

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application of)

WORLDXCHANGE CORP., dba ACCERIS )  
COMMUNICATIONS PARTNERS and ACCERIS )  
COMMUNICATIONS SOLUTIONS, and )  
LOCAL TELCOM HOLDINGS, LLC, dba )  
TRANSPPOINT COMMUNICATIONS )

DOCKET NO. 03-0089

For Approval to Transfer Assets, )  
and of Other Related Matters. )  
\_\_\_\_\_ )

DECISION AND ORDER NO. 20231

Filed June 13, 2003

At 9:00 o'clock A.M.

Karen Higashi  
Chief Clerk of the Commission

DEPT. OF CONSUMER ADVOCACY  
DEPT. OF COMMERCE  
CONSUMER AFFAIRS  
COMMERCIAL DIVISION

2003 JUN 13 P 4:20

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

K. Higashi

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 WORLDXCHANGE CORP., dba ACCERIS )  
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A copy of the application was served on the Department of Commerce and Consumer Affairs, Division of Consumer Advocacy ("Consumer Advocate"). On May 20, 2003, Applicants submitted their responses to the commission's information requests, including updated financial statements.

By position statement filed on June 6, 2003, the Consumer Advocate does not object to the commission's approval of the application, provided that Applicants, pursuant to Hawaii Administrative Rules ("HAR") § 6-80-91(a) and (d), file certain annual financial reports, with service upon the Consumer Advocate.

## II.

### A.

WorldxChange Corp., dba Acceris Communications Partners and Acceris Communications Solutions, holds a commission-issued certificate of authority ("COA") to operate as a reseller of telecommunications services in the State of Hawaii ("State").<sup>1</sup>

WorldxChange Corp. is a wholly-owned, indirect subsidiary of I-Link Incorporated. Counsel Springwell Communications, LLC, in turn, holds a majority interest in I-Link Incorporated. Counsel Corporation, a publicly traded Canadian corporation, holds a majority interest in Counsel Springwell Communications, LLC.<sup>2</sup>

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<sup>1</sup>See *In re PT-1 Counsel Inc.*, Decision and Order No. 18089, filed on September 28, 2000, in Docket No. 00-0208. WorldxChange Corp. represents that it was formerly known as PT-1 Counsel Inc. See *In re WorldxChange Corp. and WorldxChange Comm., Inc.*, Decision and Order No. 20021, filed on February 18, 2003, in Docket No. 03-0039. By letter dated February 11, 2003, WorldxChange Corp. informed the commission of its intent to adopt Acceris Communications Partners and Acceris Communications as "doing business as" names in the State.

<sup>2</sup>In describing WorldxChange Corp.'s upstream organization, the commission takes administrative notice of Dockets No. 02-0153, *In re WorldxChange Corp. and RSL COM U.S.A., Inc.*

Transpoint Holdings Corporation is a: (1) newly formed holding company; and (2) direct subsidiary of WorldxChange Corp.

Attached as Exhibit C to the joint application is a chart that illustrates the upstream and downstream organizational structure of WorldxChange Corp.

B.

By Decision and Order No. 18901, filed on September 17, 2001, in Docket No. 01-0242, the commission granted Local Telcom Holdings, LLC, dba Transpoint Communications, a COA to operate as a reseller of telecommunications services in the State. On May 20, 2003, in response to PUC-IR-101, Transpoint Communications filed its initial tariff. Applicants represent that "Transpoint Communications does not currently provide service to any customers in the State of Hawaii."

C.

WorldxChange Corp. and Transpoint Communications intend to engage in a series of transactions culminating in WorldxChange Corp.'s acquisition of Transpoint Communications' assets and customer base.

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and No. 02-0215, *In re Counsel Springwell Comm. LLC and WorldxChange Corp.*

In particular:

1. Pursuant to a purchase agreement, dated July 22, 2002, Transpoint Holdings Corporation will acquire all of Transpoint Communications' stock.<sup>3</sup>

As a result, Transpoint Communications, through Transpoint Holdings Corporation, will become a wholly-owned, indirect subsidiary of WorldxChange Corp.

2. Pursuant to an asset purchase agreement, dated July 22, 2002, Transpoint Communications' operating assets and customer base "will be assigned on an intra-corporate family basis" to WorldxChange Corp.<sup>4</sup>
3. Once the assignment is completed, WorldxChange Corp. "will assume the service obligations to current Transpoint [Communications] customers."

Attached as Exhibit C to the joint application is a chart illustrating the pre- and post-organizational structures of WorldxChange Corp. Applicants explain that, although both written agreements are dated July 22, 2002, for a variety of business reasons and other considerations, the closing of the proposed transactions was postponed until 2003.

Applicants represent that "no assets or customers in the [S]tate of Hawaii will be affected by the transactions proposed by Applicants." The anticipated closing date of the subject transactions is June 2003.

