

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
HAWAIIAN TELCOM, INC. and HAWAIIAN)
TELCOM SERVICES COMPANY, INC.)
For Approval of Security)
Arrangements Related to the)
Increase in Senior Secured)
Revolving Credit Facility.)
_____)

DOCKET NO. 2008-0044

DECISION AND ORDER

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

PUBLIC UTILITIES
COMMISSION

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FILED

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TELCOM SERVICES COMPANY, INC.)
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)

By this Decision and Order, the commission denies HAWAIIAN TELCOM, INC. ("HTI") and HAWAIIAN TELCOM SERVICES COMPANY, INC.'s ("HTSC") (collectively, "Applicants") request for commission approval to allow Hawaiian Telcom Communications, Inc. ("HT Communications") to increase its borrowing capacity under its existing senior secured revolving credit facility from \$90 million to \$150 million.

Joint Application

On February 27, 2008, Applicants jointly filed their application¹ requesting commission approval to increase their existing security obligations in connection with an increase in

¹Applicants filed their Application; Verification; and Certificate of Service (collectively, "Application") on February 27, 2008.

HT Communications' senior secured revolving credit facility from \$90 million to \$150 million ("Proposed Financing Arrangement").² The Application was filed pursuant to HRS §§ 269-7, 269-17, and 269-19, as applicable, and HAR Title 6, Chapter 61, Subchapters 2, 6, 9, and 10.

1.

Applicants

In March 2005, the commission conditionally approved the merger transaction and other related matters described in the joint application filed by Paradise MergerSub, Inc., now known as HT Communications; GTE Corporation; Verizon Hawaii Inc., now known as HTI; Bell Atlantic Communications, Inc., dba Verizon Long Distance; and Verizon Select Services Inc. (referred to herein as the "VH Merger").³ Through the VH Merger transaction, control over HTI and certain related assets were transferred from various subsidiaries of Verizon Communications Inc. to HT Communications and its parent company, which

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 pursuant to Hawaii Revised Statutes ("HRS") § 269-51 and Hawaii Administrative Rules ("HAR") § 6-61-62. Applicants and the Consumer Advocate are the sole parties to this proceeding.

³In re Paradise MergerSub, Inc., et al., Docket No. 04-0140, Decision and Order No. 21696, filed on March 16, 2005 ("Decision and Order No. 21696").

are ultimately controlled by the TC Group L.L.C., dba The Carlyle Group, a Delaware limited liability company.

HTI, a Hawaii corporation, is a wholly-owned subsidiary of HT Communications. Its principal place of business is in Honolulu, Hawaii. HTI was originally chartered in 1883 under the Kingdom of Hawaii, and is a public utility, as defined by HRS § 269-1, subject to commission regulation under HRS Chapter 269. As the incumbent local exchange carrier ("ILEC") for the State of Hawaii ("State"), HTI provides a "comprehensive slate" of local and intraLATA telecommunications services on a statewide basis.

HTSC, a wholly-owned subsidiary of HT Communications and an affiliate of HTI, is a Delaware corporation. Its principal place of business is in Honolulu, Hawaii. HTSC is authorized to transact business in the State and is a telecommunications carrier as defined by HRS § 269-1. Currently, HTSC is authorized by the commission to provide resold and facilities-based telecommunications services and intrastate resold wireless telecommunications services (known as, commercial mobile radio services or "CMRS") in the State.⁴ Further, HTSC

⁴HTSC received its certificate of authority ("COA") to provide resold telecommunications services in the VH Merger docket (see Decision and Order No. 21696 at 58-60) and later received its certificate of registration to provide CMRS in the State in Decision and Order No. 21892, filed on June 24, 2005, in Docket No. 05-0097. In March 2008, HTSC received commission approval to expand its COA to also provide facilities-based telecommunications services in the State. See In re Hawaiian Telcom Services Company, Inc., Docket No. 2007-0423, Decision and Order No. 24114, filed on March 31, 2008.

provides interstate toll service on a nationwide basis under the purview of the Federal Communications Commission. Recently, HTSC divested itself of its directory publishing business.⁵

2.

