

I.

Background

A.

Application

On June 18, 2008, Applicant filed an application for commission approval of the Proposed Transactions pursuant to HRS § 269-7 ("Application"). According to Applicant, it seeks approval to transfer control of Applicant by redeeming the membership interests held by certain members, allowing Mr. Riklis, a current member, to acquire a portion of the redeemed membership interest, and other transactions. Currently, Mr. Riklis owns 30.63% of the membership interests of the Applicant.² After completion of the Proposed Transactions, Mr. Riklis will own 75% of the membership interests of the Applicant.³ Applicant states that the change in control does not involve a transfer of operating authority, assets or customers, and will not affect the identity of the utility authorized to provide telecommunications services in the State.⁴ Applicant will continue to offer the same services at the same rates, terms and conditions as at present, therefore, "the contemplated transfer of control will be entirely transparent to customers. The only change will be that [Applicant] will be majority owned by Mr. Riklis."⁵ Moreover:

²Application, at 3.

³Application, at 4.

⁴Application, at 1.

⁵Application, at 1-2.

The transaction is not expected to result in any discontinuance of service for any customer. Indeed, [Applicant] will continue to be backed by the same financial, managerial and technical qualifications that the [c]ommission has already examined in approving the Applicant['s] authorization to provide service in [the State]. The day-to-day operations of [Applicant] will not change as a result of this transaction.

Application, at 5. Applicant states that the proposed transfer of control will serve the public interest since Mr. Riklis' purchase of additional ownership interests and investment of additional resources will enable Applicant to enhance and expand its services.⁶

B.

Consumer Advocate's Statement of Position

On July 24, 2008, the DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS ("Consumer Advocate")⁷ filed its statement of position ("Statement of Position") in which it recommends that the commission, on its own motion, waive its approval authority of the Proposed Transactions. In the alternative, the Consumer Advocate recommends that the commission approve Applicant's request for a change in ownership. The Consumer Advocate contends that the proposed transaction requires commission approval under HRS § 269-17, not HRS § 269-7, as indicated in the Application,

⁶Application, at 5.

⁷The Consumer Advocate is an ex officio party to all proceedings before the commission pursuant to HRS § 269-51 and Hawaii Administrative Rules ("HAR") § 6-61-62.

"since the transaction involves the redemption and subsequent issuance of membership interests in [Applicant]."⁸

The Consumer Advocate notes that Applicant is one of many authorized providers of local exchange telecommunications services in the State and based on the information contained in the Annual Financial Reports for years ending December 31, 2004, 2005, and 2007, Applicant has not reported any revenues in the State. Thus, Applicant is a non-dominant provider of telecommunications services in the State.⁹

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. HRS § 269-16.9 states:

(a) . . . The commission, upon its own motion . . . may exempt a telecommunications provider or a telecommunications service from any or all of the provisions of this chapter, except the provisions of section 269-34, upon a determination that the exemption is in the public interest. In determining whether an exemption is in the public interest, the commission shall consider whether the exemption promotes state policies in telecommunications, the development, maintenance, and operation of effective and economically efficient telecommunications services, and the furnishing of telecommunications services at just and reasonable rates and in a fair manner in view of the needs of the various customer segments of the telecommunications industry.

⁸Statement of Position, at 3.

⁹Statement of Position, at 4.

. . . .
(e) The commission may waive other regulatory requirements under this chapter applicable to telecommunications providers when it determines that competition will serve the same purpose as public interest regulation.

HRS § 269-16.9. Additionally, 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 Applicant is a non-dominant telecommunications service provider in the State. The commission also finds that the Proposed Transactions are 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 269-17 should be waived, to the extent applicable, with regard to the matters in this docket, pursuant to HRS § 269-16.9 and HAR § 6-80-135.¹⁰

¹⁰The 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) and 269-17 should be waived. Thus, the commission's waiver in this instance should not be construed by any public utility, including Applicant, as a basis for not filing an application or petition regarding similar transactions that fall within the purview of these statutes.

III.

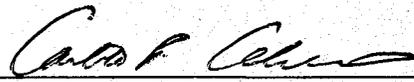
Orders

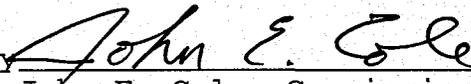
THE COMMISSION ORDERS:

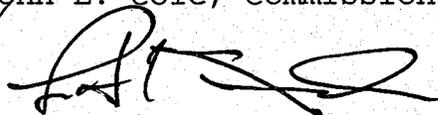
The requirements of HRS §§ 269-7(a), and 269-17, to the extent applicable, are waived with respect to the Proposed Transactions described in the Application filed on June 18, 2008.

DONE at Honolulu, Hawaii JAN - 8 2009.

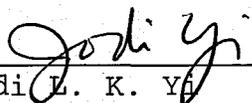
PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By 
John E. Cole, Commissioner

By 
Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:


Jodi L. K. Yi
Commission Counsel

2008-0120.cp

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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