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<sup>3</sup>Page 5 of the joint application refers to this agreement as the purchase agreement, as amended.

<sup>4</sup>Page 5 of the joint application refers to this agreement as the asset purchase agreement, as amended.

### III.

#### A.

HRS § 269-19 provides that no public utility 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, nor by any means, directly or indirectly, merge or consolidate with any other public utility, without first having secured from the commission "an order authorizing it so to do." Moreover, 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 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.

B.

Applicants contend that the series of transactions, culminating in WorldxChange Corp.'s acquisition of Transpoint Communications' assets, are consistent with the public interest. In support thereto, Applicants state that:

1. The transactions will facilitate competition in the Hawaii telecommunications market by "reinforcing" WorldxChange Corp.'s status as a viable competitor and improving its operations.
2. Transpoint Communications' former customers will continue to receive telecommunications services under the same rates, terms, and conditions. Thus, the transactions will be seamless and transparent to them.
3. The resulting expansion of WorldxChange Corp.'s customer base will enable it to more effectively compete against other telecommunications carriers.
4. Applicants will "work closely together to prevent transaction related service interruptions."

The Consumer Advocate notes that no Hawaii-based customers or assets will be affected by the subject transactions. Concomitantly, the Consumer Advocate requests that certain annual financial reports ("AFR" or "AFRs") be filed with the commission and served upon the Consumer Advocate.<sup>5</sup>

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<sup>5</sup>Of the AFRs identified by the Consumer Advocate: (1) WorldxChange Corp. filed its 2002 AFR; (2) PT-1 Counsel Inc. filed its 2001 AFR under the name of WorldxChange Corp.; and (3) Transpoint Communications has not filed its AFRs for 2001 and 2002.

Applicants shall promptly: (1) file Transpoint Communications' 2001 and 2002 AFRs; and (2) serve copies of the following AFRs upon the Consumer Advocate: (A) Transpoint Communications' 2001 and 2002 AFRs; (B) WorldxChange Corp.'s 2002 AFR; and (C) PT-1 Counsel Inc.'s 2001 AFR.

Upon review, the commission finds that the subject transactions, culminating in WorldxChange Corp.'s acquisition of Transpoint Communications' assets: (1) are consistent with the public interest; and that (2) competition, in this instance, will serve the same purpose as public interest regulation. Accordingly, the commission, on its own motion, will waive the requirements of HRS §§ 269-19 and 269-7(a), to the extent applicable.<sup>6</sup>

In waiving its review, the commission also notes that, in this case: (1) Transpoint Communications does not provide telecommunications services to any Hawaii-based customers; and (2) no Hawaii-based assets will be affected by the subject transactions.

C.

Upon the closing of the subject transactions, Transpoint Communications will voluntarily surrender its COA. The commission, consistent with its practice, will address

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<sup>6</sup>At 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 §§ 269-19 and 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.

The commission further notes its previous rulings that a telecommunications carrier's customer base and accounts are not assets or property under HRS § 269-19.

Transpoint Communications' surrender request in Docket No. 01-0242, the docket granting its COA.<sup>7</sup>

D.

HRS § 269-16.92 provides that a telecommunications carrier shall not initiate a change in a subscriber's selection or designation of a long distance carrier without first obtaining the subscriber's prescribed authorization.

Applicants seek a waiver of HRS § 269-16.92, pursuant to HRS § 269-16.9(e) and HAR § 6-80-135. Because Transpoint Communications does not have any Hawaii-based customers, Applicants request is moot, and no further action by the commission is warranted.

IV.

THE COMMISSION ORDERS:

1. HRS §§ 269-19 and 269-7(a), to the extent applicable, are waived with respect to the subject transactions.
2. Applicants shall promptly comply with the annual financial reporting and service requirements set forth in footnote 5, *supra*.

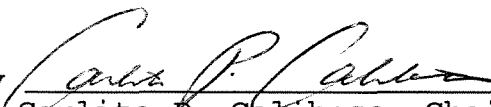
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<sup>7</sup>In this respect, Transpoint Communications will need to file the applicable AFRs and pay the corresponding public utility fees before the commission approves the voluntary surrender of the carrier's COA.

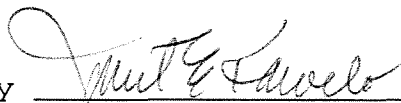
3. Upon the closing of the subject transactions, Transpoint Communications shall: (A) comply with the conditions set forth in footnote 7, *supra*; and (B) surrender its COA, issued in Docket No. 01-0242.

DONE at Honolulu, Hawaii this 13th day of June, 2003.

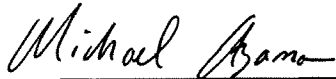
PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By   
Carlito P. Caliboso, Chairman

By (EXCUSED)  
Wayne H. Kimura, Commissioner

By   
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:

  
Michael Azama  
Commission Counsel  
03-0089.ac

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 20231 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: June 13, 2003