

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

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

In the Matter of the Petition of)
DSLnet COMMUNICATIONS, LLC)
For Grant of the Authority)
Necessary for Minority)
Transfer of Control.)
_____)

DOCKET NO. 03-0250

DECISION AND ORDER NO. 20632

Filed Nov. 13, 2003
At 9:00 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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OF THE STATE OF HAWAII

In the Matter of the Petition of))	
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DECISION AND ORDER

I.

Introduction

DSLnet COMMUNICATIONS, LLC ("DSLnet"), by a petition filed on September 10, 2003, requests commission approval to consummate a series of proposed financial transactions through which:

1. Deutsche Bank AG London ("Deutsche Bank") intends to obtain a substantial indirect minority interest in DSLnet; and
2. DSLnet's current indirect majority investor, VantagePoint Venture Partners ("VPVP") intends to relinquish its indirect majority interest in DSLnet.

DSLnet served copies of the petition on the DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY ("Consumer Advocate") on September 9, 2003. The Consumer Advocate, through its position statement filed on October 15, 2003, indicates

that it does not object to the approval of the proposed financial transactions, described above, subject to certain qualifications.

II.

Background

A.

Overview of Subject Entities

DSLnet is a limited liability company organized and existing under the laws of the State of Delaware with principal offices located in New Haven, Connecticut.¹ It is a wholly-owned subsidiary of DSL.net, Inc. ("Parent"), a publicly held Delaware corporation also headquartered in New Haven, Connecticut.

VPVP, a family of affiliated private investor funds,² currently owns a majority interest of Parent. Deutsche Bank, Parent's new investor, is incorporated as a German stock corporation with limited liability. It is a widely held international financial service provider offering a broad range of first-class banking, account-keeping, cash, and securities investment and asset management.

¹The commission granted DSLnet a certificate of authority ("COA") to provide intrastate telecommunications services in the State of Hawaii as a reseller and facilities-based carrier. Decision and Order No. 17095, filed on July 26, 1999, in Docket No. 99-0112.

²VPVP is comprised of the following four affiliated private investment funds: (1) VantagePoint Venture Partners III (Q), LP; (2) VantagePoint Venture Partners III, LP; (3) VantagePoint Communications Partners, LP; and (4) VantagePoint Venture Partners 1996, LP.

B.

Proposed Financial Transactions

Parent is in the process of completing a series of proposed financial transactions, which could result in an indirect minority transfer of control of DSLnet. In particular, Parent proposes to issue certain warrants to Deutsche Bank to acquire more than 118 million shares of Parent's common stock in connection with a \$30 million investment financing. Deutsche Bank would own an indirect minority interest of up to 37 per cent in DSLnet, if the warrants are issued and exercised. This, in turn, would result in VPVP relinquishing its majority indirect interest in DSLnet (less than 50 per cent interest), as depicted in Exhibit "A" attached hereto.

DSLnet represents that the proposed financial transactions are expected to allow DSLnet to become financially stronger, primarily because DSLnet will continue to have access to capital through Parent. DSLnet confirms that the proposed financial transactions will not affect its management structure or result in a change in rates, terms, or conditions of service, and will be entirely transparent to DSLnet's customers. DSLnet also contends that the proposed financial transactions will increase competition in Hawaii's telecommunications market by reinforcing the status of DSLnet as a viable competitor.

III.

Discussion

Hawaii Revised Statutes ("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." Thus, the commission has jurisdiction to review the proposed financial transactions of the parent entity of a regulated public utility under HRS § 269-7(a). Under HRS § 269-7(a), the commission will approve the proposed financial transaction if it is reasonable and consistent with the public interest.³

HRS § 269-16.9(e) permits us to waive regulatory requirements applicable to telecommunications providers if we determine that competition will serve the same purpose as public interest regulation. Similarly, Hawaii Administrative Rules ("HAR") § 6-80-135 permits us to waive the applicability of any of the provisions of HRS chapter 269 or any rule (except provisions of HRS § 269-34 of provisions of HAR Chapter 6-80 that implement HRS § 269-34), upon a determination that a waiver is in the public interest.

