

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
ELECTRIC LIGHTWAVE, LLC)
For Approval of Financing)
Arrangement and Encumbrance of)
Assets)

Docket No. 2007-0127
Decision and Order No. 23527

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 Electric Lightwave, LLC's ("Applicant") request to participate in certain financing arrangements, including the execution of a guarantee and encumbrance of its assets, in connection with Applicant's parent company, Integra Telecom Holdings, Inc.'s ("Integra") acquisition of Eschelon Telecom, Inc. ("Eschelon") ("Proposed Transaction").

I.

Background

A.

Description of Subject Entities

Applicant is a Delaware limited liability company with its principal place of business in Vancouver, Washington.¹ It

¹See Consumer Advocate's Statement of Position, filed on May 29, 2007 ("Statement of Position") at 4.

provides local phone service, switched and dedicated long distance, private networks, advanced data and internet access services² to approximately six customers in the State of Hawaii.³ Applicant's predecessor, Electric Lightwave, Inc. obtained a Certificate of Authority ("COA") to provide resold interexchange telecommunications services in Hawaii.⁴ By Decision and Order No. 21646, filed on February 11, 2005, in Docket No. 04-0338, the COA was transferred to Applicant.

Applicant's parent company is Integra,⁵ an Oregon corporation with its principal offices in Portland, Oregon.⁶ Integra's parent company is Integra Telecom, Inc. ("Integra's Parent")⁷

B.

Application

On May 15, 2007, Applicant filed a petition seeking commission approval to participate in certain financing arrangements involving Integra and Integra's Parent. By Agreement and Plan of Merger dated March 19, 2007, Integra will acquire 100% of the ownership and control of Eschelon and

²Id.

³Application at 2.

⁴See Decision and Order No. 16592, filed on October 6, 1998, in Docket No. 98-0210.

⁵See Decision and Order No. 22057, filed on June 1, 2006, in Docket No. 2006-0065.

⁶See Statement of Position at 3.

⁷See Application at 3.

Eschelon will be merged into a wholly owned subsidiary of Integra.⁸

To finance the acquisition of Eschelon, Integra's Parent will raise a total of approximately \$1.2 billion in new debt to purchase Eschelon's stock for an aggregate amount of \$710 million, refinance various loan obligations, provide excess operating cash, and cover transition expenses and fees.⁹

The \$1.2 billion is a combination of \$985 million in Senior Secured Debt and \$215 million in notes. The Senior Secured Debt will be guaranteed by Integra and its subsidiaries, including Applicant, as well as secured by their assets.¹⁰ The \$215 million in senior, unsecured notes¹¹ will be issued by Integra's Parent pursuant to the agreement.¹²

Once Integra's Parent purchases Eschelon, it will be merged with ITH Acquisition Corp., a newly formed subsidiary of Integra, and the surviving entity will retain the name Eschelon Telecom, Inc.¹³

Applicant states that the Proposed Transaction is in the public interest as it "will combine the strengths and talents of two of the nation's most successful CLECs"; will "enable both

⁸Applicant 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.

⁹Application at 3.

¹⁰See Application at 3-4.

¹¹Id. at 4.

¹²Id. at 4.

¹³See Application at 3.

Eschelon and Integra's operating subsidiaries, including [Applicant], to continue to offer innovative products and to further strengthen their competitive positions"; will be virtually transparent to Applicant's customers; and will not result in a change of ownership of Applicant.¹⁴

Applicant requests expedited commission approval of the Proposed Transaction or waiver of the commission's approval requirements by July 1, 2007.

C.

Consumer Advocate's Statement of Position

On May 29, 2007, the Consumer Advocate filed its statement of position in which it states that it does not object to Applicant's guarantee of the proposed financing and encumbrance of Applicant's assets as security for the financing. In the alternative, the Consumer Advocate "recommends that the [c]ommission waive its investigati[ve] authority under HRS § 269-7(a) and approval requirement under HRS §§ 269-17 and 269-19."¹⁵ If the commission is inclined to waive its approval authority, the Consumer Advocate recommends that "the waiver should also extend to any filing requirements (e.g., for copies of the financing agreements and other related documentation) required by the [c]ommission to complete the record. The basis for this recommendation is that the need to review and maintain copies of the financing arrangement for record keeping purposes

¹⁴Application at 1, 4-5.

¹⁵See Statement of Position at 10.

is eliminated if the need to review the proposed financing arrangement is waived."¹⁶

The Consumer Advocate's recommendation is based in part on the fact that "[t]he proposed transaction is expected to be virtually transparent to [Applicant's] customers. The transaction will not result in a change of ownership of [Applicant] or change in customer rates, terms or conditions. Thus, there is expected to be no interruption of service to [Applicant's] customers."¹⁷ Also, "with only six customers in the State, [Applicant] is clearly a non-dominant reseller of telecommunications services."¹⁸

According to the Consumer Advocate, the Proposed Transaction will "serve the public interest because the transaction will combine the strengths and talents of two of the nation's most successful CLECs [Competitive Local Exchange Carriers]. In addition, Integra and its operating subsidiaries are expected to be provided with the ability to offer innovative products and to further strengthen their competitive positions."¹⁹ Finally, "[Applicant's] customers will have the ability to obtain the resold telecommunications services from other telecommunications providers in the State, if [Applicant] is unable to continue providing the service Thus, competition is expected to serve the same purpose as public

¹⁶See Statement of Position at 11.

¹⁷See Statement of Position at 8.

¹⁸Id. at 8.

¹⁹See Statement of Position at 9.

regulation should the [Agreement] be approved. The market place, it is assumed, will then serve to mitigate any traditional public utility regulatory concerns regarding the proposed debt financing affecting [Applicant]."²⁰

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

In this docket, we find, at this time, that Applicant is a non-dominant carrier 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), 269-17 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 § 6-80-135.²¹ Similarly, based on these findings and conclusions

²⁰Id. at 9.

²¹The 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 Applicant, as a basis for not filing an application or petition

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 Transaction, described in the Application filed on May 15, 2007.

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

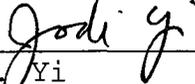
DONE at Honolulu, Hawaii JUN 29 2007.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By 
John E. Cole, Commissioner

APPROVED AS TO FORM:


Jodi K. Yi
Commission Counsel
2007-0127.cp

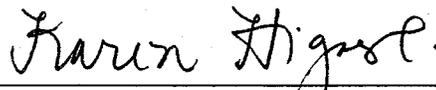
regarding similar transactions that fall within the purview of these statutes.

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 23527 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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DIVISION OF CONSUMER ADVOCACY
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Karen Higashi

DATED: JUN 29 2007