

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 a *Pro Forma*)
Transfer of Control.)

DOCKET NO. 2008-0114

DECISION AND ORDER

RECEIVED

2008 JUL 25 A 8:47

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

PUBLIC UTILITIES
COMMISSION

2008 JUL 24 A 9:46

FILED

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
TIME WARNER CABLE INFORMATION)
SERVICES (HAWAII), LLC) Docket No. 2008-0114
For Approval of a *Pro Forma*)
Transfer of Control.)
_____)

DECISION AND ORDER

By this Decision and Order, the commission approves the proposed *pro forma* transfer of control of TIME WARNER CABLE INFORMATION SERVICES (HAWAII), LLC ("TWCIS (Hawaii)"), as described in its application filed on June 13, 2008 ("Application").

I.

Background

TWCIS (Hawaii) is a member-managed Delaware limited liability company with its principal place of business located in Stamford, Connecticut. TWCIS (Hawaii) is an indirect subsidiary of Time Warner Cable Inc. ("TWC").¹ In 2004, TWCIS (Hawaii) received commission authority to provide intrastate

¹TWCIS (Hawaii) is a wholly owned subsidiary of TWC Digital Phone LLC, which in turn is a subsidiary of Time Warner Entertainment Company, L.P., dba Oceanic Time Warner Cable ("Oceanic TW Cable") and certain other affiliates all of whom are subsidiaries of TWC. See Application, Exhibit A.

telecommunications services in the State of Hawaii ("State") as a reseller and facilities-based carrier.²

TWC is a Delaware corporation with its principal place of business located in Stamford, Connecticut. Presently, approximately 84% of TWC's common stock (representing a 90.6% voting interest) is owned indirectly by Time Warner Inc. ("Time Warner"). According to TWCIS (Hawaii), it is the "second-largest cable operator in the United States and, through its operating subsidiaries, provides video, high-speed data, and Voice over Internet Protocol services to customers in 27 states across the nation."³

Time Warner is a publicly traded Delaware corporation with its principal offices located in New York, New York. According to TWCIS (Hawaii), Time Warner is a "leading media and entertainment company with extensive operations spanning film, television, online content and interactive services, and magazine publishing. Its operations include TWC; AOL LLC, a leading provider of Internet access, content, and services; Time Inc.; Home Box Office; Turner Broadcasting System; and Warner Bros."⁴

²See In re Time Warner Cable Information Services (Hawaii), LLC, Docket No. 04-0135, Decision and Order No. 21427, filed on October 22, 2004.

³See Application at 3.

⁴Id.

A.

Application

On June 13, 2008, TWCIS (Hawaii) filed its Application seeking commission approval of a *pro forma* transfer of control of TWCIS (Hawaii) under Hawaii Revised Statutes ("HRS") § 269-7(a) or, in the alternative, pursuant to HRS § 269-16.9(e) and Hawaii Administrative Rules ("HAR") § 6-80-135, a waiver of any applicable statutes or rules with regards to the transfer.⁵ Under the *pro forma* transfer of control (which provides for a structural separation of TWC from Time Warner, pursuant to the Separation Agreement dated May 20, 2008), Time Warner would distribute to some or all of its shareholders all of its shares in TWC, resulting in Time Warner's shareholders holding TWC's shares directly, rather than indirectly as they do presently (the "Proposed Transaction").⁶ According to TWCIS (Hawaii), none of Time Warner's shareholders hold a 10% or greater equity or voting interest in Time Warner and, thus, Time Warner's current shareholders ultimately control TWCIS (Hawaii) and will continue to do so upon consummation of the Proposed Transaction through their control of TWC.

⁵TWCIS (Hawaii) 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 docket pursuant to HRS § 269-51 and HAR § 6-61-62. No persons moved to intervene or participate without intervention in this docket.

⁶Pursuant to HAR § 6-61-105(c)(1), TWCIS (Hawaii) attached the latest available financial statements of TWC as Exhibit B to the Application. However, to the extent that any other financial or other documents are required, TWCIS (Hawaii) requests an exemption or waiver from these requirements under HRS § 269-16.9 and HAR § 6-80-135.

TWCIS (Hawaii) states that the Proposed Transaction would not result in any substantial change in control of TWC or any of its subsidiaries (including TWCIS (Hawaii)). Instead, upon consummation of the Proposed Transaction, the public shareholders of Time Warner would ultimately control TWC and its subsidiaries (including TWCIS (Hawaii)) and would exercise that control through their direct ownership of TWC. TWCIS (Hawaii) represents that the Proposed Transaction would be seamless and transparent to its customers. According to TWCIS (Hawaii), its services would continue to be offered under the same name, and TWCIS (Hawaii) would continue to be led by its experienced management team. Moreover, TWCIS (Hawaii) states that the Proposed Transaction would not result in: (1) the discontinuation, reduction, or impairment of any existing services; (2) any changes to any customer's service provider; (3) any interruption in service; or (4) any change to the rates, terms, or conditions governing TWCIS (Hawaii)'s services.