Proposed Financing Arrangement

In Decision and Order No. 21696, while conditionally approving the VH Merger transaction, the commission permitted certain financing and security arrangements entered into for the purpose of consummating the VH Merger. These arrangements included HT Communications obtaining a senior secured revolving credit facility ("Revolving Credit Facility"). HT Communications' Revolving Credit Facility are "secured by, among other things: (1) an unconditional guarantee by HTI and HTSC, (2) a first priority pledge of all of the capital stock and equity interests held by HTI and HTSC, and (3) perfected first priority security interests in, and mortgages on, substantially all tangible and intangible assets of HTI and HTSC" (collectively, referred to as the "Security Obligations").⁶

Presently, the total amount available (drawn plus undrawn) under HT Communications' Revolving Credit Facility is

⁵In November 2007, the commission conditionally approved Applicants' request to sell HTSC's directory publishing business to CBD Investor, Inc. ("Directory Sale Docket"). See In re Hawaiian Telcom Services Company, Inc. and Hawaiian Telcom, Inc., Docket No. 2007-0123, Decision and Order No. 23825, filed on November 13, 2007 ("Decision and Order No. 23825").

⁶See Application at 7.

\$90 million.⁷ However, under HT Communications' loan agreements, HT Communications is authorized a one-time right to increase the amount available under the Revolving Credit Facility to \$150 million without: (1) additional lender approval; (2) entering into any additional security obligations; and (3) executing any additional loan documentation. Applicants state that HT Communications desires to now increase its Senior Revolving Facility from \$90 million to \$150 million to "acquire property and complete various construction relating to primary telephone service, service improvements and administrative support as outlined in HTI's Construction Budget" filed with the commission on April 30, 2007.⁸ Applicants assert that any remaining portions of the revolving line of credit will be reserved to meet short-term needs to be repaid within 12 months and for unexpected capital expenditures or unforeseen events (e.g., natural disasters, unexpected weather conditions, etc.). According to Applicants, "[t]his represents a safety cushion for Applicants and serves as a prudent mechanism in the

⁷According to Applicants, prior to Decision and Order No. 21696 approving the VH Merger transaction, it was contemplated that the amount of the Revolving Credit Facility would be \$150 million. However, due to restructurings of the financing amounts, the Revolving Credit Facility limit was ultimately reduced to \$90 million, with the option for HT Communications to increase the threshold to \$200 million. In January 2008, HT Communications paid down the drawn amounts in the credit facility with the proceeds from the sale of the directories, and in an effort to save on loan commitment fees on the uncommitted (i.e., undrawn) portion of the Revolving Credit Facility, it requested that the increased limit on the facility be reduced to \$150 million. Additional details are set forth in footnote 13 of page 8 of the Application.

⁸See Application at 8.

public interest to ensure that Applicants will have immediate accessibility to funds to address unforeseen events and to appropriately manage Applicants' financial operations and liquidity."⁹

Applicants assert that the proposed increase or expansion of Applicants' existing Security Obligations will be transparent to Applicants' customers and that customers would benefit from Applicants' ability to assure them continued receipt of quality telecommunications services at competitive prices.¹⁰

B.

Applicants' Modification

By letter dated April 14, 2008, Applicants modified their Application ("Modification Letter"). While still seeking commission approval of the Proposed Financing Arrangement, and stating that the increased capacity (i.e., from \$90 million to \$150 million) would be subject to the Security Obligations, Applicants proposed that "[a]ny draws in the future on the increased capacity will be subject to the review of and/or approval by the Commission that it deems necessary or appropriate" following the filing of Applicants' Debt Reduction Plan,¹¹ a requirement under the Directory Sale Docket (the "Modified Request"). Applicants' Modified Request is due to

⁹Id. at 8-9 (internal quotes omitted).

¹⁰Id. at 10.

¹¹See Modification Letter at 2.

their recognition of "uncertainty" caused by their requests in the Application and the need for additional information. With regards to this, Applicants refer to the March 27, 2008, commission letter requesting Applicants to submit the Debt Reduction plan prior to May 30, 2008,¹² the submittal deadline at that time,¹³ and the Consumer Advocate's information requests ("IRs") issued on March 25, 2008, seeking information on, among other things, the planned uses for the additional \$60 million in capacity.

