51

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

Karen Higashi

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DECISION AND ORDER

By this Decision and Order, the commission approves the proposed reorganization of TIME WARNER CABLE INFORMATION SERVICES (HAWAII), LLC's ("Applicant") parent companies, pursuant to Hawaii Revised Statutes ("HRS") §§ 269-7(a) and 269-19 ("Proposed Reorganization").

I.

Background

A.

Description of Applicant and Relevant Entities

Applicant is a member-managed limited liability company organized under the laws of the State of Delaware with its principal place of business in Stamford, Connecticut. Applicant is authorized to provide intrastate telecommunications services in the State of Hawaii as a reseller and facilities-based carrier.¹

¹See Decision and Order No. 21427, filed on October 22, 2004, in Docket No. 04-0135 ("Decision and Order No. 21427").

Time Warner Entertainment Company, L.P. ("TWE"), dba Oceanic Time Warner Cable, which provides cable services in Hawaii, owns 100% of the membership interest in Applicant. Time Warner Inc. owns 84.04% of the interest in Time Warner Cable Inc., which indirectly owns one hundred percent of the interests in TWE.

B.

Application

On March 28, 2007, Applicant filed an application for commission approval of the Proposed Reorganization pursuant to HRS § 269-7.² In the alternative, Applicant requests a waiver of all statutory requirements, pursuant to HRS § 269-16.9(e).

In its Application, Applicant proposes a corporate reorganization under which a new entity, TWC Digital Phone LLC ("TWC Digital"), will own 100% of the interest of Applicant. TWC Digital will in turn be owned by Time Warner Cable LLC (10%), Time Warner NY Cable LLC (16%), TWE (34%), and Time Warner Entertainment Advance/Newhouse Partnership (40%). All of these entities will be ultimately owned by Time Warner Cable Inc. and Time Warner Inc. Therefore, as before the Proposed

²Application; Exhibits "A" and "B"; Verification of Julie Y. Patterson; and Certificate of Service, filed on March 28, 2007 ("Application"). Applicant incorporates by reference its most recent year end financial statements to satisfy the requirements of Hawaii Administrative Rules ("HAR") § 6-61-75.

On March 28, 2007, the Application was served upon the DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS ("Consumer Advocate"). Pursuant to HAR § 6-61-62, the Consumer Advocate is an ex officio party to any proceeding before the commission.

Reorganization, Applicant will remain an indirect subsidiary of its current ultimate parent, Time Warner Inc.

Applicant represents that the Proposed Reorganization: (1) will be transparent to its customers; (2) will not impact the day-to-day management of Applicant given that the existing management team will remain intact; (3) will not change the nature of the services provided or the terms, conditions and rates of such services; and (4) Time Warner Inc. will remain the ultimate parent corporation of Applicant. Moreover, Applicant asserts that the Proposed Reorganization will allow it and its corporate parents to streamline and normalize their overall organizational structure, improving operational cost efficiencies, financial flexibility, and possibly creating tax savings. As such, the Proposed Reorganization will enhance Applicant's ability to offer competitive facilities-based services as an alternative to the incumbent service provider.

In the alternative, Applicant requests that the commission waive its approval requirements pursuant to HRS § 269-16.9(e) and HAR § 6-80-135 stating that in this instance, competition in the marketplace will serve the same purpose as public interest regulation and that a waiver would be in the public interest. Applicant claims that a waiver in this proceeding would be appropriate because it is a non-dominant carrier providing competitive services in Hawaii, and a waiver will reduce regulatory delay and costs to Time Warner Inc. and its subsidiaries and assist them in finalizing the Proposed Reorganization on a timely basis.

Applicant also incorporates by reference its most recent year end financial statements to satisfy the requirements of HAR § 6-61-75. To the extent that any other financial or other documentation is required, Applicant requests a waiver or exemption of any such requirement, pursuant to HRS § 269-16.9.

C.

Consumer Advocate's Statement of Position

On April 26, 2007, the Consumer Advocate filed its statement of position ("Statement of Position") in which it informed the commission that it does not object to the commission's approval of the Proposed Reorganization pursuant to HRS §§ 269-7(a) and 269-19 because: (1) Applicant's technical, managerial and financial qualifications after the Proposed Reorganization will not be adversely affected, and (2) the Proposed Reorganization is in the public interest in that the Proposed Reorganization will be transparent to Applicant's customers and will allow Applicant and its corporate parents to streamline and normalize their overall organizational structure.

The Consumer Advocate, however, does not support Applicant's request for a waiver of the investigative requirements set forth in HRS § 269-7(a), and of the approval requirements set forth in HRS § 269-19. The Consumer Advocate asserts that based on a review of the annual financial statements filed by Applicant, Applicant can be viewed as a fast growing and significant telecommunications provider in Hawaii.

II.

Discussion

A.

Request for Waiver

As the commission often grants waivers of its investigative and approval authority for applications involving indirect transfers of control by telecommunications providers, the commission will first address Applicant's alternative waiver request.