To effectuate the Proposed Transaction, Time Warner would transfer to its shareholders its entire ownership of TWC either through a "spin off" or a "split-off" or a combination of the two.⁷ As a result of the Proposed Transaction, Time Warner would no longer have any ownership interest in TWC, nor would it be TWCIS (Hawaii)'s indirect parent. According to TWCIS

⁷TWCIS (Hawaii) represents that under a spin-off, Time Warner would distribute to all of its shareholders a *pro rata* number of shares of TWC; however, if a split-off is elected, Time Warner would offer its shareholders the opportunity to exchange their shares of Time Warner stock for a specified number of shares of TWC. Thereafter, any shares of TWC not distributed under the exchange would be distributed on a *pro rata* basis to all of Time Warner's shareholders.

(Hawaii), upon consummation of the Proposed Transaction, TWC would be managed by its own board of directors and the shareholders of Time Warner, along with the current public shareholders of TWC, would directly control TWC.

TWCIS (Hawaii) contends that the Proposed Transaction is in the public interest and warrants commission approval. In support of this claim, TWCIS (Hawaii) represents that through the Proposed Transaction (resulting in the separation of Time Warner's media content businesses from TWC's content delivery platform), Time Warner and TWC would be allowed to focus more directly on their respective areas of expertise. According to TWCIS (Hawaii), "[t]his enhanced management focus and flexibility will, in turn, improve the prospects of both companies for growth and enable each of them to better execute their respective business plans, to the ultimate benefit of their customers."⁸ Moreover, TWCIS (Hawaii) represents that the Proposed Transaction would not result in any substantial transfer of control of TWCIS (Hawaii), nor materially effect TWCIS (Hawaii)'s operations, its customers, or the rates, terms, or conditions governing its services. TWCIS (Hawaii) states that, upon consummation of the Proposed Transaction, it would continue to offer competitive services "bringing broader customer choice, innovation and enhanced service capabilities to Hawaii."⁹

Alternatively, TWCIS (Hawaii) requests that the commission waive the approval requirements for the

⁸See Application at 6.

⁹Id.

Proposed Transaction under HRS § 269-16.9(e) and HAR § 6-80-135. TWCIS (Hawaii) submits that since competition would serve the same purpose as regulation, the grant of a waiver in this case is appropriate and would service the public interest. Among other things, TWCIS (Hawaii) contends that it is a "non-dominant, competitive carrier and competitive communications markets produce well-documented benefits for consumers" and that the Proposed Transaction is in the public interest.¹⁰

B.

Consumer Advocate's Position

On July 1, 2008, the Consumer Advocate filed its Statement of Position informing the commission that it does not object to the approval of the Proposed Transaction ("CA's Statement of Position"). At the outset, the Consumer Advocate contends that HRS §§ 269-7(a) and 269-19 are applicable since the Proposed Transaction involves the indirect and ultimate parents of TWCIS (Hawaii), a public utility authorized by the commission to provide telecommunications services in the State.

The Consumer Advocate's recommendation regarding the Proposed Transaction is based on TWCIS (Hawaii)'s representations. Additionally, upon review of TWCIS (Hawaii)'s Annual Report of Resellers and Various Telecommunications Services for Year Ended December 31, 2007 ("2007 Annual Report"), the Consumer Advocate states that it appears that TWCIS (Hawaii)

¹⁰Id. at 7

and "TWC have the financial resources needed to sustain operations for a reasonable future time period should the Commission approve" the Proposed Transaction.¹¹ Moreover, with regard to the public interest, aside from reiterating the factors listed by TWCIS (Hawaii),¹² the Consumer Advocate contends that the Proposed Transaction would not result in any negative market share impact to the State's telecommunications marketplace since the Proposed Transaction only involves the transfer of equity ownership at the parent level, and would be transparent to TWCIS (Hawaii)'s Hawaii operations.

However, the Consumer Advocate recommends that the commission not waive its regulatory authority under HRS §§ 269-7(a) and 269-19 with regards to the Proposed Transaction. In support of its position, the Consumer Advocate contends that TWCIS (Hawaii) is: (1) also owned, in part, by Oceanic TW Cable, which is a "major cable service provider in the State"¹³; and (2) an affiliate of Time Warner Communications of Hawaii, L.P., dba Oceanic Communications, which is also authorized to provide telecommunications services in the State and, according to the Consumer Advocate, "has increased its share of Hawaii's market over the years since receiving its certification."¹⁴ Furthermore, upon review of TWCIS (Hawaii)'s annual financial statements, the Consumer Advocate asserts that TWCIS (Hawaii) can be viewed as a

¹¹See CA's Statement of Position at 4-5.