Applicants state that they are not able to submit the Debt Reduction Plan at this time and, without completing their planned analysis, are unable to identify the long-term projects

¹²By letter dated March 27, 2008, the commission stated that it appeared that the information contained in the Debt Reduction Plan (which was then, after an initial extension, due on May 30, 2008) may be relevant to the commission's deliberations regarding the requests set forth in the Application for which Applicants are seeking a commission decision by May 21, 2008. Accordingly, the commission requested that Applicants consider submitting the Debt Reduction Plan prior to the May 30, 2008 deadline, and made clear that the commission does not foresee concluding its deliberations regarding the Application without review of the Debt Reduction Plan.

¹³On May 6, 2008, the commission issued Order No. 24174 in Docket No. 2007-0123 ("Order No. 24174") approving Applicants' request for an additional extension of time from May 30, 2008, to June 30, 2008, to submit their Debt Reduction Plan, pursuant to the commission's decision and order issued in the Directory Sale Docket. Applicants' additional extension request was based on their representation that they were in the process of developing a 5-year strategic plan ("Strategic Plan"), of which the Debt Reduction Plan is a component, that required additional time to complete. Accordingly, while approving Applicants' request for additional time to submit the Debt Reduction Plan (i.e., until June 30, 2008), the commission also ordered Applicants to submit its Strategic Plan concurrently with its Debt Reduction Plan.

and uses of the increased capacity.¹⁴ However, due to the uncertainty of the credit markets, Applicants believe that commission approval of the Proposed Financing Arrangement would be prudent and in the best interest of Applicants and their customers. According to Applicants, commission approval would allow them to exercise their right to increase the threshold without any incremental loan origination or other fees and state that it is "highly unlikely that Applicants could obtain a revolving credit or other loan facility on such favorable terms as under the current loan documents given the current state of the credit markets."¹⁵ In support they cite to their responses to CA-IR-1 and CA-IR-2 filed on April 14, 2008.

Applicants state that their Modified Request is in the public interest. According to Applicants, under their Modified Request, Applicants' interests would be protected by allowing an increase in the existing Revolving Credit Facility to \$150 million under the current favorable terms of the loan while allowing the commission and the Consumer Advocate the necessary time to review Applicants' Debt Reduction Plan and planned uses of the increased capacity of the Revolving Credit Facility once the Debt Reduction Plan is filed.

¹⁴See Modification Letter at 2.

¹⁵Id.

C.

Consumer Advocate's Position

On May 13, 2008, the Consumer Advocate filed its Statement of Position ("CA's Position Statement") stating that it does not recommend commission approval of the Proposed Financing Arrangement. However, should the commission not concur with its recommendation and is inclined to approve the Proposed Financing Arrangement in accordance with Applicants' Modified Request, the Consumer Advocate "recommends that such Commission approval be granted with the ability to rescind the approval if Applicants' Debt Reduction Plan and/or Strategic Plan are not deemed reasonable."¹⁶ The Consumer Advocate's position is based on the following contentions.

First, the Consumer Advocate states that it has significant concerns regarding Applicants' existing highly leveraged capital structure. The Consumer Advocate notes that the commission in Decision and Order No. 21696 expressed concerns regarding Applicants' capital structure during the VH Merger proceeding and, among other things, restricted payments of dividends until a target consolidated capital structure of 65% debt and 35% equity is achieved. Accordingly, the Consumer Advocate states that it is "gravely troubled" about the impacts of Applicants' instant proposal on HTI's capital structure as set forth on Exhibit 3 of the Application.¹⁷

¹⁶See CA's Position Statement at 19.

¹⁷Exhibits 2, 3 and 4 of Applicants' Application were filed confidentially under Protective Order No. 24083, issued on

Moreover, the Consumer Advocate states that the recent downgrading of Applicant's bonds by rating agencies due to Applicants' continued poor financial performance from operations and increased competition cannot be ignored.¹⁸ According to the Consumer Advocate, "[a]llowing Applicants to incur, now or in the future, any additional debt would thus: (a) not be in the public interest, (b) [be] contrary to the Commission's intended debt reduction conditions as set forth in Decision and Order No. 21696, and (c) possibly viewed as negligence of one's regulatory responsibility to the public."¹⁹

