

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
MOBILEPRO CORP.,)
AMERICAN FIBER NETWORK, INC.,)
and UNITED SYSTEMS ACCESS, INC.)
For the Transfer of Control of)
American Fiber Network, Inc. to)
United Systems Access, Inc.)

DOCKET NO. 2007-0330

DECISION AND ORDER NO. 23874

Filed Dec. 6, 2007
At 11 o'clock A.M.

Karen Higashi
Chief Clerk of the Commission

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

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

K. Higashi

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Docket No. 2007-0330
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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 MOBILEPRO CORP. ("MobilePro"), AMERICAN FIBER NETWORK, INC. ("AFN"),¹ and UNITED SYSTEMS ACCESS, INC.'s ("USAI") (collectively, "Applicants") request to approve the transfer of control of AFN from MobilePro to USAI ("Proposed Transaction").

¹AFN, a wholly owned subsidiary of MobilePro, received its Certificate of Authority to provide facilities-based and resold intrastate telecommunications services in the State of Hawaii by Decision and Order No. 17387, filed on November 24, 1999, as amended by Order No. 17456, filed on January 7, 2000, in Docket No. 99-0344.

I.

Background

A.

Application

On October 8, 2007, Applicants filed a joint application ("Application") requesting expedited commission approval of the Proposed Transaction, pursuant to HRS § 269-19.² According to Applicants, USAI will acquire control of AFN, pursuant to an agreement dated June 30, 2007, between MobilePro and USAI under which USAI will purchase one hundred percent (100%) of the stock of AFN.

Applicants state that the Proposed Transaction will be transparent to AFN's customers, as AFN will continue to offer service under the same rates, terms and conditions of service. According to Applicants, the Proposed Transaction will enhance their respective operations in terms of service coverage area and through the ability of each entity to offer customers an expanded line of products and services.

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.

B.

Consumer Advocate's Statement of Position

On November 15, 2007, the Consumer Advocate filed its statement of position in which it recommends that the commission waive its authority over the Proposed Transaction or, in the alternative, that the commission approve the Proposed Transaction.

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, the commission finds, at this time, that AFN is a non-dominant carrier in the State. The commission also finds 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 respect 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, the commission also waives 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) and 269-19, to the extent applicable, are waived with respect to the Proposed Transaction, described in the Application filed on October 8, 2007.

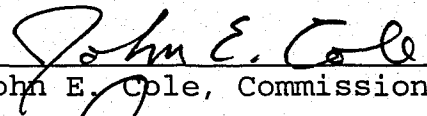
2. The filing requirements of HAR §§ 6-61-101 and 6-61-105, to the extent applicable, are also waived.

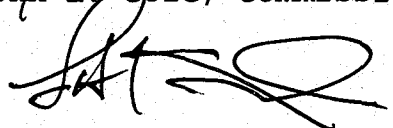
³The commission will continue to examine each application or petition and make determinations on a case-by-case basis as to whether the applicable requirements of HRS §§ 269-7(a) or 269-19 should be waived. Thus, the commission's waiver in this instance should not be construed by any public utility, including Applicants, as a basis for not filing an application or petition regarding similar transactions that fall within the purview of these statutes.

DONE at Honolulu, Hawaii DEC - 6 2007.

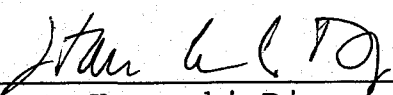
PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By 
John E. Cole, Commissioner

By 
Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:


Stacey Kawasaki Djou
Commission Counsel

2007-0330.laa

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 23874 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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Karen Higashi

DATED: DEC - 6 2007