HRS § 269-16.9(e) permits the commission to waive regulatory requirements applicable to telecommunications providers if the commission determines that competition will serve the same purpose as public interest regulation.³ Additionally, HAR § 6-80-135 permits the commission to grant an exemption from or 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 an exemption or waiver is in the public interest. However, where the commission finds that an applicant plays a significant role in the telecommunications

³See In re Broadwing Communications, LLC, Docket No. 05-0271, Decision and Order No. 22187 (December 14, 2005) (finding that while the applicant's proposed financial transaction fell under the purview of HRS §§ 269-7(a), 269-17, and 269-19, HRS § 269-16.9 allowed the commission to waive regulatory requirements applicable to telecommunications providers if the commission determined that competition will serve the same purpose as public interest regulation).

industry, the commission may deny a request for a waiver under HRS § 269-16.9(e).⁴

In this instance, the commission agrees with the Consumer Advocate that a waiver of the commission's investigative and approval requirements are inappropriate because Applicant is a "fast growing and significant telecommunication provider in the State."⁵ A review of the commission's records indicates that in terms of revenues Applicant is one of the larger resellers in the State, and its revenues have substantially increased in recent years.⁶ Moreover, the commission is cognizant of the fact that Applicant is part of a group of interrelated companies that has shaped the telecommunications market in Hawaii via numerous dockets before the commission. While the telecommunications industry (and telecommunications providers) in Hawaii may be transitioning to internet protocol or IP-based services,⁷ Applicant is authorized to provide intrastate telecommunications services in Hawaii as a reseller and facilities-based carrier.⁸

⁴See, e.g., In re Sprint Long Distance, Inc., Docket No. 2006-0060, Decision and Order No. 22462 (May 11, 2006) (denying a waiver request where competition did not serve the same purpose as public interest regulation pursuant to HRS § 269-16.9(e)).

⁵See Statement of Position at 6.

⁶Pursuant to HAR § 6-61-48, the commission takes official notice of the information contained in its files and records.

⁷For example, Applicant "intends to provide local and long distance Internet Protocol . . . voice services (aka, Voice over Internet Protocol or VOIP) targeted to Hawaii's customers who reside in Oceanic Time Warner Cable's Road Runner service areas." Decision and Order No. 21427 at 3.

⁸Id. at 9.

Accordingly, the commission concludes that Applicant's request for a waiver of the approval requirements of HRS § 269-7(a) should be denied.

Nonetheless, despite the commission's unwillingness to waive its investigative and approval requirements, the commission does find it appropriate to waive the applicability of HAR § 6-61-75 to the extent that Applicant's financial statements are not in compliance with the filing requirements of HAR chapter 6-61, including HAR § 6-61-75. As noted above, Applicant incorporates by reference its most recent year end financial statements and requests a commission waiver of the financial requirements set forth in HAR § 6-61-75. As discussed above, pursuant to HRS § 269-16.9, the commission has the authority to waive certain regulatory requirements relevant to telecommunications carriers. In this instance, the commission finds it in the public interest to waive the applicability of HAR § 6-61-75 to the extent that Applicant's financial statements are not in compliance with the filing requirements of HAR chapter 6-61, including HAR § 6-61-75.

C.

Request for Approval of Application

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 HRS § 269-7(a), the commission will approve the Proposed Reorganization if it is reasonable and consistent

with the public interest.⁹ A transaction is reasonable and in the public interest if it will not adversely affect the carrier's fitness, willingness, and ability to provide intrastate telecommunications services in Hawaii, as authorized by the commission.¹⁰

HRS § 269-19 provides that a public utility corporation must obtain the commission's consent prior to, among other things, directly or indirectly, merging or consolidating with any other public utility corporation. 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."

Upon a review of the record in this docket,¹¹ the commission finds the Proposed Reorganization to be reasonable and in the public interest. Applicant represents that the Proposed Reorganization will be totally transparent to its customers and will not impact its day-to-day management since the existing management team will remain intact. Moreover, there will be no change in the nature of services provided or the terms, conditions and rates of such services as a result of the Proposed Reorganization. Finally, Time Warner Inc. will remain Applicant's ultimate parent corporation.

⁹See Decision and Order No. 19874, filed on December 13, 2002, in Docket No. 02-0345.

¹⁰See Decision and Order No. 21715, filed on April 4, 2005, in Docket No. 05-0045, at 11-12.

¹¹Pursuant to HAR § 6-61-48, the commission takes official notice of all records relating to Applicant and TWTC.
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Accordingly, the commission concludes that the Proposed Reorganization should be approved, pursuant to HRS §§ 269-7(a) and 269-19, subject to the condition that Applicant be required to provide the commission and the Consumer Advocate with written notice of the date when the Proposed Reorganization is consummated.

III.

Orders

THE COMMISSION ORDERS:

1. The Proposed Reorganization, as described in the Application, is approved, subject to the condition that Applicant notifies the commission and the Consumer Advocate in writing of the date when the Proposed Reorganization is consummated. Failure to promptly comply may constitute cause to void this Decision and Order, and may result in further regulatory action, as authorized by law.

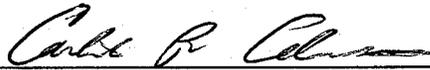
2. Applicant's alternative request for a waiver of the approval requirements of HRS § 269-7(a) is denied.

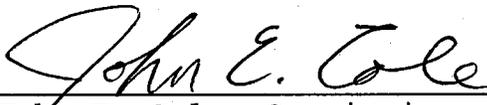
3. To the extent that the Application does not fully comply with the filing requirements of HAR chapter 6-61, those requirements, including HAR § 6-61-75, are waived.

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

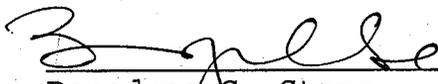
DONE at Honolulu, Hawaii MAY 17 2007.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By 
John E. Cole, Commissioner

APPROVED AS TO FORM:


Benedyne S. Stone
Commission Counsel

2007-0083.eh

CERTIFICATE OF SERVICE

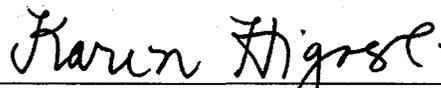
I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 23444 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

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DATED: MAY 17 2007