Second, the Consumer Advocate claims that Applicants' interest coverage ratios shows that earnings from operations are currently and projected to be insufficient to meet their expenses. Interest coverage ratio is the result of dividing earnings before income taxes by the interest expense and is used to determine how easily a company can pay interest on outstanding debt.²⁰ The Consumer Advocate states that a company's ability to meet interest expenses may be questionable when its interest coverage is 1.5 or lower and that a ratio below 1.0 indicates that a company is having difficulty generating the necessary cash

March 7, 2008, in this docket ("Protective Order"). Accordingly, material portions of the Consumer Advocate's analysis regarding Applicants' capital structure referencing Exhibit 3 were filed subject to the Protective Order. See CA's Position Statement at 6-8.

¹⁸Id. at 6-7 (citation omitted).

¹⁹Id. at 8.

²⁰Id.

to pay its interest obligations. The Consumer Advocate states that Exhibit 4 of the Application reflects projections indicating a significant deficiency in Applicants' ability to generate sufficient cash to meet interest obligations for the existing and proposed debt. The Consumer Advocate contends that "any approval to allow Applicants to increase their debt and related interest obligations would only serve to exacerbate the current concern with the present and projected interest coverage ratios."²¹

Third, the Consumer Advocate argues that approving additional debt or the requested increase in HT Communications' Revolving Credit Facility is not in the public interest. While the Consumer Advocate understands that having access to funds for an ILEC's on-going operational needs is in the public interest since it would ensure the continued viability of the ILEC, the Consumer Advocate disagrees that such funds should be obtained by increasing the Revolving Credit Facility when considering the existing debt levels and associated interest coverage ratios. The Consumer Advocate contends that allowing an entity with interest coverage ratios similar to Applicants to incur additional debt is akin to allowing a person to obtain a mortgage that the person cannot afford. According to the Consumer Advocate, in both situations the debtor runs the risk of defaulting on the loan and creating a critical liquidity problem for the debtor's customers. Asserting its view that Applicants are overextended, the Consumer Advocate argues that allowing

²¹Id. at 9.

Applicants to increase their Revolving Credit Facility "simply because they are currently able to do so without any incremental costs is not in the public interest given the current debt to equity and interest coverage ratios."²² Moreover, the Consumer Advocate contends that operational shortfalls, if any, should be funded through an equity infusion, as opposed to debt, which would be in the public interest.

Fourth, the Consumer Advocate states that Applicants have not demonstrated a need to increase the Revolving Credit Facility. According to the Consumer Advocate, Exhibits 2 and 3 of the Application indicate that Applicants do not project the need to draw down more than the \$90 million in funds from the Revolving Credit Facility until after 2010. The Consumer Advocate states that the projection assumes that there will be insufficient cash generated from operations at that time to pay for the proposed capital expenditures and financing costs. The Consumer Advocate contends that it is premature to assume that there will be a need to draw down the projected funds beyond the current \$90 million threshold from the Revolving Credit Facility at that time without more information about HTI's actual operations and financing needs. Additionally, the Consumer Advocate states that on March 25, 2008, Applicants drew approximately \$73 million of the current \$90 million from the Revolving Credit Facility and placed the funds in an AAA-rated money market portfolio for "future" use.

²²Id. at 11 (emphasis in original).

"Thus, Applicants have \$73 million in available funds for future capital expenditures should there be insufficient funds generated from operations to make such purchase/investment or pay debt service costs."²³ Furthermore, based on Applicants' response to CA-IR-2a wherein they state that they are unable to identify the property (or properties) to be acquired or the construction project(s) to be built using the additional funds drawn from the Revolving Credit Facility, the Consumer Advocate states that it is not clear that Applicants need the additional funds from the facility beyond the current \$90 million threshold for utility acquisitions or to engage in construction projects.

Fifth, the Consumer Advocate contends that should any of Applicants' strategic plans identify the need for funds to pursue future utility property acquisitions or construction projects, such funding should be from the \$73 million that was drawn down and placed in an investment portfolio or through the infusion of additional equity. The basis for this recommendation is that equity infusion: (1) is consistent with the commission's finding that Applicants should achieve a reasonable capital structure; (2) would eliminate the existing concerns with Applicants' high leverage and associated financial risk; and (3) would not have a direct impact on Applicants' interest coverage ratio and possibly address any existing concerns regarding Applicants' liquidity.²⁴

²³Id. at 12.

