BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

----- In the Matter of ----- )
CABLE & WIRELESS USA, INC. and ) DOCKET NO. 02-0349
PRIMUS TELECOMMUNICATIONS, INC.)
Transfer of Long Distance )
Customers. )

DECISION AND ORDER NO. 19779

Filed Nov. 18, 2002
At 11:30 o'clock A.M.

Chief Clerk of the Commission

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

of the State of Hawaii

Docket No. 02-0349

Decision and Order No. 19779

--- In the Matter of ---

Cable & Wireless USA, Inc. and
Primus Telecommunications, Inc.

Transfer of Long Distance
Customers.

Decision and Order

I.

By letter dated September 18, 2002, and filed on September 19, 2002, Cable & Wireless USA, Inc. (C&W) and Primus Telecommunications, Inc. (Primus) (collectively, parties) informed the commission that Primus is acquiring the long distance customers of C&W (transfer of customers) pursuant to their Customer Transfer Agreement executed on September 13, 2002 (Agreement). The parties note that they were informed that commission approval is not required with regards to the transfer of customers, however, in the event that commission action is required, they request commission authority to effectuate the transaction. The parties also request that the commission waive the applicability of Hawaii Revised Statutes (HRS) § 269-16.92.

By letter dated October 28, 2002, and filed on October 29, 2002, C&W informed the commission that no Hawaii customers will be affected by the Agreement and withdrew the request for a waiver of HRS § 269-16.92 since no Hawaii customers will be transferred without consent (waiver withdrawal request).
The parties forwarded a copy of the letters to the DIVISION OF CONSUMER ADVOCACY OF THE DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS.

II.

Both C&W and Primus are foreign corporations authorized to transact business in the State of Hawaii (State). The commission authorized C&W to operate as a reseller of intrastate telecommunications services in the State in Decision and Order No. 15162, filed on November 13, 1996, in Docket No. 96-0380. By Decision and Order No. 17664, filed on April 11, 2000, in Docket No. 99-0189, the commission, among other things, granted Primus a certificate of authority to operate as a reseller of intrastate telecommunications services in the State.

The parties represent that aside from C&W's long distance customers, no assets are being transferred through the Agreement.

III.

Based on the parties' representations, the commission finds good cause to grant the waiver withdrawal request, filed on
October 29, 2002. HRS § 269-16.92 is not applicable with regards to the transfer of long distance customers from C&W to Primus since no customers in Hawaii will be affected by the Agreement.

Additionally, we find that commission approval is unnecessary with regards to the parties’ Agreement. The commission has traditionally held that the acquisition of an entity’s customers does not require commission approval. Our review of the specific circumstances of the transfer of customers in this docket does not necessitate the commission to deviate from prior commission rulings. Thus, this matter does not require further commission consideration.

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1HRS § 269-16.92 states, in pertinent part:

No telecommunications carrier shall initiate a change in a subscriber’s selection or designation of a long-distance carrier without first receiving:

(1) A letter of agency or letter of authorization;
(2) An electronic authorization by use of a toll-free number;
(3) An oral authorization verified by an independent third party; or
(4) Any other prescribed authorization; provided that the letter or authorization shall be in accordance with verification procedures that are prescribed by the Federal Communications Commission or the public utilities commission.

2See In re Maxxis Communications, Inc., Decision and Order No. 17063, filed on July 8, 1999, in Docket No. 99-0099; In re OneStar Long Distance, Inc., Decision and Order No. 17131, filed on August 27, 1999, in Docket No. 99-0211; In re OneStar Long Distance, Inc. and AS Telecommunications, Inc., dba AllStar Telecom, Decision and Order No. 18939, filed on October 11, 2001, in Docket No. 01-0399; and In re WorldxChange Corp. and RSL Com U.S.A., Inc., Decision and Order No. 19498, filed on August 1, 2002, in Docket No. 02-0153.
Based on the above, the commission concludes that the waiver withdrawal request, filed on October 29, 2002, should be granted. Additionally, finding no other matters to be addressed, the commission concludes that this docket should be closed.

IV.

THE COMMISSION ORDERS:

1. The waiver withdrawal request, filed on October 29, 2002, is granted.

2. This docket is closed.

DONE at Honolulu, Hawaii this 18th day of November, 2002.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAI'I

By Wayne H. Kimura, Chairman

By Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:

By (RECUSED)
Gregg J. Kinkley, Commissioner

By JI Sook Kim
Commission Counsel
CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 19779 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: November 18, 2002