¹²Id. at 5-6.

¹³Id. at 6.

¹⁴Id. at 6-7 (references omitted).

fast growing and significant telecommunications provider in the State.

II.

Discussion

HRS § 269-19 states:

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, nor by any means, directly or indirectly, merge or consolidate with any other public utility corporation 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). The purpose of HRS § 269-19 is to safeguard the public interest.¹⁵

Moreover, under HRS § 269-7(a), the commission is empowered to examine the condition of a public utility, the manner in which it is operated with reference to the safety or accommodation of the public, "and all matters of every nature affecting the relations and transactions between it and the public or persons or corporations." Accordingly, the commission, under HRS § 269-7(a), has the authority to examine any and all transactions of the public utility that affect or may affect the public that it serves.

¹⁵See In re Honolulu Rapid Transit Co., 54 Haw. 402, 409, 507 P.2d 755, 759 (1973).

Upon review of the record in this docket, the commission finds the Proposed Transaction to be reasonable and in the public interest. The commission's decision regarding this matter is based on, among other matters, TWCIS (Hawaii)'s representations that the Proposed Transaction would: (1) not change any customer's service provider or interrupt service to customers; (2) not affect TWCIS (Hawaii)'s rates, terms or conditions governing its service; and (3) be seamless and transparent to TWCIS (Hawaii)'s customers. TWCIS (Hawaii) further represents that it would continue to offer competitive services, "bringing broader customer choice, innovation and enhanced service capabilities to Hawaii" upon the consummation of the Proposed Transaction.¹⁶

It appears that the Proposed Transaction is in the public interest since TWCIS (Hawaii) and its customers should benefit through enhanced management focus and flexibility. According to TWCIS (Hawaii), the Proposed Transaction would improve TWC (TWCIS (Hawaii)'s indirect parent) and Time Warner's prospects for growth and "enable each of them to better execute their respective business plans, to the ultimate benefit of their customers."¹⁷ Increased management focus and flexibility achieved through the Proposed Transaction should result in a stronger entity that can better respond to the competitive forces that currently exist in the State's telecommunications market. Accordingly, the Proposed Transaction appears to also further the

¹⁶See Application at 6.

¹⁷Id.

commission's objective of fostering competition in the State's telecommunications market. Finally, the commission agrees with the Consumer Advocate's statement that the Proposed Transaction should not result in any negative impacts to the State's telecommunications marketplace since the Proposed Transaction only involves the transfer of equity ownership at the parent level, and should be transparent to TWCIS (Hawaii)'s Hawaii operations.

Based on the foregoing, the commission concludes that the Proposed Transaction should be approved under HRS §§ 269-19 and 269-7(a), as applicable.¹⁸

III.

Orders

THE COMMISSION ORDERS:

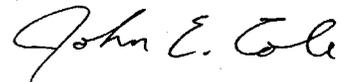
1. The Proposed Transaction, described in TWCIS (Hawaii)'s Application filed on June 13, 2008, is approved, pursuant to HRS §§ 269-19 and 269-7(a).
2. This docket is closed, unless otherwise ordered by the commission.

¹⁸Given that the commission is approving the Proposed Transaction under HRS §§ 269-19 and 269-7(a), TWCIS (Hawaii)'s alternative request for a waiver of the approval requirements, pursuant to HRS § 269-16.9(e) and HAR § 6-80-135, is moot.

DONE at Honolulu, Hawaii JUL 24 2008

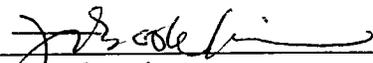
PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By: 
Carlito P. Caliboso, Chairman

By: 
John E. Cole, Commissioner

By: 
Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:


Ji Sook Kim
Commission Counsel

2008-0114.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:

CATHERINE P. AWAKUNI
EXECUTIVE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
DIVISION OF CONSUMER ADVOCACY
P. O. Box 541
Honolulu, HI 96809

JULIE P. LAINE
VICE PRESIDENT & CHIEF COUNSEL, TELEPHONY
TIME WARNER CABLE INC.
290 Harbor Drive
Stamford, CT 06902

J. DOUGLAS ING, ESQ.
PAMELA J. LARSON, ESQ.
LISA S. HIRAHARA, ESQ.
WATANABE ING & KOMEIJI LLP
999 Bishop Street, 23rd Floor
Honolulu, HI 96813