²⁴Id. at 13.

Sixth, should the commission not concur with the Consumer Advocate's concerns and resulting recommendation, the Consumer Advocate recommends that approval of Applicants' request in accordance with the Modified Request be conditioned on the commission's ability to rescind its approval if Applicant's Debt Reduction Plan or Strategic Plan are not deemed reasonable. In short, the Consumer Advocate contends that it would "only be prudent" that any approved increase of Applicants' Revolving Credit Facility be rescinded should their Debt Reduction Plan or Strategic Plan be deemed unreasonable and unacceptable.

Finally, the Consumer Advocate states that HTI, as the State's only ILEC, is the provider of services and the backbone for the provision of telecommunications services by the authorized competitive local exchange carriers. Thus, the Consumer Advocate contends that HTI must remain financially strong in order to ensure continued operations, and that HTI must have sufficient funds to operate, repair, and maintain its telecommunications infrastructure and computer systems. However, the required funds, according to the Consumer Advocate, should not be through additional debt, which would place the ILEC at high financial risk. The Consumer Advocate states that "Applicants need to first establish a creditable track record that shows significant progress toward meeting the Commission's targeted capital structure before being allowed to enter into additional debt."²⁵

²⁵Id. at 18.

Moreover, the Consumer Advocate recommends that the commission view the information presented in the Debt Reduction and Strategic Plan with caution. As set forth on pages 15 through 17 of the Consumer Advocate's Position Statement, the Consumer Advocate contends, among other things, that given the past and, possibly, current system problems that existed and may still exist, there are questions regarding the accuracy of the outputs or data provided and used to develop the Debt Reduction Plan and Strategic Plan. The Consumer Advocate also states that the recent turnover of strategic senior executives and termination or departure of a number of management employees may have resulted in the loss of strategic operational and market knowledge and experience. Moreover, the Consumer Advocate notes that Applicants appear to consistently be uncertain regarding their financials since materials previously filed have already materially changed and Applicants continue to extend the due date of their Debt Reduction Plan which was originally due on January 12, 2008.

D.

Applicants' Response

On May 14, 2008, Applicants filed their Statement in Response to Division of Consumer Advocacy's Statement of Position ("Applicants' Response"). In their Response, Applicants contend that, upon further consideration, it does not appear that specific commission approval under HRS §§ 269-17 and 269-19 is required for HT Communications to exercise its one-time right to

increase its borrowing capacity under the Revolving Credit Facility from \$90 million to \$150 million pursuant to their Modified Request. They argue that while HT Communications' obligations under the Revolving Credit Facility and other loan arrangements are secured by the Security Obligations, "these obligations are actually not triggered, or expanded, to cover this additional capacity unless or until this additional capacity is drawn upon, which,"²⁶ under the Modified Request, would require separate commission review and approval under HRS §§ 269-17 and 269-19 and, thus, Applicants now contend that commission approval is not required for HT Communications to exercise its option to increase its borrowing capacity under the Revolving Credit Facility from \$90 to \$150 million ("Approval Analysis").

In their Response, Applicants again modified their request. Now, Applicants request that, by May 21, 2008, the commission inform them whether the commission agrees with their Approval Analysis. Alternatively, in the event that the commission does not agree with Applicant's Approval Analysis, Applicants request a decision and order by May 21, 2008, providing any approvals deemed necessary or appropriate to allow HT Communications to increase its borrowing capacity under the Revolving Credit Facility to \$150 million ("Proposed Capacity Increase"). Related to this, Applicants "confirm and acknowledge that funds cannot be drawn (and debts not incurred) on this increased capacity without the separate review of and/or approval

²⁶See Applicants' Response at 3.

by the Commission under HRS §§ 269-17 and/or 269-19."²⁷ Additionally, Applicants "confirm and agree" that they will not seek draws from the increased capacity until at least sometime following the commission's review of Applicants' Debt Reduction Plan.

