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DOCKET NO. 03-0039

Filed Feb. 18, 2003
At 10:30 o'clock A.M.

Karen Higdon
Chief Clerk of the Commission

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

2003 FEB 18 P 4: 14

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

Commissioner, State of Hawaii
A. Dignel.

-----In the Matter of-----)
)
 WORLDxCHANGE CORP. and)
 WORLDxCHANGE COMMUNICATIONS, INC.)
)

Decision and Order No. 20021

²See *PT-1 Counsel Inc.*, Decision and Order No. 18089, filed on September 28, 2000, in Docket No. 00-0208.

with its acquisition of certain operations of the now bankrupt WorldxChange Communications, Inc. in 2001.

In Docket No. 02-0153, the commission waived its approval of WorldxChange Corp.'s acquisition of certain assets of RSL COM U.S.A., Inc.³ In Docket No. 02-0215, the commission approved the withdrawal of a joint application filed by Counsel Springwell Communications LLC and WorldxChange Corp., involving a proposed debt restructuring and corporate reorganization.⁴ These dockets are both closed.

B.

WorldxChange Communications formerly held a commission-issued COA to operate as an intrastate reseller of telecommunications services.⁵

By Decision and Order No. 17703, filed on May 2, 2000, in Docket No. 99-0400, the commission granted WorldxChange Communications a COA to operate as a reseller of intrastate telecommunications services. Thereafter, by Order No. 18400,

³See Decision and Order No. 19498, filed on August 1, 2002, in Docket No. 02-0153.

⁴By position statement filed on November 22, 2002, the Consumer Advocate did not object to the commission's approval of the joint application, subject to certain recommendations. Thereafter: (1) by letter dated December 17, 2002, the applicants requested approval to withdraw their joint application; and (2) by Order No. 19923, filed on December 20, 2002, the commission approved the withdrawal.

Subsequently, by letters dated December 19, 2002 and February 5, 2003, WorldxChange Corp. addresses certain issues raised by the Consumer Advocate. These issues are the subject of the instant decision and order.

⁵See Docket No. 99-0440, *Communication Telesystems Int'l, dba WorldxChange Communications*.

filed on March 1, 2001, the commission approved WorldxChange Communications' voluntary surrender of its COA.

By letter dated March 9, 2001, WorldxChange Communications requested the reconsideration of Order No. 18400. It explained that:

1. In December 2000, WorldxChange Communications merged with World Access, Inc., to form WorldxChange Communications, Inc.
2. WorldxChange Communications, the holder of the COA, was dissolved as a result of the merger, and no longer exists.

As a result, WorldxChange Communications clarified that it essentially seeks commission approval to transfer or assign WorldxChange Communications' COA to WorldxChange Communications, Inc. Once this transfer is completed, WorldxChange Communications requested that it be removed from the commission's records as the holder of the COA.

In response thereto, by Order No. 18420, filed on March 6, 2001, the commission directed WorldxChange Communications, Inc. to file an application, requesting commission approval, *nunc pro tunc*, of the merger between WorldxChange Communications and WorldAccess, Inc., in accordance with HRS § 269-19 and HAR § 6-61-105. Thereafter, in September 2002, WorldxChange Communications, Inc. submitted information on its Chapter 11 bankruptcy petition filed with the United States Bankruptcy Court.

III.

A.

In its position statement filed on November 22, 2002, in Docket No. 02-0215, the Consumer Advocate contends that WorldxChange Corp. should have sought the commission's approval in 2001 for the acquisition of WorldxChange Communications, Inc.'s assets, i.e., the subject transaction.⁶ Hence, the Consumer Advocate recommends that the commission instruct WorldxChange Corp. to apply for approval under HRS § 269-19, *nunc pro tunc*. In the alternative, if the commission chooses not to instruct WorldxChange Corp. to file an application, the Consumer Advocate recommends that WorldxChange Corp. submit a copy of the executed acquisition agreement. The acquisition agreement, the Consumer Advocate reasons, will substantiate WorldxChange Corp.'s acquisition of WorldxChange Communications, Inc.'s assets.

B.

In its responses filed on December 19, 2002 and February 6, 2003, WorldxChange Corp. clarifies that:

1. It is not and has never been affiliated with WorldxChange Communications, Inc. "through ownership or otherwise[.]"

Thus, WorldxChange Corp. is unable to make any representations on WorldxChange Communications, Inc.'s behalf.

⁶The Consumer Advocate first raised this issue in the post-decision information requests it issued in Docket No. 02-0153.

2. In 2001, when WorldxChange Corp. was known as PT-Counsel Inc., it acquired certain assets located outside the State from WorldxChange Communications, Inc., which was in bankruptcy.

Shortly after the completion of this transaction, PT-Counsel changed its name to WorldxChange Corp.

3. Following the transaction's completion, WorldxChange Corp. remained as an entity separate and unaffiliated with WorldxChange Communications, Inc. Thus, the transaction did not involve the merger or consolidation of these two entities.

WorldxChange Corp. represents that the assets it acquired from WorldxChange Communications, Inc. in 2001 "did not involve any Hawaiian assets, customers or authorizations[.]" Rather, the transaction was limited to WorldxChange Communications, Inc.'s out-of-state assets. Thus, the transaction did not involve the sale or disposition of any of WorldxChange Communications, Inc.'s Hawaii-based properties or assets, as envisioned by HRS § 269-19. Nor did it involve the merger or consolidation of two public utilities, under HRS § 269-19.

Accordingly, WorldxChange Corp. contends that the commission's after-the-fact review of the subject transaction, in this instance, is unwarranted. At the same time, WorldxChange Corp. makes clear that: (1) in general, it is subject to the commission's jurisdiction; and (2) any future transaction it engages in may require the commission's approval.

IV.

Upon careful review, the commission finds that the subject transaction appears consistent with the public interest, and that competition will serve the same purpose as public

interest regulation.⁷ Among other things, WorldxChange Corp. remains as a certificated reseller of intrastate telecommunications services, following its acquisition of certain assets of WorldxChange Communications, Inc.

Accordingly, in this instance, the commission, on its own motion, will conditionally waive the requirements of HRS § 269-19, to the extent applicable; provided that WorldxChange Corp. promptly file:

1. Copies of the acquisition agreement confirming its acquisition of WorldxChange Communications, Inc.'s assets, as recommended by the Consumer Advocate; and
2. A written statement confirming that no Hawaii-based customers were affected by the subject transaction.

V.

THE COMMISSION ORDERS:


1. HRS § 269-19, to the extent applicable, is conditionally waived with respect to the subject transaction between WorldxChange Corp. and WorldxChange Communications, Inc.; provided that WorldxChange Corp. promptly file with the commission: (A) copies of the acquisition agreement; and (B) a written statement confirming that no Hawaii-based customer were affected by the subject transaction. Copies of both filing shall be served upon the Consumer Advocate.

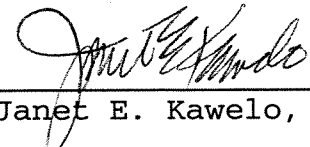
⁷See HRS § 269-16.9(e) and HAR § 6-80-135.

2. Further action from the commission will then follow.

DONE at Honolulu, Hawaii this 18th day of February, 2003.


PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Wayne H. Kimura, Chairman

By 
Janet E. Kawelo, Commissioner

By (RECUSED)
Gregg J. Kinkley, Commissioner

APPROVED AS TO FORM:


Michael Azama
Commission Counsel

WC.D0.sl

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 20021 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: February 18, 2003