Upon review of the record in this docket, particularly DSLnet's representations in this docket, we find that: (1) much of the telecommunications services currently provided by DSLnet are competitive; (2) DSLnet is a non-dominant carrier in Hawaii;

³See, Decision and Order No. 19874, filed on December 13, 2002, in Docket No. 02-0345.

(3) the proposed financial transactions are consistent with the public interest; and (4) competition, in this instance, will serve the same purpose as public interest regulation.

Based on the foregoing, 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 HAR § 6-80-135.⁴ Similarly, we also find that it is in the public interest to waive the applicability of HAR §§ 6-61-101 and 6-61-105 in this application.⁵ Accordingly, we conclude that the requirements of HAR §§ 6-61-101 and 6-61-105 that are not satisfied by the information provided in DSLnet's petition should also be waived.

Nonetheless, we agree with the Consumer Advocate's qualifications to the extent that certain documents need to be submitted to the commission and the Consumer Advocate for their records. Our waiver of the statutory and rule-based requirements in this docket is granted, *sua sponte*, but subject to the condition that DSLnet immediately submits to the commission and the Consumer Advocate the following documents: (1) A copy of the executed financing documents, as ordered by the commission in

⁴The 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 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.

⁵We note that the petition failed to comply with the requirements set forth in HAR §§ 6-61-101 and 6-61-105 by not submitting, among other things, a copy of the applicable financial statements and agreements (i.e., Purchase Agreement dated as of July 18, 2003) relating to the proposed financial transactions.

Decision and Order No. 17481, filed on January 19, 2000, in Docket No. 99-0243; and (2) A copy of the Purchase Agreement dated July 18, 2003, executed for the purpose of completing the proposed financial transactions in the instant docket.⁶

IV.

Orders

THE COMMISSION ORDERS:

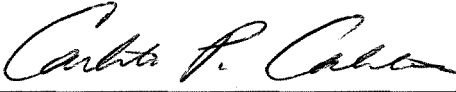
1. The requirement of HRS § 269-7(a), to the extent applicable, are waived with respect to the proposed financial transactions described in the instant application, subject to the applicable filing conditions described above in Section III.

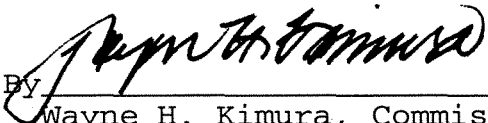
2. To the extent that the application does not contain all of the information required under either HAR § 6-61-101 or HAR § 6-61-105, the applicability of those sections is waived, subject to the applicable filing conditions described above in Section III.


⁶Our records indicate that although DSLnet filed its revised tariff on August 5, 1999, in accordance with Decision and Order No. 17095, it failed to properly serve the Consumer Advocate. We will forward a copy of DSLnet's revised tariff filed in Docket No. 99-0112 to the Consumer Advocate by a separate letter. However, we admonish DSLnet to ensure that two copies of "any documents filed with the commission" be served on the Consumer Advocate. HAR § 6-61-21. We also admonish DSLnet that it may be subject to civil penalties and revocation of its COA if it fails to comply with any of our orders. See HRS § 269-28, HAR § 6-80-19, and HAR Chapter 6-68.

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


PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By 
Wayne H. Kimura, Commissioner

By 
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:

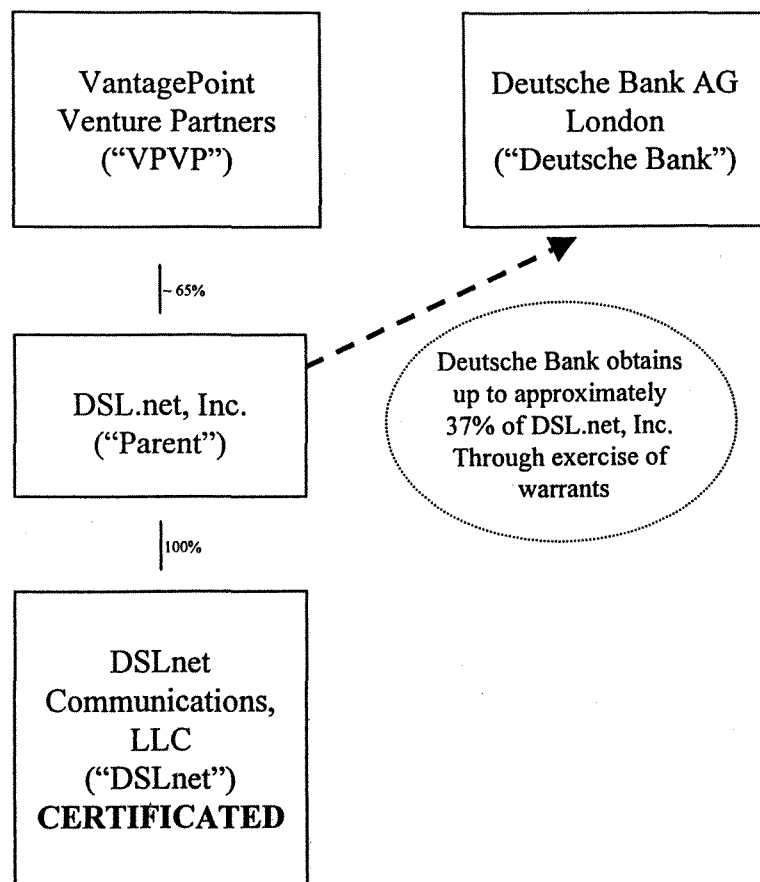

Kris N. Nakagawa
Commission Counsel

03-0250.eh

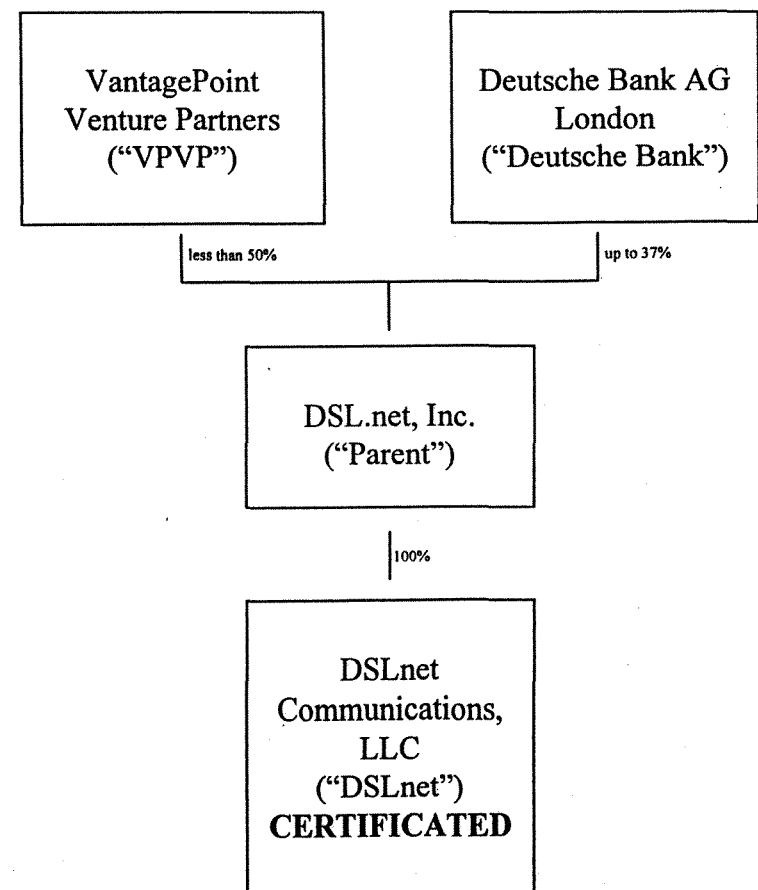
EXHIBIT "A"

Illustrative Chart

Pre-Transaction



Post-Transaction



CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 20632 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
DIVISION OF CONSUMER ADVOCACY
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Honolulu, HI 96809

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Karen Higashi

DATED : November 13, 2003