In response to certain concerns raised by the Consumer Advocate, Applicants state that the Modified Request proposed by Applicants, and clarified in their Response, will not impact Applicants' capital structure, debt levels, or interest coverage ratios since Applicants will not actually draw down on the increased capacity at this time. According to Applicants, under the Modified Request, "all that is being planned or proposed at this time is for HT Communications to increase its borrowing capacity under its revolving credit facility[.]"²⁸ Moreover, since Applicants would not be allowed to actually draw down from the increased capacity without separate and additional commission review and approval, Applicants contend that the "reasonable" and "very legitimate" concerns raised by the Consumer Advocate should not be considered as part of the instant proposal.

²⁷Id. at 4.

²⁸Id. at 6.

E.

Consumer Advocate's Supplement

On May 14, 2008, the Consumer Advocate filed its Supplemental Statement of Position ("CA's Supplement") requesting commission leave to submit its filing and setting forth its position on the new proposal set forth in Applicants' Response. In short, the Consumer Advocate states that it disagrees with Applicants' Approval Analysis.

The Consumer Advocate contends that under HRS §§ 269-17 and 269-19, a public utility subject to the commission's jurisdiction "must seek prior Commission approval to issue any evidence of indebtedness that would encumber the whole or any part of the utility's assets necessary or useful in the performance of its authorized public utility service."²⁹ The Consumer Advocate states that the commission must consider the utility's ability to repay the debt or risk the loss of the assets that were pledged as security on the debt when evaluating the appropriateness of allowing a utility to enter into long-term debt and to encumber its assets as security on the debt. The Consumer Advocate argues that it does not matter whether the funds are dawn, but that the analysis must consider the impact of the commitment to enter into the debt and the pledge of the utility's assets. Moreover, the Consumer Advocate contends that any written notice to increase the amount of funds available under the Revolving Credit Facility is "akin to a commitment by

²⁹ See CA's Supplement at 4.

Applicants to enter into [and] execute a debt instrument for the amount of the increase" resulting in a "corresponding increase in the amount of encumbrance of Applicants' public utility assets."³⁰ Accordingly, the Consumer Advocate states that Applicants' proposal set forth in their Response requires commission approval.

In addition, the Consumer Advocate states that Applicants' contention that commission approval would only be required when Applicants intend to actually draw funds from the increased capacity is inconsistent with their existing practice of not seeking commission approval on each draw down from the existing \$90 million of the Revolving Credit Facility. The Consumer Advocate reiterates its recommendation that the commission should deny Applicants' request and states that the commission not be "swayed" by the claim that the analysis should not focus on Applicants' ability to repay the debt or their financial position at this time.

II.

Discussion

The commission is conferred with the supervision and regulation of "all public utilities" and the administration of HRS Chapter 269.³¹ Specifically, under HRS § 269-19, prior commission approval is required before a public utility mortgages, disposes of, or encumbers, among other things, the

³⁰Id. (emphasis in original).

³¹See HRS § 269-6.

whole or any part of its property necessary in the performance of its duties to the public. Specifically, HRS § 269-19 states as follows:

No public utility corporation shall sell, lease, assign, mortgage, or otherwise dispose of or encumber the whole or any part of its road, line, plant, system, or other property necessary or useful in the performance of its duties to the public, or any franchise or permit, or any right thereunder, . . . without first having secured from the public utilities commission an order authorizing it so to do. 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.

HRS § 269-19 (emphasis added).

Prior commission approval is also required under HRS § 269-17, before a public utility can issue stocks and stock certificates, bonds, notes and other evidences of indebtedness, payable at periods of more than one year after issue. HRS § 269-17, restricts the purpose for which stocks and other evidences of indebtedness may be issued to: (1) acquisition of property; (2) construction, completion, extension, or improvement of or addition to its facilities or service; (3) discharge or for the lawful refunding of its obligations; and (4) reimbursement of moneys actually expended for the purposes noted above.

Furthermore, HRS § 269-7(a) authorizes the commission to examine the condition of every public utility including all of its financial transactions and its business relations with other persons, companies, and corporations.³²

³²Specifically, HRS § 269-7(a) states, in relevant part, the following:

At the outset, the commission notes that Applicants amended their initial request twice in this proceeding, first in its Modification Letter dated April 14, 2008, and again in Applicants' Response filed on May 14, 2008. Due to the time constraints involved in HT Communications' exercise of its right to increase its borrowing capacity under the Revolving Credit Facility, and to allow for the just and efficient disposition of the matters of this docket, the commission will afford Applicants certain leniency with its procedural rules, pursuant to HAR § 6-61-1, and will address their amendments to the Application.³³

In addition, given the above, the commission also finds it reasonable to grant the Consumer Advocate's request to submit its Supplement.

