

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
XO COMMUNICATIONS, INC. and)
XO LONG DISTANCE SERVICES, INC.)
For Approval to Transfer Ownership)
and Control.)
_____)

DOCKET NO. 02-0117

DECISION AND ORDER NO. 19490

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

Filed July 26, 2002
At 10:00 o'clock A .M.

Karen Higashi
Chief Clerk of the Commission

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

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DECISION AND ORDER

I.

By joint application filed on May 7, 2002, XO COMMUNICATIONS, INC. and XO LONG DISTANCE SERVICES, INC. (collectively, Applicants), seek commission approval under Hawaii Revised Statutes (HRS) § 269-7(a), to the extent required, to transfer ownership and control of XO Communications, Inc.

Copies of the application were served on the Department of Commerce and Consumer Affairs, Division of Consumer Advocacy (Consumer Advocate). By position statement filed on July 18, 2002, the Consumer Advocate does not object to the proposed transaction.

II.

A.

XO Long Distance Services, Inc. (XO Long Distance), fka NEXTLINK Long Distance Services, Inc., is a public utility that

holds a commission-issued certificate of authority to provide intrastate telecommunications services on a resold basis.¹

XO Long Distance is a wholly-owned subsidiary of XO Communications, Inc. (XO Communications). In turn, XO Communications, through its subsidiaries, is authorized to provide: (1) intrastate long distance services, virtually nationwide, including Hawaii; and (2) local exchange services in approximately 30 states, not including Hawaii.

XO Communications is currently owned by: (1) Craig McCaw, 51 per cent interest; (2) Forstmann Little & Co. (Forstmann Little), 8 per cent interest; and (3) the remainder by individual shareholders who individually do not hold a voting interest greater than 10 per cent.² Accordingly, XO Communications is a second-tier subsidiary corporation, while XO Long Distance is a third-tier subsidiary corporation.

On June 17, 2002, XO Communications filed a petition for bankruptcy with the United States (U.S.) Bankruptcy Court, under Chapter 11 of the U.S. Bankruptcy Code.³ XO Communications represents that:

1. It is "seeking temporary protection from claims of creditors while the Company reorganizes its operations and restructures its finances."
2. Its operating subsidiaries, including XO Long Distance, have not filed for bankruptcy protection, and will continue to operate under the same terms and rates.

¹See Decision and Order No. 17493, filed on January 25, 2000, in Docket No. 99-0208. See also letter dated January 22, 2001, from XO Long Distance to the commission (name change).

²See Exhibit 2, page 1, of the joint application.

³See letter dated June 20, 2002, filed on June 21, 2002, from counsel for XO Communications; and form letter dated June 24, 2002, filed on July 1, 2002, from XO Communications.

3. It does not anticipate any disruption of service to its customers, and will conduct business as usual with respect to its operating subsidiaries.

B.

Telmex, a Mexico corporation, is a provider of telecommunications services in Mexico. Forstmann Little is a private equity investment firm located in New York.

C.

Pursuant to a stock purchase agreement, dated January 15, 2002, Telmex and Forstmann Little will invest cash in XO Communications, in return for common shares. Following this proposed transaction, the respective ownership interests of XO Communications will be as follows: (1) Telmex, 40 per cent interest; (2) Forstmann Little, 40 per cent interest; (3) 18 per cent interest by individual shareholders, including Craig McCaw, who individually will not hold a voting interest greater than 10 per cent; and (4) the remaining 2 per cent by management interests.⁴ Upon the closing of the proposed transaction, XO Long Distance will continue as a third-tier subsidiary corporation.

III.

HRS § 269-7(a) authorizes the commission to examine the condition of each public utility, its financial transactions, and "all matters of every nature affecting the relations and

⁴See Exhibit 2, page 2, of the joint application.

transactions between it and the public or persons or corporations."

HRS § 269-16.9(e) authorizes the commission to waive regulatory requirements applicable to telecommunications providers if the commission determines that competition will serve the same purpose as public interest regulation. Similarly, HAR § 6-80-135 authorizes the commission to exempt or waive a telecommunications carrier or services from the provisions of HRS chapter 269 or any other telecommunications rules, upon a determination that the exemption or waiver is in the public interest.

The proposed transaction involves the transfer of ownership and control and subsequent restructuring of various entities at the first-tier level. Upon review, the commission believes that HRS § 269-7(a) applies to the proposed transaction. Nonetheless, the commission 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. Of particular note:

1. Following the transaction, XO Communications will continue to retain full ownership and operating authority of XO Long Distance.
2. XO Long Distance will continue to provide intrastate long distance service under the same name, management team, tariff, and rates.
3. Applicants, thus, state that the transaction will be transparent to its Hawaii-based customers.
4. Applicants maintain that the infusion of capital by Forstmann Little and Telmex will allow XO Communications "to build upon its solid foundation with a strengthened balance sheet and significantly reduced debt and is projected to result in a fully funded business plan."

5. Applicants conclude that the proposed investment is consistent with the public interest because it will increase XO Communications financial strength and enable XO Long Distance to continue its provision of "high quality, local, long distance, and broadband services to its customer base."

Based on the foregoing reasons, the commission, on its own motion, will waive the requirements of HRS § 269-7(a), to the extent applicable, pursuant to HRS § 269-16.9(e) and Hawaii Administrative Rules § 6-80-135.⁵

XO Long Distance's current tariff on file with the commission, dated January 22, 2001, took effect on January 30, 2001. The Consumer Advocate recommends that XO Long Distance revise its tariff in accordance with the commission's Decision and Order No. 17493.⁶ To the extent its tariff is inconsistent with Decision and Order No. 17493, XO Long Distance shall promptly file its revised tariff sheets with the commission, and serve two copies upon the Consumer Advocate.

IV.

THE COMMISSION ORDERS:

1. HRS § 269-7(a), to the extent applicable, is waived with respect to the transaction described in the joint application, filed on May 7, 2002.

⁵At the same time, the commission will continue to examine a utility's application on a case-by-case basis to determine whether the applicable requirements of HRS § 269-7(a), or any other related provision governing utility transactions, should be waived. The commission's waiver in this decision and order shall not be construed by any utility as a basis for not filing an application involving similar transactions or circumstances.


⁶See footnote 1, supra. See also Decision and Order No. 18006, filed on September 1, 2000, in Docket No. 00-0032.


2. To the extent its tariff is inconsistent with Decision and Order No. 17493, XO Long Distance Services, Inc. shall promptly file its revised tariff sheets with the commission, and serve two copies upon the Division of Consumer Advocacy.


3. This docket is closed.

DONE at Honolulu, Hawaii this 26th day of July, 2002.


PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Wayne H. Kimura, Chairman

By 
Dennis R. Yamada, Commissioner

By 
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:


Michael Azama
Commission Counsel

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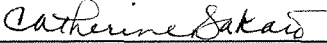
CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 19490 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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Catherine Sakato

DATED: July 26, 2002