The public utilities commission . . . shall have power to examine into the condition of each public utility, the manner in which it is operated with reference to . . . the issuance by it of stocks and bonds, and the disposition of the proceeds thereof, the amount and disposition of its income, and all its financial transactions, its business relations with other persons, companies, or corporations, its compliance with all applicable state and federal laws and with the provisions of its franchise, charter, and articles of association, if any, its classifications, rules, regulations, practices, and service, and all matters of every nature affecting the relations and transactions between it and the public or persons or corporations.

HRS § 269-7(a).

³³For instance, Applicants' request, in their Response, for the commission to provide a confirmation regarding is Approval Analysis is properly a request for a declaratory ruling under Subchapter 16 of HAR Chapter 6-61.

A.

Applicants' Approval Analysis

In their Response, Applicants assert that under the Modified Request (bifurcated between the increase in the Revolving Credit Facility from the actual draw down of funds), specific commission approval under HRS §§ 269-17 and 269-19 is not required for HT Communications to exercise its one-time right to increase its borrowing capacity under the Revolving Credit Facility from \$90 million to \$150 million since Applicants cannot draw down on the increased capacity without separate review or approval of the commission under HRS §§ 269-17 and 269-19 (i.e., Applicant's Approval Analysis). The commission disagrees.

The requirements of HRS §§ 269-17 and 269-19 are clear: a public utility must obtain commission approval before issuing any evidences of indebtedness that would encumber the whole or any part of its property (or assets) necessary or useful in the performance of its duties to the public, and any encumbrance made other than in accordance with an order of the commission would be void. The commission finds that the encumbrance (or, in this case, the pledge to increase the Security Obligations) is the triggering point as opposed to the actual draw down of funds as interpreted by Applicants. In this instance, the encumbrance will occur when HT Communications exercises its right to increase its borrowing capacity under its Revolving Credit Facility from \$90 million to \$150 million since Applicants' Security Obligations are subject to HT Communications' increase in borrowing capacity. Throughout this proceeding Applicants make

clear that the increase in HT Communications' borrowing capacity under the Revolving Credit Facility from \$90 million to \$150 million is subject to the Security Obligations.³⁴ Accordingly, commission review and approval of the Proposed Capacity Increase is necessary under HRS §§ 269-17 and 269-19.³⁵

B.

Proposed Capacity Increase

In their Response, Applicants requested that the commission issue an order either agreeing with its Approval Analysis, addressed in the section above, or a decision and order providing any approvals deemed necessary or appropriate to allow HT Communications to increase its borrowing capacity under the Revolving Credit Facility from \$90 million to \$150 million (i.e., the Proposed Capacity Increase). Having reviewed Applicants' request and the record established in this proceeding, the commission finds Applicants' request to be inconsistent with the public interest and, under the circumstances, unreasonable.

In support of their request, Applicants contend that it would be against the public interest to not allow the increase in the capacity of the Revolving Credit Facility at this time if it is needed at a later date and found by the commission to be in

³⁴See Application at 1, 2, 6 and 7; Modification Letter at 1 and 2.

³⁵The Consumer Advocate concurs with our assessment. See CA's Supplement at 4.

the public interest to allow such draws in the future. The commission disagrees. Given our review of the record established in this proceeding, it appears highly speculative whether the commission would find it in the public interest to allow any draws from the "increased capacity" under HRS §§ 269-17 and 269-19. Moreover, the commission can only make its determination based the established record in this docket and not on future expectations and financial conditions, and speculative assumptions.

In this proceeding, Applicants failed to demonstrate a need to increase the Revolving Credit Facility. Applicants' projections set forth in Exhibits 2 and 3 of the Application indicate that draw downs beyond the \$90 million threshold would not occur until a number of years from now. The March 2008 draw down of \$73.8 million from the Revolving Credit Facility and the placement of \$73 million of these funds into an AAA-rated money market portfolio to ensure that resources are available for "future" use indicates that additional funds beyond the \$90 million threshold may not be necessary.³⁶

Additionally, Applicants failed to satisfy the requirements of HRS § 269-17 which restricts the issuance of any form of indebtedness under the statute for certain purposes such as the acquisition of property and improvement of or addition to a public utility's facilities or service. Applicants failed to

³⁶See Applicants' response to CA-IR-1.

provide adequate support for their request. For instance, in response to CA-IR-2a, Applicants state that they are not able to identify the properties to be acquired or the construction projects to be built using the funds drawn from the Revolving Credit Facility. In their Modification Letter, they reiterate that they are "unable to identify the long-term projects and uses that the [R]evolving [C]redit [F]acility may be used for."³⁷

In their Response, Applicants characterize the concerns set forth in the Consumer Advocate's Position Statement, which are summarized in Section I.C above, to be "reasonable", "very legitimate", and shared by Applicants.³⁸ The commission concurs with many of the concerns articulated by the Consumer Advocate. In particular, the commission is concerned that Applicants appear to have not made strides to achieve the target capital structure articulated by the commission in Decision and Order No. 21696.

Nor have Applicants explained how any increased borrowings would affect their capital structure and how they would eventually improve it. Applicants state that they "hope" and believe that Applicants' Debt Reduction Plan and Strategic Plan, which are being developed, would alleviate the concerns and largely mitigate them. The commission notes, however, that these documents are currently "works in progress" and have not been filed with the commission. The Debt Reduction Plan was initially

³⁷See Modification Letter at 2.

³⁸See Applicants' Response at 4 and 7.

required to be filed on January 12, 2008. The commission informed Applicants that it needed their Debt Reduction Plan to review the Application in this docket by letter dated March 27, 2008. However, Applicants requested and received two separate extensions to file the Debt Reduction Plan which is now, along with Applicant's Strategic Plan, scheduled to be filed on June 30, 2008.³⁹ The delay in the filing of the Debt Reduction Plan is another concern of the commission because it would have allowed the commission to analyze Applicants' request in the greater context of their capital structure and how Applicants propose to retire existing debt and any additional debt with earnings from operations.

Moreover, commission approval of the sale of HTSC's directory publishing business was largely based on Applicants' pledge, in the Directory Sale Docket, to utilize the net proceeds from the sale to pay down HT Communications' existing debt levels.⁴⁰ In that proceeding, Applicants contended that the sale and application of the proceeds to existing debt would result in a less highly leveraged company and mitigate the commission's capital structure concerns set forth in Decision and Order No. 21696.⁴¹ Applicants' request in this docket appears to be incongruent with the intent of their pledge to pay down

³⁹See Order No. 24174.

⁴⁰See Decision and Order No. 23825.

⁴¹See Applicants' Application filed on May 11, 2007, in the Directory Sale Docket at 13-15.

existing debt levels and the benefits derived from the sale of HTSC's directory publishing business.

Given the above, Applicants' argument that their request for approval of the Proposed Capacity Increase is in the public interest is, at best, questionable. Allowing Applicants to pledge to increase their Security Obligations associated with HT Communications' increased borrowing capacity under the Revolving Credit Facility, at this time, simply to take advantage of purported "favorable terms" is, given the current circumstances, unreasonable, and inconsistent with the public interest.

Based on the foregoing, the commission concludes that Applicants' request for commission approval to allow HT Communications to increase its borrowing capacity under the Revolving Credit Facility from \$90 million to \$150 million should be denied.

III.

Orders

THE COMMISSION ORDERS:

1. The Consumer Advocate's request to submit its Supplement filed on May 14, 2008, is granted.

2. Applicants' request for commission approval to allow HT Communications to increase its borrowing capacity under the Revolving Credit Facility from \$90 million to \$150 million is denied.

DONE at Honolulu, Hawaii MAY 21 2008.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By: Carlito P. Caliboso
Carlito P. Caliboso, Chairman

By: John E. Cole
John E. Cole, Commissioner

By: Leslie H. Kondo
Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:

Ji Sook Kim
Ji Sook Kim
Commission Counsel

2008-0044.eh

CERTIFICATE OF SERVICE

The foregoing order was served on the date of filing by mail, postage prepaid, and properly addressed to the following parties:

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